

TRIBUTE TO THE 7TH GREAT DOMINICAN PARADE AND CARNAVAL OF THE BRONX

HON. JOSÉ E. SERRANO

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 17, 1997

Mr. SERRANO. Mr. Speaker, it is an honor for me to recognize the Great Dominican Parade and Carnival of the Bronx on its seventh year of celebrating Dominican culture in my South Bronx congressional district.

Under its founder and president Felipe Febles, the parade has grown in size and splendor. It now brings together an increasing number of participants from all five New York City boroughs and beyond.

On Sunday, thousands of members and friends of the Dominican community will march along the grand concourse in honor of Juan Pablo Duarte, the father of the independence of the Dominican Republic.

The event will feature a wide variety of entertainment for all age groups. This year's festival includes the performance of Merengue and Salsa bands, crafts exhibitions, and food typical of the Dominican Republic.

In addition to the parade, President Febles and many organizers have provided the community with nearly 2 weeks of activities to commemorate the contributions of the Dominican community, its culture, and history.

Mr. Speaker, it is with enthusiasm that I ask my colleagues to join me in paying tribute to this wonderful celebration of Dominican culture, which has brought much pride to the Bronx community.

TRIBUTE TO JOHN NEFF

HON. ROBERT A. BORSKI

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 17, 1997

Mr. BORSKI. Mr. Speaker, I rise today in honor of my friend and associate, Mr. John Neff. I would like to acknowledge John on his retirement after 32 years of dedicated service to Frankford Hospital. John has truly reshaped the hospital, and moved it to the forefront of modern health care.

When John first came to Frankford Hospital in 1965, it consisted of a single, extremely outdated facility. As he retires, we can see the transformation that he has created. Thirty-two years later, the hospital is a contemporary health system, with five state-of-the-art facilities. Throughout his tenure, John focused on using change as a catalyst to see the hospital's objective of service come to fruition. With his fingers on the pulse of innovation, he is leaving Frankford Hospital poised to meet the demands of a new era in health care.

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John has always agreed with me that the needs of seniors in Philadelphia are of utmost importance, and has continued to work to provide quality health care for seniors in our community. As a member of the Hospital and Healthsystem Association of Pennsylvania, he has worked in conjunction with this group to see that health care in Philadelphia maintains the necessary components of superior care for its patients.

Not only has John changed the care side of the hospital, but he has also changed the way

in which it dealt with employees. When employees of the hospital speak about John, they often use the words kind, compassionate, and open. He has developed a feeling of fellowship and community within the hospital, with the staff describing John and other members as family.

As John moves on to a time in his life where he can devote himself to his other great passions: family, grandchildren, flying, and golf, I congratulate him on 32 years of unwavering service and dedication to Frankford Hospital and the people of Philadelphia. John is a model of perseverance and true dedication. He has taken the lead without apprehension, and challenged the status quo. With great respect, I wish to honor and applaud my friend and colleague. May he have continued success.

IN HONOR OF BILL COBANE: AN EXEMPLARY INDIVIDUAL; A DEDICATED PUBLIC SERVANT

HON. ROBERT MENENDEZ

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 17, 1997

Mr. MENENDEZ. Mr. Speaker, I rise today to pay tribute to William Cobane, a special gentleman who has distinguished himself through his outstanding dedication to my district. He served as an intern in my office, and excelled to become a congressional staff member who served my constituents earnestly and without desire of reward. In recognition of his dedicated service, I would like to honor Mr. Cobane for his exceptional voluntary service and efforts on behalf of the Sixth Annual Project Children Luncheon on July 21, 1997 at O'Donoghue's Pub in Hoboken, NJ.

Tradition and excellence are key words describing this truly dedicated citizen. Mr. Cobane has worked extensively on the Project Children benefit—an organization committed to promoting peace in Northern Ireland. This organization annually brings children from Northern Ireland to spend part of their summer in America with host families. Driven by his Irish roots, Bill Cobane works to make sure these children have the wonderful opportunity to experience and enjoy this time in America, and away from the violence in their homeland.

His hard work and commitment to the event has benefited the lives of many young children from Northern Ireland. He has dedicated much of his time and efforts toward the success of this special event.

Mr. Cobane's work and dedication are an example of his loyal and committed service to others. His volunteerism demonstrates his dedication to his community and his stature as a model citizen. His service to my district will always stand as a shining example for others. I am proud to have such a caring individual work on the Project Children Luncheon.

WAS JOHN HUANG DEBRIEFED?

HON. GERALD B.H. SOLOMON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 17, 1997

Mr. SOLOMON. Mr. Speaker, our worst fears about the depth and significance of the administration's scandals are being realized.

Is there anyone who still thinks this is just about campaign finance reform? We read in today's Washington Post column of Robert D. Novak the headline "Was John Huang Debriefed?" Was he, indeed? I raised this question quite some time ago with Commerce Secretary Daley and was met with the delays and stonewalling that have characterized this administration. What else are we to conclude, but that at the very least when it comes to Mr. Huang and security matters this administration has something to hide.

