No State preemption: Its provisions sunset when a State enacts UETA.

Exclusions of family law: It specifically excludes agreements relating to marriage, adoption, premarital agreements, divorce, residuary and other family matters because these are not commercial transactions.

Removal of statutory barriers to electronic transactions: It requires OMB to report to Congress 18 months after enactment identifying statutory barriers to electronic transactions and recommending legislation to remove such barriers.

In conclusion, Mr. President, I wish to acknowledge the leadership of Sen. ABRAHAM in moving this legislation forward. He and I have teamed up successfully on other legislation, and it was a pleasure to work with him and his staff. I also want to recognize the contribution of Senator LEAHY, particularly with regard to the consumer protection provisions, as well as the effort of Senator HOLLINGS. It took a bipartisan team to get this bill through the Senate today, and I look forward to continuing to work with this team as we go to conference with the House on S. 761.

I ask unanimous consent that my statement be printed in the record following Senator ABRAHAM's statement on the passage of S. 761.

Mr. LIEBERMAN. Mr. President, I rise today to express my support for the legislation that will effectively create a consistent, but temporary, national electronic signature law to preempt a multitude of sometimes inconsistent state laws. The bill is technology neutral, allowing contracting parties to determine the appropriate electronic signature technology for their transactions. Importantly, this legislation is the result of thoughtful compromise. It gives electronic signatures more legal certainty but also provides for consumer protection. It deals with electronic signatures only in creating contracts. It preempts state law only until the states enact their own statutes and standards as provided for by the Uniform Electronic Transactions Act (UETA).

Mr. President, I thank those who have worked so diligently to create this Act. Through the considerate and collaborative approach of several of my colleagues, including Senators ABRAHAM, LEAHY, and WYDEN, we now have legislation with language that achieves a broad public purpose. We are now able to continue supporting the growth and evolution of electronic commerce and technologies that will effectively bring us into the next century.

Ms. COLLINS. Mr. President, I ask unanimous consent the committee amendment in the nature of a substitute was agreed to.

The committee amendment in the nature of a substitute was agreed to. Without objection, it is so ordered.

Ms. COLLINS. Mr. President, there is a substitute amendment at the desk submitted by Senators SESSIONS and JEFFORDS. I ask for its consideration.

The PRESIDING OFFICER. The clerk will report the bill by title. The legislative clerk read as follows:

A bill (S. 1309) to amend title I of the Employee Retirement Income Security Act of 1974 to provide for the preemption of State law in certain cases relating to certain church plans.

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

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

Mr. President, I further ask consent immediately following the vote on the adoption of the conference report, H. Con. Res. 236 be agreed to, and the motion to reconsider be laid upon the table.

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

CHURCH PLAN PARITY AND ENTANGLEMENT PREVENTION ACT OF 1999

Ms. COLLINS. Mr. President, I ask unanimous consent the health committee be discharged from further consideration of S. 1309 and that the Senate proceed to its immediate consideration.

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

The clerk will report the bill by title. The legislative clerk read as follows:

A bill (S. 1309) to amend title I of the Employee Retirement Income Security Act of 1974 to provide for the preemption of State law in certain cases relating to certain church plans.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SEC. 2. CLARIFICATION OF CHURCH WELFARE PLAN STATUS UNDER STATE INSURANCE LAW.

(a) In General.—For purposes of determining the status of a church plan that is a welfare plan under provisions of a State insurance law described in subsection (b), such a church plan (and any trust under such plan) shall be deemed to be a plan sponsored by a single employer that reimburses costs from general church assets, or purchases insurance coverage with general church assets, or both.

(b) STATE INSURANCE LAW.—A State insurance law described in this subsection is a law that—
(1) requires a church plan, or an organiza-

(2) Reimburse costs from general church assets.—The term "reimburses costs from general church assets" means engaging in an activity that is not the spreading of risk solely for the purposes of the provisions of State insurance laws described in subsection (b).

(c) Definitions.—For purposes of this section:

(1) Church plan.—The term "church plan" has the meaning given such term by section 414(e) of the Internal Revenue Code of 1986 and section 3(33) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(33)).

