

United States not otherwise appropriated, the Secretary of the Treasury shall pay to the Bureau of the Census \$10,000,000 for each of fiscal years 1996, 1997, 1998, 1999, and 2000 to carry out subsection (a).

SEC. 908. SECRETARIAL SUBMISSION OF LEGISLATIVE PROPOSAL FOR TECHNICAL AND CONFORMING AMENDMENTS.

Not later than 90 days after the date of the enactment of this Act, the Secretary of Health and Human Services shall submit to the appropriate committees of the Congress a legislative proposal providing for such technical and conforming amendments in the law as are required by the provisions of this Act.

THE DEPARTMENT OF THE INTERIOR APPROPRIATIONS ACT FOR FISCAL YEAR 1996

BROWN AMENDMENT NO. 2283

Mr. GORTON (for Mr. BROWN) proposed an amendment to the bill (H.R. 1977) making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1996, and for other purposes; as follows:

Insert at page 126, between line 7 and line 8:

"(g)(1) It is the policy of the Congress that entrance, tourism, and recreational use fees for the use of Federal lands and facilities not discriminate against any State of any region of the country.

"(2) Not later than October 1, 1996, the Secretary of the Interior, in cooperation with the heads of other affected agencies shall prepare and submit to the Senate and House Appropriations Committees a report that—

"(A) identifies all Federal lands and facilities that provide tourism or recreational use; and

"(B) analyzes by State and region any fees charged for entrance to or for tourism or recreational use of Federal lands and facilities in a State or region, individually and collectively.

"(3) Not later than October 1, 1997, the Secretary of the Interior, in cooperation with the heads of other affected agencies, shall prepare and submit to the Senate and House Appropriations Committees any recommendations that the Secretary may have for implementing the policy stated in subsection (1)."

CHAFEE AMENDMENT NO. 2284

Mr. GORTON (for Mr. CHAFEE) proposed an amendment to the bill H.R. 1977, supra; as follows:

On page 10, line 16 of the bill, strike "enacted," and insert "enacted or until the end of fiscal year 1996, whichever is earlier."

GORTON AMENDMENTS NOS. 2285–2289

Mr. GORTON proposed five amendments to the bill H.R. 1977, supra; as follows:

AMENDMENT NO. 2285

On page 115, line 10, strike "draft" and insert in lieu thereof "final".

AMENDMENT NO. 2286

On page 80, lines 5 through 16, vitiate the Committee amendment and restore the House text.

AMENDMENT NO. 2287

On page 10, line 15 of the bill, strike "Endangered Species Act" and insert "Endangered Species Act of 1973, (16 U.S.C. 1533)".

AMENDMENT NO. 2288

On page 55, line 14, insert "not" after "shall".

On page 55, line 15, delete "action" and insert "actions".

On page 55, line 16, delete "judgment" and insert "judgments".

On page 55, line 16, delete "has" and insert "have".

AMENDMENT NO. 2289

On page 76, after line 23, insert the following: None of the funds appropriated under this Act for the Forest Service shall be made available for the purpose of applying paint to rocks, or rock colorization; *Provided*, That notwithstanding any other provision of law, the Forest Service shall not require of any individual or entity, as part of any permitting process under its authority, or as a requirement of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4231 et seq), the painting or colorization of rocks.

GORTON (AND OTHERS) AMENDMENTS NO. 2290–2291

Mr. GORTON (for himself, Mr. MCCAIN, Mr. INOUE, and Mr. DOMENICI) proposed two amendments to the bill H.R. 1977, supra; as follows:

AMENDMENT NO. 2290

On page 31, lines 3 through 7, delete the Committee amendment.

On page 31, line 15, delete "\$997,221,000" and insert "\$1,260,921,000".

On page 32, line 13, delete "\$35,331,000" and insert "\$62,328,000".

On page 32, lines 15 through 17, delete the Committee amendments.

On page 34, lines 4 through 11, delete the Committee amendment.

On page 36, line 7, delete the Committee amendment.

On page 36, lines 9 through 10, restore "; acquisition of lands and interests in lands; and preparation of lands for farming".

On page 36, line 11, delete "\$60,088,000" and insert "\$107,333,000".

On page 36, lines 12 through 16, delete the Committee amendment.

On page 36, lines 20 through 23, delete the Committee amendment.

On page 37, lines 22 through page 38, line 23, delete the Committee amendment.

On page 37, line 26, of the matter restored, strike "\$75,145,000" and insert "\$82,745,000".

On page 38, line 1 of the matter restored, strike "\$73,100,000" and insert "\$78,600,000".

On page 38, line 11 of the matter restored, strike "\$1,000,000" and insert "\$3,100,000".

On page 44, lines 11 through 16, delete the following: "including expenses necessary to provide for management, development, improvement, and protection of resources and appurtenant facilities formerly under the jurisdiction of the Bureau of Indian Affairs, including payment of irrigation assessments and charges and acquisition of water rights".

On page 44, line 16, delete "\$280,038,000" and insert "\$16,338,000" in lieu thereof.

On page 44, line 16, delete "\$15,964,000" and insert "\$15,891,000" in lieu thereof.

On page 44, lines 18 through 19, delete ", attorney fees, litigation support, and the Navajo-Hopi Settlement Program".

On page 45, lines 7 through 16, delete beginning with "Provided" on line 7 and ending with "1997" on line 16.

On page 45, lines 18 through 19, delete ", attorney fees, litigation support, and the Navajo-Hopi Settlement Program".

Delete the Committee amendment beginning on page 45 line 23 through page 48 line 8.

AMENDMENT NO. 2291

On page 35, beginning on line 11, delete after the word "area" (beginning with "Provided") and all that follows through "Appropriations" on line 22.

MCCAIN AMENDMENT NO. 2292

Mr. MCCAIN proposed an amendment to the bill H.R. 1977, supra; as follows:

Strike all in the committee amendment on page 19, lines 8–14 and insert in lieu thereof he following: "Provided further, That funds provided under this head, derived from the Historic Preservation Fund, established by the Historic Preservation Act of 1966 (80 Stat. 915), as amended (16 U.S.C. 470), may be available until expended to render sites safe for visitors and for building stabilization".

