

Lankford, for working with me to improve this legislation.

I respect the sponsor's goal with his bill, which is to provide taxpayers more information about how their money is being spent by the Federal Government. I think most people don't mind paying taxes, but they want to know that they are spending them and that they are being used in an effective and efficient manner and for the purpose intended.

However, the Congressional Research Service identified multiple areas of potential overlap and duplication between the bill as it was introduced and the current statutory requirements.

For example, the bill, as introduced, would have required each agency to report information on improper payments, but the Improper Payments Information Act already requires agencies to report information on improper payments.

The current bill, as amended, eliminates much of that duplication. This is a much better bill, and I applaud the majority for their work on it.

There is one provision in the Taxpayers Right-to-Know Act that I want to note because I think it will be a real improvement with regard to transparency. The bill would require agencies to report the number of full-time positions that are paid, in full or in part, through a grant or a contract.

We do not currently know how many employees are working for the Federal Government through contracts. This bill would require agencies to disclose this information on an annual basis.

This bill also includes an amendment that was offered by Representative SPEIER during our committee markup to require agencies to report for their programs any findings of duplication or overlap identified by internal review, an inspector general, the Government Accountability Office, or other report to the agency.

This requirement will help agencies keep track of areas of duplication. It also will increase accountability by making this information easier to find for government watchdogs, including Congress.

I appreciate the improvements that have been made to the bill. I appreciate the bipartisan spirit by which we were able to come to the floor today. I intend to support the legislation.

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

#### GENERAL LEAVE

Mr. LANKFORD. 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 the bill under consideration.

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

There was no objection.

Mr. LANKFORD. Mr. Speaker, let me make one quick comment, then I would like to yield a minute to my colleague.

This does allow us to be able to gather that information. It is a good thing to have the information.

Over the past several years there has been a push to provide greater transparency in the Federal Government, but the difficulty of bits of information scattered in different parts in different reports has forced the need for this; to say, let's put all that data together.

Not only the number of staff and the number of programs and duplication reports, but let's gather that into one readable report so that every American doesn't have to know where to chase down to get bits of information. They can actually go to one spot and be able to look at it, whether it is a watchdog group, Members of Congress, or any citizen at any computer in America, they can be able to do that kind of research.

Mr. Speaker, I yield 1 minute to the gentleman from California (Mr. ISSA).

Mr. ISSA. Mr. Speaker, I will be brief.

When our committee works together in the way they have, particularly under the leadership of Chairman LANKFORD, we can do some amazing reforms. This is, in fact, more amazing than people might at first gather.

For example, this requires something as simple as to have the Office of Management and Budget report what is called the all-in cost of Federal programs. For too long, the American people have heard about what a program costs, only to find out that if you go through all the various budgets that a particular action is spread about, it might cost five or six times as much.

That kind of single point accountability is just one of the many reasons that this well-thought-out, bipartisan legislation, led by Mr. LANKFORD, really needs to be passed today as part of this package of reforms to get a government accountability to the American people.

I thank the chairman. I thank the ranking member.

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

Mr. Speaker, as I close, I urge all Members to vote in favor of the legislation.

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

Mr. LANKFORD. Mr. Speaker, I do appreciate the conversation and the debate today. This is something that Republicans and Democrats can agree on. We should have transparency. Again, this is not a Republican issue or a Democrat issue. This is a size and scope of our government issue.

We have grown extremely large in the Federal Government. We have duplication that none of us can even find, large budget categories with no specific items underneath them to be able to identify how much things cost, what their effectiveness includes.

This is a moment for us to begin to get the details of all these programs that Congress has authorized back to the Congress for us to be able to evaluate their effectiveness.

This is the right move to be able to make in the days ahead, for us to be

able to get our arms around an extremely large, extremely complicated budget with a tremendous amount of duplication and waste that we can't find until we shine some light on it through this bill. I urge all Members to be able to support this bill.

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 Oklahoma (Mr. LANKFORD) that the House suspend the rules and pass the bill, H.R. 1423, as amended.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

#### UNLOCKING CONSUMER CHOICE AND WIRELESS COMPETITION ACT

Mr. GOODLATTE. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1123) to promote consumer choice and wireless competition by permitting consumers to unlock mobile wireless devices, and for other purposes, as amended.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 1123

*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 "Unlocking Consumer Choice and Wireless Competition Act".

#### SEC. 2. REPEAL OF EXISTING RULE AND ADDITIONAL RULEMAKING BY LIBRARIAN OF CONGRESS.

(a) REPEAL AND REPLACE.—As of the date of the enactment of this Act, paragraph (3) of section 201.40(b) of title 37, Code of Federal Regulations, as amended and revised by the Librarian of Congress on October 28, 2012, pursuant to the Librarian's authority under section 1201(a) of title 17, United States Code, shall have no force and effect, and such paragraph shall read, and shall be in effect, as such paragraph was in effect on July 27, 2010.

(b) RULEMAKING.—

(1) IN GENERAL.—The Librarian of Congress, upon the recommendation of the Register of Copyrights, who shall consult with the Assistant Secretary for Communications and Information of the Department of Commerce and report and comment on his or her views in making such recommendation, shall determine, consistent with the requirements set forth under section 1201(a)(1) of title 17, United States Code, whether to extend the exemption for the class of works described in section 201.40(b)(3) of title 37, Code of Federal Regulations, as amended by subsection (a), to include any other category of wireless devices in addition to wireless telephone handsets.

(2) TIMING OF RULEMAKING.—(A) If this Act is enacted before June 1, 2014, the determination under paragraph (1) shall be made by not later than the end of the 9-month period beginning on the date of the enactment of this Act.

(B) If this Act is enacted on or after June 1, 2014, the determination under paragraph (1) shall be made in the first rulemaking

under section 1201(a)(1)(C) of title 17, United States Code, that begins on or after the date of the enactment of this Act.

(c) UNLOCKING AT DIRECTION OF OWNER.—

(1) IN GENERAL.—Circumvention of a technological measure that restricts wireless telephone handsets or other wireless devices from connecting to a wireless telecommunications network—

(A)(i) as authorized by paragraph (3) of section 201.40(b) of title 37, Code of Federal Regulations, as made effective by subsection (a), and

(ii) as may be extended to other wireless devices pursuant to a determination in the rulemaking conducted under subsection (b), or

(B) as authorized by an exemption adopted by the Librarian of Congress pursuant to a determination made on or after the date of enactment of this Act under section 1201(a)(1)(C) of title 17, United States Code, may be initiated by the owner of any such handset or other device, by another person at the direction of the owner, or by a provider of a commercial mobile radio service or a commercial mobile data service at the direction of such owner or other person, solely in order to enable such owner or a family member of such owner to connect to a wireless telecommunications network, when such connection is authorized by the operator of such network.

(2) NO BULK UNLOCKING.—Nothing in this subsection shall be construed to permit the unlocking of wireless handsets or other wireless devices, for the purpose of bulk resale, or to authorize the Librarian of Congress to authorize circumvention for such purpose under this Act, title 17, United States Code, or any other provision of law.

(d) RULE OF CONSTRUCTION.—Except as provided in subsection (c), nothing in this Act alters, or shall be construed to alter, the authority of the Librarian of Congress under section 1201(a)(1) of title 17, United States Code.

(e) DEFINITIONS.—In this Act:

(1) COMMERCIAL MOBILE DATA SERVICE; COMMERCIAL MOBILE RADIO SERVICE.—The terms “commercial mobile data service” and “commercial mobile radio service” have the respective meanings given those terms in section 20.3 of title 47, Code of Federal Regulations, as in effect on the date of the enactment of this Act.

(2) WIRELESS TELECOMMUNICATIONS NETWORK.—The term “wireless telecommunications network” means a network used to provide a commercial mobile radio service or a commercial mobile data service.

(3) WIRELESS TELEPHONE HANDSETS; WIRELESS DEVICES.—The terms “wireless telephone handset” and “wireless device” mean a handset or other device that operates on a wireless telecommunications network.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Virginia (Mr. GOODLATTE) and the gentleman from Virginia (Mr. SCOTT) each will control 20 minutes.

PARLIAMENTARY INQUIRY

Mr. POLIS. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state his parliamentary inquiry.

Mr. POLIS. I don't believe there is a rule for this bill. Is there a rule for this bill?

The SPEAKER pro tempore. The Chair is referring to a standing rule of the House.

Mr. POLIS. Mr. Speaker, I claim the time in opposition.

The SPEAKER pro tempore. Is the gentleman from Virginia in favor of the motion?

Mr. SCOTT of Virginia. Mr. Speaker, I am in favor of the motion. I am not opposed to the bill.

The SPEAKER pro tempore. On that basis, pursuant to the rule, the gentleman from Colorado (Mr. POLIS) will control the 20 minutes in opposition.

The gentleman from Virginia (Mr. GOODLATTE) is recognized.

GENERAL LEAVE

Mr. GOODLATTE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and include extraneous materials on H.R. 1123, currently under consideration.

