

Union Calendar No. 212

106TH CONGRESS
1ST SESSION

H. R. 354

[Report No. 106-349, Part I]

A BILL

To amend title 17, United States Code, to provide protection for certain collections of information.

OCTOBER 8, 1999

The Committee on Commerce discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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To amend title 17, United States Code, to provide protection for certain collections of information.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 19, 1999

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

SEPTEMBER 30, 1999

Reported with an amendment and referred to the Committee on Commerce for a period ending not later than October 8, 1999, for consideration of such provisions of the bill and amendment as fall within the jurisdiction of that committee pursuant to clause 1(f), rule X

[Strike out all after the enacting clause and insert the part printed in *italic*]

OCTOBER 8, 1999

Additional sponsors: Mr. BERMAN, Mr. FRANK of Massachusetts, Mrs. BONO, Mr. GOODLATTE, Mr. CANADY of Florida, Mr. HALL of Ohio, Mr. SHOWS, Mr. DELAHUNT, Mr. WEXLER, Mrs. TAUSCHER, Mr. CANNON, Mr. SUNUNU, Mr. HOBSON, Mr. FOLEY, Mr. VENTO, Mr. BARRETT of Nebraska, Mr. PASTOR, Mr. LUTHER, Mr. PEASE, Ms. PRYCE of Ohio, Mr. GREENWOOD, Mr. COYNE, Mr. BEREUTER, Mr. HUTCHINSON, Mr. SHAW, Mr. ROYCE, Mr. MEEKS of New York, Mr. CONYERS, Mr. PETERSON of Minnesota, Mr. BARRETT of Wisconsin, Ms. JACKSON-LEE of Texas, Mrs. MYRICK, Ms. GRANGER, Mr. MCINNIS, Mrs. MORELLA, Mr. FORD, Mr. PORTMAN, Ms. NORTON, Mr. MINGE, Mr. SHERMAN, Mr. HYDE, Mr. REGULA, Mr. MATSUI, Mr. LANTOS, Ms. MILLENDER-MCDONALD, Mr. SHAYS, Mr. WELDON of Pennsylvania, Mr. SCHAFFER, Mr. GOSS, Mr. HALL of Texas, Mr. PETRI, Mr. CHABOT, Mr. GARY MILLER of California, Mr. BARTLETT of Maryland, Mr. ROTHMAN, Mr. MOAKLEY, Mr. SALMON, Ms. LEE, Mr. GEORGE MILLER of California, Mr. FILNER, Mr. HERGER, Mr. TRAFICANT, Mrs. MALONEY of New York, Ms. BERKLEY, Mr. LINDER, Mr. REYNOLDS, Mr. JACKSON of Illi-

nois, Mr. LAHOOD, Mr. BASS, Mr. GALLEGLY, Mr. SESSIONS, Mr. DOOLITTLE, Mr. MALONEY of Connecticut, Mr. TANCREDO, Mrs. BIGGERT, and Mr. BARR of Georgia

OCTOBER 8, 1999

The Committee on Commerce discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on January 19, 1999]

A BILL

To amend title 17, United States Code, to provide protection for certain 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. COLLECTIONS OF INFORMATION.**

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

9 **“CHAPTER 14—COLLECTIONS OF**
 10 **INFORMATION**

“Sec.

“1401. Definitions.

“1402. Prohibition.

“1403. Permitted acts.

“1404. Exclusions.

“1405. Relationship to other laws.

“1406. Civil remedies.

“1407. Criminal offenses and penalties.

“1408. Defense to claims.

“1409. Limitations on actions.

“1410. Study and report.

1 **“§ 1401. Definitions**

2 “As used in this chapter:

3 “(1) *COLLECTION OF INFORMATION.*—The term
4 ‘collection of information’ means information that has
5 been collected and has been organized for the purpose
6 of bringing discrete items of information together in
7 one place or through one source so that persons may
8 access them. The term does not include an individual
9 work which, taken as a whole, is a work of narrative
10 literary prose, but may include a collection of such
11 works.

12 “(2) *INFORMATION.*—The term ‘information’
13 means facts, data, works of authorship, or any other
14 intangible material capable of being collected and or-
15 ganized in a systematic way.

16 “(3) *PRIMARY MARKET.*—The term ‘primary
17 market’ means all markets—

18 “(A) in which a product or service which
19 incorporates a collection of information is of-
20 fered; and

21 “(B) in which a person claiming protection
22 with respect to that collection of information
23 under section 1402 derives or reasonably expects
24 to derive revenue, directly or indirectly.

