

SB2040



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB2040

Introduced 2/10/2011, by Sen. Ronald Sandack

SYNOPSIS AS INTRODUCED:

720 ILCS 5/16-7

from Ch. 38, par. 16-7

Amends the Section of the Criminal Code of 1961 creating the offense of unlawful use of recorded sounds or images. Provides that, with respect to sound recordings (other than from the sound track of a motion picture or other audiovisual work), the Section applies only to sound recordings that were initially recorded before February 15, 1972.

LRB097 00013 RLC 40033 b

A BILL FOR

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Criminal Code of 1961 is amended by changing
5 Section 16-7 as follows:

6 (720 ILCS 5/16-7) (from Ch. 38, par. 16-7)

7 Sec. 16-7. Unlawful use of recorded sounds or images.

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

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

17 (2) Intentionally, knowingly or recklessly sells,
18 offers for sale, advertises for sale, uses or causes to be
19 used for profit any such article described in subsection
20 16-7(a) (1) without consent of the owner.

21 (3) Intentionally, knowingly or recklessly offers or
22 makes available for a fee, rental or any other form of
23 compensation, directly or indirectly, any equipment or

1 machinery for the purpose of use by another to reproduce or
2 transfer, without the consent of the owner, any sounds or
3 images recorded on any sound or audio visual recording to
4 another sound or audio visual recording or for the purpose
5 of use by another to manufacture any sound or audio visual
6 recording in violation of Section 16-8.

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

13 (b) As used in this Section and Section 16-8:

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

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

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

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

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

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

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

21 (1) If the offense involves more than 100 but not
22 exceeding 1000 unidentified sound recordings or more than 7
23 but not exceeding 65 unidentified audio visual recordings
24 during any 180 day period the authorized fine is up to
25 \$100,000; and

26 (2) If the offense involves more than 1,000

1 unidentified sound recordings or more than 65 unidentified
2 audio visual recordings during any 180 day period the
3 authorized fine is up to \$250,000.

4 (d) This Section shall neither enlarge nor diminish the
5 rights of parties in private litigation.

6 (e) This Section does not apply to any person engaged in
7 the business of radio or television broadcasting who transfers,
8 or causes to be transferred, any sounds (other than from the
9 sound track of a motion picture) solely for the purpose of
10 broadcast transmission.

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

17 (g) Each and every individual manufacture, distribution or
18 sale or transfer for a consideration of such recorded devices
19 in contravention of this Section constitutes a separate
20 violation of this Section.

21 (h) Any sound or audio visual recordings containing
22 transferred sounds or a performance whose transfer was not
23 authorized by the owner of the master sound recording or
24 performance, in violation of this Section, or in the attempt to
25 commit such violation as defined in Section 8-2, or in a
26 solicitation to commit such offense as defined in Section 8-1,

1 may be confiscated and destroyed upon conclusion of the case or
2 cases to which they are relevant, except that the Court may
3 enter an order preserving them as evidence for use in other
4 cases or pending the final determination of an appeal.

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

13 (j) With respect to sound recordings (other than from the
14 sound track of a motion picture or other audiovisual work),
15 this Section applies only to sound recordings that were
16 initially recorded before February 15, 1972.

17 (Source: P.A. 95-485, eff. 1-1-08.)