

106TH CONGRESS
1ST SESSION

H. R. 354

To amend title 17, United States Code, to provide protection for certain collections of information.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 19, 1999

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

A BILL

To amend title 17, United States Code, to provide protection for certain 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Collections of Informa-
5 tion Antipiracy Act”.

6 **SEC. 2. MISAPPROPRIATION OF COLLECTIONS OF INFOR-**
7 **MATION.**

8 Title 17, United States Code, is amended by adding
9 at the end the following new chapter:

1 **“CHAPTER 14—MISAPPROPRIATION OF**
2 **COLLECTIONS OF INFORMATION**

“Sec.

“1401. Definitions.

“1402. Prohibition against misappropriation.

“1403. Permitted acts.

“1404. Exclusions.

“1405. Relationship to other laws.

“1406. Civil remedies.

“1407. Criminal offenses and penalties.

“1408. Limitations on actions.

3 **“§ 1401. Definitions**

4 “As used in this chapter:

5 “(1) COLLECTION OF INFORMATION.—The term
6 ‘collection of information’ means information that
7 has been collected and has been organized for the
8 purpose of bringing discrete items of information to-
9 gether in one place or through one source so that
10 users may access them.

11 “(2) INFORMATION.—The term ‘information’
12 means facts, data, works of authorship, or any other
13 intangible material capable of being collected and or-
14 ganized in a systematic way.

15 “(3) POTENTIAL MARKET.—The term ‘potential
16 market’ means any market that a person claiming
17 protection under section 1402 has current and de-
18 monstrable plans to exploit or that is commonly ex-
19 ploited by persons offering similar products or serv-
20 ices incorporating collections of information.

1 “(4) COMMERCE.—The term ‘commerce’ means
2 all commerce which may be lawfully regulated by the
3 Congress.

4 **“§ 1402. Prohibition against misappropriation**

5 “Any person who extracts, or uses in commerce, all
6 or a substantial part, measured either quantitatively or
7 qualitatively, of a collection of information gathered, orga-
8 nized, or maintained by another person through the invest-
9 ment of substantial monetary or other resources, so as to
10 cause harm to the actual or potential market of that other
11 person, or a successor in interest of that other person, for
12 a product or service that incorporates that collection of
13 information and is offered or intended to be offered for
14 sale or otherwise in commerce by that other person, or
15 a successor in interest of that person, shall be liable to
16 that person or successor in interest for the remedies set
17 forth in section 1406.

18 **“§ 1403. Permitted acts**

19 “(a) EDUCATIONAL, SCIENTIFIC, RESEARCH, AND
20 ADDITIONAL REASONABLE USES.—

21 “(1) CERTAIN NONPROFIT EDUCATIONAL, SCI-
22 ENTIFIC, OR RESEARCH USES.— Notwithstanding
23 section 1402, no person shall be restricted from ex-
24 tracting or using information for nonprofit edu-
25 cational, scientific, or research purposes in a manner

1 that does not harm directly the actual market for
2 the product or service referred to in section 1402.

3 “(2) ADDITIONAL REASONABLE USES.—

4 “(A) IN GENERAL.—Notwithstanding sec-
5 tion 1402, an individual act of use or extraction
6 of information done for the purpose of illustra-
7 tion, explanation, example, comment, criticism,
8 teaching, research, or analysis, in an amount
9 appropriate and customary for that purpose, is
10 not a violation of this chapter, if it is reason-
11 able under the circumstances. In determining
12 whether such an act is reasonable under the cir-
13 cumstances, the following factors shall be con-
14 sidered:

15 “(i) The extent to which the use or
16 extraction is commercial or nonprofit.

17 “(ii) The good faith of the person
18 making the use or extraction.

19 “(iii) The extent to which and the
20 manner in which the portion used or ex-
21 tracted is incorporated into an independent
22 work or collection, and the degree of dif-
23 ference between the collection from which
24 the use or extraction is made and the inde-
25 pendent work or collection.

1 “(iv) Whether the collection from
2 which the use or extraction is made is pri-
3 marily developed for or marketed to per-
4 sons engaged in the same field or business
5 as the person making the use or extrac-
6 tion.

7 In no case shall a use or extraction be per-
8 mitted under this paragraph if the used or ex-
9 tracted portion is offered or intended to be of-
10 fered for sale or otherwise in commerce and is
11 likely to serve as a market substitute for all or
12 part of the collection from which the use or ex-
13 traction is made.