25 “(4) *RELATED MARKET.*—The term ‘related mar-
26 ket’ means any market—

1 “(A)(i) in which products or services which
2 incorporate collections of information similar to
3 a product or service offered by a person claiming
4 protection under section 1402 are offered; and

5 “(ii) in which persons offering such similar
6 products or services derive or reasonably expect
7 to derive revenue, directly or indirectly; or

8 “(B) any market in which a person claim-
9 ing protection with respect to a collection of in-
10 formation under section 1402 has taken demon-
11 strable steps to offer in commerce within a short
12 period of time a product or service incorporating
13 that collection of information with the reasonable
14 expectation to derive revenue, directly or indi-
15 rectly.

16 “(5) *COMMERCE*.—The term ‘commerce’ means
17 all commerce which may be lawfully regulated by the
18 Congress.

19 “(6) *MAINTAIN*.—To ‘maintain’ a collection of
20 information means to update, verify or supplement
21 the information the collection contains.

22 **“§ 1402. Prohibition**

23 “(a) *MAKING AVAILABLE OR EXTRACTING TO MAKE*
24 *AVAILABLE*.—Any person who makes available to others, or
25 extracts to make available to others, all or a substantial

1 *part of a collection of information gathered, organized, or*
2 *maintained by another person through the investment of*
3 *substantial monetary or other resources, so as to cause ma-*
4 *terial harm to the primary market or a related market of*
5 *that other person, or a successor in interest of that other*
6 *person, for a product or service that incorporates that collec-*
7 *tion of information and is offered or intended to be offered*
8 *in commerce by that other person, or a successor in interest*
9 *of that person, shall be liable to that person or successor*
10 *in interest for the remedies set forth in section 1406.*

11 “(b) *OTHER ACTS OF EXTRACTION.*—Any person who
12 *extracts all or a substantial part of a collection of informa-*
13 *tion gathered, organized, or maintained by another person*
14 *through the investment of substantial monetary or other re-*
15 *sources, so as to cause material harm to the primary market*
16 *of that other person, or a successor in interest of that other*
17 *person, for a product or service that incorporates that collec-*
18 *tion of information and is offered or intended to be offered*
19 *in commerce by that other person, or a successor in interest*
20 *of that person, shall be liable to that person or successor*
21 *in interest for the remedies set forth in section 1406.*

22 **“§ 1403. Permitted acts**

23 “(a) *REASONABLE USES.*—Notwithstanding section
24 *1402, the making available or extraction of information for*
25 *purposes such as illustration, explanation, example, com-*

1 *ment, criticism, teaching, research, or analysis is not a vio-*
2 *lation of this chapter, if it is reasonable under the cir-*
3 *cumstances. In determining whether such an act is reason-*
4 *able under the circumstances, all of the following factors*
5 *shall be considered:*

6 “(1) *The extent to which the making available or*
7 *extraction is commercial or nonprofit.*

8 “(2) *Whether the amount of information made*
9 *available or extracted is appropriate and for the pur-*
10 *pose.*

11 “(3) *The good faith of the person making avail-*
12 *able or extracting the information.*

13 “(4) *The extent to which and the manner in*
14 *which the portion made available or extracted is in-*
15 *corporated into an independent work or collection,*
16 *and the degree of difference between the collection*
17 *from which the information is made available or ex-*
18 *tracted and the independent work or collection.*

19 “(5) *The effect of the making available or extrac-*
20 *tion on the primary or related market for a protected*
21 *collection of information.*

22 “(b) *CERTAIN NONPROFIT EDUCATIONAL, SCIENTIFIC,*
23 *OR RESEARCH USES.—Notwithstanding section 1402, no*
24 *person shall be restricted from making available or extract-*
25 *ing information for nonprofit educational, scientific, or re-*

1 *search purposes in a manner that does not materially harm*
2 *the primary market for the product or service referred to*
3 *in section 1402.*

4 “(c) *INDIVIDUAL ITEMS OF INFORMATION AND OTHER*
5 *INSUBSTANTIAL PARTS.*—*Nothing in this chapter shall pre-*
6 *vent the making available or extraction of an individual*
7 *item of information, or other insubstantial part of a collec-*
8 *tion of information, in itself. An individual item of infor-*
9 *mation, including a work of authorship, shall not itself be*
10 *considered a substantial part of a collection of information*
11 *under section 1402. Nothing in this subsection shall permit*
12 *the repeated or systematic making available or extracting*
13 *of individual items or insubstantial parts of a collection*
14 *of information so as to circumvent the prohibition con-*
15 *tained in section 1402.*

