(Four trillion, forty-four billion, twenty-one million)

Ten years ago, September 2, 1987, the Federal debt stood at $2,358,780,000,000. (Two trillion, three hundred fifty-eight billion, seven hundred eighty million)

Fifteen years ago, September 2, 1982, the Federal debt stood at $1,109,939,000,000 (One trillion, one hundred nine billion, nine hundred thirty-nine million) which reflects a debt increase of more than $4 trillion—$4,314,429,836,901.08 (Four trillion, three hundred fourteen billion, four hundred twenty-nine million, eight hundred thirty-six thousand, nine hundred one dollars and eight cents) during the past 15 years.

TRIBUTE TO DR. RICHARD LESHER

Mr. HATCH. Mr. President, I rise to pay a word of tribute to Dr. Richard Lesher, outgoing president of the U.S. Chamber of Commerce.

Mr. President, it has been my pleasure to know and work with Dick Lesher since I was a freshman Member of the Senate. We have served in the army of free enterprise in many important legislative battles. Dick was a dedicated fighter for small businesses.

Dick can also be justifiably proud of the growth and success of the U.S. Chamber over the last 22 years. During his tenure as president, the Chamber has grown to 215,000 strong.

The Chamber has also expanded its information services to include television. ''First Business'' is carried on 42 local stations, the USA Latin American channel, and USIA's WorldNet. ''It's Your Business'' is seen on USA Cable Network and 140 stations around the country.

Dick Lesher also took very seriously the Chamber's responsibility to help educate the next generation of business leaders and created the Center for Workforce Preparation.

These are just a few of Dick Lesher's many accomplishments as president of the flagship business organization in our country.

But, Dick is a man we can appreciate as much for who he is as for what he did. I have always known Dick Lesher to be straightforward and honest. He never pulled punches. You knew where you stood. And, even if Dick disagreed on a matter of policy, he admired his opponents' convictions. Such a fair-minded attitude sets the stage for alliances on other issues. And, I have always believed, having genuine respect for everyone on the playing field is not only good business, it is a hallmark of good character.

Dick is leaving the Chamber to return to his hometown in Chambersburg, PA. I wish him all the best in his new home and, hopefully, more relaxed lifestyle.

But, while he will be leaving the day-to-day battles on labor and tax policy to his successor, I do not believe for a minute that he is retiring. I know that he will remain informed and engaged in the myriad of issues that affect the health and growth prospects of American business. And, I look forward to his continued counsel and insights.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Williams, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting treaties and sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MEASURES REFERRED

The following bill, previously received from the House of Representatives for the concurrence of the Senate, was read the first and second times by unanimous consent and referred as indicated:

H.R. 765. An act to ensure maintenance of a herd of wild horses in Cape Lookout National Seashore; to the Committee on Energy and Natural Resources.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–2875. A communication from the Director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, the sequestration update report for fiscal year 1998; referred jointly, pursuant to the order of August 1977, to the Committee on the Budget and to the Committee on Governmental Affairs.

EC–2876. A communication from the Administrator of the Health Care Financing Administration, Department of Health and Human Services, transmitting, pursuant to law, a rule entitled ''End-Stage Renal Disease Payment Exception Requests and Organ Procurement Costs'' (RIN0938–AG20) received on August 26, 1997; to the Committee on Finance.

EC–2877. A communication from the Chief of the Regulations Branch, U.S. Customs Services, Department of the Treasury, transmitting, pursuant to law, a rule entitled ''Duty-Free Treatment of Articles Imported From U.S. Insular Possessions'' (RIN1515–AB14) received on August 28, 1997; to the Committee on Finance.

EC–2878. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, the report of the texts of international agreements, other than treaties, and background statements; to the Committee on Foreign Relations.

EC–2879. A communication from the Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, the report of Presidential Determination 97–30; to the Committee on Foreign Relations.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. MOYNIHAN (for himself, Mr. D'AMATO, and Mr. GRAHAM):

S. 1142. A bill to repeal the provision in the Taxpayer Relief Act of 1997 relating to the termination of certain exceptions from rules relating to exempt organizations which provide commercial-type insurance; to the Committee on Finance.

