Anyone who confuses this scenario with a slap on the wrist, or a censure written in disappearing ink, underestimates the historic impact of such a pronouncement. Nor should anyone forget the power of television to foster indelible images in the national memory—not unlike what happened on the solemn August noontime in 1974 when I stood in the East-Room and declared our long national nightmare to be over.

At 85, I have no personal or political agenda, nor do I have any interest in ''rescuing'' Bill Clinton. But I do care, passionately, about rescuing the country I love from further turmoil or uncertainty.

More than a way out of the current mess, most. Americans want a way up to something better. In the midst of a far graver national crisis, Lincoln observed, ''The occasion is piled high with difficulty, and we must rise with the occasion.'' We should remember those words in the days ahead. Better yet, we should be guided by them.

Ms. LANDRIEU. Mr. President, I ask unanimous consent to speak in morning business for the next 20 minutes for the purpose of introducing a piece of legislation.

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

(The remarks of Ms. LANDRIEU and Mr. BREAUX pertaining to the introduction of S. 2566 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

CONCERN ABOUT THE DEVELOPMENTS IN KOSOVO

Mr. MCCAIN. Mr. President, this is a letter I sent to the President this morning concerning Kosovo. It reads as follows:

DEAR MR. PRESIDENT: I am writing because of my serious concern about developments in Kosovo. With a brutality that would be almost unimaginable were anyone else responsible for it, Slobodan Milosevic has subjected yet another innocent population to the bloody carnage of ethnic cleansing. The stark depravity of his actions gravely offends the basic moral values of Western civilization. Moreover, the conflict in Kosovo threatens the stability of Europe, as the prospects are quite real that it may eventually embroil other countries in the region in a larger war. More than once, the United States has warned Serbia that NATO will not tolerate its continued aggression against Kosovo. Serbia has ignored our warnings, thereby challenging the credibility of the United States, obliging us and our NATO allies to consider using military force to prevent further aggression against our values and interests in Kosovo.

Congress has reservations about such a course of action, however. While I am inclined to support military action, I understand the basis for my colleagues' reservations, and I believe it is imperative that prior to ordering any military strike on Serbia you take all necessary steps to ensure both Congress and the American people that the action is necessary, affordable, and designed to achieve clearly defined goals.

First, you must state clearly the American interest in resolving this terrible conflict; describe in detail the facts on the ground; identify all parties responsible for perpetrating the terrible atrocities committed in Kosovo while making clear that Serbia is indisputably the primary culprit; explain how our own security is threatened by Serbian aggression and justifies risking the lives of American pilots, and how the use of air power can prevent further aggression. You must also define for the public what will constitute the operation's success so that Americans know that air strikes were launched with a realistic end game in mind.

Second, you must convincingly explain to the American people why it is that we should be involved in a conflict that to many people seems to affect our interests indirectly, and that should be resolved exclusively by those countries most directly threatened by it—our European allies. As I am sure you appreciate, Congress and the public's frustration over Europe's lack of willingness to bear a greater share of the burden for maintaining peace in their own backyard is at an all time high, threatening the nation's consensus that our leadership in NATO should remain a priority interest for the United States. You could go a long way toward alleviating that frustration by ensuring that any ground forces that might ultimately be needed to keep the peace in Kosovo will be provided by European countries alone.

Third, should you order air strikes you must ensure the nation that they will be of sufficient magnitude to achieve their objectives. I hope you will view the following criticism in the constructive spirit in which it is offered. In the past, your administration has too often threatened and then backed down from the use of force, or authorized cruise missile strikes that amounted to little more than ineffective gestures intended, I suspect, to send a message to our adversaries, but because of their small scale interpreted by our adversaries as a lack of resolve on the part of the United States to defend our interests vigorously. Your administration's failure to support UNSCOM inspectors in Iraq has also greatly exacerbated our adversaries' lack of respect for America's resolve.

Finally, you should explain how you intend to find additional resources to fund the operation in order to alleviate well-founded Congressional anxiety regarding the over-extension of U.S. military commitments at a time when spending on national defense is woefully inadequate.

Mr. President, should you convincingly address the issues I have raised, which I believe you can do, I am confident you will have the support of Congress and our constituents for operations against Serbia. You will certainly have mine. I believe there exists a clear and compelling case for such an action that Americans will accept if you avoid the mistakes made in the past when your administration has attempted to build public support for the use of force. I urge to give these concerns your most serious consideration.

INTERNET TAX FREEDOM ACT

The Senate continued with the consideration of the bill.

Mr. MCCAIN. Mr. President, I ask unanimous consent that the pending Coats amendment be 20 minutes in length, 10 minutes on either side.

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

Mr. MCCAIN. I yield the floor.

Mr. COATS addressed the Chair.

The PRESIDING OFFICER. The Senator from Indiana.

AMENDMENT NO. 3695

(Purpose: To exempt from the moratorium on Internet taxation any persons engaged in the business of selling or transferring by means of the World Wide Web material that is harmful to minors who do not restrict access to such material by minors)

Mr. COATS. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Indiana (Mr. COATS) proposes an amendment numbered 3695.

Mr. COATS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 17, between lines 15 and 16, insert the following:

(c) EXCEPTION TO MORATORIUM.—

(1) IN GENERAL.—Subsection (a) shall also not apply in the case of any person or entity who in interstate or foreign commerce is knowingly engaged in the business of selling or transferring, by means of the World Wide Web, material that is harmful to minors unless such person or entity requires the use of a verified credit card, debit account, adult access code, or adult personal identification number, or such other procedures as the Federal Communications Commission may prescribe, in order to restrict access to such material by persons under 17 years of age.

(2) SCOPE OF EXCEPTION.—For purposes of paragraph (1), a person shall not be considered to engaged in the business of selling or transferring material by means of the World Wide Web to the extent that the person is—

(A) telecommunications carrier engaged in the provision of a telecommunications service;

(B) a person engaged in the business of providing an Internet access service;

(C) a person engaged in the business of providing an Internet information location tool; or

(D) similarly engaged in the transmission, storage, retrieval, hosting, formatting, or translation (or any combination thereof) of a communication made by another person, without selection or alteration of the communication.

(3) DEFINITIONS.—In this subsection:

(A) BY MEANS OF THE WORLD WIDE WEB.—The term ''by means of the World Wide Web'' means by placement of material in a computer server-based file archive so that it is publicly accessible, over the Internet, using hypertext transfer protocol, file transfer protocol, or other similar protocols.

(B) ENGAGED IN THE BUSINESS.—The term ''engaged in the business'' means that the person who sells or transfers or offers to sell or transfer, by means of the World Wide Web, material that is harmful to minors devotes time, attention, or labor to such activities, as a regular course of trade or business, with the objective of earning a profit, although it is not necessary that the person make a profit or that the selling or transferring or offering to sell or transfer such material be the person's sole or principal business or source of income.

(C) INTERNET.—The term ''Internet'' means the combination of computer facilities and electromagnetic transmission media, and related equipment and software, comprising the interconnected worldwide network of computer networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocol, to transmit information.

(D) INTERNET ACCESS SERVICE.—The term ''Internet access service'' means a service that enables users to access content, information, electronic mail, or other services offered over the Internet and may also include access to proprietary content, information, and other services as part of a package of services offered to consumers. Such term does not include telecommunications services.

(E) INTERNET INFORMATION LOCATION TOOL.—The term ''Internet information location tool'' means a service that refers or links users to an online location on the World Wide Web. Such term includes directories, indices, references, pointers, and hypertext links.

(F) MATERIAL THAT IS HARMFUL TO MINORS.—The term ''material that is harmful to minors'' means any communication, picture, image, graphic image file, article, recording, writing, or other matter of any kind that—

(i) taken as a whole and with respect to minors, appeals to a prurient interest in nudity, sex, or excretion;

(ii) depicts, describes, or represents, in a patently offensive way with respect to what is suitable for minors, an actual or simulated sexual act or sexual contact, actual or simulated normal or perverted sexual acts, or a lewd exhibition of the genitals; and

(iii) taken as a whole, lacks serious literary, artistic, political, or scientific value for minors.

(G) SEXUAL ACT; SEXUAL CONTACT.—The terms ''sexual act'' and ''sexual contact'' have the meanings given such terms in section 2246 of title 18, United States Code.

(H) TELECOMMUNICATIONS CARRIER; TELECOMMUNICATIONS SERVICE.—The terms ''telecommunications carrier'' and ''telecommunications service'' have the meanings given such terms in section 3 of the Communications Act of 1934 (47 U.S.C. 153).

Mr. MCCAIN. Mr. President, I ask unanimous consent to vitiate the unanimous consent agreement.

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

AMENDMENT NO. 3695, AS MODIFIED

Mr. COATS. Mr. President, I also send a modification to this amendment to the desk and ask unanimous consent that my amendment No. 3695 be considered as modified.

I might just explain the amendment.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The amendment (No. 3695), as modified, is as follows:

On page 17, between lines 15 and 16, insert the following:

(c) EXCEPTION TO MORATORIUM.—

(1) IN GENERAL.—Subsection (a) shall also not apply in the case of any person or entity who in interstate or foreign commerce is knowingly engaged in the business of selling or transferring, by means of the World Wide Web, material that is harmful to minors unless such person or entity requires the use of a verified credit card, debit account, adult access code, or adult personal identification number, or such other procedures as the Federal Communications Commission may prescribe, in order to restrict access to such material by persons under 17 years of age.

(2) SCOPE OF EXCEPTION.—For purposes of paragraph (1), a person shall not be considered to engaged in the business of selling or transferring material by means of the World Wide Web to the extent that the person is—

(A) a telecommunications carrier engaged in the provision of a telecomunications service;

(B) a person engaged in the business of providing an Internet access service;

(C) a person engaged in the business of providing an Internet information location tool; or

(D) similarly engaged in the transmission, storage, retrieval, hosting, formatting, or translation (or any combination thereof) of a communication made by another person, without selection or alteration of the communication.

(3) DEFINITIONS.—In this subsection:

(A) BY MEANS OF THE WORLD WIDE WEB.—The term ''by means of the World Wide Web'' means by placement of material in a computer server-based file archive so that it is publicly accessible, over the Internet, using hypertext transfer protocol, file transfer protocol, or other similar protocols.

(B) ENGAGED IN THE BUSINESS.—The term ''engaged in the business'' means that the person who sells or transfers or offers to sell or transfer, by means of the World Wide Web, material that is harmful to minors devotes time, attention, or labor to such activities, as a regular course of trade or business, with the objective of earning a profit, although it is not necessary that the person make a profit or that the selling or transferring or offering to sell or transfer such material be the person's sole or principal business or source of income.

(C) INTERNET.—The term ''Internet'' means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected world-wide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire or radio.

(D) INTERNET ACCESS SERVICE.—The term ''Internet access service'' means a service that enables users to access content, information, electronic mail, or other services offered over the Internet and may also include access to proprietary content, information, and other services as part of a package of services offered to consumers. Such term does not include telecommunications services.

(E) INTERNET INFORMATION LOCATION TOOL.—The term ''Internet information location tool'' means a service that refers or links users to an online location on the World Wide Web. Such term includes directories, indices, references, pointers, and hypertext links.

(F) MATERIAL THAT IS HARMFUL TO MINORS.—The term ''material that is harmful to minors'' means any communication, picture, image, graphic image file, article, recording, writing, or other matter of any kind that—

(i) taken as a whole and with respect to minors, appeals to a prurient interest in nudity, sex, or excretion;

(ii) depicts, describes, or represents, in a patently offensive way with respect to what is suitable for minors, an actual or simulated sexual act or sexual contact, actual or simulated normal or perverted sexual acts, or a lewd exhibition of the genitals; and

(iii) taken as a whole, lacks serious literary, artistic, political, or scientific value for minors.

(G) SEXUAL ACT; SEXUAL CONTACT.—The terms ''sexual act'' and ''sexual contact'' have the meanings given such terms in section 2246 of title 18, United States Code.

(H) TELECOMMUNICATIONS CARRIER; TELECOMMUNICATIONS CARRIER SERVICE.—The terms ''telecommunications carrier'' and ''telecommunications service'' have the meanings given such terms in Section 3 of the Communications Act of 1934 (47 U.S.C. 153).

Mr. COATS. The modification is a technical amendment.

The underlying Finance Committee substitute was previously modified changing the definition of ''Internet,'' and the modification that I am sending to the desk simply brings my definition in my amendment in line with the underlying amendment now as modified by the underlying amendment.

Mr. President, I also ask for the yeas and nays on this amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. COATS. Thank you, Mr. President.

Mr. DODD addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I send an amendment in the second degree to the desk.

The PRESIDING OFFICER. Is there objection to the consideration of the second-degree amendment?

Without objection, it is so ordered.

Mr. MCCAIN. Mr. President, did the Senator from Connecticut need unanimous consent in order for this amendment to be considered?

The PRESIDING OFFICER. The Senator may call up a previously filed amendment. He needs consent to modify it.

Mr. MCCAIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DODD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. DODD. Mr. President, I also ask unanimous consent that the amendment be considered as read and, further, that my colleague from Indiana proceed to speak on his amendment. Then when he completes his discussion, I will make some comments on the amendment that I am offering.

AMENDMENT NO. 3780 TO AMENDMENT NO. 3695, AS MODIFIED

(Purpose: To provide an exception to the moratorium with respect to Internet access providers who do not offer customers screening software)

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Connecticut (Mr. DODD) proposes an amendment numbered 3780 to amendment No. 3695, as modified.

Mr. DODD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

At the end of the amendment, add:

(d) ADDITIONAL EXCEPTION TO MORATORIUM.—

(1) IN GENERAL.—Subsection (a) shall also not apply with respect to an Internet access provider, unless, at the time of entering into an agreement with a customer for the provision of Internet access services, such provider offers such customer (either for a fee or at no charge) screening software that is designed to permit the customer to limit access to material on the Internet that is harmful to minors.

(2) DEFINITIONS.—In this subsection:

(A) INTERNET ACCESS PROVIDER.—The term 'Internet access provider' means a person engaged in the business of providing a computer and communications facility through which a customer may obtain access to the Internet, but does not include a common carrier to the extent that it provides only telecommunications services.

(B) INTERNET ACCESS SERVICES.—The term 'Internet access services' means the provision of computer and communications services through which a customer using a computer and a modem or other communications device may obtain access to the Internet, but does not include telecommunications services provided by a common carrier.

(C) SCREENING SOFTWARE.—The term ''screening software'' means software that is designed to permit a person to limit access to material on the Internet that is harmful to minors.

(3) APPLICABILITY.—Paragraph (1) shall apply to agreements for the provision of Internet access services entered into on or after the date that is 6 months after the date of enactment of this Act.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. COATS. Mr. President, I don't believe we will need all 20 minutes. There may be other Members who want to speak on this. But I will summarize this in the interest of time, because essentially what we are doing here is something that has already been done in the Senate. It has been passed unanimously by the Senate. But it is not attached to legislation that has as much chance of succeeding, or at least, if that legislation succeeds, we are not sure what the Senate has passed is going to survive the process. It might be dropped from that.

Let me begin by summarizing this just to refresh my colleagues' memory of what we have done before.

This amendment exempts from the moratorium which, if this bill passes—and I believe it will—will be applied to any kind of a taxation on the World Wide Web—my amendment simply exempts from that moratorium any commercial porn site on the World Wide Web that does not comply with the reasonable requirements that are incorporated in this amendment to restrict access by children to sexually explicit material on the site.

The amendment establishes specific measures that porn site operators—commercial porn site operators—must take to restrict access. These restrictions represent standard technology already on the web, and they reflect the technology and the requirements acknowledged by the Court as both technically and economically feasible.

In the Reno v. ACLU case—that is, the Court's decision that struck down the indecency provisions of the Communications Decency Act—the Court said there were two problems with that act.

