

1 *Senate* BILL NO. *182*
2 INTRODUCED BY *Edw. Ryan Gordon*-----

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT CONCERNING PIRACY OF
5 SOUND RECORDINGS AND LIVE PERFORMANCES AND THE TRANSFER OF
6 RECORDED SOUND WITHOUT PERMISSION OF THE LAWFUL OWNER;
7 PROVIDING PENALTIES FOR VIOLATIONS AND AN IMMEDIATE
8 EFFECTIVE DATE."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Definitions. As used in this act, the
12 following definitions apply:

13 (1) "Person" means any individual, firm, partnership,
14 corporation, or association.

15 (2) "Owner" means the person who owns the original
16 fixation of sounds embodied in a master phonograph record,
17 master disc, master tape, master film, or other device used
18 for reproducing sounds on phonograph records, discs, tapes,
19 films, or other articles upon which sound is recorded and
20 from which the transferred recorded sounds are directly
21 derived.

22 (3) "Performer" means the person or persons appearing
23 in a performance.

24 (4) "Sound recording" means a phonograph record, disc,
25 wire, tape, film, or other article on which sound is

1 recorded.

2 Section 2. Unauthorized manufacture of sound
3 recordings prohibited. (1) No person may knowingly, without
4 the consent of the owner, transfer or cause to be
5 transferred any sounds recorded on a sound recording with
6 the intent to sell or cause to be sold for profit or to be
7 used to promote the sale of any product.

8 (2) No person may knowingly and without the consent of
9 the performer transfer or cause to be transferred to any
10 sound recording any performance, whether live before an
11 audience or transmitted by wire or through the air by radio
12 or television, with the intent to sell or cause to be sold
13 for profit or used to promote the sale of any product, such
14 sound recording onto which such performance is so
15 transferred.

16 (3) A person convicted of violating this section shall
17 be imprisoned in the state prison for any term not to exceed
18 10 years.

19 Section 3. Sale of unauthorized sound recordings
20 prohibited. (1) No person may knowingly, or with reasonable
21 grounds to know, advertise, offer for sale or resale, sell
22 or resell, or distribute or possess for such purposes any
23 sound recording that has been produced without the consent
24 of the owner. Possession of 5 or more duplicate copies or 20
25 or more individual copies of such sound recording produced

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1 without the consent of the owner creates a rebuttable
2 presumption that the copies are intended for sale or
3 distribution in violation of this section.

4 (2) No person may knowingly, or with reasonable
5 grounds to know, sell or resell, distribute, or possess for
6 such purposes any sound recordings embodying any
7 performance, whether live before an audience or transmitted
8 by wire or through the air by radio or television, without
9 the prior express written consent of the performer.

10 (3) A person convicted of violating this section shall
11 be fined no more than \$500 or be imprisoned in the county
12 jail for any term not to exceed 6 months, or both.

13 Section 4. Sale of sound recording without name of
14 manufacturer and name of performer or group prohibited. (1)
15 No person may advertise, offer for sale or resale, sell or
16 resell, or possess for such purposes any sound recording
17 unless the outside cover, box, or jacket clearly and
18 conspicuously discloses the name and address of its
19 manufacturer and the name of the performer actually
20 producing the sounds recorded.

21 (2) A person convicted of violating this section shall
22 be fined no more than \$500 or be imprisoned in the county
23 jail for any term not to exceed 6 months, or both.

24 Section 5. Forfeiture. Any article produced in
25 violation of [sections 2, 3, or 4 of this act] and any

1 equipment used to produce it are subject to forfeiture to
2 and destruction by the appropriate law enforcement agency.

3 Section 6. Exceptions. This act does not apply to:

4 (1) any broadcaster who, in connection with a radio,
5 television, or cable broadcast transmission or for the
6 purpose of archival preservation, transfers any sounds
7 recorded on a sound recording;

8 (2) any person who transfers such sounds in the home
9 for personal use, without compensation; or

10 (3) any person who transfers such sounds for bona fide
11 educational purposes.

12 Section 7. Civil litigation. This act neither enlarges
13 nor diminishes the rights of parties in civil litigation.

14 Section 8. Severability. If a part of this act is
15 invalid, all valid parts that are severable from the invalid
16 part remain in effect. If a part of this act is invalid in
17 one or more of its applications, the part remains in effect
18 in all valid applications that are severable from the
19 invalid applications.

20 Section 9. Effective date. This act is effective on
21 its passage and approval.

-End-

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Approved by Committee
on Judiciary

SENATE BILL NO. 182

INTRODUCED BY ROBERTS, REGAN, GOODOVER

A BILL FOR AN ACT ENTITLED: "AN ACT CONCERNING PIRACY OF SOUND RECORDINGS AND LIVE PERFORMANCES AND THE TRANSFER OF RECORDED SOUND WITHOUT PERMISSION OF THE LAWFUL OWNER; PROVIDING PENALTIES FOR VIOLATIONS AND AN IMMEDIATE EFFECTIVE DATE."

