Agility in an Age of Information Ubiquity: Freedom of Expression and Information Policy

Emily J. M. Knox

Abstract

Freedom of expression is a fundamental human right that is closely intertwined with information policy. In this time of ubiquitous information, it is necessary to have an agile framework for information policy that responds to the proliferation of misinformation and disinformation, addresses the harms that inaccurate information can cause, and also ensures an individual's right to freedom of expression. This chapter first provides a conceptual overview of human rights, freedom of expression and information policy before offering a possible solution for information policy and freedom of expression in the digital age by appeal to Danielle Allen's (2015) flow dynamics model of discourse.

Key Words

Freedom of expression, information policy, hate speech, disinformation, misinformation, flow model

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Introduction

Information policy and the concept of freedom of expression are so closely intertwined that it is somewhat difficult to delineate where one starts and the other begins. This is an outcome of living in an information age: the constant barrage of information that we encounter in our daily lives means that the line between what is 'information' and what is 'expression' is blurred. This continually connected, information age is one in which people express their ideas in real time to the entire world. Information policy for expression in this time requires a flexible and responsive theoretical framework that accounts for both human rights and changes in technology.

There are two issues that policy-makers have had to grapple with in recent years. The first concerns the effect of expression on individuals—especially those with marginalized identities. Over the past few decades, there has been an increase in arguments for policy-makers to consider the harm that expression itself can cause rather than just considering actions that might be catalyzed by harmful speech. Second, policy-makers must concern themselves with the proliferation of inaccurate information through communication channels. Both of these issues call for more agile and responsive information policies that can be easily applied to disparate media in a rapidly changing landscape. This chapter provides a framework for these policies.

The chapter begins with an overview of Kay Mathiesen's (2012) typology of human rights. It then discusses the right to communication as a type of right that protects other rights, including freedom of expression. Freedom of expression is then discussed in more depth through a brief analysis of the United Nations Declaration of Human Rights Articles 18 and 19. Next, the chapter provides an overview of information policy through the lens of the right to freedom of expression.

The chapter then offers a possible solution for information policy and freedom of expression in the digital age. It connects the right to freedom of expression to Danielle Allen's (2015) flow dynamics model of discourse circulation. Allen's model configures the public sphere as a 'flow' rather than a space and posits that there are two types of discourse: influential and expressive. Allen's model uses the concepts of volume, velocity, and viscosity as variables in the model. Finally, the chapter argues that these two concepts, freedom of expression as a fundamental human right and the flow dynamics model, provide a robust framework for information policy in our digital age.

Freedom of Expression

Freedom of expression is a fundamental human right. By 'right', I mean that it is both a moral and legal entitlement due to human beings that societies have an obligation to uphold. In her article on the internet as a human right, Kay Mathiesen (2012) offers a typology of rights that is helpful for understanding the right to freedom of expression and how this right might inform

information policy. Mathiesen begins by stating that some rights are primary while others are derived. Using the theory of philosopher Carl Wellman, she notes that *primary*—or basic, fundamental rights—are things like food, shelter, and water. *Derived* rights, on the other hand, are the result of other rights and often focus on specific circumstances. Her example, from Wellman, centres the freedom of the press as a derived right that comes from both the right to freedom of expression and the right to access to information.

These latter rights are *lynchpin* rights or rights that make other rights possible. In Mathiesen's typology, the right to communication is a lynchpin right that protects other rights such as the right to freedom of thought or to be part of the political process. As she notes, 'The ability to exercise the rights of expression and access to information (collectively, referred to as the 'right to communicate') promotes the realization of all other human rights' (Mathiesen 2012, p. 14). Using another rights scholar's—James Nickel's—analysis, Mathiesen argues that lynchpin rights protect, remedy, preserve, and empower other rights.

Mathiesen makes the strong, essentialist argument that all rights are based in the right to communicate:

> Indeed, one could argue that, without the ability to communicate, we do not have rights at all. A right licenses a person to speak up for herself…One cannot claim a right if one does not know that one has the right and one cannot claim a right if one lacks the means to express oneself. The idea of claiming in relation to rights is so important that some philosophers have argued that only those who can make claims can be rights holders. While we might want to include such beings as animals and small children within the realm of rights holders, there is still something of special dignity to adult human rights holders who can take an active role in exercising their rights. (Mathiesen 2012, p. 15)

In order to have rights in the first place, one must claim them, and this claiming happens through communication. That is, it is the right to freedom of expression and the right to access to information that provides the foundation for all other rights. This essentialist argument for the right to communicate also provides a robust theoretical foundation for developing well-structured information policy.