14 “(B) DEFINITION.—For purposes of this
15 paragraph, the term ‘individual act’ means an
16 act that is not part of a pattern, system, or re-
17 peated practice by the same party, related par-
18 ties, or parties acting in concert with respect to
19 the same collection of information or a series of
20 related collections of information.

21 “(b) INDIVIDUAL ITEMS OF INFORMATION AND
22 OTHER INSUBSTANTIAL PARTS.—Nothing in this chap-
23 tershall prevent the extraction or use of an individual item
24 of information, or other insubstantial part of a collection
25 of information, in itself. An individual item of information,

1 including a work of authorship, shall not itself be consid-
2 ered a substantial part of a collection of information under
3 section 1402. Nothing in this subsection shall permit the
4 repeated or systematic extraction or use of individual
5 items or insubstantial parts of a collection of information
6 so as to circumvent the prohibition contained in section
7 1402.

8 “(c) GATHERING OR USE OF INFORMATION OB-
9 TAINED THROUGH OTHER MEANS.—Nothing in this
10 chapter shall restrict any person from independently gath-
11 ering information or using information obtained by means
12 other than extracting it from a collection of information
13 gathered, organized, or maintained by another person
14 through the investment of substantial monetary or other
15 resources.

16 “(d) USE OF INFORMATION FOR VERIFICATION.—
17 Nothing in this chapter shall restrict any person from ex-
18 tracting or using a collection of information within any
19 entity or organization, for the sole purpose of verifying
20 the accuracy of information independently gathered, orga-
21 nized, or maintained by that person. Under no cir-
22 cumstances shall the information so used be extracted
23 from the original collection and made available to others
24 in a manner that harms the actual or potential market

1 for the collection of information from which it is extracted
2 or used.

3 “(e) NEWS REPORTING.—Nothing in this chapter
4 shall restrict any person from extracting or using informa-
5 tion for the sole purpose of news reporting, including news
6 gathering, dissemination, and comment, unless the infor-
7 mation so extracted or used is time sensitive and has been
8 gathered by a news reporting entity, and the extraction
9 or use is part of a consistent pattern engaged in for the
10 purpose of direct competition.

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

15 **“§ 1404. Exclusions**

16 “(a) GOVERNMENT COLLECTIONS OF INFORMA-
17 TION.—

18 “(1) EXCLUSION.—Protection under this chap-
19 ter shall not extend to collections of information
20 gathered, organized, or maintained by or for a gov-
21 ernment entity, whether Federal, State, or local, in-
22 cluding any employee or agent of such entity, or any
23 person exclusively licensed by such entity, within the
24 scope of the employment, agency, or license. Nothing
25 in this subsection shall preclude protection under

1 this chapter for information gathered, organized, or
2 maintained by such an agent or licensee that is not
3 within the scope of such agency or license, or by a
4 Federal or State educational institution in the
5 course of engaging in education or scholarship.

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

9 “(A) under the Securities Exchange Act of
10 1934 by a national securities exchange, a reg-
11 istered securities association, or a registered se-
12 curities information processor, subject to sec-
13 tion 1405(g) of this title; or

14 “(B) under the Commodity Exchange Act
15 by a contract market, subject to section
16 1405(g) of this title.

17 “(b) COMPUTER PROGRAMS.—

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

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

6 “(c) DIGITAL ONLINE COMMUNICATIONS.—Protec-
7 tion under this chapter shall not extend to a product or
8 service incorporating a collection of information gathered,
9 organized, or maintained to address, route, forward, trans-
10 mit, or store digital online communications or provide or
11 receive access to connections for digital online communica-
12 tions.

13 **“§ 1405. Relationship to other laws**

14 “(a) OTHER RIGHTS NOT AFFECTED.—Subject to
15 subsection (b), nothing in this chapter shall affect rights,
16 limitations, or remedies concerning copyright, or any other
17 rights or obligations relating to information, including
18 laws with respect to patent, trademark, design rights,
19 antitrust, trade secrets, privacy, access to public docu-
20 ments, and the law of contract.

21 “(b) PREEMPTION OF STATE LAW.—On or after the
22 effective date of this chapter, all rights that are equivalent
23 to the rights specified in section 1402 with respect to the
24 subject matter of this chapter shall be governed exclusively
25 by Federal law, and no person is entitled to any equivalent

1 right in such subject matter under the common law or
2 statutes of any State. State laws with respect to trade-
3 mark, design rights, antitrust, trade secrets, privacy, ac-
4 cess to public documents, and the law of contract shall
5 not be deemed to provide equivalent rights for purposes
6 of this subsection.

