JOSEPH P. KINNEARY UNITED STATES COURTHOUSE

Mr. KIM. Madam Speaker, I move to suspend the rules and pass the Senate bill (S. 1800) to designate the Federal building and United States courthouse located at 85 Marconi Boulevard in Columbus, Ohio, as the "Joseph P. Kinneary United States Courthouse".

The Clerk read as follows:

S. 1800

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

SECTION 1. DESIGNATION OF JOSEPH P. KINNEARY UNITED STATES COURTHOUSE.

The Federal building and United States courthouse located at 85 Marconi Boulevard in Columbus, Ohio, shall be known and designated as the "Joseph P. Kinneary United States Courthouse".

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the Federal building and United States courthouse referred to in section 1 shall be deemed to be a reference to the "Joseph P. Kinneary United States Courthouse".

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from California (Mr. KIM) and the gentleman from Ohio (Mr. TRAFICANT) each will control 20 minutes.

The Chair recognizes the gentleman from California (Mr. KIM).

Mr. KIM. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, S. 1800 designates the Federal building and United States courthouse located in Columbus, Ohio, as the "Joseph P. Kinneary United States Courthouse."

Judge Joseph Kinneary has served and continues to serve his country in a distinguished manner. During World War II, Judge Kinneary served in the United States Army from 1942 to 1946. He has also held the offices of Assistant Attorney General and First Assistant Attorney General for the State of Ohio, as well as United States Attorney for the Southern District of Ohio. In 1961, President Johnson appointed Judge Kinneary to the Federal bench for the Southern District of Ohio, where after 32 years he continues to preside and maintain an active docket.

Judge Kinneary gives new meaning to the phrase "dedicated public servant." This is a fitting tribute.

I support the bill, and I urge my colleagues to support the bill.

Madam Speaker, I reserve the balance of my time.

Mr. TRAFICANT. Madam Speaker, I yield myself such time as I may consume. I am proud to support this bill as an Ohio resident that takes pride in the long distinguished service career of Judge Kinneary.

Judge Kinneary has served on the Ohio Federal bench for over 32 years, and even today, Madam Speaker, as we deliberate this tribute to the fine judge, he continues to serve the citizens of Ohio as a senior judge very active in carrying a docket of cases.

As has been stated, the good judge graduated from law school in 1935 and practiced law as an Assistant Attorney General until 1939. During World War II he served his country in the Army from 1942 until 1946.

After the war, Judge Kinneary returned to Ohio. In 1949 he became the First Assistant Attorney General of Ohio. In 1961, as the gentleman from California (Mr. KIM) has stated, President Kennedy appointed Judge Kinneary as the United States Attorney for the Southern District of Ohio where his work has been an example to all who have followed him. President Johnson then appointed Judge Kinneary to the District Court for the Southern District of Ohio in 1966, and the rest is history that we are all in Ohio, Buckeyes, proud of.

Judge Kinneary's long distinguished career spans almost six decades in service to the Buckeye State. It is absolutely fitting and proper here today that the Congress of the United States pay tribute to this outstanding judge by designating the Federal building in Columbus, Ohio, as the Joseph P. Kinneary United States Courthouse. I am proud to be a part of this process.

Madam Speaker, I want to compliment the gentleman from Ohio (Mr. LATOURETTE) my neighbor to the north for being a part of this process and bringing this to the attention of the United States Congress.

I urge an "aye" vote.

Mr. PORTMAN. Mr. Speaker, I rise today to pay tribute to Judge Joseph Kinneary, a fellow native of Cincinnati who will be 93 in September. A respected jurist, Judge Kinneary has worked hard to serve justice in Cincinnati, in Ohio, and in America.

Judge Kinneary attended Saint Xavier High School in Cincinnati, then went on to Notre Dame. He returned to Cincinnati to obtain his law degree from the College of Law at the University of Cincinnati.

Judge Kinneary served our government with distinction. After becoming Assistant Attorney General of Ohio, President Kennedy appointed him to United States Attorney for Southern Ohio in 1961. He was reappointed by President Johnson. He later became United States District Judge for the Southern District of Ohio, a position he held for thirty-two years, including three years as Chief Judge. Judge Kinneary also served his nation in the Army during the Second World War. He served for four years, achieved the rank of Captain, and won the Army Commendation Ribbon for his outstanding contributions.

Legislation is before us today to designate the federal building and courthouse in Columbus the Joseph P. Kinneary United States Courthouse. I welcome this effort to recognize the commitment, dedication and years of service given by Judge Kinneary. He honorably served his country in time of war, and continued that devotion by working for justice though our legal system. Having distinguished himself since he received his law degree from the College of Law at the University of Cincinnati, he has returned to become a member on the Board of Visitors for the College of Law and one of the Law School's strongest supporters. Judge Kinneary holds the distinction of being the second longest serving federal judge in the nation.

I applaud the initiative to recognize and reward the forty-seven years of public service put forth by Judge Kinneary, and want to commend Judge Kinneary's selfless devotion to his local community. I urge my colleagues in Congress to support this action which recognizes the achievements and commitment of so dedicated a citizen.

Mr. TRAFICANT. Madam Speaker, I yield back the balance of my time.

Mr. KIM. Madam Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. KIM) that the House suspend the rules and pass the Senate bill, S. 1800.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. KIM. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H.R. 3696 and S. 1800.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

DIGITAL MILLENNIUM COPYRIGHT ACT

Mr. COBLE. Madam Speaker, I move to suspend the rules and pass the bill (H.R. 2281) to amend title 17, United States Code, to implement the World Intellectual Property Organization Copyright Treaty and Performances and Phonograms Treaty, as amended.

The Clerk read as follows:

H.R. 2281

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".

SEC. 2. TABLE OF CONTENTS.

TITLE I—WIPO COPYRIGHT TREATIES IMPLEMENTATION

SEC. 101. SHORT TITLE.

This title may be cited as the "WIPO Copyright Treaties Implementation Act".

SEC. 102. TECHNICAL AMENDMENTS.

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

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

(2) in the definition of "The 'country of origin' of a Berne Convention work"—

(A) by striking "The 'country of origin' of a Berne Convention work, for purposes of section 411, is the United States if" and inserting "For purposes of section 411, a work is a 'United States work' only if";

(B) in paragraph (1)—

(i) in subparagraph (B) by striking "nation or nations adhering to the Berne Convention" and inserting "treaty party or parties";

(ii) in subparagraph (C) by striking "does not adhere to the Berne Convention" and inserting "is not a treaty party"; and

(iii) in subparagraph (D) by striking "does not adhere to the Berne Convention" and inserting "is not a treaty party"; and

(C) in the matter following paragraph (3) by striking "For the purposes of section 411, the 'country of origin' of any other Berne Convention work is not the United States.";

(3) by inserting after the definition of "fixed" the following:

"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.";

(4) by inserting after the definition of "including" the following:

"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.";

(5) by inserting after the definition of "transmit" the following:

"A 'treaty party' is a country or intergovernmental organization other than the United States that is a party to an international agreement.";

(6) by inserting after the definition of "widow" the following:

"The 'WIPO Copyright Treaty' is the WIPO Copyright Treaty concluded at Geneva, Switzerland, on December 20, 1996.";

(7) by inserting after the definition of "The 'WIPO Copyright Treaty'" the following:

"The 'WIPO Performances and Phonograms Treaty' is the WIPO Performances and Phonograms Treaty concluded at Geneva, Switzerland, on December 20, 1996."; and

(8) by inserting after the definition of "work made for hire" the following:

"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) SUBJECT MATTER OF COPYRIGHT; NATIONAL ORIGIN.—Section 104 of title 17, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (1) by striking "foreign nation that is a party to a copyright treaty to which the United States is also a party" and inserting "treaty party";

(B) in paragraph (2) by striking "party to the Universal Copyright Convention" and inserting "treaty party";

(C) by redesignating paragraph (5) as paragraph (6);

(D) by redesignating paragraph (3) as paragraph (5) and inserting it after paragraph (4);

(E) by inserting after paragraph (2) the following:

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

(F) in paragraph (4) by striking "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"; and

(G) by inserting after paragraph (6), as so redesignated, the following:

"For purposes of paragraph (2), a work that is published in the United States or a treaty party within 30 days after publication in a foreign nation that is not a treaty party shall be considered to be first published in the United States or such treaty party, as the case may be."; and

(2) by adding at the end the following new subsection:

"(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) COPYRIGHT IN RESTORED WORKS.—Section 104A(h) of title 17, United States Code, is amended—

(1) in paragraph (1), by striking subparagraphs (A) and (B) and inserting the following:

"(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) by amending paragraph (3) 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 the enactment of the Uruguay Round Agreements Act;

"(B) on such date of enactment is, or after such 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)—

(A) in subparagraph (C)(iii) by striking "and" after the semicolon;

(B) at the end of subparagraph (D) by striking the period and inserting "; and"; and

(C) by adding after subparagraph (D) the following:

"(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.";

(4) in paragraph (8)(B)(i)—

(A) by inserting "of which" before "the majority"; and

(B) by striking "of eligible countries"; and

(5) by striking paragraph (9).

(d) REGISTRATION AND INFRINGEMENT ACTIONS.—Section 411(a) of title 17, United States Code, is amended in the first sentence—

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

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

(e) STATUTE OF LIMITATIONS.—Section 507(a) of title 17, United State Code, is amended by striking "No" and inserting "Except as expressly provided otherwise in this title, no".

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

(a) IN GENERAL.—Title 17, United States Code is amended by adding at the end the following new chapter:

"CHAPTER 12—COPYRIGHT PROTECTION AND MANAGEMENT SYSTEMS

"§1201. Circumvention of copyright protection systems

"(a) VIOLATIONS REGARDING CIRCUMVENTION OF TECHNOLOGICAL MEASURES.—(1)(A) No person shall circumvent a technological measure that effectively controls access to a work protected under this title. The prohibition contained in the preceding sentence shall take effect at the end of the 2-year period beginning on the date of the enactment of this chapter.

"(B)(i) The prohibition contained in subparagraph (A) shall not apply to persons

with respect to a copyrighted work which is in a particular class of works and to which such persons have gained initial lawful access, if such persons are, or are likely to be in the succeeding 3-year period, adversely affected by virtue of such prohibition in their ability to make noninfringing uses of that particular class of works under this title, as determined under subparagraph (C).

"(ii) The prohibition contained in subparagraph (A) shall not apply to nonprofit libraries, archives, or educational institutions, or to any entity described in section 501(c)(3), (4), or (6) of the Internal Revenue Code of 1986 that is exempt from tax under section 501(a) of such Code, with respect to a particular class of works, if such entities are, or are likely to be in the succeeding 3-year period, adversely affected by virtue of such prohibition in their ability to make noninfringing uses of that particular class of works under this title, as determined under subparagraph (C).

"(C) During the 2-year period described in subparagraph (A), and during each succeeding 3-year period, the Secretary of Commerce, in consultation with the Under Secretary of Commerce for Intellectual Property Policy, the Assistant Secretary of Commerce for Communications and Information, and the Register of Copyrights, shall conduct a rulemaking on the record to make the determination for purposes of subparagraph (B) of whether nonprofit libraries, archives, or educational institutions and other entities described in subparagraph (B) or persons who have gained initial lawful access to a copyrighted work are, or are likely to be in the succeeding 3-year period, adversely affected by the prohibition under subparagraph (A) in their ability to make noninfringing uses under this title of a particular class of copyrighted works. In conducting such rulemaking, the Secretary shall examine—

"(i) the availability for use of copyrighted works;

"(ii) the availability for use of works for nonprofit archival, preservation, and educational purposes;

"(iii) the impact of the prohibition on the circumvention of technological measures applied to copyrighted works on criticism, comment, news reporting, teaching, scholarship, or research;

"(iv) the effect of circumvention of technological measures on the market for or value of copyrighted works; and

"(v) such other factors as the Secretary, in consultation with the Under Secretary of Commerce for Intellectual Property Policy, the Assistant Secretary of Commerce for Communications and Information, and the Register of Copyrights, considers appropriate.

"(D) The Secretary shall publish any class of copyrighted works for which the Secretary has determined, pursuant to the rulemaking conducted under subparagraph (C), that noninfringing uses by nonprofit libraries, archives, or educational institutions and other entities described in subparagraph (B) or by persons who have gained initial lawful access to a copyrighted work are, or are likely to be, adversely affected, and the prohibition contained in subparagraph (A) shall not apply to such entities with respect to such class of works, or to such persons with respect to such copyrighted work, for the ensuing 3-year period.

"(E) Neither the exception under subparagraph (B) from the applicability of the prohibition contained in subparagraph (A), nor any determination made in a rulemaking conducted under subparagraph (C), may be used as a defense in any action to enforce any provision of this title other than this paragraph.

"(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 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 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 measure that effectively controls access to a work protected under this title.

"(3) As used in this subsection—

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

"(B) a technological 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 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 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 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 measure' means avoiding, bypassing, removing, deactivating, or otherwise impairing a technological measure; and

"(B) a technological 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 measure.

"(4) Nothing in this section shall enlarge or diminish any rights of free speech or the press for activities using consumer electronics, telecommunications, or computing products.

"(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). 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, product, service, component, or part thereof, which circumvents a technological 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 the United States, a State, or a political subdivision of a State.

"(f) REVERSE ENGINEERING.—(1) Notwithstanding the provisions of subsection (a)(1)(A), a person who has lawfully obtained the right to use a copy of a computer program may circumvent a technological 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.

"(2) Notwithstanding the provisions of subsections (a)(2) and (b), a person may develop and employ technological means to circumvent a technological measure, or to circumvent protection afforded by a technological measure, in order for that person to make the identification and analysis permitted under paragraph (1), or for the limited purpose of that person achieving interoperability of an independently created computer program with other programs, if such means are necessary to achieve such interoperability, to the extent that doing so does not constitute infringement under this title.

"(3) The information acquired through the acts permitted under paragraph (1), and the means permitted under paragraph (2), may be made available to others if the person referred to in paragraphs (1) and (2) 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 other applicable law.

"(4) For purposes of this subsection, the term 'interoperability' means the ability of computer programs to exchange information, and of such programs mutually to use the information which has been exchanged.

"(g) ENCRYPTION RESEARCH.—

"(1) DEFINITIONS.—For purposes of this subsection—

"(A) the term 'encryption research' means activities necessary to identify and analyze flaws and vulnerabilities of encryption technologies applied to copyrighted works, if these activities are conducted to advance the state of knowledge in the field of encryption technology or to assist in the development of encryption products; and

"(B) the term 'encryption technology' means the scrambling and descrambling of information using mathematical formulas or algorithms.

"(2) PERMISSIBLE ACTS OF ENCRYPTION RESEARCH.—Notwithstanding the provisions of subsection (a)(1)(A), it is not a violation of that subsection for a person to circumvent a technological measure as applied to a copy, phonorecord, performance, or display of a published work in the course of an act of good faith encryption research if—

"(A) the person lawfully obtained the encrypted copy, phonorecord, performance, or display of the published work;

"(B) such act is necessary to conduct such encryption research;

"(C) the person made a good faith effort to obtain authorization before the circumvention; and

"(D) such act does not constitute infringement under this title or a violation of applicable law other than this section, including section 1030 of title 18 and those provisions of title 18 amended by the Computer Fraud and Abuse Act of 1986.

"(3) FACTORS IN DETERMINING EXEMPTION.—In determining whether a person qualifies for the exemption under paragraph (2), the factors to be considered shall include—

"(A) whether the information derived from the encryption research was disseminated, and if so, whether it was disseminated in a manner reasonably calculated to advance the state of knowledge or development of encryption technology, versus whether it was disseminated in a manner that facilitates infringement under this title or a violation of applicable law other than this section, including a violation of privacy or breach of security;

"(B) whether the person is engaged in a legitimate course of study, is employed, or is appropriately trained or experienced, in the field of encryption technology; and

"(C) whether the person provides the copyright owner of the work to which the technological measure is applied with notice of the findings and documentation of the research, and the time when such notice is provided.

"(4) USE OF TECHNOLOGICAL MEANS FOR RESEARCH ACTIVITIES.—Notwithstanding the provisions of subsection (a)(2), it is not a violation of that subsection for a person to—

"(A) develop and employ technological means to circumvent a technological measure for the sole purpose of that person performing the acts of good faith encryption research described in paragraph (2); and

"(B) provide the technological means to another person with whom he or she is working collaboratively for the purpose of conducting the acts of good faith encryption research described in paragraph (2) or for the purpose of having that other person verify his or her acts of good faith encryption research described in paragraph (2).

"(5) REPORT TO CONGRESS.—Not later than 1 year after the date of the enactment of this chapter, the Under Secretary of Commerce for Intellectual Property Policy, the Assistant Secretary of Commerce for Communications and Information, and the Register of Copyrights shall jointly report to the Congress on the effect this subsection has had on—

"(A) encryption research and the development of encryption technology;

"(B) the adequacy and effectiveness of technological measures designed to protect copyrighted works; and

"(C) protection of copyright owners against the unauthorized access to their encrypted copyrighted works.

The report shall include legislative recommendations, if any.

"(h) EXCPETIONS REGARDING MINORS.—(1) 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—

"(A) does not itself violate the provisions of this title; and

"(B) has the sole purpose to prevent the access of minors to material on the Internet.

"(2) Notwithstanding the provisions of subsection (a)(1)(A), it is not a violation of that subsection for a parent to circumvent a technological measure that effectively controls access to a test, examination, or other evaluation of his or her minor child's abilities that is given by a nonprofit educational institution if—

"(A) the parent made a good faith effort to obtain authorization before the circumvention; and

"(B) such act is necessary to obtain a copy of such test, examination, or other evaluation.

"(i) PROTECTION OF PERSONALLY IDENTIFYING INFORMATION.—

(1) CIRCUMVENTION PERMITTED.—Notwithstanding the provisions of subsection (a)(1)(A), it is not a violation of that subsection for a person to circumvent a technological measure that effectively controls access to a work protected under this title, if—

"(A) the technological measure, or the work it protects, contains the capability of collecting or disseminating personally identifying information reflecting the online activities of a natural person who seeks to gain access to the work protected;

"(B) in the normal course of its operation, the technological measure, or the work it protects, collects or disseminates personally identifying information about the person who seeks to gain access to the work protected, without providing conspicuous notice of such collection or dissemination to such person, and without providing such person with the capability to prevent or restrict such collection or dissemination;

"(C) the act of circumvention has the sole effect of identifying and disabling the capability described in subparagraph (A), and has no other effect on the ability of any person to gain access to any work; and

"(D) the act of circumvention is carried out solely for the purpose of preventing the collection or dissemination of personally identifying information about a natural person who seeks to gain access to the work protected, and is not in violation of any other law.

"(2) INAPPLICABILITY TO CERTAIN TECHNOLOGICAL MEASURES.—This subsection does not apply to a technological measure, or a work it protects, that does not collect or disseminate personally identifying information and that is disclosed to a user as not having or using such capability.

"§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 section, the term 'copyright management information' means any of the following information conveyed in connection with copies or phonorecords of a work or performances or displays of a work, including in digital form, except that such term does not include any personally identifying information about a user of a work or of a copy, phonorecord, performance, or display of a work:

"(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.

"(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 the United States, a State, or a political subdivision of a State.

"(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 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 of a right under this title.

"(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 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 paragraph (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 of a right under this title.

"(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 paragraph (1) shall not be liable for a violation of subsection (b) with respect to such copyright management information, if the activity that constitutes such violation is not intended to induce, enable, facilitate, or conceal infringement of a right under this title, and 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 chapter; 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 broadcast stations or cable systems and copyright owners of a category of works that are intended for public performance by such stations or systems.

"(3) DEFINITIONS.—As used in this subsection—

"(A) the term 'broadcast station' has the meaning given that term in section 3 of the Communications Act of 1934 (47 U.S.C. 153)); and

"(B) the term 'cable system' has the meaning given that term in section 602 of the Communications Act of 1934 (47 U.S.C. 522)).

"§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, but in no event shall impose a prior restraint on free speech or the press protected under the 1st amendment to the Constitution;

"(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 title, 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.—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.".

(b) CONFORMING AMENDMENT.—The table of chapters for title 17, United States Code, is amended by adding after the item relating to chapter 11 the following:

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

SEC. 104. DEVELOPMENT AND IMPLEMENTATION OF TECHNOLOGICAL PROTECTION MEASURES.

(a) STATEMENT OF CONGRESSIONAL POLICY AND OBJECTIVE.—It is the sense of the Congress that technological measures that effectively control access to works protected under title 17, United States Code, or that effectively protect a right of a copyright owner under such title play a crucial role in safeguarding the interests of both copyright owners and lawful users of copyrighted works in digital formats, by facilitating lawful uses of such works while protecting the private property interests of holders of rights under title 17, United States Code. Accordingly, the expeditious implementation of such measures, developed by the private sector is a key factor in realizing the full benefits of making available copyrighted works through digital networks, including the benefits set forth in this section.

(b) TECHNOLOGICAL MEASURES.—The technological measures referred to in subsection (a) shall include, but not be limited to, those which—

(1) enable nonprofit libraries, for nonprofit purposes, to continue to lend to library users copies or phonorecords that such libraries have lawfully acquired, including the lending of such copies or phonorecords in digital formats in a manner that prevents infringement;

(2) effectively protect against the infringement of exclusive rights under title 17, United States Code, and facilitate the exercise of those exclusive rights; and

(3) promote the development and implementation of diverse methods, mechanisms, and arrangements in the marketplace for making available copyrighted works in digital formats which provide opportunities for individual members of the public to make lawful uses of copyrighted works in digital formats.

(c) PROCEDURES FOR DEVELOPING AND IMPLEMENTING TECHNOLOGICAL MEASURES.—The technological measures whose development and implementation the Congress anticipates include, but are not limited to, those which—

(1) are developed pursuant to a broad consensus in an open, fair, voluntary, and multi-industry process;

(2) are made available on reasonable and nondiscriminatory terms; and

(3) do not impose substantial costs or burdens on copyright owners or on manufacturers of hardware or software used in conjunction with copyrighted works in digital formats.

(d) OVERSIGHT AND REPORTING.—(1) The Under Secretary of Commerce for Intellectual Property Policy, the Assistant Secretary of Commerce for Communications and Information, and the Register of Copyrights shall jointly review the impact of the enactment of section 1201 of title 17, United States Code, on the access of individual users to copyrighted works in digital formats and shall jointly report annually thereon to the Committees on the Judiciary and on Commerce of the House of Representatives and the Committees on the Judiciary and on Commerce, Science, and Transportation of the Senate.

(2) Each report under paragraph (1) shall address the following issues:

(A) The status of the development and implementation of technological measures described in this section, including measures that advance the objectives of this section, and the effectiveness of such technological measures in protecting the private property interests of copyright owners under title 17, United States Code.

(B) The degree to which individual lawful users of copyrighted works—

(i) have access to the Internet and digital networks generally;

(ii) are dependent upon such access for their use of copyrighted works;

(iii) have available to them other channels for obtaining and using copyrighted works, other than the Internet and digital networks generally;

(iv) are required to pay copyright owners or intermediaries for each lawful use of copyrighted works in digital formats to which they have access; and

(v) are able to utilize nonprofit libraries to obtain access, through borrowing without payment by the user, to copyrighted works in digital formats.

(C) The degree to which infringement of copyrighted works in digital formats is occurring.

(D) Whether and the extent to which section 1201 of title 17, United States Code, is asserted as a basis for liability in claims brought against persons conducting research and development, including reverse engineering of copyrighted works, and the extent to which such claims constitute a serious impediment to the development and production of competitive goods and services.

(E) The degree to which individual users of copyrighted materials in digital formats are able effectively to protect themselves against the use of technological measures to carry out or facilitate the undisclosed collection and dissemination of personally identifying information concerning the access to and use of such materials by such users.

