

105<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 2652

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IN THE SENATE OF THE UNITED STATES

MAY 20, 1998

Received; read twice and referred to the Committee on the Judiciary

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## AN ACT

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 INFOR-**  
5 **MATION.**

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  
14 has been collected and has been organized for the  
15 purpose of bringing discrete items of information to-  
16 gether in one place or through one source so that  
17 users may access 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 de-  
4 monstrable plans to exploit or that is commonly ex-  
5 ploited by persons offering similar products or serv-  
6 ices incorporating collections of information.

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

10           “(5) PRODUCT OR SERVICE.—A product or  
11 service incorporating a collection of information does  
12 not include a product or service incorporating a col-  
13 lection of information gathered, organized, or main-  
14 tained to address, route, forward, transmit, or store  
15 digital online communications or provide or receive  
16 access to connections for digital online communica-  
17 tions.

18 **“§ 1202. Prohibition against misappropriation**

19           “Any person who extracts, or uses in commerce, all  
20 or a substantial part, measured either quantitatively or  
21 qualitatively, of a collection of information gathered, orga-  
22 nized, or maintained by another person through the invest-  
23 ment of substantial monetary or other resources, so as to  
24 cause harm to the actual or potential market of that other  
25 person, or a successor in interest of that other person, for

1 a product or service that incorporates that collection of  
2 information and is offered or intended to be offered for  
3 sale or otherwise in commerce by that other person, or  
4 a successor in interest of that person, shall be liable to  
5 that person or successor in interest for the remedies set  
6 forth in section 1206.

7 **“§ 1203. Permitted acts**

8       “(a) INDIVIDUAL ITEMS OF INFORMATION AND  
9 OTHER INSUBSTANTIAL PARTS.—Nothing in this chapter  
10 shall prevent the extraction or use of an individual item  
11 of information, or other insubstantial part of a collection  
12 of information, in itself. An individual item of information,  
13 including a work of authorship, shall not itself be consid-  
14 ered a substantial part of a collection of information under  
15 section 1202. Nothing in this subsection shall permit the  
16 repeated or systematic extraction or use of individual  
17 items or insubstantial parts of a collection of information  
18 so as to circumvent the prohibition contained in section  
19 1202.

20       “(b) GATHERING OR USE OF INFORMATION OB-  
21 TAINED THROUGH OTHER MEANS.—Nothing in this  
22 chapter shall restrict any person from independently gath-  
23 ering information or using information obtained by means  
24 other than extracting it from a collection of information  
25 gathered, organized, or maintained by another person

1 through the investment of substantial monetary or other  
2 resources.

3       “(c) USE OF INFORMATION FOR VERIFICATION.—  
4 Nothing in this chapter shall restrict any person from ex-  
5 tracting information, or from using information within  
6 any entity or organization, for the sole purpose of verifying  
7 the accuracy of information independently gathered, orga-  
8 nized, or maintained by that person. Under no cir-  
9 cumstances shall the information so extracted or used be  
10 made available to others in a manner that harms the ac-  
11 tual or potential market for the collection of information  
12 from which it is extracted or used.

13       “(d) NONPROFIT EDUCATIONAL, SCIENTIFIC, OR RE-  
14 SEARCH USES.—Nothing in this chapter shall restrict any  
15 person from extracting or using information for nonprofit  
16 educational, scientific, or research purposes in a manner  
17 that does not harm the actual or potential market for the  
18 product or service referred to in section 1202.

19       “(e) NEWS REPORTING.—Nothing in this chapter  
20 shall restrict any person from extracting or using informa-  
21 tion for the sole purpose of news reporting, including news  
22 gathering, dissemination, and comment, unless the infor-  
23 mation so extracted or used is time sensitive, has been  
24 gathered by a news reporting entity for distribution to a  
25 particular market, and has not yet been distributed to that

1 market, and the extraction or use is part of a consistent  
2 pattern engaged in for the purpose of direct competition  
3 in that market.

4 “(f) TRANSFER OF COPY.—Nothing in this chapter  
5 shall restrict the owner of a particular lawfully made copy  
6 of all or part of a collection of information from selling  
7 or otherwise disposing of the possession of that copy.

