

SB

153

COMMITTEE REPORT

5/1/75

HOUSE

Mr. Speaker:

Date 5/1/75

The Committee on JUDICIARY has had SR 153

under consideration. A Majority of the members of the Committee

recommends it DO PASS

recommends it DO NOT PASS

recommends it DO PASS WITH ATTACHED AMENDMENT(S)

recommends it BE REPLACED WITH CS FOR _____ AND THAT

CS FOR _____ DO PASS

"and" recommends it BE REFERRED TO THE _____

COMMITTEE

reports it back WITHOUT RECOMMENDATION

"other"

Members signing the Majority report:

<u>James Hardin</u>	_____	_____
<u>W. S. Seadley</u>	_____	_____
<u>Robert [unclear]</u>	_____	_____
<u>Samuel [unclear]</u>	_____	_____

Members NOT concurring in the Majority report:

_____ recommends:

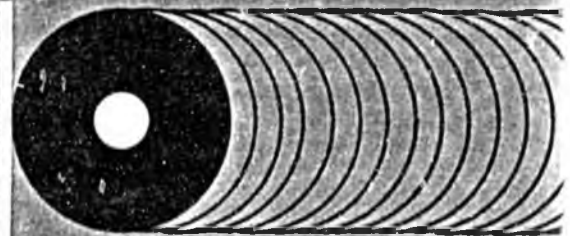
_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

James Hardin Chairman



Piracy: a booming racket

Here's what you and your legislators need to know to help eliminate the illegal piracy of sound recordings. It's a \$200 million a year crime and growing. And every honest taxpayer is the victim.

The pirates are profitable, feeding on the initiative, talent and capital investment of legitimate companies.
John L. Murphy,
Chief, Economic Policy, Department of Justice

Nearly one-third of all tape recordings sold in the U.S. are produced by pirates!

You'll find pirated copies of legitimate recordings in practically every area in the U.S. where recordings are sold.

Why is piracy so widespread?

It's very profitable for the pirates. Duplication of tapes is mechanically simple. Federal laws protect only those recordings produced since February, 1972. Most of the pirated material was originally recorded prior to that time. *Most states with criminal laws prohibiting piracy penalize piracy only as a misdemeanor, so when a pirate is caught, he may pay only a small fine, pack up and move to a new location under a new name.* It's a perfect setup for the fast-buck con artist.

Many law enforcement people are either unaware that piracy is illegal or too busy with other "important" problems to give piracy the attention it needs. The consumer is either unaware that he's paying for "hot," inferior merchandise, or else he can't resist the cheap price.

Whom does piracy hurt?

Piracy is harmful in many ways to many people. It hurts every segment of the public, it hurts elderly citizens in nursing homes and countless other citizens who are deprived of free entertainment financed by royalties from legitimate sales; it hurts service personnel in veterans hospitals because it likewise reduces the funding available for their free entertainment. Piracy hurts every artist (not just the big stars with earnings in six figures), musician and vocalist alike, it hurts legitimate manufacturers, retailers, wholesalers, and everyone who works for them. It hurts every level of government that suffers from lost taxes, thereby adding an additional burden to every honest taxpayer.

How does piracy hurt?

Some of the damage that pirates do was recently described by Hal C. Davis, President of the American

Federation of Musicians, in testimony before the House Subcommittee of the Judiciary.

Mr. Davis said, "Now, I have heard it said that record pirates are engaged in a legitimate business which they should be able to pursue because they are represented by respectable counsel. . . . We all know that murderers and thieves have often been represented by respectable counsel. To me, a pirate is a pirate in anybody's language. To put it bluntly, a pirate is a person who steals a product made by my people and the other great artists, the vocalists. In my judgment, he has no right to grow wealthy on the creative efforts of those gifted people. He flagrantly violates human and moral rights. This pirate could easily become legitimate by signing the applicable collective bargaining agreements, and paying prevailing wages and other benefits.

"The legitimate recording industry pays into two funds for every record or commercial recording sold. One is known as the Special Payments Fund and the other is the Music Performance Trust Funds. On September 1, 1974, out of the Special Payments, some \$8 million was paid to all the musicians recently employed by the Recording Industry. This is in addition to the basic scale they received for making the records.

"In addition, some \$9 million last fiscal year were spent by the Trustee of the Music Performance Trust Funds. This nonprofit, public service organization provided free live concerts of various sizes and descriptions for the people of this country. Some took place in schools, some took place in veterans hospitals, some took place at block parties, some took place in public parks. In all, approximately 100,000 of these programs were performed free of charge last year and all were open to and given for the benefit of the public. Every act of piracy deprives both of these funds of the proper payments."

