

I applaud Representative HEINEMAN's work on this issue. His legislation serves the interest not only of society, it seems to me, but the inmate as well. In many instances, rewarding inmates for activity they should have avoided in the first place appears to perhaps be a misplaced priority.

I think Representative HEINEMAN's bill is pursuing the proper course, and I thank the gentleman from North Carolina for having yielded the time to me.

Mr. HEINEMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 2650, the Mandatory Federal Prison Drug Treatment Act, restores equity in the way the Federal Bureau of Prisons administers its very successful drug treatment program. H.R. 2650 is an example of bipartisan legislation at its best. I have worked closely with the Department of Justice, and the Democrats on the Judiciary Committee, including the ranking minority member of the Crime Subcommittee, CHARLES SCHUMER, who enthusiastically supports this legislation.

As a 38-year law enforcement veteran, I know the importance of tough and effective drug treatment for non-violent offenders and the dangerous precedent set by rewarding drug addicts for simply being drug addicts.

H.R. 2650 does away with a loophole in the 1994 crime bill which allowed the Bureau of Prisons to release drug addicts a year earlier than their clean counterparts. The Mandatory Federal Prison Drug Treatment Act also strengthens the ability of the Bureau of Prisons to get addicted prisoners into treatment.

Thus, the Mandatory Federal Prison Drug Treatment Act preserves drug treatment programs in Federal prisons while providing a better policy for addicts to get clean. H.R. 2650 provides the Bureau of Prisons with the flexibility it needs to utilize a variety of sanctions for inmates at different security levels.

H.R. 2650 strengthens the Bureau of Prison's ability to employ a variety of incentives and sanctions to motivate inmates to participate in drug treatment programs and thus will maximize the effect of the program and the number of inmates receiving treatment. H.R. 2650 is emblematic of how tough law enforcement can be combined with effective treatment programs for non-violent offenders to provide maximum results.

Mr. Speaker, I would again like to thank my colleagues from both sides of the aisle for their support of this sensible legislation. I also want to thank our leadership and the staff of the Judiciary Committee for expediting consideration of this important and bipartisan measure.

Mr. HOKE. Mr. Speaker, as an original cosponsor of H.R. 2650 and as a member of the committee that heard testimony on it, I rise in strong support of the legislation.

This bill eliminates the sentencing inequity which now allows the Federal Bureau of Pris-

ons to reward a convicted felon simply for being a drug addict. The current state of our prison policy on this issue is downright appalling. Many of our constituents probably do not realize that drug addicts are eligible for early release from prison if they complete drug treatment programs while serving time. In other words, if a drug addict abides by the law while serving his sentence by forgoing illegal drug use, he will receive preferential treatment over other prisoners who are drug-free and serving the same sentence.

What signal are we sending to our young people by giving such preferential treatment to drug abusers? Our society has not done a very good job instilling basic moral values in our future generations, in large measure because we have ignored the real-life consequences of our activity here in Washington. Despite the tremendous amount of money that has been spent on drug prevention programs, substance abuse is on the rise. And what kind of role models do drug-addicted athletes make? It is time for Congress to take a stand, and use its bully pulpit to discourage drug use. While this legislation is narrowly drawn to address one aspect of our drug control strategy, it is a good first step.

Supporters of the current system argue that the early release mechanism is used as an incentive for addicts to seek help. But there are other "carrots" and "sticks" that may be used to achieve this same goal. For example, inmates might be granted preferred housing or job assignments. The bill requires the Bureau of Prisons to use all such incentives and sanctions to get prisoners into drug treatment programs.

This legislation recognizes that incentives can be powerful tools, but does not sacrifice the integrity of the prison sentence in the process. I commend the gentleman from North Carolina for introducing this bill and I am proud to support it.

Mr. DAVIS. Mr. Speaker, I rise today in strong support of H.R. 2650, the Mandatory Federal Prison Drug Treatment Act which was introduced by the gentleman from North Carolina, Congressman FRED HEINEMAN.

H.R. 2650 is a commonsense bill that would eliminate the sentencing inequity which currently allows the Federal Bureau of Prisons to in practice reward a drug addicted inmate for being a drug addict.

Under the 1994 crime bill, a disparity in sentencing was created that favors prisoners who attend drug treatment by giving them a 1-year credit toward the term of their sentence. Thus, those individuals who enter prison with a drug problem can currently be released earlier than a similarly sentenced individual who has no drug addition. Mr. Speaker, I believe that this provision of the 1994 crime bill is just another example of a well intentioned Federal law that has unintended practical consequences.

Congressman HEINEMAN's legislation does not modify the Bureau of Prisons successful drug treatment program currently in place. The bill would retain all incentives for completing drug treatment besides the credit toward early release. These incentives include giving inmates preferred jobs and housing assignments.

Instead, H.R. 2650 requires the Bureau of Prisons to provide proper incentives for addicted inmates to get treatment. Mr. Speaker, there is no reason why an inmate convicted for a crime should get 1 year taken off his

sentence just because he is a drug addict, while a similarly convicted inmate who is not an addict must serve a full sentence.

Therefore, I urge the House to support this bipartisan legislation.

Mr. HEINEMAN. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from North Carolina [Mr. HEINEMAN] that the House suspend the rules and pass the bill, H.R. 2650, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

□ 1445

#### ANTICOUNTERFEITING CONSUMER PROTECTION ACT OF 1996

Mr. MOORHEAD. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 2511) to control and prevent commercial counterfeiting, and for other purposes, as amended.

The Clerk read as follows:

H.R. 2511

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Anticounterfeiting Consumer Protection Act of 1996".

