

*Group A -- Session 4 – June 3, 2004*  
*The George Washington University – eRulemaking Workshop 2.0*

**M: Moderator**

R: Respondents

**M1: The first question is a very general and broad one. Using whatever terms you feel are appropriate, we'd like you to just speak on what you think the costs and benefits are of applying IT to the rulemaking process? You can define costs and benefits by whatever terms you feel are appropriate. They don't necessarily have to be monetary. By IT, we simply mean those information and communication technologies that are commonplace or that may become commonplace in the electronic rulemaking environment.**

R4: I think that with my background, our department has not really developed its rulemaking process. We are still working with DOT's system. I heard a couple comments about DOT's system. The last two and half years have been my first exposure to the rulemaking process. That has not been my background. But, I think the DOT system seems to be pretty good and user friendly. I know one of the speakers mentioned that people that really use the system is a clearly defined group already, whether they are associations or agencies. They are groups that are automatically looking out for potential rulemakings, especially for the NPRM stage. They are looking specifically to comment on things, because it is going to affect their industry. The IT seems to make that easier for them to submit comments, and easier for us to process the comments. I think some of the costs come because I don't know if we are just hitting those focus groups, the people who are looking for it. We don't do a good job; the government doesn't do a good job of marketing this. How do we bridge that digital divide so that everybody has the opportunity to look at this, and so the public can have more access to us? I see comments of different rulemakings, especially the security rulemakings that we just had. A lot of "Joe Publics" commented, but the vast majority of comments were from agencies, groups, and societies that have already been involved with some of the rulemakings we've had in the past. That is what I've seen. How do we do a better job of getting it out so that everyone can participate? Or, maybe we are doing it right. Maybe those are the only ones it really affects.

R10: I have a follow-up to that. Two comments that were made, during the give-and-take with the audience, which I would like to comment on. If you are educated and IT literate, then this is, in a sense, almost a no-brainer; if you are educated and not IT literate, then it is a little more difficult. If you are not "educated", college-educated or high school-educated, say you have a 6<sup>th</sup> grade education, you do not have access or have limited access to a computer; then this is really still problematic. No amount of marketing, at this point right now, is going to get us over that hump of making this truly a public means of commenting on a rule, even if they had an idea that something was going on. The other aspect was related to API. How many average citizens even know that they have a person in their community that would be interested in assisting and educating them with public rulemaking? I see that as an issue. Working in the Module 2 working group and in the Module 1 working group, it is still an issue, even among the folks who are educated and IT literate.

R2 also in session 3B (R7);

R8 also in sessions 1A (R2), 2B (R6), 3B (R4), 5B (R5).

**M1: Since the first two comments have touched on digital divide type issues, is it the function of these new technologies to bring people into rulemaking who otherwise wouldn't participate? Is it the case that the technology should facilitate that transition to a broader engagement?**

R6: The question there becomes a marginal question. The question is one of the marginal utility of eRulemaking. Right now, those who in many ways probably have the most interest and knowledge about this have no way of doing anything about it. So, to the extent that eRulemaking is no panacea, to the extent that there is a problem with eRulemaking in that it doesn't make it perfect, doesn't mean that it doesn't make it better. To the extent that it makes it better is very important. As an activist, it does allow me to reach out to these people to the extent that they are online. I can find them, to the extent they are online, which I couldn't do three years ago, without bringing them to Washington. This is a lot better.

R8: I agree. I feel like, in a sense, when we worry about the digital divide with respect to eRulemaking, we are asking the wrong question. First of all, literacy and a bunch of other things make it a problem for people who don't have a lot of education to participate in any write-in politics, not just eRulemaking. The second thing is, whether it is the eRulemaking or the access that we ought to be thinking about, because access is a problem in lots of ways. I think rather than saying we shouldn't do eRulemaking, because access is a problem in lots of ways; so, rather than saying, we shouldn't do eRulemaking because not everybody can do it, we should be asking what we can do to get more access for more people.

