

Frequently the result is extensive litigation over technical procedural issues rather than substantive problems.

We have structured this bill to demand a great deal of oversight and regulation. But, in designing these requirements, we have demanded environmental protection and safety without building in unnecessary and extensive delays.

#### FINANCIAL COMPENSATION

The House bill provided no funding for the State of New Mexico. The senate prevailed on the \$20 million annual payment to the State. The conference agreement authorizes this payment for 15 years, indexed for inflation. In addition, the legislation makes a commitment that Congress will consider extending financial compensation to the State beyond the 15-year time period.

The bill also provides that a portion of the payment to New Mexico could be used for environmental monitoring and economic studies. While the conference report drops the authorization for payments equivalent to taxes [PETT] and specific additional authorizations for the Calisbad Environmental Monitoring Center and for an economic impact assessment group, nothing in this bill precludes funding for these important projects in addition to the payments to the State.

The administration has requested and Congress has appropriated funding for these items in the absence of an authorization in the past and should continue to do so in the future. Moreover, Congress has been generous in both authorization and appropriations legislation with respect to legislation affecting another proposed waste repository in Nevada.

I hope the lack of these specific authorizations in this conference report does not bring opposition to their funding. It is simply unfair to ask the State of New Mexico to absorb the costs associated with this project. It would be ironic indeed that New Mexico's reward for cooperating with the Federal government on WIPP is less financial assistance.

Mr. President, I want to thank the chairman, Senator JOHNSTON, and the ranking member of the committee, Senator WALLOP, for all their assistance in bringing this legislation to fruition. A also want to extend special thanks to Representative JOHN DINGELL. If not for him, I am not sure we would have a bill today.

I urge my colleagues to support the conference report.

Mr. FORD, Mr. President, I ask unanimous consent that the conference report be agreed to; that the motion to reconsider be laid upon the table; that any statements relative to the passage of these items appear at the appropriate place in the RECORD as though read.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the conference report was agreed to.

#### CACHE LA POUFRE RIVER BASIN HERITAGE STUDY ACT

Mr. FORD, Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 775, S. 1174, relating to the Cache La Poudre River; that the amendment at the desk by Senator Brown be agreed to; that the committee substitute amendment as amended be agreed to; that the bill be deemed read a third time, passed; that the motion to reconsider be laid upon the table; that any statements relative to the passage of this item appear at the appropriate place in the RECORD.

The PRESIDING OFFICER. Is there objection? The Chair hears none and it is so ordered. The bill (S. 1174), as amended, was deemed to have been read a third time and passed, as follows:

(The text of S. 1174, as passed by the Senate, will be printed in a future edition of the RECORD.)

#### PENALTIES FOR VIOLATIONS OF SOFTWARE COPYRIGHT

Mr. FORD, Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 893.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

*Resolved*, That the bill from the Senate (S. 893) entitled "An Act to amend title 18, United States Code, to impose criminal sanctions for violation of software copyright," do pass with the following amendments:

Strike out all after the enacting clause and insert:

#### SECTION 1. CRIMINAL PENALTIES FOR COPYRIGHT INFRINGEMENT.

Section 2319(b) of title 18, United States Code, is amended to read as follows:

"(b) Any person who commits an offense under subsection (a) of this section—

"(1) shall be imprisoned not more than 5 years, or fined in the amount set forth in this title, or both, if the offense consists of the reproduction or distribution, during any 180-day period, of at least 10 copies or phonorecords, of 1 or more copyrighted works, with a retail value of more than \$2,500;

"(2) shall be imprisoned not more than 10 years, or fined in the amount set forth in this title, or both, if the offense is a second or subsequent offense under paragraph (1); and

"(3) shall be imprisoned not more than 1 year, or fined in the amount set forth in this title, or both, in any other case."

#### SEC. 2. CONFORMING AMENDMENTS.

Section 2319(c) of title 18, United States Code, is amended—

(1) in paragraph (1) by striking "sound recording", "motion picture", "audiovisual work", "phonorecord", and inserting "phonorecord"; and

(2) in paragraph (2) by striking "118" and inserting "120".

Amend the title so as to read: "An Act to amend title 18, United States Code, with respect to the criminal penalties for copyright infringement."

Mr. HATCH, Mr. President, I was pleased last summer when the Senate unanimously passed S. 893, as originally proposed. I introduced S. 893 earlier this year, with my good friend

from Arizona, Senator DECONCINI as an original cosponsor. The bill was designed to help the computer software industry combat the growing problem of large-scale commercial piracy of its products, by making such conduct a felony under Federal law punishable by fine and imprisonment. In so doing, S. 893 simply treated software piracy in the same manner that Congress had earlier decided to treat motion picture and sound recording piracy.

