relates. The arbitration award shall be unenforceable until such notice is given. Nothing in this subsection shall preclude the Administrator from determining whether a design is subject to registration in a cancellation proceeding under section 1413(c).

§ 1422. Injunctions

''(a) IN GENERAL.—A court having jurisdiction over actions under this chapter may grant injunctions in accordance with the principles of equity to prevent infringement of a design under this chapter, including, in its discretion, prompt relief by temporary restraining orders and preliminary injunctions.

''(b) DAMAGES FOR INJUNCTIVE RELIEF WRONGFULLY OBTAINED.—A seller or distributor who suffers damage by reason of injunctive relief wrongfully obtained under this section has a cause of action against the applicant for such injunctive relief and may recover such relief as may be appropriate, including damages for lost profits, cost of materials, loss of good will, and punitive damages in instances where the injunctive relief was sought in bad faith, and, unless the court finds extenuating circumstances, reasonable attorney's fees.

''§ 1423. Recovery for infringement

''(a) DAMAGES.—Upon a finding for the claimant in an action for infringement under this chapter, the court shall award the claimant damages adequate to compensate for the infringement. In addition, the court may increase the damages to such amount, not exceeding $50,000 or $1 per copy, whichever is greater, as the court determines to be just. The damages awarded shall constitute compensation and not a penalty. The court may receive expert testimony as an aid to the determination of damages.

''(b) INFRINGER'S PROFITS.—As an alternative to the remedies provided in subsection (a), the court may award the claimant the infringer's profits resulting from the sale of the copies if the court finds that the infringer's sales are reasonably related to the use of the claimant's design. In such a case, the claimant shall be required to prove only the amount of the infringer's sales and the infringer shall be required to prove its expenses against such sales.

''(c) STATUTE OF LIMITATIONS.—No recovery under subsection (a) or (b) shall be had for any infringement committed more than 3 years before the date on which the complaint is filed.

''(d) ATTORNEY'S FEES.—In an action for infringement under this chapter, the court may award reasonable attorney's fees to the prevailing party.

''(e) DISPOSITION OF INFRINGING AND OTHER ARTICLES.—The court may order that all infringing articles, and any plates, molds, patterns, models, or other means specifically adapted for making the articles, be delivered up for destruction or other disposition as the court may direct.

''§ 1424. Power of court over registration

''In any action involving the protection of a design under this chapter, the court, when appropriate, may order registration of a design under this chapter or the cancellation of such a registration. Any such order shall be certified by the court to the Administrator, who shall make an appropriate entry upon the record.

''§ 1425. Liability for action on registration fraudulently obtained

''Any person who brings an action for infringement knowing that registration of the design was obtained by a false or fraudulent representation materially affecting the rights under this chapter, shall be liable in the sum of $10,000, or such part of that amount as the court may determine. That amount shall be to compensate the defendant and shall be charged against the plaintiff and paid to the defendant, in addition to such costs and attorney's fees of the defendant as may be assessed by the court.

''§ 1426. Penalty for false marking

''(a) IN GENERAL.—Whoever, for the purpose of deceiving the public, marks upon, applies to, or uses in advertising in connection with an article made, used, distributed, or sold, a design which is not protected under this chapter, a design notice specified in section 1406, or any other words or symbols importing that the design is protected under this chapter, knowing that the design is not so protected, shall pay a civil fine of not more than $500 for each such offense.

''(b) SUIT BY PRIVATE PERSONS.—Any person may sue for the penalty established by subsection (a), in which event one-half of the penalty shall be awarded to the person suing and the remainder shall be awarded to the United States.

''§ 1427. Penalty for false representation

''Whoever knowingly makes a false representation materially affecting the rights obtainable under this chapter for the purpose of obtaining registration of a design under this chapter shall pay a penalty of not less than $500 and not more than $1,000, and any rights or privileges that individual may have in the design under this chapter shall be forfeited.

''§ 1428. Enforcement by Treasury and Postal Service

''(a) REGULATIONS.—The Secretary of the Treasury and the United States Postal Service shall separately or jointly issue regulations for the enforcement of the rights set forth in section 1408 with respect to importation. Such regulations may require, as a condition for the exclusion of articles from the United States, that the person seeking exclusion take any one or more of the following actions:

''(1) Obtain a court order enjoining, or an order of the International Trade Commission under section 337 of the Tariff Act of 1930 excluding, importation of the articles.

''(2) Furnish proof that the design involved is protected under this chapter and that the importation of the articles would infringe the rights in the design under this chapter.

''(3) Post a surety bond for any injury that may result if the detention or exclusion of the articles proves to be unjustified.

''(b) SEIZURE AND FORFEITURE.—Articles imported in violation of the rights set forth in section 1408 are subject to seizure and forfeiture in the same manner as property imported in violation of the customs laws. Any such forfeited articles shall be destroyed as directed by the Secretary of the Treasury or the court, as the case may be, except that the articles may be returned to the country of export whenever it is shown to the satisfaction of the Secretary of the Treasury that the importer had no reasonable grounds for believing that his or her acts constituted a violation of the law.

''§ 1429. Relation to design patent law

''The issuance of a design patent under title 35 for an original design for an article of manufacture shall terminate any protection of the original design under this chapter.

''§ 1430. Common law and other rights unaffected

''Nothing in this chapter shall annul or limit—

''(1) common law or other rights or remedies, if any, available to or held by any person with respect to a design which has not been registered under this chapter; or

''(2) any right under the trademark laws or any right protected against unfair competition.

''§ 1431. Administrator; Office of the Administrator

''In this chapter, the 'Administrator' is the Register of Copyrights, and the 'Office of the Administrator' and the 'Office' refer to the Copyright Office of the Library of Congress.

''§ 1432. No retroactive effect

''Protection under this chapter shall not be available for any design that has been made public under section 1410(b) before the effective date of this chapter.''.

SEC. 603. CONFORMING AMENDMENTS.

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

''14. Protection of Original Designs .... 1401''.

(b) JURISDICTION OF DISTRICT COURTS OVER DESIGN ACTIONS.—(1) Section 1338(c) of title 28, United States Code, is amended by inserting '', and to exclusive rights in designs under chapter 14 of title 17,'' after ''title 17''.

(2)(A) The section heading for section 1338 of title 28, United States Code, is amended by inserting ''**designs,**'' after ''**mask works,**''.

(B) The item relating to section 1338 in the table of sections at the beginning of chapter 85 of title 28, United States Code, is amended by inserting ''designs,'' after ''mask works,''.

(c) PLACE FOR BRINGING DESIGN ACTIONS.—Section 1400(a) of title 28, United States Code, is amended by inserting ''or designs'' after ''mask works''.

(d) ACTIONS AGAINST THE UNITED STATES.—Section 1498(e) of title 28, United States Code, is amended by inserting '', and to exclusive rights in designs under chapter 14 of title 17,'' after ''title 17''.

SEC. 604. EFFECTIVE DATE.

The amendments made by sections 602 and 603 shall take effect one year after the date of the enactment of this Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from North Carolina (Mr. COBLE) and the gentleman from Massachusetts (Mr. FRANK) each will control 20 minutes.

The Chair recognizes the gentleman from North Carolina (Mr. COBLE).

GENERAL LEAVE

Mr. COBLE. Madam Speaker, I ask unanimous consent that all Members may have 10 legislative days within which to revise and extend their remarks on the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

Mr. COBLE. Madam Speaker, I ask unanimous consent that the gentleman from Virginia (Mr. BLILEY), the chairman of the Committee on Commerce, be allowed to control 10 of my 20 minutes.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

Mr. COBLE. Madam Speaker, I yield myself such time as I may consume. Oftentimes when significant legislation comes to the floor, it is described as landmark legislation. At the risk of being presumptuous and immodest, I think this may well indeed be landmark legislation.

This bill will implement two treaties which are extremely important to ensure the adequate protection for American works in countries around the world, particularly at a time when the

digital environment now allows users to send and retrieve perfect copies of copyrighted material over the Internet. While digital dissemination of copies will benefit owners and consumers, it will unfortunately also facilitate pirates who aim to destroy the value of American intellectual property. In compliance with the treaties, H.R. 2281 makes it unlawful to defeat technological protections used by copyright owners to protect their works, including preventing unlawful access and targeting devices made to circumvent encrypted copyrighted material. It also makes it unlawful to deliberately alter or delete information provided by a copyright owner which identifies a work, its owners, and its permissible use.

H.R. 2281, Madam Speaker, is a comprehensive copyright bill that adds substantial value to our copyright law. It represents five years of research, debate, hearings and negotiations. It is only the beginning of Congress' evaluation of the impact of the digital age on copyrighted works. Although it is just a beginning, it is essential to maintain the United States' position as the world leader in the protection of intellectual property in the digital environment.

H.R. 2281 also represents the collective efforts of many. In particular I want to commend the gentleman from Illinois (Mr. HYDE), the chairman of the Committee on the Judiciary; the gentleman from Michigan (Mr. Conyers), the ranking member of the Committee on the Judiciary; and the gentleman from Massachusetts (Mr. FRANK), the ranking member of the Subcommittee on Courts and Intellectual Property.

H.R. 2281, Madam Speaker, in my opinion is necessary legislation to ensure the protection of copyrighted works as the world moves into the digital environment. I urge its passage.

Madam Speaker, I reserve the balance of my time.

Mr. FRANK of Massachusetts. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, I first want to note that this is a matter that the Committee on the Judiciary has been working on for some time. It then went, under our rules, to the Committee on Commerce. Both committees and indeed both parties in both committees bring this bill forward. I note that because people who have been unduly addicted to the media would not, I think, have an understanding of what has been happening. We have here some very complex issues dealing with the economy and how we adapt some fundamental principles, intellectual property principles which are very important to us, to modern technology. There were some sharp disagreements. There were some conflicting and competing values, as is often the case. What has happened is for a period of some time, first in the Committee on the Judiciary and then in the Committee on Commerce, people have worked on this and come up with what I believe is a very good set of solutions.

I note that because I do think the public is entitled to know that the portrayals of the Congress in general, the Committee on the Judiciary in particular as somehow the set of a Three Stooges movie or the scene of ferocious battles simply is not true. One of the problems we have today is that there is an inattention on the part of our friends in the media to what is the actual business of this place. I think it is important for people to understand. These are very serious issues that had to be dealt with, conflicting values.

For example, many of us feel very strongly on the need to protect intellectual property. If we do not see that authors and composers and singers and musicians and other creative people are rewarded for their work, not only is that unfair, to many of us, but the amount of work we get will diminish.

□ 1345

There may be some people fortunate enough to be able to create out of love without regard to compensation. We cannot depend only on the independently wealthy to be our creative people. It is important for us as a vibrant society to sustain that, and one way to sustain that is to recognize the property that people have in the product of their intellectual labors, their creative intellectual labors.

That was, to some extent, threatened by modern technology, by technological change which makes it easier for that minority of people who do not respect others' intellectual property to steal it because of the collection of technology we now use, the short end of the Internet. What we wanted to do was to come up with ways to adapt the protection of intellectual property to a modern technological era without unduly diminishing people's rights to enjoy things. We do not want to prevent the public from having the enjoyment of these products.

Madam Speaker, I have one thing that bothered me in particular, and I am pleased that this bill addresses it in a reasonable way because there was no guarantee that it would.

