

DATABASE ANTIPIRACY LEGISLATION (Senate - January 19, 1999)

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Mr. HATCH. Mr. President, I rise today to speak on an issue of great and escalating importance: database piracy. While perhaps not an issue on the tips of most Americans' tongues, it is nevertheless an issue that has garnered considerable attention in recent years both in the United States and in international forums. The 106th Congress is now the third consecutive Congress in which database legislation will be considered. This is an appropriate reflection of the fact that while intellectual property has become the heart of our Nation's economy, information is its lifeblood.

Utahns are interested in an appropriate balance of interest here. Utah is a leader in the hi-tech and information industries, and is home to both producers and users of information and database collections. Utah is blessed with world class scientists and scholars, genealogists, and computer and hi-tech companies that create new information, organize information, and use information--often using information created by others in innovative ways to create new information or to make it more easily or inexpensively accessible. I would guess that most of my colleagues would find that similarly in their own home states that many of their constituents are interested in this issue at some level because so many are producers or users of information, and often both.

American database providers render an invaluable service by collecting, organizing, and disseminating billions of bits of information from myriad sources of every possible sector of our economy. They give us such widely-used tools as phone books, directories, catalogs, almanacs, encyclopedias, and other reference guides. They provide specialized products like statistical abstracts, medical and pharmaceutical reference tools, stock quotes, pricing guides, genealogical data and countless other sources of information for businesses, researchers, scientists, educators, and consumers. Indeed, it is the information they collect that allows us to predict the weather, to treat disease, to preserve our national security, to use computers to communicate over global networks, like the Internet, to travel, to buy a home, and even to watch the evening news.

It is not surprising that the cost of creating and maintaining accurate, reliable, and user-friendly databases is significant. Yet, the commercial viability of these products has, for many years, served as an incentive to investment and spawned a thriving information industry in the United States. Nevertheless, events in the past several years have caused some to question the continued viability of these products, raising the question of whether current law is sufficient to maintain the same sort of incentives that have served to keep the United States on the cutting edge of the information age.

The most debated among these is perhaps the 1991 decision in *Feist Publications v. Rural Telephone*

Service Co., 499 U.S. 340, in which the Supreme Court rejected the so-called 'sweat of the brow' theory as a basis for copyright protection for databases. Under Feist, the degree of labor and investment associated with producing a database is irrelevant to the question of copyrightability. Rather, a database may be protected by copyright only where it exhibits a minimum level of originality in the selection and arrangement of its contents. And, even then, the copyright in the database is said to be 'thin' in that it extends only to the original selection and arrangement of the material but does not protect against the wholesale appropriation of the facts themselves. Thus, Feist made clear that a database owner who spends several years and a substantial amount of money to respond to an unmet market for data cannot look to copyright law for protection against a competitor who seeks 'to reap where he has not sown' by reproducing and commercializing the same information in a different format, so long as the competing product does not copy the original selection or arrangement of the underlying information, if any. For example, in *Martindale-Hubbell, Inc. v. Dunhill Int'l List Co.*, No. 88-6767-CIV-ROETTGER (S.D. Fla. Dec. 30, 1994), the court held that wholesale copying of attorney's names, addresses, and other information from the Martindale-Hubbell directory for inclusion in a competing directory was not infringing.

Having no recourse to copyright law, such database producers must rely on state law regimes of contract and unfair competition to protect their investment. While there has been an ongoing and healthy debate as to whether such protections are sufficient, it is clear that the varying nature of the patchwork of state laws has led, at the very least, to some uncertainty among database producers regarding the degree of protection they may expect.

Also of growing importance is the effect of technology on the database industry as a whole. To a large extent, technology has been the fire that has fueled the growth of the database industry. Many also look to emerging technology as the solution to many of the problems sought to be addressed in the current debate. But while technological measures for protecting databases are still emerging, current technology has greatly contributed to the uncertainty that surrounds existing database protections. As databases move from hard-bound printed text versions to fully searchable electronic information-bases, selection and arrangement of the material becomes less important, and copyright protection is further removed. Thus, a database that in print form might be protected by copyright based on its arrangement of facts would likely not be protected by copyright when the same information is placed in a searchable electronic database where the arrangement of the facts is unimportant. And the digital networked environment has made piracy of databases much easier, both in terms of the facility of reproduction and in terms of the ease of unauthorized access to the contents of the database itself.

Finally, recent international proposals for database legislation and have heightened awareness of database piracy and prompted a greater sense of urgency among some to elevate the level of protection for databases in the United States. Most significant among these is the 1996 directive of the European Union requiring its member states to adopt certain protections for both copyrightable and noncopyrightable databases by January 1, 1998. Of particular relevance is a provision withholding protection for those databases produced in countries that do not afford

a similar level of protection for European databases. Thus, failure by the United States to enact legislation extending federal protection to noncopyrightable databases will likely result in the withholding of protection for American databases in Europe--a significant market for U.S. database providers.

Mr. President, I have long been on record as supporting some form of federal protection to fill the gap of protection created by Feist for those databases that are the result of significant effort and investment. Nearly 2 years ago I initiated a process that I hoped would enable Congress to balance the varied interests at stake in order to preserve appropriate incentives for investment in information while promoting the widest possible dissemination of information, as well as the greatest innovation in making information inexpensive and easy to use. I began this process by asking the Copyright Office to conduct a comprehensive study of the issues involved and to make recommendations to the Judiciary Committee. The Register of Copyrights and her staff did an outstanding job in responding to my request, and the

Copyright Office issued a formal report in August 1997, shortly before the 104th Congress adjourned.

Congressman **Coble**, chairman of the Subcommittee on Courts and Intellectual Property in the House of Representatives, spearheaded the effort to report database legislation in the 105th Congress. His subcommittee reported legislation, which was ultimately passed twice by the House of Representatives in the 105th Congress--once under suspension of the rules and then again as title V of the H.R. 2281, the Digital Millennium Copyright Act. I commend him for the hard work that he has done and for his work in bringing the various parties together on this particular issue.

As my Senate colleagues will recall, while the Coble bill encountered very limited opposition on the House floor, it proved to be more controversial in the Senate. In order to address the outstanding concerns of various information users, I requested that the parties sit down under the auspices of the Judiciary Committee to discuss their differences and seek a resolution that was favorable to all. These discussions went on almost daily for approximately three weeks, and considerable progress was made. Based on these meetings, I put forward a series of discussion drafts that sought to narrow the gaps and arrive at an acceptable solution. While ultimately a solution could not be reached before the Congress adjourned, we did make considerable progress. Each of these discussion drafts represented an additional step toward a resolution, and I believe that in the end we were close to a workable compromise.

As we begin the 106th Congress, I want to stand before my colleagues to reiterate my commitment to the timely enactment of database legislation. There are many people that stand to be affected by such legislation, and many points of view about what the proper approach should be. While I am not wedded to a specific proposal or a particular approach, I do believe that any bill should keep in mind the dual priorities of providing the protections necessary to ensure the continued proliferation of databases in the United States and of protecting widespread access to and dissemination of information. In an effort to build upon the progress we made in the Senate last year, I am sharing with my colleagues a discussion draft that is identical to the last of the

discussion drafts I offered last year. I ask unanimous consent that the text of this draft be included in the **Record** immediately after my statement.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

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Mr. HATCH. By putting forward this particular draft I do not mean to suggest that this is necessarily the appropriate starting point for debate in the 106th Congress. Provisions of this draft must be read in light of the circumstances in which they were written, mainly the consideration of the conference report on the Digital Millennium Copyright Act. It does, however, represent a number of significant advances toward consensus as well as ideas and principles that I expect will prove useful in crafting a database bill that meets the above-stated objectives. For these reasons I commend it to my colleagues for their consideration. But there are other approaches we should be cognizant of as we work toward the best possible solution.

First, there is a broad unfair competition model that approaches in some ways a property rights model. The foremost example of this approach has been the House's bills over the past few years. I understand that Chairman **Coble** has introduced a bill in the House that largely reflects the bill that passed by the House last year and that he will be seeking to forge a consensus in the House based on that proposal. I am pleased that he has made this a priority again this year, and I look forward to working with him as I have been privileged to do on so many prior occasions. For the reference of my colleagues, I ask unanimous consent that Mr. **Coble's** bill be printed in the **Record** as an example of the broad model of database protection.

There being no objection, the material was ordered to be printed in the **Record**, as follows:

H. --

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Collections of Information Antipiracy Act'.

SEC. 2. MISAPPROPRIATION OF COLLECTIONS OF INFORMATION.

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

CHAPTER 14--MISAPPROPRIATION OF COLLECTIONS OF INFORMATION

Sec.

1401. Definitions.

1402. Prohibition against misappropriation.

1403. Permitted acts.

1404. Exclusions.

1405. Relationship to other laws.

1406. Civil remedies.

1407. Criminal offenses and penalties.

1408. Limitations on actions.

1401. Definitions

As used in this chapter:

(1) **Collection of information:** The term 'collection of information' means information that has been collected and has been organized for the purpose of bringing discrete items of information together in one place or through one source so that users may access them.

