October 12, 1998

Now, it is true, that is down dramatically from the last year of the Bush administration, when the true deficit, instead of being $280 billion, was really $341 billion if you excluded the Social Security surplus. But if you exclude the Social Security surplus this year, instead of having a $70 billion surplus, you have a $35 billion deficit.

Some economists say, well, you really can't compare the two years together. Well, maybe that is why they are economists. I can tell you this: If you were running a company and you tried to take the retirement funds of your employees and throw those into the pot, you would be in big trouble because that is a violation of the law. It is called fraud. You cannot take the retirement funds of your employees, throw those into the pot, and say you have balanced your operating budget. But that is what is done with the Federal budget.

So I think it is important to understand that while it is true we have made enormous progress, we have come down dramatically with respect to the deficits, all against a backdrop of an unfunded Social Security surplus, we are balanced for the first time in 24 years. If we did not count the Social Security surplus, we would still have a deficit of $33 billion.

Mr. President, let me just conclude by saying, the fact is, when I hear our colleagues say, No. 1, President Clinton is responsible for our failure to have a budget. He has failed. It is absolutely true. There is not a Member of this body who does not understand the President does not have one thing to do with the budget resolution. The budget resolution is just that—it is a resolution by both Houses of Congress. It is our responsibility to pass a budget resolution, and this Congress has failed.

But for the first time in 24 years, there is no budget resolution. The Senate passed a budget resolution, but the Republicans in the House and the Republicans in the Senate could never agree, and so for months the appropriations bills were delayed. So here we are at the start of a new fiscal year—no budget, no appropriations bills, and we are sitting here wondering how it is going to end.

I think we know how it is going to end. Mr. President. It is going to end with a huge continuing resolution. There will probably be thousands of pages. There will probably be seven or eight appropriations bills all ginned into one package. And remember what Ronald Reagan said about that kind of process? He said in his 1987 State of the Union Address:

...the budget process is a sorry spectacle. The missing of deadlines and the nightmare of negotiators continuing resolutions costing hundreds of billions of dollars of spending into one bill must be stopped.

Our Republican friends in the House and the Senate must not have been listening to former President Reagan, because they have not stopped it. In fact, what they have done is, every year for the last 3 years that they have been in control of this Senate and the House, that is exactly what they have done. They failed to do their work on time and, instead, they have handed us a stack of thousands of pages in a continuing resolution, with no time to review it.

And Ronald Reagan said the very next year, on February 18, 1988, in his budget message:

...As I have stressed on numerous occasions, the current budget process is clearly unworkable and desperately needs a drastic overhaul. Last year, as in the year before, the Congress did not complete action on a budget until well past the beginning of the fiscal year. The Congress missed every deadline it had set for itself just 9 months earlier.

He could have been referring to this Congress, because this Congress has failed to meet every single budget deadline. In fact, for the first time in 24 years, they have passed no budget. Our colleagues across the aisle was talking about how a family operates. I do not know many families that never bother to come up with a budget, but that is exactly what has happened here under the leadership of our friends on the other side of the aisle. For the first time in 24 years, there is no budget—ever. That is exactly what the President's failure is. It is their failure.

President Reagan went on to say that Congress missed every deadline. He said, "In the end, the Congress passed a 'long, 11-month omnibus' appropriations bill with an accompanying conference report of over 1400 pages and a reconciliation bill over 1400 pages long."

President Reagan said:

Members of Congress had only 3 hours to consider all three items. Congress should not pass another massive continuing resolution [President Reagan said in 1988].

He went on to say:

—and as I said in the State of the Union Address, if they do, I will not sign it.

What a difference 10 years makes. 10 years ago, a Republican President said there should not be another continuing resolution. But here we are with a Republican-controlled Congress who has failed to even write a budget. That is the most basic responsibility of any Congress, to write a budget. This Congress, under Republican control, has failed in that most basic duty for the first time in 24 years. Why? Because the Republicans in the U.S. Senate who did pass a budget resolution—we passed it on a bipartisan basis—could never get together with the Republicans in the House of Representatives. So what we have is a colossal failure.

