

106TH CONGRESS
1ST SESSION

S. 1948

To amend the provisions of title 17, United States Code, and the Communications Act of 1934, relating to copyright licensing and carriage of broadcast signals by satellite.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 17, 1999

Mr. LOTT introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend the provisions of title 17, United States Code, and the Communications Act of 1934, relating to copyright licensing and carriage of broadcast signals by satellite.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Intellectual Property and Communications Omnibus Re-
6 form Act of 1999”.

7 (b) **TABLE OF CONTENTS.**—The table of contents of
8 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—SATELLITE HOME VIEWER IMPROVEMENT

- Sec. 1001. Short title.
 Sec. 1002. Limitations on exclusive rights; secondary transmissions by satellite carriers within local markets.
 Sec. 1003. Extension of effect of amendments to section 119 of title 17, United States Code.
 Sec. 1004. Computation of royalty fees for satellite carriers.
 Sec. 1005. Distant signal eligibility for consumers.
 Sec. 1006. Public broadcasting service satellite feed.
 Sec. 1007. Application of Federal Communications Commission regulations.
 Sec. 1008. Rules for satellite carriers retransmitting television broadcast signals.
 Sec. 1009. Retransmission consent.
 Sec. 1010. Severability.
 Sec. 1011. Technical amendments.
 Sec. 1012. Effective dates.

TITLE II—RURAL LOCAL TELEVISION SIGNALS

- Sec. 2001. Short title.
 Sec. 2002. Local television service in unserved and underserved markets.

TITLE III—TRADEMARK CYBERPIRACY PREVENTION

- Sec. 3001. Short title; references.
 Sec. 3002. Cyberpiracy prevention.
 Sec. 3003. Damages and remedies.
 Sec. 3004. Limitation on liability.
 Sec. 3005. Definitions.
 Sec. 3006. Study on abusive domain name registrations involving personal names.
 Sec. 3007. Historic preservation.
 Sec. 3008. Savings clause.
 Sec. 3009. Technical and conforming amendments.
 Sec. 3010. Effective date.

TITLE IV—INVENTOR PROTECTION

Sec. 4001. Short title.

Subtitle A—Inventors' Rights

- Sec. 4101. Short title.
 Sec. 4102. Integrity in invention promotion services.
 Sec. 4103. Effective date.

Subtitle B—Patent and Trademark Fee Fairness

- Sec. 4201. Short title.
 Sec. 4202. Adjustment of patent fees.
 Sec. 4203. Adjustment of trademark fees.
 Sec. 4204. Study on alternative fee structures.
 Sec. 4205. Patent and Trademark Office Funding.
 Sec. 4206. Effective date.

Subtitle C—First Inventor Defense

- Sec. 4301. Short title.
- Sec. 4302. Defense to patent infringement based on earlier inventor.
- Sec. 4303. Effective date and applicability.

Subtitle D—Patent Term Guarantee

- Sec. 4401. Short title.
- Sec. 4402. Patent term guarantee authority.
- Sec. 4403. Continued examination of patent applications.
- Sec. 4404. Technical clarification.
- Sec. 4405. Effective date.

Subtitle E—Domestic Publication of Patent Applications Published Abroad

- Sec. 4501. Short title.
- Sec. 4502. Publication.
- Sec. 4503. Time for claiming benefit of earlier filing date.
- Sec. 4504. Provisional rights.
- Sec. 4505. Prior art effect of published applications.
- Sec. 4506. Cost recovery for publication.
- Sec. 4507. Conforming amendments.
- Sec. 4508. Effective date.

Subtitle F—Optional Inter Partes Reexamination Procedure

- Sec. 4601. Short title.
- Sec. 4602. Ex parte reexamination of patents.
- Sec. 4603. Definitions.
- Sec. 4604. Optional inter partes reexamination procedures.
- Sec. 4605. Conforming amendments.
- Sec. 4606. Report to Congress.
- Sec. 4607. Estoppel effect of reexamination.
- Sec. 4608. Effective date.

Subtitle G—Patent and Trademark Office

- Sec. 4701. Short title.

CHAPTER 1—UNITED STATES PATENT AND TRADEMARK OFFICE

- Sec. 4711. Establishment of Patent and Trademark Office.
- Sec. 4712. Powers and duties.
- Sec. 4713. Organization and management.
- Sec. 4714. Public advisory committees.
- Sec. 4715. Conforming amendments.
- Sec. 4716. Trademark Trial and Appeal Board.
- Sec. 4717. Board of Patent Appeals and Interferences.
- Sec. 4718. Annual report of Director.
- Sec. 4719. Suspension or exclusion from practice.
- Sec. 4720. Pay of Director and Deputy Director.

CHAPTER 2—EFFECTIVE DATE; TECHNICAL AMENDMENTS

- Sec. 4731. Effective date.
- Sec. 4732. Technical and conforming amendments.

CHAPTER 3—MISCELLANEOUS PROVISIONS

- Sec. 4741. References.
- Sec. 4742. Exercise of authorities.
- Sec. 4743. Savings provisions.
- Sec. 4744. Transfer of assets.
- Sec. 4745. Delegation and assignment.
- Sec. 4746. Authority of Director of the Office of Management and Budget with respect to functions transferred.
- Sec. 4747. Certain vesting of functions considered transfers.
- Sec. 4748. Availability of existing funds.
- Sec. 4749. Definitions.

Subtitle H—Miscellaneous Patent Provisions

- Sec. 4801. Provisional applications.
- Sec. 4802. International applications.
- Sec. 4803. Certain limitations on damages for patent infringement not applicable.
- Sec. 4804. Electronic filing and publications.
- Sec. 4805. Study and report on biological deposits in support of biotechnology patents.
- Sec. 4806. Prior invention.
- Sec. 4807. Prior art exclusion for certain commonly assigned patents.
- Sec. 4808. Exchange of copies of patents with foreign countries.

TITLE V—MISCELLANEOUS PROVISIONS

- Sec. 5001. Commission on online child protection.
- Sec. 5002. Privacy protection for donors to public broadcasting entities.
- Sec. 5003. Completion of biennial regulatory review.
- Sec. 5004. Public broadcasting entities.
- Sec. 5005. Technical amendments relating to vessel hull design protection.
- Sec. 5006. Informal rulemaking of copyright determination.
- Sec. 5007. Service of process for surety corporations.
- Sec. 5008. Low-power television.

TITLE VI—SUPERFUND RECYCLING EQUITY

- Sec. 6001. Superfund recycling equity.

1 **TITLE I—SATELLITE HOME** 2 **VIEWER IMPROVEMENT**

3 **SEC. 1001. SHORT TITLE.**

- 4 This title may be cited as the “Satellite Home Viewer
- 5 Improvement Act of 1999”.

1 **SEC. 1002. LIMITATIONS ON EXCLUSIVE RIGHTS; SEC-**
 2 **ONDARY TRANSMISSIONS BY SATELLITE CAR-**
 3 **RIERS WITHIN LOCAL MARKETS.**

4 (a) IN GENERAL.—Chapter 1 of title 17, United
 5 States Code, is amended by adding after section 121 the
 6 following new section:

7 **“§ 122. Limitations on exclusive rights; secondary**
 8 **transmissions by satellite carriers within**
 9 **local markets**

10 “(a) SECONDARY TRANSMISSIONS OF TELEVISION
 11 BROADCAST STATIONS BY SATELLITE CARRIERS.—A sec-
 12 ondary transmission of a performance or display of a work
 13 embodied in a primary transmission of a television broad-
 14 cast station into the station’s local market shall be subject
 15 to statutory licensing under this section if—

16 “(1) the secondary transmission is made by a
 17 satellite
 18 carrier to the public;

19 “(2) with regard to secondary transmissions,
 20 the satellite carrier is in compliance with the rules,
 21 regulations, or authorizations of the Federal Com-
 22 munications Commission governing the carriage of
 23 television broadcast station signals; and

24 “(3) the satellite carrier makes a direct or indi-
 25 rect charge for the secondary transmission to—

1 “(A) each subscriber receiving the sec-
2 ondary transmission; or

3 “(B) a distributor that has contracted with
4 the satellite carrier for direct or indirect deliv-
5 ery of the secondary transmission to the public.

6 “(b) REPORTING REQUIREMENTS.—

7 “(1) INITIAL LISTS.—A satellite carrier that
8 makes secondary transmissions of a primary trans-
9 mission made by a network station under subsection
10 (a) shall, within 90 days after commencing such sec-
11 ondary transmissions, submit to the network that
12 owns or is affiliated with the network station a list
13 identifying (by name in alphabetical order and street
14 address, including county and zip code) all sub-
15 scribers to which the satellite carrier makes sec-
16 ondary transmissions of that primary transmission
17 under subsection (a).

18 “(2) SUBSEQUENT LISTS.—After the list is sub-
19 mitted under paragraph (1), the satellite carrier
20 shall, on the 15th of each month, submit to the net-
21 work a list identifying (by name in alphabetical
22 order and street address, including county and zip
23 code) any subscribers who have been added or
24 dropped as subscribers since the last submission
25 under this subsection.

1 “(3) USE OF SUBSCRIBER INFORMATION.—Sub-
2 scriber information submitted by a satellite carrier
3 under this subsection may be used only for the pur-
4 poses of monitoring compliance by the satellite car-
5 rier with this section.

6 “(4) REQUIREMENTS OF NETWORKS.—The sub-
7 mission requirements of this subsection shall apply
8 to a satellite carrier only if the network to which the
9 submissions are to be made places on file with the
10 Register of Copyrights a document identifying the
11 name and address of the person to whom such sub-
12 missions are to be made. The Register of Copyrights
13 shall maintain for public inspection a file of all such
14 documents.

15 “(c) NO ROYALTY FEE REQUIRED.—A satellite car-
16 rier whose secondary transmissions are subject to statu-
17 tory licensing under subsection (a) shall have no royalty
18 obligation for such secondary transmissions.

19 “(d) NONCOMPLIANCE WITH REPORTING AND REGU-
20 LATORY REQUIREMENTS.—Notwithstanding subsection
21 (a), the willful or repeated secondary transmission to the
22 public by a satellite carrier into the local market of a tele-
23 vision broadcast station of a primary transmission em-
24 bodying a performance or display of a work made by that
25 television broadcast station is actionable as an act of in-

1 fringement under section 501, and is fully subject to the
2 remedies provided under sections 502 through 506 and
3 509, if the satellite carrier has not complied with the re-
4 porting requirements of subsection (b) or with the rules,
5 regulations, and authorizations of the Federal Commu-
6 nications Commission concerning the carriage of television
7 broadcast signals.

8 “(e) WILLFUL ALTERATIONS.—Notwithstanding
9 subsection (a), the secondary transmission to the public
10 by a satellite carrier into the local market of a television
11 broadcast station of a performance or display of a work
12 embodied in a primary transmission made by that tele-
13 vision broadcast station is actionable as an act of infringe-
14 ment under section 501, and is fully subject to the rem-
15 edies provided by sections 502 through 506 and sections
16 509 and 510, if the content of the particular program in
17 which the performance or display is embodied, or any com-
18 mercial advertising or station announcement transmitted
19 by the primary transmitter during, or immediately before
20 or after, the transmission of such program, is in any way
21 willfully altered by the satellite carrier through changes,
22 deletions, or additions, or is combined with programming
23 from any other broadcast signal.

1 “(f) VIOLATION OF TERRITORIAL RESTRICTIONS ON
2 STATUTORY LICENSE FOR TELEVISION BROADCAST STA-
3 TIONS.—

4 “(1) INDIVIDUAL VIOLATIONS.—The willful or
5 repeated
6 secondary transmission to the public by a satellite
7 carrier of a primary transmission embodying a per-
8 formance or display of a work made by a television
9 broadcast station to a subscriber who does not reside
10 in that station’s local market, and is not subject to
11 statutory licensing under section 119 or a private li-
12 censing agreement, is actionable as an act of in-
13 fringement under section 501 and is fully subject to
14 the remedies provided by sections 502 through 506
15 and 509, except that—

16 “(A) no damages shall be awarded for such
17 act of infringement if the satellite carrier took
18 corrective action by promptly withdrawing serv-
19 ice from the ineligible subscriber; and

20 “(B) any statutory damages shall not ex-
21 ceed \$5 for such subscriber for each month dur-
22 ing which the violation occurred.

23 “(2) PATTERN OF VIOLATIONS.—If a satellite
24 carrier engages in a willful or repeated pattern or
25 practice of secondarily transmitting to the public a

1 primary transmission embodying a performance or
2 display of a work made by a television broadcast sta-
3 tion to subscribers who do not reside in that sta-
4 tion's local market, and are not subject to statutory
5 licensing under section 119 or a private licensing
6 agreement, then in addition to the remedies under
7 paragraph (1)—

8 “(A) if the pattern or practice has been
9 carried out on a substantially nationwide basis,
10 the court—

11 “(i) shall order a permanent injunc-
12 tion barring the secondary transmission by
13 the satellite carrier of the primary trans-
14 missions of that television broadcast sta-
15 tion (and if such television broadcast sta-
16 tion is a network station, all other tele-
17 vision broadcast stations affiliated with
18 such network); and

19 “(ii) may order statutory damages not
20 exceeding \$250,000 for each 6-month pe-
21 riod during which the pattern or practice
22 was carried out; and

23 “(B) if the pattern or practice has been
24 carried out on a local or regional basis with re-

1 spect to more than one television broadcast sta-
2 tion, the court—

3 “(i) shall order a permanent injunc-
4 tion barring the secondary transmission in
5 that locality or region by the satellite car-
6 rier of the primary transmissions of any
7 television broadcast station; and

8 “(ii) may order statutory damages not
9 exceeding \$250,000 for each 6-month pe-
10 riod during which the pattern or practice
11 was carried out.

12 “(g) BURDEN OF PROOF.—In any action brought
13 under subsection (f), the satellite carrier shall have the
14 burden of proving that its secondary transmission of a pri-
15 mary transmission by a television broadcast station is
16 made only to subscribers located within that station’s local
17 market or subscribers being served in compliance with sec-
18 tion 119 or a private licensing agreement.

19 “(h) GEOGRAPHIC LIMITATIONS ON SECONDARY
20 TRANSMISSIONS.—The statutory license created by this
21 section shall apply to secondary transmissions to locations
22 in the United States.

23 “(i) EXCLUSIVITY WITH RESPECT TO SECONDARY
24 TRANSMISSIONS OF BROADCAST STATIONS BY SATELLITE
25 TO MEMBERS OF THE PUBLIC.—No provision of section

1 111 or any other law (other than this section and section
2 119) shall be construed to contain any authorization, ex-
3 emption, or license through which secondary transmissions
4 by satellite carriers of programming contained in a pri-
5 mary transmission made by a television broadcast station
6 may be made without obtaining the consent of the copy-
7 right owner.

8 “(j) DEFINITIONS.—In this section—

9 “(1) DISTRIBUTOR.—The term ‘distributor’
10 means an entity which contracts to distribute sec-
11 ondary transmissions from a satellite carrier and, ei-
12 ther as a single channel or in a package with other
13 programming, provides the secondary transmission
14 either directly to individual subscribers or indirectly
15 through other program distribution entities.

16 “(2) LOCAL MARKET.—

17 “(A) IN GENERAL.—The term ‘local mar-
18 ket’, in the case of both commercial and non-
19 commercial television broadcast stations, means
20 the designated market area in which a station
21 is located, and—

22 “(i) in the case of a commercial tele-
23 vision broadcast station, all commercial tel-
24 evision broadcast stations licensed to a
25 community within the same designated

1 market area are within the same local mar-
2 ket; and

3 “(ii) in the case of a noncommercial
4 educational television broadcast station,
5 the market includes any station that is li-
6 censed to a community within the same
7 designated market area as the noncommer-
8 cial educational television broadcast sta-
9 tion.

10 “(B) COUNTY OF LICENSE.—In addition to
11 the area described in subparagraph (A), a sta-
12 tion’s local market includes the county in which
13 the station’s community of license is located.

14 “(C) DESIGNATED MARKET AREA.—For
15 purposes of subparagraph (A), the term ‘des-
16 ignated market area’ means a designated mar-
17 ket area, as determined by Nielsen Media Re-
18 search and published in the 1999–2000 Nielsen
19 Station Index Directory and Nielsen Station
20 Index United States Television Household Esti-
21 mates or any successor publication.

22 “(3) NETWORK STATION; SATELLITE CARRIER;
23 SECONDARY TRANSMISSION.—The terms ‘network
24 station’, ‘satellite carrier’, and ‘secondary trans-

1 mission' have the meanings given such terms under
2 section 119(d).

3 “(4) SUBSCRIBER.—The term ‘subscriber’
4 means a person who receives a secondary trans-
5 mission service from a satellite carrier and pays a
6 fee for the service, directly or indirectly, to the sat-
7 ellite carrier or to a distributor.

8 “(5) TELEVISION BROADCAST STATION.—The
9 term ‘television broadcast station’—

10 “(A) means an over-the-air, commercial or
11 noncommercial television broadcast station li-
12 censed by the Federal Communications Com-
13 mission under subpart E of part 73 of title 47,
14 Code of Federal Regulations, except that such
15 term does not include a low-power or translator
16 television station; and

17 “(B) includes a television broadcast station
18 licensed by an appropriate governmental au-
19 thority of Canada or Mexico if the station
20 broadcasts primarily in the English language
21 and is a network station as defined in section
22 119(d)(2)(A).”.

23 (b) INFRINGEMENT OF COPYRIGHT.—Section 501 of
24 title 17, United States Code, is amended by adding at the
25 end the following new subsection:

1 “(f)(1) With respect to any secondary transmission
2 that is made by a satellite carrier of a performance or
3 display of a work embodied in a primary transmission and
4 is actionable as an act of infringement under section 122,
5 a television broadcast station holding a copyright or other
6 license to transmit or perform the same version of that
7 work shall, for purposes of subsection (b) of this section,
8 be treated as a legal or beneficial owner if such secondary
9 transmission occurs within the local market of that sta-
10 tion.

11 “(2) A television broadcast station may file a civil ac-
12 tion against any satellite carrier that has refused to carry
13 television broadcast signals, as required under section
14 122(a)(2), to enforce that television broadcast station’s
15 rights under section 338(a) of the Communications Act
16 of 1934.”.

17 (c) TECHNICAL AND CONFORMING AMENDMENTS.—
18 The table of sections for chapter 1 of title 17, United
19 States Code, is amended by adding after the item relating
20 to section 121 the following:

“122. Limitations on exclusive rights; secondary transmissions by satellite car-
riers within local market.”.

1 **SEC. 1003. EXTENSION OF EFFECT OF AMENDMENTS TO**
2 **SECTION 119 OF TITLE 17, UNITED STATES**
3 **CODE.**

4 Section 4(a) of the Satellite Home Viewer Act of
5 1994 (17 U.S.C. 119 note; Public Law 103-369; 108
6 Stat. 3481) is amended by striking “December 31, 1999”
7 and inserting “December 31, 2004”.

8 **SEC. 1004. COMPUTATION OF ROYALTY FEES FOR SAT-**
9 **ELLITE CARRIERS.**

10 Section 119(e) of title 17, United States Code, is
11 amended by adding at the end the following new para-
12 graph:

13 “(4) REDUCTION.—

14 “(A) SUPERSTATION.—The rate of the
15 royalty fee in effect on January 1, 1998, pay-
16 able in each case under subsection (b)(1)(B)(i)
17 shall be reduced by 30 percent.

18 “(B) NETWORK AND PUBLIC BROAD-
19 CASTING SATELLITE FEED.—The rate of the
20 royalty fee in effect on January 1, 1998, pay-
21 able under subsection (b)(1)(B)(ii) shall be re-
22 duced by 45 percent.

23 “(5) PUBLIC BROADCASTING SERVICE AS
24 AGENT.—For purposes of section 802, with respect
25 to royalty fees paid by satellite carriers for re-
26 transmitting the Public Broadcasting Service sat-

1 elite feed, the Public Broadcasting Service shall be
2 the agent for all public television copyright claimants
3 and all Public Broadcasting Service member sta-
4 tions.”.

5 **SEC. 1005. DISTANT SIGNAL ELIGIBILITY FOR CONSUMERS.**

6 (a) UNSERVED HOUSEHOLD.—

7 (1) IN GENERAL.—Section 119(d) of title 17,
8 United States Code, is amended by striking para-
9 graph (10) and inserting the following:

10 “(10) UNSERVED HOUSEHOLD.—The term
11 ‘unserved household’, with respect to a particular
12 television network, means a household that—

13 “(A) cannot receive, through the use of a
14 conventional, stationary, outdoor rooftop receiv-
15 ing antenna, an over-the-air signal of a primary
16 network station affiliated with that network of
17 Grade B intensity as defined by the Federal
18 Communications Commission under section
19 73.683(a) of title 47 of the Code of Federal
20 Regulations, as in effect on January 1, 1999;

21 “(B) is subject to a waiver granted under
22 regulations established under section 339(e)(2)
23 of the Communications Act of 1934;

24 “(C) is a subscriber to whom subsection
25 (e) applies;

1 “(D) is a subscriber to whom subsection
2 (a)(11) applies; or

3 “(E) is a subscriber to whom the exemp-
4 tion under subsection (a)(2)(B)(iii) applies.”.

5 (2) CONFORMING AMENDMENT.—Section
6 119(a)(2)(B) of title 17, United States Code, is
7 amended to read as follows:

8 “(B) SECONDARY TRANSMISSIONS TO
9 UNSERVED HOUSEHOLDS.—

10 “(i) IN GENERAL.—The statutory li-
11 cense provided for in subparagraph (A)
12 shall be limited to secondary transmissions
13 of the signals of no more than two network
14 stations in a single day for each television
15 network to persons who reside in unserved
16 households.

17 “(ii) ACCURATE DETERMINATIONS OF
18 ELIGIBILITY.—

19 “(I) ACCURATE PREDICTIVE
20 MODEL.—In determining presump-
21 tively whether a person resides in an
22 unserved household under subsection
23 (d)(10)(A), a court shall rely on the
24 Individual Location Longley-Rice
25 model set forth by the Federal Com-

1 communications Commission in Docket
2 No. 98–201, as that model may be
3 amended by the Commission over time
4 under section 339(c)(3) of the Com-
5 munications Act of 1934 to increase
6 the accuracy of that model.

7 “(II) ACCURATE MEASURE-
8 MENTS.—For purposes of site meas-
9 urements to determine whether a per-
10 son resides in an unserved household
11 under subsection (d)(10)(A), a court
12 shall rely on section 339(c)(4) of the
13 Communications Act of 1934.

14 “(iii) C-BAND EXEMPTION TO
15 UNSERVED HOUSEHOLDS.—

16 “(I) IN GENERAL.—The limita-
17 tions of clause (i) shall not apply to
18 any secondary transmissions by C-
19 band services of network stations that
20 a subscriber to C-band service re-
21 ceived before any termination of such
22 secondary transmissions before Octo-
23 ber 31, 1999.

24 “(II) DEFINITION.—In this
25 clause the term ‘C-band service’

1 means a service that is licensed by the
2 Federal Communications Commission
3 and operates in the Fixed Satellite
4 Service under part 25 of title 47 of
5 the Code of Federal Regulations.”.

6 (b) EXCEPTION TO LIMITATION ON SECONDARY
7 TRANSMISSIONS.—Section 119(a)(5) of title 17, United
8 States Code, is amended by adding at the end the fol-
9 lowing:

10 “(E) EXCEPTION.—The secondary trans-
11 mission by a satellite carrier of a performance
12 or display of a work embodied in a primary
13 transmission made by a network station to sub-
14 scribers who do not reside in unserved house-
15 holds shall not be an act of infringement if—

16 “(i) the station on May 1, 1991, was
17 retransmitted by a satellite carrier and was
18 not on that date owned or operated by or
19 affiliated with a television network that of-
20 fered interconnected program service on a
21 regular basis for 15 or more hours per
22 week to at least 25 affiliated television li-
23 censees in 10 or more States;

24 “(ii) as of July 1, 1998, such station
25 was retransmitted by a satellite carrier

1 under the statutory license of this section;
2 and

3 “(iii) the station is not owned or oper-
4 ated by or affiliated with a television net-
5 work that, as of January 1, 1995, offered
6 interconnected program service on a reg-
7 ular basis for 15 or more hours per week
8 to at least 25 affiliated television licensees
9 in 10 or more States.”.

10 (c) MORATORIUM ON COPYRIGHT LIABILITY.—Sec-
11 tion 119(e) of title 17, United States Code, is amended
12 to read as follows:

13 “(e) MORATORIUM ON COPYRIGHT LIABILITY.—
14 Until December 31, 2004, a subscriber who does not re-
15 ceive a signal of Grade A intensity (as defined in the regu-
16 lations of the Federal Communications Commission under
17 section 73.683(a) of title 47 of the Code of Federal Regu-
18 lations, as in effect on January 1, 1999, or predicted by
19 the Federal Communications Commission using the Indi-
20 vidual Location Longley-Rice methodology described by
21 the Federal Communications Commission in Docket No.
22 98–201) of a local network television broadcast station
23 shall remain eligible to receive signals of network stations
24 affiliated with the same network, if that subscriber had
25 satellite service of such network signal terminated after

1 July 11, 1998, and before October 31, 1999, as required
2 by this section, or received such service on October 31,
3 1999.”.

4 (d) RECREATIONAL VEHICLE AND COMMERCIAL
5 TRUCK EXEMPTION.—Section 119(a) of title 17, United
6 States Code, is amended by adding at the end the fol-
7 lowing:

8 “(11) SERVICE TO RECREATIONAL VEHICLES
9 AND COMMERCIAL TRUCKS.—

10 “(A) EXEMPTION.—

11 “(i) IN GENERAL.—For purposes of
12 this subsection, and subject to clauses (ii)
13 and (iii), the term ‘unserved household’
14 shall include—

15 “(I) recreational vehicles as de-
16 fined in regulations of the Secretary
17 of Housing and Urban Development
18 under section 3282.8 of title 24 of the
19 Code of Federal Regulations; and

20 “(II) commercial trucks that
21 qualify as commercial motor vehicles
22 under regulations of the Secretary of
23 Transportation under section 383.5 of
24 title 49 of the Code of Federal Regu-
25 lations.

1 “(ii) LIMITATION.—Clause (i) shall
2 apply only to a recreational vehicle or com-
3 mercial truck if any satellite carrier that
4 proposes to make a secondary transmission
5 of a network station to the operator of
6 such a recreational vehicle or commercial
7 truck complies with the documentation re-
8 quirements under subparagraphs (B) and
9 (C).

10 “(iii) EXCLUSION.—For purposes of
11 this subparagraph, the terms ‘recreational
12 vehicle’ and ‘commercial truck’ shall not
13 include any fixed dwelling, whether a mo-
14 bile home or otherwise.

15 “(B) DOCUMENTATION REQUIREMENTS.—
16 A recreational vehicle or commercial truck shall
17 be deemed to be an unserved household begin-
18 ning 10 days after the relevant satellite carrier
19 provides to the network that owns or is affili-
20 ated with the network station that will be sec-
21 ondarily transmitted to the recreational vehicle
22 or commercial truck the following documents:

23 “(i) DECLARATION.—A signed dec-
24 laration by the operator of the recreational
25 vehicle or commercial truck that the sat-

1 elite dish is permanently attached to the
2 recreational vehicle or commercial truck,
3 and will not be used to receive satellite
4 programming at any fixed dwelling.

5 “(ii) REGISTRATION.—In the case of a
6 recreational vehicle, a copy of the current
7 State vehicle registration for the rec-
8 reational vehicle.

9 “(iii) REGISTRATION AND LICENSE.—
10 In the case of a commercial truck, a copy
11 of—

12 “(I) the current State vehicle
13 registration for the truck; and

14 “(II) a copy of a valid, current
15 commercial driver’s license, as defined
16 in regulations of the Secretary of
17 Transportation under section 383 of
18 title 49 of the Code of Federal Regu-
19 lations, issued to the operator.

20 “(C) UPDATED DOCUMENTATION RE-
21 QUIREMENTS.—If a satellite carrier wishes to
22 continue to make secondary transmissions to a
23 recreational vehicle or commercial truck for
24 more than a 2-year period, that carrier shall
25 provide each network, upon request, with up-

1 dated documentation in the form described
2 under subparagraph (B) during the 90 days be-
3 fore expiration of that 2-year period.”.

4 (e) CONFORMING AMENDMENT.—Section 119(d)(11)
5 of title 17, United States Code, is amended to read as
6 follows:

7 “(11) LOCAL MARKET.—The term ‘local mar-
8 ket’ has the meaning given such term under section
9 122(j).”.

