105th Congresses, and to work for pas-
sage of this legislation, which was fi-
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.

The Hatch-Leahy-Schumer “Digital Theft Deterrence and Copyright Dam-
ages 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 have raised 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 have raised 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 prescribes provisions of the cur-
rent law allowing the court to reduce the award of statutory damages to as little as $200 in cases of innocent infringe-
ment and requiring the court to remit damages in certain cases involving
nonprofit educational institutions, libraries, archives, or public broadcast-
ing entities.

Finally, the bill provides authority for the Commission to expedi-
tiously to fulfill its responsibilities under the No Electronic Theft Act, which directed the Commission to en-
sure 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 Sen-
tencing Commission has not had a full slate of Commissioners serving. In fact, we have had no Commissioners since October 1997. 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 pro-
posed enhanced penalty for infringers who engage in a repeated pattern of in-
fringement, but without any scien-
tist requirement. I shared the concerns raised by the White House Office of this provision, absent a willfulness scien-
tist 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 was sent to the House in July and updated with a wide net, which could chill legitimate fair uses of copyrighted works. Instead, the bill 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 the retail value of the infringing entity in any case in which the infringing entity is part of a willful and repeated pattern or practice of infringement.

In view of the fact that the full Sen-
tencing Commission has not had an op-
portunity for the past two years to con-
sider and implement the original direc-
tion 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 per-
sonally favor addressing penalties under this statute expedi-
tiously.

I fully concur in the judgment of Chair-
man 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 consider-
ation.

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 im-
prove 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 substi-
ute amendment at the desk sub-
mitted 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-
ber 2789.

The amendment is as follows:

Strike all after the enacting clause and
insert the following:

SECTION 1. SHARED APPRECIATION ARRANGE-
MENTS.

(a) IN GENERAL.—Section 533(e) of the Con-
solidated Farm and Rural Development Act
Copyright Damages Improvement Act of 1999

Ms. COLLINS. Mr. President, I ask unanimous consent the amendment be agreed to, the bill be read the third time and passed as amended, the motion to reconsider be laid upon the table, and that any statements be printed in the Record.

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

The amendment (No. 2789) was agreed to.

The bill (S. 961), as amended, was read the third time and passed, as follows:

[The bill was not available for printing. It will appear in a future edition of the Record.]

Copyright Damages Improvement Act of 1999

Ms. COLLINS. I ask unanimous consent the Chair lay before the Senate a message from the House to accompany S. 1257.

The PRESIDING OFFICER. The bill (S. 1257) entitled “An Act to amend statutory damages provisions of title 17, United States Code,” do pass with the following amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the ‘Copyright Damages Improvement Act of 1999’.

SEC. 2. STATUTORY DAMAGES ENHANCEMENT.

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

(1) in paragraph (1)—

(a) by striking “$500” and inserting “$750”; and

(b) by striking “$20,000” and inserting “$30,000”;

(2) in paragraph (2), by striking “$100,000” and inserting “$150,000”;

SEC. 3. SENTENCING COMMISSION GUIDELINES.

Section 2(g) of the No Electronic Theft (NET) Act (28 U.S.C. 994 note) is amended by striking paragraph (2) and inserting the following:

“(2) In implementing paragraph (1), the Sentencing Commission shall guide the courts in applying the statute applicable to criminal infringement of a copyright or trademark to provide an enhancement based upon the retail price of the legitimate items that are infringed upon and the quantity of the infringing items. The extent the conduct involves a violation of section 2319A of title 18, United States Code, the enhancement shall be based upon the retail price of the infringing items and the quantity of the infringing items.

“(3) Paragraph (1) shall be implemented not later than 3 months after the later of—

(A) the first day occurring after May 20, 1999; or

(B) the first day after the date of the enactment of this paragraph, on which sufficient members of the Sentencing Commission have been confirmed to constitute a quorum.

“(4) The Commission shall promulgate the guidelines or amendments provided for under this section in accordance with the procedures set forth in section 21(a) of the Sentencing Act of 1987, as though the authority under that Act had not expired.

SEC. 4. EFFECTIVE DATE.

The amendments made by section 2 shall apply to any action brought on or after the date of the enactment of this Act, regardless of the date on which the alleged activity that is the basis of the action occurred.

AMENDMENT NO. 2790

(Purpose: To provide for the promulgation of emergency guidelines by the United States Sentencing Commission relating to criminal infringement of a copyright or trademark, and for other purposes)

Ms. COLLINS. Mr. President, I ask unanimous consent that the Senate concur in the House amendment with a further amendment which is at the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Maine [Ms. Collins] for Mr. Hatch, for himself, and Mr. Library, proposes an amendment numbered 2790.

The amendment is as follows:

On page 1, line 2, insert “Digital Theft Termination and” before “Copyright”. On page 2, strike lines 2 through 26 and insert the following:

Within 120 days after the date of the enactment of this Act, or within 120 days after the first date on which there is a sufficient number of voting members of the Sentencing Commission to constitute a quorum, whatever is later, the Commission shall promulgate emergency guideline amendments to implement section 2(g) of the No Electronic Theft (NET) Act (28 U.S.C. 994 note) in accordance with the procedures set forth in section 21(a) of the Sentencing Act of 1987, as though the authority under that Act had not expired.

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

AMENDING THE INSPECTOR GENERAL ACT

Ms. COLLINS. Mr. President, I ask unanimous consent the Senate now proceed to the consideration of Calendar No. 408, S. 1707.

The PRESIDING OFFICER. The clerk will report the bill by title.