

106TH CONGRESS
1ST SESSION

H. R. 1858

To promote electronic commerce through improved access for consumers to electronic databases, including securities market information databases.

IN THE HOUSE OF REPRESENTATIVES

MAY 19, 1999

Mr. BLILEY (for himself, Mr. DINGELL, Mr. TAUZIN, Mr. MARKEY, Mr. OXLEY, and Mr. TOWNS) introduced the following bill; which was referred to the Committee on Commerce

A BILL

To promote electronic commerce through improved access for consumers to electronic databases, including securities market information 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 “Consumer and Investor
5 Access to Information Act of 1999”.

1 **TITLE I—COMMERCE IN DUPLI-**
2 **CATED DATABASES PROHIB-**
3 **ITED**

4 **SEC. 101. DEFINITIONS.**

5 As used in this title:

6 (1) DATABASE.—The term “database” means a
7 collection of discrete items of information that have
8 been collected and organized in a single place, or in
9 such a way as to be accessible through a single
10 source, through the investment of substantial mone-
11 tary or other resources, for the purpose of providing
12 access to those discrete items of information by
13 users of the database. However, a discrete section of
14 a database that contains multiple discrete items of
15 information may also be treated as a database.

16 (2) DUPLICATE OF A DATABASE.—A database
17 is “a duplicate” of any other database if the data-
18 base is substantially the same as such other data-
19 base, and was made by extracting information from
20 such other database.

21 (3) INFORMATION.—The term “information”
22 means facts, data, or any other intangible material
23 capable of being collected and organized in a system-
24 atic way, with the exception of works of authorship.

1 (4) COMMERCE.—The term “commerce” means
2 all commerce which may be lawfully regulated by the
3 Congress.

4 (5) IN COMPETITION.—The term “in competi-
5 tion with” when used with respect to the sale or dis-
6 tribution of a database to the public means that the
7 database—

8 (A) displaces substantial sales or licenses
9 of the database of which it is a duplicate; and

10 (B) significantly threatens the opportunity
11 to recover a return on the investment in the col-
12 lecting or organizing of the duplicated database.

13 (6) GOVERNMENT DATABASE.—The term “gov-
14 ernment database” means a database that—

15 (A) has been collected or maintained by
16 the United States of America, or any agency or
17 instrumentality thereof; or

18 (B) is required by Federal statute or regu-
19 lation to be collected or maintained, to the ex-
20 tent so required.

21 **SEC. 102. PROHIBITION AGAINST DISTRIBUTION OF DUPLI-**
22 **CATES.**

23 It is unlawful for any person, by any means or instru-
24 mentality of interstate or foreign commerce or commu-

1 nications, to sell or distribute to the public a database
2 that—

3 (1) is a duplicate of another database that was
4 collected and organized by another person; and

5 (2) is sold or distributed in commerce in com-
6 petition with that other database.

7 **SEC. 103. PERMITTED ACTS.**

8 (a) COLLECTING OR USE OF INFORMATION OB-
9 TAINED THROUGH OTHER MEANS.—Nothing in this title
10 shall restrict any person from selling or distributing to the
11 public a database consisting of information obtained by
12 means other than by extracting it from a database col-
13 lected and organized by another person.

14 (b) NEWS REPORTING.—Nothing in this title shall
15 restrict any person from selling or distributing to the pub-
16 lic a duplicate of a database for the sole purpose of news
17 reporting, including news gathering and dissemination, or
18 comment, unless the information duplicated is time sen-
19 sitive and has been collected by a news reporting entity,
20 and the sale or distribution is part of a consistent pattern
21 engaged in for the purpose of direct competition.

22 (c) LAW ENFORCEMENT AND INTELLIGENCE ACTIVI-
23 TIES.—Nothing in this title shall prohibit an officer,
24 agent, or employee of the United States, a State, or a po-
25 litical subdivision of a State, or a person acting under con-

1 tract of such officers, agents or employees, from selling
2 or distributing to the public a duplicate of a database as
3 part of lawfully authorized investigative, protective, or in-
4 telligence activities.