8 **“§ 1204. Exclusions**

9 “(a) GOVERNMENT COLLECTIONS OF INFORMA-  
10 TION.—

11 “(1) EXCLUSION.—Protection under this chap-  
12 ter shall not extend to collections of information  
13 gathered, organized, or maintained by or for a gov-  
14 ernment entity, whether Federal, State, or local, in-  
15 cluding any employee or agent of such entity, or any  
16 person exclusively licensed by such entity, within the  
17 scope of the employment, agency, or license. Nothing  
18 in this subsection shall preclude protection under  
19 this chapter for information gathered, organized, or  
20 maintained by such an agent or licensee that is not  
21 within the scope of such agency or license, or by a  
22 Federal or State educational institution in the  
23 course of engaging in education or scholarship.

1           “(2) EXCEPTION.—The exclusion under para-  
2 graph (1) does not apply to any information re-  
3 quired to be collected and disseminated—

4           “(A) under the Securities Exchange Act of  
5 1934 by a national securities exchange, a reg-  
6 istered securities association, or a registered se-  
7 curities information processor, subject to sec-  
8 tion 1205(g) of this title; or

9           “(B) under the Commodity Exchange Act  
10 by a contract market, subject to section  
11 1205(g) of this title.

12       “(b) COMPUTER PROGRAMS.—

13           “(1) PROTECTION NOT EXTENDED.—Subject to  
14 paragraph (2), protection under this chapter shall  
15 not extend to computer programs, including, but not  
16 limited to, any computer program used in the manu-  
17 facture, production, operation, or maintenance of a  
18 collection of information, or any element of a com-  
19 puter program necessary to its operation.

20           “(2) INCORPORATED COLLECTIONS OF INFOR-  
21 MATION.—A collection of information that is other-  
22 wise subject to protection under this chapter is not  
23 disqualified from such protection solely because it is  
24 incorporated into a computer program.

1 **“§ 1205. Relationship to other laws**

2       “(a) OTHER RIGHTS NOT AFFECTED.—Subject to  
3 subsection (b), nothing in this chapter shall affect rights,  
4 limitations, or remedies concerning copyright, or any other  
5 rights or obligations relating to information, including  
6 laws with respect to patent, trademark, design rights,  
7 antitrust, trade secrets, privacy, access to public docu-  
8 ments, and the law of contract.

9       “(b) PREEMPTION OF STATE LAW.—On or after the  
10 effective date of this chapter, all rights that are equivalent  
11 to the rights specified in section 1202 with respect to the  
12 subject matter of this chapter shall be governed exclusively  
13 by Federal law, and no person is entitled to any equivalent  
14 right in such subject matter under the common law or  
15 statutes of any State. State laws with respect to trade-  
16 mark, design rights, antitrust, trade secrets, privacy, ac-  
17 cess to public documents, and the law of contract shall  
18 not be deemed to provide equivalent rights for purposes  
19 of this subsection.

20       “(c) RELATIONSHIP TO COPYRIGHT.—Protection  
21 under this chapter is independent of, and does not affect  
22 or enlarge the scope, duration, ownership, or subsistence  
23 of, any copyright protection or limitation, including, but  
24 not limited to, fair use, in any work of authorship that  
25 is contained in or consists in whole or part of a collection  
26 of information. This chapter does not provide any greater



1 protection to a work of authorship contained in a collec-  
2 tion of information, other than a work that is itself a col-  
3 lection of information, than is available to that work under  
4 any other chapter of this title.

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

10 “(e) LICENSING.—Nothing in this chapter shall re-  
11 strict the rights of parties freely to enter into licenses or  
12 any other contracts with respect to the use of collections  
13 of information.

14 “(f) COMMUNICATIONS ACT OF 1934.—Nothing in  
15 this chapter shall affect the operation of the provisions  
16 of the Communications Act of 1934 (47 U.S.C. 151 et  
17 seq.), or shall restrict any person from extracting or using  
18 subscriber list information, as such term is defined in sec-  
19 tion 222(f)(3) of the Communications Act of 1934 (47  
20 U.S.C. 222(f)(3)), for the purpose of publishing telephone  
21 directories in any format.

