

CONGRATULATING THE STATE OF  
QATAR

Mr. GORTON. Mr. President, I ask unanimous consent that the Senate now proceed to the immediate consideration of Calendar No. 188, H. Con. Res. 35.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 35) congratulating the State of Qatar and its citizens for their commitment to democratic ideals and women's suffrage on the occasion of Qatar's historic elections of a central municipal council on March 8, 1999.

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

Mr. GORTON. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and any statements relating to this resolution be printed in the RECORD.

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

The resolution (H. Con. Res. 35) was agreed to.

The preamble was agreed to.

DIGITAL THEFT DETERRENCE AND  
COPYRIGHT DAMAGES IMPROVE-  
MENT ACT OF 1999

Mr. GORTON. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of Calendar No. 193, S. 1257.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (S. 1257) to amend statutory damages provisions of title 17, United States Code.

There being no objection, the Senate proceeded to consider the bill.

Mr. HATCH. Mr. President, today the Senate is considering four very important intellectual property related "high-tech" bills that Senator LEAHY and I have introduced to promote the continued growth of vital sectors of the American economy and to protect the interests and investment of the entrepreneurs, authors, and innovators who fuel their growth. These bills were reported by unanimous consent earlier today by the Judiciary Committee.

Technology is the driving force in the American economy today, and American technology is setting new standards for the global economy, from semiconductor chip technology, to computer software, Internet and telecommunications technology, to leading pharmaceutical 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. Similar success is seen

in areas across the country, with the U.S. being home to seven of the world's top ten technology centers and with American creative industries now surpassing all other export sectors in foreign sales and exports.

Underlying all of these technologies are the intellectual property rights 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. Strong intellectual property protections are particularly critical in the global high-tech 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 these companies have fewer than 25 employees, and a majority have annual revenues of less than \$1 million. Intellectual property is the lifeblood of these companies, and even a single instance of piracy could 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 we enacted a number of measures last year to provide enhanced protection for intellectual property in the new global, high-tech environment. For example, the Digital Millennium Copyright Act (DMCA) implemented two new World Intellectual Property Organization Treaties setting new global standards for copyright protection in the digital environment. We also paved the way for new growth in online commerce by providing a copyright framework in which the Internet and other new technologies can flourish.

This year, Senator LEAHY and I are continuing to focus our attention on important high-tech and intellectual property legislation. The bills we are considering today will build upon existing protections, including last year's measures to deter digital piracy, by raising the Copyright Act's limit on statutory damages to make it more costly to engage in cyber-piracy and copyright theft. They will also make technical "clean-up" amendments to the DMCA and other Copyright Act provisions to make them clearer and more user-friendly. On the trademark side, these bills will make the protection of famous marks easier and more efficient and provide recourse for trademark owners against the federal government for trademark infringement. Finally, these bills will allow the Patent and Trademark Office to better serve its customers—America's innovators and trademark owners—through the collection and retention of fees.

Each of these bills is noncontroversial and enjoys widespread support. I want to thank Senator LEAHY for his assistance, cooperation, and leadership

in this process, and I look forward to the Senate swiftly passing these bills today.

Mr. GORTON. I ask unanimous consent that the bill be considered read a third time and passed and the motion to reconsider be laid upon the table.

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

The bill (S. 1257) was considered read the third time and passed, as follows:

S. 1257

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Digital Theft Deterrence and Copyright Damages Improvement Act of 1999".

**SEC. 2. STATUTORY DAMAGES ENHANCEMENT.**

Section 504(c) of title 17, United States Code, is amended—

(1) in paragraph (1)—

(A) by striking "\$500" and inserting "\$750"; and

(B) by striking "\$20,000" and inserting "\$30,000"; and

(2) in paragraph (2)—

(A) by inserting "(A)" after "(2)";

(B) by striking "\$100,000" and inserting "\$150,000";

(C) by inserting after the second sentence the following:

"(B) In a case where the copyright owner demonstrates that the infringement was part of a repeated pattern or practice of willful infringement, the court may increase the award of statutory damages to a sum of not more than \$250,000 per work."; and

(D) by striking "The court shall remit statutory damages" and inserting the following:

"(C) The court shall remit statutory damages".

