Adventures in information policy wonderland: an afterward

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Citation to Publisher Version:

Citation to this Version:
Wanderings Through the Hallways of Information Policy

Reflecting back on half a century wandering the hallways of information policy, I think of *Alice’s Adventures in Wonderland*. In policy wonderland, we encounter numerous tales, strange games, and many unknown creatures. We get lost in the forest, play games with the Queen, and testify at kangaroo courts. Over the past few decades, I traveled with library and information science (ILIS) colleagues down the rabbit hole of information policy that has shifted from a disconnected domain of arcane specialists with strong ties to influential stakeholders working on a narrow array of issues to a highly connected land of information and communication analysts with weak ties to a broad collection of actors with overlapping concerns. We entered a place that morphed from narrowly defined to undefined rules, from clear to fuzzy boundaries, from singular to multiple points of control, and from limited to large sets of players. We reached for the key to open the door for the public to engage directly with policy makers.

When we awake from our dream, we imagine a digital wonderland full of unprecedented possibilities for human creativity, global communication, innovation, and access to information. Yet this same land sends us down paths where strange creatures try to control our ideas and threaten to erode political discourse, scientific inquiry, free
speech, and the creativity needed for a healthy democracy. We enter this adventure in pursuit of a fair and just information society, but along the way we face mad hatters, march hares, and dormice in our uphill climb to influence policy outcomes. In this mad dash, we pursue a strategy that advances innovation, stimulates creativity, and promotes the sharing of information.

**Down the Rabbit Hole of Information Policy**

I first got involved in information policy discourse when it was easy to find my way meandering on the banks of a slow-moving river. My path toward legislative advocacy focused on funding and grant programs. Initially, I encountered public librarians who supported the enactment and renewal of federal Library Services Act and Library Services and Construction Act programs, school librarians who championed provisions of the Elementary and Secondary Education Act, academic librarians who advocated for Title I and III of the Higher Education Act and for National Endowment for the Humanities programs, documents specialists who cheered for depository library programs, state librarians who collected statistics for federal agencies, archivists who defined how the National Historic Publications and Records Administration would allocate funding, and leaders of national libraries who urged funding increases for the Library of Congress, National Agriculture Library, the National Library of Medicine, and other federal libraries. I began my legislative advocacy journey on a well-marked path full of familiar faces.

Librarians and information (LIS) professionals are not new to information policy. We began participating in national policy issues over a century ago in highly specialized, narrow ways. In 1919, the American Library Association (ALA) endorsed a
congressional bill to create a federal Department of Education, to fund literacy programs for school children, and to extend public library services in support of education. Then, in the mid 1930s, ALA endorsed the receipt of federal tax support for public libraries, resulting in recommendations for federal intervention to support academic, school, and public library services presented in 1938 by President Roosevelt’s Advisory Committee on Education. After World War II, ALA proposed a modest program to establish public libraries in rural communities, opening its first Washington office to support these efforts in 1949. Once the Association secured passage of the Library Services Act (LSA) in 1956, it began crafting a strategy to expand federal support for libraries. On the morning of November 22, 1963, Senator Edward Kennedy was presiding over Senate debate of the Library Services and Construction Act (LSCA) when proceedings were interrupted by the assassination of his brother, President John F. Kennedy. Shortly thereafter, in its first official action after Kennedy’s death, the Senate passed LSCA—a bill that expanded upon LSA to include support for all types of public libraries and for construction, with interlibrary cooperation and special services to institutions and the physically handicapped added the next year. That same year, Congress authorized legislation that supported school, academic and medical libraries, as well as a new building for the Library of Congress. Thirty years later, LSCA became the Library Services and Technology Act (LSTA), adding provisions to support technological innovation and moving the program into a newly created Institute for Museum and Library Services.

