and no economic or environmental analysis is even more troubling. Over the years, our federal agencies and this body have done an admirable job of protecting these lands for the public, not for private interests. We should not start reversing that record now.

ARKANSAS RIVERBED LAND

Mr. INHOFE. Mr. President, I wish to express my thanks to the chairman and vice chairman of the Senate Committee on Indian Affairs who have greatly assisted the effort to bring much needed finality to the uncertainty created by litigation surrounding the ownership of the bed of the Arkansas River. A decision by the United States Supreme Court in 1970 determined that parts of the bed of the Arkansas River were included along with other land that was conveyed to Indian Nations based on 19th century treaties between the United States and the Indian Nations that were relocated from the East Coast of the United States to Oklahoma or ''Indian Territory'' as it was then known.

Based on the Supreme Court's decision that Arkansas riverbed lands were included within the treaties with Indian Nations, the United States is subject to monetary damages for any breaches of its trust obligation with respect to this land. A suit has been brought on behalf of the Indian Nations asserting that such breaches of trust have occurred. The case is presently before the United States Court of Federal Claims.

With respect to such treaty lands, the Non-Intercourse Act of 1790 prevents the transfer of title without Congressional approval. Without action by Congress, claims to legal title on behalf of the Indian Nations can continue to be raised with respect to these lands based on the Federal Government's underlying trust obligation. The threat of such lawsuits is a serious hardship on those people who were simply unaware that they were living on land that was once part of the bed of the Arkansas River. H.R. 3534 would eliminate title problems that are the result of the Supreme Court's decision and resolve breach of trust claims brought by the Indian Nations.

Several months ago, United Keetowah Band of Cherokee Indians, UKB, filed a motion to intervene in the Court of Federal Claims lawsuit. Although this motion was denied, the Department of Justice expressed its reluctance to endorse H.R. 3534 unless it was drafted to precluded the UKB from either bringing quiet title actions or from petitioning the United States to bring such actions. In order to ensure that UKB was not left without a remedy for pursuing its claims, the Justice Department proposed that the bill be amended to allow the UKB to pursue such claims in an action in the Court of Federal Claims. In addition, the Justice Department suggested that H.R. 3534 be amended to reserve some portion of the settlement proceeds until any claims that can be raised by the UKB are fully and finally litigated.

I am pleased to report that a compromise was reached on this issue. Like any compromise, everyone had to give something up in order for us to move forward. In that regard, I would like to express my appreciation to all of those who have worked so hard on this compromise.

Under the proposed amendment to H.R. 3534 that is before the Senate, all tribal claims concerning Arkansas riverbed land are resolved through proceedings in the Court of Federal Claims or through the settlement incorporated in H.R. 3534. This allows the United States Congress to remove the threat of quiet title actions brought by or on behalf of an Indian tribe claiming title to land based on the Supreme Court's decision. In other words, the UKB and each of the other tribes have agreed to allow their claims to the riverbed to be addressed through the process established by H.R. 3534. In return, the UKB has asked that 10% of the settlement fund established by the bill will be aside to satisfy any of the UKB's claims if the tribe is ultimately successful in the Court of Federal Claims. In addition, if this amount is not sufficient to satisfy any judgment awarded to the tribe, the permanent judgment appropriation, section 1304 of title 31, is explicitly made available to satisfy the remainder of any judgment amount awarded to the UKB.

The UKB has also requested one additional consideration. The UKB recognizes that the purpose of the legislation is to preclude the Tribe from bringing or asking the United States to bring a lawsuit making a direct claim that asserts right, title, or an interest in Arkansas riverbed arising out of the Supreme Court's opinion. However, the Tribe wishes to make it clear that nothing in H.R. 3534 is intended or is to be construed to address, resolve, or prejudice the underlying basis of a claim that they would have been able to make if H.R. 3534 was not enacted. In other words, the UKB have asked that the legislation include a provision to make it clear that H.R. 3534 does not alter the character, nature, or basis of any claim or right that the tribe could have made before the effective date of this legislation. We have done so.