One of the things we do here is to say:

"If you are an on-line service provider, if you are responsible for the production of all of this out to the public, you will not be held automatically responsible if someone misuses the electronic airway you provide to steal other people's property.

There is a balance here. We want to protect property, but we do not want to deter people from making this widely available. We have a problem here of making sure that intellectual property is protected, but we do not want freedom of expression impinged upon.

Madam Speaker, I found that particularly important for this reason, and I think this is a point that I want very much to stress:

We live in as free a society from the standpoint of expression as I believe has ever existed in the world. The level of freedom of expression which Americans enjoy is very, very profound, and that is very important to us.

The problem is we have had two doctrines of freedom of expression. We have had one which covered all speech and written speech, newspapers, magazines, theater, billboards; that has been very free.

Beginning in the 1930s when radio came to play, we started a new form of speech, and that was speech electronically transmitted. And because we started with a limited spectrum, because we started with physical limitations on the amount of speech that could go out, we began with electronically-communicated speech in the 1930s to develop a parallel doctrine which gave less protection to speech electronically transmitted. Over time we had a tradition of constitutionally very protected speech, and then speech transmitted electronically that was less protected.

The problem here is that as this society goes forward, an increasingly high percentage of what we say to each other will be electronically transmitted through E-mail and through other ways. It seems to me important for us to reverse this notion that electronically-transmitted speech is entitled to a lesser degree of protection in the area of freedom of expression than all other forms of speech or we will be, 30 years from now, a less free society. That has application to legislation of various kinds, and we will deal with that in another context.

But one of the things that was a potential danger here was that by protecting intellectual property, a very important job, we would have imposed on the on-line service providers such a degree of liability as, in fact, to diminish to some extent the freedom they felt in presenting things.

What I am most happy about in this bill is I think we have hit about the right balance. We have hit a balance which fully protects intellectual property, which is essential to the creative life of America, to the quality of our life, because if we do not protect the creators, there will be less creation. But at the same time we have done this in a way that will not give to the people in the business of running the on-line service entities and running Internet, it will not give them either an incentive or an excuse to censor.

No bill is perfect. There are some tensions here. This will go to conference, and then there will be room for some further changes.

But for achieving that essential balance I am very pleased, and I want to note again the two committees of this House and the parties represented in both committees worked very closely together to bring forward legislation without rancor, without partisanship, in fact serving very well the needs of this country.

Madam Speaker, I reserve the balance of the time.

Mr. BLILEY. Madam Speaker, I yield myself 2 minutes.

(Mr. BLILEY asked and was given permission to revise and extend his remarks and include extraneous material.)

Mr. BLILEY. Madam Speaker, I rise in support of H.R. 2281, and would like to begin by commending my good friend and colleague, the gentleman from Illinois (Mr. HYDE), the chairman of the House Committee on the Judiciary, and his very able subcommittee chairman, the gentleman from Greensboro, North Carolina (Mr. COBLE), the chairman of the Subcommittee on Courts and Intellectual Property of the Committee on the Judiciary.

And I would also like to thank two members of the Committee on Commerce in addition to my ranking member, the gentleman from Michigan (Mr. DINGELL), but I would also like to thank the gentleman from Wisconsin (Mr. KLUG) and the gentleman from Virginia (Mr. BOUCHER) whom I believe through their work have improved this legislation. It is because of the steadfast commitment to enacting this important legislation that we are here today on the brink of enactment.

I would like to thank the gentleman from Massachusetts (Mr. FRANK), the ranking member of the subcommittee, for his work, as well as the gentleman from Massachusetts (Mr. MARKEY) for his contributions. It shows that we can work together and we can achieve very important legislation.

As my colleagues know, Madam Speaker, with the growth of electronic commerce having such a profound effect on the economy, the Committee on Commerce has been engaged in a wide-ranging review of the subject, including the issues raised by H.R. 2281. The Committee on Commerce's version of this bill strikes an appropriate balance between the goal of promoting electronic commerce and the interests of copyright owners.

Let me specifically highlight two of the most important changes that the Committee on Commerce added to the bill before us today:

First, the Committee on Commerce included a strong fair use provision to ensure that consumers as well as libraries and institutions of higher learning will be able to continue to exercise their historical fair use rights. The bill before us today contains the substance of the Committee on Commerce provision on fair use, and I am pleased to say that major newspapers such as the New York Times and the Washington Post have strongly endorsed the Committee on Commerce's language on fair use.

Madam Speaker, I include those editorials following my statement in the RECORD.

The editorials referred to are as follows:

[From the New York Times, July 24, 1998]

PROTECTING DIGITAL COPYRIGHTS

Traditional copyright concepts that have served this nation well for centuries should guide the debate on copyright in the digital universe. As Congress fashions ways to protect commercial interests in the digital realm, it must be careful also to protect the larger public interest in broad access to information.

Digital copyright legislation, required to institute two international treaties that would protect movies, music and other intellectual property from piracy, passed the Senate and the House Judiciary Committee this spring. But controversy continues to swirl around a provision in the legislation that would make it a crime to circumvent encryption used to control access to digital material or to manufacture or sell devices that could be used to circumvent protection measures.

Movie and music producers argue that making circumvention illegal is the only way to prevent consumer theft of on-line movies, recordings and other products. But libraries and schools believe that the prohibition is so broad that it could greatly limit access to electronic information that copyright law would otherwise allow.

Existing law assures producers the right to profit from their creative works. But the law does not allow a creator to control who looks at the material or prevent the material from being circulated or lent to others. It specifically allows the ''fair use'' of copyrighted materials for commentary, criticism, teaching, news reporting, scholarship and research under certain circumstances without permission from the copyright owner.

Thus a library can purchase a book, allow hundreds of patrons to borrow it and let teachers make copies of material in it for classroom use, all without infringing the copyright. Preserving these user rights is important in the digital world where copyright owners, with the right technology, could limit or prevent access to information.

The content producers dismiss fears that the Internet could become a strictly pay-for-use world as unrealistic, but neither they nor Congress can predict how the Internet will develop. That is why legislation needs to be flexible enough to deal with rapid evolution in technology and electronic commerce.

A prudent compromise approved by the House Commerce Committee last week would delay the anti-circumvention rule for two years while the Commerce Department and the Federal patent and copyright officers study the effect of the prohibition on users. The Commerce Secretary could waive the rule for any class of works where technological shields were impeding the lawful use of copyrighted matter. The situation would be reviewed every two years. Both the content producers and the libraries and schools are willing to accept this more fluid approach. Congress should adopt this plan in the final version of the digital copyright legislation.

[From The Washington Post, Aug. 4, 1998]

A PAY-PER-VIEW WORLD

Congress has been trying for most of this year to ratify the international treaties that are supposed to bring copyright law into the digital age. It's been a large and complicated endeavor, requiring people to rethink such fundamental aspects of intellectual property rights as what constitutes ''copying'' in a digital environment (is it copying a document just to read it on your computer? To print it out to read later?) and when such copying represents a copyright violation. But the major snag is none of these weighty issues but, rather, a fierce face-off between libraries and big-time copyright-holding interests over a seemingly minor provision that would make it a crime to break any technological locking device designed to prevent unauthorized copying.

This debate over the ''anti-circumvention'' provision is now the main item of disagreement between versions of the copyright bill produced by the Judiciary and Commerce committees. (The Senate passed copyright legislation in May.) Those who expect movies, songs, software and even books to be eventually delivered mainly over the Internet want to make sure that this will not mean widespread unauthorized copying and the subsequent collapse of any market for the work. (Newspapers, as creators of copyrighted material, have an interest here as well.) They picture every piece of intellectual property being distributed with some kind of ''lock'' that would permit, say, just one viewing of a downloaded movie. It's the disabling of this lock that would be made a crime, except in specified circumstances.

There's room for doubt whether it makes sense to make the lock-breaking a crime here rather than merely, as till now, the actual copyright violation. But the real problem is more pragmatic. This ''transition to a pay-per-view world,'' as one enthusiastic movie distributor put it, works fine for the entertainment industries and the commercial market. Where it doesn't work is in libraries and other places where use of books and research material is not pay-per-view but, till now, free.

Libraries are worried that the ''fair use'' exemption that allows limited use of copyrighted material without permission for such purposes as comment, criticism, education or research—though technically unchanged in the law—would become sharply limited in practice if all material were distributed with ''locks'' and libraries were prohibited from ''unlocking'' it. What happens, they ask if a chart of environmental data that now can be photocopied for use in a class were made available only on a CD from which printouts can't be made? What if research journals are provided to libraries on a pay-per-view basis that keeps independent researchers from making photocopies for their own use?

Language in the Commerce bill sought to address this problem by creating a mandatory review every two years of the provision's effect on ''fair use'' in various contexts. On the floor or in conference, these protections from a permanent ''pay-per-review world'' ought to be maintained.

As the Chairman of the Committee which was principally responsible for rewriting H.R. 2281 and eliminating the most harmful aspects of the bill as proposed by the Administration, I want to share with my colleagues the Committee's perspective on the scope of this legislation and to note, where appropriate, the instances in which we sought to clarify the bills as reported by the Committee on the Judiciary and as approved by the Senate.

As noted at the outset, the Committee has been engaged in a wide-ranging review of all the issues affecting the growth of electronic commerce. Our Committee has a long-standing, well-established role in assessing the impact of possible changes in law on the use and availability of the products and services that have made our information technology industry the envy of the world. We therefore paid particular attention to the potential harmful impacts on electronic commerce of the bill as reported by the Committee on the Judiciary.

Today, the U.S. information technology industry is developing exciting new products to enhance the lives of individuals throughout the world, and our telecommunications industry is developing new means of distributing information to these consumers in every part of the

globe. In this environment, the development of new laws and regulations could well have a profound impact on the growth of electronic commerce.

In recognition of these developments and as part of the effort to begin updating national laws for the digital era, delegates from over 150 countries (including the United States) convened in December 1996 to negotiate two separate treaties under the auspices of the World Intellectual Property Organization: the Copyright Treaty and the Performance and Phonograms Treaty. In July 1997, the Clinton Administration submitted the treaties to the Senate for ratification and submitted proposed implementing legislation to both the House and the Senate. The Committee on the Judiciary largely reported out the bill as proposed by the Administration.

In holding hearings, it became apparent to our Committee that this and the Senate version of the legislation contained serious flaws. Not surprisingly, these bills were opposed by significant private and public sector interests, including libraries, institutions of higher learning, consumer electronics and computer product manufacturers, and others with a vital stake in the growth of electronic commerce. It also became apparent that the main provisions of the treaties to be implemented have little to do with copyright law. In fact, the ''anti-circumvention'' provisions of the Administration's bill created entirely new rights for content providers that are wholly divorced from copyright law. These new provisions (and the accompanying penalty provisions for violations of them) would be separate from, and cumulative to, the claims available to copyright owners under the Copyright Act.

In carrying out its responsibilities under the Constitution. Congress has historically regulated the use of information—not the devices or means by which information is delivered or used by information consumers—and has ensured an appropriate balance between the interests of copyright owners and information users. Section 106 of the Copyright Act of 1976, for example, establishes certain rights copyright owners have in their works, including limitations on the use of these works without their authorization. Sections 107 through 121 of the Copyright Act set forth the circumstances in which such uses are deemed lawful even though unauthorized.

