Mr. LOTT. I now withdraw the motion I made.

The PRESIDING OFFICER. The motion is withdrawn.

DIGITAL MILLENNIUM COPYRIGHT ACT OF 1998

Mr. LOTT. Mr. President, I ask the Senate turn to Calendar No. 358, S. 2037, regarding the WIPO treaty, which is the treaty dealing with digital copyright.

The PRESIDING OFFICER. Under the previous order, the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2037) to amend title 17, United States Code, to implement the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty, to provide limitations on copyright liability relating to material online, and for other purposes.

The Senate proceeded to consider the bill.

Mr. LOTT. Mr. President, the Senate is now considering the WIPO Copyright Treaty which has up to 1 hour under the consent agreement that was reached on May 12. Therefore, the next vote will occur shortly—hopefully in less than an hour—on passage of the WIPO copyright bill, and that will be the last vote of the day.

I know there are some Senators here who have worked on this issue who do want to be heard briefly—the Senator from Missouri, and, of course, the Senator from Utah has been working on this assiduously. We had a little problem we ran into yesterday, but we are going forward with this and we will try to work it out with the House, and I will certainly try to be helpful with that.

This is important legislation. A lot of effort has been put into it. Some of the problems have been resolved, thanks to the courtesy and leadership of Senator HATCH, working with Senator ASHCROFT. So I think we need to go ahead and do it today and we will have had, really, an incredible week on these high-tech bills.

Again, the next vote will occur on Monday—there will be no further votes after the WIPO vote tonight—and I will notify all Members as to the time of that vote.

With regard to the DOD authorization matter, I will be talking with the managers of this legislation to see what their wishes are, and we will have some further announcements of when that legislation will be brought up again.

I yield the floor.

The PRESIDING OFFICER. Under the previous order, the time allocated for this debate is 60 minutes, equally divided and controlled between the Senator from Utah, Mr. HATCH, and the Senator from Vermont, Mr. LEAHY, with 15 minutes of the time of Mr. HATCH controlled by the Senator from Missouri, Mr. ASHCROFT.

The Senate will be in order.

Mr. ASHCROFT. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HATCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATCH. I would like to yield to the distinguished Senator from Arizona for an amendment that he has to take care of.

Mr. MCCAIN. Mr. President, I ask unanimous consent to send to the desk an amendment that is on the DOD bill.

The PRESIDING OFFICER. The Presiding Officer will advise the Senator the DOD bill is not the pending business.

Mr. MCCAIN. Can I, by unanimous consent, send up that amendment?

Mr. LEVIN. I object. Reserving the right to object.

Mr. MCCAIN. It is an amendment that has been accepted by both sides.

Mr. LEVIN. On the DOD bill? I have to object. There are too many pending amendments. I am sorry, if the Senator can clear that——

The PRESIDING OFFICER. Objection is heard. The Senator from Utah.

Mr. HATCH. Mr. President, I ask this time not be charged.

The PRESIDING OFFICER. The amendments are submitted and will be numbered. The Senator from Utah.

Mr. HATCH. I ask that time not be charged to the present act.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATCH. Mr. President, I rise to speak in support of the Digital Millennium Copyright Act of 1998, S. 2037. The DMCA is the most comprehensive bill that has come before the Senate regarding the Internet and the digital world in general.

The DMCA in Title I implements the World Intellectual Property (WIPO) treaties on copyright and on performers and phonograms, and in Title II limits the copyright infringement liability of on-line and Internet service providers (OSPs and ISPs) under certain circumstances. The DMCA also provides in Title III a minor but important clarification of copyright law that the lawful owner or lessee of a computer may authorize someone to turn on their computer for the purposes of maintenance or repair. Title IV addresses the issues of ephemeral recordings, distance education, and digital preservation for libraries and archives.

Due to the ease with which digital works can be copied and distributed worldwide virtually instantaneously, copyright owners will hesitate to make their works readily available on the Internet without reasonable assurance that they will be protected against massive piracy. Legislation implementing the treaties provides this protection and creates the legal platform for launching the global digital on-line marketplace for copyrighted works. It will facilitate making available quickly and conveniently via the Internet the movies, music, software, and literary works that are the fruit of American creative genius. It will also encourage the continued growth of the existing off-line global marketplace for copyrighted works in digital format by setting strong international copyright standards.

The copyright industries are one of America's largest and fastest growing economic assets. According to International Intellectual Property Alliance statistics, in 1996 (when the last full set of figures was available), the U.S. creative industries accounted for 3.65% of the U.S. gross domestic product (GDP)—$278.4 billion. In the last 20 years in which comprehensive statistics are available—1977–1996—the U.S. copyright industries' share of GDP grew more than twice as fast as the remainder of the economy—5.5 percent versus 2.6 percent.

Between 1997 and 1996, employment in the U.S. copyright industries more than doubled to 3.5 million workers—2.8 percent of total U.S. employment. Between 1977 and 1996 U.S. copyright industry employment grew nearly three times as fast as the annual rate of the economy as a whole—4.6 percent versus 1.6 percent. In fact, the copyright industries contribute more to the U.S. economy and employ more workers than any single manufacturing sector, including chemicals, industrial equipment, electronics, food processing, textiles and apparel, and aircraft.

More significantly for the WIPO treaties, in 1996 U.S. copyright industries achieved foreign sales and exports of $60.18 billion, for the first time leading all major industry sectors, including agriculture, automobiles and auto parts, and the aircraft industry. There can be no doubt that copyright is of supreme importance to the American economy. Yet, American companies are losing $18 to $20 billion annually due to the international piracy of copyrighted works.

But the potential of the Internet, both as information highway and marketplace, depends on its speed and capacity. Without clarification of their liability, service providers may hesitate to make the necessary investment to fulfill that potential. In the ordinary course of their operations service providers must engage in all kinds of acts that expose them to potential copyright infringement liability.

For example, service providers must make innumerable electronic copies in order simply to transmit information over the Internet. Certain electronic copies are made to speed up the delivery of information to users. Other electronic copies are made in order to host World Wide Web sites. Many service providers engage in directing users to sites in response to inquiries by users or they volunteer sites that users may find attractive. Some of these sites might contain infringing material. In

short, by limiting the liability of service providers, the DMCA ensures that the efficiency of the Internet will continue to improve and that the variety and quality of services on the Internet will continue to expand.

Besides the major copyright owners and the major OPSs and ISPs (e.g., the local telephone companies, the long distance carriers, America OnLine, etc.), the Committee heard from representatives of individual copyright owners and small ISPs, from representatives of libraries, archives and educational institutions, from representatives of broadcasters, computer hardware manufacturers, and consumers—and this is not an exhaustive list.

Title II, for example, reflects 3 months of negotiations between the major copyright owners and the major OSPs, and ISPs, which I encouraged and in which I participated, and which took place with the assistance of Senator ASHCROFT. Intense discussions took place on distance education too, with the participation of representatives of libraries, teachers, and educational institutions, and with the assistance of Senator LEAHY, Senator ASHCROFT, and the Copyright Office.

As a result, the Committee took substantial steps to refine the discussion draft that I laid down before the Committee through a series of amendments, each of which was adopted unanimously. For example, the current legislation contains:

(1) a provision to ensure that parents will be able to protect their children from pornography and other inappropriate material on the Internet;

(2) provisions to provide for the updating of the copyright laws so that educators, libraries, and achieves will be able to take full advantage of the promise of digital technology;

(3) important procedural protections for individual Internet users to ensure that they will not be mistakenly denied access to the World Wide Web;

(4) provisions to ensure that the current practice of legitimate reverse engineering for software interoperability may continue; and

(5) provisions to accommodate the needs of broadcasters for ephemeral recordings and regarding copyright management information.

These provisions are in addition to provisions I had already incorporated into my discussion draft, such as provisions on library browsing, provisions addressing the special needs of individual creators regarding copyright management information, and provisions exempting nonprofit archives, nonprofit educational institutions, and nonprofit libraries from criminal penalties and, in the case of civil penalties, remitting damages entirely when such an institution was not aware and had no reason to believe that its acts constituted a violation.

Consequently, the DMCA enjoys widespread support from the motion picture, recording, software, and publishing industries, as well as the telephone companies, long distance carriers, and other OSPs and ISPs. It is also supported by the Information Technology Industry Council, which includes the leading computer hardware manufacturers, and by representatives of individual creators, such as the Writers Guild, the Directors Guild, the Screen Actors Guild, and the American Federation of Television and Radio Artists. The breadth of support for S. 2037 is reflected in the unanimous roll call vote (18-0) by which the DMCA was reported out of Committee.

Mr. President, the United States started the Internet, and remains its most significant hub. No country comes close to the United States in creative output. In these areas, we are the undisputed leaders. This bill will help us maintain this edge in an increasingly competitive global market.

Mr. President, I urge my colleagues in the Senate to vote favorably for S. 2037. This bill has such important ramifications for the continued prosperity of the U.S. as we enter the next millennium and has such powerful support that it should be enacted immediately.

Finally, I would like to particularly pay tribute to the ranking member of the Senate Judiciary Committee, Senator LEAHY. I don't know of anyone who has more interest in the Internet, more interest in computers, more interest in copyright matters than Senator LEAHY, unless it is myself, and I don't think I have more. He has done a great job on this committee. It is a pleasure to work with him.

It has been a wonderful experience throughout the 22 years I have been on the committee to work with him on technical and difficult issues. I personally thank him before everybody today for his good work. Without his help, we wouldn't be this far, and we all know it. I thank him. I would also like to thank Manus Cooney, Edward Damich, Troy Dow, and Virginia Isaacson of my staff for their long hours of hard work on this issue. And I want to commend the hard work and cooperation I received from Bruce Cohen, Beryl Howell, and Marla Grossman of Senator LEAHY's staff, and Paul Clement, and Bartlett Cleland of Senator ASHCROFT's staff.

AMENDMENT NO. 2411

(Purpose: To make technical corrections)

Mr. HATCH. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Utah [Mr. HATCH] proposes an amendment numbered 2411.

The amendment is as follows:

On page 12, line 15 strike subsection (c) and redesignate the succeeding subsections and references thereto accordingly.

On page 17, line 4, insert "and with the intent to induce, enable, facilitate or conceal infringement" after "knowingly"

On page 17, beginning on line 8, strike ", with the intent to induce, enable, facilitate or conceal infringement"

On page 17, beginning on line 21, strike paragraph (3) and insert in lieu thereof the following:

"(3) distribute, import for distribution, or publicly perform works, copies of works, or phonorecords, knowing that copyright management information has been removed or altered without authority of the copyright owner or the law,

knowing, or, with respect to civil remedies under section 1203, having reasonable grounds to know, that it will induce, enable, facilitate or conceal an infringement of any right under this title.".

On page 19, line 4, insert the following new paragraph and redesignate the succeeding paragraphs accordingly:

"(6) terms and conditions for use of the work;".

On page 19, line 4, strike "of" and insert in lieu thereof "or".

Mr. HATCH. This is a technical amendment, and I urge its adoption.

The PRESIDING OFFICER. If there is no objection, the amendment is agreed to.

The amendment (No. 2411) was agreed to.

Mr. HATCH. I yield the floor.

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I thank my friend from Utah for his gracious comments, and I do appreciate working with him on this matter. He and I have discussed this so many times in walking back and forth to votes and in the committee room, and so on. I think the Senator from Utah and I long ago determined that if we were going to have this WIPO implementing bill passed, its best chance would be one where the Senator from Utah and the Senator from Vermont were basically holding hands on it.

The Senator from Utah may recall a time once when the then-Senator from Nevada, Senator Laxalt, and I were here and we had two pieces of legislation, a Laxalt-Leahy bill and a Leahy-Laxalt bill. One of our colleagues said, "This is either a very good bill or one of you didn't read."

In this case, the Hatch-Leahy-et al. piece of legislation is a very good bill, and one which the two of us have read every word. We have tried to make very clear to the Senate that the issues we are raising in this bill are not partisan issues. These are issues that create jobs in the United States. These are issues that allow the United States to go into the next century with our innovative genius in place. These are issues that allow the United States, in creating that innovative genius, to continue to lead the world. Senators, in voting for this legislation, will be voting to maintain the intellectual leadership of the United States.

The successful adoption by the World Intellectual Property Organization, what we call WIPO, in December 1996, of two new copyright treaties—one on written material and one on sound recordings—was praised in the United States. The bill that we have before us today, the DMCA, the Digital Millennium Copyright Act, will effectuate the

purposes of those treaties in the United States and, I believe, will serve as a model for the rest of the world.

The WIPO treaties will fortify intellectual property rights around the world. They will help unleash the full potential of America's most creative industries, including the movie, recording, computer software, and other copyrighted industries that are subject to online and other forms of piracy, especially in the digital age where it is easier to pirate and steal exact copies of works.

If they don't have the protection, the owners of intellectual property are going to be unwilling to put their material online. If there is no content worth reading online, then the growth and usefulness of the Internet will be stifled and public accessibility will be retarded.

Secretary Daley of the Department of Commerce said, for the most part, "The treaties largely incorporate intellectual property norms that are already part of U.S. law." What the treaties will do is give American owners of copyrighted material an important tool to protect their intellectual property in those countries that become a party to the treaties.

With ever-expanding electronic commerce, trafficking the global superhighway, international copyright standards are critical to protecting American firms and American jobs. The future growth of the Internet and of digital media requires rigorous international intellectual property protections.

I have in my hand the 1998 Report on Copyright Industries in the United States Economy. This was released last week by the International Intellectual Property Alliance.

This report shows conclusively just how important the U.S. copyright industries are to American jobs and how important it is to protect that U.S. copyright industry from global piracy.

If you look at the chart over here, Mr. President, it shows that from the years 1977 to 1996, the U.S. copyright industries' share of the gross national product grew more than twice as fast as the rest of the economy.

These are the core copyright industries. Look how fast they grew as compared to the rest of the U.S. economy.

One of the things that has expanded and fueled our expanding economy is the copyright industry.