BUMPERS (AND OTHERS) AMENDMENT NO. 2293

Mr. BUMPERS (for himself, Mr. LAUTENBERG, Mr. LEVIN, Mr. BRADLEY, Mr. FEINGOLD, and Mr. ROBB) proposed an amendment to the bill H.R. 1977, supra; as follows:

Add the following at the end of the language on lines 16–21 on page 128 proposed to be stricken by the Committee amendment: "The provisions of this section shall not apply if the Secretary of Interior determines that, for the claim concerned: (1) a patent application was filed with the Secretary on or before the date of enactment of the fiscal year 1995 Interior Appropriations Act, and (2) all requirements established under Sections 2325 and 2326 of Revised Statutes (30 U.S.C. 29 and 30) for vein or lode claims and Sections 2329, 2330, 2331 and 2333 of the Revised Statutes (30 U.S.C. 35, 36 and 37) for placer claims, and Section 2337 of the Revised Statutes (30 U.S.C. 42) for mill site claims, as the case may be, were fully complied with by the applicant by that date."

CRAIG (AND OTHERS) AMENDMENT NO. 2294

Mr. CRAIG (for himself, Mr. REID, and Mr. BRYAN) proposed an amendment to the bill H.R. 1977, supra; as follows:

Strike all the language in the amendment and insert in lieu thereof the following:

"SEC. (a). FAIR MARKET VALUE FOR MINERAL PATENTS.

"Except as provided in subsection (c), any patent issued by the United States under the general mining laws after the date of enactment of this Act shall be issued only upon payment by the owner of the claim of the fair market value for the interest in the land owned by the United States exclusive of and without regard to the mineral deposits in the land or the use of the land. For the purposes of this section, "general mining laws" means those Acts which generally comprise chapters 2, 11, 12, 12A, 15, and 16, and sections 161 and 162, of Title 30 of the United States Code, all Acts heretofore enacted which are amendatory of or supplementary to any of the foregoing Acts, and the judicial and administrative decisions interpreting such Acts.

"SEC. (b). RIGHT OF REENTRY.

"(1) IN GENERAL.—Except as provided in subsection (c), and notwithstanding any other provision of law, a patent issued under subsection (a) shall be subject to a right of

reentry by the United States if it is used by the patentee for any purpose other than for conducting mineral activities in good faith and such unauthorized use is not discontinued as provided in subsection (b)(2). For the purposes of this section, the term "mineral activities" means any activity related to, or incidental to, exploration for or development, mining, production, beneficiation, or processing of any locatable mineral or mineral that would be locatable if it were on Federal land, or reclamation of the impacts of such activities.

"(2) NOTICE BY THE SECRETARY.—If the patented estate is used by the patentee for any purpose other than for conducting mineral activities in good faith, the Secretary of the Interior shall serve on all owners of interests in such patented estate, in the manner prescribed for service of a summons and complaint under the Federal Rules of Civil Procedure, notice specifying such unauthorized use and providing not more than 90 days in which such unauthorized use must be terminated. The giving of such notice shall constitute final agency action appealable by any owner of an interest in such patented estate. The Secretary may exercise the right of reentry as provided in subsection (b)(3) if such unauthorized use has not been terminated in the time provided in this paragraph, and only after all appeal rights have expired and any appeals of such notice have been finally determined.

"(3) RIGHT OF REENTRY.—The Secretary may exercise the right of the United States to reenter such patented estate by filing a declaration of reentry in the office of the Bureau of Land Management designated by the Secretary and recording such declaration where the notice or certificate of location for the patented claim or site is recorded under State law. Upon the filing and recording of such declaration, all right, title and interest in such patented estate shall revert to the United States. Lands and interests in lands for which the United States exercises its right of reentry under this section shall remain open to the location of mining claims and mill sites, unless withdrawn under other applicable law.

"SEC. (c). PATENTS EXCEPTED FROM REQUIREMENTS.

"The requirements of subsections (a) and (b) of this Act shall not apply to the issuance of those patents whose applications were excepted under section 113 of Pub. L. No. 103-322, 108 Stat. 2499, 2519 (1994), from the prohibition on funding contained in Section 112 of that Act. Such patents shall be issued under the general mining laws in effect prior to the date of enactment of this Act.

"SEC. (d). PROCESSING OF PENDING PATENT APPLICATIONS.

"(2) PROCESSING SCHEDULE.—For those applications for patent under the general mining laws which are pending at the date of enactment of this Act, or any amendments to or resubmittals of such patent applications, the Secretary of the Interior shall—

"(A) Within three months of the enactment of this Act, file with the House and Senate Committees on Appropriations and the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the United States Senate a plan which details how the Department of the Interior will take final action on all such applications within two years of the enactment of this Act and file reports annually thereafter with the same committees detailing actions taken by the Department of the Interior to carry out such plan; and

"(B) Take such actions as may be necessary to carry out such plan.

"(2) MINERAL EXAMINATIONS.—Upon the request of a patent applicant, the Secretary of

the Interior shall allow the applicant to fund the retention by the Bureau of Land Management of a qualified third-party contractor to conduct a mineral examination of the mining claims or mill sites contained in a patent application. All such third-party mineral examinations shall be conducted in accordance with standard procedures and criteria followed by the Bureau of Land Management, and the retention and compensation of such third-party contractors shall be conducted in accordance with procedures employed by the Bureau of Land Management in the retention of third-party contractors for the preparation of environmental analyses under the National Environmental Policy Act (42 U.S.C. §§4321-4370d) to the maximum extent practicable."

**THOMAS (AND OTHERS)
AMENDMENT NO. 2295**

Mr. GORTON (for Mr. THOMAS for himself, Mr. CAMPBELL, Mr. BURNS, Mr. KEMPTHORNE, Mr. BENNETT, Mr. SIMPSON, Mr. MURKOWSKI, Mr. CRAIG, Mr. DOLE, Mr. PRESSLER, Mr. HATCH, Mr. BROWN, Mr. KYL, and Mr. BAUCUS) proposed an amendment to the bill H.R. 1977, supra; as follows:

At the end of the bill, add the following:

SEC. . DELAY IN IMPLEMENTATION OF THE ADMINISTRATION'S RANGELAND REFORM PROGRAM.

