

Suppression orders and interstate newspapers

A complex issue for SA librarians

In *inCite* 7 (28 May 1990) we published a letter from Lee Welch about the problems faced by librarians in South Australia as a result of the order suppressing comment on the Von Einem case. The situation has recently become more difficult with the publication of a ruling by the SA Attorney General which seems, on the face of it, to be almost impossible to comply with.

Because of the great importance of this issue, the text of the ruling is given here in full:

The State Librarian has expressed concern at the implication of the suppression orders in the Von Einem committal. That committal has attracted wide publicity not only in South Australia but also interstate. Material suppressed from publication in South Australia under section 69a of the Evidence Act, 1929, may of course be published with impunity outside South Australia. The State Librarian has referred to the difficulty that arises when the library receives interstate newspapers which contain material the subject of a suppression order in South Australia. The State Librarian also refers to advice received from my Department that the State Library should withhold interstate newspapers containing suppressed materials. In my opinion, the display in the State Library of newspapers containing suppressed material is a publication of that material within the meaning of section 69a. The question whether the Crown can be proceeded against for contempt of Court or criminally pursuant to section 70 of the Evidence Act, 1929, for breach of a suppression order, in circumstances where the State Librarian publishes material in contravention of such an order is not straightforward. However, it would be inappropriate for the State Librarian (or any employee of the Crown) to act in contravention of such an order. I would therefore confirm the advice previously given.

The State Librarian has noted that a number of interstate newspapers are available in 'full text online mode' on computers in public libraries, and it is impossible to prevent access to suppressed material short [I assume] of removing the computer terminals from the library. It is tempting to search for a distinction between keeping and making available in a library a newspaper containing suppressed material and keeping a computer terminal in a library by means of which persons may gain access to suppressed material, and offering the distinction as a basis for holding that the first is a publication and the second is not. However, I can find no logical reason for doing so. It is true that in the case of the computer terminal the user must activate the terminal and manipulate it in a certain way in order to gain access to the material. It is also true that in order to read the suppressed material in the newspaper the library user must go to the newspaper reading room, find the appropriate newspaper and then read it. As a matter of logic, I do not think the test of publication is what must be done by the user

to gain access to the information. If the information is stored in some format by means of which members of the public may legitimately (that is, in accordance with the library's rules) gain access to it, then I consider that it has been published. In the case of Casley-Smith -v- F S Evans and the District Council of Stirling (No. 4) 49 SASR 339, Justice Olsson considered the meaning of 'published' in section 64 of the Evidence Act. The Court said 'It must have been so made available by the alleged publisher that it is generally accessible to any member of the public having an interest in it' (page 345), and later 'if it is nevertheless released through a library system or on some other basis such to be generally available to interested members of the public at large, then that is sufficient' (page 345).

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I am unable to offer a practical solution to the State Librarian's query in relation to computer terminals. I would suggest that discussions be entered into with the publishers of the relevant database with the suggestion that they take steps to remove the suppressed material from the database as made available in South Australia. It is pertinent to note that the owner of the database is probably in breach of the suppression orders itself.

The State Librarian has raised two further issues. Firstly, it appears that library users may request that the library obtain facsimile copies of interstate newspapers from interstate sources. Where the newspapers, or the portions of them transmitted by facsimile, contain suppressed material, then the library publishes that material when it bands the facsimile copy to the library user. I would therefore advise that the library not procure suppressed material in this manner. Secondly, the State Librarian observes that television and radio broadcasts emanating from Victoria may be received in the eastern districts of South Australia. By analogy with the law of defamation, I think it arguable for the purpose of section 69a that a radio or television broadcast is published in the place which it is heard or seen (see Gorton -v- Australian Broadcasting Commission 22 FLR 181 at 183). However, there are difficult questions as to the appropriate venue for a prosecution in these circumstances.

(Item provided by Jan Heath) ■

Final call for submissions on local studies guidelines

The discussion paper, *Towards the establishment of guidelines for local studies provision in libraries and related agencies within Australia* is currently undergoing a final revision.

The paper is one of the outcomes of the ALIA 1989 study tour by Margaret Wyatt, NSW Local Studies Librarian. Although directed predominantly at public libraries, the paper proposes guidelines for local studies (history) collections developed by historical societies, tertiary institutions and heritage organisations, as well as in public libraries. Sections detail the meaning of 'local studies', the development of local studies librarianship, the varied structure of collections, the need to plan for such provision, users of the collection, and the development and implementation of local studies policies.

Over the last 12 months, contributions have been received from all States and Territories, representing librarians, archivists, library managers, library and archives educators, National Library and State/Territory library administrators, and professional library and archives associations. The paper also had its first national airing at the Perth Conference, when about 70 persons discussed some of the more controversial issues.

Any individual, or representative of a public library or other agency which has missed the opportunity to have access to the draft document, and now wishes to have a final say, should contact Helen Mandl at the ALIA National Office immediately. It is hoped publication will take place early in 1991. ■

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