

Reply Comment  
David O. Carson, Esq.  
General Counsel  
Copyright Office  
LM-403  
James Madison Memorial Building  
101 Independence Avenue, S.E.  
Washington, D.C.

Dear Mr. Carson,

The undersigned organizations, all of whom create and commercially market databases, welcome the opportunity to submit a reply to the comments received under the Copyright Office's Notice of Inquiry ("NOI")<sup>1</sup> regarding the exclusion of certain classes of works from section 1201(a)(1) of the Digital Millennium Copyright Act ("DMCA").<sup>2</sup> As database producers, we feel compelled to respond to the unsupported attempts by the university<sup>3</sup> and, to some degree, the library<sup>4</sup> associations to exclude databases from the reach of section 1201(a)(1)(A).<sup>5</sup>

More specifically, the American Association of Universities and others' argument that "scientific and academic databases" and "databases" generally should be exempted from the statute under the flawed rubrics of "Thin Copyright Works" and "Fair Use Works"<sup>6</sup> ignores the legal framework set forth in the NOI, the legislative history, and the language of the statute. In addition, as discussed in more detail below, we believe that such a determination would be ill advised as a matter of public policy.

The world of databases is not a homogenous one. Databases vary greatly in their subject matter, methods of organization and the manner in which protected expression is integrated within them. Databases also feed the needs of a variety of organizations in both the nonprofit and for-profit markets. The undersigned organizations, ranging from small businesses to large corporations, collectively invest billions of dollars in the creation and distribution of databases in nearly every field of human endeavor—medicine, law, finance, business, and national defense, to name a few, and are an integral part of the U.S. database community. These companies employ or represent many thousands of editors, researchers, and others who gather, update, verify, format, organize, index and distribute the information contained in their vast array of database products.

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<sup>1</sup> 64 Fed. Reg. 66140 (Nov. 24, 1999).

<sup>2</sup> Pub. L. No. 105-304, 112 Stat. 2860 (1998).

<sup>3</sup> Comment # 161, John Vaughan, Comment of the Association of American Universities (February 17, 2000) [hereinafter AAU Comments].

<sup>4</sup> Comment 162, Miriam Nisbet, Comment of the American Library Association, *et al.*, (February 17, 2000) [hereinafter ALA Comments].

<sup>5</sup> We do not address every assertion made by these groups; we understand that other groups will address these defects. We do not, in any event, waive objection to any assertion by other parties by failure to mention it here, and would welcome an opportunity to testify at Copyright Office hearings or submit a supplemental response.

<sup>6</sup> AAU Comments, at 3-4. The universities view these classes as including scholarly journals, maps, newspapers, textbooks and legal casebooks. *See id.* Although we focus our attention on databases, we believe the arguments which apply to databases apply with similar force to the purported class of "Thin Copyright Works" (maps, newspapers, scholarly journals, directories) and to the equally defective class of "Fair Use Works" (textbooks, legal casebooks, and scholarly journals).

As a result of their efforts, scientists, researchers, academics, scholars, businesses, governments and consumers have ready access to a wealth of user-friendly, reliable and up-to-date information they consult daily.<sup>7</sup>

The Internet has made distribution of these products possible on a scale and in manners never imagined just ten years ago. In all likelihood, increases in bandwidth and processing power will make today's technology seem hopelessly slow and archaic just a decade hence. This digital revolution also has a dark side. As you are well aware, current technology enables a user to create multiple perfect, inexpensive, and instantaneously distributed copies of a work at a fraction of the cost of creation.<sup>8</sup> Congress therefore concluded that the piracy threat caused by unauthorized access to such works would result in publishers refusing to fully embrace digital media unless legal protection from the circumvention of access controls existed. Congress enacted the DMCA to "facilitate the robust development and world-wide expansion of electronic commerce, communication, research, development and education" by "mak[ing] digital networks safe places to disseminate and exploit copyrighted materials."<sup>9</sup>

For this reason, Congress placed a high burden on those who would seek to have certain kinds of works excluded from protection. The statute provides that the Copyright Office shall conduct a rulemaking to determine whether the *prohibition* in section 1201(a)(1)(A) has adversely affected or is likely to adversely affect certain users in their ability to make non-infringing uses of a certain class of works, and then issue a recommendation to the Librarian. Significantly, the Librarian "is not required to make a determination under the statute with respect to any class of copyrighted works"—a result which we wholeheartedly endorse with regard to the current inquiry.<sup>10</sup> If, however, the Librarian decides to exercise his authority, he should do so based only on a "determination that the *prohibition* has a substantial adverse effect on non-infringing uses of that particular class of works."<sup>11</sup>

Thus, the statute requires proponents of an exclusion to show two things: first, that they have properly identified a "class of works" and second, that they demonstrate that the statute has or is likely to cause "substantial adverse effects" on non-infringing

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<sup>7</sup> An illustrative—but by no means exhaustive—list of the signatories' compilations is attached as Exhibit A.

