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our State. I was able to say earlier that in the annual balance of payments study that we have been putting out for 2 years, New York has the third highest poverty rate in the Nation and the fourth highest cost of living. These children are at stake.

The Senator has made the point, and I congratulate the Senator for it, in that mode and making clear because the record is there that this issue was never raised prior to the veto. It was a decision made after the bill was signed, I think. I don't know. And I think that some reassessment of the process, the procedure might bring change in judgment.

Again, I thank my friend, and I am telling him how pleased and honored I am to be associated with him in this matter.

By Mr. GRAMS:

S. 1145. A bill to amend the Social Security Act to provide simplified and accurate information on the Social Security trust funds, and personal earnings and benefit estimates to eligible individuals; to the Committee on Finance.

THE SOCIAL SECURITY INFORMATION ACT

Mr. GRAMS, Madam President, I rise today to introduce legislation to require the Social Security Administration to provide key information to the American people for retirement planning.

In that regard, I plan to send my bill to the desk in just a moment.

But to explain that, every working American has a significant part of each paycheck designated to the Social Security Program, but few know how much they've contributed over their lifetime, the real value of their Social Security investment, or how much they'll need for a secure retirement.

As average life-expectancy increases and the oldest baby boomers approach retirement, the answers to those three questions become critically important, for there's growing concern over the future of Social Security and how individuals should prepare themselves for retirement.

Over the next 33 years, the number of retirees and their dependents who are eligible for Social Security benefits will increase by more than 100 percent; from 30 million in 1997 to more than 60 million in 2030, while the number of workers 20 to 64 years old will increase by only 20 percent.

By 2030, the ratio of workers per retiree will be the smallest ever, straining the entire Social Security system to the breaking point. Most of these older Americans will rely on Social Security benefits as their major source of retirement income.

For many families, Social Security is the largest and most important financial investment they'll make, consuming up to one-eighth of their total lifetime income. Yet, the Federal Government remains unaccountable for the dollars working Americans have invested in the program.

Current laws do not require the Social Security Administration, [SSA],

the agency managing the Social Security trust funds, to send clear and complete account statements to individual taxpayers.

Therefore, Americans don't receive adequate information about the retirement benefits they can expect to receive, the rate of return from their Social Security investment, or the future financial status of the Social Security trust funds—information, by the way, private investment agencies are required to provide to their investors.

As a result, the vast majority of today's baby boomers won't be financially secure at retirement.

My legislation would help to correct this problem and bring Social Security closer to meeting the disclosure requirements expected of private investment firms. This legislation will help ensure that working Americans receive the information they need to plan for a secure retirement.

In 1989, Congress passed the personal earnings and benefits estimate statements, it is commonly known as PEBES. That legislation requires the SSA to send to eligible individuals statements on their yearly earnings and estimated benefits.

A recent study by the General Accounting Office, the accounting arm of Congress, suggests that while the PEBES is useful, it is extremely difficult for average Americans to understand and, in fact, could be misleading. Therefore it isn't as effective as it could be or should be.

Moreover, the current PEBES statement does not include the information an individual needs to most effectively plan for retirement.

My proposal would require Washington to provide key information on the real value, or the yield, of a worker's investment in the Social Security Program by counting employers' contributions as workers' earnings to calculate the rate of return. Washington currently excludes this type of contribution from a worker's earnings statement.

The employer's share of Social Security is a labor cost that's ultimately borne by the employee; it is only fair that it be counted as a worker's contribution.

To ensure that the information is easy to understand, my legislation would also direct the SSA to provide benefit estimates in real rather than current dollars. To show the impact of inflation on Social Security benefits, consider the case of a typical individual retiring in 2043. That American is 25 years old today, retiring in the year 2043.

The current benefit estimate found in PEBES will tell this worker that he or she can expect to receive \$98,989—nearly \$100,000 annually in Social Security benefits. That sounds pretty good, doesn't it? But most workers will never consider the effects of inflation on this number. They'd never guess that an income of \$98,989 in 2043 will actually be the equivalent of only \$14,180 today because of inflation.

If the PEBES includes such misleading information, it is likely that more working Americans will misunderstand and, therefore, overestimate the value of the benefits they will receive from Social Security. Only after it is too late will they find themselves financially unprepared for retirement.

