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Citation: 4 William H. Manz Federal Copyright Law The  
Histories of the Major Enactments of the 105th  
1 1999

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105<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 2652

To amend title 17, United States Code, to prevent the misappropriation  
of collections of information.

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 9, 1997

Mr. COBLE introduced the following bill; which was referred to the Committee  
on the Judiciary

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## A BILL

To amend title 17, United States Code, to prevent the  
misappropriation of collections of information.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Collections of Informa-  
5       tion Antipiracy Act”.

6       **SEC. 2. MISAPPROPRIATION OF COLLECTIONS OF INFOR-**  
7       **MATION.**

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



1           **“CHAPTER 12—MISAPPROPRIATION OF**  
2                           **COLLECTIONS OF INFORMATION**

“Sec.

“1201. Prohibition against misappropriation.

“1202. Permitted acts.

“1203. Exclusions.

“1204. Definitions.

“1205. Relationship to other laws.

“1206. Civil remedies.

“1207. Criminal offenses and penalties.

“1208. Limitations on actions.

3   **“§ 1201. Prohibition against misappropriation**

4           “Any person who extracts, or uses in commerce, all  
5 or a substantial part of a collection of information gath-  
6 ered, organized, or maintained by another person through  
7 the investment of substantial monetary or other resources,  
8 so as to harm that other person’s actual or potential mar-  
9 ket for a product or service that incorporates that collec-  
10 tion of information and is offered by that other person  
11 in commerce, shall be liable to that person for the rem-  
12 edies set forth in section 1206.

13   **“§ 1202. Permitted acts**

14           “(a) INDIVIDUAL ITEMS OF INFORMATION AND  
15 OTHER INSUBSTANTIAL PARTS.—Nothing in this chapter  
16 shall prevent the extraction or use of an individual item  
17 of information, or other insubstantial part of a collection  
18 of information, in itself.

19           “(b) GATHERING OR USE OF INFORMATION OB-  
20 TAINED THROUGH OTHER MEANS.—Nothing in this  
21 chapter shall restrict any person from independently gath-

1 ering information or using information obtained by means  
2 other than extracting it from a collection of information  
3 gathered, organized, or maintained by another person  
4 through the investment of substantial monetary or other  
5 resources.

6       “(e) USE OF INFORMATION FOR VERIFICATION.—  
7 Nothing in this chapter shall restrict any person from ex-  
8 tracting information, or from using information within  
9 any entity or organization, for the sole purpose of verifying  
10 the accuracy of information independently gathered, orga-  
11 nized, or maintained by that person.

12       “(d) NOT-FOR-PROFIT EDUCATIONAL, SCIENTIFIC,  
13 OR RESEARCH USES.—Nothing in this chapter shall re-  
14 strict any person from extracting or using information for  
15 not-for-profit educational, scientific, or research purposes  
16 in a manner that does not harm the actual or potential  
17 market for the product or service referred to in section  
18 1201.

19       “(e) NEWS REPORTING.—Nothing in this chapter  
20 shall restrict any person from extracting or using informa-  
21 tion for the sole purpose of news reporting.

22       **“§ 1203. Exclusions**

23       “(a) GOVERNMENT COLLECTIONS OF INFORMA-  
24 TION.—Protection under this chapter shall not extend to  
25 a governmental entity, whether Federal, State, or local,

1 including any employee or agent of such an entity, or any  
 2 person exclusively licensed by such an entity, with respect  
 3 to collections of information gathered, organized, or main-  
 4 tained within the scope of such employment, agency, or  
 5 license.

6 “(b) COMPUTER PROGRAMS.—Protection under this  
 7 chapter shall not extend to computer programs, including  
 8 without limitation any computer program used in the  
 9 manufacture, production, operation, or maintenance of a  
 10 collection of information. The preceding sentence shall not  
 11 apply to a collection of information directly or indirectly  
 12 incorporated in a computer program.

13 **“§ 1204. Definitions**

14 “As used in this chapter:

15 “(1) INFORMATION.—The term ‘information’  
 16 means facts, data, works of authorship, or any other  
 17 intangible material capable of being collected and or-  
 18 ganized in a systematic way.

19 “(2) COMMERCE.—The term ‘commerce’ means  
 20 all commerce which may be lawfully regulated by the  
 21 Congress.

22 **“§ 1205. Relations to other laws**

23 “(a) OTHER RIGHTS NOT AFFECTED.—Subject to  
 24 subsection (b), nothing in this chapter shall affect rights,  
 25 limitations, or remedies concerning copyright, or any other

1 rights or obligations relating to information, including  
2 laws with respect to patent, trademark, design rights,  
3 antitrust or competition, trade secrets, privacy, access to  
4 public documents, and the law of contract.

5       “(b) PREEMPTION OF STATE LAW.—On or after the  
6 effective date of this chapter, all rights that are equivalent  
7 to the rights specified in section 1201 with respect to the  
8 subject matter of this chapter shall be governed exclusively  
9 by Federal law, and no person is entitled to any equivalent  
10 right in such subject matter under the common law or  
11 statutes of any State. State laws with respect to trade-  
12 mark, design rights, antitrust or competition, trade se-  
13 crets, privacy, access to public documents, and the law of  
14 contract shall not be deemed to provide equivalent rights  
15 for purposes of this subsection.

