

These statistics about the harm done to our economy by the theft of copyrighted software alone, prompted me to introduce 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 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 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 expeditiously 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. This situation was corrected on November 10th 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 legislation, H.R. 1761, contained a new proposed enhanced penalty for infringers who engage in a repeated pattern of infringement, but without any scienter requirement. I shared the concerns

raised by the Copyright Office that this provision, absent a willfulness scienter requirement, would permit imposition of the enhanced penalty even against person who negligently, albeit repeatedly, engaged in acts of infringement. Consequently, the Hatch-Leahy-Schumer bill, S. 1257, that we sent to the House in July avoided casting 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 infringed 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, 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 legitimate items that are infringed 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.

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 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 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 Sentencing Commission has not had an opportunity 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 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 Sessions of the District of Vermont specifically noted that:

If confirmed, our first task must be to address Congress' longstanding directives, including implementation of the guidelines pursuant to the NET Act. Congress directed the Sentencing Commission to fashion guidelines under the NET Act that are sufficiently severe to deter such criminal activity. I personally 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 should be stricken. The House addressed these 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 nonprofit 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 ineligible 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,

Zach, along with his brothers, earned an international reputation as a leader in the construction industry. Zach spent the rest of his life doing good deeds for his country, turning the wealth he earned as a developer into good will for the men and women of the armed services.

In 1978, Zach founded the Intrepid Museum Foundation to save the historic and battle-scarred aircraft carrier *Intrepid*. Through his efforts the vessel became the home of the Intrepid Sea Air Space Museum, which opened in New York City in 1982. Zach went on to contribute more than \$25 million for the establishment and operation of the Museum, a tribute to the thousands of military men and women who have served and continue to serve our country.

In addition to founding the Intrepid Museum, Zach and his wife Elizabeth also formed the Fisher Armed Services Foundation to provide contributions to families who survive the death of a loved one in the armed service. Since then, the Foundation has supported hundreds of families of military personnel.

The Foundation also provides scholarship funds to active duty and former service members as well as their families. Since 1987, hundreds of students have received significant scholarships to further their education. In 1990, the Fishers began the Fisher House Program, dedicating more than \$15 million to the construction of housing for families of hospitalized military personnel. The houses are designed to provide all the comforts of home and allow families to support one another through their difficult times.

The Presidential Medal of Freedom Award, the highest honor that can be awarded a United States citizen, was presented to Zachary Fisher by President Clinton in 1998. Fisher was awarded the Medal for his steadfast and generous support of the U.S. military. His support of the military was also recognized this year as legislation, which I had the honor of sponsoring in the Senate designating Zachary Fisher as an honorary veteran of the United States Armed Forces. Zach was only the second person ever to receive such a designation. In addition, Zach was also awarded the Congressional Medal of Freedom.

Sadly, Zach lost his long battle with cancer on June 4, 1999. Zach was truly the friend of the everyday soldier. He will be dearly missed and remembered for his selfless devotion to United States service members and their families. Zachary Fisher was a great man who leaves behind a legacy that will continue to better the lives of American men and women for years to come.●

GEORGIA BOARD OF REGENTS

● Mr. CLELAND. Mr. President, I rise before you today to recognize the outstanding achievements and hard work of the Georgia Board of Regents. This dedicated group of men and women has committed itself to improving higher education in the state of Georgia and I am proud of their accomplishments. As John F. Kennedy said, "Our progress as a nation can be no swifter than our progress in education."

Over the past five years, the Regents have developed a commitment to bring the Georgia higher education system into the new millennium through strategic planning and sweeping vision. In October of 1994, just as Dr. Stephen Porch was officially inaugurated as the University System's ninth Chancellor, the Board adopted the first step of a new program, "Access to Academic Excellence for the New Millennium." The Board called for Georgia's public colleges and universities to be recognized for first-rate education, leading edge research and committed public service. The Board's new statement took into account input from various student groups, University and Regent presidents, and leaders in the education community.

Later that same year, the Regents adopted a new set of guiding principles to serve as the foundation for future policy making and modified the affiliated graduate degree structure. This cleared the way for institutions throughout the state to offer graduate programs autonomously, collectively, or under shared authority.

In March of 1995, Chancellor Porch introduced another new policy direction to address the need for "co-reform" of public education in the state. This reform was an effort to recognize that all sectors of education are fundamentally linked and that improvement in one sector requires a comprehensive effort of all sectors. Governor Miller's support of this initiative became a critical element in its success and he appointed a statewide Council to implement the directive.

Throughout 1995, the Board of Regents continued to see successes in its effort to improve the delivery of education throughout Georgia. In June, the Board introduced a new admissions policy with the goal of breaking the cycle of low admissions expectations and inadequate college preparation. The new admissions policy aimed to make such changes in two ways: fostering more effective preparation of students before they are accepted for admission; and broadening the admissions evaluation process to look beyond single quantitative measures such as standardized test scores.

In 1996, the Board approved the framework for a new core curriculum, just eight months after the first meet-

ing of the Advisory Committee meeting. The committee was charged with redesigning the original core curriculum—a redesign that focused on a multidisciplinary effort that maximizes the resources of a particular institution.

All of these efforts came together in December of 1997 when the Board gave final approval on the University System's new admissions policy. This approval included policy on admissions for students without a high school diploma and outlines specific courses that fulfill the College Preparatory Curriculum requirements.

In August of 1998, Chancellor Porch began a tour of all 34 System institutions. He travelled to update faculty, staff, students and elected officials as well as local communities on the progress the University System had made over the past four years, and the work that remains to be done to create a more educated Georgia.

By this fall, the members of the Georgia Board of Regents saw the fruits of their labor. SAT scores of students entering the University System were up, and a survey of state business leaders showed their satisfaction with the quality of the University had increased from two years prior. Plans to increase access to technology were drafted, and an effort to be even more responsive to the educational, economic and fiscal needs of the state was committed. As Ben Franklin once said, "An investment in knowledge always pays the best interest." How true that is.

I once heard Marian Wright Edelman of the Children's Defense Fund say that "service is the rent each of us pays for living." I want to thank the men and women of the Georgia Board of Regents for their service and dedication to the higher educational system in the great state of Georgia. We will all benefit from your efforts.

At this point, I would ask to include in the RECORD the names and hometowns of the distinguished Georgians who have served on the state's Board of Regents from January 1993 to the present.

The material follows:

Thomas F. Allgood, Sr. of Augusta; Shannon L. Amos of Columbus; John Henry Anderson, Jr. of Hawkinsville; David H. (Hal) Averitt of Statesboro; Juanita Powell Baranco of Lithonia; James E. Brown of Dalton; Kenneth W. Canestra of Atlanta; Connie Carter of Macon; John Howard Clark of Moultrie; S. William Clark of Waycross; J. Tom Coleman of Savannah; W. Lamar Cousins of Marietta; Joel Cowan of Peachtree City; A.W. "Bill" Dahlberg of Atlanta; Suzanne G. Elson of Palm Beach, FL; Dwight Evans of Gulfport, MS; Elsie B. Hand of