16 “(d) *GATHERING OR USE OF INFORMATION OBTAINED*
17 *THROUGH OTHER MEANS.*—*Nothing in this chapter shall*
18 *restrict any person from independently gathering informa-*
19 *tion or making available information obtained by means*
20 *other than extracting it from a collection of information*
21 *gathered, organized, or maintained by another person*
22 *through the investment of substantial monetary or other re-*
23 *sources.*

24 “(e) *MAKING AVAILABLE OR EXTRACTION OF INFOR-*
25 *MATION FOR VERIFICATION.*—*Nothing in this chapter shall*

1 *restrict any person from making available or extracting in-*
2 *formation from a collection of information within any enti-*
3 *ty or organization, for the sole purpose of verifying the ac-*
4 *curacy of information independently gathered, organized,*
5 *or maintained by that person. Under no circumstances shall*
6 *the information so used be made available to others or ex-*
7 *tracted from the original collection in a manner that harms*
8 *the primary market or a related market for the collection*
9 *of information from which it is made available or extracted.*

10 “(f) *NEWS REPORTING.*—*Nothing in this chapter shall*
11 *restrict any person from making available or extracting in-*
12 *formation for the sole purpose of news reporting on any*
13 *subject (including news gathering, dissemination, comment,*
14 *and feature or general interest reporting) unless the infor-*
15 *mation so made available or extracted is time sensitive and*
16 *has been gathered by a news reporting entity, and making*
17 *available or extracting the information is part of a con-*
18 *sistent pattern engaged in for the purpose of direct competi-*
19 *tion.*

20 “(g) *TRANSFER OF COPY.*—*Nothing in this chapter*
21 *shall restrict the owner of a particular lawfully made copy*
22 *of all or part of a collection of information from selling*
23 *or otherwise disposing of the possession of that copy.*

24 “(h) *GENEALOGICAL INFORMATION.*—

1 “(1) *IN GENERAL.*—Notwithstanding section
2 1402, no person shall be restricted from—

3 “(A) *making available or extracting genea-*
4 *logical information for nonprofit, religious pur-*
5 *poses; or*

6 “(B) *making available or extracting, for*
7 *private, noncommercial purposes, genealogical*
8 *information that has been gathered, organized, or*
9 *maintained for nonprofit, religious purposes.*

10 “(1) *DEFINITION.*—For purposes of this sub-
11 *section, ‘genealogical information’ includes, but is not*
12 *limited to, data indicating the date, time, or place of*
13 *an individual’s birth, christening, marriage, death, or*
14 *burial, the identity of an individual’s parents, spouse,*
15 *children, or siblings, and other information useful in*
16 *determining the identity of ancestors.*

17 “(i) *INVESTIGATIVE, PROTECTIVE, OR INTELLIGENCE*
18 *ACTIVITIES.*—Nothing in this chapter shall prohibit—

19 “(1) *an officer, agent, or employee of the United*
20 *States, a State, or a political subdivision of a State;*
21 *or*

22 “(2) *a person acting under contract with an offi-*
23 *cer, agent, or employee described in paragraph (1),*

1 *from making available or extracting information as part*
2 *of lawfully authorized investigative, protective, or intel-*
3 *ligence activities.*

4 **“§ 1401. Exclusions**

5 *“(a) GOVERNMENT COLLECTIONS OF INFORMATION.—*

6 *“(1) EXCLUSION.—Protection under this chapter*
7 *shall not extend to collections of information gathered,*
8 *organized, or maintained by or for a government en-*
9 *tity, whether Federal, State, or local, including by*
10 *any employee or agent of such government entity, or*
11 *any person substantially funded by, exclusively li-*
12 *censed by, or working under contract to such govern-*
13 *ment to achieve a government purpose or fulfill a gov-*
14 *ernment obligation as established by law or regula-*
15 *tion, if such collections of information are gathered,*
16 *organized, or maintained within the scope of the em-*
17 *ployment, agency, license, grant, contract, or funding.*
18 *Nothing in this subsection shall preclude protection*
19 *under this chapter for information gathered, orga-*
20 *nized, or maintained by such a person that is not*
21 *within the scope of such employment, agency, license,*
22 *grant, contract, or funding, or by a Federal or State*
23 *educational institution in the course of engaging in*
24 *education or scholarship.*

1 “(2) *EXCEPTION.*—*The exclusion under para-*
2 *graph (1) does not apply to any information required*
3 *to be collected and made available—*

