



Database & Collections of Information Misappropriation Act

(Previously H.R. 354 "Collections of Information Anti-Piracy Act")

SUMMARY: (*Draft text of bill posted at www.aapsonline.org*)

- Creates a new federally-enforced property right even if no new material created;
- Protects government-granted monopolies;
- Preempts state law;
- Exceeds Constitutional authority;
- Creates a new federal tort for the trial lawyers;
- Labels free market & Internet as "free rides" to be policed;
- Blocks scientists' access to data, chills research, increases costs;
- Places burden of proof on database users, rather than complainants;
- Expanded subpoena power encourages fishing expeditions, frivolous lawsuits & harassment.];
- Repeatedly opposed by hundreds of research & scientific groups, universities, consumer groups.

ACTION:

- Sign the coalition letter by Monday, Sept. 15 – **CONTACT AAPS: Michael Ostrolenk 301.717.05 -- mostrolenk@comcast.net**
- Contact: House Judiciary & Energy & Commerce Committees and Senate Commerce, Science and Budget Committee

WHAT OTHERS ARE SAYING:

"The question of whether to create a new type of intellectual-property protection for collections of information has been before Congress a number of times, and on every previous occasion, a broad coalition of industry, public-interest and academic critics, as well as scientists and researchers and many other stakeholders, have pointed out flaws with such a proposal — not merely drafting flaws of the sort that might be fixed in negotiation or markup, but fundamental philosophical problems that lie at the heart of our democracy. This new "discussion draft" is no exception." *Consumers Union, Electronic Frontier Foundation, Electronic Privacy Information Center, Media Access Project, and Public Knowledge*

Database developers have "yet to see any serious evidence of the need for legislation that provides additional protections to databases. Congress has been discussing database legislation since 1996, and in all that time, there has been little if any evidence that the database industry has faced uncertainty in the courts or has been harmed in the marketplace. There is no evidence that selected database producers have suffered any serious harm as a result of activity addressed in the current draft proposal. Indeed, the industry appears to be thriving." *American Library Association and three other leading library groups.*

> Brought to you by the Center for Technology Policy of the Free Congress Foundation

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Legislative Alert: Trade Associations Try To Assert Monopoly Rights Over Information That Should Be In The Public Domain

>9/5/03 Powerful trade associations, more than likely including the American Medical Association, are attempting to rush through Congress a bill that would reestablish monopoly copyright rights for databases that are required by law. The Association of American Physicians and Surgeons notes its members and, in fact, any physician practicing within the United States, are required by law to use the American Medical Association's "overpriced...unwieldy" database in medical billing. Not only does the AMA profit from its monopoly, doctors must grapple with an overly complex billing system. The monopoly granted the AMA database for medical billing codes eliminates the incentive for competitors to develop a less complex series of codes. The decision comes in the wake of a June 2003 decision of a federal court that rejected the case of a database owner who tried to interfere with its usage. Now, this legislation would essentially overturn the court's decision.

the AAPS wrote in May 2000, a federal district court had found "that copyright protection provided the necessary economic incentive to produce and maintain the codes, and that there is an increasing trend for government adoption of such codes."

> But the AAPS counters that the "public-private" codes are essentially regulations. The AAPS cites the opinion offered by a U.S. District Court in *State of Georgia v. Harrison Co.*: "The citizens are the authors of the law, and therefore its owners, regardless of who actually drafts the provisions, because the law derives its authority from the consent of the public, expressed through the democratic process." But what the AMA would like is "privately owned law."

> Addressing the issue in a broader sense, the AAPS argues that a new federal property right is not needed, particularly in that what it will really do is establish monopolies over information that should be readily available to the public.

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> The court suit in question involved a case in which a citizen, Peter Veeck, purchased the Southern Building Code Congress International's model building codes and posted them online, allowing free access. Mr. Veeck argued that the model codes had become law and therefore had entered public domain. As