

City University of New York (CUNY)

## CUNY Academic Works

---

Publications and Research

CUNY School of Law

---

2015

### Social Media Privacy: A Rallying Cry to Librarians

Sarah Lamdan  
*CUNY School of Law*

[How does access to this work benefit you? Let us know!](#)

More information about this work at: [https://academicworks.cuny.edu/cl\\_pubs/52](https://academicworks.cuny.edu/cl_pubs/52)

Discover additional works at: <https://academicworks.cuny.edu>

---

This work is made publicly available by the City University of New York (CUNY).  
Contact: [AcademicWorks@cuny.edu](mailto:AcademicWorks@cuny.edu)

# Social Media Privacy: A Rallying Cry to Librarians

Sarah Shik Lamdan

## ABSTRACT

As information technology advances at a rapid pace, librarians must take action to continue their traditional roles as champions of privacy and intellectual freedom into the digital age. Social media is quickly becoming a major source of information and center for information seeking, and librarians have an opportunity to promote and help shape social media policies that protect users' privacy and assure that users can seek information without inhibition. This article recalls librarians' historical privacy campaigns, investigates the impact of social media on privacy, and offers librarians a plan for joining the social media user rights movement by advocating terms-of-use agreements that protect information seekers.

Social media is the most prevalent Internet activity, overtaking even pornography as the most popular online pastime (Fontecilla 2013). Social media has become people's primary source for news, opinions, and the human connection. It fosters social movements and catalyzes political change around the world. Facebook, Twitter, and other social media companies are quickly becoming ingrained in society as information portals. A recent Pew Research Center study found that more than 90% of online teens participate in social media. The social media giant Facebook has over a billion users (Pew Research Center 2013b). As one librarian explains, "If Facebook were a country and its users citizens, it would be the third most populous country in the world, behind only China and India" (Griffey 2010).

Librarians, as information science specialists, stand at the pinnacle of this information revolution, creating social media policies and methods of use. In some communities, libraries often provide the only Internet access available to the public, making libraries the sole access point for online social media (Privacy Resources 2013).

As social media provides library users with information, it also collects volumes of personal data, from biographical information to information about personal affiliations with people, organizations, and institutions. Social media data contains chat logs, message files, tweets, photos, videos, tags, GPS locations, "likes," check-ins, log-in timetables, pins, and even clicks.

q1

q2

q3

As social media stores, sorts, and disseminates this personal information, information science professionals acknowledge the conflict between society's thirst for continuous flows of information and people's privacy rights. Librarians traditionally value the right to privacy, and especially a person's right to privately seek and gather information. This privacy right is explicit in the American Library Association's (ALA) intellectual freedom manual, which describes an information seeker's privacy right as "the right to open inquiry without having the subject of one's interest examined or scrutinized by others" (ALA Office for Intellectual Freedom 2010, 177).

In the Internet age, where most information is sought not in paper volumes but through electronic means, librarians must extend their traditional privacy doctrines to social media platforms. Intellectual freedom, the right of individuals to seek and receive information, relies on privacy to protect information seekers. Librarians and ALA are the best potential sources of intellectual freedom advocacy in the Internet age. Librarians have a long-standing history of championing privacy and the right to seek information unhindered by prying eyes. The ALA has been a proven force against tyranny, censorship, and privacy breaches for almost a century.

Librarians were also some of the first Internet users, and library professionals comprise one of the most knowledgeable groups of Internet information experts (Technology Marches On 2013). Librarians also have large, cohesive networks (such as ALA), and they are bound by an organizationwide code of ethics containing privacy obligations, which is a rare and powerful professional duty. For these reasons, libraries are a natural locus for movement toward intellectual freedom on social media platforms.

This article is a call to action for librarians and ALA, urging library professionals to lead the transition of online social media's terms of service to terms that value the privacy rights of users. The first section of the article reflects on ALA's history as an intellectual freedom advocate, and the second describes current library privacy practices. The third section points out the federal government's failure to create Internet laws that protect the privacy of social media users, and the fourth explores the prevalence of social media in American life, illustrating the need for such measures. The fifth section investigates current social media privacy advocacy, and the last section offers ALA and librarians a plan for joining the social media user rights movement and urging the adoption of terms of use that protect library patrons and information seekers everywhere.

To some librarians, the loss of patron privacy is a trade-off of social media use (Parry 2012). This article argues that we can have both Internet innovation and also the privacy ethics we hold dear by including privacy norms in social media standards. The ALA declares, "When users recognize or fear that their privacy or confidentiality is compromised, true freedom of inquiry no longer exists" (ALA Office for Intellectual Freedom 2010, 178). This freedom of inquiry is so vital that librarians should refuse to sacrifice privacy for trade-offs and concessions in order to access social media online.

### Librarians' History of Privacy Protection

In 1938 the ALA adopted its *Code of Ethics for Librarians*, which demanded that library professionals “treat as confidential any private information obtained through contact with library patrons” (Johnson 1989, 773). This code was the first formal acknowledgment by librarians of the confidential relationship between libraries and patrons. The ALA’s rationale for initially embracing patron privacy is undocumented, but Bruce Johnson, law librarian and associate professor of law, speculates that American librarians reacted to the struggles of European librarians, such as those in Germany and the Soviet Union, who faced the scrutiny of totalitarian regimes concerned with what their citizens read (Johnson 1989, 774).

Librarians eventually associated their privacy responsibilities with philosophical and legal principles. They looked to legal scholars such as Louis D. Brandeis and Samuel D. Warren, who wrote a historic paper about the legal right to privacy. The famous lawyers borrowed a phrase from Judge Thomas Cooley, describing the privacy right as “the right to be let alone” (Warren and Brandeis 1890, 199). In their benchmark paper identifying the tort of privacy invasion, the jurists equate the right of privacy to the right not to be assaulted, imprisoned, or defamed (Warren and Brandeis 1890, 205). According to Brandeis and Warren, privacy rights are guaranteed by the nation’s common law, and a person cannot be forced to reveal his thoughts outside a courtroom’s witness stand. The privacy right declared by Warren and Brandeis, and the body of laws following their declaration, have led to the development of privacy guidelines governing the ways library professionals collect, preserve, and disseminate patron information (McCord 2013).