7 “(c) RELATIONSHIP TO COPYRIGHT.—Protection
8 under this chapter is independent of, and does not affect
9 or enlarge the scope, duration, ownership, or subsistence
10 of, any copyright protection or limitation, including, but
11 not limited to, fair use, in any work of authorship that
12 is contained in or consists in whole or part of a collection
13 of information. This chapter does not provide any greater
14 protection to a work of authorship contained in a collec-
15 tion of information, other than a work that is itself a col-
16 lection of information, than is available to that work under
17 any other chapter of this title.

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

23 “(e) LICENSING.—Nothing in this chapter shall re-
24 strict the rights of parties freely to enter into licenses or

1 any other contracts with respect to the use of collections
2 of information.

3 “(f) COMMUNICATIONS ACT OF 1934.—Nothing in
4 this chapter shall affect the operation of the provisions
5 of the Communications Act of 1934 (47 U.S.C. 151 et
6 seq.), or shall restrict any person from extracting or using
7 subscriber list information, as such term is defined in sec-
8 tion 222(f)(3) of the Communications Act of 1934 (47
9 U.S.C. 222(f)(3)), for the purpose of publishing telephone
10 directories in any format.

11 “(g) SECURITIES AND COMMODITIES MARKET IN-
12 FORMATION.—

13 “(1) FEDERAL AGENCIES AND ACTS.—Nothing
14 in this chapter shall affect—

15 “(A) the operation of the provisions of the
16 Securities Exchange Act of 1934 (15 U.S.C.
17 78a et seq.) or the Commodity Exchange Act (7
18 U.S.C. 1 et seq.);

19 “(B) the jurisdiction or authority of the
20 Securities and Exchange Commission and the
21 Commodity Futures Trading Commission; or

22 “(C) the functions and operations of self-
23 regulatory organizations and securities informa-
24 tion processors under the provisions of the Se-
25 curities Exchange Act of 1934 and the rules

1 and regulations thereunder, including making
2 market information available pursuant to the
3 provisions of that Act and the rules and regula-
4 tions promulgated thereunder.

5 “(2) PROHIBITION.—Notwithstanding any pro-
6 vision in subsection (a), (b), (c), (d), or (f) of section
7 1403, nothing in this chapter shall permit the ex-
8 traction, use, resale, or other disposition of real-time
9 market information except as the Securities Ex-
10 change Act of 1934, the Commodity Exchange Act,
11 and the rules and regulations thereunder may other-
12 wise provide. In addition, nothing in subsection (e)
13 of section 1403 shall be construed to permit any
14 person to extract or use real-time market informa-
15 tion in a manner that constitutes a market sub-
16 stitute for a real-time market information service
17 (including the real-time systematic updating of or
18 display of a substantial part of market information)
19 provided on a real-time basis.

20 “(3) DEFINITION.—As used in this subsection,
21 the term ‘market information’ means information re-
22 lating to quotations and transactions that is col-
23 lected, processed, distributed, or published pursuant
24 to the provisions of the Securities Exchange Act of
25 1934 or by a contract market that is designated by

1 the Commodity Futures Trading Commission pursu-
2 ant to the Commodity Exchange Act and the rules
3 and regulations thereunder.

4 **“§ 1406. Civil remedies**

5 “(a) CIVIL ACTIONS.—Any person who is injured by
6 a violation of section 1402 may bring a civil action for
7 such a violation in an appropriate United States district
8 court without regard to the amount in controversy, except
9 that any action against a State governmental entity may
10 be brought in any court that has jurisdiction over claims
11 against such entity.

12 “(b) TEMPORARY AND PERMANENT INJUNCTIONS.—
13 Any court having jurisdiction of a civil action under this
14 section shall have the power to grant temporary and per-
15 manent injunctions, according to the principles of equity
16 and upon such terms as the court may deem reasonable,
17 to prevent a violation of section 1402. Any such injunction
18 may be served anywhere in the United States on the per-
19 son enjoined, and may be enforced by proceedings in con-
20 tempt or otherwise by any United States district court
21 having jurisdiction over that person.

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

1 used in violation of section 1402, and of all masters, tapes,
2 disks, diskettes, or other articles by means of which such
3 copies may be reproduced. The court may, as part of a
4 final judgment or decree finding a violation of section
5 1402, order the remedial modification or destruction of
6 all copies of contents of a collection of information ex-
7 tracted or used in violation of section 1402, and of all
8 masters, tapes, disks, diskettes, or other articles by means
9 of which such copies may be reproduced.

