

## **STATE LAW TEXTS**

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### **Alabama**

**Ala.Code 1975 § 13A-8-80**  
**§ 13A-8-80. “Owner” defined.**

Unless the context clearly requires otherwise, the term “owner,” as used in this article, shall mean the person who owns, or has the exclusive license in the United States to reproduce or the exclusive license in the United States to distribute to the public copies of the original fixation of sounds embodied in the master phonograph record, master disc, master tape, master film or other device used for reproducing recorded sounds on phonograph records, discs, tapes, films, videocassettes or other articles now known or later developed on which sound is recorded and from which the transferred sounds are directly or indirectly derived, or the person who owns the rights to record or to authorize the recording of a live performance.

**Ala.Code 1975 § 13A-8-81**

**§ 13A-8-81. Transfer, manufacture, distribution, etc., of certain sounds without consent prohibited; applicability; penalties; recording rights; evidence of performer's consent.**

(a) It shall be a felony for any person to:

(1) Knowingly transfer or cause to be transferred, directly or indirectly, by any means, any sounds recorded on a phonograph record, disc, wire, tape, film, videocassette or other article now known or later developed on which sounds are recorded, with the intent, for commercial advantage or private financial gain, to sell or rent, or cause to be sold or rented, or to be used for profit through public performance, such article on which sounds are so transferred, without consent of the owner;

(2) Knowingly transfer or cause to be transferred, directly or indirectly, by any means, onto any phonograph record, disc, wire, tape, film, videocassette or other article now known or later developed, any live performance, for commercial advantage or private financial gain, without the consent of the owner; or

(3) Manufacture, distribute, transport or wholesale any article with the knowledge that the sounds or performances are so transferred without consent of the owner.

(b) The provisions of this section shall not apply to any person engaged in radio or television broadcasting who transfers, or causes to be transferred, any such sounds other than from the sound track of a motion picture intended for, or in connection with broadcast or telecast transmission or related uses, or for archival purposes.

(c) Penalties for violations hereof are prescribed in Section 13A-8-86(a).

(d) Subdivision (a)(1) of this section applies only to sound recordings that were initially fixed prior to February 15, 1972.

(e) In the absence of a written agreement or operation of law to the contrary, the performer or performers of the live performance shall be presumed to own the rights to record or authorize the recording of the live performance. In any proceeding where a performer's consent is in issue, a person who is authorized to maintain custody and control over business records reflecting consent shall be considered a proper witness, subject to all rules of evidence relating to competency and admissibility.

**Ala.Code 1975 § 13A-8-82**

**§ 13A-8-82. Possession, sale, rental, etc., of recorded device in violation of article prohibited; penalties.**

(1) It shall be unlawful for any person to knowingly sell, rent, cause to be sold or rented, or possess for the purpose of selling or renting any recorded device that has been produced, manufactured, distributed or acquired in violation of any provision of this article.

(2) Penalties for violations hereof are prescribed in Section 13A-8-86(b).

**Ala.Code 1975 § 13A-8-83**  
**§ 13A-8-83. Manufacturer's name required on package.**

Every recorded device sold, rented or transferred for commercial advantage or private financial gain, or possessed for the purpose of sale, rental or transfer by any manufacturer, distributor or wholesale or retail merchant shall contain on its packaging the true name and address of the manufacturer; provided, that the term "manufacturer" shall not include the manufacturer of the cartridge or casing itself, but shall mean the manufacturer of the actual recorded material. The term "recorded device" means the tangible medium upon which sounds or images are recorded or otherwise stored, and includes any phonograph record, disc, wire, tape, videocassette, film, or other medium now known or later developed on which sounds or images are recorded or otherwise stored.

**Ala.Code 1975 § 13A-8-84**  
**§ 13A-8-84. Confiscation of nonconforming recordings, equipment and components.**

It shall be the duty of any state, county or local law enforcement officer to confiscate all recorded material that does not conform to the provisions of this article and all equipment and components used or intended to be used in the manufacture of the infringing recordings and to deliver the nonconforming recorded devices, equipment and components to the State Attorney General or the appropriate local district attorney of the judicial district in which the confiscation was made. The provisions of this section shall apply to any nonconforming recording, regardless of lack of knowledge or intent on the part of the retail seller.

**Ala.Code 1975 § 13A-8-85**  
**§ 13A-8-85. Damages in civil action.**

(a) Any owner of recorded material whose material has allegedly been illegally reproduced as provided herein shall have a cause of action in the circuit courts of this state for all damages resultant therefrom, including actual, compensatory and incidental damages, as well as punitive damages of not more than three times the amount of the total cost of producing the illegally recorded material.

(b) Any lawful producer of recorded material, as set forth in this article, whose product is allegedly the subject of a violation of the provisions of this article shall have a cause of action in the circuit courts of this state for all damages resultant therefrom, including actual, compensatory and incidental damages, as well as punitive damages not exceeding three times the amount of the total cost of producing the recorded materials.

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## **Alaska**

**AS § 45.50.900**  
**§ 45.50.900. Reproduction and sale of sound recordings without consent**

(a) A person who (1) reproduces for sale, sells, offers for sale, or knowingly advertises for sale any sound recording that has been reproduced without the written consent of the owner or (2) advertises, offers for sale or resale, or sells or resells a phonograph record, disc, wire, tape, film, or other article on which sounds are recorded, without clearly and conspicuously disclosing on the outside cover, box, or jacket the actual name and full address of the manufacturer and the name of the actual performer or group, is guilty of a misdemeanor and, upon conviction, is punishable by confiscation of the unlawful stock of the reproduced recording and by imprisonment for a period of not more than one year, or by a fine of not more than \$1,000, or by both. In this subsection "owner" means the person who owns the original fixation of sounds

embodied in the master phonograph record, master disc, master tape, master film, or other device used for reproducing sounds on phonograph records, discs, tapes, films, or other articles upon which sound is recorded, and from which the transferred recorded sounds are directly derived.

(b) The prohibition contained in (a) of this section is not applicable to the reproduction of a sound recording that

(1) Is used, or intended to be used, solely for broadcast by commercial or educational radio or television stations; or

(2) Constitutes the verbatim transcript, or other public record, of the proceedings of a judicial, legislative, or administrative agency, department, or other public body for which a charge or fee may or may not be made or collected for the reproduced recording.

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## Arizona

### A.R.S. § 13-3705

#### **§ 13-3705. Unlawful copying or sale of sounds or images from recording devices; true name and address of articles; definitions; classification**

**A.** A person commits unlawful copying or sale of sounds or images from recording devices by knowingly:

1. Manufacturing an article without the consent of the owner.

2. Distributing an article with the knowledge that the sounds thereon have been so transferred without the consent of the owner.

3. Distributing or manufacturing an article on which sounds or images have been transferred which does not bear the true name and address of the manufacturer in a prominent place on the outside cover, box, jacket or label.

4. Distributing or manufacturing the outside packaging intended for use with articles which does not bear the true name and address of the manufacturer in a prominent place on the outside cover, box, jacket or label.

5. Transferring or causing to be transferred to an article any performance, whether live before an audience or transmitted by wire or through the air by radio or television without the consent of the owner and with the intent to obtain commercial advantage or personal financial gain.

6. Distributing an article with knowledge that the performance on the article, whether live before an audience or transmitted by wire or through the air by radio or television, has been transferred without the consent of the owner.

**B.** This section shall not apply to any person or persons engaged in radio or television broadcasting who transfers, or causes to be transferred, any such sounds, other than from the sound track of a motion picture, intended for, or in connection with, broadcast transmission or related uses, including the making of commercials and films, or for archival purposes.

**C.** Subsection A, paragraphs 1 and 2 of this section apply only to recordings first fixed in a phonorecord before February 15, 1972.

**D.** Notwithstanding any other law and in the absence of a written agreement, the performer of a live performance is presumed to own the rights to record the performance.

**E.** The person who maintains custody and control over the business records of the owner is the proper witness regarding the issue of consent.

**F.** On conviction of a violation of this section, the court shall order:

1. The forfeiture and destruction of the articles and outside packaging.
2. The forfeiture pursuant to chapter 39 of this title<sup>1</sup> of any implement, device or equipment used to manufacture or distribute the article or outside packaging.
3. The defendant to make restitution to any owner or lawful producer of a master recording, master disc, master tape, master videotape, master film or other device or article from which sounds or visual images are derived that has suffered injury resulting from the violation, or to the trade association representing the owner or lawful producer. The order of restitution shall be based on the aggregate wholesale value of lawfully manufactured and authorized recorded devices corresponding to the nonconforming recorded devices involved in the violation and shall include investigative costs relating to the violation. Proof of the specific wholesale value of each nonconforming device shall not be required.

**G.** In this section, unless the context otherwise requires:

1. "Aggregate wholesale value" means the average wholesale value of lawfully manufactured and authorized sound or audiovisual recordings corresponding to the nonconforming recorded devices involved in the offense.
2. "Article" means the tangible medium on which sounds or images are recorded including any original phonograph record, disc, compact disc, tape, audio or video cassette, wire, film or other medium now known or later developed on which sounds or images are or can be recorded or otherwise stored, or any copy or reproduction which duplicates in whole or in part the original.
3. "Distributing" means the actual, constructive or attempted sale, rental, delivery, possession, transportation, exhibition or advertisement of an article with intent to obtain commercial advantage or personal financial gain or to promote the sale of any goods.
4. "Fixation of sounds" means the master recording from which copies can be made of the series of sounds constituting the sound recording.
5. "Manufacturing" means transferring or causing to be transferred any sounds or images recorded on one article to another article with the intent to distribute the article.
6. "Owner" means the person who owns the original fixation of sounds or images embodied in the master phonograph record, master disc, master compact disc, master tape, master film or other device used for reproducing recorded sounds on phonograph records, discs, compact discs, tapes, films or other articles on which sound is or can be recorded, and from which the transferred recorded sounds are directly or indirectly derived, or the person who owns the rights to record or authorize the vending of a live performance.
7. "Phonorecord" means the material object in which sounds other than those accompanying a motion picture or other audiovisual work are fixed by any method now known or later developed, and from which can be perceived, reproduced or otherwise communicated directly or with the aid of a machine or device. Phonorecord includes the material object in which the sound is first fixed.

**H.** Unlawful copying or sale of sounds or images involving one hundred or more articles containing sound recordings or one hundred or more articles containing audiovisual recordings is a class 3 felony. Unlawful copying or sale of sounds or images involving ten or more but less than one hundred articles containing sound recordings or ten or more but less than one hundred articles containing audiovisual recordings is a

class 6 felony. Unlawful copying or sale of sounds or images involving less than ten articles containing sound recordings or less than ten articles containing audiovisual recordings is a class 1 misdemeanor.

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## **Arkansas**

### **A.C.A. § 5-37-510**

#### **§ 5-37-510. Unauthorized copying or sale of recordings**

(a) As used in this section:

(1) "Owner" means the person who owns the:

(A) Original fixation of sounds embodied in the master phonograph record, master disc, master tape, master film, or other device used for reproducing a sound on a recording upon which sound is recorded and from which the transferred recorded sound is directly derived; or

(B) Right to record a live performance;

(2) "Person" means any individual, firm, partnership, corporation, or association; and

(3) "Recording" means the tangible medium on which sound or image is recorded or otherwise stored and includes any phonograph record, audio or video disc, audio or video tape, wire, film, or other medium now known or later developed on which a sound or image is recorded or otherwise stored.

(b) It is unlawful for any person for commercial advantage or private financial gain knowingly to:

(1) Transfer or cause to be transferred any sound recorded on a phonograph record, disc, wire, tape, film, or other article on which a sound is recorded, or any live performance, onto any recording without the consent of the owner; or

(2) Sell, distribute, circulate, offer for sale, distribution, or circulation, possess for the purpose of sale, distribution, or circulation, cause to be sold, distributed, or circulated, offered for sale, distribution, or circulation, or possessed for sale, distribution, or circulation, any recording on which a sound or a performance has been transferred, knowing it to have been made without the consent of the owner.

(c) It is unlawful for any person for commercial advantage or private financial gain to sell, distribute, circulate, offer for sale, distribution, or circulation, or possess for the purposes of sale, distribution, or circulation, any recording on which a sound or image has been transferred unless the recording bears the actual name and address of the transferor of the sound or image in a prominent place on the recording's outside face, label, cover, jacket, or package.

(d) This section does not apply to any person who transfers or causes to be transferred any sound or image:

(1) Intended for or in connection with radio or television broadcast transmission, for communication media, or a related use;

(2) For an archival purpose;

(3) For an educational purpose, with no compensation being derived as a result of the transfer;

(4) For the internal operation of a business;

(5) With prior authorization by a court of competent jurisdiction; or

(6) Solely for the personal use of the person transferring or causing the transfer if the person transferring or causing the transfer has no intention to evade a provision or intent of this section if proof of intent is an element of the offense.

(e)(1) Upon conviction, any person violating a provision of this section is guilty of a Class A misdemeanor for the first offense involving fewer than one hundred (100) sound recordings or fewer than seven (7) audiovisual recordings.

(2) For a subsequent offense, and for an offense involving one hundred (100) or more sound recordings or seven (7) or more audiovisual recordings, the person is guilty of a Class D felony and is subject to an additional fine not to exceed two hundred fifty thousand dollars (\$250,000).

(f) This section does not enlarge or diminish the right of a party in private litigation.

(g) When a person is convicted of any violation of this section, the court in its judgment of conviction shall order the forfeiture and destruction or other disposition of any recording that does not conform to a requirement of this section and any implement, device, label, or equipment used in the manufacture of the recording.

(h)(1) Upon discovery, it is the duty of any law enforcement officer to confiscate any recording that does not conform to a provision of this section.

(2) It is the duty of law enforcement, by court order, to destroy or otherwise dispose of a recording described in subdivision (h)(1) of this section.

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## California

### **§ 653h. Misappropriation of recorded music for commercial advantage or private financial gain; penalties**

(a) Every person is guilty of a public offense punishable as provided in subdivisions (b) and (c), who:

(1) Knowingly and willfully transfers or causes to be transferred any sounds that have been recorded on a phonograph record, disc, wire, tape, film or other article on which sounds are recorded, with intent to sell or cause to be sold, or to use or cause to be used for commercial advantage or private financial gain through public performance, the article on which the sounds are so transferred, without the consent of the owner.

(2) Transports for monetary or like consideration within this state or causes to be transported within this state any such article with the knowledge that the sounds thereon have been so transferred without the consent of the owner.

(b) Any person who has been convicted of a violation of subdivision (a), shall be punished by imprisonment in the county jail not to exceed one year, by imprisonment in the state prison for two, three, or five years, or by a fine not to exceed five hundred thousand dollars (\$500,000), or by both, if the offense involves the transfer or transportation, or conduct causing that transfer or transportation, of not less than 1,000 of the articles described in subdivision (a).

(c) Any person who has been convicted of any other violation of subdivision (a) not described in subdivision (b), shall be punished by imprisonment in the county jail not to exceed one year, or by a fine of not more than fifty thousand dollars (\$50,000), or by both. A second or subsequent conviction under subdivision (a) not described in subdivision (b) shall be punished by imprisonment in the state prison or by a fine not to exceed two hundred thousand dollars (\$200,000), or by both.

(d) Every person who offers for sale or resale, or sells or resells, or causes the sale or resale, or rents, or possesses for these purposes, any article described in subdivision (a) with knowledge that the sounds thereon have been so transferred without the consent of the owner is guilty of a public offense.

(1) A violation of subdivision (d) involving not less than 100 of those articles shall be punishable by imprisonment in a county jail not to exceed one year or by a fine not to exceed twenty thousand dollars (\$20,000), or by both. A second or subsequent conviction for the conduct described in this paragraph shall be punishable by imprisonment in the county jail not to exceed one year or in the state prison, or by a fine not to exceed fifty thousand dollars (\$50,000), or by both.

(2) A person who has been convicted of any violation of this subdivision not described in paragraph (1) shall be punished by imprisonment in the county jail not to exceed six months or by a fine not to exceed ten thousand dollars (\$10,000), or by both. A second conviction for the conduct described in this paragraph shall be punishable by imprisonment in the county jail not to exceed one year or by a fine not to exceed twenty thousand dollars (\$20,000), or by both. A third or subsequent conviction for the conduct described in this paragraph shall be punishable by imprisonment in the county jail not to exceed one year or in the state prison, or by a fine not to exceed fifty thousand dollars (\$50,000), or by both.

(e) As used in this section, "person" means any individual, partnership, partnership's member or employee, corporation, limited liability company, association or corporation or association employee, officer or director; "owner" means the person who owns the original master recording embodied in the master phonograph record, master disc, master tape, master film or other article used for reproducing recorded sounds on phonograph records, discs, tapes, films or other articles on which sound is or can be recorded, and from which the transferred recorded sounds are directly or indirectly derived; and "master recording" means the original fixation of sounds upon a recording from which copies can be made.

(f) This section shall neither enlarge nor diminish the right of parties in private litigation.

(g) This section does not apply to any person engaged in radio or television broadcasting who transfers, or causes to be transferred, any such sounds (other than from the sound track of a motion picture) intended for, or in connection with, broadcast transmission or related uses, or for archival purposes.

(h) This section does not apply to any not-for-profit educational institution or any federal or state governmental entity, if the institution or entity has as a primary purpose the advancement of the public's knowledge and the dissemination of information regarding America's musical cultural heritage, provided that this purpose is clearly set forth in the institution's or entity's charter, bylaws, certificate of incorporation, or similar document, and the institution or entity has, prior to the transfer, made a good faith effort to identify and locate the owner or owners of the sound recordings to be transferred and, provided that the owner or owners could not be and have not been located. Nothing in this section shall be construed to relieve an institution or entity of its contractual or other obligation to compensate the owners of sound recordings to be transferred. In order to continue the exemption permitted by this subdivision, the institution or entity shall make continuing efforts to locate such owners and shall make an annual public notice of the fact of the transfers in newspapers of general circulation serving the jurisdictions where the owners were incorporated or doing business at the time of initial affixations. The institution or entity shall keep on file a record of the efforts made to locate such owners for inspection by appropriate governmental agencies.

(i) This section applies only to such articles that were initially mastered prior to February 15, 1972.

#### **§ 653w. Failure to disclose origin of recording or audiovisual work; violations; punishment**

(a) A person is guilty of failure to disclose the origin of a recording or audiovisual work if, for commercial advantage or private financial gain, he or she knowingly advertises or offers for sale or resale, or sells or resells, or causes the rental, sale, or resale of, or rents, or manufactures, or possesses for these purposes, any recording or audiovisual work, the outside cover, box, jacket, or label of which does not clearly and conspicuously disclose the actual true name and address of the manufacturer thereof and the name of the actual author, artist, performer, producer, programmer, or group thereon. This section does not require the original manufacturer or authorized licensees of software producers to disclose the contributing authors or programmers. As used in this section, "recording" means any tangible medium upon which information or

sounds are recorded or otherwise stored, including, but not limited to, any phonograph record, disc, tape, audio cassette, wire, film, memory card, flash drive, hard drive, data storage device, or other medium on which information or sounds are recorded or otherwise stored, but does not include sounds accompanying a motion picture or other audiovisual work. As used in this section, "audiovisual works" are the physical embodiment of works that consist of related images that are intrinsically intended to be shown using machines or devices, such as projectors, viewers, or electronic equipment, together with accompanying sounds, if any, regardless of the nature of the material objects, such as films, tapes, discs, memory cards, flash drives, hard drives, data storage devices, or other devices, on which the works are embodied.

(b) Any person who has been convicted of a violation of subdivision (a) shall be punished as follows:

(1) If the offense involves the advertisement, offer for sale or resale, sale, rental, manufacture, or possession for these purposes, of at least 100 articles of audio recordings or 100 articles of audiovisual works described in subdivision (a), the person shall be punished by imprisonment in a county jail not to exceed one year, or by imprisonment in the state prison for two, three, or five years, or by a fine not to exceed five hundred thousand dollars (\$500,000), or by both.

(2) Any other violation of subdivision (a) not described in paragraph (1), shall, upon a first offense, be punished by imprisonment in a county jail not to exceed one year, or by a fine not to exceed fifty thousand dollars (\$50,000), or by both.

**West's Ann.Cal.Civ.Code § 980**

**§ 980. Ownership; works not fixed in tangible medium; sound recordings; inventions or designs**

(a)(1) The author of any original work of authorship that is not fixed in any tangible medium of expression has an exclusive ownership in the representation or expression thereof as against all persons except one who originally<sup>1</sup> and independently creates the same or similar work. A work shall be considered not fixed when it is not embodied in a tangible medium of expression or when its embodiment in a tangible medium of expression is not sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration, either directly or with the aid of a machine or device.

**(2) The author of an original work of authorship consisting of a sound recording initially fixed prior to February 15, 1972, has an exclusive ownership therein until February 15, 2047, as against all persons except one who independently makes or duplicates another sound recording that does not directly or indirectly recapture the actual sounds fixed in such prior sound recording, but consists entirely of an independent fixation of other sounds, even though such sounds imitate or simulate the sounds contained in the prior sound recording.**

(b) The inventor or proprietor of any invention or design, with or without delineation, or other graphical representation, has an exclusive ownership therein, and in the representation or expression thereof, which continues so long as the invention or design and the representations or expressions thereof made by him remain in his possession.

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## **Colorado**

**C.R.S. 18-4-601 (2010)**

### **18-4-601. Definitions**

As used in this part 6, unless the context otherwise requires:

(1) "Aggregate wholesale value" means the average wholesale value of lawfully manufactured and authorized sound or audio-visual recordings corresponding to the number of nonconforming recorded articles involved in the offense. Proof of the specific wholesale value of each nonconforming device shall not be required.

(1.3) "Article" means a tangible medium on which sounds, images, or both are recorded or otherwise stored, including an original phonograph record, disc, tape, audio or video cassette, wire, film, memory card, flash drive, hard drive, data storage device, or other medium now existing or developed later on which sounds, images, or both are or can be recorded or otherwise stored, or a copy or reproduction that duplicates, in whole or in part, the original.

(1.5) "Copyright" means the ownership rights that accrue to an owner and relate solely to the common law copyright accruing to such owner. **The term "copyright" does not include a federal copyright, which inures to the benefit of owners pursuant to Public Law 92-140, as amended by Public Law 93-573, which became effective February 15, 1972. For the purposes of this part 6, no common law copyright shall exist for a period longer than fifty-six years after an original copyright accrues to an owner.**

(1.7) "Manufacturer" means the person who actually makes a recording or causes a recording to be made. "Manufacturer" does not include a person who manufactures a medium upon which sounds or images can be recorded or stored, or who manufactures the cartridge or casing itself, unless such person actually makes the recording or causes the recording to be made.

(2) "Owner" means the person who owns the copyright on the original fixation of sounds embodied in the master phonograph record, master disc, master tape, master film, or other device used for reproducing sounds on phonograph records, discs, tapes, films, or other articles upon which sound is recorded and from which the transferred recorded sounds are directly derived.

(3) "Person" means any individual, firm, partnership, corporation, or association.

#### **C.R.S. 18-4-602 (2010)**

##### **18-4-602. Unlawful transfer for sale**

(1) A person who knowingly and without the consent of the owner transfers any copyrighted sounds recorded on a phonograph record, video disc, wire, tape, film, or other article on which sounds are recorded with the intent to sell such article on which such sounds are so transferred or to cause the same to be sold for profit or to be used to promote the sale of any product commits unlawful transfer for sale.

(2) Unlawful transfer for sale is a class 6 felony.

#### **C.R.S. 18-4-603 (2010)**

##### **18-4-603. Unlawful trafficking in unlawfully transferred articles**

(1) A person who knowingly, or who reasonably should have such knowledge, advertises, offers for sale or resale, sells or resells, distributes, or possesses for any of the purposes provided in this subsection (1) any article that has been transferred without consent of the owner as provided in section 18-4-602 commits unlawful trafficking in unlawfully transferred articles.

(2) Each act of unlawful trafficking in unlawfully transferred articles is a class 3 misdemeanor.

#### **C.R.S. 18-4-604 (2010)**

##### **18-4-604. Dealing in unlawfully packaged recorded articles**

(1) A person who knowingly and for commercial advantage or private financial gain advertises, offers for sale or resale, sells or resells, transports, or possesses for any of the purposes provided in this subsection (1)

any article on which sounds are recorded, the cover, box, jacket, or label of which does not clearly and conspicuously disclose the actual name and address of the manufacturer, commits dealing in unlawfully packaged recorded articles.

(2) Dealing in unlawfully packaged recorded articles is a class 1 misdemeanor. If the offense involves more than one hundred unlawfully packaged recorded articles or the offense is a second or subsequent offense, the court shall assess a fine of at least one thousand dollars.

#### **C.R.S. 18-4-604.3 (2010)**

##### **18-4-604.3. Unlawful recording of a live performance**

(1) A person who, without the consent of the owner of the right to record a live performance, records or causes to be recorded the live performance on a phonograph record, compact disc, video disc, wire, tape, film, or other article on which a live performance is recorded with the intent to sell the article on which the live performance is recorded or to cause the same to be sold for profit or to be used to promote the sale of any product commits unlawful recording of a live performance.

(2) In the absence of a written agreement or law to the contrary, the performer or performers of a live performance are presumed to own the rights to record the live performance.

(3) For purposes of this section, a person who is authorized to maintain custody and control of business records that reflect whether the owner of the live performance consented to having the live performance recorded is a competent witness in a proceeding regarding the issue of consent.

(4) Unlawful recording of a live performance is a class 1 misdemeanor.

(5) As used in this section, "live performance" means a recitation, rendering, or playing of a series of images, musical, spoken, or other sounds, or a combination of images and sounds, in an audible sequence.

#### **C.R.S. 18-4-604.7 (2010)**

##### **18-4-604.7. Trafficking in unlawfully recorded live performance**

(1) A person who knows or reasonably should know that an article has been recorded in violation of section 18-4-604.3 and advertises, offers for sale or resale, sells or resells, or distributes the article, or possesses the article for any of the said purposes, commits trafficking in an unlawfully recorded live performance.

(2) Each act of trafficking in an unlawfully recorded live performance is a class 1 misdemeanor.

#### **C.R.S. 18-4-605 (2010)**

##### **18-4-605. Applicability**

(1) This part 6 shall not apply to:

(a) Any broadcaster who, in connection with or as part of a radio, television, or cable broadcast transmission or for the purpose of archival preservation, transfers any copyrighted sounds recorded on a sound recording;

(b) Any person who transfers copyrighted sounds in the home for personal use and without compensation for such transfer.

(2) This part 6 shall neither enlarge nor diminish the rights of the respective parties in a civil litigation concerning the subject matter of this part 6.

**C.R.S. 18-4-606 (2010)**

**18-4-606. Confiscation and disposition of items**

(1) A law enforcement officer shall, upon discovery, confiscate all unlawfully labeled, transferred, or recorded articles possessed for the purposes of selling or distributing in violation of this part 6 and all equipment and components used or intended to be used to knowingly and unlawfully transfer, manufacture, or record articles for the purposes of selling or distributing in violation of this part 6.

(2) Notwithstanding any other provision of law, recorded articles and equipment and components that are confiscated pursuant to subsection (1) of this section are contraband and shall be delivered to the district attorney in the county in which the confiscation was made. Upon conviction of the person, the district attorney may request a court order for destruction of the recorded articles and a court order for distribution of the equipment and components. Upon conviction of the person and motion of the district attorney, the court shall order the recorded articles to be destroyed or otherwise disposed of if the court finds that the person claiming title to the recorded articles possessed the recorded articles for the purposes of selling or distributing in violation of this part 6. The court shall order the equipment and components distributed to a charitable or educational organization if the court finds that the person claiming title to the equipment possessed the equipment to record nonconforming articles for the purposes of selling or distributing in violation of this part 6.

**C.R.S. 18-4-607 (2010)**

**18-4-607. Restitution**

Notwithstanding any other provision of law, upon conviction of a violation of this part 6, the convicted person shall be ordered to make restitution to the owner or lawful producer of the master sound or audio-visual recording, or to the trade association representing the owner or lawful producer who suffered injury resulting from the crime. The order of restitution shall be based on the aggregate wholesale value of lawfully manufactured and authorized recordings corresponding to the number of nonconforming recorded articles involved in the offense unless a greater value can be proven. The order of restitution shall also include investigative costs relating to the offense.

