

mously passed a bill that would have created an agency to match indigent capital defendants with qualified lawyers. (That Texas, which leads the nation in executions, could pass such a bill *unanimously* is an indication of how badly it is needed). Nevertheless, Governor Bush vetoed it in June. Undoubtedly, he intended to send a message to voters. But his veto killed a practical, bipartisan agreement that would have hastened justice and likely saved lives. Voters should send their

own message right back.

The way to repair the "machinery of death" is to shift resources to points earlier in the criminal justice cycle. Only then, with the chance for error greatly diminished, would faster processing be justified. Proponents of capital punishment would have an efficient and equitable system, while opponents could argue abolition purely on its merits. With violent crime at its lowest rate in 25 years, there is no better time for sensible reform. ☛

hesitate to flex their muscle, Kentucky Senator **Jim Bunning** has been holding up the nomination of **Arthur Money** to be assistant secretary of defense. Why? Does the nominee have some defect of character or are his policy views beyond the pale? Not exactly. Bunning wants to force the Pentagon to retrofit its safes with a kind of lock made, you guessed it, in Kentucky.

Here's the story behind **John McLaughlin's** breakup with **Jack Germond**, as told in Germond's new book, *Fat Man in the Middle Seat*. At the 1996 Republican national convention, General Electric held a lunch at which the group appeared, and McLaughlin announced that GE was going to underwrite international distribution of the program. Asked by McLaughlin to comment on the momentous tidings, Germond said "we could take credit for dumbing down the whole world."

For those on the Hill who want to make overtures to **George W. Bush**, the men to see are **Paul Coverdell** in the

Senate and **Roy Blunt** in the House.

Lois Romano's *Washington Post* article, from which we extracted that tidbit, was mostly about how **George W.** shuns his

father's former aides. It seems they, who knew him from the '88

and '92 campaigns and as an unofficial White House trouble-shooter, don't think very highly of him either. "Virtually everyone interviewed for this story said they never expected to be talking about him as a presidential candidate."

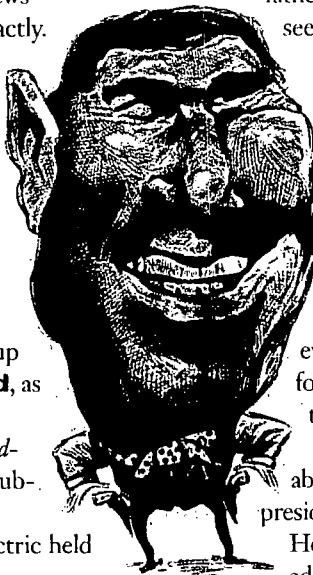
He was known, they added, "for having little or no interest in policy, for being confrontational and rarely wearing a suit, and for spitting tobacco in waste cans." Bush supporters are encouraged to chew on this a little bit.

Before **Terry McAuliffe** came through with his guarantee of **Bill** and **Hillary Clinton's** home loan, three well-heeled friends of the First Family had stiffed them. The non-friends-in-

need include former Treasury Secretary **Robert Rubin** and former White House chiefs of staff **Thomas F. McLarty** and **Erskine Bowles**. Bowles had agreed to do it but then backed out the week before the loan was closed. As they say, it's lonely at the top.

Two Republican presidential candidates hope that it is not a case of rats deserting a sinking ship, but there have been some embarrassing defections lately. For **Gary Bauer**, it was his national campaign chairman who left to join the **Steve Forbes** campaign. For **Elizabeth Dole**, it was first **Ari Fleischer**, her communications director, and then **Mike Paranzino**, her press secretary. She, at least, has one consolation—they didn't scramble to another candidate.

The U.S. Senate is the home of the nation's dimmer bulbs, according to **Elizabeth Drew's** new book, *The Corruption of American Politics*. **Max Cleland** of Georgia is "out of his depth." **Don Nickles** of Oklahoma is "none too bright," **Rick Santorum** of Pennsylvania is "unburdened by brilliance," and Hawaii's **Daniel K. Akaka** is "a room-emptier because of the thinness of his thought."



Harlot's Web

Internet

Why and how the government should regulate the Internet

BY NICHOLAS THOMPSON

JUDY FISCHER WAS FRUSTRATED BY HOW hard it can be to tell the good guys from the bad guys on the World Wide Web. So she decided to start an organization called the Web Assurance Bureau that would log consumer complaints and develop a seal of approval for ethical companies. After sketching her business plan, Ms. Fischer doled out \$277 to a cheap online software dealer with a reputable-looking home page and a money-back guarantee.

The software soon arrived in the mail. But it didn't work. And the dealer that had sold it no longer existed. No Web page, no address, no recourse for Ms. Fischer and certainly no money back. She called the Federal Trade Commission (FTC) but no one knew where the company had gone, where it had come from or, indeed, that it had ever existed. It had taken Ms. Fischer's money and vanished into cyberspace without leaving a footprint.

