

434.445 Unauthorized reproduction and distribution of recorded article or device for sale or rent -- Exemption -- Confiscation and destruction -- Penalties.

- (1) Any person who knowingly transfers or causes to be transferred 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 for profit or used to promote the sale of any product, such article on which sounds are so transferred without the consent of the owner, shall be guilty of a Class D felony. Each individual manufacture of such recorded article shall constitute a separate offense. "Owner," for purposes of this section, means the person who owns the original fixation of sounds embodied in the master phonograph record, master disc, master tape, master film, or other device used for reproducing sounds on phonograph records, discs, tapes, films, or other articles upon which sound is recorded and from which the transferred recorded sounds are directly derived.
- (2) Any person who knowingly transfers or causes to be transferred to any phonograph record, disc, wire, tape, film, or other article, any performance, whether live before an audience or transmitted by wire or through the air by radio or television, with the intent to sell or cause to be sold for profit or used to promote the sale of any product, such article onto which such performance is or distributes, causes the distribution of, or possesses for one (1) or more of these purposes, to be transferred without the consent of the performer, shall be fined not less than five hundred dollars (\$500) nor more than three thousand dollars (\$3,000) or confined in the penitentiary for not less than one (1) year nor more than five (5) years, or both. Each individual transfer or manufacture of such recorded article shall constitute a separate offense. For purposes of this section, a person who is authorized to maintain custody and control over business records that reflect whether or not the owner of the live performance consented to having the live performance recorded or fixed is a proper witness in a proceeding regarding the issue of consent.
- (3) Any person who knowingly, or with reasonable grounds to know, advertises or offers for sale or resale, or sells or resells, or as a renter, rents or causes the rental of, or distributes or possesses for such purposes any sound recording manufactured without the consent of the owner, as defined in subsection (1) of this section, or any sound recording manufactured without the consent of the performer shall, be guilty of a Class D felony. Possession of five (5) or more duplicate copies or twenty (20) or more individual copies of such recorded articles, produced without the consent of the owner, shall create a rebuttable presumption that such devices are intended for sale or distribution in violation of this section. Each sale or resale of any such article shall constitute a separate offense.
- (4) Any person who knowingly sells or distributes, offers to sell or distribute, possesses for the purpose of sale or distribution any phonograph record, disc, wire, tape, film, or other article now known or later developed on which sounds, images, or both sounds and images have been transferred unless such phonograph record, disc, wire, tape, film, or other article bears the true name and address of the transferor of the sounds and the name of the actual performer or group in a prominent place on its packaging shall be guilty of a Class D felony. Each sale or distribution of any such

article shall constitute a separate offense.

- (5) This section does not apply to any person who transfers or causes to be transferred any such sounds or images intended for or in connection with radio or television broadcast or cable transmission or related uses, or for archival purposes, or solely for the personal use of the person transferring or causing the transfer and without any compensation being derived by the person from the transfer.
- (6) It shall be the duty of all peace officers within the Commonwealth of Kentucky and the Department of Kentucky State Police upon discovery to confiscate the recorded devices produced in violation of this section. Any recorded device produced in violation of this section, which has come into the custody of a peace officer, shall be forfeited and destroyed by the court having jurisdiction. A record of the place where said recorded devices were seized, the kinds and quantities of recorded devices so destroyed, and of the time, place, and manner of the destruction, shall be kept.

Effective: June 26, 2007

History: Amended 2007 Ky. Acts ch. 85, sec. 317, effective June 26, 2007. -- Amended 1992 Ky. Acts ch. 108, sec. 1, effective July 14, 1992. -- Amended 1978 Ky. Acts ch. 321, sec. 2, effective June 17, 1978. -- Created 1974 Ky. Acts ch. 120, sec. 1.