''Airworthiness Directives; Pratt and Whitney JT9D Series Turbofan Engines; Correction: Docket No. 98 ANE–31 (10–15/10–21)'' (RIN2120–AA64) (1999–0404), received October 21, 1999; to the Committee on Commerce, Science, and Transportation.

EC–5968. A communication from the Program Analyst, Office of the Chief Counsel, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; General Electric Aircraft Engines CF34 Series Turbofan Engines; Docket No. 98 ANE–62 (10–26/10–25)'' (RIN2120–AA64) (1999–0423), received October 25, 1999; to the Committee on Commerce, Science, and Transportation.

REPORT OF COMMITTEE

The following report of committee was submitted:

By Mr. ABRAHAM, from the Committee on the Judiciary, with an amendment in the nature of a substitute:

S. 1455. A bill to enhance protections against fraud in the offering of financial assistance for college education, and for other purposes.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

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

By Mr. HELMS:

S. 1829. A bill to amend the Foreign Assistance Act of 1961 to prohibit the payment of debts incurred by the communist government of Cuba; to the Committee on Foreign Relations.

By Mr. COVERDELL (for himself, Mr. BIDEN, Mr. ROTH, Mr. EDWARDS, Mr. GRAHAM, Mr. CLELAND, Mr. SARBANES, Ms. MIKULSKI, and Mr. MACK):

S. 1830. A bill to provide for the appointment of additional temporary bankruptcy judges, and for other purposes; to the Committee on the Judiciary.

By Mr. DASCHLE (for himself and Mr. JOHNSON):

S. 1831. A bill to protect and provide resources for the Social Security System, to reserve surpluses to protect, strengthen and modernize the Medicare Program, and for other purposes; to the Committee on the Budget and the Committee on Government Affairs, jointly, pursuant to the order of August 4, 1977, with instructions that if one Committee reports, the other committee have thirty days to report or be discharged.

By Mr. DASCHLE (for Mr. KENNEDY):

S. 1832. A bill to amend the Fair Labor Standards Act of 1938 to increase the Federal minimum wage; read the first time.

By Mr. DASCHLE (for himself, Mr. BINGAMAN, Mr. BAUCUS, Mr. BYRD, Mr. KERREY, and Mr. INOUYE):

S. 1833. A bill to amend the Internal Revenue Code of 1986 to provide tax incentives to encourage the production and use of efficient energy sources, and for other purposes; to the Committee on Finance.

By Mr. DASCHLE:

S. 1834. A bill to amend title XIX of the Social Security Act to restore medical eligibility for certain supplementary security income beneficiaries; to the Committee on Finance.

By Mr. LEAHY:

S. 1835. A bill to restore Federal remedies for violations of intellectual property rights by States, and for other purposes; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Mr. HELMS (for himself, Mr. LEAHY, Mr. COVERDELL, Mr. DODD, Mr. DEWINE, and Mr. JEFFORDS):

S. Res. 209. A resolution expressing concern over interference with freedom of the press and the independence of judicial and electoral institutions in Peru; to the Committee on Foreign Relations.

By Mr. SCHUMER (for himself, Mr. MOYNIHAN, and Mr. LIEBERMAN):

S. Res. 210. A resolution recognizing and honoring the New York Yankees; considered and agreed to.

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

S. Res. 211. A resolution expressing the sense of the Senate regarding the February 2000 deployment of the U.S.S. Eisenhower Battle Group and the 24th Marine Expeditionary Unit to an area of potential hostilities and the essential requirements that the battle group and expeditionary unit have received the essential training needed to certify the warfighting proficiency of the forces comprising the battle group and expeditionary unit; to the Committee on Armed Services.

By Mr. ABRAHAM (for himself, Mr. MCCONNELL, Mr. TORRICELLI, Mr. ALLARD, Mr. REED, Mr. BENNETT, Ms. COLLINS, Mr. FITZGERALD, Mr. ENZI, Mr. KERRY, Mr. DURBIN, Mr. WARNER, Mr. EDWARDS, and Mr. LIEBERMAN):

S. Con. Res. 63. A concurrent resolution condemning the assassination of Armenian Prime Minister Vazgen Sargsian and other officials of the Armenian Government and expressing the sense of the Congress in mourning this tragic loss of the duly elected leadership of Armenia; to the Committee on Foreign Relations.

By Mr. INHOFE (for himself, Mr. SMITH of New Hampshire, Mr. SESSIONS, Mr. HUTCHINSON, and Mr. KYL):

S. Con. Res. 64. A concurrent resolution expressing the sense of Congress concerning continued use of the United States Navy training range on the island of Vieques in the Commonwealth of Puerto Rico; to the Committee on Armed Services.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. COVERDELL (for himself, Mr. BIDEN, Mr. ROTH, Mr. EDWARDS, Mr. GRAHAM, Mr. CLELAND, Mr. SARBANES, Ms. MIKULSKI, and Mr. MACK):

S. 1830. A bill to provide for the appointment of additional temporary bankruptcy judges, and for other purposes; to the Committee on the Judiciary.

BANKRUPTCY JUDGESHIP ACT

Mr. COVERDELL. Mr. President, I rise today to introduce legislation that would address the growing bankruptcy caseload in our federal judiciary. Increased bankruptcy filings are placing a severe strain on our federal courts and on the judges who preside over these cases. The House and Senate bankruptcy reform bills seek to address this issue by authorizing eighteen new bankruptcy judges. While Congress recognizes the need for these judges, it has not yet taken the step it deems necessary to approve another needed group of bankruptcy judges identified by the U.S. Judicial Conference in March of this year. This legislation would authorize these six judgeships and help our federal judiciary address an overburdensome workload.

My home state of Georgia is one of the states that the Judicial Conference has indicated needs another bankruptcy judge. The middle and southern districts in Georgia have, respectively, the eighth and ninth highest weighted caseloads in the country. The most recent data from the Administrative Office of the U.S. Courts indicates that the weighted bankruptcy filings per authorized judgeships is 1,907 for the middle district and 1,880 for the Southern district. Even with approval of a new judge for the southern district, the three full-time judges in that district would still carry a caseload that exceeds the threshold of 1,500 weighted hours that justifies the creation of another judgeship.

The review undertaken by the Judicial Conference of the workload in these Georgia districts also found that caseloads are being managed in a highly efficient manner. The Judicial Conference had no suggestions to assist the court in expending its caseload. A new judgeship is the only solution to this caseload problem.

I understand that the Judicial Conference used the same criteria to justify the 6 new judgeships in their March 1999 recommendation that they used to justify the 18 judgeships in the bankruptcy reform bills. Understanding the need for a new bankruptcy judge in my state, I support the Judicial Conference's recommendation, and other states' efforts to obtain an additional judge. I am pleased that Senator BIDEN, EDWARDS, GRAHAM, CLELAND, SARBANES, MIKULSKI, and MACK, whose states were also included in the March 1999 Judicial Conference recommendation, have joined me on this bill. I believe this legislation will shed important light on caseloads and the need for new judges. The last time Congress approved new bankruptcy judgeships was seven years ago. These judges are needed now and I hope Congress will move forward in approving them.

By Mr. DASCHLE (for himself and Mr. JOHNSON):

S. 1831. A bill to protect and provide resources for the Social Security System, to reserve surpluses to protect, strengthen and modernize the Medicare Program, and for other purposes; to the

Committee on the Budget and the Committee on Governmental Affairs, jointly, pursuant to the order of August 4, 1977, with instructions that if one committee reports, the other committee have 30 days to report or be discharged.

MEDICAID ELIGIBILITY RESTORATION ACT OF 1999

Mr. DASCHLE. Mr. President, today I introduce the Medicaid Eligibility Restoration Act of 1999, which fixes a major problem recently created in the health care safety net.

My bill addresses a Medicaid eligibility problem—lack of access to health insurance during the first, and often costliest, month of disability—that was inadvertently caused by a change to Supplemental Security Income (SSI) policy in the 1996 welfare reform law.

Let me explain how this Medicaid ''gap month'' problem was created.

In 1996, the effective date of application for Supplemental Security Income (SSI) was changed to the month following the date when an individual applies for SSI.

Before the 1996 change, pro-rated payments began immediately. Since 1996, payments do not begin until the month following original application.

This SSI payment change generated a small cost savings for the SSI program and ended the administrative burden of calculating partial month payments, but it also created a problem—a gap month—for Medicaid eligibility that is linked to SSI.

For most SSI and Medicaid recipients, this change has resulted in one lost month of Medicaid eligibility, which is a hardship in itself.

But those who suddenly become disabled or who are born with a disability face more dire consequences.

Because of the 1996 change, they now lose health insurance coverage for what is often their costliest month—their first month of disability. This policy shift has left families with enormous medical bills and hospitals with uncompensated care.

The Medicaid Eligibility Restoration Act would end this gap month in Medicaid coverage and would restore the pre-1996 Medicaid eligibility criteria.

This issue first came to my attention when I received a letter from Randall Connelly of Sioux Falls, South Dakota.

His wife, Susan, had recently given birth to premature twins. Tragically, the twins died a few days later.

Despite the fact that Randy had a good job, with good health insurance, he still faced unaffordable out-of-pocket medical expenses. Because of the twins' low birth weight, both children were automatically eligible for SSI and Medicaid—or they would have been, if the twins had been born before enactment of the welfare reform law of 1996.

In fact, the Connellys were ineligible for any help with their medical bills because of the small 1996 technical change in SSI payment policy.

The unfortunate result was that the Connellys were left to cope not only with the loss of their newborn twins, but also with unaffordable hospital bills.

Since my communication with the Connellys, I have heard from hospital administrators who have expressed concern on behalf of patients and families who have suddenly found themselves with nowhere to turn during their first weeks of extreme financial hardship and emotional trauma due to disability.

Sioux Valley Hospital in Sioux Falls, SD, has reported that 28 newborns were affected during the past year in that one hospital alone. Hospital administrators report that:

> Delay in Medicaid coverage results in severe hardship for many families. . . . The normal stresses of dealing with a newborn with a serious disability are compounded by the extensive financial demands attendant to medical services provided for that child.

I ask that a copy of Sioux Valley's letter of support for the bill be printed in the RECORD.

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

SIOUX VALLEY
HOSPITALS & HEALTH SYSTEM,
Sioux Falls, SD, October 27, 1999.

Hon. THOMAS DASCHLE,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR DASCHLE: I am writing to express the support of the Sioux Valley Hospitals & Health System for legislation we understand you are planning to introduce which would address an issue involving SSI eligibility, and therefore, Medicaid eligibility. The issue, as we have experienced it, involves the date on which Medicaid coverage would commence for SSI eligible newborns. We understand that current law results in a start date for Medicaid payment coverage on the first of the month following SSI eligibility which for disabled newborns is their date of birth.

That delay in Medicaid coverage results in severe hardship for many families who have had babies with medical conditions requiring extremely expensive services in the Sioux Valley Hospital Neonatal Intensive Care Unit. Some 28 families have been affected at Sioux Valley alone over the course of the last year. The normal stresses of dealing with a newborn with a serious disability are compounded by the extensive financial demands attendant to medical services required for the child.

While we understand that public programs cannot be expected to address expenses associated with every catastrophic medical situation, this delay in coverage for severely disabled newborns seems particularly appropriate for a public response. I wanted you to know, therefore, that we do support your effects in this respect.

Please let me know if any of our staff could provide further information with respect to the importance and impact of the legislation which you propose.

Sincerely,

FRANK M. DREW,
Senior Vice President of Public Policy.

Mr. DASCHLE. I have also heard from public health officials who are concerned that public health funds may need to be diverted to address the needs of those who should have been covered by Medicaid—as they were in the past.

Some states are able to cover the gap month through other Medicaid categories, such as the ''medically needy'' category and a category for those who meet all the SSI criteria but are not receiving benefits.

There are several states, however, that still face the gap month problem.

It is difficult for many of these states to address this problem, because, while covering only the gap month may be affordable, adding a whole new Medicaid category is seen as too expensive.

There is a simpler, and less expensive way to address the problem: restore the pre-1996 Medicaid eligibility.

We must restore health care benefits to those with disabilities who need them and should be eligible for them.

The gap month is not a difficult problem to fix.

A solution only requires our attention and our commitment to protecting the health care safety net. My bill does that by ensuring Medicaid helps cover those facing unexpected disability.

I urge my colleagues to join me in support of this legislation.

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. 1831

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 ''Strengthen Social Security and Medicare Act of 1999.''

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that:

(1) The Social Security system is one of the cornerstones of American national policy and has allowed a generation of Americans to retire with dignity. For 30 percent of all senior citizens, Social Security benefits provide almost 90 percent of their retirement income. For 66 percent of all senior citizens, Social Security benefits provide over half of their retirement income. Poverty rates among the elderly are at the lowest level since the United States began to keep poverty statistics, due in large part to the Special Security system. The Social Security system, together with the additional protections afforded by the Medicare system, have been an outstanding success for past and current retirees and must be preserved for future retirees.

(2) The long-term solvency of the Social Security and Medicare trust funds is not assured. There is an estimated long-range actuarial deficit in the Social Security trust funds. According to the 1999 report of the Board of Trustees of the Social Security trust funds, the accumulated balances in the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund are currently projected to become unable to pay benefits in full on a timely basis starting in 2034. The Medicare system faces more immediate financial

shortfalls, with the Hospital Insurance Trust Fund projected to become exhausted in 2015.

