

choosing to alter what is visible or audible when viewing a film, the focus of this legislation, and a separate entity choosing to create and distribute a single, altered version to members of the public. It is the sponsor's intent that only viewer directed changes to the viewing experience be immunized, and not the making or distribution of actual altered copies of the motion picture.

On a related point, the committee took notice of conflicting expert opinions on whether fixation is required to infringe the derivative work right under the Copyright Act, as well as whether evidence of Congressional intent in enacting the 1976 Copyright Act supports the notion that fixation should not be a prerequisite for the preparation of an infringing derivative work. The committee and the sponsors take no view of that disputed point of the law and leave that point to future developments in the courts or Congress. This legislation should not be construed to be predicated on or to take a position on whether fixation is necessary to violate the derivative work right, or whether the conduct that is immunized by this legislation would be infringing in the absence of this legislation.

Section 3 of the Family Movie Act provides for a limited exemption from trademark infringement for those engaged in the conduct described in the new section 110(11) of the Copyright Act. The substitute amendment makes several clarifying changes from the version as reported by the Committee.

In short, this section makes clear that a person engaging in the conduct described in section 110(11)—the “making imperceptible of portions of audio or video content of a motion picture or the creation or provision of technology to enable such making available—is not subject to trademark infringement liability based on that conduct, provided that person's conduct complies with the requirements of section 110(11). This section provides a similar exemption for a manufacturer, licensee or licensor of technology that enables such making imperceptible, but such manufacturer, licensee or licensor is subject to the additional requirement that it ensure that the technology provides a clear and conspicuous notice at the beginning of each performance that the performance of the motion picture is altered from the performance intended by the director or the copyright holder.

Of course, nothing in this section would immunize someone whose conduct, apart from the narrow conduct described by 110(11), rises to the level of a Lanham Act violation.

For example, someone who provides technology to enable the making imperceptible limited portions of a motion picture consistent with section 110(11) could not be held liable on account of such conduct under the Trademark Act, but if in providing such technology the person also makes an infringing use of a protected mark or engages in other ancillary conduct that is infringing, such conduct would not be subject to the exemption provided here.

Finally, regarding Section 10(G), the Committee intends that the government has the burden to prove beyond a reasonable doubt that the service provider is ineligible for a Section 512 safe harbor from monetary relief for performing the function in question. The Committee also intends that courts refer to the legislative history regarding and case law interpreting Section 512 as a guide to interpreting the substantive standards governing whether

the service provider is ineligible for Section 512 protection.

## MARRIAGE PROTECTION AMENDMENT

SPEECH OF

**HON. RAÚL M. GRIJALVA**

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, September 30, 2004*

Mr. GRIJALVA. Mr. Speaker, I rise today to express my strong objection to this so-called “marriage protection” amendment. Furthermore, I am appalled that we are spending three and a half hours debating this issue when Americans are struggling to cope with much more serious issues, with little or no help from this body.

The sponsors of this bill claim that there is a dire need to amend the Constitution in order to protect and promote the notion of healthy, stable families. I support the notion of “healthy families” but I could suggest a number of methods we could use to reach this goal that do not include discriminating against an entire class of American citizens.

We could provide healthcare to the over 40 million uninsured Americans.

We could work to offer a real prescription drug benefit for seniors so they do not need to choose between food and medicine.

We could offer real solutions to create economic opportunity for all.

We could provide the funding necessary to allow all children to go to school in a safe and healthy environment.

We could strengthen programs that combat domestic violence.

We could renew the assault weapons ban.

We do not need to prevent two people who love each other from being legally recognized as such.

These are serious issues that too many Americans struggle with every day. These are serious problems that Congress could address if we had the time and dedication to the real issues. Instead, we stand on the floor today playing party politics on a stage that has been held hostage by the Republican House leadership's election year politics to consider an initiative that the Senate has already overwhelmingly rejected.

Mr. Speaker, I urge my colleagues to vote against this unnecessarily divisive election year proposal.

