Resolved by the House of Representatives (the Senate concurring), That it is the sense of the Congress that—

(1) the United States Patent and Trademark Office has contributed significantly to the Nation's economy; and

(2) DaimlerChrysler Corporation and its employees should be commended for their achievement in receiving the 500,000th design patent.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from Michigan (Mr. CONYERS) each will control 20 minutes.

The Chair recognizes the gentleman from Wisconsin (Mr. SENSENBRENNER).

GENERAL LEAVE

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H. Con. Res. 53, currently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this concurrent resolution commends the U.S. Patent and Trademark Office for its contribution to the Nation's economy and the DaimlerChrysler Corporation and its employees for their achievement in receiving the 500,000th design patent issued by the Patent and Trademark Office.

Mr. Speaker, we all recognize the important role that innovation and invention have played in our Nation's history and economy. We also know that by ensuring protection for our ideas, we provide significant incentive for inventors to continue to come up with new concepts that improve our lives, whether it is a machine that raises productivity or a pharmaceutical drug that cures a life-threatening disease. The efforts of the PTO in aiding such accomplishments are certainly noteworthy.

I commend the gentleman from Michigan (Mr. CONYERS), the Motor City, for introducing this resolution and congratulate DaimlerChrysler as the recipient of this landmark number patent. I urge the House to support this bill.

Mr. Speaker, I reserve the balance of my time.

Mr. CONYERS. Mr. Speaker, I yield myself as much time as I may consume.

I begin by thanking the gentleman from Wisconsin (Mr. SENSENBRENNER), the distinguished chairman of the Committee on the Judiciary, and as well the committee leaders, the gentleman from Texas (Mr. SMITH) and the gentleman from California (Mr. BERMAN), for moving this measure swiftly through the Committee on the Judiciary.

On December 21 of last year, the United States Patent and Trademark Office issued its 500,000th design patent to the DaimlerChrysler Corporation for the design of the popular Chrysler Crossfire. House Concurrent Resolution 53, before us now, expresses the sense of Congress that the Patent and Trademark Office has contributed significantly to the Nation's economy and to the reputation in the United States that we enjoy worldwide for our technological innovation and ingenuity.

This is a very distinguished commendation, and I am very proud of the Patent and Trademark Office, which has helped us in protecting and preserving intellectual property.

As a senior member of the Committee on the Judiciary, I am well aware of the importance of intellectual property protection and what it means to our economy. Intellectual property rewards and encourages innovation and advancement. Without it, we would not have the high-tech, biotech and everyday numerous inventions that we have come to rely upon in everyday life, and that we have permitted to be exported to all the concerns of the planet.

I am also proud of this patent because I happen to represent the automobile capital of the world still. It is no secret that Michigan boasts the finest automobile workers in the world, and it should be no surprise that it is the design of an American car that has received this award.

So for these reasons and others, I am so proud of my colleagues who have joined me in this presentation, the gentleman from Michigan (Mr. STUPAK); the gentleman from Michigan (Mr. DINGELL), the dean of the Congress; the gentleman from Michigan (Mr. ROGERS); the gentleman from Michigan (Mr. KILDEE); the gentleman from Michigan (Mr. MCCOTTER); and the gentleman from Michigan (Mr. SCHWARZ), all. It is a proud moment for us, and we are glad to be honored.

On a more personal note, my father was a worker and union organizer for the United Automobile Workers for Chrysler, Local 7. It was the first company, Chrysler, to be brought into collective bargaining, and so I urge that the Members favorably consider House Concurrent Resolution 53.

Mr. WU. Mr. Speaker, I rise to strongly support H. Con. Res. 53, a resolution expressing the sense of Congress regarding the issuance of the 500,000th design patent by the United States Patent and Trademark Office.

For over 200 years, the basic role of the United States Patent and Trademark Office, USPTO, has been to promote the progress of science and the useful arts by securing for limited times to inventors the exclusive right to their respective discoveries. Under this system of protection, American industry has flourished. New products have been invented, new uses for old ones discovered, and employment opportunities created for millions of Americans. The strength and vitality of the U.S. economy depends directly on effective mechanisms that protect new ideas and investments in innovation and creativity. The continued demand for patents and trademarks underscores the ingenuity of American inventors and entrepreneurs. The USPTO is indeed at the cutting edge of America's technological progress and achievement.

As many of you may know, on December 21, 2004, the USPTO reached an important milestone and awarded the 500,000th design patent to DaimlerChrysler Corporation for the design of the Chrysler Crossfire. I would like to congratulate the USPTO and its employees for being at the core of our nation's creative forces. It is with their commitment to excellence our Nation moved from a young Nation to the world economic power that it is today.

As the Ranking Member on the House Science Subcommittee on Environment, Science and Standards and a former technology lawyer, I profoundly value the work of the USPTO, and urge my colleagues for their support for this important institution. As the 109th Congress moves to take up our FY06 appropriations bills, I look forward to working on ensuring a strong funding level for the USPTO.

Mr. CONYERS. Mr. Speaker, I reserve the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I have no further speakers. If the gentleman will yield back, we can vote and pass this resolution.

Mr. CONYERS. Mr. Speaker, I yield back my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Wisconsin (Mr. SENSENBRENNER) that the House suspend the rules and agree to the concurrent resolution, H. Con. Res. 53.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the concurrent resolution was agreed to.

A motion to reconsider was laid on the table.

FAMILY ENTERTAINMENT AND COPYRIGHT ACT OF 2005

Mr. SENSENBRENNER. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 167) to provide for the protection of intellectual property rights, and for other purposes.

The Clerk read as follows:

S. 167

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Family Entertainment and Copyright Act of 2005''.

TITLE I—ARTISTS' RIGHTS AND THEFT PREVENTION

SEC. 101. SHORT TITLE.

This title may be cited as the ''Artists' Rights and Theft Prevention Act of 2005'' or the ''ART Act''.

SEC. 102. CRIMINAL PENALTIES FOR UNAUTHORIZED RECORDING OF MOTION PICTURES IN A MOTION PICTURE EXHIBITION FACILITY.

