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(FORM UPDATED: 08/11/2010)

**WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS**

1999-00

(session year)

Assembly

(Assembly, Senate or Joint)

**Committee on ... Judiciary and Personal Privacy
(AC-JPP)**

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Mike Barman (LRB) (May/2012)

Assembly

Record of Committee Proceedings

Committee on Judiciary and Personal Privacy

Assembly Bill 614

Relating to: unauthorized duplication of a recording, unauthorized recording of a performance, failure to disclose manufacturer of a recording, unauthorized use of a recording device in a movie theater and providing a penalty.

By Representatives Pettis, Kestell, Jensen, Coggs, Underheim, Klusman, Sykora, Albers, Olsen, Nass, Ward, Handrick, Vrakas, Staskunas, Kreibich, Walker, Musser, Kaufert and Bock; cosponsored by Senators George, Rosenzweig, Panzer, Breske and Grobschmidt.

December 1, 1999 Referred to committee on Judiciary and Personal Privacy.

January 18, 2000 **PUBLIC HEARING HELD**

Present: (9) Representatives Huebsch, Gundrum, Walker, Suder, Grothman, Sherman, Colon, Hebl and Staskunas.

Absent: (0) None.

Appearances for

- Rep. Mark Pettis, 28th Assembly District
- Don Valdez, Recording Industry Association of America
- John Langley, Recording Industry Association of America
- Pete Christianson, Motion Picture Association of America

Appearances against

- None.

Appearances for Information Only

- None.

Registrations for

- Richard Williams, Madison Police Dept.
- Ron Hermes, National Association of Theatre Owners
- Dan Rossmiller on behalf of Senator Gary George

Registrations against

- None.

February 2, 2000 **EXECUTIVE SESSION**

Present: (9) Representatives Huebsch, Gundrum, Walker, Suder, Grothman, Sherman, Colon, Hebl and Staskunas.

Absent: (0) None.

Moved by Representative Huebsch, seconded by Representative Gundrum, that **Assembly Amendment 1 to Assembly Bill 614** be recommended for introduction.

Ayes: (9) Representatives Huebsch, Gundrum, Walker, Suder, Grothman, Sherman, Colon, Hebl and Staskunas.

Noes: (0) None.

Absent: (0) None.

INTRODUCTION RECOMMENDED, Ayes 9, Noes 0, Absent 0

Moved by Representative Grothman, seconded by Representative Gundrum, that **Assembly Amendment 1 to Assembly Bill 614** be recommended for adoption.

Ayes: (5) Representatives Huebsch, Gundrum, Walker, Grothman and Staskunas.

Noes: (4) Representatives Suder, Sherman, Colon and Hebl.

Absent: (0) None.

ADOPTION RECOMMENDED, Ayes 5, Noes 4, Absent 0

Moved by Representative Huebsch, seconded by Representative Gundrum, that **Assembly Amendment 2 to Assembly Bill 614** be recommended for introduction.

Ayes: (9) Representatives Huebsch, Gundrum, Walker, Suder, Grothman, Sherman, Colon, Hebl and Staskunas.

Noes: (0) None.

Absent: (0) None.

INTRODUCTION RECOMMENDED, Ayes 9, Noes 0, Absent 0

Moved by Representative Hebl, seconded by Representative Colon, that **Assembly Amendment 2 to Assembly Bill 614** be recommended for adoption.

Ayes: (3) Representatives Colon, Hebl and Staskunas.
Noes: (6) Representatives Huebsch, Gundrum, Walker, Suder, Grothman and Sherman.
Absent: (0) None.

ADOPTION RECOMMENDED, Ayes 3, Noes 6, Absent 0

Moved by Representative Huebsch, seconded by Representative Gundrum, that **Assembly Amendment 3 to Assembly Bill 614** be recommended for introduction.

Ayes: (9) Representatives Huebsch, Gundrum, Walker, Suder, Grothman, Sherman, Colon, Hebl and Staskunas.
Noes: (0) None.
Absent: (0) None.

INTRODUCTION RECOMMENDED, Ayes 9, Noes 0, Absent 0

Moved by Representative Sherman, seconded by Representative Hebl, that **Assembly Amendment 3 to Assembly Bill 614** be recommended for adoption.

