

Union Calendar No. 297

105TH CONGRESS
2^D SESSION

H. R. 2652

[Report No. 105-525]

To amend title 17, United States Code, to prevent the misappropriation of collections of information.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 9, 1997

Mr. COBLE introduced the following bill; which was referred to the Committee on the Judiciary

MAY 12, 1998

Additional sponsors: Mr. HALL of Ohio, Mrs. MORELLA, Mr. VENTO, Mr. LAHOOD, and Mrs. TAUSCHER

MAY 12, 1998

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italic*]

[For text of introduced bill, see copy of bill as introduced on October 9, 1997]

A BILL

To amend title 17, United States Code, to prevent the misappropriation of collections of information.

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

1 **SECTION 1. SHORT TITLE.**

2 *This Act may be cited as the “Collections of Informa-*
 3 *tion Antipiracy Act”.*

4 **SEC. 2. MISAPPROPRIATION OF COLLECTIONS OF INFORMA-**
 5 **TION.**

6 *Title 17, United States Code, is amended by adding*
 7 *at the end the following new chapter:*

8 **“CHAPTER 12—MISAPPROPRIATION OF**
 9 **COLLECTIONS OF INFORMATION**

“Sec.

“1201. Definitions.

“1202. Prohibition against misappropriation.

“1203. Permitted acts.

“1204. Exclusions.

“1205. Relationship to other laws.

“1206. Civil remedies.

“1207. Criminal offenses and penalties.

“1208. Limitations on actions.

10 **“§ 1201. Definitions**

11 *“As used in this chapter:*

12 *“(1) COLLECTION OF INFORMATION.—The term*
 13 *‘collection of information’ means information that has*
 14 *been collected and has been organized for the purpose*
 15 *of bringing discrete items of information together in*
 16 *one place or through one source so that users may ac-*
 17 *cess them.*

18 *“(2) INFORMATION.—The term ‘information’*
 19 *means facts, data, works of authorship, or any other*
 20 *intangible material capable of being collected and or-*
 21 *ganized in a systematic way.*

1 “(3) *POTENTIAL MARKET.*—The term ‘potential
2 *market*’ means any market that a person claiming
3 *protection under section 1202 has current and demon-*
4 *strable plans to exploit or that is commonly exploited*
5 *by persons offering similar products or services incor-*
6 *porating collections of information.*

7 “(4) *COMMERCE.*—The term ‘commerce’ means
8 *all commerce which may be lawfully regulated by the*
9 *Congress.*

10 **“§ 1202. Prohibition against misappropriation**

11 “Any person who extracts, or uses in commerce, all
12 or a substantial part, measured either quantitatively or
13 qualitatively, of a collection of information gathered, orga-
14 nized, or maintained by another person through the invest-
15 ment of substantial monetary or other resources, so as to
16 cause harm to the actual or potential market of that other
17 person, or a successor in interest of that other person, for
18 a product or service that incorporates that collection of in-
19 formation and is offered or intended to be offered for sale
20 or otherwise in commerce by that other person, or a succes-
21 sor in interest of that person, shall be liable to that person
22 or successor in interest for the remedies set forth in section
23 1206.

1 **“§ 1203. Permitted acts**

2 “(a) *INDIVIDUAL ITEMS OF INFORMATION AND OTHER*
3 *INSUBSTANTIAL PARTS.*—*Nothing in this chapter shall pre-*
4 *vent the extraction or use of an individual item of informa-*
5 *tion, or other insubstantial part of a collection of informa-*
6 *tion, in itself. An individual item of information, including*
7 *a work of authorship, shall not itself be considered a sub-*
8 *stantial part of a collection of information under section*
9 *1202. Nothing in this subsection shall permit the repeated*
10 *or systematic extraction or use of individual items or insub-*
11 *stantial parts of a collection of information so as to cir-*
12 *cumvent the prohibition contained in section 1202.*

13 “(b) *GATHERING OR USE OF INFORMATION OBTAINED*
14 *THROUGH OTHER MEANS.*—*Nothing in this chapter shall*
15 *restrict any person from independently gathering informa-*
16 *tion or using information obtained by means other than*
17 *extracting it from a collection of information gathered, or-*
18 *ganized, or maintained by another person through the in-*
19 *vestment of substantial monetary or other resources.*

