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## Librarians as Privacy Advocates

BJ ARD\*

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Librarians' professional commitment to protecting patron privacy reaches back nearly a century.<sup>1</sup> The profession's ethical commitments are bolstered by library privacy laws in nearly every state and by librarians' conscientious design of their own recordkeeping systems to safeguard patron records against disclosure.<sup>2</sup> This focus on privacy stems from librarians' commitment to intellectual freedom, or the ideal that every individual should enjoy the unfettered right to seek and receive information.<sup>3</sup> Privacy advances this sort of freedom by

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\* Ph.D. Candidate in Law, Yale University, and Resident Fellow at the Yale Law School Information Society Project. J.D. 2010, Yale Law School. I am deeply grateful to my co-panelists Seeta Peña Gangadharan and Anne Klinefelter, to our moderator Margot Kaminski, and to my colleague Kiel Brennan-Marquez for sharing their ideas and feedback. I would also like to thank the staff at the *I/S: A Journal of Law and Policy for the Information Society* for their excellent editorial assistance.

<sup>1</sup> ALA POLICY MANUAL § B.2.1.16 Privacy: An Interpretation of the Library Bill of Rights (AM. LIBR. ASS'N 2014), *reprinted in* AM. LIBR. ASS'N, INTELLECTUAL FREEDOM MANUAL 174-76 (Trina Magi & Martin Garner eds., 9th ed. 2015).

<sup>2</sup> *See id.*

<sup>3</sup> ALA POLICY MANUAL § B.2.3 Freedom to Read (AM. LIBR. ASS'N 2004), *reprinted in* INTELLECTUAL FREEDOM MANUAL, *supra* note 1, at 23.

insulating library patrons against the normalizing effects of surveillance.<sup>4</sup>

Recent developments nonetheless strain the profession's ability to vindicate this commitment to patron privacy. Libraries increasingly provide access to third-party databases or refer patrons to e-book providers like Amazon, and these third parties collect intimate details on patrons' reading habits without facing the constraints of library-specific privacy laws and without being governed by librarians' ethics.<sup>5</sup> Many readers, moreover, now seek information primarily from non-library sources: Google fields billions of reference requests per day; Amazon tracks the reading patterns of those who download books for the Kindle e-reader; and social media platforms like Facebook have become the primary source of news for millions of Americans. These digital intermediaries surveil users' reading habits in ways that are troubling from the perspective of intellectual freedom, but almost entirely outside librarians' direct control.<sup>6</sup>

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<sup>4</sup> See ALA POLICY MANUAL § B.2.1.16 Privacy: An Interpretation of the Library Bill of Rights, *supra* note 1, at 175 ("When users recognize or fear that their privacy or confidentiality is compromised, true freedom of inquiry no longer exists."). Several legal scholars have analyzed the connection between privacy and intellectual freedom in great depth. See Marc Jonathan Blitz, *Constitutional Safeguards for Silent Experiments in Living: Libraries, the Right to Read, and a First Amendment Theory for an Unaccompanied Right to Receive Information*, 74 UMKC L. REV. 799 (2006); Julie E. Cohen, *A Right to Read Anonymously: A Closer Look at "Copyright Management" in Cyberspace*, 28 CONN. L. REV. 981 (1996); Neil M. Richards, *Intellectual Privacy*, 87 TEX. L. REV. 387 (2008).

<sup>5</sup> See generally Michael Zimmer, *Patron Privacy in the "2.0" Era: Avoiding the Faustian Bargain of Library 2.0*, 22 J. INFO. ETHICS 44 (2013) (identifying the challenges that third parties pose for library privacy); April D. Lambert, Michelle Parker & Masooda Bashir, *Library Patron Privacy in Jeopardy: An Analysis of the Privacy Policies of Digital Content Vendors*, 52 PROC. ASS'N INFO. SCI. & TECH. 1 (2015) (documenting third-party vendors' failure to offer privacy policies that comply with librarians' privacy commitments); BJ Ard, *Confidentiality and the Problem of Third Parties: Protecting Reader Privacy in the Age of Intermediaries*, 16 YALE J.L. & TECH. 1 (2013) (analyzing the shortcomings of libraries' traditional methods of securing reader privacy when library services are delivered by third parties).