#### SEC. 2. FINDINGS.

The counterfeiting of trademarked and copyrighted merchandise—

- (1) has been connected with organized crime;
- (2) deprives legitimate trademark and copyright owners of substantial revenues and consumer goodwill;
- (3) poses health and safety threats to United States consumers;
- (4) eliminates United States jobs; and
- (5) is a multibillion-dollar drain on the United States economy.

#### SEC. 3. COUNTERFEITING AS RACKETEERING.

Section 1961(1)(B) of title 18, United States Code, is amended by inserting " , section 2318 (relating to trafficking in counterfeit labels for phonorecords, computer programs or computer program documentation or packaging and copies of motion pictures or other audiovisual works), section 2319 (relating to criminal infringement of a copyright), section 2319A (relating to unauthorized fixation of and trafficking in sound recordings and music videos of live music performances), section 2320 (relating to trafficking in goods or services bearing counterfeit marks)" after "sections 2314 and 2315 (relating to interstate transportation of stolen property)".

#### SEC. 4. APPLICATION TO COMPUTER PROGRAMS, COMPUTER PROGRAM DOCUMENTATION, OR PACKAGING.

(a) IN GENERAL.—Section 2318 of title 18, United States Code, is amended—

- (1) in subsection (a), by striking "a motion picture or other audiovisual work," and inserting "a computer program or documentation or packaging for a computer program, or a copy of a motion picture or other audiovisual work, and whoever, in any of the circumstances described in subsection (c) of this section, knowingly traffics in counterfeit documentation or packaging for a computer program,";

(2) in subsection (b)(3) by inserting "'computer program,'" after "'motion picture,'" and

(3) in subsection (c)—

(A) by striking "or" at the end of paragraph (2);

(B) in paragraph (3)—

(i) by inserting "a copy of a copyrighted computer program or copyrighted documentation or packaging for a computer program," after "enclose,"; and

(ii) by striking the period at the end and inserting "; or"; and

(C) by adding after paragraph (3) the following:

"(4) the counterfeited documentation or packaging for a computer program is copyrighted."

(b) CONFORMING AMENDMENTS.—(1) The section caption for section 2318 of title 18, United States Code, is amended to read as follows:

**§ 2318. Trafficking in counterfeit labels for phonorecords, copies of computer programs or computer program documentation or packaging, and copies of motion pictures or other audio visual works, and trafficking in counterfeit computer program documentation or packaging.**

(2) The item relating to section 2318 in the table of sections for chapter 113 of such title is amended to read as follows:

"2318. Trafficking in counterfeit labels for phonorecords, copies of computer programs or computer program documentation or packaging, and copies of motion pictures or other audio visual works, and trafficking in counterfeit computer program documentation or packaging."

#### **SEC. 5. TRAFFICKING IN COUNTERFEIT GOODS AND SERVICES.**

Section 2320 of title 18, United States Code, is amended by adding at the end the following:

"(e) Beginning with the first year after the date of enactment of this subsection, the Attorney General shall include in the report of the Attorney General to Congress on the business of the Department of Justice prepared pursuant to section 522 of title 28, an accounting, on a district by district basis, of the following with respect to all actions taken by the Department of Justice that involve trafficking in counterfeit labels for phonorecords, copies of computer programs or computer program documentation or packaging, copies of motion pictures or other audiovisual works (as defined in section 2318 of title 18), criminal infringement of copyrights (as defined in section 2319 of title 18), unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances (as defined in section 2319A of title 18), or trafficking in goods or services bearing counterfeit marks (as defined in section 2320 of title 18):

"(1) The number of open investigations.

"(2) The number of cases referred by the United States Customs Service.

"(3) The number of cases referred by other agencies or sources.

"(4) The number and outcome, including settlements, sentences, recoveries, and penalties, of all prosecutions brought under sections 2318, 2319, 2319A, and 2320 of title 18."

#### **SEC. 6. SEIZURE OF COUNTERFEIT GOODS**

Section 34(d)(9) of the Act of July 5, 1946 (60 Stat. 427, chapter 540; 15 U.S.C. 1116(d)(9)), is amended by striking the first sentence and inserting the following: "The court shall order that service of a copy of the order under this subsection shall be made by a Federal law enforcement officer (such as a United States marshal or an officer or agent of the United States Customs Service, Secret

Service, Federal Bureau of Investigation, or Post Office) or may be made by a State or local law enforcement officer, who, upon making service, shall carry out the seizure under the order."

#### **SEC. 7. RECOVERY FOR VIOLATION OF RIGHTS.**

Section 35 of the Act of July 5, 1946 (60 Stat. 427, chapter 540; 15 U.S.C. 1117), is amended by adding at the end the following new subsection:

"(c) In a case involving the use of a counterfeit mark (as defined in section 34(d) (15 U.S.C. 1116(d)) in connection with the sale, offering for sale, or distribution of goods or services, the plaintiff may elect, at any time before final judgment is rendered by the trial court, to recover, instead of actual damages and profits under subsection (a), an award of statutory damages for any such use in connection with the sale, offering for sale, or distribution of goods or services in the amount of—

"(1) not less than \$500 or more than \$100,000 per counterfeit mark per type of goods or services sold, offered for sale, or distributed, as the court considers just; or

"(2) if the court finds that the use of the counterfeit mark was willful, not more than \$1,000,000 per counterfeit mark per type of goods or services sold, offered for sale, or distributed, as the court considers just."

#### **SEC. 8. DISPOSITION OF EXCLUDED ARTICLES.**

Section 603(c) of title 17, United States Code, is amended in the second sentence by striking "as the case may be;" and all that follows through the end and inserting "as the case may be."