I place the Novak column in today's RECORD.

[From the Washington Post, July 17, 1997]

WAS JOHN HUANG DEBRIEFED?

(By Robert D. Novak)

A previously missing government form that should have indicated whether John Huang was debriefed by a security officer before he left the Commerce Department two years ago turned up last Friday. But the place where the now infamous Democratic fund-raiser was supposed to have signed is blank.

Any government official with top-secret access—Deputy Assistant Secretary of Commerce Huang included—must attest to the return of all classified information when debriefed as he leaves the government. But Huang's unsigned debriefing document underlines questions about what he did with government secrets and how well they were protected.

Complete answers can come only from investigators with subpoena powers. Contrary to the White House mantra, current Senate hearings concern much more than campaign finance reform—such as Huang's security clearance, dubious on its face. Immediately following CIA briefings, Huang would regularly contact the Chinese Embassy. Yet, even after resigning from the government and going to the Democratic National Committee (DNC), he received another security clearance. The CIA, which had given him documents, was not alerted to Huang's change of status.

Under the Freedom of Information Act, the conservative weekly Human Events several weeks ago obtained from the Commerce Department Huang's "Separation Clearance Certificate," noting that his "effective date of separation" was Jan. 17, 1995 (though he actually went to the DNC in December). Commerce officials signed the document on Jan. 22, noting Huang's return of government charge cards, his parking permit and his diplomatic passport. "Security debriefing and credentials" was noted and signed by a Commerce Department security officer named Robert W. Mack.

At that debriefing, Huang should have signed a Standard Form 312 acknowledging return of classified material. But an official Commerce spokesman told Human Events editor Terrence Jeffrey two weeks ago: "The recollection of our security personnel is that he [Huang] was debriefed but that a Standard Form 312 has not been located."

What's more, there are indications it was never given to congressional investigating committees. On July 3, Rep. Jerry Solomon (R-N.Y.), chairman of the House Rules Committee, wrote Commerce Secretary William Daley demanding the Form 312 by July 9.

That deadline came and went, but late on Friday, July 11, the piece of paper was dispatched to Solomon. It showed that on July 18, 1994, Huang signed for his security briefing. But Huang never signed the debriefing acknowledgment that "I have returned all classified information in my custody."

If security officer Mack signed off for the debriefing, why didn't Huang? "For reasons

that we have not determined," Commerce press officer Maria Cardona told me. I called Mack himself, but he said he could not reply. "When you're as low on the totem pole as I am . . ." he said, trailing off.

However, an unsigned Commerce document of Dec. 9, 1996, supplied to Solomon earlier this year, quotes Mack as saying that "he personally briefed Huang and had him sign a SF-312" in July 1994 but adds: "Mack has no recall of the debriefing" the following January. The memorandum continues that "he does recall" a call from a high-ranking official "to make sure that Huang did not lose his top-secret clearance" but kept it as a "consultant."

"Mack said to the best of his knowledge, Huang never worked as a consultant, but DISCO [Defense Industrial Security Clearance Office] did issue a top-secret clearance to Huang. . . . DISCO has never been notified to cancel the clearance," the memo continued. The memo writer said the clearance, issued on Dec. 14, 1995, was still valid on Dec. 9, 1996.

Yet another mysterious document: Commerce security officer Richard Duncan—Mack's colleague—on Feb. 13, 1995, wrote an internal memo listing Huang among other officials as signing SF-312s. Was this an attempt to create a paper trail?

This is the curious conclusion of John Huang's access to secret information. It began with the official request Jan. 31, 1994 that the required background investigation for Huang be waived because of "the critical need for his expertise . . . by Secretary [Ron] Brown." When Huang resigned a year later, Assistant Secretary Charles Meissner proposed the consultant's role, in order for Huang to retain access to classified documents. Brown and Meissner both perished in the tragic plane crash in Croatia, but their patronage of John Huang remains a fit subject for scrutiny.

THE ON-LINE COPYRIGHT LIABILITY LIMITATION ACT

HON. HOWARD COBLE

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 17, 1997

Mr. COBLE. Mr. Speaker, the On-Line Copyright Liability Limitation Act is being introduced in response to concerns raised by a number of on-line service and Internet access providers regarding their potential liability for copyright infringement when infringing material is transmitted on-line through their services. While several judicially created doctrines currently address the question of when liability is appropriate, providers have sought greater certainty through legislation as to how these doctrines will apply in the digital environment. Undoubtedly, service providers will be concerned that the exemption contained in this bill does not go far enough and copyright owners will be concerned that it goes too far. This bill is meant to be a new starting point for discussion among the groups affected by its provisions.

BOB GOODLATTE of Virginia invested months of his time in the last Congress leading negotiation sessions between on-line service and Internet access providers, telephone companies, libraries, universities, and copyright owners. He will continue to steer the negotiation process in this Congress as the parties involved begin discussions starting from the framework established in the On-Line Copyright Liability Limitation Act.