**M1: What I heard [name - R4] saying is not that we shouldn't do it, but that we should be aware of the potential that this will further enhance the people who are already doing very well in the system. The regular players will become even more skillful and even more empowered, whereas the folks who tend to not participate will suffer a disadvantage that is greater than it was already in the existing system. And, while I don't think we should spend the whole time discussing this one element, I want to make sure that I get a sense whether other people feel that is an issue.**

R2: I would agree that that is an issue. The whole eRulemaking process will allow more people to participate, but they won't understand all of the very technical hoops that are involved with rulemaking: the Reg. Flex Acts, the Congressional Review Act, the Executive Orders, the Paperwork Reduction Act. They don't understand the intricacies of all that. I do think the good news is that it will bring in more people who will over time get educated. But, the bad news is that will bring in more people. I fear eRulemaking will bring us into what now happens with C-Span, where you get the "crazies" on the phone calling in. I think you are going to have the potential for some "crazies" to overwhelm the process, whereas, in a more formal rulemaking, they have to be willing to show up to a hearing and willing to get a paper document to you. We've had some rulemakings where people have been so vehement that they have threatened bombing us if a rule went through. We've had to have federal marshals at our hearings. Now, they will have anonymity, and I see the potential for that to bog down the rulemaking process.

R3: I have a different opinion. I'm not that pessimistic. I don't know if I'm right, because I'm not sure I have enough information. I would think that the expanded access for the average

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R8 also in sessions 1A (R2), 2B (R6), 3B (R4), 5B (R5).

person would enable a greater participation in government. I don't see how that can lead to a greater divide. My concern, just in the general topic we are discussing, is that we are going to be moving to a different way of governing, and I wonder if it will be too rhetorically based. There is a difference between analyzing an issue and generating rhetoric about an issue. Rhetoric can be very interesting and fun, but that is not the best way to deal with a real problem. When you are dealing with a real problem, you need to analyze it carefully with good information, and make sure you hit the essential points. Rhetoric is fun, but it is not necessarily going to solve the problem. Often rhetoric is very heated, emotional, and dramatic; so, it gets a lot of attention. But that is not really what you need to be looking at. I happen to have been involved with agency litigation, which is not related to rulemaking, but in that context you see per se litigates – people who have a beef that needs to be addressed, or they have a controversy that the courts should decide. But, if they are not represented, often their papers are really incoherent argument, and it is not productive to try to answer each point they make. They might have 30 handwritten pages, and they are sometimes called rants, because they really do not have a coherent presentation. So, while the courts are not turned upside down by rants, they handle them differently than they do a skilled analysis of an issue.

**M1: [Name - R5], how about costs and benefits for you?**

R5: Our system already operated under a document management system – the DOT system. Are you aware of that? If not, you need to know what benefits we've derived?

**M1: I'm in pretty close contact with you guys.**

R5: Because, it has been very successful. We get a lot more comments. Secondly, we have people who are interested in reading those comments. Before we got the docket management system, we would retain paper dockets in our offices. They were available to the public, and the public was made aware of where they were, but it was very rare that people would come look at those dockets. Now, we know that people are looking at the electronic docket, by the substantive comments they are submitting.

**M1: You've noticed that people have been responding to other comments in the docket.**

R5: Right. We're not one of the agencies who have two comment periods, one for comments and one for responses. I'd like to talk with an agency that does that and find out really how successful that is, because I've got my questions about it. But, as far as the system, it has been very beneficial and very cheap for us. It is \$100,000 a year. The benefits to our audience and our organization are well worth it. It makes it easier for us to gather the comments and keep them in order. Though we do not have a search function, we have all the comments for the entire rulemaking continuously laid out in chronological order. We also have information on the authors and the number of pages; we have several different identifying and informative factors. The point about how eRulemaking will hurt or benefit those who are either limited by their computer knowledge or their general education, I don't necessarily see that it will have any effect on these people. The reason is, very likely, those are the people that don't participate. This may not be good, but those are the ones that don't participate, but that may be covered by organizations that represent the class. So, their interests may be covered even though they

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maybe don't have the knowledge or awareness of knowing what is going on around them that they might have an interest in. I don't quite see how the eRulemaking part plays there. With our organization, we might have outreach programs that try to encourage and educate people to let them know where our web site is and where our document management system is, or how to find out what the Federal Register's agenda is of all government rulemakings. We have ways of trying to get that information out, through the work we do with organizations. But, how far is our duty to go down and bring people out? Our Congress tells us all we need to do is publish in the Federal Register and that is legal notice worldwide. How many people have ever heard of the Register? Of those that have, how many would know where to go to find one or how easy it is to find one? And if they were to find one, what is in it, and how do they work the system? I'd be interested to hear what other people have to say on that. I don't know how radical my thinking gets.