20 “(c) *USE OF INFORMATION FOR VERIFICATION.*—*Noth-*
21 *ing in this chapter shall restrict any person from extracting*
22 *information, or from using information within any entity*
23 *or organization, for the sole purpose of verifying the accu-*
24 *racy of information independently gathered, organized, or*
25 *maintained by that person. Under no circumstances shall*
26 *the information so extracted or used be made available to*

1 *others in a manner that harms the actual or potential mar-*
2 *ket for the collection of information from which it is ex-*
3 *tracted or used.*

4 “(d) *NONPROFIT EDUCATIONAL, SCIENTIFIC, OR RE-*
5 *SEARCH USES.*—*Nothing in this chapter shall restrict any*
6 *person from extracting or using information for nonprofit*
7 *educational, scientific, or research purposes in a manner*
8 *that does not harm the actual or potential market for the*
9 *product or service referred to in section 1202.*

10 “(e) *NEWS REPORTING.*—*Nothing in this chapter shall*
11 *restrict any person from extracting or using information*
12 *for the sole purpose of news reporting, including news gath-*
13 *ering, dissemination, and comment, unless the information*
14 *so extracted or used is time sensitive, has been gathered by*
15 *a news reporting entity for distribution to a particular*
16 *market, and has not yet been distributed to that market,*
17 *and the extraction or use is part of a consistent pattern*
18 *engaged in for the purpose of direct competition in that*
19 *market.*

20 “(f) *TRANSFER OF COPY.*—*Nothing in this chapter*
21 *shall restrict the owner of a particular lawfully made copy*
22 *of all or part of a collection of information from selling*
23 *or otherwise disposing of the possession of that copy.*

24 “**§ 1204. Exclusions**

25 “(a) *GOVERNMENT COLLECTIONS OF INFORMATION.*—

1 “(1) *EXCLUSION.*—*Protection under this chapter*
2 *shall not extend to collections of information gathered,*
3 *organized, or maintained by or for a government en-*
4 *tity, whether Federal, State, or local, including any*
5 *employee or agent of such entity, or any person exclu-*
6 *sively licensed by such entity, within the scope of the*
7 *employment, agency, or license. Nothing in this sub-*
8 *section shall preclude protection under this chapter*
9 *for information gathered, organized, or maintained*
10 *by such an agent or licensee that is not within the*
11 *scope of such agency or license, or by a Federal or*
12 *State educational institution in the course of engag-*
13 *ing in education or scholarship.*

14 “(2) *EXCEPTION.*—*The exclusion under para-*
15 *graph (1) does not apply to any information required*
16 *to be collected and disseminated by either a national*
17 *securities exchange under the Securities Exchange Act*
18 *of 1934 or a contract market under the Commodity*
19 *Exchange Act.*

20 “(b) *COMPUTER PROGRAMS.*—

21 “(1) *PROTECTION NOT EXTENDED.*—*Subject to*
22 *paragraph (2), protection under this chapter shall not*
23 *extend to computer programs, including, but not lim-*
24 *ited to, any computer program used in the manufac-*
25 *ture, production, operation, or maintenance of a col-*

1 *lection of information, or any component of a com-*
2 *puter program necessary to its operation.*

3 “(2) *INCORPORATED COLLECTIONS OF INFORMA-*
4 *TION.—A collection of information that is otherwise*
5 *subject to protection under this chapter is not dis-*
6 *qualified from such protection solely because it is in-*
7 *corporated into a computer program.*

8 **“§ 1205. Relationship to other laws**

9 “(a) *OTHER RIGHTS NOT AFFECTED.—Subject to sub-*
10 *section (b), nothing in this chapter shall affect rights, limi-*
11 *tations, or remedies concerning copyright, or any other*
12 *rights or obligations relating to information, including laws*
13 *with respect to patent, trademark, design rights, antitrust,*
14 *trade secrets, privacy, access to public documents, and the*
15 *law of contract.*

