

to another person who was already in prison for rape. So, 7 years after the initial DNA tests and more than 16 years after he was sentenced to be executed, Earl Washington was granted an absolute pardon for the rape and murder of Rebecca Williams, a rape and murder he never committed. After science had twice proven his innocence, the Commonwealth of Virginia finally acknowledged the truth.

That is not the end of the story. He then spent another 4 months in prison for his attack on Hazel Weeks. That is at least a crime he committed. He hit her with a chair in 1983. So now, 17 years later, he is finishing that sentence. People sentenced for similar crimes in Virginia are generally paroled after 7 to 10 years in prison. They made Earl Washington serve twice the time that others would serve the maximum possible time in prison. Having unjustly condemned him, the Commonwealth of Virginia compounded the injustice by keeping him in prison until two days ago, when he became entitled to mandatory parole. It is almost as if they were saying: How dare you be innocent of the other crime we convicted you of? How dare you prove us wrong? We will make you pay for it.

I had hoped to meet with Earl Washington after his release from prison. Congressman BOBBY SCOTT of Virginia wrote to the Virginia correctional authorities 2 weeks ago and sought permission for Earl Washington to travel to Capitol Hill Monday under the care and supervision of his attorneys. We thought it was important for the American people to hear firsthand an account of this injustice. A good justice system learns from its mistakes.

The last 17 years of Earl Washington's life have been one of the system's worst mistakes. We felt we owed it to Earl Washington and future Earl Washingtons to listen. The officials of the Commonwealth did not. They had a different view. They did not want Earl Washington to come here. They did not want him to come here even for a few hours, come that great distance from Virginia, which is 2 miles away. They didn't want him to come those extra 2 miles and tell the story.

This case reveals the dark side of a system that is not known for admitting its mistakes. I am not speaking only of the Commonwealth of Virginia. A whole lot of other States have been just as bad at admitting their mistakes.

In the Earl Washington case, state officials insisted on pursuing a death penalty charge despite having wholly unreliable evidence. They kept him in prison for years despite knowing he was falsely convicted. They kept him locked up, knowing he was falsely convicted. And then they would not even let him come here to Washington to tell the American people what happened.

We need to hear from such people like Earl Washington, not hide them from public view. The American justice

system is about the search for the truth: the truth, the whole truth, and nothing but the truth. As a former prosecutor, I understand the importance of finality in criminal cases, but even more important than that is the commitment to the truth; that has to come first.

This case tells us we cannot sit back and assume prosecutors and courts will do the right thing when it comes to DNA evidence. It took Earl Washington years to convince prosecutors to do the very simple tests that would prove his innocence, and more time still to win his freedom.

Some States continue to stonewall on requests for DNA testing. They continue to hide behind time limits and procedural default rules to deny prisoners the opportunity to present DNA test results in court. They continue to destroy DNA evidence that could set innocent people free.

These practices must stop. I have long supported and I continue to support funding to ensure that law enforcement has access to DNA testing and all the other tools it needs to investigate and prosecute crime in our society. But if we as a society are committed to getting it right, and not just to getting a conviction, we need to make sure that DNA testing, and the ability to present DNA evidence to the courts, is also available to the defense. We should not pass up the promise of truth and justice for both sides of our adversarial system, and that promise is there in DNA evidence.

We must also understand this case shows why we should not allow the execution of the mentally retarded. As I noted in a floor statement last December, people with mental retardation are more prone to make false confessions simply to please their interrogators, and they are often unable to assist their lawyers in their own defense. Earl Washington confessed to no less than four serious felonies which he did not commit and could not have committed. We should join the overwhelming number of nations that do not allow the execution of the mentally retarded.

There are good things that may come out of this case. I know the Supreme Court of Virginia has proposed eliminating the 21-day rule, which prevented Earl Washington from getting a new trial based on the initial DNA tests in the early 1990s. That would be a good thing if it happens. But it would be just a start.

I urge us to go forward and pass the Innocence Protection Act, supported by both Republicans and Democrats in this body and in the other body. This legislation addresses several serious problems in the administration of capital punishment. Most urgently, the bill would afford greater access to DNA testing for convicted offenders and help states improve the quality of legal representation in their capital cases. It also proposes that the United States Congress speak as the conscience of the Nation in condemning the execution of the mentally retarded.

People of good conscience can and will disagree on the morality of the death penalty; but people of good conscience all share the same goal of preventing the execution of the innocent. People of good conscience should not disagree that the way the case of Earl Washington was handled over the past 17 years was unjust. It was completely unacceptable. We ought to find ways to make sure these kinds of things do not happen again.

#### INTELLECTUAL PROPERTY AND HIGH TECHNOLOGY TECHNICAL AMENDMENTS ACT OF 2001

The PRESIDING OFFICER (Mrs. LINCOLN). Under the previous order, the hour of 2 p.m. having arrived, the Senate will now proceed to the consideration of S. 320, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 320) to make technical corrections in patent, copyright, and trademark laws.

The PRESIDING OFFICER. Under the previous order, there will now be 1 hour of debate on the bill equally divided in the usual form.

The Senator from Utah.

Mr. HATCH. Madam President, I rise today to discuss S. 320, the Intellectual Property and High Technology Technical Amendments Act, which I have worked on with my distinguished colleague, the ranking member of the Judiciary Committee, Senator LEAHY. We have had a very productive relationship in the Judiciary Committee in the area of high technology and intellectual property. Our bipartisan cooperation has resulted in much good legislation that has helped American consumers and businesses and which has encouraged American innovation and creativity, including greater deployment of the Internet.

Some recent examples of our work include the following items:

The Satellite Home Viewer Improvement Act, which authorized the carriage of local television stations by satellite carriers, has brought local television to thousands across the country who might not have been able to get it before, and has brought competition in subscription television services to many others who before could only choose the local cable company. The passage last year of a loan guarantee program will help make the benefits of this law more widely available.

The Anticybersquatting Consumer Protection Act helps guard against fraudulent or pornographic websites that confuse, offend, or defraud unwitting online consumers who go to sites with famous business names only to find that someone else is using that trademarked name in bad faith under false pretenses. This law also helps protect the goodwill of American businesses that could be hurt by the bad faith misuse of their trademarked business name in ways that tarnish their

name or undermine consumer confidence in their brands.

The American Inventor Protection Act is helping to further serve American innovators with more streamlined procedures at the United States Patent and Trademark Office, and better organizing the Office so that it will better serve its customers, American inventors. There are also protections for inventors from unscrupulous businesses that prey on small inventors who are not familiar with the procedures of obtaining a patent.

The Digital Millennium Copyright Act updated copyright law for the Internet, while striking a balance necessary to foster technological development and full deployment of the Internet. This law has set the groundwork for entertainment convergence on a single interactive platform where the consumer is king and can set his or her own schedule for news, information, entertainment, communication, and so on.

Well, Madam President, this is just a sampling of what we have achieved together. And it is a prelude to what we can do in the future.

Today, we are here to discuss S. 320, the Intellectual Property and High Technology Technical Amendments Act. S. 320 is a technical corrections bill to clean up some scrivener's errors that have crept into the U.S. Code in the patent, trademark, and copyright laws. We, the sponsors, believe it is to the benefit of smooth functioning of the law to clean up the Code to make it easier to use, and to more accurately reflect Congressional intent.

Specifically, the bill corrects typographical errors such as misspellings, dropped or erroneous cross-references or punctuation errors. It also makes consistent the titles of the U.S. Patent and Trademark Office and its officers. It also clarifies some unclear drafting in the Code on some procedural matters at the USPTO, such as making it clear that if foreign trademark applicants fail to designate a U.S. agent, the USPTO Commissioner is deemed to be that agent for delivery of documents regarding that application; and ensuring that no prior art effect will be given to foreign patents or patent applications unless they are published in English. It makes it easier for small inventors to sit on the USPTO Advisory Committee. These pro-American inventor policies are codified now in the law, but not clearly drafted. This bill makes them clearer.