This experience only confirmed what Ms. Fischer already knew: The Internet is far from the paradise that conventional wisdom would have it be. There's no doubt that it has made products cheaper and information more accessible. But from Matt Drudge's unsubstantiated mudslinging through fly-by-night software companies, the Internet continually extends

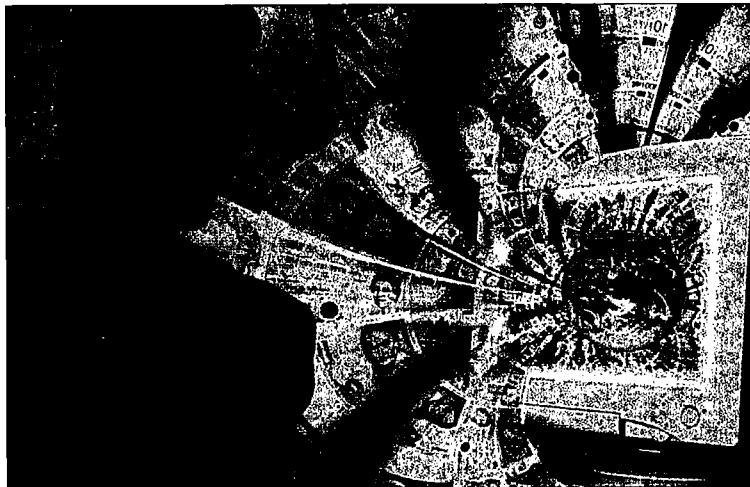
society's lowest standards. Moreover, as the Net has become increasingly unruly and inscrutable, Congress and the Clinton administration have made little effort to protect consumers. After writing the report that shapes the central organizing principles for the Clinton administration on Internet issues, special adviser Ira Magaziner emphatically declared, "The Internet doesn't need government."

But it does. The Internet under Magaziner and Clinton's genial permissiveness would be like New York City without stoplights.

Surfing USA

The Internet was conceived of in the late 1960s at the Defense Department as a means to help the United States keep going in the aftermath of a nuclear war. Twenty years later, it had become a medium for computer programmers to exchange code. In 1991, Netscape developed its Navigator browser and made it easy for everyday computer users to get online.

In those first heady days, the Web looked to be the ultimate medium for increasing power from the ground up. Any entrepreneur could start a business; any researcher could find near-limitless data; any consumer could choose among 43 brands of nail clippers. The Net promised to inspire democratic initiative all over the world, from shoppers in Lincoln,



Nebraska to oppressed minorities on the Burmese border.

As the Net started growing, small, idealistic companies were siphoning money and market power from large corporations. A frenetic 30-year-old named Jeff Bezos founded Amazon.com in a Seattle van. Even though he soon had enough cash to wipe out the external debt of Honduras, money didn't seem to be the only thing driving him and he still operated from behind his first desk, an old door balanced on a sawhorse. According to Bezos, Amazon began with noble ideals: to kill sprawling strip malls and to bring cheap books to the people. Did he want to sell books that people weren't interested in? No, he said: "What consumerism really is, at its worst, is getting people to buy things that don't actually improve their lives That's approaching evil."

Unfortunately, getting people to buy things that don't actually improve their lives is a good way to get rich, and it wasn't long before the lure of major league fortunes crushed the principles of Internet visionaries. Soon, people began to put businesses online, not out of high ideals, but because they wanted to have their smiling billion-dollar photographs on the cover of *Wired* magazine.

Amazon certainly couldn't escape the change in attitude; last spring, the company was caught offering positive reviews and prominent placement to publishers who dropped bags of gold on the sawhorse. For \$10,000 a publisher could get a top slot on the company's home page for its favored book, an author profile, and "complete Amazon.com editorial review treatment." That's trying to get people to buy things they don't want and that don't improve their lives. That's approaching evil. When caught, Amazon abandoned the practice and now disavows it. Still, their action raises serious doubts about whether or not they are sticking to the ideals that Bezos apparently used to hold so dear.

But Amazon isn't the worst Internet company or even close to it. Other Web sites have jumped into the game and many don't just approach evil, they careen right through it. Go online and you'll have no problem finding pyramid stock schemes, virtual slot machines, sites publishing and promoting bungled science that would be rejected by the drunkest editor, and pretty much anything else disreputable you can imagine. Almost overnight, the New York Public Library has become Caesar's

Palace—and Caesar's hasn't gotten around to hiring bouncers yet.

Drug Test

Perhaps the clearest way to see the threat that flat-out unregulated commerce poses to consumers is to log on to one of the nearly 400 drugstores that have appeared on the Internet in the past few years. Visiting many of these sites is like going to Tijuana, except better: You can get almost anything you want without having to worry about paying for the gas to

The Internet under Magaziner and Clinton's genial permissiveness would be like New York City without stoplights.

drive to the border. Is your doctor reluctant to prescribe a pill that you just know you need? Log on, order, pop it in your mouth, and rock 'n' roll.

The Food, Drug and Cosmetic Act of 1938 requires that a patient consult a licensed doctor before getting a prescription filled, but, like most laws, Internet companies can dodge it. Customers fill out a generic form online which some staff doctor looking for a little extra dough just has to rubber stamp: no physical exam, no waiting rooms, no blood tests.

Ideally, there would be a way to make these online drugstores follow the same rules in letter and in spirit as brick and mortar stores. But trying to wrap current laws around the Internet is often like trying to put a gorilla into loafers. Laws are always tricky and somewhat subjective and they get trickier when companies can relocate overseas with one click of the mouse. As became clear during congressional hearings last July, state governments and the FDA are often unable even to figure out the drug companies' e-mail addresses or location information. And as it stands now, without any government regulation, even if the law could catch up to the drugstore cowboys, the culprits no doubt have maps to the virtual roads heading out of town. A devious Internet company doesn't even have warehouses to pack up if the authorities start sniffing around: A simple command at a Unix prompt "rm -r www" can wipe out all evidence that it ever existed.

Buy, Baby, Buy

The drugstore issue also exposes another great danger of the Net, that corporations will be able to manipulate customer preferences through the blurring of the lines between content and advertising. Peter Neupert, CEO of drugstore.com (an online firm 44 percent owned by Amazon.com) unwittingly made the point while criticizing his offline competitors: "People have lots of questions, like which of the 10 Saint John's Wort products should I take? Should I even take Saint John's Wort? Retail stores just aren't set up to answer those questions."

