Americans from violent crime in national parks.

S. 2666

At the request of Ms. CANTWELL, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. 2666, a bill to amend the Internal Revenue Code of 1986 to encourage investment in affordable housing, and for other purposes.

S. 2689

At the request of Mr. SMITH, the names of the Senator from Georgia (Mr. CHAMBLISS) and the Senator from Kansas (Mr. BROWNBACK) were added as cosponsors of S. 2689, a bill to amend section 411h of title 37, United States Code, to provide travel and transportation allowances for family members of members of the uniformed services with serious inpatient psychiatric conditions.

S. 2702

At the request of Mr. SALAZAR, the names of the Senator from Maryland (Ms. MIKULSKI) and the Senator from New Mexico (Mr. BINGAMAN) were added as cosponsors of S. 2702, a bill to amend title XVIII of the Social Security Act to improve access to, and increase utilization of, bone mass measurement benefits under the Medicare part B Program.

S. 2753

At the request of Mr. MENENDEZ, the names of the Senator from Virginia (Mr. WEBB) and the Senator from New Jersey (Mr. LAUTENBERG) were added as cosponsors of S. 2753, a bill to protect consumers, and especially young consumers, from skyrocketing credit card debt, unfair credit card practices, and deceptive credit offers.

S. 2760

At the request of Mr. LEAHY, the names of the Senator from Maryland (Mr. CARDIN) and the Senator from South Dakota (Mr. JOHNSON) were added as cosponsors of S. 2760, a bill to amend title 10, United States Code, to enhance the national defense through empowerment of the National Guard, enhancement of the functions of the National Guard Bureau, and improvement of Federal-State military coordination in domestic emergency response, and for other purposes.

S. 2766

At the request of Mr. NELSON of Florida, the names of the Senator from Pennsylvania (Mr. SPECTER), the Senator from Wisconsin (Mr. KOHL) and the Senator from Mississippi (Mr. WICKER) were added as cosponsors of S. 2766, a bill to amend the Federal Water Pollution Control Act to address certain discharges incidental to the normal operation of a recreational vessel.

S. 2775

At the request of Mr. KERRY, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 2775, a bill to amend the Internal Revenue Code of 1986 and the Social Security Act to treat certain domestically controlled foreign persons performing services under contract with the United States Government as American employers for purposes of certain employment taxes and benefits.

S. 2785

At the request of Ms. STABENOW, the name of the Senator from Mississippi (Mr. WICKER) was added as a cosponsor of S. 2785, a bill to amend title XVIII of the Security Act to preserve access to physicians' services under the Medicare program.

S. 2799

At the request of Mrs. MURRAY, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 2799, a bill to amend title 38, United States Code, to expand and improve health care services available to women veterans, especially those serving in Operation Iraqi Freedom and Operation Enduring Freedom, from the Department of Veterans Affairs, and for other purposes.

S. 2819

At the request of Mr. ROCKEFELLER, the name of the Senator from Iowa (Mr. HARKIN) was added as a cosponsor of S. 2819, a bill to preserve access to Medicaid and the State Children's Health Insurance Program during an economic downturn, and for other purposes.

S. 2878

At the request of Mr. CORNYN, the name of the Senator from Wyoming (Mr. ENZI) was added as a cosponsor of S. 2878, a bill to amend the Labor-Management Reporting and Disclosure Act of 1959 to provide for specified civil penalties for violations of that Act, and for other purposes.

S. 2895

At the request of Mr. DODD, the names of the Senator from Montana (Mr. TESTER) and the Senator from New Jersey (Mr. LAUTENBERG) were added as cosponsors of S. 2895, a bill to amend the Higher Education Act of 1965 to maintain eligibility, for Federal PLUS loans, of borrowers who are 90 or more days delinquent on mortgage loan payments, or for whom foreclosure proceedings have been initiated, with respect to their primary residence.

S. RES. 482

At the request of Mr. ENZI, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. Res. 482, a resolution designating July 26, 2008, as ''National Day of the American Cowboy''.

S. RES. 515

At the request of Mr. WHITEHOUSE, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. Res. 515, a resolution commemorating the life and work of Dith Pran.

S. RES. 523

At the request of Mr. BIDEN, the names of the Senator from Ohio (Mr. VOINOVICH) and the Senator from Oregon (Mr. SMITH) were added as cosponsors of S. Res. 523, a resolution expressing the strong support of the Senate for the declaration of the North Atlantic Treaty Organization at the Bucharest Summit that Ukraine and Georgia will become members of the alliance.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. CASEY (for himself and Ms. STABENOW):

S. 2906. A bill to require a report on invasive agricultural pests and diseases and sanitary and phytosanitary barriers to trade before initiating negotiations to enter into a free trade agreement, and for other purposes; to the Committee on Finance.

Mr. CASEY. Mr. President, I rise today to introduce the Agriculture Smart Trade Act along with my colleague Senator STABENOW. The goal of this legislation is to ensure that, as we consider the various free trade agreements that come before the Senate, we are taking a look at the big picture, including the increased risk of accidently importing invasive pests or diseases and the ability for American agricultural producers to access new export markets once trade agreements are in effect. Our bill is supported by United Fresh, the national association of fruit and vegetable growers and processors, and the U.S. Apple Association.