In 1970, the Internal Revenue Service requested permission from several libraries to examine circulation records to determine the names of persons reading materials about explosives and guerilla warfare. In response, ALA developed its “Policy on Confidentiality of Library Records,” urging libraries to designate their records as
confidential and accessible only "pursuant to such process, order, or subpoena as may be authorized under the authority of, and pursuant to, federal, state, or local law relating to civil, criminal, or administrative discovery procedures or legislative investigatory power." (ALA 1971, 1986 rev). The following year, ALA sought to protect the confidentiality of relationships between librarians and library users. After a grand jury attempted to elicit information from a librarian about anti-Vietnam War activists, ALA passed a resolution on government intimidation, asserting that "no librarian would lend himself to a role as informant, whether of voluntarily revealing circulation records or identifying patrons and their reading habits." (ALA 1971). Then, in the late 1980s, ALA contested the FBI’s Library Awareness program that solicited information on the use of various library services by "suspicious looking foreigners," claiming that the Bureau was requesting that librarians violate not only their professional ethics but also confidentiality laws that librarians had succeeded in passing in most states.

The 1970s and 1980s were pivotal in extending the role of librarians beyond their traditional boundaries. In 1976, facing off against the publishing industry, ALA led in the reformulation of copyright policy by incorporating into law the convention of fair use, recognition of certain types of library copying with the arrival of the photocopy machine, and elimination of liability for copyright infringement by library staff. ALA was also successful in gaining Congressional approval of classroom and interlibrary loan copying guidelines. A few years later, Congress appointed the Director of the ALA Washington Office as co-chair of a committee charged with developing guidelines for off-air videotaping for educational use, contending with the Motion Picture Association for a seat at the little glass table in an emerging media environment. As copying threatened the business models of media and publishing giants, the library and
information communities found themselves more deeply involved with issues beyond their boundaries and of concern to a diversity of stakeholders holding an array of differing positions.

In parallel, the issues and numbers of players involved in government information policy grew in complexity. During the Cold War, government depended on military contractors to computerize data that was privatized by a rising information industry whose leader, Paul Zurkowski, forecast: “Just as surely as the Berlin Wall stands today, in the absence of a concerted industry-wide effort, user choice in information one day soon will be replaced by ‘free information’ from one source” (Berry, 1975, p. 795). A decade later, the Reagan Administration eliminated scores of government-produced publications, contracted out and closed down federal library and information programs, and placed “maximum feasible reliance” on the private sector to disseminate government information, (Office of Management and Budget, 1985). At the same time, obsessed with national security and secrecy, the Administration acted much like the Queen of Hearts by seizing control of public access to information still produced by the government, widening classification actions, discouraging declassification, limiting access to sensitive but unclassified information, and gutting many of the provisions of the newly-minted Freedom of Information Act. The LIS community responded by vigorously protesting, documenting, and publicizing every action counter to the free flow of ideas and reduction of access. ALA formed the Coalition on Government Information to broaden its efforts to contest the positions of private sector stakeholders who threaten the public’s right to know. The Coalition proposed the GPO Access Act passed in 1993, which provided no-fee public access to federal electronic government information.
The Clinton Administration reversed many of the previous Administration’s actions, opened up access, limited classification actions, increased declassification, and supported electronic Freedom of Information requests. In the 1990s, LIS professionals influenced the development of open, interoperable systems through the appointment of representatives from the Library of Congress and the LIS community to the federal networking committee, extending networks beyond major federal science agencies like the National Science Foundation (NSF), the National Aeronautics and Space Administration (NASA), and the Defense Advanced Research Projects Agency (DARPA). As networks became more diffused and available for public use, LIS professionals helped craft language for a new National Research and Education Network (NREN), which quickly morphed into the National Information Infrastructure (NII) led by Vice President Albert Gore. When he introduced the NII in 1993, Gore credited librarians with contributions that extended advanced technologies to the public. President Clinton appointed a librarian to the prestigious NII Advisory Committee and, later that decade, chose several LIS professionals to serve on the President’s Information Technology Advisory Committee (PITAC). Public access advocates also participated in advanced Internet initiatives and in ICANN governance policy—new roles that gave them yet another seat at the tea party—although one with many occupants.