16 “(b) *PREEMPTION OF STATE LAW.—On or after the*
17 *effective date of this chapter, all rights that are equivalent*
18 *to the rights specified in section 1202 with respect to the*
19 *subject matter of this chapter shall be governed exclusively*
20 *by Federal law, and no person is entitled to any equivalent*
21 *right in such subject matter under the common law or stat-*
22 *utes of any State. State laws with respect to trademark,*
23 *design rights, antitrust, trade secrets, privacy, access to*
24 *public documents, and the law of contract shall not be*

1 *deemed to provide equivalent rights for purposes of this sub-*
2 *section.*

3 “(c) *RELATIONSHIP TO COPYRIGHT.*—*Protection*
4 *under this chapter is independent of, and does not affect*
5 *or enlarge the scope, duration, ownership, or subsistence of,*
6 *any copyright protection in any work of authorship that*
7 *is contained in or consists in whole or part of a collection*
8 *of information. This chapter does not provide any greater*
9 *protection to a work of authorship contained in a collection*
10 *of information, other than a work that is itself a collection*
11 *of information, than is available to that work under any*
12 *other chapter of this title.*

13 “(d) *ANTITRUST.*—*Nothing in this chapter shall limit*
14 *in any way the constraints on the manner in which prod-*
15 *ucts and services may be provided to the public that are*
16 *imposed by Federal and State antitrust laws, including*
17 *those regarding single suppliers of products and services.*

18 “(e) *LICENSING.*—*Nothing in this chapter shall re-*
19 *strict the rights of parties freely to enter into licenses or*
20 *any other contracts with respect to the use of collections of*
21 *information.*

22 “(f) *COMMUNICATIONS ACT OF 1934.*—*Nothing in this*
23 *chapter shall affect the operation of section 222(e) of the*
24 *Communications Act of 1934 (47 U.S.C. 222(e)), or shall*
25 *restrict any person from extracting or using subscriber list*

1 *information, as such term is defined in section 222(f)(3)*
2 *of the Communications Act of 1934 (47 U.S.C. 222(f)(3)),*
3 *for the purpose of publishing telephone directories in any*
4 *format.*

5 **“§ 1206. Civil remedies**

6 “(a) *CIVIL ACTIONS.*—*Any person who is injured by*
7 *a violation of section 1202 may bring a civil action for*
8 *such a violation in an appropriate United States district*
9 *court without regard to the amount in controversy, except*
10 *that any action against a State governmental entity may*
11 *be brought in any court that has jurisdiction over claims*
12 *against such entity.*

13 “(b) *TEMPORARY AND PERMANENT INJUNCTIONS.*—
14 *Any court having jurisdiction of a civil action under this*
15 *section shall have the power to grant temporary and perma-*
16 *nent injunctions, according to the principles of equity and*
17 *upon such terms as the court may deem reasonable, to pre-*
18 *vent a violation of section 1202. Any such injunction may*
19 *be served anywhere in the United States on the person en-*
20 *joined, and may be enforced by proceedings in contempt or*
21 *otherwise by any United States district court having juris-*
22 *diction over that person.*

23 “(c) *IMPOUNDMENT.*—*At any time while an action*
24 *under this section is pending, the court may order the im-*
25 *pounding, on such terms as it deems reasonable, of all cop-*

1 *ies of contents of a collection of information extracted or*
2 *used in violation of section 1202, and of all masters, tapes,*
3 *disks, diskettes, or other articles by means of which such*
4 *copies may be reproduced. The court may, as part of a final*
5 *judgment or decree finding a violation of section 1202,*
6 *order the remedial modification or destruction of all copies*
7 *of contents of a collection of information extracted or used*
8 *in violation of section 1202, and of all masters, tapes, disks,*
9 *diskettes, or other articles by means of which such copies*
10 *may be reproduced.*

