

achievement of all its students; to the Committee on Health, Education, Labor, and Pensions.

STATEMENTS ON INTRODUCED
BILLS AND JOINT RESOLUTIONS

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

S. 1257. A bill to amend statutory damages provisions of title 17, United States Code; to the Committee on the Judiciary.

COPYRIGHT DAMAGES IMPROVEMENT ACT OF 1999

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

S. 1258. A bill to authorize funds for the payment of salaries and expenses of the Patent and Trademark Office, and for other purposes; to the Committee on the Judiciary.

PATENT FEE INTEGRITY AND INNOVATION
PROTECTION ACT OF 1999

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

S. 1259. A bill to amend the Trademark Act of 1946 relating to dilution of famous marks, and for other purposes; to the Committee on the Judiciary.

TRADEMARK AMENDMENTS ACT OF 1999

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

S. 1260. A bill to make technical corrections in title 17, United States Code, and other laws; to the Committee on the Judiciary.

COPYRIGHT ACT TECHNICAL CORRECTIONS

Mr. HATCH. Mr. President, today I am pleased to rise, along with the ranking minority Member on the Judiciary Committee, Senator LEAHY, to introduce a series of intellectual property related "high-tech" measures designed to promote the continued growth of these vital sectors of the American economy and to protect the interests and investment of the entrepreneurs, authors, and innovators who fuel their growth.

It is no secret that high technology is the driving force in the American economy today. American technology is setting new standards for the global economy, from computer chip technology and computer hardware, to personal and business software applications, to Internet, multimedia and telecommunications technology, and even cutting-edge pharmaceuticals and genetic research. In my own state of Utah, these information technology industries contribute in excess of \$7 billion each year to the State's economy and pay wages that average 66 percent higher than the state average. Their performance has placed Utah among the world's top ten technology centers according to Newsweek Magazine. Where Wired is a Way of Life, Newsweek, November 9, 1998, at 44. Similar success is seen across the country, with

seven of the world's top ten technology centers located in the United States, and with American creative industries now surpassing all other export sectors in foreign sales and exports.

Underlying all of these technologies are the intangible property rights—copyrights, trademarks, patents, and trade secrets—that serve to promote creativity and innovation by safeguarding the investment, effort, and goodwill of those who venture into these fast-paced and volatile fields. Providing adequate protections for these intellectual property rights in the global high-tech environment is critical, particularly in the digital environment where electronic piracy is so easy, so cheap, and yet so potentially devastating to intellectual property owners—many of which are small entrepreneurial enterprises. In Utah, 65 percent of the information technology companies have fewer than 25 employees, and a majority have annual revenues of less than \$1 million. Over half of Utah's information technology companies have been in business for less than 10 years, with nearly a quarter having opened their doors since 1995. Intellectual property is the lifeblood of these companies and others similarly situated throughout the country, and even a single instance of piracy may be enough to drive them out of business. What's more, without adequate international protection, these companies would simply be unable to compete in the global marketplace.

That is why in the last Congress we enacted a number of measures to provide enhanced protection for intellectual property in the new global, high-tech environment. For example, last year Congress ratified two new landmark World Intellectual Property Organization (WIPO) treaties to update international copyright standards to respond to the challenges of the global economy and the digital, networked environment. In enacting the Digital Millennium Copyright Act (DMCA), Congress implemented these treaties in the United States by bringing our own copyright laws into the digital age and set the standard internationally for other nations to follow in amending their own laws to meet the requirements of the new WIPO treaties. In addition, as a part of that bill, we paved the way for new growth in online commerce by creating greater security for copyright owners and for the Internet service providers who transmit and store copyrighted works online. We also addressed new technologies, such as webcasting and satellite radio, to provide a copyright framework in which these new platforms can flourish.

