

Program; and the National Park and Recreation Association, with a 'Commemorative Citation' in recognition of outstanding leadership and volunteerism to the parks and recreation movement and to advancing the quality of life in her community.

Furthermore, Marge has been a key figure in the formation of the Halloran Advisory Board—a board that contains both community and civic minded individuals, who share the interest of the positive delivery of services to the community of Halloran Skating Rink.

Along with this tremendous work, and being a wife to the late Dennis Sweeney, Marge has taken great pride in raising her eight lovely children; Dennis, Patty, Brian, Jimmy, Kevin, Shawn, Kelly, and Annie.

Madam Speaker and colleagues, please join me in honoring Marge Sweeney for her thirty years of public service to the residents of Cleveland, and for her kindness and generosity that have and will continue to inspire all who cross paths with her.

IN HONOR OF VACLAV HAVEL AND
THE 30TH ANNIVERSARY OF
CHARTER 77

HON. STENY H. HOYER

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 27, 2007

Mr. HOYER. Madam Speaker, this year marks the thirtieth anniversary of the Charter 77 movement. Along with other colleagues from the Helsinki Commission, which I had the privilege of Chairing and Co-Chairing from 1985 to 1994, I rise today to commemorate Charter 77's extraordinary accomplishments, and to praise Vaclav Havel, a founding member of the Charter 77 movement and Czechoslovakia's first President after the fall of communism.

Twenty years ago this month, I led a Congressional delegation to Czechoslovakia—my first trip to that country. At that time, I was assured by Czechoslovak Government officials that Charter 77 was only a small group, and there was no need to have a dialogue with its members. In an apparent effort to underscore their point, the regime detained several Chartists to keep them from meeting with our delegation: Vaclav Havel, Petr Uhl and Jiri Dienstbier were all arrested in Prague; Miklos Duray was prevented from traveling to Prague from Slovakia; and although Petr Puspoki-Nagy made it to Prague, he was also immediately detained on his arrival.

Although I was deprived of the chance to meet these individuals in person, I was already well aware of their work. In fact, the Helsinki Commission's second hearing, held in February 1977, published the full text of the Charter 77 manifesto at the request of one of our witnesses, Mrs. Anna Faltus. We owe a special debt of gratitude to the late Mrs. Faltus, who worked tirelessly for decades as an advocate for a free Czechoslovakia. To this end, she made sure that the documents of Charter 77 and the Committee for the Defense of the Unjustly Persecuted were quickly translated and widely disseminated to policy makers and human rights advocates. Her effort made it possible for the Helsinki Commission to publish (in 1982 and in 1987) selected and representative texts of the Charter 77 movement.

Looking back, the breadth of those documents is truly remarkably, touching on everything from the legacy of World War II to the country's economic situation; from contemporary music to nuclear energy. But the common thread that bound these diverse statements together was a commitment to promote and protect "the right of the individual to know and act upon his rights." This right was freely adopted by the Czechoslovak Socialist Republic when Gustav Husak fixed his signature to the Helsinki Final Act in 1975.

It was, of course, with great interest that I discussed Charter 77, first with Czechoslovak officials during my February 1987 trip to Prague, then with Czechoslovak parliamentarians visiting Washington in June 1988 (a delegation which included Prague Communist Party boss Miroslav Stepan), and then with the Czechoslovak delegation to the 1989 Paris Meeting of the Conference on the Human Dimension. In these meetings, as well as in correspondence with the Czechoslovak Ambassador to the United, I was told that Charter 77 didn't represent public opinion. I was warned that siding with Charter 77 would not help bilateral relations, and I was assured that democracy was coming soon to Czechoslovakia—"socialist democracy."