By Mr. ALLARD (for himself and Mr. CAMPBELL):

S. 1143. A bill to prohibit commercial air tours over the Rocky Mountain National Park; to the Committee on Commerce, Science, and Transportation.

By Mr. MOYNIHAN (for himself and Mr. D'AMATO):

S. 1144. A bill disapproving the cancellation transmitted by the President on August 11, 1997, regarding Public Law 105–33; to the Committee on Finance.

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.

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.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. HATCH (for himself, Mr. LEAHY, Mr. DASCHLE, Mr. SPECTER, Ms. LANDRIEU, Mr. BIDEN, Ms. MIKULSKI, Mr. DODD, Mr. GRAHAM, Mrs. FEINSTEIN, and Ms. MOSELEY-BRAUN):

S. Res. 118. A resolution expressing the condolences on the death of Diana, Princess of Wales, and designating September 6, 1997, as a ''National Day of Recognition for the Humanitarian Efforts of Diana Princess of Wales.''; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. MOYNIHAN (for himself, Mr. D'AMATO and Mr. GRAHAM):

S. 1142. A bill to repeal the provision in the Taxpayer Relief Act of 1997 relating to the termination of certain exceptions from rules relating to exempt organizations which provide commercial-type insurance; to the Committee on Finance.

LEGISLATION REPEALING CERTAIN PROVISION OF THE TAXPAYER RELIEF ACT

Mr. MOYNIHAN. Mr. President, I rise today to introduce legislation that would repeal an irrational provision of the Taxpayer Relief Act of 1997. I refer to section 1042 of that act, which took away the tax exempt status of TIAA–CREF, the Teacher's Insurance Annuity Association College Retirement Equities Fund. The legislation I am introducing today, with Senators D'AMATO

and GRAHAM of Florida as original cosponsors, would simply strike section 1042 and restore the tax exemption that TIAA–CREF has been afforded since its establishment by Andrew Carnegie in 1918. Repeal of section 1042 would also serve to restore the tax exemption for Mutual of America, which has served as a pension administrator for social welfare organizations for over 50 years and was similarly tax-exempt until August 5, 1997, when the President signed the tax bill.

TIAA–CREF is a 2-million member retirement system that serves 6,100 American colleges, universities, teaching hospitals, museums, libraries, and other nonprofit educational and research institutions. TIAA was incorporated under the laws of the State of New York in 1937 to ''forward the cause of education and promote the welfare of the teaching profession.'' Let me repeat—to ''forward the cause of education and promote the welfare of the teaching profession.'' The law further states that the purpose of TIAA—this is the New York Statute—is ''to aid and strengthen non-proprietary and non-profit-making colleges, universities, and other institutions engaged primarily in research.'' And it has done just that, in an exemplary manner. It has long been recognized as a model of such programs.

Mr. President, by charter and New York law, TIAA–CREF's pension assets are exclusively and irrevocably dedicated to providing retirement benefits to covered employees. Its funds are essentially equivalent to a multiple employer pension trust for colleges and universities. Like other pension trusts, TIAA–CREF should not be taxed.

As a somewhat unanticipated result of TIAA–CREF's creation, it brought to American higher education portability of pensions. You did not have to start out in one institution and after a certain point stay there the rest of your life because you had to have some retirement benefit. This is of great value to our educational system for the simple reason that it enables a young person at, say, a 2-year college or a local college, who shows great promise, does good work, to end up at Chicago or Stanford or Duke, because they can move. This is part of the agility of American higher education. There is no reason to tax this. Earlier in the summer, the Finance Committee had said don't tax it, and the full Senate agreed. But somehow or other, the conference agreement provided otherwise. This was a mistake, and it wants to be corrected.

The repeal of TIAA–CREF's 79-year-old tax exemption will cost the average retiree who receives a $12,000 annual pension about $600 in income, unless we act. Librarians are not highly paid. A $12,000 pension would be quite normal. A $600 reduction would be 5 percent right away. Future retirees currently accumulating benefits are likely to face reductions of 10 to 15 percent.