Now, during those same 20 years, job growth in the core copyright industries was nearly three times as fast as the rest of the economy. What this shows us, Mr. President, is that we are undergoing unprecedented expansion of our economy, but this is the area expanding the fastest.

These statistics underscore why, when the President transmitted the two WIPO treaties and draft legislation to implement the treaties to the U.S. Senate, I was proud to introduce the implementing legislation, S. 1121, with Senators HATCH, THOMPSON, and KOHL. We did it the same day. The legislation we have before us today is the result of years of work domestically and internationally to ensure that the appropriate copyright protections are in place around the world to foster the growth of the Internet and other digital media and networks.

The Clinton administration showed great foresight when it formed, in 1993, the Information Infrastructure Task Force, IITF, which established a Working Group on Intellectual Property Rights to examine and recommend changes to keep copyright law current with new technology. Then they released a report in 1995 explaining the importance of this effort, stating:

> The full potential of the NII will not be realized if the education, information and entertainment products protected by intellectual property laws are not protected. . .

The report said further:

> All the computers, telephones, fax machines, scanners, cameras, keyboards, televisions, monitors, printers, switches, routers, wires, cables, networks, and satellites in the world will not create a successful NII, if there is no content. What will drive the NII is the content moving through it.

The same year that report was issued, Senator HATCH and I joined together to introduce the NII Copyright Protection Act of 1995, S. 1284, which incorporated the recommendations of the Administration. That legislative proposal confronted fundamental questions about the role of copyright in the next century—many of which are echoed by the DMCA, which we consider today.

Title I of the DMCA is based on the Administration's recommendations for legislation to implement the two WIPO treaties. It makes certain technical changes to conform our copyright laws to the treaties and substantive amendments to comply with two new treaty obligations.

Specifically, the treaties oblige the signatories to provide legal protections against circumvention of technological measures used by copyright owners to protect their works, and against violations of the integrity of copyright management information (CMI). Such information is used to identify a work, its author, the copyright owner and any information about the terms and conditions of use of the work. The bill adds a new chapter to U.S. copyright law to implement the anticircumvention and CMI provisions, along with corresponding civil and criminal penalties.

Title II of the DMCA limits the liability for copyright infringement, under certain conditions, for Internet and online service providers. Title III gives a Copyright Act exemption to lawful computer owners or lessees so that independent technicians may service the machines without infringement liability.

Title IV begins a process of updating our Nation's copyright laws with respect to library archives, and educational uses of copyrighted works in the digital age.

Title I is based on the administration's recommendations, as I said.

Following intensive discussions with a number of interested parties, including libraries, universities, small businesses, ISPs and OSPs, telephone companies, computer users, broadcasters, content providers, and device manufacturers, we in the Senate Judiciary Committee were able to reach unanimous agreement.

For example, significant provisions were added to the bill in Title II to clarify the liability for copyright infringement of online and Internet service providers. The bill provides "safe harbors" from liability under clearly defined circumstances, which both encourage responsible behavior and protect important intellectual property rights. In addition, during the committee's consideration of this bill, an Ashcroft-Leahy-Hatch amendment was adopted to ensure that computer users are given reasonable notice when their Web sites are the subject of infringement complaints, and to provide procedures for computer users to have material that is mistakenly taken down put back online.

We have a number of provisions designed to help libraries and archives. First, libraries expressed concerns about the possibility of criminal sanctions or potentially ruinous monetary liability for actions taken in good faith. This bill makes sure that libraries acting in good faith can never be subject to fines or civil damages. Specifically, a library is exempt from monetary liability in a civil suit if it was not aware and had no reason to believe that its acts constituted a violation. In addition, libraries are completely exempt from the criminal provisions.

We have a "browsing" exception for libraries so they can look at encrypted work and decide whether or not they want to purchase it for their library.

Senator HATCH, Senator ASHCROFT, and I crafted an amendment to provide for the preservation of digital works by qualified libraries and archives. The ability of libraries to preserve legible copies of works in digital form is one I consider critical. Under present law, libraries are permitted to make a single facsimile copy for their collections for preservation purposes, or to replace copies in case of fire and so on. That worked back in the nondigital age. It does not work today. This gives us a chance to be up to date. We would allow libraries to transfer a work from one digital format to another if the equipment needed to read the earlier format becomes unavailable commercially.

The bill ensures that libraries' collections will continue to be available to future generations by permitting libraries to make up to three copies in any format—including in digital form. This was one of the proposals in The National Information Infrastructure (NII) Copyright Protection Act of 1995, which I sponsored with Senator HATCH in the last Congress. The Register of Copyrights, among others, has supported that proposal.

These provisions go a long way toward meeting the concerns that libraries have expressed about the original

implementing legislation we introduced.

We address distance learning. When Congress enacted the present copyright law it recognized the potential of broadcast and cable technology to supplement classroom teaching, and to bring the classroom to those who, because of their disabilities or other special circumstances, are unable to attend classes. At the same time, Congress also recognized the potential for unauthorized transmissions of works to harm the markets for educational uses of copyrighted materials. The present Copyright Act strikes a careful balance and includes a narrowly crafted exemption.

As with so many areas of copyright law, the advent of digital technology requires us to take another look at the issue.

I recognize that the issue of distance learning has been under consideration for the past several years by the Conference on Fair Use (CONFU) that was established by the Administration to consider how to protect fair use in the digital environment. In spite of the hard work of the participants, CONFU has so far been unable to forge a comprehensive agreement on guidelines for the application of fair use to digital distance learning.

We made tremendous strides in the Committee to chart the appropriate course for updating the Copyright Act to permit the use of copyrighted works in valid distance learning activities.

Senator HATCH, Senator ASHCROFT, and I joined together to ask the Copyright Office to facilitate discussions among interested library and educational groups and content providers with a view toward making recommendations for us to consider with this legislation. We incorporated into the DMCA a new section 122 requiring the Copyright Office to make broader recommendations to Congress on digital distance education within six months. Upon receiving the Copyright Office's recommendations, it is my hope that the Senate Judiciary Committee will promptly commence hearings on the issue and move expeditiously to enact further legislation on the matter. I know that all members on this Committee are as anxious as I am to complete the process that we started in Committee of updating the Copyright Act to permit the appropriate use of copyrighted works in valid distance learning activities. This step should be viewed as a beginning—and we are committed to making more progress as quickly as possible.

We have also asked the Copyright Office to examine, in a comprehensive fashion, when the actions of a university's employees might jeopardize the university's eligibility for the safe harbors set out in the bill for online service providers. This is an important and complex issue with implications for other online service providers, including libraries and archives, and I look forward to reviewing the Copyright Office's analysis of this issue.

Amendments sponsored by Senator ASHCROFT, Senator HATCH, and I were crafted to address the question of reverse engineering, ephemeral recordings, and to clarify the use of copyright management.

Finally, to assuage the concerns of the consumer, electronics manufacturers, and others, that the bill might require them to design their products to respond to a particular technological protection measure, Senator HATCH, Senator ASHCROFT, and I crafted an amendment to clarify the bill on this issue.

I mention all of these things, Mr. President, because it shows why the administration has sent a Statement of Administration policy saying the Administration supports passage of this bill. This is a well-balanced package of proposals. As we go into the next century—the creators, the consumers, those in commerce in this country need the best laws possible. The United States is the leader today. The United States will not be the leader tomorrow without adequate laws.

These laws allow the United States to continue to be the electronic and intellectual property leader of the world. We should pass this bill. We can pass it with pride.

I would like to close by praising the dedicated staff members from the Judiciary Committee who have assisted us in crafting this legislation. They appreciate the significance of this legislation for our country and its economy. In particular, I want to thank Edward Damich and Troy Dow from the Chairman's staff, and Paul Clement and Bartlett Cleland from Senator ASHCROFT's staff, for demonstrating what can be done when we put political party allegiances aside and strive to work together in a bipartisan fashion to craft the best bill possible. My hope is that the bipartisan manner in which they worked on behalf of the Chairman and Senator ASHCROFT to bridge differences rather than exacerbate them can be replicated on a number of other important issues pending in our Committee.

I would also like to thank those people on my Judiciary Committee staff—Bruce Cohen, Beryl Howell, Marla Grossman, Bill Bright and Mike Carrasco—for their work on this bill. They each put in long hours to help me find solutions to the concerns of a number of stakeholders in this bill. I could always trust their counsel to be fair and conscientious.

Mr. President, I reserve the remainder of my time.

Mr. HATCH. Mr. President, let me just praise my colleague from Missouri. Senator ASHCROFT has been committed and has worked very, very hard to make this bill one that all of us can support. He has done a terrific job. He has worked on this OSP liability thing with us ad infinitum and added matters to this bill that made this a much better bill and strengthened the bill. I just could not feel better about somebody on my committee working on this bill than I do toward Senator ASHCROFT. I just wanted to say he played a significant role in this legislation. I personally thank him.

I yield the floor.

Mr. ASHCROFT addressed the Chair.

The PRESIDING OFFICER. Under the previous order, the Senator from Missouri is recognized to speak for 15 minutes.

Mr. ASHCROFT. Thank you, Mr. President.

I am grateful for the kind remarks of the Senator from Utah and am pleased to have the opportunity to work with him and the Senator from Vermont.

I rise today to speak in favor of one of the most important pieces of technology legislation in the 105th Congress. At its heart, this legislation is about updating the copyright laws for the digital age and preparing a sizable portion of our economy for the next century.

The affected parties include the online service providers, computer hardware and software manufacturers; every educator in America is affected by this legislation; every student; all the libraries; all the consumer electronics manufacturers and consumers of electronics; the motion picture companies, and everyone who uses the Internet. This measure will have as broad an impact on the American public as virtually any measure we will address.

The full Senate's consideration of this bill culminates an effort of updating our copyright law that I began last September when I introduced S. 1146, the Digital Copyright Clarification and Technology Education Act. S. 1146 was a comprehensive bill designed to jumpstart a process that had ground to a halt and appeared to be going nowhere.

The bill addresses three basic problems. First, the liability of online service providers for copyright violations; second, the need to update the provisions of the copyright law that affect educators and libraries for the digital age; and third—and not least, of course—the need to implement the World Intellectual Property Organization, or WIPO, treaties.

The United States of America, as the generator of so much content and material—the innovator, the creator of so much of what is copywritten—stands to gain most by making sure that our copyrights are respected worldwide.

I am gratified that today the full Senate will vote on this bill that addresses all three of these concerns, especially the concerns regarding the need to implement the World Intellectual Property Organization treaties which will provide that the United States effort to protect copyrights—the intellectual property of those who are the creators in this country and develop things in this country—those treaties will protect those copyrights.

The original administration language that was introduced by Senators HATCH and LEAHY focused exclusively on the

WIPO treaties. However, through hard work, numerous amendments and the assistance of Senators HATCH and LEAHY and their staffs—and this was really a cooperative effort—we were able to fashion a comprehensive approach to updating the copyright laws for the digital age.

Many important changes were made to the bill, including amendments reinforcing on-line privacy rights, ensuring that the bill would not be read to mandate design decisions and addressing the need to update the copyright laws to permit distance education using digital technology.

When I was a professor—I won't want to admit how long ago—I used to teach a television course. The very same procedures I used in analog technology for television transmission might well have been illegal if the TV signal had been transmitted digitally. It is important that we give the capacity for distance education in the digital age the same potential that we had for distance education in the analog age.

I will focus on three important changes, one reflecting each of the three basic problems addressed by the original bill.

First, there is the issue of the liability of on-line service providers. The notion that service providers should not bear the responsibility for copyright infringements when they are solely transmitting the material is one key to the future growth of the Internet. Now, what we are really talking about is if someone illegally transmits material on the Internet, the Internet companies that provide the opportunity for people to transmit the material shouldn't be held responsible any more than the phone company should be held responsible if you were to say something illegal over the phone, or that Xerox should be held responsible if you violate a copyright by illegally copying material on the Xerox machine.

This is very important because of the way the Internet operates in terms of assembling and reassembling digital messages that they not be considered to be an illegal publisher; they, therefore, needed the protections that are provided in this bill so that we can have and continue to use the infrastructure of the Internet and allow it to operate effectively.

Proper resolution of this issue is critical to unlock the potential for the Internet. For that reason, I included a title addressing on-line service provider liability in my legislation. Make no mistake about it, clarification of on-line service provider liability was one of my fundamental concerns in the debate, and after months of negotiations the affected parties were able to agree to legislative language that protects on-line service providers, or what we call the OSPs, from liability when they simply transmit—they are not involved, they don't have any interest in the message, but they are just transmitters. If there is a violation, it is not their fault that something was transmitted in contravention of the copyright law.

Although I applauded the efforts of the affected industries to resolve the OSP liability issue, there was one issue which the industry agreement did not address—the protections that need to be given to users of the Internet. The agreement that the OSPs entered into would have protected the interests of the copyright owners, but it provided little or no protection for an Internet user who was wrongfully accused of violating copyright laws.

I think of a little girl, perhaps, who puts on her Internet site the picture of a duck she draws. We shouldn't allow Disney to say, "We own Donald Duck. That looks too much like Donald," and be able to bully a little girl from having a duck on her web site. We needed protection for the small user, not just for the big content promoters.

Even though several Judiciary Committee members claimed no amendments were needed, I made sure that the industry compromise respected the rights of typical Internet users, ordinary people, by offering an amendment that provided a protection included in the original bill I had offered. It is an idea which is referred to as the "notice and put-back" provision. If material is wrongfully taken down from the Internet user's home page, my amendment ensures that the end user will be given notice of the action taken and gives them a right to initiate a process that allows them to put their material back on line without the need to hire a lawyer or go to court. This was a critical improvement over the industry's prior compromise agreement.

A second concern of mine throughout this process has been the need to update protections for educators and libraries already included in the copyright law to reflect the digital technology. I have already mentioned that. Having been an individual who had the privilege of teaching a college course on television I knew just how important it would be for libraries and educational institutions to be able to use digital transmissions of documents and signals in the same way that they were authorized to do so with analog signals under our copyright law as it has existed.