The bill has two main components. First, it requires the Administration to send a report to Congress prior to the start of formal trade negotiations with a foreign nation detailing potential invasive pests and disease that could pose a risk to U.S. agriculture. Furthermore, this report must identify what additional agricultural inspectors and other personnel are needed to prevent these pests and diseases from being brought into the United States.

Second, the bill requires the Administration to disclose in the same report all sanitary and photosanitary, or SPS, trade barriers that could unduly restrict export markets for American commodities. What we've seen in the past is that a trading partner will raise SPS barriers to prevent American products from entering their country. Some of these SPS barriers are not grounded in science are simply non-tariff trade barriers. As the Administration begins negotiations for a trade agreement, we all need to take a look at what kinds of SPS issues we have with potential trading partners. Are their SPS concerns based in science? We need to be sure that once an agreement is in effect, we will have access to those foreign markets as stipulated in the trade agreement.

I want to make clear that this bill does not in any way limit the President's authority to negotiate trade agreements under Fast-Track, nor does it prevent trade legislation from being considered by the Congress. What this bill does is provide the Senate and the House of Representatives with a more complete picture of what potential trade agreements involve beyond the obvious import and export quotas.

Regardless of how any senator feels about the free trade agreements that we review and debate, I think all of my colleagues will agree with me that increased international trade means an increased risk of importing bugs and diseases that have the potential to devastate our food sources, jeopardize the livelihoods of our farmers, and cost our states a fortune. We need to acknowledge the risk and put in place the best safeguards we can to prevent the accidental introduction of these harmful pests.

I am not merely speculating about the risk of invasive pests and disease. It is a fact that all of our States are battling insects and crop diseases and dreading the next outbreak. Most recently in Pennsylvania we discovered that the western part of our state is infested with the Emerald Ash Borer, an invasive beetle that was accidently imported to the U.S. through Detroit via wooden shipping pallets from China. This beetle is costing our commercial nursery growers millions of dollars in lost stock. Senator STABENOW knows better than anyone how much money, time and other resources the Ash Borer has cost the States of Michigan, Illinois, Indiana, Ohio, and Pennsylvania. But that's just one example. Orange growers in Florida have spent the past decade fighting to contain and eradicate citrus canker, an invasive disease that causes citrus trees to produce less and less fruit until they prematurely die. And California and Texas have dealt with expensive eradication programs to deal with the Mediterranean fruit fly or ''Med fly.''

The list goes on and on. And there isn't a single State that has not been impacted by invasive pests or diseases. So I hope that my colleagues will support the Agriculture Smart Trade Act, and help us make smart decisions that will protect our growers and our economy while opening new export markets. Because that is what this bill is about—smart trade.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD following my remarks.

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

S. 2906

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Agriculture Smart Trade Act''.

SEC. 2. DEFINITIONS.

In this Act:

(1) FREE TRADE AGREEMENT.—The term ''free trade agreement'' means a trade agreement entered into with a foreign country that provides for—

(A) the reduction or elimination of duties, import restrictions, or other barriers to or distortions of trade between the United States and the foreign country; or

(B) the prohibition of or limitation on the imposition of such barriers or distortions.

(2) INVASIVE AGRICULTURAL PESTS AND DISEASES.—The term ''invasive agricultural pests and diseases'' means agricultural pests and diseases, as determined by the Secretary of Agriculture—

(A) that are not native to ecosystems in the United States; and

(B) the introduction of which causes or is likely to cause economic or environmental harm or harm to human health.

(3) SANITARY AND PHYTOSANITARY MEASURE.—The term ''sanitary and phytosanitary measure'' has the meaning given that term in the Agreement on the Application of Sanitary and Phytosanitary Measures of the World Trade Organization referred to in section 101(d)(3) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(3)).

SEC. 3. REQUIREMENT FOR REPORTS BEFORE INITIATING NEGOTIATIONS TO ENTER INTO FREE TRADE AGREEMENTS.

(a) IN GENERAL.—Not later than 90 days before the date on which the President initiates formal negotiations with a foreign country to enter into a free trade agreement with that country, the President shall submit to Congress a report on—

(1) invasive agricultural pests or diseases in that country; and

(2) sanitary or phytosanitary measures imposed by the government of that country on goods imported into that country.

(b) CONTENTS OF REPORT.—The report required under subsection (a) shall include the following:

(1) INVASIVE AGRICULTURAL PESTS AND DISEASES.—With respect to any invasive agricultural pests or diseases in the country with which the President intends to negotiate a free trade agreement—

(A) a list of all invasive agricultural pests and diseases in that country;

(B) a list of agricultural commodities produced in the United States that might be affected by the introduction of such pests or diseases into the United States; and

(C) a plan for preventing the introduction into the United States of such pests and diseases, including an estimate of—

(i) the number of additional inspectors, officials, and other personnel necessary to prevent such introduction and the ports of entry at which the additional inspectors, officials, and other personnel will be needed; and

(ii) the total cost of preventing such introduction.

(2) SANITARY AND PHYTOSANITARY MEASURES.—With respect to sanitary or phytosanitary measures imposed by the government of the country with which the President intends to negotiate a free trade agreement on goods imported into that country—

(A) a list of any such sanitary and phytosanitary measures that may affect the exportation of agricultural commodities from the United States to that country;

(B) an assessment of the status of any petitions filed by the United States with the government of that country requesting that that country allow the importation into that country of agricultural commodities produced in the United States;

(C) an estimate of the economic potential for the exportation of agricultural commodities produced in the United States to that country if the free trade agreement enters into force; and

(D) an assessment of the effect of sanitary and phytosanitary measures imposed or proposed to be imposed by the government of that country on the economic potential described in subparagraph (C).

