Congress, the Presidency, Information Technology, and the Internet: Policy Entrepreneurship at Both Ends of Pennsylvania Avenue*

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The 1990s ushered in a veritable information revolution made possible by digital technology and the convergence of telecommunications, television, video, and computer applications. American national institutions have struggled to keep pace with the rapid advances in information technology (IT) and the growth of the Internet that have far-reaching implications for politics and the policy process. Shaping the commercial development and regulation of “cyberspace” proved a complex and often daunting task for the president and Congress in the last decade.

A number of vexing subjects remain on the national agenda at the turn of the new millennium. From censorship to taxation of electronic commerce in the “new economy,” these issues promise lengthy and continued debate. The central question for scholars of the presidency and Congress is this: What can we learn about the future direction of national policies on the Internet by examining presidential and congressional efforts in the 1990s? Surprisingly, political scientists have given little attention to how the president and Congress have jointly and independently sought to cope with the mounting policy challenges of the information age.

The objective of this chapter is to fill part of this scholarly void by exploring the respective roles of the White House and Capitol Hill in the development and regulation of the Internet from 1993-2000. No single paradigm adequately explicates executive and legislative actions on Internet policy. The concept of “policy entrepreneurship” does, however, cast light on the distinguishable roles played at the opposite ends of Pennsylvania Avenue. This analytical perspective aids in reconciling charges of “policy chaos” with the reality that the 1990s witnessed significant progress toward a delicate balance between governmental promotion of IT development and regulation of the Internet.
Responsibility for the Internet and information technology is shared and fragmented between the president and Congress. Attempts to fashion a national policy on the Internet fit very well within the framework of the “tandem institutions” perspective (Peterson 1990; C. Jones 1994). This perspective emphasizes interdependence between the branches. Policymaking, as Peterson (1990, 7) writes, cannot be understood “with reference to only one branch of government” (Peterson 1990, 7). The American system of “separated institutions sharing powers” (Neustadt 1960) yields the probability that at various points in time, and on various policies, Congress and the president will be more or less dominant in setting the agenda and steering policy outcomes.

The central argument of this chapter is that the president and Congress played complementary, if dissimilar roles, on Internet policy in the 1990s. Policy innovation and issue foci differed within each branch. The Clinton Administration concentrated both on spurring private sector development of information technologies and applying IT to federal agencies. Much of the president’s agenda was accomplished through independent actions under a pre-existing legislative framework when the Administration failed to procure a new and expansive one from 1993-94. Congress, by contrast, struggled far more with regulating unforeseen consequences of the Internet’s mercurial ascent as a tool for everything from “e-commerce” to the distribution of pornographic material. Capitol Hill suffered from the lack of a unifying policy history on Internet-related issues capable of bridging institutional capacity with accelerated technological change. The multidimensional quality of Internet issues confounded lawmaking efforts and yielded an incremental and cautious approach to regulation.
Adding the concept of “policy entrepreneurship” to the tandem institutions perspective offers a useful lens through which to assess the basis for independent and joint presidential and congressional policy action on Internet issues. Policy entrepreneurs are concerned with *policy change* (Price 1971). They are best defined as those political actors—in the executive or legislative branch—who seize the initiative to identify policy problems and offer substantive alternatives and solutions (Baumgartner and Jones 1993; Kingdon 1995). They seek to mold the public agenda, steer the debate, and are willing and able to invest the time, energy, and resources to engage networks of decision-makers in “policy communities” and “policy networks” to coordinate vital support for new initiatives (Kingdon 1995; Riker 1986; Heclo 1978). Policy success and status may constitute the central motivation for political entrepreneurs (Schneider and Teske 1992, 739-740; Chong 1991). As Mintrom (1997, 740) notes:

> Policy entrepreneurs can be thought of as being to the policy-making process what economic entrepreneurs are to the marketplace. Policy entrepreneurs are able to spot problems, they are prepared to take risks to promote innovative approaches to problem solving, and they have the ability to organize others to help turn policy ideas into government policies.

By navigating new initiatives through the policy process—from the definition of problems and agenda-setting to coalition-building—policy entrepreneurs may be a source of significant and punctuated advances in policymaking, or “serial policy shifts” (B. Jones 1994, 25-26).

The president and members of Congress have similar incentives, though different resources, to engage in policy entrepreneurship. Each branch faces different constraints and opportunities. Presidents have strong incentives to provide policy entrepreneurship because they are innately concerned with their historical legacies. They are well-positioned in the American political system to take advantage of the media’s intense focus on their actions and reach an extensive public audience. In addition, they may be able to employ the formal trappings and
informal perquisites of the office to lure congressional interest in, and action on, their initiatives. Yet, presidents cannot control internal dynamics in Congress. Legislative success is contingent largely on Congress-centered factors, including party, ideology, and constituency—factors that place the president “at the margins” of influence (Edwards 1980; 1989; Bond and Fleisher 1990). Presidents can, however, take independent actions including executive orders and administrative policies that do not require congressional assent. And they can utilize the expansive resources in the White House and executive branch to network within the federal establishment and link to private sector interests to promote their agenda, through both formal and informal venues.

Presidents’ interest in policy entrepreneurship is likely to converge around issues like IT and the Internet for which alternatives have not been adequately defined or debated. Presidents’ ability to identify and shepherd such “promising issues,” as Lammers and Genovese (2000) describe them, is a key component of presidential skill. Bryan Jones (1994, 197) notes that:

Presidents at the national level (or governors and mayors at the state and local levels) are frequently the primary entrepreneurs seeking to redefine an issue in order to achieve maximum support for it. While political chief executives may act as brokers for the policy ideas of others, in the modern world they must also define a policy agenda themselves in order to be viewed as successful. That agenda must also be “packaged and sold” to Congress, the media, and to the public.

On emerging issues such as new technology, presidents can stimulate public dialogue, lend their own perspective to the best course of action, and devote the vast resources of the White House to leave a lasting imprint on policy, whether through congressional liaison and legislative endeavors or through independent executive actions.

Members of Congress may be driven to engage in policy activism by electoral incentives (Mayhew 1974) and by their desire to enact good public policy (Fenno 1973). Their ability to play a prominent policy role, shape the contours of debate, and offer substantive alternatives to
solve emergent problems may depend significantly on the policy “niche” that they are able to cultivate through their committee assignments (Price 2000). Members who are well-situated to engage in policy entrepreneurship include those party leaders in authoritative decision-making positions, including committee and subcommittee chairs with specialized policy expertise. These leaders are most likely to enjoy the status and access to the requisite human and financial resources to steer initiatives through the legislative process.

Opportunity structures in Congress—the distribution of authority and resources—shape the potential for policy entrepreneurship. Members can face considerable constraints in their bid to assume an assertive policy leadership role. The centralization of decision-making authority in party leaders beginning the 1980s may limit members’ ability to stray too far from leaders’ policy objectives (see Rohde 1991; Sinclair 1995). Jurisdictional lines between committees are often blurred. Committees leaders may attempt to encroach on each other’s turf (Baumgartner and Jones 1993, 198-99). Party leaders’ referral of legislation to multiple committees may additionally complicate policy innovation (see Davidson, Oleszek, and Kephart 1988). The successful congressional policy entrepreneur must therefore maneuver around numerous institutional hurdles and reach out to party leaders, other committee and subcommittee chairs, as well as rank-and-file members and organized interests, to build the requisite coalitional support.