Librarians also turned to philosophers such as Immanuel Kant, who declared that human beings should always be treated as “ends and never merely as means.” Librarians have interpreted Kant’s philosophy in their professional practice by considering the dignity and human worth of individuals while performing information-seeking services. Robert Hauptman, a librarian who writes extensively about librarians’ ethical imperatives, urges the profession to consider the dignity and human worth of library patrons as Kant decrees (Hauptman 1976, 2). Similarly, librarian Sonia Bodi wrote an article about Kant’s ethical standards in librarianship. She describes the intersection of library use and privacy, saying that it is the patron, not the librarian, who determines which individuals share in the patron’s activities and deliberations (Bodi 1998, 461). Librarians often write about the privacy right in information seeking and believe that independence, dignity, and integrity are violated when one’s privacy rights are imperiled during intellectual pursuits (Garoogian 1991, 219). To the library community, privacy is seen as a basic human need and the heart of personal identity. Privacy and patron confidentiality are moral obligations of librarians’ jobs.

Librarians’ privacy standards go beyond mere ideology to displays of civil disobedience and activism. Intellectual freedom has been tested throughout history, and libraries have been the grounds for many privacy battles in the United States. For decades, members of ALA have

actively and vehemently protected library visitors from government efforts to track and incriminate library patrons.

In 1953 librarians reacted to Cold War efforts to rid libraries of communist influences and assure that no American libraries were maintaining ties to radical political groups by drafting *The Freedom to Read* with the American Book Publishers Council (Johnson 1989, 780). The statement condemned efforts to regulate and track library patrons' reading habits and publicly declared an affirmative right to read (Johnson 1989, 780). Librarians rallied around the memo, which became so well known that even President Eisenhower wrote of its importance (Johnson 1989, 781).

In the 1960s ALA led protest efforts after the Federal Bureau of Investigation (FBI) tried to track seven Vietnam War protesters' library habits (Kennedy 1989, 741–742). The FBI believed that the “Harrisburg Seven” had conspired to kidnap Henry Kissinger and blow up generators and heating tunnels in Washington, DC. Librarians blocked the government intrusion so steadfastly that one librarian likened the surveillance dispute to a “duel” between ALA and the FBI (Kennedy 1989).

In the 1970s Judith Krug warned librarians that the US Treasury Department was approaching circulation desks across the country and checking card catalogs to obtain the names of library patrons looking at books about explosives (Krug and Harvey 1970). The ALA protested to members of the Senate Subcommittee on Constitutional Rights, decrying the Treasury's investigations as unconscionable and unconstitutional invasions of library patrons' privacy. Librarians all over the United States conducted sit-ins and protests (Kennedy 1989, 743).

After the Treasury protests, ALA drafted its *Policy on the Confidentiality of Library Records* in 1971. The policy required librarians to keep circulation records and other patron-identifying records confidential. The ALA also actively and persistently lobbied state governments, urging them to pass library patron privacy laws (Garoojian 1991, 217). Librarians convinced all but two states to pass library-patron privacy laws, and the two states lacking library records privacy laws have attorney generals' opinions guaranteeing the privacy of library patrons (Kennedy 1989).

In the 1980s government surveillance reemerged with the FBI's Library Awareness Program (LAP), a counterintelligence initiative profiling people with Russian and Slavic-sounding last names and tracking their reading habits through library records (Matz 2008, 72). The ALA responded to LAP with an advisory statement to libraries across the nation directing librarians to avoid breaching privacy obligations. The ALA also drafted a statement to the FBI director voicing its concerns about the program and publicly protested, denouncing LAP until the FBI was forced to discontinue the initiative (Matz 2008, 72).

The ALA's most recent national protest for privacy was in reaction to the 2001 passage of the USA PATRIOT Act by the US Congress. Librarians understood the patron privacy threats created by Section 215 (granting access to “any tangible item” under the Foreign Intelligence

Surveillance Act) and Section 505 (permitting the FBI to obtain library records without judicial oversight) of the act and joined with the American Civil Liberties Union (ACLU) and other organizations to form the In Defense of Freedom Coalition (Matz 2008, 72). They staged public protests and drafted press releases and guidance to the nations' libraries to avoid patron surveillance (Matz 2008).

At the 2006 ALA conference, librarians wore protest pins that read "Radical Militant Librarian" after librarians were labeled "radical" and "militant" by FBI agents for refusing to comply with a law that prevented library workers from revealing government surveillance requests to their patrons (Dorsett 2006). Similarly, when US Attorney General John Ashcroft dismissed librarians' concerns as "breathless reports and baseless hysteria," librarians across the nation created buttons and other promotional items boasting the phrase "Another hysteric librarian for freedom" (Matz 2008, 77).

In the wake of the Edward Snowden PRISM leaks, Woody Evans (2013) urges librarians to maintain their activism in the Internet age. Evans reminds American librarians that Americans have a right to demand that the government stop undermining privacy rights (Evans 2013). While acknowledging the illegality of Snowden's acts, Evans reminds librarians that Snowden, "like us librarians, took a stand for patron privacy—for citizen privacy." He reminds librarians not to stop fighting for intellectual freedom in the Internet age, writing, "If a citizen's data really is hers, shouldn't she get to say who sees it? . . . No matter how 'radical' a librarian you may or may not have become over the last 12 years, you know the answer by now" (Evans 2013).

q6

### Current Library Privacy Practices

American libraries have adopted numerous privacy practices in reaction to history's patron-privacy invasions. The ALA includes patron privacy as an integral part of intellectual freedom (Intellectual Freedom 2014). Librarians nationwide have adopted electronic privacy measures, and the current ALA Code of Ethics includes electronic transmissions in its guidelines (Code of Ethics 2014). The ALA also urges librarians to take multipronged approaches to privacy, incorporating patron education and Internet privacy settings on library electronics into library best practices (Privacy Resources 2013). In addition, both the ALA Office of Intellectual Freedom (OIF) and the ALA Intellectual Freedom Committee engage in robust public education campaigns, such as the OIF's annual Choose Privacy Week, to alert library patrons to library-related privacy issues.