That act, by the way, is the one that was passed by the Senate in I think a nearly unanimous vote. It was labeled the Exon-Coats amendment, offered in the last Congress by the Senator from Nebraska, the Democrat Senator from Nebraska, Senator Exon, and myself. We included in that amendment—which passed both the House and the Senate and was endorsed wholeheartedly by the President and the administration but did not survive a Court challenge for two reasons:

One, the Court said that the restrictions had to apply only to those engaged in the business; that is, those commercial providers.

Second, it said that our standard of indecency as described in the material not suitable for children was not acceptable, violated first amendment concerns, and they proscribed then a standard as harmful to minors, or suggested that.

We went back and adjusted that Communications Decency Act which was passed by the Congress, signed into law, but rejected by the Court. We revised it to comply with the Court's concerns, so that now it, we believe, will meet the constitutional standard. We have applied it strictly to commercial sites. We have adopted the requirements for establishing the types of technology that the commercial porn providers and the net can require that one will have to comply with and the other require, and we have adopted the definition of ''harmful to minors'' as outlined in the famous case on this issue, the Ginsberg, New York Ginsberg case. That defined ''harmful to minors'' in a way that means you have to be under 17, it has to be patently offensive as to what is suitable for minors, taken as a whole lacking serious literary, artistic, political, and scientific value for minors and appealing to prurient interests.

This is a standard that we are all familiar with. It has been the standard applied in obscenity cases now for several decades, and it is the generally accepted standard. That is the standard we have put into this bill.

So to summarize, what we are doing here is attaching to this legislation, which provides a tax moratorium for users of the World Wide Web, we are saying that that moratorium does not exist, will not be available to those who use the World Wide Web for the purpose of providing sexually explicit material to minors and have not put in place in terms of their provision to all other users restrictions which are technically feasible and already used, which are economically feasible, but restrictions which allow them to certify that the person requesting the material is, in fact, an adult; that is, 17 years and older.

This is exactly the language which was adopted unanimously by this Senate in this Congress. And so everyone here has already read it, understood it, voted for it, supported it. We are simply transferring it now over to this particular bill and applying it in a somewhat different way by denying the tax exemption.

It is inconceivable that we would grant a massive tax perk to commercial porn sites that make their smut available to children. We are going to give a golden egg to commercial entities on the Internet, or giving them a tax shelter, at least a moratorium for a tax shelter for a period of time, but to think that we would give that same tax break to those who are providing obscene material to minors without requiring any good-faith effort on their part to make sure that minors do not have free access to this material is unthinkable. That is the bottom line.

S. 442, the underlying bill that we are talking about, holds out a massive tax shelter to on-line businesses. The question is, Is the Senate going to extend this tax shelter to pornographers who are making their material available to every child in America.

People say, well, look, I mean, this is a proactive thing. Why don't the parents take control and control what their child clicks into and orders up.

Mr. President, I will not display this on the Senate floor because I think it is obscene, and whether or not you agree it is obscene for adults, I think it is absolutely not only obscene but totally inappropriate for minors. This is material that is available free. This is before you click in and say I want to purchase your material or send me more. These are the teasers. The teasers are almost beyond description, and it is something we don't want to talk about here.

There is no excuse in saying, well, an 11-year-old, if he clicks in to find out about a school project and uses the wrong word, all it is is a verbal version; he has to take a proactive effort to obtain the material. That is not true. That youngster, that child, whether they are in the library, whether they are in their school classroom, whether they are at home, is immediately given the most graphic of images and the most graphic of language as a teaser for them to go forward and obtain the material. We are saying that there has to be a provision whereby the provider of this material puts in place reasonable restrictions to assure that the person asking for the material is someone who is 17 years old or older.

We have complied with the Court requirements. This is language that has already been adopted by the Senate, and I hope my colleagues will see it in that light and support this vote that is coming up in the next few moments.

Mr. President, I do not see any other Members on our side who are wishing to speak at this particular time. And I am asking how much time is remaining of the Senator's time and I would reserve that time.

The PRESIDING OFFICER. The Senator has 52 minutes left under cloture.

Mr. DODD. Parliamentary inquiry, Mr. President.

There was no unanimous consent time agreement on this amendment?

The PRESIDING OFFICER. That is correct.

Mr. COATS. That is correct. It was asked, agreed to and vitiated.

The PRESIDING OFFICER. The Senator is correct.

Mr. DODD addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. I commend my colleague from Indiana who is in his closing days in this body, having made the decision not to seek reelection. A lot of Members, as they wind down, spend their last few days winding up work and not being actively involved in the legislative process. It is a tribute to Senator COATS that in his remaining days in this body, he is still very active and involved in issues he has cared deeply about. This is one such issue. I commend him for this amendment. I think it is a very creative way to advance this issue and provide some safety for young people who are being exposed today to an alarming amount of pornography on the Internet.

I strongly support his amendment. Now, let me put my amendment in a framework for some people. My amendment is a second degree amendment, and really complements the Coats amendment. My amendment requires that Internet access providers either provide free of charge, or for a fee, screening software at the time they make sales to customers. Internet access providers that don't do this, as with the Coats amendment, would be denied the benefits of the tax breaks in the underlying bill. This amendment also relies on the Ginsberg definition that has been used in the Coats amendment.

How big is this problem, people say? Let me just put it in perspective for you. According to Wired Magazine, there are 28,000 web sites worldwide that have soft- or hard-core pornography on them. And, fifty new web sites with such material are added to the Internet every single day—50 a day.

My colleague from Indiana has some material he wisely decided not to show on the floor, but suffice to say, most Americans would find it highly offensive, to put it mildly. The idea that this material is available to children is something that ought to be a cause of alarm to all of us. Sadly, many of our children are unwittingly and accidentally exposed to such sites while surfing the web. They type in search terms as innocuous as ''toys''—pretty innocuous—only to find graphic images and language on their display terminals.

Mr. President, the Internet is profoundly changing the way we learn and communicate with people. Today our children have unprecedented access to educational material through the Internet. It provides children with vast opportunities to learn about art and culture and history. The possibilities are endless. It is an incredibly valuable technology for children all across this country and across the globe.

But as with any technology, Mr. President, this advanced technology also brings with it a dark side for our children. Many of these young people are browsing the net, often unaccompanied by an adult, and come across material that is unsuitable, to put it mildly. It is oftentimes very sexually explicit.

Every parent worries about strangers approaching their children in their neighborhood or on a playground at school.

And they teach their children how to avoid these strangers. But today, these strangers can literally enter our homes via the Internet. They are only a mouse click away from our children. In our libraries and bookstores, we store reading material that is harmful to minors in areas accessible only to adults. Yet, in cyberspace, these same materials are as accessible to a child as his or her favorite bedtime story. Pornographic images and sexual predators are now reaching our children, via the Internet, in the privacy and safety of their own homes and classrooms. This kind of access to our children is alarming, and this invasion of our children's privacy and innocence is unconscionable.

Just a few weeks ago, law enforcement agents in a sting operation apprehended 200 members of an Internet pornography ring that possessed and distributed sexually explicit images of children. Members of this ring traded inappropriate images of children on the Internet. One of the sites raided was in my own State of Connecticut. As I noted a moment ago, there are 50 new sites a day added to the Web that contain pornography, these sites are added to the 28,000 that already exist. Despite this successful operation by law enforcement agents, their raid only represents the elimination of approximately four days of new sites.

We, as a nation, have an obligation to ensure that surfing the web remains a safe and viable option for our children. We have a responsibility to make sure that they are able to learn and grow in an environment free of sexual predators and pornographic images. Clearly, there is no substitute for parental supervision; yet, I think we can all agree that many parents know less about the Internet than their children do. Parents are convinced of the Internet's educational value, but they also feel anxious about their ability to supervise their children while they use it. In my view, it is important that we encourage parents and children to use the Internet together. But clearly, it is difficult for any adult to monitor children on line all the time.

Therefore, I believe we need to provide our parents with tools that will help them to protect and to guide their children on the Internet. The amendment I have offered here is a modest measure. It is not a cure-all by any stretch of the imagination. It is a modest idea and just requires that Internet access providers make screening software available to customers purchasing Internet access services.

The amendment would allow customers to have the opportunity, as I said, to either buy or obtain free of charge, as determined by the provider, screening software that permits customers to limit access to material on the Internet that is harmful to minors. Like going to a pharmacy and being asked if you want to buy a childproof lid for prescription medication, my bill will require that Internet access providers ask parents whether they would like to obtain screening software to protect them from the very kind of dangers that we see on the 28,000 existing web sites and the 50 new ones that are added each day. This is a serious problem, and providing this kind of tool to parents is one way we can begin to combat the problem.

At any rate, I hope my colleagues will see fit to support this amendment. It has been offered once before on the floor and passed the Senate overwhelmingly and, not unlike the Coats amendment, we need to have it included in this bill today.

Again, I commend my colleague from Indiana for his fine work on many issues, but once again on this particular issue, and hope as well this second-degree amendment will be adopted.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. COATS. I am more than happy to accept the amendment offered by the Senator from Connecticut. I thank him for his tireless work on behalf of children. It has been my pleasure to serve with him on both sides, the majority and minority, of the Children and the Families Committee; under his chairmanship as ranking member, and now as chairman, with Senator DODD as ranking member. He has been a tireless advocate of children and addressing the particular concerns that children have to deal with, the problems they have to deal with growing up, and his support for this legislation and the amendment to my amendment, which I think strengthens what we are attempting to do and is very reasonable, earlier offered by Senator MCCAIN, to utilize the advantages of software that allows for blocking.

We see this as, certainly, a useful tool. It is not a totally useful tool because there are a myriad of ways of defeating it. As we speak, there are undoubtedly computer people far more savvy than this Senator, looking for ways to bypass this and looking for ways to defeat it. But it is a helpful tool, and it should be available to parents to help them in their efforts to protect their children from material that they do not deem appropriate and that certainly is not appropriate.

I will be more than happy to accept the amendment. I do not know that we need a rollcall vote on both. We can combine the two and I think we will have a very worthwhile amendment.

The PRESIDING OFFICER. Is there further debate on the Dodd amendment, No. 3780? The Senator from Montana.

Mr. BURNS. Mr. President, if my friend from Indiana and my friend from Connecticut will yield, I am not going to oppose this amendment. I congratulate both of them, as they have been dedicated to raising the awareness of the garbage that we have on the Internet. No technology that we can devise,

that stays in place very long, is going to actually protect our young children from the pitfalls of the stuff that we find on there. The only thing that we can do, and I think both of them have done this very well, is to raise the awareness of the need for adult supervision whenever young people go on the Internet. That is the only way. That is the only way we are going to get protection and also a public awareness and a public feeling that we are not going to do business with Internet providers who offer this stuff.

We cannot protect and use this great tool called the glass highway and bring any integrity to it unless, No. 1, we secure it when I send a message to you. Of course, that is the encryption issue, and that is an issue we have to fight another day, as far as law enforcement surveillance and this type of thing is concerned. But we cannot be lulled or rocked into a position of where we are in a basket of comfort, thinking we have done the job and protected our children from the pedophiles and the garbage that we find on the Internet, because the Internet is going to reflect what we have in society. No matter where you go, you will find what you are looking for. It is going to be there, too, just like it is downtown or any place in America.

So, I am not going to oppose this amendment. I do have some reservations about it because, No. 1, I think it is overreaching a little bit into industrial policy, as far as what we should be doing. But I tell Americans, don't get comfortable in this basket of security because we have this amendment or that we have this legislation, that we are still going to be susceptible to the people who prey on the Internet with garbage. We will never solve that problem. The only place it will be solved is through parents and us talking about it and raising the awareness that it is there. Parental supervision, supervision in our schools and our libraries, that is the only way we defeat this. Because basically we are decent people, that is what will defeat it. That is what will finally crowd it off of there, and also secure it, so maybe there will not be any room for it. I hope that would be the case, also.

I congratulate the Senator from Indiana. I will miss him and his service in the next U.S. Senate. But nobody has a more stellar record than Senator COATS on these issues of family and decency in the public place. I appreciate that.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, first, before my friend from Montana leaves the floor, I want to tell him how much I appreciate his work as chairman of the telecommunications subcommittee on the Commerce Committee. My friend from Montana and I have had spirited discussions and debates on this overall issue. I understand his deeply held views, and I appreciate them. There is great attraction to his argument. There is a fine line in America between the prevention of material which is offensive being forced on our young people and censorship. So I understand the arguments that the Senator from Montana has made. But let me say that it is a huge problem, and the Senator from Montana knows it as well as I do. It is a huge problem.

Anyone who operates the Internet today sees this proliferation of incredible trash that occurs, which is terribly, terribly disturbing to all of us—all of us on both sides of the aisle—because of the influence that it has on young Americans, not to mention older Americans.

We had a hearing in the Commerce Committee. There was testimony that there is a direct relation between pedophilia and the Internet. There are documented cases where pedophiles have corresponded with young people on the Internet and enticed them into meeting. These stories are so terrible and graphic that I am reluctant to discuss them on the floor of the U.S. Senate.

It is a problem in American society when you look at the growth of the Internet in America. All of us, especially those of us who serve on the Commerce Committee, are aware of the incredible potential of the Internet, the unbelievable effects it is going to have on the Nation and the world. With the wiring of schools and libraries in America, for the first time, every child in America, no matter whether they come from the Navajo Reservation and Chinlee High School or whether they attend Beverly Hills High School, are going to have access to knowledge and information like never before.

When you dial in the word ''teen'' on the Internet, or when you dial in the word ''nurse'' and the search engine comes up with a proliferation of pornography and advertisements for it, we have to try to address this problem.

The Senator from North Dakota has discussed this issue in committee hearings, the Senator from Oregon—all of us who are familiar with it. I will tell you right now, Mr. President, one of the problems is that a lot of us don't use the Internet like the now tens of millions of Americans do, so we are not aware of this problem. And, no, none of us would support censorship. No one is in favor of censorship.

I will tell you that when we have actual testimony before our committee by detectives who say that they go out and they find people who entice young children through the Internet to meet with them and then terrible things ensue, then obviously we have a problem. Recently in Phoenix, AZ, a young boy who was on the Internet viewing pornography walked out and molested a 4-year-old child. It is a fact. It is a documented fact. Or parents in the library see pornography as they walk by and their children are in the library and see this.

I am not sure I know the answers. I don't know the answers, but I firmly believe that we at least ought to make an effort to provide parents with the tools and institutions with the tools at least to filter out some of this garbage, which brings me to the Senator from Indiana.

I know of no one who is more involved in the issues of families and morals and decency in America than is Senator COATS. I miss many of my colleagues when they leave; some of them I don't miss. But the fact is, the majority of them I do. I will miss Senator COATS because I view him as a moral compass around here.

When Senator COATS speaks on these issues, we all listen because he is a living example of what we want families in America to be about. Senator COATS has been involved in this particular effort on this piece of legislation for a long, long time.

I believe there may be some question about the bill's constitutionality. Fine, we will let the courts decide that. I have some questions myself. But it is a sad, but inescapable fact that material harmful to children is pervasive on the Internet in America today. It is an indisputable fact. There is no Member of the Senate who is more qualified and has more credibility to address this issue than the Senator from Indiana.

It is my understanding that the Senator from Montana is not going to seek a recorded vote on the second-degree amendment of the Senator from Connecticut. Fairly shortly, if there is no other debate on this amendment, we will move to a vote around noon.

Mr. President, I ask unanimous consent that after adoption of the Dodd second-degree amendment that the Senate vote at 12 noon on the Coats amendment.

Mr. COATS. Reserving the right to object, I would like to reserve 1 minute for summation on the amendment that is being offered before the vote. Hopefully, I can do that before 12 o'clock. In case I can't, I would like that 1 minute.

Mr. MCCAIN. I amend my unanimous consent request that the Senator from Indiana have 2 minutes prior to the vote.

The PRESIDING OFFICER (Mr. BURNS). Without objection, it is so ordered.

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I will take 1 minute. I want to use this unique opportunity to add my comments about the Senator from Indiana. I have told people that I am enormously proud to serve in this body. One of the major reasons for that is the men and women with whom I serve, both Republicans and Democrats, liberals and conservatives, I think are the best men and women I have been associated with in my entire life.