By Ms. SNOWE (for herself and Mr. BROWN):

S. 2910. A bill to require brokers to disclose and pay independent truckers for any fuel surcharges received from shippers that relate to fuel costs paid for by the truckers; to the Committee on Commerce, Science, and Transportation.

Ms. SNOWE. Mr. President, I rise to introduce legislation that I believe is vital to the survival and competitiveness of our nation's trucking industry. For too long, our small business motor freight carriers, who struggle every day to make ends meet, have had their concerns ignored and neglected. Today, as the entire trucking industry faces monumental economic challenges spurred by skyrocketing, record-breaking oil prices and exorbitant and volatile fuel costs, not to mention a detrimental slow-down in the hiring of new drivers, our independent operators are having to contend with a devastating economic downturn and enduring business failures—the likes of which this country has not seen since 2000.

During the first quarter of 2008, nearly one thousand motor carriers failed, and they were not just trucking companies with two or three trucks, but the average number of vehicles numbered 45 trucks! As you can imagine, the financial impact is enormous, especially given that the Bureau of Transportation Statistics projects freight to grow by more than 70 percent by 2020. Forestalling action is not an option if we are to sustain our trucking industry which is an undeniable, economic lifeline of this nation.

That is why I have taken this opportunity to join with Senator BROWN in introducing the Trust in Reliable Understanding of Consumer Costs (TRUCC) Act which would provide our small business operators and carriers with the long-denied fairness that is owed to them. It is time that these hard-working men and women free from stranglehold of unscrupulous brokers and middle-men who charge shippers for fuel costs, but refuse to pass on those costs to operators who actually pay for the fuel. Our bill would provide not only a clear line-item delineating the fuel surcharge in the contracts provided to our small business carriers, but also would guarantee that the entity in the transaction—whether a shipper, broker, or driver—who absorbs the consistently-rising cost of fuel will become the recipient of the fuel surcharge.

To our measure's detractors who mischaracterize it, calling it among other things—outrageous, I want to remind them that our focus is on small business motor carriers which comprise more than 90 percent of the truck industry, and that these individuals continue to traverse the country, carrying consumer goods and propelling our economy forward in the process. And they do so, despite the constant challenges that are part and parcel of this occupation . . . brokers who obfuscate the amount or even existence of fuel surcharges to the benefit of their own coffers, the escalation of fuel prices, maintenance costs for their vehicles,

the long days or weeks of travel—sacrificing time away from their families in order to make a living, feed their families, and finance the education of their children. And so, Mr. President, I ask, how can we afford to turn a blind eye to the plight of these Americans whose livelihood is so integral to commerce in the great country? Merely wishing the problem away or simply keeping it out of sight and out of mind is neither tenable nor acceptable.

Make no mistake, not all brokers are bad actors, nor are all small business operators being exploited. That is precisely why the legislation Senator BROWN and I are offering today does not place onerous burdens on the logistics industry. We merely seek to ensure that an industry under siege on several fronts receives what its purveyors are rightfully entitled to—equitable treatment and a modicum of transparency. Is it too much to ask that they may see for themselves in a transaction who, if anyone, is receiving a fuel surcharge, and how much is being paid out for the cost of fuel? Is it too much to ask for an assurance that, if the motor carrier is willing to pay the high cost of fuel at the pump while transporting goods across this nation, that carrier will be reimbursed? The answer to both questions is a resounding, ''No!'' The solution to addressing this regrettable situation is our common-sense legislation the consideration of which is long overdue.

I urge all my colleagues who have small business motor carriers in their state to consider seriously this issue and lend their strong support to this welcomed legislation.

By Ms. MURKOWSKI (for herself and Mrs. MURRAY):

S. 2911. A bill to improve vaccination rates among children; to the Committee on Health, Education, Labor, and Pensions.

Ms. MURKOWSKI. Mr. President, today, I join with my colleague Senator MURRAY in introducing legislation that will help bolster childhood immunization in those parts of our country where immunization rates are much too low. Since the beginning of the 20th century, vaccines have completely eradicated the once frequent killer smallpox and almost eradicated polio. Vaccines save lives, avert communicable diseases and reduce health care spending for preventable diseases. We must continue in our efforts to achieve childhood immunization rates of 90 percent by 2010 and with passage of this bill, we can do just that.

Vaccines are one of the most effective tools for prevention of disease. According to the Centers for Disease Control and Prevention, for every $1 spent on vaccines, America saves $18.60 in both medical costs and societal costs. But more important than the cost saving is the weight and value we must place on ensuring that children are fully vaccinated. We must not lose one more child to a vaccine preventable disease. Childhood vaccines prevent over 10 million cases of infectious illness and nearly 34,000 childhood deaths in America every year. Clearly, vaccines are a tried and true way to not only reduce health care costs, but also to keep our children healthy.

