

for use in the administration of State plans for child and spousal support; to the Committee on Finance.

EXECUTIVE AND OTHER COMMUNICATIONS

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

EC-1472. A communication from the Under Secretary of Defense, transmitting, pursuant to law, the report of a violation of the Antideficiency Act, case number 94-16; to the Committee on Appropriations.

EC-1473. A communication from the Deputy Assistant Secretary (Communication, Computers, and Support Systems), the Department of the Air Force, transmitting, notification of a cost comparison; to the Committee on Armed Services.

REPORTS OF COMMITTEES

The following report of committee was submitted on September 27, 1995:

By Mr. HATCH, from the Committee on the Judiciary, without amendment:

S.J. Res. 31: A joint resolution proposing an amendment to the Constitution of the United States to grant Congress and the States the power to prohibit the physical desecration of the flag of the United States (Rept. No. 104-148).

The following report of committee was submitted on September 28, 1995:

By Mr. HATFIELD, from the Committee on Appropriations:

Special Report entitled "Revised Allocation to Subcommittees of Budget Totals from the Concurrent Resolution for Fiscal Year 1996" (Rept. No. 104-149).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

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

By Mr. MACK:

S. 1280. A bill to amend the Internal Revenue Code of 1986 to provide all taxpayers with a 50-percent deduction for capital gains, to index the basis of certain assets, and to allow the capital loss deduction for losses on the sale or exchange of an individual's principal residence; to the Committee on Finance.

By Mr. KERRY (for himself and Mr. KENNEDY):

S. 1281. A bill to authorize the Secretary of Transportation to issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade for the vessel *Sarah-Christen*; to the Committee on Commerce, Science, and Transportation.

S. 1282. A bill to authorize the Secretary of Transportation to issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade for the vessel *Triad*; to the Committee on Commerce, Science, and Transportation.

By Mr. MCCONNELL:

S. 1283. A bill to authorize the Secretary of Agriculture to regulate the commercial transportation of horses for slaughter, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. HATCH (for himself and Mr. LEAHY):

S. 1284. A bill to amend title 17 to adapt the copyright law to the digital, networked environment of the National Information Infrastructure, and for other purposes; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Mr. WARNER (for himself and Mr. FORD):

S. Res. 176. A resolution relating to expenditures for official office expenses; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. KERRY (for himself and Mr. KENNEDY):

S. 1281. A bill to authorize the Secretary of Transportation to issue a certificate of documentation with appropriate endorsement for employment in coastwise trade for the vessel *Sarah-Christen*; to the Committee on Commerce, Science, and Transportation.

JONES ACT WAIVER LEGISLATION

• Mr. KERRY. Mr. President, I am pleased to join my colleague, the distinguished senior Senator from Massachusetts, in introducing a bill to allow the vessel *Sarah-Christen* to be employed in coastwise trade of the United States. This boat has a small passenger capacity, carrying up to 12 passengers in a charter business. The purpose of this bill is to waive those sections of the Jones Act which prohibit foreign-made vessels from operating in coastwise trade. The waiver is necessary because, under the law, a vessel is not considered built in the United States unless all major components of its hull and superstructures are fabricated in the United States, and the vessel is assembled entirely in the United States. This vessel was originally built in a foreign shipyard in 1971, but since then has been owned and operated by American citizens, repaired in American shipyards, and maintained with American products. The owner of the vessel simply wishes to start a small business, a charter boat operation, seasonally taking people out for cruises.

After reviewing the facts in the case of the *Sarah-Christen*, I find that this waiver does not compromise our national readiness in times of national emergency, which is the fundamental purpose of the Jones Act requirement. While I generally support the provisions of the Jones Act, I believe the specific facts in this case warrant a waiver to permit the *Sarah-Christen* to engage in coastwise trade. These include the facts the vessel is more than 20 years old, the owner has invested significant funds in vessel maintenance and restoration in the United States, and the vessel has a relatively small passenger-carrying capacity. I hope and trust the Senate will agree and will speedily approve the bill being introduced today.●

By Mr. KERRY (for himself and Mr. KENNEDY):

S. 1282. A bill to authorize the Secretary of Transportation to issue a certificate of documentation with appropriate endorsement for employment in coastwise trade for the vessel *Triad*; to the Committee on Commerce, Science, and Transportation.

JONES ACT WAIVER LEGISLATION

• Mr. KERRY. Mr. President, I am pleased to join my colleague, the distinguished senior Senator from Massachusetts, in introducing a bill to allow the vessel *Triad* to be employed in coastwise trade of the United States. This boat has a small passenger capacity, carrying up to 6 passengers in a charter business. The purpose of this bill is to waive those sections of the Jones Act which prohibit foreign-made vessels from operating in coastwise trade. The waiver is necessary because, under the law, a vessel is not considered built in the United States unless all major components of its hull and superstructure are fabricated in the United States, and the vessel is assembled entirely in the United States. This vessel was originally built in a foreign shipyard in 1982, but since 1992 it has been owned and operated by American citizens, repaired in American shipyards, and maintained with American products. The owner of the vessel now wishes to start a small business, a charter boat operation, seasonally taking people out for cruises.

After reviewing the facts in the case of the *Triad* I find that this waiver would not compromise our national readiness in times of national emergency, which is the fundamental purpose of the Jones Act requirement. While I generally support the provisions of the Jones Act, I believe the specific facts in this case warrant a waiver to permit the *Triad* to engage in coastwise trade. These include the facts the vessel is more than 10 years old, the owner has invested significant funds in vessel maintenance and restoration in the United States and the vessel has a relatively small passenger-carrying capacity. I hope and trust the Senate will agree and will speedily approve the bill being introduced today.●

By Mr. MCCONNELL:

S. 1283. A bill to authorize the Secretary of Agriculture to regulate the commercial transportation of horses, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

THE HUMANE METHODS OF LIVESTOCK SLAUGHTER ACT AMENDMENTS ACT OF 1995

• Mr. MCCONNELL. Mr. President, last year I introduced legislation amending the Federal Humane Methods of Livestock Slaughter Act to regulate the commercial transportation of horses to slaughter facilities. After considerable discussion and much mail on this important issue, I have made several modifications to the original bill. Today, I am introducing legislation that will provide greater oversight and

integrity concerning the commercial transportation of horses to slaughter facilities.

