START\_STATUTE13-3705.  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 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. END\_STATUTE