<sup>8</sup> Indeed, some of those submitting comments believe that they are entitled to perform such acts. *See, e.g.*, Comment #191 ("I don't make enough money to view all this stuff without circumvention access controls. [sic] This would mean a significant decrease in the amount of entertainment purchases I can make. Big business will claim that this is going to cost them hundreds of millions. Out of billions, that's not too much."); Comment # 178 ("One has to accept that the newly-formed global community will follow its own rules, regardless of the laws of individual countries. This is a good thing. ... Digital media will always be copied...").

<sup>9</sup> S. Rep. No. 105-190, at 2 (1998).

<sup>10</sup> THE HOUSE COMMITTEE ON THE JUDICIARY, SECTION BY SECTION ANALYSIS OF H.R. 2281 AS PASSED BY THE UNITED STATES HOUSE OF REPRESENTATIVES, 105<sup>th</sup> CONG., at 8 (August 4, 1998) (Ser. No. 6) [hereinafter MANAGERS' REPORT ].

<sup>11</sup> 64 Fed. Reg. at 66141 (emphasis added).

uses.<sup>12</sup> The library and university associations have failed to meet their burden with respect to both prongs of this test.

### A. The Comments Fail to Identify a Class of Works

Section 1201 does not define the phrase "category of works." The Commerce Committee, in which this phrase germinated, states that the class of works should be "a narrow [sic] and focused subset of the broad categories of works of authorship than is identified in Section 102 of the Copyright Act."<sup>13</sup> The Managers' Report echoes this theme, instructing that a class of works should be a narrower, carefully tailored subset of the Copyright Act's definitions:

"The illustrative list of categories appearing in section 102 of title 17 is only a starting point. ... Even within the category of computer programs, the availability for fair use purposes of PC-based operating business applications is unlikely to be affected by laws against circumvention of technological protection measures in the same way as the availability for those purposes of videogames distributed in formats playable only on dedicated platforms. ..."<sup>14</sup>

The AAU, however, seems to ignore the instructions of the DMCA's legislative history. The "Thin" and "Fair Use" categories that the AAU puts forward as purported classes of works—specifically as they apply to "databases" and "scientific and academic databases"—are hopelessly overbroad.<sup>15</sup> What Congress wished to see done with a scalpel, the AAU attempts with a sledgehammer.

First, one cannot—as the AAU has done—blithely lump all databases into one category. Its argument rests on the premise that because certain works of authorship, specifically "scientific and academic databases" and "databases," contain large amounts of information and unprotected expression, they should be exempt from this access control technology.<sup>16</sup> This argument knows no bounds—*every* copyrighted work

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<sup>12</sup> See *id.*

<sup>13</sup> H.R. Rep. No. 101-551, part 2 at 38 (1998) [hereinafter Commerce Comm. Report].

<sup>14</sup> See MANAGERS' REPORT, at 7-8 (warning against casting a net too narrow, or too wide). We note that throughout their comments, the ALA and the AAU rely heavily on the Commerce Committee report as support for their position. See, e.g., AAU Comment at 2. However, the Managers' amendment is later in time, and reflects the result of negotiation between the House Judiciary and Commerce Committee. To the extent that the Commerce Committee report and the Managers' Report conflict, the Managers' Report therefore controls.

<sup>15</sup> This overbreadth runs throughout the classifications in both the "Fair Use" and "Thin" categories. For example, newspapers—"Thin" works, in the AAU's estimate—contain enormous amounts of protected expression in the photographs they contain, in editorials, advertisements, as well as in sports, feature or general interest stories, to name a few areas. Similarly, "scholarly journals"—which appear both in the "Thin" and "Fair Use" categories, are made up primarily of protected expression. Without original expression, a law review article would be little more than a string citation under a caption, and in the scientific field, the data in a cancer or Alzheimer's experiment would be unintelligible to most readers without the protected expression. The originality in these works is not anemic by any means, and the Copyright Act accords them no less dignity than motion pictures or an abstract painting.