5 (d) SCIENTIFIC, EDUCATIONAL, OR RESEARCH
6 USES.—No person or entity who for scientific, edu-
7 cational, or research purposes duplicates the same infor-
8 mation that has been collected or generated by another
9 person or entity shall incur liability under this title so long
10 as such conduct is not part of a consistent pattern en-
11 gaged in for the purpose of direct commercial competition
12 with that other person.

13 **SEC. 104. EXCLUSIONS.**

14 (a) GOVERNMENT INFORMATION.—

15 (1) EXCLUSION OF GOVERNMENT DATA-
16 BASES.—Protection under section 102 shall not ex-
17 tend to government databases.

18 (2) INCORPORATED NONGOVERNMENT POR-
19 TIONS PROTECTED.—The incorporation of all or part
20 of a government database into a non-government
21 database does not preclude protection for the por-
22 tions of the non-government database which came
23 from a source other than the government database.

24 (3) AUTHORITY TO EXCLUDE ADDITIONAL GOV-
25 ERNMENT-SUPPORTED DATABASES.—Nothing in this

1 title shall prevent the Federal Government or a
2 State or local government from establishing by law
3 or contract that a database, the creation or mainte-
4 nance of which is substantially funded by such Fed-
5 eral, State, or local government, shall not be subject
6 to the protection afforded under this title.

7 (b) DATABASES RELATED TO INTERNET COMMU-
8 NICATIONS.—Protection under section 102 does not ex-
9 tend to a database incorporating information collected or
10 organized—

11 (1) to perform the function of addressing, rout-
12 ing, forwarding, transmitting, or storing Internet
13 communications; or

14 (2) to perform the function of providing or re-
15 ceiving connections for Internet communications.

16 (c) COMPUTER PROGRAMS.—

17 (1) PROTECTION NOT EXTENDED.—Subject to
18 paragraph (2), protection under section 102 shall
19 not extend to computer programs, including any
20 computer program used in the manufacture, produc-
21 tion, operation, or maintenance of a database, or
22 any element of a computer program necessary to its
23 operation.

24 (2) INCORPORATED DATABASES.—A database
25 that is otherwise subject to protection under section

1 102 is not disqualified from such protection solely
2 because it resides in a computer program, so long as
3 the database functions as a database within the
4 meaning of this title and not as an element nec-
5 essary to the operation of the computer program.

6 (d) NONPROTECTABLE SUBJECT MATTER.— Protec-
7 tion for databases under section 102 does not extend to
8 the sale or distribution to the public of a duplicate of any
9 individual idea, fact, procedure, system, method of oper-
10 ation, concept, principle, or discovery.

11 (e) SUBSCRIBER LIST INFORMATION.—Protection for
12 databases under section 102 does not extend to subscriber
13 list information within the meaning of section 222(f) of
14 the Communications Act of 1934 (47 U.S.C. 222(f)).
15 Nothing in this subsection shall affect the operation of sec-
16 tion 222(e) of such Act, under which a telecommunications
17 carrier provides, upon request, subscriber list information
18 for the purposes of publishing directories in any format
19 under nondiscriminatory and reasonable rates, terms, and
20 conditions.

21 **SEC. 105. RELATIONSHIP TO OTHER LAWS.**

22 (a) OTHER RIGHTS NOT AFFECTED.—Subject to
23 subsection (b), nothing in this title shall affect rights, limi-
24 tations, or remedies concerning copyright, or any other
25 rights or obligations relating to information, including

1 laws with respect to patent, trademark, design rights,
2 antitrust, trade secrets, privacy, access to public docu-
3 ments, misuse, and the law of contract.

4 (b) PREEMPTION OF STATE LAW.—On or after the
5 effective date of this Act, no State law that prohibits or
6 that otherwise regulates conduct that is subject to the pro-
7 hibitions specified in section 102 shall be effective to the
8 extent that such State law is inconsistent with section 102.