I am pleased that my bill is supported by the American Horse Council, and the American Horse Protection Association. Other organizations that support this legislation include the American Association of Equine Practitioners, the American Humane Association, the American Society for Prevention of Cruelty to Animals, and the Humane Society of the United States.

Currently, some horses are being transported for long periods in overcrowded conditions without rest, food, or water. Some vehicles used for transport have inadequate headroom and are not intended to transport large animals. Further, some of the horses transported have serious injuries which can be severely aggravated by the journey. This legislation would give the Secretary of Agriculture the authority to correct these practices by regulating those in the business of transporting horses to processing facilities.

I want to make it clear that it is not my intention to either promote or prevent the commercial slaughter of horses. This industry has been in existence for a long time in this country, and I expect that it will continue to operate long into the future. My purpose in this legislation is to protect horses from unduly harsh and unpleasant treatment as they are transported across the country.

Horses occupy a central role in the traditions, history, and economy of Kentucky. Thousands of Kentuckians are employed either directly or indirectly by the horse industry. Horses have been good to Kentucky; and we should try to the maximum practical extent to be good to horses.

This bill would require that horses be rested off the vehicle after 24 hours, with access to food and water. Vehicles used to transport the horses would have to have adequate headroom and interiors free of sharp edges. Transporting vehicles must be maintained in a sanitary condition, offer adequate ventilation and shelter from extremes of heat and cold, be large enough for the number of horses transported, and allow for the position of horses by size, with stallions segregated from other horses. Finally, in order to be transported, horses must be physically fit to travel.

Enforcement of the Act is placed with the U.S. Department of Agriculture, which presently regulates the slaughter process itself under the Humane Methods of Slaughter Act. The Department would be authorized to work with State and local authorities to enforce the provisions of this bill. This bill, while correcting abuses that exist, will not be an excessive burden on the processing facilities, auctions, or the commercial transporters of these horses.

Unlike other livestock, the transportation of horses to processing facilities is often a lengthy process, because

there are fewer facilities that handle horses and they are located in only a few areas. Moreover, not all of them operate on a full-time basis. The result is that the transporting of these animals requires special protection.

There are several States that have passed legislation to regulate the transportation of these horses, but most of the travel is interstate, across wide areas. This is why Federal legislation is needed. The shipment of horses over long distances in inappropriate trailers, without food or water, is unacceptable. This bill would extend Federal regulation to the commercial transport of horses to slaughter and assure the humane and safe conditions of that transport.

I invite all groups that are concerned about these horses to work with me in passing this legislation.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1283

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 "Safe Commercial Transportation of Horses for Slaughter Act of 1995".

SEC. 2. COMMERCIAL TRANSPORTATION OF HORSES FOR SLAUGHTER.

Public Law 85-765 (7 U.S.C. 1901 et seq.) is amended by adding at the end the following:

"TITLE II—COMMERCIAL TRANSPORTATION OF HORSES FOR SLAUGHTER

*****S 14548—Continued S 14548

"SEC. 201. FINDINGS.

"Congress finds that, to ensure that horses sold for slaughter are provided human treatment and care, it is essential to regulate the transportation, care, handling, and treatment of horses by any person engaged in the commercial transportation of horses for slaughter.

"SEC. 202. DEFINITIONS.

"In this title:

"(1) **COMMERCE.**—The term 'commerce' means trade, traffic, transportation, or other commerce—

"(A) between any State, territory, or possession of the United States, or the District of Columbia, and any place outside thereof;

"(B) between points within the same State, territory, or possession of the United States, or the District of Columbia, but through any place outside thereof; or

"(C) within any territory or possession of the United States or the District of Columbia.

"(2) **DEPARTMENT.**—The term 'Department' means the United States Department of Agriculture.

"(3) **EQUINE.**—The term 'equine' includes any member of the Equidae family.

"(4) **FOAL.**—The term 'foal' means a horse that is not more than 6 months of age.

"(5) **HORSE.**—The term 'horse' includes any member of the Equidae family.

"(6) **HORSE FOR SLAUGHTER.**—The term 'horse for slaughter' means any horse that is transported, or intended to be transported, to a slaughter facility or intermediate handler from a sale, auction, or intermediate handler by a person engaged in the business of transporting horses for slaughter.

"(7) **INTERMEDIATE HANDLER.**—The term 'intermediate handler' means any person en-

gaged in the business of receiving custody of horses for slaughter in connection with the transport of the horses to a slaughter facility, including a stockyard, feedlot, or assembly point.

"(8) **PERSON.**—The term 'person' includes any individual, partnership, firm, company, corporation, or association.

"(9) **SECRETARY.**—The term 'Secretary' means the Secretary of Agriculture.

"(10) **VEHICLE.**—The term 'vehicle' means any machine, truck, tractor, trailer, or semitrailer, or any combination thereof, propelled or drawn by mechanical power and used on a highway in the commercial transportation of horses for slaughter.

"(11) **STALLION.**—The term 'stallion' means any uncastrated male horse that is 1 year of age or older.

"SEC. 203. STANDARDS FOR HUMANE COMMERCIAL TRANSPORTATION OF HORSES FOR SLAUGHTER.

"(a) **IN GENERAL.**—Not later than 180 days after the date of enactment of this title, the Secretary shall issue, by regulation, standards for the humane commercial transportation of horses for slaughter.

"(b) **PROHIBITION.**—No person shall transport in commerce, to a slaughter facility or intermediate handler, a horse for slaughter except in accordance with the standards and this title.

