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Citation: 5 William H. Manz Federal Copyright Law The Histories of the Major Enactments of the 105th E1052 1999

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PERSONAL EXPLANATION

HON. ELIOT L. ENGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, June 5, 1998

Mr. ENGEL. Mr. Speaker, I was necessarily absent during roll call votes 203, 204, and 205. If present, I would have voted 'yes' on roll call vote 203, 'yes' on roll call vote 204, and 'no' on roll call vote 205.

IMPACT OF MINIMUM WAGE INCREASE

HON. JAY DICKEY

OF ARKANSAS

IN THE HOUSE OF REPRESENTATIVES

Friday, June 5, 1998

Mr. DICKEY. Mr. Speaker, I rise today to bring to the attention of my colleagues the wise remarks of Mr. Leo Collins in the following article which appeared in the Pine Bluff Commercial. As a former small business owner myself, I understand and believe the comments made by Mr. Collins. Another increase in the minimum wage will have a negative impact on jobs, especially jobs for teenagers. Increases in the minimum wage lead employers to cut back on work hours and training. Unfortunately, low-skilled teenage workers will be the first to be affected. Combining the cutback of hours and training with the loss of job opportunities, this means that many youths are prevented from reaching the first rung on the ladder of success.

[From the Pine Bluff Commercial]

TO OVERCOME MEANS ACCEPTING REALITY

(By Leo Collins)

I became acquainted with a young Nigerian male some years ago who was fortunate to be one of a few chosen by his government to be given the opportunity to study and attend school in America.

He thought himself special and could not understand why so many Americans, particularly young blacks, did not pursue an education in an aggressive way since education was so accessible.

This young man was my roommate one summer while I was in graduate school. He asked me one day, "Why is it that blacks in America who will not take full advantage of an education, continue to blame other racial groups for their own personal failures?" I had no concrete answer.

He said, since he had been in America, it seems that every other race of people tend to overcome poverty except blacks. Other groups, he said, tend to take full and complete advantage of public schools, educational grants and low interest college student loans.

Every other group, other than American blacks—he implied—tend to develop a bond between themselves not too much unlike a mother and a new born child. He added that American blacks either do not like each other or they do not trust each other.

I had to tell him at that point that even though he is a Nigerian, his ancestors have never been enslaved. I told him that all of the other racial groups he sees came to America on their own accord. They didn't come, I told him, in the belly of slave ships and once here, sold on an auction block as chattel to the highest bidder.

I did not want him to go back to his native Nigeria with his knowledge bucket half full and half empty. I insisted that he fully understand that the black experience was unique only to blacks in America. He needs to fully understand that there is nothing in the annals of world history to compare that experience with; therefore, he shouldn't try to make a simple analogy when he returns to his native homeland.

Even today, blacks have not gotten completely away from the yoke of suppression. Too many are still seeking a solution to their economic, social and political woes outside of their own ranks. Many seemingly seek ways to generate failure. They do so by dropping out of school, defying authoritative symbols, joining street gangs, resisting parental guidance, etc.

Blacks tend to keep the memory of slavery alive by doing to themselves exactly what the old slave masters of a bygone era did to them; that being, denying themselves the opportunity to develop the most important human organ: their minds.

Today, there is a great demand for all kinds of workers. Employers cannot find enough workers. But do you know who still cannot find work? I'll tell you; 9.6 percent of current unemployed Americans are black. Out of nearly 6 million unemployed, 600,000 are black. Is this because of racism? Some of it may be, but the bulk of it isn't.

Blacks are not getting the technical training needed in today's job market. Dropping out of school in the ninth grade doesn't prepare you for much other than membership in a street gang and a short life span.

Blacks must learn to bond with each other and stay in school. Being dumb is not being cool; it's being stupid. Minimum wage, as benevolent as it is, is only another crutch aimed at pacifying black Americans that there is no need to rush to help yourself. Uncle Sugar will guarantee you a marginal lifestyle.

Blacks should develop their skills. Minimum wage laws do nothing but pacify the conscience of whites who support it and sedate the minds of blacks who accept it. Minimum wage is not a panacea for high school dropouts.

H.R. 2652 "COLLECTIONS OF INFORMATION ANTIPIRACY ACT"

HON. HENRY J. HYDE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Friday, June 5, 1998

Mr. HYDE. Mr. Speaker, I would like to place in the RECORD the correspondence between Chairman BLILEY and myself on this legislation.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC, June 3, 1998.

Hon. TOM BLILEY,
Chairman,
Committee on Commerce, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your letter of May 19, 1998, expressing your interest in H.R. 2652, the "Collections of Information Antipiracy Act."

As you know, H.R. 2652 was introduced on October 9, 1997. Its predecessor in the 104th Congress, H.R. 3531, authorized by then-Chairman of the Subcommittee on Courts and Intellectual Property, Carlos Moorhead, was introduced on May 23, 1996. H.R. 3531 was introduced in anticipation of a Diplomatic Conference on Intellectual Property in Databases held by the World Intellectual Property Organization in Geneva, Switzerland in December, 1996, and on a Directive issued by the European Union under which member countries must enact laws to protect collections of information and pursuant to which American collections would not receive reciprocal protection without offering comparable protection to foreign collections in the U.S. Both bills were referred to the Committee on the Judiciary.