(2) **Information:** The term 'information' means facts, data, works of authorship, or any other intangible material capable of being collected and organized in a systematic way.

(3) **Potential market:** The term 'potential market' means any market that a person claiming protection under section 1402 has current and demonstrable plans to exploit or that is commonly exploited by persons offering similar products or services incorporating collections of information.

(4) **Commerce:** The term 'commerce' means all commerce which may be lawfully regulated by the Congress.

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1402. Prohibition against misappropriation

Any person who extracts, or uses in commerce, all or a substantial part, measured either quantitatively

or qualitatively, of a collection of information gathered, organized, or maintained by another person through the investment of substantial monetary or other resources, so as to cause harm to the actual or potential market of that other person, or a successor in interest of that other person, for a product or service that incorporates that collection of information and is offered or intended to be offered for sale or otherwise in commerce by that other person, or a successor in interest of that person, shall be liable to that person or successor in interest for the remedies set forth in section 1406.

`1403. Permitted acts

`(a) **Educational, Scientific, Research, and Additional Reasonable Uses:**

`(1) **Certain nonprofit educational, scientific, or research uses:** Notwithstanding section 1402, no person shall be restricted from extracting or using information for nonprofit educational, scientific, or research purposes in a manner that does not harm directly the actual market for the product or service referred to in section 1402.

`(2) **Additional reasonable uses:**

`(A) **In general:** Notwithstanding section 1402, an individual act of use or extraction of information done for the purpose of illustration, explanation, example, comment, criticism, teaching, research, or analysis, in an amount appropriate and customary for that purpose, is not a violation of this chapter, if it is reasonable under the circumstances. In determining whether such an act is reasonable under the circumstances, the following factors shall be considered:

`(i) The extent to which the use or extraction is commercial or nonprofit.

`(ii) The good faith of the person making the use or extraction.

`(iii) The extent to which and the manner in which the portion used or extracted is incorporated into an independent work or collection, and the degree of difference between the collection from which the use or extraction is made and the independent work or collection.

`(iv) Whether the collection from which the use or extraction is made is primarily developed for or marketed to persons engaged in the same field or business as the person making the use or extraction.

In no case shall a use or extraction be permitted under this paragraph if the used or extracted portion is offered or intended to be offered for sale or otherwise in commerce and is likely to serve as a market substitute for all or part of the collection from which the use or extraction is made.

`(B) **Definition:** For purposes of this paragraph, the term 'individual act' means an act that is not part of a pattern, system, or repeated practice by the same party, related parties, or parties acting in concert with respect to the same collection of information or a series of related collections of information.

`(b) **Individual Items of Information and Other Insubstantial Parts:** Nothing in this chapter shall prevent the extraction or use of an individual item of information, or other insubstantial part of a collection of information, in itself. An individual item of information, including a work of authorship, shall not itself be considered a substantial part of a collection of information under section 1402. Nothing in this subsection shall permit the repeated or systematic extraction or use of individual items or insubstantial parts of a collection of information so as to circumvent the prohibition contained in section 1402.

`(c) **Gathering or Use of Information Obtained Through Other Means:** Nothing in this chapter shall restrict any person from independently gathering information or using information obtained by means other than extracting it from a collection of information gathered, organized, or maintained by another person through the investment of substantial monetary or other resources.

`(d) **Use of Information for Verification:** Nothing in this chapter shall restrict any person from extracting or using a collection of information within any entity or organization, for the sole purpose of verifying the accuracy of information independently gathered, organized, or maintained by that person.

Under no circumstances shall the information so used be extracted from the original collection and made available to others in a manner that harms the actual or potential market for the collection of information from which it is extracted or used.

`(e) **News Reporting:** Nothing in this chapter shall restrict any person from extracting or using information for the sole purpose of news reporting, including news gathering, dissemination, and comment, unless the information so extracted or used is time sensitive and has been gathered by a news reporting entity, and the extraction or use is part of a consistent pattern engaged in for the purpose of direct competition.

`(f) **Transfer of Copy:** Nothing in this chapter shall restrict the owner of a particular lawfully made copy of all or part of a collection of information from selling or otherwise disposing of the possession of that copy.

`1404. Exclusions

`(a) **Government Collections of Information:**

`(1) **Exclusion:** Protection under this chapter shall not extend to collections of information gathered, organized, or maintained by or for a government entity, whether Federal, State, or local, including any employee or agent of such entity, or any person exclusively licensed by such entity, within the scope of the employment, agency, or license. Nothing in this subsection shall preclude protection under this chapter for information gathered, organized, or maintained by such an agent or licensee that is not within the scope of such agency or license, or by a Federal or State educational institution in the course of engaging in education or scholarship.

`(2) **Exception:** The exclusion under paragraph (1) does not apply to any information required to be collected and disseminated--

`(A) under the Securities Exchange Act of 1934 by a national securities exchange, a registered securities association, or a registered securities information processor, subject to section 1405(g) of this title; or

`(B) under the Commodity Exchange Act by a contract market, subject to section 1405(g) of this title.

`(b) **Computer Programs:**

`(1) **Protection not extended:** Subject to paragraph (2), protection under this chapter shall not extend to computer programs, including, but not limited to, any computer program used in the manufacture, production, operation, or maintenance of a collection of information, or any element of a computer program necessary to its operation.

`(2) **Incorporated collections of information:** A collection of information that is otherwise subject to protection under this chapter is not disqualified from such protection solely because it is incorporated into a computer program.

`(c) **Digital Online Communications:** Protection under this chapter shall not extend to a product or service incorporating a collection of information gathered, organized, or maintained to address, route, forward, transmit, or store digital online communications or provide or receive access to connections for digital online communications.

`1405. Relationship to other laws

`(a) **Other Rights Not Affected:** Subject to subsection (b), nothing in this chapter shall affect rights, limitations, or remedies concerning copyright, or any other rights or obligations relating to information, including laws with respect to patent, trademark, design rights, antitrust, trade secrets, privacy, access to public documents, and the law of contract.

`(b) **Preemption of State Law:** On or after the effective date of this chapter, all rights that are equivalent to the rights specified in section 1402 with respect to the subject matter of this chapter shall be governed exclusively by Federal law, and no person is entitled to any equivalent right in such subject matter under the common law or statutes of any State. State laws with respect to trademark, design rights, antitrust, trade secrets, privacy, access to public documents, and the law of contract shall not be

deemed to provide equivalent rights for purposes of this subsection.

`(c) **Relationship to Copyright:** Protection under this chapter is independent of, and does not affect or enlarge the scope, duration, ownership, or subsistence of, any copyright protection or limitation, including, but not limited to, fair use, in any work of authorship that is contained in or consists in whole or part of a collection of information. This chapter does not provide any greater protection to a work of authorship contained in a collection of information, other than a work that is itself a collection of information, than is available to that work under any other chapter of this title.

`(d) **Antitrust:** Nothing in this chapter shall limit in any way the constraints on the manner in which products and services may be provided to the public that are imposed by Federal and State antitrust laws, including those regarding single suppliers of products and services.

`(e) **Licensing:** Nothing in this chapter shall restrict the rights of parties freely to enter into licenses or any other contracts with respect to the use of collections of information.

`(f) **Communications Act of 1934:** Nothing in this chapter shall affect the operation of the provisions of the Communications Act of 1934 (47 U.S.C. 151 et seq.), or shall restrict any person from extracting or using subscriber list information, as such term is defined in section 222(f)(3) of the Communications Act of 1934 (47 U.S.C. 222(f)(3)), for the purpose of publishing telephone directories in any format.

`(g) **Securities and Commodities Market Information:**

`(1) **Federal agencies and acts:** Nothing in this chapter shall affect--

`(A) the operation of the provisions of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or the Commodity Exchange Act (7 U.S.C. 1 et seq.);

`(B) the jurisdiction or authority of the Securities and Exchange Commission and the Commodity Futures Trading Commission; or

`(C) the functions and operations of self-regulatory organizations and securities information processors under the provisions of the Securities Exchange Act of 1934 and the rules and regulations thereunder, including making market information available pursuant to the provisions of that Act and the rules and regulations promulgated thereunder.

`(2) **Prohibition:** Notwithstanding any provision in subsection (a), (b), (c), (d), or (f) of section 1403, nothing in this chapter shall permit the extraction, use, resale, or other disposition of real-time market information except as the Securities Exchange Act of 1934, the Commodity Exchange Act, and the rules and regulations thereunder may otherwise provide. In addition, nothing in subsection (e) of section 1403 shall be construed to permit any person to extract or use real-time market information in a manner that constitutes a market substitute for a real-time market information service (including the real-time systematic updating of or display of a substantial part of market information) provided on a real-time basis.

`(3) **Definition:** As used in this subsection, the term 'market information' means information relating to quotations and transactions that is collected, processed, distributed, or published pursuant to the provisions of the Securities Exchange Act of 1934 or by a contract market that is designated by the Commodity Futures Trading Commission pursuant to the Commodity Exchange Act and the rules and regulations thereunder.