GENERAL APPROACH

The general approach of the bill is to be as simple and streamlined as possible. It provides a single exemption, written broadly so as to cover a range of acts dealt with in separate exemptions in drafts under discussion last year. The availability of the exemption depends on the actor's level of control, participation, and knowledge of the infringement, rather than on the particular type of technology used or the particular type of business being conducted. Similarly, the exemption is available to any person engaging in the covered activity, not limited to those falling within a defined category of "service provider."

A decision was made not to attempt to codify industry-specific codes of conduct or detailed notification procedures at this time. The bill does not foreclose these possibilities, however, should the parties who will be affected directly by the provisions of this bill concur that they are desirable. It also provides certain legal protections for parties who act responsibly to assist in preventing infringement.

SECTION BY SECTION ANALYSIS

SEC. 1 SHORT TITLE

This act may be referred to as the "On-Line Copyright Liability Limitation Act".

SEC. 2. LIMITATIONS ON LIABILITY

Paragraph (a) would amend Chapter 5 of Title 17, U.S. Code, the chapter setting out what constitutes infringement and establishing remedies, to add a new section 512, entitled "Limitations on liability relating to material on-line." Paragraph (a) contains the substance of the new exemption.

Paragraph (a)(1) provides an exemption from both liability for direct infringement and vicarious liability, based solely on acts of transmitting or otherwise providing access to material online, if certain criteria are met. The exemption does not specify any particular right of the copyright owner under section 106; it would excuse the infringement of any of the rights.

If a person making use of copyrighted material on-line does not qualify for the exemption because of a failure to fall within one or more of the criteria, that does not mean that the person is necessarily liable for infringement. If the exemption does not apply, the doctrines of existing law will come into play, and liability will only attach to the extent that the court finds that the requirements for direct infringement, contributory infringement or vicarious liability have been met, and the conduct is not excused by any other exception or limitation.

"Transmitting" refers to moving material from one place to another so that it is received beyond the place from which it is sent. "Providing access" is a broader term; it could be accomplished by transmitting or by otherwise placing material on-line in a location where individuals may gain access to it on demand. The terms "transmitting" and "providing access" are intended to cover any means of accomplishing these acts. Such means could include any of the following: the carriage and routing of telecommunications signals; the services of on-line service providers or Internet access providers; the operation of bulletin boards; and the sending of private electronic or real-time communications.

The term "solely" is intended to make clear that the exemption applies only to the acts of transmission or providing access in themselves. If the person engaging in these acts also makes further use of the copyrighted material, such as making additional copies or using copies for other purposes, the exemption will not apply.

CRITERIA

The exemption is aimed essentially at passive, intermediary types of conduct. The criteria determining its applicability are adapted from a combination of case law and prior discussions of the issue in Congress in the last session. Some of the concepts are similar to those specified in the "passive carrier" exemption in section 111(a)(3) of the Copyright Act.¹ The overall goal is to exempt conduct where liability does not seem appropriate because of a low level of participation, control and knowledge, while at the same time ensuring that adequate incentives remain to assist copyright owners in preventing infringement, without ensuring that adequate incentives remain to assist copyright owners in preventing infringement, without obligating service providers generally to monitor or police communications over the Internet.

The failure to meet any one of the criteria would disqualify a person from the benefit of the exemption, since the person would then be performing a more active or knowledgeable role in distributing the infringing material. The ordinary rules of respondeat superior and enterprise liability would determine whether conduct by someone acting on behalf of the person seeking the exemption is attributed to that person.

The first three criteria all relate to the concept of acting as an intermediary in the chain of dissemination, rather than an initiator or director of the dissemination of the material.

Subparagraph (A)

The first criterion is that the person seeking the exemption did not initiate the circulation of the infringing material. Someone else was responsible for placing it on-line. For example, a service provider would not be disqualified under this criterion where a work was placed on-line by a subscriber.

Subparagraph (B)

The second criterion is that the person has no control over the content of the material: he or she did not create the material, choose it, or make any changes in it.

Subparagraph (C)

The third criterion requires that the person not be the one to decide who will receive the material. The fact that the person may have control over the universe of possible recipients, for example by controlling the list of subscribers to an on-line service or a bulletin board, would not disqualify him or her, since the choice of all subscribers does not determine which subscriber receives which material.

Subparagraph (D)

The fourth criterion rules out the possibility of receiving a financial benefit directly from a particular act of infringement. It would prevent someone who obtained a percentage of the revenue on each piece of pirated software transmitted from claiming the benefit of the exemption. It would not, however, bar someone whose financial benefit consisted of charging users of its service by the length of the message (per number of bytes, for example) or by time unit.

¹That section exempts from liability secondary transmissions made by a carrier who "has no direct or indirect control over the content or selection of the primary transmission or over the particular recipients of the secondary transmission, and whose activities consist solely of providing wires, cables, or other communications channels for the use of others: *Provided*, That the provisions of this clause extend only to the activities of said carrier with respect to secondary transmissions and do not exempt from liability the activities of others with respect to their own primary or secondary transmissions." 17 U.S.C. § 111(a)(3).