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Guider les usagers parmi l'information médicale en ligne : les bibliothécaires peuvent-ils être tenus responsables ?

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Résumé : La quantité d'information médicale disponible sur Internet s'accroît rapidement et on demande de plus en plus aux intermédiaires fournissant cette information d'aider les usagers pour le repérage et l'interprétation de cette information. En général, cette activité semble relativement inoffensive, du point de vue juridique. Cependant, il existe une mince possibilité que l'intermédiaire dirige l'usager vers une information pouvant lui être préjudiciable. L'intermédiaire pourrait par conséquent être tenu responsable des blessures subies. Cet article examine les fondements théoriques des lois pertinentes, met en relief les risques sous-jacents et suggère des recommandations pour diminuer ces risques.

Abstract: The amount of health information available on the Internet is growing rapidly and information intermediaries are increasingly being asked to help information seekers find and make sense of this information. This activity is for the most part benign from a legal perspective. However, there is a small possibility that, should the intermediary steer an information seeker to information that proves harmful to the seeker, the intermediary may be found liable for injuries incurred. In this paper, we examine the theoretical underpinnings of the relevant laws, clarify the risks, and recommend ways to minimize risk.

Promulgation of health information on the Internet is having a profound effect on the methods by which health information is disseminated

and absorbed. Whereas in the past, healthcare providers did the lion's share of ensuring that patients and families understood health information that was conveyed to them, increasingly patients and families are seeking information from a wide variety of sources. Government bodies, health-provider associations, and illness advocacy/resource groups are making information available to assist the public in making informed health-care decisions. Indeed, increased access to sources of information will undoubtedly lead to increased expectations that patients can and will research their condition and treatment options and will generally be better informed.[1]

In this paper, we briefly examine the increasing role of librarians in assisting information seekers to access health information. We then turn our attention to some of the legal issues prompted by this activity. Our purpose here is to describe the legal context and analyze how these legal matters may apply to interactions between patrons and librarians.[2]

Use of the Internet to access health information

A considerable amount of health information is available on the Internet. The federal government (Health Canada 2006) and several provincial governments (British Columbia 2006, Alberta 2006, Saskatchewan 2006, Ontario 2006) have developed websites to provide health information to citizens. Organizations such as the Canadian Cancer Society and the Alzheimer Society also maintain sites that contain health information and discussions of treatments.

There is clear evidence that increasing numbers of people are accessing health information over the Internet. A Harris Poll conducted in the United States found that

- 80 per cent of all adults who are online (i.e., 53 per cent of all adults) sometimes use the Internet to look for health care information, while only 18 per cent say they do this "often," while most do so "sometimes" (35 per cent), or "hardly ever" (27 per cent)
- this 80 per cent of all those online amounts to 110 million cyberchondriacs (those who search for health information online) nationwide, which compares with 54 million in 1998, 69 million in 1999, and 97 million in 2001

- on average, those who look for health care information online do so three times every month (Harris Interactive 2002)

A more recent study conducted by the Pew Internet and American Life Project arrived at similar statistics, with 79 per cent of Internet users having searched online for health-related information (Pew Internet 2005). This study also found that 86 per cent of Internet users with more than six years of experience in using the Internet searched for health information.

While evidence suggests that, at present, patients generally prefer to use medical professionals as their main source of health information (Dolan, Iredale, and Ameen 2004, 147–8; Henwood et al. 2003, 597),[3] it is expected that use of the Internet for researching health issues will increase as the population becomes more comfortable with online resources.

Role of the information intermediary

A considerable amount of information is available online. However, much of it remains difficult for people to access. Finding information in an electronic environment requires availability of computers and an ability to use them. Many people do not own computers and may be reluctant to search for personal health information over public terminals. Even if information seekers do have access to computers in an environment in which they feel at ease, they may lack the computer skills to access the relevant data. Even if they find sources of data, many people have difficulty in "unpacking" the information in a way that speaks to their needs.[4] In sum, while infrastructure is being built to make information available, often people need help in finding and making sense of the information.[5]