"(c) **MINIMUM REQUIREMENTS.**—The standards shall include minimum requirements for the humane handling, care, treatment, and equipment necessary to ensure the safe and humane transportation of horses for slaughter. The standards shall require, at a minimum, that—

"(1) no horse for slaughter shall be transported for more than 24 hours without being unloaded from the vehicle and allowed to rest for at least 8 consecutive hours and given access to adequate quantities of wholesome food and potable water;

"(2) a vehicle shall provide adequate headroom for a horse for slaughter with a minimum of at least 6 feet, 6 inches of headroom from the roof and beams or other structural members overhead to floor underfoot, except that a vehicle transporting 6 horses or less shall provide a minimum of at least 6 feet of headroom from the roof and beams or other structural members overhead to floor underfoot if none of the horses are over 16 hands;

"(3) the interior of a vehicle shall—

"(A) be free of protrusions, sharp edges, and harmful objects;

"(B) have ramps and floors that are adequately covered with a nonskid nonmetallic surface; and

"(C) be maintained in a sanitary condition;

"(4) a vehicle shall—

"(A) provide adequate ventilation and shelter from extremes of weather and temperature for all equine;

"(B) be of appropriate size, height, and interior design for the number of equine being carried to prevent overcrowding; and

"(C) be equipped with doors and ramps of sufficient size and location to provide for safe loading and unloading, including unloading during emergencies;

"(5)(A) horses shall be positioned in the vehicle by size; and

"(B) stallions shall be segregated from other horses;

"(6)(A) all horses for slaughter must be fit to travel as determined by an accredited large animal veterinarian, who shall prepare a certificate of inspection, prior to loading for transport, that—

"(i) states that the horses were inspected and satisfied the requirements of subparagraph (B);

"(ii) includes a clear description of each horse; and

“(iii) is valid for 7 days;

“(B) no horse shall be transported to slaughter if the horse is found to be—

“(i) suffering from a broken or dislocated limb;

“(ii) unable to bear weight on all 4 limbs;

“(iii) blind in both eyes; or

“(iv) obviously suffering from severe illness, injury, lameness, or physical debilitation that would make the horse unable to withstand the stress of transportation;

“(C) no foal may be transported for slaughter;

“(D) no mare in foal that exhibits signs of impending partition may be transported for slaughter; and

“(E) no horse for slaughter shall be accepted by a slaughter facility unless the horse is accompanied by a certificate of inspection issued by an accredited large animal veterinarian, not more than 7 days before the delivery, stating that the veterinarian inspected the horse on a specified date.

“SEC. 204. RECORDS.

“(a) IN GENERAL.—A person engaged in the business of transporting horses for slaughter shall establish and maintain such records, make such reports, and provide such information as the Secretary may, by regulation, require for the purposes of carrying out, or determining compliance with, this subtitle.

“(b) MINIMUM REQUIREMENTS.—The records shall include, at a minimum—

“(1) the veterinary certificate of inspection;

“(2) the names and addresses of current owners and consignors, if applicable, of the horses at the time of sale or consignment to slaughter; and

“(3) the bill of sale or other documentation of sale for each horse.

“(c) AVAILABILITY.—The records shall—

“(1) accompany the horses during transport to slaughter;

“(2) be retained by any person engaged in the business of transporting horses for slaughter for a reasonable period of time, as determined by the Secretary; and

“(3) on request of an officer or employee of the Department, be made available at all reasonable times for inspection and copying by the officer or employee.

“SEC. 205. AGENTS.

“(a) IN GENERAL.—For purposes of this title, the act, omission, or failure of an individual acting for or employed by a person engaged in the business of transporting horses for slaughter, within the scope of the employment or office of the individual, shall be considered the act, omission, or failure of the person engaging in the commercial transportation of horses for slaughter as well as of the individual.

“(b) ASSISTANCE.—If a horse suffers a substantial injury or illness while being transported for slaughter on a vehicle, the driver of the vehicle should seek prompt assistance from a large animal veterinarian.

“SEC. 206. COOPERATIVE AGREEMENTS.

“Not later than 180 days after the date of enactment of this title, the Secretary shall, to the maximum extent practicable, establish cooperative agreements and enter into memoranda of agreement with appropriate Federal and State agencies or political subdivisions of the agencies, including State departments of agriculture, State law enforcement agencies, and foreign governments, to carry out and enforce this title.

“SEC. 207. INVESTIGATIONS AND INSPECTIONS.

“(a) IN GENERAL.—The Secretary shall make such investigations or inspections as the Secretary considers necessary—

“(1) to enforce this title (including any regulation issued under this title); and

“(2) pursuant to information regarding alleged violations of this title provided to the

Secretary by a State official or any other person.

“(b) ACCESS.—For the purposes of conducting an investigation or inspection under subsection (a), the Secretary shall, at all reasonable times, have access to—

“(1) the place of business of any person engaged in the business of transporting horses for slaughter;

“(2) the facilities and vehicles used to transport the horses; and

“(3) records required to be maintained under section 204.

“(c) MINIMUM REQUIREMENT.—An investigation or inspection shall include, at a minimum, an inspection by an employee of the Department of all horses and vehicles carrying horses, on the arrival of the horses and vehicles at the slaughter facility.

“(d) ASSISTANCE TO OR DESTRUCTION OF HORSES.—The Secretary shall issue such regulations as the Secretary considers necessary to permit employees or agents of the Department to—

“(1) provide assistance to any horse that is covered by this title (including any regulation issued under this title); or

“(2) destroy, in a humane manner, any such horse found to be suffering.

“SEC. 208. INTERFERENCE WITH ENFORCEMENT.

“(a) IN GENERAL.—Subject to subsection (b), a person who forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person while engaged in or on account of the performance of an official duty of the person under this title shall be fined not more than \$5,000 or imprisoned not more than 3 years, or both.

“(b) WEAPONS.—If the person uses a deadly or dangerous weapon in connection with an action described in subsection (a), the person shall be fined not more than \$10,000 or imprisoned not more than 10 years, or both.

“SEC. 209. JURISDICTION OF COURTS.

“Except as provided in section 210(a)(5), a district court of the United States in any appropriate judicial district under section 1391 of title 28, United States Court, shall have jurisdiction to specifically enforce this title, to prevent and restrain a violation of this title, and to otherwise enforce this title.

“SEC. 210. CIVIL AND CRIMINAL PENALTIES.

“(a) CIVIL PENALTIES.—

“(1) IN GENERAL.—A person who violates this title (including a regulation or standard issued under this title) shall be assessed a civil penalty by the Secretary of not more than \$2,000 for each violation.

