

Ralph Nader Vs. Al Gore: What's The Best Policy For Democracy And the Internet Economy

Wired News hosted a particularly lively and informative debate on technology policy during the 2000 election. It featured Green Party presidential candidate Ralph Nader and Al Gore advisor Reed Hundt, former chairman of the FCC during the Clinton-Gore administration. Other presidential campaign offices declined to participate. Here are some key excerpts.



Ralph Nader's Critique

As a U.S. senator, Mr. Gore was indeed a supporter of public investments in the development of the Internet, and a vision for the Internet to serve educational needs. However, for the past eight years, Mr. Gore has not only coasted on his earlier deeds, he has actively pushed for a new approach to the Internet as something that is far less public.



Beginning with the famous exchange between Mr. Gore and AT&T right after the 1992 election over who would build the "information superhighway," the vice president has followed corporate America in redefining the agenda. It is no longer about information policy; it is about government promotion of e-commerce and the growth of markets.

The Snowe/Rockefeller initiative for funding telecommunications services for schools and libraries is one of the rare areas where the public character of the Internet has been given any attention. To his credit, Mr. Hundt at the FCC, of course, supported this initiative. However, at the end of the day, this isn't a lot for an eight-year legacy.

What is remarkable is how little the Clinton/Gore administration has invested in critical evaluation of technology in the classroom, the development of curriculum, training for teachers, the creation of new public-domain software or content relating to teaching.

For all of Mr. Gore's reported concerns about digital libraries, what has the administration brought forth?

The big push to put government information online came from the grass roots -- librarians and activists such as the Consumer Project on Technology. The decisive movement for government policy on this topic did not come from the Clinton/Gore administration, which was busy raising money from their friend Vance Opperman, then the CEO at legal publisher West Publishing, a company that opposed online access to public records.

Rather it was from Newt Gingrich, who proclaimed in 1994 that all Congressional documents would be published on the Internet for free -- the minute they were available to corporate lobbyists.

While Mr. Gingrich and the Congress never followed through on this promise, his statement at least pointed to a decisive policy goal that never came from the White House.

An endless source of frustration with the Clinton/Gore administration on this score has been the unwillingness to enforce across-the-board limits on the prices that federal agencies charge for data -- hefty prices that limit access except for corporate users -- and the various proposals to privatize and corporatize certain federal databases and publications. Of course, different federal agencies have different records, and under Mr. Hundt's leadership the FCC did a great job.

But there have been battles over opening up the Patent and Trademark databases and the CIA's Foreign Broadcast Information Service, which is marketed by the National Technical Information Service as the World News Connection).

An annual online subscription to the World News Connection is \$25 per week, or \$780 per year. Want the conference proceedings for Workers' Compensation and Managed Care? You can place your order online for \$124. The 18-page executive summary of Hospital Based Managed Care: Cost and Quality is \$28.50. How many school children or civic-minded citizens can afford these prices for government reports?

More recently I have been asking the administration to put all government contracts (above a threshold amount) on the Internet, to make the management of taxpayer property and government by contract more transparent and subject to public scrutiny.

I will add that the lack of openness regarding government contracts is astonishing. For example, the Clinton/Gore administration won't even disclose, under Freedom of Information Act requests, for the term of exclusive patent licenses or the royalties paid to the government for taxpayer-funded inventions that are worth billions to big pharmaceutical companies.

Putting existing government information on the Internet should be the easy part. The more challenging issue concerns the funding and support for the free public digital libraries that would focus on materials that are particularly useful for students and citizens. The vice president talked about this when he was elected, but what was actually done?

Mr. Hundt's cursory discussion of competition policy deserves something more than a few self-congratulatory pats on the back for the occasional good works by the bureaucracy.

The Reagan administration split AT&T into seven regional local exchange companies and one long-distance company, with rules in place that stopped the local exchange companies from entering various content businesses. It has been the Clinton/Gore administration that has permitted the Bell Atlantic/Nynex/GTE merger (now Verizon) and the SBC-PacBell-Ameritech merger, reducing the number of big local exchange carriers from eight to four.