I did offer an amendment in committee, and it was unanimously incorporated into the bill, which will allow libraries to use digital technology for archiving and for interlibrary loans, for example. This will help libraries serve the American public.

A final issue of profound importance, ensuring that the bill did not inadvertently make it a violation of the Federal law to be a good parent. The original bill or draft of this bill took such a broad approach to outlawing any devices that could be used to gain access to a copyrighted work that it may have made it illegal to manufacture and use devices that were designed to protect children from obscenities and pornography. An amendment I offered in committee makes it clear that a parent may protect his children from pornography without running afoul of this law. I think moms and dads will want to be able to protect their children and shouldn't have to risk running afoul of the law to do so. My own belief is that when moms and dads do their jobs, governing America will be easy. If moms and dads don't do their jobs, governing this country could be impossible. We need to make it possible for parents in every instance to do their job.

The amendment recognizes that devices designed to allow such parental monitoring must be allowed. We should never allow any legislation to move forward that intentionally or unintentionally makes good parenting illegal. When the choice is between protecting our children from obscene material and perhaps allowing one machine to be diverted for unlawful use, Congress and the court should choose the protection of the children every time and then prosecute anyone who makes unlawful use of such machine.

There are a number of individuals who deserve our specific thanks here, and I want to take the time to make sure that deserving individuals and organizations are thanked. I want to take a moment to thank a few particular staff members who labored into the night over and over again and through weekends to put together this legislation. I commend my colleagues Senators HATCH and LEAHY. I want to say that a number of my concerns were accommodated because these members of the Leahy and Hatch staff were so hard-working. Ed Damich and Troy Dow with Senator HATCH were critical to moving forward on all issues, particularly by coordinating the OSP discussions.

Beryl Howell and Marla Grossman of Senator LEAHY's staff were similarly important to the process, particularly in regard to the education provisions and on drafting language for several key areas. I thank the staff. They worked very closely with two of the best staff members that I think work in any arena on Capitol Hill, and that is Bartlett Cleland of my staff and Paul Clement. They worked extremely hard with industry and with other Members of the Senate to craft a piece of legislation which I believe is going to be a tremendous asset in allowing the potential of the Internet to be realized.

Finally, I want to thank all of the individuals representing various industry and education interests who were critical not only in educating me on the myriad of technical issues addressed in this legislation, but were helping in every way to reach agreement when the time came. In the end, this is perhaps not a perfect bill. I would have favored a different approach to some issues. But this is a bill that has become a comprehensive effort to bring the copyright law into the digital age. It is an important piece of legislation which we can work together to make work for America.

Accordingly, I am happy to support this bill. I look forward to its final passage, with appreciation to the outstanding leadership of Senator HATCH and Senator LEAHY in the committee. Working with them has been one of the most gratifying experiences of a process of reaching a conclusion on legislation which I think will advance our opportunity significantly to access the advantages of electronic and digital communication for the entirety of America.

Mr. President, I want to go over some of these notions again and expand the ideas a bit further.

I rise today to speak in favor of one of the most important pieces of technology legislation in the 105th congress. At its heart, this legislation is about updating the copyright laws for the digital age and preparing a sizable portion of our economy for the next century. The affected parties include the on-line service providers, computer hardware and software manufacturers, educators students, libraries, consumer electronics manufacturers and consumers, motion picture companies, and everyone who uses the Internet. The full Senate's consideration of this bill culminates an effort at updating our copyright law that I began last September when I introduced S. 1146, the Digital Copyright Clarification and Technology Education Act. S. 1146 was a comprehensive bill designed to jump start a process that had ground to a halt and appeared to be going nowhere. The bill addressed three basic problems: (1) the liability of on-line service providers for copyright violations, (2) the need to update the provisions of the copyright law that affect educators and libraries for the digital age, and (3) the need to implement the World Intellectual Property Organization, or WIPO, treaties. I am gratified that today the full Senate will vote on a bill that addresses all three of these concerns.

The original Administration language that was introduced by Senators HATCH and LEAHY focused exclusively on the WIPO Treaties. However, through hard work, numerous amendments, and the assistance of Senators HATCH and LEAHY and their staffs, we were able to fashion a comprehensive approach to updating the copyright laws for the digital age.

The bill before the Senate today now addresses all three of the basic problems identified in my bill. First, the notion that service providers should not bear the responsibility for copyright infringements when they are providing a means of communication is a key notion for the future growth and development of digital communications and most importantly the Internet. Resolution of this issue is critical for the future development of the Internet. For that reason, I included a title regarding on-line service provider liability in my legislation. After months of negotiations, the affected parties were able to agree to legislative language that protects on-line service providers, or OSPs, from liability when they simply transmit information along the Internet.

The principles expressed in this legislation will provide a clear path for OSPs to operate without concern for legal ramifications or copyright infringement that may occur in the regular course of the operation of the Internet, or that occur without the OSPs knowledge. Without these issues being clearly delineated we would have faced a future of uncertainty regarding the growth of Internet and potentially whether it could have operated at all. Make no mistake that the clarification of on-line service provider liability was one of my fundamental concerns in this debate. While this was not the only crucial change in the legislation it is a change that I found essential for this legislation to even be considered, which is why Title I of my original legislation was devoted to clearly defining liability.

Although I was supportive of the affected industries' efforts to resolve the OSP liability issues, there was one issue which the industry agreement did not address—what protections would be given the typical users of the Internet. The agreement protected the interests of OSPs, and it protected the interests of copyright owners, but it provided little or no protection for an Internet user wrongfully accused of violating the copyright laws.

The original draft would have left these wrongly injured, innocent users with limited recourse. They would have to hire an attorney and go to court to have the court require the OSP and copyright holder to allow the web page to go back up—in other words the end user would have to go to court to prove their innocence. I found this situation to be totally unacceptable. Even though several Judiciary Committee members claimed that no amendments were needed I made sure that the industry compromise protected the rights of the typical Internet user by offering an amendment that provided protection included my original bill—an idea referred to as notice and put back. If material is wrongly taken down from an Internet user's home page because the original notice mistakenly did not take into account that the Internet user was only making a fair use of the copyrighted work, my amendment ensures that the end-user will be given notice of the action taken, and gives them a right to initiate a process that allows them to put their material back on-line, without the need to hire a lawyer and go to court. This was a critical improvement over the industry's compromise agreement.

Another modification to the OSP liability material was to guarantee that companies, such as Yahoo!, could continue to operate as they have previous to the passage of this legislation. I admire companies that can succeed in the highly competitive technology sector, and Yahoo! has done just that. In no way should Congress discourage true entrepreneurship, particularly when the better "mouse trap" in this case has propelled a company to the top of its market. The safe harbor should not dissipate merely because a service provider viewed a particular online location during the course of categorization for a directory. If the rule were otherwise, true consumer oriented products would be eliminated or discouraged in the marketplace.

Finally, I also insisted on language in the Committee role that recognized that the OSP liability provisions must be applied to educators and libraries with sensitivity to the special nature of those institutions and the unique relationships that exist in those settings. The report also makes it clear that the notice and put-back provision I mentioned above provides all the process that is due, so that state institutions need not worry about having to choose between qualifying for the safe harbors provided in the bill and the requirements imposed by the Due Process Clause.

The second title of my original legislation was dedicated to similar concerns of universities, libraries, schools, educators and students, and ensured that these groups would not be left out when the content providers rushed to secure their position in the digital age. This legislation now includes some of the same provisions. I worked closely with Senator LEAHY, educators, libraries and publishers to guarantee that libraries will be able to update their archives and provide materials to the public in a way that keeps pace with technology.

Additionally, this legislation begins the process to allow distance education in the digital world. We should not tolerate laws that discriminate against technology, instead we should seek to guarantee that what people can do in the analog that they can continue those actions in the digital world. A study will be undertaken to help Congress to sort out the many technological and legal challenges of updating the copyright law regarding distance education. At the beginning of the next Congress I fully expect to introduce legislation specifically on distance education and I understand that both Senators HATCH and LEAHY have agreed to support legislation based on the study conducted by the Copyright Office. In addition, I look forward to working with both the education community and the content community to pass, not block, this important legislation. Distance education is of fundamental importance to Missouri, as it is to most rural states, and of great importance to the many parents who home school their children.

A third portion of the bill addresses the means by which the WIPO treaties will be implemented in the United States, also referred to as section 1201. This issue is of fundamental importance for a vital part of our nations

economy. Piracy is a large and growing problem for many content providers, but particularly to our software industry. Billions of dollars in pirated material is lost every year and in impact is felt directly to our national bottom line.

While the overall structure of the legislation in this part is not the way I would have approached the issue I believe that I have been given enough assurance both in legislative language and in legislative history that I can support the bill. I still find troubling any approach that makes technology the focus of illegality rather than the bad conduct of a bad actor, but with the accommodations that have been given I think that the bill is workable.

One issue of profound importance to me was ensuring that parents continue to have the legal ability to be good parents. The original draft of this bill took such a broad approach to outlawing devices, that it may have inadvertently made it illegal to manufacture and use devices designed to protect children from on-line pornography. The bill, as amended recognizes that certain devices—such as devices that allow parents to protect their children from on-line pornography—must be allowed. An amendment I offered in Committee makes clear that a parent may protect their children from pornography without running afoul of this law. We should never be in the position with any legislation that intentionally or unintentionally makes good parenting illegal. When the choice is between protecting our children from obscene material and perhaps allowing one machine to be diverted for unlawful use, Congress and the courts should choose the protection of children every time.

Additionally, the protection of privacy remains a concern. While the legislation makes some effort to make clear that a person acting to protect their individual privacy should not be liable for or guilty of circumvention some further clarification is needed. One of my primary concerns has been the use of "cookies" and their detrimental impact for on-line privacy. I am not convinced that cookies could not be copyrighted and protected in such a way that getting rid of them or turning them off would not violate the new law. Recently my concern has been proven further by a piece of software developed by Blizzard Entertainment called StarCraft. This software rifles through the player's hard drives and sends the information found back to the company. Again, I was told by some that I should not be concerned, but I will tell you that I am concerned and everyone in this body and in the country should have similar concerns about this or any legislation that without careful thought could create a situation where an individual's privacy is jeopardized. I believe the savings clause I added to the bill will address this problem. However, if that does not prove sufficient, I will introduce legislation to deal with this problem directly and will look forward to working with all the parties that support this bill to ensure passage of such legislation.

One industry that has concerns about this legislation is the encryption industry. I sought to have included in the legislative language a provision to guarantee that the highly successful means for encryption research that are used in this country may continue to be used in the future, despite some of the prohibitions included in this bill. Unfortunately, we were not able to work out any acceptable legislative language. We were able to craft language for the report that made clear that most forms of current encryption research were left undisturbed by the bill. While I believe that this is better than nothing, I understand that there are lingering concerns, and I would certainly support efforts to try to address this issue before the House completes work on this important piece of legislation.

In discussing the anti-circumvention portion of the legislation, I think it is worth emphasizing that I could agree to support the bill's approach of outlawing certain devices because I was repeatedly assured that the device prohibitions in 1201(a)(2) and 1201(b) are aimed at so-called "black boxes" and not at legitimate consumer electronics and computer products that have substantial non-infringing uses. I specifically worked for and achieved changes to the bill to make sure that no court would misinterpret this bill as outlawing legitimate consumer electronics devices or computer hardware. As a result, neither section 1201(a)(2) nor section 1201(b) should be read as outlawing any device with substantial non-infringing uses, as per the tests provided in those sections.

If history is a guide, however, someone may yet try to use this bill as a basis for initiating litigation to stop legitimate new products from coming to market. By proposing the addition of section 1201(d)(2) and (3), I have sought to make clear that any such effort to use the courts to block the introduction of new technology should be bound to fail.

As my colleagues may recall, this wouldn't be the first time someone has tried to stop the advance of new technology. In the mid 1970s, for example, a lawsuit was filed in an effort to block the introduction of the Betamax video recorder. I think it useful to recall what the Supreme Court had to say in ruling for consumers and against two movie studies in that case:

> One may search the Copyright Act in vain for any sign that the elected representatives of the millions of people who watch television every day have made it unlawful to copy a program for later viewing at home, or have enacted a flat prohibition against the sale of machines that make such copying possible.

As Missouri's Attorney General, I had the privilege to file a brief in the Supreme Court in support of the right of consumers to buy that first generation of VCRs. I want to make it clear that I did not come to Washington to vote for a bill that could be used to ban the next generation of recording equipment. I want to reassure consumers that nothing in the bill should be read to make it unlawful to produce and use the next generation of computers or VCRs or whatever future device will render one or the other of these familiar devices obsolete.

Another important amendment was added that makes clear that this law does not mandate any particular selection of components for the design of any technology. I was concerned that this legislation could be interpreted as a mandate on product manufacturers to design products so as to respond affirmatively to effective technical protection measures available in the marketplace. In response to this concern I was pleased to offer an amendment, with the support of both the Chairman and the Ranking Member of the Committee, to avoid the unintended effect of having design requirements imposed on product and component manufacturers, which would have a dampening effect on innovation, and on the research and development of new products. Accordingly, my amendment clarified that product designers need not design consumer electronics, telecommunications, or computing products, nor design and select parts or components for such products, in order to respond to particular technological protection measures.

This amendment reflects my belief that product manufacturers should remain free to design and produce consumer electronics, telecommunications and computing products without the threat of incurring liability for their design decisions under this legislation. Nothing could cause greater disaster and a swifter downfall of our vibrant technology sector than to have the federal government dictating the design of computer chips or mother boards. By way of example, during the course of our deliberations, we were made aware of certain video boards used in personal computers in order to allow consumers to receive television signals on their computer monitors which, in order to transform the television signal from a TV signal to one capable of display on a computer monitor, remove attributes of the original signal that may be associated with certain copy control technologies. I am acutely aware of this particular example because I have one of these video boards on my own computer back in my office. It is quite useful as it allows me to monitor the Senate floor, and occasionally ESPN on those rare occasions when the Senate is not in session. My amendment makes it clear that this legislation does not require that such transformations, which are part of the normal conversion process rather than affirmative attempts to remove or circumvent copy control technologies, fall within the proscriptions of chapter

12 of the copyright law as added by this bill.

