

THE INTERNET AND CONGRESSIONAL DECISIONMAKING

A Report Prepared for the Chairman
House Rules Committee

Walter J. Oleszek
Senior Specialist in the Legislative Process, CRS
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The pace of technological change in today's society is truly astounding. "Moore's law" is a good example. Gordon Moore, former head of the world's largest semiconductor maker (Intel), correctly predicted in 1965 that the computing speed of silicon chips would double every year.¹ Rapid advances in telecommunications have ended the constraints of time and distance and led commentators to call ours the "Information Age," the "Knowledge Society," the "Digital Age," or the "Networked Nation." Personal computers, palm pilots, laptops, interactive television, wireless networks, and more are technological devices reshaping the habits and routines of individuals and institutions, including the U.S. Congress.

The relationship between Congress and the Internet is multifaceted. The emergence of any major technological development (railroads, radio, automobiles, etc.) always give rise to legislative debates about the need for new tax, regulatory, or management laws. The Internet is no exception. It has changed the character of the legislative agenda and expanded the lawmaking function. Congress is now grappling with a host of complex Internet-related issues heretofore not on its agenda, such as the extent to which copyright protections should be extended to material transmitted in cyberspace or whether state and local governments should collect sales taxes on goods and services traded on the Internet.² Scores of information technology bills (from a few dozen during the 104th Congress to hundreds today) are introduced, influencing the work of nearly all congressional committees and members and spawning the growth of a new array of interest groups. Thus, the invention of the Internet as a new communications medium formed by the interconnection of numerous computers has led Congress into new frontiers of lawmaking and oversight.

The Internet's influence is evident within and between the chambers of Congress. Nearly every nook and cranny is filled with diverse technologies. For example, member and committee offices are "wired" to various electronic networks; numerous Internet data bases provide lawmakers, committees, and staff aides with a wide range of information; legislative support units, such as the Congressional Research Service or the Government Printing Office, integrate the Internet into their work; committees and lawmakers maintain their own Web sites; and the exchange of legislative e-mail addresses is as common as trading telephone numbers. There is even a bicameral, bipartisan Internet Caucus which has as one of its prime goals moving Congress ever more quickly into the Information Age. The Congress Online Project, a partnership of the Congressional Management Foundation and The George Washington University funded by The Pew Charitable Trusts, provides relevant information and ideas to congressional offices on how they might enhance their use of online communications.

Despite widespread discussion about how the Internet will revolutionize politics and policymaking, Congress usually reacts cautiously to new complexities and innovations. "The Congress never moves as fast as the rest of the world does," said Senator Joseph Lieberman, D-Conn.³ Long-standing traditions, customs, and procedures exert a powerful influence in both the House and Senate and inhibit frequent changes in the way Congress conducts its day-to-day work.

¹Paul Abrahams and Louise Kehoe, "Moore's Law Sets the Pace of Progress," *Financial Times*, June 2-3, 2001, p. 7.

²See, for example, Neil Munro and Drew Clark, "Digital Dilemma," *National Journal*, July 28, 2001, pp. 2386-2392.

³Edward-Isaac Dove, "Legislative Pace Appears To Be On Track," *The Hill*, July 25, 2001, p. 29.

However, Congress also recognizes that, “ready or not,” it must adopt certain new technologies both to enhance lawmakers’ performance and to remain a relevant and effective branch of government.

The purposes of this report are several: to explore how new technologies are allowed in or introduced to the Congress; to discuss the impact of information technology on the two principal centers of institutional power—committees (jurisdictional competition, for example) and parties (message agendas and communications strategies, for instance); and to provide summary observations about the Internet and congressional governance.

I. Technological Inventions Come to Capitol Hill

Members of Congress often approach the application of new technology to legislative processes with a mix of caution, skepticism, and resistance. As one lawmaker put it: “Whatever the future holds, we can be sure of one thing: At first, Congress will always be very good at resisting it.”⁴ This general attitude among many lawmakers is understandable. Change often brings in its wake both pluses and minuses and has the potential to change the distribution of influence within Congress. Before lawmakers sign on to change, they want to know: Who stands to win or lose power with the new technology? Are there electoral risks associated with its use? What are its costs and benefits? Will members become too dependent on the technology? How long will it be before the technology becomes obsolete? What rules or customs are likely to change if the new technology is used by the Congress? Is the new technology applicable to all the functions of Congress? What is the best way to integrate the technology into the legislative process? The list of questions can go on and on.

The point is that just because new technologies are constantly developed and marketed does not mean they will find ready acceptance in the Congress or even among the general public. For example, a scholar pointed out that the video telephone was demonstrated at the 1964 World’s Fair in New York City with home units available in the 1990s and inexpensive versions available to use on the Web. Still, there is little public interest in employing them.

Why? The camera would add an unwelcome burden to the technique of conversation. You would need to look your best, be careful about facial expressions (you’re being recorded), and perhaps be forced to tidy up the visible background.⁵

A look at the lengthy process of installing electronic voting machines in the House, the televising of House and Senate floor sessions, and applying computers in Congress highlights the general congressional pattern of resistance followed by embracement.

Electronic Voting. On June 1, 1869, Thomas Edison was granted a patent by the U.S. Patent Office for his electric vote recorder. “Having observed the great loss of time attending roll calls for votes in Congress (when he used to report them on the press wire),” Edison conceived the idea for an electronic voting machine.⁶ He explained that the places where lawmakers sat would be wired to a central receiving instrument:

⁴Susan Crabtree, “Congress in the 21st Century,” *Roll Call*, January 24, 2000, p. B-1. The member quoted is Representative J.D. Hayworth, R-Ariz.

⁵Edward Tenner, “We the Innovators,” *U.S. News & World Report*, January 10, 2000, p. 75.

⁶Matthew Josephson, *Edison: A Biography* (New York: John Wiley & Sons, 1992), p. 65.

In front of each member of the House [would be] two buttons, one for aye and one for no. By the side of the Speaker's desk was erected a square frame, in the upper part of which were two dials, corresponding to the two classes of votes. Below the dials were spaces in which numbers appeared. When the vote was called for, each member pressed one or another of the buttons before him and...the number of votes appeared automatically on the record. All the speaker had to do was to glance at the dial and announce the result.⁷

Edison believed that his voting machine would win wide acceptance by state legislatures and the U.S. Congress. He was wrong. For example, the Massachusetts Legislature rejected Edison's machine on the ground that it would infringe on the minority's right to delay action on legislation. Undeterred, Edison went to Washington, D.C. and demonstrated his apparatus to a committee chairman whose panel was authorized to purchase such equipment. The chairman told Edison:

Young man, that is just what we do *not* want. Your invention would destroy the only hope that the minority would have of influencing legislation....And as the ruling majority knows that at some day they may become a minority, they will be as much averse to change as their opponents.⁸

Still, there was support in the House for Edison's voting machine. On July 6, 1870, the chamber considered a report from the Committee on Rules recommending that the House experiment with a voting machine to expedite the counting of votes. "I believe a machine like this, which will facilitate the taking of the yeas and nays in this House," declared Representative Samuel Cox, D-N.Y., "is consonant with the spirit of our progressive country and our progressive age."⁹ Another member, Thomas Ferry, R-Mich., stressed the large amount of time that would be saved by using the new voting apparatus. During a session of the 40th Congress, he said, "the roll was called three hundred and forty-six times, consuming one hundred and fifteen hours, which would be some twenty-three days, or a calendar month."¹⁰ These arguments were unsuccessful, and the House tabled (or killed) the proposition by a roll call vote of 86 to 82.

One hundred years passed before the House authorized the use of electronic voting equipment for roll call votes or quorum calls. The relevant part of section 121 of the Legislative Reorganization Act of 1970 (P.L. 91-510) stated: "[U]pon any roll call or quorum call, the names of such Members voting or present may be recorded through the use of appropriate electronic equipment." In the interim between Edison's time and 1970, there were periodic calls from lawmakers and others to install electronic voting equipment. In 1945, for instance, two House members testified before the Joint Committee on the Organization of Congress and recommended an automatic roll call device. Twenty years later about a dozen lawmakers testified in favor of electronic voting in the House before another joint reorganization committee. Then, in the midst of large public concern about secrecy in Congress, especially the lack of recorded votes in the Committee of the Whole (the prime amending forum in the House), the 1970 LRA made provision for recording the names of lawmakers either by tally clerks or an electronic device. A bipartisan coalition of lawmakers deserves large credit for generating public support for recording these votes. They employed an anti-secrecy strategy which gathered support from editorial writers and public

⁷*Ibid.*, p. 66.

