A NEW DRIVER

In George W. Bush, Internet leaders have the hands-off president they want. Will the *real* New Economy follow suit? BY K. DANIEL GLOVER

ILLUSTRATIONS BY **DORIT RABINOVITCH**

Last October, 440 high-tech executives cast their political lot with Vice President Al Gore by publicly endorsing the man who said he "took the initiative in creating the Internet." Led by the likes of Netscape Communications founder Marc Andreesen, who said Netscape would not have emerged without Gore's help in securing government backing for technology research, the executives said no one in Washington knew technology better than Gore.

A month earlier, the campaign of now-President George W. Bush had placed a full-page newspaper ad in the heart of Silicon Valley touting Bush's popularity in high-tech circles. It responded to Gore's endorsement boast with one of its own—that Bush's high-tech endorsements also had grown to 440 and that Gore's "last-minute list of names cannot begin to equal the longevity, policy input and grassroots activism of Governor Bush's 440-member high-tech advisory council."

That tit-for-tat endorsement snapshot of Campaign 2000 demonstrated that the technology community was as evenly divided as the nation when it came to picking a president. Individual executives stood by their men, yet the technology community as a whole would have been content with either candidate in the White House. But now that Bush is in the White House, with an almost evenly split Congress, the question is how he will reshape the Information Age policies of a Clinton-Gore administration that voters only half-heartedly rejected.



THE FENCE-MENDER: Under the Bush administration, Microsoft may find its fiercest enemy, the U.S. Department of Justice, is now its best friend.

The Bush agenda

The high-tech plan Bush and his advisory council crafted during last year's presidential campaign offered few glimpses into the new president's thinking on technology and its place in the policy arena. That plan, in fact, said little, and sometimes nothing, about hot-button issues like privacy, Internet taxation, and Napster-induced chatter about the place of intellectual property in the "new economy."

Instead, Bush emphasized—and then often vaguely—broad policies that are as important to the business community as a whole as to the technology industry. His campaign opus on "technology and the new economy" preached the gospel of tax cuts, trade policy, litigation reform, the research and development (R&D) tax credit, and export controls.

During the campaign, Bush shared his vision for the role of technology in education, while criticizing the Clinton administration for missing "the real divide" in educational achievement and focusing almost exclusively on wiring schools. He also talked at length about his plans for electronic government in the context of his larger plan for government reform. And in his "New Freedom Initiative," Bush promised to make the world more accessible to the disabled by, among other things, helping them buy computers.

Short of vows to provide more funding for certain programs, however, Bush rarely divulged specific policy prescriptions on the tech issues he chose to address. And when he did, it was on issues like H-1B visas to allow more foreign workers, and thus more technology experts, into the United States, an issue that became moot when Congress and President Clinton ultimately resolved it with a new law.

Bush met with technology leaders Jan. 4 and "assured them that I'd be available to take their phone calls, and I look forward to continuing to listen to them." On the same day, Donald Evans, Bush's commerce secretary, in a confirmation hearing before the Senate Commerce Committee, vowed not to "procrastinate" on issues such as privacy legislation and extending the Internet tax moratorium, which expires in October of this year.



TAKING A BREAK: The Internet industry is counting on Bush to shift the federal government's focus away from tech issues.

On March 28, Bush fulfilled a pledge to high-tech supporters by appointing one of their own to a senior position in the administration. E. Floyd Kvamme, a partner at the Valley-based venture-capital firm Kleiner, Perkins, Caufield & Byers, will be co-chair of the President's Council of Advisors on Science and Technology.

But some observers are convinced that technology, and specifically Internet-related issues, will be a secondary concern to Bush. As a campaigner, Bush earned a reputation for staying "on message." Tech issues that did not fall within his broader campaign themes received short shrift—and they are not likely to get any more attention in his administration.

Technology wants to be free

Dave McClure, president of the U.S. Internet Industry Association (USIIA), says inactivity will be the norm for the Bush administration. "Internet policy is less likely to be called for in its own right," he says, "but rather will be taken up as part of a larger issue, such as education."

Adam Keiper, president of the Center for the Study of Technology and Society (CSTS), says technology policy is not the bailiwick of presidents. "Only very rarely does the president get involved in technology policy directly," he says "and in those instances it is either by way of setting broad policy initiatives or hosting ceremonial events."