Further, concerns were voiced during the Committee's deliberations that because 1201 applies not only to devices but to parts and components of devices, it could be interpreted broadly to sweep in legitimate products such as personal computers and accessories and video and audio recording devices. While the manufacturers of these products were understandably concerned, it was quite apparent to me that it was not the Committee's intention that such useful multipurpose articles of commerce be prohibited by 1201 on the basis that they may have particular parts or components that might, if evaluated separately from such products, fall within the proscriptions of 1201(a)(2) or (b). My amendment adding sections 1201(d)(2) and (3) was intended to address these concerns.

Another issue of concern is that unless product designers are adequately consulted on the design and implementation of technological protection measures and means of preserving copyright management information, such measures may have noticeable and recurring adverse effects on the authorized display or performance of works. Under such circumstances, certain adjustments to specific products may become necessary after sale to a consumer to maintain the normal, authorized functioning of such products. Such adjustments, when made solely to mitigate the adverse effects of the measure on the normal, authorized operation of a manufacturer's product, device, component, or part thereof, would not, in my view, constitute conduct that would fall within the proscriptions of this legislation.

The problems described may occur at a more fundamental level—with noticeable and recurring adverse effects on the normal operation of products that are being manufactured and sold to consumers. The best way to avoid this problem is for companies and industries to work together to seek to avoid such problems to the maximum extent possible. I am pleased to note that multi-industry efforts to develop copy control technologies that are both effective and avoid such noticeable and recurring adverse effects have been underway over the past two years in relation to certain copy protection measures. I join my colleagues in strongly encouraging the continuation of these efforts, since, in my view, they offer substantial benefits to copyright owners who add so much to the economy and who obviously want devices that do not interfere with the other normal operations of affected products.

The truth of the matter is that Congress ought to operate contemporaneously with industry to solve problems. Anytime the affected industries beat government to the solution they ought to be praised. In many respects I invite the private sector to be there first and get it done well. If they are there first, they will often solve the problem. Even when they cannot solve the problem, the private sector problem solving process will at least narrow the issues for the government to address. Getting a law passed is very difficult, getting it changed is sometimes even more difficult, and so relying on government really elevates the need to have no garbage in, to result in the right output.

I would encourage the content community and the device and hardware manufacturers to work together to avoid situations in which effective technological measures and copyright management information affect display quality. There is no reason why the interested parties cannot resolve these issues to ensure both optimal protection of content and optimal picture quality. To the extent that a particular technological protection measure or means of applying or embedding copyright management information to or in a work is designed and deployed into the marketplace without adequate consultation with potentially affected manufacturers, the proprietor of such a measure or means and those copyright owners using it must be aware that product adjustments by a manufacturer to avoid noticeable and recurring adverse effects on the normal, authorized operation of affected products are foreseeable, legitimate and commercially necessary. Such actions by manufacturers may not, therefore, be proscribed by this chapter.

Again, several individuals and organizations deserve thanks from everyone involved in this debate. I want to take a moment to thank those few particular staff who labored into the night and over weekends to put together this legislation and to accommodate some of my concerns. Ed Damich and Troy Dow with Senator HATCH's office were critical to moving forward on all issues particularly by coordinating the OSP discussions. Beryl Howell and Marla Grossman were similarly important to the process particularly in regards to the education provisions and on drafting language for several key areas. I would like to thank all of the individuals representing various industry and educational interests who were critical not only in educating me on the myriad issues but also on copyright law in general. Finally, I would again like to thank the members of my own staff, Bartlett Cleland and Paul Clement who worked so well to produce a piece of legislation that could guide this country to a digital future.

In the end, this is not a perfect bill. I would have favored a different approach to some issues. However, this bill is an important step forward in bringing the copyright law into the digital age. I am happy to support this bill and look forward to its final passage.

Mr. KOHL. Mr. President, I rise to express my support for the Digital Millennium Copyright Act of 1998. In my view, we need this measure to stop an epidemic of illegal copying of protected works—such as movies, books, musical recordings, and software. The copyright industry is one of our most thriving businesses. But we still lose more than $15 billion each year due to foreign copyright piracy, according to some estimates.

This foreign piracy is out of control. For example, one of my staffers investigating video piracy on a trip to China walked into a Hong Kong arcade and bought three bootlegged computer games—including "Toy Story" and "NBA '97"—for just $10. These games normally sell for about $100. Indeed, the manager was so brazen about it, he even agreed to give a receipt.

Illegal copying has been a longstanding concern to me. I introduced one of the precursors to this bill, the Motion Picture Anti-Piracy Act, which in principle has been incorporated into this measure. And I was one of the original cosponsors of the original proposed WIPO implementing legislation, the preliminary version of this measure.

In my opinion, this bill achieves a fair balance by taking steps to effectively deter piracy, while still allowing fair use of protected materials. It is the product of intensive negotiations between all of the interested parties—including the copyright industry, telephone companies, libraries, universities and device manufacturers. And every major concern raised during that process was addressed. For these reasons, it earned the unanimous support of the Judiciary Committee.

I am confident that this bill has the best approach for stopping piracy and strengthening one of our biggest export industries. It deserves our support. Thank you.

Mr. GRASSLEY. Mr. President, I wanted to make a few brief remarks on S. 2037, the Digital Millennium Copyright Act of 1998, which would implement the World Intellectual Property Organization treaties. The amendments adopted in Committee make some significant improvements to the original bill. For example, the bill now includes provisions clarifying educational institution and library liability and use exemptions, as well as provisions dealing with distance learning. The Committee also adopted provisions addressing concerns regarding pornography and privacy. Further, I worked with Senator KYL to make sure that our law enforcement and intelligence people are able to carry out their duties in the best, and most effective, manner possible.

It was important to me that the bill be clarified to ensure that parents are not prohibited from monitoring, or limiting access to, their children in regard to pornography and other indecent material on the Internet. I don't believe anyone wants to restrict parents' rights to take care of their children, or to take away tools that might be helpful for parents to ensure that their kids aren't accessing sites containing pornography. The interests of the copyright owners had to be balanced with the needs of consumers and

families. I think that the Committee made a significant improvement to the bill in defense of this important protection for our families.

Also, the Committee worked on changes which protect individuals' right to privacy on the Internet. I've heard concerns about software programs, probes, contaminants and "cookies," and how they obtain personal and confidential information on Internet users and then convey it to companies for commercial purposes, sometimes without the users even knowing that this is happening. Even if users are aware a "cookie" or one of these other techniques has been sent to them, I think we'd all agree that Internet users should have a choice on whether to give up their personal information or not. While some argue that this is a non-issue because "cookies" and "cookie-cutting" do not violate the provisions of the bill, I've heard otherwise. In fact, I've heard about a case where a computer game company admitted that it surreptitiously collected personal information from users' computers when they were playing the game via the Internet. So I was not convinced that there did not need to be a clarification in the bill on this subject. The intent behind the bill is now clear that an Internet user can protect his or her privacy by disabling programs that transmit information on that user to other parties, or by utilizing software programs like "cookie-cutters" to do this.

I'd also like to make a few remarks on the clarification Senator KYL and I worked on dealing with the law enforcement exceptions in the bill. The changes Senator KYL and I made substantially improve the bill's language by making it clear that the exceptions will protect officers, agents, employees, or contractors of, or other persons acting at the direction of, a law enforcement or intelligence agency of the United States, a State, or a political subdivision of a State, who are performing lawfully authorized investigative, protective, or intelligence activities. Further, the bill's language was clarified to indicate that the exceptions also apply to officers, agents, employees, or contractors of, or other persons acting at the direction of, any element or division of an agency or department of the United States, a State, or a political subdivision of a State, which does not have law enforcement or intelligence as its primary function, when those individuals are performing lawfully authorized investigative, protective, or intelligence activities. I'd like to note that the Committee report makes clear that these exceptions only apply when the individuals are performing these activities within the scope of their duties and in furtherance of lawfully authorized activities. Our law enforcement and intelligence people must have the opportunity and the tools to carry out their duties effectively. This language was crafted with the input and support of representatives from the law enforcement community, the Administration, as well as the content providers and other parties. I'd like to especially thank Senator KYL and his fine staff for their hard work on this important clarification to the bill.

I want to thank Senator ASHCROFT and his staff for all the hard work and long hours they put into this difficult negotiations process to improve this bill. Their efforts in working for a balance of interests in the bill are to be commended. I'd also like to thank Chairman HATCH and Senator LEAHY, and their staffs, for their hard work on the bill.

Mrs. BOXER. Mr. President I am proud to support the Digital Millennium Copyright Act (DMCA) of 1998 which I believe is an important step in the evolution of international digital commerce. The DMCA accomplishes two important goals—it implements the World Intellectual Property Organization Copyright Treaty and the World Intellectual Property Organization Performances and Phonograms Treaty. Both treaties include provisions that respond to the challenges of digital technology.

Although the treaties contain little that is not already covered by U.S. law, the treaties will provide U.S. copyright holders the worldwide protections they need and deserve. In addition, the treaties will go along way towards standardizing international copyright practice.

Intellectual property, including copyright, is an integral part of the U.S. economy. The core copyright industries accounted for $238.6 billion in value added to the U.S. economy, accounting for approximately 3.74 percent of the Gross Domestic Product. In addition, between 1977 and 1993, employment in the core copyright industries doubled to 3 million workers, about 2.5 percent of total U.S. employment. The copyright industries contribute more to the U.S. economy and employ more workers than any single manufacturing sector including aircraft, textiles and apparels or chemicals.

Intellectual property is a particularly integral part of the economy of my home state of California. California is the leading producer of movies, computer software, recordings, video games, and other creative works. California's movie and television industries employed approximately 165,000 Californians in 1995 and the combined payroll of those industries was $7.4 billion. Similarly, the California pre-packaged computer software industry employs more than 25,000 Californians.

Finally Mr. President, I want to note the importance of this bill to Online Service Providers (OSPs) and to Internet Service Providers (ISPs). I believe it is important to update our copyright laws to comport with the digital electronic age in which we now operate. This bill appropriately balances the interests of copyright holders and OSPs/ISPs. It ensures that creative works receive the protection they deserve while also assuring that OSPs/ISPs are not held liable for unknowingly posting infringing material or for merely providing the physical facilities used to upload infringing material.

I think this is a good bill, a balanced and fair bill, and I am proud to support it.

Mr. THOMPSON. Mr. President, I am pleased to support S. 2037, the Digital Millennium Copyright Act. This legislation implementing the World Intellectual Property Organization Treaty is of vital importance to the American economy.

No nation benefits more from the protection of intellectual property than the United States. We lead the world in the production and export of intellectual property, including the many forms of artistic intellectual property and computer software. These industries are among the fastest growing employers in our country. When the owners of intellectual property are not fairly compensated, that hurts Americans and it decreases incentives for creating additional intellectual property that educates, entertains, and does business for us.

New technology creates exciting opportunities for intellectual property, but the digital environment also poses threats to this form of property. Unscrupulous copyright violators can use the Internet to more widely distribute copyrighted material without permission. To maintain fair compensation to the owners of intellectual property, a regime for copyright protection in the digital age must be created. Technology to protect access to copyrighted work must be safeguarded. Copyright management information that identifies the copyright owner and the terms and conditions of use of the copyrighted material must be secured.

There are new issues with respect to copyright in the digital age that never were issues before. The bill addresses such issues as on-line service provider liability in a way that is fair to all parties. And it governs a number of other issues that have been accommodated in the new era.

Passage of this bill is important if American intellectual property is to be protected in other countries. I was pleased to be an original co-sponsor of the initial bill, and to have supported the bill in the Judiciary Committee and now on the floor. I strongly support its enactment.

Mrs. FEINSTEIN. Mr. President, it is with great pleasure that I rise today to speak on passage of S. 2037, the Digital Millennium Copyright Act. This Act implements two treaties adopted by the World Intellectual Property Organization, or WIPO, in December, 1996—the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty.

Passage of this important legislation will clear the way for ratification of these treaties, which are in the paramount interest of the United States—

and of the State of California, in particular. These treaties are intended to ensure that foreign countries give intellectual property to the same high level of protection that we afford it here in the U.S.

The United States is the world's leader in intellectual property, the home of the most creative and dynamic individuals and enterprises in the world—the majority of whom are located in California. This industry constitutes a very important sector of the U.S. economy, and contributes greatly to our global economic position: American creative industries grew twice as fast as the rest of the U.S. economy from 1987-94; more than 3 million Americans worked in the core copyright industries as of 1994; exports of U.S. intellectual property were more than $53 billion in 1995; and the Business Software Alliance reports that 50-60 percent of its revenues come from overseas.

It is vital that we do everything we can to protect and defend this important sector of the economy from foreign piracy, especially in this new digital age, when the potential exists for thousands of absolutely perfect, priated copies of American intellectual property to be made almost instantly, at the tough of a button: American copyright owners lose $15 billion in overseas sales to piracy every year; the digital gaming industry loses $3.2 billion per year to priacy—almost one third of its $10.1 billion annual sales; and the recording industry's domestic business is flat and they need a strong export market for sales growth.

Indeed, some countries, such as Argentina, have said that computer programs aren't even protected by copyright; ratifying WIPO will ensure that they are. Foreign countries have been waiting for the U.S., as the world's largest producer of intellectual property, to take the lead in WIPO ratification before the ratify the WIPO treaty, so this is an important step we are taking today.

The bill which we crafted in the Judiciary Committee is a truly impressive achievement. We worked together with a plethora of diverse industries, academic interests, and law enforcement to forge a bill which advances everybody's interest.

Title I of the bill implements the WIPO treaties, and outlaws so-called "black boxes": devices designed to accomplish the perfect digital piracy which I have mentioned. By protecting against this piracy and paving the way for ratification of the WIPO treaties, this title provides immense help to America's creative industries, including authors, composers, publishers, performers, movie-makers, the recording industry, and the software industry.