All of these changes make the intellectual property laws of our country easier to use and understand for our constituents who invent, create, innovate and so serve our other citizens. It also makes the law clearer for those who use the inventions and creations of others. I believe there is no controversy about the provisions of this bill, and it clears the way for further Congressional action to foster the growth of our most innovative sector, our intellectual property sector.

With regard to that, Senator LEAHY and I are releasing today our joint High Technology and Intellectual Property legislative agenda.

I would like to mention some of the items on that agenda and discuss some of them briefly.

In the Internet Age, many basic questions need to be asked anew about the relationships between the artists and the media companies that market and distribute their product; about the rights of consumers and fans to use works in new ways and the ability of technology companies and other mediators to assist them in those uses; and about the accessibility of works to scholars, students, or others for legitimate purposes. We need to continue to think about how the copyright system applies in the Internet world, where some of the assumptions underpinning traditional copyright law may not be relevant, or need to be applied by a proper analogy. Are there ways to clarify the rights and responsibilities of artists, owners, consumers, and users of copyrighted works? How can we foster the continued convergence of information, entertainment, and communication services on a variety of platforms and devices that will make life more enjoyable and convenient? We need to encourage an open and competitive environment in the production and distribution of content on the Internet.

As the Internet's new digital medium continues to grow, we must ensure that consumers are confident that personally identifiable information which they submit electronically are afforded adequate levels of privacy protection. As consumer confidence in the security of their personal and financial information is enhanced, Internet users will be more willing to go online, make purchases over the Internet and generally provide personal information required by businesses and organizations over the Internet. At the same time, we must ensure that any initiatives have the least regulatory effect on the growth of e-commerce and on commercial free speech rights protected by the Constitution. We expect to examine the adequacy of Internet privacy protection and will, where necessary, advance reforms aimed at ensuring greater privacy protection.

For example, the Committee expects to examine the following:

(1) How are privacy concerns impacting the growth of e-commerce, in the financial services industry, in the insurance industry, in online retailing, etc., and the deployment of new technologies that could further the growth of, and consumer access to, the Internet?

(2) Does Congress need to amend criminal or civil rights laws to address consumer electronic privacy concerns?

(3) Does U.S. encryption policy negatively affect the growth of e-commerce?

(4) What is the impact of the European Union's Internet Privacy Directive on U.S. industry and e-commerce?

(5) Can Federal law enforcement, particularly civil rights enforcers, play a larger role in safeguarding the privacy concerns of Internet users?

(6) To what extent can web-sites and Government agencies track the Internet activities of individual users and what should be done to ensure greater protection of personally identifiable or financially sensitive data?

We would like to work toward reforms that can more fully deploy the Internet to make educational opportunities more widely available to students in remote locations, to life-long learners, and to enhance the educational experience of all students.

The Internet can bring new experiences to remote locations. My own home state of Utah has been experimenting with ways to bring the best possible educational experience to learners all across our state, some of whom live in remote rural areas, using wired technology. We would like to see how we can further support efforts to harness the communicative power of the wired world on behalf of students across the country.

Science is advancing rapidly and the challenge to the patent system of genetics, biotechnology, and business method patents are daunting. Whole new subject matter areas are being exploited, from patents on business methods from financial services to e-commerce tools on the Internet. Both the complexity and the sheer volume of patent applications are expanding exponentially. Recent Supreme Court decisions have once again posed the question of state government responsibility to respect and protect intellectual property rights. And I believe we need to review the Drug Price Competition and Patent Term Restoration Act of 1984 to ensure that its balanced goals continue to be met.

As many know, that act helped to create the modern generic drug industry. It has been estimated that it has largely saved consumers \$10 billion every year since 1984. It is considered one of the most important consumer protection acts in the history of the country.

As the assignment of domain names transitions from a single company to a competitive, market-based system, we need to stay vigilant with regard to the significant antitrust and intellectual property ramifications this process holds for American businesses and consumers. We intend to build on our record of strengthening protection for online consumers by protecting the trademarks consumers rely on in cyberspace, while also encouraging the full range of positive interactions the Internet makes possible. I think the Internet can be a place of infinite variety while we continue to allow consumers to rely on brand names they know in the e-commerce context. The world-wide nature of the Internet also heightens the need for the United States to join international efforts to make worldwide intellectual property

protection, including that of trademarks, more efficient and effective for Americans. In particular, I hope we can move ahead on the United States accession to the Madrid Protocol.

I have always maintained that proper and timely enforcement of federal antitrust laws can foster both competition and innovation, while minimizing the need for government regulation. This is an especially important paradigm for the Internet. We need to carefully think through the antitrust implications of Business-to-Business exchanges. We also need to consider carefully what remedies should be imposed in cases where antitrust violations do occur, notwithstanding the generally dynamic and competitive nature of Internet-related industries. We will also need to review the increasing legal tension in the high technology industry between intellectual property rights and antitrust laws. There has always been a tension here, but in the Internet world, we need to be careful that intellectual property or content power is not leveraged into distribution power, or otherwise used in anti-competitive ways. Furthermore, the Internet poses new questions about the competitive need to protect collections of data in a way that preserves incentives for the creation of databases without unduly hampering the free flow of information in anticompetitive ways.

Access to new "broadband" technologies is increasingly important for full deployment and enjoyment of the Internet. We will need to consider the countervailing rights and duties of local phone companies and cable companies, either of which may provide broadband services in a local area. Specifically, what rights of access to broadband lines should competitors have, and what right to content should competitive distribution services have?

The Internet is a radically new medium not just for commerce, but also for speech, broadcasting and advertising. As we analogize from traditional media such as broadcasting, we need to ask afresh what regulations make sense in this new medium, if any, and how do we cope with different media competing toward largely the same goal, but with differing rules?

In summary Madam President, this non-controversial technical corrections bill clears the way for an exciting agenda for the 107th Congress in the Judiciary Committee. I hope we can pass this bill today, and I look forward to working with my colleague from Vermont on this most interesting and ambitious agenda.

In fact, I enjoy working with him. We have worked together all these years, and I think maybe we can get more done this year than in the past. Hopefully, we can move these agendas forward in the best interest of all Americans.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. Madam President, have the yeas and nays been ordered on S. 320?

The PRESIDING OFFICER. They have not been.

Mr. LEAHY. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. LEAHY. Madam President, I thank my good friend from Utah for his comments. He and I have been working closely on an agenda for the coming year for the Judiciary Committee. As always, the agenda will reflect not only the needs of the Senate, but the friendship that the two of us have had for well over 20 years.

I congratulate Senator HATCH for his continuing leadership in improving our copyright, trademark, and patent law. Our intellectual property laws are important engines for our economy, fueling the creative energy responsible for America's global leadership in the software, movie, music, and high-tech industries.

The bill we considered today contains amendments recommended to us by the Copyright Office. I commend the Register of Copyrights, Marybeth Peters, for the expertise she brings to her office and the assistance she brings to us. At the end of my statement, I ask that a letter from Marybeth Peters in support of this legislation be printed in the RECORD.

(See exhibit 1.)

Mr. LEAHY. Over the past years, Senator HATCH and I, and others on the Judiciary Committee, have worked constructively and productively together on intellectual property matters. Just in the last Congress, we were able to pass the Anticybersquatting Consumer Protection Act, the Patent Fee Integrity and Innovation Protection Act, the Trademarks Amendments Act, the Satellite Home Viewers Improvements Act, and the American Inventors Protection Act. These significant intellectual property matters were preceded by our work together forging a consensus on the Digital Millennium Copyright Act, the Copyright Term Extension Act, the PTO Reauthorization Act, the Trademark Law Treaty Implementation Act, and many others. We and the other members of the committee have worked to ensure that divisive partisanship stays clear of this important area.

