

105TH CONGRESS
2D SESSION

S. 2291

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

IN THE SENATE OF THE UNITED STATES

JULY 10, 1998

Mr. GRAMS introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

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,*

3 **SECTION 1. SHORT TITLE.**

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

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) the United States workforce is increasingly
9 engaged in the creation, processing, distribution, and

1 maintenance of information in interstate and foreign
2 commerce;

3 (2) comprehensive, trustworthy collections of in-
4 formation are increasingly a fundamental component
5 of scientific, educational, and social progress;

6 (3) the United States public benefits from hav-
7 ing ready access to reliable, up-to-date collections of
8 information concerning virtually all the endeavors of
9 mankind;

10 (4) the production of accurate, trustworthy col-
11 lections of information requires the investment of
12 substantial amounts of human, technical, and finan-
13 cial resources to compile, sort, organize, maintain,
14 verify, and distribute;

15 (5) the wholesale, unauthorized copying, and
16 dissemination of another person's information prod-
17 uct constitutes market-destructive free riding on the
18 investment of the information compiler;

19 (6) advances in digital technology render infor-
20 mational products increasingly vulnerable to data-
21 base piracy as unauthorized copies may be made and
22 transmitted around the world in a few seconds;

23 (7) current Federal and State laws, including
24 laws governing copyright, contract, and misappro-

1 priation, do not adequately protect investments
2 against this free riding;

3 (8) as a result of the decision of the United
4 States Supreme Court in *Feist Publications, Inc. v.*
5 *Rural Telephone Services Co.*, 499 United States
6 340 (1991), and certain decisions of the inferior
7 courts of the United States, the copyright law af-
8 fords members of the United States business com-
9 munity, both individuals and entities who create and
10 distribute compilations of data, little or no protec-
11 tion against piracy;

12 (9) legislation is needed to ensure that legiti-
13 mate access to discrete data is not impaired while
14 also encouraging persons to identify, collect, verify,
15 and add value to such information and make it
16 available for study, enjoyment, and use;

17 (10) the piecemeal, inconsistent protection for
18 databases provided by State misappropriation and
19 contract laws inadequately protects the investment
20 of database compilers from destructive acts of free
21 riding;

22 (11) the continuing development of digital tech-
23 nology has enabled even the smallest information
24 provider to transact business on a national scale,

1 rendering uniformity essential to the continued
2 growth of interstate commerce;

3 (12) technology safeguards do not adequately
4 deter database piracy, because such safeguards are
5 not foolproof, add to the cost and difficulty of ac-
6 cessing and delivering information, and provide no
7 recourse once the safeguards have been cir-
8 cumvented;

9 (13) the United States should set the world
10 standard for database protection, and make the ut-
11 most effort to ensure the uniform, international pro-
12 tection of these valuable information products;

13 (14) database piracy, if left unchecked by Con-
14 gress, will so reduce the incentive to produce these
15 products that the quality or existence will be signifi-
16 cantly threatened or eliminated; and

17 (15) new legislation is needed to protect the
18 substantial investments involved in the production
19 and dissemination of collections of information in
20 interstate commerce.

21 **SEC. 3. MISAPPROPRIATION OF COLLECTIONS OF INFOR-**
22 **MATION.**

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

1 **“CHAPTER 12—MISAPPROPRIATION OF**
 2 **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.

3 **“§ 1201. 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 1202 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 “(5) PRODUCT OR SERVICE.—A product or
5 service incorporating a collection of information does
6 not include a product or service incorporating a col-
7 lection of information gathered, organized, or main-
8 tained to address, route, forward, transmit, or store
9 digital online communications or provide or receive
10 access to connections for digital online communica-
11 tions.

12 **“§ 1202. Prohibition against misappropriation**

13 “Any person who extracts, or uses in commerce, all
14 or a substantial part, measured either quantitatively or
15 qualitatively, of a collection of information gathered, orga-
16 nized, or maintained by another person through the invest-
17 ment of substantial monetary or other resources, so as to
18 cause harm to the actual or potential market of that other
19 person, or a successor in interest of that other person, for
20 a product or service that incorporates that collection of
21 information and is offered or intended to be offered for
22 sale or otherwise in commerce by that other person, or
23 a successor in interest of that person, shall be liable to
24 that person or successor in interest for the remedies set
25 forth in section 1206.

