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that as long as there is competition between Federal and State programs for LWCF appropriations, the State matching grants will lose. He suggested a separate source of funds.

I am taking his advice to heart, and calling upon Congress to establish a separate and permanent fund for State matching grants.

My legislation creates an $800 million permanent endowment to provide LWCF matching grants to the States. Interest from that account will help provide parks, campgrounds, trails, and recreation facilities for millions of Americans. It will also help preserve open spaces for the future.

Where does that money come from? On June 19, 1997, the Supreme Court ruled the Federal Government retains title to lands underlying tidal waters off Alaska's North Slope. As the result, the government will receive $1.6 billion in escrowed oil and gas lease revenues.

This sum is twice the amount the Congressional Budget Office estimated for the concurrent budget resolution. My bill places this bonus $800 million in a permanent endowment account.

This new approach is consistent with the vision of the Land and Water Conservation Fund Act and a promise made to the American people 30 years ago.

Our Government promised us that a portion of proceeds from offshore oil and gas leases would fund outdoor recreation and conservation. My bill makes good on that promise—permanently. It makes sure the State grants are never forgotten again.

That sound we hear on the doors to this Chamber is opportunity knocking. We must seize the opportunity and use those funds to renew and reinvigorate the bipartisan vision of the LWCF.

I urge my colleagues to join me in this endeavor and support the Community Recreation and Conservation Endowment Act of 1997.

By Mr. ABRAHAM:

S. 1119. A bill to amend the Perishable Agricultural Commodities Act, 1930 to increase the penalty under certain circumstances for commission merchants, dealers, or brokers who misrepresent the country of origin or other characteristics of perishable agricultural commodities; to the Committee on Agriculture, Nutrition, and Forestry.

FOOD SAFETY LEGISLATION

Mr. ABRAHAM. Mr. President, in March of this year, over 200 schoolchildren in my State contracted the hepatitis A virus from food served by the school lunch program. As news of the outbreak began to pour in, the Michigan Department of Community Health and the Centers for Disease Control went into action to determine the cause. They soon found the culprit: Frozen strawberries sold to the school lunch program by a San Diego company named Andrews and Williamson. Investigators also discovered that some of the strawberries sold to the school lunch program had been illegally certified as domestically grown when, in fact, they had been grown in Mexico.

There does not currently exist a method for testing strawberries for the hepatitis A virus. Thus, we may never know whether the strawberries brought in from Mexico were the source of this pathogen. Given the growing conditions that USDA investigators found at the farm, however, the likelihood is strong.

And one thing we do know, Mr. President, is that these strawberries should never have been served in the school lunch program in the first place. By law, products sold to the school lunch program must be certified as being domestically grown. Unfortunately, because the USDA lacks the resources to effectively enforce this requirement, companies have typically been trusted to do the right thing. Andrews and Williamson chose to do something else. They chose to break the law by misrepresenting their product's country-of-origin, and over 200 people were poisoned as a result.

This dangerous incident, the poisoning of Michigan children by their own school lunch program, compelled and received my immediate involvement. Shortly after the outbreak, I called for, and was granted, a hearing on the matter. I arranged to have officials from the CDC come to my state to brief the families of those affected. During this process I learned of the similar efforts being made by a private organization called Safe Tables Our Priority [STOP]. Their assistance throughout this process has been invaluable.

One of the first things I learned while studying this issue was that a specific statute exists which states that misrepresenting the country-of-origin of a perishable good is a crime. Unfortunately, the penalty for such fraud is a $2,000 fine and possible loss of license; a rather small price to pay for poisoning over 200 people.

Of course, this does not mean that A&W will walk away from this incident without paying a price. After reviewing the case made by investigators from the USDA, the U.S. Attorneys Office filed 47 charges against A&W. The first charge is conspiracy to defraud the United States. Counts two, three and four are for making false statements, and counts five through forty-seven are for making false claims. For each of these counts, the maximum penalty is 5 years and/or $250,000 per count or $500,000 for a corporation.

