



## **S. 2291/Title V of H.R. 2281 (was H.R. 2652) -- The Collections Of Information Antipiracy Act Is Overbroad And Would Harm Both Commercial And Nonprofit Activities**

The database industry is one of the healthiest sectors of the U.S. economy in terms of growth and profits. Database publishers can protect their investment through copyright, contract, trade secrecy, trademark, state common law misappropriation, and technological measures. While the establishment of a national misappropriation statute directed at the unfair commercial predation of databases merits serious consideration, S. 2291 is too sweeping in its approach and will harm both the commercial and non-profit sectors.

### **1. S. 2291 Is Overbroad**

- Although styled as a misappropriation bill, S. 2291 affords far more protection than the state common law misappropriation doctrine. State common law misappropriation targets free-riding by direct competitors which threatens the existence or quality of the information at issue, while S. 2291 prohibits an extraction or use even if it causes only limited harm to a "potential market."
- S. 2291 prohibits a transformative use of information -- reuse of information to create a new type of product. The "sweat of the brow" doctrine S. 2291 is intended to restore was not applied so broadly. This restriction on transformative use represents a major shift in this nation's information policy.
- S. 2291 affords protection to databases already covered by copyright, thereby allowing those publishers to raise prices without any offsetting social benefits.
- S. 2291 applies retroactively to databases created 15 years ago; no incentive to create needs to be given for something already in existence.
- The exceptions for scientific and educational use are circular and ineffective.
- The only relief provided from the new monopoly power of sole source databases is antitrust law.

### **2. Many Sectors Have Reservations About S. 2291**

- S. 2291 would significantly increase research costs by requiring scientists to pay for data they now receive for minimal cost. This, in turn, would discourage the collaborative methodology so critical to the advancement of knowledge.
- S. 2291 would prevent the creation of "value-added" databases by substantially increasing the cost of the information included in these databases.
- The elimination of competition from value-added publishers will reduce the incentive for the established up-stream publishers to innovate and contain prices.
- S. 2291 would allow database publishers to prevent businesses from reconfiguring information they purchase because the reconfiguration harms a "potential market" for databases.
- S. 2291 would increase the costs for other communities such as genealogists and fantasy sport enthusiasts.

### **3. Codification Of *NBA v. Motorola* Would Prevent Predation Without Harming Legitimate Activities**

- The Second Circuit's recent decision in *NBA v. Motorola*, 105 F.3d 841 (2d Cir. 1997), provides the template for a true misappropriation statute.
- The *Motorola* approach prohibits unauthorized uses that compete in commerce with and threaten the existence or quality of authorized uses.
- A statute based on *Motorola* would provide database publishers with additional protection by establishing a uniform national misappropriation standard. This protection could be enhanced by liberalizing the "hot news" test found in *Motorola*.
- A statute based on the *Motorola* decision would protect Warren Publishing and the stock exchanges, and still be acceptable to the opponents of S. 2291.

---

## Other Issue Papers: Concerns with S. 2291/H.R. 2652

- [Myths and Facts about S. 2291/H.R. 2652](#)
- [Competition and Database Protection](#)
- [An Alternative to S. 2291/H.R. 2652--A True Federal Misappropriation Approach](#)
- [S. 2291/H.R. 2652 will harm U.S. Businesses](#)
- [Challenges to Innovation and Progress in Communications](#)
- [S. 2291/H.R. 2652 is Overbroad; would harm commercial and non-profit activities](#)
- [H.R. 2652--The End of History](#)



© Association of Research Libraries, Washington, DC

Web Design by [Mindy Michels](#)

Maintained by [ARL Web Administrator](#)

**Last Modified:** August 24, 1998