

CHAPTER 144

AN ACT concerning motion picture piracy and amending P.L.1991, c.125.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 1 of P.L.1991, c.125 (C.2C:21-21) is amended to read as follows:

C.2C:21-21 Short title; definitions; offenses; penalties.

1. a. This act shall be known and may be cited as the "New Jersey Anti-Piracy Act."

b. As used in this act:

(1) "Sound recording" means any phonograph record, disc, tape, film, wire, cartridge, cassette, player piano roll or similar material object from which sounds can be reproduced either directly or with the aid of a machine.

(2) "Owner" means (a) the person who owns the sounds fixed in any master sound recording on which the original sounds were fixed and from which transferred recorded sounds are directly or indirectly derived; or (b) the person who owns the rights to record or authorize the recording of a live performance.

(3) "Audiovisual work" means any work that consists of a series of related images which are intrinsically intended to be shown by the use of machines or devices such as projectors, viewers, or electronic equipment, together with accompanying sounds, if any, regardless of the nature of the material object, such as film or tape, in which the work is embodied. "Audiovisual work" includes but is not limited to a motion picture.

(4) "Audiovisual recording function" means the capability of a device to record or transmit a motion picture or any part thereof by means of any technology.

(5) "Facility" means any theater, screening room, indoor or outdoor screening venue, auditorium, ballroom or other premises where motion pictures are publicly exhibited but does not include a library or retail establishment.

c. A person commits an offense who:

(1) Knowingly transfers, without the consent of the owner, any sounds recorded on a sound recording with intent to sell the sound recording onto which the sounds are transferred or to use the sound recording to promote the sale of any product, provided, however, that this paragraph shall only apply to sound recordings initially fixed prior to February 15, 1972.

(2) Knowingly transports, advertises, sells, resells, rents, or offers for rental, sale or resale, any sound recording or audiovisual work that the person knows has been produced in violation of this act.

(3) Knowingly manufactures or transfers, directly or indirectly by any means, or records or fixes a sound recording or audiovisual work, with the intent to sell or distribute for commercial advantage or private financial gain, a live performance with the knowledge that the live performance has been recorded or fixed without the consent of the owner of the live performance.

(4) For commercial advantage or private financial gain, knowingly advertises or offers for sale, resale or rental, or sells, resells, rents or transports, a sound recording or audiovisual work or possesses with intent to advertise, sell, resell, rent or transport any sound recording or audiovisual work, the label, cover, box or jacket of which does not clearly and conspicuously disclose the true name and address of the manufacturer, and, in the case of a sound recording, the name of the actual performer or group.

(5) Knowingly operates an audiovisual recording function of a device in a facility while a motion picture is being exhibited, for the purpose of recording the motion picture, without the consent of both the licensor of the motion picture and the owner or lessee of the facility.

d. Notwithstanding the provisions of subsection b. of N.J.S.2C:43-3:

(1) Any offense set forth in this act which involves at least 1,000 unlawful sound recordings or at least 65 audiovisual works within any 180-day period shall be punishable as a crime of the third degree and a fine of up to \$250,000 may be imposed.

(2) Any offense which involves more than 100 but less than 1,000 unlawful sound recordings or more than 7 but less than 65 unlawful audiovisual works within any 180-day period shall be punishable as a crime of the third degree and a fine of up to \$150,000 may be imposed.

(3) Any offense punishable under the provisions of this act not described in paragraph (1) or (2) of this subsection shall be punishable for the first offense as a crime of the fourth degree and

a fine of up to \$25,000 may be imposed. For a second and subsequent offense pursuant to this paragraph, a person shall be guilty of a crime of the third degree. A fine of up to \$50,000 may be imposed for a second offense pursuant to this paragraph and a fine of up to \$100,000 for a third and subsequent offense may be imposed.

e. All unlawful sound recordings and audiovisual works and any equipment or components used in violation of the provisions of this act shall be subject to forfeiture in accordance with the procedures set forth in chapter 64 of Title 2C of the New Jersey Statutes.

f. The provisions of this act shall not apply to:

(1) Any broadcaster who, in connection with or as part of a radio or television broadcast transmission, or for the purposes of archival preservation, transfers any sounds or images recorded on a sound recording or audiovisual work.

(2) Any person who, in his own home, for his own personal use, and without deriving any profit, transfers any sounds or images recorded on a sound recording or audiovisual work.

(3) Any law enforcement officer who, while engaged in the official performance of his duties, transfers any sounds or images recorded on a sound recording or audiovisual work.

g. A law enforcement officer, an owner or lessee of a facility where a motion picture or a live performance is being exhibited, the authorized agent or employee of the owner or lessee, the licensor of the motion picture or the live performance or the authorized agent or employee of the licensor, who has probable cause for believing that a person has operated an audiovisual recording function of a device in violation of this section and that he can recover the recording by taking the person into custody, may, for the purpose of attempting to effect recovery thereof, take the person into custody and detain him in a reasonable manner for not more than a reasonable time, and the taking into custody by a law enforcement officer, owner, lessee, licensor, authorized agent or employee shall not render such person criminally or civilly liable in any manner or to any extent whatsoever.

Any law enforcement officer may arrest without warrant any person he has probable cause for believing has operated an audiovisual recording function of a device in violation of this section.

An owner or lessee of a facility, the authorized agent or employee of the owner or lessee, the licensor of the motion picture or the live performance or the authorized agent or employee of the licensor who causes the arrest of a person for operating an audiovisual recording function of a device in violation of this section, shall not be criminally or civilly liable in any manner or to any extent whatsoever where the owner, lessee, licensor, authorized agent or employee has probable cause for believing that the person arrested committed the offense.

2. This act shall take effect immediately.

Approved September 10, 2004.