

## ABSTRACT

Representative George W. Gekas and James W. Harper,  
*Early Returns from Government Regulation of Electronic Commerce: What's New Is  
What's Old*

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Abstract by Mitchell Tuchman

Against the boundless opportunities for increased economic efficiency--speed of transactions, customization of goods and services, more and better access to markets--are arrayed the quotidian forces of government regulation. The subject matter is essentially new, but the motivations for and modes of regulation are the all-too-familiar ones of federal departmental budget maximizing, jurisdictional expansion, and agency entrepreneurialism. As examples authors discuss the now-discontinued surcharge imposed by the National Science Foundation and Network Solutions, Inc. on domain name registrations; the Federal Communications Commission's Universal Service tax, collected to fund government nonprofits; and the Federal Trade Commission's assumption of responsibility for Internet privacy, enforced in no small part through regulatory provisions embodied in consent decrees.

Ultimately the authors propose principles for government regulation of electronic commerce. First, national regulation must reflect a national consensus in favor of regulation, recognizing that the Internet presents plentiful opportunities for private establishment of nonlegal norms privately promulgated and enforced. Second, to the extent regulatory power is delegated to federal agencies, regulation must be promulgated consistent with the Administrative Procedure Act, the Regulatory Flexibility Act, and other administrative law that require open processes and public deliberation. Finally, Congress should carefully circumscribe any delegations of its power, acting decisively to stem any regulatory action that is inconsistent with its will or with the Constitution.