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`1406. Civil remedies

`(a) **Civil Actions:** Any person who is injured by a violation of section 1402 may bring a civil action for such a violation in an appropriate United States district court without regard to the amount in controversy, except that any action against a State governmental entity may be brought in any court that has jurisdiction over claims against such entity.

`(b) **Temporary and Permanent Injunctions:** Any court having jurisdiction of a civil action under

this section shall have the power to grant temporary and permanent injunctions, according to the principles of equity and upon such terms as the court may deem reasonable, to prevent a violation of section 1402. Any such injunction may be served anywhere in the United States on the person enjoined, and may be enforced by proceedings in contempt or otherwise by any United States district court having jurisdiction over that person.

`(c) **Impoundment:** At any time while an action under this section is pending, the court may order the impounding, on such terms as it deems reasonable, of all copies of contents of a collection of information extracted or used in violation of section 1402, and of all masters, tapes, disks, diskettes, or other articles by means of which such copies may be reproduced. The court may, as part of a final judgment or decree finding a violation of section 1402, order the remedial modification or destruction of all copies of contents of a collection of information extracted or used in violation of section 1402, and of all masters, tapes, disks, diskettes, or other articles by means of which such copies may be reproduced.

`(d) **Monetary Relief:** When a violation of section 1402 has been established in any civil action arising under this section, the plaintiff shall be entitled to recover any damages sustained by the plaintiff and defendant's profits not taken into account in computing the damages sustained by the plaintiff. The court shall assess such profits or damages or cause the same to be assessed under its direction. In assessing profits the plaintiff shall be required to prove defendant's gross revenue only and the defendant shall be required to prove all elements of cost or deduction claims. In assessing damages the court may enter judgment, according to the circumstances of the case, for any sum above the amount found as actual damages, not exceeding three times such amount. The court in its discretion may award reasonable costs and attorney's fees to the prevailing party and shall award such costs and fees where it determines that an action was brought under this chapter in bad faith against a nonprofit educational, scientific, or research institution, library, or archives, or an employee or agent of such an entity, acting within the scope of his or her employment.

`(e) **Reduction or Remission of Monetary Relief for Nonprofit Educational, Scientific, or Research Institutions:** The court shall reduce or remit entirely monetary relief under subsection (d) in any case in which a defendant believed and had reasonable grounds for believing that his or her conduct was permissible under this chapter, if the defendant was an employee or agent of a nonprofit educational, scientific, or research institution, library, or archives acting within the scope of his or her employment.

`(f) **Actions Against United States Government:** Subsections (b) and (c) shall not apply to any action against the United States Government.

`(g) **Relief Against State Entities:** The relief provided under this section shall be available against a State governmental entity to the extent permitted by applicable law.

`1407. Criminal offenses and penalties

`(a) **Violation:**

`(1) **In general:** Any person who violates section 1402 willfully, and--

`(A) does so for direct or indirect commercial advantage or financial gain, or

`(B) causes loss or damage aggregating \$10,000 or more in any 1-year period to the person who gathered, organized, or maintained the information concerned,

shall be punished as provided in subsection (b).

`(2) **Inapplicability:** This section shall not apply to an employee or agent of a nonprofit educational, scientific, or research institution, library, or archives acting within the scope of his or her employment.

`(b) **Penalties:** An offense under subsection (a) shall be punishable by a fine of not more than \$250,000 or imprisonment for not more than 5 years, or both. A second or subsequent offense under subsection (a) shall be punishable by a fine of not more than \$500,000 or imprisonment for not more than 10 years, or both.

`1408. Limitations on actions

- `(a) **Criminal Proceedings:** No criminal proceeding shall be maintained under this chapter unless it is commenced within three years after the cause of action arises.
- `(b) **Civil Actions:** No civil action shall be maintained under this chapter unless it is commenced within three years after the cause of action arises or claim accrues.
- `(c) **Additional Limitation:** No criminal or civil action shall be maintained under this chapter for the extraction or use of all or a substantial part of a collection of information that occurs more than 15 years after the portion of the collection that is extracted or used was first offered for sale or otherwise in commerce, following the investment of resources that qualified that portion of the collection for protection under this chapter. In no case shall any protection under this chapter resulting from a substantial investment of resources in maintaining a preexisting collection prevent any use or extraction of information from a copy of the preexisting collection after the 15 years have expired with respect to the portion of that preexisting collection that is so used or extracted, and no liability under this chapter shall thereafter attach to such acts of use or extraction.'

SEC. 3. CONFORMING AMENDMENTS.

(a) **Table of Chapters:** The table of chapters for title 17, United States Code, is amended by adding at the end the following:

`14. Misappropriation of Collections of Information

1401'.

(b) **District Court Jurisdiction:** (1) Section 1338 of title 28, United States Code, is amended--

(A) in the section heading by inserting `misappropriations of collections of information,' after `trade-marks,'; and

(B) by adding at the end the following:

`(d) The district courts shall have original jurisdiction of any civil action arising under chapter 14 of title 17, relating to misappropriation of collections of information. Such jurisdiction shall be exclusive of the courts of the States, except that any action against a State governmental entity may be brought in any court that has jurisdiction over claims against such entity.'

(2) The item relating to section 1338 in the table of sections for chapter 85 of title 28, United States Code, is amended by inserting `misappropriations of collections of information,' after `trade-marks,'.

(c) **Place for Bringing Actions:** (1) Section 1400 of title 28, United States Code, is amended by adding at the end the following:

`(c) Civil actions arising under chapter 14 of title 17, relating to misappropriation of collections of information, may be brought in the district in which the defendant or the defendant's agent resides or may be found.'

(2) The section heading for section 1400 of title 28, United States Code, is amended to read as follows:

`1400. Patents and copyrights, mask works, designs, and collections of information'.

(3) The item relating to section 1400 in the table of sections at the beginning of chapter 87 of title 28, United States Code, is amended to read as follows:

`1400. Patents and copyrights, mask works, designs, and collections of information.'

(d) **Court of Federal Claims Jurisdiction:** Section 1498(e) of title 28, United States Code, is amended by inserting `and to protections afforded collections of information under chapter 14 of title 17' after `chapter 9 of title 17'.

SEC. 4. EFFECTIVE DATE.

(a) **In General:** This title and the amendments made by this title shall take effect on the date of the enactment of this Act, and shall apply to acts committed on or after that date.

(b) **Prior Acts Not Affected:** No person shall be liable under chapter 14 of title 17, United States Code,

as added by section 2 of this Act, for the use of information lawfully extracted from a collection of information prior to the effective date of this Act, by that person or by that person's predecessor in interest.

Mr. HATCH. Second, there are many who believe a narrower unfair competition model is preferable to the model set forth in the Coble bill. One such proposal has been proposed by certain commercial database users, with the support of the scientific, education, and library communities. I ask unanimous consent that this proposal also be printed in the **Record**.

There being no objection, the material was ordered to be printed in the **Record**, as follows:

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Proposed Bill To Amend Title 17, United States Code, To Promote Research and Fair Competition in the Databases Industry

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Database Fair Competition and Research Promotion Act of 1999'.

SEC. 2. FINDINGS.

Congress finds that--

(1) the United States workforce is increasingly engaged in the creation, processing, distribution, and maintenance of information in interstate and foreign commerce;

(2) comprehensive, trustworthy databases are increasingly a fundamental component of scientific, educational, and social progress;

(3) such databases are also critical to the operation of financial markets and the burgeoning electronic commerce;

(4) the United States public benefits from having ready access to reliable, up-to-date databases concerning virtually all the endeavors of mankind;

(5) the production of accurate, trustworthy databases requires the investment of substantial amounts of human, technical, and financial resources to compile, sort, organize, maintain, verify, and distribute;

(6) the wholesale, unauthorized duplication and dissemination of another person's information product constitutes market-destructive free riding on the investment of the information compiler;

(7) advances in digital technology render information products increasingly vulnerable to database piracy as unauthorized copies may be made and transmitted around the world in a few seconds;

(8) current Federal and State laws, including laws governing copyright, contract, and misappropriation, do not adequately protect investments against this free riding;

(9) the continuing development of digital technology has enabled even the smallest information provider to transact business on a national scale, rendering uniformity essential to the continued growth of interstate commerce;

(10) technology safeguards do not adequately deter database piracy, because such safeguards are not foolproof, add to the cost and difficulty of accessing and delivering information, and provide no recourse once the safeguards have been circumvented;

(11) the United States should set the world standard for effective and balanced database protection, and make a determined effort to ensure similar international protection of these valuable information products;

(12) while wholesale duplication by a competitor diminishes the incentive to invest in database creation, transformative use of the information in new products promotes fair competition, innovation, and consumer welfare;

(13) transformative uses of information are also critical to scientific research and the advancement of knowledge;

(14) transformative uses of information are essential to free speech, a free press, and democratic institutions;

(15) any legal regime designed to prevent unfair competition in databases must be carefully crafted so as not to prevent fair competition;

(16) in addition to database piracy, database publishers are also harmed by other publishers misrepresenting various aspects of the information included in their database, including its source, currency, and comprehensiveness;

(17) these misrepresentations also harm consumers who rely upon them, thereby diminishing the credibility of the database industry as a whole;

(18) new legislation is needed to protect the substantial investments involved in the production and dissemination of databases in interstate commerce.

