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DIGITAL MILLENNIUM COPYRIGHT ACT—CONFERENCE REPORT

Mr. HATCH. Mr. President, I submit a report of the committee of conference on the bill (H.R. 2281) amend title 17, United States Code, to implement the World Intellectual Property Organization Copyright Treaty and Performance and Phonograms Treaty, and for other purposes, and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The assistant legislative clerk read as follows:

The committee on conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2281), have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of October 8, 1998.)

Mr. KOHL. Mr. President, I rise to express my support for the Conference Report on the Digital Millennium Copyright Act (H.R. 2281). 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—and to limit, in a balanced and thoughtful way, the infringement liability of online service providers. 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.

And foreign piracy is just 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, combined, normally sell for about $100. Indeed, the manager was so brazen about it, he even agreed to give out 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 (in the 101st Congress), which in principle has been incorporated into this measure. And I was one of the cosponsors of the original proposed WIPO implementing legislation, the preliminary version of this proposal.

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 virtually every major concern raised during that process was addressed.

Unfortunately, however, the Conference dropped what I believe were crucial protections for databases. It is my understanding, though, that the Committee will be "fast tracking" consideration of database protection next Congress. I look forward to working with Chairman HATCH to move forward on this matter early next year.

In sum, Mr. President, I am confident that this bill will reduce piracy and strengthen one of our biggest export industries. It deserves our support and the President's signature.

Mr. ASHCROFT. Mr. President, I rise in support of the conference report on H.R. 2281, a bill to implement the World Intellectual Property Organization copyright treaties. I am pleased that the final product of the many months of negotiations has produced a bill of appropriate scope and balance, and reflects many of the priorities I established through the introduction of my own bill to implement the WIPO copyright treaties, to begin updating the Copyright Act for the digital era, and to address the potential problem of on-line servicer liability.

First, with respect to "fair use," the conferees adopted an alternative to section 1201(a)(1) that would authorize the Librarian of Congress to selectively waive the prohibition against the act of circumvention to prevent a diminution in the availability to individual users (including institutions) of a particular category of copyrighted materials. As originally proposed by the Administration and adopted by the Senate, this section would have established a flat prohibition on the circumvention of technological protection measures to gain access to works for any purpose, and thus raised the specter of moving our Nation towards a "pay-per-use" society. Under the compromise embodied in the conference report, the Librarian of Congress would have authority to address the concerns of libraries, educational institutions, and other information consumers potentially threatened with a denial of access to categories of works in circumstances that otherwise would be lawful today. I trust that the Librarian of Congress will implement this provision in a way that will ensure information consumers may exercise their centuries-old fair use privilege to continue to gain access to copyrighted works.

Second, the conferees made an important contribution by clarifying the "no mandate" provision of the bill. Because the conference report is silent, I thought that I should explain this provision in some detail. As my colleagues may recall, I had been very concerned that S. 2037 could be interpreted as a mandate on product manufacturers to design products so as to affirmatively

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

respond to or accommodate technological protection measures that copyright owners might use to deny access to or the copying of their works. To address this potential problem, I authored an amendment providing that nothing in the bill required 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. The amendment reflected my belief that product manufacturers should remain free to design and produce the best, most advanced consumer electronics, telecommunications, and computing products without the threat of incurring liability for their design decisions. Creative engineers—not risk-averse lawyers—should be principally responsible for product design. As important, the amendment reflected the working assumption of all of my colleagues that this bill is aimed fundamentally at so-called "black boxes" and not at legitimate products that have substantial noninfringing uses.

As my colleagues know, there had been some concern expressed that the "so long as" clause of section 1201(c)(3) made the provision appear to be circular in its logic. In other words, there was concern that the entire provision could be read to provide in essence that manufacturers were not under any design mandate to respond to technological measures, as long as they "otherwise" designed their devices to respond to existing technological measures. I never shared that perspective. To eliminate any uncertainty, the House Commerce Committee simply deleted the "so long as" clause. As I explained on the floor in September, that change merely confirmed my original conception of the amendment. Now that the conferees have adopted a provision requiring certain analog videocassette recorders to respond to certain existing analog protection measures, the "so long as" clause has a meaning that all should agree is logical: Manufacturers of consumer electronics, telecommunications, and computer products are not under a design mandate generally, but they are otherwise subject to a single, very limited, and carefully defined mandate to design certain analog videocassette recorders to respond to existing analog protection measures. Quite importantly from my perspective, this provision is limited so as not to impair the reasonable and accustomed home taping practices of consumers recognized in the Supreme Court's Betamax decision.

