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## 1.0 Introduction

The making of public policy has often been compared to the making of sausage. [1] It may turn out being very good, but you don't want to watch the process. Of all our current public policy areas, information policy is probably the most confusing and complex. All levels of government participate in the regulation of access to information of all types. The array of issues and the complexity of laws makes this area one of the most difficult to study.

Information is a basic resource for all human beings, and it is as important to us as food, good air, and rest. It is the basis for all our decisions. Information is needed for personal decisions as minor as when to go to bed to as significant as buying a house. Information is also the basis for running the organizations in which we work. Policies concerning information, both governmental and private, have the potential to have a profound effect on society.

It is "intelligence" information which enables President Clinton to make decisions concerning foreign policy; it is social information which allows the federal government to make decisions concerning education programs; and it is information about all aspects of health care that is consuming Hillary Rodham Clinton and congressional policy makers. Governmental policies can provide wide access to information or restrict access. All public policy is made on the basis of the information available at the time of the decision. Therefore, information policy provides the basis, or the support, for all other public policy. The availability of information has made the crucial difference in many public policy decisions. Policies on the creation, collection, storage, use, and dissemination of information form the basis of information policy. It is this attribute, the all encompassing nature of information, that makes it so difficult and complex. The formation of information policy is one of the most important aspects of public policy today.

## 2.0 Changes in the Information Environment

Information is the basis for communication, both personal and scholarly. Therefore, policies governing access to information can have dramatic affects on the scholarly communication process. For example, governmental policies concerning classified information have partially determined what topics military historians can choose to explore. In truth, access to information determines many choices that scholars make concerning what to study. If access is not provided, study cannot proceed.

As we move to the use of electronic information, the relationship between information, the producer, and the consumer

is changing. Spender proposes that each information medium has its own social structure. [2] As communication has moved from verbal to print to electronic the relationships between writer and reader and between lay citizen and scholar have changed.

When the means of communication were strictly oral, the exchange of information required direct contact. Those who were the repositories of information were the authorities. They preserved the knowledge base for society and chose to whom knowledge was communicated. These authorities were the authors and users of information, so they held great power in society.

When writing and printing came into common use, this power relationship changed. Through the printed page, information could be exchanged without direct contact between people. Paper proved to be both durable and transportable. Printing gave information to the masses, allowing education to become widespread. However, authoring essentially remained with scholars and professionals. Printing was, and still is, an expensive investment. Access was primarily given to those with appropriate education and credentials--giving them the authority to communicate information.

With the advent of electronic information, the relationship between the author and the user of information is changing further. Electronic information can, and does, move anywhere at anytime. A mere change in the way information is stored, from paper to electronic, has produced a vastly significant change--geography is no longer important. The place where a piece of information is stored has become less relevant.

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Information used to be stored on printed pieces of paper. Pieces of paper can only be at one place at one time--essentially controlling access to that information. Physical access was required for intellectual access; in order to read the information it had to be physically in your hand. Today, information stored in electronic form can be easily accessed from thousands of miles away. Exact copies can be made without the owner of the original losing his or her copy or even knowing it has been shared with another person.

This reality has made the movement of information very difficult to control. Access to information has vastly increased for those who know how to gain this access. The ability to control access to information, for any reason, is challenged in a way without precedent in our history. This ease of access has changed the relationship between author and user. It is much more difficult for the author to restrict access. Control of information is shifting from the author to the user. In addition, it is also easier to become an author. Many electronic networks provide free access to information, both as a user and an author, making it easy for authors to add their thoughts to the knowledge base. The increased availability of information in electronic formats has substantially decreased control over information as a whole.

The laws that form the basis of our information policy have not kept pace with this vast technological change. Setting public policy in this area poses a daunting challenge, even for information professionals. There currently exists a vast complex of laws, regulations, directives, statements, policies and judicial interpretations concerning information. Given this complexity, how does an information professional balance all the competing needs? How can we organize our thinking about

information policy?

### 3.0 A Framework for Information Policy

Given the complexity of information policy, a system to organize our thinking would be a valuable asset. Overman and Cahill [3] have provided a framework which can be used to study information policy issues. This paper will cover three of the information policy values defined by Overman and Cahill. These three values are: (1) access--the ability to gain access to records held by governments or private companies; (2) privacy--an individual's right to hold information about him/herself secure; and (3) intellectual property--the ownership of information. These three values comprise the major components for the current information policy debate.