In seeking answers to their health-related questions, people often turn to information intermediaries such as librarians, community health workers, or volunteers in health-related organizations (e.g., the Cancer Society, the Alzheimer Society), and informed lay people. These people have widely varying levels of knowledge. Some are adept at locating sources but have little medical knowledge; some have more medical knowledge but are not information specialists. For the most part, providing help to find and understand the content of online health information is a benign activity. However, there remains a remote possibility that liability may fall on information intermediaries who steer the seeker to health information that is dangerous or outdated and that results in injury to the seeker. This paper

addresses liability issues about which librarians should be aware when providing assistance. Our focus is primarily on librarians offering services to the general public rather than on hospital librarians.[6]

Legal issues

Most of the research on liability in the library has been conducted in the United States, likely due in part to the propensity of injured parties there to bring lawsuits. Our research has not uncovered a single case in Canada, the United States, or Great Britain in which a librarian has been sued for providing negligent information. That it has not yet happened, however, does not mean that it will not happen.[7] Two areas of law with potential to cause difficulties for the unwitting librarian are contract law and tort law.[8] These will be discussed in turn.

Liability under contract law

To form a binding contract, one party must offer to do something for another, and the other must accept the offer (Fridman 1986, 3). There must also be consideration—an exchange of something of value—to give effect to the exchange of promises (75). Furthermore, the terms of the contract must be clear to both parties (15). The parties must, in addition, be competent to enter into contracts. While contracts need not be written, both parties must be aware that they are entering into legally binding relations.

Some municipal and academic libraries charge user fees in order for the patron to receive a card. However, this would be unlikely to be seen as imposing contractual obligations between the parties beyond the expected ones that enable the patron to use library resources in accordance with library policy.[9] Some libraries provide patrons with information about conditions of use when they receive a card. In such cases, the terms of the contract or of the conditions of use would generally circumscribe the extent of liability that could be imposed on the library.[10] Thus, even if a contract were found between a patron and a library, the subject matter of the contract would not likely include the library assuming responsibility for the patron's use of information found within the library. Anything beyond the expected conditions of use would require a specific offer and acceptance, a clear understanding by both parties that they are entering into legally binding relations, and a description of the terms of the service being offered.

Contract law would more likely be relevant if the intermediary is an information broker who is being paid by the patron for services. A contract can be found, too, when a library provides services for a fee. If an information broker or librarian contracts with a patron to find appropriate information on, for example, treatment options for stomach cancer, he or she is obligated by the terms of the contract to find relevant information. Likely the contract would call for the most up-to-date and relevant information about the information seeker's specific requests. The information intermediary would be expected to use reasonable skill, care, and diligence in the performance of the contract, including consultation of the relevant databases and literature and informing the information seeker of the search's limits (e.g., what databases and sources will be searched).

If a contract is found between the two parties, the intermediary could be found liable if his or her performance does not meet the reasonable expectations of the information seeker based on the contract. In determining whether a breach has occurred, the court would look to the terms of the contract, the actions of the intermediary (to see whether he or she has met the terms), and any disclaimer clauses contained in the contract.[11]

Should any groups contemplate charging fees for assisting clients in researching medical questions, it would be prudent to ensure that both the researcher and the client understand exactly the service being provided and the inherent limitations on the information found (e.g., what databases are searched, how far back the search goes). Researchers who are not medically trained are not in a position to provide medical advice that the client should follow, and medically trained researchers are able to advise only within their area of competence. An intermediary must ensure that the client understands that medical answers are not being provided but, rather, that the service offered is solely access to medical literature which is of a general nature and not meant to apply directly and pointedly to the client's health situation. In addition, the contract should contain an explicit clause, vetted by a lawyer, disclaiming any responsibility for the accuracy of the information provided.

Liability under tort law

Should an information intermediary steer an information seeker to a source that contains outdated, erroneous, or incomplete information that harms the seeker, it is most likely that the legal action would be framed in the tort of negligence.

Tort law addresses civil wrongs between people. If a person negligently causes a motor vehicle accident, if a house burns down because the electrician incorrectly installed a fuse box, or if the gasoline tank of a vehicle explodes and injures a passenger, the law of torts may be brought to bear. One of the guiding impulses behind tort law is that we owe an obligation to others to reduce foreseeable risks caused by our actions. Thus, unlike contract law, which generally affects only those who are party to the contract, tort law imposes a general duty on all, at least in a minimal sense, to look out for the welfare of others.