**Treading Water in a Pool of Tears**

Like Alice in her travels through unfamiliar lands, LIS professionals met obstacles in their journeys. Although the late 20th century offered the public new on-ramps to the information superhighway, the roadway was littered with secret doors, either as a result of privatization, rapidly expanding intellectual property rights, filters, classification, or other controls. Some restrictions were brought on by the transformation...
from print to electronic and from analog to digital. In the private sector, media mergers, telecommunications deregulation, scholarly publishing consolidation, content sharing restrictions, and technological protection measures restricted open access to information.

The breakup of the American Telephone & Telegraph Company (AT&T) in 1982, plus subsequent government policies favoring telecommunications deregulation, brought another wave of complexity and change to the nation’s evolving information policy wonderland. Telephone companies, previously “common carriers” for information produced by others, expanded into production and distribution, while the cable industry moved to provide both connectivity and content. Freed from regulatory constraints, phone, cable, and news corporations pressed Congress for concessions that would lead to positions of dominance in an evolving fast-paced technological future. Consolidation of media, telecommunications, and computer industries proceeded rapidly over the next two decades, resulting in the emergence of a few mega companies that dominate the production and distribution of most of the nation’s information.

Amidst this ferment, Congress passed the first wholesale revision of communications law since the Communications Act of 1934. The Telecommunications Act of 1996 relaxed limits and barriers to ownership of telephone services, broadcast, cable television, and newspapers. The intent of the law was to reduce prices, lower entry barriers, and increase diversity. Instead, the law set off a frenzy of mergers and acquisitions that resulted in the ascent of a few telecommunications, broadcast, and print behemoths. The law catapulted librarians and educators into this thorny policy arena, where they assumed new responsibilities for closing access gaps through discounted network connections for public libraries and schools through the E-rate program. Although libraries now serve as the number one point-of-public access to the Internet
outside the workplace and home, a digital divide between rich and poor, black and white, urban and rural, English and non-English-speakers, old and young, new Americans and Native Americans, and among those with disabilities still persists across American communities. Most Americans now use the Internet at home; and, while certain groups continue to lag in high-speed access, many more lack skills necessary to utilize these resources effectively. Consequently, the LIS sector has turned its attention to skill development and digital literacy, in order to help the public make better use of the Internet and mobile devices.

The Telecommunications Act assisted libraries and schools to bridge the digital divide, but it also incorporated the Communications Decency Act (CDA), an obstacle like those experienced by Alice. While the CDA did not pass constitutional muster with the Supreme Court, subsequent battles to shield minors from Internet images deemed harmful have raged for more than two decades, forcing schools and public libraries receiving federal funds to install faulty filters on all computers, including those for adults and staff. Subsequent attempts at both the federal and state levels to regulate content available over the Internet followed, such as the Children’s Internet Protection Act (CIPA), which was upheld by the Supreme Court in June 2003.

Beyond contested terrain over open Internet access, LIS professionals have stood in support of network neutrality to ensure that some providers are not favored over others. After a bitter battle that pitted telecommunications companies against content providers and public interest groups, LIS professionals and the general public, the Obama Federal Communications Commission (FCC) acted to approve net neutrality provisions in 2015, only to have them overturned by the Trump FCC despite protests by millions of citizens.
Like Alice seeking the key into the beautiful walled garden, LIS professionals sought entry to the debate over intellectual property rights—so much so that their associations founded the Digital Futures Coalition, hiring a copyright attorney and a copyright policy specialist to find the keys to navigating these complex issues. Alarmed by the growth of telecommunications networks, the publishing and media industries sought legislative remedies against ease of copying and transmission in order to protect their content, culminating in the passage of the 1998 Digital Millennium Copyright Act (DMCA). The Act imposed criminal penalties for circumventing encryption or even distributing circumvention tools. Another, the Sonny Bono Copyright Term Extension Act (CTEA), extended the already lengthy duration of copyright for an additional 20 years. The courts followed Congressional lead by rejecting a constitutional challenge to the Sonny Bono law, and later shut down music file-sharing services like Napster, Grokster and KaZaA. In recent years, content industries have intensified their efforts to control the use of their products. Such controls counter vital free expression safety valves like fair use, the first sale doctrine, and the public domain. In response, a cadre of copyright scholars have joined LIS professionals to bring new challenges to laws that favor media industry control. In particular, they have opened new directions for the reclamation of fair use and the public domain.

