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# Not by Technology Alone: The “Analog” Aspects of Online Public Engagement in Policymaking

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Not by Technology Alone:

The "Analog" Aspects of Online Public Engagement in Policymaking

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## Abstract

Between Twitter revolutions and Facebook elections, there is a growing belief that information and communication technologies are changing the way democracy is practiced. The discourse around e-government and online deliberation is frequently focused on technical solutions and based in the belief that if you build it correctly they will come. This paper departs from the literature on digital divide to examine barriers to online civic participation in policy deliberation. While most scholarship focuses on identifying and describing those barriers, this study offers an in-depth analysis of what it takes to address them using a particular case study. Based in the tradition of action research, this paper focuses on analysis of practices that evolved in Regulation Room - a research project of CeRI (Cornell eRulemaking Initiative) that works with federal government agencies in helping them engage public in complex policymaking processes. It draws a multidimensional picture of motivation, skill, and general political participation divides; or the “analog” aspects of the digital divide in online civic participation and policy deliberation.

Keywords: e-participation; e-rulemaking; digital divide; civic engagement; socio-technical systems.

## 1. Introduction

Between Twitter revolutions and Facebook elections, there is a growing belief that information and communication technologies are changing the way democracy is practiced. Some view the Internet as shifting the principles of political organization by making collective action cheaper and more easily available (Bimber, Stohl, & Flanagin, 2009; Shirky, 2008). Others allude to the “sunlight effect” of Internet technologies that can make political institutions and politicians more accountable to the public as their actions become more visible and information used for their decision-making is more easily accessible (Coleman, 2009; Schacter, 2009). Some note that adoption of information technologies by government institutions changes their character and their organizational arrangements (Fountain, 2009; Margetts, 2009). Yet others view the Internet as altering the polity itself by shifting power from the center of the communication network to its edges (Mueller, 2010) and by enabling a better informed (Hardy, Hall Jamieson, & Winneg, 2009; Reedy & Wells, 2009) and a more engaged public (Brundidge & Rice, 2009).

Among researchers of deliberative democracy, some suggest that the Internet allows for scaling of deliberative processes beyond small group face-to-face discussion to broad public participation (Gil de Zúñiga, Veenstra, Vraga, & Shah, 2010; Gimmler, 2001; Witschge, 2004). Others observe disparities in how different socioeconomic groups utilize the Internet for political purposes and suggest that the more powerful social strata are overall better positioned to engage (Min, 2010; Norris, 2001; Papacharissi, 2002). Along similarly critical lines, another view highlights the polarizing effect of online anonymous discussions (Witschge, 2004), while others, supported by the popular discourse about Web 2.0, suggest that when designed correctly,

technical solutions can leverage the affordances of the Internet to enable large scale public deliberation (Wright & Street, 2007).

Using the lens of scholarship about the digital divide, this paper explains how various aspects of online civic deliberation are addressed through design decisions with deliberate care and focused attention on the needs of users who are unfamiliar with the complex process in which they are operating, unsure of every step they are taking, and often skeptical that the value of their participation is worth the effort they put into it. This analysis offers insights into comprehensive thinking about online deliberation and raises important questions to consider in future efforts in e-government. We will delve into what it actually takes to turn Internet technology into a meaningful deliberative tool in the context of civic engagement in policymaking, analyzing Regulation Room, an interdisciplinary research project of CeRI (the Cornell University eRulemaking Initiative) that offers an online public participation platform for interested individuals to learn about and provide input on complex government policy discussions. Over the last three years, it has featured five proposed federal agency rulemakings. Regulation Room's target audience has been those whose voices are traditionally missing in the rulemaking process.

## 2. Civic Participation and the Digital Divide

Disparities in access and ability to use the Internet are typically referred to as the “digital divide.” Originally rooted in a dichotomous notion of information “haves” vs. “have-nots,” the concept of the digital divide has been used to analyze information technology-related inequalities within and between countries and regions (Epstein, 2011). When translated into policy, this dichotomous thinking often takes the form of fundamental technocratic optimism with an action focus on physical access to technology. Thus, early policy responses to the digital divide were focused on providing computers and Internet connection to the have-nots, with the implied notion that once available, the technology would be put to positive and productive uses spurring political, economic, and social progress (Epstein, Nisbet, & Gillespie, 2011). More recently, emphasis has shifted to the quality of the connection, as the policy focus has become expanding broadband access (Kruger and Gilroy, 2012).