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

There was no objection.

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

Last winter, due to an expired exemption to existing law, consumers lost the legal right to unlock their cell phones so that they could use them on a different wireless carrier. Outraged consumers flooded Congress and the White House with complaints over this change in policy that resulted in reduced marketplace competition.

In response to this impact on consumers, a bipartisan group of House Judiciary Committee members introduced H.R. 1123, the Unlocking Consumer Choice and Wireless Competition Act. The legislation reinstates the prior exemption to civil and criminal law for unlocking cell phones for personal use. It also creates an expedited process to determine whether this exemption should be extended to other wireless devices such as tablets.

When this legislation is enacted, consumers will be able to go to a kiosk in the mall, get help from a neighbor, or see a wireless carrier to help unlock their cell phone without any risk of legal penalties. This is not the case today, which is why this legislation is necessary.

H.R. 1123 is supported by such diverse groups in the cellular industry, from the large carriers of CTIA to the small carriers of the Competitive Carriers Association.

Although these two groups announced a private sector agreement in December on unlocking based upon this same legislation, that agreement cannot eliminate the potential of civil and criminal sanctions for consumers who unlock their cell phones. So the need for the legislation remains. Even Consumers Union supports this critical legislation.

□ 1600

The committee has been aware of law enforcement concerns regarding the explosive growth in smartphone thefts. Efforts by criminals to undertake bulk unlocking and transfers of stolen phones are a growing concern in Amer-

ica. Smartphones seem to have become crime magnets in many cities across America.

Because the policy issue has always focused on the ability of consumers to unlock their phones, the legislation is similarly focused on individual consumer unlocking without raising law enforcement concerns. Why would it make sense for Congress to enable criminal gangs to more easily make money off stolen phones instead of simply solving the main issue of consumers being able to unlock their own phones?

Some would like this legislation to go even further. However, I hope all can agree that this is a good start and a solid piece of legislation that will empower consumer choice.

I urge my colleagues to support this important proconsumer legislation, and I reserve the balance of my time.

Mr. POLIS. Mr. Speaker, I yield myself such time as I may consume, and I rise in opposition to the Unlocking Consumer Choice and Wireless Competition Act.

I support the sentiment behind this bill, and I support the version that was reported out of the Judiciary Committee. However, unfortunately, an important change that I will discuss to the detriment of this bill was added last week, just prior to this bill being brought to the floor.

The gentleman from Virginia (Mr. GOODLATTE) gave some background with regard to why a bill is necessary. Ever since the Library of Congress ruled last year that unlocking your cell phone violates copyright law, there have been a number of us on both sides of the aisle who have worked to ensure that consumers have the right to unlock their wireless devices and use their property as they see fit.

I am proud to be a cosponsor of Congresswoman LOFGREN's bill, the Unlocking Technology Act of 2013, which gives consumers the right to unlock their devices on a permanent basis.

Before I came to Congress, I was an entrepreneur who started a number of businesses, and I understand firsthand the importance of allowing a free market to thrive and to create a positive environment for businesses and consumers alike.

Allowing consumers to unlock their cell phones, which are their own personal property, can spur competition, allowing new start-up carriers to succeed, lowering prices, and increasing service options for all cell phone users.

To be clear, this is a separate issue from being contractually bound to use a certain provider for a certain period of time. Many Americans choose to enter into a long-term contract in exchange for discounts or free cell phones.

That is not the issue being discussed today, and I don't think there is a problem from either side of the aisle about those consensual contracts.

Rather, we are talking about unlocking cell phones that are not contractually bound to a certain service

provider. This has been an issue within our trade agreements.

I have recently drafted bipartisan letters to the United States Trade Representative, with Representative MASSIE, expressing concern that the leaked text of the Trans-Pacific Partnership agreement would potentially make any permanent fix to unlocking cell phones illegal.

Now, this bill is not a permanent fix. This bill would make clear congressional intent consistent with the optional agreement between the companies that they have reached. However, the last-minute change that was made in this bill, different from the bill that was passed out of committee, puts a real poison pill in this bill for consumer advocates, such as myself.

The bill adds the language that nothing in this subsection shall be construed to permit the unlocking of wireless handsets or other wireless devices for the purpose of bulk resale or to authorize the Librarian of Congress to authorize circumvention for such purpose or any other provision of law.

Now, while this gives, again, at least a patina of deniability that the bill is making a statement in one way or the other, the statement certainly implies that Congress believes that bulk unlocking is, in fact, illegal.

Now, why is bulk unlocking important? When it comes to the actual technical skills necessary, many consumers are not going to be unlocking their phones themselves. There needs to be a market in unlocked phones for consumers to have the full ability and to be empowered to choose the provider of their choice.

This bill does weigh in, with congressional intent, against the creation of a dynamic marketplace that increases consumer choice and options.

I think, without this clause, this was a bill that made it clear that we can't use the Digital Millennium Copyrights Act to interfere with an issue that is unrelated to copyright, but with this clause, it suggests that perhaps the DMCA's clauses can be used for non-copyright issues if, perhaps, somebody doesn't like the motive behind the unlocker.

So, as a result of this change, a number of organizations have withdrawn their support: iFixit, the Electronic Frontier Foundation, Public Knowledge, Generation Opportunity, and FreedomWorks.

I hope to be able to continue to work with colleagues on both sides of the aisle to improve this bill, but with the current language, I do not believe, at this point, that this bill is a step forward for consumers.

I reserve the balance of my time.

Mr. GOODLATTE. Mr. Speaker, at this time, it is my pleasure to yield 3 minutes to the gentleman from California (Mr. ISSA), the chairman of the Oversight and Government Reform Committee.

Mr. ISSA. I thank the chairman.

Mr. Speaker, when I was alerted as to this change, like Mr. POLIS, I asked,

What will be the impact? And, at first glance, I was concerned that it could be a poison pill, that it could limit the ability, for example, for somebody to take trade-ins of thousands of phones and unlock them, but I found no such case because they are buying from an individual.

At that moment, they choose to unlock it as part of the arrangement, and you now have an unlocked phone. There is no prohibition on buying 500 unlocked phones and selling 500 unlocked phones.

As a matter of fact, when I went through the language of bulk sales, I could find essentially no possible business plan that would require the unlocking of bulk phones, except as to buying from a wholesaler who did not intend them to be unlocked, intended them to be sold individually, unlocking them, and then selling them off to another party.

Any transaction in which the product gets to an individual or in which unlocking occurs at the time of the individual is fully covered by this bill.

So although I did share the concern of the gentleman from Colorado (Mr. POLIS) that there was a scenario in which somebody would not be able to unlock a phone, I discovered that there was nothing that the consumer would be affected by that could possibly affect this.

For example, let me say that, hypothetically, I am that individual, that company, and Mr. POLIS and I have something in common, which is we both ran companies. If I am an individual and I want to buy 1,000 locked phones, there is going to be an easy unlock capability. Third parties are going to be able to provide the unlock capability.

I can buy 1,000 locked phones or 100,000 locked phones. I can sell them to somebody else, who sells them to somebody else. Anytime that company or individual is down to the end user who wants to unlock a phone, that capability is there.

Mr. POLIS is one of the most intelligent and knowledgeable and trained people in this area of anyone in Congress, but if we go through each of the workarounds that we, in business, would do, I can find no scenario whatsoever in which this would stop the consumer from receiving an unlocked phone, if they chose to, even if, in the interim basis, there were many transactions of 10 or 100,000 phones of bulk sale.

It does not prevent the sale of unlocked bulk phones being sold and resold. It does not prevent the bulk sale of locked phones. So you only have to ensure, as I understand the law—and I have checked it against the language—that the unlocking occurs in support of the consumer.

So though I share the opposition's concern, I believe—I have looked through, vetted it, and like Mr. POLIS, as a businessman, I have found that it stops no business plan and hurts no consumer.

I thank the chairman for bringing this legislation. I urge its support.

Mr. GOODLATTE. Will the gentleman yield?

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. GOODLATTE. Mr. Speaker, I yield an additional 1 minute to the gentleman from California.

Mr. ISSA. I yield to the gentleman from Virginia.

Mr. GOODLATTE. I thank the gentleman for yielding.

Mr. Speaker, on the very point that the gentleman from California just raised, I will submit a letter for the RECORD from the Small Business & Entrepreneurship Council, representing many small businesses and entrepreneurs around America and endorsing this legislation.

I would also like to note that the Consumers Union of America and the Competitive Carriers Association, which are the small telecommunications companies that have to compete with the big behemoths, would both be concerned about their ability to compete in this very area; but they both support this legislation as well, the Consumers Union representing consumers and small businesses, and the SBE representing small businesses and entrepreneurs.

SBE COUNCIL,

Vienna, VA, February 24, 2014.

Hon. BOB GOODLATTE,  
Chairman, Committee on the Judiciary, Washington, DC.