10 **SEC. 1006. PUBLIC BROADCASTING SERVICE SATELLITE**
11 **FEED.**

12 (a) SECONDARY TRANSMISSIONS.—Section 119(a)(1)
13 of title 17, United States Code, is amended—

14 (1) by striking the paragraph heading and in-
15 serting “(1) SUPERSTATIONS AND PBS SATELLITE
16 FEED.—”;

17 (2) by inserting “or by the Public Broadcasting
18 Service satellite feed” after “superstation”; and

19 (3) by adding at the end the following: “In the
20 case of the Public Broadcasting Service satellite
21 feed, the statutory license shall be effective until
22 January 1, 2002.”.

23 (b) ROYALTY FEES.—Section 119(b)(1)(B)(iii) of
24 title 17, United States Code, is amended by inserting “or

1 the Public Broadcasting Service satellite feed” after “net-
2 work station”.

3 (c) DEFINITIONS.—Section 119(d) of title 17, United
4 States Code, is amended—

5 (1) by amending paragraph (9) to read as fol-
6 lows:

7 “(9) SUPERSTATION.—The term
8 ‘superstation’—

9 “(A) means a television broadcast station,
10 other than a network station, licensed by the
11 Federal Communications Commission that is
12 secondarily transmitted by a satellite carrier;
13 and

14 “(B) except for purposes of computing the
15 royalty fee, includes the Public Broadcasting
16 Service satellite feed.”; and

17 (2) by adding at the end the following:

18 “(12) PUBLIC BROADCASTING SERVICE SAT-
19 ELLITE FEED.—The term ‘Public Broadcasting
20 Service satellite feed’ means the national satellite
21 feed distributed and designated for purposes of this
22 section by the Public Broadcasting Service con-
23 sisting of educational and informational program-
24 ming intended for private home viewing, to which

1 the Public Broadcasting Service holds national ter-
2 restrial broadcast rights.”.

3 **SEC. 1007. APPLICATION OF FEDERAL COMMUNICATIONS**
4 **COMMISSION REGULATIONS.**

5 Section 119(a) of title 17, United States Code, is
6 amended—

7 (1) in paragraph (1), by inserting “with regard
8 to secondary transmissions the satellite carrier is in
9 compliance with the rules, regulations, or authoriza-
10 tions of the Federal Communications Commission
11 governing the carriage of television broadcast station
12 signals,” after “satellite carrier to the public for pri-
13 vate home viewing,”;

14 (2) in paragraph (2), by inserting “with regard
15 to secondary transmissions the satellite carrier is in
16 compliance with the rules, regulations, or authoriza-
17 tions of the Federal Communications Commission
18 governing the carriage of television broadcast station
19 signals,” after “satellite carrier to the public for pri-
20 vate home viewing,”; and

21 (3) by adding at the end of such subsection (as
22 amended by section 1005(e) of this Act) the fol-
23 lowing new paragraph:

24 “(12) STATUTORY LICENSE CONTINGENT ON
25 COMPLIANCE WITH FCC RULES AND REMEDIAL

1 STEPS.—Notwithstanding any other provision of this
 2 section, the willful or repeated secondary trans-
 3 mission to the public by a satellite carrier of a pri-
 4 mary transmission embodying a performance or dis-
 5 play of a work made by a broadcast station licensed
 6 by the Federal Communications Commission is ac-
 7 tionable as an act of infringement under section
 8 501, and is fully subject to the remedies provided by
 9 sections 502 through 506 and 509, if, at the time
 10 of such transmission, the satellite carrier is not in
 11 compliance with the rules, regulations, and author-
 12 izations of the Federal Communications Commission
 13 concerning the carriage of television broadcast sta-
 14 tion signals.”.

15 **SEC. 1008. RULES FOR SATELLITE CARRIERS RETRANSMIT-**
 16 **TING TELEVISION BROADCAST SIGNALS.**

17 (a) AMENDMENTS TO COMMUNICATIONS ACT OF
 18 1934.—Title III of the Communications Act of 1934 is
 19 amended by inserting after section 337 (47 U.S.C. 337)
 20 the following new sections:

21 **“SEC. 338. CARRIAGE OF LOCAL TELEVISION SIGNALS BY**
 22 **SATELLITE CARRIERS.**

23 “(a) CARRIAGE OBLIGATIONS.—

24 “(1) IN GENERAL.—Subject to the limitations
 25 of paragraph (2), each satellite carrier providing,

1 under section 122 of title 17, United States Code,
2 secondary transmissions to subscribers located with-
3 in the local market of a television broadcast station
4 of a primary transmission made by that station shall
5 carry upon request the signals of all television
6 broadcast stations located within that local market,
7 subject to section 325(b).

8 “(2) REMEDIES FOR FAILURE TO CARRY.—The
9 remedies for any failure to meet the obligations
10 under this subsection shall be available exclusively
11 under section 501(f) of title 17, United States Code.

12 “(3) EFFECTIVE DATE.—No satellite carrier
13 shall be required to carry local television broadcast
14 stations under paragraph (1) until January 1, 2002.

15 “(b) GOOD SIGNAL REQUIRED.—

16 “(1) COSTS.—A television broadcast station as-
17 serting its right to carriage under subsection (a)
18 shall be required to bear the costs associated with
19 delivering a good quality signal to the designated
20 local receive facility of the satellite carrier or to an-
21 other facility that is acceptable to at least one-half
22 the stations asserting the right to carriage in the
23 local market.

1 “(2) REGULATIONS.—The regulations issued
2 under subsection (g) shall set forth the obligations
3 necessary to carry out this subsection.

4 “(c) DUPLICATION NOT REQUIRED.—

5 “(1) COMMERCIAL STATIONS.—Notwithstanding
6 subsection (a), a satellite carrier shall not be re-
7 quired to carry upon request the signal of any local
8 commercial television broadcast station that substan-
9 tially duplicates the signal of another local commer-
10 cial television broadcast station which is secondarily
11 transmitted by the satellite carrier within the same
12 local market, or to carry upon request the signals of
13 more than one local commercial television broadcast
14 station in a single local market that is affiliated with
15 a particular television network unless such stations
16 are licensed to communities in different States.

17 “(2) NONCOMMERCIAL STATIONS.—The Com-
18 mission shall prescribe regulations limiting the car-
19 riage requirements under subsection (a) of satellite
20 carriers with respect to the carriage of multiple local
21 noncommercial television broadcast stations. To the
22 extent possible, such regulations shall provide the
23 same degree of carriage by satellite carriers of such
24 multiple stations as is provided by cable systems
25 under section 615.

1 “(d) CHANNEL POSITIONING.—No satellite carrier
2 shall be required to provide the signal of a local television
3 broadcast station to subscribers in that station’s local
4 market on any particular channel number or to provide
5 the signals in any particular order, except that the satellite
6 carrier shall retransmit the signal of the local television
7 broadcast stations to subscribers in the stations’ local
8 market on contiguous channels and provide access to such
9 station’s signals at a nondiscriminatory price and in a
10 nondiscriminatory manner on any navigational device, on-
11 screen program guide, or menu.

12 “(e) COMPENSATION FOR CARRIAGE.—A satellite
13 carrier shall not accept or request monetary payment or
14 other valuable consideration in exchange either for car-
15 riage of local television broadcast stations in fulfillment
16 of the requirements of this section or for channel posi-
17 tioning rights provided to such stations under this section,
18 except that any such station may be required to bear the
19 costs associated with delivering a good quality signal to
20 the local receive facility of the satellite carrier.

21 “(f) REMEDIES.—

22 “(1) COMPLAINTS BY BROADCAST STATIONS.—
23 Whenever a local television broadcast station believes
24 that a satellite carrier has failed to meet its obliga-
25 tions under subsections (b) through (e) of this sec-

1 tion, such station shall notify the carrier, in writing,
2 of the alleged failure and identify its reasons for be-
3 lieving that the satellite carrier failed to comply with
4 such obligations. The satellite carrier shall, within
5 30 days after such written notification, respond in
6 writing to such notification and comply with such
7 obligations or state its reasons for believing that it
8 is in compliance with such obligations. A local tele-
9 vision broadcast station that disputes a response by
10 a satellite carrier that it is in compliance with such
11 obligations may obtain review of such denial or re-
12 sponse by filing a complaint with the Commission.
13 Such complaint shall allege the manner in which
14 such satellite carrier has failed to meet its obliga-
15 tions and the basis for such allegations.

16 “(2) OPPORTUNITY TO RESPOND.—The Com-
17 mission shall afford the satellite carrier against
18 which a complaint is filed under paragraph (1) an
19 opportunity to present data and arguments to estab-
20 lish that there has been no failure to meet its obliga-
21 tions under this section.

22 “(3) REMEDIAL ACTIONS; DISMISSAL.—Within
23 120 days after the date a complaint is filed under
24 paragraph (1), the Commission shall determine
25 whether the satellite carrier has met its obligations

1 under subsections (b) through (e). If the Commis-
2 sion determines that the satellite carrier has failed
3 to meet such obligations, the Commission shall order
4 the satellite carrier to take appropriate remedial ac-
5 tion. If the Commission determines that the satellite
6 carrier has fully met the requirements of such sub-
7 sections, the Commission shall dismiss the com-
8 plaint.

9 “(g) REGULATIONS BY COMMISSION.—Within 1 year
10 after the date of the enactment of this section, the Com-
11 mission shall issue regulations implementing this section
12 following a rulemaking proceeding. The regulations pre-
13 scribed under this section shall include requirements on
14 satellite carriers that are comparable to the requirements
15 on cable operators under sections 614(b)(3) and (4) and
16 615(g)(1) and (2).

17 “(h) DEFINITIONS.—As used in this section:

18 “(1) DISTRIBUTOR.—The term ‘distributor’
19 means an entity which contracts to distribute sec-
20 ondary transmissions from a satellite carrier and, ei-
21 ther as a single channel or in a package with other
22 programming, provides the secondary transmission
23 either directly to individual subscribers or indirectly
24 through other program distribution entities.

1 “(2) LOCAL RECEIVE FACILITY.—The term
2 ‘local receive facility’ means the reception point in
3 each local market which a satellite carrier designates
4 for delivery of the signal of the station for purposes
5 of retransmission.

6 “(3) LOCAL MARKET.—The term ‘local market’
7 has the meaning given that term under section
8 122(j) of title 17, United States Code.

9 “(4) SATELLITE CARRIER.—The term ‘satellite
10 carrier’ has the meaning given such term under sec-
11 tion 119(d) of title 17, United States Code.

12 “(5) SECONDARY TRANSMISSION.—The term
13 ‘secondary transmission’ has the meaning given such
14 term in section 119(d) of title 17, United States
15 Code.

16 “(6) SUBSCRIBER.—The term ‘subscriber’ has
17 the meaning given that term under section 122(j) of
18 title 17, United States Code.

19 “(7) TELEVISION BROADCAST STATION.—The
20 term ‘television broadcast station’ has the meaning
21 given such term in section 325(b)(7).

22 **“SEC. 339. CARRIAGE OF DISTANT TELEVISION STATIONS**
23 **BY SATELLITE CARRIERS.**

24 “(a) PROVISIONS RELATING TO CARRIAGE OF DIS-
25 TANT SIGNALS.—

1 “(1) CARRIAGE PERMITTED.—

2 “(A) IN GENERAL.—Subject to section 119
3 of title 17, United States Code, any satellite
4 carrier shall be permitted to provide the signals
5 of no more than two network stations in a sin-
6 gle day for each television network to any
7 household not located within the local markets
8 of those network stations.

9 “(B) ADDITIONAL SERVICE.—In addition
10 to signals provided under subparagraph (A),
11 any satellite carrier may also provide service
12 under the statutory license of section 122 of
13 title 17, United States Code, to the local mar-
14 ket within which such household is located. The
15 service provided under section 122 of such title
16 may be in addition to the two signals provided
17 under section 119 of such title.

18 “(2) PENALTY FOR VIOLATION.—Any satellite
19 carrier that knowingly and willfully provides the sig-
20 nals of television stations to subscribers in violation
21 of this subsection shall be liable for a forfeiture pen-
22 alty under section 503 in the amount of \$50,000 for
23 each violation or each day of a continuing violation.

1 “(b) EXTENSION OF NETWORK NONDUPLICATION,
2 SYNDICATED EXCLUSIVITY, AND SPORTS BLACKOUT TO
3 SATELLITE RETRANSMISSION.—

4 “(1) EXTENSION OF PROTECTIONS.—Within 45
5 days after the date of the enactment of the Satellite
6 Home Viewer Improvement Act of 1999, the Com-
7 mission shall commence a single rulemaking pro-
8 ceeding to establish regulations that—

9 “(A) apply network nonduplication protec-
10 tion (47 CFR 76.92) syndicated exclusivity pro-
11 tection (47 CFR 76.151), and sports blackout
12 protection (47 CFR 76.67) to the retrans-
13 mission of the signals of nationally distributed
14 superstations by satellite carriers to subscribers;
15 and

16 “(B) to the extent technically feasible and
17 not economically prohibitive, apply sports black-
18 out protection (47 CFR 76.67) to the retrans-
19 mission of the signals of network stations by
20 satellite carriers to subscribers.

21 “(2) DEADLINE FOR ACTION.—The Commission
22 shall complete all actions necessary to prescribe reg-
23 ulations required by this section so that the regula-
24 tions shall become effective within 1 year after such
25 date of enactment.

1 “(c) ELIGIBILITY FOR RETRANSMISSION.—

2 “(1) SIGNAL STANDARD FOR SATELLITE CAR-
3 RIER PURPOSES.—For the purposes of identifying an
4 unserved household under section 119(d)(10) of title
5 17, United States Code, within 1 year after the date
6 of the enactment of the Satellite Home Viewer Im-
7 provement Act of 1999, the Commission shall con-
8 clude an inquiry to evaluate all possible standards
9 and factors for determining eligibility for retrans-
10 missions of the signals of network stations, and, if
11 appropriate—

12 “(A) recommend modifications to the
13 Grade B intensity standard for analog signals
14 set forth in section 73.683(a) of its regulations
15 (47 CFR 73.683(a)), or recommend alternative
16 standards or factors for purposes of deter-
17 mining such eligibility; and

18 “(B) make a further recommendation re-
19 lating to an appropriate standard for digital
20 signals.

21 “(2) WAIVERS.—A subscriber who is denied the
22 retransmission of a signal of a network station
23 under section 119 of title 17, United States Code,
24 may request a waiver from such denial by submit-
25 ting a request, through such subscriber’s satellite

1 carrier, to the network station asserting that the re-
2 transmission is prohibited. The network station shall
3 accept or reject a subscriber's request for a waiver
4 within 30 days after receipt of the request. The sub-
5 scriber shall be permitted to receive such retrans-
6 mission under section 119(d)(10)(B) of title 17,
7 United States Code, if such station agrees to the
8 waiver request and files with the satellite carrier a
9 written waiver with respect to that subscriber allow-
10 ing the subscriber to receive such retransmission. If
11 a television network station fails to accept or reject
12 a subscriber's request for a waiver within the 30-day
13 period after receipt of the request, that station shall
14 be deemed to agree to the waiver request and have
15 filed such written waiver.

16 “(3) ESTABLISHMENT OF IMPROVED PRE-
17 DICTIVE MODEL REQUIRED.—Within 180 days after
18 the date of the enactment of the Satellite Home
19 Viewer Improvement Act of 1999, the Commission
20 shall take all actions necessary, including any recon-
21 sideration, to develop and prescribe by rule a point-
22 to-point predictive model for reliably and presump-
23 tively determining the ability of individual locations
24 to receive signals in accordance with the signal in-
25 tensity standard in effect under section

1 119(d)(10)(A) of title 17, United States Code. In
2 prescribing such model, the Commission shall rely on
3 the Individual Location Longley-Rice model set forth
4 by the Federal Communications Commission in
5 Docket No. 98–201 and ensure that such model
6 takes into account terrain, building structures, and
7 other land cover variations. The Commission shall
8 establish procedures for the continued refinement in
9 the application of the model by the use of additional
10 data as it becomes available.

11 “(4) OBJECTIVE VERIFICATION.—

12 “(A) IN GENERAL.—If a subscriber’s re-
13 quest for a waiver under paragraph (2) is re-
14 jected and the subscriber submits to the sub-
15 scriber’s satellite carrier a request for a test
16 verifying the subscriber’s inability to receive a
17 signal that meets the signal intensity standard
18 in effect under section 119(d)(10)(A) of title
19 17, United States Code, the satellite carrier and
20 the network station or stations asserting that
21 the retransmission is prohibited with respect to
22 that subscriber shall select a qualified and inde-
23 pendent person to conduct a test in accordance
24 with section 73.686(d) of its regulations (47
25 CFR 73.686(d)), or any successor regulation.

1 Such test shall be conducted within 30 days
2 after the date the subscriber submits a request
3 for the test. If the written findings and conclu-
4 sions of a test conducted in accordance with
5 such section (or any successor regulation) dem-
6 onstrate that the subscriber does not receive a
7 signal that meets or exceeds the signal intensity
8 standard in effect under section 119(d)(10)(A)
9 of title 17, United States Code, the subscriber
10 shall not be denied the retransmission of a sig-
11 nal of a network station under section 119 of
12 title 17, United States Code.

13 “(B) DESIGNATION OF TESTER AND ALLO-
14 CATION OF COSTS.—If the satellite carrier and
15 the network station or stations asserting that
16 the retransmission is prohibited are unable to
17 agree on such a person to conduct the test, the
18 person shall be designated by an independent
19 and neutral entity designated by the Commis-
20 sion by rule. Unless the satellite carrier and the
21 network station or stations otherwise agree, the
22 costs of conducting the test under this para-
23 graph shall be borne by the satellite carrier, if
24 the station’s signal meets or exceeds the signal
25 intensity standard in effect under section

1 119(d)(10)(A) of title 17, United States Code,
2 or by the network station, if its signal fails to
3 meet or exceed such standard.

4 “(C) AVOIDANCE OF UNDUE BURDEN.—
5 Commission regulations prescribed under this
6 paragraph shall seek to avoid any undue burden
7 on any party.

8 “(d) DEFINITIONS.—For the purposes of this section:

9 “(1) LOCAL MARKET.—The term ‘local market’
10 has the meaning given that term under section
11 122(j) of title 17, United States Code.

12 “(2) NATIONALLY DISTRIBUTED SUPERSTA-
13 TION.—The term ‘nationally distributed supersta-
14 tion’ means a television broadcast station, licensed
15 by the Commission, that—

16 “(A) is not owned or operated by or affili-
17 ated with a television network that, as of Janu-
18 ary 1, 1995, offered interconnected program
19 service on a regular basis for 15 or more hours
20 per week to at least 25 affiliated television li-
21 censees in 10 or more States;

22 “(B) on May 1, 1991, was retransmitted
23 by a satellite carrier and was not a network sta-
24 tion at that time; and

1 “(C) was, as of July 1, 1998, retrans-
2 mitted by a satellite carrier under the statutory
3 license of section 119 of title 17, United States
4 Code.

5 “(3) NETWORK STATION.—The term ‘network
6 station’ has the meaning given such term under sec-
7 tion 119(d) of title 17, United States Code.

8 “(4) SATELLITE CARRIER.—The term ‘satellite
9 carrier’ has the meaning given such term under sec-
10 tion 119(d) of title 17, United States Code.

11 “(5) TELEVISION NETWORK.—The term ‘tele-
12 vision network’ means a television network in the
13 United States which offers an interconnected pro-
14 gram service on a regular basis for 15 or more hours
15 per week to at least 25 affiliated broadcast stations
16 in 10 or more States.”.

17 (b) NETWORK STATION DEFINITION.—Section
18 119(d)(2) of title 17, United States Code, is amended—

19 (1) in subparagraph (B) by striking the period
20 and inserting a semicolon; and

21 (2) by adding after subparagraph (B) the fol-
22 lowing:

23 “except that the term does not include the signal of the
24 Alaska Rural Communications Service, or any successor
25 entity to that service.”.

1 **SEC. 1009. RETRANSMISSION CONSENT.**

2 (a) IN GENERAL.—Section 325(b) of the Commu-
3 nications Act of 1934 (47 U.S.C. 325(b)) is amended—

4 (1) by amending paragraphs (1) and (2) to
5 read as follows:

6 “(b)(1) No cable system or other multichannel video
7 programming distributor shall retransmit the signal of a
8 broadcasting station, or any part thereof, except—

9 “(A) with the express authority of the origi-
10 nating station;

11 “(B) under section 614, in the case of a station
12 electing, in accordance with this subsection, to assert
13 the right to carriage under such section; or

14 “(C) under section 338, in the case of a station
15 electing, in accordance with this subsection, to assert
16 the right to carriage under such section.

17 “(2) This subsection shall not apply—

18 “(A) to retransmission of the signal of a non-
19 commercial television broadcast station;

20 “(B) to retransmission of the signal of a tele-
21 vision broadcast station outside the station’s local
22 market by a satellite carrier directly to its sub-
23 scribers, if—

24 “(i) such station was a superstation on
25 May 1, 1991;

1 “(ii) as of July 1, 1998, such station was
2 retransmitted by a satellite carrier under the
3 statutory license of section 119 of title 17,
4 United States Code; and

5 “(iii) the satellite carrier complies with any
6 network nonduplication, syndicated exclusivity,
7 and sports blackout rules adopted by the Com-
8 mission under section 339(b) of this Act;

9 “(C) until December 31, 2004, to retrans-
10 mission of the signals of network stations directly to
11 a home satellite antenna, if the subscriber receiving
12 the signal—

13 “(i) is located in an area outside the local
14 market of such stations; and

15 “(ii) resides in an unserved household;

16 “(D) to retransmission by a cable operator or
17 other multichannel video provider, other than a sat-
18 ellite carrier, of the signal of a television broadcast
19 station outside the station’s local market if such sig-
20 nal was obtained from a satellite carrier and—

21 “(i) the originating station was a supersta-
22 tion on May 1, 1991; and

23 “(ii) as of July 1, 1998, such station was
24 retransmitted by a satellite carrier under the

1 statutory license of section 119 of title 17,
2 United States Code; or

3 “(E) during the 6-month period beginning on
4 the date of the enactment of the Satellite Home
5 Viewer Improvement Act of 1999, to the retrans-
6 mission of the signal of a television broadcast station
7 within the station’s local market by a satellite car-
8 rier directly to its subscribers under the statutory li-
9 cense of section 122 of title 17, United States Code.
10 For purposes of this paragraph, the terms ‘satellite car-
11 rier’ and ‘superstation’ have the meanings given those
12 terms, respectively, in section 119(d) of title 17, United
13 States Code, as in effect on the date of the enactment
14 of the Cable Television Consumer Protection and Competi-
15 tion Act of 1992, the term ‘unserved household’ has the
16 meaning given that term under section 119(d) of such
17 title, and the term ‘local market’ has the meaning given
18 that term in section 122(j) of such title.”;

19 (2) by adding at the end of paragraph (3) the
20 following new subparagraph:

21 “(C) Within 45 days after the date of the enactment
22 of the Satellite Home Viewer Improvement Act of 1999,
23 the Commission shall commence a rulemaking proceeding
24 to revise the regulations governing the exercise by tele-
25 vision broadcast stations of the right to grant retrans-

1 mission consent under this subsection, and such other reg-
2 ulations as are necessary to administer the limitations
3 contained in paragraph (2). The Commission shall com-
4 plete all actions necessary to prescribe such regulations
5 within 1 year after such date of enactment. Such regula-
6 tions shall—

7 “(i) establish election time periods that cor-
8 respond with those regulations adopted under sub-
9 paragraph (B) of this paragraph; and

10 “(ii) until January 1, 2006, prohibit a television
11 broadcast station that provides retransmission con-
12 sent from engaging in exclusive contracts for car-
13 riage or failing to negotiate in good faith, and it
14 shall not be a failure to negotiate in good faith if the
15 television broadcast station enters into retrans-
16 mission consent agreements containing different
17 terms and conditions, including price terms, with
18 different multichannel video programming distribu-
19 tors if such different terms and conditions are based
20 on competitive marketplace considerations.”;

21 (3) in paragraph (4), by adding at the end the
22 following new sentence: “If an originating television
23 station elects under paragraph (3)(C) to exercise its
24 right to grant retransmission consent under this
25 subsection with respect to a satellite carrier, section

1 338 shall not apply to the carriage of the signal of
2 such station by such satellite carrier.”;

3 (4) in paragraph (5), by striking “614 or 615”
4 and inserting “338, 614, or 615”; and

5 (5) by adding at the end the following new
6 paragraph:

7 “(7) For purposes of this subsection, the
8 term—

9 “(A) ‘network station’ has the meaning
10 given such term under section 119(d) of title
11 17, United States Code; and

12 “(B) ‘television broadcast station’ means
13 an over-the-air commercial or noncommercial
14 television broadcast station licensed by the
15 Commission under subpart E of part 73 of title
16 47, Code of Federal Regulations, except that
17 such term does not include a low-power or
18 translator television station.”.

19 (b) ENFORCEMENT PROVISIONS FOR CONSENT FOR
20 RETRANSMISSIONS.—Section 325 of the Communications
21 Act of 1934 (47 U.S.C. 325) is amended by adding at
22 the end the following new subsection:

23 “(e) ENFORCEMENT PROCEEDINGS AGAINST SAT-
24 ELLITE CARRIERS CONCERNING RETRANSMISSIONS OF

1 TELEVISION BROADCAST STATIONS IN THE RESPECTIVE
2 LOCAL MARKETS OF SUCH CARRIERS.—

3 “(1) COMPLAINTS BY TELEVISION BROADCAST
4 STATIONS.—If after the expiration of the 6-month
5 period described under subsection (b)(2)(E) a tele-
6 vision broadcast station believes that a satellite car-
7 rier has retransmitted its signal to any person in the
8 local market of such station in violation of sub-
9 section (b)(1), the station may file with the Commis-
10 sion a complaint providing—

11 “(A) the name, address, and call letters of
12 the station;

13 “(B) the name and address of the satellite
14 carrier;

15 “(C) the dates on which the alleged re-
16 transmission occurred;

17 “(D) the street address of at least one per-
18 son in the local market of the station to whom
19 the alleged retransmission was made;

20 “(E) a statement that the retransmission
21 was not expressly authorized by the television
22 broadcast station; and

23 “(F) the name and address of counsel for
24 the station.

1 “(2) SERVICE OF COMPLAINTS ON SATELLITE
2 CARRIERS.—For purposes of any proceeding under
3 this subsection, any satellite carrier that retransmits
4 the signal of any broadcast station shall be deemed
5 to designate the Secretary of the Commission as its
6 agent for service of process. A television broadcast
7 station may serve a satellite carrier with a complaint
8 concerning an alleged violation of subsection (b)(1)
9 through retransmission of a station within the local
10 market of such station by filing the original and two
11 copies of the complaint with the Secretary of the
12 Commission and serving a copy of the complaint on
13 the satellite carrier by means of two commonly used
14 overnight delivery services, each addressed to the
15 chief executive officer of the satellite carrier at its
16 principal place of business, and each marked ‘UR-
17 GENT LITIGATION MATTER’ on the outer pack-
18 aging. Service shall be deemed complete one business
19 day after a copy of the complaint is provided to the
20 delivery services for overnight delivery. On receipt of
21 a complaint filed by a television broadcast station
22 under this subsection, the Secretary of the Commis-
23 sion shall send the original complaint by United
24 States mail, postage prepaid, receipt requested, ad-

1 dressed to the chief executive officer of the satellite
2 carrier at its principal place of business.

3 “(3) ANSWERS BY SATELLITE CARRIERS.—

4 Within five business days after the date of service,
5 the satellite carrier shall file an answer with the
6 Commission and shall serve the answer by a com-
7 monly used overnight delivery service and by United
8 States mail, on the counsel designated in the com-
9 plaint at the address listed for such counsel in the
10 complaint.

11 “(4) DEFENSES.—

12 “(A) EXCLUSIVE DEFENSES.—The de-
13 fenses under this paragraph are the exclusive
14 defenses available to a satellite carrier against
15 which a complaint under this subsection is filed.

