



## **Balancing Freedom of Expression and Inclusion**

The goal of this background paper is to offer an overview of the broad range of library perspectives on balancing freedom of expression and inclusion considerations when working with third-party content or events. Please keep in mind that library responses vary widely due to vast differences in local legal and cultural contexts.

Please note that the examples of library policies and practices cited in this paper are included for illustrative purposes only. The examples illustrate elements of a proposed broad classification of library responses and perspectives, but cannot portray a library response in a particular scenario in full detail, nor can they be used to infer a library's full position on freedom of expression and inclusion overall.

### *The mounting challenges of content moderation*

Globally, concerns are mounting over intolerance, prejudice and hate speech targeted at minorities – both on- and off-line.<sup>1</sup> Coupled with persistent challenges of mis- and disinformation and other online harms, the past year saw online platforms take new and unprecedented steps in their content moderation practices – e.g. removing posts which may cause public harm (e.g. COVID disinformation), making changes to their automated moderation systems,<sup>2</sup> cooperating to promote authoritative information sources, and more.

Similarly, policy dialogue around regulating illegal and/or harmful content online remains high on the political agenda – from the EU Digital Services Act, to policy responses to misinformation in different countries throughout Africa,<sup>3</sup> to the debate around Section 230 of the US Communications Decency Act and beyond.

These developments once again throw the spotlight on questions around intermediary responsibility and liability: as gateways, carriers or enablers of access to information, what is their role in mitigating the harms that may ensue? Alongside this are the questions of how measures taken to counter these online harms may impact freedom of expression (and other human rights).

---

<sup>1</sup> <https://news.un.org/en/story/2021/03/1087412>, <https://www.cfr.org/backgrounder/hate-speech-social-media-global-comparisons>

<sup>2</sup> <https://www.theverge.com/2020/12/3/22150964/facebook-moderation-anti-black-hate-speech-policy-change>

<sup>3</sup> <https://africacheck.org/fact-checks/blog/governments-africa-have-doubled-false-news-laws-little-effect-another-way-possible>

## *Echoing developments in the library field: intellectual freedom and social justice*

These concerns mirror some of the challenging questions libraries in different countries have been grappling with: balancing freedom of speech - and their overarching commitment to intellectual freedom - with inclusivity and freedom from discrimination for their patrons and broader communities.

These questions are by no means new to the library field – libraries have, for example, long faced various forms of book challenges, such as users (or other stakeholders) requesting a book to be removed from circulation on the grounds that it contains offensive or objectionable materials. The past few years, however, saw many challenges over library venue bookings, events, exhibitions, internet filtering and collection development – particularly in cases where these enable access to, give a platform for, or amplify content that is seen as intolerant, inciting hatred or otherwise objectionable.

How have libraries around the world responded and struck a balance – and what useful lessons can be learned from the evolving parallel discourse on online platform liability?

### *Liability vs immunity, freedom and obligation to moderate*

As a starting point, one proposed classification of platforms' intermediary liability models distinguishes between strict liability, conditional liability, and broad immunity. The first one holds intermediaries squarely responsible for the third-party content they are hosting. The second one sets out procedural conditions which, if met, afford intermediaries immunity from prosecution. The last one holds that intermediaries are not liable for third-party content therein.<sup>4</sup>

These differ across domestic legal frameworks – and the type of content in question.<sup>5</sup> However, it has also been pointed out that domestic laws can in some cases have an outsized impact on content moderation beyond the borders,<sup>6</sup> and there has been criticism that, to avoid liability, large platforms operating across borders can tend to follow the strictest rules.

For libraries, the legal provisions determining their liability for and/or ability to moderate speech or content - from online searches on library computers to room rentals - also vary widely. For example, the interpretation of public libraries' legal obligations in Canada which guided Toronto Public Library's decision in the case of a controversial third-party event in 2019 prevents the library from denying access to services based on the viewpoints or beliefs of the user, barring intended room use for illegal speech or activities.