The very nature of Internet issues complicates policy entrepreneurship in Congress. One basic problem is that the pace of legislative efforts can lag behind rapid technological advances. By the time that policy entrepreneurs have reconciled conflicting interests and brokered necessary support, the window of opportunity for legislative action may have closed with new technology that renders regulation ineffectual or unnecessary. Another problem is that the Internet represents a “computer-generated public domain which has no territorial boundaries or physical attributes
and is in perpetual use” (Loader 1997, 1). No single entity “owns” or is responsible for the Internet. Consequently, the intractable issues with which members Congress must grapple often blur distinctions between the private and public spheres and transcend regulatory, distributive and redistributive policy typologies (Lowi 1964). Cross-cutting committee jurisdictions over information technology, members’ short-term electoral incentives, budget politics, and bicameralism frustrate bids to overlay a comprehensive, long-term national structure for Internet development and regulation.

**President Clinton, Congress, and Policy Innovation on Internet Issues**

In light of the divergent policymaking settings within which the president and members of Congress operate, policy entrepreneurship on Internet issues followed distinctive tracks in the White House and on Capitol Hill in the 1990s. Each branch grappled with different facets of IT and Internet development and regulation and assumed a different entrepreneurial role. President Clinton and Vice President Gore sought to develop a National Information Infrastructure (NII) and streamline governmental information procedures and public access. When priority legislation for the NII stalled in the 103rd Congress (1993-94), Clinton used a statutory framework that pre-dated the Administration—the High Performance Computing Act (HPCA) of 1991—to foster public-private partnerships toward IT development across the remainder of his term. Clinton also used his executive authority to assemble a task force of public and private sector concerns to facilitate problem-solving. In addition, Congress was successful in passing several bills with broad bipartisan support that targeted IT in government agencies and the Administration incorporated provisions of the bills into Vice-President Gore’s National Performance Review (NPR) initiative. The White House, then, pursued policy entrepreneurship for IT development and usage on a variety of fronts—through an admixture of executive orders and independent actions, the
expansion of research and development grant programs by “creative” budgeting, and congressional legislation that complemented Gore’s focus on “reinventing government.”

Congress, on the other hand, was (and continues to be) constrained by the enormously difficult task of updating existing laws and crafting new legislation to address the fresh issues raised by the very development and commercialization of the Internet championed by Clinton and Gore. Cross-cutting and seemingly contradictory issues that emerged on the public agenda were among the most difficult for Congress to reconcile. Capitol Hill sought to promote “privatization” of information technology while ensuring “privacy” rights for consumers. Legislators recognized the need to protect the most vulnerable segment of the population—children—from sexual predators on the Internet but found that striking a balance with First Amendment protections was an onerous task. And while physical borders are insignificant for the World Wide Web, geography remains central for political choices in a federal system on such issues as the taxation of e-commerce. What legislation emerged in the 1990s frequently resulted from the steadfast efforts of a handful of enterprising leaders in Congress who devoted themselves to Internet issues on Capitol Hill and were able to broker legislative support for a tempered approach to regulation.

Major efforts in Congress to weave together a coherent national Internet policy proceeded largely under the tutelage of select policy entrepreneurs in both chambers. In the House of Representatives Bob Goodlatte, Rick Boucher, and Thomas Bliley (all of Virginia) and Christopher Cox of California used their positions on key committees to innovate on issues of competitiveness, taxation, and business-related Internet policies and regulation. In the Senate Orrin Hatch of Utah, Ron Wyden of Oregon, and Ernest (Fritz) Hollings of South Carolina took the lead on bringing several laws current with Internet applications. The efforts of these policy
entrepreneurs were complemented and supported by members of the bipartisan Congressional Internet Caucus, whose mission is to “educate their colleagues about the promise and potential of the Internet” (CQWR 9/3/99, 2071).

A closer examination of executive and congressional policy entrepreneurship on Internet issues distinguishes the variable opportunities and constraints the White House and Capitol Hill faced in cobbling together development and regulatory policies for IT in the 1990s. The next section explores the White House’s varied approach to Internet development and application to government agencies.

**Clinton, Gore, and the National Information Infrastructure (NII)**

Although the search for national coordination of information technology policy dates to the 1970s in the Ford Administration, President Clinton and Vice President Gore made IT central to the 1992 election campaign (Miller 1996, 73; Dugan, Cheverie, and Souza 1996). The new Administration swiftly laid bare a comprehensive vision of a National Information Infrastructure (NII) in a document entitled “Agenda for Action” in February 1993. The document outlined the ultimate goal of constructing “a seamless web of communications networks, computers, databases, and consumer electronics that will put vast amounts of information at users’ fingertips” (Agenda for Action 1993, Executive Summary).

The NII was established to bridge the public and private spheres. The plan involved a delicate “balancing act” by the Administration by inviting public participation in the information policy debate while simultaneously developing incentives for private sector development of the information superhighway (Dugan, Cheverie, and Souza 1996, 133). The Federal government’s primary role was to 1) promote private sector development and reform regulatory impediments to development; 2) ensure “universal service” and accessibility; 3) increase government grants for
information technology; 4) emphasize user-driven, interactive applications; 5) ensure information security and network reliability; 6) protect intellectual property rights; 7) coordinate the NII with state, local, and international governments; and, 8) provide greater access to government information and improve government procurement practices.

Vice-President Al Gore’s efforts were central to the NII initiative. Gore had long championed IT issues during his tenure in both the House of Representatives and Senate (Cate 1995, 147). In early 1993—now as Vice President—he announced a legislative package the Administration sought to move in earnest on Capitol Hill to transform the Agenda for Action from idea to practice (Gore 1994). The five principles accentuated by Gore—private investment, competition, open access, avoiding an information society of “haves” and “have nots,” and flexible government action—were detailed in a widely-distributed Administration “white paper” (NII White Papers). The legislative initiative aimed to update the High Performance Computing Act of 1991 (S. 272, PL 102-194), which Gore had helped steer to completion while in the Senate. Gore had been unsuccessful in later attempts to amend the Act in 1992 to include a coordinated approach to IT development (S. 2947, Information Infrastructure and Technology Act of 1992). From his new vantage point in the executive branch, however, Gore was now free of the binding committee jurisdictions in the Senate that foiled his earlier proposal and was “able to design the initiative as a general blueprint for the challenges of the information revolution” (Kahin 1997, 151).

Yet many of the same dynamics that dashed Senator Gore’s 1992 proposal also thwarted passage of the Administration’s information superhighway initiatives in the 103rd Congress. Jurisdictional jealousies and competing claims to IT issues by congressional committees and bicameral politics—much more than the partisan divides that would prove so tumultuous for other
elements of the Administration’s agenda in the 103rd Congress—proved insurmountable. The Senate’s failure to pass the National Competitiveness Act of 1993 (S. 4) was pivotal in impeding the White House’s legislative agenda on IT issues and forcing Clinton and Gore to find more creative means to accomplish their policy objectives.