Bush's greatest impact will come in the form of his appointments to key posts such as chairmen of the Federal Communications Commission (FCC) and the Federal Trade Commission (FTC), and head of the Justice Department's antitrust division. Those Bush appointees are more likely to let the market alone than to regulate. "It is clear," McClure concludes in a white paper released last December, "that the Internet will not hold the same position of importance that it held in the Clinton administration."

The hands-off approach is just fine with most techies, of course. They argue that their industry has thrived precisely because government at all levels largely stayed out of its business.

But industry observers like Adam D. Thierer, the director of telecommunications studies at the libertarian Cato Institute, lament that the government became too involved in tech policy under Clinton—by using antitrust law to attack companies like Microsoft and to impose conditions on mergers such as the one between America Online and Time Warner; by imposing the "e-rate" to wire schools; and by creating hysteria over a supposed "digital divide." If Bush can end the "political meddling," conservatives like Thierer say, progress will have been made.

Bipartisanship reigns ... but is it enough?

Congress, on the other hand, may be more inclined to act—at least some members of Congress. In the Senate, Arizona Republican John McCain, chairman of the Commerce Committee; Conrad Burns (R-Mont.); and Ron Wyden (D-Ore.) are likely to lead the way. McCain was the sponsor of a leading privacy-related bill in the 106th Congress.

Newly elected Sens. Hillary Rodham Clinton (D-N.Y.), George Allen (R-Va.), and Maria Cantwell (D-Wash.) also may play key roles. Clinton courted New York's Silicon Alley community during her 2000 campaign. Allen boasted of having named his state the "Silicon Dominion" and vowed to become the "Technology Senator." And Cantwell, who served one term in the House in the early 1990s, funded her campaign largely from the personal wealth she accumulated as a marketing executive with the software upstart RealNetworks.

On the House side, the list of techies includes new House Commerce Committee Chairman W.J. "Billy" Tauzin. The Louisiana Republican is expected to use his powerful post to try to change the system governing how telephone companies charge for connecting calls to the Internet, an initiative his predecessor as chairman, Rep. Tom Bliley, had refused to consider.

Congressional Internet Caucus co-chairmen Bob Goodlatte

companies and encourage them to provide broadband, as well as efforts to provide incentives for companies to build out in underserved rural and urban areas. Legislation also could pre-empt state-based initiatives. "McCain and Tauzin have both been active on this issue," Correll says of the two key congressional chairmen, "so it's likely we will see something happen this year."

Trade. Trade is one of the most important issues to the tech community, as witnessed by the political capital it invested in the successful 2000 battle to win enactment of PNTR with China. ITI members include Microsoft, AOL Time Warner, Intel, IBM, Dell, Compaq, and other industry heavyweights who sell more than 55 percent of their products overseas.

Now that it has won the PNTR battle, the tech industry is setting its sights on other fronts, Latin America chief among them. They hope Bush will push for more open markets there and also convince Congress to renew trade-promotion authority (formerly known as "fast track"), a system that gives the president virtually free reign to negotiate trade deals and allows Congress only an up-or-down vote on the final pacts.

Early signs have been encouraging. The tech industry rejoiced at Bush's selection of Robert Zoellick to be his U.S. trade representative (USTR) as well as his decision to keep the USTR as a Cabinet-level post. And Bush spokesman Ari Fleischer has said Bush considers fast track to be a "crucial piece" of his economic agenda that he will fight aggressively to gain.

In his tech plan, Bush also promised to fight to keep the Internet "a duty- and tariff-free zone worldwide" and to create a President's Technology Export Council that would comprise tech-industry representatives who would report to him regularly. Bush also promised an overhaul of the export-control system.

The industry was gratified in March when Bush went even further on that score than Clinton, who in January loosened export controls on high-performance computers for the sixth time since 1993. After negotiations with key senators, the Bush administration agreed to repeal a longstanding limit on exports based on the millions of theoretical operations per second (MTOPS) the computers can perform. Lawmakers who worry that exports of powerful computers could weaken national security may, as they have in the past, try to block the repeal. But Bush already has moved the debate to a new level.

The ITAA's Miller also would like to see the Bush administration more aggressively try to influence the European approach to Internet regulation. He says Bush should raise the stakes in international trade negotiations. "Not intervening," he says, "means U.S. companies, many of which operate globally, will find themselves operating under different rules in Europe and Europeans will try to export their philosophy and laws to developing countries."