None of the funds made available under this or any other Act may be used to implement or enforce the final rule published by the Secretary of the Interior on February 22, 1995 (60 Fed. Reg. 9894), making amendments to parts 4, 1780, and 4100 of title 43, Code of Federal Regulations, to take effect August 21, 1995, until December 21, 1995. None of the funds made available under this or any other Act may be used to publish proposed or enforce final regulations governing the management of livestock grazing on lands administered by the Forest Service until November 21, 1995.

**DOMENICI (AND OTHERS)
AMENDMENT NO. 2296**

Mr. DOMENICI (for himself, Mr. INOUE, Mr. MCCAIN, Mr. SIMON, Mr. DORGAN, Mr. CONRAD, Mr. KYL, Mr. CAMPBELL, and Mr. BINGAMAN) proposed an amendment to the bill H.R. 1977, supra; as follows:

On page 2, line 11, strike "\$565,936,000" and insert "\$519,436,000".

On page 3, line 5, strike "\$565,936,000" and insert "\$519,436,000".

On page 9, line 23, strike "\$496,978,000" and insert "\$466,978,000".

On page 16, line 13, strike "\$145,965,000, of which \$145,915,000" and insert "\$100,965,000, of which \$100,915,000".

On page 21, line 22, strike "\$577,503,000" and insert "\$531,003,000".

On page 24, line 23, strike "\$182,169,000" and insert "\$157,169,000".

On page 31, line 15, before ", of", insert the following: "(plus \$200,000,000)".

On page 32, line 17, before ": Provided," insert the following: "; and of which not to exceed \$5,000,000 shall remain available until expended for the implementation of the Indian Tribal Justice Act (25 U.S.C. 3601 et seq.); and of which not to exceed \$2,500,000 shall remain available until expended for the implementation of the Indian Child Protection and Family Violence Prevention Act (25 U.S.C. 3201 et seq.)."

On page 43, line 1 strike "\$58,109,000" and insert "\$51,109,000".

JEFFORDS AMENDMENT NO. 2297

Mr. GORTON (for Mr. JEFFORDS) proposed an amendment to the bill H.R. 1977, supra; as follows:

At the appropriate place, insert: "Notwithstanding other provisions of law, the National Park Service's American Battlefield Protection Program may enter into cooperative agreements, grants, contracts, or other generally accepted means of financial assistance with federal, state, local, and tribal governments; other public entities; educational institutions; and private, non-profit organizations for the purpose of identifying, evaluating, and protecting historic battlefields and associated sites."

**GORTON (AND MURRAY)
AMENDMENTS NOS. 2298-2299**

Mr. GORTON (for himself and Mrs. MURRAY) proposed two amendments to the bill H.R. 1977, supra; as follows:

AMENDMENT NO. 2298

On page 55, line 13 strike "." and insert " or".

On page 55, line 14 insert the following: "(3) fail to reach a mutual agreement that addresses the concerns of affected parties within 90 days after the date of enactment of this Act."

AMENDMENT NO. 2299

On page 114, line 9, strike \$1,600,000 and insert "\$4,000,000".

On page 115, line 1, after "funds" insert the word "generally".

GORTON AMENDMENT NO. 2300

Mr. GORTON proposed an amendment to the bill H.R. 1977, supra; as follows:

On page 103, on line 25 strike "." and insert the following: ", unless the relevant agencies for the Department of Interior and/or Agriculture follow appropriate reprogramming guidelines. Provided further: if no funds are provided for the AmeriCorps program by the VA-HUD and Independent Agencies fiscal year 1996 appropriations bill, then none of the funds appropriated or otherwise made available by this Act may be used for the AmeriCorps programs."

MCCAIN AMENDMENT NO. 2301

Mr. GORTON (Mr. MCCAIN) proposed an amendment to the bill H.R. 1977, supra; as follows:

On page 136, between lines 12 and 13, insert the following:

SEC. 330. (a)(1) The head of each agency referred to in paragraph (2) shall submit to the President each year, through the head of the department having jurisdiction over the agency, a land acquisition ranking for the agency concerned for the fiscal year beginning after the date of the submittal of the report.

(2) The heads of agencies referred to in paragraph (1) are the following:

(A) The Director of the National Park Service in the case of the National Park Service.

(B) The Director of the Fish and Wildlife Service in the case of the Fish and Wildlife Service.

(C) The Director of the Bureau of Land Management in the case of the Bureau of Land Management.

(D) The Chief of the Forest Service in the case of the Forest Service.

(3) In this section, the term "land acquisition ranking", in the case of a Federal agency, means a statement of the order of precedence of the land acquisition proposals of the

agency, including a statement of the order of precedence of such proposals for each organizational unit of the agency.

(b) The President shall include the land acquisition rankings for a fiscal year that are submitted to the President under subsection (a)(1) in the supporting information submitted to Congress with the budget for that fiscal year under section 1105 of title 31, United States Code.

(c)(1) The head of the agency concerned shall determine the order of precedence of land acquisition proposals under subsection (a)(1) in accordance with criteria that the Secretary of the Department having jurisdiction over the agency shall prescribe.

(2) The criteria prescribed under paragraph (1) shall provide for a determination of the order of precedence of land acquisition proposals through consideration of—

(A) the natural resources located on the land covered by the acquisition proposals;

(B) the degree to which such resources are threatened;

(C) the length of time required for the acquisition of the land;

(D) the extent, if any, to which an increase in the cost of the land covered by the proposals makes timely completion of the acquisition advisable;

(E) the extent of public support for the acquisition of the land; and

(F) such other matters as the Secretary concerned shall prescribe.

HATCH (AND FEINSTEIN) AMENDMENT NO. 2302

Mr. GORTON for Mr. HATCH for himself and Mrs. FEINSTEIN proposed an amendment to the bill H.R. 1977, *supra*; as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Digital Performance Right in Sound Recordings Act of 1995".

SEC. 2. EXCLUSIVE RIGHTS IN COPYRIGHTED WORKS.

Section 106 of title 17, United States Code, is amended—

(1) in paragraph (4) by striking "and" after the semicolon;

(2) in paragraph (5) by striking the period and inserting "; and"; and

(3) by adding at the end the following:

"(6) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission."

SEC. 3. SCOPE OF EXCLUSIVE RIGHTS IN SOUND RECORDINGS.