SEC. 3. PROMOTION OF FAIR DATABASE COMPETITION.

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

CHAPTER 14--FAIR DATABASE COMPETITION

Sec.

1401. Prohibition Against Duplication.

1402. Permitted acts.

1403. Exclusions.

1404. Prohibition Against Misrepresentation.

1405. Definitions.

`1406. Relationship to other laws.

`1407. Limitations on Liability.

`1408. Civil remedies.

`1409. Limitations on actions.

`SEC. 1401. PROHIBITION AGAINST DUPLICATION.

`It is unlawful for a person to duplicate a database collected and organized by another person in a database that competes in commerce with that other database.

`SEC. 1402. PERMITTED ACTS.

`(a) **Collecting or Use of Information Obtained Through Other Means:** Nothing in this chapter shall restrict any person from independently collecting information or using information obtained by means other than by duplicating it from a database collected and organized by another person.

`(b) **News Reporting:** Nothing in this chapter shall restrict any person from duplicating a database for the sole purpose of news reporting, including news gathering and dissemination, or comment, unless the information duplicated is time sensitive and has been collected by a news reporting entity, and the duplication is part of a consistent pattern engaged in for the purpose of direct competition.

`(c) **Law Enforcement and Intelligence Activities:** Nothing in this chapter shall prohibit an officer, agent, or employee of the United States, a State, or a political subdivision of a State, or a person acting under contract of one of the enumerated officers, agents or employees, from duplicating a database as part of lawfully authorized confidential investigative, protective, or intelligence activities.

`(d) Genealogical Information:

`(1) **In general:** No person shall be restricted from using genealogical information for nonprofit, religious purposes, or from using, for private, noncommercial purposes, genealogical information that has been gathered, organized, or maintained for nonprofit, religious purposes.

`(2) **Definition:** For purposes of this subsection, 'genealogical information' includes, but is not limited to, data indicating the date, time, and/or place of an individual's birth, christening, marriage, death, or burial, the identity of an individual's parents, spouse, children or siblings, and other information useful in determining the identity of ancestors.

`(e) **Scientific, Educational, or Research Uses:** No person or entity who for scientific, educational, or research purposes duplicates the same information that has been collected or generated by another person or entity shall incur liability under this chapter so long as such conduct is not part of a consistent pattern engaged in either for the purpose of direct competition with that other person or for the purpose of avoiding payment of reasonable fees for access to a database incorporated into a product or service specifically marketed for educational or research purposes.

`SEC. 1403. EXCLUSIONS.

`(a) Government Information:

`(1) **Exclusion:** Protection under Section 1 shall not extend to government databases.

`(2) The incorporation of all or part of a government database into a non-government database does not preclude protection for the portions of the non-government database which came from a source other

than the government database.

`(3) Nothing in this chapter shall prevent a federal, state, or local government entity from determining that a database, the creation or maintenance of which is substantially funded by that entity, shall not be subject to the protection afforded under this chapter.

`(b) **Databases Related to Digital Communications:** Protection under Section 1 does not extend to a database incorporating information collected or organized to perform the function of addressing, routing, forwarding, transmitting, or storing digital online communications or the function of providing or receiving connections for digital online communications.

`(c) Computer Programs:

`(1) **Protection not extended:** Subject to paragraph (2), protection under Section 1 shall not extend to computer programs, including, but not limited to, any computer program used in the manufacture, production, operation, or maintenance of a database, or any element of a computer program necessary to its operation.

`(2) **Incorporated databases:** A database that is otherwise subject to protection under Section 1 is not disqualified from such protection solely because it resides in a computer program, so long as the database does not, in whole or in part, function as an element necessary to the operation of the computer program.

`(d) **Nonprotectable Subject Matter:** Protection for databases under Section 1 does not extend to any idea, fact, procedure, system, method of operation, concept, principle or discovery, as distinct from a database protected under Section 1.

`SEC. 1404. PROHIBITION AGAINST MISREPRESENTATION.

`It shall be unlawful for any person, in connection with the use in commerce of any database, to misrepresent:

`(a) the sponsorship or approval of the database by any other person;

`(b) the affiliation, connection, or association of the person with any other person;

`(c) the qualities of the information contained in the database, including its source, currency, or comprehensiveness; or

`(d) the extent of the person's responsibility for the collection and organization of the information contained in the database.

`SEC. 1405. DEFINITIONS.

`As used in this chapter:

`(1) **Database:** The term 'database' means a collection of discrete items of information that have been collected and organized in a single place, or in such a way as to be accessible through a single source, through the investment of substantial monetary or other resources, for the purpose of providing access to those discrete items of information by users of the database.

`(2) **Information:** The term 'information' means facts, data, or any other intangible material capable of being collected and organized in a systematic way, with the exception of works of authorship.

`(3) **Commerce:** The term 'commerce' means all commerce which may be lawfully regulated by the

Congress.

`(4) **Competes in commerce:** The term 'competes in commerce' means that the database (A) is substantially the same as the protected database, (B) displaces substantial sales or licenses of the protected database; and (C) is either offered for sale or license for commercial advantage or is distributed to the public over a digital network, in such a manner as to significantly diminish the incentive to invest in the collecting or organizing of the protected database.

`(5) **Government database:** The term 'government database' means a database (A) that has been collected or maintained by the United States of America; or (B) that is required by federal statute or regulation to be collected or maintained, to the extent so required.

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`SEC. 1406. RELATIONSHIP TO OTHER LAWS.

`(a) **Other Rights Not Affected:** Subject to subsection (b), nothing in this chapter shall affect rights, limitations, or remedies concerning copyright, or any other rights or obligations relating to information, including laws with respect to patent, trademark, design rights, antitrust, trade secrets, privacy, access to public documents, misuse, and the law of contract.

`(b) **Preemption of State Law:** On or after the effective date of this chapter, all rights that are equivalent to the rights specified in section 1 with respect to the subject matter of this chapter shall be governed exclusively by Federal law, and no person is entitled to any equivalent right in such subject matter under the common law or statutes of any State.

`(c) **Licensing:** Subject to the provisions on misuse in Section 7(b), nothing in this chapter shall restrict the rights of parties freely to enter into licenses or any other contracts with respect to the use of information.

`(d) **Communications Act of 1934:** Nothing in this chapter shall affect the operation of the Communications Act of 1934 (47 U.S.C. 151 et seq.). Nor shall this chapter restrict any person from using subscriber list information, as such term is defined in section 222(f)(3) of the Communications Act of 1934 (47 U.S.C. 222(f)(3)).

`(e) **Securities Exchange and Commodity Exchange Act:** Nothing in this chapter shall affect the operation of the provisions of the Securities Exchange Act of 1934 of the Commodity Exchange Act.

`SEC. 1407. LIMITATIONS ON LIABILITY.

`(a) Service Provider Liability:

`(1) Subject to the limitations of paragraph (2), a provider of online services or network access, or the operator of facilities therefor, shall not be liable for a violation of Section 1 by reason of:

`(A) transmitting, routing, or providing connections for, material through a system or network controlled or operated by or for the service provider;

`(B) providing storage of that material on a system or network controlled by or operated for the service provider; or

`(C) referring or linking users to an online location at which infringing material is located.

`(2) **Conditions:** The limitation on liability set forth in paragraph (1)(B) and (C) shall apply, provided that--

`(A) the service provider did not initially place the material on the system;

`(B) the service provider does not have actual knowledge that the material violates Section 1 or, in the absence of such actual knowledge, is not aware of facts or circumstances from which such violation is apparent; or

`(C) upon obtaining such knowledge or awareness, acts expeditiously to remove the material or to disable its use, to the extent such removal or disablement is technically feasible, effective and economically reasonable.

`(3) **Notification of claimed violation:** A service provider will be presumed to have actual knowledge of a violation of Section 1 if it receives adequate notification of a claimed violation in compliance with the requirements as set forth in 17 U.S.C. 512(c)(4) from a person who is injured by a violation of Section 1 or his designated agents.

`(4) **Reenabling of use:** If a person claiming to be injured by a violation of Section 1 does not obtain a court order enjoining the alleged violation within ten days of the service provider disabling the use, the alleged infringer may request the service provider to reenable the use; and upon receiving such request in compliance with the requirements as set forth in 17 U.S.C. 512(f)(3), the service provider may reenable the use without becoming liable for a violation of Section 1.

`(5) **Limitation on other liability:** A service provider shall not be liable to any claim based on the service provider's good faith removal, or disabling of a use, of material claimed to violate Section 1 or based on facts or circumstances from which such violation is apparent, regardless of whether a violation is ultimately determined to have occurred.

`(6) **Misrepresentations:** Any person who knowingly misrepresents that material or activities violate Section 1 shall be liable for any damages, including costs and attorneys' fees, incurred by the alleged violator or by the service provider who is injured by such misrepresentation.