(3) In addition to preserving Social Security and Medicare, the Congress and the President have a responsibility to future generations to reduce the Federal debt held by the public. Significant debt reduction will contribute to the economy and improve the Government's ability to fulfill its responsibilities and to face future challenges, including preserving and strengthening Social Security and Medicare.

(4) The Federal Government is now in sound financial condition. The Federal budget is projected to generate significant surpluses. In fiscal years 1998 and 1999, there were unified budget surpluses—the first consecutive surpluses in more than 40 years. Over the next 15 years, the Government projects the on-budget surplus, which excludes Social Security, to total $2.9 trillion. The unified budget surplus (including Social Security) is projected by the Government to total $5.9 trillion over the next 15 years.

(5) The surplus, excluding Social Security, offers an unparalleled opportunity to: preserve Social Security; protect, strengthen, and modernize Medicare; and significantly reduce the Federal debt held by the public, for the future benefit of all Americans.

(b) PURPOSE.—It is the purpose of this Act to protect the Social Security surplus for debt reduction, to extend the solvency of Social Security, and to set aside a reserve to be used to protect, strengthen, and modernize Medicare.

SEC. 3. ADDITIONAL APPROPRIATIONS TO FEDERAL OLD-AGE AND SURVIVORS INSURANCE TRUST FUND AND FEDERAL DISABILITY INSURANCE TRUST FUND.

(a) PURPOSE.—The purpose of this section is to assure that the interest savings on the debt held by the public achieved as a result of Social Security surpluses from 2000 to 2015 are dedicated to Social Security solvency.

(b) ADDITIONAL APPROPRIATION TO TRUST FUNDS.—Section 201 of the Social Security Act is amended by adding at the end the following new subsection:

"(n) ADDITIONAL APPROPRIATION TO TRUST FUNDS.

"(1) In addition to the amounts appropriated to the Trust Funds under subsections (a) and (b), there is hereby appropriated to the Trust Funds, out of any moneys in the Treasury not otherwise appropriated—

"(A) for the fiscal year ending September 30, 2011, and for each fiscal year thereafter through the fiscal year ending September 30, 2016, an amount equal to the prescribed amount for the fiscal year; and

"(B) for the fiscal year ending September 30, 2017, and for each fiscal year thereafter through the fiscal year ending September 30, 2044, an amount equal to the prescribed amount for the fiscal year ending September 30, 2016.

"(2) The amount appropriated by paragraph (1) in each fiscal year shall be transferred in equal monthly installments.

"(3) The amount appropriated by paragraph (1) in each fiscal year shall be allocated between the Trust Funds in the same proportion as the taxes imposed by chapter 21 (other than sections 3101(b) and 3111(b)) of Title 26 with respect to wages (as defined in section 3121 of Title 26) reported to the Secretary of the Treasury or his delegate pursuant to subtitle F of Title 26, and the taxes imposed by chapter 2 (other than section 1401(b)) of Title 26 with respect to self-employment income (as defined in section 1402 of Title 26) reported to the Secretary of the Treasury or his delegate pursuant to subtitle F of Title 26, are allocated between the Trust Funds in the calendar year that begins in the fiscal year.

"(4) For purposes of this subsection, the "prescribed amount" for any fiscal year shall be determined by multiplying:

"(A) the excess of:

"(i) the sum of:

"(I) the face amount of all obligations of the United States held by the Trust Funds on the last day of the fiscal year immediately preceding the fiscal year of determination purchased with amounts appropriated or credited to the Trust Funds other than any amount appropriated under paragraph (1); and

"(II) the sum of the amounts appropriated under paragraph (1) and transferred under paragraph (2) through the last day of the fiscal year immediately preceding the fiscal year of determination, and an amount equal to the interest that would have been earned thereon had those amounts been invested in obligations of the United States issued directly to the Trust Funds under subsections (d) and (f),

"over—

"(ii) the face amount of all obligations of the United States held by the Trust Funds on September 30, 1999,

"times—

"(B) a rate of interest determined by the Secretary of the Treasury, at the beginning of the fiscal year of determination, as follows:

"(i) if there are any marketable interest-bearing obligations of the United States then forming a part of the public debt, a rate of interest determined by taking into consideration the average market yield (computed on the basis of daily closing market bid quotations or prices during the calendar month immediately preceding the determination of the rate of interest) on such obligations; and

"(ii) if there are no marketable interest-bearing obligations of the United States then forming in part of the public debt, a rate of interest determined to be the best approximation of the rate of interest described in clause (i), taking into consideration the average market yield (computed on the basis of daily closing market bid quotations or prices during the calendar month immediately preceding the determination of the rate of interest) on investment grade corporate obligations selected by the Secretary of the Treasury, less an adjustment made by the Secretary of the Treasury to take into account the difference between the yields on corporate obligations comparable to the obligations selected by the Secretary of the Treasury and yields on obligations of comparable maturities issued by risk-free government issuers selected by the Secretary of the Treasury.".

SEC. 4. PROTECTION OF SOCIAL SECURITY SURPLUSES.

(a) POINTS OF ORDER TO PROTECT SOCIAL SECURITY SURPLUSES.—Section 312 of the Congressional Budget Act of 1974 is amended by adding at the end the following new subsection:

"(g) POINTS OF ORDER TO PROTECT SOCIAL SECURITY SURPLUSES.—

"(1) CONCURRENT RESOLUTIONS ON THE BUDGET.—It shall not be in order in the House of Representatives or the Senate to consider any concurrent resolution on the budget, or conference report thereon or amendment thereto, that would set forth an on-budget deficit for any fiscal year.

"(2) SUBSEQUENT LEGISLATION.—It shall not be in order in the House of Representatives or the Senate to consider any bill, joint resolution, amendment, motion, or conference report if—

"(A) the enactment of the bill or resolution as reported;

"(B) the adoption and enactment of that amendment; or

"(C) the enactment of that bill or resolution in the form recommended in that conference report,

would cause or increase an on-budget deficit for any fiscal year.

"(3) BUDGET RESOLUTION BASELINE.—(A) For purposes of this section, "set forth an on-budget deficit", with respect to a budget resolution, means the resolution sets forth an on-budget deficit for a fiscal year and the baseline budget projection of the surplus or deficit for such fiscal year on which such resolution is based projects an on-budget surplus, on-budget balance, or an on-budget deficit that is less than the deficit set forth in the resolution.

"(B) For purposes of this section, "cause or increase an on-budget deficit" with respect to legislation means causes or increases an on-budget deficit relative to the baseline budget projection.

"(C) For purposes of this section, the term "baseline budget projection" means the projection described in section 257 of the Balance Budget and Emergency Deficit Control Act of 1985 of current year levels of outlays, receipts, and the surplus or deficit into the budget year and future years, except that—

"(i) if outlays for programs subject to discretionary appropriations are subject to discretionary statutory spending limits, such outlays shall be projected at the level of any applicable current adjusted statutory discretionary spending limits:

"(ii) if outlays for programs subject to discretionary appropriations are not subject to discretionary spending limits, such outlays shall be projected as required by section 257 beginning in the first fiscal year following the last fiscal year in which such limits applied; and

"(iii) with respect to direct spending or receipts legislation previously enacted during the current calendar year and after the most recent baseline estimate pursuant to section 257 of the Balance Budget and Emergency Deficit Control Act of 1995, the net extent (if any) by which all such legislation is more than fully paid for in one of the applicable time periods shall count as a credit for that time period against increase in direct spending or reductions in net revenue.".

(b) CONTENT OF CONCURRENT RESOLUTION ON THE BUDGET.—Section 301(a) of the Congressional Budget Act of 1974 is amended by redesignating paragraphs (6) and (7) as paragraphs (7) and (8), respectively, and by inserting after paragraph (5) the following new paragraph.

"(6) the receipts, outlays, and surplus or deficit in the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, combined, established by title II of the Social Security Act;".

(c) SUPER MAJORITY REQUIREMENT.—

(1) Section 904(c)(1) of the Congressional Budget Act of 1974 is amended by inserting "312(g)," after "310(d)(2),".

(2) Section 904(d)(2) of the Congressional Budget Act of 1974 is amended by inserting "312(g)," after "310(d)(2),".

SEC. 5. PROTECTION OF MEDICARE.

(a) POINTS OR ORDER TO PROTECT MEDICARE.—

(1) Section 301 of the Congressional Budget Act of 1974 is amended by adding at the end the following:

"(j) POINTS OR ORDER TO PROTECT MEDICARE.—

(1) IN GENERAL.—It shall not be in order in the House of Representatives or the Senate to consider any concurrent resolution on the budget (or amendment, motion, or conference report on the resolution) that would decrease the on-budget surplus for the total of the period of fiscal years 2000 through 2009 below the level of the Medicare surplus reserve for those fiscal years are calculated in accordance with section 3(11).

"(2) INAPPLICABILITY.—This subsection shall not apply to legislation that—

"(A) appropriates a portion of the Medicare reserve for new amounts for prescription drug benefits under the Medicare program as part of or subsequent to legislation extending the solvency of the Medicare Hospital Insurance Trust Fund; or

"(B) appropriates new amounts from the general fund to the Medicare Hospital Insurance Trust Fund.".

(2) Section 311(a) of the Congressional Budget Act of 1974 is amended by adding at the end the following:

"(4) ENFORCEMENT OF THE MEDICARE SURPLUS RESERVE.—

"(A) IN GENERAL.—It shall not be in order in the House of Representatives or the Senate to consider any bill, joint resolution, amendment, motion, or conference report that together with associated interest costs would decrease the on-budget surplus for the total of the period of fiscal years 2000 through 2009 below the level of the Medicare surplus reserve for those fiscal years as calculated in accordance with section 3(11).".

"(B) INAPPLICABILITY.—This paragraph shall not apply to legislation that—

"(i) appropriates a portion of the Medicare reserve for new amounts for prescription drug benefits under the Medicare program as part of or subsequent to legislation extending the solvency of the Medicare Hospital Insurance Trust Fund; or

"(ii) appropriates new amounts from the general fund to the Medicare Hospital Insurance Trust Fund.

(b) DEFINITION.—Section 3 of the Congressional Budget Act of 1974 is amended by adding at the end the following:

"(11) The term 'Medicare surplus reserve' means one-third of any on-budget surplus for the total of the period of the fiscal years 2000 through 2009, an estimated by the Congressional Budget Office in the most recent initial report for a fiscal year pursuant to section 202(e).".

(c) SUPER MAJORITY REQUIREMENT—

(1) Section 904(c)(2) of the Congressional Budget Act of 1974 is amended by inserting "301(j)," after "301(i),".

(2) Section 904(d)(3) of the Congressional Budget Act of 1974 is amended by inserting "301(j)," after "301(i),".

SEC. 6. EXTENSION OF DISCRETIONARY SPENDING LIMITS.

(a) EXTENSION OF LIMITS.—Section 251(b)(2) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended, in the matter before paragraph (A), by deleting "2002", and inserting "2014".

(b) EXTENSION OF AMOUNTS.—Section 251(c) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by striking paragraphs (4), (5), (6) and (7), and inserting the following:

"(4) With respect to fiscal year 2000,

"(A) for the discretionary category: $535,368,000,000 in new budget authority and $543,257,000,000 in outlays;

"(B) for the highway category: $24,574,000,000 in outlays;

"(C) for the mass transit category: $4,117,000,000 in outlays; and

"(D) for the violent crime reduction category: $4,500,000,000 in new budget authority and $5,564,000,000 in outlays;

"(5) With respect to fiscal year 2001,

"(A) for the discretionary category: $573,004,000,000 in new budget authority and $564,931,000,000 in outlays;

"(B) for the highway category: $26,234,000,000 in outlays; and

"(C) for the mass transit category: $4,888,000,000 in outlays;

"(6) With respect to fiscal year 2002,

"(A) for the discretionary category: $584,754,000,000 in new budget authority and $582,516,000,000 in outlays;

"(B) for the highway category: $26,655,000,000 in outlays; and

"(C) for the mass transit category: $5,384,000,000 in outlays;

"(7) With respect to fiscal year 2003,

"(A) for the discretionary category: $590,800,000,000 in new budget authority and $587,642,000,000 in outlays;

"(B) for the highway category: $27,041,000,000 in outlays; and

"(C) for the mass transit category: $6,124,000,000 in outlays;

"(8) With respect to fiscal year 2004, for the discretionary category: $604,319,000,000 in new budget authority and $634,039,000,000 in outlays;

"(9) With respect to fiscal year 2005, for the discretionary category: $616,496,000,000 in new budget authority and $653,530,000,000 in outlays;

"(10) With respect to fiscal year 2006, for the discretionary category: $630,722,000,000 in new budget authority and $671,530,000,000 in outlays;

"(11) With respect to fiscal year 2007, for the discretionary category: $644,525,000,000 in new budget authority and $687,532,000,000 in outlays;

"(12) With respect to fiscal year 2008, for the discretionary category: $663,611,000,000 in new budget authority and $704,534,000,000 in outlays; and

"(13) With respect to fiscal year 2009, for the discretionary category: $678,019,000,000 in new budget authority and $721,215,000,000 in outlays, "as adjusted in strict conformance with subsection (b).