<sup>6</sup> See Anne Klinefelter, *Library Standards for Privacy: A Model for the Digital World?*, 11 N.C. J.L. & TECH. 553, 561 (2010) (noting this gap and arguing we ought to extend library privacy laws to cover these contexts); see also Margot E. Kaminski & Shane Witnov, *The Conforming Effect: First Amendment Implications of Surveillance, Beyond Chilling Speech*, 49 U. RICH. L. REV. 465, 511-14 (2015) (explaining how surveillance undermines intellectual freedom by promoting conformity). To be sure, there is much that libraries can and ought to do to reclaim reader privacy within libraries themselves by protecting patrons' data flows, see, e.g., Seeta Gangadharan, *Library Privacy in Practice: System Change and Challenges*, 13 I/S: J.L. & POL'Y FOR INFO. SOC'Y. 175 (2016), and by securing confidentiality in their agreements with vendors and other collaborators, see, e.g., Anne

Librarians nonetheless have an important role to play as privacy advocates, a role they have historically pursued through lobbying, litigation, and community education in the face of government surveillance. I argue that librarians should redouble these efforts in the face of emerging privacy challenges, including those arising from the private sector. Tech firms are systematically advantaged relative to consumers in shaping privacy law given their concentrated interests in collecting data relative to the public's more diffuse interests in privacy; these advantages are compounded by the obscurity and technical complexity surrounding the data flows in question.<sup>7</sup>

Librarians, accordingly, stand to provide an important counterweight in policymaking by asserting their expertise in information science and leveraging the profession's unparalleled credibility and goodwill. The following discussion outlines the history of librarians' privacy advocacy and identifies opportunities for future engagement.

## I. LEGISLATION AND LOBBYING

The library profession has historically been outspoken in confronting laws and policies that threaten reader privacy. Throughout the 1970s and 1980s, one such threat came from covert federal investigation. Internal Revenue Service ("IRS") agents canvassed public libraries to request circulation records, despite having no subpoenas, and the Federal Bureau of Investigation ("FBI")

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Klinefelter, *Reader Privacy in Digital Library Collaborations: Signs of Commitment, Opportunities for Improvement*, 13 I/S: J.L. & POL'Y FOR INFO. SOC'Y. 199 (2016). This essay is not meant to downplay the importance of these efforts, but instead to situate them alongside librarians' decades of committed advocacy in the wider public sphere.

<sup>7</sup> See, e.g., NEIL K. KOMESAR, IMPERFECT ALTERNATIVES: CHOOSING INSTITUTIONS IN LAW, ECONOMICS, AND PUBLIC POLICY 68-73 (1994) (tracing the role of concentrated interests and information access in spurring political action). Even those privacy advocates who are concerned primarily with privacy vis-à-vis the state ought to be concerned about private surveillance in light of the state's ability to coopt the private sector's surveillance tools. For greater coverage of this phenomenon, see for example, Jack M. Balkin, *Old-School/New-School Speech Regulation*, 127 HARV. L. REV. 2296 (2014) (tracing state surveillance through cooption of privately owned communications networks); Jon D. Michaels, *All the President's Spies: Private-Public Intelligence Partnerships in the War on Terror*, 96 CAL. L. REV. 901, 908 (2008) (identifying the appeal of private-public partnerships where "private data gathering is subject to less stringent regulation than what the government faces"); and Richards, *supra* note 4, at 427-28 (articulating the risks that such partnerships pose for intellectual privacy).

conducted its infamous Library Surveillance Program.<sup>8</sup> Through the Library Surveillance Program, the FBI attempted to recruit librarians to participate in the government's surveillance apparatus by requesting that librarians report what "suspicious-looking foreigners" had been reading. The FBI in effect asked that the profession betray the confidence of patrons "with accents or 'with foreign-sounding last names.'"<sup>9</sup>

Librarians denounced these programs swiftly and without equivocation. The American Library Association ("ALA") repeatedly affirmed librarians' commitment to privacy during the debate over these programs, and the library community ultimately rallied support from the public at large as well as members of Congress.<sup>10</sup> Representative Don Edwards (D-CA), a former FBI agent, publicly rebuked the FBI for its conduct in the Library Surveillance Program: "You have not measured what you are doing to freedom of speech and privacy and so forth against the panic that you are causing in this country. And it is real."<sup>11</sup>

We may never know whether the FBI and other federal investigators officially abandoned these programs, but public outcry was such that they certainly changed tactics. Librarians' successful mobilization against these programs was also instrumental in the

<sup>8</sup> See HERBERT N. FOERSTEL, SURVEILLANCE IN THE STACKS: THE FBI'S LIBRARY AWARENESS PROGRAM 4-5 (1991) (documenting IRS efforts); *id.* at 14 (describing the FBI's library surveillance program); see also Bruce M. Kennedy, *Confidentiality of Library Records: A Survey of Problems, Policies, and Laws*, 81 L. LIBR. J. 733, 741-42 (1989) (documenting the FBI's attempts to recruit academic librarians as informants prior to the Library Surveillance Program).

