ILLUSTRATION BY PABLO

Microsoft cared little for politics until the Department of Justice called it a monopoly. Now the company approaches lobbying the way it approaches everything—aggressively—and consequently it dominates the technology policy agenda. CIOs may not be better off for it.

Mr. Gates Goes to Washington

BY BEN WORTHEN

Mike Reynolds, a State Representative in Oklahoma, is as conservative and pro-business as a Republican can get. "I'm about the *least* bipartisan guy in Oklahoma City," he says. But the former software entrepreneur's March 2004 bill requiring companies that develop custom applications for the state to turn over their source code received support from both sides of the aisle and sailed through the Oklahoma House of Representatives 75–20, getting every Republican vote and over half the Democrats'. The bill, which applied only to software built specifically for the state, not off-the-shelf or previously developed applications, seemed like a bill most everyone could agree on.

Most everyone but Microsoft.

In October 2003, when Reynolds first announced plans for the bill, Andrew Wise, a Texas-based Microsoft lobbyist, flew up to Oklahoma to try to convince him that his bill was misguided. Reynolds was surprised that Microsoft, which doesn't make custom software, was interested. He says Wise told him that Microsoft might one day enter the custom software market. Undeterred, Reynolds introduced his bill at the start of the next legislative session.

Almost immediately, the Oklahoma Chamber of Commerce called Reynolds and other legislators to lobby against the bill. Reynolds asked them whom they had been talking to. They said Microsoft. After Reynolds clarified what the bill actually said, the Chamber dropped its opposition; indeed, it called back the legislators it had lobbied to say so.

The Initiative for Software Choice (ISC), a trade association with close ties to Microsoft, wrote letters to Reynolds and other legislators stating that the bill would create a climate favoring open-source software and "harm Oklahoma's public administration, its IT industry and workers" by eliminating competition.

Responding to what seemed like a wave of opposition, the Oklahoma Senate Appropriations Committee tabled the bill.

It never came up for vote.

When asked about Microsoft's involvement with the bill, Microsoft spokeswoman Ginny Terzano responded, "Microsoft reached out and attempted to work with Mr. Reynolds on this legislation because we thought it needed improvement. Unfortunately, he refused to work with us and others who tried to get a more sensible bill."

THE POWER

Microsoft is one of the top lobbying shops in the country. With spending on federal lobbying in line with traditional powerhouses such as financial services company Citigroup and defense contractors Lockheed Martin and Northrop Grumman, Microsoft makes the rest of the computer industry look like poor country cousins. In 2000 Microsoft spent $9.4 million on federal-level lobbyists, according to records obtained from the Center for Public Integrity (CPI). That same year IBM, Oracle, Sun and Cisco combined to spend $9.49 million. Microsoft has exceeded its 2000 total in each of the past three years. It spent $11.1 million in 2003, while IBM (which is nearly three times the size of Microsoft) spent $6.7 million, Oracle $2.1 million, Sun $1.6 million and Cisco $645,200, according to the CPI. Recently, *The Hill*, a Washington insider publication, named Jack Krumholtz, Microsoft's managing director of federal government

affairs and associate general counsel, one of the top corporate lobbyists in the country, and called Microsoft "a lobbying powerhouse."

Lobbying is a part of the political process, and every company with the wherewithal to do it does so to some extent. But many observers believe that Microsoft's impact on technology policy is disproportionately large because its vast lobbying resources are exercised in a near vacuum. The United States does not have a unified technology policy. What little policy there is is piecemeal, scattered among many unrelated agencies. For example, the Federal Communications Commission is in charge of broadband policy, while the Federal Trade Commission regulates spam and privacy issues. The Technology Administration in the Commerce Department is in charge of innovation and research and development (the undersecretary of commerce for technology, Phil Bond, has ties to Microsoft; see "Friends in High Places," Page 70). And critical infrastructure issues are handled by Homeland Security and Justice. "[Technology policy] is a blind spot," says Bruce McConnell, the former chief of information and technology policy at the Office of Management and Budget who has served under Presidents Reagan, George H.W. Bush and Clinton. "It's frustrating because you have to go from agency to agency and talk to all sorts of people," he says. In this kind of fragmented environment, lobbying groups that are large, determined and well-funded can afford to make connections in all the relevant agencies. "The better connected company has an advantage," says McConnell, who now heads a consulting firm, McConnell International.