Ayes: (4) Representatives Sherman, Colon, Hebl and Staskunas.
Noes: (5) Representatives Huebsch, Gundrum, Walker, Suder and Grothman.
Absent: (0) None.

ADOPTION RECOMMENDED, Ayes 4, Noes 5, Absent 0

Moved by Representative Walker, seconded by Representative Gundrum, that **Assembly Bill 614** be recommended for passage as amended.

Ayes: (8) Representatives Huebsch, Gundrum, Walker, Suder, Grothman, Sherman, Hebl and Staskunas.
Noes: (1) Representative Colon.

Absent: (0) None.

PASSAGE AS AMENDED RECOMMENDED, Ayes 8, Noes 1,
Absent 0

A handwritten signature in black ink, appearing to read "Robert Delaporte", written over a horizontal line.

Robert Delaporte
Committee Clerk

Vote Record

Assembly Committee on Judiciary and Personal Privacy

Date: 2-2-00
 Moved by: Groth Seconded by: Gundrum
 AB: 614 Clearinghouse Rule: _____
 SB: _____ Appointment: _____
 AJR: _____ SR: _____ Other: _____
 A: _____

A/S Amdt: 1 LRB 1235/1
 A/S Amdt: _____ to A/S Amdt: _____
 A/S Sub Amdt: _____
 A/S Amdt: _____ to A/S Sub Amdt: _____
 A/S Amdt: _____ to A/S Amdt: _____ to A/S Sub Amdt: _____

- Be recommended for:
- | | |
|--|--|
| <input type="checkbox"/> Passage | <input type="checkbox"/> Indefinite Postponement |
| <input checked="" type="checkbox"/> Introduction | <input type="checkbox"/> Tabling |
| <input checked="" type="checkbox"/> Adoption | <input type="checkbox"/> Concurrence |
| <input type="checkbox"/> Rejection | <input type="checkbox"/> Nonconcurrence |
| | <input type="checkbox"/> Confirmation |

Committee Member	Aye	No	Absent	Not Voting
Rep. Michael Huebsch, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Mark Gundrum	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Scott Walker	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Scott Suder	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Glenn Grothman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Gary Sherman	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Pedro Colon	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Tom Hebl	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Tony Staskunas	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Totals: 5 4 _____ _____

Motion Carried

Motion Failed

Vote Record

Assembly Committee on Judiciary and Personal Privacy

Date: 2-2-00
 Moved by: Hebl Seconded by: Colon
 AB: 614 Clearinghouse Rule: _____
 AB: _____ Appointment: _____
 AJR: _____ SR: _____ Other: _____
 A: _____ SR: _____

A/S Amdt: (2) 125711
 A/S Amdt: _____ to A/S Amdt: _____
 A/S Sub Amdt: _____
 A/S Amdt: _____ to A/S Sub Amdt: _____
 A/S Amdt: _____ to A/S Amdt: _____ to A/S Sub Amdt: _____

- Be recommended for:
- | | |
|--|--|
| <input type="checkbox"/> Passage | <input type="checkbox"/> Indefinite Postponement |
| <input checked="" type="checkbox"/> Introduction | <input type="checkbox"/> Tabling |
| <input checked="" type="checkbox"/> Adoption | <input type="checkbox"/> Concurrence |
| <input type="checkbox"/> Rejection | <input type="checkbox"/> Nonconcurrency |
| | <input type="checkbox"/> Confirmation |

Committee Member	Aye	No	Absent	Not Voting
Rep. Michael Huebsch, Chair	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Mark Gundrum	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Scott Walker	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Scott Suder	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Glenn Grothman	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Gary Sherman	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Pedro Colon	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Tom Hebl	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Tony Staskunas	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Totals:	<u>3</u>	<u>6</u>	_____	_____

Vote Record

Assembly Committee on Judiciary and Personal Privacy

Date: 2-2-00
 Moved by: Sherman Seconded by: Hebl
 AB: 614 Clearinghouse Rule: _____
 AB: _____ SB: _____ Appointment: _____
 AJR: _____ SJR: _____ Other: _____
 A: _____ SR: _____
 A/S Amdt: (1258) 3
 A/S Amdt: _____ to A/S Amdt: _____
 A/S Sub Amdt: _____
 A/S Amdt: _____ to A/S Sub Amdt: _____
 A/S Amdt: _____ to A/S Amdt: _____ to A/S Sub Amdt: _____