H.R. 2652 was the subject of two days of hearings held by the Subcommittee on Courts and Intellectual Property on October 23, 1997 and on February 12, 1998. The Subcommittee held a markup on H.R. 2652 on March 18, 1998. The full Committee held a markup on the bill on March 24, 1998. The bill was reported to the House on May 12, 1998 (H. Rept. 105-525) and placed on the Union Calendar (Calendar No. 297) on that same date. I first learned of your interest in this important legislation on May 12, the date it was reported and placed on the Union Calendar, as the manager of the bill was preparing to call it up for consideration under suspension of the Rules on the House floor. After you expressed initial concerns, I agreed to recommend a one week delay in the consideration of the bill so that you might review it. It passed the House under suspension of the Rules on May 19, and was received in the Senate on May 20, 1998. It has been referred to the Senate Committee on the Judiciary for consideration by the other body.

There are several statements and assertions contained in your letter to me in need of clarification. The "Collections of Information Antipiracy Act" is legislation necessary to serve as a complement to copyright protection of collections in which there has been substantial investment. It does not, as your letter indicates, create a new federal property right; rather, like the Lanham Act for trademark protection, it prohibits misappropriation of another's collection under certain circumstances. The general prohibition and other specific provisions guarantee that a use of a collection similar to a "fair use" under copyright law is permitted.

The bill was developed in the aftermath of the Supreme Court's 1991 decision in *Feist Publications v. Rural Telephone Service Co.*, which, in denying copyright protection for certain collections, highlighted the need for Congress to establish a separate complementary federal remedy for the unauthorized copying of collections of information in order to guarantee complete protection. The bill is based on United States "sweat of the brow" case law predating the application by courts of copyright protection to collections of information, and was suggested as one viable way of "filling in" the "*Feist* gap" in a Report issued by the Copyright Office of the United States on Database Protection in September, 1997.

While, like almost every piece of legislation, H.R. 2652 affects commerce generally, it does not discriminate between environments in which collections may appear, such as print or digital, nor does it "govern a key component of interstate and foreign electronic commerce," as you assert. Rather, it establishes a legal right to bring a cause of action in federal district court for the unauthorized taking of another's collection of information organized, gathered, or maintained through the investment of substantial monetary or other resources. The bill specifically denies protection to any product or service incorporating a collection of information which is gathered, maintained or organized to address, route, forward, transmit, or store digital online communications or provide or receive access to connections for digital online communications. Thus, the bill provides a new legal cause of action in federal courts, rather than regulating any element or function relating to digital communications or electronic commerce.

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Your letter states that the Committee on Commerce has two specific interests in H.R. 2652. It states that "[f]irst, proposed section 1204(a)(2) would . . . [a]s our staffs have discussed, . . . result in effective changes to existing laws and regulations administrated by the Securities and Exchange Commission, which would undermine the ability of the Commission to regulate and oversee the collection and dissemination of information about the securities markets, including information about stock quotations and transactions, and could create questions as to the public nature of that market data." I must take exception to this statement. You will recall that my staff communicated to your staff the opposite assertion. The language to which you refer the opposite effect of that which you claim. Paragraph 1204(a)(2) was drafted to avoid the interference you suggest.

As you know, the dissemination of stock and commodities information based on the public interest in such information is regulated by the Securities Exchange Act and the Commodity Exchange Act, and regulated by the Securities and Exchange Commission and the Commodity Futures Trading Commission. Currently, by regulation, exchanges are allowed to be compensated for certain market information for a short time after its creation. While the regulatory bodies to which exchanges are subject are governmental entities, the exchanges themselves are not. Subsection 1204(a) provides that government information is not protected under the bill in order to preserve free access by taxpayers to collections of information funded by them. In order to avoid any confusion, and to avoid interfering with the ability of exchanges to be compensated according to applicable regulations, paragraph 1204(a)(2) states that an exchange is not to be considered a governmental entity under 1204(a). In other words, to prevent any misconception that exchanges are governmental entities and therefore must give out information for free under the bill, which would undermine current regulations, and to avoid interference with the jurisdiction of the Committee on Commerce, the clarifying language contained in 1204(a)2) was inserted. The provision you cite therefore averts, and does not create, jurisdiction in the Committee on Commerce.

Your letter states as your second specific interest in H.R. 2652, that "notwithstanding the savings clause in proposed section 1205(f) for provisions of the Communications Act of 1934, the bill may have the unintended effect of restricting the Federal Communications Commission's (FCC's) ability to administer telecommunications laws that require carriers make available to the FCC and other carriers certain information," and that 'if interpreted narrowly, the savings clause will not preclude carriers from limiting access to, or dissemination of, certain information that is critical to promoting competition in telecommunications markets." Again, I must take exception to this statement. The savings clause to which you refer states that nothing in the bill shall affect "the operation of the provisions of the Communications Act of 1934." This language has been drafted in the broadest possible terms so as to prevent any narrow reading. Further, just in case any court could possibly interpret any situation regarding the dissemination of subscriber information as somehow not falling under the scope of the "operation of the provisions of the Communications Act," an additional clause was added to provide excessive and abundant assurance that the circumstance you foresee could not occur.