Negligence is one branch of tort law. In a negligence action, the injured party has to prove all of the following: (1) the injured party was owed a duty of care by the person claimed to be the injuring party, (2) the injuring party breached the standard of care, (3) the injured party suffered a harm, (4) the injuring party's actions in fact caused the injury, and finally, (5) the damages were not too remote from the offending behaviour so as to warrant allowing the person who caused the injury to escape liability for the injury. If the injured party can prove all of the elements of negligence on a balance of probabilities, the injuring party will be found liable for the injury and required to pay damages. However, liability for the injury can be limited by the party alleged to have caused the injury if she establishes that the injured party was partially responsible for his own injuries and thus was contributorily negligent. Each of these elements will be examined in turn.

Duty of care

The question of whether a duty of care exists may be assessed by asking whether it is reasonably foreseeable that when one either takes or fails to take an action in a careless fashion, someone in the position of the injured party could be harmed. In *Kamloops v. Nielsen*, the Supreme Court of Canada adopted a two-part test to determine whether a duty of care exists. Basically, to determine whether a duty exists, the court has to decide whether "there is a sufficiently close relationship between the parties ... so that, in the reasonable contemplation of the [injuring party], carelessness on its part might cause damage to that person" (10). Secondly, the court has to decide whether the claim should fail for policy reasons.

With respect to the first question about the closeness of the relationship between the parties, imagine four scenarios.

In the first, a patron merely asks a public librarian to show her how to use a Web portal such as Google through which, unbeknownst to the librarian, the patron researches cancer treatments. It is unclear in law as to whether a duty of care arises merely by virtue of the fact that there is a relationship between the librarian and a patron. However, such a duty, if it exists, would be met merely by showing the patron how to use the portal. It would certainly not require a librarian to vet the searches a patron makes to minimize the possibility the patron might injure herself. The librarian would at a minimum need reasonably to foresee that the patron was a possible victim of some kind of injury due to showing the patron how to use Google before such a duty would be imposed on the librarian.

In the second scenario, a patron of a public library requests a librarian's help in finding information on stomach cancer, explaining that he is trying to determine the best course of action to take regarding treatment options. Whether a duty of care would be found to exist is unclear. It would at first appear that the relationship was sufficiently close that the librarian might foresee negative consequences arising from a failure on her part; the librarian has enough information about the patron and what use the patron wishes to make of the information to understand that risks might arise if adequate care is not taken to direct the patron to reputable sources. However, the second factor of the Supreme Court's two-part test described above might circumvent such a finding: good policy reasons may exist for not finding a duty of care in this circumstance. Speaking in the American context (which may or may not be persuasive in a Canadian court), John A. Gray turned his attention to this issue and made an "educated guess":

> The policy consideration supporting this view [that there is no duty of care owed to the patron] is that the law should promote and encourage the availability and circulation of information in our society. The fact that reference services are provided gratuitously indicates a strong public policy in favor of the availability and circulation of information in our society, an availability and circulation that would be restrained if common law courts too readily acknowledged professional negligence on the part of reference librarians as a cause of action. (Gray 1988, 77)

How the courts would weigh the two factors in determining whether a duty of care would be owed in this scenario is unclear, but it is not obvious that a duty would be found.

In the third scenario, a patron goes into a health sciences library and speaks to a medical librarian. The librarian conducts a reference interview to

determine what the patron is seeking. The librarian learns that the patron has just been diagnosed with gastric stromal tumours and is researching treatment options. The librarian has enough information about the patron and her needs to realize the risks involved in not competently attending to the patron's information request. While policy reasons may affect the imposition of liability, courts might find that a medical services reference librarian who has conducted a reference interview is in a position vis-à-vis medical literature that is different from that of a public library reference librarian. Here the likelihood of a duty of care being imposed is greater, though by no means certain.

In the fourth scenario, a client hires an information broker who specializes in medical research to investigate treatment options for gastric stromal tumours. Disregarding the contractual relationship between the two, it is clear that the information broker would owe the client a duty of care in negligence, as the relationship would, without question, be sufficiently close. Moreover, no policy reason exists to protect a paid professional researcher who fails to do his job properly and thereby causes harm to the client.

