years going back to 1969 and complicate the job of congressional oversight. Furthermore, transferring this responsibility to the AO might create delays in issuance of the report since no other agency has the methodology in place. Finally, federal, state and local agencies are well accustomed to the reporting methodology developed by the AO. Notifying all these agencies that the reporting standards and agency have changed would inevitably create more confusion and more expense as law enforcement agencies across the country are forced to learn a new system and develop a liaison with a new agency.

The system in place now has worked well and we should avoid any disruptions. We know how quickly law enforcement may be subjected to criticism of their use of these surveillance tools and we should avoid aggravating these sensitivities by changing the reporting agency and methodology on little to no notice. I appreciate, however, the AO’s interest in changing the wiretapping requirement to another entity. Any such transfer must be accomplished with a minimum of disruption to the collection and reporting of information and with complete assurances that any new entity is able to fulfill this important job as capably as the AO has done.

The amendment would update the reporting requirements currently in place with one additional reporting requirement. Specifically, the amendment would require the wiretap reports prepared beginning in calendar year 2000 to include information on the number of orders in which encryption was encountered and whether such encryption hindered the ability to obtain the plain text of communications intercepted pursuant to such order.

Encryption technology is critical to protect sensitive computer and online information. Yet, the same technology poses challenges to law enforcement when it is exploited by criminals to hide evidence or the fruits of criminal activities. A report by the U.S. Working Group on Organized Crime titled, “Encryption and Evolving Technologies: Tools of Organized Crime and Terrorism,” released in 1997, collected anecdotal case studies on the use of encryption in furtherance of criminal activities in order to estimate the future impact of encryption on law enforcement. The report noted the need for “an ongoing study of the effect of encryption and other information technologies on investigations, prosecutions, and intelligence operations.” As part of this study, “a database of case information from federal and local law enforcement and intelligence agencies should be established and maintained.”

Adding a requirement that reports be furnished on the number of occasions when encryption is encountered by law enforcement is a far more reliable basis than anecdotal evidence on which to assess law enforcement needs and make sensible policy in this area.

The final section of this amendment would codify the information that the Attorney General already provides on pen register and trap and trace device orders, and require further information on which the types of facilities—telephone, computer, pager or other device—to which the order relates. Under the Electronic Communications Privacy Act (“ECPA”) of 1986, P.L. 99-508, codified at 18 U.S.C. 3126, the Attorney General of the United States is required to report annually to the Congress on the number of pen register orders and orders for trap and trace devices applied for by law enforcement agencies of the Department of Justice. As the original sponsor of ECPA, I believed that adequate oversight of the surveillance activities of federal law enforcement could only be accomplished with reporting requirements such as the one included in this law.

The reports furnished by the Attorney General on an annual basis compile information from five components of the Department of Justice: the Federal Bureau of Investigation, the Drug Enforcement Administration, the Immigration and Naturalization Service, the United States Marshals Service and the Office of the Inspector General. The report contains information on the number of original and extension orders made to the courts for authorization to use both pen register and trap and trace devices, information concerning the number of investigations involved, the offenses on which the applications were predicated and the number of people whose telephone facilities were affected.

These specific categories of information are used by the amendment which would direct the Attorney General to continue providing these specific categories of information. In addition, the amendment would direct the Attorney General to include information on the identity, including the district, of the agency making the application and the person authorizing the order. In this way, the Congress and the public will be informed of those jurisdictions using this surveillance technique—information which is currently not included in the Attorney General’s annual reports.

The requirement for preparation of the wiretap reports will soon lapse so I am delighted to see the Senate take prompt action on this legislation to continue the requirement for submission of the wiretap reports and to update the requirements for reports from the AO. Both the wiretap reports submitted by the AO and the pen register and trap and trace reports submitted by the Attorney General.

DIgITAL THEFT DETERRENCE AND COPYRIGHT DAMAGES IMPROVEMENT ACT OF 1999

- Mr. LEAHY. Mr. President, the Senate is today passing an important bill, H.R. 3456, which is the Hatch-Leahy-Schumer “Digital Theft Deterrence and Copyright Damages Improvement Act of 1999.” This legislation should help our copyright industries, which in turn helps 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 of final passage, and it should be sent promptly to the President.

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 reported. Each of these bills (S. 1257, the text of which is considered today as H.R. 3456; S. 1258, the “Patent Fee Integrity and Innovation Protection Act”; S. 1259, the “Trademark Amendments Act”; and S. 1260, the “Copyright Act Technical Corrections Act”) make important improvements to our intellectual property laws, and I congratulate Senator HATCH for his leadership in moving these bills promptly through the Committee and the Senate.