The list keeps growing ... Numerous other initiatives are on the agenda. The technology industry, for instance, would like to see the research-and-development tax credit made permanent—and may find an entirely GOP-led government more willing to oblige. Bush also promised bold new e-government initiatives, including the naming of a chief information officer and $100 million in funding to help make government more "citizen-centered." Although a new e-signature law took effect just last October, policymakers also may be forced to revisit that issue.

An international cyber-crime treaty now being drafted is sure to raise numerous questions about who has jurisdiction in what Rayder calls a "boundary-less world." Also on deck are Congressional hearings on the process the Internet Corporation for Assigned Names and Numbers uses to grant approval of new top-level domain names. And clashes over Internet filtering and other issues of online speech are sure to continue, especially under a president who, in the second presidential debate, openly worried that children are having their "heart[s] turned dark as a result of being on the Internet."

Another issue that may haunt Bush: voting technology. In the wake of the Florida election dispute that catapulted Bush to the presidency, the push for new voting technology, backed by groups like ITAA, is both popular and divisive. Lawmakers already have introduced a slew of competing bills on the topic, and some members of the Congressional Black Caucus, who remain bitter over an election that they believe disenfranchised black voters, have been less then welcoming of Bush's overtures toward them.

"Congress will hold hearings, there will probably be a block of federal money heading to the states, and George Bush can be expected to support their efforts," the CSTS' Keiper says of efforts to get new voting technology. "This issue will not be long-lived ... but it may be the first major technology issue the next president will face."

Other technology-related "sleeper" issues, says Rayder, lie just beneath the surface—issues like determining how to meet the electricity demands of a technology-driven economy (think California energy crisis) and deciding what role organized labor should play in this economy.

So what will happen? Will Bush become "the technology president"? Will Congress take the lead? Will the tech community be able to relive the policy successes they experienced over the past two years? No one can say for sure. But the USIIA's McClure says one thing is certain: The fate of tech issues relies to a great extent on the commitment of the people to whom they matter most.

"Our industry has ... been so focused on growth and the stock market that we have not properly tended our [policy] obligations," he says. "Virtually the only time you see anyone from the industry on Capitol Hill is when they have their hand out for a favor. And Washington knows this. We have to feed more information to Congress and the federal agencies, and we have to commit resources ... if we are to have a successful relationship with our own national government." ■sar

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TOLL-BUSTER: It is likely that the Bush administration will allow online consumers to continue shopping without taxation.

"The states and the localities very much want to collect a growing revenue base from Internet traffic," says Ben Isaacson, executive director of the Association of Interactive Media. They may have a tough sell before Bush and Congress, however, because Republicans have put tax *cuts* at the top of their agenda and do not seem likely to back any initiatives that would pave the way for new taxes or encourage the collection of taxes states already have the right to collect.

On the issue of allowing sales taxes on e-commerce, Bush appears not to side with the many GOP governors who rallied behind his presidential candidacy. And, he is on the record as backing a permanent ban on the taxing of Internet access and other revenue measures covered in the existing moratorium.

But unless Congress decides to add a ban on sales taxes to an extension of the moratorium, which many observers expect to pass and to cover another three to five years, the issue ultimately rests with the states—and the USIIA's McClure thinks that sooner or later, they will abandon the sales-tax system and find new ways of collecting revenue. "The sales tax—derived to fit the needs of a local, agricultural society—just doesn't fit in today's global economy," McClure says. "So at some point the states are going to have to replace it with something that does make sense."

Intellectual property. Intellectual property is big business these days, according to the International Intellectual Property Alliance (IIPA). In "Copyright Industries in the U.S. Economy: The 2000 Report," released last December, the IIPA says copyright industries accounted for 4.9 percent, or $457.2 billion, of the United States' gross domestic product (GDP) in 1999. Perhaps even more noteworthy, the report notes that those industries' share of GDP grew more than twice as fast as the rest of the economy from 1977 to 1999, and that their share of the U.S. workforce doubled over the same 22-year period.

No wonder, then, that folks who make their money off their intellectual capital are gunning for the Napsters and MP3.coms of the world. "Napster is just the tip of the iceberg," says ITAA's Miller. "When movies can easily be downloaded, too, the stakes involved will grow enormously."

In response to a Napster-related question in last year's Web White & Blue rolling cyber-debate, Bush said the Napster case is one of several "thorny questions" the nation would face and that policymakers must balance the rights of creators to earn a profit and the need to utilize new technologies like Napster's peer-to-peer file-sharing system to get information to consumers.