<sup>9</sup> Judith F. Krug, *ALA and Intellectual Freedom: A Historical Overview*, in AM. LIBR. ASS'N, INTELLECTUAL FREEDOM MANUAL 14, 22-23 (7th ed. 2006); Nat Hentoff, *The FBI in the Library: Sweet Land of Liberty*, WASH. POST, July 23, 1988, at A23.

<sup>10</sup> See, e.g., FOERSTEL, *supra* note 8, at 5-6 (documenting the ALA's 1970 advisory statement condemning the IRS's attempt to obtain records without legal process); INTELLECTUAL FREEDOM MANUAL, *supra* note 9, at 297 (documenting the ALA's 1971 Policy on Confidential Records); *Statement on Professional Ethics, 1975*, AM. LIBR. ASS'N, <http://www.ala.org/advocacy/proethics/history/index3> [<https://perma.cc/T58T-4VMG>] ("A Librarian . . . [m]ust protect the essential confidential relationship which exists between a library user and the library.").

<sup>11</sup> *FBI Counterintelligence Visits to Libraries: Hearing Before the Subcomm. on Civil and Constitutional Rights of the H. Comm. on the Judiciary*, 100th Cong. 121 (1989) (statement of Rep. Don Edwards); see Linda Greenhouse, *F.B.I. Search for Spies in Library is Assailed*, N.Y. TIMES, June 21, 1988, at A16.

passage or updating of state library privacy laws to curtail law enforcement efforts to obtain circulation records without a warrant.<sup>12</sup> Open records laws presented a contemporaneous challenge. Public libraries are arms of the government, and private parties from the late 1970s through late 1980s discovered that they could use state sunshine laws to request circulation records that showed what neighbors, family members, and perfect strangers had been reading. A religious group in Florida sought to learn who checked out certain books so it could proselytize them; a man in Virginia sought his wife's reading records to prove she had been planning a divorce; and the Christian-right political group Moral Majority sought to obtain the names of school teachers in Washington State who borrowed particular sex-education films.<sup>13</sup> Requests like these undermined librarians' confidentiality obligations, despite their apparent legality. Libraries succeeded in rallying support for library privacy laws that would either prohibit these requests or, at a minimum, empower librarians with discretion to deny these requests through the exercise of their professional judgment.<sup>14</sup> Forty-eight states and the District of Columbia now protect library records by statute.<sup>15</sup>

More recently, the library community has been outspoken in its opposition to the perceived overreaching of the Patriot Act.<sup>16</sup> The ALA in particular has been a consistent voice in criticizing Section 215 of

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<sup>12</sup> See Anne Klinefelter, *Privacy and Library Public Services: Or, I Know What You Read Last Summer*, 26 LEGAL REFERENCES SERV. Q. 253, 259 (2007) (explaining state library privacy laws as a "reaction to the Library Awareness Program of the 1970s and later").

<sup>13</sup> FOERSTEL, *supra* note 8, at 123; see Kennedy, *supra* note 8, at 755.

<sup>14</sup> See Kennedy, *supra* note 8, at 745, 758; see also Ard, *supra* note 5, at 25-26 (contrasting the various legal protections available under these laws).

<sup>15</sup> For in-depth coverage and comparison of specific laws, see Klinefelter, *supra* note 6 (appendix) (canvassing the laws); Kennedy, *supra* note 8, at 754-66 (comparing the statutory design, scope, exceptions, disclosure procedures, and sanctions under these laws). Hawaii and Kentucky—the two states without library privacy statutes—enjoy a measure of protection under opinions by their state attorneys general. See Op. Letter No. 90-30 from Haw. Att'y Gen., to Haw. State Librarian (Oct. 23, 1990) (on file at 1990 WL 482378); Op. Letter No. 82-149 from Ky. Att'y Gen., to Ky. State Librarian and Comm'r (Mar. 12, 1982) (on file at 1982 WL 176791); Op. Letter No. 81-159 from Ky. Att'y Gen., to Ky. State Librarian and Comm'r (Apr. 21, 1981) (on file at 1981 WL 142193).