Title II of the bill provides for protection from copyright infringement liability for on-line service providers who act responsibly. This title provides much-desired protection for on-line service providers, such as Yahoo! from my State of California, telecommunications companies, and educational institutions.

Title II includes a provision which I authored, section 204 of the bill, which requires the Copyright Office to take a comprehensive look at the issue of the liability of schools and universities for the acts of their students and faculty who may use their network to post infringing materials, and to make recommendations for legislation.

Among the factors which the Copyright Office is to consider are: What is the direct, vicarious, and contributory liability of universities for infringement by: faculty, administrative employees, students, graduate students, and students who are employed by the university.

What other users of university computers universities may be responsible for; the unique nature of the relationship between universities and faculty; what policies should universities adopt regarding copyright infringement by university computer users; what technological measures are available to monitor infringing uses; what monitoring of the computer system by universities is appropriate; what due process should the universities afford in disabling access by allegedly infringing computer users; should distinctions be drawn between open computer systems, closed computer systems, and open systems with password-protected parts; and taking into account the tradition of academic freedom.

I want to thank the Chairman, Senator HATCH, and the Ranking Member, Senator LEAHY, for working with me on this provision.

It is my hope and expectation that copyright content providers and the educational community will get together and work cooperatively to address these issues during the course of the Copyright Office study.

Title III of the bill ensures that computer maintenance and repair providers will not be found liable for copyright infringement for performing their ordinary services.

Title IV of the bill provides additional copyright exemptions for libraries, archives and broadcasters, and another study, of distance learning, which could benefit educational institutions.

So this bill helps an incredibly broad spectrum of American interests: authors, telecommunications, universities, computer makers, movies, software, broadcasters, and on and on. No small number of these industries are centered or have very substantial presence in, and immense importance to the economy of, my state of California.

Thus, it is with great pleasure that I applaud the passage of this legislation, and urge the House to protect America's economy and rapidly pass it as well.

Mr. KYL. Mr. President: I rise today to speak about a section in the Digital Millennium Copyright Act that I am particularly proud of, and that is the law enforcement exception in the bill. At the Judiciary Committee mark-up, Senator GRASSLEY and I, along with the assistance of Chairman HATCH and Senator ASHCROFT worked to strengthen the law enforcement exception in the bill. We received input on the language from the copyright community and the administration: the National Security Agency (NSA), the Central Intelligence Agency (CIA), the Departments of Commerce and Justice, and the Office of Management and Budget (OMB).

The law enforcement exception ensures that the government continues to have access to current and future technologies to assist in their investigative, protective, or intelligence activities. I am concerned that the tools and resources of our intelligence and law enforcement communities are preserved—and more importantly, not limited, by passage of S. 2037. Under this bill, a company who contracts with the government can continue to develop encryption/decryption devices under that contract, without having to worry about criminal penalties.

Because much of our leading technologies come from the private sector, the government needs to have access to this vital resource for intelligence and law enforcement purposes.

The law enforcement exception recognizes that oftentimes governmental agencies work with non-governmental entities—companies, in order to have access to and develop cutting edge technologies and devices. Such conduct should not be prohibited or impeded by this copyright legislation.

Mr. BIDEN. Mr. President, I commend my colleagues for their hard work on this legislation—which implements the two world intellectual property organization copyright treaties adopted by the 1996 Geneva diplomatic conference.

As is the practice on such intellectual property matters, we are first seeking to pass the implementing legislation. This, I believe, will pave the way for the Foreign Relations Committee—and the full senate—to ratify the treaties, which the administration submitted last July.

The WIPO treaties and the implementing legislation will update intellectual property law to deal with the explosion of the Internet and other forms of electronic communications. Delegates from the United States and 160 other member nations agreed to give authors of "literary and artistic works," including books, computer programs, films, and sound recordings, the exclusive right to sell or otherwise make their work available to the public.

The treaties give tougher international protection to software makers and the recording industry—the U.S. Government's biggest goal. The U.S. wanted—and got—tough international protection for sound recordings in order to stop pirating of music compact discs overseas. The treaties protect literary and artistic works from

digital copying, but do not make it illegal to use the Internet in the normal way.

To give a concrete example of what passage and implementation of the WIPO treaties will mean—before the treaty it was illegal to photocopy the contents of an entire book or copy a videotape without permission, but it was not clear whether it was illegal to e-mail copies of a digital book or movie to 500 friends all over the world. Passage of this bill and the WIPO treaties will ensure that both will be illegal—both domestically and overseas.

I am pleased that this bill contains provisions to clarify the actions Internet service providers—as well as libraries and educational institutions—will be legally required to take when confronted with evidence of copyright violations by users of their services.

I am also pleased that this bill contains language intended to preserve the ability of consumer electronics manufacturers—and computer manufacturers and software developers—to continue research and development of innovative devices and hardware products.

These provisions in my view strike an appropriate balance between the rights of copyright holders and the need to encourage continuing expansion of access to digital information to greater numbers of users throughout the world.

Therefore, I commend my Judiciary Committee colleagues for their hard work on this bill and I look forward to its passage by the Congress.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. Mr. President, we are prepared to yield back the remainder of our time. First, I understand that the Senator from Illinois would like up to 2 minutes. We will yield that time to him, and then we will yield the remainder of the time and go to a vote.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. DURBIN. Mr. President, many good reasons have been stated on the floor for the passage of this important legislation. I hold in my hand convincing evidence. It is an unsolicited e-mail sent to my Senate computer a few weeks ago. It boasts that they will offer for me to purchase 500 different bootleg video games from a person who says in this solicitation, "All the games I sell are pirated. I do not sell originals." This business is operating across the United States, Canada, England, Australia, and claims to trade copies made in Hong Kong.

When you think of the importance of intellectual property to America's exports and the importance of this business in terms of the United States and the world, it is clear that we need this legislation to stop this type of flagrant abuse, which I received and I am sure many others could receive if they surf the Internet.

I commend Senators HATCH, LEAHY, ASHCROFT, and so many others. I urge its unanimous passage and yield the remainder of my time.

Mr. HATCH. Mr. President, on behalf of Senator LEAHY and myself, I yield the remainder of our time. The yeas and nays have been ordered.

The PRESIDING OFFICER. All time having been yielded, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The question is on passage of the bill, as amended. The yeas and nays have been ordered.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from New Hampshire (Mr. GREGG) is necessarily absent.

The result was announced—yeas 99, nays 0, as follows:

[Rollcall Vote No. 137 Leg.]

YEAS—99

Abraham	Faircloth	Lott
Akaka	Feingold	Lugar
Allard	Feinstein	Mack
Ashcroft	Ford	McCain
Baucus	Frist	McConnell
Bennett	Glenn	Mikulski
Biden	Gorton	Moseley-Braun
Bingaman	Graham	Moynihan
Bond	Gramm	Murkowski
Boxer	Grams	Murray
Breaux	Grassley	Nickles
Brownback	Hagel	Reed
Bryan	Harkin	Reid
Bumpers	Hatch	Robb
Burns	Helms	Roberts
Byrd	Hollings	Rockefeller
Campbell	Hutchinson	Roth
Chafee	Hutchison	Santorum
Cleland	Inhofe	Sarbanes
Coats	Inouye	Sessions
Cochran	Jeffords	Shelby
Collins	Johnson	Smith (NH)
Conrad	Kempthorne	Smith (OR)
Coverdell	Kennedy	Snowe
Craig	Kerrey	Specter
D'Amato	Kerry	Stevens
Daschle	Kohl	Thomas
DeWine	Kyl	Thompson
Dodd	Landrieu	Thurmond
Domenici	Lautenberg	Torricelli
Dorgan	Leahy	Warner
Durbin	Levin	Wellstone
Enzi	Lieberman	Wyden

NOT VOTING—1

Gregg

The bill (S. 2037), as amended, was passed, as follows:

S. 2037

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Digital Millennium Copyright Act of 1998".

SEC. 2. TABLE OF CONTENTS.

TITLE I—WIPO TREATIES IMPLEMENTATION

SEC. 101. SHORT TITLE.

This title may be cited as the "WIPO Copyright and Performances and Phonograms Treaties Implementation Act of 1998".

SEC. 102. TECHNICAL AMENDMENTS.

(a) Section 101 of title 17, United States Code, is amended—

(1) by deleting the definition of "Berne Convention work";

(2) in the definition of "The 'country of origin' of a Berne Convention work", by deleting "The 'country of origin' of a Berne Convention work,", capitalizing the first letter of the word "for", deleting "is the United States" after "For purposes of section 411,", and inserting "a work is a 'United States work' only" after "For purposes of section 411,";

(3) in paragraph (1)(B) of the definition of "The 'country of origin' of a Berne Convention work", by inserting "treaty party or parties" and deleting "nation or nations adhering to the Berne Convention";

(4) in paragraph (1)(C) of the definition of "The 'country of origin' of a Berne Convention work", by inserting "is not a treaty party" and deleting "does not adhere to the Berne Convention";

(5) in paragraph (1)(D) of the definition of "The 'country of origin' of a Berne Convention work", by inserting "is not a treaty party" and deleting "does not adhere to the Berne Convention";

(6) in subsection (3) of the definition of "The 'country of origin' of a Berne Convention work", by deleting "For the purposes of section 411, the 'country of origin' of any other Berne Convention work is not the United States.";

(7) after the definition for "fixed", by inserting "The 'Geneva Phonograms Convention' is the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, concluded at Geneva, Switzerland on October 29, 1971.";

(8) after the definition for "including", by inserting "An 'international agreement' is—

"(1) the Universal Copyright Convention;

"(2) the Geneva Phonograms Convention;

"(3) the Berne Convention;

"(4) the WTO Agreement;

"(5) the WIPO Copyright Treaty;

"(6) the WIPO Performances and Phonograms Treaty; and

"(7) any other copyright treaty to which the United States is a party.";

(9) after the definition for "transmit", by inserting "A 'treaty party' is a country or intergovernmental organization other than the United States that is a party to an international agreement.";

(10) after the definition for "widow", by inserting "The 'WIPO Copyright Treaty' is the WIPO Copyright Treaty concluded at Geneva, Switzerland, on December 20, 1996.";

(11) after the definition for "The 'WIPO Copyright Treaty'," by inserting "The 'WIPO Performances and Phonograms Treaty' is the WIPO Performances and Phonograms Treaty concluded at Geneva, Switzerland on December 20, 1996."; and

(12) by inserting, after the definition for "work for hire", "The 'WTO Agreement' is the Agreement Establishing the World Trade Organization entered into on April 15, 1994. The terms 'WTO Agreement' and 'WTO member country' have the meanings given those terms in paragraphs (9) and (10) respectively of section 2 of the Uruguay Round Agreements Act.".

(b) Section 104 of title 17, United States Code, is amended—

(1) in subsection (b)(1), by deleting "foreign nation that is a party to a copyright treaty to which the United States is also a party" and inserting "treaty party";

(2) in subsection (b)(2) by deleting "party to the Universal Copyright Convention" and inserting "treaty party";

(3) by renumbering the present subsection (b)(3) as (b)(5) and moving it to its proper sequential location and inserting a new subsection (b)(3) to read:

"(3) the work is a sound recording that was first fixed in a treaty party; or";

(4) in subsection (b)(4) by deleting "Berne Convention work" and inserting "pictorial, graphic or sculptural work that is incorporated in a building or other structure, or an architectural work that is embodied in a building and the building or structure is located in the United States or a treaty party";

(5) by renumbering present subsection (b)(5) as (b)(6);

(6) by inserting a new subsection (b)(7) to read:

"(7) for purposes of paragraph (2), a work that is published in the United States or a treaty party within thirty days of publication in a foreign nation that is not a treaty party shall be considered first published in the United States or such treaty party as the case may be."; and

(7) by inserting a new subsection (d) to read:

"(d) EFFECT OF PHONOGRAMS TREATIES.—Notwithstanding the provisions of subsection (b), no works other than sound recordings shall be eligible for protection under this title solely by virtue of the adherence of the United States to the Geneva Phonograms Convention or the WIPO Performances and Phonograms Treaty.".

(c) Section 104A(h) of title 17, United States Code, is amended—

(1) in paragraph (1), by deleting "(A) a nation adhering to the Berne Convention or a WTO member country; or (B) subject to a Presidential proclamation under subsection (g)," and inserting—

"(A) a nation adhering to the Berne Convention;

"(B) a WTO member country;

"(C) a nation adhering to the WIPO Copyright Treaty;

"(D) a nation adhering to the WIPO Performances and Phonograms Treaty; or

"(E) subject to a Presidential proclamation under subsection (g)";

(2) paragraph (3) is amended to read as follows:

"(3) the term 'eligible country' means a nation, other than the United States that—

"(A) becomes a WTO member country after the date of enactment of the Uruguay Round Agreements Act;

"(B) on the date of enactment is, or after the date of enactment becomes, a nation adhering to the Berne Convention;

"(C) adheres to the WIPO Copyright Treaty;

"(D) adheres to the WIPO Performances and Phonograms Treaty; or

"(E) after such date of enactment becomes subject to a proclamation under subsection (g).";

(3) in paragraph (6)(C)(iii), by deleting "and" after "eligibility";

(4) at the end of paragraph (6)(D), by deleting the period and inserting "; and";

(5) by adding the following new paragraph (6)(E):

"(E) if the source country for the work is an eligible country solely by virtue of its adherence to the WIPO Performances and Phonograms Treaty, is a sound recording.";

(6) in paragraph (8)(B)(i), by inserting "of which" before "the majority" and striking "of eligible countries"; and

(7) by deleting paragraph (9).

(d) Section 411 of title 17, United States Code, is amended—

(1) in subsection (a), by deleting "actions for infringement of copyright in Berne Convention works whose country of origin is not the United States and"; and

(2) in subsection (a), by inserting "United States" after "no action for infringement of the copyright in any".

(e) Section 507(a) of title 17, United States Code, is amended by adding at the beginning, "Except as expressly provided elsewhere in this title,".