22 “(g) SECURITIES EXCHANGE ACT OF 1934 AND  
23 COMMODITY EXCHANGE ACT.—Nothing in this chapter  
24 shall affect—

1           “(1) the operation of the provisions of the Secu-  
2           rities Exchange Act of 1934 (15 U.S.C. 58a et seq.)  
3           or the Commodity Exchange Act (7 U.S.C. 1 et  
4           seq.);

5           “(2) the public nature of information with re-  
6           spect to quotations for and transactions in securities  
7           that is collected, processed, distributed, or published  
8           pursuant to the requirements of the Securities Ex-  
9           change Act of 1934;

10           “(3) the obligations of national securities ex-  
11           changes, registered securities associations, or reg-  
12           istered information processors under the Securities  
13           Exchange Act of 1934; or

14           “(4) the jurisdiction or authority of the Securi-  
15           ties and Exchange Commission or the Commodity  
16           Futures Trading Commission.

17 **“§ 1206. Civil remedies**

18           “(a) CIVIL ACTIONS.—Any person who is injured by  
19 a violation of section 1202 may bring a civil action for  
20 such a violation in an appropriate United States district  
21 court without regard to the amount in controversy, except  
22 that any action against a State governmental entity may  
23 be brought in any court that has jurisdiction over claims  
24 against such entity.

1       “(b) TEMPORARY AND PERMANENT INJUNCTIONS.—  
2 Any court having jurisdiction of a civil action under this  
3 section shall have the power to grant temporary and per-  
4 manent injunctions, according to the principles of equity  
5 and upon such terms as the court may deem reasonable,  
6 to prevent a violation of section 1202. Any such injunction  
7 may be served anywhere in the United States on the per-  
8 son enjoined, and may be enforced by proceedings in con-  
9 tempt or otherwise by any United States district court  
10 having jurisdiction over that person.

11       “(c) IMPOUNDMENT.—At any time while an action  
12 under this section is pending, the court may order the im-  
13 pounding, on such terms as it deems reasonable, of all cop-  
14 ies of contents of a collection of information extracted or  
15 used in violation of section 1202, and of all masters, tapes,  
16 disks, diskettes, or other articles by means of which such  
17 copies may be reproduced. The court may, as part of a  
18 final judgment or decree finding a violation of section  
19 1202, order the remedial modification or destruction of  
20 all copies of contents of a collection of information ex-  
21 tracted or used in violation of section 1202, and of all  
22 masters, tapes, disks, diskettes, or other articles by means  
23 of which such copies may be reproduced.

24       “(d) MONETARY RELIEF.—When a violation of sec-  
25 tion 1202 has been established in any civil action arising

1 under this section, the plaintiff shall be entitled to recover  
2 any damages sustained by the plaintiff and defendant's  
3 profits not taken into account in computing the damages  
4 sustained by the plaintiff. The court shall assess such  
5 profits or damages or cause the same to be assessed under  
6 its direction. In assessing profits the plaintiff shall be re-  
7 quired to prove defendant's gross revenue only; defendant  
8 must prove all elements of cost or deduction claims. In  
9 assessing damages the court may enter judgment, accord-  
10 ing to the circumstances of the case, for any sum above  
11 the amount found as actual damages, not exceeding three  
12 times such amount. The court in its discretion may award  
13 reasonable costs and attorney's fees to the prevailing party  
14 and shall award such costs and fees where it determines  
15 that an action was brought under this chapter in bad faith  
16 against a nonprofit educational, scientific, or research in-  
17 stitution, library, or archives, or an employee or agent of  
18 such an entity, acting within the scope of his or her em-  
19 ployment.

20       “(e) REDUCTION OR REMISSION OF MONETARY RE-  
21 LIEF FOR NONPROFIT EDUCATIONAL, SCIENTIFIC, OR  
22 RESEARCH INSTITUTIONS.—The court shall reduce or  
23 remit entirely monetary relief under subsection (d) in any  
24 case in which a defendant believed and had reasonable  
25 grounds for believing that his or her conduct was permis-

1 sible under this chapter, if the defendant was an employee  
2 or agent of a nonprofit educational, scientific, or research  
3 institution, library, or archives acting within the scope of  
4 his or her employment.