I state these charges because they do not include any mention of the specific crime which A&W is accused of violating, namely, misrepresenting the country-of-origin for a perishable food. Well, Mr. President, I intend to rectify this oversight. Today I am introducing legislation which modifies current law such that an intentional misrepresentation of the origin, kind or character of any perishable commodity, the reckless disregard of the effects on the public safety of such action, or violations which result in serious injury, illness or death will constitute a felony with a maximum penalty of five years imprisonment and/or a fine of $250,000 per count.

This change in law will ensure that individuals who intentionally misrepresent their goods will now suffer the appropriate consequences of their actions. The recent outbreaks of hepatitis A, Cyclospora and E Coli demonstrate that a new commitment to food safety is sorely needed in this country. I will continue working to see that Congress takes the appropriate measures to assist the USDA, FDA and Centers for Disease Control in their efforts to keep America's food supply the safest in the world.

Mr. President, I ask consent that the full text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1119

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

SECTION 1. MISREPRESENTATION OF COUNTRY OF ORIGIN OR OTHER CHARACTERISTICS OF PERISHABLE AGRICULTURAL COMMODITIES.

Section 2(5) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499b(5)), is amended by adding at the end the following: "If a court of competent jurisdiction finds that a person has intentionally, or with reckless disregard, engaged in a misrepresentation described in this paragraph and the misrepresentation resulted in a serious bodily injury (as defined in section 1365(g) of title 18, United States Code) to, or death of, an individual, the person shall be guilty of a Class D felony that is punishable under title 18, United States Code."

By Mr. HATCH (for himself, Mr. LEAHY, Mr. THOMPSON, and Mr. KOHL):

S. 1121. A bill to amend Title 17 to implement the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty; to the Committee on the Judiciary.

THE WIPO COPYRIGHT AND PERFORMANCE AND PHONOGRAMS TREATY IMPLEMENTATION ACT OF 1997

Mr. HATCH. Mr. President, today I am introducing legislation proposed by the Clinton administration to implement two important treaties that were adopted last December by the World Intellectual Property Organization (WIPO). The distinguished Ranking Member of the Judiciary Committee, Sen. LEAHY, the distinguished Senator for Tennessee, Sen. THOMPSON, and the distinguished Senator from Wisconsin, Sen. KOHL, join me as original cosponsors. I strongly support adoption of the treaties, and I am introducing this bill on behalf of the Administration as an essential step in that process. I believe that the Administration's bill provides an excellent starting point for the debate on exactly what must be changed in U.S. law in order to comply with the treaties.

The WIPO Copyright Treaty and the WIPO performances and Phonograms

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Treaty—completed after years of intense lobbying by the United States government—will update international copyright law for the digital age and ensure the protection of American creative products abroad. I want to commend Secretary of Commerce Bill Daley, Commissioner of Patents and Trademarks Bruce Lehman, and their staffs for their efforts in moving this important issue forward, and I welcome the opportunity to work with them during the legislative process.

The United States leads the world in the production of creative works and high-technology products—including software, movies, recordings, music, books, video games, and information. Copyright industries represent nearly 6% of the U.S. gross domestic product, and nearly 5% of U.S. employment. Yet American companies lose $18–20 billion every year due to international piracy of copyrighted works. The film industry alone estimates its annual losses due to counterfeiting in excess of $2.3 billion, even though full-length motion pictures are not yet available on the Internet. The recording industry estimates that it looses more than $1.2 billion each year due to piracy, with seizures of bootleg CDS up some 1,300 percent in 1995. These figures will only continue to grow with the recent technological developments that permit creative products to be pirated and distributed globally with the touch of a button, significantly weakening international protection for the copyrighted works that are such a critical part of this country's economic backbone and costing the U.S. economy exports and jobs.

The WIPO treaties will raise the minimum standards for copyright protection worldwide, providing the U.S. with the tools it needs to combat international piracy. But the treaties will be meaningless unless they are ratified by a large number of countries. It is therefore up to the United States to demonstrate leadership on this issue by ratifying and implementing the treaties promptly. Swift U.S. action will encourage global implementation of the WIPO treaties, and will signal U.S. determination to curb the threat that international piracy poses to U.S. jobs and the economy.

This bill takes the approach that the substantive protections in U.S. copyright law already meet the standards of the new WIPO treaties, and therefore very few changes to U.S. law are necessary in order to implement the treaties. In addition to minimal technical amendments, the treaties require signatory countries to provide legal protections against the circumvention of certain technologies that copyright owners use to protect their works and to guard against the alteration or falsification of identifying data known as copyright management information (CMI).