S. 4 was sponsored by Commerce, Science and Transportation Committee Chairman Ernest Hollings (D-SC). The bill would have authorized $380 billion for loans and research grants for computing and communications programs. The Department of Commerce’s National Institute of Standards and Technology (NIST) was to be the locus of coordination of the funds. However, a provision for the Department of Commerce to develop a pilot program for investment in technology-based companies stirred controversy with Dale Bumpers, chair of the Senate Small Business Committee. Bumpers was adamant that the Small Business Administration administer the program. The Energy and Natural Resources Committee also sought to influence elements of the high-performance computing provisions in the bill (Congressional Quarterly Almanac 1993, 241-45). The inability of Hollings and Democratic leaders to reconcile these programmatic conflicts precluded reporting the bill out of committee. S. 4 never reached the floor for a vote by the full chamber.

Most importantly, the untimely failure of S. 4 left key House legislation dead in its tracks. The House had already approved two companion bills that represented the core of the Administration’s agenda. H.R. 820 passed after enduring Republicans’ skepticism on both principle and substance. The bill authorized just over $2 billion for the development of new IT programs through research grants and loans to the private sector. Many GOP legislators argued that the bill represented “too much government interference in the marketplace” (Congressional Quarterly Almanac 1993, 243). The bill was subject to a barrage of amendments. The
Democratic leadership permitted an open rule on floor consideration of the legislation—the first
time an open rule had been allowed since 1992—and thereby provided an opportunity for
unlimited debate and change. The Democratic majority turned back the lion’s share of the
Republican amendments to curtail spending on the bill and several compromises on funding were
eventually reached. Yet passage of the bill 267-167 was moot without Senate action.

The National Information Infrastructure Act (H.R. 1757), a House bill to coordinate a
national network of “information superhighways,” was to be appended to S. 4 and therefore also
fell victim to Senate inertia. The initiative was a central component of the Administration’s
objective of linking government, schools, libraries, and medical facilities together through the
Internet, though the bill did not take up Gore’s controversial call for “universal access” to the
Internet for consumers (see Dentzer 1994; Glassman 2000). The bill’s sponsor, Rick Boucher
(D-VA), drew a sharp distinction between public and private sector responsibility for IT
development: the governmental role was to assist the private sector in structuring computer
standards, protocols, and interoperability, but the federal government itself was in no way taking
on the task of constructing or managing information networks (Congressional Quarterly Almanac

In the absence of enabling legislation for the NII, the Clinton Administration was now
compelled to search for alternative means to pursue its IT agenda. Clinton and Gore did so
through a number of independent actions. One of the most important components of that agenda
was achieved by executive “extension” of provisions in the High Performance Computing Act
(HPCA) of 1991. The main thrust of the HPCA was to advance high-speed computing
applications through a multi-agency effort.¹ The Clinton Administration used the “central
clearance” process in the Office of Management and Budget (OMB), through which all agencies
must formally route (or clear) programmatic budget requests, to expand the contours of the HPCA. The result was a new Information Infrastructure Technology and Applications (IITA) Program beginning in FY 1994. Through executive maneuvers Clinton had accomplished what Congress could not. The expansion of the HPCA achieved to a large degree the objectives outlined in H.R. 1757.

The IITA dovetailed with calls by the Computer Systems Policy Project (CSPP), an amalgam of the largest computer companies in the United States, to expand the High Performance Computing and Communications Program (HPCC). The IT industry supported development of a national information network to insure competitiveness in the global market (CSPP Perspectives 1995). As Kahin (1997, 172) notes, “The new component merely enlarged the scope of the HPCC budget crosscut rather than added a new funded program, but it answered CSPP’s calls for broadening the focus of the HPCC.” Twenty-five percent of the HPCC FY 1995 budget was accorded to the IITA, which focused on awarding research and development grants to the private sector and private-public partnerships for NII development (Dugan, Cheverie, and Souza 1996). This policy represented the Clinton Administration’s broad emphasis in the NII on user communities, research, education, scientific community, and private sector development, with the federal government playing a central role primarily in funding new initiatives (Bertot and McClure 1996, 33).

Over the course of his two terms President Clinton took a host of other independent actions—executive orders and proclamations—that pertained to the Internet and information technology. Many of these actions were symbolic, such as the declaration of “World Trade Weeks” and “National Back to School Weeks,” with explicit references to the role of IT. Other
actions fit within the NII framework and were far more substantive, including executive orders on the formation of a Global Disaster Information Network (2000), a working group on unlawful conduct on the Internet (1999), and a presidential advisory commission on Next Generation Internet Issues (1997). The cumulative effect of these independent actions was twofold—to increase public awareness of IT issues and streamline government information procedures. Two executive actions were particularly notable in these domains and merit closer examination: Executive Order (E.O.) 12384, which established an informal, public-private task force on the NII, and E.O. 13011, which addressed federal information technology practices.

E.O. 12864, issued September 15, 1993, created the “United States Advisory Council on the National Information Infrastructure,” chaired by Department of Commerce Secretary Ron Brown. Brown initially appointed twenty-five members from government agencies and the IT industry. The objective of the ad hoc task force was to foster a climate for the “co-production” of policies by bridging various policy networks in the public and private sectors and spurring cooperation between government agencies, interest groups, and public institutions. The goal of the Council was to stimulate a collaborative exchange between the federal government and private industry leaders toward a national strategy, including: 1) delineating the proper roles of the public and private sectors in NII development; 2) enhancing public and commercial applications of IT; 3) evaluating proposed regulation; 4) optimizing the potential for economic growth; and, 5) evaluating inter-operability of networks and protocols, access, privacy, copyright, and international issues.

The NII task force represented a central element in the Clinton Administration’s long-term objective to adapt the public policy dialogue to new technology. The work of the task force focused on reorganizing government approaches to “informatisation” (Frissen 1997)—the
development and administration of IT issues that cross the fields of service delivery, policymaking, policy debate, and deliberation. With respect to the multiple agencies and government entities responsible for elements of IT issues and development, the NII task force “helped to coordinate their often disparate, even contradictory, policies, while at the same time bringing them more into line with the Administration’s focus on managing competition in the information marketplace, assessing regulatory flexibility, and guaranteeing universal service” (Cate 1995, 151).

The central function of the task force was to hold public meetings, draft position papers, and solicit comments (Miller 1996, 111). Although the task force did issue a number of widely disseminated reports (NII Virtual Library), the impact of the group’s efforts was negligible in terms of tangible policy outcomes. The public-private task force was never fully developed or institutionalized because it had no formal budget authority. Participation by members was voluntary, and the work of the task force largely ground to a halt with the tragic death of Secretary Brown in the former Yugoslavia in 1996.