1 **“§ 1203. Permitted acts**

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

14 “(b) GATHERING OR USE OF INFORMATION OB-
15 TAINED THROUGH OTHER MEANS.—Nothing in this
16 chapter shall restrict any person from independently gath-
17 ering information or using information obtained by means
18 other than extracting it from a collection of information
19 gathered, organized, or maintained by another person
20 through the investment of substantial monetary or other
21 resources.

22 “(c) USE OF INFORMATION FOR VERIFICATION.—
23 Nothing in this chapter shall restrict any person from
24 using a collection of information within any entity or orga-
25 nization, for the sole purpose of verifying the accuracy of
26 information independently gathered, organized, or main-

1 tained by that person. Under no circumstances shall the
2 information so used be extracted from the original collec-
3 tion and made available to others in a manner that harms
4 the actual or potential market for the collection of infor-
5 mation from which it is extracted or used.

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

12 “(e) NEWS REPORTING.—Nothing in this chapter
13 shall restrict any person from extracting or using informa-
14 tion for the sole purpose of news reporting, including news
15 gathering, dissemination, and comment, unless the infor-
16 mation so extracted or used is time sensitive, has been
17 gathered by a news reporting entity for distribution to a
18 particular market, has not yet been distributed to that
19 market, and the extraction or use is part of a consistent
20 pattern engaged in for the purpose of direct competition
21 in that market.

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

1 **“§ 1204. Exclusions**

2 “(a) GOVERNMENT COLLECTIONS OF INFORMA-
3 TION.—

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

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

20 “(A) under the Securities Exchange Act of
21 1934 by a national securities exchange, a reg-
22 istered securities association, or a registered se-
23 curities information processor, subject to sec-
24 tion 1205(g) of this title; or

1 “(B) under the Commodity Exchange Act
2 by a contract market, subject to section
3 1205(g) of this title.

4 “(b) COMPUTER PROGRAMS.—

5 “(1) PROTECTION NOT EXTENDED.—Subject to
6 paragraph (2), protection under this chapter shall
7 not extend to computer programs, including, but not
8 limited to, any computer program used in the manu-
9 facture, production, operation, or maintenance of a
10 collection of information, or any element of a com-
11 puter program necessary to its operation.

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

17 **“§ 1205. Relationship to other laws**

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

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

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

23 “(d) ANTITRUST.—Nothing in this chapter shall limit
 24 in any way the constraints on the manner in which prod-
 25 ucts and services may be provided to the public that are

1 imposed by Federal and State antitrust laws, including
 2 those regarding single suppliers of products and services.

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

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

15 “(g) SECURITIES AND COMMODITIES MARKET IN-
 16 FORMATION.—

17 “(1) FEDERAL AGENCIES AND ACTS.—Nothing
 18 in this Act shall affect—

19 “(A) the operation of the provisions of the
 20 Securities Exchange Act of 1934 (15 U.S.C.
 21 58a et seq.) or the Commodity Exchange Act (7
 22 U.S.C. 1 et seq.), including the execution of the
 23 finding of Congress that it is in the public in-
 24 terest and appropriate for the protection of in-
 25 vestors and the maintenance of fair and orderly

1 markets to assure the availability to brokers,
2 dealers, and investors of market information;

3 “(B) the obligations and rights of self-reg-
4 ulatory organizations, members of such organi-
5 zations, securities information processors, bro-
6 kers, and dealers under the provisions of the
7 Securities and Exchange Act of 1934 and the
8 rules and regulations promulgated under such
9 Act, including the obligations and rights of self-
10 regulatory organizations to make market infor-
11 mation available on fair and reasonable terms,
12 and terms that are not unreasonably discrimi-
13 natory; or

14 “(C) the jurisdiction or authority of the
15 Securities and Exchange Commission and the
16 Commodity Futures Trading Commission.

17 “(2) PROHIBITION.—Notwithstanding section
18 1203, nothing in this chapter shall permit the ex-
19 traction, use, resale, or other disposition of real time
20 market information except as the Securities Ex-
21 change Act of 1934, the Commodity Exchange Act,
22 and the rules and regulations promulgated under
23 such Acts may otherwise provide. Nothing in section
24 1203(e) shall be construed to permit any person to
25 extract or use real time market information in a

1 manner that constitutes a market substitute for a
 2 real time market data service (including the real
 3 time systematic updating of or display of a substan-
 4 tial part of market information) provided on a real
 5 time basis.

