

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Commerce Committee

BILL: CS/SB 1692

INTRODUCER: Commerce Committee and Senator Baker

SUBJECT: Unauthorized Copies of Recordings

DATE: March 25, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rogers	Cooper	CM	Fav/CS
2.			JU	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This CS provides that a court must order individual who violates current law regarding unauthorized copies of recordings to make restitution to the owner or trade association representing such owner in accordance with s. 775.089, F.S.

The amount of restitution must be based on the average wholesale value of authorized articles corresponding to the number of unauthorized articles involved in the offense, unless a great value can be proven. The order will also include investigative costs relating to the offense.

This CS provides an exemption for telecommunications, cell phone and internet service providers who are serving as intermediaries for individuals who may be in violation this section, as long as the service provider does not personally or knowingly facilitate violation of this section by others.

This CS amends s. 540.11, F.S.

II. Present Situation:

Florida Law

Section 540.11, F.S., addresses the unauthorized copying of phonograph records, disk, wire, tape, film, or other article on which sounds are recorded. Subsection (3) provides that it is illegal to sell or offer for sale or resale, advertise, cause the sale or resale of, rent, transport or cause to be rented or transported, or possess for any of these purposes any article:

- with the knowledge, or with reasonable grounds to know, that the article that contains the sounds have been transferred without the consent of the owner, or;
- embodying any performance, whether live before an audience or transmitted by wire or through the air by radio or television, recorded without the consent of the performer.

Additionally, it is illegal to knowingly, for commercial advantage or private financial gain to sell or resell, offer for sale or resale, advertise, cause the sale or resale of, rent, transport or cause to be rented or transported, or possess for such purposes, any phonograph record, disk, wire, tape, film, or other article on which sounds are recorded unless the outside cover, box, or jacket clearly and conspicuously discloses the actual name and address of the manufacturer thereof, and the name of the actual performer or group.

If the offense involves at least 1,000 unauthorized articles embodying sound, or at least 65 unauthorized audiovisual articles during any 180-day period or is a second or subsequent conviction under this law, the violation is a felony of the third degree, punishable by a fine of up to \$250,000, or both.

If the offense involves more than 100 but less than 1,000 unauthorized articles embodying sound or more than 7 but less than 65 unauthorized audiovisual articles during any 180-day period, the violation is a felony of the third degree, punishable by a fine of up to \$150,000, or both.

If the offense involves less than 100 unauthorized articles embodying sound or less than 7 unauthorized audiovisual articles, the violation is a misdemeanor of the first degree, punishable by a fine of up to \$25,000, or both.

Section 775.089, F.S., addresses restitution. This section requires the court to order the defendant to make restitution to the victim for damage related to the defendant's behavior, unless the court finds compelling reasons not to order such restitution. Additionally, this section provides guidelines for court ordered restitution.

Piracy

Internet piracy involves using the Internet to download and distribute unauthorized copies of intellectual property such as:

- music,
- movies,
- software applications,

- television, and
- games.

Illegal downloads occur in many forms including hacked computers, websites, and Peer-to-Peer (P2P) file sharing networks. A P2P service is a network that enables computers to connect directly to each other in order to distribute and copy files.¹ Programs can utilize these networks to search for and exchange many kinds of files. A file posted on the Internet can be downloaded and accessed an unlimited number of times by an unlimited number of individuals. After the downloads occur, individuals or “laboratories” can mass produce, package, prepare, and offer for sale illegally duplicated CD’s, CD-R’s, CD+R’s, VCD’s, DVD’s, DVD+R’s, and DVD-R’s on websites, online auction sites, and through street vendors and flea markets around the state.

In 2005, the Motion Picture Association of America (MPAA) studios reported that they lost \$2.3 billion worldwide to Internet piracy.² The Recording Industry Association of America (RIAA) references the Institute for Policy Innovation, which concluded that the global piracy of music results in \$12.5 billion in yearly global economic losses.³

Theatrical camcording piracy involves individuals going to movie theaters and using personal video cameras to record motion picture films off of theater screens. They then copy these films onto blank videocassettes and discs for illegal distribution. Advance copies of motion pictures used for legitimate screening and marketing purposes can also be used to make illegal copies. Individuals can sell these recordings to “laboratories” where they are illegally mass produced, packaged, and prepared for sale. The illegal discs or videocassettes are then distributed to sellers across the world. The illegal product is often packaged in a way that resembles legitimate packaging. According to the MPAA, 90 percent of pirated copies of movies are still playing in theaters.

The theft of a 35 mm or 16 mm film print for the purpose of making illegal copies allows for the creation of a relatively high quality videotape, which is then used as the master recording in mass production of illegal videocassettes. This type of piracy is not as common due to the difficulty in obtaining the film prints and difficulty in transferring the print to another format, such as videocassettes.

Related Federal Law⁴

The Copyright Act of 1976 was the last comprehensive copyright law revision in the U.S. The act was amended in 1982, substantially increasing the penalties for the illegal duplication of copyrighted material, making such offenses felonies on the first offense. Copyright owners may file civil lawsuits against copyright infringers, and the government may file criminal charges. The Communications Act of 1984 and later amendments provide penalties and remedies for theft of cable TV and satellite services, and the Digital Millennium Copyright Act of 1998 prohibits the circumvention of technical measures used to protect copyrighted works against theft. The

¹ Examples of P2P services include eDonkey, KazaA, Limewire and DirectConnect.

² See <http://www.mpaa.org/piracy.asp>.

³ See <http://www.riaa.org>.

⁴ 17 USC.

Family Entertainment and Copyright Act of 2005 made camcording in a theater a federal felony and established new penalties for pirating works that have not yet been released commercially. First-time violators can be sentenced to 3 and 5 years, respectively, for these crimes and fined up to \$250,000.⁵

III. Effect of Proposed Changes:

Section 1 provides that a court must order individual who violates current law regarding unauthorized copies of recordings to make restitution to the owner or trade association representing such owner in accordance with s. 775.089, F.S.

The amount of restitution must be based on the average wholesale value of authorized articles corresponding to the number of unauthorized articles involved in the offense, unless a great value can be proven. The order must also include investigative costs relating to the offense.

An exemption is provided for telecommunications, cell phone and internet service providers who are serving as intermediaries for individuals who may be in violation this section, as long as the service provider does not personally or knowingly facilitate violation of this section by others.

Section 2 provides an effective date of July 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Individuals who violate this law will be required to pay restitution.

⁵ 17 USC 101.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Pennsylvania law⁶ includes a provision for restitution that is very similar to the language proposed by this CS. Illinois enacted a law⁷ on January 1, 2008, that provides for restitution and is also similar to the language proposed in this CS.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Commerce Committee on March 25, 2008:

This CS conforms the language in this bill to the language in HB 1133. The CS provides that the amount of restitution shall be based on the average wholesale value of authorized articles corresponding to the number of unauthorized articles involved in the offense.

This CS provides an exemption for telecommunications, cell phone and internet service providers who are serving as intermediaries for individuals who may be in violation this section, as long as the service provider does not personally or knowingly facilitate violation of this section by others.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

⁶ PA §4116(h)(3).

⁷ 720 ILCS 5/16-7.