The greatest effect of the NII task force was to co-opt technology interests in the bid to define the appropriate private and public sector roles and scope of a national information policy. The Administration used the task force as a “bully pulpit” through which to publicize technology issues, draw public attention to policy development, and build consensus about the need to guard the public interest, all the while emphasizing private sector innovation (Kahin 1997, 172). This focus on public-private cooperation, rather than confrontation, may not have completely altered corporate uneasiness about government regulation of the Internet (Clarke 1998). But the work of the task force acted as a confidence-building mechanism that gave Clinton and Gore more
opportunities to credibly prompt the IT industry to self-regulate while accepting some
government intervention.  

Another of Clinton’s major independent actions took aim at IT in federal agencies. E.O. 13011, signed July 16, 1996, addressed broad issues in information resources management at the federal level. The executive action entitled “Federal Information Technology” synthesized elements of three congressional statutes targeting government efficiency: the Government Performance and Results Act of 1993, the Paperwork Reduction Act of 1995, and the Clinger-Cohen Act of 1996. The Clinton Administration took advantage of the congressional legislation to emphasize IT issues at the federal level as part of Gore’s NPR or “reinventing government” campaign (Holden and Hernon 1996, 90). The order provided comprehensive guidelines for federal agencies to manage information resources as a “strategic asset,” increase the efficacy of acquisitions, and integrate IT into agency investment and performance planning (Fletcher and Westerback, 1999). Above all, the Administration’s objective was to ensure greater public access to government information on the Internet, including data and forms. The executive order was supplemented by revisions to OMB Circular No. A-130, which emphasized information planning processes as well as service delivery to achieve agencies’ missions (Bertot et al. 1996).

A review of the Clinton Administration’s independent actions and executive orders demonstrates the centrality of discretionary authority for presidential policy entrepreneurship on the Internet and IT issues. The White House was successful in promoting a research and development agenda by re-tooling an existing statutory framework when Congress failed to furnish a new one. The Administration also provided instrumental guidance to federal agencies by unifying the provisions of several congressional bills to promote a strategic approach to governmental management of information resources. White House efforts on Internet and IT
policy, like those in Congress, surely lagged behind soaring advances in technology. Divided party control of the national government also led to some inter-branch tension over levels of research and development funding for IT and telecommunications reform after Republicans captured Congress in the 1994 elections (see Kahin 1997, 181-83; Bertot and McClure 1996). Yet the Administration’s emphasis on industry self-regulation and general (and likely purposive) avoidance of hot-button regulatory issues averted considerable partisan confrontation with Congress over the Internet. Congressional policy innovation and attempts to come to grips with these issues, and the Clinton Administration’s variable role therein, is the subject of the next section.

**The Internet Challenge, Major Legislation, and Policy Entrepreneurship on Capitol Hill**

In the 103rd Congress Edward Markey (D-MA), Chairman of House Telecommunications Subcommittee, expressed the dilemma that emerging Internet issues posed for Capitol Hill this way: “The good news from Washington is that every single person in Congress supports the concept of an information superhighway, the bad news is that no one has any idea what that means” (Markey 1994, 398). Such a lack of conceptual consensus in Congress did not, however, preclude legislators from gradually attempting to bring laws up to speed with the information age. The House of Representatives, in particular, took a steadily increasing interest in Internet development and regulation beginning in the mid-1990s.

[Figure 2]

Between the 103rd Congress (1993-94) and the 106th Congress (1999-2000) the number of proposed House bills directly concerning IT and the Internet mushroomed from less than five to fifty. The pace of Senate legislation similarly quickened. Momentum for action ostensibly built between 1993-96, peaked with the passage of a half-dozen major bills in the 105th Congress
(1997-98), and declined in the following biennial period. Growing congressional attention to Internet-related issues by the end of the decade did not, however, yield passage of a great deal of major legislation. The curvilinear relationship between the consideration and passage of major bills and time suggests a type of “surge and decline” or “life cycle” to regulatory efforts on the Internet, with only few bills successfully coming to fruition.

Representative Markey’s prescient observation about congressional uncertainty over IT issues, and the data trends in Figure 2, beg several important questions about efforts on Capitol Hill to regulate the Internet and how congressional activity differed from White House policy steps. First, what type of special obstacles did potential legislative entrepreneurs face vis-à-vis Internet regulation? Second, how did policy entrepreneurs contribute to the passage of major bills?

Several key problems inhere in congressional attempts to regulate the Internet-based “new economy.” As James Boyle of American University notes, “although many other policy areas have distinct sides, issues concerning the Internet do not break down along easily defined lines” (CQWR 10/17/98, 2817). The lack of a public policy history surrounding Internet issues—and the broad and occasionally non-traditional coalescence of interests involved—complicates policy innovation. Legislators must maneuver through a veritable minefield of conflicting views in the bid to define whom the federal government should protect and whom it should regulate—consumers, Internet providers, or the nascent e-commerce industry—while addressing other vexing questions such as content and access.

Updating existing legislation and forging new laws in the information age has been further complicated by many legislators’ unfamiliarity with Internet technology. A type of “digital divide” exists on Capitol Hill. David McClure, executive director of the Association of Online
Professionals, described the situation in this manner: “We still have members of Congress who don’t understand how the Internet works” (CQWR 10/17/98, 2817). Democrat Zoe Lofgren of California noted that many members do not recognize “the potential it [the Internet] has for changing economic and human behavior” (CQWR 1/31/98, 238). The divide in Congress is exemplified by the differing characteristics of members of the Internet Caucus, like Lofgren, and non-members. The 103 members of the Internet Caucus in the House, for example, are more junior compared to non-members by nearly a full term. They also tend to be more ideologically moderate within their own party. And the constituencies represented by members of the Internet Caucus are highly urban, with strong IT industry ties and fewer blue collar workers than non-members. A plurality of members are from technology-rich states including California, New York, and Massachusetts with vested interests in Internet development.  

The task of brokering the necessary support within Congress and among competing interests to steer complex legislation to passage frequently fell to select policy entrepreneurs, often drawn from the Internet Caucus. Members on technology- and commerce-related subcommittees, like Virginia Republican Bob Goodlatte and Democrat Bob Boucher, co-chairmen of the Internet Caucus, were pivotal in defining the congressional Internet agenda and policy options. Such policy entrepreneurs placed a premium on rounding up bipartisan support, and for those bills that passed into law, they were successful in reconciling not only conflicting committee jurisdictions in Congress but also the cross-pressures of interest group claims and IT industry demands.

A brief examination of the legislative history of three primary domains of Internet regulation—commerce, privacy, and anti-pornography legislation—emphasizes an incremental congressional response with a central role for policy entrepreneurs. Any rush to regulate the
Internet was suppressed by the unique cross-cutting conflicts that the medium generated. The tie that binds many of the successful legislative initiatives, consistent with the basic tenets of the sweeping Telecommunications Act of 1996 and executive actions, is the promotion of an environment of IT competition and development. In some cases, such as children’s access to adult-oriented web sites, technological innovation bolstered industry calls to self-regulate and was successful in ways that congressional intervention was not. In other cases, like the tax moratorium on electronic commerce, Congress came to the tenuous decision to put off definitive action and settled on an uneasy, if only temporary, compromise with competing interests. In still other cases, such as the export of encryption technology abroad, presidential action preempted the need for legislation. Congress was least successful in providing legislative “fixes” on gambling and privacy issues.