⁸*Ibid.*

⁹*The Congressional Globe*, July 6, 1870, p. 5250.

¹⁰*Ibid.*

interest groups across the country. The electronic voting provision became effective on January 23, 1973.

Periodically, suggestions are made in the Senate to permit electronic voting. On January 6, 1987, for example, Majority Leader Robert C. Byrd, D-W.Va., introduced a resolution (S. Res. 29) to permit electronic voting on measures or matters, subject to the joint approval of the Democratic and Republican leaders.¹¹ To date, the Senate has yet to emulate the House and install electronic voting. One reason for the Senate's reluctance to modernize its voting system is that many senators prefer the drama associated with calling the roll on highly controversial issues where the outcome is in doubt. Furthermore, during the period when the roll is called, senators welcome the opportunity to discuss legislative business with colleagues and to socialize with one another.

Televising Floor Proceedings. Not until the 1970s did the House make a concerted effort to employ a technology—television—that had been in American homes a quarter century earlier. Like electronic voting, legislative resistance to television was strong. Many lawmakers argued that if floor sessions were televised, it would promote grandstanding and distort floor proceedings, encourage broadcasters to portray Congress unfairly (focusing on members reading newspapers rather than paying attention to the discussion, for example), and either be too complicated or too boring for the average viewer. However, even as early as the 1920s, lawmakers began proposing radio coverage of the House and Senate and later, with the invention of television, they introduced legislation authorizing radio and television coverage of chamber and committee proceedings.

1947 saw a television first on the opening day of the 80th Congress. Television coverage of the House was permitted for the first—and last—time until the 1970s. (Television was allowed in the chamber for the president's State of the Union message or for speeches by certain dignitaries, but key party leaders opposed its broader use.) House and Senate committees were sometimes televised—for example, the nationally televised hearings in the 1950s on the communist threat or the 1960s hearings on the Vietnam War—subject to the rules of the pertinent panels. For a time in the 1950s, Speaker Sam Rayburn, D-Tex., even banned televised committee hearings arguing that they were not authorized by House rules. For example, on February 25, 1952, in response to an inquiry from GOP Leader Joseph Martin, Mass., Speaker Rayburn said: “There being no rule with reference to television or radio, the Chair interprets that the rules of the House shall apply to the committees whether they sit in Washington or outside of Washington.” Not until enactment of the Legislative Reorganization Act of 1970 did the House and Senate formally authorize the televising of committee hearings subject to the committees' broadcasting rules.

Pressure to extend television coverage to floor proceedings, especially in the House, continued into the 1970s during a time of heightened public interest in “sunshine in government” and legislative-executive clashes over the Vietnam War. According to Don Wolfensberger, who served as a top staff aide to the House Rules Committee's 1975-1976 ad hoc subcommittee on broadcasting: “What gave impetus to televising House floor debates was the recognition by the Democratic leadership in early 1970 that President Richard Nixon was dominating the airwaves with defenses of his Vietnam War policies, while Congressional opponents were not being given equal access by the networks.”¹² Finally, after several closed-circuit tests were authorized by the Speaker, the House

¹¹*Congressional Record*, January 6, 1987, p. S92.

¹²Don Wolfensberger, “20 Years of House TV: A Bipartisan Reform For a Partisan Era?” *Roll* (continued...)

on March 19, 1979 went public for the first time with live floor coverage carried over the Cable Satellite Public Affairs Network (C-SPAN) whose founder, Brian Lamb, was instrumental in transforming the House floor into the “electronic gallery.”

If the House was slow to permit gavel-to-gavel broadcast coverage of its floor proceedings, the Senate was even slower. On May 2, 1924, the Senate did agree to a resolution sponsored by Senator Robert Howell, R-Neb., whose background was in radio, to consider the radio broadcasting of the chamber’s floor proceedings. Many senators opposed Howell’s proposal, including Majority Leader Henry Cabot Lodge, R-Mass., who stated: “I do not at all know whether or not the Senate desires to have everything which is said here broadcasted.”¹³ Nothing ever came of Howell’s broadcast idea until July 29, 1986, when the Senate, after a six-week trial period, voted 78 to 21 to permit gavel-to-gavel coverage of its floor proceedings over C-SPAN II.

Institutional pride, competition, and self-image were among the prime factors that contributed to the Senate vote in favor of televised coverage. Senators, who were accustomed to receiving much more publicity than rank-and-file House members, were concerned about the heightened public visibility accorded the House and its lawmakers. A telling argument for television coverage heard over and over again in the Senate was made by Majority Leader Howard Baker, R-Tenn.: “My point is that the House of Representatives will become the dominant congressional branch of government of the United States, simply because the public has access to their proceedings, if we do not provide similar access here.”¹⁴ Added Minority Leader Robert C. Byrd, D-W. Va., “Many people think Congress is only what they see on TV—Tip O’Neill and the House of Representatives—and it shouldn’t be that way.”¹⁵ Or as Speaker Thomas O’Neill, D-Mass., phrased it: “They got a little tired of us grabbing the news.”¹⁶ Many senators, too, wanted their own electronic “bully pulpit” as a counterweight to the White House’s.

Computers and Congress. The introduction of information technologies to the Congress was also a slow process. A lawmaker in the mid-1960s who opposed (perhaps feared) computers for Congress stated: “In my opinion, it will be a sorry day for the country when Congressmen have been replaced by computers.”¹⁷ Nonetheless, there were lawmakers during this period who recognized the importance and value of technology for congressional use. They proposed legislation to encourage use of automatic data processing systems to better manage, store, and retrieve information, making Congress less dependent on the executive branch or special interests

¹²(...continued)

Call, March 18, 1999, p. 6. For more comprehensive treatments of Congress and television, see Stephen Ferantzich and John Sullivan, *The C-Span Revolution* (Norman, Okla.: University of Oklahoma Press, 1996) and Ronald Garay, *Congressional Television: A Legislative History* (Westport, Conn.: Greenwood Press, 1984).

¹³Quoted in Richard Baker [the Historian of the Senate], “Senate Historical Minute: May 2, 1924 Radio Days,” *The Hill*, May 2, 2001, p. 6.

¹⁴*Congressional Record*, April 14, 1982, p. S3476.

¹⁵Steven Roberts, “Senators Ponder Value of Letting TV in the Door,” *New York Times*, September 16, 1985, p. B6.

¹⁶Karen Tumulty, “Senate Decides to Live With TV,” *Los Angeles Times*, July 30, 1986, p. 11.

¹⁷Quoted in Representative Fred Schwengel, “Information Handling: `For a Vast Future Also’,” in Mary McInnis, ed., *We Propose: A Modern Congress* (New York: McGraw-Hill, 1966), p. 312.

for data and analysis.¹⁸ Several House and Senate committees and other legislative entities also examined where to apply computer technology (Member offices, committees, administrative units, and so on), for what purposes (payroll preparation, inventory control, mail preparation, etc.) and how it could best be used to assist lawmakers in making informed judgments on a myriad of complex issues.¹⁹ For instance, a proposal by a committee reform panel won Senate adoption on February 4, 1977, requiring establishment of a computerized scheduling system for all Senate committees. Still, by 1993, a report of the Joint Committee on the Organization of Congress noted:

Congress is an institution that has not kept pace with the developments in technology widely used in society. The House and Senate spend more than \$150 million per year on information and technology resources, yet critical information is often not readily available to the Members. There is little coordination between the entities that provide technological support to the Congress. Members require modern technological support to deal with the scope and variety of information on a huge span of issues. It is not being provided.²⁰

Technological development on Capitol Hill accelerated in the mid-1990s because of the determined effort of many lawmakers to bring Information Age technology to Capitol Hill. Speaker Newt Gingrich, R-Ga., was a strong champion of employing diverse technologies to empower both individual lawmakers and individual citizens to acquire an expanded range of legislative information in a timely and cost-effective manner. Soon after he became Speaker in 1995, Gingrich inaugurated a computer system called THOMAS (after Thomas Jefferson) in the Library of Congress. It is an online legislative information resource—<http://thomas.loc.gov>—which provides anyone in the world who is interested with materials (bill summaries and status updates, committee reports, the *Congressional Record*, etc.) previously accessible easily only to Capitol Hill insiders and Washington lobbyists. This Internet-accessed system was a watershed event for it made the legislative process more transparent and promoted the wide and easy availability of materials about the Congress. Not everything of legislative significance is available on THOMAS, such as the “chairman’s mark” (the document to be considered during the committee amendment, or markup, stage), but THOMAS provides a large amount of current and unfiltered information about Congress to the general public.

