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#### SIDETRACKING OF INTELLECTUAL PROPERTY AND TELECOMMUNICATIONS LEGISLATION

Mr. LEAHY. Mr. President, during the final days of this session, which have stretched over weeks and months, we have been struggling to pass a number of important and uncontroversial bills, but we have met with what some would call obstructionism from the Republican side of the aisle. Enactment of legislation needed for e-911 provisions to provide critical resources to our first responders, the Universal Service Administrative Corporation, a spectrum relocation trust fund, junk fax legislation, as well as the Family Entertainment and Copyright Act, anticounterfeiting legislation, film preservation legislation and many other measures have been sidetracked and hijacked.

The Federal Communications Commission Chairman Michael Powell has spoken out urging enactment of these needed telecommunications bills. The telecommunications package contains critically important provisions that will enhance 911 service, allow spectrum relocation, and preserve the ability of the universal service fund to do its important work. These are not controversial or partisan provisions. We

should do all we can to ensure that first responders can provide their essential public services and that includes e-911. The spectrum relocation trust fund will free more space for wireless broadband services. This will help the American economy by promoting jobs and education. The Universal Service Fund provision will fix an accounting glitch that if left unattended will seriously impede the USF as it goes about its critical work. If we do not make this fix, rural communities and schools will suffer, and in the end everyone will pay, with higher fees. I echo the FCC's concern and add my own with respect to the intellectual property legislation.

Thanks to the ingenuity, the inspiration and the hard work of America's creators, the United States is the world leader in the creation of intellectual property. Protecting intellectual property matters. It matters to our creators, to our economy and to our future. Affording intellectual property straightforward and reasonable protections, and giving law enforcement officials the resources to give those protections genuine power should be bipartisan, noncontroversial goals. In the United States, copyright industries account for at least 12 percent of our gross domestic product and employ more than 11 million people. Copyright industries have been adding workers at an annual rate that exceeds that of the economy as a whole by 27 percent, and those industries have achieved annual foreign sales and exports of almost \$90 billion. Republican objection has prevented the Senate from passing important intellectual property legislation, in an apparent effort to pressure the House to accept unrelated legislation.

Along with Senator HATCH, Senator CORNYN, Senator BIDEN, Senator FEINSTEIN, and many others, I have been working on a package of key intellectual property legislation for some time. Our staffs have worked late into the night and through weekends to accomplish all that we can this year. We have a package of strong and significant measures that would bolster protection of the intellectual property that helps drive our Nation's economy and that would ensure that law enforcement has the tools it needs to do its job in this regard. There was no good reason not to have sent this package to the House so that it could be enacted without delay. Instead, it has been blocked and the reason has nothing to do with the merits of the bill. It is merely being misused as leverage in an attempt to pass unrelated legislation that the Senate has already sent to the House and that the House finds objectionable. Apparently some are willing to sacrifice important intellectual property legislation for their own narrow purposes. That is unfortunate.

Our economy loses billions of dollars every year to various forms of piracy. Instead of making inroads in this fight, we face a Republican roadblock. It is a barrier that stands in the way of the ART Act, a bill that passed the Judiciary Committee and then the full Senate by unanimous consent. Senators CORNYN and FEINSTEIN introduced the

bill, and I was pleased to work with them on it and to include it in our intellectual property legislation. These provisions would provide new tools in the fight against bootleg copies of movies snatched from the big screen by camcorders smuggled into theaters. Our bill would adopt a creative solution developed by the Copyright Office to address the growing problem of piracy of pre-release works. Republican obstruction is ensuring that these problems will be left unaddressed by this Senate and this Congress.

Our anticounterfeiting legislation would mark a step forward in the fight against software piracy. I was glad to work with Senator BIDEN on this provision, which we included in the intellectual property package. The Republican-led Congress can tell our software companies that they will have to wait at least another year for the remedies promised by this legislation. The Business Software Alliance tells us that \$29 billion in software was stolen in 2003 alone. We are risking a higher number and more harm as we proceed into 2005.