(a) IN GENERAL.—Chapter 113 of title 18, United States Code, is amended by adding after section 2319A the following new section:

''§ 2319B. Unauthorized recording of Motion pictures in a Motion picture exhibition facility

''(a) OFFENSE.—Any person who, without the authorization of the copyright owner,

knowingly uses or attempts to use an audiovisual recording device to transmit or make a copy of a motion picture or other audiovisual work protected under title 17, or any part thereof, from a performance of such work in a motion picture exhibition facility, shall—

''(1) be imprisoned for not more than 3 years, fined under this title, or both; or

''(2) if the offense is a second or subsequent offense, be imprisoned for no more than 6 years, fined under this title, or both.

The possession by a person of an audiovisual recording device in a motion picture exhibition facility may be considered as evidence in any proceeding to determine whether that person committed an offense under this subsection, but shall not, by itself, be sufficient to support a conviction of that person for such offense.

''(b) FORFEITURE AND DESTRUCTION.—When a person is convicted of a violation of subsection (a), the court in its judgment of conviction shall, in addition to any penalty provided, order the forfeiture and destruction or other disposition of all unauthorized copies of motion pictures or other audiovisual works protected under title 17, or parts thereof, and any audiovisual recording devices or other equipment used in connection with the offense.

''(c) AUTHORIZED ACTIVITIES.—This section does not prevent any lawfully authorized investigative, protective, or intelligence activity by an officer, agent, or employee of the United States, a State, or a political subdivision of a State, or by a person acting under a contract with the United States, a State, or a political subdivision of a State.

''(d) IMMUNITY FOR THEATERS.—With reasonable cause, the owner or lessee of a motion picture exhibition facility where a motion picture or other audiovisual work is being exhibited, the authorized agent or employee of such owner or lessee, the licensor of the motion picture or other audiovisual work being exhibited, or the agent or employee of such licensor—

''(1) may detain, in a reasonable manner and for a reasonable time, any person suspected of a violation of this section with respect to that motion picture or audiovisual work for the purpose of questioning or summoning a law enforcement officer; and

''(2) shall not be held liable in any civil or criminal action arising out of a detention under paragraph (1).

''(e) VICTIM IMPACT STATEMENT.—

''(1) IN GENERAL.—During the preparation of the presentence report under rule 32(c) of the Federal Rules of Criminal Procedure, victims of an offense under this section shall be permitted to submit to the probation officer a victim impact statement that identifies the victim of the offense and the extent and scope of the injury and loss suffered by the victim, including the estimated economic impact of the offense on that victim.

''(2) CONTENTS.—A victim impact statement submitted under this subsection shall include—

''(A) producers and sellers of legitimate works affected by conduct involved in the offense;

''(B) holders of intellectual property rights in the works described in subparagraph (A); and

''(C) the legal representatives of such producers, sellers, and holders.

''(f) STATE LAW NOT PREEMPTED.—Nothing in this section may be construed to annul or limit any rights or remedies under the laws of any State.

''(g) DEFINITIONS.—In this section, the following definitions shall apply:

''(1) TITLE 17 DEFINITIONS.—The terms 'audiovisual work', 'copy', 'copyright owner', 'motion picture', 'motion picture exhibition facility', and 'transmit' have, respectively, the meanings given those terms in section 101 of title 17.

''(2) AUDIOVISUAL RECORDING DEVICE.—The term 'audiovisual recording device' means a digital or analog photographic or video camera, or any other technology or device capable of enabling the recording or transmission of a copyrighted motion picture or other audiovisual work, or any part thereof, regardless of whether audiovisual recording is the sole or primary purpose of the device.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 113 of title 18, United States Code, is amended by inserting after the item relating to section 2319A the following:

''2319B. Unauthorized recording of motion pictures in a motion picture exhibition facility.''.

(c) DEFINITION.—Section 101 of title 17, United States Code, is amended by inserting after the definition of ''Motion pictures'' the following: ''The term 'motion picture exhibition facility' means a movie theater, screening room, or other venue that is being used primarily for the exhibition of a copyrighted motion picture, if such exhibition is open to the public or is made to an assembled group of viewers outside of a normal circle of a family and its social acquaintances.''.

SEC. 103. CRIMINAL INFRINGEMENT OF A WORK BEING PREPARED FOR COMMERCIAL DISTRIBUTION.

(a) PROHIBITED ACTS.—Section 506(a) of title 17, United States Code, is amended to read as follows:

''(a) CRIMINAL INFRINGEMENT.—

''(1) IN GENERAL.—Any person who willfully infringes a copyright shall be punished as provided under section 2319 of title 18, if the infringement was committed—

''(A) for purposes of commercial advantage or private financial gain;

''(B) by the reproduction or distribution, including by electronic means, during any 180-day period, of 1 or more copies or phonorecords of 1 or more copyrighted works, which have a total retail value of more than $1,000; or

''(C) by the distribution of a work being prepared for commercial distribution, by making it available on a computer network accessible to members of the public, if such person knew or should have known that the work was intended for commercial distribution.

''(2) EVIDENCE.—For purposes of this subsection, evidence of reproduction or distribution of a copyrighted work, by itself, shall not be sufficient to establish willful infringement of a copyright.

''(3) DEFINITION.—In this subsection, the term 'work being prepared for commercial distribution' means—

''(A) a computer program, a musical work, a motion picture or other audiovisual work, or a sound recording, if, at the time of unauthorized distribution—

''(i) the copyright owner has a reasonable expectation of commercial distribution; and

''(ii) the copies or phonorecords of the work have not been commercially distributed; or

''(B) a motion picture, if, at the time of unauthorized distribution, the motion picture—

''(i) has been made available for viewing in a motion picture exhibition facility; and

''(ii) has not been made available in copies for sale to the general public in the United States in a format intended to permit viewing outside a motion picture exhibition facility.''.