This year, Senator LEAHY and I are continuing to focus our attention, and that of the Judiciary Committee, on important high-tech and intellectual property legislation. Already this year

the Judiciary Committee has reported, and the Senate has enacted, legislation to extend the Satellite Home Viewer Act, which will enable the satellite industry to use new and emerging technology to provide competition in the multichannel video marketplace and allow satellite subscribers to receive local network stations by way of their satellite dishes for the first time.

Today we are introducing a number of additional measures relating to technology and intellectual property to strengthen our laws further in order to provide both incentives to creativity and deterrents against infringement. Included among these are legislation that builds upon existing protections, including last year's measures to deter digital piracy, by raising the Copyright Act's limit on statutory damages, thereby making it more costly to engage in cyber-piracy and copyright theft. Also included is a measure to make technical "clean-up" amendments to the Digital Millennium Copyright Act in order to make its provisions clearer and more user-friendly. On the trademark side, Senator LEAHY and I are introducing a bill to make the protection of famous marks easier and more efficient and to provide recourse for trademark owners against the federal government for trademark infringement. Finally, we are introducing Patent and Trademark Office reauthorization legislation to allow the PTO to better serve its customers—America's innovators and trademark owners—through the collection and retention of patent and trademark fees.

It is our intention to turn to these bills in the Judiciary Committee prior to the July 4th recess at a Committee markup session dedicated solely to the consideration of intellectual property legislation. I expect these measures to be noncontroversial, and I look forward to working with my colleagues in the Senate as we bring these bills to the floor.

THE COPYRIGHT DAMAGES IMPROVEMENT ACT OF
1999

The Copyright Damages Improvement Act will provide strengthened protections for copyright owners and added deterrence against infringement by making it more costly to engage in digital piracy and copyright theft. In an age where electronic piracy costs next to nothing and where the distribution of pirated goods to locations around the world is as easy as the click of a button, we are faced with the danger that the costs of engaging in piracy will pale in comparison with the anticipated rewards. Last year we strengthened the Copyright Act's substantive protections to deter digital piracy in this global networked environment. The bill we are introducing today will make it more costly to infringe these and the Copyright Act's other substantive protections by raising the limit on statutory damages by 50 percent.

Section 504(c) of the Copyright Act provides for the award of statutory damages at the plaintiff's election in order to provide greater security for copyright owners, who often find it difficult to prove actual damages in infringement cases—particularly in the electronic environment—and to provide greater deterrence for would-be infringers. The current provision caps statutory damages at \$20,000 (\$100,000 in cases of willful infringement), which reflects figures set in statute in 1988 when the United States joined the Berne Convention. The combination of more than a decade of inflation and revolutionary changes in technology have rendered those figures largely inadequate to achieve their aims. The Copyright Damages Improvement Act updates the statutory damage provisions to account for both these factors.

Under the bill, the cap on statutory damages is increased by 50 percent, from \$20,000 to \$30,000, and the minimum is similarly increased from \$50 to \$750. For cases of willful infringement, the cap is raised to \$150,000. In addition, the bill creates a new tier of statutory damages targeted at bad actors who engage in a repeated pattern or practice of infringement. In these cases, the court is authorized to award statutory damages up to \$250,000.

This will not mean that a court must impose the full amount of damages in any given case, or even that it will be more likely to do so. In most cases, courts attempt to do justice by fixing the statutory damages at a level that approximates actual damages and defendant's profits. What this bill does is give courts wider discretion to award damages that are commensurate with the harm caused and the gravity of the offense. At the same time, the bill preserves provisions of the current law allowing the court to reduce the award of statutory damages to as little as \$200 in cases of innocent infringement and requiring the court to remit damages in certain cases involving nonprofit educational institutions, libraries, archives, or public broadcasting entities.

COPYRIGHT ACT TECHNICAL CORRECTIONS

Senator LEAHY and I are also introducing a general clean-up measure as a follow-up to the Digital Millennium Copyright Act and the Sonny Bono Copyright Term Extension Act, which were enacted at the end of the last Congress. This bill improves these bills to make them more user-friendly for copyright owners and those who make use of their works in accordance with the provisions of the Copyright Act.