9 (c) LICENSING.—Subject to the provisions on misuse
10 in section 106(b), nothing in this title shall restrict the
11 rights of parties freely to enter into licenses or any other
12 contracts with respect to the use of information.

13 (d) COMMUNICATIONS ACT OF 1934.—Nothing in
14 this title shall affect the operation of the Communications
15 Act of 1934 (47 U.S.C. 151 et seq.) or the authority of
16 the Federal Communications Commission.

17 **SEC. 106. LIMITATIONS ON LIABILITY.**

18 (a) SERVICE PROVIDER LIABILITY.—A provider of
19 telecommunications services or information services (with-
20 in the meaning of section 3 of the Communications Act
21 of 1934 (47 U.S.C. 153)), or the operator of facilities
22 therefor, shall not be liable for a violation of section 102
23 if such provider or operator did not initially place the data-
24 base that is the subject of the violation on a system or
25 network controlled by such provider or operator.

1 (b) MISUSE.—A person shall not be liable for a viola-
2 tion of section 102 if the person benefiting from the pro-
3 tection afforded a database under section 102 misuses the
4 protection. In determining whether a person has misused
5 the protection afforded under this title, a court shall con-
6 sider, among other factors—

7 (1) the extent to which the ability of persons to
8 engage in the permitted acts under this title has
9 been frustrated by contractual arrangements or
10 technological measures;

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

15 (3) the extent to which the license or sale of in-
16 formation contained in a database protected under
17 this title has been conditioned on the acquisition or
18 license of any other product or service, or on the
19 performance of any action, not directly related to the
20 license or sale;

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

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

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

7 **SEC. 107. ENFORCEMENT.**

8 (a) **USE OF FEDERAL TRADE COMMISSION ACT AU-**
9 **THORITY.**—The Federal Trade Commission shall have ju-
10 risdiction, under section 5 of the Federal Trade Commis-
11 sion Act (15 U.S.C. 45), to prevent violations of section
12 102 of this title.

13 (b) **RULEMAKING AUTHORITY.**—The Federal Trade
14 Commission may, pursuant to subparagraph (A) or (B)
15 of section 18(a) of the Federal Trade Commission Act (15
16 U.S.C. 57a(a)), but without regard to the limitations con-
17 tained in section 18(b)(3) of such Act, prescribe rules to
18 implement this title.

19 (c) **ENFORCEMENT.**—Any violation of any rule pre-
20 scribed under subsection (b) shall be treated as a violation
21 of a rule respecting unfair or deceptive acts or practices
22 under section 5 of the Federal Trade Commission Act (15
23 U.S.C. 45). Notwithstanding section 5(a)(2) of such Act
24 (15 U.S.C. 45(a)(2)), communications common carriers

1 shall be subject to the jurisdiction of the Federal Trade
2 Commission for purposes of this title.

3 (d) ACTIONS BY THE COMMISSION.—The Federal
4 Trade Commission shall prevent any person from violating
5 section 102 or a rule of the Commission under subsection
6 (b) of this section in the same manner, by the same means,
7 and with the same jurisdiction, powers, and duties as
8 though all applicable terms and provisions of the Federal
9 Trade Commission Act (15 U.S.C. 41 et seq.) were incor-
10 porated into and made a part of this title. Any person
11 who violates section 102 or such rule shall be subject to
12 the penalties and entitled to the privileges and immunities
13 provided in the Federal Trade Commission Act in the
14 same manner, by the same means, and with the same ju-
15 risdiction, power, and duties as though all applicable terms
16 and provisions of the Federal Trade Commission Act were
17 incorporated into and made a part of this title.