q7

q8

q9

The ALA recommends conducting regular library privacy audits to alert librarians to potential privacy gaps in patron services. The ALA also suggests gathering the minimum amount of patron information needed for library operations and erasing information connecting a user to a particular transaction after the transaction is completed (Magi 2014). In addition, ALA's best practices restrict patron information access to only the library personnel that need it.

q10

As librarians work to protect privacy, they note tension between traditional library privacy and interactive computer technology such as social media. In the past, when libraries dealt only with print materials, librarians could easily monitor privacy. When patrons started utilizing social media sites for information, “it became difficult for the library to manage patron privacy the same way” (Griffey 2010). New social media innovations increase the strain on library privacy ethics, blurring the lines between information access and privacy by requiring users to disseminate personal information in order to obtain information that is also of a personal nature, unlike Internet search mechanisms such as Google, which require no personal information from users. Information science professor Michael Zimmer uses the term “Faustian bargain” to describe the privacy trade-off librarians make in order to avail their libraries of new Internet innovations, including social media involvement (Parry 2013).

q11

Despite the challenges of privacy in the era of online social media, librarians should avoid easing stringent privacy measures, as privacy is integral to protecting intellectual freedom. As a youth services librarian said, “Often, if young people do not think their information requests and information-gathering activities are going to be private, they won’t ask for the information. They would rather suffer the consequences of not knowing” (Adams 2002).

q12

### **Current Legislative and Regulatory Inactivity in Internet Privacy**

Librarian privacy efforts are all the more important in light of the federal government’s failure to address personal privacy on the Internet. Overwhelmingly, the federal government has not been proactive about dealing with the privacy issues raised by online social media (Sengupta 2013). A consumer privacy bill of rights proposed by the White House has been abandoned by Congress, and an update to the 27-year-old Electronic Communications Privacy Act has failed to pass into law (Jennings 2013).

A lack of cohesive statutes on Internet privacy leaves a mere patchwork of inconsistent laws for social media outlets to follow (Sengupta 2013). This patchwork is full of holes for privacy to fall through, leaving social media providers to use customers’ information largely without restraint (Langerderfer and Cook 2004). The uncoordinated and inconsistent laws governing online interactions are the result of the lack of legislative foresight and the inability to anticipate the technological advances. Attorney Christopher M. Loeffler (2012) explains that traditional privacy laws did not anticipate the social media environment.

States have been trying to pick up the federal government’s legislative slack on Internet privacy issues. Jonathan Strickland, a Texas state representative, says, “Congress is obviously not interested in updating those things or protecting privacy. If they’re not going to do it, states have to do it” (Sengupta 2013). State efforts have not yet focused on amending library privacy laws to embrace other types of information seeking. Library privacy protection laws were created long before the social media age and, like the nation’s privacy laws, failed to anticipate the ways technology would change the character of library use (Garogian 1991, 230).

q13

Some of the existing legislative patchwork consists of state laws regulating who inherits digital data, including Facebook passwords, when social media users die (Sengupta 2013). California enacted a law giving children the right to erase social media posts, making it a misdemeanor to publish identifiable nude pictures online without the subject's permission, and requiring social media companies to tell consumers whether they abide by "do not track" settings on web browsers (Sengupta 2013).

Currently, most state legislation focuses on protecting the privacy of employees who use social media. Wisconsin lawmakers are following New Jersey and Washington State in a trend to introduce legislation prohibiting potential employers from requesting job applicants' social media passwords (Heaton 2014). Ten other states have conflicting social media laws that, on one end of the spectrum, prohibit employers from making "friend" requests to employees and, on the opposite end, specifically permit employers to view employees' public social media pages (Dunning 2013). Scattered and inconsistent state laws deal with tiny facets of social media privacy in different ways, but there is no comprehensive, 50-state solution to social media's privacy invasions in the legal framework of the United States.

Lack of cohesive legislation protecting social media users' privacy counters the desires of the American public. According to the Pew Internet Center, 86% of United States citizens take steps to conceal their identity online. Americans feel that existing laws are inadequate to protect Internet privacy, and most feel that they have to go to great lengths to protect themselves (Sengupta 2013). A majority of Internet users clear browsing histories, delete social media posts, and use virtual networks to conceal their Internet addresses to proactively protect their privacy on their own in the absence of legal privacy guarantees (Pew Research Center 2013a).

### **Prevalence of Social Media in Human Life**

With twee insignia that includes Twitter bird tweets and Facebook thumbs-ups, some dismiss social media as merely a passing trend in a sea of cultural fads. Those who deny social media's sea change do so in the face of history, for in its early years even the telephone was declared a passing trend. "The telephone is little better than a toy," proclaimed an 1870s editorial in a British journal. "It amazes ignorant people for a moment" (Casson 1911, 247). The rapid rise of online social media use indicates that social media is becoming a basic part of human communication in the modern world as the telephone did generations ago. Engaging in social media on the Internet takes up a significant portion of peoples' days. Users from 18 to 50 spend over three hours a day on social media, on average. Each day, people upload over 40 million photos to Instagram and send over 450 million Tweets (100,000 per minute). One hour of YouTube video is uploaded each second and 684,478 pieces of content are shared on Facebook every minute. More than 2.6 million companies have LinkedIn company pages, and that number continues to climb (Marrouat 2013).



With society's mass adoption of social media, elections can now be predicted and influenced by social media activity (Zwerdling 2013). Social media is also fast becoming people's main source of news. Fifty percent of people now learn about breaking news on social media, and 65% of traditional media reporters and editors use sites such as Facebook and LinkedIn for story research. In fact, the news of a July 20, 2012, movie theater shooting in Aurora, Colorado, appeared on both Twitter and YouTube before traditional news reporters even arrived on the scene. Social media has also been a catalyst for political and social movements. Many credit online social media for setting off the 2011 Arab Spring protests that swept across the Middle East. In the United States, a July 4, 2011, tweet from Adbusters with the hashtag #occupywall street was a starting point for the Occupy Wall Street movement (Stepanova 2011).

