creating and passing this legislation that I cannot possibly name them all here, but a few groups that deserve special recognition are Copyright Alliance, Professional Photographers of America, Professional Photographers of Louisiana, American Bar Association, American Intellectual Property Law Association, American Society of Media Photographers, Association of American Publishers, Authors Guild, Graphic Artists Guild, Recording Academy, Songwriters Guild of America, and U.S. Chamber of Commerce. I also want to thank my staff, who worked tireless hours wading through copyright law to ensure we ended up with the best bill possible. And thank you to my colleagues in the House and Senate, particularly Senator DICK DURBIN and our original cosponsors, for supporting this legislation and agreeing to its passage.

PROTECTING LAWFUL STREAMING ACT

Mr. TILLIS. Mr. President, today I want to say a word about the need to revise title 18 so that criminal commercial enterprises that stream pirated content to users are subject to the same felony penalties as criminal commercial enterprises that distribute to users or reproduce pirated content. The provisions of the Protecting Lawful Streaming Act target clearly criminal conduct committed with criminal intent. Lawful internet and streaming services, licensees, other mainstream businesses, and users engaged in ordinary activities do not risk prosecution. Most importantly, businesses engaged in those activities are clearly excluded by the requirements that a defendant be engaged in conduct that is primarily designed, intentionally marketed, or has no commercially significant purpose or use other than for use in illegal streaming. Nor do those engaged in noncommercial activities risk prosecution under this statute. Noncommercial activities are explicitly excluded by the terms of section 2319C(a). It is intended that none of these activities shall be subject to any risk of criminal prosecution under this bill.

More generally, it is well established that criminal penalties are the exception rather than the rule in cases of copyright infringement. As the Department of Justice itself has noted, criminal sanctions are appropriate only with respect to certain types of infringement—generally when infringer knows the infringement is wrong, and when the infringement is particularly serious or the type of case renders civil enforcement by copyright owners especially difficult. As such, criminal prosecution has been and is appropriately reserved for serious forms of large-scale, commercial infringement, not as a means of targeting ordinary business disputes between legitimate companies or those which are otherwise adequately addressed through civil litigation. The new section 2319C, in particular, requires willfulness, which means that the statute does not apply in the absence of an intentional violation of a known legal duty.

Consistent with this, a provider of broadband internet access service would not be subject to prosecution under this statute, for example, based merely on the attributes or features of its service, nor could prosecution be predicated on the misuse of its service by its customers or others in furtherance of an infringement scheme, where the service provider does not itself share the requisite criminal intent of the underlying substantive offense and act with specific intent to further it. In this regard, offering high-speed connections that allow its customers to access the internet, failing to block or disable access to particular online locations, or failing to take measures to restrict the use of or deny its customers access to such service would not be sufficient to demonstrate the requisite criminal intent under the bill. This conduct would also not otherwise meet the prerequisites under the aiding and abetting statute, regardless of whether the broadband internet access service provider might be civilly liable in such circumstances under the differing standards for contributory or vicarious liability.

A person who willfully and for purposes of commercial advantage or private financial gain offers or provides to the public a digital transmission service violates the statute under section 2319C(a)(3) when that person intentionally promotes or directs the promotion of its use in publicly performing works protected under title 17 without the authority of the copyright owner or the law. The language of section 2319C makes clear that it is the offering of an illicit digital transmission service, as defined by section 2319C(a)(1)–(3), that is an offense, not the marketing activities done by or at the direction of a person offering an illicit digital transmission service, as referred to in section 2319C(a)(3). Thus, an entity that provides only commercial online marketing services and does not itself also provide an illicit digital transmission service would not be subject to prosecution under section 2319C(a). Further, it is not the intent of this legislation to create potential aiding and abetting liability for mainstream third party ad networks or marketers. An online marketing services provider could be liable for aiding and abetting an unrelated entity providing unlawful streaming services only where the online marketing services provider shared the same requisite criminal intent of each element of the underlying substantive offense and acted with specific intent to further it. Thus, an online marketing services provider which places an advertisement for an entity that is violating section 2319C(a) would face aiding and abetting liability only if the online marketing services provider was itself associated with the criminal venture of the illicit digital transmission service to such an extent that it shares the criminal intent of the person offering the service and acted with the requisite specific intent to commit or facilitate the underlying offense.

Similarly, a service that streams content uploaded by users would not be subject to prosecution merely because some users might upload infringing content. The service would be subject to criminal liability only if it had the requisite criminal intent and acted with specific intent to further it.