One of those is the Senator from Indiana. We became acquainted in 1981 when we both were elected to the House of Representatives in the same election, and although we perhaps have

agreed and disagreed many times on many issues throughout the years, I have deep admiration for Senator COATS and his family.

When he leaves the Senate, as is the case with so many of our colleagues, the Senate will have lost a very important contributor on a good many issues, this one most notable. He has been persistent on this issue and, as the Senator from Arizona just described, we have had hearings in the Commerce Committee about this issue. It desperately needs attention, desperately needs a solution, and the Senator from Indiana has been a significant contributor in that effort. I did not want to let this moment pass without sharing my respect for Senator COATS. I yield the floor.

Mr. COATS addressed the Chair.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. COATS. Mr. President, I appreciate the kind words from my colleagues—the Senator from Connecticut, the Senator from North Dakota and the Senator from Arizona. I am also appreciative of their support for this effort.

I don't know if any of us has a perfect answer to this. We do see the Internet, the World Wide Web, as one of the most extraordinary invasions in the history of mankind. It can provide access to information that can revolutionize our world and provide opportunities for people who heretofore have not had those opportunities for knowledge and for learning that are extraordinary.

At the same time, there is a dark side to the Internet. As with most new technology, it can be used for good; it can be used for evil. Unfortunately, the Internet is no exception. None of us want to put ourselves in the position of being a censor. We decry that material. We don't think it sends the right kind of moral message. We wish we didn't have it.

Yet, as a country dedicated to the freedom of speech, enshrined in its Constitution, we have to accept certain types of material that some of us consider offensive, but doesn't necessarily meet the obscenity test that the Court has laid out, which is a pretty stringent test.

By the same token, surely—surely—we as a society can address the issue of how we protect the innocence of our children and whether we can use reasonable means to give parents tools to protect that innocence. That is what this amendment is about.

Software is an attempt to do that. We know from documented evidence that software is only a partial solution, that it can be defeated, but I think it is helpful and we ought to utilize that and encourage it.

Beyond that, however, we need a sanction, a sanction that imposes some requirements—technologically feasible requirements and economically feasible requirements—on those who seek to bypass the effort to put any kind of restrictions on the availability of this material to children.

We passed legislation earlier, the Communications Decency Act. Even though the Congress and the people of America and the President supported it, the Court did not support it. It struck it down. We have carefully modified and changed this language in this bill that I offered earlier that the Senate passed to comply with those Court restrictions.

We have made sure that it applies to minors; that the requirements put in place meet the Court's standard; that the language harmful to minors meets the Court-ordered test that was given to us years ago in the Ginsberg case. We believe we have something here that not only is acceptable to the American people and to the Congress of the United States and to the administration, but hopefully acceptable to the standards imposed by the Supreme Court. So I thank my colleagues for their generous words. I thank them for their support.

The hour of 12 noon having approached, if there is any time left, I yield it back and hope we can go to a vote and pass this unanimously and send the kind of signal that we need to send, and that is that this country and this Congress is not going to stand for obscene material to be pushed into children's minds through the Internet without reasonable restrictions on that material.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The question now occurs on agreeing to the Dodd amendment No. 3780 to the Coats amendment, as modified.

The amendment (No. 3780) was agreed to.

Mr. DODD. I move to reconsider the vote.

Mr. MCCAIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

VOTE ON AMENDMENT NO. 3695, AS MODIFIED, AS AMENDED

The PRESIDING OFFICER. The question now occurs on agreeing to the Coats amendment No. 3695, as modified and as amended. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Ohio (Mr. GLENN) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 98, nays 1, as follows:

[Rollcall Vote No. 303 Leg.]

YEAS—98

Abraham	Breaux	Cochran
Akaka	Brownback	Collins
Allard	Bryan	Conrad
Ashcroft	Bumpers	Coverdell
Baucus	Burns	Craig
Bennett	Byrd	D'Amato
Biden	Campbell	Daschle
Bingaman	Chafee	DeWine
Bond	Cleland	Dodd
Boxer	Coats	Domenici
Dorgan	Jeffords	Reed
Durbin	Johnson	Reid
Enzi	Kempthorne	Robb
Faircloth	Kennedy	Roberts
Feingold	Kerrey	Rockefeller
Feinstein	Kerry	Roth
Ford	Kohl	Santorum
Frist	Kyl	Sarbanes
Gorton	Landrieu	Sessions
Graham	Lautenberg	Shelby
Gramm	Levin	Smith (NH)
Grams	Lieberman	Smith (OR)
Grassley	Lott	Snowe
Gregg	Lugar	Specter
Hagel	Mack	Stevens
Harkin	McCain	Thomas
Hatch	McConnell	Thompson
Helms	Mikulski	Thurmond
Hollings	Moseley-Braun	Torricelli
Hutchinson	Moynihan	Warner
Hutchison	Murkowski	Wellstone
Inhofe	Murray	Wyden
Inouye	Nickles	

NAYS—1

Leahy

NOT VOTING—1

Glenn

The amendment (No. 3695), as modified, as amended, was agreed to.

Mr. GRASSLEY. Mr. President, I move to reconsider the vote.

Mrs. HUTCHISON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mrs. HUTCHISON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MCCAIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

AMENDMENTS NUMBERED 3734; 3723, AS MODIFIED, 3717, 3713, 3710, 3712, 3735; AND 3721, AS MODIFIED

Mr. MCCAIN. Mr. President, I understand the following amendments which were filed earlier are acceptable to both sides.

Therefore, I ask unanimous consent that the following amendments be considered en bloc, and agreed to:

Amendments numbered 3734, 3723, as modified, 3717, 3713, 3710, 3712, 3735, and 3721, as modified.

The PRESIDING OFFICER. Is there objection?

Mr. DORGAN. Mr. President, reserving the right to object, I shall not object, the amendments have been cleared on our side. We have no objection.

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

The amendments (Nos. 3734; 3723, as modified, 3717, 3713, 3710, 3712, 3735; and 3721, as modified) were agreed to, as follows:

AMENDMENT NO. 3734

(Purpose: To modify the Commission membership)

Beginning on page 18, line 17, strike all through page 19, line 21, and insert:

(B) Eight representatives from State and local governments (1 of whom shall be from a State or local government that does not impose a sales tax) and 8 representatives of the electronic commerce industry, telecommunications carriers, local retail businesses, and consumer groups, comprised of—

(i) five representatives appointed by the Majority Leader of the Senate;

(ii) three representatives appointed by the Minority Leader of the Senate;

(iii) five representatives appointed by the Speaker of the House of Representatives; and

(iv) three representatives appointed by the Minority Leader of the House of Representatives.

AMENDMENT NO. 3723, AS MODIFIED

(Purpose: To establish the relationship between the bill and certain other provisions of existing law, and to set forth the role of the National Commission on Uniform State Legislation)

On page 25, between lines 6 and 7, insert the following:

(3) EFFECT ON THE COMMUNICATIONS ACT OF 1934.—Nothing in this section shall include an examination of any fees or charges imposed by the Federal Communications Commission or States related to—

(A) obligations under the Communications Act of 1934 (47 U.S.C. 151 et seq.); or

(B) the implementation of the Telecommunications Act of 1996 (or of amendments made by that Act).

(h) NATIONAL TAX ASSOCIATION COMMUNICATIONS AND ELECTRONIC COMMERCE TAX PROJECT.—The Commission shall, to the extent possible, ensure that its work does not undermine the efforts of the National Tax Association Communications and Electronic Commerce Tax Project.

AMENDMENT NO. 3717

(Purpose: To add a severability provision for the entire bill)

At the end of the bill, add the following:

SEC. . SEVERABILITY.

If any provision of this Act, or any amendment made by this Act, or the application of that provision to any person or circumstance, is held by a court of competent jurisdiction to violate any provision of the Constitution of the United States, then the other provisions of that section, and the application of that provision to other persons and circumstances, shall not be affected.

AMENDMENT NO. 3713

(Purpose: To correct a reference to ''interstate'', rather than ''electronic'' commerce)

On page 22, line 25, strike ''interstate'' and insert ''electronic''.

AMENDMENT NO. 3710

(Purpose: To correct a reference to ''consumers'' to refer to ''users'')

On page 28, line 6, strike ''consumers.'' and insert ''users.''.

AMENDMENT NO. 3712

(Purpose: To define the term ''Internet'')

On page 27, strike lines 14 through 23, and insert the following:

(4) INTERNET.—The term ''Internet'' means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected world-wide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire or radio.

AMENDMENT NO. 3735

(Purpose: To make it clear that the delayed effective date for the Children's Online Privacy Act is keyed to the filing date of the application)

In section 208(2) of title II of the bill, as added by amendment, insert ''filed'' after ''application'' the first place it appears.

Mr. BRYAN. Mr. President, this bill was reported out of Committee last week by voice vote. Because of time constraints at the end of the session, we have been unable to file a committee report before offering it as an amendment on the Senate floor. Accordingly, I wish to take this opportunity to explain the purpose and some of the important features of the amendment.

In a matter of only a few months since Chairman MCCAIN and I introduced this bill last summer, we have been able to achieve a remarkable consensus. This is due in large part to the recognition by a wide range of constituencies that the issue is an important one that requires prompt attention by Congress. It is due to revisions to our original bill that were worked out carefully with the participation of the marketing and online industries, the Federal Trade Commission, privacy groups, and first amendment organizations.

The goals of this legislation are: (1) to enhance parental involvement in a child's online activities in order to protect the privacy of children in the online environment; (2) to enhance parental involvement to help protect the safety of children in online fora such as chatrooms, home pages, and pen-pal services in which children may make public postings of identifying information; (3) to maintain the security of personally identifiable information of children collected online; and (4) to protect children's privacy by limiting the collection of personal information from children without parental consent. The legislation accomplishes these goals in a manner that preserves the interactivity of children's experience on the Internet and preserves children's access to information in this rich and valuable medium.

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

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

SECTION-BY-SECTION SUMMARY

Section 1. Short title

This Act may be cited as the ''Children's Online Privacy Protection Act of 1998.''

Section 202. Definitions

(1) Child: The amendment applies to information collected from children under the age of 13.

(2) Operator: The amendment applies to ''operators.'' This term is defined as the person or entity who both operates an Internet website or online service and collects information on that site either directly or through a subcontractor. This definition is intended to hold responsible the entity that collects the information, as well as the entity on whose behalf the information is collected. This definition, however, would not apply to an online service to the extent that it does not collect or use the information.

The amendment exempts nonprofit entities that would not be subject to the FTC Act. The exception for a non-profit entity set forth in Section 202(2)(B) applies only to a true not-for-profit and would not apply to an entity that operates for its own profit or that operates in substantial part to provide profits to or enhance the profitability of its members.

(7) Parent: The term ''parent'' includes ''legal guardian.''

(8) Personal Information: This is an online children's privacy bill, and its reach is limited to information collected online from a child.

The amendment applies to individually identifying information collected online from a child. The definition covers the online collection of a first and last name, address including both street and city/town (unless the street address alone is provided in a forum, such as a city-specific site, from which the city or town is obvious), e-mail address or other online contact information, phone number, Social Security number, and other information that the website collects online from a child and combines with one of these identifiers that the website has also collected online. Thus, for example, the information ''Andy from Las Vegas'' would not fall within the amendment's definition of personal information. In addition, the amendment authorizes the FTC to determine through rulemaking whether this definition should include any other identifier that permits the physical or online contacting of a specific individual.

It is my understanding that ''contact'' of an individual online is not limited to e-mail, but also includes any other attempts to communicate directly with a specific, identifiable individual. Anonymous, aggregate information—information that cannot be linked by the operator to a specific individual—is not covered by this definition.

(9) Verifiable Parental Consent: The amendment establishes a general rule that ''verifiable parental consent'' is required before a web site or online service may collect information online from children, or use or disclose information that it has collected online from children. The amendment makes clear that parental consent need not be obtained for each instance of information collection, but may, with proper notice, be obtained by the operator for future information collection, use and disclosure. Where parental consent is required under the amendment, it means any reasonable effort, taking into consideration available technology, to provide the parent of a child with notice of the website's information practices and to ensure that the parent authorizes collection, use and disclosure, as applicable, of the personal information collected from that child.

The FTC will specify through rulemaking what is required for the notice and consent to be considered adequate in light of available technology. The term should be interpreted flexibly, encompassing ''reasonable effort'' and ''taking into consideration available technology.'' Obtaining written parental consent is only one type of reasonable effort authorized by this legislation. ''Available technology'' can encompass other online and electronic methods of obtaining parental consent. Reasonable efforts other than obtaining written parental consent can satisfy the standard. For example, digital signatures hold significant promise for securing consent in the future, as does the World Wide Web Consortium's Platform for Privacy Preferences. In addition, I understand that the FTC will consider how schools, libraries and other public institutions that provide Internet access to children may accomplish the goals of this Act.

As the term ''reasonable efforts'' indicates, this is not a strict liability standard and looks to the reasonableness of the efforts made by the operator to contact the parent.

(10) Website Directed to Children: This definition encompasses a site, or that portion of a site or service, which is targeted to children under age 13. The subject matter, visual content, age of models, language or other characteristics of the site or service, as well

as off-line advertising promoting the website, are all relevant to this determination. For example, an online general interest bookstore or compact disc store will not be considered to be directed to children, even though children visit the site. However, if the operator knows that a particular visitor from whom it is collecting information is a child, then it must comply with the provisions of this amendment. In addition, if that site has a special area for children, then that portion of the site will be considered to be directed to children.

The amendment provides that sites or services that are not otherwise directed to children should not be considered directed to children solely because they refer or link users to different sites that are directed to children. Thus a site that is directed to a general audience, but that includes hyperlinks to different sites that are directed to children, would not be included in this definition but the child oriented linked sites would be. By contrast, a site that is a child-oriented director would be considered directed to children under this standard. However, it would be responsible for its own information practices, not those of the sites or services to which it offers hyperlinks or references.

(12) Online Contact Information: This term means an e-mail address and other substantially similar identifiers enabling direct online contact with a person.

Section 203. Regulation of unfair and deceptive acts and practices

This subsection directs the FTC to promulgate regulations within one year of the date of enactment prohibiting website or online service operators or any person acting on their behalf from violating the prohibitions of subsection (b). The regulations shall apply to any operator of a website or online service that collects personal information from children and is directed to children, or to any operator where that operator has actual knowledge that it is collecting personal information from a child.

The regulations shall require that these operators adhere to the statutory requirements set forth in Section 203(b)(1):

1. Notice—Operators must provide notice on their sites of what personal information they are collecting online from children, how they are using that information, and their disclosure practices with regard to that information. Such notice should be clear, prominent and understandable. However, providing notice on the site alone is not sufficient to comply with the other provisions of Section 202 that require the operator to make reasonable efforts to provide notice in obtaining verifiable parental consent, or the provisions of Section 203 that require reasonable efforts to give parents notice and an opportunity to refuse further use or maintenance of the personal information collected from their child. These provisions require that the operator make reasonable efforts to ensure that a parent receives notice, taking into consideration available technology.

2. Prior Parental Consent—As a general rule, operators must obtain verifiable parental consent for the collection, use or disclosure of personal information collected online from a child.

3. Disclosure and Opt Out for a Parent Who Has Provided Consent: Subsection 203(b)(1)(B) creates a mechanism for a parent, upon supplying proper identification, to obtain: (1) disclosure of the specific types of personal information collected from the child by the operator; and (2) disclosure through a ''means that is reasonable under the circumstances'' of the actual personal information the operator has collected from that child. It would be inappropriate for operators to be liable under another source of law for disclosures made in a good faith effort to fulfill the disclosure obligation under this subsection. Accordingly, subsection 203(a)(2) provides that operators are immune from liability under either federal or state law for any disclosure made in good faith and following procedures that are reasonable. If the FTC has not issued regulations, I expect that such procedures would be judged by a court based upon their reasonableness.

