

104TH CONGRESS
2D SESSION

H. R. 3531

To amend title 15, United States Code, to promote investment and prevent intellectual property piracy with respect to databases.

IN THE HOUSE OF REPRESENTATIVES

MAY 23, 1996

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

A BILL

To amend title 15, United States Code, to promote investment and prevent intellectual property piracy with respect to databases.

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 “Database Investment
5 and Intellectual Property Antipiracy Act of 1996”.

6 **SEC. 2. DEFINITIONS.**

7 “Change of commercial significance” means a change
8 that a reasonable user of a database would regard as af-
9 fecting the quality, quantity or value of contents of that
10 database as a whole.

1 “Commerce” means all commerce that may lawfully
2 be regulated by Congress.

3 “Database” means a collection, assembly or compila-
4 tion, in any form or medium now or later known or devel-
5 oped, of works, data or other materials, arranged in a sys-
6 tematic or methodical way.

7 “Database maker” means the natural or juristic per-
8 son making a substantial investment, qualitatively or
9 quantitatively, in the collection, assembly, verification, or-
10 ganization and/or presentation of the contents of the
11 database. Unless provided otherwise by contract—

12 (1) where two or more persons qualify as the
13 makers of a database, they are jointly the database
14 maker;

15 (2) where a database is made by employees
16 within the scope of their employment, the employer
17 is the database maker; and

18 (3) where a database is made pursuant to spe-
19 cial order or commission, the person who ordered or
20 commissioned the database is the database maker.

21 “Database management information” means the
22 name and other identifying information of the database
23 maker, the name and other identifying information of the
24 database owner, and terms and conditions for extraction
25 and use or reuse of the contents of the database.

1 “Database owner” means the database maker or the
2 natural or juristic person who is the database maker’s suc-
3 cessor in interest.

4 “Extraction” means the permanent or temporary
5 transfer of all or a substantial part of the contents of a
6 database or of a copy or copies thereof. Such transfer may
7 be to an identical or different medium, and by any means
8 or in any form, now or later known or developed.

9 “Governmental entity” means the United States Gov-
10 ernment, any State, any agency or instrumentality of ei-
11 ther, and any officer or employee of any of the foregoing
12 acting in his or her official capacity.

13 “Insubstantial part” of a database means any portion
14 of the contents of a database whose extraction, use or
15 reuse does not diminish the value of the database, conflict
16 with a normal exploitation of the database or adversely
17 affect the actual or potential market for the database.

18 “Juristic person” means any firm, corporation,
19 union, association, non-profit institution, or other organi-
20 zation capable of suing and being sued in a court of law,
21 but does not include a governmental entity.

22 “Place in commercial use” means to use or reuse, or
23 to authorize use or reuse, for direct or indirect commercial
24 advantage or for financial gain.

1 “Person” means any natural person, any juristic per-
2 son, and any governmental entity.

3 “Use” and “reuse” means making available all or a
4 substantial part, qualitatively or quantitatively, of the con-
5 tents of a database, or access to all or such substantial
6 part, whether or not for direct or indirect commercial ad-
7 vantage or financial gain, by any means now known or
8 later developed, including any of the following: (i) market-
9 ing, selling, or renting; (ii) in the form of permanent or
10 temporary copies; or (iii) by distribution, any online or
11 other form of transmission.

12 **SEC. 3. DATABASES SUBJECT TO THE ACT.**

13 (a) A database is subject to the Act if it is the result
14 of a qualitatively or quantitatively substantial investment
15 of human, technical, financial or other resources in the
16 collection, assembly, verification, organization or presen-
17 tation of the database contents, and (i) the database is
18 used or reused in commerce; or (ii) the database owner
19 intends to use or reuse the database in commerce.

20 (b) A database otherwise subject to this Act shall re-
21 main subject, regardless of whether it is made available
22 to the public or in commercial use; the form or medium
23 in which it is embodied; or whether the database or any
24 contents of the database are intellectual creations.

1 (c) Except for a database made by a governmental
2 entity, any database otherwise subject to this Act, is not
3 excluded herefrom because its contents have been obtained
4 from a governmental entity.

5 (d) Computer programs are not subject to this Act,
6 including without limitation any computer programs used
7 in the manufacture, production, operation or maintenance
8 of a database. However, the contents of a database other-
9 wise subject to this Act remain subject, notwithstanding
10 their direct or indirect incorporation in a computer pro-
11 gram or other work.