In contrast, private academic libraries can have substantially more leeway in rejecting controversial or potentially harmful bids for exhibition space or meeting rooms. Like online platforms, private entities set the terms and conditions for the use of their

---

<sup>4</sup> <https://www.eff.org/sites/default/files/manila-principles-background-paper-0.99.pdf>;  
<https://jolt.law.harvard.edu/digest/platform-responsibility-and-regulation-in-canada-considerations-on-transparency-legislative-clarity-and-design>

<sup>5</sup> [https://www.europarl.europa.eu/RegData/etudes/STUD/2021/656318/EPRS\\_STU\(2021\)656318\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2021/656318/EPRS_STU(2021)656318_EN.pdf)

<sup>6</sup> See e.g. <https://www.internetjurisdiction.net/uploads/pdfs/Internet-Jurisdiction-Policy-Network-20-102-Geographic-Scope-Content-Restrictions.pdf>

services, and speech and content therein. In addition, a frequently invoked argument within the content moderation policy dialogue holds that online platforms are not a public space or public forum, and are therefore not subject to the same level of free speech obligations.<sup>7</sup> A similar argument could therefore be put forward for non-public libraries.

The differences do not stop at institution type and domestic legal tradition, of course – different rules and obligations may apply to different types of services or activities within a library.

For example, also in Canada, an applicant requested a judicial review following a public library’s decision to cancel a room agreement – since it was intended for a film screening which was determined to be likely to promote hatred. The court found that the film viewing was intended to be a private event, and making space available for private events was not one of the library’s core objectives – meaning that, although a public body, the library’s decision to terminate the rental agreement was a private one and not subject to the same review procedures as those governing library’s actions in a public capacity.<sup>8</sup>

Conversely, there are legal policy frameworks which require libraries to intervene – a prominent example perhaps being an obligation to filter public internet access to maintain a safe environment for some types of vulnerable users.<sup>9</sup>

### *Harmful vs illegal*

A second key element to consider is the nature of the content in question. A key distinction highlighted in the ongoing online content moderation and platform liability discussions is between *illegal* and *legal-yet-harmful* content.

*Illegal*: Clearly, speech or content which is illegal based on local criminal laws is illegal both in libraries and online platforms. Notably, in practice, stakeholders highlight the “porosity” of the boundary between illegal and legal content online in some cases, which can lead to many false positives and false negatives in identifying violations.<sup>10</sup>

As is often noted, concerns over freedom of speech are particularly acute where the local legal definitions of illegal content are very broad, banning such categories of speech as those disturbing public order, those which are culturally inappropriate, or cause public anxiety.<sup>11</sup>

*Harmful*: Moderating content which is legal but harmful presents particularly complex challenges. The present discourse often acknowledges that, while not inherently illegal, some speech and content have the potential to do significant harm when amplified, made more visible or spread more instantaneously – e.g. through algorithmic content delivery.<sup>12</sup> For platforms, examples of such content can include mis-and dis-information

---

<sup>7</sup> <https://www.bbc.com/news/technology-51658341>

<sup>8</sup> <https://www.cba.org/Sections/Administrative-Law/Articles/2019/Court-rules>

<sup>9</sup> <https://www.ifla.org/files/assets/faife/statements/guidelines-on-public-internet-access.pdf>

<sup>10</sup> [https://www.europarl.europa.eu/RegData/etudes/STUD/2020/652718/IPOL\\_STU\(2020\)652718\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/652718/IPOL_STU(2020)652718_EN.pdf)

<sup>11</sup> See e.g. <https://www.internetgovernance.org/2021/03/18/regulation-of-digital-platforms-in-asia/>;

<https://www.apc.org/sites/default/files/OnlineContentToRegulateOrNotToRegulate.pdf>

<sup>12</sup> [https://www.disinfo.eu/advocacy/how-the-digital-services-act-\(dsa\)-can-tackle-disinformation/](https://www.disinfo.eu/advocacy/how-the-digital-services-act-(dsa)-can-tackle-disinformation/)

(for example, electoral or health-related, particularly during a public health crisis) or cyberbullying. To some extent, this point on amplification echoes the concerns over harmful speech in a library – that it offers such speech a platform with broader reach or an added impression of legitimacy.