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

8 “(g) RELIEF AGAINST STATE ENTITIES.—The relief  
9 provided under this section shall be available against a  
10 State governmental entity to the extent permitted by ap-  
11 plicable law.

12 **“§ 1207. Criminal offenses and penalties**

13 “(a) VIOLATION.—

14 “(1) IN GENERAL.—Any person who violates  
15 section 1202 willfully, and—

16 “(A) does so for direct or indirect commer-  
17 cial advantage or financial gain; or

18 “(B) causes loss or damage aggregating  
19 \$10,000 or more in any 1-year period to the  
20 person who gathered, organized, or maintained  
21 the information concerned,

22 shall be punished as provided in subsection (b).

23 “(2) INAPPLICABILITY.—This section shall not  
24 apply to an employee or agent of a nonprofit edu-  
25 cational, scientific, or research institution, library, or

1 archives acting within the scope of his or her em-  
2 ployment.

3 “(b) PENALTIES.—An offense under subsection (a)  
4 shall be punishable by a fine of not more than \$250,000  
5 or imprisonment for not more than 5 years, or both. A  
6 second or subsequent offense under subsection (a) shall  
7 be punishable by a fine of not more than \$500,000 or im-  
8 prisonment for not more than 10 years, or both.

9 **“§ 1208. Limitations on actions**

10 “(a) CRIMINAL PROCEEDINGS.—No criminal pro-  
11 ceeding shall be maintained under this chapter unless it  
12 is commenced within three years after the cause of action  
13 arises.

14 “(b) CIVIL ACTIONS.—No civil action shall be main-  
15 tained under this chapter unless it is commenced within  
16 three years after the cause of action arises or claim ac-  
17 crues.

18 “(c) ADDITIONAL LIMITATION.—No criminal or civil  
19 action shall be maintained under this chapter for the ex-  
20 traction or use of all or a substantial part of a collection  
21 of information that occurs more than 15 years after the  
22 investment of resources that qualified the portion of the  
23 collection of information for protection under this chapter  
24 that is extracted or used.”.

1 **SEC. 3. CONFORMING AMENDMENT.**

2 The table of chapters for title 17, United States  
3 Code, is amended by adding at the end the following:

“12. **Misappropriation of Collections of Information** ..... 1201”.

4 **SEC. 4. CONFORMING AMENDMENTS TO TITLE 28, UNITED**  
5 **STATES CODE.**

6 (a) **DISTRICT COURT JURISDICTION.**—Section 1338  
7 of title 28, United States Code, is amended—

8 (1) in the section heading by inserting “**mis-**  
9 **appropriations of collections of informa-**  
10 **tion,**” after “**trade-marks,**”; and

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

12 “(d) The district courts shall have original jurisdic-  
13 tion of any civil action arising under chapter 12 of title  
14 17, relating to misappropriation of collections of informa-  
15 tion. Such jurisdiction shall be exclusive of the courts of  
16 the States, except that any action against a State govern-  
17 mental entity may be brought in any court that has juris-  
18 diction over claims against such entity.”.

19 (b) **CONFORMING AMENDMENT.**—The item relating  
20 to section 1338 in the table of sections for chapter 85 of  
21 title 28, United States Code, is amended by inserting  
22 “misappropriations of collections of information,” after  
23 “trade-marks,”.

24 (c) **COURT OF FEDERAL CLAIMS JURISDICTION.**—  
25 Section 1498(e) of title 28, United States Code, is amend-

1 ed by inserting “and to protections afforded collections of  
2 information under chapter 12 of title 17” after “chapter  
3 9 of title 17”.

4 **SEC. 5. EFFECTIVE DATE.**

5 (a) IN GENERAL.—This Act and the amendments  
6 made by this Act shall take effect on the date of the enact-  
7 ment of this Act, and shall apply to acts committed on  
8 or after that date.

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

Passed the House of Representatives May 19, 1998.

Attest:

ROBIN H. CARLE,

*Clerk.*