Be recommended for:

- | | |
|--|--|
| <input type="checkbox"/> Passage | <input type="checkbox"/> Indefinite Postponement |
| <input checked="" type="checkbox"/> Introduction | <input type="checkbox"/> Tabling |
| <input checked="" type="checkbox"/> Adoption | <input type="checkbox"/> Concurrence |
| <input type="checkbox"/> Rejection | <input type="checkbox"/> Nonconcurrency |
| | <input type="checkbox"/> Confirmation |

Committee Member

Rep. Michael Huebsch, Chair
 Rep. Mark Gundrum
 Rep. Scott Walker
 Rep. Scott Suder
 Rep. Glenn Grothman
 Rep. Gary Sherman
 Rep. Pedro Colon
 Rep. Tom Hebl
 Rep. Tony Staskunas

Aye	No	Absent	Not Voting
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Totals: 4 3 _____ _____

Motion Carried

Motion Failed

Vote Record

Assembly Committee on Judiciary and Personal Privacy

Date: 2-2-00
 Moved by: Walker Seconded by: Gundrum
 AB: 614 Clearinghouse Rule: _____
 AB: _____ SB: _____ Appointment: _____
 AJR: _____ SJR: _____ Other: _____
 A: _____ SR: _____

A/S Amdt: _____
 A/S Amdt: _____ to A/S Amdt: _____
 A/S Sub Amdt: _____
 A/S Amdt: _____ to A/S Sub Amdt: _____
 A/S Amdt: _____ to A/S Amdt: _____ to A/S Sub Amdt: _____

- Be recommended for:
- Passage *as amended*
 - Introduction
 - Adoption
 - Rejection
 - Indefinite Postponement
 - Tabling
 - Concurrence
 - Nonconcurrence
 - Confirmation

Committee Member	Aye	No	Absent	Not Voting
Rep. Michael Huebsch, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Mark Gundrum	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Scott Walker	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Scott Suder	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Glenn Grothman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Gary Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Pedro Colon	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Tom Hebl	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Tony Staskunas	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Totals:	<u>8</u>	<u>1</u>	_____	_____

Motion Carried Motion Failed

Vote Record

Assembly Committee on Judiciary and Personal Privacy

Date: 1-27-00
Moved by: Walk
AB: 619 Seconded by: Stask
AB: _____ Clearinghouse Rule: _____
AJR: _____ Appointment: _____
A: _____ SR: _____ Other: _____

A/S Amdt: _____
A/S Amdt: _____ to A/S Amdt: _____
A/S Sub Amdt: _____
A/S Amdt: _____ to A/S Sub Amdt: _____
A/S Amdt: _____ to A/S Amdt: _____ to A/S Sub Amdt: _____

Be recommended for:

- Passage
- Introduction
- Adoption
- Rejection

- Indefinite Postponement
- Tabling
- Concurrence
- Nonconcurrence
- Confirmation

Committee Member	Aye	No	Absent	Not Voting
Rep. Michael Huebsch, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Mark Gundrum	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Scott Walker	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Scott Suder	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Glenn Grothman	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Gary Sherman	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Pedro Colon	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Tom Hebl	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Tony Staskunas	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Totals: _____

Motion Carried

Motion Failed





WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701-2536
Telephone: (608) 266-1304
Fax: (608) 266-3830
Email: leg.council@legis.state.wi.us

DATE: January 14, 2000

TO: REPRESENTATIVE MICHAEL HUEBSCH, CHAIRPERSON, ASSEMBLY
COMMITTEE ON JUDICIARY

FROM: Don Dyke, Senior Staff Attorney

SUBJECT: 1999 Assembly Bill 614, Relating to Unauthorized Duplication of a
Recording, Unauthorized Recording of a Performance, Failure to Disclose
Manufacturer of a Recording, Unauthorized Use of a Recording Device in a
Movie Theater and Providing a Penalty

This memorandum, prepared at your request, describes the provisions of the above-captioned bill.