"With respect to fiscal year 2010 and each fiscal year thereafter, the term "discretionary spending limit" means, for the discretionary category, the baseline amount calculated pursuant to the requirements of Section 257(c), as adjusted in strict conformance with subsection (b).".

SEC. 7. EXTENSION AND CLARIFICATION OF PAY-AS-YOU-GO REQUIREMENT.

Section 252 of the Balanced Budget And Emergency Deficit Control Act of 1985 is amended—

(a) in subsection (a), by striking "October 1, 2002" and inserting "October 1, 2014" and by adding "or decreases the surplus" after "increases the deficit"; (b)(1) in paragraph (1) of subsection (b), by striking "October 1, 2002" and inserting "October 1, 2014" and by adding "or any net surplus decrease" after "any net deficit increase";

(2) in paragraph (2) of subsection (b),

(i) in the header by adding "or surplus decrease" after "deficit increase";

(ii) in the matter before subparagraph (A), by adding "or surplus" after "deficit"; and

(iii) in subparagraph (C), by adding "or surplus" after "net deficit"; and

(3) in the header of subsection (c), by adding "or surplus decrease" after "deficit increase".

SEC. 8. EXTENSION OF BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT.

Section 275(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by striking "September 30, 2002" and inserting "September 30, 2104" and by striking "September 30, 2006" and inserting "September 30, 2018".

SEC. 9. EXTENSION OF SOCIAL SECURITY FIREWALL IN CONGRESSIONAL BUDGET ACT.

Section 904(e) of the Congressional Budget Act of 1974 is amended by striking "September 30, 2002" and inserting "September 30, 2014".

SEC. 10. PROTECTION OF SOCIAL SECURITY INTEREST SAVINGS TRANSFERS.

(a) DEFINITION OF DEFICIT AND SURPLUS UNDER BUDGET ENFORCEMENT ACT.—Section 250(c) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended in paragraph (1) by adding "'surplus'," before "and 'deficit'".

(b) REDUCTION OR REVERSAL OF SOCIAL SECURITY TRANSFERS NOT TO BE COUNTED AS PAY-AS-YOU-GO OFFSET.—Any legislation that would reduce, reverse or repeal the transfers to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund made by Section 201(n) of the Social Security Act, as added by Section 3 of this Act, shall not be counted on the pay-as-you-go scorecard and shall not be included in any pay-as-you-go estimates made by the Congressional Budget Office or the Office of Management and Budget under Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985.

(c) CONFORMING CHANGE.—Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended, in paragraph (4) of subsection (d), by—

(1) striking "and" after subparagraph (A),

(2) striking the period after the subparagraph (B) and inserting "; and", and

(3) adding the following:

"(C) provisions that reduce, reverse or repeal transfers under Section 201(n) of the Social Security Act.".

SEC. 11. CONFORMING CHANGES.

(a) REPORTS.—Section 254 of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended—

(1) in paragraph (3) of subsection (c),

(A) in subparagraph (A), by adding "or surplus" after "deficit";

(B) in subparagraph (B), by adding "or surplus" after "deficit"; and

(C) in subparagraph (C), by adding "or surplus decrease" after "deficit increase";

(2) in paragraph (4) of subsection (f), by adding "or surplus" after "deficit"; and

(3) in subparagraph A of paragraph (2) of subsection (f), by striking "2002" and inserting "2009".

(b) ORDERS.—Section 258A(a) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended in the first sentence by adding "or increase the surplus" after "deficit".

(c) PROCESS.—Section 258(C)(a) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended—

(1) in paragraph (2), by adding "or surplus increase" after "deficit reduction";

(2) in paragraph (3), by adding "or increase in the surplus" after "reduction in the deficit"; and

(3) in paragraph (4), by adding "or surplus increase" after "deficit reduction".

By Mr. LEAHY:

S. 1835. A bill to restore Federal remedies for violations of intellectual property rights by States, and for other purposes; to the Committee on the Judiciary.

THE INTELLECTUAL PROPERTY PROTECTION RESTORATION OF 1999

Mr. LEAHY. Mr. President, today I am introducing the Intellectual Property Protection Restoration Act of 1999, a bill to restore federal remedies for violations of intellectual property rights of States.

Innvoation and creativity have been the fuel of our national economic boom over the past decade. The United States now leads the world in computing, communications and biotechnologies, and American authors and brand names are recognized across the globe.

Our national prosperity is, first and foremost, a tribute to American ingenuity. But it is also a tribute to the wisdom of our Founding Fathers, who made the promotion of what they called ''Science and the Useful Arts'' a national project, which they constitutionally assigned to Congress. And it is no less of a tribute to the successive Congresses and Administrations of both parties who have striven to provide real incentives and rewards for innovation and creativity by providing strong and even-handed protection to intellectual property rights. Congress passed the first federal patent law in 1790, and the U.S. Government issued its first patent the same year—to Samuel Hopkins of my home State of Vermont. The first federal copyright law was also enacted in 1790, and the first federal trademark laws date back to the 1870s.

The Supreme Court has long recognized that intellectual property rights bear the hallmark of true constitutional property rights—the right of exclusion against the world—and are therefore protection against appropriation both by individuals and by government. Consistent with this understanding of intellectual property, Congress has long ensured that the rights secured by the federal intellectual property laws were enforceable against the federal governments by waiving the government's immunity in suits alleging infringements of those rights.

No doubt Congress would have legislated similarly with respect to infringements by State entities and bureaucrats had there been any doubt that they were already fully subject to federal intellectual property laws. But there was no doubt. States had long enjoyed the benefits of the intellectual property laws on an equal footing with private parties. By the same token, and in accordance with the fundamental principles of equity on which our intellectual property laws are founded, the States bore the burdens of the intellectual property laws, being liable for infringements just like private parties. States were free to join intellectual property markets as participants, or to hold back from commerce and limit themselves to a narrower governmental role. The intellectual property right of exclusion meant what it said and was enforced evenhandley for public and private entities alike.

This harmonious state of affairs ended in 1985, with the Supreme Court's announced of the so-called ''clear statement'' rule in Atascadero State Hospital v. Scanlon. The Court in Atascadero held that Congress must express its intention to abrogate the States' Eleventh Amendment immunity ''in unmistakable language in the statute itself.'' A few years later, in Pennsylvania v. Union Gas Co., the Supreme Court assured us that if the intent to abrogate were expressed clearly enough, it would be honored.

Following Atascadero, some courts held that States and State entities and officials could escape liability for patent, copyright and trademark infringement because the patent, copyright and trademark laws lacked the clear statement of congressional intent that was now necessary to abrogate State sovereign immunity.

To close this new loophole in the law, Congress promptly did precisely what the Supreme Court had told us was necessary. In 1990 and 1992, Congress passed three laws—the Patent and Plant Variety Protection Remedy Clarification Act, the Copyright Remedy Clarification Act, and the Trademark Remedy Clarification Acts. The sole purpose of these Clarification Acts was to make it absolutely, unambiguously, 100 percent clear that Congress intended the patent, copyright and trademark laws to apply to everyone, including the States, and that Congress did not intend the States to be immune from liability for money damages. Each of three Clarification Acts passed unanimously.

In 1996, however, by a five-to-four vote, the Supreme Court in Seminole Tribe of Florida v. Florida reversed its earlier decision in Union Gas and held that Congress lacked authority under article I of the Constitution to abrogate the States' Eleventh Amendment immunity from suit in federal court.

Then, on June 23, by the same bare majority, the Supreme Court in Florida Prepaid Postsecondary Education Expense Board v. College Savings Bank told us that it did not really mean what it said in Atascadero and invalidated the Patent and Plant Variety Protection Remedy Clarification Act. In a companion case decided on the same day, the same five Justices held that the Trademark Remedy Clarification Act also failed to abrogate State sovereign immunity.

The Court's latest decisions have been the subject of bipartism criticism. In a floor statement on July 1, I highlighted the anti-democratic implications of the approach of the activist majority of the Supreme Court, who have left constitutional text behind, ripped up precedent, and treated Congress with less respect than that due to an administrative agency in their haste to impose their natural laws notions of sovereignty as a barrier to democratic regulations. I also noted that ''the Court's decisions will have far-reaching consequences about how . . . intellectual property rights may be protected against even egregious infringements and violation by the State.''

One of my Republican colleagues on the Judicial Committee, Senator SPECTER, expressed similar concerns in a floor statement on August 5. He noted that the Court decisions ''leave us with an absurd and untenable state of affairs,'' where ''States will enjoy an enormous advantage over their private sector competitions.''

Not surprisingly, alarm has also been expressed in the business community about the potential of the Court's recent decisions to harm intellectual property owners in a wide variety of ways. A commentary in Business Week on August 2, 1999, gave these examples:

> Watch out if you publish software that someone at a State university wants to copy for free . . . Watch out if you own a patent on a medical procedure that some doctor in a State medical school wants to use. Watch out if you've invested heavily in a great trademark, like Nike's Swoosh, and a bureaucrat decides his State program would be wildly promoted if it used the same mark.

Charles Fried, a professor at Harvard Law School and former Solicitor General during the Reagan Administration, has called the Court's decisions in Florida Prepaid and College Savings Bank ''truly bizarre.'' He observed, in a July 6 opinion editorial in the New York Times:

> [The Court's decisions] did not question that States are subject to the patent and trademark laws of the United States. It's just that when a State violates those laws—as when it uses a patented invention without permission and without paying for it—the patent holder cannot sue the State for infringement. So a State hospital can manufacture medicines patented by others and sell or use them, and State schools universities can pirate textbooks and software, and the victims cannot sue for infringement.

I believe that these concerns are very real. As Congress realized when it waived federal sovereign immunity in the area, it would be naive to imagine that reliance on the commercial decency of the government and its myriad agencies and officials would provide the security needed to promote investment in research and development and to facilitate negotiation in the exclusive licensing arrangements that are often necessary to bring valuable products and creations to market.

The issue is not whether State infringement has been frequent in the past, but rather whether we can assure American inventors and investors and our design trading partners that, as State involvement in intellectual property becomes ever greater in the new information economy, U.S. intellectual property rights are backed by guaranteed legal remedies. It is a question of economics: our national economy depends on real and effective intellectual property rights. It is also a question of justice: in conceding that the States are constitutionally bound to respect federal intellectual property rights but invalidating the remedies Congress has created to enforce those rights, the Court has jeopardized one of the key principles that distinguishes our Constitution from the Constitution of the old Soviet Union—the principle that where there is a right, there must also be a remedy.

Some have suggested that a constitutional amendment may be the only way to restore protection to patent, copyright and trademark owners as against States. But even if Congress were to adopt such an amendment, I do not expect that we will see a lot of States rushing to ratify an amendment that forces them to pay for things that they can currently get for free.

Fortunately, however, while the implications of the Court's decisions for our constitutional scheme are serious, we can restore the guarantees of our intellectual property laws without resorting to a constitutional amendment. After close consideration of Florida Prepaid and the other recent Supreme Court precedents, I have no doubt that they leave several constitutional mechanisms open to us to restore substantial protection for patents, copyrights and trademarks through ordinary legislation. The Supreme Court's hyper-technical constitutional interpretations require us to jump through some technical constitutional hoops of our own, but that the exercise is now not merely worthwhile, but essential to safeguard both U.S. prosperity and the continued authority of Congress.

The Intellectual Property Protection Restoration Act is based on a simple supposition—that there is no inherent entitlement to federal intellectual property rights. In discussing the policies underlying the patent laws, the Supreme Court has emphasized that ''[t]he grant of a patent is the grant of a special privilege 'to promote the Progress of Science and useful Arts,' '' and that ''[i]t is the public interest which is dominant in the patent system.'' Similarly, in discussing the copyright laws, the Court has underscored that ''the monopoly privileges that Congress has authorized, while 'intended to motivate the creative activity of authors and inventors by the provision of a special reward,' are limited in nature and must ultimately serve the public good.''

The Constitution empowers but does not require Congress to make intellectual property rights available, and Congress should do so on in a manner that encourages and protects innovation in the public and private sector alike.

States and their institutions, especially State universities, benefit hugely from the federal intellectual property laws. All 50 States own or have obtained patents—some hold many hundreds of patents. States also hold other intellectual property rights secured by federal law, and the trend is toward increased participation by the States in commerce involving intellectual property rights.

Principles of State sovereignty tell us that States are entitled to a free and informed choice of whether or not to participate in the federal intellectual property schemes, subject only to their constitutional obligations. Equity and common sense tell us that one who chooses to enjoy the benefits of a law—whether it be a federal grant or the multimillion-dollar benefits of intellectual property protections—should also bear its burdens. Sound economics and traditional notions of federalism tell us that it is appropriate for the federal government to assist and encourage the sovereign States in their sponsorship of whatever innovation and creation they freely choose to sponsor by giving them intellectual property protection and, on occasion, funding, so long as the States reciprocate by assisting the federal governments to keep its promise of guaranteed exclusive rights to intellectual property owners.

The IPPRA builds on these principles. In order to promote cooperative federalism in the intellectual property arena, it provides a mechanism for States to affirm their willingness to participate in our national intellectual property project and so ''opt in'' as full and equal participants. A State would opt in to the federal intellectual property system every time it applied for protection under a federal intellectual property law, by promising to waive its sovereign immunity from any subsequent suit against the State arising under such a law.