“(2) SEPARATE OFFENSES.—Each horse transported in violation of this title shall constitute a separate offense. Each violation and each day during which a violation continues shall constitute a separate offense.

“(3) HEARINGS.—No penalty shall be assessed under this subsection unless the person who is alleged to have violated this title is given notice and opportunity for a hearing with respect to an alleged violation.

“(4) FINAL ORDER.—An order of the Secretary assessing a penalty under this subsection shall be final and conclusive unless the aggrieved person files an appeal from the order pursuant to paragraph (5).

“(5) APPEALS.—Not later than 30 days after entry of a final order of the Secretary issued pursuant to this subsection, a person aggrieved by the order may seek review of the order in the appropriate United States Court of Appeals. The Court shall have exclusive jurisdiction to enjoin, set aside, suspend (in whole or in part), or to determine the validity of the order.

“(6) NONPAYMENT OF PENALTY.—On a failure to pay the penalty assessed by a final order under this section, the Secretary shall request the Attorney General to institute a civil action in a district court of the United

States or other United States court for any district in which the person is found, resides, or transacts business, to collect the penalty. The court shall have jurisdiction to hear and decide the action.

“(b) CRIMINAL PENALTIES.—

“(1) FIRST OFFENSE.—Subject to paragraph (2), a person who knowingly violates this title (or a regulation or standard issued under this title) shall, on conviction of the violation, be subject to imprisonment for not more than 1 year or a fine of not more than \$2,000, or both.

“(2) SUBSEQUENT OFFENSES.—On conviction of a second or subsequent offense described in paragraph (1), a person shall be subject to imprisonment for not more than 3 years or to a fine of not more than \$5,000, or both.

“SEC. 211. PAYMENTS FOR TEMPORARY OR MEDICAL ASSISTANCE FOR HORSES DUE TO VIOLATIONS.

“From sums received as penalties, fines, or forfeitures of property for any violation of this title (including a regulation issued under this title), the Secretary shall pay the reasonable and necessary costs incurred by any person in providing temporary care or medical assistance for any horse that needs the care or assistance due to a violation of this title.

“SEC. 212. RELATIONSHIP TO STATE LAW.

“Nothing in this title prevents a State from enacting or enforcing any law (including a regulation) that is not inconsistent with this title or that is more restrictive than this title.

“SEC. 213. AUTHORIZATION OF APPROPRIATIONS.

“There is authorized to be appropriated for each fiscal year such sums as are necessary to carry out this title.”

SEC. 3. CONFORMING AMENDMENTS.

(a) The first section of Public Law 85-765 (7 U.S.C. 1901) is amended by striking “That the Congress” and inserting the following:

“SEC. 1. SHORT TITLE.

“This Act may be cited as the ‘Federal Humane Methods of Livestock Slaughter Act’.

“TITLE I—HUMANE METHODS OF LIVESTOCK SLAUGHTER

“SEC. 101. FINDINGS AND DECLARATION OF POLICY.

“Congress”.

(b) Section 2 of the Federal Humane Methods of Livestock Slaughter Act (7 U.S.C. 1902) is amended by striking “SEC. 2. No” and inserting the following:

“SEC. 102. HUMANE METHODS.

“No”.

(c) Section 4 of the Act (7 U.S.C. 1904) is amended by striking “SEC. 4. In” and inserting the following:

“SEC. 103. METHODS RESEARCH.

“In”.

(d) Section 6 of the Act (7 U.S.C. 1906) is amended by striking “SEC. 6. Nothing” and inserting the following:

“SEC. 104. EXEMPTION OF RITUAL SLAUGHTER.

“Nothing”.

SEC. 4. EFFECTIVE DATE.

(a) IN GENERAL.—This Act and the amendments made by this Act shall become effective 180 days after the date of enactment of this Act.

(b) REGULATIONS.—As soon as practicable, but not later than 180 days after the date of enactment of this Act, the Secretary of Agriculture shall issue such regulations as the Secretary determines are necessary to implement this Act and the amendments made by this Act.

(c) COMPLIANCE.—A person shall be required to comply with—

(1) sections 203 and 204 of the Federal Humane Methods of Livestock Slaughter Act (as added by section 2) beginning on the date

that is 180 days after the date of enactment of this Act; and

(2) other sections of title II of the Act beginning on the date that is 90 days after the Secretary issues final regulations under subsection (b).•

By Mr. HATCH (for himself and Mr. LEAHY):

S. 1284. A bill to amend title 17 to adapt the copyright to the digital, networked environment of the National Information Infrastructure, and for other purposes; to the Committee on the Judiciary.

THE NATIONAL INFORMATION INFRASTRUCTURE
COPYRIGHT PROTECTION ACT

Mr. HATCH. Mr. President, today, together with my distinguished colleague from Vermont, Senator LEAHY, I am introducing the National Information Infrastructure Copyright Protection Act of 1995, which amends the Copyright Act to bring it up to date with the digital communications age.

The National Information Infrastructure or "NII" is a fancy name for what is popularly known as the "information highway." Probably most people today experience the information highway by means of their computers when they use electronic mail or subscribe to a bulletin board service or use other on-line services. But these existing services are only dirt roads compared to the superhighway of information-sharing which lies ahead.

The NII of the future will link not only computers, but also telephones, televisions, radios, fax machines, and more into an advanced, high-speed, interactive, broadband, digital communications system. Over this information superhighway, data, text, voice, sound, and images will travel, and their digital format will permit them not only to be viewed or heard, but also to be copied and manipulated. The digital format will also ensure that copies will be perfect reproductions, without the degradation that normally occurs today when audio and videotapes are copied.

The NII has tremendous potential to improve and enhance our lives, by providing quick, economical, and high-quality access to information that educates and entertains as well as informs. When linked up to a "Global Information Infrastructure," the NII will broaden our cultural experiences, and allow American products to be more widely disseminated.