Over the years, the discourse about the digital divide has expanded beyond “first-level” divide issues, which focused on access to technology and the associated socio-demographic causes, to include factors such as motivation and Internet skills (Min, 2010). This focus on the “second-level” divide brought the technocratic view of information technology and the causal relationship between adoption of technology and social outcomes under increasing scrutiny. Some scholars have suggested that the digital divide should be understood as a series of divides (Barzilai-Nahon, 2006; Meredyth & Thomas, 2002) or inequalities (DiMaggio, Hargittai, Celeste, & Shafer, 2004), while others prefer viewing it as a continuum (Warschauer, 2002, 2003) or spectrum (Lenhart & Horrigan, 2003). Some also challenged the attention to access as determinist, utopian, and naïve, warning that the evident demographic disparities have to do with more than just the presence or absence of the technology, and do not simply disappear as

information and communication technologies (ICTs) become more ubiquitous (Gunkel, 2003; van Dijk, 2006). Others have attempted to link the digital divide to the larger forces that perpetuate resource disparities: some see the digital divide as an element of political and economic development (Norris, 2001; Pohjola, 2001; Warschauer, 2003), while others see it as a product of cultural imperialism (Chomsky, 2004), Westernization (Schiller, 1992), or an emerging power bloc within the information industry (Chomsky, 2004; Schiller, 1992).

Specifically in the area of civic engagement in political processes and e-government, dichotomous digital divide thinking of information “haves” vs. “have-nots” lent itself to the “if you build it, they will come” mindset primarily among policymakers (e.g. Chen & Dimitrova, 2006). In other words, given the right technological tools, members of the public will engage in political processes, and they will do so in a meaningful way (Macintosh, 2004; Reddick, 2005). A recent report by the Pew Internet and American Life Project, for example, suggests that 73% of adult Internet users in the US (representing 53% of all US adults) could be described as “online political users in 2010.” Yet most of the “political” use of the Internet described in the report is consuming political news, whether from online outlets, campaign websites, or online social interactions (Smith, 2011).

While an informed public is an important component in a democratic society, consuming information does not necessarily translate to people effectively engaging or interacting with the government online. An earlier Pew report (see Smith, 2010) suggested that accessing government information is the most common “interaction” of US citizens with their government online, followed by consuming government services (such as renewing a driver’s license or auto registration). The report found that only 23% of Internet users “participate in the online debate around government policies or issues, with much of this discussion occurring outside of official

government channels” (p. 2-3). Although this proportion is not negligible, the report suggests that there is still a divide to bridge in terms of civic online engagement, a divide that also mirrors the socioeconomic disparities. For example, it states that “participants tend to be somewhat more educated and affluent than the online population as a whole” (p.32); moreover, the group of citizens engaged online “is more heavily composed of whites” compared to other racial groups (p.33). In other words, the digital divide can be viewed as amplifying the dynamics where the powerful are becoming more powerful and the politically weak are becoming weaker.

Avoiding online tools that enable meaningful and productive engagement of the public in policymaking processes is not a trivial undertaking. Simply giving people interactive technology, when they know how to operate it, does not necessarily result in effective engagement. For example, soon after the election of Barak Obama, whose campaign was praised for its use of information technology, his transition team launched a series of initiatives aimed to engage the public in policy processes using the Internet (White, 2008). The results of these initiatives were mixed. For example, in the *Citizen’s Briefing Book*, legalization of marijuana was voted as the top topic to be included in the new administration’s agenda (Johnson, 2009), but this stand was not taken seriously by the powers that be. The transition team did not achieve the kind of participation they hoped for about issues the incoming Administration perceived as important—such as healthcare and unemployment—while members of the public who did participate felt their voices have not been heard.

Similar disappointments occurred in other online experiments of the transition team and later the administration, as well as in other contexts and countries (e.g. Chen & Dimitrova, 2006; Tomkova, 2009). These discrepancies between the democratic promise of the Internet and the mixed results on the ground suggest that a more nuanced story about the digital divide and online



civic engagement needs to be constructed. van Dijk (2005), for example, speaks about the digital divide as an assembly of different kinds of accesses, each shaping and at the same time being shaped by the other. Specifically, he identifies motivational access, material access, skills access, and usage access—all positioned within social, political and economic context, and continuously interacting with the characteristics of technology.