No, doctors are. Unbiased consumer information sources are. Companies trying to sell you the product are not.

If Brand X Saint John's Wort buys lots of ad space, maybe, just maybe, Mr. Neupert will recommend it to his customers and prominently cite studies that assert its particular virtues. Think about a drugstore with two equally sound, competing products: one high-margin and expensive, one low-margin and cheaper. The company is going to promote the former and pretend that it is better for its customers' health. "Should I even take St. John's Wort?" "Of course. Try this one." Any company that didn't would soon find itself out of business. People don't have to be immoral, yet alone evil, to be mesmerized by money; much of the time, they just have to want to survive.

The driving logic of the Net has been to eliminate the middleman, like your doctor and the drugstore clerk. But informed, relatively disinterested middlemen are often central to consumer protection and to eliminate them is to destroy an important safeguard. As one crafty scoundrel who had succeeded in defrauding customers in an online auction wrote, "Ha Ha Ha Ha. All you people are really quite ridiculous. You make a deal via e-mail, never see the person, never speak with the person, and then get upset when you get ripped off. You must be a bunch of morons."

Cookie Monster

The Net also has the ability to do more than sell us products that are harmful or make us buy things that we don't need. It can also take away our last shreds of privacy.

Many companies send out packets of information known as cookies when you visit their pages. These cookies attach themselves to your browser and then trigger information within the companies' databases on your next visit to their sites. There are advan-

tages to this: If a page (like *The New York Times* site) requires a password for you to access its information, cookies are what allow you to visit again and again without having to retype your password each time. However, cookies are also how, in the not-very-distant future, Web pages will be able to cough up your shopping history along with your astrological sign, hair color, and phone number. A company called DoubleClick has already compiled a database of 50 million people and is currently working to integrate these data with other companies (like L.L. Bean) that have long-running and extensive data series on specific customers.

According to privacy expert Jason Catlett, companies like DoubleClick will soon be "able to do some really scary things. For instance, say you're browsing a favorite Web newspaper site, and you spend time reading an article on financial planning. Two minutes later, the telephone rings, and it's a guy trying to sell you life insurance... Companies will pay a lot of money for getting someone at the time when they might be receptive to their pitch."

Even more chillingly, a whole industry has sprung up around gathering private, personal, and critical information. Go online and search for someone's credit history or medical records and there'll be no middlemen concerned that you don't match the ID and that you've already asked for six other names that very day. Nor will any cop be around to track you; just run yourself through anonymizer.com and you're virtually invisible. Similarly, it's extremely difficult for individuals to retain copyright protection. The Net is open-source; anyone can copy the code used to create a certain page (go to your browser and click on "view source"). This means that, within minutes, I can create a Web page that looks exactly like *The New York Times* with exactly the same content, colors, and graphics. It's all available and very easy to steal.

Less sinister, but still thoroughly irritating, is the ease with which companies can get e-mail addresses and pummel recipients with untraceable, unwanted e-mail known as "spam." If you've ever gone online, you'll know what I mean. But the government has done basically nothing at all—perhaps because congressional aides serve as middlemen, filtering out the junk e-mail flooding upon congressmen before it can irritate them. Ralph Nader's Consumer Project on Technology has advocated that all e-mail be tagged so that senders of spam can be identified. But, like all other consumer protection regulation for the Net, this bill is buried in a file on

some congressman's desk, next to a coffee mug that hasn't been cleaned in three months. It wasn't put in the "urgent" folder where so many of the bills to help large Internet companies (like the one protecting them from Y2K liabilities) have gone.

Let Them All Run Free

Elliott Maxwell, a senior advisor for the digital economy at the Department of Commerce, has felicitously said that he wants the Net to become "a clean, well-lighted place." The concept is a good one but the administration's approach of complete private self-regulation is not.

The first principle of Magaziner's grand report of 1997, "A Framework for Global Electronic Commerce" begins: "The Internet should develop as a market-driven arena, not a regulated industry," and the report plunges on from there. The Internet is "changing classic business and economic paradigms." The administration "will encourage the creation of private forces to take the lead in areas requiring self-regulation such as privacy, content ratings, and consumer protection."

The first justification for this paean is the classic laissez-faire mantra that private industry will self-regulate because it has a vested interest in doing so. Nothing would destroy Amazon.com faster than a large-scale onslaught of fraud on the Net. If people can't trust their credit card numbers, people won't buy books online. If enough people die from sub- (or non-) standard drugs from online drug-stores, the customers left on their feet are going to race straight back to their neighborhood corner shops.

It's as though Magaziner has resigned himself to a world in which, at most, the government can play Elmer Fudd to the Net's Bugs Bunny. The Net's just too fast, too smart, and too darn hard to catch up with. Surely, part of Magaziner's reluctance to do anything comes from his having burnt his fingers on health care. Part of it also flows from Bill Clinton's desire to remain the smiling Buddha of our economic expansion—not really sure of what he is doing, but surrounded by assurances that whatever he's doing is right. Still, Clinton should know better. As his attempts at health care, environmental protection (see Robert Worth's article in this issue) and tobacco regulation have shown, self-interest has not been repealed and freedom for the wolves is

still death for the sheep. Private companies are not going to serve the public interest, they're going to serve their private interest. Sometimes the two will overlap, sometimes not. As even the famous free-marketer Adam Smith wrote in 1776, when people of "the same trade" meet together, inevitably "the conversation ends in a conspiracy against the public, or in some contrivance to raise prices."