THE TRADEMARK AMENDMENTS ACT OF 1999

The Trademark Amendments Act will provide stronger and more efficient protection for trademark owners and consumers by making it possible to prevent trademark dilution before it occurs, by clarifying the remedies available under the federal trademark dilution statute when it does occur, by

providing recourse against the federal government for its infringement of others' trademarks, and by creating greater certainty and uniformity in the area of trade dress protection.

In 1995, Senator LEAHY and I sponsored the Federal Trademark Dilution Act to provide a uniform federal cause of action for trademark dilution—the commercial use in commerce of a mark that dilutes, or “whittles away,” the distinctive quality of a famous trademark. Under this legislation, now codified as section 43(c) of the Lanham Act, the owner of a famous mark is able to protect the investment and consumer goodwill associated with his mark by preventing others from using the same or similar marks in ways that tarnish or blur the distinctiveness of his mark, even where such uses do not directly compete with the goods or services of the trademark owner. This new federal cause of action has been used increasingly in the high-tech, online environment as a means of combating cyberpirates and shady dealers who register famous marks as Internet domain names, seeking to sell them at a huge profit to the legitimate trademark owners or to reap where they have not sown, trading on the goodwill of others by confusing consumers about their relationships to famous brand-names. This problem is particularly acute in the Internet context where the only assurance of quality or sponsorship may be the information found on a web page and the IP address that leads consumers there.

On the whole, the Federal Trademark Dilution Act has been effective in achieving better protection for trademark owners and national uniformity in this area of the law. There are a number of areas, however, in which we can improve implementation of the law and its ability to protect both trademark owners and consumers. The Trademark Amendments Act of 1999 is designed to do just that.

First, it authorizes the Trademark Trial and Appeals Board (TTAB) to consider dilution as grounds for refusal to register a mark or for cancellation of a registered mark. In *Babson Bros. Co. v. Surge Power Corp.*, 39 USPQ 2d. 1953 (TTAB 1996), the TTAB held that it was not authorized by the Federal Trademark Dilution Act to consider dilution as grounds for opposition or cancellation of a registration. Thus, under current law a trademark owner may seek relief under the federal dilution statute only after dilution of the mark has occurred. And at least one circuit has held that likelihood of dilution is not enough, the trademark owner must prove actual dilution. The result is that the owner of a famous mark must stand idly by throughout the registration process and await recourse through costly litigation in federal court only after he has suffered harm to his mark. By specifically allowing

the trademark owner to oppose registration or to petition for cancellation of a diluting mark, the bill we are introducing today will prevent needless harm to the goodwill and distinctiveness of many trademarks and will make enforcing the federal dilution statute less costly and time consuming for all involved.

Second, the bill clarifies the trademark remedies available in dilution cases, including injunctive relief, defendant's profits, damages, costs, and, in exceptional cases, reasonable attorney fees, and the destruction of articles containing the diluting mark.

In addition, our bill will amend the Lanham Act to subject the federal government to suit for trademark infringement and dilution. The federal government increasingly participates in the marketplace as a provider of goods and services in competition with private entities. In fact, the federal government owns a substantial number of trademarks registered with the Patent and Trademark Office (PTO), and the Lanham Act even allows the PTO Commissioner to waive the registration fees for federal agencies. As a trademark owner, the federal government enjoys the full panoply of rights under the Lanham Act, including the right to sue private citizens and businesses to enforce its rights under the Act. In contrast, in *Preferred Risk Mutual Insurance Co. v. United States*, 39 F3d 789 (8th Cir. 1996), the Eighth Circuit held that the federal government is immune from suit for trademark infringement absent an explicit waiver of sovereign immunity.