Bolstered by the widespread adoption of social media platforms and the demonstrated power of social media tools, the social media market is bursting with ever-increasing innovation. Social media is poised to take off in directions that just a decade ago would have been considered science fiction. An Israeli firm recently sold face.com, a facial recognition product that has already deciphered 18 billion faces online (Southan 2013). New airplane seating tools use data from users' LinkedIn and Facebook profiles to automatically pair passengers with seatmates who are a "good match," and Internet services help users choose hotels by listing people users know who have stayed at the hotel before (Southan 2013).

The information collected on social media is very useful to businesses that enjoy social media's unprecedented access to reliable information about consumers. Information brokers sell bundles of records for pennies per name or address (Langerderfer and Cook 2004). As of 2004, 97% of websites collected personal information from visitors, yet only 20% of websites met the Federal Trade Commission's standards for a comprehensive privacy policy (Langerderfer and Cook 2004, 735). The marketing information garnered from social media is so valuable that it has become its own form of currency. One British data entrepreneur declared that "data is the new oil," and Lindsey Greig, an e-privacy consultant, warns that "if something is free on the web, then you're the product" (Southan 2013).

Because of the widespread commercial and privacy use of social media data, privacy on social media networks is largely seen as a give-and-take where participants get social media's benefits by giving away parcels of privacy (Brownstein 2013). People generally feel that privacy erosion is beyond their control and that to use social media, participants must "pay the price that maybe someone could use that information about you legally or illegally" (Brownstein 2013).

q15  
q16

q17

### The Use of Social Media by the Government

In addition to commercial use, the government also uses personal information found in social media. Although certain laws, such as the Stored Communications Act (18 U.S.C. § 2701–

2712), address tangential privacy concerns, such as the disclosure of stored wire and electronic communications and transactional records held by third-party Internet service providers, there are no laws that restrict the disclosure of information held by social media providers (Fontecilla 2013; Pullano and Laver 2013).

National security concerns have created leeway for government surveillance. As Eric Snowden revealed in 2013, the National Security Agency (NSA) tracks and collects information from social media to examine Americans' social and professional networks for intelligence purposes (Risen and Poitras 2013). The FBI plants undercover agents on social media venues to track people (Lardner 2010). Google reports that NSA requests for tracking have doubled from 2010 to 2013 (Hesseldahl 2013), and Facebook reports that it received 11,000–12,000 requests for data from US government entities during the first half of 2013 alone (Rapaport 2013).

In the judiciary, US courts consider the social media accounts of defendants when determining whether or not they are guilty of crimes (Fontecilla 2013, discussing *United States v. Kabir*). Although the US Supreme Court justices recognize that new innovations such as social media tools are changing citizens' privacy expectations (*States v. Jones*, 132 S. Ct. 945, 963 [2012]), there is currently no rule of law in place to stop judges from considering social media materials in court cases. Courts force parties to produce Facebook log-in information so that social media disclosures can be used as evidence (Pullano and Laver 2013, discussing *McMillen v. Hummingbird Speedway, Inc.*).

Because courts have no privacy barriers for social media, one attorney described social media in litigation as “floodgates of data” opening, releasing a flow of information for courtroom use (Zwerdling 2013). Attorney Lee Rosen says his staff issues dozens of subpoenas each month for digital files (Zwerdling 2013). The effects of social media in the courtroom are only beginning to be seen. In 2014 retired New York police officers charged with disability fraud found their social media posts used against them. Prosecutors showed social media images of defendants driving, participating in recreational sports, lifting heavy objects, and riding Jet Skis to prove that the disability claims were false (Herzfeld 2014). As more people use social media, their posts, videos, chats, and other social media interactions will appear more frequently in courtrooms (Pullano and Laver 2013).

The police also utilize social media to obtain incriminating evidence. Although the constitution prevents police from using social media to justify searches and arrests (Schmidt 2012, 516–17), the Fourth Amendment's prohibition of unreasonable searches does not extend to online social media searches (Schmidt 2012). Even if a person does not allow police to search his or her home, the police officer can still access the person's social media to see the “selfie” picture featuring marijuana or the wall post bragging about an illegal act. A man in Kentucky was jailed after posting a Facebook photo of himself siphoning gas from a police car, and other

people have been arrested for photographing themselves with the proceeds of robberies (Fontecilla 2013). Social media has become such a helpful aid for police surveillance that the New York Police Department added a Twitter tracking unit to its operations to scour social networks for evidence of criminal activities.

### Online Social Media—Where Privacy Goes Awry

A 2009 study on privacy in social media networks concluded that the market for privacy in social networks is dysfunctional. The study observed social media services rife with wide privacy gaps, poor privacy controls, and no legal privacy policies (Bonneau and Priebusch 2009). Poor internal privacy controls, combined with the lack of online social media privacy regulation by federal and state governments, make social media on the Internet a virtual “wild west.” Activities that are heavily regulated in the non-Internet world, such as taxation, hate expression, pornography, and privacy, go unchecked on the Internet.

In lieu of government-generated consumer privacy protection, social media providers handle privacy themselves. Most social media providers brush off privacy rights through agreements that users click on before entering the social media application (NPR Staff 2013). These agreements are often long and difficult for laypeople to understand, and it is usually necessary to click on the disclaimers (thus waiving privacy rights) in order to benefit from the social media technology. These click-through contracts have been called “contract abuse” and “fine-print bullying.” For instance, Facebook’s user agreement is over 14,000 words and has been described as a document more complex than the US Constitution. These contracts also lack negotiation processes. Users cannot amend the terms (Fischer 2013). Without the power to negotiate, users are rendered powerless and can only hope that the social media entity will not violate their privacy. In the current privacy regime, “You are trusting that Facebook is not going to violate a general norm in society when it comes to acceptable protections of privacy and change in its rules mid-game” (Fischer 2013).

Officials are only beginning to understand the nature of social media “contract abuse” but have yet to take action (NPR Staff 2013). Meanwhile, social media corporations are relying on the government to regulate them rather than taking proactive measures to fix their privacy breaches. In 2013 Facebook, Twitter, Google, and other social media providers revealed an agenda to overhaul surveillance laws and practices globally but did not offer to reform their own inner workings to better provide users with privacy.