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**Connecticut**

**Conn. Gen. Stat. § 53-142b (2011)**

**Sec. 53-142b. Transferral, sale or use of records, tapes, film, cassettes or discs without owner's consent, or supplying machinery for reproduction thereof, prohibited. Exceptions.**

(a) As used in this section, "owner" means the person who owns the master phonograph record, master disc, master tape, master audio or video cassette or disc, master film or other device used for reproducing recorded sounds or images, or both, on phonograph records, discs, tapes, audio or video cassettes or discs, films and other articles on which sound or images, or both, are recorded and from which the transferred recorded sounds or images, or both, are directly or indirectly derived.

(b) No person shall (1) knowingly and willfully transfer or cause to be transferred any sounds or images, or both, recorded on a phonograph record, disc, tape, audio or video cassette or disc, film or other article on which sounds or images, or both, are recorded, with the intent to sell or cause to be sold, or to use or cause to be used for profit such article without the consent of the owner, or (2) sell or offer for sale or advertise

for sale any such article with the knowledge that the sounds or images, or both, thereon have been so transferred without the consent of the owner or (3) offer or make available for a fee, rental or any other form of compensation, directly or indirectly, any equipment or machinery with the knowledge that such equipment or machinery will be used by another to reproduce, without the consent of the owner, any phonograph record, disc, wire, tape, audio or video cassette or disc, film or other article on which sounds or images, or both, may be transferred.

(c) Any person engaging in radio or television broadcasting who transfers or causes to be transferred any such sounds or images, or both, which are intended for, or in connection with, broadcast transmission or related uses or for archival purposes shall be exempt from any provision of subsection (b) of this section.

(d) Any person who violates any provision of this section shall be guilty of a class A misdemeanor.

## **Delaware**

**11 Del. C. § 920 (2011)**

### **§ 920. Transfer of recorded sounds; class G felony**

(a) No person shall knowingly transfer or cause to be transferred, directly or indirectly by any means, any sounds recorded on a phonograph record, disc, wire, tape, film or other article upon which sounds are recorded, with the intent to sell or cause to be sold, or to use for profit through public performance, or to use to promote the sale of any product, such article on which sounds are so transferred, without consent of the owner; provided, that such owner is domiciled or has its principal place of business in a country which is a signatory to the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms (executed on October 29, 1971, Geneva).

(b) For the purposes of this section, "owner" means the person who owns the original fixation of sounds embodied in the master phonograph record, master disc, master wire, master tape, master film or other device used for reproducing sounds on phonograph records, discs, wires, tapes, films or other articles upon which sound is recorded, and from which the transferred recorded sounds are directly or indirectly derived.

(c) Violation of this section shall constitute a class G felony.

**11 Del. C. § 921 (2011)**

### **§ 921. Sale of transferred recorded sounds; class A misdemeanor**

(a) No person shall knowingly, or with reasonable grounds to know, advertise or offer for sale or resale, or sell or resell, distribute or possess for such purposes, any article that has been produced in violation of § 920 of this title.

(b) Violation of this section shall constitute a class A misdemeanor.

## **11 Del. C. § 922 (2011)**

### **§ 922. Improper labeling; class G felony**

- (a) No person shall advertise or offer for sale or resale, or sell or resell, or possess for such purposes, any phonograph record, disc, wire, tape, film or other article on which sounds are recorded, unless the cover, box, jacket, or label clearly and conspicuously discloses the actual name and address of the manufacturer thereof, and the name of the actual performer or group.
- (b) Violation of this section involving 100 or more improperly labeled sound recordings shall constitute a class G felony, otherwise it is/shall constitute an unclassified misdemeanor.
- (c) A second or subsequent violation of this section involving 100 or more improperly labeled sound recordings, or in which the second or subsequent violation plus any and all prior violations of this section added together involve 100 or more improperly labeled sound recordings, shall constitute a class F felony.

## **11 Del. C. § 923 (2011)**

### **§ 923. Exceptions**

This subpart shall not apply to:

- (1) Any broadcaster who, in connection with or as part of a radio, television or cable broadcast transmission, or for the purpose of archival preservation, transfers any such sounds recorded on a sound recording;
- (2) Any person who transfers such sounds in the home, for personal use, and without compensation for such transfer;
- (3) Any phonograph record, disc, wire, tape, film or other article upon which sound is recorded where a period of 50 years has transpired since the original fixation of sounds thereon was made by the owner or on the owner's behalf.

## **11 Del. C. § 924 (2011)**

### **§ 924. Civil litigation**

This subpart shall neither enlarge nor diminish the rights of parties in civil litigation.

## **11 Del. C. § 924A (2011)**

### **§ 924A. Forfeiture**

If a person is convicted of a violation of § 922 of this title, the court in its sentencing order shall order the forfeiture and destruction or other disposition of:

- (1) All articles on which the conviction is based; and
- (2) All implements, devices, materials, and equipment used or intended to be used in the manufacture of the recordings on which the conviction is based.

## **District of Columbia**

**DC ST § 22-3214**  
**22-3814. Formerly cited as DC ST 1981 §**  
**§ 22-3214. Commercial piracy.**

(a) For the purpose of this section, the term:

(1) "Owner", with respect to phonorecords or copies, means the person who owns the original fixation of the property involved or the exclusive licensee in the United States of the rights to reproduce and distribute to the public phonorecords or copies of the original fixation. In the case of a live performance the term "owner" means the performer or performers.

(2) "Proprietary information" means customer lists, mailing lists, formulas, recipes, computer programs, unfinished designs, unfinished works of art in any medium, process, program, invention, or any other information, the primary commercial value of which may diminish if its availability is not restricted.

(3) "Phonorecords" means material objects in which sounds, other than those accompanying a motion picture or other audiovisual work, are fixed by any method now known or later developed, and from which the sounds can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. The term "phonorecords" includes the material object in which the sounds are first fixed.

(b) A person commits the offense of commercial piracy if, with the intent to sell, to derive commercial gain or advantage, or to allow another person to derive commercial gain or advantage, that person reproduces or otherwise copies, possesses, buys, or otherwise obtains phonorecords of a sound recording, live performance, or copies of proprietary information, knowing or having reason to believe that the phonorecord or copies were made without the consent of the owner. A presumption of the requisite intent arises if the accused possesses 5 or more unauthorized phonorecords either of the same sound recording or recording of a live performance.

(c) Nothing in this section shall be construed to prohibit:

(1) Copying or other reproduction that is in the manner specifically permitted by Title 17 of the United States Code; or

(2) Copying or other reproduction of a sound recording that is made by a licensed radio or television station or a cable broadcaster solely for broadcast or archival use.

(d) Any person convicted of commercial piracy shall be fined not more than \$1,000 or imprisoned for not more than 180 days, or both.

(e) This section does not apply to any sound recording initially fixed on or after February 15, 1972.

**DC ST § 22-3214.01**  
**22-3814.1 Formerly cited as DC ST 1981 §**  
**§ 22-3214.01. Deceptive labeling.**

(a) For the purposes of this section, the term:

(1) "Audiovisual works" means material objects upon which are fixed a series of related images which are intrinsically intended to be shown by the use of machines or devices such as projectors, viewers, or electronic equipment, now known or later developed, together with accompanying sounds, if any, regardless of the nature of the material objects, such as films or tapes, in which the works are embodied.

(2) "Manufacturer" means the person who authorizes or causes the copying, fixation, or transfer of sounds or images to sound recordings or audiovisual works subject to this section.

(3) "Sound recordings" means material objects in which sounds, other than those accompanying a motion picture or other audiovisual work, are fixed by any method now known or later developed, and from which the sounds can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.

(b) A person commits the offense of deceptive labeling if, for commercial advantage or private financial gain, that person knowingly advertises, offers for sale, resale, or rental, or sells, resells, rents, distributes, or transports, or possesses for such purposes, a sound recording or audiovisual work, the label, cover, or jacket of which does not clearly and conspicuously disclose the true name and address of the manufacturer thereof.

(c) Nothing in this section shall be construed to prohibit:

(1) Any broadcaster who, in connection with, or as part of, a radio or television broadcast transmission, or for the purposes of archival preservation, transfers any sounds or images recorded on a sound recording or audiovisual work; or

(2) Any person who, in his own home, for his own personal use, and without deriving any commercial advantage or private financial gain, transfers any sounds or images recorded on a sound recording or audiovisual work.

(d)(1) Any person convicted of deceptive labeling involving less than 1,000 sound recordings or less than 100 audiovisual works during any 180-day period shall be fined not more than \$10,000 or imprisoned for not more than 1 year, or both.

(2) Any person convicted of deceptive labeling involving 1,000 or more sound recordings or 100 or more audiovisual works during a 180-day period shall be fined not more than \$50,000 or imprisoned for not more than 5 years, or both.

(e) Upon conviction under this section, the court shall, in addition to the penalties provided by this section, order the forfeiture and destruction or other disposition of all sound recordings, audiovisual works, and equipment used, or attempted to be used, in violation of this section.

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## **Florida**

**Fla. Stat. § 540.11 (2011)**

### **§ 540.11. Unauthorized copying of phonograph records, disk, wire, tape, film, or other article on which sounds are recorded**

(1) As used in this section, unless the context otherwise requires:

(a) "Owner" means the person who owns the original sounds embodied in the master phonograph record, master disk, master tape, master film, or other device used for reproducing sounds on phonograph records, disks, tapes, films, or other articles upon which sound is recorded, and from which the transferred recorded sounds are directly or indirectly derived, or the person who owns the rights to record or authorize the recording of a live performance.

(b) "Performer" means the person or persons appearing in the performance.

(c) "Master recording" means the original fixation of sounds upon an article from which copies can be made.

(d) "Person" means any individual, partnership, corporation, association, or other legal entity.

(e) "Article" means the tangible medium upon which sounds or images are recorded or any original phonograph record, disk, tape, audio or video cassette, wire, film, or other medium now known or later developed on which sounds or images are or can be recorded or otherwise stored, or any copy or reproduction which duplicates, in whole or in part, the original.

(2) (a) It is unlawful:

1. Knowingly and willfully and without the consent of the owner, to transfer or cause to be transferred, directly or indirectly, any sounds recorded on a phonograph record, disk, wire, tape, film, or other article on which sounds are recorded, with the intent to sell, or cause to be sold, or use or cause to be used for profit through public performance, such article on which sounds are so transferred without consent of the owner.

2. Knowingly to manufacture, distribute, wholesale or transport within the state or cause to be transported within the state for commercial advantage or private financial gain any article on which sounds are recorded with knowledge that the sounds thereon are transferred without consent of the owner.

3. Knowingly and willfully and without the consent of the performer, to transfer to or cause to be transferred to any phonograph record, disk, wire, tape, film, or other article any performance, whether live before an audience or transmitted by wire or through the air by radio or television, with the intent to sell, or cause to be sold, or to use or cause to be used for profit through public performance or to be used to promote the sale of any product or such article onto which such performance is so transferred.

4. Knowingly to manufacture, distribute, wholesale or transport within this state or cause to be transported within this state for commercial advantage or private financial gain any article embodying a performance, whether live before an audience or transmitted by wire or through the air by radio or television, recorded with the knowledge that the performance is so transferred without consent of the owner.

Subparagraphs 1. and 2. apply only to sound recordings fixed prior to February 15, 1972.

(b) 1. A person who violates paragraph (a) commits a felony of the third degree, punishable as provided in s. 775.082, by a fine of up to \$ 250,000, or both if the offense involves at least 1,000 unauthorized articles embodying sound or at least 65 unauthorized audiovisual articles during any 180-day period or is a second or subsequent conviction under either this subparagraph or subparagraph 2.

2. A person who violates paragraph (a) commits a felony of the third degree, punishable as provided in s. 775.082, by a fine of up to \$ 150,000, or both if the offense involves more than 100 but less than 1,000 unauthorized articles embodying sound or more than 7 but less than 65 unauthorized audiovisual articles during any 180-day period.

3. A person who otherwise violates paragraph (a) commits a misdemeanor of the first degree, punishable as provided in s. 775.082, by a fine of up to \$ 25,000, or both.

(c) For purposes of this subsection, a person who is authorized to maintain custody and control over business records which reflect whether or not the owner of the live performance consented to having the live performance recorded or fixed shall be a proper witness in any proceeding regarding the issue of consent.

(3) (a) It is unlawful:

1. To sell or offer for sale or resale, advertise, cause the sale or resale of, rent, transport or cause to be rented or transported, or possess for any of these purposes any article with the knowledge, or with reasonable grounds to know, that the sounds thereon have been transferred without the consent of the

owner.

2. To sell or offer for sale or resale, advertise, cause the sale or resale of, rent, transport or cause to be rented or transported, or possess for any of these purposes any article embodying any performance, whether live before an audience or transmitted by wire or through the air by radio or television, recorded without the consent of the performer.

3. Knowingly, for commercial advantage or private financial gain to sell or resell, offer for sale or resale, advertise, cause the sale or resale of, rent, transport or cause to be rented or transported, or possess for such purposes, any phonograph record, disk, wire, tape, film, or other article on which sounds are recorded, unless the outside cover, box, or jacket clearly and conspicuously discloses the actual name and address of the manufacturer thereof, and the name of the actual performer or group.

(b) 1. A person who violates paragraph (a) commits a felony of the third degree, punishable as provided in s. 775.082, by a fine of up to \$ 250,000, or both if the offense involves at least 1,000 unauthorized articles embodying sound or at least 65 unauthorized audiovisual articles during any 180-day period or is a second or subsequent conviction under either this subparagraph or subparagraph 2. of this subsection.

2. A person who violates paragraph (a) commits a felony of the third degree, punishable as provided in s. 775.082, by a fine of up to \$ 150,000, or both if the offense involves more than 100 but less than 1,000 unauthorized articles embodying sound or more than 7 but less than 65 unauthorized audiovisual articles during any 180-day period.

3. A person who otherwise violates this subsection commits a misdemeanor of the first degree, punishable as provided in s. 775.082, by a fine of up to \$ 25,000, or both.

(4) Any recorded article produced in violation of subsections (2) and (3), or any equipment or components used in the production thereof, shall be subject to seizure and forfeiture and destruction by the seizing law enforcement agency.

(5) This section shall neither enlarge nor diminish the right of parties in private litigation.

(6) This section does not apply:

(a) To any broadcaster who, in connection with, or as part of, a radio, television, or cable broadcast transmission, or for the purpose of archival preservation, transfers any such sounds recorded on a sound recording.

(b) To any person who transfers such sounds in the home for personal use and without compensation for such transfer.

(c) To any not-for-profit educational institution or any federal or state governmental entity, if all the following conditions exist:

1. The primary purpose of the institution or entity is the advancement of the public's knowledge and the dissemination of information.

2. Such purpose is clearly set forth in the institution's or entity's charter, bylaws, certificate of incorporation, or similar document.

3. Prior to the transfer of the sounds, the institution or entity has made a good faith effort to identify and locate the owner or owners of the articles to be transferred.

4. Despite good faith efforts, the owner or owners have not been located.

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## **Georgia**

**O.C.G.A. § 16-8-60 (2011)**

### **§ 16-8-60. Reproduction of recorded material; transfer, sale, distribution, circulation; forfeiture; restitution**

(a) It is unlawful for any person, firm, partnership, corporation, or association knowingly to:

(1) Transfer or cause to be transferred any sounds or visual images recorded on a phonograph record, disc, wire, tape, videotape, film, or other article on which sounds or visual images are recorded onto any other phonograph record, disc, wire, tape, videotape, film, or article without the consent of the person who owns the master phonograph record, master disc, master tape, master videotape, master film, or other device or article from which the sounds or visual images are derived; or

(2) Sell; distribute; circulate; offer for sale, distribution, or circulation; possess for the purpose of sale, distribution, or circulation; cause to be sold, distributed, or circulated; cause to be offered for sale, distribution, or circulation; or cause to be possessed for sale, distribution, or circulation any article or device on which sounds or visual images have been transferred, knowing it to have been made without the consent of the person who owns the master phonograph record, master disc, master tape, master videotape, master film, or other device or article from which the sounds or visual images are derived.

(b) It is unlawful for any person, firm, partnership, corporation, or association to sell; distribute; circulate; offer for sale, distribution, or circulation; or possess for the purposes of sale, distribution, or circulation any phonograph record, disc, wire, tape, videotape, film, or other article on which sounds or visual images have been transferred unless such phonograph record, disc, wire, tape, videotape, film, or other article bears the actual name and address of the transferor of the sounds or visual images in a prominent place on its outside face or package.

(c) This Code section shall not apply to any person who transfers or causes to be transferred any such sounds or visual images:

(1) Intended for or in connection with radio or television broadcast transmission or related uses;

(2) For archival purposes; or

(3) Solely for the personal use of the person transferring or causing the transfer and without any profit being derived by the person from the transfer.

(d) Every person convicted of violating this Code section shall be guilty of a felony and shall be punished as follows:

(1) Upon the first conviction of violating this Code section, by a fine of not less than \$500.00 nor more than \$25,000.00, by imprisonment for not less than one year nor more than two years, or both such fine and imprisonment;

(2) Upon the second conviction of violating this Code section, by a fine of not less than \$1,000.00 nor more than \$100,000.00, by imprisonment for not less than one year nor more than three years and the judge may suspend, stay, or probate all but 48 hours of any term of imprisonment, or both such fine and imprisonment; or

(3) Upon the third or subsequent conviction of violating this Code section, by a fine of not less than \$2,000.00 nor more than \$250,000.00, by imprisonment for not less than two nor more than five years and the judge may suspend, stay, or probate all but six days of any term of imprisonment, or both such fine and imprisonment.

(e) This Code section shall neither enlarge nor diminish the right of parties to enter into a private contract.

(f) (1) Any phonograph record, disc, wire, tape, videotape, film, or other article onto which sounds or visual images have been transferred shall be subject to forfeiture to the State of Georgia except that no property of any owner shall be forfeited under this paragraph, to the extent of the interest of such owner, by reason of an act or omission established by such owner to have been committed or omitted without knowledge or consent of such owner.

(2) The procedure for forfeiture and disposition of forfeited property under this subsection shall be as provided for under Code Section 16-13-49.

(g) For purposes of imposing restitution pursuant to Chapter 14 of Title 17 when a person is convicted pursuant to this Code section, the court shall consider damages to any owner or lawful producer of a master phonograph record, master disc, master tape, master videotape, master film, or other device or article from which sounds or visual images are derived. Restitution shall be based upon the aggregate wholesale value of lawfully manufactured and authorized recorded devices corresponding to the nonconforming recorded devices involved in the violation of this Code section and shall also include reasonable investigative costs related to the detection of the violation of this Code section.

**CONSTITUTIONALITY:** Trial court did not err in finding that O.C.G.A. § 16-8-60(b) was not unconstitutionally vague nor overbroad and was not preempted by federal law, as: (1) the statute aimed to protect the public and entertainment industry from piracy and bootlegging, a legitimate governmental interest unrelated to free speech concerns; (2) the statute did not impinge upon pure speech, but, at most, regulated a combination of commercial conduct and speech; (3) the statute's deterrent effect on legitimate expression was minimal; and (4) the statute plainly prohibited the sale or possession for the purposes of sale of an article that did not prominently display the name and address of the individual (or entity) who transferred the sounds to the article; moreover, there was no federal preemption as the statute contained an extra element, specifically, labeling, which qualitatively distinguished it from federal copyright law.  
*Briggs v. State*, 281 Ga. 329, 638 S.E.2d 292 (2006).

## **O.C.G.A. § 16-8-61 (2011)**

### **§ 16-8-61. Display of official rating on video movies**

(a) As used in this Code section, the term:

(1) "Official rating" means the official rating of a motion picture by the Classification and Rating Administration of the Motion Picture Association of America.

(2) "Video movie" means a videotape, video cassette, video disc, any prerecorded video display or visual depiction, any prerecorded device that can be converted to a visual depiction, or other reproduction or reconstruction of a motion picture.

(b) No person may sell, rent, loan, or otherwise disseminate or distribute for monetary consideration a video movie unless the official rating of the motion picture from which the video movie is copied is clearly and prominently displayed in boldface type on the outside of the cassette, case, jacket, or other covering containing the video movie. Such video movie shall be clearly and prominently marked as "not rated" if:

(1) The motion picture from which the video movie is copied has no official rating;

(2) The official rating of the motion picture from which the video movie is copied is not readily available to such person; or

(3) The video movie has been altered so that its content materially differs from the motion picture.

(c) Any person who violates subsection (b) of this Code section shall, upon conviction thereof, be punished by a fine of not more than \$100.00.

**O.C.G.A. § 16-8-62 (2011)**

**§ 16-8-62. Film piracy prohibited; exceptions; penalty for violation**

(a) As used in this Code section, the term:

(1) "Audiovisual recording device" means any device capable of recording or transmitting a motion picture, or any part thereof, using any technology now known or later developed.

(2) "Facility" shall not include a personal residence.

(b) Any person who knowingly operates the recording function of an audiovisual recording device while a motion picture is being exhibited, without the consent of the owner, operator, or lessee of the exhibition facility and of the licensor of the motion picture being exhibited, shall be guilty of film piracy.

(c) The provisions of this Code section shall not be construed to prevent any lawfully authorized investigative, law enforcement, or intelligence personnel of the state or federal government from operating any audiovisual recording device in a facility where a motion picture is being exhibited as part of their official duties or activities.

(d) This Code section is not applicable to a person who operates an audiovisual recording device in a retail establishment solely to demonstrate the use of the device for sales purposes.

(e) A prosecution under this Code section shall not preclude obtaining any other civil or criminal remedy under any other provision of law.

(f) Violation of this Code section is a misdemeanor of a high and aggravated nature and punishable upon conviction as provided in Code Section 17-10-4. A second or subsequent conviction for violation of this Code section shall be punishable as a felony.

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**Hawaii**

**HRS § 482C-1 (2011)**

**[§ 482C-1.] Unlawful transfer of recorded sounds.**

It shall be unlawful for any individual, firm, partnership, corporation or association to transfer or cause to be transferred, without the consent of the person who owns the master phonograph record, master disc, master wire, master tape, master film or other device or article from which the sounds are derived, any sounds recorded on a phonograph record, disc, wire, tape, film, or other article on which sounds are recorded, with intent to sell or cause to be sold, or use or cause to be used for profit through public performance the article onto which such sounds are recorded.

**HRS § 482C-2 (2011)**

**[§ 482C-2.] Sale of unlawfully recorded sounds.**

It is unlawful to advertise, offer for sale, or sell any article onto which sounds have been transferred as described in section 482C-1 with the knowledge that the sounds have been transferred without the consent of the owner.

[§ 482C-3.] Sale or rental of recording equipment for unlawful use.

It is unlawful for any person to offer or make available for a fee, rental, or any other form of compensation, directly or indirectly, any equipment or machinery with the knowledge that it will be used by another to reproduce, without the consent of the owner, any phonograph record, disc, wire, tape, film, or other article on which sounds have been transferred for the purpose of capitalizing commercially on such reproduction.

**HRS § 482C-4 (2011)**

**[§ 482C-4.] Lawful uses; defined.**

This chapter shall not apply to any person who transfers or causes to be transferred any sounds intended for or in connection with radio or television broadcast transmission or related uses, for archival purposes, or solely for the personal use of the person transferring or causing the transfer and with no purpose of capitalizing commercially on such reproduction.

**[§ 482C-5.] Penalty.**

Any person who violates this chapter shall be guilty of a misdemeanor.

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**Idaho**

**Idaho Code § 18-7601 (2011)**

**§ 18-7601. Short title**

This act shall be known as the "Idaho Tape Piracy Act of 1976."

**Idaho Code § 18-7602 (2011)**

**§ 18-7602. Definitions**

As used in this chapter, the terms defined in this section shall have the following meanings, unless the context clearly indicates another meaning:

(1) "Person" means any individual, firm, partnership, corporation or association of individuals.

(2) "Owner" means the person who owns the original fixation of sounds embodied in the master phonograph record, master disc, master tape, master film, or other device used for reproducing sounds on phonograph records, discs, tapes, films, or other articles upon which sound is recorded, and from which transferred recorded sounds are directly derived.

**Idaho Code § 18-7603 (2011)**

**§ 18-7603. Unlawful transfer, sale, distribution, advertisement**

It shall be unlawful and punishable:

(1) For any person to knowingly, and without the consent of the owner, transfer or cause to be transferred or recorded any sounds previously recorded on a phonograph record, disc, wire, tape, film or other article on which sounds are recorded with the intent to sell such articles, or cause them to be sold for profit or used to promote the sale of any product.

(2) For any person to knowingly, or with reasonable grounds to know, advertise, or offer for sale or resale, or sell or resell, distribute or possess for such purposes, any article that has been produced in violation of the provisions of subsection (1) of this section.

(3) For any person to advertise, or offer for sale or resale, or sell or resell, or possess for such purposes, any phonograph record, disc, wire, tape, film or other article on which sounds are recorded, unless the outside cover, box, jacket or container clearly and conspicuously discloses the actual name and address of the manufacturer thereof, and the name of the actual performer or group.

#### **Idaho Code § 18-7604 (2011)**

##### **§ 18-7604. Penalties**

(1) Any person who violates subsection (1) of section 18-7603, Idaho Code, is guilty of a felony and upon conviction may be fined not more than ten thousand dollars (\$ 10,000), or imprisoned for not more than four (4) years, or both such fine and imprisonment. Each recording of the original fixation of sounds without consent of the owner thereof shall constitute a separate offense.

(2) Any person who violates subsection (2) or (3) of section 18-7603, Idaho Code, is guilty of a misdemeanor and upon conviction may be fined not more than one thousand dollars (\$ 1,000) or imprisoned for not more than six (6) months, or both such fine and imprisonment.

#### **Idaho Code § 18-7605 (2011)**

##### **§ 18-7605. Confiscation of equipment**

Any article produced in violation of section 18-7603, Idaho Code, and any equipment used for such purpose, shall be subject to confiscation and destruction by the appropriate law enforcement agency.

#### **Idaho Code § 18-7606 (2011)**

##### **§ 18-7606. Exceptions**

The provisions of this act shall not apply to any broadcaster, who, in connection with or as part of a radio, television, or cable broadcast transmission, or for the purpose of archival preservation, transfers any such sounds recorded on a sound recording.

#### **Idaho Code § 18-7607 (2011)**

##### **§ 18-7607. Act not an exclusive remedy**

This act shall not be deemed an exclusive remedy for persons affected or injured by acts herein proscribed.

#### **Idaho Code § 18-7608 (2011)**

##### **§ 18-7608. Severability**

If any provisions of this act, or the application thereof to any person or circumstances, is held invalid as unconstitutional or ineffective for any reason, such invalidity shall not affect other provisions or applications of the act, and to this end the provisions of this [act] are severable.

## **Illinois**

**720 ILCS 5/16-7 (2011)**  
[Prior to 1/1/93 cited as: Ill. Rev. Stat., Ch. 38, para. 16-7]

### **§ 720 ILCS 5/16-7. Unlawful use of recorded sounds or images**

(a) A person commits unlawful use of recorded sounds or images when he:

(1) Intentionally, knowingly or recklessly transfers or causes to be transferred without the consent of the owner, any sounds or images recorded on any sound or audio visual recording with the purpose of selling or causing to be sold, or using or causing to be used for profit the article to which such sounds or recordings of sound are transferred.

(2) Intentionally, knowingly or recklessly sells, offers for sale, advertises for sale, uses or causes to be used for profit any such article described in subsection 16-7(a)(1) [720 ILCS 5/16-7] without consent of the owner.

(3) Intentionally, knowingly or recklessly offers or makes available for a fee, rental or any other form of compensation, directly or indirectly, any equipment or machinery for the purpose of use by another to reproduce or transfer, without the consent of the owner, any sounds or images recorded on any sound or audio visual recording to another sound or audio visual recording or for the purpose of use by another to manufacture any sound or audio visual recording in violation of Section 16-8 [720 ILCS 5/16-8].