This "minimalist" bill is the product of much hard work by the Administration, and represents many months of negotiations among interested parties, including software companies, computer manufacturers, and the copyright community. This bill is a compromise; it does not represent any group's "wish list" for WIPO implementing legislation. The Administration has tried to craft a bill that addresses only those issues required by the treaties without altering the substantive protections and exceptions provided under U.S. copyright law or injecting extraneous issues into the treaty process. The Administration has tried to preserve the delicate balance that U.S. law already strikes between copyright owners and users, since the WIPO treaties were not intended to upset that balance.

I urge my colleagues to give this legislation serious consideration. The Judiciary Committee will begin hearings on this bill shortly. I would like to see the treaties go into effect this year, and I will try hard to meet this goal. However, the late date on which the Administration has submitted the legislation may render this goal unachievable.

In any event, we must act promptly to ratify and implement the WIPO treaties in order to demonstrate leadership on international copyright protection, so that the WIPO treaties can be implemented globally and so that further theft of our nation's most valuable creative products may be prevented.

Mr. President, I ask unanimous consent that a copy of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1121

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "WIPO Copyright and Performances and Phonograms Treaty Implementation Act of 1997".

SEC. 2. TECHNICAL AMENDMENTS.

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

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

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

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

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

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

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

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

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

"(1) the Universal Copyright Convention;

"(2) the Geneva Phonograms Convention;

"(3) the Berne Convention;

"(4) the WTO Agreement;

"(5) the WIPO Copyright Treaty;

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

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

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

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

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

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

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

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

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

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

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

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

(5) by renumbering present section (b)(5) as (b)(6),

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

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

and

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

"(d) Effect of Phonograms Treaties.—Notwithstanding the provisions of subsection (b), no works other than sound recordings shall be eligible for protection under this

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title solely by virtue of the adherence of the United States to the Geneva Phonograms Convention or the WIPO Performances and Phonograms Treaty.".

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

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

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

"(B) a WTO member country;

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

"(D) a nation adhering to the WIPO Performance and Phonograms Treaty, or

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

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

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

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

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

"(C) adheres to the WIPO Copyright Treaty;

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

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

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

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

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

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

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

(7) by deleting paragraph (9).

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

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

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

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

SEC. 3. COPYRIGHT PROTECTION SYSTEMS AND COPYRIGHT MANAGEMENT INFORMATION.

Title 17, United States code, is amended by adding the following new chapter: "Chapter 12.—COPYRIGHT PROTECTION AND MANAGEMENT SYSTEMS

"Sec.

"1201. Circumvention of Copyright Protection Systems

"1202. Integrity of Copyright Management Information

"1203. Civil Remedies

"1204. Criminal Offenses and Penalties

"§1201. Circumvention of Copyright Protection Systems

"(a)(1) No person shall circumvent a technological protection measure that effectively controls access to a work protected under title 17.

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

"(A) is primarily designed or produced for the purpose of circumventing a technological protection measure that effectively controls access to a work protected under Title 17,

"(B) has only limited commercially significant purpose or use other than to circumvent a technological protection measure that effectively controls access to a work protected under Title 17, or

"(C) is marketed by that person or another acting in concert with that person for use in circumventing a technological protection measure that effectively controls access to a work protected under Title 17.

"(3) As used in this subsection,

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

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

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

"(A) is primarily designed or produced for the purpose of circumventing protection afforded by a technological protection measure that effectively protects a right of a copyright owner under Title 17 in a work or a portion thereof,

"(B) has only limited commercially significant purpose or use other than to circumvent protection afforded by a technological protection measure that effectively protects a right of a copyright owner under Title 17 in a work or a portion thereof, or

"(C) is marketed by that person or another acting in concert with that person for use in circumventing protection afforded by a technological protection measure that effectively protects a right of a copyright owner under Title 17 in a work or a portion thereof.

"(2) As used in this subsection,

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

"(B) a technological protection measure 'effectively protects a right of a copyright owner under Title 17' 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 Title 17.

