SLIDE 1

Hello and welcome to the lecture for the third week of LIS 598 Information Policy. This week we will be looking at trends and issues in information policy with a focus on neoliberalism but also touching on several other topics.

SLIDE 2

Just to recap last week’s lecture, we began by examining the idea of great transformations, specifically the Neolithic and industrial revolutions before considering whether the emergence of the information age constituted a third great transformation. Then we examined information society discourse. We then turned to information society theory, looking first at two of the key proponents, Bell and Castells. We then examined some of the critics, touching briefly on Giddens, Harvey and Webster. Finally, I sketched out the shift from Fordism to post-Fordism, which leads nicely into our discussion this week of neoliberalism.

SLIDE 3

This week we’ll look at a range of influences on policy making in general and information policy specifically. We will begin with neoliberalism, which has had pervasive effects in many areas of policy, including information policy. We’ll then turn to the role of international influences on information policy. In the third part we’ll examine the debate around evidence-based policymaking. In the fourth part we will examine private ordering, the alternative to public ordering and its influence on information policy. Lastly, we’ll conclude by examining the increased tensions and interactions between areas of information policy.

SLIDE 4

While one can identify some clear starting points for the political rise of neoliberalism, specifically the coup by Pinochet in Chile in 1973 and the election of Thatcher in the UK in 1979, it is important to note that neoliberalism is not simply a political doctrine, but an ideology and economic viewpoint as well. Furthermore, neoliberalism is not a monolithic system – it has numerous variants. While its political origins can be traced to the 1970s, specifically as a response to the crises of the 1970s, the concept goes back far further. Jessop (2010) notes the term was first coined in German in 1932, and the concept has a clear ideological and academic origin at this time. In particular the works of Friedrick Hayek and Ludwig von Mises are an ideological starting point. Hayek’s *Road to Serfdom* in particular, which was sharp critique of central planning, written during World War II helped develop the early ideological starting point for neoliberalism. Two key schools of thought contributed heavily to the development of neoliberalism – the Austrian School which is represented by Hayek and Mises among others and the Chicago School which had Milton Friedman as its leading thinker.

Shortly after the conclusion of the war there was the formation of the Mont Pelerin Society in 1947 that brought together many leading neoliberal thinkers. The Mont Pelerin Society had to main aims – redefining the role of the state, and establishing an international order to create economic agreement (Birch and Mykhnenko, 2010). Following this major neoliberal think tanks started to emerge, specifically the Institute of Economic Affairs in the UK and the Heritage Foundation in the US. Thus by the 1970s there had been considerable germination and development of neoliberal thought. Evidence of the growing influence of Hayek and Friedman is reflected in the fact that they received Nobel Prizes in economics in 1974 and 1976 respectively. While Pinochet’s regime, which was heavily influenced by the Chicago school was the first neoliberal regime, the election of Thatcher and then Reagan marked the political ascendency of neoliberalism.

SLIDE 5

Looking then at neoliberalism, there is no universal definition. Neoliberalism comes in a variety of approaches and flavours, but can be seen understood by looking at common elements. The academic and ideological roots of neoliberalism are critical of central planning and strong favour market ordering. As a corollary there is a strong emphasis on property rights, competition and individual liberty.

Jessop (2010) highlights four variants of neoliberalism – full scale system transformations that came were introduced in Eastern Europe following the collapse of the Soviet Union; regime shifts, which have been most pronounced in Anglo-American countries and includes the neoliberalism of Thatcher and Reagan; structural adjustment programmes which have occurred throughout the world, particularly in places like Latin America where the World Bank, and specifically the IMF and its structural adjustments are used to introduce neoliberalism in return for financial aide; and lastly neoliberal policy changes, the most modest form of neoliberalism which has occurred in Nordic countries.