### Current Advocacy for Privacy Measures in Social Media

Activists have reacted to the government and social media providers’ failure to scale back privacy threats by launching public campaigns for social media privacy protections. Glib responses from the Internet world such as “You have zero privacy anyway. Get over it” (Sprengrer 1999) abrade the ethical notions of most Americans, so it is unsurprising that

q18

q19

q20

Americans have tried to stand up to social media, demanding privacy. In the nation's courtrooms, citizens have banded together, filing class-action lawsuits against Instagram, Facebook, and Google over privacy invasions, including the sharing of users' information and images in advertising (Koonar 2013). Courts have largely dismissed actions against social media companies due, in part, to the voluntary nature of membership in social media.

Grassroots campaigns also defy social media's privacy invasions. Websites such as biggestlie.com and commonterms.net petition for easier-to-understand user agreements (Fischer 2013). One organization crafted a Bill of Privacy Rights for social media that enumerates user privacy expectations for social media entities (Opsahl 2010). A collection of scholars drafted a "People's Terms of Service" contract for social media to reflect consumer priorities, including security and confidentiality for social media users. These terms of service are a tool for collective action for social media users to use to push companies to provide consumer rights (Melber, Hartzog, and Selinger 2013).

### **Contractual Privacy Guarantees: Librarians' Call to Action**

In 2011, ALA charged librarians with the task of expanding their privacy standards to the digital age (Privacy Resources 2013). Librarians, over other professional groups, have the organizational strength (through ALA) and ethical will (through their ethical code) to shape online privacy policies. As traditional keepers of information, librarians have innate roles as Internet advocates for their patrons. Additionally, librarians' history as intellectual freedom advocates is well established. As Judith Krug, famous librarian and ALA leader, described her professional colleagues' advocacy power in the fight for privacy rights in pursuit of information access: "We're not meek and mild" (Dorsett 2006). Librarians have proven their strength and ability to change policies related to intellectual freedom. During the PATRIOT Act protests, librarians demonstrated that they have the power to disrupt the smooth enforcement of national legislation. One journalist wrote that Attorney General Ashcroft "regards the librarians as peskier opponents than the A.C.L.U." (Talbot 2003).

Like the fight for intellectual freedom in the PATRIOT Act era, librarians should lead the charge to infuse online social media with the privacy boundaries established in librarian ethics. By adopting the standards and tools created by privacy scholars, American librarians, under the umbrella of ALA, could push social media providers to adopt privacy measures and assure those measures in their terms-of-service contracts.

The "People's Terms of Service" contract drafters admit that the idea of a mass movement for contract changes might initially seem outlandish because, currently, there is no negotiable aspect of user agreements on social media platforms. For example, users cannot ask Twitter to exclude their Twitter handle from click tracking or request that Facebook exempt them from a Graph search. The drafters urge the public to consider a world in which social media users and consumer advocates try to collectively negotiate a contract that reflects

q21

q22

common consumer priorities, including privacy, for the first time in social media. The resulting contract “could be pressed on existing Internet companies, and also provide a model for new companies that want to compete for users who demand respect for their freedom, choice and privacy” (Melber et al. 2013).

The contract model that librarians adopt should utilize Privacy by Design concepts crafted by Ann Cavoukian, the privacy commissioner for Ontario, Canada, and used as guidelines by the United States (NPR 2013). Cavoukian’s approach consists of seven principles. The principles are that Internet organizations:

1. Be proactive, not reactive (anticipating and preventing privacy invasions, rather than acting after-the-fact);
2. Use privacy as the default setting (so that the system automatically preserves privacy without external prompting, and even if an individual does nothing, their privacy remains intact);
3. Embed privacy into the design and architecture of systems and practices, not as after-the-fact add-ons but as essential components of the core functionality being delivered;
4. Remove the pretense of false dichotomies and focus on how privacy is a win-win, not a dated, zero-sum approach (for instance, remove the notion of privacy versus security by making it possible to have both);
5. Provide end-to-end security and cradle-to-grave information management (incorporate privacy into the system before the first element of information is collected, and ensure that, at the end of the process, all data are securely destroyed in a timely fashion);
6. Create transparent components and parts that remain visible to users and providers alike (trust but verify); and
7. Keep the interests of the individual at the helm of all options and functions (Cavoukian n.d.).

q23

Librarians should urge social media creators and maintainers to adopt policies that fit Privacy by Design guidelines and modify their activities to fall under Cavoukian’s framework (NPR 2013). By demanding things such as “do not track” settings as the default setting in social media platforms and requiring social media providers to agree to remove content upon user request as boilerplate terms of service, librarians could turn the tides of privacy invasion by social media corporations.

The ALA can lead the call for social media privacy through amended terms-of-service contracts. The organization can urge libraries to push privacy standards for social media, and it can directly engage social media corporations as a powerful, national organization of information professionals. State and federal governments have successfully convinced social media provid-

ers to modify contracts, proving that with enough motivation, social media companies will modify their terms of service. For example, the National Association of State Chief Information Officers (NASCIO) forced Facebook to revise standard terms of service for state and local governments through a special agreement (Vaughn 2011). On a federal level, dozens of social media companies have penned special, modified terms-of-service agreements for federal agencies (Ross 2013). The amended contracts cede some control of social media content, including the placement, removability, and permanence of content, to the government (the “user”). These social media contracts also contain clauses in which social media providers promise not to set cookies in some situations, such as when a certain widget is used or when domains end with .gov or .mil (Tauberer 2009). Sample federal government user agreements are available online for model draft language.

Undertaking a campaign involving contracts may seem somewhat outside the realm of librarianship. After all, librarians are not contract lawyers. However, the “People’s Terms of Service” drafters urge us to recall the pessimism surrounding Creative Commons, an effort that drew on the collective power of artists and creators to better protect copyrighted works on the Internet. Although the Creative Commons plan initially sounded complex, involving dense legal copyright concepts and tricky Internet coding ideas, Creative Commons is now widely known to anyone searching for fair-use materials online. The “People’s Terms of Service” drafters also remind us that the push for contract modification serves a greater ideological purpose. The drafters say that even if companies don’t rush to adopt consumers’ terms, “there is a great value to advancing a common baseline for values and expectations in the online world” (Melber et al. 2013).

