

## THE E-GOVERNMENT ACT: PROMOTING E-QUALITY OR EXAGGERATING THE DIGITAL DIVIDE?

*In passing the E-Government Act of 2002, Congress has promised to improve the technological savvy of federal agencies and make more public forms and records available online. However, the question is whether doing so will alienate those Americans who do not have Internet access. Will the Act exaggerate the gap between the Internet haves and have-nots that is known as the digital divide? This iBrief identifies the e-quality issues arising from the E-Government Act and argues that implementation of the Act, however well intentioned, may exaggerate the digital divide.*

### Introduction

E-commerce has expanded dramatically in recent years. For example, in the third quarter of 2002 Internet purchases topped \$11 billion, an increase of thirty-four percent from the same quarter in 2001.<sup>1</sup> The explosion of online information and transactional capabilities is attributable to the benefits the Internet offers to both consumers and businesses. American consumers have become more comfortable with the virtual marketplace as they have learned that they can lower their search costs by using the Internet as a concentrated location for researching products, comparing prices, and making purchases. Likewise, businesses have found that the Internet can be a strong marketing tool, allowing them to save money by decreasing transaction costs and facilitating quick and easy dissemination of product information. Additionally, because websites can be accessed any time of the day, any day of the week, the traditional limitation of business hours no longer applies.

The federal government has been slower than private industry in capitalizing on the benefits of e-commerce. In 1999, a group of federal officials led by then-Vice President Al Gore focused on how the government could facilitate the growth of e-commerce.<sup>2</sup> In that report, federal agencies were commended for using the Internet to communicate with their constituents.<sup>3</sup>

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<sup>1</sup> U.S. Dep't of Commerce Press Release (Nov. 22, 2002), *available at* <http://www.census.gov/mrts/www/current.html>.

<sup>2</sup> THE U.S. GOVERNMENT WORKING GROUP ON ELECTRONIC COMMERCE, TOWARD DIGITAL EQUALITY, SECOND ANNUAL REPORT (1999), *available at* <http://www.ta.doc.gov/digeconomy/annrpt.htm> [hereinafter TOWARD DIGITAL EQUALITY] (The Electronic Commerce Working Group was made up of officials within the Clinton Administration and representatives from various federal agencies.)

<sup>3</sup> *Id.* (noting that, among other things, taxpayers were benefiting from the ability to download publications and forms from the IRS website, as well as file tax returns electronically).

However, there was no directive for all agencies to do so. A few years later many federal agencies had established websites, but the functionality of the sites was limited, and there was little uniformity in the types of government services available online.<sup>4</sup> In April of 2000 a report showed that 68 million Americans had used government websites.<sup>5</sup> Apparently, however, those sites did not keep up with the standards set by business or meet the expectations of the public. In June 2001 a study found that the federal government “had fallen behind both Canada and Great Britain in the effective, coordinated deployment of E-government services to citizens.”<sup>6</sup>

To improve the federal government’s web presence the Bush Administration recently introduced a single point of access to the federal government — FirstGov.gov.<sup>7</sup> At the FirstGov site users can gain access to the website of any federal agency or government program through just a few mouse clicks. President Bush has characterized FirstGov as the “Front Door” to the federal government<sup>8</sup> and the website was lauded by Yahoo! as one of fifty “most incredibly useful websites.”<sup>9</sup>

## **The E-Government Act of 2002**

Despite the Administration’s efforts to improve the federal government’s online visibility and accessibility through the FirstGov website, the opportunity remained for the federal government to make “e-government” a reality.<sup>10</sup> In July of 2002 President Bush announced that proposals would be forthcoming to create a federal government that is more “citizen-centered,

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<sup>4</sup> Rebecca Fairley Raney, *Technology Briefing Internet: Bush Signs E-Government Act*, N.Y. TIMES, Dec. 18, 2002, at C4.

<sup>5</sup> *Promoting Government Use of the Internet: Hearing on H.R. 2458 before the House Comm. on Government Reform Subcomm. on Technology and Procurement Policy*, 107th Cong. (Sept. 18, 2002) [hereinafter *H.R. 2458*] (testimony of Mark W. Everson) (citing a report by the Pew Foundation).

<sup>6</sup> *Id.* (testimony of Rep. Tom Davis) (citing an Accenture study).

<sup>7</sup> FirstGov, at <http://firstgov.gov> (last visited Feb. 12, 2003).

<sup>8</sup> Press Release, Letter from the President on the Launch of the New FirstGov Web Site (Mar. 14, 2002), available at <http://www.whitehouse.gov/news/releases/2002/03/20020314.html>.

<sup>9</sup> *H.R. 2458*, *supra* note 5 (testimony of Mark W. Everson) (citing Yahoo! survey).

