

SENATE BILL 2637

By Harper

AN ACT to amend Tennessee Code Annotated, Title 29;
Title 39 and Title 40, relative to legal proceedings
against persons unlawfully using certain sound
recordings.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 29, is amended by adding the following language as a new chapter:

29-40-101. This chapter shall be known and may be cited as the “Legacy Sound Recording Protection Act.”

29-40-102. As used in this chapter:

(1) “Copies” means material objects, other than phonorecords, in which a work is fixed by any method now known or later developed, and from which the work can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. “Copies” includes the material object, other than a phonorecord, in which the work is first fixed;

(2) “Digital transmission” means a transmission in whole or in part in a digital or other non-analog format;

(3) “Fixed” means embodied in a copy or phonorecord, by or under the authority of the author, so that the matter embodied is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration. A work consisting of sounds that is being transmitted is “fixed” if a fixation of the work is being made simultaneously with its transmission;

(4) "Owner" means a person who owns the sounds fixed in a master phonorecord from which the transferred recorded sounds are directly or indirectly derived;

(5) "Perform" means to recite, render, play, dance, or act a work, either directly or by means of any device or process;

(6) "Phonorecords" means material objects in which sounds are fixed by any method now known or later developed, and from which the sounds can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. "Phonorecords" includes the material object in which the sounds are first fixed;

(7) "Publicly" means:

(A) At a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered; or

(B) Communicated to a place, described in subdivision (7)(A) or to the public, by means of any device or process, whether the members of the public capable of receiving the sound recording receive it in the same place or in separate places and at the same time or at different times;

(8) "Sound recording" means a work that results from the fixation of a series of musical, spoken, or other sounds; and

(9) "Transmit" means to communicate by any device or process, known as of July 1, 2015, or later developed, whereby sounds are received beyond the place from which the sounds are sent.

29-40-103.

(a) The owner of a sound recording initially fixed on or before February 15, 1972, has the exclusive right to:

(1) Reproduce the sound recording in copies or phonorecords;
(2) Prepare derivative works based upon the sound recording;
(3) Distribute copies or phonorecords of the sound recording to the public by sale or other transfer of ownership, or by rental, lease, or lending; or

(4) Perform the sound recording publicly by means of a digital or satellite audio transmission.

(b) In addition to any other penalty provided by law, including § 39-14-139, the owner of a sound recording initially fixed on or before February 15, 1972, shall have a civil cause of action against any person or legal entity that performs any of the actions described in subdivisions (a)(1)–(4) without the owner’s express permission.

29-40-104.

(a) It is not a violation of this chapter for a library or archives, or any of its employees acting within the scope of their employment, to reproduce no more than three (3) copies of a phonorecord or to distribute copies under the conditions specified by this section, if:

(1) The reproduction or distribution is made without any purpose of direct or indirect commercial advantage; and

(2) The collections of the library or archives are:

(A) Open to the public; or

(B) Available to persons doing research in a specialized field without regard to their affiliation with the library, archives, or institution of which the library or archives is a part.

(b) The rights of reproduction and distribution under this section extend to the isolated and unrelated reproduction or distribution of a single copy or phonorecord of the same material on separate occasions, but do not extend to cases where the library or archives, or an employee of the library or archives:

(1) Is aware or has substantial reason to believe that the library or archives is engaging in the related or concerted reproduction or distribution of multiple copies or phonorecords of the same material, whether made on one (1) occasion or over a period of time, and whether intended for aggregate use by one (1) or more individuals or for separate use by the individual members of a group; or

(2) Engages in the systematic reproduction or distribution of single or multiple copies or phonorecords; provided, nothing in this subdivision (b)(2) prevents a library or archives from participating in interlibrary arrangements that do not have, as the purpose or effect, that the library or archives receiving the copies or phonorecords for distribution does so in such aggregate quantities as to substitute for a subscription to or purchase of the work.

(c) This chapter shall not be construed to limit, annul, or diminish in any respect any existing common law or statutory rights in sound recordings fixed before February 15, 1972, or causes of action for infringement of those rights.

SECTION 2. This act shall take effect July 1, 2015, the public welfare requiring it, and applies to prohibited conduct occurring on or after the effective date of this act.