

# Chapter II

## Government Web Sites as Public Forums

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### INTRODUCTION

In countries around the globe, the public availability of information through technologies such as the Internet has increased the average citizen's ability to access documents, resources and solutions with unprecedented ease. Governments are increasingly faced with the task of balancing their information technology capabilities and the electronically based solutions demanded by citizens (Brewer, Neubauer & Geiselhart, 2006, Streib & Navano, 2006). For example, Thomas and Streib (2003) note that the citizen-initiated contacts made through Web interfaces is fundamentally different than traditional interfaces in that the interaction

is often easier and quicker than traditional contacts. However, they also note that with the lack of personal interaction, citizens make decisions based on only the information presented on the Web site, which may or may not be based on totally objective information sources.

Public managers who are the gatekeepers regarding the informational content of communication systems have to be especially cognizant of which resources to provide on public owned systems. At times, online solutions provided by the government may involve referring citizens to for-profit firms through hyperlinks on government-owned Web sites (Sellitto & Burgess, 2005). The inclusion of one firm over another on government

Web sites has been noted to be a real concern for public managers (Menzel, 1998). In this article, we employ a legal perspective to examine the ramifications of public information strategies that allow firms to have hyperlinks embedded within the content of public information systems. This perspective allows the public information manager to make informed decisions when developing government portal strategies.

## **BACKGROUND**

The Internet has proven to be an invaluable communication media resource. Individuals and businesses desiring a product, service or information use the Web to find prices, specifications, recommendations and peer ratings. Unlike traditional communication media, such as television or radio broadcasts in which content is provided in sequence, the Internet allows an individual to choose from Web pages that only interest them right then and right there.

Businesses, especially those that sell products and services related to a site's content (Moore et al., 2005), are often interested in attracting the Web site visitors and often have the opportunity to purchase access to this group from the visited Web site's owner. The business can pay the Web site owner to place an ad or an embedded hyperlink on the Web site that, with a click, will take the interested customer directly to the business's Web site. The end result being that the clicked on business has benefited from having a hyperlink on the Web site.

Alternatively, if the Web site owner does not want to deal with a particular business, then the owner simply does not provide a hyperlink. However, what if the Web site owner is a governmental entity? For example, in an effort to encourage online submission of tax returns, the United States Internal Revenue Service has set up a page in which it lists the names and hyperlinks to private firms that will assist individuals to electronically prepare their taxes (IRS, 2006). Similarly, the City of Chicago has hyperlinks to external sites such as Chicago City Search and Metromix, which are

for profit commercial ventures (cityofchicago.org, 2007). These Web site hyperlinks represent the government's de facto decision to not promote other alternative businesses. Additionally, having a link on these government-sponsored sites may have a positive branding effect on the hyperlinked company resulting in an individual believing that because it is on a government Web site, the hyperlinked firm is sanctioned by the government.

If a governmental entity can arbitrarily grant or deny access to a Web site, then that governmental entity has the ability to greatly affect not only political debate but also marketplace ideas and access by controlling who will participate in the debate. But, governments must have some control over whom and what is allowed on their Web sites. So, how is this control maintained while not running afoul of the business's right to access? The U.S. government's Web portal Firstgov.gov has even set about to clarify its position on linking from its site by instituting the following policy:

*In rare instances, FirstGov.gov links to Web sites that are not government-owned or government-sponsored if these Web sites provide government information and/or services in a way that is not available on an official government Web site. FirstGov.gov provides these non-government Web sites as a public service only. The U.S. government, including the U.S. General Services Administration (the primary sponsoring federal agency of FirstGov.gov), neither endorses nor guarantees in any way the external organizations, services, advice, or products included in these Web site links. Furthermore, the U.S. government neither controls nor guarantees the accuracy, relevance, timeliness or completeness of the information contained in non-government Web site links. (See Disclaimer of Endorsement for more information on this topic.) (USA.gov, 2006)*

Clearly, the government treats its Web sites as property and government property for First Amendment purposes, has been placed in three broad categories, or forums: the traditional public forum, the designated public forum, and the nonpublic forum. The significance of the char-

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