(4) Intentionally, knowingly or recklessly transfers or causes to be transferred without the consent of the owner, any live performance with the purpose of selling or causing to be sold, or using or causing to be used for profit the sound or audio visual recording to which the performance is transferred.

(b) As used in this Section and Section 16-8 [720 ILCS 5/16-8]:

(1) "Person" means any individual, partnership, corporation, association or other entity.

(2) "Owner" means the person who owns the master sound recording on which sound is recorded and from which the transferred recorded sounds are directly or indirectly derived, or the person who owns the rights to record or authorize the recording of a live performance.

(3) "Sound or audio visual recording" means any sound or audio visual phonograph record, disc, pre-recorded tape, film, wire, magnetic tape or other object, device or medium, now known or hereafter invented, by which sounds or images may be reproduced with or without the use of any additional machine, equipment or device.

(4) "Master sound recording" means the original physical object on which a given set of sounds were first recorded and which the original object from which all subsequent sound recordings embodying the same set of sounds are directly or indirectly derived.

(5) "Unidentified sound or audio visual recording" means a sound or audio visual recording without the actual name and full and correct street address of the manufacturer, and the name of the actual performers or groups prominently and legibly printed on the outside cover or jacket and on the label of such sound or audio visual recording.

(6) "Manufacturer" means the person who actually makes or causes to be made a sound or audio visual recording. The term manufacturer does not include a person who manufactures the medium upon which sounds or visual images can be recorded or stored, or who manufactures the cartridge or casing itself.

(c) Unlawful use of recorded sounds or images is a Class 4 felony; however:

- (1) If the offense involves more than 100 but not exceeding 1000 unidentified sound recordings or more than 7 but not exceeding 65 unidentified audio visual recordings during any 180 day period the authorized fine is up to \$ 100,000; and
- (2) If the offense involves more than 1,000 unidentified sound recordings or more than 65 unidentified audio visual recordings during any 180 day period the authorized fine is up to \$ 250,000.
- (d) This Section shall neither enlarge nor diminish the rights of parties in private litigation.
- (e) This Section does not apply to any person engaged in the business of radio or television broadcasting who transfers, or causes to be transferred, any sounds (other than from the sound track of a motion picture) solely for the purpose of broadcast transmission.
- (f) If any provision or item of this Section or the application thereof is held invalid, such invalidity shall not affect other provisions, items or applications of this Section which can be given effect without the invalid provisions, items or applications and to this end the provisions of this Section are hereby declared severable.
- (g) Each and every individual manufacture, distribution or sale or transfer for a consideration of such recorded devices in contravention of this Section constitutes a separate violation of this Section.
- (h) Any sound or audio visual recordings containing transferred sounds or a performance whose transfer was not authorized by the owner of the master sound recording or performance, in violation of this Section, or in the attempt to commit such violation as defined in Section 8-2 [720 ILCS 5/8-2], or in a solicitation to commit such offense as defined in Section 8-1 [720 ILCS 5/8-1], may be confiscated and destroyed upon conclusion of the case or cases to which they are relevant, except that the Court may enter an order preserving them as evidence for use in other cases or pending the final determination of an appeal.

- (i) It is an affirmative defense to any charge of unlawful use of recorded sounds or images that the recorded sounds or images so used are public domain material. For purposes of this Section, recorded sounds are deemed to be in the public domain if the recorded sounds were copyrighted pursuant to the copyright laws of the United States, as the same may be amended from time to time, and the term of the copyright and any extensions or renewals thereof has expired.

**720 ILCS 5/16-8 (2011)**  
**[Prior to 1/1/93 cited as: Ill. Rev. Stat., Ch. 38, para. 16-8]**

**§ 720 ILCS 5/16-8. Unlawful use of unidentified sound or audio visual recordings**

- (a) A person commits unlawful use of unidentified sound or audio visual recordings when he intentionally, knowingly, recklessly or negligently for profit manufactures, advertises or offers for sale, sells, distributes, transports, vends, circulates, performs, leases, or possesses for such purposes, unidentified sound or audio visual recordings or causes the manufacture, advertisement or offer for sale, sale, distribution, transportation, vending, circulation, performance, lease, or possession for such purposes, unidentified sound or audio visual recordings.
- (b) Unlawful use of unidentified sound or audio visual recordings is a Class 4 felony; however:
- (1) If the offense involves more than 100 but not exceeding 1000 unidentified sound recordings or more than 7 but not exceeding 65 unidentified audio visual recordings during any 180 day period the authorized fine is up to \$ 100,000; and
- (2) If the offense involves more than 1,000 unidentified sound recordings or more than 65 unidentified audio visual recordings during any 180 day period the authorized fine is up to \$ 250,000.

(c) Each and every individual manufacture, advertisement or offer for sale, sale, distribution, transportation, vending, circulation, performance, lease, or possession for such purposes, an unidentified sound or audio visual recording constitutes a separate violation of this Section.

(c-5) Upon conviction of any violation of this Section, the offender shall be sentenced to make restitution to any owner or lawful producer of a master sound or audio visual recording, or to the trade association representing such owner or lawful producer, that has suffered injury resulting from the crime. The order of restitution shall be based on the aggregate wholesale value of lawfully manufactured and authorized sound or audio visual recordings corresponding to the non-conforming recorded devices involved in the offense, and shall include investigative costs relating to the offense.

(d) If any provision or item of this Section or the application thereof is held invalid, such invalidity shall not affect other provisions, items or applications of this Section which can be given effect without the invalid provisions, items or applications and to this end the provisions of this Section are hereby declared severable.

(e) Any unidentified sound or audio visual recording used in violation of this Section, or in the attempt to commit such violation as defined in Section 8-4 [720 ILCS 5/8-4], or in a conspiracy to commit such violation as defined in Section 8-2 [720 ILCS 5/8-2], or in a solicitation to commit such offense as defined in Section 8-1 [720 ILCS 5/8-1], may be confiscated and destroyed upon conclusion of the case or cases to which they are relevant, except that the Court may enter an order preserving them as evidence for use in other cases or pending the final determination of an appeal.

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## **Indiana**

N/A

**Repealed: Ind. Code §§ 35-17-7-1 to 3**  
**Repealed by L. 1991, Ch. 112, § 10.**

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## **Iowa**

**Iowa Code § 714.15 (2011)**

### **714.15 Reproduction of sound recordings.**

For the purposes of this section:

"Person" shall mean person as defined in section 4.1, subsection 20.

"Owner" means any person who owns the original fixation of sounds embodied in the master phonograph record, master disc, master tape, master film or other device used for reproducing sounds on phonograph records, discs, tapes, films, or other articles upon which sound is recorded, and from which the transferred recorded sounds are derived.

1. Except as provided in subsection 3, it is unlawful for a person knowingly to:
  - a. Transfer or cause to be transferred any sounds recorded on a phonograph record, disc, wire, tape, film or other article without the consent of the owner; or
  - b. Sell; distribute; circulate; offer for sale, distribution or circulation; possess for the purpose of sale, distribution or circulation; or cause to be sold, distributed, circulated; offered for sale, distribution or circulation; or possessed for sale, distribution or circulation, any article or device on which sounds have been transferred without the consent of the person who owns the master phonograph record, master disc,

master tape or other device or article from which the sounds are derived.

2. It is unlawful for a person to sell, distribute, circulate, offer for sale, distribution or circulation or possess for the purposes of sale, distribution or circulation, any phonograph record, disc, wire, tape, film or other article on which sounds have been transferred unless the phonograph record, disc, wire, tape, film or other article bears the actual name and address of the transferor of the sounds in a prominent place on its outside face or package.

3. This section does not apply to a person who transfers or causes to be transferred sounds intended for or in connection with radio or television broadcast transmission or related uses, synchronized sound tracks of motion pictures or sound tracks recorded for synchronizing with motion pictures, for archival purposes or for the personal use of the person transferring or causing the transfer and without any compensation being derived by the person from the transfer.

4. A person who violates the provisions of this section is guilty of theft.

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## Kansas

### **K.S.A. § 21-3748 (2011)**

#### **21-3748 Piracy of recordings.**

(a) Piracy of recordings is knowingly, and without the consent of the owner, duplicating or causing to be duplicated any sounds recorded on a phonograph record, disc, wire, tape, film or other article on which sounds are recorded, or recording or causing to be recorded any live performance, with the intent to sell, rent or cause to be sold or rented, any such duplicated sounds or any such recorded performance, or to give away such duplicated sounds or recorded performance as part of a promotion for any product or service.

(b) For purposes of this section and K.S.A. 21-3750 and amendments thereto "owner" means the person who owns the original fixation of sounds embodied in the master phonograph record, master disc, master wire, master tape, master film or other device used for reproducing sounds on phonograph records, discs, wires, tapes, films or other articles now known or later developed upon which sound is recorded or otherwise stored, and from which the duplicated recorded sounds are directly or indirectly derived, or the person who owns the right to record such live performance; and "computer program" means a set of statements or instructions to be used directly or indirectly in a computer in order to bring about a certain result.

(c) This section shall not apply to: (1) Any broadcaster who, in connection with or as part of a radio or television broadcast or cable transmission, or for the purpose of archival preservation, duplicates any such sounds recorded on a sound recording;

(2) any person who duplicates such sounds or such performance, for personal use, and without compensation for such duplication;

(3) any sounds initially fixed in a tangible medium of expression after February 15, 1972; or

(4) any computer program or any audio or visual recording that is part of any computer program.

Piracy of recordings is a severity level 9, nonperson felony.

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## Kentucky

### **434.445. Unauthorized reproduction and distribution of recorded article or device for sale or rent -- Exemption -- Confiscation and destruction -- Penalties.**

- (1) Any person who knowingly transfers or causes to be transferred any sounds recorded on a phonograph record, disc, wire, tape, film, or other article on which sounds are recorded, with the intent to sell or cause to be sold for profit or used to promote the sale of any product, such article on which sounds are so transferred without the consent of the owner, shall be guilty of a Class D felony. Each individual manufacture of such recorded article shall constitute a separate offense. "Owner," for purposes of this section, means the person who owns the original fixation of sounds embodied in the master phonograph record, master disc, master tape, master film, or other device used for reproducing sounds on phonograph records, discs, tapes, films, or other articles upon which sound is recorded and from which the transferred recorded sounds are directly derived.
- (2) Any person who knowingly transfers or causes to be transferred to any phonograph record, disc, wire, tape, film, or other article, any performance, whether live before an audience or transmitted by wire or through the air by radio or television, with the intent to sell or cause to be sold for profit or used to promote the sale of any product, such article onto which such performance is or distributes, causes the distribution of, or possesses for one (1) or more of these purposes, to be transferred without the consent of the performer, shall be fined not less than five hundred dollars (\$500) nor more than three thousand dollars (\$3,000) or confined in the penitentiary for not less than one (1) year nor more than five (5) years, or both. Each individual transfer or manufacture of such recorded article shall constitute a separate offense. For purposes of this section, a person who is authorized to maintain custody and control over business records that reflect whether or not the owner of the live performance consented to having the live performance recorded or fixed is a proper witness in a proceeding regarding the issue of consent.
- (3) Any person who knowingly, or with reasonable grounds to know, advertises or offers for sale or resale, or sells or resells, or as a renter, rents or causes the rental of, or distributes or possesses for such purposes any sound recording manufactured without the consent of the owner, as defined in subsection (1) of this section, or any sound recording manufactured without the consent of the performer shall, be guilty of a Class D felony. Possession of five (5) or more duplicate copies or twenty (20) or more individual copies of such recorded articles, produced without the consent of the owner, shall create a rebuttable presumption that such devices are intended for sale or distribution in violation of this section. Each sale or resale of any such article shall constitute a separate offense.
- (4) Any person who knowingly sells or distributes, offers to sell or distribute, possesses for the purpose of sale or distribution any phonograph record, disc, wire, tape, film, or other article now known or later developed on which sounds, images, or both sounds and images have been transferred unless such phonograph record, disc, wire, tape, film, or other article bears the true name and address of the transferor of the sounds and the name of the actual performer or group in a prominent place on its packaging shall be guilty of a Class D felony. Each sale or distribution of any such article shall constitute a separate offense.
- (5) This section does not apply to any person who transfers or causes to be transferred any such sounds or images intended for or in connection with radio or television broadcast or cable transmission or related uses, or for archival purposes, or solely for the personal use of the person transferring or causing the transfer and without any compensation being derived by the person from the transfer.
- (6) It shall be the duty of all peace officers within the Commonwealth of Kentucky and the Department of Kentucky State Police upon discovery to confiscate the recorded devices produced in violation of this section. Any recorded device produced in violation of this section, which has come into the custody of a peace officer, shall be forfeited and destroyed by the court having jurisdiction. A record of the place where said recorded devices were seized, the kinds and quantities of recorded devices so destroyed, and of the time, place, and manner of the destruction, shall be kept.

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## Louisiana

La. R.S. 14:223 (2011)

### § 14:223. Sound reproductions without consent prohibited

Any person who, for commercial gain, knowingly transfers or causes to be transferred, sells, distributes, circulates, or causes to be sold, distributed, or circulated, directly or indirectly, or possesses for such purposes, any sounds recorded on any article for a consideration without the consent of the owner within the state of Louisiana shall be guilty of a criminal offense and punished as provided in R.S. 14:223.3. This Section applies only to sound recordings and does not apply to motion pictures or other audiovisual works.

#### **§ 14:223.1. Terms defined**

The following terms have the meanings indicated:

(1) As used in R.S. 14:223 and 223.6,1 "owner" means the person who owns the sounds fixed in the master phonograph record, master disc, master tape, master film, master audio or video cassette, or other device now known or later developed, used for reproducing recorded sounds or images on phonograph records, discs, tapes, films, video cassettes, or other articles or media on which sound is or may be recorded and from which the transferred recorded sounds are directly or indirectly derived. As used in R.S. 14:223.5, "owner" means the person who owns the sounds and images or the rights to authorize the recording of the sounds or images of any performance not fixed in a tangible medium of expression.

1As appears in enrolled bill.

(2) "Person" means any individual, partnership, corporation, association, or any other legal entity.

(3) "Recording" and "article" mean any original phonograph record, disc, tape, audio or visual cassette, wire, film, or other medium known or later developed on which sounds or images are recorded or otherwise stored, or any copy or reproduction which duplicates, in whole or in part, the original.

(4) "Audiovisual work" means a series of related images intended to be shown through the use of mechanical or electronic devices, together with accompanying sounds, if any.

(5) "Motion picture" means an audiovisual work consisting of a series of images which, when shown in succession, impart an impression of motion together with accompanying sounds, if any.

(6) "Phonorecord" means a material object in which sounds other than those accompanying a motion picture or other audiovisual work are fixed by any method now known or later developed, and from which the sounds can be perceived, reproduced, or otherwise communicated directly or with the aid of a machine or device. Phonorecord includes the material object in which the sound is first fixed.

(7) "Counterfeit label" means an identifying label or container that appears to be genuine but is not.

#### **§ 14:223.2. Exceptions**

R.S. 14:223 through 223.8 shall not apply to any person engaged in radio or television broadcasting who transfers or causes to be transferred any such sounds intended for or in connection with broadcast transmissions or related uses or for archival purposes.

#### **§ 14:223.3. Penalties**

Any person, any member of a partnership, or any officer or employee of a corporation found guilty of violating any provision of R.S. 14:223 through 223.8 shall be punished as follows:

(1) For the first offense of a violation of R.S. 14:223, 223.5, or 223.6 involving fewer than one hundred phonorecords; a violation of R.S. 14:223.7 involving fewer than one hundred counterfeit labels affixed or

designed to be affixed to phonorecords; a violation of R.S. 14:223.6 involving fewer than one hundred articles upon which motion pictures or other audiovisual works are recorded; or a violation of R.S. 14:223.7 involving fewer than one hundred counterfeit labels affixed or designed to be affixed to articles upon which motion pictures or other audiovisual works are or are to be recorded, the offender shall be punished by a fine of not more than five thousand dollars or by imprisonment not exceeding six months, or both.

(2) For the first offense of a violation of R.S. 14:223.8, the offender shall be punished by a fine not exceeding twenty-five thousand dollars, or by imprisonment for not more than two years with or without hard labor, or both.

(3) For any offense of a violation of R.S. 14:223, 223.5, or 223.6 involving one hundred or more phonorecords; a violation of R.S. 14:223.7 involving one hundred or more counterfeit labels affixed or designed to be affixed to phonorecords; a violation of R.S. 14:223.6 involving one hundred or more articles upon which motion pictures or other audiovisual works are recorded; or a violation of R.S. 14:223.7 involving one hundred or more counterfeit labels affixed or designed to be affixed to articles upon which motion pictures or other audiovisual works are or are to be recorded, the offender shall be punished by a fine not exceeding fifty thousand dollars or by imprisonment for not more than five years with or without hard labor, or both.

(4) For the second and subsequent violations of R.S. 14:223 through 223.8, the offender shall be punished by a fine not exceeding one hundred thousand dollars, or by imprisonment for not less than two years nor more than five years with or without hard labor, or both.

(5) Whenever any person is convicted of any violation of R.S. 14:223 through 223.8, the court in its judgment of conviction may, in addition to any other penalty, order the forfeiture and destruction or other disposition of all unlawful recordings, counterfeit labels, and all implements, devices, and equipment used or intended to be used in the manufacture of the unlawful recordings or counterfeit labels. The court may enter an order preserving such recordings, labels, implements, devices, or equipment as evidence for use in other cases or pending the final determination of an appeal.

#### **§ 14:223.4. Civil remedies preserved**

Nothing in R.S. 14:223 through 223.8 shall be construed to abrogate or modify any civil action for any of the acts referred to herein.

#### **§ 14:223.5. Recording of performances without consent prohibited**

Any person who, without the consent of the owner and for commercial gain, knowingly transfers or causes to be transferred to any article, or sells, distributes, circulates, or causes to be sold, distributed, or circulated, directly or indirectly, or possesses for such purposes, a recording of any performance whether live before an audience or transmitted by wire or through the air by radio or television with intent to sell or cause to be sold or used to promote the sale of any article or product within the state of Louisiana shall be guilty of a criminal offense and punished as provided in R.S. 14:223.3.

#### **§ 14:223.6. Rental or sale of improperly labeled articles prohibited**

Any person who advertises, offers for rental, sale, resale, distribution, or circulation, or rents, sells, resells, distributes, or circulates, or causes to be sold, resold, distributed, or circulated, or possesses for such purposes, any recording the cover, label, or jacket of which fails to conspicuously display thereon in clearly readable print, the true name and address of the manufacturer and the name of any actual performer or group thereof shall be guilty of a criminal offense and punished as provided in R.S. 14:223.3.

### **§ 14:223.7. Counterfeiting or possessing counterfeit labels prohibited**

Any person who has in his possession for any illegal purpose or who makes, sells, issues, distributes, circulates, or puts in circulation a counterfeit label affixed or designed to be affixed to a recording within the state of Louisiana shall be guilty of a criminal offense and punished as provided in R.S. 14:223.3.

### **§ 14:223.8. Possessing of tools and equipment used for manufacturing unauthorized sound recordings prohibited**

Any person who, for any of the purposes mentioned in R.S. 14:223 through 223.7, possesses or controls any electronic, mechanical, or other device for manufacturing or reproducing recordings or counterfeit labels, or who possesses or controls any tool, implement, instrument, or thing, used, fitted, or intended to be used for such purposes within the state of Louisiana shall be guilty of a criminal offense and punished as provided in R.S. 14:223.3.

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## **Maine**

### **§ 1261. Transfer of recorded sounds for unlawful use; sale**

1. Transfers. Every person who knowingly and willfully transfers or causes to be transferred any sounds recorded on a phonograph record, disc, wire, tape, film or other article on which sounds are recorded, with intent to sell or cause to be sold, or to use or cause to be used for profit through public performance, such article on which such sounds are so transferred, without the consent of the owner, shall be punished by a fine of not less than \$500 nor more than \$5,000 for each such offense.
  2. Advertising and sale. Every person who advertises, offers for sale or sells any article described in subsection 1 with the knowledge that the sounds thereon have been so transferred without the consent of the owner shall be punished by a fine of not less than \$50 nor more than \$500 for each such offense.
  3. Definition of person and owner. As used in this section, "person" means any individual, partnership, corporation or association; and "owner" means the person who owns the master phonograph record, master disc, master tape, master file or other device used for reproducing recorded sounds on phonograph records, discs, tapes, films or other articles on which sound is recorded, and from which the transferred recorded sounds are directly or indirectly derived.
  4. Civil remedies unaffected. This section shall neither enlarge nor diminish civil remedies of the State or of parties injured by practices prohibited by this section.
  5. Application. This section does not apply to any person engaged in radio or television broadcasting who transfers or causes to be transferred any recorded sounds as described in subsection 1, other than from the sound track of a motion picture, intended for, or in connection with, broadcast transmission or related uses or for archival purposes. This section does not apply to any person who transfers or causes to be transferred any recorded sounds as described in subsection 1 for private use and with no purpose of capitalizing commercially on such reproduction.
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## **Maryland**

**MD Code, Criminal Law, § 7-308**

**467A Formerly cited as MD CODE Art. 27, §**

**§ 7-308. Prohibited transfer of recorded sounds or images**

### **Definitions**

- (a)(1) In this section the following words have the meanings indicated.

(2) "Deliver" means to sell, rent, distribute, or circulate.

(3) "Performance" includes a live performance and a performance that is transmitted by wire, radio, or television.

(4) "Recorded article" means a phonograph record, disc, wire, tape, film, videocassette, or other article on which sounds are recorded or otherwise stored.

**Prohibited--Transfer without consent of sound recordings initially fixed before February 15, 1972**

(b)(1) This subsection applies only to sound recordings initially fixed before February 15, 1972.

(2) Except as otherwise provided in this section, a person may not knowingly transfer or cause to be transferred any sounds recorded on a recorded article to any other recorded article:

(i) with the intent to sell or cause to be sold for profit or used to promote the sale of any product; and

(ii) without the consent of the owner of the original fixation of sounds embodied in the master recorded article.

**Prohibited--Delivery of a recorded article or device without consent**

(c) Except as otherwise provided in this section, a person may not knowingly deliver, offer for delivery, possess for delivery, cause to be delivered, cause to be offered for delivery, or cause to be possessed for delivery a recorded article or device:

(1) on which sounds have been transferred without the consent of the owner of the original fixation of sounds embodied in the master recorded article; or

(2) embodying a performance without the consent of the performer.

**Prohibited--Transfer of sound or images without consent and without credit**

(d)(1) Except as otherwise provided in this section, a person may not knowingly transfer to or cause to be transferred to a recorded article on which sounds or images have been transferred or stored any performance:

(i) with the intent to sell or cause to be sold for profit or used to promote the sale of any product; and

(ii) without the consent of the performer.

(2) A person may not knowingly deliver, offer for delivery, or possess for the purpose of delivery a recorded article on which sounds or images have been transferred or stored, unless the recorded article bears in a prominent place on its outside face or package:

(i) the actual name and street address of the transferor of the sounds or images; and

(ii) the actual name of the performer or group.

**Prohibited--Audiovisual recording in motion picture theater**

(e) Except in the lobby area of a motion picture theater, a person may not knowingly operate an audiovisual recording function of a device in a motion picture theater without the consent of the owner or lessee of the theater.

**MD Code, Criminal Law, § 7-309**  
**467A Formerly cited as MD CODE Art. 27, §**  
**§ 7-309. Penalty**

**First violation**

(a) For a first violation, a person who violates this part is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 1 year or a fine not exceeding \$2,500 or both for each individual act in violation of this part.

**Subsequent violation**

(b) For each subsequent violation, a person who violates this part is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 3 years or a fine not exceeding \$10,000 or both for each individual act in violation of this part.

**MD Code, Criminal Law, § 7-310**  
**467A Formerly cited as MD CODE Art. 27, §**  
**§ 7-310. Forfeiture and destruction**

A recorded article produced in violation of this part and all equipment used to produce the recorded article are subject to forfeiture and destruction by the appropriate law enforcement unit.

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**Massachusetts**

**Effective: February 14, 2005**  
**M.G.L.A. 266 § 143**  
**§ 143. Definitions applicable to Secs. 143A to 143H**

As used in sections 143A to 143H, inclusive, the following words shall have the following meanings:

“Article” or “recorded device”, the tangible medium upon which sounds or images are recorded or otherwise stored, and shall include any original phonograph record, disc, wire, tape, audio or video cassette, film or other medium now known or later developed on which sounds or images may be recorded or otherwise stored, or any copy or reproduction which duplicates, in whole or in part, the original.

“Audiovisual recording function”, the capability to record or transmit visual images or soundtrack, including any portion thereof, from a motion picture.

“Motion picture theater”, movie theater, screening room, or other venue if used primarily for the exhibition of motion pictures.

“Owner”, the person or other entity who owns a master phonograph record, master disc, master tape, master film or other device used for reproducing recorded visual images or sounds on a phonograph record, disc, tape, film, video cassette or other article on which visual images or sound is recorded, and from which the transferred recorded images or sounds are directly or indirectly derived.

**M.G.L.A. 266 § 143A**  
**§ 143A. Unauthorized reproduction and transfer of sound recordings**

Whoever directly or indirectly by any means, knowingly transfers or causes to be transferred any sound recorded on a phonograph record, disc, wire, tape, film, videocassette or other article on which such sound

is recorded, with intent to sell, rent or transport, or cause to be sold, rented or transported, or to use or cause to be used for profit through public performance such article on which such sound is so transferred, without the consent of the owner, or whoever sells any such article with the knowledge that the sound thereon has been so transferred without the consent of the owner, shall be punished as provided in section 143E.

**M.G.L.A. 266 § 143B**  
**§ 143B. Unauthorized reproduction and sale of live performances**

Whoever for commercial advantage or private financial gain records or causes to be recorded a live performance with knowledge that such recording is without the consent of the owner, or advertises, sells, rents, transports or causes to be advertised, sold, rented or transported, or possesses for any of such purposes, a recording of a live performance with the knowledge that the live performance was recorded without the consent of the owner, shall be punished as provided in section 143E.

**M.G.L.A. 266 § 143C**  
**§ 143C. Manufacture, rental, or sale of recorded devices in packaging not bearing reproducer's name and address**

Whoever for commercial advantage or private financial gain knowingly manufactures, rents, sells, transports, or causes to be manufactured, rented, sold or transported, or possesses for purposes of sale, rental or transport, any recorded device the outside packaging of which does not clearly and conspicuously bear the true name and address of the transferor of the sounds or images contained thereon shall be punished as provided in section 143E.

**M.G.L.A. 266 § 143D**  
**§ 143D. Application of Secs. 143 to 143C; exceptions**

- (a) Nothing in sections 143A to 143C, inclusive, shall be construed to apply to any person lawfully entitled to use or who causes to be used such sound or images for profit through public performance, or who transfers or causes to be transferred any such sound or images as part of a radio or television broadcast or for archival preservation.
- (b) Nothing in section 143A to 143C, inclusive, shall be construed to apply to local, state or federal law enforcement officers employing an audiovisual recording function during the lawful exercise of law enforcement duties.

**M.G.L.A. 266 § 143E**  
**§ 143E. Violations of Secs. 143A to 143C; punishment**

Whoever violates any provision of section 143A to section 143C, inclusive, shall be punished:

- (i) by imprisonment for not more than 1 year in the house of correction or by a fine of not more than \$25,000, or by both such fine and imprisonment;
- (ii) by imprisonment in the house of correction for not more than 2 years or by a fine of not more than \$100,000, or by both such fine and imprisonment if the offense involves less than 1,000 but not less than 100 unlawful sound recordings or less than 65 but not less than 7 unlawful audio visual recordings; or
- (iii) by imprisonment in state prison for not more than 5 years or by a fine of not more than \$250,000, or by both such fine and imprisonment if the offense involves not less than 1,000 unlawful sound recordings or not less than 65 unlawful audio visual recordings.

