

Union Calendar No. 253

108TH CONGRESS
2^D SESSION

H. R. 3872

[Report No. 108-437]

To prohibit the misappropriation of databases while ensuring consumer access to factual information.

IN THE HOUSE OF REPRESENTATIVES

MARCH 2, 2004

Mr. STEARNS (for himself, Ms. SCHAKOWSKY, Mr. BOUCHER, Mr. UPTON, Mr. DINGELL, Mr. SHADEGG, Mr. MARKEY, Mr. PICKERING, Mr. DEUTSCH, Mr. TERRY, Mr. TOWNS, Mr. ISSA, Mr. GORDON, Mr. RUSH, Ms. ESHOO, Mr. GREEN of Texas, Ms. MCCARTHY of Missouri, Ms. SOLIS, and Mr. GONZALEZ) introduced the following bill; which was referred to the Committee on Energy and Commerce

MARCH 16, 2004

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

A BILL

To prohibit the misappropriation of databases while ensuring consumer access to factual 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 “Consumer Access to
3 Information Act of 2004”.

4 **SEC. 2. MISAPPROPRIATION OF A DATABASE.**

5 (a) MISAPPROPRIATION PROHIBITED.—The mis-
6 appropriation of a database is an unfair method of com-
7 petition and an unfair or deceptive act or practice in com-
8 merce under section 5(a)(1) of the Federal Trade Com-
9 mission Act (15 U.S.C. 45(a)(1)).

10 (b) DEFINITION.—For purposes of subsection (a),
11 the term “misappropriation of a database” means that—

12 (1) a person (referred to in this section as the
13 “first person”) generates or collects the information
14 in the database at some cost or expense;

15 (2) the value of the information is highly time-
16 sensitive;

17 (3) another person’s (referred to in this section
18 as the “other person”) use of the information con-
19 stitutes free-riding on the first person’s costly efforts
20 to generate or collect it;

21 (4) the other person’s use of the information is
22 in direct competition with a product or service of-
23 fered by the first person; and

24 (5) the ability of other parties to free-ride on
25 the efforts of the first person would so reduce the
26 incentive to produce the product or service that its

1 existence or quality would be substantially threat-
2 ened.

3 **SEC. 3. LIMITATION ON LIABILITY OF CERTAIN ENTITIES.**

4 (a) **LIMITATION ON LIABILITY.**—No provider of an
5 interactive computer service shall be liable under section
6 2 for making available information that is provided by an-
7 other information content provider.

8 (b) **DEFINITIONS.**—In this section, the terms “inter-
9 active computer service” and “information content pro-
10 vider” have the meaning given to those terms in section
11 230(f) of the Communications Act of 1934 (47 U.S.C.
12 230(f)).

13 (c) **CONSTRUCTION.**—For purposes of section 230 of
14 the Communications Act of 1934 (47 U.S.C. 230), the
15 provisions of this Act shall not be construed to be a law
16 pertaining to intellectual property.

17 **SEC. 4. REMEDIES.**

18 (a) **TREATMENT OF VIOLATIONS AS RULE VIOLA-**
19 **TIONS.**—A misappropriation of a database under section
20 2 shall be treated as a violation of a rule defining an un-
21 fair or deceptive act or practice prescribed under section
22 18(a)(1)(B) of the Federal Trade Commission Act (15
23 U.S.C. 57a(a)(1)(B)).

24 (b) **FTC AUTHORITY.**—The Federal Trade Commis-
25 sion shall enforce this Act in the same manner, by the

1 same means, and with the same jurisdiction, powers, and
2 duties as though all applicable terms and provisions of the
3 Federal Trade Commission Act (15 U.S.C. 41 et seq.)
4 were incorporated into and made a part of this Act.

5 **SEC. 5. EXCLUSIONS.**

6 Nothing in this Act shall—

7 (1) affect the operation of the Securities Act of
8 1933 (15 U.S.C. 78a et seq.), the Securities Ex-
9 change Act of 1934 (15 U.S.C. 78a et seq.), the
10 Trust Indenture Act of 1939 (15 U.S.C. 77aaa et
11 seq.), the Investment Company Act of 1940 (15
12 U.S.C. 80a–1 et seq.), the Investment Advisers Act
13 of 1940 (15 U.S.C. 80b et seq.), the Securities In-
14 vestor Protection Act of 1970 (15 U.S.C. 78aaa et
15 seq.), or the rules and regulations thereunder;

16 (2) affect the authority of the Securities and
17 Exchange Commission; or

18 (3) apply to information with respect to
19 quotations for, or indications, orders, or transactions
20 in, securities.

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