`(b) **Misuse:** The relief provided under this chapter shall not be available to a person who misuses the protection afforded a database under this chapter. In determining whether a person has misused the protection afforded under this chapter, a court shall consider, among other factors:

`(1) The extent to which the ability of persons to engage in the permitted acts under this chapter has been frustrated by contractual arrangements or technological measures;

`(2) the extent to which information contained in a database that is the sole source of the information contained therein is made available through licensing or sale on reasonable terms and conditions;

`(3) the extent to which the license or sale of information contained in a database protected under this chapter has been conditioned on the acquisition or license of any other product or service, or on the performance of any action, not directly related to the license or sale;

`(4) the extent to which access to information necessary to research, competition, or innovation purposes has been prevented;

`(5) the extent to which the manner of asserting rights granted under this chapter constitutes a barrier to entry into the relevant database market; and

`(6) the extent to which the judicially developed doctrines of misuse in other areas of the law may appropriately be extended to the case in controversy.

`SEC. 1408. CIVIL REMEDIES.

^(a) **Civil Actions:** Any person who is injured by a violation of Section 1 or Section 4 may bring a civil action for such a violation in an appropriate United States district court without regard to the amount in controversy, except that any action against a State government entity may be brought in any court that has jurisdiction over claims against such entity.

^(b) **Temporary and Permanent Injunctions.**--Any court having jurisdiction of a civil action under this section shall have the power to grant temporary and permanent injunctions, according to the principles of equity and upon such terms as the court may deem reasonable, to prevent a violation of section 1 or 4. Any such injunction may be served anywhere in the United States on the person enjoined, and may be enforced by proceedings in contempt or otherwise by any United States district court having jurisdiction over that person.

^(c) **Impoundment:** At any time while an action under this section is pending, the court may order the impounding, on such terms as it deems reasonable, of all copies of databases made in violation of section 1, and of all masters, tapes, disks, diskettes, or other articles by means of which such copies may be reproduced. The court may, as part of a final judgment or decree finding a violation of section 1, order the remedial modification or destruction of all copies of databases made in violation of section 1, and of all masters, tapes, disks, diskettes, or other articles by means of which such copies may be reproduced.

^(d) **Monetary Relief:**

^(1) When a violation of section 1 has been established in any civil action arising under this section, the plaintiff shall be entitled, subject to the principles of equity, to recover defendant's profits and any damages sustained by the plaintiff. In assessing profits the plaintiffs shall be required to prove defendant's sales only; defendant must prove all elements of cost or deduction claims. In assessing damages the court may enter judgment, according to the circumstances of the case, for any sum above the amount found as actual damages, not exceeding three times such amount.

^(2) When a violation of Section 4 has been established, the plaintiff shall be entitled to recover, subject to the principles of equity, any damages sustained.

^(3) The court in its discretion may award reasonable costs and attorney's fees to the prevailing party and shall award such costs and fees where it determines that an action was brought under this chapter in bad faith against a nonprofit scientific, research, or educational institution, library or archives, or against an employee or agent of such entity, acting within the scope of his or her employment.

^(e) **Reduction or Remission of Remedies for Nonprofit Scientific, Educational, or Research Institutions:** The court shall reduce or remit entirely monetary relief under subsection (d) in any case in which the defendant believed, and had reasonable grounds for believing, that his or her conduct was permissible under this chapter, if the defendant was an employee or agent of a nonprofit scientific, educational, or research institution, library or archives, acting within the scope of his or her employment.

^(f) **Actions Against United States Government:** Subsections (b) and (c) shall not apply to any action against the United States Government.

^(g) **Relief Against State Entities:** The relief provided under this section shall be available against a State governmental entity to the extent permitted by applicable law.

^(h) **Sole Source Databases:** If the court determines that a defendant who has violated Section 1 could not have independently collected the information taken from the plaintiff's database in a commercially practicable manner, the relief available to the plaintiff shall be limited to the plaintiff's actual damages, measured by a reasonable royalty.

^SEC. 1409. LIMITATIONS ON ACTIONS.

`(a) No civil action shall be maintained under the provisions of this chapter unless it is commenced within three years after the claim accrued.

`(b) No civil action shall be maintained under the provisions of this chapter for the duplication of a database collected and organized prior to the effective date of this Act.

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SEC. 4. CONFORMING AMENDMENT.

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

CHAPTER 14--PROTECTION OF DATABASES

SEC. 5. EFFECTIVE DATE.

(a) **In General:** This Act and the amendments made by this Act shall take effect on the date of the enactment of this Act, and shall apply to acts committed on or after that date.

`(b) **Prior Acts Not Affected:** No person shall be liable under chapter 14 of title 17, United States Code, as added by section 2 of this Act, for the acts done prior to the effective date of this Act, by that person or by that person's predecessor in interest.

SEC. 6. REPORT TO CONGRESS.

Not later than 24 months after the date of enactment of this Act, the Copyright Office, after consultation with appropriate agencies, which may include the Department of Justice, the Patent and Trademark Office, and the Federal Trade Commission, shall report to the Congress on the effect this Act has had on the United States database industry and related parties, including--

(a) the extent of competition between database producers, including the concentration of market power within the database industry;

(b) the investment in the development and maintenance of databases, including changes in the number and size of databases;

(c) the availability of information to industries and researchers which rely upon such availability; and

(d) whether in the period after enactment of this legislation database producers have faced unfair competition, particularly from publishers in the European Union.

The report shall include legislative recommendations, if any.

Mr. HATCH. I include this proposal in the **Record** hoping that it will also help our deliberations be more fully informed and spur discussion of the merits of each approach. The existence of, and my dissemination of, these various approaches, however, should not be used to delay prompt action on this important issue.

In short, Mr. President, as we rapidly approach the new millennium, it is time for Congress to act to ensure adequate federal protection for American investment in information. I intend this to be a high priority in the Judiciary Committee this year and intend to move forward with hearings and timely consideration of appropriate legislation. I look forward to working with the interested parties in an effort

to build consensus in this area, and I encourage my colleagues to join with me in support of this process.

Exhibit 1

S. --

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Database Antipiracy Act of 1999.'

SEC. 2. FINDINGS.

Congress finds that--

- (1) the United States workforce is increasingly engaged in the creation, processing, distribution, and maintenance of information in interstate and foreign commerce;
- (2) comprehensive, trustworthy collections of information are increasingly a fundamental component of scientific, educational, and social progress;
- (3) the United States public benefits from having ready access to reliable, up-to-date collections of information concerning virtually all the endeavors of mankind;
- (4) the production of accurate, trustworthy collections of information requires the investment of substantial amounts of human, technical, and financial resources to compile, sort, organize, maintain, verify, and distribute;
- (5) the wholesale, unauthorized copying, and dissemination of another person's information product constitutes market-destructive free riding on the investment of the information compiler;
- (6) advances in digital technology render informational products increasingly vulnerable to database piracy as unauthorized copies may be made and transmitted around the world in a few seconds;
- (7) current Federal and State laws, including laws governing copyright, contract, and misappropriation, do not adequately protect investments against this free riding;
- (8) as a result of the decision of the United States Supreme Court in *Feist Publications, Inc. v. Rural Telephone Services Co.*, 499 United States 340 (1991), and certain decisions of the inferior courts of the United States, the copyright law affords members of the United States business community, both individuals and entities who create and distribute compilations of data less certain protection against piracy;
- (9) legislation is needed to ensure that legitimate access to discrete data is not impaired while also encouraging persons to identify, collect, verify, and add value to such information and make it available for study, enjoyment, and use;
- (10) the piecemeal, inconsistent protection for databases provided by State misappropriation and contract laws inadequately protects the investment of database compilers from destructive acts of free riding;
- (11) the continuing development of digital technology has enabled even the smallest information

provider to transact business on a national scale, rendering uniformity essential to the continued growth of interstate commerce;

(12) technology safeguards do not adequately deter database piracy, because such safeguards are not foolproof, add to the cost and difficulty of accessing and delivering information, and provide no recourse once the safeguards have been circumvented;

(13) the United States should set the world standard for effective and balanced database protection, and make a determined effort to ensure similar international protection of these valuable information products;

(14) database piracy, if left unchecked by Congress, will so reduce the incentive to produce these products that the quality or existence will be significantly threatened or eliminated; and

(15) new legislation is needed to protect the substantial investments involved in the production and dissemination of collections of information in interstate commerce.

SEC. 3. MISAPPROPRIATION OF DATABASES.

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

CHAPTER 13--MISAPPROPRIATION OF DATABASES

Sec.

1301. Definitions.

1302. Prohibition against misappropriation.

1303. Permitted acts.

1304. Permitted use for certain purposes.

1305. Exclusions.

1306. Relationship to other laws.

1307. Certain instructional activities and library uses.

1308. Civil remedies.

1309. Criminal offenses and penalties.

1310. Limitations on actions.

1311. Deposit of databases.

1301. Definitions

As used in this chapter:

(1) **Database:** The term 'database' means a collection of discrete items of information that have been collected and organized in a single place, or in such a way as to be accessible through a single source, for the purpose of providing access to those discrete items of information by users of the database.