No technology company has better connections than Microsoft.

Over the past five years Microsoft has developed one of the most sophisticated lobbying networks in the country: one that includes dozens of well-connected political insiders at both the state and the federal level, as well as a handful of trade associations that are heavily funded by Microsoft and whose agendas frequently reflect that of the Redmond, Wash.-based company. This network makes it difficult for anyone to pass technology-related legislation Microsoft opposes.

Microsoft's Terzano disagrees. "There has been legislation passed that Microsoft does not support and legislation passed with the support of many in the industry including Microsoft," she says. Krumholtz adds that Microsoft isn't any different from other technology companies when it comes to lobbying. "More and more high-tech companies have people in Washington," he says. "We are one of the bigger players in the industry. It should not be surprising that our program is bigger."

THE AGENDA—SPAM AND OPEN SOURCE

Microsoft's policy agenda includes issues that many CIOs agree with, notably more government funding for research and development, stronger copyright protection, and free trade in offshore products and services. However, two of Microsoft's policy priorities, limiting the adoption of open-source software and inoculating technology companies from spam liability, stand out as areas wherein what's good for Microsoft may not be good for all CIOs.

In a recent CIO Executive Council poll, 83 percent of respondents said that current spam legislation had no effect on their IT departments, and just 10 percent found it helpful. Furthermore, 55 percent of CIOs favor a do-not-spam registry similar to the federal do-not-call one (27 percent opposed it). Microsoft has been the leading opponent of this registry at both the state and the federal level, saying the registry would be impossible to secure (possibly leading to even more spam

for businesses and consumers) and that spammers would simply move offshore. "[Microsoft] pays a large cost from spam," says Terzano. "If there was a law that would help solve it, we would strongly support it." She adds, "[But] we don't see a technical solution [today] that does not create more problems than it solves."

Observers speculate, however, that Microsoft is lobbying hard for the status quo because, like other ISPs (Microsoft owns the

MSN Internet and Hotmail e-mail services as well as the List Builder e-mail marketing software), it fears becoming liable for spam. If the registry failed, customers might want to shoot the messengers as well as the spammers. (Other major ISPs such as AOL and EarthLink also oppose the registry.) Today's federal antispam measures in the Can-Spam Act, and almost all the bills in states that have passed antispam legislation, mirror Microsoft's antispam talking points. These include a provision that exempts

e-mail providers and ISPs from liability and instead calls on ISPs to "self-police the Internet." But without strong enforcement, say observers, the more user-protective measures that Microsoft suggests—such as prohibiting false or misleading information in e-mails, and providing a mechanism for consumers to opt out—become less meaningful.

Jeff Emerson, CIO of Magellan Health Services and a spam spokesman for the CIO

Executive Council, favors tougher spam laws, including the registry. "If [the legislation] were crafted correctly it would have criminal liability as well as civil penalty for spammers, especially anyone who obtained e-mail addresses illegally," he says. As of April 2004, only two of the 36 states that have antispam bills similar to Microsoft's template have successfully prosecuted a total of three spammers.

By far, the most contentious issue for Microsoft's lobbyists is open-source software. *CIO* magazine polls show that CIOs consider open-source software a credible alternative to proprietary software, and they want the option to use it, even if they choose not to. They see

On March 3, 1998, Microsoft Chairman Bill Gates was called before the Senate Judiciary Committee to defend his company against charges that it was an illegal monopoly. After Gates's closing plea fell on deaf ears, and the Justice Department filed its antitrust suit, Microsoft began taking politics more seriously.

open source as a way to avoid vendor "lock-in" and cut costs. But Microsoft has lobbied particularly hard against open source, helping kill state bills that advocate for open source in Oregon and Texas. Microsoft argues that open source freezes innovation, and Krumholtz says that commercial software alone spurs economic growth and creates jobs.