A rapidly developing telecommunications and information environment triggered debates over one of the most contested rights in American history—privacy. Government agencies, policymakers, corporations, and the general public began grappling with the consequences of electronic data collection. Librarians, who stood for the protection of privacy and confidentiality in the 1970s, and who challenged the FBI Library Awareness Program in the late 1980s, saw privacy concerns emerge again in the 21st century.
Librarians helped protect the privacy rights of minors through passage of the Children’s Internet Privacy Protection Act (COPPA) in 1998. Their efforts to contest electronic surveillance techniques such as Radio Frequency Identification (RFID), biometrics and the use of a national (Real) ID system were eclipsed after the September 11th terrorist attacks. Nonetheless, LIS professionals worked with numerous organizations to thwart the passage and question the constitutionality of portions of the USA PATRIOT Act along with the gag order provisions that violate free expressions rights of those served with a search warrant. Although a broad coalition of groups have not succeeded in changing the contested sections of these laws, they have managed to galvanize democrats and republicans, liberals and conservatives alike, by raising awareness of the dangers of repressive surveillance programs. LIS professionals also raised concerns about unnecessary secrecy, such as the over-classification of and limits placed on the declassification of documents, as well as the withholding of information under the Freedom of Information Act (FOIA), and reduced access to sensitive but unclassified information.

In the 21st century, Mad Hatters reappeared on the scene. Companies like Google, Apple, Facebook, Twitter, Verizon, AT&T and Comcast have grown to become giants. Although newer companies like Google and Facebook only recently joined the Washington policy scene, their influence has unlocked the key to a world of information by connecting us with each other, refining search and retrieval capacities, and offering convenient shopping opportunities, yet, at the same time, watching everything we search and recording every contact we make, in order to share that data with advertisers. The bargain we have struck with these companies raises many policy issues, most of which we have barely begun to identify, let alone tackle. The new corporate leaders have
become some of the most powerful unelected people in the world and their decisions create enormous consequences for society, perhaps even contributing to the global breakdown of democracy as a result of disinformation campaigns that undermine elections in the U.S. and beyond.

Over recent decades, as information further penetrated our lives, this journey down a rabbit hole plunged LIS professionals into uncharted waters in efforts to balance the rights of users and creators, preserve the public domain, and unlock the doors to public access to all in the digital age. The array of issues LIS professionals negotiated through the last quarter of the 20th century set the stage for a divergent 21st century policy discourse. Today, rational policy making has given way to a highly competitive contest to claim victories rather than find solutions to common concerns. Champions of openness, fairness, free expression, and inclusion must now find a voice in a crowded cacophony of corporate as well as ideological interests competing to dominate the world’s information and communication networks. Whether it is increased security, protection of privacy, equitable access to information, or digital inclusion, the battlefield teems with private actors fighting to control the marketplace. Sometimes these players align with the goals of LIS professionals over issues like privacy or free expression, but other times they differ over regulatory action or intellectual property protection.

