

# ARL Summary and Status of H.R. 2652

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## Background

A Subcommittee in the House, the Subcommittee on Courts and Intellectual Property, is considering legislation, H.R. 2652, that would provide unprecedented new levels of protection for "collections of information." The implications of this legislation for many communities in the not-for-profit and for profit communities are significant. As Congress considers H.R. 2652, it is important that all communities evaluate its consequences regarding how they may operate in the print and electronic environments. A fact sheet is included that provides key points and the concerns of many in the public and private sectors with the legislation.

## Key points - H.R. 2652, "Collections of Information Antipiracy Act"

- H.R. 2652, the Collections of Information Antipiracy Act, was introduced on October 8, 1997 by Chairman Coble (R-NC), House Subcommittee on Courts and Intellectual Property, Committee on the Judiciary.(\*)
- H.R. 2652 was introduced to address the concerns of certain segments of the information industry, the legal publishers in particular. Other segments of the private sector do not support the press for additional protection.
- A European Union directive on the legal protection of databases is also spurring the call for legislation in the U.S. by these same legal publishers. Most EU countries have not implemented this directive nor has the international arena supported moving ahead with a draft treaty which focuses on additional protections for databases.
- Two hearings have been conducted by the House Subcommittee on Courts and Intellectual Property, October 23, 1997 and February 12, 1998.

## Key Concerns

- **There continues to be no compelling research detailing the need for additional new protections.**

There has been no demonstrated need for new intellectual property protections for "electronic collections and other collections of factual material." Industry statistics demonstrate that the database arena enjoys a thriving and robust marketplace, indeed, one that is growing quite significantly. Many in the not-for-profit and commercial sectors believe that adequate forms of protection exist - copyright, contracts, and increasingly, technological measures.

- **The legislation encompasses a vast array of information, in part because provisions in the legislation go well beyond the traditional misappropriation doctrine.**

The prohibitions in this legislation would go beyond the sphere of commercial competition, to reach the activities of individual consumers and not-for-profit institutions. This casts a wide net and could conceivably chill the legitimate use of databases and related collections.

- **Greater definition of key terms is needed and the relationship between H.R. 2652 and the copyright statute requires clarification to understand the full scope of the legislation**

Key terms are poorly or are not defined in H.R. 2652. For example, the definition of information included in the legislation would sweep in a vast array of information products and services. In addition, it will be important to evaluate the overlap between the coverage of H.R. 2652 and that of copyright. The effect of the proposed legislation, could be to prevent certain sectors from pursuing legitimate functions permitted today. Since H.R. 2652 is designed to "protect" investment rather than creativity, the long and important tradition in the United States of protecting expression not facts will be undermined. This tradition is based on an appreciation that such a policy stimulates innovations in the public and private sectors, supports the educational process, and "promotes the progress of Science and the useful arts." Finally, provisions in the bill would provide protection to both current and retroactive information thus permitting, in effect, perpetual protection.

- **The exceptions and exclusions included in the legislation are narrow and require additional definition to be meaningful.**

Unlike the Copyright Act, which includes numerous exemptions and limitations in support of education and libraries, there are no comparable exemptions in H.R. 2652. For example, given the extremely broad definition of information included in H.R. 2652, much of what libraries and educational institutions are able to accomplish due to the exemptions and limitations in the Copyright Act could be undermined. Would it be possible to fashion meaningful provisions for the not-for-profit, education, and research communities?

- **The provision relating to government information requires modification to ensure a continued, robust public domain and to ensure that governmental works are not copyrighted.**

Section 1203 requires additional amplification. One reading of this legislation is that it would permit private parties to compile collections of non-copyrightable government information and assert protection over them. When coupled with seemingly perpetual protection, the proposal could significantly reduce the amounts and types of information in the public domain.

\* In 1996, legislation was introduced in Congress that focused on the "sui generis protection of databases." H.R. 2652 addresses issues related to "collections of information, not only "databases. The international community chose not to consider a draft treaty that would provide additional protections to databases.

#### **Web sites with additional information:**

<http://www.house.gov/judiciary/4.htm>

<http://www.arl.org/info/frn/copy/copytoc.html> Database Proposals

[http://www.codata.org/data\\_access/summary.html](http://www.codata.org/data_access/summary.html)

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