WEST VIRGINIA CODE: §61-3-50

§61-3-50. Unauthorized transferral of recorded sounds; sale and possession; penalties; civil action; definition.

(a) No person shall knowingly and willfully for commercial advantage or private financial gain transfer by electronic or mechanical means or cause to be transferred by electronic or mechanical means with intent to sell for profit the recorded sounds contained on any phonograph record, disc, tape, film or other device without the permission of the owner of such recorded sounds or his authorized representative, or to knowingly, or with reasonable grounds to know, sell or possess with intent to sell any phonograph record, disc, tape, film or other device containing such unauthorized transferred recorded sounds. This paragraph applies to sound recordings initially fixed prior to February 15, 1972.

No person shall knowingly and willfully for commercial advantage or private financial gain offer for sale, sell, rent, transport, cause the sale, resale, rental or transportation of or possess for one or more of these purposes a recording of a live performance with the knowledge that the live performance has been recorded or fixed without the consent of the owner.

No person shall knowingly and willfully for commercial advantage or private financial gain record or fix or cause to be recorded or fixed on any type of recording device a live performance with the knowledge that the live performance is being recorded or fixed without the consent of the owner.

No person shall knowingly and willfully for commercial advantage or private financial gain offer for sale, sell, rent, transport, or cause the sale, resale, rental or transportation of or possess for one or more of these purposes, any phonograph record, disc, tape, film, video tape, video cassette or other device which fails to clearly and conspicuously disclose the actual name and address of the manufacturer thereof.

(b) Any owner of such recorded sounds, images or any audio-visual combination and any person lawfully transferring such sounds by agreement with such owner shall have a cause of action for the unauthorized transferral of such sounds and shall be entitled to treble damages resulting therefrom.

(c)(1) For the purpose of this section, the term "owner" means the person vested with the rights to and ownership of the original fixation of sounds, images or any audio-visual combination embodied in the master phonograph record, master disc, master tape, master film or other device used for transferring sounds or images on phonograph records, discs, tapes, films, video tapes or video cassettes or other similar articles upon which sounds, images or any audio-visual combination are recorded and from which the transferred recorded sounds and/or images are directly derived.

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In the absence of a written agreement or law to the contrary, the performer or performers of a live performance are presumed to own the rights to record or fix the sounds, images or any audio-visual combination of a live performance. A person who is authorized to maintain custody and control over business records that reflect whether or not the owner or owners of a live performance consented to having a live performance recorded or fixed is a proper witness in a proceeding regarding the issue of consent.

(2) For the purposes of this section, the term "manufacturer" means the person who transfers, authorizes or causes the transfer of a recording of sounds, images or any audio-visual combination to a phonograph record, disc, tape, film, video tape, video cassette or other device.

(d)(1) Any person convicted of an offense under this section involving less than one hundred unlawful sound recordings or less than twenty unlawful audio-visual recordings shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than $1,000, or imprisoned for not more than one year in jail or both fined and imprisoned.

(2) Any person convicted of an offense under this section involving at least one hundred but less than one thousand unlawful sound recordings or at least twenty but less than sixty-five audio-visual recordings shall be guilty of a felony, and, upon conviction thereof, shall be fined not less than $1,000 nor more than $5,000, or imprisoned for not more than two years in the penitentiary or both fined and imprisoned.

(3) Any person convicted of an offense under this section involving at least one thousand unlawful sound recordings or at least sixty-five unlawful audio-visual recordings shall be guilty of a felony, and, upon conviction thereof, shall be fined not less than $5,000 nor more than $10,000, or imprisoned for not more than five years in the penitentiary or both fined and imprisoned.

(4) Any person convicted of a second or subsequent offense under this section shall be guilty of a felony, and, upon conviction thereof, shall be fined not less than $1,000 nor more than $10,000, or imprisoned for not more than five years or both fined and imprisoned.

(5) Any unauthorized recorded sounds or images produced in violation of this section and any equipment used for such purpose shall be confiscated by the appropriate law-enforcement agency.

If a person is convicted of any violation under this chapter, the court in its judgment of conviction shall order the forfeiture and destruction or release to a law-enforcement agency for use in official agency business of all infringing recordings and of any equipment or components used or intended to be used in the production of the recordings. All infringing phonograph records, discs, tapes, films, video tapes, video cassettes or other devices shall be destroyed once they are no longer needed for court proceedings. Nothing contained herein shall apply to televisions and radio stations licensed by the federal communications commission or to educational institutions, when the purpose of such reproduction is limited

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and used for criticism, comments, news reporting, archival or educational purposes.

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