

*The Euricom Project: Electronic Networks and Democracy*



**Integrating Science and Public Values  
in Environmental Decision-Making:  
The Role of the Internet in Public Participation**

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# Rulemaking and the U.S. Democracy

“One could not know the importance of rulemaking from the curricula of political science, public administration, and public policy programs . . . . Rulemaking rarely, if ever, merits more than a small fraction of a single course. Clearly, this is an area in which the academic community lags behind the practitioners.” (p. 278)

**Source:** Cornelius Kerwin, *Rulemaking: How Government Agencies Make Law and Write Policy* 2<sup>nd</sup> ed. (Washington, DC: CQ Press, 1999)

# “The Internet Changes Everything,” or does it change anything?

“...studies demonstrate that courts invalidate legislative rules promulgated by agencies through notice and comment rulemaking in thirty to fifty percent of the cases challenging them....One [EPA] Administrator estimates that nearly eighty percent of the major rules promulgated by the EPA during his tenure were challenged in court.”

**Source:** Stephen M. Johnson. 1997. “The Internet Changes Everything: Revolutionizing Public Participation and Access to Government Information Through the Internet,” *Administrative Law Review* 50: 277-337.

# An Emerging U.S. E-Government

“E-Government currently is a loose-knit mix of ideas, projects, and affiliations often not well coordinated, sometimes overlapping in its goals and redundant in its expenditures...This is not the best way forward. We can and must take full advantage of information technologies to overcome the often arbitrary boundaries that exist between agencies, and to provide the public with seamless, secure online services.”

**Source:** Senator Joe Lieberman, Introducing S. 803,  
The Electronic Government Act of 2001

# Reflexive Modernization

- Critical response to, and involvement in, technological innovation
- Question the assumptions and implications of technology
- Regain a voice and the ability to act
- Public sphere, and social science, involvement in technological design

# Research Agenda

## Discursive democracy

- Can IT better serve democratic ideals underlying citizen participation & public discourse?

## Interface of environmental science and public values

- Can IT integrate scientific knowledge and public values in environmental decision making?

# E-Rulemaking and Discursive Democracy


- ✓ Deliberation, not preference aggregation
- ✓ Inclusion of difference
- ✓ Respect for multiple positions
- ✓ The transformation of preferences
- ✓ Expanding discourse in the public sphere
- ✓ Authenticity and impact

**Table 1. Discursive Democracy: Hypotheses and Theoretical Bases**

<b>Hypothesis</b>	<b>Theoretical Basis</b>
H <sub>1</sub> Participation in electronic rulemaking is more discursive than traditional forms of comment.	The trend in democratic theory is toward more discourse and deliberation (Dryzek 2000); online discussions may actualize this trend.
H <sub>2</sub> Electronic participation is more diverse, demographically, than traditional forms of comment.	There is a digital divide, but electronic comment may offer more access to participation than exists now.
H <sub>3</sub> Software for electronic participation in rulemaking privileges scientific and legalistic comments more than other forms of comment.	Only Certain forms of comment are acceptable and incorporated in much democratic deliberation (Young 1996).
H <sub>4</sub> Electronic participants show more respect toward other opinions than participants in traditional forms of comment	Democratic discourse engenders respect (Benhabib 1992, Young 2000).
H <sub>5</sub> Citizen preferences change more after participating in electronic comment than in traditional comment.	Democratic discourse engenders reflection on one's positions and preferences (Habermas, Bohman)
H <sub>6</sub> Electronic participation occurs more in isolation than via groups than traditional forms of comment.	Democracy is as much about groups as about individual participation (Dryzek 2000; Putnam 2001).
H <sub>7</sub> Electronic commentary is incorporated into revised rules	Democratic processes must be authentic in order to be valid (Dryzek 2000).



# Integrating Public Values and Scientific Knowledge

- Increasing science-based public comment
  - Incorporating public values
  - Satisfaction final decisions
  - Trust in government agencies
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**Table 2. Public Values and Scientific Knowledge: Hypotheses and Theoretical Bases**

<b>Hypothesis</b>	<b>Theoretical Basis</b>
H <sub>1</sub> Making scientific information for a proposed rule available to the public over the Internet results in more scientifically informed public comments.	The public gets excluded from decision-making because of its lack of scientific understanding. A scientifically literate public is more valuable to agency officials. (Tesh 2000)
H <sub>2</sub> Citizens are more likely to offer value-based justifications for a position on a ruling when commenting over the Internet.	Regular participants learn the value of scientifically based comments. New participants commenting over the Internet will more freely offer value-based justifications for their views. (Hill & Hughes 1998)
H <sub>3</sub> Citizens who participate in Internet-based public comment periods are more likely to perceive the decision-making process as fair, and to report their interests were adequately represented in the final decision.	Citizens object when decision-making processes appear unfair or their interests are not represented. Internet-based commenting increases perceived fairness because of ease of participating, and a sense that the decision-making playing field is level. (Aikens 1999)
H <sub>4</sub> Citizens who participate in Internet-based public comment periods are more likely to report higher levels of trust in agencies than traditional commenters.	Document access and procedural transparency reduce the sense that decisions are made behind closed doors. (Cross 1999; Dawes <i>et al.</i> 1999)
H <sub>5</sub> Final rulings that incorporate electronic comments in addition to traditional comments are more likely to reflect public values.	Expanding the options for participation encourages a diversity of voices, including those not typically part of decision-making processes. (GAO 2001; PITAC 1999)
H <sub>6</sub> Final rulings that incorporate electronic comments and reflect public values are less likely to undergo litigation.	Citizens will litigate unless a decision appears consistent with their values, regardless of the science (Johnson 1998).

# Proposed Methodologies

## ☛ Case Studies

- Comparative analysis of comments
- Large, qualitative studies using software such as ATLAS.ti or NVivo

## ☛ Surveys of commenters

- Attitudes, perceptions and practices

## ☛ Interviews with agency personnel

## ☛ Agency and media records of final rulings

# Coming Down the Pipe

- NSF-sponsored eRulemaking workshop
  - Kennedy School of Government
  - January 2003
  - An RFP for future federally funded research
- An expanding role for social science
  - Informing and collaborating with IT disciplines
- A battle over the functionality of a new “one-stop-shop” for all federal rulemakings