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From Domain Names to Video Games: The Rise of the Internet in Presidential Politics

FROM DOMAIN NAMES TO VIDEO GAMES: THE RISE OF THE INTERNET IN PRESIDENTIAL POLITICS

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ABSTRACT

Senator Barack Obama's historic victory in the 2008 presidential election marks some important milestones—notably that this country is ready for its first African-American president. His win also underscores the importance of understanding today's Internet as a campaign tool. No longer is the Internet a one-way communications medium between candidate and electorate. It is now a powerful multi-directional networking tool. It can bridge physical and virtual spaces in a way never before possible, bringing previously latent social and political groups together. Senator Obama's campaign strategists understood and capitalized on the capabilities of what has recently become known as Web 2.0—an Internet characterized by interactive group networking and participation. This article examines how the needs of Senator Obama's campaign converged with the features of this new Internet, in many ways creating a perfect online campaign platform for the senator. It contrasts his use of the Internet with other uses of the Internet in politics. It concludes with some comments about the likely future of the Internet in presidential politics.

INTRODUCTION

As Senator Barack Obama, a junior senator from Illinois, emerged victorious in a historical and definitive win against the more experienced Senator John McCain in the 2008 presidential election, the victory was notable on a number of levels. Obviously, President-elect Obama was the first African-American candidate to win the nomination of a major party, and then to win the presidency. He will bring with him to the White House the first African-American First Lady—his wife, Michelle Obama. He engaged for the first time, and in many cases reconnected, many previously disenfranchised voices in the electoral process. So how

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did he do it? When it came to the presidential election itself, there were a number of factors in his favor, including the dramatic economic downturn and unprecedented low popularity ratings of the incumbent president, George W. Bush. His rival candidate, Senator John McCain, made a number of missteps in his campaign, including arguably the nomination of Alaska Governor Sarah Palin as his running mate.

Nevertheless, before all this happened, Senator Obama needed to win the Democratic Party's nomination over more experienced, influential and arguably more powerful rivals, such as Senator Hillary Clinton and Senator John Edwards. Senator Obama seemed an unlikely victor in that race: a half white, half African, Hawaiian-born son of a poor to lower middle class family, raised by a single mother and her parents,¹ with an unfamiliar name² that bore an unfortunate phonetic resemblance to that of al-Qaida terrorist leader, Osama Bin Laden.³ Despite these disadvantages, Senator Obama had personal qualities that enabled him to break through the public consciousness in decidedly positive ways both at the Democratic National Convention in 2004,⁴ and later in the 2008 presidential race.

These personal qualities included a calm, deliberative, and reassuring temperament; an engaging intellectual curiosity; a desire to be an agent for positive change in the world; and a desire and ambition to bring people together. Coupled with this, he proved himself to be a remarkable orator and writer, able to write and deliver moving speeches that connected at a fundamental level with grassroots electors. Nevertheless, even with all these attributes, he still needed a powerful and well coordinated strategy to propel him first to the Democratic nomination, and ultimately to the White House. The Internet as it existed in 2008, was a critical factor in his strategy.

This article examines how today's developmental stage of the Internet, known as Web 2.0, coincided in many respects with the needs of Senator Obama's campaign, giving him precisely the right set of tools for his campaign exactly when he needed them. In many ways, Senator Obama was uniquely able to utilize many features of Web 2.0 in ways that eluded other candidates. Even though all of the candidates who participated in the Democratic and Republican presidential primaries had some Internet presence, Senator Obama clearly took the measure of available Internet capabilities in a manner unmatched by any other candidate.

1. BARACK OBAMA, *DREAMS FROM MY FATHER: A STORY OF RACE AND INHERITANCE*, 9-11 (2004).

2. *Id.* at 9-10.

3. Not to mention that his middle name—Hussein—was the same as that of Saddam Hussein, the deposed Iraqi leader who was at the center of the unpopular Iraq war.

4. BARACK OBAMA, *THE AUDACITY OF HOPE: THOUGHTS ON RECLAIMING THE AMERICAN DREAM*, 354 (2006).

He truly understood that the key benefit of the Internet in today's world is its ability to bring communities together in a manner that spans both virtual and physical spaces. The Internet does more than simply operate as a one-way communications channel between politicians and the electorate—it invites group participation on many levels. Senator Obama's success in harnessing the power of this community building aspect of the Internet largely built on work initially undertaken by then-Governor Howard Dean in the Democratic primaries leading up to the 2004 presidential election.⁵ However, Senator Obama's strategies, coupled with online developments in social networking tools between the 2003-2004 and 2007-2008 campaigns, made a critical difference to the success of the Obama campaign.

Part I gives a brief overview of Internet use during the 2004 presidential election, including a description of the technical limitations of the Internet during this time period. Part II examines how the move from Web 1.0 to Web 2.0 between 2004 and 2008 enabled more effective uses of the Internet in presidential politics, and how Senator Obama's campaign capitalized on those capabilities. Part III considers additional Internet issues that arose during the 2008 presidential election. These additional examples raise legal and policy issues that may have to be considered in future elections. Part IV sets out some predications about the future of the Internet in presidential politics.