It thus should be about as clear as can be to a judge or jury that, unless otherwise specified, nothing in this legislation should be interpreted to limit manufacturers of legitimate products with substantial noninfringing uses—such as VCRs and personal computers—in making fundamental design decision or revisions, whether in selecting certain components over others or in choosing particular combinations of parts.

Third, I am pleased to see that the conferees have addressed the device "playability" problem. As I pointed out in my floor speech just prior to final passage of S. 2037, "playability" problems may arise at two levels. Technological measures may cause noticeable and recurring adverse effects on the normal operation of products, and thus adjustments may be necessary at the factory levels to ensure consumers get what they expect. In addition, adjustments to specific products may be necessary after sale to a consumer to maintain their normal, authorized functioning. Subsequently, I was pleased to see that the Commerce Committee's report explicitly reaffirmed my interpretation.

I also was pleased that the conferees shared my perspective on encouraging all interested parties to strive to work together through a consultative approach before new technological measures are introduced in the market. As the conferees pointed out, one of the benefits of such consultations is to allow the testing of proposed technologies to determine whether they create playability problems, and to have an opportunity to take steps to eliminate or substantially mitigate such adverse effects before new technologies are introduced. As the conferees recognized, however, persons may choose to implement a new technological measure (or copyright management information system) without vetting it through an inter-industry consultative process, or without regard to the input of the affected parties.

Whether introduced unilaterally or developed with the input of experts in the field, a new protection technology coming to market might materially degrade or otherwise cause recurring appreciable adverse effects on the authorized performance or display of works. Given the multiplicity of ways in which devices might be interconnected, some playability problems may not be foreseeable. I was thus pleased that the conference report unambiguously provides that manufacturers and persons servicing popular consumer electronics, telecommunications, or computing products who make product adjustments solely to mitigate a playability problem—whether or not taken in combination with other lawful product modifications—shall not be deemed to have violated either section 1201(a) or section 1201(b). Having heard directly from a major trade association representing professional servicers, I am pleased we could include such strong language so that they can go about their business without fear of facing crippling liability.

Fourth, the conferees adopted specific provisions making it clear that the bill is not intended to prohibit legitimate encryption research or security systems testing. As my colleagues know, Senators BURNS, LEAHY, and I have lead the effort in the Senate to ensure that U.S. business can develop and export world-class encryption products. by explicitly fashioning an affirmative encryption research defense, the conferees made an important contribution to our overall efforts to ensure that U.S. industry remains at the forefront in developing secure encryption methods. In addition, by including a security system testing amendment, the conferees have confirmed that professional consultants and other well-established, responsible corporate citizens can survey and test IT security systems for vulnerabilities.

Finally, the conferees built on my efforts to ensure that this legislation would not harm the efforts of consumers to protect their personal privacy by including two important amendments proposed by the House Commerce Committee. The first amendment would create incentives for website operators to disclose whenever they use technological measures that have the capability to gather personal data, and to give consumers a means of disabling them. The second amendment strengthened section 1202 of this legislation by making explicit that the term "copyright management information" does not include "any personally identifying information about a user of a work or a copy, phonorecord, performance, or display of a work." In my view, these amendments will help preserve the critical balance that we must maintain between the interests of copyright owners and the privacy interests of information users.

We should all be gratified that so much has been done to appropriately calibrate the WIPO copyright treaties implementing legislation. Each of us, working alone, would undoubtedly have produced a different bill. But we have a good bill, perhaps one more balanced and limited in scope than might have been thought possible at times throughout the debate. I therefore urge my colleagues to vote in favor of the conference report.

Mr. THURMOND. Mr. President, I wish to express my strong support for the Conference Report to the Digital Millennium Copyright Act. As one of the conferees, I believe this bill represents a fair compromise between the House and Senate versions of this most significant legislation.

