

SENATE BILL 5030

State of Washington

52nd Legislature

1991 Regular Session

By Senators Nelson, Talmadge and Thorsness.

Read first time January 16, 1991. Referred to Committee on Law & Justice.

1 AN ACT Relating to the protection of recording rights; amending RCW
2 19.25.010, 19.25.020, 19.25.030, 19.25.040, 19.26.010, and 19.26.020;
3 adding new sections to chapter 19.25 RCW; and prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 19.25.010 and 1974 ex.s. c 100 s 1 are each amended to
6 read as follows:

7 As used in this chapter((~~7~~)):

8 (1) "Owner" means ((the owner of the master recording, master disc,
9 ~~master tape, master film, or other device used for reproducing recorded~~
10 ~~sound on a phonograph record, disc, tape, film, or other material on~~
11 ~~which sound is recorded and from which the transferred recorded sound~~
12 ~~is)) a person who owns the sounds fixed in a master phonograph record,~~
13 master disc, master tape, master film, or other recording on which

1 sound is or can be recorded and from which the transferred recorded
2 sounds are directly or indirectly derived.

3 (2) "Fixed" means embodied in a recording or other tangible medium
4 of expression, by or under the authority of the author, so that the
5 matter embodied is sufficiently permanent or stable to permit it to be
6 perceived, reproduced, or otherwise communicated for a period of more
7 than transitory duration.

8 (3) "Live performance" means a recitation, rendering, or playing of
9 a series of images, musical, spoken or other sounds, or combination of
10 images and sounds, in an audible sequence.

11 (4) "Recording" means a tangible medium on which sounds, images, or
12 both are recorded or otherwise stored, including an original phonograph
13 record, disc, tape, audio or video cassette, wire, film, or other
14 medium now existing or developed later on which sounds, images, or both
15 are or can be recorded or otherwise stored or a copy or reproduction
16 that duplicates in whole or in part the original.

17 **Sec. 2.** RCW 19.25.020 and 1974 ex.s. c 100 s 2 are each amended to
18 read as follows:

19 ~~((A person commits a gross misdemeanor punishable by a fine not to~~
20 ~~exceed one thousand dollars and imprisonment not to exceed one year and~~
21 ~~confiscation of illegal stock, if he:~~

22 ~~(1) Reproduces for sale any sound recording without the written~~
23 ~~consent of the owner of the master recording; or~~

24 ~~(2) Knowingly sells or offers for sale or advertises for sale any~~
25 ~~sound recording that has been reproduced without the written consent of~~
26 ~~the owner of the master recording.)) (1) A person commits an offense if
27 the person:~~

28 (a) Knowingly reproduces for sale or causes to be transferred any
29 recording with intent to sell it or cause it to be sold or use it or

1 cause it to be used for commercial advantage or private financial gain
2 through public performance without the consent of the owner;

3 (b) Transports within this state, for commercial advantage or
4 private financial gain, a recording with the knowledge that the sounds
5 have been reproduced or transferred without the consent of the owner;
6 or

7 (c) Advertises, offers for sale, sells, or rents, or causes the
8 sale, resale, or rental of or possesses for one or more of these
9 purposes any recording that the person knows has been reproduced or
10 transferred without the consent of the owner.

11 (2) An offense under this section is punishable by:

12 (a) A fine of not more than two hundred fifty thousand dollars,
13 imprisonment for not more than five years, or both if:

14 (i) The offense involves at least one thousand unauthorized
15 recordings during a one hundred eighty-day period; or

16 (ii) The defendant has been previously convicted under this
17 section;

18 (b) A fine of not more than two hundred fifty thousand dollars,
19 imprisonment for not more than two years, or both, if the offense
20 involves more than one hundred but less than one thousand unauthorized
21 recordings during a one hundred eighty-day period; or

22 (c) A fine of not more than twenty-five thousand dollars,
23 imprisonment for not more than one year, or both, for any other
24 offense.