I. WEB 1.0 AND THE INTERNET IN POLITICS BEFORE 2008

During the 2004 Democratic primaries, then-Governor of Vermont Howard Dean arguably set the stage for what would become a phenomenal Internet campaign run the next time around by Senator Barack Obama. What Governor Dean realized before many other politicians was the potential of the Internet to bring people together in a manner that transcends virtual reality—and carries over into physical spaces.⁶ Seeing the Internet as more than a tool to simply communicate policy information to the electorate, Governor Dean utilized services such as Meetup.com⁷ to arrange real world campaign events. Meetup.com is an online service that uses the Internet to facilitate face-to-face meetings between people with similar interests.

5. JOE TRIPPI, *THE REVOLUTION WILL NOT BE TELEVISED: DEMOCRACY, THE INTERNET, AND THE OVERTHROW OF EVERYTHING* (2004) (describing Governor Dean's historic use of the Internet in his bid for the 2004 Democratic nomination).

6. In actual fact, it was one of Governor Dean's strategists, Joe Trippi, who really understood the Internet as a campaign tool and contributed much of the online success in the Dean campaign. *See id.* at 132-33 (noting how Governor Dean gradually become more proficient with Internet technologies during the 2004 Democratic primaries).

7. *See id.* at 95-99 (describing early impact of Meetup.com on Governor Dean's campaign in 2004); Use the Internet to get off the Internet!—Meetup.com, <http://www.meetup.com> (last visited Jan. 17, 2009).

Governor Dean was the first high profile politician to realize its potential for campaign events. In fact, it was arguably Meetup.com that enabled Governor Dean to take his place in the national spotlight during the 2004 Democratic primaries. By all accounts, the success of an early Howard Dean Meetup caught even the governor off-guard: “The first time Dean appeared in the national consciousness was when three hundred people showed up for a Howard Dean Meetup in New York City in early 2003. This level of attendance was unprecedented, and Dean himself took note of it, coming down from Vermont to speak to his supporters.”⁸

The success of the meeting was unquestionably unprecedented, but as Professor Clay Shirky notes, it was perhaps less of a testament to Dean as a candidate than one might have expected:

People were right to be excited about the Dean Meetup but wrong about the reason, because Meetup was founded to lower the coordination costs of real-world gatherings. Prior to Meetup, a turnout of three hundred people would have indicated the existence of a huge and latent population of Dean supporters; as with letters to Congress, one individual coming out in support would have suggested much broader support for Dean. However, because Meetup makes it easier to gather the faithful, it confused people into thinking they were seeing an increase in Dean support, rather than a decrease in the hassle of organizing groups—the 2003 Dean Meetup simply brought out a much larger percentage of Dean supporters than would have shown up previously.⁹

Dean was ultimately unsuccessful in winning the 2004 Democratic nomination for a number of reasons, undoubtedly in part due to the fact that his unexpected public following did indeed evidence the phenomenon identified by Professor Shirky. In other words, it wasn't that there were an unexpectedly large number of Dean supporters out there, but that his use of the Internet made it easier for those who did support him to gather together at campaign events. And in the spirit of “The Internet giveth and the Internet taketh away,” Dean was ultimately done in by an unfortunate victory speech in Iowa that ended in a gleeful scream, soon to become known infamously as “the Dean Scream.” Videos of the Scream were broadcast all over the then-burgeoning online video website, YouTube.¹⁰ In fact, four years later, the Scream is still readily accessible on YouTube with constantly updated commentary and perspec-

8. CLAY SHIRKY, *HERE COMES EVERYBODY: THE POWER OF ORGANIZING WITHOUT ORGANIZATIONS*, 288 (2008); *see also* TRIPPI, *supra* note 5, at 95-98.

9. SHIRKY, *supra* note 8, at 288-89.

10. *See* YouTube—Broadcast Yourself, <http://www.youtube.com> (last visited Jan. 17, 2009).

tives on the ongoing political work of Howard Dean, who is now the Chairman of the Democratic National Committee.¹¹

Unsuccessful as he was in his bid for the Democratic nomination, Dean's campaign did illustrate the importance of understanding the capabilities of the Internet during a political campaign. Other politicians around the same time also started becoming aware of the increasing need to have an Internet presence. However, the Internet of 2004 was very different than that of today. In fact, most of the political controversies involving the Internet around 2004 involved battles to control domain names corresponding with politicians' names. This evidences somewhat of a "Web 1.0 attitude." In other words, the first step to awareness of the Internet as a campaign tool in the early days of online campaigning related to the ability to control a relevant domain name and use it to set up a website to convey policy and other information to electors.

