uses in this process of analysis is the subject of our request. Based on our review of the history of the ''is apparent'' standard, we believe it to result in a narrower reporting scope than ''probably cause,'' which at best calls for an uncertain ''more likely than not'' judgment.

A more workable approach is to trigger the duty when the ISP receives knowledge of ''facts or circumstances from which a violation of [applicable law] is apparent****'' While the ISP has no duty to monitor its users, in essence this language creates a ''red flag:'' if the ISP in the operation of its service obtains knowledge of material which is clearly child pornography, a red flag should be raised. Such material must be reported to the authorities. It is not, the ISP may be heavily fined—it ignores the red flag at its peril.

As you are aware, this standard originated in Title II of the Digital Millennium Copyright Act, developed in the Judiciary Committee and passed 99–0 by the Senate earlier this summer. For material present on ISPs' servers or material to which ISP's link on the Internet, committee desired to create a standard of liability triggered by disregard of any ''red flags''. It sought a test falling between the familiar ''should have known, could have known'' standard, which was deemed too broad in its coverage, and absolute certainty of infringement, which was deemed too narrow. ''Apparent'' has more the meaning of ''clear on its face,'' and is a higher standard of evidence of illegality than ''probable cause'', which implies ''more likely than not, based on all the circumstances.''. As the bill's extensively-negotiated ''Section by Section'' written analysis states: ''Under this standard, a service provider would have no obligation to seek out copyright infringement, but it would not qualify for the safe habor if it had turned a blind eye to 'red flags' of obvious infringement.''

Again, given this history and understanding of the ''is apparent'' standard, we believe it will be a significant improvement over ''probable cause'' in H.R. 3494's duty-to-report provisions.

In conclusion, thank you for your willingness to continue working with us on this point. Your sensitivity, and that of the Chairman, have once again been crucial in laying down a workable legislative road map for the Internet/online medium.

Very truly yours,

JILL A. LESSER,
Director, Law & Public Policy,
Assistant General Counsel.

Mr. LAUTENBERG. Mr. President, we live in a world where it is increasingly difficult to protect our children. The advent of sophisticated computer technology has made it too easy for depraved criminals to gather information about children and prey upon them. And nothing is more heinous and reprehensible than the brutalization of a child. We cannot be too vigilant in the battle against child predators.

I am pleased that today, with the passage of the Child Protection and Sexual Predator Punishment Act, the Senate is marching forward in this fight. This legislation will provide tough punishment for those who would sexually abuse the youth of our Nation.

This measure contains an important provision, the Joan's Law Act, that Senator TORRICELLI and I originally introduced as a separate bill. This measure is based on a New Jersey law, which was named after a 7-year-old-girl, Joan D'Alessandro. Tragically, Joan was raped and killed in 1973. Although her murderer was convicted of the crime and sentenced to 20 years in State prison, he has become eligible for parole and continues to seek his release.

Joan's family has repeatedly had to fight against parole for this vicious killer. They have been forced to relive this tragedy again and again, as they try to ensure that others are protected from the terrible horror they have suffered.

Joan's law will spare other families from these battles. It provides that, unless the death sentenced is imposed, any criminal convicted of a sexual offense that results in the death of a minor under the age of 14 will be sentenced to life imprisonment. With this effort, we will ensure that cold-blooded murderers who abuse our children will be kept behind bars for the rest of their lives.

Mr. President, I wish that we could do more to alleviate the pain and trauma suffered by the D'Alessandro family. With profound courage and dignity, they have endured so much for so long. Their relentless battle for justice, and their tireless efforts to protect others is an inspiration to us all. I am deeply heartened that Congress has passed this legislative memorial to Joan.

Mr. CONRAD. Mr. President, I would like to say a few words about my strong support of the Mississippi Sioux Tribes Judgment Fund Distribution Act.