This has fundamentally undermined the benefits of the AT&T breakup. With smaller local calling areas, the local exchange monopolies would have had to contend with entry barriers when they tried to grow outside of their market area. But these mergers have given the local exchange monopolies such huge calling areas that they can avoid competition with each other and punish rivals in a much bigger market.

The failures of the FCC, the U.S. Department of Justice and state regulators to protect the competitive sector for last-mile connections is one of the reasons there is so little broadband deployment.

And, without resistance from the Clinton/Gore administration, the new entrants are merging or becoming partners with the incumbent monopolies. The local exchange companies are buying into

the new DSL providers. SBC/PacBell/Ameritech is now an investor in Covad, a firm that had filed an antitrust suit against SBC. Verizon is investing in Northpoint Communication.

As Brian Pioskina writes in Interactive Week, NorthPoint and Covad were the two strongest competitors in the market, not just because of their size, but because of the ferocious manner in which they took action in court against the incumbents when business practices were in dispute.

Will the Gore Administration stop these deals? The Qwest merger with U S West was another example of a merger that sought to avoid competition.

If you look at the Internet Service Provider market, you no longer see a group of upstart companies challenging the old-guard telecom players. With few exceptions, you see a bunch of upstart companies that have been bought or become partners with old-guard telecom companies.

Mr. Hundt's earlier assertion that there was no evidence that the cable industry would engage in anticompetitive conduct in the broadband Internet market prompted me, in my previous post, to quote from Disney's devastating accounting of the history of AOL and Time Warner's anticompetitive acts.

Mr. Hundt ignores all of the specific allegations except one -- the time that Time Warner blacked out ABC from its cable television platform, which he also noted led to swift FCC action to protect Disney.

Then Mr. Hundt accuses me of shilling for Disney, which he calls "Mickey Mouse behavior." To be accused of shilling for Disney by Mr. Hundt, on behalf of Mr. Gore, is of course offensive or amusing, depending upon one's mood. But clearly Mr. Hundt is afraid to deal with the specifics set out, not only by Disney, but by virtually every major consumer group that follows the open-access issue, including the Consumer Federation of America, Consumers Union, the Media Access Project, the Center for Media Education, and the Consumer Project on Technology, not to mention free-speech groups such as the American Civil Liberties Union.

Mr. Hundt's comment on the Cisco initiative includes this naive statement: "Cisco's vision of the Internet fundamentally reinforces the concepts of openness, and the transfer of market power to the individual and/or enterprise user. The tools discussed by Cisco can work for the individual: Every person with a server is part of the vision."

While every person with a server may be part of the vision, what Cisco has marketed to cable companies will be managed by the cable owner, not by the cable subscriber? Perhaps Mr. Hundt can't see the difference between Time Warner/AOL and AT&T or Comcast and their customers, but I can.

The issue isn't whether or not technology by Cisco or others would permit useful ways to control Internet-data delivery -- they will. The issue is who will control this technology, and what are the consequences for the Internet of tomorrow.

If the cable Internet company decides which data travels fast and which data travels slow, it can and will use this bottleneck to charge content providers premium fees for premium delivery or to discriminate among content providers.

This is not rocket science. The cable industry has been engaged in discrimination among content providers as long as there has been a cable industry. This is what the cable companies do. This is also

what AOL does, and it is what every would-be Internet monopoly dreams of, including Microsoft, now an investor in many cable systems here and in Europe.

If Mr. Hundt wants to make a good case for Mr. Gore, he should explain how Mr. Gore will protect the Internet from would-be monopolies, including those in the cable industry who want to turn the Internet into a highly discriminatory content platform with monopolistic pricing for data delivery that isn't lousy (the so-called premium service). This would be more compelling than telling us how Al Gore deserves credit for every new technical innovation on the Internet.

Mr. Hundt's comments regarding privacy seem to suggest the issue will be solved if the Democrats can only control Congress. But what does this mean? Will the Democrats in the Congress finally stop the Democrats in the White House from using U.S. trade policy to undermine European privacy policies?

Will the Gore appointees to the Federal Trade Commission finally see Internet privacy as something not solved by self-regulation? Will Mr. Gore actually agree that the government must actively protect citizen privacy rights?

