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**Remarks by Zoë Baird
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**National Association of Attorneys General
Palo Alto, CA
January 11, 2000**

INTRODUCTION

Thank you, Attorney General Modisett, for that generous introduction.

It is a pleasure to join you for this important meeting and to see so many old friends in the audience. I used to represent state and local governments in the '80s when I was in private practice and worked closely with state AGs.

When Jeff asked me about this meeting, there was no question in my mind that it would be a critical event in policy-making for the Internet because my experience has been that state AGs represent the smartest and most courageous of political leaders. I truly believe this is one of the most exciting times to be in the roles you are in. We are entering into a rapidly changing world that can be shaped by and benefit from your leadership.

I want to take a little time today to share with you some of my observations of the current communications landscape. And I want to talk about why I believe the next few years pose a unique challenge to all of us to help shape this new media environment into one that can actually improve peoples lives. In particular, I think that you as state AG's can make a real difference in this area, and I want to suggest some of the ways you might do that.

SCOPE OF THE INTERNET

You can't talk about the Internet and society without taking a brief moment to pay homage to the massive scale of this technology, the rapid pace of adoption and the unprecedented degree to which it is impacting our lives.

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I don't think even the most visionary or optimistic Silicon Valley entrepreneur could have predicted that this medium we call the Internet would spread so far, or illuminate so much. I don't think that anyone could have dreamed to what extent it would ignite not only our economy, but rage across our populace to ignite people's imagination.

Just look at the numbers.

The number of Internet users in the United States has gone from zero to 80 million in just five years. We send three times more e-mail than regular mail. By 2002, it is projected that we will send 8 billion e-mail messages a day. And as the holiday season just demonstrated, millions of people are using the Internet for transactions and purchases at astounding levels. By 2003, e-commerce revenue is expected to exceed \$100 billion. This new technology is completely altering our sense of geographical borders, bringing people together despite the distance that may exist between them. While 70 percent of the U.S. population will be Internet users by 2005, they will represent only 30 percent of the global Internet community.

Not only is this new technology creating a global community and market, it is creating new and engaging ways for people to share common interests and get important information and services directly. In short, it is empowering individuals with greater control and opportunity.

Because the Internet has grown so much. . . Because it is becoming hard to imagine what life was like before we had the Internet . . . Many tend to think that the medium is mostly, if not completely, developed.

Others see a new dot.com host established every two seconds, or read about how this Digital Gold Rush created yet another twenty-something millionaire and are led to think that the Internet is principally a wide-open business opportunity.

It is not defined by either. The Internet may be developing fast . . . But it is not developed in full. And although a thriving economy is certainly in the public interest, e-commerce is not enough.

INTERNET STILL DEVELOPING/CRITICAL TIME

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We can help the Internet fulfill its potential to improve people's lives, but only if we act on Internet time.

I believe strongly that the next 3-5 years present a unique and critical window of opportunity to invest in the future. This is the single most important thought I hope to leave with you today. While business models are still forming, while standards are still developing, and while expectations are still evolving . . . we must act at the speed of the industry itself over the next three to five years to ensure that public's needs are met. We must take advantage of this time and provide the leadership we are capable of.

We must act now because even though entrepreneurial spirit and energy will continue to redefine what's possible, the new media will quickly become the established media. And once an industry matures, not unlike people, it tends to get set in its ways. Once it does, the opportunity is lost.

Let me give you an historic example to make my point.

From the late 1940's to the early 1950's, the television medium was the focus of extensive experimentation and innovation by the broadcast networks. However, once profitable business models were identified, they predominated for decades.

The window of opportunity to address societal needs was slammed shut.

Even though beginning in the '60's public television was eventually formed and regulatory requirements were eventually introduced and reintroduced, by and large, it has not been possible for television to achieve its potential by trying to retrofit it with social objectives.

We don't have to repeat that pattern. If we did, I would argue the consequences could be far more tragic. Considering the Internet's unique interactive nature and the sheer number of current and future users – there is simply too much potential to improve people's lives for us to waste.

We know society is changing. But the book is still open -- unfinished. Now is the time to write the chapters on *how* we want it to change. Now is the time to invest in the tools needed to build strong institutions. Now is the time to promote technology that is brand new and preserve

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beliefs that are age-old. Now is the time to enforce laws and at the same time encourage values.