**M.G.L.A. 266 § 143F**

**§ 143F. Unlawful recording of motion picture in motion picture theater; punishment**

(a) Any person, in a motion picture theater while a motion picture is being exhibited, who knowingly operates an audiovisual recording function, with the intent to unlawfully record the motion picture and without the consent of the owner or lessee of the motion picture theater, shall be punished for a first offense by imprisonment in the house of correction for not more than 2 years or by a fine of not more than \$100,000, or by both such fine and imprisonment and for a second or subsequent conviction, by imprisonment in the state prison for not more than 5 years or by a fine of not more than \$250,000, or by both such fine and imprisonment.

(b) Nothing in subsection (a) shall be construed to apply to local, state or federal law enforcement officers employing an audiovisual recording function during the lawful exercise of law enforcement duties.

**M.G.L.A. 266 § 143G**

**§ 143G. Persons detained for possible violation of Sec. 143F; defense to false imprisonment or false arrest action**

In an action for false arrest or false imprisonment brought by any person, by reason of having been detained for questioning or awaiting the arrival of law enforcement, on or in the immediate vicinity of a motion picture theater, if such person was detained in a reasonable manner and for not more than a reasonable length of time by a person authorized to make arrests or by the owner or his agent or servant authorized for such purpose and if there were reasonable grounds to believe that the person so detained was committing or attempting to commit any violation of section 143F, it shall be a defense to such action.

**M.G.L.A. 266 § 143H**

**§ 143H. Forfeiture of recordings upon conviction for violation of Secs. 143A to 143C or Sec. 143F**

Upon conviction of a person for a violation of sections 143A to 143C, inclusive, or section 143F, the court may order the forfeiture, destruction or other disposition of all recordings on which the conviction is based and all implements, devices and equipment used or intended to be used in the manufacture of the recordings on which the conviction is based. Such order shall be stayed pending any appeal.

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**Michigan**

**M.C.L.A. 752.781  
752.781. Owner, defined**

Sec. 1. As used in this act, "owner" means the person who owns the original fixation of sounds embodied in the master phonograph record, master disc, master tape, master film, or other article used for reproducing sound on phonograph records, discs, tapes, films, or other articles upon which sound is recorded, and from which the transferred recorded sound is directly or indirectly derived.

**M.C.L.A. 752.782**

**752.782. Transfers without consent of owner**

Sec. 2. (1) A person, without the consent of the owner, shall not transfer or cause to be transferred sound recorded on a phonograph record, disc, wire, tape, film, or other article on which sound is recorded, with

the intent to sell or cause to be sold for profit or used to promote the sale of a product, the article on which the sound is so transferred.

(2) A person who violates this section shall be guilty of a misdemeanor punishable by imprisonment for not more than 1 year, or a fine of not more than \$5,000.00, or both.

**M.C.L.A. 752.783**

**752.783. Advertising, sale, possession, etc., of articles resulting from transfers without consent**

Sec. 3. (1) A person, knowing or having reasonable grounds to know that the sound thereon has been transferred without the consent of the owner, shall not advertise, sell, resell, offer for sale or resale, or possess for the purpose of sale or resale, an article that has been produced in violation of section 2.<sup>1</sup>

(2) A person who violates this section shall be guilty of a misdemeanor punishable by a fine of not more than \$100.00 for each offense.

**M.C.L.A. 752.784**

**752.784. Application of act; recordings**

Sec. 4. Sections 2 and 3<sup>1</sup> of this act shall apply only to those recordings originally fixed before February 15, 1972, which were not protected by 17 U.S.C. section 1(f).

**M.C.L.A. 752.785**

**752.785. Application of act; transfers**

Sec. 5. This act does not apply to a person who transfers or causes to be transferred sound:

(a) Intended for or in connection with radio or television broadcast transmission or related uses.

(b) For archival, library, or educational purposes.

(c) Solely for the personal use of the person transferring or causing the transfer and without any compensation being derived by the person from the transfer.

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## **Minnesota**

**M.S.A. § 325E.17**

**325E.17. Unlawful transfers or sales of recordings**

Unless exempt under section 325E.19, it is unlawful for any person knowingly:

(1) to transfer or cause to be transferred any sounds or images from one recording to another recording; or

(2) to sell, distribute, circulate, offer for sale, distribution or circulation, possess for the purpose of sale, distribution or circulation, or cause to be sold, distributed or circulated, offered for sale, distribution or circulation, or possessed for sale, distribution or circulation, any recording without the consent of the owner of the master recording.

**M.S.A. § 325E.18**

**325E.18. Identity of transferor**

It is unlawful for any person for commercial purposes to sell, distribute, circulate, offer for sale, distribution or circulation, or possess for the purpose of sale, distribution or circulation, any recording unless the recording bears the actual name and address of the transferor of the sounds or images in a prominent place on its outside face, label, or package.

**M.S.A. § 325E.19**  
**325E.19. Exemptions**

Sections 325E.169 to 325E.201 do not apply to any person who transfers or causes to be transferred any recordings (a) intended for or in connection with radio or television broadcast transmission or related uses, (b) for archival purposes, (c) for library purposes, (d) for educational purposes, or (e) solely for the personal use of the person transferring or causing the transfer and without any compensation being derived by the person from the transfer.

**M.S.A. § 325E.20**  
**325E.20. Repealed by Laws 1993, c. 221, § 7**

Current with laws of the 2011 Regular Session through Chapter 19

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## **Mississippi**

**Miss. Code Ann. § 97-23-87**  
**§ 97-23-87. Unauthorized copying or sale of recordings**

(1) For purposes of this section, the following words shall have the meaning ascribed herein, unless the context requires otherwise:

(a) "Person" means any individual, partnership, corporation, association or any communications media, including radio or television, broadcasters or licensees, newspapers, magazines, or other publications or media which offer facilities for the purposes stated herein.

(b) "Owner" means the person who owns, or who has the license in the United States to produce or to distribute to the public copies of the original fixation of sounds or pictures embodied in, the master phonograph record, master disc, master tape, master videocassette, master film or other device used for reproducing recorded sounds or images on phonograph records, discs, tapes, films or other articles on which sound or images are recorded, and from which the transferred recorded sounds or images are directly or indirectly derived.

(2)(a) Any person who shall knowingly and willfully transfer or cause to be transferred, without the consent of the owner, any sounds or images recorded on phonograph record, disc, wire, tape, videocassette, film, or other article or device on which sounds or images are recorded with intent to sell, rent for a fee, or cause to be sold, or rented for a fee or for any financial gain the article on which such sounds or images are transferred, shall be guilty of a felony and, upon conviction of a first violation of this subsection, shall be fined not more than Twenty-five Thousand Dollars (\$25,000.00) or be imprisoned in the State Penitentiary for not more than five (5) years, or both. Any person who shall be convicted of a second or subsequent violation of this subsection shall be fined not more than One Hundred Thousand Dollars (\$100,000.00) or be imprisoned not more than ten (10) years, or both.

(b) Any person who records, masters or causes to be recorded or mastered on any recorded article or device with the intent to sell, market or lease for commercial advantage or private financial gain, the sounds or images of a live performance, with the knowledge that the sounds or images so recorded have been recorded or mastered without the consent of the owner of the sounds of the live performance, is guilty of a felony, and upon conviction thereof, shall be subject to fine and imprisonment as provided for the first and subsequent convictions of violations of subsection (2)(a). In the absence of a written agreement or

operation of law to the contrary, the performer or performers of the sounds of a live performance shall be presumed to own the right to record or master those sounds. Such performers shall also be deemed, in absence of such agreement or operation of law, to own the right to display and distribute their own personal images.

(c) Each and every individual and separate manufacture of a recorded device as described in this subsection shall constitute a separate offense of this subsection.

(3)(a) It is unlawful for any person to:

(i) Advertise, offer for sale or sell any such article or device described in subsection (2)(a) of this section with the knowledge that the sounds or images thereon have been transferred without the consent of the owner;

(ii) Offer or make available for a fee, rental or any other form of compensation, directly or indirectly, any equipment or machinery with the knowledge that it will be used by another to reproduce, without the consent of the owner, any phonograph record, disc, wire, tape, videocassette, film or other article on which sounds or images have been transferred; or

(iii) Possess with intent to sell, to make available for a fee, rental or other form of compensation, or for the purpose of obtaining any form of compensation through the use of any article or device described in subsection (2)(a), with the knowledge that the sounds or images thereon have been transferred without the consent of the owner.

Any person convicted of a first violation of this subsection shall be guilty of a felony and fined not more than Five Thousand Dollars (\$5,000.00) or imprisoned in the State Penitentiary for not more than three (3) years, or both. Any person convicted of a second or subsequent violation of this subsection shall be guilty of a felony and fined not more than Fifty Thousand Dollars (\$50,000.00) or imprisoned in the State Penitentiary for not more than seven (7) years, or both.

(b) Each and every individual advertisement, offer for sale, sale, rental or possession of such recorded devices or offer or making available of equipment or machinery in violation of the provisions of this subsection shall constitute a separate offense.

(4) The provisions of this subsection shall not apply to reproduction of sounds or images made in the home for private use with no purpose of otherwise capitalizing commercially on such reproduction.

**Miss. Code Ann. § 97-23-89**  
**§ 97-23-89. Performer's identity to be displayed**

(1) For purposes of this section, the following words shall have the meaning ascribed herein, unless the context requires otherwise:

(a) "Person" means any individual, partnership, corporation or association.

(b) "Manufacturer" means any individual, partnership, corporation or association which, after first having acquired the right to transfer sounds or images from the lawful owner thereof, actually transfers or causes the transfer thereon of such sounds or images recorded on a phonograph record, disc, wire, tape, videocassette, film or other article on which sounds or images are recorded, or assembles and transfers any product containing such transferred sounds or images as a component thereof.

(2) It shall be unlawful for any person to manufacture or knowingly (a) sell, rent, distribute or circulate, (b) cause to be sold, distributed or circulated, or (c) possess with intent to sell, rent, distribute or circulate, for any compensation, a recorded article or device containing sounds or images, including any phonograph record, tape, disc, videocassette, film or other article or device upon which sounds or images may be fixed

or reproduced, without the actual name and street address of the manufacturer thereof and, when the recorded article or device contains sounds only, without the name of the actual performer or group of performers prominently disclosed on the cover, jacket, box or label containing such recorded article or device. Any person who is convicted of a first violation of this subsection shall be guilty of a felony and fined not more than Ten Thousand Dollars (\$10,000.00) or be imprisoned in the State Penitentiary for not more than three (3) years, or both. Any person who is convicted of a second or subsequent violation of this subsection shall be guilty of a felony and fined not more than Fifty Thousand Dollars (\$50,000.00) or be imprisoned in the State Penitentiary for not more than seven (7) years, or both.

(3) Each and every individual manufacture, distribution or sale or transfer for a consideration of such recorded article or device in violation of the provisions of this section shall constitute a separate offense.

**Miss. Code Ann. § 97-23-91**  
**§ 97-23-91. Construction; actions; confiscation**

(1) Except as otherwise provided in this section, the provisions of Sections 97-23-87 through 97-23-91 shall not be construed or interpreted to enlarge or diminish the rights of parties in civil litigation. Such sections shall not be construed or interpreted to apply to the transfer by a television operator, radio or television broadcaster, librarian or archivist of any such sounds (other than from the sound track of a motion picture) intended for, or in connection with, broadcast transmission, retransmission or related uses, or for archival purposes only.

(2) Any owner of a recorded article or device whose work is allegedly the subject of a violation of the provisions of Section 97-23-87 or 97-23-89 shall have a cause of action in the circuit courts of this state for all damages resulting therefrom, including actual, compensatory, incidental and punitive damages.

(3) Any lawful producer of a recorded article or device whose product is allegedly the subject of a violation of the provisions of Section 97-23-87 or 97-23-89 shall have a cause of action in the circuit courts of this state for all damages resulting therefrom, including actual, compensatory, incidental and punitive damages.

(4) It shall be the duty of any state, county or local law enforcement officer to confiscate all recorded articles and devices prohibited by the provisions of Sections 97-23-87 and 97-23-89 and all equipment and components used or intended to be used in the manufacture of the recordings prohibited by said sections. The law enforcement officer confiscating such materials and equipment shall deliver the prohibited recorded material, equipment and components to the State Attorney General or the appropriate local district attorney of the judicial district in which the confiscation was made, or cause the same to be stored in a safe place until such time as the court having jurisdiction over the confiscated recorded material and equipment shall determine the rights, if any, of any person in and to said confiscated materials and the appropriate disposition of such material and equipment. The provisions of this section shall apply to any prohibited recording, regardless of lack of knowledge or intent on the part of the person in possession of same to violate Section 97-23-87 or 97-23-89.

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## **Missouri**

### **§ 570.225. Unauthorized recording prohibited, when**

No person shall, without the consent of the owner, transfer or cause to be transferred any sounds recorded on a phonograph record, disc, wire, tape, film, videocassette or other article or medium now known or later developed on which sounds are recorded, with the intent to sell or cause to be sold for profit or used to promote the sale of any article on which sounds are so transferred, except that this section shall only apply to sound recordings initially fixed prior to February 15, 1972.

### **§ 570.226. Unauthorized recording for profit prohibited**

No person shall, without the consent of the owner, transfer or cause to be transferred to any phonograph record, disc, wire, tape, film, videocassette, or other article or medium now known or later developed on which sounds or images are recorded or otherwise stored, any performance whether live before an audience or transmitted by wire or through the air by radio or television, with the intent to sell or cause to be sold for profit.

### **§ 570.230. Sale or offer to sell unauthorized recordings prohibited**

No person shall advertise, or offer for sale, resale, or sell or resell, or cause to be sold, resold or process for such purposes any article that has been produced in violation of the provisions of section 570.225 or 570.226, knowing, or having reasonable grounds to know, that the sounds thereon have been so transferred without the consent of the owner.

### **§ 570.235. Definitions**

As used in sections 570.225 to 570.255, the following terms mean:

- (1) "Audiovisual works", works that consist of a series of related images which are intrinsically intended to be shown by the use of machines, electronic equipment or other devices, now known or later developed, together with accompanying sounds, if any;
- (2) "Manufacturer", the person who transfers or causes to be transferred any sounds or images to the particular article, medium, recording or other physical embodiment of such sounds or images then in issue;
- (3) "Motion pictures", audiovisual works consisting of a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any;
- (4) "Owner", the person who owns the sounds of any performance not yet fixed in a medium of expression, or the original fixation of sounds embodied in the master phonograph record, master disc, master tape, master film, master videocassette, or other device or medium now known or later developed, used for reproducing sounds on phonograph records, discs, tapes, films, videocassettes, or other articles or medium upon which sound is or may be recorded, and from which the transferred recorded sounds are directly or indirectly derived;
- (5) "Person", any natural person, corporation or other business entity.

### **§ 570.240. Labeling required**

The label, cover, box or jacket on all phonograph records, discs, wires, tapes, films, videocassettes or other articles or medium now known or later developed on which sounds or images are recorded shall contain thereon in clearly readable print the name and address of the manufacturer.

### **§ 570.241. Sale of item produced in violation of law prohibited**

No person shall advertise, or offer for rental, sale, resale, or rent, sell, resell, or cause to be sold, resold, or possess for such purposes any article that has been produced in violation of the provisions of section 570.240, knowing, or having reasonable grounds to know, that the article has been produced in violation of the provisions of section 570.240.

### **§ 570.245. Exemptions from law**

Sections 570.225 to 570.255 do not apply to:

- (1) Any radio or television broadcaster who transfers any such sounds as part of or in connection with a radio or television broadcast transmission or for archival preservation;
- (2) Any person transferring any such sounds at home for his personal use without any compensation being derived by such person or any other person from such transfer;
- (3) Any cable television company that transfers any such sounds as part of its regular cable television service.

### **§ 570.255. Violations, how punished -- forfeiture and destruction of items -- penalties not exclusive**

1. Any person guilty of a violation of sections 570.225 to 570.255 is punishable as follows:

- (1) For the first offense of a violation of sections 570.225 to 570.241 which is not a felony under subdivision (2) of this subsection, such person is guilty of a misdemeanor, and upon conviction shall be punished by a fine not exceeding five thousand dollars, or by confinement in the county jail not exceeding six months, or by both such fine and confinement.
- (2) For any offense of a violation of section 570.240 or 570.241 involving one hundred or more articles upon which motion pictures or audiovisual works are recorded, or any other violation of section 570.225 to 570.241 involving one hundred or more articles, such person is guilty of a felony and, upon conviction, shall be punished by a fine not exceeding fifty thousand dollars, or by imprisonment by the department of corrections for not more than five years, or by both such fine and imprisonment.
- (3) For the second and subsequent violations of sections 570.225 to 570.255, such person is guilty of a felony and, upon conviction, shall be punished by a fine not exceeding one hundred thousand dollars, or by imprisonment by the department of corrections for not less than two years nor more than five years, or by both such fine and imprisonment.

2. If a person is convicted of any violation of sections 570.225 to 570.255, the court in its judgment of conviction may order the forfeiture and destruction or other disposition of all unlawful recordings and all implements, devices and equipment used or intended to be used in the manufacture of the unlawful recordings. The court may enter an order preserving such recordings and all implements, devices and equipment as evidence for use in other cases or pending in the final determination of an appeal. The provisions of this subsection shall not be construed to allow an order to destroy any such implements, devices, or equipment used or intended to be used in such manufacture subject to any valid lien or rights under any security agreement or title retention contract when the holder thereof is an innocent party.

3. The penalties provided under sections 570.225 to 570.255 are not exclusive and are in addition to any other penalties provided by law.

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## **Montana**

### **MCA 30-13-141 30-13-141. Definitions**

As used in 30-13-141 through 30-13-147, the following definitions apply:

- (1) "Owner" means the person who owns the original fixation of sounds embodied in a master phonograph record, master disc, master tape, master film, or other device used for reproducing sounds on phonograph

records, discs, tapes, films, or other articles upon which sound is recorded and from which the transferred recorded sounds are directly derived.

(2) "Performer" means the person or persons appearing in a performance.

(3) "Person" means any individual, firm, partnership, limited liability company, corporation, or association.

(4) "Sound recording" means a phonograph record, disc, wire, tape, film, or other article on which sound is recorded.

**MCA 30-13-142**

**30-13-142. Unauthorized manufacture of sound recordings prohibited**

(1) No person may knowingly, without the consent of the owner, transfer or cause to be transferred any sounds recorded on a sound recording with the intent to sell or cause to be sold for profit any sound recordings onto which such sounds are transferred or to use such sound recordings to promote the sale of any product.

(2) No person may knowingly and without the consent of the performer transfer or cause to be transferred to any sound recording any performance, whether live before an audience or transmitted by wire or through the air by radio or television, with the intent to sell or cause to be sold for profit or to be used to promote the sale of any product such sound recording onto which such performance is so transferred.

(3) A person convicted of violating this section shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed \$50,000, or both.

**MCA 30-13-143**

**30-13-143. Sale of unauthorized sound recordings prohibited**

(1) No person may knowingly, or with reasonable grounds to know, advertise, offer for sale or resale, sell or resell, or distribute or possess for such purposes any sound recording that has been produced without the consent of the owner. Possession of 5 or more duplicate copies or 20 or more individual copies of such sound recording produced without the consent of the owner creates a rebuttable presumption that the copies are intended for sale or distribution in violation of this section.

(2) No person may knowingly, or with reasonable grounds to know, advertise, offer for sale or resale, sell or resell, or distribute or possess for such purposes any sound recordings embodying any performance, whether live before an audience or transmitted by wire or through the air by radio or television, without the prior express written consent of the performer.

(3) A person convicted of violating this section shall be fined no more than \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

**MCA 30-13-144**

**30-13-144. Sale of sound recording without name of manufacturer and name of performer or group prohibited**

(1) No person may advertise, offer for sale or resale, sell or resell, or distribute or possess for such purposes any sound recording unless the outside cover, box, or jacket clearly and conspicuously discloses the name and address of its manufacturer and the name of the performer actually producing the sounds recorded.

(2) A person convicted of violating this section shall be fined no more than \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

**MCA 30-13-145**  
**30-13-145. Forfeiture**

Any article produced in violation of 30-13-142 through 30-13-144 and any equipment used to produce it are subject to forfeiture to and destruction by the appropriate law enforcement agency.

**MCA 30-13-146**  
**30-13-146. Exceptions**

Sections 30-13-141 through 30-13-147 do not apply to:

- (1) any broadcaster who, in connection with a radio, television, or cable broadcast transmission or for the purpose of archival preservation, transfers any sounds recorded on a sound recording;
- (2) any person who transfers such sounds in the home for personal use, without compensation; or
- (3) any person who transfers a single copy of such sounds for bona fide educational purposes, provided that no person directly or indirectly derives any pecuniary gain from such transfer.

**MCA 30-13-147**  
**30-13-147. Civil litigation**

Sections 30-13-141 through 30-13-147 neither enlarge nor diminish the rights of parties in civil litigation.

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## **Nebraska**

**Neb.Rev.St. § 28-1323**  
**28-1323. Transfer or cause to be transferred any sounds recorded on  
a phonograph record, disc, wire, tape, or film; unlawful; exemption**

Unless exempt under section 28-1325, it is unlawful for any person, firm, partnership, limited liability company, corporation, or association knowingly to (1) transfer or cause to be transferred any sounds recorded on a phonograph record, disc, wire, tape, film, or other article on which sounds are recorded onto any other phonograph record, disc, wire, tape, film, or other article or (2) sell, distribute, circulate, offer for sale, distribution or circulation, possess for the purpose of sale, distribution, or circulation, or cause to be sold, distributed, or circulated, offered for sale, distribution, or circulation, or possessed for sale, distribution, or circulation any article or device on which sounds have been transferred without the consent of the person who owns the master phonograph record, master disc, master tape, master wire, master film, or other article from which the sounds are derived.

**Neb.Rev.St. § 28-1324**  
**28-1324. Sell, distribute, circulate, offer for sale, or possess phonograph  
record, disc, wire, tape, film, or sounds transferred; unlawful; exception**

It is unlawful for any person, firm, partnership, limited liability company, corporation, or association to sell, distribute, circulate, offer for sale, distribution, or circulation, or possess for the purpose of sale, distribution, or circulation any phonograph record, disc, wire, tape, film, or other article on which sounds have been transferred unless such phonograph record, disc, wire, tape, film, or other article bears the actual name and address of the transferor of the sounds in a prominent place on its outside face or package.

**Neb.Rev.St. § 28-1325**  
**28-1325. Transfer of sounds; sections; when not applicable**

Sections 28-1323 to 28-1326 do not apply to any person who transfers or causes to be transferred any sounds (1) intended for or in connection with radio or television broadcast transmission or related uses, (2) for archival purposes, (3) solely for the personal use of the person transferring or causing the transfer and without any compensation being derived by the person from the transfer, or (4) intended for use by an educational institution, school, or other person for instructional or educational uses.

**Neb.Rev.St. § 28-1326**  
**28-1326. Transfer of sounds; violations; penalty**

Any person violating the provisions of section 28-1323 or 28-1324 shall be guilty of a Class II misdemeanor.

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## **Nevada**

**N.R.S. 205.217**  
**205.217. Unlawful reproduction or sale of sound recordings**

1. Except as otherwise provided in subsection 3, it is unlawful for any person, firm, partnership, corporation or association knowingly to:
  - (a) Transfer or cause to be transferred any sounds recorded on a phonograph record, disc, wire, tape, film or other article on which sounds are recorded onto any other phonograph record, disc, wire, tape, film or article; or
  - (b) Sell, distribute, circulate, offer for sale, distribution or circulation, possess for the purpose of sale, distribution or circulation, or cause to be sold, distributed, circulated, offered for sale, distribution or circulation, or possessed for sale, distribution or circulation, any article or device on which sounds have been transferred without the consent of the person who owns the master phonograph record, master disc, master tape or other device or article from which the sounds are derived.
2. It is unlawful for any person, firm, partnership, corporation or association to sell, distribute, circulate, offer for sale, distribution or circulation or possess for the purposes of sale, distribution or circulation, any phonograph record, disc, wire, tape, film or other article on which sounds have been transferred unless the phonograph record, disc, wire, tape, film or other article bears the actual name and address of the transferor of the sounds in a prominent place on its outside face or package.
3. This section does not apply to any person who transfers or causes to be transferred any sounds intended for or in connection with radio or television broadcast transmission or related uses, for archival purposes or solely for the personal use of the person transferring or causing the transfer and without any compensation being derived by the person from the transfer.
4. A person who violates the provisions of this section shall be punished:
  - (a) For the first offense, for a category D felony as provided in NRS 193.130.
  - (b) For a subsequent offense, for a category C felony as provided in NRS 193.130.

## **New Hampshire**

**N.H. Rev. Stat. § 352-A:1**  
**352-A:1 Definitions.**

As used in this chapter:

I. "Owner" means the person who owns the original fixation of sounds embodied in the master phonograph record, master disc, master tape, master film or other device used for reproducing recorded sounds on phonograph records, discs, tapes, films or other articles on which sound is recorded and from which the transferred sounds are directly or indirectly derived.

II. "Performer" means a person or persons appearing in a performance, whether live before an audience or transmitted by radio, television or other means.

III. "Person" means any natural person, group, firm, partnership, corporation, association, or any other legal entity.

**N.H. Rev. Stat. § 352-A:2  
352-A:2 Acts Prohibited.**

It shall be unlawful for any person to:

I. Knowingly transfer or cause to be transferred to any article on which sounds are recorded, directly or indirectly by any means, with the intent to sell such article or cause it to be sold or to be used for profit:

- (a) Any sounds recorded on a phonograph record, disc, wire, tape, film, or other article on which sounds are recorded, without prior express written consent of the owner; or
- (b) Any performance, whether live before an audience or transmitted by radio, television or other means, without the prior express written consent of the performer.

II. Advertise, sell or offer for sale at wholesale or retail, distribute, or possess for such purpose, any article on which sounds are recorded, if such person knew or should have known that such article:

- (a) embodies any sounds transferred from a phonograph record, disc, wire, tape, film or other article, without the prior express written consent of the owner; or
- (b) embodies any performance, whether live before an audience or transmitted by radio or television or other means, without the prior express written consent of the performer. Possession of 5 or more duplicate copies or 20 or more individual copies of such recorded articles, produced without the consent of the owner or performer, shall create a rebuttable presumption that such articles are intended for sale or distribution in violation of this section.

III. This section does not apply to:

- (a) Any motion picture or any sound recording initially fixed on or after February 15, 1972; or
- (b) Any person who transfers, or causes to be transferred, any such sounds intended for or in connection with:
  - (1) broadcast or telecast transmissions or related uses, provided the transferor is engaged in licensed radio or television broadcasting;
  - (2) archival purposes; or
  - (3) home or personal use, without involving compensation or profit.

**N.H. Rev. Stat. § 352-A:3**

**352-A:3 Identification Required.**

Every recorded device sold or possessed for the purpose of sale by any manufacturer, distributor, wholesale or retail merchant shall contain on its packaging the name and address of the manufacturer and the name of the actual performer, artist or group; provided, however, that the term "manufacturer" shall not include the manufacturer of the cartridge or casing itself, or the physical medium used on which to make the recording.

**N.H. Rev. Stat. § 352-A:4**  
**352-A:4 Civil Remedies.**

This chapter shall neither enlarge nor diminish the rights of parties in civil litigation.

**N.H. Rev. Stat. § 352-A:5**  
**352-A:5 Criminal Penalties.**

I. Any person who violates any provision of RSA 352-A:2, I, shall be guilty of a class B felony. Each individual manufacture of such recorded article shall constitute a separate offense.

II. Any person who violates any provision of RSA 352-A:2, II, shall be guilty of a misdemeanor.

III. (a) Any recorded article produced or offered for sale in violation of this chapter shall be subject to seizure by law enforcement authorities pending disposition of the charge, and, upon final conviction of the accused, shall be subject to forfeiture and destruction by the appropriate law enforcement agency. (b) Any equipment, devices or components used in the production of such articles in violation of this chapter shall be subject to seizure by law enforcement authorities pending disposition of the charge and, upon final conviction of the accused, shall be subject to forfeiture and destruction, disposition, or sale at auction by the appropriate law enforcement agency, in the discretion and upon order of the trial court.

