

Issue Area: Business
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Dear Senator:

We are writing to urge your support of important legislation to fill a dangerous gap in the legal protections available to databases under U.S. law. Such legislation has been passed twice -- without opposition -- by the House of Representatives as H.R. 2652, the *Collections of Information Antipiracy Act*, and as Title V of H.R. 2281, the *Digital Millennium Copyright Act* ("DMCA"). In addition, S. 2291 -- a Senate companion measure -- is now pending before the Senate Judiciary Committee. We favor creating incentives for the U.S. database industry to continue to innovate and to offer products and services to a wide variety of users. We ask you to ensure that a fair, effective database bill emerges from the House/Senate conference on the DMCA, and respectfully ask for your vote in favor of such a bill as part of the conference report.

American database producers contribute hundreds of millions of dollars to the U.S. economy annually and are among the few industries that have shown a consistent, positive trade balance. The United States produces some 65% of the world's databases, touching every subject imaginable, including defense, communications, medicine, agriculture, real estate, science, law, education and finance. The database community directly employs tens of thousands of Americans who collect, update, and verify this information, and also supports equal numbers and jobs in ancillary industries, such as software and computer technology. Today as never before, nearly every component of the world economy relies on accurate, reliable, and up-to-date databases that are logically organized, user-friendly and easy to access -- precisely the types of products and services that America's database producers desire to continue bringing to the market.

However, the U.S. information industry is gravely threatened -- both here and abroad -- by the lack of a uniform, federal statute to offer protection from market-destructive thefts of the products and services in which these companies have invested enormous sums of money, time and effort. American companies are learning the hard way that today, U.S. law -- in particular copyright law -- does not adequately protect most databases against wholesale extraction and dissemination of their contents by database pirates. Without improved protections to clarify the rights and responsibilities of database producers and users alike, some databases will disappear from the market altogether, or access to them may be restricted. But prompt action by the Senate can prevent these unfortunate outcomes.

Moreover, as America's information providers position themselves to compete in an increasingly global marketplace, they face a 1996 European Union (EU) Directive requiring that all EU nations protect only those databases whose owners are located in the European Union or in a country that has comparable laws in place to protect databases. Should the EU model of discriminatory protection prevail because of a lack of U.S. legislation, both American database producers and users will suffer as U.S. products are subject to increased piracy and decreased protection in the global marketplace. The European Commission reports that by the end of this

year 16 nations that are EU members or that have special trading relationships with EU members will have this same type of law in place. Nations such as Germany, Great Britain, France, Italy and Spain are not only themselves major trading partners, but they also exert influence on the trading practices of other European countries and nations in Latin America, Asia and Africa.

You probably have received letters and press releases from opponents of any form of database protection legislation, claiming that all parties have not had ample opportunity to air their views and concerns. These statements have mischaracterized the discussions and efforts by Congress, the Copyright Office and the U.S. Patent and Trademark Office ("PTO") to help craft fair, balanced database protection legislation. These same critics would have you believe that the bills mentioned above -- which are the result of extensive debate on this issue -- are radical and unbalanced.

Nothing could be further from the truth.

During this Congress alone: (1) the Copyright Office conducted a four-month process of discussion and investigation with all interested parties that led to issuance of an August 1997 report thoroughly examining various approaches to database protection and identifying shortcomings of U.S. law; (2) the House Subcommittee on Courts and Intellectual Property held two hearings over the course of six months and made significant changes to address the concerns of nonprofit institutions and scientists before mark-ups last spring; and (3) PTO held an all-day conference in April 1998 to further air views of all parties and issued a detailed report, with recommendations, in August.

Perhaps most importantly, over the course of the five weeks this summer the Senate Judiciary Committee sponsored extensive negotiations between affected interests. This process afforded opposing groups an extensive opportunity to voice their concerns, and their views have been thoroughly vetted. At each turn, all those concerned with database protection have had an opportunity to present detailed, specific proposals for how best to craft U.S. legislation. Yet almost without fail, opponents have ignored such opportunities and have instead issued general statements of opposition -- both to the very notion of protecting databases and the purported unfairness of the process.

In contrast, database producers have remained engaged in the debates and have worked with many government officials to help address the legitimate concerns of those who have offered specific proposals and criticisms of the bills mentioned above. Indeed, a quick comparison between H.R. 2652 as introduced and its final iteration as Title V of H.R. 2281 demonstrates the significance of the changes. And these changes have been almost exclusively to the benefit of libraries, universities and scientists by broadening exceptions to the already limited protections offered database producers under the bill. These changes also require courts to lower any penalties that may be levied against nonprofit bad actors and ensure that the legislation does not inadvertently inhibit the technological developments so important to the growth of the Internet.

Now the Senate faces a clear choice. On the one hand, it can act to help perfect legislation that has already been the subject of much scrutiny, that has enjoyed unanimous,

bipartisan support by the House Judiciary Committee, and that has been passed by the full House of Representatives twice. It is legislation that -- despite assertions otherwise -- is in line with U.S. law and tradition, provides more protections for libraries, universities and researchers than does even current copyright law, and will meet the comparability requirements of the EU Directive. Most important, legislation such as S. 2291, H.R. 2652 and Title V of H.R. 2281 will help assure that American database producers remain able and willing to provide high-quality, reliable products and services in the global marketplace.

On the other hand, the Senate can listen to critics whose position today is the same position they held three years ago and likely to be the same three years hence: namely, that even though databases enjoy no uniform, federal law to protect them against piracy, there is no need for such protection. Recent court rulings and the European Union Directive indicate that failure to act now will threaten valuable U.S. products, the jobs of Americans who create them, and the preeminence of the United States in the global information market.

We believe the choice is clear and we urge you once again to vote in favor of fair, effective database protection legislation similar to S. 2291, H.R. 2652 and Title V of H.R. 2281. It will be a vote for American jobs and for the bedrock principle that commercial success should come from one's own hard work, not from a free ride on the backs of others.

Sincerely,