I don't know how else to say it, but this is mismanagement on a grand scale. I hope you won't underestimate what the record is because it does make a difference. America has enjoyed unprecedented prosperity in the last 5 years. I believe that I have become in significant part because of an economic plan that was passed in 1993, the 5-year budget plan, that actually did the job. It reduced the budget each and every year. I will show the comparison chart again.

It reduced the budget each and every year since it was passed. When President Bush left town, he had a $230 billion deficit. When he returned to Washington, he had a $230 billion surplus. That is how the Social Security surplus was reduced. It was reduced by the agreement that was reached with the Democrats across the aisle to agree to a unified continuing resolution. They failed to meet every deadline. That was the only way they could do it. And how did it happen? President Clinton came in and, in each and every year after we passed that 1993 plan, the deficit has come down. So now we have a $70 billion surplus.

Again, I am quick to say I don't consider this a surplus because it is counting the Social Security surplus. Nonetheless, dramatic progress has been made in reducing the deficit. That has given rise to the strongest economy in almost anyone's memory.

Our friends on the other side who are now in control are responsible for a dramatic failure, a failure to write a budget for the United States of America.

The result is, here we are, the new fiscal year has started, we have no budget. If you don't make a budget, if you don't pass a budget, if you don't work on a budget, if you don't pass it, we will all be rolled into a stack of paper that will be probably 3 feet high, it will be slammed on our desks, and we will be told to vote on it 3 hours later.

What a way to govern. What a way to manage.

It is not Bill Clinton's fault that no budget was written here. A budget resolution is the distinct responsibility of the Congress. This Congress has failed. I yield the floor.

MAKING FURTHER CONTINUING APPROPRIATIONS FOR FISCAL YEAR 1989

The PRESIDING OFFICER. Under the previous order, H.J. Res 134, received today from the House, is deemed as passed.

The joint resolution (H.J. Res 134) was considered read the third time and passed.

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

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

[PROCEEDINGS OFFICER (Mr. JEFFORDS). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

[HOUSE-PASSAGE OF THE DIGITAL MILLENNIUM COPYRIGHT ACT CONFERENCE REPORT]

Mr. HATCH. Mr. President, last Thursday the Senate approved, by unanimous consent, the conference report on H.R. 281, the Digital Millennium Copyright Act (DMCA). I rose today to laud the House's action in adding its vote of approval to that of the Senate. The bill now goes to the President, who I expect will move
swiftly to sign this important legislation into law.

As I said last Thursday, and on many other occasions, I believe the DMCA is one of the most important pieces of legislation the Congress will consider this Congress, and it is important that the law have a critical structure in our nation's transition to a "digital millennium."

But all this would not have happened without the critical support of countless parties who have come together in negotiations to refine the bill and reach a compromise that best promotes American interests at home and abroad. Once again, I want to thank all of the conferences who participated in bringing this legislation to closure.

In particular, I want to recognize the efforts of the members on the Senate side, Senator LEAHY and Senator THURMOND. I also want to convey my appreciation for the dedicated efforts of Congressman HENRY HUDO, the distinguished Chairman of the House Judiciary Committee, and Congressman JOHN CONyers, the distinguished Ranking Member of the House Judiciary Committee, and Congressman HOWARD COBLE, the distinguished Chairman of the House Subcommittee on Courts and Intellectual Property. They have been committed to seeing this bill through from beginning to end, undeterred by other pressing business that has occupied the House Judiciary Committee in recent weeks. I also want to recognize Congressman TOM BILEY, the distinguished Chairman of the Commerce Committee, for his willingness to consider the Senate's views objectively and dispassionately.

I want to acknowledge once again the hard work done by staff. In particular I want to recognize the efforts of Manus Cooney, Edward Daniel, and Mary Schwartz, whose long hours and tireless efforts were key to guiding this bill through every stage of the legislative process. Bruce Cohen, Beryl Howell, and Maria Grossman, of Senator LEAHY's staff, likewise provided invaluable assistance on all levels. I also want to thank Garry Malphrus of Senator THURMOND's staff for his work in conference, as well as Paul Cleminti and Bartlett Claxton, of Senator ASHCROFT's staff for their invaluable assistance in reaching key compromises in the Judiciary Committee. Finally, I want to thank the House staff, including Mitch Glazier, Debra Laman, Robert Rabin, David Lehman, Bari Schwartz, Justin Lilley, Andrew Levin, Mike O'Reilly, and Whitney Page.