(F) Such other issues as the Under Secretary of Commerce for Intellectual Property Policy, the Assistant Secretary of Commerce for Communications and Information, and the Register of Copyrights identify as relevant to the impact of the enactment of section 1201 of title 17, United States Code, on the access of individual users to copyrighted works in digital formats.

(3) The first report under this subsection shall be submitted not later than one year after the date of the enactment of this Act, and the last such report shall be submitted not later than three years after the date of the enactment of this Act.

(4) The reports under this subsection may include such recommendations for additional legislative action as the Under Secretary of Commerce for Intellectual Property Policy, the Assistant Secretary of Commerce for Communications and Information, and the Register of Copyrights consider advisable in order to further the objectives of this section.

SEC. 105. EVALUATION OF IMPACT OF COPYRIGHT LAW AND AMENDMENTS ON ELECTRONIC COMMERCE AND TECHNOLOGICAL DEVELOPMENT.

(a) EVALUATION BY UNDER SECRETARY OF COMMERCE AND REGISTER OF COPYRIGHTS.—The Under Secretary of Commerce for Intellectual Property Policy, the Assistant Secretary of Commerce for Communications and Information, and the Register of Copyrights shall jointly evaluate—

(1) the effects of the amendments made by this title and the development of electronic commerce and associated technology on the operation of sections 109 and 117 of title 17, United States Code; and

(2) the relationship between existing and emergent technology and the operation of sections 109 and 117 of title 17, United States Code.

(c) REPORT TO CONGRESS.—The Under Secretary of Commerce for Intellectual Property Policy, the Assistant Secretary of Commerce for Communications and Information, and the Register of Copyrights shall, not later than 24 months after the date of the enactment of this Act, submit to the Congress a joint report on the evaluation conducted under subsection (b), including any legislative recommendations the Under Secretary, the Assistant Secretary, and the Register may have.

SEC. 106. EFFECTIVE DATE.

(a) IN GENERAL.—Subject to subsection (b), this title and 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 the 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)(4) of this Act.

(B) The amendment made by section 102(a)(6) of this Act.

(C) Subparagraph (C) of section 104A(h)(1) of title 17, United States Code, as amended by section 102(c)(1) of this Act.

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

(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)(4) of this Act.

(B) The amendment made by section 102(a)(7) of this Act.

(C) The amendment made by section 102(b)(2) of this Act.

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

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

(F) The amendments made by section 102(c)(3) of this Act.

TITLE II—ONLINE COPYRIGHT INFRINGEMENT LIABILITY LIMITATION

SEC. 201. SHORT TITLE.

This title may be cited as the "Online Copyright Infringement Liability Limitation Act".

SEC. 202. LIMITATIONS ON LIABILITY FOR 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. Limitations on liability relating to material online

"(a) TRANSITORY 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 of copyright by reason of 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 by reason of the intermediate and transient storage of that material in the course of such transmitting, routing, or providing connections, if—

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

"(2) the transmission, routing, provision of connections, or storage is carried out through an automatic technical process without selection of the material by the service provider;

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

"(4) no copy of the material made by the service provider in the course of such intermediate or transient storage 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 such anticipated recipients for a longer period than is reasonably necessary for the transmission, routing, or provision of connections; and

"(5) the material is transmitted through the system or network without modification of its content.

"(b) SYSTEM CACHING.—

"(1) LIMITATION ON LIABILITY.—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 of copyright by reason of the intermediate and temporary storage of material on a system or network controlled or operated by or for the service provider in a case in which—

"(A) the material is made available online by a person other than the service provider,

"(B) the material is transmitted from the person described in subparagraph (A) through the system or network to a person other than the person described in subparagraph (A) at the direction of that other person, and

"(C) the storage is carried out through an automatic technical process for the purpose of making the material available to users of the system or network who, after the material is transmitted as described in subparagraph (B), request access to the material from the person described in subparagraph (A),

if the conditions set forth in paragraph (2) are met.

(2) CONDITIONS.—The conditions referred to in paragraph (1) are that—

"(A) the material described in paragraph (1) is transmitted to the subsequent users described in paragraph (1)(C) without modification to its content from the manner in which

the material was transmitted from the person described in paragraph (1)(A);

"(B) the service provider described in paragraph (1) complies with rules concerning the refreshing, reloading, or other updating of the material when specified by the person making the material available online in accordance with a generally accepted industry standard data communications protocol for the system or network through which that person makes the material available, except that this subparagraph applies only if those rules are not used by the person described in paragraph (1)(A) to prevent or unreasonably impair the intermediate storage to which this subsection applies;

"(C) the service provider does not interfere with the ability of technology associated with the material to return to the person described in paragraph (1)(A) the information that would have been available to that person if the material had been obtained by the subsequent users described in paragraph (1)(C) directly from that person, except that this subparagraph applies only if that technology—

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

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

"(iii) does not extract information from the provider's system or network other than the information that would have been available to the person described in paragraph (1)(A) if the subsequent users had gained access to the material directly from that person;

"(D) if the person described in paragraph (1)(A) has in effect a condition that a person must meet prior to having access to the material, such as a 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 met those conditions and only in accordance with those conditions; and

"(E) if the person described in paragraph (1)(A) makes that material available online without the authorization of the copyright owner of the material, the service provider responds expeditiously to remove, or disable access to, the material that is claimed to be infringing upon notification of claimed infringement as described in subsection (c)(3), except that this subparagraph applies only if—

"(i) the material has previously been removed from the originating site or access to it has been disabled, or a court has ordered that the material be removed from the originating site or that access to the material on the originating site be disabled; and

"(ii) the party giving the notification includes in the notification a statement confirming that the material has been removed from the originating site or access to it has been disabled or that a court has ordered that the material be removed from the originating site or that access to the material on the originating site be disabled.

"(c) INFORMATION RESIDING ON SYSTEMS OR NETWORKS AT DIRECTION OF USERS.—

"(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 of copyright by reason of 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 an activity using the material on the system or network 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) upon obtaining such knowledge or awareness, acts expeditiously to remove, or disable access to, the material;

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

"(C) upon notification of claimed infringement as described in paragraph (4), 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) LIMITATION ON LIABILITY OF NONPROFIT EDUCATIONAL INSTITUTIONS.—A nonprofit educational institution that is a service provider shall not be liable for monetary relief, or, except as provided in subsection (j), for injunctive or other equitable relief, by reason of the acts or omissions of a faculty member, administrative employee, student, or graduate student, unless such faculty member, administrative employee, student, or graduate student is exercising managerial or operational responsibilities that directly relate to the institution's function as a service provider.

"(3) DESIGNATED AGENT.—The limitations on liability established in this subsection apply to a service provider only if the service provider has designated an agent to receive notifications of claimed infringement described in paragraph (4), by making available through its service, including on its website in a location accessible to the public, and by providing to the Copyright Office, substantially the following information:

"(A) the name, address, phone number, and electronic mail address of the agent.

"(B) other contact information which the Register of Copyrights may deem appropriate.

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, and may require payment of a fee by service providers to cover the costs of maintaining the directory.

"(4) ELEMENTS OF NOTIFICATION.—

"(A) To be effective under this subsection, a notification of claimed infringement must be a written communication provided to the designated agent of a service provider 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 copyrighted 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 and 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, its agent, or the law.

"(vi) A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

"(B)(i) Subject to clause (ii), a notification from a copyright owner or from a person authorized to act on behalf of the copyright owner that fails to comply substantially with the provisions of subparagraph (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.

"(ii) In a case in which the notification that is provided to the service provider's designated agent fails to comply substantially with all the provisions of subparagraph (A) but substantially complies with clauses (ii), (iii), and (iv) of subparagraph (A), clause (i) of this subparagraph applies only if the service provider promptly attempts to contact the person making the notification or takes other reasonable steps to assist in the receipt of notification that substantially complies with all the provisions of subparagraph (A).

"(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 of copyright by reason of the provider referring or linking users to an online location containing infringing material or infringing activity, by using information location tools, including a directory, index, reference, pointer, or hypertext link, if the service provider—

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

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

"(C) upon obtaining such knowledge or awareness, acts expeditiously to remove, or disable access to, the material;

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

"(3) upon notification of claimed infringement as described in subsection (c)(4), responds expeditiously to remove, or disable access to, the material that is claimed to be infringing or to be the subject of infringing activity, except that, for purposes of this paragraph, the information described in subsection (c)(4)(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 that 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 a 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) NO LIABILITY FOR TAKING DOWN GENERALLY.—Subject to paragraph (2), 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) EXCEPTION.—Paragraph (1) 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 notification described in paragraph (3), promptly provides the person who provided the notification under subsection (c)(1)(C) with a copy of the counter notification, and informs that person that it will replace the removed material or cease disabling access to it in 10 business days; and

"(C) replaces the removed material and ceases disabling access to it not less than 10, nor more than 14, 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) CONTENTS OF COUNTER NOTIFICATION.—To be effective under this subsection, a counter notification must be a 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 the material appeared before it was removed or access to it 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 District 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 notification under subsection (c)(1)(C) or an agent of such person.

"(4) LIMITATION ON OTHER LIABILITY.—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) SUBPOENA TO IDENTIFY INFRINGER.—

"(1) REQUEST.—A copyright owner or a person authorized to act on the owner's behalf may request the clerk of any United States district court to issue a subpoena to a service provider for identification of an alleged infringer in accordance with this subsection.

"(2) CONTENTS OF REQUEST.—The request may be made by filing with the clerk—

"(A) a copy of a notification described in subsection (c)(4)(A);

"(B) a proposed subpoena; and

"(C) a sworn declaration to the effect that the purpose for which the subpoena is sought is to obtain the identity of an alleged infringer and that such information will only be used for the purpose of protecting rights under this title.

"(3) CONTENTS OF SUBPOENA.—The subpoena shall authorize and order the service provider receiving the notification and the subpoena to expeditiously disclose to the copyright owner or person authorized by the copyright owner information sufficient to identify the alleged infringer of the material described in the notification to the extent such information is available to the service provider.

"(4) BASIS FOR GRANTING SUBPOENA.—If the notification filed satisfies the provisions of subsection (c)(4)(A), the proposed subpoena is in proper form, and the accompanying declaration is properly executed, the clerk shall expeditiously issue and sign the proposed subpoena and return it to the requester for delivery to the service provider.

"(5) ACTIONS OF SERVICE PROVIDER RECEIVING SUBPOENA.—Upon receipt of the issued subpoena, either accompanying or subsequent to the receipt of a notification described in subsection (c)(4)(A), the service provider shall expeditiously disclose to the copyright owner or person authorized by the copyright owner the information required by the subpoena, notwithstanding any other provision of law and regardless of whether the service provider responds to the notification.

"(6) RULES APPLICABLE TO SUBPOENA.—Unless otherwise provided by this section or by applicable rules of the court, the procedure for issuance and delivery of the subpoena, and the remedies for noncompliance with the subpoena, shall be governed to the greatest extent practicable by those provisions of the Federal Rules of Civil Procedure governing the issuance, service, and enforcement of a subpoena duces tecum.

"(h) CONDITIONS FOR ELIGIBILITY.—

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

"(A) has adopted and reasonably implemented, and informs subscribers and account holders of the service provider's system or network of, a policy that provides for the termination in appropriate circumstances of subscribers and account holders of the service provider's system or network who are repeat infringers; and

"(B) accommodates and does not interfere with standard technical measures.

"(2) DEFINITION.—As used in this subsection, the term 'standard technical measures' means technical measures that are used by copyright owners to identify or protect copyrighted works and—

"(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 under this section:

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

"(i) An order restraining the service provider 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 the service provider from providing access to a subscriber or account holder of the service provider's system or network who is engaging in infringing activity and is identified in the order, by terminating the accounts of the subscriber or account holder that are specified in the order.

"(iii) Such other injunctive relief as the court may consider necessary to prevent or restrain infringement of copyrighted material specified in the order of the court at a particular online location, if such relief is the least burdensome to the service provider among the forms of relief 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 the service provider from providing access to a subscriber or account holder of the service provider's system or network who is using the provider's service to engage in infringing activity and is identified in the order, by terminating the accounts of the subscriber or account holder that are specified in the order.

"(ii) An order restraining the service provider from providing access, by taking reasonable steps specified in the order to block access, to a specific, identified, online location outside the United States.

"(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 be available only after notice to the service provider and an opportunity for the service provider to appear are provided, 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) SERVICE PROVIDER.—(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 this section, other than subsection (a), 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 subparagraph (A).

"(2) MONETARY RELIEF.—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 gaining access to, removing, or disabling access to material in cases in which such conduct is prohibited by law.

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

(b) 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. Limitations on liability relating to material online.".

(c) EFFECTIVE DATE.—The amendments made by this section take effect on the date of the enactment of this Act.

SEC. 203. 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 COPYRIGHT EXEMPTION

SEC. 301. SHORT TITLE.

This title may be cited as the "Computer Maintenance Competition Assurance Act".

SEC. 302. LIMITATIONS 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:

"(c) MACHINE MAINTENANCE OR REPAIR.—Notwithstanding the provisions of section 106, it is not an infringement for the 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—MISCELLANEOUS PROVISIONS

Subtitle A—Establishment of the Under Secretary of Commerce for Intellectual Property Policy

SEC. 401. UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY POLICY.

(a) APPOINTMENT.—There shall be within the Department of Commerce an Under Secretary of Commerce for Intellectual Property Policy, who shall be appointed by the President, by and with the advice and consent of the Senate, at level II of the Executive Schedule. On or after the effective date of this subtitle, the President may designate an individual to serve as the Acting Under Secretary until the date on which an Under Secretary qualifies under this subsection.

(b) DUTIES.—The Under Secretary of Commerce for Intellectual Property Policy, under the direction of the Secretary of Commerce, shall perform the following functions with respect to intellectual property policy:

(1) In coordination with the Under Secretary of Commerce for International Trade, promote exports of goods and services of the United States industries that rely on intellectual property.

(2) Advise the President, through the Secretary of Commerce, on national and certain international issues relating to intellectual property policy, including issues in the areas of patents, trademarks, and copyrights.

(3) Advise Federal departments and agencies on matters of intellectual property protection in other countries.

(4) Provide guidance, as appropriate, with respect to proposals by agencies to assist foreign governments and international intergovernmental organizations on matters of intellectual property protection.

(5) Conduct programs and studies related to the effectiveness of intellectual property protection throughout the world.

(6) Advise the Secretary of Commerce on programs and studies relating to intellectual property policy that are conducted, or authorized to be conducted, cooperatively with foreign patent and trademark offices and international intergovernmental organizations.

(7) In coordination with the Department of State, conduct programs and studies cooperatively with foreign intellectual property offices and international intergovernmental organizations.

(c) DEPUTY UNDER SECRETARIES.—To assist the Under Secretary of Commerce for Intellectual Property Policy, the Under Secretary shall appoint a Deputy Under Secretary for Patent Policy and a Deputy Under Secretary for Trademark Policy, as members of the Senior Executive Service in accordance with the provisions of title 5, United States Code. The Deputy Under Secretaries shall perform such duties and functions as the Under Secretary shall prescribe.

(d) COMPENSATION.—Section 5313 of title 5, United States Code, is amended by adding at the end the following: "Under Secretary of Commerce for Intellectual Property Policy."

(e) FUNDING.—Funds available to the Patent and Trademark Office shall be made available for all expenses of the Office of the Under Secretary of Commerce for Intellectual Property Policy, subject to prior approval in appropriations Acts. Amounts made available under this subsection shall not exceed 2 percent of the projected annual revenues of the Patent and Trademark Office from fees for services and goods of that Office. The Secretary of Commerce shall determine the budget requirements of the Office of the Under Secretary for Intellectual Property Policy.

(f) CONSULTATION.—In connection with the performance of his or her duties under this section, the Under Secretary shall, on appropriate matters, consult with the Register of Copyrights.

SEC. 402. RELATIONSHIP WITH EXISTING AUTHORITIES.

(a) NO DEROGATION.—Nothing in section 401 shall derogate from the duties of the United States Trade Representative or from the duties of the Secretary of State. In addition, nothing in this subtitle shall derogate from the duties and functions of the Register of Copyrights or otherwise alter current authorities relating to copyright matters.

(b) CLARIFICATION OF AUTHORITY OF THE COPYRIGHT OFFICE.—Section 701 of title 17, United States Code, is amended—

(1) by redesignating subsections (b) through (e) as subsections (c) through (f), respectively; and

(2) by inserting after subsection (a) the following:

"(b) In addition to the functions and duties set out elsewhere in this chapter, the Register of Copyrights shall perform the following functions:

"(1) Advise Congress on national and international issues relating to copyright, other matters arising under chapters 9, 12, 13, and 14 of this title, and related matters.

"(2) Provide information and assistance to Federal departments and agencies and the Judiciary on national and international issues relating to copyright, other matters arising under chapters 9, 12, 13, and 14 of this title, and related matters.

"(3) Participate in meetings of international intergovernmental organizations and meetings with foreign government officials relating to copyright, other matters arising under chapters 9, 12, 13, and 14 of this title, and related matters, including as a member of United States delegations as authorized by the appropriate Executive Branch authority.

"(4) Conduct studies and programs regarding copyright, other matters arising under chapters 9, 12, 13, and 14 of this title, and related matters, the administration of the Copyright Office, or any function vested in the Copyright Office by law, including educational programs conducted cooperatively with foreign intellectual property offices and international intergovernmental organizations.

"(5) Perform such other functions as Congress may direct, or as may be appropriate in furtherance of the functions and duties specifically set forth in this title."

Subtitle B—Related Provisions

SEC. 411. EPHEMERAL RECORDINGS.

Section 112(a) of title 17, United States Code, is amended—

(1) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively;

(2) by inserting "(1)" after "(a)"; and

(3) by inserting after "114(a)," the following: "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,"; and

(4) by adding at the end the following:

"(2) In a case in which a transmitting organization entitled to make a copy or phonorecord under paragraph (1) in connection with the transmission to the public of a performance or display of a work 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, the copyright owner shall make available to the transmitting organization the necessary means for permitting the making of such copy or phonorecord as permitted under that paragraph, if it is technologically feasible and economically reasonable for the copyright owner to do so. If the 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 paragraph (1) of this subsection.".

SEC. 412. LIMITATIONS ON EXCLUSIVE RIGHTS: DISTANCE EDUCATION.

(a) RECOMMENDATIONS BY REGISTER OF COPYRIGHTS.—Not later than 6 months after the date of the 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 of copyrighted works. Such recommendations shall include any legislation the Register of Copyrights considers appropriate to achieve the objective described in the preceding sentence.

(b) FACTORS.—In formulating recommendations under subsection (a), the Register of Copyrights shall consider—

(1) the need for an exemption from exclusive rights of copyright owners 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 or should be employed to safeguard against unauthorized access to, and use or retention of, copyrighted materials as a condition of eligibility for any distance education exemption, including, in light of developing technological capabilities, the exemption set out in section 110(2) of title 17, United States Code;

(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. 413. EXEMPTION FOR LIBRARIES AND ARCHIVES.

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

(1) in subsection (a)—

(A) by striking "Notwithstanding" and inserting "Except as otherwise provided in this title and notwithstanding";

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

(C) in paragraph (3) by inserting after "copyright" the following: "that appears on the copy or phonorecord that is reproduced under the provisions of this section, or includes 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)—

(A) by striking "a copy or phonorecord" and inserting "three copies or phonorecords";

(B) by striking "in facsimile form"; and

(C) by striking "if the copy or phonorecord reproduced is currently in the collections of the library or archives." and inserting "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 in that format outside the premises of the library or archives."; and

(3) in subsection (c)—

(A) by striking "a copy or phonorecord" and inserting "three copies or phonorecords";

(B) by striking "in facsimile form";

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

(D) by 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 "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 outside the premises of the library or archives in lawful possession of such copy."; and

(E) by 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.".

SEC. 414. FAIR USE.

Section 107 of title 17, United States Code, is amended in the first sentence by striking ", including such use" and all that follows through "section,".

SEC. 415. SCOPE OF EXCLUSIVE RIGHTS IN SOUND RECORDINGS; EPHEMERAL RECORDINGS.

(a) SCOPE OF EXCLUSIVE RIGHTS IN SOUND RECORDINGS.—Section 114 of title 17, United States Code, is amended as follows:

(1) Subsection (d) is amended—

(A) by striking subparagraph (A) and inserting the following:

"(A) a nonsubscription broadcast transmission;"; and

(B) by amending paragraph (2) to read as follows:

"(2) STATUTORY LICENSING OF CERTAIN TRANSMISSIONS.—The performance of a sound recording publicly by means of a subscription digital audio transmission not exempt under paragraph (1) or an eligible nonsubscription digital audio transmission shall be subject to statutory licensing, in accordance with subsection (f) if—

"(A) in the case of a subscription transmission not exempt under paragraph (1) or an eligible nonsubscription transmission—

"(i) the transmission is not part of an interactive service;

"(ii) except in the case of a transmission to a business establishment, the transmitting entity does not automatically and intentionally cause any device receiving the transmission to switch from one program channel to another; and

"(iii) except as provided in section 1002(e), the transmission of the sound recording is accompanied by the information encoded in that sound recording, if any, by or under the authority of the copyright owner of that sound recording, that identifies the title of the sound recording, the featured recording artist who performs on the sound recording, and related information, including information concerning the underlying musical work and its writer;

"(B) in the case of a subscription transmission not exempt under paragraph (1) by a preexisting subscription service in the same transmission medium used by such service on July 31, 1998—

"(i) the transmission does not exceed the sound recording performance complement;

"(ii) the transmitting entity does not cause to be published by means of an advance program schedule or prior announcement the titles of the specific sound recordings or phonorecords embodying such sound recordings to be transmitted; and

"(C) in the case of an eligible nonsubscription transmission or a subscription transmission not exempt under paragraph (1) by a new subscription service or by a preexisting subscription service other than in the same transmission medium used by such service on July 31, 1998—

"(i) the transmission does not exceed the sound recording performance complement, except that this requirement shall not apply in the case of a retransmission of a broadcast transmission if the retransmission is made by a transmitting entity that does not have the right or ability to control the programming of the broadcast station making the broadcast transmission, unless the broadcast station makes broadcast transmissions—

"(I) in digital format that regularly exceed the sound recording performance complement; or

"(II) in analog format, a substantial portion of which, on a weekly basis, exceed the sound recording performance complement;

Provided, however, That the sound recording copyright owner or its representative has notified the transmitting entity in writing that broadcast transmissions of the copyright owner's sound recordings exceed the sound recording complement as provided in this clause;

"(ii) the transmitting entity does not cause to be published, or induce or facilitate the publication, by means of an advance program schedule or prior announcement, the titles of the specific sound recordings to be transmitted, the phonorecords embodying such sound recordings, or, other than for illustrative purposes, the names of the featured recording artists, except that this clause does not disqualify a transmitting entity that makes a prior announcement that a particular artist will be featured within an unspecified future time period and, in any 1-hour period, no more than 3 such announcements are made with respect to no more than 2 artists in each announcement;

"(iii) the transmission is not part of—

"(I) an archived program of less than 5 hours duration;

"(II) an archived program of greater than 5 hours duration that is made available for a period exceeding 2 weeks;

"(III) a continuous program which is of less than 3 hours duration; or

"(IV) a program, other than an archived or continuous program, that is transmitted at a scheduled time more than 3 additional times in a 2-week period following the first transmission of the program and for an additional 2-week period more than 1 month following the end of the first such 2-week period;

"(iv) the transmitting entity does not knowingly perform the sound recording in a manner that is likely to cause confusion, to cause mistake, or to deceive, as to the affiliation, connection, or association of the copyright owner or featured recording artist with the transmitting entity or a particular product or service advertised by the transmitting entity, or as to the origin, sponsorship, or approval by the copyright owner or featured recording artist of the activities of the transmitting entity other than the performance of the sound recording itself;

"(v) the transmitting entity cooperates to prevent, to the extent feasible without imposing substantial costs or burdens, a transmission recipient or any other person or entity from automatically scanning the transmitting entity's transmissions together with transmissions by other transmitting entities to select a particular sound recording to be transmitted to the transmission recipient;

"(vi) the transmitting entity takes reasonable steps to ensure, to the extent within its control, that the transmission recipient cannot make a phonorecord in a digital format of the transmission, and the transmitting entity takes no affirmative steps to cause or induce the making of a phonorecord by the transmission recipient;

"(vii) phonorecords of the sound recording have been distributed to the public in the United States under the authority of the copyright owner or the copyright owner authorizes the transmitting entity to transmit the sound recording, and the transmitting entity makes the transmission from a phonorecord lawfully made under this title;

"(viii) the transmitting entity accommodates and does not interfere with the transmission of technical measures that are widely used by sound recording copyright owners to identify or protect copyrighted works, and that are technically feasible of being transmitted by the transmitting entity without imposing substantial costs on the transmitting entity or resulting in perceptible aural or visual degradation of the digital signal; and

"(ix) in the case of an eligible nonsubscription transmission, the transmitting entity identifies the sound recording during, but not before, the time it is performed, including the title of the sound recording, the title of the phonorecord embodying such sound recording, if any, and the featured recording artist in a manner to permit it to be perceived by the transmission recipient, except that the obligation in this clause shall not take effect until 1 year after the date of the enactment of the Digital Millennium Copyright Act.".