Intellectual property is an increasingly important part of the American economy. This bill recognizes the significance of our copyright laws as America and the world have become increasingly computerized. The Internet is rapidly changing our lives, and our copyright laws must keep pace.

This legislation implements the WIPO treaties to help protect the property rights of the creative community in our global environment. It also clarifies the liability of on-line and Internet service providers regarding their liability for copyright infringement and permits fair use of works. Together, these provisions do a great deal

to accommodate the interests of the owners of copyrighted works with those who use or facilitate the use of those works in the digital age.

A final title of the bill is the Vessel Hull Design Protection Act. Although it was not part of the Senate version of the legislation, it was accepted at conference. I share Senator HATCH's concerns about this controversial title. It contains not only industrial design protection, which itself has created controversy in the past because of its impact on consumers and others, but it protects functionality of vessel hulls in addition to aesthetic aspects. It is my understanding that functionality is protected from copying through patent, and this title is a significant departure from that principle, although for a specific narrow area.

Also, I wish to note that although data base protection is not included in this bill, I think it is important that we make every effort to address this significant issue next year.

In closing, I wish to thank the Chairman of the conference, Senator HATCH, and all of the other members of the conference for their cooperation in resolving this matter. I am very pleased with the outcome.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I ask unanimous consent the conference report be agreed to, the motion to reconsider be laid upon the table, and that any statements relating to the conference report be printed in the RECORD.

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

The conference report was agreed to.

Mr. HATCH. Mr. President, in the wining days of a Congress, so many important measures need attention that the significance of individual bills is often not appreciated. This is even more true for a bill that has copyright as its subject matter, such as the Digital Millennium Copyright Act, the conference report which passed the Senate today by unanimous consent. But the DMCA is one of the most important bills passed this session, as the distinguished majority leader stated yesterday,

"Digital Millennium" may seem grandiose, but in fact it accurately describes the purpose of the bill—to set copyright law up to meet the promise and the challenge of the digital world in the new millennium. Digital "world" is appropriate here, because the Internet has made it possible for information—including valuable American copyrighted works—to flow around the globe in a matter of hours, and Internet end users can receive copies of movies, music, software, video games and literary and graphic works that are as good as the originals. Indeed, the initial impetus for the DMCA was the implementation of the World Intellectual Property Organization (WIPO) treaties on copyright and on performances and phonorecords.

The WIPO treaties and the DMCA will protect the property rights of Americans in their work as they move in the global, digital marketplace, and, by doing so, continue to encourage the creation of new works to inspire and delight us and to improve the quality of our lives.

In addition to securing copyright in the global, digital environment, the DMCA also clarifies the liability of online and Internet service providers—OSPs and ISPs—for copyright infringement liability. The OSPs and ISPs needed more certainty in this area in order to attract the substantial investments necessary to continue the expansion and upgrading of the Internet.

The final component of the DMCA is the Vessel Hull Design Protection, Act (VHDPA). This legislation was not part of the Senate-passed version of the DMCA; rather, it was accepted by the Senate conferees in deference to the House of Representatives. Although I support the idea of industrial design protection as a legal regime outside of patent law, I appreciate how controversial it is, and I think that the Senate should act circumspectly. Furthermore, I am concerned that this bill is not like traditional industrial design protection in that the VHDPA protects the functionality of vessel hulls, not only its aesthetic aspects.

But because the VHDPA is limited only to boat hulls, I felt that I could acquiesce in including it in the conference report as a limited experiment in design protection. In order to make it truly experimental, I suggested, and the conferees adopted, modifications that "sunset" the bill two years after enactment and that require two studies of its effect. Therefore, in the future, we will be able to re-evaluate the Act, and we will have the benefit of two studies—both of them conducted jointly by the Register of Copyrights and the Commissioner of Patents and Trademarks—to help us make the right decision.

In the nearer future—early in the next session—I intend to focus my attention on database protection legislation. The House bill on this issue, which was attached by the House to the WIPO implementation legislation, was a good start toward tackling the problem of database piracy. It was quite controversial, however, so I asked the parties to sit down with me to work out a compromise bill, so that disagreements on database protection would not jeopardize the DMCA. This effort resulted in a bill draft that attempted to accommodate the diverging interests. The scientific research community, in particular, favored my approach because it allayed many of their fears that recognizing a property right in databases would hamper scientific research.