(b) CRIMINAL PENALTIES.—Section 2319 of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) by striking ''Whoever'' and inserting ''Any person who''; and

(B) by striking ''and (c) of this section'' and inserting '', (c), and (d)'';

(2) in subsection (b), by striking ''section 506(a)(1)'' and inserting ''section 506(a)(1)(A)'';

(3) in subsection (c), by striking ''section 506(a)(2) of title 17, United States Code'' and inserting ''section 506(a)(1)(B) of title 17'';

(4) by redesignating subsections (d) and (e) as subsections (e) and (f), respectively;

(5) by adding after subsection (c) the following:

''(d) Any person who commits an offense under section 506(a)(1)(C) of title 17—

''(1) shall be imprisoned not more than 3 years, fined under this title, or both;

''(2) shall be imprisoned not more than 5 years, fined under this title, or both, if the offense was committed for purposes of commercial advantage or private financial gain;

''(3) shall be imprisoned not more than 6 years, fined under this title, or both, if the offense is a second or subsequent offense; and

''(4) shall be imprisoned not more than 10 years, fined under this title, or both, if the offense is a second or subsequent offense under paragraph (2).''; and

(6) in subsection (f), as redesignated—

(A) in paragraph (1), by striking ''and'' at the end;

(B) in paragraph (2), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following:

''(3) the term 'financial gain' has the meaning given the term in section 101 of title 17; and

''(4) the term 'work being prepared for commercial distribution' has the meaning given the term in section 506(a) of title 17.''.

SEC. 104. CIVIL REMEDIES FOR INFRINGEMENT OF A WORK BEING PREPARED FOR COMMERCIAL DISTRIBUTION.

(a) PREREGISTRATION.—Section 408 of title 17, United States Code, is amended by adding at the end the following:

''(f) PREREGISTRATION OF WORKS BEING PREPARED FOR COMMERCIAL DISTRIBUTION.—

''(1) RULEMAKING.—Not later than 180 days after the date of enactment of this subsection, the Register of Copyrights shall issue regulations to establish procedures for preregistration of a work that is being prepared for commercial distribution and has not been published.

''(2) CLASS OF WORKS.—The regulations established under paragraph (1) shall permit preregistration for any work that is in a class of works that the Register determines has had a history of infringement prior to authorized commercial distribution.

''(3) APPLICATION FOR REGISTRATION.—Not later than 3 months after the first publication of a work preregistered under this subsection, the applicant shall submit to the Copyright Office—

''(A) an application for registration of the work;

''(B) a deposit; and

''(C) the applicable fee.

''(4) EFFECT OF UNTIMELY APPLICATION.—An action under this chapter for infringement of a work preregistered under this subsection, in a case in which the infringement commenced no later than 2 months after the first publication of the work, shall be dismissed if the items described in paragraph (3) are not submitted to the Copyright Office in proper form within the earlier of—

''(A) 3 months after the first publication of the work; or

''(B) 1 month after the copyright owner has learned of the infringement.''.

(b) INFRINGEMENT ACTIONS.—Section 411(a) of title 17, United States Code, is amended by inserting ''preregistration or'' after ''shall be instituted until''.

(c) EXCLUSION.—Section 412 of title 17, United States Code, is amended by inserting after ''section 106A(a)'' the following: '', an action for infringement of the copyright of a work that has been preregistered under section 408(f) before the commencement of the infringement and that has an effective date of registration not later than the earlier of 3 months after the first publication of the work or 1 month after the copyright owner has learned of the infringement,''.

SEC. 105. FEDERAL SENTENCING GUIDELINES.

(a) REVIEW AND AMENDMENT.—Not later than 180 days after the date of enactment of this Act, the United States Sentencing Commission, pursuant to its authority under section 994 of title 28, United States Code, and in accordance with this section, shall review and, if appropriate, amend the Federal sentencing guidelines and policy statements applicable to persons convicted of intellectual property rights crimes, including any offense under—

(1) section 506, 1201, or 1202 of title 17, United States Code; or

(2) section 2318, 2319, 2319A, 2319B, or 2320 of title 18, United States Code.

(b) AUTHORIZATION.—The United States Sentencing Commission may amend the Federal sentencing guidelines in accordance with the procedures set forth in section 21(a) of the Sentencing Act of 1987 (28 U.S.C. 994 note) as though the authority under that section had not expired.

(c) RESPONSIBILITIES OF UNITED STATES SENTENCING COMMISSION.—In carrying out this section, the United States Sentencing Commission shall—

(1) take all appropriate measures to ensure that the Federal sentencing guidelines and policy statements described in subsection (a) are sufficiently stringent to deter, and adequately reflect the nature of, intellectual property rights crimes;

(2) determine whether to provide a sentencing enhancement for those convicted of the offenses described in subsection (a), if the conduct involves the display, performance, publication, reproduction, or distribution of a copyrighted work before it has been authorized by the copyright owner, whether in the media format used by the infringing party or in any other media format;

(3) determine whether the scope of ''uploading'' set forth in application note 3 of section 2B5.3 of the Federal sentencing guidelines is adequate to address the loss attributable to people who, without authorization, broadly distribute copyrighted works over the Internet; and

(4) determine whether the sentencing guidelines and policy statements applicable to the offenses described in subsection (a) adequately reflect any harm to victims from copyright infringement if law enforcement authorities cannot determine how many times copyrighted material has been reproduced or distributed.

TITLE II—EXEMPTION FROM INFRINGEMENT FOR SKIPPING AUDIO AND VIDEO CONTENT IN MOTION PICTURES

SEC. 201. SHORT TITLE.

This title may be cited as the ''Family Movie Act of 2005''.

SEC. 202. EXEMPTION FROM INFRINGEMENT FOR SKIPPING AUDIO AND VIDEO CONTENT IN MOTION PICTURES.

(a) IN GENERAL.—Section 110 of title 17, United States Code, is amended—

(1) in paragraph (9), by striking ''and'' after the semicolon at the end;

(2) in paragraph (10), by striking the period at the end and inserting ''; and'';

(3) by inserting after paragraph (10) the following:

''(11) the making imperceptible, by or at the direction of a member of a private household, of limited portions of audio or video content of a motion picture, during a performance in or transmitted to that household for private home viewing, from an authorized copy of the motion picture, or the creation or provision of a computer program or other technology that enables such making imperceptible and that is designed and marketed to be used, at the direction of a member of a private household, for such making imperceptible, if no fixed copy of the altered version of the motion picture is created by such computer program or other technology.''; and

(4) by adding at the end the following:

''For purposes of paragraph (11), the term 'making imperceptible' does not include the addition of audio or video content that is performed or displayed over or in place of existing content in a motion picture.