The Speaker in 1995 also directed a Computer and Information Services Working Group to upgrade and revamp the House’s information system. Two years later, Gingrich supported adoption

¹⁸For a summary overview of some of these developments, see Bruce Hopkins, “Congressional Reform: Toward a Modern Congress,” *Notre Dame Lawyer*, February, 1972, pp. 452-460.

¹⁹For example, in 1969 the Special Subcommittee on Electrical and Mechanical Office Equipment of the Committee on House Administration established a Working Group on Automatic Data Processing to develop an automatic data processing system for the House. Prominent outside organizations, such as the Stanford Research Institute and The MITRE Corporation, and academics (political science professors Richard Fenno, Charles Jones, and Donald Matthews, among others) served as advisors and consultants to the Working Group. See *Second Progress Report of the Special Subcommittee on Electrical and Mechanical Office Equipment*, Prepared by The Working Group on Automatic Data Processing for the House of Representatives, Committee on House Administration (October 1970).

²⁰*Background Materials: Supplemental Information Provided To Members of the Joint Committee on the Organization of Congress*, Joint Committee on the Organization of Congress, S. Prt. 103-25, 103rd Congress, First Session (1993), p. 1624.

of a new House rule: "Each committee shall make its publications available in electronic form to the maximum extent feasible." Previously, committee publications were available only in printed form. Speaker Gingrich believed, too, that improving the information technology available to Congress would make the institution more responsive to a public mood that, in his estimation, increasingly favored the Republican party. Also in January 1997, the Library of Congress and the Congressional Research Service, at the instigation of the Senate Committees on Appropriations and Rules and Administration, brought online a legislative information retrieval system (the LIS) which is "available only within the legislative branch."²¹

To summarize, a number of significant forces and factors commonly combine to trigger technological change on Capitol Hill. First, new innovations arrive in the House or Senate because determined lawmakers champion their cause, as do key congressional committees. Second, external challenges from the White House or other sources require the House and Senate to embrace technology as a way to modernize and strengthen their competency and effectiveness. Third, lawmakers recognize the "competitive advantage" of the technology and realize that it improves their ability to manage their workload and to better serve their constituents. Fourth, the application of the technology can be accommodated to suit the unique requirements, responsibilities, procedures, traditions, and operations of the legislative branch. Fifth, the broader political environment fosters support for the technology and lessens internal opposition to it. Finally, election results produce an influx of new members who support technological innovation.

II. The Net's Strategic Impact on Capitol Hill

Today, every lawmaker is an "electronic legislator" to one degree or another because the major functions of Congress—representation, lawmaking, and oversight—are all affected by information technology. Members' representational role has probably been affected the most by the array of new information technologies as witness, for instance, the advent of e-mail. Constituents communicate their opinions around-the-clock to lawmakers. In turn, many members embrace the same technology to respond to voters' inquiries. (Lawmakers also use the Internet for e-campaigning purposes—raising money and enlisting volunteers.) The Internet also expands the concept of "representation" beyond a distinct geographical area (a district or state) to include people who share similar interests and electronically network to form a global community of interest. (Some lawmakers block e-mails from outside their constituency or, while maintaining a Web site, choose not to receive e-mails at all.)

Information technology affects lawmaking in numerous ways from the ready supply of data and analysis for policy formulation to the rise of e-lobbying to concerns that some form of electronic "direct democracy" might short-circuit our representative system of government. Both the House and Senate prohibit members from using electronic devices on the floor on the ground that they would disrupt the deliberative process. As House Rules Chairman David Dreier, R-Calif., stated: "There is a sanctity to the floor of Congress. There are no constituents there, no lobbyists, no interests other than your colleagues."²² Representative Jesse Jackson, Jr., D-Ill., disagrees. "It's ridiculous that we can't have laptops on the floor," he said. "We could use laptops to get up-to-the-

²¹Jeffrey C. Griffith, "Congress's Legislative Information Systems: THOMAS and the LIS," *Government Information Quarterly*, Vol. 18, Number 1 (2001), p. 45.

²²Kathy Kiely, "Capitol Hill At A Crossroads on Info Highway," *USA Today*, November 3, 1999, p. 24A.

minute information while giving a speech or receive a message from a staffer about something we should mention in the speech. It would make things run that much more efficiently.”²³

As for Congress’s oversight role—the monitoring of the executive branch—computer-based technologies appear to be under-utilized for this purpose compared to representation or lawmaking. Nonetheless, lawmakers do rely upon information technology in tracking the fiscal expenditures of executive agencies and programs and in evaluating agency and program performance. Senators Lieberman and Fred Thompson, R-Tenn., established a Web site “to collect ideas from citizens on how the government might offer more services and better online information.”²⁴ There are also many governmental and private Web sites which provide abundant information on “the anatomy of almost any [federal] rule” or regulation.²⁵ A relatively new private Web site also breaks down hard-to-get information on federal spending by program, agency, and function for each congressional district.²⁶

To probe more specifically how changes in technology affect congressional decisionmaking, the next section will discuss the Internet’s influence on two major centers of institutional power: committees and parties. The new possibilities of information technology are transforming the strategic behavior and expectations of both committee and party leaders. At the committee level, there is a surge of jurisdictional rivalry; at the party level, there is an acceleration of “message politics.”

1. Committees and Internet Politics

The Internet’s effect on committees occurs in numerous ways. For example, committees can make available to everyone important materials, such as reports and documents, on their home page. The House Education and Workforce Committee even became the first panel ever to create a Spanish-language Web site so Spanish-speakers could obtain President George W. Bush’s “No Child Left Behind” educational initiative.²⁷ Many House and Senate committees broadcast hearings over the Internet or organize interactive hearings with witnesses located outside of Washington, D.C. and viewers able to e-mail their questions to committee members.²⁸ Committees sometimes distribute conference reports in cyberspace. Committee staff aides share information and analysis over the Internet. To be sure, outside groups can use the Internet to quickly mobilize support or opposition to legislation, nominations, or other matters being considered by a committee. High tech lobbying groups also strive to win committee assignments for favorite lawmakers who will work on behalf of their issues.

²³Crabtree, “Congress in the 21st Century,” p. B-6.

²⁴Ben White, “Senators Go Looking for E-Ideas,” *The Washington Post*, May 19, 2000, p. A29.

²⁵Cindy Skrzycki, “Web Sites Track Regulatory Changes,” *The Washington Post*, April 24, 2001, p. E1.

²⁶Claudia Deane, “Federal Spending in Districts Tracked,” *The Washington Post*, April 5, 2001, p. A25. At this juncture, this Web site (www.cnponline.org) has information for districts in Illinois, Michigan, and Ohio. The Web site was launched by the Center for National Policy, which is chaired by former Clinton White House chief of staff Leon Panetta.

²⁷National Journal’s CongressDaily/PM, July 9, 2001, p. 7.

²⁸See, for example, Sean Piccoli, “Hill Samples ‘Third Wave,’” *The Washington Times*, June 13, 1995, p. A8.

Committee jurisdictions loom large with respect to the Internet, because they are central to congressional policymaking. Which committee has jurisdiction over a bill determines how, when, and by whom the legislation is considered and whether legislation will make it to the floor. Regular battles between or among committees over jurisdictional turf are a critical, although little publicized outside Capitol Hill, aspect of congressional politics and decisionmaking. Even in an era characterized by the decline of committee autonomy, jurisdiction still translates into power on Capitol Hill. Ambitious and turf-conscious chairmen seek to expand (or protect) their policy domain, especially when new issues or technologies appear on Congress's agenda. As a colleague said of Representative John Dingell, D-Mich., when he chaired (1981-1995) the Energy and Commerce Committee, he "thought that every bill that began with H.R. began in the Commerce Committee."²⁹ Committee leaders, in brief, seek to exploit ambiguous committee boundaries or referral rules and precedents to lay claim to emerging issues.

