

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: CS/SB 604

INTRODUCER: Commerce and Tourism Committee and Senator Flores

SUBJECT: Consumer Protection

DATE: March 9, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	<b>Fav/CS</b>
2.	<u>Caldwell</u>	<u>Cibula</u>	<u>JU</u>	<b>Favorable</b>
3.	_____	_____	<u>AP</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 604 creates the True Origin of Digital Goods Act, which requires owners or operators of websites that disseminate commercial recordings or audiovisual works to Florida consumers to clearly post on the website and make readily accessible to a consumer using or visiting the website the true name of the operator or owner, the physical address, and the telephone number or e-mail address. The bill creates an injunctive remedy for parties aggrieved by a website's failure to clearly post its owner's or operator's identifying information. In order to be subject to this disclosure requirement, the owner or operator of the website must electronically disseminate commercial recordings or audiovisual works to Florida consumers. The owner, assignee, authorized agent, or licensee of a commercial recording or audio visual work that is electronically disseminated by a website that does not publish required identifying information may enjoin the violating website to require compliance with the bill and recover necessary expenses and reasonable attorney fees.

**II. Present Situation:**

Florida law does not regulate or protect commercial recordings or audio visual works. In 2004, California passed the "True Name and Address" Act, which makes the knowing electronic dissemination of a commercial recording or audiovisual work to more than 10 people without the disclosure of the disseminator's e-mail address a misdemeanor.<sup>1</sup>

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<sup>1</sup> Cal. Penal Code §653aa.

Tennessee followed suit in July, 2014, with the passage of the True Origin of Goods Act.<sup>2</sup> This law requires the owner or operator of a website dealing in electronic dissemination of commercial recordings or audiovisual works to clearly post his or her true and correct name, physical address, and telephone number. If the website's owner fails to disclose his or her address, he or she may be enjoined to enforce compliance, and fined for failure to do so.<sup>3</sup> Tennessee requires these actions to be initiated and sustained by the Tennessee Attorney General's Office.<sup>4</sup>

### III. Effect of Proposed Changes:

**Section 1** creates the "True Origin of Digital Goods Act" within the General Provisions of the chapter 501 (Consumer Protection) which requires owners or operators of websites that disseminate commercial recordings or audiovisual works to Florida consumers to clearly post on the website and make readily accessible to a consumer using or visiting the website the following information:

- The true and correct name of the operator or owner;
- The operator or owner's physical address; and
- The operator or owner's telephone number or e-mail address.

This bill does not protect copyrighted material, but rather governs "commercial recordings or audiovisual works," which are defined broadly in the bill to include a recording or audiovisual work whose owner, assignee, authorized agent, or licensee has disseminated or intends to disseminate such work for sale, rental, or performance or exhibition to the public, regardless of whether the person seeks commercial advantage or private financial gain from the dissemination. This bill therefore appears to apply to websites that disseminate copyrighted material as well as any disseminated recording or audiovisual work, regardless of the disseminator's intent to seek commercial advantage or financial gain from the work.

**Section 1** also establishes a right to injunctive relief for owners, assignees, authorized agents, or licensees of a commercial recording or audio visual work whose work appears on a website that has not posted identifying information in violation of the bill. Before initiating the civil action provided for in the bill, the aggrieved party must "make reasonable efforts" to place an individual alleged to be in violation of the section on notice that the owner or operator may be in violation of the act, and that failure to cure the violation within 14 days may result in civil action. The prevailing party under may also obtain necessary expenses<sup>5</sup> and reasonable attorney fees. These remedies are available as a supplement to other state and federal criminal and civil law provisions.

**Section 1** also authorizes the court to make appropriate orders to compel compliance with the section upon motion of the party instituting the action.

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<sup>2</sup> Tenn. Code Ann. §47-18-5601 – 47-18-5606 (2014).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> The term "necessary expenses" is not defined by this bill.

The bill specifically exempts providers of interactive computer services, communication services, commercial mobile services, information services that provide transmission, storage, or caching of electronic communications or other related telecommunications service, and commercial mobile radio services.

**Section 2** provides an effective date of July 1, 2015.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

For a court to exercise jurisdiction over a respondent, it must have subject matter jurisdiction and personal jurisdiction. State courts have general jurisdiction, and therefore a claim made under a state statute meets the subject matter jurisdiction requirement.<sup>6</sup> Personal jurisdiction is a constitutional requirement that a respondent have minimum contacts with the state in which the court sits so that the court may exercise power over the respondent.<sup>7</sup> A non-resident respondent may have sufficient contacts with Florida if he or she commits acts expressly enumerated in Florida's long-arm statute.<sup>8</sup> Alternately, the non-resident respondent may be subject to a Florida court's personal jurisdiction because he or she has minimum contacts with the state that are otherwise unrelated to matter that brings him or her into court.<sup>9</sup> Examples of sufficient minimum contacts include frequent business travel to the state, owning a company with a Florida office branch, or subjecting oneself to the court's jurisdiction by presenting oneself in the Florida court.<sup>10</sup> These jurisdictional requirements ensure that a respondent has sufficient notice and due process afforded to him or her under the U.S. Constitution before his or her rights are subjected to the court.<sup>11</sup>

Whether a non-resident internet company that electronically disseminates commercial recordings or audiovisual works into Florida has sufficient minimum contacts with the

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<sup>6</sup> *Caiazzo v. American Royal Arts Corp.*, 73 So. 3d 245, 250 (Fla. 4<sup>th</sup> DCA 2011).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*; § 48.193, F.S.

