Navigating Access to Knowledge: Copyright, Fake News, Fair Use, and Libraries

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Thank you so much. Good morning.

I want to start first by emphasizing what I feel is not often heard other than in conferences and meetings like this, and that is that the work that you do, the role that you play as librarians, as archivists, as integral parts of the education, civic education infrastructure in this country is indispensable. Let me just say that again. You and the role that you play are indispensable, and I think it's very easy to lose sight of that, and part of what motivated my talk this morning and some of the work that I've been doing is thinking about ways in which we might need to reconceptualize the role of libraries and the place of librarians in a system and in a season in which platform technologies govern much of our educational and civic discourse.

I want to start with a story that some of you have heard me share, and I share it again because I had thought so much about bringing my mother with me and my schedule just didn't allow it. My mother was a librarian for much of my growing up years and so my love affair with libraries began at a very young age. But, in reality, it wasn't my mother's role that brought me to what I call my "first classroom." As a little girl growing up in New York City, I experienced quite a bit of hostility. My parents had immigrated and sent us off to private school because they felt that that would give us the best opportunities in life and they didn't quite trust the New York public school system at the time, this was in the early '70s. And so off we went to private school, and there in private school not only was I introduced to some of the finest teachers and educators and resources, I was also introduced to a world in which I was an outsider. I was the only child of color in the classroom and I was in a classroom in which many of my classmates had never encountered a person of color. So everything from my hair to ashy skin was a novelty, and I found myself sort of feeling like a museum piece: stared at, touched, admired, criticized, people just not quite knowing what to make of me. And as I experienced this over the course of time, I thought, "Well, I need to find friends. I need to find a place

where I can make sense of some of what I'm experiencing." My parents were overwhelmed with four children and going to school and getting their PhDs and I didn't feel, even as a little girl, that I should burden them with what I was going through in this elite private school. And so I found solace in some of my best friends in the New York Public Library. I found as I walked to school or took the bus, my parents did not know this. They would put me on the bus and I would hop off. My mother was just about to faint when I told her this many years ago, and I would hop off and I would make my way to the public library. And in the public library I would go to the librarians and I would say, "I want to read a book," and then the librarian would say, "Well, what kind of book do you want to read?" And I would say, "Well, I'm not sure." And this librarian would walk me through these massive bookshelves and say, "Why don't you start here. Here's some fiction." And she would tell me about some of the authors, and so I began this love affair and I read and I read and I read and in this world of books and being guided by my new friends in the library and my fictional friends in these books, I discovered a world of learning, and ultimately the design of copyright law is about learning. And when you think about copyright law as a legal regime today, we tend to think of publishers and licenses and fair use and can I copy? Can I not copy? But the fundamental design of the system had libraries embedded in it.

The first copyright statute in the known world, the United Kingdom Statute of Anne, was aptly titled "An Act for the Encouragement of Learning." So, by the way, was the first copyright act in the United States "an act for the encouragement of learning." It is somewhat grievous to me that we actually no longer think of copyright as a system that facilitates learning. Now when you think about the Statute of Anne and you think about the design of copyright law as an instrument for education, as an instrument for public education, actually, it's interesting to go back to the beginning and you look at Part Five of the Statute of Anne, and this was a statute that is ironic in many ways because it was first of all enacted during the reign of Queen Anne and in a world in which you wouldn't have thought of feminism or the suffragette movement or anything like that. Here was a kingdom ruled by a woman who was courted

by publishers and printers and you get this amazing statute and the statute is interesting because it starts with the words "provided always." In other words, at the time in which the system of copyright was being envisaged, it was not being envisaged as a temporary fix. It wasn't being envisaged as something that was expedient for the time. It wasn't a response to a public emergency. It wasn't a design that was hastily put together in order to appease particular stakeholders. It was provided always that there would be a system in which libraries would get deposits of books to make sure that there was access in universities, access in the palace, access in institutions of higher education to whatever was being published in the realm.

Now, what I think is fascinating about the statute and about Part Five in particular, I mean the Statute of Anne was not a very long statute, but what's fascinating about it is not only did it see the provision of books to libraries as something that needed to last beyond the immediate pressures that gave rise to the statute, it also embedded librarians into its very heart and so note that in Part Five not only were these publishers to deposit nine copies, so it wasn't just one for archival purposes. Those of you who work well with Section 108 of the U.S. copyright act today know that you can make one copy. Well, this actually was not reflective of how we began the system and so you have to deposit nine copies in very diverse libraries, and it was stated in the act the libraries that had to receive copies, but it also, as I said, then said librarians had to demand the books if the deposits were not made by the publishers, and so from the very beginning the idea that librarians or that libraries were these passive recipients of data, of knowledge, of books has never been the case historically, and I often refer to it as a myth today that libraries and librarians were part of the design of the copyright system and libraries were in fact the institutional home for the education of the public. There was no way to design a system intended to facilitate access to knowledge by the public without libraries.