In general, all of these provisions are technology neutral. They do not regulate commerce in information technology, i.e., products and devices for transmitting, storing, and using information. Instead, they prohibit certain actions and create exceptions to permit certain conduct deemed to be in the greater public interest, all in a way that balances the interests of copyright owners and users of copyrighted works.

In writing its bill, the Committee sought to preserve that tradition. We worked hard to reduce the risk that enactment of H.R. 2281 could establish the legal framework that would inexorably create a ''pay-per-use'' society. In short, the Committee endeavored to specify, with as much clarity as possible, how the anti-circumvention right in particular would be qualified to maintain balance between the interests of content creators and information users.

The Committee considered it particularly important to ensure that the concept of fair use would remain firmly established in the law. Section 1201(a)(1) is one of the most important provisions of this legislation, and one that must be included in any version of this bill eventually sent to the President for signature. It was crafted by the Commerce Committee to protect ''fair use'' and other users of information now lawful under the Copyright Act. Let us make no mistake about the scope of what we are doing here today in adopting H.R. 2281, about the tremendously powerful new right to control access to information that we are granting to information owners for the very first time.

If left unqualified, this new right, as the Commerce Committee heard in testimony from the public and private sectors alike, could well prove to be the legal foundation for a society in which information becomes available only on a ''pay-per-use'' basis. That's why this bill assures that institutions like schools and libraries, and the public, will have an opportunity in a credible and permanent process to make the case that the new right we've adopted is interfering with fair use and other rights now enjoyed by information users under current law. Moreover, the Commerce Committee's report, I note for the record makes clear that the showing that must be made in this process is not intended to be unduly burdensome for either institutions or the public. Indeed, the Committee took pains to make clear that evidence of loss of access to a ''particular class of works''—intended to be gauged narrowly—would result in relief from the prohibition otherwise imposed on access to information by this legislation.

That's also why—in express recognition of the importance of the Commerce Committee's work—today's Washington Post carries an editorial urging that ''on the floor, or in conference, these protections from a permanent 'pay-per-view world ought to be maintained.' '' Copyright law is not just about protecting information. It's just as much about affording reasonable access to it as a means of keeping our democracy healthy and doing what the Constitution says copyright law is all about: promoting ''Progress in Science and the useful Arts.'' If this bill ceases to strike that balance, it will no longer deserve Congress' or the public's support.

Section 1201(a)(2) makes it illegal to manufacture, import, offer to the public, provide, or otherwise traffic in any technology, product, service, device, component, or part thereof that is primarily designed or produced for the purpose of circumventing a technological measure that effectively controls access to certain works; has only limited commercially significant purposes or uses other than to circumvent such a measure; or is marketed for use in circumventing such a measure. Section 1201(b)(1) similarly makes it illegal to manufacture, import, offer to the public, provide, or otherwise traffic in any technology, product, service, device, component, or part thereof that is primarily designed or produced for the purpose of circumventing a protection measure that protects certain rights of copyright owners under title 17, United States Code; has only limited commercially significant purposes or uses other than to circumvent such a measure; or is marketed for use in circumventing such a measure.

In our report, the Committee stressed that section 1201(a)(2) is aimed fundamentally at outlaying so-called ''black boxes'' that are expressly intended to facilitate circumvention of protection measures for purposes of gaining access to a work. This provision is not aimed at products that are capable of commercially significant noninfringing uses, such as the consumer electronics, telecommunications, and computer products—including videocassette recorders, telecommunications switches, personal computers, and servers—used by businesses and consumers everyday for perfectly legitimate purposes. Moreover, as section 1201(c)(3) makes clear, such a device does not need to be designed or assembled, or parts or components for inclusion in a device be designed, selected, or assembled, so as affirmatively to accommodate or respond to any particular technological measure.

Section 2101(a)(3) of H.R. 2281 defines certain terms used throughout Section 1201(a). As we made clear in our report, the measures that would be deemed to ''effectively control access to a work'' would be those based on encryption, scrambling, authentication, or some other measure which requires the use of a ''key'' provided by a copyright owner to gain access to a work.

Section 2101(b)(1) of H.R. 2281 makes it illegal to manufacture, import, offer to the public, provide, or otherwise traffic in any technology, product, service, device, component, or part thereof that is primarily designed or produced for the purpose of circumventing a protection measure that protects certain rights of copyright owners under title 17, United States Code; has only limited commercially significant purposes or uses other than to circumvent such a measure; or is marketed for use in circumventing such a measure. The Committee believes it is very important to emphasize that this section, like section 1201(a)(2), is aimed fundamentally at outlawing so-called ''black boxes'' that are expressly intended to facilitate circumvention of protection measures. Thus, this section similarly would not outlaw the manufacturing, importing, or distributing of standard videocassette recorders and computer products.

Section 1201(b)(2) of H.R. 2281 defines important phrases, including when a protection measure ''effectively protects a right of a copyright owner under title 17, United States Code.'' In our view, the measures that would be deemed to ''effectively'' protect such rights would be those based on encryption, scrambling, authentication, or some other measure which requires the use of a ''key'' to copy a work.

With respect to the effectiveness of the measures covered by the legislation, the Committee stressed in its report that those measures that cause noticeable and recurring adverse effects on the authorized display or performance of works should not be deemed to be effective. Given our keen interest in the development of new products, in particular digital television monitors, the Committee is particularly concerned that the introduction of such measures not frustrate consumer expectations and that this legislation not be interpreted to in any way limit the authority of manufacturers and retailers to address the legitimate concerns of their customers.

Based on prior experience, the Committee on Commerce was concerned that manufacturers, retailers, and consumers may be adversely affected by the introduction of some technological measures and systems for preserving copyright management information. In fact, the Committee learned as part of its review of H.R. 2281 that, as initially proposed, a

proprietary copy protection scheme that is today widely used to protect analog motion pictures could have caused significant viewability problems, including noticeable artifacts, with certain television sets until it was modified with the cooperation of the consumer electronics industry.

As advances in technology occur, consumers will enjoy additional benefits if devices are able to interact and share information. Achieving interoperability in the consumer electronics environment will be a critical factor in the growth of electronic commerce. In our view, manufacturers, consumers, retailers, and servicers should not be prevented from correcting an interoperability problem resulting from a protection measure causing one or more devices in the home or in a business to fail to interoperate with other technologies.

Under the bill under consideration today, nothing would make it illegal for a manufacturer of a product or device (to which section 1201 would otherwise apply) to design or modify the product or device solely to the extent necessary to mitigate a frequently occurring and noticeable adverse effect on the authorized performance or display of a work that is caused by a protection measure in the ordinary course of its design and operation. Similarly, recognizing that a technological measure may cause a problem with a particular device, or combination of devices, used by a consumer, it is our view that nothing in the bill should be interpreted to make it illegal for a retailer or individual consumer to modify a product or device solely to the extent necessary to mitigate a noticeable adverse effect on the authorized performance or display of a work that is communicated to or received by that particular product or device if that adverse effect is caused by a protection measure in the ordinary course of its design and operation. I might add that nothing in section 1202 makes it illegal for such a person to design or modify a product or device solely to the extent necessary to mitigate a frequently occurring and noticeable adverse effect on the authorized performance or display of a work that is caused by the use of copyright management information.

I wish to stress that I and other Members of the Committee on Commerce believe that the affected industries should be able to work together to avoid such problems. We know that multi-industry efforts to develop copy control technologies that are both effective and avoid such noticeable and recurring adverse effects have been underway over the past two years. We strongly encourage the continuation of those efforts, which should offer substantial benefits to copyright owners in whose interest it is to achieve the introduction of effective protection (and copyright management information) measures that do not interfere with the normal operations of affected products. We look forward to working with interested parties to the extent additional legislation is required to implement such technologies or to avoid their circumvention.

As the Chairman of the Committee that eliminated the inherent ambiguity in the Senate's version of this legislation, I also want to put section 1201(c)(3) in context. It provides that nothing in section 1201 requires that the design of, or design and selection of parts and components for, a consumer electronics, telecommunications, or computer product provide for a response to any particular protection measure. We specifically modified the Senate version of this provision because of our strong belief that product manufacturers should remain free to design and produce consumer electronics, telecommunications, and computing products without the threat of incurring liability for their design decisions. Imposing design requirements on product and component manufacturers would have a dampening effect on innovation, on the research and development of new products, and hence on the growth of electronic commerce.

As the hearing record demonstrates, there is a fundamental difference between a device that does not respond to a protection measure and one that affirmatively removes such a measure. Section 1202(c)(3) is intended to make clear that nothing in section 1201 requires that the design of, or design and selection of parts and components for, a consumer electronics, telecommunications, or computing product provide for a response to any particular technological measure that might be used to control access to or the copying of a work protected under title 17, United States Code. Of course, this provision is not intended to create a loophole to remove from the proscriptions of section 1201 devices, or components or parts thereof, that circumvent by, for example, affirmatively decrypting an encrypted work or descrambling a scrambled work.

Mr. BLILEY. Madam Speaker, I reserve the balance of my time.

Mr. COBLE. Madam Speaker, I yield 3½ minutes to the gentleman from Virginia (Mr. GOODLATTE) a member of the subcommittee and the full committee.

(Mr. GOODLATTE asked and was given permission to revise and extend his remarks.)

Mr. GOODLATTE. Madam Speaker, I rise today in support of H.R. 2281, the World Intellectual Property Organization Copyright Treaties Implementation Act. I would like to thank the gentleman from North Carolina (Mr. COBLE) and the gentleman from Illinois (Mr. HYDE), as well as the gentleman from Virginia (Mr. BLILEY) and the gentleman from Massachusetts (Mr. FRANK) for their leadership on this issue.

Additionally, I would like to thank the gentleman from North Carolina (Mr. COBLE) for asking me to lead the negotiations between the various parties on the issue of on-line service provider liability for copyright infringement which is included in this important bill. Madam Speaker, the issue of liability for on-line copyright infringement, especially where it involves third parties, is difficult and complex.

For me personally this issue is not a new one. During the 104th Congress then-Chairman Carlos Moorhead asked me to lead negotiations between the parties. Although I held numerous meetings involving members of the content community and members of the service provider community, unfortunately we were not able to resolve this issue.

At the beginning of the 105th Congress the gentleman from North Carolina (Mr. COBLE) asked me to again lead the negotiations between the parties on this issue. After a great deal of meetings and negotiation sessions, the copyright community and the service provider community were able to successfully reach agreement. That agreement is included in the bill we are considering today. No one is happier, except maybe those in each community who spent countless hours and a great deal of effort trying to reach agreement, than I am with the agreement contained in this bill.

Madam Speaker, this is a critical issue to the development of the Internet, and I believe that both sides in this debate need each other. If America's creators do not believe that their works will be protected when they put them on-line, then the Internet will lack the creative content it needs to reach its true potential; and if America's service providers are subject to litigation for the acts of third parties at the drop of a hat, they will lack the incentive to provide quick and sufficient access to the Internet.

The provisions of H.R. 2281 will allow the Internet to flourish and I believe will prove to be a win-win not only for both sides, but for consumers and Internet users throughout the Nation.

I would also like to discuss the importance of the World Intellectual Property Organization treaties and this accompanying implementing legislation which are critical to protecting U.S. copyrights overseas.

The United States is the world leader in intellectual property. We export billions of dollars worth of creative works every year in the form of software books, tapes, videotapes and records. Our ability to create so many quality products has become a bulwark of our national economy, and it is vital that copyright protection for these products not stop at our borders. International protection of U.S. copyrights will be of tremendous benefit to our economy, but we need to ratify the WIPO treaties for this to happen.

