

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 535 Electronic Dissemination of Commercial Recordings and Audiovisual Works

SPONSOR(S): Busatta Cabrera

TIED BILLS: **IDEN./SIM. BILLS:** SB 1542

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee	17 Y, 0 N	Wright	Anstead
2) Civil Justice & Property Rights Subcommittee	16 Y, 0 N	Mathews	Jones
3) Commerce Committee	18 Y, 0 N	Wright	Hamon

SUMMARY ANALYSIS

The True Origin of Digital Goods Act (Act) requires owners or operators of websites that electronically 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 identifying 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.

For purposes of the Act, "electronic dissemination" means initiating a transmission of, making available, or otherwise offering a commercial recording or audiovisual work for distribution through the Internet or other digital network, regardless of whether another person has previously electronically disseminated the same commercial recording or audiovisual work.

The Act gives 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 Act.

The bill amends the definition of "electronic dissemination" under the Act to include "display" and "performance" to require a person who owns or operates a streaming service dealing in commercial recordings and audiovisual works to post their identifying information on the website.

The bill provides an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

True Origin of Digital Goods Act

The True Origin of Digital Goods Act (Act) requires owners or operators of websites that electronically 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 identifying information:¹

- 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.

"Electronic dissemination" under the Act means initiating a transmission of, making available, or otherwise offering a commercial recording or audiovisual work for distribution through the Internet or other digital network, regardless of whether another person has previously electronically disseminated the same commercial recording or audiovisual work.²

The Act does not protect copyrighted material, but rather governs "commercial recordings or audiovisual works," defined broadly 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. The Act applies 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.³

The Act gives 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 Act. Before initiating the civil action provided for in the Act, 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 may also recover necessary expenses and reasonable attorney fees. These remedies are available as a supplement to other state and federal criminal and civil law provisions.⁴

The Act authorizes the court to make appropriate orders to compel compliance with the Act upon motion of the party instituting the action.⁵

The Act 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;⁶ and
- commercial recordings and audiovisual works that are video games, depictions of video game play, and streaming of video game activity.⁷

Streaming Services

¹ S. 501.155(4)(a), F.S.

² S. 501.155(3)(b), F.S.

³ S. 501.155(3)(a), F.S.

⁴ S. 501.155(5), F.S.

⁵ *Id.*

⁶ S. 501.155(2)(b), F.S.

⁷ S. 501.155(3)(a), F.S.

Generally, a streaming service is an online provider of entertainment, including music and movies, that delivers the content via an Internet connection to a user or subscriber's computer, television, or mobile device.⁸

Effect of the Bill

The bill amends the definition of “electronic dissemination” to read: “initiating a transmission of, making available, or otherwise offering a commercial recording or audiovisual work for distribution, **display, or performance** through the Internet or other digital network, regardless of whether another person has previously electronically disseminated the same commercial recording or audiovisual work.”

Therefore, the bill requires a person who owns or operates a streaming service dealing in commercial recordings and audiovisual works, not subject to an exemption, to post their identifying information on the website.

The bill provides an effective date of July 1, 2021.

B. SECTION DIRECTORY:

Section 1: Amends s. 501.155, F.S.; requiring certain notice requirements on websites that offer certain recordings and work for display or performance.

Section 2: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may allow more owners, assignees, authorized agents, or licensees of a commercial recording or audio visual work to initiate actions based on improper notice.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

⁸ PC Mag Digital Group, *Streaming Service*, <https://www.pcmag.com/encyclopedia/term/streaming-service> (last visited Mar. 26, 2021).

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

For a court to exercise jurisdiction over a respondent, it must have subject matter jurisdiction and personal jurisdiction.⁹ A non-resident respondent may have sufficient contacts with Florida if he or she commits acts expressly enumerated in Florida's long-arm statute.¹⁰ 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 the matter that brings him or her into court.¹¹

Whether a non-resident Internet company that electronically disseminates commercial recordings or audiovisual works into Florida has sufficient minimum contacts with the state is a fact-specific question that would likely need to be addressed on a case-by-case basis by a court.

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.¹² 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."¹³

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

⁹ *Caiazza v. American Royal Arts Corp.*, 73 So. 3d 245, 250 (Fla. 4th DCA 2011).

¹⁰ *Id.*, S. 48.193, F.S.

¹¹ *Caiazza v. American Royal Arts Corp.*, 73 So. 3d 245, 250 (Fla. 4th DCA 2011).

¹² *Turner Broadcasting System, Inc. v. F.C.C.*, 520 U.S. 180,189 (U.S. 1997).

¹³ *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)).