1999 Assembly Bill 614: (a) revises a current crime relating to transfer of recorded sounds for unlawful use; (b) creates a new crime relating to recording a performance without the consent of the performance owner; (c) creates a new crime relating to failure to disclose the manufacturer of a recording; and (d) creates a new crime relating to the unlawful use of a recording device in a motion picture theater and distribution of a recording made by that unlawful use.

A. DEFINITIONS

Assembly Bill 614 provides definitions that apply to three of the crimes treated by the bill: transfer of recorded sounds for unlawful use; recording a performance without consent of the performance owner; and failure to disclose the manufacturer of a recording. Definitions are provided for the following terms: "manufacturer"; "owner" (this is a revision of the current definition in s. 943.206 (2), Stats.); "performance"; "performance owner"; and "recording." The definitions are set forth in the attachment to this memorandum.

B. TRANSFER OF RECORDED SOUNDS FOR UNLAWFUL USE

Under current s. 943.207, Stats., a person may not: (1) knowingly and wilfully transfer recorded sounds without the consent of the owner with intent to sell the device onto which the

sounds are transferred [s. 943.207 (1) (a), Stats.]; and (2) may not advertise, offer for sale or sell the device onto which such sounds have been transferred with knowledge that the sounds were transferred onto the device without the consent of the owner. [s. 943.207 (1) (b), Stats.]

A person violating the above prohibitions is guilty of a Class B misdemeanor. [s. 943.207 (3), Stats.] A subsequent conviction for the first-listed offense is punishable as a Class A misdemeanor. Under the current statute, each unlawful transfer and each unlawful advertisement, offer for sale or sale constitutes a separate offense.

Assembly Bill 614 makes the following changes to s. 943.207, Stats.:

1. With regard to the intentional transfer of recorded sounds without the consent of the owner with intent to sell, limits the prohibition to transfer any sounds "first embodied in or on a recording before February 15, 1972." According to the Legislative Reference Bureau, a federal copyright law protects recordings made after that date and the federal law preempts state law.

2. Expands the prohibition on intentional nonconsensual transfer of recorded sounds with intent to sell to also include transfers with intent to rent the recording into or onto which such sounds are transferred.

3. Restricts the prohibition on nonconsensual transfers of recorded sounds with intent to sell or rent the recording to intent to sell or rent "for commercial advantage or private financial gain."

4. Expands the prohibition against advertising, offering for sale or selling a recording onto which sounds have been unlawfully transferred to include offering for rent, renting or possessing the recording.

5. Prohibits transporting a recording within the state for commercial advantage or private financial gain with knowledge that sounds have been unlawfully transferred into or onto the recording.

6. Revises penalties, as described below.

Assembly Bill 614 provides a range of penalties for violation of s. 943.207 from a Class A misdemeanor to a Class C felony. Whoever violates the section is guilty of a Class A misdemeanor under the following circumstances: (1) the violation involves 100 or fewer recordings during a 180-day period; or (2) the violation involves transferring sounds on or to the Internet and the transferred sounds are never replayed or are replayed by others from the Internet 100 or fewer times during a 180-day period.

A person who violates the section is guilty of a Class D felony under the following circumstances: (1) the violation involves more than 100 but less than 1,000 recordings during a 180-day period; or (2) the violation involves transferring sounds on or to the Internet and the transferred sounds are replayed by others from the Internet more than 100 but less than 1,000 times during a 180-day period.

A person who violates the section is guilty of a Class C felony under the following circumstances: (1) the violation involves at least 1,000 recordings during a 180-day period; or (2) the violation involves transferring sounds on or to the Internet and the transferred sounds are replayed by others from the Internet at least 1,000 times during a 180-day period; or (3) the violation occurs after the person has been convicted under the section.

C. PROHIBITION AGAINST RECORDING PERFORMANCE WITHOUT CONSENT OF PERFORMANCE OWNER

Assembly Bill 614 prohibits the following if done for commercial advantage or private gain: (1) creating a recording of a performance without consent of the performance owner and with intent to sell or rent the recording; (2) advertising, offering for sale or rent, selling, renting or transporting a recording of a performance with knowledge that the performance sounds or images embodied in the recording were recorded without the consent of the performance owner; and (3) possessing with intent to advertise, offer for sale or rent, sell, rent or transport a recording of a performance with knowledge that the performance sounds or images embodied in the recording were recorded without the consent of the performance owner.