With specific reference to neoliberalism’s relationship with the state there are a number of points to be made. First, as Harvey and others note, neoliberalism is not simply an anti-statist approach, rather it is a reconfiguring of state power to create the conditions for private capital accumulation. The state’s apparatus and institutions are vital in neoliberalism. While deregulation is a common policy element, it is actually more accurate to consider this as reregulation than deregulation (Konings, 2012). These institutions are used to embed financial intermediation thought-out society, and a key element is creating new forms of securitization (debt and credit). Another key element of neoliberalism’s relationship with the state has been the socialization of risk. What we see over the past 30-40 years are regulations allowing new forms of securitization and other financial innovations, then a tendency for a crash whether it is the savings and loan crisis of the 1980s, the 1997 Asian financial crises, the late 1990s Argentinian crisis or the Great Recession of 2008, and then the ultimate cost for this crisis borne by the state, and therefore taxpayers, and not banks and other financial institutions. This represents another key element of neoliberalism – it is crisis inducing and crisis induced (Peck et al, 2012). Neoliberal policies are introduced in response to a crisis, then precipitate another crisis down the line, and then new forms of neoliberal policy are introduced to respond. As a result neoliberalism tends to have this inevitable forward movement and is highly experimental.

Finally, it is important to note that we may speak of neoliberalism as a noun, but this really is discursive nominalization. There is no thing that is neoliberalism hiding in the bushes or the halls of power. It is important to remember that neoliberalism stems from a range of policy actors, albeit highly influential ones.

SLIDE 6

Looking then at neoliberalism and information policy, while neoliberalism tends to be associated with parties of the right – the Conservatives in Canada and the UK and Republicans in the United States, we see elements of neoliberalism in many of the centre left parties as well whether it is the Liberals in Canada, Labour in the UK or the Democrats in the US. The Democratic Party in the US has been a particularly strong leader for many neoliberal policies. For example, the 1996 US Telecommunications Act, the 1998 Digital Millennium Copyright Act (or DMCA) and 1998 Copyright Term Extension Act (aka the Sonny Bono Copyright Term Extension Act or the Mickey Mouse Copyright Term Extension Act) are all signed into law by Clinton with general bipartisan support in Congress. The Telecommunications Act significantly deregulated (or more accurately re-regulated) the telecom sector, the DMCA expanded protections for copyright owners and the Copyright Term Extension act expanded the duration of copyright by 20 years.

As we will discuss in the third and fourth modules, intellectual property and communications, specifically telecommunications have been areas sharply influenced by neoliberalism.

Even some policies, which seem on the face to have nothing to do with neoliberalism, can be seen through a neoliberal lenses. Hall (2008) has argued that open access scholarly publishing can be viewed in this way, and the OA mandate in the UK, which transferred considerable sums to publishers for publically funded works, can be seen in this way. Later in the course we’ll read Gurstein who makes a similar argument in relation to open data.

SLIDE 7

While neoliberalism has had considerable influence on policymakers, there is also significant opposition. Within academic circles, it is quite easy to find opposition. There are numerous books and articles critical of neoliberalism, and this is the case even within library and information studies with Cope (2014) outlining some of the key voices. Harvey’s 2005 book is one of many texts on the subject, but one that is held in high regard because he correctly forecast the ‘08 crisis.

Harvey and other scholars, are quick to note that neoliberalism is not a totalizing force, and that its primary power is hegemonic. Acquiescence for neoliberal policies is often secured by the fact that they appeal to common sense. “Of course inventors and authors should have strong rights to encourage new creations and discoveries.” “Certainly a competitive telecom market is one that is better than a set or government regulated monopolies.” “If we can contract out municipal garbage service, custodial services in the library and even cataloguing and acquisition functions, why can’t the private sector run the entire library (and more efficiently than government).”

One of the major challenges is that there are often locally successful alternatives that have difficulty scaling up to national or international responses. Furthermore, neoliberal policy-makers have been quite adept at developing new responses to crises, often created through neoliberal policies themselves.

SLIDE 8

For some, the 08 financial crisis marked what some believed was a clear crisis in neoliberalism. The crisis, and its responses including the Occupy movement, did underscore that neoliberalism’s dominance was not absolute, but as with previous crises, the state was quickly coopted into socializing risk undertaken by banks and financial institutions. The rise of state capitalist regimes, particularly in China and Russia, where state policy is more interventionist in the economy represents an alternative to Anglo-American neoliberalism; however, it can also be argued that this is simply another variant of a political and ideological doctrine whereby state power is used to facilitate private accumulation.