R3: I think on the point about reliance by less educated people on these interest groups, I have that sense also: that people who have an interest in a topic, but they don't feel confident about expressing their opinion, will be looking to an interest group to help them.

R5: Whether they like it or not, there will probably be interest groups that cover people from whatever sponsorship.

R2: I wish that were true. But, at least the agency that I work with, when it comes to workers, only 16% of them are unionized. So, that means 75% is non-unionized. And, who is their advocacy group? I don't think there is an advocacy group for them. What I do think is where there is an overlap between those persons who may not know how to negotiate or understand the Federal Register rulemaking and who have an advocacy group, I do think that eRulemaking will help those groups go up more efficiently against the powerful groups that have unlimited amounts of money. The eRulemaking will make it easier for those groups to better use their money. I think it will be much easier for labor organizations to get their comments and positions across, because it is going to be so easy now for them to get to the dockets. It won't level the playing field, but it will come a little bit closer for them.

**M1: In the interest of time, I'd like to get a couple more responses to the first question please.**

R7: Where I work, our business is getting individuals to participate in government, usually through advocacy organizations. We find that is the way most people participate. They come, because they have a special interest and they are part of an advocacy group. My basic feeling is that the benefits of eRulemaking are educational. A lot of times, the first time people get involved in the political process is by sending an email to Congress. This type of a system makes that first step easier for people. It makes them more comfortable with it, and next time they may go to Regulations.gov themselves, or they make a phone call or go to the EPA web site, whatever it happens to be. I feel like the eRulemaking process does make that first step easier and it makes the education process easier. That becomes a very significant part of the whole thing, whether or not they are sending a form letter and that message is being counted, at least they are getting involved in the process. They are aware of that there has been a rule created. It helps the rest of the whole participation process.

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R10: Back to your original question about the costs and benefits of eRulemaking, someone put a slide up there that said approximately 80% of the major EPA rulemakings were challenged in court. That is a serious cost. We recently lost a standard rule, I would say, primarily due to the fact that we did not have a really adequately favorable real-time docket that we could respond to legal challenge. Nor, did we have the ability to really get a measured response from the private citizen.

**M1: Would people agree then that the ability to have people air their objections and concerns and give you a heads up – assuming they don't submit their comments in the last 5 minutes of a 90 day comment period...**

R6: They all do.

**M1: ...would the impact result in more durable rules?**

R6: Listening to this discussion has led me to the conclusion, the costs and benefits are the same. There is a secondary question here of how much is the rulemaking process, especially through eRulemaking, becoming more and more like legislation. The quasi-legislative groups that basically grew out of the New Deal, though not all of them were born there, were born as a way to remove politics from governance. That was their job, to let interest groups square off, get the data out there, and remove it from politics. The more the eRulemaking turns rulemaking into legislation, and into bringing people in that way, the more it becomes a hazard to the job of these quasi-legislative groups. [Name - R5] made the comments that it doesn't matter for a lot of people, because they are covered by these orgs that represent them. If we increase the input for people in legislation, who know how to maneuver the system, and we have this digital divide, and we've turned it into more like legislation so that legislative people are given advantages, it does affect those who don't have those same advantages, because it is a comparative power issue.

R8: That is really interesting, but I feel like it is too late. They should have done something about it a long time ago. The cat is already out of the bag, and what do you do now?

**M1: Given that we want rulemaking to be rulemaking, and not legislation, how can IT improve rulemaking? And, give us your definition of "improve". Is it improved outcome or improved process or both?**

R2: I'm going to go back to the statement I made before, which hooks onto [name - R6's] statement. I do think that there is an unlevelled playing field right now in rulemaking. Predominantly, industry groups have unlimited resources to put into defeating regulation. I think IT is going to give more power to those groups who have more limited resources to be able to more effectively participate. Just the ability to search the docket to see how you would frame your arguments against the other groups' positions, how you would prepare for a hearing, how you would go about cross-examining industry representatives or whatever the powerful organization is, I think in that case it is going to help that particular group. I see that group as benefiting from IT, in addition to those that already have the power.

