

DOJ and DHHS take steps toward less transparency

The federal government wants to alter the delivery method for public notices by shifting them out of newspapers onto obscure federal websites.

Currently, the Department of Justice has proposed regulations that would allow the ATF, the FBI and the DEA, to publish forfeiture notices on infrequently-viewed federal government Internet sites instead of on independent community newspaper websites. In addition, the Department of Health and Human Services has proposed regulations that would authorize states to post Medicaid rate increases on state government websites, instead of on independent community newspaper sites.

The National Newspaper Association joined the Public Notice Resource Center, along with the American Court and Commercial Newspapers and the Newspaper Association of America, to oppose these changes. The coalition submitted a letter to the DOJ and DHHS in opposition of the proposals—because fewer people will receive public notices from government Internet sites than if the notices are in independent community newspapers.

The purpose of public notice is to display information in places where the public is most likely to notice it. It has been established that independent, community newspapers are the best outlets to distribute public notices because they are generally published regularly at known intervals, circulated

in a community, restricted to a geographical area and the information they contain is timely and interesting to the general public.

Compete (www.compete.com), a Kantor Media Co., provides market analysis for most major Internet sites, including traffic history and competitive analytics. PNRRC used Compete to test www.forfeiture.gov, the likely government Internet site for forfeiture notices, and found that its traffic—when tested against a sample of newspaper sites—was miniscule. For the month of June, the total number of unique visitors to forfeiture.gov was only 201. (The unique visitors' metric only counts a person once no matter how many times he or she visits a site in a given month.) Although the number of visitors to www.forefeiture has slightly fluctuated within the past year, the data clearly shows that few people visit that site. Based on this information, it is unrealistic to assume the public will visit or receive public notices from this federal government site.

One major problem with government Internet sites is they do not lure viewers. Government Internet sites publish a combination of reference materials, such as contact information, biographical information on public figures, regulations, and statutes, and the agency's own mission news and press releases of successes and actions—all of which is generally stagnant information and does not grab readers' attention. This means people are less likely to visit government Internet sites—if ever—than a frequently updated news site.

Other studies have also shown that the general public rarely visits government Internet sites. This was affirmed by the Pew Center for the Internet and American Life (Pew Research Center), an independent, non-partisan public opinion

research organization that studies attitudes toward politics, the press, and public policy issues.

Last year, the Pew Research Center released statistics that found only 40 percent of adult users have researched online raw data about government spending and actions. Although this same study found that visits to government Internet sites from the general public are slowly growing, it did not examine any research specific to the Internet sites that may be visited for public notices searched.

In the federal agencies' justification for the proposed regulations, no statistics, reports or studies are cited that would reveal anything to the contrary. It is almost as if the departments want to either ignore or disregard a fact that is commonly known: Few people visit government Internet sites.

In addition, traditional public notice has four elements that mark a valid notice. The notice must be published from an independent party, the publication must be archivable, the publication must be accessible and the publication must be verifiable. If any one of these elements is absent, the public loses. The departments' proposed rules remove the independence of a third party because government agencies will have the option to publish public notices on government Internet sites, resulting in no accountability and no oversight.

Requiring the federal government to archive forfeiture notices and states to archive Medicaid rate increase notices will place a significant financial burden on both state and federal governments that are already known to be cash strapped. With this financial burden comes the risk that notices may not be archived, or not archived properly, in order to reduce costs.

It is also commonly known that a high proportion of the

general population is undergoing economic hardships, leading to reduced spending on non-essentials—like computers and Internet services. People without a computer and Internet access will face tough odds in receiving public notices posted on government websites.

The public and the source of the notice must be able to verify that the notice was published and not altered once published. When a newspaper provides notice, an affidavit is provided by the publisher, which can be used in an evidentiary proceeding to demonstrate that a true copy was published as well as the exact wording that was used. It will be difficult and costly for government agencies to prove authentication of Internet site publications because Internet sites can—and often are—edited repeatedly after initial publication.

The departments need to recognize that newspaper notification is the best way to distribute public notices. They provide notifications that are independent, archivable, accessible and verifiable. This form of notification is important because newspaper notices are not lost with technological changes, and their content is permanently fixed once published. Also, most newspapers have Internet sites that contain public notices. This provides the general public with two ways to receive these notices.

Government Internet sites are desirable and can be used to supplement public records. The time, however, has not yet arrived when an Internet site—public or private—can supplant printed newspaper notices.

If you would like a copy of the letters submitted to the DOJ or DHHS please visit www.pnrc.net or call 703-237-9806.

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PERSPECTIVES ON PUBLIC NOTICE

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