In particular, neoliberalism has had a lasting influence on public service provision, including libraries. While this is sometimes discussed using related term (new public philosophy and new public management) the public sector is challenged by a culture of increased scrutiny, accountability and audits, concerns over efficiency and specifically whether the private sector can better perform some services, and growing acceptance of what can be termed flexible labour (by its proponents) precarious labour (by its critics) or as federal finance minister Morneau prefers – job churn in the economy in general and in the public sector.

SLIDE 9

A couple of Canadian examples to highlight the points made. First the 2010 digital economy consultation document, which, while not a policy document on its own, is reflective of neoliberal discourse, particularly as this document aims to frame the consultation around a digital economy strategy. For example on page 15 the basis for a digital strategy is clearly outlined as generating wealth, and the information society/digital economy language is used to emphasize this. A careful crafting of the state’s role is taken – the private sector is given the key role, but the government plays an important flanking role though things like protecting the online marketplace (or creating the conditions for private accumulation).

SLIDE 10

While the previous example demonstrated influence of neoliberal discourse, Canadian telecommunications offers a very sharp example of neoliberal policy making. In 2006 the Privy Council Office (effectively the Cabinet) provided a policy direction to the CRTC on how it should interpret the Telecommunication Policy Objectives that are outlined in section 7 of the Telecommunications Act – note: we will cover these objectives when we look at telecom policy. The policy direction is pretty stark – regulation to the minimal extent necessary and maximal reliance on market forces.

SLIDE 11

Subsequently in 2007 Industry Canada revised its framework for spectrum policy adding similar language. With regard to the spectrum framework this represented a near complete reversal of the position in the original framework from 1993 which allowed for market based approaches only after a “full public consultation.”

The CRTC Policy Direction and Spectrum Policy Framework for Canada represent a prima facie case of neoliberal policymaking.

As we will see throughout the course there will be several other examples where information policy has been influenced by neoliberal policy or discourse. That said, there are still a number of other influences on policy making worth examining.

SLIDE 12

Looking at external influences on domestic policies there are many, and in this regard, these external factors shape almost all countries policymaking processes save the most isolationist countries, and to some degree the United States, which has a tendency to shape policies elsewhere in a variety of means, though it is still shaped by outsides pressures, just to a lesser extent than other countries.

Here I have listed five major factors. The first are international agreements. These have been particularly influential in the area of intellectual property rights. In this regard it is important to note that there exist two types of international agreements – ones with enforcement mechanisms, or teeth, and ones without. Many international agreements are toothless. In the case if IP an example of a toothless treaty would be the World Intellectual Property Organization (WIPO) Copyright Treaty. Even though Canada has signed and implemented the WIPO Copyright Treaty, there is nothing in the treaty or through WIPO that would punish Canada if it violated the treaty. That said, there are other means though which a country could face repercussions – the United States, and specifically the United States Trade Representative would, as they did in the past, could highlight the lack of upholding the treaty as an indication that Canada was among the worst offenders in terms of IP protection.

There is one notable set of treaties with teeth. The three major trade treaties administered by the WTO – GATT, GATS and TRIPS all come with a punitive sanction ability via the WTO’s Dispute Settlement Body. In effect, if Canada does not uphold its obligations with respect to TRIPS then through the Dispute Settlement Process at the WTO another country may be able to put retaliatory sanctions on some kinds of Canadian exports. Furthermore, this can be done in the area of greatest impact, and not just in the area involving the violation. For example if Cote D’Ivore failed to uphold its obligations under TRIPS, which effectively require it to have intellectual property protection levels comparable to information intensive economies, then it could be penalized with sanctions on its exports of coffee, palm oil and cocoa beans, which would effectively cripple its export economy. Thus through the WTO countries are strongly incentivized to uphold treaty obligations.