Needless to say, I was not convinced by my interlocutors: I was not convinced that Augustin Navratil was actually being treated for a mental health condition, rather than being persecuted for his religious activism. I was frankly disgusted when the Czechoslovak delegation to the Paris meeting baldly lied about Jiri Wolf, telling us he had been released early from his prison sentence as a "humanitarian" gesture, and then shrugging with indifference when they were caught in their lie. Most of all, I did not believe that Vaclav Havel was a criminal and Charter 77 merely an "insignificant" group.

In fact, in 1989 Senator Dennis DeConcini and I nominated Vaclav Havel for the Nobel Peace Prize. As Senator DeConcini said, "[i]n spite of relentless harassment by the authorities, including imprisonment, repeated detentions, house searches, and confiscation of property, Havel has remained active in the struggle for human rights. . . Havel is now in prison, but he is not alone in his cause. In a dramatic move. . . over 700 of his colleagues—playwrights, producers, artists, and actors—signed a petition calling for his release and the release of others [similarly imprisoned]. For these people, like many others in his country, Vaclav Havel has become a symbol of an enduring and selfless commitment to human rights."

Madam Speaker, on this 30th anniversary of the founding of the Charter 77 movement, I rise to commend and remember the courageous men and women, signatories and supporters, who paved the way for the peaceful transition from communism in Czechoslovakia and restoration of Europe, whole and free. On this anniversary, I give special tribute to Vaclav Havel, playwright and president, and his singular role in leading his country to freedom.

PERSONAL EXPLANATION

HON. LUIS V. GUTIERREZ

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 27, 2007

Mr. GUTIERREZ. Madam Speaker, I was unavoidably absent from this chamber today. I would like the RECORD to show that, had I been present, I would have voted "yea" on rollcall votes 100, 101 and 102.

INTRODUCTION OF THE FAIR USE
ACT OF 2007

HON. RICK BOUCHER

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 27, 2007

Mr. BOUCHER. Madam Speaker, I am pleased to be introducing the Freedom And Innovation Revitalizing U.S. Entrepreneurship Act of 2007. Like other bills I have introduced in earlier years, the FAIR USE Act of 2007 is intended to promote innovation, encourage the introduction of new technology, enhance library preservation efforts and protect the fair use rights of consumers.

As more fully described in the attached section-by-section analysis, this bill differs fundamentally from H.R. 107 and H.R. 1201, as proposed in the 108th and 109th Congresses, respectively. For example, the revised bill does not contain the provision which would have established a fair use defense to the act of circumvention. I continue to believe that there should be such an exemption in the law, but content owners have expressed concern that enactment of such a provision could lead to widespread redistribution of audiovisual and other works.

In an effort to address their concerns, I have instead crafted specific exemptions to section 1201 of the Digital Millennium Copyright Act which do not pose a comparable potential threat to their business models. For example, the proposed legislation would codify the decision by the Register of Copyrights, as affirmed in a determination made by the Librarian of Congress under section 1201(a)(1) of the DMCA, to allow consumers to "circumvent" digital locks in six discrete areas. The bill also contains six narrowly crafted additional exemptions that are a natural extension of these exemptions. For example, given the central role that libraries and archives play in our society in ensuring free speech and continuing access to creative works, the bill includes a provision to ensure that they can circumvent a digital lock to preserve or secure a copy of a work or replace a copy that is damaged, deteriorating, lost, or stolen.

The bill contains other new elements. For example, it would limit the availability of statutory damages against individuals and firms who may be found to have engaged in contributory infringement, inducement of infringement, vicarious liability or other indirect infringement. Given the increasing extent to which content companies are on the receiving end of lawsuits, I would hope they would see the value of this element of the bill.

I have more narrowly crafted the provision codifying the Supreme Court's Betamax decision to eliminate any uncertainty about a potential negative impact on the Supreme Court's holding in the Grokster case.

I look forward to working with my colleagues and all interested parties in an effort to properly balance the rights of content owners, consumers and other constructive users of content.

I will welcome their suggestions about how the measure might be further improved as it moves forward in the legislative process.