**N.H. Rev. Stat. § 638:6-a**  
**638:6-a Dealing in Counterfeit Recordings.**

I. As used in this section, "original recording" means any article on which sounds or images, or both, have been recorded with the authorization of the holder of the copyright for the material recorded. "Counterfeit recording" means any article on which sounds or images, or both, have been copied from an original recording, without the authorization of the holder of the copyright for the material recorded.

II. Any person who sells or rents counterfeit recordings, or possesses counterfeit recordings for the purpose of sale or rental, shall be guilty of a class A misdemeanor if a natural person, or guilty of a class B felony if any other person. Each individual counterfeit recording shall constitute a separate offense.

III. Possession of 5 or more duplicate copies or 20 or more individual copies of counterfeit recordings shall create a rebuttable presumption that such recordings are intended for sale or distribution in violation of this section.

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**New Jersey**

**N.J.S.A. 2C:21-21**  
**2C:21-21. New Jersey Anti-Piracy Act**  
**Effective: September 10, 2004**

a. This act shall be known and may be cited as the "New Jersey Anti-Piracy Act."

b. As used in this act:

(1) "Sound recording" means any phonograph record, disc, tape, film, wire, cartridge, cassette, player piano roll or similar material object from which sounds can be reproduced either directly or with the aid of a machine.

(2) "Owner" means (a) the person who owns the sounds fixed in any master sound recording on which the original sounds were fixed and from which transferred recorded sounds are directly or indirectly derived; or (b) the person who owns the rights to record or authorize the recording of a live performance.

(3) "Audiovisual work" means any work that consists of a series of related images which are intrinsically intended to be shown by the use of machines or devices such as projectors, viewers, or electronic equipment, together with accompanying sounds, if any, regardless of the nature of the material object, such as film or tape, in which the work is embodied. "Audiovisual work" includes but is not limited to a motion picture.

(4) "Audiovisual recording function" means the capability of a device to record or transmit a motion picture or any part thereof by means of any technology.

(5) "Facility" means any theater, screening room, indoor or outdoor screening venue, auditorium, ballroom or other premises where motion pictures are publicly exhibited but does not include a library or retail establishment.

c. A person commits an offense who:

(1) Knowingly transfers, without the consent of the owner, any sounds recorded on a sound recording with intent to sell the sound recording onto which the sounds are transferred or to use the sound recording to promote the sale of any product, provided, however, that this paragraph shall only apply to sound recordings initially fixed prior to February 15, 1972.

(2) Knowingly transports, advertises, sells, resells, rents, or offers for rental, sale or resale, any sound recording or audiovisual work that the person knows has been produced in violation of this act.

(3) Knowingly manufactures or transfers, directly or indirectly by any means, or records or fixes a sound recording or audiovisual work, with the intent to sell or distribute for commercial advantage or private financial gain, a live performance with the knowledge that the live performance has been recorded or fixed without the consent of the owner of the live performance.

(4) For commercial advantage or private financial gain, knowingly advertises or offers for sale, resale or rental, or sells, resells, rents or transports, a sound recording or audiovisual work or possesses with intent to advertise, sell, resell, rent or transport any sound recording or audiovisual work, the label, cover, box or jacket of which does not clearly and conspicuously disclose the true name and address of the manufacturer, and, in the case of a sound recording, the name of the actual performer or group.

(5) Knowingly operates an audiovisual recording function of a device in a facility while a motion picture is being exhibited, for the purpose of recording the motion picture, without the consent of both the licensor of the motion picture and the owner or lessee of the facility.

d. Notwithstanding the provisions of subsection b. of N.J.S.2C:43-3:

(1) Any offense set forth in this act which involves at least 1,000 unlawful sound recordings or at least 65 audiovisual works within any 180-day period shall be punishable as a crime of the third degree and a fine of up to \$250,000 may be imposed.

(2) Any offense which involves more than 100 but less than 1,000 unlawful sound recordings or more than 7 but less than 65 unlawful audiovisual works within any 180-day period shall be punishable as a crime of the third degree and a fine of up to \$150,000 may be imposed.

(3) Any offense punishable under the provisions of this act not described in paragraph (1) or (2) of this subsection shall be punishable for the first offense as a crime of the fourth degree and a fine of up to \$25,000 may be imposed. For a second and subsequent offense pursuant to this paragraph, a person shall be guilty of a crime of the third degree. A fine of up to \$50,000 may be imposed for a second offense pursuant to this paragraph and a fine of up to \$100,000 for a third and subsequent offense may be imposed.

e. All unlawful sound recordings and audiovisual works and any equipment or components used in violation of the provisions of this act shall be subject to forfeiture in accordance with the procedures set forth in chapter 64 of Title 2C of the New Jersey Statutes.

f. The provisions of this act shall not apply to:

(1) Any broadcaster who, in connection with or as part of a radio or television broadcast transmission, or for the purposes of archival preservation, transfers any sounds or images recorded on a sound recording or audiovisual work.

(2) Any person who, in his own home, for his own personal use, and without deriving any profit, transfers any sounds or images recorded on a sound recording or audiovisual work.

(3) Any law enforcement officer who, while engaged in the official performance of his duties, transfers any sounds or images recorded on a sound recording or audiovisual work.

g. A law enforcement officer, an owner or lessee of a facility where a motion picture or a live performance is being exhibited, the authorized agent or employee of the owner or lessee, the licensor of the motion picture or the live performance or the authorized agent or employee of the licensor, who has probable cause for believing that a person has operated an audiovisual recording function of a device in violation of this section and that he can recover the recording by taking the person into custody, may, for the purpose of attempting to effect recovery thereof, take the person into custody and detain him in a reasonable manner for not more than a reasonable time, and the taking into custody by a law enforcement officer, owner, lessee, licensor, authorized agent or employee shall not render such person criminally or civilly liable in any manner or to any extent whatsoever. Any law enforcement officer may arrest without warrant any person he has probable cause for believing has operated an audiovisual recording function of a device in violation of this section. An owner or lessee of a facility, the authorized agent or employee of the owner or lessee, the licensor of the motion picture or the live performance or the authorized agent or employee of the licensor who causes the arrest of a person for operating an audiovisual recording function of a device in violation of this section, shall not be criminally or civilly liable in any manner or to any extent whatsoever where the owner, lessee, licensor, authorized agent or employee has probable cause for believing that the person arrested committed the offense.

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## New Mexico

### **N. M. S. A. 1978, § 30-16B-2 § 30-16B-2. Definitions**

As used in the Unauthorized Recording Act:

A. "audiovisual recording" means a recording on which images, including images accompanied by sound, are recorded or otherwise stored, including motion picture film, video cassette, video tape, video disc, other recording mediums or a copy that duplicates in whole or in part the original, but does not include recordings produced by an individual for personal use that are not commercially distributed for profit;

- B. "fixed" means embodied in a recording or other tangible medium of expression, by or under the authority of the owner, so that the matter embodied is sufficiently permanent or stable to permit it to be perceived, reproduced or otherwise communicated for a period of more than transitory duration;
- C. "live performance" means a recitation, rendering or playing of a series of images, musical, spoken or other sounds, or a combination of images and sounds;
- D. "manufacturer" means any person who actually transfers or causes the transfer of a recording, or assembles and transfers any product containing any recording as a component thereof, but does not include the manufacturer of a cartridge or casing for a recording;
- E. "owner" means a person who owns the sounds or images fixed in a master phonograph record, master disc, master tape, master film or other recording on which sound or image is or can be recorded and from which the transferred recorded sounds or images are directly or indirectly derived;
- F. "person" means any individual, firm, partnership, corporation, association or other entity;
- G. "recording" means a tangible medium on which sounds, images or both are recorded or otherwise stored, including an original phonograph record, disc, tape, audio cassette or videocassette, wire, film or other medium now existing or developed later on which sounds, images or both are or can be recorded or otherwise stored, or a copy or reproduction that duplicates in whole or in part the original;
- H. "tangible medium of expression" means the material object on which sounds, images or a combination of both are fixed by any method now known or later developed, and from which the sounds, images or combination of both can be perceived, reproduced or otherwise communicated, either directly or with the aid of a machine or device; and
- I. "transfer" means to duplicate a recording from one tangible medium of expression to another recording.

**N. M. S. A. 1978, § 30-16B-3**  
**§ 30-16B-3. Unauthorized recording; prohibited act; penalties**

- A. It is unlawful for any person to:
- (1) knowingly transfer for sale or cause to be transferred any recording with intent to sell it or cause it to be sold or use it or cause it to be used for commercial advantage or private financial gain without the consent of the owner;
- (2) transport within this state for commercial advantage or private financial gain a recording with the knowledge that the sounds have been transferred without the consent of the owner; or
- (3) advertise or offer for sale, sell, rent or cause the sale, resale or rental of or possess for one or more of these purposes any recording that the person knows has been transferred without the consent of the owner.
- B. Any person violating the provisions of Subsection A of this section:
- (1) when the offense involves seven or more unauthorized recordings embodying sound or seven or more audiovisual recordings, at any one time, is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and
- (2) when the offense involves fewer than seven unauthorized recordings embodying sound or fewer than seven audiovisual recordings, at any one time, is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

**N. M. S. A. 1978, § 30-16B-4**  
**§ 30-16B-4. Required labeling; penalties**

A. It is unlawful for any person for commercial advantage or private financial gain to advertise, offer for sale or resale, sell, resell, lease or possess for any of these purposes any recording that the person knows does not contain the true name of the manufacturer in a prominent place on the cover, jacket or label of the recording.

B. Any person violating the provisions of Subsection A of this section:

- (1) when the offense involves seven or more unauthorized recordings embodying sound or seven or more audiovisual recordings, at any one time, is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and
- (2) when the offense involves fewer than seven unauthorized recordings embodying sound or fewer than seven audiovisual recordings, at any one time, is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

**N. M. S. A. 1978, § 30-16B-5**  
**§ 30-16B-5. Unauthorized recording of live performances; penalties**

A. It is unlawful for any person for commercial advantage or private financial gain to advertise, offer for sale, sell, rent, transport, cause the sale, resale, rental or transportation of or possess for one or more of these purposes a recording of a live performance that has been recorded or fixed without the consent of the owner.

B. Any person violating the provisions of Subsection A of this section:

- (1) when the offense involves seven or more unauthorized recordings embodying sound or seven or more audiovisual recordings, at any one time, is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and
- (2) when the offense involves fewer than seven unauthorized recordings embodying sound or fewer than seven audiovisual recordings, at any one time, is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

C. In the absence of a written agreement or law to the contrary, the performer of a live performance is presumed to own the rights to record or fix those sounds.

D. For the purposes of this section, a person who is authorized to maintain custody and control over business records that reflect whether the owner of the live performance consented to having the live performance recorded or fixed is a competent witness in a proceeding regarding the issue of consent.

**N. M. S. A. 1978, § 30-16B-6**  
**§ 30-16B-6. Exemptions**

The provisions of the Unauthorized Recording Act do not apply to:

- A. any radio or television broadcaster who transfers any recording as part of, or in connection with, a radio or television broadcast transmission or for archival preservation;
- B. any recording defined as a public record of any court, legislative body or proceedings of a public body, whether or not a fee is charged or collected for copies; or

C. any person who transfers a recording for his personal use and who does not derive any commercial advantage or private financial gain from the transfer.

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## New York

### **McKinney's Penal Law § 275.00 Definitions**

The following definitions are applicable to this article:

1. "Person" means any individual, firm, partnership, corporation or association.
2. "Owner" means (a) the person who owns, or has the exclusive license in the United States to reproduce or the exclusive license in the United States to distribute to the public copies of the sounds fixed in a master phonograph record, master disc, master tape, master film or any other device used for reproducing sounds on phonograph records, discs, tapes, films, videocassettes, or any other articles upon which sound is recorded, and from which the transferred recorded sounds are directly derived; or (b) the person who owns the rights to record or authorize the recording of a live performance.
3. "Fixed" means embodied in a recording by or under the authority of the author, so that the matter embodied is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration.
4. "Performer" means the person or persons appearing in a performance.
5. "Performance" means, whether live before an audience or transmitted by wire or through the air by radio or television, a recitation, rendering, or playing of a series of images, musical, spoken, or other sounds, or a combination of images and sounds, in an audible sequence.
6. "Recording" means an original phonograph record, disc, tape, audio or video cassette, wire, film, or any other medium on such sounds, images, or both sounds and images are or can be recorded or otherwise stored, or a copy or reproduction that duplicates in whole or in part the original.

### **McKinney's Penal Law § 275.05 § 275.05 Manufacture of unauthorized recordings in the second degree**

A person is guilty of the manufacture of unauthorized recordings in the second degree when such person:

1. knowingly, and without the consent of the owner, transfers or causes to be transferred any sound recording, with the intent to rent or sell, or cause to be rented or sold for profit, or used to promote the sale of any product, such article to which such recording was transferred, or
2. transports within this state, for commercial advantage or private financial gain, a recording, knowing that the sounds have been reproduced or transferred without the consent of the owner; provided, however, that this section shall only apply to sound recordings initially fixed prior to February fifteenth, nineteen hundred seventy-two. Manufacture of unauthorized recordings in the second degree is a class A misdemeanor.

### **McKinney's Penal Law § 275.10 § 275.10 Manufacture of unauthorized recordings in the first degree**

A person is guilty of manufacture of unauthorized recordings in the first degree when he commits the crime of manufacture of unauthorized recordings in the second degree as defined in section 275.05 of this article and either:

1. has previously been convicted of that crime within the past five years; or
2. commits that crime by the manufacture of one thousand unauthorized sound recordings; provided, however, that this section shall only apply to sound recordings initially fixed prior to February fifteenth, nineteen hundred seventy-two. Manufacture of unauthorized recordings in the first degree is a class E felony.

**McKinney's Penal Law § 275.15**

**§ 275.15 Manufacture or sale of an unauthorized recording of a performance in the second degree**

A person commits the crime of manufacture or sale of an unauthorized recording of a performance in the second degree when he knowingly, and without the consent of the performer, records or fixes or causes to be recorded or fixed on a recording a performance, with the intent to sell or rent or cause to be sold or rented such recording, or with the intent to use such recording to promote the sale of any product; or when he knowingly possesses, transports or advertises, for purposes of sale, resale or rental or sells, resells, rents or offers for rental, sale or resale, any recording that the person knows has been produced in violation of this section. Manufacture or sale of an unauthorized recording of a performance in the second degree is a class A misdemeanor.

**McKinney's Penal Law § 275.20**

**§ 275.20 Manufacture or sale of an unauthorized recording of a performance in the first degree**

A person commits the crime of unauthorized recording of a performance in the first degree when he commits the crime of manufacture or sale of an unauthorized recording of a performance in the second degree as defined in section 275.15 of this article and either:

1. such person has previously been convicted of that crime within the past five years; or
2. commission of that crime involves at least one thousand unauthorized sound recordings or at least one hundred unauthorized audio-visual recordings. Manufacture or sale of an unauthorized recording of a performance in the first degree is a class E felony.

**McKinney's Penal Law § 275.25**

**§ 275.25 Advertisement or sale of unauthorized recordings in the second degree**

A person is guilty of the advertisement or sale of unauthorized recordings in the second degree when such person knowingly advertises, offers for sale, resale, or rental, or sells, resells, rents, distributes or possesses for any such purposes, any recording that has been produced or transferred without the consent of the owner; provided, however, that this section shall only apply to sound recordings initially fixed prior to February fifteenth, nineteen hundred seventy-two. Advertisement or sale of unauthorized recordings in the second degree is a class A misdemeanor.

**McKinney's Penal Law § 275.30**

**§ 275.30 Advertisement or sale of unauthorized recordings in the first degree**

A person is guilty of the advertisement or sale of unauthorized recordings in the first degree when such person commits the crime of advertisement or sale of unauthorized recordings in the second degree as defined in section 275.25 of this article and either:

1. such person has previously been convicted of that crime within the past five years; or

2. commission of that crime involves at least one thousand unauthorized sound recordings or at least one hundred unauthorized audiovisual recordings. Advertisement and sale of unauthorized recordings in the first degree is a class E felony.

**McKinney's Penal Law § 275.40**  
**§ 275.40 Failure to disclose the origin of a recording in the first degree**  
**Effective: November 1, 2006**

A person is guilty of failure to disclose the origin of a recording in the first degree when such person commits the crime of failure to disclose the origin of a recording in the second degree as defined in section 275.35 of this article and either:

1. such person has been convicted of failure to disclose the origin of a recording in the first or second degree within the past five years; or
2. commission of the crime involves at least one hundred unauthorized sound recordings or at least one hundred unauthorized audiovisual recordings. Failure to disclose the origin of a recording in the first degree is a class E felony.

**McKinney's Penal Law § 275.45**  
**§ 275.45 Limitations of application**

1. This article does not apply to:
    - (a) any broadcaster who, in connection with or as part of a radio, television, or cable broadcast transmission, or for the purpose of archival preservation, transfers any such recorded sounds or images; or
    - (b) any person who transfers such sounds or images for personal use, and without profit for such transfer.
  2. This article shall neither enlarge nor diminish the rights of parties in civil litigation.
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## **North Carolina**

**N.C.G.S.A. § 14-432**  
**§ 14-432. Definitions**

The following definitions apply in this Article:

- (1) "Article" means the tangible medium upon which sounds or images are recorded or otherwise stored, including any original phonograph record, disc, tape, audio or video cassette, wire, film, or other medium now known or later developed on which sounds or images, or both, can be recorded or otherwise stored, or any copy or reproduction which duplicates, in whole or in part, the original.
- (2) "Fixed" means that the work has been recorded in a tangible medium of expression, by or under the authority of the author, and its embodiment is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration. A work consisting of sounds or images, or both, that are being transmitted is fixed for the purposes of this section if a fixation of the work is being made simultaneously with its transmission.
- (3) "Owner" means the person who owns the sounds fixed in any master phonograph record, master disc, master tape, master film, or other device used for reproducing recorded sounds on phonograph records,

discs, tapes, films, or other articles on which sound is or can be recorded and from which the transferred sounds are directly or indirectly derived, or the person who owns the rights to record or authorize the recording of a live performance.

**N.C.G.S.A. § 14-433**

**§ 14-433. Recording of live performances or recorded sounds and distribution, etc., of such recordings unlawful in certain circumstances**

(a) It shall be unlawful for any person to:

(1) Knowingly transfer or cause to be transferred, directly or indirectly by any means, any sounds recorded on a phonograph record, disc, wire, tape, film or other article on which sounds are recorded, with the intent to sell or cause to be sold, or to use or cause to be used for profit through public performance, such article on which sounds are so transferred, without consent of the owner.

(2) Manufacture, distribute, wholesale or transport any article for profit, or possess for these purposes with the knowledge that the sounds recorded on the article were transferred in violation of subdivision (a)(1) of this section.

(a1) It shall be unlawful for any person to:

(1) Knowingly transfer or cause to be transferred, directly or indirectly by any means, any sounds at a live performance, with the intent to sell or cause to be sold, or to use or cause to be used for profit through public performance, the article on which sounds are so transferred, without consent of the owner.

(2) Manufacture, distribute, transport or wholesale any article for profit, or possess for those purposes with the knowledge that the sounds recorded on the article were transferred in violation of subdivision (a1)(1) of this section.

(b) Subdivisions (a)(1) and (a)(2) of this section shall apply only to sound recordings that were initially fixed prior to February 15, 1972. Federal copyright law, 17 U.S.C. § 101 et seq., preempts State prosecution of the acts described in subdivisions (a)

(1) and (a)(2) with respect to sound recordings initially fixed on or after February 15, 1972.

(c) This section shall not apply to any person engaged in webcasting or radio or television broadcasting who transfers, or causes to be transferred, any such sounds other than from the sound track of a motion picture intended for, or in connection with webcast, broadcast or telecast transmission or related uses, or for archival purposes. An Internet service provider who is solely providing a conduit for access to the Internet, shall not be deemed to be using, or causing to be used, recordings that may be transferred over the Internet by third parties in violation of this Article.

**N.C.G.S.A. § 14-434**

**§ 14-434. Retailing, etc., of certain recorded devices unlawful**

It shall be unlawful for any person to knowingly retail, advertise or offer for sale or resale, sell or resell or cause the sale or resale, rent or cause to rent, or possess for any of these purposes any article that has been produced, manufactured, distributed, or acquired at wholesale in violation of any provision of this Chapter.

**N.C.G.S.A. § 14-435**

**§ 14-435. Recorded devices to show true name and address of manufacturer**

(a) A person is guilty of failure to disclose the origin of an article when, for commercial advantage or private financial gain, the person knowingly advertises or offers for sale or resale, or sells or resells, or causes the rental, sale, or resale, or rents, or manufactures, or possesses for these purposes, any article, the packaging, cover, box, jacket, or label of which does not clearly and conspicuously disclose the actual true name and address of the manufacturer of the article and the name of the actual author, artist, performer, producer, programmer, or group.

(b) This section does not require the original manufacturer or authorized licensees of software producers to disclose the contributing authors or programmers. As used in this section, the term "manufacturer" shall not include the manufacturer of the article's packaging, cover, box, jacket, or label itself.

**N.C.G.S.A. § 14-436**  
**§ 14-436. Recorded devices; civil action for damages**

Any owner of an article as defined in this Article whose work is allegedly the subject of a violation of G.S. 14-433 or G.S. 14-434, shall have a cause of action in the courts of this State for all damages resulting from the violation, including actual, compensatory and incidental damages.

**N.C.G.S.A. § 14-437**  
**§ 14-437. Violation of Article; penalties**

(a) Every individual act in contravention of the provisions of this Article shall constitute a Class 1 misdemeanor, except that the offense is a Class I felony with a maximum fine of one hundred fifty thousand dollars (\$150,000) if (i) the offense involves at least 100 unauthorized articles during any 180-day period, or (ii) is a third or subsequent conviction for an offense that involves at least 26 unauthorized articles during any 180-day period.

(b) If a person is convicted of any violation under this Article, the court, in its judgment of conviction, shall order the forfeiture and destruction or other disposition of:

(1) All infringing articles; and

(2) All implements, devices and equipment used or intended to be used in the manufacture of the infringing articles.

**N.C.G.S.A. § 66-28**  
**§ 66-28. Prohibition of rights to further restrict or to collect royalties on commercial use**

When any phonograph record or electrical transcription, upon which musical performances are embodied, is sold in commerce for use within this State, all asserted common-law rights to further restrict or to collect royalties on the commercial use made of such recorded performances by any person is hereby abrogated and expressly repealed. When such article or chattel has been sold in commerce, any asserted intangible rights shall be deemed to have passed to the purchaser upon the purchase of the chattel itself, and the right to further restrict the use made of phonograph records or electrical transcriptions, whose sole value is in their use, is hereby forbidden and abrogated. Nothing in this section shall be deemed to deny the rights granted any person by the United States copyright laws. The sole intentment of this enactment is to abolish any common-law rights attaching to phonograph records and electrical transcriptions, whose sole value is in their use, and to forbid further restrictions of the collection of subsequent fees and royalties on phonograph records and electrical transcriptions by performers who were paid for the initial performance at the recording thereof.

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**North Dakota**

**NDCC, 47-21.1-01**  
**§ 47-21.1-01. Definition**

As used in this chapter, the term "owner" means the person who owns the original fixation of sounds embodied in the master phonograph record, master disc, master tape, master film, or other device used for reproducing sounds on phonograph records, discs, tapes, films, or other articles on which sound is recorded, and from which the transferred recorded sounds are directly derived.

**NDCC, 47-21.1-02**  
**§ 47-21.1-02. Unauthorized transfer of recorded sound or the recording of any performance prohibited**

It is hereby declared unlawful for any person to knowingly:

1. Transfer or cause to be transferred any sounds recorded on a phonograph record, disc, tape, wire, film, or other article on which sounds are recorded, with the intent to sell or cause to be sold for profit, or used to promote the sale of any product, any article on which sounds are so transferred without the express consent of the owner.
2. And without the consent of the performer, transfer to or cause to be transferred to any phonograph record, disc, wire, tape, film, or other article, any performance, whether live before an audience or transmitted by wire or through the air by radio or television, with the intent to sell or cause to be sold for profit or used to promote the sale of any product, such article onto which such performance is so transferred.
3. Or with reasonable grounds to know, advertise, or offer for sale or resale, or sell or resell, distribute or possess for such purposes, any recorded article that has been produced without the consent of the owner. Possession of five or more duplicate copies, or twenty or more individual copies of such recorded articles, produced without the consent of the owner, shall create a rebuttable presumption that such devices are intended for sale or distribution in violation of this section.
4. Or with reasonable grounds to know, sell or resell, distribute or possess for such purposes, any phonograph record, disc, wire, tape, film, or other article embodying any performance, whether live before an audience, or transmitted by wire or through the air by radio or television, recorded without the consent of the performer.

**NDCC, 47-21.1-03**  
**§ 47-21.1-03. Disclosure of name and address of manufacturer**

No person shall advertise or offer for sale or resale, or sell or resell, or possess for such purposes, any phonograph record, disc, wire, tape, film, or other article on which sounds are recorded, unless the outside cover, box, or jacket clearly and conspicuously discloses the actual name and address of the manufacturer thereof, and the name of the actual performer or group of performers.

**NDCC, 47-21.1-04**  
**§ 47-21.1-04. Forfeiture and destruction of illegal recordings**

Any recording produced in violation of this chapter, and any equipment used in the production thereof, shall be subject to forfeiture and destruction upon seizure by any state or local law enforcement agency or officer thereof.

**NDCC, 47-21.1-05**  
**§ 47-21.1-05. Exemptions**

The provisions of this chapter shall not apply to:

1. Any broadcaster who, in connection with or as part of a radio, television, or cable broadcast transmission, or for the purpose of archival preservation, transfers any sounds recorded on a sound recording.
2. Any person who transfers sounds in the home, for personal use, and without compensation for such transfer.
3. Any person who transfers or causes to be transferred any recorded sounds or transcript thereof in any judicial or administrative proceedings conducted pursuant to law.

**NDCC, 47-21.1-06**  
**§ 47-21.1-06. Penalty**

Any person violating subsection 1 or 2 of section 47-21.1-02 shall, upon conviction thereof, be guilty of a class C felony. Each individual, felonious manufacture or production of a recorded article shall constitute a separate offense and be punishable as such. Any person violating the provisions of subsection 3 or 4 of section 47-21.1-02, or the provisions of section 47-21.1-03 shall, upon conviction thereof, be guilty of a class B misdemeanor.

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## **Ohio**

**R.C. § 1333.52**  
**1333.52 Record piracy**

(A) No person shall purposely do either of the following:

(1) Transcribe, without the consent of the owner, any sounds recorded on a phonograph record, disc, wire, tape, film, or other article on which sounds are recorded, with intent to sell or use for profit through public performance any product derived from the transcription. Each transcription of sound in violation of division (A)(1) of this section is a separate offense.

(2) Advertise, offer for sale, or sell, any product knowing it to have been produced in violation of division (A)(1) of this section.

(B) No person shall purposely manufacture, sell, or distribute for profit any phonograph record, tape, or album of phonograph records or tapes unless the record and the outside cover, box, or jacket of the record, tape, or album clearly and conspicuously discloses the name and street address of the manufacturer of the record, tape, or album, and the name of the performer or group whose performance is recorded. Each manufacture, sale, or distribution of a different performance on a record, tape, or album in violation of this section is a separate offense.

(C) This section does not apply to the following:

(1) Transcription by a radio or television broadcaster of any sounds in connection with a radio, television, or cable broadcast transmission, or for archival purposes;

(2) Any person who transcribes sounds for personal use.

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## **Oklahoma**

### **21 Okl.St.Ann. § 1975 § 1975. Definitions**

A. As used in this act:

1. "Sound recording" and "article" means a phonograph record, disc, tape, film, audio or video cassette, compact video disc, or other material now known or later developed on which sounds or images are or can be recorded or otherwise stored;
2. "Owner" means the owner of the master sound recording and, with respect to Section 4 of this act, shall mean the owner of the rights to record or authorize the recording of any performance not yet fixed in a tangible medium of expression;
3. "Manufacturer" means the entity authorizing the duplication of the specific recording in question, but shall not include the manufacturer of the cartridge or casing which encloses the recording or the manufacturer of the recording medium;
4. "Counterfeit label" means an identifying label, markings serving the purpose of a label, or container that appears to be genuine but is not genuine;
5. "Audiovisual work" means a series of related images intended to be shown through the use of mechanical or electronic devices, together with accompanying sounds, if any; and
6. "Motion picture" means an audiovisual work consisting of a series of images which, when shown in succession, impart an impression of motion together with accompanying sounds, if any.