Aside from these losses from piracy to all legitimate sectors of society described by Mr. Davis, piracy hurts the public in other significant ways. Here are some of them:

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Piracy is harmful in many ways to many people

1. Pirate merchandise is generally of poor quality; the sound isn't as good as a legitimate recording.

Since a pirate tape is a reproduction of a reproduction, the sound can't be as good as the initial version. It's like reproducing a photograph from a photograph, instead of from the original negative. Some pirate tapes are of such poor quality, or are so poorly assembled, that they foul up tape recorders.

2. Legitimate companies are hampered in offering a wide selection of recordings to meet the widely varying interests of the public.

Pirates copy only the big-selling records. And these big sellers subsidize thousands of lesser-selling recordings, including much classical and jazz output. Without the income from the big sellers that are pirated, the selection of recordings available to the public will decline. Most recordings don't appeal to the masses and many fail to recover their costs. The \$200 million the pirates steal each year could finance a lot of different legitimate records. (\$200 million is four times the amount spent to operate all U.S. Attorney offices throughout the nation for a year!)

3. It's more difficult for recording companies to invest in new artists, new musicians and song writers, as well as classical orchestras, because of the income lost to the pirates.

Introducing and popularizing new talent requires money, and that money has to come from the profitable recordings.

4. Pirates seldom pay full taxes. That means the rest of the public has to pay more.

Tax authorities estimate that a large percentage of the \$200 million pirate take is not reported to the Internal Revenue Service or state and local governments. That's a lot of taxable income.

Piracy also hurts a broad range of other people. *The artist gets no income from pirate recordings.* His talent, his unique performance, his time, his contractual rights, all go unrewarded. Since the professional life span of the average popular artist is relatively short, he is entitled to 100 per cent of the income from his talent—which is the only thing he has to sell. Remember, all artists suffer—not just the stars.

Musicians and arrangers are heavily dependent on the income from recordings for their livelihood.

The pirates pay them nothing. Income from legitimate recordings goes to their pension and welfare funds, pays for retired musicians and those who are sick and out of work. These funds get nothing from the pirates. The Music Performance Trust Funds depends on income from legitimate tape and record sales to finance its free public concerts.

Legitimate retailers and wholesalers are badly damaged by sellers of pirate recordings.

The honest businessman cannot compete with competitors who sell stolen merchandise or "swag." Stolen goods are cheap, and pirate tapes and records are actually the same as stolen goods. Pirates copy only the big sellers. They take no risks and incur none of the expenses of the companies which created and popularized the big sellers.

The law enforcement community is also affected because piracy has become so widespread.

Any criminal business that flourishes in practically every area, that produces illegal income of \$4 million a week, contributes to the erosion of public respect for the law and its enforcers.

Is this an issue of labor vs. management?

No! On the contrary—the fight against piracy has united labor and management in common cause. It should be recognized that at every level both the 330,000-member American Federation of Musicians (AFL-CIO) and the Recording Industry Association of America (the industry association representing most legitimate recording companies) are working together to achieve enactment of strong laws in every state.

But everywhere the pirates are lighting back. Astonishingly enough, they have often been successful in persuading even some of our most sincere legislators that their efforts help the plain people of America because they can buy their product cheaper! The notion that the public is benefited when a thief sells a stolen automobile or radio at a cheaper price than the honest manufacturer can meet is nonsense!

Help is available for law enforcers

The music and recording industry and the American Federation of Musicians are committed to the elimination of piracy. The recording companies and the music publishers maintain investigators who are ready and able to cooperate with Federal, state and local law enforcement.

The Anti-Piracy Intelligence Bureau of the Recording Industry Association of America, Inc. (RIAA), is located at 1 East 57th Street, New York, New York 10022, (212) 688-3778. The Bureau conducts and supervises all investigations of piracy on a national basis, cooperates closely with federal, state and local authorities and serves as a clearing house for collecting and reviewing all information on pirate activities—manufacturers, wholesalers and retailers.

If you know where pirate products are being produced or sold, or if you want help in identifying pirate or counterfeit merchandise, contact the RIAA Bureau.

How to spot pirate recordings

Tape recordings are the most widely sold form of pirate merchandise. Here are some good clues you can use to spot pirate tapes.

1. Watch out for package or label with no familiar company name or trademark.

Pirates create their own packaging, and most show no company name or trademark. Rarely is there an address; usually just a phony post office box number.

2. Be alert for clumsy, inferior-looking package art work.

Record companies creatively make their album and tape covers "arty," distinctive, and attractive. Pirates generally do not. Few pirates use multi-color printing and artwork. Photos or illustrations of performers are never used.

3. Be leery of look-alike cover designs.

Pirates often use the same package and label design on several different tapes. They change only the names of the songs and artists.