Why make the lives of librarians and assistant professors and teachers in community colleges harder? We have an opportunity to undo this before the law takes effect in 1998. Why don't we? The Finance Committee said no to it. During the conference deliberations on the tax bill, nearly half the Members of the Senate, and dozens of Members of the House, signed letters asking the conferees to stand against repealing this tax exemption.

Now it is September. Members of Congress have had a month-long opportunity to visit with and hear from the academic community. I am hopeful we can act on this legislation and restore TIAA–CREF and Mutual of America to their appropriate status as tax-exempt organizations before Congress adjourns for the year.

Mr. President, I ask unanimous consent that the 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. 1142

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

SECTION. 1. REPEAL OF PROVISION RELATING TO THE TERMINATION OF CERTAIN EXCEPTIONS.

(a) IN GENERAL.—Section 1042 of the Taxpayer Relief Act of 1997 (Public Law 105–34) is repealed.

(b) EFFECTIVE DATE.—The repeal made by subsection (a) shall take effect as if included in the enactment of the Taxpayer Relief Act of 1997 (Public Law 105–34).

By Mr. ALLARD: (for himself and Mr. CAMPBELL):

S. 1143. A bill to prohibit commercial air tours over the Rocky Mountain National Park; to the Committee on Commerce, Science, and Transportation.

ROCKY MOUNTAIN NATIONAL PARK LEGISLATION

Mr. ALLARD. Mr. President, I am here today to introduce legislation banning commercial tour overflights at Rocky Mountain National Park.

Tour overflight disturbances are a growing problem at a number of parks. This is an issue that other Members of Congress have addressed in the past, and it will continue to be contentious as long as the natural calm treasured by park visitors is threatened.

I commend the Members of Congress who have been involved in creating legislation to control national park overflights in general or in a particular park. Details of problems are park specific, which is why I am addressing the issue of overflights at Rocky Mountain National Park in Colorado. I hope that introduction of this legislation also serves to help Congress and the administration stay focused on creating a policy to address tour overflights at all national parks.

The National Park Service is directed by law to protect the natural quiet in our National Parks. The 1916 National Park Service Organic Act states that the Park Service shall conserve scenery and wildlife and leave the areas unimpaired for future generations. Two other public laws explicitly state the need to preserve national parks in their natural state, most recently the National Parks Overflights Act of 1987 that notes the adverse impact that overflights have on the natural quiet and experience. The law also insists that parks should be essentially free from aircraft sound intrusions. In 1996, President Clinton announced his commitment to the peace of our national parks by ordering that agencies protect them against noise intrusions from park overflights.

Furthermore, surveys have indicated that more than 90 percent of park visitors feel that tranquility is very important, but it is not only the quiet atmosphere that overflights threaten; overflights also have the potential to adversely impact wildlife and other natural resources.

In particular, I am concerned about proposals for helicopter sightseeing at Rocky Mountain National Park that could seriously detract from the enjoyment of other park visitors and also could have a negative impact on the resources and values of the park itself. I value the wildlife and solitude at Rocky Mountain National Park, and I understand fully the concern that commercial tour overflights will impair visitor enjoyment.

Rocky Mountain National Park is a relatively small park in the Rockies, about 70 miles from Denver. The park receives nearly 3 million visitors each year, almost as many as Yellowstone National Park, which is eight times its size. The park is easily accessible, yet continues to provide quiet, solitude, and remoteness to visitors, especially in the back country.

Several problems are specific to this mountainous park. The elevation of the Park does not allow a large minimum altitude, therefore, according to the National Park Service, natural quiet is unlikely if overflights are permitted at all. In addition, the terrain, consisting of many 13,000 foot peaks and narrow valleys, coupled with unpredictable weather, presents serious safety concerns. Also, the unique terrain of Rocky Mountain National Park would cause air traffic to cumulate over the popular, lower portions of the park as pilots are forced to navigate around the dangerous peaks and high winds.