Traditionally, the digital divide has been addressed in terms of material access; this is the perception behind the “build it and they will come” approach to online civic engagement. Yet, other kinds of access play out in important and unique ways when considered in the context of citizens’ engagement with the government. For example, van Dijk explains *motivational access* as a function of the psychological processes or social context that supports adoption of new technology. He emphasizes the centrality of a consciously recognized need for the technology, as well as a potential conflict between the moral and the cultural values of the users and perceived dangers of the new medium. In the specific context of civic engagement, motivational access requires the motivation not only to use technology but also to use technology to engage in meaningful political discourse online; each one of these motivations can enhance or limit the other.

DiMaggio et al. (2004) emphasize the centrality of *skills* in adoption of new technology (see also Hargittai, 2002). Their research allows us to picture adoption of socio-technical practices as sort of a Maslow pyramid at the bottom of which is physical access to technology, further up is the basic ability to use the technology primarily for recreational purposes, and at the top is the advanced ability to use the technology for capital enhancing activities. DiMaggio et al. allude to the reflection of social disparities in the digital divide when viewed through the lens of skills. Thus, they demonstrate that those belonging to higher socio-economic strata are more

likely to engage in capital enhancing activities, compared to those belonging to the lower socio-economic strata. The Pew report mentioned above (see Smith, 2011) suggests that similar tendencies can be observed in online civic engagement, where those in positions of social strength are more likely to engage in activities influencing policymaking processes as opposed to merely using government services online or consuming government information. In other words, the digital divide lens may suggest that technology amplifies already existing discrepancies in power. The way online content is often organized further enhances those processes as graphic design often takes priority over usability, thus requiring additional skills and cognitive abilities from the user to ensure meaningful engagement (Berry, 2000; Oviatt, 2006).

Norris (2001) refers specifically to the link between *understanding political processes*, democracy, and the digital divide. She emphasizes the role of social structures in mediating political activity and of information technology as a mechanism that can reify or challenge those structures. Groups that are traditionally marginalized in political discourse are more likely to be marginalized in the online political discourse as well; the power relations of the offline world are typically transferred online as well. Specifically for online civic engagement with policymaking processes, a lack of understanding of those processes and their “rules of engagement” can be a significant barrier to broad public participation. Lack of knowledge about the appropriate nature and forum means of participation in the policymaking activities adds another layer to the technology-based divide.

In sum, the notion of the digital divide has evolved as a function of changes in technical, social, economic, and political conditions as well as our understanding of the phenomenon. Most notably, one can trace a change from a simplified dichotomous view of the digital divide as an issue of physical access into a more nuanced view that takes into account skills and context of

technology adoption (Epstein, 2011). In the US, where physical access is less of an acute problem compared to other parts of the world, we need this more expansive view of what constitutes the divide in the context of online civic engagement, including one that accounts for all aspects of the divide: motivation, skills, and broader understanding of political processes. Previous studies have identified a gap in online political participation that can be explained through constructs such as skills and motivation and there is now a need to better understand the dynamics of this gap and the efforts to mitigate it.

### 3. CeRI and Regulation Room

CeRI (Cornell e-Rulemaking Initiative) is a multidisciplinary group of researchers from communications, computing, conflict resolution, information science, and law who work in active partnership with the U.S. Department of Transportation (DOT) and other federal agencies. The project's core is an experimental online public participation platform, Regulation Room, which offers selected live rulemakings and other policy discussions. Research on Regulation Room is motivated by the belief that broad public participation in deliberative democratic processes, such as rulemaking and similar kinds of complex government policymaking, is beneficial for stronger democracy.

On the surface, the rulemaking process appears to be a prime opportunity for widespread direct public participation in government policymaking. In reality, however, it is dominated by large industry actors whose lawyers compose complex and sophisticated comments. Few Americans have ever heard of rulemaking; fewer still have ever lent their voice to the process, particularly in a way that is helpful for the agency (Coglianese, 2006; Kerwin, 2003; Lubbers, 2006). Of those who have, they often participate in mass comment campaigns orchestrated by advocacy groups that can generate tens or hundreds of thousands of submissions by new

rulemaking participants but, such comments typically are neither factually informative nor reliable indicators of citizens' informed value preferences (Arenstein, 2012; Farina, Newhart, & Heidt, 2011; Shulman, 2009). The Internet is believed to mitigate some of these barriers by making the relevant information and the rulemaking process itself more accessible; this is the goal of initiatives such as the Regulations.gov website. Yet introduction of information technology into an a priori complex environment can be a double edged sword. The citizens who are most affected by the regulation very well may be members of those demographic groups who often experience the digital divide, and so lack the access, skills, or confidence to jump into the deep end of rulemaking participation online.