Often, this type of harmful content is addressed through platforms’ own terms and conditions and self-regulation.<sup>13</sup> There have also been some collaborative efforts to address legal but harmful content – e.g. the self-regulatory EU *Code of Practice on Disinformation*, which sees the Commission and major platforms cooperate to address the spread of viral conspiracy theories”.<sup>14</sup>

Legislative approaches in this matter continue to evolve as well, with the UK recently publishing a draft Online Safety Bill, which would put obligations on (large) platforms to tackle legal-yet-harmful content as well – like abusive speech which doesn’t pass the threshold of criminality, disinformation, age-inappropriate violent content, etc. An intermediary’s obligations here could be to address such content, describe how the platform addresses this content in its terms and conditions, and offer transparency reports.<sup>15</sup> Concerns have been raised over the impacts this could have on freedom of expression by incentivising platforms to over-censor, and leaving crucial decisions about speech in the hands of private, rather than public or judicial, actors.<sup>16</sup>

A different proposed approach to ‘legal-but-harmful’ content focuses on remedies other than removal. In a recent open letter, a group of stakeholders including Twitter and Mozilla proposed instead to focus on the discoverability of such content. This can be achieved, for example, by discoverability limits, algorithmic transparency, and meaningful user control over the content they see.<sup>17</sup> In 2020, the European Commission Vice-President for Values and Transparency, during discussions on a then-forthcoming Digital Service Act, noted that “in order to address disinformation and harmful content we should focus on how this content is distributed and shown to people rather than push for removal.”<sup>18</sup>

### *Charting library responses: intellectual freedom, social justice*

In parallel with online platforms, libraries are facing a diversity of legal frameworks and types of challenging content when it comes to balancing intellectual freedom and objectionable or hateful speech. Below is a rough outline of the types of library responses in different parts of the world – and how they echo some of the approaches and lessons learned from content moderation policy and practice.

---

<sup>13</sup> See e.g. <https://www.aarp.org/health/conditions-treatments/info-2021/facebook-blocks-coronavirus-misinformation.html>

<sup>14</sup> <https://www.brusselstimes.com/news/eu-affairs/173131/new-eu-study-shows-increase-in-on-line-antisemitism-during-the-coronavirus-crisis/>

<sup>15</sup> <https://www.lexology.com/library/detail.aspx?g=4c0be777-d91f-4ed5-a48a-d841d6e688bc>

<sup>16</sup> See e.g. <https://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/ContentRegulation.aspx>

<sup>17</sup> <https://blog.mozilla.org/netpolicy/files/2020/12/Open-Internet-Letter-Content-Liability-Dec-2020-1.pdf>

<sup>18</sup> <https://www.euractiv.com/section/digital/news/digital-services-act-should-avoid-rules-on-harmful-content-big-tech-tells-eu/>. There is also an interesting discussion on the extent to which governments may require a cam on amplification on legal content, depending on the national legal frameworks, e.g. in the US - [https://knightcolumbia.org/content/amplification-and-its-discontents?mc\\_cid=f70bbd619d&mc\\_eid=fdb7877561](https://knightcolumbia.org/content/amplification-and-its-discontents?mc_cid=f70bbd619d&mc_eid=fdb7877561)

Notably, these library responses are rooted in widely different legal traditions and cultures when it comes to freedom of speech and countering hate and discrimination. As such, solutions which are appropriate and acceptable to one library in one context may be perceived as infringing (and inappropriate) by another, and vice versa.

### *Response 1: Intellectual freedom and the threshold of legality*

The first approach is, of course, one that **emphasises free speech** and neutrality. It is articulated, for example, in the American Library Association's interpretation of the Library Bill of Rights.<sup>19</sup> Key arguments here include libraries' commitment to intellectual freedom and a professional obligation to represent a wide range of materials and ideas for their community; as well as the obligation to not discriminate between patrons based on their views or beliefs. Proponents also refer to the historical importance to social justice causes over the past decades of not policing offensive or minority opinions.

Consequently, this approach could be characterised as taking a position that, **as long as the contested/objectionable speech is not breaching the law**, then free speech, intellectual freedom and nondiscrimination principles hold that it has the right to a place inside the library.

Here, it's worth noting that bigoted and hateful speech targeted at minorities or other groups with protected characteristics is a distinct case precisely because, in many legal interpretations, the threshold for criminal hate speech is set fairly high (for instance, in Canada's legal framework). Similarly, as a UN publication highlighted, "Rather than prohibiting hate speech as such, international law prohibits the incitement to discrimination, hostility and violence (referred to here as 'incitement')." <sup>20</sup>

In libraries, from a procedural standpoint, this approach may involve requesting information and **screening the "eligibility" of a proposed third-party event, booking or exhibition at the application stage** – to make sure that it is not likely to meet the criteria for illegal speech/activities. Such a review (which can at times require external consultations<sup>21</sup>) can focus on the overarching legal obligations of the library, as well as existing policies on the use of library facilities.<sup>22</sup> The latter points to the importance of having clear rules and policies in place – and well as appropriate mechanisms for appeal.