Highways, of course, are meant to be used, and in order to be used, they must be safe. That's why we have "rules of the road" on our asphalt highways and that's why we need rules for our digital highway. No manufacturer would ship his or her goods on a highway if his trucks were routinely hijacked and his or her goods plundered. Likewise, no producer of intellectual property will place his or her works on the information superhighway if they are routinely pirated. We might end up having enormous access to very little information, unless we can protect property rights in intel-

lectual works. The piracy problem is particularly acute in the digital age where perfect copies can be made quickly and cheaply.

Protecting the property rights of the owners of intellectual property not only induces them to make their products available, it also encourages the creation of new products. Our copyright laws are based on the conviction that creativity increases when authors can reap benefits of their creative activity.

But the NII also promises to increase creativity in a more dramatic way by providing individual creators with public distribution of their works outside traditional channels. For example, authors who have been unsuccessful in finding a publisher will be able to distribute their works themselves to great numbers of people at very low cost.

The bill that I am introducing today begins the process of designing the rules of the road for the information superhighway. It was drafted by the Working Group on Intellectual Property Rights of the Information Infrastructure Task Force. Chaired by the Honorable Bruce A. Lehman, Assistant Secretary of Commerce and Commissioner of Patents and Trademarks, the Working Group labored for 2 years examining the intellectual property implications of the NII to determine if changes were necessary to intellectual property law and to recommend appropriate statutory language.

The Working Group drew upon the expertise of 26 departments and agencies of the Federal Government; it heard the testimony of 30 witnesses and received some 70 written statements from all interested parties. On July 7, 1994, it produced a preliminary draft ("Green Paper"), which opened another period of extensive testimony and comment. The Final Report, containing a draft of the legislation that I am introducing today, was unveiled on September 5, 1995.

The length and scope of the Working Group's investigation would alone command its recommendations to serious attention, but I have also studied the legislation and find it an excellent basis for the Committee on the Judiciary to begin its own examination of the issues with a view to fine-tuning the solutions proposed by the Working Group.

The bill deals with five major areas:

- (1) transmission of copies,
- (2) exemptions for libraries and the visually impaired,
- (3) copyright protection systems,
- (4) copyright management information, and
- (5) remedies.

In general, the bill provides as follows:

Transmission of Copies. The bill makes clear that the right of public distribution in the Copyright Act applies to transmission of copies and phonorecords of copyrighted works. For example, this means that transmitting a copy of a computer program

from one computer to ten other computers without permission of the copyright owner would ordinarily be an infringement.

Exemptions for Libraries and the Visually Impaired. The bill amends the current exemption for libraries to allow the preparation of three copies of works in digital format, and it authorizes the making of a limited number of digital copies by libraries and archives for purposes of preservation.

The bill adds a new exemption for non-profit organizations to reproduce and distribute to the visually impaired—at cost—Braille, large type, audio or other editions of previously published literary works, provided that the owner of the exclusive right to distribute the work in the United States has not entered the market for such editions during the first year following first publication.

Copyright Protection Systems. The bill adds a new section which prohibits the importation, manufacture or distribution of any device or product, or the provision of any service, the primary purpose or effect of which is to deactivate any technological protections which prevent or inhibit the violation of exclusive rights under the copyright law.

Copyright Management Information. "Copyright management information" is information that identifies the author of the work, the copyright owner, the terms and conditions for uses of the work, and other information that the Register of Copyrights may prescribe. The bill prohibits the dissemination of copyright management information known to be false and the unauthorized removal or alteration of copyright management information.

Remedies. The bill provides for civil penalties for circumvention of copyright protection systems and for tampering with copyright management information, including injunction, impoundment, actual or statutory damages, costs, attorney's fees, and the modification or destruction of products and devices.

The bill provides criminal penalties for tampering with copyright management information—a fine of not more than \$500,000 or imprisonment of not more than 5 years or both.

There is widespread support for the general thrust of the bill among interested parties. However, during the hearing process, I am sure that issues will arise that no one has yet anticipated. Already, some potential discussion points have been identified: the scope of the library exemption and the exemption for the visually impaired, the absence of criminal penalties for circumvention of copyright protection systems, the use of encryption as a copyright protection system, the application of the doctrine of fair use, the development of efficient licensing models, and the liability of on-line service providers.

In the interest of time, it may be that fuller discussion and solution may

have to be deferred for those points not covered expressly in the bill. The fully commercial information superhighway is not yet here, and we must resign ourselves to a period of experimentation. We want to be on the cutting edge, not the bleeding edge of new technology.

Once again, I would like to commend the Working Group on Intellectual Property Rights of the Information Infrastructure Task Force for providing an excellent model for us to work with. I also recommend to all interested parties that they read the full report of the Working Group. Without endorsing any of the specific language of that report, I believe that it provides useful background material for the recommended changes.

In conclusion, Mr. President, I would like to thank my colleague from Vermont, Senator LEAHY, for joining me in introducing this important legislation.

Mr. President, I ask unanimous consent that a copy of this bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1284

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 "NII Copyright Protection Act of 1995".

SEC. 2. TRANSMISSION OF COPIES.

(a) DISTRIBUTION.—Section 106(3) of title 17, United States Code, is amended by striking "or by rental, lease, or lending" and inserting "by rental, lease, or lending, or by transmission".

(b) DEFINITIONS.—Section 101 of title 17, United States Code, is amended—

(1) in the definition of "publication" by striking "or by rental, lease, or lending" in the first sentence and insert "by rental, lease, or lending, or by transmission"; and

(2) in the definition of "transmit" by inserting at the end thereof the following: "To 'transmit' a reproduction is to distribute it by any device or process whereby a copy or phonorecord of the work is fixed beyond the place from which it was sent."

(c) IMPORTATION.—Section 602 of title 17, United States Code, is amended by inserting "whether by carriage of tangible goods or by transmission," after "Importation into the United States,".

SEC. 3. EXEMPTIONS FOR LIBRARIES AND THE VISUALLY IMPAIRED.