#### **SEC. 9. DISPOSITION OF MERCHANDISE BEARING AMERICAN TRADEMARK**

Section 526(e) of the Tariff Act of 1930 (19 U.S.C. 1526(e)) is amended—

(1) in the second sentence, by inserting "destroy the merchandise. Alternatively, if the merchandise is not unsafe or a hazard to health, and the Secretary has the consent of the trademark owner, the Secretary may" after "shall, after forfeiture,";

(2) by inserting "or" at the end of paragraph (2);

(3) by striking ", or" at the end of paragraph (3) and inserting a period; and

(4) by striking paragraph (4).

#### **SEC. 10. CIVIL PENALTIES**

Section 526 of the Tariff Act of 1930 (19 U.S.C. 1526) is amended by adding at the end the following new subsection:

"(f) CIVIL PENALTIES.—(1) Any person who directs, assists financially or otherwise, or aids and abets the importation of merchandise for sale or public distribution that is seized under subsection (e) shall be subject to a civil fine.

"(2) For the first such seizure, the fine shall be not more than the value that the merchandise would have had if it were genuine, according to the manufacturer's suggested retail price, determined under regulations promulgated by the Secretary.

"(3) For the second seizure and thereafter, the fine shall be not more than twice the value that the merchandise would have had if it were genuine, as determined under regulations promulgated by the Secretary.

"(4) The imposition of a fine under this subsection shall be within the discretion of the Customs Service, and shall be in addition to any other civil or criminal penalty or other remedy authorized by law."

#### **SEC. 11. PUBLIC DISCLOSURE OF AIRCRAFT MANIFESTS.**

Section 431(c)(1) of the Tariff Act of 1930 (19 U.S.C. 1431(c)(1)) is amended—

(1) in the matter preceding subparagraph (A), by inserting "vessel or aircraft" before "manifest";

(2) by amending subparagraph (D) to read as follows:

"(D) The name of the vessel, aircraft, or carrier.";

(3) by amending subparagraph (E) to read as follows:

"(E) The seaport or airport of loading.";

(4) by amending subparagraph (F) to read as follows:

"(F) The seaport or airport of discharge.";

and

(5) by adding after subparagraph (G) the following new subparagraph:

"(H) The trademarks appearing on the goods or packages."

#### **SEC. 12. CUSTOMS ENTRY DOCUMENTATION.**

Section 484(d) of the Tariff Act of 1930 (19 U.S.C. 1484(d)) is amended—

(1) by striking "Entries" and inserting "(1) Entries"; and

(2) by adding at the end the following new paragraph:

"(2) The Secretary, in prescribing regulations governing the content of entry documentation, shall require that entry documentation contain such information as may be necessary to determine whether the imported merchandise bears an infringing trademark in violation of section 42 of the Act of July 5, 1946 (commonly referred to as the 'Trademark Act of 1946'; 15 U.S.C. 1124), or any other applicable law, including a trademark appearing on the goods or packaging."

#### **SEC. 13. UNLAWFUL USE OF VESSELS, VEHICLES, AND AIRCRAFT IN AID OF COMMERCIAL COUNTERFEITING.**

Section 80302(a) of title 49, United States Code, is amended—

(1) by striking "or" at the end of paragraph (4);

(2) by striking the period at the end of paragraph (5) and inserting "; or"; and

(3) by adding at the end the following new paragraph:

"(6)(A) a counterfeit label for a phonorecord, copy of a computer program or computer program documentation or packaging, or copy of a motion picture or other audiovisual work (as defined in section 2318 of title 18);

"(B) a phonorecord or copy in violation of section 2319 of title 18;

"(C) a fixation of a sound recording or music video of a live musical performance in violation of section 2319A of title 18; or

"(D) any good bearing a counterfeit mark (as defined in section 2320 of title 18)."

#### **SEC. 14. REGULATIONS.**

Not later than 6 months after the date of the enactment of this Act, the Secretary of the Treasury shall prescribe such regulations or amendments to existing regulations that may be necessary to carry out the amendments made by sections 9, 10, 11, 12, and 13 of this Act.

The SPEAKER pro tempore (Mr. UPTON). Pursuant to the rule, the gentleman from California [Mr. MOORHEAD] and the gentlewoman from Colorado [Mrs. SCHROEDER] will each be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. MOORHEAD].

GENERAL LEAVE

Mr. MOORHEAD. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks on H.R. 2511.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. MOORHEAD. Mr. Speaker, I yield myself 3 minutes.

(Mr. MOORHEAD asked and was given permission to revise and extend his remarks.)

Mr. MOORHEAD. Mr. Speaker, I would like to commend my friend and colleague from Virginia, Mr. GOODLATTE, for his leadership in drafting and introducing this bill, which is cosponsored by Chairman HYDE, Ranking Minority Member CONYERS, Representative COBLE, a valued senior member on the subcommittee, myself, and several other Members. I also want to thank the gentlewoman from Colorado, PAT SCHROEDER, for her support in processing this legislation.

Two amendments to H.R. 2511 were adopted by the Subcommittee on Courts and Intellectual Property, and the bill was unanimously approved by both the subcommittee and the full Judiciary Committee. A companion bill in the other body, S. 1136, passed by voice vote on December 13, 1995.

Current law recognizes that a problem of criminal trademark and copyright counterfeiting exists, but it does not do enough to deter and prosecute counterfeiters. Criminal counterfeiting has risen to a new level. In 1982, the cost of piracy to U.S. industries was approximately \$5.5 billion. Today, American businesses lost 35 times that amount, more than \$200 billion per year.