Not only would the overflights be concentrated directly over the most popular portions of the park, but more powerful, and louder, helicopters must be used to achieve the necessary lift at a high altitude.

In August the members of the Clinton administration's appointed task force on commercial tour overflights toured Rocky Mountain National Park. One of the participants, a spokesman for the National Air Transportation Association observed the altitude of the park and extreme weather conditions and stated, ''I don't know that there's anything here that being in a helicopter would make that much

more interesting than what can be seen from the road.''

These distinctive qualities lead to the conclusion that the best solution to overflight disturbance is a ban on commercial tour flights at Rocky Mountain National Park. It is important for me to affirm that this legislation would only ban commercial tour overflights. It is not intended to have any adverse effect on emergency, military and administrative flights or on commercial high-level airlines or private planes.

A commercial tour overflight ban has widespread support throughout my State. State and local officials in areas adjacent to the park, including Larimer County, Grand County, and the city of Estes Park have indicated their concerns with flights over the park, and they support a ban. In the last session of Congress the entire Colorado delegation went on record in support of an overflight ban. The Governor of Colorado has also expressed a fear shared by many that such disturbances could cause a loss of tourism.

Rocky Mountain National Park has been fortunate enough to be free from overflights to this point, partially because local towns have discouraged companies that might provide such services. In addition, there are no existing private property rights that are infringed upon by the implementation of a permanent commercial tour overflight ban.

At the beginning of this year the FAA issued a temporary ban on sightseeing flights over Rocky Mountain National Park. However, I remain concerned as we await final ruling by the FAA on park overflights and consider the possibility that such low-flying aircraft could be permitted in the park.

In 1995, one of our top Denver newspapers editorialized that the FAA should make Rocky Mountain National Park off-limits to low-flying aircraft use, the sooner the better. Now, 2 years later, it is time to take action on imposing a permanent ban on scenic overflights.

By Mr. MOYNIHAN (for himself and Mr. D'AMATO):

S. 1144. A bill disapproving the cancellation transmitted by the President on August 11, 1997, regarding Public Law 105–33; to the Committee on Finance.

DISAPPROVAL LEGISLATION

Mr. MOYNIHAN. Mr. President, on this the first full day of Senate business since our adjournment for the August recess, I come to the floor with my colleague and friend from New York, Senator D'AMATO, to address an issue of importance to New York, and of surpassing significance to our constitutional form of government. On August 11, for the first time in our history, President Clinton exercised his new authority under the Line Item Veto Act. In doing so he repealed, a provision of Federal law intended to relieve New York of up to $2.6 billion in disputed Medicaid claims. The provision had been included at Senator D'AMATO's behest, and with my full support, in the Balanced Budget Act of 1997, one of the two major reconciliation bills signed into law on August 5 in a ceremony at the White House.

Senator D'AMATO and I rise today to state for the record our firm opposition to the President's repeal of the New York Medicaid provision, and to introduce a ''disapproval bill'' to reverse the President's action. I will also speak to the underlying question of the constitutionality of the Line Item Veto Act.

Each year, for 21 years now, I have issued a report on the balance of payments, as we put it, between New York State and the Federal Government. The twenty-first edition, now prepared in collaboration with the Taubman Center on State and Local Government at the John F. Kennedy School of Government will be published toward the end of this month. Let me report for purposes of this comment, however, that it will show that New York has the third highest poverty rate in the Nation and the fourth highest Cost of Living Index—as computed by the Friar-Leonard State Cost of Living Index. This has resulted in an extraordinarily high level of Medicaid costs for the State and especially for the city of New York.

This level of payments might have been sustainable with a more equitable Federal-State matching formula. If, for example, the Federal Government paid 73 percent as it does in Arkansas. But we were capped at 50 percent. As my colleague from New York knows, the current Federal-State Medicaid matching formula was taken directly from the Hill-Burton Hospital Survey and Construction Act of 1946, under which the matching rate is based on the square of the ratio of State per capita income and national per capita income. In a commencement address at Kingsborough Community College in New York 20 years ago, I suggested, only half jokingly, why not square root? If you are going to have algebra in Federal statutes, why not turn it our way? Given New York's 50-percent match rate, however, something had to be done.