Regulation

There are two primary ways for the government to regulate the Net. The first way is to try to restrict activity. Examples include a law mandating that every

Magaziner has resigned himself to a world in which the government can at most play Elmer Fudd to the Net's Bugs Bunny.

business disclose its full address and location information in large type on its home page or a law making it illegal to sell or exchange private credit information. The second way is to offer support for people online. Examples include publishing consumer tips online or offering subsidies to people like Ms. Fischer who are trying to limit Net fraud.

Magaziner and Clinton reject both types of regulation. With regards to restrictions, they're mostly right. With regards to supporting consumers, they're dead wrong.

Clinton and Magaziner's legitimate trouble with restriction is that the Net moves too fast to be pinned down. Try to set restrictions on content and, by the time a bill is halfway through its first House committee meeting, every company possibly in violation will have moved its servers to Djibouti. Draft a law restricting the use of cookies and the whole technology will be obsolete two years before the bill reaches the President's desk. Most hopelessly, think what would happen if every country attempted to synchronize content standards: Is it possible to imagine a world where Calvin Klein would develop an advertising campaign that would meet the laws of both Saudi Arabia and the United States?

Moreover, this country's lax approach to restriction has certainly allowed the U.S. online industry to leap ahead of other nations that have taken a plodding, institutional approach to the Internet. France,

for example, is still slogging through negotiations over cultural content. Unsurprisingly, we're wired and they're not. A friend of mine in Paris whipped out a hand calculator last year that could tell what time of day it was in both Sydney and in London, gloating that this was the (new) new thing. With the United States running full steam ahead and everyone else sipping wine, 70 percent of all electronic commerce now is transacted in the United States.

Supporting Consumers

But the difficulty of restrictive regulation is not an excuse to do nothing. There's still a great deal that the government can and should do to ensure that consumers come out winners in the new bacchanal.

* A good place to start government regulation would be to develop a system through the Department of Commerce that certifies Web sites that comply with privacy rules and consumer protection statutes—much like the system that Ms. Fischer was trying to develop when the software company took her \$277. If a Web page is completely based in the United States, follows binding U.S. rules, and practices full disclosure, give it the Department of Commerce stamp. If it doesn't, don't. If a program like this were sufficiently publicized, companies like drugstores would fall over themselves to make sure they could qualify and no one would have to worry about seedy companies vanishing into thin air after picking their customers' pockets. Already, a few organizations like TRUSTe offer this service. Yes, there will be lobbyists and redundant lawyers. But at times even bureaucracy is better than being totally on your own.

Second, the government needs to completely reverse its position on encryption so that consumers are more able to protect their personal information from online thieves. It may not be possible to ban the sale of private credit information if it's easy for the thieves and merchants to operate from servers based in Djibouti; but it is possible to make the task of stealing much much harder. Until early September there was a ban on the export of strong encryption software by U.S. companies which, in effect, meant a ban on its development (who's going to make Internet software that you can't even put online?). Effective blocking software known as Pretty Good Privacy (PGP) already exists that allows consumers to have secure places where they can make transactions and store their data. Now that the government has reversed its wrong-headed ban, it should take the

further step of helping to bring PGP to the public.

A third step would be to develop a consumer protection code that would activate when first-time users start their browsers. The Department of Commerce has developed a page that explains what to be wary of on the Net, how to navigate, and how to make sure that you don't get duped. It's a great page but it's buried deep. To bring information like this to the mainstream, the government would have to lean on Netscape and Internet Explorer (perhaps in the same way that tobacco companies were forced to put the Surgeon General's warning on their products) to get them to post an informational notice like this as their browser's original starting point. Then, every new user would come to this page the first time she gets online. While people with experience do make mistakes (Napoleon did go into Russia and Ms. Fischer did blow \$277) Net fraud threatens new users far more than experienced ones, and a page explaining the potential dangers of the Net could be an important first line of defense.

But most importantly, the government needs to get the glaze out of its eyes and start thinking its basic responsibilities through. The more something is repeated, the more it becomes an unexamined truth—and this is starting to happen with the Net. Everyone "knows" that the Net shouldn't be regulated, but few people can offer a serious rationale. It's a shibboleth, sleepily repeated over and over with only timid voices trying to shout it down. The more time that passes before the government starts to build a regulatory and supportive infrastructure, the more damage will have already been done and the harder the task of regulation will be.

The Net does need to become a "clean, well-lighted place." And it should be the government's job to start sweeping the streets and building the lamp-posts as soon as possible.

Research assistance provided by Yvonne Kalawur

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house. "Painted, polished and relit," writes Paul Richard of *The Washington Post*, it now has the "curators, computers, archivists, conservators, registrars, accountants, fund-raisers and thermostats that forward-thinking, show-arranging art museums need." Much of this I regret. Nonetheless, the Phillips remains, along with the Frick in New York and the Gardner in Boston, among this country's best small collections.

.....
"HA! YOU GUYS WHO CONTEND that tobacco companies should reimburse the government for the health expenses it has incurred because of tobacco forgot one thing—the money the government saves because people die prematurely!" I've heard this argument from a number of conservatives, most recently from Matthew Rees of *The Weekly Standard*. One could take on the economic argument by adding up tax revenues lost when people die prematurely and aren't able to fulfill their earning potential.

But that misses the main point, which is the moral lunacy of the conservative position. Do they really want to contend that there is social good in dying young, in not living a normal-lifetime? It can't be long before a Tom DeLay proposes giving Philip Morris a tax credit for killing, say \$100 for each person who dies prematurely from a tobacco-related illness. Seriously, one wonders if these conservatives have ever watched a friend endure the agony of slowly dying from lung cancer.

.....
THE WEEKLY STANDARD'S Matthew Rees is to be distinguished from the great political consultant Matthew Reese, who died last year. Shortly before his death Matt told me that one of his regrets was the opinion research he had done for Philip Morris.