DEAR CHAIRMAN GOODLATTE: The Small Business & Entrepreneurship Council (SBE Council) is pleased to support H.R. 1123, the Unlocking Consumer Choice and Wireless Competition Act of 2013. Entrepreneurs require flexibility to successfully run their businesses, and they certainly support the freedom and choice provided by H.R. 1123.

H.R. 1123 repeals a Library of Congress (LOC) rulemaking determination regarding the circumvention of measures controlling access to copyrighted software on wireless telephone handsets for the purposes of connecting to other, different wireless handsets. This means entrepreneurs and small businesses can easily switch to another carrier once their contracts expire on their cell phones or tablets.

H.R. 1123 is a common sense measure that aligns government policies with the flexibility the 100,000 members of SBE Council need. We look forward to working with you to advance H.R. 1123.

Sincerely,

KAREN KERRIGAN,  
President and Chief Executive Officer.

NATIONAL FRATERNAL ORDER OF POLICE,  
Washington, DC, February 24, 2014.

Hon. ROBERT W. GOODLATTE,  
Committee on the Judiciary, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN, I am writing on behalf of the members of the Fraternal Order of Police to advise you of our support for H.R. 1123, the "Unlocking Consumer Choice and Wireless Competition Act," which has been favorably reported by your committee and is scheduled to be considered by the House later this week.

Law enforcement agencies across the country, and especially in large urban areas, have been experiencing an increase in the number of crimes that involve stolen wireless devices. Often, smartphones are stolen from consumers and then sold to the criminal

equivalent of an aggregator who unlocks them in bulk and attempts to sell them domestically or abroad. The ability to unlock these devices is a critical part of criminals' ability to resell them at a profit.

For this reason, as Congress contemplates legislation to facilitate lawful unlocking by individuals, either for themselves or for devices on a family plan, we urge you to retain the prohibition on bulk unlocking consistent with both the 2010 and 2012 decisions from the Copyright Office. We believe that maintaining this prohibition will reduce smartphone thefts because the criminal sale of these devices will no longer be as profitable.

Thank you as always for considering the views of the more than 330,000 members of the Fraternal Order of Police. If I can provide any more information on this issue, please do not hesitate to contact me or Executive Director Jim Pasco in my Washington office.

Sincerely,

CHUCK CANTERBURY,  
National President.

Mr. POLIS. I yield 3 minutes to the gentleman from Virginia (Mr. SCOTT).

Mr. SCOTT of Virginia. I thank the gentleman for yielding.

Mr. Speaker, the inability to unlock cell phones means that the original wireless carrier has an unfair and unnecessary competitive advantage. In many instances, the sole purpose of locking a cell phone is to keep consumers bound to their existing networks.

Consumers often buy a new cell phone as part of their initial purchase of service from a carrier's wireless network. Because the phone is locked into that carrier's network, at the end of the first term of service, the consumer is forced to stay with that provider, sometimes at a higher rate, or being stuck with a useless locked phone.

Allowing a phone to be unlocked will allow a consumer to keep his phone and switch carriers to a more appropriate, affordable, or suitable plan and have that opportunity, without having to purchase a new phone. So I support H.R. 1123, as amended, as it will restore a consumer's ability to unlock their cell phones.

Now, obviously, allowing millions of consumers who wish to unlock their cell phones and switch to another provider, obviously, that has widespread support. The White House, the Federal Communications Commission, and others that the chairman of the committee have mentioned have all urged Congress to allow cell phone unlocking.

The bill, as amended, makes improvements to the bill as reported by the Judiciary Committee. The new language in the bill makes it clear that the sole purpose of the bill is to allow unlocking in order to switch carriers.

This bipartisan legislation enhances consumer choice in the cell phone market, and accordingly, I urge my colleagues to support the legislation.

Mr. GOODLATTE. Mr. Speaker, at this time, it is my pleasure to yield 2 minutes to the gentleman from Utah (Mr. CHAFFETZ), a member of the Judiciary Committee.

Mr. CHAFFETZ. I thank the gentleman from Virginia, Chairman GOODLATTE, for his leadership on this issue.

We woke up one day, Mr. Speaker, and the Library of Congress—the Library of Congress—decided that, if you unlocked your cell phone, that that would be a felony—a felony.

You go and buy a mobile phone. It is your phone. You own it. The current law on the books today, if you go to unlock that phone, you have committed a felony in the United States of America.

You have got to be kidding me. It is a felony to unlock your cell phone?

This bill today is short, sweet, and is simple. It is not a big, broad review of the DMCA. We are just trying to do something simple. We have an opportunity to make sure that that good person at home who wants to unlock their phone doesn't commit a felony. It is that short. It is that sweet. It is that simple.

I stand with Representatives LOFGREN, POLIS, and others who want to look at this bigger, broader reform. But for today, could we please just make sure that it is not a felony to unlock your own phone? My goodness. We can do that. We can do that.

I urge a "yes" vote on this bill. I appreciate the chairman's leadership. Let's get this done. Vote "yes."

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

In listening to the gentleman from California (Mr. ISSA), there was a discussion of to what degree does this language interfere with potential and existing business models, and I agree with them. There are many workarounds. I think the danger here is invoking the language of copyright in an unrelated area.

To quote from Public Knowledge: this new language, even if Congress believes that bulk unlocking is a problem, it is clear that it is not a copyright problem. Just as individual unlocking is not a copyright problem, a bill designed to scale back overreaching copyright laws should not also endorse an overreach of copyright law.

I have a full statement from Public Knowledge that I will submit for the RECORD, Mr. Speaker. And as put by the Electronic Frontier Foundation, by expressly excluding bulk unlocking, this new legislation sends two dangerous signals: one, that Congress is okay with using copyright as an excuse to inhibit certain business models, even if the business isn't actually infringing on any of its copyrights; and, two, that Congress still doesn't understand the collateral damage section 1201 is causing.

For example, bulk unlocking not only benefits consumers, but it is also good for the environment. Unlocking allows reuse, and that means less electronic waste. I will be submitting the Electronic Frontier Foundation statement into the RECORD.

Again, the bill, as it passed committee, didn't weigh in on these mat-

ters of bulk unlocking and was satisfactory to consumer advocacy groups, including those that have now come out in opposition to this underlying bill.

Many of the arguments that the gentleman from Virginia (Mr. GOODLATTE) made about the potential use of phones for criminal purposes may, in fact, be valid arguments and may, in fact, deserve policy responses, but not within the realm of copyright law.

They deserve appropriate attention within the realm of criminal law and perhaps might prevail upon the expertise of both of my colleagues from Virginia, who know far more about these matters than I.

But if there need to be harsher penalties or more enforcement within criminal law with regard to the illegal use of cell phones, whether locked or unlocked, or illicit transactions, that would be an appropriate venue.

□ 1615

But invoking copyright law is a very dangerous precedent for an unrelated area. We did reach a bipartisan consensus on this bill in July, but at the last minute after the bill was marked up and reported out, this new language was added to the bill that would have negative effects on consumers' ability to unlock their phones.

The new language specifically states that the bill does not apply to bulk unlocking. Now, that signals that Congress believes that it is illegal for companies, including many small businesses and start-ups, to unlock cell phones in bulk, again, as Mr. ISSA pointed out, not binding language, not something that immediately would be used to prosecute a small business, but it would create greater uncertainty—not less uncertainty—around unlocking of cell phones in bulk, which could make it more difficult for consumers to buy an already unlocked, used cell phone. Again, since many consumers lack the technical expertise themselves to unlock cell phones, we want to ensure that they have availability to purchase unlocked cell phones and use them with the carrier of their choice.

Again, this is an inappropriate use of copyright law to bar small businesses and large businesses from unlocking devices when it has nothing to do with making illegal copies of protected works, the purpose of copyright law. Again, if there is a criminal problem, we should address that within the realm of criminal law and enforcement, not within the realm of copyright.

My colleague, Congresswoman LOFGREN, offered compromise language to Chairman GOODLATTE, but she reports back that this language was rejected because it was provided too late in the process. Again, I wish that Congresswoman LOFGREN and others were brought in earlier in the process. I think there was the general assumption among the advocates on my side of the bill and that encourage more consumer choice that the bill, as reported

from committee, would be the bill that was considered on the floor, as is traditionally done.

Unfortunately, we are not voting on that bill that had that bipartisan consensus in committee. The bill has changed, and the bill now can be perceived as picking sides with regard to congressional intent of application of copyright law for bulk unlocking, something that many of us see as a negative precedent with regard to consumer choice and overreach of using copyright law to protect incumbent advantages.

But, Mr. Speaker, it is never too late to reach a compromise. There is no rush to bring this bill to the floor today. There is a temporary agreement in place which offers consumers the same protections that are considered under this bill, and I hope that the chair and ranking member consider working to improve this bill so that it can pass this body unanimously. It doesn't need to be a controversial bill.

I fear that the bill currently before us, while, again, it enshrines some of the current protections that protect consumers that Mr. CHAFFETZ talked so passionately about, also, unfortunately, weighs in in applying copyright law in an unrelated area that can have the effect of restricting consumer choice.

