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ARTICLE

A Truly “Top Task”: Rulemaking and Its Accessibility on Agency Websites

by Cary Coglianese

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One of the most significant powers exercised by federal agencies in the United States is their power to make rules. These regulations bind millions of individuals and businesses, imposing substantial compliance costs in an attempt to advance important societal goals. The nation’s economic prosperity, public health, and security are significantly affected by rules issued by administrative agencies. Given the substantive importance of agency rulemaking, the process by which agencies develop regulations has long been subject to procedural requirements aiming to advance democratic values of openness and public participation. The Administrative Procedure Act of 1946 (APA), for example, mandates that agencies provide members of the public with notice of proposed rules and allow them an opportunity to comment on these proposals before they take final effect.¹ Since 1966, the Freedom of Information Act (FOIA) has established the public’s right to access certain information held by the government.² Similarly, court decisions reviewing agency rules have tended to reinforce the principles of openness and public participation in the rulemaking process.³

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1. 5 U.S.C. §553 (2006).
2. Freedom of Information Act of 1966, Pub. L. No. 88-554, 80 Stat. 383 (codified as amended at 5 U.S.C. §552 (2006)).
3. See, e.g., *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins.*, 463 U.S. 29, 48 (1983); *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 419 (1971); *Sierra Club v. Costle*, 657 F.2d 298, 400-01 (D.C. Cir. 1981).

With the advent of the digital age, government agencies have encountered new opportunities and challenges in putting these longstanding principles into practice. The development of the Internet has resulted in special efforts to elicit public participation in the rulemaking process via electronic communication and to expand the availability of rulemaking information. The most dominant method of increasing governmental transparency has been to provide extensive information on each agency’s website. Just as the website has increasingly become the face of retail business, it has increasingly become the government’s “front door” to the public.⁴ Accordingly, public officials and scholars have increasingly recognized government websites as an important location for public access and participation in the governmental process. However, despite a growing body of research on agency websites, researchers have so far ignored agency websites as a method of public contact over rulemaking.

In this article, I report results from two systematic surveys conducted on regulatory agencies’ websites which reveal how much more agencies could do to improve public access to rulemaking. Agencies commonly succumb to pressures to organize their websites around their “top tasks”⁵—but, regrettably, they too often define these key tasks in terms of the volume of user demand for information and functionality. Although such an emphasis on user demand makes sense in other settings and for other purposes, rulemaking is entirely different. The profound power agencies wield in a democracy makes rulemaking a

4. Telephone Interview with Rachel Flagg, Co-Chair, Federal Web Managers Council (July 1, 2011).
5. As part of the federal government’s strategy for overhauling agencies’ websites, each agency has been required to provide an inventory of its domain names and other information about its sites, including a listing of each site’s “top tasks.” See Kasie Coccaro, *What You Missed: Live Chat on Improving Federal Websites*, WHITE HOUSE (July 13, 2011), <http://www.whitehouse.gov/blog/2011/07/13/what-you-missed-live-chat-improving-federal-websites> (video feed starting at about 12:00) (statement by Sheila Campbell, General Services Administration’s Director of the Center for Excellence in Digital Government); see also FED. WEB MANAGERS COUNCIL, <http://www.howto.gov/communities/federal-web-managers-council> (describing the Council’s membership as including agencies “that deliver top citizen tasks” and its goals as including assisting the public in completing “their most critical tasks online”). A mindset that emphasized top tasks was also apparent in responses from among the more than 15 interviews with agency managers from 10 different agencies conducted as part of the research for this article.

substantively top task no matter what the relative volume of user demand. Regulatory agencies can and should do more to improve public access to the regulatory process by treating rulemaking as a truly top task.

I. Agency Rulemaking on the Web

In 2003, the federal government rolled out a centralized, web-based portal for rulemaking information known as Regulations.gov. This web portal was envisioned both as a one-stop shop for information about rulemaking across the entire federal government as well as a central site for submitting public comments. Two years later, Regulations.gov came to be supported by a new electronic Federal Docket Management System that was designed to house rulemaking information in one central online location, bringing together material that had been kept in disparate paper and electronic dockets scattered across the federal government. By 2008, more than 170 different rulemaking entities in 15 Cabinet Departments and some independent regulatory commissions were using a common database for rulemaking documents, a universal docket management interface, and a single public website for viewing proposed rules and accepting online comments. Regulations.gov has been modified considerably over the years, and the site's functionality has markedly improved over its initial design.