18 **SEC. 108. REPORT TO CONGRESS.**

19 Not later than 36 months after the date of enactment
20 of this title, the Federal Trade Commission shall report
21 to the Congress on the effect this title has had on elec-
22 tronic commerce and on the United States database indus-
23 try and related parties, including—

1 (1) the availability of databases, search engines,
2 and other tools for locating information necessary
3 for electronic commerce;

4 (2) the extent of competition between database
5 producers, including the concentration of market
6 power within the database industry;

7 (3) the investment in the development and
8 maintenance of databases, including changes in the
9 number and size of databases;

10 (4) the availability of information to industries
11 and researchers which rely upon such availability;

12 (5) whether in the period after enactment of
13 this title database producers have faced unfair com-
14 petition, particularly from publishers in the Euro-
15 pean Union; and

16 (6) the extent to which extraction of informa-
17 tion from databases, to a degree insufficient to re-
18 sult in liability under section 102, is harming data-
19 base producers' incentive to collect and organize
20 databases.

21 **SEC. 109. EFFECTIVE DATE.**

22 This title shall take effect on the date of the enact-
23 ment of this Act, and shall apply to the sale or distribution
24 after that date of a database that was collected and orga-
25 nized after that date.

1 **TITLE II—SECURITIES MARKET**
2 **INFORMATION**

3 **SEC. 201. MISAPPROPRIATION OF REAL-TIME MARKET IN-**
4 **FORMATION.**

5 Section 11A of the Securities Exchange Act of 1934
6 (15 U.S.C. 78k–1) is amended by adding at the end the
7 following new subsection:

8 “(e) MISAPPROPRIATION OF REAL-TIME MARKET IN-
9 FORMATION.—

10 “(1) PROHIBITION AGAINST MISAPPROPRIA-
11 TION.—Subject to paragraphs (3), (4), and (5), any
12 person who—

13 “(A) obtains directly or indirectly from a
14 market information processor real-time market
15 information, and

16 “(B) directly or indirectly sells, distributes
17 or redistributes, or otherwise disseminates such
18 real-time market information, without the au-
19 thorization of the market information processor,
20 shall be liable to that market information processor
21 for the remedies set forth in paragraph (2).

22 “(2) CIVIL REMEDIES.—

23 “(A) CIVIL ACTIONS.—Any person who is
24 injured by a violation of paragraph (1) may
25 bring a civil action for such a violation in an

1 appropriate United States district court, except
2 that any action against a State governmental
3 entity may be brought in any court that has ju-
4 risdiction over claims against such entity.

5 “(B) TEMPORARY AND PERMANENT IN-
6 JUNCTIONS.—Any court having jurisdiction of a
7 civil action under this subsection shall have the
8 power to grant temporary and permanent in-
9 junctions, according to the principles of equity
10 and upon such terms as the court may deem
11 reasonable, to prevent a violation of paragraph
12 (1).

13 “(C) MONETARY RELIEF.—When a viola-
14 tion of paragraph (1) has been established in
15 any civil action arising under this subsection,
16 the plaintiff shall be entitled to recover any
17 damages sustained by the plaintiff.

18 “(D) DISGORGEMENT.—When a violation
19 of paragraph (1) has been established, if the
20 plaintiff is not able to prove recoverable dam-
21 ages to the full extent of the defendant’s mone-
22 tary gain directly attributable to the violation,
23 the court, in its equitable discretion, may order
24 the defendant to disgorge the amount of such
25 monetary gain to the plaintiff.

1 “(3) PERMITTED ACTS.—

2 “(A) GATHERING OR USE OF REAL-TIME
3 MARKET INFORMATION INDEPENDENTLY OB-
4 TAINED.—Nothing in this subsection shall re-
5 strict any person from independently gathering
6 real-time market information, or from redistrib-
7 uting or disseminating such independently gath-
8 ered information.

9 “(B) NEWS REPORTING.—Nothing in this
10 subsection shall restrict any news reporting en-
11 tity from extracting real-time market informa-
12 tion for the sole purpose of news reporting, in-
13 cluding news gathering, dissemination, and
14 comment, unless the extraction is part of a con-
15 sistent pattern of competing with a market in-
16 formation processor in the distribution of real-
17 time market information.