For several years, Federal law has provided strong criminal penalties for persons involved in the unauthorized production or distribution of multiple copies of phono records, sound recordings, and motion pictures. In a similar manner, this legislation was intended to provide the same enhanced criminal sanctions for the violation of copyright in computer programs. S. 893 as passed by the Senate on June 4 protected only computer software. We chose this approach because computer software differs in many ways, such as design, use, and distribution methods, from those forms of intellectual property presently afforded protection in the criminal law.

The amended version of S. 893 that has now come back to us from the House contains all of the teeth of our computer software bill but it has altered and refined the way in which the criminal code addresses the entire question of criminal penalties for large-scale copyright infringement. Instead of the previous scheme of separate statutes setting different penalties for piracy of different types of copyrighted material, the new House-passed law sets a uniform standard of liability for piracy of copyrighted works, whether they be motion pictures, records, books, or computer software. This is a welcome and logical development in clarifying the point at which the copyright law intersects with the criminal code, and I would like to sincerely compliment Representative BILL HUGHES, the author of this amendment, for his foresight in seeing how my bill could be improved without losing any of its substance.

The House approach to the problem of criminal copyright infringement necessitated several amendments to current law. Because the amended bill predicates liability on the proof that the copied material exceeds a certain "retail value," questions will no doubt arise as to what constitutes "retail value." I note with approval the extended discussion of this issue in the House report, particularly the view that in the amended bill the term "retail value" means the suggested retail price of the legitimate copyrighted work at the initial time of its release, and not the market price of the pirate copy. In the case of a copyrighted work that is not sold at retail, the "retail value" for the purpose of the statute should reflect the harm to the copyright holder and not the infringer's profits; for example the unauthorized release of videocassettes or

audiocassettes embodying as yet unreleased material will necessarily harm copyright owners, distributors and retailers far in excess of the retail value of the infringing material. For example, a film print or audio studio master which is not to be sold on the open market obviously has substantial asset value.

The important point to keep in mind, is that retail value should be determined by looking to the value of the copyrighted works in the legitimate retail market, not the thieves' criminal market. For the purpose of the criminal law, we should determine the harm from the point of view of the copyright holder, not by the value of the gain to the criminal. So I agree that the term "retail value" should generally mean the suggested retail price of the legitimate copyrighted work at the initial time of release and not the value of the pirate copies. In the event the copyrighted work is not sold in the form copied or distributed, the term "retail value" should mean the greater of the replacement cost or the true cost of production of the copyrighted work, including, but not limited to, the purchase cost of the components of the copyrighted work, design costs, and labor and overhead expenses required to create and manufacture the work.

Another potential question relating to the new standard of criminal liability for copyright infringement is an issue that arose during House consideration of this legislation. 17 U.S.C. 506(a) currently prohibits any person from infringing a copyright "willfully and for purposes of commercial advantage or private financial gain." The term "willfully," although used in copyright statutes since 1897 for criminal violations, has never been defined. Instead, copyright owners and prosecutors have relied on standards developed by the courts. It is my view that it is proper for the courts to continue to develop this concept in appropriate cases, and that the version of S. 893 we adopt today by specifically failing to define further the concept of "willful" conduct acknowledges that fact.

I note that the House considered defining the term "willfully" in this legislation. In fact, the House Judiciary Committee's Intellectual Property Subcommittee included a definition of "willfully" in the version of the bill it referred to the full committee, but the full committee-approved bill did not contain that language. The version of S. 893 that has passed the House and is before us now does not define "willfully." Therefore, S. 893 does not directly or by implication signal any disapproval with the manner in which the courts have previously interpreted this element of the offense.

At no point during our proceedings in the Senate Judiciary Committee or in the Subcommittee on Patents, Copyrights and Trademarks did we consider the question of defining by statute the term "willfully," but I am certain that we would be willing to do so in the fu-

ture if presented with reasons to do so. It is my opinion that at this point the courts do seem to be interpreting the term "willfully" in a workable manner, that the existing statute is meeting the objectives that Congress set out when the law was enacted, and that the text of S. 893 is sufficient as adopted. As the House report indicates, and as I would like to emphatically state, this criminal statute is not designed to reach instances of permissible, private home copying, nor does it represent any infringement on traditional concepts permitting the fair use of copyrighted materials for purposes of research, criticism, scholarship, parody, and other long-recognized uses. Similarly, this bill is not designed to interfere with evolving notions of fair use, as that concept is applied with respect to new communications networks and computer technologies. Once again, I would point out that the mens rea requirement is strict with respect to this crime: unless done for the express purposes of obtaining commercial advantage or private financial gain, copying of copyrighted material is not a crime under S. 893. Simply put, the copying must be undertaken to make money, and even incidental financial benefits that might accrue as a result of the copying should not contravene the law where the achievement of those benefits were not the motivation behind the copying.