Regulations.gov has garnered considerable attention from academic observers as well as governmental practitioners. Although Regulations.gov has received many plaudits,⁶ it has been subjected to its share of criticism too. Some observers, for example, have faulted the completeness of the information Regulations.gov purports to contain, the usability of its search function, and the overall complexity of its design.⁷ Agency officials, governmental auditors, and independent expert panels have scrutinized Regulations.gov, offering numerous recommendations for improving its management, functionality, and design.⁸ Although Regulations.gov's functionality has improved

markedly in response to these suggestions, it remains only part of regulatory agencies' public outreach on the World-wide Web, and perhaps only a small part at that. After all, members of the public still can be expected to go to an agency's "front door" when looking for information about new rulemakings and seeking to comment on them.

A few individual regulatory agencies have constructed new websites specifically to support public access to and participation in their rulemaking proceedings. For example, the Environmental Protection Agency (EPA) has created a website that the agency initially called its "Rulemaking Gateway" but now calls a "Regulatory Development and Retrospective Review Tracker"—or "Reg DaRRT" for short. As the agency has described it, Reg DaRRT "provides information to the public on the status of the EPA's priority rulemakings and retrospective reviews of existing regulations."⁹ Priority rulemakings appear on Reg DaRRT soon after the EPA's Regulatory Policy Officer approves their commencement, typically appearing online well in advance of the appearance of any notice of the rulemaking in the semiannual regulatory agenda or in the *Federal Register*.¹⁰ Reg DaRRT enables the public to track priority rulemakings from the earliest pre-proposal stage through to completion.¹¹ To facilitate commenting, Reg DaRRT provides users with instructions on how to comment on a regulation via Regulations.gov.¹² Users may view all Reg DaRRT rules in one list or may sort through them by their phase in the rulemaking process or by other criteria.¹³ In response to Executive Order 13563,¹⁴ Reg DaRRT also allows users to view the EPA's retrospective reviews of current regulations.¹⁵

How common are websites like Reg DaRRT? When I conducted a study a few years ago for the Administrative Conference of the United States (ACUS), I could find only one other agency—the Commodities Futures Trading

6. A page on the Regulations.gov website lists its awards. *About Us: Awards and Recognition*, REGULATIONS.GOV, <http://www.regulations.gov/#!aboutAwards> (last visited July 13, 2011). Additionally, the General Services Administration and the Federal Web Managers Council have listed Regulations.gov as an example of a "best practice" in a governmental website for its effort to consolidate regulatory information and reduce duplication across agencies. See *Agency Examples*, HOWTO.GOV, <http://www.howto.gov/web-content/requirements-and-best-practices/agency-examples> (last visited June 16, 2011).

7. For a summary of such complaints, see Cynthia R. Farina et al., *Rulemaking 2.0*, 65 U. MIAAMI L. REV. 395, 403-04 (2011).

8. Jeffrey S. Lubbers, *A Survey of Federal Agency Rulemakers' Attitudes About E-Rulemaking*, 62 ADMIN. L. REV. 451 (2010); Cary Coglianese, Heather Kilmartin & Evan Mendelson, *Transparency and Public Participation in the Federal Rulemaking Process: Recommendations for the New Administration*, 77 GEO. WASH. L. REV. 924, 939-41 (2009); CURTIS W. COPELAND, CONG. RESEARCH SERV., RL 34210, ELECTRONIC RULEMAKING IN THE FEDERAL GOVERNMENT 37-42 (2008), available at <http://www.fas.org/sgp/crs/misc/RL34210.pdf>; U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-10-872T, ELECTRONIC RULEMAKING: EFFORTS TO FACILITATE PUBLIC PARTICIPATION

CAN BE IMPROVED 29 (2003), available at <http://www.gao.gov/new.items/d03901.pdf>.