## PAYING TRIBUTE TO FLORIE MASSAROTTI

**HON. SCOTT McINNIS**

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

*Monday, October 4, 2004*

Mr. McINNIS. Mr. Speaker, it is with great pride that I rise today to pay tribute to Florie Massarotti, a truly dedicated community leader from Cokedale, Colorado. Florie has been participating in the Boy Scouts for over fifty years, both as a young member and as an adult leader in various positions. The mentorship he has provided to many children in Las Animas County is exemplary, and I would like to join my colleagues here today in recognizing his

tremendous achievements before this body of Congress and this Nation.

Florie began his long association and service with the Boy Scouts at the age of twelve in Cokedale. After graduating high school, he stopped participating for several years, during which time the local troop was disbanded. When, in 1958, the Holy Name Society reorganized the troop, Florie volunteered as a third assistant scoutmaster. Two weeks later he became the Scoutmaster. For twenty years, Florie headed his troop, passing on the leadership role to his successor, while assuming a position as a council member. In the 1990's, when the Scoutmaster position was vacated, he took the lead until a replacement was found. Today, in addition to serving as a council member, Florie is a member of the Rocky Mountain Council Executive Board. In recognition for his commendable contributions, Florie was awarded the St. George Award, a Roman Catholic award for adults in Scouting, the 50-year Pin, and the Silver Beaver that is awarded to Scouters with distinguished service.

Mr. Speaker, it is a privilege to honor Florie Massarotti for his half-century of contributions to the Boy Scouts. His actions serve as an example, and it is with great pleasure to recognize him today before this body of Congress and this Nation. Thank you, Florie, and I wish you well with all of your future endeavors.

## 50 YEARS OF RADIO FREE EUROPE/RADIO LIBERTY BROADCASTING IN UKRAINE

**HON. TOM LANTOS**

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Monday, October 4, 2004*

Mr. LANTOS. Mr. Speaker, 50 years ago, Congress authorized a program of U.S. radio broadcasts to Ukraine that had enormous historical importance, and still do today. We know that the transition to democracy and genuine freedom of speech in the former communist countries has never been easy to implement, but such broadcasts are an essential component. Thomas A. Dine, the President of the RFE/RL, is one of my dear and closest friends. He has been a tireless fighter for democracy, human rights, press freedoms, and rule of law in Ukraine and other countries of Eastern Europe and the former Soviet Union. I want to honor his contribution to the cause of freedom and democracy in Ukraine by including this speech he delivered last month in Kharkiv, Ukraine, in the CONGRESSIONAL RECORD.

TODAY'S UKRAINE: THE LACK OF DEMOCRATIC FREEDOMS

(By Thomas A. Dine)

I am in Ukraine at this time for several reasons:

First, to celebrate the 50th anniversary of Radio Liberty's Ukrainian broadcasting service. Radio Liberty has been a source of objective news and information for the people of Ukraine for fifty years—for this fact, I am honored to head Radio Free Europe/Radio Liberty and to be associated with the men and women who have brought first-class journalism to Ukraine's airwaves for half a century. Second, to remind as many Ukrainians as possible that in February 2004, the Kuchma Government kicked Radio Liberty

off the Dovira Radio FM network. Third, to work with media people to try to restore our broadcasts on as many stations as possible as soon as possible. Fourth, to join all of you participating in this Global Fairness Initiatives, IREX, and Ukraine in Europe conference here in Kharkiv.

Today I want to share my experiences and observations about the condition of democratic institutions in general, and free press in particular, in Ukraine. Overall, the Ukrainian people still do not have the full freedoms they deserve. This is the essence of my talk here this morning: after five decades, the Ukrainian people still do not have the full freedoms they deserve. Of course, Ukraine in 2004 is a vastly better place to be than it was in 1954. The tyrannical Soviet Union is no more, and its calculated effort to eradicate Ukrainian culture failed. Ukraine now has a semblance of political independence and free markets.