I reserve the balance of my time.

REP. GOODLATTE SLIPS SECRET CHANGE INTO PHONE UNLOCKING BILL THAT OPENS THE DMCA UP FOR WIDER ABUSE

(By Mike Masnick)

As you may recall, there's been a ridiculous (on many levels) fight concerning the legality of "unlocking" mobile phones. Let's go through the history first. Because of section 1201 of the DMCA, the "anti-circumvention" provision, companies have been abusing copyright law to block all sorts of actions that are totally unrelated to copyright. That's because 1201 makes it illegal to circumvent basically any "technological protection measures." The intent of the copyright maximalists was to use this section to stop people from breaking DRM. However, other companies soon distorted the language to argue that it could be used to block certain actions totally unrelated to copyright law—such as unlocking garage doors, ink jet cartridges, gaming accessories . . . and phones. There have been court cases about a number of these issues, with (thankfully) many courts ruling against this kind of abuse, though it still happens.

Separately, every three years, the Librarian of Congress gets to announce "exemptions" to section 1201 where it feels that things are being locked up that shouldn't be. Back in 2006, one of these exemptions involved mobile phone unlocking. Every three years this exemption was modified a bit, but in 2012, for unexplained reasons, the Librarian of Congress dropped that exemption entirely, meaning that starting in late January of 2013, it was possible to interpret the DMCA to mean that phone unlocking was illegal. In response to this there was a major White House petition—which got over 100,000 signatures, leading the White House to announce (just weeks later) that it thought unlocking should be legal—though, oddly, it seemed to place the issue with the FCC to fix, rather than recognizing the problem was with current copyright law.

Following this, a slew of new bills were introduced in Congress, many of which attempted to narrowly deal with the specific issue, while leaving the larger issues untouched. Many of these bills were incredibly problematic, though eventually the consensus seemed to get behind one bill before . . . nothing. Fast forward a year and nothing has changed, though the main bill, supported by Rep. Goodlatte, called the Unlocking Consumer Choice Act, is scheduled to go to a vote on Tuesday. It had gone through the basic markup process and some adjustments had been made to make it a good first step towards fixing problems.

As of last week, a bunch of folks, who were concerned about the issues with unlocking and how Section 1201 was a problem, were supportive of this bill and were expecting to publicly speak out in favor of getting the bill passed. Except . . . late last week, with no explanation whatsoever, and no consultation with others even though the markup and Judiciary Committee process had already concluded, Rep. GOODLATTE slipped into the bill a little poison pill/favor to big phone companies, adding a seemingly innocuous statement as section (c)(2):

No Bulk Unlocking—Nothing in this subsection shall be construed to permit the unlocking of wireless handsets or other wireless devices, for the purpose of bulk resale, or to authorize the Librarian of Congress to authorize circumvention for such purpose under this Act, title 17, United States Code, or any other provision of law.

While this gives GOODLATTE and other maximalists some sort of plausible deniability that this bill is making no statement one way or the other on bulk unlocking, it certainly very strongly implies that Congress believes bulk unlocking is, in fact, still illegal. And that's massively problematic on any number of levels, in part suggesting that the unlocker's motives in unlocking has an impact on the determination under Section 1201 as to whether or not it's legal. And that's an entirely subjective distinction when a bill seems to assume motives, which makes an already problematic Section 1201 much more problematic. Without that clause, this seemed like a bill that was making it clear that you can't use the DMCA to interfere with an issue that is clearly unrelated to copyright, such as phone unlocking. But with this clause, it suggests that perhaps the DMCA's anti-circumvention clause can be used for entirely non-copyright issues if someone doesn't like the "motive" behind the unlocker.

Given that, both Public Knowledge and EFF have pulled their support for the bill. As Public Knowledge noted:

"The new language specifically excluding bulk unlocking could indicate that the drafters believe that phone unlocking has something to do with copyright law. This is not a position we support. Even if Congress believes that bulk unlocking is a problem, it's clear that it's not a copyright problem, just as individual unlocking is not a copyright problem. A bill designed to scale back overreaching copyright laws should not also endorse an overreach of copyright law."

EFF made a similar statement:

By expressly excluding [bulk unlocking], this new legislation sends two dangerous signals: (1) that Congress is OK with using copyright as an excuse to inhibit certain business models, even if the business isn't actually infringing anyone's copyright; and (2) that Congress still doesn't understand the collateral damage Section 1201 is causing. For example, bulk unlocking not only benefits consumers, it's good for the environment—unlocking allows re-use, and that means less electronic waste

Two members of Congress who have been closely associated with these issues, Reps.

Zoe Lofgren and Anna Eshoo, also pulled their support of the bill late Monday as well, expressing their clear outrage at how this change was slipped in after the fact, in a letter sent to their colleagues in the House:

After this bill was marked up and reported out of committee, a new section was added to the bill without notice to or consultation with us. . . .

They furthermore point out that it's ridiculous that Congress is not fixing the broken anti-circumvention parts of the DMCA, and could possibly be strengthening them with this sneaky change of language:

In his concurring opinion in *Lexmark v. Static Control Components*, Judge Merritt wrote: "We should make clear that in the future companies like Lexmark cannot use the DMCA in conjunction with copyright law to create monopolies of manufactured goods for themselves . . ." The court's holding prevented Lexmark from using dubious copyright claims and an overboard reading of 17 USC 1201—the same section the Unlocking Consumer Choice Act alters—to prevent third parties from creating competing printer ink cartridges. The issue is similar here.

UNLOCKING TO GET A VOTE IN CONGRESS, BUT THE BILL IS FLAWED

(By Troy Wolverton)

Congress on Tuesday is expected to take up the issue of cell phone unlocking. But what started out as an effort to restore consumer rights may end up being a setback to consumers.

While consumers may soon be able to legally unlock their cell phones again, the bill that would temporarily restore that right would essentially prohibit companies from making a business doing the same thing. In other words, while you could legally unlock your own cell phone—if you can figure out how to do it—you might have a difficult time buying an already unlocked used cell phone—because few of them would be on the market.

That wasn't how the bill, H.R. 1123, was originally written or what it stated when it was voted out of committee. Instead, the bill simply would have set aside for the next year or so a regulatory ruling from last year and allowed anyone—consumer or business—to unlock cell phones individually or in bulk.

But late last week, new language barring bulk unlocking was added surreptitiously to the bill. Although the new language wasn't subject to any hearings or public debate, it's included in the bill that will be voted on by Congress. What's worse is that the bill will apparently be voted on using a special procedure that would essentially bar both debate on the floor of the House and amendments to the bill.

The change to the bill was so substantial that Derek Khanna, a former Republican congressional staffer who started the campaign to reverse the regulatory ruling on unlocking and has worked for the past year to keep the issue alive, has become lukewarm on the bill, calling the new language "troublesome." While he's still backing the bill, Khanna expressed hope that the Senate, when considering the issue, would work on a bill without the bulk unlocking ban.

Other former backers have now dropped their support for the unlocking bill. Among them: the Electronic Frontier Foundation, consumer advocacy group Public Knowledge and local Democratic representatives Anna Eshoo and Zoe Lofgren.

"We're all for phone freedom and we wish we could support the bill. Unfortunately, however, the costs for users outweigh the benefits," the EFF said in statement.

Cell phone manufacturers and carriers frequently use software to bind or lock devices

to particular networks. The locks are meant to make it difficult for consumers to take their devices with them to another carrier. Manufacturers and carriers say the locks are important to their businesses, allowing them to develop exclusive devices that can attract or retain consumers. Consumer advocates, meanwhile, basically view them as tools that thwart competition in the marketplace and prevent consumers from being able to fully control the devices they own.

The locks are protected by an obscure portion of U.S. copyright law that forbids consumers and businesses from tampering with protections put in place by intellectual property owners to protect their works—even when what they want to do with those works is completely legal or covered by fair use.

The Librarian of Congress is charged with reviewing, every three years, potential exemptions to that copyright provision. Starting in 2006, the Librarian recognized an exception for cell phone unlocking.

But in late 2012, the Librarian, citing the growing number of unlocked devices on the market, announced that the exemption would be revoked. Early last year, unlocking cell phones again became illegal.

Ever since, consumers and their advocates have pressed policy makers to overturn the Librarian's ruling. A petition to President Obama last year, for example, received more than 114,000 signatures in a little more than a month.

At its base, the dispute over unlocking is about whether copyright law can be twisted to forbid otherwise legal activities. The copyright provision that prohibits the breaking of software locks was written as the age of digital information was just starting to take off. One of the features of digital information is that computers can be used to make perfect copies of originals. There was a real fear on the part of copyright holders that the market for their goods would be undermined by a flood of perfect digital copies of their works. Why buy a song from Apple if you can simply download the same one for free from Napster? The provision was written to allow copyright holders to protect their works from this kind of illicit mass copying.

