

April 1, 1999

The Honorable Howard Coble
Chair, Subcommittee on Courts and Intellectual Property
B-351A Rayburn House Office Building
Washington, D.C. 20515-6219

Dear Mr. Chairman,

This letter is in response to the request made at the March 18 hearing on H.R. 354, for a review of the Administration's testimony on the "Collections of Information Antipiracy Act." We very much appreciate the opportunity to provide additional comment on the legislation on behalf of five of the Nation's library associations.

The library associations agree with the Administration position that there is a need for legal protection against commercial misappropriation of collections of information where other legal protections and remedies are inadequate and that there should be effective legal remedies against "free-riders." In addition, we agree that as drafted, provisions in H.R. 354 are "too broad" and accomplish much more than targeting "troubling acts of commercial misappropriation."

Overall, the library associations agree with the majority of the Administration's comments on H.R. 354. Most of the concerns with H.R. 354 raised by the Administration mirror those included in our testimony on the legislation. We believe that the six principles articulated in the Administration statement propose a balanced approach to additional protections for databases. The problems enumerated by the Administration address most of the significant but not all of the concerns of the library associations and others in the not-for-profit sectors. These concerns are detailed in much of the testimony by representatives of the library, higher education, and scientific and research communities during the March 18 hearing. We find that the Administration's proposed changes are extremely helpful, though several do not fully address the complexity of selected issues. Key issues are listed below.

1) Breadth of legislation:

The Administration notes that section 1402 is overly broad and the term "use" is "simply too broad and ambiguous." The Administration suggests that a focus on conduct such as "troubling acts of commercial misappropriation" is more appropriate. The Administration further suggests that the term distribution be used in lieu of "use," and that the concepts of actual and potential market are problematic.

We completely agree with the Administration that the section is too broad and that the legislation should target inappropriate conduct, e.g. commercial free-riding. The Administration suggested a revision of substituting "distribution" for "use" that would improve the legislation. We share the concern that terms such as extraction and use are problematic. There are a number of ways by which these concerns could be addressed which merit further discussion and review. For example, one revision which solves part of this problem was included in Dr. Phelps' statement.

2) Government Information:

The library associations and our members have a long history of working with the federal government in support of preserving access to government data. The Administration testimony identifies some of the thorniest and most complex issues raised by the legislation such as "data capture" or government databases mandated by statute that include private sector data. The notion of urging agencies to comply is noteworthy as is disclosure of source but more consideration of these issues is required. The Administration statement notes that in the context of the recent revision to Circular A-110, uniform access requirements on government agencies are not recommended. Indeed, this revision has proven to be highly controversial thus any statutory changes in this arena should be subject to congressional

hearings and debate.

3) Sole Source:

The Administration identifies issues relating to sole source databases as problematic and worthy of addressing. We understand that tackling this issue is extremely difficult but believe that as the Administration notes, "it will be important that any database protection legislation incorporate provisions that guard against the possibility that sole source database providers will employ their new rights to the detriment of competition in related markets."

The alternative draft bill, the "Database Fair Competition and Research Promotion Act of 1999" placed in the Congressional Record by Sen. Hatch addresses the issue of sole source. Further evaluation of the different approaches would be helpful.

4) Duration of Protection:

We agree with the Administration that "there is no single, optimal term of protections for the wide range of products subject to protections as 'databases' or 'collections of information.'" We continue to be concerned that a 15-year term of protection may be excessive. As noted by the Federal Trade Commission in their review of H.R. 2652, the predecessor to H.R. 354, "it is unclear that a 15-year term is necessary in order to protect incentives to produce all types of databases." The useful commercial life of some data, like stock prices, can expire in a matter of hours, if not minutes.

Like the Administration, we believe that there is a significant risk that language in H.R. 354 could result in the perpetual protection of a database or collection of information. We agree that a deposit system may be unwieldy and raises a number of economic concerns. The Administration's suggestion of, for example making older versions of a database publicly available, is a step in the right direction but given the complexity of this issue, additional consideration is necessary.

5) Reasonable Uses:

The inclusion of new language for "reasonable uses" in H.R. 354 is a modest step in the right direction in addressing a serious concern of the library and education community and the Administration. As noted by the Administration, the library associations, and Dr. Phelps, the provision as drafted falls short of what is required to continue to conduct a wide range of currently reasonable and customary research and education activities. The Administration did not address several issues, in particular, the phrase "individual acts," which is extremely problematic. As H.R. 354 moves through the legislative process, it will be important to examine the full range of concerns such as those noted above.

6) OSP Liability:

The Administration statement does not address issues of online service provider liability. The alternative draft bill, the "Database Fair Competition and Research Promotion Act of 1999" and Senator Hatch's Discussion Draft both include a provision that exempts online service providers from liability. Comparable provisions are needed in H.R. 354.

7) Alternative Proposals:

We do not agree with the Administration statement that the "minimalist" approach taken in the draft bill, the "Database Fair Competition and Research Promotion Act of 1999" "appears to only bar misappropriation of an entire database." We believe that an opportunity to fully examine all approaches to commercial misappropriation of collections of information would be productive.

We look forward to working with Members of the Subcommittee on this legislation. Please let me know if there is additional information that we can provide.

Sincerely,

James G. Neal
Dean, University Libraries
Johns Hopkins University

on behalf of the

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[Association of Research Libraries](#),
[American Association of Law Libraries](#),
[Medical Library Association](#),
[Special Libraries Association](#)

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