In 1967, the Indian Claims Commission rendered a judgment in favor of the Sisseton-Wahpeton Sioux Tribe, the Devils Lake Sioux Tribe (now the Spirit Lake Nation), and the Assiniboine and Sioux Tribe of Fort Peck, to satisfy land compensation claims. In 1968, Congress appropriated $5.9 million for this settlement.

In 1972, Congress passed legislation to provide for the distribution of this award to the three Tribes. Twenty-five percent ($1.5 million) was set aside for lineal descendants who are not tribal members. Funds were distributed to the Devils Lake Sioux and the Sisseton-Wahpeton Sioux in 1974, and a partial distribution was made to the Assiniboine and Sioux Tribe in 1979. However, because the original judgment did not include shares for the lineal descendants, the issue has been tied up in litigation and the lineal descendants' share of the funds has remained undistributed since the passage of distribution legislation in 1972. Since that time, the interest on the fund has grown to nearly $15 million. The bill we have approved today will distribute 71.6005 percent of these funds to the lineal descendants, and 28.3995 percent to the Tribes.

I say again, as I have said on numerous occasions, this situation has gone on long enough. Neither the Tribes nor the lineal descendants benefit from these funds being tied up in court. The Indian Affairs Committee has worked with the Tribes, the Department of the Interior, and representatives of the lineal descendants to craft the compromise embodied in this legislation.

Mr. President, I am pleased by the passage of this legislation, which helps finalize a judgment made three decades ago. This legislation is a fair compromise, one that will help break the stalemate that has prevented the distribution of these judgment funds. I thank my colleagues for their support and assistance.

AMENDING THE ARMORED CAR INDUSTRY RECIPROCITY ACT OF 1993

Mr. COATS. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of calendar No. 538, H.R. 624.

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

The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 624) to amend the Armored Car Industry Reciprocity Act of 1993 to clarify certain requirements and to improve the flow of interstate commerce.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. COATS. Mr. President, I ask unanimous consent that the bill be considered read the third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill appear at this point in the RECORD.

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

The bill (H.R. 624) was considered read the third time, and passed.

ANTI-MICROBIAL REGULATION TECHNICAL CORRECTIONS ACT OF 1998

Mr. COATS. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 4679, which was received from the House.

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

The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 4679) to amend the Federal Food, Drug and Cosmetic Act to clarify the circumstances in which a substance is considered to be a pesticide chemical for purposes of such act, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. COATS. Mr. President, I ask unanimous consent that the bill be considered read the third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be placed at the appropriate place in the RECORD.

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

The bill (H.R. 4679) was considered read the third time, and passed.

MISSISSIPPI SIOUX TRIBES JUDGMENT FUND DISTRIBUTION ACT OF 1998

Mr. COATS. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of calendar No. 708, S. 391.

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

The clerk will report.

The legislative clerk read as follows:

A bill (S. 391) to provide for the disposition of certain funds appropriated to pay judgment in favor of the Mississippi Sioux Indians, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Indian Affairs, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Mississippi Sioux Tribes Judgment Fund Distribution Act of 1998''.

SEC. 2. DEFINITIONS.

In this Act:

(1) COVERED INDIAN TRIBE.—The term ''covered Indian tribe'' means an Indian tribe listed in section 4(a).

(2) FUND ACCOUNT.—The term ''Fund Account'' means the consolidated account for tribal trust funds in the Treasury of the United States that is managed by the Secretary—

(A) through the Office of Trust Fund Management of the Department of the Interior; and

(B) in accordance with the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.).

(3) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(4) TRIBAL GOVERNING BODY.—The term ''tribal governing body'' means the duly elected governing body of a covered Indian tribe.

SEC. 3. DISTRIBUTION TO, AND USE OF CERTAIN FUNDS BY, THE SISSETON AND WAHPETON TRIBES OF SIOUX INDIANS.

Notwithstanding any other provision of law, including Public Law 92–555 (25 U.S.C. 1300d et seq.), any funds made available by appropriations under chapter II of Public Law 90–352 (82 Stat. 239) to the Sisseton and Wahpeton Tribes of Sioux Indians to pay a judgment in favor of those Indian tribes in Indian Claims Commission dockets numbered 142 and 359, including interest, that, as of the date of enactment of this Act, have not been distributed, shall be distributed and used in accordance with this Act.