''Nothing in paragraph (11) shall be construed to imply further rights under section 106 of this title, or to have any effect on defenses or limitations on rights granted under any other section of this title or under any other paragraph of this section.''.

(b) EXEMPTION FROM TRADEMARK INFRINGEMENT.—Section 32 of the Trademark Act of 1946 (15 U.S.C. 1114) is amended by adding at the end the following:

''(3)(A) Any person who engages in the conduct described in paragraph (11) of section 110 of title 17, United States Code, and who complies with the requirements set forth in that paragraph is not liable on account of such conduct for a violation of any right under this Act. This subparagraph does not preclude liability, nor shall it be construed to restrict the defenses or limitations on rights granted under this Act, of a person for conduct not described in paragraph (11) of section 110 of title 17, United States Code, even if that person also engages in conduct described in paragraph (11) of section 110 of such title.

''(B) A manufacturer, licensee, or licensor of technology that enables the making of limited portions of audio or video content of a motion picture imperceptible as described in subparagraph (A) is not liable on account of such manufacture or license for a violation of any right under this Act, if such manufacturer, licensee, or licensor ensures 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 copyright holder of the motion picture. The limitations on liability in subparagraph (A) and this subparagraph shall not apply to a manufacturer, licensee, or licensor of technology that fails to comply with this paragraph.

''(C) The requirement under subparagraph (B) to provide notice shall apply only with respect to technology manufactured after the end of the 180-day period beginning on the date of the enactment of the Family Movie Act of 2005.

''(D) Any failure by a manufacturer, licensee, or licensor of technology to qualify for the exemption under subparagraphs (A) and (B) shall not be construed to create an inference that any such party that engages in conduct described in paragraph (11) of section 110 of title 17, United States Code, is liable for trademark infringement by reason of such conduct.''.

(c) DEFINITION.—In this section, the term ''Trademark Act of 1946'' means the Act entitled ''An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes'', approved July 5, 1946 (15 U.S.C. 1051 et seq.).

TITLE III—NATIONAL FILM PRESERVATION

Subtitle A—Reauthorization of the National Film Preservation Board

SEC. 301. SHORT TITLE.

This subtitle may be cited as the ''National Film Preservation Act of 2005''.

SEC. 302. REAUTHORIZATION AND AMENDMENT.

(a) DUTIES OF THE LIBRARIAN OF CONGRESS.—Section 103 of the National Film Preservation Act of 1996 (2 U.S.C. 179m) is amended—

(1) in subsection (b)—

(A) by striking ''film copy'' each place that term appears and inserting ''film or other approved copy'';

(B) by striking ''film copies'' each place that term appears and inserting ''film or other approved copies''; and

(C) in the third sentence, by striking ''copyrighted'' and inserting ''copyrighted, mass distributed, broadcast, or published''; and

(2) by adding at the end the following:

''(c) COORDINATION OF PROGRAM WITH OTHER COLLECTION, PRESERVATION, AND ACCESSIBILITY ACTIVITIES.—In carrying out the comprehensive national film preservation program for motion pictures established under the National Film Preservation Act of 1992, the Librarian, in consultation with the Board established pursuant to section 104, shall—

''(1) carry out activities to make films included in the National Film registry more broadly accessible for research and educational purposes, and to generate public awareness and support of the Registry and the comprehensive national film preservation program;

''(2) review the comprehensive national film preservation plan, and amend it to the extent necessary to ensure that it addresses technological advances in the preservation and storage of, and access to film collections in multiple formats; and

''(3) wherever possible, undertake expanded initiatives to ensure the preservation of the moving image heritage of the United States, including film, videotape, television, and born digital moving image formats, by supporting the work of the National Audio-Visual Conservation Center of the Library of Congress, and other appropriate nonprofit archival and preservation organizations.''.

(b) NATIONAL FILM PRESERVATION BOARD.—Section 104 of the National Film Preservation Act of 1996 (2 U.S.C. 179n) is amended—

(1) in subsection (a)(1) by striking ''20'' and inserting ''22'';

(2) in subsection (a) (2) by striking ''three'' and inserting ''5'';

(3) in subsection (d) by striking ''11'' and inserting ''12''; and

(4) by striking subsection (e) and inserting the following:

''(e) REIMBURSEMENT OF EXPENSES.—Members of the Board shall serve without pay, but may receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.''.

(c) NATIONAL FILM REGISTRY.—Section 106 of the National Film Preservation Act of 1996 (2 U.S.C. 179p) is amended by adding at the end the following:

''(e) NATIONAL AUDIO-VISUAL CONSERVATION CENTER.—The Librarian shall utilize the National Audio-Visual Conservation Center of the Library of Congress at Culpeper, Virginia, to ensure that preserved films included in the National Film Registry are stored in a proper manner, and disseminated to researchers, scholars, and the public as may be appropriate in accordance with—

''(1) title 17, United States Code; and

''(2) the terms of any agreements between the Librarian and persons who hold copyrights to such audiovisual works.''.

(d) USE OF SEAL.—Section 107 (a) of the National Film Preservation Act of 1996 (2 U.S.C. 179q(a)) is amended—

(1) in paragraph (1), by inserting ''in any format'' after ''or any copy''; and

(2) in paragraph (2), by striking ''or film copy'' and inserting ''in any format''.

(e) EFFECTIVE DATE.—Section 113 of the National Film Preservation Act of 1996 (2 U.S.C. 179w) is amended by striking ''7'' and inserting ''13''.

Subtitle B—Reauthorization of the National Film Preservation Foundation

SEC. 311. SHORT TITLE.

This subtitle may be cited as the ''National Film Preservation Foundation Reauthorization Act of 2005''.

SEC. 312. REAUTHORIZATION AND AMENDMENT.

(a) BOARD OF DIRECTORS.—Section 151703 of title 36, United States Code, is amended—

(1) in subsection (b)(2)(A), by striking ''nine'' and inserting ''12''; and

(2) in subsection (b)(4), by striking the second sentence and inserting ''There shall be no limit to the number of terms to which any individual may be appointed.''.

(b) POWERS.—Section 151705 of title 36, United States Code, is amended in subsection (b) by striking ''District of Columbia'' and inserting ''the jurisdiction in which the principal office of the corporation is located''.