And so, like a number of other States, New York began to impose provider taxes on hospitals, nursing homes, home health agencies, and so forth, as a way of generating revenues to finance specific health care programs. As part of the costs incurred by providers, these taxes were reimbursable, withal at the 50-percent level, by the Federal Government. The taxes all went into additional health care, and no one could claim fraud. However, in recent years some States got too creative in imposing and seeking Federal matching funds for their provider taxes, in some instances using the Federal money for purposes unrelated to health care. This led Congress in 1991 to enact legislation to prevent States from gaming the system. Since New York was confident its taxes were in compliance with the 1991 law, the State continued its practice, all the while seeking a waiver from the Federal health care bureaucracy.

And so, when the time came to draft the 1997 reconciliation bill, Senator D'AMATO, a member of the Committee on Finance, asked that a provision be included that would simply preclude any Federal claims regarding the use of these taxes from 1991 to 1996. I fully supported this measure. The issue had been debated during our markup in the Finance Committee, and the provision was included in the final bill, which was passed by a large 73 to 27 majority. The conference report was adopted by an even larger majority, 85 to 15.

As ranking member of the committee, I was on this floor with our esteemed chairman, Senator ROTH, for several days and in meetings with House conferees and administration officials for an eternity, or so it seemed. Morning, noon, night; mostly night. Let the RECORD reflect that at no point in the course of those deliberations did the subject of the Medicaid waiver come up. No Member of the House challenged it; no representative of the administration said a word to me. In fact, the only administration objection that I know of was buried deep in the 21-page letter of administration views sent by OMB Director Raines on July 7, which said, in pertinent part:

> [T]he Senate bill would deem provider taxes as approved for one State. We have serious concerns about these provisions and would like to work with the Conferees to address the underlying problems.

This was not the clearest possible statement. What, for example, does ''deem'' mean? Further, the term ''serious concerns'' is used any number of times in the administration's views, yet in none of those other instances did a line item veto result. ''Serious concerns.'' I ask my friend from New York, does that sound like a veto threat to him? In 20 years in the Senate, this Senator has heard many veto threats made, but never one like that. Yet this is evidently how we should expect things to work in the era of the line item veto.

This leads to my second, larger, point. I am one of those—and I am not alone—who hold that the line-item veto is unconstitutional in that it violates the presentment clause of article I, section 7, which states:

> Every bill which shall have passed the House of Representatives and the Senate shall, before it becomes a law, be presented to the President of the United States; if he approve, he shall sign it, but if not, he shall return it.

When the Line Item Veto Act was first debated in the Senate in the spring of 1995, I argued—along with our revered colleague from West Virginia, Senator ROBERT C. BYRD, and others—that the presentment clause means exactly what it says. But I'm afraid not many people were listening.

Recall that the line item veto was part of item one in the Contract With America, which was then only a few months old. But we said: ''Don't do this! It violates the principle of the separation of powers as we have understood it since George Washington was President.'' For it was President Washington who wrote ''From the nature of the Constitution, I must approve all the parts of a bill or reject it in toto.''

In lengthy statements here on the floor, Senators BYRD, LEVIN, Hatfield, and I—among others—argued as emphatically as we could. We cited the relevant case law—INS versus Chadha, Bowsher versus Synar; we quoted prominent constitutional scholars—Laurence H. Tribe, Michael J. Gerhardt. Yet in the end we were in a regrettably small minority. The Line Item Veto Act passed the Senate on March 23, 1995, by a vote of 69 to 29. When the conference report came back in March of 1996—a full year later—it passed by a vote of 69–31. Of the 31 Senators opposed, four of us felt the principle at stake was so consequential that it demanded immediate scrutiny by the courts. For which the Line Item Veto Act had explicitly provided: Section 3 of the act provides for ''expedited review'' of the statute's constitutionality by the U.S. District Court for the District of Columbia, with direct appeal to the U.S. Supreme Court. The act further stated that ''any Member of Congress or any individual adversely affected'' could bring an action ''on the ground that any provision of this part violates the Constitution.''