(2) Subsection (f) is amended to read as follows:

(A) in paragraph (1)—

(i) in the first sentence—

(I) by striking "(1) No" and inserting "(1)(A) No";

(II) by striking "the activities" and inserting "subscription transmissions by preexisting subscription services"; and

(III) by striking "2000" and inserting "2001"; and

(ii) by amending the third sentence to read as follows: "Any copyright owners of sound recordings or any preexisting subscription services may submit to the Librarian of Congress licenses covering such subscriptions transmissions with respect to such sound recordings."; and

(B) by striking paragraphs (2), (3), (4), and (5) and inserting the following:

"(B) In the absence of license agreements negotiated under subparagraph (A), during the 60-day period commencing 6 months after publication of the notice specified in subparagraph (A), and upon the filing of a petition in accordance with section 803(a)(1), the Librarian of Congress shall, pursuant to chapter 8, convene a copyright arbitration royalty panel to determine and publish in the Federal Register a schedule of rates and terms which, subject to paragraph (3), shall be binding on all copyright owners of sound recordings and preexisting subscription services. In establishing rates and terms for preexisting subscription services, in addition to the objectives set forth in section 801(b)(1), the copyright arbitration royalty panel may consider the rates and terms for comparable types of subscription digital audio transmission services and comparable circumstances under voluntary license agreements negotiated as provided in subparagraph (A).

"(C)(i) Publication of a notice of the initiation of voluntary negotiation proceedings as specified in subparagraph (A) shall be repeated, in accordance with regulations that the Librarian of Congress shall prescribe—

"(I) no later than 30 days after a petition is filed by any copyright owners of sound recordings or any preexisting subscription services indicating that a new type of subscription digital audio transmission service on which sound recordings are performed is or is about to become operational; and

"(II) in the first week of January, 2001, and at 5-year intervals thereafter.

"(ii) The procedures specified in subparagraph (B) shall be repeated, in accordance with regulations that the Librarian of Congress shall prescribe, upon filing of a petition in accordance with section 803(a)(1) during a 60-day period commencing—

"(I) 6 months after publication of a notice of the initiation of voluntary negotiation proceedings under subparagraph (A) pursuant to a petition under clause (i)(I) of this subparagraph; or

"(II) on July 1, 2001, and at 5-year intervals thereafter.

"(iii) The procedures specified in subparagraph (B) shall be concluded in accordance with section 802.

"(2)(A) No later than 30 days after the date of the enactment of the Digital Millennium Copyright Act, the Librarian of Congress shall cause notice to be published in the Federal Register of the initiation of voluntary negotiation proceedings for the purpose of determining reasonable terms and rates of royalty payments for eligible nonsubscription transmissions and transmissions by new subscription services specified by subsection (d)(2) during the period beginning on the date of the enactment of such Act and ending on December 31, 2000, or such other date as the parties may agree. Such rates and terms shall distinguish among the different types of eligible nonsubscription transmission services then in operation and shall include a minimum fee for each such type of service. Any copyright owners of sound recordings or any entities performing sound recordings affected by this section may submit to the Librarian of Congress licenses covering such eligible nonsubscription transmissions with respect to such sound recordings. The parties to each negotiation proceeding shall bear their own costs.

"(B) In the absence of license agreements negotiated under subparagraph (A), during the 60-day period commencing 6 months after publication of the notice specified in subparagraph (A), and upon the filing of a petition in accordance with section 803(a)(1), the Librarian of Congress shall, pursuant to chapter 8, convene a copyright arbitration royalty panel to determine and publish in the Federal Register a schedule of rates and terms which, subject to paragraph (3), shall be binding on all copyright owners of sound recordings and entities performing sound recordings during the period beginning on the date of the enactment of the Digital Millennium Copyright Act and ending on December 31, 2000, or such other date as the parties may agree. Such rates and terms shall distinguish among the different types of eligible nonsubscription transmission services then in operation and shall include a minimum fee for each such type of service, such differences to be based on criteria, including, but not limited to, the quantity and nature of the use of sound recordings and the degree to which use of the service may substitute for or may promote the purchase of phonorecords by consumers. In establishing rates and terms for transmissions by eligible nonsubscription services and new subscription services, the copyright arbitration royalty panel shall establish rates and terms that most clearly represent the rates and terms that would have been negotiated in the marketplace between a willing buyer and a willing seller. In determining such rates and terms, the copyright arbitration royalty panel shall base its decision on economic, competitive and programming information presented by the parties, including—

"(i) whether use of the service may substitute for or may promote the sales of phonorecords or otherwise may interfere with or may enhance the sound recording copyright owner's other streams of revenue from its sound recordings; and

"(ii) the relative roles of the copyright owner and the copyright user in the copyrighted work and the service made available to the public with respect to relative creative contribution, technological contribution, capital investment, cost, and risk.

"(C)(i) Publication of a notice of the initiation of voluntary negotiation proceedings as specified in subparagraph (A) shall be repeated in accordance with regulations that the Librarian of Congress shall prescribe—

"(I) no later than 30 days after a petition if filed by any copyright owners of sound recordings or any eligible nonsubscription service or new subscription service indicating that a new type of eligible nonsubscription service or new subscription service on which sound recordings are performed is or is about to become operational; and

"(II) in the first week of January 2000, and at 2-year intervals thereafter, except to the extent that different years for the repeating of such proceedings may be determined in accordance with subparagraph (A).

"(ii) The procedures specified in subparagraph (B) shall be repeated, in accordance with regulations that the Librarian of Congress shall prescribe, upon filing of a petition in accordance with section 803(a)(1) during a 60-day period commencing—

"(I) 6 months after publication of a notice of the initiation of voluntary negotiation proceedings under subparagraph (A) pursuant to a petition under clause (i)(I); or

"(II) on July 1, 2000, and at 2-year intervals thereafter, except to the extent that different years for the repeating of such proceedings may be determined in accordance with subparagraph (A).

"(iii) The procedures specified in subparagraph (B) shall be concluded in accordance with section 802.

"(3) License agreements voluntarily negotiated at any time between 1 or more copyright owners of sound recordings and 1 or more entities performing sound recordings

shall be given effect in lieu of any determination by a copyright arbitration royalty panel or decision by the Librarian of Congress.

"(4)(A) The Librarian of Congress shall also establish requirements by which copyright owners may receive reasonable notice of the use of their sound recordings under this section, and under which records of such use shall be kept and made available by entities performing sound recordings.

"(B) Any person who wishes to perform a sound recording publicly by means of a transmission eligible for statutory licensing under this subsection may do so without infringing the exclusive right of the copyright owner of the sound recording—

"(i) by complying with such notice requirements as the Librarian of Congress shall prescribe by regulation and by paying royalty fees in accordance with this subsection; or

"(ii) if such royalty fees have not been set, by agreeing to pay such royalty fees as shall be determined in accordance with this subsection.

"(C) Any royalty payments in arrears shall be made on or before the twentieth day of the month next succeeding the month in which the royalty fees are set.".

(3) Subsection (g) is amended—

(A) in the subsection heading by striking "SUBSCRIPTION";

(B) in paragraph (1) in the matter preceding subparagraph (A), by striking "subscription transmission licensed" and inserting "transmission licensed under a statutory license";

(C) in subparagraphs (A) and (B) by striking "subscription"; and

(D) in paragraph (2) by striking "subscription".

(4) Subsection (j) is amended—

(A) by redesignating paragraphs (2), (3), (5), (6), (7), and (8) as paragraphs (3), (5), (9), (11), (12), and (13), respectively;

(B) by inserting after paragraph (1) the following:

"(2) An 'archived program' is a prerecorded program that is available repeatedly on demand and that is performed in the same predetermined order from the beginning.";

(C) by inserting after paragraph (3), as so redesignated, the following:

"(4) A 'continuous program' is a prerecorded program that is continuously performed in the same predetermined order and the point in the program at which it is accessed is beyond the control of the transmission recipient.";

(D) by inserting after paragraph (5), as so redesignated, the following:

"(6) An 'eligible nonsubscription transmission' is a noninteractive, nonsubscription transmission made as part of a service that provides audio programming consisting, in whole or in part, of performances of sound recordings, including retransmissions of broadcast transmissions, if the primary purpose of the service is to provide to the public such audio or other entertainment programming, and the primary purpose of the service is not to sell, advertise, or promote particular products or services other than sound recordings, live concerts, or other music-related events.

"(7) An 'interactive service' is one that enables a member of the public to receive a transmission of a program specially created for the recipient, or on request, a transmission of a particular sound recording, whether or not as part of a program, which is selected by or on behalf of the recipient. The ability of individuals to request that particular sound recordings be performed for reception by the public at large does not make a service interactive, if the programming on each channel of the service does not substantially consist of sound recordings that are performed within 1 hour of the request or at a time designated by either the transmitting entity or the individual making such request. If an entity offers both interactive and noninteractive services (either concurrently or at different times), the noninteractive component shall not be treated as part of an interactive service.

"(8) A 'new subscription service' is a service that performs sound recordings by means of subscription digital audio transmissions and that is not a preexisting subscription service.";

(E) by inserting after paragraph (9), as so redesignated, the following:

"(10) A 'preexisting subscription service' is a service that performs sound recordings by means of noninteractive audio-only subscription digital audio transmissions, which was in existence and was making such transmission to the public for a fee on or before July 31, 1998."; and

(F) by adding at the end the following:

"(14) A 'transmission' is either an initial transmission or a retransmission.".

(b) EPHEMERAL RECORDINGS.—Section 112 of title 17, United States Code, is amended by adding at the end the following:

"(f) STATUTORY LICENSE.—(1) An ephemeral recording of a sound recording by a transmitting organization entitled to transmit to the public a performance of that sound recording by means of a digital audio transmission under a statutory license in accordance with section 114(f) or an exemption provided in section 114(d)(1)(B) or (C) is subject to statutory licensing under the conditions specified by this subsection.

"(2) A statutory license under this subsection grants a transmitting organization entitled to transmit to the public a performance of a sound recording by means of a digital audio transmission under a statutory license in accordance with section 114(f) or an exemption provided in section 114(d)(1)(B) or (C) the privilege of making no more than 1 phonorecord of the sound recording (unless the terms and conditions of the statutory license allow for more), if—

"(A) the phonorecord is retained and used solely by the transmitting organization that made it, and no further phonorecords are reproduced from it; and

"(B) the phonorecord is used solely for the transmitting organization's own transmissions in the United States under a statutory license in accordance with section 114(f) or an exemption provided in section 114(d)(1)(B) or (C);

"(C) unless preserved exclusively for purposes of archival preservation, the phonorecord is destroyed within 6 months from the date the sound recording was first transmitted to the public using the phonorecord; and

"(D) phonorecords of the sound recording have been distributed to the public in the United States under the authority of the copyright owner or the copyright owner authorizes the transmitting entity to transmit the sound recording, and the transmitting entity makes the transmission from a phonorecord lawfully made and acquired under this title.

"(3) Notwithstanding any provision of the antitrust laws, any copyright owners of sound recordings and any transmitting organizations entitled to obtain a statutory license under this subsection may negotiate and agree upon royalty rates and license terms and conditions for ephemeral recordings of such sound recordings and the proportionate division of fees paid among copyright owners, and may designate common agents to negotiate, agree to, pay, or receive such royalty payments.

"(4) No later than 30 days after the date of the enactment of the Digital Millennium Copyright Act, the Librarian of Congress shall cause notice to be published in the Federal Register of the initiation of voluntary negotiation proceedings for the purpose of determining reasonable terms and rates of royalty payments for the activities specified by paragraph (2) of this subsection during the period beginning on the date of the enactment of such Act and ending on December 31, 2000, or such other date as the parties may agree. Such rates shall include a minimum fee for each type of service. Any copyright owners of sound recordings or any transmitting organizations entitled to obtain a statutory license under this subsection may submit to the Librarian of Congress licenses covering such activities with respect to such sound recordings. The parties to each negotiation proceeding shall bear their own costs.

"(5) In the absence of license agreements negotiated under paragraph (3), during the 60-day period commencing 6 months after publication of the notice specified in paragraph (4), and upon the filing of a petition in accordance with section 803(a)(1), the Librarian of Congress shall, pursuant to chapter 8, convene a copyright arbitration royalty panel to determine and publish in the Federal Register a schedule of reasonable rates and terms which, subject to paragraph (6), shall be binding on all copyright owners of sound recordings and transmitting organizations entitled to obtain a statutory license under this subsection during the period beginning on the date of the enactment of the Digital Millennium Copyright Act and ending on December 31, 2000, or such other date as the parties may agree. Such rates shall include a minimum fee for each type of service. The copyright arbitration royalty panel shall establish rates that most clearly represent the fees that would have been negotiated in the marketplace between a willing buyer and a willing seller. In determining such rates and terms, the copyright arbitration royalty panel shall base its decision on economic, competitive, and programming information presented by the parties, including—

"(A) whether use of the service may substitute for or may promote the sales of phonorecords or otherwise interferes with or enhances the copyright owner's traditional streams of revenue;

"(B) the relative roles of the copyright owner and the copyright user in the copyrighted work and the service made available to the public with respect to relative creative contribution, technological contribution, capital investment, cost, and risk.

In establishing such rates and terms, the copyright arbitration royalty panel may consider the rates and terms under voluntary license agreements negotiated as provided in paragraphs (3) and (4). The Librarian of Congress shall also establish requirements by which copyright owners may receive reasonable notice of the use of their sound recordings under this section, and under which records of such use shall be kept and made available by transmitting organizations entitled to obtain a statutory license under this subsection.

"(6) License agreements voluntarily negotiated at any time between 1 or more copyright owners of sound recordings and 1 or more transmitting organizations entitled to obtain a statutory license under this subsection shall be given effect in lieu of any determination by a copyright arbitration royalty panel or decision by the Librarian of Congress.

"(7) Publication of a notice of the initiation of voluntary negotiation proceedings as specified in paragraph (4) shall be repeated, in accordance with regulations that the Librarian of Congress shall prescribe, in

the first week of January 2000, and at 2-year intervals thereafter, except to the extent that different years for the repeating of such proceedings may be determined in accordance with paragraph (4). The procedures specified in paragraph (5) shall be repeated, in accordance with regulations that the Librarian of Congress shall prescribe, upon filing of a petition in accordance with section 803(a)(1) during a 60-day period commencing on July 1, 2000, and at 2-year intervals thereafter, except to the extent that different years for the repeating of such proceedings may be determined in accordance with paragraph (4). The procedures specified in paragraph (5) shall be concluded in accordance with section 802.

"(8)(A) Any person who wishes to make an ephemeral recording of a sound recording under a statutory license in accordance with this subsection may do so without infringing the exclusive right of the copyright owner of the sound recording under section 106(1)—

"(i) by complying with such notice requirements as the Librarian of Congress shall prescribe by regulation and by paying royalty fees in accordance with this subsection; or

"(ii) if such royalty fees have not been set, by agreeing to pay such royalty fees as shall be determined in accordance with this subsection.

"(B) Any royalty payments in arrears shall be made on or before the 20th day of the month next succeeding the month in which the royalty fees are set.

"(9) If a transmitting organization entitled to make a phonorecord under this subsection is prevented from making such phonorecord by reason of the application by the copyright owner of technical measures that prevent the reproduction of the sound recording, the copyright owner shall make available to the transmitting organization the necessary means for permitting the making of such phonorecord within the meaning of this subsection, if it is technologically feasible and economically reasonable for the copyright owner to do so. If the 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 phonorecords as permitted under this subsection.".

SEC. 416. ASSUMPTION OF CONTRACTUAL OBLIGATIONS RELATED TO TRANSFERS OF RIGHTS IN MOTION PICTURES.

(a) IN GENERAL.—Part VI of title 28, United States Code, is amended by adding at the end the following new chapter:

"CHAPTER 180—ASSUMPTION OF CERTAIN CONTRACTUAL OBLIGATIONS

"Sec.
"4001. Assumption of contractual obligations related to transfers of rights in motion pictures.

"§ 4001. Assumption of contractual obligations related to transfers of rights in motion pictures

"(a) ASSUMPTION OF OBLIGATIONS.—In the case of a transfer of copyright ownership in a motion picture (as defined in section 101 of title 17) that is produced subject to 1 or more collective bargaining agreements negotiated under the laws of the United States, if the transfer is executed on or after the effective date of this chapter and is not limited to public performance rights, the transfer instrument shall be deemed to incorporate the assumption agreements applicable to the copyright ownership being transferred that are required by the applicable collective bargaining agreement, and the transferee shall be subject to the obligations under each such assumption agreement to make residual payments and provide related notices, accruing after the effective date of the transfer and applicable to the exploitation of the rights transferred, and any remedies under each such assumption agreement for breach of those obligations, as those obligations and remedies are set forth in the applicable collective bargaining agreement, if—

"(1) the transferee knows or has reason to know at the time of the transfer that such collective bargaining agreement was or will be applicable to the motion picture; or

"(2) in the event of a court order confirming an arbitration award against the transferor under the collective bargaining agreement, the transferor does not have the financial ability to satisfy the award within 90 days after the order is issued.

"(b) FAILURE TO NOTIFY.—If the transferor under subsection (a) fails to notify the transferee under subsection (a) of applicable collective bargaining obligations before the execution of the transfer instrument, and subsection (a) is made applicable to the transferee solely by virtue of subsection (a)(2), the transferor shall be liable to the transferee for any damages suffered by the transferee as a result of the failure to notify.

"(c) DETERMINATION OF DISPUTES AND CLAIMS.—Any dispute concerning the application of subsection (a) and any claim made under subsection (b) shall be determined by an action in United States district court, and the court in its discretion may allow the recovery of full costs by or against any party and may also award a reasonable attorney's fee to the prevailing party as part of the costs.".

(b) CONFORMING AMENDMENT.—The table of chapters for part VI of title 28, United States Code, is amended by adding at the end the following:

"180. Assumption of Certain Contractual Obligations ..... 4001".

SEC. 417. FIRST SALE CLARIFICATION.

Section 109(a) of title 17, United States Code, is amended by striking the first sentence and inserting the following: "Notwithstanding the provisions of section 106(3), the owner of a particular lawfully made copy or phonorecord that has been distributed in the United States by the authority of the copyright owner, or any person authorized by the owner of that copy or phonorecord, is entitled, without the authority of the copyright owner, to sell or otherwise dispose of the possession of that copy or phonorecord.".

TITLE V—COLLECTIONS OF INFORMATION ANTIPIRACY ACT

SEC. 501. SHORT TITLE.

This title may be cited as the "Collections of Information Antipiracy Act".

SEC. 502. MISAPPROPRIATION OF COLLECTIONS OF INFORMATION.

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

"CHAPTER 13—MISAPPROPRIATION OF COLLECTIONS OF INFORMATION

"Sec.
"1301. Definitions.
"1302. Prohibition against misappropriation.
"1303. Permitted acts.
"1304. Exclusions.
"1305. Relationship to other laws.
"1306. Civil remedies.
"1307. Criminal offenses and penalties.
"1308. Limitations on actions.

"§ 1301. Definitions

"As used in this chapter:

"(1) COLLECTION OF INFORMATION.—The term 'collection of information' means information that has been collected and has been organized for the purpose of bringing discrete items of information together in one place or through one source so that users may access them.

"(2) INFORMATION.—The term 'information' means facts, data, works of authorship, or any other intangible material capable of being collected and organized in a systematic way.

"(3) POTENTIAL MARKET.—The term 'potential market' means any market that a person claiming protection under section 1302 has current and demonstrable plans to exploit or that is commonly exploited by persons offering similar products or services incorporating collections of information.

"(4) COMMERCE.—The term 'commerce' means all commerce which may be lawfully regulated by the Congress.

"(5) PRODUCT OR SERVICE.—A product or service incorporating a collection of information does not include a product or service incorporating a collection of information gathered, organized, or maintained to address, route, forward, transmit, or store digital online communications or provide or receive access to connections for digital online communications.

"§ 1302. Prohibition against misappropriation

"Any person who extracts, or uses in commerce, all or a substantial part, measured either quantitatively or qualitatively, of a collection of information gathered, organized, or maintained by another person through the investment of substantial monetary or other resources, so as to cause harm to the actual or potential market of that other person, or a successor in interest of that other person, for a product or service that incorporates that collection of information and is offered or intended to be offered for sale or otherwise in commerce by that other person, or a successor in interest of that person, shall be liable to that person or successor in interest for the remedies set forth in section 1306.

"§ 1303. Permitted acts

"(a) INDIVIDUAL ITEMS OF INFORMATION AND OTHER INSUBSTANTIAL PARTS.—Nothing in this chapter shall prevent the extraction or use of an individual item of information, or other insubstantial part of a collection of information, in itself. An individual item of information, including a work of authorship, shall not itself be considered a substantial part of a collection of information under section 1302. Nothing in this subsection shall permit the repeated or systematic extraction or use of individual items or insubstantial parts of a collection of information so as to circumvent the prohibition contained in section 1302.

"(b) GATHERING OR USE OF INFORMATION OBTAINED THROUGH OTHER MEANS.—Nothing in this chapter shall restrict any person from independently gathering information or using information obtained by means other than extracting it from a collection of information gathered, organized, or maintained by another person through the investment of substantial monetary or other resources.

"(c) USE OF INFORMATION FOR VERIFICATION.—Nothing in this chapter shall restrict any person from extracting or using a collection of information within any entity or organization, for the sole purpose of verifying the accuracy of information independently gathered, organized, or maintained by that person. Under no circumstances shall the information so used be extracted from the original collection and made available to others in a manner that harms the actual or potential market for the collection of information from which it is extracted or used.

"(d) NONPROFIT EDUCATIONAL, SCIENTIFIC, OR RESEARCH USES.—Notwithstanding section 1302, no person shall be restricted from extracting or using information for nonprofit educational, scientific, or research purposes in a manner that does not harm directly the

actual market for the product or service referred to in section 1302.

"(e) NEWS REPORTING.—Nothing in this chapter shall restrict any person from extracting or using information for the sole purpose of news reporting, including news gathering, dissemination, and comment, unless the information so extracted or used is time sensitive and has been gathered by a news reporting entity, and the extraction or use is part of a consistent pattern engaged in for the purpose of direct competition.

"(f) TRANSFER OF COPY.—Nothing in this chapter shall restrict the owner of a particular lawfully made copy of all or part of a collection of information from selling or otherwise disposing of the possession of that copy.