.....
WHAT HAPPENS WHEN YOU MIX the modern mania for making money with the modern mania for

psychotherapy? The answer is in this report from Timothy Burn that appeared last month in *The Washington Times*: "A D.C. therapist yesterday agreed to pay nearly \$90,000 in fines to settle charges that he profited from insider information gleaned during a 1996 psychotherapy session with an employee of a Gaithersburg computing company."

.....
TENURE IS A PROBLEM THIS magazine has long labored to get liberals to face. Most recently in our May issue, Robert Worth demonstrated how it protects the mediocre and the incompetent. Now comes a solution from an unlikely source: the New York City Schools. Perhaps it's a case of desperation inspiring creativity. Anyway the city is offering its principals a substantial incentive to surrender tenure. It's a hefty raise—33 percent. *The New York Times*, in the voice of editorial writer Brent Staples, is urging the principals to accept the deal. Staples, who is black, is one of the growing number of African Americans who have abandoned the old solidarity that protected incompetent black principals. He understands that tenure is less important than a good education for the children who need it most. You also see this trend in African American support for vouchers—which now stands at 48 percent—as an alternative to the worst public schools.

(This doesn't mean I think vouchers are the magic bullet for education. What I do believe is that liberals have to show the public school establishment that we are going to stop sacrificing today's children to reforms that are always promised for tomorrow but rarely delivered.)

.....
SPEAKING OF PHILIP MORRIS, IT IS not only a major lobbyist in Washington, it also tries to influence state government. It, for example, "has long been one of the biggest

spenders on lobbying in Albany," according to a recent article in *The New York Times*.

.....
STUDENTS OF BUREAUCRATIC culture will love this one: Gateway Computers took a full page ad in *The Washington Post* of September 14 to announce "It's our annual 'spend your budget before it's gone' sale." Those unschooled in the art of government budgeting may need a little background. As the end of the fiscal year approaches, federal officials grow increasingly anxious that they will not be able to spend all of the funds appropriated to them by Congress. If they fall short on September 30, they fear that when they ask for funds next year, Congress will say "you didn't use what we gave you last year, so we'll give you less this year." Since no prospect is more horrifying to a bureaucrat than a budget cut, enormous effort goes into spending every last dollar in September.

.....
A DISTURBING PARALLEL TO Robert Worth's finding about declining enforcement of environmental law in the Clinton-Gore administration comes from the Occupational Safety and Health Agency. OSHA's inspections have fallen from a high of 89,859 in 1975 to 33,697 in 1998. In 1996 they actually fell lower, to 25,860.

.....
ON JUNE 1, NORFOLK SOUTHERN and CSX carved up Conrail, each taking over operations of roughly half of its rail network. How well have they done? According to the *Journal of Commerce*, two-thirds of shippers said CSX's service was worse than they got from Conrail. Norfolk Southern was even more inefficient and unreliable. More than 80 percent of its shippers said the service was worse.

.....
I AM SOMETIMES A TAD TOO quick to spot a trend when it's headed in a direction I applaud. The

Internet

MEMORANDUM

TO: Jim Kohlenberger

FROM: Becky Burr

RE: Possible Approaches to Protecting Children from Inappropriate Materials on the Internet

DATE: November 1, 1999

You have asked for an analysis of the pro's and con's of creating a new Internet top level domain (TLD), such as ".adult," to be set aside for otherwise legal adult materials. The purpose of creating such a TLD would be to (1) increase the chance that content filters could effectively block access by children to such sites and (2) decrease the chance that a child (or an adult) would inadvertently access such a web site. The following is a preliminary, and informal, look at this question. It has not been cleared in the Department of Commerce, and does not represent Department of Commerce positions. Moreover, the decision to create a ".adult" top level domain carries with it significant First Amendment issues, and should be thoroughly considered by Justice Department attorneys with expertise in this area.

How Would a Top Level Domain for Adult Materials Be Created?

The Department of Commerce has entered into a Memorandum of Understanding with the Internet Corporation for Assigned Names and Numbers (ICANN). ICANN is charged with developing criteria for and introducing new generic top level domains (gTLDs). The Department of Commerce could seek to amend the MOU to require ICANN to launch a new TLD for adult materials. This would, however, be heavy-handed in light of the position laid out by the Administration in the so-called "White Paper" on management of the domain name system. In the White Paper, the Administration specifically declined to mandate the introduction of new TLDs, deferring, instead, to policies to be developed by the private sector. It is quite likely, nonetheless, that ICANN would collaborate with the Department of Commerce in studying this issue. The United States Government does, however, retain ultimate policy authority over the Internet's authoritative root server, and could instruct the operator of the "A" root server (currently Network Solutions, Inc.) to add such a top level domain. In addition, the Department of Commerce will shortly issue a RFP for management of the ".us" top level domain. Creation of a second level domain for adult materials might be built into that award.¹

¹ Conditioning award of a procurement contract for .us management on creation of such a second level domain constitutes state action, and might raise First Amendment concerns. It may be possible to address those concerns by ensuring that registration in such a second level

Benefits of Creating a Top Level Domain for Adult Materials

The idea of creating a special top level domain for adult materials has been discussed in the Internet community for some time. Certain benefits are clear:

- Internet content blocking software could be set to completely block all sites from a top level domain set aside for adult material. This kind of blocking is likely to be far more effective than blocking that depends on either human or computer-aided analysis of each web site.
- Otherwise legitimate purveyors of adult material could, by registering in a specialized top level domain, increase the chance that their web page content is accessed only by individuals who deliberately seek out such material.

Drawbacks and Limitations

At this time, creation of a top level domain for adult materials is likely to have only minimal impact on the presence of web sites containing adult material in other top level domains such as .com.