4 “(A) *under the Securities Exchange Act of*
5 *1934 by a national securities exchange, a reg-*
6 *istered securities association, or a registered se-*
7 *curities information processor, subject to section*
8 *1405(g) of this title; or*

9 “(B) *under the Commodity Exchange Act*
10 *by a contract market, subject to section 1405(g)*
11 *of this title.*

12 “(b) *COMPUTER PROGRAMS.*—

13 “(1) *PROTECTION NOT EXTENDED.*—*Subject to*
14 *paragraph (2), protection under this chapter shall not*
15 *extend to computer programs, including, but not lim-*
16 *ited to, any computer program used in the manufac-*
17 *ture, production, operation, or maintenance of a col-*
18 *lection of information, or any element of a computer*
19 *program necessary to its operation.*

20 “(2) *INCORPORATED COLLECTIONS OF INFORMA-*
21 *TION.*—*A collection of information that is otherwise*
22 *subject to protection under this chapter is not dis-*
23 *qualified from such protection solely because it is in-*
24 *corporated into a computer program.*

1 “(c) *DIGITAL ONLINE COMMUNICATIONS.—Protection*
2 *under this chapter shall not extend to a product or service*
3 *incorporating a collection of information gathered, orga-*
4 *nized, or maintained to address, route, forward, transmit,*
5 *or store digital online communications, register addresses*
6 *to be used in digital online communications, or provide or*
7 *receive access to connections for digital online communica-*
8 *tions.*

9 “**§ 1405. Relationship to other laws**

10 “(a) *OTHER RIGHTS NOT AFFECTED.—Subject to sub-*
11 *section (b), nothing in this chapter shall affect rights, limi-*
12 *tations, or remedies concerning copyright, or any other*
13 *rights or obligations relating to information, including laws*
14 *with respect to patent, trademark, design rights, antitrust,*
15 *trade secrets, privacy, access to public documents, and the*
16 *law of contract.*

17 “(b) *PREEMPTION OF STATE LAW.—On or after the*
18 *effective date of this chapter, all rights that are equivalent*
19 *to the rights specified in section 1402 with respect to the*
20 *subject matter of this chapter and protected by this chapter*
21 *shall be governed exclusively by Federal law, and no person*
22 *is entitled to any equivalent right in such subject matter*
23 *under the common law or statutes of any State. State laws*
24 *with respect to trademark, design rights, antitrust, trade*
25 *secrets, privacy, access to public documents, and the law*

1 *of contract shall not be deemed to provide equivalent rights*
2 *for purposes of this subsection.*

3 “(c) *RELATIONSHIP TO COPYRIGHT.*—*Protection*
4 *under this chapter is independent of, and does not affect*
5 *or enlarge the scope, duration, ownership, or subsistence of,*
6 *any copyright protection or limitation, including, but not*
7 *limited to, fair use, in any work of authorship that is con-*
8 *tained in or consists in whole or part of a collection of in-*
9 *formation. This chapter does not provide any greater pro-*
10 *tection to a work of authorship contained in a collection*
11 *of information, other than a work that is itself a collection*
12 *of information, than is available to that work under any*
13 *other chapter of this title.*

14 “(d) *ANTITRUST.*—*Nothing in this chapter shall limit*
15 *in any way the constraints on the manner in which prod-*
16 *ucts and services may be provided to the public that are*
17 *imposed by Federal and State antitrust laws, including*
18 *those regarding single suppliers of products and services.*

19 “(e) *LICENSING.*—*Nothing in this chapter shall re-*
20 *strict the rights of parties freely to enter into licenses or*
21 *any other contracts with respect to making available or ex-*
22 *tracting collections of information.*

23 “(f) *COMMUNICATIONS ACT OF 1934.*—*Nothing in this*
24 *chapter shall affect the operation of the provisions of the*
25 *Communications Act of 1934 (47 U.S.C. 151 et seq.), or*

1 *shall restrict any person from making available or extract-*
2 *ing subscriber list information, as such term is defined in*
3 *section 222(f)(3) of the Communications Act of 1934 (47*
4 *U.S.C. 222(f)(3)).*

5 “(g) *SECURITIES AND COMMODITIES MARKET INFOR-*
6 *MATION.*—

7 “(1) *AUTHORITY OF SEC AND CFTC.*—*The Secu-*
8 *rities and Exchange Commission shall have the au-*
9 *thority to modify the application of this chapter as*
10 *it affects securities issues over which it has jurisdic-*
11 *tion, and the Commodity Futures Trading Commis-*
12 *sion shall have the authority to modify the applica-*
13 *tion of this chapter as it affects commodities issues*
14 *over which it has jurisdiction.*