Section 114 of title 17, United States Code, is amended—

(1) in subsection (a) by striking "and (3)" and inserting "(3) and (6)";

(2) in subsection (b) in the first sentence by striking "phonorecords, or of copies of motion pictures and other audiovisual works," and inserting "phonorecords or copies";

(3) by striking subsection (d) and inserting:

"(d) LIMITATIONS ON EXCLUSIVE RIGHT.—Notwithstanding the provisions of section 106(6)—

"(1) EXEMPT TRANSMISSIONS AND RETRANSMISSIONS.—The performance of a sound recording publicly by means of a digital audio transmission, other than as a part of an interactive service, is not an infringement of section 106(6) if the performance is part of—

"(A)(i) a nonsubscription transmission other than a retransmission;

"(ii) an initial nonsubscription retransmission made for direct reception by members of the public of a prior or simulta-

neous incidental transmission that is not made for direct reception by members of the public; or

"(iii) a nonsubscription broadcast transmission;

"(B) a retransmission of a nonsubscription broadcast transmission: *Provided*, That, in the case of a retransmission of a radio station's broadcast transmission—

"(i) the radio station's broadcast transmission is not willfully or repeatedly retransmitted more than a radius of 150 miles from the site of the radio broadcast transmitter, however—

"(I) the 150 mile limitation under this clause shall not apply when a nonsubscription broadcast transmission by a radio station licensed by the Federal Communications Commission is retransmitted on a nonsubscription basis by a terrestrial broadcast station, terrestrial translator, or terrestrial repeater licensed by the Federal Communications Commission; and

"(II) in the case of a subscription retransmission of a nonsubscription broadcast retransmission covered by subclause (I), the 150 mile radius shall be measured from the transmitter site of such broadcast retransmitter;

"(ii) the retransmission is of radio station broadcast transmissions that are—

"(I) obtained by the retransmitter over the air;

"(II) not electronically processed by the retransmitter to deliver separate and discrete signals; and

"(III) retransmitted only within the local communities served by the retransmitter;

"(iii) the radio station's broadcast transmission was being retransmitted to cable systems (as defined in section 111(f)) by a satellite carrier on January 1, 1995, and that retransmission was being retransmitted by cable systems as a separate and discrete signal, and the satellite carrier obtains the radio station's broadcast transmission in an analog format: *Provided*, That the broadcast transmission being retransmitted may embody the programming of no more than one radio station; or

"(iv) the radio station's broadcast transmission is made by a noncommercial educational broadcast station funded on or after January 1, 1995, under section 396(k) of the Communications Act of 1934 (47 U.S.C. 396(k)), consists solely of noncommercial educational and cultural radio programs, and the retransmission, whether or not simultaneous, is a nonsubscription terrestrial broadcast retransmission; or

"(C) a transmission that comes within any of the following categories:

"(i) a prior or simultaneous transmission incidental to an exempt transmission, such as a feed received by and then retransmitted by an exempt transmitter: *Provided*, That such incidental transmissions do not include any subscription transmission directly for reception by members of the public;

"(ii) a transmission within a business establishment, confined to its premises or the immediately surrounding vicinity;

"(iii) a retransmission by any retransmitter, including a multichannel video programming distributor as defined in section 602(12) of the Communications Act of 1934 (47 U.S.C. 522(12)), of a transmission by a transmitter licensed to publicly perform the sound recording as a part of that transmission, if the retransmission is simultaneous with the licensed transmission and authorized by the transmitter; or

"(iv) a transmission to a business establishment for use in the ordinary course of its business: *Provided*, That the business recipient does not retransmit the transmission outside of its premises or the immediately surrounding vicinity, and that the trans-

mission does not exceed the sound recording performance complement. Nothing in this clause shall limit the scope of the exemption in clause (ii).

"(2) SUBSCRIPTION TRANSMISSIONS.—In the case of a subscription transmission not exempt under subsection (d)(1), the performance of a sound recording publicly by means of a digital audio transmission shall be subject to statutory licensing, in accordance with subsection (f) of this section, if—

"(A) the transmission is not part of an interactive service;

"(B) the transmission does not exceed the sound recording performance complement;

"(C) the transmitting entity does not cause to be published by means of an advance program schedule or prior announcement the titles of the specific sound recordings or phonorecords embodying such sound recordings to be transmitted;

"(D) except in the case of transmission to a business establishment, the transmitting entity does not automatically and intentionally cause any device receiving the transmission to switch from one program channel to another; and

"(E) except as provided in section 1002(e) of this title, the transmission of the sound recording is accompanied by the information encoded in that sound recording, if any, by or under the authority of the copyright owner of that sound recording, that identifies the title of the sound recording, the featured recording artist who performs on the sound recording, and related information, including information concerning the underlying musical work and its writer.

"(3) LICENSES FOR TRANSMISSIONS BY INTERACTIVE SERVICES.—

"(A) No interactive service shall be granted an exclusive license under section 106(6) for the performance of a sound recording publicly by means of digital audio transmission for a period in excess of 12 months, except that with respect to an exclusive license granted to an interactive service by a licensor that holds the copyright to 1,000 or fewer sound recordings, the period of such license shall not exceed 24 months: *Provided, however*, That the grantee of such exclusive license shall be ineligible to receive another exclusive license for the performance of that sound recording for a period of 13 months from the expiration of the prior exclusive license.

"(B) The limitation set forth in subparagraph (A) of this paragraph shall not apply if—

"(i) the licensor has granted and there remain in effect licenses under section 106(6) for the public performance of sound recordings by means of digital audio transmission by at least 5 different interactive services: *Provided, however*, That each such license must be for a minimum of 10 percent of the copyrighted sound recordings owned by the licensor that have been licensed to interactive services, but in no event less than 50 sound recordings; or

"(ii) the exclusive license is granted to perform publicly up to 45 seconds of a sound recording and the sole purpose of the performance is to promote the distribution or performance of that sound recording.

"(C) Notwithstanding the grant of an exclusive or nonexclusive license of the right of public performance under section 106(6), an interactive service may not publicly perform a sound recording unless a license has been granted for the public performance of any copyrighted musical work contained in the sound recording, *Provided*, That such license to publicly perform the copyrighted musical work may be granted either by a performing rights society representing the copyright owner or by the copyright owner.