`(2) **Information:** The term `information' means facts, data, works of authorship, or any other intangibles capable of being collected and organized in a systematic way.

`(3) **Neighboring market:** The term `neighboring market' means any market that is commonly exploited by persons offering similar products or services incorporating databases.

`(4) **Commerce:** The term `commerce' means all commerce which may be lawfully regulated by the Congress.

`(5) **Product or service:** A product or service incorporating a database does not include a product or service incorporating a database that has been gathered, organized, or maintained to perform the function of addressing, routing, forwarding, transmitting or storing digital online communications or the function of providing or receiving connections for digital online communications.

`(6) **Government database:** The term `government database' means a database that has been created or maintained by or for a government entity, whether Federal, State, or local--

`(A) that is created or maintained by an employee or agent of such government entity, or any person exclusively licensed by such entity, acting within the scope of his or her employment, agency, or license;

`(B) the creation or maintenance of which is substantially funded by such government entity; or

`(C) that is required by statute or regulation to be created or maintained, to the extent so required, except that such term does not include a database that is required by a statute or regulation to be created or maintained where such database or a prior version, was first created or maintained prior to the enactment of such statute or regulation.

`(7) **Government information:** The term `government information' means information produced or otherwise generated by or for a government entity, whether Federal, State, or local--

`(A) that is produced or otherwise generated by an employee or agent of such government entity or any person exclusively licensed by such entity, acting within the scope of his or her employment, agency, or exclusive license; or

`(B) the production or generation of which is substantially funded by such government entity.

`1302. Prohibition against misappropriation

`Any person who extracts, or uses in commerce, all or a substantial part, measured either quantitatively or qualitatively, of a database gathered, organized, or maintained by another person through the investment of substantial monetary or other resources, so as to cause substantial harm to the actual or neighboring market of that other person, or a successor in interest of that other person, for a product or service that incorporates that database and is offered or intended to be offered for sale or otherwise in commerce by that other person, or a successor in interest of that person, shall be liable to that person or successor in interest for the remedies set forth in section 1308.

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`1303. Permitted acts

`(a) **Individual Items of Information and Other Insubstantial Parts:** Nothing in this chapter shall prevent the extraction or use of an individual item of information, or other insubstantial part of a database, in itself. An individual item of information, including a work of authorship, shall not itself be considered a substantial part of a database under section 1302. Nothing in this subsection shall permit the repeated or systematic extraction or use of individual items or insubstantial parts of a database so as

to circumvent the prohibition contained in section 1302.

`(b) **Gathering or Use of Information Obtained Through Other Means:** Nothing in this chapter shall restrict any person from independently gathering information or using information obtained by means other than extracting it from a database gathered, organized, or maintained by another person through the investment of substantial monetary or other resources.

`(c) **Nonprofit Educational, Scientific, or Research Uses:** Notwithstanding section 1302, no person shall be restricted from extracting or using information for nonprofit educational, scientific, or research purposes in a manner that does not harm directly the actual market for the product or service referred to in section 1302.

`(d) **Genealogical Information:**

`(1) **In general:** Notwithstanding section 1302, no person shall be restricted from extracting or using genealogical information for nonprofit, religious purposes, or from extracting or using, for private, noncommercial purposes, genealogical information that has been gathered, organized, or maintained for nonprofit, religious purposes.

`(2) **Definition:** For purposes of this subsection, 'genealogical information' includes, but is not limited to, data indicating the date, time and/or place of an individual's birth, christening, marriage, death, or burial, the identity of an individual's parents, spouse, children or siblings, an other information useful in determining the identity of ancestors.

`(e) **News Reporting:** Nothing in this chapter shall restrict any person from extracting or using information for the sole purpose of news reporting, including news gathering and dissemination, or comment, unless the information so extracted or used is time sensitive and has been gathered by a news reporting entity, and the extraction or use is part of a consistent pattern engaged in for the purpose of direct competition.

`(f) **Transfer of Copy:** Nothing in this chapter shall restrict the owner of a particular lawfully made copy of all or part of a database from selling or otherwise disposing of the possession of that copy.

`(g) **Law Enforcement and Intelligence Activities:** Nothing in this chapter shall prohibit an officer, agent, or employee of the United States, a State, or a political subdivision of a State, or a person acting under contract of one of the enumerated officers, agents, or employees from extracting and using information as part of lawfully authorized confidential investigative, protective, or intelligence activities.

`1304. Permitted use for certain purposes

`(a) **In General:** Nothing in this Chapter shall prohibit or otherwise restrict the extraction or use of a database protected under this chapter for the following purposes--

`(1) for illustration, explanation or example, comment or criticism, internal verification, or scientific or statistical analysis of the portion used or extracted; and

`(2) in the case of nonprofit scientific, educational or research activities by nonprofit organizations, for similar customary or transformative purposes.

`(b) **Certain Use Not Permitted:** In no case may a use or extraction for a purpose described in subsection (a) be permitted if the substantial harm referred to in section 1302--

`(1) arises because the amount of the portion used or extracted is more than is reasonable and customary for the purpose;

`(2) consists of the use or extraction being intended to, or being likely to, serve as a substitute for or to supplant all or a substantial part of the database from which the extraction or use is made or an adaptation thereof that is protected under this chapter;

`(3) arises because the extraction or use is intended to avoid payment of reasonable fees for use of a database incorporated into a product or service specifically marketed for educational, scientific or research purposes; or

`(4) arises because the use or extraction is part of a pattern, system, or repeated practice by the same party, related parties, or parties acting in concert with respect to the same database or a series of related databases.

`1305. Exclusions

`(a) Government Databases:

`(1) **Exclusion.**--Protection under this chapter shall not extend to government databases.

`(2) The adoption or incorporation of, or reference to, a non-government database otherwise protected under section 1302 into or in a government publication, regulation, or statute does not preclude protection for such non-government database under this chapter.

`(3) The incorporation of all or part of a government database into a non-government database otherwise protected under section 1302 does not preclude protection for such non-government database under this chapter.

`(b) Availability of Government Databases and Government Information Incorporated Into Databases:

`(1) Any person, or a successor in interest, who has incorporated all or part of a government database into a database subject to protection under section 1302 of this chapter, or who has incorporated government information into a database subject to protection under section 1302 of this chapter, shall provide the ability to extract or use the information so incorporated to any person so requesting, where such person is acting within the scope of his or her employment by a nonprofit library, archives, educational, scientific, or research institution, provided that--

`(A) the request for such extraction or use is accompanied by a written statement--

`(i) clearly identifying the information to be extracted or used, in whole or in part; and

`(ii) providing evidence of reasonable, good faith efforts made to obtain such information from other sources;

`(B) the person requesting the ability to extract or use such information can show that such extraction or use is necessary to further a legitimate nonprofit educational, scientific, or research activity;

`(C) the person who has incorporated such information as part of his or her database, or a successor in interest, can reasonably identify, extract, and provide the requested information as first obtained from the government entity, employee, agent, or exclusive licensee, in the original format, separate and apart from other portions of the database; and

`(D) the person requesting such extraction or use reimburses the person who has gathered, organized or maintained such information for the costs of identification, extraction and delivery.

`(2) In cases where a dispute arises as to whether a request made for the ability to extract or use government information or information incorporated into a protected database from a government

database, or a response thereto, satisfies the requirements of subsection (b)(1), the court shall determine whether such request was reasonably made or denied and may, upon finding that the request was denied in bad faith, order the person to whom the request was made to provide the ability extract or use the requested information without reimbursement, to pay all costs and attorney's fees incurred by the person making such request, or both

`(c) **Exception:** The exclusions under subsections (a)(1) and (b) do not apply to any information required to be collected and disseminated--

`(1) under the Securities Exchange Act of 1934 by a national securities exchange, a registered securities association, or a registered securities information processor, subject to section 1306(g) of this title; or

`(2) under the Commodity Exchange Act by a contract market, subject to section 1306(g) of this title.

`(d) Computer Programs:

`(1) **Protection Not Extended:** Subject to paragraph (2), protection under this chapter shall not extend to computer programs, including, but not limited to, any computer program used in the manufacture, production, operation, or maintenance of a database, or any element of a computer program necessary to its operation.

`(2) **Incorporated Databases:** A database that is otherwise subject to protection under this chapter is not disqualified from such protection solely because it resides in a computer program, so long as the database does not, in whole or in part, function as an element necessary to the operation of the computer program.

`1306. Relationship to other laws

`(a) **Other Rights Not Affected:** Subject to subsection (b), nothing in this chapter shall affect rights, limitations, or remedies concerning copyright, or any other rights or obligations relating to information, including laws with respect to patent, trademark, design rights, antitrust, trade secrets, privacy, access to public documents, fraud and other inequitable conduct (including, where applicable, misuse), and the law of contract.

`(b) **Preemption of State Law:** On or after the effective date of this chapter, all rights that are equivalent to the rights specified in section 1302 with respect to the subject matter of this chapter shall be governed exclusively by Federal law, and no person is entitled to any equivalent right in such subject matter under the common law or statutes of any State. State laws with respect to trademark, design rights, antitrust, trade secrets, privacy, access to public documents, and the law of contract shall not be deemed to provide equivalent rights for purposes of this subsection.