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R3: I think we will be able to be more responsive to comments and be able to manage them better. I think, overall, we'll be in a better environment. As far as whether it is a good rule substantively, that is a more difficult question. Actually, I wonder if outside of the IT environment, if there has been any kind of really good study of, what is a good rule? It might be interesting to interface that kind of analysis, if it has been done in fairly recent time, to see if there are any connections.

**M1: There is a good long debate in the scholarship about that, and I think it is unsettled. I want to back you up and ask you to define “more responsive”.**

R3: It sort of relates to the presenter who said comments could sort of get buried and disappears. I think that by having the technology, you will be able to zoom right to certain information, where before you might have to claw around the file cabinets and you might never find it. So, that would be one thing, you'd have better control over this mass of information. I think it is a better tool.

R4: I think it is definitely better – eGovernment, making it accessible. To me, that is big. Accessibility makes it better overall.

**M1: How about some of those technologies that the presenter was talking about, or some of the things that [name - R8] is interested in? Can you see those becoming part of your daily routine as a regulator; either the centralization screen or the information management tools or things that will allow you to manage data more easily?**

R4: I think, overall from a broad perspective, it is the best thing to do to reduce barriers to the government, to reduce barriers to the general public. If you want to participate you can do it. You have the option to opt in or opt out of it. If you don't ever want to deal with it, it doesn't matter. You may not ever capture them. If you want to deal with them, if you want to look at it, the government is reducing barriers to accessibility to rulemaking. And, I think that is the overall positive thing to do. Whether you choose to participate or not, that is an individual choice. But, for an agency, I think it will only make things better. We might have to wait a generation. Who knows if it will make a better rule? My 5<sup>th</sup> graders are already on the Internet far much more than my generation. If we wait a generation, I think in the long run, this will be better. I don't think we'll see results immediately. But, it reduces barriers, increases accessibility, and I think it will make a better rule. We might just have to wait a generation. By then, they will all be so tech savvy.

R5: I don't think that IT will make rulemaking better. It provides opportunities to make rules better. It provides a tool that will enable those people to make rules better. That doesn't mean, necessarily, that any agency is going to have better rules, because of internal policies in certain agencies. And, I think there is a lack of importance placed upon rulemaking in a lot of government agencies. These tools will help them, it will give them better quality information, new ideas, more material to work from, a better gauge on what the consensus is out there in their audience. But, it is just a tool. In no way is it going to ensure a better regulation other than that it will provide a better tool.

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R6: The big question you asked is “What makes a better rule?” I certainly agree with [name - R5], in that the only way it really leads to a better rule is in a reduction to the number of FOIA’s. Anything that makes me do that, makes me, and the person on the receiving end of said FOIA, much happier. The ability for me to get the information about the process, without having to go through that, has gotten a lot easier thanks to eRulemaking. It makes the process a little bit cleaner, but I agree that it is just a tool. IT in all cases is a wrench. You can use a wrench for almost anything. It is a bad tool for almost everything, but it is a useful tool for almost everything. Similarly, IT is that way. It doesn’t lead to better rules, but if it can make it more transparent, that is better.

R7: To ask your question about the technology presented, we are going to need those tools to deal with large numbers of emails. Just to be able to sort out the messages and say which ones are duplicates and which are not. I believe that just because a message is a duplicate doesn’t mean it is not valuable. It should still be counted. But to be able to sort those out from messages that have much more specific and detailed comments is key and necessary. Maybe it won’t make better rules, but it can help to keep the process of the comment period possible. Without it, I think the volume of comments could overwhelm the system.

R8: I think I agree with a lot of what has been said. I agree with what [name - R5] was saying in that it is basically a tool that will not necessarily make anything better. Beyond that, I think that no matter whether it makes things better or not, it is certainly going to make them different. It opens up a lot of possibilities. If we can figure out how to take advantage of them, it might be very interesting. I’m still interested in what [name - R6] was saying earlier about removing politics. I really do think it is too late for that. My own personal hope is that in some ways that is going to force agencies to be more collaborative. I hope that nonprofit organizations will see that as an opportunity to work with the agencies to figure out how to make things work in this new situation. It is political, and the big industries are going to keep it that way. So, it is going to be a political process, but in theory, there could be a collaborative process early on that defines some of the boundaries and issues with some of the things that had to be discussed, so that it wasn’t all part of the very structured rulemaking process. IT could facilitate that process of collaboration.