Not only would my legislation direct the SSA to include all of the most important information found in PEBES on a single, easy-to-read form, but the SSA would also be required to provide the current and projected balance in the Social Security trust funds, and let individuals decide on their future by providing them honest information today.

With this information, Americans will be able to quickly and easily determine what the PEBES report is about and find the information essential to successful retirement planning.

Working American need to know up front what they can and cannot expect out of the Social Security system compared against what they are paying into it.

Giving individuals an honest accounting of that information serves the fundamental objectives of the Social Security Program by enabling workers to judge to what degree they should supplement their contributions with other forms of retirement savings such as pension plans and personal savings and investments.

While much more needs to be accomplished to preserve and strengthen the Social Security safety net for today and tomorrow, the approach I've outlined would be an important first step in that attempt.

By Mr. ASHCROFT:

S. 1146. A bill to amend title 17, United States code, to provide limitations on copyright liability relating to material on-line, and for other purposes; to the Committee on the Judiciary.

THE DIGITAL COPYRIGHT CLARIFICATION AND TECHNOLOGY EDUCATION ACT OF 1997

Mr. ASHCROFT, Mr. President, I speak today on an issue of great importance to copyright law and to the continued growth of electronic commerce on the Internet. In December 1996, two treaties were adopted by the diplomatic conference of the World Intellectual Property Organization [WIPO] to update international copyright law. These treaties would extend international copyright law into the digital environment, including the Internet. However, these treaties do not provide a comprehensive response to the many copyright issues raised by the flourishing of the Internet and the promise of digital technology. We must endeavor to keep the scales of copyright law balanced, providing important protections to creators of content, while ensuring their widespread distribution. To begin the discussion I am introducing today the Digital Copyright Clarification and Technology Education Act of 1997.

Any discussion of this issue, even in the most simple terms, raises many

important issues. We must foster the growth of the Internet, which provides such great opportunity to our country because it is the most participatory form of mass communication ever developed. It draws people together from all corners of the globe to share and communicate on an unprecedented level, and brings all levels of government closer to the public. The Internet also holds great promise for education. Students—rural, suburban, and urban—are increasingly able to access a wealth of information right at their computer that was previously beyond their reach.

In addition, the Internet offers significant commercial possibilities. Small businesses can reach out across the globe and conquer the distances between them and potential customers. Individuals can view merchandise and make purchases without leaving home. Hopefully, soon a system will develop to allow individuals to contract electronically with traditional force of law for contracts on paper. However, this potential will never be realized without a system that fairly protects the interests of those who own copyrighted material; those who deliver that material via the Internet; and individual users. The implications here are far-reaching, with impacts that touch individual users, companies, libraries, universities, teachers and students.

The legislation I am introducing today would accomplish several goals. First, the legislation would clarify the extent of liability for entities who transfer information via the Internet without control of the content. Second, the bill would provide for a rapid response to copyright infringement with the cooperation of the copyright owner and the on-line service to take down the infringing material, helping to curtail piracy. Third, the Act will provide for the use of digital technology in education, research, and library archives, including updating the fair use doctrine for electronic media. Fourth, the legislation provides a standard for liability based on individual conduct, not a standard that constrains the development of new technology.

We must confirm that the entities who facilitate the operation of the global information infrastructure are not unfairly liable for literally billions of transmissions that individual users send via the Internet or post on the World Wide Web every week. We cannot make the Internet too costly to operate. Liability for infringement of copyright should reflect the degree of control that any party had in the determination of the content of the offending message. Those providing the infrastructure that makes the Internet possible should not be held liable for the content of messages to which they have no access. Often, the copyright holders will be best situated to make a determination of whether their copyrighted material is being infringed.