9. *Reg DaRRT*, U.S. ENVTL. PROT. AGENCY, <http://yosemite.epa.gov/opei/RuleGate.nsf/> (last visited Oct. 14, 2011). Reg DaRRT was previously named the Rulemaking Gateway, but was renamed on August 22, 2011. See *Recent Upgrades*, U.S. ENVTL. PROT. AGENCY, <http://yosemite.epa.gov/opei/RuleGate.nsf/content/upgrades.html> (last visited Oct. 14, 2011). Reg DaRRT contains the same basic design as the Gateway and much of the same features. It differs in that Reg DaRRT no longer provides an easy way to identify and provide input on EPA proposed rules open for comment, but it does allow users to view the Agency's retrospective reviews of existing regulations. *Id.* Reg DaRRT's focus on "priority" rulemakings also means that it does not provide information on all the Agency's proposed rules, just a select group.

10. *About Reg DaRRT*, U.S. ENVTL. PROT. AGENCY, <http://yosemite.epa.gov/opei/RuleGate.nsf/content/about.html?opendocument> (last visited Oct. 14, 2011).

11. *Reg DaRRT*, *supra* note 9.

12. *Comment on a Regulation*, U.S. ENVTL. PROT. AGENCY, <http://yosemite.epa.gov/opei/RuleGate.nsf/content/phasescomments.html?opendocument> (last visited Oct. 14, 2011).

13. *Reg DaRRT*, *supra* note 9.

14. Exec. Order No. 13563, 76 Fed. Reg. 3821, 3822 (Jan. 21, 2011).

15. *Reg DaRRT*, *supra* note 9.

Commission (CFTC)—that had a similar site. True, many other agency websites do contain pages dedicated to regulations. However, the EPA and CFTC sites are distinctive in that they provide an easily accessible, yet comprehensive list of the agencies' proposed rules. The U.S. Department of Labor's website, by contrast, included a page devoted to regulations where users could find links to the Department's regulatory agenda and other helpful information. The "featured items" on the Labor Department's page included only a subset of actions from the agency's regulatory agenda, presumably those that agency managers thought would be of greatest interest to the public.¹⁶ Only toward the bottom of the webpage did a box appear that was labeled "Other Regulations Currently Open for Comment," and as of July 2011, it contained an incomplete list comprising only three of the agency's active rulemakings.

II. The 2005 Website Survey

In an earlier study of agency websites, I sought to gain the first systemic understanding of the accessibility of rulemaking information on the Internet. Working with Prof. Stuart Shapiro, I surveyed agency website features in 2005, specifically looking for information related to rulemaking.¹⁷ Until that time, most of the research on e-rulemaking focused on ways to use the Internet to allow the electronic submission of public comments, ranging from the advent of e-mail submission to the one-stop, governmentwide comment funnel, Regulations.gov.¹⁸ Other scholarship tended to play out scenarios by which digital government would "transform" or "revolutionize" the relationship between the public and agency decisionmakers.¹⁹

In our study, Shapiro and I proceeded on the premise that any transformation in rulemaking would presumably begin with, or at least involve, the ubiquitous agency website. We selected 89 federal regulatory agency websites to study, drawing on agencies that had completed rulemakings with some regularity during the preceding two years.²⁰ We recruited graduate students to code each agency website according to a uniform protocol we created. The protocol was designed to collect website information in three broad categories: (1) the ease of finding the agency's website, such as by typing in the agency name or acronym directly or using Google; (2) general website features, including the presence of a search engine, a site map, help or feedback options, other languages, and disability friendly features; and (3) the availability and access

to regulatory information, such as the kind of material that the public could otherwise find in a paper rulemaking docket.²¹

Although we learned that agency websites could be easily located,²² the general features of agency websites were not as consistently favorable. Search engines were present on the home pages of almost all the agency websites, and user feedback and help features could be found on a majority of sites. But less than one-half of the sites were readable in a language other than English, and only four of the 89 sites surveyed had what we deemed "disability friendly" features.²³ More notably, regulatory information was too often lacking. Although more than one-half of the websites included one or more words related to rulemaking on the home pages (e.g., "rule," "rulemaking," "regulation," or "standard"), other keywords related to participation in rulemaking—like "comment," "proposed rule," and "docket"—could not be found on most of the agency home pages.²⁴