The “build it and they will come” approach does not necessarily work in this case, because the barriers to participation are only partially technological (although technology can help addressing them). In fact, the technical and the non-technical barriers to participation may reinforce each other: Even when the technology is at hand, effective participation in this process is not entirely straightforward, nor is it easily comparable to other government processes that most individuals are already familiar with (e.g. receiving government services online).

Over the last three years, CeRI has completed five live rulemakings on Regulation Room, four rules with DOT and one with the Consumer Financial Protection Bureau (CFPB). The idea was not to replace traditional commenting mechanisms, but to focus on when and how additional technical solution or online engagement techniques should be deployed. The first rule was on texting by commercial motor vehicle drivers (the “texting rule”), then airline passenger rights (the “APR rule”), required use of electronic on-board recorders in commercial motor vehicles (the “EOBR rule”), accessibility standards for airport ticketing kiosks and airline websites (the “Accessibility rule”), and lastly rules for home mortgage servicers that would provide increased

consumer protection (the “Home Mortgage” rule). The number of visitors to the site for each rule varied greatly, from a low of 1,999 visitors for the texting rule to a high of 24,441 visitors for the APR rule.<sup>1</sup> The vast majority of individuals who contributed a comment on Regulation Room (64%–98% depending on rule) indicated they had never before participated in federal rulemaking.

The design and operating protocols of Regulation Room are premised on a particular understanding of what “the people” can add to rulemaking—i.e., information about impacts, ambiguities and gaps, enforceability, contributory causes, unintended consequences, etc. that is known by participants because of their lived experience in the complex reality into which the proposed regulation would be introduced (Farina et al., 2012). This “situated knowledge” is first-hand knowledge that the agency may not possess, and that organizations purporting to represent these commenters may not reveal at all, or do not convey in sufficient detail. The Regulation Room project team therefore focused on increasing participation by individuals and small private or public entities who would be directly affected (either being regulated by or benefiting from the agency’s proposal) but who, based on historical participation patterns, are unlikely to engage in the conventional comment process. In the EOBR rule, for example, these included individual commercial motor vehicle (“CMV”) drivers and small business owners (who comprise more than ninety-nine percent of firms in the industry.) In the Accessibility rule, they targeted travelers with disabilities, their families and friends, and web accessibility practitioners.

The initial working hypothesis for Regulation Room was that individuals and small entities do not participate because they: (1) are unaware of rulemakings that would affect them; (2) are unfamiliar with how to participate effectively in the process; and (3) would be

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<sup>1</sup> There are a number of reasons for the variations in the number of visitors. For instance, whereas the notice and comment period for the texting rule was only 30 days, it was 110 days for the airline passenger rights rule. Additional details are available in project publications.

overwhelmed by the volume and complexity of rulemaking materials. Therefore, communications outreach strategies were developed to alert and engage them, and methods of presenting rulemaking information clearly and concisely. Human moderators, trained in techniques of group facilitation and following a research-informed moderation protocol, were available to answer questions, point commenters to information, and mentor them in effective commenting practices. With these strategies, it was believed that Regulation Room could engage rulemaking newcomers in the process successfully, inculcating them with the norms of effective participation to a sufficient degree that they could provide information perceived as useful by agency decisionmakers (Farina, Epstein, Heidt, & Newhart, 2012; Farina et al., 2011) .

#### 4. Regulation Room through the Digital Divide Lens

The Regulation Room project attempts to engage individuals in a highly complex policymaking process that most of them have never heard of, much less participated in, by developing a technological platform and practices for its effective use. At every stage, the project must address a different aspect of the digital divide in online civic participation, starting with issues of motivation, continuing to an assortment of skills-related challenges, and ending with the political participation divide.