12 **SEC. 4. PROHIBITED ACTS.**

13 (a) No person shall, without the authorization of the
14 database owner—

15 (1) extract, use or reuse all or a substantial
16 part, qualitatively or quantitatively, of the contents
17 of a database subject to this Act in a manner that
18 conflicts with the database owner's normal exploi-
19 tation of the database or adversely affects the actual
20 or potential market for the database;

21 (2) engage, notwithstanding section 5(a), in the
22 repeated or systematic extraction, use or reuse of in-
23 substantial parts, qualitatively or quantitatively, of
24 the contents of a database subject to this Act in a
25 manner that cumulatively conflicts with the database

1 owner's normal exploitation of the database or ad-
2 versely affects the actual or potential market for the
3 database; or

4 (3) procure, direct or commission any act pro-
5 hibited by subsections (i) or (ii).

6 (b) Acts that conflict with a normal exploitation of
7 the database or adversely affect the actual or potential
8 market for the database include but are not limited to the
9 extraction, use or reuse of all or a substantial part of the
10 contents of a database—

11 (1) in a product or service that directly or indi-
12 rectly competes in any market with the database
13 from which it was extracted; or

14 (2) in a product or service that directly or indi-
15 rectly competes in any market in which the database
16 owner has a demonstrable interest or expectation in
17 licensing or otherwise using or reusing the database;
18 or

19 (3) in a product or service for customers who
20 might otherwise reasonably be expected to be cus-
21 tomers for the database; or

22 (4) by or for multiple persons within an organi-
23 zation or entity in lieu of the authorized additional
24 use or reuse (by license, purchase or otherwise) of
25 copies of the database by or for such persons.

1 **SEC. 5. EXCEPTIONS TO PROHIBITED ACTS.**

2 (a) Subject to section 4(a)(ii), a lawful user of a
3 database made available to the public or placed in com-
4 mercial use is not prohibited from extracting, using or
5 reusing insubstantial parts of its contents, qualitatively or
6 quantitatively, for any purposes whatsoever.

7 (b) Nothing in this Act shall in any way restrict any
8 person from independently collecting, assembling or com-
9 piling works, data or materials from sources other than
10 a database subject to this Act.

11 **SEC. 6. DURATION OF PROHIBITIONS.**

12 (a) A database becomes subject to this Act when the
13 necessary investment has been made to qualify its maker
14 as such under section 2. The database shall remain subject
15 to this Act for a period of twenty-five years from the first
16 of January following the date when it was first made avail-
17 able to the public or the date when it was first placed in
18 commercial use, whichever is earlier.

19 (b) Any change of commercial significance, quali-
20 tatively or quantitatively, to a database, including any
21 such change through the accumulation of successive addi-
22 tions, deletions, reverifications, alterations, modifications
23 in organization or presentation, or other modifications,
24 shall make the resulting database subject to this Act for
25 its own term, as calculated under subsection (a).

1 **SEC. 7. CIVIL REMEDIES FOR VIOLATION OF SECTION 4.**

2 (a) CIVIL ACTIONS.—A database owner injured by a
3 violation of section 4 may bring a civil action for such a
4 violation in an appropriate United States district court
5 without regard to the amount in controversy: *Provided*
6 *however*, That any action against a State governmental en-
7 tity may be brought in any court that has jurisdiction over
8 claims against such entity.

9 (b) TEMPORARY AND PERMANENT INJUNCTIONS.—
10 Any court having jurisdiction of a civil action arising here-
11 under shall have the power to grant temporary and perma-
12 nent injunctions, according to the principles of equity and
13 upon such terms as the court may deem reasonable, to
14 prevent the violation of section 4. Any such injunction
15 granted upon hearing, after notice to the party sought to
16 be enjoined, by any district court of the United States,
17 may be served on the party against whom such injunction
18 is granted anywhere in the United States where such per-
19 son may be found, and shall be operative and may be en-
20 forced by proceedings in contempt or otherwise by any
21 United States district court having jurisdiction over such
22 party.

23 (c) IMPOUNDMENT.—At any time while an action
24 hereunder is pending, the court may order the impound-
25 ing, on such terms as it deems reasonable, of all copies
26 of contents of databases extracted and or used or reused

1 in violation of section 4, and of all masters, tapes, disks,
2 diskettes, or other articles by means of which such copies
3 may be reproduced. The court may, as part of a final judg-
4 ment or decree finding a violation of section 4, order the
5 remedial modification or destruction of all copies of con-
6 tents of databases extracted, used or reused in violation
7 of section 4, and of all masters, tapes, disks, diskettes,
8 or other articles by means of which such copies may be
9 reproduced.