Strikingly, rulemaking dockets either did not exist online or were not easy to locate. Our 2005 study was conducted before the governmentwide adoption of the Federal Docket Management System that underlies Regulations.gov, so online dockets, if they existed at that time, would have only been found on agency websites. Only 44% of the agencies surveyed had a link to some type of docket on their home page.²⁵ Dockets were found on the site maps of only three agencies' websites, and the coders could find dockets on only two additional sites through the use of the websites' search engines.²⁶ If the coders could find no reference to a docket on an agency's home page or by using a site map and search engine, we asked them to take two minutes to try to locate a docket for that agency by whatever means possible; however, even with this additional instruction and time, they could find only seven more dockets.²⁷

We also compared websites across different agencies. We ranked agencies' sites based on three scores: (1) the ease of finding the website and the general website characteristics; (2) the regulatory content on the website; and (3) the sum of the first and second scores.²⁸ We found that agencies that promulgated more rules tended to have websites that were slightly easier to find, but they did not tend to have sites with more features.²⁹ Remarkably, we found no major difference in accessibility to regulatory information between agencies that frequently and less frequently issued rules—with the one exception being that it was actually easier to find a link to a docket for agencies that regulated less frequently.³⁰

16. *DOL Regulations*, U.S. DEP'T OF LABOR, <http://www.dol.gov/regulations> (last visited July 17, 2011).

17. Stuart Shapiro & Cary Coglianese, *First Generation E-Rulemaking: An Assessment of Regulatory Agency Websites* (Univ. of Pa. Law Sch. Pub. Law & Legal Theory Research Paper Series, Paper No. 07-15, 2007), available at <http://papers.ssrn.com/abstract=980247>.

18. Steven J. Balla & Benjamin M. Daniels, *Information Technology and Public Commenting on Agency Regulations*, 1 REG. & GOVERNANCE 46, 60 (2007).

19. Beth Simone Noveck, *The Electronic Revolution in Rulemaking*, 53 EMORY L.J. 433, 433 (2004); Stephen M. Johnson, *The Internet Changes Everything: Revolutionizing Public Participation and Access to Government Information Through the Internet*, 50 ADMIN. L. REV. 277, 320 (1998).

20. Shapiro & Coglianese, *supra* note 17.

21. *Id.* at 3.

22. *Id.*

23. *Id.*

24. *Id.* at 3-4.

25. *Id.* at 3.

26. *Id.*

27. *Id.*

28. *Id.* at 5.

29. *Id.* at 4.

30. *Id.*

We concluded that agency websites had much untapped room for improvement. Consequently, we urged that greater attention be given to websites as an important mediating juncture between the public and the agency with respect to rulemaking, suggesting that “at the same time scholars and government managers justifiably focus on new tools, some thought also be given to standards or best practices for the accessibility of regulatory information on the first generation tool”—the website.³¹

III. The 2011 Website Survey

Agencies admittedly have many governmental responsibilities besides rulemaking. Nevertheless, from our 2005 coding of agency websites, Shapiro and I observed “a comparative lack of availability of regulatory information on the agencies’ home pages.”³² Despite the fact that the agencies included in our sample had engaged in rulemaking with some regularity, much of the information on their websites had little to do with rulemaking. With only a few exceptions, less than one-half of the home pages contained the regulatory terms we asked our coders to find.

If those results were striking in 2005, it is perhaps even more striking that they remained stable over time. To assess more recent agency use of the Internet in support of rulemaking, I undertook to replicate and extend the 2005 study to determine whether agencies had made progress in the intervening years, as well as to identify both new developments and any new concerns. This second study, conducted in March 2011, followed the earlier one in its design and in most of the coding protocols, but it also included additional coding for each agency’s use of social media, such as Facebook and Twitter, which were not in widespread use at the time data were collected for the 2005 study.