##### *4.1 Motivation Divide*

Getting new participants into rulemaking poses two distinct challenges: first, newcomers to the process must be made aware that a rulemaking is going on and that they have a right to participate and second, they must be convinced of why they should bother. As van Dijk describes, the first phase of access is a preliminary condition of all other phases. The *motivation* of potential users to adopt, acquire, learn and use these technologies cannot be taken for granted. Even if an individual has the sufficient material resources they must have time and for some

participants, time can be the most important resource that is scarce (van Dijk 2005). To have the motivation there must be a tangible benefit for individuals to invest their time and efforts in commenting on a proposed rule. Contrary to the “build it and they will come” approach, making the rulemaking documents available and allowing for submission of comments online does not inevitably generate broader public participation.

To address the motivational divide, project team use *awareness* strategies. The rulemakings hosted on Regulation Room were carefully selected because they directly affected individuals or groups unlikely to meaningfully engage in the conventional process. To create awareness of a particular rulemaking among these interested stakeholders, they employed an outreach plan that used a mix of both offline and online activities. In addition to expanding the number of individuals that could be informed of the opportunity, integrating offline activities into the awareness strategy takes into account existing disparities in access and ability to use the Internet.

Once a rulemaking was selected by the Regulation Room project team, the process of remediating public unawareness began weeks before the rules were available for comment. A communication outreach plan was developed for each rulemaking by first defining, with input from their agency partners, the kinds of stakeholders they wanted to alert. For example, in the Home Mortgage rule their agency partners at CFPB stressed a desire to hear from consumers who had experienced difficulties with their home mortgage and small mortgage servicers. Both, because these were stakeholders groups they had not heard from in past rulemakings and because comments from small servicers were needed to determine appropriate exemptions or adjustments to the proposal. Of the 140 individuals who registered on Regulation Room during the time the

Home Mortgage rule was open, 69 (66%) identified themselves as consumers and 17 (19%) said they provided mortgage services in their local community.<sup>2</sup>

They then discovered where, and how, these target groups get information by identifying membership associations, recreational and trade publications, and influential individuals such as bloggers. Outreach was then done through email, phone, and online communications.

Additionally, press coverage was coordinated with their agency partner's communications office. They worked together to persuade conventional and online media outlets to publicize the rulemakings and the availability of Regulation Room. For example, during the EOBR rule, a member of the Regulation Room team did an interview with a truck driver's station on satellite radio and the team contacted special-interest print publications, such as Land Line Magazine.

For each rulemaking, the project team developed lists of keywords and phrases for use on social media for use (1) *proactively* in daily tweeting and Facebook posting, and (2) *reactively* by setting up continuous automated searches and responding with comments or tweets when the rule or its subjects appears on news sites, blogs, Twitter, and Facebook and Google ads.

Regulation Room has a presence on Facebook, and the site itself is designed to encourage users to "share" both issue posts and individual comments. Leveraging the affordances of these media, the project encouraged participation through the sharing of its content, which is a low cost activity. Over time, targeting those members of potentially affected communities who were already on the more sophisticated end of the spectrum in terms Internet access and skills, but often lacked the motivation to use the web as a tool for government participation, appear to have

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<sup>2</sup> When a user first makes a comment or endorses a comment on Regulation Room they are asked to identify their interest in the rule. The interest question is amended for each rule, based on the stakeholder groups identified as target participants. Additional information on the Home Mortgage Rule can be found on RegulationRoom.org. Including a glossary definition of a small servicer, defined as "a company that services no more than 1,000 mortgages, all of which it or an affiliate owns or originated" and a detailed analysis of all 144 participants "interest" in the Rule.



been successful, particularly in the EOBR rule, where two of the top sources of referral traffic to the site were Facebook and Twitter.<sup>3</sup> DiMaggio and van Dijk both observe that one of the greatest predictors of whether an individual will have Internet access and skills and will use them for “capital-enhancing” purposes is whether or not the individual’s friends, relatives, and coworkers have adopted similar uses of the Internet (DiMaggio, 2004; van Dijk, 2005). In their rulemaking outreach strategies, the project team used social media to increase motivational access by reaching out directly to members of potentially affected communities who were already part of an Internet community and by encouraging those individuals to share the information with other members of their stakeholder. The project team believed that using a mix of both offline and online activities to encourage those who had not yet engaged in civic participant online is an important element of developing an e-government culture.<sup>4</sup>

An array of concerns that are external to the rulemaking process constitutes another layer of complexity in addressing the motivation divide. While members of the public are accustomed to consuming public goods and official government information, engaging in a direct dialogue with a federal government agency is a relatively rare practice. People project their prior experiences of interacting with the government agencies, as well as their prejudices and hesitations regarding the policymaking process. To address potential fears, Regulation Room users could remain anonymous. While registration is required before users can leave comments, they do not have to provide a real name to register. The only identifying information that is

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<sup>3</sup> Other top sources of traffic were search engines (Google, Yahoo, and Bing), the website of the Digress-It plug-in used on the site, Cornell University site, and the DOT website. The most common way people got to the site was by typing the URL into the address bar.