**The Internet and Commerce, Taxation, and Intellectual Property Regulation**

A synopsis of legislative efforts to enact taxation, copyright, and gambling legislation places into sharp relief policy entrepreneurs’ difficulties in reconciling a web of tangled interests nearly as complicated as the negotiation of data transmission protocols on the Internet. These issues brought to the fore an amalgam of unique and competing interests, including governors and traditional retailers, the entertainment industry and librarians. Never far from the surface were nettling questions of regulatory enforceability in cyberspace with which legislators wrestled.

Congressional attempts to stave off state and local governments’ taxation of electronic commercial transactions and Internet access involved issues of federalism and states’ rights in addition to conflicts between traditional retailers and “e-tailers.” The stakes for the IT industry, “bricks-and-mortar” retailers, and the nation’s governors were high. Government and private sector studies of e-commerce transactions unveiled an astronomical growth in just four short
years, with estimates of $5.6 billion in 1997, doubling to $16 billion in 1998, quadrupling to $66 billion in 1999, and more than doubling again to $132 billion in 2000.\textsuperscript{5}

The question of state and local taxation of Internet purchases pitted numerous interests against one another in the context of little policy history available to Congress for guidance. The IT industry understandably championed swift congressional action on a tax moratorium, fearing state and local taxation would stifle the growth of Web-based commerce. But on the other side of the coin, the nation’s governors contended that a moratorium deprives states of a lucrative tax base. Governors argued that it is unfair that Internet businesses be allowed to conduct transactions with residents of a state and be exempted from collecting that state’s sales taxes simply because those businesses are not physically located in the state. States rely on sales taxes for roughly half of all revenues, and in 1997 governors estimated that Internet transactions cost states a total of $4 billion in lost taxes (Congressional Quarterly Almanac 1998, 21-22). Finally, the growth in e-commerce also troubled traditional retailers who worry that consumers’ ability to avoid taxes through the Internet damages their sales.

The effort to enact a tax moratorium can be traced to two key policy entrepreneurs in the Senate and in the House. In 1997 Senator Ron Wyden (D-Oregon), a member of the Senate Commerce Committee, first introduced a measure (S. 442) to impose a “time-out” period for Congress to study the issue of Internet taxation. The proposed “Internet Tax Freedom” bill prohibited state and local governments from taxing interactive services and electronic commerce until the year 2004. The legislation was immediately opposed by the National Governors Association (NGA), which questioned Congress’ assertion of control over Internet commerce. The governors contended that the legislation preempted states’ taxing authority (Congressional Quarterly Almanac 1997, 3-40). Governors also worried that in addition to the loss of revenue
from Internet sales, some states which already imposed taxes on access to the Internet to the tune of $53 million in 1997 would lose this important source of revenue (Congressional Quarterly Almanac 1998, 21-22). Some in the Senate also expressed reservations about the legislation’s impact on traditional retailers. Slade Gorton (R-WA), Wyden’s colleague on the Commerce Committee, lambasted the bill for the potential effect on “Main Street” retailers by treating Internet sales “the way we treat mail-order catalogue sales” (CQWR 11/8/97, 2762).

On the House side, Commerce Committee member Christopher Cox (R-CA) sponsored similar legislation, noting that the “Net’s decentralized, packet-switched architecture makes every transmission vulnerable to multiple taxation. Thirty thousand state and local tax authorities could potentially tax the Internet to death” (Journal of Accountancy 1997). Cox played a central role in nearly a year of negotiations with the NGA that produced a compromise bill in 1998 (H.R. 4105). The moratorium time frame was reduced to three years, and steadfast lobbying by the NGA won several key concessions. A “grandfather clause” enabled states already collecting taxes on Internet access before October 1, 1998 to continue doing so during the initial moratorium period. The legislation charged a commission, comprised of government and industry officials, to study the tax implications of e-commerce during the “time out” period and fashion a uniform framework should states be allowed to levy taxes on Internet transactions (Congressional Quarterly Almanac 1998, 21-19).

The drawback to passage of S. 442 was that the temporary measure only postponed the conflicts over Internet commerce and taxation that were bound to surface again as the sunset of the tax moratorium approached. As of early Spring 2001 legislators have been unable to forge a compromise between states’ rights concerns and the high technology industry. Republican House majority leader Dick Armey pushed a five-year continuation of the moratorium to a successful
vote in May 2000 over many objectors (CQWR 5/13/2000, 1116). The moratorium question arrived at an impasse in the Senate, however, as a divided Commerce Committee was unable to reach consensus on any length of a moratorium extension. Byron Dorgan (D-ND) has emerged as a key figure in the debate by sponsoring legislation that would allow states to conditionally levy taxes on Internet transactions. Dorgan’s plan, supported by the NGA, would enable states to enter into a compact with other states and develop a unified tax rate on remote e-commerce sales (CQWR 6/3/2000, 1338). Whether Dorgan’s or a similar plan is ultimately enacted, the stakes for states, companies engaged in e-commerce, and traditional retailers have only increased. With estimates of Web-based sales approaching $454 billion by 2004 (Trager 2000), the congressional search for a resolution between the competing needs of states and e-commerce development will remain precarious.

Congress also faced an uphill battle as legislators took steps to restructure copyright laws to meet the challenges of the information age. In similar fashion to the tax moratorium effort, legislators encountered a panoply of unique, rival interests that complicated the search for a balanced outcome. Initial attempts to modify copyright laws in 1996 never emerged from committee in the House. Complex issues of assigning liability for Internet copyright infringement and dissensus over circumvention technology stifled legislative progress. Bob Goodlatte (R-VA) described the process like “nailing Jell-O to the wall. The problem is that there were just too many contingencies to build the necessary support to pass the underlying legislation” (Congressional Quarterly Almanac 1996, 3-12). Goodlatte did spearhead a separate and more modest effort a year later to criminalize the theft of copyrighted works on the Internet. H.R. 2265, signed into law in December 1997, focused on thievery of copyrighted material by
computer. The bill provided for stiff penalties for the piracy of music, movies, and software on the Internet (Congressional Quarterly Almanac 1997, 3-15).

A much larger bid to bring U.S. copyright laws consistent with international treaties followed the next year and culminated in the passage of H.R. 2281, but not without considerable wrangling. Congress was prompted to action by two World Intellectual Property Organization treaties to which the United States had become a signatory in 1996. The treaties established international recognition of copyrights of music and software (Congressional Quarterly Almanac 1998, 22-3). Hollywood, anxious to gain protection from copyright infringement on the Internet, furnished further incentive to key policy innovators on Capitol Hill. Howard Coble, Chairman of the House Subcommittee on the Courts and Intellectual Property, along with Senate Judiciary Committee Chairman Orrin Hatch and Senator Patrick Leahy, were recipients of combined campaign contributions from the entertainment industry totaling $2.5 million (CQWR 10/17/98, 2818).