- In order to meet First Amendment requirements, registration of a top level domain for adult materials would likely have to be voluntary.
- Based on our information, absent some significant incentive, even completely legitimate adult sites are likely to remain in .com. That is because most of these sites are selling advertising rather than content. Advertising revenue is based almost exclusively on the number of visitors to a particular site. Advertisers do not currently discriminate between deliberate and inadvertent visits to a site. Thus, even web sites that are not seeking inadvertent visits benefit from such visits. This is unlikely to change until micro-payment systems are more readily available and revenue stream can be generated from the sale of content rather than advertising.
- One possible answer to this problem is to create some sort of safe haven for purveyors of adult material who voluntarily choose to locate in a specialized top level domain. This does not seem to be an especially attractive route, however. At the very least, it would raise significant law enforcement as well as First Amendment concerns. And any such safe harbor would be extremely hard to reconcile with our "community standards" evaluation of adult materials.
- Some have suggested that creation of a top level domain for adult materials would create something akin to an attractive nuisance for older children with more sophisticated computer skills. By creating a "forbidden zone," they say, you

domain remains entirely voluntary.

would create a strong target for under-age hackers seeking to circumvent filters and blocking software installed by parents. And, of course, for children whose parents do not avail themselves of filtering and rating software, such a top level domain would simply be an easy route to adult materials.

Conclusion on Adding a Top Level Domain for Adult Materials.

Creation of a top level domain for adult materials is unlikely to have a significant impact on the availability of adult materials in other top level domains such as .com. Before proceeding, it is advisable to discuss concerns related to creating an attractive nuisance with children's advocates.

Other Steps

The Federal Trade Commission in September obtained a preliminary injunction against web page hijackers. "Pagejacking" is a practice that involves stealing Web pages and misrepresenting their true identity. First, pagejackers copy millions of Web pages from unrelated third parties. In FTC v. Carlos Pereira et al., the defendants illicitly copied Web pages concerning such topics as pie recipes, songs, kid's books, movie reviews, and automobiles. Next, defendants made one nefarious alteration to each stolen page that is hidden to the average viewer: they inserted a line of software code, or "javascript," that contains a command that redirects unwary users to the defendants' sexually-explicit, adult-oriented Web sites. Finally, the defendants took the altered stolen Web pages and placed them on computers owned by them or their agents. Because defendants lie about who they really are, when unsuspecting consumers click on a search result, thinking they will get a pie recipe for example, they instead are taken to Web sites replete with pornographic images and advertisements.

In seeking the preliminary injunction in this case, the FTC relied on Section 5 of the FTC Act which forbids "deceptive acts or practices," 15 U.S.C. § 45(a). An act or practice is deceptive if it is likely to mislead consumers, acting reasonably under the circumstances, about a material fact to their detriment. World Travel Vacation Brokers, 861 F.2d at 1029. If consumers are likely to have chosen differently but for the deception, then a misrepresentation is material. Southwest Sunsites, Inc., 105 F.T.C. 7, 149 (1985), aff'd, 785 F.2d 1431 (9th Cir. 1986), cert. denied, 479 U.S. 828 (1986).

The FTC argued that in order to induce consumers to go to their adult sites, the defendants expressly misrepresented the true identity of their Web sites. Search engine descriptions for their hijacked Web pages are virtually identical to descriptions of original Web pages created by unrelated third parties. When consumers click on a search result describing a Web page for the movie "Saving Private Ryan" or some other subject, consumers are not carried to a site about movies, World War II or some other innocuous topic. Rather, consumers are redirected to defendants' own graphic adult Web sites.

The FTC argued that the act of redirecting consumers on the Internet is deceptive by itself. In Niton Corp. v. Radiation Monitoring Services, 27 F. Supp. 2d 102 (D. Mass. Nov. 18, 1998), the court granted a preliminary injunction against a company that had deceptively placed false

information in their metatags which resulted in consumers being directed to the wrong Web site. See also, Brookfield Communications, Inc. v. West Coast Entertainment Corp., 1999 U.S. App. LEXIS 7779 (9th Cir. Apr. 22, 1999) ("initial interest confusion" is a factor to be weighed when evaluating consumer confusion regarding metatag text).

Finally, the FTC argued that the defendants' pagejacking was deceptive and material to any reasonable consumer. Consumers act reasonably when they go to a search engine to find information on the Internet. Pagejacking materially undermines consumers' ability to find quality Web sites and can drastically affect where they go when they click on specific search results.

The FTC's reasoning in FTC v. Carlos Pereira et al seems to be applicable to a number of the more egregious cases of adult material on the Internet being labeled in ways that appeal to children or other unsuspecting consumers of Internet content (e.g. "cheerleaders.com, whitehouse.com, and the various sites that use the name of beloved children's character such as Bambi, etc.).

The Administration may want to examine ways to encourage the FTC, consistent with its status as an independent law enforcement agency, to take a hard look at these cases.

Clinton set off an uproar last year when she backed establishment of a Palestinian state, while official U.S. policy did not.

Since her Senate campaign started this past summer, the first lady has declined to repeat her endorsement of a Palestinian state and has taken the position that Jerusalem should be the undivided capital of Israel.

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To : Tom Freedman FAX 202 237 7832 November 19 1999

From Janice Stevens M.D. Prof of Neurology & Psychiatry Oregon Health Sciences
University, Portland Or 97201 tel 503 678 1524; fax 503 678 3216;

Correction to my email stevenja@ohsu.edu



November 19, 1999

MEMORANDUM FOR THE PRESIDENT

FROM: BRUCE REED
TOM FREEDMAN

SUBJECT: Values, Rights, and Responsibilities – Accomplishments and Challenges

The basic pact that binds our society together is the idea that we have responsibilities as well as rights, that we have an obligation to expand opportunity for all and demand responsibility from all. Activist government can only succeed if it reinforces people's values and doesn't undermine them.