Subsection 203(b)(1)(B) also gives that parent the ability to opt out of the operator's further use or maintenance in retrievable form, or future online collection of information from that child. The opt out of future collection operates as a revocation of consent that the parent has previously given. It does not prohibit the child from seeking to provide information to the operator in the future, nor the operator from responding to such a request by seeking (and obtaining) parental consent. In addition, the opt out requirement relates only to the online site or sites for which the information was collected and maintained, and does not apply to different sites which the operator separately maintains.

Subsection 203(b)(3) provides that if a parent opts out of use or maintenance in retrievable form, or future online collection of personal information, the operator of the site or service in question may terminate the service provided to that child.

4. Curbing Inducements to Disclose Personal Information: Subsection 203(b)(1)(C) prohibits operators from inducing a child to disclose more personal information than reasonably necessary in order to participate in a game, win a prize, or engage in another activity.

5. Security Procedures: Subsection 203(b)(1)(D) requires that an operator establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of personal information collected online from children by that operator.

Exceptions to Parental Consent: Subsection 203(b)(2) is intended to ensure that children can obtain information they specifically request on the Internet but only if the operator follows certain specified steps to protect the child's privacy. This subsection permits an operator to collect online contact information from a child without prior parental consent in the following circumstances: (A) collecting a child's online contact information to respond on a one-time basis to a specific request of the child; (B) collecting a parent's or child's name and online contact information to seek parental consent or to provide parental notice; (C) collecting online contact information to respond directly more than once to a specific request of the child (e.g., subscription to an online magazine), when such information is not used to contact the child beyond the scope of that request; (D) the name and online contact information of the child to the extent reasonably necessary to protect the safety of a child participant in the site; and (E) collection, use, or dissemination of such information as necessary to protect the security or integrity of the site or service, to take precautions against liability, to respond to judicial process, or, to the extent permitted under other provisions of law, to provide information to law enforcement agencies or for an investigation related to public safety.

For each of these exceptions the amendment provides additional protections to ensure the privacy of the child. For a one-time contact, the online contact information collected may be used only to respond to the child and then must not be maintained in retrievable form. In cases where the site has collected the parents' online contact information in order to obtain parental consent, it must not maintain that information in retrievable form if the parent does not respond in a reasonable period of time. Finally, if the child's online contact information will be used, at the child's request, to contact the child more than once, the site must use reasonable means to notify parents and give them the opportunity to opt out.

In addition, subsection (C)(ii) also allows the FTC the flexibility to permit the site to recontact the child without notice to the parents, but only after the FTC takes into consideration the benefits to the child of access to online information and services and the risks to the security and privacy of the child associated with such access.

Paragraph (D) clarifies that websites and online services offering interactive services directed to children, such as monitored chatrooms and bulletin boards, that require registration but do not allow the child to post personally identifiable information, may request and retain the names and online contact information of children participating in such activities to the extent necessary to protect the safety of the child. However, the company may not use such information except in circumstances where the company believes that the safety of a child participating on that site is threatened, and the company must provide direct parental notification with the opportunity for the parent to opt out of retention of the information. For example, there have been instances in which children have threatened suicide or discussed family abuse in such fora. Under these circumstances, an operator may use the name and online contact information of the child in order to be able to get help for the child.

Throughout this section, the amendment uses the term ''not maintained in retrievable form.'' It is my intent in using this language that information that is ''not maintained in retrievable form'' be deleted from the operator's database. This language simply recognizes the technical reality that some information that is ''deleted'' from a database may linger there in non-retrievable form.

Enforcement.—Subsection 203(c) provides that violations of the FTC's regulations issued under this amendment shall be treated as unfair or deceptive trade practices under the FTC Act. As discussed below, State Attorneys General may enforce violations of the FTC's rules. Under subsection 203(d), state and local governments may not, however, impose liability for activities or actions covered by the amendment if such requirements would be inconsistent with the requirements under this amendment or Commission regulations implementing this amendment.

Section 204. Safe harbors

This section requires the FTC to provide incentives for industry self-regulation to implement the requirements of Section 203(b). Among these incentives is a safe harbor through which operators may satisfy the requirements of Section 203 by complying with self-regulatory guidelines that are approved by the Commission under this section.

This section requires the Commission to make a determination as to whether self-regulatory guidelines submitted to it for approval meet the requirements of Commission regulations issued under Section 203. The Commission will issue, through rulemaking, regulations setting forth procedures for the submission of self-regulatory guidelines for Commission approval. The regulations will require that such guidelines provide the privacy protections set forth in Section 203. The Commission will assess all elements of proposed self-regulatory guidelines, including

enforcement mechanisms, in light of the circumstances attendant to the industry or sector that the guidelines are intended to govern.

The amendment provides that, once guidelines are approved by the Commission, compliance with such guidelines shall be deemed compliance with Section 203 and the regulations issued thereunder.

The amendment requires the Commission to act upon requests for approval of guidelines for safe harbor treatment within 180 days of the filing of such requests, including a period for public notice and comment, and to set forth its conclusions in writing. If the Commission denies a request for safe harbor treatment or fails to act on a request within 180 days, the amendment provides that the party that sought Commission approval may appeal to a United States district court as provided for in the Administrative Procedure Act, 5 U.S.C. §706.

Section 205. Actions by States

State Attorneys General may file suit on behalf of the citizens of their state in any U.S. district court of jurisdiction with regard to a practice that violates the FTC's regulations regarding online children's privacy practices. Relief may include enjoining the practice, enforcing compliance, obtaining compensation on behalf of residents of the state, and other relief that the court considers appropriate.

Before filing such an action, an attorney general must provide the FTC with written notice of the action and a copy of the complaint. However, if the attorney general determines that prior notice is not feasible, it shall provide notice and a copy of the complaint simultaneous to filing the action. In these actions, state attorneys general may exercise their power under state law to conduct investigations, take evidence, and compel the production of evidence or the appearance of witnesses.

After receiving notice, the FTC may intervene in the action, in which case it has the right to be heard and to file an appeal. Industry associations whose guidelines are relied upon as a defense by any defendant to the action may file as amicus curiae in proceedings under this section.

If the FTC has filed a pending action for violation of a regulation prescribed under Section 3, no state attorney general may file an action.

Section 206. Administration and applicability

FTC Enforcement: Except as otherwise provided in the amendment, the FTC shall conduct enforcement proceedings. The FTC shall have the same jurisdiction and enforcement authority with respect to its rules under this amendment as in the case of a violation of the Federal Trade Commission Act, and the amendment shall not be construed to limit the authority of the Commission under any other provisions of law.

Enforcement by Other Agencies: In the case of certain categories of banks, enforcement shall be carried out by the Office of the Controller of the Currency; the Federal Reserve Board, the Board of Directors of the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, and the Farm Credit Administration. The Secretary of Transportation shall have enforcement authority with regard to any domestic or foreign air carrier, and the Secretary of Agriculture where certain aspects of the Packers and Stockyards Act apply.

Section 207. Review

Within 5 years of the effective date for this amendment, the Commission shall conduct a review of the implementation of this amendment, and shall report to Congress.

Section 208. Effective date

The enforcement provisions of this amendment shall take effect 18 months after the date of enactment, or the date on which the FTC rules on the first safe harbor application under section 204 if the FTC does not rule on the first such application filed within one year after the date of enactment, whichever is later. However, in no case shall the effective date be later than 30 months after the date of enactment of this Act.

LIST OF SUPPORTERS OF CHILDREN'S INTERNET PRIVACY LANGUAGE

The Federal Trade Commission.
The Direct Marketing Association (representing 3,500 domestic members).
GeoCities.
Time Warner.
Commercial Internet eXchange Association.
Disney.
AOL.
Highlights for Children.
American Academy of Pediatrics.
American Advertising Federation.
American Association of Advertising Agencies.
Center for Democracy & Technology.
Center for Media Education.
Viacom.

AMENDMENT NO. 3721, AS MODIFIED

(Purpose: To make minor changes in the commission established by the bill)

On page 17, beginning with line 18, strike through line 21 on page 19 and insert the following:

(a) ESTABLISHMENT OF COMMISSION.—There is established a commission to be known as the Advisory Commission on Electronic Commerce (in this title referred to as the ''Commission''). The Commission shall—

(1) be composed of 19 members appointed in accordance with subsection (b), including the chairperson who shall be selected by the members of the Commission from among themselves; and

(2) conduct its business in accordance with the provisions of this title.

(b) MEMBERSHIP.—

(1) IN GENERAL.—The Commissioners shall serve for the life of the Commission. The membership of the Commission shall be as follows:

(A) 3 representatives from the Federal Government, comprised of the Secretary of Commerce, the Secretary of the Treasury, and the United States Trade Representative (or their respective delegates).

(B) 8 representatives from State and local governments (one such representative shall be from a State or local government that does not impose a sales tax * * *) and one representative shall be from a state that does not impose an income tax.

(C) 8 representatives of the electronic commerce industry, telecommunications carriers, local retail businesses, and consumer groups, comprised of—

(i) 5 individuals appointed by the Majority Leader of the Senate;

(ii) 3 individuals appointed by the Minority Leader of the Senate;

(iii) 5 individuals appointed by the Speaker of the House of Representatives; and

(iv) 3 individuals appointed by the Minority Leader of the House of Representatives.

AMENDMENT NO. 3722

(Purpose: To direct the Commission to examine model State legislation)

Mr. MCCAIN. Mr. President, I ask unanimous consent that amendment numbered 3722 be the pending business.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Arizona (Mr. MCCAIN), for himself, Mr. GREGG, and Mr. LIEBERMAN, proposes an amendment numbered 3722.

Mr. MCCAIN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 23, beginning with line 14, strike through line 2 on page 25 and insert the following:

''(D) an examination of model State legislation that—

''(i) would provide uniform definitions of categories of property, goods, service, or information subject to or exempt from sales and use taxes; and

''(ii) would ensure that Internet access services, online services, and communications and transactions using the Internet, Internet access service, or online services would be treated in a tax and technologically neutral manner relative to other forms of remote sales; and''.

Mr. MCCAIN. Mr. President, this amendment is simple. It is offered by myself for Senators GREGG and LIEBERMAN. The amendment instructs the commission created in this bill to examine model state legislation and provide definitions of what should be subject to or exempt from taxation. Additionally, the Commission would be instructed to look specifically at Internet transactions.

Some would like to see the scope of the commission expanded. This is not necessary. The Commission may look at any form of remote sales, but it is not forced to.

This bill is about the Internet, and its potential as a new technology—but more importantly, as a medium for electronic commerce. The Internet is not like the mail. It is not a monopoly. It is unlike anything that we have seen to date. For that reason we believe that it should be protected from discriminatory taxation.

Mr. President, there will be some who seek to defeat this amendment or will offer second degree amendments to it regarding remote sales, specifically mail order sales. We dealt with that subject specifically the other day. My good friend from Arkansas offered an amendment to overturn the Quill decision regarding mail order sales. Senator GRAHAM of Florida spoke in favor of the amendment. And then the Senate voted on the matter. The amendment was defeated handily: 65–30. We don't need to revisit this issue again. If we do, I would hope the vote to table would be the same.

We should let this commission do its work. We should not prejudge what they will decide or attempt to force them to examine certain subjects or come to certain conclusions. That would be wrong and would undermine the mission of the Commission. The bipartisan amendment before the Senate gives the commission free reign to decide what it believes is best and report such findings to the Congress. I urge my colleagues to support the McCain/Gregg/Lieberman amendment and defeat any second degree amendments that may be offered.

Mr. President, I yield the floor.

Mr. HUTCHINSON addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

AMENDMENT NO. 3760 TO AMENDMENT NO. 3722

(Purpose: Relating to the duties of the Advisory Commission on Electronic Commerce)

Mr. HUTCHINSON. Mr. President, I call up second-degree amendment 3760.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Arkansas (Mr. HUTCHINSON), for himself, Mr. ENZI, and Mr. GRAHAM, proposes an amendment numbered 3760 to amendment No. 3722.

Mr. HUTCHINSON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

At the end of the McCain amendment, add the following:

(F) an examination of the effects of taxation, including the absence of taxation, on all interstate sales transactions, including transactions using the Internet, on local retail businesses and on State and local governments, which examination may include a review of the efforts of State and local governments to collect sales and use taxes owed on in-State purchases from out-of-State sellers.

Mr. HUTCHINSON. I ask unanimous consent that Senator ENZI be added as cosponsor to my amendment.

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

Mr. HUTCHINSON. Mr. President, I ask unanimous consent that the amendment be modified by deleting the word ''local'' on line 6 of page 1 of the amendment.

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

The modification is accepted.

Mr. HUTCHINSON. Mr. President, this amendment amends the McCain first-degree underlying amendment to allow the commission to establish by the Internet Tax Freedom Act a study of the effects of taxation on interstate sales, or the lack thereof on retail businesses and State and local governments.

I can think of nothing more reasonable and nothing more common sense than saying that the commission that we are creating should conduct a study to look at and examine the implications upon retail businesses and the implications upon local and State governments that this moratorium and this bill would have.

The Senate rejected an amendment last week which would have immediately authorized States to require out-of-State sellers to collect sales taxes and remit them to the State in which the purchase was made. My colleague from Arkansas, Senator BUMPERS, offered that amendment. I think that many of my colleagues who joined me in voting against this amendment would agree that this issue warrants further study.

Why not have the commission establish by this bill conduct a study and examine the issue that is so important to State and local governments and which is so important to local businesses that are trying to survive and who are remitting those sales taxes. This issue, which is so critical, ought to be, I believe, examined and studied. For the sake of small mom-and-pop businesses who find themselves in competition with Internet entities and other out-of-State sellers who do not have to collect State sales taxes from out-of-State buyers, we should allow the commission to study the impact that the lack of taxation on these transactions has on small businesses.

For the sake of out-of-State sellers who do collect and remit sales taxes while their competitors do not, let's allow the commission to study this issue. This is, in fact, a commission study.

It should be noted that Congress and Congress alone can either accept or eject the recommendations that the commission might make. The Supreme Court decided in the case of *Quill* v. *North Dakota* that States cannot require out-of-State sellers to collect and remit sales taxes on goods purchased for use in a particular State, unless Congress authorizes them to do so.

My amendment does not overturn Quill. I want to emphasize that. This amendment does not overturn the Quill decision. It simply allows the commission to study the implications, to study the ramifications of Quill on small businesses and State and local governments.

Electronic commerce is estimated to reach $8 billion in 1998. And by the year 2002, electronic commerce is expected to reach $300 billion.

Let me say that the Internet is an incredible tool both for education purposes and business promotion. My amendment in no way is intended to thwart the growth of the Internet. Again, it merely says that in light of the incredible growth in electronic commerce that we have witnessed over the last 5 years and that we anticipate in the next 5 years that this commission that we are about to create should have the right to examine its impact on businesses serving local markets.

We will have an argument that my good friend from Arizona has argued—that this Internet Tax Freedom Act should focus solely on the Internet. But I argue that the Internet is a form of interstate commerce just like mail order, just like catalog sales. And when we talk about the impact of such interstate sales on local businesses, there is no distinction between the three. We should not address this issue in a vacuum.

So the commission that is created ought to have the right to examine all of the implications of what we are doing and its impact upon that small businessman, that small businesswoman, that city, that county, that State government, and the effect upon their revenue stream.

So the amendment I propose is a compromise. It is, I believe, one that is worthy of support.

I ask my colleagues to support this second-degree amendment.

Mr. WYDEN. Mr. President, first, let me say that I strongly support the Gregg amendment. Let me say to the Senator from Arkansas, I think his amendment is in the wrong place. I think it is supposed to go at page 25. But if we could work with him, we want to make sure that there is fair consideration of his amendment.

Mr. President, let me also say that the whole point of the Internet Tax Freedom Act is to focus on electronic commerce. We have had, since the beginning of this discussion, efforts to bring into this debate a variety of other kinds of subjects, but it seems to me at a time when we have 30,000 taxing jurisdictions, many of which have varied and sundry ideas with respect to electronic commerce and the Internet, what we ought to do is stick to the subject at hand, and that is calling a brief time-out to look at these issues, a time-out in which the Internet would be treated like everything else, by the way.