But since then, the provision has been used to thwart all kinds of otherwise legitimate activities. Not only has the unlocking of cell phones been impeded by the provision, but so too have things like the “jailbreaking” of iPads so that they can run programs not approved by Apple, the making of printer cartridges by companies other than the printer manufacturer, and reporting on security vulnerabilities.

Advocates for a renewed right of unlocking generally oppose this kind of restrictive view of copyright. They'd like Congress or regulators to recognize that, in general, breaking software locks is OK if the intention is to do something legal, something that might be covered under fair use or other consumer rights.

What those advocates find objectionable about the bulk unlocking bar in the new bill is that it represents something of a Congressional imprimatur for the more restrictive view of copyright, one in which copyright law can be used to ban business practices that have nothing to do with making illicit copies of protected works.

As Eshoo and Lofgren put it in a joint statement today: “Congress should work to roll back abusive practices that use copyright law to prevent owners from having control over the devices they lawfully own. What it means to ‘own’ a device that has been purchased is what’s at stake here. The new addition to the bill puts the effort to stand up for the property rights of the owners of technology devices at risk.”

Eshoo, Lofgren and other backers of unlocking have put their hope in a broader

bill co-authored by the two that would grant a permanent right for consumers and businesses to unlock phones, but to circumvent software locks if the intent is to do something non-infringing.

As I wrote in my column today, I think that bill is a long shot, given the current dysfunction of Congress. Instead, I argued that the Federal Communications Commission should simply step in now and bar the locking of cell phones to particular carriers.

[From washingtonpost.com, Feb. 21, 2014]

HERE'S WHAT REFORMERS SAY IS MISSING  
FROM CONGRESS CELLPHONE UNLOCKING BILL  
(By Timothy B. Lee)

Almost everyone agrees that unlocking your cellphone should be legal. But crafting legislation to give consumers the freedom everyone agrees they should have is surprisingly difficult.

The debate over cellphone unlocking started about a year ago, when a ruling by the Library of Congress suggested that unlocking your cellphone to take it to another wireless carrier could run afoul of copyright law. That triggered a grassroots backlash, prompting members of Congress and even the White House to support overruling the Librarian's ruling.

But crafting legislation to permit cellphone unlocking has been surprisingly complicated. Rep. Bob Goodlatte (R-Va.), the chairman of the House Judiciary Committee, has introduced legislation permitting consumers to unlock their cellphones. But that legislation has gotten lukewarm support from public interest groups who say it doesn't go far enough in recognizing consumer rights.

On Friday, the advocacy group Public Knowledge announced it was withdrawing support from Goodlatte's bill after the chairman introduced a new version. The new version includes language permitting individuals to unlock their cellphones. But the legislation states that “nothing in this subsection shall be construed to permit the unlocking of wireless handsets or other wireless devices, for the purpose of bulk resale.”

The problem, according to Public Knowledge's Sherwin Siy, is that the DMCA shouldn't apply to phone unlocking—“bulk” or otherwise—in the first place. The DMCA was supposed to be about preventing piracy, not limiting what consumers do with their gadgets. The new Goodlatte bill “doesn't prevent bulk unlocking but it certainly seems to suggest Congress thinks it's already prohibited,” Siy says. That could be a step backwards.

The issue has significance well beyond cellphones. More and more of the products in our daily lives have computers embedded in them. If it's illegal to unlock your cellphone, it might be illegal to modify or repair a wide variety of other products. For example, all modern cars have computers embedded in them, and repairing a car increasingly requires accessing its onboard software. Could car manufacturers invoke the DMCA to prevent unauthorized repair work?

An aide to the judiciary committee insists that critics like Siy are over-reading the legislation. The bill is intended to allow cellphone unlocking, the aide says, without affecting broader questions about the scope of the DMCA. Those broader issues will be tackled later, as part of a broader review of U.S. copyright law.

But the current furor over cellphone unlocking represents a rare opportunity to craft DMCA reform that could actually pass Congress. If Congress passes narrow legislation fixing only the most obvious abuse of the DMCA, there might not be enough political capital left for a broader reform later on.

The Electronic Frontier Foundation, another public interest group that favors overhauling the DMCA, shares Siy's concern. “We are deeply concerned that the bill has new language excluding bulk unlocking,” EFF's Corynne McSherry says. “Unlocking, whether individually or in bulk, makes reuse and repair possible, and is a public benefit. It should be clearly lawful.”

Mr. GOODLATTE. Mr. Speaker, I yield myself 1 minute to say to the gentleman from Colorado, I understand that you would like to see copyright law changed. But the fact of the matter is this is copyright law, and so the fact of the matter is right now consumers cannot legally unlock their phones, and we need to fix that problem. We have been working to do it.

I have worked very closely with the ranking member of the full committee and the ranking member of the subcommittee on the Judiciary Committee so that this change that was made is bipartisan. It should come as a surprise to no one because we, in fact, discussed this during the markup of the bill in the committee. When we did discuss that, we said we would continue to work with Members moving forward, and we came up with language that is bipartisan.

It is also supported, by the way, by Senator LEAHY and Senator GRASSLEY in the United States Senate. This is a bipartisan and bicameral compromise to move this legislation forward to address the concerns of organizations like the American Consumers Union supporting this legislation, the Small Business & Entrepreneurship Council, the Competitive Carriers Association, the CTIA, and also, importantly—

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. GOODLATTE. I yield myself an additional 30 seconds. I will read very briefly from the letter from the National Fraternal Order of Police.

It says: “As Congress contemplates legislation to facilitate lawful unlocking by individuals, either for themselves or for devices on a family plan, we urge you to retain the prohibition on bulk unlocking consistent with both the 2010 and 2012 decisions from the Copyright Office. We believe that maintaining this prohibition will reduce smartphone thefts because the criminal sale of these devices will no longer be as profitable.”

I reserve the balance of my time.

Mr. POLIS. Mr. Speaker, I would like to yield 2 minutes to the gentleman from Virginia (Mr. SCOTT) for purposes of a colloquy.

Mr. SCOTT of Virginia. Mr. Speaker, I would like to engage the chairman in a colloquy.

Mr. Chairman, am I correct that this legislation is meant to preserve the Registrar of Copyrights' findings on bulk resale of new phones in both the 2010 and 2012 rulemakings and is not intended to apply to used phones?

Mr. GOODLATTE. Will the gentleman yield?

Mr. SCOTT of Virginia. I yield to the gentleman from Virginia.



Mr. GOODLATTE. That is correct. This legislation is not intended to impair unlocking related to family plans consisting of a small number of handsets or of used phones by legitimate recyclers or resellers. The objective of this savings clause is to make it clear that the legislation does not cover those engaged in subsidy arbitrage or in attempting to use the unlocking process to further traffic in stolen devices.

Mr. SCOTT of Virginia. Thank you, Mr. Chairman.

Also, I think you have indicated that the Fraternal Order of Police is supportive of this provision as well?

Mr. GOODLATTE. That is correct.

Mr. Speaker, at this time, it is my pleasure to yield 2 minutes to the gentleman from Georgia (Mr. COLLINS), a member of the Judiciary Committee.

Mr. COLLINS of Georgia. Thank you, Mr. Chairman.

Mr. Speaker, again, as we come here to talk about this, I join and associate myself with the gentleman from Utah and also the other comments that have been made here. We are looking to protect consumers. I enjoy the opportunity to go forward and look at an issue which we are supportive of: consumer choice.

As a member of the Judiciary Committee's IP Subcommittee, I believe if a consumer has met their contractual obligations with a service provider, then they should have the right to unlock and use the device with another carrier.

Our Nation's intellectual property law should prioritize three things: innovation, creation, and competition. Frankly, holding consumers hostage to their carrier fails to pass the smell test in this category.

We live in an age where consumers want choice, access, and freedom. Although carriers may have to evolve and develop to address the changes that this legislation may have on their business models, I am confident that any changes made will only better serve the consumer and promote competition.

It is with that in mind that I understand the gentleman from Colorado, and I understand the thought, because I actually had passed and do support the larger measure that came out of the Judiciary Committee. But also, in taking into account, there is a process here in which I believe that immediate help to consumers is the bigger issue and would be willing and will work, as I have stated before, for the larger measures that have been talked about here before. However, to hold this bill as it is and say this is not something to move forward on I can't accept and would urge all Members to accept this bill. It is a process of moving forward.

I do not believe that there is picking sides here. In fact, what I believe is happening here is we are protecting consumers and moving the discussion down the line. That is what we are sent here to do, and I believe this is a good balance between the two.

I respect the gentleman from Colorado and, Mr. Speaker, believe that we can work further on this, but this is a bill that needs to be passed today so we can move on and protect our consumers.

Mr. Chairman, I appreciate your work and the work of the committee in doing so. This is a matter of consumers, this is a matter of choice, and we need to make sure that this body stands for that.

Mr. POLIS. I would like to inquire, Mr. Speaker, as to how much time remains on both sides?