Peter Quinn, CIO for the state of Massachusetts, whose procurement policy calls for considering open source, disagrees, saying that open source "is fundamental to innovation," because it brings an additional group of developers to the table. "We have to preserve information forever and make sure that it is accessible," says Quinn. He believes having a state IT policy that allows him to consider open-source software and open standards allows the state to do so, while reducing its dependence on vendors.

Microsoft's Terzano denies that her company has lobbied against open source. "But we do and have advocated for neutral procure-

From March of 1998 through the end of the last election cycle in 2002, **Microsoft has donated more soft and hard money to political parties and individual candidates than any other company in America.**

ment policies," she says. McConnell, the former information policy chief, says that Terzano's phrasing is simply a way of opposing open source without appearing to oppose it.
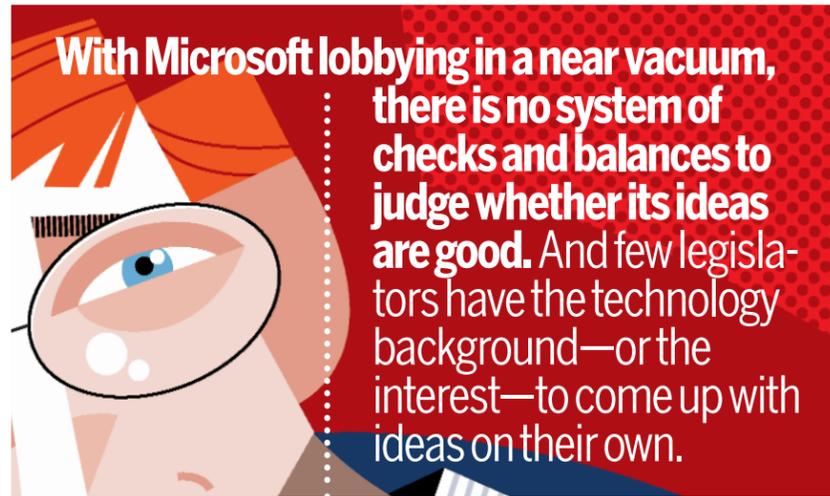
MICROSOFT'S AWAKENING

There was a time when Microsoft didn't advocate for much of anything in government. In the mid-'90s Microsoft had one lobbyist, Krumholtz. And like other technology companies, Microsoft was almost apolitical. It spent a total of just $162,000 in soft money contributions (which go to political parties rather than specific candidates) from 1989 through early 1998. "I think they felt the way that many high-tech companies felt: that what happened in Washington didn't affect them and that they were outside the political realm," says Larry Noble, executive director and general counsel for the Center for Responsive Politics (CRP), a nonpartisan campaign finance watchdog group.

But then everything changed. On March 3, 1998, Bill Gates was called before Congress for the first time to defend his company against charges that it was an illegal monopoly. His closing plea—that if Microsoft lost its position in the market, "Let it be because we failed to innovate fast enough, not because we were hobbled by government intervention"—fell on deaf ears. In May 1998, the Justice Department filed its antitrust suit.

That got Microsoft's attention, and the company began approaching politics the same way it approached the software market—aggressively. From Gates's testimony in March until the end of 1998, Microsoft gave $689,816 in soft money, nearly five times its total from the previous eight-plus years. From that March through 2002, the last complete election cycle, Microsoft—through its employees, PAC and corporate soft money contributions—has donated more money to political parties and individual candidates than any other company in America, according to *CIO*'s review of Federal Election Commission documents.

"Microsoft did not take Washington seriously and learned a hard lesson," says Noble. "The antitrust suit was a major turn for them. After that they ramped up very quickly."

With Microsoft lobbying in a near vacuum, there is no system of checks and balances to judge whether its ideas are good. And few legislators have the technology background—or the interest—to come up with ideas on their own.