At various points in this debate we have heard about how we are establishing a tax haven for the Internet. That is simply wrong. During the moratorium, sales on the Internet would get treated just like other sales. It is very important now, with the extraordinary growth of the Internet, as our colleagues have noted, that we do this job right, which requires that we go forward with language such as that offered by the Senator from New Hampshire to ensure that we focus on electronic commerce.

By doing that, we also increase the prospects for making sure that at the end of our work we have a policy that guarantees technological neutrality. We don't have that today in America. We have parts of the country, for example, where you get the newspaper through traditional mail, and you pay no tax on it. But if you read that very same newspaper on line, you pay a tax. That is not technologically neutral. That is what our legislation is all about. The Internet should not get a preference, nor should the Internet be discriminated against. It seems to me that by adopting the Gregg amendment we will ensure that the focus is on electronic commerce, No. 1; No. 2, we will have a chance to look at the very complicated and technical questions dealing with what is close to 30,000 taxing jurisdictions, and I urge my colleagues to support the original Gregg amendment.

I yield the floor.

Mr. GREGG addressed the Chair.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Mr. President, I rise in opposition to the amendment offered by the Senator from Arkansas as a second degree to the amendment offered by myself, Senator MCCAIN, and Senator LIEBERMAN, which is the underlying amendment here. I think the Senator from Oregon, who has certainly

been a core player in bringing this matter to the Senate, outlined the issue rather well by pointing out that the purpose of this moratorium and the commission that is created under the moratorium should be to review the electronic commerce under the Internet and to pursue a path which will make that commerce more efficient.

This bill, this attempt to protect the Internet from arbitrary taxation across the country with the 30,000 potential municipalities that could assess against the Internet and thus create chaos in what is truly one of the great engines of prosperity and economic entrepreneurship which has occurred within this century, and may be the economic engine for the next century—this bill, which is an attempt to put a hold on that sort of tax policy which might undermine, fundamentally harm, the expansion of the Internet during this formative period is a good bill, but it should not be used to bootstrap other issues onto the question.

What is being attempted here is a backdoor bootstrapping of the whole issue of tax policy as it relates to the question of sales at distant points, whether it happens to be under the Internet, cable, catalogs or by telephone. And another study in this area, which is the proposal that is put forward by the Senator from Arkansas, is simply an attempt to broaden the scope of the underlying effort, which is to protect and address the issues that evolve around the Internet. It is totally inappropriate. There is no reason we should go down that road.

There have been enumerable studies of this issue already. In fact, I have two right here, one done by the League of Cities and the other done by the Center for Budget and Policy Priorities. I also understand there has been one done by the Governors' Association, I believe. The fact is, the issues which are being raised by the Senator from Arkansas have been studied and studied extensively. Putting another study into this bill is not going to in any way change the tenor of the debate. It is simply going to attempt to expand the debate into a whole separate arena, which is inappropriate to this moratorium.

The bottom line of this moratorium—and I will come to that after we have disposed of the amendment of the Senator from Arkansas, but the bottom line issue here is whether or not by voting to expand the moratorium and to get into areas such as the Senator from Arkansas has proposed we wish to dramatically expand the taxing authority of States and local jurisdictions and basically use this bill to become a huge vehicle for expansion in tax policy and expansion of taxes.

I do not think that most Members of this body want to do that, and we already voted on this issue once with the Bumpers amendment. The vote was overwhelming. This body said no, it did not want to use this vehicle for the purposes of creating an explosion in new taxes. And yet there is another attempt being made now to do that, this time through a study. We will hear another attempt, I suspect, from the Senator from Florida who will do that with his amendment to this bill and this underlying amendment.

So I guess what it comes down to is that this body has to make a policy decision: Does it want to use the Internet bill and the protection of the Internet, which has been proposed through the moratorium, which has been energized in large part by the Senator from Oregon, and obviously the Senator from Arizona, and which I have strongly supported, does it want to use that effort to try to protect the Internet to also be an effort to grossly expand the tax laws of this country and the tax policy of this country and the tax activity of municipalities and States, or do we want to stay focused on the subject at hand, which is how to make the Internet an efficient and effective place to do business, how to keep it as a dynamic engine for entrepreneurship and prosperity that it has become through a moratorium on taxes which might be assessed at the local community level?

Although this amendment is couched in the terms of a study, it really gets back to that core issue of whether or not we want to have a moratorium which addresses the Internet or whether we want to use this moratorium as a bootstrapping event for purposes of dramatically increasing taxes and the tax collection capacity of local communities and States across the country.

I oppose this study. I think it is misdirected to be attached to this bill, and I would say that if you really are interested in such a study, here is one you can read. Here is another one you can read. And the Governors' Association has one you can read. You don't have to pay for a new one.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from Florida.

Mr. GRAHAM. Mr. President, parliamentary inquiry. Is there a time limit on this amendment?

The PRESIDING OFFICER. No time limit has been agreed to.

Mr. GRAHAM. Mr. President, first let us come back to what we are fundamentally about. What the Internet Tax Freedom Act says is that there shall be a moratorium, a pause, in the State and local governments' exercise of their otherwise legal authority to impose a tax on access to or transactions consummated over the Internet.

That is an unusual action. For the Congress of the United States to preempt State and local governments from their otherwise lawful responsibilities to establish what they feel to be appropriate policy for their citizens is an unusual act for the Congress and one which we should only take after careful consideration.

Why should we exercise such care? Because the consequences of this action, of establishing a moratorium on the taxation of one form of commerce as opposed to all forms of commerce, is to create or to continue a competitive disparity. In this case, it is the comparative disparity between the Main Street retailer, the person who is selling hardware on Main Street and is legally responsible for collecting a sales tax from those who purchase hammers and saws, and those who buy the same hammers and saws over the Internet where they are not subject to the requirement to pay, and the seller to collect, that same sales tax. That is a level of obvious inequity that we would, only under exception circumstances, impose.

Second, at a time when we are underscoring our commitment to fundamental activities such as law enforcement and education, we are about to drive a major hole in the ability to do so of those levels of government which have the primary responsibility for law enforcement and education, which are our colleagues at the State and local level. I will be giving some current examples, as recently as today's newspaper, of the potential that we are about to open up.

So it would only take an extremely persuasive argument to convince the Congress of the United States that it ought to inflict that inequality in the marketplace and the threat to the ability to deliver fundamental police, fire, and educational services at the local level as this legislation does.

What is that rationale? The rationale: This is a new, rapidly evolving technology and we need to have this pause so we can assure that whatever tax policies are developed are developed with uniformity, with nondiscrimination, with predictability, so as not to interfere with the natural growth and evolution of this very important part of our commerce at the end of the 20th century that no doubt will play even a larger role as we go into the 21st. That is the argument for the discrimination and threat to State and local governments for which we are about to be asked to vote.

I will personally support the basic proposition of a pause. But I will only do so if that pause is for a reasonable period of time, that period of time that we would consider necessary to carry out this review and recommendation as to uniform, nondiscriminatory, predictable tax policy, and, second, that we have a commission, which is going to be making this study, which will represent all of the diversity of interests on this matter and will have a charter broad enough to look at all the questions that are relevant to establishing proper policy for the Internet.

The argument here is a direct clash between what the Senate Finance Committee found and what the authors of this amendment support. The language which I support is the language which is in the bill that was reported by the Senate Finance Committee with 19 favorable votes.

If you will look in the bill that appears on our desk, starting on page 22, which is the beginning of the issues to be studied, as stated by the Senate Finance Committee, on page 23, under paragraph (d), the Finance Committee, under the leadership of Senator ROTH, who advocated this language, states that:

. . . there will be an examination of the efforts of State and local governments to collect sales and use taxes owed on purchases from interstate sellers, the advantages and disadvantages of authorizing State and local governments to require such sellers to collect and remit such taxes, particularly with respect to electronic commerce, and the level of contact sufficient to permit a State or local government to impose such taxes on such interstate commerce.

That is the essence of the language that the McCain-Gregg-Lieberman amendment is going to strike.

Mr. President, I ask my fellow colleagues, is that unreasonable for a commission we are going to set up to study the effects of Internet taxation on State and local governments and on fairness in the marketplace? Is that language unfair? I do not believe it is. The McCain amendment would strike that language.

Senator HUTCHINSON of Arkansas, who has worked very diligently on this issue—and I commend him for his leadership on this matter and his deep understanding of the implications of this issue—has offered a second-degree amendment to the McCain amendment which essentially inserts the same concept of Senator ROTH's language that was in the Finance Committee. His amendment would provide for ''an examination of the effects of taxation, including the absence of taxation on all interstate sales transactions, including transactions using the Internet, on local retail businesses and on State and local governments, which examination may include a review of the efforts of State and local governments to collect sales and use taxes owed on in-State purchases from out-of-State sellers.''

That is the amendment that Senator HUTCHINSON has offered which I think is as eminently reasonable as the language which was offered by Senator ROTH in the Finance Committee. So I strongly support Senator HUTCHINSON's very thoughtful and significant amendment and would go on to say that current events are underscoring the urgency of this look at all forms of remote sales.

One of the purposes of the underlying bill is to eliminate discrimination. That raises the question, Discrimination in relationship to what? If we end up with a bill that says that the commission cannot even look at the taxation and the effect of that taxation on fairness in the marketplace and on the ability of State and local governments to support their police and fire and schools, we are already guaranteeing that the commission will give us a report that, in order to be nondiscriminatory, the Internet should not be subject to taxation. That would make it the same as catalog sales. That would be a result with very serious long-term implications.

If, on the other hand, we are able to adopt the language that either was in the underlying bill or the language that Senator HUTCHINSON has offered, then the commission is going to look at the taxation of all forms of remote sales and will be able to come back with a set of policy regulations that will in fact meet the test of uniformity, nondiscrimination, and predictability, which is the whole purpose of this exercise.

I said the issue is one that is as topical as today's paper. I refer you to the Washington Post of October 7, on page C–10, which carries a story, ''Publisher, Bookseller Join Forces.''

I will not read the whole article but let me just give you a flavor of what it says:

Taking direct aim at Amazon.com, publishing conglomerate Bertelsmann AG said [yesterday] it will spend $200 million to buy half of the online book service of Barnes & Noble.

So, what we have is a major bookseller which already has an on-line service, where they are selling through the Internet as well as through their Barnes & Noble megabookstores; now they have sold half of their on-line service to yet another publisher, the publisher who has well known book houses such as Random House, Doubleday, and Bantam Publishing. They now together own an on-line bookselling firm which is going to try to compete with Amazon.com.

Why are they doing this? While still a tiny segment of the book retailing marketplace, on-line sales are exploding in popularity. I underscore ''exploding in popularity.''

Seattle-based Amazon.com, founded three years ago, had revenues of $204 million in the first six months of 1998.

The implications of this to the independent bookstores in Helena, MT, or in Concord, NH, are obvious. In addition to the other benefits of convenience of the Internet, we are now going to have a situation where, if you buy a copy of your book at the Main Street independent bookstore, you are going to be paying the State and local sales tax, but if you buy it over the Internet, you will not be paying the sales tax, and, thus, we are institutionalizing a significant competitive disadvantage.

Why we would want to adopt the policy that puts the Main Street seller at a disadvantage to cyberspace is beyond me. It also happens to be beyond a number of important organizations, whose letters I will ask unanimous consent be printed in the RECORD immediately after my remarks, beginning with the National Home Furnishings Association, which states:

The home furnishing industry has struggled with the issue of whether there is an obligation for remote sellers to collect and remit sales/use taxes to the state in which the purchaser resides on sales of furniture, long before the first sale was made on the Internet.

It goes on to say:

In addition to the lost revenue to the state, the in-state retailer is placed at a distinct disadvantage. There is, of course, the differential in the customer's total cost reflecting the sales/use tax. . . . Indeed, many times they serve as the unwilling ''showroom'' and sales adviser for the remote seller, as customers visit their store, discuss a purchase with the sales staff, scribble down model numbers and then call the remote seller.

That is an example of the kind of institutionalization of competitive disadvantage we are about to enact.

I also ask to have printed immediately after my remarks a letter from the Newspaper Association of America representing 1,700 newspaper members. This organization has supported the Internet Tax Freedom Act, but they state:

. . . I am writing to express support for your efforts to amend the Internet Tax Freedom Act to ensure that the advisory commission examines the tax treatment of all remote sales. . . . The major thrust behind the Internet Tax Freedom Act is to ensure that the Internet is not subjected to unfair, discriminatory and inconsistent taxes at the state and local level. Proponents of the legislation—including NAA—have argued that business transactions and services should be treated similarly regardless of whether they are offered through electronic means or through existing channels of commerce. However, if the commission is not directed in the legislation to examine all remote sales, a discriminatory tax structure could be established that treats one form of remote sales—the Internet—differently from other forms of remote sales. Therefore, we believe a comprehensive approach works best.

Mr. President, I ask unanimous consent that the letter from the National Home Furnishings Association and the Newspaper Association of America be printed in the RECORD immediately after my remarks.

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

(See Exhibit 1.)

Mr. GRAHAM. Mr. President, the second issue which is directly related to the first, the first being the discrimination against the local Main Street sale, is the impact on the ability of local governments and State governments to carry out their fundamental educational, health, and other responsibilities. I will be a Floridian for a moment and cite some of the statistics about the potential impact that an out-of-control moratorium leading to permanent exemption from taxation of the Internet could have on a State such as mine.

In 1996, the State of Florida collected a total of $11.4 billion in general sales tax revenue. This represented 77.3 percent of Florida's tax revenue generated from sales and excise taxes, excise taxes representing $3.8 billion of that total.

Florida is not unique in having a high percentage of its tax revenue generated by sales and excise taxes. For instance, Nevada gets 84.3 percent of its total revenue from these two

sources; Texas, 81 percent; South Dakota, 78.4 percent; Tennessee, 76.7 percent; Washington, 74.3 percent; Mississippi, 67.3 percent; Hawaii, 61.7 percent; Arizona, 57 percent; North Dakota, 56.8 percent; and New Mexico, 56.7 percent. They are examples of States which are heavily dependent on sales and excise taxes, the kind of taxes that are generated by Main Street activity.

Currently, mail order nationwide has sales of $100 billion to $120 billion a year. That is the catalog of remote selling. This results in an estimated $3.5 billion to $4 billion in lost sales tax. It is estimated, for instance, in the State of Florida that that would represent something in excess of $200 million a year in lost sales. That is, if the same sale had taken place at the local shopping mall that took place over the remote sales catalog process, it would have been an additional $200 million of sales tax collected.

Internet sales are expected to grow by the year 2004, not to the $100 billion to $120 billion of current catalog sales, but rather to $400 billion to $500 billion. So Internet sales, by the year 2004, are expected to be four to five times what current catalog sales are. If $100 billion in sales loses $3.5 billion, then the $500 billion would represent a loss of $17.5 billion. For Florida, this means there could be an estimated loss of $875 million in sales tax per year as a result of this removing of the responsibility of the Internet seller to collect the taxes on those transactions.

Florida's Department of Revenue states that the cost of exempted Internet taxation costs the State $60 million in sales tax revenue and $18 million for the gross receipts tax. This gross receipts tax is what is used to fund our school construction costs.

Mr. President, the impact of this on State and local governments in their ability to put an adequate number of police on the streets and an adequate fire defense, and particularly an adequate number of schools and teachers and the other support personnel necessary for their educational system, will be extremely vulnerable if this legislation gets out of control.

This is the amendment which I believe begins to break the dam of reasonability. It is reasonable to have a brief pause to look at all of the implications of Internet taxation. I support that brief pause. It is also reasonable to look at one that is conducted by people who represent all the interests that will be affected by these decisions and that those persons have a charter broad enough to give us wise, comprehensive policy.

To adopt the McCain-Gregg-Lieberman amendment, which would essentially say we are going to put a blindfold over our eyes and we will not be able to look at those remote sales activities which are the most analogous to what the potential for Internet sales would be, is, in my opinion, to render this legislation ineffective in terms of its purpose and to strengthen the doubts that some of us have that its real purpose is, not to have a thoughtful examination, but rather to have this as the beginning of what will be a permanent bar to State and local governments' ability to manage their fiscal affairs and that the principal loser of this will be the shuttered stores along Main Street of the traditional seller, like the bookstore unable to compete when he or she has to collect the local sales tax but its competitor thousands of miles away does not, and will also be seen in the diminishment of vital public services, especially the education of our children.

