

Jiang. There are two words that prove this: Cold War. Not until U.S. and Soviet Union leaders began talking did that war begin to thaw.

With that approach in mind, perhaps Clinton's hope is that as China becomes less isolated and more of a global participant, a Gorbachev-type leader will succeed Jiang, and China's appalling treatment of some of its citizens will improve.

A TRIBUTE TO FRANCIS E. DYER,  
SR.

**HON. CURT WELDON**

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, November 13, 1997*

Mr. WELDON of Pennsylvania. Mr. Speaker, I rise today to pay tribute to Francis Dyer, a close friend and great man, who recently passed away.

A longtime resident of Pennsylvania and the Seventh Congressional District, I have known Francis Dyer for many years and am proud to claim him as a friend. He was a true American hero, a World War II veteran, and a prisoner of war. I will miss him very much and I share the grief felt by his entire family, especially his loving wife, Teresa, his friends and all the people of Upper Darby.

Francis E. Dyer, Sr. was born on September 29, 1922. The son of the late Francis W. and Frances P. McFate Dyer, Francis E. Dyer, Sr. graduated in 1940 from Darby High School and entered Temple University on a scholarship that same year. Two years later he enlisted in the Army and was stationed overseas in February 1944 with the 782d bomb squad, 465th bomb group of the 15th Air Force, based in Italy.

When flying a mission to Freidrichshafen, Germany on August 3, 1944, his plane was one of eight from the 465th group that was shot down and Francis Dyer was only 1 of 3 survivors of the 10-man crew on his aircraft. He was captured the next day while trying to get to Switzerland and became a German prisoner of war. On February 6, 1945, when the Russian Army was approaching Stalag Luft IV, where he was imprisoned, the camp was evacuated and the prisoners began a march that lasted 86 days. Francis Dyer was liberated by the British Army on May 2, 1945, 6 days before the war in Europe ended on May 8.

Upon his return to the United States, Francis was married and subsequently discharged from the Army in October 1945. He returned to Temple University and was graduated in 1948. He never forgot his past, however, and became a great fighting force in veteran affairs. He was a life member and past commander of a number of notable veterans groups such as the Tri-State Chapter of American Ex-Prisoners of War, the Prisoner of War Memorial Post 5999, Veterans of Foreign Wars, the Colonel A.J. Campbell Chapter 19, and the Disabled American Veterans. He also belonged to the Delaware County Veterans Council for 12 years and served a year as commander of that unit.

Several generations have benefited from his undeniable spirit and compassion. My heart goes out to his 7 children, 2 stepchildren, 19 grandchildren, and 2 stepgrandchildren. Mr. Speaker, I am proud to rise today to honor

this great man. My district has lost a tremendous human being and a great contributor to veteran's affairs. His life was lived to its fullest and he will be remembered by all who were fortunate to have known him.

HONORING DR. DAVID KESSLER

**HON. NITA M. LOWEY**

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Thursday, November 13, 1997*

Mrs. LOWEY. Mr. Speaker, I rise today to recognize the extraordinary accomplishments of Dr. David Kessler.

Dr. Kessler is known to many of us through his service as Commissioner of the Food and Drug Administration. By almost every account, he transformed that once moribund agency into a dynamo of public health leadership and policy development. Quite simply, Dr. Kessler redefined the role of FDA Commissioner, setting a standard that his successors will surely admire and strive to attain.

Dr. Kessler's courageous efforts to identify the dangers of smoking and to encourage a broad public dialog on tobacco usage may prove to be his most lasting legacy. His authoritative presentation of medical fact and resolute defiance of those who would deny the grave effects of tobacco smoke made him a familiar figure to millions of Americans. And his efforts, in particular, to protect children from tobacco smoke, may potentially save thousands of lives. Smoking remains an urgent public health challenge, but Dr. Kessler's work undoubtedly established a strong foundation on which future efforts to curb smoking can be built.

Of course, Dr. Kessler's accomplishments do not end with tobacco. Under this leadership, the FDA streamlined the approval process for life-saving and life-improving drugs. He helped make possible a revolution in the treatment of HIV and other illnesses. And he boosted the morale and professionalism of an organization too long adrift.

Since leaving the FDA, Dr. Kessler has continued his distinguished career at Yale, where he serves as the dean of the school of medicine.

Mr. Speaker, on November 19, Dr. Kessler is to be honored by the League of Women Voters of New York State with the prestigious Carrier Chapman Catt Award. I am very pleased to join the league and so many other grateful citizens from my district and State in saluting Dr. Kessler and in recognizing his profound contribution to our Nation's health and future.

TRIBUTE TO HAROLD M.  
WILLIAMS

**HON. BRAD SHERMAN**

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, November 13, 1997*

Mr. SHERMAN. Mr. Speaker, I rise today to pay tribute to Harold M. Williams for his leadership and involvement not only in our community, but on a national and international level as well.

