

## Union Calendar No. 253

108<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 3872

[Report No. 108-437]

To prohibit the misappropriation of databases while ensuring consumer access to factual information.

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### IN THE HOUSE OF REPRESENTATIVES

MARCH 2, 2004

Mr. STEARNS (for himself, Ms. SCHAKOWSKY, Mr. BOUCHER, Mr. UPTON, Mr. DINGELL, Mr. SHADEGG, Mr. MARKEY, Mr. PICKERING, Mr. DEUTSCH, Mr. TERRY, Mr. TOWNS, Mr. ISSA, Mr. GORDON, Mr. RUSH, Ms. ESHOO, Mr. GREEN of Texas, Ms. MCCARTHY of Missouri, Ms. SOLIS, and Mr. GONZALEZ) introduced the following bill; which was referred to the Committee on Energy and Commerce

MARCH 16, 2004

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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## A BILL

To prohibit the misappropriation of databases while ensuring consumer access to factual information.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Consumer Access to  
3 Information Act of 2004”.

4 **SEC. 2. MISAPPROPRIATION OF A DATABASE.**

5 (a) MISAPPROPRIATION PROHIBITED.—The mis-  
6 appropriation of a database is an unfair method of com-  
7 petition and an unfair or deceptive act or practice in com-  
8 merce under section 5(a)(1) of the Federal Trade Com-  
9 mission Act (15 U.S.C. 45(a)(1)).

10 (b) DEFINITION.—For purposes of subsection (a),  
11 the term “misappropriation of a database” means that—

12 (1) a person (referred to in this section as the  
13 “first person”) generates or collects the information  
14 in the database at some cost or expense;

15 (2) the value of the information is highly time-  
16 sensitive;

17 (3) another person’s (referred to in this section  
18 as the “other person”) use of the information con-  
19 stitutes free-riding on the first person’s costly efforts  
20 to generate or collect it;

21 (4) the other person’s use of the information is  
22 in direct competition with a product or service of-  
23 fered by the first person; and

24 (5) the ability of other parties to free-ride on  
25 the efforts of the first person would so reduce the  
26 incentive to produce the product or service that its

1 existence or quality would be substantially threat-  
2 ened.

3 **SEC. 3. LIMITATION ON LIABILITY OF CERTAIN ENTITIES.**

4 (a) LIMITATION ON LIABILITY.—No provider of an  
5 interactive computer service shall be liable under section  
6 2 for making available information that is provided by an-  
7 other information content provider.

8 (b) DEFINITIONS.—In this section, the terms “inter-  
9 active computer service” and “information content pro-  
10 vider” have the meaning given to those terms in section  
11 230(f) of the Communications Act of 1934 (47 U.S.C.  
12 230(f)).

13 (c) CONSTRUCTION.—For purposes of section 230 of  
14 the Communications Act of 1934 (47 U.S.C. 230), the  
15 provisions of this Act shall not be construed to be a law  
16 pertaining to intellectual property.

17 **SEC. 4. REMEDIES.**

18 (a) TREATMENT OF VIOLATIONS AS RULE VIOLA-  
19 TIONS.—A misappropriation of a database under section  
20 2 shall be treated as a violation of a rule defining an un-  
21 fair or deceptive act or practice prescribed under section  
22 18(a)(1)(B) of the Federal Trade Commission Act (15  
23 U.S.C. 57a(a)(1)(B)).

24 (b) FTC AUTHORITY.—The Federal Trade Commis-  
25 sion shall enforce this Act in the same manner, by the

1 same means, and with the same jurisdiction, powers, and  
2 duties as though all applicable terms and provisions of the  
3 Federal Trade Commission Act (15 U.S.C. 41 et seq.)  
4 were incorporated into and made a part of this Act.

5 **SEC. 5. EXCLUSIONS.**

6 Nothing in this Act shall—

7 (1) affect the operation of the Securities Act of  
8 1933 (15 U.S.C. 78a et seq.), the Securities Ex-  
9 change Act of 1934 (15 U.S.C. 78a et seq.), the  
10 Trust Indenture Act of 1939 (15 U.S.C. 77aaa et  
11 seq.), the Investment Company Act of 1940 (15  
12 U.S.C. 80a–1 et seq.), the Investment Advisers Act  
13 of 1940 (15 U.S.C. 80b et seq.), the Securities In-  
14 vestor Protection Act of 1970 (15 U.S.C. 78aaa et  
15 seq.), or the rules and regulations thereunder;

16 (2) affect the authority of the Securities and  
17 Exchange Commission; or

18 (3) apply to information with respect to  
19 quotations for, or indications, orders, or transactions  
20 in, securities.



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