Accordingly, on January 2 of this year, the first business day after the Line Item Veto Act took effect, I joined with Senator BYRD, Senator CARL LEVIN of Michigan, former Senator Mark O. Hatfield of Oregon, and Representatives HENRY A. WAXMAN of California and DAVID E. SKAGGS of Colorado, as plaintiffs in a lawsuit challenging the constitutionality of the measure. We were represented on a pro bono basis by a team of distinguished and learned counsel, including Louis R. Cohen; Charles J. Cooper; Lloyd N. Cutler; Michael Davidson; and Alan B. Morrison. Oral argument was heard on March 21 by Judge Thomas Penfield Jackson of the U.S. District Court for the District of Columbia. And less than 3 weeks later, on April 10, Judge Jackson held for us and declared the bill unconstitutional. He wrote in his opinion:

> . . . the Act effectively permits the President to repeal duly enacted provisions of federal law. This he cannot do. . . . The duty of the President with respect to such laws is to ''take care that [they] be faithfully executed.'' U.S. Const. art. II, sec. 3. Canceling, i.e., repealing, parts of a law cannot be considered its faithful execution.

On June 26, however, the Supreme Court vacated the district court's judgment, holding in a 7–2 decision that as Members of Congress, we did not have ''standing'' to sue, as we could not demonstrate any personal, or ''judicially cognizable,'' injury. We do not agree; in our view, the measure shifts the balance of power between the Congress and President in direct contravention of article I, something that can only be done by constitutional amendment. But, of course, the Court left it for others to sue.

Now we can. As a consequence of the President's decision to use the line-item veto on a measure designed to help New York, surely there will now be a lawsuit that will persuade the Supreme Court to strike down the measure as unconstitutional. All manner of New Yorkers presumably have standing; they have suffered injury. The Court was explicit that in such a case, the act was open to constitutional challenge. Let the Governor sue. The Comptroller. The Speaker. Mayors. Hospital administrators. Nurses unions. I shall be honored to join in. Expedited judicial review will again be provided pursuant to section 3 of the Line Item Veto Act; the action will again begin in the district court in Washington, with direct appeal to the Supreme Court. This time round, I trust the Court will declare the statute unconstitutional. As Justice John Paul Stevens wrote in his dissent to the Court's June 26 decision:

> If the [Act] were valid, it would deny every Senator and every Representative any opportunity to vote for or against the truncated measure that survives the exercise of the President's cancellation authority. Because the opportunity to cast such votes is a right guaranteed by the text of the Constitution, I think it clear that the persons who are deprived of that right by the Act have standing to challenge its constitutionality. . . . [T]he same reason that the respondents have standing provides a sufficient basis for concluding that the statute is unconstitutional.

Once the constitutional issue is disposed of, and even if it is not, and very possibly before it is, I know my colleague from New York will join me in saying that the issue of the equity of the Medicaid matching formula must be addressed. It is too extreme an example of discrimination to go on for another half century. Three years ago, President Clinton said as much. On a visit to New York City in May 1994, he spoke at a breakfast of the Association for a Better New York. Inviting questions, the President was asked by State Comptroller H. Carl McCall whether anything would be done to relieve the State of the ''crushing burden'' imposed by Medicaid. The President replied:

> There's no question that the formula should be changed, and that states like New York with high per capita incomes but huge numbers of poor people are not treated fairly under a formula that only deals with per capita income.

There was no reference to this in the President's recent veto message of the New York provision. Rather, the contrary:

> No other state in the nation would be given this provision, and it is unfair to the rest of our nation's taxpayers to ask them to subsidize it.

This was not entirely accurate, although there is no reason to suppose the President was aware of this. In the absurdly dense 1,600-page bill Congress had sent him, there was a small provision, adopted in the Finance Committee, which raises the Medicaid matching level for Alaska from the bottom rate of 50 percent to the national average of 59.6 percent. The Senators from Alaska made the simple case that the cost of living in Alaska is well above the national average. This is reflected in higher incomes, which the Medicaid formula wrongly interprets as greater wealth. They asked for nothing more than the national average. The District of Columbia got an increased match rate as well. Hawaii asked also, but the bill had been closed by then. Senator D'AMATO and I say it is time to open the issue up.