I would like to state for the record my understanding that sections 102(a)(2) and 102(b)(1) of this bill are not intended to address computer system security, such as devices used to crack into computer security systems such as firewalls or discover log-on passwords that protect an entire system. The ban contained in these provisions is intended to cover circumvention devices aimed at technological protection measures that protect particular works covered under Title 17 such as movies, songs or computer programs. Unauthorized hacking into computer programs is already covered by other laws.

This bill is critical not only because it will allow the Internet to flourish but also because it ensures that America will remain the world leader in the development of intellectual property. I urge each of my colleagues to support this legislation.

Mr. FRANK of Massachusetts. Madam Speaker, I yield 4 minutes to the gentleman from Virginia (Mr. BOUCHER).

(Mr. BOUCHER asked and was given permission to revise and extend his remarks.)

Mr. BOUCHER. Madam Speaker, I thank the gentleman from Massachusetts (Mr. FRANK) for yielding this time to me, and I am pleased to rise today in support of the passage of H.R. 2281, which will extend new protections against the theft of their works to copyright owners.

Madam Speaker, new protections are needed due to the ease with which flawless copies of copyrighted materials can both be made and transmitted in the digital network environment. Essential, however, to the creation of new guarantees for copyright owners is the retention of the traditional rights of the users of intellectual property. A balance has always existed in our law between these conflicting interests, and the major challenge in the writing of this legislation is to assure that no fundamental altering of that delicate balance takes place.

Another challenge is to ensure that in the effort to eliminate devices that are designed and produced to make illegal copies of copyrighted materials, that legitimate consumer electronics products are not also placed in a category of legal uncertainty.

Today I want to offer congratulations primarily to the Members of the House Committee on Commerce who have devoted long hours in the effort to assure that these challenges are met. Specifically, the Committee on Commerce has added provisions that protect personal privacy by clearly permitting personal computer owners to disable cookies that are placed on their disks by others; that allow the encryption research that will lead to a new generation of trusted and secure systems; that give equipment manufacturers the certainty that their consumer electronics products need not affirmatively accommodate all technological protection measures; and that creative procedure for assuring the continuation of the fair use rights of the American public, a procedure that will prevent material that is generally available today under fair use being locked away in a pay-per-use regime in future years.

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Report language also specifies that the technological protection measure circumvention restrictions will not apply when manufacturers, retailers and technicians need to make adjustments to devices to ensure that their performance is not degraded as a consequence of the installation of a technological protection measure. These changes, taken together, significantly improve the original legislation.

The gentleman from Virginia (Chairman BLILEY), the gentleman from Michigan (Mr. DINGELL), the gentleman from Wisconsin (Mr. KLUG), the gentleman from Florida (Mr. STEARNS) and the gentleman from Massachusetts (Mr. MARKEY), among others, deserve thanks for their successful efforts to create new copyright protections, while ensuring that traditional user rights are not undermined.

The Committee on Commerce has, in the manner for which it is known, mastered the intricate details of this complex subject and has produced a balanced result. I want to offer my congratulations to all who have been involved in that outstanding effort.

It is my pleasure to urge passage of H.R. 2281.

Madam Speaker, I will insert in the record correspondence from the subcommittee chairman, the gentleman from North Carolina (Mr. COBLE), to the gentleman from California (Mr. CAMPBELL) and myself, which further defines the terminology that is used in the statute.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC, June 16, 1998.

Hon. TOM CAMPBELL,
U.S. Representative for the 15th District of California, Washington, DC.

Hon. RICK BOUCHER,
U.S. Representative for the 9th District of Virginia, Washington, DC.

DEAR TOM AND RICK: Thank you for visiting with me in my office recently regarding H.R. 2281, the ''WIPO Copyright Treaties Implementation Act.'' I appreciate the concerns you expressed with respect to H.R. 2281 as it was reported from the House Committee on the Judiciary.

I expressed to you that I would consider your thoughts and respond to you in detail, and am pleased to do so in this letter.

I believe that many of your concerns, which are enumerated in your substitute bill, H.R. 3048, have been addressed already in a reasonable manner in amendments to the bill adopted by the Subcommittee on Courts and Intellectual Property and the Committee on the Judiciary in the House and by the Committee on the Judiciary and on the floor in the Senate (regarding the Senate companion bill, S. 2037). Others have been addressed in legislative history in House Report 105–551 (Part I) which accompanies the bill, as well as in Senate Report 105–190, which accompanies the Senate companion bill. Still others may be addressed as the House Committee on Commerce exercises its sequential jurisdiction over limited portions of the bill and as I work with interested members on developing a manager's amendment to be considered by the whole House. I anticipate including many of the amendments made by the Senate in the manager's amendment, along with other provisions. I also anticipate that a conference will be necessary to reconcile the House and Senate versions of the bills.

While I am unable to support the specific provisions of H.R. 3048, for reasons I will explain in this letter, I am willing to work with you in the coming weeks to address additional concerns regarding the impact of this legislation on the application of the ''fair use'' doctrine in the digital environment and on the consumer electronics industry. I wish to stress, however, that I believe the bill, as amended by the House and Senate thus far, and explained by both the House and the Senate Judiciary Committee reports, already addresses these issues in several constructive ways.

I believe it is important, in order to recognize properly the efforts undertaken by the Congress and the Administration to address the concerns of the consumer electronics and fair use communities, to review the history of H.R. 2281 and to evaluate all of the provisions that have been either added to or deleted from the bill since its development leading to introduction in this Congress. As I am sure you will appreciate, I am sensitive to your concerns and have worked diligently with members and all parties involved to create a balanced and fair proposal that will result in the enactment of legislation this Congress.

In February, 1993, the Administration formed the Information Infrastructure Task Force to implement Administration policies regarding the emergence of the Internet and other digital technologies. This task force formed a Working Group on Intellectual Property Rights to investigate and report on the effect of this new technology on copyright and other rights and to recommend any changes in law or policy. The working group held a public hearing in November, 1993, at which 30 witnesses testified. These witnesses represented the views of copyright owners, libraries and archives, educators, and other interested parties. The working group also solicited written comments and received over 70 statements during a public comment period. Based on oral and written testimony, the working group released a ''Green Paper'' on July 7, 1994. After releasing the Green Paper, the working group again heard testimony from the public through four days of hearings held around the country. More than 1,500 pages of written testimony were filed during a four-month comment period by more than 150 individuals and organizations.

In March, 1995, then-Chairman Carlos Moorhead solicited informal comments from parties who had submitted testimony regarding the Green Paper, including library and university groups, and computer and electronics group, in order to work effectively with the Administration on jointly developing any proposed updates to U.S. copyright law that might be necessary in light of emerging technologies.

In summer, 1995, the working group released a ''White Paper'' based on the oral and written testimony it has received after releasing the Green Paper. The White Paper contained legislative recommendations which were developed from public comment in conjunction with consultations between the House and Senate Judiciary Committees, the Copyright Office and the Administration.

In September, 1995, Chairman Moorhead in the House and Chairman Hatch in the Senate introduced legislation which embodied the recommendations contained in the White Paper and held a joint hearing on November 15, 1995. Testimony was received from the Administration, the World Intellectual Property Organization and the Copyright Office. The House Subcommittee on Courts and Intellectual Property held two days of further hearings in February, 1996. Testimony was received from copyright owners, libraries and archives, educators and other interested parties. in May, 1996, the Senate Judiciary Committee held a further hearing. Testimony was received from copyright owners, libraries and other interested parties. These hearings were supplemented with negotiations in both bodies led by Representative Goodlatte (as authorized by Chairman Moorhead) in the House and by Chairman Hatch in the Senate. Further negotiations were held by the Administration in late summer and fall of 1996.

During consideration of the ''NII Copyright Protection Act of 1995,'' Chairman Moorhead requested that Mr. Boucher and Mr. Berman of California lead negotiations between interested parties regarding the issue of circumvention. While these negotiations were helpful in streamlining and clarifying the issues to be discussed, they ultimately did not result in an agreement.

It is important to note that shortly after its establishment, the Administration task force's working group convened, as part of its consideration, a Conference on Fair Use (CONFU) to explore the effect of digital technologies on the doctrine of fair use, and to

develop guidelines for uses of works by libraries and educators. Because of the complexities involved in developing broad-based policies for the adaptation of the fair use doctrine to the digital environment, and due to much disagreement among the participants (including within the library and educational communities), CONFU did not issue its full report until nearly two years after it was convened. An Interim Report was released by CONFU in September 1997 on the first phase of its work. No consensus was reached on how to apply the fair use doctrine to the digital age. In fact, the CONFU working group on interlibrary loan and document delivery concluded in a report to its Chair that it is ''premature to draft guidelines for digital transmission of digital documents.'' The work of CONFU continues today and a final report should be released soon with no agreed conclusions. As you can see, developing sweeping legislation, rather than relying on court-based ''case or controversy'' applications of the doctrine, is exceedingly difficult to do.

Since before the debate began with the establishment of a task force in the United States in 1993, the international community had also been considering what updates should be made to the Berne Convention on Artistic and Literary Works in order to provide adequate and balanced protection to copyrighted works in the digital age. This culminated in a Diplomatic Conference hosted by the World Intellectual Property Organization at which over 150 countries agreed on changes needed to accomplish this goal.

This goal was not reached easily, however, and many of the issues being debated by the Administration and the Congress in the United States concerning fair use and circumvention were aired at the Diplomatic Conference, with significant changes made to accommodate fair use concerns and the effect on the consumer electronic industries. Representatives of both groups participated in the Conference and aggressively sought to maintain proper limitations on copyright. They succeeded. For example, language was added to ensure that exceptions such as fair use could be extended into the digital environment. The treaty also originally contained very specific language regarding obligations to outlaw circumvention. It was changed to state that all member countries ''shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by authors in connection with the exercise of their rights under this Treaty.'' This left to each country the development of domestic legislation to accomplish this goal.

After the United States signed the WIPO Treaties, the Administration again began negotiations led by the Department of Commerce and the Patent and Trademark Office, in consultiation with the Copyright Office and the Congress, to develop domestic implementing legislation for the treaties. It built upon the efforts already accomplished by the release of the Green Paper and the White Paper and all of the testimony and comments heard as part of that process, the House and Senate bills introduced in the 104th Congress and all of the hearing testimony and negotiations associated with them, and the negotiations held by the Administration leading up to and during the Diplomatic Conference. Again, comments were solicited from fair use and consumer electronics groups. In the summer of 1997, the Administration submitted to the Congress draft legislation to implement the treaties. In July, 1997, Chairman Hatch and I introduced the current pending legislation in each house. Importantly, the legislation was tailored to match the treaty language by establishing legal protection and remedies not against any technological measures whatsoever, but only ''against the circumvention of effective technological measures that are used by authors in connection with the exercise of their rights.''

The fair use and consumer electronics groups succeeded, just as they had at the Diplomatic Conference, in assuring in the introduced version of the bills the maintenance of proper limitations on copyright. The Administration had considered originally banning both the manufacture and use of devices which circumvent effective technological measures and had no specific provision on fair use, since Section 107 of the Copyright Act would, of course, continue to exist after enactment of the legislation. The word ''use'' was eliminated in the device provision and a specific provision relating to the adoption of the fair use doctrine in the digital environment was added.

