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**SUBSTITUTE HOUSE BILL 1064**

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**State of Washington                      52nd Legislature                      1991 Regular Session**

**By** House Committee on Judiciary (originally sponsored by Representatives Appelwick, Padden, Ludwig, R. Meyers, Belcher, Paris, Miller and Orr).

Read first time February 6, 1991.

1            AN ACT Relating to the protection of recording rights; amending RCW  
2 19.25.010, 19.25.020, 19.25.030, and 19.25.040; adding new sections to  
3 chapter 19.25 RCW; repealing RCW 19.26.010 and 19.26.020; and  
4 prescribing penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6            **Sec. 1.** RCW 19.25.010 and 1974 ex.s. c 100 s 1 are each amended to  
7 read as follows:

8            As used in this chapter((~~7~~)):

9            (1) "Owner" means ((the owner of the master recording, master disc,  
10 master tape, master film, or other device used for reproducing recorded  
11 sound on a phonograph record, disc, tape, film, or other material on  
12 which sound is recorded and from which the transferred recorded sound  
13 is)) a person who owns the sounds fixed in a master phonograph record,  
14 master disc, master tape, master film, or other recording on which

1 sound is or can be recorded and from which the transferred recorded  
2 sounds are directly or indirectly derived.

3 (2) "Fixed" means embodied in a recording or other tangible medium  
4 of expression, by or under the authority of the author, so that the  
5 matter embodied is sufficiently permanent or stable to permit it to be  
6 perceived, reproduced, or otherwise communicated for a period of more  
7 than transitory duration.

8 (3) "Live performance" means a recitation, rendering, or playing of  
9 a series of images; musical, spoken or other sounds; or combination of  
10 images and sounds.

11 (4) "Recording" means a tangible medium on which sounds, images, or  
12 both are recorded or otherwise stored, including an original phonograph  
13 record, disc, tape, audio or video cassette, wire, film, or other  
14 medium now existing or developed later on which sounds, images, or both  
15 are or can be recorded or otherwise stored or a copy or reproduction  
16 that duplicates in whole or in part the original.

17 (5) "Manufacturer" means the entity authorizing the duplication of  
18 the recording in question, but shall not include the manufacturer of  
19 the cartridge or casing itself.

20 **Sec. 2.** RCW 19.25.020 and 1974 ex.s. c 100 s 2 are each amended to  
21 read as follows:

22 ~~((A person commits a gross misdemeanor punishable by a fine not to~~  
23 ~~exceed one thousand dollars and imprisonment not to exceed one year and~~  
24 ~~confiscation of illegal stock, if he:~~

25 ~~(1) Reproduces for sale any sound recording without the written~~  
26 ~~consent of the owner of the master recording; or~~

27 ~~(2) Knowingly sells or offers for sale or advertises for sale any~~  
28 ~~sound recording that has been reproduced without the written consent of~~

1 ~~the owner of the master recording.))~~ (1) A person commits an offense if  
2 the person:

3 (a) Knowingly reproduces for sale or causes to be transferred any  
4 recording with intent to sell it or cause it to be sold or use it or  
5 cause it to be used for commercial advantage or private financial gain  
6 without the consent of the owner;

7 (b) Transports within this state, for commercial advantage or  
8 private financial gain, a recording with the knowledge that the sounds  
9 have been reproduced or transferred without the consent of the owner;  
10 or

11 (c) Advertises, offers for sale, sells, or rents, or causes the  
12 sale, resale, or rental of or possesses for one or more of these  
13 purposes any recording that the person knows has been reproduced or  
14 transferred without the consent of the owner.

15 (2) An offense under this section is a felony punishable by:

16 (a) A fine of not more than two hundred fifty thousand dollars,  
17 imprisonment for not more than ten years, or both if:

18 (i) The offense involves at least one thousand unauthorized  
19 recordings during a one hundred eighty-day period; or

20 (ii) The defendant has been previously convicted under this  
21 section;

22 (b) A fine of not more than two hundred fifty thousand dollars,  
23 imprisonment for not more than five years, or both, if the offense  
24 involves more than one hundred but less than one thousand unauthorized  
25 recordings during a one hundred eighty-day period.

26 (3) Any other offense under this section is a gross misdemeanor  
27 punishable by a fine of not more than twenty-five thousand dollars,  
28 imprisonment for not more than one year, or both.

29 (4) This section does not affect the rights and remedies of a party  
30 in private litigation.

1       (5) This section applies only to recordings that were initially  
2 fixed before February 15, 1972.

3       **Sec. 3.** RCW 19.25.030 and 1974 ex.s. c 100 s 3 are each amended to  
4 read as follows:

5       ~~((This chapter shall not be applicable to the reproduction of any~~  
6 ~~sound recording that is used or intended to be used only for broadcast~~  
7 ~~by commercial or educational radio or television stations.)) (1) A~~  
8 person commits an offense if the person:

9       (a) For commercial advantage or private financial gain advertises,  
10 offers for sale, sells, rents, transports, causes the sale, resale,  
11 rental, or transportation of or possesses for one or more of these  
12 purposes a recording of a live performance with the knowledge that the  
13 live performance has been recorded or fixed without the consent of the  
14 owner; or

15       (b) With the intent to sell for commercial advantage or private  
16 financial gain records or fixes or causes to be recorded or fixed on a  
17 recording a live performance with the knowledge that the live  
18 performance has been recorded or fixed without the consent of the  
19 owner.