States take their commitments seriously. We can therefore expect that a State, having promised to waive its immunity if called upon to do so, would take whatever steps were necessary to fulfill that promise. At least in theory, however, a State could assert its immunity regardless of any assurance to the contrary.

The IPPRA addresses this problem by conditioning a State's intellectual property rights on its adherence to its promise to waive immunity. Thus, a State's refusal to waive immunity in an intellectual property suit after it has accepted benefits under an intellectual property law would have a number of consequences. Most significantly, it would give private parties the right to assert an immunity-like defense to damages claims in any action to enforce an intellectual property right that is or has been owned by the State during the five years preceding the State's assertion of immunity. This quid pro quo provision restores the level playing field by putting States that assert immunity in essentially the same position as private parties who seek to endorse federal intellectual property rights against them.

The IPPRA does this without coercing the State to waive by threatening pre-existing benefits. The quid pro quo provision only affects those intellectual property rights that the State acquired by virtue of its promise to waive immunity. To ensure that State waivers are voluntary, State intellectual property rights that pre-date the passage of the IPPRA are preserved regardless of waiver.

This scheme is consistent with the spirit of federalism, as interpreted by the Supreme Court, because it gives the States a free, informed and meaningful choice to waive or not to waive immunity at any time. It is also plainly authorized by the letter of the Constitution. Article I empowers Congress to ''promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.'' Incident to this power, Congress may attach conditions on the receipt of exclusive intellectual property rights. Indeed, we have always attached certain conditions, such as the requirements of public disclosure of an invention at the Patent and Trademark Office in order to obtain a patent.

Congress may attach conditions on States' receipt of federal intellectual property protection under its Article I intellectual property power just as Congress may attach conditions on States' receipt of federal funds under its Article I spending power. Either way, the power to attach conditions to the federal benefit is an integral part of the greater power to deny the benefit altogether. Either way, States have a choice—to forgo the federal benefit and exercise their sovereign power however they wish subject to the Constitution, or to take the benefit and exercise their sovereign power in the manner requested by Congress. In South Dakota v. Dole, for example, the Supreme Court held that Congress may condition federal highway funds on a State's agreement to raise its minimum drinking age to 21. The condition imposed on receipt of federal benefits by the IPPRA—submitting to suit under laws that are already binding on the States—is not onerous, nor does it co-opt any State resources to the service of federal policy.

Given the choice between opting in to the intellectual property laws and forgoing intellectual property protection under the federal laws, most States are likely to choose to former. The benefits secured by those laws far outweigh the burdens. Most States already respect intellectual property rights and will seldom find themselves in infringement suits. To deny the States the choice that the IPPRA offers them would amount to penalizing States that play by the federal intellectual property rules for the free-riding violations of the minority of States that refuse to commit to do so. As is normally the case in a federal system, cooperation between the States and the federal government is likely to be beneficial to all concerned.

However, some States and some State entities and officials have infringed patents and violated other intellectual property rights in the past, and the massive growth of both intellectual property and State participation in intellectual property that we are seeing as we move into the next century give ample cause for concern that such violations will continue. Now that the Supreme Court has seemingly given States and State entities carte blanche to violate intellectual property rights free from any adverse financial consequences so long as they stand on their newly augmented sovereign immunity, the prospect of States violating federal law and then asserting immunity is too serious to ignore.

The IPPRA therefore also provides for the limited set of remedies that the Supreme Court's new jurisprudence leaves available to Congress to enforce a non-waiving State's obligations under federal law and the United States Constitution. The key point here is that, while the Court struck down our prior effort to enforce the intellectual property laws themselves by authorizing actions for damages against the States, it nonetheless acknowledged Congress' power to enforce constitutional rights related to intellectual property.

First, for the avoidance of doubt, the IPPRA ensures the full availability of prospective equitable relief to prevent States from violating or exceeding their rights under federal intellectual property laws. As the Supreme Court expressly acknowledged in its Seminole Tribe decision in 1996, such relief is available, notwithstanding any assertion of State sovereign immunity, under what is generally known as the doctrine of Ex parte Young.

Second, to address the harm done to the rights of intellectual property owners before they can secure an injunction, the IPPA also provides a damages remedy against non-consenting States, to the full extent of Congress' power to enforce the constitutional rights of intellectual property owners. Under the Supreme Court's recent decisions, this remedy is necessarily limited to the redress of constitutional violations, not violations of the federal intellectual property laws themselves. However, as I have already noted, the Supreme Court has reaffirmed on many occasions that the intellectual property owner's right of exclusion is a property right fully protected from governmental violation under the Fifth Amendment's Takings Clause and under the Fourteenth Amendment's Due Process Clause.

Under the Fifth Amendment, a State can be sued for damages for taking an intellectual property right. Although States can normally take a property right constitutionally, so long as they do so for a "public purpose" and provide "just compensation," the Supreme Court held in 1984 that the "public purpose" requirement for a lawful taking means that the taking must be a valid exercise of the State's eminent domain powers. Because of the uniquely federal nature of federal intellectual property rights of exclusion, States have no eminent domain or other sovereign power over them. "When Congress grants an exclusive right or monopoly, its effects are pervasive; no citizen or State may escape its reach." Therefore, every State taking of an intellectual property right, with or without some promise of subsequent compensation, is a constitutional violation ripe for congressional enforcement under section five of the Fourteenth Amendment.

Stangely, and I think improperly, the Supreme Court declined to decide in Florida Prepaid whether our earlier Clarification Acts could be sustained as an enforcement of the Takings Clause. The Court also did not resolve when a violation of intellectual property rights amounts to an unconstitutional taking. Because the Court emphasized that the resolution of such constitutional questions is its job, and not ours, the IPPRA simply provides a federal cause of action for an unconstitutional taking of intellectual property rights, leaving the courts to make the final determination of what is a constitutional violation and what remedy is constitutionally authorized. The IPPRA does, however, instruct the courts to interpret both the right and the remedy as broadly as constitutionally permissible. At the same time, by excluding treble damages from the remedies provided and by adopting the same standard of compensation—"reasonable and entire compensation"—that is currently available against the federal government for patient infringements, the bill respects the States' dignity and responds to the Court's objection that the Clarification Acts provided identical remedies against States and private parties.

Finally, in order to ensure the full availability of constitutionally permissible remedies if the courts adopt a narrow view of the Takings Clause in this context, the IPPRA adopts a similar approach in providing the fullest remedies constitutionally available, up to and including "reasonable and entire compensation" but excluding treble damages, for State violations of a federal intellectual property owner's Fourteenth Amendment right not to be deprived of her property without due process of law.

In sum, the constitutional remedy provided by the IPPRA closely resembles the remedy that Congress provided decades ago for deprivations of federal rights by persons acting under color of State law. The bill does not expand the property rights secured by the federal intellectual property laws—these laws are already binding on the States—nor does the bill interfere with any governmental authority to regulate businesses that own such rights. It simply restores the ability of private persons to sue in federal court to enforce such rights against the States.

I view this bill as an exercise in cooperative federalism. Clear, certain and uniform national rules protecting federal intellectual property rights benefit everyone: consumers, businesses, the federal government and the States. The IPPRA preserves States' rights, and gives the States a free choice. At the same time, it ensures effective protection for individual constitutional rights, and fills the gap left by recent Supreme Court decisions in which there are federal rights unsupported by effective remedies.

There are, to be sure, other approaches that Congress could take to address the problems created by the Court's decisions. For example, Congress could condition a State's receipt of federal funds—including federal research funds used to generate intellectual property—on the State's wavier of immunity from any suit arising under the federal intellectual property laws. As I previously discussed, this approach is squarely supported by the Court's decisions in the spending cases. In my view, however, such an approach would be less respectful of State sovereignty than the opt-in-scheme proposed by the IPPRA. It would also impede the States' ability to conduct research in a manner that the IPPRA would not.

There is another approach that remains open to Congress that would provide a remedy for intellectual property owners against States, respect State sovereignty, and restore some degree of uniformity and consistency in the construction of the federal intellectual property laws. That is, Congress could give State courts jurisdiction over intellectual property suits or just compensation claims against the States, and then require the United States Supreme Court to exercise appellate review of the resulting State court judgment. There is no possible constitutional objection to this approach; the Eleventh Amendment does not defeat the Supreme Court's appellate jurisdiction over suits brought against the States. We should not, however, burden the Supreme Court in this manner when, as the IPPRA demonstrates, there are efficient and proper ways to bring these claims into the lower federal courts in which intellectual property expertise resides.

Intellectual property is the currency of the new global economy. As we move into the 21st century, we should not allow that currency to be devalued by abstruse 18th century legal formalities. For that reason, I believe that legislation is imperative to minimize the ill effects of the Supreme Court's latest attack on our ability to protect our national economic assets. The IPPRA restores protection for violations of intellectual property rights that may, under current law, go unremedied, and so provides the certainty and security necessary to foster innovation and creativity. We unanimously passed more sweeping legislation earlier this decade, but were thwarted by Supreme Court technicalities. The IPPRA is designed to restore the benefits we sought to provide intellectual property owners while meeting the Supreme Court's technical requirements. We should move to consider this legislation as soon as we return next year.

I ask unanimous consent that the bill and a section-by-section summary of the bill be printed in the RECORD.

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

S. 1835

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

SECTION 1. SHORT TITLE; REFERENCES; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Intellectual Property Protection Restoration Act of 1999''.

(b) REFERENCES.—Any reference in this Act to the Trademark Act of 1946 shall be a reference to 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'', approved July 5, 1946 (15 U.S.C. 1051 et seq.).

(c) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress makes the following findings:

(1) The protection of Federal intellectual property rights is of critical importance to the Nation's ability to compete in the global market.

(2) There is a strong Federal interest in the development of uniform and consistent law regarding Federal intellectual property rights, and in the fulfillment of international treaty obligations that the Federal Government has undertaken.

(3) Prior to 1985 and the Supreme Court ruling in Atascadero State Hospital v. Scanlon, 473 U.S. 234 (1985) (in this section referred to as ''Atascadero''), owners of Federal intellectual property rights could fully protect their rights against infringement by States.

(4) Following Atascadero, a number of courts held that Federal patent, copyright and trademark laws failed to contain the clear statement of intent to abrogate State sovereign immunity necessary to permit owners of Federal intellectual property rights to protect their rights against infringement by States.

(5) In 1990, Congress passed the Copyright Remedy Clarification Act (Public Law 101–553), to clarify its intent to abrogate State sovereign immunity from suits for infringement of copyrights and exclusive rights in mask works.

(6) In 1992, Congress passed the Patent and Plant Variety Protection Remedy Clarification Act (Public Law 102–206) and the Trademark Remedy Clarification Act (Public Law 102–542) to clarify its intent to abrogate State sovereign immunity from suits for infringement of patents, protected plant varieties and trademarks.

(7) In 1996, the Supreme Court held in Seminole Tribe of Florida v. Florida, 517 U.S. 44 (1996) (in this section referred to as ''Seminole Tribe'') that Congress may not abrogate State sovereign immunity under article I of the United States Constitution. Under the Supreme Court decision in Seminole Tribe, the Copyright Remedy Clarification Act, the Patent and Plant Variety Protection Remedy Clarification Act, and the Trademark Remedy Clarification Act could not be sustained under clause 3 or 8 of section 8 of article I of the United States Constitution.

(8) In 1999, the Supreme Court held in Florida Prepaid Postsecondary Education Expense Board v. College Savings Bank, 119 S. Ct. 2199 (1999) (in this section referred to as ''Florida Prepaid'') that the Patent and Plant Variety Protection Remedy Clarification Act could not be sustained as legislation enacted to enforce the guarantees of the due process clause of the fourteenth amendment of the United States Constitution.

(9) As a result of the Supreme Court's decision in Florida Prepaid, and absent remedial legislation, a patent owner's only remedy under the Federal patent laws against a State infringer of a patent is prospective relief under the doctrine of Ex parte Young, 209 U.S. 123 (1908).

(10) On the same day that it decided Florida Prepaid, the Supreme Court in College Savings Bank v. Florida Prepaid Postsecondary Education Expense Board, 119 S. Ct. 2219 (1999) (in this section referred to as ''College Savings Bank'') extended State sovereign immunity to purely commercial activities of certain State entities.

(11) The Seminole Tribe, Florida Prepaid and College Savings Bank decisions have the potential to—

(A) deprive private intellectual property owners of effective protection for both their Federal intellectual property rights and their constitutional rights under the fifth and fourteenth amendments of the United States Constitution; and

(B) compromise the ability of the United States to fulfill its obligations under a variety of international treaties.

(12) Article I of the United States Constitution empowers, but does not require, Congress to offer Federal intellectual property protection to any person on such terms as appear reasonable and appropriate to serve the public interest by encouraging scientific and artistic innovation and promoting commerce and fair competition.

(13) Congress can best accomplish the public interests described under paragraph (12) by providing clear and certain national rules protecting Federal intellectual property rights that establish a level playing field for everyone, including States.

(14) In recent years, States have increasingly elected to avail themselves of the benefits of the Federal intellectual property system by obtaining and enforcing Federal intellectual property rights.

(15) Any State should continue to enjoy the benefits of the Federal intellectual property system, if that State accepts the burdens with the benefits.

(16) A State should not enjoy the benefits of the Federal intellectual property laws unless it is prepared to have those same laws enforced against that State.