The proof of what we in Congress can accomplish when we put partisan differences aside, roll up our sleeves, and do the hard work or crafting compromises is demonstrated by our record of legislative achievements on intellectual property matters.

I hope all Senators will look at what Senator HATCH and I have been able to do when we set aside partisan differences and make sure we do things that work.

This bill makes technical corrections to and various non-substantive changes

in our intellectual property laws. Introduction and passage of this bill is a good start for this Congress, but we must not lose sight of the other copyright, patent and trademark issues requiring our attention. The Senate Judiciary Committee has a full slate of intellectual property matters to consider. I am pleased to work on a bipartisan basis with the chairman on an agenda to provide the creators and inventors of copyrighted and patented works with the protection they may need in our global economy, while at the same time providing libraries, educational institutions, and other users with the clarity they need as to what constitutes fair use of such work.

We have to realize things have changed. There has been a lot in the press in the past couple days about the Ninth Circuit Court of Appeals decision in Napster. I suggest that if anyone thinks this is the end of the whole issue, they are mistaken.

It is clear that creators and owners of copyrighted property should have their copyrights protected, and they should certainly be compensated for their artistry and their work.

Those who distribute or produce copyrighted material, including movies, music, and books, have to realize their own business practices may well have to change and be a lot different. Profit margins may change, depending upon how it is done. Artists are not going to be beholden just to a few mega distributors. With the Internet, they are going to be able to work out their own way of distributing their material. They are going to be able to get themselves known if they want, even if it is by distributing their music, movies, or books for free.

It is a different world out there, but it is just one example of the kinds of issues we have to look at. Applying copyright principles to new situations should not be done just by court-made law which is imprecise, at best, because a court is limited to the factual situation before it rather than a full panoply of circumstances, but can be done here, recognizing we have a whole new way of doing things.

I remember when I was growing up in Montpelier, VT, my parents owned a small printing business. We used either moveable type or hot lead type. It was a laborious process. One thing I learned was not only to proofread in a hurry, but to read upside down and backward, as well as right side up and forward, because that is the way the letters work. It is a matter of consternation sometimes. People do not realize I am reading what is before me.

Now I look at the business, and there has been enormous change. It is less labor intensive in the setting up—it is not even type anymore, now it is offset. It changes the whole economy, but opens up a whole new world, all using different kinds of copyrighted material.

Among the things we should look at is protection from State infringement.

In response to the Supreme Court's decisions in the Florida Prepaid and College Savings Bank cases, I introduced in the last Congress legislation to restore Federal protection for intellectual property to guard against infringement by the States.

This is a reaction to an activist U.S. Supreme Court which held that States and their institutions cannot be held liable for patent infringement and other violations of the Federal intellectual property laws, even though those same States can and do enjoy the full protection of those laws for themselves.

Basically, the Supreme Court—it seemed to me anyway—seems to be willing to rewrite the rule of law with regard to the Constitution, certainly when it comes to telling States what they cannot do. We know they are not hesitant to do that. The legislation I sponsored would condition a State's ability to obtain new intellectual property rights on its waiver of sovereign immunity in future intellectual property suits.

It would also improve the limited remedies available to enforce a nonwaiving State's obligations under Federal law and the U.S. Constitution. This is a critical area in which the Congress should act.

Then we have distance education. The Senate Judiciary Committee held a hearing in the last Congress on the Copyright Office's thorough and balanced report on copyright and digital distance education, something that can be very important to those of us from rural States where there may be small schools.

While the distinguished Presiding Officer has metropolitan areas in her State, she also has very rural areas. Schools in rural areas may not be able to hire the top math teacher, the top language teacher, or the top science teacher, even though all these may be needed, but three or four of them together can do so if they are connected in such a way that they can utilize this.

We need to address legislative recommendations outlined in the Copyright Office's report to ensure our laws permit the appropriate use of copyrighted works in valid distance learning activities. I know Senator HATCH shares my goal for the schools in this country, particularly in rural areas. We can use this technology to maximize the educational experiences of our children.

It is an important area for the Judiciary Committee to examine. Not everybody comes from large schools. I had about 30 in my high school graduating class. Interestingly, every 4 years, all 500 of those 30 students show up at my door saying they were a high school classmate; could they please have a ticket to the Presidential inauguration.

We have the Madrid Protocol Implementation Act. I introduced legislation in the last two Congresses to help

American businesses, and especially small and medium-sized companies, protect their trademarks as they go into international markets. The legislation would do so by conforming American trademark application procedures to the terms of the Madrid protocol.

The Clinton administration transmitted the protocol to the Senate for its advise and consent last year. I regret we did not work on it promptly. I hope the new President will urge that action because ratification by the United States of this treaty would help create a one-stop international trademark registration process, an enormous benefit for American businesses.

Next we have business method patents. The PTO has been subject to criticism for granting patents for obvious routines which implement existing business methods. The patent reform law that Senator HATCH and I worked out in the last Congress addressed one aspect of this matter: The prior user defense at least protects those who previously practiced that particular art. We should hold a hearing and engage the PTO in a dialog about this important issue to find out what you do with initial patents.

Frankly, I find patenting electronic business practices not that far removed from the situation where two competing hardware stores in the spring put the seeds, the Rototillers, and whatnot out front and in the winter put the snowblowers out front. Should one be allowed to patent that process so in the summer its competitor would have to have its snowblowers out front and could not put out lawn items? I think not. That is what we are looking at, except now in a digital age.

The Organization for Economic Cooperation and Development criticized the PTO for granting overly broad biotechnology patent protections. This area, as well as the international protection of patent rights, warrants examination and careful monitoring.

Then we have the issue of rural satellite television and Internet service. It is important to the State of Vermont. It is important to every rural community. It is certainly important to mine. I live in a house where I cannot get any television. I used to joke that I would get one and a quarter. I do not even get the quarter anymore. I cannot get anything, but I can if I have satellite television, and I can get my Internet service the same way. Senator HATCH and I worked together to address this issue in the major Satellite Home Viewers Law passed last Congress.

We authorized a rural loan guarantee program to help facilitate deployment in rural areas. That law included a priority for loans that offered financing for high-speed Internet access. That is a great tool in eliminating the digital divide between urban and rural America.

So we want to make sure that gets done and done right.

The job of this Congress is to ensure that the administration gets the job

done so that those goals are met and the programs we have established are fully implemented.

The ninth circuit's ruling in the Napster case on Monday highlights the tensions between new online tools and services and protection of intellectual property rights. In the long term, where it counts the most, both sides—copyright holders and advocates for advances in new technology—can find victories in this ruling.

Nothing should stop the genius of a Shawn Fanning or those who come up with new online technologies like Napster.

While Napster customers may not initially see it that way, the availability of new music and other creative works—and its contributions to the vibrancy of our culture and in fueling our economy—depends on clearly understood and adequately enforced copyright protection. The Court of Appeals has sent the case back to the district court to ensure that the rights of creators are protected and that the online marketplace is just that, and not a free-for-all.

The exponential growth of Napster has proven that the Internet works well to distribute music, but this case is a warning that copyrights may not be ignored when new online services are deployed. The Internet can and must serve the needs not only of Internet users and innovators of new technologies, but also of artists, songwriters, performers and copyright holders. The Judiciary Committee should examine this issue closely to ensure that our laws are working well to meet all these needs.

Last Congress I introduced the Drug Competition Act of 2000, S. 2993, to give the Justice Department and the FTC the information they need to prevent anticompetitive practices which delay the availability of low-cost generic prescription drugs. I intend to re-introduce this bill soon and work with my colleagues to enact it this year to help assure that the availability of lower cost prescription drugs.

I noted upon passage of the Digital Millennium Copyright Act in 1998 that there was not enough time before the end of that Congress to give due consideration to the issue of database protection, and that I hoped the Senate Judiciary Committee would hold hearings and consider database protection legislation. Despite the passage of time, the Judiciary Committee has not yet held hearings on this issue.