WTO treaty obligations thus represent the strongest form of international influence. We do see similar effects with other trade obligations, including multilateral agreements like the North American Free Trade Agreement and in some cases bilateral agreements, which we will touch on in just a bit.

A second set of influences come from international norms, sometimes called ‘soft law.’ Like toothless treaties these carry no penalties if violated; however, soft law and international norms do influence policymakers. A key set of soft law is UN declarations, with the UN Declarations of Human Rights being the most significant. UN agencies will often make reference to UN Declarations as the sources of inspiration for various Declarations. It should be noted, however, that often these soft laws are open to quite a bit of flexibility for policymakers. For example Article 27 , which reads:

(1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.  
(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

This language gives considerable room for innovation and intellectual property policy. Similarly Article 19 of the International Covenant on Civil and Political Rights touches on information access, but also provides broad room for limitations on these rights.

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

Looking at third category of international influences, we can see the role international standards have on shaping information policy. For example the International Standard Organization (ISO) can have considerable influence on Canadian policy simply by setting international standards. Another area, specifically of information policy, where we see a considerable role for standards is around the internet. The Internet Engineering Task Force based out of California has the ability to influence the internet globally through the TCP/IP standards.

The fourth category, which shares some similarity with the first and third, is harmonization efforts. Global harmonization, particularly in areas dealing with information/information policy, is quite important as physical borders are easily overcome with transborder data flows. Attempts to harmonize policy across jurisdictions can stem from and through a variety of means. In some cases this is done through bilateral trade agreements. One of the key means through which the US has been able to strengthen IP rights around the world is by incorporating intellectual property rights as elements of free trade agreements. In Canada we also see this effect; for example the Canada-European Comprehensive Economic and Trade Agreement or CETA contains an extensive discussion of intellectual property rights in Chapter 20 spanning 22 pages.

Sometimes harmonization efforts come through other means. In the case of information policy, we can see this in the case of Privacy. In 1995 the EU passed its Data Protection Directive, which contained specific provisions for data transferred to “third countries” (countries outside the EU). In turn this influenced the Canadian federal private sector privacy legislation the Personal Information Protection and Electronic Documents Act (or PIPEDA), as the Canadian government wanted to have legislation that met EU standards.

Lastly, we have lobbying by non-state actors. This can be seen in any number of different areas of information policy, so how about a strange one. Currently the NFL, the National Football League, in the US, along with Bell, is actively lobbying for a CRTC decision on simultaneous substitution of ads during the Super Bowl to be reversed. The NFL and Bell are arguing that the CRTC’s decision effectively negates the contract between the two. This example is a bit unconventional – we wouldn’t necessarily consider the NFL as a group trying to influence information policy in Canada, and more often than not it is industry lobbies and associations.

SLIDE 13

Looking then specifically at the United Nations, I want to highlight four groups within the UN that have some information policy functions – the ITU, UNESCO, UPU and WIPO which was formerly BIRPI. I’ll touch more on WIPO and the ITU in the next slide, but what is notable is that three of these four organizations predate the UN. Thus international coordination on information related policy areas has a long pre-UN and even pre-League of Nations history. Again, this shouldn’t be surprising given that information policy areas often deal with transborder issues. It also underscores that some of the early elements in information policy can be traced to what are seemingly non-information policy issues now – lettermail and the telegraph.

SLIDE 14

The ITU, originally the International Telegraph Union, is among the oldest international organizations in the world. It plays a number of important coordination roles in various telecom areas as well as standard setting roles. It also lead the two phase World Summit on the Information Society summit, and more recently the 2012 World Conference on International Telecommunications and 2015 World Radiocommunication Conference.