(17) Limiting the ability of a State to enjoy the benefits of the Federal intellectual property system will neither prevent the State from providing any services to citizens

of that State, nor stop the State from engaging in any commercial activity.

(18) If a State waives its sovereign immunity from suit under the Federal intellectual property laws, any constitutional violation resulting from its infringement of a Federal intellectual property right may be remedied in an infringement suit in Federal court.

(19) If a State does not waive sovereign immunity with respect to Federal intellectual property laws, it is necessary and appropriate for Congress to exercise its power under section 5 of the fourteenth amendment to the United States Constitution to protect the constitutional rights of owners of Federal intellectual property rights, which are property interests protected by the fifth and fourteenth amendments of the United States Constitution.

(20) According to the Supreme Court in College Savings Bank, ''The hallmark of a protected property interest is the right to exclude others.''. Patents, copyrights, and trademarks are constitutionally cognizable species of property because they secure for their owners rights of exclusion against others.

(21) A State may not exercise any of the rights conferred by a Federal intellectual property law without the authorization of the right holder, except in the manner and to the extent authorized by such law. In Goldstein v. California, 412 U.S. 546 (1973), the Supreme Court stated ''When Congress grants an exclusive right or monopoly, its effects are pervasive; no citizen or State may escape its reach.''.

(22) Because a State engaged in an infringing use of a Federal intellectual property right is acting outside the scope of its sovereign power, such State fails to meet the public use requirement for a taking of property imposed by the fifth amendment of the United States Constitution (made applicable to the States through the fourteenth amendment).

(23) According to the Supreme Court in Hawaii Housing Authority v. Midkiff, 467 U.S. 229 (1984), a claim for the taking of property in violation of the public use requirement is ripe at the time of the taking.

(24) A violation of the Federal intellectual property laws by a State may also constitute an unconstitutional deprivation of property under the due process clause of the fourteenth amendment of the United States Constitution.

(25) In order to enforce Federal intellectual property rights against States under the fifth and fourteenth amendments of the United States Constitution, it is appropriate to provide a right to enjoin any continuing or future constitutional violation and a right to recover sufficient damages to make the injured party whole.

(26) Violations of the Federal intellectual property laws by States not only impair the constitutional rights of the individual intellectual property owner, but also discourage technological innovation and artistic creation. Moreover, the potential for future violations to go unremedied as a result of State sovereign immunity prevents intellectual property owners from securing fair and efficient fees in licensing negotiations.

(27) States and instrumentalities of States have been involved in many intellectual property cases. Some States have violated Federal intellectual property rights and the constitutional provisions which protect such rights and have refused to waive their constitutional immunities, thereby securing unfair economic advantages over other States and private entities with whom such States may be in competition.

(28) States and instrumentalities of States have become increasingly involved in commerce involving intellectual property rights in recent years, and this trend is likely to continue. As a result, violations of Federal intellectual property rights by States have become increasingly more widespread.

(29) It is not practical for Congress to engage in an ongoing particularized inquiry as to which States are violating the United States Constitution at any given time. Accordingly, a national, uniform remedy for constitutional violations is appropriate.

(b) PURPOSES.—The purposes of this Act are to—

(1) provide States an opportunity to participate in the Federal intellectual property system on equal terms with private entities;

(2) reaffirm the availability of prospective relief to prevent State officials from violating Federal intellectual property laws, and to allow challenges to assertions by State officials of rights secured under such laws, on the same terms and in the same manner as if such State officials were private parties;

(3) provide other Federal remedies to owners of Federal intellectual property rights as against the States, State instrumentalities and State officials, to the maximum extent permitted by the United States Constitution; and

(4) abrogate State sovereign immunity in suits alleging violations of Federal intellectual property laws or challenging assertions of Federal intellectual property rights by States to the maximum extent permitted by the United States Constitution, pursuant to Congress's powers under the fifth and fourteenth amendments of the United States Constitution and any other applicable provisions.

TITLE I—STATE PARTICIPATION IN THE FEDERAL INTELLECTUAL PROPERTY SYSTEM

Subtitle A—Definitions

SEC. 101. DEFINITIONS.

In this title:

(1) FEDERAL INTELLECTUAL PROPERTY LAW.—The term ''Federal intellectual property law'' means a statute or regulation of the United States that governs the creation or protection of any form of intellectual property, including a patent, protected plant variety, copyright, mask work, original design, trademark, or service mark.

(2) FEDERAL INTELLECTUAL PROPERTY RIGHT.—The term ''Federal intellectual property right'' means any of the rights secured under a Federal intellectual property law.

(3) FEDERAL INTELLECTUAL PROPERTY SYSTEM.—The term ''Federal intellectual property system'' means the system established under the Federal intellectual property laws for protecting and enforcing Federal intellectual property rights, including through the award of damages, injunctions, and declaratory relief.

Subtitle B—Procedures for State Participation in the Federal Intellectual Property System

SEC. 111. OPT-IN PROCEDURE.

(a) IN GENERAL.—No State or any instrumentality of that State may acquire a Federal intellectual property right unless the State opts into the Federal intellectual property system.

(b) AGREEMENT TO WAIVE SOVEREIGN IMMUNITY.—A State opts into the Federal intellectual property system by providing an assurance under the procedures established in subtitle D of this title with respect to the State's agreement to waive sovereign immunity from suit in Federal court in any action against the State or any instrumentality or official of that State—

(1) arising under a Federal intellectual property law; or

(2) seeking a declaration with respect to a Federal intellectual property right.

SEC. 112. BREACH OF ASSURANCE BY A STATE.

(a) IN GENERAL.—If a State asserts sovereign immunity contrary to an assurance provided under the procedures established in subtitle D of this title, such State shall be deemed to have breached such assurance.

(b) ASSERTION OF IMMUNITY.—A State asserts sovereign immunity for purposes of subsection (a) if—

(1) the State or any instrumentality or official of that State is found to have asserted the State's sovereign immunity in an action against the State or any instrumentality or official of that State—

(A) arising under a Federal intellectual property law; or

(B) seeking a declaration with respect to a Federal intellectual property right; and

(2) such State, instrumentality, or official does not, within a period of 60 days after such finding, withdraw such assertion of immunity and consent to the continuation or refiling of the action in which the finding was made.

(c) EFFECTIVE DATE OF BREACH OF ASSURANCE.—A State shall be deemed to have breached an assurance on the day after the end of the 60-day period provided in subsection (b)(2).

SEC. 113. CONSEQUENCES OF BREACH OF ASSURANCE BY A STATE.

(a) ABANDONMENT OF PENDING APPLICATIONS.—Any application by or on behalf of a State or any instrumentality or official of that State for protection arising under a Federal intellectual property law shall be regarded as abandoned and shall not be subject to revival after the date referred to under paragraph (2), if that application—

(1) contains an assurance provided under the procedures established in subtitle D; and

(2) is pending on the date upon which such State is deemed to have breached an assurance under section 112.

(b) ESTABLISHMENT OF DEFENSE TO LIABILITY.—

(1) IN GENERAL.—No damages or other monetary relief shall be awarded in any action to enforce a Federal intellectual property right that is or has been owned by or on behalf of a State or any instrumentality of that State at any time during the 5-year period preceding the date upon which such State is deemed to have breached an assurance under section 122.

(2) NO RETROACTIVE EFFECT.—The defense under paragraph (1) shall not be available in any action to enforce a Federal intellectual property right that was owned by or on behalf of a State or an instrumentality of a State before the effective date of this title.

(c) ONE-YEAR BAR ON ACQUISITION OF NEW RIGHTS.—

(1) IN GENERAL.—A State may not opt back into the Federal intellectual property system under section 111 during the 1-year period following the date upon which that State was deemed to have breached an assurance under section 112.

(2) NEW RIGHTS UNENCUMBERED.—Federal intellectual property rights acquired by or on behalf of a State or any instrumentality or official of that State after the State has opted back into the Federal intellectual property system shall be unencumbered by any prior breach of an assurance.

Subtitle C—Administration of Procedures for State Participation in the Federal Intellectual Property System

SEC. 121. NOTIFICATION BY COURT OF STATE ASSERTION OF SOVEREIGN IMMUNITY.

Not later than 20 days after any finding by a Federal court that a State or any instrumentality or official of that State has asserted the State's sovereign immunity from suit in that court in an action against the State or any instrumentality or official of that State arising under a Federal intellectual property law, or seeking a declaration with respect to a Federal intellectual property right, the clerk of the court shall notify the Commissioner of Patents and Trademarks. The clerk shall send with the notification a copy of any order, judgment, or written opinion of the court.

SEC. 122. CONFIRMATION BY COMMISSIONER OF PATENTS AND TRADEMARKS OF STATE ASSERTION OF SOVEREIGN IMMUNITY.

Not later than 20 days after receiving a notification under section 121, the Commissioner of Patents and Trademarks shall—

(1) forward such notification to the attorney general of the State whose sovereign immunity has been found to have been asserted, together with a copy of this title; and

(2) inquire of the attorney general whether the State intends to withdraw such assertion of immunity and consent to the continuation or refiling of the action in which the finding was made within the 60-day period provided in section 112(b)(2).

SEC. 123. PUBLICATION BY COMMISSIONER OF PATENTS AND TRADEMARKS OF STATE ASSERTION OF SOVEREIGN IMMUNITY.

(a) IN GENERAL.—The Commissioner of Patents and Trademarks, in consultation with the Secretary of Agriculture and the Register of Copyrights, shall publish in the Federal Register and maintain on the Internet information concerning the participation of each State in the Federal intellectual property system.

(b) CONTENT OF INFORMATION.—The information under subsection (a) shall include, for each State—

(1) whether the State's sovereign immunity from suit in Federal court has been asserted under section 112(b); and

(2) the name of the case and court in which such assertion of immunity was made.

SEC. 124. RULEMAKING AUTHORITY.

The Commissioner of Patents and Trademarks may, pursuant to section 6 of title 35, United States Code, promulgate such rules as necessary to implement the provisions of this subtitle.

Subtitle D—Amendments to the Federal Intellectual Property Laws

SEC. 131. CONDITIONS FOR STATE PARTICIPATION IN THE FEDERAL PATENT SYSTEM.

(a) APPLICATION FOR PATENT.—Section 111 of title 35, United States Code, is amended by adding at the end the following:

''(c) APPLICATION BY OR ON BEHALF OF A STATE.—When an application for patent or a provisional application for patent is made by or on behalf of a State, an instrumentality of a State, or a State official acting in an official capacity, the Commissioner shall require—

''(1) an assurance that, during the pendency of the application and the term of any patent resulting from that application, the State's sovereign immunity from suit in Federal court will be waived in any action against the State or any instrumentality or official of that State—

''(A) arising under a Federal intellectual property law; or

''(B) seeking a declaration with respect to a Federal intellectual property right; and

''(2) a certification that, during the 1-year period preceding the date of the application, the State's sovereign immunity from suit in Federal court has not been asserted in any action described in paragraph (1).''.

(b) ASSIGNMENT AND RECORDATION.—Section 261 of title 35, United States Code, is amended—

(1) by striking ''Subject to the provisions of this title'' in the first sentence and inserting ''(a) IN GENERAL.—Subject to the provisions of this title''; and

(2) by adding at the end the following:

''(b) RECORDATION BY OR ON BEHALF OF A STATE.—When an assignment, grant, or conveyance of an application for patent, patent, or any interest in that patent, is recorded in the Patent and Trademark Office by or on behalf of a State, an instrumentality of a State, or a State official acting in an official capacity, the Commissioner shall require—

''(1) an assurance that, during the pendency of the application and the term of any patent resulting from that application, or during the remaining term of the patent or any interest in that patent, the State's sovereign immunity from suit in Federal court will be waived in any action against the State or any instrumentality or official of that State—

''(A) arising under a Federal intellectual property law; or

''(B) seeking a declaration with respect to a Federal intellectual property right; and

''(2) a certification that, during the 1-year period preceding the date of the recordation, the State's sovereign immunity from suit in Federal court has not been asserted in any action described in paragraph (1).''.

SEC. 132. CONDITIONS FOR STATE PARTICIPATION IN THE FEDERAL PLANT VARIETY PROTECTION SYSTEM.

(a) APPLICATION FOR CERTIFICATE OF PROTECTION.—Section 52 of the Plant Variety Protection Act (7 U.S.C. 2422) is amended—

(1) by striking ''An application for a certificate'' in the first sentence and inserting ''(a) An application for a certificate''; and

(2) by adding at the end the following:

''(b) When an application for plant variety protection is made by or on behalf of a State, an instrumentality of a State, or a State official acting in an official capacity, the Secretary shall require—

''(1) an assurance that, during the pendency of the application and the term of any plant variety protection resulting from that application, the State's sovereign immunity from suit in Federal court will be waived in any action against the State or any instrumentality or official of that State—

''(A) arising under a Federal intellectual property law; or

''(B) seeking a declaration with respect to a Federal intellectual property right; and

''(2) a certification that, during the 1-year period preceding the date of the application, the State's sovereign immunity from suit in Federal court has not been asserted in any action described in paragraph (1).''.