But I can tell you that for those of us in the business of establishing and protecting freedom of speech and press institutions, Ukraine continues to be a heartache. For example, here's a question for you: What do Pakistan, Jordan, Azerbaijan, Indonesia, Egypt, and Kuwait have in common? Yes, they are all Muslim countries. But besides that, they all, according to the watchdog organization Reporters Without Borders, have more press freedom than Ukraine.

Let me give you a more personal example: Radio Free Europe/Radio Liberty broadcasts to 19 countries today, and each one is important to us. All people, whether they're from large nations like Russia or small nations like Armenia, have the right of unfettered access to news and information. But as the President of RFE/RL, owing to the lack of real press freedom here in Ukraine, starting with the murder of George Gongadze, I have spent more time dealing with Ukraine over the past four years than with any other single country. The condition of press freedom in Ukraine today is poor.

Ukraine is the biggest disappointment among the countries to which Radio Free Europe/Radio Liberty broadcasts. I say this because, while we certainly broadcast to countries less free than Ukraine, no other country's post-Soviet path has diverted so much from the hopes that I, and other western friends of Ukraine, had for it. Ukraine is a potentially rich and beautiful country, with immense potential with a well-educated populace 50-million strong, fertile land, bustling seaports, and a strategic location between the European Union and Russia. But a succession of corrupt governments has squandered this potential. U.S. State Department officials have even invented a term for our feelings of frustration; it is called in Washington, "Ukraine fatigue." Elected American politicians and American foreign policy officials are tired of the Ukrainian leadership's resistance to liberal democratic reforms.

The media environment in Ukraine has one overriding problem, and it's easy to summarize: an overwhelming majority of radio and television stations present only pro-government points of view. Experts who have studied the Ukrainian media have identified three reasons for this.

The first reason is obvious: almost all national TV and radio stations are owned or controlled by government officials and their friends. Two associates of President Kuchma in particular Viktor Medvedchuk, the head of the Kuchma Administration, and Viktor Pinchuk, Mr. Kuchma's son-in-law-control a staggering portion of Ukrainian broadcast media outlets.

The second reason for the dominance of the government's point of view on the airwaves is the widespread use of *temniki*. As I am

sure all of you know, *temniki* are secret, unsigned daily memoranda sent by President Kuchma's staff to editors of the leading state and private media, instructing them on how to cover a particular story, and on which stories to cover and which to ignore. When the President's office determines the content of the evening news, that is not freedom—that is autocracy. Noted journalist Andriy Shevchenko put it best when he told your Parliament in 2002, "Television news coverage in Ukraine is done by remote control."

The third reason for the orthodoxy prevailing in Ukrainian broadcasting is the corrupt licensing process. As you know, anyone with a computer and a printer can start a newsletter or a website. But television and radio frequencies are a finite commodity that must be allotted by the government. That is how it works in the United States, and that's how it works in Ukraine. The problem in Ukraine, however, is that the licensing authorities favor broadcast entities that promise to be friendly to the government—and the process itself is so closed and confusing that protesting a given decision is futile.

This concentration of media power in the hands of one political mindset and one political bloc becomes particularly dangerous during an election campaign. This year, when it is absolutely critical that voters receive as much objective and balanced information about the candidates as possible, Ukrainian voters are getting only one side of the story. Studies by outside observers have established beyond doubt that on the TV and radio stations controlled by Mr. Medvedchuk and Mr. Pinchuk, including Ukrainian state television and Ukrainian state radio, reporters are providing positive coverage of the candidate Mr. Kuchma supports, and overwhelmingly negative coverage of the candidate Mr. Kuchma most fears and dislikes. This is precisely why freedom of the press is essential to the operation of a democracy: an electorate cannot possibly make informed choices at the ballot box if the media do not report the whole truth about the candidates.

President Kuchma thus enjoys a luxury that any political leader would envy—a media environment that is almost totally compliant. And this lack of diversity in the media landscape has been exacerbated by the fact that the profession of practicing journalism in Ukraine is so difficult that few people are willing to do it.