“(D) The performance of a sound recording by means of a retransmission of a digital audio transmission is not an infringement of section 106(6) if—

“(i) the retransmission is of a transmission by an interactive service licensed to publicly perform the sound recording to a particular member of the public as part of that transmission; and

“(ii) the retransmission is simultaneous with the licensed transmission, authorized by the transmitter, and limited to that particular member of the public intended by the interactive service to be the recipient of the transmission.

“(E) For the purposes of this paragraph—

“(i) a ‘licensor’ shall include the licensing entity and any other entity under any material degree of common ownership, management, or control that owns copyrights in sound recordings; and

“(ii) a ‘performing rights society’ is an association or corporation that licenses the public performance of nondramatic musical works on behalf of the copyright owner, such as the American Society of Composers, Authors and Publishers, Broadcast Music, Inc., and SESAC, Inc.

“(4) RIGHTS NOT OTHERWISE LIMITED.—

“(A) Except as expressly provided in this section, this section does not limit or impair the exclusive right to perform a sound recording publicly by means of a digital audio transmission under section 106(6).

“(B) Nothing in this section annuls or limits in any way—

“(i) the exclusive right to publicly perform a musical work, including by means of a digital audio transmission, under section 106(4);

“(ii) the exclusive rights in a sound recording or the musical work embodied therein under sections 106(1), 106(2) and 106(3); or

“(iii) any other rights under any other clause of section 106, or remedies available under this title, as such rights or remedies exist either before or after the date of enactment of the Digital Performance Right in Sound Recordings Act of 1995.

“(C) Any limitations in this section on the exclusive right under section 106(6) apply only to the exclusive right under section 106(6) and not to any other exclusive rights under section 106. Nothing in this section shall be construed to annul, limit, impair or otherwise affect in any way the ability of the owner of a copyright in a sound recording to exercise the rights under sections 106(1), 106(2) and 106(3), or to obtain the remedies available under this title pursuant to such rights, as such rights and remedies exist either before or after the date of enactment of the Digital Performance Right in Sound Recordings Act of 1995.”; and

(4) by adding after subsection (d) the following:

“(e) AUTHORITY FOR NEGOTIATIONS.—

“(1) Notwithstanding any provision of the antitrust laws, in negotiating statutory licenses in accordance with subsection (f), any copyright owners of sound recordings and any entities performing sound recordings affected by this section may negotiate and agree upon the royalty rates and license terms and conditions for the performance of such sound recordings and the proportionate division of fees paid among copyright owners, and may designate common agents on a nonexclusive basis to negotiate, agree to, pay, or receive payments.

“(2) For licenses granted under section 106(6), other than statutory licenses, such as for performances by interactive services or performances that exceed the sound recording performance complement—

“(A) copyright owners of sound recordings affected by this section may designate common agents to act on their behalf to grant licenses and receive and remit royalty pay-

ments, *Provided*, That each copyright owner shall establish the royalty rates and material license terms and conditions unilaterally, that is, not in agreement, combination, or concert with other copyright owners of sound recordings; and

“(B) entities performing sound recordings affected by this section may designate common agents to act on their behalf to obtain licenses and collect and pay royalty fees, *Provided*, That each entity performing sound recordings shall determine the royalty rates and material license terms and conditions unilaterally, that is, not in agreement, combination, or concert with other entities performing sound recordings.

“(f) LICENSES FOR NONEXEMPT SUBSCRIPTION TRANSMISSIONS.—

“(1) No later than 30 days after the enactment of the Digital Performance Right in Sound Recordings Act of 1995, the Librarian of Congress shall cause notice to be published in the Federal Register of the initiation of voluntary negotiation proceedings for the purpose of determining reasonable terms and rates of royalty payments for the activities specified by subsection (d)(2) of this section during the period beginning on the effective date of such Act and ending on December 31, 2000. Such terms and rates shall distinguish among the different types of digital audio transmission services then in operation. Any copyright owners of sound recordings or any entities performing sound recordings affected by this section may submit to the Librarian of Congress licenses covering such activities with respect to such sound recordings. The parties to each negotiation proceeding shall bear their own costs.

“(2) In the absence of license agreements negotiated under paragraph (1), during the 60-day period commencing 6 months after publication of the notice specified in paragraph (1), and upon the filing of a petition in accordance with section 803(a)(1), the Librarian of Congress shall, pursuant to chapter 8, convene a copyright arbitration royalty panel to determine and publish in the Federal Register a schedule of rates and terms which, subject to paragraph (3), shall be binding on all copyright owners of sound recordings and entities performing sound recordings. In addition to the objectives set forth in section 801(b)(1), in establishing such rates and terms, the copyright arbitration royalty panel may consider the rates and terms for comparable types of digital audio transmission services and comparable circumstances under voluntary license agreements negotiated as provided in paragraph (1). The Librarian of Congress shall also establish requirements by which copyright owners may receive reasonable notice of the use of their sound recordings under this section, and under which records of such use shall be kept and made available by entities performing sound recordings.

“(3) License agreements voluntarily negotiated at any time between one or more copyright owners of sound recordings and one or more entities performing sound recordings shall be given effect in lieu of any determination by a copyright arbitration royalty panel or decision by the Librarian of Congress.

“(4)(A) Publication of a notice of the initiation of voluntary negotiation proceedings as specified in paragraph (1) shall be repeated, in accordance with regulations that the Librarian of Congress shall prescribe—

“(i) no later than 30 days after a petition is filed by any copyright owners of sound recordings or any entities performing sound recordings affected by this section indicating that a new type of digital audio transmission service on which sound recordings are performed is or is about to become operational; and

“(ii) in the first week of January, 2000 and at 5-year intervals thereafter.

“(B)(i) The procedures specified in paragraph (2) shall be repeated, in accordance with regulations that the Librarian of Congress shall prescribe, upon the filing of a petition in accordance with section 803(a)(1) during a 60-day period commencing—

“(I) six months after publication of a notice of the initiation of voluntary negotiation proceedings under paragraph (1) pursuant to a petition under paragraph (4)(A)(i); or

“(II) on July 1, 2000 and at 5-year intervals thereafter.

“(ii) The procedures specified in paragraph (2) shall be concluded in accordance with section 802.