The legislation Senator MURRAY and I are introducing today authorizes funding for effective interventions recommended by the Task Force on Community Preventive Services and helps to achieve childhood immunization rates of 90 percent by 2010. First, the legislation authorizes additional funding for a demonstration program allowing Women, Infant and Children clinics, also known as ''WIC'' to play a greater role in childhood immunizations. This is achieved by recommending vaccines to WIC recipients, coordinating care or immunization services, or employing an immunization coordinator. More than 45 percent of U.S. infants receive benefits through WIC clinics. A 2002 study by the National Foundation for Infectious Diseases recommended coordinating government benefits to keep children up-to-date with their immunizations and noted that WIC programs have successfully accomplished this in numerous communities. Our legislation would enhance such efforts and would even go a step further to require that any grantee using these funds have access to the State Immunization Information System to better coordinate immunization screenings and services.

Second, this legislation authorizes additional funding for the Centers for Disease Control and Prevention to conduct public, age appropriate immunization awareness campaigns and immunization education and outreach activities. Research shows that outreach, coupled with the coordination of immunization and WIC clinics, can increase childhood immunization rates by of approximately 12 percent.

Lastly, this legislation establishes a sense of the Senate concerning the importance of electronic record coordination by both the Secretary of Health and Human Services and the Director of the Centers for Disease Control and Prevention, CDC, and that these leaders should work together to improve the integration of immunization information systems with electronic medical records, health information systems, and health information exchanges.

Vaccine preventable diseases will continue to be a threat to our Nation's most vulnerable population if we do not ensure proper vaccination among infants. Through this legislation, we can work to achieve the Healthy People 2010 objective of vaccinating 90 percent of all children by age two. To take a quote from a former First Lady of the United States and a cofounder of the organization Every Child by Two ''No child in America should have to get sick from a vaccine preventable disease. It's time for us to redouble efforts to protect the 20 percent of preschoolers who are routinely not being immunized on time.'' The Infant Immunization Improvement Act will be a vital first step to increasing vaccination rates and will serve as an important safeguard against the spread of communicable diseases. I would like to thank the Partnership for Prevention for their input on this legislation and the 156 members of the 317 Coalition for endorsing the Infant Immunization Improvement Act. I urge my colleagues to cosponsor this legislation—because leaving a single child unprotected is one too many.

By Mr. LEAHY (for himself and Mr. HATCH):

S. 2913. A bill to provide a limitation on judicial remedies in copyright infringement cases involving orphan works; to the Committee on the Judiciary.

Mr. LEAHY. Mr. President, today, I join once again with Senator HATCH to introduce a bill that will have a significant and positive impact on our cultural heritage. Hundreds of thousands of so-called ''orphan works''—works that may be protected by copyright, but whose owners cannot be identified or located—are collecting dust. Despite tremendous interest in using these orphan works in new collections and new creations, they often languish unseen, because those who would like to bring them to light, and to the attention of the world, fear the prospect of prohibitively expensive statutory damages. In other instances, the copyright in an orphan work may have expired, but potential users lack the information to be certain of the propriety of going forward with its use.

The Shawn Bentley Orphan Works Act of 2008 will remedy this situation. It will help potential users of orphan works find the owners of those works, and it will help the owners to receive compensation. The works will no longer be orphans; their owners will reap the financial benefits of their use, while the public reaps the creative benefits. More creative works will be used, contributing to our cultural and artistic heritage, and more creators will receive compensation for use of their work.

Our legislation permits the use of an orphan work only if the potential user performs and documents a good faith search for the copyright owner. If users cannot locate and contact copyright owners, they may use the orphan work. But if copyright owners later make themselves known, and if users have performed a search that qualifies under this legislation, owners are entitled to reasonable compensation. The user will not be liable for full statutory damages in those circumstances, but if a user does not perform that good faith search, the user will face up to $150,000 in statutory damages.

In practical terms, then, what does this mean? It means that a woman in Vermont can restore a wedding photograph of her grandparents, even if she

cannot locate the photographer to get permission to do so. It means that a library can display letters of American soldiers wrote during World War II, even if the library cannot contact the soldiers or their descendents. It means that museums can exhibit Depression-era photographs, even if they cannot determine the name of the photographer.

What this bill does not do is create a ''license to infringe.'' In any of the above instances, if the users do not conduct a good faith search for the copyright owner, those users are in the same boat they are in now when it comes to infringement. This bill does not change the basic premise of copyright law: If you use the copyrighted works of others, you must compensate them for it. As an avid photographer, I understand what it means to devote oneself to creative expression, and I applaud anyone with the talent and commitment to make a living doing so. Orphan works are too important to our families, our communities, and our culture to go left unseen and unused.

I thank Senator HATCH for his help in developing this legislation, and I look forward to working with him to ensure that this bill becomes law. I am especially pleased to name this bill for Shawn Bentley. Several years ago, Shawn died, tragically young, but he left behind a legacy of affection and regard for all of us who knew him. He served Senator HATCH as a counsel for intellectual property, and it was he who first inspired this effort on orphan works. Naming this bill for him is a testament to his dedication to the issue, and his value to the Judiciary Committee.

I ask unanimous consent that the full bill text be included in the RECORD.

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

S. 2913

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Shawn Bentley Orphan Works Act of 2008''.

SEC. 2. LIMITATION ON REMEDIES IN CASES INVOLVING ORPHAN WORKS.