Neither the House bill nor my proposal was accepted by the conferees, but I am determined to work on this issue in the next Congress. Indeed, I intend to introduce a bill based on my proposal, have a hearing on database protection, and move database legislation as quickly as possible. We need to encourage the substantial investment of money, time and labor that it takes to gather and organize information and at the same time address the reasonable concerns of information users. In our global, high tech era, information will be the coin of the realm, and I see database protection as the next step in moving the law into the digital millennium.

In closing, I would like to recognize the many people who brought this bill to a successful conclusion. First, I would like to thank my colleague, Senator PATRICK LEAHY, the distinguished ranking member of the Judiciary Committee, who was of invaluable assistance in getting this important piece of legislation passed. Two other distinguished colleagues, Senator STORM THURMOND and Senator JOHN ASHCROFT, participated in the refining process that made the DMCA a better bill.

Second, I want to thank the House conferees, especially Congressman HENRY HYDE, the distinguished chairman of the Judiciary Committee, Congressman HOWARD COBLE, the distinguished chairman of the Subcommittee on Courts and Intellectual Property, and Congressman TOM BLILEY, the distinguished chairman of the Commerce Committee for their willingness to consider the Senate's views objectively and dispassionately. They too wanted to get this done, and it was the spirit of cooperation on both sides that produced this admirable result.

Finally, I would like to acknowledge the hard work done by the Senate and House staffs. There were so many who worked on this bill that it would take a column of the CONGRESSIONAL RECORD to list them. But I would like to mention just a few. Manus Cooney, the staff director and chief counsel of the Senate Judiciary Committee, was the staff pilot for the DMCA. He was ably assisted by Edward Damich, Chief Intellectual Property Counsel of the Committee, and Staff Assistant Troy Dow. Senator THURMOND was ably assisted in the conference committee by his Judiciary Committee Counsel, Garry Malphus.

Bruce Cohen, Minority Chief Counsel and Staff Director of the Judiciary Committee, Beryl Howell, Minority General Counsel, and Marla Grossman, Minority Counsel, provided invaluable assistance on all levels. We had superb cooperation from the minority, and the DMCA is truly a bipartisan bill.

Turning to the House side, I want to express my appreciation for the contributions of Mitch Glazier, Chief Counsel of the Subcommittee on Courts and Intellectual Property, Debra Laman, Counsel of the Subcommittee, Robert Raben, Minority Counsel of the Subcommittee, Justin Lilley, General Counsel of the Commerce Committee, and Andrew Levin, Minority Counsel of that Committee.

Mr. President, this bill, the Digital Millennium Copyright Act, is one of the most important bills in this whole Congress. It has taken a tremendous amount of effort from all of us to be able to put this together. It is going to make a difference in so many ways—in the protection of copyrighted works, in digital communication and otherwise—throughout the world, that I feel very, very happy to be able to say that this is being enacted into law at this particular point.

I would like to state my agreement with certain important points that Senator LEAHY made in his remarks about Section 1201(k), "Certain Analog Devices and Certain Technological Measures." The Senator emphasized that that section establishes requirements only for analog videocassette recorders, analog videocassette camcorders and professional analog videocassette recorders. It is also my understanding that the intent of the conferees is that these provisions apply only to analog video recording devices.

In addition, because innovation and technological development thrive in unregulated environments, this section should not be misconstrued as providing any impetus or precedent for regulating or otherwise dictating to the computer software industry technological standards. I agree fully with the assessment of the conferees that technology develops best and most rapidly in response to marketplace forces. For these reasons, this section applies to analog technologies only, and it is entirely without prejudice to digital technologies.

Let me just say that I am disappointed that we were not able to include database protection in this bill this year. There are so many people who would like to have that done, on the floor and in the business world and elsewhere, but we were unable to get it done because of objections and because of some dissent. But I would like to put everybody on notice that, shortly after we get back next year, I will file a database protection bill. I believe my colleague from Vermont will join me in this. That, hopefully, will be a bill that everybody can support, because it is absolutely critical that we get this done.

