There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. BOOZMAN. Mr. President, I ask unanimous consent that the concurrent resolution be agreed to and the motion to reconsider be consider made and laid upon the table with no intervening action or debate.

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

The concurrent resolution (H. Con. Res 127) was agreed to.

Mr. BOOZMAN. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. BOOZMAN). Without objection, it is so ordered.

NATIONAL DEFENSE AUTHORIZATION ACT

Mr. MCCONNELL. Mr. President, for the information of all Senators, here is where we are on the status of the Defense authorization bill.

The Senate has passed this annual bill to support our servicemembers and our national security every year for the last 59 years. As I indicated when I filed cloture on the NDAA conference report after Thanksgiving, my intention was and is to ensure the Senate continues fulfilling our obligation to the men and women of our Armed Forces.

I hope the President will not veto this bill, which redoubles our commitment to modernization, advances cutting-edge capabilities, and equips our military with the tools and resources they need to compete with our great power adversaries on land, on sea, in the air, and in cyberspace. These are the steps we need to take to continue to compete with Russia and China.

In the event that President Trump does elect to veto this bipartisan bill, it appears the House may choose to return after the holidays to set up a vote to consider the veto. The Democratic leader and I have agreed to a unanimous consent request as follows: The Senate will meet for pro forma sessions only until December 29, when we will return to session.

In the event that the President has vetoed the bill and the House has voted to override the veto, the Senate would have the opportunity to process the veto override at that time.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to executive session and the Committee on Foreign Relations be discharged and the Senate proceed to the en bloc consideration of the following nominations: PN1938, PN2024, PN2101, PN2030, and PN2025.

There being no objection, the committee was discharged, and the Senate proceeded to consider the nominations en bloc.

Mr. MCCONNELL. I ask unanimous consent that the Senate vote on the nominations en bloc with no intervening action or debate; that if confirmed, the motions to reconsider be considered made and laid upon the table en bloc; and that the President be immediately notified of the Senate's actions.

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

The question is, Will the Senate advise and consent to the nominations of C. Kevin Blackstone, of Virginia, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Democratic Republic of Timor-Leste; Cynthia Kierscht, of Minnesota, a Career Member of the Senior Foreign Service, Class of Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Islamic Republic of Mauritania; Brian D. McFeeters, of Virginia, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Malaysia; David Reimer, of Ohio, a Career Member of the Senior Foreign Service, Class of Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Sierra Leone; Geeta Pasi, of New York, a Career Member of the Senior Foreign Service, Class of Career Minister, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Federal Democratic Republic of Ethiopia?

The nominations were confirmed en bloc.

LEGISLATIVE SESSION

MORNING BUSINESS

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to legislative session for a period of morning business, with Senators permitted to speak therein for up to 10 minutes each.

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

NATIONAL DEFENSE AUTHORIZATION ACT

Mr. MENENDEZ. Mr. President, section 1301 of title XIII of the FY21 consolidated appropriations act delays implementation of reforms to the U.S. Agency for Global Media outlined in section 1299Q of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021. While the FY2021 NDAA has not yet been enacted and may be enacted following the enactment of the 2021 Consolidated Appropriations Act, Chairman RISCH and I believe it is Congress's intent that these two provisions be understood concurrently and that the reforms outlined in section 1299Q be delayed for 90 days following enactment of the FY2021 NDAA.

CASE Act

Mr. KENNEDY, Mr. President, after many years of work to ensure small creators have a voice, I am glad to share the Copyright Alternatives in Small-Claims Enforcement Act, also known as CASE Act, passed the House and Senate and is awaiting the President's signature. This bipartisan and bicameral legislation is critical for protecting the creative middle class in Louisiana and across America who rely upon commercializing their creative works for their livelihood.

Photographers, visual artists, independent movie directors, musicians, authors, and other creators who make up the creative middle class rely on copyright to protect their works from unauthorized reproduction. However, under current law, copyright owners with small infringement claims cannot obtain relief because district court litigation costs are higher than the damages sought. That is where CASE Act comes in. This legislation creates the Copyright Claims Board within the U.S. Copyright Office to provide a simple, quick, and less expensive forum for small copyright owners to enforce their rights.

The creation of this bill began more than 7 years ago. In 2013, after a comprehensive study, the U.S. Copyright Office made several legislative recommendations to help independent creators in enforcing their constitutionally protected copyrights. Since then, Congress has worked in lock-step with the U.S. Copyright Office to create a framework to accomplish this goal. That framework culminated in CASE Act.

In response to concerns raised by the library community, the bill now includes a blanket opt-out provision for libraries and archives. This opt-out is expressly limited to activities covered by section 108 of the Copyright Act. It does not apply to activities that fall outside that section, such as websites making and offering unlicensed copies of works. A library or archive must remain in full compliance with section 108 at all times to be eligible for the blanket opt-out privilege and would lose its eligibility for the blanket opt-out if, at any time, it is found to have violated any of the conditions throughout section 108.

I want to extend my gratitude to the photographers, musicians, artists, authors, and many other creators who have helped make the passage of CASE Act a success. There are so many individuals who have been instrumental in

creating and passing this legislation that I cannot possibly name them all here, but a few groups that deserve special recognition are Copyright Alliance, Professional Photographers of America, Professional Photographers of Louisiana, American Bar Association, American Intellectual Property Law Association, American Society of Media Photographers, Association of American Publishers, Authors Guild, Graphic Artists Guild, Recording Academy, Songwriters Guild of America, and U.S. Chamber of Commerce. I also want to thank my staff, who worked tireless hours wading through copyright law to ensure we ended up with the best bill possible. And thank you to my colleagues in the House and Senate, particularly Senator DICK DURBIN and our original cosponsors, for supporting this legislation and agreeing to its passage.