Will he agree to the creation of an independent office with a mission to protect personal privacy, as most modern countries do now? Will he support an International Convention on Privacy Protection that will help safeguard the privacy interests of consumers and citizens in the 21st century, as called for by the Trans Atlantic Consumer Dialogue and global privacy groups?

On the issue of privacy, the United States stands alone in opposing meaningful privacy regulation of e-commerce. Why is this so? Because the Clinton/Gore administration has been so focused on raising campaign contributions from the e-commerce industry, where company valuations are often based upon a firm's ability to strip consumers of privacy.

When it has come down to a choice between what investors in e-commerce want and what most American voters want, the investors have had their way. Does Mr. Hundt really believe this will change in the next four years, after what we have seen in the past eight?

In looking at the Internet, one might also ask what has the administration done to support the open-source movement, either through procurement policies (very little), funding for open-source software (not something the administration talks about) or protecting free software developers from software patents and anticompetitive practices targeted at the free-software movement?

In the area of corporate welfare, tax breaks and subsidies for big corporations, there is no end to what this administration will do for the e-commerce industry.

But when it comes to supporting an astonishing citizen movement that is protecting the Internet from Microsoft and other would-be monopolies and providing huge benefits to the economy, the administration is completely inarticulate.

During the government's antitrust investigation of Microsoft, Mr. Gore's daughter went to work for Microsoft. Could he at least respond to the repeated requests for the administration to talk about procurement and the free-software movement? Or find a way to use the federal acquisition regulations to fund the development of public-domain software?

And what can we expect from Mr. Gore on the issue of intellectual property rights? Right now the U.S. Patent and Trademark Office is pushing as hard as it can for the public to accept patents on business methods.

We have patents on methods of Internet auctions, patents on one-click shopping, patents on methods of picking stocks, patents on methods of avoiding taxes on credit card transactions, patents on methods of political campaigning on the Internet, and even patents on Internet Web standards.

Mastercard has foolishly sued me, claiming their trademark rights can stop my use of parody in political ads, including using the word "priceless" itself.

There are lawsuits over hypertext links in Web pages. The Girl Scouts are told to pay royalties on campfire songs. Trade-secret laws are now a federal criminal offense. Students have been thrown in jail for refusing to turn patents over to giant corporations who fund university facilities.

I am opposed to patents on software, and opposed to patents on business methods. I believe that parody should be protected in copyright and trademark, that copyright enforcement should not override privacy rights, and that use of patents, trademarks and copyrights should be limited by fair use, and when necessary, compulsory licenses.

The public domain should be protected, and public figures need to speak out against the ever-escalated march of corporate lobbying for expanding intellectual property rights.

There is finally the issue of the privatization of law and policy making on the Internet, and the easy way that Mr. Gore has pushed for the elimination of democratic institutions. The creation of the Internet Corporation for Assigned Names and Numbers is at the center of the Clinton/Gore Internet strategy.

ICANN is a nonprofit organization that is largely controlled by corporate interests. The initial board for ICANN was largely picked by then-IBM executive Roger Cochetti. The majority of ICANN's board is controlled by a handful of structures that are controlled by corporate interests. The ICANN board and Clinton/Gore administration officials claim this is a feature, not a flaw.

What is ICANN, and what will it do? That is the interesting question. Right now ICANN is using its power to protect big corporate trademark interests.

The next issue will be copyright, as ICANN considers corporate proposals to use the ICANN control over domain names and IP numbers, to become an ever-ambitious police for alleged intellectual property infringements. In the trademark areas, ICANN is already throwing concepts such as fair use or free speech out the window. Mostly, however, it is an issue of corporate privatization.

ICANN is a private government. It isn't the same as no government. It is a government where regular people either can't vote or will never be able to elect a majority (in the current election, ICANN will only permit five of its 19 board members to be elected by Internet users).

These are really only a few of the information society issues confronting citizens today. People can think about these issues, and ask themselves, will Vice President Gore stand up for their interests as citizens, consumers or owners of small businesses, or will he protect powerful corporate interests?