SEC. 4. DISTRIBUTION OF FUNDS TO TRIBES.

(a) IN GENERAL.—

(1) AMOUNT DISTRIBUTED.—

(A) IN GENERAL.—Subject to section 8(e) and if no action is filed in a timely manner (as determined under section 8(d)) raising any claim identified in section 8(a), not earlier than 365 days after the date of enactment of this Act and not later than 415 days after the date of enactment of this Act, the Secretary shall transfer to the Fund Account to be credited to accounts established in the Fund Account for the benefit of the applicable governing bodies under paragraph (2) an aggregate amount determined under subparagraph (B).

(B) AGGREGATE AMOUNT.—The aggregate amount referred to in subparagraph (A) is an amount equal to the remainder of—

(i) the funds described in section 3; minus

(ii) an amount equal to 71.6005 percent of the funds described in section 3.

(2) DISTRIBUTION OF FUNDS TO ACCOUNTS IN THE FUND ACCOUNT.—The Secretary shall ensure that the aggregate amount transferred under paragraph (1) is allocated to the accounts established in the Fund Account as follows:

(A) 28.9276 percent of that amount shall be allocated to the account established for the benefit of the tribal governing body of the Spirit Lake Tribe of North Dakota.

(B) 57.3145 percent of that amount, after payment of any applicable attorneys' fees and expenses by the Secretary under the contract numbered A00C14202991, approved by the Secretary on August 16, 1988, shall be allocated to the account established for the benefit of the tribal governing body of the Sisseton and Wahpeton Sioux Tribe of South Dakota.

(C) 13.7579 percent of that amount shall be allocated to the account established for the benefit of the tribal governing body of the Assiniboine and Sioux Tribes of the Fort Peck Reservation in Montana, as designated under subsection (c).

(b) USE.—Amounts distributed under this section to accounts referred to in subsection (d) for the benefit of a tribal governing body shall be distributed and used in a manner consistent with section 5.

(c) TRIBAL GOVERNING BODY OF ASSINIBOINE AND SIOUX TRIBES OF FORT PECK RESERVATION.—For purposes of making distributions of funds pursuant to this Act, the Sisseton and Wahpeton Sioux Council of the Assiniboine and Sioux Tribes shall act as the governing body of the Assiniboine and Sioux Tribes of the Fort Peck Reservation.

(d) TRIBAL TRUST FUND ACCOUNTS.—The Secretary of the Treasury, in cooperation with the Secretary of the Interior, acting through the Office of Trust Fund Management of the Department of the Interior, shall ensure that such accounts as are necessary are established in the Fund Account to provide for the distribution of funds under subsection (a)(2).

SEC. 5. USE OF DISTRIBUTED FUNDS.

(a) PROHIBITION.—No funds allocated for a covered Indian tribe under section 4 may be used to make per capita payments to members of the covered Indian tribe.

(b) PURPOSES.—The funds allocated under section 4 may be used, administered, and managed by a tribal governing body referred to in section 4(a)(2) only for the purpose of making investments or expenditures that the tribal governing body determines to be reasonably related to—

(1) economic development that is beneficial to the covered Indian tribe;

(2) the development of resources of the covered Indian tribe;

(3) the development of programs that are beneficial to members of the covered Indian tribe, including educational and social welfare programs;

(4) the payment of any existing obligation or debt (existing as of the date of the distribution of the funds) arising out of any activity referred to in paragraph (1), (2), or (3);

(5)(A) the payment of attorneys' fees or expenses of any covered Indian tribe referred to in subparagraph (A) or (C) of section 4(a)(2) for litigation or other representation for matters arising out of the enactment of Public Law 92–555 (25 U.S.C. 1300d et seq.); except that

(B) the amount of attorneys' fees paid by a covered Indian tribe under this paragraph with funds distributed under section 4 shall not exceed 10 percent of the amount distributed to that Indian tribe under that section;