<sup>4</sup> In survey results, users reported that they shared information about Regulation Room with others through a variety of means, including email, on a webpage, on Twitter and Facebook, and by making an announcement at a conference. At this point, there is no way to definitively determine whether adoption of participation in rulemaking via Regulation Room sufficiently permeated the relevant stakeholder networks to reach the “tipping point” at which it becomes so common that members of the network feel they are missing something if they are not using it. Nonetheless, Regulation Room’s increasing successes at inducing participants to tell others in their communities about the site is certainly a positive sign.

required before users comment is collected from two survey questions: whether the user has ever participated in a federal agency rulemaking, and what their interest is in the particular rule. This data was collected so that Regulation Room could report to the agencies the different stakeholder groups represented on the site, and what members of those groups had to say about the rule. Beyond identifying a user as a member of a broad stakeholder group, however, no further demographic or identifying data was collected. In their comments, of course, some users did choose to reveal more about their personal experiences and identity in order to explain where their knowledge about the agency proposal comes from.

Especially for those users who suffer from what van Dijk (2005) calls a lack of motivation due to concerns about Internet use, this anonymity offers an increased level of reassurance that user data is not collected and shared with others. Because van Dijk asserts that intermittent Internet users feel they have a more insecure position in society and that Internet dropouts feel they have less control over their lives, the protection from secondary negative consequences that anonymity provides may be particularly helpful for these users that have otherwise relatively limited access. They will not feel the increased risk of their employer discovering that they have been participating in a rulemaking that will affect the industry they work in, for example.

For users who are unaccustomed to online interaction with government or online participation in government processes, and especially for those users who have avoided government interactions online due to privacy concerns, Regulation Room's offer of anonymity is particularly attractive. In the government-run notice and comment process, agencies may choose whether or not to accept anonymous comments. Thus, while Regulations.gov users may choose to leave their comments anonymously, there is no guarantee that the government will

read their comments and take them into account when formulating the final rule. On Regulation Room, however, users could retain total anonymity, and their comments were still included in the official summary sent to the agency (Regulation Room identifies itself as the entity submitting the comments, so its comments are not considered anonymous by the agency.) Regulation Room offers those users who may be more uneasy about government participation online a “safe” environment in which they can do so without worries about the government discovering their identity.

#### 4.2 Access Divide

Online skills, the ability to use the computer and the Internet to efficiently and effectively find information, have long been recognized as an important factor in people’s ability to utilize web-based opportunities for their social, political, and financial capital enhancing activities (DiMaggio et al., 2004 & Hargittai, 2002 ). Those who are more adept online are more likely to engage the government, beyond pure consumption of its services and information (Smith, 2010). Yet, for such a specific and well-defined activity as commenting on a proposed rulemaking, being adept online may not be enough. van Dijk (2005, 2006) proposed a succession of three types of user skills that have to be developed: operational, information, and strategic. First, a user must develop operational skills, the basic ability to work with the hardware and software; then s(he) has to develop information skills, the ability to search, select, and process information found online; and, lastly, strategic skills, the ability to use information technologies as the means to achieve particular goals. For a user to have made an effective comment on one of the five rules hosted on Regulation Room, they must have the operational skills required to use the functionality of the site, the information skills required to know how to interact with a social, content-oriented platform, and the strategic skills to know how to structure a comment that

would impact the policymakers' decision. The project team addressed these access divide skill issues with explicit efforts that lowered the operational skills threshold and developed practices that enhance users' informational and strategic skills.

To improve the operational usability of the site, the project team worked to make the core functionality explicit by adding explanations in places where it may have seemed redundant to experienced user, but was important to lowering the skill barrier for novices. For instance, based on a feedback from users who did not know how to comment, text was added in the comment box that says, "Click here to comment," wording of the button under the comment box was changed from "Submit" to "Submit comment," and the color contrast was made stronger. Moreover, the team added a "How do I comment?" link underneath the comment box that, when clicked, opened a video explaining how to comment.