The combination of high profits and low risk of prosecution has made trademark and copyright counterfeiting a favorite activity of organized crime syndicates. Law enforcement agents from the U.S. Customs Service testified that combating criminal activity connected to counterfeiting is starting to look like attacking the drug trafficking problem. Last year, those same customs agents coordinated raids in New York and Los Angeles that netted \$27 million in counterfeit merchandise and supported indictments of 43 members of a Korean crime syndicate.

The price of counterfeiting goes well beyond lost revenues and damaged business reputations: it can cost lives. Fatal automobile, airplane, and helicopter crashes have been associated with faulty counterfeit machine parts. Name brand prescription and over-the-counter drugs have also been counterfeited. Millions of bogus pills containing inferior, or even harmful, ingredients have been distributed to unsuspecting consumers purchasing medicine.

Searle discovered the distribution of more than 1 million bogus birth control pills after several women complained of unusual bleeding. Tylenol, Advil, Tagament, Ceclor, and Zantac are all other famous name brand pharmaceuticals that are reported to have been counterfeited. One witness testified that toy makers are concerned that cheap knock-offs present choking hazards and may contain toxic paints or dyes.

H.R. 2511 proposes key amendments to both criminal and civil laws in response to the growing threat of criminal counterfeiting. It improves the ability of law enforcement officers to detect and arrest counterfeiters. It also

allows for the meaningful prosecution of all levels of a criminal organization involved in counterfeiting.

Finally, this bill ensures that seized counterfeit goods are destroyed rather than returned to the importer for re-shipment to another port of entry.

I am unaware of any opposition to H.R. 2511, and I urge its adoption.

Mr. Speaker, I reserve the balance of my time.

Mrs. SCHROEDER. Mr. Speaker, I yield myself such time as I may consume.

(Mrs. SCHROEDER asked and was given permission to revise and extend her remarks.)

Mrs. SCHROEDER. Mr. Speaker, I join the subcommittee chairman in supporting H.R. 2511. This bill strengthens criminal and civil laws and remedies relating to copyright and trademark counterfeiting.

Our subcommittee has worked hard to ensure that intellectual property is accorded a high level of protection. As we seek to persuade other countries around the world to provide strong protection for copyrights, trademarks, and patents, it is critical that we demonstrate through our own legal system the high value that we place on intellectual property.

Because there is an enormous potential for profit in illegal counterfeiting, the civil and criminal remedies must be strong if we are to deter counterfeiting. As the committee report notes, between 5 and 8 percent of all goods and services sold worldwide are counterfeit. In some industries, the problem is enormous; the computer software industry, for example, estimates that for every five software programs that are legally sold, two illegally pirated copies are also sold.

As the gentleman from California has pointed out, the problem goes beyond the monetary loss and damage to reputation suffered by the copyright or trademark owner. Counterfeit goods also can pose a serious threat to consumers. Many of my colleagues may recall, for example, the substandard infant formula, falsely labeled with a well-known brand, that was distributed last year in the United States. In another case, more than a million bogus birth control pills were distributed falsely bearing the mark of a pharmaceutical company; the company did not discover the counterfeits until women complained of pain and unusual bleeding.

By making trafficking in counterfeit goods or services a predicate offense subject to RICO, by strengthening provisions relating to the seizure and destruction of counterfeited goods, and by providing for judicially determined statutory damages for trademark owners, this bill will make it easier to combat commercial counterfeiting.

The administration supports this bill, and I urge my colleagues to support this bill strengthening the ability of trademark and copyright owners to protect their property rights, and that is what this bill does.

Mr. Speaker, I thank everybody on the committee for doing this, and I think it has been in the long tradition of this committee to move these in a very bipartisan, nonconfrontational fashion because we understand how terribly important it is for the United States to stand firm on the globe in protecting these trademarks and to be moving forward and protecting copyrights. This country produces a very high percentage of it, it is a high percentage of our trade internationally, and I again thank the subcommittee chairman for his strong leadership on all of this.

Mr. Speaker, I reserve the balance of my time.

Mr. MOORHEAD. Mr. Speaker, I yield 2 minutes to the gentleman from Illinois [Mr. HYDE], chairman of the full Committee on the Judiciary of the House.

(Mr. HYDE asked and was given permission to revise and extend his remarks.)

Mr. HYDE. Mr. Speaker, I surely am not going to take all that time. I have nothing new to add that has not already been said. This is a fine piece of legislation. It will cure or move toward cure of a very serious problem, that of counterfeiting, and so I will ask that my remarks, which are truncated and comprehensive, be included in the RECORD.

But, I do want to congratulate the chairman of the subcommittee, the gentleman from California, CARLOS MOORHEAD, and the ranking member, the gentlewoman from Colorado, Mrs. PATRICIA SCHROEDER, on her excellent counsel, the gentleman from Virginia, Mr. GOODLATTE, who initiated this legislation. And I think the staff, certainly our staff, Tom Mooney, John Dudas, Mitch Glazier, Joe Wolfe, and Betty Wheeler, all deserve special thanks as well.

Mr. Speaker, I strongly support H.R. 2511, the Anticounterfeiting Consumer Protection Act of 1996. Soon we will consider the renewal of most-favored-nation status for China. This timely legislation highlights one of the growing problems we have with that country: counterfeit goods. The Chinese continue to counterfeit the goods of legitimate American companies at an alarming rate.