"This area needs to be addressed, and the sooner, the better," says Scott Rayder, until last year a senior policy analyst at the Heritage Foundation.

That may not happen in Congress or the administration, however. Keiper and others say Congress may need to revisit the Digital Millennium Copyright Act (DMCA) in light of

the Napster case and other developments, but they doubt that lawmakers will have the stomach to do so. Miller, meanwhile, says Congress should keep watch on the issue, but added that the DMCA "does not yet merit revisitation" because the marketplace and the courts "should be able to work out answers."

Bush may take some steps on the international front, though. His tech plan vowed to "step up efforts to combat [international] piracy of American ideas and intellectual property."

Education. Education was the cornerstone of Bush's presidential campaign. Apparently already having backed off one of the core principles of his agenda—the right for parents to choose whether to send their children to public or private schools—Bush now may turn to less divisive education issues that also happen to be of interest to techies. Those issues include boosting math and science scores and training teachers on how to use computers.

During the campaign, Bush promised to dedicate more time and money toward training teachers, and he insisted that quality education in math and science is essential to the country's future. People in the information-technology industry agree. "I am hopeful the shortage of U.S. IT workers will disappear," ITAA's Miller says, "but government intervention in education and training is part of the solution."

In his education-technology plan, Bush also praised the work of "faith-based organizations" in creating technology centers that provide free Net access, computer-literacy training, and professional-skills development. He said his administration would provide $80 million a year in matching grants to fund and maintain an estimated 2,000-plus such centers in high-poverty areas.

"We were disappointed that the Elementary and Secondary Education Act didn't get reauthorized last year," Correll says, "but are optimistic that President Bush will make education an early priority."

Antitrust law. How, if at all, will Bush's Justice Department alter the government's stance on antitrust law in such tech-related cases as the ongoing Microsoft case? And what restrictions, if any, will it impose on mega-mergers such as the one between America Online and Time Warner? Those are the questions on the minds of more than Bill Gates and Steve Case as the new administration assumes power.

Bush's technology agenda may give some indication as to how his administration will answer. The plan included a vow for legal reforms that Bush says will touch the technology industry. It also promises Bush will "reduce the threat of massive, unnecessary litigation," and adds that he "understands that an assault on high-technology companies by trial lawyers could have a disastrous impact on the nation's high-tech industries and the American economy as a whole."

Bush's picks for top administration posts also may give some clues as to his intentions. For instance, Attorney General John Ashcroft has conservative free-market leanings that endear him to the high-tech industry. Some observers expect that a Justice Department led by him would not have initiated a case like the one against Microsoft. And he could even reverse course in that case, much as former President Ronald Reagan's Justice Department dropped the government's longstanding battle against IBM as being "without merit."

An FCC under newly appointed Chairman Michael Powell and an FTC run by current designee Timothy Muris, meanwhile, undoubtedly would approach the proposed AOL Time Warner deal differently than did the FCC and FTC under Democratic rule. "This is an area where the president can have a great deal of influence," Keiper says. "The Bush administration will probably be more laissez-faire. … Microsoft is probably safer under Bush, and I suspect the AOL Time Warner merger … would have faced less opposition under Bush."

At the same time, though, the tech-related antitrust cases pursued, and sometimes settled, under the Clinton administration may have set a precedent that even Bush's team will be reluctant to abandon entirely. The Microsoft case, the Delaney Policy group observed, may "serve as a model for examining future market concentrations in the technology sector."

Broadband. Bush himself is not likely to play too much of a role in the debate about how to expand the reach of high-speed, broadband Internet connections around the country. But the issue is expected to be one of the most significant before Congress in coming years, which means the president ultimately may have to take a stand if a bill hits his desk.

The FTC's mandate that a merged AOL Time Warner open its cable lines to competitors that want to use them to connect people to the Internet may have set a precedent on the issue. Advocates for "open access" to cable and phone lines such as the Center for Democracy and Technology (CDT) certainly hope so.

The CDT praised the FTC's decision in a Dec. 18 e-mail alert saying: "The requirements of the consent order are critical to assuring that the broadband Internet's characteristics of openness and free expression will not be compromised as the Internet evolves."

Leading industry groups back legislation that would ease regulations on telecommunications

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(R-Va.) and Rick Boucher (D-Va.) also have a meaty agenda of issues to push. And various House members have vowed to resurrect pet bills on everything from Internet gambling to spam. Whether they will succeed is open to debate.