Freedom of expression is also related to communication of one's thoughts and beliefs. This relationship is clear if one analyzes the articles of the United Nations Declaration of Human Rights (United Nations 1948). Article 18 says 'Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance' (United Nations 1948). Article 19 moves from having thoughts to conveying those thoughts to others: 'Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers' (United Nations 1948). Freedom of expression means that one may state their ideas and receive ideas from others without fear of censorship. This is, of course, the statement of an ideal

statement and it is public policy that shapes the contours of an individual's right to freedom of expression in a given context. As Jaeger and Taylor (2019, p. 98) note, an individual's human rights are rarely secured through global mechanisms but are left to being upheld by nation-states, nongovernmental organizations, and institutions in a local community.

A note on the term 'free speech' is needed to provide additional explanation for the language used throughout this chapter. Unfortunately, this concept has recently become contested in the United States. Discussions of 'free speech' in right-wing discourse often assert that all speech, including hate speech, should be able to be stated without consequences. In addition, 'free speech' can be construed as something that is 'said' using one's voice. Freedom of expression, on the other hand, has broader connotations and is not limited to speech, per se, but also encompasses the arts and written expression. It also is not a broadly contested phrase. As such, freedom of expression is the preferred term throughout this chapter.

Historically, laws concerning freedom of expression are based on a clear distinction between expression and action. For example, in Joe Emerson's System of Freedom of Expression (1970, p. 8), he notes that 'the theory rests upon a fundamental distinction between belief, opinion, and communication of ideas on the one hand, and different forms of conduct on the other. For shorthand purposes, we refer to this distinction hereafter as one between "expression" and "action"'. Although this has long been the basis for the legal system in the United States, other countries have legal systems whose structures for freedom of expression incorporate the idea that expression has an effect on the person who receives it and can lead to incitement of other individuals. For example, incitement to hatred of another person is illegal in Germany. In keeping with this distinction, the European Court of Human Rights (2020) has two different methods for conceptualizing 'incitement to hatred' and the right to freedom of expression. Judges in the court must either exclude comments that negate the values given in the European Convention on Human Rights or refuse to give such speech legal protections.

Although the legal system in the United States maintains the distinction between expression and action this has been contested in recent years. For context, Emerson (1970, p. 17) states that 'expression' must be freely allowed and encouraged. 'Action' can be controlled, subject to other constitutional requirements but not by controlling expression. However, more recent legal scholarship calls this principle into question. For example, in *Words that Wound* authors Nari J. Matsuda, Charles R. Lawrence, Richard Delgado and Kimberlè Williams Crenshaw (1993) state that potential for harm should be a guiding principle when developing freedom of expression laws. In her chapter entitled 'Public Response to Racist Speech', Matsuda (1993, p. 30) notes that 'the need to limit racist hate messages is implicit in basic human rights documents such as the UN Charter and the Universal Declaration of Human Rights'. Her argument is that hate speech both imparts and leads to physical effects and therefore should be outlawed. Individual physical effects range from loss of self-esteem to the 'fight or flight' mechanism that kicks in when hearing bigoted speech. More specifically, Matsuda (1993) states that racist speech will eventually lead to racist actions such as discrimination. She does note that this is an uphill battle in the U.S:

> Critical race theory uses the experience of subordination to offer a phenomenology of race and law. The victims' experience reminds us that the harm of racist hate messages is real harm to real people. When the legal system offers no redress for that real harm, it perpetuates racism. [The author will] begin a conversation about the first amendment that acknowledges both the civil libertarian's fear of tyranny and the victims' experience of loss of liberty in a society that tolerates racist speech (Matsuda 1993, p. 50).

The question of harm and the effects of free expression on others is one of the underlying tensions that one encounters when developing policy. More recently, Richard Delgado and Jean Stefancic offer an argument for legal redress for those harmed by hate speech:

> Because most citizens comply with legal rules, a tort action for racial insults would discourage harmful activity through the teaching function of the law. Establishing a legal norm against hate speech would certainly increase public consciousness of its harm. Then the behaviour of citizens toward each other would reflect the values of a mature society more consistently than it does now (Delgado & Stefancic 2018, p. 14).

