October 1, 1986

CONGRESSIONAL RECORD — SENATE

S 14441

Whereas the Communist-controlled governments of the Soviet Union, Romania, and other Warsaw Pact nations have systematically sought to annihilate organized religion, especially the Byzantine Rite Catholic Church, by every possible means, including the imprisonment and or death of the Church hierarchy—the only Church leaders with authority to make decisions for the faithful;

Whereas no ecclesiastical document with canonical value exists calling for the resolution of the Byzantine Rite Church, and no bishops have endorsed or agreed to any merger with the Orthodox Church, choosing instead intense suffering, persecution, and death at the hands of their captors;

Whereas even after brutal torture, intimidation, imprisonment, and threats against their families less than 40 of the considerably more than 2,000 priests in Romania submitted to the pressure of the Government of Romania and even so continue to practice their faith;

Whereas 142 Byzantine Rite Catholic monasteries and convents, 4,119 churches and chapels in Ukraine, and countless other such facilities and Church properties were seized throughout Eastern Europe, including the Romanian Catholic cathedral at Blaj;

Whereas the Byzantine Rite and Latin Rite Catholic faithful in Ukraine, Romania, Czechoslovakia, and throughout Eastern Europe continue to profess and practice their faith despite a history of persecution which includes torture, imprisonment, harassment, and threats;

Whereas Byzantine Rite Catholic bishops and priests continue to be ordained and to serve the spiritual needs of the faithful in church-like secrecy;

Whereas although the Soviet Union and its satellites wish the world to think that there are no Byzantine Rite Catholics within their borders, millions remain faithful to the Holy See and are conscientious, practicing Catholics and have asked their brethren in the West to plead for their religious freedom and the restoration of their Churches; and

Whereas the Government of the Soviet Union and the governments of other Soviet-bloc Eastern European countries refuse to allow the restoration of the Byzantine Rite Catholic Church on an equal basis with other recognized religions and refuse to restore all confiscated property of the Byzantine Rite Catholic Churches: Now, therefore, be it

Resolved, That (a) the Senate hereby recognizes the continuing right of the people of Ukraine, Lithuania, Romania, Czechoslovakia, and all other Soviet-bloc Eastern European countries to have freedom of religion.

(b) The Senate hereby deplores the refusal of the Soviet Union and Romania to officially recognize the Byzantine Rite Catholic Church and the refusal of the Soviet Union, Romania, and Czechoslovakia (which allowed the restoration of the Byzantine Rite Church in 1965) to restore all Church properties and possessions.

(c) It is the sense of the Senate that the President should instruct the United States delegation to the Review Meeting of the Conference on Security and Cooperation in Europe, scheduled for November 4, 1986, to press for the full restoration of the Byzantine Rite Catholic Church and freedom of religion for the people of all the Captive Nations before the world community.

S 2. The Secretary of the Senate shall transmit a copy of this resolution to the President.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

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

The motion to lay on the table was agreed to.

RELEASE TO MUSEUMS OF CERTAIN OBJECTS OF THE UNITED STATES INFORMATION AGENCY

The bill (H.R. 5522) to authorize the release to museums in the United States of certain objects owned by the United States Information Agency, was considered, ordered to a third reading, read the third time, and passed.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

CONCERNING THE SOVIET PERSECUTION OF MEMBERS OF THE UKRAINIAN AND OTHER PUBLIC HELSINKI MONITORING GROUPS

The concurrent resolution (S. Con. Res. 154) concerning the Soviet Union's persecution of members of the Ukrainian and other public Helsinki Monitoring Groups, was indefinitely postponed.

CONCERNING SOVIET PERSECUTION OF MEMBERS OF THE UKRAINIAN AND OTHER HELSINKI MONITORING GROUPS

The concurrent resolution (H. Con. Res. 332) concerning the Soviet Union's persecution of members of the Ukrainian and other public Helsinki Monitoring Groups, was considered, and agreed to.

The preamble was agreed to.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the concurrent resolution was agreed to.

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

The motion to lay on the table was agreed to.

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate now turn to Calendar No. 700, H.R. 4952, dealing with electronic communications.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senate from West Virginia (Mr. Byrd, for Mr. Lehr for himself and Mr. Mathias, and Mr. Thurmond), sends an amendment to the substitute for the amendment (S. 2510) of Mr. Byrd, for Mr. Leahy (for himself and Mr. Mathias, and Mr. Thurmond), proposes an amendment numbered 3107, in the nature of a substitute.

Mr. BYRD. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

Whereas the Government of the Soviet Union, in furtherance of its program to suppress and eliminate any organization or belief which challenges its authority, and thereby denies the people of certain countries the right to be free;

Whereas the United States, as a signatory to the Helsinki Final Act, has recognized these rights as non-negotiable and has repeatedly expressed its concern with the continuing suppression of these rights in the Soviet Union and the other countries of the Warsaw Pact (b) The Senate hereby deplores the refusal of the Soviet Union, Romania, and Czechoslovakia to agree to the continuation of the work of the Helsinki Commission by some means compatible with principles of good faith, justice, and public order.

Whereas Byzantine Rite Catholic bishops and priests continue to be ordained and to serve the spiritual needs of the faithful in church-like secrecy;

Whereas although the Soviet Union and its satellites wish the world to think that there are no Byzantine Rite Catholics within their borders, millions remain faithful to the Holy See and are conscientious, practicing Catholics and have asked their brethren in the West to plead for their religious freedom and the restoration of their Churches; and

Whereas the Government of the Soviet Union and the governments of other Soviet-bloc Eastern European countries refuse to allow the restoration of the Byzantine Rite Catholic Church on an equal basis with other recognized religions and refuse to restore all confiscated property of the Byzantine Rite Catholic Churches: Now, therefore, be it

Resolved, That (a) the Senate hereby recognizes the continuing right of the people of Ukraine, Lithuania, Romania, Czechoslovakia, and all other Soviet-bloc Eastern European countries to have freedom of religion.

(b) The Senate hereby deplores the refusal of the Soviet Union and Romania to officially recognize the Byzantine Rite Catholic Church and the refusal of the Soviet Union, Romania, and Czechoslovakia (which allowed the restoration of the Byzantine Rite Church in 1965) to restore all Church properties and possessions.

(c) It is the sense of the Senate that the President should instruct the United States delegation to the Review Meeting of the Conference on Security and Cooperation in Europe, scheduled for November 4, 1986, to press for the full restoration of the Byzantine Rite Catholic Church and freedom of religion for the people of all the Captive Nations before the world community.

SEC. 2. The Secretary of the Senate shall transmit a copy of this resolution to the President.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

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

The motion to lay on the table was agreed to.