I stated earlier that the condition of media freedom in Ukraine is poor. Associated with this fact is that Ukraine, to put it mildly, is not a good place to be a journalist. Reporters there have more to fear than the censorship and intimidation that unfortunately plague much of the media in the former Soviet Union. Ukrainian journalists must also fear for their lives. Since 2000, at least 39 journalists have been killed. 42 Ukrainian journalists were attacked or harassed in 2003 alone nearly double the figure for 2002. And although President Kuchma himself may not be to blame for all the mayhem that is visited on reporters in his country, there is strong evidence, indeed a tape recording, that he is directly responsible for the most notorious act of violence against a journalist in recent memory: the cruel and criminal beating of Georgy Gongadze.

Furthermore, practicing journalism in Ukraine entails enormous economic burdens. While there is a small group of well-connected journalists that is very well-paid, low salaries are the rule. Expenses such as computers, transmitters, newsprint, and paper are very burdensome for the average Ukrainian enterprise. Private media outlets have a limited pool of advertisers from which to draw extra revenue, and therefore have a hard time turning a profit. When you have

impoverished media employing impoverished journalists, the result is a journalistic climate that is extremely conducive to corruption: people with money can get their stories told and their views expressed, while people without money cannot. Moneyed interests—including government officials—can manipulate coverage of their actions, as cash-starved newspapers are offered financial inducements to tell the payer's side of the story. Call it journalistic bribery.

Meanwhile, the prevalence of organized crime has made targets of journalists who dare to print the truth about corruption. And law suits against media outlets for defamation are on the rise. In a climate such as this, when independent journalists face everything from lawsuits to jail to death, it is almost a miracle that anyone is willing to pursue the profession.

Radio Free Europe/Radio Liberty has experienced the hostility of the Ukrainian media environment firsthand. As a broadcast entity funded in the United States and produced in Prague, we cannot be intimidated by President Kuchma and his goons. But while Kuchma can't go after RFE/RL, he can go after our affiliate stations in Ukraine, and that is precisely what he has done.

The government's crusade against Radio Liberty began in earnest in February 2004 when, after a five-year, close working relationship, our Ukrainian-language programs were removed from the Dovira FM radio network by the company's new owner, who is a political supporter of President Kuchma. Dovira was RFE/RL's major affiliate; it gave us the ability to reach some 60 percent of the population of Ukraine, including Kyiv. The explanation given by the new owners—that RFE/RL news programs did not fit the envisioned new format of the radio network—ignored the fact that Dovira listenership was highest when our programs were on its airwaves. And in fact, authorities later admitted to some of us that the Dovira action was taken for political, not commercial, reasons.

The attack on Radio Liberty intensified in March, when Radio Kontyent, an FM commercial station in Kyiv that had begun to air RFE/RL programming two days earlier, was raided and closed by Ukrainian authorities. The station's transmission equipment was seized and three employees were briefly detained. This station also carried the programs of other international broadcasters, including the Voice of America, BBC, Polish State Radio, and Deutsche Welle. Serhiy Sholokh, the owner of Radio Kontyent, fled Ukraine and has received political asylum in the United States.

On that very same day, an RFE/RL representative was scheduled to meet in Kyiv with Heorhiy Chechyk, the owner of an independent FM station in Poltava, to finalize a contract to broadcast RFE/RL programs. The director was killed in a suspicious automobile accident en route to this meeting.

RFE/RL continues to broadcast in Ukraine on seven independent radio stations in smaller cities and a small network in Crimea. In addition, our board, the U.S. Broadcasting Board of Governors, has added additional shortwave frequencies into Ukraine in an effort to continue to provide our popular programming to listeners in Ukraine. But the Kuchma Administration is doing its best to prevent us from gaining greater access. Over and over again, owners of radio stations in Ukraine tell us that they are being threatened by Ukrainian authorities and told not to take RFE/RL programs. Some station owners who earlier showed interest now are unwilling even to meet with us. The government has exerted financial pressure on potential affiliates as well, threatening a tenfold increase in the licensing fees of any TV or radio station that rebroadcasts foreign

programming. Their tactics, in other words, are no different from those of the mafia.