_21st Century Information Policy_

Over the last several decades, LIS professionals confronted an array of challenging issues as they wandered through the woods of information policy. Tensions between information as a public good available to all and information as a private commodity for those most able to pay have given rise to a highly contested policy environment. Divergent
goals—equal access to information so that all citizens can meaningfully participate in public discourse, pay barriers to consumer choice among products and services, government-subsidized support for technological innovation, unfettered free expression, and protection from government intrusion—strain the information chain. At stake are not only these professional concerns, but also the arteries of representative democracy—best served by the free and open flow of information. Though this flow of information across various communication channels relies on the market system, the boundaries of that system leave too many people lost in the digital age. The state of the debate requires us to call into question the Jabberwocky definitions of public, as used in “public good,” “public interest,” “public domain,” etc. and private, including privatization. Given that information and communication are essential to the fairness, equity, and efficiency of social organization, we must also determine the role and responsibility of governments—federal, state, and local—that guarantee for citizens the access they need to information as well as to appropriate channels of communication. These concerns are especially timely given the failure of information markets that leave citizens without access and excluded from public discourse. Ironically, but perhaps not surprisingly, they echo the fears of the nation’s founders.

Alice needed trustworthy guidance to find her way. Without information, people will not find their way to exercise their rights as citizens. The greater access to information for purposes of engagement, the greater the responsiveness of government to community needs. Conversely, the greater the restrictions placed on access, the greater the experience of powerlessness and alienation.
The nation's founders acknowledged the importance of information and communication to the success of the young democracy when they created a government balanced across three branches in tension between the federal role and that of the states. Indeed, the underlying questions remain. How do we assure justice as fairness? How do we preserve legal rights challenged by technological change, economic rights in the face of altered sets of financial pressures, or political rights when technological controls constrain access to Constitutionally-protected content? So, how do we balance the rights of the individual with the individual's obligations to society, between the power of government with its responsibilities to each citizen?

Through the Looking Glass

In wonderland, Alice tried to avoid penalties and pitfalls during her adventures. In ours, we are experiencing a fundamental shift in the way we engage in democratic discourse. We no longer rely on reason, data, and stories to convince policy makers about the best path forward. We do not even agree on the facts, let alone the naming and framing of problems. We are experiencing an assault on objective truth. And, our elections are unlikely to solve the problem soon. Policy making has further suffered from the low productivity of a Congress so gridlocked it struggles to pass a continuing resolution to keep the government solvent. Not surprisingly, leaders have relegated policy to the private sector, where accountability is limited to stockholders. We must take a different tack.

While federal policy makers are stuck in an endless mad tea party where norms turn upside down, citizens explore their own paths to a fair and just information society, as they attempt to set the rules of the game. Civil libertarians brought law suits
challenging a USA PATRIOT Act gag order against Connecticut librarians. Academics have joined forces with librarians at Harvard, University of California, Rutgers, and hundreds of other campuses around the country in order to establish open access publishing initiatives. State and local libraries like those in Florida and Cobb County, Georgia, have partnered with government agencies to deliver e-government and emergency recovery services. Depository libraries have archived threatened federal web sites and reports. Public libraries in Massachusetts and Colorado have countered restrictive licensing arrangements by offering alternative eBook contracts. California has passed legislation in support of net neutrality laws and privacy regulations. Municipalities like Baltimore and Honolulu have established their own municipal wifi hot spots. Cities like New York have hired a privacy officer who stages data privacy training at local public libraries, as well as cybersecurity training for nonprofit organizations and advocacy groups. New York has also worked on a bill that will place more responsibility on Internet and cable companies to secure personal data. In Kansas City and New York, libraries have joined forces with other anchor institutions to bridge the digital divide.

At the national level, policy change follows its own rules. Certainly, the election of different Congressional leaders, followed by shifts in committee chairs or agency heads always promise opportunities for policy change. When parties or factions come to power, their allies often bring forward new evidence about alternatives. They may even bring new technical information to light, thereby changing the parameters of a previously settled policy dispute. A new consensus may emerge, with newly mobilized interest groups or a more vigorous focus on an issue. In an overwhelmingly complex information environment, where thousands of bills are considered each year, merely offering a reasonable solution to a problem is not sufficient. The problem addressed must be of
import to the nation. Serious problems facing small constituencies struggle for a spot on the agenda. Powerful forces—both institutional and social—protect the status quo, making it even more difficult to produce change. When the policy door opens we as policy advocates must seize the moment to get the issue not only on a government agenda, but on a decision agenda before the door shuts.