*These points echo the concerns that putting an obligation on online platforms to remove content beyond what is illegal can risk over-enforcement and have a chilling effect on free speech. Similarly, it mirrors the concerns that intermediaries are not always well-equipped to judge the legality of hateful or offensive speech which is more context-dependent or open to interpretation, risking over-enforcement - especially if there is a lack of suitable redress and oversight mechanisms.<sup>23</sup> As such, transparency and clarity of existing rules – as well as the availability of redress mechanisms – remains key.*

---

<sup>19</sup> <http://www.ala.org/advocacy/intfreedom/librarybill/interpretations/meetingrooms>

<sup>20</sup> <https://www.un.org/en/genocideprevention/documents/UN%20Strategy%20and%20Plan%20of%20Action%20on%20Hate%20Speech%2018%20June%20SYNOPSIS.pdf>

<sup>21</sup> See e.g. <https://www.fletcherfree.org/response>

<sup>22</sup> See e.g. <https://www.straight.com/news/1305711/proposed-vancouver-public-library-rental-policy-affirms-commitment-intellectual-freedom>

<sup>23</sup> See e.g. <https://edri.org/our-work/content-regulation-whats-the-online-harm/>; see also <https://www.article19.org/resources/internet-companies-alone-cant-prevent-online-harms/>

*1.1. Distancing.* As an added subset of this library position, in practice this approach might also involve **clarifying the distinction** between the controversial expression/expo/event and the position of the library. A library can, for instance, issue a statement explaining their decision to allow an event to proceed but highlighting that it does not represent the views of the library.

CFLA/FCAB, the Canadian Federation of Library Associations, suggests some possible good practices on third-party meeting room use reflecting these. For example, a library “posts a permanent notice, in the languages commonly used in the community, near the meeting rooms and spaces stating that the library does not advocate or endorse the viewpoints expressed in meetings or by meeting room users. [...] The Library posts a disclaimer statement outside the meeting room or facility in use, making it clear that the free expression being exercised does not necessarily reflect the views of the Library”.<sup>24</sup>

### *Response 2: Framing and counter-speech*

*As mentioned above, online platforms have a range of tools at their disposal to counter harmful or objectionable content without resorting to removal. Some of these have been prominently visible, for example, during the pandemic: e.g. labelling posts which contain misinformation, linking to credible information sources, adjusting the visibility of authoritative and non-authoritative content.*

*One suggested taxonomy of remedies that various platforms have been leveraging distinguishes between the following broad categories:*

- *Content regulation (removal, suspension, relocation, adding labels or counter-speech...)*
- *Account regulation (termination, suspension, reduced service levels...)*
- *Monetary action (e.g. demonetisation)*
- *Visibility measures (e.g. downgrading or removing the item’s internal or external search visibility, “age-gates”, reduced or no promotion...)*
- *And a wide category of “other” measures: strikes and warnings, user education, “community service”, and more.<sup>25</sup>*

Monetary or account-based solutions may not be as relevant for libraries (although, depending on library policies, some services might be withheld from repeat ‘offenders’), but libraries certainly have been exploring remedies similar to some of those outlined above.

*2.1 Counter-speech.* Particularly in the case of offensive or potentially harmful speech in events or exhibitions, some proposed solutions from the library field include: requesting that a meeting is held publicly and/or open for whoever wants to join, that a

---

<sup>24</sup> [http://cfla-fcab.ca/wp-content/uploads/2019/03/CFLA-FCAB\\_statement\\_meeting\\_rooms.pdf](http://cfla-fcab.ca/wp-content/uploads/2019/03/CFLA-FCAB_statement_meeting_rooms.pdf)

<sup>25</sup> Goldman, E., 2020, “Content Moderation Remedies” - <https://poseidon01.ssrn.com/delivery.php?ID=697001127126075115125112079118081074103024036044086003100072098125124091023125091029110032053022109049003121008070098096075114116083094022086121066109117120019104060017067021018094124114111027006068094023029094100008001088006109124079072116068120009&EXT=pdf&INDEX=TRUE>

moderator is present, or strategically placing books or handouts with scientific and high-quality resources near or in the room where a meeting is held.<sup>26</sup>

There are some examples of these approaches being explored in practice – for instance, in Europe and the US. In one case, a third-party event booking by a group promoting religious intolerance was met by a library request to ‘accommodate debate and accept input from people with opposing views’, and rejected upon the group’s refusal.<sup>27</sup>

On a broader scale, another suggested approach is for a library to instead focus on making a positive difference and supporting other events and movements for equality and social justice in the face of offensive or intolerant speech or sentiments in their communities at large.