I also want to recognize the long hours and persistent dedication of the many people who engaged in hard-fought, fruitful, private-sector negotiations on related issues. Many of the compromises embodied in this legislation would not have been reached without the support of these parties. For example, we would not be passing this legislation in a form that today at all were it not for the willingness of the copyright industries, Internet service providers, educators, librarians, and others to use their creative energy to come together at the direction and under the supervision of the Judiciary Committee to arrive at a consensus position regarding standards for making the transition to the information age and the shifting reliance of Internet service providers.

Many other negotiations were conducted and agreements reached that made this legislation possible, including agreements between copyright owners and manufacturers of the consumer electronics devices that make the use of their works by the public possible. One such agreement reflects the understanding of the motion picture industry and consumer electronics manufacturers regarding standards for the incorporation of certain copyright protection technologies in analog videocassette recorders. This agreement was the basis for the new section 1201(k) of the Copyright Act, as added by the Digital Millennium Copyright Act, 1998. These agreements require manufacturers of analog videocassette recorders to accommodate specific copy control technologies in analog videocassette recorders. The Digital Millennium Copyright Act, 1998, makes this technology available in the marketplace for the first time.
inter-industry forum that is being established. We have been assured that this forum will be established within six months after passage of this legislation and will include equal representation from the consumer electronics, computer, and movie studio industries.

With regard to our licensing terms, we commit to you and your colleagues that we will from the date of enactment adhere to the standards of non-discriminatory treatment that are reflected in our current licensing policies. First, as stated above, our proprietary analog copy protection technology will be offered on reasonable and non-discriminatory terms, as that phrase is used in the normal industry practice. Second, in relation to certain specific circumstances:

(a) Manufacturers of consumer-grade analog VHS and 8mm analog video cassette recorders, to the extent that they are required by the legislation to conform to our proprietary analog copy protection technology (and any new development made necessary by a twelve-month reconsideration record that is covered by paragraph (b)(1)(A)(v) of the legislation and thereby required to conform to our proprietary analog copy control technologies) will be provided royalty-free licenses for the use of our relevant intellectual property in any device that plays back a prerecorded master content item or that reads and responds to or generates or carries forward the elements of these technologies as a consequence of its installation.

(b) In the same circumstances as described in (a), other manufacturers of devices that generate, carry forward, and/or read and reproduce the elements of class technologies will be provided with licenses carrying only modest fees (in the current dollar range of fifty dollars for initial payment and lesser amounts as recurring annual fees).

(c) Manufacturers of other products, including set-top-boxes and other devices that perform similar functions (including integrated devices containing such functionality), will be provided with licenses on reasonable and non-discriminatory terms, including royalty and other considerations.

In the absence of the specific attached legislative and explanatory language, Macrovision would have made the above referenced commitments regarding our non-discriminatory terms and other contract clauses on VCR responsiveness and playability issues. We very much appreciate the work of you and your staff in drafting the legislation and, hopefully, ultimately enacting this legislation.

We also appreciate and acknowledge the leadership and cooperation of certain companies and individuals in getting this proposal to this point.

I understand that this letter will be incorporated into the official report of the Conference Committee and that the Conference is relying on our representation herein. If you or other members of the Conference have any questions or need any clarification on any point, please do not hesitate to contact me, or have one of your staff contact me.

Sincerely,

WILLIAM A. KRIPKE
President/COO

SONNY BONO COPYRIGHT TERM EXTENSION ACT

Mr. HATCH. Mr. President, I am delighted at the recent passage of S. 855, the Sonny Bono Copyright Term Extension Act. The main purpose of the bill is to ensure adequate copyright protection for works created by extending the U.S. term of copyright protection for an additional 20 years. The late Sonny Bono was an avid supporter of the bill, and he fully appreciated what its passage would mean to the American economy. It is therefore an appropriate memorial to this fine American. Eight years ago, the President, Congress fundamentally altered the way in which the U.S. calculates its term of copyright protection by abandoning a fixed-year term of protection and adopting a single life-plus-term protection based on the life of the author. In adopting the life-plus-50 term, Congress cited three primary justifications for the change: (1) the need to conform the U.S. copyright term with the prevailing worldwide standard; (2) the insufficiency of the U.S. copyright term to provide a fair economic return for authors and their dependents; and, (3) the failure of the U.S. copyright term to keep pace with the substantially increased commercial life of copyrighted works resulting from the rapid growth in nonlinear and new forms of content creation.