Take the case of energy, for instance. When it became the number one issue in Congress with the Arab oil embargo of 1973, which triggered long gasoline lines around the country, members clamored to participate in the energy debate. Numerous House and Senate committees got involved in the issue by, for instance, incorporating energy-related topics into measures reported from their panels even if they had scant responsibility for energy (such as a committee whose jurisdiction encompasses education), or by holding hearings and issuing reports on the topic. "[M]ost [House] committees have attempted to engage in some energy-related activity," declared the House Select Committee on Committees in 1974. "The interest has been stimulated by the current crisis atmosphere."³⁰ Like any broad subject area, energy does not fit neatly into one committee's mandate and the multiple referral of legislation since 1975 in the House added to the jurisdictional layers and rivalries. To minimize jurisdictional disputes, the House in 1977 created a temporary Ad hoc Energy Committee to coordinate and report out President Jimmy Carter's national energy program.³¹

A similar pattern of jurisdictional evolution is associated with the Internet because, in a knowledge-based society, it influences virtually every kind of social, legal, cultural, economic, or political activity. Understandably, lawmakers and committees want a hand in shaping its development and to obtain a "piece of the technology action." As a rough indicator of this trend, a search was made of the LEGIS data base using the bucket term "Internet" to determine how many measures introduced in the 104th (1995-1997) and 106th (1999-2001) Congresses, respectively, referenced that word in legislation.

During the 104th Congress, 26 bills introduced in the House and Senate addressed the topic of the Internet. Eight House committees and three Senate committees received the legislation. By the end of the 106th Congress, 529 measures mentioned the Internet, and they were sent to 19 committees in the House and 14 committees in the Senate. Unsurprisingly, as in the case of energy, the Internet has spawned jurisdictional rivalries, the artful use of referral precedents, and even the formation of a few ad hoc panels.

²⁹National Journal's CongressDaily/PM, March 30, 2000, p. 6.

³⁰*Committee Reform Amendments of 1974*, Report of the House Select Committee on Committees, 93rd Congress, 2d Session, Rept. 93-916, Part II (March 21, 1974), p. 36.

³¹See Bruce I. Oppenheimer, "Policy Effects of U.S. House Reform: Decentralization and the Capacity to Resolve Energy Issues," *Legislative Studies Quarterly*, February 1980, pp. 5-30.

Jurisdictional Rivalries. It is noteworthy that the term “Internet” is not mentioned in the formal jurisdictional rules of either chamber (House Rule X; Senate Rule XXV). As a result, committee entrepreneurs have leverage to win Internet referrals either by emphasizing the information technology’s impact on matters within their formal purview, by using extant precedents, or by initiating actions which bolster their jurisdictional claims, such as memorandums of understanding between or among committees. These primary jurisdictional sources—formal rules, referral precedents, and memorandums of understanding—are employed by committees to claim Internet-related measures.³²

First, the formal jurisdictional rules of House and Senate committees run the gamut from being overly broad (“interstate and foreign commerce generally”) to narrowly specific (“Gallaudet University and Howard University and Hospital”). Committee leaders are adept at developing plausible arguments at either extreme if they want to assert jurisdictional prerogatives. A recent Internet example illustrates how “turf” arouses the territorial instincts of committee chairmen.

When the 107th Congress (2001-2003) began, about a dozen House committees, including Energy and Commerce and Judiciary, had new chairmen because of the six-year term limit rule adopted by the House in 1995. Energy and Commerce Chairman Billy Tauzin, R-La., and Judiciary Chairman James Sensenbrenner, R-Wis., are both known as strong-willed lawmakers who aggressively defend their panel’s turf. Chairman Tauzin teamed with his ranking minority member and the former chair of the panel, John Dingell, to introduce a bill (H.R. 1542) with over 100 cosponsors to amend the landmark Telecommunications Act of 1996. H.R. 1542 would permit the Baby Bells (the four regional telephone companies such as Verizon Communications) to provide high-speed, or broadband, Internet service over their telephone lines without opening their local telephone markets to competitive rivals (cable television companies or satellite companies, for example) as required by the 1996 Act.³³ A spokesman for Chairman Tauzin emphasized that “the Energy and Commerce Committee has sole jurisdiction over telecom policy.”³⁴

Judiciary Chairman Sensenbrenner, concerned about the bill’s anti-trust implications, launched a public lobbying campaign to win a referral of the legislation. He “sent a highly detailed 11-page letter to Speaker Dennis Hastert (R-Ill.)—and to the media—making the case for why Judiciary should receive sequential referral of the bill. Sensenbrenner also pressed his case with the House Parliamentarian.”³⁵ (House rules state that the Speaker refers all measures, but in practice the function is performed by the Parliamentarian. The Senate Parliamentarian also refers legislation on behalf of the presiding officer.)

Sensenbrenner’s letter to the Speaker, which he posted on Judiciary’s Web site, detailed the reasons why his committee wanted the Tauzin-Dingell bill referred to his panel. For example, he highlighted the long history of hearings (since the 1950s) the Judiciary Committee conducted on

³²For a discussion of jurisdictional politics, see David C. King, *Turf Politics: How Congressional Committees Claim Jurisdiction* (Chicago: University of Chicago Press, 1997).

³³See Neil Mnro and geri Rucker, “The Battle for Broadband,” *National Journal*, May 26, 2001, pp. 1564-1568.

³⁴Peter Cobn, “House Judiciary Rings Up Telecom Measure,” *CQDaily Monitor*, June 13, 2001, p. 13.

³⁵Ben Pershing, “Sensenbrenner Goes Out of His Way to Defend Turf,” *Roll Call*, July 5, 2001, p. 3.

antitrust and the communications industry. He spotlighted the legislation referred to Judiciary, either on an exclusive basis or jointly with the Energy and Commerce Committee, that dealt with the topic. He cited committee reports accompanying telecommunications legislation prepared by Judiciary. And he made explicit reference to House rules which, he argued, justify the sequential referral of the Tauzin-Dingell measure to his panel.

Rule X(1)(k)(5) of the Rules of the House of Representatives provides the Committee on the Judiciary has jurisdiction over the “[p]rotection of trade and commerce against unlawful restraints and monopolies.” In addition, Rule X(1)(k)(2) of the Rules of the House provides that the Committee on Judiciary has jurisdiction over “[a]dministrative practice and procedure.” Fundamentally, H.R. 1542 addresses a monopoly issue. It takes its place at the end of a long line of legislative efforts that confront the monopoly power of incumbent local exchange carriers in the telephone industry. For decades, such efforts have come under the jurisdiction of the Committee on the Judiciary.³⁶

A Democratic member of the Judiciary Committee, Jerrold Nadler of New York, strongly supported Sensenbrenner’s determination to protect the panel’s jurisdiction. He said: “I...want to express my appreciation and fervent desire to cooperate with the chairman in a vigorous defense of the jurisdiction of this committee against any imperialist assaults by other committees.”³⁷

In mid-May 2001, Speaker Hastert granted a 30-day sequential referral of H.R.1542 to Judiciary but limited its review of the bill to provisions dealing with the Department of Justice. On June 13, 2001, the Judiciary Committee reported the broadband legislation unfavorably and with an amendment “tearing out the heart of the [Tauzin-Dingell] measure.”³⁸ To avoid a nasty parliamentary fight on the floor between the two chairmen, Speaker Hastert directed Tauzin to negotiate differences with the opponents of his bill or he would not schedule the legislation for floor consideration.³⁹ Each side in the jurisdictional battle marshaled an array of outside interests to lobby in support of their position.

Encryption policy, which deals with the security of communications transmitted in cyberspace, is another Internet-related issue that affects several panels’ jurisdictional areas. During the 105th Congress, five House committees (Judiciary, International Relations, Armed Services, Intelligence, and Commerce) obtained review of an encryption bill (H.R. 695). “The bill passed each committee, but in five different versions with two being complete opposites.”⁴⁰ The job of reconciling disparate committee versions of legislation falls to the House Rules Committee, but in this case the conflicts among the committees prevented any reconciliation and the legislation died.

³⁶<http://www.house.gov/judiciary/broadband>, p. 1.

³⁷Pershing, “Sensenbrenner Goes Out of His Way to Defend Turf,” p. 3.

³⁸J.P. Cassidy, “Rep. Tauzin Needs Deal to Win,” *The Hill*, August 8, 2001, p. 23.

³⁹*Ibid.*

⁴⁰See Priscilla M. Regan, “From Clipper to Carnivore: Balancing Privacy, Law Enforcement and Industry Interests,” Paper prepared for delivery at the Annual Meeting of the American Political Science Association, San Francisco, August 29-September 2, 2001, p. 14. When these kinds of stalemates occur, lawmakers may try to end run the authorizing committees and attach their policy to one of the “must pass” appropriations bills. This ploy may trigger turf conflicts between the authorizers and appropriators.

Referral Precedents. Knowledge of referral precedents, combined with astute drafting, can shape which committee receives what legislation. One referral strategy is for members to introduce legislation that amends statutes over which their committees have sole jurisdiction. To lay claim to Internet legislation and avoid referral of their bill to the Commerce Committee, two House Judiciary Committee members drafted their measure to amend the Sherman Anti-Trust Act, which is within their panel's exclusive jurisdiction, and not the Telecommunications Act of 1996, which falls under the Commerce Committee. Lawmakers, too, may work to draft their bill during the introductory and committee markup stages to limit its chance of sequential referral to another panel.