<sup>16</sup> The Act was passed as the USA PATRIOT ACT of 2001, Pub. L. No. 107-56, 115 Stat. 272, and extended pursuant to the USA PATRIOT Act Additional Reauthorization Amendments Act of 2006, Pub. L. No. 109-178, 120 Stat. 278.

the Patriot Act, which allows the FBI to request production of “tangible things”—including library records—in secret and without judicial oversight.<sup>17</sup> As described in greater detail below, however, the library profession’s early advocacy efforts were hamstrung by the FBI’s use of gag orders to keep librarians who were targeted under the Patriot Act from speaking to the public about their experiences.<sup>18</sup>

The library community has been much more ambivalent, however, in its response to the threats to reader privacy posed by private actors. Consider the arrangements that hundreds of public and academic libraries have brokered with Amazon: libraries pay for services where their patrons can borrow e-books for reading on their Kindle e-book readers, but Amazon monitors exactly which pages users read, highlight, or linger on.<sup>19</sup> Some librarians have criticized these arrangements for their adverse effects on reader privacy.<sup>20</sup> Others dismiss the concerns, reasoning that Kindle users have voluntarily surrendered their information to Amazon.<sup>21</sup>

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<sup>17</sup> See, e.g., AM. LIBR. ASS’N, RESOLUTION ON THE USA PATRIOT ACT AND RELATED MEASURES THAT INFRINGE ON THE RIGHTS OF LIBRARY USERS (2003), <http://www.ala.org/offices/oif/statementspols/ifresolutions/resolutionusa> [<https://perma.cc/VA9V-Y74V>]; AM. LIBR. ASS’N, RESOLUTION ON THE USA PATRIOT ACT AND LIBRARIES (2005), <http://www.ala.org/offices/sites/ala.org.offices/files/content/wo/reference/colresolutions/PDFs/062905-CD20.6.pdf> [<https://perma.cc/LBV7-Q8AC>]; see also Dean E. Murphy, *Some Librarians Use Shredder To Show Opposition to New F.B.I. Powers*, N.Y. TIMES, Apr. 7, 2003, at A12 (documenting efforts by direct-service librarians to resist the Patriot Act).

<sup>18</sup> See *infra* notes 25-29 and accompanying text.

<sup>19</sup> See Ard, *supra* note 5, at 28-46 (analyzing this arrangement with Amazon); Deborah Caldwell-Stone, *A Digital Dilemma: Ebooks and Users’ Rights*, AM. LIBR., May/June 2012, at 60, 61; Marc Parry, *As Libraries Go Digital, Sharing of Data Is at Odds with Tradition of Privacy*, CHRON. HIGHER EDUC. (Nov. 5, 2012), <http://chronicle.com/article/As-LibrariesGo-Digital/135514/> [<https://perma.cc/H4VK-ULYY>].

<sup>20</sup> See, e.g., Caldwell-Stone, *supra* note 19 (“The current model of digital content delivery for libraries places library users’ privacy at risk . . . Easily aggregated—and then associated—with a particular user, such records can be used against the reader . . .”).

<sup>21</sup> See, e.g., Parry, *supra* note 19 (quoting a prominent Yale librarian for his sentiment that there is no great privacy concern because these borrowers have already entered a relationship with Amazon); see also Lindsey Levinsohn, *A Note on Library Patron and Student Privacy*, OVERDRIVE BLOGS (Oct. 4, 2011), <http://blogs.overdrive.com/general/2011/10/04/a-note-on-library-patron-and-student-privacy/> [<https://perma.cc/6AYZ-ZCCS>] (suggesting that users could simply create alternate accounts to disassociate their library borrowing from their Kindle purchases).

Regardless of whether these arrangements with commercial providers violate librarians' formal obligations, pervasive surveillance of this sort threatens intellectual freedom.<sup>22</sup> What's worse, this threat is present even within libraries themselves as a result of their arrangements with third parties like Amazon. Librarians are uniquely positioned to give life to these concerns, to pressure third parties to better respect patron privacy, or even to seek new reader privacy laws.