15 “(2) *FEDERAL AGENCIES AND ACTS.*—*Notwith-*
16 *standing paragraph (1), nothing in this chapter shall*
17 *affect—*

18 “(A) *the operation of the provisions of the*
19 *Securities Exchange Act of 1934 (15 U.S.C. 78a*
20 *et seq.) or the Commodity Exchange Act (7*
21 *U.S.C. 1 et seq.);*

22 “(B) *the jurisdiction or authority of the Se-*
23 *curities and Exchange Commission or the Com-*
24 *modity Futures Trading Commission; or*

1 “(C) *the functions and operations of self-*
2 *regulatory organizations and securities informa-*
3 *tion processors under the provisions of the Secu-*
4 *rities Exchange Act of 1934 and the rules and*
5 *regulations thereunder, including making market*
6 *information available pursuant to the provisions*
7 *of that Act and the rules and regulations there-*
8 *under.*

9 “(3) *PROHIBITION.—Notwithstanding any provi-*
10 *sion of subsection (a), (b), (c), (d), (e), (g), (h), or (i)*
11 *of section 1403, nothing in this chapter shall permit*
12 *the making available, extraction, resale, or other dis-*
13 *position of real-time market information except as the*
14 *Securities Exchange Act of 1934, the Commodity Ex-*
15 *change Act, and the rules and regulations thereunder*
16 *may otherwise provide. Nothing in subsection (f) of*
17 *section 1403 shall be construed to permit any person*
18 *to make available or extract real-time market infor-*
19 *mation in a manner that constitutes a market sub-*
20 *stitute for a real-time market information service (in-*
21 *cluding the real-time systematic updating of or dis-*
22 *play of a substantial part of market information)*
23 *provided on a real-time basis.*

24 “(4) *DEFINITION.—As used in this subsection,*
25 *the term ‘market information’ means information re-*

1 *lating to quotations and transactions that is collected,*
2 *processed, distributed, or published pursuant to the*
3 *provisions of the Securities Exchange Act of 1934 or*
4 *by a contract market that is designated by the Com-*
5 *modity Futures Trading Commission pursuant to the*
6 *Commodity Exchange Act and the rules and regula-*
7 *tions thereunder.*

8 “(h) *PROTECTION OF PRIVACY.*—*Nothing in this chap-*
9 *ter shall limit, impair, or annul in any manner the protec-*
10 *tions under Federal or State law or regulation relating to*
11 *the collection or use of personally identifying information,*
12 *including medical information.*

13 **“§ 1406. Civil remedies**

14 “(a) *CIVIL ACTIONS.*—*Any person who is injured by*
15 *a violation of section 1402 may bring a civil action for*
16 *such a violation in an appropriate United States district*
17 *court without regard to the amount in controversy, except*
18 *that any action against a State governmental entity may*
19 *be brought in any court that has jurisdiction over claims*
20 *against such entity.*

21 “(b) *TEMPORARY AND PERMANENT INJUNCTIONS.*—
22 *Any court having jurisdiction of a civil action under this*
23 *section shall have the power to grant temporary and perma-*
24 *nent injunctions, according to the principles of equity and*
25 *upon such terms as the court may deem reasonable, to pre-*

1 *vent a violation of section 1402. Any such injunction may*
2 *be served anywhere in the United States on the person en-*
3 *joined, and may be enforced by proceedings in contempt or*
4 *otherwise by any United States district court having juris-*
5 *diction over that person.*

6 “(c) *IMPOUNDMENT.*—*At any time while an action*
7 *under this section is pending, the court may order the im-*
8 *pounding, on such terms as it deems reasonable, of all cop-*
9 *ies of contents of a collection of information made available*
10 *or extracted in violation of section 1402, and of all masters,*
11 *tapes, disks, diskettes, or other articles by means of which*
12 *such copies may be reproduced. The court may, as part of*
13 *a final judgment or decree finding a violation of section*
14 *1402, order the remedial modification or destruction of all*
15 *copies of contents of a collection of information made avail-*
16 *able or extracted in violation of section 1402, and of all*
17 *masters, tapes, disks, diskettes, or other articles by means*
18 *of which such copies may be reproduced.*

19 “(d) *MONETARY RELIEF.*—*When a violation of section*
20 *1402 has been established in any civil action arising under*
21 *this section, the plaintiff shall be entitled to recover the ac-*
22 *tual damages sustained by the plaintiff as a result of the*
23 *violation and any profits of the defendant that are attrib-*
24 *utable to the violation and are not taken into account in*
25 *computing the actual damages sustained by the plaintiff.*