"(c) The importation into the United States, the sale for importation, or the sale within the United States after importation by the owner, importer or consignee of any technology, product, service, device, component, or part thereof as described in this section shall be actionable under section 1337 of Title 19.

"(d) Nothing in this section shall affect rights, remedies, limitations, or defenses to copyright infringement, including fair use, under Title 17.

"(e) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or of an intelligence agency of the United States.

"§1202. Integrity of Copyright Management Information

"(a) FALSE COPYRIGHT MANAGEMENT INFORMATION.—No person shall knowingly—

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

(2) distribute or import for distribution copyright management information that is false, with the intent to induce, enable, facilitate or conceal an infringement of any right under Title 17.

"(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 Title 17.

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

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

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

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

"(4) Terms and conditions for use of the work;

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

"(6) 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) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or of an intelligence agency of the United States.

"§1203. Civil Remedies

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

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

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

"(2) at any time while an action in 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

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or product involved in the violation that is in the custody or control of the violator or has been impounded under subsection (2).

"(c) AWARD OF DAMAGES.—

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

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

"(B) statutory damages, as provided by subsection (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.—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.

"§ 1204. Criminal Offenses and Penalties.

"(a) Any person who violates section 1201 or 1202 willfully and for purposes of commercial advantage or private financial gain shall be fined not more than $500,000 or imprisoned for not more than 5 years, or both for the first offense and shall be fined not more than $1,000,000 or imprisoned for not more than 10 years, or both for any subsequent offense."

"(b) Notwithstanding section 507(a) of this title, no criminal proceeding shall be brought under section 1204 unless such proceeding is commenced within five years after the cause of action arose."

SEC. 4. CONFORMING AMENDMENTS.

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. 5. EFFECTIVE DATE.

The amendments made by this Act shall take effect on the date of the enactment of this Act, except clause (5) of the definition of "international agreement" as amended by section 2(a)(8) of this Act, section 2(a)(10) of this Act, clause (C) of section 104(h)(1) of Title 17 as amended by section 2(c)(1) of this Act and clause (C) of section 104(h)(3) of Title 17 as amended by section 2(c)(2) of this Act shall take effect upon entry into force of the WIPO Copyright Treaty with respect to the United States, and clause (6) of the definition of "international agreement" as amended by section 2(a)(8) of this Act, section 2(a)(11) of this Act, section 2(b)(7) of this Act, clause (D) of section 104A(h)(1) of Title 17 as amended by section 2(c)(2) of this Act, and sections 2(c)(4) and 2(c)(5) of this Act shall take effect upon entry into force of the WIPO Performances and Phonograms Treaty with respect to the United States.

Mr. LEAHY. Mr. President, the successful adoption by the World Intellectual Property Organization [WIPO] of two new copyright treaties—one on written material and one on sound recordings—in Geneva last December was appropriately lauded in the United States. The WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty will give a significant boost to the protection of intellectual property rights around the world, and stand to benefit important American creative industries—from movies, recordings, computer software and many other copyrighted materials that are subject to piracy on-line.

According to Secretary Daley of the Department of Commerce, for the most part, "the treaties largely incorporate intellectual property norms that are already part of U.S. law." What the treaties will do is give American owners of copyrighted material an important tool to protect their intellectual property in those countries that become a party to the treaties. With an ever-expanding global marketplace, such international protection is critical to protect American companies and, ultimately, American jobs and the U.S. economy.

Over the past few months, I spoke and wrote to Secretary Daley urging him to transmit without delay the administration's proposal for implementing legislation. I am very pleased that earlier this week, the administration did so. The legislative package we received is an excellent start for moving forward, and I commend the administration, Secretary Daley and, in particular, Assistant Secretary Bruce Lehman of the Patent and Trademark Office for their hard work on this proposal.

I am glad to introduce this legislation, with Senator HATCH, on behalf of the administration. I hope we will take this matter up for hearings and further deliberation and action promptly after the recess.

In sum, this bill makes certain technical changes to conform our copyright laws to the treaties and substantive amendments to comply with two new Treaty obligations. Specifically, the treaties oblige the signatories to provide legal protections against circumvention of technological measures used by copyright owners to protect their works, and against violations of the integrity of copyright management information [CMI], which identifies a work, its author, the copyright owners and any information about the terms and conditions of use of the work. The bill adds a new chapter to U.S. copyright law to implement the anti-circumvention and CMI provisions, along with corresponding civil and criminal penalties.