Two notable examples of early political domain name disputes involved the domain names "hillaryclinton.com" and "kerryedwards.com." In the first example, Senator Hillary Clinton brought a successful arbitration proceeding under the Uniform Domain Name Dispute Resolution Policy ("UDRP")¹² to have the domain name "hillaryclinton.com" transferred to her after it was initially registered by a cybersquatter.¹³ The second example involved the failure by Senator John Kerry, the Democratic party's nominee for the 2004 presidential election, to secure registration of the domain name "kerryedwards.com" when he named Senator John Edwards as his running mate. This name had been previously registered to a Mr. Kerry Edwards who tried to auction it off for a profit after Senator Kerry named his running mate.¹⁴

Another interesting Internet interlude in the 2004 presidential election that involved Internet domain names occurred during the televised debate between Vice President Cheney and Senator Edwards. The Vice President incorrectly referred viewers to "www.factcheck.com" to ascertain the truth about allegations made against his business interests by Senator Edwards. In fact, the Vice President misspoke when he referred to this domain name. He had intended to refer viewers to "fact-check.org." This is a nonpartisan website aiming to reduce deception and confusion in American politics by monitoring political debates,

11. YouTube—Howard Dean's Scream, <http://www.youtube.com/watch?v=D5FzCeV0ZFc> (last visited Jan. 17, 2009).

12. ICANN | Uniform Domain Name Dispute Resolution Policy, <http://www.icann.org/en/udrp/udrp-policy-24oct99.htm> (last visited Jan. 17, 2009).

13. Clinton v. Dinoia, Nat'l Arbitration Forum, Claim No. FA0502000414641 (Mar. 18, 2005), <http://www.arb-forum.com/domains/decisions/414641.htm>.

14. KerryEdwards.com Domain Name To Be Auctioned, <http://www.prweb.com/releases/2004/07/prweb142903.htm> (last visited Jan. 17, 2009). See Jacqueline D. Lipton, *Beyond Cybersquatting: Taking Domain Name Disputes Past Trademark Policy*, 40 WAKE FOREST L. REV 1361, 1433 & n.334 (2005), for a discussion on the registration/cybersquatting of the KerryEdwards.com domain name.

speeches, and interviews, and attempting to “increase public knowledge and understanding” of accurate information.¹⁵ The domain name “fact-check.com” was in fact owned by a domain name trader whose servers almost crashed because of the amount of web traffic they received in the wake of the debate. As an amusing attempt to prevent calamity on his servers, the registrant redirected traffic to a political gripe site about Vice President Cheney that was owned and operated by financial speculator and philanthropist, George Soros.¹⁶

Amusing as these incidents may have seemed at the time, they are evidence of two important things. The first is that politicians were beginning to become aware of the importance of the Internet during a political campaign. The various missteps of these high profile politicians evidence the beginning of a learning curve that politicians have had to quickly master to run effective campaigns in the Internet age. The second point is that much of the pre-2008 political activity on the Internet really related to mastering aspects of what has now come to be called Web 1.0—the early version of the Internet that was predominantly about conveying information to Internet users.¹⁷ This time could also be characterized by heavy reliance on easy-to-remember or intuitive Internet domain names.¹⁸

The Internet during the 2004 presidential race was appropriately characterized as predominantly exhibiting characteristics of Web 1.0. By 2008, things had dramatically changed online. Web 2.0 had come into fruition. It was the next stage of Internet development characterized by participation, interactivity, and community building.¹⁹ It is probably not a coincidence that a young United States senator with a background in community organizing²⁰ should be the person with the natural affinity for

15. FactCheck.org: About FactCheck.org, <http://www.factcheck.org/about/> (last visited Jan. 17, 2009):

We are a nonpartisan, nonprofit “consumer advocate” for voters that aims to reduce the level of deception and confusion in U.S. politics. We monitor the factual accuracy of what is said by major U.S. political players in the form of TV ads, debates, speeches, interviews and news releases. Our goal is to apply the best practices of both journalism and scholarship, and to increase public knowledge and understanding.

16. DAVID KESMODEL, *THE DOMAIN GAME: HOW PEOPLE GET RICH FROM INTERNET DOMAIN NAMES*, 108 (2008).

17. DON TAPSCOTT & ANTHONY D. WILLIAMS, *WIKINOMICS: HOW MASS COLLABORATION CHANGES EVERYTHING* 19 (2006) (“While the old Web was about Websites, clicks, and ‘eyeballs,’ the new web is about the communities, participation, and peering . . . This new Web already links more than a billion people directly and (unlike Web 1.0) is reaching out to the physical world, connecting countless inert objects, from hotel doors to cars.”).

18. Jacqueline D. Lipton, *Who Owns Hillary.com? Political Speech and the First Amendment in Cyberspace*, 49 B.C. L. REV. 55, 120-21 (2008) (discussing competing perspectives on the decreasing importance of Internet domain names as search tools as the Internet develops over time).

19. KESMODEL, *supra* note 16, at 126 (“Web 2.0 was a buzz word used to describe a new wave of Web businesses that leveraged social networking, user-generated content, and other forms of collaboration and information-sharing on the Internet.”).

20. See generally OBAMA, *DREAMS FROM MY FATHER*, *supra* note 1, Chapter 7.

this kind of networking.²¹ While Howard Dean saw the beginnings of these Web 2.0 capabilities in his uses of Meetup.com in 2003-2004, the explosion of interactive networking technologies did not occur until after the 2004 presidential election.²² These developments came just in time for Senator Obama to take full advantage of them during his presidential run.