(2) Reimburse costs from general church assets.—The term "reimburses costs from general church assets" means engaging in an activity that is not the spreading of risk solely for the purposes of the provisions of State insurance laws described in subsection (b).

(3) Welfare plan.—The term "welfare plan"—

(A) means any church plan to the extent that such plan provides medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or pre-paid legal services; and

(B) does not include any entity, such as a health insurance issuer described in section 9832(b)(2) of the Internal Revenue Code of 1986 or a health maintenance organization described in section 9832(b)(3) of such Code, or any other organization that does business with the church plan or organization sponsoring or maintaining such a plan.

(d) Enforcement authority.—Notwithstanding any other provision of this section, for purposes of enforcing provisions of State insurance laws that apply to a church plan that is a welfare plan, the church plan shall be subject to State enforcement as if the church plan were an insurer licensed by the State.

(e) Application of section.—Except as provided in subsection (d), the application of this section is limited to determining the status of a church plan that is a welfare plan under the provisions of State insurance laws described in subsection (b). This section shall not otherwise be construed to recharacterize the status, or modify or affect the rights, of any plan participant or bene-

ficiary including participants or beneficiaries who make plan contributions.

Mr. LEAHY. Mr. President, the Sen-
ate is today passing an important bill, S. 1257, the Hatch-Leahy-Schumer "Digital Theft Deterrence and Copy-
right Damages Improvement Act of 1999.

This legislation should help our copyright industries, which in turn helps both those who are employed in those industries and those who enjoy the wealth of consumer products, including books, magazines, movies, and computer software, that makes the vibrant culture of this country the envy of the world. This legislation has already traveled an unnecessarily bumpy road to get to this stage, and it is my hope that it will be sent promptly to the President's desk.

On July 1, 1999, the Senate passed four intellectual property bills which Senator HATCH and I had joined in introducing and which the Judiciary Committee had unanimously reported. Each of these bills (S. 1257, which we consider today; S. 1258, the Patent Fee Integrity and Innovation Protection Act; S. 1259, the Trademark Amend-
ment Act; and S. 1260, the Copyright Act Technical Corrections Act) make important improvements to our intel-
lectual property laws, and I congratulate Senator HATCH for his leadership in moving these bills promptly through the Committee.

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105th Congresses, and to work for pas-
sage of this legislation, which was fi-
nally enacted as the “No Electronic Theft Act of 1997.” Pub. L. 105–147. The current rates of software piracy show that we need to do better to combat this theft, both with enforcement of our current copyright laws and with strengthened copyright laws to deter potentially willful infringements.

The Hatch-Leahy-Schumer “Digital Theft Deterrence and Copyright Damages Improvement Act” would help provide additional deterrence by amending the Copyright Act, 17 U.S.C. § 504(c), to increase the amounts of statutory damages recoverable for copyright infringements. These amounts were last increased in 1988 when the United States acceded to the Berne Convention. Specifically, the bill would increase the cap on statutory damages by 50 percent, raising the minimum from $500 to $750 and raising the maximum from $20,000 to $30,000. In addition, the bill would raise from $100,000 to $150,000 the amount of statutory damages recoverable for willful infringements.

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

Finally, the bill provides authority for the Sentencing Commission expedi-
tiously to fulfill its responsibilities under the No Electronic Theft Act, which directed the Commission to ensure that the guidelines provide for consideration of the retail value and quantity of the items with respect to which the intellectual property offense was committed. Since the time that this law became effective, the Sentencing Commission has not had a full slate of Commissioners serving. In fact, we have had no Commissioners since October 1998. The Commission corrected last week with the confirmation of seven new Commissioners.