<sup>16</sup> Maps and legal textbooks appear in this category as well. See AAU Comment at 3.

contains information, facts, and ideas to which the copyright does not adhere, and by the nature of the copyright regime itself, *every* infringement is subject to the fair use defense. Had Congress intended fair use to be a defense to the 1201(a)(1), or even relevant to it, it would have had no need to enact section 1201(c)(1).<sup>17</sup>

Second, the AAU offers no method by which these purported "thin" databases may be distinguished from their "thicker" counterparts. Not all databases contain "thin" protection, however. Some databases contain great originality in their selection, coordination and arrangement. Other databases, such as those composed entirely of the "thicker" copyright in photographs, news stories, abstracts, or modern art paintings, consist entirely of protected expression. Distinguishing between 'thick' and 'thin' copyrighted works without the aid of a judge would be impossible for both the creators of these works and those who wish to access them.

Third, the AAU seems to believe that because a nonprofit user makes use of these materials, it is entitled to an exemption from section 1202(a)(1)(A). The statutory language and the legislative history offer no support for the assertion that a "class of user" may define a "class of works." The flaws in the "class of user" distinction become more apparent when one considers that many database publishers, such as SilverPlatter Information, market their products primarily to the nonprofit educational community. By excluding these works based on their appeal to educational institutions, the AAU's definition effectively penalizes these publishers for servicing these markets. Given Congress' stated desire to make digital networks safe places to distribute copyrighted content, such a result plainly runs contrary to legislative intent.

Finally, adoption of the AAU's recommendation with respect to classes of works in which the copyright is *actually* thin would have disastrous practical effects for database producers. The onset of the Internet medium has vastly increased the economic value of electronic databases. Database publishers typically invest tremendous effort into producing products that are thorough, accurate, and comprehensive. The current scope of copyright protection in compilations has caused several entities to modify their business plans and to question the manner in which these products and services are offered, and investments in these products has become increasingly risky.<sup>18</sup> All that stops an infringer

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<sup>17</sup> 17 U.S.C. § 1201(c)(1) ("Nothing in this section shall affect rights, remedies, limitations, or defenses to infringement, including fair use, under this title."). Cf. *Universal City Studios, Inc., v. Reimerdes*, 82 F. Supp. 2d 211, 219 (S.D.N.Y. 2000) (noting in a case brought under § 1201(a)(2) that "Defendants are not sued . . . for copyright infringement. They are sued for offering to the public and providing technology primarily designed to circumvent technological measures. If Congress had meant the fair use defense to apply to such actions, it would have said so.").

<sup>18</sup> See Hearing on H.R. 2652 Before the Subcomm. On Courts and Intellectual Property of the House Comm. on the Judiciary, Statement of Marybeth Peters, Register of Copyrights, at 5 ("After examining the post-*Feist* case law and listening to the participants in the meetings we held, the Copyright Office is convinced that the theoretical gap in the law is leading to real-world consequences . . . We have heard reports of reluctance on the part of many producers to create legally vulnerable database products, or to disseminate them widely to the public . . ."); UNITED STATES COPYRIGHT OFFICE, REPORT ON LEGAL PROTECTION FOR DATABASES, 17-18 (1997) (stating that, "most of the post-*Feist* appellate cases have found wholesale takings from copyrightable compilations to be non-infringing. The trend is carrying through in district court as well.").

from utterly eviscerating the fruits of their labor is the eggshell of originality surrounding the selection, coordination, and arrangement of the underlying works. Once the eggshell has shattered, the yolk is free for the taking.<sup>19</sup> Protection from unauthorized circumvention of a technological measure preserves the incentives in current law to create and distribute these valuable products.