The case for legislative remedy is surely overwhelming. And we intend to use the new attention that has been drawn to this issue by the President's veto to press that case at every opportunity.

Mr. D'AMATO. Mr. President, may I suggest the absence of a quorum so I will have an opportunity to concur with my colleague, the distinguished senior Senator from New York? Let me say, No. 1, that I totally support his presentation as it related to the manner in which this veto took place. It is something that none of us were apprised of or aware of; that there had been extended negotiations with his administration during this process. It came as a total surprise. But I would like to take one moment and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MOYNIHAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MOYNIHAN. Mr. President, I send, for myself and Mr. D'AMATO, a bill to the desk and ask that it be appropriately referred.

The PRESIDING OFFICER. The bill will be appropriately referred to the appropriate committee.

Mr. D'AMATO addressed the Chair.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. D'AMATO. Mr. President, I rise this morning, along with Senator MOYNIHAN, to introduce legislation to ''disapprove'' President Clinton's line-item veto that cancels a Medicaid provision in the Balanced Budget Act of 1997 which provides health care to the poorest of the poor in New York. Let me say that that is the legislation which has just been sent to the desk. That is legislation to disapprove this veto. Let me also say that I must speak out not about the authority of the line-item veto, which I support, but about its use in this particular case.

Mr. President, I have to tell you—and I listened intently to Senator MOYNIHAN making his presentation with respect to the manner in which the entire budget negotiations and the process was conducted. The fact of the matter is that the administration and the President agreed during the budget negotiations to accept the provisions that were included in this bill.

The fact of the matter is, I believe it was June 25 when these provisions were adopted by the full Senate. Mr. President, there was no secret. The administration knew. The administration had ample time all during that process to say ''no'', this is unacceptable.

I have to tell you, I am shocked and outraged that the administration has singled out New York for this particular provision by stating that this is an ''item that would have given preferential treatment to only New York.''

Mr. President, that is blatantly, patently false. It is a total misstatement.

I hope that the President will have an opportunity to examine this because I believe that his advisers have given him very poor advice.

I can't believe, knowing the President's commitment to attempt to deal with the problem of the uninsured, particularly the children—he had full knowledge of the manner and the totality of dealing with the shortcomings because we are attempting to reduce the burdens, we are attempting to get our Medicaid and Medicare costs under control. In this bill, notwithstanding that the administration claimed and advised the President and his people that this was a special provision just for New York, there are instance after instance, in case after case after case, where other States received similar treatment, as they can and should have in order to push the tremendous cuts —15 percent-plus in some cases. There were going to be 25 percent cuts that hospitals dealing with a disproportionate share of this Nation's poor would otherwise have had to make. That is DSH payments.

Let's understand what we are talking about. The average person—what are you talking about? What is this DSH? How do you take care, in large metropolitan areas in the North, the South, the East, and the West of our country, of those who do not have medical insurance? What do those hospitals do? Close their doors? Go bankrupt? Who is to pay for them?

So there was a conscious effort by the committee to see to it that States with these disproportionate problems in terms of dealing with the uninsured, with those who had just Medicaid and Medicaid alone, who cannot sustain the operations of our medical centers, to give relief. Indeed, Mr. President, I believe if one were to add up the totality of the money provided, it would be in the area of $700 to $800 million that was given in relief to pushing the cuts that these States and these institutions would otherwise absorb.

Let me give you just some of the States. Alabama, Connecticut, Florida, Louisiana, Maine, Missouri, New Hampshire, New Jersey, South Carolina, Texas, Vermont.

Mr. President, to suggest that New York was the only one, indeed, New York could have been included. And if draftsmanship had been used, if we had known that we would have been singled out in this manner, I tell you we could have included the provision within the budget in such a way that all of these States including New York would have had to be vetoed then.