6 “(3) DEFINITION.—As used in this subsection,
 7 the term ‘market information’ means information re-
 8 lating to quotations for and transactions in securi-
 9 ties or commodities that is collected, processed, dis-
 10 tributed, or published—

11 “(A) pursuant to the provisions of the Se-
 12 curities Exchange Act of 1934 (15 U.S.C. 58a
 13 et seq.); or

14 “(B) by a contract market that is des-
 15 ignated by the Commodity Futures Trading
 16 Commission under the Commodity Exchange
 17 Act (7 U.S.C. 1 et seq.) and the rules and regu-
 18 lations under such Act.

19 **“§ 1206. Civil remedies**

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

1 be brought in any court that has jurisdiction over claims
2 against such entity.

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

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

1 “(d) MONETARY RELIEF.—When a violation of sec-
2 tion 1202 has been established in any civil action arising
3 under this section, the plaintiff shall be entitled to recover
4 any damages sustained by the plaintiff and defendant’s
5 profits not taken into account in computing the damages
6 sustained by the plaintiff. The court shall assess such
7 profits or damages or cause the same to be assessed under
8 its direction. In assessing profits the plaintiff shall be re-
9 quired to prove defendant’s gross revenue only and the
10 defendant shall be required to prove all elements of cost
11 or deduction claims. In assessing damages the court may
12 enter judgment, according to the circumstances of the
13 case, for any sum above the amount found as actual dam-
14 ages, not exceeding three times such amount. The court
15 in its discretion may award reasonable costs and attor-
16 ney’s fees to the prevailing party and shall award such
17 costs and fees where it determines that an action was
18 brought under this chapter in bad faith against a non-
19 profit educational, scientific, or research institution, li-
20 brary, or archives, or an employee or agent of such an
21 entity, acting within the scope of his or her employment.

22 “(e) REDUCTION OR REMISSION OF MONETARY RE-
23 LIEF FOR NONPROFIT EDUCATIONAL, SCIENTIFIC, OR
24 RESEARCH INSTITUTIONS.—The court shall reduce or
25 remit entirely monetary relief under subsection (d) in any

1 case in which a defendant believed and had reasonable
 2 grounds for believing that his or her conduct was permis-
 3 sible under this chapter, if the defendant was an employee
 4 or agent of a nonprofit educational, scientific, or research
 5 institution, library, or archives acting within the scope of
 6 his or her employment.

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

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

14 **“§ 1207. Criminal offenses and penalties**

15 “(a) VIOLATION.—

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

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

20 “(B) causes loss or damage aggregating
 21 \$10,000 or more in any 1-year period to the
 22 person who gathered, organized, or maintained
 23 the information concerned,
 24 shall be punished as provided in subsection (b).

1 “(2) INAPPLICABILITY.—This section shall not
 2 apply to an employee or agent of a nonprofit edu-
 3 cational, scientific, or research institution, library, or
 4 archives acting within the scope of his or her em-
 5 ployment.

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

12 **“§ 1208. Limitations on actions**

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

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

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

1 collection of information for protection under this chapter
 2 that is extracted or used.”.

3 **SEC. 4. CONFORMING AMENDMENT.**

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

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

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

8 (a) DISTRICT COURT JURISDICTION.—Section 1338
 9 of title 28, United States Code, is amended—

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

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

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

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

1 (c) COURT OF FEDERAL CLAIMS JURISDICTION.—
2 Section 1498(e) of title 28, United States Code, is amend-
3 ed by inserting “and to protections afforded collections of
4 information under chapter 12 of title 17” after “chapter
5 9 of title 17”.

6 **SEC. 6. EFFECTIVE DATE.**

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

11 (b) PRIOR ACTS NOT AFFECTED.—No person shall
12 be liable under chapter 12 of title 17, United States Code,
13 as added by section 3 of this Act, for the use of informa-
14 tion lawfully extracted from a collection of information
15 prior to the effective date of this Act, by that person or
16 by that person’s predecessor in interest.