I support legal protection against commercial misappropriation of collections of information, but am sensitive to the concerns raised by the libraries, certain educational institutions, and the scientific community. This is a complex and important matter that I look forward to considering in this Congress.

Product identification codes provide a means for manufacturers to track their goods, which can be important to protect consumers in case of defective,

tainted, or harmful products and to implement product recalls. Defacing, removing, or tampering with product identification codes can thwart these tracking efforts, with potential safety consequences for American consumers. We should examine the scope of, and legislative solutions to remedy, this problem.

Senator HATCH and I worked together to pass cybersquatting legislation in the last Congress to protect registered trademarks online. This is an issue that has concerned me since the Congress passed the Federal Trademark Dilution Act of 1995, when I expressed my hope that the new law would "help stem the use of deceptive Internet addresses taken by those who are choosing marks that are associated with the products and reputations of others." (CONGRESSIONAL RECORD, December 29, 1995, page S19312).

The Internet Corporation for Assigned Names and Numbers (I-CANN) has recently added new top-level domain names and is negotiating contracts with the new registries. Senator HATCH and I followed these developments closely and together wrote to then Secretary of Commerce Norman Mineta on December 15, 2000, for the Commerce Department's assurances that the introduction of the new TLDs be achieved in a manner that minimizes the abuses of trademark rights. The Judiciary Committee has an important oversight role to play in this area.

We also will need to pay careful attention to the increasing consolidation in the airline, telecommunications, petroleum, electric, agriculture, and other sectors of the economy to ensure that consumers are protected from anticompetitive practices. The Judiciary Committee has already held one hearing on airline consolidation in this Congress and I stand ready to work with my colleagues on legislation to address competition problems.

I have already joined with the Democratic leader and several of my colleagues on the Securing a Future for Independent Agriculture Act, S. 20, to address the growing serious problem of consolidation in the agriculture processing sector. In addition, we need to carefully monitor international efforts to harmonize competition law to ensure that American companies and consumers are fairly treated and that our antitrust policies are not weakened.

This bill represents a good start on the work before the Senate Judiciary Committee to update American intellectual property law to ensure that it serves to advance and protect American interests both here and abroad. The list of additional copyright, patent, and trademark issues that require our attention shows that we have a lot more work to do.

## EXHIBIT 1

REGISTER OF COPYRIGHTS,  
LIBRARY OF CONGRESS,  
Washington, DC, February 12, 2001.

Hon. PATRICK J. LEAHY,  
U.S. Senate, Committee on the Judiciary,  
Washington, DC.

DEAR SENATOR LEAHY: I understand that you will be sponsoring legislation in this Congress that will incorporate last year's proposed Copyright Technical Corrections Act of 2000, H.R. 5106.

The Copyright Office proposed the technical corrections that were included in H.R. 5106 to address some minor drafting errors in the Intellectual Property and Communications Omnibus Reform Act of 1999 and to correct some other technical discrepancies in Title 17. None of these proposed corrections are substantive.

I believe that it is important that the provisions of Title 17 be clear, and therefore I thank you for your leadership on this legislation and hope that you will be successful in obtaining its passage.

Sincerely,

MARYBETH PETERS,  
Register of Copyrights.

Mr. HATCH. Madam President, how much time remains?

The PRESIDING OFFICER. The Senator from Utah has 15 minutes 18 seconds.

Mr. HATCH. Madam President, I will tell everybody I do not intend to use that whole time. I will use part of it.

THE NINTH CIRCUIT DECISION IN THE NAPSTER CASE

Mr. HATCH. Madam President, I would like to take a few moments while we are on the subject of copyright law to address the Ninth Circuit Court of Appeals' long-awaited decision in the Napster case. I have been considering the opinion for the last few days, and it may be some time before all of us grasp its full implications. I believe the Judiciary Committee will need to hold hearings on the decision's possible implications and to get an update on developments in the online music market. I will consult with my ranking member and other interested parties, and will likely look into the matter in the coming weeks.

As I have considered the case over the last couple of days, I have been troubled by the possible practical problems that may arise from this decision. I am troubled as a strong supporter and prime author of much of our copyright law and intellectual property rights.

By ordering the lower court to impose a preliminary injunction—before a trial on the merits, mind you—on this service that had developed a community of over 50 million music fans, it could have the effect of shutting down Napster entirely, depriving more than 50 million consumers access to a music service they have enjoyed. The Napster community represents a huge consumer demand for the kind of online music services Napster, rightly or wrongly, has offered and, to date, the major record labels have been unable to satisfy. Now, I understand that the labels have been working hard to get offerings online, and I have seen some projects beginning recently. I have been promised consumer roll-outs this

year. But these offerings have been slow in coming and have not been broadly deployed as of yet. I hope deployment will be speeded up to meet the unsatisfied demand that may be caused by interruptions in Napster service as the litigation continues through trial on the merits and appeals.

I am longtime advocate of strong intellectual property laws. There is something in our legal system called copyright, and the principle underlying copyright is a sound one. I believe that artists must be compensated for their creativity. And I believe that Napster as it currently operates, threatens this principle. I authored Digital Millennium Copyright Act, which has ensured that, as a general matter, copyright law should apply to the Internet. I am proud of my work in furtherance of that Act. I have mentioned Senator LEAHY in particular, and there others as well.

Yet, I also believe that the compensation principle underlying copyright can coexist—and has in fact coexisted—with society's evolving technologies for generations. And, in each case this coexistence has benefited both the copyright owner and the consumer, in what you might call an expansion of the pie, in other words.

So let's turn to the present controversy. It might be helpful to review some facts. In the span of about one and a half years, Napster has seen its client software downloaded more than 62 million times. Over 8 million people a day log onto the Napster service. At any one time there may be as many as 1.7 million people simultaneously using the service. It is, quite simply, a virtual community of unprecedented reach and scale. It is the most popular application in the history of the Internet and, I have to say, in the history of music.

It is also free and, unfortunately, according to the court, it is probably facilitating copyright infringement. The major labels, which account for over 80 percent of the CD's sold in this country, is rightly shaken by the Napster phenomenon. Although the industry saw its sales increase by 4.4 percent in the year 2000, it believes it would have sold more CD's had it not been for Napster. And the district court and Court of Appeals agreed with them. The labels have, as is their right under the laws—many of which I have authored—pursued legal redress through out judicial system. Were I in their shoes, I question whether I would have taken a different course of action.

Now the parties have brought their dispute to the point where the erosion of the copyright laws might be the frightening outcome.

I am particularly troubled because, if the popular Napster service, which has a relationship with one of the major record companies, Bertelsmann, is shut down, and no licensed online services exist to fill this consumer demand, I fear that this consumer demand will be

filled by Napster clones, particularly ones like Gnutella or Freenet, which have no central server, and no central business office with which to negotiate a marketplace licensing arrangement. Such a development would further undermine the position of copyright law online, and the position of artists in the new digital world that the Internet is developing.

Furthermore, if past experience is any indication, I would expect that my colleagues, like me, will be contacted by the over 50 million Napster fans who oppose the injunction and fear the demise of Napster. This may prompt a legislative response. I know that people in Congress are weighing various legislative solutions, some intriguing, some troubling and counter to the public interest.

Some of these responses could strike the important intellectual property rights of artists and copyright owners online entirely, undoing the carefully balanced development I have tried to foster over the years, and possibly harming consumers as well as creators in the long run.

I guess my feeling about this Ninth Circuit decision is a gnawing concern that this legal victory for the record labels may prove pyrrhic or shortsighted from a policy perspective. Some have suggested that the labels merely wished to establish a legal precedent and then would be willing to work on negotiating licenses. Well, it seems to me that now might be a good time to get those deals done, for the good of music fans, and for the good of the copyright industries and the artists they represent.

