

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2003

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HOUSE BILL 42  
Committee Substitute Favorable 3/17/03  
Senate Judiciary I Committee Substitute Adopted 5/14/03

Short Title: Criminal Unauthorized Recordings.

(Public)

Sponsors:

Referred to:

February 20, 2003

1 A BILL TO BE ENTITLED  
2 AN ACT MODIFYING THE FELONY AND MISDEMEANOR OFFENSES  
3 RELATED TO CONDUCTING CERTAIN UNAUTHORIZED SOUND AND  
4 VIDEO RECORDINGS.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 14-432 reads as rewritten:

7 "§ 14-432. Definitions.

8 As used in this Article "owner" means the person who owns the sounds fixed in any  
9 master phonograph record, master disc, master tape, master film or other device used for  
10 reproducing recorded sounds on phonograph records, discs, tapes, films or other articles  
11 on which sound is or can be recorded and from which the transferred sounds are directly  
12 or indirectly derived, or the person who owns the rights to record or authorize the  
13 recording of a live performance; "article" means the tangible medium upon which  
14 sounds or images are recorded or any original phonograph record, disc, tape, audio or  
15 video cassette, wire, film or other medium now known or later developed on which  
16 sounds or images are or can be recorded or otherwise stored, or any copy or  
17 reproduction which duplicates, in whole or in part, the original. The following  
18 definitions apply in this Article:

19 (1) "Article" means the tangible medium upon which sounds or images are  
20 recorded or otherwise stored, including any original phonograph  
21 record, disc, tape, audio or video cassette, wire, film, or other medium  
22 now known or later developed on which sounds or images, or both,  
23 can be recorded or otherwise stored, or any copy or reproduction  
24 which duplicates, in whole or in part, the original.

25 (2) "Fixed" means that the work has been recorded in a tangible medium  
26 of expression, by or under the authority of the author, and its  
27 embodiment is sufficiently permanent or stable to permit it to be  
28 perceived, reproduced, or otherwise communicated for a period of

1            more than transitory duration. A work consisting of sounds or images,  
2            or both, that are being transmitted is "fixed" for the purposes of this  
3            section if a fixation of the work is being made simultaneously with its  
4            transmission.

5            (3) "Owner" means the person who owns the sounds fixed in any master  
6            phonograph record, master disc, master tape, master film, or other  
7            device used for reproducing recorded sounds on phonograph records,  
8            discs, tapes, films, or other articles on which sound is or can be  
9            recorded and from which the transferred sounds are directly or  
10           indirectly derived, or the person who owns the rights to record or  
11           authorize the recording of a live performance."

12           **SECTION 2.** G.S. 14-433 reads as rewritten:

13           **"§ 14-433. Recording of live ~~concerts~~ performances or recorded sounds and**  
14           **distribution, etc., of such recordings unlawful in certain circumstances.**

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

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

22           (2) Manufacture, distribute, wholesale or transport any article for profit, or  
23           possess for ~~such~~ these purposes with the knowledge that the sounds  
24           recorded on the article were transferred in violation of subdivision  
25           (a)(1) of this section. ~~are so transferred, without consent of the owner,~~

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

27           ~~(3)~~(1) Knowingly transfer or cause to be transferred, directly or indirectly by  
28           any means, any sounds at a live ~~concert,~~ performance, with the intent  
29           to sell or cause to be sold, or to use or cause to be used for profit  
30           through public performance, ~~such~~ the article on which sounds are so  
31           transferred, without consent of the ~~owner,~~ owner.

32           ~~(4)~~(2) Manufacture, distribute, transport or wholesale any ~~such~~ article for  
33           profit, or possess for ~~such~~ those purposes with the knowledge that the  
34           sounds recorded on the article were transferred in violation of  
35           subdivision (a1)(1) of this section. ~~are so transferred, without consent~~  
36           of the owner.

37           (b) Subdivisions (a)(1) and (a)(2) of this section shall apply only to sound  
38           recordings that were initially fixed prior to February 15, 1972. Federal copyright law, 17  
39           U.S.C. § 101 et seq., preempts State prosecution of the acts described in subdivisions  
40           (a)(1) and (a)(2) with respect to sound recordings initially fixed on or after February 15,  
41           1972.

42           (c) This section shall not apply to any person engaged in webcasting or radio or  
43           television broadcasting who transfers, or causes to be transferred, any such sounds other  
44           than from the sound track of a motion picture intended for, or in connection with

1 webcast, broadcast or telecast transmission or related uses, or for archival purposes. An  
2 Internet service provider who is solely providing a conduit for access to the Internet,  
3 shall not be deemed to be using, or causing to be used, recordings that may be  
4 transferred over the Internet by third parties in violation of this Article."

5 **SECTION 3.** G.S. 14-435 reads as rewritten:

6 "**§ 14-435. Recorded devices to show true name and address of manufacturer.**

7 ~~Ninety days after January 1, 1975, every article knowingly sold or transferred or~~  
8 ~~possessed for the purpose of sale, advertising or offering for sale or resale, renting or~~  
9 ~~transporting or causing to be rented or transported by any manufacturer, distributor, or~~  
10 ~~wholesale or retail merchant shall contain on its packaging the true name and address of~~  
11 ~~the manufacturer. The term "manufacturer" shall not include the manufacturer of the~~  
12 ~~cartridge or casing itself.~~

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

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

24 **SECTION 4.** G.S. 14-436 reads as rewritten:

25 "**§ 14-436. Recorded devices; civil action for damages.**

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

30 **SECTION 5.** G.S. 14-437(a) reads as rewritten:

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

37 ~~(1) A Class I felony, which may include a fine of not more than one~~  
38 ~~hundred fifty thousand dollars (\$150,000), if the offense involves at~~  
39 ~~least 1,000 unauthorized sound recordings or at least 100 unauthorized~~  
40 ~~audio visual recordings during any 180 day period or is a second or~~  
41 ~~subsequent conviction under either subdivision (1) or (2) of this~~  
42 ~~section;~~

43 ~~(2) A Class 1 misdemeanor, if the offense involves more than 100 but less~~  
44 ~~than 1,000 unauthorized sound recordings or more than 10 but less~~

1                   ~~than 100 unauthorized audio visual recordings during any 180 day~~  
2                   ~~period;~~

3                   ~~(3) A Class 2 misdemeanor, for any other violation of these sections."~~

4                   **SECTION 6.** This act becomes effective December 1, 2003, and applies to  
5 offenses committed on or after that date. Prosecutions for offenses committed before the  
6 effective date of this act are not abated or affected by this act, and the statutes that  
7 would be applicable but for this act remain applicable to those prosecutions.