ELECTRONIC COMMUNICATIONS PRIVACY ACT

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate now turn to Calendar No. 700, H.R. 4952, dealing with electronic communications.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 4952) to amend title 18, United States Code, with respect to the interception of certain communications other than wire, oral, or other electronic communications.

The PRESIDING OFFICER. Without objection, the Senate will proceed to its immediate consideration.

The Senate proceeded to consider the bill.

AMENDMENT NO. 3107

(Purpose: To insert a substitute amendment)

Mr. BYRD. Mr. President, on behalf of Senators Leahy, Mathias, and Thurmond, I send an amendment to the deed and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senate from West Virginia (Mr. Byrd, for Mr. Leahy for himself and Mr. Mathias, and Mr. Thurmond), proposes an amendment numbered 3107, in the nature of a substitute.

Mr. BYRD. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

Whereas the Government of the Soviet Union, in furtherance of its program to suppress and eliminate any organization or belief which challenges its authority, and thereby denies the people of certain countries the right to be free;

Whereas the United States, as a signatory to the Helsinki Final Act, has recognized these rights as non-negotiable and has repeatedly expressed its concern with the continuing suppression of these rights in the Soviet Union and the other countries of the Warsaw Pact (b) The Senate hereby deplores the refusal of the Soviet Union, Romania, and Czechoslovakia to agree to the continuation of the work of the Helsinki Commission by some means compatible with principles of good faith, justice, and public order.

Whereas Byzantine Rite Catholic bishops and priests continue to be ordained and to serve the spiritual needs of the faithful in church-like secrecy;

Whereas although the Soviet Union and its satellites wish the world to think that there are no Byzantine Rite Catholics within their borders, millions remain faithful to the Holy See and are conscientious, practicing Catholics and have asked their brethren in the West to plead for their religious freedom and the restoration of their Churches; and

Whereas the Government of the Soviet Union and the governments of other Soviet-bloc Eastern European countries refuse to allow the restoration of the Byzantine Rite Catholic Church on an equal basis with other recognized religions and refuse to restore all confiscated property of the Byzantine Rite Catholic Churches: Now, therefore, be it

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(c) It is the sense of the Senate that the President should instruct the United States delegation to the Review Meeting of the Conference on Security and Cooperation in Europe, scheduled for November 4, 1986, to press for the full restoration of the Byzantine Rite Catholic Church and freedom of religion for the people of all the Captive Nations before the world community.

S 2. The Secretary of the Senate shall transmit a copy of this resolution to the President.
(A) by striking out "and" at the end of paragraph (10); (B) by striking out the period at the end of paragraph (11) and inserting a semicolon therefor; and (C) by inserting the following: "12. 'electronic communication' means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectric or photoptical system that affects interstate or foreign commerce, but does not include— (A) the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit; (B) any wire or oral communication; (C) any communication made through a tone-only paging device; or (D) any communication from a tracking device (as defined in section 3117 of this title); (13) 'user' means any person or entity who— (A) uses an electronic communication service; and (B) is duly authorized by the provider of such service to engage in such use; (14) 'electronic communications system' means any wire, radio, electromagnetic, photooptical or photoptoelectric facilities for the creation, manipulation or transmission of electronic communications, and any computer facilities or related electronic equipment for the electronic storage of such communications; (15) 'electronic communication service' means any service which provides to users thereof the ability to send or receive wire or electronic communications; (16) 'readily accessible to the general public', means, with respect to a radio communication, that such communication is not— (A) scrambled or encrypted; (B) transmitted using modulation techniques whose essential parameters have been withheld from the public with the intention of preserving the privacy of such communication; (C) carried on a subcarrier or other signal subsidiary to a radio transmission; (D) transmitted over a communication system that is configured so that such electronic communication is read­ily accessible to the general public; or that relates to ships, aircraft, vehicles, or persons in distress; (E) by any governmental, law enforcement, civil defense, private land mobile, or emergency operating station or consumer electronic communication system, utilizing radio frequency allocated under part 74 that is not— (i) by any military, or aeronautical, or maritime communications system, utilizing radio frequency allocated under part 74, subpart D, E, or F of part 74, unless the communication is a tone only paging system communication; or (ii) by any station for the use of the general public, or that relates to ships, aircraft, vehicles, or persons in distress; (F) for the use of the general public; or that relates to ships, aircraft, vehicles, or persons in distress; (G) by a provider of wire or electronic communication service, unless the communication is a tone only paging system communication; or "(17) 'electronic storage' means— (A) any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof; and (B) any storage of such communication by an electronic communication service for purposes of backup protection of such communication; "(18) 'aural transfer' means a transfer containing the human voice at any point between and including the point of origin and the point of reception.
for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain, and the wire, oral, or electronic communication is intercepted, disclosed, or intentionally used by the violator as a result of the violation; or

§ 2520. Recovery of civil damages authorized
Section 2520 of title 18, United States Code, is amended by adding at the end thereof the following:

"$(2) a court warrant or order, a grand jury subpoena, or a legislative authorization, or a statutory authorization;"

§ 2521. Actions for civil damages
(a) IN GENERAL.—Except as provided in section 2511(2)(a)(ii), any person whose wire, oral, or electronic communication is intercepted, disclosed, or intentionally used by the violator as a result of the violation shall be subject to suit by the Federal Government in a court of competent jurisdiction.

(b) RELIEF.—In an action under this section—

(1) such preliminary and other equitable relief as may be appropriate; and

(2) damages to the extent of actual losses suffered by the plaintiff and any profits made by the defendant as a result of the violation; or

(c) COMPTION OF DAMAGES.—In an action under this section, if the conduct in violation of the chapter is the private viewing of that communication to its destination; or

(d) DEFENSE.—A good faith reliance on—

(1) a court warrant or order, a grand jury subpoena, or a legislative authorization, or a statutory authorization; or

(2) a request of an investigative or law enforcement officer under section 2518(7) of this title; or

(3) a good faith determination that section 2511(3) of this title permitted the conduct complained of;

(c) LIMITATION.—A civil action under this section may not be commenced later than two years after the date upon which the claimant first has a reasonable opportunity to discover the violation.

SEC. 170. CERTAIN APPROVALS BY JUSTICE DEPARTMENT OFFICIALS.
Section 2113 of title 18 of the United States Code is amended by striking out "or any Assistant Attorney General" and inserting in lieu thereof "any Assistant Attorney General in the Criminal Division".

SEC. 171. ADDITION OF OFFENSES TO CRIMES FOR WHICH INTERCEPTION IS AUTHORIZED.
(a) WIRE OR ANORE INTERCEPTIONS.—Section 2516(1) of title 18 of the United States Code is amended by striking out "or any Assistant Attorney General" and inserting in lieu thereof "any Assistant Attorney General in the Criminal Division".

