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105TH CONGRESS
1ST SESSION

H. R. 2652

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

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A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Collections of Information Antipiracy Act".

SEC. 2. MISAPPROPRIATION OF COLLECTIONS OF INFORMATION.

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

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"CHAPTER 12—MISAPPROPRIATION OF COLLECTIONS OF INFORMATION

"Sec.
"1201. Prohibition against misappropriation.
"1202. Permitted acts.
"1203. Exclusions.
"1204. Definitions.
"1205. Relationship to other laws.
"1206. Civil remedies.
"1207. Criminal offenses and penalties.
"1208. Limitations on actions.

"§ 1201. Prohibition against misappropriation

"Any person who extracts, or uses in commerce, all or a substantial part of a collection of information gathered, organized, or maintained by another person through the investment of substantial monetary or other resources, so as to harm that other person's actual or potential market for a product or service that incorporates that collection of information and is offered by that other person in commerce, shall be liable to that person for the remedies set forth in section 1206.

"§ 1202. Permitted acts

"(a) INDIVIDUAL ITEMS OF INFORMATION AND OTHER INSUBSTANTIAL PARTS.—Nothing in this chapter shall prevent the extraction or use of an individual item of information, or other insubstantial part of a collection of information, in itself.

"(b) GATHERING OR USE OF INFORMATION OBTAINED THROUGH OTHER MEANS.—Nothing in this chapter shall restrict any person from independently gath-

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ering information or using information obtained by means other than extracting it from a collection of information gathered, organized, or maintained by another person through the investment of substantial monetary or other resources.

"(c) USE OF INFORMATION FOR VERIFICATION.—Nothing in this chapter shall restrict any person from extracting information, or from using information within any entity or organization, for the sole purpose of verifying the accuracy of information independently gathered, organized, or maintained by that person.

"(d) NOT-FOR-PROFIT EDUCATIONAL, SCIENTIFIC, OR RESEARCH USES.—Nothing in this chapter shall restrict any person from extracting or using information for not-for-profit educational, scientific, or research purposes in a manner that does not harm the actual or potential market for the product or service referred to in section 1201.

"(e) NEWS REPORTING.—Nothing in this chapter shall restrict any person from extracting or using information for the sole purpose of news reporting.

"§ 1203. Exclusions

"(a) GOVERNMENT COLLECTIONS OF INFORMATION.—Protection under this chapter shall not extend to a governmental entity, whether Federal, State, or local,

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including any employee or agent of such an entity, or any person exclusively licensed by such an entity, with respect to collections of information gathered, organized, or maintained within the scope of such employment, agency, or license.

"(b) COMPUTER PROGRAMS.—Protection under this chapter shall not extend to computer programs, including without limitation any computer program used in the manufacture, production, operation, or maintenance of a collection of information. The preceding sentence shall not apply to a collection of information directly or indirectly incorporated in a computer program.

"§ 1204. Definitions

"As used in this chapter:

"(1) INFORMATION.—The term 'information' means facts, data, works of authorship, or any other intangible material capable of being collected and organized in a systematic way.

"(2) COMMERCE.—The term 'commerce' means all commerce which may be lawfully regulated by the Congress.

"§ 1205. Relations to other laws

"(a) OTHER RIGHTS NOT AFFECTED.—Subject to subsection (b), nothing in this chapter shall affect rights, limitations, or remedies concerning copyright, or any other

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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.

"(b) PREEMPTION OF STATE LAW.—On or after the effective date of this chapter, all rights that are equivalent to the rights specified in section 1201 with respect to the subject matter of this chapter shall be governed exclusively by Federal law, and no person is entitled to any equivalent right in such subject matter under the common law or statutes of any State. State laws with respect to trademark, design rights, antitrust or competition, trade secrets, privacy, access to public documents, and the law of contract shall not be deemed to provide equivalent rights for purposes of this subsection.

"(c) LICENSING.—Nothing in this chapter shall restrict the rights of parties freely to enter into licenses or any other contracts with respect to the use of information.

"(d) COMMUNICATIONS ACT OF 1934.—Nothing in this chapter shall 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.

"§ 1206. Civil remedies

"(a) CIVIL ACTIONS.—Any person who is injured by a violation of section 1201 may bring a civil action for

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such a violation 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 such entity.

"(b) TEMPORARY AND PERMANENT INJUNCTIONS.—Any court having jurisdiction of a civil action under this section shall have the power to grant temporary and permanent injunctions, according to the principles of equity and upon such terms as the court may deem reasonable, to prevent a violation of section 1201. Any such injunction may be served anywhere in the United States on the person enjoined, and may be enforced by proceedings in contempt or otherwise by any United States district court having jurisdiction over that person.

"(c) IMPOUNDMENT.—At any time while an action under this section is pending, the court may order the impounding, on such terms as it deems reasonable, 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, as part of a final judgment or decree finding a violation of section 1201, order the remedial modification or destruction of all copies of contents of a collection of information ex-

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tracted 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.

"(d) MONETARY RELIEF.—When a violation of section 1201 has been established in any civil action arising under this section, the plaintiff shall be entitled, subject to the principles of equity, to 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. In assessing profits the plaintiff shall be required to prove defendant's sales only; defendant must prove all elements of cost or deduction claims. In assessing damages the court may enter judgment, according to the circumstances of the case, for any sum above the amount found as actual damages, not exceeding three times such amount. The court in its discretion may award reasonable costs and attorney's fees to the prevailing party.

"(e) ACTIONS AGAINST UNITED STATES GOVERNMENT.—Subsections (b) and (c) shall not apply to any action against the United States Government.

"(f) RELIEF AGAINST STATE ENTITIES.—The relief provided under this section shall be available against a State governmental entity to the extent permitted by applicable law.

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"§ 1207. Criminal offenses and penalties

"(a) VIOLATION.—Any person who violates section 1201 willfully, and—

"(1) does so for direct or indirect commercial advantage or financial gain, or

"(2) thereby causes loss or damage aggregating $10,000 or more in any 1-year period to the person who gathered, organized, or maintained the information concerned,

shall be punished as provided in subsection (b).

"(b) PENALTIES.—An offense under subsection (a) 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.

"§ 1208. Limitations on actions

"(a) CRIMINAL PROCEEDINGS.—No criminal proceeding shall be maintained under the provisions of this chapter unless it is commenced within three years after the cause of action arose.

"(b) CIVIL ACTIONS.—No civil action shall be maintained under the provisions of this chapter unless it is commenced within three years after the claim accrued.".

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SEC. 3. CONFORMING AMENDMENT.

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

"12. Misappropriation of Collections of Information ..... 1201".

SEC. 4. EFFECTIVE DATE.

"(a) IN GENERAL.—This Act and the amendments made by this Act shall take effect on the date of the enactment of this Act, and shall apply to acts committed on or after that date.

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

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