Although some might take issue with their causal argument, this is, in fact the theoretical foundation for incitement to hatred laws. Many countries have outlawed hate speech, and some might argue that hate speech is such a particular case it should not have bearing on information policy as whole. However, it is also important to ask what is lost when such laws and policies are put into practice, while also keeping in mind the United States' example of how difficult it is to have a policies and laws that allow for maximalist freedom of expression. Policy-makers must balance multiple obligations when working to ensure the human right to freedom of expression.

The Nature of Policy: Big-P and Little-p

Policies regulate our life and are often the embodiment of values in a given context. They shape all aspects of our lives in ways that are often difficult to discern. Policy researchers sometimes divide policy into two types which can be designated using an informal naming convention— Big-P and Little-p. In their article 'Understanding Evidence-Based Public Health Policy', Brownson, Chriqui, and Stamtakis (2009, p. 1578) state that Big-P policy refers to 'formal laws, rules, and regulations enacted by elected officials'. Little-p policy refers to 'organizational guidelines, internal agency decisions or memoranda, and social norms guiding behaviour'. Information policy includes both of these policy types.

In my own research, most of my previous work has centred on one particular type of information policy: policies developed and employed by libraries of all types to ensure that patrons are able to access information. This area of policy is, of course, related to freedom of expression, but is usually focused on expression only after it is fixed in the form of a book, video stream, magazine, DVD, CD, or some other medium. However, this research in small-p institution information policy is helpful for understanding how policies operate on both a large and small scale.

Although their book is written for policies in a library and is therefore more concerned with 'Little-p' policy, Sandra Nelson and June Garcia's (2003) manual for creating policy provides a good overview of why policy matters at any scale. Nelson and Garcia argue that good policies have four functions. First, they transform an institution's values into action. For example, I am writing this in the United States during the summer of 2020 when the laws related to qualified immunity which provide a liability shield for public employees, especially the police, are facing intense scrutiny. This law and its application in cases of police brutality embody values that privilege the lives and well-being of police officers over the lives and well-being of people in communities which they serve.

Second, Nelson and Garcia (2003) state that policies provide the information that an agency or individual needs to perform a task. This task can be anything from how to build a broadband network to the paperwork needed to use a meeting room in a library. Third, policies are boundary objects (Bowker and Star 1999). They communicate to people both inside and outside of an agency or institution what can and will be expected. Finally, if legal action is needed, policies inform the context for conducting such legal action.

We can use Nelson and Garcia's model to better understand how policies operate in a larger context. Similar to 'Little-p' policies for institutions, 'Big-P' policies transform a society's values into action. 'Free' societies tend to have policies that enable free expression in many different areas. In addition, having such policies and regulations demonstrates that the society holds freedom of expression to be an important value. Policies also inform what someone might do in a given society. In the U.S., for example, it is generally assumed that one will not be arrested for expressing any opinion or belief as long as it does not put others in immediate, physical danger. This does not mean that there might not be other consequences, but imprisonment is not usually one of these consequences.

Third, policies can inform citizens of what they can expect from their governing institutions. They are a communication mechanism for large bureaucracies. Finally, policies shape laws and regulations by (ideally) indicating what people can expect from their governments in the case of legal action.

As noted, information policy incorporates both 'Little-p' and 'Big-P' policy. How much a given person is able to exercise their right to freedom of expression is governed by policy. It is also important to note that we live in an age, especially in many Western states, which holds to neoliberal ideologies in policy-making that focus on both privatization and personal responsibility often at the expense of public goods and communal responsibility (Jaeger and Taylor 2019, p. 65). These societies emphasize deregulation in policy especially when it comes to information and communication technologies (ICTs). 'The deregulation of the private sector is based on strengthening the ability of corporations at the expense of individuals on the assumption that the market will find ways to protect individuals through options', as Jaeger and Taylor, note (2019, p. 65). In our digital age, which can also be understood as an age of 'informatization', as discussed below, the policies that shape rights to freedom of expression are crucial for living a fulfilling life.

Information Policy

As noted above, in the age of the internet, it can seem that information policy encompasses almost all policies. In a *Normative Theory of the Information Society*, Alistair Duff (2012) describes this process as 'informatization'. There are three phenomena that we can observe in this ubiquitous information landscape: 'The development of a post-industrial economy based on services and information; an information technology revolution; and an information explosion' (Duff 2012, p. 55). Duff argues that information policy should not simply be derived from empirical sources but also needs a strong grounding in normative ethics: 'Perhaps unsurprisingly, such a demanding intellectual summons is rarely met, with the result that much information policy discourse appears strangely disconnected, if not downright superficial, and specific policies and laws go forth into the world devoid of robust normative underpinnings' (Duff 2012, p. 32). It is hoped that grounding information policy in Danielle Allen's dynamic flow model as described in this chapter will meet this goal of providing a normative ethic for freedom of expression in the digital age.