(b) By inserting "section 3521(b)(3) (relating to witness retaliation)," after "section 3521(a)(6) (relating to penalty for failure to appear), section 3516 (relating to fraud and related activity in connection with access devices), section 3146 (relating to penalty for failure to appear), section 3521(b)(4) (relating to witness retaliation and suppression), section 32 (relating to destruction of aircraft or aircraft facilities), after "stolen property),";"

(c) By inserting "section 1952A (relating to use of interstate commerce facilities in the commission of murder for hire), section 1952A (relating to violent crimes involving racketeering activity)," after "section 1952 (interstate and foreign travel or transportation in aid of racketeering enterprise)," by inserting "section 115 (relating to threatening or retaliating against a Federal official), the section in chapter 65 relating to destruction of an energy facility, and section 1341 (relating to mail fraud)," after "section 1963 (violations with respect to racketeer influenced and corrupt organization)," and

(d) By inserting "section 1952A (relating to use of interstate commerce facilities in the commission of murder for hire), section 1952A (relating to violent crimes involving racketeering activity)," after "section 1952 (interstate and foreign travel or transportation in aid of racketeering enterprise)," by inserting "section 115 (relating to threatening or retaliating against a Federal official), the section in chapter 65 relating to destruction of an energy facility, and section 1341 (relating to mail fraud)," after "section 1963 (violations with respect to racketeer influenced and corrupt organization),"

SEC. 190. REQUIREMENTS FOR CERTAIN DISCLOSURES.
Section 2511 of title 18, United States Code, is amended by adding at the end the following:

"(3)c Except as provided in paragraph (b) of this subsection, a person or entity providing an electronic communication service to the public shall not intentionally divulge the contents of any communication (other than one to such person or entity) or an agent of such address or intended recipient.

(b) A person or entity providing electronic communication service to the public may not be found liable in a civil action under such communication or an agent of such address or intended recipient.

(c) A person or entity providing electronic communication service to the public may not be found liable in a civil action under such communication or an agent of such address or intended recipient.

(d) DEFENSE.—A good faith reliance on—

(1) a court warrant or order, a grand jury subpoena, or a legislative authorization, or a statutory authorization;

(2) a request of an investigative or law enforcement officer under section 2518(7) of this title; or

(3) a good faith determination that section 2511(3) of this title permitted the conduct complained of;

(c) LIMITATION.—A civil action under this section may not be commenced later than two years after the date upon which the claimant first has a reasonable opportunity to discover the violation.

SEC. 191. CERTAIN APPROVALS BY JUSTICE DEPARTMENT OFFICIALS.
Section 2113 of title 18 of the United States Code is amended by striking out "or any Assistant Attorney General" and inserting in lieu thereof "any Assistant Attorney General in the Criminal Division".

SEC. 192. ADDITION OF OFFENSES TO CRIMES FOR WHICH INTERCEPTION IS AUTHORIZED.
(a) WIRE OR ANORE INTERCEPTIONS.—Section 2516(1) of title 18 of the United States Code is amended by striking out "or any Assistant Attorney General" and inserting in lieu thereof "any Assistant Attorney General in the Criminal Division".

(b) By inserting "section 3521(b)(3) (relating to witness retaliation)," after "section 3521(a)(6) (relating to penalty for failure to appear), section 3516 (relating to fraud and related activity in connection with access devices), section 3146 (relating to penalty for failure to appear), section 3521(b)(4) (relating to witness retaliation and suppression), section 32 (relating to destruction of aircraft or aircraft facilities), after "stolen property),";"

(c) By inserting "section 1952A (relating to use of interstate commerce facilities in the commission of murder for hire), section 1952A (relating to violent crimes involving racketeering activity)," after "section 1952 (interstate and foreign travel or transportation in aid of racketeering enterprise)," by inserting "section 115 (relating to threatening or retaliating against a Federal official), the section in chapter 65 relating to destruction of an energy facility, and section 1341 (relating to mail fraud)," after "section 1963 (violations with respect to racketeer influenced and corrupt organization)," and

(d) By inserting "section 1952A (relating to use of interstate commerce facilities in the commission of murder for hire), section 1952A (relating to violent crimes involving racketeering activity)," after "section 1952 (interstate and foreign travel or transportation in aid of racketeering enterprise)," by inserting "section 115 (relating to threatening or retaliating against a Federal official), the section in chapter 65 relating to destruction of an energy facility, and section 1341 (relating to mail fraud)," after "section 1963 (violations with respect to racketeer influenced and corrupt organization),"
INTERCEPTION OF ELECTRONIC COMMUNICATIONS.—Section 2518(3)(d) of title 18 of the United States Code is amended by inserting "except as provided in subsection (11)," before "there is".

Section 2518 of the United States Code is amended by adding at the end the following:

"(1) The requirements of subsections (1)(b)(ii) and (3)(d) of this section relating to the interception of an oral communication are to be intercepted do not apply if—

"(a) in the case of an application with respect to the interception of an oral communication—

"(i) the application is by a Federal investigative or law enforcement officer and is approved by the Attorney General, the Deputy Attorney General, the Associate Attorney General, an Assistant Attorney General, or an acting Assistant Attorney General;

"(ii) the application contains a full and complete statement as to why such specification is not practical; and

"(iii) the judge finds that such specification is not practical.

"(b) in the case of an application with respect to a wire or electronic communication—

"(i) the application is by a Federal investigative or law enforcement officer and is approved by the Attorney General, the Deputy Attorney General, the Associate Attorney General, an Assistant Attorney General, or an acting Assistant Attorney General;

"(ii) the application identifies the person whose communications are to be intercepted;

"(iii) the judge finds that such purpose has been adequately shown.

"(12) An Interception of a communication under an order with respect to which the requirements of subsections (1)(b)(ii) and (3)(d) of this section do not apply by reason of subsection (11) shall not begin until the facilities from which the communications are to be intercepted are reasonably available during the interception period, minimization may be accomplished as soon as practicable after such interception. An Interception under this chapter may be conducted in whole or in part by Government personnel, or by an individual retained by or for the Government, acting under the supervision of an investigative or law enforcement officer authorized to conduct the interception."
SEC. 201. TITLE 18 AMENDMENT.

(a) In General.—Chapter 119 of Title 18, United States Code, is amended by adding at the end the following:

"§ 2521. Injunction against illegal interception

"Whenever it shall appear that any provision or section is about to be engaged in any act which constitutes, or will constitute, a felony violation of this chapter, the Attorney General may initiate a civil action in a district court of the United States to enjoin such violation. The court shall proceed as soon as practicable to the hearing and determination of such an action, and may, at any time before the court determines to enjoin such a restraining order or prohibition, or take such other action, as is warranted to prevent a continuation of the activity to the United States or to any person or class of persons for whose protection the action is brought. A proceeding under this section is governed by the Federal Rules of Civil Procedure, except that, if an indictment has been returned against the respondent, sovereign immunity is governed by the Federal Rules of Criminal Procedure.";

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 119 of Title 18, United States Code, is amended by adding at the end thereof the following:

"2521. Injunction against illegal interception.