“(5)(A) Any person who wishes to perform a sound recording publicly by means of a nonexempt subscription transmission under this subsection may do so without infringing the exclusive right of the copyright owner of the sound recording—

“(i) by complying with such notice requirements as the Librarian of Congress shall prescribe by regulation and by paying royalty fees in accordance with this subsection; or

“(ii) if such royalty fees have not been set, by agreeing to pay such royalty fees as shall be determined in accordance with this subsection.

“(B) Any royalty payments in arrears shall be made on or before the twentieth day of the month next succeeding the month in which the royalty fees are set.

“(g) PROCEEDS FROM LICENSING OF SUBSCRIPTION TRANSMISSIONS.—

“(1) Except in the case of a subscription transmission licensed in accordance with subsection (f) of this section—

“(A) a featured recording artist who performs on a sound recording that has been licensed for a subscription transmission shall be entitled to receive payments from the copyright owner of the sound recording in accordance with the terms of the artist's contract; and

“(B) a nonfeatured recording artist who performs on a sound recording that has been licensed for a subscription transmission shall be entitled to receive payments from the copyright owner of the sound recording in accordance with the terms of the nonfeatured recording artist's applicable contract or other applicable agreement.

“(2) The copyright owner of the exclusive right under section 106(6) of this title to publicly perform a sound recording by means of a digital audio transmission shall allocate to recording artists in the following manner its receipts from the statutory licensing of subscription transmission performances of the sound recording in accordance with subsection (f) of this section:

“(A) 2½ percent of the receipts shall be deposited in an escrow account managed by an independent administrator jointly appointed by copyright owners of sound recordings and the American Federation of Musicians (or any successor entity) to be distributed to nonfeatured musicians (whether or not members of the American Federation of Musicians) who have performed on sound recordings.

“(B) 2½ percent of the receipts shall be deposited in an escrow account managed by an independent administrator jointly appointed by copyright owners of sound recordings and the American Federation of Television and Radio Artists (or any successor entity) to be distributed to nonfeatured vocalists (whether or not members of the American Federation of Television and Radio Artists) who have performed on sound recordings.

“(C) 45 percent of the receipts shall be allocated, on a per sound recording basis, to the recording artist or artists featured on such sound recording (or the persons conveying

rights in the artists' performance in the sound recordings).

"(h) LICENSING TO AFFILIATES.—

"(1) If the copyright owner of a sound recording licenses an affiliated entity the right to publicly perform a sound recording by means of a digital audio transmission under section 106(6), the copyright owner shall make the licensed sound recording available under section 106(6) on no less favorable terms and conditions to all bona fide entities that offer similar services, except that, if there are material differences in the scope of the requested license with respect to the type of service, the particular sound recordings licensed, the frequency of use, the number of subscribers served, or the duration, then the copyright owner may establish different terms and conditions for such other services.

"(2) The limitation set forth in paragraph (1) of this subsection shall not apply in the case where the copyright owner of a sound recording licenses—

"(A) an interactive service; or

"(B) an entity to perform publicly up to 45 seconds of the sound recording and the sole purpose of the performance is to promote the distribution or performance of that sound recording.

"(i) NO EFFECT ON ROYALTIES FOR UNDERLYING WORKS.—License fees payable for the public performance of sound recordings under section 106(6) shall not be taken into account in any administrative, judicial, or other governmental proceeding to set or adjust the royalties payable to copyright owners of musical works for the public performance of their works. It is the intent of Congress that royalties payable to copyright owners of musical works for the public performance of their works shall not be diminished in any respect as a result of the rights granted by section 106(6).

"(j) DEFINITIONS.—As used in this section, the following terms have the following meanings:

"(1) An 'affiliated entity' is an entity engaging in digital audio transmissions covered by section 106(6), other than an interactive service, in which the licensor has any direct or indirect partnership or any ownership interest amounting to 5 percent or more of the outstanding voting or non-voting stock.

"(2) A 'broadcast' transmission is a transmission made by a terrestrial broadcast station licensed as such by the Federal Communications Commission.

"(3) A 'digital audio transmission' is a digital transmission as defined in section 101, that embodies the transmission of a sound recording. This term does not include the transmission of any audiovisual work.

"(4) An 'interactive service' is one that enables a member of the public to receive, on request, a transmission of a particular sound recording chosen by or on behalf of the recipient. The ability of individuals to request that particular sound recordings be performed for reception by the public at large does not make a service interactive. If an entity offers both interactive and non-interactive services (either concurrently or at different times), the non-interactive component shall not be treated as part of an interactive service.

"(5) A 'nonsubscription' transmission is any transmission that is not a subscription transmission.

"(6) A 'retransmission' is a further transmission of an initial transmission, and includes any further retransmission of the same transmission. Except as provided in this section, a transmission qualifies as a 'retransmission' only if it is simultaneous with the initial transmission. Nothing in this definition shall be construed to exempt

a transmission that fails to satisfy a separate element required to qualify for an exemption under section 114(d)(1).

"(7) The 'sound recording performance complement' is the transmission during any 3-hour period, on a particular channel used by a transmitting entity, of no more than—

"(A) 3 different selections of sound recordings from any one phonorecord lawfully distributed for public performance or sale in the United States, if no more than 2 such selections are transmitted consecutively; or

"(B) 4 different selections of sound recordings

"(i) by the same featured recording artist; or

"(ii) from any set or compilation of phonorecords lawfully distributed together as a unit for public performance or sale in the United States,

if no more than three such selections are transmitted consecutively:

Provided, That the transmission of selections in excess of the numerical limits provided for in clauses (A) and (B) from multiple phonorecords shall nonetheless qualify as a sound recording performance complement if the programming of the multiple phonorecords was not willfully intended to avoid the numerical limitations prescribed in such clauses.

"(8) A 'subscription' transmission is a transmission that is controlled and limited to particular recipients, and for which consideration is required to be paid or otherwise given by or on behalf of the recipient to receive the transmission or a package of transmissions including the transmission.

"(9) A 'transmission' includes both an initial transmission and a retransmission."

SEC. 4. MECHANICAL ROYALTIES IN DIGITAL PHONORECORD DELIVERIES.