The provisions of this statute also do not apply to any person acting in good faith and with an objectively reasonable basis in law to believe that their conduct is lawful. Thus, a bona fide commercial dispute over the scope or existence of a contract or license governing such conduct or a good-faith dispute regarding whether a particular activity is authorized by the Copyright Act would not provide a basis for prosecution. For example, neither a cloud-based DVR service nor an application provided by a multichannel video programming distributor, MVPD, to enable such MVPD's customers to access its video service utilizing a mobile device, which were the subject of prior civil copyright infringement challenges based on good faith disagreements regarding the scope of rights under the Copyright Act, would be actionable under this provision if the provider offering such services met this standard. By contrast, a party that merely asserts an applicable contract, an exception, or a belief that the person's conduct was lawful, in a case where the assertion is not made in good-faith, is merely a pretense, or is otherwise not based on an objectively reasonable interpretation of the law, would not avoid prosecution on that basis.

The statute provides for an enhanced penalty in section 2319C(b)(2) for someone who knowingly commits an offense in connection with 1 or more works being prepared for commercial public performance. The ''should have known'' standard in section 2319C(b)(2) applies only after a finder of fact determines beyond a reasonable doubt that the person committed an offense under subsection (a). The ''should have known'' standard should not be conflated with the standards of willfulness, not primarily designed, no commercially significant purpose, and intentionality set forth in section 2319C(a), all of which define the underlying offense and are intended to protect lawful internet and streaming services, content licensees, and noncommercial users.

Finally, the statute in section 2319C(d)(3) defines a work being prepared for commercial public performance, based on the definition of ''work being prepared for commercial distribution'' in section 506(a)(3) of the Copyright Act, while updating that definition to account for the challenges of piracy in the modern streaming environment. Section 2319C reflects the

fact that infringement threatens unique harm when it occurs prior to or in the earliest windows of commercial availability. The definition in 2319C(d)(3) recognizes that in the modem streaming environment, not all motion pictures are developed for theatrical distribution. The updated definition of a ''work being prepared for commercial public performance'' affords appropriately enhanced penalties for violations of the statute involving pre- and just-released film and television content, whether in a first theatrical window or immediately upon release to the public via a streaming or other platform. The legislation does not make corresponding changes to the definition of ''work made for commercial distribution'' in section 506(a)(3). Whether it is appropriate to harmonize the definitions is a question that is beyond the scope of this particular legislation, which does not otherwise make changes to title 17. Section 2319C(d)(1) defines ''motion picture'' as defined in the Copyright Act, which includes nontheatrical motion pictures, television shows, and broadcasts of live events.

JOINT EXPLANATORY STATEMENT

Mr. RUBIO. Mr. President, this explanation reflects the status of negotiations and disposition of issues reached between the Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence for the Intelligence Authorization Act for Fiscal Year 2021.

The explanation shall have the same effect with respect to the implementation of this act as if it were a joint explanatory statement of a conference committee.

I ask unanimous consent that the joint explanatory statement for the Intelligence Authorization Act for Fiscal Year 2021 be printed into the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 2021

The following is the explanation of the Intelligence Authorization Act for Fiscal Year 2021 (hereinafter, ''the Act'').

This explanation reflects the result of negotiations and disposition of issues reached between the Senate Select Committee on Intelligence (SSCI) and the House Permanent Select Committee on Intelligence (HPSCI) and the (hereinafter, ''the Agreement''). The explanation shall have the same effect with respect to the implementation of the Act as if it were a joint explanatory statement of a conference committee. The term ''Committees'' refers to both SSCI and HPSCI.

The explanation comprises three parts: an overview of the application of the annex to accompany this statement; unclassified congressional direction; and a section-by-section analysis of the legislative text.

PART I: APPLICATION OF THE CLASSIFIED ANNEX

The classified nature of U.S. intelligence activities prevents the SSCI and HPSCI (collectively, the ''congressional intelligence committees'') from publicly disclosing many details concerning the conclusions and recommendations of the Agreement. Therefore, a classified Schedule of Authorizations and a classified annex have been prepared to describe in detail the scope and intent of the congressional intelligence committees' actions. The Agreement authorizes the Intelligence Community (IC) to obligate and expend funds not altered or modified by the classified Schedule of Authorizations as requested in the President's budget, subject to modification under applicable reprogramming procedures.

The classified annex is the result of negotiations between the congressional intelligence committees. They reconcile the differences between the congressional intelligence committees' respective versions of the bill for the National Intelligence Program (NIP) for Fiscal Year 2021. The Agreement also makes recommendations for the Military Intelligence Program (MIP) and the Information Systems Security Program (ISSP), consistent with the National Defense Authorization Act for Fiscal Year 2021, and provides certain direction for these two programs. The Agreement applies to IC activities for Fiscal Year 2021.

