



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

July 16, 1999

H.R. 354

Collections of Information Antipiracy Act

As ordered reported by the House Committee on the Judiciary on May 26, 1999

SUMMARY

CBO estimates that enacting H.R. 354 could result in significant mandatory costs to the federal government. Such costs would probably be zero in many years, but we expect that the average annual costs would be about \$10 million, beginning in 2002. Because the bill would affect direct spending, pay-as-you-go procedures would apply.

H.R. 354 would attempt to protect substantial investments made in the collecting of information or the establishing of databases with commercial value. Databases that lack a modest amount of original creative expression are not eligible for copyright protection. For example, the Supreme Court held in *Feist Publications v. Rural Telephone Service Co.*, 449 U.S. 340 (1991), that the “white pages” of standard telephone directories lack sufficient creative expression to sustain a copyright. To provide some protection of investments in such databases and other collections of information, H.R. 354 generally would prohibit the misappropriation of a substantial portion of such information in a way that would decrease its potential market value.

Violators of the bill's provisions would be subject to a criminal fine, imprisonment, or civil action. The bill would waive the sovereign immunity of the federal government from liability for decreasing the potential market value of databases. Finally, the bill would require the U.S. Copyright Office and the Department of Justice (DOJ) to conduct a study on whether the Congress should expand certain exemptions for research, educational, or archival uses.

H.R. 354 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) because it would preempt state laws regarding the protection of collections of information. However, CBO estimates that complying with this mandate would not have a significant impact on state budgets primarily because states do not generally regulate in this area of law. The bill also would create a new private-sector mandate, as defined in UMRA, by granting copyright-like protection to certain collections

of information that are not protected by copyright law. CBO cannot estimate the costs that this mandate would impose on the private sector.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

Spending Subject to Appropriation

Because H.R. 354 would establish a new federal crime, CBO anticipates that the U.S. government would be able to pursue cases that it otherwise would be unable to prosecute. Based on information from DOJ, however, we do not expect the government to pursue many additional cases. Thus, CBO estimates that implementing the bill would not have a significant impact on the cost of federal law enforcement activity. Implementing the bill also could increase costs to the federal courts if more civil suits are filed by private parties, but we do not expect many additional cases.

Based on information from the Copyright Office, CBO estimates that conducting the required study would not significantly increase costs. Finally, waiving sovereign immunity could result in the government paying more to license privately owned databases and could result in additional costs to defend the government in litigation. CBO cannot estimate the amount or timing of these costs, but any such spending would be subject to appropriation of the necessary amounts.

Revenues and Direct Spending

CBO cannot precisely estimate the magnitude or timing of costs that would result from waiving sovereign immunity. The costs could vary greatly from year to year and could be significant—at least in some years. Just one successful suit could result in the payment of tens of millions of dollars. Such payments for successful claims against the federal government would constitute direct spending.

We expect that there would be no claims payments in many years. In particular, CBO estimates no significant payments for 2000 or 2001 because it would take some time for suits to be initiated and resolved. Although payments are likely to be sporadic, we estimate that they would average about \$10 million a year beginning in 2002.

Enacting H.R. 354 could increase governmental receipts (i.e., revenues) from fines, but we estimate that any such increase would be less than \$500,000 annually. Criminal fines are deposited as revenues in the Crime Victims Fund and spent in the following year. Thus, any change in direct spending from the fund would match the increase in revenues with a one-year lag.

PAY-AS-YOU-GO CONSIDERATIONS

The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending and receipts. H.R. 354 would affect both direct spending and receipts, but the effects on revenues would be less than \$500,000 a year. We estimate direct spending costs of \$10 million a year, beginning in 2002, as shown in the following table. For the purposes of enforcing pay-as-you-go procedures, only the effects in the current year, the budget year, and the succeeding four years are counted.

	By Fiscal Year, in Millions of Dollars										
	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Changes in outlays	0	0	0	10	10	10	10	10	10	10	10
Changes in receipts	0	0	0	0	0	0	0	0	0	0	0

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

H.R. 354 contains an intergovernmental mandate as defined in UMRA because it would preempt state laws regarding the protection of collections of information. However, CBO estimates that complying with this mandate would not have a significant impact on state budgets primarily because states do not generally regulate in this area of law.

ESTIMATED IMPACT ON THE PRIVATE SECTOR

H.R. 354 would create a new private-sector mandate by granting copyright-like protection to certain collections of information that are not protected by copyright law. Firms that commercially exploit such collections without first obtaining the permission of their owners would be required to pay license fees to the owners or to excise the infringing materials from their products. CBO expects that many such firms would enter into license agreements. Those firms unable to obtain licenses would suffer decreased revenues.

CBO cannot estimate the mandate's costs because we do not have enough information to determine the scope and impact of the new protections. Court rulings identify certain affected collections, but because collection owners are not always aware of unauthorized use and may not wish to bring legal action under current law, court rulings are only a limited indication of the types of collections to which H.R. 354 would extend protection.

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