Since we are constantly surrounded by devices that send us information, even environmental policies related to the mining of minerals used in ICTs and transportation of goods can be seen as a type of broad information policy. Jaeger and Taylor (2019) describe information policy as a type of meta-policy that 'affects virtually everything in the world.' They define information policy as

> a broad set of goals—and the accompany instruments and mechanism required to accomplish those goals—created by governments and other societal institutions to manage the information life cycle (from creation to disposition.). These goals are interconnected but not always compatible and are designed to affect the information behaviour and limit or increase information access of individuals, communities, civic organizations, and institutions of government, education, and commerce. (Jaeger and Taylor 2019, p. 15)

For the purposes of this chapter, I will primarily be focusing on information policy as it relates to the creation and distribution of information by individuals.

Information creation is the essence of freedom of expression. Regulating it used to be a much easier task. Information was either spoken or written in a semi-permanent format. These written formats took effort to duplicate and distribute so it was usually clear how to pass laws and develop policy for a given medium. This process became infinitely more difficult with the development of the internet and the rise of the web and social media.

Information policy itself comes from many different sources including, as Jager and Taylor (2019, p. 26) note, 'laws, regulations, court rulings, international treaties, agencies, and public opinion'. Each of these is interconnected. Although public opinion can seem like a strange source for information policy it is particularly important when considering information policy and freedom of expression. Jager and Taylor argue that 'although members of the public may feel individually removed from or powerless in the policymaking process, public discourse can

be a major driver of public policy' (Jaeger & Taylor 2019, p. 33). In the summer of 2020, there is a global pandemic taking place that has destabilized many societies and there are many discussions regarding what is or is not acceptable expression in the public sphere. It is very possible that public opinion regarding freedom of expression and therefore information policy will shift significantly over the coming years.

Freedom of Expression and Information Policy

Freedom of expression is primarily related to information policy through laws that regulate both information creation and information access in a particular country. A recent report from the U.S. Library of Congress (2019) compared freedom of expression laws across 13 countries. The report found that there were broad restrictions in China and Ukraine while other countries have more specific rules for curtailing speech. For example, 'Unreasonable disruption in a public place of "any meeting, congregation, or audience" is specifically prohibited under New Zealand law' (Library of Congress 2019, 'Specific prohibitions on disruption of public speech and deliberations'). The report also discussed the limitations placed on hate speech in the European context, as mentioned above.

The nonpartisan, U.S-based Freedom House (freedomhouse.org) publishes a 'Freedom Map'. Freedom House defines 'freedom' through 12 central issues including media freedom, religious freedom, freedom of assembly and freedom of expression. Although their methodology can be contested, Freedom House's analysis of freedom of expression and beliefs provides a good foundation for analyzing information policy and freedom of expression. Freedom House uses four sets of questions in this particular cluster. The first focuses on freedom of the press, the next focuses on religion, while the third concerns academic freedom. The final set of questions focuses on freedom of expression. This final set asks if individuals are free in a given country to 'express their personal views on political or other sensitive topics without fear of surveillance or retribution' ('Freedom in the World Research Methodology' n.d.). Freedom House analyzes whether or not people can engage in both public and private discussions without fear of retaliation, harassment, or retribution. By aggregating the analysis, these questions can provide an overview for understanding freedom of expression and its related policies in a particular country.

Freedom of expression and information policy can be understood to operate in similar spheres. For example, in *Change of State,* her comprehensive assessment and analysis of information policy, Sandra Braman (2006) describes four separates spaces in which expression operates. First, there is speech versus 'things' which Braman defines as the—now somewhat less definite—'distinction between expressing ideas in symbols and expressing ideas in objects or processes' (Braman 2006, p. 99). This is the basis for intellectual property law. The ubiquity of digitization has made this distinction somewhat moot as one can see from the software patent wars. Next is speech vs. action, which can be understood through the lens of the discussion of harm and hate speech described above. Again, this is also less distinct as the understandings of 'harm' have changed over time. The third space of expression is symbolic action. Art or protests are good examples of this space. Finally, speech vs information processing is the space in which,

as Braman notes, individuals employ arguments against freedom of expression. This is another method for thinking through the changes that have come from the digital age:

> Expression has always involved information processing in order to reach the ideas and/or create the messages expressed…with the exteriorization of information processing from the human to the computer however those stages of message creation have become more visible. As a result, legal thinkers began to separate information processing conceptually from speech for distinct legal treatment… (Braman 2006, p. 102)

Information processing is often coupled with privacy considerations and this makes it the target of regulation. This space is also related to issues of access to government information and confidential documents.