The other key UN group is WIPO, which administers a number of intellectual property treaties. These range for treaties dealing with protection of copyright and patents, all the way to the Nairobi Treaty, which is a special international treaty dealing with protection of the Olympic Rings. While WIPO has historically been primarily focused on traditional IP protection, it has shown more interest of late in other IP related areas such as the Marrakesh Treaty of 2013 (not to be confused with the Marrakesh Treaty of 1994 establishing the WTO), which dealt with access rights in copyright for people who are bling, visually impaired or otherwise print disabled. WIPO has also been, for quite some time, trying to develop an international treaty around protection of traditional knowledge and cultural expressions and genetic resources; however, there is to date no treaty (or draft) in sight.

SLIDE 15

Looking then at some other key organizations we have the WTO, which we have already covered. The World Bank and IMF have come up previously in our discussion of neoliberalism, and are key international agencies through which neoliberal policies are enacted. Both of these groups along with the OECD also have interest in a range of information, and specifically ICT related policies. With relation to internet governance, in addition to the IETF, there is W3C and ICANN all of which play a role. In this regard WIPO is also involved in domain name dispute resolution. And the ISO which was mentioned earlier.

SLIDE 16

Before leaving international influences, I want to touch on two important policy development elements that relate to the international dimension – forum shopping and policy laundering. Forum shopping or forum shifting, is a policy maneuver whereby actors pursue policies in various forums or venues with the goal of finding the path of least resistance. A couple examples from the realm of intellectual property. Drahos traces international forum shopping by the US in its efforts to strengthen copyright protection. Initially the US found success for strengthening IP rights through the WTO and TRIPS, a most favourable condition given the WTO’s teeth. However, once it because clear that a post TRIPS ratcheting up of IP through the WTO wasn’t possible, it sought out a new forum – WIPO, where it got the two WIPO Internet Treaties passed –the WIPO Copyright Treaty (the WCT) and the WIPO Performances and Phonograms Treaty (the WPPT). However, while many countries signed the WIPO Internet Treaties, few implemented them, so the US would then go and negotiate bilateral trade agreements, stick in an IP chapter, and make one element of the trade agreement implementing the WCT and WPPT, or even higher forums of protection. This represents one kind of forum shopping.

Alternatively we also see it in IP litigation as well, particularly patent fights that are global in scale. We will look more at Apple and Samsung in the week on innovation, but these companies have engaged in a lengthy international fight using multiple national court systems. The situation in the US is further complicated as patent cases can be pursued in District Courts or through the United States International Trade Commission, or in both forums in parallel. Forum shopping is one factor influencing policymaking.

SLIDE 17

A second factor is policy laundering, with the name being taken from the concept of money laundering. Policy laundering occurs when you take a policy that you might not be able to get passed domestically on its own, and then get it incorporated into an international agreement. In turn one uses the international agreement to make the case for domestic implementation. As noted by Yu this can be done via an international agreement, through trade agreements, or by simple appearance of a custom (or international norm). Examples of policy laundering include US protection for technological protection measures which stemmed from the House Judiciary and House Commerce Committees over readings of the WCT according to Herman and Gandy (2006), and Sarikakis and Rodreigues Amat’s analysis of Spanish policy laundering of a bill requiring telecom providers to assist with copyright infringement investigations.

SLIDE 18

Turning to the issue of evidence based policy making it is necessary to first look at the idea of policy analysis and policy capacity. Post World War II there was a greater emphasis on policy analysis. Related to the ability to analyze policy is the concept of policy capacity. In 1996 the Government of Canada took some considerable steps to strengthen its policy capacity including establishing the Policy Research Secretariat which focused specifically on policy research and analysis, and then Statistics Canada head Ivan Fellegi also lead what was known as the Fellegi taskforce which focused on improving policy capacity in Canada. As noted by Fellegi policy capacity is a broad term, and it includes both internal government capacity and external capacity. The development of policy analysis and the related expansion of policy capacity are two crucial steps along the path to the development of evidence based policy making.

SLIDE 19

Briefly contrasting the US and Canadian landscape, the US has far more policy capacity. This is in part because of the extensive external to government capacity that exists both in academic institutions and in the numerous think tanks. To return to the first part of the lecture, think tanks, particularly neoliberal ones like the Heritage Foundation, have played an important role in shaping US policy. Another important dimension to contrast is the nature of government. In Canada our Prime Minister, particularly in a majority government situation, is far more powerful than the US president when it comes to policymaking power. The Prime Minister, his or her office (the PMO) along with Cabinet and the Privy Council Office can effectively control policymaking. This is, relatively speaking, a small group of individuals, and thus getting access to this group can be quite challenging.