SEC. 110. INJUNCTIVE REMEDY.

(a) In General.—Except as provided in subsection (b) or (c), this title and the amendments made by this title shall take effect 90 days after the date of enactment of this Act shall take effect on the date of enactment of this Act and thereby obtains, alters, or prevents authorization access to a wire or electronic communication while it is in electronic storage in such system shall be punished as provided in subsection (b) or (c), this title and the amendments made by this title shall take effect on the date of enactment of this Act.

(b) PUNISHMENT.—The punishment for an offense under subsection (a) of this section is:

"(1) If the offense is committed for purposes of commercial advantage, malicious destruction or damage, or private commercial gain—

"(A) a fine not more than $250,000 or imprisonment for not more than one year, or both, in the case of first offense under this subsection; and

"(B) a fine not more than $5,000 or imprisonment for not more than six months, or both, in any other case.

"(c) EXCEPTIONS.—Subsection (a) of this section does not apply with respect to conduct authorized—

"(1) by the person or entity providing a wire or electronic communications service; or

"(2) by a user of that service with respect to a communication of or intended for that user;

"(d) in section 2703, 2704 or 2516 of this title.

"§ 2702. Disclosure of contents

(a) PROHIBITIONS.—Except as provided in subsection (b)—

"(1) a person or entity providing an electronic communications service to the public shall not knowingly divulge to any person or entity the contents of a communication while in electronic storage by that service; and

"(2) a person or entity providing remote computing service to the public shall not knowingly divulge to any person or entity the contents of any electronic communication which is maintained or carried on that service—

"(A) on behalf of and by means of electronic transmission from (or created by means of computer processing of communications received by electronic transmission from), a subscriber or customer of such remote computing service; and

"(B) solely for the purpose of providing storage or computer processing services to such subscriber or customer, if the provider is not authorized to access the contents of any such communications for purposes of providing any services other than storage or computer processing.

"(c) RECORDS CONCERNING ELECTRONIC COMMUNICATIONS SERVICE OR REMOTE COMPUTING SERVICE.—(1) A person or entity providing a wire or electronic communications service or remote computing service may disclose a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by subsection (a) or (b) of this section) to any person other than a governmental entity.

"(B) A provider of electronic communications service or remote computing service shall disclose a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by subsection (a) or (b) of this section) to a governmental entity only when the governmental entity—
(1) an administrative subpoena authorized by Federal or State law, or a Federal or State grand jury subpoena;

(ii) obtains a warrant issued under the Federal Rule of Criminal Procedure or an equivalent State warrant;

(iii) obtains a court order for such disclosure under subsection (d) of this section; or

(2) A governmental entity acting under section 2703(b) of this title, may—

(A) delay notice or a court order pursuant to subsection (a) of this section, may—

(1) within fourteen days after notice by the governmental entity to the subscriber or customer for whom the communication sought is reasonably believed to be relevant to a legitimate law enforcement inquiry, or that there has not been substantial compliance with the provisions of this subsection, the term in the Federal Rules of Civil Procedure.

(2) The governmental entity shall maintain the order or a court order issued for a subpoena or court order a reasonable and prudent time for the governmental entity to file a petition for a court order.

(3) If the court finds that the customer has been substantially in violation of this section, the court shall order the governmental entity to file a petition for a court order.

(4) The court shall order the governmental entity to file a petition for a court order, or to the customer or the governmental entity to comply with the provisions of this section.

(5) Upon expiration of the period of delay of notification under paragraph (1) or (4) of this subsection, the governmental entity to file a petition for a court order, or to the customer or the governmental entity to comply with the provisions of this section.

(6) The service provider shall release such backup copy to the governmental entity on the date on which the governmental entity to file a petition for a court order or to the customer or the governmental entity to comply with the provisions of this section.

(7) The service provider shall release such backup copy to the governmental entity on the date on which the governmental entity to file a petition for a court order or to the customer or the governmental entity to comply with the provisions of this section.

(8) The service provider shall release such backup copy to the governmental entity on the date on which the governmental entity to file a petition for a court order or to the customer or the governmental entity to comply with the provisions of this section.

(9) The service provider shall release such backup copy to the governmental entity on the date on which the governmental entity to file a petition for a court order or to the customer or the governmental entity to comply with the provisions of this section.
provider of electronic communications service or remote computing service to whom a warrant, subpoena, or court order is directed, for such period as the court deems appropriate, not to notify any other person of the existence of the warrant, subpoena, or court order. The court shall enter such an order if it determines that there is reason to believe that notification of the existence of the warrant, subpoena, or court order will result in—

“(1) endangering the life or physical safety of an individual;

“(2) flight from prosecution;

“(3) destruction or tampering with evidence;

“(4) intimidation of potential witnesses; or

“(5) other circumstances likely to jeopardize an investigation or unduly delay a trial.

§ 2706. Cost reimbursement

“(a) PAYMENT.—Except as otherwise provided in subsection (c), a governmental entity obtaining the contents of communications, records, or other information under section 2702, 2703, or 2704 of this title shall pay the person or entity providing the information, as agreed by the governmental entity and the person or entity providing the information a fee for reimbursement for such costs as are reasonably necessary and which have been directly incurred in connection with the furnishing, assembling, reproducing, or otherwise providing such information. Such reimbursable costs shall include costs due to necessary disruption of normal operations of any electronic communication service or remote computing service in which such information may be stored.

“(b) AMOUNT.—The amount of the fee provided by subsection (a) shall be as mutually agreed by the governmental entity and the person or entity providing the information, or, in the absence of agreement, shall be as determined by the court which issued the order for production of such information or the court before which a criminal prosecution relating to such information would be brought, if no court order was issued for production of the information.

“(c) The requirement of subsection (a) of this section does not apply with respect to records or other information maintained by or electronic communication service provider shall comply with a request for subscriber information and toll billing records information, or electronic communication transactional records in its custody or possession made by the Director of the Federal Bureau of Investigation under section 2711 of this section.

“(d) LIMITATION.—A civil action under this section may not be commenced later than two years after the date upon which the claimant first discovered or had a reasonable opportunity to discover the violation.

§ 2708. Exclusivity of remedies

“The remedies and sanctions described in this chapter are the only judicial remedies and sanctions for nonconstitutional violations of this chapter.