4. Beware of statements saying "fees and royalties have been paid," or "the law has been complied with."

Legitimate companies pay the proper royalties and fees and need not acknowledge this on their packages.

5. Watch out for more than one top artist or musical group on the same tape.

Most artists and groups perform exclusively for one record company. *Some discs are also produced by pirates, but not many.* The same clues used in spotting tapes also apply to discs.

The bottom line

Each of us in recent years has been tragically affected by so-called "white collar" or "business" crimes in our society. Piracy is one of these. It is a big and rotten business. It is, quite simply, stealing and no invocation of "free enterprise" can clothe it in respectability.

You, your friends, your elected representatives at every level of government have a stake in outlawing piracy, because you are its victim.

Model Legislation

Statement of Purpose

This bill is intended to prevent the unauthorized duplication and sale of sound recordings, either tape recordings or discs. Pirates of recordings divert some \$200 million a year from legitimate sources—retailers, wholesalers, musicians, arrangers, artists, the musicians union and recording companies. Nearly one in three tape recordings sold in the United States come from pirate sources.

The pirates are parasites who rob legitimate retailers, wholesalers, producers, artists, musicians and the unions of the fruits of their honest labors. Because piracy is simple and lucrative, it attracts the shady operator and the fast buck artist.

Record piracy grew out of modern technology, the advent of the tape recorder and the ease with which recordings can be duplicated. When the United States copyright law was enacted in 1909, this was not envisioned.

Federal law was amended in late 1971 to protect recordings. United States copyright law now protects all sound recordings produced *after* February 15, 1972. State laws are necessary to protect other recordings. A majority of the states have passed such laws.

The constitutionality of state anti-piracy statutes, such as this proposed law, has been upheld by the U.S. Supreme Court [Goldstein v. Calif. 412 US 546 (1973)].

The courts have also held that piracy is a form of unfair competition and illegal under civil laws. The 9th and 10th United States Circuit Courts of Appeals have

You . . . have a stake in outlawing piracy, because you are its victim

DeHart and Broide

March 28, 1975

The Honorable Robert Ziegler
Pouch V
Capitol Building
Juneau, Alaska 99801

Dear Senator Ziegler:

I appreciate your taking the time to discuss Senate Bill 153 with me by phone. This letter is in response to your request for information concerning the merits of the bill.

S.B. 153 amends the present law, which was enacted last year as House Bill 680.

Federal law prohibits the unauthorized manufacture or sale of sound recordings released after February 15, 1972. This was done in late 1971 through extension of the federal copyright law (Public Law 92-140). Congress did not grant this limited copyright to sound recordings published prior to February 15, 1972 because this would have involved granting a copyright retroactively. Recordings produced by legitimate manufacturers after that date display this symbol to indicate post February 15, 1972 production.



As you can understand, when the original copyright law was enacted in 1909, no one foresaw the future popularity of sound recordings, the development of the tape recording, and the ease with which tapes can be duplicated today.

State laws are necessary to protect pre-February 15, 1972 recordings because tape piracy remains a widespread problem, diverting hundreds of millions of dollars from those who have legitimately earned it. It is estimated that nearly one out of every three tape recordings sold in the U.S. is a pirate copy. Because of piracy, some \$200 million a year is diverted from its rightful recipients -- artists, musicians, music publishers, composers, retailers, wholesalers and record manufacturers, and the unions. (Some background material on the piracy problem is enclosed as Attachment A.)

The U.S. Department of Justice has recommended to the states that special legislation be adopted to prohibit piracy.

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March 28, 1975
Page Two

To date, some 27 states have passed criminal laws against record piracy, and this number is expected to grow. (See Attachment A-1, page 9.)

The constitutionality of state anti-piracy laws has been upheld by the U.S. Supreme Court (Goldstein v. California, 412 U.S. 546, June 1973).

State laws are necessary because record piracy continues to be rampant. This is unfair competition, and also deprives the lawful owners of sound recordings of their property and their profits.

Record piracy has been consistently held unlawful in various U.S. courts, even in the absence of state anti-piracy statute.

Moreover, four U.S. Circuit Courts of Appeals have ruled that the compulsory licensing provisions of the Copyright Act may not be used as justification for unauthorized duplication of sound recordings. These appeals came about because some pirates argued that they are "legal" when they pay royalties to the music publishers.

Despite these court decisions, piracy continues. That is because a pirate found guilty in one jurisdiction merely moves to another. Piracy is so profitable that the pirates are willing to take the risk of misdemeanor penalties, with modest sentences or fines. Under such circumstances, it is up to the states to join with the federal government to protect law-abiding citizens and declare piracy illegal.

Like the other states, Alaska has also been the scene of a good deal of pirate sales of recordings. A state law is therefore important.