As it was introduced, H.R. 2281 contained two important safeguards for fair use. First, the bill dealt separately with technological measures that prevent access and technological measures that prevent copying. As to the latter, the bill contained no prohibition on the act of circumbention itself, leaving users free to circumvent such measures in order to make fair use copies. Second, the savings clause in subsection 1201(d) ensures that defenses to copyright protection, including fair use, are unaffected by the prohibitions on circumvention. For example, circumvention of an effective technological measure that controls access to a work does not preclude, or affect in any way, a defense of fair use for copying the work. Moreover, the bill as introduced did not expand exclusive rights or diminish exceptions and limitations on exclusive rights.

Again, a series of legislative hearings were held by the House and Senate Judiciary Committees at which testimony was again heard from copyright owners, libraries and archives, educators, consumer electronics groups and other interested parties. In February, 1998, almost five years to the date of the establishment of the Administration's working group, taking into account all of the concessions and negotiations leading up to it, the first markup was finally held in Congress by the Subcommittee on Courts and Intellectual Property on this important legislation. As is evident by the timetable involved in the development of this legislation, and considering the number of hearings, negotiations and conferences dedicated to its contents, this bill certainly has not been placed on any ''fast-track.''

In the course of Subcommittee and Committee consideration of the bill in the House, the gentleman from Massachusetts, the Ranking Democratic member of the Subcommittee, Mr. Frank, and I, proposed a number of improvements to the bill, which were adopted by the Committee, that benefit libraries and nonprofit educational institutions. We introduced a special ''shopping privilege'' exemption that permits nonprofit libraries and archives to circumvent effective technological measures in order to decide whether they wish to acquire lawfully a copy of the work. We added a provision that requires a court to remit monetary damages for innocent violations of sections 1201 or 1202. And we eliminated any possibility that nonprofit libraries and archives or educational institutions can be held criminally liable for any violation of sections 1201 or 1202, even when such violations are willful.

These changes add protection to language already included in the bill which safeguard manufacturers of legitimate consumer electronic devices. Unlike the ''NII Copyright Protection Act of 1995,'' which would have prohibited devices ''the primary purpose or effect of which is to circumvent,'' H.R. 2281 sets out three narrow bases for prohibiting devices. A device is prohibited under section 1201 only if it is primarily designed or produced to circumvent, has limited commercially significant use other than to circumvent, or is marketed specifically for use in circumventing. This formulation means that under H.R. 2281, it is not enough for the primary effect of the device to be circumvention. It therefore excludes legitimate multipurpose devices from the prohibition of section 1201. Devices such as VCRs, and personal computers do not fall within any of these three categories (unless they are, in reality, black boxes masquerading as VCRs or PCs).

In addition, H.R. 2281 as introduced does not require any manufacturer of a consumer electronic device to accommodate existing or future technological protection measures. ''Circumvention,'' as defined in the bill, requires an affirmative step of ''avoiding, bypassing, removing, deactivating, or otherwise impairing a technological protection measure.'' Language added in the Senate, referred to below, clarified this even further.

In addition to all of the foregoing, there are a number of amendments that were made in the Senate bill that will be included in the manager's amendment to H.R. 2281. These include:

An expansion of the exemptions of nonprofit libraries and archives in 17 U.S.C. §108 to cover the making of digital copies without authorization, for purposes of preservation, security or replacement of damaged, lost or stolen copies;

An expansion of section 108 to cover the making of digital copies without authorization in order to replace copies in the collection that are in an obsolete format;

A provision directing the Register of Copyrights to make recommendations as to any statutory changes needed to apply the limitations on liability of online service providers to nonprofit educational institutions that act in the capacity of service providers;

A provision directing the Register of Copyrights to consult with nonprofit libraries and nonprofit educational institutions and submit recommendations on how to promote distance education through digital technologies, including any appropriate statutory changes;

A savings provision stating that nothing in section 1201 enlarges or diminishes vicarious or contributory liability for copyright infringement in connection with any technology, product, service, device, component or part thereof;

A provision that states explicitly that nothing in section 1201 requires accommodation of present or future technological protection measures;

A provision to ensure that the prohibition on circumvention does not limit the ability to decompile computer programs to the extent permitted currently under the doctrine of fair use; and

A provision ensuring that technology will be available to enable parents to prevent children's access to indecent material on the Internet.

I believe that these are constructive provisions that precisely and carefully address specific concerns you have raised in H.R. 3048. In order to assure that fair use applies in the digital environment, in addition to the above changes, I have also agreed to include in the manager's amendment an amendment to Section 107 of the Copyright Act to make it continue to be technology-neutral with respect to means of exploitation.

It may be helpful, in addition to discussing what is contained in H.R. 2281 and the Senate companion, and what will be included in the

manager's amendment, to raise directly with you some of the identifiable problems I see associated with H.R. 3048 as introduced.

In my opinion, this extension of the first sale doctrine is antithetical to the policies the doctrine was intended to further. The alienability of tangible property is not at issue, since no tangible property changes hands in a transmission. Further, it does not address specifically the ability to control the after-market for resales of the same copy of a work, since in this case distribution of a work by digital transmission necessarily requires a reproduction—it is not the same copy. The bill's answer to this quandary—that the original copy must be destroyed—is unenforceable and certainly not a substitute for disposition of a tangible copy. Destruction involves an affirmative act, generally in the privacy of a home, that is difficult to police and would involve significant invasions of privacy if it were policed effectively.

Further, regardless of whether the original copy is destroyed, the new copy would be free of contractual or other controls placed on the original copy by the copyright owner. It is also likely that this provision would have a much greater impact on an owner's primary market for new copies of a work than the current first sale doctrine has on the primary market for physical copies. Unlike used books, digital information is not subject to wear and tear. The ''used'' copy is just as desirable as the new one because they are indistinguishable. For this reason, Congress has curtailed the first sale doctrine as it applies to the rental of sound recordings and software in the past, to prevent posing so great a burden on a copyright owner so as to undermine the incentive to create works which is the driving force behind the Copyright Act.

H.R. 3048 would also broaden Section 110(2) of the Copyright Act so that the performance, display, or distribution of any work (rather than just the performance of a nondramatic literary or musical work and the display of any work) through digital transmission (rather than just through audio broadcasts) would be allowed without the permission of the copyright holder, as long as it is received by students, or by government employees as part of their duties. This broad expansion of the distance learning provisions currently codified in the Copyright Act would permit the transmission of a wide variety of Internet-based or other remote-access digital transmission formats for distance education and raises serious questions about safeguards to prevent such transmissions from unauthorized access. In other words, it may facilitate piracy.

Both CONFU and the Senate have discussed the intricacies involved in safeguarding transmissions used for distance learning purposes and have agreed that it is premature to enact specific legislation at this time. As discussed earlier, the Senate has included a provision in its companion bill, which I plan to include in the House manager's amendment, that will provide for a study with legislative recommendations on this issue, within a six-month time frame. This study will be better able to address the complex problems I have identified.

Section 7 of H.R. 3048 would amend Section 301(a) of the Copyright Act to preempt enforcement of certain license terms under state law. Specifically, it would preempt any state statute or common law that would enforce a ''non-negotiable license term'' governing a ''work distributed to the public'' if such term limited the copying of material that is not subject to copyright protection or if it restricted the limitations to copyright contained in the Copyright Act. In effect, it would prohibit standard form agreements, used in the context of copies distributed to the public, that purport to govern use of noncopyrightable subject matter or limit certain exceptions and limitations, such as fair use.

The use of standard form licensing agreements has become prevalent in the software and information industries, as owners seek to protect their investment in these products against the risk of unauthorized copying. Section 7 would result in destroying the ability of the producer of a work to create specific licenses tailored to the circumstances of the marketplace, or, in the case of factual databases and other valuable but noncopyrightable works, destroy the most significant form of protection currently available. This could result, for example, in the loss of crucial revenues to stock and commodity exchanges who rely on such contracts to disseminate information.

Attempts to introduce language similar to Section 7 of H.R. 3048 into Article 2B of the Uniform Commercial Code (UCC) have been rejected repeatedly by the UCC Article 2B Drafting Committee on several occasions. The National Conference of Commissioners on Uniform State Laws also rejected a proposal similar to the one you propose as has the American Law Institute. I agree with these bodies that restricting the freedom to contract in the manner proposed in H.R. 3048 would have a negative effect on the availability of information to consumers.

H.R. 3048 also proposes several changes to Section 108 of the Copyright Act regarding archiving and library activities. As you are aware, library groups and copyright owners have come to an agreement regarding changes in this section to update the Act for the digital environment and those changes were incorporated by the Senate in the companion bill. I will include those same provisions in the manager's amendment in the House.

Finally, the new Section 1201 contained in H.R. 3048 would not prohibit manufacturing or trafficking in devices purposely created to gain unauthorized access to copyrighted works, and insofar as it prohibits conduct, would permit circumvention in the fist instance for purposes of fair use. In other words, H.R. 3048, as I discussed earlier, would grant to users a right never before allowed—free access to copyrighted works in order to make a fair use. I believe that is unwise policy and tilts the balance away from the protection of works in a free market economy toward the free provision of works to anyone claiming to make a fair use. This would, I believe, ultimately lead to much more litigation against libraries and others who lawfully engage in fair use and ultimately would diminish the number of works made available over new media.

While it would be impossible to communicate to you all of the problems contained in the exact language of H.R. 3048, I wanted to, in truncated form, reveal my serious concerns with the bill. In its current form, for the above reasons and others, I would oppose it as a substitute to H.R. 2281, as amended. I remain dedicated, however, to working with you, as I have in the past, to address your concerns in a reasonable manner that will result successfully in changes to our nation's copyright law that will benefit both owners and users of works.

I truly believe that we are at the beginning of a long process of addressing adaptation to the digital environment. It is not possible at this point to enact legislation that will contemplate all uses of a work and, as CONFU members aptly point out, many will have to be addressed as we move forward. I am committed, however, to preserving fair use in the digital age and thank you for your valuable and continuing insight and interest.

Sincerely,

HOWARD COBLE,
Chairman, Subcommittee on Courts and Intellectual Property.

Mr. BLILEY. Madam Speaker, I yield one minute to the gentleman from Colorado (Mr. DAN SCHAEFER).

(Mr. DAN SCHAEFER of Colorado asked and was given permission to revise and extend his remarks.)

Mr. DAN SCHAEFER of Colorado. Madam Speaker, I thank the gentleman for yielding me time.

Madam Speaker, the webcasting is a new use of the digital works this bill deals with, and even most recent copyright amendments in 1995 do not really address it clearly. Under current law it is difficult for webcasters and record companies to know their rights and their responsibilities for negotiating new licenses. This provision makes it clear what each party must do and sets a statutory licensing program to make it as easy as possible to comply with.

I want to thank the gentleman from Washington (Mr. WHITE) and the gentleman from North Carolina (Mr. COBLE) for working with them to make sure this was all included, and I strictly urge my colleagues to carefully respect and preserve the delicate compromise that we have worked so hard to agree on as we move through this legislative process in the conference committee.

Mr. COBLE. Madam Speaker, I yield 1½ minutes to the gentleman from Florida (Mr. FOLEY), the chairman of the House Entertainment Task Force.