The SPEAKER pro tempore. The gentleman from Colorado has 7½ minutes remaining. The gentleman from Virginia has 8 minutes remaining.

Mr. POLIS. I yield myself such time as I may consume.

Again, there seems to be some strong, bipartisan consensus here that there remains more work to be done. As Representative CHAFFETZ said, we do need a long-term solution. We need to ensure that any solution we enter is not compromised by our Nation's trade agreements to ensure that consumers are protected in control of their own devices in choosing the plan that they desire.

The language in question that was added after the bipartisan consensus was reached in committee is not operative language. It is not language that criminalizes something that wasn't criminal before or proactively bans the bulk sale of phones. What it does explicitly do is establish some degree of congressional intent.

Perhaps this colloquy between the two gentlemen from Virginia helped roll back a part of what could be read in the congressional intent of this language, and I am appreciative of that effort. However, congressional intent could, nevertheless, be construed that there is an imprint, there is a congressional desire to use a more restrictive view of copyright, one in which copyright laws can be used to ban business practices that have nothing to do with making illicit copies of protected works.

Copyrights are a very important area of law. It is meant to protect the creator of a work from having their work ripped off and sold and others profit at their expense. However, it is difficult to see, and this is why so many of us were critical of the Librarian of Congress' initial decision. It is very difficult to see what the nexus is between unlocking cell phones and copyright.

By adding this language in, it adds some degree of congressional perception that copyright law can be what many of us feel to be abused in this manner that reduces consumer choice and does not protect any legitimate creator of a work. Again, to the extent there are concerns from police and law enforcement officials with regard to how unlocked or locked cell phones are being used for transactions that are otherwise illegal, that is a question of criminal law and enforcement and

something that I would hope to be certainly supportive of efforts within Judiciary or Homeland Security or other committees to ensure that we reduce crime across all of those. But let's not give the court's ruling on these actions a reason to think that perhaps Congress condones them.

Again, having my colleagues on both sides of the aisle on the RECORD talking about how this bill is simply a first step and how we need to go further and, of course, not backing away from the initial committee markup of the bill, it is certainly also helpful in establishing congressional intent. And that is really what we are talking about here. We are not talking about binding language where before this bill passes somebody doesn't go to jail, after this bill passes they do. We are talking about potential use and precedent going forward with regard to how copyright law can, from my perception, be misapplied to reduce consumer choice in areas that are unrelated to the purpose of copyright protection.

That is why I continue to stand in opposition to this bill, certainly appreciating the step forward of enshrining in law potentially that it is no criminal penalty for an individual unlocking their own cell phone. But, again, we want to make sure it doesn't happen at the expense of moving the entire discussion in the wrong direction.

An opinion in yesterday's L.A. Times was headlined, "The House's cell phone unlocking bill: Thanks but no thanks." I would like to submit the L.A. Times op-ed into the RECORD, Mr. Speaker.

I reserve the balance of my time.

[From the Los Angeles Times, Feb. 25, 2014]

THE HOUSE'S CELLPHONE UNLOCKING BILL:  
THANKS BUT NO THANKS

(By Jon Healey)

How hard can it be for Congress to make it legal for consumers to switch mobile networks without having to buy a new phone?

Too hard, evidently.

The House is scheduled to vote Tuesday on a bill that was supposed to clear the way for consumers to unlock the phones they buy from wireless companies after they've fulfilled their contracts. But the measure, which was modest to begin with, has been rendered irrelevant by voluntary agreements on unlocking that the Federal Communications Commission obtained from the wireless companies. The bill was also changed at the last minute in a way that arguably weakens consumers' ownership rights, prompting some consumer advocates and Democrats to withdraw their support.

The current version is so bad, consumers would be better off if Congress did nothing at all.

At issue is a dubious interpretation of copyright law that deters people from moving their phones from one network to another. Each mobile carrier typically sells phones with electronic locks that prevent them from being reprogrammed to work on rival carriers' networks. The U.S. Copyright Office, acting through the Librarian of Congress, ruled in 2012 that removing the locks violated the 1998 Digital Millennium Copyright Act, which forbids the circumvention of technologies that protect copyrighted works.

The ruling was bizarre, considering that the locks inside phones don't protect against

software piracy; their only real purpose is to protect the mobile carriers' business model. And the carriers have (and use) better tools to recover the subsidies they put into the phones they sell, most notably contracts that impose hefty early termination penalties.

The 1998 law requires the Librarian of Congress to revisit the anti-circumvention rules every three years, which means the Electronic Frontier Foundation and other consumer advocates can try to set things right in 2015. Sadly, however, the default interpretation of the cellphone locks is that they are covered by the anti-circumvention ban.

The Copyright Office's decision, which took effect early last year, led more than 100,000 people to petition the White House for help. Tech-friendly lawmakers lined up to offer bills, including an elegantly simple one by Sen. AMY KLOBUCHAR (D-Wis.) that would require mobile companies to let customers unlock the wireless devices they buy, and a more sweeping proposal by Sen. RON WYDEN (D-Ore.) to exempt wireless device unlocking from the anti-circumvention ban.

The best of the bunch was a bill by Rep. ZOE LOFGREN (D-San Jose) and a bipartisan group of co-sponsors to limit the 1998 law's anti-circumvention rules to locks that protect against piracy. That bill also would have declared that it was not copyright infringement for the owner of a mobile device to unlock it for the purpose of switching to another network.

The House, however, is scheduled to take up a different measure Tuesday afternoon, H.R. 1123 by Judiciary Committee Chairman BOB GOODLATTE (R-Va.) and co-sponsors from both parties. As introduced, it would simply have replaced the Copyright Office's 2012 ruling with its decision in 2010 that cellphone owners could unlock their phones without running afoul of copyrights. It also would have called on the Librarian of Congress to decide within a year whether to extend the exemption to all other locked wireless devices, such as tablets.

The relief offered by the bill would have remained in effect only until the Librarian of Congress reviewed the anti-circumvention rules again in 2015, so it hardly seemed worth the effort. The version that the House is slated to vote on Tuesday also includes a new provision effectively barring devices from being unlocked in bulk for the purpose of reselling them.

The latter change disturbed LOFGREN (a member of Goodlatte's committee) and fellow Silicon Valley Democrat ANNA ESHOO, who accused Republicans of adding the provision in secret after the Judiciary Committee approved the bill. The proposed ban on unlocking for the sake of resale, they argued in a letter to colleagues Monday, is an inappropriate use of copyright law to stop people from disposing of the devices they buy as they please.

"Congress should work to roll back abusive practices that use copyright law to prevent owners from having control over the devices they lawfully own," LOFGREN and ESHOO wrote. "What it means to 'own' a device that has been purchased is what's at stake here. The new addition to the bill puts the effort to stand up for the property rights of the owners of technology devices at risk."

Public Knowledge, a technology advocacy group, agreed. "Even if Congress believes that bulk unlocking is a problem, it's clear that it's not a copyright problem, just as individual unlocking is not a copyright problem," said Sherwin Siy, the group's vice president of legal affairs. "A bill designed to scale back overreaching copyright laws should not also endorse an overreach of copyright law."

Both Public Knowledge and the Electronic Frontier Foundation withdrew their support

for the measure after the new provision was disclosed last week.

The House plans to bring up HR 1123 under an expedited procedure that forbids amendments but requires a two-thirds vote to pass. With some luck, LOFGREN and ESHOO can rally all the supposedly tech-friendly members in the chamber to knock the bill off track.

As you may recall, there's been a ridiculous (on many levels) fight concerning the legality of "unlocking" mobile phones. Let's go through the history first. Because of section 1201 of the DMCA, the "anti-circumvention" provision, companies have been abusing copyright law to block all sorts of actions that are totally unrelated to copyright. That's because 1201 makes it illegal to circumvent basically any "technological protection measures." The intent of the copyright maximalists was to use this section to stop people from breaking DRM. However, other companies soon distorted the language to argue that it could be used to block certain actions totally unrelated to copyright law—such as unlocking garage doors, ink jet cartridges, gaming accessories . . . and phones. There have been court cases about a number of these issues, with (thankfully) many courts ruling against this kind of abuse, though it still happens.

Separately, every three years, the Librarian of Congress gets to announce "exemptions" to section 1201 where it feels that things are being locked up that shouldn't be. Back in 2006, one of these exemptions involved mobile phone unlocking. Every three years this exemption was modified a bit, but in 2012, for unexplained reasons, the Librarian of Congress dropped that exemption entirely, meaning that starting in late January of 2013, it was possible to interpret the DMCA to mean that phone unlocking was illegal. In response to this there was a major White House petition—which got over 100,000 signatures, leading the White House to announce (just weeks later) that it thought unlocking should be legal—though, oddly, it seemed to place the issue with the FCC to fix, rather than recognizing the problem was with current copyright law.