A collective campaign for contractual privacy obligations for social media providers headed by ALA would implement change by forcing social media platforms to make a binding promise to each and every user to improve their privacy practices, which would eventually become the default for social media providers. The US government, state governments, and other nations have already successfully started working with social media corporations such as Facebook and Google to create contractual solutions to privacy issues. With librarians leading the force, the type of privacy protections created in other countries, and for government agencies, can become available to all people.

## Conclusion

Article IV of the Library Bill of Rights states, “Libraries should cooperate with all persons and groups concerned with resisting abridgement of free expression and free access to ideas” (ALA Office for Intellectual Freedom 2010, 178). Inherent in librarians’ values and institutional missions is the duty to protect intellectual freedom, even in the Internet age. To those who argue that privacy is a trade-off for Internet use, librarians reply that intellectual freedom

is a basic right that should never be sacrificed. Librarians understand that reading is an intimate activity and that tracking lists of the things people read and look at is a way of creating a shorthand version of their minds' thoughts, an interior life that must not be violated by privacy intrusions (Talbot 2003).

To advertisers who argue that privacy measures would destroy the profitability of social media enterprises, Cavoukian retorts that if companies profit from users' personal information, people will slowly gravitate to more privacy-oriented social media providers. She warns that right now users do not know that there are other options, and they accept what is being offered because that's the "only game in town." Cavoukian promises that the social media landscape will soon include providers that honor users' privacy rights so that users can choose privacy (NPR 2013).

To people who believe that librarians' strength is too weak to overpower social media corporations, the drafters of the "People's Terms of Service" note that, in other industries, power belongs to consumers. Stockholders can overthrow board members, television viewers can switch the channel en masse, and unethical companies can be boycotted. The idea that one-sided corporate agreements are an unavoidable cost of social media participation is a fallacy that is becoming outmoded (Hartzog and Stutzman 2013). If social media users unite in protest, the protest could grow so large and cohesive that concerned users can no longer be silenced by click-through user agreements.

To librarians who want to move privacy protections into the future, to have their privacy ethics "cake" and "eat it too" in the online social media world, it is time to take action. By "baking" privacy into the very design of technology via contractual obligation, social media corporations can assure their users' privacy and avoid post hoc repairs for privacy invasions with preset privacy assurances (NPR 2013). Joseph Janes, a library and information sciences scholar, writes that the library profession has a grand opportunity to shape the future of the Internet. He describes the heroes who will humanize "big data" in the Internet era: "Those who think about questions of privacy, authority, quality, authenticity, rationality, and ethicality. Who center these processes in efforts to better the human condition and the lives of individuals. Who build tools to gyre and gimble in the taffeta of data to find just the right thread for a person in need. Somebody like, I don't know, a reference librarian" (Janes 2012, 42).

Our role is vital, and our time is now: librarians can take the reins of a privacy-centered social media future.

## References

- Adams, Helen R. 2002. "Privacy and Confidentiality: Now More Than Ever, Youngsters Need to Keep Their Library Use under Wraps." *American Libraries* 33 (10): 44–48.

- American Library Association. 2008. "Code of Ethics of the American Library Association." <http://www.ala.org/advocacy/proethics/codeofethics/codeethics>.
- American Library Association. n.d.a "Intellectual Freedom and Censorship Q & A." <http://www.ala.org/advocacy/intfreedom/censorshipfirstamendmentissues/ifcensorshipqanda>.
- American Library Association. n.d.b "Privacy Resources for Librarians, Library Users, and Families." <http://www.ala.org/advocacy/privacyconfidentiality/privacy/privacyresources>.
- American Library Association. n.d.c "Technology Marches On, and So Do Libraries." <http://www.ala.org/news/state-americas-libraries-report-2013/social-networking>.
- ALA Office for Intellectual Freedom. 2010. *Intellectual Freedom Manual*. 8th ed. Chicago: ALA Editions.
- Bodi, Sonia. 1998. "Ethics and Information Technology: Some Principles to Guide Students." *Journal of Academic Librarianship* 24 (6): 459–463.
- Bonneau, Joseph, and Soren Priebusch. 2009. "The Privacy Jungle: On the Market for Data Protection in Social Networks." Paper presented at the Eighth Workshop on the Economics of Information Security, University College London, UK, June.
- Brownstein, Ronald. 2013. "Americans Know They've Already Lost Their Privacy." *National Journal*, June 13.
- Bunge, Charles A. 1989. "Ethics and the Reference Librarian." In *Ethics and the Librarian: Papers Presented at the Allerton Park Institute Held October 29–31, 1989*, edited by F. W. Lancaster. <https://www.ideals.illinois.edu/handle/2142/592>.
- Carson, Bryan M. 2010. "Libraries and Social Media." *Information Outlook* 14 (7): 9–12.
- Casson, Herbert N. 1910. *The History of the Telephone*. Freeport, NY: Books for Libraries Press.
- Cavoukian, Ann. n.d. "7 Foundational Principles." Privacy by Design, <http://www.privacybydesign.ca/index.php/about-pbd/7-foundational-principles>.
- Dorsett, Amy. 2006. "Librarians Would Shelve Patriot Act." *San Antonio Express*, January 25.
- Dunning, Elizabeth. 2013. "Myriad of Social Media Privacy Laws Create Havoc for Multi-State Employers." *Employers' Lawyers*, July 22.
- Evans, Woody. 2013. "ALA vs NSA: Reflecting on Libraries and Social Media." *Library Journal*, June 14.
- Fischer, Lauryl. 2013. "Privacy Check: Social Media Changes Highlight Importance of Terms and Conditions." *Pendulum: Elon University's Student News Organization*, February 24.
- Fontecilla, Adrian. 2013. "The Ascendance of Social Media as Evidence." *Criminal Justice* 28 (1): 55.
- Garoogian, Rhoda. 1991. "Librarian/Patron Confidentiality: An Ethical Challenge." *Library Trends* 40 (2): 216–233.
- Griffey, Jason. 2010. "Social Networking and the Library." *Library Technology Reports* 46 (8): 34.
- Hartzog, Woodrow, and Frederic Stutzman. 2013. "Obscurity by Design." *Washington Law Review* 88 (1): 385–418.
- Hauptman, R. 1976. "Professionalism or Culpability? An Experiment in Ethics." *Wilson Library Bulletin* 50: 626–627.
- Heaton, Brian. 2014. "Wisconsin to Adopt Social Media Privacy Law." *Government Technology*, January 28.
- Herzfeld, John. 2014. "Social Media Evidence Cited in Fraud Case against NYC Cops, Firefighters." *Bloomberg BNA Social Media Law and Policy Report*, January 9.
- Hesseldahl, Arik. 2013. "Requests for Google User Account Info by Government Are on the Rise." *All Things D*, November 14. <http://allthingsd.com/20131114/requests-for-google-user-account-info-by-governments-are-on-the-rise>.
- Janes, Joseph. 2012. "Data, Data Everywhere." *American Libraries* 43 (5/6): 42.