PROTECTING LAWFUL STREAMING ACT

Mr. TILLIS. Mr. President, today I want to say a word about the need to revise title 18 so that criminal commercial enterprises that stream pirated content to users are subject to the same felony penalties as criminal commercial enterprises that distribute to users or reproduce pirated content. The provisions of the Protecting Lawful Streaming Act target clearly criminal conduct committed with criminal intent. Lawful internet and streaming services, licensees, other mainstream businesses, and users engaged in ordinary activities do not risk prosecution. Most importantly, businesses engaged in those activities are clearly excluded by the requirements that a defendant be engaged in conduct that is primarily designed, intentionally marketed, or has no commercially significant purpose or use other than for use in illegal streaming. Nor do those engaged in noncommercial activities risk prosecution under this statute. Noncommercial activities are explicitly excluded by the terms of section 2319C(a). It is intended that none of these activities shall be subject to any risk of criminal prosecution under this bill.

More generally, it is well established that criminal penalties are the exception rather than the rule in cases of copyright infringement. As the Department of Justice itself has noted, criminal sanctions are appropriate only with respect to certain types of infringement—generally when infringer knows the infringement is wrong, and when the infringement is particularly serious or the type of case renders civil enforcement by copyright owners especially difficult. As such, criminal prosecution has been and is appropriately reserved for serious forms of large-scale, commercial infringement, not as a means of targeting ordinary business disputes between legitimate companies or those which are otherwise adequately addressed through civil litigation. The new section 2319C, in particular, requires willfulness, which means that the statute does not apply in the absence of an intentional violation of a known legal duty.

Consistent with this, a provider of broadband internet access service would not be subject to prosecution under this statute, for example, based merely on the attributes or features of its service, nor could prosecution be predicated on the misuse of its service by its customers or others in furtherance of an infringement scheme, where the service provider does not itself share the requisite criminal intent of the underlying substantive offense and act with specific intent to further it. In this regard, offering high-speed connections that allow its customers to access the internet, failing to block or disable access to particular online locations, or failing to take measures to restrict the use of or deny its customers access to such service would not be sufficient to demonstrate the requisite criminal intent under the bill. This conduct would also not otherwise meet the prerequisites under the aiding and abetting statute, regardless of whether the broadband internet access service provider might be civilly liable in such circumstances under the differing standards for contributory or vicarious liability.

A person who willfully and for purposes of commercial advantage or private financial gain offers or provides to the public a digital transmission service violates the statute under section 2319C(a)(3) when that person intentionally promotes or directs the promotion of its use in publicly performing works protected under title 17 without the authority of the copyright owner or the law. The language of section 2319C makes clear that it is the offering of an illicit digital transmission service, as defined by section 2319C(a)(1)–(3), that is an offense, not the marketing activities done by or at the direction of a person offering an illicit digital transmission service, as referred to in section 2319C(a)(3). Thus, an entity that provides only commercial online marketing services and does not itself also provide an illicit digital transmission service would not be subject to prosecution under section 2319C(a). Further, it is not the intent of this legislation to create potential aiding and abetting liability for mainstream third party ad networks or marketers. An online marketing services provider could be liable for aiding and abetting an unrelated entity providing unlawful streaming services only where the online marketing services provider shared the same requisite criminal intent of each element of the underlying substantive offense and acted with specific intent to further it. Thus, an online marketing services provider which places an advertisement for an entity that is violating section 2319C(a) would face aiding and abetting liability only if the online marketing services provider was itself associated with the criminal venture of the illicit digital transmission service to such an extent that it shares the criminal intent of the person offering the service and acted with the requisite specific intent to commit or facilitate the underlying offense.

Similarly, a service that streams content uploaded by users would not be subject to prosecution merely because some users might upload infringing content. The service would be subject to criminal liability only if it had the requisite criminal intent and acted with specific intent to further it.

The provisions of this statute also do not apply to any person acting in good faith and with an objectively reasonable basis in law to believe that their conduct is lawful. Thus, a bona fide commercial dispute over the scope or existence of a contract or license governing such conduct or a good-faith dispute regarding whether a particular activity is authorized by the Copyright Act would not provide a basis for prosecution. For example, neither a cloud-based DVR service nor an application provided by a multichannel video programming distributor, MVPD, to enable such MVPD's customers to access its video service utilizing a mobile device, which were the subject of prior civil copyright infringement challenges based on good faith disagreements regarding the scope of rights under the Copyright Act, would be actionable under this provision if the provider offering such services met this standard. By contrast, a party that merely asserts an applicable contract, an exception, or a belief that the person's conduct was lawful, in a case where the assertion is not made in good-faith, is merely a pretense, or is otherwise not based on an objectively reasonable interpretation of the law, would not avoid prosecution on that basis.

The statute provides for an enhanced penalty in section 2319C(b)(2) for someone who knowingly commits an offense in connection with 1 or more works being prepared for commercial public performance. The ''should have known'' standard in section 2319C(b)(2) applies only after a finder of fact determines beyond a reasonable doubt that the person committed an offense under subsection (a). The ''should have known'' standard should not be conflated with the standards of willfulness, not primarily designed, no commercially significant purpose, and intentionality set forth in section 2319C(a), all of which define the underlying offense and are intended to protect lawful internet and streaming services, content licensees, and noncommercial users.

Finally, the statute in section 2319C(d)(3) defines a work being prepared for commercial public performance, based on the definition of ''work being prepared for commercial distribution'' in section 506(a)(3) of the Copyright Act, while updating that definition to account for the challenges of piracy in the modern streaming environment. Section 2319C reflects the