1 *The court shall assess such profits or damages or cause the*
2 *same to be assessed under its direction. In assessing profits*
3 *the plaintiff shall be required to prove defendant’s gross rev-*
4 *enue only and the defendant shall be required to prove all*
5 *elements of cost or deduction claims. In assessing damages*
6 *the court may enter judgment, according to the cir-*
7 *cumstances of the case, for any sum above the amount found*
8 *as actual damages, not exceeding three times that amount.*
9 *The court in its discretion may award reasonable costs and*
10 *attorney’s fees to the prevailing party and shall award such*
11 *costs and fees if it determines that an action was brought*
12 *under this chapter in bad faith against a nonprofit edu-*
13 *cational, scientific, or research institution, library, or ar-*
14 *chives, or an employee or agent of such an entity, acting*
15 *within the scope of his or her employment.*

16 “(e) *REDUCTION OR REMISSION OF MONETARY RE-*
17 *LIEF FOR NONPROFIT EDUCATIONAL, SCIENTIFIC, OR RE-*
18 *SEARCH INSTITUTIONS AND EMPLOYEES THEREOF.—The*
19 *court shall reduce or remit entirely monetary relief under*
20 *subsection (d) if any case in which a defendant believed*
21 *and had reasonable grounds for believing that his or her*
22 *conduct was permissible under this chapter, if the defendant*
23 *was a nonprofit educational, scientific, or research institu-*
24 *tion, library, or archives, or an employee or agent of such*

1 *an institution, library, or archives acting within the scope*
2 *of his or her employment.*

3 “(f) *ACTIONS AGAINST UNITED STATES GOVERN-*
4 *MENT.—Subsections (b) and (c) shall not apply to any ac-*
5 *tion brought against the United States Government.*

6 “(g) *RELIEF AGAINST STATE ENTITIES.—The relief*
7 *provided under this section shall be available against a*
8 *State governmental entity to the extent permitted by appli-*
9 *cable law.*

10 “(h) *RELIEF AGAINST INTERNET SERVICE PRO-*
11 *VIDERS.—(1) The relief provided under this section shall*
12 *not be available against any Internet service provider un-*
13 *less such provider violates section 1402 willfully.*

14 “(2) *For purposes of this subsection, the term ‘Internet*
15 *service provider’ means an entity offering the transmission,*
16 *routing, or providing of connections for digital online com-*
17 *munications, between or among points specified by a user,*
18 *of material of the user’s choosing, without modification to*
19 *the content of the material as sent or received.*

20 **“§ 1407. Criminal offenses and penalties**

21 “(a) *VIOLATION.—*

22 “(1) *IN GENERAL.—Any person who violates sec-*
23 *tion 1402 willfully either—*

24 “(A) *for purposes of direct or indirect com-*
25 *mercial advantage or financial gain;*

1 “(B) causes loss or damage aggregating
2 \$100,000 or more during any 1-year period to
3 the person who gathered, organized, or main-
4 tained the information concerned; or

5 “(C) causes loss or damage aggregating
6 \$50,000 or more in any 1-year period to the per-
7 son who gathered, organized, or maintained the
8 information concerned,
9 shall be punished as provided in subsection (b).

10 “(2) *INAPPLICABILITY.*—This section shall not
11 apply to any employee or agent of a nonprofit edu-
12 cational, scientific, or research institution, library,
13 archives, or law enforcement agency, or to any em-
14 ployee or agent of such an institution, library, ar-
15 chives, or agency acting within the scope of his or her
16 employment.

17 “(b) *PENALTIES.*—(1) Any person who commits an of-
18 fense under subsection (a)(1)(A) shall be fined not more
19 than \$250,000, imprisoned not more than 5 years, or both.

20 “(2) Any person who commits a second or subsequent
21 offense under subsection (a)(1)(A) shall be fined not more
22 than \$500,000, imprisoned not more than 10 years, or both.

23 “(3) Any person who commits an offense under sub-
24 section (a)(1)(B) shall be fined not more than \$250,000, im-
25 prisoned not more than 3 years, or both.

1 “(4) Any person who commits a second or subsequent
2 offense under subsection (a)(1)(B) shall be fined not more
3 than \$500,000, imprisoned not more than 6 years, or both.

4 “(5) Any person who commits an offense under sub-
5 section (a)(1)(C) shall be fined not more than \$100,000, im-
6 prisoned not more than 1 year, or both.