q25

q26

q27

q28



- Jennings, Molly. 2013. "To Track or Not to Track: Recent Legislative Proposals to Protect Consumer Privacy." *Harvard Journal on Legislation* 49 (1): 193–206.
- Johnson, Bruce S. 1989. "A More Cooperative Clerk': The Confidentiality of Library Records." *Law Library Journal* 81 (4): 769–802.
- Kennedy, Bruce M. 1989. "Confidentiality of Library Records: A Survey of Problems, Policies, and Laws." *Law Library Journal* 81 (4): 733–767.
- Koonar, Selina. 2013. "Growing Concerns over Online Privacy Lead to Class Action Lawsuits against Instagram, Facebook, and Google." *Lexology*, March 7.
- Krug, Judith F., and James A. Harvey. 1970. "Intellectual Freedom." *American Libraries* 1 (8): 751–752.
- Langerderfer, Jeff and Don Lloyd Cook. 2004. "Oh, What a Tangled Web We Weave: The State of Privacy Protection in the Information Economy and Recommendations for Governance." *Journal of Business Research* 57 (7): 734–747.
- Lardner, Richard. 2010. "Your New Facebook 'Friend' May Be the FBI." NBCnews.com, March 16. [http://www.nbcnews.com/id/35890739/ns/technology\\_and\\_science-security-.UxCgr17nypc](http://www.nbcnews.com/id/35890739/ns/technology_and_science-security-.UxCgr17nypc).
- Loeffler, Christopher M. 2012. "Privacy Issues in Social Media." *IP Litigator* 18 (5): 12–18.
- Mackelprang v. Fid. Nat. Title Agency of Nevada, Inc., 2:06-CV-00788-JCM, 2007 BL 250427 (D. Nev. Jan. 9 2007).
- Magi, Trina J. 2006. "Protecting Library Patron Confidentiality—Checklist of Best Practices." Illinois Library Association. [http://www.ila.org/advocacy-files/pdf/Confidentiality\\_Best\\_Practices.pdf](http://www.ila.org/advocacy-files/pdf/Confidentiality_Best_Practices.pdf).
- Marrouat, Cendrine. 2013. "The Impact of Social Media on Society (Infographic)." Social Media Slant. <http://socialmediaslant.com/social-media-infographic>.
- Matz, Chris. 2008. "Libraries and the USA Patriot Act: Values in Conflict." *Journal of Library Administration* 47 (3/4): 69–87.
- Melber, Ari, Woodrow Hartzog, and Evan Selinger. 2013. "Fighting Facebook, a Campaign for People's Terms of Service." *Nation*, May 22.
- McCord, Gretchen. 2013. "What You Need to Know about Privacy Law: A Guide for Librarians and Educators." Santa Barbara, CA: ABC-CLIO.
- NPR. 2013. "A Movement to Bake Online Privacy into Modern Life, 'By Design.'" National Public Radio interview, *All Things Considered* (transcript), December 13.
- Opsahl, Kurt. 2010. "A Bill of Privacy Rights for Social Network Users." Electronic Frontier Foundation blog, May 19. <https://www.eff.org/deeplinks/2010/05/bill-privacy-rights-social-network-users>.
- Osborn v. United States, 385 U.S. 341 (1966).
- Parry, Marc. 2012. "As Libraries Go Digital, Sharing of Data Conflicts with Tradition of Privacy." *Chronicle of Higher Education* 59 (11).
- Pew Research Center. 2013a. "Anonymity, Privacy, and Security Online." Pew Research Center's Internet Project. <http://www.pewinternet.org/2013/09/05/anonymity-privacy-and-security-online>.
- Pew Research Center. 2013b. "Social Media Update 2013." Pew Research Center's Internet and American Life Project. <http://www.pewinternet.org/2013/12/30/social-media-update-2013>.
- Pullano, Michael, and Matthew Laver. 2013. "Discovery Rulings Increasingly Unfriendly to Facebook Users' Privacy Rights." *Bloomberg BNA Social Media Law and Policy Report*, September 25.
- Rapaport, Lisa. 2013. "Facebook Reports Rise in U.S. Government Requests for User Data." *Businessweek*, August 27.
- Risen, James, and Laura Poitras. 2013. "N.S.A. Gathers Data on Social Connections of U.S. Citizens." *New York Times*, September 28.