It will be one of the highest orders of priority that we will have on the Senate Judiciary Committee next year. It was one of the things that I feel disappointed we were unable to get done on this particular bill. It just could not be done at this time. I know there are people who are disappointed, but we will get it done next year—we will do everything we can to get it done, and I hope we can call upon industry and everyone else interested in this issue throughout the country to help us in this matter. I hope our colleagues will, because it is very, very important.

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER (Mr. HAGEL). The Senator from Vermont.

Mr. LEAHY. Mr. President, America's founders recognized and valued the creativity of this nation's citizens to such an extent that intellectual property rights are rooted in the Constitution. Article I, Section 8, Clause 8 of the Constitution states that

> The Congress shall have power . . . [t]o promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.

The Continental Congress proclaimed,

> Nothing is more properly a man's own than the fruit of his study."

Protecting intellectual property rights is just as important today as it was when America was a fledgling nation.

It is for this reason I am pleased that the Senate has today passed the Conference Report on the Digital Millennium Copyright Act (DMCA), H.R. 2281.

Title I of the DMCA will implement the two World Intellectual Property Organization (WIPO) copyright treaties. These treaties will fortify intellectual property rights around the world and will help unleash the full potential of America's most creative industries, including the computer software, publishing, movie, recording and other copyrighted industries that are subject to online piracy. By insuring better protection of the creative works available online, the DMCA will also encourage the continued growth of the Internet and the global information infrastructure. It will encourage the ingenuity of the American people, and will send a powerful message to intellectual property pirates that we will not tolerate theft.

I should note that there are provisions in Title I that address certain technologies used to control copying of motion pictures in analog form on video cassette recorders which were not part of either the original Senate or House DMCA bills. These provisions establish certain requirements only for analog videocassette recorders, analog videocassette camcorders and professional analog videocassette recorders. It is my understanding that these provisions do not establish any obligations with respect to digital technologies, including computers or software.

It is also my understanding that the intent of the conferees is that these provisions neither establish, nor should be interpreted as establishing, a precedent for Congress to legislate specific standards or specific technologies to be used as technological protection measures, particularly with respect to computers and software. Generally, Congress should not establish technology specific rules; technology develops best and most rapidly in response to marketplace forces.

Title II of the DMCA will limit the infringement liability of online service providers. This title is intended to preserve incentives for online service providers and copyright owners to cooperate to detect and address copyright infringements that occur in the digital networked environment.

Title III will provide a minor, yet important, clarification in section 117 of the Copyright Act to ensure that the lawful owner or lessee of a computer machine may authorize an independent service provider, a person unaffiliated with either the owner or lessee of the machine, to activate the machine for the sole purpose of servicing its hardware components.

Title IV will begin to update our nation's copyright laws with respect to library, archives, and educational uses of copyrighted works in a digital environment. It includes provisions relating to the Commissioner of Patents and Trademarks and the Register of Copyrights, and clarifies the role of the Copyright Office. It also addresses the assumption of contractual obligations related to the transfer of rights in motion pictures. Finally, this title creates a fair and efficient licensing mechanism to address the complex issues facing copyright owners and users of copyrighted materials as a result of the rapid growth of digital audio services.

Title V, the "Vessel Hull Design Protection Act," creates a new form of sui generis intellectual property protection for vessel hull designs. By adoption of this title, however, the Conferees wisely took no position on the advisability or propriety of adopting broader design protection for other useful articles. Indeed, when broad industrial design legislation was considered by the Congress in the late 1980s and early 1990s, a number of legitimate concerns were raised about the effects such legislation would have, particularly on the cost of auto repairs. Establishing narrow protection for vessel hulls in the conference report should not be interpreted as signaling support, or setting a precedent, for broader design protection that could negatively affect the ability of consumers to obtain economical, quality auto repairs.

The Senate today is passing a balanced and important package. Certain issues that the House had included in the version it passed on August 4, 1998, were eliminated to allow consideration of the rest of the package in a timely manner.

One of the issues dropped was that of database protection. Title V of the House passed DMCA bill created a new federal prohibition against the misappropriation of databases that are the product of substantial investment, with both civil remedies and criminal penalties. The argument for enhanced database protection is that legal rulings and technological developments have eroded protections against database theft. Companies may be able to copy significant portions of established databases and sell them, avoiding the substantial cost of creating and verifying the databases themselves. I appreciate that the threat to U.S. databases has been magnified because database protection laws recently implemented in European Union countries will not be available to U.S. publishers unless comparable legislation is enacted in the U.S.