§ 2710. Counterintelligence access to telephone toll and transactional records

“(a) DUTY TO PROVIDE.—The Federal Bureau of Investigation or electronic communication service provider shall comply with a request for subscriber information and toll billing records information, or electronic communication transactional records in its custody or possession made by the Director of the Federal Bureau of Investigation under section 2711 of this section.

“(b) REQUIRED CERTIFICATION.—The Director of the Federal Bureau of Investigation may request any such information and records if the Director (or the Director’s designee) certifies in writing to the wire or electronic communication service provider to which the request is made that—

“(1) the information sought is relevant to an authorized foreign counterintelligence investigation; and

“(2) there are specific and articulable facts giving reason to believe that the person or entity to whom the information sought pertains is a foreign power or an agent of a foreign power as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801).

§ 2719. Counterintelligence access to toll and transactional records

“(a) DISSEMINATION BY BUREAU.—The Federal Bureau of Investigation may disseminate information and records obtained under this section only as provided in guidelines approved by the Attorney General for foreign intelligence collection and foreign counterintelligence investigations conducted by the Federal Bureau of Investigation, and, with respect to dissemination to an agency of the United States, only if such information is clearly relevant to the authorized responsibilities of such agency.

“(b) REPORT.—The Director of the Federal Bureau of Investigation may disseminate information and records obtained under this section only as provided in guidelines approved by the Attorney General for foreign intelligence collection and foreign counterintelligence investigations conducted by the Federal Bureau of Investigation, and, with respect to dissemination to an agency of the United States, only if such information is clearly relevant to the authorized responsibilities of such agency.

§ 2710. Definitions for chapter

As used in this chapter—

“(a) COURT WARRANT OR ORDER.—A warrant or order, a grand jury subpoena, a legislative authorization, or a statutory authority.

“(b) REQUEST FOR INFORMATION.—A request for information and toll billing records information, or electronic communication transactional records in its custody or possession made by the Director of the Federal Bureau of Investigation under section 2711 of this title.

“(c) COMMUNICATION SERVICE.—A wire or electronic communication service, subscriber, or customer aggrieved by any violation of this chapter in which the conduct constituting the violation is engaged in with a knowing or intentional state of mind may, in a civil action, recover from the person or entity with respect to which such violation shall be appropriate.

“(d) RELIEF.—In a civil action under this chapter, the person or entity aggrieved by any violation of this chapter in which the conduct constituting the violation is engaged in with a knowing or intentional state of mind may, in a civil action, recover from the person or entity with respect to which such violation shall be appropriate.

“(e) DAMAGES.—The court may assess as damages in a civil action under this chapter the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation, but in no case shall the amount of damages assessed exceed the sum of $1,000.

“(f) DEFENSE.—A good faith reliance on—

“(G) AFFIDAVIT.—An affidavit of the person or entity aggrieved by any violation of this chapter in which the conduct constituting the violation is engaged in with a knowing or intentional state of mind may, in a civil action, recover from the person or entity with respect to which such violation shall be appropriate.
ter, in writing under oath or equivalent af
or investigative officer making the applica
section 3123 of this title for approving the installa
and use of a pen register or a trap and trace device under this chapter, in writing under oath or equivalent affirmation, to a court of competent jurisdiction of such State.

(b) CONTENTS OF APPLICATION.—An application under subsection (a) of this section shall include—

(1) the identity of the attorney for the Government or the State law enforcement or investigative officer making the application and the identity of the law enforcement agency conducting the investigation; and

(2) a certification by the applicant that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by that agency.

§ 3123. Issuance of an order for a pen register or a trap and trace device

(a) IN GENERAL.—Upon an application for an order under section 3122 of this title, the court may make an order authorizing or approving the installation and use of a pen register or a trap and trace device within the jurisdiction of the court, at reasonable intervals during regular business hours for the duration of the order.

(b) CONTENTS OF ORDER.—An order issued under this section shall—

(A) specify—

(i) the identity, if known, of the person to whom or to any other person, unless or until otherwise ordered by the court, the results of the trap and trace device shall be furnished to the officer of a law enforcement agency, designated in the court, at reasonable intervals during regular business hours for the duration of the order;

(ii) a statement of the offense to which the information likely to be obtained is relevant to an ongoing criminal investigation;

(iii) the geographic limits of the installation and use of such device; and

(iv) a statement of the offense to which the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation.

(C) the number and, if known, physical location of the telephone line to which the pen register or trap and trace device is to be attached;

(D) the identity, if known, of the person who is the subject of the criminal investigation;

(E) the name, if known, of the subscriber, or to any other person, unless or until otherwise ordered by the court, the results of the trap and trace device shall be furnished; and

(F) shall direct, upon the request of the applicant, the furnishing of information, facilities, and technical assistance necessary to accomplish the installation of the pen register or trap and trace device under section 3124 of this title.

§ 3124. Assistance in installation and use of a pen register or a trap and trace device

(a) PEN REGISTERS.—Upon the request of an attorney for the Government or an officer of a law enforcement agency authorized to install and use a pen register or a trap and trace device under this chapter, a provider of wire or electronic communication service, landlord, custodian, or other person forthwith all information, facilities, and technical assistance necessary to accomplish the installation of the device forthwith on the appropriate line and shall furnish such information, facilities, and technical assistance unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place, if such assistance is directed by a court order as provided in section 3123(b)(2) of this title.

(b) TRAP AND TRACE DEVICE.—Upon the request of an attorney for the Government or an officer of a law enforcement agency authorized to receive the results of a trap and trace device under this chapter, a provider of wire or electronic communication service, landlord, custodian, or other person shall install such device forthwith on the appropriate line and shall furnish such information, facilities, and technical assistance including installation and operation of the trap and trace device from which a wire or electronic communication was transmitted;

(c) COMPENSATION.—A provider of a wire or electronic communication service, landlord, custodian, or other person who furnishes the necessary assistance pursuant to this section shall be reasonably compensated for such reasonable expenses incurred in providing such facilities and assistance;

(d) NO CAUSE OF ACTION AGAINST A PROVIDER.—No cause of action shall lie in any court against any provider of a wire or electronic communication service, its officers, employees, agents, or other specified persons, or any custodian, landlord, or other person who furnishes the necessary assistance pursuant to this section.

§ 3125. Reporting concerning pen registers and trap and trace devices

(a) IN GENERAL.—The Attorney General shall annually report to Congress on the number of pen register orders and orders for trap and trace devices applied for by enforcement agencies of the Department of Justice.

(b) DEFINITIONS.—As used in this chapter—

(1) the terms 'wire communication', 'electronic communication', and 'electronic communication service' have the meanings set forth for such terms in section 2510 of this title;

(2) the term 'court of competent jurisdiction' has the meaning given such term for the purposes of the Federal Rules of Criminal Procedure and

(3) the term 'State' means a State, the District of Columbia, Puerto Rico, and any other possession or territory of the United States.