## B. The Comments Do Not Demonstrate Adverse Effects

In addition to failing to identify a "class of works" properly, the AAU and the libraries have not met the statutory burden of showing that the prohibition has caused "adverse impact" to "users of a particular class of work."<sup>20</sup> The legislative history is quite clear on the burden that those who would seek an exemption based on existing adverse impact must carry. Congress has instructed that "[t]he focus of the rulemaking proceeding must remain on whether the prohibition ... has caused any substantial impact on the ability of users to make non-infringing uses," and that "mere inconveniences, or individual cases, do not rise to the level of a substantial adverse impact."<sup>21</sup> Moreover, proponents of a regulatory exception must show that the prohibition, not other forces has caused a substantial adverse effect on non-infringing uses of a class of works. "Adverse impacts that flow from other sources—including marketplace trends, other technological developments, or changes in the role of libraries, distributors, or other intermediaries—or that are not clearly attributable to such a prohibition, are outside the scope of the rulemaking."<sup>22</sup> Finally, the "rulemaking proceedings should consider the positive as well as the adverse effects of these technologies on the availability of copyrighted materials."<sup>23</sup>

With respect to *prospective* effects, however, the burden becomes greater: "the determination should be based upon anticipated, rather than actual impacts, only in *extraordinary circumstances* in which the evidence of likelihood of future adverse impact during that time period is highly specific, strong and persuasive."<sup>24</sup> As the statute has not yet taken effect, the sole path towards an exemption is the more difficult prospective one. The showing by the library and university groups falls well short of this burden.

First, the library and university proponents of an exemption must show actual, "extraordinary circumstances" where non-infringing use is likely to be curtailed. The AAU does not document a *single instance* in which non-infringing use has been curtailed

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<sup>19</sup> Of course, the access control provisions are of no use to those who wish to adopt a broadcast model of information publishing, where they receive revenue from advertising based on the number of "hits" on their site. Database publishers such as these, or those who publish works in printed format, face grave risks of piracy.

<sup>20</sup> 17 U.S.C. § 1201(a)(1)(B).

<sup>21</sup> MANAGERS' REPORT, at 6; *accord* Commerce Comm. Report, at 37 (directing the rulemaking to focus on "distinct, verifiable, and measurable impacts").

<sup>22</sup> MANAGERS' REPORT, at 6.

<sup>23</sup> *Id.* at 7.

<sup>24</sup> *Id.* at 6 (emphasis added).

by these measures, much less an "extraordinary" one.<sup>25</sup> For their part, all the library associations have managed to do is assemble anecdotal evidence of inconvenience having nothing whatsoever to do with the legal prohibition contained in section 1201(a)(1)(A). The libraries claim, for example, that "Many databases include technological measures that limit the number of users. If five users are allowed access, number six cannot make any fair use."<sup>26</sup> The same is true, for example, if there are only five working modems or computers, or if the sixth user gets to the library after it closes for the day. These so-called "adverse effects" catalogued by the librarians revolve around inconvenience, not around any chilling effect of the prohibition on non-infringing use.<sup>27</sup>

Second, and equally importantly, the ALA comments have utterly failed to demonstrate causation. The plain language of the statute requires that the prohibition *against the act of circumvention*, not the use of technologies, budgetary shortfalls, or agreement to licensing terms, adversely affect non-infringing access to works. Thus, for example, the allegation that "document delivered articles, for which we pay copyright [sic] are delivered with a technological device that prevents a second viewing or online storage" has nothing to do with the prohibition in section 1201(a)(1)(A).<sup>28</sup>

These document delivery systems allow broad access to individual journal articles when a subscription to the journal as a whole would be cost-prohibitive. In fact, Congress noted with approval that the deployment of alternative pricing mechanisms is "essential to a distribution strategy that allows a consumer to purchase a single article from an electronic database, rather than having to pay more for a subscription to a journal that the consumer does not want."<sup>29</sup> Such "marketplace trends"<sup>30</sup> have nothing *whatsoever* to do with any negative effect that the *circumvention provision* may have on such uses of copyrighted works in general, and databases in particular.

Finally, the ALA comments do not address any of the positive effects that the emergence of these technologies has had on the availability of copyrighted works. Password controls, for example, have enabled LEXIS and WESTLAW to be available from any computer on the planet via the World Wide Web, thereby making access far

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<sup>25</sup> The AAU is not alone in suffering this defect. See Comment # 235, Andrew Appel, and Edward Felten, Technological Access Control Interferes with Noninfringing Scholarship.

<sup>26</sup> ALA Comment, at 21.