q29  
q30

q31

q32

- Ross, Sue. 2013. "Amending Social Media Site User Agreements." Norton Rose Fulbright Social Media Law Blog, January 29. <http://fulbrightsocialmediablog.com/2013/01/29/amending-social-media-site-user-agreements>.
- Schmidt, Lisa A. 2012. "Social Networking and the Fourth Amendment: Location Tracking on Facebook, Twitter, and Foursquare." *Cornell Journal of Law and Public Policy* 22 (2): 515–536.
- Sengupta, Somini. 2013. "No U.S. Action, So States Move on Privacy Law." *New York Times*, October 30.
- Southan, Jenny. 2013. "Open Door: Jenny Southan Investigates How Demand for Data-Based Service and Personalised Travel Can Undermine Your E-Privacy." *Business Traveller*, July–August, 26.
- Sprengrer, Polly. 1999. "Sun on Privacy: 'Get Over It.'" *Wired* magazine, January 26.
- Stepanova, Ekaterina. 2011. "The Role of Information Communication Technologies in the 'Arab Spring.'" PONARS Eurasia Policy Memo No. 159, May.
- Talbot, Margaret. 2003. "The Way We Live Now: 9-28-03; Subversive Reading." *New York Times*, September 28.
- Tauberer, Josh. 2009. "GSA Social Media TOS Review." Josh Tauberer's Blog, May 29. <http://razor.occams.info/blog/2009/05/29/gsa-social-media-tos-review>.
- Unlawful Access to Stored Communications, 18 U.S.C. § 2701–2712.
- Vaughn, Shawn. 2011. "NASCIO and Attorneys General Negotiate Model Facebook Agreement for State Government Use." Press Release, NASCIO News Room, January 5.
- Warren, Samuel D., and Louis D. Brandeis. 1890. "The Right to Privacy." *Harvard Law Review* 4 (5): 193–220.
- Zwerdling, Daniel. 2013. "Your Digital Trail: Data Fuels Political and Legal Agendas." National Public Radio, October 3. <http://www.npr.org/blogs/alltechconsidered/2013/09/30/226835934/your-digital-trail-and-how-it-can-be-used-against-you>.

q33

q34

---

**Sarah Shik Lamdan:** associate law library professor and legal reference librarian, City University of New York School of Law. Lamdan previously served as research librarian for several international law firms. Her research interests include administrative law, privacy ethics, and information access issues. Her writing on the Freedom of Information Act and information access has been published in the *Kansas Journal of Law and Public Policy*, *Government Information Quarterly*, and the *Vermont Journal of Environmental Law*. Lamdan also speaks and writes about social media issues and their ethical impacts on attorneys and library professionals. E-mail: [sarah.lamdan@law.cuny.edu](mailto:sarah.lamdan@law.cuny.edu).

## QUERIES TO THE AUTHOR

**q1.** AU: This article has been edited to conform to this journal's style conventions regarding grammatical construction, spelling, capitalization, hyphenation, use of italics and bold, treatment of references and their citations, figure and table formatting, and the like. Please read over the entire proof to make certain that no change of meaning has occurred because of the editing changes.

**q2.** AU: Please provide a page number for the quote from Griffey 2010.

**q3.** AU: Is this meant to be a reference to the American Library Association Privacy Resources document? If so, per the References list, the citation should be written American Library Association n.d.b. Please confirm and we will update the text citation. Also, can the date 2013 be added? It's not included in the listing in references. (If there is no date, "n.d." can be used.)

**q4.** AU: Is this meant to be a reference to the American Library Association Privacy Resources document? If so, per the References list, the citation should be American Library Association n.d.c. Or can the date 2013 be added?

**q5.** AU: Per journal style, roman numerals have been removed from headings throughout.

**q6.** AU: "Reminds" has been used three times in this paragraph—could one of these be changed to a different word to avoid repetition?

**q7.** AU: Is this meant to be a reference to the American Library Association Intellectual Freedom and Censorship Q & A document? If so, per the References list, the citation should be American Library Association n.d.a. Or can the date 2013 be added?

**q8.** AU: Is this meant to be a reference to the American Library Association Code of Ethics document? If so, per the References list, the citation should be American Library Association 2008.

**q9.** AU: Regarding Privacy Resources 2013—should this be American Library Association n.d.b.

**q10.** AU: Regarding Magi 2014—the date is given as 2006 in References list. Which is correct?

**q11.** AU: For the quote from Griffey 2010, please add a page number for the quote.

**q12.** AU: Please provide a page number for the quote from Adams 2002.

- q13.** AU: Please provide a page number for the quote from Sengupta 2013. [↴](#)
- q14.** AU: Regarding Casson 1911—the date is 1910 in References. Which is correct? [↴](#)
- q15.** AU: Please provide a page number for the quote from Southan 2013. [↴](#)
- q16.** AU: It's not clear what "privacy use" means. Can you clarify? [↴](#)
- q17.** AU: Please provide a page number for the quote from Brownstein 2013. [↴](#)
- q18.** AU: Is this NPR Staff 2013 citation for the *All Things Considered* interview? If so, we can update this to NPR 2013 to match the listing in references. I see no other NPR sources except Zwerdling. [↴](#)
- q19.** AU: Please see earlier query; is this NPR Staff 2013 citation for the *All Things Considered* interview? [↴](#)
- q20.** AU: Please provide a page number for the quote from Sprenger 1999. [↴](#)
- q21.** AU: Regarding Privacy Resources 2013—should this be American Library Association n.d.? [↴](#)
- q22.** AU: Please provide a page number for the quote from Dorsett 2006. [↴](#)
- q23.** AU: I didn't find a date on the web site for this page, so I changed to 2014 "n.d."; OK? [↴](#)
- q24.** AU: Please provide a page number for the quote from Melber et al. 2013. [↴](#)
- q25.** AU: The duplicate Brandeis and Warren reference has been removed—it is already correctly listed in the W section of the list, under Warren.
- q26.** AU: The Bunge 1989 reference is not cited in the text. Indicate where to cite or if to remove. [↴](#)
- q27.** AU: The Carson 2010 reference is not cited in the text. Indicate where to cite or if to remove. [↴](#)
- q28.** AU: Regarding Casson 1910—the text citation list the date as 1911. Which is correct? [↴](#)
- q29.** AU: The Mackelprang reference is not cited in the text. Indicate where to cite or if to remove. [↴](#)

**q30.** AU: Regarding Magi 2006—the date is listed as 2014 in text citation. Which is correct? [▲](#)

**q31.** AU: The Osborn reference is not cited in the text. Indicate where to cite or if to remove. [▲](#)

**q32.** AU: For Parry 2012, please provide the page range of the selected article. [▲](#)

**q33.** AU: I incorporated States v. Jones info into the text where it appeared and deleted the reference listing. (This could be done with other court cases as well.)

**q34.** AU: The Unlawful Access reference is not cited in the text. Indicate where to cite or if to remove. [▲](#)