Mr. FOLEY. Madam Speaker, I thank the chairman and also all the Members who have participated in this very, very important debate, and particularly the leadership, the gentleman from Georgia (Mr. GINGRICH), the gentleman from Texas (Mr. ARMEY), and others who have helped bring this platter to the floor today for full and fair debate.

Businesses and industries that depend on copyright protection, including publishing, music and recording, film and video and computer software companies, are among the fastest growing segment of our society. These creative industries contribute nearly $280 billion to the gross domestic product yearly and provide jobs for some 3.5 million Americans. Moreover, they are among our biggest export earners, accounting for some $60 billion in foreign sales.

What has been plaguing this huge and important industry is piracy, the outright theft of copyrighted works. Not piracy on the high seas, it is today's version, piracy on the Internet. American companies are losing nearly $20 billion yearly because of the international piracy of these copyrighted on-line works, and that is what this bill helps to stop.

It has been a long process which has been carefully and thoughtfully negotiated. What we now have is a balanced

measure that protects both the interests of the users and the consumers, and the property rights of the creators.

As chairman of the Entertainment Industry Task Force, I know how important the enactment of this bill is to one of America's most promising industries. I would like it thank the chairman of the Committee on the Judiciary, the chairman of the Committee on Commerce, the gentleman from North Carolina (Mr. COBLE) and others who have worked tirelessly on this effort, as well as Members of the other side of the aisle, the gentleman from Massachusetts (Mr. FRANK) and others, who have taken into consideration all the concerns of both the users and end users of the product, as well as those who provide the intellectual content, if you will, to striking what is a fair balance for Americans, a fair balance for consumers, but, more importantly, will allow the very appropriate and important works to be put on the Internet for future generations to come.

Mr. FRANK of Massachusetts. Madam Speaker, I yield three minutes to the gentleman from California (Mr. BERMAN).

Mr. BERMAN. Madam Speaker, this day has been a long time coming. Going back nine years as the technological capacity to make unauthorized copies of copyrights works was rapidly expanding, some of us anticipated the need to enact legislation to protect technological measures used by copyright holders to protect their works.

Last Congress, our former colleagues, Carlos Moorehead and Pat Schroeder, laid further groundwork for today's WIPO bill with their efforts to enact national information infrastructure legislation. Then in December 1996, the U.S. victory that produced two new international treaties, made the enactment of implementing legislation an urgent task.

Today, under the leadership of the gentleman from North Carolina (Mr. COBLE) and the gentleman from Massachusetts (Mr. FRANK), the gentleman from Illinois (Mr. HYDE) and the gentleman from Michigan (Mr. CONYERS), our efforts have come top fruition.

Passage of this bill is essential to implementation of the treaties around the world. Our leadership is necessary in order to gain passage of the treaties in other countries where the standards for intellectual property is much lower than our own.

Make no mistake, American intellectual property and the almost unsurpassed contribution it makes to our balance of trade is at risk around the world. Piracy costs American creators $15 billion in sales. In a digital era which brings the capacity to make perfect copies of copyrighted works, we must enact this legislation to fight overseas piracy and the toll it takes in export revenues and American jobs.

Madam Speaker, I think the gentleman from Massachusetts (Mr. FRANK) had it right. In the context of trying to protect this property, we needed to come to reasonable balances with providers of these services, with people who have legitimate interests in the fair use. This is, at least at this particular point, the best effort we can make to try to come to those kinds of balances and still provide the essential protection that this bill provides. I urge its adoption.

Mr. BLILEY. Madam Speaker, I yield such time as he may consume to the gentleman from Michigan (Mr. DINGELL).

(Mr. DINGELL asked and was given permission to revise and extend his remarks.)

Mr. DINGELL. Madam Speaker, I thank my good friend for yielding to me.

Because of an act of extraordinary lack of comity of the part of the managers of the bill on this side, and because of some extraordinary discourtesy, the Committee on Commerce has not been afforded our share of the time on this bill. I am therefore compelled to request time from the Republicans for this unanimous consent request. I express my thanks.

I hope that the next time our two committees deal with each other, there will be more courtesy shown by the Committee on the Judiciary. I intend to remember this event.

Mr. DINGELL. Mr. Speaker, I rise in support of H.R. 2281, the ''Digital Millennium Copyright Act,'' and I urge my colleagues to join me. This legislation is vitally important to the livelihoods of authors, musicians, filmmakers, software developers, and countless other creators of copyrighted works. However, just as important, this bill will preserve the legal right of information consumers to make ''fair use'' of copyrighted works just as they have done for over one hundred years.

Why is this treaty and its implementing legislation important? The digital age has vastly improved the quality of these works that we all enjoy. Today limitless copies can be made with virtually no reduction in quality. Unfortunately, these improvements in technology do not come without a cost. Piracy of copyrighted works, particularly overseas, has increased dramatically, and copyright owners are desperately in need of additional protection to protect their property from thieves who increasingly prey on their creative ingenuity.

However, there is another side to this story. As copyrighted works are afforded more protection, they will be encrypted in ''digital wrappers'' that make them impenetrable to anyone other than those who are willing to pay the going rate. While that may sound like the American way, it is not. United States copyright law historically has carved out important exceptions to the rights of copyright owners to have exclusive control over the use of their property.

The most notable exception is ''fair use.'' Libraries and universities, for example, are permitted to freely use portions of copyrighted works legally for research and study. This practice has been a bedrock of our copyright law for over a century. Both Congress and the courts repeatedly have recognized this important balance in the law between the right of copyright owners to be compensated for their efforts, and the right of information consumers to use these works in limited ways to increase knowledge and understanding for the benefit of our whole society.

We can now take great comfort in the fact that H.R. 2281 will continue to recognize this important balance. The ''fair use'' debate, though heated at times, was negotiated to an acceptable conclusion in the Commerce Committee, and this key compromise between the content and ''fair use'' communities is reflected in the bill on the floor today. Other critical matters were also resolved, such as protecting consumer privacy interests, electronic device manufacturing, and encryption research.

I would like to commend my good friend from Virginia, Chairman BLILEY, for his fine work on this bill. In addition, I would also like to give special thanks to Mr. BOUCHER and Mr. KLUG who contributed so much to the resolution of the ''fair use'' issue, as well as Mr. MARKEY and Mr. TAUZIN for their important efforts. Also, special thanks goes to all the staff who worked so hard on this legislation, in particular Justin Lilley with the Commerce Committee majority, Andy Levin and Kyra Fischbeck with the Commerce Committee minority, Ann Morton with Mr. BOUCHER, Kathy Hahn with Mr. KLUG, Whitney Fox with Mr. TAUZIN, and Colin Crowell with Mr. MARKEY, to name just a few.

Thank you, Mr. Speaker. I yield back the balance of my time.

Mr. BLILEY. Madam Speaker, I yield one minute to the gentleman from Ohio (Mr. OXLEY).

(Mr. OXLEY asked and was given permission to revise and extend his remarks.)

Mr. OXLEY. Madam Speaker, I rise in strong support of H.R. 2281, the WIPO enabling legislation. I want to pay special tribute to the chairman of the full committee, the gentleman from Virginia (Mr. BLILEY), as well as the gentleman from Illinois (Chairman HYDE), for their work as well, as my good friend the gentleman from Michigan (Mr. DINGELL) on the other side of the aisle.

The digital revolution presents special opportunities and special challenges for copyright holders and users of copyrighted works. Working with the Committee on the Judiciary, I think we put together a bill that we can all be proud of that deals with issues like fair use, encryption research and temporary and ephemeral copies.

This legislation will extend copyright protections for intellectual property into the digital age, while simultaneously protecting fair use of such works. It will provide an important foundation for the growth of electronic commerce on the Internet.

The bill also includes an important provision preserving the authority of the SEC over the mechanisms by which the public obtains information about our securities markets, including stock quotes. This ensures that the commission will be able to ensure that investors have ready access to the information they need to make their investment decisions.

I again thank the work of both the Committee on Commerce and the Committee on the Judiciary for bringing us where we are today.

Mr. FRANK of Massachusetts. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, I had intended to stick to the merits, but I did want to respond to the ranking member of the Committee on Commerce. Unfortunately, the public got a look at some of the turf battles that I do not think serve us very well.

The gentleman made some reference to comity. I do not know how that was spelled. But had the gentleman wanted me to yield him some time, I would have been glad to do it. I did not, because I had not been instructed by the ranking member of my full committee to split the time in terms of control. But I am glad to yield time to anyone who wants. Indeed, I yielded four minutes right away to the gentleman from Virginia. Now, the gentleman serves on both the Committee on the Judiciary and the Committee on Commerce, but he used his four minutes for a tribute to the work of the Committee on Commerce that was lyrical in its composition, and I am sure will go down in the annals as one of the best tributes to a committee ever given.

So, at this point I would reserve the balance of my time, but if Members want to speak, I would be glad to yield them time.

Mr. BLILEY. Madam Speaker, I yield one minute to the gentleman from Wisconsin (Mr. KLUG), who did an extraordinary amount of work on this piece of legislation.

Mr. KLUG. Madam Speaker, I thank the gentleman for yielding me time.

Madam Speaker, we have in front of us a very difficult balancing act, essentially trying to protect the American creative community across the world, people who make movies and television shows, book publishers and the recording industry. But in an era of exploding information, we also have to guarantee access to libraries and also university researchers, to make sure we do not enter a new era of pay per view, where the use of a library card always carries a fee and where the flow of information comes with a meter that rings up a charge every time the Internet is accessed.

Today we have a reasonable compromise in front of us, and I want to thank the gentleman from Virginia (Mr. BLILEY) and the gentleman from Michigan (Mr. DINGELL) for their leadership.

If I also could indulge the committee to single out several other people, Justin Lilley of the committee staff, Kathy Hahn of my staff, for working so hard on this compromise, and in particular the support of my colleague, the gentleman from Virginia (Mr. BOUCHER). I urge adoption of the bill.

I rise in support of H.R. 2281, the Digital Millennium Copyright Act of 1998 and request permission to revise and extend my remarks and to submit additional materials into the RECORD.

I especially want to acknowledge the many significant contributions that the Commerce Committee has made to this bill, under the leadership of Chairmen BLILEY and TAUZIN and Representatives DINGELL and MARKEY, and Justin Lilly, Kathy Hahn on my staff.

The bill that came to the Commerce Committee for consideration was a flawed bill in a number of respects: Most important, it created a flat prohibition against circumventing ''technological protection measures'' for any reason.

This original prohibition passed by the Judiciary Committee sharply skews the balance in favor of copyright owners. It would have required each user of information to negotiate with the copyright owner for access to information. I assume that the copyright owner would grant that permission, but would extract a price in exchange.

The Copyright Clause of the Constitution grants a limited preference to copyright owners. But this clause has consistently been interpreted to grant an incentive for the purposes of advancing knowledge or, in the words of the Constitution, ''to promote the Progress of Science and the Useful Arts.''

This incentive has always been interpreted to be of secondary importance to ''allow the public access to the products of genius.''

As the New York Times noted recently:

As Congress fashions ways to protect commercial interests in the digital realm, it must be careful also to protect the larger public interests in broad access to information. * * * The law does not allow a creator to control who looks at the material or prevent the material from being circulated or lent to others. It specifically allows the ''fair use'' of copyrighted materials for commentary, criticism, teaching, news reporting, scholarship and research under certain circumstances without permission from the copyright owner.