(c) PRINCIPAL OFFICE.—Section 151706 of title 36, United States Code, is amended by inserting '', or another place as determined by the board of directors'' after ''District of Columbia''.

(d) AUTHORIZATION OF APPROPRIATIONS.—Section 151711 of title 36, United States Code, is amended by striking subsections (a) and (b) and inserting the following:

''(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Library of Congress amounts necessary to carry out this chapter, not to exceed $530,000 for each of the fiscal years 2005 through 2009. These amounts are to be made available to the corporation to match any private contributions (whether in currency, services, or property) made to the corporation by private persons and State and local governments.

''(b) LIMITATION RELATED TO ADMINISTRATIVE EXPENSES.—Amounts authorized under this section may not be used by the corporation for management and general or fundraising expenses as reported to the Internal Revenue Service as part of an annual information return required under the Internal Revenue Code of 1986.''.

TITLE IV—PRESERVATION OF ORPHAN WORKS

SEC. 401. SHORT TITLE.

This title may be cited as the ''Preservation of Orphan Works Act''.

SEC. 402. REPRODUCTION OF COPYRIGHTED WORKS BY LIBRARIES AND ARCHIVES.

Section 108(i) of title 17, United States Code, is amended by striking ''(b) and (c)'' and inserting ''(b), (c), and (h)''.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from California (Mr. BERMAN) each will control 20 minutes.

The Chair recognizes the gentleman from Wisconsin (Mr. SENSENBRENNER).

GENERAL LEAVE

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on S. 167, currently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, S. 167 includes several intellectual property-related measures that were considered during the previous Congress, but were unable to be acted on by both Houses prior to adjournment.

Notably, this legislation addresses the growing desire of parents to be able to control what their children see in the privacy of their own homes. One component of this legislation, the Family Movie Act, clarifies that existing copyright and trademark law cannot be used to prevent a parent from utilizing available technology to skip over portions of a movie they may find objectionable.

The legislation also addresses the rampant piracy problem facing our Nation's creative community. New technologies have made theft and duplication of copyrighted works easier than ever before. The number of pirated films continues to increase, causing severe harm to the bottom line of our Nation's copyright holders. Additionally, the theft, duplication and mass distribution of copyrighted works represents a drain on our economy, shrinking the global demand for legitimately acquired works.

By setting forth Federal criminal penalties, this legislation addresses the serious problem of individuals using camcorders to record recently released movies that are then copied and sold on the black market. Additionally, this legislation establishes criminal penalties for the distribution of a copyrighted computer program, musical work or motion picture by making it available on a computer network accessible to members of the public if the person knew, or should have known, that the work was a copyrighted work intended for commercial distribution.

Finally, this legislation reauthorizes the Film Preservation Board at the Library of Congress and corrects a technical error in the Sonny Bono Copyright Term Extension Act that had the unintended effect of limiting the ability of libraries and archives to access older copyrighted works.

Mr. Speaker, I urge the Members to support this legislation.

Mr. Speaker, I reserve the balance of my time.

Mr. BERMAN. Mr. Speaker, I yield myself 6 minutes.

Mr. Speaker, I rise in support of S. 167, and I ask my colleagues to join me in voting to pass this worthy legislation.

Prior to reporting S. 167 by voice vote last month, the Committee on the Judiciary gave the bill all due deliberation. The provisions in this bill and its precursor, H.R. 4077, which passed the House last year, were the subject of multiple subcommittee hearings and markups.

Through the extensive consideration given on the provisions of S. 167, the Committee on the Judiciary has agreed to a bill that makes important contributions to the fight against the proliferation of pirated copyrighted works and that encourages the preservation and protection of creative content.

□ 1430

In addition to providing us with entertainment and education in the form of movies, sound recordings, software, books, computer games and other products, the core copyright industries account for over 6 percent of U.S. gross domestic product. Businesses that rely on copyright employ more than 11 million U.S. workers. Robust protection for creativity supports everyone from the most famous artist to the completely unknown set designer.

Unfortunately, copyright piracy has become a grave threat to the livelihoods of all copyright creators. We live in an environment where consumers want their choice of entertainment to be available at any time, in any place, in any format. While copyright owners are excited by the new opportunities to allow greater access to their works, they must battle with those that give away their products for free.

Pirates have taken over the ship of distribution and now provide users with sound recordings before they are released, copies of movies for $1 on the street, and pirated computer software as part of the sale of computers. Without adequate copyright protection, the developers and creators of new and original works have no protection from the rampant theft of their work that goes on every day. While not a magic bullet, S. 167 will play a valuable role in addressing the piracy problem. Last year's bill provided more expansive protection. However, S. 167 contains important disincentives to the making of unauthorized use of a copyrighted work. It isolates a number of areas necessary to preserve the integrity of the works.

It has become clear that pirates are most harmful when a creator delivers a new or highly anticipated product. Title I of S. 167 is designed to prevent the pirates from obtaining an initial copy of a motion picture through camcording or distributing by computer network a work being prepared for commercial distribution. Section 102 clarifies that it is a felony to surreptitiously record a movie in a theater. This section deals with the growing phenomenon of copyright thieves who use portable digital video recorders to record movies of theater screens during public exhibitions. Organized piracy rings then distribute copies of these surreptitious recordings both online and on the streets.

This section also provides immunity for a movie theater owner who detains

a person who is camcording the movie. It also allows those affected by the crime to file a victim impact statement to illustrate the loss accrued by the piracy. This, hopefully, will deter those who contribute to the ease with which pirated material is obtained.

Even more detrimental to copyright owners than camcording a movie in the theaters is the effect of distributing an unauthorized copy of a movie or sound recording as it is prepared for commercial distribution. Distributing a film before final edits are made can undermine artistic integrity and can also harm the film's commercial prospects because the release is typically coordinated with a marketing effort. Sections 103 and 104 provide for enhanced penalties for prerelease of a work being prepared for commercial distribution. Furthermore, it requires the Copyright Office to establish rules for preregistration of works. We need to address the problems generated when new works are leaked and pirated before they are made available for sale, the prerelease problem.