(a) LIMITATION ON REMEDIES.—Chapter 5 of title 17, United States Code, is amended by adding at the end the following:

''§ 514. Limitation on remedies in cases involving orphan works

''(a) DEFINITIONS.—In this section, the following definitions shall apply:

''(1) MATERIALS AND STANDARDS.—The term 'materials and standards' includes—

''(A) the records of the Copyright Office that are relevant to identifying and locating copyright owners;

''(B) sources of copyright ownership information reasonably available to users, including private databases;

''(C) industry practices and guidelines of associations and organizations;

''(D) technology tools and expert assistance, including resources for which a charge or subscription fee is imposed, to the extent that the use of such resources is reasonable for, and relevant to, the scope of the intended use; and

''(E) electronic databases, including databases that are available to the public through the Internet, that allow for searches of copyrighted works and for the copyright owners of works, including through text, sound, and image recognition tools.

''(2) NOTICE OF CLAIM FOR INFRINGEMENT.—The term 'notice of the claim for infringement' means, with respect to a claim for copyright infringement, a written notice that includes at a minimum the following:

''(A) The name of the owner of the infringed copyright.

''(B) The title of the infringed work, any alternative titles of the infringed work known to the owner of the infringed copyright, or if the work has no title, a description in detail sufficient to identify it.

''(C) An address and telephone number at which the owner of the infringed copyright may be contacted.

''(D) Information from which a reasonable person could conclude that the owner of the infringed copyright's claims of ownership and infringement are valid.

''(3) OWNER OF THE INFRINGED COPYRIGHT.—The 'owner of the infringed copyright' is the legal owner of the exclusive right under section 106, or any party with the authority to grant or license such right, that is applicable to the infringement.

''(4) REASONABLE COMPENSATION.—The term 'reasonable compensation' means, with respect to a claim for infringement, the amount on which a willing buyer and willing seller in the positions of the infringer and the owner of the infringed copyright would have agreed with respect to the infringing use of the work immediately before the infringement began.

''(b) CONDITIONS FOR ELIGIBILITY.—

''(1) CONDITIONS.—

''(A) IN GENERAL.—Notwithstanding sections 502 through 505, and subject to subparagraph (B), in a civil action brought under this title for infringement of copyright in a work, the remedies for infringement shall be limited in accordance with subsection (c) if the infringer—

''(i) proves by a preponderance of the evidence that before the infringement began, the infringer, a person acting on behalf of the infringer, or any person jointly and severally liable with the infringer for the infringement—

''(I) performed and documented a qualifying search, in good faith, for the owner of the infringed copyright; and

''(II) was unable to locate the owner of the infringed copyright;

''(ii) provided attribution, in a manner that is reasonable under the circumstances, to the owner of the infringed copyright, if such owner was known with a reasonable degree of certainty, based on information obtained in performing the qualifying search;

''(iii) included with the use of the infringing work a symbol or other notice of the use of the infringing work, in a manner prescribed by the Register of Copyrights;

''(iv) asserts in the initial pleading to the civil action the right to claim such limitations;

''(v) consents to the jurisdiction of United States district court, or such court holds that the infringer is within the jurisdiction of the court; and

''(vi) at the time of making the initial discovery disclosures required under Rule 26 of the Federal Rules of Civil Procedure, states with particularity the basis for the right to claim the limitations, including a detailed description and documentation of the search undertaken in accordance with paragraph (2)(A).

''(B) EXCEPTION.—Subparagraph (A) does not apply if, after receiving notice of the claim for infringement and having an opportunity to conduct an expeditious good faith investigation of the claim, the infringer—

''(i) fails to negotiate reasonable compensation in good faith with the owner of the infringed copyright; or

''(ii) fails to render payment of reasonable compensation in a reasonably timely manner.

''(2) REQUIREMENTS FOR SEARCHES.—

''(A) REQUIREMENTS FOR QUALIFYING SEARCHES.—

''(i) IN GENERAL.—For purposes of paragraph (1)(A)(i)(I), a search is qualifying if the infringer undertakes a diligent effort to locate the owner of the infringed copyright.

''(ii) DETERMINATION OF DILIGENT EFFORT.—In determining whether a search is diligent under this subparagraph, a court shall consider whether—

''(I) the actions taken in performing that search are reasonable and appropriate under the facts relevant to that search, including whether the infringer took actions based on facts uncovered by the search itself;

''(II) the infringer employed the applicable best practices maintained by the Register of Copyrights under subparagraph (B); and

''(III) the infringer performed the search before using the work and at a time that was reasonably proximate to the commencement of the infringement.

''(iii) LACK OF IDENTIFYING INFORMATION.—The fact that a particular copy or phonorecord lacks identifying information pertaining to the owner of the infringed copyright is not sufficient to meet the conditions under paragraph (1)(A)(i)(I).

''(B) INFORMATION TO GUIDE SEARCHES; BEST PRACTICES.—

''(i) STATEMENTS OF BEST PRACTICES.—The Register of Copyrights shall maintain and make available to the public, including through the Internet, current statements of best practices for conducting and documenting a search under this subsection.

''(ii) CONSIDERATION OF RELEVANT MATERIALS AND STANDARDS.—In maintaining the statements of best practices required under clause (i), the Register of Copyrights shall, from time to time, consider materials and standards that may be relevant to the requirements for a qualifying search under subparagraph (A).

''(3) PENALTY FOR FAILURE TO COMPLY.—If an infringer fails to comply with any requirement under this subsection, the infringer is subject to all the remedies provided in section 502 through 505, subject to section 412.