Mr. President, the willful infringement of copyright in computer software programs is a widespread practice that is threatening the United States software industry. The easy accessibility of computer programs distributed in magnetic media format, together with the distribution of popular applications programs, has led to persistent large-scale copying of these programs. Studies indicate that for every authorized copy of software programs in circulation, there is an illegal copy also in circulation. Losses to the personal computer software industry from all illegal copying were estimated to be \$1.6 billion in 1989. If we do not address the piracy of these programs, we may soon see a decline in this vibrant and important sector of our economy.

Not only is the software industry seriously damaged, but the public is also victimized by these acts of piracy. The purchaser of pirated often pays full price for a product which he or she believes is legitimate. However, not only may there be imperfections in the actual reproduction, but the quality of the product is also often lower as a result of cheap duplication equipment. Furthermore, the consumer of pirated works is ineligible for the important support and backup services typically offered by the software publisher.

As was noted during the hearings on increasing the penalties for illegal copying of records, sound recordings, and motion pictures, stiffer penalties toward piracy do act as a deterrent to these types of crimes. Enhanced penalties for large-scale violation of soft-

ware copyright is more in line with the seriousness of the crime.

I believe that the version of S. 893 that we consider today will provide a strong tool for prosecutors and others who are interested in deterring the growing problem of computer software piracy. As I have mentioned, it maintains as well the strict protections that the motion picture and sound recording industries have enjoyed for nearly a decade, and it nips in the bud the potential for large-scale book piracy that might otherwise be exploited through emerging technologies.

Under the language of S. 893, a person involved in software piracy—or for that matter any crime copyright infringement—would be subject to a fine and imprisonment of up to 10 years if the offense is a second or subsequent act of reproducing or distributing at least 10 copies of the copyrighted work. For a first offense, the penalty cannot exceed a term of 5 years imprisonment and/or the fine prescribed by title 18, for first offenses. In addition, the criminal liability attaches if fewer than 10 works are copied if the retail value of the copied works exceeds \$2,500. In this instance, the prescribed imprisonment cannot exceed 1 year.

Mr. President, I am very pleased that both Houses of Congress have reached an agreement on this important issue. It is my belief that enactment of S. 893 will end the unacceptable current situation where this significant area of criminal activity is insufficiently proscribed and ineffectively punished.

Before concluding, I would be remiss if I did not note again the significant help we have received in drafting this legislation from Representative BILL HUGHES, the chairman of the House Subcommittee on Intellectual Property and the Administration of Justice, as well as the customary strong support we are used to receiving from Representative CARLOS MOORHEAD, the ranking Republican on that subcommittee. Nor could this successful conclusion have been achieved without the excellent staff work of Bill Patry, Hayden Gregory, Joe Wolfe, and Tom Mooney from the House Subcommittee on Intellectual Property; Karen Robb, chief counsel of the Senate Subcommittee on Patents, Copyrights, and Trademarks; and Darrell Panethiere of my Judiciary Committee staff. To all of them, I express my gratitude.

Mr. FORD. Mr. President, I move the Senate concur in the amendments of the House.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DECONCINI. Mr. President, I rise in support of the carjacking provisions in H.R. 4542, the Anti-Car Theft Act of 1992, introduced by the chairman of the

House Judiciary Committee on Crime, CHARLES SCHUMER. I introduced similar legislation in the Senate earlier this year, S. 3239. I believe it is vitally important that we take strong action to address this crime of frightening frequency that presents a vicious new breed of criminal.

My only reservation with the carjacking section in H.R. 4542 goes to the provision that makes the use of a firearm an essential element of the crime. First, this element is unnecessarily restrictive because it does not cover carjacking committed with the use of other type of weapons nor would simple brute force be covered. Second, it creates a new firearm crime outside the context of the existing gun laws. Firearm crimes have been and should be the primary responsibility of the experts in this area, the Bureau of Alcohol, Tobacco and Firearms [ATF]. The brave men and women of ATF have established an outstanding record over the past few years in enforcing the Federal firearms laws against the most violent criminals among us.

It is for that reason that we have discussed with the office of Chairman SCHUMER that we all intend for ATF to continue to play a leading role in combatting this and other firearm related crimes. We plan to discuss this issue with the Agencies involved with enforcing this provision to ensure that they work together to curb this menacing crime.

#### PREVENTION OF AUTO THEFT

Mr. FORD. Mr. President, I ask unanimous consent the Senate proceed to the immediate consideration of H.R. 4542, a bill to prevent and deter auto theft just received from the House; that the bill be deemed read three times, passed, and the motion to reconsider laid upon the table, and that any statement respective to this bill be inserted at the appropriate place in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the bill (H.R. 4542) was deemed read a third time and passed.

Mr. PRESSLER. Mr. President, vehicle theft is a serious problem in the United States. But it would be wrong to conclude that this problem is limited only to the loss of property. Increasingly, death and serious bodily injuries are resulting from vehicle theft. This relatively new and violent form of auto theft has been dubbed "carjacking." It is defined as the taking of a motor vehicle from a person or in the presence of another by force, violence or intimidation.