I have long been an advocate for strong intellectual property rights protection and enforcement. I have urged the labels and composers and publishers working out synergistic arrangements with online music distributors and Internet technologist that will serve the artists and their audience. Such synergy is possible. I was pleased when Bertelsmann took the initiative in harnessing the consumer demand evidenced by Napster and decided to work cooperatively together to develop a service that would benefit both of them and those they seek to serve, the artists and music fans. I again urge the other major music industry players to take significant steps toward this end, and again, I think now is a good time to do it. I have recently discussed my views with some of the interested parties, and I believe there is some interest in working this out for the benefit of all parties, including consumers and creators. I stand ready, willing and able to try to help them in this matter.

Last July, the Committee held its first of two hearings on the subject. At this hearing, I was joined by my colleague and friend, the distinguished ranking member and former chairman of the Judiciary Committee, Senator LEAHY. The two of us encouraged a marketplace resolution to the Napster, and the other, digital music controversies.

I think working together in the marketplace cooperatively will lead to the best result for all parties, the record labels, the online music services, the artists and the music fans. I hope the focus will be on the latter two. After all, without artists, there is nothing to convey, and without the fans, there is no one to convey it to. I think keeping the focus on the artists and the audience can help the technologists and the copyright industries find a way for all to flourish. And I hope this opportunity is taken before it is lost.

I hope this opportunity is taken before it is lost. I wanted to make these remarks on the floor, and I hope we can resolve these problems in a way that benefits artists, consumers, publishers, and others who are interested in this matter. I think if we get together and work this out, it will be in the best interests of everybody.

I am prepared to yield my time.

Mr. LEAHY. Madam President, I yield whatever time remains.

Mr. HATCH. I yield my time as well. We can proceed.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER (Mr. THOMPSON). The bill having been read for the third time, the question is, Shall the bill pass? The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Kentucky (Mr. BUNNING and the Senator from Idaho (Mr. CRAPO) are necessarily absent.

I further announce that, if present and voting, the Senator from Kentucky (Mr. BUNNING) would vote "yea."

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 98, nays 0, as follows:

[Rollcall Vote No. 12 Leg.]

YEAS—98

Akaka	DeWine	Kerry
Allard	Dodd	Kohl
Allen	Domenici	Kyl
Baucus	Dorgan	Landrieu
Bayh	Durbin	Leahy
Bennett	Edwards	Levin
Biden	Ensign	Lieberman
Bingaman	Enzi	Lincoln
Bond	Feingold	Lott
Boxer	Feinstein	Lugar
Breaux	Fitzgerald	McCain
Brownback	Frist	McConnell
Burns	Graham	Mikulski
Byrd	Gramm	Miller
Campbell	Grassley	Murkowski
Cantwell	Gregg	Murray
Carnahan	Hagel	Nelson (FL)
Carper	Harkin	Nelson (NE)
Chafee	Hatch	Nickles
Cleland	Helms	Reed
Clinton	Hollings	Reid
Cochran	Hutchinson	Roberts
Collins	Hutchison	Rockefeller
Conrad	Inhofe	Santorum
Corzine	Inouye	Sarbanes
Craig	Jeffords	Schumer
Daschle	Johnson	Sessions
Dayton	Kennedy	Shelby

Smith (NH)	Stevens	Voinovich
Smith (OR)	Thomas	Warner
Snowe	Thompson	Wellstone
Specter	Thurmond	Wyden
Stabenow	Torricelli	

NOT VOTING—2

Bunning Crapo

The bill (S. 320) was passed, as follows:

S. 320

*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 "Intellectual Property and High Technology Technical Amendments Act of 2001".

**SEC. 2. OFFICERS AND EMPLOYEES.**

(a) RENAMING OF OFFICERS.—(1) Title 35, United States Code, is amended—

(A) by striking "Director" each place it appears and inserting "Commissioner"; and

(B) by striking "Director's" each place it appears and inserting "Commissioner's".

(2) The Act of July 5, 1946 (commonly referred to as the "Trademark Act of 1946"; 15 U.S.C. 1051 et seq.) is amended by striking "Director" each place it appears and inserting "Commissioner".

(3)(A) Title 35, United States Code, is amended by striking "Commissioner for Patents" each place it appears and inserting "Assistant Commissioner for Patents".

(B) Section 3(b)(2) of title 35, United States Code, is amended—

(i) in the paragraph heading, by striking "COMMISSIONERS" and inserting "ASSISTANT COMMISSIONERS";

(ii) in subparagraph (A), in the last sentence—

(I) by striking "a Commissioner" and inserting "an Assistant Commissioner"; and

(II) by striking "the Commissioner" and inserting "the Assistant Commissioner";

(iii) in subparagraph (B)—

(I) by striking "Commissioners" each place it appears and inserting "Assistant Commissioners";

(II) by striking "Commissioners" each place it appears and inserting "Assistant Commissioners"; and

(iv) in subparagraph (C), by striking "Commissioners" and inserting "Assistant Commissioners".

(C) Section 3(f) of title 35, United States Code, is amended in paragraphs (2) and (3), by striking "the Commissioner" each place it appears and inserting "the Assistant Commissioner".

(D) Section 13 of title 35, United States Code, is amended—

(i) by striking "Commissioner of" each place it appears and inserting "Assistant Commissioner for"; and

(ii) by striking "Commissioners" and inserting "Assistant Commissioners".

(E) Chapter 17 of title 35, United States Code, is amended by striking "Commissioner of Patents" each place it appears and inserting "Assistant Commissioner for Patents".

(F) Section 297 of title 35, United States Code, is amended by striking "Commissioner of Patents" each place it appears and inserting "Commissioner".

(4) Title 35, United States Code, is amended by striking "Commissioner for Trademarks" each place it appears and inserting "Assistant Commissioner for Trademarks".

(5) Section 5314 of title 5, United States Code, is amended by striking

"Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office." and inserting

"Under Secretary of Commerce for Intellectual Property and Commissioner of the

United States Patent and Trademark Office.”

(6)(A) Section 303 of title 35, United States Code, is amended—

(i) in the section heading by striking “Director” and inserting “Commissioner”; and

(ii) by striking “Director’s” and inserting “Commissioner’s”.

(B) The item relating to section 303 in the table of sections for chapter 30 of title 35, United States Code, is amended by striking “Director” and inserting “Commissioner”.

(b) ADDITIONAL CLERICAL AMENDMENTS.—

(1) The following provisions of law are amended by striking “Director” each place it appears and inserting “Commissioner”.

(A) Section 9(p)(1)(B) of the Small Business Act (15 U.S.C. 638(p)(1)(B)).

(B) Section 19 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831r).

(C) Section 182(b)(2)(A) of the Trade Act of 1974 (19 U.S.C. 2242(b)(2)(A)).

(D) Section 302(b)(2)(D) of the Trade Act of 1974 (19 U.S.C. 2412(b)(2)(D)).

(E) Section 702(d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 372(d)).

(F) Section 1295(a)(4)(B) of title 28, United States Code.

(G) Section 1744 of title 28, United States Code.

(H) Section 151 of the Atomic Energy Act of 1954 (42 U.S.C. 2181).

(I) Section 152 of the Atomic Energy Act of 1954 (42 U.S.C. 2182).

(J) Section 305 of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2457).

(K) Section 12(a) of the Solar Heating and Cooling Demonstration Act of 1974 (42 U.S.C. 5510(a)).

(L) Section 10(i) of the Trading with the enemy Act (50 U.S.C. App. 10(i)).

(M) Section 4203 of the Intellectual Property and Communications Omnibus Reform Act of 1999, as enacted by section 1000(a)(9) of Public Law 106-113.

(2) The item relating to section 1744 in the table of sections for chapter 115 of title 28, United States Code, is amended by striking “generally” and inserting “, generally”.

(c) REFERENCES.—Any reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to the Patent and Trademark Office—

(1) to the Director of the United States Patent and Trademark Office or to the Commissioner of Patents and Trademarks is deemed to refer to the Under Secretary of Commerce for Intellectual Property and Commissioner of the United States Patent and Trademark Office;

(2) to the Commissioner for Patents is deemed to refer to the Assistant Commissioner for Patents; and

(3) to the Commissioner for Trademarks is deemed to refer to the Assistant Commissioner for Trademarks.