16 “(B) DEFENSES.—The defenses referred
17 to under subparagraph (A) are the defenses
18 that—

19 “(i) the satellite carrier did not re-
20 transmit the television broadcast station to
21 any person in the local market of the sta-
22 tion during the time period specified in the
23 complaint;

24 “(ii) the television broadcast station
25 had, in a writing signed by an officer of

1 the television broadcast station, expressly
2 authorized the retransmission of the sta-
3 tion by the satellite carrier to each person
4 in the local market of the television broad-
5 cast station to which the satellite carrier
6 made such retransmissions for the entire
7 time period during which it is alleged that
8 a violation of subsection (b)(1) has oc-
9 curred;

10 “(iii) the retransmission was made
11 after January 1, 2002, and the television
12 broadcast station had elected to assert the
13 right to carriage under section 338 as
14 against the satellite carrier for the relevant
15 period; or

16 “(iv) the station being retransmitted
17 is a noncommercial television broadcast
18 station.

19 “(5) COUNTING OF VIOLATIONS.—The retrans-
20 mission without consent of a particular television
21 broadcast station on a particular day to one or more
22 persons in the local market of the station shall be
23 considered a separate violation of subsection (b)(1).

24 “(6) BURDEN OF PROOF.—With respect to each
25 alleged violation, the burden of proof shall be on a

1 television broadcast station to establish that the sat-
2 ellite carrier retransmitted the station to at least one
3 person in the local market of the station on the day
4 in question. The burden of proof shall be on the sat-
5 ellite carrier with respect to all defenses other than
6 the defense under paragraph (4)(B)(i).

7 “(7) PROCEDURES.—

8 “(A) REGULATIONS.—Within 60 days
9 after the date of the enactment of the Satellite
10 Home Viewer Improvement Act of 1999, the
11 Commission shall issue procedural regulations
12 implementing this subsection which shall super-
13 sede procedures under section 312.

14 “(B) DETERMINATIONS.—

15 “(i) IN GENERAL.—Within 45 days
16 after the filing of a complaint, the Com-
17 mission shall issue a final determination in
18 any proceeding brought under this sub-
19 section. The Commission’s final determina-
20 tion shall specify the number of violations
21 committed by the satellite carrier. The
22 Commission shall hear witnesses only if it
23 clearly appears, based on written filings by
24 the parties, that there is a genuine dispute
25 about material facts. Except as provided in

1 the preceding sentence, the Commission
2 may issue a final ruling based on written
3 filings by the parties.

4 “(ii) DISCOVERY.—The Commission
5 may direct the parties to exchange perti-
6 nent documents, and if necessary to take
7 prehearing depositions, on such schedule as
8 the Commission may approve, but only if
9 the Commission first determines that such
10 discovery is necessary to resolve a genuine
11 dispute about material facts, consistent
12 with the obligation to make a final deter-
13 mination within 45 days.

14 “(8) RELIEF.—If the Commission determines
15 that a satellite carrier has retransmitted the tele-
16 vision broadcast station to at least one person in the
17 local market of such station and has failed to meet
18 its burden of proving one of the defenses under
19 paragraph (4) with respect to such retransmission,
20 the Commission shall be required to—

21 “(A) make a finding that the satellite car-
22 rier violated subsection (b)(1) with respect to
23 that station; and

24 “(B) issue an order, within 45 days after
25 the filing of the complaint, containing—

1 “(i) a cease-and-desist order directing
2 the satellite carrier immediately to stop
3 making any further retransmissions of the
4 television broadcast station to any person
5 within the local market of such station
6 until such time as the Commission deter-
7 mines that the satellite carrier is in compli-
8 ance with subsection (b)(1) with respect to
9 such station;

10 “(ii) if the satellite carrier is found to
11 have violated subsection (b)(1) with respect
12 to more than two television broadcast sta-
13 tions, a cease-and-desist order directing
14 the satellite carrier to stop making any
15 further retransmission of any television
16 broadcast station to any person within the
17 local market of such station, until such
18 time as the Commission, after giving notice
19 to the station, that the satellite carrier is
20 in compliance with subsection (b)(1) with
21 respect to such stations; and

22 “(iii) an award to the complainant of
23 that complainant’s costs and reasonable at-
24 torney’s fees.

1 “(9) COURT PROCEEDINGS ON ENFORCEMENT
2 OF COMMISSION ORDER.—

3 “(A) IN GENERAL.—On entry by the Com-
4 mission of a final order granting relief under
5 this subsection—

6 “(i) a television broadcast station may
7 apply within 30 days after such entry to
8 the United States District Court for the
9 Eastern District of Virginia for a final
10 judgment enforcing all relief granted by
11 the Commission; and

12 “(ii) the satellite carrier may apply
13 within 30 days after such entry to the
14 United States District Court for the East-
15 ern District of Virginia for a judgment re-
16 versing the Commission’s order.

17 “(B) APPEAL.—The procedure for an ap-
18 peal under this paragraph by the satellite car-
19 rier shall supersede any other appeal rights
20 under Federal or State law. A United States
21 district court shall be deemed to have personal
22 jurisdiction over the satellite carrier if the car-
23 rier, or a company under common control with
24 the satellite carrier, has delivered television pro-
25 gramming by satellite to more than 30 cus-

1 tomers in that district during the preceding 4-
2 year period. If the United States District Court
3 for the Eastern District of Virginia does not
4 have personal jurisdiction over the satellite car-
5 rier, an enforcement action or appeal shall be
6 brought in the United States District Court for
7 the District of Columbia, which may find per-
8 sonal jurisdiction based on the satellite carrier's
9 ownership of licenses issued by the Commission.
10 An application by a television broadcast station
11 for an order enforcing any cease-and-desist re-
12 lief granted by the Commission shall be resolved
13 on a highly expedited schedule. No discovery
14 may be conducted by the parties in any such
15 proceeding. The district court shall enforce the
16 Commission order unless the Commission
17 record reflects manifest error and an abuse of
18 discretion by the Commission.

19 “(10) CIVIL ACTION FOR STATUTORY DAM-
20 AGES.—Within 6 months after issuance of an order
21 by the Commission under this subsection, a tele-
22 vision broadcast station may file a civil action in any
23 United States district court that has personal juris-
24 diction over the satellite carrier for an award of stat-
25 utory damages for any violation that the Commis-

1 sion has determined to have been committed by a
2 satellite carrier under this subsection. Such action
3 shall not be subject to transfer under section
4 1404(a) of title 28, United States Code. On finding
5 that the satellite carrier has committed one or more
6 violations of subsection (b), the District Court shall
7 be required to award the television broadcast station
8 statutory damages of \$25,000 per violation, in ac-
9 cordance with paragraph (5), and the costs and at-
10 torney's fees incurred by the station. Such statutory
11 damages shall be awarded only if the television
12 broadcast station has filed a binding stipulation with
13 the court that such station will donate the full
14 amount in excess of \$1,000 of any statutory damage
15 award to the United States Treasury for public pur-
16 poses. Notwithstanding any other provision of law, a
17 station shall incur no tax liability of any kind with
18 respect to any amounts so donated. Discovery may
19 be conducted by the parties in any proceeding under
20 this paragraph only if and to the extent necessary to
21 resolve a genuinely disputed issue of fact concerning
22 one of the defenses under paragraph (4). In any
23 such action, the defenses under paragraph (4) shall
24 be exclusive, and the burden of proof shall be on the
25 satellite carrier with respect to all defenses other

1 than the defense under paragraph (4)(B)(i). A judg-
2 ment under this paragraph may be enforced in any
3 manner permissible under Federal or State law.

4 “(11) APPEALS.—

5 “(A) IN GENERAL.—The nonprevailing
6 party before a United States district court may
7 appeal a decision under this subsection to the
8 United States Court of Appeals with jurisdic-
9 tion over that district court. The Court of Ap-
10 peals shall not issue any stay of the effective-
11 ness of any decision granting relief against a
12 satellite carrier unless the carrier presents clear
13 and convincing evidence that it is highly likely
14 to prevail on appeal and only after posting a
15 bond for the full amount of any monetary
16 award assessed against it and for such further
17 amount as the Court of Appeals may believe ap-
18 propriate.

19 “(B) APPEAL.—If the Commission denies
20 relief in response to a complaint filed by a tele-
21 vision broadcast station under this subsection,
22 the television broadcast station filing the com-
23 plaint may file an appeal with the United
24 States Court of Appeals for the District of Co-
25 lumbia Circuit.

1 “(12) SUNSET.—No complaint or civil action
2 may be filed under this subsection after December
3 31, 2001. This subsection shall continue to apply to
4 any complaint or civil action filed on or before such
5 date.”.

6 **SEC. 1010. SEVERABILITY.**

7 If any provision of section 325(b) of the Communica-
8 tions Act of 1934 (47 U.S.C. 325(b)), or the application
9 of that provision to any person or circumstance, is held
10 by a court of competent jurisdiction to violate any provi-
11 sion of the Constitution of the United States, then the
12 other provisions of that section, and the application of that
13 provision to other persons and circumstances, shall not be
14 affected.

15 **SEC. 1011. TECHNICAL AMENDMENTS.**

16 (a) **TECHNICAL AMENDMENTS RELATING TO CABLE**
17 **SYSTEMS.**—Title 17, United States Code, is amended as
18 follows:

19 (1) Such title is amended by striking “pro-
20 graming” each place it appears and inserting “pro-
21 gramming”.

22 (2) Section 111 is amended by striking “com-
23 pulsory” each place it appears and inserting “statu-
24 tory”.

1 (3) Section 510(b) is amended by striking
2 “compulsory” and inserting “statutory”.

3 (b) TECHNICAL AMENDMENTS RELATING TO PER-
4 FORMANCE OR DISPLAYS OF WORKS.—

5 (1) Section 111 of title 17, United States Code,
6 is amended—

7 (A) in subsection (a), in the matter pre-
8 ceding paragraph (1), by striking “primary
9 transmission embodying a performance or dis-
10 play of a work” and inserting “performance or
11 display of a work embodied in a primary trans-
12 mission”;

13 (B) in subsection (b), in the matter pre-
14 ceding paragraph (1), by striking “primary
15 transmission embodying a performance or dis-
16 play of a work” and inserting “performance or
17 display of a work embodied in a primary trans-
18 mission”; and

19 (C) in subsection (c)—

20 (i) in paragraph (1)—

21 (I) by inserting “a performance
22 or display of a work embodied in”
23 after “by a cable system of”; and

1 (II) by striking “and embodying
2 a performance or display of a work”;
3 and

4 (ii) in paragraphs (3) and (4)—

5 (I) by striking “a primary trans-
6 mission” and inserting “a perform-
7 ance or display of a work embodied in
8 a primary transmission”; and

9 (II) by striking “and embodying
10 a performance or display of a work”.

11 (2) Section 119(a) of title 17, United States
12 Code, is amended—

13 (A) in paragraph (1), by striking “primary
14 transmission made by a superstation and em-
15 bodying a performance or display of a work”
16 and inserting “performance or display of a
17 work embodied in a primary transmission made
18 by a superstation”;

19 (B) in paragraph (2)(A), by striking “pro-
20 gramming” and all that follows through “a
21 work” and inserting “a performance or display
22 of a work embodied in a primary transmission
23 made by a network station”;

24 (C) in paragraph (4)—

1 (i) by inserting “a performance or dis-
2 play of a work embodied in” after “by a
3 satellite carrier of”; and

4 (ii) by striking “and embodying a per-
5 formance or display of a work”; and

6 (D) in paragraph (6)—

7 (i) by inserting “performance or dis-
8 play of a work embodied in” after “by a
9 satellite carrier of”; and

10 (ii) by striking “and embodying a per-
11 formance or display of a work”.

12 (3) Section 501(e) of title 17, United States
13 Code, is amended by striking “primary transmission
14 embodying the performance or display of a work”
15 and inserting “performance or display of a work em-
16 bodied in a primary transmission”.

17 (c) CONFORMING AMENDMENT.—Section
18 119(a)(2)(C) of title 17, United States Code, is amended
19 in the first sentence by striking “currently”.

20 (d) WORK MADE FOR HIRE.—Section 101 of title 17,
21 United States Code, is amended in the definition relating
22 to work for hire in paragraph (2) by inserting “as a sound
23 recording,” after “audiovisual work”.

1 **SEC. 1012. EFFECTIVE DATES.**

2 Sections 1001, 1003, 1005, 1007, 1008, 1009, 1010,
3 and 1011 (and the amendments made by such sections)
4 shall take effect on the date of the enactment of this Act.
5 The amendments made by sections 1002, 1004, and 1006
6 shall be effective as of July 1, 1999.

7 **TITLE II—RURAL LOCAL**
8 **TELEVISION SIGNALS**

9 **SEC. 2001. SHORT TITLE.**

10 This title may be cited as the “Rural Local Broadcast
11 Signal Act”.

12 **SEC. 2002. LOCAL TELEVISION SERVICE IN UNSERVED AND**
13 **UNDERSERVED MARKETS.**

14 (a) **IN GENERAL.**—Not later than 1 year after the
15 date of the enactment of this Act, the Federal Commu-
16 nications Commission (“the Commission”) shall take all
17 actions necessary to make a determination regarding li-
18 censes or other authorizations for facilities that will uti-
19 lize, for delivering local broadcast television station signals
20 to satellite television subscribers in unserved and under-
21 served local television markets, spectrum otherwise allo-
22 cated to commercial use.

23 (b) **RULES.**—

24 (1) **FORM OF BUSINESS.**—To the extent not in-
25 consistent with the Communications Act of 1934
26 and the Commission’s rules, the Commission shall

1 permit applicants under subsection (a) to engage in
2 partnerships, joint ventures, and similar operating
3 arrangements for the purpose of carrying out sub-
4 section (a).

5 (2) HARMFUL INTERFERENCE.—The Commis-
6 sion shall ensure that no facility licensed or author-
7 ized under subsection (a) causes harmful inter-
8 ference to the primary users of that spectrum or to
9 public safety spectrum use.

10 (3) LIMITATION ON COMMISSION.—Except as
11 provided in paragraphs (1) and (2), the Commission
12 may not restrict any entity granted a license or
13 other authorization under subsection (a) from using
14 any reasonable compression, reformatting, or other
15 technology.

16 (c) REPORT.—Not later than January 1, 2001, the
17 Commission shall report to the Agriculture, Appropria-
18 tions, and the Judiciary Committees of the Senate and
19 the House of Representatives, the Senate Committee on
20 Commerce, Science, and Transportation, and the House
21 of Representatives Committee on Commerce, on the extent
22 to which licenses and other authorizations under sub-
23 section (a) have facilitated the delivery of local signals to
24 satellite television subscribers in unserved and under-
25 served local television markets. The report shall include—

1 (1) an analysis of the extent to which local sig-
2 nals are being provided by direct-to-home satellite
3 television providers and by other multichannel video
4 program distributors;

5 (2) an enumeration of the technical, economic,
6 and other impediments each type of multichannel
7 video programming distributor has encountered; and

8 (3) recommendations for specific measures to
9 facilitate the provision of local signals to subscribers
10 in unserved and underserved markets by direct-to-
11 home satellite television providers and by other dis-
12 tributors of multichannel video programming service.

13 **TITLE III—TRADEMARK** 14 **CYBERPIRACY PREVENTION**

15 **SEC. 3001. SHORT TITLE; REFERENCES.**

16 (a) **SHORT TITLE.**—This title may be cited as the
17 “Anticybersquatting Consumer Protection Act”.

18 (b) **REFERENCES TO THE TRADEMARK ACT OF**
19 1946.—Any reference in this title to the Trademark Act
20 of 1946 shall be a reference to the Act entitled “An Act
21 to provide for the registration and protection of trade-
22 marks used in commerce, to carry out the provisions of
23 certain international conventions, and for other purposes”,
24 approved July 5, 1946 (15 U.S.C. 1051 et seq.).

1 **SEC. 3002. CYBERPIRACY PREVENTION.**

2 (a) IN GENERAL.—Section 43 of the Trademark Act
3 of 1946 (15 U.S.C. 1125) is amended by inserting at the
4 end the following:

5 “(d)(1)(A) A person shall be liable in a civil action
6 by the owner of a mark, including a personal name which
7 is protected as a mark under this section, if, without re-
8 gard to the goods or services of the parties, that person—

9 (i) has a bad faith intent to profit from that
10 mark, including a personal name which is protected
11 as a mark under this section; and

12 (ii) registers, traffics in, or uses a domain
13 name that—

14 (I) in the case of a mark that is distinc-
15 tive at the time of registration of the domain
16 name, is identical or confusingly similar to that
17 mark;

18 (II) in the case of a famous mark that is
19 famous at the time of registration of the do-
20 main name, is identical or confusingly similar
21 to or dilutive of that mark; or

22 (III) is a trademark, word, or name pro-
23 tected by reason of section 706 of title 18,
24 United States Code, or section 220506 of title
25 36, United States Code.

1 “(B)(i) In determining whether a person has a bad
2 faith intent described under subparagraph (A), a court
3 may consider factors such as, but not limited to—

4 “(I) the trademark or other intellectual prop-
5 erty rights of the person, if any, in the domain
6 name;

7 “(II) the extent to which the domain name con-
8 sists of the legal name of the person or a name that
9 is otherwise commonly used to identify that person;

10 “(III) the person’s prior use, if any, of the do-
11 main name in connection with the bona fide offering
12 of any goods or services;

13 “(IV) the person’s bona fide noncommercial or
14 fair use of the mark in a site accessible under the
15 domain name;

16 “(V) the person’s intent to divert consumers
17 from the mark owner’s online location to a site ac-
18 cessible under the domain name that could harm the
19 goodwill represented by the mark, either for com-
20 mercial gain or with the intent to tarnish or dispar-
21 age the mark, by creating a likelihood of confusion
22 as to the source, sponsorship, affiliation, or endorse-
23 ment of the site;

24 “(VI) the person’s offer to transfer, sell, or oth-
25 erwise assign the domain name to the mark owner

1 or any third party for financial gain without having
2 used, or having an intent to use, the domain name
3 in the bona fide offering of any goods or services, or
4 the person's prior conduct indicating a pattern of
5 such conduct;

6 “(VII) the person's provision of material and
7 misleading false contact information when applying
8 for the registration of the domain name, the per-
9 son's intentional failure to maintain accurate contact
10 information, or the person's prior conduct indicating
11 a pattern of such conduct;

12 “(VIII) the person's registration or acquisition
13 of multiple domain names which the person knows
14 are identical or confusingly similar to marks of oth-
15 ers that are distinctive at the time of registration of
16 such domain names, or dilutive of famous marks of
17 others that are famous at the time of registration of
18 such domain names, without regard to the goods or
19 services of the parties; and

20 “(IX) the extent to which the mark incor-
21 porated in the person's domain name registration is
22 or is not distinctive and famous within the meaning
23 of subsection (c)(1) of section 43.

24 “(ii) Bad faith intent described under subparagraph
25 (A) shall not be found in any case in which the court de-

1 termines that the person believed and had reasonable
2 grounds to believe that the use of the domain name was
3 a fair use or otherwise lawful.

4 “(C) In any civil action involving the registration,
5 trafficking, or use of a domain name under this para-
6 graph, a court may order the forfeiture or cancellation of
7 the domain name or the transfer of the domain name to
8 the owner of the mark.

9 “(D) A person shall be liable for using a domain
10 name under subparagraph (A) only if that person is the
11 domain name registrant or that registrant’s authorized li-
12 censee.

13 “(E) As used in this paragraph, the term ‘traffics in’
14 refers to transactions that include, but are not limited to,
15 sales, purchases, loans, pledges, licenses, exchanges of cur-
16 rency, and any other transfer for consideration or receipt
17 in exchange for consideration.

18 “(2)(A) The owner of a mark may file an in rem civil
19 action against a domain name in the judicial district in
20 which the domain name registrar, domain name registry,
21 or other domain name authority that registered or as-
22 signed the domain name is located if—

23 “(i) the domain name violates any right of the
24 owner of a mark registered in the Patent and Trade-

1 mark Office, or protected under subsection (a) or
2 (c); and

3 “(ii) the court finds that the owner—

4 “(I) is not able to obtain in personam ju-
5 risdiction over a person who would have been a
6 defendant in a civil action under paragraph (1);

7 or

8 “(II) through due diligence was not able to
9 find a person who would have been a defendant
10 in a civil action under paragraph (1) by—

11 “(aa) sending a notice of the alleged
12 violation and intent to proceed under this
13 paragraph to the registrant of the domain
14 name at the postal and e-mail address pro-
15 vided by the registrant to the registrar;
16 and

17 “(bb) publishing notice of the action
18 as the court may direct promptly after fil-
19 ing the action.

20 “(B) The actions under subparagraph (A)(ii) shall
21 constitute service of process.

22 “(C) In an in rem action under this paragraph, a do-
23 main name shall be deemed to have its situs in the judicial
24 district in which—

1 “(i) the domain name registrar, registry, or
2 other domain name authority that registered or as-
3 signed the domain name is located; or

4 “(ii) documents sufficient to establish control
5 and authority regarding the disposition of the reg-
6 istration and use of the domain name are deposited
7 with the court.

8 “(D)(i) The remedies in an in rem action under this
9 paragraph shall be limited to a court order for the for-
10 feiture or cancellation of the domain name or the transfer
11 of the domain name to the owner of the mark. Upon re-
12 ceipt of written notification of a filed, stamped copy of
13 a complaint filed by the owner of a mark in a United
14 States district court under this paragraph, the domain
15 name registrar, domain name registry, or other domain
16 name authority shall—

17 “(I) expeditiously deposit with the court docu-
18 ments sufficient to establish the court’s control and
19 authority regarding the disposition of the registra-
20 tion and use of the domain name to the court; and

21 “(II) not transfer, suspend, or otherwise modify
22 the domain name during the pendency of the action,
23 except upon order of the court.

24 “(ii) The domain name registrar or registry or other
25 domain name authority shall not be liable for injunctive

1 or monetary relief under this paragraph except in the case
 2 of bad faith or reckless disregard, which includes a willful
 3 failure to comply with any such court order.

4 “(3) The civil action established under paragraph (1)
 5 and the in rem action established under paragraph (2),
 6 and any remedy available under either such action, shall
 7 be in addition to any other civil action or remedy otherwise
 8 applicable.

9 “(4) The in rem jurisdiction established under para-
 10 graph (2) shall be in addition to any other jurisdiction
 11 that otherwise exists, whether in rem or in personam.”.

12 (b) CYBERPIRACY PROTECTIONS FOR INDIVID-
 13 UALS.—

14 (1) IN GENERAL.—

15 (A) CIVIL LIABILITY.—Any person who
 16 registers a domain name that consists of the
 17 name of another living person, or a name sub-
 18 stantially and confusingly similar thereto, with-
 19 out that person’s consent, with the specific in-
 20 tent to profit from such name by selling the do-
 21 main name for financial gain to that person or
 22 any third party, shall be liable in a civil action
 23 by such person.

24 (B) EXCEPTION.—A person who in good
 25 faith registers a domain name consisting of the

1 name of another living person, or a name sub-
2 stantially and confusingly similar thereto, shall
3 not be liable under this paragraph if such name
4 is used in, affiliated with, or related to a work
5 of authorship protected under title 17, United
6 States Code, including a work made for hire as
7 defined in section 101 of title 17, United States
8 Code, and if the person registering the domain
9 name is the copyright owner or licensee of the
10 work, the person intends to sell the domain
11 name in conjunction with the lawful exploitation
12 of the work, and such registration is not prohib-
13 ited by a contract between the registrant and
14 the named person. The exception under this
15 subparagraph shall apply only to a civil action
16 brought under paragraph (1) and shall in no
17 manner limit the protections afforded under the
18 Trademark Act of 1946 (15 U.S.C. 1051 et
19 seq.) or other provision of Federal or State law.

20 (2) REMEDIES.—In any civil action brought
21 under paragraph (1), a court may award injunctive
22 relief, including the forfeiture or cancellation of the
23 domain name or the transfer of the domain name to
24 the plaintiff. The court may also, in its discretion,

1 award costs and attorneys fees to the prevailing
2 party.

3 (3) DEFINITION.—In this subsection, the term
4 “domain name” has the meaning given that term in
5 section 45 of the Trademark Act of 1946 (15 U.S.C.
6 1127).

7 (4) EFFECTIVE DATE.—This subsection shall
8 apply to domain names registered on or after the
9 date of the enactment of this Act.

10 **SEC. 3003. DAMAGES AND REMEDIES.**

11 (a) REMEDIES IN CASES OF DOMAIN NAME PI-
12 RACY.—

13 (1) INJUNCTIONS.—Section 34(a) of the Trade-
14 mark Act of 1946 (15 U.S.C. 1116(a)) is amended
15 in the first sentence by striking “(a) or (c)” and in-
16 serting “(a), (c), or (d)”.

17 (2) DAMAGES.—Section 35(a) of the Trade-
18 mark Act of 1946 (15 U.S.C. 1117(a)) is amended
19 in the first sentence by inserting “, (c), or (d)” after
20 “section 43(a)”.

21 (b) STATUTORY DAMAGES.—Section 35 of the Trade-
22 mark Act of 1946 (15 U.S.C. 1117) is amended by adding
23 at the end the following:

24 “(d) In a case involving a violation of section
25 43(d)(1), the plaintiff may elect, at any time before final

1 judgment is rendered by the trial court, to recover, instead
2 of actual damages and profits, an award of statutory dam-
3 ages in the amount of not less than \$1,000 and not more
4 than \$100,000 per domain name, as the court considers
5 just.

6 **SEC. 3004. LIMITATION ON LIABILITY.**

7 Section 32(2) of the Trademark Act of 1946 (15
8 U.S.C. 1114) is amended—

9 (1) in the matter preceding subparagraph (A)
10 by striking “under section 43(a)” and inserting
11 “under section 43(a) or (d)”; and

12 (2) by redesignating subparagraph (D) as sub-
13 paragraph (E) and inserting after subparagraph (C)
14 the following:

15 “(D)(i)(I) A domain name registrar, a domain
16 name registry, or other domain name registration
17 authority that takes any action described under
18 clause (ii) affecting a domain name shall not be lia-
19 ble for monetary relief or, except as provided in sub-
20 clause (II), for injunctive relief, to any person for
21 such action, regardless of whether the domain name
22 is finally determined to infringe or dilute the mark.

23 “(II) A domain name registrar, domain name
24 registry, or other domain name registration author-
25 ity described in subclause (I) may be subject to in-

1 junctive relief only if such registrar, registry, or
2 other registration authority has—

3 “(aa) not expeditiously deposited with a
4 court, in which an action has been filed regard-
5 ing the disposition of the domain name, docu-
6 ments sufficient for the court to establish the
7 court’s control and authority regarding the dis-
8 position of the registration and use of the do-
9 main name;

10 “(bb) transferred, suspended, or otherwise
11 modified the domain name during the pendency
12 of the action, except upon order of the court; or

13 “(cc) willfully failed to comply with any
14 such court order.

15 “(ii) An action referred to under clause (i)(I) is
16 any action of refusing to register, removing from
17 registration, transferring, temporarily disabling, or
18 permanently canceling a domain name—

19 “(I) in compliance with a court order
20 under section 43(d); or

21 “(II) in the implementation of a reasonable
22 policy by such registrar, registry, or authority
23 prohibiting the registration of a domain name
24 that is identical to, confusingly similar to, or di-
25 lutive of another’s mark.

1 “(iii) A domain name registrar, a domain name
2 registry, or other domain name registration author-
3 ity shall not be liable for damages under this section
4 for the registration or maintenance of a domain
5 name for another absent a showing of bad faith in-
6 tent to profit from such registration or maintenance
7 of the domain name.

8 “(iv) If a registrar, registry, or other registra-
9 tion authority takes an action described under clause
10 (ii) based on a knowing and material misrepresenta-
11 tion by any other person that a domain name is
12 identical to, confusingly similar to, or dilutive of a
13 mark, the person making the knowing and material
14 misrepresentation shall be liable for any damages,
15 including costs and attorney’s fees, incurred by the
16 domain name registrant as a result of such action.
17 The court may also grant injunctive relief to the do-
18 main name registrant, including the reactivation of
19 the domain name or the transfer of the domain
20 name to the domain name registrant.

21 “(v) A domain name registrant whose domain
22 name has been suspended, disabled, or transferred
23 under a policy described under clause (ii)(II) may,
24 upon notice to the mark owner, file a civil action to
25 establish that the registration or use of the domain

1 name by such registrant is not unlawful under this
2 Act. The court may grant injunctive relief to the do-
3 main name registrant, including the reactivation of
4 the domain name or transfer of the domain name to
5 the domain name registrant.”.

6 **SEC. 3005. DEFINITIONS.**

7 Section 45 of the Trademark Act of 1946 (15 U.S.C.
8 1127) is amended by inserting after the undesignated
9 paragraph defining the term “counterfeit” the following:

10 “The term ‘domain name’ means any alphanumeric
11 designation which is registered with or assigned by any
12 domain name registrar, domain name registry, or other
13 domain name registration authority as part of an elec-
14 tronic address on the Internet.