Now, I think what's interesting about this original design was not only the demand by librarians but the idea that everyone had to comply; otherwise there was an automatic penalty. This was the commitment to the public ideals of civic participation in the generation and in the consumption of knowledge. So, there was deposit in a variety of libraries. There was a requirement that it be more than just one copy. There was a role for librarians to play and there was a penalty. The system was designed to be effective, not

simply to be a placeholder, and so what's happened since our glorious days of libraries as we know them? And I must admit that I in fact have this romantic view of the library and here you see one of many cartoons introducing children to libraries today and here is a mother with a little child saying, "It's a library, honey. Think of it of course as an early version of the World Wide Web." I actually disagree with this cartoon. I don't think of libraries as an early version of the World Wide Web. I think sometimes of the World Wide Web as sort of somewhat of a black hole. A place where you put all sorts of things and hope that someone will sort them out for you over the course of time. But the idea of course behind the cartoon is that we have a generation that doesn't really know what a library is and doesn't really understand what the role of libraries is and the data points actually suggest otherwise. In fact, the data points to the contrary, that millennials are the most likely generation of Americans to use public libraries and that I think is a fascinating data point. It's a fascinating data point because when you think about millennials, you don't think of them as being interested in anything other than their devices, quick answers, easy solutions. But that in fact is not true. They also, as it turns out, happen to be a generation deeply distrustful of institutions, and libraries remarkably become one of the few institutions that millennials in fact trust. Fifty-three percent of millennials visited a public library in the past year. Think about that. Fifty-three percent. More than half. Two-thirds of Americans say that if their local public libraries were closed, it would have a major impact on their community. Seventy-four percent of Americans say that local libraries help them find and check and confirm information that they can trust, and 64% of U.S. library users essentially went to borrow print books. Libraries may not be on the front page of the news today, but they remain vital both in their educational mission and purpose but also in their vital role in promoting civic education and in building community.

And so I wanted to say to you this morning that in a world in which one of the most significant challenges is how do you discern what is real and what is not? This notion of fake news, which we have, by the way, not done a very good job of defining. Is it fake because I made it up? Is it fake because it has no source? Is it fake because it is in fact not true? What is it about news that makes it fake? We have actually not done a very good job of distinguishing the various categories of knowledge to which we might want to attribute this label of "fake news." So, libraries in my view play a critical social function and it's not

that much different, frankly, from the unarticulated but clearly implied notion that libraries were vital in the Statute of Anne. Libraries are important for free access to educational and cultural works. They are important because not only do they store historical works, they store contemporary works, and they make it possible for users to identify not only specific items but a genre of items that they might be looking for. This is especially important for low-income communities. Libraries, as I like to say it, are the great levelers of socioeconomic opportunity. Libraries are the great levelers of socioeconomic opportunity, that a child may not be able to go to a private school or even go to a school with a library, but a child that has access to a library has opportunities that can transform his or her life. This is of course particularly true in my case and I say to my students all the time that when I would go to the New York Public Library, back in the day there were no limits on what books you could borrow. And so as my appetite for reading increased. I would take garbage bags to the library and I would stuff these garbage bags and I would drag them behind me as I walked down Amsterdam Avenue, and I walked back to my apartment and I would hide them under my bed because I didn't want my parents to know how many books I had brought home. My allowance was not going to cover the cost for late returns. My parents would've made me return them. But the capacity for children and adults and otherwise unable members of our society to enter into a place where they have the opportunity to receive levels of exposure to cultural, political, and educational works that they otherwise would not have. I have said to people, if you shut down every public school and left every public library open, we would still have a better educational system than most of the world today. That is a fact because when you teach a child how to read, you teach a child how to ask questions. You teach an adult how to find solutions and you encourage participation in this democracy of ours that we continue to strive to build.

It is a space for quiet study. Educators all over the world, and particularly in the United States, are asking should we turn off laptops in the classroom? Should we allow our students to jump online while we're lecturing? How do we create spaces for contemplation and reflection? How do you create informed citizens? Because the only reason in my view that fake news has gotten the play that it has is because we have not done as good of a job as we need to create informed citizens. Informed citizens don't actually facilitate fake news. They make it impossible to become the news of the day. It is a sad testimony to the fact that we have

not been successful in our capacity to facilitate reflection and consideration of multiple sources of information in order to cultivate an opportunity for people to begin to build communities around shared thoughts. Of course quiet study in these spaces in terms of their physical spaces also promotes the capacity for people to work and to have options about how they work remotely. Twenty-five percent of Americans ages 20 to 36 or older are clear about the importance of libraries as promoting access to the Internet, and in fact I have always said that one of the most important innovations we could do in our educational institutions is to insist that access to the Internet go by way of a library, because when we put undiscerning and uninformed individuals in front of the Internet, what you do get is an undiscerning capacity to distinguish between what is real and what is not. And so ultimately we find that the data suggests that people who have utilized library spaces in addition to Internet resources are more liable to have the capacity to discern between what is true and what is in fact real news or what is in fact distinctive news from what is not.