<sup>27</sup> See, e.g., *id.* at 22 ("We have tried to avoid resources that are so strictly tied to a low number of users . . . and consequently we put up with waiting for access until the resources are freed up"); *id.* at 22 ("all journals are tied up while one person looks at one, although he/she could browse all of them").

<sup>28</sup> ALA Comment, at 33. This defect runs throughout the ALA filing. See, e.g., *id.* at 22 (specifically referencing budgetary shortfalls in stating that the library "cannot afford" to *increase* online subscriptions to certain products); *id.* at 33 (erroneously asserting the user's refusal of a 'cookie' at a library workstation creates a barrier to access); *id.* at 19 (mistakenly arguing that a license which protects online content by limiting access to a specific IP address is within the scope of the rulemaking).

<sup>29</sup> MANAGERS' REPORT, at 7. These arrangements enable publishers to charge different prices for different levels of content or service, as market demand permits. This kind of price discrimination inures to the benefit of consumers. Cf. *Pro CD v. Zeidenberg*, 86 F.3d 1447, 1453 (7<sup>th</sup> Cir. 1996) ("Competition between vendors, not judicial revision of a . . . [license's] contents, is how consumers are protected in a market economy."). Or, to put it more colloquially, not every driver should have to buy a Mercedes.

<sup>30</sup> MANAGERS' REPORT, at 7.

more convenient than it has ever been. Over 90% of daily newspapers have online web sites, and the vast majority do not charge subscription fees. Maps, another so-called category singled out by the universities for exemption, are routinely available gratis on numerous web sites. The "substantial adverse effects" which the statute requires do not exist for any reason, much less on account of section 1201(a)(1)(A)'s enactment.

## **Conclusion**

Even if section 1201(a)(1)(A) were in effect today—and it is not—the libraries and universities have not come remotely close to either (a) defining an appropriate class of works, or (b) demonstrating the substantial adverse impact that the statute requires. The process leading to the enactment of the DMCA involved numerous hearings, markups, and compromises, reflecting a delicate balance of interests on all sides. This extended legislative give-and-take calls for a certain degree of prudence on the part of the Librarian—the statute should be given a chance to work. Contrary to the assertions of the library and university associations, experience suggests that the protection offered by the DMCA will increase the availability of copyrighted works for all to use. We believe, in short, that an exemption from section 1201(a)(1)(A) with respect to any class of copyrighted works, but especially one that includes "databases," is simply premature.

Respectfully submitted,

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on Behalf of:

American Business Press  
The McGraw-Hill Companies  
National Association of Securities Dealers  
Newspaper Association of America  
Phillips International, Inc.  
Reed Elsevier Inc.  
SilverPlatter Information, Inc.  
Skinder-Strauss Associates  
Software and Information Industry Association  
Thomson Corporation

## Exhibit A

1. **Reed Elsevier's MDL Information Systems, Inc.** MDL is a U.S. based company with more than 330 employees worldwide (a substantial number of whom have Ph. D.'s in the sciences) that creates, produces and distributes databases and computer programs used around the globe by, among others, the pharmaceutical and chemical industries, as well as by government and education organizations involved in basic scientific research. For example, MDL produces a range of databases that, taken together, offer chemists an electronic library for ready access to data selectively obtained from more than 400 chemistry journals, 250 chemical supplier catalogs, pharmaceutical patents, company and regulatory reports, as well as conference proceedings. These databases cover chemical suppliers and pricing, handling and safety information for 100,000 chemical products, organic chemistry syntheses and preparative methods, xenobiotic transformations and compounds, and structure and biological activity data for 70,000 drugs.

2. **The Thomson Corporation's POISINDEX.** This invaluable database provides medical professionals—usually an emergency room physician or poison control specialist—with immediate access to comprehensive listings of toxicological information—a crucial tool to complement their years of experience and training. Authorized users have unlimited access to this information at their own facilities 24 hours a day, 365 days a year. POISINDEX enables them, for example, to identify a substance that a child may have ingested and then to provide instructions for critical, immediate care. Treatments guided by this specialized database have helped save thousands of lives since POISINDEX was created over twenty-three years ago.

POISINDEX contains about 1,000,000 entries describing substances such as drugs, chemicals, commercial and household products and biological materials. More than 30 professionals with training in nursing, pharmacy, toxicology and medicine are responsible for reviewing these substances and obtaining pertinent information on them. In addition, more than 200 practicing clinicians from over 20 countries participate in the editorial process as members of the POISINDEX editorial board. The database lists each substance and up to four full-text documents detailing its clinical effects, treatment measures, degree of toxicity and other relevant information. Software engineers develop computer software to store, edit, sort and retrieve the data and to maintain, test, produce and support the database.