If you truly believe Mr. Gore is your friend and your advocate on these issues, then make him take a stand for users and consumers on these fast-emerging issues and (stop) fronting for autocratic interests over the Internet.

The Gore Campaign's Response

First, if you think some other public official deserves more credit than Al Gore for repealing the paradigm of monopoly and implementing instead a competitive blueprint for the American and international communications sector, who would it be? Certainly not any Republican. Virtually every initiative -- from unbundling to exemption from interstate access charges -- that has promoted data and the Internet was opposed by the greater part of the Republican Congress. Certainly not any member of the Green Party -- a group virtually absent from this hugely important shift in policy.

Second, if you think that the policy of competition has not promoted the success of open code and open-system business models, then you are at odds with every single CEO in the software and hardware worlds. Indeed, without a robust competition model, such business models are doomed; regulated monopolies do not adopt open models.

Third, if you think that the American-style competition model is not materially related to the Internet as a mass-market phenomenon, then not only do you disagree with all academic work on this topic, but you also overlook the most obvious facts about the Internet in America today: It is cheap; it is marketed by more than 5,000 different providers; it flourishes under the umbrella of protection from the subsidy-giving and subsidy-taking schemes that historic policy has layered onto the voice networks of every country; it is unlicensed; and it benefits from a host of pro-competitive and pro-Internet regulations, including but not limited to unbundled loops, reciprocal compensation, information services categorization and many others.

None of this is by accident; all is spelled out in my book, *You Say You Want A Revolution*. And not one step down this path was taken by anyone more boldly or with more vision and commitment than was shown by Al Gore. You can look it up.

Of course, the fact that the multiple protocols that create the Web experience are shared is one of the key reasons for the widespread adoption of the Net. And yet it is also true that the code that constitutes MS-DOS has also had widespread adoption.

What is the difference? The Internet flourishes in a competitive market; that is, what Windows does not inhabit. Please think about this: Competition, not standards-mandating regulation, is the key to maintaining the growth and inclusion of the Net.

You talk about the breakup of AT&T as if it were the mother or father of all sound competition policy. But -- and here I resort to the learning of 17 years of practicing antitrust law -- the breakup of AT&T did not lead to competition in the local telephony market, or to competition among data carriers, or to competition in software. It had an effect largely limited to the long-haul voice market, today an industry in its last stages. It would not have been useful or practical to break up the Bell companies. Many small telephone companies in fact already exist; only in rare cases do they face serious competition.

Whether a telco is large or small is largely irrelevant to whether it does or does not face competition. That competition exists if government actively insists on unbundling and interconnection. No federal government has ever more actively pressed those two points -- in the face of virtually unceasing

Republican congressional opposition and many recalcitrant courts -- than the Gore-led administration. Entrepreneurs, startups and customers are the beneficiaries.

So is the entire economy: These startups are pushing productivity-generating technologies into every small and large business in the country. These startups are the distribution agents of the economic efficiencies that are keeping our wealth-creating economy going at record pace. No one in public life has done more than Al Gore to promote this market economy; no one can even name another public official who has done remotely as much.

You raise the open-access issue, again embracing the Disney argument that because a cable company unlawfully and briefly did not carry a broadcast TV show, it therefore follows that a new regime of regulating Internet access should be invented and applied, presumably to any and all bandwidth companies. I might call this overreaction -- or an excessive attachment to Regis Philbin.

But if we really wanted the most number of people in the United States to have a crack at being a millionaire -- i.e., if we want to maximize value creation -- it would not be by expanding to the Internet space the clear obligation of cable companies to carry broadcast. Rather, we would promote competition and investment in alternative bandwidth providers.

We should always prefer robust competition over monopoly-encouraging regulation. Because that is what the open-access debate is really about beneath the surface: letting cable monopolists perpetuate monopolies in return for granting access to a powerful few, such as the estimable and effective Disney. I assure you that if the cable companies could obtain monopoly status in return for granting open access, they would do so. That is what they did in the 1984 Cable Act, which in turn led to record increases in cable prices, which in turn led to the mandate for me, at the FCC, to check those price increases, which I did, until the Republican Congress stripped us of that authority in 1996.