11 “(d) *MONETARY RELIEF.*—*When a violation of section*
12 *1202 has been established in any civil action arising under*
13 *this section, the plaintiff shall be entitled to recover any*
14 *damages sustained by the plaintiff and defendant’s profits*
15 *not taken into account in computing the damages sustained*
16 *by the plaintiff. The court shall assess such profits or dam-*
17 *ages or cause the same to be assessed under its direction.*
18 *In assessing profits the plaintiff shall be required to prove*
19 *defendant’s gross revenue only; defendant must prove all ele-*
20 *ments of cost or deduction claims. In assessing damages the*
21 *court may enter judgment, according to the circumstances*
22 *of the case, for any sum above the amount found as actual*
23 *damages, not exceeding three times such amount. The court*
24 *in its discretion may award reasonable costs and attorney’s*
25 *fees to the prevailing party and shall award such costs and*

1 *fees where it determines that an action was brought under*
2 *this chapter in bad faith against a nonprofit educational,*
3 *scientific, or research institution, library, or archives, or*
4 *an employee or agent of such an entity, acting within the*
5 *scope of his or her employment.*

6 “(e) *REDUCTION OR REMISSION OF MONETARY RE-*
7 *LIEF FOR NONPROFIT EDUCATIONAL, SCIENTIFIC, OR RE-*
8 *SEARCH INSTITUTIONS.—The court shall reduce or remit*
9 *entirely monetary relief under subsection (d) in any case*
10 *in which a defendant believed and had reasonable grounds*
11 *for believing that his or her conduct was permissible under*
12 *this chapter, if the defendant was an employee or agent of*
13 *a nonprofit educational, scientific, or research institution,*
14 *library, or archives acting within the scope of his or her*
15 *employment.*

16 “(f) *ACTIONS AGAINST UNITED STATES GOVERN-*
17 *MENT.—Subsections (b) and (c) shall not apply to any ac-*
18 *tion against the United States Government.*

19 “(g) *RELIEF AGAINST STATE ENTITIES.—The relief*
20 *provided under this section shall be available against a*
21 *State governmental entity to the extent permitted by appli-*
22 *cable law.*

23 **“§ 1207. Criminal offenses and penalties**

24 “(a) *VIOLATION.—*

1 “(1) *IN GENERAL.*—Any person who violates sec-
2 tion 1202 willfully, and—

3 “(A) does so for direct or indirect commer-
4 cial advantage or financial gain, or

5 “(B) causes loss or damage aggregating
6 \$10,000 or more in any 1-year period to the per-
7 son who gathered, organized, or maintained the
8 information concerned,
9 shall be punished as provided in subsection (b).

10 “(2) *INAPPLICABILITY.*—This section shall not
11 apply to an employee or agent of a nonprofit edu-
12 cational, scientific, or research institution, library, or
13 archives acting within the scope of his or her employ-
14 ment.

15 “(b) *PENALTIES.*—An offense under subsection (a)
16 shall be punishable by a fine of not more than \$250,000
17 or imprisonment for not more than 5 years, or both. A sec-
18 ond or subsequent offense under subsection (a) shall be pun-
19 ishable by a fine of not more than \$500,000 or imprison-
20 ment for not more than 10 years, or both.

21 **“§ 1208. Limitations on actions**

22 “(a) *CRIMINAL PROCEEDINGS.*—No criminal proceed-
23 ing shall be maintained under this chapter unless it is com-
24 menced within three years after the cause of action arises.

1 *Such jurisdiction shall be exclusive of the courts of the*
2 *States.”.*

3 **(b) CONFORMING AMENDMENT.**—*The item relating to*
4 *section 1338 in the table of sections for chapter 85 of title*
5 *28, United States Code, is amended by inserting “mis-*
6 *appropriations of collections of information,” after “trade-*
7 *marks.”.*

8 **SEC. 5. EFFECTIVE DATE.**

9 **(a) IN GENERAL.**—*This Act and the amendments*
10 *made by this Act shall take effect on the date of the enact-*
11 *ment of this Act, and shall apply to acts committed on or*
12 *after that date.*

13 **(b) PRIOR ACTS NOT AFFECTED.**—*No person shall be*
14 *liable under chapter 12 of title 17, United States Code, as*
15 *added by section 2 of this Act, for the use of information*
16 *lawfully extracted from a collection of information prior to*
17 *the effective date of this Act, by that person or by that per-*
18 *son’s predecessor in interest.*

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