For months now, the citizens of Los Angeles have been anticipating the opening of the J.

Paul Getty Center. As president and chief executive officer of the J. Paul Getty Trust, the wealthiest art institution in the world, Harold has played a prominent role in bringing culture to our community. Since 1981, Harold has worked to ensure that the trust makes a significant contribution to awareness and longevity of the visual arts in the areas of conservation, scholarship and education. The work Harold has done for the arts has earned him praise at both a national and international level. He was appointed by President Clinton to serve as a member of the President's Committee on the Arts and Humanities and is recognized by the French Government as an "Officier dans L'Ordre des Arts et des Lettres."

Most recently, Harold has been working with President James Wolfensohn of the World Bank to develop a partnership which would conserve and promote the cultural heritage of developing countries. In Harold's own words, "Historically the World Bank and a lot of others have tended to think of sustainable development in social and economic terms, and this really amounts to a redefinition of what is sustainable development. You really cannot have sustainable development without recognizing the cultural heritage of a country."

President Kennedy once said that "... Art establishes the basic human truths which must serve as the touchstone of our judgment." Harold has worked for over a decade to ensure that no country's art history or cultural heritage will be lost to future generations. His awareness of the importance of a rich heritage has made him a champion of the arts in our community and around the world, and he has used his position as president of this trust to bring these issues to the forefront of the international agenda.

As a leader in the educational, cultural and political arenas, Harold has worked to improve the standard of living for our community, our country and the world. Though he will be officially retiring in January, the work he has done will be appreciated by many future generations. Mr. Speaker, distinguished colleagues, please join me in honoring Harold Williams for his distinguished portfolio of accomplishments.

ASIAN PACIFIC AMERICAN MEMBERS  
ARE SEPARATE FROM  
OUTSIDE GROUP

**HON. ROBERT T. MATSUI**

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, November 13, 1997*

Mr. MATSUI. Mr. Speaker, I would like to draw the attention of my colleagues to an organization that calls itself the Congressional Asian Pacific American Caucus Institute [CAPACI].

It is my understanding that this group was formed in the Spring of 1995 to promote Asian-American involvement in politics, and members of the Asian Pacific American Caucus were put on the board of directors without their knowledge or permission. Realizing this, in March 1996, nearly every member of the Asian Pacific American Caucus signed a letter to Ms. Francy Lim Youngberg, executive director of the institute, removing our names as board members and clarifying that, while we may share the goals of the institute in promoting political involvement by Asian Pacific

Americans, we are not affiliated with the organization, nor are we in any way responsible for their actions or statements.

I point this out to my colleagues because it is reasonable to assume that an organization that calls itself a congressional caucus institute would be associated with or answerable to the congressional caucus or its members. In fact, I have had many conversations both on and off Capitol Hill in which people refer to this group as your institute, meaning mine.

It is obvious to me that the most effective way for this group to avoid this kind of confusion in the future is to change its name, removing any stated affiliation to the Congress or the Congressional Asian Pacific American Caucus. Indeed, the caucus' chair, our colleague Representative PATSY MINK, has requested such a name change both verbally and in writing. Yet to this day the organization continues to use the misleading name creating more confusion.

Mr. Speaker, as I stated earlier, I wish to do no harm to any outside organization pursuing laudable goals such as those espoused by this particular group. However, in light of the fact that this group continues to represent itself in a misleading manner, I feel it necessary to state for the record that the Congressional Asian Pacific American Caucus Institute, despite what the name would indicate, is not affiliated with the Congressional Asian Pacific American Caucus or the Congress in any way.

#### INTRODUCTION OF THE DIGITAL ERA COPYRIGHT ENHANCEMENT ACT

**HON. RICK BOUCHER**

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, November 13, 1997*

Mr. BOUCHER. Mr. Speaker, I rise today with my distinguished colleague the gentleman from California, Mr. CAMPBELL, to introduce the Digital Era Copyright Enhancement Act. We believe this legislation best advances the interests of both creators and users of copyrighted works in the digital era by modernizing the Copyright Act in a way that will preserve the fundamental balance built into the act by our predecessors throughout the analog era.

We offer this measure as an appropriate starting point for congressional discussion of a range of copyright changes which the advent of digital technology will require in the belief that the legislation will serve as a solid foundation for the debate on these matters next year. We look forward to participating with the administration, other Members of Congress and interested external parties as next year's discussions commence.

At the request of the administration, legislation was introduced earlier this year to implement two treaties negotiated by more than 100 nations under the auspices of the World Intellectual Property Organization [WIPO]. The matters raised by introduction of the administration's WIPO implementing legislation certainly are important, but these issues should not be addressed in isolation.

I believe that we should address other compelling matters as part of a comprehensive measure revising the Copyright Act for the digital era. Moreover, I have serious concerns regarding the approach taken in the administra-

tion's legislation in addressing so-called circumvention devices.