3. **Skinder-Strauss Associates' Lawyers Diary and Manual.** Attorneys in New Jersey, New York, Massachusetts, Florida and New Hampshire routinely use the *Lawyers Diary*, or Red Book, as their daily reference and directory for information regarding courts, judges, government agencies, and the members of the bar. Practicing lawyers rely upon its comprehensive and accurate databases to assist them with their day-to-day communications, and many regard the Red Book as their most essential source for this needed information. A third-generation, family-owned business, Skinder-Strauss has more than 40 full-time employees who are actively engaged in the daily activities of data collection, verification, editorial compilation, research and data entry. The various



databases managed by the company require contact with more than 400,000 individuals and entities at least once a year. All contact and verification research is initiated by the company through extensive direct mail, telemarketing and other proactive efforts. These initiatives involve the expenditure of significant sums, thousands of man-hours and the pride and dedication of those so engaged.

4. **Phillips International, Inc.** provides a broad range of information products for distinct business markets, including more than 35 directory and directory-related products. For example, Phillips' *EDI Yellow Pages and Electronic Commerce Directory*, formerly *Who's Who in Electronic Commerce*, is just the type of informational product that, given the ever-increasing role of electronic commerce, is vital to our maintaining our leadership in the global marketplace. It links the reader to more than 34,000 potential Electronic Commerce ("EC") and Electronic Data Interchange ("EDI") business partners. The 1999 edition will show a user how to implement electronic commerce into their business; select the right order processing payment software for their business; and secure their business information from outside interference. Sections in the directory include: organizations active in EC and EDI; business partners by industry; market data; value added networks; software providers; value-added banks; business and technical services; bar coding equipment providers; associations and user groups; standards organizations; and more. The directories will keep the reader up-to-date with a competitive and constantly changing industry and give access to key decision makers who move within companies and from company to company. Compiling this directory requires two full-time editors to gather, inspect, and update more than 34,000 names, addresses and telephone numbers, plus independent contractors to assist with programming.

5. **SilverPlatter Information, Inc.** is a global information company that publishes nearly 300 reference databases in electronic formats to provide librarians and knowledge workers in research-oriented organizations with excellent searching capability, accurate results and seamless links to full content. SilverPlatter databases are accessible via Internet and CD-ROM subscriptions. Currently SilverPlatter databases provide links to nearly 4,500 electronic journal articles, providing users with desktop access to a wide selection of journal articles. SilverPlatter has 200 employees located in ten offices around the world.

6. *The Standard & Poor's DRI US Central Database* (a product of **The McGraw-Hill Companies**) includes 23,000 series of US economic, financial, and demographic statistics. Coverage includes data on U.S. trade, population, production, income, housing, employment, and finance. USCEN is one of the largest privately available databases in the world and has offers reliable data since its inception. Substantial collections of information date from the 1940's in many cases, and some date as far back as 1900. The inclusion of large amounts of private source data increases the value of the database and its utility.

7. Among other databases, *The Nasdaq Stock Market, Inc.* (a product of the **National Association of Securities Dealers**) is the source of real-time stock quotation

and transaction information on over 5,000 Nasdaq-listed securities and over 4,500 OTC securities. Nasdaq also calculates and distributes prominent real-time indexes like the Nasdaq Composite and the Nasdaq 100. Real-time distribution of Nasdaq market information occurs mainly through authorized market data vendors. Authorized vendors are also permitted to systematically delay Nasdaq market information (by 15 minutes or more) and redistribute it without incurring any fee liability or contractual obligations for their subscribers. In this way, Nasdaq is able to meet the needs of researchers and investors to analyze and use market data for historical purposes and yet maintain a period of time when it can collect the multi-millions of dollars of licensing revenues needed to maintain its existence. These revenues, in part, fund data collection, dissemination, and the regulatory compliance activities that help ensure the accuracy and reliability of the data that the market does and must depend on. Statutory, contractual, and technological mechanisms that protect against the piracy or unauthorized distribution of market data are vital to Nasdaq's ability to collect these needed revenues.