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5-21-2006

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Recommended Citation

Farina, Cynthia R.; Cardie, Claire; Bruce, Thomas R.; and Wagner, Erica, "Better Inputs for Better Outcomes: Using the Interface to Improve e-Rulemaking" (2006). *Cornell e-Rulemaking Initiative Publications*. Paper 8.

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Better Inputs for Better Outcomes: Using the Interface to Improve e-Rulemaking

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ABSTRACT

We believe that e-rulemaking does indeed have potential to increase both the transparency of, and participation in, regulatory policymaking. We argue in this paper that this potential can be realized only if the public interface at www.regulations.gov is substantially redesigned.

1. INTRODUCTION

The E-Government Act of 2002 directed that regulatory government should become “more transparent and accountable” and more “citizen-centric” by providing web-based access to agency records, and by allowing Internet-facilitated participation in agency proceedings such as rulemaking.

With EPA serving as lead agency, and directed by the Office of Management and Budget (OMB), the first phase of compliance has created an electronic docketing system, the Federal Docket Management System (FDMS). At least theoretically, this e-docket will comprise the official record of all agency proceedings. The second phase is creation of an interface for rulemaking, the legal procedure through which agencies give notice of proposed rules, with supporting data and reasoning. Interested members of the public are then allowed to submit comments, which the agency must legally take account of before issuing a final rule. For all federal executive agencies, the e-docket and the e-rulemaking interface will be found at a single portal, www.regulations.gov.

Prior to the emergence of www.regulations.gov, some agencies had been using their own e-mail and Web-based systems to solicit rulemaking comments. The alarmingly large number of public comments received in a few high-profile rulemakings raised concerns about whether a wholesale move to e-rulemaking would overwhelm agencies with high volume (and, often, duplicative or near duplicative) comments.

Thus, research attention was focused quite early on *ex post* issues of *comment management* and the development of tools to help agency rulewriters categorize and analyze comments -- as opposed to *ex ante* issues of *facilitating informed participation* and *comment enrichment*.

2. PROBLEMS WITH THE NEW INTERFACE

Ironically, given the announced “good government” goals of the E-Government Act, there is virtually no chance that the interface being constructed at www.regulations.gov will make regulatory government more transparent or accountable, and little chance that it will enable the public to participate in rulemaking more effectively.

Human-computer interaction (HCI) experts at Cornell asked to assess the interface rated it “absolutely horrific.” Fundamental design problems include: (i) the interface assumes the knowledge of a repeat player (e.g., lawyer) who knows how the regulatory process works, rather than providing information for lay persons new to the process; and (ii) it is built from the perspective of the underlying database “outward” and therefore violates the most basic tenets of webpage usability.

Moreover, legal educators and experts in legal informatics pointed out that no effort is being made to use technology proactively: (i) to educate users about the regulatory process; (ii) to provide meaningful assistance in locating the agency or proceeding relevant to the issue of interest to them; (iii) to understand the objectives, steps, and general context of the notice and comment rulemaking process; or (iv) to facilitate the submission of comments richer in substance and thus more useful to the agency. Indeed, elements of the current website design (such as the apparent limitation on comment size) might affirmatively hinder effective comment management by encouraging submission in forms more difficult to process.

3. OUR PROJECT

We believe that e-rulemaking does indeed have potential to increase both the transparency of, and participation in, regulatory policymaking. *However, this potential can be realized only if the public interface at www.regulations.gov is substantially redesigned.* The focus of redesign efforts should, at minimum, include:

- § better guidance in locating the relevant agency and/or proceeding
- § basic educational cues about the objectives and procedure of the rulemaking process
- § a Web presence grounded in an up-to-date, scientific understanding of web usability.

In addition, we wish to explore a variety of ideas on:

- \$ input formats that facilitate comment management and analysis by the agency – in particular, how much issue channeling is useful at the point of interface?
- \$ devices to encourage commentors who initially express “mere sentiment” to participate in more substantive (and therefore more useful) comments
- \$ methods to use existing comments to help potential commentors formulate more meaningful inputs – e.g., information on number/content of comments to date; threaded comment chains
- \$ methods to increase the transparency of the rulemaking process by providing appropriate post-submission feedback to commentors
- \$ the use of “best-practices” guides to assist e-rulewriters in creating proposed rules and putting them before the public in ways that are efficient and effective in the Web environment
- \$ exploration of legally and practically available incentives to “good” commenting.

4. OUR GOAL

Our aim is to produce a working interface of superior transparency and participatory potential that could be substituted for the current interface at www.regulations.gov, along with a Best Practices guide for agency e-rulewriters.

Working as closely as possible with relevant government officials, our design efforts will not only be based on existing HCI research and experience with legal informatics whenever possible, but also tested through laboratory and field simulation. We will collect both quantitative and ethnographic data on impact and functionality from both the public and the agency, thus grounding assessment of the effectiveness of the interface and providing a basis for continuous improvement.

We have a great deal of respect for the many agency officials who have worked hard over the years to make Web-based rulemaking a reality. By paying serious attention to the interface, it is possible both to facilitate current research efforts in comment management and to actually accomplish, to some modest degree, the goals of the E-Government Act.