For example, today, any basement can become a top-of-the-line recording studio, so the law and Copyright Office regulations must reflect the realities of the fast-paced creative entertainment businesses. Unauthorized prereleases are unfair to an artist because his or her song is circulating even before it is in its final form. Just as we edit letters and speeches, we must allow songwriters to tweak and refine their works. They deserve to have the tools to penalize those who thrive on the ability to leak a song or CD before it is available in stores or other legitimate avenues of commerce.

This bill also addresses consumer concerns related to preserving content in orphan works, those works not available in the marketplace at a reasonable price. In section 402 of the bill, we have amended the Copyright Act to enable libraries and archives to reproduce, distribute, perform, and display all orphan works in the course of their preservation, scholarly and research activities.

Furthermore, sections 302 and 312 ensure that the National Film Preservation Board and the National Film Preservation Foundation are reauthorized. These groups help maintain our history of film, which helps foster the creative process.

Title III of S. 167 did generate some concern during the hearings held by the Committee on the Judiciary because it resolves a legal question at the heart of a pending Federal litigation. The Family Movie Act inappropriately intervenes in this pending legislation, shields one specific company from liability for altering the viewed performance.

Directors should have the ability to control the content they create. Although I personally oppose this section, I, like many Members of the Committee on the Judiciary, believe that the bulk of the anti-piracy provisions contained in S. 167 are essential and therefore support the bill as a whole.

The provisions included in S. 167 are derived from a more expansive bill passed by the House last year, H.R. 4077, which contained multiple sections designed to give additional resources statutory authority and incentives to law enforcement authorities to make them productive participants in the anti-piracy battle.

There were also several provisions addressing the problem of copyright infringing files being illegally offered for distribution through peer-to-peer file-swapping networks. I urge the committee and my colleagues to include these provisions in future legislation.

It is worth noting that, while not universally embraced, S. 167 has gained widespread consensus support. Groups as diverse as the Video Software Dealers Association, the American Association of Law Libraries, and the American Medical Association have written in support. On balance, S. 167 is an important advancement in the ongoing effort to battle copyright piracy, and I encourage my colleagues to join me in supporting it.

Mr. Speaker, I reserve the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield 6 minutes to the gentleman from Texas (Mr. SMITH).

Mr. SMITH of Texas. Mr. Speaker, first of all I want to thank the gentleman from Wisconsin (Mr. SENSENBRENNER), the chairman of the Committee on the Judiciary, for yielding me this time.

Mr. Speaker, this legislation contains four main components: first, the Family Movie Act, which I first introduced in the last Congress, will enable parents to skip over or mute the sex, violence, and profanity in movies they find objectionable for their children.

Second, the Art Act will create new penalties for those who camcord movies in public theaters and who willfully infringe copyright law by distributing copies of prerelease works, movies or otherwise, online.

Third, a reauthorization of the Film Preservation Board will protect older works that would otherwise deteriorate.

Finally, a technical fix to the Sonny Bono Copyright Term Extension Act will ensure that libraries and archives have continued access to works during the last 20 years of a copyright term.

As for the Family Movie Act, it lets parents decide for themselves what their children see and hear on television. These days, I do not think anyone would even consider buying a DVD player that does not come with a remote control; yet there are some who would deny parents the right to use the equivalent electronic device that would protect their children from sex, violence, and profanity in movies watched at home.

Raising children may be the toughest job in the world. Parents need all the help they can get, and they should be able to determine what their children see on the screen. Yes, we parents might mute dialogue that others deem crucial, or we might fast forward over scenes that others consider essential, but that is irrelevant. Parents should be able to mute or skip over anything they want if they feel it is in the best interest of their children.

Just as the author of a book should not be able to force someone to read that book in any particular manner or order, a studio or director should not be able to force our children to watch a movie in a particular way. No one can argue with a straight face it should be against the law to skip over a few pages or even entire chapters of a book. So, too, it should not be illegal to skip over a few words or scenes in a movie. The Family Movie Act ensures that parents have such rights.

In fact, the Registrar of Copyrights testified that such actions by parents are not in violation of existing copyright law. But needless litigation continues on this issue. It is time for the rights of parents not to be tied up in the courts any longer.

Turning to other provisions within this bill, millions of pirated movies, music, software, games, and other copyrighted files are now available for a free download by certain peer-to-peer networks. Many of these files are the latest movies, music, software, and games that have yet to be released to the public in legal copies. Title I of the legislation focuses on these prereleased copies of works that are distributed on computer networks before they are available in legal copies to the public.

Such activity is clearly wrong; yet existing law does not create a penalty targeted at this activity. Title I creates a minimum penalty of 3 years in jail for those who undertake such activity. Combined with the camcording provisions in title I, this legislation will impose new and significant penalties on organized groups that camcord movies on the first day of their release and then distribute pirated DVDs the following day on streets worldwide.

Title III of the legislation reauthorizes the Film Preservation Board at the Library of Congress. Title IV corrects a technical error in the Sonny Bono Copyright Term Extension Act that had the result of limiting library and archive access to older works.

Mr. Speaker, this legislation represents a combination of important public policy objectives. I encourage my colleagues to support the measure and send it to the President's desk for his signature.

Mr. BERMAN. Mr. Speaker, I am pleased to yield 5 minutes to my colleague, the gentlewoman from California (Ms. WATSON), the founder and chair of the Congressional Entertainment Caucus, and a very diligent fighter for the protection of intellectual property and the vibrancy of an industry very important to our area and to the country.

Ms. WATSON. Mr. Speaker, I rise in support of S. 167, the Family Entertainment and Copyright Act of 2005, which strengthens our Nation's intellectual property rights system and further protects and rewards our Nation's artists for their creative products.

I supported this bill during the last Congress, and I look forward to seeing its eventual enactment in the coming weeks. This bill closes several significant gaps in our copyright laws that have contributed to the epidemic of digital piracy today. It outlaws camcording of movies off of theater screens by making it a Federal crime. It also empowers judges to impose up to 5-year prison terms for persons convicted of distributing copyrighted songs and movies on file-sharing networks for financial gain. I believe these provisions create crucial tools to combat the theft and redistribution of valuable intellectual property.