It is the uncertainty of the moment that makes so many in the private sector open to collaboration and that makes our experience, perspective and ability to bridge sectors so critical at this time.

And, we cannot assume that if we don't act, others will. Most likely, if the policy vacuum is not filled by responsible public advocates like all of you, it will be filled by those who may not take the time to understand the technology or care about the benefits it can bring.

MARKLE'S ACTIVITIES

So what must each of us do? Jeff asked me to tell you about what Markle has been doing and then address how this might inform the way you think about your role.

When I became president of the Markle Foundation, I was given the extraordinary opportunity to take a wide look at the communications landscape. I and the talented people at Markle saw that communications and new media were not only drastically changing . . . But they were drastically changing society. And we realized that the brave new world was leaving many confused. That there was void in leadership. That the public voice wasn't being heard. That the public, private and nonprofit sectors weren't working together like we could and should.

So we decided to devote our entire focus to this task.

We knew that if we were to make the biggest impact, we would need to put a clear and focused strategy in place. And so we decided to invest over half of all our assets -- \$100 million -- in the next 3-5 years to make sure that the Internet develops to meet public needs.

Specifically, we identified four main areas of public need where we will concentrate our effort and resources.

The first area is **Interactive Media and Children.**

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I have said before that we are now raising the first generation of Internet children. Children under the age of ten won't even remember a time when interactive media wasn't a dominant fixture in their lives.

When we think about the implications of this trend, both good and bad, we do so wearing more than one hat. I'm a foundation president. But I'm also an Internet user. And most important, I'm a **parent** of Internet users. Many of you are Attorneys General, and there's certainly an important law enforcement element if our children are maliciously exposed to inappropriate material, but you are also public leaders. And many of you parents.

So we ask the same questions as any other parent:

Which interactive experiences are positive? Are our children learning valuable skills; can they learn certain skills better through this medium; is it enhancing their education? What should be avoided, in what way, and for what ages?

There are so many valid questions. Yet, there is so little research to date about the effects of interactive technology on children. Even the American Academy of Pediatrics will tell you that their warning against young children using computers is based on little research.

That is why we will soon be announcing a National Research Agenda and intend to make a major investment in studying the potential and impact of interactive media. We will also work to incorporate this knowledge into products and services, and finally, help parents navigate what we all know can be choppy seas if we're forced to go at it alone.

The technology at our fingertips is so powerful. It would be a tragedy if we fail to find a way to channel that power to help our children learn and grow into responsible citizens.

The second area we are concentrating on is **public engagement**.

Surfing the web is not a passive exercise. To reap the rewards, you must participate. If you think about it, democracy is built on the very same premise.

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The Kennedy-Nixon television debates changed the face of politics because it offered people a new way to learn about their candidates. A new way to participate. We're concentrating on public engagement because the Internet can and should do the same.

That's what Web White & Blue is all about. In 1998, we worked with America Online, Harvard's Kennedy School of Government and 1300 other web sites and portals to create a site that hundreds of thousands of people could use as a gateway to information about candidates and their platforms. It was a great success during the 98 cycle and I expect that the role it will play to meet the different needs of this election will be as important in 2000.

The best part about it though is this: it's just the beginning of what we can do. Because in addition to receiving more information, the interactive nature of the Internet can allow Americans to actually join the debate about the issues that impact their lives – whether it is an election cycle or not.

And that's what we should be shooting for.

The point is simple: Let's use the Internet to reinvigorate the democratic process. Let's use it to cultivate citizens, not just consumers.

Another key area in which we are working that I want to talk about can be summed up this way: when we say citizens, we mean **all** citizens.

Of course, I'm talking about the so-called **Digital Divide**.

We all know that despite the remarkable growth of the Internet, there is still a disparity in access to this technology. Households with incomes of \$75,000 are twenty times more likely to have Internet access than those at the lowest income levels. Black and Hispanic households are just two-fifths as likely to have access as white households.

We hear these statistics often, but the truth is the divide is deeper and wider than just access. Access is not a gift unless it solves problems or creates opportunities for people. We need to look at how the Internet can be a means of meeting the needs low income people have.

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Will there be content that lower income individuals and communities find helpful? Can we narrow, or even prevent, the divide by better understanding the needs of low-income people that can be met through this technology and promoting the development of the content that should follow?