(a) LIBRARIES.—Section 108 of title 17, United States Code, is amended—

(1) in subsection (a) by deleting "one copy or phonorecord" and inserting in lieu thereof "three copies or phonorecords";

(2) in subsection (a) by deleting "such copy or phonorecord" and inserting in lieu thereof "no more than one of such copies or phonorecords";

(3) by inserting at the end of subsection (a)(3) "if such notice appears on the copy or phonorecord that is reproduced under the provisions of this section";

(4) in subsection (b) by inserting "or digital" after "facsimile" and by inserting "in facsimile form" before "for deposit for research use"; and

(5) in subsection (c) by inserting "or digital" after "facsimile".

(b) VISUALLY IMPAIRED.—Title 17, United States Code, is amended by adding the following new section:

"§ 108A. Limitations on exclusive rights: Reproduction for the Visually Impaired

"Notwithstanding the provision of section 106, it is not an infringement of copyright for a non-profit organization to reproduce and distribute to the visually impaired, at cost, a Braille, large type, audio or other edition of a previously published literary work in a form intended to be perceived by the visually impaired, provided that, during a period of at least one year after the first publication of a standard edition of such work in the United States, the owner of the exclusive right to distribute such work in the United States has not entered the market for editions intended to be perceived by the visually impaired."

SEC. 4. COPYRIGHT PROTECTION SYSTEMS AND COPYRIGHT MANAGEMENT INFORMATION.

Title 17, United States Code, is amended by adding the following new chapter:

"CHAPTER 12.—COPYRIGHT PROTECTION AND MANAGEMENT SYSTEMS

"Sec.

"1201. Circumvention of Copyright Protection Systems

"1202. Integrity of Copyright Management Information

"1203. Civil Remedies

"1204. Criminal Offenses and Penalties

§ 1201. Circumvention of Copyright Protection Systems

"No person shall import, manufacture or distribute any device, product, or component incorporated into a device or product, or offer or perform any service, the primary purpose or effect of which is to avoid, bypass, remove, deactivate, or otherwise circumvent, without the authority of the copyright owner or the law, any process, treatment, mechanism or system which prevents or inhibits the violation of any of the exclusive rights of the copyright owner under section 106.

§ 1202. Integrity of Copyright Management Information

"(a) FALSE COPYRIGHT MANAGEMENT INFORMATION.—No person shall knowingly provide copyright management information that is false, or knowingly publicly distribute or import for public distribution copyright management information that is false.

"(b) REMOVAL OR ALTERATION OF COPYRIGHT MANAGEMENT INFORMATION.—No person shall, without authority of the copyright owner or the law, (i) knowingly remove or alter any copyright management information, (ii) knowingly distribute or import for distribution copyright management information that has been altered without authority of the copyright owner or the law, or (iii) knowingly distribute or import for distribution copies or phonorecords from which copyright management information has been removed without authority of the copyright owner or the law.

"(c) DEFINITION.—As used in this chapter, "copyright management information" means the name and other identifying information of the author of a work, the name and other identifying information of the copyright owner, terms and conditions for uses of the work, and such other information as the Register of Copyrights may prescribe by regulation.

§ 1203. Civil Remedies

"(a) CIVIL ACTIONS.—Any person injured by a violation of Sec. 1201 or 1202 may bring a civil action in an appropriate United States district court for such violation.

"(b) POWERS OF THE COURT.—In an action brought under subsection (a), the court—

"(1) may grant temporary and permanent injunctions on such terms as it deems reasonable to prevent or restrain a violation;

"(2) at any time while an action is pending, may order the impounding, on such terms as it deems reasonable, of any device or product that is in the custody or control of the alleged violator and that the court has reasonable cause to believe was involved in a violation;

"(3) may award damages under subsection (c);

"(4) in its discretion may allow the recovery of costs by or against any party other than the United States or an officer thereof;

"(5) in its discretion may award reasonable attorney's fees to the prevailing party; and

"(6) may, as part of a final judgment or decree finding a violation, order the remedial modification or the destruction of any device or product involved in the violation that is in the custody or control of the violator or has been impounded under subsection (2).

"(c) AWARDS OF DAMAGES.—

"(1) IN GENERAL.—Except as otherwise provided in this chapter, a violator is liable for either (i) the actual damages and any additional profits of the violator, as provided by subsection (2) or (ii) statutory damages, as provided by subsection (3).

"(2) ACTUAL DAMAGES.—The court shall award to the complaining party the actual damages suffered by him or her as a result of the violation, and any profits of the violator that are attributable to the violation and are not taken into account in computing the actual damages, if the complaining party elects such damages at any time before final judgment is entered.

"(3) STATUTORY DAMAGES.—

"(A) At any time before final judgment is entered, a complaining party may elect to recover an award of statutory damages for each violation of section 1201 in the sum of not less than \$200 or more than \$2,500 per device, product, offer or performance of service, as the court considers just.

"(B) At any time before final judgment is entered, a complaining party may elect to recover an award of statutory damages for each violation of section 1202 in the sum of not less than \$2,500 or more than \$25,000.

"(4) REPEATED VIOLATIONS.—In any case in which the injured party sustains the burden of proving, and the court finds, that a person has violated section 1201 or 1202 within three years after a final judgment was entered against that person for another such violation, the court may increase the award of damages up to triple the amount that would otherwise be awarded, as the court considers just.

"(5) INNOCENT VIOLATIONS.—The court in its discretion may reduce or remit altogether the total award of damages in any case in which the violator sustains the burden of proving, and the court finds, that the violator was not aware and had no reason to believe that its acts constituted a violation.

§ 1204. Criminal Offenses and Penalties

"Any person who violates section 1202 with intent to defraud shall be fined not more than \$500,000 or imprisoned for not more than 5 years, or both."

SEC. 5. CONFORMING AMENDMENTS.

(a) TABLE OF SECTIONS.—The table of sections for chapter 1 of title 17, United States Code, is amended by inserting after the item relating to section 108 the following:

"108A. Limitations on exclusive rights: Reproduction for the Visually Impaired."

(b) TABLE OF CHAPTERS.—The table of chapters for title 17, United States Code, is amended by adding at the end the following:

"12. COPYRIGHT PROTECTION AND MANAGEMENT SYSTEMS. 1201".

SEC. 6. EFFECTIVE DATE.

This Act, and the amendments made by this Act, shall take effect on the date of the enactment of this Act.