10 “(d) MONETARY RELIEF.—When a violation of sec-
11 tion 1402 has been established in any civil action arising
12 under this section, the plaintiff shall be entitled to recover
13 any damages sustained by the plaintiff and defendant’s
14 profits not taken into account in computing the damages
15 sustained by the plaintiff. The court shall assess such
16 profits or damages or cause the same to be assessed under
17 its direction. In assessing profits the plaintiff shall be re-
18 quired to prove defendant’s gross revenue only and the
19 defendant shall be required to prove all elements of cost
20 or deduction claims. In assessing damages the court may
21 enter judgment, according to the circumstances of the
22 case, for any sum above the amount found as actual dam-
23 ages, not exceeding three times such amount. The court
24 in its discretion may award reasonable costs and attor-
25 ney’s fees to the prevailing party and shall award such

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

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

23 **“§ 1407. Criminal offenses and penalties**

24 “(a) VIOLATION.—

1 “(1) IN GENERAL.—Any person who violates
2 section 1402 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
7 person who gathered, organized, or maintained
8 the 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 em-
14 ployment.

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
18 second or subsequent offense under subsection (a) shall
19 be punishable by a fine of not more than \$500,000 or im-
20 prisonment for not more than 10 years, or both.

21 **“§ 1408. Limitations on actions**

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

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

5 “(c) ADDITIONAL LIMITATION.—No criminal or civil
 6 action shall be maintained under this chapter for the ex-
 7 traction or use of all or a substantial part of a collection
 8 of information that occurs more than 15 years after the
 9 portion of the collection that is extracted or used was first
 10 offered for sale or otherwise in commerce, following the
 11 investment of resources that qualified that portion of the
 12 collection for protection under this chapter. In no case
 13 shall any protection under this chapter resulting from a
 14 substantial investment of resources in maintaining a pre-
 15 existing collection prevent any use or extraction of infor-
 16 mation from a copy of the preexisting collection after the
 17 15 years have expired with respect to the portion of that
 18 preexisting collection that is so used or extracted, and no
 19 liability under this chapter shall thereafter attach to such
 20 acts of use or extraction.”.

21 **SEC. 3. CONFORMING AMENDMENTS.**

22 (a) TABLE OF CHAPTERS.—The table of chapters for
 23 title 17, United States Code, is amended by adding at the
 24 end the following:

“14. **Misappropriation of Collections of Information** 1401”.

1 (b) DISTRICT COURT JURISDICTION.—(1) Section
2 1338 of title 28, United States Code, is amended—

3 (A) in the section heading by inserting “**mis-**
4 **appropriations of collections of informa-**
5 **tion,**” after “**trade-marks,**”; and

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

7 “(d) The district courts shall have original jurisdic-
8 tion of any civil action arising under chapter 14 of title
9 17, relating to misappropriation of collections of informa-
10 tion. Such jurisdiction shall be exclusive of the courts of
11 the States, except that any action against a State govern-
12 mental entity may be brought in any court that has juris-
13 diction over claims against such entity.”.

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

18 (c) PLACE FOR BRINGING ACTIONS.—(1) Section
19 1400 of title 28, United States Code, is amended by add-
20 ing at the end the following:

21 “(e) Civil actions arising under chapter 14 of title
22 17, relating to misappropriation of collections of informa-
23 tion, may be brought in the district in which the defendant
24 or the defendant’s agent resides or may be found.”.

1 (2) The section heading for section 1400 of title 28,
2 United States Code, is amended to read as follows:

3 **“§ 1400. Patents and copyrights, mask works, designs,**
4 **and collections of information”.**

5 (3) The item relating to section 1400 in the table of
6 sections at the beginning of chapter 87 of title 28, United
7 States Code, is amended to read as follows:

 “1400. Patents and copyrights, mask works, designs, and collections of informa-
 tion.”.

8 (d) COURT OF FEDERAL CLAIMS JURISDICTION.—
9 Section 1498(e) of title 28, United States Code, is amend-
10 ed by inserting “and to protections afforded collections of
11 information under chapter 14 of title 17” after “chapter
12 9 of title 17”.

13 **SEC. 4. EFFECTIVE DATE.**

14 (a) IN GENERAL.—This title and the amendments
15 made by this title shall take effect on the date of the en-
16 actment of this Act, and shall apply to acts committed
17 on or after that date.

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

○