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(3) "Performer" means the person or persons appearing in a performance.

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recorded.

Section 2. Unauthorized manufacture of sound recordings prohibited. (1) No person may knowingly, without the consent of the owner, transfer or cause to be transferred any sounds recorded on a sound recording with the intent to sell or cause to be sold for profit ANY SOUND RECORDINGS ONTO WHICH SUCH SOUNDS ARE TRANSFERRED or to be used USE SUCH SOUND RECORDINGS to promote the sale of any product.

(2) No person may knowingly and without the consent of the performer transfer or cause to be transferred to any sound recording 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 TO BE used to promote the sale of any product, such sound recording onto which such performance is so transferred.

(3) A person convicted of violating this section shall be imprisoned in the state prison for any term not to exceed 10 years.

Section 3. Sale of unauthorized sound recordings prohibited. (1) No person may knowingly, or with reasonable grounds to know, advertise, offer for sale or resale, sell or resell, or distribute or possess for such purposes any sound recording that has been produced without the consent

1 of the owner. Possession of 5 or more duplicate copies or 20
 2 or more individual copies of such sound recording produced
 3 without the consent of the owner creates a rebuttable
 4 presumption that the copies are intended for sale or
 5 distribution in violation of this section.

6 (2) No person may knowingly, or with reasonable
 7 grounds to know, ~~ADVERTISE, OFFER FOR SALE OR RESALE,~~ sell
 8 or resell, ~~OR~~ distribute or possess for such purposes any
 9 sound recordings embodying any performance, whether live
 10 before an audience or transmitted by wire or through the air
 11 by radio or television, without the prior express written
 12 consent of the performer.

13 (3) A person convicted of violating this section shall
 14 be fined no more than \$500 or be imprisoned in the county
 15 jail for any term not to exceed 6 months, or both.

16 Section 4. Sale of sound recording without name of
 17 manufacturer and name of performer or group prohibited. (1)
 18 No person may advertise, offer for sale or resale, sell or
 19 resell, or ~~DISTRIBUTE OR~~ possess for such purposes any sound
 20 recording unless the outside cover, box, or jacket clearly
 21 and conspicuously discloses the name and address of its
 22 manufacturer and the name of the performer actually
 23 producing the sounds recorded.

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 25 be fined no more than \$500 or be imprisoned in the county

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2 Section 5. Forfeiture. Any article produced in
 3 violation of [sections 2, 3, or 4 of this act] and any
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 9 purpose of archival preservation, transfers any sounds
 10 recorded on a sound recording;

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 16 nor diminishes the rights of parties in civil litigation.

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1 of the owner. Possession of 5 or more duplicate copies or 20
 2 or more individual copies of such sound recording produced
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 4 presumption that the copies are intended for sale or
 5 distribution in violation of this section.

6 (2) No person may knowingly, or with reasonable
 7 grounds to know, ~~ADVERTISE, OFFER FOR SALE OR RESALE,~~ sell
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 18 No person may advertise, offer for sale or resale, sell or
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2 Section 5. Forfeiture. Any article produced in
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6 Section 6. Exceptions. This act does not apply to:

7 (1) any broadcaster who, in connection with a radio,
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 9 purpose of archival preservation, transfers any sounds
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(2) No person may knowingly and without the consent of the performer transfer or cause to be transferred to any sound recording 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 ~~TO BE~~ used to promote the sale of any product, such sound recording onto which such performance is so transferred.

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COMMITTEE ON BUSINESS AND INDUSTRY AMENDMENTS TO SENATE BILL NO. 182

1. Amend page 4, section 6, subsection (3), line 13.

Following: "transfers"

Insert: "a single copy of"

2. Amend page 4, section 6, subsection (3), line 14.

Following: "purposes"

Insert: ", provided that no person directly or indirectly derives any pecuniary gain from such transfer"

AS AMENDED

BE CONCURRED IN

1 SENATE BILL NO. 182

2 INTRODUCED BY ROBERTS, REGAN, GOODOVER

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT CONCERNING PIRACY OF
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14 or television, with the intent to sell or cause to be sold
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 9 purpose of archival preservation, transfers any sounds
 10 recorded on a sound recording;

11 (2) any person who transfers such sounds in the home
 12 for personal use, without compensation; or

13 (3) any person who transfers A SINGLE COPY OF such
 14 sounds for bona fide educational purposes, PROVIDED THAT NO
 15 PERSON DIRECTLY OR INDIRECTLY DERIVES ANY PECUNIARY GAIN
 16 FROM SUCH TRANSFER.

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 18 nor diminishes the rights of parties in civil litigation.

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