R10: IT can indefinitely improve the process, particularly if you are coming from a totally papered process. It cleans it up and makes it user-friendly, real time, right now, and it makes it available to anyone who asks. As far as improving the rulemaking, that is problematic. It has great potential. But that potential is a plus if the persons doing the rulemaking use it effectively. It can certainly be a wonderful tool, but if the folks doing the rule making don’t know how to use it or are unwilling to use it, it will not help rulemaking at all. Digital divide.

**M1: How do you see stakeholders that you represent or deal with using IT right now? How do you expect them to adapt over time? If we went back 10 years ago, I don’t think your sector of the economy existed. Ten years from now, will a million comments look like not that many? What sorts or things can you anticipate coming down the pipeline as worse case scenarios or unintended consequences of these new technologies being in place? So the first half is how do you see people using IT right now? We know that listservs and web**

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**sites are fairly commonplace. Are there other forms of activism that your constituency groups engage in or may turn to? We're looking for people to look ahead and anticipate what is coming down the pipeline. We've got a pretty good sense at what is out there right now.**

R6: I'm part of an eActivism group here in DC. It is really just a group of us who get together over beer to discuss what we are doing, how and why, what is effective and what's not, what our feedback from our members is, etc. I think you give us way too much credit. It is not just that we don't know what is going to happen next year. We don't know what is effective yet. IT as a tool, both in rulemaking and in legislation, is still new enough that nobody knows what's effective. Nobody knows what works. Nobody knows anything. It is actually sort of fun. I was in Silicon Valley in 1994, and let me tell you, it was the exact same way with the Web when it opened up to public us. It is sort of fun to be there, now here. I went to a whole day seminar that Capital Advantage held, and what we heard is, "We are trying this, but we don't know what is effective." There was one guy, Brad Fitch, who knew a little bit about what was effective in a really specific way. So you ask, what's going to happen in five years, but I can't tell you what we are going to try next month. Because, we are going to keep trying until we find out what works.

**M1: That is a fair comment. I think we are all a little uncertain. But, we do know that there is a cat and mouse game that goes on in some respects. One innovation appears on the federal side, and one appears on the comment side, and people get in the system. What we are looking for is your response to how these innovations will be met or greeted by the users of the system.**

R8: One of the things that came up in a morning session that I was in is that somebody had just had a vendor in wanting to sell her a means of sending in comments that were less duplicative. I gather there was other discussion about that too. So, what you are saying is certainly true. It may also mean that the system is going to get a quick kick to try and think how you deal with that kind of stuff. And, it is just immediate.

R7: There is definitely a cat and mouse game. A member of Congress will decide that they don't want to accept third party submissions, so they'll put something into their web form or some other thing that they think will block people like us from submitting. Well, we've figured out a way around that. So, they put up another block. I think one of the things that is good about this process now, is to come up with accepted standards of what is the proper way to submit a comment to deal with a federal agency, especially for third parties like us, because we don't want to play that game. It actually makes our business more valuable. The harder they make it for people to communicate with them, the more people come to us for help. The more there are barriers up there, the more likely there will be people like us out there.

**M1: Is the inverse true too? If the barriers were lowered, how would that affect you?**

R6: We are client of Capital Advantage. They do very good work in getting those web forms in, but they are not cheap. We are not just a non-profit. We are a really broke non-profit, as most of

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them are. It is not cheap to pay for them. If we didn't have to, we wouldn't. But we do have to and we know that.

R2: I see that a lot of the web applications used by stakeholders now are the big automated dumps of the same thing. They dump an automated form and they get an automated letter back. It is sort of like, "What did it all mean?" Unfortunately, we are seeing that it is going to enable the large dumps. The same thing over and over again doesn't move the argument along at all. I would hope that in the future some of these organizations, that want to do big dumps, will add very specific fields in their thing that every person would have to fill out that gives really precise information. I'll give you an example. If you're writing in about people who have been injured because of exposure to "x", it could ask, "What industry?"; "How long did you work?"; "How many days away from work?"; "How much did the injury cost?"; "What was the cost to the employer?" Because, then, 50,000 of those coming in literally can become a database that the agency or organization can play with and give you something, and it could make those form letters something more valuable and useful to the agency. I'm hoping those organizations will discover that in the future, because I don't think any agency rulemaking is just a government by public sight, and it shouldn't be. We have statutory standards we have to meet on what we must base our final decision-making on, and it is not numbers.