The Regulation Room platform attempts to strike a balance between broad inclusiveness and informed understanding, while providing the kind of support needed to enable a wide range of citizens to engage effectively in proposed rules that affect them. This focus on increasing opportunity to participate, rather than participation, defines the design choices on Regulation Room. For example, visitors during the five rules hosted on the site, did not have the ability to vote, rank or rate the proposals or other's comments. These mechanisms that enable users to curate content (e.g., star ratings; sliding scales; thumbs up/down; rating-determined content ranking) are popular forms of simple, low-effort engagement. But when government policymakers seek public comment on complex policy issues the parameters of "relevant" discussion are set by legal, institutional, budgetary and/or political factors external to the user community. Comments that are off-topic, as measured by these parameters, will be ignored – regardless of what participants think the agenda for discussion should be. Similarly, in

rulemaking the official decisionmaking process is not majoritarian. One comment that is supported by credible facts, reasonable arguments, and thoughtful acknowledgement of competing values and interests has a far greater value than multiple comments that express sentiment or preferences only.

Informed and strategic participation requires information. In the federal rulemaking context the problem not lack of information per se, but that the volume and the linguistic, technical and legal complexity of the notice of proposed rulemaking (NPRM) and other documents supplied by the agency to explain its proposal vastly exceeds what many would-be participants can or will read and comprehend. To improve the information skill required to interact effectively with Regulation Room and make informed comments, a number of technical and procedural solutions were employed.

For each of the five rulemakings, a number of information re-packaging strategies were used to create a series of “issue posts” that present the important aspects of the proposed rules in relatively manageable segments and fairly plain language. The project team conducted “information triage” by identifying and foregrounding the information in the specific policy context most likely to be needed by participants. This information was then packaged into thematic segments of manageable length. Participants with desire to learn more could get to the original, more complex NPRM text and regulatory analysis, while those who want more help could get it through a glossary of unfamiliar terms and acronyms and separate pages that explain the regulatory background. For example, the Home Mortgage rule featured 10 issue posts, each broken into several sub topics. From those issue posts, participants could link directly to the relevant text in the two NPRMS (each several hundred pages long). Through information layering, all content in the primary agency documents were available on Regulation Room.

However, they were structured to give participants control, in a form less likely to overwhelm novices or to distract the more knowledgeable user. As a key element in fostering a site culture of deliberative participation, the Regulation Room design required participants to attach their comments to a specific section of the issue post. Each section contains information about a single idea or cluster of ideas. The targeted commenting application used, Digress.it, placed the comment stream alongside the post text, with page width being divided roughly equally between the two.

Educational materials on the site included “Learn More” pages that used graphics and simple language to explain the rulemaking process and effective commenting. Users could also watch a short video explaining rulemaking. However, consistent with general website use patterns, those educational aids were only used sporadically. (Farina et al. 2011b) The principal strategy for increasing rulemaking “participation literacy” on Regulation Room was tacit rather than overt: human moderators who mentored effective commenting using facilitative moderation. Law students in an e-government clinic that were trained in the conflict resolution techniques of content- and process-based group facilitation (Kaner 2007), moderated asynchronously under the supervision of senior researchers. Moderators helped users manage the large informational load of the rulemakings by providing substantive information about the proposed rules, correcting misstatements or clarifying what the agency was looking for and pointing users to relevant information. They also mentored effective commenting by asking the commenter to provide more elaboration and/or clarification, asking for factual details or data, asking them to consider possible solutions or alternative approaches, and pointing out the characteristics of effective commenting.

#### 4.3. Democratic Divide

While motivation and online skills are factors associated with the second-level digital divide, the democratic divide is an illustration of it (Min, 2010). In describing the democratic divide, Norris (2001), emphasized that the Internet probably has the least impact on changing the motivational basis for political action, “digital politics functions mainly to engage the engaged.” The project team’s first initial working hypothesis focused on mediating motivation and access issues for would be participants in the five rulemakings. By using their communication outreach strategies, methods of information presentation, and human facilitative moderation they were trying to “engage the unengaged” by bringing rulemaking newcomers to Regulation Room and inculcating them with the norms of effective participation to a sufficient degree that they could provide information perceived as useful by agency decisionmakers (Farina, Miller, et al., 2011).