Just 2 weeks ago, the administration issued a finding that China was not satisfactorily implementing the Agreement on Enforcement of Intellectual Property Rights and Market Access, signed in March 1995. In making its finding, the administration said the following:

Critical deficiencies are present in China's implementation of measures to address piracy at the production and wholesale distribution level. Piracy remains particularly rampant in Guangdong province. Manufacturers and distributors, primarily located in southern China, continue to produce pirated CD's, LD's, and CD-ROM's in massive quantities. Due to lax enforcement at the point of production and at the border, exports of pirated computer software, movies, sound recordings, and other products have grown substantially over the past year. Products pirated in China have flooded Southeast Asia, Russia, and the other Commonwealth of

Independent States [CIS] countries. Latin America and European markets have also been targeted, and the U.S. Customs Service has seized pirated CD's and CD-ROM's entering the United States from China.

According to recent newspaper articles, the Chinese may have as many as 31 government-licensed plants turning out pirated CD's and CD-ROM's. To make matters worse, many believe that some or all of these plants are run by the Chinese military or government officials. According to these articles, the International Intellectual Property Alliance, which represents the record and motion picture industry, estimates that in 1995, the United States lost \$6.9 billion in exports because of counterfeit movies, records, books, and software. About \$2.3 billion were lost to the Chinese. The Pharmaceutical Manufacturers' Association estimates that its losses from pirated drug patents exceed \$3 billion. Millions more are lost to counterfeit auto parts, athletic shoes, and apparel.

Unfortunately, the probe is not limited to the Chinese. Organized crime operations sell counterfeit goods as a way to launder the money from their other criminal activities. By doing so, the Chinese, the Mob, and countless other criminals steal billions of dollars' worth of intellectual property that American companies and individuals have developed at great expense.

For far too long, we have tended to look upon the counterfeiting of goods as a rather trivial crime. That must stop. The sale of counterfeit goods has numerous serious consequences.

First, we must consider who is selling these goods: the Chinese communist government, the Mob, and common criminals. These are not people that Americans want to finance.

Second, counterfeit goods amount to nothing more than the theft of intellectual property. If we do not vigorously protect intellectual property, we destroy the incentive to create.

Third, counterfeit goods are frequently dangerous, and they can cause serious injury. The current issue of *Business Week* reports that substandard airplane parts contributed to at least 166 airplane crashes from 1973 to 1993. Last September, the *New York Times* reported that the FDA has uncovered at least 10 operations in 8 States producing substandard infant formula that has caused sickness in babies using it.

Finally, by injuring legitimate American companies, counterfeit goods destroy American jobs. If we want to protect our American jobs, we must stop the importation of the phony compact discs and computer programs that the Chinese would foist upon us.

Because of all these serious consequences, I strongly support H.R. 2511. It will give new tools to the legitimate American companies who want to fight off the counterfeiters. It will place counterfeiting activities within the RICO statute, exactly the place where such organized criminal activity belongs. With all of the RICO remedies in hand, law enforcement officials and the private companies will be able to hit the counterfeiters in their pocketbooks.

H.R. 2511 will also give the Government new tools when it seizes counterfeit goods at the border. Amazingly, up until now, our law allowed counterfeiters who got caught at the border to re-export the goods to another country. Obviously then, there was little cost to getting caught. H.R. 2511 insures that we will

never engage in that simple-minded practice again. Rather, under H.R. 2511, counterfeit goods seized at the border will either be destroyed or, if the legitimate trademark owner consents, given to charity.

For all these reasons, Mr. Speaker, I commend the distinguished chairman of the Subcommittee on Courts and Intellectual Property, Mr. MOORHEAD, and the ranking member, Mrs. SCHROEDER, for their important work in bringing this bipartisan legislation to the floor. I urge all of my colleagues to vote in favor of H.R. 2511.

Mr. MOORHEAD. Mr. Speaker, I yield 8 minutes to the gentleman from Virginia [Mr. GOODLATTE], the sponsor of this legislation.

Mr. GOODLATTE. Mr. Speaker, as the lead sponsor of H.R. 2511 I am proud that this House is taking a decisive step to make it tougher for product counterfeiters to prey on American business and American consumers and cost American workers their jobs.

Counterfeit products cost U.S. businesses an estimated \$200 billion annually. An estimated 5 percent of products sold worldwide are phony. *Fortune Magazine* has called it the crime of the 21st century. That is because counterfeiting is a highly lucrative, but relatively low-risk crime with only hand-slap penalties if caught.

New technology has made it much easier for counterfeiters to pursue their trade. Computers and digital technology have made it a cinch to copy audiotapes, video, and software, and unlike analog copies, the thousandth digital copy is just as clean and clear as the first. Scanners and laser printers have made it easy to replicate labels, logos, and even the holograms that software producers affix to their products to prove authenticity.

For years we have overlooked counterfeiters, assuming that product counterfeiting meant \$2 fake watches and was a victimless crime. But the evidence is mounting that counterfeiting is a very dangerous crime that can threaten the health and safety of us all.

Last year the Federal Aviation Administration grounded 6,000 piston-powered aircraft to check for phoney crankshaft bolts that could cause crashes. The cover story in this week's *Business Week* is on bogus airplane parts and cites the explosion last June of the No. 2 engine on a ValuJet plane as an example. *Business Week* reports that the explosion was caused by an engine that had been overhauled and later sold to ValuJet by a repair station in Turkey that lacked FAA approval. It further reports that investigators found that the engine contained a cracked and corroded compressor disk which had been plated over during the overhaul and was thus undetectable.

Counterfeit airplane parts actually caused a deadly crash of a Norwegian plane that killed 55 people.

