

An hourglass-shaped graphic with a globe inside. The top bulb is dark blue, and the bottom bulb is light blue. The globe is centered in the narrow neck of the hourglass. The word "WikiLeaks" is written in white on a light blue rectangular background at the bottom of the hourglass.

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*COLLECTIONS OF INFORMATION ANTIPIRACY ACT:
SUMMARY OF H.R. 2652*

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Abstract. H.R. 2652, 105th Congress, 1st Session, proposes to create a new body of copyright law which would be entitled "Misappropriation of Collections of Information." The bill would impose liability on anyone who extracted or used in commerce all or a substantial portion of a collection of information in such a way as to harm the market for the product or service that contained the information and is offered in commerce. The database collection would be protected for a term of fifteen years. The bill provides for civil and criminal remedies and sets time limitations for bringing actions for misappropriation.

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Collections of Information Antipiracy Act: Summary of H.R. 2652

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Summary

H.R. 2652, 105th Congress, 1st Sess., proposes to create a new body of copyright law which would be entitled “Misappropriation of Collections of Information.” The bill would impose liability on anyone who extracted or used in commerce all or a substantial portion of a collection of information in such a way so as to harm the market for the product or service that contained the information and is offered in commerce. The database collection would be protected for a term of fifteen years. The bill provides for civil and criminal remedies and sets time limitations for bringing actions for misappropriation. The bill was introduced on October 9, 1997 by Representative Coble and reported to the House with amendments by the House Committee on Judiciary on March 24, 1998, H.Rept. 105-525.

Background

In 1991, the Supreme Court rejected the “sweat of the brow” theory for copyright protection in *Feist Communications v. Rural Telephone Service Co., Inc.*¹ The case involved the protection of telephone listings that had been compiled through great effort.² The Court determined that the telephone listings lacked sufficient originality to merit copyright protection, in spite of the fact that considerable time, effort, and expense (“sweat of the brow”) had been involved in the compilation of the listings. As a result of this decision, limited compilation copyright protection has been available for computer databases.³

¹ 499 U.S. 340 (1991).

² See CRS Report No. 91-552, Copyright and Compilations of Fact, *Feist Publications v. Rural Telephone Service Co.*

³ Some databases may consist of extensive lists of commands which have limited creativity and therefore currently have limited copyright protection available under the *Feist* doctrine. Courts have scrutinized the copyrightability of software in light of the *Feist* principles. See (continued...)

On October 9, 1997, Representative Coble introduced H.R. 2652 which would protect compilations of information and which would, in effect, provide a new form of database protection. The bill deals with the “misappropriation of information,” but sets forth certain “permitted acts” and provides for certain “exclusions.” Specific provisions of the bill are examined below.

Proponents of database protection legislation argue that the limited compilation copyright protection available for databases after the *Feist* decision left a “gap” in intellectual property protection that could serve as a disincentive to investment in new database development. Supporters of the legislation include the database industry, some publishers, and their related interest groups. They wish to protect their intellectual property interests and the time, effort, and financial resources which were devoted to the development of the databases. Opponents of the legislation include some research groups, libraries, educators, and public interest groups. These groups wish to have as much information as possible made freely available to the public. Concerns have also been expressed that such protection may restrict database development and may impact the use and development of the Internet.

Summary of the Bill’s Provisions

The “Collections of Information Antipiracy Act,” H.R. 2652, 105th Congress, 1st Sess. would amend the copyright statute by adding a new Chapter 12 entitled “Misappropriation of Collections of Information” which would create statutory protection for collections of information.

Proposed Section 1201⁴ would provide specific prohibitions against the misappropriation of collections of information. Recourse would be available against anyone who extracted or used in commerce, all or a substantial portion of information gathered, organized, or maintained by another person through the utilization of substantial financial or other resources, in a manner to harm the other person’s actual or future market for the product or service that incorporated that collection and is offered in commerce.

Certain permissible acts are set out in Section 1202. Individual items of information and other insubstantial parts of a collection of information may be used or extracted. The bill would not restrict any person from independently gathering information or using information obtained by means other than extracting it from a collection of information gathered by another person through the investment of substantial financial or other resources. The bill would not restrict the extraction of information for the exclusive purpose of verifying the accuracy of information which had been independently gathered, organized, or maintained by that person. Nothing in the bill would restrict any person from extracting or using information for not-for-profit educational, scientific, or research purposes in a manner that did not harm the actual or potential market for the product or

³(...continued)

Bateman v. Mnemonics, Inc., 79 F.3d 1532 (11th Cir. 1996); *ProCD, Inc. v. Zeidenberg*, 908 F.Supp. 640 (W.D. Wis. 1996); *Allen-Myland, Inc. v. IBM*, 770 F.Supp. 1004 (E.D.Pa. 1991); *Atari Games Corp. v. Nintendo of America Inc.*, 975 F.2d 832 (U.S. App. 1992).