In order to make a clear connection between constitutional law and information policy, in his article entitled 'The First Amendment is an Information Policy' Jack Balkin (2012) demonstrates how information policy is informed by the law. Working within the framework of the U.S constitution, Balkin argues that the First Amendment to the U.S. Constitution shapes all information policy within the country. The modern nation-state, according to Balkin, is an 'informational state: states that recognize problems of governance by collecting, analysing, and distributing information. Knowledge and information policy is at the heart of government today' (Balkin 2012, p. 4). Balkin states that there are two different information policy nation-states: democratic and authoritarian. Democratic information states tend to have policies that encourage freedom of expression and access to information while autocratic information states do the opposite.

In the U.S. context, Balkin argues that it is important to view the First Amendment as a collective and not an individual right. It is the policies that are based in the foundations of the constitution in the U.S. that lead to what he calls an 'infrastructure of free expression'. That infrastructure includes 'technologies of communication, policies that promote innovation, and diffusion of knowledge, the institutions of civil society that create knowledge and help ensure its quality, and government and private investments in science, education, and communications technology' (Balkin 2012, p. 7). I highlight this argument because it is important to understand that freedom of expression and information policy are linked across many different contexts in society.

Misinformation and Disinformation

Along with injurious speech discussed above, misinformation and disinformation constitute another difficult knot for information policy and freedom of expression. As Nicole Cooke (2017, p. 214) notes, 'concepts of misinformation and disinformation (mis/dis) can be thought of as two sides of the same coin'. Misinformation is information that is vague and often false in a particular context but is not placed with the intent to deceive. Disinformation is false information that is circulated with the intent to deceive. A colloquial mnemonic that one might use to recall the difference between the two is that misinformation is a 'MIStake' while disinformation is a

'DISS' or information that is disrespectful to the recipient because the creator assumes that they will not understand that it is untrue or deceitful.

Another category of information is 'fake news'—a now contested term. As Robert Spicer (2018) discusses, the definition of the term 'fake news' shifted during the 2016 presidential election between Donald Trump and Hillary Clinton.

> In the context of the 2016 election and the months that followed, the term 'fake news' came to mean something slightly different from a reference to satire and something closer to phony government PR [public relations]….A good way to define 'fake news' in reference to this kind of content would be as any story that is fabricated in its entirety or in part, and is then circulated via social media, in order to influence public perception, and/or gain and then profit from users' attention. (Spicer 2018, p. 8)

Fake news, as it is understood now in the right-leaning political world especially in the U.S., is essentially disinformation as defined by those who object to its contents. These ideas are important for freedom of expression and information policy because fake news, misinformation and disinformation, are difficult to regulate through policy. They are defined by the intent of the communicator and although policy can shape outcomes, it can do very little to shape the objectives of the creators themselves. As Spicer (2018, p. 17) notes, there were no consequences associated with spreading disinformation during the 2016 campaign. In fact, the campaign that engaged in this behaviour was rewarded with the presidency.

Developing a robust information policy model that both allows for the human right of freedom of expression and accounts for the spread of misinformation and disinformation is the focus of the next section of the chapter.

Information Policy for the Age of Digital Expression

Throughout this chapter, I have been skirting around the issue of social media. It is difficult to overstate the complexities that social media brings to developing information policy for freedom of expression. This can be easily seen if one considers how government agencies use social media. What is the United Kingdom Government's Facebook page? Is it a government document? What about President Trump's Twitter feed? Are these public forums even though they are on private platforms? How should they be regulated? As Jaeger and Taylor (2019, p. 93) note, governments have attempted to create policies for disseminating information but have not had much success. It is necessary to think through a model for information policy that both accounts for harm to individuals and groups and allows for the circulation of discourse and free expression.