15 “The term ‘Internet’ has the meaning given that term
16 in section 230(f)(1) of the Communications Act of 1934
17 (47 U.S.C. 230(f)(1)).”.

18 **SEC. 3006. STUDY ON ABUSIVE DOMAIN NAME REGISTRA-**
19 **TIONS INVOLVING PERSONAL NAMES.**

20 (a) IN GENERAL.—Not later than 180 days after the
21 date of the enactment of this Act, the Secretary of Com-
22 merce, in consultation with the Patent and Trademark Of-
23 fice and the Federal Election Commission, shall conduct
24 a study and report to Congress with recommendations on
25 guidelines and procedures for resolving disputes involving

1 the registration or use by a person of a domain name that
2 includes the personal name of another person, in whole
3 or in part, or a name confusingly similar thereto, including
4 consideration of and recommendations for—

5 (1) protecting personal names from registration
6 by another person as a second level domain name for
7 purposes of selling or otherwise transferring such
8 domain name to such other person or any third
9 party for financial gain;

10 (2) protecting individuals from bad faith uses of
11 their personal names as second level domain names
12 by others with malicious intent to harm the reputa-
13 tion of the individual or the goodwill associated with
14 that individual's name;

15 (3) protecting consumers from the registration
16 and use of domain names that include personal
17 names in the second level domain in manners which
18 are intended or are likely to confuse or deceive the
19 public as to the affiliation, connection, or association
20 of the domain name registrant, or a site accessible
21 under the domain name, with such other person, or
22 as to the origin, sponsorship, or approval of the
23 goods, services, or commercial activities of the do-
24 main name registrant;

1 (4) protecting the public from registration of
2 domain names that include the personal names of
3 government officials, official candidates, and poten-
4 tial official candidates for Federal, State, or local
5 political office in the United States, and the use of
6 such domain names in a manner that disrupts the
7 electoral process or the public's ability to access ac-
8 curate and reliable information regarding such indi-
9 viduals;

10 (5) existing remedies, whether under State law
11 or otherwise, and the extent to which such remedies
12 are sufficient to address the considerations described
13 in paragraphs (1) through (4); and

14 (6) the guidelines, procedures, and policies of
15 the Internet Corporation for Assigned Names and
16 Numbers and the extent to which they address the
17 considerations described in paragraphs (1) through
18 (4).

19 (b) GUIDELINES AND PROCEDURES.—The Secretary
20 of Commerce shall, under its Memorandum of Under-
21 standing with the Internet Corporation for Assigned
22 Names and Numbers, collaborate to develop guidelines
23 and procedures for resolving disputes involving the reg-
24 istration or use by a person of a domain name that in-

1 cludes the personal name of another person, in whole or
2 in part, or a name confusingly similar thereto.

3 **SEC. 3007. HISTORIC PRESERVATION.**

4 Section 101(a)(1)(A) of the National Historic Preser-
5 vation Act (16 U.S.C. 470a(a)(1)(A)) is amended by add-
6 ing at the end the following: “Notwithstanding section
7 43(c) of the Act entitled ‘An Act to provide for the reg-
8 istration and protection of trademarks used in commerce,
9 to carry out the provisions of certain international conven-
10 tions, and for other purposes’, approved July 5, 1946
11 (commonly known as the ‘Trademark Act of 1946’ (15
12 U.S.C. 1125(c))), buildings and structures on or eligible
13 for inclusion on the National Register of Historic Places
14 (either individually or as part of a historic district), or
15 designated as an individual landmark or as a contributing
16 building in a historic district by a unit of State or local
17 government, may retain the name historically associated
18 with the building or structure.”.

19 **SEC. 3008. SAVINGS CLAUSE.**

20 Nothing in this title shall affect any defense available
21 to a defendant under the Trademark Act of 1946 (includ-
22 ing any defense under section 43(c)(4) of such Act or re-
23 lating to fair use) or a person’s right of free speech or
24 expression under the first amendment of the United States
25 Constitution.

1 **SEC. 3009. TECHNICAL AND CONFORMING AMENDMENTS.**

2 Chapter 85 of title 28, United States Code, is amend-
3 ed as follows:

4 (1) Section 1338 of title 28, United States
5 Codes, is amended—

6 (A) in the section heading by striking
7 “**trade-marks**” and inserting “**trade-**
8 **marks**”;

9 (B) in subsection (a) by striking “trade-
10 marks” and inserting “trademarks”; and

11 (C) in subsection (b) by striking “trade-
12 mark” and inserting “trademark”.

13 (2) The item relating to section 1338 in the
14 table of sections for chapter 85 of title 28, United
15 States Code, is amended by striking “trade-marks”
16 and inserting “trademarks”.

17 **SEC. 3010. EFFECTIVE DATE.**

18 Sections 3002(a), 3003, 3004, 3005, and 3008 of
19 this title shall apply to all domain names registered before,
20 on, or after the date of the enactment of this Act, except
21 that damages under subsection (a) or (d) of section 35
22 of the Trademark Act of 1946 (15 U.S.C. 1117), as
23 amended by section 3003 of this title, shall not be avail-
24 able with respect to the registration, trafficking, or use
25 of a domain name that occurs before the date of the enact-
26 ment of this Act.

1 **TITLE IV—INVENTOR**
2 **PROTECTION**

3 **SEC. 4001. SHORT TITLE.**

4 This title may be cited as the “American Inventors
5 Protection Act of 1999”.

6 **Subtitle A—Inventors’ Rights**

7 **SEC. 4101. SHORT TITLE.**

8 This subtitle may be cited as the “Inventors’ Rights
9 Act of 1999”.

10 **SEC. 4102. INTEGRITY IN INVENTION PROMOTION SERV-**
11 **ICES.**

12 (a) IN GENERAL.—Chapter 29 of title 35, United
13 States Code, is amended by adding at the end the fol-
14 lowing new section:

15 **“§ 297. Improper and deceptive invention promotion**

16 “(a) IN GENERAL.—An invention promoter shall
17 have a duty to disclose the following information to a cus-
18 tomer in writing, prior to entering into a contract for in-
19 vention promotion services:

20 “(1) the total number of inventions evaluated
21 by the invention promoter for commercial potential
22 in the past 5 years, as well as the number of those
23 inventions that received positive evaluations, and the
24 number of those inventions that received negative
25 evaluations;

1 “(2) the total number of customers who have
2 contracted with the invention promoter in the past
3 5 years, not including customers who have pur-
4 chased trade show services, research, advertising, or
5 other nonmarketing services from the invention pro-
6 moter, or who have defaulted in their payment to
7 the invention promoter;

8 “(3) the total number of customers known by
9 the invention promoter to have received a net finan-
10 cial profit as a direct result of the invention pro-
11 motion services provided by such invention promoter;

12 “(4) the total number of customers known by
13 the invention promoter to have received license
14 agreements for their inventions as a direct result of
15 the invention promotion services provided by such
16 invention promoter; and

17 “(5) the names and addresses of all previous in-
18 vention promotion companies with which the inven-
19 tion promoter or its officers have collectively or indi-
20 vidually been affiliated in the previous 10 years.

21 “(b) CIVIL ACTION.—(1) Any customer who enters
22 into a contract with an invention promoter and who is
23 found by a court to have been injured by any material
24 false or fraudulent statement or representation, or any
25 omission of material fact, by that invention promoter (or

1 any agent, employee, director, officer, partner, or inde-
2 pendent contractor of such invention promoter), or by the
3 failure of that invention promoter to disclose such infor-
4 mation as required under subsection (a), may recover in
5 a civil action against the invention promoter (or the offi-
6 cers, directors, or partners of such invention promoter),
7 in addition to reasonable costs and attorneys' fees—

8 “(A) the amount of actual damages incurred by
9 the customer; or

10 “(B) at the election of the customer at any time
11 before final judgment is rendered, statutory damages
12 in a sum of not more than \$5,000, as the court con-
13 siders just.

14 “(2) Notwithstanding paragraph (1), in a case where
15 the customer sustains the burden of proof, and the court
16 finds, that the invention promoter intentionally misrepre-
17 sented or omitted a material fact to such customer, or will-
18 fully failed to disclose such information as required under
19 subsection (a), with the purpose of deceiving that cus-
20 tomer, the court may increase damages to not more than
21 three times the amount awarded, taking into account past
22 complaints made against the invention promoter that re-
23 sulted in regulatory sanctions or other corrective actions
24 based on those records compiled by the Commissioner of
25 Patents under subsection (d).

1 “(c) DEFINITIONS.—For purposes of this section—

2 “(1) a ‘contract for invention promotion serv-
3 ices’ means a contract by which an invention pro-
4 moter undertakes invention promotion services for a
5 customer;

6 “(2) a ‘customer’ is any individual who enters
7 into a contract with an invention promoter for inven-
8 tion promotion services;

9 “(3) the term ‘invention promoter’ means any
10 person, firm, partnership, corporation, or other enti-
11 ty who offers to perform or performs invention pro-
12 motion services for, or on behalf of, a customer, and
13 who holds itself out through advertising in any mass
14 media as providing such services, but does not
15 include—

16 “(A) any department or agency of the Fed-
17 eral Government or of a State or local govern-
18 ment;

19 “(B) any nonprofit, charitable, scientific,
20 or educational organization, qualified under ap-
21 plicable State law or described under section
22 170(b)(1)(A) of the Internal Revenue Code of
23 1986;

24 “(C) any person or entity involved in the
25 evaluation to determine commercial potential of,

1 or offering to license or sell, a utility patent or
2 a previously filed nonprovisional utility patent
3 application;

4 “(D) any party participating in a trans-
5 action involving the sale of the stock or assets
6 of a business; or

7 “(E) any party who directly engages in the
8 business of retail sales of products or the dis-
9 tribution of products; and

10 “(4) the term ‘invention promotion services’
11 means the procurement or attempted procurement
12 for a customer of a firm, corporation, or other entity
13 to develop and market products or services that in-
14 clude the invention of the customer.

15 “(d) RECORDS OF COMPLAINTS.—

16 “(1) RELEASE OF COMPLAINTS.—The Commis-
17 sioner of Patents shall make all complaints received
18 by the Patent and Trademark Office involving inven-
19 tion promoters publicly available, together with any
20 response of the invention promoters. The Commis-
21 sioner of Patents shall notify the invention promoter
22 of a complaint and provide a reasonable opportunity
23 to reply prior to making such complaint publicly
24 available.

1 (b) REISSUE FEE.—Section 41(a)(4)(A) of title 35,
2 United States Code, relating to the fee for filing for a re-
3 issue of a patent, is amended by striking “\$760” and in-
4 serting “\$690”.

5 (c) NATIONAL FEE FOR CERTAIN INTERNATIONAL
6 APPLICATIONS.—Section 41(a)(10) of title 35, United
7 States Code, relating to the national fee for certain inter-
8 national applications, is amended by striking “\$760” and
9 inserting “\$690”.

10 (d) MAINTENANCE FEES.—Section 41(b)(1) of title
11 35, United States Code, relating to certain maintenance
12 fees, is amended by striking “\$940” and inserting
13 “\$830”.

14 **SEC. 4203. ADJUSTMENT OF TRADEMARK FEES.**

15 Notwithstanding the second sentence of section 31(a)
16 of the Trademark Act of 1946 (15 U.S.C. 111(a)), the
17 Under Secretary of Commerce for Intellectual Property
18 and Director of the United States Patent and Trademark
19 Office is authorized in fiscal year 2000 to adjust trade-
20 mark fees without regard to fluctuations in the Consumer
21 Price Index during the preceding 12 months.

22 **SEC. 4204. STUDY ON ALTERNATIVE FEE STRUCTURES.**

23 The Under Secretary of Commerce for Intellectual
24 Property and Director of the United States Patent and
25 Trademark Office shall conduct a study of alternative fee

1 structures that could be adopted by the United States Pat-
2 ent and Trademark Office to encourage maximum partici-
3 pation by the inventor community in the United States.
4 The Director shall submit such study to the Committees
5 on the Judiciary of the House of Representatives and the
6 Senate not later than 1 year after the date of the enact-
7 ment of this Act.

8 **SEC. 4205. PATENT AND TRADEMARK OFFICE FUNDING.**

9 Section 42(c) of title 35, United States Code, is
10 amended in the second sentence—

11 (1) by striking “Fees available” and inserting
12 “All fees available”; and

13 (2) by striking “may” and inserting “shall”.

14 **SEC. 4206. EFFECTIVE DATE.**

15 (a) IN GENERAL.—Except as provided in subsection
16 (b), the amendments made by this subtitle shall take effect
17 on the date of the enactment of this Act.

18 (b) SECTION 4202.—The amendments made by sec-
19 tion 4202 of this subtitle shall take effect 30 days after
20 the date of the enactment of this Act.

21 **Subtitle C—First Inventor Defense**

22 **SEC. 4301. SHORT TITLE.**

23 This subtitle may be cited as the “First Inventor De-
24 fense Act of 1999”.

1 **SEC. 4302. DEFENSE TO PATENT INFRINGEMENT BASED ON**
2 **EARLIER INVENTOR.**

3 (a) DEFENSE.—Chapter 28 of title 35, United States
4 Code, is amended by adding at the end the following new
5 section:

6 **“§ 273. Defense to infringement based on earlier in-**
7 **ventor**

8 “(a) DEFINITIONS.—For purposes of this section—

9 “(1) the terms ‘commercially used’ and ‘com-
10 mercial use’ mean use of a method in the United
11 States, so long as such use is in connection with an
12 internal commercial use or an actual arm’s-length
13 sale or other arm’s-length commercial transfer of a
14 useful end result, whether or not the subject matter
15 at issue is accessible to or otherwise known to the
16 public, except that the subject matter for which com-
17 mercial marketing or use is subject to a premar-
18 keting regulatory review period during which the
19 safety or efficacy of the subject matter is estab-
20 lished, including any period specified in section
21 156(g), shall be deemed ‘commercially used’ and in
22 ‘commercial use’ during such regulatory review pe-
23 riod;

24 “(2) in the case of activities performed by a
25 nonprofit research laboratory, or nonprofit entity
26 such as a university, research center, or hospital, a

1 use for which the public is the intended beneficiary
2 shall be considered to be a use described in para-
3 graph (1), except that the use—

4 “(A) may be asserted as a defense under
5 this section only for continued use by and in
6 the laboratory or nonprofit entity; and

7 “(B) may not be asserted as a defense
8 with respect to any subsequent commercializa-
9 tion or use outside such laboratory or nonprofit
10 entity;

11 “(3) the term ‘method’ means a method of
12 doing or conducting business; and

13 “(4) the ‘effective filing date’ of a patent is the
14 earlier of the actual filing date of the application for
15 the patent or the filing date of any earlier United
16 States, foreign, or international application to which
17 the subject matter at issue is entitled under section
18 119, 120, or 365 of this title.

19 “(b) DEFENSE TO INFRINGEMENT.—

20 “(1) IN GENERAL.—It shall be a defense to an
21 action for infringement under section 271 of this
22 title with respect to any subject matter that would
23 otherwise infringe one or more claims for a method
24 in the patent being asserted against a person, if
25 such person had, acting in good faith, actually re-

1 duced the subject matter to practice at least 1 year
2 before the effective filing date of such patent, and
3 commercially used the subject matter before the ef-
4 fective filing date of such patent.

5 “(2) EXHAUSTION OF RIGHT.—The sale or
6 other disposition of a useful end product produced
7 by a patented method, by a person entitled to assert
8 a defense under this section with respect to that use-
9 ful end result shall exhaust the patent owner’s rights
10 under the patent to the extent such rights would
11 have been exhausted had such sale or other disposi-
12 tion been made by the patent owner.

13 “(3) LIMITATIONS AND QUALIFICATIONS OF DE-
14 FENSE.—The defense to infringement under this
15 section is subject to the following:

16 “(A) PATENT.—A person may not assert
17 the defense under this section unless the inven-
18 tion for which the defense is asserted is for a
19 method.

20 “(B) DERIVATION.—A person may not as-
21 sert the defense under this section if the subject
22 matter on which the defense is based was de-
23 rived from the patentee or persons in privity
24 with the patentee.

1 “(C) NOT A GENERAL LICENSE.—The de-
2 fense asserted by a person under this section is
3 not a general license under all claims of the
4 patent at issue, but extends only to the specific
5 subject matter claimed in the patent with re-
6 spect to which the person can assert a defense
7 under this chapter, except that the defense shall
8 also extend to variations in the quantity or vol-
9 ume of use of the claimed subject matter, and
10 to improvements in the claimed subject matter
11 that do not infringe additional specifically
12 claimed subject matter of the patent.

13 “(4) BURDEN OF PROOF.—A person asserting
14 the defense under this section shall have the burden
15 of establishing the defense by clear and convincing
16 evidence.

17 “(5) ABANDONMENT OF USE.—A person who
18 has abandoned commercial use of subject matter
19 may not rely on activities performed before the date
20 of such abandonment in establishing a defense under
21 this section with respect to actions taken after the
22 date of such abandonment.

23 “(6) PERSONAL DEFENSE.—The defense under
24 this section may be asserted only by the person who
25 performed the acts necessary to establish the defense

1 and, except for any transfer to the patent owner, the
2 right to assert the defense shall not be licensed or
3 assigned or transferred to another person except as
4 an ancillary and subordinate part of a good faith as-
5 signment or transfer for other reasons of the entire
6 enterprise or line of business to which the defense
7 relates.

8 “(7) LIMITATION ON SITES.—A defense under
9 this section, when acquired as part of a good faith
10 assignment or transfer of an entire enterprise or line
11 of business to which the defense relates, may only be
12 asserted for uses at sites where the subject matter
13 that would otherwise infringe one or more of the
14 claims is in use before the later of the effective filing
15 date of the patent or the date of the assignment or
16 transfer of such enterprise or line of business.

17 “(8) UNSUCCESSFUL ASSERTION OF DE-
18 FENSE.—If the defense under this section is pleaded
19 by a person who is found to infringe the patent and
20 who subsequently fails to demonstrate a reasonable
21 basis for asserting the defense, the court shall find
22 the case exceptional for the purpose of awarding at-
23 torney fees under section 285 of this title.

24 “(9) INVALIDITY.—A patent shall not be
25 deemed to be invalid under section 102 or 103 of

1 this title solely because a defense is raised or estab-
 2 lished under this section.”.

3 (b) CONFORMING AMENDMENT.—The table of sec-
 4 tions at the beginning of chapter 28 of title 35, United
 5 States Code, is amended by adding at the end the fol-
 6 lowing new item:

“273. Defense to infringement based on earlier inventor.”.

7 **SEC. 4303. EFFECTIVE DATE AND APPLICABILITY.**

8 This subtitle and the amendments made by this sub-
 9 title shall take effect on the date of the enactment of this
 10 Act, but shall not apply to any action for infringement
 11 that is pending on such date of enactment or with respect
 12 to any subject matter for which an adjudication of in-
 13 fringement, including a consent judgment, has been made
 14 before such date of enactment.

15 **Subtitle D—Patent Term**
 16 **Guarantee**

17 **SEC. 4401. SHORT TITLE.**

18 This subtitle may be cited as the “Patent Term Guar-
 19 antee Act of 1999”.

20 **SEC. 4402. PATENT TERM GUARANTEE AUTHORITY.**

21 (a) ADJUSTMENT OF PATENT TERM.—Section
 22 154(b) of title 35, United States Code, is amended to read
 23 as follows:

24 “(b) ADJUSTMENT OF PATENT TERM.—

25 “(1) PATENT TERM GUARANTEES.—

1 “(A) GUARANTEE OF PROMPT PATENT
2 AND TRADEMARK OFFICE RESPONSES.—Subject
3 to the limitations under paragraph (2), if the
4 issue of an original patent is delayed due to the
5 failure of the Patent and Trademark Office
6 to—

7 “(i) provide at least one of the notifi-
8 cations under section 132 of this title or a
9 notice of allowance under section 151 of
10 this title not later than 14 months after—

11 “(I) the date on which an appli-
12 cation was filed under section 111(a)
13 of this title; or

14 “(II) the date on which an inter-
15 national application fulfilled the re-
16 quirements of section 371 of this title;

17 “(ii) respond to a reply under section
18 132, or to an appeal taken under section
19 134, within 4 months after the date on
20 which the reply was filed or the appeal was
21 taken;

22 “(iii) act on an application within 4
23 months after the date of a decision by the
24 Board of Patent Appeals and Interferences
25 under section 134 or 135 or a decision by

1 a Federal court under section 141, 145, or
2 146 in a case in which allowable claims re-
3 main in the application; or

4 “(iv) issue a patent within 4 months
5 after the date on which the issue fee was
6 paid under section 151 and all outstanding
7 requirements were satisfied,

8 the term of the patent shall be extended 1 day
9 for each day after the end of the period speci-
10 fied in clause (i), (ii), (iii), or (iv), as the case
11 may be, until the action described in such
12 clause is taken.

13 “(B) GUARANTEE OF NO MORE THAN 3-
14 YEAR APPLICATION PENDENCY.—Subject to the
15 limitations under paragraph (2), if the issue of
16 an original patent is delayed due to the failure
17 of the United States Patent and Trademark Of-
18 fice to issue a patent within 3 years after the
19 actual filing date of the application in the
20 United States, not including—

21 “(i) any time consumed by continued
22 examination of the application requested
23 by the applicant under section 132(b);

24 “(ii) any time consumed by a pro-
25 ceeding under section 135(a), any time

1 consumed by the imposition of an order
2 under section 181, or any time consumed
3 by appellate review by the Board of Patent
4 Appeals and Interferences or by a Federal
5 court; or

6 “(iii) any delay in the processing of
7 the application by the United States Pat-
8 ent and Trademark Office requested by the
9 applicant except as permitted by paragraph
10 (3)(C),

11 the term of the patent shall be extended 1 day
12 for each day after the end of that 3-year period
13 until the patent is issued.

14 “(C) GUARANTEE OR ADJUSTMENTS FOR
15 DELAYS DUE TO INTERFERENCES, SECRECY OR-
16 DERS, AND APPEALS.—Subject to the limita-
17 tions under paragraph (2), if the issue of an
18 original patent is delayed due to—

19 “(i) a proceeding under section
20 135(a);

21 “(ii) the imposition of an order under
22 section 181; or

23 “(iii) appellate review by the Board of
24 Patent Appeals and Interferences or by a
25 Federal court in a case in which the patent

1 was issued under a decision in the review
2 reversing an adverse determination of pat-
3 entability,

4 the term of the patent shall be extended 1 day
5 for each day of the pendency of the proceeding,
6 order, or review, as the case may be.

7 “(2) LIMITATIONS.—

8 “(A) IN GENERAL.—To the extent that pe-
9 riods of delay attributable to grounds specified
10 in paragraph (1) overlap, the period of any ad-
11 justment granted under this subsection shall
12 not exceed the actual number of days the
13 issuance of the patent was delayed.

14 “(B) DISCLAIMED TERM.—No patent the
15 term of which has been disclaimed beyond a
16 specified date may be adjusted under this sec-
17 tion beyond the expiration date specified in the
18 disclaimer.

19 “(C) REDUCTION OF PERIOD OF ADJUST-
20 MENT.—

21 “(i) The period of adjustment of the
22 term of a patent under paragraph (1) shall
23 be reduced by a period equal to the period
24 of time during which the applicant failed

1 to engage in reasonable efforts to conclude
2 prosecution of the application.

3 “(ii) With respect to adjustments to
4 patent term made under the authority of
5 paragraph (1)(B), an applicant shall be
6 deemed to have failed to engage in reason-
7 able efforts to conclude processing or ex-
8 amination of an application for the cumu-
9 lative total of any periods of time in excess
10 of 3 months that are taken to respond to
11 a notice from the Office making any rejec-
12 tion, objection, argument, or other request,
13 measuring such 3-month period from the
14 date the notice was given or mailed to the
15 applicant.

16 “(iii) The Director shall prescribe reg-
17 ulations establishing the circumstances
18 that constitute a failure of an applicant to
19 engage in reasonable efforts to conclude
20 processing or examination of an applica-
21 tion.

22 “(3) PROCEDURES FOR PATENT TERM ADJUST-
23 MENT DETERMINATION.—

24 “(A) The Director shall prescribe regula-
25 tions establishing procedures for the application

1 for and determination of patent term adjust-
2 ments under this subsection.

3 “(B) Under the procedures established
4 under subparagraph (A), the Director shall—

5 “(i) make a determination of the pe-
6 riod of any patent term adjustment under
7 this subsection, and shall transmit a notice
8 of that determination with the written no-
9 tice of allowance of the application under
10 section 151; and

11 “(ii) provide the applicant one oppor-
12 tunity to request reconsideration of any
13 patent term adjustment determination
14 made by the Director.

15 “(C) The Director shall reinstate all or
16 part of the cumulative period of time of an ad-
17 justment under paragraph (2)(C) if the appli-
18 cant, prior to the issuance of the patent, makes
19 a showing that, in spite of all due care, the ap-
20 plicant was unable to respond within the 3-
21 month period, but in no case shall more than
22 three additional months for each such response
23 beyond the original 3-month period be rein-
24 stated.

1 “(D) The Director shall proceed to grant
2 the patent after completion of the Director’s de-
3 termination of a patent term adjustment under
4 the procedures established under this sub-
5 section, notwithstanding any appeal taken by
6 the applicant of such determination.

7 “(4) APPEAL OF PATENT TERM ADJUSTMENT
8 DETERMINATION.—

9 “(A) An applicant dissatisfied with a de-
10 termination made by the Director under para-
11 graph (3) shall have remedy by a civil action
12 against the Director filed in the United States
13 District Court for the District of Columbia
14 within 180 days after the grant of the patent.
15 Chapter 7 of title 5, United States Code, shall
16 apply to such action. Any final judgment result-
17 ing in a change to the period of adjustment of
18 the patent term shall be served on the Director,
19 and the Director shall thereafter alter the term
20 of the patent to reflect such change.

21 “(B) The determination of a patent term
22 adjustment under this subsection shall not be
23 subject to appeal or challenge by a third party
24 prior to the grant of the patent.”.

25 (b) CONFORMING AMENDMENTS.—

1 (1) Section 282 of title 35, United States Code,
2 is amended in the fourth paragraph by striking “156
3 of this title” and inserting “154(b) or 156 of this
4 title”.

5 (2) Section 1295(a)(4)(C) of title 28, United
6 States Code, is amended by striking “145 or 146”
7 and inserting “145, 146, or 154(b)”.

8 **SEC. 4403. CONTINUED EXAMINATION OF PATENT APPLICA-**
9 **TIONS.**

10 Section 132 of title 35, United States Code, is
11 amended—

12 (1) in the first sentence by striking “Whenever”
13 and inserting “(a) Whenever”; and

14 (2) by adding at the end the following:

15 “(b) The Director shall prescribe regulations to pro-
16 vide for the continued examination of applications for pat-
17 ent at the request of the applicant. The Director may es-
18 tablish appropriate fees for such continued examination
19 and shall provide a 50 percent reduction in such fees for
20 small entities that qualify for reduced fees under section
21 41(h)(1) of this title.”.

22 **SEC. 4404. TECHNICAL CLARIFICATION.**

23 Section 156(a) of title 35, United States Code, is
24 amended in the matter preceding paragraph (1) by insert-
25 ing “, which shall include any patent term adjustment

1 granted under section 154(b),” after “the original expira-
2 tion date of the patent”.

3 **SEC. 4405. EFFECTIVE DATE.**

4 (a) AMENDMENTS MADE BY SECTIONS 4402 AND
5 4404.—The amendments made by sections 4402 and
6 4404 shall take effect on the date that is 6 months after
7 the date of the enactment of this Act and, except for a
8 design patent application filed under chapter 16 of title
9 35, United States Code, shall apply to any application
10 filed on or after the date that is 6 months after the date
11 of the enactment of this Act.

12 (b) AMENDMENTS MADE BY SECTION 4403.—The
13 amendments made by section 4403—

14 (1) shall take effect on the date that is 6
15 months after the date of the enactment of this Act,
16 and shall apply to all applications filed under section
17 111(a) of title 35, United States Code, on or after
18 June 8, 1995, and all applications complying with
19 section 371 of title 35, United States Code, that re-
20 sulted from international applications filed on or
21 after June 8, 1995; and

22 (2) do not apply to applications for design pat-
23 ents under chapter 16 of title 35, United States
24 Code.