Section 115 of title 17, United States Code, is amended—

(1) in subsection (a)(1)—

(A) in the first sentence by striking out "any other person" and inserting in lieu thereof "any other person, including those who make phonorecords or digital phonorecord deliveries,"; and

(B) in the second sentence by inserting before the period "including by means of a digital phonorecord delivery";

(2) in subsection (c)(2) in the second sentence by inserting "and other than as provided in paragraph (3)," after "For this purpose,";

(3) by redesignating paragraphs (3), (4), and (5) of subsection (c) as paragraphs (4), (5), and (6), respectively, and by inserting after paragraph (2) the following new paragraph:

"(3)(A) A compulsory license under this section includes the right of the compulsory licensee to distribute or authorize the distribution of a phonorecord of a nondramatic musical work by means of a digital transmission which constitutes a digital phonorecord delivery, regardless of whether the digital transmission is also a public performance of the sound recording under section 106(6) of this title or of any nondramatic musical work embodied therein under section 106(4) of this title. For every digital phonorecord delivery by or under the authority of the compulsory licensee—

"(i) on or before December 31, 1997, the royalty payable by the compulsory licensee shall be the royalty prescribed under paragraph (2) and chapter 8 of this title; and

"(ii) on or after January 1, 1998, the royalty payable by the compulsory licensee shall be the royalty prescribed under subparagraphs (B) through (F) and chapter 8 of this title.

"(B) Notwithstanding any provision of the antitrust laws, any copyright owners of nondramatic musical works and any persons

entitled to obtain a compulsory license under subsection (a)(1) may negotiate and agree upon the terms and rates of royalty payments under this paragraph and the proportionate division of fees paid among copyright owners, and may designate common agents to negotiate, agree to, pay or receive such royalty payments. Such authority to negotiate the terms and rates of royalty payments includes, but is not limited to, the authority to negotiate the year during which the royalty rates prescribed under subparagraphs (B) through (F) and chapter 8 of this title shall next be determined.

"(C) During the period of June 30, 1996, through December 31, 1996, the Librarian of Congress shall cause notice to be published in the Federal Register of the initiation of voluntary negotiation proceedings for the purpose of determining reasonable terms and rates of royalty payments for the activities specified by subparagraph (A) during the period beginning January 1, 1998, and ending on the effective date of any new terms and rates established pursuant to subparagraph (C), (D) or (F), or such other date (regarding digital phonorecord deliveries) as the parties may agree. Such terms and rates shall distinguish between (i) digital phonorecord deliveries where the reproduction or distribution of a phonorecord is incidental to the transmission which constitutes the digital phonorecord delivery, and (ii) digital phonorecord deliveries in general. Any copyright owners of nondramatic musical works and any persons entitled to obtain a compulsory license under subsection (a)(1) may submit to the Librarian of Congress licenses covering such activities. The parties to each negotiation proceeding shall bear their own costs.

"(D) In the absence of license agreements negotiated under subparagraphs (B) and (C), upon the filing of a petition in accordance with section 803(a)(1), the Librarian of Congress shall, pursuant to chapter 8, convene a copyright arbitration royalty panel to determine and publish in the Federal Register a schedule of rates and terms which, subject to subparagraph (E), shall be binding on all copyright owners of nondramatic musical works and persons entitled to obtain a compulsory license under subsection (a)(1) during the period beginning January 1, 1998, and ending on the effective date of any new terms and rates established pursuant to subparagraph (C), (D) or (F), or such other date (regarding digital phonorecord deliveries) as may be determined pursuant to subparagraphs (B) and (C). Such terms and rates shall distinguish between (i) digital phonorecord deliveries where the reproduction or distribution of a phonorecord is incidental to the transmission which constitutes the digital phonorecord delivery, and (ii) digital phonorecord deliveries in general. In addition to the objectives set forth in section 801(b)(1), in establishing such rates and terms, the copyright arbitration royalty panel may consider rates and terms under voluntary license agreements negotiated as provided in subparagraphs (B) and (C). The royalty rates payable for a compulsory license for a digital phonorecord delivery under this section shall be established de novo and no precedential effect shall be given to the amount of the royalty payable by a compulsory licensee for digital phonorecord deliveries on or before December 31, 1997. The Librarian of Congress shall also establish requirements by which copyright owners may receive reasonable notice of the use of their works under this section, and under which records of such use shall be kept and made available by persons making digital phonorecord deliveries.

"(E)(i) License agreements voluntarily negotiated at any time between one or more copyright owners of nondramatic musical works and one or more persons entitled to

obtain a compulsory license under subsection (a)(1) shall be given effect in lieu of any determination by the Librarian of Congress. Subject to clause (ii), the royalty rates determined pursuant to subparagraph (C), (D) or (F) shall be given effect in lieu of any contrary royalty rates specified in a contract pursuant to which a recording artist who is the author of a nondramatic musical work grants a license under that person's exclusive rights in the musical work under sections 106(1) and (3) or commits another person to grant a license in that musical work under sections 106(1) and (3), to a person desiring to fix in a tangible medium of expression a sound recording embodying the musical work.

“(ii) The second sentence of clause (i) shall not apply to—

“(I) a contract entered into on or before June 22, 1995, and not modified thereafter for the purpose of reducing the royalty rates determined pursuant to subparagraph (C), (D) or (F) or of increasing the number of musical works within the scope of the contract covered by the reduced rates, except if a contract entered into on or before June 22, 1995, is modified thereafter for the purpose of increasing the number of musical works within the scope of the contract, any contrary royalty rates specified in the contract shall be given effect in lieu of royalty rates determined pursuant to subparagraph (C), (D) or (F) for the number of musical works within the scope of the contract as of June 22, 1995; and

“(II) a contract entered into after the date that the sound recording is fixed in a tangible medium of expression substantially in a form intended for commercial release, if at the time the contract is entered into, the recording artist retains the right to grant licenses as to the musical work under sections 106(1) and 106(3).

“(F) The procedures specified in subparagraphs (C) and (D) shall be repeated and concluded, in accordance with regulations that the Librarian of Congress shall prescribe, in each fifth calendar year after 1997, except to the extent that different years for the repeating and concluding of such proceedings may be determined in accordance with subparagraphs (B) and (C).

“(G) Except as provided in section 1002(e) of this title, a digital phonorecord delivery licensed under this paragraph shall be accompanied by the information encoded in the sound recording, if any, by or under the authority of the copyright owner of that sound recording, that identifies the title of the sound recording, the featured recording artist who performs on the sound recording, and related information, including information concerning the underlying musical work and its writer.