As more fully explained in the section-by-section analysis that accompanies this statement, our comprehensive legislation addresses matters of concern not only to copyright proprietors, but also to consumers, educators, librarians, archivists, device manufacturers, and other groups concerned about maintaining a proper balance in the Copyright Act. For the benefit of my colleagues, I thought it would be helpful to describe the provisions of our legislation, focusing in particular on proposed section 1201.

Section 1201. Because I have serious reservations about the implications for digital technologies of the administration's device-oriented approach to section 1201, I have crafted an alternative that is more properly and closely tailored to our WIPO treaty obligations.

Last December, when the U.S. Government and the representatives of more than 100 other governments met in Geneva to negotiate the text of the two WIPO treaties, they initially considered a draft text prepared by the chairman of the drafting committee, Mr. Lieder of Finland. That provision would have essentially outlawed the manufacturing of any device the primary purpose or effect of which is to avoid any anticopying technology. Perhaps not surprisingly, opposition to this device-oriented approach was expressed by numerous countries based upon a concern that such a provision could sweep within its reach legitimate and useful technology and inhibit the willingness of manufacturers to bring new products to market. As a result of that strong opposition, the device oriented this approach was dropped. Instead, the delegates adopted an alternative formulation that closely followed language I had proposed to the administration prior to the diplomatic conference.

And yet, the device-oriented approach having been rejected by the delegates in Geneva, the administration nonetheless has proposed as the core of its legislation implementing the WIPO treaties a device-oriented provision.

During the hearings held this fall before the Judiciary Committee's Courts and Intellectual Property Subcommittee, the Commissioner of Patents and Trademarks confirmed what many private-sector witnesses argued in their testimony, namely that the adoption of legislation that essentially would punish the manufacturers of devices, such as general purpose computers and recorders, is not necessary for the implementation of the WIPO treaties. Commissioner Lehman correctly stated that the United States could take an entirely different and I think more positive approach by adopting legislation that does not punish the manufacturer of devices but instead punishes circumvention conduct tied to the act of infringement.

The subcommittee also heard compelling testimony that the approach of the administration's bill would stifle the introduction of new technology and would effectively overturn the long-settled law of the United States as announced by the Supreme Court in 1984 in its *Betamax* decision, *Sony Corp. of America versus Universal City Studios, Inc.* In that case, the Court held that a manufacturer could not be held liable for contributory copyright infringement for manufacturing a device that had a substantial non-infringing use. Even though there may be infringing uses for the device, the presence of a single substantial non-infringing use renders the manufacturer unanswerable under the copyright law.

That case is the state of our law today with respect to devices which have both infringing and non-infringing uses. It is that settled law which the administration's proposed treaty implementing legislation would effectively overturn.

If that measure were to become law, equipment manufacturers would be liable when their devices have legitimate, non-infringing uses. The consequences, I fear, will be a reluctance to bring pioneering new technology to market or even to continue the manufacturing of existing technology that has potential infringing uses.

Mr. Speaker, what is needed is a more thoughtful approach, one clearly contemplated by the WIPO convention that rejected the device-oriented approach, one consistent with well-settled American law, and one that will not stifle the development of new technology. We have proposed that alternative.

Section 1201 of our legislation would create liability for a person who, for purposes of facilitating or engaging in an act of infringement, knowingly removes, deactivates, or otherwise circumvents the application or operation of an effective technological measure used by a copyright owner to preclude or limit reproduction of a work in a digital format. Our legislation appropriately puts the focus on conduct, not on devices.

Let me now briefly describe the other elements of our legislation.

Section 1202. We have taken as our starting point the administration's proposed section 1202, but have revised it in part to ensure protection of the privacy interests of users of new technology. Our legislation would create liability for a person who knowingly provides false copyright management information or removes or alters copyright management information without the authority of the copyright owner, and with the intent to mislead or induce or facilitate infringement. In order to assure privacy protection, the measure explicitly excludes from the definition of copyright management information any personally identifiable information relating to the user of a work.

Fair Use. The legislation makes clear that the Fair Use doctrine in the copyright law—which generally preserves the ability of users, including libraries, teachers and scholars, to make limited, noncommercial use of copyrighted works—continues to apply with full force in a digital networked environment.

First Sale. Given the historical importance to libraries, scholars, educators, and consumers of transferring to others lawfully acquired copies of works, the legislation offers assurances of the continued applicability in the digital environment of the First Sale doctrine.

Library Provisions. The legislation permits libraries to utilize digital technologies for preservation purposes and increases the number of copies of a work that may be made for archival purposes.

Distance Learning. The legislation fully authorizes educators to use data networks for distance learning in the same way they now use broadcast and closed-circuit television for that purpose.

Ephemeral Copying. The legislation amends the Copyright Act to make explicit that it is not an infringement for a person to make a digital copy of a work when such copying is made incidental to the operation of a computer in the course of the use of the work in a way that is otherwise lawful.