So, Mr. President, for those reasons, I strongly support the amendment offered by the Senator from Arkansas as eminently reasonable and consistent with the stated purpose of this legislation, and I urge its adoption.

EXHIBIT 1

NATIONAL HOME FURNISHINGS ASSOCIATION,
Washington, DC.

NHFA CONCERNS WITH PROPOSED MANAGER'S AMENDMENT TO S. 442, THE INTERNET TAX FREEDOM ACT

The home furnishings industry has struggled with the issue of whether there is an obligation for remote sellers to collect and remit sales/use taxes to the state in which the purchaser resides on sales of furniture, long before the first sale was made on the Internet. Sales are frequently made over the telephone or through the mails.

In addition to the lost revenue to the state, the in-state retailer is placed at a distinct disadvantage. There is, of course, the differential in the customer's total cost reflecting the sales/use tax. However, the in-state retailer also makes a significant investment in the community. Indeed, many times they serve as the unwilling ''showroom'' and sales adviser for the remote seller, as customers visit their store, discuss a purchase with the sales staff, scribble down model numbers and then call a remote seller.

NHFA has long sought a consistent, realistic definition of what constitutes nexus for the purpose of determining the sales/use tax obligation of a remote seller.

S. 442 imposes a moratorium on so-called telecommunication taxes, and establishes a commission to examine a variety of issues. Both the Senate Finance and Commerce Committees' versions of the bill, as does the House bill, include language authorizing the commission to examine the issue of the obligation of remote sellers to collect and remit a variety of taxes includes sales and use taxes. For example, the Senate Finance Committee bill states: ''an examination of the efforts of State and local governments to collect sales and use taxes owed on purchases from interstate sellers, the advantages and disadvantages of authorizing State and local governments to require such sellers to collect and remit such taxes, particularly with respect to electronic commerce, and the level of contracts sufficient to permit a State or local government to impose such taxes on such interstate commerce.''

We have learned that a proposed manager's amendment would severely limit the scope of the commission's mission and strike the language allowing an examination of the broader sales/use tax issue.

If a moratorium on telecommunication taxes is enacted, even though it does not technically apply to sales/use taxes on the purchase of the goods themselves, the moratorium will still have a chilling impact on the collection of those taxes. We thought we could live with that moratorium, in the belief we would gain more in the long run, if the commission could resolve once and for all, the broader issue of jurisdiction over remote sellers for all tax purposes including sales and use taxes. It would seem to us, if the manager's amendment strips the commission of the authority to examine the nexus issue, we get the worst of both worlds.

NEWSPAPER ASSOCIATION OF AMERICA,
Vienna, VA, October 6, 1998.

Hon. ROBERT GRAHAM,
U.S. Senate,
Washington, DC.

DEAR SENATOR GRAHAM: On behalf of the more than 1,700 newspaper members of the Newspaper Association of America (NAA), I am writing to express support for your efforts to amend the Internet Tax Freedom Act to ensure that the advisory commission examines the tax treatment of all remote sales. As you are aware, we have supported and continue to support enactment of the Internet Tax Freedom Act.

The major thrust behind the Internet Tax Freedom Act is to ensure that the Internet is not subjected to unfair, discriminatory and inconsistent taxes at the state and local level. Proponents of the legislation—including NAA—have argued that business transactions and services should be treated similarly regardless of whether they are offered through electronic means or through existing channels of commerce. However, if the commission is not directed in the legislation to examine all remote sales, a discriminatory tax structure could be established that treats one form of remote sales—the Internet—differently from other forms of remote sales. Therefore, we believe a comprehensive approach works best.

We believe the Internet Tax Freedom Act provides a unique opportunity for a thoughtful and deliberative examination of a uniform tax structure for goods and services. By including all remote sales in the scope of the advisory commission's work, the Congress is encouraging the development of tax policies that present one set of rules that will be applied to all businesses. A uniform approach not only promotes fairness and consistency—it's sound public policy.

Sincerely,

JOHN F. STURM,
President and CEO.

Mr. WYDEN addressed the Chair.

The PRESIDING OFFICER (Mr. SANTORUM). The Senator from Oregon.

Mr. WYDEN. Thank you, Mr. President.

Mr. President, I urge adoption of the Gregg amendment and the rejection of the Hutchinson amendment. First, it is quite clear that this legislation is going to, in fact, study all of the questions related to the subject this bill deals with thoroughly. Let me just read into the RECORD exactly what it says with respect to what will be studied. It says:

> The Commission shall conduct a thorough study of Federal, State and local, and international taxation and tariff treatment of transactions using the Internet and Internet access and other comparable interstate or international sales activities.

So it is right there at pages 21 and 22.

Mr. HUTCHINSON. Will the Senator yield?

Mr. WYDEN. In just 1 minute I will be happy to yield.

It is quite clear, at page 21 and page 22, that there will be ''a thorough study'' of the issues and that the commission will look at ''comparable interstate or international sales activities.''

The question, Mr. President, and colleagues, is whether or not we are going to focus on yesterday's concerns, which are the mail-order or catalog issues—and they are important ones—or are we going to look at trying to come up with some sensible policies with respect to tomorrow's issues which essentially involve the ground rules for the digital economy.

Somehow, those that want to look at mail-order and catalog sales feel that they can resolve all of their concerns on this legislation. We feel otherwise. The reason that it is so important to have the Gregg language is that it does put the focus on electronic commerce. I and others believe that if we do look at electronic commerce, and look at it thoughtfully, that it may, in fact, come up with some answers to these other issues—mail-order and catalog questions, which are important—but if we change the focus of this bill, which is essentially what the Senator from Arkansas wants to do, I believe what is going to happen is, A, we will not get any sensible ground rules for electronic commerce, nor will we deal with the issues with respect to mail orders.

The fact of the matter is that Main Street America overwhelmingly has endorsed this bill. We have entered into the RECORD the list of the groups that are for it. And the reason that Main Street has endorsed this legislation is that if you are a small business on a main street in rural Arkansas or rural Oregon, or any other part of the country that is essentially rural, right now you are having a lot of difficulty competing against the Wal-Marts and the economic giants in our country.

The Internet is a great equalizer. By having a web page, by having the ability to do business on line, that Main Street business in rural Oregon or rural America, for the first time, has the ability, in an inexpensive way, to market and look at lucrative markets around the world.

Picture, if we will, what will happen to a home-based business in Wyoming or Arkansas or Oregon if we do nothing. There are 100,000 of these home-based businesses in my State alone. They are the fastest growing part of our economy, and if we do not come up with some uniform tax treatment for these home-based businesses, what is going to happen is they will be subject to scores of different taxes all over America.

How is a home-based business in the State of Oregon or the State of Arkansas going to go out and hire a battery of accountants and lawyers and experts to help them sort this out? They are not going to be able to do it. And that is why, when we had the hearings on this legislation in the Senate Commerce Committee, we heard from a small Tennessee business that tried to operate through this thicket of different kinds of State and local rules and ended up going out of business.

These home-based businesses are simply not going to be able to hire the battery of experts and accountants and lawyers that some of those who have opposed this legislation are going to mandate on these small businesses. So I hope that we can stick to the issue in front of us. That would mean going forward with the Gregg amendment and rejecting the amendment of the Senator from Arkansas.

The Senator from Arkansas did ask me to yield, and I am happy to do so.

Mr. HUTCHINSON. I thank the Senator for yielding.

In the early part of your remarks, you emphasized and read from the bill that the commission would be authorized to conduct a thorough study. You emphasized the word ''thorough.'' I think you found a couple places where the term is used. It seems you are implying they will look at all issues affected by this legislation and by Internet sales.

My question is, why, if in fact it is to be a thorough study looking at all issues and all the implications and ramifications of Internet sales on retailers and on government, why then would the Gregg amendment exclude, in effect, say this is off the table, this is one area of issues you cannot look at? When the Finance Committee, by a vote of 19–1, said this should be included, this should be an area that should be examined, this should be the purview of the commission, why then, if it is to be a thorough study, would this amendment, the Gregg amendment, exclude this particular area from study?

Mr. WYDEN. Reclaiming my time, as I said, the debate here is over, Do you want to focus on the subject of this bill, which is electronic commerce—that is what the legislation does; that is what the Gregg amendment seeks to do—or are we going to go back and study in this legislation essentially yesterday's economy?

We believe that if you put the focus on electronic commerce—that is what the Gregg amendment does—we are going to be able to deal with the digital economic issues; and we may well, in fact, come up with some ideas and some innovative approaches that may well resolve the mail-order and catalog question as well.

My concern, and the concern of the Senator from New Hampshire, is that essentially this is going to change the focus of this legislation to put it on the mail-order and catalog issues. There are Members of the U.S. Senate who feel that mail-order and catalog sales are insufficiently taxed. I am not one of them. I am one who believes that we all ought to work together, on a bipartisan basis, to deal with tomorrow's set of economic concerns, which involves the digital economy.

I tell the Senator from Arkansas that as the original sponsor of this legislation, I have made more than 30 separate changes to this legislation in an effort to accommodate what I think are valid concerns which come from States and municipalities and others who are advocating the viewpoint of the Senator from Arkansas.

But what I am not willing to support is essentially changing the focus of this legislation. If we do that, I believe that the 100,000 home-based businesses in my State, and the hundreds of thousands across this country, are not going to see their concerns addressed; I think we will not be taking advantage of the opportunity to look at the Internet issues objectively, and we will lose that focus and take it off into another area which is, in my view, likely to not produce consensus with respect to the mail-order or catalog issue, nor make the progress we need to with respect to the Internet.

Mr. President, I yield back the time.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Mr. President, I rise in strong support of the amendment offered by my friend from Arkansas. This amendment addresses the issue that is being changed by the Senator from New Hampshire. The second-degree amendment would change things back to the way that they were.

We have to take a look at the Internet sales tax issue for people who might be using this piece of legislation to develop huge loopholes in our current system. I am not talking about changing the system. I am talking about preserving for those cities, towns, counties, and States that rely on sales tax the ability to collect the tax they are currently getting.

We are talking about a 2-year moratorium. Do you know how much the Internet will change in a 2-year period? Right now, with the current technology in the Internet, there are ways I could eliminate every single bit of retail sales tax in the United States, every day, if this bill passes. And I don't think that is our intent.

I don't care if we have 30 amendments; if it needs 40 amendments, we will have to have 40 amendments. The number of amendments has nothing to do with the issue that we are addressing. There are some critical issues here that have to be solved to keep the stability of State and local government—just the stability of it—not increase sales tax, just protect what is there right now.

We introduce these amendments because we don't think there is adequate protection now. An increase in catalog sales, I agree, is a topic for another time. It is very important we don't build electronic loopholes on the Internet, an ever-changing Internet, one that is growing by leaps and bounds, one that is finding new technology virtually every day. What we know as the Internet today is not what we will be using by the time this report comes

out. More people are using it every day.

It is fascinating to me that one of the biggest areas of increased use of the Internet is by senior citizens. It probably has something to do with the quality of entertainment. If they do use computers, they are spending an average of 6 hours a day on the Internet. Part of that is purchasing; part of that is learning.

The stated purpose of this bill is:

To establish a national policy against state and local government interference with interstate commerce on the Internet or interactive computer services, and for other purposes.

Let me repeat that:

To establish a national policy against State and local government interference. . . .

Mr. President, I recognize this body has a constitutional responsibility to regulate interstate commerce. Furthermore, I understand the desire of the bill's sponsors to protect and promote the growth of Internet commerce. Internet commerce is an exciting field. It has a lot of growth potential. The new business will create millions of new jobs in the coming years.

The exciting thing about that for Wyomingites is that our merchants don't have to go where the people are. For people in my State, that means their products are no longer confined to a local market. They don't have to rely on expensive catalogs to sell merchandise to the big city folks. They don't have to travel all the way to Asia to display their goods. The customer can come to us on the Internet. It is a remarkable development, and it will push more growth for small manufacturers in rural America, especially in my State. We are just beginning to see some of the economic potential in the Internet. It is a valuable resource because it provides access on demand. It brings information to your fingertips when you want it and how you want it.

We should probably take another look at using it on the Senate floor, but we need laptops for that; I will save that issue for another day.

Having said that, I do have concerns about the bill before the Senate today. I come to this debate having been the mayor of a small town, Gillette, WY, for 8 years. I later served in the State house for 5 years and the State senate for 5 years. Throughout my public life I have always worked to reduce taxes, to return more of people's hard-earned wages to them.

I am not here to argue in favor of taxes. There were times in Gillette when we had to make tough decisions. I was mayor during the boom time when the size of our town doubled in just a few years. We had to be very creative to be sure that our revenue sources would cover the necessary public services—important services like sewer, water, curb and gutter, filling in potholes, shoveling snow, collecting garbage, mostly water. It is a tough job because the impact of your decision is felt by all of your neighbors. They can look you in the eye. One of the biggest problems with local government is the ''Oh, by the ways.'' You go to dinner and somebody says, ''By the way, I have a little problem. Don't get up and solve it. Tomorrow morning will be fine.'' And tomorrow morning they know if you solved that problem.

Hardly any of those problems is solved without money. When you are the mayor of a small town, you are on call 24 hours a day. You are in the phone book. People can call you at night and tell you that the city sewer is backing up into their house. I was fascinated how they were always sure that it was the city's sewer that was doing it. When they call to say that the power is out, they don't want a delay before it is fixed. When they call to tell you a neighbor has stolen a D–8 Cat and is tearing up the street and driving over sports cars and mailboxes and ripping up sprinkler systems, you have to go to work. Those are exciting things that happen from time to time in cities.

The point is that the government that is closest to the people is also on the shortest time line to get results. I think it is the hardest work. I am very concerned with any piece of legislation that mandates or restricts local government's ability to meet the needs of its citizens. This has the potential to provide electronic loopholes that will take away all of their revenue. It may not seem like a big restriction, it may not exceed the $50 million limit that Congress set in the Unfunded Mandates Reform Act, but it does establish a national policy against State and local government. It does take an affirmative step to tie the hands of local government.

Congress has to be very careful when we pass a law like this. We have to realize the effect of all of those people living at the local level—not the Federal level. I have not met anybody who lives on the Federal level; they all live at the local level.

I am also concerned about the bill's impact on small businesses. My wife Diana and I owned a shoestore on Main Street, Gillette, for 28 years. My wife did most of the managing on that. She greeted the people, she sold the shoes, ran the cash register, swept the floor, all the things that have to be done by a small business.

We recognize the advantage of the Internet for these small businesses, these home-based businesses that were mentioned earlier. Yes, we understand the complications of trying to keep track of every kind of sales tax that is levied across the whole United States regardless of what kind of jurisdiction it is in. That is current law. That is current collection, to some degree, particularly if you have a presence in the State where the product is being sold.

What is a ''presence'' in the State? Internet goes into absolutely every State. There is now the easy capability to set up another corporation in another State that does not have sales tax and still make the sale local, with immediate delivery, and avoid all sales tax through the Internet. That is going to be a problem.

The problem with small business is, we talk about whether a business is 500 employees or just 150 employees. That is not the kind of small business I am talking about. I am talking about sweeping the sidewalk, carrying out the trash, filling out the myriad reams of required Federal paperwork. It really doesn't have much application to your business—probably five employees or less. These are the people who sponsor Little League, the basketball camps, the yearbooks, and all of the other things that happen in municipalities. They donate the raffle prizes and uniforms and they support all kinds of community activity. Every kid in town comes to the local small business and asks for help. Fortunately for America, they donate, and they donate gladly. They serve on the parade committees. They serve on the fair committees. They are the volunteers in the church and in the school and in local government. They are not only the neighbors, they are the customers for a small town for any retailer.

We buy mail-order goods often because they are cheaper; there is no sales tax. That is a part of the pitch that is used. That is like a 5- to 7- to 9-percent reduction.