**M1: When I said, "How can IT improve the system?" this is precisely the kind of vision that we are trying to draw out of you. Not, what is a better rulemaking process. It is probably one that is defined by higher quality comments. So, the question is, "How can the IT that is developable, be deployed in such a way to decrease the number of the insignificant or irrelevant comments and increase the number of significant, salient, and legally defensible comments?"**

R2: It is not going to be a blind study with peer review with regression analysis. It is not going to be that. But it certainly moves you out of one classification, "Yeah we looked at them once and counted them all up," into a higher more careful attention to the comments. I think both business, as well as other types of non-business advocacy groups, could do this. And, I think it should be done with your letters to Congress too.

R7: When you look at Regulations.gov, it is one form. There are no customizations based on the comment period itself. In framing each comment period, you ought to be able to say that, we are seeking people who have been injured in these certain ways and be able to ask the questions and populate some type of database that you would be able to extrapolate that data from.

R2: We do. We do ask the questions. Very few people ever answer them.

R7: Is it in a form they have to fill that they have to say your arm was broken, or things like that? What I'm suggesting is, there are ways of building surveys. There are survey tools that do that type of thing.

R2: We have to be very careful at how we do it, because at some point, we pass over from asking general questions to doing a survey that has to be approved on the Paperwork Reduction Act to ask more than 9 people at one time.

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R4: I think it would be great. We just did the security things that IT used – having filters, being able to sort it, dumping into particular boxes. I'm talking specifically about comments from my perspective. It is a great tool to be able to use. Could we theoretically get spammed with junk comments? Yeah, I guess we could. But, if we were able to filter things, and compartmentalize them quickly, that would be great. We haven't been doing that. We have put them in an Excel program. It did make it faster for us. But if the new technology could sort the comments for us, that would be so much faster yet, and it would be fantastic. We could spend more time analyzing.

R8: I think part of what [name - R2] was saying was something, not that an agency could do, but that an organization could do. Then you'd have more flexibility in the way that you designed your surveys and you could play to your members. You could do a lot of things. But, the things you have to have to do that are the standards. You have to have a federal system that lets organizations hook into it. That is the part that we should talk about, because that is the part that is being decided now. I thought one of the more positive things today is that John offered to get together with people to talk about that stuff, because this is the moment when that needs to happen.

R7: The fact of the matter is that if he doesn't do it, it is going to happen anyway. We didn't ask permission, we just did it.

R2: Right. But, why make it hard for people and probably harder for them too in the long run?

**M1: I think one of the positive things that has come out of these meetings is that people have consistently said that they want this standard. Today you had representatives from the executive branch, and one of their key oversight persons from Congress standing there listening, as they heard rather emphatic and logical arguments, creating the opportunity to allow the structure to be built outside of government, in much the same way that eFile allows a bunch of different vendors to build these different interfaces for completing your taxes. They have different interfaces that range from, "Novice, I need help" to "Expert, I don't need any help." That could all be developed in the private or nonprofit sector and mapped onto a centralized system in such a way that it was seamless but not uniform. It could be adaptable to different rules and rulemakings, adaptable to different individuals and different groups. In that way I think you are going to maximize the potential of IT to serve the function of rulemaking.**

R10: Actually, with our paper docket, we've had stakeholders ask us if there was any way that they could provide it electronically or if they could directly receive it from us electronically. So, there is a real desire. Ten years down the line, one of the biggest concerns that we envision is the issue of comments on comments on comments. If indeed the docket is fully transparent, how do we control and handle that? That is an issue within the rulemaking process.

**M1: Could you elaborate why you think that is a liability?**

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R10: Our GC folks, to some degree, have been very consistent in stating that until the comment period is closed, that any comment received is not available to the public to respond on the comment, because we are requesting comments on the proposed rules, not comments on the comment.