B. This act shall not apply to player piano tapes or rolls or the sound occasioned by the use thereof on player pianos, nor shall this act apply to any person engaged in radio, cable television, or television broadcasting who transfers, or causes to be transferred, any such sounds, other than from the sound track of a motion picture, intended for, or in connection with broadcast or telecast transmission or related uses, or for archival purposes.

### **21 Okl.St.Ann. § 1976 § 1976. Unlawful reproduction for sale of sound recording or audiovisual work--Exemptions--Penalties**

A. It shall be unlawful for any person to knowingly reproduce for sale any sound recording produced without the written consent of the owner of the original recording, provided, however, that this section shall only apply to sound recordings initially fixed prior to February 15, 1972, and shall not apply to motion pictures or other audiovisual works.

B. A violation of this section involving less than one hundred articles shall constitute a misdemeanor, and shall, upon conviction, be punishable by a fine not to exceed Five Thousand Dollars (\$5,000.00).

C. A violation of this section involving one hundred or more articles shall constitute a felony, and shall, upon conviction, be punishable by a fine not to exceed Fifty Thousand Dollars (\$50,000.00), or by imprisonment in the State Penitentiary for a term not to exceed five (5) years, or both such fine and imprisonment.

D. A second or subsequent conviction for a violation of this section shall constitute a felony and shall, upon conviction, be punishable by a fine not to exceed One Hundred Thousand Dollars (\$100,000.00), or by

imprisonment in the State Penitentiary for a term not less than two (2) years nor more than five (5) years, or both such fine and imprisonment.

**21 Okl.St.Ann. § 1977**  
**§ 1977. Unlawful sale or offer for sale of sound recording--Penalties**

A. It shall be unlawful for any person to knowingly sell or offer for sale any sound recording that has been produced or reproduced in violation of the provisions of Sections 1975 through 1981 of this title, knowing, or having reasonable grounds to know, that the sounds or images thereon have been produced or reproduced without the consent of the owner.

B. A violation of this section involving less than one hundred articles shall constitute a misdemeanor, and shall, upon conviction, be punishable by a fine not to exceed Five Thousand Dollars (\$5,000.00).

C. A violation of this section involving one hundred or more articles shall constitute a felony, and shall, upon conviction, be punishable by a fine not to exceed Fifty Thousand Dollars (\$50,000.00), or by imprisonment in the State Penitentiary for a term not more than five (5) years, or both such fine and imprisonment.

D. A second or subsequent conviction for a violation of this section shall constitute a felony, and shall, upon conviction, be punishable by a fine not to exceed One Hundred Thousand Dollars (\$100,000.00), or by imprisonment in the State Penitentiary for a term not less than two (2) years nor more than five (5) years, or both such fine and imprisonment.

**21 Okl.St.Ann. § 1978**  
**§ 1978. Unlawful transfer of article or sound recording or performance for unauthorized sale--Penalties**

A. It shall be unlawful for any person to knowingly and without the written consent of the owner, transfer or cause to be transferred to any article or sound recording or otherwise reproduce for sale, any performance, whether live before an audience or transmitted by wire or through the air by radio or television, with the intent to sell or cause to be sold for profit or used to promote the sale of any article or product.

B. A violation of this section involving less than one hundred articles shall constitute a misdemeanor, and shall, upon conviction, be punishable by a fine not to exceed Five Thousand Dollars (\$5,000.00).

C. A violation of this section involving one hundred or more articles shall constitute a felony, and shall, upon conviction, be punishable by a fine not to exceed Fifty Thousand Dollars (\$50,000.00), or by imprisonment in the State Penitentiary for a term not more than five (5) years, or both such fine and imprisonment.

D. A second or subsequent conviction for a violation of this section shall constitute a felony, and shall, upon conviction, be punishable by a fine not to exceed One Hundred Thousand Dollars (\$100,000.00) or by imprisonment in the State Penitentiary for a term not less than two (2) years nor more than five (5) years, or both such fine and imprisonment.

**21 Okl.St.Ann. § 1979**  
**§ 1979. Advertisement, rental, sale, resale, distribution or circulation of article without actual true name or address of manufacturer--Penalties**

A. It shall be unlawful for any person to advertise, or offer for rental, sale, resale, distribution or circulation, or rent, sell, resell, distribute or circulate, or cause to be sold, resold, distributed or circulated,

or possess for such purposes any article, which does not clearly and conspicuously display thereon in clearly readable print the actual true name and address of the manufacturer thereof.

B. A violation of this section involving less than seven articles upon which motion pictures or other audiovisual works are recorded or less than one hundred other articles or sound recordings, shall constitute a misdemeanor, and shall, upon conviction, be punishable by a fine not to exceed Five Thousand Dollars (\$5,000.00).

C. A violation of this section involving seven or more articles upon which motion pictures or other audiovisual works are recorded or one hundred or more other articles or sound recordings, shall constitute a felony, and shall, upon conviction, be punishable by a fine not to exceed Fifty Thousand Dollars (\$50,000.00), or by imprisonment in the State Penitentiary for a term not more than five (5) years, or both such fine and imprisonment.

D. A second or subsequent conviction for a violation of this section shall constitute a felony, and shall, upon conviction, be punishable by a fine not to exceed One Hundred Thousand Dollars (\$100,000.00) or by imprisonment in the State Penitentiary for a term not less than two (2) years nor more than five (5) years, or both such fine and imprisonment.

**21 Okl.St.Ann. § 1980**  
**§ 1980. Counterfeit labels--Penalties**

A. It shall be unlawful for any person to make, manufacture, sell, distribute, offer for sale, issue or place in circulation or knowingly have in his possession for purposes of commercial advantage or private financial gain, a counterfeit label affixed or designed to be affixed to a phonorecord, a copy of a motion picture or other audiovisual work, recording or article.

B. A violation of this section involving less than seven articles upon which motion pictures or other audiovisual works are recorded or less than one hundred other articles or sound recordings, shall constitute a misdemeanor, and shall, upon conviction, be punishable by a fine not to exceed Five Thousand Dollars (\$5,000.00).

C. A violation of this section involving seven or more articles upon which motion pictures or other audiovisual works are recorded or one hundred or more other articles or sound recordings, shall constitute a felony, and shall, upon conviction, be punishable by a fine not to exceed Fifty Thousand Dollars (\$50,000.00), or by imprisonment in the State Penitentiary for a term not more than five (5) years, or both such fine and imprisonment.

D. A second or subsequent conviction for a violation of this section shall constitute a felony, and shall, upon conviction, be punishable by a fine not to exceed One Hundred Thousand Dollars (\$100,000.00) or by imprisonment in the State Penitentiary for a term not less than two (2) years nor more than five (5) years, or both such fine and imprisonment.

**21 Okl.St.Ann. § 1981**  
**§ 1981. Confiscation, preservation and disposition of sound recording or article and implements, devices and equipment used in unauthorized manufacture**

A. If a person is convicted of any violation of this act, the court in its judgment of conviction shall order the forfeiture and destruction or other disposition of any sound recording or article which does not conform to the requirements of this act and all implements, devices and equipment used or intended to be used in the manufacture of such sound recordings or articles.

The court may enter an order preserving any such articles or items for use in other cases or pending the final determination of an appeal.

B. It shall be the duty of all law enforcement officers, upon discovery, to confiscate all recordings and articles that do not conform to the requirements of this act. The nonconforming recordings and articles shall be delivered to the district attorney of the county in which the confiscation was made, who shall, by court order, destroy or otherwise dispose of such recordings and articles. This section shall apply to any nonconforming recording or article, regardless of the knowledge or intent of the person in possession.

C. The penalties provided in this act are not exclusive and are in addition to any other penalties provided by law.

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## Oregon

### **O.R.S. § 164.864 164.864. Definitions**

As used in ORS 164.865, 164.866, 164.868, 164.869, 164.872, 164.873, 164.875 and 164.882 and this section, unless the context requires otherwise:

- (1) "Audiovisual recording function" means the capability of a device to record or transmit a motion picture or any part of a motion picture by means of any technology now known or later developed.
- (2) "Commercial enterprise" means a business operating in intrastate or interstate commerce for profit. "Commercial enterprise" does not include:
  - (a) Activities by schools, libraries or religious organizations;
  - (b) Activities incidental to a bona fide scholastic or critical endeavor;
  - (c) Activities incidental to the marketing or sale of recording devices; and
  - (d) Activities involving the recording of school or religious events or activities.
- (3) "Fixed" means embodied in a recording or other tangible medium of expression, by or under the authority of the author, so that the matter embodied is sufficiently permanent or stable to permit it to be perceived, reproduced or otherwise communicated for a period of more than transitory duration.
- (4) "Live performance" means a recitation, rendering or playing of musical instruments or vocal arrangements in an audible sequence in a public performance.
- (5) "Manufacturer" means the entity authorizing the duplication of a specific recording, but shall not include the manufacturer of the cartridge or casing itself.
- (6) "Master recording" means the master disk, master tape, master film or other device used for reproducing recorded sound from which a sound recording is directly or indirectly derived.
- (7) "Motion picture" includes any motion picture, regardless of length or content, that is exhibited in a motion picture theater, exhibited on television to paying customers or under the sponsorship of a paying advertiser or produced and exhibited for scientific research or educational purposes. "Motion picture" does not include amateur films that are shown free or at cost to friends, neighbors or civic groups.
- (8) "Motion picture theater" means a movie theater, screening room or other venue that is being utilized primarily for the exhibition of a motion picture.
- (9) "Owner" means a person who owns the sounds fixed in a master phonograph record, master disk, master tape, master film or other recording on which sound is or can be recorded and from which the transferred recorded sounds are directly or indirectly derived.

(10) "Recording" means a tangible medium on which information, sounds or images, or any combination thereof, are recorded or otherwise stored. Medium includes, but is not limited to, an original phonograph record, disk, tape, audio or video cassette, wire, film or other medium now existing or developed later on which sounds, images or both are or can be recorded or otherwise stored or a copy or reproduction that duplicates in whole or in part the original.

(11) "Sound recording" means any reproduction of a master recording.

(12) "Videotape" means a reel of tape upon which a motion picture is electronically or magnetically imprinted by means of an electronic video recorder and which may be used in video playback equipment to project or display the motion picture on a television screen.

**O.R.S. § 164.865**  
**164.865. Unlawful sound recording**

(1) A person commits the crime of unlawful sound recording if the person:

- (a) Reproduces for sale any sound recording without the written consent of the owner of the master recording; or
- (b) Knowingly sells, offers for sale or advertises for sale any sound recording that has been reproduced without the written consent of the owner of the master recording.

(2) Unlawful sound recording is a Class B misdemeanor.

**O.R.S. § 164.866**  
**164.866. Civil actions**

Nothing in ORS 164.864, 164.865, 164.868, 164.869, 164.872, 164.873 or 164.875 or this section limits or impairs the right of a person injured by the criminal acts of a defendant to sue and recover damages from the defendant in a civil action.

**O.R.S. § 164.867**  
**164.867. Commercial enterprises as offenders**

The provisions of ORS 164.868, 164.869 and 164.872 apply only to persons operating commercial enterprises.

**O.R.S. § 164.868**  
**164.868. Unlawful labeling of a sound recording**

(1) A person commits unlawful labeling of a sound recording if the person:

(a) Fails to disclose the origin of a sound recording when the person knowingly advertises or offers for sale or resale, sells, resells, rents, leases, or lends or possesses for any of these purposes, any sound recording that does not contain the true name and address of the manufacturer in a prominent place on the cover, jacket or label of the sound recording; and

(b) Possesses five or more duplicate copies or 20 or more individual copies of recordings produced without consent of the owner or performer and the recordings are intended for sale or distribution in violation of this section.

(2) Unlawful labeling of a sound recording is a Class C felony.

**O.R.S. § 164.869**  
**164.869. Unlawful recording of a live performance**

(1) A person commits unlawful recording of a live performance if the person:

(a)(A) Advertises or offers for sale, sells, rents, transports, or causes the sale, resale, rental or transportation of, or possesses for one or more of these purposes, a recording containing sounds of a live performance with the knowledge that the live performance has been recorded or fixed without the consent of the owner; or

(B) With the intent to sell, records or fixes, or causes to be recorded or fixed on a recording, a live performance with the knowledge that the live performance has been recorded or fixed without the consent of the owner; and

(b) Possesses five or more duplicate copies or 20 or more individual copies of recordings produced without consent of the owner or performer and the recordings are intended for sale or distribution in violation of this section.

(2) Unlawful recording of a live performance is a Class C felony.

(3) For purposes of subsections (1) and (2) of this section, in the absence of a written agreement or law to the contrary, the performer of a live performance is presumed to own the rights to record or fix the performance.

(4) A person who is authorized to maintain custody and control over business records that reflect whether or not the owner of the live performance consented to having the live performance recorded or fixed is a proper witness in a proceeding regarding the issue of consent.

**O.R.S. § 164.870**  
**164.870. Repealed by Laws 1957, c. 269, § 1; (164.871 enacted in lieu of 164.870)**

Current with emergency legislation through Ch. 236 of the 2011 Regular Session. Revisions to Acts made by the Oregon Reviser were unavailable at the time of publication.

**O.R.S. § 164.871**  
**164.871. Laws 1957, c. 269, § 2 (enacted in lieu of 164.870); repealed by Laws 1971, c. 743, § 432**

Current with emergency legislation through Ch. 236 of the 2011 Regular Session. Revisions to Acts made by the Oregon Reviser were unavailable at the time of publication.

**O.R.S. § 164.872**  
**164.872. Unlawful labeling of a videotape recording**

(1) A person commits unlawful labeling of a videotape recording if the person:

(a) Fails to disclose the origin of a recording when the person knowingly advertises or offers for sale or resale, or sells, resells, rents, leases or lends, or possesses for any of these purposes, any videotape recording that does not contain the true name and address of the manufacturer in a prominent place on the cover, jacket or label of the videotape recording; and

(b) Possesses five or more duplicate copies or 20 or more individual copies of videotape recordings produced without consent of the owner or performer and the videotape recordings are intended for sale or distribution in violation of this section.

(2) Unlawful labeling of a videotape recording is a Class C felony.

**O.R.S. § 164.873**  
**164.873. Exemptions**

(1) The provisions of ORS 164.872 and 164.875 do not apply to:

(a) The production of a videotape of a motion picture that is defined as a public record under ORS 192.005 (5), in accordance with ORS 192.005 to 192.170 or 357.805 to 357.895.

(b) The production of a videotape of a motion picture that is defined as a legislative record under ORS 171.410, in accordance with ORS 171.410 to 171.430.

(2) The provisions of ORS 164.865, 164.868, 164.869 (1) and (2) and 164.875 do not apply to the reproduction of:

(a) Any recording that is used or intended to be used only for broadcast by educational radio or television stations.

(b) A sound recording, or the production of a videotape of a motion picture, that is defined as a public record under ORS 192.005 (5), with or without charging and collecting a fee therefore, in accordance with ORS 192.005 to 192.170 or 357.805 to 357.895.

(c) A sound recording defined as a legislative record under ORS 171.410, with or without charging and collecting a fee therefore, in accordance with ORS 171.410 to 171.430.

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## **Pennsylvania**

**18 Pa.C.S.A. § 4116**  
**§ 4116. Copying; recording devices**

**(a) Definitions.**--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

**“Manufacturer.”** The person or entity which authorized or caused the recording or transfer of sounds, images or a combination of sounds and images to the recorded device in issue. The term shall not include the manufacturer of the cartridge or casing itself.

**“Owner.”** The person who owns the master phonograph record, master disc, master tape, master film or other device used for reproducing recorded sounds on phonograph records, discs, tapes, films or other articles on which sound is recorded and from which the transferred sounds are directly or indirectly derived.

**“Recorded device.”** Any phonograph record, disc, tape, film, videotape, video cassette or other tangible article, now known or later developed, upon which sounds or images or any combination of sounds and images are recorded.

**(b) Unauthorized transfer of sounds on recording devices.**--It shall be unlawful for any person to:

- (1) knowingly transfer or cause to be transferred, directly or indirectly by any means, any sounds recorded on a phonograph record, disc, wire, tape, film or other article on which sounds are recorded, with the intent to sell or cause to be sold, or to be used for profit through public performance, such article on which sounds are so transferred, without consent of the owner; or
- (2) manufacture, distribute or wholesale any article with the knowledge that the sounds are so transferred, without consent of the owner.

**(c) Exceptions.--**

- (1) Subsection (b) shall not apply to any person engaged in radio or television broadcasting who transfers, or causes to be transferred, any such sounds other than from the sound track of a motion picture intended for, or in connection with broadcast or telecast transmission or related uses, or for archival purposes.
- (2) Subsection (b) shall not apply to motion pictures or to sound recordings fixed on or after February 15, 1972.

**(d) Manufacture, sale or rental of illegal recording or recorded devices.--** It shall be unlawful for any person to knowingly manufacture, transport, sell, resell, rent, advertise or offer for sale, resale or rental or cause the manufacture, sale, resale or rental or possess for such purpose or purposes any recorded device in violation of this section.

**(d.1) Manufacture, sale or rental of a recording of a live performance without consent of the owner.--**

- (1) It shall be unlawful for any person to knowingly manufacture, transport, sell, resell, rent, advertise or offer for sale, resale or rental or cause the manufacture, sale, resale or rental or possess for such purpose or purposes any recording of a live performance with the knowledge that the live performance has been recorded without the consent of the owner.
- (2) In the absence of a written agreement or law to the contrary, the performer or performers of a live performance are presumed to own the rights to record those sounds.
- (3) For purposes of this section, a person who is authorized to maintain custody and control over business records that reflect whether or not the owner of the live performance consented to having the live performance recorded is a competent witness in a proceeding regarding the issue of consent.

**(e) Name of manufacturer on recorded device packaging.--** Every recorded device manufactured, transported, rented, sold, offered for sale or rental, or transferred or possessed for such purpose or purposes by any person shall contain on its packaging or label the true name of the manufacturer.

**(f) Confiscation of non-conforming recorded devices.--** It shall be the duty of all law enforcement officers, upon discovery, to confiscate all recorded devices that do not conform to the provisions of subsection (e). The non-conforming recorded devices shall be delivered to the district attorney of the county in which the confiscation was made. The officer confiscating the recorded devices shall provide to the person from whom the recorded devices were confiscated notice that the person may request a hearing concerning the confiscation and disposition of the devices. Thereafter, the district attorney may seek a court order for destruction of the recorded devices. The provisions of this section shall apply to any non-conforming recorded device, regardless of the requirement in subsection (d) of knowledge or intent.

**(g) Grading of offenses.--**

- (1) Any violation of the provisions of this section involving, within any 180-day period, at least 100 devices upon which motion pictures or portions thereof have been recorded or at least 1,000 devices containing sound recordings or portions thereof is a felony of the third degree. A second or subsequent

conviction is a felony of the second degree if at the time of sentencing the defendant has been convicted of another violation of this section.

(2) Any other violation of the provisions of this section not described in paragraph (1) upon a first conviction is a misdemeanor of the first degree and upon a second or subsequent conviction is a felony of the third degree if at the time of sentencing the defendant has been convicted of another violation of this section.

**(h) Rights of owners and producers to damages...--**

(1) Any owner of a recorded device whose work is allegedly the subject of a violation of the provisions of subsection (b), (d) or (e) shall have a cause of action for all damages resultant therefrom, including actual and punitive damages.

(2) Any lawful producer of a recorded device whose product is allegedly the subject of a violation of the provisions of subsection (b), (d) or (e) shall have a cause of action for all damages resultant therefrom, including actual and punitive damages.

(3) Upon conviction for any offense under this section, the offender may be sentenced to make restitution to any owner or lawful producer of a recorded device or any other person who suffered injury resulting from the crime. Notwithstanding any limitation in section 1106 (relating to restitution for injuries to person or property), the order of restitution may be based on the aggregate wholesale value of lawfully manufactured and authorized recorded devices corresponding to the non-conforming recorded devices involved in the offense. All other provisions of section 1106 not inconsistent with this provision shall apply to an order of restitution under this section.

**(i) Forfeiture.--**

(1) No property right shall exist in any property used or intended for use in the commission of a violation of this section or in any proceeds traceable to a violation of this section, and the same shall be deemed contraband and forfeited in accordance with the provisions set forth in section 6501(d) (relating to scattering rubbish).

(2) Property and proceeds found in close proximity to illegally recorded devices shall be rebuttably presumed to be used or intended for use to facilitate a violation of this section.

(3) The provisions of this subsection shall not, in any way, limit the right of the Commonwealth to exercise any rights or remedies otherwise provided by law.

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## **Rhode Island**

**Gen.Laws 1956, § 6-13.1-15  
§ 6-13.1-15. Piracy of recordings**

(a) As used in this section, "article" means a phonograph record, disc, wire, tape, film, compact disc, audio or video cassette, compact video disc, or other device on which sounds or images are or can be recorded or otherwise stored.

(b) Unless exempt under subsection (d), it is unlawful for any person, firm, partnership, corporation, or association knowingly to:

(1) Transfer or cause to be transferred any sounds recorded on any article on which sounds are recorded onto any other article;

- (2) Transfer or cause to be transferred any performance, whether live before an audience or transmitted by wire or through the air by radio or television, onto any article; or
- (3) Sell, distribute, circulate, offer for sale, distribution, or circulation, possess for the purpose of sale, distribution, or circulation, or cause to be sold, distributed, circulated, offered for sale, distribution, or circulation, or possessed for sale, distribution, or circulation, any article on which sounds or performances have been transferred without the consent of the person who owns the master article from which the sounds are derived or the right to record the performance.
- (c) It is unlawful for any person, firm, partnership, corporation, or association to sell, distribute, circulate, offer for sale, distribution, or circulation or possess for the purposes of sale, distribution, or circulation, any article on which sounds or images have been transferred unless the article bears the actual name and address of the transferor of the sounds in a prominent place on its outside face or package.
- (d) This section does not apply to any person who transfers or causes to be transferred any sounds or images intended for or in connection with radio or television broadcast transmission or related uses, for archival purposes or solely for the personal use of the person transferring or causing the transfer and without any compensation being derived by the person from the transfer.

- (e) Every person who violates the provisions of this section is guilty of a felony and:
- (1) For the first offense is punishable by a fine of not more than five thousand dollars (\$5,000) or by imprisonment in the state prison for not more than six (6) years, or by both fine and imprisonment.
- (2) For a subsequent offense is punishable by a fine of not more than five thousand dollars (\$5,000) or by imprisonment in the state prison for not more than ten (10) years, or by both fine and imprisonment.
- (3) The court in its judgment of conviction may order the forfeiture and destruction or other disposition of all infringing articles and all implements, devices, and equipment used in the manufacture of the infringing articles.

**Gen.Laws 1956, § 42-8.1-7**  
**§ 42-8.1-7. Administration of state archives**

- (a) The state archivist, whenever it appears to him or her to be in the public interest, is hereby authorized:
- (1) To accept for deposit with the state archives the records of any state or local agency or of the general assembly that are determined to have sufficient historical or other value to warrant their continued preservation by the state archives;
- (2) To direct and effect, with the approval of the head of the originating agency (or if the existence of such agency shall have been terminated, then with the approval of his or her successor in function, if any) the transfer of records of permanent legal or historical value to the archives of the state provided, that the title to such records shall be vested in the state archives; and
- (3) To direct and effect the transfer of materials from private sources authorized to be received by the state archivist under the provisions of this chapter.
- (b) The state archivist shall be responsible for the custody, use, and withdrawal of records transferred to him or her; provided, that whenever any records the use of which is subject to statutory limitations and restrictions are so transferred, permissive and restrictive statutory provisions with respect to the examination and use of the records applicable to the head of the agency from which the records were transferred or to employees of that agency shall thereafter likewise be applicable to the archivist, and to the employees of the state archives respectively; provided, further that whenever the head of any agency shall specify in writing restrictions that appear to him or her to be necessary or desirable in the public interest, on

the use or examination of records being considered for transfer from his or her custody to the state archivist shall impose such restrictions on the records so transferred, and shall not remove or relax the restrictions without the concurrence in writing of the head of the agency from which the material shall have been transferred (or if the existence of the agency shall have been terminated, then he or she shall not remove or relax such restrictions without the concurrence of the successor in function, if any, of the agency head); provided, however, that statutory and other restrictions referred to in the provisions of this subsection shall remain in force or effect after the records have been in existence for fifty (50) years unless the archivist by order shall determine with respect to specific bodies of records that the restrictions shall remain in force and effect for a longer period; and provided further that restrictions on the use or examination of records deposited with the archives of the state heretofore imposed and now in force and effect shall continue in force and effect regardless of the expiration of the tenure of office of the official who imposed them but may be removed or relaxed by the archivist with the concurrence in writing of the head of the agency from which material has been transferred (or if the existence of the agency shall have been terminated, then with the concurrence in writing of his or her successor in function, if any).

- (c) The state archivist shall make provisions for the preservation, arrangement, repair and rehabilitation, duplication and reproduction (including microfilms), description, and exhibition of records transferred to him or her as may be needful or appropriate, including the preparation and publication of inventories, indexes, catalogs, and other finding aids or guides facilitating their use; and, when approved by the secretary of state, he or she may also publish such historical works and collections of sources as seem appropriate for printing or otherwise recording at the public expense.
- (d) The state archivist, with the approval of the secretary of state, shall make provisions and maintain such facilities as he or she deems necessary or desirable for servicing records in his or her custody. The facilities shall meet recognized archival standards.

(e) The state archivist may accept for deposit:

- (1) The personal papers and other personal historical documentary materials of predecessors or successors of the following officials: Rhode Island general office holders, general assembly leadership and chairpersons, mayors and town administrators as the state archivist may designate, offered for deposit under restrictions respecting their use specified in writing by the prospective depositors; provided, that restrictions so specified on the materials, or any portions thereof, accepted by the archivist for deposit shall have force and effect during the lifetime of the depositor or for a period not to exceed twenty-five (25) years, whichever is longer, unless sooner terminated in writing by the depositor or his or her legal heirs; and provided, further, that the archivist determines that the materials accepted for deposit will have continuing historical or other value;
- (2) The original acts, resolutions and other proceedings of the general assembly shall be deposited and safely kept in the division of state archives of the department of state, and shall not be removed therefrom except upon the order of the general assembly, or upon process issued by the supreme or superior court or by a justice of either of said courts per the provisions of § 43-2-3;
- (3) Motion-picture films, still pictures and sound recordings from public and private sources that are appropriate for preservation by the state government as evidence of its organization, functions, policies, decisions, procedures, and transactions. Title to materials so deposited under this subsection shall pass to and vest in the state archives.
- (4) Burial records from any private or nonprofit cemetery association or perpetual care society or any funeral director which has ceased operations.
- (f) The state archivist is hereby authorized to preserve video tapes, motion-picture films, still pictures, and sound recordings pertaining to and illustrative of the historical development of the state and its activities, and to make provisions for preparing, editing, titling, scoring, processing, duplicating, reproducing,

exhibiting, and releasing for nonprofit educational purposes, motion-picture films, still pictures, and sound recordings in his or her custody.

(g)(1) The state archivist is hereby authorized to establish a unit within the division which shall be known as the local government records program and which shall be primarily responsible for assisting cities and towns with the care and management of their public records. The program shall be charged with designing and implementing a training program for local government records keepers; publishing retention schedules for the proper disposition of public records in local governments; and providing technical and advisory assistance in the storage, preservation, and ongoing maintenance of the records of local governments.

(2) The state archivist shall submit a yearly report on the progress of the local government records program to the general officers and to the general assembly. The state archivist shall be permitted to request funding as part of the operating budget of the office of secretary of state to operate this program.