Everyone familiar with tech issues seems to agree that Congress will remain as bipartisan as it was when, say, only four lawmakers out of 513 voting opposed the electronic-signatures law Congress passed in June 2000. "[Information technology] issues have always had bipartisan support," says Harris N. Miller, president of the Information Technology Association of America, "and I expect that to continue."

But bipartisanship or not, the most important issues on the technology agenda may go nowhere. "The IT industry was extremely successful in the last Congress," Connie Correll, former communications director for the Information Technology Industry Council (ITI), says, noting success on fronts like permanent, normal trade relations (PNTR) for China, digital signatures, and H-1B visas. "It's unlikely we will do as well in the coming Congress mainly because some of the issues we have to deal with are more complex."

The plot thickens

The make-up of government also could be a factor, according to the Delaney Policy Group, a Washington-based public affairs and management consulting firm that specializes in technology policy. Numerous tech issues have made their way to the top of the legislative agenda, the group notes in its "Tech Policy 2001" report. But the virtually even partisan split in government may have doomed what could have been a boom year for technology policy to two years of "gridlock" in Congress.

Previous FTC reports, in both 1998 and 1999, had backed the industry line of self-regulation. The 1999 report even "commended" the industry on its efforts to self-regulate and concludes that "legislation to address online privacy is not appropriate at this time."

In Congress, meanwhile, dozens of lawmakers, including key chairmen like McCain, have introduced privacy-related bills. The industry unity in favor of self-regulation has begun to fracture by some accounts. And in one of his last acts as president, Clinton issued new federal regulations on medical privacy, requiring doctors to obtain patients' permission to release records, including electronic ones. His decision to require that patients "opt in" by giving their consent could set a precedent for the larger privacy debate, some analysts predict.

The Delaney Policy Group concludes in its "Tech Policy 2001" report that the debate over privacy legislation has reached its final phase. "After a number of years of general discussion, 2000 ended with a clear structure to the question policymakers must address: Should Web sites be required to have users opt in to information gathering, or is providing an opt-out mechanism sufficient? … In 2001 … some federal government actions seem unavoidable."

Exactly what those actions might be, and where Bush stands on whether or how to regulate privacy, remains unclear. Bush has offered little more than vague commitments to protect citizens' privacy. But, the issue will be impossible to avoid.

"I think it would be difficult for George Bush to ignore the public support for privacy safeguards, particularly in the commercial realm," says Marc Rotenberg, president of the Electronic Privacy Information Center. "Many reports have already made clear that e-commerce is suffering because of a lack of consumer trust and privacy protection."

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"With so many issues primed for public action, 2001 could have provided an opportunity … to define the future of the technology sector, e-commerce, and civil society in a digital age," the report says. "However, the November 2000 election has created a political landscape that, in all likelihood, precludes passage of a sweeping array of initiatives that comprehensively address any set of issues."

Freestanding technology issues may not rank as high in the Bush administration as some would like, and he may not bring as much leadership to the Information Age as Clinton arguably did. Yet Bush undoubtedly will push initiatives of interest to the technology industry over the next four years and perhaps be forced to react to the agendas of others.

Here is a glimpse of the landscape before Bush, Congress, the regulators, the lobbyists, and others who may define the parameters of the digital age:

Privacy. The political ground in the debate shifted dramatically in May 2000 when the FTC issued a new report. "Privacy Online: Fair Information Practices In The Electronic Marketplace" recommends that Congress pass broad privacy mandates.

Internet taxation. Many people wrongly believe that the Internet Tax Freedom Act, which imposed the soon-to-expire three-year Net tax moratorium, prohibited states from collecting sales taxes on goods sold to people out of state via the Web. Only a pair of U.S. Supreme Court rulings on the taxing of interstate commerce, and the lack of political will among governors and state legislatures, prevent such taxes.

They may yet muster that will. More than half of the states have joined forces in the Streamlined Sales Tax Project (SSTP), and several others are "observers" to the project, the ultimate goal of which is to tax e-commerce transactions just as they do sales from bricks-and-mortar stores. The SSTP also has the support of the National Conference of State Legislatures and the National Governors' Association. The SSTP approved model legislation for streamlining sales taxes on a 26–0 vote Dec. 22, 2000. The issue now goes to participating states.



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