There are other noncontroversial provisions in this legislation, as well, such as language that would help ensure that the Library of Congress is able to continue its important work in archiving our Nation's fading film heritage. Some of America's oldest films—works that document who we were as a people in the beginning of the 20th Century—are literally disintegrating faster than they can be saved.

It now appears an expanse of important, bipartisan legislation may fall victim to yet another Republican roadblock. Our copyright holders will suffer, our patent holders will suffer, our economy will suffer, emergency services and broadband deployment will suffer, our rural communities and rural schools will suffer. The Senate will have failed to respond to the needs of the American people. That is a shame.

#### ART ACT

Mr. CORNYN. Mr. President, I note that Senator LEAHY today made a floor statement referencing important Intellectual Property legislation that unfortunately will not pass in the 108th Congress.

I agree completely with the Senior Senator from Vermont's view of the importance of these matters and I share his frustration that the bills are not moving forward because of matters not related to the substance of the legislation.

I joined with Senator FEINSTEIN to introduce the ART Act, S. 1932, just over a year ago to help curtail the problem of piracy of films in movie theaters and to help stop the illegal distribution of pre-released copyrighted works. It is a good bill, but it will not become law despite having passed the Senate twice this year and enjoying overwhelming bipartisan support in the House.

Along with the ART Act, other valuable legislation such as the Family Movie Act, a bill that will help parents control the content of films and other entertainment their children see is

being held up. Good legislation, such as anti-counterfeiting and film preservation, is also not moving forward again, for reasons completely unrelated to the substance of the bills.

As disappointed as I am about this, I am encouraged by the good faith bipartisan work that has occurred among my staff and the staffs of my colleagues. I want to thank Senators FEINSTEIN, LEAHY, HATCH and BIDEN for their assistance and support, and mostly, I want to thank their staffs for their dedication, hard work and long hours devoted to this effort.

I especially would like to note Senator LEAHY's diligence and dedication to this cause, and willingness to pass over legislation he introduced and believes to be important in deference to the greater cause of passing a larger bipartisan package that would have protected copyrighted works, but for the senseless and unneeded obstacles placed before it.

I am confident that when we take this legislation up in the 109th Congress, we will pass it and I look forward to working with these Senators and others to accomplish that goal.

#### ELECTION REFORM

Mr. DODD. Mr. President, yesterday the Leadership Conference on Civil Rights, along with Common Cause and the Century Foundation, sponsored the first comprehensive public review of election day issues, including a review of the implementation of certain provisions of the Help America Vote Act, HAVA, bipartisan legislation I was pleased to coauthor in the 107th Congress. Numerous other organizations are also planning similar reviews, including the distinguished ranking member of the House Judiciary Committee, Congressman JOHN CONYERS, who is hosting a forum on election day issues today on the House side. As the primary Senate author of HAVA, I welcome these reviews and believe that Congress can learn much from them in terms of whether HAVA is working as intended.

Following the debacle of the 2000 Presidential election, I sought the input and counsel of the Leadership Conference and countless other civil rights, disability, language minority, and voting rights groups to fashion legislation which would ensure that every eligible American voter would have an equal opportunity to cast a vote and have that vote counted. Our efforts, and the efforts of others, produced the Help America Vote Act. HAVA has been hailed as the first civil rights law of the 21st century, and I am committed to ensuring that it is fully implemented as such.

The results of the 2004 Presidential election have not been contested in the same manner as those of the 2000 election. However, the jury is still out on whether HAVA successfully addressed the problems that arose in the 2000 election. While I believe there is still

much work to do to ensure the franchise for all Americans, I am confident that without HAVA, thousands of eligible American voters would not have been able to cast a vote, nor have their vote counted, in the November 2004 Presidential election.