In April 1995, the Food and Drug Administration released a "Consumer Alert" warning parents against using

counterfeit-labeled Similac with iron "Ready to Feed" liquid formula in 8-ounce plastic cans with a fictitious code number and expiration date. The fake infant formula, found in 16 States, reportedly caused illnesses ranging from rashes to seizures in many babies who consumed the substandard product.

A counterfeit brake pad caused an automobile crash that killed a mother and her child. In 1990 more than 30 raids were conducted in 15 States as a result of a crackdown on auto parts counterfeiting.

Rampant piracy of the intellectual property of American businesses has strained United States-China relations, bringing us to the brink of a trade war and requiring a reconsideration of whether China should receive most-favored-nation trade benefits.

The question Congress must ask is whether China will agree to abide by the basic rules that govern international trade, or will Chinese officials continue to condone piracy? Remember that China is our fifth largest trading partner and very well may be on its way to becoming the world's largest economy. If China refuses to play by the rules and continues at best, to ignore piracy, or at worst, to encourage it, the losses for American companies will be staggering.

For example, Chinese officials, after much prodding by Microsoft Corp. agreed to investigate the Jin Die Science and Technology Development Co. in southern China. When they raided the company, Chinese officials found 5,700 computer disks containing thousands of dollars each in Microsoft software, illegally mass-produced on sophisticated machinery. According to the *Washington Post*, during this raid the Chinese confiscated the counterfeit software disks, but U.S. executives who were at the raid claim they also saw Jin Die's machines producing video discs containing movies such as "Waterworld" and "Ace Ventura II." The Chinese authorities did nothing to stop the pirating of these American movies.

H.R. 2511 will make it easier to ensure that the constant flow of counterfeits, arriving in the United States from countries like China can be confiscated and taken out of the stream of commerce. It also ensures that the American businesses who suffer commercial damage from counterfeit products may be awarded either actual or statutory damages.

Because of the lure of enormous profits compared to the relatively low risk of being arrested, prosecuted, and sent to jail, it has not taken long for organized crime to get involved in counterfeiting operations. These operations have become highly sophisticated, well-financed, mobile, and international in scope.

In March 1995, more than 10.5 million dollars' worth of counterfeit software was found during a raid in California that also turned up semiautomatic

weapons, handguns, and military explosives. Newspaper stories report that those who were arrested are under investigation for their link to organized crime, a link that may reach from China, Hong Kong, and Taiwan to southern California's immigrant neighborhoods.

These criminal networks have distribution systems as diverse as any modern corporation. Counterfeiters know that although criminal penalties exist on the books, criminal actions are rarely initiated against counterfeiters. As for private enforcement actions, trademark and copyright owners are consistently frustrated by an inability to recover any meaningful damages.

This legislation takes strong steps to attack this problem.

The Anticounterfeiting Consumer Protection Act will help law enforcement officials contend with the sophisticated nature of modern counterfeiting. First, it increases criminal penalties by making trafficking in counterfeit goods or services a RICO offense, consequently providing for increased jail time, criminal fines, and asset forfeiture.

Second, the legislation allows greater involvement by all levels of Federal law enforcement in fighting counterfeiting, including enhanced authority to seize counterfeit goods and the tools of the counterfeiters' trade.

Third, it makes it more difficult for these goods to re-enter the stream of commerce once they have been seized.

Fourth, our bill also adds teeth to existing statutes and provides stronger civil remedies, including civil fines pegged to the value of genuine goods and statutory damage awards of up to \$1,000,000 per mark.

The Anticounterfeiting Consumer Protection Act will provide law enforcement officials with the tools they need to fight back, and to protect American business and the health and safety of American consumers. The time has come to make sure that our fight against counterfeiting is as sophisticated and modern as the crime itself.

Finally, I want to thank all of the members of the Judiciary Committee who have supported this important legislation. Chairman HYDE, Chairman MOORHEAD, ranking minority member CONYERS, Congresswoman SCHROEDER have all contributed to this effort. I greatly appreciate their hard work on behalf of American consumers and businesses.

I urge all to support this legislation.

□ 1500

Mrs. SCHROEDER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would like to thank two more staff people who worked very, very hard on this legislation, and that would be Elizabeth Frazee and Betty Wheeler. They also, I think, worked very hard on this, and we want-

ed to make sure everyone was included in the chairman's very generous thanks.

Mr. Speaker, I yield back the balance of my time.

Mr. MOORHEAD. Mr. Speaker, I yield 2 minutes to the gentleman from Virginia [Mr. DAVIS].

Mr. DAVIS. Mr. Speaker, first of all, I want to compliment the author of this legislation, the gentleman from Virginia [Mr. GOODLATTE], the chairman, the gentleman from California [Mr. MOORHEAD], and the ranking member, the gentlewoman from Colorado [Mrs. SCHROEDER], for their leadership on this issue.

Trademark counterfeiting costs this Nation over \$200 million annually. That is more than the annual budget deficit in this country. Counterfeiting has grown from about \$5.5 million in costs in 1982 to that \$200 billion figure today. I once again applaud the authors of this amendment and the bipartisan way in which we have moved forward passage today.

The industry estimates that sales of counterfeit software exceed 40 percent of total industry revenues. Almost two of five cartridges that include a piece of software that are sold are counterfeit. Counterfeit software also costs companies more than revenues and it costs this Nation more than just jobs. It costs companies their reputation, because often substandard products with inferior quality enter the marketplace mislabeled with the originating company. What consumers do is they cannot take a chance on this, so they will buy other products that they figure are not mislabeled. The better companies end up, as a result of that, losing sales, losing jobs, losing revenues.