In addition, two very real considerations in the final outcome are the ca-

abilities and limits of current technology. It is not possible to monitor every communication on the Internet, not even to look at every homepage on the World Wide Web, even if it were desirable. In January 1997, one estimate put the number of Internet hosts at more than 16 million. Each could host multiple homepages, and those individual sites could be composed of multiple individual pages. One individual host, GeoCities, boasts of more than half a million homesteaders, with 5,000 new residents arriving daily. As of May 1997 there were more than 40 million people on the Web, a breathtaking increase from the 1 million in December 1994. To state the facts of the exploding traffic growth in a different way, one major infrastructure provider, of which there are many, reports traffic of 250 terabytes a month—a terabyte is a thousand billion bytes—which translates into almost six billion bytes a minute—for one carrier. More importantly, any wholesale reading of messages would constitute the largest full scale attack on our individual privacy ever undertaken. We are confident that those delivering the mail do not read our sealed letters and we should have that same confidence in our e-mail and other electronic communications. It would be impossible for any carrier to review all of the material; and we cannot create a legal obligation that is technologically impossible to satisfy. Clearly, the potential for copyright infringement is real—as real as the impossibility of requiring a service provider to monitor every communication, including e-mail, homepages, and chat rooms.

Another important issue is the right of reproduction as specifically related to ephemeral copying. As a message is sent through cyberspace copies of the message are reproduced, in a sense. This is a reality of computer technology. For the most part an entire copy never exists anywhere, except at the points of distribution and receipt. The Internet was designed to send packets, pieces of a message expressed in digital form, a full message is not sent from one point to another. In the process of delivering the message multiple copies of each packet are sent so if a path is blocked path or data lost, the end message can be totally reassembled. Additionally, a full copy may be assembled on the recipient's server, where the message would reside until the recipient pulls down the file, or a copy may be made on a user's hard drive during the simple act of reading a document on-line. Obviously, to make this sort of copy illegal would be a move that flies in the face of the operations of the Internet and would destroy the World Wide Web. We need to make clear the status of these temporary and necessary copies within communications networks.

The passage of appropriate copyright legislation goes beyond the implications of liability and technical operations. The outcome of this debate will

affect educators and students across the country. One important aspect for education is to guarantee that computers can be used in distance learning, in a way that television and video recorders have been used for years. The copyright laws have long recognized the need to ensure that the copyright laws do not stand in the way of the opportunities that the technology promises to provide students in rural areas. Unfortunately, the current law reflects the technology that was current when it was passed, largely video. We need to update these laws to reflect the enormous potential of the digital era. Part of the work in this area may include defining the classroom to reflect that in many instances the classroom is no longer a physical space.

In addition, the fair use doctrine in the Copyright Act should be amended to make clear that fair use applies regardless of the manner in which the material is distributed. A sound fair use doctrine is critical to continued interoperability of various systems, which in effect allows the Internet to exist and grow. Fair use encourages others to build freely on the ideas and information in a work while guaranteeing the author's right to their original expression. Currently, fair use may be made of a work for teaching, commentary, research, scholarship, criticism, and even news reporting. We should not tolerate discriminatory treatment based on a means of distribution or an alternative technology. Fair use in one medium should be fair use in another.

Finally, we must facilitate the preservation of copyrighted materials by libraries, archives, and universities. These institutions should be able to preserve their works, many of which represent the cultural heritage of the United States, in the best means possible, including digitally. To require that these institutions purchase new copies of existing works, but in digital format, could cost untold billions of dollars. Many works could never be made available digitally as they are no longer available in a format available for purchase.

Mr. President, we have made an effort to provide access to technology to all students in the last couple of years. In 1996, Congress appropriated \$200 million to provide teachers with the training and support needed for access to technology, and to ensure that effective software and on-line resources would be available for use with the curriculum. The fiscal year 1998 budget request from the administration for this program is \$425 million, with the House Appropriations Committee approving \$460 million. Approving nearly \$700 million over 2 years to guarantee that education can be delivered in a digital format, while impeding or denying delivery of digital material by neglecting our copyright law makes no sense. A decision has been made that students must prepare to operate in an on-line world. We must unlock the teaching

potential of the Internet and we must now guarantee that the appropriate material is made available, so that our students can receive a full education while taking advantage of the tremendous strides made in technology.

The Missouri State Librarian recently wrote to me that Missouri's strong distance education programs could flourish or wither, depending on the outcome of this debate. I suspect this is the case in all States with strong distance learning programs to serve rural areas. These programs allow residents in even the most remote areas to have the same access to education as those who live near schools, colleges, or universities. These programs cannot operate as effectively without the assurance that educators can use materials over computer networks.