''(c) LIMITATIONS ON REMEDIES.—The limitations on remedies in a civil action for infringement of a copyright to which this section applies are the following:

''(1) MONETARY RELIEF.—

''(A) GENERAL RULE.—Subject to subparagraph (B), an award for monetary relief (including actual damages, statutory damages, costs, and attorney's fees) may not be made other than an order requiring the infringer to pay reasonable compensation to the legal or beneficial owner of the exclusive right under the infringed copyright for the use of the infringed work.

''(B) FURTHER LIMITATIONS.—An order requiring the infringer to pay reasonable compensation for the use of the infringed work may not be made under subparagraph (A) if the infringer is a nonprofit educational institution, museum, library, or archives, or a public broadcasting entity (as defined in subsection (f) of section 118) and the infringer proves by a preponderance of the evidence that—

''(i) the infringement was performed without any purpose of direct or indirect commercial advantage;

''(ii) the infringement was primarily educational, religious, or charitable in nature; and

''(iii) after receiving notice of the claim for infringement, and after conducting an expeditious good faith investigation of the claim, the infringer promptly ceased the infringement.

''(C) EXCEPTION TO FURTHER LIMITATION.—Notwithstanding the limitation established under subparagraph (B), if the owner of an infringed copyright proves, and a court finds, that the infringer has earned proceeds directly attributable to the use of the infringed work by the infringer, the portion of such proceeds attributable to such infringement may be awarded to the owner.

''(2) INJUNCTIVE RELIEF.—

''(A) GENERAL RULE.—Subject to subparagraph (B), the court may impose injunctive relief to prevent or restrain any infringement alleged in the civil action.

''(B) EXCEPTION.—In a case in which the infringer has prepared or commenced preparation of a work that recasts, transforms, adapts, or integrates the infringed work with a significant amount of the infringer's original expression, any injunctive relief ordered by the court—

''(i) may not restrain the infringer's continued preparation or use of that new work;

''(ii) shall require that the infringer pay reasonable compensation to the legal or beneficial owner of the exclusive right under the infringed copyright for the use of the infringed work; and

''(iii) shall require that the infringer provide attribution, in a manner that is reasonable under the circumstances, to the owner of the infringed copyright, if requested by such owner.

''(C) LIMITATIONS.—The limitations on injunctive relief under subparagraphs (A) and (B) shall not be available to an infringer if the infringer asserts in the civil action that neither the infringer or any representative of the infringer acting in an official capacity is subject to suit in the courts of the United States for an award of damages to the legal or beneficial owner of the exclusive right under the infringed copyright under section 106, unless the court finds that the infringer—

''(i) has complied with the requirements of subsection (b); and

''(ii) has made an enforceable promise to pay reasonable compensation to the legal or beneficial owner of the exclusive right under the infringed copyright.

''(D) RULE OF CONSTRUCTION.—Nothing in subparagraph (C) shall be construed to authorize or require, and no action taken under such subparagraph shall be deemed to constitute, either an award of damages by the court against the infringer or an authorization to sue a State.

''(E) RIGHTS AND PRIVILEGES NOT WAIVED.—No action taken by an infringer under subparagraph (C) shall be deemed to waive any right or privilege that, as a matter of law, protects the infringer from being subject to suit in the courts of the United States for an award of damages to the legal or beneficial owner of the exclusive right under the infringed copyright under section 106.

''(d) PRESERVATION OF OTHER RIGHTS, LIMITATIONS, AND DEFENSES.—This section does not affect any right, limitation, or defense to copyright infringement, including fair use, under this title. If another provision of this title provides for a statutory license that would permit the infringement contemplated by the infringer if the owner of the infringed copyright cannot be located, that provision applies instead of this section.

''(e) COPYRIGHT FOR DERIVATIVE WORKS AND COMPILATIONS.—Notwithstanding section 103(a), an infringer who qualifies for the limitation on remedies afforded by this section with respect to the use of a copyrighted work shall not be denied copyright protection in a compilation or derivative work on the basis that such compilation or derivative work employs preexisting material that has been used unlawfully under this section.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 17, United States Code, is amended by adding at the end the following:

''514. Limitation on remedies in cases involving orphan works.''.

SEC. 3. DATABASE OF PICTORIAL, GRAPHIC, AND SCULPTURAL WORKS.

(a) ESTABLISHMENT OF DATABASE.—

(1) IN GENERAL.—The Register of Copyrights shall undertake a certification process for the establishment of an electronic database that facilitates the search for pictorial, graphic, and sculptural works that are subject to copyright protection under title 17, United States Code.

(2) PROCESS AND STANDARDS FOR CERTIFICATION.—The process and standards for certification of the electronic database required under paragraph (1) shall be established by the Register of Copyrights, except that certification may not be granted if the electronic database does not contain—

(A) the name of all authors of the work, if known, and contact information for any author if the information is readily available;

(B) the name of the copyright owner if different from the author, and contact information of the copyright owner;

(C) the title of the copyrighted work, if such work has a title;

(D) with respect to a copyrighted work that includes a visual image, a visual image of the work, or, if such a visual image is not available, a description sufficient to identify the work;

(E) one or more mechanisms that allow for the search and identification of a work by both text and image; and

(F) security measures that reasonably protect against unauthorized access to, or copying of, the information and content of the electronic database.

(b) PUBLIC AVAILABILITY.—The Register of Copyrights—

(1) shall make available to the public through the Internet a list of all electronic databases that are certified in accordance with this section; and

(2) may include any database so certified in a statement of best practices established under section 514(b)(5)(B) of title 17, United States Code.