(b) ASSIGNMENT AND RECORDATION.—Section 101 of the Plant Variety Protection Act (7 U.S.C. 2531) is amended by adding at the end the following:

''(e) When an assignment, grant, conveyance, or license of plant variety protection or application for plant variety protection is filed for recording in the Plant Variety Protection Office by or on behalf of a State, an instrumentality of a State, or a State official acting in an official capacity, the Secretary shall require—

''(1) an assurance that, during the remaining term of the plant variety protection, or during the pendency of the application and the term of any plant variety protection resulting from that application, the State's sovereign immunity from suit in Federal court will be waived in any action against the State or any instrumentality or official of that State—

''(A) arising under a Federal intellectual property law; or

''(B) seeking a declaration with respect to a Federal intellectual property right; and

''(2) a certification that, during the 1-year period preceding the date of the recordation, the State's sovereign immunity from suit in Federal court has not been asserted in any action described in paragraph (1).''.

SEC. 133. CONDITIONS FOR STATE PARTICIPATION IN THE FEDERAL COPYRIGHT SYSTEM.

Section 409 of title 17, United States Code, is amended—

(1) in paragraph (10), by striking ''and'' at the end;

(2) by redesignating paragraph (11) as paragraph (12); and

(3) by inserting after paragraph (10) the following:

''(11) if the application is by or on behalf of a State or an instrumentality of a State—

''(A) an assurance that, during the pendency of the application and the subsistence of any copyright identified in that application, the State's sovereign immunity from suit in Federal court will be waived in any action against the State or any instrumentality or official of that State—

''(i) arising under a Federal intellectual property law; or

''(ii) seeking a declaration with respect to a Federal intellectual property right; and

''(B) a certification that, during the 1-year period preceding the date of the application, the State's sovereign immunity from suit in Federal court has not been asserted in any action described in subparagraph (A); and''.

SEC. 134. CONDITIONS FOR STATE PARTICIPATION IN THE FEDERAL MASK WORK SYSTEM.

Section 908 of title 17, United States Code, is amended by adding at the end the following:

''(h) When an application for registration of a mask work is made by or on behalf of a State or an instrumentality of a State, the Register of Copyrights shall require—

''(1) an assurance that, during the pendency of the application and any term of protection resulting from that application, the State's sovereign immunity from suit in Federal court will be waived in any action against the State or any instrumentality or official of that State—

''(A) arising under a Federal intellectual property law; or

''(B) seeking a declaration with respect to a Federal intellectual property right; and

''(2) a certification that, during the 1-year period preceding the date of the application, the State's sovereign immunity from suit in Federal court has not been asserted in any action described in paragraph (1).''.

SEC. 135. CONDITIONS FOR STATE PARTICIPATION IN THE FEDERAL ORIGINAL DESIGN SYSTEM.

Section 1310 of title 17, United States Code, is amended by adding at the end the following:

''(k) APPLICATION BY OR ON BEHALF OF A STATE OR AN INSTRUMENTALITY OF A STATE.—When an application for registration of a design is made by or on behalf of a State or an instrumentality of a State, the Administrator shall require—

''(1) an assurance that, during the pendency of the application and any term of protection resulting from that application, the State's sovereign immunity from suit in Federal court will be waived in any action against the State or any instrumentality or official of that State—

''(A) arising under a Federal intellectual property law; or

''(B) seeking a declaration with respect to a Federal intellectual property right; and

''(2) a certification that, during the 1-year period preceding the date of the application, the State's sovereign immunity from suit in Federal court has not been asserted in any action described in paragraph (1).''.

SEC. 136. CONDITIONS FOR STATE PARTICIPATION IN THE FEDERAL TRADEMARK SYSTEM.

(a) APPLICATION FOR USE OF TRADEMARK OR SERVICE MARK.—Section 1 of the Trademark Act of 1946 (15 U.S.C. 1051) is amended by adding at the end the following:

''(f) When an application under subsection (a) or (b) of this section is made by or on behalf of a State or an instrumentality of a State, the Commissioner shall require—

''(1) an assurance that, during the pendency of the application and for as long as the mark is registered, the State's sovereign immunity from suit in Federal court will be waived in any action against the State or any instrumentality or official of that State—

''(A) arising under a Federal intellectual property law; or

''(B) seeking a declaration with respect to a Federal intellectual property right; and

''(2) a certification that, during the 1-year period preceding the date of the application, the State's sovereign immunity from suit in Federal court has not been asserted in any action described in paragraph (1).''.

(b) ASSIGNMENT AND RECORDATION.—Section 10 of the Trademark Act of 1946 (15 U.S.C. 1060) is amended—

(1) by inserting ''(a)'' before ''A registered mark'';

(2) by inserting ''(b)'' before ''An assignee not domiciled''; and

(3) by adding at the end the following:

''(c) When an assignment of a registered mark or a mark for which an application to register has been filed is recorded in the Patent and Trademark Office by or on behalf of a State or an instrumentality of a State, the Commissioner shall require—

''(1) an assurance that, during the pendency of any application and for as long as any mark is registered, the State's sovereign immunity from suit in Federal court will be waived in any action against the State or any instrumentality or official of that State—

''(A) arising under a Federal intellectual property law; or

''(B) seeking a declaration with respect to a Federal intellectual property right; and

''(2) a certification that, during the 1-year period preceding the date of the recordation, the State's sovereign immunity from suit in Federal court has not been asserted in any action described in paragraph (1).''.

SEC. 137. NO RETROACTIVE EFFECT.

The amendments made by this subtitle shall not apply to—

(1) any application pending before the effective date of this title; or

(2) any assertion of sovereign immunity made before the effective date of this title.

TITLE II—RESTORATION OF PROTECTION FOR FEDERAL INTELLECTUAL PROPERTY RIGHTS

SEC. 201. LIABILITY OF STATES FOR PATENT VIOLATIONS.

Section 296 of title 35, United States Code, is amended to read as follows:

''§ 296. Liability of States, instrumentalities of States, and State officials for infringement of patents

''(a) REMEDY FOR STATUTORY VIOLATION.—In any action against an officer or employee of a State for infringement of a patent under section 271, or for any other violation under this title, prospective relief is available against the officer or employee in the same manner and to the same extent as such relief is available in an action against a private individual under like circumstances. Prospective relief may include injunctions under section 283, attorney fees under section 285, and declaratory relief under section 2201 of title 28.

''(b) REMEDY FOR CONSTITUTIONAL VIOLATION.—

''(1) DEFINITION.—In this subsection, the term 'State' includes a State, an instrumentality of a State, and an officer or employee of a State acting in an official capacity.

''(2) IN GENERAL.—

''(A) REMEDIES.—Any State that takes any of the rights of exclusion secured under this chapter in violation of the fifth amendment of the United States Constitution, or deprives any person of any of the rights of exclusion secured under this chapter without due process of law in violation of the fourteenth amendment—

''(i) shall be liable to the party injured in a civil action against the State for the recovery of that party's reasonable and entire compensation; and

''(ii) may be enjoined from continuing or future constitutional violations, in accordance with the principles of equity and upon such terms as the court may determine reasonable.

''(B) COMPENSATION.—Reasonable and entire compensation may include damages, interest, and costs under section 284, attorney fees under section 285, and the additional remedy for infringement of design patents under section 289.

''(3) LIMITATIONS.—

''(A) IN GENERAL.—The remedy provided under paragraph (2) is not available in an action against—

''(i) a State that has waived its sovereign immunity from suit in Federal court for damages resulting from a violation of this title; or

''(ii) a State official in an individual capacity.

''(B) REMEDIES.—Remedies (including remedies both at law and in equity) are available against such State or State official in the same manner and to the same extent as such remedies are available in an action against a private entity or individual under like circumstances.

''(4) BURDEN OF PROOF.—If a claimant produces prima facie evidence to support a claim under paragraph (2), the burden of proof shall be on the State, except as to any elements of the claim that would have to be proved if the action were brought under another provision of this title. The burden of proof shall be unaffected with respect to any such element.

''(c) PREEMPTION.—No State may use or manufacture the invention described in or covered by a patent without the authorization or consent of the patent owner, except in the manner and to the extent authorized by Federal law.''.

SEC. 202. LIABILITY OF STATES FOR VIOLATION OF PLANT VARIETY PROTECTION.

Section 130 of the Plant Variety Protection Act (7 U.S.C. 2570) is amended to read as follows:

''SEC. 130. LIABILITY OF STATES, INSTRUMENTALITIES OF STATES, AND STATE OFFICIALS FOR INFRINGEMENT OF PLANT VARIETY PROTECTION.

''(a) In any action against an officer or employee of a State for infringement of plant variety protection under section 111, or for any other violation under this chapter, prospective relief is available against the officer or employee in the same manner and to the same extent as such relief is available in an action against a private individual under like circumstances. Prospective relief may include injunctions under section 123, attorney fees under section 125, and declaratory relief under section 2201 of title 28, United States Code.

''(b)(1) In this subsection, the term 'State' includes a State, an instrumentality of a State, and an officer or employee of a State acting in an official capacity.

''(2)(A) Any State that takes any of the rights of exclusion secured under this chapter in violation of the fifth amendment of the United States Constitution, or deprives any person of any of the rights of exclusion secured under this chapter without due process of law in violation of the fourteenth amendment—

''(i) shall be liable to the party injured in a civil action against the State for the recovery of that party's reasonable and entire compensation; and

''(ii) may be enjoined from continuing or future constitutional violations, in accordance with the principles of equity and upon such terms as the court may determine reasonable.

''(B) Reasonable and entire compensation may include damages, interest, and costs under section 124, and attorney fees under section 125.

''(3)(A) The remedy provided under paragraph (2) is not available in an action against—

''(i) a State that has waived its sovereign immunity from suit in Federal court for damages resulting from a violation of this chapter; or

''(ii) a State official in an individual capacity.

''(B) Remedies (including remedies both at law and in equity) are available against such State or State official in the same manner and to the same extent as such remedies are available in an action against a private entity or individual under like circumstances.

''(4) If a claimant produces prima facie evidence to support a claim under paragraph (2), the burden of proof shall be on the State, except as to any elements of the claim that would have to be proved if the action were brought under another provision of this chapter. The burden of proof shall be unaffected with respect to any such element.

''(c) No State may exercise any rights of the owner of a plant variety protected by a certificate of plant variety protection under this chapter without the authorization or consent of such owner, except in the manner and to the extent authorized by Federal law.''.

SEC. 203. LIABILITY OF STATES FOR COPYRIGHT VIOLATIONS.

Section 511 of title 17, United States Code, is amended to read as follows:

''§ 511. Liability of States, instrumentalities of States, and State officials for infringement of copyright

''(a) REMEDY FOR STATUTORY VIOLATION.—In any action against an officer or employee of a State for violation of any rights of a copyright owner as provided in sections 106 through 121 or of an author as provided in section 106A, or for any other violation under this title, prospective relief is available against the officer or employee in the same manner and to the same extent as such relief is available in an action against a private individual under like circumstances. Prospective relief may include injunctions under section 502, impounding and disposition of infringing articles under section 503, costs and attorney fees under section 505, and declaratory relief under section 2201 of title 28.

''(b) REMEDY FOR CONSTITUTIONAL VIOLATION.—

''(1) DEFINITION.—In this subsection, the term 'State' includes a State, an instrumentality of a State, and an officer or employee of a State acting in an official capacity.

''(2) IN GENERAL.—

''(A) REMEDIES.—Any State that takes any of the rights of exclusion secured under this title in violation of the fifth amendment of the United States Constitution, or deprives any person of any of the rights of exclusion secured under this title without due process of law in violation of the fourteenth amendment—

''(i) shall be liable to the party injured in a civil action against the State for the recovery of that party's reasonable and entire compensation; and

''(ii) may be enjoined from continuing or future constitutional violations, in accordance with the principles of equity and upon such terms as the court may determine reasonable.

''(B) COMPENSATION.—Reasonable and entire compensation may include actual damages and profits or statutory damages under section 504, and costs and attorney fees under section 505.

''(3) LIMITATIONS.—

''(A) IN GENERAL.—The remedy provided under paragraph (2) is not available in an action against—

''(i) a State that has waived its sovereign immunity from suit in Federal court for damages resulting from a violation of this title; or

''(ii) a State official in an individual capacity.

''(B) REMEDIES.—Remedies (including remedies both at law and in equity) are available against such State or State official in the same manner and to the same extent as such remedies are available in an action against a private entity or individual under like circumstances.

''(4) BURDEN OF PROOF.—If a claimant produces prima facie evidence to support a claim under paragraph (2), the burden of proof shall be on the State, except as to any elements of the claim that would have to be proved if the action were brought under another provision of this title. The burden of proof shall be unaffected with respect to any such element.

''(c) PREEMPTION.—No State may exercise any rights of a copyright owner protected under this title without the authorization or consent of such owner, except in the manner and to the extent authorized by Federal law.''.

SEC. 204. LIABILITY OF STATES FOR MASK WORK VIOLATIONS.

(a) IN GENERAL.—Chapter 9 of title 17, United States Code, is amended—

(1) in section 911, by striking subsection (g); and

(2) by adding at the end the following:

''§ 915. Liability of States, instrumentalities of States, and State officials for violation of mask works

''(a) REMEDY FOR STATUTORY VIOLATION.—In any action against an officer or employee of a State for infringement of any rights in a mask work protected under this chapter, or for any other violation under this chapter, prospective relief is available against the officer or employee in the same manner and to the same extent as such relief is available in an action against a private individual under like circumstances. Prospective relief may include injunctive relief under section 911(a), impounding and destruction of infringing products under section 911(e), costs and attorney fees under section 911(f), and declaratory relief under section 2201 of title 28.