1 **Subtitle E—Domestic Publication**
2 **of Patent Applications Pub-**
3 **lished Abroad**

4 **SEC. 4501. SHORT TITLE.**

5 This subtitle may be cited as the “Domestic Publica-
6 tion of Foreign Filed Patent Applications Act of 1999”.

7 **SEC. 4502. PUBLICATION.**

8 (a) PUBLICATION.—Section 122 of title 35, United
9 States Code, is amended to read as follows:

10 **“§ 122. Confidential status of applications; publica-**
11 **tion of patent applications**

12 “(a) CONFIDENTIALITY.—Except as provided in sub-
13 section (b), applications for patents shall be kept in con-
14 fidence by the Patent and Trademark Office and no infor-
15 mation concerning the same given without authority of the
16 applicant or owner unless necessary to carry out the provi-
17 sions of an Act of Congress or in such special cir-
18 cumstances as may be determined by the Director.

19 “(b) PUBLICATION.—

20 “(1) IN GENERAL.—(A) Subject to paragraph
21 (2), each application for a patent shall be published,
22 in accordance with procedures determined by the Di-
23 rector, promptly after the expiration of a period of
24 18 months from the earliest filing date for which a
25 benefit is sought under this title. At the request of

1 the applicant, an application may be published ear-
2 lier than the end of such 18-month period.

3 “(B) No information concerning published pat-
4 ent applications shall be made available to the public
5 except as the Director determines.

6 “(C) Notwithstanding any other provision of
7 law, a determination by the Director to release or
8 not to release information concerning a published
9 patent application shall be final and nonreviewable.

10 “(2) EXCEPTIONS.—(A) An application shall
11 not be published if that application is—

12 “(i) no longer pending;

13 “(ii) subject to a secrecy order under sec-
14 tion 181 of this title;

15 “(iii) a provisional application filed under
16 section 111(b) of this title; or

17 “(iv) an application for a design patent
18 filed under chapter 16 of this title.

19 “(B)(i) If an applicant makes a request upon
20 filing, certifying that the invention disclosed in the
21 application has not and will not be the subject of an
22 application filed in another country, or under a mul-
23 tilateral international agreement, that requires publi-
24 cation of applications 18 months after filing, the ap-

1 plication shall not be published as provided in para-
2 graph (1).

3 “(ii) An applicant may rescind a request made
4 under clause (i) at any time.

5 “(iii) An applicant who has made a request
6 under clause (i) but who subsequently files, in a for-
7 eign country or under a multilateral international
8 agreement specified in clause (i), an application di-
9 rected to the invention disclosed in the application
10 filed in the Patent and Trademark Office, shall no-
11 tify the Director of such filing not later than 45
12 days after the date of the filing of such foreign or
13 international application. A failure of the applicant
14 to provide such notice within the prescribed period
15 shall result in the application being regarded as
16 abandoned, unless it is shown to the satisfaction of
17 the Director that the delay in submitting the notice
18 was unintentional.

19 “(iv) If an applicant rescinds a request made
20 under clause (i) or notifies the Director that an ap-
21 plication was filed in a foreign country or under a
22 multilateral international agreement specified in
23 clause (i), the application shall be published in ac-
24 cordance with the provisions of paragraph (1) on or

1 as soon as is practical after the date that is specified
2 in clause (i).

3 “(v) If an applicant has filed applications in
4 one or more foreign countries, directly or through a
5 multilateral international agreement, and such for-
6 eign filed applications corresponding to an applica-
7 tion filed in the Patent and Trademark Office or the
8 description of the invention in such foreign filed ap-
9 plications is less extensive than the application or
10 description of the invention in the application filed
11 in the Patent and Trademark Office, the applicant
12 may submit a redacted copy of the application filed
13 in the Patent and Trademark Office eliminating any
14 part or description of the invention in such applica-
15 tion that is not also contained in any of the cor-
16 responding applications filed in a foreign country.
17 The Director may only publish the redacted copy of
18 the application unless the redacted copy of the appli-
19 cation is not received within 16 months after the
20 earliest effective filing date for which a benefit is
21 sought under this title. The provisions of section
22 154(d) shall not apply to a claim if the description
23 of the invention published in the redacted applica-
24 tion filed under this clause with respect to the claim

1 does not enable a person skilled in the art to make
2 and use the subject matter of the claim.

3 “(c) PROTEST AND PRE-ISSUANCE OPPOSITION.—

4 The Director shall establish appropriate procedures to en-
5 sure that no protest or other form of pre-issuance opposi-
6 tion to the grant of a patent on an application may be
7 initiated after publication of the application without the
8 express written consent of the applicant.

9 “(d) NATIONAL SECURITY.—No application for pat-
10 ent shall be published under subsection (b)(1) if the publi-
11 cation or disclosure of such invention would be detrimental
12 to the national security. The Director shall establish ap-
13 propriate procedures to ensure that such applications are
14 promptly identified and the secrecy of such inventions is
15 maintained in accordance with chapter 17 of this title.”.

16 (b) STUDY.—

17 (1) IN GENERAL.—The Comptroller General
18 shall conduct a 3-year study of the applicants who
19 file only in the United States on or after the effec-
20 tive date of this subtitle and shall provide the results
21 of such study to the Judiciary Committees of the
22 House of Representatives and the Senate.

23 (2) CONTENTS.—The study conducted under
24 paragraph (1) shall—

1 (A) consider the number of such applicants
2 in relation to the number of applicants who file
3 in the United States and outside of the United
4 States;

5 (B) examine how many domestic-only filers
6 request at the time of filing not to be published;

7 (C) examine how many such filers rescind
8 that request or later choose to file abroad;

9 (D) examine the status of the entity seek-
10 ing an application and any correlation that may
11 exist between such status and the publication of
12 patent applications; and

13 (E) examine the abandonment/issuance ra-
14 tios and length of application pendency before
15 patent issuance or abandonment for published
16 versus unpublished applications.

17 **SEC. 4503. TIME FOR CLAIMING BENEFIT OF EARLIER FIL-**
18 **ING DATE.**

19 (a) IN A FOREIGN COUNTRY.—Section 119(b) of title
20 35, United States Code, is amended to read as follows:

21 “(b)(1) No application for patent shall be entitled to
22 this right of priority unless a claim is filed in the Patent
23 and Trademark Office, identifying the foreign application
24 by specifying the application number on that foreign appli-
25 cation, the intellectual property authority or country in or

1 for which the application was filed, and the date of filing
2 the application, at such time during the pendency of the
3 application as required by the Director.

4 “(2) The Director may consider the failure of the ap-
5 plicant to file a timely claim for priority as a waiver of
6 any such claim. The Director may establish procedures,
7 including the payment of a surcharge, to accept an unin-
8 tentionally delayed claim under this section.

9 “(3) The Director may require a certified copy of the
10 original foreign application, specification, and drawings
11 upon which it is based, a translation if not in the English
12 language, and such other information as the Director con-
13 siders necessary. Any such certification shall be made by
14 the foreign intellectual property authority in which the for-
15 eign application was filed and show the date of the appli-
16 cation and of the filing of the specification and other pa-
17 pers.”.

18 (b) IN THE UNITED STATES.—

19 (1) IN GENERAL.—Section 120 of title 35,
20 United States Code, is amended by adding at the
21 end the following: “No application shall be entitled
22 to the benefit of an earlier filed application under
23 this section unless an amendment containing the
24 specific reference to the earlier filed application is
25 submitted at such time during the pendency of the

1 application as required by the Director. The Direc-
2 tor may consider the failure to submit such an
3 amendment within that time period as a waiver of
4 any benefit under this section. The Director may es-
5 tablish procedures, including the payment of a sur-
6 charge, to accept an unintentionally delayed submis-
7 sion of an amendment under this section.”.

8 (2) RIGHT OF PRIORITY.—Section 119(e)(1) of
9 title 35, United States Code, is amended by adding
10 at the end the following: “No application shall be en-
11 titled to the benefit of an earlier filed provisional ap-
12 plication under this subsection unless an amendment
13 containing the specific reference to the earlier filed
14 provisional application is submitted at such time
15 during the pendency of the application as required
16 by the Director. The Director may consider the fail-
17 ure to submit such an amendment within that time
18 period as a waiver of any benefit under this sub-
19 section. The Director may establish procedures, in-
20 cluding the payment of a surcharge, to accept an un-
21 intentionally delayed submission of an amendment
22 under this subsection during the pendency of the ap-
23 plication.”.

1 **SEC. 4504. PROVISIONAL RIGHTS.**

2 Section 154 of title 35, United States Code, is
3 amended—

4 (1) in the section caption by inserting “; **pro-**
5 **visional rights**” after “**patent**”; and

6 (2) by adding at the end the following new sub-
7 section:

8 “(d) PROVISIONAL RIGHTS.—

9 “(1) IN GENERAL.—In addition to other rights
10 provided by this section, a patent shall include the
11 right to obtain a reasonable royalty from any person
12 who, during the period beginning on the date of pub-
13 lication of the application for such patent under sec-
14 tion 122(b), or in the case of an international appli-
15 cation filed under the treaty defined in section
16 351(a) designating the United States under Article
17 21(2)(a) of such treaty, the date of publication of
18 the application, and ending on the date the patent
19 is issued—

20 “(A)(i) makes, uses, offers for sale, or sells
21 in the United States the invention as claimed in
22 the published patent application or imports
23 such an invention into the United States; or

24 “(ii) if the invention as claimed in the pub-
25 lished patent application is a process, uses, of-
26 fers for sale, or sells in the United States or

1 imports into the United States products made
2 by that process as claimed in the published pat-
3 ent application; and

4 “(B) had actual notice of the published
5 patent application and, in a case in which the
6 right arising under this paragraph is based
7 upon an international application designating
8 the United States that is published in a lan-
9 guage other than English, had a translation of
10 the international application into the English
11 language.

12 “(2) RIGHT BASED ON SUBSTANTIALLY IDEN-
13 TICAL INVENTIONS.—The right under paragraph (1)
14 to obtain a reasonable royalty shall not be available
15 under this subsection unless the invention as claimed
16 in the patent is substantially identical to the inven-
17 tion as claimed in the published patent application.

18 “(3) TIME LIMITATION ON OBTAINING A REA-
19 SONABLE ROYALTY.—The right under paragraph (1)
20 to obtain a reasonable royalty shall be available only
21 in an action brought not later than 6 years after the
22 patent is issued. The right under paragraph (1) to
23 obtain a reasonable royalty shall not be affected by
24 the duration of the period described in paragraph
25 (1).

1 “(4) REQUIREMENTS FOR INTERNATIONAL AP-
2 PLICATIONS.—

3 “(A) EFFECTIVE DATE.—The right under
4 paragraph (1) to obtain a reasonable royalty
5 based upon the publication under the treaty de-
6 fined in section 351(a) of an international ap-
7 plication designating the United States shall
8 commence on the date on which the Patent and
9 Trademark Office receives a copy of the publi-
10 cation under the treaty of the international ap-
11 plication, or, if the publication under the treaty
12 of the international application is in a language
13 other than English, on the date on which the
14 Patent and Trademark Office receives a trans-
15 lation of the international application in the
16 English language.

17 “(B) COPIES.—The Director may require
18 the applicant to provide a copy of the inter-
19 national application and a translation thereof.”.

20 **SEC. 4505. PRIOR ART EFFECT OF PUBLISHED APPLICA-**
21 **TIONS.**

22 Section 102(e) of title 35, United States Code, is
23 amended to read as follows:

24 “(e) The invention was described in—

1 “(1) an application for patent, published under
2 section 122(b), by another filed in the United States
3 before the invention by the applicant for patent, ex-
4 cept that an international application filed under the
5 treaty defined in section 351(a) shall have the effect
6 under this subsection of a national application pub-
7 lished under section 122(b) only if the international
8 application designating the United States was pub-
9 lished under Article 21(2)(a) of such treaty in the
10 English language; or

11 “(2) a patent granted on an application for pat-
12 ent by another filed in the United States before the
13 invention by the applicant for patent, except that a
14 patent shall not be deemed filed in the United States
15 for the purposes of this subsection based on the fil-
16 ing of an international application filed under the
17 treaty defined in section 351(a); or”.

18 **SEC. 4506. COST RECOVERY FOR PUBLICATION.**

19 The Under Secretary of Commerce for Intellectual
20 Property and Director of the United States Patent and
21 Trademark Office shall recover the cost of early publica-
22 tion required by the amendment made by section 4502 by
23 charging a separate publication fee after notice of allow-
24 ance is given under section 151 of title 35, United States
25 Code.

1 **SEC. 4507. CONFORMING AMENDMENTS.**

2 The following provisions of title 35, United States
3 Code, are amended:

4 (1) Section 11 is amended in paragraph 1 of
5 subsection (a) by inserting “and published applica-
6 tions for patents” after “Patents”.

7 (2) Section 12 is amended—

8 (A) in the section caption by inserting
9 “**and applications**” after “**patents**”; and

10 (B) by inserting “and published applica-
11 tions for patents” after “patents”.

12 (3) Section 13 is amended—

13 (A) in the section caption by inserting
14 “**and applications**” after “**patents**”; and

15 (B) by inserting “and published applica-
16 tions for patents” after “patents”.

17 (4) The items relating to sections 12 and 13 in
18 the table of sections for chapter 1 are each amended
19 by inserting “and applications” after “patents”.

20 (5) The item relating to section 122 in the table
21 of sections for chapter 11 is amended by inserting
22 “; publication of patent applications” after “applica-
23 tions”.

24 (6) The item relating to section 154 in the table
25 of sections for chapter 14 is amended by inserting
26 “; provisional rights” after “patent”.

1 (7) Section 181 is amended—

2 (A) in the first undesignated paragraph—

3 (i) by inserting “by the publication of
4 an application or” after “disclosure”; and

5 (ii) by inserting “the publication of
6 the application or” after “withhold”;

7 (B) in the second undesignated paragraph
8 by inserting “by the publication of an applica-
9 tion or” after “disclosure of an invention”;

10 (C) in the third undesignated paragraph—

11 (i) by inserting “by the publication of
12 the application or” after “disclosure of the
13 invention”; and

14 (ii) by inserting “the publication of
15 the application or” after “withhold”; and

16 (D) in the fourth undesignated paragraph
17 by inserting “the publication of an application
18 or” after “and” in the first sentence.

19 (8) Section 252 is amended in the first undesignated
20 paragraph by inserting “substantially” before
21 “identical” each place it appears.

22 (9) Section 284 is amended by adding at the
23 end of the second undesignated paragraph the fol-
24 lowing: “Increased damages under this paragraph

1 shall not apply to provisional rights under section
2 154(d) of this title.”.

3 (10) Section 374 is amended to read as follows:

4 **“§ 374. Publication of international application**

5 “The publication under the treaty defined in section
6 351(a) of this title, of an international application desig-
7 nating the United States shall confer the same rights and
8 shall have the same effect under this title as an application
9 for patent published under section 122(b), except as pro-
10 vided in sections 102(e) and 154(d) of this title.”.

11 (11) Section 135(b) is amended—

12 (A) by inserting “(1)” after “(b)”; and

13 (B) by adding at the end the following:

14 “(2) A claim which is the same as, or for the same
15 or substantially the same subject matter as, a claim of
16 an application published under section 122(b) of this title
17 may be made in an application filed after the application
18 is published only if the claim is made before 1 year after
19 the date on which the application is published.”.

20 **SEC. 4508. EFFECTIVE DATE.**

21 Sections 4502 through 4507, and the amendments
22 made by such sections, shall take effect on the date that
23 is 1 year after the date of the enactment of this Act and
24 shall apply to all applications filed under section 111 of
25 title 35, United States Code, on or after that date, and

1 all applications complying with section 371 of title 35,
2 United States Code, that resulted from international ap-
3 plications filed on or after that date. The amendments
4 made by sections 4504 and 4505 shall apply to any such
5 application voluntarily published by the applicant under
6 procedures established under this subtitle that is pending
7 on the date that is 1 year after the date of the enactment
8 of this Act. The amendment made by section 4504 shall
9 also apply to international applications designating the
10 United States that are filed on or after the date that is
11 1 year after the date of the enactment of this Act.

12 **Subtitle F—Optional Inter Partes**
13 **Reexamination Procedure**

14 **SEC. 4601. SHORT TITLE.**

15 This subtitle may be cited as the “Optional Inter
16 Partes Reexamination Procedure Act of 1999”.

17 **SEC. 4602. EX PARTE REEXAMINATION OF PATENTS.**

18 The chapter heading for chapter 30 of title 35,
19 United States Code, is amended by inserting “**EX**
20 **PARTE**” before “**REEXAMINATION OF PAT-**
21 **ENTS**”.

22 **SEC. 4603. DEFINITIONS.**

23 Section 100 of title 35, United States Code, is
24 amended by adding at the end the following new sub-
25 section:

1 ment of an inter partes reexamination fee estab-
2 lished by the Director under section 41; and

3 “(2) set forth the pertinency and manner of ap-
4 plying cited prior art to every claim for which reex-
5 amination is requested.

6 “(c) COPY.—Unless the requesting person is
7 the owner of the patent, the Director promptly shall
8 send a copy of the request to the owner of record
9 of the patent.

10 **“§ 312. Determination of issue by Director**

11 “(a) REEXAMINATION.—Not later than 3 months
12 after the filing of a request for inter partes reexamination
13 under section 311, the Director shall determine whether
14 a substantial new question of patentability affecting any
15 claim of the patent concerned is raised by the request,
16 with or without consideration of other patents or printed
17 publications. On the Director’s initiative, and at any time,
18 the Director may determine whether a substantial new
19 question of patentability is raised by patents and publica-
20 tions.

21 “(b) RECORD.—A record of the Director’s determina-
22 tion under subsection (a) shall be placed in the official
23 file of the patent, and a copy shall be promptly given or
24 mailed to the owner of record of the patent and to the
25 third-party requester, if any.

1 posed amended or new claim enlarging the scope of the
2 claims of the patent shall be permitted.

3 “(b) RESPONSE.—(1) This subsection shall apply to
4 any inter partes reexamination proceeding in which the
5 order for inter partes reexamination is based upon a re-
6 quest by a third-party requester.

7 “(2) With the exception of the inter partes reexam-
8 ination request, any document filed by either the patent
9 owner or the third-party requester shall be served on the
10 other party. In addition, the third-party requester shall
11 receive a copy of any communication sent by the Office
12 to the patent owner concerning the patent subject to the
13 inter partes reexamination proceeding.

14 “(3) Each time that the patent owner files a response
15 to an action on the merits from the Patent and Trademark
16 Office, the third-party requester shall have one oppor-
17 tunity to file written comments addressing issues raised
18 by the action of the Office or the patent owner’s response
19 thereto, if those written comments are received by the Of-
20 fice within 30 days after the date of service of the patent
21 owner’s response.

22 “(c) SPECIAL DISPATCH.—Unless otherwise provided
23 by the Director for good cause, all inter partes reexamina-
24 tion proceedings under this section, including any appeal

1 to the Board of Patent Appeals and Interferences, shall
2 be conducted with special dispatch within the Office.

3 **“§ 315. Appeal**

4 “(a) PATENT OWNER.—The patent owner involved in
5 an inter partes reexamination proceeding under this
6 chapter—

7 “(1) may appeal under the provisions of section
8 134 and may appeal under the provisions of sections
9 141 through 144, with respect to any decision ad-
10 verse to the patentability of any original or proposed
11 amended or new claim of the patent; and

12 “(2) may be a party to any appeal taken by a
13 third-party requester under subsection (b).

14 “(b) THIRD-PARTY REQUESTER.—A third-party re-
15 quester may—

16 “(1) appeal under the provisions of section 134
17 with respect to any final decision favorable to the
18 patentability of any original or proposed amended or
19 new claim of the patent; or

20 “(2) be a party to any appeal taken by the pat-
21 ent owner under the provisions of section 134, sub-
22 ject to subsection (c).

23 “(c) CIVIL ACTION.—A third-party requester whose
24 request for an inter partes reexamination results in an
25 order under section 313 is estopped from asserting at a

1 later time, in any civil action arising in whole or in part
2 under section 1338 of title 28, United States Code, the
3 invalidity of any claim finally determined to be valid and
4 patentable on any ground which the third-party requester
5 raised or could have raised during the inter partes reexam-
6 ination proceedings. This subsection does not prevent the
7 assertion of invalidity based on newly discovered prior art
8 unavailable to the third-party requester and the Patent
9 and Trademark Office at the time of the inter partes reex-
10 amination proceedings.

11 **“§ 316. Certificate of patentability, unpatentability,**
12 **and claim cancellation**

13 “(a) IN GENERAL.—In an inter partes reexamination
14 proceeding under this chapter, when the time for appeal
15 has expired or any appeal proceeding has terminated, the
16 Director shall issue and publish a certificate canceling any
17 claim of the patent finally determined to be unpatentable,
18 confirming any claim of the patent determined to be pat-
19 entable, and incorporating in the patent any proposed
20 amended or new claim determined to be patentable.

21 “(b) AMENDED OR NEW CLAIM.—Any proposed
22 amended or new claim determined to be patentable and
23 incorporated into a patent following an inter partes reex-
24 amination proceeding shall have the same effect as that
25 specified in section 252 of this title for reissued patents

1 on the right of any person who made, purchased, or used
2 within the United States, or imported into the United
3 States, anything patented by such proposed amended or
4 new claim, or who made substantial preparation therefor,
5 prior to issuance of a certificate under the provisions of
6 subsection (a) of this section.

7 **“§ 317. Inter partes reexamination prohibited**

8 “(a) ORDER FOR REEXAMINATION.—Notwith-
9 standing any provision of this chapter, once an order for
10 inter partes reexamination of a patent has been issued
11 under section 313, neither the patent owner nor the third-
12 party requester, if any, nor privies of either, may file a
13 subsequent request for inter partes reexamination of the
14 patent until an inter partes reexamination certificate is
15 issued and published under section 316, unless authorized
16 by the Director.

17 “(b) FINAL DECISION.—Once a final decision has
18 been entered against a party in a civil action arising in
19 whole or in part under section 1338 of title 28, United
20 States Code, that the party has not sustained its burden
21 of proving the invalidity of any patent claim in suit or
22 if a final decision in an inter partes reexamination pro-
23 ceeding instituted by a third-party requester is favorable
24 to the patentability of any original or proposed amended
25 or new claim of the patent, then neither that party nor

1 its privies may thereafter request an inter partes reexam-
2 ination of any such patent claim on the basis of issues
3 which that party or its privies raised or could have raised
4 in such civil action or inter partes reexamination pro-
5 ceeding, and an inter partes reexamination requested by
6 that party or its privies on the basis of such issues may
7 not thereafter be maintained by the Office, notwith-
8 standing any other provision of this chapter. This sub-
9 section does not prevent the assertion of invalidity based
10 on newly discovered prior art unavailable to the third-
11 party requester and the Patent and Trademark Office at
12 the time of the inter partes reexamination proceedings.

13 **“§ 318. Stay of litigation**

14 “Once an order for inter partes reexamination of a
15 patent has been issued under section 313, the patent
16 owner may obtain a stay of any pending litigation which
17 involves an issue of patentability of any claims of the pat-
18 ent which are the subject of the inter partes reexamination
19 order, unless the court before which such litigation is
20 pending determines that a stay would not serve the inter-
21 ests of justice.”.

22 (b) CONFORMING AMENDMENT.—The table of chap-
23 ters for part III of title 25, United States Code, is amend-
24 ed by striking the item relating to chapter 30 and insert-
25 ing the following:

“30. Prior Art Citations to Office and Ex Parte Reexamination of Patents	301
“31. Optional Inter Partes Reexamination of Patents	311”.

1 **SEC. 4605. CONFORMING AMENDMENTS.**

2 (a) PATENT FEES; PATENT SEARCH SYSTEMS.—Sec-
3 tion 41(a)(7) of title 35, United States Code, is amended
4 to read as follows:

5 “(7) On filing each petition for the revival of an
6 unintentionally abandoned application for a patent,
7 for the unintentionally delayed payment of the fee
8 for issuing each patent, or for an unintentionally de-
9 layed response by the patent owner in any reexam-
10 ination proceeding, \$1,210, unless the petition is
11 filed under section 133 or 151 of this title, in which
12 case the fee shall be \$110.”

13 (b) APPEAL TO THE BOARD OF PATENTS APPEALS
14 AND INTERFERENCES.—Section 134 of title 35, United
15 States Code, is amended to read as follows:

16 **“§ 134. Appeal to the Board of Patent Appeals and**
17 **Interferences**

18 “(a) PATENT APPLICANT.—An applicant for a pat-
19 ent, any of whose claims has been twice rejected, may ap-
20 peal from the decision of the administrative patent judge
21 to the Board of Patent Appeals and Interferences, having
22 once paid the fee for such appeal.

23 “(b) PATENT OWNER.—A patent owner in any reex-
24 amination proceeding may appeal from the final rejection

1 of any claim by the administrative patent judge to the
2 Board of Patent Appeals and Interferences, having once
3 paid the fee for such appeal.

4 “(c) THIRD-PARTY.—A third-party requester in an
5 inter partes proceeding may appeal to the Board of Patent
6 Appeals and Interferences from the final decision of the
7 administrative patent judge favorable to the patentability
8 of any original or proposed amended or new claim of a
9 patent, having once paid the fee for such appeal. The
10 third-party requester may not appeal the decision of the
11 Board of Patent Appeals and Interferences.”.

12 (c) APPEAL TO COURT OF APPEALS FOR THE FED-
13 ERAL CIRCUIT.—Section 141 of title 35, United States
14 Code, is amended by adding the following after the second
15 sentence: “A patent owner in any reexamination pro-
16 ceeding dissatisfied with the final decision in an appeal
17 to the Board of Patent Appeals and Interferences under
18 section 134 may appeal the decision only to the United
19 States Court of Appeals for the Federal Circuit.”.

20 (d) PROCEEDINGS ON APPEAL.—Section 143 of title
21 35, United States Code, is amended by amending the third
22 sentence to read as follows: “In any reexamination case,
23 the Director shall submit to the court in writing the
24 grounds for the decision of the Patent and Trademark Of-
25 fice, addressing all the issues involved in the appeal.”.

1 (e) CIVIL ACTION TO OBTAIN PATENT.—Section 145
2 of title 35, United States Code, is amended in the first
3 sentence by inserting “(a)” after “section 134”.

4 **SEC. 4606. REPORT TO CONGRESS.**

5 Not later than 5 years after the date of the enact-
6 ment of this Act, the Under Secretary of Commerce for
7 Intellectual Property and Director of the United States
8 Patent and Trademark Office shall submit to the Congress
9 a report evaluating whether the inter partes reexamination
10 proceedings established under the amendments made by
11 this subtitle are inequitable to any of the parties in inter-
12 est and, if so, the report shall contain recommendations
13 for changes to the amendments made by this subtitle to
14 remove such inequity.

15 **SEC. 4607. ESTOPPEL EFFECT OF REEXAMINATION.**

16 Any party who requests an inter partes reexamina-
17 tion under section 311 of title 35, United States Code,
18 is estopped from challenging at a later time, in any civil
19 action, any fact determined during the process of such re-
20 examination, except with respect to a fact determination
21 later proved to be erroneous based on information unavail-
22 able at the time of the inter partes reexamination decision.
23 If this section is held to be unenforceable, the enforce-
24 ability of the remainder of this subtitle or of this title shall
25 not be denied as a result.

1 **SEC. 4608. EFFECTIVE DATE.**

2 (a) IN GENERAL.—Subject to subsection (b), this
 3 subtitle and the amendments made by this subtitle shall
 4 take effect on the date of the enactment of this Act and
 5 shall apply to any patent that issues from an original ap-
 6 plication filed in the United States on or after that date.

7 (b) SECTION 4605(a).—The amendments made by
 8 section 4605(a) shall take effect on the date that is 1 year
 9 after the date of the enactment of this Act.

10 **Subtitle G—Patent and Trademark**
 11 **Office**

12 **SEC. 4701. SHORT TITLE.**

13 This subtitle may be cited as the “Patent and Trade-
 14 mark Office Efficiency Act”.

15 **CHAPTER 1—UNITED STATES PATENT**
 16 **AND TRADEMARK OFFICE**

17 **SEC. 4711. ESTABLISHMENT OF PATENT AND TRADEMARK**
 18 **OFFICE.**

19 Section 1 of title 35, United States Code, is amended
 20 to read as follows:

21 **“§ 1. Establishment**

22 “(a) ESTABLISHMENT.—The United States Patent
 23 and Trademark Office is established as an agency of the
 24 United States, within the Department of Commerce. In
 25 carrying out its functions, the United States Patent and
 26 Trademark Office shall be subject to the policy direction

1 of the Secretary of Commerce, but otherwise shall retain
2 responsibility for decisions regarding the management and
3 administration of its operations and shall exercise inde-
4 pendent control of its budget allocations and expenditures,
5 personnel decisions and processes, procurements, and
6 other administrative and management functions in accord-
7 ance with this title and applicable provisions of law. Those
8 operations designed to grant and issue patents and those
9 operations which are designed to facilitate the registration
10 of trademarks shall be treated as separate operating units
11 within the Office.