20       (2) An offense under this section is a felony punishable by:

21       (a) A fine of not more than two hundred fifty thousand dollars,  
22 imprisonment for not more than ten years, or both, if:

23       (i) The offense involves at least one thousand unauthorized  
24 recordings embodying sound or at least one hundred unauthorized  
25 audiovisual recordings during a one hundred eighty-day period; or

26       (ii) The defendant has been previously convicted under this  
27 section; or

28       (b) A fine of not more than two hundred fifty thousand dollars,  
29 imprisonment for not more than five years, or both, if the offense

1 involves more than one hundred but less than one thousand unauthorized  
2 recordings embodying sound or more than ten but less than one hundred  
3 unauthorized audiovisual recordings during a one hundred eighty-day  
4 period.

5 (3) Any other offense under this section is a gross misdemeanor  
6 punishable by a fine of not more than twenty-five thousand dollars,  
7 imprisonment for not more than one year, or both.

8 (4) In the absence of a written agreement or law to the contrary,  
9 the performer or performers of a live performance are presumed to own  
10 the rights to record or fix those sounds.

11 (5) For the purposes of this section, a person who is authorized to  
12 maintain custody and control over business records that reflect whether  
13 or not the owner of the live performance consented to having the live  
14 performance recorded or fixed is a competent witness in a proceeding  
15 regarding the issue of consent.

16 (6) This section does not affect the rights and remedies of a party  
17 in private litigation.

18 **Sec. 4.** RCW 19.25.040 and 1974 ex.s. c 100 s 4 are each amended to  
19 read as follows:

20 ~~((This chapter shall not be applicable to the reproduction of a~~  
21 ~~sound recording defined as a public record of any court, legislative~~  
22 ~~body, or proceedings of any public body, whether or not a fee is~~  
23 ~~charged or collected therefor.))~~

24 (1) A person is guilty of failure to disclose the origin of a  
25 recording when, for commercial advantage or private financial gain, the  
26 person knowingly advertises, or offers for sale, resale, or rent, or  
27 sells or resells, or rents, leases, or lends, or possesses for any of  
28 these purposes, any recording which does not contain the true name and

1 address of the manufacturer in a prominent place on the cover, jacket,  
2 or label of the recording.

3 (2) An offense under this section is a felony punishable by:

4 (a) A fine of not more than two hundred fifty thousand dollars,  
5 imprisonment for not more than ten years, or both, if:

6 (i) The offense involves at least one hundred unauthorized  
7 recordings during a one hundred eighty-day period; or

8 (ii) The defendant has been previously convicted under this  
9 section;

10 (b) A fine of not more than two hundred fifty thousand dollars,  
11 imprisonment for not more than five years, or both, if the offense  
12 involves more than ten but less than one hundred unauthorized  
13 recordings during a one hundred eighty-day period.

14 (3) Any other offense under this section is a gross misdemeanor  
15 punishable by a fine of not more than twenty-five thousand dollars,  
16 imprisonment for not more than one year, or both.

17 (4) This section does not affect the rights and remedies of a party  
18 in private litigation.

19 NEW SECTION. Sec. 5. A new section is added to chapter 19.25 RCW  
20 to read as follows:

21 (1) All recordings which have been fixed, transferred, or possessed  
22 without the consent of the owner in violation of RCW 19.25.020 or  
23 19.25.030, and any recording which does not contain the true name and  
24 address of the manufacturer in violation of RCW 19.25.040 shall be  
25 deemed to be contraband. The court shall order the seizure,  
26 forfeiture, and destruction or other disposition of such contraband.

27 (2) The owner or the prosecuting attorney may institute proceedings  
28 to forfeit contraband recordings. The provisions of this subsection  
29 shall apply to any contraband recording, regardless of lack of

1 knowledge or intent on the part of the possessor, retail seller,  
2 manufacturer, or distributor.

3 (3) Whenever a person is convicted of a violation under this  
4 chapter, the court, in its judgment of conviction, shall, in addition  
5 to the penalty therein prescribed, order the forfeiture and destruction  
6 or other disposition of all contraband recordings and any and all  
7 electronic, mechanical, or other devices for manufacturing,  
8 reproducing, packaging, or assembling such recordings, which were used  
9 to facilitate any violation of this chapter.

10 NEW SECTION. **Sec. 6.** A new section is added to chapter 19.25 RCW  
11 to read as follows:

12 This chapter does not apply to:

13 (1) Any recording that is used or intended to be used only for  
14 broadcast by commercial or educational radio or television stations;

15 (2) Any recording that is received in the ordinary course of a  
16 broadcast by a commercial or educational radio or television station  
17 where no recording is made of the broadcast; or

18 (3) Any recording defined as a public record of any court,  
19 legislative body, or proceedings of any public body, whether or not a  
20 fee is charged or collected for copies.

21 NEW SECTION. **Sec. 7.** If any provision of this act or its  
22 application to any person or circumstance is held invalid, the  
23 remainder of the act or the application of the provision to other  
24 persons or circumstances is not affected.

25 NEW SECTION. **Sec. 8.** The following acts or parts of acts are  
26 each repealed:

27 (1) RCW 19.26.010 and 1971 ex.s. c 113 s 1; and

1 (2) RCW 19.26.020 and 1971 ex.s. c 113 s 2.