In prior scholarship, I have recommended that states expand their library privacy laws to cover all parties to library transactions rather than cover librarians exclusively.<sup>23</sup> This move would allow libraries to maintain a consistent level of privacy in delivering services regardless of the actors involved. States could also go further in enacting comprehensive reader privacy laws that apply to booksellers and other non-library sources of reading material, as California did through its Reader Privacy Act of 2011.<sup>24</sup> Librarians who seek to protect intellectual freedom ought to be at the forefront of these campaigns, just as they were a generation ago in fighting for the first wave of reader privacy laws.

## II. LITIGATION AND ENFORCEMENT

Librarians engage with privacy not only through legislative advocacy, but also through active litigation. The profession moved to the vanguard of privacy litigation through direct confrontation with the Patriot Act in 2005. The FBI issued national security letters to Library Connection—a consortium of public libraries in Connecticut—requesting “any or all subscriber information, billing information and access logs of any person or entity” that had used computers during a specific forty-five minute timeframe at any of the twenty-six libraries

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<sup>22</sup> See sources cited *supra* note 4.

<sup>23</sup> See Ard, *supra* note 5, at 48; see also BJ Ard, *The Limits of Industry-Specific Privacy Law*, 51 IDAHO L. REV. 607, 616-17 (2015) (identifying the advantages of transaction-centered privacy laws). By upholding existing laws and norms governing the appropriate flow of information within libraries, this approach would help safeguard the contextual integrity of the library confidentiality regime. See Helen Nissenbaum, *Privacy as Contextual Integrity*, 79 WASH. L. REV. 119, 151 (2004).

<sup>24</sup> See CAL. CIV. CODE §§ 1798.90-1798.90.05 (West Supp. 2016). *But see* Ard, *supra* note 23, at 609-11 (identifying shortcomings that arise from this law's industry-specific language).

in the consortium.<sup>25</sup> National security letters like these customarily come with “gag orders” that prohibit the recipient from disclosing the request to the public or even to other members of the organization. Library Connection challenged these document requests and the accompanying gag order in court, and in doing so they mounted one of the first three known challenges to the Patriot Act.<sup>26</sup>

Library Connection’s suit never reached resolution on the merits. The FBI abandoned its request shortly after the Patriot Act’s 2006 reauthorization. Some privacy advocates have accused the FBI of gamesmanship in keeping the gag order in place until after the reauthorization, ensuring that the library community could not speak firsthand about its concerns with the scope of national security letters during the reauthorization debates.<sup>27</sup> In speaking out after the gag order was lifted—and the Patriot Act already reauthorized—Library Connection executive director George Christian likened the situation to “being permitted to call the Fire Department only after a building has burned to the ground.”<sup>28</sup> The library community was nonetheless primed to voice its concerns ahead of the Patriot Act’s subsequent extensions and its amendment in 2015.<sup>29</sup>

The library community has also filed comments and amicus briefs aimed at protecting reader privacy outside the library. The Google Books litigation provided an ideal vehicle for such advocacy. Google had assembled its virtual catalog of books by scanning library collections, but it refused to guarantee library-style confidentiality

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<sup>25</sup> SUSAN N. HERMAN, *TAKING LIBERTIES: THE WAR ON TERROR AND THE EROSION OF AMERICAN DEMOCRACY* 136-38 (2011).

<sup>26</sup> *See Doe v. Gonzalez*, 386 F. Supp. 2d 66, 74 n.6 (D. Conn. 2005).

<sup>27</sup> *See* HERMAN, *supra* note 25, at 141 (asserting that the government was “determined to prevent the librarians from talking to Congress”); *cf. Gonzalez*, 386 F. Supp. 2d at 72-73 (“Considering the current national interest in and the important issues surrounding the debate on renewal of the PATRIOT Act provisions, it is apparent to this court that the loss of Doe’s ability to speak out now on the subject as a NSL recipient is a real and present loss of its First Amendment right to free speech that cannot be remedied.”).

<sup>28</sup> George Christian, *Doe v. Gonzales: Fighting the FBI’s Demand for Library Records*, ACLU (Sept. 4, 2016), <https://www.aclu.org/doe-v-gonzales-fighting-fbis-demand-library-records-statement-george-christian> [<https://perma.cc/TQ82-FJKB>].

