

AMENDMENT IN THE NATURE OF A SUBSTITUTE**TO H.R. 2652****OFFERED BY MR. COBLE**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the "Collections of Informa-
3 tion Antipiracy Act".

4 SEC. 2. MISAPPROPRIATION OF COLLECTIONS OF INFOR-
5 MATION.

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

8 "CHAPTER 12—MISAPPROPRIATION OF
9 COLLECTIONS OF INFORMATION

"Sec.

"1201. Definitions.

"1202. Prohibition against misappropriation.

"1203. Permitted acts.

"1204. Exclusions.

"1205. Relationship to other laws.

"1206. Civil remedie:

"1207. Criminal offenses and penalties.

"1208. Limitations on actions.

10 "§ 1201. Definitions

11 "As used in this chapter:

12 "(1) COLLECTION OF INFORMATION.—The term
13 'collection of information' means information that
14 has been collected and organized for the purpose of

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1 bringing discrete items of information together in
2 one place so that users may access them.

3 "(2) INFORMATION.—The term 'information'
4 means facts, data, works of authorship, or any other
5 intangible material capable of being collected and or-
6 ganized in a systematic way.

7 "(3) POTENTIAL MARKET.—The term 'potential
8 market' means any market that a person claiming
9 protection under section 1202 has current and de-
10 monstrable plans to exploit or that is commonly ex-
11 ploited by persons offering similar products or serv-
12 ices incorporating collections of information.

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

16 **"§ 1202. Prohibition against misappropriation**

17 "Any person who extracts, or uses in commerce, all
18 or a substantial part, measured either quantitatively or
19 qualitatively, of a collection of information gathered, orga-
20 nized, or maintained by another person through the invest-
21 ment of substantial monetary or other resources, so as to
22 harm the actual or potential market of that other person,
23 or an assignee of that other person, for a product or serv-
24 ice that incorporates that collection of information and is
25 offered or intended to be offered for sale or otherwise by

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1 that other person in commerce, shall be liable to that per-
2 son for the remedies set forth in section 1206.

3 **“§ 1203. Permitted acts**

4 **“(a) INDIVIDUAL ITEMS OF INFORMATION AND**
5 **OTHER INSUBSTANTIAL PARTS.—**Nothing in this chapter
6 shall prevent the extraction or use of an individual item
7 of information, or other insubstantial part of a collection
8 of information, in itself. An individual item of information,
9 including a work of authorship, shall not itself be consid-
10 ered a substantial part of a collection of information under
11 section 1202.

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

20 **“(c) USE OF INFORMATION FOR VERIFICATION.—**
21 Nothing in this chapter shall restrict any person from ex-
22 tracting information, or from using information within
23 any entity or organization, for the sole purpose of verifying
24 the accuracy of information independently gathered, orga-
25 nized, or maintained by that person.

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

7 “(e) **NEWS REPORTING.**—Nothing in this chapter
8 shall restrict any person from extracting or using informa-
9 tion for the sole purpose of news reporting, including news
10 gathering, dissemination, and comment, in an amount rea-
11 sonably necessary for such purpose, unless the information
12 so extracted or used has been gathered by a news report-
13 ing entity in competition with that person for distribution
14 to the public, and has not yet been distributed to the pub-
15 lic.

16 “(f) **TRANSFER OF COPY.**—Nothing in this chapter
17 shall restrict the owner of a particular lawfully made copy
18 of all or part of a collection of information from selling
19 or otherwise disposing of the possession of that copy.

20 **“§ 1204. Exclusions**

21 “(a) **GOVERNMENT COLLECTIONS OF INFORMA-**
22 **TION.**—

23 “(1) **EXCLUSION.**—Protection under this chap-
24 ter shall not extend to collections of information
25 gathered, organized, or maintained in the course of

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1 performing governmental functions other than edu-
2 cation or scholarship, by or for a government entity,
3 whether Federal, State, or local, including any em-
4 ployee or agent of such entity, or any person exclu-
5 sively licensed by such entity, within the scope of the
6 employment, agency, or license. Nothing in this sub-
7 section shall be construed to preclude protection
8 under this chapter for information gathered, orga-
9 nized, or maintained by such an agent or licensee
10 that is not within the scope of such agency or li-
11 cense.