One of the most important considerations here is, of course, the public sphere. Information policy for freedom of expression must take into account the public sphere. Jurgen Habermas (1974) originally conceived of the public sphere as a 'space' where public opinion is formed. This public opinion is, of course, moulded through the communication of beliefs and ideas. He defines the public body as 'citizens confer[ring] in an unrestricted fashion...about matters of

general interest' (Habermas 1974, p. 49). Again, this is related to freedom of expression. Public opinion 'refers to the tasks of criticism and control which a public body of citizens informally—and, in periodic elections, formally as well—practices vis-à-vis the ruling structure organized in the form of a state' (Habermas 1974, p. 49). As noted previously, information policy is often based on public opinion.

In her chapter describing a new model for conceptualizing the public sphere, Allen (2015) begins with Habermas but then argues that we should not think of the public sphere as a 'space' but rather as a 'flow'. 'Spaces' are rigid and defined, while the current age of informatization and ubiquitous communication calls for a model of communication that is flexible. This section gives an overview of Allen's flow dynamics model and then applies this model to information policy for freedom of expression.

A Flexible Model for Information Policy

As noted, Allen first discusses Habermas and notes that while he originally describes the public sphere as a 'space' he eventually discusses it as a 'flow'. In spite of this, Habermas eventually goes back to spatial metaphors, a move that Allen calls a mistake. She writes 'one needs a model of the public sphere that constantly foregrounds the empirical realities that lie behind the well-worn critiques concerning exclusion, excessively rigid distinctions between the public and the private, and the value of diverse discourse types, from rhetoric to humor to "dark speech"' (Allen 2015, p. 181). I would also argue that a flow metaphor is more in keeping with how we understand the circulation of ideas in our current media landscape. Expression flows from a tweet, to a blog post, to a 24-hour news channel, to a Facebook post, then to book, which is then reviewed in an online magazine post, which is then posted as a link to Twitter. Communication is not contained within a particular space but moves across various mediums and media, even if those media are accessed on one device.

Allen's model is grounded in two types of discourse: *influential* and *expressive*. Allen describes influential discourse as being related to structural decision-making while expressive discourse is part of expressive community formation. What separates the two types are the motivations of the actors, how many people are exposed to the ideas, and the methods for getting 'buy-in' from others. This is essentially an ideal typology for describing communication and expression and also allows information policy-makers to more fully describe the kind of discourse they are trying to regulate.

Influential discourse can be understood as communication that brings about change. According to Allen (2015, p. 184) there are four different levers for change: political and legal institutions, authoritative institutional spaces, social movements and discourse for culture change. Allen uses the anti-tobacco campaigns as an example of the latter type of discourse. She notes that, 'importantly, these four levers interact with one another. If one influences the preferences of individual voters on a mass scale, they will change outcomes in the political space occupied by politicians, civil servants, and other government officials' (Allen 2015, p. 184). Other examples of this type of discourse include the Arab Spring in the Middle East in the early 2010s as well as

the Black Lives Matter movement in the U.S., which started after the death of Michael Brown in Ferguson, Missouri, in 2016.

Expressive discourse, on the other hand, has a different intent and moves through distinct types of communities, even though the actual mediums of communication may be the same. Although there is some overlap with influential discourse that flows through what Allen (2015, p. 184) calls 'decision-making structures', expressive discourse tends to flow through different types of networks and groups. These include 'formal or informal associations; familial, ethnic, or social networks; education, vocational and professional institutions and organizations' (Allen 2015, p. 184). For policy-makers, it is the decision-making aspect of some types of discourse that should be attended to. As Allen notes:

> It is therefore worth noting that the distinction between the structural decision-making discourse loop and the expressive discourse loop does not reflect a standard distinction between institutions and culture or between politics and culture. Instead, it reflects a distinction between two different flows of discourse—those that have a direct influence on structural-level decisions and those whose influence on particular structural-level decisions is a few steps removed (Allen 2015, p. 191).

This is crucial for developing information policy for freedom of expression. Policy-makers should focus on which discourses influence decision-making—including their own. I would also argue that policy-makers should not simply listen to the loudest voices but also to those that have expertise in a given area and those who are affected (including those adversely affected) by their decision. Allen (2015) also describes in more detail how influential and expressive discourse work within politics. Briefly, she posits five propositions that describe the role of discourse: 1. The constitutive status of discourse 2. Agency 3. Influence vs. Expression 4. Multiple spheres 5. Multiple decision structure (Allen 2015, pp. 185-7). More important for our purposes is considering how this model provides a foundation for information policy for freedom of expression.