<sup>29</sup> *See, e.g.*, Press Release, Am. Libr. Ass’n, American Library Association ‘Inimically Against’ Bill to Extend Section 215 of PATRIOT Act Without ‘Urgently Needed Change’ (Apr. 22, 2015), <http://www.ala.org/news/press-releases/2015/04/american-library-association-inimically-against-bill-extend-section-215> [<https://perma.cc/Y653-K8MU>].



protections for Google Books users.<sup>30</sup> Instead, the company was poised to monitor users' reading habits and add them to the same dossiers that Google uses to monitor users' other activities and serve targeted advertisements.<sup>31</sup> The ALA, the Association of College and Research Libraries, and the Association of Research Libraries—parties that participated as active amici throughout the Google Books litigation—accordingly filed comments criticizing the parties' proposed settlement on the grounds that it failed to specify how Google would protect readers' privacy.<sup>32</sup> This was a perspective that neither Google nor its opponents in the Authors' Guild had any interest in raising at that phase in litigation, even though the issue impacts the privacy interests of millions who continue to use Google's services.

Litigation has nonetheless played only a limited part in librarians' advocacy efforts given the role of happenstance in raising relevant privacy issues. The Google Books litigation arose not out of privacy concerns, but from a copyright infringement suit filed by the Author's Guild.<sup>33</sup> Librarians' opportunity for advocacy in this case was fortuitous, but countless other digital reading services have launched without a comparable forum for privacy advocacy. It is even rarer for a library to be put in the position of formally challenging an FBI demand. Litigation has accordingly tended to support librarians' lobbying and education efforts rather than implement major reforms on its own.

That being said, libraries could adopt an instrumental role in privacy enforcement by serving as local clearinghouses for privacy complaints. Libraries serve 96.4 percent of the total U.S. population—including people in otherwise marginalized urban and rural

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<sup>30</sup> See Library Ass'n Comments on Proposed Settlement, *Author's Guild v. Google Inc.*, 721 F.3d 132 (2d Cir. 2013) (No. 05 CV 8136-CV).

<sup>31</sup> See *id.*

<sup>32</sup> *Id.*; see also Letter from the Association of Research Libraries to FTC (Apr. 26, 2011), [http://www.arl.org/storage/documents/publications/gbs-privacycomments\\_26apr11.pdf](http://www.arl.org/storage/documents/publications/gbs-privacycomments_26apr11.pdf) [<https://perma.cc/5FWP-DWXF>] (urging the FTC "to protect reader privacy and free inquiry" with respect to the Google Books project).

<sup>33</sup> The copyright suit was ultimately resolved in Google's favor on fair use grounds. *Author's Guild v. Google, Inc.*, 804 F.3d 202 (2015), *cert. denied* 136 S. Ct. 1658 (2016).

communities—and serve as key focal points for civic engagement.<sup>34</sup> And librarians routinely act as intermediaries and assistants in citizens' interactions with government and various nonprofit services: they distribute tax forms, refer patrons to local homeless shelters and other social services, or direct patrons' consumer complaints to the responsible government agencies.<sup>35</sup> Following this line of service offerings, librarians could aid in the investigation of problematic privacy practices and the enforcement of privacy policies by channeling patrons' privacy complaints to the Federal Trade Commission ("FTC"),<sup>36</sup> state attorneys general,<sup>37</sup> and other consumer watchdogs. As information professionals who are already attuned to the importance of privacy for intellectual freedom—and who are more technically savvy than the general public in understanding data flows in digital services—librarians could provide an invaluable link between local communities and the institutions we trust to enforce our privacy laws.

### III. EDUCATION AND OUTREACH

Education is a cornerstone of library advocacy. Sometimes librarians' outreach efforts underpin a larger campaign to change the law, as was the case when librarians exposed the FBI's Library Surveillance Program of the 1970s-80s<sup>38</sup> and when they called attention to provisions of the Patriot Act that would allow the FBI to

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<sup>34</sup> See INST. OF MUSEUM & LIBR. SERVS., PUBLIC LIBRARIES IN THE UNITED STATES SURVEY 7 (2010), <https://www.ims.gov/assets/1/AssetManager/PLS2010.pdf> [<https://perma.cc/9NZM-35UZ>].