And here's what I think is something to keep front and center of your minds as you think about your work on a daily basis, right? That there is a significant amount of individuals who cannot access the Internet. The idea that the Internet and libraries are interchangeable, the idea that we saw in this cartoon, which we've seen many iterations of, is simply false. Libraries and the Internet and librarians and search engines are not synonymous and they are not coordinates. They cannot be replaced. Most of the world's population, believe it or not, even though that may not be true in the United States, it's a lesser number, but most of the world's population cannot access the Internet. Most of the world's population does not have sufficient broadband access at home, and it is a travesty that those that do spend most of that time not reading or researching electronic archives but in fact on other forms of social entertainment. Forty-nine percent of teachers say that the lack of digital access at home is a major barrier to using technology in instruction. Most students, particularly in rural America and certainly in most parts of the world, simply don't have that. And so I think the case can be made and should be made on a daily basis about the importance of libraries and the importance of librarians, because librarians—in fact, you don't walk into a library and just wander around. Librarians become not only your guides, they become your reference points; they become your access points; they guide the research; they help locate relevant information and they help navigate without cutting off your

freedom, of course, to explore. It's important, of course, the community events and the kinds of educational resources, the public meeting spaces, all of the things that libraries facilitate and teach without selling personal data, without creating a market in which the only price that matters appears to be what you give of your privacy and of your reading habits and of the things that you prefer in exchange for access to knowledge.

And I like to say that knowledge can't be free if the price of it is that we lose our libraries, that we lose the capacity in fact to distinguish between what is permissible and what might be appropriate, and so all over the place we see this concern about "fake news" and we see it as this giant chasm into which the nation is being sucked, and I think that ultimately libraries play one of the most important roles here as well because one of the things that happens when you are an avid library user is information literacy. Information literacy. I still in fact go to the library to figure out well, what's the universe of literature that I need to know? I still love to pull out, where they exist, the little drawers with all the cards in them on my way to finding a book and all the others that I find on my journey there, and information literacy is something that you cannot learn on the Internet. It's something you cannot learn simply by spending time curating webpages. The ability to locate and evaluate and effectively use relevant and reliable sources of information is critical to the function of civic society. We're often talking about this information overload, but the reality is that there's always been a lot of information and one of the things, of course, the libraries did was help systematize that information and help to determine how to divide and categorize and process that information so that users have the freedom essentially to find categories of information that they needed but also categories of information that they needed to know about. And even though we have increasingly digital sources of information, it becomes critical, of course, to note that much of that information only confirms our existing biases; rarely does it transform our existing condition. And so when you think about this, it's not surprising that so many of our middle school students are not able to distinguish between what is sponsored, what is fabricated, and what might be real. And so I have actually made it a requirement in some of my classes, my students are graduate students, to ensure that they are able to verify, to ensure that they are able to get to a library and in fact recognize what libraries can be used for in teaching information literacy, helping people understand how to corroborate information.

and fact checking is a vital part of what we do with our libraries, and I think it's important, of course, that libraries raise awareness. That there is awareness about the importance of critical thinking, about digital literacy. They make the job of education both necessary, vibrant, and robust.

So, here are some examples of some of what we're seeing, warning signs about how to fact check, ways in which you are teaching a new generation how to critically evaluate information that they receive. And of course ultimately what you want to think about is the way in which copyright often interfaces with some of the elements that we find problematic today. These digital technologies, as important as they are, have made it difficult for libraries to acquire data themselves, have made it difficult to preserve, and have made it difficult, of course, to think about how one might exchange resources with libraries across the country, much less around the world, and there have been over the years here at this conference discussions about the International Treaty for Libraries and that discussion is ongoing, and there is still a move to create an international treaty where libraries can enjoy greater flexibility in ensuring that their role within the information ecosystem is protected.

And while that's going on, while the legal effort to exclude libraries and to create a world in which libraries are able to exercise more autonomy in the selection and the curation and the preservation and the use of materials, there is also discussion about how new technologies might track ownership of e-books and facilitate things like the First Sale doctrine that might galvanize and that might release libraries to be able to do more with their resources. My sense, frankly, is that the way to handle this challenge for libraries and this challenge to what libraries do and this challenge to the critical role of libraries is not simply to mess around the edges, that my challenge is that we need to begin to think of a way in which libraries are not viewed as just one of many stakeholders in the information ecosystem, that libraries in fact are not just stakeholders, that libraries are the critical institutions, the anchor of the system, and make sure that the various sources of information have a reference point against which facts can be corroborated. The efforts to reform Section 108 and to make it more balanced, in my view, is too little, too late. What we need is a wholesale exception for libraries in which libraries become essentially once again the institutional anchor for ensuring that this happens, that information and that

access to knowledge occurs. Fair use remains important but I think we need fair use and more.