### SEC. 3. CLARIFICATION OF REEXAMINATION PROCEDURE ACT OF 1999; TECHNICAL AMENDMENTS.

(a) OPTIONAL INTER PARTES REEXAMINATION PROCEDURES.—Title 35, United States Code, is amended as follows:

(1) Section 311 is amended—

(A) in subsection (a), by striking “person” and inserting “third-party requester”; and

(B) in subsection (c), by striking “Unless the requesting person is the owner of the patent, the” and inserting “The”.

(2) Section 312 is amended—

(A) in subsection (a), by striking the last sentence; and

(B) by striking “, if any”.

(3) Section 314(b)(1) is amended—

(A) by striking “(1) This” and all that follows through “(2)” and inserting “(1)”;

(B) by striking “the third-party requester shall receive a copy” and inserting “The Of-

fice shall send to the third-party requester a copy”; and

(C) by redesignating paragraph (3) as paragraph (2).

(4) Section 315(c) is amended by striking “United States Code,”.

(5) Section 317 is amended—

(A) in subsection (a), by striking “patent owner nor the third-party requester, if any, nor privies of either” and inserting “third-party requester nor its privies”; and

(B) in subsection (b), by striking “United States Code,”.

(b) CONFORMING AMENDMENTS.—

(1) APPEAL TO THE BOARD OF PATENT APPEALS AND INTERFERENCES.—Subsections (a), (b), and (c) of section 134 of title 35, United States Code, are each amended by striking “administrative patent judge” each place it appears and inserting “primary examiner”.

(2) PROCEEDING ON APPEAL.—Section 143 of title 35, United States Code, is amended by amending the third sentence to read as follows: “In an ex parte case or any reexamination case, the Commissioner shall submit to the court in writing the grounds for the decision of the Patent and Trademark Office, addressing all the issues involved in the appeal. The court shall, before hearing an appeal, give notice of the time and place of the hearing to the Commissioner and the parties in the appeal.”

(c) CLERICAL AMENDMENTS.—

(1) Section 4604(a) of the Intellectual Property and Communications Omnibus Reform Act of 1999, is amended by striking “Part 3” and inserting “Part III”.

(2) Section 4604(b) of that Act is amended by striking “title 25” and inserting “title 35”.

(d) EFFECTIVE DATE.—The amendments made by sections 4605(c) and 4605(e) of the Intellectual Property and Communications Omnibus Reform Act, as enacted by section 1000(a)(9) of Public Law 106-113, shall apply to any reexamination filed in the United States Patent and Trademark Office on or after the date of the enactment of Public Law 106-113.

### SEC. 4. PATENT AND TRADEMARK EFFICIENCY ACT AMENDMENTS.

(a) DEPUTY COMMISSIONER.—

(1) Section 17(b) of the Act of July 5, 1946 (commonly referred to as the “Trademark Act of 1946”) (15 U.S.C. 1067(b)), is amended by inserting “the Deputy Commissioner,” after “Commissioner,”.

(2) Section 6(a) of title 35, United States Code, is amended by inserting “the Deputy Commissioner,” after “Commissioner,”.

(b) PUBLIC ADVISORY COMMITTEES.—Section 5 of title 35, United States Code, is amended—

(1) in subsection (i), by inserting “, privileged,” after “personnel”; and

(2) by adding at the end the following new subsection:

“(j) INAPPLICABILITY OF PATENT PROHIBITION.—Section 4 shall not apply to voting members of the Advisory Committees.”

(c) MISCELLANEOUS.—Section 153 of title 35, United States Code, is amended by striking “and attested by an officer of the Patent and Trademark Office designated by the Commissioner,”.

### SEC. 5. DOMESTIC PUBLICATION OF FOREIGN FILED PATENT APPLICATIONS ACT OF 1999 AMENDMENTS.

Section 154(d)(4)(A) of title 35, United States Code, as in effect on November 29, 2000, is amended—

(1) by striking “on which the Patent and Trademark Office receives a copy of the” and inserting “of”; and

(2) by striking “international application” the last place it appears and inserting “publication”.

### SEC. 6. DOMESTIC PUBLICATION OF PATENT APPLICATIONS PUBLISHED ABROAD.

Subtitle E of title IV of the Intellectual Property and Communications Omnibus Reform Act of 1999, as enacted by section 1000(a)(9) of Public Law 106-113, is amended as follows:

(1) Section 4505 is amended to read as follows:

#### “SEC. 4505. PRIOR ART EFFECT OF PUBLISHED APPLICATIONS.

“Section 102(e) of title 35, United States Code, is amended to read as follows:

“(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for the purposes of this subsection of an application filed in the United States if and only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language; or”.

(2) Section 4507 is amended—

(A) in paragraph (1), by striking “Section 11” and inserting “Section 10”;

(B) in paragraph (2), by striking “Section 12” and inserting “Section 11”.

(C) in paragraph (3), by striking “Section 13” and inserting “Section 12”;

(D) in paragraph (4), by striking “12 and 13” and inserting “11 and 12”;

(E) in section 374 of title 35, United States Code, as amended by paragraph (10), by striking “confer the same rights and shall have the same effect under this title as an application for patent published” and inserting “be deemed a publication”; and

(F) by adding at the end the following:

“(12) The item relating to section 374 in the table of contents for chapter 37 of title 35, United States Code, is amended to read as follows:

“374. Publication of international application.”.

(3) Section 4508 is amended to read as follows:

#### “SEC. 4508. EFFECTIVE DATE.

“Except as otherwise provided in this section, sections 4502 through 4507, and the amendments made by such sections, shall take effect on November 29, 2000, and shall apply only to applications (including international applications designating the United States) filed on or after that date. The amendments made by sections 4504 and 4505 shall additionally apply to any pending application filed before November 29, 2000, if such pending application is published pursuant to a request of the applicant under such procedures as may be established by the Commissioner. If an application is filed on or after November 29, 2000, or is published pursuant to a request from the applicant, and the application claims the benefit of one or more prior-filed applications under section 119(e), 120, or 365(c) of title 35, United States Code, then the amendment made by section 4505 shall apply to the prior-filed application in determining the filing date in the United States of the application.”.

### SEC. 7. MISCELLANEOUS CLERICAL AMENDMENTS.

(a) AMENDMENTS TO TITLE 35.—The following provisions of title 35, United States Code, are amended:

(1) Section 2(b) is amended in paragraphs (2)(B) and (4)(B), by striking “, United States Code”.

(2) Section 3 is amended—

(A) in subsection (a)(2)(B), by striking “United States Code,”;