SEC. 103. COPYRIGHT PROTECTION SYSTEMS AND COPYRIGHT MANAGEMENT INFORMATION.

Title 17, United States Code, is amended by adding the following new chapter:

"CHAPTER 12—COPYRIGHT PROTECTION AND MANAGEMENT SYSTEMS

"Sec.

"1201. Circumvention of copyright protection systems.

"1202. Integrity of copyright management information.

"1203. Civil remedies.

"1204. Criminal offenses and penalties.

"1205. Savings Clause.

"§1201. Circumvention of copyright protection systems

"(a) VIOLATIONS REGARDING CIRCUMVENTION OF TECHNOLOGICAL PROTECTION MEASURES.—(1) No person shall circumvent a technological protection measure that effectively controls access to a work protected under this title.

"(2) No person shall manufacture, import, offer to the public, provide or otherwise traffic in any technology, product, service, device, component, or part thereof that—

"(A) is primarily designed or produced for the purpose of circumventing a technological protection measure that effectively controls access to a work protected under this title;

"(B) has only limited commercially significant purpose or use other than to circumvent a technological protection measure that effectively controls access to a work protected under this title; or

"(C) is marketed by that person or another acting in concert with that person with that person's knowledge for use in circumventing a technological protection measure that effectively controls access to a work protected under this title.

"(3) As used in this subsection—

"(A) to 'circumvent a technological protection measure' means to descramble a scrambled work, to decrypt an encrypted work, or otherwise to avoid, bypass, remove, deactivate, or impair a technological protection measure, without the authority of the copyright owner; and

"(B) a technological protection measure 'effectively controls access to a work' if the measure, in the ordinary course of its operation, requires the application of information, or a process or a treatment, with the authority of the copyright owner, to gain access to the work.

"(b) ADDITIONAL VIOLATIONS.—(1) No person shall manufacture, import, offer to the public, provide, or otherwise traffic in any technology, product, service, device, component, or part thereof that—

"(A) is primarily designed or produced for the purpose of circumventing protection afforded by a technological protection measure that effectively protects a right of a copyright owner under this title in a work or a portion thereof;

"(B) has only limited commercially significant purpose or use other than to circumvent protection afforded by a technological protection measure that effectively protects a right of a copyright owner under this title in a work or a portion thereof; or

"(C) is marketed by that person or another acting in concert with that person with that person's knowledge for use in circumventing protection afforded by a technological protection measure that effectively protects a right of a copyright owner under this title in a work or a portion thereof.

"(2) As used in this subsection—

"(A) to 'circumvent protection afforded by a technological protection measure' means avoiding, bypassing, removing, deactivating, or otherwise impairing a technological protection measure; and

"(B) a technological protection measure 'effectively protects a right of a copyright owner under this title' if the measure, in the ordinary course of its operation, prevents, restricts, or otherwise limits the exercise of a right of a copyright owner under this title.

"(c) OTHER RIGHTS, ETC., NOT AFFECTED.—(1) Nothing in this section shall affect rights, remedies, limitations, or defenses to copyright infringement, including fair use, under this title.

"(2) Nothing in this section shall enlarge or diminish vicarious or contributory liability for copyright infringement in connection with any technology, product, service, device, component or part thereof.

"(3) Nothing in this section shall require that the design of, or design and selection of parts and components for, a consumer electronics, telecommunications, or computing product provide for a response to any particular technological protection measure, so long as such part or component or the product, in which such part or component is integrated, does not otherwise fall within the prohibitions of subsection (a)(2) or (b)(1).

"(d) EXEMPTION FOR NONPROFIT LIBRARIES, ARCHIVES, AND EDUCATIONAL INSTITUTIONS.—(1) A nonprofit library, archives, or educational institution which gains access to a commercially exploited copyrighted work solely in order to make a good faith determination of whether to acquire a copy of that work for the sole purpose of engaging in conduct permitted under this title shall not be in violation of subsection (a)(1). A copy of a work to which access has been gained under this paragraph—

"(A) may not be retained longer than necessary to make such good faith determination; and

"(B) may not be used for any other purpose.

"(2) The exemption made available under paragraph (1) shall only apply with respect to a work when an identical copy of that work is not reasonably available in another form.

"(3) A nonprofit library, archives, or educational institution that willfully for the purpose of commercial advantage or financial gain violates paragraph (1)—

"(A) shall, for the first offense, be subject to the civil remedies under section 1203; and

"(B) shall, for repeated or subsequent offenses, in addition to the civil remedies

under section 1203, forfeit the exemption provided under paragraph (1).

"(4) This subsection may not be used as a defense to a claim under subsection (a)(2) or (b), nor may this subsection permit a nonprofit library, archives, or educational institution to manufacture, import, offer to the public, provide, or otherwise traffic in any technology which circumvents a technological protection measure.

"(5) In order for a library or archives to qualify for the exemption under this subsection, the collections of that library or archives shall be—

"(A) open to the public; or

"(B) available not only to researchers affiliated with the library or archives or with the institution of which it is a part, but also to other persons doing research in a specialized field.

"(e) LAW ENFORCEMENT AND INTELLIGENCE ACTIVITIES.—This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of an officer, agent or employee of the United States, a State, or a political subdivision of a State, or a person acting pursuant to a contract with such entities.

"(f) Notwithstanding the provisions of subsection (a)(1), a person who has lawfully obtained the right to use a copy of a computer program may circumvent a technological protection measure that effectively controls access to a particular portion of that program for the sole purpose of identifying and analyzing those elements of the program that are necessary to achieve interoperability of an independently created computer program with other programs, and that have not previously been readily available to the person engaging in the circumvention, to the extent any such acts of identification and analysis do not constitute infringement under this title.

"(g) Notwithstanding the provisions of subsections (a)(2) and (b), a person may develop and employ technological means to circumvent for the identification and analysis described in subsection (f), or for the limited purpose of achieving interoperability of an independently created computer program with other programs, where such means are necessary to achieve such interoperability, to the extent that doing so does not constitute infringement under this title.

"(h) The information acquired through the acts permitted under subsection (f), and the means permitted under subsection (g), may be made available to others if the person referred to in subsections (f) or (g) provides such information or means solely for the purpose of achieving interoperability of an independently created computer program with other programs, and to the extent that doing so does not constitute infringement under this title, or violate applicable law other than this title.

"(i) For purposes of subsections (f), (g), and (h), the term "interoperability" means the ability of computer programs to exchange information, and for such programs mutually to use the information which has been exchanged.

"(j) In applying subsection (a) to a component or part, the court may consider the necessity for its intended and actual incorporation in a technology, product, service or device, which (i) does not itself violate the provisions of this chapter and (ii) has the sole purpose to prevent the access of minors to material on the Internet.

"§1202. Integrity of copyright management information

"(a) FALSE COPYRIGHT MANAGEMENT INFORMATION.—No person shall knowingly and with the intent to induce, enable, facilitate or conceal infringement—

"(1) provide copyright management information that is false, or

"(2) distribute or import for distribution copyright management information that is false.

"(b) REMOVAL OR ALTERATION OF COPYRIGHT MANAGEMENT INFORMATION.—No person shall, without the authority of the copyright owner or the law—

"(1) intentionally remove or alter any copyright management information,

"(2) distribute or import for distribution copyright management information knowing that the copyright management information has been removed or altered without authority of the copyright owner or the law, or

"(3) distribute, import for distribution, or publicly perform works, copies of works, or phonorecords, knowing that copyright management information has been removed or altered without authority of the copyright owner or the law,

knowing, or, with respect to civil remedies under section 1203, having reasonable grounds to know, that it will induce, enable, facilitate or conceal an infringement of any right under this title.

"(c) DEFINITION.—As used in this chapter, 'copyright management information' means the following information conveyed in connection with copies or phonorecords of a work or performances or displays of a work, including in digital form—

"(1) the title and other information identifying the work, including the information set forth on a notice of copyright;

"(2) the name of, and other identifying information about, the author of a work;

"(3) the name of, and other identifying information about, the copyright owner of the work, including the information set forth in a notice of copyright;

"(4) with the exception of public performances of works by radio and television broadcast stations the name of, and other identifying information about, a performer whose performance is fixed in a work other than an audiovisual work;

"(5) with the exception of public performances of works by radio and television broadcast stations, in the case of an audiovisual work, the name of, and other identifying information about, a writer, performer, or director who is credited in the audiovisual work;

"(6) terms and conditions for use of the work;

"(7) identifying numbers or symbols referring to such information or links to such information; or

"(8) such other information as the Register of Copyrights may prescribe by regulation, except that the Register of Copyrights may not require the provision of any information concerning the user of a copyrighted work.

"(d) LAW ENFORCEMENT AND INTELLIGENCE ACTIVITIES.—This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of an officer, agent, or employee of the United States, a State, or a political subdivision of a State, or a person acting pursuant to a contract with such entities.

"(e) LIMITATIONS ON LIABILITY.—

"(1) ANALOG TRANSMISSIONS.—In the case of an analog transmission, a person who is making transmissions in its capacity as a radio or television broadcast station, or as a cable system, or someone who provides programming to such station or system, shall not be liable for a violation of subsection (b) if—

"(A) avoiding the activity that constitutes such violation is not technically feasible or would create an undue financial hardship on such person; and

"(B) such person did not intend, by engaging in such activity, to induce, enable, facilitate or conceal infringement.

"(2) DIGITAL TRANSMISSIONS.—

"(A) If a digital transmission standard for the placement of copyright management information for a category of works is set in a voluntary, consensus standard-setting process involving a representative cross-section of radio or television broadcast stations or cable systems and copyright owners of a category of works that are intended for public performance by such stations or systems, a person identified in subsection (e)(1) shall not be liable for a violation of subsection (b) with respect to the particular copyright management information addressed by such standard if—

"(i) the placement of such information by someone other than such person is not in accordance with such standard; and

"(ii) the activity that constitutes such violation is not intended to induce, enable, facilitate or conceal infringement.

"(B) Until a digital transmission standard has been set pursuant to subparagraph (A) with respect to the placement of copyright management information for a category or works, a person identified in subsection (e)(1) shall not be liable for a violation of subsection (b) with respect to such copyright management information, where the activity that constitutes such violation is not intended to induce, enable, facilitate or conceal infringement, if—

"(i) the transmission of such information by such person would result in a perceptible visual or aural degradation of the digital signal; or

"(ii) the transmission of such information by such person would conflict with—

"(I) an applicable government regulation relating to transmission of information in a digital signal;

"(II) an applicable industry-wide standard relating to the transmission of information in a digital signal that was adopted by a voluntary consensus standards body prior to the effective date of this section; or

"(III) an applicable industry-wide standard relating to the transmission of information in a digital signal that was adopted in a voluntary, consensus standards-setting process open to participation by a representative cross-section of radio or television broadcast stations or cable systems and copyright owners of a category of works that are intended for public performance by such stations or systems.

"§1203. Civil remedies

"(a) CIVIL ACTIONS.—Any person injured by a violation of section 1201 or 1202 may bring a civil action in an appropriate United States district court for such violation.

"(b) POWERS OF THE COURT.—In an action brought under subsection (a), the court—

"(1) may grant temporary and permanent injunctions on such terms as it deems reasonable to prevent or restrain a violation;

"(2) at any time while an action is pending, may order the impounding, on such terms as it deems reasonable, of any device or product that is in the custody or control of the alleged violator and that the court has reasonable cause to believe was involved in a violation;

"(3) may award damages under subsection (c);

"(4) in its discretion may allow the recovery of costs by or against any party other than the United States or an officer thereof;

"(5) in its discretion may award reasonable attorney's fees to the prevailing party; and

"(6) may, as part of a final judgment or decree finding a violation, order the remedial modification or the destruction of any device or product involved in the violation that is

in the custody or control of the violator or has been impounded under paragraph (2).

"(c) AWARD OF DAMAGES.—

"(1) IN GENERAL.—Except as otherwise provided in this chapter, a person committing a violation of section 1201 or 1202 is liable for either—

"(A) the actual damages and any additional profits of the violator, as provided in paragraph (2), or

"(B) statutory damages, as provided in paragraph (3).

"(2) ACTUAL DAMAGES.—The court shall award to the complaining party the actual damages suffered by the party as a result of the violation, and any profits of the violator that are attributable to the violation and are not taken into account in computing the actual damages, if the complaining party elects such damages at any time before final judgment is entered.

"(3) STATUTORY DAMAGES.—

"(A) At any time before final judgment is entered, a complaining party may elect to recover an award of statutory damages for each violation of section 1201 in the sum of not less than $200 or more than $2,500 per act of circumvention, device, product, component, offer, or performance of service, as the court considers just.

"(B) At any time before final judgment is entered, a complaining party may elect to recover an award of statutory damages for each violation of section 1202 in the sum of not less than $2,500 or more than $25,000.

"(4) REPEATED VIOLATIONS.—In any case in which the injured party sustains the burden of proving, and the court finds, that a person has violated section 1201 or 1202 within three years after a final judgment was entered against the person for another such violation, the court may increase the award of damages up to triple the amount that would otherwise be awarded, as the court considers just.

"(5) INNOCENT VIOLATIONS.—

"(A) IN GENERAL.—The court in its discretion may reduce or remit the total award of damages in any case in which the violator sustains the burden of proving, and the court finds, that the violator was not aware and had no reason to believe that its acts constituted a violation.

"(B) NONPROFIT LIBRARY, ARCHIVES, OR EDUCATIONAL INSTITUTIONS.—In the case of a nonprofit library, archives, or educational institution, the court shall remit damages in any case in which the library, archives, or educational institution sustains the burden of proving, and the court finds, that the library, archives, or educational institution was not aware and had no reason to believe that its acts constituted a violation.

"§1204. Criminal offenses and penalties

"(a) IN GENERAL.—Any person who violates section 1201 or 1202 willfully and for purposes of commercial advantage or private financial gain—

"(1) shall be fined not more than $500,000 or imprisoned for not more than 5 years, or both for the first offense; and

"(2) shall be fined not more than $1,000,000 or imprisoned for not more than 10 years, or both for any subsequent offense.