"§1304. Exclusions

"(a) GOVERNMENT COLLECTIONS OF INFORMATION.—

"(1) EXCLUSION.—Protection under this chapter shall not extend to collections of information gathered, organized, or maintained by or for a government entity, whether Federal, State, or local, including any employee or agent of such entity, or any person exclusively licensed by such entity, within the scope of the employment, agency, or license. Nothing in this subsection shall preclude protection under this chapter for information gathered, organized, or maintained by such an agent or licensee that is not within the scope of such agency or license, or by a Federal or State educational institution in the course of engaging in education or scholarship.

"(2) EXCEPTION.—The exclusion under paragraph (1) does not apply to any information required to be collected and disseminated—

"(A) under the Securities Exchange Act of 1934 by a national securities exchange, a registered securities association, or a registered securities information processor, subject to section 1305(g) of this title; or

"(B) under the Commodity Exchange Act by a contract market, subject to section 1305(g) of this title.

"(b) COMPUTER PROGRAMS.—

"(1) PROTECTION NOT EXTENDED.—Subject to paragraph (2), protection under this chapter shall not extend to computer programs, including, but not limited to, any computer program used in the manufacture, production, operation, or maintenance of a collection of information, or any element of a computer program necessary to its operation.

"(2) INCORPORATED COLLECTIONS OF INFORMATION.—A collection of information that is otherwise subject to protection under this chapter is not disqualified from such protection solely because it is incorporated into a computer program.

"§1305. Relationship to other laws

"(a) OTHER RIGHTS NOT AFFECTED.—Subject to subsection (b), nothing in this chapter shall affect rights, limitations, or remedies concerning copyright, or any other rights or obligations relating to information, including laws with respect to patent, trademark, design rights, antitrust, trade secrets, privacy, access to public documents, and the law of contract.

"(b) PREEMPTION OF STATE LAW.—On or after the effective date of this chapter, all rights that are equivalent to the rights specified in section 1302 with respect to the subject matter of this chapter shall be governed exclusively by Federal law, and no person is entitled to any equivalent right in such subject matter under the common law or statutes of any State. State laws with respect to trademark, design rights, antitrust, trade secrets, privacy, access to public documents, and the law of contract shall not be deemed to provide equivalent rights for purposes of this subsection.

"(c) RELATIONSHIP TO COPYRIGHT.—Protection under this chapter is independent of, and does not affect or enlarge the scope, duration, ownership, or subsistence of, any copyright protection or limitation, including, but not limited to, fair use, in any work of authorship that is contained in or consists in whole or part of a collection of information. This chapter does not provide any greater protection to a work of authorship contained in a collection of information, other than a work that is itself a collection of information, than is available to that work under any other chapter of this title.

"(d) ANTITRUST.—Nothing in this chapter shall limit in any way the constraints on the manner in which products and services may be provided to the public that are imposed by Federal and State antitrust laws, including those regarding single suppliers of products and services.

"(e) LICENSING.—Nothing in this chapter shall restrict the rights of parties freely to enter into licenses or any other contracts with respect to the use of collections of information.

"(f) COMMUNICATIONS ACT OF 1934.—Nothing in this chapter shall affect the operation of the provisions of the Communications Act of 1934 (47 U.S.C. 151 et seq.), or shall restrict any person from extracting or using subscriber list information, as such term is defined in section 222(f)(3) of the Communications Act of 1934 (47 U.S.C. 222(f)(3)), for the purpose of publishing telephone directories in any format.

"(g) SECURITIES AND COMMODITIES MARKET INFORMATION.—

"(1) FEDERAL AGENCIES AND ACTS.—Nothing in this Act shall affect:

"(A) the operation of the provisions of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or the Commodity Exchange Act (7 U.S.C. 1 et seq.);

"(B) the jurisdiction or authority of the Securities and Exchange Commission and the Commodity Futures Trading Commission; or

"(C) the functions and operations of self-regulatory organizations and securities information processors under the provisions of the Securities Exchange Act of 1934 and the rules and regulations thereunder, including making market information available pursuant to the provisions of that Act and the rules and regulations promulgated thereunder.

"(2) PROHIBITION.—Notwithstanding any provision in subsection (a), (b), (c), (d), or (f) of section 1303, nothing in this chapter shall permit the extraction, use, resale, or other disposition of real-time market information except as the Securities Exchange Act of 1934, the Commodity Exchange Act, and the rules and regulations thereunder may otherwise provide. In addition, nothing in subsection (e) of section 1303 shall be construed to permit any person to extract or use real-time market information in a manner that constitutes a market substitute for a real-time market information service (including the real-time systematic updating of or display of a substantial part of market information) provided on a real-time basis.

"(3) DEFINITION.—As used in this subsection, the term 'market information' means information relating to quotations and transactions that is collected, processed, distributed, or published pursuant to the provisions of the Securities Exchange Act of 1934 or by a contract market that is designated by the Commodity Futures Trading Commission pursuant to the Commodity Exchange Act and the rules and regulations thereunder.

"§1306. Civil remedies

"(a) CIVIL ACTIONS.—Any person who is injured by a violation of section 1302 may bring a civil action for such a violation in an appropriate United States district court without regard to the amount in controversy, except that any action against a State governmental entity may be brought in any court that has jurisdiction over claims against such entity.

"(b) TEMPORARY AND PERMANENT INJUNCTIONS.—Any court having jurisdiction of a civil action under this section shall have the power to grant temporary and permanent injunctions, according to the principles of equity and upon such terms as the court may deem reasonable, to prevent a violation of section 1302. Any such injunction may be served anywhere in the United States on the person enjoined, and may be enforced by proceedings in contempt or otherwise by any United States district court having jurisdiction over that person.

"(c) IMPOUNDMENT.—At any time while an action under this section is pending, the court may order the impounding, on such terms as it deems reasonable, of all copies of contents of a collection of information extracted or used in violation of section 1302, and of all masters, tapes, disks, diskettes, or other articles by means of which such copies may be reproduced. The court may, as part of a final judgment or decree finding a violation of section 1302, order the remedial modification or destruction of all copies of contents of a collection of information extracted or used in violation of section 1302, and of all masters, tapes, disks, diskettes, or other articles by means of which such copies may be reproduced.

"(d) MONETARY RELIEF.—When a violation of section 1302 has been established in any civil action arising under this section, the plaintiff shall be entitled to recover any damages sustained by the plaintiff and defendant's profits not taken into account in computing the damages sustained by the plaintiff. The court shall assess such profits or damages or cause the same to be assessed under its direction. In assessing profits the plaintiff shall be required to prove defendant's gross revenue only and the defendant shall be required to prove all elements of cost or deduction claims. In assessing damages the court may enter judgment, according to the circumstances of the case, for any sum above the amount found as actual damages, not exceeding three times such amount. The court in its discretion may award reasonable costs and attorney's fees to the prevailing party and shall award such costs and fees where it determines that an action was brought under this chapter in bad faith against a nonprofit educational, scientific, or research institution, library, or archives, or an employee or agent of such an entity, acting within the scope of his or her employment.

"(e) REDUCTION OR REMISSION OF MONETARY RELIEF FOR NONPROFIT EDUCATIONAL, SCIENTIFIC, OR RESEARCH INSTITUTIONS.—The court shall reduce or remit entirely monetary relief under subsection (d) in any case in which a defendant believed and had reasonable grounds for believing that his or her conduct was permissible under this chapter, if the defendant was an employee or agent of a nonprofit educational, scientific, or research institution, library, or archives acting within the scope of his or her employment.

"(f) ACTIONS AGAINST UNITED STATES GOVERNMENT.—Subsections (b) and (c) shall not apply to any action against the United States Government.

"(g) RELIEF AGAINST STATE ENTITIES.—The relief provided under this section shall be available against a State governmental entity to the extent permitted by applicable law.

"§1307. Criminal offenses and penalties

"(a) VIOLATION.—

"(1) IN GENERAL.—Any person who violates section 1302 willfully, and—

"(A) does so for direct or indirect commercial advantage or financial gain; or

"(B) causes loss or damage aggregating $10,000 or more in any 1-year period to the person who gathered, organized, or maintained the information concerned,

shall be punished as provided in subsection (b).

"(2) INAPPLICABILITY.—This section shall not apply to an employee or agent of a nonprofit educational, scientific, or research institution, library, or archives acting within the scope of his or her employment.

"(b) PENALTIES.—An offense under subsection (a) shall be punishable by a fine of not more than $250,000 or imprisonment for not more than 5 years, or both. A second or subsequent offense under subsection (a) shall be punishable by a fine of not more than $500,000 or imprisonment for not more than 10 years, or both.

"§1308. Limitations on actions

"(a) CRIMINAL PROCEEDINGS.—No criminal proceeding shall be maintained under this chapter unless it is commenced within three years after the cause of action arises.

"(b) CIVIL ACTIONS.—No civil action shall be maintained under this chapter unless it is commenced within three years after the cause of action arises or claim accrues.

"(c) ADDITIONAL LIMITATION.—No criminal or civil action shall be maintained under this chapter for the extraction or use of all or a substantial part of a collection of information that occurs more than 15 years after the investment of resources that qualified the portion of the collection of information for protection under this chapter that is extracted or used.".

SEC. 503. CONFORMING AMENDMENT.

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

"13. Misappropriation of Collections of Information ..... 1301".

SEC. 504. CONFORMING AMENDMENTS TO TITLE 28, UNITED STATES CODE.

(a) DISTRICT COURT JURISDICTION.—Section 1338 of title 28, United States Code, is amended—

(1) in the section heading by inserting "misappropriations of collections of information," after "trade-marks,"; and

(2) by adding at the end the following:

"(d) The district courts shall have original jurisdiction of any civil action arising under chapter 13 of title 17, relating to misappropriation of collections of information. Such jurisdiction shall be exclusive of the courts of the States, except that any action against a State governmental entity may be brought in any court that has jurisdiction over claims against such entity.".

(b) CONFORMING AMENDMENT.—The item relating to section 1338 in the table of sections for chapter 85 of title 28, United States Code, is amended by inserting "misappropriations of collections of information," after "trade-marks,".

(c) COURT OF FEDERAL CLAIMS JURISDICTION.—Section 1498(e) of title 28, United States Code, is amended by inserting "and to protections afforded collections of information under chapter 13 of title 17" after "chapter 9 of title 17".

SEC. 505. EFFECTIVE DATE.

(a) IN GENERAL.—This title and the amendments made by this title shall take effect on the date of the enactment of this Act, and shall apply to acts committed on or after that date.

(b) PRIOR ACTS NOT AFFECTED.—No person shall be liable under chapter 13 of title 17, United States Code, as added by section 502 of this Act, for the use of information lawfully extracted from a collection of information prior to the effective date of this Act, by that person or by that person's predecessor in interest.

TITLE VI—PROTECTION OF CERTAIN ORIGINAL DESIGNS

SEC. 601. SHORT TITLE.

This Act may be referred to as the "Vessel Hull Design Protection Act".

SEC. 602. PROTECTION OF CERTAIN ORIGINAL DESIGNS.

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

"CHAPTER 14—PROTECTION OF ORIGINAL DESIGNS

"§1401. Designs protected

"(a) DESIGNS PROTECTED.—

"(1) IN GENERAL.—The designer or other owner of an original design of a useful article which makes the article attractive or distinctive in appearance to the purchasing or using public may secure the protection provided by this chapter upon complying with and subject to this chapter.

"(2) VESSEL HULLS.—The design of a vessel hull, including a plug or mold, is subject to protection under this chapter, notwithstanding section 1402(4).

"(b) DEFINITIONS.—For the purpose of this chapter, the following terms have the following meanings:

"(1) A design is 'original' if it is the result of the designer's creative endeavor that provides a distinguishable variation over prior work pertaining to similar articles which is more than merely trivial and has not been copied from another source.

"(2) A 'useful article' is a vessel hull, including a plug or mold, which in normal use has an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information. An article which normally is part of a useful article shall be deemed to be a useful article.

"(3) A 'vessel' is a craft, especially one larger than a rowboat, designed to navigate on water, but does not include any such craft that exceeds 200 feet in length.

"(4) A 'hull' is the frame or body of a vessel, including the deck of a vessel, exclusive of masts, sails, yards, and rigging.

"(5) A 'plug' means a device or model used to make a mold for the purpose of exact duplication, regardless of whether the device or model has an intrinsic utilitarian function that is not only to portray the appearance of the product or to convey information.

"(6) A 'mold' means a matrix or form in which a substance for material is used, regardless of whether the matrix or form has an intrinsic utilitarian function that is not only to portray the appearance of the product or to convey information.

"§1402. Designs not subject to protection

"Protection under this chapter shall not be available for a design that is—

"(1) not original;

"(2) staple or commonplace, such as a standard geometric figure, a familiar symbol, an emblem, or a motif, or another shape, pattern, or configuration which has become standard, common, prevalent, or ordinary;

"(3) different from a design excluded by paragraph (2) only in insignificant details or in elements which are variants commonly used in the relevant trades;

"(4) dictated solely by a utilitarian function of the article that embodies it; or

"(5) embodied in a useful article that was made public by the designer or owner in the United States or a foreign country more than 1 year before the date of the application for registration under this chapter.

"§1403. Revisions, adaptations, and rearrangements

"Protection for a design under this chapter shall be available notwithstanding the employment in the design of subject matter excluded from protection under section 1402 if the design is a substantial revision, adaptation, or rearrangement of such subject matter. Such protection shall be independent of any subsisting protection in subject matter employed in the design, and shall not be construed as securing any right to subject matter excluded from protection under this chapter or as extending any subsisting protection under this chapter.

"§1404. Commencement of protection

"The protection provided for a design under this chapter shall commence upon the earlier of the date of publication of the registration under section 1413(a) or the date the design is first made public as defined by section 1410(b).

"§1405. Term of protection

"(a) IN GENERAL.—Subject to subsection (b), the protection provided under this chapter for a design shall continue for a term of 10 years beginning on the date of the commencement of protection under section 1404.

"(b) EXPIRATION.—All terms of protection provided in this section shall run to the end of the calendar year in which they would otherwise expire.

"(c) TERMINATION OF RIGHTS.—Upon expiration or termination of protection in a particular design under this chapter, all rights under this chapter in the design shall terminate, regardless of the number of different articles in which the design may have been used during the term of its protection.

"§1406. Design notice

"(a) CONTENTS OF DESIGN NOTICE.—(1) Whenever any design for which protection is sought under this chapter is made public under section 1410(b), the owner of the design shall, subject to the provisions of section 1407, mark it or have it marked legibly with a design notice consisting of—

"(A) the words 'Protected Design', the abbreviation 'Prot'd Des.', or the letter 'D' with a circle, or the symbol "D";

"(B) the year of the date on which protection for the design commenced; and

"(C) the name of the owner, an abbreviation by which the name can be recognized, or a generally accepted alternative designation of the owner.

Any distinctive identification of the owner may be used for purposes of subparagraph (C) if it has been recorded by the Administrator before the design marked with such identification is registered.

"(2) After registration, the registration number may be used instead of the elements specified in subparagraphs (B) and (C) of paragraph (1).

"(b) LOCATION OF NOTICE.—The design notice shall be so located and applied as to give reasonable notice of design protection while the useful article embodying the design is passing through its normal channels of commerce.

"(c) SUBSEQUENT REMOVAL OF NOTICE.—When the owner of a design has complied with the provisions of this section, protection under this chapter shall not be affected by the removal, destruction, or obliteration by others of the design notice on an article.

"§1407. Effect of omission of notice

"(a) ACTIONS WITH NOTICE.—Except as provided in subsection (b), the omission of the notice prescribed in section 1406 shall not cause loss of the protection under this chapter or prevent recovery for infringement under this chapter against any person who, after receiving written notice of the design protection, begins an undertaking leading to infringement under this chapter.

"(b) ACTIONS WITHOUT NOTICE.—The omission of the notice prescribed in section 1406 shall prevent any recovery under section 1423 against a person who began an undertaking leading to infringement under this chapter before receiving written notice of the design protection. No injunction shall be issued under this chapter with respect to such undertaking unless the owner of the design reimburses that person for any reasonable expenditure or contractual obligation in connection with such undertaking that was incurred before receiving written notice of the design protection, as the court in its discretion directs. The burden of providing written notice of design protection shall be on the owner of the design.

"§1408. Exclusive rights

"The owner of a design protected under this chapter has the exclusive right to—

"(1) make, have made, or import, for sale or for use in trade, any useful article embodying that design; and

"(2) sell or distribute for sale or for use in trade any useful article embodying that design.

"§1409. Infringement

"(a) ACTS OF INFRINGEMENT.—Except as provided in subjection (b), it shall be infringement of the exclusive rights in a design protected under this chapter for any person, without the consent of the owner of the design, within the United States and during the term of such protection, to—

"(1) make, have made, or import, for sale or for use in trade, any infringing article as defined in subsection (e); or

"(2) sell or distribute for sale or for use in trade any such infringing article.

"(b) ACTS OF SELLERS AND DISTRIBUTORS.—A seller or distributor of an infringing article who did not make or import the article shall be deemed to have infringed on a design protected under this chapter only if that person—

"(1) induced or acted in collusion with a manufacturer to make, or an importer to import such article, except that merely purchasing or giving an order to purchase such article in the ordinary course of business shall not of itself constitute such inducement or collusion; or

"(2) refused or failed, upon the request of the owner of the design, to make a prompt and full disclosure of that person's source of such article, and that person orders or reorders such article after receiving notice by registered or certified mail of the protection subsisting in the design.

"(c) ACTS WITHOUT KNOWLEDGE.—It shall not be infringement under this section to make, have made, import, sell, or distribute, any article embodying a design which was created without knowledge that a design was protected under this chapter and was copied from such protected design.

"(d) ACTS IN ORDINARY COURSE OF BUSINESS.—A person who incorporates into that person's product of manufacture an infringing article acquired from others in the ordinary course of business, or who, without knowledge of the protected design embodied in an infringing article, makes or processes the infringing article for the account of another person in the ordinary course of business, shall not be deemed to have infringed the rights in that design under this chapter except under a condition contained in paragraph (1) or (2) of subsection (b). Accepting an order or reorder from the source of the infringing article shall be deemed ordering or reordering within the meaning of subsection (b)(2).

"(e) INFRINGING ARTICLE DEFINED.—As used in this section, an 'infringing article' is any article the design of which has been copied from a design protected under this chapter, without the consent of the owner of the protected design. An infringing article is not an illustration or picture of a protected design in an advertisement, book, periodical, newspaper, photograph, broadcast, motion picture, or similar medium. A design shall not be deemed to have been copied from a protected design if it is original and not substantially similar in appearance to a protected design.

"(f) ESTABLISHING ORIGINALITY.—The party to any action or proceeding under this chapter who alleges rights under this chapter in a design shall have the burden of establishing the design's originality whenever the opposing party introduces an earlier work which is identical to such design, or so similar as to make prima facie showing that such design was copied from such work.

"(g) REPRODUCTION FOR TEACHING OR ANALYSIS.—It is not an infringement of the exclusive rights of a design owner for a person to reproduce the design in a useful article or in any other form solely for the purpose of teaching, analyzing, or evaluating the appearance, concepts, or techniques embodied in the design, or the function of the useful article embodying the design.

"§1410. Application for registration

"(a) TIME LIMIT FOR APPLICATION FOR REGISTRATION.—Protection under this chapter shall be lost if application for registration of the design is not made within two years after the date on which the design is first made public.

"(b) WHEN DESIGN IS MADE PUBLIC.—A design is made public when an existing useful article embodying the design is anywhere publicly exhibited, publicly distributed, or offered for sale or sold to the public by the owner of the design or with the owner's consent.

"(c) APPLICATION BY OWNER OF DESIGN.—Application for registration may be made by the owner of the design.

"(d) CONTENTS OF APPLICATION.—The application for registration shall be made to the Administrator and shall state—

"(1) the name and address of the designer or designers of the design;

"(2) the name and address of the owner if different from the designer;

"(3) the specific name of the useful article embodying the design;

"(4) the date, if any, that the design was first made public, if such date was earlier than the date of the application;

"(5) affirmation that the design has been fixed in a useful article; and

"(6) such other information as may be required by the Administrator.

The application for registration may include a description setting forth the salient features of the design, but the absence of such a description shall not prevent registration under this chapter.

"(e) SWORN STATEMENT.—The application for registration shall be accompanied by a statement under oath by the applicant or the applicant's duly authorized agent or representative, setting forth, to the best of the applicant's knowledge and belief—

"(1) that the design is original and was created by the designer or designers named in the application;

"(2) that the design has not previously been registered on behalf of the applicant or the applicant's predecessor in title; and

"(3) that the applicant is the person entitled to protection and to registration under this chapter.

If the design has been made public with the design notice prescribed in section 1406, the statement shall also describe the exact form and position of the design notice.

"(f) EFFECT OF ERRORS.—(1) Error in any statement or assertion as to the utility of the useful article named in the application under this section, the design of which is sought to be registered, shall not affect the protection secured under this chapter.

"(2) Errors in omitting a joint designer or in naming an alleged joint designer shall not affect the validity of the registration, or the actual ownership or the protection of the design, unless it is shown that the error occurred with deceptive intent.

"(g) DESIGN MADE IN SCOPE OF EMPLOYMENT.—In a case in which the design was made within the regular scope of the designer's employment and individual authorship of the design is difficult or impossible to ascribe and the application so states, the name and address of the employer for whom the design was made may be stated instead of that of the individual designer.

"(h) PICTORIAL REPRESENTATION OF DESIGN.—The application for registration shall be accompanied by two copies of a drawing or other pictorial representation of the useful article embodying the design, having one or more views, adequate to show the design, in a form and style suitable for reproduction, which shall be deemed a part of the application.

"(i) DESIGN IN MORE THAN ONE USEFUL ARTICLE.—If the distinguishing elements of a design are in substantially the same form in different useful articles, the design shall be protected as to all such useful articles when protected as to one of them, but not more than one registration shall be required for the design.

"(j) APPLICATION FOR MORE THAN ONE DESIGN.—More than one design may be included in the same application under such conditions as may be prescribed by the Administrator. For each design included in an application the fee prescribed for a single design shall be paid.

"§1411. Benefit of earlier filing date in foreign country

"An application for registration of a design filed in the United States by any person who has, or whose legal representative or predecessor or successor in title has, previously

filed an application for registration of the same design in a foreign country which extends to designs of owners who are citizens of the United States, or to applications filed under this chapter, similar protection to that provided under this chapter shall have that same effect as if filed in the United States on the date on which the application was first filed in such foreign country, if the application in the United States is filed within 6 months after the earliest date on which any such foreign application was filed.

"§1412. Oaths and acknowledgments

"(a) IN GENERAL.—Oaths and acknowledgments required by this chapter—

"(1) may be made—

"(A) before any person in the United States authorized by law to administer oaths; or

"(B) when made in a foreign country, before any diplomatic or consular officer of the United States authorized to administer oaths, or before any official authorized to administer oaths in the foreign country concerned, whose authority shall be proved by a certificate of a diplomatic or consular officer of the United States; and

"(2) shall be valid if they comply with the laws of the State or country where made.

"(b) WRITTEN DECLARATION IN LIEU OF OATH.—(1) The Administrator may by rule prescribe that any document which is to be filed under this chapter in the Office of the Administrator and which is required by any law, rule, or other regulation to be under oath, may be subscribed to by a written declaration in such form as the Administrator may prescribe, and such declaration shall be in lieu of the oath otherwise required.

"(2) Whenever a written declaration under paragraph (1) is used, the document containing the declaration shall state that willful false statements are punishable by fine or imprisonment, or both, pursuant to section 1001 of title 18, and may jeopardize the validity of the application or document or a registration resulting therefrom.