Under the bill, whoever violates the above:

1. Is guilty of a Class A misdemeanor if the violation involves 100 or fewer recordings embodying sound or 10 or fewer audiovisual recordings during a 180-day period.
2. Is guilty of a Class D felony if the violation involves more than 100 but less than 1,000 recordings embodying sound or more than 10 but less than 100 audiovisual recordings during a 180-day period.
3. Is guilty of a Class C felony if the violation involves at least 1,000 recordings embodying sound or at least 100 audiovisual recordings during a 180-day period or if the violation occurs after the person has been convicted under the section.

D. FAILURE TO DISCLOSE MANUFACTURER OF RECORDING

Assembly Bill 614 prohibits the following if done for commercial advantage or private financial gain:

1. Knowingly advertising, offering for sale or rent, selling, renting or transporting a recording that does not contain the name and address of the manufacturer in a prominent place on the cover, jacket or label of the recording.
2. Possessing with intent to advertise, offer for sale or rent, sell, rent or transport a recording that does not contain the name and address of the manufacturer in a prominent place on the cover, jacket or label of the recording.

Under the bill, whoever violates the above:

1. Is guilty of a Class A misdemeanor if the violation involves 10 or fewer recordings during a 180-day period.

2. Is guilty of a Class D felony if the violation involves more than 10 but less than 100 recordings during a 180-day period.

3. Is guilty of a Class C felony if the violation involves at least 100 recordings during a 180-day period or if the violation occurs after the person has been convicted under the section.

E. RECORDING DEVICE IN MOTION PICTURE THEATER AND DISTRIBUTION OF RECORDING

1. Unlawful Use in Theater

Assembly Bill 614 prohibits a person from operating a recording device in a motion picture theater without written authorization from the theater owner or the owner's agent. "Recording device" is defined as "a camera, an audio or video recorder or any other device that may be used to record or transfer sounds or images." Violation of the prohibition is punishable as a Class A misdemeanor unless the violation occurs after a previous conviction, in which case a violation is punishable as a Class D felony.

2. Distributing Copies of Unlawfully Recorded Movies

Assembly Bill 614 prohibits the following if done for a commercial advantage or private financial gain:

a. Advertising, offering for sale or renting, selling, renting or transporting a recording of a movie with knowledge that the sounds or images on the recording were transferred from a recording made in violation of the prohibition against unauthorized use of a recording device in a movie theater.

b. Possessing with intent to advertise, offer for sale or rent, sell, rent or transport a recording of a movie with knowledge that the sounds or images on the recording were transferred from a recording made in violation of the prohibition against unauthorized use of a recording device in a movie theater.

Whoever violates the above:

a. Is guilty of a Class A misdemeanor if:

(1) The violation involves 10 or fewer recordings during a 180-day period; or

(2) The violation involves transferring sounds on or to the Internet and the transferred sounds are never replayed or are replayed by others from the Internet 100 or fewer times during a 180-day period.

b. Is guilty of a Class D felony if:

- (1) The violation involves more than 10 but less than 100 recordings during a 180-day period; or
 - (2) The violation involves transferring sounds on or to the Internet and the transferred sounds are replayed by others from the Internet more than 100 but less than 1,000 times during a 180-day period.
- c. Is guilty of a Class C felony if:
- (1) The violation involves at least 100 recordings during a 180-day period;
 - (2) The violation involves transferring sounds on or to the Internet and the transferred sounds are replayed by others from the Internet at least 1,000 times during a 180-day period; or
 - (3) The violation occurs after the person has been convicted under the section.