I have therefore been and continue to be supportive of legislation to provide database producers with adequate protection from database piracy.

I am also sensitive, however, to the concerns about the House-passed database bill that were raised by the Administration, the libraries, certain educational institutions, and the scientific community. The Department of Justice, in a memorandum dated July 28, 1998, concluded that the House passed database bill, H.R. 2652, which was later incorporated in Title V of the House DMCA, raised difficult and novel constitutional questions.

The Department of Commerce has also advised me that while the Administration supports legal protection against commercial misappropriation of collections of information, the Administration has a number of concerns with H.R. 2652, including that the Constitution imposes significant constraints upon Congress' power to enact legislation of this sort.

Just this week, the Department of Commerce told me in a letter that:

Given the critical importance of implementing the WIPO treaties, and the short time remaining in the Session, we urge the Conferees to focus on issues germane to these treaties, rather than unrelated matters.

Although there was not enough time before the end of this Congress to give this important issue due consideration, 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 at the beginning of the 106th Congress. The work that the Committee did this year on the issue should be viewed as a beginning, and we are committed to making more progress as quickly as possible.

The legislation that the Senate passed today is the culmination of several years' work, both domestically and internationally, to ensure that the appropriate copyright protections are in place around the world to foster the enormous growth of the Internet and other digital computer networks.

Much of the credit for this legislation is due to the hard work and dedication of the Chairman of the Senate Judiciary Committee, Senator HATCH. This is another example of when we work together, we get good things done. It was also a pleasure to serve on the Conference with Senator THURMOND, former Chairman the Senate Judiciary Committee and a force in his own right.

The Chairman and Ranking Member of the House Judiciary Committee—Chairman HYDE and Congressman CONYERS—and the Chairman and Ranking Member of the Subcommittee on Courts and Intellectual Property—Chairman COBLE and Congressman FRANK—deserve particular recognition and praise for their fine work. Although Congressman FRANK was not on the Conference Committee, his tremendous efforts on behalf of the WIPO implementing language as well as on the other matters in the DMCA are very much appreciated. Congressman GOODLATTE and BERMAN also contributed considerable time and talent to the benefit of all who participated in the process.

Although I had not previously had the pleasure of working on WIPO with the Chairman and Ranking Member of the House Commerce Committee—Chairman BLILEY and Congressman DINGELL—or the Chairman of the Telecommunications, Trade and Consumer Protection Subcommittee, Chairman TAUZIN, I would like to acknowledge their significant contributions to the final package.

The staff of all of the Conferees deserve special recognition. Manus Cooney, Edward Damich, Troy Dow, Garry Malphrus, Mitch Glazier, Debbie Laman, Robert Raben, Bari Schwartz, David Lehman, Ben Cline, Justin Lilley, Andy Levin, Mike O'Rielly, and Whitney Fox spent countless hours on this bill, when it was pending in Committee, on the floor and, finally, in conference. Without their labor and talent, we would not be here today considering the DMCA.

The DMCA also reflects the recommendations and hard work of the Copyright Office. Specifically, Marybeth Peters, Shira Perlmutter, David Carson, Jesse Feder, Carolina Saez, Sayuri Rajapakse, Rachel Goslins and Jule Sigall were invaluable on this legislation. The Copyright Office was there at every step along the way—from the negotiation of the WIPO treaties to the negotiations and the drafting of the implementing legislation and the other issues in the DMCA. Given their expertise in copyright law, they will play a significant role in the implementation of the legislation, particularly with regards to the rule-making on the circumvention of technological measures that effectively control access to a copyrighted work and the studies mandated by the bill.

The Clinton Administration deserves praise for the role it played in making this legislation a reality. I would especially like to thank Secretary Daley, Andy Pincus, Ellen Bloom, Jennifer Conovitz and Justin Hughes of the Department of Commerce, as well as Brian Kahin and Thomas Kalil for all of their hard work on the DMCA.