So how do we find our way out of this rabbit hole? Challenging times require the policy community to go from opposing to proposing by reframing the arguments that have lacked traction—making these arcane topics salient and appealing to decision makers and the general public. For starters, we must conduct our own tea party by convening experts and innovators together to formulate theory and practice for a new generation of information policy. Such convenings should engage the big questions within the context of the moment—a moment that calls for careful scrutiny at a time when the rules are changing. Part of this dialogue needs to focus on what we want, not just what we do not want. Where are we and where do we need to go? When the federal government abrogates its responsibility to blaze new trails, and the private sector accumulates unchecked power, we must rethink our basic assumptions. How do we minimize the harm?

Engagement requires the monitoring of legislative and regulatory actions, and the joining of law suits to strike down laws and administrative decisions that violate Constitutional and statutory boundaries. To do so requires a long-term view. Initiatives like ALA’s policy corps offer a useful, intentional way to build capacity capable of responding to a changing environment. This cadre of curious specialists will also rebuild the community of policy activists to replace a generation now exiting the profession—
one way that those of us who witnessed the transition to the digital age can prepare a new
generation armed with expertise and understanding of a new era.

To find our way, we must find trustworthy allies, along with public-private
partnerships. These efforts can serve as catalysts to engage our communities, particularly
a younger generation born digital. This can mean joining national and international
professional associations, organizing locally or statewide, and partnering with like-
minded groups. Professional organizations provide the vehicles with which to assess
policies, take positions, build partnerships, organize coalitions, and lobby policy makers.
Our associations facilitate political action by teaching members about the issues,
evaluating choices, drafting principles, deliberating about alternatives, and negotiating a
public stance. They also provide the public relations support to develop a unified
message that reaches out to the media and beyond. The voices of LIS professionals
working together through our professional associations can compete for and win the
battle to shape the nation’s information policies in the public interest if we stand up and
voice our legitimate concerns. No one else will stand up with the same conviction, with
the same dedication, with the same determination to protect and promote the public's
right to know. Yet, we cannot enter this battle alone. We must mobilize collective action
through organizations with members whose interests overlap. Yelling louder will not
work. By raising the volume of our voices, we simply talk past one another. To meet
the challenge of information access in the digital age, we must join together with other
public interest advocates to amplify our voices and extend our reach.

Shortly before her death, Nobel Prize winning political scientist Elinor Ostrom
exhorted an audience at Rutgers University to *embrace complexity*. Following in
Ostrom’s footsteps, we must immerse ourselves in the issues—not an easy task given the
mass and diffusion of relevant topics. It requires participation in democratic processes that range from building relationship with stakeholders and actors, to joining relevant networks, to staying in touch with legislators, agencies, and regulators. But it also means galvanizing public support by reaching beyond experts in order to set the terms of the discourse; simply keeping citizens informed is no longer sufficient. Stakeholders must not only build stronger relationships with each other, policy makers, and industry leaders, but also with the general public. The public is the ultimate beneficiary or loser when it comes to information policy making. And, in an age of social media, the public no longer needs to leave the bidding solely to Washington lobbyists and interest groups. We the people can matter in the digital age.

When they awaken from their dream in wonderland, our caucus of proponents of the public’s right to know must change the terms of the debate by voicing positive needs, not just condemning the unacceptable. We must articulate why free and open access to information advances knowledge, civil society, and democratic participation. We must inform ourselves about the issues and perspectives held by players on all sides. Moreover, we must compile tales about the positive effects of open access to information. Let us not race blindly down the rabbit hole. Like Alice, we too must emerge from our own adventures in wonderland capable of charting a course toward a more open, just and equitable information society.

References


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1 *Alice’s Adventures in Wonderland* was written by Lewis Carroll in 1865 and published in London by Macmillan.