(B) in subsection (b)(2)—  
 (i) in the first sentence of subparagraph (A), by striking “, United States Code”;  
 (ii) in the first sentence of subparagraph (B)—  
 (I) by striking “United States Code,”; and  
 (II) by striking “, United States Code”;  
 (iii) in the second sentence of subparagraph (B)—  
 (I) by striking “United States Code,”; and  
 (II) by striking “, United States Code.” and inserting a period;  
 (iv) in the last sentence of subparagraph (B), by striking “, United States Code”;  
 (v) in subparagraph (C), by striking “, United States Code”;  
 (C) in subsection (c)—  
 (i) in the subsection caption, by striking “, UNITED STATES CODE”;  
 (ii) by striking “United States Code.”  
 (3) Section 5 is amended in subsections (e) and (g), by striking “, United States Code” each place it appears.  
 (4) The table of contents for part I is amended in the item relating to chapter 3, by striking “before” and inserting “Before”.  
 (5) The item relating to section 21 in the table of contents for chapter 2 is amended to read as follows:  
 “21. Filing date and day for taking action.”  
 (6) The item relating to chapter 12 in the table of contents for part II is amended to read as follows:  
**“12. Examination of Application ..... 131”.**  
 (7) The item relating to section 116 in the table of contents for chapter 11 is amended to read as follows:  
 “116. Inventors.”  
 (8) Section 154(b)(4) is amended by striking “, United States Code.”  
 (9) Section 156 is amended—  
 (A) in subsection (b)(3)(B), by striking “paragraphs” and inserting “paragraph”;  
 (B) in subsection (d)(2)(B)(i), by striking “below the office” and inserting “below the Office”; and  
 (C) in subsection (g)(6)(B)(iii), by striking “submitted” and inserting “submitted”.  
 (10) The item relating to section 183 in the table of contents for chapter 17 is amended by striking “of” and inserting “to”.  
 (11) Section 185 is amended by striking the second period at the end of the section.  
 (12) Section 201(a) is amended—  
 (A) by striking “United States Code,”; and  
 (B) by striking “5, United States Code.” and inserting “5.”  
 (13) Section 202 is amended—  
 (A) in subsection (b)(4), by striking “last paragraph of section 203(2)” and inserting “section 203(b)”; and  
 (B) in subsection (c)—  
 (i) in paragraph (4) by striking “rights;” and inserting “rights,”; and  
 (ii) in paragraph (5) by striking “of the United States Code”.  
 (14) Section 203 is amended—  
 (A) in paragraph (2)—  
 (i) by striking “(2)” and inserting “(b)”;  
 (ii) by striking the quotation marks and comma before “as appropriate”; and  
 (iii) by striking “paragraphs (a) and (c)” and inserting “paragraphs (1) and (3) of subsection (a)”; and  
 (B) in the first paragraph—  
 (i) by striking “(a)”, “(b)”, “(c)”, and “(d)” and inserting “(1)”, “(2)”, “(3)”, and “(4)”, respectively; and  
 (ii) by striking “(1.” and inserting “(a)”.  
 (15) Section 209 is amended in subsections (a) and (f)(1), by striking “of the United States Code”.  
 (16) Section 210 is amended—  
 (A) in subsection (a)—  
 (i) in paragraph (11), by striking “5901” and inserting “5908”; and

(ii) in paragraph (20) by striking “178(j)” and inserting “178j”; and

(B) in subsection (c)—  
 (i) by striking “paragraph 202(c)(4)” and inserting “section 202(c)(4)”; and  
 (ii) by striking “title.” and inserting “title.”.

(17) The item relating to chapter 29 in the table of contents for part III is amended by inserting a comma after “Patent”.

(18) The item relating to section 256 in the table of contents for chapter 25 is amended to read as follows:

“256. Correction of named inventor.”

(19) Section 294 is amended—

(A) in subsection (b), by striking “United States Code,”; and

(B) in subsection (c), in the second sentence by striking “court to” and inserting “court of”.

(20)(A) The item relating to section 374 in the table of contents for chapter 37 is amended to read as follows:

“374. Publication of international application.”

(B) The amendment made by subparagraph (A) shall take effect on November 29, 2000.

(21) Section 371(b) is amended by adding at the end a period.

(22) Section 371(d) is amended by adding at the end a period.

(23) Paragraphs (1), (2), and (3) of section 376(a) are each amended by striking the semicolon and inserting a period.

(b) OTHER AMENDMENTS.—

(1) Section 4732(a) of the Intellectual Property and Communications Omnibus Reform Act of 1999 is amended—

(A) in paragraph (9)(A)(ii), by inserting “in subsection (b),” after “(ii)”; and

(B) in paragraph (10)(A), by inserting after “title 35, United States Code,” the following: “other than sections 1 through 6 (as amended by chapter 1 of this subtitle).”

(2) Section 4802(1) of that Act is amended by inserting “to” before “citizens”.

(3) Section 4804 of that Act is amended—

(A) in subsection (b), by striking “11(a)” and inserting “10(a)”; and

(B) in subsection (c), by striking “13” and inserting “12”.

(4) Section 4402(b)(1) of that Act is amended by striking “in the fourth paragraph”.

#### SEC. 8. TECHNICAL CORRECTIONS IN TRADE-MARK LAW.

(a) AWARD OF DAMAGES.—Section 35(a) of the Act of July 5, 1946 (commonly referred to as the “Trademark Act of 1946”) (15 U.S.C. 1117(a)), is amended by striking “a violation under section 43(a), (c), or (d),” and inserting “a violation under section 43(a) or (d).”

(b) ADDITIONAL TECHNICAL AMENDMENTS.—The Trademark Act of 1946 is further amended as follows:

(1) Section 1(d)(1) (15 U.S.C. 1051(d)(1)) is amended in the first sentence by striking “specifying the date of the applicant’s first use” and all that follows through the end of the sentence and inserting “specifying the date of the applicant’s first use of the mark in commerce and those goods or services specified in the notice of allowance on or in connection with which the mark is used in commerce.”

(2) Section 1(e) (15 U.S.C. 1051(e)) is amended to read as follows:

“(e) If the applicant is not domiciled in the United States the applicant may designate, by a document filed in the United States Patent and Trademark Office, the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark. Such notices or process may be served upon the person so designated by leaving with that person or mailing to that person a copy thereof at the address specified in the last

designation so filed. If the person so designated cannot be found at the address given in the last designation, or if the registrant does not designate by a document filed in the United States Patent and Trademark Office the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark, such notices or process may be served on the Commissioner.”

(3) Section 8(f) (15 U.S.C. 1058(f)) is amended to read as follows:

“(f) If the registrant is not domiciled in the United States, the registrant may designate, by a document filed in the United States Patent and Trademark Office, the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark. Such notices or process may be served upon the person so designated by leaving with that person or mailing to that person a copy thereof at the address specified in the last designation so filed. If the person so designated cannot be found at the address given in the last designation, or if the registrant does not designate by a document filed in the United States Patent and Trademark Office the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark, such notices or process may be served on the Commissioner.”

(4) Section 9(c) (15 U.S.C. 1059(c)) is amended to read as follows:

“(c) If the registrant is not domiciled in the United States the registrant may designate, by a document filed in the United States Patent and Trademark Office, the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark. Such notices or process may be served upon the person so designated by leaving with that person or mailing to that person a copy thereof at the address specified in the last designation so filed. If the person so designated cannot be found at the address given in the last designation, or if the registrant does not designate by a document filed in the United States Patent and Trademark Office the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark, such notices or process may be served on the Commissioner.”

(5) Subsections (a) and (b) of section 10 (15 U.S.C. 1060(a) and (b)) are amended to read as follows:

“(a)(1) A registered mark or a mark for which an application to register has been filed shall be assignable with the good will of the business in which the mark is used, or with that part of the good will of the business connected with the use of and symbolized by the mark. Notwithstanding the preceding sentence, no application to register a mark under section 1(b) shall be assignable prior to the filing of an amendment under section 1(c) to bring the application into conformity with section 1(a) or the filing of the verified statement of use under section 1(d), except for an assignment to a successor to the business of the applicant, or portion thereof, to which the mark pertains, if that business is ongoing and existing.

“(2) In any assignment authorized by this section, it shall not be necessary to include the good will of the business connected with the use of and symbolized by any other mark used in the business or by the name or style under which the business is conducted.

“(3) Assignments shall be by instruments in writing duly executed. Acknowledgment shall be prima facie evidence of the execution of an assignment, and when the prescribed information reporting the assignment is recorded in the United States Patent

and Trademark Office, the record shall be prima facie evidence of execution.

(4) An assignment shall be void against any subsequent purchaser for valuable consideration without notice, unless the prescribed information reporting the assignment is recorded in the United States Patent and Trademark Office within 3 months after the date of the assignment or prior to the subsequent purchase.

(5) The United States Patent and Trademark Office shall maintain a record of information on assignments, in such form as may be prescribed by the Commissioner.