From my perspective, those who deserve the most thanks are my Judiciary Committee staff who have assisted me during the hearings, debates, negotiations, and conference on this bill. Bruce Cohen, Beryl Howell and Marla Grossman have worked tirelessly to ensure that this bill was well crafted and lived up to its promise.

This legislation is an important step for protecting American ingenuity and creative expression. It addresses the needs of creators, consumers and commerce in the digital age and well into the next century. I am proud that the Senate has passed this legislation today.

Mr. President, so Senators will know, the distinguished senior Senator from Utah and I spent enormous amounts of time on this piece of legislation working to get us to this point. We both share great concerns about the database part. We understood that we would not be able to get the bill passed had that stayed in the bill.

The distinguished Senator from Utah and I will work between the time we go out and the time we come back in January to put together database legislation. There will be a strong effort, I know, on my side of the aisle, as there will be on his. We hope the Senate will be able to vote on that and the House, too, early next year. I say this because I do not want anybody to think that this has now disappeared because the rest of the legislation has gone through.

With that, I yield the floor.

Mr. DEWINE. Mr. President, I rise today in support of the conference report to implement the WIPO treaties. I also strongly support the copyright term extension legislation that we recently passed by voice vote.

While I would like to congratulate the conferees and their staff for working out a consensus on so many controversial provisions, I feel it is necessary to express my disappointment that we are unable to pass some form of database protection this year. It is unfortunate that a consensus could not be reached on an issue that is so vital to so many people in our country. Agricultural databases, for example, are relied upon by our farmers and by others in our farming supply industry. While computers and the Internet make access to information available at our fingertips, we need to provide adequate protection for those who compile that information in such a user friendly format. Such easy access is essential to health care workers, for example, who need to have fast access to accurate information about which drugs have adverse reactions to other drugs or which antidotes are most effective in counteracting certain poisons.

I see my friend from Utah, Senator HATCH, the chairman of the Judiciary Committee, is on the floor, and I would like to ask if he would agree that Congress should pass database legislation as early as possible next year to ensure that those who invest their time, money and effort in compiling and updating databases are protected from having their work pirated both domestically and internationally? Would the Senator from Utah agree that without such protections, database creators may decide that the risk of loss from piracy outweighs any potential gains from creating or updating databases.

Mr. HATCH. Mr. President, as my colleague well knows, I have facilitated a number of meetings with interested parties from all sides of this issue to try to work out a consensus bill. Obviously more work needs to be done to pass a bill that is acceptable to all sides. This is an important issue, and I

think everyone understands that. The Senator from Ohio has my assurance that I will continue to work with him on this issue.

Mr. DEWINE. I again commend the Senator from Utah and the other WIPO conferees and their staff, especially Senator LEAHY, for their tireless efforts to reach consensus on so many complex issues. I would simply like to ask my friend from Utah to work with those of us on the Judiciary Committee to introduce and seek passage of legislation early next year that protects our databases.

Mr. HATCH. Mr. President, let me assure my friend from Ohio that I have spoken to our colleagues on the House side, Congressmen HYDE and COBLE, and we have agreed to work together to introduce and seek passage of database protection legislation early next year. I will continue to work with the Senator from Ohio and our Senate and House colleagues and address this issue early next year.

Mr. DEWINE. I thank the Senator from Utah for his comments.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Virginia has the floor.

Mr. HATCH. Will the Senator yield?

Mr. WARNER. Without losing my right to the floor.

Mr. HATCH. As I understand, the conference report has been agreed to. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. LEAHY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HATCH. I thank my friend, the Senator from Virginia.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. HATCH. Will my colleague yield for 1 other minute? I promised I would yield to the distinguished Senator from Arizona.

Mr. WARNER. I will be happy to yield to the distinguished Senator from Arizona, provided I do not lose my right of recognition.

The PRESIDING OFFICER. The Senator from Arizona.

MEDICARE BENEFICIARY FREEDOM TO CONTRACT ACT

Mr. KYL. I thank the Senator from Utah.

Mr. President, I rise with several of my fellow Senators in support of S. 1194, the Medicare Beneficiary Freedom to Contract Act. S. 1194 currently has 48 Senate and 192 House cosponsors.

We believe that Medicare beneficiaries should have the same right to obtain health care from the physician or provider of their choice as do Members of Congress and virtually all other Americans.