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## **South Carolina**

### **Code 1976 § 16-11-910**

#### **§ 16-11-910. Prohibitions relative to sound recordings; application of section.**

(A) It is unlawful for a person to:

(1) knowingly and willfully transfer or cause to be transferred, for commercial advantage or private financial gain, without the consent of the owner, any sounds recorded on a phonograph record, disc, wire, tape, film, or other article on which sounds are recorded, with intent to sell or cause to be sold, or to use or cause to be used for profit through public performance, them article on which such sounds are transferred;

(2) advertise, offer for sale or resale, or sell or resell, or cause the sale or resale, or rent or cause the rental of, or possess for any of these purposes any article described in item (1) with the knowledge that the sounds on it have been transferred without the consent of the owner;

(3) offer or make available for a fee, rental, or other form of compensation, directly or indirectly, any equipment or machinery with the knowledge that it will be used by another to reproduce, without the consent of the owner, a phonograph record, disc, wire, tape, film, or other article on which sounds have been transferred. The provisions of this item do not apply to reproduction in the home for private use and with no purpose of otherwise capitalizing commercially on the reproduction; or

(4) transport for commercial advantage or private financial gain within this State or cause to be transported within this State an article with the knowledge that the sounds on it have been transferred without the consent of the owner. A person who violates this section, upon conviction, must be punished as provided for in Section 16-11-920.

(B) As used in this section:

(1) "Person" means an individual, partnership, corporation, company, association, any communications media including, but not limited to, radio or television, broadcasters or licensees, newspapers, magazines, or other publications, or media which offer facilities for the purposes stated in this chapter, or other legal entity.

(2) "Owner" means the person who owns the original fixed sounds embodied in the master phonograph record, master disc, master tape, master film, or other article used for reproducing recorded sounds on phonograph records, discs, tapes, films, or other articles on which sound is or can be recorded and from which the transferred recorded sounds are directly or indirectly derived.

(3) "Fixed" means embodied in a tangible medium of expression when its embodiment in an article, by or under the authority of the author, is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration.

(4) "Article" means the tangible medium upon which sounds or images are recorded or otherwise stored and includes any original phonograph record, disc, tape, audio or video cassette, wire, film, or other medium now known or later developed on which sounds or images are or can be recorded or otherwise stored, or any copy or reproduction which duplicates, in whole or in part, the original. This section neither enlarges nor diminishes the right of parties in private litigation nor does it apply to the transfer by a radio or television broadcaster of any sounds (other than from the sound tract of a motion picture) intended for, or in connection with, broadcast transmission or related uses or for archival purposes. An owner of a record, disc, wire, tape, film, or other article or device which is transferred unlawfully or used in violation of this section has a cause of action in the circuit court of this State against the party committing the violation for all damages resulting therefrom, including actual, compensatory, incidental, and punitive.

**Code 1976 § 16-11-915**  
**§ 16-11-915. Prohibitions relative to live performances;**  
**persons considered proper witnesses; application of section.**

(A) It is unlawful for a person to:

(1) advertise or offer for sale or resale, or sell or resell, or cause the sale or resale, or rent or cause the rental of, or transport or cause to be transported, or possess for any of these purposes for commercial advantage or private financial gain any article containing a live performance with the knowledge that the live performance has been fixed without the consent of the owner of the live performance; or

(2) record or fix or cause to be recorded or fixed on an article with the intent to sell for commercial advantage or private financial gain, the live performance with the knowledge that the live performance has been recorded or fixed without the consent of the owner of the live performance. The provisions of this item (2) shall not apply to reproduction in the home for private use and with no purpose of otherwise capitalizing commercially on the reproduction. A person who violates this section, upon conviction, must be punished as provided for in Section 16-11-920.

(B) As used in this section:

(1) "Person" means an individual, partnership, corporation, company, association, or other legal entity.

(2) "Owner", in the absence of a written agreement or operation of law to the contrary, is presumed to be the performer of the live performance.

(3) "Fixed" means embodied in a tangible medium of expression when its embodiment in an article, by or under the authority of the author, is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration.

(4) "Article" means the tangible medium upon which sounds or images are recorded or otherwise stored and includes any original phonograph record, disc, tape, audio or video cassette, wire, film, or other medium now known or later developed on which sounds or images are or can be recorded or otherwise stored, or a copy or reproduction which duplicates in whole or in part, the original.

(5) "Live performance" means the recitation, rendering, or playing of a series of images or musical, spoken, or other sounds in any audible sequence.

(C) For the purposes of this section, a person who is authorized to maintain custody and control over business records which reflect whether or not the owner consented to having the live performance recorded or fixed is a proper witness in any proceeding regarding the issue of consent.

(D) A witness called pursuant to this section is subject to all rules of evidence relating to the competency of a witness to testify and the relevance and admissibility of the testimony offered.

(E) This section neither enlarges nor diminishes the rights and remedies of parties in private litigation nor does it apply to the transfer by a radio or television broadcaster of any such sounds, other than from the sound tract of a motion picture, intended for, or in connection with, broadcast transmission or related uses or for archival purposes.

**Code 1976 § 16-11-920  
§ 16-11-920. Penalties.**

(A) A person who violates the provisions of Section 16-11-911 is guilty of a misdemeanor and, upon conviction:

(1) for a first offense, must be fined not more than five thousand dollars or imprisoned not more than one year, or both;

(2) for a second offense, must be fined not more than ten thousand dollars or imprisoned not more than two years, or both;

(3) for a third and each subsequent offense, must be fined not more than fifteen thousand dollars or imprisoned not more than three years, or both.

(B) A person who violates the provisions of Section 16-11-910 or 16-11-915 is guilty of a felony and, upon conviction, must be fined not more than two hundred fifty thousand dollars or imprisoned not more than five years, or both, if the offense:

(1) involves at least one thousand unauthorized articles embodying sound or sixty-five unauthorized audio visual articles during any one hundred eighty-day period; or

(2) is a second or subsequent conviction under Section 16-11-910 or 16-11-915.

(C) A person who violates the provisions of Section 16-11-910 or 16-11-915 is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred fifty thousand dollars or imprisoned not more than two years, or both, if the offense involved:

(1) more than one hundred but less than one thousand unauthorized articles embodying sound during any one hundred eighty day period; or

(2) more than ten but less than sixty-five unauthorized audiovisual articles during any one hundred eighty-day period.

(D) A person who violates the provisions of Section 16-11-910 or 16-11-915 is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars for a first offense and not more than ten thousand dollars for a second or subsequent offense if the offense or both offenses involve not more than:

(1) twenty-five unauthorized articles embodying sound during any one hundred eighty-day period; or

(2) ten unauthorized audiovisual articles during any one hundred eighty- day period.

(E) A person who violates any other provision of Section 16-11-910 or 16-11-915 is guilty of a misdemeanor and, upon conviction, must be fined not more than twenty-five thousand dollars or imprisoned not more than one year, or both.

(F) If a person is convicted of a violation of Section 16-11-910, 16-11-911, or 16-11-915, the court shall order the forfeiture and destruction or other disposition of all:

- (1) infringing articles;
- (2) implements, devices, and equipment used or intended to be used in the manufacture of the infringing articles.

These penalties are not exclusive but are in addition to other penalties provided by law.

**Code 1976 § 16-11-930**  
**§ 16-11-930. Illegal distribution of recordings without name  
and address of manufacturer and designation of featured artist.**

It is unlawful for a person to manufacture or knowingly sell, distribute, circulate, or cause to be sold, distributed, or circulated, advertise, resell or offer for sale or resale, or cause the sale or resale, or rent or cause the rental, or transport or cause to be transported, or possess for any of these purposes for commercial advantage or private financial gain, a phonograph record, tape, album of phonograph records or tapes, or any other article without the actual name and street address of the manufacturer, and the name of the actual performer or group prominently disclosed on the outside cover, box, or jacket containing the record, tape, album of records or tapes, or any other article. A person who violates this section, upon conviction, must be punished as provided for in Section 16-11-940. A law enforcement officer in this State, when charging a person with a violation of this section, if possible at the time of arrest, shall confiscate any records, tapes, albums, or other articles and, upon conviction of the person, the records, tapes, albums, or other articles must be destroyed.

As used in this section:

- (1) "Person" means an individual, partnership, corporation, association, or other legal entity.
- (2) "Manufacturer" means a person who actually transfers or causes the transfer of any sound or images recorded on a phonograph record, disc, wire, tape, film, or other article on which sounds are recorded or assembles and transfers any product containing such transferred sounds or images as a component of it.
- (3) "Article" means the tangible medium upon which sounds or images are recorded or otherwise stored and includes any original phonograph record, disc, tape, audio or video cassette, wire, film, or other medium now known or later developed on which sounds or images are or can be recorded or otherwise stored, or any copy or reproduction which duplicates, in whole or in part, the original.

**Code 1976 § 16-11-950**  
**§ 16-11-950. Exceptions.**

The provisions of this article do not apply to sounds or calls of wild birds or animals.

**Code 1976 § 39-3-510**  
**§ 39-3-510. Repeal of common-law rights in phonograph records  
to restrict use or collect royalties on commercial use after sale.**

When any phonograph record or electrical transcription, upon which musical performances are embodied, is sold in commerce for use within this State, all asserted common-law rights further to restrict or collect royalties on the commercial use made of any such recorded performances by any person are abrogated and expressly repealed. When such article or chattel has been sold in commerce any asserted intangible rights shall be deemed to have passed to the purchaser upon the purchase of the chattel itself and the right to

further restrict the use made of phonograph records or electrical transcriptions, whose sole value is in their use, is forbidden and abrogated. Nothing in this section shall be deemed to deny the rights granted any person by the United States copyright laws. The sole intentment of this section is to abolish any common-law rights attaching to phonograph records and electrical transcriptions, whose sole value is in their use, and to forbid further restrictions or the collection of subsequent fees and royalties on phonograph records and electrical transcriptions by performers who were paid for the initial performance at the recording thereof.

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## **South Dakota**

### **SDCL § 43-43A-1 43-43A-1. Owner defined**

The term “owner,” as used in this chapter, shall mean any person who owns the original fixation of sounds embodied in the master phonograph record, master disc, master tape, master wire, master film, or other device used for reproducing recorded sounds on phonograph records, discs, tapes, wires, films, or other articles on which sound is recorded.

### **SDCL § 43-43A-2 43-43A-2. Pirating recorded sound or dealing in pirated recordings as felony**

Except as provided in § 43-43A-4, or with the express consent of the owner, it is a Class 6 felony for any person to knowingly:

- (1) Transfer or cause to be transferred any sounds recorded on a phonograph record, disc, tape, wire, film, or other article on which sound is recorded, with the intent to sell or cause to be sold or to use or cause to be used for profit through public performance the article on which such sounds are so transferred; or
- (2) Manufacture, distribute, advertise or sell, offer for sale, or possess for the purpose of sale, at wholesale or retail, any such article on which sounds have been so transferred.

### **SDCL § 43-43A-3 43-43A-3. Sale of recordings without identification of manufacturer and performers as felony**

It is a Class 6 felony for any person to distribute, advertise, circulate, sell, or offer for sale or possess for the purpose of sale, at wholesale or retail, any phonograph record, disc, tape, wire, film, or other article on which sounds have been transferred, unless such phonograph record, disc, tape, wire, film, or other article prominently discloses the actual name and street address of the manufacturer thereof, and the name of the actual performing artist or group. As used in this section, the term “manufacturer” shall not include the manufacturer of the cartridge or casing itself.

### **SDCL § 43-43A-4 43-43A-4. Broadcast media, home recording, judicial and administrative proceedings exempt**

The provisions of this chapter shall not apply to:

- (1) Any person engaged in radio or television broadcasting who transfers, or causes to be transferred any recorded sounds as a part of a radio or television broadcast or for archival preservation; or
- (2) Any person who transfers or causes to be transferred any recorded sounds in the home, for personal use, without any compensation being derived by such person or any other person from such transferral; or

(3) Any person who transfers or causes to be transferred any recorded sounds, or transcript thereof, in any judicial proceedings or administrative proceedings under chapter 1-26.

**SDCL § 43-43A-5**  
**43-43A-5, 43-43A-6. Repealed by SL 1983, ch 15, §§ 14, 15**

Current through the 2010 Regular Session, 2010 general election, and Supreme Court Rule 10-07

**SDCL § 43-43A-6**  
**43-43A-5, 43-43A-6. Repealed by SL 1983, ch 15, §§ 14, 15**

Current through the 2010 Regular Session, 2010 general election, and Supreme Court Rule 10-07

**SDCL § 43-43A-7**  
**43-43A-7. Each transaction as separate offense**

Each and every individual and separate manufacture, distribution, sale, or offer of sale, at wholesale of a recorded article prohibited by this chapter shall constitute a separate offense and be punishable as such.

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## **Tennessee**

**T. C. A. § 39-14-102**  
**§ 39-14-102. Definitions**

The following definitions apply in this part, unless the context otherwise requires:

(1) "Cable television company" means any franchise or other duly licensed company which is operated or intended to be operated to perform the service of receiving and amplifying the signals broadcast by one (1) or more television stations and redistributing such signals by wire, cable or other device or means for accomplishing such redistribution to members of the public who subscribe to such service, or distributing through such company's antennae, poles, wires, cables, conduits or other property used in providing service to its subscribers and customers any television signals whether broadcast or not;

(2) "Credit card" means any real or forged instrument, writing or other evidence, whether known as a credit card, credit plate, charge plate or by any other name, which purports to evidence an understanding to pay for property or services delivered or rendered to or upon the order of a designated person or bearer;

(3) "Debit card" means any real or forged instrument, writing or other evidence known by any name issued with or without a fee by an issuer for the use of a depositor in obtaining money, goods, services or anything else of value, payment of which is made against funds previously deposited in an account with the issuer;

(4) "Expired" credit or debit card means a card which is no longer valid because the term shown on it has expired;

(5) "Issuer" means the business organization or financial institution or its duly authorized agent which issues a credit or debit card;

(6) "Library" means any:

(A) Public library;

(B) Library of educational, historical or eleemosynary institution, organization or society;

(C) Archives; or

(D) Museum;

(7) "Library material" includes any book, plate, picture, photograph, engraving, painting, drawing, map, newspaper, magazine, pamphlet, broadside, manuscript, document, letter, public record, microfilm, sound recording, audiovisual materials in any format, magnetic or other tapes, electronic data, processing records, artifacts or other documentary, written or printed materials, regardless of physical form or characteristics, belonging to or on loan to or otherwise in the custody of a library;

(8) "Microwave multi-point distribution system station" or "MDS" means any franchise or other duly licensed company which is operated or intended to be operated to perform the service of receiving and amplifying the signals broadcast by one (1) or more television stations, and redistributing such signals by microwave transmissions to members of the public who subscribe to such service, or distributing through such company's antennae, conduits, or other property used in providing service to its subscribers and customers any television signals whether broadcast or not;

(9) "Receiving" includes, but is not limited to, acquiring possession, control, title or taking a security interest in the property; and

(10) "Revoked" credit or debit card means a card which is no longer valid because permission to use it has been suspended or terminated by the issuer.

**T. C. A. § 39-14-139**  
**§ 39-14-139. Recordings**

(a) As used in this section:

(1) "Aggregate wholesale value" means the average wholesale value of lawfully manufactured and authorized recordings corresponding to the number of nonconforming recordings involved in the offense. Proof of the specific wholesale value of each nonconforming recording shall not be required;

(2) "Fixed" means embodied in a recording or other tangible medium of expression, by or under the authority of the author, so that the matter embodied is sufficiently permanent or stable to permit it to be perceived, reproduced or otherwise communicated for a period of more than transitory duration;

(3) "Live performance" means a recitation, rendering or playing of a series of images, musical, spoken or other sounds, or a combination of images and sounds, in an audible sequence;

(4) "Manufacturer" means the person who actually makes the recording or causes the recording to be made. "Manufacturer" does not include a person who manufactures a medium upon which sounds or images can be recorded or stored, or who manufactures the cartridge or casing itself, unless the person actually makes the recording or causes the recording to be made;

(5) "Owner" means a person who owns the sounds fixed in a master phonograph record, master disc, master tape, master film or other recording on which sound is or can be recorded and from which the transferred recorded sounds are directly or indirectly derived; and

(6) "Recording" means a tangible medium on which sounds, images, or both are recorded or otherwise stored, including an original phonograph record, disc, tape, audio or video cassette, wire, film, memory card, flash drive, hard-drive, data storage device, or other medium now existing or developed later on which sounds, images, or both are or can be recorded or otherwise stored, or a copy or reproduction that duplicates, in whole or in part, the original.

(b)(1) It is unlawful for any person to:

(A) Knowingly reproduce for sale or cause to be transferred any recording with intent to sell it or cause it to be sold or use it or cause it to be used for commercial advantage or private financial gain through public performance without the consent of the owner;

(B) Transport within this state, for commercial advantage or private financial gain, a recording with the knowledge that the sounds on the recording have been reproduced or transferred without the consent of the owner; or

(C) Advertise, offer for sale, sell or rent, cause the sale, resale or rental of, or possess for one (1) or more of these purposes any recording that the person knows has been reproduced or transferred without the consent of the owner.

(2) Subdivision (b)(1) does not apply to audiovisual recordings and applies only to sound recordings that were initially fixed before February 15, 1972.

(c)(1) It is unlawful for any person to:

(A) For commercial advantage or private financial gain, advertise, offer for sale, sell, rent, transport, cause the sale, resale, rental, or transportation of, or possess for one (1) or more of these purposes a recording containing sounds of a live performance with the knowledge that the live performance has been recorded or fixed without the consent of the owner; or

(B) With the intent to sell for commercial advantage or private financial gain, record or fix or cause to be recorded or fixed on a recording a live performance with the knowledge that the live performance has been recorded or fixed without the consent of the owner.

(2) In the absence of a written agreement or law to the contrary, the performer or performers of a live performance may be presumed to own the rights to record or fix those sounds.

(d) It is unlawful for any person to, for commercial advantage or private financial gain, knowingly advertise, offer for sale, sell, rent or transport, cause the sale, resale, rental or transportation of, or possess for any of these purposes a recording if the outside cover, box, jacket or label of the recording does not clearly and conspicuously disclose the actual name and address of the manufacturer.

(e) Any violation of this section constitutes a:

(1) Class D felony, accompanied by a fine of no less than one thousand dollars (\$1,000), if:

(A) The violation involves one hundred (100) or more recordings during a one hundred eighty-day period; or

(B) The defendant has been previously convicted under this section;

(2) Class E felony, accompanied by a fine of no less than five hundred dollars (\$500), if the violation involves more than fifty (50) but less than one hundred (100) recordings during a one hundred eighty-day period; or

(3) Class A misdemeanor, accompanied by a fine of no less than two hundred dollars (\$200), for any other offense.

(f) If a person is convicted of a violation of this section, the court may order the person to make restitution to any owner or lawful producer of a master recording that has suffered injury resulting from the crime, or to the trade association representing the owner or lawful producer. An order of restitution may be based on the aggregate wholesale value of lawfully manufactured and authorized recordings corresponding to the

number of nonconforming recordings involved in the offense unless a greater value can be proven. An order of restitution may also include investigative costs relating to the offense.

(g) All recordings involved in the offense, implements, devices and equipment used or intended to be used in the manufacture of recordings on which the offense is based, proceeds and any and all contraband associated with the offense are subject to forfeiture and destruction or other disposition pursuant to § 39-11-703.

(h) The penalties provided by this section are in addition to any other penalties provided under any other law. This section does not affect the rights and remedies of a party in private litigation.

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## Texas

**V.T.C.A., Bus. & C. § 641.001**  
**§ 641.001. Definitions**  
**Effective: April 1, 2009**

In this chapter:

(1) “Fix” means to embody in a recording or other tangible medium of expression, by or under the authority of the author, so that the matter embodied is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration.

(2) “Live performance” means a recitation, rendering, or playing of a series, in an audible sequence, of:

(A) images;

(B) musical, spoken, or other sounds; or

(C) a combination of images and sounds.

(3) “Owner” means a person who owns the sounds fixed in a master phonograph record, master disc, master tape, master film, or other recording:

(A) on which sound is recorded; and

(B) from which the transferred recorded sounds are directly or indirectly derived.

(4) “Recording” means a tangible medium on which sounds, images, or both are recorded or otherwise stored, including:

(A) an original phonograph record, disc, tape, audio or video cassette, wire, film, or other medium now existing or later developed; or

(B) a copy or reproduction that wholly or partly duplicates the original.

**V.T.C.A., Bus. & C. § 641.051**  
**§ 641.051. Unauthorized Duplication of Certain Recordings**  
**Effective: April 1, 2009**

(a) This section applies only to a recording that was initially fixed before February 15, 1972.

(b) A person commits an offense if the person:

- (1) knowingly reproduces for sale or causes to be transferred any recording with intent to sell the recording or cause the recording to be sold or use a recording or cause the recording to be used for commercial advantage or private financial gain through public performance without the consent of the owner;
- (2) with the knowledge that the sounds on a recording have been reproduced or transferred without the consent of the owner, transports the recording within this state for commercial advantage or private financial gain; or
- (3) with the knowledge that a recording has been reproduced or transferred without the consent of the owner:
- (A) advertises, offers for sale, sells, or rents the recording;
- (B) causes the sale, resale, or rental of the recording; or
- (C) possesses the recording for a purpose described by Paragraph (A) or (B).
- (c) An offense under this section is punishable by:
- (1) imprisonment for a term of not more than five years, a fine not to exceed \$250,000, or both, if:
- (A) the offense involves at least 1,000 unauthorized recordings during a 180-day period; or
- (B) the defendant has been previously convicted under this section;
- (2) imprisonment for a term of not more than two years, a fine not to exceed \$250,000, or both, if the offense involves more than 100 but fewer than 1,000 unauthorized recordings during a 180-day period; or
- (3) confinement in the county jail for a term of not more than one year, a fine not to exceed \$25,000, or both, if the offense is not otherwise punishable under Subdivision (1) or (2).
- (d) This section does not apply to any fees due to the American Society of Composers, Authors and Publishers.

**V.T.C.A., Bus. & C. § 641.052**

**§ 641.052. Unauthorized Recording of Live Performance**

**Effective: April 1, 2009**

- (a) A person commits an offense if the person, with the knowledge that a live performance has been recorded or fixed without the consent of the owner:
- (1) for commercial advantage or private financial gain, advertises, offers for sale, sells, rents, or transports, causes the sale, resale, rental, or transportation of, or possesses for one or more of these purposes a recording containing sounds of the live performance; or
- (2) with the intent to sell for commercial advantage or private financial gain, records or fixes the live performance, or causes the live performance to be recorded or fixed on a recording.
- (b) An offense under this section is punishable by:
- (1) imprisonment for a term of not more than five years, a fine not to exceed \$250,000, or both, if:
- (A) the offense involves at least 1,000 unauthorized recordings embodying sound or at least 65 unauthorized audiovisual recordings during a 180-day period; or

- (B) the defendant has been previously convicted under this section;
- (2) imprisonment for a term of not more than two years, a fine not to exceed \$250,000, or both, if the offense involves more than 100 but fewer than 1,000 unauthorized recordings embodying sound or more than seven but fewer than 65 unauthorized audiovisual recordings during a 180-day period; or
- (3) confinement in the county jail for a term of not more than one year, a fine not to exceed \$25,000, or both, if the offense is not otherwise punishable under Subdivision (1) or (2).
- (c) In the absence of a written agreement or law to the contrary, the performer or performers of a live performance are presumed to own the rights to record or fix those sounds.
- (d) For purposes of this section, a person authorized to maintain custody and control over business records that reflect whether the owner of a live performance consented to having the live performance recorded or fixed is a proper witness in a proceeding regarding the issue of consent. A witness called under this subsection is subject to the rules of evidence relating to the competency of a witness to testify and the relevance and admissibility of the testimony offered.

**V.T.C.A., Bus. & C. § 641.054**  
**§ 641.054. Labeling**  
**Effective: April 1, 2009**

- (a) A person commits an offense if:
- (1) for commercial advantage or private financial gain, the person knowingly:
- (A) advertises, offers for sale, sells, rents, or transports a recording;
- (B) causes the sale, resale, rental, or transportation of a recording; or
- (C) possesses a recording for a purpose described by Paragraph (A) or (B); and
- (2) the outside cover, box, or jacket of the recording does not clearly and conspicuously disclose:
- (A) the actual name and address of the manufacturer; and
- (B) the name of the performer or group.
- (b) An offense under this section is punishable by:
- (1) imprisonment for a term of not more than five years, a fine not to exceed \$250,000, or both, if:
- (A) the offense involves at least 65 unauthorized recordings during a 180-day period; or
- (B) the defendant has been previously convicted under this section;
- (2) imprisonment for a term of not more than two years, a fine not to exceed \$250,000, or both, if the offense involves more than seven but fewer than 65 unauthorized recordings during a 180-day period; or
- (3) confinement in the county jail for a term of not more than one year, a fine not to exceed \$25,000, or both, if the offense is not otherwise punishable under Subdivision (1) or (2).
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## **Utah**

**U.C.A. 1953 § 13-10-3**  
**§ 13-10-3. Definitions**

As used in this chapter:

- (1) "Fixed" means embodied in a recording or other tangible medium of expression, by or under the authority of the author, so that the matter embodied in the recording or other tangible medium of expression is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration.
- (2) "Owner" means the person, corporation, partnership, or business association who owns the sounds fixed in a master phonograph record, master disc, master wire, master tape, master film, or other device used for reproducing recorded sounds on phonograph records, discs, wires, tapes, films, or other articles or materials in which sound is recorded and from which the transferred recorded sounds are directly or indirectly derived.

**U.C.A. 1953 § 13-10-4**  
**§ 13-10-4. Prohibited practices**

It is unlawful for any individual, partnership, corporation, or association:

- (1) to knowingly transfer or cause to be transferred, directly or indirectly, for sale or profit within this state, without the express consent of the owner, by any means, any sounds recorded on a phonographic record, disc, wire, tape, film, or other article or material on which sounds are recorded onto any other phonograph record, disc, wire, tape, film, article, or material;
- (2) to sell, distribute, circulate, or offer for sale, distribution or circulation, or cause to be sold, distributed, circulated, or possess for the purpose of sale, distribution, or circulation, within the state, for a consideration, any phonograph record, disc, wire, tape, film, or other article or material onto which such sounds have been transferred, with the knowledge that the sounds thereon have been transferred without the express consent of the owner; or
- (3) to knowingly rent, make available, or permit the use of, or offer to rent, make available, or permit the use of, for a fee, rental, or any other form of compensation, any equipment or machinery for the purpose of enabling, aiding, or causing another to transfer without the consent of the owner any sounds recorded on a phonograph record, disc, wire, tape, film, or other article or material onto any other phonograph record, disc, wire, tape, film, article, or material.

**U.C.A. 1953 § 13-10-5**  
**§ 13-10-5. Exemptions**

- (1) This chapter does not apply to:
  - (a) any person engaged in radio or television broadcasting or cable television who transfers, or causes to be transferred, any of the sounds referred to in Sections 13-10-3 and 13-10-4 (other than from the sound track of a motion picture) intended for, or in connection with, broadcast transmission or for archival purposes; or
  - (b) any person transferring any such sounds without any compensation being derived by this person or any other person from the transfer.
- (2) This chapter shall neither enlarge nor diminish the rights of parties in civil litigation.

**U.C.A. 1953 § 13-10-6**  
**§ 13-10-6. Violation a misdemeanor**

Each violation of Section 13-10-4 is a misdemeanor.

**U.C.A. 1953 § 13-10-7**  
**§ 13-10-7. Application of provisions**

Sections 13-10-1 through 13-10-6 apply only to recorded sounds that were initially fixed before February 15, 1972.

**U.C.A. 1953 § 13-10-8**  
**§ 13-10-8. Failure to disclose the origin of a recording--Penalty**

(1) For purposes of this section “recording” means:

- (a) a tangible medium on which sounds or images are recorded or otherwise stored, including an original phonograph record, disc, tape, audio or video cassette, wire, film, or other similar medium; or
- (b) a copy or reproduction that duplicates the original in whole or in part.