§ 3126. Pen Registers and Trap and Trace Devices

SEC. 392. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), this title and the amendments made by this title shall take effect ninety days after the date of the enactment of this Act and shall, in the case of conduct pursuant to a court order or extension, apply only with respect to court orders or extensions made after this title takes effect.

(b) GENERAL RULE FOR STATUTES OF LIMITATIONS AND INTERVENTIONS.—Any pen register or trap and trace device order or installation which would be valid and lawful without regard to the amendments made by this title shall be valid and lawful notwithstanding such amendments if such order or installation occurs during the period beginning on the date such amendments take effect and ending on the earlier of—

(1) the day before the date of the taking effect of changes in State law required in order to make orders or installations under this title as law as amended by this title; or

(2) the date two years after the date of the enactment of this Act.

SEC. 393. INTERFERENCE WITH THE OPERATION OF A SATELLITE.

(a) OFFENSE.—Chapter 65 of title 18, United States Code, is amended by inserting at the end the following:

"(k) Whoever, without the authority of the satellite operator, intentionally or maliciously interferes with the authorized operation of a communications or weather satellite or obstructs or hinders any satellite transmission shall be fined in accordance with this title or imprisoned not more than ten years or both."
Mr. LEAHY. Mr. President, not long ago, a message was transmitted by first class mail, by wire, or by some form of wireless communications link. Each had its advantages and vulnerabilities. Each was regulated by separate legislation that provided a legal framework of appropriate privacy protection of the user. It was a neat and tidy world, in which private users, common carriers, and Government knew their rights and limits.

Today, Americans have at their fingertips a battery of electronic communications and computer technology, including electronic mail, voice mail, electronic bulletin boards, computer storage, cellular telephones, video teleconferencing, and computer links. These technological advances are wonderful. They make the lives of individual citizens easier and they promote American business.

Thefortunate are most people who use these new forms of technology are not aware that the law regarding the privacy and security of such communications is in tatters.

The primary law in this area is the Federal wiretap statute, title III of the Omnibus Crime Control and Safe Streets Act of 1968. When title III was written 18 years ago, Congress could barely contemplate forms of telecommunications and computer technology we are starting to take for granted today. Congress could not envision the dramatic changes in the telephone industry which have witnessed in the last few years. Today, a phone can be carried by wire, microwave, or fiber optics. Even a local call may follow an interstate path. And an ordinary message can be transmitted in different forms—digitized voice, data, or video. In addition, since the divestiture of AT&T and deregulation, many different companies, not just common carriers, offer a wide variety of telephone and other communications services.

In short, technology and the structure of the communications industry have outstripped existing law.

Senate bill 2575, the Electronic Communications Privacy Act of 1986 which I introduced with Senator MATHIAS and which Senators THURMOND, STAFFORD, ANDREWS and DeConcini have cosponsored, is designed to update title III of the Omnibus Crime Control and Safe Streets Act to provide a reasonable level of Federal privacy protection to these new forms of communication.

The substitute amendment Senators MATHIAS, THURMOND, and I are offering today to the House version of the Electronic Communications Privacy Act, H.R. 4952, is the culmination of 2 years of hard work with Congressmen Kastenmoor and Moakley and their staffs on the House Judiciary Subcommittee on Courts, Civil Liberties, and the Administration of Justice. We have also worked with the Department of Justice, the American Civil Liberties Union, representatives of the computer and telecommunications industry, the Federal Communications Commission, representatives of the satellite dish industry, and satellite dish owners and technology and privacy groups. I want to thank all those people who have worked with me, with Senator MATHIAS and our staffs to make the Electronic Communications Privacy Act a better bill.

Let me describe the Electronic Communications Privacy Act briefly. It provides standards by which law enforcement agencies may obtain access to both wiretap orders and the records of an electronic communications system. These provisions are designed to protect legitimate law enforcement needs while minimizing intrusions on the privacy of system users as well as the business needs of electronic communications system providers.

At the request of the Justice Department, we strengthened the current wiretap law from a law enforcement perspective. Specifically, we expanded the list of felonies for which a voice wiretap order may be issued and the list of Justice Department officials who may apply for a court order to place a wiretap. We also added a provision making it easier for law enforcement officials to deal with a target who repeatedly changes telephones to thwart legitimate law enforcement investigations, and created criminal penalties for those who notify a target of a wiretap in order to obstruct it.

The legislation creates a statutory framework for court authorization and issuance of orders for pen registers and trap and trace devices. It also creates civil penalties for the users of electronic communications services whose rights under the bill are violated. Finally, it preserves the careful balance governing electronic surveillance for foreign intelligence and counterintelligence purposes embodied in the Foreign Intelligence Surveillance Act of 1978. And it provides a clear procedure for access to telephone toll records in counterintelligence investigations.

Since we introduced S. 2575 in June, Senator MATHIAS and I have continued to improve this legislation, and the substitute we are offering today to H.R. 4952, the House-passed version of the Electronic Communications Act includes several key changes.

In order to address the recent Capitol Midnight incident, at the request of the FCC, we added a provision to increase the penalties for the intentional or malicious interference with a satellite transmission.

We wanted to underscore that the inadvertent receipt of a protected communication is not a crime. In order to do that, we changed the state of mind requirement under title III of the Omnibus Crime Control and Safe Streets Act from “willful” to “intentional.”

Mr. President, as the Subcommittee on Patents, Copyrights and Trademarks prepared to markup S. 2575, Senators LAXALT, GRASSLEY, DeConcini and SIMPSON expressed concerns about the bill’s penalty structure for the interception of certain satellite transmissions by home viewers. In order to address those concerns we have completely restructured the penalty provisions of the bill for such conduct.

That restructuring is accomplished through Senator GRASSLEY’s proposal which eliminates from the Electronic Communications Privacy Act civil penalties for the home viewing of private satellite video communications. Senators LAXALT, McCONNELL, SIMPSON, and DENTON are cosponsors of the Grassley amendment.

The amendment is incorporated in the substitute we are offering today, and I would like to describe it briefly. The criminal penalties and civil liability provisions of chapter 119 of title 18 of the United States Code have been modified so that there is a two-track, tiered penalty structure for home viewing of private satellite transmissions when that conduct is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain.

On the public side, a first offender would be subject to a suit by the Government, including injunctive relief, one who violates the injunction would be subject to the full panoply of enforcement mechanisms within the court’s existing authority, including contempt of court and civil contempt. Second and subsequent offenses carry a mandatory $500 civil fine for each violation. The term “violation” in this context refers to each viewing of a private video communication.