The final adoption of H.R. 2281 by voice vote in the House and by a 99-0 margin in the Senate belied the arduous path to success the legislation followed. The central controversy over the bill centered on fundamental questions about how best to protect copyrights and assign liability for infringement. On the one hand, the IT industry worried that a ban of all devices that could be used to circumvent the theft of copyrighted material on the Internet could retard technological innovation. The chief fear was that the regulatory effort could prove unworkable if products had to be designed around anti-copying technology (CQWR 10/17/98, 2818). On the other hand, librarians and educators were troubled that individuals who use circumvention technology for personal use and without intent to violate copyrights would be subject to criminal prosecution. Such a scenario, they argued, might undermine the Internet’s utility for library and
academic research (Congressional Quarterly Almanac 1998, 22-6, 7). A final point of contention concerned whether Internet providers could be held liable for copyright infringements by individuals who utilize their access service.

Representative Coble and Senator Hatch steered efforts to find an acceptable compromise. Months of lengthy negotiation between House and Senate Judiciary and Commerce committee members, interest groups, and advocates for IT industry yielded a middle ground on many of the most contentious provisions. These changes did not necessarily dispel the high technology industry’s concerns about the effect of encryption devices on product innovation, but they did quell major opposition. The final legislation specified exceptions to the ban on circumvention devices and clarified that computer products did not have to be designed to be compatible with anti-theft or anti-copying technology. The legislation also provided a “fair use” provision championed by educators and librarians to allow individuals to use circumvention devices for personal use of the copyrighted material. To be sure, questions liability for copyright infringements and the practicality of enforcement lingered after passage of the bill, signed by President Clinton in October 1998. But as Barney Frank (D-MA) put it, “No one thinks this will be the last thing we do” on digital copyrights (Congressional Quarterly Almanac 1998, 22-3).

Protracted congressional efforts to ban Internet-based digital gambling did not meet with success in the 1990s despite the best efforts of policy entrepreneurs. The several attempts to proscribe on-line gaming brought to the fore questions of federalism, Native American rights, and feasibility of enforcement that ultimately proved impossible to reconcile. In 1997 Senator John Kyl (R-AZ) sponsored legislation (S. 474) to update current laws, which banned gambling only over telephone lines in the United States. Kyl’s bill was expansive in scope. Apart from prohibiting all domestic Internet-based gambling operations and imposing stiff penalties on
violators, the legislation also targeted off-shore gambling sites. Kyl’s proposal would have enabled federal and state law enforcement entities to force Internet service providers to block access to gaming sites located outside the United States. Critics of the legislation, including gaming operators, contended that the legislation was simply unworkable and would impose “undue if not impossible burdens” on Internet service providers (Congressional Quarterly Almanac 1997, 3-43). Kyl’s bill did receive voice vote approval in committee, but only after an amendment which would have permitted states to allow Internet-based gambling within their own borders. The full Senate did not take subsequent action on the measure in 1997.

Both the House and the Senate took up the measure again in 1998, but controversies over parimutuel betting over the Internet stifled progress. The Senate folded the provisions of S. 474 into a Commerce, Justice and State appropriations bill (S. 2260), which was passed with strong bipartisan support in mid-summer. But the companion bill later approved by the House included provisions allowing parimutuel betting over the Internet in states or on Indian reservations where such gambling was legal, rather than just “closed-loop” betting not accessible to the general population. The House exceptions drew objections from Kyl, who argued that the bill would fail to prevent individuals in other states from gambling (Congressional Quarterly Almanac 1998, 22-7). Critics charged that compelling Internet providers to enforce the ban with the parimutuel loopholes could prove unworkable (CQWR 10/17/98, 2819). In the absence of consensus and in the end of session rush to pass the appropriations bill, the anti-gambling provisions were dropped in entirety.

Bob Goodlatte of Virginia took up the cause of an Internet gambling ban again in 2000, but similar issues surfaced to cast a pall over progress. Goodlatte and colleague Billy Tauzin (R-LA) attempted to broker a compromise between legal gambling interests and social conservatives
in Congress. H.R. 3125 ultimately fell victim to an “ends against the middle” effect. Goodlatte brought the bill up under a suspension of House rules in order to stave off amendments that would have weakened the bill’s anti-gambling provisions. Although the bill was backed by a strong majority (245-159), the vote fell short of the two-thirds majority required. Anticipated amendments allowing on-line dog, horse, and jai alai betting were subsequently opposed by conservative Republicans in Congress and a number of conservative advocacy groups (CQWR 7/1/2000, 1617). The Clinton Administration worried that the bill was unenforceable and would drive gambling Interests off-shore and out of the reach of U.S. jurisdiction (CQWR 7/22/2000, 1808). Governors then contended that allowing these forms of gambling, but not the sale of lottery tickets, was unacceptable and violated states’ rights (CQWR 7/15/000, 1736). And yet other members opposed stepped-up regulation of the Internet on principle. Goodlatte pulled the bill from consideration but vowed to resuscitate the issue in the future. The failure of the gambling bill clearly accentuated the difficulties involved in reconciling Internet issues that traverse social concerns, states’ rights, international borders, and questions of the practicality of enforcement.

The Internet, Consumer and Privacy Rights, and Pornography Issues

Consumer and privacy rights and the protection of minors from pornographic material were among the most difficult Internet issues for policy entrepreneurs to manage. From the export of encryption technology abroad and electronic signatures to the protection of Social Security numbers and children’s access to adult-oriented web-sites, this subset of issues comprised contradictory calls for government action. On the one hand, the IT industry appealed to Congress to remove regulatory barriers for the export of encryption technology used to secure Internet transactions. On the other hand, consumer advocates called on Congress to intervene
more forcefully to protect sensitive personal information. In this volatile mix of issues states’ rights, individual rights, First Amendment rights, and national security concerns erected considerable obstacles to legislative success.

At first glance the export of encryption technology for Internet transactions might seem non-controversial. Encryption technology scrambles the coding of information sent over the Internet. Encryption software is a vital tool in the development of e-commerce as it insures individuals’ privacy and prevents third-party access to sensitive personal, business, or classified information. Yet it can also be used for more sinister activity by “hackers” to steal credit card numbers, Social Security numbers, or even national security information (Los Angeles Times 1/14/2000, 1). Governmental controls limiting encryption technology exports consequently pitted IT industry interests and privacy advocates against law enforcement concerns. The IT industry contended that export restrictions placed American businesses at a competitive disadvantage with foreign firms already marketing such technology abroad, and privacy advocates argued that broader distribution of the technology would help to secure transactions over the Internet. Law enforcement and national security agencies opposed easing of restrictions for fear that the extensive use of encryption technology would hamper evidence-gathering and enable criminal activity to go undetected (Congressional Quarterly Almanac 1998, 22-19; 1999, 22-22).