25 (3) This section does not affect the rights and remedies of a party
26 in private litigation.

27 (4) This section applies only to recordings that were initially
28 fixed before February 15, 1972.

1 **Sec. 3.** RCW 19.25.030 and 1974 ex.s. c 100 s 3 are each amended to
2 read as follows:

3 ~~((This chapter shall not be applicable to the reproduction of any~~
4 ~~sound recording that is used or intended to be used only for broadcast~~
5 ~~by commercial or educational radio or television stations.)) (1) A~~
6 ~~person commits an offense if the person:~~

7 (a) For commercial advantage or private financial gain advertises,
8 offers for sale, sells, rents, transports, causes the sale, resale,
9 rental, or transportation of or possesses for one or more of these
10 purposes a recording containing sounds of a live performance with the
11 knowledge that the live performance has been recorded or fixed without
12 the consent of the owner; or

13 (b) With the intent to sell for commercial advantage or private
14 financial gain records or fixes or causes to be recorded or fixed on a
15 recording a live performance with the knowledge that the live
16 performance has been recorded or fixed without the consent of the
17 owner.

18 (2) An offense under this section is punishable by:

19 (a) A fine of not more than two hundred fifty thousand dollars,
20 imprisonment for not more than five years, or both, if:

21 (i) The offense involves at least one thousand unauthorized
22 recordings embodying sound or at least sixty-five unauthorized
23 audiovisual recordings during a one hundred eighty-day period; or

24 (ii) The defendant has been previously convicted under this
25 section;

26 (b) A fine of not more than two hundred fifty thousand dollars,
27 imprisonment for not more than two years, or both, if the offense
28 involves more than one hundred but less than one thousand unauthorized
29 recordings embodying sound or more than seven but less than sixty-five

1 unauthorized audiovisual recordings during a one hundred eighty-day
2 period; or

3 (c) A fine of not more than twenty-five thousand dollars,
4 imprisonment for not more than one year, or both, for any other
5 offense.

6 (3) In the absence of a written agreement or law to the contrary,
7 the performer or performers of a live performance are presumed to own
8 the rights to record or fix those sounds.

9 (4) For the purposes of this section, a person who is authorized to
10 maintain custody and control over business records that reflect whether
11 or not the owner of the live performance consented to having the live
12 performance recorded or fixed is a proper witness in a proceeding
13 regarding the issue of consent. A witness called pursuant to this
14 section is subject to the rules of evidence relating to the competency
15 of a witness to testify and the relevance and admissibility of the
16 testimony offered.

17 (5) This section does not affect the rights and remedies of a party
18 in private litigation.

19 **Sec. 4.** RCW 19.25.040 and 1974 ex.s. c 100 s 4 are each amended to
20 read as follows:

21 ~~((This chapter shall not be applicable to the reproduction of a~~
22 ~~sound recording defined as a public record of any court, legislative~~
23 ~~body, or proceedings of any public body, whether or not a fee is~~
24 ~~charged or collected therefor.)) This chapter shall not be applicable
25 to the reproduction of any sound recording that is used or intended to
26 be used only for broadcast by commercial or educational radio or
27 television stations.~~

1 NEW SECTION. **Sec. 5.** A new section is added to chapter 19.25 RCW
2 to read as follows:

3 This chapter shall not be applicable to the reproduction of a sound
4 recording defined as a public record of any court, legislative body, or
5 proceedings of any public body, whether or not a fee is charged or
6 collected therefor.

7 NEW SECTION. **Sec. 6.** A new section is added to chapter 19.25 RCW
8 to read as follows:

9 (1) Whenever any person is convicted of any violation of RCW
10 19.25.020 or 19.25.030 the court, in its judgment of conviction, shall,
11 in addition to the penalty therein prescribed, order the forfeiture and
12 destruction or other disposition of all articles, including, but not
13 limited to, phonograph records, discs, wires, tapes, films, labels, or
14 any other article upon which sounds or images can be recorded or
15 stored, and any and all electronic, mechanical, or other devices for
16 manufacturing, reproducing, or assembling these articles, which were
17 used in connection with, or which were part of, any violation of RCW
18 19.25.020 or 19.25.030.