10 (d) MONETARY RELIEF.—When a violation of section
11 4 has been established in any civil action arising here-
12 under, the plaintiff shall be entitled, subject to principles
13 of equity, to recover (i) defendant’s profit, (ii) any dam-
14 ages sustained by the plaintiff, and (iii) the costs of the
15 action. The court shall assess such profits or damages or
16 cause the same to be assessed under its direction. In as-
17 sessing profits the plaintiff shall be required to prove de-
18 fendant’s sales only; defendant must prove all elements of
19 cost or deduction claimed. In assessing damages the court
20 may enter judgment, according to the circumstances of the
21 case, for any sum above the amount found as actual dam-
22 ages, not exceeding three times such amount. If the court
23 shall find that the amount of the recovery based on profits
24 is either inadequate or excessive, the court may in its dis-
25 cretion enter judgment for such sum as it finds just. The

1 court in its discretion may award reasonable attorney fees
2 to the prevailing party.

3 (e) Subsections (b) and (c) shall not apply to any ac-
4 tion against the United States Government.

5 (f) The relief provided under this section shall be
6 available against a State governmental entity to the extent
7 allowed by applicable law.

8 **SEC. 8. CRIMINAL OFFENSES AND PENALTIES FOR VIOLA-**
9 **TION OF SECTION 4.**

10 (a) Any person who violates section 4 willfully, and—

11 (1) does so for direct or indirect commercial ad-
12 vantage or financial gain; or

13 (2) thereby causes loss or damage to a database
14 owner aggregating \$10,000 or more in any one-year
15 calendar period, shall be punished as provided in
16 subsection (b).

17 (b) An offense under subsection (a) shall be punish-
18 able by a fine of not more than \$250,000 or imprisonment
19 for not more than five years, or both. A second or subse-
20 quent offense under subsection (a) shall be punishable by
21 a fine of not more than \$500,000, imprisonment for not
22 more than ten years, or both.

23 **SEC. 9. RELATIONSHIP TO OTHER LAWS.**

24 (a) The remedies against violations hereunder shall
25 be without prejudice to any remedies under any copyright

1 that may subsist in the database, any contents of the
2 database, or the selection, coordination or arrangement of
3 such contents. Such remedies shall not limit, impair, or
4 otherwise affect the existence, scope or duration of protec-
5 tion under any such copyright.

6 (b) Nothing in this Act shall restrict the rights of
7 parties freely to enter into licenses or any other contracts
8 with respect to databases or their contents.

9 (c) Nothing in this Act shall prejudice provisions con-
10 cerning copyright, rights related to copyright or any other
11 rights or obligations in the database or its contents, in-
12 cluding laws in respect of patent, trademark, design
13 rights, antitrust or competition, trade secrets, data protec-
14 tion and privacy, access to public documents, and the law
15 of contract.

16 **SEC. 10. CIRCUMVENTION OF DATABASE PROTECTION SYS-**
17 **TEMS.**

18 No person shall import, manufacture or distribute
19 any device, product, or component incorporated into a de-
20 vice or product, or offer or perform any service, the pri-
21 mary purpose or effect of which is to avoid, bypass, re-
22 move, deactivate, or otherwise circumvent, without the au-
23 thority of the database owner or the law, any process,
24 treatment, mechanism or system which prevents or inhib-

1 its the extraction, use or reuse of the contents of the
2 database in violation of section 4 hereof.

3 **SEC. 11. INTEGRITY OF DATABASE MANAGEMENT INFOR-**
4 **MATION.**

5 (a) FALSE DATABASE MANAGEMENT INFORMA-
6 TION.—No person shall knowingly provide database man-
7 agement information that is false, or knowingly publicly
8 distribute or import for public distribution database man-
9 agement information that is false.

10 (b) REMOVAL OR ALTERATION OF DATABASE MAN-
11 AGEMENT INFORMATION.—No person shall, without au-
12 thority of the database owner or the law, (i) knowingly
13 remove or alter any database management information,
14 (ii) knowingly distribute or import for distribution
15 database management information that has been altered
16 without authority of the database owner or the law; or
17 (iii) knowingly distribute or import for distribution copies
18 of a database from which database management informa-
19 tion has been removed without the authority of the
20 database owner or the law.