By the time of his presidential campaign, Senator Obama had all the social networking tools of Meetup, MySpace, Facebook,²³ YouTube, Flickr, Blackplanet, Faithbase, and many others on hand.²⁴ He realized the potential of near-instantaneous and ubiquitous communications media, such as email and text messaging, to communicate with supporters, and he realized the potential of electronic commerce for fundraising online. The following discussion outlines some of Senator Obama's online campaign strategies, and describes ways in which they exhibited superior use of available technologies than uses made by his competitors, both in the Democratic primaries and in the presidential election.

II. WEB 2.0 AND THE OBAMA CAMPAIGN

"While the old Web was about Web sites, clicks, and 'eyeballs,' the new Web is about the communities, participation, and peering."

- Don Tapscott and Anthony D. Williams²⁵

Senator Obama established a detailed, interactive, coordinated, and extremely polished online presence very early in his campaign. Part of his goal was to let Americans get to know him and his family so he would not seem so much the unelectable outsider. To this end, he made available personal profiles of himself and his wife, on social networking services such as Facebook.²⁶ He opened dialogues with the public over various social networking services, some targeted at particular groups, such as Latinos,²⁷ Asians,²⁸ or African-Americans,²⁹ while others more

21. TRIPPI, *supra* note 5, at 250 ("[Barack Obama] *knew*—he understood the moment. He had been a community organizer. He was Mr. Bottom Up.").

22. Diane Murley, *What Is All the Fuss about Library 2.0?*, 100 LAW LIBR. J. 197, 197 (2008) ("The term 'Web 2.0' was coined in 2004 during a brainstorming session that led to the Web 2.0 Conference.").

23. TRIPPI, *supra* note 5, at 255 (noting Obama's early support from Chris Hughes, the founder of Facebook, and the fact that the popular actor Tom Hanks announced his support for Obama on Hanks' MySpace page late in the primary campaign).

24. See, e.g., Barack Obama Meetup Groups, <http://barackobama.meetup.com> (last visited Jan. 13, 2009); Barack Obama's Myspace Page, <http://www.myspace.com/barackobama> (last visited Jan. 13, 2009).

25. TAPSCOTT & WILLIAMS, *supra* note 17, at 19.

26. Barack Obama | Facebook, <http://www.facebook.com/barackobama> (last visited Jan. 13, 2009); Michelle Obama | Facebook, <http://www.facebook.com/pages/Michelle-Obama/22092775577> (last visited Jan. 13, 2009).

27. See, e.g., MiGente.com—Barack Obama, http://www.migente.com/barack_Obama (last visited Jan. 14, 2009).

generally targeted young people who networked online as part of their daily routines. In this vein, one notable aspect of his early campaigning in the Democratic primaries involved a “dinner with Barack Obama” competition where four grassroots donors were selected to have dinner and an informal conversation with the candidate in a restaurant. The dinner was filmed and posted on YouTube by the campaign where it generated, and continues to generate, discussion about the senator and his policies.³⁰

Such activities serve a number of purposes. They introduce the candidate and his ideas. They demonstrate his willingness to listen to the “real people” and engage in real dialogue with them both online and in physical spaces. They portray him publicly—and globally—as just one of the ordinary folks who can relate to voters’ daily concerns. Even though much of Senator Obama’s support was from high profile politicians³¹ and businesses,³² he kept his public focus on the grassroots donors and their concerns, and he achieved much of this through the Internet. He also effectively augmented his activities on web pages and social networking sites with “reaching out” efforts utilizing modern communications technology such as personal emails and text messages. His use of text message alerts to supporters in his announcement of a running mate was an extremely effective method of communicating with the electorate, involving and engaging people in his campaign and, at the same time, collecting telephone numbers of current and potential donors.

He also ensured that his efforts to reach out to the electorate were presented with a personal touch. Many emails and telephone messages from the Democratic Party soliciting funds from donors appeared to come directly from the candidate himself, his wife, or his running mate. Donors did not receive too many, if any, unsolicited email messages from “the Democratic National Committee.” Receiving “personal” messages in familiar email, voicemail, and text message formats from people who sounded like regular folk also helped to engage electors in the cam-

28. See, e.g., AsianAve.com—Barack Obama, http://www.asianave.com/barack_Obama (last visited Jan. 14, 2009).

29. See, e.g., BlackPlanet.com—Barack Obama, http://www.blackplanet.com/barack_Obama (last visited Jan. 14, 2009).

30. See Dinner with Barack Obama, <http://www.youtube.com/watch?v=2PIJR-KBj1c> (last visited Jan. 14, 2009).

31. For example, Senator Obama received high profile endorsements from the following: Senators Ted Kennedy and John Edwards, see Jim Rutenberg, *Edwards, a Former Rival, Gives Backing to Obama; Support Could Help Woo Blue-collar Vote*, INT’L HERALD TRIB., May 16, 2008, at 3; Governor Bill Richardson, see Adam Nagourney & Jeff Zeleny, *First a Tense Talk With Clinton, Then Richardson Backs Obama*, N.Y. TIMES, Mar. 22, 2008, at A1; and Colin Powell, see Jonathan Weisman & Amy Choizick, *Campaign '08: Powell Endorses Obama, Reflecting Fractures in GOP*, WALL ST. J., Oct. 20, 2008, at A6.