Despite the careful drafting done by the Committee on the Judiciary to assure no repercussions on important issues and governmental bodies falling under the jurisdiction of the Committee on Commerce, I agreed to recommend a delay in floor consideration of H.R. 2652 for one week, so that you and your staff might be able to review the provisions of this important bill. Based upon your review, Chairman Coble was equally pleased to include in a manager's amendment additional clarifying language suggested by you to reaffirm and reassure that the provisions contained in H.R. 2652 do not affect any matter or entity within the jurisdiction of the Committee on Commerce.

Per your suggestion, I will include your letter of May 19, along with this letter, in the record. Thank you for expressing your views, and for your cooperation.

Sincerely,

HENERY J. HYDE,
Chairman.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON COMMERCE,
Washington, DC, May 19, 1998.

Hon. HENRY J. HYDE,
Chairman,
Committee on the Judiciary, U.S. House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: On May 12, 1998, the Committee on the Judiciary reported H.R. 2652, the Collection of Information Antipiracy Act. As you know, H.R. 2652 would establish a prohibition, with certain exceptions and exclusions, against the misappropriation of information gathered, organized or maintained by another person in a collection through the investment of substantial monetary or other resources.

The Committee on Commerce has a strong interest in legislation affecting the accessibility of information on the Internet, and other telecommunications and information networks that rely on electronic databases for the storage of information. The Committee is in the midst of a Committee-wide review of electronic commerce issues within its jurisdiction. Our review demonstrates that the Internet and other digital networks carry great potential for facilitating interstate and global commerce, and that the potential for global electronic commerce, among other things, presupposes that users and providers will have ready and affordable access to collections of information. By providing collections of information a new federal property right, H.R. 2652 would govern a key component of interstate and foreign electronic commerce.

In addition, the Committee on Commerce has two specific interests in H.R. 2652, as reported by the Committee on the Judiciary. First, proposed section 1204(a)(2) would except from the exclusion provided for government-owned collections any information required to be collected and disseminated by either a national securities exchange under the Securities Exchange Act of 1934 or a contract market under the Commodity Exchange Act. As our staffs have discussed, this exception would result in effective changes to existing laws and regulations administered by the Securities and Exchange Commission, which would undermine the ability of the Commission to regulate and oversee the collection and dissemination of information about the securities markets, including information about stock quotations and transactions, and could create questions as to the public nature of that market data.

Second, we have expressed a concern that, notwithstanding the savings clause in proposed section 1205(f) for provisions of the Communications Act of 1934, the bill may have the unintended effect of restricting the Federal Commission's (FCC's) ability to administer telecommunications laws that require carriers make available to the FCC and other carriers certain information. The Committee on Commerce is concerned that, if interpreted narrowly, the savings clause will not preclude carriers from limiting access to, or dissemination of, certain information that is critical to promoting competition in telecommunications markets. The Telecommunications Act of 1996 is intended to promote competition in all telecommunications markets, and the Committee on Commerce seeks to ensure that H.R. 2652, if enacted, does not supersede our national commitment to competition.

I understand your interest in moving this legislation expeditiously to the House Floor. In exchange for your agreement to include language in the bill to address the problems described above, I agree not to seek a sequential referral of the bill. By agreeing not to seek a sequential referral, the Committee on Commerce does not waive its jurisdictional interest in any matter within the scope of the bill. Furthermore, I reserve the right to seek appropriate representation on any House-Senate conference that may be convened on this legislation.

I want to thank you and your staff for your assistance in providing the Committee on Commerce with an opportunity to review it jurisdictional interests in H.R. 2652. I would appreciate your acknowledgement of our agreement and your including this letter in the record of the debate on H.R. 2652 on the House Floor.

Thank you again for your consideration.

Sincerely,

TOM BLILEY,
Chairman.

SMALL BUSINESS WEEK

HON. ALLEN BOYD

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Friday, June 5, 1998

Mr. BOYD. Mr. Speaker, in honor of Small Business Week, I would like to commend a hard working group of dedicated men and women who own and operate the nearly 23 million small businesses in the United States. America's small busineses are the heart and soul of our Nation's marketplace and the lifeblood of our communities.

Small business owners constitute almost 98 percent of all employers and are the key to our economy's continued prosperity. Through their innovation and hard work, the United States has remained competitive in the world marketplace for the last 200 years. At the same time, the charity and civic leadership of America's small business owners have made our neighborhoods a better place to live.

During Small Business Week, and throughout the year, Congress should take time to consider the contributions of small business owners to our society. As Members of Congress, we must ensure that our nation's small business owners and their employees are not choked by unnecessary government regulation, but rather free to grow and provide new jobs and opportunities for our communities.

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