"§1413. Examination of application and issue or refusal of registration

"(a) DETERMINATION OF REGISTRABILITY OF DESIGN; REGISTRATION.—Upon the filing of an application for registration in proper form under section 1410, and upon payment of the fee prescribed under section 1416, the Administrator shall determine whether or not the application relates to a design which on its face appears to be subject to protection under this chapter, and, if so, the Register shall register the design. Registration under this subsection shall be announced by publication. The date of registration shall be the date of publication.

"(b) REFUSAL TO REGISTER; RECONSIDERATION.—If, in the judgment of the Administrator, the application for registration relates to a design which on its face is not subject to protection under this chapter, the Administrator shall send to the applicant a notice of refusal to register and the grounds for the refusal. Within 3 months after the date on which the notice of refusal is sent, the applicant may, by written request, seek reconsideration of the application. After consideration of such a request, the Administrator shall either register the design or send to the applicant a notice of final refusal to register.

"(c) APPLICATION TO CANCEL REGISTRATION.—Any person who believes he or she is or will be damaged by a registration under this chapter may, upon payment of the prescribed fee, apply to the Administrator at any time to cancel the registration on the ground that the design is not subject to protection under this chapter, stating the reasons for the request. Upon receipt of an application for cancellation, the Administrator shall send to the owner of the design, as shown in the records of the Office of the Administrator, a notice of the application, and the owner shall have a period of 3 months after the date on which such notice is mailed in which to present arguments to the Administrator for support of the validity of the registration. The Administrator shall also have the authority to establish, by regulation, conditions under which the opposing parties may appear and be heard in support of their arguments. If, after the periods provided for the presentation of arguments have expired, the Administrator determines that the applicant for cancellation has established that the design is not subject to protection under this chapter, the Administrator shall order the registration stricken from the record. Cancellation under this subsection shall be announced by publication, and notice of the Administrator's final determination with respect to any application for cancellation shall be sent to the applicant and to the owner of record.

"§1414. Certification of registration

"Certificates of registration shall be issued in the name of the United States under the seal of the Office of the Administrator and shall be recorded in the official records of the Office. The certificate shall state the name of the useful article, the date of filing of the application, the date of registration, and the date the design was made public, if earlier than the date of filing of the application, and shall contain a reproduction of the drawing or other pictorial representation of the design. If a description of the salient features of the design appears in the application, the description shall also appear in the certificate. A certificate of registration shall be admitted in any court as prima facie evidence of the facts stated in the certificate.

"§1415. Publication of announcements and indexes

"(a) PUBLICATIONS OF THE ADMINISTRATOR.—The Administrator shall publish lists and indexes of registered designs and cancellations of designs and may also publish the drawings or other pictorial representations of registered designs for sale or other distribution.

"(b) FILE OF REPRESENTATIVES OF REGISTERED DESIGNS.—The Administrator shall establish and maintain a file of the drawings or other pictorial representations of registered designs. The file shall be available for use by the public under such conditions as the Administrator may prescribe.

"§1416. Fees

"The Administrator shall by regulation set reasonable fees for the filing of applications to register designs under this chapter and for other services relating to the administration of this chapter, taking into consideration the cost of providing these services and the benefit of a public record.

"§1417. Regulations

"The Administrator may establish regulations for the administration of this chapter.

"§1418. Copies of records

"Upon payment of the prescribed fee, any person may obtain a certified copy of any official record of the Office of the Administrator that relates to this chapter. That copy shall be admissible in evidence with the same effect as the original.

"§1419. Correction of errors in certificates

"The Administrator may, by a certificate of correction under seal, correct any error in a registration incurred through the fault of the Office, or, upon payment of the required fee, any error of a clerical or typographical nature occurring in good faith but not through the fault of the Office. Such registration, together with the certificate, shall thereafter have the same effect as if it had been originally issued in such corrected form.

"§1420. Ownership and transfer

"(a) PROPERTY RIGHT IN DESIGN.—The property right in a design subject to protection under this chapter shall vest in the designer, the legal representatives of a deceased designer or of one under legal incapacity, the employer for whom the designer created the design in the case of a design made within the regular scope of the designer's employment, or a person to whom the rights of the designer or of such employer have been transferred. The person in whom the property right is vested shall be considered the owner of the design.

"(b) TRANSFER OF PROPERTY RIGHT.—The property right in a registered design, or a design for which an application for registration has been or may be filed, may be assigned, granted, conveyed, or mortgaged by an instrument in writing, signed by the owner, or may be bequeathed by will.

"(c) OATH OR ACKNOWLEDGEMENT OF TRANSFER.—An oath or acknowledgment under section 1412 shall be prima facie evidence of the execution of an assignment, grant, conveyance, or mortgage under subsection (b).

"(d) RECORDATION OF TRANSFER.—An assignment, grant, conveyance, or mortgage under subsection (b) shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, unless it is recorded in the Office of the Administrator within 3 months after its date of execution or before the date of such subsequent purchase or mortgage.

"§1421. Remedy for infringement

"(a) IN GENERAL.—The owner of a design is entitled, after issuance of a certificate of registration of the design under this chapter, to institute an action for any infringement of the design.

"(b) REVIEW OF REFUSAL TO REGISTER.—(1) Subject to paragraph (2), the owner of a design may seek judicial review of a final refusal of the Administrator to register the design under this chapter by bringing a civil action, and may in the same action, if the court adjudges the design subject to protection under this chapter, enforce the rights in that design under this chapter.

"(2) The owner of a design may seek judicial review under this section if—

"(A) the owner has previously duly filed and prosecuted to final refusal an application in proper form for registration of the design;

"(B) the owner causes a copy of the complaint in the action to be delivered to the Administrator within 10 days after the commencement of the action; and

"(C) the defendant has committed acts in respect to the design which would constitute infringement with respect to a design protected under this chapter.

"(c) ADMINISTRATOR AS PARTY TO ACTION.—The Administrator may, at the Administrator's option, become a party to the action with respect to the issue of registrability of the design claim by entering an appearance within 60 days after being served with the complaint, but the failure of the Administrator to become a party shall not deprive the court of jurisdiction to determine that issue.

"(d) USE OF ARBITRATION TO RESOLVE DISPUTE.—The parties to an infringement dispute under this chapter, within such time as may be specified by the Administrator by regulation, may determine the dispute, or any aspect of the dispute, by arbitration. Arbitration shall be governed by title 9. The parties shall give notice of any arbitration award to the Administrator, and such award shall, as between the parties to the arbitration, be dispositive of the issues to which it

relates. The arbitration award shall be unenforceable until such notice is given. Nothing in this subsection shall preclude the Administrator from determining whether a design is subject to registration in a cancellation proceeding under section 1413(c).

§ 1422. Injunctions

"(a) IN GENERAL.—A court having jurisdiction over actions under this chapter may grant injunctions in accordance with the principles of equity to prevent infringement of a design under this chapter, including, in its discretion, prompt relief by temporary restraining orders and preliminary injunctions.

"(b) DAMAGES FOR INJUNCTIVE RELIEF WRONGFULLY OBTAINED.—A seller or distributor who suffers damage by reason of injunctive relief wrongfully obtained under this section has a cause of action against the applicant for such injunctive relief and may recover such relief as may be appropriate, including damages for lost profits, cost of materials, loss of good will, and punitive damages in instances where the injunctive relief was sought in bad faith, and, unless the court finds extenuating circumstances, reasonable attorney's fees.

"§ 1423. Recovery for infringement

"(a) DAMAGES.—Upon a finding for the claimant in an action for infringement under this chapter, the court shall award the claimant damages adequate to compensate for the infringement. In addition, the court may increase the damages to such amount, not exceeding $50,000 or $1 per copy, whichever is greater, as the court determines to be just. The damages awarded shall constitute compensation and not a penalty. The court may receive expert testimony as an aid to the determination of damages.

"(b) INFRINGER'S PROFITS.—As an alternative to the remedies provided in subsection (a), the court may award the claimant the infringer's profits resulting from the sale of the copies if the court finds that the infringer's sales are reasonably related to the use of the claimant's design. In such a case, the claimant shall be required to prove only the amount of the infringer's sales and the infringer shall be required to prove its expenses against such sales.

"(c) STATUTE OF LIMITATIONS.—No recovery under subsection (a) or (b) shall be had for any infringement committed more than 3 years before the date on which the complaint is filed.

"(d) ATTORNEY'S FEES.—In an action for infringement under this chapter, the court may award reasonable attorney's fees to the prevailing party.

"(e) DISPOSITION OF INFRINGING AND OTHER ARTICLES.—The court may order that all infringing articles, and any plates, molds, patterns, models, or other means specifically adapted for making the articles, be delivered up for destruction or other disposition as the court may direct.

"§ 1424. Power of court over registration

"In any action involving the protection of a design under this chapter, the court, when appropriate, may order registration of a design under this chapter or the cancellation of such a registration. Any such order shall be certified by the court to the Administrator, who shall make an appropriate entry upon the record.

"§ 1425. Liability for action on registration fraudulently obtained

"Any person who brings an action for infringement knowing that registration of the design was obtained by a false or fraudulent representation materially affecting the rights under this chapter, shall be liable in the sum of $10,000, or such part of that amount as the court may determine. That amount shall be to compensate the defendant and shall be charged against the plaintiff and paid to the defendant, in addition to such costs and attorney's fees of the defendant as may be assessed by the court.

"§ 1426. Penalty for false marking

"(a) IN GENERAL.—Whoever, for the purpose of deceiving the public, marks upon, applies to, or uses in advertising in connection with an article made, used, distributed, or sold, a design which is not protected under this chapter, a design notice specified in section 1406, or any other words or symbols importing that the design is protected under this chapter, knowing that the design is not so protected, shall pay a civil fine of not more than $500 for each such offense.

"(b) SUIT BY PRIVATE PERSONS.—Any person may sue for the penalty established by subsection (a), in which event one-half of the penalty shall be awarded to the person suing and the remainder shall be awarded to the United States.

"§ 1427. Penalty for false representation

"Whoever knowingly makes a false representation materially affecting the rights obtainable under this chapter for the purpose of obtaining registration of a design under this chapter shall pay a penalty of not less than $500 and not more than $1,000, and any rights or privileges that individual may have in the design under this chapter shall be forfeited.

"§ 1428. Enforcement by Treasury and Postal Service

"(a) REGULATIONS.—The Secretary of the Treasury and the United States Postal Service shall separately or jointly issue regulations for the enforcement of the rights set forth in section 1408 with respect to importation. Such regulations may require, as a condition for the exclusion of articles from the United States, that the person seeking exclusion take any one or more of the following actions:

"(1) Obtain a court order enjoining, or an order of the International Trade Commission under section 337 of the Tariff Act of 1930 excluding, importation of the articles.

"(2) Furnish proof that the design involved is protected under this chapter and that the importation of the articles would infringe the rights in the design under this chapter.

"(3) Post a surety bond for any injury that may result if the detention or exclusion of the articles proves to be unjustified.

"(b) SEIZURE AND FORFEITURE.—Articles imported in violation of the rights set forth in section 1408 are subject to seizure and forfeiture in the same manner as property imported in violation of the customs laws. Any such forfeited articles shall be destroyed as directed by the Secretary of the Treasury or the court, as the case may be, except that the articles may be returned to the country of export whenever it is shown to the satisfaction of the Secretary of the Treasury that the importer had no reasonable grounds for believing that his or her acts constituted a violation of the law.

"§ 1429. Relation to design patent law

"The issuance of a design patent under title 35 for an original design for an article of manufacture shall terminate any protection of the original design under this chapter.

"§ 1430. Common law and other rights unaffected

"Nothing in this chapter shall annul or limit—

"(1) common law or other rights or remedies, if any, available to or held by any person with respect to a design which has not been registered under this chapter; or

"(2) any right under the trademark laws or any right protected against unfair competition.

"§ 1431. Administrator; Office of the Administrator

"In this chapter, the 'Administrator' is the Register of Copyrights, and the 'Office of the Administrator' and the 'Office' refer to the Copyright Office of the Library of Congress.

"§ 1432. No retroactive effect

"Protection under this chapter shall not be available for any design that has been made public under section 1410(b) before the effective date of this chapter.".

SEC. 603. CONFORMING AMENDMENTS.

(a) TABLE OF CHAPTERS.—The table of chapters for title 17, United States Code, is amended by adding at the end the following:

"14. Protection of Original Designs .... 1401".

(b) JURISDICTION OF DISTRICT COURTS OVER DESIGN ACTIONS.—(1) Section 1338(c) of title 28, United States Code, is amended by inserting ", and to exclusive rights in designs under chapter 14 of title 17," after "title 17".

(2)(A) The section heading for section 1338 of title 28, United States Code, is amended by inserting "designs," after "mask works,".

(B) The item relating to section 1338 in the table of sections at the beginning of chapter 85 of title 28, United States Code, is amended by inserting "designs," after "mask works,".

(c) PLACE FOR BRINGING DESIGN ACTIONS.—Section 1400(a) of title 28, United States Code, is amended by inserting "or designs" after "mask works".

(d) ACTIONS AGAINST THE UNITED STATES.—Section 1498(e) of title 28, United States Code, is amended by inserting ", and to exclusive rights in designs under chapter 14 of title 17," after "title 17".

SEC. 604. EFFECTIVE DATE.

The amendments made by sections 602 and 603 shall take effect one year after the date of the enactment of this Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from North Carolina (Mr. COBLE) and the gentleman from Massachusetts (Mr. FRANK) each will control 20 minutes.

The Chair recognizes the gentleman from North Carolina (Mr. COBLE).

GENERAL LEAVE

Mr. COBLE. Madam Speaker, I ask unanimous consent that all Members may have 10 legislative days within which to revise and extend their remarks on the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

Mr. COBLE. Madam Speaker, I ask unanimous consent that the gentleman from Virginia (Mr. BLILEY), the chairman of the Committee on Commerce, be allowed to control 10 of my 20 minutes.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

Mr. COBLE. Madam Speaker, I yield myself such time as I may consume. Oftentimes when significant legislation comes to the floor, it is described as landmark legislation. At the risk of being presumptuous and immodest, I think this may well indeed be landmark legislation.

This bill will implement two treaties which are extremely important to ensure the adequate protection for American works in countries around the world, particularly at a time when the

digital environment now allows users to send and retrieve perfect copies of copyrighted material over the Internet. While digital dissemination of copies will benefit owners and consumers, it will unfortunately also facilitate pirates who aim to destroy the value of American intellectual property. In compliance with the treaties, H.R. 2281 makes it unlawful to defeat technological protections used by copyright owners to protect their works, including preventing unlawful access and targeting devices made to circumvent encrypted copyrighted material. It also makes it unlawful to deliberately alter or delete information provided by a copyright owner which identifies a work, its owners, and its permissible use.

H.R. 2281, Madam Speaker, is a comprehensive copyright bill that adds substantial value to our copyright law. It represents five years of research, debate, hearings and negotiations. It is only the beginning of Congress' evaluation of the impact of the digital age on copyrighted works. Although it is just a beginning, it is essential to maintain the United States' position as the world leader in the protection of intellectual property in the digital environment.

H.R. 2281 also represents the collective efforts of many. In particular I want to commend the gentleman from Illinois (Mr. HYDE), the chairman of the Committee on the Judiciary; the gentleman from Michigan (Mr. Conyers), the ranking member of the Committee on the Judiciary; and the gentleman from Massachusetts (Mr. FRANK), the ranking member of the Subcommittee on Courts and Intellectual Property.

H.R. 2281, Madam Speaker, in my opinion is necessary legislation to ensure the protection of copyrighted works as the world moves into the digital environment. I urge its passage.

Madam Speaker, I reserve the balance of my time.

Mr. FRANK of Massachusetts. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, I first want to note that this is a matter that the Committee on the Judiciary has been working on for some time. It then went, under our rules, to the Committee on Commerce. Both committees and indeed both parties in both committees bring this bill forward. I note that because people who have been unduly addicted to the media would not, I think, have an understanding of what has been happening. We have here some very complex issues dealing with the economy and how we adapt some fundamental principles, intellectual property principles which are very important to us, to modern technology. There were some sharp disagreements. There were some conflicting and competing values, as is often the case. What has happened is for a period of some time, first in the Committee on the Judiciary and then in the Committee on Commerce, people have worked on this and come up with what I believe is a very good set of solutions.

I note that because I do think the public is entitled to know that the portrayals of the Congress in general, the Committee on the Judiciary in particular as somehow the set of a Three Stooges movie or the scene of ferocious battles simply is not true. One of the problems we have today is that there is an inattention on the part of our friends in the media to what is the actual business of this place. I think it is important for people to understand. These are very serious issues that had to be dealt with, conflicting values.

For example, many of us feel very strongly on the need to protect intellectual property. If we do not see that authors and composers and singers and musicians and other creative people are rewarded for their work, not only is that unfair, to many of us, but the amount of work we get will diminish.

□ 1345

There may be some people fortunate enough to be able to create out of love without regard to compensation. We cannot depend only on the independently wealthy to be our creative people. It is important for us as a vibrant society to sustain that, and one way to sustain that is to recognize the property that people have in the product of their intellectual labors, their creative intellectual labors.

That was, to some extent, threatened by modern technology, by technological change which makes it easier for that minority of people who do not respect others' intellectual property to steal it because of the collection of technology we now use, the short end of the Internet. What we wanted to do was to come up with ways to adapt the protection of intellectual property to a modern technological era without unduly diminishing people's rights to enjoy things. We do not want to prevent the public from having the enjoyment of these products.

Madam Speaker, I have one thing that bothered me in particular, and I am pleased that this bill addresses it in a reasonable way because there was no guarantee that it would.

One of the things we do here is to say:

"If you are an on-line service provider, if you are responsible for the production of all of this out to the public, you will not be held automatically responsible if someone misuses the electronic airway you provide to steal other people's property.

There is a balance here. We want to protect property, but we do not want to deter people from making this widely available. We have a problem here of making sure that intellectual property is protected, but we do not want freedom of expression impinged upon.

Madam Speaker, I found that particularly important for this reason, and I think this is a point that I want very much to stress:

We live in as free a society from the standpoint of expression as I believe has ever existed in the world. The level of freedom of expression which Americans enjoy is very, very profound, and that is very important to us.

The problem is we have had two doctrines of freedom of expression. We have had one which covered all speech and written speech, newspapers, magazines, theater, billboards; that has been very free.

Beginning in the 1930s when radio came to play, we started a new form of speech, and that was speech electronically transmitted. And because we started with a limited spectrum, because we started with physical limitations on the amount of speech that could go out, we began with electronically-communicated speech in the 1930s to develop a parallel doctrine which gave less protection to speech electronically transmitted. Over time we had a tradition of constitutionally very protected speech, and then speech transmitted electronically that was less protected.

The problem here is that as this society goes forward, an increasingly high percentage of what we say to each other will be electronically transmitted through E-mail and through other ways. It seems to me important for us to reverse this notion that electronically-transmitted speech is entitled to a lesser degree of protection in the area of freedom of expression than all other forms of speech or we will be, 30 years from now, a less free society. That has application to legislation of various kinds, and we will deal with that in another context.

But one of the things that was a potential danger here was that by protecting intellectual property, a very important job, we would have imposed on the on-line service providers such a degree of liability as, in fact, to diminish to some extent the freedom they felt in presenting things.

What I am most happy about in this bill is I think we have hit about the right balance. We have hit a balance which fully protects intellectual property, which is essential to the creative life of America, to the quality of our life, because if we do not protect the creators, there will be less creation. But at the same time we have done this in a way that will not give to the people in the business of running the on-line service entities and running Internet, it will not give them either an incentive or an excuse to censor.

No bill is perfect. There are some tensions here. This will go to conference, and then there will be room for some further changes.

But for achieving that essential balance I am very pleased, and I want to note again the two committees of this House and the parties represented in both committees worked very closely together to bring forward legislation without rancor, without partisanship, in fact serving very well the needs of this country.

Madam Speaker, I reserve the balance of the time.

Mr. BLILEY. Madam Speaker, I yield myself 2 minutes.

(Mr. BLILEY asked and was given permission to revise and extend his remarks and include extraneous material.)

Mr. BLILEY. Madam Speaker, I rise in support of H.R. 2281, and would like to begin by commending my good friend and colleague, the gentleman from Illinois (Mr. HYDE), the chairman of the House Committee on the Judiciary, and his very able subcommittee chairman, the gentleman from Greensboro, North Carolina (Mr. COBLE), the chairman of the Subcommittee on Courts and Intellectual Property of the Committee on the Judiciary.

And I would also like to thank two members of the Committee on Commerce in addition to my ranking member, the gentleman from Michigan (Mr. DINGELL), but I would also like to thank the gentleman from Wisconsin (Mr. KLUG) and the gentleman from Virginia (Mr. BOUCHER) whom I believe through their work have improved this legislation. It is because of the steadfast commitment to enacting this important legislation that we are here today on the brink of enactment.

I would like to thank the gentleman from Massachusetts (Mr. FRANK), the ranking member of the subcommittee, for his work, as well as the gentleman from Massachusetts (Mr. MARKEY) for his contributions. It shows that we can work together and we can achieve very important legislation.

As my colleagues know, Madam Speaker, with the growth of electronic commerce having such a profound effect on the economy, the Committee on Commerce has been engaged in a wide-ranging review of the subject, including the issues raised by H.R. 2281. The Committee on Commerce's version of this bill strikes an appropriate balance between the goal of promoting electronic commerce and the interests of copyright owners.

Let me specifically highlight two of the most important changes that the Committee on Commerce added to the bill before us today:

First, the Committee on Commerce included a strong fair use provision to ensure that consumers as well as libraries and institutions of higher learning will be able to continue to exercise their historical fair use rights. The bill before us today contains the substance of the Committee on Commerce provision on fair use, and I am pleased to say that major newspapers such as the New York Times and the Washington Post have strongly endorsed the Committee on Commerce's language on fair use.

Madam Speaker, I include those editorials following my statement in the RECORD.

The editorials referred to are as follows:

[From the New York Times, July 24, 1998]

PROTECTING DIGITAL COPYRIGHTS

Traditional copyright concepts that have served this nation well for centuries should guide the debate on copyright in the digital universe. As Congress fashions ways to protect commercial interests in the digital realm, it must be careful also to protect the larger public interest in broad access to information.

Digital copyright legislation, required to institute two international treaties that would protect movies, music and other intellectual property from piracy, passed the Senate and the House Judiciary Committee this spring. But controversy continues to swirl around a provision in the legislation that would make it a crime to circumvent encryption used to control access to digital material or to manufacture or sell devices that could be used to circumvent protection measures.

Movie and music producers argue that making circumvention illegal is the only way to prevent consumer theft of on-line movies, recordings and other products. But libraries and schools believe that the prohibition is so broad that it could greatly limit access to electronic information that copyright law would otherwise allow.

Existing law assures producers the right to profit from their creative works. But the law does not allow a creator to control who looks at the material or prevent the material from being circulated or lent to others. It specifically allows the "fair use" of copyrighted materials for commentary, criticism, teaching, news reporting, scholarship and research under certain circumstances without permission from the copyright owner.

Thus a library can purchase a book, allow hundreds of patrons to borrow it and let teachers make copies of material in it for classroom use, all without infringing the copyright. Preserving these user rights is important in the digital world where copyright owners, with the right technology, could limit or prevent access to information.

The content producers dismiss fears that the Internet could become a strictly pay-for-use world as unrealistic, but neither they nor Congress can predict how the Internet will develop. That is why legislation needs to be flexible enough to deal with rapid evolution in technology and electronic commerce.

A prudent compromise approved by the House Commerce Committee last week would delay the anti-circumvention rule for two years while the Commerce Department and the Federal patent and copyright officers study the effect of the prohibition on users. The Commerce Secretary could waive the rule for any class of works where technological shields were impeding the lawful use of copyrighted matter. The situation would be reviewed every two years. Both the content producers and the libraries and schools are willing to accept this more fluid approach. Congress should adopt this plan in the final version of the digital copyright legislation.