<sup>35</sup> The Consumer Financial Protection Bureau ("CFPB"), for example, recently launched an initiative to offer financial literacy training and other resources—including the CFPB's consumer complaint services—in public libraries. See Dan Rutherford, *CFPB Offers Free Materials and Other Resources to Libraries*, INST. OF MUSEUM AND LIBR. SERVS.: UPNEXT BLOG (Aug. 8, 2014), <https://www.ims.gov/news-events/upnext-blog/2014/08/cfpb-offers-free-materials-and-other-resources-libraries> [<https://perma.cc/2ZK9-Q3FV>].

<sup>36</sup> See generally Daniel J. Solove & Woodrow Hartzog, *The FTC and the New Common Law of Privacy*, 114 COLUM. L. REV. 583 (2014) (documenting the FTC's central role in privacy regulation).

<sup>37</sup> See generally Danielle Keats Citron, *The Privacy Policymaking of State Attorneys General*, 92 NOTRE DAME L. REV. 747 (2016) (arguing that state attorneys general are important privacy entrepreneurs with more flexibility to act than federal actors).

<sup>38</sup> See *supra* notes 10-12 and accompanying text.

request library records in secret.<sup>39</sup> Other times, the goal is to directly educate members of the public so that they can protect themselves against unwanted data collection and disclosure.<sup>40</sup>

The Lebanon Public Libraries' efforts to establish local Tor relays in a small town in New Hampshire highlights both these outreach strategies.<sup>41</sup> Tor is a software platform that facilitates anonymous communications by routing senders' messages through a network of relays distributed across the globe. This system makes it difficult for those who intercept or receive a message to identify the location of the original sender and thereby provides a layer of protection for those who wish to avoid state or private surveillance. By establishing local relays, these New Hampshire public librarians were establishing additional relay nodes that would strengthen the anonymity network.<sup>42</sup>

These actions prompted a public discussion around privacy and the appropriate state responses to anonymity tools like Tor. The Department of Homeland Security objected to the library's involvement with Tor, and its objection prompted the library to disable the new relay.<sup>43</sup> The next month, however, the library's board of trustees convened a public meeting and—following public consensus—returned the relay to service.<sup>44</sup> The apparent showdown

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<sup>39</sup> See *supra* notes 16-18, 25-29 and accompanying text.

<sup>40</sup> See, e.g., Gangadharan, *supra* note 6 (indicating that 87% of librarians at the Brooklyn public library agree “that the library should educate patrons about privacy”).

<sup>41</sup> See generally Bob Warburton, *New Hampshire Library Reaffirms Tor Project Participation*, LIBR. J. (Sept. 21, 2005), <http://lj.libraryjournal.com/2015/09/digital-resources/new-hampshire-library-reaffirms-tor-project-participation/> [<https://perma.cc/F3ZL-JKCD>].

<sup>42</sup> Chuck McAndrew & Alison Macrina, *Wrapping Up Our Tor Exits Pilot*, LIBR. FREEDOM PROJECT (June 6, 2016), <https://libraryfreedomproject.org/torexitspilotwrapup/> [<https://perma.cc/K4CV-9R88>] (“By participating as one of many volunteer relay operators in the Tor network, Lebanon Public Library continues the library tradition of protecting people’s privacy while helping make Tor strong.”).

<sup>43</sup> See Yael Grauer, *Security News This Week: Russia and US Homeland Security Agree on Something for Once*, WIRED (Sept. 12, 2015), <https://www.wired.com/2015/09/security-news-week-russia-us-homeland-security-agree-something/> [<https://perma.cc/83XW-AVHX>].

<sup>44</sup> See Warburton, *supra* note 41; see also McAndrew & Macrina, *supra* note 42 (describing “overwhelming” community support for the project).

between the feds and public librarians generated national attention and attracted grassroots support from librarians and privacy advocates across the country.<sup>45</sup> More recently, state legislators in New Hampshire have voiced their support by proposing a bill that would expressly authorize libraries' use of confidentiality software.<sup>46</sup>

The story of the Tor relay at the Kilton Public Library also demonstrates how libraries can empower patrons to protect their own privacy. Citizens of the small, unincorporated community of West Lebanon, New Hampshire—a community of only 3,500 residents—have now received training in encryption tools like Tor that are ordinarily reserved to a privacy and tech-savvy minority.<sup>47</sup> Libraries are well suited to equip the public with tools like these as part of their ongoing efforts at science, technology, engineering, and mathematics (“STEM”) education. Makerspaces involving 3D printers and robotics; digital editing studios with green screens, camera equipment, and video editing software; and internet-connected computer labs alongside basic computer literacy courses already form the backbone of public libraries' efforts to prepare their communities to better participate in today's information economy.<sup>48</sup>