3. Detention of Person Committing Violation

Assembly Bill 614 provides that a theater owner, a theater owner's adult employe or a theater owner's security agent who has reasonable cause to believe that a person has violated any of the above in his or her presence may detain the person in a reasonable manner for a reasonable length of time to deliver the person to a peace officer or to his or her parent or guardian in the case of a minor. The detained person must be promptly informed of the purpose for the detention and permitted to make telephone calls. The person may not be interrogated or searched against his or her will before the arrival of a peace officer, who may conduct a lawful interrogation of the accused person. The theater owner, the adult employe or the security agent may release the detained person before the arrival of a peace officer or a parent or guardian. Any theater owner, theater owner's adult employe or theater owner's security agent who acts in good faith in any act authorized under these provisions is immune from civil or criminal liability for those acts.

F. FORFEITURE OF RECORDINGS AND RELATED DEVICES

Assembly Bill 614 subjects to seizure and forfeiture any recording used in violation of the bill's prohibitions and any electronic, mechanical or other device for making a recording or for manufacturing, reproducing, packaging or assembling a recording that was used to facilitate a violation of the prohibitions, regardless of the knowledge or intent of the person from whom the recording or device is seized. The proposal requires that the holder of a bona fide perfected security interest without knowledge of or consent to a violation must be paid from the proceeds of the forfeiture.

Assembly Bill 614 provides that if a recording involved in a violation of the crimes described under Sections B., C. and D., above, is forfeited, the sheriff of the county in which the recording was seized must destroy it if no longer needed for evidence.

The bill also provides that if a recording or device is seized and no forfeiture proceeding is commenced within a specified time after seizure or conviction, the prosecutor must notify the owner, if known, by certified mail. The prosecutor then must return the property to the person from whom it was seized no earlier than 60 days and no later than 90 days after a specified time, unless:

1. A court has entered an order prohibiting the return of the property or requiring it to be conveyed to another person; or
2. The property is needed as evidence in a criminal proceeding and is likely to be unavailable for use as evidence if returned.

If you have any questions or need additional information, please contact me directly at the Legislative Council Staff offices.

DD:rv:tl;wu

Attachment

ATTACHMENT

**Definitions Applicable to ss. 943.207 to 943.209, Stats.,
as Treated by 1999 Assembly Bill 614**

- (1) "Manufacturer" means a person who transfers sounds to a recording.
- (2) "Owner" means the person who owns from which the transferred sounds are directly or indirectly derived.
- (3) "Performance" means a recital, rendering or playing of a series of words or other sounds, either alone or in combination with images or physical activity.
- (4) "Performance owner" means the performer or performers or the person to whom the performer or performers have transferred, through a contract, the right to sell recordings of a performance.
- (5) "Recording" means a medium on or in which sounds or images or both are stored.





January 17, 2000

To: Members of the Assembly Committee on
Judiciary and Personal Privacy

From: Pete Christianson and Tom Fonfara, for the Motion Picture Association of America

Re: Assembly Bill 614 Merits Support

We appear today in support of Assembly Bill 614 on behalf of the Motion Picture Association of America ("the MPAA"). The MPAA serves as the voice and advocate of the American motion picture, home video, and television industries; it represents not only the world of theatrical film but also serves as the leader and advocate for the major producers and distributors of entertainment programming for television, cable, home video, and future delivery systems not yet imagined. Its member companies are Walt Disney Company; Sony Pictures Entertainment, Inc.; Metro-Goldwyn-Mayer, Inc.; Paramount Pictures Corporation; Twentieth Century Fox Film Corp.; Universal Studios, Inc.; and Warner Bros.

AB 614 would prohibit the unauthorized duplication of a recording, unauthorized recording of a performance, and unauthorized use of a recording device in a movie theater. It would also require disclosure of the "true name" of the manufacturer of a recording. The purpose of the bill is to enact a "counterfeiting" statute that can be enforced in the State of Wisconsin. While all of these activities are covered by federal law, that law cannot be enforced in state court. Today, 45 states have already enacted similar laws which parallel the applicable federal law.

Virtually all forms of artistic expression are subject to counterfeiting today. As each new medium develops, so do methods of copying. Unauthorized copying or recording harms all aspects of the entertainment industry, from the creators (including writers, producers, actors, and singers) to distributors, theaters, and retailers. Even the State of Wisconsin, counties, and other local governmental bodies lose as unauthorized recordings are sold without the collection of the state, county, and local (where applicable) sales taxes.