Congress is now going to decide to prohibit local governments from taxing certain businesses—easy businesses to set up, easy businesses to locate in a State that has no sales tax whatever. We haven't seen anything like this before in the history of the United States, but we are about to see the biggest boom in the Internet that we have ever seen. We need a few amendments to this bill to provide some protection for the current system. I am not talking about expanding, I am talking about the current system.

Are we going to be in the business of picking the tax winners and the tax losers? I am talking about the towns where the people of America live. We know who the losers will be. It will be the small retailer in your town, the one that you rely on to run down and pick up the emergency item.

I do support this amendment. The commission should be allowed to study all of the issues with the Internet, all of the issues related to taxation. They definitely ought to be able to look at those that change with the technology so that the current system of collecting revenues for those towns and States can be preserved. I don't think we have all the answers, or we wouldn't be asking for this bill.

I don't think we are going to have all the answers on the technology that is going to transpire in the next 2 years. So whatever we do, we have to have some amendments that will preserve the way that small business and small towns function at the present time. This amendment will help Congress to

make a decision in the future. It restores language that would be taken out with the Gregg amendment. It is critical for towns, small businesses, and you and me. I urge my colleagues to support it.

I yield the floor.

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

Mr. DORGAN. Mr. President, I rise in support of the second-degree amendment for all of the reasons previously stated by the Senator from Wyoming, the Senator from Arkansas and the Senator from Florida. I have, beginning with the origin of this bill in the Senate Commerce Committee, been very concerned about exactly what the language in this legislation will mean to this country, to our Main Streets, to our States and local governments.

The issue here is a relatively simple one, and I don't need to restate all of the reasons that were offered by the Senator from Wyoming for being concerned about it. But the genesis of this bill was to be concerned about State and local governments applying ''punitive'' tax programs against Internet commerce. They were worried that this growth of the Internet and the expansion of commerce on the Internet would be retarded by local governments or State governments, seeing that as a big, juicy target, and apply some kind of new discriminatory or punitive tax regime upon it. Therefore, they said, let us at least have a time-out until we understand how to impose some sort of tax system that is fair to the Internet sellers and that does not discriminate against the Internet sellers.

Well, the question here, then, is, if in this legislation where you have a time-out, or a moratorium, and you create a commission during that moratorium to investigate or evaluate all of these issues, why then would you say to that commission that you can take a look at all of this, you can take a look at what this means with respect to Internet commerce, but you cannot look at the other issues; you cannot look at how it relates, Internet commerce versus mail-order firms; you cannot look at how it relates to Internet commerce versus Main Street sellers? What kind of logic is that? If you are going to have a commission to try to figure out how this piece fits in the puzzle, then make sure all the pieces are there. That is all this second degree says—make sure all the pieces are there.

The people who are here saying we don't want to solve this puzzle are people who have a vested interest. They are here, frankly, because of mail-order firms and the Internet. They are saying we don't want anybody to look at all of this. We want a moratorium for the Internet over here, and over here we don't want anybody discussing mail-order issues.

The Senator from Wyoming said he and his wife had a shoestore. I didn't know that. I have never been to their shoestore. I have never shopped in Gillette, WY, and I probably never will shop there. But the issue he raises is essential to this point. When he and his wife opened the door in the morning and displayed shoes for sale in that store, they knew a couple of things: They rented the building, they hired the employees, and they bought an inventory. They opened their door and said: We are in business on Main Street in Gillette, WY. They knew that when somebody came through the door and took their shoes off and got fitted up and bought a brand new shiny pair of shoes, when they paid for it, they had to apply the local sales tax. That is what you have to do on Main Street. You are a tax collector for the local consumption tax in the State of Wyoming. I didn't hear him complain about that. That is what they do on Main Streets all across this country. I believe 45 States have a sales tax.

Another thing he and his wife knew, I am sure, and he is not here to answer the question, but I am sure they knew that if someone three blocks away decided they were not going to go to Main Street to buy shoes today, they were going to buy them through a mail-order catalog, in most cases they will buy those through the catalog without paying a local sales tax or a State sales tax, which means that his local business ended up being undersold by someone, perhaps by 4 percent, maybe 6, or maybe even 7 or 8 percent, because the catalog seller, in most cases, didn't charge the State sales tax.

Is that discriminatory vis-a-vis the Main Street businessperson? I think it is. Of course, it is. Does it mean there is not a tax on the transaction? No, there is a tax. When they mail that pair of shoes from the mail-order catalog house to the person in Gillette, WY, or Fargo, or Bismarck, ND, the person who receives that pair of shoes has a responsibility in most every State to pay a use tax. Of course, they don't know that and they won't ever pay that, but that is the responsibility.

The net result of all of this is that the Main Street folks will end up always being at a disadvantage with respect to taxation versus those who are doing business elsewhere, those who have constructed a catalog and haven't hired the employees, haven't rented a place to do business, and they haven't hired local folks; they have just operated through a catalog.

I happen to think catalog sellers are very important to this country. Frankly, they are wonderful marketers. I think it is wonderful for a lot of people in this country to be able to shop that way. There is no question about that. I think when you look at the tax issue here—whether it is buying it through a catalog or going through a computer and getting on the Internet and buying it through a seller on the Internet or buying it on Main Street—there ought to be some symmetry here in the tax treatment to make sure the tax treatment is not going to retard the growth of the business on Main Street, it is not going to retard the business growth of people who have catalogs and the business opportunities of the people on the Internet.

But what is being said in the underlying amendment is, let's take a look at this only with respect to how it relates to the Internet, and you must ignore everything else. My friend, the Senator from Oregon, says, well, we want to explore everything. But, of course, this says you cannot, you must not; in fact, we are going to fight to the end here to see that you are unable to explore everything. That doesn't make any sense to me. That is what the second-degree amendment is about.

The Senate Finance Committee got this right. It passed a bill, came to the floor, created a commission and said, take a look at all of this. We will have a commission that evaluates and studies all of this with respect to the tax neutrality, with respect to the opportunities in growth, and the impact of these taxes on a wide range of commerce—not just Internet commerce, but a wide range of commerce.

The Senate Finance Committee got it right. The underlying amendment now offered by a couple of good legislators, I think for understandable reasons, would say that the Finance Committee is wrong; this commission must not, cannot, and will not be able to study the whole range of circumstances. The second degree says, no, we don't accept that; we want to insert language that is effectively the language coming out of the Senate Finance Committee.

I say again, as I did yesterday when the Senator from Florida was on the floor, and I say it now to the Senator from Arkansas, who along with the Senator from Florida and the Senator from Wyoming were primary sponsors of the second degree, in my judgment, they are dead right. They are absolutely right on target. I hope that the Senate, notwithstanding whatever curves and straightaways we find with this legislation—I assume this legislation will be worked out in the coming hours and days and, perhaps, be passed tomorrow, and I hope it will be passed in a satisfactory form.

But one of the ways that this legislation will be made a better piece of legislation is to pass this second-degree amendment and restore it to the condition it was in when it came out of the Senate Finance Committee. These folks spent a lot of time on tax issues in the Finance Committee. I used to be on the House Ways and Means Committee in the other body for 10 years, and I spent a lot of time on tax issues. I think the Senate Finance Committee got it right. They said, study these issues, evaluate them all, understand the consequences of them all, and then, with that knowledge, let's make some judgments. That is the purpose of the time-out; that is the purpose of the moratorium.

I have, as the Senator from Oregon stated, spent a fair amount of time

with him, and I think we have made a lot of progress on these issues.

My expectation is we will pass a piece of legislation that is an acceptable piece of legislation that has a timeout moratorium. But it must, in my judgment, include this in order to really give us the assurance that that moratorium is used effectively by a commission that has divisions to look at all of these issues.

I yield the floor.

Mr. LIEBERMAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. I thank the Chair.

Mr. President, I rise to oppose the amendment offered by the Senator from Arkansas and others and to express my support of the underlying amendment offered in the first instance by the Senator from Arizona, the chairman of the committee. I am proud to be a cosponsor of that one.

I was a cosponsor of the initial legislation, one of the pieces of legislation earlier in the session, along with my colleague from New Hampshire, Senator GREGG, which had the intention of trying to create some order and predictability and a little space for this extraordinary new area of economic activity, activity which has benefited so many people around our country, which is to say, e-commerce over the Internet.

The aim was to say to the taxing jurisdictions, of which there are thousands and thousands and thousands—30,000, as a matter of fact—potential taxing jurisdictions which exist in the United States, catch your breath, sit back, and let this new sector of our economy—Internet commerce, e-commerce, which the United States is heading and which has benefited so many people, which has created so many jobs—let it grow out of its infancy before we begin to put the teeth of the taxman into various parts of its anatomy; and let's let this commission begin to grow some ground rules for the consistent and fair handling of this new area of economic activity.

The fact is today that an Internet service provider, or a merchant selling goods or services over the Internet, has no way of knowing in advance whether a State decides to tax them. As an example, in New Mexico, Internet access charges are subject to New Mexico gross receipts taxes. In Ohio, their sales are taxed as an electronic information service; in Tennessee, it is a telecommunications service; in my own State of Connecticut, as a computer and data processing services. Texas officials, I gather, have threatened to tax transactions that go through Internet servers in its State, even if the buyer and seller, in conventional terms, are not located in the State of Texas.

The uncertainty of this tax liability is real and is having what you would expect—a negative, destabilizing effect on this business. Peat Marwick, a respected, recognized firm, just released a survey of industry executives of companies that sell over the Internet. Fifty percent of the executives said that the current State tax ambiguities and conflicting tax treatment of electronic commerce among the States are inhibiting their companies' involvement in electronic commerce. Ninety percent describe the current State sales tax procedures with regard to electronic commerce as ''overly burdensome,'' and 75 percent expressed their concern that State and local tax laws will place their companies at a disadvantage. It is because the industry is in its infancy.

A predictable legal environment is exactly what the President's Report on Electronic Commerce recommended that we promote internationally. In fact, the administration has been sending out emissaries over the last year to persuade international organizations and individual countries to agree to create a predictable legal environment for the spread of electronic commerce. That is not only fair, it is good for American business, which happens to have a lead over business in any other countries in the effective use of the Internet.

What the underlying bill, the underlying amendment, is saying is that it is time that we create the same sense of predictability here in the United States that our Government is urging on countries around the world. That is what this commission would do.

The commission is asked to draft model State legislation that creates uniform definitions and categories of commercial transactions on the Internet so that States will be using the same vocabulary when it comes to categorizing the tax liabilities of an Internet company, or transaction—not unifying a tax rate among States, but creating a legal environment in which companies can do business.

The National Commission on Uniform State Legislation has been working for the past 2 years on updating the treatment of Internet transactions according to various State laws. But it has not looked directly at taxes. This commission that would be created by this legislation would work with the national commission and other groups that have already been active in trying to update laws to be certain that Internet commerce is treated fairly. We would extend their work through this commission in the tax arena.

I want to stress that the measure introduced by the distinguished chairman of committee, the Senator from Arizona—Senator GREGG, I, and others are proud to be cosponsors—does not preclude the commission created by this legislation from considering the question of nexus or taxation of remote sales. The danger in this amendment before us, the second-degree amendment, is that it singles these particular questions out as a requirement and thereby, I think, puts the commission in danger of falling into a very dense thicket.

A battle has been waging for more than three decades, and taken right to the Supreme Court at one point, as to how remote sales by catalog-telephone sales would be taxed by the 30,000 taxing jurisdictions in the States in the country. In so doing, I think the amendment threatens what is and should be the focus of the commission, which is to direct its attention on this extraordinary new sector of commerce, Internet commerce, and it runs the risk really of getting the commission so tied up in the thicket of remote sales that it will never really contribute what we hope it will to creating some order and predictability in e-commerce.

Mr. President, the fact is that this commission that is created by the underlying legislation may well—I think we who are its sponsors hope it will—create some language to reach some judgments that may in fact offer some counsel and help in this ongoing debate about taxation of remote sales, but let that happen naturally—that is my hope and prayer—as opposed to forcing it into the second-degree amendment in a way that would run the risk of destroying the underlying purpose of the proposal, and in that sense doing damage to Internet commerce and all who both benefit from it as consumers and benefit from it because they work in companies that are using it.

I want to mention one other matter before closing. That is this: There are times when we talk about Main Street and the effect of Internet commerce on Main Street as if it were, one wins and one loses.

The reality is that e-commerce has the potential to expand the winner's circle, to make more winners. I want to cite real cases from Connecticut which I learned about in the last 6 months to a year, and I think are typical of what is happening all over the country.

First, let me say that a recent survey in Connecticut found that 38 percent of small- and medium-sized companies have a web page—almost two out of five. A little over half of those are using their web page to sell goods and services—right now. And 21 percent are planning to add a web page next year. I am sure those numbers are going to grow dramatically in coming years.

The fact is, insofar as some folks who are in taxing jurisdictions and the concern of this amendment has to do with treatment of direct mail-order sales or phone sales, if the mail-order catalogs that I get at my house are any indication of what the future is, I am being truly encouraged, aggressively encouraged by those catalogs instead of calling up, to use the Internet. So I think more and more of that kind of commerce will be done by e-commerce.

But let me give you two great examples from home about the effect that the Internet is having on Main Street. A small company in old Broad Brook, CT, beautiful town by the water on Long Island Sound, called Stencil Ease, family-owned, 18 employees, sells stencils for home decorating and crafts. It

started a web page in 1996. They have been averaging 100 to 200 hits a day. Their sales increased 10 percent the first year due to the web site and 20 percent the next year.

Here is a startling story in the second one—Coastal Tool & Supply. I have been there. It is a small, family-run hardware store in Hartford, CT, capital city. It was threatened, interestingly, by a location nearby of one of the large chain hardware stores. It was having a hard time. They decided to go on the Internet, in a sense to leap over the big competitor down the street. I think it was Home Depot, but it doesn't matter—a big competitor down the street and in a sense enter the global main street and hired a very able young man, skilled in computer matters, who put their catalog essentially on the Internet. Sales have grown almost 500 percent. They are doing more business over the Internet than they are from people coming into the store.

So this is what the future holds, and it is a situation, if we do it right, where not only the big companies, but a lot of mom-and-pop stores and businesses are going to be able to benefit from Internet sales.

Now, as it grows, it will actually have an effect on taxing jurisdictions, and we will naturally, in the normal order of business, want to create an opportunity for equity and to protect State and local jurisdictions that we represent. But this is not the time to do it, and this amendment is not the place to do it. Let's let this commission deal with the unique problems of e-commerce.

Mr. WYDEN. Will the Senator yield?

Mr. LIEBERMAN. I will be glad to yield to my friend from Oregon.

Mr. WYDEN. I want to say that I think the Senator has made an especially effective approach and tell him that hardware account he gave is essentially what this legislation is all about. There has been discussion about who benefits here, huge corporations and the like. The people who benefit here are the 100,000 home-based businesses in my State, the hardware store that the Senator from Connecticut is talking about.

The reason why that is the case is that the Internet is a great equalizer for those small businesses. The small businesses now that we are seeing in the State of the Senator from Connecticut and rural Oregon are having great difficulty today competing against the Wal-Marts of the world. They do not have huge advertising budgets like Wal-Mart. They don't have batteries of lawyers and accountants. These are small, entrepreneurial operations that now look at the Internet as a tool that can trampoline them into extraordinary economic opportunities they have never had.

Without this legislation and the good work that has been done by the Senator from Connecticut and the Senator from New Hampshire, if you are a small, home-based business in Oregon or Connecticut, you may well face a good chunk of the thousands of taxing jurisdictions in our country looking at your business as a cash cow.

One of our colleagues said the threat here is the World Wide Web would become the ''World Wide Wallet'' if that kind of approach went forward.

So what the Senator was talking about with respect to that hardware store account is why I introduced this legislation early in 1997. That is the very kind of operation that I think we ought to be looking to grow in the 21st century.