Bob Goodlatte (R-VA) and Zoe Lofgren (D-CA) introduced legislation in 1997 (H.R. 695), backed by privacy advocates and the IT industry, that provided for the export of encryption technology generally already available abroad (Congressional Quarterly Almanac 1998, 22-20). A year later H.R. 695 had been approved by five separate committees in the House, but Rules Committee Chairman Gerald Solomon (R-NY), who represented legislators concerned with the law enforcement ramifications of the legislation, refused to accord a rule to bring the bill to floor
for a vote by the entire House. Goodlatte spearheaded another effort in 1999 to ease export restrictions. He and fellow members of the Subcommittee on the Judiciary, Courts, and Intellectual Property attempted to broker a compromise between the IT industry and law enforcement by including a penalty of five years of imprisonment for individuals using encryption technology to conceal criminal activity. The bill won subcommittee and full committee approval but became bottled up in the House Select Intelligence Committee, which shared jurisdiction over the bill. At the same time, Senate Commerce Committee Chairman John McCain (R-AZ) attempted to shepherd a separate bill through the Senate (S. 798) which would have allowed firms to petition for exemptions to export encryption technology. But McCain’s bill also encountered significant obstacles, including a filibuster threat from fellow Senator Ted Stevens (R-AK) who opposed the bill on national security grounds (Congressional Quarterly Almanac 1999, 22-24).

The impasse was broken by President Clinton’s intervention in early Fall 1999. Under pressure from Congress, Clinton relaxed restrictions to allow licensed businesses to export encryption technology abroad after a review by the Commerce Department. An embargo remained for countries the United States suspected of terrorist activities, including Cuba, Iraq, North Korea and three other nations (New York Times 1/13/2000, 1). The net effect of the president’s actions was to accomplish the basic contours of H.R. 850 independently. Bob Goodlatte suggested that “the administration’s policy would give high-tech companies most of what they wanted” (Congressional Quarterly Almanac 1999, 22-27). But while Clinton’s action marked a clear victory for Silicon Valley software developers, defense experts remained fearful of national security implications and law enforcement officials posited that without the source code of the encryption software, tracking Internet criminal activity would prove more difficult.
In 1999 the issue of “e-signatures” brought to the fore conflicts over consumer and states’ rights. The primary goal of the “Electronic Signatures in Global and National Commerce Act” was to make paperless, electronic transactions and recordkeeping subject to a uniform set of national standards. By early 2000 eleven states had adopted laws giving legal status to “digital contracts” signed over the Internet (CQWR 5/6/2000, 1029). Yet businesses championed the legislation to avoid compliance with a hodgepodge of separate state laws governing the retention of paper and electronic documents (CQWR 6/17/2000, 1464).

Leading separate legislative efforts in the House and Senate, respectively, Thomas Bliley (R-VA) and Spencer Abraham (R-MI) sought to standardize e-commerce practices across all fifty states with federal legislation that would supersede state laws. After bipartisan passage of bills in both chambers, the controversy over S. 761 centered around the conference committee, chaired by Bliley. Consumer groups and state agencies were concerned that the legislation did not provide adequate anti-fraud protection. States argued that federal legislation preempted their traditional role in the regulation of business activity (CQWR 5/6/2000, 1030). Moreover Democrats argued for a provision that individuals acknowledge that they were capable of receiving on-line documentation before waiving rights to paper copies of such transactions including property, licenses, banking, and insurance. The provision was opposed by Senator Phil Gramm (R-TX), a primary spokesman for the financial services industry (CQWR 4/8/2000, 841).

The compromise struck by House and Senate conferees included language that consumers must “reasonably demonstrate” that they can open electronic documents and that businesses must obtain their consent for electronic documentation. Gramm feared that this language would lead to interminable lawsuits over the definition of “reasonable” and jeopardize the financial services industry, but acceded. In addition Bliley addressed the states’ rights issue by easing requirements
on paper and electronic recordkeeping. The bill established federal standards but enabled states to
develop their own rules and imposed a uniform time frame for implementation (CQWR
6/17/2000, 1463). President Clinton signed the bill on June 30, 2000. The legislation was widely
hailed by the financial services industry as a boon for quickening transactions and opening new
accounts, though worries about liability for security breaches in Internet transactions have
prompted the banking industry to cover potential risks (Gjertsen 2001).

The e-signatures bill prompted legislators like John McCain (R-AZ) to begin
contemplating more forcefully the hot-button issue of on-line privacy and companies’ collection
and re-sale of personal information (CQWR 6/17/2000, 1464). The IT industry’s position has
been, and remains, that Congress should allow time for the development of new technology and
encourage self-regulation. The Clinton Administration—and most Americans—seemed to agree
in the late 1990s. In a Harris Poll completed in April 1998 80 percent of Americans favored
allowing the private sector to develop rules before Congress intervened with legislation (CQWR
7/25/98, 1990). However, widespread theft of individuals’ Social Security numbers, web site
operators’ ability to collect personal information and track browsing habits of Internet users
through “cookies,” and the general onus placed on Internet users to “opt out” of the collection of
personal information hastened legislators’ search for greater privacy protection (Wall Street

By the 106th Congress the number of bills and amendments concerning on-line privacy
exploded, though no major legislation passed. Senators John McCain (R-AZ) and Judd Gregg
(R-NH) introduced measures bolstering on-line privacy alongside a number of bills banning
private and public sector disclosure of Social Security numbers and other personal information
without individuals’ permission. McCain’s bill, S. 2928, dubbed the “Consumer Internet Privacy
Enhancement Act,” was unique in that it received the backing of key players in the IT industry, including America On Line and Hewlett-Packard (Washington Post 10/4/2000, E1). The bill would have compelled web site operators to conspicuously post privacy policies and facilitate Internet users’ ability to “opt out” of sharing personal information, but stopped short of further regulation and oversight. Other legislation introduced by Ernest Hollings (D-SC) and Conrad Burns (R-MT) was far more sweeping and sought to empower the Federal Trade Commission (FTC) to enforce strict regulation of on-line business transactions, an expanded authority the FTC urged after several reports (CQWR 5/27/2000, 1273: Teinowitz 1998). Finally, President Clinton weighed in on the debate by crafting a privacy proposal targeted to financial transactions. The proposal, strongly opposed by proponents of the financial services industry like Phil Gramm (R-TX), would have compelled companies to allow individuals to choose to “opt out” of sharing of any and all personal information (CQWR 5/6/2000, 1051).