''(b) REMEDY FOR CONSTITUTIONAL VIOLATION.—

''(1) DEFINITION.—In this subsection, the term 'State' includes a State, an instrumentality of a State, and an officer or employee of a State acting in an official capacity.

''(2) IN GENERAL.—

''(A) REMEDIES.—Any State that takes any of the rights of exclusion secured under this chapter in violation of the fifth amendment of the United States Constitution, or deprives any person of any of the rights of exclusion secured under this chapter without due process of law in violation of the fourteenth amendment—

''(i) shall be liable to the party injured in a civil action against the State for the recovery of that party's reasonable and entire compensation; and

''(ii) may be enjoined from continuing or future constitutional violations, in accordance with the principles of equity and upon such terms as the court may determine reasonable.

''(B) COMPENSATION.—Reasonable and entire compensation may include actual damages and profits under section 911(b) or statutory damages under section 911(c), and costs and attorney fees under section 911(f).

''(3) LIMITATIONS.—

''(A) IN GENERAL.—The remedy provided under paragraph (2) is not available in an action against—

''(i) a State that has waived its sovereign immunity from suit in Federal court for damages resulting from a violation of this title; or

''(ii) a State official in an individual capacity.

''(B) REMEDIES.—Remedies (including remedies both at law and in equity) are available against such State or State official in the same manner and to the same extent as such remedies are available in an action against a private entity or individual under like circumstances.

''(4) BURDEN OF PROOF.—If a claimant produces prima facie evidence to support a claim under paragraph (2), the burden of proof shall be on the State, except as to any elements of the claim that would have to be proved if the action were brought under another provision of this chapter. The burden of proof shall be unaffected with respect to any such element.

''(c) PREEMPTION.—No State may exercise any rights of the owner of a mask work protected under this chapter without the authorization or consent of such owner, except in the manner and to the extent authorized by Federal law.''.

(b) CONFORMING AMENDMENT.—The table of sections for chapter 9 of title 17, United States Code, is amended by adding at the end the following:

''915. Liability of States, instrumentalities of States, and State officials for violation of mask works.''.

SEC. 205. LIABILITY OF STATES FOR ORIGINAL DESIGN VIOLATIONS.

(a) IN GENERAL.—Chapter 13 of title 17, United States Code, is amended—

(1) in section 1309(a), by adding at the end the following: ''In this subsection, the term 'any person' includes any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in an official capacity. Any State, and any such instrumentality, officer, or employee, shall be subject to the provisions of this chapter in the same manner and to the same extent as any nongovernmental entity.''; and

(2) by adding at the end the following:

''§ 1333. Liability of States, instrumentalities of States, and State officials for violation of original designs

''(a) REMEDY FOR STATUTORY VIOLATION.—In any action against an officer or employee of a State for infringement of any rights in a design protected under this chapter, or for any other violation under this chapter, prospective relief is available against the officer or employee in the same manner and to the same extent as such relief is available in an action against a private individual under like circumstances. Prospective relief may include injunctions under section 1322, attorney fees under section 1323(d), disposition of infringing and other articles under section 1323(e), and declaratory relief under section 2201 of title 28.

''(b) REMEDY FOR CONSTITUTIONAL VIOLATION.—

''(1) DEFINITION.—In this subsection, the term 'State' includes a State, an instrumentality of a State, and an officer or employee of a State acting in an official capacity.

''(2) IN GENERAL.—

''(A) REMEDIES.—Any State that takes any of the rights of exclusion secured under this chapter in violation of the fifth amendment of the United States Constitution, or deprives any person of any of the rights of exclusion secured under this chapter without due process of law in violation of the fourteenth amendment—

''(i) shall be liable to the party injured in a civil action against the State for the recovery of that party's reasonable and entire compensation; and

''(ii) may be enjoined from continuing or future constitutional violations, in accordance with the principles of equity and upon such terms as the court may determine reasonable.

''(B) COMPENSATION.—Reasonable and entire compensation may include damages, profits, and attorney fees under section 1323.

''(3) LIMITATIONS.—

''(A) IN GENERAL.—The remedy provided under paragraph (2) is not available in an action against—

''(i) a State that has waived its sovereign immunity from suit in Federal court for damages resulting from a violation of this title; or

''(ii) a State official in an individual capacity.

''(B) REMEDIES.—Remedies (including remedies both at law and in equity) are available against such State or State official in the same manner and to the same extent as such remedies are available in an action against a private entity or individual under like circumstances.

''(4) BURDEN OF PROOF.—If a claimant produces prima facie evidence to support a claim under paragraph (2), the burden of proof shall be on the State, except as to any elements of the claim that would have to be proved if the action were brought under another provision of this chapter. The burden of proof shall be unaffected with respect to any such element.

''(c) PREEMPTION.—No State may exercise any rights of the owner of a design protected under this chapter without the authorization or consent of such owner, except in the manner and to the extent authorized by Federal law.''.

(b) CONFORMING AMENDMENT.—The table of sections for chapter 13 of title 17, United States Code, is amended by adding at the end the following:

''1333. Liability of States, instrumentalities of States, and State officials for violation of original designs.''.

SEC. 206. LIABILITY OF STATES FOR TRADEMARK VIOLATIONS.

Section 40 of the Trademark Act of 1946 (15 U.S.C. 1122) is amended to read as follows:

''SEC. 40. LIABILITY OF STATES, INSTRUMENTALITIES OF STATES, AND STATE OFFICIALS FOR INFRINGEMENT OF TRADEMARKS.

''(a) REMEDY FOR STATUTORY VIOLATION.—In any action against an officer or employee of a State for infringement of a trademark under section 32, or for any other violation under this Act, prospective relief is available against the officer or employee in the same manner and to the same extent as such relief is available in an action against a private individual under like circumstances. Prospective relief may include injunctive relief under section 34, costs and attorney fees under section 35, destruction of infringing articles under section 36, and declaratory relief under section 2201 of title 28, United States Code.

''(b) REMEDY FOR CONSTITUTIONAL VIOLATION.—

''(1) DEFINITION.—In this subsection, the term 'State' includes a State, an instrumentality of a State, and an officer or employee of a State acting in an official capacity.

''(2) IN GENERAL.—

''(A) REMEDIES.—Any State that takes any of the rights of exclusion secured under this Act in violation of the fifth amendment of the United States Constitution, or deprives any person of any of the rights of exclusion secured under this Act without due process of law in violation of the fourteenth amendment—

''(i) shall be liable to the party injured in a civil action against the State for the recovery of that party's reasonable and entire compensation; and

''(ii) may be enjoined from continuing or future constitutional violations, in accordance with the principles of equity and upon such terms as the court may determine reasonable.

''(B) COMPENSATION.—Reasonable and entire compensation may include actual damages and profits or statutory damages, and costs and attorney fees under section 35.

''(3) LIMITATIONS.—

''(A) IN GENERAL.—The remedy provided under paragraph (2) is not available in an action against—

''(i) a State that has waived its sovereign immunity from suit in Federal court for damages resulting from a violation of this title; or

''(ii) a State official in an individual capacity.

''(B) REMEDIES.—Remedies (including remedies both at law and in equity) are available against such State or State official in the same manner and to the same extent as such remedies are available in an action against a private entity or individual under like circumstances.

''(4) BURDEN OF PROOF.—If a claimant produces prima facie evidence to support a claim under paragraph (2), the burden of proof shall be on the State, except as to any elements of the claim that would have to be proved if the action were brought under another provision of this Act. The burden of proof shall be unaffected with respect to any such element.

''(c) PREEMPTION.—No State may use a federally registered mark for the same or similar goods or service without the authorization or consent of the owner of the mark, except in the manner and to the extent authorized by Federal law.''.

SEC. 207. RULES OF CONSTRUCTION.

(a) JURISDICTION.—The district courts shall have original jurisdiction of any action arising under this title and the amendments made by this title under section 1338 of title 28, United States Code.

(b) BROAD CONSTRUCTION.—This title and the amendments made by this title shall be construed in favor of a broad protection of Federal intellectual property rights, to the maximum extent permitted by this title and the United States Constitution.

TITLE III—EFFECTIVE DATES

SEC. 301. EFFECTIVE DATES.

(a) TITLE I.—Title I of this Act and the amendments made by that title shall take effect 90 days after the date of enactment of this Act.

(b) TITLE II.—The amendments made by title II of this Act shall take effect with respect to violations that occur on or after the date of enactment of this Act.

SEC. 302. SEVERABILITY.

If any provision of this Act or of an amendment made by this Act, or any application of such provision to any person or circumstance, is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provision to any other person or circumstance shall not be affected.

INTELLECTUAL PROPERTY PROTECTION RESTORATION ACT—SECTION-BY-SECTION SUMMARY

OVERVIEW

The purpose of the Intellectual Property Protection Restoration Act of 1999 (''IPPRA'') is to restore protection for owners of federal intellectual property rights against infringement by States. Recent Supreme Court decisions invalidated prior efforts by Congress to abrogate State sovereign immunity in actions arising under the federal intellectual property laws. The IPPRA encourages States to participate in the federal intellectual property system on equal terms with private entities, by conditioning a State's receipt of future benefits under the federal intellectual property laws on an unambiguous waiver of sovereign immunity. As against States that choose not to participate, the bill also provides new remedies for violations of federal intellectual property rights, to the maximum extent permitted by the Constitution.

DETAILED SUMMARY

TITLE I—STATE PARTICIPATION IN THE FEDERAL INTELLECTUAL PROPERTY SYSTEM

Subtitle A—Definitions

Sec. 101. Definitions

Section 101 defines terms used in this title.

Subtitle B—Procedures for State Participation in the Federal Intellectual Property System

Sec. 111. Opt-in procedure

Section 111 provides that no State or State instrumentality may acquire a federal intellectual property right unless the State opts in to the federal intellectual property system by agreeing to waive sovereign immunity in any subsequent action that either arises under a federal intellectual property law or seeks a declaration with respect to a federal intellectual property right. Thus, if a State elects to receive the benefits of a nationally recognized right governed by uniform federal laws, then it must accept the obligation to defend any suits arising under those laws in the federal courts.

An assurance provided under section 111 is binding on the State and fully enforceable. ''A State may effectuate a waiver of its constitutional immunity . . . in the context of a particular federal program,'' so long as the State's intention to waive its immunity is unequivocal. Atascadero State Hosp. v. Scanlon, 473 U.S. 234, 238 n.1 & 241 (1985). See also Litman v. George Mason Univ., 186 F.3d 544 (4th Cir. 1999) (holding that a State's acceptance of federal education funding resulted in a binding waiver of immunity in a subsequent action against a State university under Title IX); Innes v. Kansas State Univ., 184 F.3d 1275 (10th Cir. 1999) (holding that a State university's agreement to participate in a federal loan program acted as a binding waiver of immunity).

Sec. 112. Breach of assurance by a State

Section 112 establishes procedures for determining whether a State that has opted in to the federal intellectual property system is in breach of its agreement to waive sovereign immunity.

Sec. 113. Consequences of breach of assurance by a State

Section 113 sets forth three consequences of a breach of an agreement to waive sovereign immunity.

First, under subsection (a), any pending applications by or on behalf of the State for federal intellectual property rights shall be regarded as abandoned and shall not be subject to revival thereafter.

Second, under subsection (b), no damages or other monetary relief shall be awarded in any action to enforce a federal intellectual property right that is or has been owned by or on behalf of the State during the preceding five years.

Third, under subsection (c), the State is barred from acquiring any new rights under the federal intellectual property laws for a period of one year. If, however, the State opts back in to the system after a year has passed, by providing a new assurance that it will henceforth waive its sovereign immunity in federal intellectual property litigation, it can then acquire new rights that will be enforceable by the full panoply of federal intellectual property remedies.

Subtitle C—Administration of Procedures for State Participation in the Federal Intellectual Property System

Sec. 121. Notification by court of State assertion of sovereign immunity

Section 121 directs federal courts to notify the Commissioner of Patents and Trademarks within 20 days of finding that a State has asserted sovereign immunity in any action to enforce or challenge a federal intellectual property right.

Sec. 122. Confirmation by Commissioner of Patents and Trademarks of State assertion of sovereign immunity

Section 122 directs the Commissioner of Patents and Trademarks, within 20 days of receiving a notification under section 121, to forward such notification to the Attorney General of the State, together with a copy of title I of the IPPRA, and inquire whether the State intends to withdraw its assertion of immunity and consent tot he continuation or refiling of the action in which it was made within the 60-day grace period provided in section 112(b)(2).

Sec. 123. Publication by Commissioner of Patents and Trademarks of State assertion of sovereign immunity

Section 123 directs the Commissioner of Patents and Trademarks, in consultation with the Secretary of Agriculture and the Register of Copyrights, to publish in the Federal Register and maintain on the Internet information concerning the participation of each State in the federal intellectual property system. The information must include, for each State, whether the State's sovereign immunity has been asserted, and the name of the case and court in which any such assertion of immunity was made.

Sec. 124. Rulemaking authority

Section 124 authorizes the Commissioner of Patents and Trademarks to promulgate such rules as necessary to implement the provisions of this subtitle.

