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A BRIEFING ON PUBLIC POLICY ISSUES AFFECTING CIVIL LIBERTIES
ONLINE

from

THE CENTER FOR DEMOCRACY AND TECHNOLOGY

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(1) SENATORS INTRODUCE RESOLUTION TO PUT MORE CONGRESSIONAL
INFO ONLINE

Led by John McCain (R-AZ) and Patrick Leahy (D-VT), a bi-partisan group of Senators has introduced a resolution to put Congressional Research Service reports and lobbying disclosure records online. The bill, S. Res. 21, offers the best chance yet to make Congress more open and accountable.

The Congressional Research Service (CRS), housed in the Library of Congress, uses taxpayer dollars to produce reports on public policy issues ranging from foreign affairs to agriculture to health care. CRS reports represent some of the best research conducted by the federal government. All of the reports are posted online, but access is available only to Congressional offices through an intranet system. Citizens can order paper copies of the reports through their Member of Congress, but only by mail. Moreover, the general public cannot search through past reports, and a comprehensive index of the reports is not available online, so citizens basically have to guess when they ask for something.

CRS reports would be useful to researchers, students, librarians, government employees, and ordinary citizens. The McCain-Leahy resolution

would put about 2700-2800 of these reports on the Internet. Despite co-sponsorship from Senate majority leader Trent Lott (R-MS), the measure faces an uphill battle, as a few key Senators continue to oppose it.

A letter endorsing the resolution, signed by over thirty public interest groups, including CDT, is at <http://www.congressproject.org/infopolicy/mccaincrsendor01.html>

(2) CONGRESSIONAL RESEARCH SERVICE REPORTS STILL THE MOST WANTED

Forcing citizens to obtain CRS reports by mail rather than online is one example of Congress' continuing failure to take full advantage of the democratic potential of the Internet.

In August 1999, after consulting watchdog groups, reporters, librarians, and government employees, CDT and OMB Watch issued a report identifying the "Ten Most Wanted Government Documents" -- useful taxpayer-financed information that wasn't available online.

<http://www.cdt.org/righttoknow/10mostwanted/>

Since our report's release, three of the most wanted documents have been placed online:

* Supreme Court Web site -- In a significant victory for government openness, the Supreme Court put up a Web site last summer. Public interest has been tremendous: the site received over one million visitors in the first few hours after the decision was posted in the Florida election case.

<http://www.supremecourtus.gov>

* Endangered Species Recovery Plans -- These documents, which used to be available only for purchase, are now available in .pdf format directly from the Fish and Wildlife Service.

<http://endangered.fws.gov/recovery/recplans/index.htm>

* Official Gazette of Trademarks -- Printed in compiled form, these documents were online in such a dispersed format that even officials at the US Patent and Trademark Office could not find them. They have since been linked to from a single location.

<http://www.uspto.gov/web/menu/og.html#tm>

Unfortunately, Congress is lagging behind in putting up its information. In the CDT/OMB Watch survey, CRS reports were the #1 most wanted document government-wide. Two other important sets of Congressional information -- the full text of all Congressional hearings and a searchable database of Congressional votes -- also are still not online.

Reporter David Corn wrote an insightful article called "Filegate.gov" detailing Congress' unwillingness to use the Internet, in the November 2000 issue of Wired. Corn's article is available online at:

<http://www.wired.com/wired/archive/8.11/govdocs.html>

(3) FRAMING AN E-GOVERNMENT AGENDA FOR THE 107TH CONGRESS

The early 1990s offered great promise for the federal government's use of the Internet. As early as 1995, most federal agencies had Web sites with information that had been previously available only in reading rooms in Washington or by mail under the Freedom of Information Act (FOIA). The Library of Congress' legislative information site "Thomas" <http://thomas.loc.gov> was seen as a revolutionary breakthrough for citizen interaction with government. In 1996, CDT was instrumental in securing passage of the Electronic-FOIA amendments, which required agencies to deliver documents in electronic format and to pro-actively post the most frequently requested documents.

However, after the passage of E-FOIA, the momentum to use the Internet to increase government openness slowed. This year, with the convening of the 107th Congress, CDT is seeing a renewed vigor among those interested in using the Internet to make government more responsive.

A full e-government agenda has yet to take shape. However, it should

include the following initiatives, in addition to putting CRS documents online as called for in the McCain/Leahy resolution:

1. Allow citizens to opt for online responses to their FOIA requests - Citizens making FOIA requests should be able to specify that they want the government to respond by placing the information on the agency's Web site. This would not only make more information publicly accessible, but would likely save money by sparing the government the expense of having to copy and mail the same material over and over in answer to multiple requests.
2. Rewrite the Privacy Act and require "privacy impact assessments" for new information systems - Privacy has been shown to be the #1 reason that people are not using interactive services, yet the federal government is still operating under a Privacy Act signed into law in 1974. With the growth of the Internet, the Privacy Act needs a new look.
3. End the 60 day rule - Under Senate rules, Senators cannot make any changes to their Web pages within 60 days of an election, meaning that this most flexible and vibrant medium is frozen at the end of every term of Congress. Just when the most action is happening in Congress, Senators cannot use the Web to interact with constituents.

All of these reforms could -- and should -- be accomplished in this year. Other initiatives, such as taking advantage of new technologies such as XML to make government information more readily available to the public, will require more time but should be launched now.

For more information on updating the Privacy Act, see the Federal Computer Week article by CDT senior policy analyst Ari Schwartz at <http://www.fcw.com/fcw/articles/2000/1030/pol-schwart-10-30-00.asp>

For more information on the "60 day rule," see <http://www.fcw.com/fcw/articles/2000/1211/pol-schwart-12-11-00.asp>

Detailed information about online civil liberties issues may be found at

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