Knowledge of specific precedents also influences the referral of legislation. For example, precedents dictate that reference to taxes or the internal revenue code means that bills will be sent to the tax-writing committees. There are exceptions, however. To avoid referral of his bill barring taxation of Internet commerce to the House Ways and Means Committee, Representative Christopher Cox, R-Calif., took advantage of precedents stating that "so long as the bill is limited to the taxing powers of state and local governments, it is the domain of the Judiciary or Commerce Committees."⁴¹

Committees may also draft memorandums of understanding to deal with issues that overlap their responsibilities. These memorandums, which have precedential value, are usually printed in the *Congressional Record*, kept on file in the Parliamentarian's Office, and guide the reference of legislation implicated by these bi-committee agreements. For instance, when the House reconfigured its committee system at the start of the 107th Congress by establishing a new Financial Services Committee and a renamed Energy and Commerce Committee which saw some of its jurisdiction shifted to the new panel, both panels claimed authority for "the electronic communications networks that automatically match buy and sell orders for stock transactions."⁴² To end the turf battle, Speaker Hastert brokered an agreement between the two panels which was entered in the *Congressional Record*.⁴³

Ad hoc Panels. The House and Senate create ad hoc, or temporary, committees for a variety of reasons, including the need to coordinate consideration of issues that overlap the jurisdiction of several standing committees. This approach is intended to reduce jurisdictional bickering and to expedite review of an issue. Another reason is to provide direction, visibility, and laser-light attention to an issue spread diffusely and unclearly among several standing committees. A good example concerned the Senate's unanimous establishment on April 2, 1998 of the Special Committee on the Year 2000 Technology Problem, chaired by Senator Robert Bennett, R-Utah, with Senator Christopher Dodd, D-Conn., as vice chair. The Special Committee's function, as defined in its

⁴¹National Journal's *CongressDaily/PM*, April 24, 1998, p. 6.

⁴²Alan Ota, "House Panels Vie for Upper Hand In Regulating the New Economy," *Congressional Quarterly Weekly Report*, January 13, 2001, p. 133.

⁴³*Congressional Record*, January 30, 2001, p. H103. It is common for committees to waive their jurisdiction over measures in the interest of expediting floor consideration. However, an exchange of letters is usually inserted in the *Congressional Record* by the respective chairmen stating that the waiver does not constitute a precedent for any subsequent referral of legislation. In addition, the chairman of the panel which waives its jurisdictional right to a bill often states that he/she reserves the right to seek conferees in any subsequent conference with the Senate. See, for example, *Congressional Record*, June 13, 2001, pp. H3105-H3106.

authorizing resolution (S.Res. 208), was “to study the impact of the year 2000 technology problem on the Executive and Judicial Branches of the Federal Government, State governments, and private sector operations in the United States and abroad” and to make recommendations to deal effectively with the dire warnings associated with a computer software flaw known as the “millenium” or “Y2K” bug. (Speaker Newt Gingrich, R-Ga., created a House Year 2000 [Republican] Task Force and appointed GOP Representatives Stephen Horn, Calif., and Constance Morella, Md., to oversee executive branch efforts to address the millennium bug.)⁴⁴

The Y2K problem concerned the reprogramming of computer software programs so they could recognize “00” as 2000 rather than 1900. “If the appropriate adjustments are not made when New Year’s 2000 rolls around,” said Representative Lee Hamilton, D-Ind., “many of these [computer] systems will jump back to the year 1900, causing disruptions in government and private sector operations, here and abroad.”⁴⁵ A combination of factors—the foreseeable nature of the problem and the efforts made by many public and private leaders, groups, and organizations worldwide, including the Special Senate Committee—resulted in few computer glitches on January 1, 2000. On the other hand, there were political, parliamentary, and jurisdictional issues which emanated from the Y2K problem.

Politically, for example, Republicans laid the groundwork to blame Vice President Al Gore (widely acknowledged to be the leading Democratic presidential nominee for 2000) in case there were major computer problems. “I can’t imagine anything more destructive for Gore’s political future than to talk about the information superhighway and then to have the largest wreck in history on the 1st of January 2000,” declared House Speaker Newt Gingrich, R-Ga.⁴⁶ Parliamentarily, when the Senate took up a bill in 1999 that addressed the Y2K computer liability issue (limiting class action lawsuits and punitive damages against high-tech businesses in the event of computer breakdowns in 2000), it became enmeshed in bitter procedural battles that produced multiple cloture attempts and the rare tactic of filling the amendment tree by Majority Leader Trent Lott, R-Miss., to block unwanted Democratic amendments.⁴⁷

Jurisdictionally, a turf battle erupted between the Senate Commerce and Judiciary Committees as each panel rushed to be first in reporting out a bill to resolve the Y2K problem. The respective chairmen of the two panels—John McCain, R-Ariz., and Orrin Hatch, R-Utah—produced bills that were nearly identical. “There’s not a lot of difference in the bills,” remarked Chairman Hatch. “McCain took our bill and followed it.” In response, Chairman McCain discounted any similarities in the two bills saying he “hasn’t wasted the time” to look at Hatch’s version.⁴⁸ Majority Leader Lott took up the Commerce Committee’s bill on the floor.

2. Congressional Parties and Message Politics

⁴⁴See *CQ Daily Monitor*, June 23, 1998, p. 9 and *Congressional Record*, May 2, 2000, pp. H2350-H2353.

⁴⁵*Congressional Record*, September 9, 1998, p. E1666.

⁴⁶Susan Page, “GOP Drops A Bug Down Gore’s Back,” *USA Today*, June 24, 1998, p. 6A.

⁴⁷See, for example, *Congressional Record*, April 29, 1999, pp. S4405-S4417.

⁴⁸Philippe Shepnick, “McCain, Hatch Duel Over Y2K Bills That Appear To Have Few Differences,” *The Hill*, March 10, 1999, p. 3.

Congressional party leaders increasingly focus their time and resources on framing issues in a way that maximizes support among their core constituencies and swing voters. With the two parties at electoral and legislative parity, congressional leaders understand the importance of using communications and public relations strategies to promote legislative agendas which resonate with voters and that party members solidly favor. Today, the parties in each chamber assemble partisans in “theme teams,” “message groups,” or “speaker’s groups” to deliver coordinated and targeted statements on the House or Senate floor and in other forums. They use hearings, floor debates, amendments, votes, schedules, press conferences, and more to orchestrate agenda priorities and to differentiate their image and issues from the other party’s.

The development of new technologies for research and publicity, such as the Internet, underscores the importance of political communications in (1) the passage, modification, or defeat of priority legislation (message politics), (2) the formulation of party platforms that have broad popular appeal (message agendas), and (3) the parliamentary and political maneuvers used to advance party goals (message strategies). A basic aim of these coordinated efforts is to frame the national debate in a way that fosters public support for partisan goals and that inoculates the party from attacks by opponents. Republicans, for example, employed an array of message approaches (field hearings, focus groups, television, and so on) to attract support for their prime goal of cutting back on the size and scope of the national government without losing political support and credibility. As a commentator noted:

The Republicans hope to employ all the elements of the party, from congressional and state party officials to allied organizations at the grass roots, along with all the communications technology they can muster, to prevent...the Democrats from taking control of the debate and successfully portraying Republicans as heartless opponents of worthy social programs.⁴⁹

Today, GOP congressional leaders coordinate their message plans with the Bush White House. House and Senate Democratic leaders also meet regularly to advance common strategic goals.

Coordination, consultation, and communication are important functions of party leaders. Much of this activity can be done via public Internet sites. In addition, the parties maintain Intranet sites which only party members or their staff may access. For example, House GOP Conference Chairman J.C. Watts, Okla., developed a Web site for Republican lawmakers that provides them with “one-stop shopping” with respect to legislation before the House. The “committee central” site (www.gop.gov/committee) provides “bill summaries, issue briefings and sample op-eds. Parts are open to the public; some are for GOP members only.”⁵⁰ Lobby groups post letters on this site indicating which bills will be scored as a “key vote” for their annual voting scorecards. (Interest groups use these scorecards to determine which candidates will win endorsements and receive campaign contributions.)