`(c) **Relationship to Copyright:** Protection under this chapter is independent of, and does not affect or enlarge the scope, duration, ownership, or subsistence of, any copyright protection or limitation, including, but not limited to, fair use, in any work of authorship that is contained in or consists in whole or part of a database. This chapter does not provide any greater protection to a work of authorship contained in a database, other than a work that is itself a database, than is available to that work under any other chapter of this title.

`(d) **Antitrust:** Nothing in this chapter shall limit in any way the constraints on the manner in which products and services may be provided to the public that are imposed by Federal and State antitrust laws, including those regarding single suppliers of products and services.

`(e) **Licensing:** Nothing in this chapter shall restrict the rights of parties freely to enter into licenses or any other contracts with respect to the use of databases.

`(f) **Communications Act of 1934:** Nothing in this chapter shall affect the operation of the provisions of the Communications Act of 1934 (47 U.S.C. 151 et seq.). Nor shall this chapter restrict any person from extracting or using subscriber list information, as such term is defined in section 222(f)(3) of the Communications Act of 1934 (47 U.S.C. 222(f)(3)).

`(g) **Securities and Commodities Market Information:**

`(1) **Federal agencies and acts:** Nothing in this Act shall affect:

`(A) the operation of the provisions of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or the Commodity Exchange Act (7 U.S.C. 1 et seq.);

`(B) the jurisdiction or authority of the Securities and Exchange Commission and the Commodity Futures Trading Commission; or

`(C) the functions and operations of self-regulatory organizations and securities information processors under the provisions of the Securities Exchange Act of 1934 and the rules and regulations thereunder, including making market information available pursuant to the provisions of that Act and the rules and regulations promulgated thereunder.

`(2) **Rules of construction:** Nothing in subsection (e) of section 1303 shall be construed to permit any person to extract or use real-time market information in a manner that constitutes a market substitute for a real-time market information service (including the real-time systematic updating of or display of a substantial part of market information) provided on a real-time basis.

`(3) **Definition:** As used in this subsection, the term `market information' means information relating to quotations and transactions that is collected, processed, distributed, or published pursuant to the provisions of the Securities Exchange Act of 1934 or by a contract market that is designated by the Commodity Futures Trading Commission pursuant to the Commodity Exchange Act and the rules and regulations thereunder.

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`1307. Certain instructional activities and library uses

`(a) It shall not be a violation of 1302 to display visually the content of a lawfully obtained database if--

`(1) such display occurs in the course of formal, face-to-face teaching activities in a classroom or similar instructional location of a nonprofit educational institution; or

`(2) such display occurs in the course of, and as a directly relevant and integral part, of a transmission, where such transmission is a regular part of a systematic instructional activity of a nonprofit educational institutional or governmental body, and is made primarily for reception--

`(A) in classrooms or similar places of instruction;

`(B) by persons whose disabilities prevent attendance at such classroom or place of instruction; or

`(C) by government offices or employees as part of their official duties or employment.

`(b) It shall not be a violation of 1302 for a nonprofit library accessible to the public to make no more than--

`(1) one copy, in either analog or digital form, of all or a portion of--

`(A) an undisseminated database in the library's current collection if such copy is made solely for the purpose of preservation and security in connection with that library's collection; and

`(B) a disseminated and commercially available database for the sole purpose of replacing in that library's collection, material that is damaged or deteriorating, or has been lost or stolen if the library has reasonably determined that a replacement cannot be commercially purchased, licensed or otherwise obtained,

provided that any copy made in digital format is neither further reproduced or distributed in that format nor made available to the public outside of the physical premises of that library;

`(2) one analog copy of all or a portion of an undisseminated database in the library's current collection for the sole purpose of research use in another nonprofit publicly accessible library; or

`(3) one analog copy of a small portion of a database in connection with standard and customary library transactions, including inter-library arrangements, for the benefit of a specific user who takes permanent possession of that copy, if the library--

`(A) has no notice that the copy would be used for purposes other than private study;

`(B) is not aware that it is involved in related or concerted multiple or cumulative copying; and

`(C) is not engaged in systematic activity other than through its mere participation in the interlibrary arrangement.

`(c) Nothing in this section affects any contractual obligation assumed by the library, educational institution or governmental body as part of a donor, subscription, license, or other arrangement.

`1308. Civil remedies

`(a) **Civil Actions.**--Any person who is injured by a violation of section 1302 may bring a civil action for such a violation in an appropriate United States district court without regard to the amount in controversy, except that any action against a State governmental entity may be brought in any court that has jurisdiction over claims against such entity.

`(b) **Temporary and Permanent Injunctions.**--Any court having jurisdiction of a civil action under this section shall have the power to grant temporary and permanent injunctions, according to the principles of equity and upon such terms as the court may deem reasonable, to prevent a violation of section 1302. Any such injunction may be served anywhere in the United States on the person enjoined, and may be enforced by proceedings in contempt or otherwise by any United States district court having jurisdiction over that person.

`(c) **Impoundment.**--At any time while an action under this section is pending, the court may order the impounding, on such terms as it deems reasonable, of all copies of contents of a database extracted or used in violation of section 1302, and of all masters, tapes, disks, diskettes, or other articles by means of which such copies may be reproduced. the court may, as part of a final judgment or decree finding a violation of section 1302, order the remedial modification or destruction of all copies of contents of a database extracted or used in violation of section 1302, and of all masters, tapes, disks, diskettes, or other articles by means of which such copies may be reproduced.

`(d) **Monetary Relief.**--When a violation of section 1302 has been established in any civil action arising under this section, the plaintiff shall be entitled to recover any damages sustained by the plaintiff and defendant's profits not taken into account in computing the damages sustained by the plaintiff. the court shall assess such profits or damages or cause the same to be assessed under its direction. In assessing profits the plaintiff shall be required to prove defendant's gross revenue only and the defendant shall be

required to prove all elements of cost or deduction claims. In assessing damages the court may enter judgment, according to the circumstances of the case, for any sum above the amount found as actual damages, not exceeding three times such amount, provided that the database that is the subject of the judgment has been properly deposited pursuant to section 1311. the court in its discretion may award reasonable costs and attorney's fees to the prevailing party and shall award such costs and fees where it determines that an action was brought under this chapter in bad faith against a nonprofit educational, scientific, or research institution, library, or archives, or an employee or agent of such an entity, acting within the scope of his or her employment.

(e) Reduction or Remission of Monetary Relief for Nonprofit Educational, Scientific, or Research Institutions.--The court shall reduce or remit entirely monetary relief under subsection (d) in any case in which a defendant believed and had reasonable grounds for believing that his or her conduct was permissible under this chapter, if the defendant was an employee or agent of a nonprofit educational, scientific, or research institution, library, or archives acting within the scope of his or her employment.

(f) Actions Against United States Government.--Subsections (b) and (c) shall not apply to any action against the United States Government.

(g) Relief Against State Entities.--The relief provided under this section shall be available against a State governmental entity to the extent permitted by applicable law.

1309. Criminal offenses and penalties

(a) Violation.--

(1) In general.--Any person who violates section 1302 willfully shall be punished as provided in subsection (b), provided such violation--

(A) is committed for direct or indirect commercial advantage or financial gain; or

(B) causes loss or damage aggregating \$10,000 or more in any 1-year period to the person who gathered, organized, or maintained the information concerned.

(2) Inapplicability.--This section shall not apply to an employee or agent of a nonprofit education, scientific, or research institution, library, or archives acting within the scope of his or her employment.

(b) Penalties.--(1) Any person who commits an offense under subsection (a) shall be punishable by a fine of not more than \$100,000 or imprisonment for not more than 1 year;

(2) Any person who commits an offense under subsection (a) and causes loss or damage aggregating \$20,000 or more in any 1-year period to the person who gathered, organized, or maintained the information concerned, shall be punishable by a fine of not more than \$250,000 or imprisonment for not more than 5 years;

(3) Any person who commits a second or subsequent offense under subsection (a) shall be punishable by a fine of not more than \$500,000 or imprisonment for not more than 10 years.

1310. Limitations on actions

(a) Criminal Proceedings.--No criminal proceeding shall be maintained under this chapter unless it is commenced within three years after the cause of action arises.

(b) Civil Actions.--No civil action shall be maintained under this chapter unless it is commenced within three years after the cause of action arises or claim accrues.

^(c) **Additional Limitation.**--No criminal or civil action shall be maintained under this chapter for the extraction or use of all or a substantial part of a database that occurs more than 15 years after the end of the calendar year in which the portion of the database that is extracted or used was first offered for sale or otherwise in commerce, by the person claiming protection under this chapter or that person's predecessor in interest, after the investment of resources was made that qualified that portion of the database for protection under this chapter. In no case shall the renewal of protection for any part of parts of an existing database owing to the substantial investment of resources in updating or maintaining that database prevent any use or extraction of information contained in the preexisting database at the expiration of the term prescribed above, and no liability under this Chapter shall thereafter attach to such acts or use or extraction.