18 “(4) RELATIONSHIP TO OTHER LAWS.—

19 “(A) PREEMPTION.—Subject to subpara-
20 graphs (B), (C), and (D), on and after the date
21 of enactment of this subsection, this section—

22 “(i) shall exclusively govern the unau-
23 thorized extraction, sale, distribution or re-
24 distribution, or other dissemination of real-
25 time market information; and

1 “(ii) shall supersede any other Fed-
2 eral or State law (either statutory or com-
3 mon law) to the extent that such other
4 Federal or State law is inconsistent with
5 this section.

6 “(B) FEDERAL SECURITIES LAWS.—Noth-
7 ing in this subsection shall be construed—

8 “(i) to limit or otherwise affect the
9 application of any provision of the securi-
10 ties laws (as defined in section 3(a)(47)),
11 or the rules and regulations thereunder; or

12 “(ii) to impair or limit the authority
13 of the Commission.

14 “(C) ANTITRUST.—Nothing in this sub-
15 section shall limit in any way the constraints
16 that are imposed by Federal and State antitrust
17 laws on the manner in which products and serv-
18 ices may be provided to the public, including
19 those regarding single suppliers of products and
20 services.

21 “(D) LICENSING.—Nothing in this sub-
22 section shall restrict the rights of parties freely
23 to enter into licenses or any other contracts
24 with respect to the extraction, sale, distribution

1 or redistribution, or other dissemination of real-
2 time market information.

3 “(5) LIMITATIONS ON ACTIONS.—

4 “(A) CIVIL ACTIONS.—No civil action shall
5 be maintained under this subsection unless it is
6 commenced within one year after the cause of
7 action arises or claim accrues.

8 “(B) ADDITIONAL LIMITATION.—No civil
9 action shall be maintained under this subsection
10 for the extraction, sale, distribution or redis-
11 tribution, or other dissemination of market in-
12 formation that is not real-time market informa-
13 tion.

14 “(C) PERSONS SUBJECT TO CONTRACTUAL
15 REMEDIES.—No civil action shall be maintained
16 under this subsection by a market information
17 processor against any person to whom such
18 processor provides real-time market information
19 pursuant to a contract or agreement between
20 such processor and such person with respect to
21 any real-time market information or any rights
22 or remedies provided pursuant to such contract
23 or agreement.

24 “(6) DEFINITIONS.—As used in this subsection:

1 “(A) MARKET INFORMATION.—The term
2 ‘market information’ means information—

3 “(i) with respect to quotations and
4 transactions in any security; and

5 “(ii) the collection, processing, dis-
6 tribution, and publication of which is sub-
7 ject to this title.

8 “(B) REAL-TIME MARKET INFORMATION.—

9 Taking into account the present state of tech-
10 nology, different types of market data, how
11 market participants use market data, and other
12 relevant factors, the Commission may, con-
13 sistent with the protection of investors and the
14 public interest, prescribe by rule the extent to
15 which market information shall be considered to
16 be real-time market information for purposes of
17 this subsection.

18 “(C) MARKET INFORMATION PROC-
19 ESSOR.—The term ‘market information proc-
20 essor’ with respect to any market information
21 means the securities exchange, self-regulatory
22 organization, securities information processor,
23 or national market system plan administrator
24 that is responsible under this title or the rules
25 or regulations thereunder, for the collection,

1 processing, distribution, and publication of, or
2 preparing for distribution or publication, such
3 market information.”.

4 **SEC. 202. EFFECTIVE DATE.**

5 (a) IN GENERAL.—The amendment made by section
6 201 shall take effect on the date of the enactment of this
7 Act, and shall apply to acts committed on or after that
8 date.

9 (b) PRIOR ACTS NOT AFFECTED.—No person shall
10 be liable under section 11A(e) of the Securities Exchange
11 Act of 1934 (15 U.S.C. 78k–1(e)), as added by section
12 201 of this Act, for the extraction, sale, distribution or
13 redistribution, or other dissemination of real-time market
14 information prior to the date of enactment of this Act,
15 by that person or by that person’s predecessor in interest.

○