The website of RFE/RL's Ukrainian Service, [www.radiosvoboda.org](http://www.radiosvoboda.org), has a substantial following in Ukraine. But even our Internet efforts have faced government obstruction. Earlier this year, RFE/RL attempted to send a "mirror server" to Kyiv, which would have provided Internet users in Ukraine with much quicker and more reliable access to the site. Ukrainian customs, however, refused to admit the server, seizing on a clerical error to accuse RFE/RL of attempted smuggling. Just looking at the harassment Radio Liberty has faced in Ukraine, you can see why Reporters Without Borders has given Ukraine such low marks.

In addition to the problems I mentioned earlier, there is one more problem plaguing the Ukrainian media environment—and this one is the most worrisome of all. It is apathy. Over and over again, scholars and observers of Ukraine note that when the government interferes with freedom of the press, the Ukrainian people—including journalists—do not protest much. As one Ukrainian journalist has stated, "Freedom of speech is not valued in our society, and its violation does not cause public outrage" when it is threatened.

Ladies and gentlemen, if I can leave you today with one message, it is that freedom of expression does matter. There's a reason that the founders of the United States put freedom of speech and freedom of the press at the top of the Bill of Rights. There's a reason that Thomas Jefferson once wrote, "If it were left to me to decide whether we should have a government without a free press or a free press without a government, I would prefer the latter." There's a reason Franklin Roosevelt called it "the first freedom." There's a reason it occupies an important place in the Universal Declaration of Human Rights. That reason is that without a free press, society simply does not work—and its people cannot prosper.

Newspapers, radio, and television perform two functions that are absolutely critical: first, they allow a nation's citizens to engage in an ongoing conversation with one another, and to form intelligent opinions about how their society should be run; and second, they serve as a check against government corruption. It is a universal truth of human nature that power corrupts. A free press is the most important protection we the people have against government's inevitable tendency to increase its own power. This is the critical difference between the Communist view of government and the democratic view of government: the Communists preached that the government knew best. The democratic view is that because power corrupts, government cannot be trusted and it therefore must be checked in every way possible. That is why democracy requires a representative legislature, independent courts, and, most importantly, a free press.

One of my favorite words in the English language is "obstreperous." I am told that in Ukrainian it is *halaslivly*. If you look at the word's Latin roots—"ob"—against, and "strepere"—to make a noise—you can get an idea of what it means: unruly, clamorous, noisy, defiant. What Ukraine needs more than anything now is for you, the Ukrainian people, to be more obstreperous. If corrupt officials violate your rights, make lots of noise. If they shut down the TV stations they do not control, make lots of noise. If they send goons to polling places when you are trying to vote for your local mayor, make lots of noise. And if they try to steal next month's election, make lots of noise. Protest, defiance, noise, demanding the truth—these are the fundamental ingredients of freedom and democracy.

My fondest wish is for this to be the last anniversary that Radio Liberty ever celebrates in Ukraine; nothing would make me happier than for us to become obsolete. But as long as Ukraine lacks a free press, Radio Liberty will be with you—if it takes another 50 years, we will not abandon your cause of real freedom, of real democratic institutions.

Remember, though, that the most important role will be played by you, the people. Never forget that apathy is the dictator's best friend—and that obstreperousness is the dictator's worst nightmare. Ukraine is a proud place, but it is not a free place.

A window was opened when the Soviet Union dissolved and the nation-state of Ukraine arose again—and now it's up to you to make sure that the window stays open, so that Ukraine can at last breathe the same fresh air, that is a fully free media, that we in the West have worked so hard for and been fortunate enough to breathe for so long.