As with the earlier study, I drew upon the semiannual regulatory agenda to construct a sample of agencies to include in the study. Out of about 180 agencies reporting some final rulemaking over the course of the preceding two years (2009-2010), a total of 90 agencies were included in the study because they reported an average of two or more rulemakings completed during each six-month period covered by the agenda. Sixteen law students coded the websites on a single day in March 2011, each using a uniform coding protocol and following a collective training session. Each coder separately collected data on two websites—the Federal Communica-

tions Commission’s (FCC) and the U.S. Department of Transportation’s (DOT)—to ensure a high level of consistency across coders.

Table 1 compares the results of the 2005 coding with the results of the same coding in 2011. With only relatively minor fluctuations, the frequencies are remarkably alike across the two time periods. Perhaps most striking of all, references to Regulations.gov continue to appear infrequently on agency home pages, having actually declined since our 2005 coding. This finding is all the more puzzling when one considers that our 2005 coding took place at a time when Regulations.gov was still in its infancy. For whatever reason, federal agencies appear not to have grabbed hold of the Regulations.gov “brand” by incorporating it on their home pages. Instead, they have used other words to link to Regulations.gov: 53% of the home pages contained a link to a rulemaking-related word (e.g., “rules,” “regulations,” etc.) that took the user to Regulations.gov. Agencies apparently do not believe that using the term “Regulations.gov” is itself very helpful in directing users to

Table 1. Frequency of Links From Agency Home Pages

Word or Phrase	% Agencies With Home Page Link (2005 Coding)	% Agencies With Home Page Link (2011 Coding)
Code of Federal Regulations	7%	6%
Federal Register	10%	10%
Regulations.gov	27%	21%
Information Quality Act	18%	23%
Freedom of Information Act	79%	83%
Rule, rulemaking, regulation, or standard	67%	64%
Law, legislation	31%	36%
Comment	15%	26%
Proposed Rules	15%	23%
Docket	10%	4%

the Regulations.gov website.

Just about as many sites that linked to Regulations.gov also linked to some agency-specific page related to rulemaking (54%), with some agencies providing links to an agency page and to Regulations.gov. When coders used the search engine on the website, in 51% of the cases they found some agency page related to rulemaking in one of the “top ten” search results; however, in only three cases did they find a link to Regulations.gov in one of the top 10 search results. Thirty percent of the websites had a central rulemaking page listed on the site map, while only 13% had a link to Regulations.gov on their site map.

In about a third of the agency websites (34%), coders found a webpage, graphic, or video that explained the rulemaking process to a lay audience. Strikingly, only about one-fifth of the home pages (22%) mentioned even one specific proposed rule, and a similar minority of home pages (23%) had a dedicated link or section devoted to proposed rules or rules open for comment. About 40% of the websites did not have any link to the *Federal Register*, the

31. *Id.* at 6.

32. *Id.* at 3.

Code of Federal Regulations, Regulations.gov, any proposed rule, or a section dedicated to rules.

As shown in Table 1, the availability or visibility of agency rulemaking dockets, which was already slight in 2005, diminished still further by 2011. Only six agency home pages in 2011 included the word “docket,” with only four websites containing a link on that word (a drop from about nine websites in the 2005 study). None of these four links connected the user to Regulations.gov.

Given the scant attention given to dockets on the agencies’ home pages, I asked all the coders to see if they could find something that looked like a rulemaking docket. About 17% of coders were able to find a central rulemaking docket in one of the top 10 results by using the agency website’s search engine. In 29% of the websites, coders found something that looked to them like a docket but did not use the word “docket.”

IV. Rulemaking Information for All

Agencies increasingly use the Internet for many different purposes, including using their websites to communicate with the public not only about rulemaking but also about a variety of other issues and activities. A proliferation of competing demands for communication makes rulemaking only one—and to some managers within agencies, a relatively minor one—of the many priorities under consideration when agency officials make decisions about the design and functionality of their websites. As a result, the risk exists that agencies will make website design decisions without giving due consideration to the values of public participation reflected in the various laws and executive orders that have called upon agencies to use electronic media to enhance the public’s understanding of and role in rulemaking. Indeed, an emerging approach to government website design focuses on giving prominence to “top tasks” sought most frequently by members of the public.³³ Such an approach certainly has much to be said for it. But an exclusive focus on current website use or demand will probably push information about rulemaking, and online opportunities for public commenting on rulemaking, far into the background, simply because the volume of website traffic generated by various online government services dwarfs the traffic related to rulemaking. Rulemaking may perhaps never be a “top task” in terms of the numbers of web users who visit an agency website, but in a democracy, few tasks compare in significance with the ability of government agencies to create binding law backed up with the threat of civil, and even criminal, penalties.