Standard of care

To determine whether the injuring party has breached the standard of care, the issue is framed around how a reasonable and prudent person would have acted in similar circumstances. To assess what a reasonable and prudent person would do, the law postulates the figure of the reasonable person. This fictional person is designed to abstract the particulars and find some objective ground for establishing fault. The standard is not perfection but what would reasonably be expected of someone in a position similar to that of the injuring party. Who figures as the reasonable person will vary with the level of expertise and experience possessed by people in similar circumstances. Thus, professionals will be held to a higher standard than non-professionals and, within professions, certain groups are held to even higher standards (e.g., medical specialists will be held to a higher standard than general practitioners). As well, injuring parties may be held to a higher standard if they had advance knowledge that those with whom they were dealing had particular vulnerabilities.

We will first sketch a scenario of potential concern and consider, given the role of the librarian, how likely it is that she or he could be found to have fallen below the standard of the reasonable person. Understanding precisely

the role of the librarian can clarify the types of action that could form the basis of a lawsuit.

A main concern expressed in the library literature deals with situations where a librarian passes along to a patron a source of information that the patron then relies upon to his or her detriment. Indeed, the issue of librarian liability was first raised in 1976 when Allan Angoff published a mock news story that dealt with this situation (Angoff 1976, 489). Angoff posited a scenario in which a library provided a patron with a book that had been published ten years prior to the event by a publisher who was now defunct. The book contained faulty information about building a patio and, as a consequence, the patio collapsed, causing personal injury and damage to property. An action in negligence was initiated against the library.

Whether the scenario presented by Angoff is plausible is the subject of debate. William Nasri finds it to be so: "One may ask, 'Who is liable for inaccurate information or advice given to users?' Actually the person who provides the information is liable for the harm caused by it" (Nasri 1980, 5).[12] Martha Dragich disagrees, pointing out that in Angoff's scenario, if liability were found, a librarian can potentially be held responsible for any and all information contained in every book in the library. This would increase the scope of liability beyond all reasonable limits (Dragich 1989).[13] Dragich cites a California libel case that draws an analogy to the situations of libraries.[14] In that case a video rental store was sued for libel contained in a rental video, and the California Court of Appeal stated that "one who merely plays a secondary role in dissemination of information published by another, as in the case of libraries," cannot be found liable unless he or she knew or had reason to know that the information was false (*Osmond v. EWA, Inc.*, qtd. in Dragich, 270). What is important about the situation of information intermediaries who merely distribute the work of others is that for a party to be held responsible for damages that result from misinformation, the party must know or should have known that the information was faulty:[15]

> That the creator of the information source might be liable for faulty information is fairly clear. However, when the claim is against the disseminator of the information, the issue is less clear. By making a claim against a librarian, the plaintiff is not just saying that the information is somehow inadequate, but also that the librarian knew or should have known that this was the case and supplied it anyway, and further that it was reasonable to rely on the librarian without any further analysis or judgment on the patron's part. (Healy 1995, 524)

Librarians do not have expert knowledge in all fields; rather, they are experts in finding and marshalling information. According to Gray, the basic services of a librarian are "(1) to search for and identify available, reliable sources of information relevant to the user's question/request, (2) to assist the patron/client in using the information source, or (3) alternatively themselves to access and obtain the information requested and report it accurately" (Gray 1988, 73). Taking this as an accurate reflection of the primary duties of a librarian, an injured party wishing to establish a breach in the standard of care would have to establish that the librarian failed to exercise the degree of care that a prudent librarian would have exercised in similar circumstances while providing one or more of these enumerated services. A breach in the standard of care might include such things as failing to check the relevant databases, failing to know the limits of particular databases, failing to use proper search strategies, failing to use reputable search portals, and inaccurate reporting of results. These failures essentially reduce to inadequate searching and inadequate screening of sources that the prudent librarian would identify as unreliable (e.g., because they are out of date or from a suspect source).