With our movie industry losing about $3 billion to piracy every year, it is time that Congress demonstrates its support for our Nation's creators and artists by strengthening protection of copyrighted products. In addition, the bill strengthens our Nation's film heritage by reauthorizing the National Film Preservation Board and the National Film Preservation Foundation that have worked successfully to preserve historically or culturally significant films. Their fine work will ensure our collective artistic heritage will be preserved for generations to come.

Finally, I want to point out that despite my overall support for the bill, I disagree with title II of the legislation, which shields companies that make movie-filtering systems from liability for copyrighting infringements. The intent of the movie-filtering technology is to sanitize movies to protect children. While I support a family-friendly entertainment, I believe this method is not only a violation of film makers' copyright protections but also an infringement of their artistic vision.

Just yesterday, the Washington Post reported that companies sanitizing films removed 24 minutes from the part of the movie ''Saving Private Ryan'' depicting the landing at Omaha Beach on D-Day and eliminated racial epithets uttered by police officials against African American boxer Rubin Carter in ''The Hurricane.'' Both are central to the themes of the movies. Such editing may be done in the name of protecting children, but often reflect our political or ideological biases of the censors. I want to make it clear that my general support of the bill is no way an endorsement of film sanitization.

Mr. Speaker, I urge my colleagues to support S. 167, and it is my hope that we will keep the dialogue open regarding the ever-changing landscape of technology, censorship, and creativity in our country.

□ 1445

Mr. SENSENBRENNER. Mr. Speaker, I yield 2 minutes to the gentleman from Utah (Mr. CANNON).

Mr. CANNON. Mr. Speaker, I rise today in support of S. 167. I commend the gentleman from Texas (Mr. SMITH) for introducing the House counterpart of this legislation, and I commend the gentleman from Wisconsin (Chairman SENSENBRENNER) and the gentleman from California (Mr. BERMAN) for their continued diligence in bringing this legislation to the floor.

Mr. Speaker, included in Title II of this legislation is the Family Movie Act of 2005. This title clarifies the Copyright Act so families, in the privacy of their homes, can use technology that allows them to skip or mute objectionable content in legally purchased or rented DVDs. Parents should have the right to watch any movie they want and to skip over or mute any content they find objectionable. This legislation will allow parents to have the final say in what their children watch in the privacy of their homes, and parents should have the option to protect their children from the sex, violence, profanity and other objectionable material found in movies that are produced in Hollywood these days.

This legislation allows them to do so by clarifying the exemption in the copyright infringement law allowing people to skip, mute or avoid scenes on DVDs. This legislation does not allow for the modifying of the underlying content of the movie, it merely allows fast forwarding or muting portions of the movie or sound track.

Thanks to this legislation, parents can control the content their children view without having to hold a finger on the remote control and anticipate scenes they might find objectionable.

Mr. Speaker, technology that helps parents accomplish this goal should be applauded. S. 167 will allow for technology innovation to flourish without having to face continued legal challenges. This bill is an ideal solution that can be used by families in the home, and does not require limits to be placed on content the studios develop.

I support this legislation. I urge the support of my colleagues.

Mr. BERMAN. Mr. Speaker, I yield myself 2 minutes.

Mr. Speaker, my better judgment notwithstanding, the arguments on this one aspect of the bill on which the majority and I disagree requires me to make just a couple of points.

There is no one who thinks parents do not have and should not have the right to skip over, pass up or omit scenes of any video production they think are inappropriate for their children to see. No one debates that. No one debates they have the right to do that.

What some of us do debate is the right of a commercial enterprise to peddle a technology which fundamentally alters the creator's work any more than some publisher has the right to take an unabridged version of a book that is under copyright, in order to excerpt and take out objectionable patches of that book, and then make a commercial profit without the permission of the copyright owner in peddling that book. That is the issue underlying our opposition to the Family Movie Act.

Parents should have all of these rights, including the right to just say ''no'' to their kids watching a movie or reading a book that is not appropriate. There is no dispute about that. This is a dispute about a particular type of technology that this bill seeks to immunize from liability for employing some young people to decide what someone else should see and not see. But I will not get myself too worked up about a bill that I plan to actively support.

Mr. CONYERS. Mr. Speaker, I rise in support of this legislation with reservations about one part. At the outset, I strongly support efforts to make it more difficult to steal content and to encourage preservation of historic content.

As I have said before, the content industries are a boon to our economy, providing this country's number one export. Their products, which include music, movies, books, and software, survive on the protection given by copyright law. Without protection from rampant copying and other infringement, creators would have no reason to keep creating and investing in new content.

The success of copyrighted content, however is also its Achilles' Heel. People now camcord movies in theaters to sell online or in DVD format. They obtain pre-release copies of content and sell it online. Of course, this is illegal because it is done without the permission of the content owners and without payment to them. This bill clarifies that these two acts are illegal even if technology makes it easy and fast and cheap. While I believe we should do more to stop piracy, S. 167 is a step in the right direction.

Having said that, I would like to clarify one issue. The civil enforcement said of the pre-release provision imposes a statute of limitations on certain copyright lawsuits. Because it imposes the limit only for infringements that occur no more than two months after pre-registered content is first distributed, it is clear that the bill does not impose any time limit on filing lawsuits for infringements that occur more than two months after distribution.

The bill also contains two provisions that will encourage the preservation of historically-significant content. First, it reauthorizes the National Film Preservation Board and National Film Preservation Foundation, which review initiatives to ensure the preservation of valued films and issue grants to libraries and other institutions that can save films from degradation. The Directors Guild of America and the Academy of Motion Picture Arts and Sciences have applauded these efforts. The program expired in 2003, so S. 167 extends it until 2009.

The second preservation piece, the ''Preservation of Orphan Works Act,'' will empower libraries and archives to make additional copies of musical works, movies, and other content.

My one objection to S. 167, however, is with the ''Family Movie Act,'' which would allow private companies to sell movie editing software

without permission from the filmmakers. This was proposed in response to a lawsuit between one company and filmmakers. From our consideration of this provision last year, we know this section inserts Congress into a private dispute and will take away the copyrights and artistic rights of filmmakers to the financial benefit of one private company. It is important to note that the bill does not immunize those who make fixed copies of edited content; such copies would still be illegal, as they are today, and the legislative history should reflect that.

I urge my colleagues to vote "yes" on this legislation.