(b) An assignee not domiciled in the United States may designate by a document filed in the United States Patent and Trademark Office the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark. Such notices or process may be served upon the person so designated by leaving with that person or mailing to that person a copy thereof at the address specified in the last designation so filed. If the person so designated cannot be found at the address given in the last designation, or if the assignee does not designate by a document filed in the United States Patent and Trademark Office the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark, such notices or process may be served upon the Commissioner.”

(7) Section 23(c) (15 U.S.C. 1091(c)) is amended by striking the second comma after “numeral”.

(8) Section 33(b)(8) (15 U.S.C. 1115(b)(8)) is amended by aligning the text with paragraph (7).

(9) Section 34(d)(1)(A) (15 U.S.C. 1116(d)(1)(A)) is amended by striking “section 110” and all that follows through “(36 U.S.C. 380)” and inserting “section 220506 of title 36, United States Code.”

(10) Section 34(d)(1)(B)(ii) (15 U.S.C. 1116(d)(1)(B)(ii)) is amended by striking “section 110” and all that follows through “(36 U.S.C. 380)” and inserting “section 220506 of title 36, United States Code.”

(11) Section 34(d)(11) is amended by striking “6621 of the Internal Revenue Code of 1954” and inserting “6621(a)(2) of the Internal Revenue Code of 1986”.

(12) Section 35(b) (15 U.S.C. 1117(b)) is amended—

(A) by striking “section 110” and all that follows through “(36 U.S.C. 380)” and inserting “section 220506 of title 36, United States Code,”; and

(B) by striking “6621 of the Internal Revenue Code of 1954” and inserting “6621(a)(2) of the Internal Revenue Code of 1986”.

(13) Section 44(e) (15 U.S.C. 1126(e)) is amended by striking “a certification” and inserting “a true copy, a photocopy, a certification.”

#### SEC. 9. PATENT AND TRADEMARK FEE CLERICAL AMENDMENT.

The Patent and Trademark Fee Fairness Act of 1999 (113 Stat. 1537-546 et seq.), as enacted by section 1000(a)(9) of Public Law 106-113, is amended in section 4203, by striking “111(a)” and inserting “113(a)”.

#### SEC. 10. COPYRIGHT RELATED CORRECTIONS TO 1999 OMNIBUS REFORM ACT.

Title I of the Intellectual Property and Communications Omnibus Reform Act of 1999, as enacted by section 1000(a)(9) of Public Law 106-113, is amended as follows:

(1) Section 1007 is amended—

(A) in paragraph (2), by striking “paragraph (2)” and inserting “paragraph (2)(A)”;

and

(B) in paragraph (3), by striking “1005(e)” and inserting “1005(d)”.

(2) Section 1006(b) is amended by striking “119(b)(1)(B)(iii)” and inserting “119(b)(1)(B)(ii)”.

(3)(A) Section 1006(a) is amended—

(i) in paragraph (1), by adding “and” after the semicolon;

(ii) by striking paragraph (2); and

(iii) by redesignating paragraph (3) as paragraph (2).

(B) Section 1011(b)(2)(A) is amended to read as follows:

“(A) in paragraph (1), by striking ‘primary transmission made by a superstation and embodying a performance or display of a work’ and inserting ‘performance or display of a work embodied in a primary transmission made by a superstation or by the Public Broadcasting Service satellite feed’;”.

#### SEC. 11. AMENDMENTS TO TITLE 17, UNITED STATES CODE.

Title 17, United States Code, is amended as follows:

(1) Section 119(a)(6) is amended by striking “of performance” and inserting “of a performance”.

(2)(A) The section heading for section 122 is amended by striking “rights; secondary” and inserting “rights; Secondary”.

(B) The item relating to section 122 in the table of contents for chapter 1 is amended to read as follows:

“122. Limitations on exclusive rights: Secondary transmissions by satellite carriers within local markets.”

(3)(A) The section heading for section 121 is amended by striking “reproduction” and inserting “Reproduction”.

(B) The item relating to section 121 in the table of contents for chapter 1 is amended by striking “reproduction” and inserting “Reproduction”.

(4)(A) Section 106 is amended by striking “107 through 121” and inserting “107 through 122”.

(B) Section 501(a) is amended by striking “106 through 121” and inserting “106 through 122”.

(C) Section 511(a) is amended by striking “106 through 121” and inserting “106 through 122”.

(5) Section 101 is amended—

(A) by moving the definition of “computer program” so that it appears after the definition of “compilation”; and

(B) by moving the definition of “registration” so that it appears after the definition of “publicly”.

(6) Section 110(4)(B) is amended in the matter preceding clause (i) by striking “conditions;” and inserting “conditions:”.

(7) Section 118(b)(1) is amended in the second sentence by striking “to it”.

(8) Section 119(b)(1)(A) is amended—

(A) by striking “transmitted” and inserting “retransmitted”; and

(B) by striking “transmissions” and inserting “retransmissions”.

(9) Section 203(a)(2) is amended—

(A) in subparagraph (A)—

(i) by striking “(A) the” and inserting “(A) The”; and

(ii) by striking the semicolon at the end and inserting a period;

(B) in subparagraph (B)—

(i) by striking “(B) the” and inserting “(B) The”; and

(ii) by striking the semicolon at the end and inserting a period;

(C) in subparagraph (C), by striking “(C) the” and inserting “(C) The”.

(10) Section 304(c)(2) is amended—

(A) in subparagraph (A)—

(i) by striking “(A) the” and inserting “(A) The”; and

(ii) by striking the semicolon at the end and inserting a period;

(B) in subparagraph (B)—

(i) by striking “(B) the” and inserting “(B) The”; and

(ii) by striking the semicolon at the end and inserting a period; and

(C) in subparagraph (C), by striking “(C) the” and inserting “(C) The”.

(11) The item relating to section 903 in the table of contents for chapter 9 is amended by striking “licensure” and inserting “licensing”.

#### SEC. 12. OTHER COPYRIGHT RELATED TECHNICAL AMENDMENTS.

(a) AMENDMENT TO TITLE 18.—Section 2319(e)(2) of title 18, United States Code, is amended by striking “107 through 120” and inserting “107 through 122”.

(b) STANDARD REFERENCE DATA.—(1) Section 105(f) of Public Law 94-553 is amended by striking “section 290(e) of title 15” and inserting “section 6 of the Standard Reference Data Act (15 U.S.C. 290e)”.

(2) Section 6(a) of the Standard Reference Data Act (15 U.S.C. 290e) is amended by striking “Notwithstanding” and all that follows through “United States Code,” and inserting “Notwithstanding the limitations under section 105 of title 17, United States Code,”.

The PRESIDING OFFICER. The Senator from Mississippi, Mr. COCHRAN, is recognized.

Mr. COCHRAN. Mr. President, I ask unanimous consent that I may proceed for up to 10 minutes as in morning business.

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

#### NATIONAL MISSILE DEFENSE SYSTEM

Mr. COCHRAN. Mr. President, I take this time to respond to those who are suggesting we put off, or even cancel, the deployment of a national missile defense system.

One reason the critics of the program are giving for delay is the alleged opposition of our allies, particularly those in Europe. Earlier this month at the Munich Conference on International Security, Secretary of Defense Donald Rumsfeld made a forceful case for deployment of a defense against strategic ballistic missiles. He explained the rationale for our missile defense program, and he also made it clear that this administration intends to deploy such a system as soon as possible.

He told those attending the conference that deploying a missile defense system was a moral issue because “no U.S. President can responsibly say his defense policy is calculated and designed to leave the American people undefended against threats that are known to exist.”

Former Secretary of State Kissinger, who negotiated the 1972 Anti-Ballistic Missile Treaty, also spoke at the conference. He said a U.S. President cannot allow a situation in which “extinction of civilized life is one’s only strategy.”

The response from our European allies was very encouraging. For months, critics have been saying that our allies firmly oppose our plans to deploy missile defenses and would never go along with them. But the Secretary General of NATO, George Robertson, said: