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As director of the California Cattlemen's Association, he has worked on behalf of other cattlemen against the inheritance tax, so that family farms, like his own, can be passed from one generation to the next. He has also worked for grazing and endangered species reform. I sometimes think that people like John Tracy should be at the top of the nation's endangered species list; he is a family rancher, struggling against nature, a tough economy, and federal encroachment, while trying to keep his family's proud heritage intact so he can pass it to the next generation.

I congratulate John Tracy on being Kern County's Cattleman of the Year.

INTRODUCTION OF THE "ON-LINE COPYRIGHT INFRINGEMENT LIABILITY LIMITATION ACT"

HON. HOWARD COBLE

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Thursday, February 12, 1998

Mr. COBLE. Mr. Speaker, The "On-Line Copyright Infringement Liability Limitation Act" is being introduced to address concerns raised by a number of on-line service and Internet access providers regarding their potential liability for copyright infringement when infringing material is transmitted on-line through their services. While several judicially created doctrines currently address the question of when liability is appropriate, providers have sought greater certainty through legislation as to how these doctrines will apply in the digital environment.

In July of last Year, Chairman HENRY HYDE and I introduced a bill, H.R. 2180, to begin the discussion in this Congress on this issue. Since that time, the Judiciary Subcommittee on Courts and Intellectual Property, which I chair, has held two legislative hearings on that bill. In addition, Representative BOB GOODLATTE of Virginia, a senior Member of the Subcommittee, has invested months of his time leading negotiation sessions between on-line service and Internet access providers, telephone companies, libraries, universities and copyright owners.

This bill is the result of those hearings and negotiation sessions and represents a common base from which to begin the markup process. It does so by codifying the core of current case law dealing with the liability of on-line service providers, while narrowing and clarifying the law in other respects that all parties agree should be addressed.

This bill offers the advantage of incorporating and building on those judicial applications of existing copyright law to the digital environment that have been widely accepted as fair and reasonable. The bill takes a minimalist approach, and has been drafted in as simple a manner as possible, imposing limitations on liability without reference to specific technologies, without detailed procedures and codes of conduct, and without setting out a long list of factors that must be met in order to qualify.

The bill distinguishes between direct infringement and secondary liability, treating each separately. This structure is consistent with evolving case law, and appropriate in light of the different legal bases for the policies behind the different forms of liability.

As to direct infringement, liability is ruled out for passive, automatic acts engaged in through a technological process initiated by another. Thus, the bill essentially codifies the result in the leading and most thoughtful judicial decision to date; Religious Technology Center v. Netcom On-line Communications Services, Inc. In doing so, it overrules those aspects of the Playboy v. Frena case, inasmuch as that case might apply to service providers, suggesting that such acts could constitute direct infringement, and provides certainty that Netcom and its progeny, so far only a few district court cases, will be the law of the land.

As to secondary liability, the bill changes existing law in two primary respects: no monetary relief can be assessed for the passive, automatic acts identified in Religious Technology Center v. Netcom On-line Communications Services, Inc., and the current criteria for finding contributory infringement or vicarious liability are made clearer and somewhat more difficult to satisfy. In a change from the bill as introduced, additional criteria are no longer included. Injunctive relief will, however, remain available, ensuring that it is possible for copyright owners to secure the cooperation of those with the capacity to prevent ongoing infringement.

Finally, the various safeguards that were included in the bill as introduced are incorporated in the substitute, as modified to reflect comments and suggestions submitted by interested parties. These safeguards include language intended to guard against interference with privacy; a provision ensuring that nonprofit institutions such as universities will not be prejudiced when they determine that an allegedly infringing use is fair use; a provision protecting service providers from lawsuits when they act to assist copyright owners in limiting or preventing infringement; and a provision requiring payment of costs incurred when someone knowlingly makes false accusations of on-line infringement.

SECTION-BY-SECTION ANALYSIS

Paragraph 512(a)(1) exempts a provider from liability on the basis of direct infringement for transmitting material over its system or network at the request of a third party, and for the intermediate storage of such material, in certain circumstances. The exempted storage and transmissions are those carried out through an automatic technological process that is indiscriminate—i.e., the provider takes no part in the selection of the particular material transmitted—where the copies are retained no longer than necessary for the purpose of carrying out the transmission. This conduct would ordinarily include forwarding of customers' Usenet postings to other Internet sites in accordance with configuration settings that apply to all such postings. It would also include routing of packets from one point to another on the Internet.

This exemption codifies the result of Religious Technology Center v. Netcom On-line Communications Services, Inc., 907 F. Supp. 1361 (N.D. Cal. 1995) ("Netcom"), with respect to liability of providers for direct infringement. See id. at 1368–70. In Netcom the court held that a provider is not liable for direct infringement where it takes no "affirmative action that directly results] in copying . . . works other than by installing and maintaining a system whereby software automatically forwards messages received from subscribers . . . and temporarily stores copies on its system." By referring to temporary storage of copies, Netcom recognizes implicitly that intermediate copies may be retained without liability for only a limited period of time. The requirement in paragraph 512(a)(1) that "any copy made of the material is not retained longer than necessary for the purpose of carrying out that transmission" is drawn from the facts of the Netcom case, and is intended to codify this implicit limitation in the Netcom holding.

Paragraph 512(a)(2) exempts a provider from any type of monetary relief under theories of contributory infringement or vicarious liability for the same activities for which providers are exempt from any liability for direct infringement under paragraph 512(a)(1). This provision extends the Netcom holding with respect to direct infringement to remove monetary exposure for claims arising under doctrines of secondary liability. Taken together, paragraphs (1) and (2) mean that providers will never be liable for any monetary damages for this type of transmission of material at the request of third parties and for intermediate storage of such material. Copyright owners may still seek an injunction against such activities under theories of secondary liability, if they can establish the necessary elements of a claim.

Paragraph 512(a)(3) similarly exempts a provider from monetary relief under theories of contributory infringement or vicarious liability for conduct going beyond the scope of paragraph (1), where a provider's level of participation in and knowledge of the infringement are low. Such conduct could include providing storage on a server and transmitting material from such storage in response to requests from users of the Internet. In addition, the provision modifies and clarifies the knowledge element of contributory infringement and the financial benefit element of vicarious liability. Even if a provider satisfies the common-law elements of contributory infringement or vicarious liability, it will be exempt from monetary liability if it satisfies the criteria in subparagraphs (A) and (B). As under paragraph (2), copyright owners may still seek an injunction even if the provider qualifies for the exemption from monetary relief.

The knowledge standard in subparagraph (A) is nearly identical to that used in the bill as introduced, and is intended to be functionally equivalent. In addition to actual knowledge, it includes "information indicating that the material is infringing." This would include a notice or any other "red flag"—information of any kind that a reasonable person would rely upon. It may, in appropriate circumstances include the absence of customary indicia of ownership or authorization, such as a standard and accepted digital watermark or other copyright management information. As subsection (b) makes clear, the bill imposes no obligation on a provider to seek out such red flags. Once a provider becomes aware of a red flag, however, it ceases to quality for the exemption and, under existing law, it may have a duty to follow up.

This standard differs from existing law, under which a defendant may be liable for contributory infringement if it knows or should have known that material was infringing.

The financial benefit standard in subparagraph (B) is intended to codify and clarify the

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direct financial benefit element of vicarious liability as it has been interpreted in cases such as Marobie-FL, Inc. v. National Association of Fire Equipment Distributors, F. Supp. (N.D. Ill. 1997). As in Marobie, receiving a one-time set-up fee and flat periodic payments for service from a person engaging in infringing activities would not constitute receiving "a financial benefit directly attributable to the infringing activity." Nor is subparagraph (B) intended to cover fees based on the length of the message (per number of bytes, for example) or by connect time. It would, however, include any such fees where the value of the service lies in providing access to infringing material.

The number of factors required to establish eligibility for the exemption under the bill is two, as compared with six under the bill as originally introduced. Several of the original factors were rendered unnecessary because direct infringement and secondary liability are no longer combined in a single exemption. In addition, the reduced number of factors reflects an effort to further simplify the bill, and to avoid further contention over the specific formulation of several of the factors.

INTRODUCING A BILL TO CONVEY ADMINISTRATIVE AND OTHER LANDS IN THE GEORGE WASHINGTON AND JEFFERSON NATIONAL FORESTS

HON. BOB GOODLATTE

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, February 12, 1998

Mr. GOODLATTE. Mr. Speaker today I introduced a bill to convey administrative and other lands in the George Washington and Jefferson National Forests and to utilize the value derived therefrom to acquire replacement sites where appropriate and for suitable improvements for National Forest administrative purposes.

In addition, my bill grants authority for the Forest Service to sell 200 acres of land adjacent to U.S. Interstate 64 to the Allegheny Highlands Economic Development Authority via the Commonwealth of Virginia for purposes of developing a corporate area catering to high-tech companies. It will be named Innovation Park.

Innovation Park should prove to have a positive economic impact by bringing high-tech jobs to those living in rural areas. This project will not only address a need for good, high paying jobs, but also for additional transportation, water and wastewater system development and improvement.

An environmental impact review is currently underway. Preliminary results indicate that Innovation Park will not adversely impact any habitats for plant or animal life. A public notice of the environmental assessment was issued in January and not a single complaint has been registered.

My bill also transfers the Natural Bridge Juvenile Correction Center from the Forest Service to the Commonwealth of Virginia along with nearly twenty other administrative land tracts or land tracts that lost their natural forest character because of proximity to U.S. Interstate 64.