"(b) LIMITATION FOR NONPROFIT LIBRARY, ARCHIVES, OR EDUCATIONAL INSTITUTION.—Subsection (a) shall not apply to a nonprofit library, archives, or educational institution.

"(c) STATUTE OF LIMITATIONS.—Notwithstanding section 507(a) of this title, no criminal proceeding shall be brought under this section unless such proceeding is commenced within five years after the cause of action arose.

"§1205. Savings Clause

"Nothing in this chapter abrogates, diminishes or weakens the provisions of, nor provides any defense or element of mitigation in a criminal prosecution or civil action under, any Federal or State law that prevents the violation of the privacy of an individual in connection with the individual's use of the Internet.".

SEC. 104. CONFORMING AMENDMENT.

The table of chapters for title 17, United States Code, is amended by adding at the end the following:

"12. Copyright Protection and Management Systems ..... 1201".

SEC. 105. EFFECTIVE DATE.

(a) IN GENERAL.—Subject to subsection (b), the amendments made by this title shall take effect on the date of the enactment of this Act.

(b) AMENDMENTS RELATING TO CERTAIN INTERNATIONAL AGREEMENTS.—(1) The following shall take effect upon entry into force of the WIPO Copyright Treaty with respect to the United States:

(A) paragraph (5) of the definition of "international agreement" contained in section 101 of title 17, United States Code, as amended by section 102(a)(8) of this title.

(B) the amendment made by section 102(a)(10) of this title;

(C) subparagraph (C) of section 104A(h)(1) of title 17, United States Code, as amended by section 102(c)(1) of this title; and

(D) subparagraph (C) of section 104A(h)(3) of title 17, United States Code, as amended by section 102(c)(2) of this title.

(2) The following shall take effect upon the entry into force of the WIPO Performances and Phonograms Treaty with respect to the United States:

(A) paragraph (6) of the definition of "international agreement" contained in section 101 of title 17, United States Code, as amended by section 102(a)(8) of this title.

(B) the amendment made by section 102(a)(11) of this title;

(C) the amendment made by section 102(b)(7) of this title;

(D) Subparagraph (D) of section 104A(h)(1) of title 17, United States Code, as amended by section 102(c)(2) of this title; and

(E) the amendment made by section 102(c)(4) of this title; and

(F) the amendment made by section 102(c)(5) of this title.

TITLE II—INTERNET COPYRIGHT INFRINGEMENT LIABILITY

SEC. 201. SHORT TITLE.

This title may be cited as the "Internet Copyright Infringement Liability Clarification Act of 1998".

SEC. 202. LIMITATIONS ON LIABILITY FOR INTERNET COPYRIGHT INFRINGEMENT.

(a) IN GENERAL.—Chapter 5 of title 17, United States Code, is amended by adding after section 511 the following new section:

"§512. Liability of service providers for online infringement of copyright

"(a) DIGITAL NETWORK COMMUNICATIONS.—A service provider shall not be liable for monetary relief, or except as provided in subsection (i) for injunctive or other equitable relief, for infringement for the provider's transmitting, routing, or providing connections for, material through a system or network controlled or operated by or for the service provider, or the intermediate and transient storage of such material in the course of such transmitting, routing or providing connections, if—

"(1) it was initiated by or at the direction of a person other than the service provider;

"(2) it is carried out through an automatic technical process without selection of such material by the service provider;

"(3) the service provider does not select the recipients of such material except as an automatic response to the request of another;

"(4) no such copy of such material made by the service provider is maintained on the system or network in a manner ordinarily accessible to anyone other than anticipated recipients, and no such copy is maintained on the system or network in a manner ordinarily accessible to the anticipated recipients for a longer period than is reasonably necessary for the communication; and

"(5) the material is transmitted without modification to its content.

"(b) SYSTEM CACHING.—A service provider shall not be liable for monetary relief, or except as provided in subsection (i) for injunctive or other equitable relief, for infringement for the intermediate and temporary storage of material on the system or network controlled or operated by or for the service provider, where (i) such material is made available online by a person other than such service provider, (ii) such material is transmitted from the person described in clause (i) through such system or network to someone other than that person at the direction of such other person, and (iii) the storage is carried out through an automatic technical process for the purpose of making such material available to users of such system or network who subsequently request access to that material from the person described in clause (i), provided that:

"(1) such material is transmitted to such subsequent users without modification to its content from the manner in which the material otherwise was transmitted from the person described in clause (i);

"(2) such service provider complies with rules concerning the refreshing, reloading or other updating of such material when specified by the person making that material available online in accordance with an accepted industry standard data communications protocol for the system or network through which that person makes the material available; provided that the rules are not used by the person described in clause (i) to prevent or unreasonably impair such intermediate storage;

"(3) such service provider does not interfere with the ability of technology associated with such material that returns to the person described in clause (i) the information that would have been available to such person if such material had been obtained by such subsequent users directly from such person, provided that such technology—

"(A) does not significantly interfere with the performance of the provider's system or network or with the intermediate storage of the material;

"(B) is consistent with accepted industry standard communications protocols; and

"(C) does not extract information from the provider's system or network other than the information that would have been available to such person if such material had been accessed by such users directly from such person;

"(4) either—

"(A) the person described in clause (i) does not currently condition access to such material; or

"(B) if access to such material is so conditioned by such person, by a current individual pre-condition, such as a pre-condition based on payment of a fee, or provision of a password or other information, the service provider permits access to the stored material in significant part only to users of its system or network that have been so authorized and only in accordance with those conditions; and

"(5) if the person described in clause (i) makes that material available online without the authorization of the copyright owner, then the service provider responds expeditiously to remove, or disable access to, the material that is claimed to be infringing

upon notification of claimed infringements described in subsection (c)(3); provided that the material has previously been removed from the originating site, and the party giving the notification includes in the notification a statement confirming that such material has been removed or access to it has been disabled or ordered to be removed or have access disabled.

"(c) INFORMATION STORED ON SERVICE PROVIDERS.—

"(1) IN GENERAL.—A service provider shall not be liable for monetary relief, or except as provided in subsection (j) for injunctive or other equitable relief, for infringement for the storage at the direction of a user of material that resides on a system or network controlled or operated by or for the service provider, if the service provider—

"(A)(i) does not have actual knowledge that the material or activity is infringing,

"(ii) in the absence of such actual knowledge, is not aware of facts or circumstances from which infringing activity is apparent, or

"(iii) if upon obtaining such knowledge or awareness, the service provider acts expeditiously to remove or disable access to, the material;

"(B) does not receive a financial benefit directly attributable to the infringing activity, where the service provider has the right and ability to control such activity; and

"(C) in the instance of a notification of claimed infringement as described in paragraph (3), responds expeditiously to remove, or disable access to, the material that is claimed to be infringing or to be the subject of infringing activity.

"(2) DESIGNATED AGENT.—The limitations on liability established in this subsection apply only if the service provider has designated an agent to receive notifications of claimed infringement described in paragraph (3), by substantially making the name, address, phone number, electronic mail address of such agent, and other contact information deemed appropriate by the Register of Copyrights, available through its service, including on its website, and by providing such information to the Copyright Office. The Register of Copyrights shall maintain a current directory of agents available to the public for inspection, including through the Internet, in both electronic and hard copy formats.

"(3) ELEMENTS OF NOTIFICATION.—

"(A) To be effective under this subsection, a notification of claimed infringement means any written communication provided to the service provider's designated agent that includes substantially the following:

"(i) a physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;

"(ii) identification of the copyrighted work claimed to have been infringed, or, if multiple such works at a single online site are covered by a single notification, a representative list of such works at that site;

"(iii) identification of the material that is claimed to be infringing or to be the subject of infringing activity that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the service provider to locate the material;

"(iv) information reasonably sufficient to permit the service provider to contact the complaining party, such as an address, telephone number, and, if available an electronic mail address at which the complaining party may be contacted;

"(v) a statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, or its agent, or the law; and

"(vi) a statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party has the authority to enforce the owner's rights that are claimed to be infringed.

"(B) A notification from the copyright owner or from a person authorized to act on behalf of the copyright owner that fails substantially to conform to the provisions of paragraph (3)(A) shall not be considered under paragraph (1)(A) in determining whether a service provider has actual knowledge or is aware of facts or circumstances from which infringing activity is apparent, provided that the provider promptly attempts to contact the complaining party or takes other reasonable steps to assist in the receipt of notice under paragraph (3)(A) when the notice is provided to the service provider's designated agent and substantially satisfies the provisions of paragraphs (3)(A) (ii), (iii), and (iv).

"(d) INFORMATION LOCATION TOOLS.—A service provider shall not be liable for monetary relief, or except as provided in subsection (j) for injunctive or other equitable relief, for infringement for the provider referring or linking users to an online location containing infringing material or activity by using information location tools, including a directory, index, reference, pointer or hypertext link, if the provider—

"(1) does not have actual knowledge that the material or activity is infringing or, in the absence of such actual knowledge, is not aware of facts or circumstances from which infringing activity is apparent;

"(2) does not receive a financial benefit directly attributable to the infringing activity, where the service provider has the right and ability to control such activity; and

"(3) responds expeditiously to remove or disable the reference or link upon notification of claimed infringement as described in subsection (c)(3); provided that for the purposes of this paragraph, the element in subsection (c)(3)(A)(iii) shall be identification of the reference or link, to material or activity claimed to be infringing, that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the service provider to locate such reference or link.

"(e) MISREPRESENTATIONS.—Any person who knowingly materially misrepresents under this section (1) that material or activity is infringing, or (2) that material or activity was removed or disabled by mistake or misidentification, shall be liable for any damages, including costs and attorneys' fees, incurred by the alleged infringer, by any copyright owner or copyright owner's authorized licensee, or by the service provider, who is injured by such misrepresentation, as the result of the service provider relying upon such misrepresentation in removing or disabling access to the material or activity claimed to be infringing, or in replacing the removed material or ceasing to disable access to it.

"(f) REPLACEMENT OF REMOVED OR DISABLED MATERIAL AND LIMITATION ON OTHER LIABILITY.—

"(1) Subject to paragraph (2) of this subsection, a service provider shall not be liable to any person for any claim based on the service provider's good faith disabling of access to, or removal of, material or activity claimed to be infringing or based on facts or circumstances from which infringing activity is apparent, regardless of whether the material or activity is ultimately determined to be infringing.

"(2) Paragraph (1) of this subsection shall not apply with respect to material residing at the direction of a subscriber of the service provider on a system or network controlled or operated by or for the service provider that is removed, or to which access is disabled by the service provider pursuant to a notice provided under subsection (c)(1)(C), unless the service provider—

"(A) takes reasonable steps promptly to notify the subscriber that it has removed or disabled access to the material;

"(B) upon receipt of a counter notice as described in paragraph (3), promptly provides the person who provided the notice under subsection (c)(1)(C) with a copy of the counter notice, and informs such person that it will replace the removed material or cease disabling access to it in ten business days; and

"(C) replaces the removed material and ceases disabling access to it not less than ten, nor more than fourteen, business days following receipt of the counter notice, unless its designated agent first receives notice from the person who submitted the notification under subsection (c)(1)(C) that such person has filed an action seeking a court order to restrain the subscriber from engaging in infringing activity relating to the material on the service provider's system or network.

"(3) To be effective under this subsection, a counter notification means any written communication provided to the service provider's designated agent that includes substantially the following:

"(A) a physical or electronic signature of the subscriber;

"(B) identification of the material that has been removed or to which access has been disabled and the location at which such material appeared before it was removed or access was disabled;

"(C) a statement under penalty of perjury that the subscriber has a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material to be removed or disabled;

"(D) the subscriber's name, address and telephone number, and a statement that the subscriber consents to the jurisdiction of Federal Court for the judicial district in which the address is located, or if the subscriber's address is outside of the United States, for any judicial district in which the service provider may be found, and that the subscriber will accept service of process from the person who provided notice under subsection (c)(1)(C) or agent of such person.

"(4) A service provider's compliance with paragraph (2) shall not subject the service provider to liability for copyright infringement with respect to the material identified in the notice provided under subsection (c)(1)(C).

"(g) IDENTIFICATION OF DIRECT INFRINGER.—The copyright owner or a person authorized to act on the owner's behalf may request an order for release of identification of an alleged infringer by filing (i) a copy of a notification described in subsection (c)(3)(A), including a proposed order, and (ii) a sworn declaration that the purpose of the order is to obtain the identity of an alleged infringer and that such information will only be used for the purpose of this title, with the clerk of any United States district court. The order shall authorize and order the service provider receiving the notification to disclose expeditiously to the copyright owner or person authorized by the copyright owner information sufficient to identify the alleged direct infringer of the material described in the notification to the extent such information is available to the service provider. The order shall be expeditiously issued if the accompanying notification satisfies the provisions of subsection (c)(3)(A) and the accompanying declaration is properly executed. Upon receipt of the order, either accompanying or subsequent to the receipt of a notification described in subsection (c)(3)(A), a service provider shall expeditiously give to the

copyright owner or person authorized by the copyright owner the information required by the order, notwithstanding any other provision of law and regardless of whether the service provider responds to the notification.

"(h) CONDITIONS FOR ELIGIBILITY.—

"(1) ACCOMMODATION OF TECHNOLOGY.—The limitations on liability established by this section shall apply only if the service provider—

"(A) has adopted and reasonably implemented, and informs subscribers of the service of, a policy for the termination of subscribers of the service who are repeat infringers; and

"(B) accommodates and does not interfere with standard technical measures as defined in this subsection.

"(2) DEFINITION.—As used in this section, "standard technical measures" are technical measures, used by copyright owners to identify or protect copyrighted works, that—

"(A) have been developed pursuant to a broad consensus of copyright owners and service providers in an open, fair, voluntary, multi-industry standards process;

"(B) are available to any person on reasonable and nondiscriminatory terms; and

"(C) do not impose substantial costs on service providers or substantial burdens on their systems or networks.