Limited waivers of sovereign immunity exist for patent and copyright cases, as well as for cases involving protected plant varieties and semiconductor chip mask works. Congress has also explicitly abrogated state immunity from suit under the 11th Amendment for cases involving trademark, copyright, and patent infringement. Our bill will extend these same policies to the federal government, making it subject to suit for trademark infringement and dilution on the same terms and conditions as states under the Lanham Act.

The bill we are introducing will also promote greater uniformity and certainty in the area of trade dress protection by requiring plaintiffs to demonstrate that an unregistered mark is not functional. While trade dress may be afforded protection and registered on the Principal Register if it serves as a trademark or service mark, protection under the Lanham Act does not extend to functional trade dress features—those that are essential to compete in a given market—which are properly the subject of patent law. Where the plaintiff has demonstrated through the examination process that the trade dress is eligible for registration, the federal registration serves as

prima facie evidence of the validity of the mark and the registration, and in effect as prima facie evidence of nonfunctionality. For those cases where the plaintiff asserting trade dress protection has not demonstrated eligibility for registration through the trademark examination process, a majority of courts require the plaintiff to prove nonfunctionality. A minority of courts, however, have held that functionality is an affirmative defense which must be proved by the defendant.

Our bill creates uniformity by adopting the majority view, requiring the plaintiff to demonstrate nonfunctionality, either in the examination process or as an element of his case in seeking to enforce trade dress rights in litigation. This is consistent with the principles of federal trademark law and the common law, which requires plaintiffs to prove the essential elements of their case. Moreover, it will promote both certainty and competitive fairness by encouraging trade dress owners to register eligible designs and to seek patent protection for those that are ineligible due to functionality.

Finally, this bill makes a number of technical "clean-up" amendments relating to the Trademark Law Treaty Implementation Act, which was enacted at the end of the last Congress.

THE UNITED STATES PATENT AND TRADEMARK OFFICE REAUTHORIZATION ACT, FISCAL YEAR 2000

The fourth bill we are introducing today is designed to allow the PTO to better serve American innovators and trademark owners through the collection and retention of patent and trademark fees. Last year we enacted legislation to provide the PTO with the resources it needs to meet the demands of its workload and to limit the ability of Congress and the Administration to divert money from the PTO to unrelated federal programs—all while providing for an overall decrease in patent fees. The bill we are introducing today continues those policies by allowing the PTO to generate the revenue it needs to operate as a fully fee-funded agency and to retain those fees for use in its patent and trademark operations, without fee diversions or the creation of new surcharges.

In the past, a substantial portion of patent fees revenues have been diverted in the budget process to pay for unrelated federal programs. The result has been substantial backlogs in patent pendency and a general inability to provide the type of service our nation's inventors pay for. I, along with several of my colleagues, have vigorously opposed this practice. The legislation we enacted last year went a long way to ensure that this practice would not continue. The legislation we are introducing today will continue this assurance by authorizing the PTO to raise just the revenues it needs to meet its

program goals and retain those fees for use in its patent and trademark operations. The bill also makes available \$116 million in fees from previous years, which the Administration has sought to withhold, and prohibits the imposition of unprecedented new surcharge fees sought by the Administration's budget to subsidize federal health and life insurance benefits for PTO employees. In the end, this legislation will promote a stronger, more efficient patent office and will mean, quite simply, that America's innovators and trademark owners will get what they pay for.

Mr. President, I look forward to working with my colleagues to promote the progress of innovation in this country and the continued growth of the high-tech industrial base that has put our nation at the forefront of the global economy. Each of the bills we are introducing today will help to do that, and I urge my colleagues' support.

Mr. LEAHY. Mr. President, I am pleased to join the chairman of the Judiciary Committee in introducing four bills to reauthorize the Patent and Trademark Office, update the statutory damages available under the Copyright Act, make technical corrections to two new copyright laws enacted last year, and prevent trademark dilution. As the Chairman and I have already indicated in our June 11 joint statement, we hope that the Senate Judiciary Committee reports these bills promptly and that the Senate considers the bills without delay.