PATENT FEE INTEGRITY AND IN-  
NOVATION PROTECTION ACT OF  
1999

Mr. GORTON. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of Calendar No. 193, S. 1258.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (S. 1258) to authorize funds for the payment of salaries and expenses of the Patent and Trademark Office, and for other purposes.

There being no objection, Senate proceeded to consider the bill.

Mr. GORTON. I ask unanimous consent that the bill be considered read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

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

The bill (S. 1258) was considered read the third time and passed, as follows:

S. 1258

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Patent Fee Integrity and Innovation Protection Act of 1999".

**SEC. 2. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be made available for the payment of salaries and necessary expenses of the Patent and Trademark Office in fiscal year 2000, \$116,000,000 from fees collected in fiscal year 1999 and such fees as are collected in fiscal year 2000 pursuant to title 35, United States Code, and the Trademark Act of 1946 (15 U.S.C. 1051 et seq.), except that the Commissioner is not authorized to charge and collect fees to cover the accrued indirect personnel costs associated with post-retirement health and life insurance of officers and employees of the Patent and Trademark Office other than those charged and collected pursuant to title 35, United States Code, and the Trademark Act of 1946.

**SEC. 3. EFFECTIVE DATE.**

This Act shall take effect on October 1, 1999.

### TRADEMARK AMENDMENTS ACT OF 1999

Mr. GORTON. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of Calendar No. 195, S. 1259.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (S. 1259) to amend the Trademark Act of 1946 relating to the dilution of famous marks, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. GORTON. I ask unanimous consent that the bill be considered read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

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

The bill (S. 1259) was considered read the third time and passed, as follows:

S. 1259

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Trademark Amendments Act of 1999".

**SEC. 2. DILUTION AS A GROUNDS FOR OPPOSITION AND CANCELLATION.**

(a) **REGISTRABLE MARKS.**—Section 2 of the Act entitled "An Act to provide for the registration and protection of trade-marks used in commerce, to carry out the provisions of certain international conventions, and for other purposes" (in this Act referred to as the "Trademark Act of 1946") (15 U.S.C. 1052) is amended by adding at the end the following flush sentences: "A mark which when used would cause dilution under section 43(c) may be refused registration only pursuant to a proceeding brought under section 13. A registration for a mark which when used would cause dilution under section 43(c) may be canceled pursuant to a proceeding brought under either section 14 or section 24."

(b) **OPPOSITION.**—Section 13(a) of the Trademark Act of 1946 (15 U.S.C. 1063(a)) is amended in the first sentence by inserting ", including as a result of dilution under section 43(c)," after "principal register".

(c) **PETITIONS TO CANCEL REGISTRATIONS.**—Section 14 of the Trademark Act of 1946 (15 U.S.C. 1064) is amended in the matter preceding paragraph (1) by inserting ", includ-

ing as a result of dilution under section 43(c)," after "damaged".

(d) **CANCELLATION.**—Section 24 of the Trademark Act of 1946 (15 U.S.C. 1092) is amended in the second sentence by inserting ", including as a result of dilution under section 43(c)," after "register".

(e) **EFFECTIVE DATE AND APPLICATION.**—The amendments made by this section shall take effect on the date of enactment of this Act and shall apply only to any application for registration filed on or after January 16, 1996.

**SEC. 3. REMEDIES IN CASES OF DILUTION OF FAMOUS MARKS.**

(a) **INJUNCTIONS.**—(1) Section 34(a) of the Trademark Act of 1946 (15 U.S.C. 1116(a)) is amended in the first sentence by striking "section 43(a)" and inserting "subsection (a) or (c) of section 43".

(2) Section 43(c)(2) of the Trademark Act of 1946 (15 U.S.C. 1125(c)(2)) is amended in the first sentence by inserting "as set forth in section 34" after "relief".

(b) **DAMAGES.**—Section 35(a) of the Trademark Act of 1946 (15 U.S.C. 1117(a)) is amended in the first sentence by striking "or a violation under section 43(a)," and inserting "a violation under section 43(a), or a willful violation under section 43(c)."