It is dangerous to have the government control health care decisions in a free society.

What is the problem addressed by this legislation?

The problem is simply one of health care choice for seniors—a problem which has been brought to our attention by countless constituents all over America.

As I have mentioned on the Senate floor several times, this problem was first brought to my attention in a letter I received from Mr. and Mrs. C.B. Howard of Prescott.

Mary Ann Howard is a diabetic. The medicine she was taking was not working, and she wanted to change doctors to one who specialized in treating diabetics.

Her doctor told her that this was not possible. Amazed, Mary Ann asked why, and her original doctor replied that, due to the regulatory and administrative burdens of the Medicare system, the specialist cannot afford to take any more Medicare patients.

When Mary Ann—who had recently turned 65 and enrolled in Medicare—asked the specialist if she could pay for the treatment out of pocket, the specialist said no. "If I accept you as a patient, I would be accused of Medicare fraud."

Yes, it's true: Because of a flawed interpretation of the Medicare law, the government has barred Medicare beneficiaries from using their own money to receive treatment from the doctor of their choice. It's Medicare or no care!

To end this unfairness, the Senate passed the Kyl amendment to the Balanced Budget Act of 1997 that would allow health care choice for seniors.

But the Administration threatened to veto the entire budget over this provision, and forced the Senate-House conference committee to include a poison pill:

In order to enter into a private contract, a physician or other provider would have to sign out of Medicare for two years.

The two-year exclusion presents your doctor with a difficult choice: He can either treat you, his patient of 30 years, on a private contract basis, and drop his other Medicare patients for two years; or refuse to treat you in favor of his current Medicare patients.

Over 96 percent of doctors accept some Medicare patients and would not likely be willing to impose such a hardship on their current patients.

So your options will likely be reduced.

To remove this "two year" limitation on patient-choice, House Ways and Means Chairman BILL ARCHER and I introduced the Medicare Beneficiaries Freedom to Contract Act.

The bill removes the two-year exclusion and ensure that any Medicare beneficiary can enter into an agreement with the provider of his or her choice for any health care service.

In his 1998 State of the Union address, President Clinton said that all Americans "should have the right to choose the doctor they want for the care they need."

We could not agree more. But as of January 1 of this year, seniors no longer have this right because, as I mentioned, the President insisted last year's Balanced Budget Act be changed to effectively preclude seniors from going outside of Medicare—even if they are willing to pay for the care themselves.

S. 1194 could also be referred to as the Senior Citizens "Medicare Point of Service Option."

Just as with a Point of Service Option in a private plan, this "Medicare Point of Service Option" would allow seniors to go outside of the Medicare network to obtain care from the doctors of their choice.

The only real difference is that the senior-patient would pay 100 percent of the cost of exercising this right, whereas the private plan would subsidize this choice to some degree.

Sandra Butler, president of United Seniors Association, represents the organization's 640,000 members who strongly support this bill.

United Seniors Association members believe that the government's view of private contracting "violates a basic—no, *the* basic—principle of American life: freedom."

In addition, a broad array of organizations have expressed support for the case to overturn current law.

This group includes the Christian Coalition, the American Civil Liberties Union, the Heritage Foundation, the American Enterprise Institute, National Right to Life Committee, the American Medical Association, the American Conservative Union, Citizens Against Government Waste, and the National Center for Policy Analysis.

Opponents of the bill make three basic arguments: the bill will increase fraud, will put seniors at the mercy of doctors and other providers, and will hurt Medicare.

1. With respect to fraud, the bill contains extensive anti-fraud measures, including the requirement of a written contract with clear terms, such as the fact that the service could be paid for by Medicare.

2. Others believe that unethical doctors would take advantage of vulnerable seniors.

Common experience with medical professionals who save lives without reimbursement in emergency situations, and seniors who read and question virtually every line in their Medicare bill, clearly refute this claim.

Further, a senior can for any reason terminate the contract prospectively and return to Medicare for the covered benefit.

3. Some believe private contracting will destroy Medicare.

However, private contracting will result in fewer claims being paid out of the near-bankrupt Medicare trust fund.

We believe that the right of seniors to choose the health care provider and benefits that suit their individual needs is essential to our Nation's concept of liberty.

Document No. 122