R2: How do you guys get away with doing that?

R5: What we are talking about here in this eRulemaking arena, primarily, is this electronic docketing system. If we were to go to this standard system in all federal rulemakings, we still have to separate the fact that what the agency does with that information depends upon the agency. The agency decides whether or not its comment period is going to close on April the third. Some agencies may say the comment period will close on the third, but then will extend the comment for another month for rebuttal. It is silliness as I see it. It is up to the agencies to decide when they want to stop that comment period, and it is up to the agencies to decide how they want to treat the comments that are received after that, and then for the agency to decide whether or not they feel they need rebuttals to comments made. The way in which our agency handles those, which I think is a better way, is if there is a need for rebuttal, we just open up the comment period again, extend it for another month or so. But, we don't make anything automatic, because there you are wasting a lot of time, because it may not be needed. You want to only limit yourself to the things that you need, because right now the rulemaking process takes so much time, that anything like the electronic docket, that can help reduce that time, is important.

R10: If that tool holds as much as it has been developed for, the more that it is developed to help us, the greater it will assist us now and down the line.

**M1: Let me just follow-up on [name - R5's] comment. People are only just learning, inside and outside the government, the extent of agency flexibility within the centralized system. Which options they choose to use and which they choose not to still resides at the agency level. It is not something to be managed by a centralized behemoth. The centralized system will give a menu of options of types of services and things you can use and some that are optional. But, within that Module 2 and Module 3 threadwork, there is a great deal of discretion to be exercised at the agency level.**

R2: I can't say how strongly I disagree with the approach that [name - R5's] agency uses. And, maybe you don't do really intensive scientific rulemaking.

R5: We to informal rulemaking.

R2: Well, we do informal rulemaking. Formal rulemaking is done by almost nobody. Everybody is informal. But, look at people who give us a study, or who comment on a study, and their interpretation of it is completely different from someone else's. Or sometimes we get the same old bullshit. It is only in this rebuttal period, and the ability for people to comment, that people toughen up and get more specific, and zero in on the type of in-depth analysis we need to be considering in finalizing our rule. I think it is, to us, one of the most important parts of the rulemaking, because it makes everyone toughen up their comments and get more realistic about

R2 also in session 3B (R7);

R8 also in sessions 1A (R2), 2B (R6), 3B (R4), 5B (R5).

what they are saying, and because their view of the universe is going to be directly challenged by somebody else. That is why we also put our comments into the docket immediately when they are received. So someone can go through, look at it, and respond back, because nobody can look through every single scientific study there is. And, we need to have this check and balance that occurs.

R5: Let's exchange cards. You and I need to talk about this. You could teach me a lot. I think we don't have the differences that you perceive. But, none of this has anything to do with the electronic docket.

R8: Yes, it does.

R2: It does.

R5: No.

R8: I think this is a fantastic demonstration of what may turn out to be the greatest benefit of the whole thing. That is, you guys are talking to each other about what happens in different agencies in the same process. The fact that there is a committee of 50 people talking about legal issues means that some of the things, like the fact that your general council is saying...

**[tape break]**

R8: ...It's a fact that these people are suddenly talking to each other, and they have gone to the Department of Justice and have asked for an interpretation on copyright. There is at least going to be a lot of foment. That is probably good.

**M1: I couldn't agree more. A little bullet point about building social capitol is to create better agencies. This is a perfect example of that. I'll give an example from the first meeting of the exact same thing. One agency said, "You put pornographic or obscene material directly on the Web." The other agency said, "Absolutely not." So, the first agency said, "How do you know what counts?" The other says, "We've got a dirty word list." And the first one says, "Where'd you get that?" "We made it up."**

R8: Somebody else might have said, "What about 1<sup>st</sup> Amendment rights?"

**M1: What someone else did say was, "If you don't include every darned thing that comes in, you don't have a legal record."**

R2: The moment you submit an electric comment to ours, it is on the docket. It is part of the public record and can not be removed. I'm going to have to ask the guy who handles the eDocket if they have a filter for bad words. We didn't allow, until very recently, for you to add attachments to your electronic submission. Now we do. I don't know what type of filtering system we have in case people send something like "Babes in Bed." I don't know. I agree with [name - R8]. With the electronic system, the moment you submit, it will part of an open, public

R2 also in session 3B (R7);

R8 also in sessions 1A (R2), 2B (R6), 3B (R4), 5B (R5).

document, which will allow additional commenters to look at what is in there to craft their own argument or to answer people directly.