[From The Washington Post, Aug. 4, 1998]

A PAY-PER-VIEW WORLD

Congress has been trying for most of this year to ratify the international treaties that are supposed to bring copyright law into the digital age. It's been a large and complicated endeavor, requiring people to rethink such fundamental aspects of intellectual property rights as what constitutes "copying" in a digital environment (is it copying a document just to read it on your computer? To print it out to read later?) and when such copying represents a copyright violation. But the major snag is none of these weighty issues but, rather, a fierce face-off between libraries and big-time copyright-holding interests over a seemingly minor provision that would make it a crime to break any technological locking device designed to prevent unauthorized copying.

This debate over the "anti-circumvention" provision is now the main item of disagreement between versions of the copyright bill produced by the Judiciary and Commerce committees. (The Senate passed copyright legislation in May.) Those who expect movies, songs, software and even books to be eventually delivered mainly over the Internet want to make sure that this will not mean widespread unauthorized copying and the subsequent collapse of any market for the work. (Newspapers, as creators of copyrighted material, have an interest here as well.) They picture every piece of intellectual property being distributed with some kind of "lock" that would permit, say, just one viewing of a downloaded movie. It's the disabling of this lock that would be made a crime, except in specified circumstances.

There's room for doubt whether it makes sense to make the lock-breaking a crime here rather than merely, as till now, the actual copyright violation. But the real problem is more pragmatic. This "transition to a pay-per-view world," as one enthusiastic movie distributor put it, works fine for the entertainment industries and the commercial market. Where it doesn't work is in libraries and other places where use of books and research material is not pay-per-view but, till now, free.

Libraries are worried that the "fair use" exemption that allows limited use of copyrighted material without permission for such purposes as comment, criticism, education or research—though technically unchanged in the law—would become sharply limited in practice if all material were distributed with "locks" and libraries were prohibited from "unlocking" it. What happens, they ask if a chart of environmental data that now can be photocopied for use in a class were made available only on a CD from which printouts can't be made? What if research journals are provided to libraries on a pay-per-view basis that keeps independent researchers from making photocopies for their own use?

Language in the Commerce bill sought to address this problem by creating a mandatory review every two years of the provision's effect on "fair use" in various contexts. On the floor or in conference, these protections from a permanent "pay-per-review world" ought to be maintained.

As the Chairman of the Committee which was principally responsible for rewriting H.R. 2281 and eliminating the most harmful aspects of the bill as proposed by the Administration, I want to share with my colleagues the Committee's perspective on the scope of this legislation and to note, where appropriate, the instances in which we sought to clarify the bills as reported by the Committee on the Judiciary and as approved by the Senate.

As noted at the outset, the Committee has been engaged in a wide-ranging review of all the issues affecting the growth of electronic commerce. Our Committee has a long-standing, well-established role in assessing the impact of possible changes in law on the use and availability of the products and services that have made our information technology industry the envy of the world. We therefore paid particular attention to the potential harmful impacts on electronic commerce of the bill as reported by the Committee on the Judiciary.

Today, the U.S. information technology industry is developing exciting new products to enhance the lives of individuals throughout the world, and our telecommunications industry is developing new means of distributing information to these consumers in every part of the

globe. In this environment, the development of new laws and regulations could well have a profound impact on the growth of electronic commerce.

In recognition of these developments and as part of the effort to begin updating national laws for the digital era, delegates from over 150 countries (including the United States) convened in December 1996 to negotiate two separate treaties under the auspices of the World Intellectual Property Organization: the Copyright Treaty and the Performance and Phonograms Treaty. In July 1997, the Clinton Administration submitted the treaties to the Senate for ratification and submitted proposed implementing legislation to both the House and the Senate. The Committee on the Judiciary largely reported out the bill as proposed by the Administration.

In holding hearings, it became apparent to our Committee that this and the Senate version of the legislation contained serious flaws. Not surprisingly, these bills were opposed by significant private and public sector interests, including libraries, institutions of higher learning, consumer electronics and computer product manufacturers, and others with a vital stake in the growth of electronic commerce. It also became apparent that the main provisions of the treaties to be implemented have little to do with copyright law. In fact, the "anti-circumvention" provisions of the Administration's bill created entirely new rights for content providers that are wholly divorced from copyright law. These new provisions (and the accompanying penalty provisions for violations of them) would be separate from, and cumulative to, the claims available to copyright owners under the Copyright Act.

In carrying out its responsibilities under the Constitution, Congress has historically regulated the use of information—not the devices or means by which information is delivered or used by information consumers—and has ensured an appropriate balance between the interests of copyright owners and information users. Section 106 of the Copyright Act of 1976, for example, establishes certain rights copyright owners have in their works, including limitations on the use of these works without their authorization. Sections 107 through 121 of the Copyright Act set forth the circumstances in which such uses are deemed lawful even though unauthorized.

In general, all of these provisions are technology neutral. They do not regulate commerce in information technology, i.e., products and devices for transmitting, storing, and using information. Instead, they prohibit certain actions and create exceptions to permit certain conduct deemed to be in the greater public interest, all in a way that balances the interests of copyright owners and users of copyrighted works.

In writing its bill, the Committee sought to preserve that tradition. We worked hard to reduce the risk that enactment of H.R. 2281 could establish the legal framework that would inexorably create a "pay-per-use" society. In short, the Committee endeavored to specify, with as much clarity as possible, how the anti-circumvention right in particular would be qualified to maintain balance between the interests of content creators and information users.

The Committee considered it particularly important to ensure that the concept of fair use would remain firmly established in the law. Section 1201(a)(1) is one of the most important provisions of this legislation, and one that must be included in any version of this bill eventually sent to the President for signature. It was crafted by the Commerce Committee to protect "fair use" and other users of information now lawful under the Copyright Act. Let us make no mistake about the scope of what we are doing here today in adopting H.R. 2281, about the tremendously powerful new right to control access to information that we are granting to information owners for the very first time.

If left unqualified, this new right, as the Commerce Committee heard in testimony from the public and private sectors alike, could well prove to be the legal foundation for a society in which information becomes available only on a "pay-per-use" basis. That's why this bill assures that institutions like schools and libraries, and the public, will have an opportunity in a credible and permanent process to make the case that the new right we've adopted is interfering with fair use and other rights now enjoyed by information users under current law. Moreover, the Commerce Committee's report, I note for the record makes clear that the showing that must be made in this process is not intended to be unduly burdensome for either institutions or the public. Indeed, the Committee took pains to make clear that evidence of loss of access to a "particular class of works"—intended to be gauged narrowly—would result in relief from the prohibition otherwise imposed on access to information by this legislation.

That's also why—in express recognition of the importance of the Commerce Committee's work—today's Washington Post carries an editorial urging that "on the floor, or in conference, these protections from a permanent 'pay-per-view world ought to be maintained.'" Copyright law is not just about protecting information. It's just as much about affording reasonable access to it as a means of keeping our democracy healthy and doing what the Constitution says copyright law is all about: promoting "Progress in Science and the useful Arts." If this bill ceases to strike that balance, it will no longer deserve Congress' or the public's support.

Section 1201(a)(2) makes it illegal to manufacture, import, offer to the public, provide, or otherwise traffic in any technology, product, service, device, component, or part thereof that is primarily designed or produced for the purpose of circumventing a technological measure that effectively controls access to certain works; has only limited commercially significant purposes or uses other than to circumvent such a measure; or is marketed for use in circumventing such a measure. Section 1201(b)(1) similarly makes it illegal to manufacture, import, offer to the public, provide, or otherwise traffic in any technology, product, service, device, component, or part thereof that is primarily designed or produced for the purpose of circumventing a protection measure that protects certain rights of copyright owners under title 17, United States Code; has only limited commercially significant purposes or uses other than to circumvent such a measure; or is marketed for use in circumventing such a measure.

In our report, the Committee stressed that section 1201(a)(2) is aimed fundamentally at outlaying so-called "black boxes" that are expressly intended to facilitate circumvention of protection measures for purposes of gaining access to a work. This provision is not aimed at products that are capable of commercially significant noninfringing uses, such as the consumer electronics, telecommunications, and computer products—including video-cassette recorders, telecommunications switches, personal computers, and servers—used by businesses and consumers everyday for perfectly legitimate purposes. Moreover, as section 1201(c)(3) makes clear, such a device does not need to be designed or assembled, or parts or components for inclusion in a device be designed, selected, or assembled, so as affirmatively to accommodate or respond to any particular technological measure.

Section 2101(a)(3) of H.R. 2281 defines certain terms used throughout Section 1201(a). As we made clear in our report, the measures that would be deemed to "effectively control access to a work" would be those based on encryption, scrambling, authentication, or some other measure which requires the use of a "key" provided by a copyright owner to gain access to a work.

Section 2101(b)(1) of H.R. 2281 makes it illegal to manufacture, import, offer to the public, provide, or otherwise traffic in any technology, product, service, device, component, or part thereof that is primarily designed or produced for the purpose of circumventing a protection measure that protects certain rights of copyright owners under title 17, United States Code; has only limited commercially significant purposes or uses other than to circumvent such a measure; or is marketed for use in circumventing such a measure. The Committee believes it is very important to emphasize that this section, like section 1201(a)(2), is aimed fundamentally at outlawing so-called "black boxes" that are expressly intended to facilitate circumvention of protection measures. Thus, this section similarly would not outlaw the manufacturing, importing, or distributing of standard videocassette recorders and computer products.

Section 1201(b)(2) of H.R. 2281 defines important phrases, including when a protection measure "effectively protects a right of a copyright owner under title 17, United States Code." In our view, the measures that would be deemed to "effectively" protect such rights would be those based on encryption, scrambling, authentication, or some other measure which requires the use of a "key" to copy a work.

With respect to the effectiveness of the measures covered by the legislation, the Committee stressed in its report that those measures that cause noticeable and recurring adverse effects on the authorized display or performance of works should not be deemed to be effective. Given our keen interest in the development of new products, in particular digital television monitors, the Committee is particularly concerned that the introduction of such measures not frustrate consumer expectations and that this legislation not be interpreted to in any way limit the authority of manufacturers and retailers to address the legitimate concerns of their customers.

Based on prior experience, the Committee on Commerce was concerned that manufacturers, retailers, and consumers may be adversely affected by the introduction of some technological measures and systems for preserving copyright management information. In fact, the Committee learned as part of its review of H.R. 2281 that, as initially proposed, a

proprietary copy protection scheme that is today widely used to protect analog motion pictures could have caused significant viewability problems, including noticeable artifacts, with certain television sets until it was modified with the cooperation of the consumer electronics industry.

As advances in technology occur, consumers will enjoy additional benefits if devices are able to interact and share information. Achieving interoperability in the consumer electronics environment will be a critical factor in the growth of electronic commerce. In our view, manufacturers, consumers, retailers, and servicers should not be prevented from correcting an interoperability problem resulting from a protection measure causing one or more devices in the home or in a business to fail to interoperate with other technologies.

Under the bill under consideration today, nothing would make it illegal for a manufacturer of a product or device (to which section 1201 would otherwise apply) to design or modify the product or device solely to the extent necessary to mitigate a frequently occurring and noticeable adverse effect on the authorized performance or display of a work that is caused by a protection measure in the ordinary course of its design and operation. Similarly, recognizing that a technological measure may cause a problem with a particular device, or combination of devices, used by a consumer, it is our view that nothing in the bill should be interpreted to make it illegal for a retailer or individual consumer to modify a product or device solely to the extent necessary to mitigate a noticeable adverse effect on the authorized performance or display of a work that is communicated to or received by that particular product or device if that adverse effect is caused by a protection measure in the ordinary course of its design and operation. I might add that nothing in section 1202 makes it illegal for such a person to design or modify a product or device solely to the extent necessary to mitigate a frequently occurring and noticeable adverse effect on the authorized performance or display of a work that is caused by the use of copyright management information.

I wish to stress that I and other Members of the Committee on Commerce believe that the affected industries should be able to work together to avoid such problems. We know 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. We strongly encourage the continuation of those efforts, which should offer substantial benefits to copyright owners in whose interest it is to achieve the introduction of effective protection (and copyright management information) measures that do not interfere with the normal operations of affected products. We look forward to working with interested parties to the extent additional legislation is required to implement such technologies or to avoid their circumvention.

As the Chairman of the Committee that eliminated the inherent ambiguity in the Senate's version of this legislation, I also want to put section 1201(c)(3) in context. It provides that nothing in section 1201 requires that the design of, or design and selection of parts and components for, a consumer electronics, telecommunications, or computer product provide for a response to any particular protection measure. We specifically modified the Senate version of this provision because of our strong 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. Imposing design requirements on product and component manufacturers would have a dampening effect on innovation, on the research and development of new products, and hence on the growth of electronic commerce.

As the hearing record demonstrates, there is a fundamental difference between a device that does not respond to a protection measure and one that affirmatively removes such a measure. Section 1202(c)(3) is intended to make clear that nothing in section 1201 requires 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 measure that might be used to control access to or the copying of a work protected under title 17, United States Code. Of course, this provision is not intended to create a loophole to remove from the proscriptions of section 1201 devices, or components or parts thereof, that circumvent by, for example, affirmatively decrypting an encrypted work or descrambling a scrambled work.

Mr. BLILEY. Madam Speaker, I reserve the balance of my time.

Mr. COBLE. Madam Speaker, I yield 3½ minutes to the gentleman from Virginia (Mr. GOODLATTE) a member of the subcommittee and the full committee.

(Mr. GOODLATTE asked and was given permission to revise and extend his remarks.)

Mr. GOODLATTE. Madam Speaker, I rise today in support of H.R. 2281, the World Intellectual Property Organization Copyright Treaties Implementation Act. I would like to thank the gentleman from North Carolina (Mr. COBLE) and the gentleman from Illinois (Mr. HYDE), as well as the gentleman from Virginia (Mr. BLILEY) and the gentleman from Massachusetts (Mr. FRANK) for their leadership on this issue.

Additionally, I would like to thank the gentleman from North Carolina (Mr. COBLE) for asking me to lead the negotiations between the various parties on the issue of on-line service provider liability for copyright infringement which is included in this important bill. Madam Speaker, the issue of liability for on-line copyright infringement, especially where it involves third parties, is difficult and complex.

For me personally this issue is not a new one. During the 104th Congress then-Chairman Carlos Moorhead asked me to lead negotiations between the parties. Although I held numerous meetings involving members of the content community and members of the service provider community, unfortunately we were not able to resolve this issue.

At the beginning of the 105th Congress the gentleman from North Carolina (Mr. COBLE) asked me to again lead the negotiations between the parties on this issue. After a great deal of meetings and negotiation sessions, the copyright community and the service provider community were able to successfully reach agreement. That agreement is included in the bill we are considering today. No one is happier, except maybe those in each community who spent countless hours and a great deal of effort trying to reach agreement, than I am with the agreement contained in this bill.

Madam Speaker, this is a critical issue to the development of the Internet, and I believe that both sides in this debate need each other. If America's creators do not believe that their works will be protected when they put them on-line, then the Internet will lack the creative content it needs to reach its true potential; and if America's service providers are subject to litigation for the acts of third parties at the drop of a hat, they will lack the incentive to provide quick and sufficient access to the Internet.

The provisions of H.R. 2281 will allow the Internet to flourish and I believe will prove to be a win-win not only for both sides, but for consumers and Internet users throughout the Nation.

I would also like to discuss the importance of the World Intellectual Property Organization treaties and this accompanying implementing legislation which are critical to protecting U.S. copyrights overseas.

The United States is the world leader in intellectual property. We export billions of dollars worth of creative works every year in the form of software books, tapes, videotapes and records. Our ability to create so many quality products has become a bulwark of our national economy, and it is vital that copyright protection for these products not stop at our borders. International protection of U.S. copyrights will be of tremendous benefit to our economy, but we need to ratify the WIPO treaties for this to happen.

I would like to state for the record my understanding that sections 102(a)(2) and 102(b)(1) of this bill are not intended to address computer system security, such as devices used to crack into computer security systems such as firewalls or discover log-on passwords that protect an entire system. The ban contained in these provisions is intended to cover circumvention devices aimed at technological protection measures that protect particular works covered under Title 17 such as movies, songs or computer programs. Unauthorized hacking into computer programs is already covered by other laws.

This bill is critical not only because it will allow the Internet to flourish but also because it ensures that America will remain the world leader in the development of intellectual property. I urge each of my colleagues to support this legislation.

Mr. FRANK of Massachusetts. Madam Speaker, I yield 4 minutes to the gentleman from Virginia (Mr. BOUCHER).

(Mr. BOUCHER asked and was given permission to revise and extend his remarks.)

Mr. BOUCHER. Madam Speaker, I thank the gentleman from Massachusetts (Mr. FRANK) for yielding this time to me, and I am pleased to rise today in support of the passage of H.R. 2281, which will extend new protections against the theft of their works to copyright owners.

Madam Speaker, new protections are needed due to the ease with which flawless copies of copyrighted materials can both be made and transmitted in the digital network environment. Essential, however, to the creation of new guarantees for copyright owners is the retention of the traditional rights of the users of intellectual property. A balance has always existed in our law between these conflicting interests, and the major challenge in the writing of this legislation is to assure that no fundamental altering of that delicate balance takes place.

Another challenge is to ensure that in the effort to eliminate devices that are designed and produced to make illegal copies of copyrighted materials, that legitimate consumer electronics products are not also placed in a category of legal uncertainty.

Today I want to offer congratulations primarily to the Members of the House Committee on Commerce who have devoted long hours in the effort to assure that these challenges are met. Specifically, the Committee on Commerce has added provisions that protect personal privacy by clearly permitting personal computer owners to disable cookies that are placed on their disks by others; that allow the encryption research that will lead to a new generation of trusted and secure systems; that give equipment manufacturers the certainty that their consumer electronics products need not affirmatively accommodate all technological protection measures; and that creative procedure for assuring the continuation of the fair use rights of the American public, a procedure that will prevent material that is generally available today under fair use being locked away in a pay-per-use regime in future years.

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Report language also specifies that the technological protection measure circumvention restrictions will not apply when manufacturers, retailers and technicians need to make adjustments to devices to ensure that their performance is not degraded as a consequence of the installation of a technological protection measure. These changes, taken together, significantly improve the original legislation.

The gentleman from Virginia (Chairman BLILEY), the gentleman from Michigan (Mr. DINGELL), the gentleman from Wisconsin (Mr. KLUG), the gentleman from Florida (Mr. STEARNS) and the gentleman from Massachusetts (Mr. MARKEY), among others, deserve thanks for their successful efforts to create new copyright protections, while ensuring that traditional user rights are not undermined.

The Committee on Commerce has, in the manner for which it is known, mastered the intricate details of this complex subject and has produced a balanced result. I want to offer my congratulations to all who have been involved in that outstanding effort.

It is my pleasure to urge passage of H.R. 2281.

Madam Speaker, I will insert in the record correspondence from the subcommittee chairman, the gentleman from North Carolina (Mr. COBLE), to the gentleman from California (Mr. CAMPBELL) and myself, which further defines the terminology that is used in the statute.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC, June 16, 1998.

Hon. TOM CAMPBELL,
U.S. Representative for the 15th District of California, Washington, DC.

Hon. RICK BOUCHER,
U.S. Representative for the 9th District of Virginia, Washington, DC.

DEAR TOM AND RICK: Thank you for visiting with me in my office recently regarding H.R. 2281, the "WIPO Copyright Treaties Implementation Act." I appreciate the concerns you expressed with respect to H.R. 2281 as it was reported from the House Committee on the Judiciary.

I expressed to you that I would consider your thoughts and respond to you in detail, and am pleased to do so in this letter.

I believe that many of your concerns, which are enumerated in your substitute bill, H.R. 3048, have been addressed already in a reasonable manner in amendments to the bill adopted by the Subcommittee on Courts and Intellectual Property and the Committee on the Judiciary in the House and by the Committee on the Judiciary and on the floor in the Senate (regarding the Senate companion bill, S. 2037). Others have been addressed in legislative history in House Report 105–551 (Part I) which accompanies the bill, as well as in Senate Report 105–190, which accompanies the Senate companion bill. Still others may be addressed as the House Committee on Commerce exercises its sequential jurisdiction over limited portions of the bill and as I work with interested members on developing a manager's amendment to be considered by the whole House. I anticipate including many of the amendments made by the Senate in the manager's amendment, along with other provisions. I also anticipate that a conference will be necessary to reconcile the House and Senate versions of the bills.

While I am unable to support the specific provisions of H.R. 3048, for reasons I will explain in this letter, I am willing to work with you in the coming weeks to address additional concerns regarding the impact of this legislation on the application of the "fair use" doctrine in the digital environment and on the consumer electronics industry. I wish to stress, however, that I believe the bill, as amended by the House and Senate thus far, and explained by both the House and the Senate Judiciary Committee reports, already addresses these issues in several constructive ways.

I believe it is important, in order to recognize properly the efforts undertaken by the Congress and the Administration to address the concerns of the consumer electronics and fair use communities, to review the history of H.R. 2281 and to evaluate all of the provisions that have been either added to or deleted from the bill since its development leading to introduction in this Congress. As I am sure you will appreciate, I am sensitive to your concerns and have worked diligently with members and all parties involved to create a balanced and fair proposal that will result in the enactment of legislation this Congress.

In February, 1993, the Administration formed the Information Infrastructure Task Force to implement Administration policies regarding the emergence of the Internet and other digital technologies. This task force formed a Working Group on Intellectual Property Rights to investigate and report on the effect of this new technology on copyright and other rights and to recommend any changes in law or policy. The working group held a public hearing in November, 1993, at which 30 witnesses testified. These witnesses represented the views of copyright owners, libraries and archives, educators, and other interested parties. The working group also solicited written comments and received over 70 statements during a public comment period. Based on oral and written testimony, the working group released a "Green Paper" on July 7, 1994. After releasing the Green Paper, the working group again heard testimony from the public through four days of hearings held around the country. More than 1,500 pages of written testimony were filed during a four-month comment period by more than 150 individuals and organizations.

In March, 1995, then-Chairman Carlos Moorhead solicited informal comments from parties who had submitted testimony regarding the Green Paper, including library and university groups, and computer and electronics group, in order to work effectively with the Administration on jointly developing any proposed updates to U.S. copyright law that might be necessary in light of emerging technologies.

In summer, 1995, the working group released a "White Paper" based on the oral and written testimony it has received after releasing the Green Paper. The White Paper contained legislative recommendations which were developed from public comment in conjunction with consultations between the House and Senate Judiciary Committees, the Copyright Office and the Administration.

In September, 1995, Chairman Moorhead in the House and Chairman Hatch in the Senate introduced legislation which embodied the recommendations contained in the White Paper and held a joint hearing on November 15, 1995. Testimony was received from the Administration, the World Intellectual Property Organization and the Copyright Office. The House Subcommittee on Courts and Intellectual Property held two days of further hearings in February, 1996. Testimony was received from copyright owners, libraries and archives, educators and other interested parties. In May, 1996, the Senate Judiciary Committee held a further hearing. Testimony was received from copyright owners, libraries and other interested parties. These hearings were supplemented with negotiations in both bodies led by Representative Goodlatte (as authorized by Chairman Moorhead) in the House and by Chairman Hatch in the Senate. Further negotiations were held by the Administration in late summer and fall of 1996.

During consideration of the "NII Copyright Protection Act of 1995," Chairman Moorhead requested that Mr. Boucher and Mr. Berman of California lead negotiations between interested parties regarding the issue of circumvention. While these negotiations were helpful in streamlining and clarifying the issues to be discussed, they ultimately did not result in an agreement.