The public Web sites of party leaders and entities are different in their format yet they also share common features. For example, the House and Senate Republican Conference sites and the House Majority and Minority Whip sites are replete with legislative information (the weekly schedule, party news, video/audio press releases, the party agenda, links to other sources, and so

⁴⁹*The Washington Post*, April 30, 1995, p. A19.

⁵⁰Juliet Eilperin and John Lancaster, “GOP Web Site Keeps Members Fully Briefed,” *The Washington Post*, July 9, 2001, p. A15.

on.) However, where House leaders maintain at least two pages (office and leadership)--Majority Leader Richard Armey, Tex., even has three: congressional office page, leadership page, and a flat tax plan page--the top Senate leaders maintain an office page only with a generic site for Democrats. As the Web site for the Senate Democratic Policy Committee states:

This is the official web page of the United States Senate Democratic Leadership. It is intended to be a source of information about the legislative agenda and issues being worked on by Senate Democrats. You can also visit the web sites of individual Democratic Senators to learn more about their work.

Suffice it to say that lawmakers can easily access information that will keep them apprised of their party's agenda priorities, the daily or weekly schedule, and updates of floor action throughout the legislative day. As House Majority Leader Armey told colleagues about the timing of legislation: "Let me just say we will again remind [Members] through e-mail and Whip notices...at the time that the committee has prepared the bill for filing."⁵¹ The Internet is used by parties for more than keeping colleagues up-to-date and informed about legislative business. On the message politics front, the Internet influences a confluence of overlapping party matters: agenda-setting, partisan competition, and policy stagecraft.

Agenda-Setting. In recognition of the Internet's contribution to technologically-fueled economic growth and the industry's ability to contribute large amounts of campaign funds, both parties in the House and Senate work continuously to win the political backing of the high-tech community. As part of the courtship, Democrats and Republicans advance Internet agendas with dual purposes: to appeal to the technology industry and to differentiate their plans from the other party's. For example, to contrast their approach with President George W. Bush's, the Democratic leaders of the House and Senate--Representative Richard Gephardt, Mo., and Senator Tom Daschle, S.D.--proposed ten high tech policy recommendations (closing the "digital divide," increasing federal research and development support, providing every American with high-speed Internet access, and so on) to spur technological growth. "President Bush has outlined one approach [to revive the high-tech economy]--cut taxes and slash regulations. We also support tax cuts and deregulation, where appropriate. But we don't think those things alone are enough," said Senator Daschle.⁵²

Republicans, too, recognize the growing political clout of the Internet industry. House Majority Leader Armey, for instance, drafted the GOP's "E-Contract 2000"--a high-tech version of their famous mid-1990s "Contract with America." Although many of the topics on Armey's agenda (expanding high-speed Internet access or providing digital opportunities for the disadvantaged) enjoy Democratic support, both parties compete vigorously to push legislation favored by the information technology industry. As Senate Democrats and Republicans left Capitol Hill for the August 2001 recess, they traded barbs over which party is doing more to promote technology issues. "If Republicans were still in the leadership," remarked Senator George Allen, R-Va., the Senate would already have acted on making permanent a research and development tax credit long sought

⁵¹*Congressional Record*, May 25, 2001, p. H2725.

⁵²Adam Marlin, "Democrats Outline Legislative Agenda for Technology Issues," *CQ Daily Monitor*, April 6, 2001, p. 6.

by the the Internet community. A top Daschle aide retorted that “it’s better to do it right than [to] do it fast.”⁵³

Party task forces are also formed to woo the technology industry. Senator Allen, for example, chairs the Republican High-Tech Task Force appointed by GOP Leader Lott. When Lott established the group in 1999, he said: “This new task force will take a broader perspective, consulting with leaders in the field to identify and address the full range of legislative priorities for the high-tech industry.”⁵⁴ Added Senator Allen when he became chairman two years later: “We want you all [in the tech community] to understand we are your portal to the Senate.”⁵⁵ The other three parties on Capitol Hill also have partisan groups which meet with technology executives, visit Silicon Valley and other high-tech facilities, and work diligently to attract the support of this important sector of the economy.

Partisan Competition. Partisanship is sometimes viewed negatively, but it serves an important purpose by identifying the principles and views that distinguish one party from the other. Recent Congresses, however, witnessed a sharp rise in political rancor and lack of trust between the two parties. One reason for today’s hard-edged partisanship is that the Democratic party has become more liberal and the Republican party more conservative than in previous decades. Compromises are hard to reach because the ideological gap is so large. As Senator Orrin Hatch, R-Utah, put it: “Today, most Democrats are far left; most Republicans are to the right; and there are very few in between.”⁵⁶ The rancorous atmosphere got so bad in the House that the two parties even met in three weekend “civility retreats” (1997, 1999, and 2001). The retreats achieved little by way of easing partisan tensions. House Minority Leader Gephardt said after the third retreat that he would not participate in any more because “they have yet to produce any results, and so there’s no point in being there.”⁵⁷

Another factor contributing to partisan polarization is that the parties are at virtual parity in Congress and the country. Both sides realize the high electoral stakes of their decisions, and each party calculates constantly how to enlarge their chances of either winning or expanding majority control of the House and Senate. Any slight advantage could tilt majority control in one partisan direction or the other. Unsurprisingly, the World Wide Web is among the technological tools that parties employ to advance their causes. Three examples make the point.

First, in the November 1996 elections, Democrat Loretta Sanchez of California was an upset victor over incumbent Robert Dornan (known in the media as “B-1 Bob” for his strong defense rhetoric). The GOP-controlled House launched a contested-election investigation to determine whether Sanchez won because of illegal voting by noncitizens. Democrats argued that the yearlong GOP investigation had turned up no evidence that Sanchez had been elected illegally. Republicans countered that all the facts had not been uncovered and continued their investigation.

⁵³National Journal’s *CongressDaily/PM*, August 10, 2001, p. 3.

⁵⁴Press Release, Senate Majority Leader Trent Lott, May 26, 1999.

⁵⁵National Journal’s *CongressDaily/AM*, March 2, 2001, p. 4.

⁵⁶Kathy Kiely and Wendy Koch, “Committees Shaped by Party Ties,” *USA Today*, October 5, 1998, p. 2A.

⁵⁷Ethan Wallison, “Civility Eludes House Leaders,” *Roll Call*, March 15, 2001, p. 29.

Much of the controversy over the Sanchez-Dornan case can be traced to a 1984 election, which Republicans said the Democrats stole from them. In a close House election in the 8th congressional district of Indiana, Democrat Frank McCloskey seemed to be the winner but the Indiana Secretary of State said some votes were counted twice and declared Republican Richard McIntyre the victor. However, the Democratically-controlled House refused to seat McIntyre and began an investigation of the election. Republicans waged parliamentary “guerrilla warfare” on McIntyre’s behalf. In the end, the House voted along party lines to seat McCloskey. When the decision was announced, Republicans walked en masse from the House chamber. Thirteen years later the situation was reversed as Democrats tried parliamentary stalling tactics to shut down the GOP-run investigation and hold a newly won seat.

When Republicans blocked the dilatory tactics on behalf of Sanchez, House Democrats moved to cyberspace to continue their battle to seat their colleague. They created and publicized a “Stop Bob Dornan” Web site (www.house.gov/democrats/orange) to generate broad public support for their effort. “On the site, visitors can read the Democrats’ version of the investigation’s history, copy a ‘Stop Bob Dornan’ [logo] onto their own Web site, and sign an Internet petition to Speaker Newt Gingrich (Ga.) telling him to prove Dornan won or end the investigation.”⁵⁸ In the end, Dornan’s challenge was dismissed by the House in February 1998.

Second, Web sites are used to promote partisan agendas, to stake out positions, and to attract audiences different from that reached by floor speeches or constituent newsletters. In 1997, the GOP-controlled Congress targeted the Internal Revenue Service (IRS) because of its overly aggressive approach to tax enforcement. House Republicans introduced a Web site to the public during Halloween to solicit “horror stories” about taxpayer abuse by the IRS. The Web page was titled “IRS Horror Stories” and urged citizens to recount stories of abuse by the IRS. “This Halloween, the Republican Congress is unmasking the IRS for what it really is: a bureaucratic monster stalking the American taxpayer,” declared Representative John Boehner, R-Ohio. “Our Web page is a silver bullet for taxpayers fighting the...beast.”⁵⁹ The House Republican initiative along with well-publicized hearings by the Senate Finance Committee led to enactment of the Internal Revenue Restructuring and Reform Act of 1998.