Professional standards and guidelines often provide the basis on which the standard of care will be determined and by which an injuring party will be assessed. However, Canada has no professional body with mandatory guidelines and standards governing the conduct or competency of librarians. The Canadian Library Association (CLA) is an association of libraries and not of librarians, and its Code of Ethics (CLA 1976)[16] is best described as aspirational rather than as action-guiding. The courts would then look to the education,[17] professional development, and common practices of librarianship to determine what standards the injuring party was expected to uphold. As noted above, the more specialized the professional, the higher the standard to which she or he would be held. Thus, a general reference librarian would not be expected to have as great a knowledge of the medical resources as a medical librarian with specialist training.

Harm

In order to establish that negligence has occurred, the injured party must prove that he or she has suffered some harm. Even if all of the other required elements are proven, if there was no actual injury to the claimant, he or she cannot recover. Thus, the patron would have to experience

harm as a result of following advice contained in a source found by a librarian.

Generally, for the harm to be compensable in the situations we are positing, it would have to be a physical injury. While psychological harm is compensable in limited circumstances, it is not easy to establish. Emotional upset, grief, and sorrow are not compensable. To recover for psychological harm, the injured party must establish both that the psychiatric damage suffered was a foreseeable consequence of the negligent conduct of the injuring party, and that the psychiatric damage was so severe that it resulted in a recognizable psychiatric illness (Linden and Klar 1999, 295). Courts are reluctant to compensate for psychiatric harm for a number of reasons including the fear of false claims, the fear that a single accident can lead to a large number of claims, and fear of overburdening the insurance industry with wide liability (Bélanger-Hardy 1999, 553).

Causation

The injured party must show that there is a connection between the injuring party's negligent actions and the harm experienced by the injured party. Generally courts utilize a "but-for" test to determine whether the link has been established. That is, the court will pose the question: But for the actions of the injuring party, would the injured party have suffered the loss? If the damages would not have occurred but for the actions of the injuring party, then the injuring party will be found to be the cause of the harm.[18] If the damage would have occurred whether or not the injuring party was negligent, the actions are not likely to be found to be the cause of the harm.

In the case of a librarian assisting a patron with health information, to satisfy the "but-for" test the injured party would have to show that, but for the failure of the librarian, the injured party would not have suffered loss. This is a conceivable scenario if, for example, the librarian presents himself as an effective judge of sources and passes along out-of-date information or recommends information found on a website entitled "Carla's Cancer Corner" as reliable while not directing the patron to, say, the websites of the Canadian Cancer Society, MedLine, and other reputable sources. The injured party would have to establish that the librarian's breach of the standard of care caused the injury; that is, but for the librarian directing the patron to Carla's Cancer Corner, the patron would not have come across injurious information that the injured party relied on to her or his detriment.

Remoteness or proximate causation

The general rule is that only reasonably foreseeable damage may be recovered, and the injured party must establish that the injuring party's actions were the proximate cause of the harm. That is, at the time the injuring party acted, damage of the kind the injured party experienced must have been reasonably foreseeable. The extent of the damage may not have been foreseeable, but if it is of the kind that one would expect, given the injuring party's actions, the damage is not too remote.

Is the worsening health of a patron a reasonably foreseeable harm that could arise from the actions of a librarian? If a librarian steers a patron to a website that offers problematic advice, the patron relies on it, and, as a consequence, her or his health worsens, is that a foreseeable consequence of steering the patron to the website? If a librarian fails to find a relevant source, and the patron thereby fails to consider an option, is the worsening health of the patron a reasonably foreseeable consequence of the failure to find the source? Clearly, these questions cannot be answered without more context, but, prima facie, harm to the injured party does not appear remote enough to relieve the injuring party of liability in cases wherein a reasonable librarian would understand that the patron is relying on her or his advice.

Contributory negligence

As mentioned above, the injured party must prove that a duty of care was owed, that the injuring party failed to meet the standard of care, that harm occurred, that the injuring party caused the harm, and that the damage was not so remote as to relieve the injuring party from the responsibility of making recompense. When the injured party has established these factors, the injuring party can reduce some of her or his burden by showing that the injured party was partially responsible for the damage suffered. Injured parties have a duty to attend to their own interests, and their unreasonable failure to do so can be found to have contributed to their losses. Such a finding does not remove liability from the shoulders of the injuring party but, rather, only to decrease the burden she or he must bear. When the injuring party has proved that the injured party contributed to his or her own losses, courts will apportion a percentage of liability between the parties.