Libraries could expand this curriculum to cover secure browsing and communication. And they could do so with minimal equipment and training relative to the more ambitious maker and software-related curriculums that many libraries are offering. Public libraries could, for example, demonstrate secure browsing using tools like Tor;

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<sup>45</sup> See, e.g., *Support Tor and Intellectual Freedom in Libraries*, ELECTRONIC FRONTIER FOUND., <https://act.eff.org/action/support-tor-and-intellectual-freedom-in-libraries> [<https://perma.cc/GU8Y-99JU>]. Indeed, Library Freedom Project Founder Alison Macrina has stated that the Department of Homeland Security's objection was one of the best things that could have happened for the project because it has “catalyzed additional libraries and community members.” Jason Koebler, *A Dozen Libraries Want To Host Tor Nodes To Protest Government Fearmongering*, MOTHERBOARD (Sept. 17, 2015), <http://motherboard.vice.com/read/a-dozen-libraries-want-to-host-tor-nodes-to-protest-government-fearmongering> [<https://perma.cc/ZAZ8-7JQK>].

<sup>46</sup> H.R. 1508, 2016 Sess., (N.H. 2016); see Patrick Howell O'Neil, *New Hampshire Bill Allows Public Libraries to Run Tor in the Face of Federal Challenges*, DAILY DOT (Feb. 18, 2016), <http://www.dailydot.com/politics/new-hampshire-tor-library-legislation/> [<https://perma.cc/S3P5-CSKU>].

<sup>47</sup> See McAndrew & Macrina, *supra* note 42.

<sup>48</sup> See Marijke Visser, *Digital Literacy and Public Policy Through the Library Lens*, 22 ME. POL'Y REV. 104, 111 (2013).

train patrons on how to use basic PGP encryption for sending secured emails; or teach digital literacy so that users could identify surveillance by private parties, government actors, or their own ISPs. Libraries could also model savvy Internet use by configuring their computer labs' default settings to those that exemplify privacy best practices; they might for example change the default search engine to DuckDuckGo, a search engine that prides itself on not tracking its users.<sup>49</sup>

These efforts may or may not kick-start national conversations like the Kilton Public Library's Tor relay. But libraries that offer these trainings advance the autonomy and intellectual privacy of vulnerable patrons who would otherwise lack the know-how to protect their personal data flows. Indeed, these trainings advance the profession's commitment to securing intellectual freedom even for the least advantaged members of their local communities.

#### IV. CONCLUSION

Librarians' commitment to intellectual freedom extends beyond the four walls of the library. As Article IV of the Library Bill of Rights makes clear, the library profession "should cooperate with all persons and groups concerned with resisting abridgment of free expression and free access to ideas."<sup>50</sup> The profession's public advocacy has been key to the realization of this end, especially in securing patrons' intellectual pursuits against the chilling effects of state surveillance. Going forward, librarians must decide how to respond to a digital environment where surveillance by state and private actors alike grows increasingly pervasive. This essay begins a discussion of how the profession might adapt its legislative, enforcement, and educational strategies to pursue effective advocacy in the face of these new privacy challenges.

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<sup>49</sup> Many libraries have already begun experimenting with these approaches. See, e.g., April Glaser, *Long Before Snowden, Librarians Were Anti-Surveillance Heroes*, FUTURE TENSE (June 3, 2015),

[http://www.slate.com/blogs/future\\_tense/2015/06/03/usa\\_freedom\\_act\\_before\\_snowden\\_librarians\\_were\\_the\\_anti\\_surveillance\\_heroes.html](http://www.slate.com/blogs/future_tense/2015/06/03/usa_freedom_act_before_snowden_librarians_were_the_anti_surveillance_heroes.html) [<https://perma.cc/8KD2-AMQU>] ("Now many libraries are hosting regular digital privacy classes for patrons . . . Some are switching to Firefox as a default browser on computers in order to install privacy-protective extensions, accompanied with signage alerting patrons that their personal data is less likely to be exploited when using a library computer.").

<sup>50</sup> Library Bill of Rights art. IV, *reprinted in* INTELLECTUAL FREEDOM MANUAL, *supra* note 1, at 15.