<sup>9</sup> *Caiazzo v. American Royal Arts Corp.*, 73 So. 3d 245, 250 (Fla. 4<sup>th</sup> DCA 2011).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 250-251.

state is a fact-specific question that would likely need to be addressed on a case-by-case basis by a court.<sup>12</sup>

Content-neutral regulations are legitimate if they advance important governmental interests that are not related to suppression of free speech, and do not substantially burden more speech than necessary to further those interests.<sup>13</sup> However, a law may be determined to be overbroad if a “substantial number of its applications are unconstitutional, judged in relation to the statute’s plainly legitimate sweep.”<sup>14</sup>

## V. Fiscal Impact Statement:

### A. Tax/Fee Issues:

None.

### B. Private Sector Impact:

Parties involved in the litigation provided for in the bill will incur costs related to bringing or defending the action.

### C. Government Sector Impact:

Florida courts may see an increase in case filings under this law, which may result in extra costs.<sup>15</sup>

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

- It is possible that a prevailing party to an action pursuant to s. 501.155(4)(a), F.S., may never recover the fees and costs ordered by a court because of lack of personal jurisdiction over the offending party, which results in an inability to enforce the order.
- It is unclear if Florida could assert jurisdiction over foreign websites should an aggrieved party attempt to enforce the disclosure requirements of this bill against a website owner or operator located outside of Florida. It can be assumed that website owners or operators located outside of Florida are not expected to respond to lawsuits or submit willingly to jurisdiction in Florida courts. As such, any proceedings against owners or operators of websites located outside of Florida would be expected to end in default judgments.

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<sup>12</sup> See *Caiazza v. American Royal Arts Corp.*, 73 So. 3d 245, (Fla. 4<sup>th</sup> DCA 2011); *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119, 1124 (W.D. Pa. 1997).

<sup>13</sup> *Turner Broadcasting System, Inc. v. F.C.C.*, 520 U.S. 180,189 (U.S. 1997).

<sup>14</sup> *U.S. v. Stevens*, 559 U.S. 460 (2010), quoting, *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 449, n. 6, (2008).

<sup>15</sup> State Courts Administrator, *SB 604 Agency Analysis* (March 2, 2015) (on file with the Senate Committee on Commerce & Tourism).

- Following a default or other declaratory judgment, the aggrieved party could proceed with third party injunctions to discourage Internet service providers, hosting services, payment services, or other Internet website services from working with websites that fail to disclose their personal information required by this bill. For example, ISP Terms of Service Agreements frequently forbid the user website from engaging in illegal activity.
- Due to the broad definitions of the terms “commercial recording or audiovisual work” and electronic dissemination,” with each word connoting the broadest sense of its meaning, a broad net appears to be cast. It appears many, if not all, private individuals having a website may be required to disclose their true and correct name, physical address, and telephone number or e-mail address. For example, under these definitions, a teenager who creates her own website for the purpose of posting self-produced recordings or audiovisual works would be required to provide the identifying information. Moreover, it appears that the true target for the injunction and further consequences are those websites that do not provide the identifying information.
- Requiring identifying information on a website makes easier the pursuit of a lawsuit against someone who is posting illegally on a website; for instance, copyrighted material. However, someone who is illegally posting copyrighted material would probably not provide identifying information on his or her website. Thus, a person harmed by copyright violation could get an injunction against a website that is illegally publishing the copyrighted material, and assuming the jurisdiction is obtained, and use the injunction as proof of violation of the ISP, credit card, or other similar agreement to have the website blocked. Most websites that comply with the identification requirement are not the target of the bill and the only enforcement for compliance probably would be if the website was posting illegally.

#### **VIII. Statutes Affected:**

This bill creates section 501.155, Florida Statutes.

#### **IX. Additional Information:**

##### **A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

##### **CS by Commerce and Tourism on March 2, 2015:**

- Clarifies that an owner, assignee, authorized agent, or licensee of a commercial recording or audiovisual work may only pursue an injunction against a website that electronically disseminates his or her commercial recording or audiovisual work, versus any commercial recording or audiovisual work;
- Requires that a website must knowingly commit, or be likely to commit a violation of the committee substitute to be subject to the civil action provided for in the committee substitute;
- Provides that an aggrieved party must make reasonable efforts to place the violating website on notice of its alleged violation and allow 14 days for the violating website to cure the violation before the aggrieved party may file for an injunction under the bill; and
- Defines the term, “website,” which excludes “channels” or homepages that are not operated by the top-level domain or website on which the channel or homepage

appears. This ensures that the owner or operator of, e.g., YouTube itself, rather than users who post information to a channel on YouTube, will be subject to the civil action provided for in this committee substitute.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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