32. See USNews.com, *5 Top Sources of Funding for Barack Obama’s Campaign*, U.S. NEWS & WORLD REP., Oct. 7, 2008, <http://www.usnews.com/articles/opinion/2008/10/07/5-top-sources-of-funding-for-barack-obamas-campaign.html> (noting that much of Obama’s campaign funding came from law firms and investment banks).

paign³³—particularly when it came to garnering the support of the “Net Generation” or “NetGeners.”³⁴

This contrasted starkly with some of Senator McCain’s attempts to utilize these often unfamiliar new technologies. At one point in Senator McCain’s campaign, he presented a video game on his website³⁵ that intentionally resembled the 1980s Space Invaders arcade game. The premise was that instead of shooting down aliens, his supporters could play the game and shoot down “pork barrel spending bills.” This was a cute idea, but probably lost on both older and younger voters. The Net-Geners would not likely remember or relate to Space Invaders, and the allusion would also be lost on retirees. Some middle-aged folks might remember Space Invaders, but may not have made the connection between the game and concerns about pork barrel spending. Interestingly, a study conducted in mid-2008 that compared Senator McCain’s and Senator Obama’s presidential websites generally found that Internet users preferred Senator McCain’s website for ease of use, even though Senator Obama’s website made the better first impression.³⁶

In any event, the move from Web 1.0 to Web 2.0 technologies not only required politicians to gain a better understanding of social networking technologies, but it also appears to have led to distinct changes in emphasis with respect to uses of the Internet in politics. For example, while many of the contentious issues involving the Internet in the 2004 presidential election revolved around Internet domain names as described in the previous section, these names were a much less significant factor in 2008. The now-more-savvy candidates had secured their own domain names well before launching their respective bids in the primaries. Thus, “barackobama.com” was registered for the Obama campaign, and “johnmccain.com” was registered for the McCain campaign very early in the process.

33. Again, this was a strategy employed by the Howard Dean campaign in 2004. TRIPPI, *supra* note 5, at 142-3:

It was something I required of every campaign correspondence, that it be written by someone real, and that it be an authentic piece of communication. People are sick of getting a form letter from their congressman that starts “I wanted to personally inform you Mr. Joseph M. Trippi of St. Michel’s, Maryland, about a key piece of legislation that blah, blah, blah . . .” These people are not morons. They *know* the letter was written by a junior staffer staring at a press release and that the blue signature at the bottom was stamped by a machine. The Internet is reversing the trend of corporate and political packaged communication and restoring old-fashioned *writing*, communicating to people in an authentic voice. You didn’t have to agree, but when you read an e-mail or a letter or a blog from the Dean campaign, you knew there was a real person on the other end.

34. See generally TAPSCOTT & WILLIAMS, *supra* note 17, at 46-47 (describing the Net Generation as “the first generation to grow up in the digital age”).

35. The McCain-Palin website has since been reduced to a transcript of Senator McCain’s concession speech. McCain-Palin 2008, <http://www.johnmccain.com> (last visited Jan. 16, 2009).

36. CATALYST GROUP INC., BEYOND RED AND BLUE: INSIGHTS INTO THE DESIGN OF PRESIDENTIAL CANDIDATE WEBSITES 6 (2008), available at <http://www.catalystgroupdesign.com/cofactors/upload/prezreport.pdf>.

Additionally, anyone who thought they might have been in contention for a spot on either ticket as a prospective running mate seemed to have registered their own name as a domain name in plenty of time for a call from their party's nominee. This was often because those people were politicians in their own right and were already using their names as domain names in their existent websites. For example, potential vice presidential candidates like Senator Hillary Clinton and Senator John Edwards had already registered their names as domain names in the course of their pre-existing political careers. The domain name "joebiden.com" had been registered, presumably by Senator Biden, prior to the announcement of Senator Biden as Senator Obama's running mate. After the announcement, the site was quickly updated and linked to that of the Obama campaign.

Later, the "obamabiden.com" name was also secured by the campaign, although at the time of the announcement the name was registered to a private individual in San Francisco. It is likely that the campaign quietly bought the name from the registrant at some point after the announcement was made. The campaign was not so lucky with the name "josephbiden.com." It was, and continued at the time of the election, to be registered to a group of Republicans who established a gripe site about the Democratic candidates. However, this did not appear to cause too much serious negative press or difficulty for the Obama campaign. Neither did the registration of "obamabiden08.com" to a private entity that offered to sell the name for a profit throughout the course of the election.

Why hadn't the Obama campaign registered all of the likely permutations of Obama's and Biden's names as domain names in the lead-up to the announcement of Senator Biden as Senator Obama's running mate? It may have been because the campaign didn't want to be seen to be giving anything away in case intrepid domain name registration watchers were attempting to punt on the identity of Senator Obama's likely choice of running mate by scouring "whois" records relating to relevant domain names.³⁷ Of course, the campaign could have hidden their registration of any such names by registering them through a private proxy service.³⁸

The reason for the failure of the campaign to register all possible permutations of the candidates' names as domain names may have been disinterest or neglect. Alternatively, the campaign may have decided that registration of multiple variations of the candidates' names was unneces-

37. A "whois" search of a domain name registration database gives the identity of the registrant of a given domain name. See, e.g., Network Solutions' Whois Search Page, <http://www.networksolutions.com/whois/index.jsp> (last visited Jan. 16, 2009).