19 (2) It shall be the duty of the prosecutor to institute forfeiture
20 proceedings for all recorded materials that do not conform to the
21 provisions of this chapter and to deliver the nonconforming recordings
22 to the judicial district in which the confiscation was made. The
23 provisions of this section shall apply to any nonconforming recording,
24 regardless of lack of knowledge or intent on the part of the retail
25 seller, manufacturer, or distributor.

26 (3) All property seized pursuant to this section shall be deemed to
27 be contraband and the court shall order the forfeiture and destruction
28 or other disposition of any materials that do not conform to the
29 provisions of this chapter.

1 **Sec. 7.** RCW 19.26.010 and 1971 ex.s. c 113 s 1 are each amended to
2 read as follows:

3 ~~((It shall be unlawful and a misdemeanor for any retailer in this
4 state to sell or offer to sell any prerecorded sound or audio recording
5 tape or any prerecorded video recording or tape unless such recording
6 or tape bears the actual name and address of the recorder on its face
7 or package: PROVIDED, That this chapter shall not be applicable to any
8 said recording or tape that is intended to be used for broadcast by
9 commercial or educational radio or television stations. Each and every
10 sale of such recording or tape which does not bear the actual name and
11 address of the recorder shall constitute a separate violation of this
12 chapter.))~~ (1) A person is guilty of failure to disclose the origin of
13 a recording when, for commercial advantage or private financial gain,
14 he or she knowingly advertises or offers for sale or resale, or sells
15 or resells, or rents, leases, or lends, or possesses for any of these
16 purposes, any recording, which does not contain the true name and
17 address of the manufacturer in a prominent place on the cover, jacket,
18 or label of the recording.

19 (2) For purposes of this section:

20 (a) "Recording" means any tangible medium upon which information,
21 sounds, or images are recorded or otherwise stored, including any
22 phonograph record, disc, tape, audio or video cassette, wire, film, or
23 other medium on which information, sounds, or images are recorded or
24 otherwise stored;

25 (b) "Manufacturer" means the entity authorizing the duplication of
26 the specific recording in question, but shall not include the
27 manufacturer of the cartridge or casing itself.

28 (3) An offense under this section is punishable by:

29 (a) A fine of not more than two hundred fifty thousand dollars,
30 imprisonment for not more than five years, or both, if:

1 (i) The offense involves at least sixty-five unauthorized
2 recordings during a one hundred eighty-day period; or

3 (ii) The defendant has been previously convicted under this
4 section;

5 (b) A fine of not more than two hundred fifty thousand dollars,
6 imprisonment for not more than two years, or both, if the offense
7 involves more than seven but less than sixty-five unauthorized
8 recordings during a one hundred eighty-day period; or

9 (c) A fine of not more than twenty-five thousand dollars,
10 imprisonment for not more than one year, or both for any other offense.

11 (4) This section does not affect the rights and remedies of a party
12 in private litigation.

13 **Sec. 8.** RCW 19.26.020 and 1971 ex.s. c 113 s 2 are each amended to
14 read as follows:

15 ~~((Each and every violation of RCW 19.26.010 shall constitute a~~
16 ~~separate offense and be subject to a fine not to exceed one hundred~~
17 ~~dollars.)) This chapter shall not be applicable to any said recording~~
18 ~~or tape that is intended to be used for broadcast by commercial or~~
19 ~~educational radio or television stations.~~

20 NEW SECTION. **Sec. 9.** If any provision of this act or its
21 application to any person or circumstance is held invalid, the
22 remainder of the act or the application of the provision to other
23 persons or circumstances is not affected.