

1 AN ACT relating to sound that is recorded or performed live.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO
4 READ AS FOLLOWS:

5 *As used in Sections 1 to 5 of this Act:*

6 *(1) "Commercial recording or audiovisual work" means a recording or work whose*
7 *owner, assignee, authorized agent, or licensee has disseminated or intends to*
8 *disseminate the recording for sale, rental, performance, or exhibition to the*
9 *public, including under license, but does not include an excerpt consisting of less*
10 *than substantially all of a work or recording. A recording or work may be*
11 *commercial regardless of whether a person who electronically disseminates it*
12 *seeks commercial advantage or private financial gain from the dissemination;*

13 *(2) "Electronic dissemination" means initiating a transmission of, making available,*
14 *or otherwise offering a commercial recording or audiovisual work for*
15 *distribution, display, or performance through the Internet or other digital*
16 *network regardless of whether another person has previously electronically*
17 *disseminated the same commercial recording or audiovisual work; and*

18 *(3) "Web site" means a set of related Web pages served from a single Web domain.*
19 *The term does not include a home page or channel page for the user account of a*
20 *person who is not the owner or operator of the Web site upon which the user*
21 *home page or channel page appears.*

22 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO
23 READ AS FOLLOWS:

24 *(1) A person who owns or operates a Web site or online service dealing in substantial*
25 *part in the electronic dissemination of third-party commercial recordings or*
26 *audiovisual work, directly or indirectly, and who electronically disseminates such*
27 *recordings or audiovisual works to consumers in this state shall clearly and*

1 conspicuously disclose his or her true and correct name, physical address,
2 telephone number, and e-mail address on his or her Web site or online service in
3 a location readily accessible to a consumer using or visiting the Web site or
4 online service.

5 (2) The following locations are deemed readily accessible for purposes of this
6 section:

7 (a) A landing or home Web page or screen;

8 (b) An "about" or "about us" Web page or screen;

9 (c) A "contact" or "contact us" Web page or screen;

10 (d) An information Web page or screen; or

11 (e) Another place on the Web site or online service commonly used to display
12 identifying information to consumers.

13 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO
14 READ AS FOLLOWS:

15 (1) An owner, assignee, authorized agent, or exclusive licensee of a commercial
16 recording or audiovisual work electronically disseminated by a Web site or online
17 service in violation of Section 2 of this Act may bring a private cause of action to
18 obtain a declaratory judgment that an act or practice violates Section 2 of this Act
19 and obtain an injunction against any person who knowingly has violated, is
20 violating, or is otherwise likely to violate that section. As a condition precedent to
21 filing a civil action under Sections 1 to 5 of this Act, the aggrieved party must
22 make reasonable efforts to place an individual alleged to be in violation of
23 Section 2 of this Act on notice of the alleged violation and that failure to cure
24 within fourteen (14) business days may result in a civil action filed in a court of
25 competent jurisdiction.

26 (2) Upon motion of the party instituting the action, the court may make appropriate
27 orders to compel compliance with Section 2 of this Act.

1 (3) The prevailing party in a cause under subsection (1) of this section is entitled to
2 recover necessary expenses and reasonable attorney's fees.

3 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO
4 READ AS FOLLOWS:

5 (1) The remedies and penalties provided in Section 3 of this Act are supplemental to
6 those provisions of state and federal criminal and civil law which impose
7 prohibitions or provide penalties, sanctions, or remedies against the same
8 conduct prohibited by Sections 1 to 5 of this Act.

9 (2) Sections 1 to 5 of this Act shall not be construed to:

10 (a) Bar any cause of action or preclude the imposition of sanctions or penalties
11 that would otherwise be available under state or federal law; or

12 (b) Impose financial liability on providers of an interactive computer service,
13 communications service, commercial or mobile service, or information
14 service, including but not limited to an Internet provider, advertising
15 network or exchange, domain name registration provider, and a hosting
16 service provider, to the extent that the providers provide the transmission,
17 storage, or caching of electronic communications or messages of others or
18 provide another related telecommunications service, commercial mobile
19 radio service, or information service, for use of such services by another
20 person in violation of Sections 1 to 5 of this Act.

21 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO
22 READ AS FOLLOWS:

23 (1) A violation of Section 2 of this Act shall be deemed an unfair, false, misleading,
24 or deceptive act or practice in the conduct of trade or commerce in violation of
25 KRS 367.170.