I wish to express my appreciation for the assistance of the Chairman of the Committee on Indian Affairs, Senator INOUYE, who has provided important procedural assistance to allow the bill to be moved expeditiously now that we have an agreement between all of the Indian tribes and the Departments of Interior and Justice.

In addition, I wish to acknowledge the good work of Senator CAMPBELL, the vice chairman of the Indian Affairs Committee, who deserves a great deal of the credit for bringing the final compromise on this matter to fruition. With that in mind, I would like to briefly engage in a colloquy with him on this final compromise.

Does the vice chairman agree that section 9 of the proposed amendment ensures that the law will only be construed to preclude claims for title to the Arkansas riverbed lands either by the UKB or on its behalf; or from the UKB requesting that the Federal government bring such claims?

Mr. CAMPBELL. That is correct.

Mr. INHOFE. Based on the Senator's answer to my last question, it is clear that the UKB will no longer be able to make a claim to the riverbed lands. However, the bill still provides a means for the UKB to raise the riverbed claims it might otherwise have brought, but it now directs that they must pursue these claims exclusively in the manner provided in H.R. 3534; isn't that correct?

Mr. CAMPBELL. Yes, that is correct.

Mr. INHOFE. By including section 9, Congress is making it clear that other than this change in forums for riverbed matters, it is not Congress's intent to express any opinion or have any effect on the claims the UKB might bring. Isn't that correct?

Mr. CAMPBELL. That is correct. To my knowledge, Congress has not reviewed or considered these claims. Furthermore, it is not necessary for Congress to do because the bill does not address the individual claims of the UKB, it merely ensures that the Tribe's claims to the riverbed are only pursued in the manner provided in H.R. 3534. Section 9 is included to make it clear that the bill is not to be construed to address the merits of any particular claim by the UKB; instead the bill is only concerned with how those riverbed claims may be pursued.

Mr. INHOFE. I thank the Senator for his assistance in this very important matter.

SMALL WEBCASTER SETTLEMENT ACT OF 2002

Mr. LEAHY. Mr. President, I am pleased that the Senate is taking the important step of passing the Helms-Leahy substitute amendment to H.R. 5469, the ''Small Webcaster Settlement Act of 2002.'' This legislation reflects hard choices made in hard negotiations under hard circumstances. I commend House Judiciary Chairman SENSENBRENNER and Representative CONYERS for bringing this legislation to a successful conclusion and passage in the House of Representatives in a timely fashion to make a difference in the prospects of many small webcasters. I also thank Senator HELMS and his staff for working constructively in the lame duck session of this Congress to get the bill done.

The Internet is an American invention that has become the emblem of the Information Age and an engine for bringing American content into homes and businesses around the globe. I have long been an enthusiast and champion of the Internet and of the creative spirits who are the source of the music, films, books, news, and entertainment

content that enrich our lives, energize our economy and influence our culture. As a citizen, I am impressed by the innovation of new online entrepreneurs, and as a Senator, I want to do everything possible to promote the full realization of the Internet's potential. A flourishing Internet with clear, fair and enforceable rules governing how content may be used will benefit all of us, including the entrepreneurs who want us to become new customers and the artists who create the content we value.

The advent of webcasting, streaming music online rather than broadcasting it over the air as traditional radio stations do, has marked one of the more exciting and quickly growing of the new industries that have sprung up on the Web. Many of the new webcasters, unconstrained by the technological limitations of traditional radio transmission, can and do serve listeners across the country and around the world. They provide music in specialized niches not available over the air. They feature new and fringe artists who do not enjoy the few spots in the Top 40. And they can bring music of all types to listeners who, for whatever reason, are not being catered to by traditional broadcasters.