In the US the situation is quite different. The President’s direct control over policymaking is more circumscribed, and there are considerably more points of entry. While in Canada back-bench MPs have little influence over party direction, US Congressional members tend to have more influence on an individual level. This also introduces many more points of entry for lobbyists and others trying to influence policy.

SLIDE 20

Looking then at evidence based policy making, I’ve quoted a length here from a relatively recent Government of Canada report on the topic. First I want to note that evidence based policy making is by no means the only approach. Other options including basing policy on political ideology, leaving policy to technocrats (or in other works experts within the bureaucracy of government) , and an approach which favours pragmatism. As we can see from the definition here, evidence based policy aims to avoid the pitfalls of special interests and ideologically driven policy; however, overcoming these requires systematic research.

One important note that evidence based policy making shares an important relationship with neoliberalism. It rises in part as a response to neoliberalism, and in particular neoliberal scrutiny of public services. It is also not without its critics.

SLIDE 21

The rise of evidence based policy-making parallels other evidence based trends, for example evidence based librarianship. All of these have their roots in evidence based health research; however, as David notes social issues are not the same as health issues. There is a far greater degree of methodological control in health research than in social sciences research. Several other issues also emerge in gaining the systematic research necessary to create evidence based opinions. Data collection can be far more costly, and if one is particularly interested in longitudinal data, unless this data has been previously collected, there is a considerable wait. For example if one wanted to determine the impact over 10 or 15 years of the CRTC’s most recent decision around broadband, one would have to wait 10 or 15 years, and by which point you have little in the way to go back and ‘fix’ the decision. Another issue is the difficulty in isolating causal effects in complicated social system. A policy intervention may be one of many factors shaping some change whether beneficial or negative. As we’ll see at the end of the lecture, information policies are often intertwined and isolating the effects of one particular policy can be challenging. Finally, there is a political argument against evidence based policy, and one that perhaps gains increased importance in an era of rising populism. What happens when evidence leads to policy suggestions that are not politically viable? Would politicians be bound to introduce policies even if the resulted in a political suicide?

To conclude the discussion on evidence based policy making, efforts are made in some spheres of information policy to use evidence – sometimes from other jurisdictions or through lengthy consultations; however, given the relative newness of many areas of information policy, there has yet to be any sort of dominance in evidence based policy making.

SLIDE 22

Another important trend in information policy is the rise of private ordering. Private ordering is rule making by private individuals or organizations, and is contrasted with public ordering where laws, bylaws and regulations are used to create rules. There are innumerable examples in all kinds of areas. A shopping mall parking lot, private property, with a 10km/h speed limit sign, library policy requiring return of books within three weeks, and a restaurant with a no shoes, no shirt no service policy are all examples of private ordering. In many cases private ordering’s position can be strengthened by using contracts as a means of private ordering. Generally, private order is seen as advantageous for any number of reasons. It is often simpler and more efficient, and more likely to be to private parties advantage– simply imagine if every library, hospital, and store policy had to be legislated on – you would end up with either blanket “one size fits all policies” which could be quickly done, or a never ending set of discussions and debates about rule make for each specific context.

While generally quite useful, private ordering can run into problems. Unlike public ordering where there is debate and process in advance, private ordering mechanism are sometimes unilaterally imposed by one side. While these can be challenged in a court of law or human rights tribunal, this kind of scrutiny comes afterwards. With specific reference to private ordering through contracts, a determination about the legality and enforceability of the contract need not be done in advance. The ability to privately order access and use of information can easily be done through contract, and this has a broad impact on information policy.