38. A registrant of a domain name wishing to conceal his or her identity can use a "private registration" service offered by a domain name registering service. See, e.g., Private Domain Registration with Network Solutions, <https://www.networksolutions.com/domain-name-registration/private.jsp> (last visited Jan. 16, 2009).

sary so long as there were one or two obvious domain names taken by the campaign—such as “joebiden.com” and “obamabiden.com.” They may have reasoned that people who went to other websites such as “josephbiden.com” or “obamabiden08.com” by mistake would quickly realize their error and use a more intuitive variation of the candidates’ names, or use a search engine, to find the official campaign website. After all, it is impossible to predict all possible permutations of candidates’ names that cybersquatters and cybergrippers may want to register for either profit or criticism purposes.

Permutations would include those discussed above as well as those that use common typographical errors—such as “obamabidden.com” or “jobiden.com.” The campaign would have to draw the line somewhere or else it would waste its time second guessing all possible domain names a cybersquatter or cybergriper might use, and pay money to register them and redirect them to the official campaign website. While a standard registration fee for a domain name is not very costly,³⁹ wresting domain names from the hands of multiple cybersquatters and cybergrippers could be a costly proposition.⁴⁰ This time and cost problem would be exponentially increased if the campaign took into account all possible permutations of multiple potential vice presidential candidates’ names in the lead-up to making its selection. It may simply have been impracticable for the campaign to try and reserve domain names relating to all candidates on the vice presidential shortlist prior to making the announcement of Senator Biden as Senator Obama’s running mate.

In the age of sophisticated search engine technology and sophisticated Internet users, the Obama campaign may well have taken the view that reserving domain names in the lead-up to the election was of lesser importance than having a variety of online presences via various social networking technologies. It therefore focused its energies on one main website under “www.barackobama.com” that linked to a variety of other web services on which information about the campaign could be easily found. This suggests that despite the apparent importance of domain names in the context of the 2004 presidential election, the move from Web 1.0 to Web 2.0 makes this less of an issue, provided that savvy politicians have secured at least one obvious version of their name as a domain name prior to embarking on the online component of their campaign strategy.

39. Domain names can generally be registered for around \$10 a year. *See, e.g.*, Register.com, Inc., http://www.register.com/promo/acquisitions_stopwatch.rcmx?trkID=SEMeaqzc7W (last visited Jan. 16, 2009).

40. Cybersquatters and legitimate domain name traders will often try to auction off domain names to the highest bidder. Some domain names have sold for millions of dollars. *See, e.g.*, KESMODEL, *supra* note 16, at 11 (noting that “vodka.com” was sold at one point for \$3,000,000 and “diamond.com” was sold for \$7,500,000).

This would certainly seem true of the 2008 Republican effort. The McCain campaign apparently failed, or decided not to, register the domain names "mccainpalin.com" and "sarahpalin.com." The former is run by an unofficial political commentary organization, and the latter appears to be privately held and, as of the date of the election, boasted no content at all other than a notice that: "This page intentionally left blank."⁴¹ Official campaign material is posted at "johnmccain.com," and has been throughout the course of the campaign. It may be that the McCain campaign was even less Internet-savvy than the Obama campaign in failing to obtain any obvious permutation at all of the candidates' names as domain names. An alternate explanation is that, as the McCain campaign was less well-funded than the Obama campaign, the cost of negotiating with a previous registrant for transfer of a relevant name such as "mccainpalin.com" was too great for the campaign's purposes when weighed against the likely benefits of obtaining the name.

III. THE INTERNET AND THE 2008 PRESIDENTIAL RACE

Web 2.0 has, in fact, impacted the 2008 presidential race in a number of ways. Online social networking, while extremely important in campaign strategy, has also taken on a life of its own outside official campaign channels. Web 2.0 technologies enable free and widespread exchanges of views between electors on a scope and scale never before possible, both in virtual space and ultimately in real space. This has both positive and negative aspects. Generally, more political speech is better than less political speech. However, Web 2.0 technologies raise the specter of campaign difficulties that simply did not arise in the past.

For example, during the Democratic primaries, the popular online social networking service Facebook was embroiled in a controversy with allegations that they had exhibited anti-Clinton/pro-Obama bias. This occurred when one of Senator Clinton's Facebook groups was overrun by "trolls" posting vile and sexist comments about the senator as a result of a bug in the Facebook software that allowed them access.⁴² At the same time, the equivalent Obama group on Facebook was not suffering from the same bug, and the founder of Facebook had apparently been assisting the Obama campaign previously in setting up a "my.barackobama.com" website.⁴³

The role of online social network providers may come under closer scrutiny in elections in the future if these Web 2.0 services continue to play a significant role in electioneering, as is likely to be the case from

41. This website has since been disabled and no longer displays the message. SarahPalin.com, <http://www.sarahpalin.com> (last visited Jan. 16, 2009).