As I noted, the House amended the version of S. 1257 that the Senate passed in July in two ways. First, the original House version of this legisla-
tion, H.R. 1761, contained a new proposed enhanced penalty for infringers who engage in a repeated pattern of infringe-
ment, but without any scienter requirement. I shared the concerns raised by the Sentencing Commission about the provision, absent a willfulness scienter requirement, would permit imposition of the enhanced penalty even against person who negligently, albeit repeat-
edly, engaged in acts of infringement. Consequently, the Hatch-Leahy-Schu-
mer bill, S. 1257, that we sent to the House last year included a new such a wide net, which could chill legitimate fair uses of copyrighted works. Instead, the bill we sent to the House would have created a new tier of statutory damages allowing a court to award damages in the amount of $250,000 per infringing work where the infringement is part of a willful and repeated pattern or practice of infringement. The entire “pattern and practice” provision, which originated in the House, has been removed from the version of S. 1257 sent back to the Senate.

Second, the original House version of this legislation provided a direction to the Sentencing Commission to amend the guidelines to provide an enhance-
ment for offenses involving widespread infringement. Consequently, the version of S. 1257 passed by the Senate in July did not include the directive to the Sentencing Commission. The House then returned S. 1257 with the same problematic directive to the Sentencing Commission.

I appreciate that my House col-
leagues and interested stakeholders have worked over the past months to address my concerns over the breadth of the proposed directive to the Sen-
tencing Commission and to find a bet-
ter definition of the categories of cases in which it would be appropriate to compute the applicable sentencing guideline based upon the retail value of the infringed upon item. A better solu-
tion than the one contained in the No Electronic Theft Act remains elusive, however.

For example, one recent proposal seeks to add to S. 1257 a direction to the Sentencing Commission to enhance the guideline offense level for copy-
right and trademark infringement based upon the retail price of the leg-
imate products multiplied by the quantity of the infringing products, ex-
cept where “the infringing products are substantially inferior to the infringed upon products and there is substantial price disparity between the legitimate products and the infringing products.” This proposed direction appears to be under-inclusive since it would not allow a guideline enhancement in cases where counterfeit goods are passed off as the real item to unsuspecting consumers, even though this is clearly a situation in which the Commission may decide to provide an enhancement.

In view of the fact that the full Sen-
tencing Commission has not had an op-
portunity for the past two years to consider and implement the original direction in the No Electronic Theft Act, passing a new and flawed directive appears to be both unnecessary and un-
wise. This is particularly the case since the new Commissioners have already indicated a willingness to consider this issue promptly. In response to ques-
tions posed at their confirmation hear-
ings, each of the nominated Sentencing Commissioners indicated that they would make this issue a priority. For example, Judge William Sessions of the District of Vermont specifically noted that:

If confirmed, our first task must be to ad-
dress Congress’ longstanding directives, in-
cluding implementation of the guidelines pursuant to the NET Act. Congress directed the Sentencing Commission to fashion guide-
lines under the NET Act that are sufficiently severe to deter such criminal activity, I person-
ally favor addressing penalties under this statute expeditiously.

I fully concur in the judgment of Chairman HATCH that the Sentencing Commission directive provision added by the House and to send, again, S. 1257 to the House for action.

This bill represents an improvement in current copyright law, and I hope that it will soon be sent to the Presi-
dent for enactment.

TO AMEND THE CONSOLIDATED FARM AND RURAL DEVELOP-
MENT ACT

Ms. COLLINS. Mr. President, I ask unanimous consent the Agriculture Committee be discharged from further consideration of S. 961, and the Senate proceed to its immediate considera-
tion.

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

The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 961) to amend the Consolidated Farm and Rural Development Act to improve shared appreciation arrangements. There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 2789

(Purpose: To provide a substitute
amendment)

Ms. COLLINS. Mr. President, there is a substitute amendment at the desk subm-
titted by Senator BURNS, and I ask for its consideration.

The PRESIDING OFFICER. The
clerk will report.

The legislative clerk read as follows:

The Senator from Maine [Ms. Collins] for Mr. BURNS, proposes an amendment num-
bered 2789.

The amendment is as follows:

Strike all after the enacting clause and in-
sert the following:

SECTION 1. SHARED APPRECIATION ARRANGE-
MENTS. (a) IN GENERAL.—Section 353(e) of the Con-
solidated Farm and Rural Development Act

November 19, 1999 CONGRESSIONAL RECORD—SENATE 30879