For this reason, officials who make decisions about the design and content of their agencies’ websites should ensure that rulemaking information is easily accessible to ordinary individuals—not just displayed in a way that compares with current traffic or usage patterns. Consider, as an example, the FCC’s website.³⁴ The FCC’s website recently

received a major redesign, making it perhaps the most up-to-date website design of any federal agency, with many appropriate and useful improvements to the site made after extensive public input. Nevertheless, from the standpoint of making rulemaking information accessible to ordinary citizens, it is striking that the website is not as clear and accessible as the agency’s former site. The new site does not list “rulemaking” or “regulation” prominently on the home page.³⁵ Instead, the new site includes a tab for “rulemaking” as one of several pull-down options under the heading “Business and Licensing.”³⁶

Should a typical citizen visit the FCC website seeking to find out about the FCC’s new regulatory policy work, she might be forgiven for not looking under a tab labeled “Business and Licensing.” She might instead be expected first to click on the tab for “Our Work”—but she will not see any option for rulemaking there. Only if she clicks further under “Our Work,” on a pull-down labeled “Consumers,” and then goes to another webpage, will she find a section toward the bottom for rulemaking. There she will find—under a heading obliquely called “Related Content for Consumers”—an incomplete list of the agency’s proposed rules.³⁷ Alternatively, if she clicks the “Take Action”³⁸ button on the home page and then further chooses the pull-down menu item for filing a public comment, she will find a list of the Commission’s “Most Active Proceedings”³⁹ (Figure 1)—although when the site was reviewed in 2011 some of these proceedings appeared to be largely if not fully completed already, such as with the listing for the FCC’s National Broadband Plan.⁴⁰ Other entries found at that time in the “Most Active Proceedings” list contained no description whatsoever, which made it hard for ordinary citizens to use. For example, a listing for the AT&T/T-Mobile merger—while perhaps self-explanatory at a certain level—offered no summary or other information about the proceeding, such as deadlines, standards for agency decisions, or links to any other supporting materials.⁴¹ The user presumably could not even glean from the website that the AT&T/T-Mobile proceeding was not a rulemaking, to the extent that matters. Of course, it *is* pos-

35. *Id.* A link for “Rulemaking” does appear in tiny font at the bottom of the site under the heading “Business and Licensing.”

36. *Id.*

37. For example, on a day when 15 rulemakings dating back to December 29, 2010 appeared under “Related Content for Consumers,” a total of 59 proposed rules could be found for the same period via a search for FCC proposed rules on Regulations.gov. *Compare Related Content for Consumers*, FED. COMM’NS COMM’N, [http://www.fcc.gov/related/44?categories\[0\]=proceeding](http://www.fcc.gov/related/44?categories[0]=proceeding) (last visited July 14, 2011), with *Search Results*, REGULATIONS.GOV, <http://www.regulations.gov/#/searchResults;a=FCC;det=PR;pd=12|29|10-07|14|11;pp=10;so=DESC;sb=postedDate;po=0> (last visited July 14, 2011).

38. FED. COMM’NS COMM’N, *supra* note 34.

39. *Send Us Your Comments*, FED. COMM’NS COMM’N, <http://www.fcc.gov/comments> (last visited June 9, 2011).

40. *A National Broadband Plan for Our Future*, FED. COMM’NS COMM’N, <http://www.fcc.gov/rulemaking/09-51-0> (last visited June 9, 2011).