42. See *Liminal States*, <http://www.talesfromthe.net/jon/?p=146> (May 10, 2008, 9:56 EST).

43. *Id.* See also TRIPPI, *supra* note 5, at 255 (noting that Chris Hughes, one of Facebook's founders, signed on to become Barack Obama's online social networks director early in his primary campaign).

now on. The scrutiny and possible regulation of such parties would be a difficult legal matter, particularly as any legal regulation of these service providers might amount to political censorship and prove to be unconstitutional under the First Amendment. A candidate who is favored by a multitude of online service providers in the future may have a distinct electoral advantage—so those with future political ambitions should start to think about cultivating relationships with Internet intermediaries as well as potential donors.

Blogging is another interesting phenomenon relating to Web 2.0 that has had a significant role to play in the 2008 presidential election. In fact, in one of the more unusual stories relating to the Republican vice presidential race, a Colorado blogger took some of the credit for the McCain campaign's choosing Governor Sarah Palin as Senator McCain's running mate. Clearly, Governor Palin had not been on the national stage or on the national radar prior to the Republican vice presidential announcement. Nevertheless, a University of Colorado student, Adam Brickley, had been researching GOP officials nationwide over the Internet since early in 2007.⁴⁴ In this research, he discovered Governor Palin and her fights against government corruption in Alaska. He registered the domain name "palinforvp.blogspot.com" and saw his website receive 2,000 to 5,000 hits a day between the time Senator McCain secured the Republican nomination and the time he named Governor Palin as his running mate.⁴⁵

While there is no direct evidence that Brickley's blog did affect McCain's choice of Governor Palin as his running mate, Brickley has been quoted as suggesting that he thinks that the blog probably got Governor Palin the initial coverage she needed to make it onto Senator McCain's shortlist.⁴⁶ This is not as improbable as it might sound. Senator McCain was obviously looking for someone new and different, and Governor Palin's name certainly had not come up in early press coverage of the Senator's search for a running mate. So, again, future bloggers might like to think about the 2012 presidential election and start researching candidates and blogging now. There are probably some as-yet-undiscovered Republican governors or legislators who would be happy to feature in such a blog.

A final example of the Internet in presidential politics in 2008 comes out of the commercial realm of campaign merchandising. While candidates themselves have become extremely savvy about marketing their wares both to assist in funding their campaigns and in getting their

44. Ed Sealover, *Colorado Blogger Saw Palin's Star Quality First*, ROCKY MOUNTAIN NEWS (Colo.), Aug. 30, 2008 at 29, available at <http://www.rockymountainnews.com/news/2008/aug/29/colorado-blogger-saw-palins-star-quality-first/>.

45. *Id.*

46. *Id.*

messages out into the physical world on t-shirts, key rings, and beach towels,⁴⁷ others too have decided to get a piece of the action. The Café Press online store,⁴⁸ for example, runs a business of selling election merchandise for profit. The site sells a variety of t-shirts, sweatshirts, coffee mugs, and the like with a variety of logos on them.

In the lead-up to the 2008 presidential election, Café Press unveiled a large and ever-expanding line of election-focused motifs. A customer could buy all manner of electoral merchandise either supporting or criticizing any of the leading electoral candidates, Republican or Democrat. The site boasts “Obama ‘08” t-shirts⁴⁹ alongside t-shirts that say “NO-bama ‘08”⁵⁰ and many worse epithets. Additionally, one can purchase a pro-Palin t-shirt⁵¹ alongside t-shirts that make fun of Palin with comments like “I Can See Russia from My House”⁵² and “What’s the difference between Sarah Palin and George W. Bush? Lipstick.”⁵³ Interestingly, the site doesn’t boast any obviously anti-Biden propaganda.

One noteworthy strategy employed by the enterprising folks at Café Press was their registration of the “obamaclinton.com” domain name in the lead-up to the democratic running mate announcement. At that time, many voters still hoped that Senator Obama would pick Senator Clinton as his running mate. During the lead-up to the announcement, the site boasted all manner of “Obama-Clinton” merchandise for sale, and in the wake of the selection of Joe Biden as Obama’s running mate, the site changed its wares to pure “Hillary Clinton” merchandise.

On the one hand this is just an electoral application of electronic commerce, plain and simple. On the other hand, this enterprising business could confuse the public into thinking they are purchasing official campaign merchandise. An Internet user typing “obamaclinton.com” into a URL⁵⁴ and coming upon Café Press’s website might think she was being invited to purchase official campaign merchandise and that Senator

47. E.g., Barack Obama Store, <http://store.barackobama.com> (last visited Jan. 13, 2009).

48. CafePress: Funny T-shirts and Unique Gifts, <http://www.cafepress.com> (last visited Jan. 13, 2009).

49. Barack Obama T-Shirts & Gifts, <http://shop.cafepress.com/obama> (last visited Jan. 13, 2009).

50. Anti Obama T-Shirts & Clothing, <http://t-shirts.cafepress.com/anti-obama> (last visited Jan. 16, 2009).

51. Sarah Palin T-Shirts & Gifts, <http://shop.cafepress.com/sarah-palin> (last visited on Jan. 13, 2009).

52. Anti Sarah Palin T-Shirts & Clothing, <http://t-shirts.cafepress.com/anti-sarah-palin> (last visited Jan. 14, 2009).

53. *Id.*

54. Linder Roeder, Definition of URL, <http://personalweb.about.com/cs/glossary/g/url.htm> (last visited Jan. 14, 2009) (“When you go to a Web page, the URL of that page is everything that is showing up in the address window of your browser including the <http://> and all that comes after it.”); Address Bar Definition | Dictionary.com, <http://dictionary.reference.com/browse/address%20bar> (last visited Jan. 15, 2009) (“[An address bar is] the space on the Web browser screen in which the currently used Web site address is displayed; also the place where the user types in a Web site address they wish to access.”).