Third, “politics by other means” is waged on Capitol Hill, and it involves court cases, investigations, media disclosures, and bitter partisan conflicts.⁶⁰ Lawmakers lodge ethics charges against colleagues; interest groups and journalists look for dirt on lawmakers; and the Internet is used to spread unsubstantiated allegations against party members or entities. This form of harsh competition between the parties has also been called the “criminalization of politics.”⁶¹ The objectives of politics by other means are several, such as destroying political careers, immobilizing the opposition, and tarnishing a party’s popular image.

⁵⁸*Roll Call*, November 13, 1997, p. 3.

⁵⁹John Godrey, “GOP Sets Up Web Site to Attract IRS Horror Stories,” *The Washington Times*, November 1, 1997, p. A4.

⁶⁰Benjamin Ginsberg and Martin Shefter, *Politics by Other Means: The Declining Importance of Elections in America* (New York: Basic Books, 1990).

⁶¹Amitai Etzioni, “It’s a Crime, the Way Politicians Go at It,” *The Washington Post*, August 5, 2001, p. B1. Also see Ronald Brownstein, “New Appeals for a Return to Civility,” *Los Angeles Times*, February 15, 1999, p. A1.

For example, in the lead-up to the November 2000 elections, the Senate Democratic and Republican Campaign Committees each charged the other with breaking copyright and other laws. Democrats said the GOP's campaign committee's Web site (www.nrsc.org) violated copyright laws by posting newspaper articles without the media organization's permission and paying the required fee to use the material. Republicans said the allegation was baseless and lodged legal complaints of their own, such as charging that the Democratic campaign group's Web site (www.dsc.org) solicited contributions in violation of federal election and IRS laws and rules. The legal counsel to the GOP campaign committee declared: "I think the DSCC must have a case of Web envy because we have a great Web site and theirs is rather static, or Jurassic, in my opinion. They need to throw another hamster onto the wheel to keep it running."⁶² Nothing came of these legal challenges, but they illustrate how the parties search for any reasonable "hook," including Web sites, to tarnish the credibility of the other.

Policy Stagecraft. The strategy for moving or blocking major legislation is often as much technological—television, radio, the Internet, and so on—as it is political or procedural. Congressional leaders understand the importance of the technological component in framing issues, molding public opinion, and generating grassroots support to achieve policy initiatives on Capitol Hill. The shrewd use of words and communications strategies is part of the competing stagecraft parties employ to target their message, advance their agenda, and attract popular support. Republicans, for instance, transformed the "estate tax," which highlighted wealth and privilege, to the "death tax" and won enactment of a tax cut "that at first appeared to be an easy target for Democrats."⁶³ As Representative Nancy Pelosi, D-Calif., pointed out: "We can do all we can with our inside maneuvering, but without the outside mobilization we'll never achieve what is possible."⁶⁴

The technology behind policy stagecraft can be illustrated by these two cases. First, President Bush announced in May 2001 a comprehensive initiative to promote domestic energy production through more drilling for oil and gas, tax incentives to encourage energy production and conservation, and funds for nuclear energy research and clean coal technology. Democrats attacked Bush's plan for emphasizing energy production over energy conservation and environmental protection. For instance, Democrats set up a "war room" in the Capitol to coordinate radio and television interviews and opened a Web site called www.grandoldpetroleum.com to bolster public opposition to Bush's plan. Republicans responded by creating their own Web site (www.bushenergy.com) to encourage supporters to call radio shows with the message that Bush "is doing everything he can—as soon as he can—to help Americans who are feeling the energy crunch at the gas pump and in their utility bills."⁶⁵ Both parties also make available online briefing materials which lawmakers can download and use in their states or districts either to attack or promote the Bush energy plan, as the case may be. House Republicans developed a CD-ROM presentation

⁶²John Mercurio, "Senate Committees War Over the Web," *Roll Call*, December 2, 1999, p. 10.

⁶³Lizette Alvarez, "In 2 Parties' War of Words, Shibboleths Emerge as Clear Winner," *New York Times*, April 27, 2001, p. A18.

⁶⁴John Nichols, "Is This the New Face of the Democratic Party?" *The Nation*, August 6/13, 2001, p. 13.

⁶⁵Mike Allen, "Democrats Turn Energy on Bush," *The Washington Post*, May 20, 2001, p. A9.

tailored to the energy picture in different states which members could use in their town-hall meetings with constituents.⁶⁶

Second, public anger against health maintenance organizations (HMOs) escalated in the late 1990s and contributed to efforts by both congressional parties to take up legislation dealing with this “hot” issue. In general, Democrats supported more federal regulation of HMOs and Republicans leaned toward a market-based approach to health care reform. A particularly divisive issue involved the Democratic proposal granting patients the right to sue HMOs for malpractice. Republicans argued that the proposal would raise the costs of health care and serve the interests of trial lawyers, a favorite Democratic support group. Democrats responded that Republicans favored the insurance companies over patients. On popular issues like the patients’ bill of rights where Democrats enjoy a large public advantage as the party best able to deal with it, Republicans employ “defensive” messages to inoculate their members from attacks by the other side and to blur inter-party differences. Thus, when the Senate addressed a patients’ bill of rights measure in the 106th Congress, Republicans “offered amendments with similar titles to those sponsored by Democrats—but embodying more limited rights and applying to fewer people.”⁶⁷

When Democrats took over the Senate in June 2001 following Senator James Jeffords’s, Vt., switch from Republican to Independent, Majority Leader Daschle successfully made chamber enactment of a patients’ bill of rights his top priority. As part of the strategy to widely broadcast the Democratic health care message, Daschle created an “intensive care unit” (ICU) in a leadership conference room “equipped for live broadcasts over television, radio and the Internet.”⁶⁸ Senators, for instance, went on-line to discuss HMO reform, rebut opponent’s charges, and advertise the Democratic plan. Not to be outdone, Senate Republicans established their own communications unit in the Capitol dubbed the “delivery room”—after their stated goal of delivering an HMO bill that President Bush would sign into law. The GOP’s room was also equipped with various technological devices “from computers for interactive chats to cameras and microphones for senators to use for interviews.”⁶⁹

Message issues like energy or HMO reform induce close coordination between lobbyists and lawmakers with similar views. Lobbying groups, for example, use their information technology to answer lawmakers’ questions, provide them with technical analysis from their data banks, and identify which members of their association have the closest ties to legislators. The lobbying groups then “dispatch a small coterie to the Hill” to convey their message to wavering lawmakers.⁷⁰ The Internet also delivers “arguments wielded by the Republicans and Democrats in Congress” that

⁶⁶Mike Allen and Juliet Eilperin, “Bush, GOP Mount Effort to Sell Energy Plan,” *The Washington Post*, June 28, 2001, p. A8.

⁶⁷Alissa Rubin, “Fine Lines Drawn in Senate Debate on Patients’ Rights Bill,” *Los Angeles Times*, July 15, 1999, p. A6.

⁶⁸John Lancaster and Helen Dewar, “Daschle’s ‘Intensive Care Unit’ to Attend to Patients’ Rights,” *The Washington Post*, June 18, 2001, p. A15.

⁶⁹Helen Dewar, “Dueling Rooms,” *The Washington Post*, June 25, 2001, p. A13.

⁷⁰Amy Goldstein, “Patients’ Rights: a Prescription for Lobbyists,” *The Washington Post*, June 23, 2001, p. A6.

are marshaled by their outside supporters.⁷¹ The Internet's capacity for rapid information retrieval and instant response means that it is a technology that cannot be ignored by either party in showcasing signature issues, mobilizing internal and external support, and winning policy and political objectives.

III. The Internet and Congress: Summary Points

The Internet's impact on legislative decisionmaking presents a complex picture. It influences nearly everything that Congress does, and sometimes in significant ways. Although information technology shapes how Congress and its members do things, it has not changed their fundamental roles and functions. They still represent constituents, make laws, oversee the executive branch, educate the public, foster consensus for action, and so on. The Internet, some suggest, is qualitatively different from other technological developments in its potential to create a new paradigm of governance: direct democracy rather than representative government. Others wonder whether, by comparison, too much is claimed for the Internet's impact on Congress or society given the significance of other technological breakthroughs, such as electricity, the telephone, radio and television, or the jet plane. The point is that the importance of the Internet in and on Congress should neither be overestimated nor underestimated.