"(i) INJUNCTIONS.—The following rules shall apply in the case of any application for an injunction under section 502 against a service provider that is not subject to monetary remedies by operation of this section:

"(1) SCOPE OF RELIEF.—

"(A) With respect to conduct other than that which qualifies for the limitation on remedies as set forth in subsection (a), the court may only grant injunctive relief with respect to a service provider in one or more of the following forms:

"(i) an order restraining it from providing access to infringing material or activity residing at a particular online site on the provider's system or network;

"(ii) an order restraining it from providing access to an identified subscriber of the service provider's system or network who is engaging in infringing activity by terminating the specified accounts of such subscriber; or

"(iii) such other injunctive remedies as the court may consider necessary to prevent or restrain infringement of specified copyrighted material at a particular online location, provided that such remedies are the least burdensome to the service provider that are comparably effective for that purpose.

"(B) If the service provider qualifies for the limitation on remedies described in subsection (a), the court may only grant injunctive relief in one or both of the following forms:

"(i) an order restraining it from providing access to an identified subscriber of the service provider's system or network who is using the provider's service to engage in infringing activity by terminating the specified accounts of such subscriber; or

"(ii) an order restraining it from providing access, by taking specified reasonable steps to block access, to a specific, identified, foreign online location.

"(2) CONSIDERATIONS.—The court, in considering the relevant criteria for injunctive relief under applicable law, shall consider:

"(A) whether such an injunction, either alone or in combination with other such injunctions issued against the same service provider under this subsection, would significantly burden either the provider or the operation of the provider's system or network;

"(B) the magnitude of the harm likely to be suffered by the copyright owner in the digital network environment if steps are not taken to prevent or restrain the infringement;

"(C) whether implementation of such an injunction would be technically feasible and effective, and would not interfere with access to noninfringing material at other online locations; and

"(D) whether other less burdensome and comparably effective means of preventing or restraining access to the infringing material are available.

"(3) NOTICE AND EX PARTE ORDERS.—Injunctive relief under this subsection shall not be available without notice to the service provider and an opportunity for such provider to appear, except for orders ensuring the preservation of evidence or other orders having no material adverse effect on the operation of the service provider's communications network.

"(j) DEFINITIONS.—

"(1)(A) As used in subsection (a), the term "service provider" means an entity offering the transmission, routing or providing of connections for digital online communications, between or among points specified by a user, of material of the user's choosing, without modification to the content of the material as sent or received.

"(B) As used in any other subsection of this section, the term "service provider" means a provider of online services or network access, or the operator of facilities therefor, and includes an entity described in the preceding paragraph of this subsection.

"(2) As used in this section, the term "monetary relief" means damages, costs, attorneys' fees, and any other form of monetary payment.

"(k) OTHER DEFENSES NOT AFFECTED.—The failure of a service provider's conduct to qualify for limitation of liability under this section shall not bear adversely upon the consideration of a defense by the service provider that the service provider's conduct is not infringing under this title or any other defense.

"(l) PROTECTION OF PRIVACY.—Nothing in this section shall be construed to condition the applicability of subsections (a) through (d) on—

"(1) a service provider monitoring its service or affirmatively seeking facts indicating infringing activity except to the extent consistent with a standard technical measure complying with the provisions of subsection (h); or

"(2) a service provider accessing, removing, or disabling access to material where such conduct is prohibited by law.

"(m) RULE OF CONSTRUCTION.—Subsections (a), (b), (c), and (d) are intended to describe separate and distinct functions for purposes of analysis under this section. Whether a service provider qualifies for the limitation on liability in any one such subsection shall be based solely on the criteria in each such subsection and shall not affect a determination of whether such service provider qualifies for the limitations on liability under any other such subsection.".

SEC. 203. CONFORMING AMENDMENT.

The table of sections for chapter 5 of title 17, United States Code, is amended by adding at the end the following:

"512. Liability of service providers for online infringement of copyright.".

SEC. 204. LIABILITY OF EDUCATIONAL INSTITUTIONS FOR ONLINE INFRINGEMENT OF COPYRIGHT.

(a) Not later than six months after the date of enactment of this Act, the Register of Copyrights, after consultation with representatives of copyright owners and nonprofit educational institutions, shall submit to the Congress recommendations regarding the liability of nonprofit educational institutions for copyright infringement committed with the use of computer systems for which such an institution is a service provider, as that term is defined in section 512 of title 17, United States Code, (as amended by this Act), including recommendations for legislation the Register of Copyrights considers appropriate regarding such liability, if any.

(b) In formulating recommendations, the Register of Copyrights shall consider, where relevant—

(1) current law regarding the direct, vicarious, and contributory liability of nonprofit educational institutions for infringement by faculty, administrative employees, students, graduate students, and students who are employees of a nonprofit educational institution;

(2) other users of their computer systems for whom nonprofit educational institutions may be responsible;

(3) the unique nature of the relationship between nonprofit educational institutions and faculty;

(4) what policies nonprofit educational institutions should adopt regarding copyright infringement by users of their computer systems;

(5) what technological measures are available to monitor infringing uses;

(6) what monitoring of their computer systems by nonprofit educational institutions is appropriate;

(7) what due process nonprofit educational institutions should afford in disabling access by users of their computer systems who are alleged to have committed copyright infringement;

(8) what distinctions, if any, should be drawn between computer systems which may be accessed from outside the nonprofit educational systems, those which may not, and combinations thereof;

(9) the tradition of academic freedom; and

(10) such other issues relating to the liability of nonprofit educational institutions for copyright infringement committed with the use of computer systems for which such an institution is a service provider that the Register considers appropriate.

SEC. 205. EFFECTIVE DATE.

This title and the amendments made by this title shall take effect on the date of the enactment of this Act.

TITLE III—COMPUTER MAINTENANCE OR REPAIR

SEC. 301. LIMITATION ON EXCLUSIVE RIGHTS; COMPUTER PROGRAMS.

Section 117 of title 17, United States Code, is amended—

(1) by striking "Notwithstanding" and inserting the following:

"(a) MAKING OF ADDITIONAL COPY OR ADAPTATION BY OWNER OF COPY.—Notwithstanding";

(2) by striking "Any exact" and inserting the following:

"(b) LEASE, SALE, OR OTHER TRANSFER OF ADDITIONAL COPY OR ADAPTATION.—Any exact"; and

(3) by adding at the end the following new subsections:

"(c) MACHINE MAINTENANCE OR REPAIR.—Notwithstanding the provisions of section 106, it is not an infringement for an owner or lessee of a machine to make or authorize the making of a copy of a computer program if such copy is made solely by virtue of the activation of a machine that lawfully contains an authorized copy of the computer program, for purposes only of maintenance or repair of that machine, if—

"(1) such new copy is used in no other manner and is destroyed immediately after the maintenance or repair is completed; and

"(2) with respect to any computer program or part thereof that is not necessary for that

machine to be activated, such program or part thereof is not accessed or used other than to make such new copy by virtue of the activation of the machine.

"(d) DEFINITIONS.—For purposes of this section—

"(1) the 'maintenance' of a machine is the servicing of the machine in order to make it work in accordance with its original specifications and any changes to those specifications authorized for that machine; and

"(2) the 'repair' of a machine is the restoring of the machine to the state of working in accordance with its original specifications and any changes to those specifications authorized for that machine.".

TITLE IV—EPHEMERAL RECORDINGS; DISTANCE EDUCATION; EXEMPTION FOR LIBRARIES AND ARCHIVES

SEC. 401. EPHEMERAL RECORDINGS.

Section 112 of title 17, United States Code is amended by—

(1) redesignating section 112(a) as 112(a)(1), and renumbering sections 112(a) (1), (2), and (3) as sections 112(a)(1) (A), (B), and (C), respectively;

(2) in section 112(a)(1), after the reference to section 114(a), add the words "or for a transmitting organization that is a broadcast radio or television station licensed as such by the Federal Communications Commission that broadcasts a performance of a sound recording in a digital format on a nonsubscription basis,";

(3) adding new section 112(a)(2) as follows:

"(2) Where a transmitting organization entitled to make a copy or phonorecord under section 112(a)(1) in connection with the transmission to the public of a performance or display of a work pursuant to that section is prevented from making such copy or phonorecord by reason of the application by the copyright owner of technical measures that prevent the reproduction of the work, such copyright owner shall make available to the transmitting organization the necessary means for permitting the making of such copy or phonorecord within the meaning of that section, provided that it is technologically feasible and economically reasonable for the copyright owner to do so, and provided further that, if such copyright owner fails to do so in a timely manner in light of the transmitting organization's reasonable business requirements, the transmitting organization shall not be liable for a violation of section 1201(a)(1) of this title for engaging in such activities as are necessary to make such copies or phonorecords as permitted under section 112(a)(1).".

SEC. 402. LIMITATIONS ON EXCLUSIVE RIGHTS; DISTANCE EDUCATION.

(a) Not later than six months after the date of enactment of this Act, the Register of Copyrights, after consultation with representatives of copyright owners, nonprofit educational institutions and nonprofit libraries and archives, shall submit to the Congress recommendations on how to promote distance education through digital technologies, including interactive digital networks, while maintaining an appropriate balance between the rights of copyright owners and the needs of users. Such recommendations shall include any legislation the Register of Copyrights considers appropriate to achieve the foregoing objective.

(b) In formulating recommendations, the Register of Copyrights shall consider—

(1) the need for an exemption from exclusive rights for distance education through digital networks;

(2) the categories of works to be included under any distance education exemption;

(3) the extent of appropriate quantitative limitations on the portions of works that may be used under any distance education exemption;

(4) the parties who should be entitled to the benefits of any distance education exemption;

(5) the parties who should be designated as eligible recipients of distance education materials under any distance education exemption;

(6) whether and what types of technological measures can and/or should be employed to safeguard against unauthorized access to, and use or retention of, copyrighted materials as a condition to eligibility for any distance education exemption, including, in light of developing technological capabilities, the exemption set out in section 110(2);

(7) the extent to which the availability of licenses for the use of copyrighted works in distance education through interactive digital networks should be considered in assessing eligibility for any distance education exemption; and

(8) such other issues relating to distance education through interactive digital networks that the Register considers appropriate.

SEC. 403. EXEMPTION FOR LIBRARIES AND ARCHIVES.

Section 108 of title 17, United States Code, is amended—

(1) in subsection (a) by—

(A) striking "Notwithstanding" and inserting "Except as otherwise provided and notwithstanding";

(B) inserting after "no more than one copy of phonorecord of a work" the following: "except as provided in subsections (b) and (c),"; and

(C) by inserting after "copyright" in clause (3) the following: "if such notice appears on the copy or phonorecord that is reproduced under the provisions of this section, or a legend stating that the work may be protected by copyright if no such notice can be found on the copy or phonorecord that is reproduced under the provisions of this section";

(2) in subsection (b) by—

(A) striking "a copy or phonorecord" and inserting in lieu thereof "three copies or phonorecords";

(B) striking "in facsimile form"; and

(C) striking "if the copy or phonorecord reproduced is currently in the collections of the library or archives." and inserting in lieu thereof "if—

"(1) the copy or phonorecord reproduced is currently in the collections of the library or archives; and

"(2) any such copy or phonorecord that is reproduced in digital format is not otherwise distributed in that format and is not made available to the public outside the premises of the library or archives in that format."; and

(3) in subsection (c) by—

(A) striking "a copy or phonorecord" and inserting in lieu thereof "three copies or phonorecords";

(B) striking "in facsimile form";

(C) inserting "or if the existing format in which the work is stored has become obsolete," after "stolen,"; and

(D) striking "if the library or archives has, after a reasonable effort, determined that an unused replacement cannot be obtained at a fair price," and inserting in lieu thereof "if—

"(1) the library or archives has, after a reasonable effort, determined that an unused replacement cannot be obtained at a fair price; and

"(2) any such copy or phonorecord that is reproduced in digital format is not made available to the public in that format except for use on the premises of the library or archives in lawful possession of such copy.";

(E) adding at the end the following: "For purposes of this subsection, a format shall be considered obsolete if the machine or device necessary to render perceptible a work stored in that format is no longer manufactured or is no longer reasonably available in the commercial marketplace.".

Mr. HATCH. Mr. President, I move to reconsider the vote.

Mr. SMITH of Oregon. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Mississippi.

MORNING BUSINESS

Mr. COCHRAN. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business until 7 p.m., with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

TRIBUTE TO REAR ADMIRAL KENDELL PEASE, USN

Mr. LOTT. Mr. President, I want to recognize and honor Rear Admiral Kendell Pease, United States Navy, as he prepares to retire upon completion of more than 34 years of faithful service to our great nation.

A Boston native, Rear Admiral Pease grew up in Natick, Massachusetts, enlisted in the United States Navy in 1963 and was selected to attend the United States Naval Academy. Upon graduation in 1968, he was commissioned an Ensign and began a distinguished career as a Public Affairs Officer. He initially served in the Republic of Vietnam and had follow-on public affairs assignments in Charleston, South Carolina; Naples, Italy; and Norfolk, Virginia. He served as the Public Affairs Officer for the Navy's Atlantic Fleet, the Naval Academy, and was assigned to multiple tours in Washington including the Department of Defense, the On-Site Inspection Agency and the Department of the Navy.

Since 1992, Rear Admiral Pease served as the Navy's Chief of Information. In this capacity, he has been instrumental in educating the American public about the Navy's role in protecting American interests around the world. During his watch, he led hundreds of successful efforts to communicate Navy operations in areas from A to Z, Albania to Zaire, including Bosnia, the Persian Gulf and Somalia. He also deserves tremendous credit for his efforts to communicate the need for very important Navy programs such as the SEAWOLF and NSSN submarine programs; CVN 77 and CVX; DDG 51 and DD 21; and Super Hornet. He accomplished all of this while navigating the Navy through a number of contentious issues, earning deep respect for his style of aggressively and honestly communicating all of the facts.

Most significantly, Rear Admiral Pease served as a passionate advocate for the Sailors in the Fleet—the men and women who serve far from home

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