<sup>10</sup> It is important to define “e-government” as it will be used in this iBrief. Some authors use the term very broadly to include even internal government activities. See Jessica M. Natale, *Exploring Virtual Legal Presence: The Present and the Promise*, 1 J. HIGH TECH. L. 157, 159 (2002) (describing the use of technology to enable virtual meetings between elected officials). Within this iBrief and the E-government Act, however, the definition of e-government is narrower, primarily encompassing the government’s external communications with constituents. See E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2902 (Dec. 17, 2002) (stating that “‘electronic Government’ means the use by the Government of web-based Internet applications and other information technologies . . . to enhance the access to and delivery of Government information and services to the public”).

results-oriented, and market-based.”<sup>11</sup> Consistent with those principles, in December of 2002 Congress passed and President Bush signed the E-Government Act of 2002.<sup>12</sup> The Act is intended to “enhance the management and promotion of electronic Government services and processes.”<sup>13</sup> Under the Act, federal agencies are required to utilize the Internet more fully in their service to the public. Agencies must establish standards to centralize information and should increase the number of public records that are accessible online.<sup>14</sup> The Act also establishes a federal Chief Information Officer (“CIO”) who will head a new Office of Electronic Government within the Office of Management and Budget.<sup>15</sup>

The E-Government Act includes a limited number of provisions that recognize the importance of avoiding diminished access to government services. The Act states “[w]hen promulgating policies and implementing programs regarding the provision of Government information and services over the Internet, agency heads shall consider the impact on persons without access to the Internet.”<sup>16</sup> Additionally, the Act requires agency heads to provide other means for disseminating information such that services are not diminished to people without Internet access.<sup>17</sup> Finally, the Act directs the new CIO to study the effectiveness of publicly funded sources of computer and Internet access, such as community technology centers and public libraries.<sup>18</sup> This study is to include “an analysis of whether community technology centers have been deployed effectively in urban and rural areas throughout the Nation.”<sup>19</sup>

### **Promoting E-Quality or Exaggerating the Digital Divide?**

In passing the E-Government Act, Congress assumed that the more citizens can interact with their government online, the more effective government will be. Certainly, that assumption

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<sup>11</sup> See Presidential Memorandum from George W. Bush, to the Heads of Executive Departments and Agencies (July 10, 2002), available at <http://www.whitehouse.gov/news/releases/2002/07/20020710-6.html>.

<sup>12</sup> E-Government Act, 116 Stat. 2899, 2899; see also Gail Repsher Emery, *Senate Passes Lieberman-Thompson e-gov bill*, NEWSBYTES NEWS NETWORK, June 28, 2002 (quoting Senator Lieberman: “we come a step closer to achieving the important goal of providing Americans the same 24-7 access to government information and services that is now available to them from the private sector”). The Act was passed unanimously in the Senate. Emery, *supra*.

<sup>13</sup> E-Government Act, 116 Stat. 2899, 2899 (preamble describing the Act).

<sup>14</sup> *Id.* at 2911-21 (requiring, among other things, that federal courts make contact information, local court rules, docket information, written opinions, and court documents available online).

<sup>15</sup> *Id.* at 2902-03.

<sup>16</sup> *Id.* at 2911.

<sup>17</sup> *Id.* at 2911.

<sup>18</sup> *Id.* at 2941.

<sup>19</sup> E-Government Act, 116 Stat. 2899, 2942.

has held true for private industry—businesses without a web presence have a hard time competing.<sup>20</sup> One is left to wonder, however, whether the federal government should be measuring itself against business when it comes to e-commerce.<sup>21</sup> Businesses that offer services over the Internet have the luxury of choosing their users.<sup>22</sup> In contrast, the federal government has an obligation to serve all Americans, whether or not they have a home computer with access to the Internet.<sup>23</sup> This different target population — a much broader one for the government — makes comparisons between private industry and the federal government tenuous at best. The impact of the digital divide will be much more severe if government services move exclusively online.

### *What is the Digital Divide?*

In recent years, significant inroads have been made in getting all American households connected to the Internet. Whereas in 1998 only 26% of American households had access to the Internet, by the end of 2001 that group had grown to 50%.<sup>24</sup> Despite the encouraging improvement in the overall statistic, certain segments of the population lag behind others in terms of Internet access. These discrepancies in Internet connectivity based on household income, race, residence, and family type are a problem known as the “digital divide.”<sup>25</sup> What is alarming is that those segments of the population without Internet access may be the very ones who depend

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<sup>20</sup> See, e.g., *Choice Ticketing Adopts MS Intergate’s Technology for Online Ticketing and Venue Seat Viewing*, BUS. WIRE, Jan. 26, 2000 (describing the difficulty of small companies in the entertainment industry of competing against competitors with an Internet presence).

