

CERTIFICATION OF ENROLLMENT
SUBSTITUTE SENATE BILL 5030

52nd Legislature
1991 Regular Session

Passed by the Senate March 1, 1991
Yeas 44 Nays 0

President of the Senate

Passed by the House April 10, 1991
Yeas 95 Nays 0

**Speaker of the
House of Representatives**

Approved

Governor of the State of Washington

CERTIFICATE

I, Gordon Golob, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5030** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5030

Passed Legislature - 1991 Regular Session

State of Washington

52nd Legislature

1991 Regular Session

By Senate Committee on Law & Justice (originally sponsored by Senators Nelson, Talmadge and Thorsness). Read first time February 5, 1991.

1 AN ACT Relating to the protection of recording rights; amending RCW
2 19.25.010, 19.25.020, 19.25.030, and 19.25.040; adding new sections to
3 chapter 19.25 RCW; repealing RCW 19.26.010 and 19.26.020; and
4 prescribing penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 19.25.010 and 1974 ex.s. c 100 s 1 are each amended to
7 read as follows:

8 As used in this chapter((~~7~~)):

9 (1) "Owner" means ((~~the owner of the master recording, master disc,~~
10 ~~master tape, master film, or other device used for reproducing recorded~~
11 ~~sound on a phonograph record, disc, tape, film, or other material on~~
12 ~~which sound is recorded and from which the transferred recorded sound~~
13 ~~is~~)) a person who owns the sounds fixed in a master phonograph record,
14 master disc, master tape, master film, or other recording on which

1 sound is or can be recorded and from which the transferred recorded
2 sounds are directly or indirectly derived.

3 (2) "Fixed" means embodied in a recording or other tangible medium
4 of expression, by or under the authority of the author, so that the
5 matter embodied is sufficiently permanent or stable to permit it to be
6 perceived, reproduced, or otherwise communicated for a period of more
7 than transitory duration.

8 (3) "Live performance" means a recitation, rendering, or playing of
9 a series of images; musical, spoken or other sounds; or combination of
10 images and sounds.

11 (4) "Recording" means a tangible medium on which sounds, images, or
12 both are recorded or otherwise stored, including an original phonograph
13 record, disc, tape, audio or video cassette, wire, film, or other
14 medium now existing or developed later on which sounds, images, or both
15 are or can be recorded or otherwise stored or a copy or reproduction
16 that duplicates in whole or in part the original.

17 (5) "Manufacturer" means the entity authorizing the duplication of
18 the recording in question, but shall not include the manufacturer of
19 the cartridge or casing itself.

20 **Sec. 2.** RCW 19.25.020 and 1974 ex.s. c 100 s 2 are each amended to
21 read as follows:

22 ~~((A person commits a gross misdemeanor punishable by a fine not to~~
23 ~~exceed one thousand dollars and imprisonment not to exceed one year and~~
24 ~~confiscation of illegal stock, if he:~~

25 ~~(1) Reproduces for sale any sound recording without the written~~
26 ~~consent of the owner of the master recording; or~~

27 ~~(2) Knowingly sells or offers for sale or advertises for sale any~~
28 ~~sound recording that has been reproduced without the written consent of~~

1 ~~the owner of the master recording.))~~ (1) A person commits an offense if
2 the person:

3 (a) Knowingly reproduces for sale or causes to be transferred any
4 recording with intent to sell it or cause it to be sold or use it or
5 cause it to be used for commercial advantage or private financial gain
6 without the consent of the owner;

7 (b) Transports within this state, for commercial advantage or
8 private financial gain, a recording with the knowledge that the sounds
9 have been reproduced or transferred without the consent of the owner;
10 or

11 (c) Advertises, offers for sale, sells, or rents, or causes the
12 sale, resale, or rental of or possesses for one or more of these
13 purposes any recording that the person knows has been reproduced or
14 transferred without the consent of the owner.

15 (2) An offense under this section is a felony punishable by:

16 (a) A fine of not more than two hundred fifty thousand dollars,
17 imprisonment for not more than ten years, or both if:

18 (i) The offense involves at least one thousand unauthorized
19 recordings during a one hundred eighty-day period; or

20 (ii) The defendant has been previously convicted under this
21 section;

22 (b) A fine of not more than two hundred fifty thousand dollars,
23 imprisonment for not more than five years, or both, if the offense
24 involves more than one hundred but less than one thousand unauthorized
25 recordings during a one hundred eighty-day period.

26 (3) Any other offense under this section is a gross misdemeanor
27 punishable by a fine of not more than twenty-five thousand dollars,
28 imprisonment for not more than one year, or both.

29 (4) This section does not affect the rights and remedies of a party
30 in private litigation.

1 (5) This section applies only to recordings that were initially
2 fixed before February 15, 1972.

3 **Sec. 3.** RCW 19.25.030 and 1974 ex.s. c 100 s 3 are each amended to
4 read as follows:

5 ~~((This chapter shall not be applicable to the reproduction of any~~
6 ~~sound recording that is used or intended to be used only for broadcast~~
7 ~~by commercial or educational radio or television stations.)) (1) A~~
8 person commits an offense if the person:

9 (a) For commercial advantage or private financial gain advertises,
10 offers for sale, sells, rents, transports, causes the sale, resale,
11 rental, or transportation of or possesses for one or more of these
12 purposes a recording of a live performance with the knowledge that the
13 live performance has been recorded or fixed without the consent of the
14 owner; or

15 (b) With the intent to sell for commercial advantage or private
16 financial gain records or fixes or causes to be recorded or fixed on a
17 recording a live performance with the knowledge that the live
18 performance has been recorded or fixed without the consent of the
19 owner.