FAIR USE ACT OF 2007

Section 1 sets forth the title of the bill, the "Freedom And Innovation Revitalizing U.S. Entrepreneurship Act of 2007."

Section 2 would make two amendments to the Copyright Act.

Subsection (2)(a) would limit the availability of statutory damages against individuals and firms who may be found to have engaged in contributory infringement, inducement of infringement, vicarious liability, or other indirect infringement. Congress developed the statutory damages award process in a world of physical works, principally paper and vinyl. Today, in a world in which silicon is the principal medium of storage, statutory damages can be so large and disproportionate that entrepreneurs and consumer electronics and information technology companies are declining to bring new technology to market out of fear that they could be bankrupted by an adverse finding of secondary liability—even in cases in which they believed on the advice of counsel that their new innovative hardware or software products would be found legal if they survived costly litigation with its highly intrusive discovery. Under the bill, statutory damages would remain available for conduct that no reasonable person could have believed to be lawful. With this condition in the law, entrepreneurs, venture capitalists, and consumer electronics and information technology companies would feel more confident in going to court, if necessary, for a fair hearing on the merits, and aggrieved parties could get relief from scofflaws. Moreover, actual damages would continue to remain available to a person harmed by secondary infringement.

Subsection (2)(b) would effectively codify the Supreme Court's holding in the *Betamax* decision with respect to hardware devices. In *Sony Corp. v. Universal City Studios, Inc.*, 464 U.S. 417 (1984), the Court held that because the *Betamax* videocassette recorder was capable of substantial, commercially significant non-infringing uses, two studios—which were concerned about consumers making in-home off-air tapes of television broadcasts—could not hold Sony contributorily liable for copyright infringement based on other possible or even predominate infringing uses. To provide greater legal certainty to legitimate CE companies bringing new products to market in the wake of the uncertainty created by the Supreme Court's decision in *Metro-Goldwyn-Mayer Studios v. Grokster, Ltd.*, 545 U.S. 913 (2005), subsection (b) would immunize these and other hardware companies, as well as entrepreneurs, from copyright infringement liability based on the design, manufacture or distribution of hardware devices (or components of those devices) that are capable of a substantial, commercially significant non-infringing use. The enactment of this clarifying provision, for avoidance of doubt with respect to hardware devices, is not intended to have any negative effect on the continued availability and application of the *Betamax* standard with respect to services and software products or to non-commercial activities.

Section 3 would amend the Digital Millennium Copyright Act.

Subsection (3)(a) would codify the decision by the Register of Copyrights, as affirmed in a determination made by the Librarian of Congress under section 1201(a)(1) of the

DMCA, to allow consumers to "circumvent" digital locks in six discrete areas. The determination was made after a thorough rule making process, in which the Register took extensive testimony from rights holders, consumers, and other interested parties. By codifying the Librarian's determination, Congress would ensure that these practices may continue, without the need for extensive review by the Register and the Librarian under section 1201(a)(1) three years from now. The importance of these exemptions was demonstrated by the Register's extensive supporting analysis. Making them permanent would create greater certainty among various user communities. The need to codify the exemptions is all the more compelling now that TracFone has challenged the entire DMCA rulemaking process as an unlawful delegation of legislative authority.

As determined by the Librarian in the Final Rule published in the Federal Register on November 27, 2006, persons making non-infringing uses of the following six classes of works will not be subject to the prohibition against circumventing access controls of the DMCA:

1. Audiovisual works included in the educational library of a college or university's film or media studies department, when circumvention is accomplished for the purpose of making compilations of portions of those works for educational use in the classroom by media studies or film professors.

2. Computer programs and video games distributed in formats that have become obsolete and that require the original media or hardware as a condition of access.

3. Computer programs protected by dongles that prevent access due to malfunction or damage and which are obsolete.

4. Literary works distributed in ebook format when all existing ebook editions of the work contain access controls that prevent the enabling either of the book's read-aloud function or of screen readers that render the text into a specialized format.