It is important to note that shortly after its establishment, the Administration task force's working group convened, as part of its consideration, a Conference on Fair Use (CONFU) to explore the effect of digital technologies on the doctrine of fair use, and to

develop guidelines for uses of works by libraries and educators. Because of the complexities involved in developing broad-based policies for the adaptation of the fair use doctrine to the digital environment, and due to much disagreement among the participants (including within the library and educational communities), CONFU did not issue its full report until nearly two years after it was convened. An Interim Report was released by CONFU in September 1997 on the first phase of its work. No consensus was reached on how to apply the fair use doctrine to the digital age. In fact, the CONFU working group on interlibrary loan and document delivery concluded in a report to its Chair that it is "premature to draft guidelines for digital transmission of digital documents." The work of CONFU continues today and a final report should be released soon with no agreed conclusions. As you can see, developing sweeping legislation, rather than relying on court-based "case or controversy" applications of the doctrine, is exceedingly difficult to do.

Since before the debate began with the establishment of a task force in the United States in 1993, the international community had also been considering what updates should be made to the Berne Convention on Artistic and Literary Works in order to provide adequate and balanced protection to copyrighted works in the digital age. This culminated in a Diplomatic Conference hosted by the World Intellectual Property Organization at which over 150 countries agreed on changes needed to accomplish this goal.

This goal was not reached easily, however, and many of the issues being debated by the Administration and the Congress in the United States concerning fair use and circumvention were aired at the Diplomatic Conference, with significant changes made to accommodate fair use concerns and the effect on the consumer electronic industries. Representatives of both groups participated in the Conference and aggressively sought to maintain proper limitations on copyright. They succeeded. For example, language was added to ensure that exceptions such as fair use could be extended into the digital environment. The treaty also originally contained very specific language regarding obligations to outlaw circumvention. It was changed to state that all member countries "shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by authors in connection with the exercise of their rights under this Treaty." This left to each country the development of domestic legislation to accomplish this goal.

After the United States signed the WIPO Treaties, the Administration again began negotiations led by the Department of Commerce and the Patent and Trademark Office, in consultiation with the Copyright Office and the Congress, to develop domestic implementing legislation for the treaties. It built upon the efforts already accomplished by the release of the Green Paper and the White Paper and all of the testimony and comments heard as part of that process, the House and Senate bills introduced in the 104th Congress and all of the hearing testimony and negotiations associated with them, and the negotiations held by the Administration leading up to and during the Diplomatic Conference. Again, comments were solicited from fair use and consumer electronics groups. In the summer of 1997, the Administration submitted to the Congress draft legislation to implement the treaties. In July, 1997, Chairman Hatch and I introduced the current pending legislation in each house. Importantly, the legislation was tailored to match the treaty language by establishing legal protection and remedies not against any technological measures whatsoever, but only "against the circumvention of effective technological measures that are used by authors in connection with the exercise of their rights."

The fair use and consumer electronics groups succeeded, just as they had at the Diplomatic Conference, in assuring in the introduced version of the bills the maintenance of proper limitations on copyright. The Administration had considered originally banning both the manufacture and use of devices which circumvent effective technological measures and had no specific provision on fair use, since Section 107 of the Copyright Act would, of course, continue to exist after enactment of the legislation. The word "use" was eliminated in the device provision and a specific provision relating to the adoption of the fair use doctrine in the digital environment was added.

As it was introduced, H.R. 2281 contained two important safeguards for fair use. First, the bill dealt separately with technological measures that prevent access and technological measures that prevent copying. As to the latter, the bill contained no prohibition on the act of circumbention itself, leaving users free to circumvent such measures in order to make fair use copies. Second, the savings clause in subsection 1201(d) ensures that defenses to copyright protection, including fair use, are unaffected by the prohibitions on circumvention. For example, circumvention of an effective technological measure that controls access to a work does not preclude, or affect in any way, a defense of fair use for copying the work. Moreover, the bill as introduced did not expand exclusive rights or diminish exceptions and limitations on exclusive rights.

Again, a series of legislative hearings were held by the House and Senate Judiciary Committees at which testimony was again heard from copyright owners, libraries and archives, educators, consumer electronics groups and other interested parties. In February, 1998, almost five years to the date of the establishment of the Administration's working group, taking into account all of the concessions and negotiations leading up to it, the first markup was finally held in Congress by the Subcommittee on Courts and Intellectual Property on this important legislation. As is evident by the timetable involved in the development of this legislation, and considering the number of hearings, negotiations and conferences dedicated to its contents, this bill certainly has not been placed on any "fast-track."

In the course of Subcommittee and Committee consideration of the bill in the House, the gentleman from Massachusetts, the Ranking Democratic member of the Subcommittee, Mr. Frank, and I, proposed a number of improvements to the bill, which were adopted by the Committee, that benefit libraries and nonprofit educational institutions. We introduced a special "shopping privilege" exemption that permits nonprofit libraries and archives to circumvent effective technological measures in order to decide whether they wish to acquire lawfully a copy of the work. We added a provision that requires a court to remit monetary damages for innocent violations of sections 1201 or 1202. And we eliminated any possibility that nonprofit libraries and archives or educational institutions can be held criminally liable for any violation of sections 1201 or 1202, even when such violations are willful.

These changes add protection to language already included in the bill which safeguard manufacturers of legitimate consumer electronic devices. Unlike the "NII Copyright Protection Act of 1995," which would have prohibited devices "the primary purpose or effect of which is to circumvent," H.R. 2281 sets out three narrow bases for prohibiting devices. A device is prohibited under section 1201 only if it is primarily designed or produced to circumvent, has limited commercially significant use other than to circumvent, or is marketed specifically for use in circumventing. This formulation means that under H.R. 2281, it is not enough for the primary effect of the device to be circumvention. It therefore excludes legitimate multipurpose devices from the prohibition of section 1201. Devices such as VCRs, and personal computers do not fall within any of these three categories (unless they are, in reality, black boxes masquerading as VCRs or PCs).

In addition, H.R. 2281 as introduced does not require any manufacturer of a consumer electronic device to accommodate existing or future technological protection measures. "Circumvention," as defined in the bill, requires an affirmative step of "avoiding, bypassing, removing, deactivating, or otherwise impairing a technological protection measure." Language added in the Senate, referred to below, clarified this even further.

In addition to all of the foregoing, there are a number of amendments that were made in the Senate bill that will be included in the manager's amendment to H.R. 2281. These include:

An expansion of the exemptions of nonprofit libraries and archives in 17 U.S.C. §108 to cover the making of digital copies without authorization, for purposes of preservation, security or replacement of damaged, lost or stolen copies;

An expansion of section 108 to cover the making of digital copies without authorization in order to replace copies in the collection that are in an obsolete format;

A provision directing the Register of Copyrights to make recommendations as to any statutory changes needed to apply the limitations on liability of online service providers to nonprofit educational institutions that act in the capacity of service providers;

A provision directing the Register of Copyrights to consult with nonprofit libraries and nonprofit educational institutions and submit recommendations on how to promote distance education through digital technologies, including any appropriate statutory changes;

A savings provision stating that nothing in section 1201 enlarges or diminishes vicarious or contributory liability for copyright infringement in connection with any technology, product, service, device, component or part thereof;

A provision that states explicitly that nothing in section 1201 requires accommodation of present or future technological protection measures;

A provision to ensure that the prohibition on circumvention does not limit the ability to decompile computer programs to the extent permitted currently under the doctrine of fair use; and

A provision ensuring that technology will be available to enable parents to prevent children's access to indecent material on the Internet.

I believe that these are constructive provisions that precisely and carefully address specific concerns you have raised in H.R. 3048. In order to assure that fair use applies in the digital environment, in addition to the above changes, I have also agreed to include in the manager's amendment an amendment to Section 107 of the Copyright Act to make it continue to be technology-neutral with respect to means of exploitation.

It may be helpful, in addition to discussing what is contained in H.R. 2281 and the Senate companion, and what will be included in the

manager's amendment, to raise directly with you some of the identifiable problems I see associated with H.R. 3048 as introduced.

In my opinion, this extension of the first sale doctrine is antithetical to the policies the doctrine was intended to further. The alienability of tangible property is not at issue, since no tangible property changes hands in a transmission. Further, it does not address specifically the ability to control the after-market for resales of the same copy of a work, since in this case distribution of a work by digital transmission necessarily requires a reproduction—it is not the same copy. The bill's answer to this quandary—that the original copy must be destroyed—is unenforceable and certainly not a substitute for disposition of a tangible copy. Destruction involves an affirmative act, generally in the privacy of a home, that is difficult to police and would involve significant invasions of privacy if it were policed effectively.

Further, regardless of whether the original copy is destroyed, the new copy would be free of contractual or other controls placed on the original copy by the copyright owner. It is also likely that this provision would have a much greater impact on an owner's primary market for new copies of a work than the current first sale doctrine has on the primary market for physical copies. Unlike used books, digital information is not subject to wear and tear. The "used" copy is just as desirable as the new one because they are indistinguishable. For this reason, Congress has curtailed the first sale doctrine as it applies to the rental of sound recordings and software in the past, to prevent posing so great a burden on a copyright owner so as to undermine the incentive to create works which is the driving force behind the Copyright Act.

H.R. 3048 would also broaden Section 110(2) of the Copyright Act so that the performance, display, or distribution of any work (rather than just the performance of a non-dramatic literary or musical work and the display of any work) through digital transmission (rather than just through audio broadcasts) would be allowed without the permission of the copyright holder, as long as it is received by students, or by government employees as part of their duties. This broad expansion of the distance learning provisions currently codified in the Copyright Act would permit the transmission of a wide variety of Internet-based or other remote-access digital transmission formats for distance education and raises serious questions about safeguards to prevent such transmissions from unauthorized access. In other words, it may facilitate piracy.

Both CONFU and the Senate have discussed the intricacies involved in safeguarding transmissions used for distance learning purposes and have agreed that it is premature to enact specific legislation at this time. As discussed earlier, the Senate has included a provision in its companion bill, which I plan to include in the House manager's amendment, that will provide for a study with legislative recommendations on this issue, within a six-month time frame. This study will be better able to address the complex problems I have identified.

Section 7 of H.R. 3048 would amend Section 301(a) of the Copyright Act to preempt enforcement of certain license terms under state law. Specifically, it would preempt any state statute or common law that would enforce a "non-negotiable license term" governing a "work distributed to the public" if such term limited the copying of material that is not subject to copyright protection or if it restricted the limitations to copyright contained in the Copyright Act. In effect, it would prohibit standard form agreements, used in the context of copies distributed to the public, that purport to govern use of non-copyrightable subject matter or limit certain exceptions and limitations, such as fair use.

The use of standard form licensing agreements has become prevalent in the software and information industries, as owners seek to protect their investment in these products against the risk of unauthorized copying. Section 7 would result in destroying the ability of the producer of a work to create specific licenses tailored to the circumstances of the marketplace, or, in the case of factual databases and other valuable but noncopyrightable works, destroy the most significant form of protection currently available. This could result, for example, in the loss of crucial revenues to stock and commodity exchanges who rely on such contracts to disseminate information.

Attempts to introduce language similar to Section 7 of H.R. 3048 into Article 2B of the Uniform Commercial Code (UCC) have been rejected repeatedly by the UCC Article 2B Drafting Committee on several occasions. The National Conference of Commissioners on Uniform State Laws also rejected a proposal similar to the one you propose as has the American Law Institute. I agree with these bodies that restricting the freedom to contract in the manner proposed in H.R. 3048 would have a negative effect on the availability of information to consumers.

H.R. 3048 also proposes several changes to Section 108 of the Copyright Act regarding archiving and library activities. As you are aware, library groups and copyright owners have come to an agreement regarding changes in this section to update the Act for the digital environment and those changes were incorporated by the Senate in the companion bill. I will include those same provisions in the manager's amendment in the House.

Finally, the new Section 1201 contained in H.R. 3048 would not prohibit manufacturing or trafficking in devices purposely created to gain unauthorized access to copyrighted works, and insofar as it prohibits conduct, would permit circumvention in the fist instance for purposes of fair use. In other words, H.R. 3048, as I discussed earlier, would grant to users a right never before allowed—free access to copyrighted works in order to make a fair use. I believe that is unwise policy and tilts the balance away from the protection of works in a free market economy toward the free provision of works to anyone claiming to make a fair use. This would, I believe, ultimately lead to much more litigation against libraries and others who lawfully engage in fair use and ultimately would diminish the number of works made available over new media.

While it would be impossible to communicate to you all of the problems contained in the exact language of H.R. 3048, I wanted to, in truncated form, reveal my serious concerns with the bill. In its current form, for the above reasons and others, I would oppose it as a substitute to H.R. 2281, as amended. I remain dedicated, however, to working with you, as I have in the past, to address your concerns in a reasonable manner that will result successfully in changes to our nation's copyright law that will benefit both owners and users of works.

I truly believe that we are at the beginning of a long process of addressing adaptation to the digital environment. It is not possible at this point to enact legislation that will contemplate all uses of a work and, as CONFU members aptly point out, many will have to be addressed as we move forward. I am committed, however, to preserving fair use in the digital age and thank you for your valuable and continuing insight and interest.

Sincerely,

HOWARD COBLE,
Chairman, Subcommittee on Courts and Intellectual Property.

Mr. BLILEY. Madam Speaker, I yield one minute to the gentleman from Colorado (Mr. DAN SCHAEFER).

(Mr. DAN SCHAEFER of Colorado asked and was given permission to revise and extend his remarks.)

Mr. DAN SCHAEFER of Colorado. Madam Speaker, I thank the gentleman for yielding me time.

Madam Speaker, the webcasting is a new use of the digital works this bill deals with, and even most recent copyright amendments in 1995 do not really address it clearly. Under current law it is difficult for webcasters and record companies to know their rights and their responsibilities for negotiating new licenses. This provision makes it clear what each party must do and sets a statutory licensing program to make it as easy as possible to comply with.

I want to thank the gentleman from Washington (Mr. WHITE) and the gentleman from North Carolina (Mr. COBLE) for working with them to make sure this was all included, and I strictly urge my colleagues to carefully respect and preserve the delicate compromise that we have worked so hard to agree on as we move through this legislative process in the conference committee.

Mr. COBLE. Madam Speaker, I yield 1½ minutes to the gentleman from Florida (Mr. FOLEY), the chairman of the House Entertainment Task Force.

Mr. FOLEY. Madam Speaker, I thank the chairman and also all the Members who have participated in this very, very important debate, and particularly the leadership, the gentleman from Georgia (Mr. GINGRICH), the gentleman from Texas (Mr. ARMEY), and others who have helped bring this platter to the floor today for full and fair debate.

Businesses and industries that depend on copyright protection, including publishing, music and recording, film and video and computer software companies, are among the fastest growing segment of our society. These creative industries contribute nearly $280 billion to the gross domestic product yearly and provide jobs for some 3.5 million Americans. Moreover, they are among our biggest export earners, accounting for some $60 billion in foreign sales.

What has been plaguing this huge and important industry is piracy, the outright theft of copyrighted works. Not piracy on the high seas, it is today's version, piracy on the Internet. American companies are losing nearly $20 billion yearly because of the international piracy of these copyrighted on-line works, and that is what this bill helps to stop.

It has been a long process which has been carefully and thoughtfully negotiated. What we now have is a balanced

measure that protects both the interests of the users and the consumers, and the property rights of the creators.

As chairman of the Entertainment Industry Task Force, I know how important the enactment of this bill is to one of America's most promising industries. I would like it thank the chairman of the Committee on the Judiciary, the chairman of the Committee on Commerce, the gentleman from North Carolina (Mr. COBLE) and others who have worked tirelessly on this effort, as well as Members of the other side of the aisle, the gentleman from Massachusetts (Mr. FRANK) and others, who have taken into consideration all the concerns of both the users and end users of the product, as well as those who provide the intellectual content, if you will, to striking what is a fair balance for Americans, a fair balance for consumers, but, more importantly, will allow the very appropriate and important works to be put on the Internet for future generations to come.

Mr. FRANK of Massachusetts. Madam Speaker, I yield three minutes to the gentleman from California (Mr. BERMAN).

Mr. BERMAN. Madam Speaker, this day has been a long time coming. Going back nine years as the technological capacity to make unauthorized copies of copyrights works was rapidly expanding, some of us anticipated the need to enact legislation to protect technological measures used by copyright holders to protect their works.

Last Congress, our former colleagues, Carlos Moorehead and Pat Schroeder, laid further groundwork for today's WIPO bill with their efforts to enact national information infrastructure legislation. Then in December 1996, the U.S. victory that produced two new international treaties, made the enactment of implementing legislation an urgent task.

Today, under the leadership of the gentleman from North Carolina (Mr. COBLE) and the gentleman from Massachusetts (Mr. FRANK), the gentleman from Illinois (Mr. HYDE) and the gentleman from Michigan (Mr. CONYERS), our efforts have come top fruition.

Passage of this bill is essential to implementation of the treaties around the world. Our leadership is necessary in order to gain passage of the treaties in other countries where the standards for intellectual property is much lower than our own.

Make no mistake, American intellectual property and the almost unsurpassed contribution it makes to our balance of trade is at risk around the world. Piracy costs American creators $15 billion in sales. In a digital era which brings the capacity to make perfect copies of copyrighted works, we must enact this legislation to fight overseas piracy and the toll it takes in export revenues and American jobs.

Madam Speaker, I think the gentleman from Massachusetts (Mr. FRANK) had it right. In the context of trying to protect this property, we needed to come to reasonable balances with providers of these services, with people who have legitimate interests in the fair use. This is, at least at this particular point, the best effort we can make to try to come to those kinds of balances and still provide the essential protection that this bill provides. I urge its adoption.

Mr. BLILEY. Madam Speaker, I yield such time as he may consume to the gentleman from Michigan (Mr. DINGELL).

(Mr. DINGELL asked and was given permission to revise and extend his remarks.)

Mr. DINGELL. Madam Speaker, I thank my good friend for yielding to me.

Because of an act of extraordinary lack of comity of the part of the managers of the bill on this side, and because of some extraordinary discourtesy, the Committee on Commerce has not been afforded our share of the time on this bill. I am therefore compelled to request time from the Republicans for this unanimous consent request. I express my thanks.

I hope that the next time our two committees deal with each other, there will be more courtesy shown by the Committee on the Judiciary. I intend to remember this event.

Mr. DINGELL. Mr. Speaker, I rise in support of H.R. 2281, the "Digital Millennium Copyright Act," and I urge my colleagues to join me. This legislation is vitally important to the livelihoods of authors, musicians, filmmakers, software developers, and countless other creators of copyrighted works. However, just as important, this bill will preserve the legal right of information consumers to make "fair use" of copyrighted works just as they have done for over one hundred years.

Why is this treaty and its implementing legislation important? The digital age has vastly improved the quality of these works that we all enjoy. Today limitless copies can be made with virtually no reduction in quality. Unfortunately, these improvements in technology do not come without a cost. Piracy of copyrighted works, particularly overseas, has increased dramatically, and copyright owners are desperately in need of additional protection to protect their property from thieves who increasingly prey on their creative ingenuity.

However, there is another side to this story. As copyrighted works are afforded more protection, they will be encrypted in "digital wrappers" that make them impenetrable to anyone other than those who are willing to pay the going rate. While that may sound like the American way, it is not. United States copyright law historically has carved out important exceptions to the rights of copyright owners to have exclusive control over the use of their property.

The most notable exception is "fair use." Libraries and universities, for example, are permitted to freely use portions of copyrighted works legally for research and study. This practice has been a bedrock of our copyright law for over a century. Both Congress and the courts repeatedly have recognized this important balance in the law between the right of copyright owners to be compensated for their efforts, and the right of information consumers to use these works in limited ways to increase knowledge and understanding for the benefit of our whole society.

We can now take great comfort in the fact that H.R. 2281 will continue to recognize this important balance. The "fair use" debate, though heated at times, was negotiated to an acceptable conclusion in the Commerce Committee, and this key compromise between the content and "fair use" communities is reflected in the bill on the floor today. Other critical matters were also resolved, such as protecting consumer privacy interests, electronic device manufacturing, and encryption research.

I would like to commend my good friend from Virginia, Chairman BLILEY, for his fine work on this bill. In addition, I would also like to give special thanks to Mr. BOUCHER and Mr. KLUG who contributed so much to the resolution of the "fair use" issue, as well as Mr. MARKEY and Mr. TAUZIN for their important efforts. Also, special thanks goes to all the staff who worked so hard on this legislation, in particular Justin Lilley with the Commerce Committee majority, Andy Levin and Kyra Fischbeck with the Commerce Committee minority, Ann Morton with Mr. BOUCHER, Kathy Hahn with Mr. KLUG, Whitney Fox with Mr. TAUZIN, and Colin Crowell with Mr. MARKEY, to name just a few.

Thank you, Mr. Speaker. I yield back the balance of my time.

Mr. BLILEY. Madam Speaker, I yield one minute to the gentleman from Ohio (Mr. OXLEY).

(Mr. OXLEY asked and was given permission to revise and extend his remarks.)

Mr. OXLEY. Madam Speaker, I rise in strong support of H.R. 2281, the WIPO enabling legislation. I want to pay special tribute to the chairman of the full committee, the gentleman from Virginia (Mr. BLILEY), as well as the gentleman from Illinois (Chairman HYDE), for their work as well, as my good friend the gentleman from Michigan (Mr. DINGELL) on the other side of the aisle.

The digital revolution presents special opportunities and special challenges for copyright holders and users of copyrighted works. Working with the Committee on the Judiciary, I think we put together a bill that we can all be proud of that deals with issues like fair use, encryption research and temporary and ephemeral copies.

This legislation will extend copyright protections for intellectual property into the digital age, while simultaneously protecting fair use of such works. It will provide an important foundation for the growth of electronic commerce on the Internet.

The bill also includes an important provision preserving the authority of the SEC over the mechanisms by which the public obtains information about our securities markets, including stock quotes. This ensures that the commission will be able to ensure that investors have ready access to the information they need to make their investment decisions.

I again thank the work of both the Committee on Commerce and the Committee on the Judiciary for bringing us where we are today.

Mr. FRANK of Massachusetts. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, I had intended to stick to the merits, but I did want to respond to the ranking member of the Committee on Commerce. Unfortunately, the public got a look at some of the turf battles that I do not think serve us very well.

The gentleman made some reference to comity. I do not know how that was spelled. But had the gentleman wanted me to yield him some time, I would have been glad to do it. I did not, because I had not been instructed by the ranking member of my full committee to split the time in terms of control. But I am glad to yield time to anyone who wants. Indeed, I yielded four minutes right away to the gentleman from Virginia. Now, the gentleman serves on both the Committee on the Judiciary and the Committee on Commerce, but he used his four minutes for a tribute to the work of the Committee on Commerce that was lyrical in its composition, and I am sure will go down in the annals as one of the best tributes to a committee ever given.

So, at this point I would reserve the balance of my time, but if Members want to speak, I would be glad to yield them time.

Mr. BLILEY. Madam Speaker, I yield one minute to the gentleman from Wisconsin (Mr. KLUG), who did an extraordinary amount of work on this piece of legislation.

Mr. KLUG. Madam Speaker, I thank the gentleman for yielding me time.

Madam Speaker, we have in front of us a very difficult balancing act, essentially trying to protect the American creative community across the world, people who make movies and television shows, book publishers and the recording industry. But in an era of exploding information, we also have to guarantee access to libraries and also university researchers, to make sure we do not enter a new era of pay per view, where the use of a library card always carries a fee and where the flow of information comes with a meter that rings up a charge every time the Internet is accessed.

Today we have a reasonable compromise in front of us, and I want to thank the gentleman from Virginia (Mr. BLILEY) and the gentleman from Michigan (Mr. DINGELL) for their leadership.

If I also could indulge the committee to single out several other people, Justin Lilley of the committee staff, Kathy Hahn of my staff, for working so hard on this compromise, and in particular the support of my colleague, the gentleman from Virginia (Mr. BOUCHER). I urge adoption of the bill.