Microsoft's Krumholtz says that two issues prompted his company's ramp up. "One was that the Internet became more important to how people worked, and more Internet-related issues were popping up," he says. Lawmakers were making decisions about technology that few of them understood, he says, "and Microsoft recognized that it was incumbent upon us to educate people." The second issue was the antitrust case. "We had to step up and engage," says Krumholtz.

INSIDE THE LOBBYING MACHINE

Microsoft's lobbying success is the result of a vast financial commitment that allows it to hire well-connected political insiders, both in Washington and throughout the country. For example, Microsoft has a 19-person Washington staff that includes four lobbyists dedicated to Congress, one for each party in each chamber. "It is a unique model. Most companies don't have the money to do that," says Dave McCurdy, president of the Electronic Industries Alliance and the former chairman of the House Intelligence Committee, pointing out that most companies have only one or two lobbyists for all of Congress. In addition, Microsoft hired 20 external lobbying firms in 2003 to work on the federal level alone, according to documents filed with the Federal Election Commission. Microsoft further bolsters its lobbying by contributing generously

to political campaigns and by funding trade organizations that generally line up behind its agenda.

Some of the leading lights who have served on Microsoft's lobbying team include: Kerry Knott, the company's longtime top Republican lobbyist, who was formerly chief of staff for House Majority Leader Dick Armey. Knott left Microsoft for Comcast in 2003, shortly after Armey left Congress. His successor, Ed Ingle, was most recently President George W. Bush's deputy assistant to the president for cabinet affairs. Other Microsoft lobbyists have similar pedigrees: Thomas Richey is a former aide to Massachusetts Senator and presidential hopeful John Kerry; Paula Ford worked for the Senate Commerce Committee; Lori Otto and Anne Gavin are veteran Republican operatives.

The outside lobbyists Microsoft hires are also impressively well-connected. In the run up to the 2000 presidential election, Microsoft hired prominent conservatives Ralph Reed, former head of the Christian Coalition, and Grover Norquist, president of Americans for Tax Reform (who had worked with Microsoft as early as 1996). Former Washington Sen. Slade Gorton lobbies for Microsoft, as does former Congressman and lobbying powerhouse Vin Weber. Current Republican National Committee Chairman Ed Gillespie used to lobby for Microsoft. Former Democratic Reps. Vic Fazio and Tom Downey; former Associate

Director of the Senate Democratic Steering Committee Jamie Houton; and Jack Quinn, former chief of staff to Vice President Al Gore, also work for Microsoft, according to the most recently available federal lobbyist filings.

At the state and local level, Microsoft keeps part-time lobbyists on retainer and hires influential locals when it needs to. In 2003, for example, according to Scott Holste, a spokesman for the Missouri Attorney General's office, when Missouri looked like it was about to pass an antispam bill that Microsoft opposed, the company hired the husband of the lieutenant governor's chief of staff, Julie Gibson, to lobby on its behalf. (The bill failed.)

THE TRADE GROUPS

In addition to its own in-house lobbyists and the influential private lobbyists it hires, Microsoft has close ties with trade associations. These groups, which Microsoft heavily funds, tend to support Microsoft's positions. The ISC's lobbying against Reynolds' bill in Oklahoma is an example. Other groups with ties to Microsoft include the Business Software Alliance (BSA), the Computer Technology Industry Association (CompTIA—the ISC's parent) and the Association for Competitive Technology (ACT).

The BSA is the best known of these groups. BSA representatives acknowledge that Micro-

soft is one of their largest financial backers, but will not say whether it is the largest. James Love, director of the Ralph Nader-founded Consumer Project on Technology, says that he has asked BSA lobbyists whom they represent, "and they say, 'I represent Microsoft and the BSA.'" CompTIA has a Microsoft vice president on its board and the organization's vice president of public policy, Robert Kramer, acknowledges that Microsoft was the driving force behind the ISC's creation in 2002. Other than Microsoft, the ISC's membership is a list of 250-plus small, relatively unknown companies—such as South Africa's 3fifteen Technology Solutions, Inteliscape (which is based in Cyprus) and Vizicomp from Bulgaria. ACT, with Microsoft as its largest member, was created around the time the government launched its antitrust investigation and backed Microsoft in that case.