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### 3.1 Access

There is nothing more basic to the relationship between government and citizens than the right of access to information. The free flow of information is essential to the citizenry's ability to participate in democratic government. This principle has been supported since the beginning of our country. [4] It has been generally agreed that information access is a citizen entitlement, particularly in this information age. [5]

As a public policy concept, access has been widely accepted. At the federal level, access policies have been put in place through broad legislation, such as the Freedom of Information Act, and by more detailed legislation relating to specific types of federal records. At the state level, open records laws exist that guarantee access to records kept by state and local jurisdictions. Two states have an access guarantee in their constitutions, and all states and the District of Columbia have open records laws. [6]

Librarians stand at the focal point for support of the free flow of information; access is a fundamental value for the profession. However, there are other information policy considerations which must be balanced with open and free access. One of those considerations is the need for government to function effectively. Experience has taught us that openness within a democratic system does not always bring effective decision making. Therefore, most access laws limit disclosure by providing for exceptions to open records and meetings.

At both levels of government, information can be withheld for reasons of effective government. The most common example on the federal level is limiting access for reasons of national security. At the state level, legislatures have attempted to balance access values with the need for secrecy in the effective functioning of government. Within open meetings laws, executive sessions can be authorized when premature publicity of the topic would be detrimental to the interest of the public at large by revealing information to individuals who might profit at the public's expense. For example, real estate transactions are often done in executive session so as to maximize the public's profit from public lands. Most access laws also recognize the need for limited access due to personal privacy, the topic of the next section.

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### 3.2 Privacy

Privacy, the right of an individual to hold personal information private, is also thought to be grounded in democratic governance. Privacy can be defined as an integral part of freedom; an important aspect of the ability to secure autonomy. This "right" is strongly supported within the Constitution. [7] Privacy has become an increasingly important concept in the information policy area. As access values have been implemented into law, the concern for privacy has grown.

At the federal level, there is strong court-interpreted support for a "right of privacy." The most comprehensive privacy legislation at the federal level is the Privacy Act of 1974. There is also federal legislation dealing with specific types of records, such as financial records in banks and other financial institutions. At the state level, there is stronger legislative support of privacy. Eleven states have a constitutional provision guaranteeing privacy, and six states have a statutory law protecting privacy. [8] Privacy is also recognized in open meetings and open records legislation.

The information policy values of access and privacy are both important to democratic governance. The balance struck between these values is one of the most difficult aspects of current information policy. The transition to electronic information has made policy making in this area even more important. As noted above, electronic information is more difficult to control. The tilt of legislation at both the federal and state level has been in favor of access, leaving privacy issues more often to court interpretation. [9] The lack of strong legislative guarantees, combined with the difficulty of enforcement has created an information policy environment where privacy is far from guaranteed. [10] Threats to privacy have become a concern for the general public. In a recent Harris poll, more than two-thirds of the public agreed that computers are a threat to personal privacy. [11] Widespread privacy violations have been reported on a consistent basis, most recently in a well documented book by Jeffrey Rothfeder. [12] He concludes that the electronic information kept by government and private business are readily available. If privacy is to be guaranteed, it is clear that information policy must change. Part of that change must be clearer definition of who owns and controls pieces of information.

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### 3.3 Intellectual Property

Ownership of information, or intellectual property, is an increasingly important aspect of information policy. The government has a substantial interest in protecting free expression by guaranteeing that citizens can use ideas for their own benefit and the benefit of others. At the same time, government has an interest in guaranteeing the people's welfare by encouraging intellectual advancement that benefits society. In a capitalistic economy, this advancement is accomplished by allowing the ownership of expression. Limiting access to information by providing for ownership fulfills this public policy need.

Most intellectual property laws exist at the federal level. Copyright law protects the expression of ideas in any form, such

as literary, musical, dramatic, graphic, and ornamental works; however, ideas that have not yet found expression are excluded. In essence, the idea itself is not protected, but the expression of the idea is. Inventions which perform some useful function are protected through federal patent law. Abstract ideas are not patentable; a patent requires actual application.

Trade secret law, which exists at the state level, is the third component of intellectual property law. These laws protect information that has independent economic value from being generally known and from benefiting anyone other than the originator. Thirty-nine states have trade secret laws. [13]

All three components of intellectual property law combine to comprise a fairly strong system of protection. However, electronic information poses a significant challenge to the current law. Software programs fall in between copyright and patent protection. They are expressions of ideas, and yet hold great utility. Legislators have not yet been able to revise current law to adequately protect such intellectual property. The courts have had a difficult time sorting out the issues of ownership given the inadequate law. This situation has left software producers in a difficult position. With the rapid change in technology, this type of intellectual property tends to have a short life span. Many software producers are moving toward trade secret law to ensure protection of their electronic intellectual property, which appears to afford them better protection in the short term.