Equally important, Mr. President, we must begin a process internationally that is structured to balance the rights of copyright owners with the needs and technological limitations of those who enable the distribution of the electronic information, and with the rights and needs of individual end users. The current treaties and statements are not sufficient, and include some language that could create legal uncertainty. The loose language could lead to law that ignores technical realities, blindly shifts liability and ignores serious issues. The language must be clarified through the enactment of legislation in conjunction with the Senate's ratification of the treaties.

Moreover, some of the proposed treaty implementation language attempts to attack copyright violations from the position of the technology that may be used, rather than placing the blame on those who are infringing the copyright. We cannot legislate technology. Just as we have seen the legislated 56-bit encryption become obsolete so too will any technology frozen in place by legislation. We must end policies of the Government that hinder technology, but, more importantly we must not initiate new policies that express an inherent fear of new technology.

We must recognize other realities. Scores of software programs are illegally copied on-line, and intellectual piracy is an issue. However, some of this problem relates to the failure of the law, particularly copyright law, to keep up with the swift advance of technology. In a digital environment, hundreds of copies can be made and distributed in the blink of an eye. These copies are reproductions; they are perfect recreations of the original. The speed with which copies can be made makes the traditional ways of enforcing the copyright laws—a court order—obsolete. Copyright laws must evolve to embrace the new medium of digital storage and transmission. Those who provide the content for the Internet need some assurance that their valuable work will not become worthless because piracy. The approach in the Digital Copyright Clarification and

Technology Education Act of 1997 requires that service providers cooperate with content providers by taking action after they are notified that illegal material is posted, or being transmitted on their systems. The benefits to copyright holders are notable. A copyright owner will be able to stop the illegal distribution of the material quickly without having to use the courts as a first measure. This approach solves the largest problem for on-line piracy, by providing a quick response to illegal activity which will preserve the value of the material.

Mr. President, one of the many important values held in this country is the freedom of expression. The United States must continue to be a leader in the preservation of freedom of expression around the world. Many countries are looking to the United States to be a leader on these important issues. We have the opportunity to send a strong message internationally that copyright law must be revised to fit the realities of a digital environment, and that by doing so we can encourage the growth and evolution of the Internet, while protecting all parties involved, with zero tolerance for illegality.

I look forward to working with all interested parties, service providers, educators, entertainers, authors and others as this issue develops. I welcome the involvement of Senators who may have an interest in this legislation and the opportunity to work together to develop sound policy.

Mr. President, the administration took a lead role in the copyright debate that took place in an international forum. We must continue this leadership in the Senate, in order to secure the U.S. role not only as a leader in the manufacture of technology and development of content, but also as a leader in fashioning a fair and just approach to the use of digital technology and information.

Mr. president, I ask unanimous consent that the text of the bill be printed in the RECORD.

S. 1146

*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 Copyright Clarification and Technology Education Act of 1997".

#### TITLE I—DIGITAL COPYRIGHT CLARIFICATION

##### SEC. 101. PURPOSES.

The purposes of this Act are—

- (1) to clarify the application of copyright law in the unique environment of Internet and on-line communication;
- (2) to foster the continued growth and development of the Internet as a means of communication and commerce, including the lawful distribution of intellectual property;
- (3) to protect the rights of copyright owners in the digital environment;
- (4) to clarify that providing network services and facilities with respect to the transmission of electronic communications of another person does not result in liability under the Copyright Act;
- (5) to clarify that Internet and on-line service providers are not liable for third-

party copyright infringements unless they have received notice in compliance with this Act of the infringing material and have a reasonable opportunity to limit the third-party infringement; and

(6) to create incentive for the rapid elimination of infringing material residing on an electronic communications system or network without litigation.