Following this, a slew of new bills were introduced in Congress, many of which attempted to narrowly deal with the specific issue, while leaving the larger issues untouched. Many of these bills were incredibly problematic, though eventually the consensus seemed to get behind one bill before... nothing. Fast forward a year and nothing has changed, though the main bill, supported by Rep. Goodlatte, called the Unlocking Consumer Choice Act, is scheduled to go to a vote on Tuesday. It had gone through the basic markup process and some adjustments had been made to make it a good first step towards fixing problems.

As of last week, a bunch of folks, who were concerned about the issues with unlocking and how Section 1201 was a problem, were supportive of this bill and were expecting to publicly speak out in favor of getting the bill passed. Except... late last week, with no explanation whatsoever, and no consultation with others even though the markup and Judiciary Committee process had already concluded, Rep. GOODLATTE slipped into the bill a little poison pill/favor to big phone companies, adding a seemingly innocuous statement as section (c)(2):

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While this gives GOODLATTE and other maximalists some sort of plausible

deniability that this bill is making no statement one way or the other on bulk unlocking, it certainly very strongly implies that Congress believes bulk unlocking is, in fact, still illegal. And that's massively problematic on any number of levels, in part suggesting that the unlocker's motives in unlocking has an impact on the determination under Section 1201 as to whether or not it's legal. And that's an entirely subjective distinction when a bill seems to assume motives, which makes an already problematic Section 1201 much more problematic. Without that clause, this seemed like a bill that was making it clear that you can't use the DMCA to interfere with an issue that is clearly unrelated to copyright, such as phone unlocking. But with this clause, it suggests that perhaps the DMCA's anti-circumvention clause can be used for entirely non-copyright issues if someone doesn't like the "motive" behind the unlocker.

Given that, both Public Knowledge and EFF have pulled their support for the bill. As Public Knowledge noted:

"The new language specifically excluding bulk unlocking could indicate that the drafters believe that phone unlocking has something to do with copyright law. This is not a position we support. Even if Congress believes that bulk unlocking is a problem, it's clear that it's not a copyright problem, just as individual unlocking is not a copyright problem. A bill designed to scale back overreaching copyright laws should not also endorse an overreach of copyright law."

EFF made a similar statement:

By expressly excluding [bulk unlocking], this new legislation sends two dangerous signals: (1) that Congress is OK with using copyright as an excuse to inhibit certain business models, even if the business isn't actually infringing anyone's copyright; and (2) that Congress still doesn't understand the collateral damage Section 1201 is causing. For example, bulk unlocking not only benefits consumers, it's good for the environment—unlocking allows re-use, and that means less electronic waste

Two members of Congress who have been closely associated with these issues, Reps. ZOE LOFGREN and ANNA ESHOO, also pulled their support of the bill late Monday as well, expressing their clear outrage at how this change was slipped in after the fact, in a letter sent to their colleagues in the House:

After this bill was marked up and reported out of committee, a new section was added to the bill without notice to or consultation with us. . . .

They furthermore point out that it's ridiculous that Congress is not fixing the broken anti-circumvention parts of the DMCA, and could possibly be strengthening them with this sneaky change of language:

In his concurring opinion in *Lexmark v. Static Control Components*, Judge Merritt wrote: "We should make clear that in the future companies like Lexmark cannot use the DMCA in conjunction with copyright law to create monopolies of manufactured goods for themselves . . ." The court's holding prevented Lexmark from using dubious copyright claims and an overboard reading of 17 USC 1201—the same section the Unlocking Consumer Choice Act alters—to prevent third parties from creating competing printer ink cartridges. The issue is similar here.

Congress should work to roll back abusive practices that use copyright law to prevent owners from having control over the devices they lawfully own. What it means to "own" a device that has been purchased is what's at stake here. The new addition to the bill puts the effort to stand up for the property rights of the owners of technology devices at risk.

It is sad that the bipartisan consensus reached during mark-up in the Judiciary



committee to improve the law has been destroyed by a secret decision of the majority after the bill was reported out.

Unfortunately, the bill was deemed so uncontroversial that it's been listed on the suspension calendar of the House, which is where non-controversial bills are put to ensure quick passage. That means that, not only did Goodlatte slip in a significant change to this bill that impacts the entire meaning and intent of the bill long after it went through the committee process (and without informing anyone about it), but he also got it put on the list of non-controversial bills to try to have it slip through without anyone even noticing.

Either way, it seems that even if the bill does pass, it won't do anything to fix a very broken part of the DMCA and, in fact, could make it somewhat worse. Politics as usual when it comes to anything having to do with copyright.

Mr. GOODLATTE. Mr. Speaker, I am the last speaker remaining on our side. I believe I have the right to close, so if the gentleman has anything else he would like to say.

Mr. POLIS. Mr. Speaker, I am prepared to close, and I yield myself the balance of my time.

I am heartened by the discussion on both sides of the aisle with regard to the path forward. I wish we could be at a better place today. I think we had a bill that was reported out of committee that would not have engendered, I don't believe, any degree of controversy here on the floor of the House.

We have now moved to a place where the bill does invoke some degree of appropriate controversy and some degree of appropriate opposition. I would advance that it is never too late to reach a compromise, either before this bill is voted upon—perhaps my colleague, Mr. GOODLATTE, will be willing to consider Ms. LOFGREN's language change—or after this bill passes. I think that we would all agree that this issue is not one in any way, shape, or form that is being put to bed here today.

I would hope that, as a guiding principle, Members on both sides of the aisle look to consumer choice and the power of markets to achieve the best outcome and ensure that incumbents don't seek to co-opt copyright law to the detriment of our economy and the detriment of consumer choice.

□ 1630

Again, this bill has language that can be construed as applying copyright law in another area and having a congressional blessing to do so, which is why I encourage my colleagues to join Electronic Frontier Foundation, Public Knowledge, Generation Opportunity, FreedomWorks, and iFixit, and some of those very organizations that were in the forefront of proposing that we pass a bill that allows unlocking that have since withdrawn their support from this bill because of the last-minute changes, which I saw for the first time yesterday and that I wish this House had a bigger opportunity to vet, perhaps bringing this bill forward under a rule if the suspension motion fails.

If a third of the Members of the House oppose, we would have an oppor-

tunity to remedy this bill under a rule that was hopefully structured to allow for compromise language that would then allow the bill to proceed with near unanimity. I hope my colleagues on both sides of the aisle see that as an opportunity, certainly not as a rebuke to the chair and ranking member on the committee. We appreciate the direction and the intent behind this bill, their desire to make sure that Americans know that they are not under duress or a criminal threat if they are unlocking their own cell phone. That is a sentiment that both the chair and the ranking member have echoed passionately, but I think we can do better with regard to ensuring that this bill is also not a precedent for the use of overreaching copyright law and a congressional blessing to do so in a way that hampers the trade, the bulk trade of unlocked cell phones which offer great potential benefits to the marketplace and to consumers.

So I urge my colleagues to vote "no" on this suspension bill, to consider working with both sides to get to "yes," and to move in a direction that we look at as a guiding principle, ensuring that consumers and the marketplace are allowed to fully operate without the co-option of copyright law to protect incumbents.

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

I would just say to the gentleman from Colorado, I understand his larger aspirations with regard to changes in copyright law. The committee recognizes that our copyright laws have not been amended in 40 years, and that we are conducting a comprehensive review. We have held many hearings on copyright issues already. We have many more planned, and we are going to continue that work, but this small bill to protect the rights of consumers on cell phone unlocking does not meet his aspirations to try to use it as a vehicle for greater things being done here because it is intended to be a narrow fix to a problem that was created when the Register of Copyrights did not take the necessary steps to allow the continued unlocking of cell phones.

So it has taken a great deal of bipartisan work on the part of the ranking member and myself; the ranking member of the subcommittee, who had objections to the bill as reported out of the committee, has since left Congress, and the new ranking member has signed off on the change that was made here to bring organizations like the Fraternal Order of Police into acceptance of this, and we still have the support of important consumer organizations, like Consumers Union, as well as the cell phone industry organizations. As a result, this legislation needs to move forward as it is today.

The savings clause that the gentleman objects to is meant to make it clear that this is focused on consumers and not on the larger issues. If enacting in one area as we are in this very

narrow, targeted bill, we sent a signal in another area, and a signal is what the gentleman identifies, we would never enact anything. So it is important that we address what is in this bill, the language that was worked out in the committee, that was discussed in the committee, that was then worked out further as the bill was reported to the floor, and pass this legislation today, and we can work on these broader issues in the future, but in the meantime, we need to protect the rights of our consumers to unlock the phones that they own when they purchase a used cell phone.

Ms. LOFGREN. Will the gentleman yield?

Mr. GOODLATTE. I am happy to yield briefly to the gentlewoman.

Ms. LOFGREN. I appreciate the gentleman yielding. I was delayed at the airport. I just wanted to indicate my opposition to the bill since it has been changed, noting that Public Knowledge in the Los Angeles Times said today that we would be better off doing nothing than the bill as changed. I have talked to the chairman about this, but I wanted to make my position clear. If we do not pass this bill because of the Obama administration's deal with the telecoms, consumers will still be able to unlock their phones. This is a step backwards.