On the private side, a person harmed by the private viewing of such a satellite communication may sue for damages in a civil action. If the defendant has not previously been enjoined in a Government action as described above, and has not previously been found liable in a civil suit, the plaintiff may recover the greater of his actual damages or statutory damages of $50 to $500. A second offender—one who has been found liable in a prior private civil action or one who has been enjoined in a government suit—is subject to liability for statutory damages or statutory damages of $100 to $1,000. Third and subsequent offenders are subject to the bill’s full civil penalties.
It also takes outside the penalty provisions of the Electronic Communications Privacy Act, the interception of a single radio subcarrier. If the transmission is intended for redistribution to facilities open to the public, provided that the conduct is not for the purpose of direct or indirect commercial advantage or private financial gain. Audio subcarriers intended for redistribution to the public include those for redistribution by broadcast stations and cable and like facilities. They also include those for redistribution by buildings that pump in music which has been transmitted via subcarrier. As specified in the substitute, this audio subcarrier exclusion does not apply to data transmissions or to telephone calls.

The private viewing of satellite cable programming, network fees and certain audio subcarriers will continue to be governed exclusively by section 108 of the Communications Act, as amended, and not by chapter 119 of title 18 of the United States Code.

Mr. President, this is a very good compromise. Those Senators who originally brought these concerns to our attention, are happy with it. So are the representatives of the satellite dish owners and manufacturers.

Senator Simon expressed concerns that the Electronic Communications Privacy Act’s penalties were too severe for the first offender who, without an unlawful or financial purpose, intercepts a cellular telephone call or certain radio communications related to news-gathering. Senator Mathias and I have accepted Senator Simon’s amendment, and it is incorporated in the substitute. The Simon amendment rectifies that for such an interception of an unencrypted, unencrypted, unscrambled radio communications transmitted in the United States.

On June 11, the House Judiciary Committee unanimously reported H.R. 4932. On June 19, Senators Leahey and Mathias introduced this bill. On June 23, the House passed H.R. 4932. On August 12, the Subcommittee on Patents, Copyrights and Trademarks of the Senate Judiciary Committee reported the bill. The Senate Judiciary Committee expressed concern that the penalties for private viewing were too severe. Their concerns have been addressed by a reduction of the private and public penalties for home viewing. The bill also addresses the recent Captain Midnight incident by increasing penalties for interference with satellite transmissions.

The Justice Department strongly supports this bill. The Judiciary Committee reported S. 2975 on September 19. The bill eliminates any federal felony for the unauthorized interception of a wire or oral communication, or to obstruct, impede or prevent such interception.

Title II of the bill creates parallel privacy protection for the unauthorized access to computers of an electronic communications system, if information is obtained or altered. It does little good to prohibit the unauthorized interception of information while it is being transmitted, if similar protection is not afforded to the information while it is being stored for later forwarding.

A telephone company may move to quash an order for such a “roving tap” if compliance would be unduly burdensome. The bill makes it a crime for a person who has knowledge of a court authorized wiretap to notify any person of the possible interception, or in order to obstruct, impede or prevent such interception.

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The bill makes it a crime for a person who has knowledge of a court authorized wiretap to notify any person of the possible interception, or in order to obstruct, impede or prevent such interception.
which an electronic communication service is provided and obtains, alters or prevents authorized access to a stored electronic communication. The offense is punished as a crime only for purposes of commercial advantage, malicious destruction or damage, or private commercial gain; otherwise it is punished as a petty offense.

Providers of electronic communication services to the public and providers of remote computing services to the public are prohibited from intentionally divulging the contents of communications contained in their systems except under circumstances specified in the bill.

The contents of messages contained in electronic storage of electronic communication systems which have been in storage for 180 days or less may be obtained by a government entity from the provider of the system only pursuant to a warrant issued under the Federal Rules of Criminal Procedure or equivalent state warrant.

The content of messages stored more than 180 days and the contents of certain records stored by providers of remote computing services may be obtained from the provider of the service without notice to the subscriber if the government obtains a warrant issued in accordance with the Federal Rules of Criminal Procedure or with notice to the customer pursuant to an administrative subpoena, a grand jury subpoena, or a court order, warrant, subpoena, or customer consent.

An electronic communications or remote computing service provider may disclose to a non-governmental entity customer information like mailing lists, but not the contents of the communication. Disclosure of such information by a federal government is required, but only when the government obtains a court order, warrant, subpoena, or customer consent.

At the FCC's request, a section was added to the bill to address problems highlighted by the recent Captain Midnight Incident. The bill specifies new penalties for the intentional or malicious interference with satellite transmissions.

The problem is to strike the right balance between privacy policy and the realities of physics. Individuals and businesses surely expect privacy when they participate in a private video-teleconference or, in the case of television, when they transact business during private or commercial advantage, malicious destruction or damage, or private commercial gain; otherwise it is punished as a petty offense.

Under the private civil damages provisions of the bill, the first offender is subject to a suit by the federal government for injunctive relief. If injunctive relief is granted, the court may use whatever means in its authority, including civil and criminal contempt, to enforce its order. It must impose a $500 civil fine. In addition, the penalty for second and subsequent offenses is a $500 fine in a suit brought by the government.

Under the private criminal damages provisions of the bill, the first offender is subject to a suit by the government for actual damages or statutory damages of $100 to $1000. Third and subsequent offenders are subject to full civil damages under the bill.

The bill creates a statutory framework for the use, for the purposes of an order for a pen register or a trap and trace device based on a finding that such installation and use is relevant to an on-going criminal investigation.

Mr. President, just very, very briefly, this Electronic Communications Privacy Act takes into consideration the fact that communications no longer are transmitted simply by wire. Now that some communications are transmitted by computer, others in digitized form, and so forth.

This amendment is designed to bring the law concerning communications not only into the 20th century, but well into the 21st century.

Mr. President, I yield to the distinguished Senator from Maryland, the sponsor of S. 575, and a co-sponsor with me on this amendment.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. MATHIAS. Mr. President, today the Senate considers an important bill to enhance the privacy of Americans and update the provisions of the 1968 wiretap act. The Electronic Communications Privacy Act of 1986, H.R. 4952, passed the House Judiciary Committee by a vote of 34 to 0. That bill was approved by the House by a voice vote on June 24.