##### SEC. 102. CLARIFICATION OF LIABILITY.

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

"§512. Liability relating to material on the Internet and on-line

"(a) MATERIAL BEING TRANSMITTED THROUGH AN ELECTRONIC COMMUNICATIONS SYSTEM OR NETWORK.—

"(1) NETWORK SERVICE WITH RESPECT TO THE TRANSMISSION OF ELECTRONIC COMMUNICATIONS.—A person shall not be liable for direct, vicarious or contributory infringement of copyright arising out of providing electronic communications network services or facilities with respect to a copyright infringement by a user. A person shall be considered to provide 'network services and facilities' when such person transmits, routes or provides connections for material on behalf of a user over an electronic communications system or network controlled or operated by or for the person, including intermediate and transient storage, the processing of information, and the provision of facilities therefor, if—

"(A) the provision of services is for the purpose of managing, controlling or operating a communications system or network, supplying local access, local exchange, telephone toll, trunk line, private line, or backbone services, including network components or functions necessary to the transmission of material contained in electronic communications carried over those services; or

"(B) the transmission of material over the system or network on behalf of a user does not involve the generation or material alteration of content by the person.

"(2) PRIVATE AND REAL-TIME COMMUNICATION SERVICES.—A person shall not be liable for direct, vicarious or contributory infringement of copyright arising from supplying to another—

"(A) a private electronic communication, including voice messaging or electronic mail services, or any other communication for which such person lacks either the technical ability or authority under law to access or disclose such communication to any third party in the normal course of business; or

"(B) real-time communication formats, including chat rooms, streamed data, or other virtually simultaneous transmissions.

"(3) INFORMATION LOCATION TOOLS.—No person shall be liable for direct, vicarious or contributory infringement of copyright arising out of supplying a user of network services or facilities with—

"(A) a site-linking aid or directory, including a hyperlink or index;

"(B) a navigational aid, including a search engine or browser; or

"(C) the tools for the creation of a site-linking aid.

"(b) MATERIAL RESIDING ON A SYSTEM OR NETWORK.—

"(1) COOPERATIVE PROCEDURE FOR EXPEDITIOUS RESPONSE TO CLAIMS OF INFRINGEMENT.—A person shall not be liable for direct, vicarious or contributory infringement of copyright arising out of the violation of any of the exclusive rights of the copyright owner by another with respect to material residing on a system or network used in conjunction with electronic communications that is controlled or operated by or for the

person, unless upon receiving notice complying with paragraph (b)(3), the person fails expeditiously to remove, disable, or block access to the material to the extent technologically feasible and economically reasonable for a period of ten days, or until receiving a court order concerning the material, whichever is less.

"(2) Paragraph (b)(1) shall apply where such person—

"(A) did not initiate the placement of the material on the system or network;

"(B) did not determine the content of the material placed on the system or network; and

"(C) did not contract for placement of the specific material on the system or network by another person in order to provide that content as part of the person's service offering.

"(3) A person shall not be deemed to have notice that material residing on a system or network used in conjunction with electronic communications is infringing unless the person—

"(A) is in receipt of a notification that the particular material is infringing. Such notification shall:

"(i) pertain only to allegedly infringing material that resides on a system or network controlled or operated by or for the person;

"(ii) be submitted in accordance with directions displayed on the person's system or network indicating a single place or person to which such notifications shall be submitted;

"(iii) be signed, physically or electronically, by an owner of an exclusive right that is allegedly infringed, or by a person authorized to act on such owner's behalf;

"(iv) provide an address, telephone number, and electronic mail address, if available, at which the complaining party may be contacted in a timely manner;

"(v) describe the material claimed to be infringing, including information reasonably sufficient to permit the person expeditiously to identify and locate the material;

"(vi) provide reasonable proof of a certificate of copyright registration for the material in question, a filed application for such registration, or a court order establishing that use of the material in the manner complained of is not authorized by the copyright owner or the law;

"(vii) contain a sworn statement that the information in the notice is accurate, that the complaining party is an owner of the exclusive right that is claimed to be infringed or otherwise has the authority to enforce the owner's rights under this title, and that the complaining party has a good faith belief that the use complained of is an infringement;

"(viii) be accompanied by any payment that the Register of Copyrights determines is necessary to deter frivolous and de minimis notices; and

"(B) A person who is an employee or agent of a nonprofit educational institution, library or archives, acting within the scope of his employment, or such an educational institution, library or archives itself, shall not be deemed to have notice under subparagraph (A) if that person reasonably believed (i) that the allegedly infringing use was a fair use under Sec. 10 or (ii) was otherwise lawful; and

"(C) The Register of Copyrights may, by regulation, establish guidelines identifying additional information to be included in the notice and shall issue a standard notice form in both electronic and hard copy formats, which complies with this paragraph, but failure of a party to provide any such additional information, or failure to use any issued form, shall not invalidate the notice.