12 "(2) EXCEPTION.—The exclusion under para-
13 graph (1) does not apply to any information re-
14 quired to be collected and disseminated by either a
15 securities exchange or a commodities exchange under
16 either the Securities Exchange Act of 1934 or the
17 Commodity Exchange Act.

18 "(b) COMPUTER PROGRAMS.—

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

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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 **“§ 1205. Relations to other laws**

7 “(a) OTHER RIGHTS NOT AFFECTED.—Subject to
8 subsection (b), nothing in this chapter shall affect rights,
9 limitations, or remedies concerning copyright, or any other
10 rights or obligations relating to information, including
11 laws with respect to patent, trademark, design rights,
12 antitrust, trade secrets, privacy, access to public docu-
13 ments, and the law of contract.

14 “(b) PREEMPTION OF STATE LAW.—On or after the
15 effective date of this chapter, all rights that are equivalent
16 to the rights specified in section 1202 with respect to the
17 subject matter of this chapter shall be governed exclusively
18 by Federal law, and no person is entitled to any equivalent
19 right in such subject matter under the common law or
20 statutes of any State. State laws with respect to trade-
21 mark, design rights, antitrust, trade secrets, privacy, ac-
22 cess to public documents, and the law of contract shall
23 not be deemed to provide equivalent rights for purposes
24 of this subsection.

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1 “(c) **RELATIONSHIP TO COPYRIGHT.**—Protection
2 under this chapter is independent of, and does not affect
3 or enlarge the scope, duration, ownership, or subsistence
4 of, any copyright protection in any work of authorship
5 that is contained in or consists in whole or part of a collec-
6 tion of information. Nor does it provide any greater pro-
7 tection to a work of authorship contained in a collection
8 of information than is otherwise available to such a work
9 under this title.

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

15 “(e) **LICENSING.**—Nothing in this chapter shall re-
16 strict the rights of parties freely to enter into licenses or
17 any other contracts with respect to the use of information.

18 “(f) **COMMUNICATIONS ACT OF 1934.**—Nothing in
19 this chapter shall affect the operation of section 222(e)
20 of the Communications Act of 1934 (47 U.S.C. 222(e)),
21 or shall restrict any person from extracting or using sub-
22 scriber list information, as such term is defined in section
23 222(f)(3) of the Communications Act of 1934 (47 U.S.C.
24 222(f)(3)), for the purpose of publishing telephone direc-
25 tories in any format.

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1 § 1206. Civil remedies

2 “(a) **CIVIL ACTIONS.**—Any person who is injured by
3 a violation of section 1202 may bring a civil action for
4 such a violation in an appropriate United States district
5 court without regard to the amount in controversy, except
6 that any action against a State governmental entity may
7 be brought in any court that has jurisdiction over claims
8 against such entity.

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

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

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1 1202, order the remedial modification or destruction of
2 all copies of contents of a collection of information ex-
3 tracted or used in violation of section 1202, and of all
4 masters, tapes, disks, diskettes, or other articles by means
5 of which such copies may be reproduced.

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

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

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

14 “(g) **RELIEF AGAINST STATE ENTITIES.—**The relief
 15 provided under this section shall be available against a
 16 State governmental entity to the extent permitted by ap-
 17 plicable law.

18 **“§ 1207. Criminal offenses and penalties**

19 “(a) **VIOLATION.—**

20 “(1) **IN GENERAL.—**Any person who violates
 21 section 1202 willfully, and—

22 “(A) does so for direct or indirect commer-
 23 cial advantage or financial gain, or

24 “(B) causes loss or damage aggregating
 25 \$10,000 or more in any 1-year period to the

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1 person who gathered, organized, or maintained
2 the information concerned,

3 shall be punished as provided in subsection (b).

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

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

15 “§ 1208. Limitations on actions

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

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

24 “(c) ADDITIONAL LIMITATION.—No criminal or civil
25 action shall be maintained under this chapter for the ex-

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1 traction or use of all or a substantial part of a collection
2 of information that occurs more than 15 years after the
3 investment of resources that qualified the collection of in-
4 formation for protection under this chapter."

5 **SEC. 3. CONFORMING AMENDMENT.**

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

"12. Misappropriation of Collections of Information 1201".

8 **SEC. 4. EFFECTIVE DATE.**

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

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

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