We have been mindful on the Judiciary Committee that as the Internet is a boon to customers, we must not neglect the artists who create and the businesses which produce the digital works that make the online world so fascinating and worth visiting. With each legislative effort to provide clear, fair and enforceable intellectual property rules for the Internet, a fundamental principle to which we have adhered is that artists and producers of digital works merit compensation for the value derived from the use of their work.

In 1995, we enacted the Digital Performance Right in Sound Recordings Act, which created an intellectual property right in digital sound recordings, giving copyright owners the right to receive royalties when their copyrighted sound recordings were digitally transmitted by others. Therefore when their copyrighted sound recordings are digitally transmitted, royalties are due. In the 1998 Digital Millennium Copyright Act, DMCA, we made clear that this law applied to webcasters and that they would have to pay these royalties. At the same time, we created a compulsory license so that webcasters could be sure of the use of these digital works. We directed that the appropriate royalty rate could be negotiated by the parties or determined by a Copyright Arbitration Royalty Panel, or CARP, at the Library of Congress.

Despite some privately negotiated agreements, no industry-wide agreement on royalty rates was reached and therefore a CARP proceeding was instituted that concluded on February 20, 2002. The CARP decision set the royalty rate to be paid by commercial webcasters, no matter their size, at .14 cents per song per listener, with royalty payments retroactive to October 1998, when the DMCA was passed.

At a Judiciary Committee hearing I convened on this issue on May 15, 2002, nobody seemed happy with the outcome of the arbitration and, in fact, all the parties appealed. The recording industry and artist representatives feel that the royalty rate, which was based on the number of performances and listeners, rather than on a percentage-of-revenue model, was too low to adequately compensate the creative efforts of the artists and the financial investments of the labels. Many webcasters declared that the per-performance approach, and the rate attached to it, would bankrupt small operations and drain the large ones. I said then that such an outcome would be highly unfortunate not only for the webcasters but also for the artists, the labels and the consumers, who all would lose important legitimate channels to connect music and music lovers online.

On appeal, the Librarian in June 2002, cut the rate in half, to .07 cents per song per listener for commercial webcasters. Nevertheless, many webcasters, who had been operating during the four year period between 1998 and 2002, were taken by surprise at the amount of their royalty liability. The retroactive fees were to be paid in full by October 20 and would have resulted in many small webcasters in particular, going out of business.

In order to avoid many webcasting streams going silent on October 20, when retroactive royalty payments were due, I urged all sides to avoid more expense and time and reach a negotiated outcome more satisfactory to all participants than the Librarian's decision. I also monitored closely the progress of negotiations between the RIAA and webcasters. On July 31, I sent a letter with Senator HATCH to Sound Exchange, which was created by the RIAA to act as the agent for copyright holders in negotiating the voluntary licenses with webcasters under the DMCA and to serve as the receiving agent for royalties under the CARP process. The letter posed questions on the status of the reported on-going negotiations between RIAA/Sound Exchange and the smaller webcasters, the terms being proposed and considered, and how likely the outcome of those negotiations would be to produce viable deals for smaller webcasters, while still satisfying the copyright community.

Reports on the progress of these negotiations were disappointing, which makes this legislation all the more important. As a general principle, marketplace negotiations are the appropriate mechanism for determining the allocation of compensation among interested parties under copyright law. Yet, we have made exceptions to this general principle, as reflected in this legislation and the very compulsory license provisions it amends.

The legislation reflects a compromise for all the parties directly affected by this legislation—small webcasters, noncommercial webcasters, and hobbyists that could not survive with the rates set by the Librarian, and copyright owners and performers who under this bill will give certain eligible webcasters an alternative royalty payment scheme. this legislation does not represent a complete victory for any of these stakeholders. Artists and music labels may believe that they are foregoing significant royalties under this legislation and I appreciate that there are those in the webcasting business, who are either not covered or not sufficiently helped by the bill, who believe that this legislation should do more. As one analyst the Radio and Internet Newsletter stated, in the October 11, 2002 issue, ''Clearly, the 'Small Webcaster Amendments Act of 2002' a/k/a H.R. 5469 is an imperfect bill that doesn't fix everything for everybody; Still, overall, does it do more good than harm for more people? My belief is that many are helped one way or the other and virtually no one is assured of being hurt. Thus, the answer, the whole, would be yes.''