R10: I think though that the eDocket does have some latitude with the Docket manager. I know that that has been discussed in working groups, how to handle that kind of commenting: the x-rated comment or the comment that is received with an obvious attachment. You don't want to be the agency that is promoting something that has nothing to do with your rulemaking, AKA spam.

**M1: We are really at the end of time, but I want to give anyone who wants it a chance to say anything about where you think this should go or what you think is missing. Obviously, we have our agenda. For years we had these meetings, and they were about getting the big grant to do the work. Now we've got the big grant, and we are doing the work. Where do you want us to go?**

R5: Has there been anyone that has made the comment that they didn't think eRulemaking was the way to go? I know where you guys are coming from, that you would like us to tell you that there are no bad things.

**M1: No. No. No. We want you to tell us about the bad things so that we can help and learn. We are not naïve. Jamie is not a software developer or part of a company. He is a researcher in an academic institution. The likelihood that his functionality will end up in your eRulemaking system, as a result of our work, is extremely low. There is not a good track record for that. Now, will some company grow up that develops a product that looks like what Jamie has built and uses some of the underlying principles? Probably. Maybe. Hopefully. But, only if there is a demand for it, only if there is demand for it, only if people think it enhances the process, only if there can be agreement amongst the people who make decisions that this won't degrade the process. This may become some product that we recognize and use the way we do Google. I can only hope. But, it may not. I just want to give one last opportunity to say, "If you could work on one thing, it would be this." This is your chance to guide us.**

R6: Maybe it is because I'm the only one here who actually does advocacy work, maybe because I'm the only one in the room thinking from that perspective, the one great frustration is the feeling that the only thing we have to bring to the table is the people that care about these issues, and it feels like, more than ever, they are actually being writ out. They are being treated as bullshit more than ever. I mentioned it myself, that the fear is of turning rulemaking into legislation. [Name - R2] made the comment that the problem is with legislation, that you get this automatic comment and automatic response. That is actually appropriate in legislation, because legislation really should be, at some level, along with what is right and wrong; there is a concept of plebiscite involved with legislation. With eRulemaking, from the side of advocates, we feel like the whole design is to get us off the table, not bring us to the table. I know that you stated earlier that that is not your goal, but it sure feels like the whole eDocket process is designed to limit where we can come in, until it is too late to do anything.

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R8 also in sessions 1A (R2), 2B (R6), 3B (R4), 5B (R5).

R10: I can speak only to my agency. Advocacy response is critical to our understanding and developing our benefits and burdens to the consumer, the market. What is truly helpful, from the advocacy, is not so much the form letter, the PRGs and the form letters, but the actual substance response: “You’re standard, if you set it at this, is going to be a benefit or burden to me for the following reason.” Not site what some particular stakeholder organization has come up with as a figure, but the actual sum and substance of how it is going to affect them.

R2: I think [name - R10] said something that is very important. My heart rests with the advocacy groups even though I work in an agency. I’m hoping the eRulemaking will allow advocacy groups to become more sophisticated, because if we don’t get information from advocacy groups that is specific, we can’t do anything. The second thing is, I think there is a lot of parallel-universe happening. I think [name - R8] has also hit on that. We’ve got government deciding how to do this eRulemaking, and I don’t know to what extent they are bringing those who will be using it up to the table, or just bringing their own conceptions about what they think those who will use it will want. Then, they’ll give them that and people won’t know to ask for something different, so it becomes this vicious circle. I’m hoping they’ll do something about that. A third thing is, I think the most critical issue that our group decided this morning was with the API. That was the fear of inherent bias in the indexing and text analysis system that could prevent your comment from being properly considered, because there was not an analysis that picked up your issue. If it is a government-wide one, that index will be so lowest common denominator that it will be even less likely. So, I think the API issue is absolutely critical.

R2 also in session 3B (R7);

R8 also in sessions 1A (R2), 2B (R6), 3B (R4), 5B (R5).