Representatives for Microsoft, the BSA, CompTIA and ACT say that they have close relationships, but add that Microsoft does not control these groups. "We are pleased to be able to represent companies like Microsoft," says BSA President Robert Holleyman, "but the BSA never lobbies for the interest of one company. We can't do that." Microsoft's Terzano, herself a former White House spokeswoman during the Clinton administration, says, "We work in partnership with other organizations and think tanks as a way to advance technology ideas and agendas that are helpful to the industry."

THE CONTRIBUTIONS

Companies that lobby hard also tend to donate a lot of money to political campaigns. Microsoft is no exception. It is one of the two or three largest contributors to political campaigns in the country, donating over $10 million since the start of the 2000 election cycle. "We support groups and individuals who share our positions on the major public policy issues that affect the industry and Microsoft," says Terzano. She says that Microsoft's lobbying efforts, on the other hand, are focused on "outreach and working with policy-makers here in Washington on key issues." Terzano says that the contributions and lobbying are not related.

Friends in High Places

Microsoft has tight links with many of the most powerful and influential shapers of policy at the federal and state level. Here's a partial list.

Phil Bond: Undersecretary of Commerce for Technology, Bond is the highest-ranking appointed official who deals with technology. He is the former top aide to U.S. Rep. Jennifer Dunn (R-Wash.), whose district includes Microsoft's hometown of Redmond. Bond's top policy aide at Commerce was Connie Correll Partoyan, the former executive vice president of TechNet (a Microsoft-funded trade association), who recently took a lobbying job for the law firm Preston, Gates, Ellis & Rouvelas Meeds. (Yes, that's Gates, as in Bill Gates Sr.)

William Kolasky: Before being appointed deputy assistant attorney general for international enforcement for the Justice Department's antitrust division in October 2001, Kolasky was a lawyer for the Association for Competitive Technology, a group whose largest contributor is Microsoft, and wrote a friend of the court brief supporting Microsoft in its antitrust lawsuit.

Ed Gillespie: As head of the Republican National Committee, Gillespie is in charge of building the Republican party and identifying candidates for state and federal elections. He is formerly a Microsoft lobbyist, and Microsoft paid his lobbying firm, Quinn Gillespie & Associates, $1.2 million between 2001 and 2003, according to the Center for Public Integrity. (Gillespie has been on leave from Quinn since taking over at the RNC in July 2003.)

Richard Wallis: Microsoft's former associate general counsel is now the chairman of the American Bar Association's antitrust section, a group that is influential in determining how much oversight federal judges have over antitrust settlements. In late June, a U.S. appeals court rejected claims that Microsoft's 2001 deal with the government was too lenient.

Most experts, however, say that campaign contributions help lobbyists gain access to politicians. "Microsoft, like every other company, gives because they think it is good for their business," says Noble. "They anticipate a positive return on their investment." Like many top lobbying companies, Microsoft parses its money fairly evenly between the parties, preferring access and influence over ideology, according to Noble. For example, Microsoft donated $4.68 million in the 2000 election cycle, splitting it 53 percent to 47 percent in favor of Republicans.

There is one notable exception to this pattern, however: the 2000 presidential election. During the campaign Microsoft donated close to $60,000 to George W. Bush's campaign and over $390,000 to the Republican National Committee. In contrast, Microsoft gave $28,750 to Democratic challenger Al Gore and $65,000 to the Democratic National Committee. Noble believes that the antitrust case, launched by the Clinton administration, may have played a role in the disparity. Adds McConnell, "This administration is more favorable to Microsoft." The antitrust case has had a lasting legacy elsewhere too. After the European Commission ruled against Microsoft in its antitrust case, for example, 33 senators and representatives made public statements condemning the ruling. Microsoft has made large donations to every single one, and Microsoft was at one point among the 20 largest donors to at least 20.