SEC. 4. EFFECTIVE DATE.

(a) IN GENERAL.—With respect to works other than pictorial, graphic, and sculptural works, the amendments made by section 2 shall apply to infringements that commence on or after January 1, 2009.

(b) PICTORIAL, GRAPHIC, AND SCULPTURAL WORKS.—With respect to pictorial, graphic, and sculptural works, the amendments made by section 2 shall—

(1) take effect on the earlier of—

(A) the date on which the Copyright Office certifies under section 3 at least 2 separate and independent searchable, comprehensive, electronic databases, that allow for searches of copyrighted works that are pictorial, graphic, and sculptural works, and are available to the public through the Internet; or

(B) January 1, 2011; and

(2) apply to infringing uses that commence on or after that effective date.

(c) PUBLICATION IN FEDERAL REGISTER.—The Register of Copyrights shall publish the effective date described in subsection (b)(1) in the Federal Register, together with a notice that the amendments made by section 2 take effect on that date with respect to pictorial, graphic, and sculptural works.

(d) DEFINITION.—In this section, the term ''pictorial, graphic, and sculptural works'' has the meaning given that term in section 101 of title 17, United States Code.

SEC. 5. REPORT TO CONGRESS.

Not later than December 12, 2014, the Register of Copyrights shall report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives on the implementation and effects of the amendments made by section 2, including any recommendations for legislative changes that the Register considers appropriate.

SEC. 6. STUDY ON REMEDIES FOR SMALL COPYRIGHT CLAIMS.

(a) IN GENERAL.—The Register of Copyrights shall conduct a study with respect to remedies for copyright infringement claims by an individual copyright owner or a related group of copyright owners seeking small amounts of monetary relief, including consideration of alternative means of resolving disputes currently heard in the United States district courts. The study shall cover the infringement claims to which section 514 of title 17, United States Code, apply, and other infringement claims under such title 17.

(b) PROCEDURES.—The Register of Copyrights shall publish notice of the study required under subsection (a), providing a period during which interested persons may submit comments on the study, and an opportunity for interested persons to participate in public roundtables on the study. The Register shall hold any such public roundtables at such times as the Register considers appropriate.

(c) REPORT TO CONGRESS.—Not later than 2 years after the date of the enactment of this Act, the Register of Copyrights shall prepare and submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report on the study conducted under this section, including such administrative, regulatory, or legislative recommendations that the Register considers appropriate.

SEC. 7. STUDY ON COPYRIGHT DEPOSITS.

(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study examining the function of the deposit requirement in the copyright registration system under section 408 of title 17, United States Code, including—

(1) the historical purpose of the deposit requirement;

(2) the degree to which deposits are made available to the public currently;

(3) the feasibility of making deposits, particularly visual arts deposits, electronically searchable by the public for the purpose of locating copyright owners; and

(4) the impact any change in the deposit requirement would have on the collection of the Library of Congress.

(b) REPORT.—Not later than 2 years after the date of the enactment of this Act, the Comptroller General shall submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report on the study conducted under this section, including such administrative, regulatory, or legislative recommendations that the Comptroller General considers appropriate.

By Mr. STEVENS (for himself, Mr. INOUYE, Mr. SMITH, Mr. DORGAN, Mr. THUNE, Mr. PRYOR, and Ms. SNOWE):

S. 2919. A bill to promote the accurate transmission of network traffic identification information; to the Committee on Commerce, Science, and Transportation.

Mr. STEVENS. Mr. President, to help end the growing problem of phantom traffic, today I introduce the ''Signaling Modernization Act of 2008.'' Senators INOUYE, SMITH, DORGAN, THUNE, PRYOR, and SNOWE cosponsored this bill. Phantom traffic is a phone call sent over the telephone network without the identifying information carriers use to bill each other.

When I call home to Alaska, that call is transmitted over several different carriers. Phone companies charge each other for the use of their networks. The funds generated by these charges are particularly important to carriers in Alaska and throughout rural America. Phantom traffic prevents carriers from collecting the funds they are owed, impacting universal service and raising rates for rural customers.

It's time Congress pulled back the mask on phantom traffic to discover who or what is behind this problem that has plagued carriers for several years. The Federal Communications Commission is actively analyzing the issue, but it is time we find a solution.

Yesterday the Commerce Committee heard from a member of the National Telecommunications Cooperative Association from rural Missouri. He told us that 11 percent of their traffic did not have sufficient information for billing, causing them to lose about $37 per line per year. This loss of revenue makes it more difficult for rural carriers to deploy broadband.

Our bill will require all calls from voice communications service providers to contain enough information to allow carriers to bill each other, including voice over internet protocol providers offering 2–way service and providers transiting the traffic between originating and terminating providers. Our bill also directs the FCC to establish rules implementing this requirement within 12 months of enactment, and gives it the authority to adopt enforcement provisions. Phantom traffic steals from rural carriers and customers. I hope Congress and the FCC will look at this issue closely and put an end to phantom traffic.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 530—DESIGNATING THE WEEK BEGINNING OCTOBER 5, 2008, AS ''NATIONAL SUDDEN CARDIAC ARREST AWARENESS WEEK''

Mr. DORGAN (for himself and Mr. CRAPO) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 530

Whereas sudden cardiac arrest is a leading cause of death in the United States;

Whereas sudden cardiac takes the lives of more than 250,000 people in the United States each year, according to the Heart Rhythm Society;