These are all tough questions which we are beginning to explore. Because at the end of the day . . . if the Internet goes faster but not farther, this experiment fails. If there is broadband without broad participation, our work is not done.

The final core area we have chosen to concentrate on we call **policy for a networked society**.

Fundamental aspects of our social, political, economic and legal systems are in flux as a result of the rapid growth in computing power, convergence, and the rise of the networked world. And new, global decision-making approaches and institutions are needed as a result.

Privacy. Intellectual property. Content regulation. Consumer protection. Taxation. E-commerce standards. These are all important and complex public policy issues. Government policy makers need to rethink fast how they want to influence the development of policy – how they will define the public interest. And private entities or inter-governmental organizations are increasingly making decisions that previously would have been made by governments.

We need to invest the time and political capital in thinking about the new public interests and competing policy agendas of a global, networked world so we can define where government is needed, which institutions should intervene or set standards in which contexts, and how we can establish policy principles so that government at all levels will know when it acts what the implications are for issues beyond the one in front of it.

And new policy-making entities are taking shape outside of government.

An example – policy governing cybersquatting, or the purchase of the Internet use of a name in order to sell it at a profit to another who wants to have the name for their site on the Internet. President Clinton recently asked Congress to defer acting on legislation on cybersquatting so that the policy could be made by a global, non-governmental organization that the US Government turned to for a range of Internet governance: ICANN, the Internet Corporation for Assigned Names and Numbers, This sends a clear signal of what we have to grapple with.

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That's why Markle gave our first Internet Governance Project grant to ICANN to help ensure that this California-based, corporately financed corporation now in charge of governing much of the Internet will be publicly accountable. Not only did we give ICANN the funds needed to create an broad, public membership that can help elect the board of directors, but we also brought in experienced democracy building organizations such as Common Cause, the Carter Center and the American Library Association to be their partners in the process. (You'll probably recognize that this means that we've brought one of your own into the middle of this, Scott Harshbarger, formerly AG of Massachusetts and now President of Common Cause.)

Why does what ICANN do matter?

As the Internet's first oversight body, ICANN has the difficult task of balancing important competing interests and brokering extremely hard decisions that can ultimately impact critical issues of free speech, free commerce, free competition and representation. Just deciding what falls within their jurisdiction and what doesn't can have widespread implications for the public.

I also want to announce today that we are initiating a major study to learn more about individuals' attitudes toward whether they expect and have the same rights on the Internet as they do in the rest of their activities -- whether it be a public voice in governance, consumer protection, or other safeguards. These are important issues for Attorneys General. Do your constituents feel they have the same protections on the Net as off? Are they right? Should they have the same protections? If so, do you have to take action to assure it, or is it automatic? We at Markle are committed to exploring people's attitudes to these questions and helping get them into the public debate.

THE ROLE OF AGs

Nurturing a positive and productive environment for our children to learn and grow, using to the Internet in a meaningful way to engage the public and enhance our democracy, closing the Digital Divide, and giving people a voice in how the Internet is developed and governed -- it sounds like a lot.

And it is.

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That's why protecting the public interest is, has been, and will always be a joint effort between individuals and companies, between nonprofit foundations like Markle and government officials like Attorneys General.

There will always be those who will say that government should just "stay out of the way" and let others lead, especially when it comes to something like the Internet that has been driven predominately by the private sector.

But I think it is becoming increasingly clear that, even if the private sector leads --and it should on many things, for this period of innovation and economic growth has been remarkably positive -- government can't just abdicate. Especially now at such a crucial time in the medium's development.

If we are going to make sure the public isn't left out of public policy, we need for public officials to:

really understand the changes that are occurring and take advantage of the new tools that are available;

take steps to ensure that markets are fair, competitive, and trustworthy;

protect consumers and make sure that timeless public values are not sacrificed on the altar of instant change and growth;

And finally, and this is often taken for granted, -- be proactive.

Even those who are reluctant to see government set policy for the Internet can set aspirations for the Internet -- whether it be doing innovative things on the web to educate consumers or developing principles for activity that can be *voluntarily* agreed to or enforced by *self*-regulation. Public officials *should* have a role in figuring out how the standards we expect elsewhere can be applied to new technology without impeding its wonderfully diverse bottom-up character.