“(H)(i) A digital phonorecord delivery of a sound recording is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and section 509, unless—

“(I) the digital phonorecord delivery has been authorized by the copyright owner of the sound recording; and

“(II) the owner of the copyright in the sound recording or the entity making the digital phonorecord delivery has obtained a compulsory license under this section or has otherwise been authorized by the copyright owner of the musical work to distribute or authorize the distribution, by means of a digital phonorecord delivery, of each musical work embodied in the sound recording.

“(ii) Any cause of action under this subparagraph shall be in addition to those available to the owner of the copyright in the nondramatic musical work under subsection (c)(6) and section 106(4) and the owner of the

copyright in the sound recording under section 106(6).

“(I) The liability of the copyright owner of a sound recording for infringement of the copyright in a nondramatic musical work embodied in the sound recording shall be determined in accordance with applicable law, except that the owner of a copyright in a sound recording shall not be liable for a digital phonorecord delivery by a third party if the owner of the copyright in the sound recording does not license the distribution of a phonorecord of the nondramatic musical work.

“(J) Nothing in this section shall be construed to prevent the exercise of the rights and remedies allowed by this paragraph, paragraph (6), and chapter 5 in the event of a digital phonorecord delivery, except that no action alleging infringement of copyright may be brought under this title against a manufacturer, importer or distributor of a digital audio recording device, a digital audio recording medium, an analog recording device, or an analog recording medium, or against a consumer, based on the actions described in such section.

“(K) Nothing in this section annuls or limits (i) the exclusive right to publicly perform a sound recording or the musical work embodied therein, including by means of a digital transmission, under sections 106(4) and 106(6), (ii) except for compulsory licensing under the conditions specified by this section, the exclusive rights to reproduce and distribute the sound recording and the musical work embodied therein under sections 106(1) and 106(3), including by means of a digital phonorecord delivery, or (iii) any other rights under any other provision of section 106, or remedies available under this title, as such rights or remedies exist either before or after the date of enactment of the Digital Performance Right in Sound Recordings Act of 1995.

“(L) The provisions of this section concerning digital phonorecord deliveries shall not apply to any exempt transmissions or retransmissions under section 114(d)(1). The exemptions created in section 114(d)(1) do not expand or reduce the rights of copyright owners under section 106(1) through (5) with respect to such transmissions and retransmissions.”; and

(5) by adding after subsection (c) the following:

“(d) DEFINITION.—As used in this section, the following term has the following meaning: A ‘digital phonorecord delivery’ is each individual delivery of a phonorecord by digital transmission of a sound recording which results in a specifically identifiable reproduction by or for any transmission recipient of a phonorecord of that sound recording, regardless of whether the digital transmission is also a public performance of the sound recording or any nondramatic musical work embodied therein. A digital phonorecord delivery does not result from a real-time, noninteractive subscription transmission of a sound recording where no reproduction of the sound recording or the musical work embodied therein is made from the inception of the transmission through to its receipt by the transmission recipient in order to make the sound recording audible.”.

SEC. 5. CONFORMING AMENDMENTS.

(a) DEFINITIONS.—Section 101 of title 17, United States Code, is amended by inserting after the definition of “device”, “machine”, or “process” the following:

“A ‘digital transmission’ is a transmission in whole or in part in a digital or other non-analog format.”.

(b) LIMITATIONS ON EXCLUSIVE RIGHTS: SECONDARY TRANSMISSIONS.—Section 111(c)(1) of title 17, United States Code, is amended in

the first sentence by inserting “and section 114(d)” after “of this subsection”.

(c) LIMITATIONS ON EXCLUSIVE RIGHTS: SECONDARY TRANSMISSIONS OF SUPERSTATIONS AND NETWORK STATIONS FOR PRIVATE HOME VIEWING.—

(1) Section 119(a)(1) of title 17, United States Code, is amended in the first sentence by inserting “and section 114(d)” after “of this subsection”.

(2) Section 119(a)(2)(A) of title 17, United States Code, is amended in the first sentence by inserting “and section 114(d)” after “of this subsection”.

(d) COPYRIGHT ARBITRATION ROYALTY PANELS.—

(1) Section 801(b)(1) of title 17, United States Code, is amended in the first and second sentences by striking “115” each place it appears and inserting “114, 115.”.

(2) Section 802(c) of title 17, United States Code, is amended in the third sentence by striking “section 111, 116, or 119,” and inserting “section 111, 114, 116, or 119, any person entitled to a compulsory license under section 114(d), any person entitled to a compulsory license under section 115.”.

(3) Section 802(g) of title 17, United States Code, is amended in the third sentence by inserting “114,” after “111.”.

(4) Section 802(h)(2) of title 17, United States Code, is amended by inserting “114,” after “111.”.

(5) Section 803(a)(1) of title 17, United States Code, is amended in the first sentence by striking “115” and inserting “114, 115” and by striking “and (4)” and inserting “(4) and (5)”.

(6) Section 803(a)(3) of title 17, United States Code, is amended by inserting before the period “or as prescribed in section 115(c)(3)(D)”.

(7) Section 803(a) of title 17, United States Code, is amended by inserting after paragraph (4) the following new paragraph:

“(5) With respect to proceedings under section 801(b)(1) concerning the determination of reasonable terms and rates of royalty payments as provided in section 114, the Librarian of Congress shall proceed when and as provided by that section.”.

SEC. 6. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect 3 months after the date of enactment of this Act, except that the provisions of sections 114(e) and 114(f) of title 17, United States Code (as added by section 3 of this Act) shall take effect immediately upon the date of enactment of this Act.

NOTICE OF HEARING

COMMITTEE ON ENERGY AND NATURAL RESOURCES, SUBCOMMITTEE ON PARKS, HISTORIC PRESERVATION AND RECREATION

Mr. CAMPBELL. Mr. President, I would like to announce for the public that a joint oversight field hearing has been scheduled before the Subcommittee on Parks, Historic Preservation and Recreation and the Subcommittee on National Parks, Forests and Lands of the House Committee on Resources. The hearing will take place Friday, August 18, 1995, beginning at 11 a.m. and ending at approximately 3 p.m., in the gymnasium of International Falls High School in International Falls, MN.

The purpose of this hearing is to review access and management issues at Voyageurs National Park and the Boundary Waters Canoe Area Wilderness.