The issue of on-line privacy remains a grand, unresolved issue with which Congress and the Bush Administration will certainly grapple. The slow and cautious approach to the issue in the 1990s, however, fits comfortably with the general model of congressional action on Internet issues and the preferred course of action supported by the Clinton Administration. The IT industry was accorded additional time to sort out the technical issues and self-regulate in the bid to promote the Internet as a tool of commerce. As Congressman Rick White (R-WA) noted, “I think it will make a lot of sense to take our time…We’ve been guilty in the past of rushing to judgment and getting it wrong.” It is also important to recognize that the lack of swift action on privacy issues on Capitol Hill did not occur in a vacuum. The IT industry increased its presence and visibility in the nation’s capital, purposefully sought to cultivate ties to members of Congress,
and dramatically increased financial contributions to members of Congress in the wake of interest

The issue on which Congress did not follow Congressman White’s warning about a rush
to judgment concerned pornography and child protection. Congress was, in fact, successful in
passing two major laws restricting content and access on the Internet, yet neither law was able to
survive judicial scrutiny. Ironically, industry self-regulation may have accomplished what
congressional legislation ultimately could not. The first effort to address pornography came in
1996 and yielded the Communications Decency Act, which was appended to the sweeping
telecommunications overhaul. The law banned the transmission of “patently offensive” material
to minors and charged Internet sites with the obligation to prevent minors from gaining access to
adult-oriented material. The Supreme Court agreed to take the case in 1996 and later ruled in
Reno v. ACLU (1997) that the law was unconstitutional because it violated free speech and was
too vague. The second effort, led by Senator Dan Coats (R-IN) in 1998, culminated in the Child
Online Protection Act (COPA). The bill was specifically tailored to address the high court’s
earlier concerns. The provisions were narrowed to compel web site operators to require a credit
card or password for Internet material deemed “harmful to minors” (CQWR 10/17/98, 2819).
Yet a federal court in California ruled in June 2000 that the COPA imposed “an impermissible
burden on constitutionally protected speech” (Los Angeles Times 6/23/2000, C2). Part of the
problem for legislators is that while the courts have ruled that communities can regulate
pornography and children’s access to adult theaters within specific geographical “zones,” the
Internet’s lack of geography precludes the “real space” communities in which content and access
can be easily regulated without violating First Amendment guarantees (Zick 1999).
While the debate over the constitutionality of legislation moved to the courts, the Clinton Administration promoted several initiatives to insure greater parental control over minors’ access to Internet content. In December 1997 leaders of the high-tech industry, including America On Line, sponsored a three-day summit to unveil a “ratings system” of web sites used in conjunction with filtering software that enables parents to better block children’s access to pornographic material (CQWR 12/6/97, 3028-9). In 1999 Vice President Al Gore announced that fifteen of the nation’s largest Internet providers were providing parents with “one-click access” to a web page with over eighty different tools for blocking children’s access to pornographic content and instructions on how to employ filtering software (McConnell 1999). Although such efforts by Internet providers are voluntary—and indeed the ratings system of web sites is also contingent upon voluntary efforts of web site operators—the Administration supported, and many web site operators have chosen, compliance with parental controls to forestall burdensome regulation that could inhibit the growth of the Internet. Despite legal challenges to the COPA many adult web sites have instituted credit card access to prevent child access to pornographic material to avoid liability.

**Conclusions: The Presidency, Congress and the Internet in the Twenty-First Century**

This review of presidential and congressional action on IT and Internet issues has shed light on the different types of policy emphasis and forms of entrepreneurship in which American national institutions engaged at the dawn of the information age from 1993-2000. The Clinton Administration championed developmental issues and accomplished much of its agenda through independent actions. The Clinton/Gore team’s formal and informal actions—from executive orders to the formation of task forces and forging of public-private partnerships—demonstrates the flexibility of presidential policymaking as well as the autonomous means by which presidents
can shape the public debate by adapting pre-existing legislative frameworks to their goals. Congress, by contrast, was saddled with the enormously complex task of updating laws to match rapid technological change and fashioning an initial and adaptable regulatory framework for e-commerce. The sheer technical complexity of emergent Internet issues, the diversity of organized interests that mobilized around those issues, and the competing committee jurisdictions within Congress with claims to these issues are the central features that distinguish the unique task facing policy entrepreneurs compared to other policy realms.

Several additional observations are noteworthy as scholars begin to examine governmental responses to technological change in the next decade. First, this analysis demonstrates that while there may be an ad hoc feature to Internet and IT development and regulation, “policy chaos” is not an accurate description of policymaking at the national level. Our “separated institutions” did indeed take separate tracks on Internet issues. Yet the tie that binds presidential and congressional action has been a common philosophy of selective intervention, caution, and support for Internet development. On Capitol Hill, it is true that the “legislative impulse” has increased with the growing ubiquity of the Internet (CQWR 9/4/99, 2029). However, unlike telecommunications policy in the 1980s for which “virtually every attempt at legislation bogged down somewhere in the legislative labyrinth” (Ferejohn and Shipan 1989, 301), most successful legislative efforts on the Internet have occurred under the tutelage of those policy entrepreneurs who have steered the debate in broader terms. These leaders have had the savoir-faire, resources, and commitment to reconcile competing claims to, and visions of, the Internet’s development and regulation.

Second, presidential and congressional Internet policymaking in the last decade is remarkable for what did not occur. The budget, abortion issues, and welfare reform yielded
intense policy conflict and gridlock between the Democratic president and the Republican Congress during divided government from 1995-2000. This was not the norm on Internet issues. It is also the case that the careful regulatory steps taken by policy entrepreneurs in Congress typically yielded bipartisan consensus within Congress as well. This accomplishment must not be underestimated in light of overlapping committee jurisdictions in Congress and the multiplicity of competing interests that Internet issues galvanized—the high-tech industry on one side, and governors, retailers, consumer advocates, librarians, law enforcement officials, and the financial services industry on the other. And never far from the surface were the thorny questions of enforceability and practicality of regulating a medium that operates beyond geographical borders. Many scholars are correct to emphasize the rise in partisan conflict between the branches and within Congress in the last decade (Bond and Fleisher 2000). Yet an emphasis on discord misses key dynamics of policymaking on Internet issues—and most importantly the role of policy innovators in the resolution of conflicts that had highly divisive potential.

In the last decade the Clinton Administration and Democratic and Republican-led Congresses he faced began to forge a much-needed public policy history for Internet issues. The tempered approach of the 1990s may serve as an instrumental model for President Bush and members of the 107th Congress. To the chagrin of the high tech industry, George W. Bush did not provide a clear blueprint for Internet and IT issues in the 2000 election campaign (Thibodeau 2000). But much of the agenda has already been defined for him. The new president and Congress face a smorgasbord of issues both old and new on the legislative agenda, including privacy rights, taxation, information security, and the implications of e-commerce for the labor market. The type of policy entrepreneurship in which Bush, a thin Republican majority in the House of Representatives, and Democratic-controlled Senate can engage, independently and
jointly, may play a critically important role in determining the landscape of national politics as the 2002 and 2004 elections approach.
Notes

1 The primary agencies constituted the National Science Foundation, the National Aeronautics and Space Administration, and the Departments of Defense, Commerce, and Energy.

2 The Technology Opportunities Program (TOP) is administered by the National Telecommunications and Information Administration (NTIA) in the Department of Commerce.

3 Joint public and private sector initiatives to screen out violence on the World Wide Web and protect minors from pornography are one such example (see McConnell 1999). These issues are covered in greater detail in the next section on Congress.

4 Data were gathered by author. The mean difference in seniority between members of the Internet Caucus and non-members is significant at $p < .05$.

Figure 1
Substantive and Symbolic Presidential Actions Regarding the Internet

Source: Federal Register.
Figure 2
Congressional Legislation on Internet Regulation, 103rd-106th Congresses (1993-2000)

Source: Library of Congress; http://thomas.loc.gov; Congressional Quarterly Almanacs. Major bills are those bills receiving coverage in Congressional Quarterly Almanacs.
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