20 (2) An offense under this section is a felony punishable by:

21 (a) A fine of not more than two hundred fifty thousand dollars,
22 imprisonment for not more than ten years, or both, if:

23 (i) The offense involves at least one thousand unauthorized
24 recordings embodying sound or at least one hundred unauthorized
25 audiovisual recordings during a one hundred eighty-day period; or

26 (ii) The defendant has been previously convicted under this
27 section; or

28 (b) A fine of not more than two hundred fifty thousand dollars,
29 imprisonment for not more than five years, or both, if the offense

1 involves more than one hundred but less than one thousand unauthorized
2 recordings embodying sound or more than ten but less than one hundred
3 unauthorized audiovisual recordings during a one hundred eighty-day
4 period.

5 (3) Any other offense under this section is a gross misdemeanor
6 punishable by a fine of not more than twenty-five thousand dollars,
7 imprisonment for not more than one year, or both.

8 (4) In the absence of a written agreement or law to the contrary,
9 the performer or performers of a live performance are presumed to own
10 the rights to record or fix those sounds.

11 (5) For the purposes of this section, a person who is authorized to
12 maintain custody and control over business records that reflect whether
13 or not the owner of the live performance consented to having the live
14 performance recorded or fixed is a competent witness in a proceeding
15 regarding the issue of consent.

16 (6) This section does not affect the rights and remedies of a party
17 in private litigation.

18 **Sec. 4.** RCW 19.25.040 and 1974 ex.s. c 100 s 4 are each amended to
19 read as follows:

20 ~~((This chapter shall not be applicable to the reproduction of a~~
21 ~~sound recording defined as a public record of any court, legislative~~
22 ~~body, or proceedings of any public body, whether or not a fee is~~
23 ~~charged or collected therefor.))~~

24 (1) A person is guilty of failure to disclose the origin of a
25 recording when, for commercial advantage or private financial gain, the
26 person knowingly advertises, or offers for sale, resale, or rent, or
27 sells or resells, or rents, leases, or lends, or possesses for any of
28 these purposes, any recording which does not contain the true name and

1 address of the manufacturer in a prominent place on the cover, jacket,
2 or label of the recording.

3 (2) An offense under this section is a felony punishable by:

4 (a) A fine of not more than two hundred fifty thousand dollars,
5 imprisonment for not more than ten years, or both, if:

6 (i) The offense involves at least one hundred unauthorized
7 recordings during a one hundred eighty-day period; or

8 (ii) The defendant has been previously convicted under this
9 section;

10 (b) A fine of not more than two hundred fifty thousand dollars,
11 imprisonment for not more than five years, or both, if the offense
12 involves more than ten but less than one hundred unauthorized
13 recordings during a one hundred eighty-day period.

14 (3) Any other offense under this section is a gross misdemeanor
15 punishable by a fine of not more than twenty-five thousand dollars,
16 imprisonment for not more than one year, or both.

17 (4) This section does not affect the rights and remedies of a party
18 in private litigation.

19 NEW SECTION. Sec. 5. A new section is added to chapter 19.25 RCW
20 to read as follows:

21 (1) All recordings which have been fixed, transferred, or possessed
22 without the consent of the owner in violation of RCW 19.25.020 or
23 19.25.030, and any recording which does not contain the true name and
24 address of the manufacturer in violation of RCW 19.25.040 shall be
25 deemed to be contraband. The court shall order the seizure,
26 forfeiture, and destruction or other disposition of such contraband.

27 (2) The owner or the prosecuting attorney may institute proceedings
28 to forfeit contraband recordings. The provisions of this subsection
29 shall apply to any contraband recording, regardless of lack of

1 knowledge or intent on the part of the possessor, retail seller,
2 manufacturer, or distributor.

3 (3) Whenever a person is convicted of a violation under this
4 chapter, the court, in its judgment of conviction, shall, in addition
5 to the penalty therein prescribed, order the forfeiture and destruction
6 or other disposition of all contraband recordings and any and all
7 electronic, mechanical, or other devices for manufacturing,
8 reproducing, packaging, or assembling such recordings, which were used
9 to facilitate any violation of this chapter.

10 NEW SECTION. **Sec. 6.** A new section is added to chapter 19.25 RCW
11 to read as follows:

12 This chapter shall not be applicable to any recording that is used
13 or intended to be used only for broadcast by commercial or educational
14 radio or television stations.

15 NEW SECTION. **Sec. 7.** A new section is added to chapter 19.25 RCW
16 to read as follows:

17 This chapter shall not be applicable to any recording that is
18 received in the ordinary course of a broadcast by a commercial or
19 educational radio or television station where no recording is made of
20 the broadcast.

21 NEW SECTION. **Sec. 8.** A new section is added to chapter 19.25 RCW
22 to read as follows:

23 This chapter shall not be applicable to any recording defined as a
24 public record of any court, legislative body, or proceedings of any
25 public body, whether or not a fee is charged or collected for copies.

1 NEW SECTION. **Sec. 9.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

5 NEW SECTION. **Sec. 10.** The following acts or parts of acts are
6 each repealed:

7 (1) RCW 19.26.010 and 1971 ex.s. c 113 s 1; and

8 (2) RCW 19.26.020 and 1971 ex.s. c 113 s 2.