I know that most webcasters share my belief that artists and labels should be fairly compensated for the use of their creative works. This legislation provides both compensation to the copyright owners and helps to support the webcasting industry by offering more variable payment options to small webcasters than the one-size-firts-all per performance rate set out in the original CARP and Librarian decisions. The rates, terms and record-keeping provisions are applicable only to the parties that qualify for and elect to be governed by this alternative royalty structure and no broad principles should be extrapolated from the rates, terms and record-keeping provisions contained in the bill. The Copyright Office is presently engaged in a rule-making on record-keeping and this bill does not supplant that ongoing process.

After the House passed H.R. 5469 on October 7, 2002, I have worked with Senator HATCH to clear the bill for passage through the Senate and address concerns raised on both sides of the aisle. While the bill was finally cleared for passage by all the Democratic Senators on October 17, passage of the legislation was blocked before the lame-duck session. I am pleased to have worked with Senator HELMS on a substitute that resolves some of the concerns raised about the original House-passed bill.

The Helms-Leahy substitute makes the following changes in H.R. 5469:

First, it authorizes SoundExchange to enter into agreements with groups representing small webcasters and noncommercial webcasters. Such agreements will be available generally to any party which qualifies under their terms as an option to the rates adopted by the Copyright Office. The rates and terms of such agreements will be binding on all copyright holders once the

agreement has been published in the Federal Register by the Copyright Office. Such deals are authorized to cover the retroactive fees, as well as those going forward.

Second, the substitute amendment imposes a 6 month moratorium on fee collections from noncommercial entities, to allow for negotiations with such entities. This provision is particularly important for noncommercial webcasters, such as those operating at colleges and universities. The Librarian's decision contained an anomaly under which nonprofit entities that held FCC licenses were given a lower per performance rate than were commercial entities, but no such provision was made for noncommercial entities that were not FCC licensees. The bill provides a moratorium on the collection of royalties in order for an alternative agreement to be reached.

It also authorizes Sound Exchange to postpone retroactive royalty collections from small webcasters with whom it is negotiating deals. The original House-passed bill recognized the retroactive burden on many of the small commercial webcasters by allowing them to make their payments based on a percentage of revenue or percentage of expense, but also allows both small commercial and noncommercial webcasters to pay these retroactive fees in three payments over he span of a year.

Third, the substitute amendment adopts language making clear that such deals are not precedent in any judicial proceeding or in future CARPs.

Fourth, the substitute amendment provides for direct payment to artists and deductibility of expenses from the proceeds of the royalties.

Finally, the substitute amendment authorizes a GAO/Copyright Office study on the impact of agreements between third parties and webcasters and the effect that such agreements should have on percentage of expense royalty rates. This authorization does not contain any preliminary findings or sense of the Congress language as to how such study should be resolved.

The agreement to be negotiated between Sound Exchange and small webcasters will likely reflect the rates and terms set forth in the original House-passed bill. These terms provide an option of paying a percentage of revenue and stay in business. As one Vermont webcaster told me, ''Although the percentage of revenue is too high, at least we have the option. A percentage of revenue deal with enable [us] to stay in business moving forward, grow our audience, and compete.''

The Librarian of Congress royalty rate is based on a per performance formula, which has the unfortunate effect of requiring webcasters to pay high fees for their use of music, even before the audience of the webcaster has grown to a sufficient size to attract any appreciable advertising revenues. Without any percentage of revenue option (as the legislation allows), the webcasting industry would be closed to all but those with the substantial resources necessary to subsidize the business until the advertising revenues caught up to the per performance royalty rate.