Congress operates more than 600 Web sites and the odds favor more extensive use of the technology as a new generation of technologically-sophisticated lawmakers enter the House and Senate.⁷² Today, young congressional staff aides are in the vanguard of using and exploring the Internet, in part because the Internet becomes a substitute for knowledge and experience. Inexperienced staff aides can "get smart quickly" on issues their Members are interested in and even target and mobilize activists on behalf of those topics. One implication of the Internet is the increasing importance on Capitol Hill of combining legislative and technological skills. Several other implications also merit mention. They include:

Transparency. The computer revolution has produced the ability to store huge amounts of information and to retrieve it quickly and efficiently. The large number of Web sites citizens can access to get reliable information and electronic documents about Congress is remarkable. These sites, whether public (the Library of Congress or the Government Printing Office, for example) or commercial (Congressional Quarterly, Inc., for instance), provide an abundance of trustworthy materials about the Congress to interested citizens. Internet access not only provides opportunities for citizens to be better informed about Congress; it also strengthens their ability to hold elected officials responsible and accountable for their actions and decisions. For example, citizens interested in this question--"Does Congress Delegate Too Much Power To Agencies and What Should Be Done About It?"--can obtain the June 14, 2000 House committee hearing record by that title via www.house.gov/reform.

As more information becomes available online about Congress, there is also more demand that additional materials be distributed electronically to the public. For example, various groups such as Ralph Nader's Congressional Accountability Project have urged Congress to post online drafts of committee "markup" documents, easily searchable voting records of lawmakers, or reports of the Congressional Research Service. There are many reasons why party or committee leaders do not

⁷¹*Ibid.*

⁷²William Matthews, "Wiring Congress," *Federal Computer Week*, February 19, 2001, p. 20.

want certain materials made easily available either to constituents or to other lawmakers. For example, after selected House and Senate members negotiate for days or weeks to hammer out a fragile compromise which they must then “sell” to colleagues, there is an understandable reluctance to disseminate the product to the general public before it has been reviewed by the majority and minority leaders of Congress and the White House.

Constituent Communications. The Internet has changed the way lawmakers and their staff aides communicate with constituents. Members can quickly keep constituents updated and informed about their activities. As Senator Bill Frist, R-Tenn., explained:

Our office...uses a digital camera—which allows photographs to be downloaded, printed, and disseminated almost instantly. On a recent trip to Bosnia, for instance, I took pictures of our troops from Tennessee, downloaded them into my laptop, e-mailed them to local newspapers in Tennessee, as well as to my Washington office where they were posted on the Web for all to see. The whole process took only a few minutes.⁷³

Cybersavvy legislators interact regularly in “chat rooms” with constituents in their districts or states. Constituents, in turn, are able to quickly send e-mails to their members. The ease of sending e-mails to lawmakers has produced “e-mail overload” in Congress with many offices unable to be responsive to the increasing volume of e-mails flooding their offices (from 20 million in 1998 sent to the House to 48 million in 2000).⁷⁴

Advocacy groups, too, are able to trigger constituent e-mails at Internet speed. When President Bush nominated the controversial John Ashcroft to be Attorney General, pro- and anti-Ashcroft “websites sprung up within hours of the nomination, and helped generate hundreds of thousands of messages to lawmakers.”⁷⁵ While the Internet-generated activism enables lawmakers to hear from numerous people, it sometimes creates unmanageable burdens on Congress’s e-mail system and inaction on legislative issues. Online advocacy can mean that “some things are easier to stop,” stated a top House Rules Committee staff aide. “You send an e-mail to all your friends and say Congress is about to do this horrible thing so write your congressman immediately.”⁷⁶

Information Access/Overload. Members are inundated with information. There is so much information created and distributed worldwide, that much of it can be characterized as “negative information.” Neither legislators nor staff aides have the time to sift through the enormous amounts of available data to determine the useful from the useless. As former Senate Majority Leader George Mitchell, D-Me., said: “What we do not lack is the means by which to learn about issues. There is no shortage of information. There is a shortage of time.”⁷⁷ The Internet’s prime virtue is the speed with which it can make unmediated information and data available to policymakers. What is often

⁷³*Congressional Record*, May 22, 1998, p. S5466.

⁷⁴See the report of the Congress Online Project, “E-Mail Overload in Congress,” March 19, 2001, p. 2.

⁷⁵Gail Russell Chaddock, “Behind Vote on Ashcroft, A Signal,” *Christian Science Monitor*, February 2, 2001, p. 4.

⁷⁶*Creating a Digital Democracy: The Impact of the Internet on Public Policy-Making*, Foundation for Public Affairs, Washington, D.C., 1999, p. 11.

⁷⁷*Congressional Record*, October 20, 1989, p. S13811.

lacking on Capitol Hill is the time and human resources to make sense of it all and to find the policy-shaping “nuggets” in the information deluge. Significantly, lawmakers also need an array of information not found on the Internet and which is usually more difficult to obtain, such as the combination of political rewards or sanctions that would encourage wavering colleagues to vote their way.

Deliberation and Decisionmaking. The range of issues that every legislator must vote upon is truly immense. On any given day, lawmakers might be required to vote on measures involving defense, higher education, abortion, taxes, or public works. There is little question that the Internet can help members make informed decisions. As Representative Kevin Brady, R-Tex., stated: “You know, we’re in the information age and we’re making decisions in so many different areas that it’s a huge help. I mean, from a policy standpoint, [computer technology is] very productive for me and it’s a very productive way to learn.”⁷⁸

On the other hand, numerous factors shape how legislators make choices, not just information. Constitutency-based, party-based, or ideologically-based decisions are often more important than information-based judgments. In politics, an old saying goes, facts are negotiable. Members frequently want “objective” analyses that support their policy predispositions. Masses of reliable and timely data are of limited value to legislators making political determinations.

Paradoxically, although information and ideas can move with the speed of light, lawmaking usually requires time for reflection and reasoned deliberation to build the consensus to pass legislation. The legislative process is replete with political and procedural “speed bumps” to inhibit overly hasty action. A leader in the “cyberCongress” movement, Representative Vern Ehlers, R-Mich., put it this way: “The art of politics is the art of persuasion. When you’re persuading, there’s nothing more important than face-to-face contact.”⁷⁹ “Virtual collegiality” through e-mails, laptops, or videoconferences is no substitute for the hard work of building personal and political relationships between or among lawmakers. “If I cannot eyeball you, I cannot see you, I cannot see your body language, I can’t really listen to you,” declared Representative Tony Hall, D-Ohio.⁸⁰

The idea of a Congress means a “coming together” for the purpose of face-to-face deliberation and dialogue. The creative insights of lawmakers, their diverse and conflicting experiences, and all the things that make up their value systems are not found in Internet data banks. Online information sources are invaluable for analyzing public policy, accessing and disseminating relevant information, and enhancing the technical quality of legislation. However, the Internet is no substitute for the many “off-line” qualities (for instance, bargaining and negotiating skills) which characterize the lawmaking process.

The Internet, in sum, has made it easy for technologically-savvy lawmakers to acquire more and faster access to information and to disseminate materials to a huge audience. Many members do not have much familiarity with the Internet, however. For example, when Speaker Newt Gingrich conducted a GOP leadership meeting, he decided to place computer terminals in front of each member. “Instead of simply discussing ideas aloud, members typed in their responses to

⁷⁸George Archibald, “Technology Lets Lawmakers Remain Connected,” *The Washington Times*, September 12, 1999, p. C10.

⁷⁹Kelly, “Capitol Hill At a Crossroads on Info Highway,” p. 24A.

⁸⁰*Creating a Digital Democracy: The Impact of the Internet on Public Policy-Making*, p. 14.

questions—which were then posted anonymously to a projection screen. The...tool is an attempt to increase honesty in discussions, reduce the influence of strong personalities in decision-making and cut down on the repetition of arguments.”⁸¹ A GOP chairman confirmed that “[t]here were some Members who had never used a computer.”⁸² It is one thing to adapt state-of-the-art technology to the legislative process, but it is another to make sure that lawmakers have the requisite skills to make the best use of it. Nonetheless, the Internet is now a part of the broad information and communications context that affects congressional decisionmaking. Although its evolution in Congress remains unclear, the Internet “redefines traditional tools of communication, consultation and decision making, forcing public servants to rethink their roles and the processes and structures” that guide their decisionmaking.⁸³

⁸¹National Journal’s *CongressDaily/PM*, January 27, 1997, p. 5.

⁸²Juliet Eilperin, “2001: A GOP Planning Odyssey,” *Roll Call*, January 27, 1997, p. 18. Also see Susan Crabtree, “Members Score Poorly in New Tech Survey,” *Roll Call*, June 5, 2000, p. 3.

⁸³Elisabeth Richard, “Tools of Governance,” in Barry Hague and Brian Loader, eds., *Digital Democracy: Discourse and Decision Making in the Information Age* (New York: Routledge, 1999), p. 73.