5. Computer programs in the form of firmware that enable wireless telephone handsets to connect to a wireless telephone communication network, when circumvention is accomplished for the sole purpose of lawfully connecting to a wireless telephone communication network.

6. Sound recordings distributed in compact disc format and protected by technological protection measures that control access to lawfully purchased works and create or exploit security flaws or vulnerabilities that compromise the security of personal computers when circumvention is accomplished solely for the purpose of good faith testing, investigating, or correcting such security flaws or vulnerabilities.

As an extension of the Librarian of Congress's determination, subsection (3)(b) of the FAIR USE Act would enable individuals in six narrowly defined circumstances to circumvent technological protection measures:

Paragraph (i) would extend the Librarian's determination with respect to excerpts of audiovisual works for use in all classrooms (instead of just in college media studies classrooms). Under the provision, an instructor could circumvent a digital lock on audiovisual works included in the collection of a library or an archives in order to make compilations of portions of those works for educational use in a classroom at all grade levels.

Paragraph (ii) would authorize consumers to circumvent a lock on a DVD or other audiovisual work in order to skip past commercials at the beginning of it or to bypass personally objectionable content (such as pornographic scenes) contained in the work.

The provision does not authorize consumers to make back up DVDs for archival or any other purpose.

Paragraph (iii) would authorize consumers to transmit a work over a home or personal network but not to circumvent for purposes of uploading that work to the Internet.

This provision would ensure that consumers can make fair use of content they have lawfully acquired, as long as they do not engage in the mass, indiscriminate redistribution of that content over the Internet.

Paragraph (iv) would allow individuals to access public domain works that are in a collection of works made up primarily of public domain works. It thus would preclude content owners from denying the public access to public domain works simply by repackaging them with one or more copyrighted works and then applying a digital lock to restrict or deny access to all of the works.

Paragraph (v) would advance long-established First Amendment rights by authorizing reporters, teachers, and others to circumvent digital locks blocking access to works of substantial public interest, when circumvention is accomplished solely for purposes of criticism, comment, news reporting, scholarship, or research.

Paragraph (vi) would authorize circumvention of technological measures that effectively control access to copyrighted works for the purpose of enabling a library or an archive to preserve or secure a copy of a work or to replace a copy that is damaged, deteriorating, lost, or stolen. This would ensure that libraries and archives can continue to engage in activities specifically authorized by section 108 of the Copyright Act.

The exceptions to the DMCA set forth in subsections (3)(a) and (b) are based on extensive comments and testimony received by the Copyright Office and the Congress. Their enactment is not intended and should not be construed as in any way limiting other rights or interpretations of either the Copyright Act or the DMCA as to which consumers and other users have had their rights vindicated in the courts or those which have not been addressed by the courts.

TRIBUTE TO MS. PHYLLIS C. CAMPBELL, SENIOR EXECUTIVE SERVICE

HON. TODD RUSSELL PLATTS

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 27, 2007

Mr. PLATTS. Madam Speaker, I rise today to pay tribute to Ms. Phyllis C. Campbell, who will retire from the Defense Logistics Agency's, DLA, Defense Distribution Center, DDC, New Cumberland, Pennsylvania, on March 3, 2007. Ms. Campbell's distinguished government career spans 40 years, and her record of achievement during this period reflects greatly upon herself and upon the organizations with which she has served. Her contributions to the national defense will be missed as she moves on to new and exciting opportunities.

Ms. Campbell was appointed to the Senior Executive Service position of deputy commander, DDC in July 1998. The DDC is DLA's Lead Center for distribution and has management responsibility for 26 military distribution centers around the world.

Ms. Campbell hails from Steelton, Pennsylvania and has followed a varied career of increasing responsibility culminating in her appointment as deputy commander. In 1966, she entered the Federal service in the Transportation Division at Defense Distribution Depot