(2) A person is guilty of failure to disclose the origin of a recording if:

- (a) the person commits any of the following acts for commercial advantage or private financial gain:
  - (i) offers a recording for sale, resale, or rent;
  - (ii) sells, resells, rents, leases, or lends a recording; or
  - (iii) possesses a recording for any of the purposes described in Subsection (2)(a)(i) or (ii); and
- (b) the person knows that the recording does not contain the true name and address of the manufacturer in a prominent place on its cover, jacket, or label.

(3) A person who fails to disclose the origin of a recording under Subsection (2) is guilty of:

- (a) a felony of the third degree if the offense involves 100 or more recordings during a 180-day period or if the person has previously been convicted of a violation of this section;
- (b) a class A misdemeanor if the offense involves at least 10 recordings but less than 100 recordings during a 180-day period; or
- (c) a class B misdemeanor if the offense involves less than 10 recordings.

(4) In addition to the penalties provided in Subsection (3), a court may order a person who commits a violation of Subsection

(2) to forfeit any recordings in the person's possession that served as the basis for the violation of Subsection (2).

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**Vermont**

N/A

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## **Virginia**

### **VA Code Ann. § 59.1-41.1 § 59.1-41.1. “Owner” defined**

As used in this chapter, “owner” means the person who owns the sounds fixed in any master phonograph record, master disc, master tape, master film or other device used for reproducing recorded sounds on phonograph records, discs, tapes, films, videocassettes, or other articles now known or later developed on which sound is recorded and from which the transferred sounds are directly or indirectly derived, or the person who owns the rights to record or authorize the recording of a live performance.

### **VA Code Ann. § 59.1-41.2 § 59.1-41.2. Recording of live concerts or recorded sounds and distribution, etc., of such recordings unlawful in certain circumstances**

It shall be unlawful for any person to:

1. Knowingly transfer or cause to be transferred, directly or indirectly by any means, any sounds at a live concert or any sounds recorded on a phonograph record, disc, wire, tape, film, videocassette, or other article now known or later developed on which sounds are recorded, with the intent to sell, rent or cause to be sold or rented, or to be used for profit through public performance, such article on which sounds are so transferred, without consent of the owner; or
2. For commercial advantage or private financial gain, manufacture, distribute, transport or wholesale, or cause to be manufactured, distributed, transported or sold as wholesale, or possess for such purposes any article with the knowledge that the sounds are so transferred, without consent of the owner.

This section shall not apply to any person engaged in radio or television broadcasting who transfers, or causes to be transferred, any such sounds other than from the sound track of a motion picture intended for, or in connection with broadcast or telecast transmission or related uses, or for archival purposes.

### **VA Code Ann. § 59.1-41.3 § 59.1-41.3. Selling or renting, etc., of certain recorded devices unlawful**

It shall be unlawful for any person to knowingly sell, rent, cause to be sold or rented, or possess for the purpose of selling or renting any recorded device that has been produced, manufactured, distributed, or acquired in violation of any provision of this chapter.

### **VA Code Ann. § 59.1-41.4 § 59.1-41.4. Recorded devices to show true name of manufacturer**

Ninety days after July 1, 1972, every recorded device sold, rented or transferred or possessed for the purpose of sale, rental or transfer by any manufacturer, distributor, or wholesale or retail merchant shall contain on its packaging the true name and address of the manufacturer. The term “manufacturer” shall not include the manufacturer of the cartridge or casing itself. The term “recorded device” means the tangible medium upon which sounds or images are recorded or otherwise stored, and includes any phonograph record, disc, wire, tape, videocassette, film or other medium now known or later developed on which sounds or images are recorded or otherwise stored.

### **VA Code Ann. § 59.1-41.5**

### **§ 59.1-41.5. Confiscation of nonconforming recorded devices**

Ninety days after July 1, 1972, it shall be the duty of all law-enforcement officers, upon discovery, to confiscate all recorded devices that do not conform to the provisions of § 59.1-41.4. The nonconforming recorded devices shall be delivered to the attorney for the Commonwealth of the county in which the confiscation was made. The attorney for the Commonwealth by court order may give the same to a charitable or educational organization. The provisions of this section shall apply to any nonconforming recorded device, regardless of the requirement in § 59.1-41.3 of knowledge or intent of a retail seller.

### **VA Code Ann. § 59.1-41.6 § 59.1-41.6. Penalties for violation of chapter**

Violations of this chapter are punishable as follows:

1. Except as otherwise provided in this section, any person convicted of an offense under this chapter is guilty of a Class 1 misdemeanor.
2. Any person convicted of an offense involving at least 100 unlawful sound recordings or twenty unlawful audio visual recordings during any 180-day period is guilty of a felony punishable by a term of imprisonment of not less than one nor more than two years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than twelve months and a fine of not more than \$5,000, either or both;
3. Any person convicted of an offense involving at least 1,000 unlawful sound recordings or 65 unlawful audio visual recordings during any 180-day period is guilty of a felony punishable by a term of imprisonment of not less than one nor more than three years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than twelve months and a fine of not more than \$100,000, either or both; and
4. Any second or subsequent felony offense under this chapter shall be punishable by a term of imprisonment of not less than one nor more than three years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than twelve months and a fine of not more than \$100,000, either or both.
5. Upon conviction of a person of any offense under this chapter, the court in its judgment of conviction may order the forfeiture and destruction or other disposition of all infringing recordings and of all implements, devices and equipment used by the person in the manufacture of the infringing recordings.

## **Washington**

### **West's RCWA 19.25.010 19.25.010. Definitions**

As used in this chapter:

- (1) "Owner" means a person who owns the sounds fixed in a master phonograph record, master disc, master tape, master film, or other recording on which sound is or can be recorded and from which the transferred recorded sounds are directly or indirectly derived.
- (2) "Fixed" means embodied in a recording or other tangible medium of expression, by or under the authority of the author, so that the matter embodied is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration.
- (3) "Live performance" means a recitation, rendering, or playing of a series of images; musical, spoken or other sounds; or combination of images and sounds.

(4) "Recording" means a tangible medium on which sounds, images, or both are recorded or otherwise stored, including an original phonograph record, disc, tape, audio or video cassette, wire, film, or other medium now existing or developed later on which sounds, images, or both are or can be recorded or otherwise stored or a copy or reproduction that duplicates in whole or in part the original.

(5) "Manufacturer" means the entity authorizing the duplication of the recording in question, but shall not include the manufacturer of the cartridge or casing itself.

**West's RCWA 19.25.020**

**19.25.020. Reproduction of sound without consent of owner unlawful--Fine and penalty**

(1) A person commits an offense if the person:

(a) Knowingly reproduces for sale or causes to be transferred any recording with intent to sell it or cause it to be sold or use it or cause it to be used for commercial advantage or private financial gain without the consent of the owner;

(b) Transports within this state, for commercial advantage or private financial gain, a recording with the knowledge that the sounds have been reproduced or transferred without the consent of the owner; or

(c) Advertises, offers for sale, sells, or rents, or causes the sale, resale, or rental of or possesses for one or more of these purposes any recording that the person knows has been reproduced or transferred without the consent of the owner.

(2)(a) An offense under this section is a class B felony punishable by a fine of not more than two hundred fifty thousand dollars, imprisonment for not more than ten years, or both if:

(i) The offense involves at least one thousand unauthorized recordings during a one hundred eighty-day period; or

(ii) The defendant has been previously convicted under this section.

(b) An offense under this section is a class C felony punishable by a fine of not more than two hundred fifty thousand dollars, imprisonment for not more than five years, or both, if the offense involves more than one hundred but less than one thousand unauthorized recordings during a one hundred eighty-day period.

(c) Any other offense under this section is a gross misdemeanor punishable by a fine of not more than twenty-five thousand dollars, imprisonment for not more than one year, or both.

(3) This section does not affect the rights and remedies of a party in private litigation.

(4) This section applies only to recordings that were initially fixed before February 15, 1972.

**West's RCWA 19.25.030**

**19.25.030. Use of recording of live performance without consent of owner unlawful--Fine and penalty**

(1) A person commits an offense if the person:

(a) For commercial advantage or private financial gain advertises, offers for sale, sells, rents, transports, causes the sale, resale, rental, or transportation of or possesses for one or more of these purposes a recording of a live performance with the knowledge that the live performance has been recorded or fixed without the consent of the owner; or

(b) With the intent to sell for commercial advantage or private financial gain records or fixes or causes to be recorded or fixed on a recording a live performance with the knowledge that the live performance has been recorded or fixed without the consent of the owner.

(2)(a) An offense under this section is a class B felony punishable by a fine of not more than two hundred fifty thousand dollars, imprisonment for not more than ten years, or both, if:

(i) The offense involves at least one thousand unauthorized recordings embodying sound or at least one hundred unauthorized audiovisual recordings during a one hundred eighty-day period; or

(ii) The defendant has been previously convicted under this section.

(b) An offense under this section is a class C felony punishable by a fine of not more than two hundred fifty thousand dollars, imprisonment for not more than five years, or both, if the offense involves more than one hundred but less than one thousand unauthorized recordings embodying sound or more than ten but less than one hundred unauthorized audiovisual recordings during a one hundred eighty-day period.

(c) Any other offense under this section is a gross misdemeanor punishable by a fine of not more than twenty-five thousand dollars, imprisonment for not more than one year, or both.

(3) In the absence of a written agreement or law to the contrary, the performer or performers of a live performance are presumed to own the rights to record or fix those sounds.

(4) For the purposes of this section, a person who is authorized to maintain custody and control over business records that reflect whether or not the owner of the live performance consented to having the live performance recorded or fixed is a competent witness in a proceeding regarding the issue of consent.

(5) This section does not affect the rights and remedies of a party in private litigation.

**West's RCWA 19.25.040**

**19.25.040. Failure to disclose origin of certain recordings unlawful--Fine and penalty**

(1) A person is guilty of failure to disclose the origin of a recording when, for commercial advantage or private financial gain, the person knowingly advertises, or offers for sale, resale, or rent, or sells or resells, or rents, leases, or lends, or possesses for any of these purposes, any recording which does not contain the true name and address of the manufacturer in a prominent place on the cover, jacket, or label of the recording.

(2)(a) An offense under this section is a class B felony punishable by a fine of not more than two hundred fifty thousand dollars, imprisonment for not more than ten years, or both, if:

(i) The offense involves at least one hundred unauthorized recordings during a one hundred eighty-day period; or

(ii) The defendant has been previously convicted under this section.

(b) An offense under this section is a class C felony punishable by a fine of not more than two hundred fifty thousand dollars, imprisonment for not more than five years, or both, if the offense involves more than ten but less than one hundred unauthorized recordings during a one hundred eighty-day period.

(c) Any other offense under this section is a gross misdemeanor punishable by a fine of not more than twenty-five thousand dollars, imprisonment for not more than one year, or both.

(3) This section does not affect the rights and remedies of a party in private litigation.

**West's RCWA 19.25.050**  
**19.25.050. Contraband recordings--Disposition, forfeiture, penalty**

(1) All recordings which have been fixed transferred, or possessed without the consent of the owner in violation of RCW 19.25.020 or 19.25.030, and any recording which does not contain the true name and address of the manufacturer in violation of RCW 19.25.040 shall be deemed to be contraband. The court shall order the seizure, forfeiture, and destruction or other disposition of such contraband.

(2) The owner or the prosecuting attorney may institute proceedings to forfeit contraband recordings. The provisions of this subsection shall apply to any contraband recording, regardless of lack of knowledge or intent on the part of the possessor, retail seller, manufacturer, or distributor.

(3) Whenever a person is convicted of a violation under this chapter, the court, in its judgment of conviction, shall, in addition to the penalty therein prescribed, order the forfeiture and destruction or other disposition of all contraband recordings and any and all electronic, mechanical, or other devices for manufacturing, reproducing, packaging, or assembling such recordings, which were used to facilitate any violation of this chapter.

**West's RCWA 19.25.100**  
**19.25.100. Truth in music advertising**

(1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Performing group" means a vocal or instrumental group seeking to use the name of another group that has previously released a commercial sound recording under that name.

(b) "Recording group" means a vocal or instrumental group, at least one of whose members has previously released a commercial sound recording under that group's name and in which the member or members have a legal right by virtue of use or operation under the group name without having abandoned the name or affiliation with the group.

(c) "Sound recording" means a work that results from the fixation on a material object of a series of musical, spoken, or other sounds regardless of the nature of the material object, such as a disk, tape, or other phonorecord, in which the sounds are embodied.

(2) A person shall not advertise or conduct a live musical performance or production through the use of a false, deceptive, or misleading affiliation, connection, or association between a performing group and a recording group unless any of the following apply:

(a) The performing group is the authorized registrant and owner of a federal service mark for the group registered in the United States patent and trademark office;

(b) At least one member of the performing group was previously a member of the recording group and has a legal right by virtue of use or operation under the group name without having abandoned the name or affiliation of the group;

(c) The live musical performance or production is identified in all advertising and promotion as a salute or tribute;

(d) The advertising does not relate to a live musical performance or production taking place in this state; or

(e) The performance or production is expressly authorized by the recording group.

(3)(a) A person who violates this section is subject to a civil penalty not less than five thousand dollars or more than fifteen thousand dollars per violation. An action for a civil penalty may be brought by the attorney general or a county or city prosecutor and is enforceable as a civil judgment.

(b) A person who violates this section is subject to the equitable remedies described in chapter 19.86 RCW.

(c) Each performance or production declared unlawful under subsection (2) of this section constitutes a separate violation.

(d) This section does not preclude prosecution of a violation of this section under any other provision of law.

**West's RCWA 19.25.800**

**19.25.800. Chapter not applicable to broadcast by commercial or educational radio or television**

This chapter shall not be applicable to any recording that is used or intended to be used only for broadcast by commercial or educational radio or television stations.

**West's RCWA 19.25.810**

**19.25.810. Chapter not applicable to certain nonrecorded broadcast use**

This chapter shall not be applicable to any recording that is received in the ordinary course of a broadcast by a commercial or educational radio or television station where no recording is made of the broadcast.

**West's RCWA 19.25.820**

**19.25.820. Chapter not applicable to defined public record**

This chapter shall not be applicable to any recording defined as a public record of any court, legislative body, or proceedings of any public body, whether or not a fee is charged or collected for copies.

**West's RCWA 19.25.900**

**19.25.900. Severability--1974 ex.s. c 100**

If any provision of this 1974 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected.

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## **West Virginia**

**W. Va. Code, § 61-3-50**

**§ 61-3-50. Unauthorized transferral of recorded sounds; sale and possession; penalties; civil action; definition**

(a) No person shall knowingly and willfully for commercial advantage or private financial gain transfer by electronic or mechanical means or cause to be transferred by electronic or mechanical means with intent to sell for profit the recorded sounds contained on any phonograph record, disc, tape, film or other device without the permission of the owner of such recorded sounds or his authorized representative, or to knowingly, or with reasonable grounds to know, sell or possess with intent to sell any phonograph record, disc, tape, film or other device containing such unauthorized transferred recorded sounds. This paragraph applies to sound recordings initially fixed prior to the fifteenth day of February, one thousand nine hundred seventy-two.

No person shall knowingly and willfully for commercial advantage or private financial gain offer for sale, sell, rent, transport, cause the sale, resale, rental or transportation of or possess for one or more of these purposes a recording of a live performance with the knowledge that the live performance has been recorded or fixed without the consent of the owner.

No person shall knowingly and willfully for commercial advantage or private financial gain record or fix or cause to be recorded or fixed on any type of recording device a live performance with the knowledge that the live performance is being recorded or fixed without the consent of the owner.

No person shall knowingly and willfully for commercial advantage or private financial gain offer for sale, sell, rent, transport, or cause the sale, resale, rental or transportation of or possess for one or more of these purposes, any phonograph record, disc, tape, film, video tape, video cassette or other device which fails to clearly and conspicuously disclose the actual name and address of the manufacturer thereof.

(b) Any owner of such recorded sounds, images or any audio-visual combination and any person lawfully transferring such sounds by agreement with such owner shall have a cause of action for the unauthorized transferral of such sounds and shall be entitled to treble damages resulting therefrom.

(c)(1) For the purpose of this section, the term "owner" means the person vested with the rights to and ownership of the original fixation of sounds, images or any audio-visual combination embodied in the master phonograph record, master disc, master tape, master film or other device used for transferring sounds or images on phonograph records, discs, tapes, films, video tapes or video cassettes or other similar articles upon which sounds, images or any audio-visual combination are recorded and from which the transferred recorded sounds and/or images are directly derived. In the absence of a written agreement or law to the contrary, the performer or performers of a live performance are presumed to own the rights to record or fix the sounds, images or any audio-visual combination of a live performance. A person who is authorized to maintain custody and control over business records that reflect whether or not the owner or owners of a live performance consented to having a live performance recorded or fixed is a proper witness in a proceeding regarding the issue of consent.

(2) For the purposes of this section, the term "manufacturer" means the person who transfers, authorizes or causes the transfer of a recording of sounds, images or any audio-visual combination to a phonograph record, disc, tape, film, video tape, video cassette or other device.

(d)(1) Any person convicted of an offense under this section involving less than one hundred unlawful sound recordings or less than twenty unlawful audio-visual recordings shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars, or imprisoned for not more than one year in jail or both fined and imprisoned.

(2) Any person convicted of an offense under this section involving at least one hundred but less than one thousand unlawful sound recordings or at least twenty but less than sixty-five audio-visual recordings shall be guilty of a felony, and, upon conviction thereof, shall be fined not less than one thousand dollars nor more than five thousand dollars, or imprisoned for not more than two years in the penitentiary or both fined and imprisoned.

(3) Any person convicted of an offense under this section involving at least one thousand unlawful sound recordings or at least sixty-five unlawful audio-visual recordings shall be guilty of a felony, and, upon conviction thereof, shall be fined not less than five thousand dollars nor more than ten thousand dollars, or imprisoned for not more than five years in the penitentiary or both fined and imprisoned.

(4) Any person convicted of a second or subsequent offense under this section shall be guilty of a felony, and, upon conviction thereof, shall be fined not less than one thousand dollars nor more than ten thousand dollars, or imprisoned for not more than five years or both fined and imprisoned.

(5) Any unauthorized recorded sounds or images produced in violation of this section and any equipment used for such purpose shall be confiscated by the appropriate law-enforcement agency. If a person is

convicted of any violation under this chapter, the court in its judgment of conviction shall order the forfeiture and destruction or release to a law-enforcement agency for use in official agency business of all infringing recordings and of any equipment or components used or intended to be used in the production of the recordings. All infringing phonograph records, discs, tapes, films, video tapes, video cassettes or other devices shall be destroyed once they are no longer needed for court proceedings. Nothing contained herein shall apply to televisions and radio stations licensed by the federal communications commission or to educational institutions, when the purpose of such reproduction is limited and used for criticism, comments, news reporting, archival or educational purposes.

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## **Wisconsin**

### **W.S.A. 943.206 943.206. Definitions**

In this section and ss. 943.207 to 943.209:

- (1) "Manufacturer" means a person who transfers sounds to a recording.
- (2) "Owner" means the person who owns sounds in or on a recording from which the transferred recorded sounds are directly or indirectly derived.
- (3) "Performance" means a recital, rendering or playing of a series of words or other sounds, either alone or in combination with images or physical activity.
- (4) "Performance owner" means the performer or performers or the person to whom the performer or performers have transferred, through a contract, the right to sell recordings of a performance.
- (5) "Recording" means a medium on or in which sounds or images or both are stored.

### **W.S.A. 943.207 943.207. Transfer of recorded sounds for unlawful use**

- (1) Whoever does any of the following may be penalized as provided in sub. (3m):
  - (a) Intentionally transfers, without the consent of the owner, any sounds first embodied in or on a recording before February 15, 1972, with intent to sell or rent the recording into or onto which such sounds are transferred for commercial advantage or private financial gain.
  - (b) Advertises, offers for sale or rent, sells, rents or possesses a recording with knowledge that sounds have been transferred into or onto it in violation of par. (a).
  - (c) Transports a recording within this state for commercial advantage or private financial gain with knowledge that sounds have been transferred into or onto the recording in violation of par. (a). (3m)(a) Whoever violates this section is guilty of a Class A misdemeanor under any of the following circumstances:
    1. If the person transfers sounds into or onto fewer than 1,000 recordings or advertises, offers for sale or rent, sells, rents, possesses or transports fewer than 1,000 recordings in violation of sub. (1) during a 180 day period, and the value of the recordings does not exceed \$2,500.
    2. If the person transfers sounds on or to the Internet in violation of sub. (1), the transferred sounds are never replayed or are replayed by others from the Internet fewer than 1,000 times during a 180-day period, and the value of the transferred sounds does not exceed \$2,500.
- (b) Whoever violates this section is guilty of a Class I felony under any of the following circumstances:

1. If the person transfers sounds into or onto fewer than 1,000 recordings or advertises, offers for sale or rent, sells, rents, possesses or transports fewer than 1,000 recordings in violation of sub. (1) during a 180-day period, and the value of the recordings exceeds \$2,500.
2. If the person transfers sounds on or to the Internet in violation of sub. (1), the transferred sounds are replayed by others from the Internet fewer than 1,000 times during a 180-day period, and the value of the transferred sounds involved in the violation exceeds \$2,500.
  - (c) Whoever violates this section is guilty of a Class H felony under any of the following circumstances:
    1. If the person transfers sounds into or onto at least 1,000 recordings or advertises, offers for sale or rent, sells, rents, possesses or transports at least 1,000 recordings in violation of sub. (1) during a 180-day period.
    2. If the person transfers sounds on or to the Internet in violation of sub. (1) and the transferred sounds are replayed by others from the Internet at least 1,000 times during a 180-day period.
    3. If the violation occurs after the person has been convicted under this section.

(4) This section does not apply to:

- (a) The transfer by a cable television operator or radio or television broadcaster of any recorded sounds, other than from the sound track of a motion picture, intended for, or in connection with, broadcast or other transmission or related uses, or for archival purposes.
- (b) The transfer of any video tape or nonvideo audio tape intended for possible use in a civil or criminal action or special proceeding in a court of record.

**W.S.A. 943.208**

**943.208. Recording performance without consent of performance owner**

- (1) Whoever does any of the following for commercial advantage or private financial gain may be penalized as provided in sub. (2):
  - (a) Creates a recording of a performance without consent of the performance owner and with intent to sell or rent the recording.
  - (b) Advertises, offers for sale or rent, sells, rents or transports a recording of a performance with knowledge that the sounds, images or both from the performance embodied in the recording were recorded without the consent of the performance owner.
  - (c) Possesses with intent to advertise, offer for sale or rent, sell, rent or transport a recording of a performance with knowledge that the sounds, images or both from the performance embodied in the recording were recorded without the consent of the performance owner.
- (2)(a) Whoever violates sub. (1) is guilty of a Class A misdemeanor if the person creates, advertises, offers for sale or rent, sells, rents, transports or possesses fewer than 1,000 recordings embodying sound or fewer than 100 audiovisual recordings in violation of sub. (1) during a 180-day period, and the value of the recordings does not exceed \$2,500.
- (b) Whoever violates sub. (1) is guilty of a Class I felony if the person creates, advertises, offers for sale or rent, sells, rents, transports or possesses fewer than 1,000 recordings embodying sound or fewer than 100 audiovisual recordings in violation of sub. (1) during a 180-day period, and the value of the recordings exceeds \$2,500.

(c) Whoever violates sub. (1) is guilty of a Class H felony if the person creates, advertises, offers for sale or rent, sells, rents, transports or possesses at least 1,000 recordings embodying sound or at least 100 audiovisual recordings in violation of sub. (1) during a 180-day period or if the violation occurs after the person has been convicted under this section.

(3) Under this section, the number of recordings that a person rents shall be the sum of the number of times in which each individual recording is rented.

**W.S.A. 943.209**

**943.209. Failure to disclose manufacturer of recording**

(1) Whoever does any of the following for commercial advantage or private financial gain may be penalized as provided in sub. (2):

(a) Knowingly advertises, offers for sale or rent, sells, rents or transports a recording that does not contain the name and address

of the manufacturer in a prominent place on the cover, jacket or label of the recording.(b) Possesses with intent to advertise, offer for sale or rent, sell, rent or transport a recording that does not contain the name and address of the manufacturer in a prominent place on the cover, jacket or label of the recording.

(2)(a) Whoever violates sub. (1) is guilty of a Class A misdemeanor if the person advertises, offers for sale or rent, sells, rents, transports or possesses fewer than 100 recordings in violation of sub. (1) during a 180-day period, and the value of the recordings does not exceed \$2,500.

(b) Whoever violates sub. (1) is guilty of a Class I felony if the person advertises, offers for sale or rent, sells, rents, transports or possesses fewer than 100 recordings in violation of sub. (1) during a 180-day period, and the value of the recordings exceeds \$2,500.

(c) Whoever violates sub. (1) is guilty of a Class H felony if the person advertises, offers for sale or rent, sells, rents, transports or possesses at least 100 recordings in violation of sub. (1) during a 180-day period or if the violation occurs after the person has been convicted under this section.

(3) Under this section, the number of recordings that a person rents shall be the sum of the number of times that each individual recording is rented.

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## **Wyoming**

**W.S.1977 § 40-13-201**

**§ 40-13-201. Definitions**

(a) As used in W.S. 40-13-201 through 40-13-206:

(i) "Owner" means the person who owns the original fixation of sounds embodied in the master phonograph record, master disc, master tape, master film or other device used for reproducing sounds on phonograph records, discs, tapes, films or other articles upon which sound is recorded and from which the transferred recorded sounds are directly derived;

(ii) "Performer" means any person appearing in a performance.

**W.S.1977 § 40-13-202**

**§ 40-13-202. Prohibited acts**

(a) No person shall:

- (i) Knowingly and without the consent of the owner, transfer or cause to be transferred any sounds recorded on a phonograph record, disc, wire, tape, film or other article on which sounds are recorded, with intent to sell or to cause to be sold for profit or used to promote the sale of any product, the article on which the sounds are transferred; or
- (ii) Knowingly and without the consent of the performer or his agent, transfer to or cause to be transferred to any phonograph record, disc, wire, tape, film or other article, any performance, whether live before an audience or transmitted by wire or through the air by radio or television, with intent to sell or to cause to be sold for profit or used to promote the sale of any product, the article on which the performance is transferred.

**W.S.1977 § 40-13-203  
§ 40-13-203. Forfeiture and destruction**

Any article produced in violation of W.S. 40-13-202 and any equipment or components used in producing the article is subject to forfeiture to and destruction by law enforcement agencies.

**W.S.1977 § 40-13-204  
§ 40-13-204. Additional prohibited act; evidence**

No person shall knowingly or with reasonable grounds to know, advertise, offer for sale or resale, sell or resell, distribute or possess any article which has been produced without the consent of the owner or performer. Possession of five (5) or more duplicate copies or twenty (20) or more individual copies of recorded articles produced without the consent of the owner or performer is *prima facie* evidence that the devices are intended for sale or distribution in violation of this section.

**W.S.1977 § 40-13-205  
§ 40-13-205. Penalty**

(a) Any person who violates any portion of W.S. 40-13-202 is guilty of a felony and shall be imprisoned in the state penitentiary for not less than one (1) year nor more than two (2) years or fined not more than ten thousand dollars (\$10,000.00), or both. Each violation is a separate offense.

(b) Any person who violates the provisions of W.S. 40-13-204 is guilty of a misdemeanor and shall be imprisoned in the county jail for not more than one (1) year or fined not more than ten thousand dollars (\$10,000.00), or both. Each violation is a separate offense.

**W.S.1977 § 40-13-206  
§ 40-13-206. Exceptions**

(a) W.S. 40-13-201 through 40-13-206 do not apply to:

- (i) Any broadcaster who, in connection with or as part of a radio, television or cable broadcast transmission or for the purpose of archival preservation, transfers any such sounds recorded on a sound recording;
- (ii) Any person who transfers such sounds in the home, for personal use and without compensation for the transfer;
- (iii) The transfer of sounds or possession of duplicate copies within an educational institution, solely for educational purposes; or

(iv) Any common carrier whose services or facilities are merely contracted for and used by another for the purpose of transferring sound.