Some might see ICANN, which I mentioned earlier, or watch the WTO set standards on e-commerce and presume that globalization is a barrier to being proactive. They would say the real policy action is happening internationally and between federal governments. Thus, they

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would argue, state officials are becoming less important to the task of promoting the public interest.

I think the opposite is true.

Obviously, as Attorneys General, you need to be prepared for the rise of international entities because they will assume some of what was once the prerogative of directly elected governments. But at the same time, there are many responsibilities for state officials.

State officials can help develop national and international consensus on key policy issues related to the Internet. You can also maintain the role of the states as “laboratories” where policy and law evolve. And, of course, you can participate in considering state versus international interests on issues where they conflict. Perhaps most importantly, if you think about the fact by 2005, 70 percent of Net users will not be American it is pretty clear that now is the time when Attorneys General and other state officials can set the standards and expectations that will affect global activities.

SPECIFIC CHALLENGES FOR AGs

Of course, there are indeed specific challenges for the Attorneys General.

I would like to quickly discuss some of these challenges and then open the floor for questions.

Arguably, at the top of the list is a challenge that’s emblematic of all others in the Digital age:

The challenge in the protection of privacy in a world of data mining.

I say it's emblematic for a couple of reasons. First, the privacy issue is largely due to innovations that attract us to the Internet in the first place. Customization, for example, allows us to shape our online experience -- to select our own consumer preferences, to prioritize the information we receive. In some cases, it can allow companies to serve us better.

But all this personalization also means that data about us is being collected by someone, somewhere. And we often don't know who that it is or how they will use it. In other words, there's a double-edged sword here -- we get a real benefit, but at a potentially major cost.

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The fact that this cost is hard to calculate is the second reason privacy is emblematic of other challenges. And that's because the issue is still so new and murky, so hard to really pin down. Americans overwhelmingly report that they are concerned about privacy online. But it's not clear exactly what we're concerned about.

Is it the prospect of some company -- or government -- storing information about us? What bothers us about such storage? Is it an intrusion on our liberty or sanctuary? A breach of a property right we have in our own data?

Is it a concern about *how* such data might be misused? How it could harm us -- causing us to be denied a loan, a job, or insurance, say? Or is it the fact that we could be the victim of so-called identify theft, a very rare but frightening possibility?

Most of us don't have clear answers to these questions -- because they're so novel. Often, it may seem like there's a fine line between a big benefit and Big Brother. Steve Case once said that for a lot of people the Internet seems like a George Orwell version of the Cheers bar -- a place where everyone knows your name

What's key are *trust* and *knowledge*.

Companies need to give consumers real notice about how they collect and use information, a meaningful opportunity to consent to that use, perhaps access to the service without consent, and an opportunity to know what information is being held about them and whether it is accurate. All this is particularly important when sensitive information - such as medical or financial information, or information about children - is at stake. A new federal law restricts the collection of information from children without a parent's consent. But in all other areas, we remain without comprehensive federal legislation.

And that's why your role is so important.

You can, should and must initiate prosecutions when important protective laws are broken.

But there are also proactive steps that can be taken.

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You can be a digital guide -- informing consumers about their rights (or lack thereof), and teaching consumers how to protect their own privacy using tools such as encryption and “anonymizers” which allow one to interact online anonymously.

You can help to give people the option to access content even if they don't want to provide information. You can help create online resources highlighting best business practices related to privacy (including lists of which companies follow them).

You can also start an important dialogue about what standards of meaningful disclosure should people expect, especially for the occasions when privacy and law enforcement prerogatives come into conflict. For instance, when Intel released its Pentium III chip, with a unique identifier that would allow an Internet user's online behavior to be tracked more easily, privacy advocates balked. But obviously, such a tool could be of great value for authorized law enforcement activities.

Another issue is Consumer fraud.

There is no limit to the number of ways in which consumers can be defrauded online. In part, this is due to the novelty of the medium and of e-commerce. Even more, it's due to the ease with which scammers can reach new, susceptible audiences, while using new fake identities at every turn.

So many of you have done so much to crack down on so many types of fraudulent behavior. These include misleading investment offers, fake business schemes and product offers, fictitious charities, and more. These prosecutions are very important, but, and I can't stress this enough, so are the proactive efforts to create anti-fraud resources online and to generally educate the public about how to be smart digital consumers.

