

Federal agencies are increasingly turning to the Internet when conducting rulemaking. Regulations.gov, which originated as a central forum for agencies to post regulatory dockets and receive public comments, has offered [expanding capabilities](#) over its 10-year history. Nevertheless, according to a recent [draft report](#) prepared for the [Administrative Conference of the United States](#), “for the most part, social media are used to get the word out about a rulemaking, but not as a mechanism through which the rulemaking is actually conducted.” The draft report concludes:

A decade into the flowering of e-Rulemaking, four years since the Open Government Memorandum, in the thick of the web 2.0 explosion, the role(s) of social media in rulemaking remains uncertain. There has yet to be a truly successful demonstration of how social media will or might meaningfully enhance the notice-and-comment process. To date, participation levels have been low and dialogue virtually nonexistent. Sophisticated participants have shunned social media, sticking to traditional notice-and-comment. The quality of contributions from lay participants has not been high, and the impact of their contributions difficult to perceive. On the other hand, the theory is enticing, and the possibility that new technologies could engage stakeholders who have heretofore been on the sidelines, tap into the dispersed knowledge of the public, bring new voices to the table, and democratize the process remains worth pursuing.

To generate ideas for using social media to improve rulemaking, the [GW Regulatory Studies Center](#) worked with the Administrative Conference to host a [workshop](#) on September 17 that featured presentations by two expert panels followed by a robust discussion among the almost 100 workshop participants.

GW Regulatory Studies Center Scholar, [Professor Steven J. Balla](#), moderated the first panel which focused on how agencies are currently using social media tools. Bryant Crowe, Program Analyst in [eRulemaking Program](#) at the Environmental Protection Agency highlighted features of the redesigned [Regulations.gov](#) site. [Ben Balter](#) of [GitHub](#) encouraged a transition in e-rulemaking from a “contributor model,” where different editors make individual changes to a document, to a “collaborator model” patterned after open-source software, where authors publish a draft, collaborators modify it, and the community discusses it. [Joel Kaufman](#), Associate General Counsel, [Federal Communications Commission](#), shared the FCC’s experience testing new media for certain regulations. The Commission found the statutory challenges manageable,



and while the experiment did engage new participants in the rulemaking and was useful for identifying public concerns, the comments submitted through new media tended to be anecdotal rather than substantive and analytical. [Justin Herman](#), with the [Center for Excellence in Digital Government](#) at the [General Services Administration](#) highlighted advances in the federal government's use of social media, including interactive toolkits that are living documents and a prototype social media policy under development

GW Regulatory Studies Center Scholar [Marcus Peacock](#) moderated the 2<sup>nd</sup> panel which explored how agencies can use social media in new and innovative ways to improve rulemaking. [Rick Otis](#), Principal at MeadowNeck Consulting, identified several areas where social media could improve regulatory procedures and outcomes, including by encouraging iterative commenting on proposed regulations, a real-time [Regulatory Agenda](#), and using a collaborator model for gathering scientific information and engaging outside experts in discussion on appropriate models, data, and interpretations of data. [Whitney Patross](#), an attorney with the [Consumer Financial Protection Bureau](#), and [Professor Cynthia R. Farina](#), Cornell University Law School and principal researcher in the [Cornell e-Rulemaking Initiative \(CeRI\)](#), both talked about the CFPB's experiment with Cornell's [Regulation Room](#). Regulation Room has facilitated broader public comment on selected regulations by presenting the information in a regulatory preamble in an accessible format, providing a guide to issues, and layering information (with links to more detail). It moderates discussion on the issues, and ultimately summarizes the comment into an official comment letter that it submits on the public record for the rulemaking. Farina offered advice to agencies considering greater use of social media. First examine what you are trying to accomplish (and recognize that social media is not an end in itself). Second, don't forget what you know about human behavior, and third, recognize that technology must usually be partnered with human effort.

ACUS attorney, [Emily Bremer](#), ACUS consultant, [Michael Herz](#), and chair of the ACUS rulemaking committee, [Neil Eisner](#) then moderated a free-flowing discussion among all workshop participants that focused on where social media could be most effective in rulemaking. Perhaps crowd sourcing might be more useful after a regulation is in effect, to evaluate how well it is working? Or perhaps the advanced notice of proposed rulemaking stage, where Administrative Procedure Act requirements do not apply, might be a good opportunity to engage a broader discussion using new interactive social media tools? ACUS Chairman [Paul Verkuil](#) concluded the conference by suggesting that the Conference apply social media crowd sourcing tools to this very project, seeking public input through a moderated discussion on possible recommendations.