To some extent, they succeeded as the vast majority of commenters (up to 98% in one rulemaking) said they had never before participated in federal rulemaking. Yet, gradually they recognized that their efforts to mentor effective commenting reflected the perspective of those *within* the community of policymaking practice. Regulation Room participants rarely provided legally or technically sophisticated arguments or detailed empirical evidence or statistical analysis. Still, both the information presentation strategies and moderation protocols assumed that participants must (and could) engage in explicit reason-giving and adequate substantiation of factual claims in order to participate effectively (Epstein, Heidt, Farina, 2012). This realization reflects Barzilai-Hanon’s (2006) argument that networks and associated technologies are not neutral artifacts but are political and social spaces in their structure as well as in their content

level. Regulation Room was unintentionally reflecting the expectations of rulemaking “insiders.”<sup>5</sup>

Two aspects of the rulemaking community of practice could operate to discourage and marginalize contributions of rulemaking newcomers: (1) the type of evidence and claim substantiation that is valued, and (2) the form of argumentation that is privileged. Rulemaking, as it has been legally constructed, emphasizes empirical “objective” evidence in the form of quantitative data and premise-argument-conclusion analytical reasoning. By contrast, novice commenters in Regulation Room tended to offer highly contextualized, experiential information, often communicated in the form of personal stories, what the project team refers to as “situated knowledge” (Farina, et. al. 2012). The comments of Regulation Room participants challenged the project team to recognize their uncritical acceptance of the “insider” paradigm of the nature and form of legitimate participation. When we asked for reasons and for factual support, commenters persisted in telling stories. Instead of hypothetical examples, they offered first-person narratives. Instead of logic-based reasoning from abstract principles, they supported their positions with highly contextualized argument from their own experience. This finding should not have been surprising, because the prevalence and role of storytelling in public discourse has been studied in a variety of contexts. Sociologists, communications theorists, conflict resolution specialists, and researchers in policy studies and public administration have noted the marked tendency of “lay” members of the public to engage policy issues from the vantage point of personal experience and to use narratives to express what they know (Black, 2009). The project team’s experience makes the case for an expanded understanding of the kinds of comments that have value in rulemaking. Situated knowledge of rulemaking newcomers can supplement the

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<sup>5</sup> Rulemaking “insiders” refers to agency and other executive branch staff involved in writing and reviewing new regulations; trade associations, and national advocacy groups who routinely take part in the process, and reviewing courts.



expertise of rulemaking insiders and in fact, the narrative form may be particularly well suited to conveying situated knowledge that is of value to agency policymakers. To reduce the democratic divide, a more capacious view of the kinds of comments that “count” in a rulemaking is required. Agencies will have to evaluate and appropriately use the experiential, situated knowledge of new rulemaking participants.

## 5. Conclusion

Producing a successful mechanism for online public participation in government decision-making is complex and resource-intensive. Adding the “e” to the processes of government and civic participation requires taking an expansive look at the digital divide and deliberative processes. It goes far beyond creating “a simple discussion forum,” as a former senior White House official once (incorrectly) described Regulation Room or simply designing the right tool. It requires adjusting the process and allocating resources to non-technological activities that contextualize online political deliberation.

The case of the Regulation Room illustrates that contrary to the commonly held belief of technological innovation reducing the costs of enabling civic participation, the actual costs may lie outside of the technical domain. In other words, while information and communication technology is indeed an enabling tool and in the context of e-government it is a necessary one, it is not sufficient to ensure effective public participation. Specifically the Regulation Room case highlights the importance and the “costs” of addressing the motivation for online civic engagement by increasing awareness and process transparency, lowering the skill barrier when it comes not only to the technical skills, but also to the process of participation in the bureaucracy, as well as addressing contextual factors that lie completely outside of the technological realm when it comes to the policy language barrier and addressing various concerns members of the

public may have based on their perceptions and previous experiences of interacting with the government.

All the factors discussed in this paper are inherently interrelated. Some of them are indeed technical and are focused primarily on design decisions and iterative approach to developing technological platforms for public participation. The majority of the factors, however, lie outside of the technological domain. The challenges of motivating the public, addressing its fears of complex bureaucratic processes, overcoming their mistrust and skepticism of the system, and educating them about the particular format of policy debate all belong to the analog world of process planning, outreach, and education. The social and physiological factors impacting civic participation require attention of the policymaker and further research from the academic community. While the mainstream debate about online deliberation and civic participation is focused primarily on technological solutions, the nuanced lens of the digital divide illuminates the non-technical aspects of non-participation.

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