Subtitle D—Amendments to the Federal Intellectual Property Laws

Sec. 131. Conditions for State participation in the federal patent system

Section 131 amends the federal patent statute to require any State that seeks to register for patent protection to provide an unequivocal assurance of the State's intention to waive sovereign immunity in any action to enforce or challenge a federal intellectual property right. A State must also certify that the State's sovereign immunity has not been asserted in any such action during the past year.

Sec. 132. Conditions for State participation in the federal plant variety protection system

Section 132 amends the federal plant variety statute to require any State that seeks to register for plant variety protection to provide an unequivocal assurance of the State's intention to waive sovereign immunity in any action to enforce or challenge a federal intellectual property right. A State must also certify that the State's sovereign immunity has not been asserted in any such action during the past year.

Sec. 133. Conditions for State participation in the federal copyright system

Section 133 amends the federal copyright statute to require any State that seeks to register for copyright protection to provide an unequivocal assurance of the State's intention to waive sovereign immunity in any action to enforce or challenge a federal intellectual property right. A State must also certify that the State's sovereign immunity has not been asserted in any such action during the past year.

Sec. 134. Conditions for State participation in the federal mask work system

Section 134 amends the federal mask work statute to require any State that seeks to register for mask work protection to provide an unequivocal assurance of the State's intention to waive sovereign immunity in any action to enforce or challenge a federal intellectual property right. A State must also certify that the State's sovereign immunity has not been asserted in any such action during the past year.

Sec. 135. Conditions for State participation in the federal original design system

Section 135 amends the federal original design statute to require any State that seeks to register for design protection to provide an unequivocal assurance of the State's intention to waive sovereign immunity in any action to enforce or challenge a federal intellectual property right. A State must also certify that the State's sovereign immunity has not been asserted in any such action during the past year.

Sec. 136. Conditions for State participation in the federal trademark system

Section 136 amends the federal trademark statute to require any State that seeks to register for trademark protection to provide an unequivocal assurance of the State's intention to waive sovereign immunity in any action to enforce or challenge a federal intellectual property right. A State must also certify that the State's sovereign immunity has not been asserted in any such action during the past year.

Sec. 137. No retroactive effect

Section 137 ensures that the amendments made by this subtitle are not given retroactive effect. Specifically, the amendments do not apply to any application by a State that was pending before the effective date of this subtitle, or to any assertion of sovereign immunity by a State made before the enactment of the IPPRA.

TITLE II—RESTORATION OF PROTECTION FOR FEDERAL INTELLECTUAL PROPERTY RIGHTS

Sec. 201. Liability of States for patent violations

Section 201 replaces section 296 of title 35, which was enacted pursuant to the Patent and Plant Variety Remedy Clarification Act of 1992 and invalidated by the Supreme Court in Florida Prepaid Postsecondary Educ. Expense Bd. v. College Savings Bank, 119 S. Ct. 2199 (1999).

Subsection (a) ensures the full availability of prospective relief to prevent State officials from violating the federal patent laws, and to allow challenges to assertions by State officials of rights secured under such laws, on the same terms and in the same manner as if such State officials were private individuals. Such relief is authorized under the doctrine of Ex parte Young, 209 U.S. 123 (1908), which held that an individual may sue a State official in an official capacity for prospective relief requiring the State official to cease violating federal law, even if the State itself is immune from suit under the Eleventh Amendment.

Subsection (b) provides a cause of action against States, State instrumentalities, and State officials acting in an official capacity for (1) taking a patent right in violation of the Fifth Amendment or (2) depriving a person of a patent right without due process of law in violation of the Fourteenth Amendment. Damages are fixed at ''reasonable and entire compensation,'' which is the measure of damages available against the United States for infringement of a patent (see 28 U.S.C. 1498); treble damages are not available under this subsection. Injunctive relief is available to prevent or deter constitutional violations.

The remedy provided under subsection (b) is not available against States that have waived their sovereign immunity from suit in federal court, nor is it available against State officials in their individual capacity, who do not partake of the State's sovereign immunity. Such States and State officials remain subject to the remedies provided by other provisions of the federal patent laws, to the same extent as such remedies are available in an action against any private entity or individual. Thus, for example, a State official sued in an individual capacity may not assert any defense or claim of absolute or qualified immunity that would not be available to a private individual under similar circumstances.

Subsection (b) abrogates State sovereign immunity to the maximum extent permitted by the Constitution, pursuant to Congress's powers under the Fifth and Fourteenth Amendments and any other applicable provisions.

A claim under subsection (b) for taking a patent right is ripe at the time of the taking. In Hawaii Housing Authority v. Midkiff, 467 U.S. 229 (1984), the Supreme Court held that the Public Use Clause of the Fifth Amendment, made applicable to the States through the Fourteenth Amendment, prohibits a State from taking private property for a non-public use, even with just compensation. The Court further stated that ''[t]he 'public use' requirement is . . . coterminous with the scope of a sovereign's police powers.'' 457 U.S. at 240. Because States making unauthorized uses of federal intellectual property rights are acting outside the scope of their sovereign powers, a State's infringement of a patent, even if compensated, is an unconstitutional taking of property for a non-public use; accordingly, the patent holder need not seek a remedy in State proceedings before filing a claim under subsection (b) in federal court.

Subsection (b)(4) addresses the burden of proof when a claimant produces prima facie evidence to support a claim under this subsection. Under subsection (b)(4), the burden of proof is on the State, except as to any elements of the claim that would have to be proved if the action were brought under another provision of this title. As to such elements, the burden of proof is unaffected. Thus, for example, if the adequacy of any State remedies became an issue, the State would bear the burden of proof thereon.

Subsection (c) clarifies that the federal patent laws and treaties supersede and preempt any power of a State to acquire or otherwise affect patent rights through the exercise of eminent domain.

Sec. 202. Liability of States for violation of plant variety protection

Section 202 establishes the same sorts of remedies for violations of protected plant varieties as section 201 establishes with respect to patents.

Sec. 203. Liability of States for copyright violations

Section 203 establishes the same sorts of remedies for violations of copyrights as section 201 establishes with respect to patents.

Sec. 204. Liability of States for mask work violations

Section 204 establishes the same sorts of remedies for violations of federally-protected rights in mask works as section 201 establishes with respect to patents.

Sec. 205. Liability of States for original design violations

Section 205 establishes the same sorts of remedies for violations of federally-protected rights in original designs as section 201 establishes with respect to patents.

Sec. 206. Liability of States trademark violations

Section 206 establishes the same sorts of remedies for violations of federally-registered trademarks and service marks as section 201 establishes with respect to patents.

Sec. 207. Rules of construction

Subsection (a) makes clear that the district courts shall have original jurisdiction under 28 U.S.C. §1338 of any action arising under this title. It follows that, pursuant to 28 U.S.C. §1295, the United States Court of Appeals for the Federal Circuit shall have exclusive jurisdiction of any appeal from a final decision of a district court in an action arising under this title relating to patents, plant variety protection, and exclusive rights in designs under chapter 13 of title 17.

Subsection (b) provides that this title shall be construed in favor of a broad protection of intellectual property rights, to the maximum extent permitted by its terms and the Constitution.

TITLE III—EFFECTIVE DATES

Sec. 301. Effective dates

Subsection (a) provides that the opt-in procedures established by title I of the IPPRA shall take effect 90 days after the date of enactment of the IPPRA.

Subsection (b) provides that the remedial provisions established by title II of the IPPRA shall take effect with respect to violations by States that occur on or after the date of enactment of the IPPRA.

Sec. 302. Severability

Section 302 contains a strong severability clause. If any provision of the IPPRA or of any amendment made by the IPPRA, or any application of such provision to any person or circumstance, is held to be unconstitutional, the remainder of the IPPRA, the amendments made by the IPPRA, and the application of the provision to any other person or circumstance shall not be affected.

ADDITIONAL COSPONSORS

S. 311

At the request of Mr. ROBB, his name was added as a cosponsor of S. 311, a bill to authorize the Disabled Veterans' LIFE Memorial Foundation to establish a memorial in the District of Columbia or its environs, and for other purposes.

S. 345

At the request of Mr. ALLARD, the names of the Senator from Illinois (Mr. FITZGERALD) and the Senator from Vermont (Mr. LEAHY) were added as cosponsors of S. 345, a bill to amend the Animal Welfare Act to remove the limitation that permits interstate movement of live birds, for the purpose of fighting, to States in which animal fighting is lawful.

S. 777

At the request of Mr. FITZGERALD, the name of the Senator from Montana (Mr. BAUCUS) was added as a cosponsor of S. 777, a bill to require the Department of Agriculture to establish an electronic filing and retrieval system to enable the public to file all required paperwork electronically with the Department and to have access to public information on farm programs, quarterly trade, economic, and production reports, and other similar information.

S. 1020

At the request of Mr. GRASSLEY, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 1020, a bill to amend chapter 1 of title 9, United States Code, to provide for greater fairness in the arbitration process relating to motor vehicle franchise contracts.

S. 1109

At the request of Mr. MCCONNELL, the names of the Senator from Delaware (Mr. ROTH) and the Senator from Connecticut (Mr. DODD) were added as cosponsors of S. 1109, a bill to conserve global bear populations by prohibiting the importation, exportation, and interstate trade of bear viscera and items, products, or substances containing, or labeled or advertised as containing, bear viscera, and for other purposes.

S. 1133

At the request of Mr. GRAMS, the name of the Senator from Montana (Mr. BAUCUS) was added as a cosponsor of S. 1133, a bill to amend the Poultry Products Inspection Act to cover birds of the order Ratitae that are raised for use as human food.

S. 1158

At the request of Mr. HUTCHINSON, the name of the Senator from Minnesota (Mr. GRAMS) was added as a cosponsor of S. 1158, a bill to allow the recovery of attorney's fees and costs by certain employers and labor organizations who are prevailing parties in proceedings brought against them by the National Labor Relations Board or by the Occupational Safety and Health Administration.

S. 1315

At the request of Mr. BINGAMAN, the name of the Senator from New Mexico (Mr. DOMENICI) was added as a cosponsor of S. 1315, a bill to permit the leasing of oil and gas rights on certain lands held in trust for the Navajo Nation or allotted to a member of the Navajo Nation, in any case in which there is consent from a specified percentage interest in the parcel of land under consideration for lease.

S. 1384

At the request of Mr. ABRAHAM, the names of the Senator from Washington (Mrs. MURRAY), the Senator from New York (Mr. SCHUMER), the Senator from Louisiana (Ms. LANDRIEU), and the Senator from South Carolina (Mr. THURMOND) were added as cosponsors of S. 1384, a bill to amend the Public Health Service Act to provide for a national folic acid education program to prevent birth defects, and for other purposes.

S. 1419

At the request of Mr. ROBB, his name was added as a cosponsor of S. 1419, a bill to amend title 36, United States Code, to designate May as ''National Military Appreciation Month.''

At the request of Mr. MCCAIN, the names of the Senator from Connecticut (Mr. DODD), the Senator from New Mexico (Mr. DOMENICI), the Senator from New York (Mr. SCHUMER), the Senator from North Dakota (Mr. CONRAD), the Senator from Tennessee (Mr. FRIST), the Senator from Illinois (Mr. DURBIN), the Senator from Indiana (Mr. BAYH), and the Senator from Montana (Mr. BURNS) were added as cosponsors of S. 1419, supra.

S. 1455

At the request of Mr. ABRAHAM, the name of the Senator from Vermont (Mr. LEAHY) was added as a cosponsor of S. 1455, a bill to enhance protections against fraud in the offering of financial assistance for college education, and for other purposes.

S. 1482

At the request of Ms. SNOWE, the name of the Senator from Massachusetts (Mr. KENNEDY) was added as a cosponsor of S. 1482, a bill to amend the National Marine Sanctuaries Act, and for other purposes.

S. 1528

At the request of Mr. LOTT, the names of the Senator from Hawaii (Mr. AKAKA) and the Senator from Iowa (Mr. HARKIN) were added as cosponsors of S. 1528, a bill to amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to clarify liability under that Act for certain recycling transactions.

S. 1590

At the request of Mr. CRAPO, the names of the Senator from Vermont (Mr. JEFFORDS) and the Senator from South Dakota (Mr. DASCHLE) were added as cosponsors of S. 1590, a bill to amend title 49, United States Code, to modify the authority of the Surface Transportation Board, and for other purposes.

S. 1592

At the request of Mr. DURBIN, the name of the Senator from Nevada (Mr. REID) was added as a cosponsor of S. 1592, a bill to amend the Nicaraguan Adjustment and Central American Relief Act to provide to certain nationals of El Salvador, Guatemala, Honduras, and Haiti an opportunity to apply for adjustment of status under that Act, and for other purposes.

S. 1600

At the request of Mr. HARKIN, the name of the Senator from West Virginia (Mr. BYRD) was added as a cosponsor of S. 1600, a bill to amend the Employee Retirement Income Security Act of 1974 to prevent the wearing away of an employee's accrued benefit under a defined benefit plan by the adoption of a plan amendment reducing future accruals under the plan.

S. 1638

At the request of Mr. ASHCROFT, the name of the Senator from Arkansas (Mr. HUTCHINSON) was added as a cosponsor of S. 1638, a bill to amend the Omnibus Crime Control and Safe