I thank the Senator for yielding me this time. I heard his account of the hardware store from the Cloakroom, and I think some have said—in fact, I heard it again today—that this was about Amazon.com or someone like that. Those people are not going to be in need of this kind of approach. This is going to benefit the small entrepreneurs, the home-based business, the kind of person the Senator from Connecticut is talking about. I thank him for yielding me this time.

Mr. LIEBERMAN. I thank the Senator from Oregon for his comments. I thank him for his leadership. Senator GREGG and I were happy to merge together with the work the Senator from Oregon and the Senator from Arizona have done.

I want to end with one story the Senator from Oregon has stimulated in my memory when I visited that hardware store. It shows how you not only jump over the big store down the block but into the global shopping mall.

One of their favorite stories—and this is not a pure market example because the particular customer I am about to refer to is from a Middle Eastern country—is about a man who happened to work for his country's national airlines, so his trip here was paid for, but he needed some large, heavy tools. He went on the Internet, found his way to the Coastal Tool & Supply web site, competitively priced, figured out the advantage, was on a flight to New York as part of his normal work, got off the plane, rented a truck, drove up to Hartford, bought the tools that he needed, drove back, put them on the plane, and went back to the Middle East, all smart shopping and good for business.

So I hope that our colleagues will resist the allures of this second-degree amendment and will not disrupt the noble and, I think, very necessary intention of the underlying bill. We can come back some other day, hopefully, informed by the work of the commission created herein to deal with the border problems that I know concern the Senator from Arkansas and the other cosponsors of the amendment.

I yield the floor.

Mr. HUTCHINSON addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. HUTCHINSON. I thank the Chair. I just want to make a few closing observations of my perspective on this second-degree amendment and clarify a few things that I think are not representative at all of what this second-degree amendment does.

May I just say also, being the Senator from the State of Arkansas and being from the hometown in which Wal-Mart stores are nationally headquartered, world wide headquartered, and Wal-Mart has been disparagingly mentioned several times——

Mr. WYDEN. Will the Senator yield?

Mr. HUTCHINSON. Not at this time. In my office in the Dirksen Building I have a hanging portrait of the 5-&-10-cent store where Sam Walton started the Wal-Mart stores. There is nothing in this amendment that is antientrepreneur. The fact is that Wal-Mart, with their huge advertising budget, as it was alluded to, started as a little 5-&-10-cent store, as a mom-and-pop store in Arkansas. That is an American success story which ought to be applauded, not disparaged. Every American ought to have that opportunity, to have that dream. We ought not with legislation undercut that little Main Street store that cannot be replicated, cannot be replaced. No matter how great the Internet is, no matter how great catalogs are, they cannot replace that store on Main Street giving to the little league and supporting the local efforts and local initiatives.

A couple other things. It has been implied that somehow this amendment, this second-degree amendment would mandate that they focus the study, the commission focus their study on interstate sales. Nothing could be further from the truth. If you look at the bill, it says, and I quote, ''may include in the study *under subsection,'' may include a study of. It is, in fact, the Gregg amendment, the McCain-Gregg amendment that excludes even their authorization to study the impact, the obvious impact of remote sales including catalog, including Internet, all of the Internet remote sales, its impact upon small businesses and upon local and State government. It simply says ''may.'' It is simply authorizing, permissive language. It is, in fact, the House bill that mandated that they study this area and its impact, because it is so obvious the impact that it could potentially have, and that any study that should be done, if it is in fact to be a thorough study, must include this area.

It is the proponents of the Gregg amendment who would say what the Finance Committee did by a vote of 19 to 1 should be overturned. The Finance Committee, led by Senator ROTH, included a study of these issues—and they should be included. They should be studied. The language in the bill says ''thorough study.'' How can you have a thorough study and then delete the area of interstate sales? It puzzles me. How can anyone object to having a broader study that would include all of the various issues involved in a very complex subject?

It has been implied that somehow this second-degree amendment, which would say this issue ought to be studied, is protax. My goodness, anybody who has ever looked at TIM HUTCHINSON's record in the statehouse in Arkansas, the U.S. House of Representatives, and the U.S. Senate, would have a hard time believing this amendment I am offering is protax or somehow a roadmap to higher taxes. Nothing could be further from the truth. We are not prejudging any kind of conclusions or any kind of recommendations that this commission might make. And, I remind my colleagues, it requires a two-thirds vote of the members of the commission to make any recommendation, and that is all they can make, is a recommendation. The final say remains with the Congress.

How in the world can you say this somehow is going to lead to higher taxes or somehow thwart the growth of the Internet? And that, may I say, has been another mischaracterization of this amendment—that it is somehow not only protax but anti-Internet.

We have applauded, and I applaud, the growth of the Internet. I quoted the statistics, from $8 billion in 1998 to the estimated $300 billion in sales in the year 2002; that is a good thing. But while it is a good thing, we should not be so blind as to think it is not going to have serious consequences, serious impacts, that ought to be examined in advance.

I support the bill. I support the timeout. I support the pause. I support the moratorium. But I also believe, if we are going to have a study, it ought to truly be a thorough study. It ought not say look at everything but don't look at the impact upon business, don't look at the impact upon the city government or the State government. It ought to truly be a thorough study. You cannot deal with these issues in a vacuum. They are interrelated, all of these, and they need to be, in fact, thoroughly studied.

Let me just conclude by saying I thought Senator ENZI's comments were moving. I, like Senator DORGAN, did not realize that he and his wife operated a little Main Street shoestore for over 20 years in Gillette, WY. I did not know that. I had a great appreciation for Senator ENZI. I have a greater appreciation now. But I think also that, as he paid those sales taxes day in and day out, as he made the struggles that any small business person makes in order to stay in existence, as he contributed to the Little League, as he contributed to the United Way, as he did everything that only a physical entity actually being right there in the community can do—irreplaceable—that we need to consider them, we need to think about them, as we pass this needed legislation.

I believe if they will simply look at the language of the second-degree amendment restoring what the Finance Committee did by a 19-to-1 vote and saying this is an area that ought to be examined, ought to be looked at, then I think my colleagues will realize that in fact it does make good sense and they will support it. I ask for their support.

I yield the floor.

The PRESIDING OFFICER (Mr. SESSIONS). The Senator from Arizona.

Mr. MCCAIN. Mr. President, the amendment does not say anything about what to do or not to do. What we are talking about here is whether the commission should say we should overturn the Quill decision. That is what we get down to, if we want to get through all the rhetoric and language about this. We don't think the Quill decision should be overturned. Obviously, the proponents of the amendment do, and that really is, to a significant degree, what this amendment is all about.

Mr. President, I move to table the amendment and ask for the yeas and nays.

Mr. BUMPERS. Mr. President, will the Senator withhold for about 2 minutes?

Mr. MCCAIN. I will be glad to withhold for 2 minutes before I make the motion to table.

Mr. BUMPERS. I thank the distinguished manager very much.

Mr. President, this is really a strange scenario for me. I have fought for years to allow States to do exactly what the Supreme Court, in the Quill decision, said we had the right to do, and that was to allow States to make mail order houses collect sales taxes on merchandise being shipped into our respective States. That is what the Supreme Court said. We would not be overturning the Quill decision. We would simply be taking advantage of what the Supreme Court said we had a right to do: Remove the interstate commerce clause as a burden and allow the States, 45 of whom have sales taxes on merchandise from out of State—allow those States who have passed those laws to implement them. They cannot be implemented. We are saying we do not care what kind of laws you pass at the State level, we are not going to allow you to implement them.

Last week we once again killed my amendment to allow states to mandate that remote sellers collect the taxes they ought to. Yesterday, the Senate decided that we cannot even make Internet sellers alert consumers to the fact that there is a sales tax in the State. We cannot even tell them to alert people to the fact that somebody may knock on their door from their state revenue department and try to collect the unpaid use tax. Think about that. Mr. President, 45 States have a sales tax and we voted yesterday not to even require Internet sellers to tell consumers there may be a tax on their purchases.

Now we come here today saying we cannot even study it. My God, how far are we going to go?

The PRESIDING OFFICER. The 2 minutes has expired.

Mr. MCCAIN. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Arizona. The yeas and nays have been ordered.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Ohio (Mr. GLENN) and the Senator from South Carolina (Mr. HOLLINGS) are necessarily absent.

The PRESIDING OFFICER (Mr. GRAMS). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 30, nays 68, as follows:

[Rollcall Vote No. 304 Leg.]

YEAS—30

Boxer	Gregg	Moseley-Braun
Burns	Hagel	Murray
Campbell	Kempthorne	Shelby
Coats	Kerry	Smith (NH)
Collins	Kohl	Smith (OR)
Craig	Kyl	Snowe
Dodd	Lautenberg	Stevens
Faircloth	Lieberman	Thompson
Frist	McCain	Torricelli
Grams	McConnell	Wyden

NAYS—68

Abraham	Dorgan	Levin
Akaka	Durbin	Lott
Allard	Enzi	Lugar
Ashcroft	Feingold	Mack
Baucus	Feinstein	Mikulski
Bennett	Ford	Moynihan
Biden	Gorton	Murkowski
Bingaman	Graham	Nickles
Bond	Gramm	Reed
Breaux	Grassley	Reid
Brownback	Harkin	Robb
Bryan	Hatch	Roberts
Bumpers	Helms	Rockefeller
Byrd	Hutchinson	Roth
Chafee	Hutchison	Santorum
Cleland	Inhofe	Sarbanes
Cochran	Inouye	Sessions
Conrad	Jeffords	Specter
Coverdell	Johnson	Thomas
D'Amato	Kennedy	Thurmond
Daschle	Kerrey	Warner
DeWine	Landrieu	Wellstone
Domenici	Leahy	

NOT VOTING—2

Glenn	Hollings

The motion to lay on the table the amendment (No. 3760), as modified, was rejected.

Mr. MCCAIN. Mr. President, the Senate has spoken. I move that we adopt the underlying amendment and the pending amendment.

The PRESIDING OFFICER. The question is on the second-degree amendment.

Without objection, the amendment is agreed to.

The amendment (No. 3760), as modified, was agreed to.

Mr. MCCAIN. Mr. President, I move to reconsider the vote.

Mr. DORGAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3722, AS AMENDED

The PRESIDING OFFICER. The question is on the first-degree amendment.

The amendment (No. 3722), as amended, was agreed to.

Mr. MCCAIN. Mr. President, I move to reconsider the vote.

Mr. DORGAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENTS NOS. 3732 AND 3733, EN BLOC

Mr. MCCAIN. Mr. President, I send two amendments to the desk, en bloc, and ask for their immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Arizona [Mr. MCCAIN] proposes amendments numbered 3732 and 3733, en bloc.

Mr. MCCAIN. Mr. President, I ask unanimous consent that reading of the amendments be dispensed with.

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

The amendments are as follows:

AMENDMENT NO. 3732

(Purpose: To modify the duties of the Commission)

On page 22, line 2, strike ''interstate'' and insert ''instrastate, interstate''.

AMENDMENT NO. 3733

(Purpose: To modify the report of the Commission)

On page 25, line 12, insert ''Any recommendation agreed to by the Commission shall be tax and technologically neutral and apply to all forms of remote commerce.'' after ''this title.''.

Mr. MCCAIN. These have been accepted by both sides. I know of no further debate.

The PRESIDING OFFICER. If there is no further debate, without objection, the amendments are agreed to.

The amendments (No. 3732 and No. 3733), en bloc, were agreed to.

Mr. MCCAIN. Mr. President, we are now down to basically two issues about which the Senator from Wyoming, the Senator from North Dakota, and the Senator from Oregon are deeply concerned. We are negotiating those. We hope we can get an agreement on those so that we can finish up on this legislation. If not, we will probably have votes on those two issues. But we have resolved the remaining amendments, except for those two. There is more than one amendment associated with those two issues. But if we can get that agreement within the next half hour or so, I think we can move to final passage. I thank the Senator from North Dakota for his cooperation with this difficult issue.

I yield the floor.

Mr. DORGAN. Mr. President, it is also my hope that in a relatively short period of time we will be able to resolve the remaining issues. We have made a lot of progress on the bill. I will say again that the Senator from Arizona has done an excellent job, and the Senator from Oregon and others have pushed very hard to get us to this point. There are other significant issues, but I expect to get them resolved in relatively short order. I hope we will make the final progress necessary on this piece of legislation.

I yield the floor.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. LOTT. Mr. President, we are working on a unanimous consent agreement now that we hope we can get approved, which would allow us to get to a conclusion and a final vote on the Internet tax freedom bill. I commend all who have been involved, including Senators MCCAIN, DORGAN and WYDEN. I believe we can actually get to a conclusion. There has been the possibility that it would be tangled up in other matters, but I think maybe we have an agreement that will allow us to complete that.

UNANIMOUS CONSENT REQUEST—S.J. RES. 40

Mr. LOTT. Mr. President, I ask unanimous consent that the majority leader, after consultation with the Democratic leader, may proceed to the consideration of S.J. Res. 40, proposing an amendment to the Constitution of the United States prohibiting the physical desecration of the flag; further, that there be 2 hours of debate equally divided on the resolution, with no amendments or motions in order, and at the conclusion or yielding back of time, the Senate proceed to vote on passage of the resolution.

The PRESIDING OFFICER. Is there objection?

Mr. KERREY. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

UNANIMOUS CONSENT REQUEST—S. 505

Mr. LOTT. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of S. 505, and that the Senate then proceed to its immediate consideration.

The PRESIDING OFFICER. Is there objection?

Mr. DODD. Mr. President, reserving the right to object, is this the copyright bill?

Mr. LOTT. Yes.

Mr. DODD. I don't want to object, but I have been asked about clearing this. Maybe a couple of us have questions about this. If the majority leader will withhold for about 15 minutes so we might be able to clear it up, we would appreciate it.

Mr. LOTT. That is a reasonable request. I will withhold on that. I had believed that we cleared it with both sides of the aisle, but some Members may not have had a chance to check on it.

Mr. LEAHY. Mr. President, I take the blame for that. I assumed it had been cleared. The Senator from Connecticut said he had an issue, so if the majority leader will give us a few minutes to see if we can work it out.

Mr. LOTT. I will do that.

Let me just say again that I hope we can get this cleared because it looks like, after a lot of hard and good work by a number of Senators—Senator HATCH worked very hard on this—that we are now in the position of being able to move the music licensing issue, the copyright bill, the international property issue, the international treaty; those are three major achievements that I thought a week ago we probably could not get done. They are all interrelated, actually. I hope we can get clearance to move forward on these issues. This is a reasonable request, and I withhold the unanimous consent request at this time.

Mr. LEAHY. Mr. President, will the Senator from Mississippi yield to me for a moment on this?

Mr. LOTT. I yield to the Senator from Vermont.

Mr. LEAHY. The Senator from Mississippi is right. He has been working very hard with both sides of the aisle to clear the items he has mentioned. As he knows, we have been working very hard, as well. These are extraordinarily complex pieces of legislation. Unfortunately, the more complex they are, the more like a Rubik's Cube they are. I think we are extremely close, and we will continue to work with him. I compliment him on his efforts to help work these out.

Mr. LOTT. Again, I say that I appreciate the help from Senator LEAHY, and I also urge that we do this as soon as we can, because, as you know, at this late stage of the game, sometimes people come in with unrelated issues that start causing problems. Let's do it as quickly as we can.

I yield the floor.

OBJECTION TO 2–HOUR TIME AGREEMENT ON S.J. RES. 40

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I will be very brief on this. There was another unanimous consent request just now to which the distinguished senior Senator from Nebraska objected. I join in that objection. The Senator from Nebraska is a distinguished veteran. In fact, he is the only person I have ever served with in either body that has been awarded the Congressional Medal of Honor. He is a servant of his country in every sense of the word.

Mr. President, the reason we were objecting is not that people would hesitate to vote on this, but a 2-hour proposal is not realistic. We are dealing here with a proposal to amend the Constitution of the United States. That is something that, as Madison put it, should be reserved for ''certain great and extraordinary occasions.''

This is a serious issue—one deserving of our full attention, our most thoughtful consideration, and our most serious debate. Instead, we are asked to consider this at the most hectic time of