^(d) **Additional Defense for Database Not Deposited With the Copyright Office.**--In the case of a database that has not been deposited with the Copyright Office before the extraction or use takes place and within one year of its first offering for sale or otherwise in commerce, no civil or criminal action shall be maintained under this title if the person extracting or using the information believed and had reasonable grounds to believe that fifteen years had elapsed from the end of the calendar year in which the database was first offered for sale or otherwise in commerce after the investment of resources was made that qualified the portion of the database extracted or used for protection under this chapter.

^(e) Service Provider Liability.

^(1) **Limitation on liability:** Subject to the limitations of paragraph (2), a provider of online services or network access, or the operator of facilities therefor, shall not be liable for a violation of section 1302 by reason of--

^(A) transmitting, routing, or providing connections for, material through a system or network controlled or operated by or for the service provider;

^(B) providing storage of that material on a system or network controlled by or operated for the service provider; or

^(C) referring or linking users to an online location at which a database is used in a manner prohibited by section 1302.

^(2) **Conditions:** The limitation on liability set forth in paragraph (1) (B) and (C) shall apply, provided that--

^(A) the service provider did not initially place the material on the system;

^(B) the service provider does not have actual knowledge that the use violates section 1302 or, in the absence of such actual knowledge, is not aware of facts or circumstances from which such violation is apparent; or

^(C) upon obtaining such knowledge or awareness, the service provider acts expeditiously to remove the material, or to disable the use, to the extent such removal or disablement is technically feasible, effective and economically reasonable.

^(3) **Notification of claimed violation:** A service provider will be presumed to have actual knowledge if it receives adequate notification of a claimed violation in compliance with the requirements as set forth in section 512(c)(4) of this title from a person who is injured by a violation of section 1302 or his designated agents.

^(4) **Reenabling of use:** If a person claiming to be injured by a violation of section 1302 does not obtain a court order enjoining the alleged violation within 10 days of the service provider disabling the

use, the alleged violator may request the service provider to reenable the use, and upon receiving such request in compliance with the requirements as set forth in section 512(f)(3) of this title, the service provider may reenable the use without becoming liable for a violation of section 1302.

`(5) **Limitation on other liability:** A service provider shall not be liable for any claim based on the service provider's good faith removal, or disabling of a use, or a database claimed to violate section 1302 or based on facts or circumstances from which such violation is apparent, regardless of whether a violation of section 1302 is ultimately determined to have occurred.

`(6) **Misrepresentations:** Any person who knowingly misrepresents that material or activities violate section 1302 shall be liable for any damages, including costs and attorneys' fees, incurred by the alleged violator or by the service provider who is injured by such misrepresentation.

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`1311. Deposit of databases

`(a) **In General:** Within one year from the date on which a database is first offered for sale or otherwise in commerce after the investment that qualified that database for protection under this chapter, a person claiming protection under section 1302 for a database may deposit the database by delivering to the Copyright Office a deposit copy, Statement of Deposit, and fee, as specified by this section.

`(b) **Copyright Office Regulations:** The Register of Copyrights shall establish by regulation procedures for the deposit of databases, including permissible formats for deposit copies.

`(c) **Deposit for Databases:** The deposit for a database shall consist of one complete copy of the database and a Statement of Deposit.

`(1) **Statement of Deposit:** The Statement of Deposit shall be made on a form prescribed by the Register of Copyrights and shall include--

`(A) the name and address of the person claiming protection under section 1302;

`(B) a title or other information identifying the database;

`(C) a general statement of the nature of the investment qualifying the database for protection;

`(D) the year in which the database was first offered for sale or otherwise in commerce;

`(E) in the case of a new version or update of a database, an identification of any preexisting database that it is based on or incorporates, and a general statement of any additional investment covered by the new deposit; and

`(G) any other information regarded by the Register of Copyrights as bearing on the identification of the database or the application of section 1310(c).

`(2) **Supplementary statement of deposit:** A depositor or its successor in interest may file a supplementary Statement of Deposit, to correct errors or omissions in a prior Statement of Deposit for the same database, or to reflect changed circumstances.

`(d) **Fees.**--The Register of Copyrights is authorized to set and adjust fees to cover the reasonable costs of the deposit system for databases established by this section.

`(e) **Effect of Material False Statements:** Any material false statement knowingly made in a Statement of Deposit shall void the deposit of the database.

`(f) Issuance of Certificate and Date of Deposit:

`(1) The Register of Copyrights shall, upon receipt of the deposit copy, Statement of Deposit, and fee specified by this section, issue to the person claiming protection under section 1302 a certificate of deposit.

`(2) The effective date of deposit for a database is the day on which the deposit copy, Statement of Deposit, and fee have all been received in the Copyright Office.

`(g) Inspection and Copying of Records:

`(1) **Statements of deposit:** A record of all Statements of Deposit for database deposited with the Copyright Office shall be maintained in the Copyright Office and shall be available to the public for inspection and copying.

`(2) Deposit copies:

`(A) During the fifteen years following the end of the calendar year of the date specified in the deposit statement as the date of the first offering in commerce after the qualifying investment, the Copyright Office shall permit access to the deposit copy of the database only upon authorization of the depositor or its successor in interest, or the purposes of litigation under this chapter in accordance with regulations issued by the Register.

`(B) Fifteen years from the end of the calendar year of the date specified in the deposit statement as the date of the first offering in commerce after the qualifying investment, the Copyright Office shall make the deposit copy of the database available to the public for inspection and copying subject to the conditions established by the Register under subsection. (C).

`(C) The Register shall by regulation specify conditions for access under subsections (A) and (B) to the copies of databases deposited with the Copyright Office, including measures to safeguard any copyrights, trade secrets, or other legal rights of the depositor or its successor in interest.

`(3) **Exclusion.**--Deposit copies deposited with the Copyright Office pursuant to this section are not subject to the provisions of the Freedom of Information Act, 5 U.S.C. 552.

`(h) **Effective Date.**--This section and section 1310(d) shall take effect one year from the date of the enactment of this Act.'

SEC. 4. STUDY REGARDING THE EFFECT OF THE ACT.

(A) **In General.**--Not later than 5 years after the effective date of this Act, and every 10 years thereafter, the General Accounting Office, in consultation with the Register of Copyrights and the Department of Justice, shall submit to the Committees on the Judiciary of the Senate and the House of Representatives, a report evaluating the effect of this Act.

(b) **Elements for Consideration.**--The study conducted under subsection (a) shall consider--

(1) The extent to which the ability of persons to engage in the permitted acts under this Act has been frustrated by contractual arrangements or technological measures,

(2) the extent to which information contained in databases that are the sole source of the information contained therein is made available through licensing or sale on reasonable terms and conditions;

(3) the extent to which the license or sale of information contained in databases protected under this Act has been conditioned on the acquisition or license of any other product or service, or on the performance

of any action, not directly related to the license or sale;

(4) the extent to which the judicially-developed doctrines of misuse in other areas of the law have been extended to cases involving protection of databases under this Act;

(5) the extent, if any, to which the provisions of this Act constitute a barrier to entry, or have encouraged entry into, a relevant database market;

(6) the extent to which claims have been made that this Act prevented access to valuable information for research, competition or innovation purposes and an evaluation of these claims;

(7) the extent to which enactment of this Act resulted in the creation of databases that otherwise would not exist; and

(8) such other matters necessary to accomplish the purpose of the report.

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SEC. 5. CONFORMING AMENDMENT.

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

`13 Misappropriation of Databases

1301'.

SEC. 6. CONFORMING AMENDMENTS TO TITLE 28, UNITED STATES CODE.

(a) **District Court Jurisdiction.**--Section 1338 of title 28, United States Code, is amended--

(1) in the section heading by inserting `misappropriations of databases,' after `trade-marks,'; and

(2) by adding at the end the following:

`(d) The district courts shall have original jurisdiction of any civil action arising under chapter 13 of title 17, relating to misappropriation of databases. Such jurisdiction shall be exclusive of the courts of the States, except that any action against a State governmental entity may be brought in any court that has jurisdiction over claims against such entity.'

(b) **Conforming Amendment.**--The item relating to section 1338 in the table of sections for chapter 85 of title 28, United States Code, is amended by inserting `misappropriations of database,' after `trade-marks,'.

(c) **Court of Federal Claims Jurisdiction.**--Section 1498(e) of title 28, United States Code, is amended by inserting `and to protections afforded databases under chapter 13 of title 17' after `chapter 9 of title 17'.

SEC. 7. EFFECTIVE DATE.

(a) **In General.**--This Act and the amendments made by this Act shall take effect on the date of the enactment of this Act, and shall apply to acts committed on or after that date.

(b) **Prior Acts Not Affected.**--No person shall be liable under chapter 13 of title 17, United States Code, as added by section 2 of this Act, for the extraction or use of all or a substantial part of a collection of information for which the investment of resources which qualified the collection of

information for protection under this chapter occurred prior to the effective date of this Act.

END

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