The unauthorized use of a recording device in a movie theater would be proscribed in SECTION 10 of the bill (page 8, line 19, through page 11, line 12). It is now possible to tape recently-released motion pictures using new technology. Under current law, a retailer who suspects a store patron of shoplifting is permitted to detain that individual pending arrival of the police. SECTION 10 would permit theater personnel to similarly detain an individual suspected of using a recording device in a movie theater.

Finally, perhaps a few words about the "true name" section of the bill are merited. SECTION 9 of the bill (page 7, line 20, through page 8, line 19) would make it a crime to sell, rent, or offer for sale a recording which does not disclose the name and address of the manufacturer in a prominent place on the cover, jacket, or label of the recording. This section of the bill is very important, for it permits easy identification of the manufacturer of a recording, thus facilitating enforcement of the law.

Your support for AB 614 would be greatly appreciated.



**Testimony for Assembly Bill 614
Representative Mark Pettis
January 17, 2000**

Mr. Chairman, members of the committee, thank you for the opportunity to testify on Assembly Bill 614.

This bill address the explosive advances made in recording technology and the corresponding increase in the level of piratical and counterfeiting activities that have necessitated changes in our laws to respond to these new challenges.

Pirates, bootleggers, and counterfeiters now have at their disposal the technology by which near perfect copies and/or recording may be produced.

The present law in Wisconsin does not adequately address the problem of piratical activities. Stiffer penalties under the current statute and additional new laws are needed to adequately deal with this problem.

Wisconsin has become a target to piratical activities because of the state's lax or no-existent laws that deal with this type of illegal activity. The relatively small fine is simply considered a cost of doing business for many of these types of brokers.

Wisconsin does not have a "true name and address" statute requires the disclosure of the true name and address of the manufacturer of a sound recording. The laws are useful in that counterfeiters, by their very nature, will not disclose the correct name of the manufacturer. Forty-five other states have adopted this statute.

With the advances of technology and proliferation of the Internet, video bootlegging is on the increase. Movies and live performances are often an easy target of bootleggers. Because our state is a magnet for a large volume of concerts and the high concentration of communities with colleges, a greater number of bootlegger are attracted to Wisconsin to set up shop. Again, because of a lack of a bootlegging statute, Wisconsin is a target of such activities. Thirty-two other states have adopted this type of bootlegging legislation.

The fact is counterfeiters are keeping up with technology. Recently it was discovered that computer hackers now have created a program, available for free on the Internet, that cracks the codes used to encrypt DVD movies and prevents the unauthorized copying. Wisconsin law must keep up with these new methods of piracy.

Finally, consumers, retailers and distributors, recording artists and actors, record companies, movies theaters and video retailers and more are hurt by piracy and bootlegging. The unauthorized use of intellectual property is simply wrong. I urge the committee to carefully consider this bill and I thank you for your time.





State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
P. O. BOX 2037
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STEPHEN R. MILLER
CHIEF

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LEGAL FAX: (608) 264-8522

REFERENCE SECTION: (608) 266-0341
REFERENCE FAX: (608) 266-5648

February 1, 2000

MEMORANDUM

To: Don Nelson, office of Rep. Mark Pettis

From: Jefren E. Olsen, Legislative Attorney, (608) 266-8906

Subject: 1999 LRBa1235/1 to 1999 Assembly Bill 614

1999 Assembly Bill 614 (AB-614) provides penalties for certain offenses involving unauthorized duplication of a recording, unauthorized recording of a performance and failure to disclose the manufacturer of a recording. 1999 LRBa1235/1 (the amendment) revises the penalty scheme provided in AB-614. You asked for a memorandum setting out, in a form similar to that in the analysis of AB-614, the penalties provided under the amendment.