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

Among the other important intellectual property matters for us to consider are the following:

Distance Education. The Senate Judiciary Committee held a hearing last month on the Copyright Office's thorough and balanced report on copyright and digital distance education. We need to address the legislative recommendations outlined in that report to ensure that our laws permit the appropriate use of copyrighted works in valid distance learning activities.

Patent Reform. A critical matter on the intellectual property agenda, important to the nation's economic future, is reform of our patent laws. I

worked on a bipartisan basis in the last Congress to get the Omnibus Patent Act, S. 507, reported by the Judiciary Committee to the Senate by a vote of 177 to one, and then tried to have this bill considered and passed by the Senate. Unfortunately, the bill became stalled due to resistance by some in the majority. We should consider and pass this important legislation.

Madrid Protocol Implementation Act. I introduced this legislation, S. 671, to help American businesses, and especially small and medium-sized companies, protect their trademarks as they expand into international markets by conforming American trademark application procedures to the terms of the Protocol in anticipation of the U.S.'s eventual ratification of the treaty. Ratification by the United States of this treaty would help create a "one stop" international trademark registration process, which would be an enormous benefit for American businesses.

Database Protection. I noted upon passage of the Digital Millennium Copyright Act last year that there was not enough time before the end of that Congress to give due consideration to the issue of database protection, and that I hoped the Senate Judiciary Committee would hold hearings and consider database protection legislation in this Congress, with a commitment to make more progress. I support legal protection against commercial misappropriation of collections of information, but am sensitive to the concerns raised by the Administration, the libraries, certain educational institutions, and the scientific community. This is a complex and important matter that I look forward to considering in this Congress.

Tampering with Product Identification Codes. Product identification codes provide a means for manufacturers to track their goods, which can be important to protect consumers in cases of defective, tainted or harmful products and to implement product recalls. Defacing, removing or tampering with product identification codes can thwart these tracking efforts, with potential safety consequences for American consumers. We should examine the scope of, and legislative solutions to remedy, this problem.

Online Trademark Protection or "Cybersquatting." I have long been concerned with protection online of registered trademarks. Indeed, when the Congress passed the Federal Trademark Dilution Act of 1995, I noted that:

[A]lthough no one else has yet considered this application, it is my hope that this antidilution statute can help stem the use of deceptive Internet addresses taken by those who are choosing marks that are associated with the products and reputations of others. (CONGRESSIONAL RECORD, December 29, 1995, page S19312).

Last year, my amendment authorizing a study by the National Research

Council of the National Academy of Sciences of the effects on trademark holders of adding new top-level domain names and requesting recommendations on related dispute resolution procedures, was enacted as part of the Next Generation Internet Research Act. We have not yet seen the results of that study, and I understand that the Internet Corporation for Assigned Names and Numbers (I-CANN) and World Intellectual Property Organization (WIPO) are considering mechanisms for resolving trademark and other disputes over assignments of domain names in an expeditious and inexpensive manner.

This is an important issue both for trademark holders and for the future of the global Internet. While I share the concern of trademark holders over what WIPO has characterized as "predatory and parasitical practices by a minority of domain registrants acting in bad faith" to register famous or well-known marks of others—which can lead to consumer confusion or down-right fraud—the Congress should tread carefully to ensure that any remedies do not impede or stifle the free flow of information on the Internet.

THE PATENT FEE INTEGRITY AND INNOVATION PROTECTION ACT OF 1999

We are introducing today the Patent Fee Integrity and Innovation Protection Act to reauthorize the Patent and Trademark Office for fiscal year 2000, on terms that ensure the fees collected from users will be used to operate the Patent and Trademark Office and not diverted to other uses.