Mr. Speaker, this legislation I think is going to make a significant contribution toward curbing these abuses. It is going to make this a RICO offense. It is going to increase fines and jail time for offenders. It is going to speed the seizure of goods, in many cases. It is going to increase penalties and civil fines of up to \$1 million per mark. It is going to allow greater enforcement coordination by State and local law enforcement officials working toward this.

This is, I think, an increasing area of concern for those in the software industry, and I think this legislation is going to make tremendous headway toward curbing these abuses in the future. I am proud to be a cosponsor of this, and once again congratulate my colleagues in bringing this to the floor today.

Mr. MOORHEAD. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. UPTON). The question is on the motion offered by the gentleman from California [Mr. MOORHEAD] that the House suspend the rules and pass the bill, H.R. 2511, as amended.

The question was taken; and (two-thirds having voted in favor thereof)

the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

#### GENERAL LEAVE

Mr. MOORHEAD. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H.R. 2511, the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. MOORHEAD. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill, S. 1136, to control and prevent commercial counterfeiting, and for other purposes, and ask for its immediate consideration in the House.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

Mrs. SCHROEDER. Mr. Speaker, reserving the right to object, I would ask the gentleman from California [Mr. MOORHEAD], if he could explain the purpose of his unanimous-consent request.

Mr. MOORHEAD. Mr. Speaker, the purpose of this request is to send the bill back to the Senate with an amendment consisting of the text of the House-passed bill, and to ask for a conference.

Mrs. SCHROEDER. Mr. Speaker, based on that, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 1136

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Anticounterfeiting Consumer Protection Act of 1995".

#### SEC. 2. FINDINGS.

The counterfeiting of trademarked and copyrighted merchandise—

- (1) has been connected with organized crime;
- (2) deprives legitimate trademark and copyright owners of substantial revenues and consumer goodwill;
- (3) poses health and safety threats to American consumers;
- (4) eliminates American jobs; and
- (5) is a multibillion-dollar drain on the United States economy.

#### SEC. 3. COUNTERFEITING AS RACKETEERING.

Section 1961(1)(B) of title 18, United States Code, is amended by inserting " , section 2318 (relating to trafficking in counterfeit labels for phonorecords, computer programs or computer program documentation or packaging and copies of motion pictures or other audiovisual works), section 2319 (relating to criminal infringement of a copyright), section 2320 (relating to trafficking in goods or services bearing counterfeit marks)" after "sections 2314 and 2315 (relating to interstate transportation of stolen property)".

#### SEC. 4. APPLICATION TO COMPUTER PROGRAMS, COMPUTER PROGRAM DOCUMENTATION, OR PACKAGING.

Section 2318 of title 18, United States Code, is amended—

(1) in subsection (a), by inserting "a computer program or computer program documentation or packaging or" after "copy of";

(2) in subsection (b)(3), by inserting "computer program," after "motion picture,"; and

(3) in subsection (c)(3), by inserting "a copy of a computer program or computer program documentation or packaging," after "enclose,".

#### SEC. 5. TRAFFICKING IN COUNTERFEIT GOODS OR SERVICES.

Section 2320 of title 18, United States Code, is amended by adding at the end the following new subsection:

"(e) Beginning with the first year after the date of enactment of this subsection, the Attorney General shall include in the report of the Attorney General to Congress on the business of the Department of Justice prepared pursuant to section 522 of title 28, on a district by district basis, for all actions involving trafficking in counterfeit labels for phonorecords, copies of computer programs or computer program documentation or packaging, copies of motion pictures or other audiovisual works (as defined in section 2318 of title 18), criminal infringement of copyrights (as defined in section 2319 of title 18), or trafficking in goods or services bearing counterfeit marks (as defined in section 2320 of title 18), an accounting of—

"(1) the number of open investigations;

"(2) the number of cases referred by the United States Customs Service;

"(3) the number of cases referred by other agencies or sources; and

"(4) the number and outcome, including settlements, sentences, recoveries, and penalties, of all prosecutions brought under sections 2318, 2319, and 2320 of title 18."

#### SEC. 6. SEIZURE OF COUNTERFEIT GOODS.

Section 34(d)(9) of the Act of July 5, 1946 (60 Stat. 427, chapter 540; 15 U.S.C. 1116(d)(9)), is amended by striking the first sentence and inserting the following: "The court shall order that service of a copy of the order under this subsection shall be made by a Federal law enforcement officer (such as a United States marshal or an officer or agent of the United States Customs Service, Secret Service, Federal Bureau of Investigation, or Post Office) or may be made by a State or local law enforcement officer, who, upon making service, shall carry out the seizure under the order."

#### SEC. 7. RECOVERY FOR VIOLATION OF RIGHTS.

Section 35 of the Act of July 5, 1946 (60 Stat. 427, chapter 540; 15 U.S.C. 1117), is amended by adding at the end the following new subsection:

"(c) In a case involving the use of a counterfeit mark (as defined in section 34(d) (15 U.S.C. 1116(d)) in connection with the sale, offering for sale, or distribution of goods or services, the plaintiff may elect, at any time before final judgment is rendered by the trial court, to recover, instead of actual damages and profits under subsection (a), an award of statutory damages for any such use in the amount of—

"(1) not less than \$500 or more than \$100,000 per counterfeit mark per type of goods or services sold, offered for sale, or distributed, as the court considers just; or

"(2) if the court finds that the use of the counterfeit mark was willful, not more than \$1,000,000 per counterfeit mark per type of goods or services sold, offered for sale, or distributed, as the court considers just."