Mr. LEAHY. Mr. President, I join today in the introduction of the "NII Copyright Protection Act." This bill reflects the effort of the Working Group on Intellectual Property Rights, chaired by Assistant Secretary of Commerce and Commissioner of Patents and Trademarks Bruce A. Lehman. The Working Group included key Federal agencies in consultation with the private sector, public interest groups and State and local governments. Its examination of the intellectual property implications of the National Information Infrastructure forms a critical component of the Information Infrastructure Task Force, created in early 1993 by President Clinton and Vice President Gore.

This legislative proposal confronts fundamental questions about the role of copyright in the next century. On July 7, 1995, the Working Group released its preliminary draft report. Following additional hearings, public comment and consultation, the Administration released its long-awaited "White Paper," or final report, on copyright protection in the digital, electronic information age on September 5, 1995. This 238-page report, "Intellectual Property and the National Information Infrastructure," culminates in legislative recommendations that are incorporated in this bill. This bill takes important steps toward answering questions about the structure of copyright protection for decades to come.

Increasing the accessibility to computer networks is of vital importance to our Nation's continued economic health and growth. Computers have already been integrated into virtually everything we do from getting cash at bank ATMs, paying for our groceries at the local market, and sending e-mail messages to friends, to making a simple telephone call that is directed by the telephone companies' computers.

Our dependence on computers only grows. Businesses both large and small depend on computers to communicate, manage and improve their delivery of goods and services. In fact, small businesses can use computers successfully to keep up with their bigger competitors.

We have to make sure that all of us feel as comfortable with using computers as we did, in my youth, using a typewriter. We have to make sure that we appreciate all the advantages that networked communities, such as the Internet, have to offer. Computer networks will increasingly become the means of transmitting copyrighted works in the years ahead. This presents great opportunities but also poses significant risks to authors and our copyright industries.

I believe that we can legislate in ways that promote the use of the Internet, both by content providers and

users. We must and will update our copyright laws to protect the intellectual property rights of creative works available online. The future growth of computer networks like the Internet and of digital, electronic communications requires it. Otherwise, owners of intellectual property will be unwilling to put their material online. If there is no content worth reading online, the growth of this medium will be stifled, and public accessibility will be retarded.

The Report of the Working Group on Intellectual Property Rights put it this way:

Thus, the full potential of the NII will not be realized if the education, information and entertainment products protected by intellectual property laws are not protected effectively when disseminated via the NII. Creators and other owners of intellectual property will not be willing to put their interests at risk if appropriate systems—both in the U.S. and internationally—are not in place to permit them to set and enforce the terms and conditions under which their works are made available in the NII environment. Likewise, the public will not use the services available on the NII and generate the market necessary for its success unless a wide variety of works are available under equitable and reasonable terms and conditions, and the integrity of those works is assured. All the computers, telephones, fax machines, scanners, cameras, keyboards, televisions, monitors, printers, switches, routers, wires, cables, networks, and satellites in the world will not create a successful NII, if there is no content. What will drive the NII is the content moving through it.

The emergence of the computer networks forming the backbone of the National Information Infrastructure in this country and the Global Information Infrastructure worldwide hold enormous promise. They also present an enormous challenge to those of us in government and in the private sector to make sure it is accessible and affordable to all.

I support a balanced approach to digital communications and have already proposed a series of other bills to foster the continued growth of electronic communications while encouraging creativity. Together with this NII Copyright Protection Act, they will go a long way toward creating an environment for growth of digital networks.

When we consider information providers we cannot leave out the Federal Government. Government databases hold vast amounts of information that is not restricted by copyright and is legally required by the Freedom of Information Act to be available to the public, who paid for its collection. Earlier this year I introduced, along with Senators Hank BROWN and John KERRY, the "Electronic Freedom of Information Improvement Act of 1995," S.1090, to require federal agencies to make more information available in electronic form and online so that it can be readily accessible to students and scholars doing research, companies who need the data for business purposes or simply curious members of the public.

Government ought to be using technology to make itself more accountable and government information more accessible to the public. Individual Federal agencies are already contributing to the development of the much heralded National Information Infrastructure by using technology to make Government information more easily accessible to our citizens. For example, the Internet Multicasting Service [IMS] now posts massive government data archives, including the Securities and Exchange Commission EDGAR database and the U.S. Patent and Trademark Office database on the Internet free of charge. Similarly, FedWorld, a bulletin board available on the Internet, provides a gateway to more than 60 Federal agencies.

The Electronic Freedom of Information Improvement Act would contribute to that information flow by increasing online access to Government information, including agency regulations, opinions, and policy statements, and FOIA-released records that are the subject of repeated requests. This bill passed the Senate in the last Congress and I hope to see it through both Houses of this Congress.

Our increasing reliance on networked computers for business and socializing also makes us more vulnerable to hackers and computer criminals. Anyone who has had to deal with the aftermath of a computer virus knows what havoc can be. Having previously been active in legislation to prevent computer crime and abuse, I have this year introduced the National Information Infrastructure Protection Act, S.982, with Senators KYL and GRASSLEY to increase protection for both government and private computers, and the information on those computers, from the growing threat of computer crime. This bill would increase protection against computer thieves, hackers and blackmailers and protecting computer systems used in interstate and foreign commerce and communications from destructive activity. It also serves to increase personal privacy, a matter on which I feel most strongly.

Finally, I note my recent introduction with Senator FEINGOLD of the Criminal Copyright Improvement Act of 1995, S.1122. This bill is designed to close a significant loophole in our copyright law and encourage the continued growth of the NII by insuring better protection of the creative works available online.

Under current law, a defendant's willful copyright infringement must be for purposes of commercial advantage or private financial gain to be the subject of criminal prosecution. As exemplified by the recent case of *United States v. LaMacchia*, this presents an enormous loophole in criminal liability for willful infringers who can use digital technology to make exact copies of copyrighted software or other digitally encoded works, and then use computer networks for quick, inexpensive and

mass distribution of pirated, infringing works.

