

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

Ogden, Utah, and in 1973, was selected into the Depot's Management Intern Program. In 1979, Ms. Campbell became a supply systems analyst in the newly formed Defense System Automation Center, DSAC, which later became the DLA System Design Center, DSDC. In 1982, she returned to the Ogden installation, becoming branch chief with responsibility for all operations and administrative systems and procedures. In 1985, Ms. Campbell was promoted to division chief, assuming additional responsibility for a \$30 million depot modernization program. In 1989, Ms. Campbell reached a career benchmark with her selection as deputy director, Office of Technology and Information Services.

In 1990, Ms. Campbell was selected by the Office of Secretary of Defense, OSD, to be the deputy for the Corporate Information Management Distribution prototype group. This group was chartered to develop a standard distribution system for use throughout the Department of Defense. In 1991, Ms. Campbell was reassigned to DLA's Defense Distribution Systems Center as its business manager. Ms. Campbell was instrumental in selecting the migration system for deployment to the then 30 DLA distribution sites. In 1993, Ms. Campbell returned to the OSD Comptroller's Office of Financial Review and Analysis. From 1995 until her appointment to deputy commander, she served as director, Distribution Operations with the Defense Distribution Center.

Ms. Campbell attended Weber State University and is the recipient of numerous special achievement and performance awards including the 2005 Presidential Distinguished Executive Rank Award, the 2002 Presidential Meritorious Executive Rank Award, the Distinguished Order of Saint Martin, and the Military Ancient Order of Saint Christopher award in recognition of her contributions to transportation initiatives.

Madam Speaker, I am honored to ask my colleagues to join me in congratulating Ms. Phyllis C. Campbell on her retirement from Federal civil service. She epitomizes the dedication and professionalism that make our Federal government a model all over the world.

#### IN HONOR OF JACK BARLICH

#### HON. SAM FARR

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, February 27, 2007*

Mr. FARR. Madam Speaker, I rise today to honor Mr. Jack Barlich, who passed away on January 16, 2007.

He was a firefighter for the City of Monterey for 29 years, and retired in 1992 as assistant fire chief. After his retirement he ran for mayor of Del Rey Oaks, defeating the incumbent who had served 30 years in city government. Jack was a knowledgeable firefighter and a hands-on kind of person who used those attributes to be an effective administrator.

He served on several county boards including the Waste Management Task Force and the Transportation Agency of Monterey County. He chaired the Fort Ord Reuse Authority board and was vice-chairman of the Monterey Regional Water Pollution Control Agency. As the mayor of Del Rey Oaks, his proudest accomplishment was the annexation of 360 acres of land for his small city from the former Fort Ord Army Base.

Jack's health began to decline in 2003, and in the summer of 2004, he resigned during his seventh term. Jack was tough but fair, and worked hard in the service of his community. He will be greatly missed.

Madam Speaker, I rise to honor Jack Barlich, who courageously served his community during his lifetime.

#### IN REMEMBRANCE OF SERGEANT MAJOR JOSEPH J. ELLIS

#### HON. DENNIS J. KUCINICH

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, February 27, 2007*

Mr. KUCINICH. Madam Speaker, I rise today to honor the extraordinary life and achievements of Sergeant Major Joseph J. Ellis, the true definition of an American hero. Throughout his life, Sergeant Major Ellis displayed the highest qualities of sacrifice, patriotism, and service.

Sgt. Maj. Ellis enlisted in the Marines in 1984 and moved up in rank, mostly in reconnaissance units, and trained as a radio operator. In 1985, he was elevated to the rank of corporal and, 2 years later, joined the 3rd Reconnaissance Battalion in Okinawa, Japan, where he served as team communicator and radio supervisor in the battalion communications platoon. Later Ellis was called to Camp Pendleton, California for duty with the School of Infantry, and served as radio supervisor in the communications platoon.

When his country needed his service, Ellis answered the call and was deployed to Saudi Arabia with the 1st Force Reconnaissance Company from Camp Pendleton in 1990 for Operation Desert Shield and Operation Desert Storm.

In late 2003, Ellis again answered the call of his country and was sent to Iraq as first sergeant for the Headquarters and Service Company. Ellis was promoted to sergeant major in 2004, making him the top enlisted man with a Camp Pendleton, California-based infantry battalion.

Adlai Stevenson once said, "Patriotism is not short, frenzied outbursts of emotion, but the tranquil and steady dedication of a lifetime." Sgt. Maj. Ellis' dedication to patriotism was a lifelong commitment, which he displayed by devoting over 20 years of service to the Marine Corps. Among his many honors and decorations, Ellis was awarded the Meritorious Service Ribbon, the Navy and Marine Corp Commendation Medal with one gold star, the Navy and Marine Corps Achievement Medal with one gold star, and the Combat Action Ribbon with one gold star. Sgt. Maj. Ellis' devotion to our country and the protection of our freedoms and values deserve our most sincere appreciation.

Madam Speaker and colleagues, please join me in honoring Sgt. Maj. Ellis, who gave the ultimate sacrifice for his country on February 7, 2007. May his actions and deeds never be forgotten.

#### PERSONAL EXPLANATION

#### HON. TOM UDALL

OF NEW MEXICO

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, February 27, 2007*

Mr. UDALL of New Mexico. Madam Speaker, on February 16th I missed rollcall vote No. 102, final passage of the Small Business Tax Relief Act. Had I voted, I would have voted "aye."

#### HONORING AND PRAISING THE NAACP ON THE OCCASION OF ITS 98TH ANNIVERSARY

SPEECH OF

#### HON. BARBARA LEE

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Monday, February 12, 2007*

Ms. LEE. Mr. Speaker, I rise today in strong support of H. Con. Res. 44, legislation to honor the National Association for the Advancement of Colored People (NAACP) on the occasion of its 98th anniversary. The NAACP is an established and proven civil rights organization and a leading voice for justice and human rights for all.

The NAACP has several national achievements but I'd like to highlight our local successes. In California's 9th Congressional District, I am honored to say the Oakland NAACP branch, established in 1913, was the first NAACP chapter in Northern California. It represented the cities of San Francisco, Oakland and Berkeley.

In fact, the Oakland NAACP branch played a pivotal role in the civil rights struggle in California. The branch participated in the organization's national campaign to eliminate Jim Crow laws and to support anti-lynching legislation.

In the late 1950's and 1960's, Bishop Nichols, then Pastor of Downs Memorial United Methodist Church in North Oakland, joined with national leaders to advocate for economic, social and educational justice in the Bay Area. He was chair of the Berkeley NAACP Education Committee and President of the Berkeley Board of Education (four years before the school district became the first to voluntarily integrate schools).

In addition, one of Oakland's own, Judge Cecile Poole served as director of the NAACP Defense and Legal Education Fund. Judge Poole became the first African-American United States Attorney, and the first black federal judge for the Northern District of California. And although he passed away ten years ago, his legacy and work with the NAACP to promote respect and basic civil rights for all disenfranchised people is still felt in the East Bay and throughout our Nation.

Mr. Speaker, with members, such as Bishop Nichols, Judge Cecile Poole, Thurgood Marshall, W.E.B. DuBois, Coretta Scott King, Fannie Lou Hamer, and Rosa Parks, there's no doubt that the NAACP served as the catalyst for the largest grassroots civil rights movement in U.S. history.

The NAACP remains a vehicle to push for legal action against injustice and an advocate for human and civil rights for all.

Their political accomplishments such as ending the separate but equal policy in