And, as the Washington Post notes this morning:

this transition to a pay-per-view world, * * * works fine for the entertainment industries and the commercial market. Where it doesn't work is in libraries and other places where use of books and research material is not pay-per-view but, till now, free.

The Commerce Committee corrected this automatic transition to a pay-per-view world by creating an exception for persons having gained lawful access who are or are likely to be adversely affected by the prohibition. In interpreting ''lawful access'', it is my hope that this term is broadly construed to include students at a university, patrons in a library, and investigative journalists who obtain critical information, among others.

Unlike the version reported by the Judiciary Committee, the approach taken by the Commerce Committee and reflected in the bill before us not only is an appropriate balance between the rights of copyright owners and users of information, it is also strongly supported by the treaty preamble that recognizes, ''the need to maintain balance between the rights of authors and the larger public interest, particularly education, research, and access to information.''

I also want to single out several other important contributions of the Commerce Committee. We have clarified that product designers and manufacturers should be able to design their products based on consumer demand. In so doing, we have eliminated any ambiguity or presumption that products must be designed to affirmatively respond to or accommodate any technological measures. It also ensures that lawyers, judges and juries do not become the principal designers of consumer products in this country. In the end, this language ensures that product designers and manufacturers will have the freedom to innovate.

As a related matter, consumers will continue to expect that the products they buy will perform to expectations, whether that be high resolution on high definition television or sound on-key for compact disks and digital video disks. Nothing in this bill, as clarified by the Commerce Committee in its report, should be read as interfering with a product manufacturer, designer, or retailer's ability to adjust any product that is experiencing material distortions caused by technological measures. We have an obligation up here to protect consumer interests, and ensuring that products play as promised is a critical step for consumer protection.

The compromise that is before us today is a thoughtful, well-crafted approach to a complicated problem. I not only urge my colleagues to vote for this compromise legislation, I strongly urge Chairman HYDE to adhere to this compromise language in its entirety, not just today, but when the House meets in conference with the Senate.

Mr. FRANK of Massachusetts. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, I did want to say that the ranking member of the full Committee on the Judiciary, the gentleman from Michigan (Mr. CONYERS), is in Michigan today because it is primary day in Michigan, and only that kept him from being here. The gentleman has been for a long time now one of the staunchest advocates of intellectual property rights. He is a man who has a great feel for American culture, and fully understands the role of intellectual property correctly understood in fostering our cultural traditions.

So I did want to express the strong support of the gentleman from Michigan and note that his leadership in this was very, very important, and to explain his absence as being due entirely to the fact that he had to be in Michigan for his primary.

Mr. BLILEY. Madam Speaker, I yield one minute to the gentleman from Washington (Mr. WHITE), who also put in a lot of work on this piece of legislation.

Mr. WHITE. Madam Speaker, I thank the chairman for yielding me time.

Madam Speaker, pretty much no matter what we do, this bill would be a big win for our country, because what this bill does in essence is it implements a treaty under which the rest of the world finally adopts our view of intellectual property. That is a big win for the United States.

But we also have the advantage that this bill actually turned out to be a pretty good bill, thanks to the gentleman from Virginia (Chairman BLILEY) and the gentleman from North

Carolina (Chairman COBLE), the gentleman from Illinois (Chairman HYDE), and many of the other people who worked on it.

The thing I like the most about it is that it moves intellectual property protection into the digital age. I was proud to play a small part in improving the bill. We adopted a special program for webcasting, this is broadcasting on the Internet. We will now have clear rules for how those sorts of things are supposed to be done.

I think this should be a day when all of us are very pleased that we are moving through the House a bill that will make big progress around the world for intellectual property, which is a big improvement for things in the United States.

Mr. BLILEY. Madam Speaker, I yield one minute to the gentleman from Florida (Mr. STEARNS), a member of the committee.

(Mr. STEARNS asked and was given permission to revise and extend his remarks.)

Mr. STEARNS. Madam Speaker, I also rise in support of the bill and compliment our chairman, the gentleman from Virginia (Mr. BLILEY), and, of course, I compliment my good friend the gentleman from North Carolina (Mr. COBLE), for their activities.

I participated in some of the areas dealing with technological protection measures, defining this actually: The no-mandate provision, which makes clear that manufacturers need not design their products to respond to any particular technological protection measure was included in the report; language to the compromise on ''fair use'' which seeks to protect consumers from a pay-per-view world in the digital area; and, three, provisions ensuring activities important to our economy and national security such as reversed engineering and encryption research will not be stifled by the new prohibition on circumventing technological protection measure.

I appreciate also the gentleman from Virginia (Mr. BOUCHER), who was very helpful and diligent in approving our amendments and working together. I recognize his efforts, and I rise in strong support of the bill.

Mr. Speaker, I rise in support of the final legislative product to implement the World Intellectual Property Organization Treaty to provide legal protection to the millions of American copyright holders and American companies.

I would also like to congratulate the efforts and the hard work of the key players to forge a compromise and bring this bill to the floor: Chairman BLILEY of the Commerce Committee and Chairman COBLE of the Intellectual Property Subcommittee deserve particular praise.

It has been a long and hard process to get us to this point. I had numerous concerns with the original bill that I believed needed correction.

During consideration of H.R. 2281, the Commerce Committee heard from many concerned groups including libraries, educators, researchers, consumer groups, advocates for families such as Eagle Forum and the Christian Coalition, and representatives of manufacturers of legitimate consumer electronics products. All of these groups raised legitimate concerns which the Commerce Committee has sought to address.

The bill we consider today represents many hours of debate and compromise.

It is not a perfect solution, but it includes important provisions designed to protect consumers and legitimate manufacturers of consumer electronics while providing important new protections to copyright owners so that their works may thrive in the digital environment.

Among the important provisions in the legislation are:

(1) The ''no mandate'' provision which makes clear that manufacturers need not design their products to respond to any particular technological protection measure;

(2) The compromise on ''fair use'' which seeks to protect consumers from a ''pay-per-view'' world in the digital era; and

(3) Provisions ensuring that activities important to our economy and national security such as reverse engineering and encryption research will not be stifled by the new prohibition on circumventing technological protection measures.

I would also like to note that during consideration of the WIPO legislation in the Commerce Committee, I had joined with my good friend from Virginia, Mr. BOUCHER, in offering an amendment that would have defined the term ''technological protection measure,'' because such a definition was lacking in the original bill.

Mr. BOUCHER and I worked diligently to improve our amendment and to seek a compromise position for a definition that would have enjoyed the support of the content community, as well as from the product manufacturers. We succeeded.

In order to push the bill forward and out of the Commerce Committee, we agreed to withdraw the amendment in exchange for Chairman BLILEY's support of report language that would have expanded on the proper definition of a ''technological protection measure.''

Although I believe the bill could have been further improved had we had the chance to define this term before bringing the bill to the floor, I believe the report of the Commerce Committee very clearly identifies the types of technological protection measures which are entitled to the special protections of this legislation.

In addition, I am confident that the federal courts that consider the meaning of the term ''technological protection measure'' will find sufficient guidance in the Commerce Committee's report.

I thank Chairman BLILEY for following through on his commitment and allowing such report language to be drafted, inserted, and negotiated with the Judiciary Committee.

I ask unanimous consent that my extended and revised remarks appear in the RECORD as if spoken.

Mr. BLILEY. Madam Speaker, I yield one minute to the gentleman from Massachusetts (Mr. MARKEY).

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Mr. MARKEY. Madam Speaker, I thank the gentleman for yielding me the time.

I want to congratulate all of the Members who have worked on this legislation, Madam Speaker. As the digital revolution sweeps over countries and industries, we are going to see a dramatic change in the nature of the American economy, because we are the clearcut leader in the post-GATT post-NAFTA world.

As we cut this implicit deal with the American people where we are going to let the low-end jobs go, it is critical for us to garner the lion's share of the high-end jobs. We are the world's leader in software, without question. In these computer, movie, books, video areas, we are the unquestioned dominant leader. It is our job to make sure that we construct treaties, laws, that protect our high end, our products that are related to the high education level which we are giving the citizens of the United States.

Built into this law are protections for the privacy of Americans, as well. We do not want corporations being able to insinuate themselves into the privacy of Americans, finding out where they go, what they do, as they use these new software technologies.

I think we have struck a nice balance, which is going to give marketplace incentives to industries to ensure that individuals have the knowledge on information that is being gathered about them, know that it may be reused, but also have the right to say no. I think it is going to be a good compromise forged.

I urge a very strong yes for all Members of Congress on this very important piece of legislation.

Mr. FRANK of Massachusetts. Madam Speaker, I yield myself such time as I may consume.

I am glad to turn away from the turf battles, which are to be of interest to no one outside this Chamber and very few inside, to talk a little more about substance.

Madam Speaker, I said earlier that one of the things I liked about this bill was that we reversed or at least stopped this trend to impinge on free speech. We have reduced the tendency to restrict speech which is electronically transmitted to a lesser degree of constitutional protection. But this is not the only bill relevant. I want to talk here about the danger in some other legislation of our continuing the unfortunate tendency of holding electronically transmitted speech to a lesser standard of protection.

I am told working its way through this body is legislation which would deny Federal aid to libraries and schools which do not impose various kinds of filtering devices on their own equipment. That it seems to me a very grave error. Of course, it makes a mockery of this profession of respect for States' rights which we occasionally hear, particularly when those who claim to be for States' rights do not like what the States are doing.

But the notion that we would impose a Federal judgment on schools and libraries, and make them use this very

admittedly imperfect technology of filtration so that they would be less than fully free in what they gave people, is an example of this unfortunate tendency to say that electronically transmitted speech has a lesser order of protection.

I hope no one would propose that Congress would say libraries would not get any money unless they censored books, unless they censored public speeches. Why, then, do we insist, and I hope we do not, that libraries can only get Federal funds if they agree to censure their electronic devices?

We already passed as part of the Telecommunications Act something called the Communications Decency Act, which was stricken by a 9 to nothing vote in the Supreme Court as unconstitutional. Indeed, some of the most ardent defenders of free speech during the campaign finance debate enthusiastically supported this, which was obviously unconstitutional at the time, and the Supreme Court held it to be.

I would just say in closing, Madam Speaker, that while I am pleased that here we took great pains to protect intellectual property while avoiding giving any additional incentive to censor, we may be undoing that in other pieces of legislation.

I would urge my colleagues to follow elsewhere the guide that I think we have set forth here: Do not adopt restrictions on electronically transmitted speech that we would not apply to written speech and to oral speech, to newspapers, to magazines, to theater, to other forums of public debate.

As this society continues to increase the percentage of our communication with each other that is electronically transmitted, it is essential that we give electronically transmitted speech the same high degree of protection from censorship and regulation that we give other speech, or we will be a less free society in consequence.

Madam Speaker, I reserve the balance of my time.

Mr. BLILEY. Madam Speaker, I yield 1½ minutes to the gentleman from Michigan (Mr. KNOLLENBERG).

(Mr. KNOLLENBERG asked and was given permission to revise and extend his remarks.)

Mr. KNOLLENBERG. Madam Speaker, I thank the chairman for being so gracious in relinquishing that time. I will not take all of it.

I will say, Madam Speaker, that I rise in full support of this bill. I want to thank the gentleman from North Carolina (Mr. COBLE) for his work in helping bring about the confection of this language. Included in the bill is a provision that I introduced to ensure that a computer owner may authorize the activation of their computer by a third party for the limited purpose of servicing computer hardware components. The bill provides language that authorizes third parties to make such a copy for the limited use of servicing computer hardware, the hardware components.

