

National Academy of Sciences Letter with regard to The Database Proposal

October 9, 1996

The Honorable Michael Kantor
Secretary of Commerce
Department of Commerce
14th Street and Constitution Avenue, NW
Washington, D.C. 20230

Dear Mr. Kantor:

We are writing to express our serious concern about pending changes to international and domestic intellectual property law that are being supported by the Department of Commerce. Although we understand that the wide availability and easy transmittal of digital databases can present difficulties for database vendors, we believe that the August 30, 1996 Draft Treaty on Intellectual Property in Respect to Databases, which was prepared under the [World Intellectual Property Organization \(WIPO\)](#), has the potential to undermine our nations progress in scientific and technical research and education if appropriate exceptions and limitations are not clearly articulated. As you may know, the proposed WIPO treaty contains major provisions, intended to do the following:

- Prohibit unauthorized extraction, use, or reuse of any database, or any substantial portion of a database (as defined by the database vendor), and effectively establish the basis for a pay-per-use system;
- Make perpetual protection the norm for databases, by making a 15-year initial term of protection renewable with every substantial change or addition to a database, actions that occur frequently with most electronic databases;
- Apply to all privately generated data, or repackaged U.S. government data (outside the United States, government databases would be protected by this law as well); and
- Include strong civil and criminal penalties, including provisions for third-party liability (e.g., liability incurred by the unwitting intermediary or disseminator).

While we certainly do not dispute the right of database compilers and vendors to obtain reasonable protection of their products, the proposed law fails to provide for any public-good exceptions, such as the fair use exemption traditionally enjoyed by the research and education communities for their limited use of copyrighted works. Database publishers would effectively obtain an absolute and perpetual monopoly in their data compilations, including preexisting data sets. The proposed changes would significantly inhibit researchers seeking to reuse and combine data for publication or for research (an especially acute problem for researchers using large, continuously updated observational data sets), as well as educators wishing to use portions of data sets for instructional purposes. The new law also would overturn a series of Supreme Court cases that limit intellectual property rights in the interest of free competition.

We believe that these changes to the intellectual property law, if enacted in their present form, would seriously undermine the ability of researchers and educators to access and use scientific data, and would have a deleterious long-term impact on our nations research capabilities. Moreover, the proposed changes are broadly antithetical to the principle of full and open exchange of scientific data espoused by the U.S. government and academic science communities, and promoted internationally. We are aware that these and additional concerns regarding changes to the intellectual property law, have been communicated to the President and Vice President by the [Digital Future Coalition](#), the [American Society](#)

[for Information Systems](#), the [Association of Research Libraries](#), and the American Association of Universities.

What is especially disconcerting is that these radical legal changes have been proposed by the Department of Commerce for formal discussion and negotiation at the WIPO Diplomatic Conference this December, without any debate or analysis of the laws potentially harmful implications for our nations scientific and technological development. Indeed, although the unintended consequences appear very grave to those studying these issues, very few individuals at the science agencies or in the academic community appear even to be aware that such changes are about to take place, nor has there been any effort made to solicit their views.

If the current Draft Treaty on Intellectual Property in Respect of Databases is adopted by WIPO, these changes will move substantially toward becoming the new international norm in intellectual property law by the end of this year. Therefore, we request that no precipitous action be taken at the planned WIPO Diplomatic Conference before the range of consequences of the proposed changes is fully understood and appropriate modifications are made.

Sincerely,

Bruce Alberts
President
National Academy of Sciences

Wm. A. Wulf
President
National Academy of Engineering

Kenneth I. Shine
President
Institute of Medicine

cc: Albert Gore, Jr., Vice President of the United States
Franklin D. Raines, Director, Office of Management and Budget
Sally Katzen, Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget
John H. Gibbons, Assistant to the President for Science and Technology, and Director, Office of Science and Technology Policy
Stuart E. Eizenstat, Under Secretary for International Trade, Department of Commerce
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Ernest F. Hollings, Ranking Minority Member, Senate Committee on Commerce, Science, and Transportation
Robert S. Walker, Chairman, House Committee on Science
George E. Brown, Jr., Ranking Minority Member, House Committee on Science
Marybeth Peters, Register of Copyrights and Associate Librarian of Congress for Copyright Services, Library of Congress

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Last Modified: June 8, 2002