Under AB-614, a violation is generally classified based on the number of recordings involved or, in the case of a recording distributed on the Internet, the number of times the recording was replayed by another person during a 180-day period. Under the amendment, if the number of the recordings or replays falls below a specified threshold, then the penalty is based on the value of the recordings or replays. The penalties provided under the amendment are as follows:

Pirated sound recordings

With respect to penalties for a "pirated" sound recording, the amendment provides that if the number of recordings or Internet replays is less than 1,000, then the penalty is based on the value of the recordings or replays, as follows:

<i>Number of recordings/replays involved during a 180-day period and value of recordings/replays, if applicable</i>	<i>Classification</i>
Fewer than 1,000, with a value not exceeding \$2,500	Class A misdemeanor
Fewer than 1,000, with a value exceeding \$2,500	Class D felony
1,000 or more, regardless of value	Class C felony

Bootlegging (recording a performance without consent)

With respect to the penalties for the "bootlegging" crime created by AB-614, if the number of the sound recordings is less than 1,000 or the number of audiovisual recordings is less than 100, then the penalty is based on the value of the recordings, as follows:

<i>Number of recordings involved during a 180-day period and value of recordings, if applicable</i>	<i>Classification</i>
Fewer than 1,000 recordings embodying sound or fewer than 100 audiovisual recordings, with the value of the recordings not exceeding \$2,500	Class A misdemeanor
Fewer than 1,000 recordings embodying sound or fewer than 100 audiovisual recordings, with the value of the recordings exceeding \$2,500	Class D felony
1,000 or more recordings embodying sound or 100 or more audiovisual recordings, regardless of value	Class C felony

Counterfeit recordings

With respect to the penalties for violations relating to counterfeit recordings, if the number of the recordings is fewer than 100, then the penalty is based on the value of the recordings, as follows:

<i>Number of recordings involved during a 180-day period and value of recordings, if applicable</i>	<i>Classification</i>
Fewer than 100, with a value not exceeding \$2,500	Class A misdemeanor
Fewer than 100, with a value exceeding \$2,500	Class D felony
100 or more, regardless of value	Class C felony

Unlawfully recorded movies

With respect to violations involving unlawfully recorded movies, the amendment provides that if the number of the recordings or Internet replays is less than 1,000, then the penalty is based on the value of the recordings or replays, as follows:

<i>Number of recordings/replays involved during a 180-day period and value of recordings/replays, if applicable</i>	<i>Classification</i>
Fewer than 1,000, with a value not exceeding \$2,500	Class A misdemeanor
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Repeat offenses

Finally, note that the amendment does not change the provisions in AB-614 relating to the penalty for a person who is convicted of a second or subsequent offense for any of these crimes. (Under the bill, a person who commits one of these crimes after having been previously convicted of the same offense is guilty of a Class C felony, regardless of the number or value of the recordings or replays involved.)

I hope that this information is helpful. Please let me know if you have any further questions.





WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701-2536

Telephone: (608) 266-1304

Fax: (608) 266-3830

Email: leg.council@legis.state.wi.us

DATE: February 2, 2000

TO: REPRESENTATIVE MICHAEL HUEBSCH, CHAIRPERSON, ASSEMBLY
COMMITTEE ON JUDICIARY AND PERSONAL PRIVACY

FROM: Don Dyke, Senior Staff Attorney

SUBJECT: Assembly Amendment __ (LRBa1235/1) to 1999 Assembly Bill 614

This memorandum describes the provisions of the above-captioned amendment.

Assembly Bill 614 provides a range of penalties from a Class A misdemeanor to a Class C felony for offenses treated by the bill. Generally, these penalties are linked to the number of unlawful recordings involved during a 180-day period, the number of replays from the Internet during a 180-day period (for some offenses) and whether the defendant has previously been convicted of a violation. The bill generally distinguishes between a misdemeanor violation and a felony violation based on the number of unlawful recordings or replays from the Internet.

Under the amendment, if the number of recordings or replays is below a specified threshold, the penalty is a misdemeanor or felony depending upon the value of the unlawful recordings involved in a 180-day period or the value of the sound transferred to the Internet during a 180-day period. The threshold value is \$2,500. Under the amendment, if the value does not exceed \$2,500, the penalty is a Class A misdemeanor. If the value exceeds \$2,500, the penalty becomes a felony.

The new penalty scheme is further explained in the attached February 1, 2000 memorandum to the office of Representative Mark Pettis from Jefren E. Olsen, Legislative Attorney, Legislative Reference Bureau.

If you have any questions or need additional information, please contact me directly at the Legislative Council Staff offices.

DD:wu:tlu;rv
Attachment

*Bob -
For distrib-
ution to
committee.
John*



State of Wisconsin

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