Whereas anyone can experience sudden cardiac arrest, including infants, high school athletes, and people in their 30s and 40s who have no sign of heart disease;

Whereas sudden cardiac arrest is extremely deadly, with the National Heart, Lung, and Blood Institute giving it a mortality rate of approximately 95 percent;

Whereas, to have a chance of surviving an attack, the American Heart Association states that victims of sudden cardiac arrest must receive a lifesaving defibrillation within the first 4 to 6 minutes of an attack;

Whereas, for every minute that passes without a shock from an automated external defibrillator, the chance of survival decreases by approximately 10 percent;

Whereas lifesaving treatments for sudden cardiac arrest are effective if they can be administered in time;

Whereas, according to joint research by the American College of Cardiology and the American Heart Association, implantable cardioverter defibrillators are 98 percent effective at protecting those at risk for sudden cardiac arrest;

Whereas, according to the American Heart Association, cardiopulmonary resuscitation and early defibrillation with an automated external defibrillator more than double a victim's chances of survival;

Whereas the Yale-New Haven Hospital and the New England Journal of Medicine state that women and African Americans are at a higher risk than the general population of dying as a result of sudden cardiac arrest, yet this fact is not well known to those at risk;

Whereas there is a need for comprehensive educational efforts designed to increase awareness of sudden cardiac arrest and related therapies among medical professionals and the greater public in order to promote early detection and proper treatment of this disease and to improve quality of life; and

Whereas early October is an appropriate time to observe National Sudden Cardiac Awareness Week: Now, therefore, be it

Resolved, That the Senate—

(1) designates the week beginning October 5, 2008, as ''National Sudden Cardiac Arrest Awareness Week'';

(2) supports—

(A) the goals and ideals of National Sudden Cardiac Arrest Awareness Week; and

(B) efforts to educate people about sudden cardiac arrest and to raise awareness about the risk of sudden cardiac arrest, identifying warning signs, and the need to seek medical attention in a timely manner;

(3) acknowledges the critical importance of sudden cardiac arrest awareness to improving national cardiovascular health; and

(4) calls upon the people of the United States to observe this week with appropriate programs and activities.

SENATE RESOLUTION 531—SUPPORTING THE GOALS AND IDEALS OF A NATIONAL CHILD CARE WORTHY WAGE DAY

Mr. MENENDEZ (for himself, Mr. KENNEDY, Mr. FEINGOLD, Mrs. BOXER, Mr. LEVIN, Mr. DURBIN, Mr. INOUYE, Mr. SANDERS, Mr. DODD, Mr. CASEY, Mr. LAUTENBERG, Mr. AKAKA, and Mr. JOHNSON) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 531

Whereas approximately 63 percent of the Nation's children under age 5 are in nonparental care during part or all of the day while their parents work;

Whereas the early care and education industry employs more than 2,300,000 workers;

Whereas the average salary of early care and education workers is $18,820 per year, and only ⅓ of these workers have health insurance and even fewer have a pension plan;

Whereas the quality of early care and education programs is directly linked to the quality of early childhood educators;

Whereas the turnover rate of early childhood program staff is roughly 30 percent per year, and low wages and lack of benefits, among other factors, make it difficult to retain high quality educators who have the consistent, caring relationships with young children that are important to the children's development;

Whereas the compensation of early childhood program staff should be commensurate with the importance of the job of helping the young children of the Nation develop their social, emotional, physical, and cognitive skills and helping them to be ready for school;

Whereas providing adequate compensation to early childhood program staff should be a priority, and resources can be allocated to improve the compensation of early childhood educators to ensure that quality care and education are accessible for all families;

Whereas additional training and education for the early care and education workforce is critical to ensuring high-quality early learning environments;

Whereas child care workers should receive compensation commensurate with their training and experience; and

Whereas the Center for the Child Care Workforce, a project of the American Federation of Teachers Educational Foundation, with support from the National Association for the Education of Young Children and other early childhood organizations, recognizes May 1 as National Child Care Worthy Wage Day: Now, therefore, be it

Resolved, That the Senate—

(1) designates May 1, 2008, as National Child Care Worthy Wage Day; and

(2) calls on the people of the United States to observe National Child Care Worthy Wage Day by honoring early childhood care and education staff and programs in their communities.

SENATE RESOLUTION 532—RECOMMENDING THAT THE LANGSTON GOLF COURSE, LOCATED IN NORTHEAST WASHINGTON, DC, AND OWNED BY THE NATIONAL PARK SERVICE, BE RECOGNIZED FOR ITS IMPORTANT LEGACY AND CONTRIBUTIONS TO AFRICAN-AMERICAN GOLF HISTORY, AND FOR OTHER PURPOSES

Mr. FEINGOLD submitted the following resolution; which was referred to the Committee on Energy and Natural Resources:

S. RES. 532

Whereas the Langston Golf Course was designated for construction by the Department of the Interior in the 1930s as a safe and expanded recreational facility for the local and national African-American communities;

Whereas Langston Golf Course was named for John Mercer Langston, the first African-American Representative elected to Congress from the State of Virginia, and who also was a founder of the Howard University Law School;

Whereas the Langston Golf Course is believed to be the first regulation course in the United States to be built almost entirely on a refuse landfill;

Whereas Langston Golf Course has been placed on the National Register of Historic Places, and the Capitol City Open golf tournament has made Langston Golf Course its home for the past 40 years;