Here are a few illustrative examples of what you have done to expand opportunity and responsibility, and some of the fundamental challenges New Democratic leaders will face in the next decade.

A. New Democratic Accomplishments

- **Balancing the Budget While Increasing Investment:** Over the last 7 years, we've turned a \$300 billion annual deficit into back-to-back surpluses, with the prospect of a trillion-dollar surplus over the next decade. Yet in that same period, we've doubled investment in education and nearly doubled investment in public safety.
- **Rewarding Work Over Welfare:** Our system used to make single mothers worse off for going to work, instead of rewarding them. We enacted a tax credit for working families that makes work a better deal than welfare. In 1998, the EITC lifted 4.3 million Americans, over half of them children, out of poverty – more than twice as many as in 1993. We also dramatically increased our investment in child care, so poor mothers could go to work and not have to worry that their children were safe. We reformed our welfare laws to require and reward work, and to demand more child support from absent fathers. We increased our minimum wage. All these steps, along with a growing economy, have given us the biggest five-year drop in poverty in 30 years.
- **Increasing Access to College While Asking Young People to Give Something Back:** We have taken several steps to open the doors of college to any young person, with tax credits and scholarships. We have also given young people the chance to give something back to their community and country in return. We have done this by: (1) launching our Americorps program which has given 100,000 young

Americans the chance to serve while earning funds for college; (2) allowing students to repay their loans as a percentage of their income over time; and (3) expanding work-study programs, which 1 million Americans will now take part in as a result of the budget that Congress passed this week.

B. Some Future Challenges

- **Balancing Work and Family:** As more families have come to depend on two incomes over the last 3 decades, American parents now have 22 fewer hours a week to spend with their children than 30 years ago. If we're going to succeed as societies, we need to find ways – through business and government – to give parents more time, more choices, and more ability to succeed at work and at home. For example, the first law I signed upon becoming President guarantees people the right to take unpaid leave to care for a sick child or family member. We're trying to expand that to give workers the right to take time off for other important family needs, such as parent-teacher conferences and doctors appointments.
- **Giving Parents Tools:** The greater personal freedom a society allows, the greater personal responsibility it must demand. We need to give parents the tools to protect and raise their children in a complex time. Starting in January, we're equipping every new TV set with a V-Chip that allows parents an easy way to control what their children watch. We are expanding that concept to the Internet and other media. For instance, there is now a free website where parents can obtain blocking and filtering tools to protect their children on the Internet.
- **Making the Most of Our Diversity:** To succeed, we must make opportunity available to all, and take advantage of everyone's diverse talents. The New Markets tour is part of that commitment to broaden opportunity and strengthen our economy for global competition. Further, a commitment to an inclusive society means that everyone must feel protected by our laws. That's why we're seeking hate crimes legislation to guarantee that no group will be targeted for violence, intimidation, and exclusion.

BUDGET TALKING POINTS:

A Hard Won Victory For The American People

November 16, 1999

The First Budget of the 21st Century Meets Our Priorities, Supports Our Values, And Invests in Our Future. President Clinton insisted that Congress keep working on its budget until key priorities were addressed, including maintaining fiscal discipline, paying down the debt, and making investments in our people. This budget reflects *all* of those priorities.

A Victory for Our Children: Smaller Class Sizes with 100,000 New Qualified Teachers. Americans value and believe in providing our children with a top quality education. Because of the President's strong stand, this budget maintains the commitment Congress made last year to reduce class sizes in the early grades by hiring 100,000 new qualified teachers.

A Victory for Safer Neighborhoods: 50,000 More Community Police Officers. Americans value safety and security for their families. Because of the President's commitment, this budget will put 50,000 additional community police officers on the street – building on the first 100,000 officers funded as part of the 1994 Crime Bill, which have already helped give Americans the lowest crime rates in a generation.

A Victory for a Cleaner Environment: Anti-Environmental Provisions Removed. Americans value a clean and safe environment. Because of the President stood firm, this final agreement strengthens our efforts to preserve natural areas, protects our environment – and does not include anti-environmental provisions or “riders” that would have put special interests above the national interest.

A Victory for American Interests: Strengthening America's Leadership in the World. Americans value our leadership and influence in the world. Because of the President's determination, this budget strengthens that influence by meeting our commitment to the Middle East peace process, paying our dues and arrears to the United Nations, safeguarding nuclear weapons and expertise, and investing in debt relief for impoverished nations.

A Victory for the American People: (Department/Agency Specific Budget Wins)

This Budget is the Result of Congress Putting Politics Aside to Make Bipartisan Progress. Congress Should Work with the President to Complete Work on Other Bipartisan Priorities. While the bipartisan work of the past few weeks resulted in a budget that maintains fiscal discipline, reflects our values and invests in the future – Congress failed to take action on important, bipartisan issues this year. The President will continue to push Congress to pass:

- Common-sense gun safety legislation
- Meaningful hate crimes legislation
- An increase in the minimum wage

A real Patients' Bill of Rights
Legislation strengthening Social Security
Modernize Medicare, with a voluntary
Prescription Drug Benefit

Internet

THE WHITE HOUSE

WASHINGTON

November 24, 1999

11-29-99 11:29:30

MEMORANDUM FOR THE PRESIDENT

FROM: LORETTA UCELLI
JOSH GOTTHEIMERCC: JOHN PODESTA
DOUG SOSNIK
STEPHANIE STREET

SUBJECT: PROPOSED INTERNET INITIATIVES

THE PRESIDENT HAS SEEN

11-29-99

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Podesta
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Makoney**all water good!*

As you have pointed out, your DLC Internet Town Hall Meeting was a resounding success, not only in offering citizens an opportunity to communicate directly with the President, but in demonstrating the technological capabilities of the Internet. By plugging into the Internet, Americans from a broad spectrum were able to participate directly in the democratic process, and experience a new sense of accountability not possible before the introduction of the Web.