I very much appreciate the gentleman's courtesy in yielding.

Mr. GOODLATTE. Reclaiming my time, what the gentlewoman says is, indeed, true; that there is a private agreement, but that private agreement cannot and does not mitigate the fact that the act of unlocking a cell phone carries with it a felony penalty under the law, and that is absolutely ridiculous. So this legislation needs to be passed, and we can then move on to have the larger debate about the importance of cell phone unlocking—or rather, section 1201 of the DMCA, and other issues as we move forward on various copyright issues in the committee, but now is not the place, now is not the time to have that debate.

This simple, bipartisan legislation should be passed by the House. I urge my colleagues to support the legislation.

I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Virginia (Mr. GOODLATTE) that the House suspend the rules and pass the bill, H.R. 1123, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds being in the affirmative, the ayes have it.

Mr. POLIS. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this motion will be postponed.

PRIVATE PROPERTY RIGHTS  
PROTECTION ACT OF 2013

Mr. GOODLATTE. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1944) to protect private property rights.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 1944

*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 “Private Property Rights Protection Act of 2013”.

**SEC. 2. PROHIBITION ON EMINENT DOMAIN ABUSE BY STATES.**

(a) IN GENERAL.—No State or political subdivision of a State shall exercise its power of eminent domain, or allow the exercise of such power by any person or entity to which such power has been delegated, over property to be used for economic development or over property that is used for economic development within 7 years after that exercise, if that State or political subdivision receives Federal economic development funds during any fiscal year in which the property is so used or intended to be used.

(b) INELIGIBILITY FOR FEDERAL FUNDS.—A violation of subsection (a) by a State or political subdivision shall render such State or political subdivision ineligible for any Federal economic development funds for a period of 2 fiscal years following a final judgment on the merits by a court of competent jurisdiction that such subsection has been violated, and any Federal agency charged with distributing those funds shall withhold them for such 2-year period, and any such funds distributed to such State or political subdivision shall be returned or reimbursed by such State or political subdivision to the appropriate Federal agency or authority of the Federal Government, or component thereof.

(c) OPPORTUNITY TO CURE VIOLATION.—A State or political subdivision shall not be ineligible for any Federal economic development funds under subsection (b) if such State or political subdivision returns all real property the taking of which was found by a court of competent jurisdiction to have constituted a violation of subsection (a) and replaces any other property destroyed and repairs any other property damaged as a result of such violation. In addition, the State or political subdivision must pay any applicable penalties and interest to regain eligibility.

**SEC. 3. PROHIBITION ON EMINENT DOMAIN ABUSE BY THE FEDERAL GOVERNMENT.**

The Federal Government or any authority of the Federal Government shall not exercise its power of eminent domain to be used for economic development.

**SEC. 4. PRIVATE RIGHT OF ACTION.**

(a) CAUSE OF ACTION.—Any (1) owner of private property whose property is subject to eminent domain who suffers injury as a result of a violation of any provision of this Act with respect to that property, or (2) any tenant of property that is subject to eminent domain who suffers injury as a result of a violation of any provision of this Act with respect to that property, may bring an action to enforce any provision of this Act in the appropriate Federal or State court. A State shall not be immune under the 11th Amendment to the Constitution of the United States from any such action in a Federal or State court of competent jurisdiction. In such action, the defendant has the burden to show by clear and convincing evi-

dence that the taking is not for economic development. Any such property owner or tenant may also seek an appropriate relief through a preliminary injunction or a temporary restraining order.

(b) LIMITATION ON BRINGING ACTION.—An action brought by a property owner or tenant under this Act may be brought if the property is used for economic development following the conclusion of any condemnation proceedings condemning the property of such property owner or tenant, but shall not be brought later than seven years following the conclusion of any such proceedings.

(c) ATTORNEYS’ FEE AND OTHER COSTS.—In any action or proceeding under this Act, the court shall allow a prevailing plaintiff a reasonable attorneys’ fee as part of the costs, and include expert fees as part of the attorneys’ fee.

**SEC. 5. REPORTING OF VIOLATIONS TO ATTORNEY GENERAL.**

(a) SUBMISSION OF REPORT TO ATTORNEY GENERAL.—Any (1) owner of private property whose property is subject to eminent domain who suffers injury as a result of a violation of any provision of this Act with respect to that property, or (2) any tenant of property that is subject to eminent domain who suffers injury as a result of a violation of any provision of this Act with respect to that property, may report a violation by the Federal Government, State, or political subdivision of a State to the Attorney General.

(b) INVESTIGATION BY ATTORNEY GENERAL.—Upon receiving a report of an alleged violation, the Attorney General shall conduct an investigation to determine whether a violation exists.

(c) NOTIFICATION OF VIOLATION.—If the Attorney General concludes that a violation does exist, then the Attorney General shall notify the Federal Government, authority of the Federal Government, State, or political subdivision of a State that the Attorney General has determined that it is in violation of the Act. The notification shall further provide that the Federal Government, State, or political subdivision of a State has 90 days from the date of the notification to demonstrate to the Attorney General either that (1) it is not in violation of the Act or (2) that it has cured its violation by returning all real property the taking of which the Attorney General finds to have constituted a violation of the Act and replacing any other property destroyed and repairing any other property damaged as a result of such violation.

(d) ATTORNEY GENERAL’S BRINGING OF ACTION TO ENFORCE ACT.—If, at the end of the 90-day period described in subsection (c), the Attorney General determines that the Federal Government, authority of the Federal Government, State, or political subdivision of a State is still violating the Act or has not cured its violation as described in subsection (c), then the Attorney General will bring an action to enforce the Act unless the property owner or tenant who reported the violation has already brought an action to enforce the Act. In such a case, the Attorney General shall intervene if it determines that intervention is necessary in order to enforce the Act. The Attorney General may file its lawsuit to enforce the Act in the appropriate Federal or State court. A State shall not be immune under the 11th Amendment to the Constitution of the United States from any such action in a Federal or State court of competent jurisdiction. In such action, the defendant has the burden to show by clear and convincing evidence that the taking is not for economic development. The Attorney General may seek any appropriate relief through a preliminary injunction or a temporary restraining order.

(e) LIMITATION ON BRINGING ACTION.—An action brought by the Attorney General under this Act may be brought if the property is used for economic development following the conclusion of any condemnation proceedings condemning the property of an owner or tenant who reports a violation of the Act to the Attorney General, but shall not be brought later than seven years following the conclusion of any such proceedings.

(f) ATTORNEYS’ FEE AND OTHER COSTS.—In any action or proceeding under this Act brought by the Attorney General, the court shall, if the Attorney General is a prevailing plaintiff, award the Attorney General a reasonable attorneys’ fee as part of the costs, and include expert fees as part of the attorneys’ fee.

**SEC. 6. NOTIFICATION BY ATTORNEY GENERAL.**

(a) NOTIFICATION TO STATES AND POLITICAL SUBDIVISIONS.—

(1) Not later than 30 days after the enactment of this Act, the Attorney General shall provide to the chief executive officer of each State the text of this Act and a description of the rights of property owners and tenants under this Act.

(2) Not later than 120 days after the enactment of this Act, the Attorney General shall compile a list of the Federal laws under which Federal economic development funds are distributed. The Attorney General shall compile annual revisions of such list as necessary. Such list and any successive revisions of such list shall be communicated by the Attorney General to the chief executive officer of each State and also made available on the Internet website maintained by the United States Department of Justice for use by the public and by the authorities in each State and political subdivisions of each State empowered to take private property and convert it to public use subject to just compensation for the taking.

(b) NOTIFICATION TO PROPERTY OWNERS AND TENANTS.—Not later than 30 days after the enactment of this Act, the Attorney General shall publish in the Federal Register and make available on the Internet website maintained by the United States Department of Justice a notice containing the text of this Act and a description of the rights of property owners and tenants under this Act.

**SEC. 7. REPORTS.**

(a) BY ATTORNEY GENERAL.—Not later than 1 year after the date of enactment of this Act, and every subsequent year thereafter, the Attorney General shall transmit a report identifying States or political subdivisions that have used eminent domain in violation of this Act to the Chairman and Ranking Member of the Committee on the Judiciary of the House of Representatives and to the Chairman and Ranking Member of the Committee on the Judiciary of the Senate. The report shall—

(1) identify all private rights of action brought as a result of a State’s or political subdivision’s violation of this Act;

(2) identify all violations reported by property owners and tenants under section 5(c) of this Act;

(3) identify the percentage of minority residents compared to the surrounding non-minority residents and the median incomes of those impacted by a violation of this Act;

(4) identify all lawsuits brought by the Attorney General under section 5(d) of this Act;

(5) identify all States or political subdivisions that have lost Federal economic development funds as a result of a violation of this Act, as well as describe the type and amount of Federal economic development funds lost in each State or political subdivision and the Agency that is responsible for withholding such funds; and