21 **SEC. 12. CIVIL REMEDIES FOR VIOLATION OF SECTIONS 10**
22 **OR 11.**

23 (a) CIVIL ACTIONS.—Any person injured by a viola-
24 tion of section 10 or section 11 may bring a civil action
25 for such violation in an appropriate United States district

1 court, without regard to the amount in controversy: *Pro-*
2 *vided, however,* That any action against a State govern-
3 mental entity may be brought in any court that has juris-
4 diction over claims against such entity.

5 (b) POWERS OF THE COURT.—In an action brought
6 under subsection (a), the court—

7 (1) may grant temporary and permanent in-
8 junctions on such terms as it deems reasonable to
9 prevent or restrain a violation;

10 (2) at any time while an action is pending, may
11 order the impounding, on such terms as it deems
12 reasonable, of any device or product that is in the
13 custody or the control of the alleged violator and
14 that the court has reasonable cause to believe was
15 involved in a violation;

16 (3) may award damages under subsection (c);

17 (4) in its discretion may allow the recovery of
18 costs by or against any party other than the United
19 States or an officer thereof;

20 (5) in its discretion may award reasonable at-
21 torney's fees to the prevailing party; and

22 (6) may, as part of a final judgment or decree
23 finding a violation, order the remedial modification
24 or the destruction of any device or product involved
25 in the violation that is in the custody or control of

1 the violator or has been impounded under subsection
2 (ii).

3 (c) AWARDS OF DAMAGES.—

4 (1) IN GENERAL.—Except as otherwise pro-
5 vided in this Act, a violator is liable for either (A)
6 the actual damages and any additional profits of the
7 violator, as provided by subsection (ii), or (B) statu-
8 tory damages, as provided by subsection (iii).

9 (2) ACTUAL DAMAGES.—The court shall award
10 to the complaining party the actual damages suf-
11 fered by him or her as a result of the violation, and
12 any profits of the violator that are attributable to
13 the violation and are not taken into account in com-
14 puting the actual damages, if the complaining party
15 elects such damages at any time before final judg-
16 ment is entered.

17 (3) STATUTORY DAMAGES.—

18 (A) At any time before final judgment is
19 entered, a complaining party may elect to re-
20 cover an award of statutory damages for each
21 violation of section 10 in the sum of not less
22 than \$200 or more than \$2,500 per device,
23 product, offer or performance of service, as the
24 court considers just.

1 (B) At any time before final judgment is
2 entered, a complaining party may elect to re-
3 cover an award of statutory damages for each
4 violation of section 11 in the sum of not less
5 than \$2,500 or more than \$25,000.

6 (4) REPEATED VIOLATIONS.—In any case in
7 which the injured party sustains the burden of prov-
8 ing, and the court finds, that a person has violated
9 section 10 or 11 within three years after a final
10 judgment was entered against that person for an-
11 other such violation, the court may increase the
12 award of damages up to triple the amount that
13 would otherwise be awarded, as the court considers
14 just.

15 (5) INNOCENT VIOLATIONS.—The court in its
16 discretion may reduce or remit altogether the total
17 award of damages in any case in which the violator
18 sustains the burden of proving, and the court finds,
19 that the violator was not aware and had no reason
20 to believe that its acts constituted a violation.

21 (d) Subsections (b) (i) and (ii) shall not apply to any
22 action against the United States Government.

23 (e) The relief provided under subsection (b) shall be
24 available against a State governmental entity to the extent
25 allowed by applicable law.

1 **SEC. 13. CRIMINAL OFFENSES AND PENALTIES FOR VIOLA-**
2 **TION OF SECTION 11.**

3 Any person who violates section 11 with intent to de-
4 fraud shall be fined not more than \$500,000 or impris-
5 oned for not more than five years, or both.

6 **SEC. 14. LIMITATIONS ON ACTIONS.**

7 No action shall be maintained under this Act unless
8 it is commenced within three years after the database
9 owner knew or should have known of the claim.

10 **SEC. 15. EFFECTIVE DATE.**

11 (a) This Act shall take effect immediately upon enact-
12 ment, and shall be applicable to acts committed on or after
13 that date.

14 (b) No person shall be liable under this Act for use
15 or reuse of database contents lawfully extracted from a
16 database, prior to the effective date of this Act, by that
17 person or by that person's predecessor in interest.

○