"(4) MISREPRESENTATIONS AND REDRESS FOR WRONGFUL NOTIFICATIONS.—Any person who

materially misrepresents that material on-line is infringing in a notice described in paragraph (b)(3)(A), shall be liable in a civil action that may be brought in an appropriate United States district court or State court for statutory damages of not less than \$1,000, and any actual damages, including costs and attorneys' fees, incurred by—

"(A) the actual copyright owner or the alleged infringer arising out of the disabling or blocking of access to or removal of such material; or

"(B) any person who relies upon such misrepresentation in removing, disabling, or blocking access to the material claimed to be infringing in such notice.

"(5) LIMITATION ON LIABILITY BASED UPON REMOVING, DISABLING, OR BLOCKING ACCESS TO INFRINGING MATERIAL.—A person shall not be liable for any claim based on that person's removing, disabling, or blocking access for a period of ten days, or until the person receives a court order concerning the material, whichever is less, to material residing on a system or network used in conjunction with electronic communications that is controlled or operated by or for that person in response to notice pursuant to paragraph (b)(3)(A) that the material is infringing, whether or not the material is infringing.

"(6) OTHER DEFENSES NOT AFFECTED.—A person's removing, disabling, or blocking access to material residing on a system or network used in conjunction with electronic communications that is controlled or operated by or for that person, pursuant to paragraph (1), or the failure to do so, shall not adversely bear upon the consideration by a court of any other issue pertaining to liability or remedy, including any other limitation on liability established in paragraph (a), any other applicable defense, any claim that the service provider's alleged conduct is not infringing, or whether or not such conduct is willful or innocent."

"(b) CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 17, United States Code, is amended by adding at the end of the following:

"512. Liability relating to material on the Internet and on-line."

#### TITLE II—TECHNOLOGY FOR TEACHERS AND LIBRARIANS

##### SEC. 201. SHORT TITLE.

This title may be cited as the "Technology for Educators and Children (TECH) Act."

##### SEC. 202. FAIR USE.

(a) TRANSMISSIONS.—The first sentence of section 107 of title 17, United States Code, is amended by inserting after "or by any other means specified in that section," the following: "and by analog or digital transmission;" and

(b) DETERMINATION.—Section 107 of title 17, United States Code, is amended by adding at the end thereof the following: "In making a determination concerning fair use, no independent weight shall be afforded to—

"(1) the means by which the work has been performed, displayed or distributed under the authority of the copyright owner; or

"(2) the application of an effective technological measure (as defined under section 1201(c)) to the work."

##### SEC. 203. LIBRARY EXEMPTIONS.

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

(1) by striking "Notwithstanding" at the beginning of subsection (a) and inserting: "Except as otherwise provided and notwithstanding";

(2) by inserting after "copyright" in subsection (a)(3): "if such notice appears on the copy or phonorecord that is reproduced under the provisions of this section";

(3) in subsection (b) by—

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

(B) deleting "in facsimile form"; and

(4) in subsection (c) by—

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

(B) deleting "in facsimile form"; and

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

##### SEC. 204. DISTANCE EDUCATION.

(a) TITLE CHANGE.—The title of section 110 of title 17, United States Code, is amended to read as follows:

"§110. Limitations on exclusive rights: Exemption of certain activities".

(b) PERFORMANCE, DISPLAY AND DISTRIBUTION OF A WORK.—Section 110(2) of title 17, United States Code, is amended to read as follows:

"(2) performance, display or distribution of a work, by or in the course of an analog or digital transmission, if—

"(A) the performance, display or distribution is a regular part of the systematic instructional activities of a governmental body or a nonprofit educational institution;

"(B) the performance, display or distribution is directly related and of material assistance to the teaching content of the transmission; and

"(C) the work is provided for reception by—

"(i) students officially enrolled in the course in connection with which it is provided; or

"(ii) officers or employees of governmental bodies as part of their official duties or employment."