Last week, I sponsored an amendment to the tax bill, H.R. 11. This amendment passed the Senate. It represented a giant step forward in slowing down auto theft by subjecting carjackers who use firearms to severe Federal criminal penalties. Law enforcement officials have theorized vehicle thieves find it easier to use force

than to deal with anti-theft devices installed in newer model cars. Additionally, carjackers can obtain the keys and registration papers for the cars they steal. The amendment would have sent a signal to would-be carjackers that auto theft is no longer just a joy-ride.

President Bush recently endorsed stronger penalties for carjackers. The President said:

We cannot put up with this animal behavior. These people have no place in a decent society \* \* \* they can go to jail and they can stay in jail and they can rot in jail for crimes like that. We need tough laws that don't bend over backwards protecting the criminal.

Sadly, the conference report to the tax bill does not include my amendment. Title I of H.R. 4542, the bill before us now, includes a provision similar to my amendment to the tax bill. Title I subjects carjackers who use firearms to serve criminal penalties. I would have preferred that this bill be broadened to subject to the same penalties not only armed carjackers, but also any carjacker who uses any kind of force, violence, or intimidation. However, Title I still will send a strong signal to would-be carjackers.

H.R. 4542 also has other auto theft prevention provisions. While I will not object to these at this late date, the record should note that I have strong reservations in supporting these provisions.

I introduced the Senate version of H.R. 4542 last April. However, after discussions with several South Dakota auto dealers, as well as parts manufacturers and parts recyclers, I came to the conclusion that the original bill should be revised. In fact, provisions within that bill actually would harm legitimate, law-abiding auto dealers and parts salvagers.

The House-passed compromise version of H.R. 4542 is based on good intentions. Potentially, though, it still could impose serious economic burdens on small auto salvage businesses. The bill also includes a task force which is tasked with studying the effectiveness of auto parts certification. That provision is aimed at developing solutions to this serious problem that will not harm auto dealers, parts manufacturers, parts salvagers, and other legitimate industries. This provision is an integral aspect of this bill. If the task force discovers that the legislation is detrimental to auto dismantlers and parts recyclers, we can take further action at a later date.

Mr. President, I would like the record to indicate my understanding of section 606 of title III of H.R. 4542. In my interpretation, the original seller of a major part marked with an identification number is required by this legislation to determine, through a procedure established by the Attorney General, that such major part has not been reported as stolen. This person or business is also required to provide any subsequent purchaser or transferee

with verification identifying the vehicle identification number of that part and a further verification that such part has not been reported as stolen. It is my understanding that a purchaser or transferee of such part can rely on this original verification and is not required to verify again that a part has not been reported as stolen.

Mr. President, during the upcoming recess, I plan to work closely with automotive industry groups in South Dakota to ensure that this legislation does not impose unwarranted burdens on their businesses. Additionally, I plan to develop further anti-car-theft legislation to deter auto theft.

Mr. LAUTENBERG. Mr. President, I rise in support of this legislation to address the national epidemic of motor vehicle theft.

The Anti-Car Theft Act would establish new criminal sanctions for carjacking, strengthen the existing system of vehicle parts marking, improve the ability of governmental authorities to identify fraudulent car titles, increase existing penalties for auto thieves, and tighten controls on the export of stolen vehicles.

Mr. President, the problem of auto theft has increased substantially in recent years. According to the Uniform Crime Report, between 1984 and 1991 motor vehicle theft increased by 61 percent, to almost 1.7 million offenses per year. Around the country, there is an average of one motor vehicle theft every 19 seconds. The total value of stolen vehicles now exceeds \$8 billion annually.

The vehicle theft problem is particularly serious in my State of New Jersey. According to recent figures, Newark, NJ, has the highest rate of auto theft in the nation. Several New Jersey cities also share the dubious distinction of being in the top ten. In addition, a large number of stolen cars are being exported from New Jersey's ports.

There are many dimensions to the vehicle theft problem, Mr. President. Perhaps the most disturbing is the emerging problem of violent carjackings. Increasingly, thieves are using violence and intimidation to force drivers to give up their cars. Many innocent people are losing their lives in the process. For others, an evening drive with an open window is an experience now best avoided.

Random carjacking may be the most horrifying form of auto theft, Mr. President, but it is just the tip of the iceberg. Stealing cars has developed into a full-fledged industry, run by professionals. Many criminals routinely solicit orders for a particular part, and then go out and steal a car to get it. Others run chop shops, breaking down stolen cars and selling their parts on the black market.

The National Highway Traffic Safety Administration has reported estimates that between 10 and 16 percent of all thefts occur in order to sell the parts for profit. Others put that figure as