(6) the payment of attorneys' fees or expenses of the covered Indian tribe referred to in section 4(a)(2)(B) for litigation and other representation for matters arising out of the enactment of Public Law 92–555 (25 U.S.C. 1300d et seq.), in accordance, as applicable, with the contracts numbered A00C14203382 and A00C14202991, that the Secretary approved on February 10, 1978 and August 16, 1988, respectively; or

(7) the payment of attorneys' fees or expenses of any covered Indian tribe referred to in section 4(a)(2) for litigation or other representation with respect to matters arising out of this Act.

(c) MANAGEMENT.—Subject to subsections (a), (b), and (d), any funds distributed to a covered Indian tribe pursuant to sections 4 and 7 may be managed and invested by that Indian tribe pursuant to the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.).

(d) WITHDRAWAL OF FUNDS BY COVERED TRIBES.—

(1) IN GENERAL.—Subject to paragraph (2), each covered Indian tribe may, at the discretion of that Indian tribe, withdraw all or any portion of the funds distributed to the Indian tribe under sections 4 and 7 in accordance with the American Indian Trust Fund Management Reform Act (25 U.S.C. 4001 et seq.).

(2) EXEMPTION.—For purposes of paragraph (1), the requirements under subsections (a) and (b) of section 202 of the American Indian Trust Fund Management Reform Act (25 U.S.C. 4022 (a) and (b)) and section 203 of such Act (25 U.S.C. 4023) shall not apply to a covered Indian tribe or the Secretary.

(3) RULE OF CONSTRUCTION.—Nothing in paragraph (2) may be construed to limit the applicability of section 202(c) of the American Indian Trust Fund Management Reform Act (25 U.S.C. 4022(c)).

SEC. 6. EFFECT OF PAYMENTS TO COVERED INDIAN TRIBES ON BENEFITS.

(a) IN GENERAL.—A payment made to a covered Indian tribe or an individual under this Act shall not—

(1) for purposes of determining the eligibility for a Federal service or program of a covered Indian tribe, household, or individual, be treated as income or resources; or

(2) otherwise result in the reduction or denial of any service or program to which, pursuant to Federal law (including the Social Security Act (42 U.S.C. 301 et seq.)), the covered Indian tribe, household, or individual would otherwise be entitled.

(b) APPLICABILITY.—Section 304 of Public Law 92–555 (25 U.S.C. 1300d–8) shall apply to any funds distributed under this Act.

SEC. 7. DISTRIBUTION OF FUNDS TO LINEAL DESCENDANTS.

(a) IN GENERAL.—Subject to section 8(e), the Secretary shall, in the manner prescribed in section 202(c) of Public Law 92–555 (25 U.S.C. 1300d–4(c)), distribute to the lineal descendants of the Sisseton and Wahpeton Tribes of Sioux Indians an amount equal to 71.6005 percent of the funds described in section 3, subject to any reduction determined under subsection (b).

(b) ADJUSTMENTS.—

(1) IN GENERAL.—Subject to section 8(e), if the number of individuals on the final roll of lineal descendants certified by the Secretary under section 201(b) of Public Law 92–555 (25 U.S.C. 1300d–3(b)) is less than 2,588, the Secretary shall distribute a reduced aggregate amount to the lineal descendants referred to in subsection (a), determined by decreasing—

(A) the percentage specified in section 4(a)(B)(ii) by a percentage amount equal to—

(i) .0277; multiplied by

(ii) the difference between 2,588 and the number of lineal descendants on the final roll of lineal descendants, but not to exceed 600; and

(B) the percentage specified in subsection (a) by the percentage amount determined under subparagraph (A).

(2) DISTRIBUTION.—If a reduction in the amount that otherwise would be distributed under subsection (a) is made under paragraph (1), an amount equal to that reduction shall be added to the amount available for distribution under section 4(a)(1), for distribution in accordance with section 4(a)(2).