The most obvious way a librarian could establish that a patron was contributorily negligent is to show that a reasonably prudent person would

not rely solely on information found by a librarian in order to make medical decisions. Reasonably prudent people would be expected to educate themselves about their condition, and might well avail themselves of the services of intermediaries, but they would also discuss matters with a healthcare professional who is familiar with the specifics of their case. Thus, it would be fairly easy to establish that an injured party who had relied exclusively on medical advice offered by a librarian acted imprudently and thus contributed to his or her own harm.

Summary regarding negligence

It is highly unlikely that a librarian would be held responsible for the content of information given the current scope of responsibilities of librarians; only in rare cases will a librarian have sufficient knowledge of the subject matter to know that the information is dangerous. In extremely limited circumstances librarians may be held responsible for failing to find information or for producing information that is out of date. This failure to meet the standard of care would be assessed against the actions of a reasonably skilled librarian in similar circumstances. The librarian does not have to find each and every relevant source or ensure that every search is error-free; the standard is not perfection. Rather, the standard against which librarians will be assessed is that of reasonableness.

Librarians may help to interpret what is in the information in order for the patron to make use of the materials, but librarians should not draw conclusions for the patron even when, as if often the case, they are pressed to do so. For example, recommending certain treatment options over others would be beyond the scope of a librarian's professional skill and judgement. Clearly such advice is best left to those who have the proper training. Moreover, to make recommendations on the content of materials breaches the standard of care required of a librarian, considerably increases the duty owed to the patron by the librarian, and makes the causal connection much easier to establish. To recommend treatments or draw conclusions for patrons about health inquiries is negligent for someone who does not have the health care training to offer such advice.

Avoiding liability

Essentially, the most effective way to avoid liability is to do nothing that could be construed as providing advice. In circumstances in which the

intermediary believes that someone is going to rely on him or her for something other than pointing out the right sources, the intermediary should make the scope of her or his assistance clear. Librarians can help people to find sources that address the information seekers' concerns, and they may help decipher what the information appears to convey, but they should make clear that they take no responsibility for actions the seeker takes or does not take in light of the information. Individual libraries should institute policies to guide their employees in assisting health information seekers and in ensuring that the public understands the types of services the library offers and the restrictions on those services.[19]

Exclusion or disclaimer clauses as a way to avoid liability have a long pedigree. Generally, if the disclaimer has been brought to the attention of the injured party prior to the injury occurring, and the injury is clearly within the scope of the exclusion, courts will allow the injuring party to avoid liability. Thus, if the information intermediary informs the seeker that she is not to rely on any information he provides as medical advice, and that the seeker ought to discuss matters with a medical professional, it is extremely unlikely that the intermediary would be held responsible for the injury if the seeker treats the information as medical advice.[20] Moreover, the librarian should make clear the limits of the search by identifying, for example, which databases and sources were searched and which were not.

Articles dealing with librarian liability caution librarians to merely present the sources of information to the patron and not to attempt to rank the sources or interpret the information (Muir and Oppenheim 1995, 96–7). The thinking behind such advice is that if the patron understands that she is responsible for answering her own questions, the librarian is less likely to be held liable for the patron's actions. The sustainability of the "hands-off" approach as greater amounts of health information are put online for public consumption remains to be seen. Building research skills and health literacy in the lay public and making available accessible and clear material to information seekers in a manner that meets their heath-related needs will take some time. In the meantime, as responsibilities for informing patients devolve from medical practitioners onto information intermediaries, librarians would do well to ensure that their assistance in finding and making sense of information cannot reasonably be construed as providing medical advice.