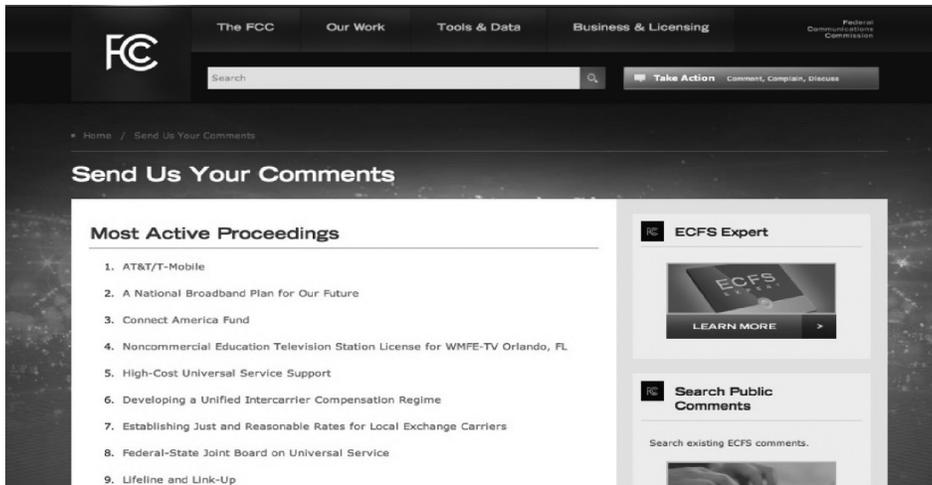
41. The link for “AT&T/T-Mobile” takes users to a form for filing a comment, which provides no further information about the merger. *ECFS Express Upload Form*, FED. COMM’NS COMM’N, <http://hfallfoss.fcc.gov/ecfs/upload/display;jsessionid=NwPQnfwQY1f6zy4kjmjj02M3KhmjwFTn06G3QYWhTyHl6ky946qD!271039122!206283283?z=mko6v> (last visited June 9, 2011).

33. See Coccaro, *supra* note 5.

34. FED. COMM’NS COMM’N, <http://www.fcc.gov> (last visited July 14, 2011).

sible to go to the search page for all FCC proceedings,⁴² type in the proceeding number for the AT&T/T-Mobile merger, and find relevant FCC notices and documents. But surely it would also be helpful for members of the public to see a summary or more descriptive account of the proceeding at the outset—especially since the proceeding appears on a list ostensibly designed to attract attention and that same kind of summary information can already be found elsewhere in the system.

Figure 1: Federal Communications Commission's Listing of Most Active Proceedings



Source: <http://www.fcc.gov/comments> (last visited June 10, 2011).

The point here is not to single out the FCC or its website for any special criticism. To the agency's credit, its website provides a prominent access point for general feedback, lists some of the more significant proceedings, and includes (albeit in hard-to-reach locations) precisely the kind of summaries helpful to a layperson for at least some proceedings.⁴³ Other agencies do not provide anything close to the same level of accessibility—and that *is* the point. If it can be cumbersome for ordinary citizens to find rulemaking information on a recently updated, if not state-of-the-art, agency website, then presumably more work remains across the entire federal government.

Web designers have an understandable, if not desirable, tendency to create sites that meet the needs of their most frequent users. This is perfectly sensible in most contexts. In the context of government agencies making binding laws, however, a commitment to well-accepted democratic principles should lead agency web designers to create sites that are at least neutral across user types—if not even *more* accessible to less sophisticated or one-shot participants in the rulemaking process. Placing a primary link to rulemaking information under a tab labeled “business”—to use the FCC again as an illustration—may well reflect the reality that businesses are both the most frequent users of

agency websites and commenters on agency rulemaking.⁴⁴ But such thinking does not fit with the ideal of making the rulemaking process as accessible to ordinary citizens as it is to sophisticated repeat players.

Agency webpages providing up-to-date information about rulemaking, like the CFTC and EPA efforts described at the beginning of this article, are steps in the right direction of providing easy public access to rulemaking information. Yet, asking other agencies to do what the CFTC and EPA have done would be asking a lot. The CFTC and EPA have added this rulemaking information and functionality to their websites by creating and maintaining their own separate databases of rules. Other agencies need not go to such effort and expense. A highly feasible, cost-effective approach for all federal agencies would be to follow a practice many members of Congress have adopted. Members of Congress display on their websites lists of legislation they are currently sponsoring simply by executing an easy interface with the THOMAS database of all legislation currently pending in Congress. Members of Congress do not need to maintain their own lists of legislation or build their own databases.

