

**National Academies Letter to
The Honorable W.J. Tauzin, Chair
Subcommittee on Telecommunications, Trade and Consumer
Protection
House Committee on Commerce**

June 14, 1999

The Honorable W.J. Tauzin, Chairman
Subcommittee on Telecommunications, Trade and Consumer Protection Committee on Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515-6115

Dear Chairman Tauzin:

I am writing on behalf of the National Academies in support of your efforts to develop balanced database protection legislation for both database owners and users. We believe that your proposed bill, H.R. 1858, the "Consumer and Investor Access to Information Act" is generally a step in the right direction, and we plan to provide more detailed comments in the near future. The National Academies have been actively involved in the public policy issues associated with the introduction of new database protection legislation by the House Committee on the Judiciary since 1996.

As we stated in our testimony at the March 18, 1999 hearing of the House Judiciary's Subcommittee on Courts and Intellectual Property, significant legal, technical, and self-help protection measures to counter database misappropriation are available already. Although we could support the adoption of new measures that are designed to address proven specific problems related to database misappropriation, we are opposed to the creation of unprecedented and unjustified new rights in factual information that do not properly balance the legitimate competing interests. In this regard, we favor legislation that:

- Targets database piracy by using true unfair competition principles, without creating unprecedented new property rights in data and unwarranted control in downstream uses of data;
- Maintains a reasonable balance between the interests of database producers and users, including legitimate and economically important value-adding activities;
- Preserves essential public-interest uses, including customary scientific, educational, and library activities;
- Adheres to all Constitutional principles; and
- Provides protection against monopolistic pricing by sole-source vendors.

We also would like to inform you that later this summer, the National Research Council, which is the operating arm of the National Academies, will release two independently authored and reviewed reports of direct relevance to the issues underlying potential database protection legislation. One of these is by a committee on intellectual property rights and the emerging information infrastructure. The other is by a committee on promoting access to scientific and technical data for the public interest, which specifically will examine and compare several legislative and other policy options. We hope that these studies will help promote a deeper understanding of the issues underlying the current debate.

Finally, I would like to take this opportunity to submit for the record to your Subcommittee several of our past letters and recent testimony regarding three different versions of database protection legislation that have been introduced by the House Committee on the Judiciary since 1996. These include:

- October 9, 1996 letter to the Secretary of Commerce, Mickey Kantor, regarding the draft Treaty on Intellectual Property in Respect to Databases in the World Intellectual Property Organization, and H.R. 3531 (Attachment 1);
- October 23, 1997 testimony by me on behalf of the National Academies concerning H.R. 2652, "The Collections of Information Antipiracy Act," at a hearing of the House Committee on the Judiciary Subcommittee on Courts and Intellectual Property;
- July 19, 1998 letter to the Chairman of the Senate Committee on the Judiciary, the Honorable Orrin G. Hatch, on H.R. 2652 (Attachment 2);
- March 18, 1999 testimony by Rockefeller University President emeritus and Nobel laureate, Joshua Lederberg, on behalf of the National Academies and the American Association for the Advancement of Science, regarding H.R. 354, "The Collections of Information Antipiracy Act," at a hearing of the House Committee on the Judiciary Subcommittee on Courts and Intellectual Property (Attachment 3); and
- May 25, 1999 letter to the Chairman of the House Committee on the Judiciary Subcommittee on Courts and Intellectual Property, the Honorable Howard Coble, and to Congressmen Howard Berman and William Delahunt, regarding the changes made by the Subcommittee to H.R. 354 following the March 18 hearing (Attachment 4).

In all these communications, we expressed our serious concerns about the potential impacts of the proposed legislation on traditional and customary access to and use of factual databases for science, education, and research, as well as on competition in the commercial database industry. Although improvements have been made in each successive version of the Committee on the Judiciary's database legislation, we continue to have substantial problems with H.R. 354 as it now stands, as explained in our May 25 letter in Attachment 4.

We therefore are encouraged by your introduction of H.R. 1858, which appears to better balance the interests of database owners and users, and provides a measured response to the perceived gaps in the law. We look forward to continuing to work with Congress in this area, which is so vital to the continuing success of our nation's research and education activities.

Sincerely,

Wm. A. Wulf
 President
 National Academy of Engineering

cc: The Honorable Tom Bliley, Chairman, House Committee on Commerce
 The Honorable John D. Dingell, Ranking Minority Member, House Committee on Commerce
 The Honorable Michael G. Oxley, Chairman, Subcommittee on Finance and Hazardous Materials
 The Honorable Edolphus Towns, Ranking Minority Member, Subcommittee on Finance and Hazardous Materials
 Justin Lilley, Counsel, Majority Staff, House Committee on Commerce

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