The PTO is fully funded and operated through the payment of application and user fees. Indeed, taxpayer support for the operations of the PTO was eliminated in the Omnibus Budget Reconciliation Act of 1990, which imposed a large fee increase (referred to as a "surcharge") on those who use the PTO, namely businesses and inventors applying for or seeking to protect patents on trademarks.

The fees accumulated from the surcharge were held in a surcharge account, for use by the PTO to support the patent and trademark systems. Unfortunately, however, the funds in the surcharge account were also diverted to fund other, unrelated government programs. By fiscal year 1997, almost \$54 million from the surcharge account was diverted from PTO operations.

Last year, Congress responded to this diversion of PTO fees by enacting H.R. 3723/S. 507, which the Chairman and I had introduced on March 20, 1997. That legislation authorized a schedule of fees to fund the PTO, but no other government program, and resulted in the first decrease in patent application fees in at least 50 years.

This PTO reauthorization bill would make \$116,000,000 available to the Patent and Trademark Office, a self-sustaining agency, to pay for salaries and

necessary expenses in FY 2000. This money reflects the amount in carry-over funds from FY99 that PTO expects to receive from fees collected, pursuant to the Patent Act and the Trademark Act. By authorizing the money to go to PTO, the bill would avoid diversion of these fees to other government agencies and programs. Inventors and the business community who rely on the patent and trademark systems do not want the fees they pay to be diverted but would rather see this money spent on PTO upgraded equipment, additional examiners and expert personnel or other items to make the systems more efficient. I agree.

COPYRIGHT ACT TECHNICAL CORRECTIONS ACT

In the last Congress, Senator HATCH and I worked together for passage of the Digital Millennium Copyright Act (DMCA) and the Sonny Bono Copyright Term Extension Act. This significant legislation is intended to encourage copyright owners to make their works available online by updating the copyright laws with additional protections for digital works, and conforming copyright terms available to American authors to those available overseas. We are now introducing legislation that will make certain technical corrections to those bills.

Specifically, this bill (1) renumbers the section number for the liability limits for online service providers; (2) renumbers paragraphs in the section on "ephemeral recordings" which are used solely for transmitting or archiving a performance or audiovisual display; (3) clarifies that the Commissioner of Patents is to be paid at level III of the executive schedule rather than level V, consistent with a provision in the DMCA; and (4) changes from one to two years the time for seeking design protection after a design is made public by the designer or, in other words, forfeits protection if an application for registration is not made within 2 years of the design being made public.

I remain hopeful that as this bills moves forward we can also address another item inadvertently omitted from the DMCA. Specifically, to include public broadcasting entities in the liability limitation provisions granted under the DMCA to nonprofit libraries, archives and educational institutions.

The House of Representatives passed its version of this legislation, H.R. 1189, on April 13, 1999, and I urge prompt Senate action on this Hatch-Leahy bill.

THE DIGITAL THEFT DETERRENCE AND COPYRIGHT DAMAGES IMPROVEMENT ACT OF 1999

I have long been concerned about reducing the levels of software piracy in this country and around the world. The theft of digital copyrighted works and, in particular, of software results in lost jobs to American workers, lost taxes to Federal and State governments, and lost revenue to American companies. A report released last week by the Business Software Alliance estimates that

worldwide theft of copyrighted software in 1998 amounted to nearly \$11 billion. According to the report, if this "pirated software has instead been legally purchased, the industry would have been able to employ 32,700 more people. In 2008, if software piracy remains at its current rate, 52,700 jobs will be lost in the core software industry." This theft also reflects losses of \$991 million in tax revenue in the United States.

These statistics about the harm done to our economy by the theft of copyrighted software alone, prompted me to introduce the "Criminal Copyright Improvement Act" in both the 104th and 105th Congresses, and work over those two Congresses for passage of this legislation, which was finally enacted as the "No Electronic Theft Act." The current rates of software piracy show that we need to do better to combat this theft, both with enforcement of our current copyright laws and with strengthened copyright laws to deter potential infringers.