A number of concerns have been raised that the rate and terms of the agreements authorized under the substitute amendment do not constitute evidence of any rates, rate structure, fees, definitions, conditions or terms that would have been negotiated in the marketplace between a willing buyer and willing seller. The concern stems from the DMCA's statutory license fee standard directing the CARP to establish rates and terms ''that most clearly represent the rates and terms that would have been negotiated in the marketplace between a willing buyer and a willing seller,'' rather than a determination of ''reasonable copyright royalty rates'' according to a set of balancing factors. This new webcasting standard may be having the unfortunate and unintended result that webcasters and copyright owners are concerned that the rates and terms of any voluntary licensing agreements will be applied industry-wide. The new webcasting standard appears to be making all sides cautious and reluctant to enter into, rather than facilitating, voluntary licensing agreements.

Passage of this legislation does not mean that our work is done. As this webcasting issue has unfolded, I have heard complaints from all sides about the fairness and completeness of procedures employed in the arbitration. Indeed, the concerns of many small webcasters were never heard, since the cost of participating in the proceedings was prohibitively expensive and their ability to participate for free was barred by procedural rules. One thing is clear: Compulsory licenses are no panacea and their implementation may only invite more congressional intervention. To avoid repeated requests for the Congress or the courts to intercede, we must make sure the procedures and standards used to establish the royalty rates for the webcasting and other compulsory licenses produce fair, workable results. Next year, we should focus attention on reforming the CARP process.

ADDITIONAL STATEMENTS

IN CELEBRATION OF THE TENTH ANNIVERSARY OF CAB CALLOWAY SCHOOL OF THE ARTS IN WILMINGTON, DELAWARE

● Mr. CARPER. Mr. President, I rise today to celebrate the 10th anniversary of the Cab Calloway School of the Arts in Wilmington, the first public arts school in the State of Delaware. Since the late Cab Calloway cut the ribbon for the school's grand opening on November 23, 1992, the school has expanded from a small middle school with vocal detractors to an overwhelmingly successful experiment in public school choice, boasting an enrollment of 760 6th to 12th graders. If their first decade is any indication of what they will offer in the future, we have much to look forward to.

Cab Calloway School of the Arts works to provide young people from diverse backgrounds with intensive training in the arts and a comprehensive academic curriculum that will prepare them for success in higher education and employment. They are succeeding.

The school's halls are filled with talented faculty, skilled supervisors, and dedicated staff. Its students have been awarded numerous accolades and recognition for their art, writing, theatre, academics, vocal and band performances, as well as academics.

Cab Calloway's students continue to defy the odds, meeting or exceeding our State's standards in reading, writing and math. Last year, the school's 10th graders ranked among the very highest in the State in reading and writing comprehension. Mixing academics with freedom of expression and strong parental support has boosted their students' self-confidence and given us all something to feel good about.

When I served as Governor of Delaware, Cab Calloway's students performed, at my request, at the Hotel DuPont for the Governor's National Association. They helped me celebrate my second inauguration as Governor at the Wilmington Grand Opera House and have since been named to the Governor's School of Excellence. They continue to make me proud.

Cab Calloway School of the Arts has represented the State of Delaware at The Kennedy Center in Washington DC, and its students have performed at the Delaware Mentoring Council Celebrations in Wilmington and Dover, attended by GEN. Colin Powell.

These days I work closely with HILLARY CLINTON in the Senate. When I brought her to tour the Cab Calloway School of the Arts in 1996, she was our First Lady, and I made sure that a tour showcasing the best of Delaware included the innovative school. We talked about the importance of school choice and the inroads made possible by a school dedicated to providing a cultural and academic experience that instills character and a greater appreciation of the arts.

As Governor of Delaware, and now as Senator, I have shared with people across America the story of Cab's success. I tell them about teachers such as Marty Lassman, who daily demonstrate unparalleled commitment and patience, the support staff that is there when needed, the students who again and again exceed expectations, and the parents and family members who understand they have an obligation to be full partners in the education of their children. Together, they serve as an inspiration and an example to communities across the country.