Exactly why Mr. Nader is bent on doing all he can -- whether or not intended -- to deliver us into the grip of another, more strengthened Republican government still leaves me dumbfounded. If he is successful (which I hope and believe he will not be) and if Al Gore truly is not elected, then not only I but history will record Mr. Nader's campaign not as a personal frolic or a ventilation of issues, but as a disastrous adventure that led to the frustration of virtually every goal sought by Mr. Nader during his justly renowned career.

As to privacy issues, I have said before and say again that a new paradigm for privacy protection should be the subject of federal legislation. There can be no doubt that a Democratic White House and Democratic Congress can make this happen, and that a Republican Congress will pervert those goals.

As to Al's vision, and my job, of putting the Internet in every classroom, Mr. Nader somewhat cavalierly says, "This isn't a lot for an eight-year legacy." Actually, putting the Internet in every classroom is a job only 65 percent done, so it's worse than Mr. Nader says: Its a 10-year effort at least.

But is it a lot or a little for Al Gore to have taken the essential initiative to create: 1) the largest new national program for K-12 education in the last 20 years; 2) the fastest-spreading innovation in education since chalk; 3) a platform for new training, curriculum, charter schools, individualized testing, new business models, online community creation, tutoring, and addressing disabilities; and 4) obtaining the greatest amount of participation from local school districts ever (nearly 90 percent)? To

me, it is a lot. It certainly took a lot of effort --- not a bit of which came from Mr. Nader, I add with regret.

Mr. Nader also states with insouciance "putting existing government information on the Internet should be the easy part."

Really, almost no business thinks so. No one involved in XML thinks so. It is an idea easy to state and very difficult to implement. Yet, in reality, no one in public office has so vigorously and effectively accomplished so much "on-lining" as Al Gore. At the FCC, just as an example, following Al's leadership we took an agency that operated under cover of Stygian Washingtonian darkness and exposed its decisions, data, speeches and debates to everyone on the Net. Literally millions of hits testify to our success.

I did not find this easy. It took extra appropriations, changing the agency culture, working with the bar and long hours of unpaid overtime with the staff. But we got the job done. Frankly, as opposed to the somewhat contemptuous disregard of the degree of difficulty of the task blithely stated by Mr. Nader, a simple "thank you" would be appropriate. Beyond that, a vote for Al Gore -- who made this happen -- rather than a whimsical protest ballot for Ralph Nader would be a way to make a contribution to openness and progress in our society.

As to the open-source movement, let me put it this way: You write the federal legislation you want to make this flourish and then decide. Would you rather try to persuade George W. Bush or Al Gore to commit the time and energy and political capital to making it pass? This is indeed an easy question to answer. I don't have any doubt about the positive direction of Al Gore's policies in this respect.

But who has done the hard work of actually writing such proposed legislation? Like code, it is easier to talk about than write. But let's do it and do it together, starting right after the election, assuming the country selects -- of the two candidates with a chance to win -- the only one who actually would engage on the relevant issues.

I understand this debate is now concluded. I honor Mr. Nader and consider it a privilege to have had this exchange. I am deeply worried when I think in particular about my own attitude toward presidential elections in 1968 and 1972, when I was in my salad days and was green of years.

I did not think then that elections mattered so much and I indulged in the cynical view that if candidates didn't say and do everything I wanted on every topic, they didn't deserve my support. I know now what I didn't know then: I know now to commit with enthusiasm to causes, to forgive the bumps and dips of the path of progress, and to fight on toward goals by following leaders who I have learned with time will get us to those goals. Such a leader is Al Gore.

If you want his clothes to be of a different color or his jokes to be funnier or his comments from a lectern to be either a little lighter or a little more accessible, then -- to be honest -- get over it. Al cannot please all of the people all of the time. But he is who he is: the most qualified, most visionary, most skilled, most caring person who has a reasonable chance to be president of the United States in this election.

To pass on that for any reason and to entrust the presidency instead to someone who has never given any indication of awareness of Mr. Nader's agenda -- much less any sympathy or sensitivity to it -- and who would disappoint in the extreme every one of Mr. Nader's followers, would not be a blunder, but a tragedy.