That's why I'm pleased that all the AGs from every state have web sites, and that 30 states have online complaint forms. (11 of the 30 online complaint forms can be submitted via the Internet.)

There's more to do, but we're headed in the right direction. And I applaud all of you for the work you're doing.

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Crime online.

As with consumer fraud, the commission of high-tech crime comes in many forms. And it owes much to the fact that the Internet provides criminals with increased reach and allows them to lurk behind a shield of anonymity.

New crimes related to computer security and piracy seem to arise daily. And so much needed attention has focused on child pornographers who use the network to distribute their materials and sexual predators who have gone after children in chat rooms and then tried to meet them in person.

Not surprisingly, the states are at the forefront fighting this -- some have even created informational web sites to educate parents and families about potential dangers. It's so important because, we all know, the best defense remains parental supervision and education about safe-surfing techniques.

Unauthorized activities or sales (e.g., gambling, pharmaceuticals).

Another challenge is policing the digital marketplace for sales of goods and services which are not permitted or must at least be licensed in your respective states.

Internet gambling services simply disregard whether their users are residents of states where gambling is illegal. And similarly, online pharmacies often don't require (or allow) users to comply with state laws; they have even mailed drugs to minors.

Many of you have been vigilant in stopping this kind of illegal activity. I'm also pleased that the President has followed your lead and recently announced that he will ask the Congress to require online drugstores to get approval from the FDA.

Business/Commercial Law Issues.

We must remember that this is not only a new environment for us, or for children, but for businesses as well.

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Digital signature laws have recently been passed in a number of states around the nation, providing some degree of clarity regarding what constitutes a bona fide agreement online. But there is still uncertainty.

Does the Uniform Commercial Code, created for the off-line world of commerce, apply neatly to e-commerce? Also, what are the limitations, if any, on the ability of businesses to monitor the online activities of their employees?

These are all tough questions -- but they also offer an opportunity for the Attorneys General to help set the standards and expectations while business models are in their formative stage.

Competition/Broadband is another issue.

How do we preserve a communications marketplace that is competitive and fair?

Is the cable companies' practice of requiring customers to purchase Internet *service* in addition to access, instead of choosing their own service provider, anticompetitive? As you know, the FCC has kept their distance -- arguing that is too early to tell whether the cable companies will have a substantial advantage over other broadband methods such as DSL phone lines and wireless, and federal antitrust authorities have also not taken a public position on the issue.

But it is definitely something we should all follow closely, especially AG's.

Voting online.

In Arizona's forthcoming Democratic presidential primary, it is estimated that up to 50,000 citizens are likely to cast their ballot online. The online voters will each be given a special digital code to verify their identity and prevent fraud.

I think it's safe to say, this is just the beginning. So we should all be ready.

The final challenge I will mention is perhaps one of the thorniest. That's because most of the issues mentioned above intersect with difficult issues of jurisdiction.

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We all know that state law enforcement officials need to protect their citizens. But there are also limits on how far a state can extend its jurisdiction. How do you deal with harms that occur because of something done by a company or person far outside your own borders?

What should constitute purposeful contact by an out-of-state actor with citizens in your jurisdiction?

Is sending an e-mail enough?

How about putting up a web site that someone in your state accesses without the knowledge of the web site owner?

There are no easy answers for these or any of the other questions that the Internet and new technology pose. Everything moves quickly. And we all know, probably too well, that there is no public interest equivalent of Moore's Law. Could you imagine if there were -- if policy could keep pace with technology by developing twice as fast and efficient every eighteen months?

But this we do know with certainty: The Internet will grow and prosper only if we can protect people and represent their interests. People and society will only grow and prosper if we can maintain our high standards for safe, secure and diverse activity of all kinds.

The Internet will develop with or without us. If we don't step up to the plate, others will. And their interests might not encompass what's best for the public interest.

Now is the time to protect the public and to give them the voice they deserve.

Now is the time to invest in our children and cultivate not just consumers, but citizens.

Now is the time to close the Digital Divide.

Now is the time to develop standards and expectations that we can be proud of.

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Together we can contribute to fully realizing the potential of the Internet to change our society for the better. I look forward to working with you to do just that.

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