#### TRIBUTE TO JONESBORO MAYOR HUBERT BRODELL

#### HON. MARION BERRY

OF ARKANSAS

IN THE HOUSE OF REPRESENTATIVES

*Monday, October 4, 2004*

Mr. BERRY. Mr. Speaker, I rise today to pay tribute to a man with a very impressive public service record. Jonesboro Mayor Hubert Brodell is retiring after 17 years of serving the needs of Jonesboro's citizens. He has served four consecutive terms as mayor and will be stepping down this year. I would like to pay tribute to his service and dedication and acknowledge his retirement today.

Hubert Brodell has worked very hard for both the economic development and the industrial growth of Jonesboro. Under his leadership, the city has expanded by 2/3 its original size, primarily due to the 1987 annexation referendum he put together to prepare for future growth. This has allowed and also attracted various industries to the area. The population has doubled during his time in office, and Mayor Brodell has risen to the challenges of a growing community by meeting them head on. He implemented the 911 Center that expanded and improved emergency services; maintained a goal of keeping the streets and highways up to par; and worked fervently with city services to better meet the needs of all who call Jonesboro home.

In his personal life, Hubert Brodell is a family man. He has been married to his wife, Dorothy, for 50 years and has 6 children and 17 grandchildren. He has decided this to be his last term so he can spend more time with the people he loves.

So on behalf of the U.S. Congress, I extend my sincerest appreciation to Hubert Brodell for his outstanding service and citizenship. Jonesboro and all of Northeast Arkansas is a better place to live and work because of his service, and I am proud to call him my friend.

#### PAYING TRIBUTE TO JEANETTE WARE

#### HON. SCOTT McINNIS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

*Monday, October 4, 2004*

Mr. McINNIS. Mr. Speaker, it is with a sad heart that I rise to pay tribute to the passing

of Jeanette Ware, a dedicated humanitarian from Carbondale, Colorado. Jeannette was a devoted member of the community, and will be missed by many in Carbondale. As her family and friends mourn her loss, I believe it is appropriate to recognize Jeanette before this body and this Nation today.

Jeanette Ware moved to Carbondale in 2000 and immediately volunteered as an Emergency Medical Technician with the fire department. Instantly making a difference, she was recognized as the rookie of the year in 2001 and was later awarded the Carbondale Fire department's Life Saver Award for saving a child's life. Jeanette also started her own business as a midwife, assisting mothers with child birth and caring for their babies. She sadly was taken from this world, at the young age of 28, in a car accident when her car lost control and went off the road.

Mr. Speaker, Jeanette was a dedicated young woman that selflessly served her community, and I am honored to pay tribute to such an amazing person. At such a young age, her contributions to the community are an incredible model for all Americans. My thoughts and prayers go out to her family and friends during this time of bereavement.

#### URGING THE GOVERNMENT OF UKRAINE TO ENSURE THAT THE PRESIDENTIAL ELECTIONS ON OCTOBER 31, 2004 ARE FREE, FAIR, AND CONSISTENT WITH INTERNATIONAL STANDARDS

#### HON. TOM LANTOS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Monday, October 4, 2004*

Mr. LANTOS. Mr. Speaker, I want to bring the attention of my friends and colleagues in Congress to an issue of a critical importance to U.S. national interests in Europe—the upcoming presidential elections in Ukraine on October 31, 2004, just days before our own elections on November 2, 2004.

Ukraine has been a country at crossroads since it first regained independence in 1991. It conducted parliamentary and presidential elections but the outcome always fell far short of the international standards and democratic commitments of its own constitution. Although the government of Ukraine adopted recommendations of the OSCE into its electoral law, the implementation was lagging. On many occasions, international elections observers observed fragrant violations of the law at all levels of the Ukrainian political system. The worst abuses exploited the so-called administrative resources to virtually shut out the opposition candidates from the political process. Despite pressure from the United States Government and Congress, these practices continued.

Nevertheless, Mr. Speaker, we hoped that these elections would be a marked improvement over the past because the government of Ukraine understood how crucial they are to ensure Ukraine's integration in Europe. Ukraine's democracy and geopolitical orientation are at stake. Throughout the past year, many Ukrainian dignitaries traveled to Washington to meet with United States Administration officials and Members of Congress to assure us that these elections would be different.