The Forest Service is fully supportive of the land transfers and have been cooperative in this attempt to gain transfer authority. They believe that the property included in my bill is more conductive to economic development than forest management and therefore are anxious to remove it from their need-to-manage inventory.

I would like to offer special recognition to Glynn Lopp, the Executive Director of the Allegheny Highlands Economic Development Authority. The Innovation Park project would not have made it as far as it has without his perseverance and enthusiasm.

This is just the first step in a long journey to bring major economic and high-tech development to the Allegheny Highlands as well as the greater area of Rockbridge, Bath, Botetourt and Craig counties. I am proud to introduce this bill, I am confident of its success and look forward to being of continued assistance in the Innovation Park project.

TRIBUTE TO THE HONORABLE RONALD V. DELLUMS

SPEECH OF

HON. PAUL McHALE

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 3, 1998

Mr. McHALE. Mr. Speaker, twenty-five years ago, when I was a student participating in the American University Washington Semester program, I would sit in the gallery and watch with wonder the speeches of Congressmen like Pete McCloskey, Andy Jacobs and Morris Udall. I remember distinctly watching a young, idealistic, compassionate, hard driving, newly elected member of Congress fighting for the causes in which he so deeply believed. We honor him today.

A quarter of a century later, RON DELLUMS retains all of the wonderful qualities of leadership and decency he brought to the House in 1971. To my great benefit, during the intervening years, he has also become my friend.

Speaking out against apartheid in 1966, Senator Robert Kennedy said, "Each time a man stands up for an ideal or strikes out against injustice, he sends forth a tiny ripple of hope * * *."

RON DELLUMS' message of hope and peace has guided this chamber and inspired his colleagues for nearly three decades. No man could leave a finer legislative legacy.

RON, you retire with the respect and great admiration of your fellow legislators, and of this friend. Our nation is and ought to be very grateful for your service. Semper Fi.

BIRTHDAY TRIBUTE TO AL ZAMPA, BUILDER OF BRIDGES—OVER WATER AND THROUGHOUT THE COMMUNITY

HON. GEORGE MILLER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, February 12, 1998

Mr. MILLER of California. Mr. Speaker, I rise today to invite my colleagues to join me in wishing a very happy birthday to Mr. Al Zampa of Crockett, California, who will be 93 years old on March 12.

Al Zampa is a truly remarkable man who has left his mark on his community in more ways than one. As an ironworker from 1927 through 1970, Al personally contributed to one of the San Francisco Bay Area's most distinctive characteristics, its bridges. Starting with construction of the Carquinez Bridge in Crockett, Al's career included work on the Oakland-San Francisco Bay Bridge, the San Mateo Bridge, the Richmond-San Rafael Bridge, the Benicia Bridge and, of course, the Golden Gate. In the autumn of 1936, Al became a member of the "Half-Way-to Hell Club" when he fell from the Golden Gate Bridge and lived to tell about it. Many of his friends and colleagues believed that that fall would end his career as an ironworker and a builder of bridges, but the day he was released from the hospital he returned to the Gate to climb the bridge that had nearly killed him.

But Al Zampa contributed to more than just our community's infrastructure, he also helped to shape a generation of its residents. Al was a major force in the creation of the Tri-City Baseball League, making positive recreational opportunities available to hundreds of youth. As the League's Vice President and a team coach for six years, Al helped shape the lives of many of our young people, and this is perhaps his most lasting tribute.

Again, I invite my colleagues to join me in recognizing the life of an incredible citizen, and wishing Al Zampa a happy and healthy 93rd birthday.

DAYCARE FAIRNESS FOR STAY-AT-HOME PARENTS

SPEECH OF

HON. SANDER M. LEVIN

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 11, 1998

Mr. LEVIN. Mr. Speaker, during the debate on H. Con. Res. 202, my colleague Mr. GOODLING said that he wanted "just again to remind everyone" that the Republicans had "provided $4 billion more than the President asked for" to fund child care. This was part of the effort to demonstrate a Republican commitment to child care.

I feel compelled to correct the record. The additional $4 billion being spent on child care is not more than the President asked for. Rather, it is more than was provided under previous law.

Indeed, the main reason for the additional money for child care beyond previous law is that the President insisted upon it, and when the Republicans resisted providing adequate funding for child care as part of the program to move people from welfare to work, the President was forced to veto that version. After the veto, the Republicans agreed to join with Democrats to increase the funds provided for child care, and the President signed the improved legislation into law.

NATIONAL RETAIL SALES TAX ACT OF 1997

HON. BOB SCHAFFER

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Thursday, February 12, 1998

Mr. BOB SCHAFFER of Colorado. Mr. Speaker, I rise today to speak on one effort

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