I am, therefore, pleased to join Senator HATCH in introducing the Digital Theft Deterrence and Copyright Damages Improvement Act. The bill would amend the Copyright Act, 17 U.S.C. §504(c), by increasing the amounts of statutory damages recoverable for copyright infringements. These amounts were last increased in 1988 when the United States acceded to the Berne Convention. Specifically, the bill would increase the cap on statutory damages by 50 percent, raising the minimum from \$500 to \$750 and raising the maximum from \$20,000 to \$30,000. In addition, the bill would raise from \$100,000 to \$150,000 the amount of statutory damages for willful infringements.

Courts determining the amount of statutory damages in any given case would have discretion to impose damages within these statutory ranges at just and appropriate levels, depending on the harm caused, ill-gotten profits obtained and the gravity of the offense. The bill preserves provisions of the current law allowing the court to reduce the award of statutory damages to as little as \$200 in cases of innocent infringement and requiring the court to remit damages in certain cases involving nonprofit educational institutions, libraries, archives, or public broadcasting entities.

In addition, the bill would create a new tier of statutory damages allowing a court to award damages in the amount of \$250,000 per infringed work where the infringement is part of a willful and repeated pattern of practice of infringement.

I note that the House version of this legislation, H.R. 1761, omits any scienter requirement for the new proposed enhanced penalty for infringers who engage in a repeated pattern of infringement. I share the concerns raised

by the Copyright Office that this provision, absent a willfulness scienter requirement, would permit imposition of the enhanced penalty even against person who negligently, albeit repeatedly, engaged in acts of infringement. The Hatch-Leahy bill avoids casting such a wide net, which could chill legitimate fair uses of copyrighted works.

THE TRADEMARK AMENDMENTS ACT OF 1999

Finally, I am pleased to join Senator HATCH in introducing the Trademark Amendments Act to enhance protection for trademark owners and consumers by making it possible to prevent trademark dilution before it occurs, by clarifying the remedies available under the Federal trademark dilution statute when it does occur, by providing recourse against the Federal Government for its infringement of others' trademarks, and by creating greater certainty and uniformity in the area of trade dress protection.

Current law provides for injunctive relief after an identical or similar mark has been in use and has caused actual dilution of a famous mark, but provides no means to oppose an application for a mark or to cancel a registered mark that will result in dilution of the holder's famous mark. In *Babson Bros. Co. v. Surge Power Corp.*, 39 USPQ 2d. 1953 (TTAB 1996), the Trademark Trial and Appeals Board (TTAB) held that it was not authorized by the "Federal Trademark Dilution Act" to consider dilution as grounds for opposition or cancellation of a registration. The bill remedies this situation by authorizing the TTAB to consider dilution as grounds for refusal to register a mark or for cancellation of a registered mark. This would permit the trademark owner to oppose registration or to petition for cancellation of a diluting mark, and thereby prevent needless harm to the goodwill and distinctiveness of many trademarks and make enforcing the Federal dilution statute less costly and time consuming for all involved.

Second, the bill clarifies the trademark remedies available in dilution cases, including injunctive relief, defendant's profits, damages, costs, and, in exceptional cases, reasonable attorney fees, and the destruction of articles containing the diluting mark.

Third, the bill amends the Lanham Act to allow for private citizens and corporate entities to sue the Federal Government for trademark infringement and dilution. Currently, the Federal Government may not be sued for trademark infringement, even though the Federal Government competes in some areas with private business and may sue others for infringement. This bill will level the playing field, and make the Federal Government subject to suit for trademark infringement and dilution on the same terms and conditions as States under the Lanham Act.

Fourth, the bill provides a limited amendment to the Lanham Act to pro-

vide that in an action for trade dress infringement, where the matter sought to be protected is not registered with the PTO, the plaintiff has the burden of proving that the trade dress is not functional. This will help promote fair competition and provide an incentive for registration.