(c) EPHEMERAL RECORDINGS OF WORKS.—Section 112(b) of title 17, United States Code, is amended by deleting "transmit a performance or display of" and inserting in lieu thereof: "perform, display or distribute".

##### SEC. 205. LIMITATIONS ON EXCLUSIVE RIGHTS.

(a) TITLE.—The title of section 117 of title 17, United States Code, is amended to read as follows:

"§117. Limitations on exclusive rights: Computer programs and digital copies";

(b) DIGITAL COPIES.—Section 117 of title 17, United States Code, is amended by inserting "(a)" before "Notwithstanding" and inserting the following as a new subsection (b):

"(b) Notwithstanding the provisions of section 106, it is not an infringement to make a copy of a work in a digital format if such copying—

"(1) is incidental to the operation of a device in the course of the use of a work otherwise lawful under this title; and

"(2) does not conflict with the normal exploitation of the work and does not unreasonably prejudice the legitimate interest of the author."

#### TITLE III—WIPO TREATY

##### IMPLEMENTATION

##### SEC. 301. WIPO IMPLEMENTATION.

Title 17 of the United States Code is amended by adding the following sections:

"§1201. Circumvention of certain technological measures

"(a) CIRCUMVENTION CONDUCT.—No person, for the purpose of facilitating or engaging in an act of infringement, shall engage in conduct so as knowingly to remove, deactivate or otherwise circumvent the application of operation of any effective technological measure used by a copyright owner to preclude or limit reproduction of a work or a portion thereof. As used in this subsection, the term "conduct" does not include manufacturing, importing or distributing a device or a computer program.

"(b) CONDUCT GOVERNED BY SEPARATE CHAPTER.—Notwithstanding subsection (a), this section shall not apply with respect to conduct or the offer or performance of a service governed by a separate chapter of this title.

"(c) DEFINITION OF EFFECTIVE TECHNOLOGICAL MEASURE.—As used in this section, the term 'effective technological measure' means information included with or an attribute applied to a transmission or a copy of a work in a digital format, or a portion thereof, so as to protect the rights of a copyright owner of such work or portion thereof under chapter one of this title and which—

"(1) encrypts or scrambles the work or a portion thereof in the absence of access information supplied by the copyright owner; or

"(2) includes attributes regarding access to or recording of the work that cannot be removed without degrading the work or a portion thereof.

"§1202. Integrity of copyright management information

"(a) FALSE COPYRIGHT MANAGEMENT INFORMATION.—No person shall knowingly provide copyright management information that is false, or knowingly publicly distribute or import for distribution copyright management information that is false, with intent to induce, facilitate, or conceal infringement.

"(b) REMOVAL OR ALTERATION OF COPYRIGHT MANAGEMENT INFORMATION.—No person shall, without authority of the copyright owner or other lawful authority, knowingly and with intent to mislead or to induce or facilitate infringement—

"(1) remove or alter any copyright management information;

"(2) publicly distribute or import for distribution a copy or phonorecord containing copyright management information that has been altered without authority of the copyright owner or other lawful authority; or

"(3) publicly distribute or import for distribution a copy or phonorecord from which copyright management information has been removed without authority of the copyright owner or other lawful authority: *Provided*, That the conduct governed by this subsection does not include the manufacturing, importing or distributing of a device.

"(c) DEFINITION OF COPYRIGHT MANAGEMENT INFORMATION.—As used in this chapter, the term 'copyright management information' means the following information in electronic form as carried in or as data accompanying a copy or phonorecord of a work, including in digital form:

"(1) The title and other information identifying the work, including the information set forth in a notice of copyright.

"(2) The name and other identifying information of the author of the work.

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

"(4) Terms and conditions for uses of the work.

"(5) Identifying numbers or symbols referring to such information or links to such information.

"(6) Such other identifying information concerning the work as the Register of Copyrights may prescribe by regulations: *Provided*, That the term 'copyright management information' does not include the information described in section 1002, section 1201(c), or a chapter of this title other than chapters one through nine of this. *Provided further*, That, in order to assure privacy protection, the term 'copyright management information' does not include any personally identifiable information relating to the user of a work, including but not limited to the name,

account, address or other contact information of or pertaining to the user.