We would like to build on this concept through a series of events that would allow you to speak directly to the American people and specific constituencies via the Internet. In addition, we have suggested other measures that would allow you to better communicate your agenda and accomplishments to the public through 21st Century technology.

We have developed several proposals for you to consider:

I. WEBSITE CHATS: USING TECHNOLOGY TO BUILD COMMUNITY

In the vein of President Roosevelt's fireside chats, this would be a series of online "websites chats" focused on the overarching theme: How Internet technology is being used by citizens and different communities not only to improve and enrich their lives, but to increase their involvement in the democratic process. It would give Americans the opportunity to communicate directly with their President through a virtual medium. You would be the first President to utilize the Internet as a regular form of communication.

We could launch the series with a large-scale, online chat, addressing the ways in which technology is affecting the lives of Americans, enhancing their democracy, and increasing their involvement in the democratic process. During this session, which could be coordinated with CNN Online or another online service provider, you would have an opportunity to discuss your policies with those online, and respond to their questions on a broad range of issues. Additionally, you might choose to host this first chat in your residence, evoking the image of Roosevelt sitting next to his fireplace.

Following the initial event, the series would address the interests of five specific constituency groups: seniors, students, women, small business owners, and community service participants. For each targeted audience, we would not only discuss the issues important to their community, but also highlight individuals who are utilizing the Web's potential to enrich their own lives or those of their peers. You might also choose to be joined by a small online panel, whose participants could field questions and offer their insight on the topics at-hand.

In addition, during the live chats, we could offer links to relevant websites that feature information on the topics under discussion. For example, during the chat with students, the online audience could access information on our Hope Scholarship, Pell Grants, or the Americorps program.

Each virtual forum would be hosted in partnership with web-based companies, whose content is geared toward the interests of a specific audience (for example, iVillage.com deals with women's issues). We would encourage these companies to: 1) hold their own online discussions in preparation for our event; 2) advertise the date, location, and topic of our event on their site; and 3) provide links from their site to our event. The format would be similar to the DLC event, except that we could host the events either at the White House or at off-campus locations.

There will be obvious costs involved in coordinating each of these online events. We will have to arrange the number and the extent of the events accordingly. So please feel free to amend the list as you see fit. We propose chats with the following five constituency groups:

Seniors: "How technology is impacting their lives." Seniors are the fastest growing group of Internet users. From health advice to safety tips, the Internet offers them an opportunity to easily tap resources that have long been out of their reach. We could partner with Thirdage.com and other web-based companies addressing issues relevant to senior citizens, like Social Security, Medicare, prescription drugs, and other health care issues. This event could be held at a senior center or at the White House.

Students: "The role of technology in the classroom." Whether in cities or in farm communities, classrooms across America can access the same information at the click of a mouse. As you know, your Administration has introduced several initiatives to help connect classrooms and libraries to the Internet. It's time we take full advantage of that progress, by plugging into this network, and "chatting" directly with students about interactive learning and technology in the classroom. We could partner with PTA.com and other popular websites frequented by students. This event could be held in a local classroom or at the White House.

Women: "How technology is impacting the balance between work and family." The Internet has become an essential tool in helping mothers deal with the demands of work and family. There are several sites with information on parenting and others that provide help with every day tasks like grocery shopping. We could partner with Oxygen.com, Parenting.com, or one of the popular parenting websites to discuss the challenges and solutions in balancing one's time at home and in the office.

Small Business Owners: "How technology is contributing to the growth of small business." With the development of Internet technology and the growth of electronic commerce, small business owners in Anchorage, Alaska have the same opportunities as those in New York City. The success of one's business no longer depends on location or physical infrastructure; but it does depend on web accessibility and bridging the digital divide. This event could be held in partnership with any number of e-commerce service providers, either at the White House or at the headquarters of a new startup company.

Community Service Participants: "How Internet technology can help to connect good will with good opportunity." Every week, new websites are developing to facilitate community service, with links to and information on service organizations. There are several community service information hubs on the Web, including Americorps and the Peace Corps, that we could partner with in an online chat.

Additional Proposals

II. LAUNCH REDESIGNED WHITE HOUSE WEBSITE

We are currently redesigning the White House Website to meet the latest technological advances. The site will be ready at the end of January 2000. To help promote it, you could host an event launching the redesigned site, and help explain some of its new functions and features.

III. INTERNET BRIEFINGS

We also suggest that following your regular message events, you ask senior White House officials and your cabinet secretaries to field additional questions via the Internet through their own online chats. You might also consider directing them to conduct their own online discussions independent of your events, focusing on the everyday issues important to their constituencies. These virtual chats would give ordinary Americans the opportunity to ask direct questions – unfiltered by the media – to their government officials.

IV. RADIO ADDRESSES

Currently, your weekly radio addresses are aired both on the radio and on the White House Website. Our redesigned site will have the technological capability to air a live video of you delivering the address, and will offer links to relevant information on the topic. At that time, you might also want to encourage citizens to send comments to you through our Website at www.whitehouse.gov.

V. INSTALL COMPUTER IN THE OVAL OFFICE

It might send a promising signal to the country if you were to install a computer near your desk in the Oval Office. As part of our holiday activities, you might even consider ordering holiday gifts off the Internet from your desk.