This is discussed, for example, by ALA – with such suggestions as: “encouraging libraries to reach out to community groups—especially of the most marginalized— alerting them to relevant resources and making them aware of available meeting spaces; and suggesting that libraries collect resources and develop guides devoted to the struggle against fascism”, “getting involved with organizations committed to a mass action approach for combating hate speech, providing reference assistance to such organizations, collecting materials and preparing guides on the struggle against the far right, participating in demonstrations against gatherings of hate groups, monitoring their meetings, and directly confronting their bigotry.”<sup>28</sup>

This relates to another strand of discussions around the “free speech vs hate speech” debate – that libraries can help counter hate speech and support social cohesion and non-discrimination on a larger scale, with positive action, not in relation to any specific contested book, library event or exhibition. This role of libraries in promoting equality and democracy was reflected, for example, in the Finnish National Development Plan.<sup>29</sup>

*2.2. Notifications, labelling and framing.* For exhibitions, possible proposed remedies also include giving context to a potentially offensive piece, e.g. clearly marking exhibits as “satire”.

This approach is also sometimes taken towards disturbing or potentially objectionable or offensive materials in library or archive collections – including digital archives and databases. There are examples of academic libraries considering potentially offensive or harmful materials in their databases, and arriving at a decision that in some cases additional contextual information may be offered for such materials; or that objectionable language in materials prepared by staff or archivists could be updated while objectionable language from the original creator would be preserved, but the material could be marked with additional descriptive notes explaining the context.<sup>30</sup>

---

<sup>26</sup> e.g. <https://www.thefire.org/so-to-speak-podcast-transcript-defending-libraries-with-james-larue/> and <https://lianza.org.nz/wp-content/uploads/2019/06/Freedom-of-Expression-Draft-Discussion-Document-March-2019-1.pdf>

<sup>27</sup> [https://slks.dk/fileadmin/user\\_upload/dokumenter/KS/service/publikationer/institutioner/biblioteker/SLO\\_2015\\_3.pdf](https://slks.dk/fileadmin/user_upload/dokumenter/KS/service/publikationer/institutioner/biblioteker/SLO_2015_3.pdf)

<sup>28</sup> <https://journals.ala.org/index.php/jifp/article/view/7098/10052>

<sup>29</sup> <https://www.ifla.org/node/11226>; <https://blogs.ifla.org/public-libraries/2016/06/01/new-library-act-and-new-strategy-for-finnish-public-libraries/>.

<sup>30</sup> <https://uwm.edu/lib-collections/potentially-offensive-materials/>;  
<https://www.colorado.edu/libraries/libraries/norlin-library/rare-and-distinctive-collections/collections/statement-potentially-harmful>

*2.3 Reach and access controls.* In online content moderation discourse, part of the suggested remedied focus in particular on giving users meaningful control over what content they see and don't see. While there are no direct equivalents to this in a library setting, there are examples of libraries reviewing books which contain insensitive or objectionable language – e.g. towards national minorities – and, upon review, taking measures that change how these can be accessed or how visible they are.

For example, in both Asia and Europe there are cases where publicly funded libraries have grappled with questions on books in their collections – especially children's books – which contain hurtful ethnic minority stereotypes. While different libraries ultimately arrived at different decisions, some of the solutions falling into this category involved moving the books to a warehouse, keeping them in circulation but marking the books with a sticker, or moving them to the adult section.<sup>31</sup>

### *Response 3: Legal but objectionable – seeking to prevent harm*

In other cases, library responses can go beyond assessing whether third-party speech or content is merely legal. A judgement call not to proceed with a potentially offensive or harmful event/expo/etc can be made based on other grounds – for example, refusing speech which is racist, hateful, etc (at least where these do not already fall under the description of illegal speech).