The amending bill introduced by Senator Chance defines "owner" in a manner developed in discussions with the Justice Department, and stemming from court decisions. It also contains an amendment (starting on line 13) which would curtail the growth of so-called "sound-alike" recordings. A sound-alike recording is one which simulates a hit recording by imitating the style and sound of the original performer(s). Sound-alikes generally involve deceptive packaging, labeling display techniques, as well as advertising, which are intended to dupe the consumer into believing that he is buying the original.

Full disclosure of the name of the manufacturer and the performers, as required by Senator Chance's bill, should alert the would-be buyer to the fact that he is buying a simulation, not the original.

The Honorable Robert Ziegler
March 28, 1975
Page Three

The production of sound-alikes has been growing as a result, we believe, of the crackdown on pirates. (See Attachment B for background information on sound-alikes.)

On behalf of the Recording Industry Association of America, our client, we urge that the Alaska legislature enact Senate Bill 153. Its passage is supported by all segments of the legitimate recording industry, including the manufacturers, the artists, musicians, the American Federation of Musicians, music publishers and composers, wholesalers and retailers.

If you have questions, we would be pleased to answer them.

Sincerely,

A handwritten signature in dark ink, appearing to read "Ed De Hart". The signature is written in a cursive, somewhat stylized hand.

Edward H. DeHart

Enclosures
EDH: jn

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House Judiciary Committee
May 15, 1975

page 2

The committee agreed that after two weeks were taken, a man should be able to extend his leave for medical reasons. Line 13 in the old bill stating which leave could be used would be put into the CS and lines 11 and 12 of the proposed CS deleted.

The Judiciary CS was passed out of committee.

HB 298 Security

Miles Scholsberg, Director, Division of Banking, stated that this bill would expand the definition of securities in order to close loopholes in enforcement of securities law - to prevent fraud by providing a deterrent. Included under the definitions of securities are pyramid sales (chain letters), commodities option contracts, health clubs (charter members). Lines 21 - 25 leave the option for possible exemptions for such companies as Avon and Fuller Brush. Mr. Brown moved on page 1, line 22: add: after consultation with the Attorney General. This amendment passed. The Commerce committee amendments were adopted except in line 4 delete /.

The Judiciary CS was passed out of committee.

SB 153 Sound Recordings

Senator Chance, sponsor of the bill, stated that the language "federally copyrighted" was inserted on the floor last session and made the bill worthless. SB 153 deletes this language and defines "owner." The copyright law for recordings became effective in 1972 but was not retroactive. This bill is designed to prevent pirates and sound alike recordings. The committee passed out SB 153.



LAWS OF ALASKA

1974

Source

SCS CSHB 680

Chapter No.

134

AN ACT

Relating to the protection of the rights of owners of sound recordings.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 45 is amended by adding a new chapter to read:

CHAPTER 51. SOUND RECORDINGS.

Sec. 45.51.010. REPRODUCTION, SALE WITHOUT CONSENT PROHIBITED. A person who reproduces for sale, sells, offers for sale, or knowingly advertises for sale any federally copyrighted sound recording that has been reproduced without the written consent of the owner of the master recording is guilty of a misdemeanor and upon conviction for the first offense is punishable by (1) confiscation of the unlawful stock of the reproduced recording and (2) by imprisonment for a period of not more than one year, or by a fine of not more than \$1,000, or by both.

Sec. 45.51.020. EXEMPTIONS. The prohibition contained in sec. 10 of this chapter is not applicable to the reproduction of a sound recording that

(1) is used, or intended to be used, solely for broadcast by commercial or educational radio or television stations; or

(2) constitutes the verbatim transcript, or other public record, of the proceedings of a judicial, legislative or administrative agency, department or other public body for which a charge or fee may or may not be made or collected for the reproduced recording.

The language "for the first offense" was removed from ch. 134 S.A. 1974 by the revisor of statutes as there was no ~~to~~ other language in the section referring to second or subsequent offenses and it was felt that the ~~penalty~~ penalty provided in the statute was ^(and subsequent) intended to apply to second as well as first offenses.

DeHart and Broide

April 7, 1975

Senator Robert H. Ziegler, Sr.
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Ziegler:

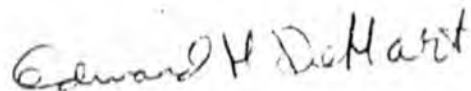
Thanks so much for your letter of April 3.

As I explained by phone, Senate Bill 153 has no bearing on those "antique copyright laws" or the ASCAP situation.

I trust this clarifies the matter and will enable S.B. 153 to move forward, as you indicated.

Let me know if you have any further questions.

Sincerely,



Edward H. DeHart

edh/ec