

GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION

CHAPTER 589
SENATE BILL 834

AN ACT TO AMEND CHAPTER 14, ARTICLE 58 REGARDING COUNTERFEIT
RECORDS, TAPES AND OTHER RECORDED DEVICES.

The General Assembly of North Carolina enacts:

Section 1. Article 58 of Chapter 14 of the General Statutes reads as rewritten:

"§ 14-432. '~~Owner~~' defined. 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.~~ 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.

"§ 14-433. Recording of live concerts 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 ~~at a live concert or 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, or
 - (2) Manufacture, ~~distribute or~~ distribute, wholesale or transport any article for profit, or possess for such purposes with the knowledge that the sounds are so transferred, without consent of the ~~owner.~~ owner,
 - (3) Knowingly transfer or cause to be transferred, directly or indirectly by any means, any sounds at a live concert, 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, or

(4) Manufacture, distribute, transport or wholesale any such article for profit, or possess for such purposes with the knowledge that the sounds 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 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 broadcast or telecast transmission or related uses, or for archival purposes.

"§ 14-434. Retailing, etc., of certain recorded devices unlawful.

It shall be unlawful for any person to knowingly ~~retail~~retail, advertise or offer for sale or resale, sell or resell or cause the sale or resale, rent or cause to rent, or possess for any of these purposes for the purpose of retailing—any article recorded device—that has been produced, manufactured, distributed, or acquired at wholesale in violation of any provision of this Chapter.

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

Ninety days after January 1, 1975, every ~~recorded device~~—article knowingly sold or transferred or possessed for the purpose of sale—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.

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

Any owner of a ~~recorded device~~—an article as defined in this Chapter whose work is allegedly the subject of a violation of G.S. 14-433 or 14-434, shall have a cause of action in the courts of this State for all damages resulting therefrom, including actual, compensatory and incidental damages.

"§ 14-437. Violation of ~~Article a misdemeanor~~—Article; penalties.

(a) Every individual act manufacturer, distribution, sale or transfer of such recorded devices—in contravention of the provisions of this Article shall ~~constitute a misdemeanor punishable by six months in jail, a fine of up to five hundred dollars (\$500.00), or both.~~ constitute:

(1) A Class I felony, punishable by imprisonment for not more than five years, a fine of not more than one hundred fifty thousand dollars (\$150,000), or both, 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 misdemeanor, punishable by imprisonment of not more than two years, a fine of not more than twenty-five thousand dollars (\$25,000), or both, 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; or
- (3) A misdemeanor, punishable by not more than six months in jail, a fine of not more than one thousand dollars (\$1,000), or both, for any other violation of these sections.

(b) If a person is convicted of any violation under this Article, the court, in its judgment of conviction, shall order the forfeiture and destruction or other disposition of:

- (1) All infringing articles; and
(2) All implements, devices and equipment used or intended to be used in the manufacture of the infringing articles."

Sec. 2. This act shall become effective November 1, 1989. This act does not affect litigation pending on the effective date of this act.

In the General Assembly read three times and ratified this the 6th day of July, 1989.