Mr. BERMAN. Mr. Speaker, I yield back the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. ISSA). The question is on the motion offered by the gentleman from Wisconsin (Mr. SENSENBRENNER) that the House suspend the rules and pass the Senate bill, S. 167.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill was passed.

A motion to reconsider was laid on the table.

MULTIDISTRICT LITIGATION RESTORATION ACT OF 2005

Mr. SENSENBRENNER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1038) to amend title 28, United States Code, to allow a judge to whom a case is transferred to retain jurisdiction over certain multidistrict litigation cases for trial, and for other purposes.

The Clerk read as follows:

H.R. 1038

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Multidistrict Litigation Restoration Act of 2005''.

SEC. 2. MULTIDISTRICT LITIGATION.

Section 1407 of title 28, United States Code, is amended—

(1) in the third sentence of subsection (a), by inserting ''or ordered transferred to the transferee or other district under subsection (i)'' after ''terminated''; and

(2) by adding at the end the following new subsection:

''(i)(1) Subject to paragraph (2) and except as provided in subsection (j), any action transferred under this section by the panel may be transferred for trial purposes, by the judge or judges of the transferee district to whom the action was assigned, to the transferee or other district in the interest of justice and for the convenience of the parties and witnesses.

''(2) Any action transferred for trial purposes under paragraph (1) shall be remanded by the panel for the determination of compensatory damages to the district court from which it was transferred, unless the court to which the action has been transferred for trial purposes also finds, for the convenience of the parties and witnesses and in the interests of justice, that the action should be retained for the determination of compensatory damages.''.

SEC. 3. TECHNICAL AMENDMENT TO MULTIPARTY, MULTIFORM TRIAL JURISDICTION ACT OF 2002.

Section 1407 of title 28, United States Code, as amended by section 2 of this Act, is further amended by adding at the end the following:

''(j)(1) In actions transferred under this section when jurisdiction is or could have been based, in whole or in part, on section 1369 of this title, the transferee district court may, notwithstanding any other provision of this section, retain actions so transferred for the determination of liability and punitive damages. An action retained for the determination of liability shall be remanded to the district court from which the action was transferred, or to the State court from which the action was removed, for the determination of damages, other than punitive damages, unless the court finds, for the convenience of parties and witnesses and in the interest of justice, that the action should be retained for the determination of damages.

''(2) Any remand under paragraph (1) shall not be effective until 60 days after the transferee court has issued an order determining liability and has certified its intention to remand some or all of the transferred actions for the determination of damages. An appeal with respect to the liability determination and the choice of law determination of the transferee court may be taken during that 60-day period to the court of appeals with appellate jurisdiction over the transferee court. In the event a party files such an appeal, the remand shall not be effective until the appeal has been finally disposed of. Once the remand has become effective, the liability determination and the choice of law determination shall not be subject to further review by appeal or otherwise.

''(3) An appeal with respect to determination of punitive damages by the transferee court may be taken, during the 60-day period beginning on the date the order making the determination is issued, to the court of appeals with jurisdiction over the transferee court.

''(4) Any decision under this subsection concerning remand for the determination of damages shall not be reviewable by appeal or otherwise.

''(5) Nothing in this subsection shall restrict the authority of the transferee court to transfer or dismiss an action on the ground of inconvenient forum.''.

SEC. 4. EFFECTIVE DATE.

(a) SECTION 2.—The amendments made by section 2 shall apply to any civil action pending on or brought on or after the date of the enactment of this Act.

(b) SECTION 3.—The amendment made by section 3 shall be effective as if enacted in section 11020(b) of the Multiparty, Multiforum Trial Jurisdiction Act of 2002 (Public Law 107–273; 116 Stat. 1826 et seq.).

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from California (Mr. BERMAN) each will control 20 minutes.

The Chair recognizes the gentleman from Wisconsin (Mr. SENSENBRENNER).

GENERAL LEAVE

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 1038, the bill currently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself such time as I may consume.

(Mr. SENSENBRENNER asked and was given permission to revise and extend his remarks, and include extraneous material.)

Mr. SENSENBRENNER. Mr. Speaker, H.R. 1038, the Multidistrict Litigation Restoration Act of 2005, reverses the effect of a 1998 Supreme Court case commonly referred to as ''Lexecon,'' which has hampered the Federal court system from adjudicating complex, multidistrict cases that are related by a common fact situation. Just as importantly, the bill functions as a technical correction to a related ''disaster litigation'' provision that was incorporated in the Department of Justice Authorization Act, which Congress passed in 2002.

A little background is in order at this point. During the 107th Congress, I authored legislation to address the Lexecon and disaster litigation problems. As passed under suspension by the House, my bill, H.R. 860, accomplished two goals: First, the bill reversed the effect of the Lexecon case which dealt with the authority of a specially designated U.S. district court to handle complex multidistrict cases consolidated for trial. Pursuant to the decision, the court known as the ''transferee'' court could retain Federal and State cases only for pretrial matters, but not the actual trials themselves.

H.R. 860 simply codified existing practice of the preceding 30 years by allowing the transferee court to retain jurisdiction for the purpose of determining liability and punitive damages, or to refer the cases back to those courts in which the cases were originally filed. This feature streamlines adjudication and enables the transferee court to induce the parties to settle.

Second, H.R. 860 conferred original jurisdiction on U.S. district courts to adjudicate any civil action arising out of a single accident under prescribed conditions, but would remand the case to the State courts for determination of compensatory damages. This portion of H.R. 860 is commonly referred to as the ''disaster litigation'' part of the bill.

The Committee on the Judiciary in the other body took no action on H.R. 860, but the matter was resurrected during House-Senate conference deliberations on the Department of Justice authorization bill. Pursuant to negotiations, the conferees agreed to take half of H.R. 860, the disaster litigation portion, which is currently codified as section 1369 of title 28 of the U.S. Code.

Trying to enact a straight Lexecon fix through the bill before us is meritorious in its own right, promoting as it does judicial efficiency, but there is another problem that the bill solves. The currently codified disaster litigation portion of H.R. 860 contemplates that the Lexecon problem is solved. In other words, the new disaster litigation law only creates original jurisdiction for a U.S. district court to accept those cases and qualify as a transferee court