SLIDE 23

Another important element in the discussion around private ordering, particularly in relation to contracts, is the level consent. If we think about contracts on an theory level, contracts are highly preferable because, in theory, two parties have come to an agreement on mutually beneficial terms through negotiation. We know in practice this is often not the case, usually one party has a dominant position. Furthermore, we are increasingly moving from this idea of active negotiation of consent, to assent, and in particular passive assent. With many information goods there is little room to negotiate – want to use a service or software, you simply have to comply with the policy. You can’t say I’m in agreement with everything, but want clause 8 sub section 2 modified. These are take it or leave it examples of assent. Furthermore in many cases this assent is passive. In some cases you have to “click here” to indicate you’ve read and agree, but in other cases you simply assent to the terms and conditions by using software. For example, I have no idea what the license conditions are for the Microsoft Software I’ve used to create this presentation, but by using the software I’ve assented to them. One issue that may become of increasing importance in the future is to what degree passive assent creates a contract and thus contractual obligations.

SLIDE 24

Looking at private ordering in action, we can find it almost everywhere there is software or digital information products. Of course the most common are terms of use/end user licensing agreements, which can touch on all kinds of information policy spheres, most notably privacy and intellectual property. Another area is technological protection measures, which are legally protected by copyright, but can be privately ordered with regards to their deployment. If a rights-holder is concerned about fair dealing uses of their work, they could simply use a technological protection measure to limit use and or access. The freedom to use technological protection measures is not limited, and thus this creates space for private ordering.

Finally, it should be noted that private ordering can also be used to increase access and use. The most common examples are anything with a CC license, which would include this presentation. By licensing it in a way that isn’t very restrictive, I’ve used private ordering to increase access. Thus what is most important is not the potential mis-use of private ordering, though that is still important, but the rise of private ordering in all areas in general that creates a real challenge for publically ordered information policy.

SLIDE 25

One final, but very important aspect influencing information policy is the considerable deal of interaction and tension between information policies. This is not necessarily unique to information policy as a policy sphere, but it is an area where we see increasing tension over time. In some cases these tensions are well established. For example the relationship between Access to Information and Privacy legislation was well known in late 1970s and early 1980s as Canada developed its (horribly outdated, but more on that next week) Access to Information Act and the Privacy Act. Access to Information provides access to information held by the government, while the privacy act restricts access to personal information held by the federal government. Another well established area of tension is broadcast and telecom policy, which as we will see at the end of the course is confounded by a range of factors from corporate consolidation and audience fragmentation to technological convergence and regulatory bifurcation. In fact the week on Internet policy is effectively a ‘made up’ week as really all internet policy can be seen through either a telecom or broadcast lens.

There are other examples. IP, copyrights and patents, are effectively means to promote the dissemination of new idea (in exchange for limited monopolies); however, these can also serve as means of censorship or avenues to quash innovation.

SLIDE 26

There are a number other examples. The Copyright Act has all kinds of entanglements with other information policy spheres from privacy implications in the new digital inter-library loan provisions, to exceptions in relation to the Access to Information, Broadcasting and Privacy Act. The Copyright Act also has a very complicated relationship with the Industrial Designs Act. The Spectrum Transfer Framework for Canada, which governs how companies and other entities can exchange spectrum licenses, has a provision through which documents related to transfers can be obtained by Access to Information Requests. This is one that I quite like to highlight. Several years ago Industry Canada undertook a consultation, and this was one of the proposed elements. At the time I, and some students with whom I was working intervened and suggested that linking the Spectrum Framework to the Access to Information system was a poor approach given how frequently Access requests are delayed. None the less Industry Canada went ahead, and afterward I tried to use the ATI system got get some materials. Needless to say that my requests were delayed for so long that the ATI officer at Industry Canada asked me if I even wanted the documents anymore because all the transfers at issue during the time period I had asked for were concluded and known to the public. Finally we see considerable interlinkages around privacy, surveillance and telecom with respect to lawful access (which we will examine later) and also in the area of copyright infringement. To return to the first week’s discussion, one of the criticisms of info policy was that it was just a collection of issues of interest to librarians and information scientists; however, a counter to this could be that the issues are intimately linked from a policy perspective.