Obama really was intending to name Senator Clinton as his running mate. She might think that proceeds for her purchase would go towards funding the campaign of the “dream ticket.”

Is there a law against this kind of conduct, or should there be? One might argue that anyone stupid enough to think that Senator Obama really would have named Senator Clinton as his running mate and stupid enough to buy a t-shirt proclaiming this fact before the announcement was made deserves what she gets. Additionally, in this particular example, Café Press did not present the content of its website as an official campaign website. The Café Press trademark was prominently displayed on the website under the domain name “obamaclinton.com,” although some Internet users may have thought that the Obama campaign simply subcontracted with Café Press to sell campaign merchandise.

It may be that trademark law has something to say about misleading electoral consumers into thinking they are buying official merchandise when, in fact, they are purchasing from a purely commercial enterprise. Thus, the application of existing trademark principles may proscribe the use of politician’s names in domain names for electronic websites that sell unofficial campaign merchandise.⁵⁵ There are no clear cases on point, although a politician who could establish a trademark interest in her personal name⁵⁶ could bring proceedings against such misleading domain name registrations under the UDRP⁵⁷ or relevant provisions of the Lanham Act.⁵⁸ However, politicians probably have better things to do—and better things to spend their campaign funds on.

Some amount of this kind of conduct may simply have to be tolerated in the electoral context going forward. And it may be that increasingly sophisticated Internet users are less likely to be fooled over time by those who attempt to pass off non-official campaign merchandise as official campaign merchandise. These problems may be less likely to arise in the future as Internet users become increasingly comfortable with identifying official campaign websites that operate as portals to other web services offered by a candidate, such as the candidate’s official merchandising operation, and the candidate’s official social networking sites.

IV. THE INTERNET’S FUTURE IN POLITICS

The move from Web 1.0 to Web 2.0 between the 2004 and 2008 presidential elections has shown us that the Internet can and will play an increasingly important role in political campaigning in the future. This

55. See Lipton, *supra* note 18, at 109-119 (describing, generally, the application of trademark law to domain name cases involving politicians’ names).

56. Jacqueline D. Lipton, *Celebrity in Cyberspace: A Personality Rights Paradigm for Personal Domain Name Disputes*, 65 WASH. & LEE L. REV. 1445 (2008).

57. See Lipton, *supra* note 18, at 66-69 (describing application of the UDRP to domain name disputes involving politicians’ names).

58. *Id.* at 60-67.

will mean that more, and different, players will become important in electoral campaigns. Internet intermediaries who run social networking services and Internet merchants who sell official and unofficial campaign merchandise online will take on new and important roles in electioneering, as we have seen in the 2008 election. Private individuals who blog and network both over the Internet and over various wireless devices will play a more active role in elections, and a candidate with sufficient charisma and organizational know-how will be able to mobilize grassroots support on a scale never before possible. The new networking technologies allow for easy physical mobilization of otherwise latent social and political groups.⁵⁹

So what will be next for the Internet in politics? What will we expect to see in 2012, and 2016? Web 3.0? What will that entail? Will all politicians have to become avatars in Second Life⁶⁰ and other virtual worlds⁶¹ to reach the voters? Will we be voting in cyberspace through virtual worlds as the next step after electronic voting machines? Will we be concerned about securing the integrity of purely virtual voting that allows individuals to cast ballots remotely from their homes through virtual worlds, or virtual election booths? Will Diebold⁶² set up shop in Second Life?

Although much of this sounds improbable today, it is likely that we have only seen the tip of the iceberg in relation to uses of the Internet in politics. President-elect Obama managed to tap into technological capabilities that only became possible for the first time in the 2008 presidential election. By 2012, the sky may be the limit for a savvy President Obama and his re-election team. And who will be his Republican challenger? Perhaps we should watch the blogs for the answer . . .

59. SHIRKY, *supra* note 8, at 288 (describing this phenomenon in relation to Howard Dean's presidential bid in 2003-4).

60. See Second Life, <http://secondlife.com/whatis/> (last visited Jan. 14, 2009).

61. TAPSCOTT & WILLIAMS, *supra* note 17, 124-27 (citing the phenomenon of virtual worlds and multiplayer online games, including Second Life).

62. See Wikipedia, the Free Encyclopedia, <http://en.wikipedia.org/wiki/Diebold> (last visited Jan. 14, 2009) (citing the historical development of the company that created electronic voting machines and the political controversies that ensued).