"§1203. Civil remedies

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

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

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

"(2) may grant such other equitable relief as it deems appropriate;

"(3) may award damages pursuant to subsection (c);

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

"(5) may award a reasonable attorney's fee to the prevailing party.

"(c) AWARD OF DAMAGES.—

"(1) IN GENERAL.—If the court finds that a violation of section 1201(a) or 1202 has occurred, the complaining party may elect either actual damages as computed under paragraph (2) or statutory damages as computed under paragraph (3).

"(2) ACTUAL DAMAGES.—The court may award to the complaining party the actual damages suffered by him or her 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 instead of statutory damages at any time before final judgment is entered.

"(3) STATUTORY DAMAGES.—(A) The court may award to the complaining party statutory damages for each violation of section 1201(a) of not less than \$250 or more than \$2,500, as the court considers just, if the complaining party elects such damages instead of actual damages at any time before final judgment is entered.

"(B) The court may award to the complaining party statutory damages for each violation of section 1202 of not less than \$500 or more than \$20,000, as the court considers just, if the complaining party elects such damages instead of actual damages at any time before final judgment is entered.

"(4) REPEATED VIOLATIONS.—In any case in which the court finds that a person has violated section 1201(a) or 1202 within three years after a final judgment against that person for another such violation was entered, the court may increase the award of damages to not more than double the amount that would otherwise be awarded under paragraph (2) or (3), as the court considers just.

"(5) INNOCENT VIOLATION.—The court may reduce or remit altogether the total award of damages that otherwise would be awarded under paragraph (2) or (3) 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 of section 1201(a) or 1202."

SEC. 302. CONFORMING AMENDMENTS.

(a) TABLE OF SECTIONS.—The table of sections for chapter 1 of title 17, United States Code, is amended by—

(1) Revising the item relating to section 110 to read as follows:

"110. Limitations on exclusive rights: Exemption of certain activities"; and

(2) Revising the item relating to section 117 to read as follows:

"117. Limitations on exclusive rights: Computer programs and digital copies".

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

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

SEC. 303. EFFECTIVE DATES.

(a) IN GENERAL.—Sections one through seven and section 9(a) of this Act, and the amendments made by sections one through seven and section 9(a) of this Act, shall take effect on the date of enactment of this Act.

(b) WIPO TREATIES.—Section 8 and section 9(b) of this Act, and the amendments made by section 8 and section 9(b) of this Act, shall take effect on the date on which both the World Intellectual Property Organization Copyright Treaty and the World Intellectual Property Organization Performances and Phonograms Treaty have entered into force with respect to the United States.

#### ADDITIONAL COSPONSORS

S. 61

At the request of Mrs. MURRAY, her name was added as a cosponsor of S. 61, a bill to amend title 46, United States Code, to extend eligibility for veterans' burial benefits, funeral benefits, and related benefits for veterans of certain service in the United States merchant marine during World War II.

S. 102

At the request of Mr. SPECTER, the name of the Senator from Connecticut [Mr. LIEBERMAN] was added as a cosponsor of S. 102, a bill to amend title XVIII of the Social Security Act to improve medicare treatment and education for beneficiaries with diabetes by providing coverage of diabetes outpatient self-management training services and uniform coverage of blood-testing strips for individuals with diabetes.

S. 210

At the request of Mr. THURMOND, the name of the Senator from Missouri [Mr. ASHCROFT] was added as a cosponsor of S. 230, a bill to amend section 1951 of title 18, United States Code (commonly known as the Hobbs Act), and for other purposes.

S. 364

At the request of Mr. LIEBERMAN, the names of the Senator from Connecticut [Mr. DODD] and the Senator from Florida [Mr. MACK] were added as cosponsors of S. 364, a bill to provide legal standards and procedures for suppliers of raw materials and component parts for medical devices.

S. 385

At the request of Mr. CONRAD, the name of the Senator from North Dakota [Mr. DORGAN] was added as a cosponsor of S. 385, a bill to provide reimbursement under the medicare program for telehealth services, and for other purposes.

S. 394

At the request of Mr. HATCH, the name of the Senator from South Dakota [Mr. JOHNSON] was added as a cosponsor of S. 394, a bill to partially restore compensation levels to their past equivalent in terms of real income and establish the procedure for adjusting

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