12 “(b) OFFICES.—The United States Patent and
13 Trademark Office shall maintain its principal office in the
14 metropolitan Washington, D.C., area, for the service of
15 process and papers and for the purpose of carrying out
16 its functions. The United States Patent and Trademark
17 Office shall be deemed, for purposes of venue in civil ac-
18 tions, to be a resident of the district in which its principal
19 office is located, except where jurisdiction is otherwise pro-
20 vided by law. The United States Patent and Trademark
21 Office may establish satellite offices in such other places
22 in the United States as it considers necessary and appro-
23 priate in the conduct of its business.

24 “(c) REFERENCE.—For purposes of this title, the
25 United States Patent and Trademark Office shall also be

1 referred to as the ‘Office’ and the ‘Patent and Trademark
2 Office’.”.

3 **SEC. 4712. POWERS AND DUTIES.**

4 Section 2 of title 35, United States Code, is amended
5 to read as follows:

6 **“§ 2. Powers and duties**

7 “(a) IN GENERAL.—The United States Patent and
8 Trademark Office, subject to the policy direction of the
9 Secretary of Commerce—

10 “(1) shall be responsible for the granting and
11 issuing of patents and the registration of trade-
12 marks; and

13 “(2) shall be responsible for disseminating to
14 the public information with respect to patents and
15 trademarks.

16 “(b) SPECIFIC POWERS.—The Office—

17 “(1) shall adopt and use a seal of the Office,
18 which shall be judicially noticed and with which let-
19 ters patent, certificates of trademark registrations,
20 and papers issued by the Office shall be authenti-
21 cated;

22 “(2) may establish regulations, not inconsistent
23 with law, which—

24 “(A) shall govern the conduct of pro-
25 ceedings in the Office;

1 “(B) shall be made in accordance with sec-
2 tion 553 of title 5, United States Code;

3 “(C) shall facilitate and expedite the proc-
4 essing of patent applications, particularly those
5 which can be filed, stored, processed, searched,
6 and retrieved electronically, subject to the provi-
7 sions of section 122 relating to the confidential
8 status of applications;

9 “(D) may govern the recognition and con-
10 duct of agents, attorneys, or other persons rep-
11 resenting applicants or other parties before the
12 Office, and may require them, before being rec-
13 ognized as representatives of applicants or
14 other persons, to show that they are of good
15 moral character and reputation and are pos-
16 sessed of the necessary qualifications to render
17 to applicants or other persons valuable service,
18 advice, and assistance in the presentation or
19 prosecution of their applications or other busi-
20 ness before the Office;

21 “(E) shall recognize the public interest in
22 continuing to safeguard broad access to the
23 United States patent system through the re-
24 duced fee structure for small entities under sec-
25 tion 41(h)(1) of this title; and

1 “(F) provide for the development of a per-
2 formance-based process that includes quan-
3 titative and qualitative measures and standards
4 for evaluating cost-effectiveness and is con-
5 sistent with the principles of impartiality and
6 competitiveness;

7 “(3) may acquire, construct, purchase, lease,
8 hold, manage, operate, improve, alter, and renovate
9 any real, personal, or mixed property, or any interest
10 therein, as it considers necessary to carry out its
11 functions;

12 “(4)(A) may make such purchases, contracts
13 for the construction, maintenance, or management
14 and operation of facilities, and contracts for supplies
15 or services, without regard to the provisions of the
16 Federal Property and Administrative Services Act of
17 1949 (40 U.S.C. 471 et seq.), the Public Buildings
18 Act (40 U.S.C. 601 et seq.), and the Stewart B.
19 McKinney Homeless Assistance Act (42 U.S.C.
20 11301 et seq.); and

21 “(B) may enter into and perform such pur-
22 chases and contracts for printing services, including
23 the process of composition, platemaking, presswork,
24 silk screen processes, binding, microform, and the
25 products of such processes, as it considers necessary

1 to carry out the functions of the Office, without re-
2 gard to sections 501 through 517 and 1101 through
3 1123 of title 44, United States Code;

4 “(5) may use, with their consent, services,
5 equipment, personnel, and facilities of other depart-
6 ments, agencies, and instrumentalities of the Fed-
7 eral Government, on a reimbursable basis, and co-
8 operate with such other departments, agencies, and
9 instrumentalities in the establishment and use of
10 services, equipment, and facilities of the Office;

11 “(6) may, when the Director determines that it
12 is practicable, efficient, and cost-effective to do so,
13 use, with the consent of the United States and the
14 agency, instrumentality, Patent and Trademark Of-
15 fice, or international organization concerned, the
16 services, records, facilities, or personnel of any State
17 or local government agency or instrumentality or
18 foreign patent and trademark office or international
19 organization to perform functions on its behalf;

20 “(7) may retain and use all of its revenues and
21 receipts, including revenues from the sale, lease, or
22 disposal of any real, personal, or mixed property, or
23 any interest therein, of the Office;

1 “(8) shall advise the President, through the
2 Secretary of Commerce, on national and certain
3 international intellectual property policy issues;

4 “(9) shall advise Federal departments and
5 agencies on matters of intellectual property policy in
6 the United States and intellectual property protec-
7 tion in other countries;

8 “(10) shall provide guidance, as appropriate,
9 with respect to proposals by agencies to assist for-
10 eign governments and international intergovern-
11 mental organizations on matters of intellectual prop-
12 erty protection;

13 “(11) may conduct programs, studies, or ex-
14 changes of items or services regarding domestic and
15 international intellectual property law and the effec-
16 tiveness of intellectual property protection domesti-
17 cally and throughout the world;

18 “(12)(A) shall advise the Secretary of Com-
19 merce on programs and studies relating to intellec-
20 tual property policy that are conducted, or author-
21 ized to be conducted, cooperatively with foreign in-
22 tellectual property offices and international intergov-
23 ernmental organizations; and

24 “(B) may conduct programs and studies de-
25 scribed in subparagraph (A); and

1 “(13)(A) in coordination with the Department
2 of State, may conduct programs and studies coop-
3 eratively with foreign intellectual property offices
4 and international intergovernmental organizations;
5 and

6 “(B) with the concurrence of the Secretary of
7 State, may authorize the transfer of not to exceed
8 \$100,000 in any year to the Department of State
9 for the purpose of making special payments to inter-
10 national intergovernmental organizations for studies
11 and programs for advancing international coopera-
12 tion concerning patents, trademarks, and other mat-
13 ters.

14 “(c) CLARIFICATION OF SPECIFIC POWERS.—(1) The
15 special payments under subsection (b)(13)(B) shall be in
16 addition to any other payments or contributions to inter-
17 national organizations described in subsection (b)(13)(B)
18 and shall not be subject to any limitations imposed by law
19 on the amounts of such other payments or contributions
20 by the United States Government.

21 “(2) Nothing in subsection (b) shall derogate from
22 the duties of the Secretary of State or from the duties
23 of the United States Trade Representative as set forth in
24 section 141 of the Trade Act of 1974 (19 U.S.C. 2171).

1 “(3) Nothing in subsection (b) shall derogate from
2 the duties and functions of the Register of Copyrights or
3 otherwise alter current authorities relating to copyright
4 matters.

5 “(4) In exercising the Director’s powers under para-
6 graphs (3) and (4)(A) of subsection (b), the Director shall
7 consult with the Administrator of General Services.

8 “(5) In exercising the Director’s powers and duties
9 under this section, the Director shall consult with the Reg-
10 ister of Copyrights on all copyright and related matters.

11 “(d) CONSTRUCTION.—Nothing in this section shall
12 be construed to nullify, void, cancel, or interrupt any pend-
13 ing request-for-proposal let or contract issued by the Gen-
14 eral Services Administration for the specific purpose of re-
15 locating or leasing space to the United States Patent and
16 Trademark Office.”.

17 **SEC. 4713. ORGANIZATION AND MANAGEMENT.**

18 Section 3 of title 35, United States Code, is amended
19 to read as follows:

20 **“§ 3. Officers and employees**

21 **“(a) UNDER SECRETARY AND DIRECTOR.—**

22 **“(1) IN GENERAL.—**The powers and duties of
23 the United States Patent and Trademark Office
24 shall be vested in an Under Secretary of Commerce
25 for Intellectual Property and Director of the United

1 States Patent and Trademark Office (in this title re-
2 ferred to as the ‘Director’), who shall be a citizen of
3 the United States and who shall be appointed by the
4 President, by and with the advice and consent of the
5 Senate. The Director shall be a person who has a
6 professional background and experience in patent or
7 trademark law.

8 “(2) DUTIES.—

9 “(A) IN GENERAL.—The Director shall be
10 responsible for providing policy direction and
11 management supervision for the Office and for
12 the issuance of patents and the registration of
13 trademarks. The Director shall perform these
14 duties in a fair, impartial, and equitable man-
15 ner.

16 “(B) CONSULTING WITH THE PUBLIC AD-
17 VISORY COMMITTEES.—The Director shall con-
18 sult with the Patent Public Advisory Committee
19 established in section 5 on a regular basis on
20 matters relating to the patent operations of the
21 Office, shall consult with the Trademark Public
22 Advisory Committee established in section 5 on
23 a regular basis on matters relating to the trade-
24 mark operations of the Office, and shall consult
25 with the respective Public Advisory Committee

1 before submitting budgetary proposals to the
2 Office of Management and Budget or changing
3 or proposing to change patent or trademark
4 user fees or patent or trademark regulations
5 which are subject to the requirement to provide
6 notice and opportunity for public comment
7 under section 553 of title 5, United States
8 Code, as the case may be.

9 “(3) OATH.—The Director shall, before taking
10 office, take an oath to discharge faithfully the duties
11 of the Office.

12 “(4) REMOVAL.—The Director may be removed
13 from office by the President. The President shall
14 provide notification of any such removal to both
15 Houses of Congress.

16 “(b) OFFICERS AND EMPLOYEES OF THE OFFICE.—

17 “(1) DEPUTY UNDER SECRETARY AND DEPUTY
18 DIRECTOR.—The Secretary of Commerce, upon nom-
19 ination by the Director, shall appoint a Deputy
20 Under Secretary of Commerce for Intellectual Prop-
21 erty and Deputy Director of the United States Pat-
22 ent and Trademark Office who shall be vested with
23 the authority to act in the capacity of the Director
24 in the event of the absence or incapacity of the Di-
25 rector. The Deputy Director shall be a citizen of the

1 United States who has a professional background
2 and experience in patent or trademark law.

3 “(2) COMMISSIONERS.—

4 “(A) APPOINTMENT AND DUTIES.—The
5 Secretary of Commerce shall appoint a Commis-
6 sioner for Patents and a Commissioner for
7 Trademarks, without regard to chapter 33, 51,
8 or 53 of title 5, United States Code. The Com-
9 missioner for Patents shall be a citizen of the
10 United States with demonstrated management
11 ability and professional background and experi-
12 ence in patent law and serve for a term of 5
13 years. The Commissioner for Trademarks shall
14 be a citizen of the United States with dem-
15 onstrated management ability and professional
16 background and experience in trademark law
17 and serve for a term of 5 years. The Commis-
18 sioner for Patents and the Commissioner for
19 Trademarks shall serve as the chief operating
20 officers for the operations of the Office relating
21 to patents and trademarks, respectively, and
22 shall be responsible for the management and di-
23 rection of all aspects of the activities of the Of-
24 fice that affect the administration of patent and
25 trademark operations, respectively. The Sec-

1 retary may reappoint a Commissioner to subse-
2 quent terms of 5 years as long as the perform-
3 ance of the Commissioner as set forth in the
4 performance agreement in subparagraph (B) is
5 satisfactory.

6 “(B) SALARY AND PERFORMANCE AGREE-
7 MENT.—The Commissioners shall be paid an
8 annual rate of basic pay not to exceed the max-
9 imum rate of basic pay for the Senior Executive
10 Service established under section 5382 of title
11 5, United States Code, including any applicable
12 locality-based comparability payment that may
13 be authorized under section 5304(h)(2)(C) of
14 title 5, United States Code. The compensation
15 of the Commissioners shall be considered, for
16 purposes of section 207(c)(2)(A) of title 18,
17 United States Code, to be the equivalent of that
18 described under clause (ii) of section
19 207(c)(2)(A) of title 18, United States Code. In
20 addition, the Commissioners may receive a
21 bonus in an amount of up to, but not in excess
22 of, 50 percent of the Commissioners’ annual
23 rate of basic pay, based upon an evaluation by
24 the Secretary of Commerce, acting through the
25 Director, of the Commissioners’ performance as

1 defined in an annual performance agreement
2 between the Commissioners and the Secretary.
3 The annual performance agreements shall in-
4 corporate measurable organization and indi-
5 vidual goals in key operational areas as delin-
6 eated in an annual performance plan agreed to
7 by the Commissioners and the Secretary. Pay-
8 ment of a bonus under this subparagraph may
9 be made to the Commissioners only to the ex-
10 tent that such payment does not cause the
11 Commissioners' total aggregate compensation in
12 a calendar year to equal or exceed the amount
13 of the salary of the Vice President under sec-
14 tion 104 of title 3, United States Code.

15 “(C) REMOVAL.—The Commissioners may
16 be removed from office by the Secretary for
17 misconduct or nonsatisfactory performance
18 under the performance agreement described in
19 subparagraph (B), without regard to the provi-
20 sions of title 5, United States Code. The Sec-
21 retary shall provide notification of any such re-
22 moval to both Houses of Congress.

23 “(3) OTHER OFFICERS AND EMPLOYEES.—The
24 Director shall—

1 “(A) appoint such officers, employees (in-
2 cluding attorneys), and agents of the Office as
3 the Director considers necessary to carry out
4 the functions of the Office; and

5 “(B) define the title, authority, and duties
6 of such officers and employees and delegate to
7 them such of the powers vested in the Office as
8 the Director may determine.

9 The Office shall not be subject to any administra-
10 tively or statutorily imposed limitation on positions
11 or personnel, and no positions or personnel of the
12 Office shall be taken into account for purposes of
13 applying any such limitation.

14 “(4) TRAINING OF EXAMINERS.—The Office
15 shall submit to the Congress a proposal to provide
16 an incentive program to retain as employees patent
17 and trademark examiners of the primary examiner
18 grade or higher who are eligible for retirement, for
19 the sole purpose of training patent and trademark
20 examiners.

21 “(5) NATIONAL SECURITY POSITIONS.—The Di-
22 rector, in consultation with the Director of the Of-
23 fice of Personnel Management, shall maintain a pro-
24 gram for identifying national security positions and
25 providing for appropriate security clearances, in

1 order to maintain the secrecy of certain inventions,
2 as described in section 181, and to prevent disclo-
3 sure of sensitive and strategic information in the in-
4 terest of national security.

5 “(c) CONTINUED APPLICABILITY OF TITLE 5,
6 UNITED STATES CODE.—Officers and employees of the
7 Office shall be subject to the provisions of title 5, United
8 States Code, relating to Federal employees.

9 “(d) ADOPTION OF EXISTING LABOR AGREE-
10 MENTS.—The Office shall adopt all labor agreements
11 which are in effect, as of the day before the effective date
12 of the Patent and Trademark Office Efficiency Act, with
13 respect to such Office (as then in effect).

14 “(e) CARRYOVER OF PERSONNEL.—

15 “(1) FROM PTO.—Effective as of the effective
16 date of the Patent and Trademark Office Efficiency
17 Act, all officers and employees of the Patent and
18 Trademark Office on the day before such effective
19 date shall become officers and employees of the Of-
20 fice, without a break in service.

21 “(2) OTHER PERSONNEL.—Any individual who,
22 on the day before the effective date of the Patent
23 and Trademark Office Efficiency Act, is an officer
24 or employee of the Department of Commerce (other
25 than an officer or employee under paragraph (1))

1 shall be transferred to the Office, as necessary to
2 carry out the purposes of this Act, if—

3 “(A) such individual serves in a position
4 for which a major function is the performance
5 of work reimbursed by the Patent and Trade-
6 mark Office, as determined by the Secretary of
7 Commerce;

8 “(B) such individual serves in a position
9 that performed work in support of the Patent
10 and Trademark Office during at least half of
11 the incumbent’s work time, as determined by
12 the Secretary of Commerce; or

13 “(C) such transfer would be in the interest
14 of the Office, as determined by the Secretary of
15 Commerce in consultation with the Director.

16 Any transfer under this paragraph shall be effective
17 as of the same effective date as referred to in para-
18 graph (1), and shall be made without a break in
19 service.

20 “(f) TRANSITION PROVISIONS.—

21 “(1) INTERIM APPOINTMENT OF DIRECTOR.—

22 On or after the effective date of the Patent and
23 Trademark Office Efficiency Act, the President shall
24 appoint an individual to serve as the Director until
25 the date on which a Director qualifies under sub-

1 section (a). The President shall not make more than
2 one such appointment under this subsection.

3 “(2) CONTINUATION IN OFFICE OF CERTAIN
4 OFFICERS.—(A) The individual serving as the As-
5 sistant Commissioner for Patents on the day before
6 the effective date of the Patent and Trademark Of-
7 fice Efficiency Act may serve as the Commissioner
8 for Patents until the date on which a Commissioner
9 for Patents is appointed under subsection (b).

10 “(B) The individual serving as the Assistant
11 Commissioner for Trademarks on the day before the
12 effective date of the Patent and Trademark Office
13 Efficiency Act may serve as the Commissioner for
14 Trademarks until the date on which a Commissioner
15 for Trademarks is appointed under subsection (b).”.

16 **SEC. 4714. PUBLIC ADVISORY COMMITTEES.**

17 Chapter 1 of part I of title 35, United States Code,
18 is amended by inserting after section 4 the following:

19 **“§ 5. Patent and Trademark Office Public Advisory**
20 **Committees**

21 “(a) ESTABLISHMENT OF PUBLIC ADVISORY COM-
22 MITTEES.—

23 “(1) APPOINTMENT.—The United States Pat-
24 ent and Trademark Office shall have a Patent Pub-
25 lic Advisory Committee and a Trademark Public Ad-

1 visory Committee, each of which shall have nine vot-
2 ing members who shall be appointed by the Sec-
3 retary of Commerce and serve at the pleasure of the
4 Secretary of Commerce. Members of each Public Ad-
5 visory Committee shall be appointed for a term of 3
6 years, except that of the members first appointed,
7 three shall be appointed for a term of 1 year, and
8 three shall be appointed for a term of 2 years. In
9 making appointments to each Committee, the Sec-
10 retary of Commerce shall consider the risk of loss of
11 competitive advantage in international commerce or
12 other harm to United States companies as a result
13 of such appointments.

14 “(2) CHAIR.—The Secretary shall designate a
15 chair of each Advisory Committee, whose term as
16 chair shall be for 3 years.

17 “(3) TIMING OF APPOINTMENTS.—Initial ap-
18 pointments to each Advisory Committee shall be
19 made within 3 months after the effective date of the
20 Patent and Trademark Office Efficiency Act. Vacan-
21 cies shall be filled within 3 months after they occur.

22 “(b) BASIS FOR APPOINTMENTS.—Members of each
23 Advisory Committee—

24 “(1) shall be citizens of the United States who
25 shall be chosen so as to represent the interests of di-

1 verse users of the United States Patent and Trade-
2 mark Office with respect to patents, in the case of
3 the Patent Public Advisory Committee, and with re-
4 spect to trademarks, in the case of the Trademark
5 Public Advisory Committee;

6 “(2) shall include members who represent small
7 and large entity applicants located in the United
8 States in proportion to the number of applications
9 filed by such applicants, but in no case shall mem-
10 bers who represent small entity patent applicants,
11 including small business concerns, independent in-
12 ventors, and nonprofit organizations, constitute less
13 than 25 percent of the members of the Patent Pub-
14 lic Advisory Committee, and such members shall in-
15 clude at least one independent inventor; and

16 “(3) shall include individuals with substantial
17 background and achievement in finance, manage-
18 ment, labor relations, science, technology, and office
19 automation.

20 In addition to the voting members, each Advisory Com-
21 mittee shall include a representative of each labor organi-
22 zation recognized by the United States Patent and Trade-
23 mark Office. Such representatives shall be nonvoting
24 members of the Advisory Committee to which they are ap-
25 pointed.

1 “(c) MEETINGS.—Each Advisory Committee shall
2 meet at the call of the chair to consider an agenda set
3 by the chair.

4 “(d) DUTIES.—Each Advisory Committee shall—

5 “(1) review the policies, goals, performance,
6 budget, and user fees of the United States Patent
7 and Trademark Office with respect to patents, in the
8 case of the Patent Public Advisory Committee, and
9 with respect to Trademarks, in the case of the
10 Trademark Public Advisory Committee, and advise
11 the Director on these matters;

12 “(2) within 60 days after the end of each fiscal
13 year—

14 “(A) prepare an annual report on the mat-
15 ters referred to in paragraph (1);

16 “(B) transmit the report to the Secretary
17 of Commerce, the President, and the Commit-
18 tees on the Judiciary of the Senate and the
19 House of Representatives; and

20 “(C) publish the report in the Official Ga-
21 zette of the United States Patent and Trade-
22 mark Office.

23 “(e) COMPENSATION.—Each member of each Advi-
24 sory Committee shall be compensated for each day (includ-
25 ing travel time) during which such member is attending

1 meetings or conferences of that Advisory Committee or
2 otherwise engaged in the business of that Advisory Com-
3 mittee, at the rate which is the daily equivalent of the an-
4 nual rate of basic pay in effect for level III of the Execu-
5 tive Schedule under section 5314 of title 5, United States
6 Code. While away from such member's home or regular
7 place of business such member shall be allowed travel ex-
8 penses, including per diem in lieu of subsistence, as au-
9 thorized by section 5703 of title 5, United States Code.

10 “(f) ACCESS TO INFORMATION.—Members of each
11 Advisory Committee shall be provided access to records
12 and information in the United States Patent and Trade-
13 mark Office, except for personnel or other privileged infor-
14 mation and information concerning patent applications re-
15 quired to be kept in confidence by section 122.

16 “(g) APPLICABILITY OF CERTAIN ETHICS LAWS.—
17 Members of each Advisory Committee shall be special Gov-
18 ernment employees within the meaning of section 202 of
19 title 18, United States Code.

20 “(h) INAPPLICABILITY OF FEDERAL ADVISORY COM-
21 MITTEE ACT.—The Federal Advisory Committee Act (5
22 U.S.C. App.) shall not apply to each Advisory Committee.

23 “(i) OPEN MEETINGS.—The meetings of each Advi-
24 sory Committee shall be open to the public, except that
25 each Advisory Committee may by majority vote meet in

1 executive session when considering personnel or other con-
2 fidential information.”.

3 **SEC. 4715. CONFORMING AMENDMENTS.**

4 (a) DUTIES.—Chapter 1 of title 35, United States
5 Code, is amended by striking section 6.

6 (b) REGULATIONS FOR AGENTS AND ATTORNEYS.—
7 Section 31 of title 35, United States Code, and the item
8 relating to such section in the table of sections for chapter
9 3 of title 35, United States Code, are repealed.

10 (c) SUSPENSION OR EXCLUSION FROM PRACTICE.—
11 Section 32 of title 35, United States Code, is amended
12 by striking “31” and inserting “2(b)(2)(D)”.

13 **SEC. 4716. TRADEMARK TRIAL AND APPEAL BOARD.**

14 Section 17 of the Act of July 5, 1946 (commonly re-
15 ferred to as the “Trademark Act of 1946”) (15 U.S.C.
16 1067) is amended to read as follows:

17 “SEC. 17. (a) In every case of interference, opposition
18 to registration, application to register as a lawful concur-
19 rent user, or application to cancel the registration of a
20 mark, the Director shall give notice to all parties and shall
21 direct a Trademark Trial and Appeal Board to determine
22 and decide the respective rights of registration.

23 “(b) The Trademark Trial and Appeal Board shall
24 include the Director, the Commissioner for Patents, the

1 Commissioner for Trademarks, and administrative trade-
2 mark judges who are appointed by the Director.”.

3 **SEC. 4717. BOARD OF PATENT APPEALS AND INTER-**
4 **FERENCES.**

5 Chapter 1 of title 35, United States Code, is
6 amended—

7 (1) by striking section 7 and redesignating sec-
8 tions 8 through 14 as sections 7 through 13, respec-
9 tively; and

10 (2) by inserting after section 5 the following:

11 **“§ 6. Board of Patent Appeals and Interferences**

12 “(a) ESTABLISHMENT AND COMPOSITION.—There
13 shall be in the United States Patent and Trademark Of-
14 fice a Board of Patent Appeals and Interferences. The Di-
15 rector, the Commissioner for Patents, the Commissioner
16 for Trademarks, and the administrative patent judges
17 shall constitute the Board. The administrative patent
18 judges shall be persons of competent legal knowledge and
19 scientific ability who are appointed by the Director.

20 “(b) DUTIES.—The Board of Patent Appeals and
21 Interferences shall, on written appeal of an applicant, re-
22 view adverse decisions of examiners upon applications for
23 patents and shall determine priority and patentability of
24 invention in interferences declared under section 135(a).
25 Each appeal and interference shall be heard by at least

1 three members of the Board, who shall be designated by
2 the Director. Only the Board of Patent Appeals and Inter-
3 ferences may grant rehearings.”.

4 **SEC. 4718. ANNUAL REPORT OF DIRECTOR.**

5 Section 13 of title 35, United States Code, as redesign-
6 nated by section 4717 of this subtitle, is amended to read
7 as follows:

8 **“§ 13. Annual report to Congress**

9 “The Director shall report to the Congress, not later
10 than 180 days after the end of each fiscal year, the mon-
11 eys received and expended by the Office, the purposes for
12 which the moneys were spent, the quality and quantity of
13 the work of the Office, the nature of training provided to
14 examiners, the evaluation of the Commissioner of Patents
15 and the Commissioner of Trademarks by the Secretary of
16 Commerce, the compensation of the Commissioners, and
17 other information relating to the Office.”.

18 **SEC. 4719. SUSPENSION OR EXCLUSION FROM PRACTICE.**

19 Section 32 of title 35, United States Code, is amend-
20 ed by inserting before the last sentence the following: “The
21 Director shall have the discretion to designate any attor-
22 ney who is an officer or employee of the United States
23 Patent and Trademark Office to conduct the hearing re-
24 quired by this section.”.

1 **SEC. 4720. PAY OF DIRECTOR AND DEPUTY DIRECTOR.**

2 (a) PAY OF DIRECTOR.—Section 5314 of title 5,
3 United States Code, is amended by striking:

4 “Assistant Secretary of Commerce and Com-
5 missioner of Patents and Trademarks.”.

6 and inserting:

7 “Under Secretary of Commerce for Intellectual
8 Property and Director of the United States Patent
9 and Trademark Office.”.

10 (b) PAY OF DEPUTY DIRECTOR.—Section 5315 of
11 title 5, United States Code, is amended by adding at the
12 end the following:

13 “Deputy Under Secretary of Commerce for In-
14 tellectual Property and Deputy Director of the
15 United States Patent and Trademark Office.”.

16 **CHAPTER 2—EFFECTIVE DATE;**
17 **TECHNICAL AMENDMENTS**

18 **SEC. 4731. EFFECTIVE DATE.**

19 This subtitle and the amendments made by this sub-
20 title shall take effect 4 months after the date of the enact-
21 ment of this Act.

22 **SEC. 4732. TECHNICAL AND CONFORMING AMENDMENTS.**

23 (a) AMENDMENTS TO TITLE 35, UNITED STATES
24 CODE.—

1 (1) The item relating to part I in the table of
2 parts for chapter 35, United States Code, is amend-
3 ed to read as follows:

“I. United States Patent and Trademark Office 1”.

4 (2) The heading for part I of title 35, United
5 States Code, is amended to read as follows:

6 **“PART I—UNITED STATES PATENT AND**
7 **TRADEMARK OFFICE”.**

8 (3) The table of chapters for part I of title 35,
9 United States Code, is amended by amending the
10 item relating to chapter 1 to read as follows:

“1. Establishment, Officers and Employees, Functions 1”.

11 (4) The table of sections for chapter 1 of title
12 35, United States Code, is amended to read as fol-
13 lows:

14 **“CHAPTER 1—ESTABLISHMENT, OFFICERS**
15 **AND EMPLOYEES, FUNCTIONS**

“Sec.