(c) **DESTRUCTION OF ARTICLES.**—Section 36 of the Trademark Act of 1946 (15 U.S.C. 1118) is amended in the first sentence—

(1) by striking "or a violation under section 43(a)," and inserting "a violation under section 43(a), or a willful violation under section 43(c)."; and

(2) by inserting after "in the case of a violation of section 43(a)" the following: "or a willful violation under section 43(c)".

(d) **EFFECTIVE DATE AND APPLICATION.**—The amendments made by this section shall take effect on the date of enactment of this Act and shall not apply to any civil action pending on such date of enactment.

**SEC. 4. LIABILITY OF GOVERNMENTS FOR TRADE-MARK INFRINGEMENT AND DILUTION.**

(a) **CIVIL ACTIONS.**—Section 32 of the Trademark Act of 1946 (15 U.S.C. 1114) is amended in the last undesignated paragraph in paragraph (1)—

(1) in the first sentence by inserting after "includes" the following: "the United States, all agencies and instrumentalities thereof, and all individuals, firms, corporations, or other persons acting for the United States and with the authorization and consent of the United States, and"; and

(2) in the second sentence by striking "Any" and inserting "The United States, all agencies and instrumentalities thereof, and all individuals, firms, corporations, other persons acting for the United States and with the authorization and consent of the United States, and any".

(b) **WAIVER OF SOVEREIGN IMMUNITY.**—Section 40 of the Trademark Act of 1946 (15 U.S.C. 1122) is amended—

(1) by redesignating subsection (b) as subsection (c);

(2) by striking "SEC. 40. (a) Any State" and inserting the following:

"SEC. 40. (a) **WAIVER OF SOVEREIGN IMMUNITY BY THE UNITED STATES.**—The United States, all agencies and instrumentalities thereof, and all individuals, firms, corporations, other persons acting for the United States and with the authorization and consent of the United States, shall not be immune from suit in Federal or State court by any person, including any governmental or nongovernmental entity, for any violation under this Act.

"(b) **WAIVER OF SOVEREIGN IMMUNITY BY STATES.**—Any State"; and

(3) in the first sentence of subsection (c), as so redesignated—

(A) by striking "subsection (a) for a violation described in that subsection" and inserting "subsection (a) or (b) for a violation described therein"; and

(B) by inserting after "other than" the following: "the United States or any agency or instrumentality thereof, or any individual, firm, corporation, or other person acting for the United States and with authorization and consent of the United States, or".

(c) **DEFINITION.**—Section 45 of the Trademark Act of 1946 (15 U.S.C. 1127) is amended by inserting between the 2 paragraphs relating to the definition of "person" the following:

"The term 'person' also includes the United States, any agency or instrumentality thereof, or any individual, firm, or corporation acting for the United States and with the authorization and consent of the United States. The United States, any agency or instrumentality thereof, and any individual, firm, or corporation acting for the United States and with the authorization and consent of the United States, shall be subject to the provisions of this Act in the same manner and to the same extent as any nongovernmental entity."

**SEC. 5. CIVIL ACTIONS FOR TRADE DRESS INFRINGEMENT.**

Section 43(a) of the Trademark Act of 1946 (15 U.S.C. 1125(a)) is amended by adding at the end the following:

"(3) In a civil action for trade dress infringement under this Act for trade dress not registered on the principal register, the person who asserts trade dress protection has the burden of proving that the matter sought to be protected is not functional."

**SEC. 6. TECHNICAL AMENDMENTS.**

(a) **ASSIGNMENT OF MARKS.**—Section 10 of the Trademark Act of 1946 (15 U.S.C. 1060) is amended—

(1) by striking "subsequent purchase" in the second to last sentence and inserting "assignment";

(2) in the first sentence by striking "mark," and inserting "mark."; and

(3) in the third sentence by striking the second period at the end.

(b) **ADDITIONAL CLERICAL AMENDMENTS.**—The text and title of the Trademark Act of 1946 are amended by striking "trade-marks" each place it appears and inserting "trade-marks".

### TECHNICAL CORRECTIONS IN TITLE 17, UNITED STATES CODE

Mr. GORTON. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of Calendar No. 196, (S. 1260).

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (S. 1260) to make technical corrections in title 17, United States Code, and other laws.

There being no objection, the Senate proceeded to consider the bill.

Mr. GORTON. I ask unanimous consent that the bill be considered read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.