So, libraries I think begin to perform not only these works but also because of the digitization of collections, the way in which libraries systematize, the way in which information is categorized also requires some sort of transformation, and artificial intelligence has been important in doing that. But, of course, as you know the dangers of artificial intelligence are such that it's not often that artificial intelligence will not attract the same challenges as copyright law has already attracted for libraries. If libraries lose their autonomy because there are embedded algorithms that track what people use, what people check out, what librarians reference, I have often said that I dread the day when our librarians become like pharmaceutical sales reps. Where what is happening is embedded algorithms that track what every librarian recommends or the way in which libraries categorize in order to exert the pressure to ensure that certain kinds of information are the most disseminated information. This is something that libraries must watch out for, particularly in the context of text mining, data mining, and artificial intelligence, and the apps go on. And it's not clear to me, I don't know enough yet about what the library associations are doing about ensuring that there are some standards that help guide the selection and a best practices guide to how libraries and librarians should think about the use of digital technologies within their library portals for purposes of helping to identify issues related to text and data mining and preserving privacy. Ultimately, we're seeing in some of these depictions how licensing as opposed to purchase, how the elimination of fair use, how the digitization of materials, how a weakened capacity to distinguish between what's newsworthy and what's not is affecting the way in which libraries themselves are systematically performing their own sense of their own functions. And libraries, when you look at the way in which the processing of data occurs, you look at how users are interfacing. It's vital that libraries do not become the middlemen between purveyors of information and the users. That role must remain robust and vibrant and it must remain autonomous and independent, and it must continue to serve critical social functions that make libraries the vital cultural institutions that they were intended to be.

And so here are a few reflections and I'm going to wrap up because we want to have some question and answer time. I say categorically all the time that information is not news. Information is not news and news is not knowledge. Simply inputting data and granting users a series of facts, even if they're true, does not transform that base into a knowledge base. Librarians are critical to the architecture of this thing called civic education, that it is not only facts but that you are providing the context in which those facts occur, that you're giving references and guiding to opposite or opposing opinions. Libraries perform specialized, nonreplicable tasks and that includes a number of these things. That one of the most vital things that happens is when you give users, adults and students and high school students and college students, training and judgment and development of intuition because they have been exposed to a variety of sources that make their capacity to develop critical thinking possible, that librarians themselves, because they're always learning and because they're exposed to so much more data and resources in terms of books than users might be, they are able to help navigate this labyrinth of information, that they foster social and intellectual communities, that there is the possibility of training of us as users and how we select and how we think and make judgments about the things that we read.

And so ultimately I think, as I said earlier, that libraries and librarians are foundational to a trusted system, not just to a cultural and political and civic educational system but to a trusted system, and maintaining that trust means libraries have to be thinking about what they do with user records, and we fought this battle significantly in America's treaty to make sure that librarians do not have to disclose the recording of the library or the lending history of users to maintain a commitment to privacy, to maintain a commitment to diversity of thought so that users are better and well served. There must be new strategic thinking about how to frame the role of libraries in a platform economy. I believe that this is a vital and urgent task for the library community and that it's important to understand the benefits and the risks of copyright globalization, that ultimately one of the things that libraries have done is that they have functioned in a global ecosystem without becoming globalized. And what has happened to libraries is that as copyright law has become more international, libraries, because they've been embedded in copyright law as stakeholders, have been forced in many ways to begin to think of themselves as part of a global system in which we need harmonized rules. That may not always be the best thing to maintain the autonomy and the freedom and the institutional relevance of libraries.

You're all probably familiar with this report, and this is what I'm going to end with, that I want you to note some of the recommendations that Allison and her colleagues, of course, have made. Now what is interesting to me is that libraries don't really feature much in this report but educators do, and librarians actually are mentioned, but it's interesting that in the recommendation that refers to creating context so that there's a capacity to consume information and actually produce knowledge, and produce knowledge that is verifiable and fact-checkable— that depends on libraries, and I thought this was a critical slide because these recommendations are vital and they don't refer to libraries as institutions.

They simply assume that libraries are there. So, there may be a long-standing assumption that libraries are there, but unless that assumption becomes a policy reality, unless that assumption becomes something that is explicit, that helps drive resources to the work that libraries do, unless libraries themselves are articulating a vision for what a library and what librarians can and ought to do in a platform age and in a season in which we need more than ever to create opportunities for people to access knowledge to maintain and preserve the core ideals of our societies, without libraries it's not clear to me that this is possible, and without librarians I am certain it is impossible. Thank you very much.