*Harmful or racist speech.* A 2019 *Freedom of Expression* draft discussion document by the Library and Information Association of New Zealand Aotearoa (LIANZA) concludes that giving a platform for some talks may entail a risk of harm, and in some cases it “may be appropriate for Libraries to [...] decide not to give a speaker or artist a platform”.<sup>32</sup> A similar judgment position might apply to displays – a publicly funded library's policy on third party displays may reserve the right to refuse materials deemed objectionable – e.g. racist or indecent.

There are examples of bookings or other third-party content rejected by libraries on the basis of such considerations – e.g. for going against a library commitment for an inclusive and welcoming environment by making some users feel uneasy. Another reason cited for why offensive or controversial events have been rejected focuses on the need to *ensure safety and security, and/or prevent disruptions interfering with the ability of others to use library services*.<sup>33</sup> Alongside a library's own policies, there may also be local legal frameworks or bylaws requiring libraries to avoid hosting events likely to lead to unrest.

Notably, the LIANZA draft document also points out that the decision to restrict speech might be considered by libraries particularly in cases of talks and exhibitions – but such considerations may not necessarily be the case for potentially objectionable or controversial materials in library collections.

---

<sup>31</sup> See e.g. <https://bibliotheekblad.nl/ophef-over-berichtgeving-verwijderen-boeken-met-zwarte-piet-uit-bibliotheek/>; <https://www.channelnewsasia.com/news/singapore/nlb-who-wins-chinese-children-book-racist-adult-libraries-13312682>; <https://www.bbc.com/news/entertainment-arts-56250658>

<sup>32</sup> <https://lianza.org.nz/wp-content/uploads/2019/06/Freedom-of-Expression-Draft-Discussion-Document-March-2019-1.pdf>. See also <https://lianza.org.nz/wp-content/uploads/2020/11/LIANZA-Statement-on-Freedom-of-Information-2020.pdf>.

<sup>33</sup> <https://www.stuff.co.nz/national/125265969/christchurch-libraries-refuse-to-host-controversial-group>.

While there are also examples of libraries arriving to a decision to remove certain objectionable materials from their collections, there is of course firm opposition to censorship in library collections overall; which can be seen as most central to library work (e.g. as mentioned by Bats, 2016),<sup>34</sup> and therefore potentially more resistant to outside pressures.

*Such considerations echo the questions around private companies' handling of legal yet objectionable content. For example, Facebook's formal operational conceptualisations of hate speech, which breaks it into tiers of severity, can extend to such forms of speech as "expressions of disgust", "self-admission to intolerance" on the basis of protected characteristics, etc.*<sup>35</sup>

*From a freedom of speech perspective, it is also worth considering the experiences of user objections to platform content moderation decisions - those made on the basis of platform terms of use (particularly around hateful speech which may fall short of criminality thresholds), and challenged on the grounds of users' fundamental right to freedom of speech.*

*Here, manifest differences exist, of course, between legal frameworks – in the US, Section 230 immunity has been a basis for dismissing court cases requesting (private online) platforms to reinstate content removed as part of moderation.<sup>36</sup> Meanwhile in Germany, the past few years saw several cases where the court ruled in the plaintiff's favour, satisfying their claims to restore access to the platform.*

*Parallels here may be, limited since part of the reasoning deals with the unique market power of such platforms and their role in public - including political - communication. Some relevant takeaways here could nonetheless include the questions around balancing fundamental rights (e.g. of the user whose speech was challenged, of intermediaries' right to set standards for communication therein, and those of other users); and the importance of not restricting such speech arbitrarily, and removing access to services which – like it or not – are a significant part of people's lives with no recourse.<sup>37</sup>*

*This goes hand in hand with the core principle that the fundamental and universal rights codified in the Universal Declaration of Human Rights (UDHR) are indivisible and interdependent – e.g. where Article 19 codifies the rights to freedom of opinion and expression, Article 7 the freedom from discrimination, while Article 29 addressed duties and general limitations.<sup>38</sup>*

#### *Response 4: Curation and setting the ground rules*

Finally, another library approach focuses on setting the rules from the outset to help prevent such challenges from arising in the first place, as well as helping in the implementation of other approaches set out above. These can take on various forms:

---

<sup>34</sup> <https://hal.archives-ouvertes.fr/hal-02476927/document>

<sup>35</sup> <https://rm.coe.int/models-of-governance-of-online-hate-speech/16809e671d>

<sup>36</sup> See e.g. <https://www.techdirt.com/articles/20210617/22335747012/changing-section-230-wont-make-internet-kinder-gentler-place.shtml>