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#### 4.0 Conclusion

This brief outline provides a basic framework for issues concerning information policy. These issues are critical to the future of the information professions as well as to the daily functioning of all citizens. The choices we make affect governance, personal privacy, and the scholarly communication process. Given the complexity of these issues, it is difficult to see how one might choose between the options.

Given the complexity of information policy, a beginning might be the statement of basic principles. There are three statements of principles that are useful tools in deciding information policy issues.

The most comprehensive set of principles dealing with personal information was issued by the Organization for Economic Co-Operation and Development. [14] These principles provide limits on the collection of personal data as well as its use. They also discuss the rights of an individual to challenge the accuracy of collected data. While these principles have been used as a model for the federal privacy act and legislation at the state level, the United States is far from guaranteeing privacy as proposed by these principles.

The National Commission on Libraries and Information Science has approved a set of principles which "reaffirms that the information policies of the U.S. government are based on the freedoms guaranteed by the Constitution, and on the recognition of public information as a national resource to be developed and preserved in the public interest." [15] These principles discuss access rights, privacy issues, accuracy of information, and cost issues. These principles are an excellent beginning toward forming a more comprehensive set of access principles.

EDUCOM has issued a Bill of Rights which defines information

policy principles specifically related to electronic information. [16] These principles cover individual and institutional rights and responsibilities dealing with access, privacy, and ownership issues. Also included are freedom of speech issues and issues surrounding learning to use electronic resources. Cost factors are also included as an issue for institutions to consider. These principles provide a basis on which an individual institution or library could write an information policy.

Ultimately, it is responsible government and responsible citizens who must decide the right use of information and the right balance between access, privacy, and ownership. The determination of information policy will affect all information institutions and professionals in coming years. The decisions made are likely to affect the most democratic of these institutions--the library. It is vitally important for information professionals to become well informed and active in the formation of information policy.

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#### Notes

1. This paper was presented at the Ninth Texas Conference on Library Automation, Houston, Texas, 3 April 1993.
2. Dale Spender, "Electronic Scholarship: Perform or Perish?" in Woman, Information Technology, and Scholarship, eds. H. Jeanie Taylor, Cheris Kramarae, and Maureen Ebben (Urbana, IL: University of Illinois, 1993), 15-19.
3. E. Samuel Overman and Anthony G. Cahill, "Information Policy: A Study of Values in the Policy Process," Policy Studies Review 9, no. 4 (1990): 803-818.
4. James Madison, "Letter to W. T. Barry, 4 August 1822," in The Writings of James Madison, ed. Gaillard Hunt (New York: Putnam, 1910), 142-144.
5. Dennis J. Reynolds, "The Bill of Rights and Beyond: Citizen Entitlement and Information Access in an Electronic Age," in Rights and Access to Electronic Information, ed. Dennis J. Reynolds (Chicago: Library and Information Technology Association, 1992), 3-31.
6. Mary Lou Goodyear, "Information and Democracy: A Study of the Relationship Between State Information Policies and Democratic Governance" (Ph.D. diss., University of Colorado, Denver, 1993).
7. Ruth Gavison, "Privacy and the Limits of the Law," in Philosophical Dimensions of Privacy: An Anthology, ed. Ferdinand David Schoeman (New York: Cambridge University Press, 1984), 346-402.
8. Mary Lou Goodyear, "Information and Democracy: A Study of the Relationship Between State Information Policies and Democratic Governance."
9. Ibid.
10. Rita Kidd, "Public Information Gatekeepers," Government Technology 6, no. 4 (1993): 20.

11. Rosita Thomas, "Privacy in the Age of Computers," CRS Review 11, no. 1 (1990): 8.

12. Jeffrey Rothfeder, *Privacy For Sale: How Computerization Has Made Everyone's Private Life an Open Secret* (New York: Simon and Schuster, 1992).

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13. Mary Lou Goodyear, "Information and Democracy: A Study of the Relationship Between State Information Policies and Democratic Governance."

14. Organization for Economic Co-operation and Development, *Guidelines on the Protection of Privacy and Transborder Flows of Personal Data* (Paris: OECD, 1981).

15. National Commission on Libraries and Information Science, "Principles of Public Information," in *Citizen Rights and Access to Electronic Information*, ed. Dennis J. Reynolds. (Chicago: Library and Information Technology Association, 1992), 175.

16. Frank Connolly and Sally Webster, "Bill of Rights and Responsibilities for Electronic Learners," *EDUCOM Review* 28, no. 3 (1993): 24-27.

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