Technological developments, such as the development of the Internet and remote computer information data bases, are leading to important advancements in accessibility and affordability of art, literature, music, film and information and services for all Americans. As Vinton Cerf, the coinventor of the computer networking protocol for the Internet, recently stated in The New York Times:

> The Internet is now perhaps the most global and democratic form of communications. No other medium can so easily render outdated our traditional distinctions among localities, regions and nations.

We see opportunities to break through barriers previously facing those living in rural settings and those with physical disabilities. Democratic values can be served by making more information and services available.

These methods of distribution also dramatically affect the role of copyright. Properly balancing copyright interests to encourage and reward creativity, while serving the needs of public access to works, can be a challenge. The public interest requires the consideration and balancing of such interests. In the area of creative rights that balance has rested on encouraging creativity by ensuring rights that reward it while encouraging its public performance, distribution and display.

I was glad to have played a role in the development and enactment of the Digital Performance Right in Sound Recording Act, Public Law 104-39. That legislation served in many respects as the precursor to the WIPO Treaty on performance rights adopted last December. Performance rights for sound recordings is an issue that has been in dispute for over 20 years. I was delighted in 1995 when we were finally able to enact a U.S. law establishing that right.

I believe that musicians, singers and featured performers on recordings ought to be compensated like other creative artists for the public performances of works that they create and that we all enjoy. I wanted companies that export American music not to be disadvantaged internationally by the lack of U.S. recognition of such a performance right. Most of all, I wanted to be sure that our laws be fair to all parties—to performers, musicians, songwriters, music publishers, performing rights societies, emerging companies expanding new technologies, and, in particular, consumers and the public.

I am glad to have been able to play a role in redesigning the performance right in sound recording law to meet these objectives. Our substitute, which was ultimately enacted, preserved existing rights, encouraged the development of new technologies, and promoted competition as the best protection for consumers. Working with Senator THURMOND, then chairman of the Antitrust Subcommittee, and with the

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help of the Antitrust Division of the Department of Justice, we were able to strengthen the bill in significant regard. I was pleased to cosponsor the substitute and to work for its passage.

I have also been supportive of copyright protection and anticircumvention legislation over the past several years and been working on ways to utilize copyright management information to protect and inform consumers.

I anticipate that at Judiciary Committee hearings on this important measure, we will examine the impact of the treaties and this implementing legislation, both domestically and internationally, on the careful balance we always strive to maintain between the authors' interest in protection along with the public's interest in the accessibility of information.

Ours is a time of unprecedented challenge to copyright protection. Copyright has been the engine that has traditionally converted the energy of artistic creativity into publicly available arts and entertainment. Historically, the Government's role has been to encourage creativity and innovation by protecting copyrights that create incentives for the dissemination to the public of new works and forms of expression. That is the tradition which I intend to continue.

Mr. KOHL. Mr. President, along with my colleagues, Senators HATCH and LEAHY, I rise in support in the WIPO Copyright and Performances and Phonograms Treaty Implementation Act of 1997. This proposal, while clearly not a final product, is nevertheless an important step forward in our ongoing battle against illegal copying of protected works—such as movies, books, musical recordings, and software. Let me also commend the administration, especially the Commerce Department and the Patent and Trademark Office, for their hard work in pushing for the underlying treaty and assembling a workable proposal to ensure the value of intellectual property.

What makes this legislation so important to our economy? Consider that the copyright industries had over $53 billion in foreign sales in 1995, surpassing every other export industry except automobiles and agriculture. Also consider that the copyright industries employ nearly 6 million people in the United States, or about 4.8 percent of our work force. But despite the tremendous contribution these businesses make to our economy, we still lose more than $15 billion each year due to foreign copyright piracy, according to some estimates. That is not only wrong; it is unacceptable.

Mr. President, we need to maintain our status as an international leader in the fight against illegal copying because many nations look to us for guidance in setting their own standards for copyright protection. And we need to show strong leadership in this area because, otherwise, some nations with troubling histories of copyright piracy will be even less likely to improve their records. This proposal moves us in the right direction.