<sup>21</sup> U.S. DEPARTMENT OF JUSTICE, LEGAL CONSIDERATIONS IN DESIGNING AND IMPLEMENTING ELECTRONIC PROCESSES: A GUIDE FOR FEDERAL AGENCIES (Nov. 2000) [hereinafter LEGAL CONSIDERATIONS], available at <http://www.cybercrime.gov/eprocess.htm> (stating that it should not be “assumed that all methods used by the private sector are necessarily appropriate for government use”).

<sup>22</sup> See *id.*

<sup>23</sup> See *id.*

<sup>24</sup> U.S. DEPARTMENT OF COMMERCE, A NATION ONLINE: HOW AMERICANS ARE EXPANDING THEIR USE OF THE INTERNET, fig. H6 (Feb. 2002) [hereinafter A NATION ONLINE], available at <http://www.ntia.doc.gov/ntiahome/dn/hhs/HHSchartsindex.html>.

<sup>25</sup> In July 1999, the National Telecommunications and Information Administration of the Department of Commerce published a report that detailed severe discrepancies between technology haves and have-nots, calling it the “digital divide.” U.S. DEPARTMENT OF COMMERCE, NATIONAL TELECOMMUNICATIONS & INFORMATION ADMINISTRATION, FALLING THROUGH THE NET: DEFINING THE DIGITAL DIVIDE (July 8, 1999), available at <http://www.ntia.doc.gov/ntiahome/ftn99/contents.html>; see also Nate Brennaman, *G8’s Dotforce Initiative: Bridging the Digital Divide or Widening It?*, 11 MINN. J. GLOBAL TRADE 311, 313 (2002) (defining the digital divide as “the differentiation or separation between those with access to the essential tools of the information society and those without such access”).

on government welfare programs — programs that the E-Government Act encourages to increasingly provide online information, applications, and communications to constituents.

The percentage of homes with Internet access is much lower for families in low-income brackets.<sup>26</sup> For instance, only 14.4% of homes with an income between \$5000 and \$9999 had Internet access in 2001, compared to 85% of homes with an income above \$75,000.<sup>27</sup> Similarly, one-parent households are much less likely to have home Internet access than married couples with children.<sup>28</sup> In 2001 71% of all married couples with children had home access to the Internet, while only 45% of single fathers with children and 40% of single mothers with children had such access.<sup>29</sup>

### *Has the Federal Telecommunications Act Obviated Concerns about the Digital Divide?*

Congress has taken steps to ensure that the digital divide cannot be equated with home Internet access. The Federal Telecommunications Act of 1996 mandates that states ensure universal telecommunications access for all schools, classrooms, health care providers, and libraries.<sup>30</sup> In sites known as community technology centers, all individuals can use computers that are connected to the Internet.

However, providing public computers so individuals can get online is only part of a solution to the digital divide. Time constraints make using the Internet in a public place, especially to access government services, a very different proposition from using it at a home computer. For example, consider a person who lacks a home computer and access to the Internet. While he can go to a library or community technology center to get access, if his intention is to communicate with the Internal Revenue Service online, and perhaps even file his tax return electronically, he is not going to be able to do so. In order to ensure that computers at public access sites are available for wide use, there are often limitations placed on the amount of time that a particular user can be at the workstation. Consider whether you could complete your tax return within such a 20 or 30 minute window. This hypothetical scenario is particularly troubling

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<sup>26</sup> A NATION ONLINE, *supra* note 24, at fig. H6 (comparing Internet access statistics by income bracket).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at fig. H10 (comparing Internet access statistics by household type).

<sup>29</sup> *Id.*

<sup>30</sup> Pub. L. No. 104-104, 110 Stat. 56 (1996).

because the IRS has established a target of having eighty percent of taxpayers file online by 2007.<sup>31</sup>

Another factor that prevents public access to the Internet from being an adequate substitute for home Internet access is privacy concerns. It can be expected that a person intending to apply for government welfare benefits online would hesitate to do so if he was at a public computer. Or, he would likely have even more hesitation about voting online — a prospect that becomes more likely every day — without the safeguard of a privacy screen.<sup>32</sup> Because of these privacy concerns as well as time constraints on public access points, and despite federal efforts through the Federal Telecommunications Act, obstacles to eliminating the digital divide still exist.