The Subcommittee on Patents, Copyrights and Trademarks held hearings last fall on an earlier version of this legislation. In essence, the Electronic Communications Privacy Act responds to new developments in computer and communications technology by amending title III of the Omnibus Crime Control and Safe Streets Act of 1968—the Federal wiretap law—to protect against the unauthorized interception of electronic communications. Currently, title III covers only voice communications. The bill expands coverage of the wiretap act to include data and video communications on nearly the same basis as conventional telephone technology. In addition, the bill eliminates the distinction between common carrier communications and private carrier communications. Section 2575 extends privacy protection to new forms of electronic communications, but is careful to exempt media in which privacy is not expected, such as tone only paging devices, amateur radio services, police, fire, and other public safety radio communications systems; and many satellite transmissions, including network feeds destined for rebroadcast, and satellite cable programming as defined in section 705 of the Communications Act of 1934.

Since Senator LEAHY and I introduced the first version of this bill, S. 1697, the legislation has been substantially changed. Senator LAXALT, and others, incorporated the improvements in the bill made by the Subcommittee on Patents, Copyrights and Trademarks. The Senate version differs from the House version in several minor and technical changes in the bill. Senator LEAHY has already placed a summary of this amendment in the Record. But I want to call the attention of my colleagues to the most important differences between the Senate and House versions of this important legislation.

First, the Federal Communications Commission has brought to our attention the problem that "backhaul feed" certain recent highly publicized case of "jamming" of satellite cable programming. The FCC has suggested a new provision to clarify and strengthen legal protection against unauthorized or malicious interference with satellite transmissions. Senator THURMOND has suggested that this bill may be an appropriate vehicle for this important but noncontroversial change, and the Subcommittee has agreed.

Second, a recurring concern throughout the consideration of this legislation has been the fear for inadvertent overhanging of electronic communications. The changes made by the House have gone a long way toward allaying this fear, but to drive the point home, this amendment provides that only intentional acts of interception—those meeting the highest standard of specific intent—can be published criminally.

Third, the Judiciary Committee has wrestled with another problem that was considered at length on the House side—privacy for truly private material, and that for truly private communications, encryption is a viable alternative.

This amendment contains substantial barriers to imposing liability on satellite dish owners; the exemption for "good faith assistance" is retained. S. 2575, the companion bill to H.R. 4952, was reported by the Subcommittee on Patents, Copyrights and Trademarks to the full Senate Judiciary Committee on August 12. Both the Senate and House versions of this important legislation enjoy the full support of the Justice Department, as well as major communications and computer industry groups and the American Civil Liberties Union.
have reexamined this issue. The amendment before the Senate provides a remedy for intentional interception of private video transmissions via satellite; but in a proceeding brought by the Government it would relate to the lowest possible level—injunctive relief. It also provides for lower statutory damages in private suits involving interception of video transmissions via satellite than those provided for other types of violations. We believe this strikes the right balance: It defines these interceptions as wrongful, but takes into account the equities on the other side of the issue. This is particularly true since these interceptions are already covered by section 705 of the Communications Act. The provisions in this legislation are in addition to any remedies that may be available to the Government or to a private party under the Communications Act.

Finally, the substitute amendment now before the Senate incorporates important changes suggested by Senators LEAHY and MATHIAS, and referred to the committee, it contained a provision that would make it a criminal offense to intercept satellite communications—known as backhauls—which are transmissions between a television affiliate and the network, as well as video conferences transmitted by satellite. Concern has been expressed in the committee that such a provision may unfairly subject unknowing satellite dish owners to criminal liability. This amendment responds to this concern by providing that a person must intentionally intercept such communications to be subject to penalties, and those penalties will be civil only. This amendment also contains other changes which serve to strengthen this bill.

I believe that this amendment strikes a reasonable balance between legitimate privacy concerns and the importance of Federal officials using electronic surveillance as an effective and valuable law enforcement tool. Because this needed legislation is supported by all members of the Judiciary Committee, and because I have been informed that the essence of this Senate amendment will be maintained through conference, I am willing to support this expedited process. I urge each one of my colleagues to vote for this amendment, and support the amended bill.

Mr. President, the House has passed this legislation. The Senate Judiciary Committee considered it carefully. We approved it, and the report is here now in the Senate.

Mr. GRASSLEY. Mr. President, I am very pleased with the agreements we were able to reach concerning the provisions in this bill which relate to home dish users. First, we have affirmed the right of dish users to listen to all unencrypted audio subcarriers that are redistributed by facilities open to the public. This includes subcarriers meant for redistribution by broadcast stations, cable systems, and like facilities and those subcarriers made available in office buildings and other places where we have decriminalized the private noncommercial viewing of unscrambled satellite video programming that would have previously resulted in the imposition of criminal sanctions on people who simply view television in the privacy of their own homes.

Anyone who has actually viewed programming from a satellite Earth station will find that many channels are indistinguishable from one another in terms of network, non-network, backhaul, or affiliate feeds. With dozens of sporting events, for example, it is difficult to tell whether one is watching a so-called affiliate feed or a backhaul feed. Similarly, with teleconferences, there is often little difference in screen format from one's own hearing or Senate floor coverage.

Finally, by decriminalizing the private viewing of most satellite television signals, we avoid the problem of potentially invading the privacy of these people who watch television in their own homes.

The new sections regarding home dish viewing of private unencrypted satellite video transmissions provide for injunctive relief in the case of intentional viewing of such signals. Intentional viewing means that the Earth station owner must know that he is viewing a prohibited signal and that such type of viewing is not permitted under the act.

So, in this case, the applicable remedy would be injunctive relief and, upon a second occurrence, a $500 civil penalty. This would give networks and other programmers the ability to claim protection under the act without scrambling their signals. These claims would largely be a fiction under any set of circumstances; however, I cannot imagine those who watch these signals having any sanctions imposed on an innocent viewing public for the benefit of those who could scramble but choose not to.

The new satellite dish provisions would affect 1.5 to 2 million American families nationwide who receive their television programming via satellite. Satellite dish technology is especially important to rural Americans who do not have the same access to a multichannel system. Television programming as do their urban counterparts.

I wish to thank my colleagues, Senators LEAHY and MATHIAS, and their competent staffs for their diligent work on resolving the satellite dish issues.

Mr. DANFORTH. This legislation covers some conduct that also is prohibited under section 705 of the Communications Act of 1934. Do you understand correctly that the sanctions contained in this legislation would be imposed in addition to, and not instead of, those contained in section 705 of the Communications Act?

Mr. MATHIAS. That is correct. This legislation is not intended to substitute for any liability that is also covered by section 705 of the Communications Act. Similarly, it is not intended to authorize any conduct which otherwise would be prohibited by section 705. The penalties provided for in the Electronic Communications Privacy Act are in addition to those which are provided by section 705 of the Communications Act.

Mr. LEAHY. Mr. President, I wish to thank my colleagues in the House and in the Senate for their hard work on this legislation. I wish to thank my colleagues, Senators LEAHY and MATHIAS, and their competent staffs for their diligent work on resolving the satellite dish issues.