“ 1. Establishment.

“ 2. Powers and duties.

“ 3. Officers and employees.

“ 4. Restrictions on officers and employees as to interest in patents.

“ 5. Patent and Trademark Office Public Advisory Committees.

“ 6. Board of Patent Appeals and Interferences.

“ 7. Library.

“ 8. Classification of patents.

“ 9. Certified copies of records.

“10. Publications.

“11. Exchange of copies of patents and applications with foreign countries.

“12. Copies of patents and applications for public libraries.

“13. Annual report to Congress.”.

1 (5) Section 41(h) of title 35, United States
2 Code, is amended by striking “Commissioner of Pat-
3 ents and Trademarks” and inserting “Director”.

4 (6) Section 155 of title 35, United States Code,
5 is amended by striking “Commissioner of Patents
6 and Trademarks” and inserting “Director”.

7 (7) Section 155A(c) of title 35, United States
8 Code, is amended by striking “Commissioner of Pat-
9 ents and Trademarks” and inserting “Director”.

10 (8) Section 302 of title 35, United States Code,
11 is amended by striking “Commissioner of Patents”
12 and inserting “Director”.

13 (9)(A) Section 303 of title 35, United States
14 Code, is amended—

15 (i) in the section heading by striking
16 “**Commissioner**” and inserting “**Direc-**
17 **tor**”; and

18 (ii) by striking “Commissioner’s” and in-
19 serting “Director’s”.

20 (B) The item relating to section 303 in the
21 table of sections for chapter 30 of title 35, United
22 States Code, is amended by striking “Commis-
23 sioner” and inserting “Director”.

24 (10)(A) Except as provided in subparagraph
25 (B), title 35, United States Code, is amended by

1 striking “Commissioner” each place it appears and
2 inserting “Director”.

3 (B) Chapter 17 of title 35, United States Code,
4 is amended by striking “Commissioner” each place
5 it appears and inserting “Commissioner of Patents”.

6 (11) Section 157(d) of title 35, United States
7 Code, is amended by striking “Secretary of Com-
8 merce” and inserting “Director”.

9 (12) Section 202(a) of title 35, United States
10 Code, is amended—

11 (A) by striking “iv)” and inserting “(iv)”;

12 and

13 (B) by striking the second period after
14 “Department of Energy” at the end of the first
15 sentence.

16 (b) OTHER PROVISIONS OF LAW.—

17 (1)(A) Section 45 of the Act of July 5, 1946
18 (commonly referred to as the “Trademark Act of
19 1946”; 15 U.S.C. 1127), is amended by striking
20 “The term ‘Commissioner’ means the Commissioner
21 of Patents and Trademarks.” and inserting “The
22 term ‘Director’ means the Under Secretary of Com-
23 merce for Intellectual Property and Director of the
24 United States Patent and Trademark Office.”.

1 (B) The Act of July 5, 1946 (commonly re-
2 ferred to as the “Trademark Act of 1946”; 15
3 U.S.C. 1051 et seq.), except for section 17, as
4 amended by 4716 of this subtitle, is amended by
5 striking “Commissioner” each place it appears and
6 inserting “Director”.

7 (C) Sections 8(e) and 9(b) of the Trademark
8 Act of 1946 are each amended by striking “Commis-
9 sioner” and inserting “Director”.

10 (2) Section 500(e) of title 5, United States
11 Code, is amended by striking “Patent Office” and
12 inserting “United States Patent and Trademark Of-
13 fice”.

14 (3) Section 5102(c)(23) of title 5, United
15 States Code, is amended to read as follows:

16 “(23) administrative patent judges and des-
17 ignated administrative patent judges in the United
18 States Patent and Trademark Office;”.

19 (4) Section 5316 of title 5, United States Code
20 (5 U.S.C. 5316) is amended by striking “Commis-
21 sioner of Patents, Department of Commerce.”,
22 “Deputy Commissioner of Patents and Trade-
23 marks.”, “Assistant Commissioner for Patents.”,
24 and “Assistant Commissioner for Trademarks.”.

1 (5) Section 9(p)(1)(B) of the Small Business
2 Act (15 U.S.C. 638(p)(1)(B)) is amended to read as
3 follows:

4 “(B) the Under Secretary of Commerce for
5 Intellectual Property and Director of the United
6 States Patent and Trademark Office; and”.

7 (6) Section 12 of the Act of February 14, 1903
8 (15 U.S.C. 1511) is amended—

9 (A) by striking “(d) Patent and Trade-
10 mark Office;” and inserting:

11 “(4) United States Patent and Trademark Of-
12 fice”; and

13 (B) by redesignating subsections (a), (b),
14 (c), (e), (f), and (g) as paragraphs (1), (2), (3),
15 (5), (6), and (7), respectively and indenting the
16 paragraphs as so redesignated 2 ems to the
17 right.

18 (7) Section 19 of the Tennessee Valley Author-
19 ity Act of 1933 (16 U.S.C. 831r) is amended—

20 (A) by striking “Patent Office of the
21 United States” and inserting “United States
22 Patent and Trademark Office”; and

23 (B) by striking “Commissioner of Patents”
24 and inserting “Under Secretary of Commerce

1 for Intellectual Property and Director of the
2 United States Patent and Trademark Office”.

3 (8) Section 182(b)(2)(A) of the Trade Act of
4 1974 (19 U.S.C. 2242(b)(2)(A)) is amended by
5 striking “Commissioner of Patents and Trade-
6 marks” and inserting “Under Secretary of Com-
7 merce for Intellectual Property and Director of the
8 United States Patent and Trademark Office”.

9 (9) Section 302(b)(2)(D) of the Trade Act of
10 1974 (19 U.S.C. 2412(b)(2)(D)) is amended by
11 striking “Commissioner of Patents and Trade-
12 marks” and inserting “Under Secretary of Com-
13 merce for Intellectual Property and Director of the
14 United States Patent and Trademark Office”.

15 (10) The Act of April 12, 1892 (27 Stat. 395;
16 20 U.S.C. 91) is amended by striking “Patent Of-
17 fice” and inserting “United States Patent and
18 Trademark Office”.

19 (11) Sections 505(m) and 512(o) of the Federal
20 Food, Drug, and Cosmetic Act (21 U.S.C. 355(m)
21 and 360b(o)) are each amended by striking “Patent
22 and Trademark Office of the Department of Com-
23 merce” and inserting “United States Patent and
24 Trademark Office”.

1 (12) Section 702(d) of the Federal Food, Drug,
2 and Cosmetic Act (21 U.S.C. 372(d)) is amended by
3 striking “Commissioner of Patents” and inserting
4 “Under Secretary of Commerce for Intellectual
5 Property and Director of the United States Patent
6 and Trademark Office” and by striking “Commis-
7 sioner” and inserting “Director”.

8 (13) Section 105(e) of the Federal Alcohol Ad-
9 ministration Act (27 U.S.C. 205(e)) is amended by
10 striking “United States Patent Office” and inserting
11 “United States Patent and Trademark Office”.

12 (14) Section 1295(a)(4) of title 28, United
13 States Code, is amended—

14 (A) in subparagraph (A) by inserting
15 “United States” before “Patent and Trade-
16 mark”; and

17 (B) in subparagraph (B) by striking
18 “Commissioner of Patents and Trademarks”
19 and inserting “Under Secretary of Commerce
20 for Intellectual Property and Director of the
21 United States Patent and Trademark Office”.

22 (15) Chapter 115 of title 28, United States
23 Code, is amended—

24 (A) in the item relating to section 1744 in
25 the table of sections by striking “Patent Office”

1 and inserting “United States Patent and
2 Trademark Office”;

3 (B) in section 1744—

4 (i) by striking “Patent Office” each
5 place it appears in the text and section
6 heading and inserting “United States Pat-
7 ent and Trademark Office”; and

8 (ii) by striking “Commissioner of Pat-
9 ents” and inserting “Under Secretary of
10 Commerce for Intellectual Property and
11 Director of the United States Patent and
12 Trademark Office”; and

13 (C) by striking “Commissioner” and in-
14 serting “Director”.

15 (16) Section 1745 of title 28, United States
16 Code, is amended by striking “United States Patent
17 Office” and inserting “United States Patent and
18 Trademark Office”.

19 (17) Section 1928 of title 28, United States
20 Code, is amended by striking “Patent Office” and
21 inserting “United States Patent and Trademark Of-
22 fice”.

23 (18) Section 151 of the Atomic Energy Act of
24 1954 (42 U.S.C. 2181) is amended in subsections c.
25 and d. by striking “Commissioner of Patents” and

1 inserting “Under Secretary of Commerce for Intel-
2 lectual Property and Director of the United States
3 Patent and Trademark Office”.

4 (19) Section 152 of the Atomic Energy Act of
5 1954 (42 U.S.C. 2182) is amended by striking
6 “Commissioner of Patents” each place it appears
7 and inserting “Under Secretary of Commerce for In-
8 tellectual Property and Director of the United States
9 Patent and Trademark Office”.

10 (20) Section 305 of the National Aeronautics
11 and Space Act of 1958 (42 U.S.C. 2457) is
12 amended—

13 (A) in subsection (c) by striking “Commis-
14 sioner of Patents” and inserting “Under Sec-
15 retary of Commerce for Intellectual Property
16 and Director of the United States Patent and
17 Trademark Office (hereafter in this section re-
18 ferred to as the ‘Director’)”; and

19 (B) by striking “Commissioner” each sub-
20 sequent place it appears and inserting “Direc-
21 tor”.

22 (21) Section 12(a) of the Solar Heating and
23 Cooling Demonstration Act of 1974 (42 U.S.C.
24 5510(a)) is amended by striking “Commissioner of
25 the Patent Office” and inserting “Under Secretary

1 of Commerce for Intellectual Property and Director
2 of the United States Patent and Trademark Office”.

3 (22) Section 1111 of title 44, United States
4 Code, is amended by striking “the Commissioner of
5 Patents,”.

6 (23) Section 1114 of title 44, United States
7 Code, is amended by striking “the Commissioner of
8 Patents,”.

9 (24) Section 1123 of title 44, United States
10 Code, is amended by striking “the Patent Office,”.

11 (25) Sections 1337 and 1338 of title 44, United
12 States Code, and the items relating to those sections
13 in the table of contents for chapter 13 of such title,
14 are repealed.

15 (26) Section 10(i) of the Trading with the
16 enemy Act (50 U.S.C. App. 10(i)) is amended by
17 striking “Commissioner of Patents” and inserting
18 “Under Secretary of Commerce for Intellectual
19 Property and Director of the United States Patent
20 and Trademark Office”.

21 **CHAPTER 3—MISCELLANEOUS**

22 **PROVISIONS**

23 **SEC. 4741. REFERENCES.**

24 (a) IN GENERAL.—Any reference in any other Fed-
25 eral law, Executive order, rule, regulation, or delegation

1 of authority, or any document of or pertaining to a depart-
2 ment or office from which a function is transferred by this
3 subtitle—

4 (1) to the head of such department or office is
5 deemed to refer to the head of the department or of-
6 fice to which such function is transferred; or

7 (2) to such department or office is deemed to
8 refer to the department or office to which such func-
9 tion is transferred.

10 (b) SPECIFIC REFERENCES.—Any reference in any
11 other Federal law, Executive order, rule, regulation, or
12 delegation of authority, or any document of or pertaining
13 to the Patent and Trademark Office—

14 (1) to the Commissioner of Patents and Trade-
15 marks is deemed to refer to the Under Secretary of
16 Commerce for Intellectual Property and Director of
17 the United States Patent and Trademark Office;

18 (2) to the Assistant Commissioner for Patents
19 is deemed to refer to the Commissioner for Patents;
20 or

21 (3) to the Assistant Commissioner for Trade-
22 marks is deemed to refer to the Commissioner for
23 Trademarks.

1 **SEC. 4742. EXERCISE OF AUTHORITIES.**

2 Except as otherwise provided by law, a Federal offi-
3 cial to whom a function is transferred by this subtitle may,
4 for purposes of performing the function, exercise all au-
5 thorities under any other provision of law that were avail-
6 able with respect to the performance of that function to
7 the official responsible for the performance of the function
8 immediately before the effective date of the transfer of the
9 function under this subtitle.

10 **SEC. 4743. SAVINGS PROVISIONS.**

11 (a) **LEGAL DOCUMENTS.**—All orders, determinations,
12 rules, regulations, permits, grants, loans, contracts, agree-
13 ments, certificates, licenses, and privileges—

14 (1) that have been issued, made, granted, or al-
15 lowed to become effective by the President, the Sec-
16 retary of Commerce, any officer or employee of any
17 office transferred by this subtitle, or any other Gov-
18 ernment official, or by a court of competent jurisdic-
19 tion, in the performance of any function that is
20 transferred by this subtitle; and

21 (2) that are in effect on the effective date of
22 such transfer (or become effective after such date
23 pursuant to their terms as in effect on such effective
24 date), shall continue in effect according to their
25 terms until modified, terminated, superseded, set
26 aside, or revoked in accordance with law by the

1 President, any other authorized official, a court of
2 competent jurisdiction, or operation of law.

3 (b) PROCEEDINGS.—This subtitle shall not affect any
4 proceedings or any application for any benefits, service,
5 license, permit, certificate, or financial assistance pending
6 on the effective date of this subtitle before an office trans-
7 ferred by this subtitle, but such proceedings and applica-
8 tions shall be continued. Orders shall be issued in such
9 proceedings, appeals shall be taken therefrom, and pay-
10 ments shall be made pursuant to such orders, as if this
11 subtitle had not been enacted, and orders issued in any
12 such proceeding shall continue in effect until modified, ter-
13 minated, superseded, or revoked by a duly authorized offi-
14 cial, by a court of competent jurisdiction, or by operation
15 of law. Nothing in this subsection shall be considered to
16 prohibit the discontinuance or modification of any such
17 proceeding under the same terms and conditions and to
18 the same extent that such proceeding could have been dis-
19 continued or modified if this subtitle had not been enacted.

20 (c) SUITS.—This subtitle shall not affect suits com-
21 menced before the effective date of this subtitle, and in
22 all such suits, proceedings shall be had, appeals taken, and
23 judgments rendered in the same manner and with the
24 same effect as if this subtitle had not been enacted.

1 (d) NONABATEMENT OF ACTIONS.—No suit, action,
2 or other proceeding commenced by or against the Depart-
3 ment of Commerce or the Secretary of Commerce, or by
4 or against any individual in the official capacity of such
5 individual as an officer or employee of an office trans-
6 ferred by this subtitle, shall abate by reason of the enact-
7 ment of this subtitle.

8 (e) CONTINUANCE OF SUITS.—If any Government of-
9 ficer in the official capacity of such officer is party to a
10 suit with respect to a function of the officer, and under
11 this subtitle such function is transferred to any other offi-
12 cer or office, then such suit shall be continued with the
13 other officer or the head of such other office, as applicable,
14 substituted or added as a party.

15 (f) ADMINISTRATIVE PROCEDURE AND JUDICIAL
16 REVIEW.—Except as otherwise provided by this subtitle,
17 any statutory requirements relating to notice, hearings,
18 action upon the record, or administrative or judicial review
19 that apply to any function transferred by this subtitle shall
20 apply to the exercise of such function by the head of the
21 Federal agency, and other officers of the agency, to which
22 such function is transferred by this subtitle.

23 **SEC. 4744. TRANSFER OF ASSETS.**

24 Except as otherwise provided in this subtitle, so much
25 of the personnel, property, records, and unexpended bal-

1 ances of appropriations, allocations, and other funds em-
2 ployed, used, held, available, or to be made available in
3 connection with a function transferred to an official or
4 agency by this subtitle shall be available to the official or
5 the head of that agency, respectively, at such time or times
6 as the Director of the Office of Management and Budget
7 directs for use in connection with the functions trans-
8 ferred.

9 **SEC. 4745. DELEGATION AND ASSIGNMENT.**

10 Except as otherwise expressly prohibited by law or
11 otherwise provided in this subtitle, an official to whom
12 functions are transferred under this subtitle (including the
13 head of any office to which functions are transferred under
14 this subtitle) may delegate any of the functions so trans-
15 ferred to such officers and employees of the office of the
16 official as the official may designate, and may authorize
17 successive redelegations of such functions as may be nec-
18 essary or appropriate. No delegation of functions under
19 this section or under any other provision of this subtitle
20 shall relieve the official to whom a function is transferred
21 under this subtitle of responsibility for the administration
22 of the function.

1 **SEC. 4746. AUTHORITY OF DIRECTOR OF THE OFFICE OF**
2 **MANAGEMENT AND BUDGET WITH RESPECT**
3 **TO FUNCTIONS TRANSFERRED.**

4 (a) DETERMINATIONS.—If necessary, the Director of
5 the Office of Management and Budget shall make any de-
6 termination of the functions that are transferred under
7 this subtitle.

8 (b) INCIDENTAL TRANSFERS.—The Director of the
9 Office of Management and Budget, at such time or times
10 as the Director shall provide, may make such determina-
11 tions as may be necessary with regard to the functions
12 transferred by this subtitle, and to make such additional
13 incidental dispositions of personnel, assets, liabilities,
14 grants, contracts, property, records, and unexpended bal-
15 ances of appropriations, authorizations, allocations, and
16 other funds held, used, arising from, available to, or to
17 be made available in connection with such functions, as
18 may be necessary to carry out the provisions of this sub-
19 title. The Director shall provide for the termination of the
20 affairs of all entities terminated by this subtitle and for
21 such further measures and dispositions as may be nec-
22 essary to effectuate the purposes of this subtitle.

23 **SEC. 4747. CERTAIN VESTING OF FUNCTIONS CONSIDERED**
24 **TRANSFERS.**

25 For purposes of this subtitle, the vesting of a function
26 in a department or office pursuant to reestablishment of

1 an office shall be considered to be the transfer of the func-
2 tion.

3 **SEC. 4748. AVAILABILITY OF EXISTING FUNDS.**

4 Existing appropriations and funds available for the
5 performance of functions, programs, and activities termi-
6 nated pursuant to this subtitle shall remain available, for
7 the duration of their period of availability, for necessary
8 expenses in connection with the termination and resolution
9 of such functions, programs, and activities, subject to the
10 submission of a plan to the Committees on Appropriations
11 of the House and Senate in accordance with the proce-
12 dures set forth in section 605 of the Departments of Com-
13 merce, Justice, and State, the Judiciary, and Related
14 Agencies Appropriations Act, 1999, as contained in Public
15 Law 105–277.

16 **SEC. 4749. DEFINITIONS.**

17 For purposes of this subtitle—

18 (1) the term “function” includes any duty, obli-
19 gation, power, authority, responsibility, right, privi-
20 lege, activity, or program; and

21 (2) the term “office” includes any office, ad-
22 ministration, agency, bureau, institute, council, unit,
23 organizational entity, or component thereof.

1 **Subtitle H—Miscellaneous Patent**
2 **Provisions**

3 **SEC. 4801. PROVISIONAL APPLICATIONS.**

4 (a) ABANDONMENT.—Section 111(b)(5) of title 35,
5 United States Code, is amended to read as follows:

6 “(5) ABANDONMENT.—Notwithstanding the ab-
7 sence of a claim, upon timely request and as pre-
8 scribed by the Director, a provisional application
9 may be treated as an application filed under sub-
10 section (a). Subject to section 119(e)(3) of this title,
11 if no such request is made, the provisional applica-
12 tion shall be regarded as abandoned 12 months after
13 the filing date of such application and shall not be
14 subject to revival after such 12-month period.”.

15 (b) TECHNICAL AMENDMENT RELATING TO WEEK-
16 ENDS AND HOLIDAYS.—Section 119(e) of title 35, United
17 States Code, is amended by adding at the end the fol-
18 lowing:

19 “(3) If the day that is 12 months after the fil-
20 ing date of a provisional application falls on a Satur-
21 day, Sunday, or Federal holiday within the District
22 of Columbia, the period of pendency of the provi-
23 sional application shall be extended to the next suc-
24 ceeding secular or business day.”.

1 (c) ELIMINATION OF COPENDENCY REQUIRE-
2 MENT.—Section 119(e)(2) of title 35, United States Code,
3 is amended by striking “and the provisional application
4 was pending on the filing date of the application for patent
5 under section 111(a) or section 363 of this title”.

6 (d) EFFECTIVE DATE.—The amendments made by
7 this section shall take effect on the date of the enactment
8 of this Act and shall apply to any provisional application
9 filed on or after June 8, 1995, except that the amend-
10 ments made by subsections (b) and (c) shall have no effect
11 with respect to any patent which is the subject of litigation
12 in an action commenced before such date of enactment.

13 **SEC. 4802. INTERNATIONAL APPLICATIONS.**

14 Section 119 of title 35, United States Code, is
15 amended as follows:

16 (1) In subsection (a), insert “or in a WTO
17 member country,” after “or citizens of the United
18 States,”.

19 (2) At the end of section 119 add the following
20 new subsections:

21 “(f) Applications for plant breeder’s rights filed in
22 a WTO member country (or in a foreign UPOV Con-
23 tracting Party) shall have the same effect for the purpose
24 of the right of priority under subsections (a) through (c)
25 of this section as applications for patents, subject to the

1 same conditions and requirements of this section as apply
2 to applications for patents.

3 “(g) As used in this section—

4 “(1) the term ‘WTO member country’ has the
5 same meaning as the term is defined in section
6 104(b)(2) of this title; and

7 “(2) the term ‘UPOV Contracting Party’ means
8 a member of the International Convention for the
9 Protection of New Varieties of Plants.”.

10 **SEC. 4803. CERTAIN LIMITATIONS ON DAMAGES FOR PAT-**
11 **ENT INFRINGEMENT NOT APPLICABLE.**

12 Section 287(c)(4) of title 35, United States Code, is
13 amended by striking “before the date of enactment of this
14 subsection” and inserting “based on an application the
15 earliest effective filing date of which is prior to September
16 30, 1996”.

17 **SEC. 4804. ELECTRONIC FILING AND PUBLICATIONS.**

18 (a) **PRINTING OF PAPERS FILED.**—Section 22 of title
19 35, United States Code, is amended by striking “printed
20 or typewritten” and inserting “printed, typewritten, or on
21 an electronic medium”.

22 (b) **PUBLICATIONS.**—Section 11(a) of title 35, United
23 States Code, is amended by amending the matter pre-
24 ceding paragraph 1 to read as follows:

1 “(a) The Director may publish in printed, type-
2 written, or electronic form, the following:”.

3 (c) COPIES OF PATENTS FOR PUBLIC LIBRARIES.—

4 Section 13 of title 35, United States Code, is amended
5 by striking “printed copies of specifications and drawings
6 of patents” and inserting “copies of specifications and
7 drawings of patents in printed or electronic form”.

8 (d) MAINTENANCE OF COLLECTIONS.—

9 (1) ELECTRONIC COLLECTIONS.—Section
10 41(i)(1) of title 35, United States Code, is amended
11 by striking “paper or microform” and inserting
12 “paper, microform, or electronic”.

13 (2) CONTINUATION OF MAINTENANCE.—The
14 Under Secretary of Commerce for Intellectual Prop-
15 erty and Director of the United States Patent and
16 Trademark Office shall not, pursuant to the amend-
17 ment made by paragraph (1), cease to maintain, for
18 use by the public, paper or microform collections of
19 United States patents, foreign patent documents,
20 and United States trademark registrations, except
21 pursuant to notice and opportunity for public com-
22 ment and except that the Director shall first submit
23 a report to the Committees on the Judiciary of the
24 Senate and the House of Representatives detailing
25 such plan, including a description of the mechanisms

1 in place to ensure the integrity of such collections
2 and the data contained therein, as well as to ensure
3 prompt public access to the most current available
4 information, and certifying that the implementation
5 of such plan will not negatively impact the public.

6 **SEC. 4805. STUDY AND REPORT ON BIOLOGICAL DEPOSITS**
7 **IN SUPPORT OF BIOTECHNOLOGY PATENTS.**

8 (a) IN GENERAL.—Not later than 6 months after the
9 date of the enactment of this Act, the Comptroller General
10 of the United States, in consultation with the Under Sec-
11 retary of Commerce for Intellectual Property and Director
12 of the United States Patent and Trademark Office, shall
13 conduct a study and submit a report to Congress on the
14 potential risks to the United States biotechnology industry
15 relating to biological deposits in support of biotechnology
16 patents.

17 (b) CONTENTS.—The study conducted under this sec-
18 tion shall include—

19 (1) an examination of the risk of export and the
20 risk of transfers to third parties of biological depos-
21 its, and the risks posed by the change to 18-month
22 publication requirements made by this subtitle;

23 (2) an analysis of comparative legal and regu-
24 latory regimes; and

25 (3) any related recommendations.

1 (c) CONSIDERATION OF REPORT.—In drafting regu-
2 lations affecting biological deposits (including any modi-
3 fication of title 37, Code of Federal Regulations, section
4 1.801 et seq.), the United States Patent and Trademark
5 Office shall consider the recommendations of the study
6 conducted under this section.

7 **SEC. 4806. PRIOR INVENTION.**

8 Section 102(g) of title 35, United States Code, is
9 amended to read as follows:

10 “(g)(1) during the course of an interference con-
11 ducted under section 135 or section 291, another inventor
12 involved therein establishes, to the extent permitted in sec-
13 tion 104, that before such person’s invention thereof the
14 invention was made by such other inventor and not aban-
15 doned, suppressed, or concealed, or (2) before such per-
16 son’s invention thereof, the invention was made in this
17 country by another inventor who had not abandoned, sup-
18 pressed, or concealed it. In determining priority of inven-
19 tion under this subsection, there shall be considered not
20 only the respective dates of conception and reduction to
21 practice of the invention, but also the reasonable diligence
22 of one who was first to conceive and last to reduce to prac-
23 tice, from a time prior to conception by the other.”.

1 **SEC. 4807. PRIOR ART EXCLUSION FOR CERTAIN COM-**
 2 **MONLY ASSIGNED PATENTS.**

3 (a) **PRIOR ART EXCLUSION.**—Section 103(c) of title
 4 35, United States Code, is amended by striking “sub-
 5 section (f) or (g)” and inserting “one or more of sub-
 6 sections (e), (f), and (g)”.

7 (b) **EFFECTIVE DATE.**—The amendment made by
 8 this section shall apply to any application for patent filed
 9 on or after the date of the enactment of this Act.

10 **SEC. 4808. EXCHANGE OF COPIES OF PATENTS WITH FOR-**
 11 **EIGN COUNTRIES.**

12 Section 12 of title 35, United States Code, is amend-
 13 ed by adding at the end the following: “The Director shall
 14 not enter into an agreement to provide such copies of spec-
 15 ifications and drawings of United States patents and ap-
 16 plications to a foreign country, other than a NAFTA coun-
 17 try or a WTO member country, without the express au-
 18 thorization of the Secretary of Commerce. For purposes
 19 of this section, the terms ‘NAFTA country’ and ‘WTO
 20 member country’ have the meanings given those terms in
 21 section 104(b).”.

22 **TITLE V—MISCELLANEOUS**
 23 **PROVISIONS**

24 **SEC. 5001. COMMISSION ON ONLINE CHILD PROTECTION.**

25 (a) **REFERENCES.**—Wherever in this section an
 26 amendment is expressed in terms of an amendment to any

1 provision, the reference shall be considered to be made to
2 such provision of section 1405 of the Child Online Protec-
3 tion Act (47 U.S.C. 231 note).

4 (b) MEMBERSHIP.—Subsection (b) is amended—

5 (1) by striking paragraph (1) and inserting the
6 following new paragraph:

7 “(1) INDUSTRY MEMBERS.—The Commission
8 shall include 16 members who shall consist of rep-
9 resentatives of—

10 “(A) providers of Internet filtering or
11 blocking services or software;

12 “(B) Internet access services;

13 “(C) labeling or ratings services;

14 “(D) Internet portal or search services;

15 “(E) domain name registration services;

16 “(F) academic experts; and

17 “(G) providers that make content available
18 over the Internet.

19 Of the members of the Commission by reason of this
20 paragraph, an equal number shall be appointed by
21 the Speaker of the House of Representatives and by
22 the Majority Leader of the Senate. Members of the
23 Commission appointed on or before October 31,
24 1999, shall remain members.”; and

1 (2) by adding at the end the following new
2 paragraph:

3 “(3) PROHIBITION OF PAY.—Members of the
4 Commission shall not receive any pay by reason of
5 their membership on the Commission.”.

6 (c) EXTENSION OF REPORTING DEADLINE.—The
7 matter in subsection (d) that precedes paragraph (1) is
8 amended by striking “1 year” and inserting “2 years”.