Are we saying it is the poor of New York who should be disadvantaged? We don't begrudge help to those States that are needing it. This is not an attempt to game the system. And let me talk about that.

There came a point in time when the Federal Government became aware that some States were gaming the system. In other words, certain States were guilty of scamming. That was wrong, and both Senator MOYNIHAN and I provided the support, and it passed unanimously, that we put a stop to that. But let's understand that is not what New York was doing.

For example, for those who were gaming the system, a provider would pay a $5,000 provider tax to the State. The State would then draw a matching $5,000 from the Federal Government and then reimburse the provider. It was a scam. It was simply a bookkeeping entry to get the Federal Government to pick up an expense that the State never really incurred and the provider did not incur.

That is wrong. That is not our system. New York was not then and is not now involved in that scam. This wasn't an attempt to bill poor people for services and build roads or not use those moneys. That has never been the allegation. And, indeed, as a matter of fact, New York has had a long history of requiring insurers to pay assessments on hospital services. Thereby, that assessment over and above that particular service would go to help the poorest of the poor. And, indeed, we now have a program by utilizing these provider taxes that provides insurance for those families who could not purchase it for their youngsters. We provide up to 140,000 youngsters, children up to the age of 19, with insurance. It comes from this provider tax.

Let me say that these assessments provide $1.1 billion a year in gross provider tax collections and are used for dealing with uninsured children, the poorest of the poor. The Balanced Budget Act contained language which specifically determined that New York provider taxes meet the legitimate requirements. That is what we did.

Now, Mr. President, we have attempted for more than 2 years to get a resolve of this matter from HCFA. Nothing. Nothing. No response. Delay, delay, delay, delay. You can't do that to a community. You are not doing it just to a State government. That impacts on the lives of hundreds and hundreds of thousands of people. Is that fair?

And so, Mr. President, I find it incomprehensible and absolutely a tragedy that the President would have received this kind of advice. People, I believe, did not tell the President the entire story. I cannot believe that he really would want to veto a provision, the dollars of which are used to take care of the truly needy. I hope that between the time this legislation that we have introduced comes to a vote, we can get a resolve of this matter, not to deal with it in a confrontational, adversarial way, but in a way that makes sense, in a way that is fair, that is fair intellectually, that is fair morally, that is fair ethically.

And I want to make it clear that I concede nothing. If we have to fight, why then we will, because this is a battle not about a State being treated fairly or unfairly but about its people and their needs. This is a battle that says that a State does have a right to raise revenues in a particular manner and to utilize them for the purpose which I have attempted to outline.

I want to commend my colleague, who, as the ranking member of Finance and, indeed, the senior member on Budget, was there every moment of the negotiations, and never once were we told this is a special treatment.

Mr. MOYNIHAN. Never.

Mr. D'AMATO. Never once. And so for it to be sprung on us —I was out of the country—I said, when asked, that I was shocked, truly shocked. Again, I think the President is a big enough person to look at this in a way, or to say to those in charge at HCFA, come on, let's resolve this. Let's see to it that New York's problem, which is one of seeing to the needs of the uninsured—and, by the way, we have plans in speaking to the administration—and Senator MOYNIHAN and I have been conferring with the health department people. They believe that this program can be and will be in the fullness of time—it is a program to provide insurance where families pay a very modest amount, in some cases $25 a month, and some none depending upon their income—that it can be expanded to take care of up to 500,000 young people, youngsters, children who otherwise would not be insured.

Mr. President, we are not going to give up the battle. It is a battle that we are committed to winning on behalf of the poor, on behalf of the needy, on behalf of the uninsured, on behalf of the many working families that do not have full coverage. And I am proud and privileged to join the senior Senator from New York, Senator MOYNIHAN, in an attempt to get justice for these children and for those in need.

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. MOYNIHAN. May I just congratulate my colleague and friend for the tone of his statement, its tenor. He is not seeking confrontation with the administration. He is seeking insurance for the poorest of poor children in

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 not be 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 capabilities 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 online 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:

''§ 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. 230

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