7 “(c) VICTIM IMPACT STATEMENT.—(1) During prepa-
8 ration of the presentence report pursuant to Rule 32(c) of
9 the Federal Rules of Criminal Procedure, victims of the of-
10 fense shall be permitted to submit, and the probation officer
11 shall receive, a victim impact statement that identifies the
12 victim of the offense and the extent and scope of the injury
13 and loss suffered by the victim, including the estimated eco-
14 nomic impact of the offense on that victim.

15 “(2) Persons permitted to submit victim impact state-
16 ments shall include—

17 “(A) persons who gathered, organized, or main-
18 tained the information affected by conduct involved in
19 the offense; and

20 “(B) the legal representatives of such persons.

21 **”§ 1408. Defenses to claims**

22 “(a) AFFIRMATIVE DEFENSE WHEN USER CANNOT
23 DETERMINE WHEN COLLECTION FIRST OFFERED IN COM-
24 MERCE.—No monetary relief shall be available for a viola-
25 tion of section 1402 if the person who made available or

1 *extracted all or a substantial part of the collection of infor-*
2 *mation that is the source of the violation could not reason-*
3 *ably determine whether the date on which the portion of*
4 *the collection that was made available or extracted was first*
5 *offered in commerce following the investment of resources*
6 *that qualified that portion of the collection for protection*
7 *under this chapter by the person claiming protection under*
8 *this chapter or that person’s predecessor in interest was a*
9 *date more than 15 years prior to making available or ex-*
10 *tracting the information.*

11 “(b) *NOTICE.—In the case of a collection of informa-*
12 *tion into which all or a substantial part of a government*
13 *collection of information is incorporated after the effective*
14 *date of this chapter, no monetary relief shall be available*
15 *for a violation of section 1402 unless a statement appeared*
16 *in connection with the version of the collection of informa-*
17 *tion from which the information was made available or ex-*
18 *tracted, in a manner and location so as to give reasonable*
19 *notice, identifying the government collection and the gov-*
20 *ernment entity from which it was obtained.*

21 “(c) *ACCESS TO GOVERNMENT INFORMATION.—*

22 “(1) *IN GENERAL.—In the case of a collection of*
23 *information that incorporates all or a substantial*
24 *part of a government collection of information, a non-*
25 *profit educational, scientific, or research institution,*

1 *library, or archives, or an employee or agent of such*
2 *an institution, library, or archives, acting within the*
3 *scope of his or her employment, shall have a complete*
4 *defense to an action for a violation of section 1402 for*
5 *extracting the government information, if all of the*
6 *following circumstances apply:*

7 *“(A) The government information was not*
8 *publicly available from the government or rea-*
9 *sonably available from any other source.*

10 *“(B) The information was extracted for the*
11 *purpose of engaging in nonprofit educational,*
12 *scientific, or research activities and not for the*
13 *purpose of offering the information obtained for*
14 *sale or otherwise in the market.*

15 *“(C) Prior to extracting the government in-*
16 *formation, the person who extracted it—*

17 *“(i) made reasonable, good faith efforts*
18 *to obtain the information from other*
19 *sources; and*

20 *“(ii) made a written request to the per-*
21 *son asserting protection under this chapter,*
22 *which clearly identified the information to*
23 *be extracted and described the reasonable,*
24 *good faith efforts made under clause (i).*

1 “(D) *The person claiming protection under*
2 *this chapter did not make the government infor-*
3 *mation available within a reasonable time after*
4 *receipt of the request, in any form of that per-*
5 *son’s choosing, including the form in which the*
6 *government information was first obtained from*
7 *the government entity or its employee, agent, or*
8 *exclusive licensee, at the cost of the information’s*
9 *identification, extraction, and delivery.*

10 “(2) *APPLICABILITY.—This subsection applies*
11 *only to collections of information existing before the*
12 *effective date of this chapter and only if the person*
13 *claiming protection under this chapter can reasonably*
14 *identify and extract the requested information in the*
15 *form first obtained from the government entity, em-*
16 *ployee, agent, or exclusive licensee.*