Three of those four bills then passed the House without amendment and were signed by the President on August 5, 1999. The House sent back to the Senate S. 1257, the “Digital Theft Deterrence and Copyright Damages Improvement Act,” with two modifications which I will describe below. Working with Senator HATCH and our colleagues in the House, we worked out additional revisions in the bill, which was then introduced as H.R. 3456 and passed by the House yesterday in time for Senate consideration before the end of this congressional session.

I have long been concerned about reducing the levels of software piracy in this country and around the world. The theft of digital copyrighted works and, in particular, of software, results in lost jobs to American workers, lost taxes to Federal and State governments, and lost revenue to American companies. A recent report released by the Business Software Alliance estimates that worldwide theft of copyrighted software was valued to nearly $11 billion. According to the report, if this ‘pirated software has instead been legally purchased, the industry would have been able to employ 32,700 more people. In 2008, if software piracy remains at its current rate, 52,700 jobs will be lost in the core software industry.’’ This theft also reflects losses of $991 million in tax revenue in the United States.
These statistics about the harm done to our economy by the theft of copyrighted software, alone, prompted me to introduce the original version of the “Criminal Copyright Improvement Act” in both the 104th and 105th Congresses, and to work for passage of this legislation, which was finally 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 potential infringers.

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, and to compute the applicable sentencing guideline based upon the retail price of the infringing item. The entire “pattern and practice” provision, which originated in the House, was 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 enhancement based upon the retail price of the infringing item and the quantity of the infringing items. I was concerned that this direction would require the Commission and, ultimately, sentencing judges to treat similarly a wide variety of infringement crimes, no matter the type and magnitude of harm. This was a problem we avoided in the carefully crafted Sentencing Commission directive originally passed as part of the “No Electronic Theft Act.” Consequently, the version of S. 1257 passed by the Senate in July did not include the directive to the Sentencing Commission. Nevertheless, the House returned S. 1257 to the Senate with the same problematic directive to the Sentencing Commission. Neverthe- less, the House returned S. 1257 to the Senate with the same problematic directive to the Sentencing Commission. I appreciate that my House colleagues and interested stakeholders have worked over the past months to address my concerns over the breadth of the proposed directive to the Sentencing Commission, and to find a better 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 solution than the one contained in the “No Electronic Theft Act” remains elusive, however.

For example, one recent proposal sought to add to S. 1257 a direction to the Sentencing Commission to enhance the guideline offense level for copyright and trademark infringements based upon the retail price of the legitimate products multiplied by the quantity of the infringing products, except where “the infringing products are substantially inferior to the infringed upon products and there is substantial value to 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 fake 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 Sent- encing Commission has not had an opportunity for the past two years to consider and implement the original directive in the “No Electronic Theft Act,” passing a new and flawed directive appears to be both unnecessary and unwise. This is particularly the case since the new Commissioners have already indicated a willingness to consider this issue promptly. In response to questions posed at their confirmation hearings, each of the nominated Sentencing Commissioners indicated that they would make this issue a priority. For example, Judge William Ses- son indicated that we need to do better to combat this theft, both with enforcement of our current copyright laws and with strengthened copyright laws to deter potential infringers.

I fully concur in the judgment of Chairman Hatch that the Sentencing Commission directive provision added to the House should be stricken. The House addressed the concerns by doing just that in the new version of the bill, H.R. 3456, which was introduced and passed by the House yesterday in time for Senate consideration before the end of this session.

This bill represents an improvement in current copyright law, and I commend its final passage.

ZACHARY FISHER TRIBUTE

Mr. CLELAND. Mr. President, I come before my colleagues today to pay tribute to a great American and dear friend, Mr. Zachary Fisher. Zach led an extraordinary life that included service to his fellow man and to our country. He was a major philanthropic benefactor for the men and women of the United States Armed Forces. His generosity was shared with numerous non-profit organizations and foundations including causes such as Alzheimer’s Disease, military retiree housing, and educational benefits for our men and women in uniform.

When the United States entered World War II in 1941, Zach was in- eligible to serve in the Armed Forces due to a serious knee injury sustained in a construction accident. “I could have cried,” he said, recalling the day he was told he did not pass the Marine Corps physical. “I wanted to go defend my country.”

Nevertheless, determined to do his part, he aided the U.S. Army Corps of Engineers in building coastal fortifications at home. Following the war,