9 (d) TERMINATION.—Subsection (f) is amended by in-
10 serting before the period at the end the following: “or No-
11 vember 30, 2000, whichever occurs earlier”.

12 (e) FIRST MEETING AND CHAIRPERSON.—Section
13 1405 is amended—

14 (1) by striking subsection (e);

15 (2) by redesignating subsections (f) (as amend-
16 ed by the preceding provisions of this section) and
17 (g) as subsections (l) and (m), respectively;

18 (3) by redesignating subsections (c) and (d) (as
19 amended by the preceding provisions of this section)
20 as subsections (e) and (f), respectively; and

21 (4) by inserting after subsection (b) the fol-
22 lowing new subsections:

23 “(c) FIRST MEETING.—The Commission shall hold
24 its first meeting not later than March 31, 2000.

1 “(d) CHAIRPERSON.—The chairperson of the Com-
2 mission shall be elected by a vote of a majority of the
3 members, which shall take place not later than 30 days
4 after the first meeting of the Commission.”.

5 (f) RULES OF THE COMMISSION.—Section 1405 is
6 amended by inserting after subsection (f) (as so redesign-
7 nated by subsection (e)(3) of this section) the following
8 new subsection:

9 “(g) RULES OF THE COMMISSION.—

10 “(1) QUORUM.—Nine members of the Commis-
11 sion shall constitute a quorum for conducting the
12 business of the Commission.

13 “(2) MEETINGS.—Any meetings held by the
14 Commission shall be duly noticed at least 14 days in
15 advance and shall be open to the public.

16 “(3) OPPORTUNITIES TO TESTIFY.—The Com-
17 mission shall provide opportunities for representa-
18 tives of the general public to testify.

19 “(4) ADDITIONAL RULES.—The Commission
20 may adopt other rules as necessary to carry out this
21 section.”.

1 **SEC. 5002. PRIVACY PROTECTION FOR DONORS TO PUBLIC**
2 **BROADCASTING ENTITIES.**

3 (a) AMENDMENT.—Section 396(k) of the Commu-
4 nications Act of 1934 (47 U.S.C. 396(k)) is amended by
5 adding at the end the following new paragraph:

6 “(12) Funds may not be distributed under this sub-
7 section to any public broadcasting entity that directly or
8 indirectly—

9 “(A) rents contributor or donor names (or other
10 personally identifiable information) to or from, or
11 exchanges such names or information with, any Fed-
12 eral, State, or local candidate, political party, or po-
13 litical committee; or

14 “(B) discloses contributor or donor names, or
15 other personally identifiable information, to any non-
16 affiliated third party unless—

17 “(i) such entity clearly and conspicuously
18 discloses to the contributor or donor that such
19 information may be disclosed to such third
20 party;

21 “(ii) the contributor or donor is given the
22 opportunity, before the time that such informa-
23 tion is initially disclosed, to direct that such in-
24 formation not be disclosed to such third party;
25 and

1 (1) Section 504(a) of the Digital Millennium
2 Copyright Act (Public Law 105–304) is amended to
3 read as follows:

4 “(a) IN GENERAL.—Not later than November 1,
5 2003, the Register of Copyrights and the Commissioner
6 of Patents and Trademarks shall submit to the Commit-
7 tees on the Judiciary of the Senate and the House of Rep-
8 resentatives a joint report evaluating the effect of the
9 amendments made by this title.”.

10 (2) Section 505 of the Digital Millennium Copy-
11 right Act is amended by striking “and shall remain
12 in effect” and all that follows through the end of the
13 section and inserting a period.

14 (3) Section 1301(b)(3) of title 17, United
15 States Code, is amended to read as follows:

16 “(3) A ‘vessel’ is a craft—

17 “(A) that is designed and capable of inde-
18 pendently steering a course on or through water
19 through its own means of propulsion; and

20 “(B) that is designed and capable of car-
21 rying and transporting one or more pas-
22 sengers.”.

23 (4) Section 1313(c) of title 17, United States
24 Code, is amended by adding at the end the fol-
25 lowing: “Costs of the cancellation procedure under

1 this subsection shall be borne by the nonprevailing
2 party or parties, and the Administrator shall have
3 the authority to assess and collect such costs.”.

4 (b) TARIFF ACT OF 1930.—Section 337 of the Tariff
5 Act of 1930 (19 U.S.C. 1337) is amended—

6 (1) in subsection (a)—

7 (A) in paragraph (1)—

8 (i) in subparagraph (A), by striking
9 “and (D)” and inserting “(D), and (E)”;

10 and

11 (ii) by adding at the end the fol-
12 lowing:

13 “(E) The importation into the United
14 States, the sale for importation, or the sale
15 within the United States after importation by
16 the owner, importer, or consigner, of an article
17 that constitutes infringement of the exclusive
18 rights in a design protected under chapter 13 of
19 title 17, United States Code.”; and

20 (B) in paragraphs (2) and (3), by striking
21 “or mask work” and inserting “mask work, or
22 design”; and

23 (2) in subsection (1), by striking “or mask
24 work” each place it appears and inserting “mask
25 work, or design”.

1 **SEC. 5006. INFORMAL RULEMAKING OF COPYRIGHT DETER-**
2 **MINATION.**

3 Section 1201(a)(1)(C) of title 17, United States
4 Code, is amended in the first sentence by striking “on the
5 record”.

6 **SEC. 5007. SERVICE OF PROCESS FOR SURETY CORPORA-**
7 **TIONS.**

8 Section 9306 of title 31, United States Code, is
9 amended—

10 (1) in subsection (a) by striking all beginning
11 with “designates a person by written power of attor-
12 ney” through the end of such subsection and insert-
13 ing the following: “has a resident agent for service
14 of process for that district. The resident agent—

15 “(1) may be an official of the State, the Dis-
16 trict of Columbia, the territory or possession in
17 which the court sits who is authorized or appointed
18 under the law of the State, District, territory or pos-
19 session to receive service of process on the corpora-
20 tion; or

21 “(2) may be an individual who resides in the ju-
22 risdiction of the district court for the district in
23 which a surety bond is to be provided and who is ap-
24 pointed by the corporation as provided in subsection
25 (b)”;

1 (2) in subsection (b) by striking “The” and in-
2 serting “If the surety corporation meets the require-
3 ment of subsection (a) by appointing an individual
4 under subsection (a)(2), the”.

5 **SEC. 5008. LOW-POWER TELEVISION.**

6 (a) **SHORT TITLE.**—This section may be cited as the
7 “Community Broadcasters Protection Act of 1999”.

8 (b) **FINDINGS.**—Congress finds the following:

9 (1) Since the creation of low-power television li-
10 censes by the Federal Communications Commission,
11 a small number of license holders have operated
12 their stations in a manner beneficial to the public
13 good providing broadcasting to their communities
14 that would not otherwise be available.

15 (2) These low-power broadcasters have operated
16 their stations in a manner consistent with the pro-
17 gramming objectives and hours of operation of full-
18 power broadcasters providing worthwhile services to
19 their respective communities while under severe li-
20 cense limitations compared to their full-power coun-
21 terparts.

22 (3) License limitations, particularly the tem-
23 porary nature of the license, have blocked many low-
24 power broadcasters from having access to capital,
25 and have severely hampered their ability to continue

1 to provide quality broadcasting, programming, or
2 improvements.

3 (4) The passage of the Telecommunications Act
4 of 1996 has added to the uncertainty of the future
5 status of these stations by the lack of specific provi-
6 sions regarding the permanency of their licenses, or
7 their treatment during the transition to high defini-
8 tion, digital television.

9 (5) It is in the public interest to promote diver-
10 sity in television programming such as that currently
11 provided by low-power television stations to foreign-
12 language communities.

13 (c) PRESERVATION OF LOW-POWER COMMUNITY
14 TELEVISION BROADCASTING.—Section 336 of the Com-
15 munications Act of 1934 (47 U.S.C. 336) is amended—

16 (1) by redesignating subsections (f) and (g) as
17 subsections (g) and (h), respectively; and

18 (2) by inserting after subsection (e) the fol-
19 lowing new subsection:

20 “(f) PRESERVATION OF LOW-POWER COMMUNITY
21 TELEVISION BROADCASTING.—

22 “(1) CREATION OF CLASS A LICENSES.—

23 “(A) RULEMAKING REQUIRED.—Within
24 120 days after the date of the enactment of the
25 Community Broadcasters Protection Act of

1 1999, the Commission shall prescribe regula-
2 tions to establish a class A television license to
3 be available to licensees of qualifying low-power
4 television stations. Such regulations shall pro-
5 vide that—

6 “(i) the license shall be subject to the
7 same license terms and renewal standards
8 as the licenses for full-power television sta-
9 tions except as provided in this subsection;
10 and

11 “(ii) each such class A licensee shall
12 be accorded primary status as a television
13 broadcaster as long as the station con-
14 tinues to meet the requirements for a
15 qualifying low-power station in paragraph
16 (2).

17 “(B) NOTICE TO AND CERTIFICATION BY
18 LICENSEES.—Within 30 days after the date of
19 the enactment of the Community Broadcasters
20 Protection Act of 1999, the Commission shall
21 send a notice to the licensees of all low-power
22 televisions licenses that describes the require-
23 ments for class A designation. Within 60 days
24 after such date of enactment, licensees intend-
25 ing to seek class A designation shall submit to

1 the Commission a certification of eligibility
2 based on the qualification requirements of this
3 subsection. Absent a material deficiency, the
4 Commission shall grant certification of eligi-
5 bility to apply for class A status.

6 “(C) APPLICATION FOR AND AWARD OF LI-
7 CENSES.—Consistent with the requirements set
8 forth in paragraph (2)(A) of this subsection, a
9 licensee may submit an application for class A
10 designation under this paragraph within 30
11 days after final regulations are adopted under
12 subparagraph (A) of this paragraph. Except as
13 provided in paragraphs (6) and (7), the Com-
14 mission shall, within 30 days after receipt of an
15 application of a licensee of a qualifying low-
16 power television station that is acceptable for
17 filing, award such a class A television station li-
18 cense to such licensee.

19 “(D) RESOLUTION OF TECHNICAL PROB-
20 LEMS.—The Commission shall act to preserve
21 the service areas of low-power television licens-
22 ees pending the final resolution of a class A ap-
23 plication. If, after granting certification of eligi-
24 bility for a class A license, technical problems
25 arise requiring an engineering solution to a full-

1 power station's allotted parameters or channel
2 assignment in the digital television Table of Al-
3 lotments, the Commission shall make such
4 modifications as necessary—

5 “(i) to ensure replication of the full-
6 power digital television applicant's service
7 area, as provided for in sections 73.622
8 and 73.623 of the Commission's regula-
9 tions (47 CFR 73.622, 73.623); and

10 “(ii) to permit maximization of a full-
11 power digital television applicant's service
12 area consistent with such sections 73.622
13 and 73.623,

14 if such applicant has filed an application for
15 maximization or a notice of its intent to seek
16 such maximization by December 31, 1999, and
17 filed a bona fide application for maximization
18 by May 1, 2000. Any such applicant shall com-
19 ply with all applicable Commission rules regard-
20 ing the construction of digital television facili-
21 ties.

22 “(E) CHANGE APPLICATIONS.—If a station
23 that is awarded a construction permit to maxi-
24 mize or significantly enhance its digital tele-
25 vision service area, later files a change applica-

1 tion to reduce its digital television service area,
2 the protected contour of that station shall be
3 reduced in accordance with such change modi-
4 fication.

5 “(2) QUALIFYING LOW-POWER TELEVISION STA-
6 TIONS.—For purposes of this subsection, a station is
7 a qualifying low-power television station if—

8 “(A)(i) during the 90 days preceding the
9 date of the enactment of the Community
10 Broadcasters Protection Act of 1999—

11 “(I) such station broadcast a min-
12 imum of 18 hours per day;

13 “(II) such station broadcast an aver-
14 age of at least 3 hours per week of pro-
15 gramming that was produced within the
16 market area served by such station, or the
17 market area served by a group of com-
18 monly controlled low-power stations that
19 carry common local programming produced
20 within the market area served by such
21 group; and

22 “(III) such station was in compliance
23 with the Commission’s requirements appli-
24 cable to low-power television stations; and

1 “(ii) from and after the date of its applica-
2 tion for a class A license, the station is in com-
3 pliance with the Commission’s operating rules
4 for full-power television stations; or

5 “(B) the Commission determines that the
6 public interest, convenience, and necessity
7 would be served by treating the station as a
8 qualifying low-power television station for pur-
9 poses of this section, or for other reasons deter-
10 mined by the Commission.

11 “(3) COMMON OWNERSHIP.—No low-power tele-
12 vision station authorized as of the date of the enact-
13 ment of the Community Broadcasters Protection Act
14 of 1999 shall be disqualified for a class A license
15 based on common ownership with any other medium
16 of mass communication.

17 “(4) ISSUANCE OF LICENSES FOR ADVANCED
18 TELEVISION SERVICES TO TELEVISION TRANSLATOR
19 STATIONS AND QUALIFYING LOW-POWER TELEVISION
20 STATIONS.—The Commission is not required to issue
21 any additional license for advanced television serv-
22 ices to the licensee of a class A television station
23 under this subsection, or to any licensee of any tele-
24 vision translator station, but shall accept a license
25 application for such services proposing facilities that

1 will not cause interference to the service area of any
2 other broadcast facility applied for, protected, per-
3 mitted, or authorized on the date of filing of the ad-
4 vanced television application. Such new license or
5 the original license of the applicant shall be forfeited
6 after the end of the digital television service transi-
7 tion period, as determined by the Commission. A li-
8 censee of a low-power television station or television
9 translator station may, at the option of licensee,
10 elect to convert to the provision of advanced tele-
11 vision services on its analog channel, but shall not
12 be required to convert to digital operation until the
13 end of such transition period.

14 “(5) NO PREEMPTION OF SECTION 337.—Noth-
15 ing in this subsection preempts or otherwise affects
16 section 337 of this Act.

17 “(6) INTERIM QUALIFICATION.—

18 “(A) STATIONS OPERATING WITHIN CER-
19 TAIN BANDWIDTH.—The Commission may not
20 grant a class A license to a low-power television
21 station for operation between 698 and 806
22 megahertz, but the Commission shall provide to
23 low-power television stations assigned to and
24 temporarily operating in that bandwidth the op-
25 portunity to meet the qualification requirements

1 for a class A license. If such a qualified appli-
2 cant for a class A license is assigned a channel
3 within the core spectrum (as such term is de-
4 fined in MM Docket No. 87–286, February 17,
5 1998), the Commission shall issue a class A li-
6 cense simultaneously with the assignment of
7 such channel.

8 “(B) CERTAIN CHANNELS OFF-LIMITS.—

9 The Commission may not grant under this sub-
10 section a class A license to a low-power tele-
11 vision station operating on a channel within the
12 core spectrum that includes any of the 175 ad-
13 ditional channels referenced in paragraph 45 of
14 its February 23, 1998, Memorandum Opinion
15 and Order on Reconsideration of the Sixth Re-
16 port and Order (MM Docket No. 87–268).
17 Within 18 months after the date of the enact-
18 ment of the Community Broadcasters Protec-
19 tion Act of 1999, the Commission shall identify
20 by channel, location, and applicable technical
21 parameters those 175 channels.

22 “(7) NO INTERFERENCE REQUIREMENT.—The

23 Commission may not grant a class A license, nor ap-
24 prove a modification of a class A license, unless the
25 applicant or licensee shows that the class A station

1 for which the license or modification is sought will
2 not cause—

3 “(A) interference within—

4 “(i) the predicted Grade B contour
5 (as of the date of the enactment of the
6 Community Broadcasters Protection Act of
7 1999, or November 1, 1999, whichever is
8 later, or as proposed in a change applica-
9 tion filed on or before such date) of any
10 television station transmitting in analog
11 format; or

12 “(ii)(I) the digital television service
13 areas provided in the DTV Table of Allot-
14 ments; (II) the areas protected in the
15 Commission’s digital television regulations
16 (47 CFR 73.622(e) and (f)); (III) the dig-
17 ital television service areas of stations sub-
18 sequently granted by the Commission prior
19 to the filing of a class A application; and
20 (IV) stations seeking to maximize power
21 under the Commission’s rules, if such sta-
22 tion has complied with the notification re-
23 quirements in paragraph (1)(D);

1 by an application filed under this section shall have
 2 priority over other low-power stations in the assign-
 3 ment of available channels.”.

4 **TITLE VI—SUPERFUND**
 5 **RECYCLING EQUITY**

6 **SEC. 6001. SUPERFUND RECYCLING EQUITY.**

7 (a) PURPOSES.—The purposes of this section are—

8 (1) to promote the reuse and recycling of scrap
 9 material in furtherance of the goals of waste mini-
 10 mization and natural resource conservation while
 11 protecting human health and the environment;

12 (2) to create greater equity in the statutory
 13 treatment of recycled versus virgin materials; and

14 (3) to remove the disincentives and impedi-
 15 ments to recycling created as an unintended con-
 16 sequence of the 1980 Superfund liability provisions.

17 (b) CLARIFICATION OF LIABILITY UNDER CERCLA
 18 FOR RECYCLING TRANSACTIONS.—

19 (1) CLARIFICATION.—Title I of the Comprehen-
 20 sive Environmental Response, Compensation, and
 21 Liability Act of 1980 (42 U.S.C. 9601 et seq.) is
 22 amended by adding at the end the following new sec-
 23 tion:

24 **“SEC. 127. RECYCLING TRANSACTIONS.**

25 **“(a) LIABILITY CLARIFICATION.—**

1 “(1) As provided in subsections (b), (c), (d),
2 and (e), a person who arranged for recycling of recy-
3 clable material shall not be liable under sections
4 107(a)(3) and 107(a)(4) with respect to such mate-
5 rial.

6 “(2) A determination whether or not any per-
7 son shall be liable under section 107(a)(3) or section
8 107(a)(4) for any material that is not a recyclable
9 material as that term is used in subsections (b) and
10 (c), (d), or (e) of this section shall be made, without
11 regard to subsections (b), (c), (d), or (e) of this sec-
12 tion.

13 “(b) RECYCLABLE MATERIAL DEFINED.—For pur-
14 poses of this section, the term ‘recyclable material’ means
15 scrap paper, scrap plastic, scrap glass, scrap textiles,
16 scrap rubber (other than whole tires), scrap metal, or
17 spent lead-acid, spent nickel-cadmium, and other spent
18 batteries, as well as minor amounts of material incident
19 to or adhering to the scrap material as a result of its nor-
20 mal and customary use prior to becoming scrap; except
21 that such term shall not include—

22 “(1) shipping containers of a capacity from 30
23 liters to 3,000 liters, whether intact or not, having
24 any hazardous substance (but not metal bits and
25 pieces or hazardous substance that form an integral

1 part of the container) contained in or adhering
2 thereto; or

3 “(2) any item of material that contained poly-
4 chlorinated biphenyls at a concentration in excess of
5 50 parts per million or any new standard promul-
6 gated pursuant to applicable Federal laws.

7 “(c) TRANSACTIONS INVOLVING SCRAP PAPER,
8 PLASTIC, GLASS, TEXTILES, OR RUBBER.—Transactions
9 involving scrap paper, scrap plastic, scrap glass, scrap tex-
10 tiles, or scrap rubber (other than whole tires) shall be
11 deemed to be arranging for recycling if the person who
12 arranged for the transaction (by selling recyclable material
13 or otherwise arranging for the recycling of recyclable ma-
14 terial) can demonstrate by a preponderance of the evi-
15 dence that all of the following criteria were met at the
16 time of the transaction:

17 “(1) The recyclable material met a commercial
18 specification grade.

19 “(2) A market existed for the recyclable mate-
20 rial.

21 “(3) A substantial portion of the recyclable ma-
22 terial was made available for use as feedstock for the
23 manufacture of a new saleable product.

24 “(4) The recyclable material could have been a
25 replacement or substitute for a virgin raw material,

1 or the product to be made from the recyclable mate-
2 rial could have been a replacement or substitute for
3 a product made, in whole or in part, from a virgin
4 raw material.

5 “(5) For transactions occurring 90 days or
6 more after the date of enactment of this section, the
7 person exercised reasonable care to determine that
8 the facility where the recyclable material was han-
9 dled, processed, reclaimed, or otherwise managed by
10 another person (hereinafter in this section referred
11 to as a ‘consuming facility’) was in compliance with
12 substantive (not procedural or administrative) provi-
13 sions of any Federal, State, or local environmental
14 law or regulation, or compliance order or decree
15 issued pursuant thereto, applicable to the handling,
16 processing, reclamation, storage, or other manage-
17 ment activities associated with recyclable material.

18 “(6) For purposes of this subsection, ‘reason-
19 able care’ shall be determined using criteria that in-
20 clude (but are not limited to)—

21 “(A) the price paid in the recycling trans-
22 action;

23 “(B) the ability of the person to detect the
24 nature of the consuming facility’s operations
25 concerning its handling, processing, reclama-

1 tion, or other management activities associated
2 with recyclable material; and

3 “(C) the result of inquiries made to the ap-
4 propriate Federal, State, or local environmental
5 agency (or agencies) regarding the consuming
6 facility’s past and current compliance with sub-
7 stantive (not procedural or administrative) pro-
8 visions of any Federal, State, or local environ-
9 mental law or regulation, or compliance order
10 or decree issued pursuant thereto, applicable to
11 the handling, processing, reclamation, storage,
12 or other management activities associated with
13 the recyclable material. For the purposes of this
14 paragraph, a requirement to obtain a permit
15 applicable to the handling, processing, reclama-
16 tion, or other management activity associated
17 with the recyclable materials shall be deemed to
18 be a substantive provision.

19 “(d) TRANSACTIONS INVOLVING SCRAP METAL.—

20 “(1) Transactions involving scrap metal shall be
21 deemed to be arranging for recycling if the person
22 who arranged for the transaction (by selling recycla-
23 ble material or otherwise arranging for the recycling
24 of recyclable material) can demonstrate by a prepon-

1 derance of the evidence that at the time of the
2 transaction—

3 “(A) the person met the criteria set forth
4 in subsection (c) with respect to the scrap
5 metal;

6 “(B) the person was in compliance with
7 any applicable regulations or standards regard-
8 ing the storage, transport, management, or
9 other activities associated with the recycling of
10 scrap metal that the Administrator promulgates
11 under the Solid Waste Disposal Act subsequent
12 to the enactment of this section and with re-
13 gard to transactions occurring after the effec-
14 tive date of such regulations or standards; and

15 “(C) the person did not melt the scrap
16 metal prior to the transaction.

17 “(2) For purposes of paragraph (1)(C), melting
18 of scrap metal does not include the thermal separa-
19 tion of 2 or more materials due to differences in
20 their melting points (referred to as ‘sweating’).

21 “(3) For purposes of this subsection, the term
22 ‘scrap metal’ means bits and pieces of metal parts
23 (e.g., bars, turnings, rods, sheets, wire) or metal
24 pieces that may be combined together with bolts or
25 soldering (e.g., radiators, scrap automobiles, railroad

1 box cars), which when worn or superfluous can be
2 recycled, except for scrap metals that the Adminis-
3 trator excludes from this definition by regulation.

4 “(e) TRANSACTIONS INVOLVING BATTERIES.—
5 Transactions involving spent lead-acid batteries, spent
6 nickel-cadmium batteries, or other spent batteries shall be
7 deemed to be arranging for recycling if the person who
8 arranged for the transaction (by selling recyclable material
9 or otherwise arranging for the recycling of recyclable ma-
10 terial) can demonstrate by a preponderance of the evi-
11 dence that at the time of the transaction—

12 “(1) the person met the criteria set forth in
13 subsection (c) with respect to the spent lead-acid
14 batteries, spent nickel-cadmium batteries, or other
15 spent batteries, but the person did not recover the
16 valuable components of such batteries; and

17 “(2)(A) with respect to transactions involving
18 lead-acid batteries, the person was in compliance
19 with applicable Federal environmental regulations or
20 standards, and any amendments thereto, regarding
21 the storage, transport, management, or other activi-
22 ties associated with the recycling of spent lead-acid
23 batteries;

24 “(B) with respect to transactions involving
25 nickel-cadmium batteries, Federal environmental

1 regulations or standards are in effect regarding the
2 storage, transport, management, or other activities
3 associated with the recycling of spent nickel-cad-
4 mium batteries, and the person was in compliance
5 with applicable regulations or standards or any
6 amendments thereto; or

7 “(C) with respect to transactions involving
8 other spent batteries, Federal environmental regula-
9 tions or standards are in effect regarding the stor-
10 age, transport, management, or other activities asso-
11 ciated with the recycling of such batteries, and the
12 person was in compliance with applicable regulations
13 or standards or any amendments thereto.

14 “(f) EXCLUSIONS.—

15 “(1) The exemptions set forth in subsections
16 (c), (d), and (e) shall not apply if—

17 “(A) the person had an objectively reason-
18 able basis to believe at the time of the recycling
19 transaction—

20 “(i) that the recyclable material would
21 not be recycled;

22 “(ii) that the recyclable material
23 would be burned as fuel, or for energy re-
24 covery or incineration; or

1 “(iii) for transactions occurring before
2 90 days after the date of the enactment of
3 this section, that the consuming facility
4 was not in compliance with a substantive
5 (not procedural or administrative) provi-
6 sion of any Federal, State, or local envi-
7 ronmental law or regulation, or compliance
8 order or decree issued pursuant thereto,
9 applicable to the handling, processing, rec-
10 lamation, or other management activities
11 associated with the recyclable material;

12 “(B) the person had reason to believe that
13 hazardous substances had been added to the re-
14 cyclable material for purposes other than proc-
15 essing for recycling; or

16 “(C) the person failed to exercise reason-
17 able care with respect to the management and
18 handling of the recyclable material (including
19 adhering to customary industry practices cur-
20 rent at the time of the recycling transaction de-
21 signed to minimize, through source control, con-
22 tamination of the recyclable material by haz-
23 ardous substances).

24 “(2) For purposes of this subsection, an objec-
25 tively reasonable basis for belief shall be determined

1 using criteria that include (but are not limited to)
2 the size of the person's business, customary industry
3 practices (including customary industry practices
4 current at the time of the recycling transaction de-
5 signed to minimize, through source control, contami-
6 nation of the recyclable material by hazardous sub-
7 stances), the price paid in the recycling transaction,
8 and the ability of the person to detect the nature of
9 the consuming facility's operations concerning its
10 handling, processing, reclamation, or other manage-
11 ment activities associated with the recyclable mate-
12 rial.

13 “(3) For purposes of this subsection, a require-
14 ment to obtain a permit applicable to the handling,
15 processing, reclamation, or other management activi-
16 ties associated with recyclable material shall be
17 deemed to be a substantive provision.

18 “(g) EFFECT ON OTHER LIABILITY.—Nothing in
19 this section shall be deemed to affect the liability of a per-
20 son under paragraph (1) or (2) of section 107(a).

21 “(h) REGULATIONS.—The Administrator has the au-
22 thority, under section 115, to promulgate additional regu-
23 lations concerning this section.

24 “(i) EFFECT ON PENDING OR CONCLUDED AC-
25 TIONS.—The exemptions provided in this section shall not

1 affect any concluded judicial or administrative action or
2 any pending judicial action initiated by the United States
3 prior to enactment of this section.

4 “(j) LIABILITY FOR ATTORNEY’S FEES FOR CERTAIN
5 ACTIONS.—Any person who commences an action in con-
6 tribution against a person who is not liable by operation
7 of this section shall be liable to that person for all reason-
8 able costs of defending that action, including all reason-
9 able attorney’s and expert witness fees.

10 “(k) RELATIONSHIP TO LIABILITY UNDER OTHER
11 LAWS.—Nothing in this section shall affect—

12 “(1) liability under any other Federal, State, or
13 local statute or regulation promulgated pursuant to
14 any such statute, including any requirements pro-
15 mulgated by the Administrator under the Solid
16 Waste Disposal Act; or

17 “(2) the ability of the Administrator to promul-
18 gate regulations under any other statute, including
19 the Solid Waste Disposal Act.

20 “(l) LIMITATION ON STATUTORY CONSTRUCTION.—
21 Nothing in this section shall be construed to—

22 “(1) affect any defenses or liabilities of any per-
23 son to whom subsection (a)(1) does not apply; or

1 “(2) create any presumption of liability against
2 any person to whom subsection (a)(1) does not
3 apply.”

4 (2) TECHNICAL AMENDMENT.—The table of
5 contents for title I of such Act is amended by adding
6 at the end the following item:

“SEC. 127. Recycling transactions.”.