17 **“§ 1409. Limitations on actions**

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

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

1 “(c) *ADDITIONAL LIMITATION.*—No criminal or civil
2 *action shall be maintained under this chapter for making*
3 *available or extracting all or a substantial part of a collec-*
4 *tion of information that occurs more than 15 years after*
5 *the portion of the collection that is made available or ex-*
6 *tracted was first offered in commerce following the invest-*
7 *ment of resources that qualified that portion of the collection*
8 *for protection under this chapter. In no case shall any pro-*
9 *tection under this chapter resulting from a substantial in-*
10 *vestment of resources in maintaining a preexisting collec-*
11 *tion prevent any information from being made available*
12 *or extracted from a copy of the preexisting collection after*
13 *the 15 years have expired with respect to the portion of that*
14 *preexisting collection that is so made available or extracted,*
15 *and no liability under this chapter shall thereafter attach*
16 *to the making available or extraction of such information.*

17 “(d) *BURDEN OF PROOF ON PLAINTIFF TO SHOW*
18 *PORTION FIRST OFFERED IN COMMERCE NO MORE THAN*
19 *15 YEARS OLD.*—No action for a violation of section 1402
20 *may be maintained unless the person claiming protection*
21 *under this chapter proves that the date on which the portion*
22 *of the collection that was made available or extracted was*
23 *first offered by that person or that person’s predecessor in*
24 *interest in commerce following the investment of resources*
25 *that qualified that portion of the collection for protection*

1 *under this chapter was no more than 15 years prior to the*
 2 *time when it was made available or extracted by the defend-*
 3 *ant.*

4 **“§ 1410. Study and report**

5 *“No later than 3 years after the date of the enactment*
 6 *of this chapter, the Register of Copyrights and the Assistant*
 7 *Attorney General, Antitrust Division of the Department of*
 8 *Justice, shall conduct a joint study and submit a joint re-*
 9 *port to Congress on whether the defense provided for in sec-*
 10 *tion 1408(c) should be expended to include collections of in-*
 11 *formation that do not incorporate all or a substantial part*
 12 *of a government collection of information where the ex-*
 13 *tracted information is not publicly available from any other*
 14 *source.”.*

15 **SEC. 3. CONFORMING AMENDMENTS.**

16 (A) *TABLE OF CHAPTERS.*—*The table of chapters for*
 17 *title 17, United States Code, is amended by adding at the*
 18 *end the following:*

“14. Collections of information 1401”.

19 (b) *DISTRICT COURT JURISDICTION.*—(1) *Section*
 20 *1338 of title 28, United States Code, is amended—*

21 (A) *in the section heading by striking “trade-*
 22 *marks,” and inserting “trademarks, collec-*
 23 *tions of information,”;*

24 (B) *in subsection (a) by striking “trade-marks”*
 25 *and inserting “trademarks”;*

1 (C) in subsection (b) by striking “trade-mark”
2 and inserting “trademark”; and

3 (D) by adding at the end the following:

4 “(d) The district courts shall have original jurisdiction
5 of any civil action arising under chapter 14 of title 17,
6 relating to collections of information. Such jurisdiction
7 shall be exclusive of the courts of the States, except that any
8 action against a State governmental entity may be brought
9 in any court that has jurisdiction over claims against such
10 entity.”.

11 (2) The item relating to section 1338 in the table of
12 sections for chapter 85 of title 28, United States Code, is
13 amended by striking “trade-marks,” and inserting “trade-
14 marks, collections of information,”.

15 (c) PLACE FOR BRINGING ACTIONS.—(1) Section 1400
16 of title 28, United States Code, is amended by adding at
17 the end the following:

18 “(c) Civil actions arising under chapter 14 of title 17,
19 relating to collections of information, may be brought in
20 the district in which the defendant or the defendant’s agent
21 resides or may be found.”.

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

1 **“§ 1400. Patents and copyrights, mask works, designs,**
2 **and collections of information”.**

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

“1400. Patents and copyrights, mask works, designs, and collections of informa-
tion.”.

6 (d) *COURT OF FEDERAL CLAIMS JURISDICTION.—Sec-*
7 *tion 1498(e) of title 28, United States Code, is amended*
8 *by inserting “and to protections afforded collections of in-*
9 *formation under chapter 14 of title 17” after “chapter 9*
10 *of title 17”.*

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

12 (a) *IN GENERAL.—This title and the amendments*
13 *made by this title shall take effect on the date of the enact-*
14 *ment of this Act, and shall apply to acts of extraction and*
15 *making available of information that are committed on or*
16 *after that date.*

17 (b) *PRIOR ACTS NOT AFFECTED.—No person shall be*
18 *liable under chapter 14 of title 17, United States Code, as*
19 *added by section 2 of this Act, for making available infor-*
20 *mation lawfully extracted from a collection of information*
21 *prior to the effective date of this Act, by that person or by*
22 *that person’s predecessor in interest.*