Allen's model focuses on the 'how' of expression and uses the concepts of *volume* (how much), *velocity* (how fast), and *viscosity* or the 'characteristics of the capacity of communicators to communicate within the context of their sociopolitical environment, rather than being a characteristic of the channels of communication' (Allen 2015, p. 193). It is a dynamic model that accounts for several levels of analysis. The emphasis on viscosity or the flow and fluidity is important for the speed and ubiquity of communication in the digital age. When creating information policies that concern freedom of expression, keeping these concepts in mind is important for thinking about issues such as who is doing the communicating, to whom they communicate, how quickly the communication circulates, and what is its level of 'stickiness'. I will look at each of these in turn. However, it is important to note that all 3 factors must be considered together. This is similar to, for example the U.S. Fair Use test. All 4 factors— purpose, nature of the work, amount, and effect upon the market—must be taken into account when considering whether or not the use of copyrighted work conforms to the Fair Use guidelines. No one factor outweighs the others.

In Allen's model, the volume (how much) and the velocity (how fast) of discourse are fairly clear parameters. Allen notes (2015, p. 192), volume is a measurable unit and, as she notes, 'word counts and time spent on discourse can be converted into one another since any given stretch of words requires some definite amount of time for a human being either to speak or read'. For most policy-makers, during the digital age, they must usually consider that the flow of expression will happen very quickly.

The viscosity of discourse or specifically for the purposes of this chapter, expression, takes a bit more explanation. It is more about who is speaking combined with the medium they are using rather than simply what they are saying. A short anecdote will explain this concept more thoroughly. I first heard about Allen's model when she was interviewed on the Vox Media podcast, *The Ezra Klein Show*, in September 2019 (Klein 2019). Ezra Klein later discussed this concept of viscosity in his other podcast *The Weeds* with Matthew Yglesias. He uses the term 'newsworthiness' as a synonym for what might be understood as 'high viscosity' in this excerpt from the transcript:

> Imagine if Jack Dorsey [the CEO of Twitter] came out tomorrow and said, we got this backwards. That instead of it being the case, that if you are more important and more powerful and have more followers, you're subject to a lower standard of behaviour. We're going to flip that if you are newsworthy! Have more than 1 million or 5 million followers, we are actually going to subject you to a higher standard of behaviour than everybody else. We are going to insist that we believe Twitter is here for healthy conversations, right? That is their stated goal as a company. We are going to insist that you speak civilly and decently. That what you write falls within a broad range of the truth. And if you repeatedly break these rules, we are in fact going to kick you off the platform (Klein and Yglesias, 2020).

The idea that someone on Twitter who has many followers would be subject to more regulation because they have more influence on discourse within the flow of public discourses is an example of accounting for viscosity of expression in action. In Klein's example, people like himself (he has 2.6 million followers on Twitter) have more influence and therefore need to be held to a higher standard when tweeting. As Allen (2015, p. 193) notes, viscosity 'captures, in effect, degrees of friction affecting diverse communication flows—for instance, the factors affecting whether people use their expressive capacities and the expressive range available to them'. Information policy-makers must take into account the relative structural power of the individual or institution that is expressing themselves.

These three factors—volume, velocity, and viscosity—taken together provide a foundation for shaping an agile information policy for freedom of expression. Policy-makers who work, for example, at a social media company can consider various thresholds for number and frequency of posts, the number of followers, along with the number of 'shares' when considering if and when the company will apply various strategies to mitigate the spread of disinformation. For governments and other public entities, this would need to be a carefully considered process that

balances individual's right to freedom of expression with needs for accurate information in order to have a just society. In this case, Allen's model provides a useful heuristic for decision-making.

Conclusion

How should information policy address the shifting landscape for freedom of expression? How should policy-makers balance an individual's right to express their ideas with other individuals' right to safety? For many years, how a nation-state would go about securing these rights was somewhat settled. Fixed mediums such as books, film, and artwork do not usually change over time and are therefore easier to target through regulation. The rise of the internet and the web have changed how expression operates in society and the tools that are needed to regulate it. New models are needed that address the proliferation of information, human rights and changes in technology. By providing a review of relevant literature culminating in an overview of Allen's (2015) flow dynamics model and the concepts of volume, velocity, and viscosity, it is hoped that that this chapter offers a new theoretical framework for the development of information policy. It is intended to provide a foundation for future empirical research.

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