It is important to remember that HAVA is not yet fully implemented. In some respects, the most important reforms have yet to be implemented by the States. These reforms include mandatory uniform and nondiscriminatory requirements that all voting systems provide second-chance voting for voters, be fully accessible to the disabled, provide for a permanent paper record for manual audits, and establish standards for what constitutes a vote and how such a vote will be counted for each type of voting system used by a State.

Additional reforms, which must be implemented by 2006, include the establishment of a computerized statewide voter registration list which must contain the name and registration information for every eligible voter in a State. Most importantly, the statewide database must be available electronically to every State and local election official, ensuring access to voter information at the polling place on election day. Had these additional reforms been in place this November, many of the election day problems that arose across the country could have been avoided or resolved at the polling place.

But what we do know is that HAVA's requirement that all States shall provide a provisional ballot to voters who are challenged at the polls, for any reason, ensured the franchise for thousands of Americans on November 2 this year. Although many States had forms of provisional ballots, HAVA requires that any voter who is willing to affirm that he or she is registered in the jurisdiction where they want to vote, and are eligible to vote in that election, must be allowed to cast a provisional ballot for the Federal offices in that jurisdiction. In Ohio alone, 155,000 voters cast provisional ballots, of which an estimated 77 percent were counted. That represents over 119,000 thousand American voters who otherwise might not have been able to cast a vote or have their vote counted, but for HAVA.

Some States, including Ohio, attempted to restrict the right to a provisional ballot, but were ultimately unsuccessful. The Federal Court of Appeals for the 6th Circuit of the United States affirmed the absolute right to receive a provisional ballot, without any additional requirements, in the decision of *Sandusky vs. Blackwell* decided on October 26, just one week prior to the election. That decision upheld the right of an individual voter to seek judicial redress of the rights conferred by HAVA and confirmed the absolute right of a challenged voter to receive a provisional ballot. I was pleased to file an *amici curiae* brief, along with my distinguished colleague, Congressman STENY HOYER, in this

case in which we urged the court to affirm and enforce these rights.

As with any comprehensive civil rights legislation, HAVA's reach and effectiveness will have to be hammered out by the courts. As that process plays out, coupled with the States' implementation of the remaining HAVA reforms, we will be in a better position to assess whether this landmark legislation hit the mark or needs further reform.

In order to assist Congress in assessing the effectiveness of HAVA, specifically with regard to the implementation of the provisional ballot requirement, I have requested that the GAO conduct and compile a nationwide review of state implementation of this provision. In particular, I have asked the GAO to compile data on the number of provisional ballots cast in the 2004 election, the number of provisional ballots counted, the number not counted and the reasons such provisional ballots were not counted. While it is already clear that the States are implementing this provision in significantly differing manners, it is troublesome that whether a Federal ballot is counted or not depends upon State law.

Efforts such as the conference and forum this week, and others to occur in the coming weeks, are vital to understanding the full impact of HAVA and its limitations. Although some weaknesses in HAVA are already apparent, and it would be my intent to introduce legislation early in the 109th Congress to address these weaknesses to better ensure HAVA's effectiveness, it is through conferences and forums such as these that Congress can assess what further reforms are needed.

At some point, we must ask ourselves whether we can ever truly ensure an equal opportunity to cast a vote and have our votes counted for all Americans when our elections are administered by 55 different State and territorial governments through over 10,000 local jurisdictions in a decentralized manner. Even in light of HAVA's farreaching reforms, this Nation is almost unique in its administration of Federal elections at the local level. Even under HAVA, States and localities have broad, but not absolute, discretion in how they implement HAVA. Similarly, the voting system standards which the Federal Election Assistance Commission will issue, pursuant to HAVA, remain voluntary only.

This discretion played out quite differently across this Nation with respect to whether provisional ballots, once cast, were actually counted. It is time to consider whether, for Federal elections, there is a national responsibility to ensure that no matter where and how a ballot is cast for the Office of the President of the United States, all Americans will have confidence that their vote was cast and counted in a uniform and nondiscriminatory way.

The Help America Vote Act is historic landmark legislation that comprehensively defines, for the first time