Finally, this bill makes a number of technical "clean-up" amendments relating to the Trademark Law Treaty Implementation Act, which was enacted at the end of the last Congress.

These bills represent a good start on the work before the Senate Judiciary Committee to update American intellectual property law to ensure that it serves to advance and protect American interests both here and abroad. I began this statement, however, with the list of copyright, patent and trademark issues that we should also address. We have a lot more work to do.

By Mr. DODD:

S. 1261. A bill to authorize the Secretary of Transportation to issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade for the vessel *Yankee*; to the Committee on Commerce, Science, and Transportation.

CERTIFICATE OF DOCUMENTATION FOR THE VESSEL "YANKEE"

Mr. DODD. Mr. President, I rise today to introduce legislation to waive the 1920 Merchant Marine Act, commonly known as the Jones Act, to allow Yankee Sailing, LLC to operate the 1959 Holland-built vessel YANKEE.

Yankee Sailing LLC is a family-owned business based out of New London, Connecticut that intends to provide 2-4 hour day sails out of the New London and Mystic areas in the summer months. In an effort to provide year-round sailing opportunities, Yankee Sailing LLC also hopes to offer 1-2 week sail training trips along the coast in the fall and winter. The YANKEE is equipped to carry 25-35 daytime passengers and 8-10 overnight passengers, and does not pose any threat to larger U.S. shipping interests.

The YANKEE is a vessel of considerable historical significance having been designed by and built for one of New England's most famous contemporary sailors, the late Irving Johnson. The YANKEE shares a well-established relationship with the Mystic Seaport Museum where the Johnson Collection is housed, and it was also the centerpiece for an Irving Johnson reunion held at the Seaport this past October.

The owners request the waiver because while the vessel was originally documented in the United States with a home port of Mystic, CT, it was built in Holland and is, therefore, excluded from coastal trade by the Jones Act. The owners were aware of the Jones Act's restrictions, however, they were unclear as to its applicability with re-

gard to a vessel's size. Their understanding was that the act only pertained to vessels 65 feet in length or greater carrying over six passengers. Yankee Sailing LLC hoped to operate with six passengers to generate revenue until they could receive full certification allowing for larger sailing trips. Due to this confusion regarding the law, Yankee Sailing LLC is unable to provide these small sailing trips and suffers financially as a consequence.

Yankee Sailing LLC wishes to provide residents of southeastern Connecticut the opportunity to experience the excitement of sailing and did not willfully violate the Jones Act. The presence of its services will help stimulate the local economy and tourism in a region attempting to promote an economic renaissance.

Based upon all of the combined facts, I believe a waiver should be granted for the YANKEE. I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1261

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CERTIFICATE OF DOCUMENTATION.

Notwithstanding section 27 of the Merchant Marine Act, 1920 (46 U.S.C. App. 883), section 8 of the Act of June 19, 1886 (24 Stat. 81, chapter 421; 46 U.S.C. App. 289), and sections 12106 and 12108 of title 46, United States Code, the Secretary of Transportation may issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade for the vessel YANKEE, United States official number 1076210.

By Mr. REED (for himself, Mr. COCHRAN, Mr. SARBANES, Mr. WELLSTONE, Mr. KENNEDY, Mr. DASCHLE, Mr. REID, and Mrs. MURRAY):

S. 1262. A bill to amend the Elementary and Secondary Education Act of 1965 to provide up-to-date school library medial resources and well-trained, professionally certified school library media specialists for elementary schools and secondary schools, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

THE ELEMENTARY AND SECONDARY SCHOOL LIBRARY MEDIA RESOURCES, TRAINING, AND ADVANCED TECHNOLOGY ACT

Mr. REED. Mr. President, I rise today to introduce legislation to support and strengthen America's school libraries.

The school library plays a vital role in the education of students. It is where reading skills are reinforced; the laboratory where ideas taught in class are explored and tested; the arena in