26 (2) A public or private right or remedy prescribed by KRS 367.110 to 367.300 may be
27 used to enforce Sections 1 to 5 of this Act.

1 (3) All of the remedies, powers, and duties delegated to the Attorney General by KRS
2 367.190 to 367.300, and the penalties provided in KRS 367.990, relating to acts
3 and practices violating KRS 367.170, shall apply with equal force and effect to
4 acts and practices declared unlawful by Sections 1 to 5 of this Act.

5 (4) A person who violates Section 2 of this Act is liable to this Commonwealth for a
6 civil penalty of not more than two thousand dollars (\$2,000) per violation. Each
7 twenty-four (24) hour period for which a person does not comply with Section 2
8 of this Act shall constitute a separate violation.

9 (5) Nothing in Sections 1 to 5 of this Act shall be construed to limit or restrict the
10 exercise of powers or the performance of the duties of the Attorney General
11 authorized under any other provision of law.

12 ➔SECTION 6. A NEW SECTION OF KRS CHAPTER 365 IS CREATED TO
13 READ AS FOLLOWS:

14 As used in Sections 6 to 8 of this Act:

15 (1) "Performing group" means a vocal or instrumental group of one (1) or more
16 members that intends to advertise or perform under the name of a recording
17 group or a name confusingly similar to a recording group;

18 (2) "Recording group" means a vocal or instrumental group of one (1) or more
19 members, at least one (1) of whose members previously released a commercial
20 sound recording under that group's name and the legal rights to which have not
21 been abandoned; and

22 (3) "Sound recording" means a work that results from the fixation of a series of
23 musical, spoken, or other sounds, regardless of the nature of the material object,
24 such as a phonograph, disc, tape, wire, digital storage, or other medium, in which
25 sounds are embodied.

26 ➔SECTION 7. A NEW SECTION OF KRS CHAPTER 365 IS CREATED TO
27 READ AS FOLLOWS:

1 (1) A person shall not advertise or conduct a live musical performance or production
 2 in this Commonwealth through the use of a false, deceptive, or misleading
 3 affiliation, connection, or association between a performing group and a
 4 recording group.

5 (2) This section shall not apply if:

6 (a) The performing group is the authorized registrant and owner of a federal
 7 service mark or trademark for the recording group which is:

8 1. Registered in the United States; or

9 2. A licensee of or otherwise authorized to use the mark by such
 10 registrant and owner;

11 (b) At least one (1) member of the performing group was a member of the
 12 recording group and that member has a legal right to use or operate under
 13 the name of the recording group without having abandoned the name or
 14 affiliation with the recording group;

15 (c) The live musical performance or production is identified in all advertising
 16 and promotion as a salute or tribute and the name of the performing group
 17 is not confusingly similar to a recording group; or

18 (d) The performance or production is expressly authorized by the recording
 19 group.

20 ➔SECTION 8. A NEW SECTION OF KRS CHAPTER 365 IS CREATED TO
 21 READ AS FOLLOWS:

22 (1) The Attorney General or county attorney may bring a civil action for temporary
 23 or permanent injunctive relief against a person, if the Attorney General or county
 24 attorney has reason to believe a person is advertising, conducting, or intends to
 25 advertise or conduct a live musical performance or production in violation of
 26 Section 7 of this Act.

27 (2) A person who violates Section 7 of this Act shall be assessed a civil penalty of not

1 less than two thousand dollars (\$2,000) or more than fifteen thousand dollars
2 (\$15,000) per violation. Each performance or production in violation of Section 7
3 of this Act constitutes a separate violation.

4 (3) The civil penalty provided by subsection (2) of this section is in addition to
5 injunctive relief and any other remedy that may be available.

6 (4) Any party, or assignee, authorized agent, or licensee of that party, who is injured
7 as a result of a person's violation of Section 7 of this Act may bring a civil action
8 for compensable damages and equitable relief, including injunctive relief, and for
9 treble damages, reasonable attorney's fees, filing fees, and costs for the injured
10 party.

11 (5) Each performance or production in violation of Section 7 of this Act constitutes a
12 separate violation.

13 ➔Section 9. Sections 1 to 8 of this Act may be cited as the Kentucky True Origin
14 of Digital Goods and Truth in Musical Advertising Act.