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Notes

1. This is not to suggest that health-care providers have a decreased responsibility to ensure that patients understand and appreciate the nature of their illness and treatment options. Healthcare providers still have a legal duty to ensure that their patients are properly informed of the relevant information they need to make choices and to give consent.
2. The information in this paper should not be construed as legal advice. The reader is urged to consult with a lawyer when faced with a specific issue related to potential librarian liability.
3. This finding seems to vary across communities. One study reports that rural women seeking information on chronic health issues relied on the Internet and books as much as they did physicians (Harris, Wathen, and Fear 2006). In a random telephone survey examining health information-seeking of rural residents, 74 per cent had searched for health information in the previous two years. The sources of health information most frequently cited by the survey participants were doctors (60 per cent) and the Internet (59 per cent) (Harris and Wathen 2007).
4. The digital divide is a pressing issue, as is the perceived usefulness of the information presented. One study reports, "One of the main reasons why some respondents do not use the Internet to access health information is related to a lack of perceived utility and pertinence of such information for managing their healthcare. The optimal and equitable use of the Internet as a means of complimenting health-service utilization will not emerge merely from increasing access to e-information" (Rogers and Mead 2004, 102).
5. Another issue that we mention but do not discuss is the reluctance of some people to engage fully as "informed consumers" of health information. In a study conducted by Henwood et al., the authors note that one of the constraints to fully realizing the informed patient paradigm is that "many patients do not want to take responsibility or seek out information for themselves—they are more than happy to trust their GP's and leave decisions to them" (Henwood et al. 2003, 604).
6. For a focused discussion of liability issues for hospital librarians, see Herin 1991.
7. The Texas Library Association, for example, offers its members insurance against damages for a number of actions including providing erroneous information. See http://www.txla.org/html/insurance.html.

8. There are other areas of law where liability may be found—defamation, for example—but they are outside the scope of this paper.
9. For example, the library allows cardholders to remove materials from the premises and the patron promises to return the materials within the specified time or pay a fine.
10. Briefly, we note that the payment of taxes to a publicly funded institution such as a library would be unlikely to be viewed as sufficient consideration to ground legally binding relations between a patron and the library. Courts would likely resist imposing these kinds of contractual obligations simply because the patron paid into a general tax fund out of which a portion was allocated to libraries.
11. For additional legal issues that may confront researchers who sell their services, see Felsky 1989.
12. Interestingly, Nasri cites no authority for this claim. Also, in this passage, Nasri fails to acknowledge that there may be multiple responsible parties. The defendant does not have to be the sole injuring party, but so long as he or she is a cause, liability may be found. The injured party would have to establish that the librarian played more than a minimal role and materially contributed to the injury suffered.
13. It is conceivable that a library could be held responsible for the content in a book, but it would have to be established that library personnel knew or had reason to know that the book contained harmful information. Thus, stocking and allowing children to take out a book entitled, say, *The Boys' and Girls' Book of Bomb-Making* might well fall below the standard of care so as to open the library to liability.
14. Libel is a legal action for dissemination of faulty information. Libel and personal injury are treated quite differently under the law.
15. The tort of negligent misstatement is not likely to apply in these circumstances. This tort applies almost exclusively where there is a purely economic loss and not a personal injury. While this tort deals with passing on information in a negligent manner that causes harm, the elements of the tort are not likely to be met within the context of librarian and patron relations.
16. The Code of Ethics of the Canadian Library Association states:
    Members of the Canadian Library Association have the individual and collective responsibility to:
    - support and implement the principles and practices embodied in the current Canadian Library Association Statement on Intellectual Freedom;
    - make every effort to promote and maintain the highest possible range and standards of library service to all segments of Canadian society;
    - facilitate access to any or all sources of information which may be of assistance to library users;
    - protect the privacy and dignity of library users and staff.
17. Education levels for librarians vary significantly. Librarians may have a master's degree granted from an American Library Association–accredited university program, or they may have a diploma from a community college, or they may have no formal education in information management at all.

18. In situations where there may be multiple parties contributing to the injury, courts will consider whether a particular injuring party materially contributed to the injury. The contribution of the injuring party must be more than minimal for liability to be found. Thus, the negligent actions of the injuring party do not have to be *the sole cause* of the harm; rather, simply being *a cause* can result in liability being assigned to the injuring party.
19. As example of such policies, see Kellogg Health Services Library (2003) and American Library Association (2001).
20. For a selection of disclaimers that libraries have used in the United States, see the website of the Consumer and Patient Health Information Section at http://caphis.mlanet.org/resources/disclaimers.html. We do not here endorse any particular form of disclaimer and suggest that organizations contemplating using a disclaimer seek appropriate legal advice.

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