

1 **State of Arkansas**
2 **78th General Assembly**
3 **Regular Session, 1991**
4 **By: Representative Gibson**

A Bill

HOUSE BILL

For An Act To Be Entitled

8 "AN ACT TO AMEND ARKANSAS CODE ANNOTATED §5-37-510 TO
9 DEFINE "RECORDING" TO INCLUDE VIDEO RECORDINGS; TO
10 SPECIFICALLY PROVIDE THAT AUDIO AND VIDEOTAPE PIRATING BE
11 FOR COMMERCIAL ADVANTAGE OR PERSONAL FINANCIAL GAIN BEFORE
12 A VIOLATION OF THE ACT MAY OCCUR; AND TO ESTABLISH
13 PENALTIES FOR AUDIO AND VIDEOTAPE PIRATING; AND FOR OTHER
14 PURPOSES."

15

16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

17

18 SECTION 1. Arkansas Code 5-37-510 is amended to read as follows:
19 "5-37-510. Unauthorized copying or sale of recordings.

20 (a) As used in this section, unless the context otherwise
21 requires:

22 (1) 'Person' means any individual, firm, partnership,
23 corporation, or association;

24 (2) 'Owner' means the person who owns the original fixation of
25 sounds embodied in the master phonograph record, master disc, master tape,
26 master film, or other device used for reproducing sounds on recordings upon
27 which sound is recorded and from which the transferred recorded sounds are
28 directly derived, or the person who owns the right to record a live
29 performance;

30 (3) 'Recording' means the tangible medium on which sounds or
31 images are recorded or otherwise stored, and includes any phonograph record,
32 audio or video disc, audio or video tape, wire, film or other medium now known
33 or later developed on which sounds or images are recorded or otherwise stored.

34 (b) Unless exempt under subsection (d) of this section, it is
35 unlawful for any person for commercial advantage or private financial gain

1 knowingly to:

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

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

12 (c) It is unlawful for any person for commercial advantage or private
13 financial gain to sell, distribute, circulate, offer for sale, distribution,
14 or circulation, or possess for the purposes of sale, distribution, or
15 circulation, any recording on which sounds or images have been transferred
16 unless the recording bears the actual name and address of the transferor of
17 the sounds or images in a prominent place on its outside face, label, cover,
18 jacket or package.

19 (d) This section does not apply to any person who transfers or causes
20 to be transferred any such sounds or images:

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

23 (2) For archival purposes;

24 (3) For educational purposes, with no compensation being derived
25 as a result of the transfer; or

26 (4) Solely for the personal use of the person transferring or
27 causing the transfer if the person transferring or causing the transfer has no
28 intention to evade the provisions or intent of this section, provided that
29 proof of intent shall be an element of the offense.

30 (e) Any person violating the provisions of this section, upon
31 conviction, shall be deemed guilty of a Class A misdemeanor for the first
32 offense involving less than one hundred (100) sound recordings or less than
33 seven (7) audio visual recordings; for a subsequent offense, and for offenses
34 involving one hundred (100) or more sound recordings, or seven (7) or more
35 audio visual recordings, the person shall be deemed guilty of a Class D felony

1 and shall be subject to an additional fine not to exceed two hundred and fifty
2 thousand dollars (\$250,000).

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

5 (g) When a person is convicted of any violation of this section, the
6 court in its judgment of conviction shall order the forfeiture and destruction
7 or other disposition of all recordings which do not conform to the
8 requirements of this section and all implements, devices, labels or equipment
9 used in the manufacture of such recordings.

10 (h) It shall be the duty of all law enforcement officers, upon
11 discovery, to confiscate all recordings that do not conform to the provisions
12 of this section. The recordings shall be delivered to the district attorney
13 for the county in which the confiscation was made. The district attorney, by
14 court order, shall destroy or otherwise dispose of such recordings."

15

16 SECTION 2. All provisions of this act of a general and permanent nature
17 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
18 Revision Commission shall incorporate the same in the Code.

19

20 SECTION 3. If any provision of this act or the application thereof to
21 any person or circumstance is held invalid, such invalidity shall not affect
22 other provisions or applications of the act which can be given effect without
23 the invalid provision or application, and to this end the provisions of this
24 act are declared to be severable.

25

26 SECTION 4. All laws and parts of laws in conflict with this act are
27 hereby repealed.

28

29

30

31

32