INFLUENCE AT ALL LEVELS

Microsoft's main goal is no different from any company that lobbies heavily: influence legislation and policy. And it has been very successful in that effort. For example, last year, Sen. Conrad Burns, a Republican from Montana (who has so far received more than $20,000 in campaign donations from Microsoft's PAC and its employees this election cycle, and who counts Krumholtz among the board members of the [Sen. Conrad] Burns Telecom Center at the University of Montana), introduced the Microsoft-supported antispam bill that eventually became federal law. The Burns bill passed after
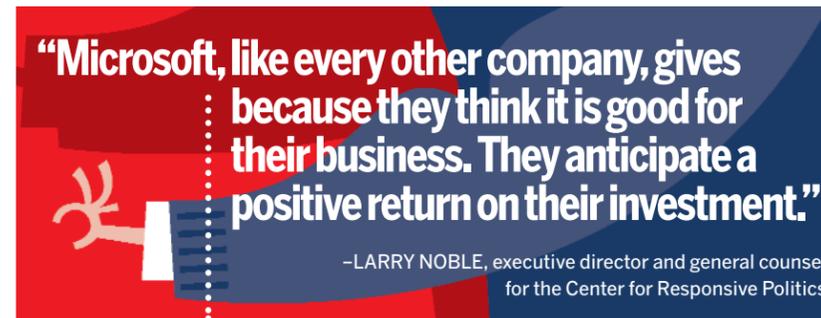
Microsoft lobbied against a bill by New York Democratic Sen. Charles Schumer that would have established a do-not-spam registry.

Microsoft also has had powerful influence at the state level, where it employs more lobbyists than any of its competitors. In Oregon, Democratic State Rep. Phil Barnhart introduced a bill that would have required state agencies to consider open-source software (not buy, consider). Two hours before the bill was supposed to be heard, it was pulled at the request of Republican Speaker of the House Karen Minnis and assigned to a workgroup. Two powerful lobbyists—Jim Gardner, a former state senator who normally lobbies for tobacco companies, and Larry Campbell, the former speaker of the House and an influential state fund-raiser—were hired by Microsoft to lobby against the bill. A third lobbyist, Jim Craven, represented the American Electronics Association (AEA), another group that has Microsoft as a member. Barnhart went to the workgroup with the lobbyists, but says it wasn't interested in reaching a compromise. "I talked to Jim Craven," says Barnhart. "He said, 'We want this bill to go away.'" Craven doesn't recall if he used those words, but says, "We didn't see a need for the bill."

It never came up for a vote.

Microsoft spokeswoman Terzano says that while Microsoft advocates for bills it supports and against bills it opposes, it tries to be a "professional and helpful" resource for lawmakers. When told of complaints from legislators who claim that Microsoft tried to delay or stop their bills, Microsoft's Terzano replied, "I have never heard that kind of description."

Two sources that Microsoft suggested *CIO* contact—Christopher Shank, a Republican member of Maryland's House who worked with Microsoft on an anti-child-pornography bill, and Dan Stambaugh, director of special projects for State Sen. Joe Conti in Pennsylvania, who worked with Microsoft on a spam bill—say that Microsoft was helpful in their efforts.

IDEAS IN A VACUUM

David Hart, an associate professor at Harvard's Kennedy school and a lobbying expert, says that lobbyists are only as good as the ideas they promote, and that lobbyists without good ideas usually don't last. But with Microsoft lobbying

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–LARRY NOBLE, executive director and general counsel for the Center for Responsive Politics

in a near vacuum, there is no system of checks and balances to judge whether its ideas are good. And few legislators have the technology background—or the interest—to come up with ideas on their own. In this kind of an environment, ideas from a well-connected, well-funded company can easily become policy.

For the time being, that leaves CIOs to deal with the status quo, which is that Microsoft has an overwhelming impact on technology policy that affects them directly. Massachusetts' Quinn is sanguine about it. "I think Microsoft is free to do whatever they want. Some of [Microsoft's policy agenda] is in line with [what Massachusetts wants] and some is not. That's OK. It is part of the competitive marketplace."

But in the marketplace of political influence, Microsoft's brilliantly orchestrated lobbying organization has little competition. **CIO**