

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

**SESSION LAW 2003-159
HOUSE BILL 42**

**AN ACT MODIFYING THE FELONY AND MISDEMEANOR OFFENSES
RELATED TO CONDUCTING CERTAIN UNAUTHORIZED SOUND AND
VIDEO RECORDINGS.**

The General Assembly of North Carolina enacts:

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

"§ 14-432. Definitions.

As used in this Article "owner" means the person who owns the sounds fixed in any master phonograph record, master disc, master tape, master film or other device used for reproducing recorded sounds on phonograph records, discs, tapes, films or other articles on which sound is or can be recorded and from which the transferred sounds are directly or indirectly derived, or the person who owns the rights to record or authorize the recording of a live performance; "article" means the tangible medium upon which sounds or images are recorded or any original phonograph record, 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. The following definitions apply in this Article:

- (1) "Article" means the tangible medium upon which sounds or images are recorded or otherwise stored, including any original phonograph record, disc, tape, audio or video cassette, wire, film, or other medium now known or later developed on which sounds or images, or both, can be recorded or otherwise stored, or any copy or reproduction which duplicates, in whole or in part, the original.
- (2) "Fixed" means that the work has been recorded in a tangible medium of expression, by or under the authority of the author, and its embodiment is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration. A work consisting of sounds or images, or both, that are being transmitted is "fixed" for the purposes of this section if a fixation of the work is being made simultaneously with its transmission.
- (3) "Owner" means the person who owns the sounds fixed in any master phonograph record, master disc, master tape, master film, or other device used for reproducing recorded sounds on phonograph records, discs, tapes, films, or other articles on which sound is or can be recorded and from which the transferred sounds are directly or indirectly derived, or the person who owns the rights to record or authorize the recording of a live performance."

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

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

- (a) It shall be unlawful for any person to:
 - (1) Knowingly transfer or cause to be transferred, directly or indirectly by any means, any sounds recorded on a phonograph record, disc, wire,

tape, film or other article on which sounds are recorded, with the intent to sell or cause to be sold, or to use or cause to be used for profit through public performance, such article on which sounds are so transferred, without consent of the ~~owner,owner.~~

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

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

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

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

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

(c) This section shall not apply to any person engaged in webcasting or 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 webcast, broadcast or telecast transmission or related uses, or for archival purposes. An Internet service provider who is solely providing a conduit for access to the Internet, shall not be deemed to be using, or causing to be used, recordings that may be transferred over the Internet by third parties in violation of this Article."

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

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

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

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

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

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

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

Any owner of an article as defined in this ~~Chapter Article~~ whose work is allegedly the subject of a violation of G.S. 14-433 or ~~14-434~~, G.S. 14-434, shall have a cause of

action in the courts of this State for all damages resulting ~~therefrom~~, from the violation, including actual, compensatory and incidental damages."

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

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

- ~~(1) A Class I felony, which may include a fine of not more than one hundred fifty thousand dollars (\$150,000), if the offense involves at least 1,000 unauthorized sound recordings or at least 100 unauthorized audio visual recordings during any 180 day period or is a second or subsequent conviction under either subdivision (1) or (2) of this section;~~
- ~~(2) A Class 1 misdemeanor, if the offense involves more than 100 but less than 1,000 unauthorized sound recordings or more than 10 but less than 100 unauthorized audio visual recordings during any 180 day period;~~
- ~~(3) A Class 2 misdemeanor, for any other violation of these sections."~~

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

In the General Assembly read three times and ratified this the 27th day of May, 2003.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ Richard T. Morgan
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 12:40 p.m. this 5th day of June, 2003