Developments over the past 20 years have led to a widespread reevaluation of the adequacy of the life-plus-70-year term as a fair measure of those same economic conditions. Among the main developments is the effect of demographic trends, such as increasing longevity and the trend toward rearing children later in life, on the effectiveness of the life-plus-70 term to provide adequate protection for American creators and their heirs. In addition, unprecedented growth in the technology over the last 20 years, including the advent of digital media and the development of the national Information Infrastructure and the Internet, have dramatically enhanced the marketable lives of creative works. Most importantly, though, is the growing international movement towards the adoption the longer term of life-of-author plus 70 years.

Thirty-five years ago, the Permanent Committee of the Berne Union began to reexamine the sufficiency of the life-plus-70-year term. Since then, a growing consensus of the inadequacy of the life-plus-70 term to protect creators in an increasingly competitive global marketplace has led to actions by several nations to increase the duration of copyright. Of particular importance is the 1993 directive issued by the European Union, which requires its member countries to implement a term of protection equal to the life of the author plus 70 years by July 1, 1995.

According to the Copyright Office, all the states of the European Union have now brought their laws in compliance with the directive. And, as the Register of Copyrights has stated, those countries that are seeking to join the European Union, including Poland, Hungary, Turkey, the Czech Republic, and Bulgaria, are likely, as well, to amend their copyright laws to conform with the life-plus-70 standard.

The reason this is of such importance to the United States is that the EU Directive also mandates the application of the rule of reasonable terms. This rule may also be applied by adherents to the Berne Convention and the Universal Copyright Convention. In short, this rule requires countries with longer copyright terms to limit protection of foreign works to the shorter term of protection granted in the country of origin. Thus, in those countries that adopt the longer term of life-plus-70, American works will forfeit 20 years of protection in those countries if the U.S. does not extend the term to provide adequate protection instead for only the duration of the life-plus-70 term afforded under U.S. law.

Mr. President, as I've said previously, copyright industries export more copyrighted intellectual property than any country in the world, a huge percentage of it to nations of the European Union. In fact, in 1996, the core U.S. copyright industries achieved foreign sales and exports exceeding $60 billion, surpassing for the first time, every other export sector, including automotive, agriculture and aircraft. And, according to 1996 estimates, core copyright industries employed more workers than any single manufacturing sector, accounting for over 5 percent of the total U.S. workforce. In fact, in 1996, the total copyright industries employed more workers than the four leading noncopyright manufacturing sectors combined.

Clearly, Mr. President, America stands to lose a significant part of its international trading advantage if our copyright laws do not keep pace with emerging international standards. Given the mandated application of the "rule of the shorter term" under the EU Directive in member nations of the EU, it is critical that we extend the copyright protection of American works into the public domain 20 years before those of our European trading partners, undercutting our international trading position and depriving copyright owners of two decades of income they might otherwise have. Similar consequences will follow in those nations outside the EU that choose to extend the "rule of the shorter term" under the Berne Convention and the Universal Copyright Convention.

The public performance of musical works is one of the copyright rights that the legislation seeks to extend. But, ironically—and in title II of the bill, Mr. President, we are cutting back on that right by expanding the exemption that currently exists in the Copyright Act for certain establishments. Because of the public performance right, businesses that use music to attract customers are required to obtain a license. The licenses can be obtained from the performing rights organizations (PROs), namely, ASCAP, BMI, and SESAC. The PROs, in turn, pay the owners of copyright in

HeinOnline -- 5 William H. Manz, Federal Copyright Law: The Legislative Histories of the Major Enactments of the 105th Congress S12377 1999
Document No. 125