I rise in support of H.R. 2281, the Digital Millennium Copyright Act of 1998 and request permission to revise and extend my remarks and to submit additional materials into the RECORD.

I especially want to acknowledge the many significant contributions that the Commerce Committee has made to this bill, under the leadership of Chairmen BLILEY and TAUZIN and Representatives DINGELL and MARKEY, and Justin Lilly, Kathy Hahn on my staff.

The bill that came to the Commerce Committee for consideration was a flawed bill in a number of respects: Most important, it created a flat prohibition against circumventing "technological protection measures" for any reason.

This original prohibition passed by the Judiciary Committee sharply skews the balance in favor of copyright owners. It would have required each user of information to negotiate with the copyright owner for access to information. I assume that the copyright owner would grant that permission, but would extract a price in exchange.

The Copyright Clause of the Constitution grants a limited preference to copyright owners. But this clause has consistently been interpreted to grant an incentive for the purposes of advancing knowledge or, in the words of the Constitution, "to promote the Progress of Science and the Useful Arts."

This incentive has always been interpreted to be of secondary importance to "allow the public access to the products of genius."

As the New York Times noted recently:

As Congress fashions ways to protect commercial interests in the digital realm, it must be careful also to protect the larger public interests in broad access to information. * * * The law does not allow a creator to control who looks at the material or prevent the material from being circulated or lent to others. It specifically allows the "fair use" of copyrighted materials for commentary, criticism, teaching, news reporting, scholarship and research under certain circumstances without permission from the copyright owner.

And, as the Washington Post notes this morning:

this transition to a pay-per-view world, * * * works fine for the entertainment industries and the commercial market. Where it doesn't work is in libraries and other places where use of books and research material is not pay-per-view but, till now, free.

The Commerce Committee corrected this automatic transition to a pay-per-view world by creating an exception for persons having gained lawful access who are or are likely to be adversely affected by the prohibition. In interpreting "lawful access", it is my hope that this term is broadly construed to include students at a university, patrons in a library, and investigative journalists who obtain critical information, among others.

Unlike the version reported by the Judiciary Committee, the approach taken by the Commerce Committee and reflected in the bill before us not only is an appropriate balance between the rights of copyright owners and users of information, it is also strongly supported by the treaty preamble that recognizes, "the need to maintain balance between the rights of authors and the larger public interest, particularly education, research, and access to information."

I also want to single out several other important contributions of the Commerce Committee. We have clarified that product designers and manufacturers should be able to design their products based on consumer demand. In so doing, we have eliminated any ambiguity or presumption that products must be designed to affirmatively respond to or accommodate any technological measures. It also ensures that lawyers, judges and juries do not become the principal designers of consumer products in this country. In the end, this language ensures that product designers and manufacturers will have the freedom to innovate.

As a related matter, consumers will continue to expect that the products they buy will perform to expectations, whether that be high resolution on high definition television or sound on-key for compact disks and digital video disks. Nothing in this bill, as clarified by the Commerce Committee in its report, should be read as interfering with a product manufacturer, designer, or retailer's ability to adjust any product that is experiencing material distortions caused by technological measures. We have an obligation up here to protect consumer interests, and ensuring that products play as promised is a critical step for consumer protection.

The compromise that is before us today is a thoughtful, well-crafted approach to a complicated problem. I not only urge my colleagues to vote for this compromise legislation, I strongly urge Chairman HYDE to adhere to this compromise language in its entirety, not just today, but when the House meets in conference with the Senate.

Mr. FRANK of Massachusetts. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, I did want to say that the ranking member of the full Committee on the Judiciary, the gentleman from Michigan (Mr. CONYERS), is in Michigan today because it is primary day in Michigan, and only that kept him from being here. The gentleman has been for a long time now one of the staunchest advocates of intellectual property rights. He is a man who has a great feel for American culture, and fully understands the role of intellectual property correctly understood in fostering our cultural traditions.

So I did want to express the strong support of the gentleman from Michigan and note that his leadership in this was very, very important, and to explain his absence as being due entirely to the fact that he had to be in Michigan for his primary.

Mr. BLILEY. Madam Speaker, I yield one minute to the gentleman from Washington (Mr. WHITE), who also put in a lot of work on this piece of legislation.

Mr. WHITE. Madam Speaker, I thank the chairman for yielding me time.

Madam Speaker, pretty much no matter what we do, this bill would be a big win for our country, because what this bill does in essence is it implements a treaty under which the rest of the world finally adopts our view of intellectual property. That is a big win for the United States.

But we also have the advantage that this bill actually turned out to be a pretty good bill, thanks to the gentleman from Virginia (Chairman BLILEY) and the gentleman from North

Carolina (Chairman COBLE), the gentleman from Illinois (Chairman HYDE), and many of the other people who worked on it.

The thing I like the most about it is that it moves intellectual property protection into the digital age. I was proud to play a small part in improving the bill. We adopted a special program for webcasting, this is broadcasting on the Internet. We will now have clear rules for how those sorts of things are supposed to be done.

I think this should be a day when all of us are very pleased that we are moving through the House a bill that will make big progress around the world for intellectual property, which is a big improvement for things in the United States.

Mr. BLILEY. Madam Speaker, I yield one minute to the gentleman from Florida (Mr. STEARNS), a member of the committee.

(Mr. STEARNS asked and was given permission to revise and extend his remarks.)

Mr. STEARNS. Madam Speaker, I also rise in support of the bill and compliment our chairman, the gentleman from Virginia (Mr. BLILEY), and, of course, I compliment my good friend the gentleman from North Carolina (Mr. COBLE), for their activities.

I participated in some of the areas dealing with technological protection measures, defining this actually: The no-mandate provision, which makes clear that manufacturers need not design their products to respond to any particular technological protection measure was included in the report; language to the compromise on "fair use" which seeks to protect consumers from a pay-per-view world in the digital area; and, three, provisions ensuring activities important to our economy and national security such as reversed engineering and encryption research will not be stifled by the new prohibition on circumventing technological protection measure.

I appreciate also the gentleman from Virginia (Mr. BOUCHER), who was very helpful and diligent in approving our amendments and working together. I recognize his efforts, and I rise in strong support of the bill.

Mr. Speaker, I rise in support of the final legislative product to implement the World Intellectual Property Organization Treaty to provide legal protection to the millions of American copyright holders and American companies.

I would also like to congratulate the efforts and the hard work of the key players to forge a compromise and bring this bill to the floor: Chairman BLILEY of the Commerce Committee and Chairman COBLE of the Intellectual Property Subcommittee deserve particular praise.

It has been a long and hard process to get us to this point. I had numerous concerns with the original bill that I believed needed correction.

During consideration of H.R. 2281, the Commerce Committee heard from many concerned groups including libraries, educators, researchers, consumer groups, advocates for families such as Eagle Forum and the Christian Coalition, and representatives of manufacturers of legitimate consumer electronics products. All of these groups raised legitimate concerns which the Commerce Committee has sought to address.

The bill we consider today represents many hours of debate and compromise.

It is not a perfect solution, but it includes important provisions designed to protect consumers and legitimate manufacturers of consumer electronics while providing important new protections to copyright owners so that their works may thrive in the digital environment.

Among the important provisions in the legislation are:

(1) The "no mandate" provision which makes clear that manufacturers need not design their products to respond to any particular technological protection measure;

(2) The compromise on "fair use" which seeks to protect consumers from a "pay-per-view" world in the digital era; and

(3) Provisions ensuring that activities important to our economy and national security such as reverse engineering and encryption research will not be stifled by the new prohibition on circumventing technological protection measures.

I would also like to note that during consideration of the WIPO legislation in the Commerce Committee, I had joined with my good friend from Virginia, Mr. BOUCHER, in offering an amendment that would have defined the term "technological protection measure," because such a definition was lacking in the original bill.

Mr. BOUCHER and I worked diligently to improve our amendment and to seek a compromise position for a definition that would have enjoyed the support of the content community, as well as from the product manufacturers. We succeeded.

In order to push the bill forward and out of the Commerce Committee, we agreed to withdraw the amendment in exchange for Chairman BLILEY's support of report language that would have expanded on the proper definition of a "technological protection measure."

Although I believe the bill could have been further improved had we had the chance to define this term before bringing the bill to the floor, I believe the report of the Commerce Committee very clearly identifies the types of technological protection measures which are entitled to the special protections of this legislation.

In addition, I am confident that the federal courts that consider the meaning of the term "technological protection measure" will find sufficient guidance in the Commerce Committee's report.

I thank Chairman BLILEY for following through on his commitment and allowing such report language to be drafted, inserted, and negotiated with the Judiciary Committee.

I ask unanimous consent that my extended and revised remarks appear in the RECORD as if spoken.

Mr. BLILEY. Madam Speaker, I yield one minute to the gentleman from Massachusetts (Mr. MARKEY).

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Mr. MARKEY. Madam Speaker, I thank the gentleman for yielding me the time.

I want to congratulate all of the Members who have worked on this legislation, Madam Speaker. As the digital revolution sweeps over countries and industries, we are going to see a dramatic change in the nature of the American economy, because we are the clearcut leader in the post-GATT post-NAFTA world.

As we cut this implicit deal with the American people where we are going to let the low-end jobs go, it is critical for us to garner the lion's share of the high-end jobs. We are the world's leader in software, without question. In these computer, movie, books, video areas, we are the unquestioned dominant leader. It is our job to make sure that we construct treaties, laws, that protect our high end, our products that are related to the high education level which we are giving the citizens of the United States.

Built into this law are protections for the privacy of Americans, as well. We do not want corporations being able to insinuate themselves into the privacy of Americans, finding out where they go, what they do, as they use these new software technologies.

I think we have struck a nice balance, which is going to give marketplace incentives to industries to ensure that individuals have the knowledge on information that is being gathered about them, know that it may be reused, but also have the right to say no. I think it is going to be a good compromise forged.

I urge a very strong yes for all Members of Congress on this very important piece of legislation.

Mr. FRANK of Massachusetts. Madam Speaker, I yield myself such time as I may consume.

I am glad to turn away from the turf battles, which are to be of interest to no one outside this Chamber and very few inside, to talk a little more about substance.

Madam Speaker, I said earlier that one of the things I liked about this bill was that we reversed or at least stopped this trend to impinge on free speech. We have reduced the tendency to restrict speech which is electronically transmitted to a lesser degree of constitutional protection. But this is not the only bill relevant. I want to talk here about the danger in some other legislation of our continuing the unfortunate tendency of holding electronically transmitted speech to a lesser standard of protection.

I am told working its way through this body is legislation which would deny Federal aid to libraries and schools which do not impose various kinds of filtering devices on their own equipment. That it seems to me a very grave error. Of course, it makes a mockery of this profession of respect for States' rights which we occasionally hear, particularly when those who claim to be for States' rights do not like what the States are doing.

But the notion that we would impose a Federal judgment on schools and libraries, and make them use this very

admittedly imperfect technology of filtration so that they would be less than fully free in what they gave people, is an example of this unfortunate tendency to say that electronically transmitted speech has a lesser order of protection.

I hope no one would propose that Congress would say libraries would not get any money unless they censored books, unless they censored public speeches. Why, then, do we insist, and I hope we do not, that libraries can only get Federal funds if they agree to censure their electronic devices?

We already passed as part of the Telecommunications Act something called the Communications Decency Act, which was stricken by a 9 to nothing vote in the Supreme Court as unconstitutional. Indeed, some of the most ardent defenders of free speech during the campaign finance debate enthusiastically supported this, which was obviously unconstitutional at the time, and the Supreme Court held it to be.

I would just say in closing, Madam Speaker, that while I am pleased that here we took great pains to protect intellectual property while avoiding giving any additional incentive to censor, we may be undoing that in other pieces of legislation.

I would urge my colleagues to follow elsewhere the guide that I think we have set forth here: Do not adopt restrictions on electronically transmitted speech that we would not apply to written speech and to oral speech, to newspapers, to magazines, to theater, to other forums of public debate.

As this society continues to increase the percentage of our communication with each other that is electronically transmitted, it is essential that we give electronically transmitted speech the same high degree of protection from censorship and regulation that we give other speech, or we will be a less free society in consequence.

Madam Speaker, I reserve the balance of my time.

Mr. BLILEY. Madam Speaker, I yield 1½ minutes to the gentleman from Michigan (Mr. KNOLLENBERG).

(Mr. KNOLLENBERG asked and was given permission to revise and extend his remarks.)

Mr. KNOLLENBERG. Madam Speaker, I thank the chairman for being so gracious in relinquishing that time. I will not take all of it.

I will say, Madam Speaker, that I rise in full support of this bill. I want to thank the gentleman from North Carolina (Mr. COBLE) for his work in helping bring about the confection of this language. Included in the bill is a provision that I introduced to ensure that a computer owner may authorize the activation of their computer by a third party for the limited purpose of servicing computer hardware components. The bill provides language that authorizes third parties to make such a copy for the limited use of servicing computer hardware, the hardware components.

This provision does nothing to threaten the integrity of the Copyright Act, and maintains all the protections under the Act. The intent of the Copyright Act is to protect and encourage a free marketplace of ideas. However, without this provision, it hurts the free market by preventing the ISOs from servicing computers. Furthermore, it limits the computer users' choice of who can service their computer and how competitive a fee can be charged.

Again, I want to thank the gentleman from North Carolina (Mr. COBLE) for all of his work in helping us along on this.

Mr. COBLE. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, I thank everybody who has contributed to this exercise today. The creative ingenuity of the people of this country is responsible for our identification, culture, and not insignificantly large trade surplus. This has only come about because this country, through the work of the congressional judiciary committees down through the years, has enacted laws which protect intellectual property.

Our Founding Fathers, Madam Speaker, knew that a constitutional protection would be necessary in order to encourage Congress to create an incentive for creators. I am proud that this Congress and our subcommittee on the Committee on the Judiciary specifically have stood up for property rights of all kinds, both real property and intellectual property. I urge passage of the bill.

Madam Speaker, I reserve the balance of my time.

Mr. FRANK of Massachusetts. Madam Speaker, I yield the balance of my time to the gentleman from California (Mr. DREIER), and hope that he will remember me when he becomes chairman.

The SPEAKER pro tempore (Mrs. EMERSON). The gentleman from California (Mr. DREIER) is recognized for 2 minutes.

Mr. DREIER. Madam Speaker, I appreciate the gentleman yielding time to me, and I will, as we have amendments that conceivably could come forward from the gentleman from Massachusetts next year, consider them. I very much appreciate his acknowledging that I will be chairman next year.

Madam Speaker, let me rise in very strong support of this agreement. One of the most troubling aspects to this issue of global trade which is very important to the survival of our economy has been the issue of piracy. When we look at the impact that this has had on the entertainment industry and the biotechnology industry in my State of California, it is very, very troubling.

When we have ideas that emanate from individuals, the right to make sure that that is their property must be ensured. This WIPO agreement is in fact the best hope that we have to ensure that it will be acknowledged.

I simply rise to congratulate my friends who have been involved in this, the gentleman from North Carolina (Mr. COBLE), the gentleman from Illinois (Mr. HYDE), and of course, the Committee on Commerce, under the able leadership of the gentleman from Virginia (Mr. BLILEY), and a wide range of individuals in other industries, and of course, the gentleman from Massachusetts (Mr. FRANK).

This is a very important agreement, and I urge my colleagues to strongly support it.

Mr. BLILEY. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, I urge adoption of the bill.

Mr. COBLE. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, I want to say to the gentleman from California, he said he would remember the gentleman from Massachusetts (Mr. FRANK). I hope he remembers that both of us worked to accommodate him today when he has the gavel in his hand next year.

Finally, this has obviously been a team effort, Madam Speaker. Oftentimes we hear charges accusing us of being a do-nothing Congress. I think this piece of legislation today pretty well refutes that charge. Much good has been done in this session of the Congress, and today has been no exception. I thank everyone again for having contributed very favorably to this dialogue today.

Mr. HASTERT. Mr. Speaker, I am proud to rise in support of H.R. 2281, the Digital Millennium Copyright Act.

I am very pleased that Chairmen BLILEY, HYDE, COBLE and TAUZIN were able to reach a compromise on this bipartisan bill.

We all know that the strength of our copyright laws is fundamental to making our economy a success, while also allowing "fair use" of protected works for the common good.

Just because an authorized product is in a digitized form, we should not hinder a child's learning at St. Charles Public Library, or complicate an academic's research at Northern Illinois University, or prevent a high-tech engineer in Illinois from improving innovative products.

Specifically, this legislation includes new terminology vital to better resolving the issues ahead of us. The bill language on . . . "no mandates on design". . . . reverse engineering" . . . "playability" . . . and "definition of protection measures" . . . will provide the framework for continuing the proper balance in the law.

By adopting these new terms, we can anticipate future policy concerns, and create a fair and balanced approach to solving the questions of the digital revolution.

Ms. SLAUGHTER. Mr. Speaker, I rise in support of H.R. 2281, the Digital Millennium Copyright Act, which would raise the international standards of copyright protection so that we can help combat the devastating losses to American companies that are being caused by the international piracy of copyrighted works.

As Chair of the Congressional Member Organization for the Arts, I am greatly concerned about the grave effects of copyright violations on America's artists, writers, and software engineers. The dramatic growth of the Internet is

providing us with tremendous new opportunities for electronic commerce and communication. But these same technological developments also carry significant risks, especially in the area of international copyright piracy. Today, American companies are losing $18–20 billion annual because copyrighted works can be stolen and distributed around the world by anyone capable of using a computer.

This legislation protects our nation's movie producers, record makers, and software designers from being forced to absorb more of these losses. At the same time, it protects lawful use of materials by classrooms and libraries, and allows individuals who perform encryption research to continue with their work. However, it does prohibit the sale, manufacture and use of devices and component parts that are specifically designed to gain unauthorized access to copyrighted works. It also addresses the issue of online service provider liability, incorporating language based on a compromise that has been reached among groups on all sides of the debate.

I urge my colleagues to vote yes on passage of H.R. 2281 so that we can protect the work of our nation's talented individuals from copyright violations while encouraging the growth of electronic commerce.

Mrs. MORELLA. Mr. Speaker, although the Commerce Committee changes to H.R. 2281, the WIPO Copyright Treaties Implementation Act, vastly improved the bill from the original Judiciary Committee passed version, I am still deeply troubled that H.R. 2281 is being considered on the suspension calendar. As I indicated in a July 31 letter to the Majority Leader, signed by several other Members of the House, I was very interested in offering a distance education amendment to H.R. 2281 that has the support of every educational group, from the National Education Association to the National Center for Home Education.

As we enter the 21st Century, distance education will play an even more pivotal role in educating our children, and those individuals interested in life long learning. Distance education will fill an important gap for those individuals, either because of family obligations, work obligations, or other barriers, who are prevented from attending traditional classes. It will also allow educational institutions, from outlying rural towns to the heart of America's inner cities, to access a full range of academic subjects that would otherwise not be available to them.

The amendment that I was planning to offer would have updated the exceptions to copyright law regarding distance education to meet the new challenges and allow for the use of new and exciting technologies that will improve the education of our citizens, so that we are better prepared to compete in this more competitive global economy. This is particularly important in my district where we currently have a shortage of high-technology workers that is hindering our economic growth.

In 1976, as part of the general revision of the Copyright Law, the Congress recognized the importance of the burgeoning practice of distance learning. As the House Report on Copyright Law Revision (No. 94–1476) put it, in the context of higher education, these "telecourses are fast becoming a valuable adjunct of the normal college curriculum." (p. 84). The use of the term "telecourses" is, of course, significant. At the time, the only technology by means of which distance education could be conducted was that of television (either "open" or "closed-circuit") and in providing an exemption from copyright liability for illustrative uses of certain works in the course of distance learning lessons; typically, moreover, these lessons involved the transmission of text material, still images, or music. Against this background, the Congress proceeded to fashion the provisions of 17 U.S.C. 110(2).

The Copyright Act, in Section 106, provides for the various "exclusive rights" of the copyright owner. Because, as a matter of definition, TV broadcasting implicates only Section 106(4) "public performance" and the Section 106(5) "public display," the distance education exemption in Section 110(2) relieves educators of liability with respect to those two rights. Moreover, since educational TV broadcasts typically at assembled groups of students, Section 110(2) was drafted to apply to "reception in classrooms of similar places" (extending to home reception only in the case of disabled persons and others in "special circumstances"). Finally, Section 110(2) was written to apply only to performances of "nondramatic literary or musical works," categories from which the overwhelming proportion of illustrative excerpts required by teachers would have been drawn.

More than 20 years later, distance education practice has changed dramatically. Increasingly, distance learning has become a staple of K–12 as well as higher education, and digital networks have become the favored technology for the delivery of distance learning lessons. As a technical matter, network transmissions generally become available to recipients only because a temporary copy of their content is made in the so-called "random access memory" of those recipients' computer terminals; thus, network transmission of an excerpt from a copyrighted work in the course of a distance learning lesson may involve not only the performance or display of that work, but also its "distribution" (another right which is reserved to the copyright owner in Section 106(2), and not covered by existing Section 110(2)). Moreover, many contemporary distance learning transmissions are intended primarily for reception in the homes or offices of students who are neither disabled nor exhibit other "special circumstances"; indeed, many such transmissions are offered by institutions (like the Western Governors' University or various home-school networks) which have few or no physical "classrooms or similar places." Again, existing Section 110(2) would not appear to cover such instructional programs. Finally, in the age of multimedia, instructors must be able to illustrate their lessons with relevant excerpts not only from the conventional literary and musical works covered in existing Section 110(2), but from the full range of cultural materials to which protection under the Copyright Act extends.

As I mentioned before, the proposed amendment would legitimize the best current practice in the field of distance education and encourage further innovation in this important area by eliminating technologically or educationally outdated restrictions from Section 110(2). By adopting such an amendment, the Congress would be following through on the decision it took in 1976 to encourage the practice of distance education by providing educators with a clearly defined "safe harbor" within which they could design lessons with enhanced learning value, free from concerns about potential legal liability.

As amended, the Section 110(2) exemption would apply only to qualified not-for-profit institutions and home-schools. "Fly-by-night" commercial trade schools and sham entities without demonstrable educational purposes would not qualify. Moreover, the amended sections would retain crucial restrictive language from the original, which limits its applicability to situations in which excerpts from copyrighted works are used "for purposes of illustration, and [are] directly related and of material assistance to the teaching content" of a distance learning lesson; indeed, the amended section would amplify that restriction with a new provision stating that the material used for illustrative purposes must be "limited to that portion of the work reasonably necessary to accomplish the teaching purpose." In other words, the amended section would not permit educators to put entire copyrighted textbooks on line; such conduct is an infringement of copyright today, and it would continue to be under the amended section.

Nor would the section allow distance education programming to become a gateway through which valuable copyrighted works, in their entirety, could flow out into the Internet and become generally available. This is all the more so because the amended section applies only to educators who had not taken reasonable steps to provide safeguards against distance education transmissions being received by non-students or copied for redistribution. Thus, the amended section actually would give distance educators a new incentive to upgrade the security features of their networks to discourage copyright infringement.

It also is noteworthy that the exemption which would be defined in the amended section would be available only in connection with the actual delivery of educational materials by educators and their institutions, or (in the case of home schools) by parents. It would not deprive copyright owners of revenues in connection with the licensing of their works for inclusion in "packaged" materials designed for use in connection with distance education. Just as textbook authors and publishers today must obtain appropriate copyright clearances in order to include excerpts from copyrighted works, so would the creators of tomorrow's "electronic texts."

Mr. COBLE. Madam Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from North Carolina (Mr. COBLE) that the House suspend the rules and pass the bill, H.R. 2281, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The title of the bill was amended so as to read:

"A bill to amend title 17, United States Code, to implement the World Intellectual Property Organization Copyright Treaty and Performances and Phonograms Treaty, and for other purposes.".

A motion to reconsider was laid on the table.

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