⁴ To be codified as 17 U.S.C. § 1201.

service. The bill also would not restrict anyone from extracting or using the information for the sole purpose of news reporting.

Two specific exclusions are provided in Section 1203. Protection is not extended to the collections of information maintained by any Government (Federal, State, and local) entities and their employees and agents. Computer programs, including any program used in the manufacture, production, and operation in the collection of information, (except for collections of information incorporated in such programs) are also exempted from protection of this legislation.

Definitions are set out in Section 1204. “Information” is defined as facts, data, works of authorship, or any other intangible material capable of being collected and organized in a systematic way. “Commerce” means all commerce which may be lawfully regulated by the Congress.

Section 1205 deals with the relationship of this legislation to other laws. Section 1205(a) provides that subject to preemption of equivalent State law protection of databases, nothing in this legislation will affect rights, limitations, or remedies concerning copyright, or any other rights or obligations relating to information, including laws with respect to patent, trademark, design rights, antitrust or competition, trade secrets, privacy, access to public documents, and the law of contract. State law is specifically preempted by Section 1205(b) of the bill. After the bill’s enactment, all rights equivalent to those in section 1201 concerning the collection of information shall be governed exclusively by Federal law and no one is entitled to any equivalent right under common law or under State law. State laws dealing with trademark, design rights, antitrust or competition, trade secrets, privacy, access to public documents, and the law of contract are not deemed to provide equivalent rights and hence, are not preempted by the legislation. Section 1205(c) provides that nothing in the legislation will restrict the rights of parties to enter into licenses or other contracts concerning the use of information. Section 1205(d) states that the legislation does not affect the operation of section 222(e) of the Communications Act of 1934 (47 U.S.C. 222(e)), as added by the Telecommunications Act of 1996. Section 222(e) requires that a telecommunications carrier must provide subscriber list information under certain conditions, to any person upon request for the purpose of publishing directories in any format.

Civil remedies are provided by Section 1206. A civil action may be brought by anyone injured by a violation of Section 1201 in an appropriate United States district court, without regard to the amount in controversy, except that any action against a State governmental entity may be brought in any court that has jurisdiction over claims against that entity. A court having jurisdiction over a civil action under this section shall have the power to grant temporary and permanent injunctions based upon principles of equity and upon terms as the courts find reasonable in order to prevent a violation of Section 1201. Such an injunction may be served anywhere in the United States on the person enjoined and it may be enforced by proceedings in contempt or otherwise by any United States district court having jurisdiction over that person. When an action is pending under this section, the court may order the impoundment, on reasonable terms, of all copies of contents of a collection of information extracted or used in violation of section 1201, and of all masters, tapes, disks, diskettes, or other articles by means of which such copies may be reproduced. The court may order the remedial modification or destruction of all copies of contents of a collection of information extracted or used in violation of Section 1201

and of all masters, tapes, disks, diskettes, or other articles by means of which such copies may be reproduced.

When a section 1201 violation has been established in any civil action, the plaintiff may recover defendant's profits, any damages sustained by the plaintiff, and the costs of the action. The court shall assess such profits or damages or cause the same to be assessed under its direction. Direction is provided for assessing profits and damages and for awarding reasonable costs and attorney's fees to the prevailing party. Actions brought under this chapter against the United States Government may not seek temporary and permanent injunctions and/or impoundment. The remedies available under this section shall be available against a State governmental entity to the extent permitted under applicable law. Monetary relief, however, is not available against employees of nonprofit educational, scientific, or research institutions, libraries, or archives, if the employee believed and had reasonable grounds for believing that his or her conduct was permissible.

Criminal offenses and penalties are provided in Section 1207. The willful violation of Section 1201 will result in criminal sanctions if it: 1) is done for direct or indirect commercial advantage or financial gain; or 2) results in loss or damage aggregating \$10,000 or more in any 1-year period to the person who gathered, organized, or maintained the information. Such an offense shall be punishable by a fine of not more than \$250,000 or imprisonment for not more than 5 years, or both. A second or subsequent offense under subsection (a) shall be punishable by a fine of not more than \$500,000 or imprisonment for not more than 10 years, or both. The criminal penalties do not apply, however, to employees of nonprofit educational, scientific, or research institutions, libraries, or archives who act within the scope of their employment.

Section 1208 sets time limitations on actions. No criminal proceedings may be brought under this chapter unless the action is brought within three years after the cause of action arose. No civil action may be maintained under this chapter unless it is commenced within three years after the claim accrued. No criminal or civil action shall be maintained under this chapter for the extraction or use of all or a substantial part of a collection of information that occurs more than fifteen years after the investment of resources that qualified the portion of the collection of information for protection under this chapter that is extracted or used.

The effective date of this legislation is the date of the enactment of the Act and will apply to acts committed on or after that date. No person shall be liable under this chapter for the use of information lawfully extracted from a collection of information prior to the effected date of the Act, by that person or by that person's predecessor in interest.