Rather, on a member's home page, the user merely clicks a button for sponsored legislation and is shown a display containing a list of sponsored bills automatically extracted from THOMAS. At the click of the button, the computer executes what is essentially a “canned” or predetermined search and extracts from the THOMAS database only those bills that are sponsored or cosponsored by that Member of Congress, sending that information for display on the member's website.

Federal agencies can do much the same by adding links that run canned searches of Regulations.gov and automatically extract lists of rules open for public comment. If this functionality can be implemented by the relatively small offices of members of Congress, it can surely be adopted by the much larger federal agencies that also create binding law through the rulemaking process. Indeed, the Penn Program on Regulation has developed a proof-of-concept website—Rulefinder.org—that shows how easy it would be for every rulemaking agency to add this functionality via a link on its home page.⁴⁵

42. *Search for Proceedings*, FED. COMM'NS COMM'N, http://fallfoss.fcc.gov/ecfs/proceeding_search/input?z=gr9c5 (last visited June 9, 2011).

43. See, e.g., *A National Broadband Plan for Our Future*, *supra* note 40.

44. For data on the frequency of business participation in rulemaking, see, e.g., Cary Coglianese, *Litigating Within Relationships: Disputes and Disturbance in the Regulatory Process*, 30 L. & SOC'Y REV. 735 (1996).

45. Rulefinder.org shows how easy it is to create canned searches of all rules open for comment. Unfortunately, the administrators of Regulations.gov do not currently allow external entities to extract search results and display the results on their own webpages. Thus, if agencies were to implement website functionality similar to what some members of Congress have for their legislation, the team administering Regulations.gov would need to

V. Conclusion

People spend an increasing amount of time online, whether for social interaction, online shopping, entertainment, or work. Corresponding with this overall trend in online activity, agency websites have become a key vehicle for public interaction with the federal government over the last fifteen years. Agencies will continue to use electronic media to support all of their services and activities, but it is equally certain that making rules to solve society's problems will remain one of government's most fundamental responsibilities. In this article, I have focused on ways that agencies could use their websites to improve the accessibility of the rulemaking process. Until recently, this process that generates thousands of binding rules each year was generally impenetrable for the average member of the public. The Internet has now made possible ways of organizing and disseminating rulemaking information as well as soliciting public input.

Yet, agencies need to use wisely the opportunities the Internet provides to advance the quality and legitimacy

of the rulemaking process. This article has provided the results from new research identifying the highly varied levels of rulemaking information available on federal agency websites. It has identified the practices of some agencies—such as the development of the EPA's Rulemaking Gateway or Reg DaRRT—that merit replication by other agencies.⁴⁶ But it has also revealed gaps and concerns that any agency should consider when undertaking future efforts at web design. Agencies should resist the temptation to define the “top tasks” receiving priority placement on an agency's home page solely in terms of the tasks that are the most popular. Some tasks—like rulemaking—may not generate large volumes of visitors to agencies' websites, but they do very much rank as truly top tasks in terms of substantive importance. Rulemaking by agencies is one of the most profound, if not also democratically problematic, powers exercised by government, so regulatory agencies should seek to improve the use and design of their websites to make the rulemaking process more accessible to all.

allow each agency to extract information and display it on the agency's own webpage, without users being redirected to Regulations.gov. Of course, even if users were to be redirected to Regulations.gov, as Rulefinder.org currently must, this would still be an advance in the ease of public accessibility to agency rulemaking information.

46. This is not to say that Reg DaRRT lacks potential for improvement. *See supra* note 10. In changing from Rulemaking Gateway to Reg DaRRT, the EPA eliminated from under its banner called “Top Tasks” a link specifically designated as “Comment on a Regulation.” With Reg DaRRT, it would appear that the EPA no longer considers commenting on a regulation as a “top task.” Nor does Reg DaRRT provide a list of all agency rules open for comment—despite the ease with which it could do so through the use of a canned search. *See supra* note 45 and accompanying text. Instead, Reg DaRRT simply gives the user a hyperlink to Regulations.gov, along with a set of instructions on a further multistep process of using Regulations.gov to find all EPA rules open for comment.