16       “(c) LICENSING.—Nothing in this chapter shall re-  
17 strict the rights of parties freely to enter into licenses or  
18 any other contracts with respect to the use of information.

19       “(d) COMMUNICATIONS ACT OF 1934.—Nothing in  
20 this chapter shall affect the operation of section 222(e)  
21 of the Communications Act of 1934 (47 U.S.C. 222(e)),  
22 as added by the Telecommunications Act of 1996.

23 **“§ 1206. Civil remedies**

24       “(a) CIVIL ACTIONS.—Any person who is injured by  
25 a violation of section 1201 may bring a civil action for

1 such a violation in an appropriate United States district  
2 court without regard to the amount in controversy, except  
3 that any action against a State governmental entity may  
4 be brought in any court that has jurisdiction over claims  
5 against such entity.

6       “(b) TEMPORARY AND PERMANENT INJUNCTIONS.—  
7 Any court having jurisdiction of a civil action under this  
8 section shall have the power to grant temporary and per-  
9 manent injunctions, according to the principles of equity  
10 and upon such terms as the court may deem reasonable,  
11 to prevent a violation of section 1201. Any such injunction  
12 may be served anywhere in the United States on the per-  
13 son enjoined, and may be enforced by proceedings in con-  
14 tempt or otherwise by any United States district court  
15 having jurisdiction over that person.

16       “(c) IMPOUNDMENT.—At any time while an action  
17 under this section is pending, the court may order the im-  
18 pounding, on such terms as it deems reasonable, of all cop-  
19 ies of contents of a collection of information extracted or  
20 used in violation of section 1201, and of all masters, tapes,  
21 disks, diskettes, or other articles by means of which such  
22 copies may be reproduced. The court may, as part of a  
23 final judgment or decree finding a violation of section  
24 1201, order the remedial modification or destruction of  
25 all copies of contents of a collection of information ex-

1 tracted or used in violation of section 1201, and of all  
2 masters, tapes, disks, diskettes, or other articles by means  
3 of which such copies may be reproduced.

4       “(d) MONETARY RELIEF.—When a violation of sec-  
5 tion 1201 has been established in any civil action arising  
6 under this section, the plaintiff shall be entitled, subject  
7 to the principles of equity, to recover defendant’s profits,  
8 any damages sustained by the plaintiff, and the costs of  
9 the action. The court shall assess such profits or damages  
10 or cause the same to be assessed under its direction. In  
11 assessing profits the plaintiff shall be required to prove  
12 defendant’s sales only; defendant must prove all elements  
13 of cost or deduction claims. In assessing damages the  
14 court may enter judgment, according to the circumstances  
15 of the case, for any sum above the amount found as actual  
16 damages, not exceeding three times such amount. The  
17 court in its discretion may award reasonable costs and at-  
18 torney’s fees to the prevailing party.

19       “(e) ACTIONS AGAINST UNITED STATES GOVERN-  
20 MENT.—Subsections (b) and (c) shall not apply to any ac-  
21 tion against the United States Government.

22       “(f) RELIEF AGAINST STATE ENTITIES.—The relief  
23 provided under this section shall be available against a  
24 State governmental entity to the extent permitted by ap-  
25 plicable law.



1 **“§ 1207. Criminal offenses and penalties**

2 “(a) VIOLATION.—Any person who violates section  
3 1201 willfully, and—

4 “(1) does so for direct or indirect commercial  
5 advantage or financial gain, or

6 “(2) thereby causes loss or damage aggregating  
7 \$10,000 or more in any 1-year period to the person  
8 who gathered, organized, or maintained the informa-  
9 tion concerned,

10 shall be punished as provided in subsection (b).

11 “(b) PENALTIES.—An offense under subsection (a)  
12 shall be punishable by a fine of not more than \$250,000  
13 or imprisonment for not more than 5 years, or both. A  
14 second or subsequent offense under subsection (a) shall  
15 be punishable by a fine of not more than \$500,000 or im-  
16 prisonment for not more than 10 years, or both.

17 **“§ 1208. Limitations on actions**

18 “(a) CRIMINAL PROCEEDINGS.—No criminal pro-  
19 ceeding shall be maintained under the provisions of this  
20 chapter unless it is commenced within three years after  
21 the cause of action arose.

22 “(b) CIVIL ACTIONS.—No civil action shall be main-  
23 tained under the provisions of this chapter unless it is  
24 commenced within three years after the claim accrued.”.

1 **SEC. 3. CONFORMING AMENDMENT.**

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

“12. Misappropriation of Collections of Information ..... 1201”.

4 **SEC. 4. EFFECTIVE DATE.**

5 “(a) **IN GENERAL.**—This Act and the amendments  
6 made by this Act shall take effect on the date of the enact-  
7 ment of this Act, and shall apply to acts committed on  
8 or after that date.

9 “(b) **PRIOR ACTS NOT AFFECTED.**—No person shall  
10 be liable under chapter 12 of title 17, United States Code,  
11 as added by section 2 of this Act, for the use of informa-  
12 tion lawfully extracted from a collection of information  
13 prior to the effective date of this Act, by that person or  
14 by that person’s predecessor in interest.

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## **Document No. 84**