<sup>37</sup> [https://policyreview.info/articles/analysis/back-can-users-sue-platforms-reinstate-deleted-content#footnoteref11\\_yi2wtuo](https://policyreview.info/articles/analysis/back-can-users-sue-platforms-reinstate-deleted-content#footnoteref11_yi2wtuo)

<sup>38</sup> See e.g. <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23999&LangID=E>

- *Setting out criteria for third-party content characteristics.* For example, a review of some third-party exhibitions policies and practices in academic libraries indicates that some of them require controversial topics to be handled in an objective manner, or for exhibitions not to promote personal, organisational or political positions.<sup>39</sup>
- *Ruling out certain purposes.* Similarly, some room booking or third-party exhibition library policies look to rule out particular uses. These can include, for instance, prohibitions of meeting room uses or exhibitions by political/religious groups or for political/religious purposes.
- *Curatorial decisions.* Finally, some arguments on this matter highlight the role of libraries as curators. With library space a limited and rivalrous resource, some library policies reserve the right to give priority to events, room bookings or exhibition bids on the basis of what aligns best with the library's goals and purposes (or those of the organisation or institution to which the library belongs). For example, they may prioritise events co-organised by the library, events which focus on reading, learning, community information, etc.

### *Summary and lessons learned*

Overall, clearly, a library's response depends heavily on the domestic legal frameworks, institution type (particularly whether it is a public body), and the type of library service or activity in question.

In summary, library measures to balance freedom of speech with freedom from discrimination and addressing hateful speech can range from:

- Putting emphasis on freedom of expression – meaning speech within legal bounds is permitted
  - Including measures to highlight the distinction between third-party speech and that of the library
- Taking measures to frame, control access/visibility of, or offer a counter-perspective to a controversial event, exhibition or material
- Rejecting hateful or otherwise potentially harmful events or materials, on the grounds of:
  - ... their potential harm to vulnerable community members and/or to an inclusive environment
  - ... on the basis of potential risks to safety, or disruption of library services
- Setting out rules and policies that rule out some types of events or library space uses by third parties; or reserving the right to make curatorial decisions and give priority to events/expos which best align with library goals.

---

<sup>39</sup> [https://www.journals.uchicago.edu/doi/10.1086/691374#\\_i11](https://www.journals.uchicago.edu/doi/10.1086/691374#_i11)

## *Drawing lessons from content moderation policies and practices*

**Lesson learned: internal policies are key!** Fundamentally, a lot of online content moderation relies on the policies and terms and conditions set out publicly by the intermediaries themselves. As practice shows, decisions over much of the ‘grey-area’ content falling short of criminal thresholds of hate speech become questions for platforms’ own terms and conditions.

This echoes libraries’ experiences: Ohio Library Council’s toolkit, for example, discusses both equal access room policies and policy caveats pertaining to group and individual behaviour; to help address both objectionable user requests and public’s opposition to those.<sup>40</sup>

**Lesson learned: consistency and due process.** A related point is that a lot of criticism has been directed at online content platforms for failing to enforce their content moderation policies consistently.<sup>41</sup> To be fair, these challenges are inherent, in no small measure, to the scale and scope of third party content in question, and the particular complexity of grey-area content, whose legal status “might be heavily contested among even highly skilled, well trained and experienced practitioners such as professional moderators and legal professionals”.<sup>42</sup>

For libraries, enforcing whichever policies are in place *consistently* is a then key part of both legal and ethical responsibilities. Having policies which lend themselves easily to consistent interpretation and/or outline procedural elements, including those pertaining to recourse mechanisms, can be an immense help in maintaining consistency and due process.

**Lesson learned: clarity and communication.** A significant number of recent efforts around content moderation governance have emphasised the importance of meaningful transparency measures – i.e. transparency reporting standards, clarity over existing rules, and so on. Libraries have experienced first-hand how challenging communication around such difficult decisions can get. Therefore, clear communication around their policies in general and the reasoning behind specific decisions in particular can be an important part of the response.

---

<sup>40</sup> <http://olc.org/wp-content/uploads/2018/07/Self-Censorship-Toolkit-Collection-Development.pdf>

<sup>41</sup> See e.g. <https://www.eff.org/nl/deeplinks/2019/04/content-moderation-broken-let-us-count-ways>

<sup>42</sup> <https://rm.coe.int/models-of-governance-of-online-hate-speech/16809e671d>