The classified Schedule of Authorizations is incorporated into the bill pursuant to Section 102. It has the status of law. The classified annex supplements and adds detail to clarify the authorization levels found in the bill and the classified Schedule of Authorizations. The congressional intelligence committees view direction and recommendations, whether contained in this explanation or in the classified annex, as requiring compliance by the Executive Branch.

PART II: SELECT UNCLASSIFIED CONGRESSIONAL DIRECTION

This Joint Explanatory Statement incorporates by reference, and the Executive Branch shall comply with, all direction contained in the Senate Select Committee on Intelligence Report to accompany the Intelligence Authorization Act for Fiscal Year 2021 (S. Rept. 116–233) and in the House Permanent Select Committee on Intelligence Report to accompany the Intelligence Authorization Act for Fiscal Year 2021 (H. Rept. 116–565).

PART III: SECTION-BY-SECTION ANALYSIS AND EXPLANATION OF LEGISLATIVE TEXT

TITLE I—INTELLIGENCE ACTIVITIES

Section 101. Authorization of appropriations

Section 101 lists the United States Government departments, agencies, and other elements for which the Act authorizes appropriations for intelligence and intelligence-related activities for Fiscal Year 2021.

Section 102. Classified Schedule of Authorizations

Section 102 provides that the details of the amounts authorized to be appropriated for intelligence and intelligence-related activities for Fiscal Year 2021 are contained in the classified Schedule of Authorizations and that the classified Schedule of Authorizations shall be made available to the Committees on Appropriations of the Senate and House of Representatives and to the President.

Section 103. Intelligence Community Management Account

Section 103 authorizes appropriations for the Intelligence Community Management Account (ICMA) of the ODNI for Fiscal Year 2021.

TITLE II—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

Section 201. Authorization of appropriations

Section 201 authorizes appropriations for the CIA Retirement and Disability Fund for Fiscal Year 2021.

TITLE III—INTELLIGENCE COMMUNITY MATTERS

Subtitle A—General Intelligence Community Matters

Section 301. Restriction on conduct of intelligence activities

Section 301 provides that the authorization of appropriations by the Act shall not be deemed to constitute authority for the conduct of any intelligence activity that is not otherwise authorized by the Constitution or laws of the United States.

Section 302. Increase in employee compensation and benefits authorized by law

Section 302 provides that funds authorized to be appropriated by the Act for salary, pay, retirement, and other benefits for federal employees may be increased by such additional or supplemental amounts as may be necessary for increases in compensation or benefits authorized by law.

Section 303. Continuity of operations plans for certain elements of the intelligence community in the case of a national emergency

Section 303 requires the Directors of the Office of the Director of National Intelligence (ODNI), Central Intelligence Agency (CIA), National Reconnaissance Office (NRO), Defense Intelligence Agency (DIA), National Security Agency (NSA), and National Geospatial-Intelligence Agency (NGA) to establish continuity of operations plans for use in the case of certain national emergencies as defined in statute, and share those with the congressional intelligence committees within 7 days of a national emergency being declared. Furthermore, Section 303 requires these agencies to provide the committees with any updates to those plans as the conditions of the national emergency require.

Section 304. Application of Executive Schedule level III to position of Director of National Reconnaissance Office

Section 304 provides that the Director of the NRO shall be designated as Level III on the Executive Schedule, the equivalent of an Under Secretary. The Committee further clarifies that this provision shall apply to a successor civilian occupying the position of Director of the NRO.

Section 305. National Intelligence University

Section 305 provides the National Intelligence University (NIU) with degree-granting authority and requires reporting on personnel and compensation. Section 305 also sustains an independent, external board of visitors to provide oversight of the NIU.

Section 306. Data collection on attrition in intelligence community

Section 306 requires the DNI to set standards and issue an annual report on the reasons why different categories of IC employees separate from service or applicants to IC positions withdraw from the hiring process after they have been issued a conditional offer of employment. Data on workforce attrition should include demographics, specialties, and length of service. Such reasons may include an alternative job opportunity, a loss of interest in joining the IC, or the length of time to complete the clearance process.

Section 307. Limitation on delegation of responsibility for program management of information-sharing environment

Section 307 stipulates that the President must delegate responsibilities under Section 1016(b) of the Intelligence Reform and Terrorism Prevention Act of 2004 to an official other than the DNI.

Section 308. Requirement to buy certain satellite component from American sources

Section 308 prohibits an element of the IC to award a contract for a national security