Some of my colleagues may remember back in 1991 when I introduced similar legislation, the Motion Picture Anti-Piracy Act, to deal with the problem of video bootlegging. Although today's technology is more advanced than in 1991, the problem of unauthorized copying remains. Indeed, it has in some respects grown even worse. The spread of copying technology worldwide, including piracy that takes place with the touch of a button over the Internet, begins to explain the scope of this problem. And because the piracy problem extends across national borders, the best way to address unauthorized copying is through international agreements that go after devices deliberately designed to circumvent technological protection measures.

Mr. President, this bill generally takes the right approach. It makes it illegal to circumvent various copyright protection systems, it protects the integrity of copyright management information, and it provides for both civil and criminal penalties to deter potential violators. Some have suggested that it goes too far, while others argue that the bill does not go far enough. In any event, we should view this proposal as a point of departure rather than a final product. And we should make certain, as the measure moves forward, that it doesn't restrict products that have other beneficial uses.

Mr. President, let me make one additional point. The bill does not address the issue of online service provider liability. This issue needs to be discussed and resolved, whether as part of this legislation or separately. But it shouldn't slow down the consideration of the bill we have before us. The WIPO Implementation Act is a significant step in curbing illegal copying, and I urge my colleagues to join me in supporting it.

By Mr. KOHL (for himself, Mr. GRASSLEY, and Mr. REID):

S. 1122. A bill to establish a national registry of abusive and criminal patient care workers and to require criminal background checks of patient care workers; to the Committee on Finance.

THE PATIENT ABUSE PREVENTION ACT

Mr. KOHL. Mr. President, I rise to introduce the Patient Abuse Prevention Act, a bill to establish greater safeguards in our health care system for vulnerable Americans. I am pleased to be joined in offering this bill by Senate Committee on Aging Chairman CHARLES GRASSLEY and Senator HARRY REID.

One of the most difficult times for any family is when a senior or disabled member enters a long-term care arrangement. That family should not also be faced with the worry that the long-term care facility or its staff may pose a threat.

Whatever health care setting a family chooses, whether institutional or community-based, there should be assurances that care will be provided by trained and compassionate professionals.

Thankfully, that is the case in most facilities. But in a few cases—and that is a few cases too many—a long-term care facility hires someone who doesn't have the best interests of the patient in mind.

A disturbing number of cases have been reported where health care workers with criminal backgrounds have been cleared to work in a long-term care facility and have abused patients in their care. If only greater attention was given to discovering the background of these applicants, the abuses may have been prevented.

A recent report from the Nation's long-term care ombudsmen indicates that, in 29 States surveyed, 7,043 cases of abuse, gross neglect or exploitation occurred in nursing homes and board and care facilities.

According to a random-sample survey of nursing home staff, 10 percent admitted committing at least one act of physical abuse in the preceding year, and 40 percent committed psychological abuse. Thirty-six percent of the sample had seen at least one incident of physical abuse in the preceding year by other staff members.

These statistics may only scratch the surface of the problem. It's quite likely that the incidence of abuse is far more prevalent. In fact, the Office of Inspector General at the Department of Health and Human Services has reported that 46 percent of respondents questioned believed abuse is only sometimes or rarely reported.

Mr. President, the vast majority of health care facilities and their employees are dedicated and work hard under stressful conditions to provide the best care possible. But it only takes a few abusive staff to cast a dark shadow over what should be a healing environment.

Although some facilities run thorough background checks on prospective employees, most do not. And even if they wanted to run more complete checks, facilities are prevented due to a fractured and inefficient system.

It is far too easy for a health care worker with a criminal or abusive background to gain employment and prey on the most vulnerable patients.

Why is this? Because current State and national safeguards are inadequate to screen out abusive workers. All States are required to maintain nurse aide registries, but these registries are not comprehensive or efficiently maintained.

Many States limit their registries to nursing home aides, failing to cover home health aides, assisted living workers and hospital aides. Most States don't require criminal background checks of long-term care workers. Further, due to hit and miss investigations, many reports of abuse fall through the cracks.

The problem I find most troubling is the lack of information sharing between States about known criminal

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