The Report of the Working Group recognizes that the LaMacchia case demonstrates that the current law is insufficient to prevent flagrant copyright violations in the NII context and generally supports the amendments to the copyright law and the criminal law (which sets out sanctions for criminal copyright violations) set forth in S.1122, introduced in the 104th Congress by Senators LEAHY and FEINGOLD following consultations with the Justice Department. This increasingly important problem must be solved and the Criminal Copyright Improvement Act, S.1122, is a necessary component of the legal changes we need to adapt to the emerging digital environment.

Today I join in sponsoring a bill that will help update our copyright law to the emerging electronic and digital age by revising basic copyright law definitions to take electronic transmissions into account. Further it endorses the use of copyright protection systems so that we may take fullest advantage of the technological developments that can be used to protect copyright and provide incentives for creativity. The bill provides graduated civil and criminal remedies for the circumvention of copyright protection systems through the use of false copyright management information.

Finally, it suggests certain limited exemptions for libraries and the visually impaired. In this bill and others we need carefully to construct the proper balance that will respect copyright, encourage and reward creativity and serve the needs of public access to works.

I believe that technological developments, such as the development of the Internet and remote computer information databases, are leading to important advancements in accessibility and affordability of information and entertainment services. We see opportunities to break through barriers previously facing those living in rural settings and those with physical disabilities. Democratic values can be served by making more information and services available.

The public interest requires the consideration and balancing of such interests. In the area of creative rights that balance has rested on encouraging creativity by ensuring rights that reward it while encouraging its public performance, distribution and display.

The Constitution speaks in terms of promoting the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries. Technological developments and the emergence of the Global Information Infrastructure hold enormous promise and opportunity for creators, artists, copyright industries and the public. There are methods of distribution emerging that dramatically affect the role of copyright and the accessibility of art, literature,

music, film and information to all Americans.

I was pleased to work with Chairman HATCH, Senator THURMOND, Senator FEINSTEIN, Senator THOMPSON and others earlier this year to craft a bill creating a performance right in sound recordings, a matter that had been a source of contention for more than 20 years. That bill, The Digital Performance Rights in Sound Recordings Act of 1995, S.227, deals with digital transmissions, has already passed the Senate and should soon be the law of the land.

Senator HATCH and I have also previously joined to cosponsor the Anticounterfeiting Consumer Protection Act of 1995, S.1136, to add law enforcement tools against counterfeit goods and to protect the important intellectual property rights associated with trademarks. I anticipate prompt hearings on that important measure and its enactment this Congress.

I look forward to working with Chairman HATCH, the Chairman of the Judiciary, and others to adapt our copyright laws to the needs of the NII and the global information society, as well. The amendment of our copyright laws is an important and essential effort, one that merits our time and attention. I hope and trust that we will soon begin hearings on this important measure so that we may be sure to understand its likely impact both domestically and internationally. We must carefully balance the authors' interest in protection along with the public's interest in the accessibility of information.

Ours is a time of unprecedented challenge to copyright protection. Copyright has been the engine that has traditionally converted the energy of artistic creativity into publicly available arts and entertainment. Historically, Government's role has been to encourage creativity and innovation by protecting copyrights that create incentives for the dissemination to the public of new works and forms of expression. That is the tradition that I intend to continue in this bill, the NII Copyright Protection Act of 1995.

ADDITIONAL COSPONSORS

S. 44

At the request of Mr. MACK, his name was added as a cosponsor of S. 44, a bill to amend title 4 of the United States Code to limit State taxation of certain pension income.

At the request of Mr. REID, the names of the Senator from Alaska [Mr. MURKOWSKI], the Senator from Idaho [Mr. CRAIG], and the Senator from Utah [Mr. BENNETT] were added as cosponsors of S. 44, supra.

S. 112

At the request of Mr. DASCHLE, the name of the Senator from South Carolina [Mr. HOLLINGS] was added as a cosponsor of S. 112, a bill to amend the Internal Revenue Code of 1986 with re-

spect to the treatment of certain amounts received by a cooperative telephone company.

S. 704

At the request of Mr. SIMON, the name of the Senator from Washington [Mr. GORTON] was added as a cosponsor of S. 704, a bill to establish the Gambling Impact Study Commission.

S. 771

At the request of Mr. PRYOR, the name of the Senator from Utah [Mr. HATCH] was added as a cosponsor of S. 771, a bill to provide that certain Federal property shall be made available to States for State use before being made available to other entities, and for other purposes.

S. 960

At the request of Mr. SANTORUM, the name of the Senator from North Carolina [Mr. FAIRCLOTH] was added as a cosponsor of S. 960, a bill to amend title 18, United States Code, to exempt qualified current and former law enforcement officers from State laws prohibiting the carrying of concealed handguns, and for other purposes.

S. 1049

At the request of Mr. HEFLIN, the name of the Senator from Alabama [Mr. SHELBY] was added as a cosponsor of S. 1049, a bill to amend the National Trails Systems Act to designate the route from Selma to Montgomery as a National Historic Trail, and for other purposes.

S. 1086

At the request of Mr. MACK, his name was added as a cosponsor of S. 1086, a bill to amend the Internal Revenue Code of 1986 to allow a family-owned business exclusion from the gross estate subject to estate tax, and for other purposes.

At the request of Mr. DOLE, the name of the Senator from Tennessee [Mr. FRIST] was added as a cosponsor of S. 1086, supra.

S. 1088

At the request of Mr. COHEN, the names of the Senator from Arkansas [Mr. PRYOR], the Senator from New Jersey [Mr. BRADLEY], and the Senator from Louisiana [Mr. JOHNSTON] were added as cosponsors of S. 1088, a bill to provide for enhanced penalties for health care fraud, and for other purposes.

S. 1144

At the request of Mr. MURKOWSKI, the name of the Senator from Montana [Mr. BURNS] was added as a cosponsor of S. 1144, a bill to reform and enhance the management of the National Park System, and for other purposes.

S. 1166

At the request of Mr. LUGAR, the names of the Senator from Florida [Mr. MACK] and the Senator from Oregon [Mr. PACKWOOD] were added as cosponsors of S. 1166, a bill to amend the Federal Insecticide, Fungicide, and Rodenticide Act, to improve the registration of pesticides, to provide minor use crop protection, to improve