### *Can Technology Fixe Obviate Concerns about the Digital Divide?*

The government could obviate concerns about the digital divide by limiting, at least until the study of the effectiveness of publicly funded Internet access points is complete, the functionality of agency websites. There are four possible variations on the extent of an agency's web presence: (1) "information dissemination," (2) "forms," (3) "transaction," and (4) "transformation."<sup>33</sup> Each category represents a more significant interface between the agency and the public. For instance, information dissemination websites make electronic information readily accessible but are the "least technically complex."<sup>34</sup> Forms websites allow citizens to download forms, but then those forms must be remitted through the mail or fax to the agency.<sup>35</sup> Transaction websites allow citizens to submit forms and applications online.<sup>36</sup> Transformation websites are the most interactive, providing searchable databases of information.<sup>37</sup> Using this hierarchy of sophistication, the less interactive websites are much less troubling, because they do not raise the concerns of time or privacy that would arise if the site were being accessed via a public workstation.<sup>38</sup>

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<sup>31</sup> *Turning the Tortoise into the Hare: Hearing before the House Government Reform Comm.*, 107th Cong. (Mar. 21, 2002) [hereinafter *Turning the Tortoise*] (testimony of the Treasury Deputy Chief Information Officer).

<sup>32</sup> In Arizona, residents were able to vote online as early as March of 2000. Natale, *supra* note 10, at 164. Following that lead, California, Massachusetts, and Washington are all considering offering online voting. *Id.* at 165.

<sup>33</sup> *Turning the Tortoise*, *supra* note 31 (testimony of Randolph C. Hite).

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> See *supra* text accompanying notes 32-36.

## Conclusion

Admirably, the E-Government Act recognizes that the federal government faces challenges in implementing electronic government services—namely, that those without Internet access may be disadvantaged by e-government.<sup>39</sup> By passing the E-Government Act, however, Congress overlooked the extent of the digital divide, and, worse, assumed that existing means of public access will allay any concerns about disadvantage that arise from e-government. In doing so, Congress may have put the cart before the metaphoric horse. Rather than embedding an impact study within the Act,<sup>40</sup> Congress should have assured that discrepancies in Internet access would not cause disadvantage under the E-Government Act *before* passing the bill.

The problems with the E-Government Act are tempered by its clear rewards. The benefits of e-government are so large that governments around the world are pushing for it.<sup>41</sup> Without question there are benefits to information technology and services provided over the Internet:

“Information tools, such as the personal computer and the Internet, are increasingly critical to economic success and full participation in all aspects of American society. People with computers and Internet access can use these tools to find a job, acquire new skills, start a small business, get lower prices for goods and services, and become more informed citizens.”<sup>42</sup>

What is questionable, however, is whether we want to add *interaction with the federal government* to this list of activities for which Internet access is *critical*. The government should slow down its implementation of online services under the E-Government Act and wait until the results of an impact study are available. If the federal government is unsure of how effective its programs for universal Internet access have been,<sup>43</sup> or how hungry Americans with access are to interact with their government through that means,<sup>44</sup> it seems hasty not only to invest in, but to

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<sup>39</sup> See *supra* text accompanying notes 16-19.

<sup>40</sup> See E-Government Act, 116 Stat. 2899, 2944-45 (mandating “a study on the disparities in Internet access for online Government services”).

<sup>41</sup> Europe is pushing to bring government services online by 2005. See Wendy Levy, *Europe new target for e-government experts*, CANBERRA TIMES, June 10, 2002, at A15. Likewise, the Japanese government is pushing for the launch of an e-government system by 2005. See *E-govt plan raises security fears*, DAILY YOMIURI (TOKYO), July 12, 2002, at 3.

<sup>42</sup> TOWARD DIGITAL EQUALITY, *supra* note 2.

<sup>43</sup> See *supra* text accompanying notes 18-19.

<sup>44</sup> A more drawn-out implementation of e-government would allow the federal government to answer lingering questions about the willingness of those who *do* have home Internet access to conduct transactions with the government online. “The rash of hacker attacks, web page defacing, and credit card information being posted on electronic bulletin boards” may create reluctance to use e-government services. See H.R. 2458, *supra* note 5 (testimony of Linda D. Koontz); see also H.R. 2458, *supra* note 5 (testimony of Patricia McGinnis) (citing a study

mandate, improvement of agency websites. Before spending upwards of \$100 million in the next two years on the implementation of the E-Government Act,<sup>45</sup> the federal government should ensure the efficacy of public Internet access points. To do otherwise may exaggerate the digital divide. “Unless e-government is seen to work for people, particularly poor and marginalized people, at the end of the day it will be seen as part of the establishment.”<sup>46</sup>

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showing that sixty-five percent of citizens “remain concerned about security and privacy, especially identity theft and hackers getting access to information in government systems”).

<sup>45</sup> The E-Government Act authorizes \$45 million for fiscal year 2003 and \$50 million for fiscal year 2004 to be spent on efforts including making federal government information and services “more readily available to members of the public (including individuals, businesses, grantees, and State and local governments).” E-Government Act, 116 Stat. 2899, 2906-08.

<sup>46</sup> William New, *U.N. Agency Urges Cautious Approach to E-Government*, NAT’L J.’S TECH. DAILY, Nov. 21, 2002 (quoting Mark Malloch Brown, administrator of the U.N. Development Program).