#### SEC. 8. DISPOSITION OF EXCLUDED ARTICLES.

Section 603(c) of title 17, United States Code, is amended in the second sentence by

striking "as the case may be;" and all that follows through the end and inserting "as the case may be."

#### SEC. 9. DISPOSITION OF MERCHANDISE BEARING AMERICAN TRADEMARK.

Section 526(e) of the Tariff Act of 1930 (19 U.S.C. 1526(e)) is amended—

(1) in the second sentence, by inserting "destroy the merchandise. Alternatively, if the merchandise is not unsafe or a hazard to health, and the Secretary has the consent of the trademark owner, the Secretary may" after "shall, after forfeiture,";

(2) by inserting "or" at the end of paragraph (2);

(3) by striking "or" at the end of paragraph (3) and inserting a period; and

(4) by striking paragraph (4).

#### SEC. 10. CIVIL PENALTIES.

Section 526 of the Tariff Act of 1930 (19 U.S.C. 1526) is amended by adding at the end the following new subsection:

"(f)(1) Any person who directs, assists financially or otherwise, or aids and abets the importation of merchandise for sale or public distribution that is seized under subsection (e) shall be subject to a civil fine.

"(2) For the first such seizure, the fine shall be not more than the value that the merchandise would have had if it were genuine, according to the manufacturer's suggested retail price, determined under regulations promulgated by the Secretary.

"(3) For the second seizure and thereafter, the fine shall be not more than twice the value that the merchandise would have had if it were genuine, as determined under regulations promulgated by the Secretary.

"(4) The imposition of a fine under this subsection shall be within the discretion of the United States Customs Service, and shall be in addition to any other civil or criminal penalty or other remedy authorized by law."

#### SEC. 11. PUBLIC DISCLOSURE OF AIRCRAFT MANIFESTS.

Section 431(c)(1) of the Tariff Act of 1930 (19 U.S.C. 1431(c)(1)) is amended—

(1) in the matter preceding subparagraph (A), by inserting "vessel or aircraft" before "manifest";

(2) by amending subparagraph (D) to read as follows:

"(D) The name of the vessel, aircraft, or carrier.";

(3) by amending subparagraph (E) to read as follows:

"(E) The seaport or airport of loading.";

and

(4) by amending subparagraph (F) to read as follows:

"(F) The seaport or airport of discharge."

#### SEC. 12. CUSTOMS ENTRY DOCUMENTATION.

Section 484(d) of the Tariff Act of 1930 (19 U.S.C. 1484(d)) is amended—

(1) by striking "Entries" and inserting "(1) Entries"; and

(2) by adding at the end the following new paragraph:

"(2) The Secretary, in prescribing regulations governing the content of entry documentation, shall require that entry documentation contain such information as may be necessary to determine whether the imported merchandise bears an infringing trademark in violation of section 42 of the Act of July 5, 1946 (60 Stat. 440, chapter 540; 15 U.S.C. 1124) or any other applicable law, including a trademark appearing on the goods or packaging."

#### SEC. 13. UNLAWFUL USE OF VESSELS, VEHICLES, AND AIRCRAFT IN AID OF COMMERCIAL COUNTERFEITING.

Section 80302(a) of title 49, United States Code, is amended—

(1) by striking "or" at the end of paragraph (4);

(2) by striking the period at the end of paragraph (5) and inserting "or"; and

(3) by adding at the end the following new paragraph:

"(6)(A) A counterfeit label for a phonorecord, computer program or computer program documentation or packaging or copy of a motion picture or other audiovisual work (as defined in section 2318 of title 18);

"(B) a phonorecord or copy in violation of section 2319 of title 18; or

"(C) any good bearing a counterfeit mark (as defined in section 2320 of title 18)."

#### SEC. 14. REGULATIONS.

Not later than 6 months after the date of enactment of this Act, the Secretary of the Treasury shall prescribe such regulations or amendments to existing regulations that may be necessary to implement and enforce this Act.

MOTION OFFERED BY MR. MOORHEAD

Mr. MOORHEAD. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. MOORHEAD moves to strike out all after the enacting clause of S. 1136 and to insert in lieu thereof the text of H.R. 2511, as passed by the House.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

APPOINTMENT OF CONFEREES

Mr. MOORHEAD. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Pursuant to rule XX and by direction of the Committee on the Judiciary, Mr. MOORHEAD moves that the House insist on its amendment to the bill S. 1136 and request a conference thereon with the Senate.

The motion was agreed to.

The SPEAKER pro tempore. Without objection, the Chair appoints the following conferees: Messrs. HYDE, MOORHEAD, GOODLATTE, CONYERS, and Mrs. SCHROEDER.

There was no objection.

A similar House bill (H.R. 2511) was laid on the table.

#### COPYRIGHT CLARIFICATIONS ACT OF 1996

Mr. MOORHEAD. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1861) to make technical corrections in the Satellite Home Viewer Act of 1994 and other provisions of title 17, United States Code, as amended.

The Clerk read as follows:

H.R. 1861

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

*This Act may be cited as the "Copyright Clarifications Act of 1996".*

#### SEC. 2. SATELLITE HOME VIEWER ACT.

*The Satellite Home Viewer Act of 1994 (Public Law 103-369) is amended as follows:*

*(1) Section 2(3)(A) is amended to read as follows:*

*"(A) in clause (i) by striking '12 cents' and inserting '17.5 cents per subscriber in the case of superstations that as retransmitted by the satellite carrier include any program which, if delivered by any cable system in the United States, would be subject to the syndicated exclusivity rules of the Federal Communications Commission, and 14 cents per subscriber in the case of superstations that are syndex-proof as defined*