This provision does nothing to threaten the integrity of the Copyright Act, and maintains all the protections under the Act. The intent of the Copyright Act is to protect and encourage a free marketplace of ideas. However, without this provision, it hurts the free market by preventing the ISOs from servicing computers. Furthermore, it limits the computer users' choice of who can service their computer and how competitive a fee can be charged.

Again, I want to thank the gentleman from North Carolina (Mr. COBLE) for all of his work in helping us along on this.

Mr. COBLE. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, I thank everybody who has contributed to this exercise today. The creative ingenuity of the people of this country is responsible for our identification, culture, and not insignificantly large trade surplus. This has only come about because this country, through the work of the congressional judiciary committees down through the years, has enacted laws which protect intellectual property.

Our Founding Fathers, Madam Speaker, knew that a constitutional protection would be necessary in order to encourage Congress to create an incentive for creators. I am proud that this Congress and our subcommittee on the Committee on the Judiciary specifically have stood up for property rights of all kinds, both real property and intellectual property. I urge passage of the bill.

Madam Speaker, I reserve the balance of my time.

Mr. FRANK of Massachusetts. Madam Speaker, I yield the balance of my time to the gentleman from California (Mr. DREIER), and hope that he will remember me when he becomes chairman.

The SPEAKER pro tempore (Mrs. EMERSON). The gentleman from California (Mr. DREIER) is recognized for 2 minutes.

Mr. DREIER. Madam Speaker, I appreciate the gentleman yielding time to me, and I will, as we have amendments that conceivably could come forward from the gentleman from Massachusetts next year, consider them. I very much appreciate his acknowledging that I will be chairman next year.

Madam Speaker, let me rise in very strong support of this agreement. One of the most troubling aspects to this issue of global trade which is very important to the survival of our economy has been the issue of piracy. When we look at the impact that this has had on the entertainment industry and the biotechnology industry in my State of California, it is very, very troubling.

When we have ideas that emanate from individuals, the right to make sure that that is their property must be ensured. This WIPO agreement is in fact the best hope that we have to ensure that it will be acknowledged.

I simply rise to congratulate my friends who have been involved in this, the gentleman from North Carolina (Mr. COBLE), the gentleman from Illinois (Mr. HYDE), and of course, the Committee on Commerce, under the able leadership of the gentleman from Virginia (Mr. BLILEY), and a wide range of individuals in other industries, and of course, the gentleman from Massachusetts (Mr. FRANK).

This is a very important agreement, and I urge my colleagues to strongly support it.

Mr. BLILEY. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, I urge adoption of the bill.

Mr. COBLE. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, I want to say to the gentleman from California, he said he would remember the gentleman from Massachusetts (Mr. FRANK). I hope he remembers that both of us worked to accommodate him today when he has the gavel in his hand next year.

Finally, this has obviously been a team effort, Madam Speaker. Oftentimes we hear charges accusing us of being a do-nothing Congress. I think this piece of legislation today pretty well refutes that charge. Much good has been done in this session of the Congress, and today has been no exception. I thank everyone again for having contributed very favorably to this dialogue today.

Mr. HASTERT. Mr. Speaker, I am proud to rise in support of H.R. 2281, the Digital Millennium Copyright Act.

I am very pleased that Chairmen BLILEY, HYDE, COBLE and TAUZIN were able to reach a compromise on this bipartisan bill.

We all know that the strength of our copyright laws is fundamental to making our economy a success, while also allowing ''fair use'' of protected works for the common good.

Just because an authorized product is in a digitized form, we should not hinder a child's learning at St. Charles Public Library, or complicate an academic's research at Northern Illinois University, or prevent a high-tech engineer in Illinois from improving innovative products.

Specifically, this legislation includes new terminology vital to better resolving the issues ahead of us. The bill language on . . . ''no mandates on design''. . . . reverse engineering'' . . . ''playability'' . . . and ''definition of protection measures'' . . . will provide the framework for continuing the proper balance in the law.

By adopting these new terms, we can anticipate future policy concerns, and create a fair and balanced approach to solving the questions of the digital revolution.

Ms. SLAUGHTER. Mr. Speaker, I rise in support of H.R. 2281, the Digital Millennium Copyright Act, which would raise the international standards of copyright protection so that we can help combat the devastating losses to American companies that are being caused by the international piracy of copyrighted works.

As Chair of the Congressional Member Organization for the Arts, I am greatly concerned about the grave effects of copyright violations on America's artists, writers, and software engineers. The dramatic growth of the Internet is

providing us with tremendous new opportunities for electronic commerce and communication. But these same technological developments also carry significant risks, especially in the area of international copyright piracy. Today, American companies are losing $18–20 billion annual because copyrighted works can be stolen and distributed around the world by anyone capable of using a computer.

This legislation protects our nation's movie producers, record makers, and software designers from being forced to absorb more of these losses. At the same time, it protects lawful use of materials by classrooms and libraries, and allows individuals who perform encryption research to continue with their work. However, it does prohibit the sale, manufacture and use of devices and component parts that are specifically designed to gain unauthorized access to copyrighted works. It also addresses the issue of online service provider liability, incorporating language based on a compromise that has been reached among groups on all sides of the debate.

I urge my colleagues to vote yes on passage of H.R. 2281 so that we can protect the work of our nation's talented individuals from copyright violations while encouraging the growth of electronic commerce.

Mrs. MORELLA. Mr. Speaker, although the Commerce Committee changes to H.R. 2281, the WIPO Copyright Treaties Implementation Act, vastly improved the bill from the original Judiciary Committee passed version, I am still deeply troubled that H.R. 2281 is being considered on the suspension calendar. As I indicated in a July 31 letter to the Majority Leader, signed by several other Members of the House, I was very interested in offering a distance education amendment to H.R. 2281 that has the support of every educational group, from the National Education Association to the National Center for Home Education.

As we enter the 21st Century, distance education will play an even more pivotal role in educating our children, and those individuals interested in life long learning. Distance education will fill an important gap for those individuals, either because of family obligations, work obligations, or other barriers, who are prevented from attending traditional classes. It will also allow educational institutions, from outlying rural towns to the heart of America's inner cities, to access a full range of academic subjects that would otherwise not be available to them.

The amendment that I was planning to offer would have updated the exceptions to copyright law regarding distance education to meet the new challenges and allow for the use of new and exciting technologies that will improve the education of our citizens, so that we are better prepared to compete in this more competitive global economy. This is particularly important in my district where we currently have a shortage of high-technology workers that is hindering our economic growth.

In 1976, as part of the general revision of the Copyright Law, the Congress recognized the importance of the burgeoning practice of distance learning. As the House Report on Copyright Law Revision (No. 94–1476) put it, in the context of higher education, these ''telecourses are fast becoming a valuable adjunct of the normal college curriculum.'' (p. 84). The use of the term ''telecourses'' is, of course, significant. At the time, the only technology by means of which distance education could be conducted was that of television (either ''open'' or ''closed-circuit'') and in providing an exemption from copyright liability for illustrative uses of certain works in the course of distance learning lessons; typically, moreover, these lessons involved the transmission of text material, still images, or music. Against this background, the Congress proceeded to fashion the provisions of 17 U.S.C. 110(2).

The Copyright Act, in Section 106, provides for the various ''exclusive rights'' of the copyright owner. Because, as a matter of definition, TV broadcasting implicates only Section 106(4) ''public performance'' and the Section 106(5) ''public display,'' the distance education exemption in Section 110(2) relieves educators of liability with respect to those two rights. Moreover, since educational TV broadcasts typically at assembled groups of students, Section 110(2) was drafted to apply to ''reception in classrooms of similar places'' (extending to home reception only in the case of disabled persons and others in ''special circumstances''). Finally, Section 110(2) was written to apply only to performances of ''nondramatic literary or musical works,'' categories from which the overwhelming proportion of illustrative excerpts required by teachers would have been drawn.

More than 20 years later, distance education practice has changed dramatically. Increasingly, distance learning has become a staple of K–12 as well as higher education, and digital networks have become the favored technology for the delivery of distance learning lessons. As a technical matter, network transmissions generally become available to recipients only because a temporary copy of their content is made in the so-called ''random access memory'' of those recipients' computer terminals; thus, network transmission of an excerpt from a copyrighted work in the course of a distance learning lesson may involve not only the performance or display of that work, but also its ''distribution'' (another right which is reserved to the copyright owner in Section 106(2), and not covered by existing Section 110(2)). Moreover, many contemporary distance learning transmissions are intended primarily for reception in the homes or offices of students who are neither disabled nor exhibit other ''special circumstances''; indeed, many such transmissions are offered by institutions (like the Western Governors' University or various home-school networks) which have few or no physical ''classrooms or similar places.'' Again, existing Section 110(2) would not appear to cover such instructional programs. Finally, in the age of multimedia, instructors must be able to illustrate their lessons with relevant excerpts not only from the conventional literary and musical works covered in existing Section 110(2), but from the full range of cultural materials to which protection under the Copyright Act extends.

As I mentioned before, the proposed amendment would legitimize the best current practice in the field of distance education and encourage further innovation in this important area by eliminating technologically or educationally outdated restrictions from Section 110(2). By adopting such an amendment, the Congress would be following through on the decision it took in 1976 to encourage the practice of distance education by providing educators with a clearly defined ''safe harbor'' within which they could design lessons with enhanced learning value, free from concerns about potential legal liability.

As amended, the Section 110(2) exemption would apply only to qualified not-for-profit institutions and home-schools. ''Fly-by-night'' commercial trade schools and sham entities without demonstrable educational purposes would not qualify. Moreover, the amended sections would retain crucial restrictive language from the original, which limits its applicability to situations in which excerpts from copyrighted works are used ''for purposes of illustration, and [are] directly related and of material assistance to the teaching content'' of a distance learning lesson; indeed, the amended section would amplify that restriction with a new provision stating that the material used for illustrative purposes must be ''limited to that portion of the work reasonably necessary to accomplish the teaching purpose.'' In other words, the amended section would not permit educators to put entire copyrighted textbooks on line; such conduct is an infringement of copyright today, and it would continue to be under the amended section.

Nor would the section allow distance education programming to become a gateway through which valuable copyrighted works, in their entirety, could flow out into the Internet and become generally available. This is all the more so because the amended section applies only to educators who had not taken reasonable steps to provide safeguards against distance education transmissions being received by non-students or copied for redistribution. Thus, the amended section actually would give distance educators a new incentive to upgrade the security features of their networks to discourage copyright infringement.

It also is noteworthy that the exemption which would be defined in the amended section would be available only in connection with the actual delivery of educational materials by educators and their institutions, or (in the case of home schools) by parents. It would not deprive copyright owners of revenues in connection with the licensing of their works for inclusion in ''packaged'' materials designed for use in connection with distance education. Just as textbook authors and publishers today must obtain appropriate copyright clearances in order to include excerpts from copyrighted works, so would the creators of tomorrow's ''electronic texts.''

Mr. COBLE. Madam Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from North Carolina (Mr. COBLE) that the House suspend the rules and pass the bill, H.R. 2281, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The title of the bill was amended so as to read:

''A bill to amend title 17, United States Code, to implement the World Intellectual Property Organization Copyright Treaty and Performances and Phonograms Treaty, and for other purposes.''.

A motion to reconsider was laid on the table.