

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 33 Electronic Dissemination of Commercial Recordings and Audiovisual Works

SPONSOR(S): Busatta Cabrera

TIED BILLS: **IDEN./SIM. BILLS:** SB 288

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee	13 Y, 0 N	Wright	Anstead
2) Civil Justice & Property Rights Subcommittee	15 Y, 0 N	Mathews	Jones
3) Commerce Committee			

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 the following identifying information readily accessible to a consumer using or visiting the website:

- 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.

Currently, “electronic dissemination” means initiating the 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 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 right to seek injunctive relief.

The bill amends the definition of “electronic dissemination” to include “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.”

As such, the bill requires a person who owns or operates a streaming service or other website dealing in substantial part in the display or performance of 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, 2022.

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 deal in substantial part in the electronic dissemination of 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

Federal Digital Millennium Copyright Act

The Digital Millennium Copyright Act (DMCA) updated federal copyright law to address the relationship between copyrighted material and the internet. The DMCA created the notice-and-takedown system,⁹ which allows online service providers to expeditiously remove infringing content after receiving a notice from a copyright holder.¹⁰ As the internet, related consumer activity, and specifically third party posting of copyrighted content have continued to grow, so have takedown notices.¹¹ For example, Google received takedown notices for approximately 3 million URLs in 2013, compared to approximately 5.3 billion as of October 21, 2021.¹²

The DMCA also requires online service providers to designate an agent to receive copyright owners' notices, and provide the agent's contact information on their websites.

Federal Protecting Lawful Streaming Act

The Consolidated Appropriations Act of 2021 created the Protecting Lawful Streaming Act (PLSA),¹³ which increases the federal penalty for illegal streaming from a misdemeanor to a felony.¹⁴ Specifically, the PLSA targets individuals who act (1) willfully, (2) for purposes of commercial advantage or private financial gain, and (3) offer or provide to the public a digital transmission service.

Effect of the Bill

The bill amends the definition of "electronic dissemination" within the True Origin of Goods Act 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 or other website dealing in substantial part in the display or performance of commercial recordings and audiovisual works, not subject to an exemption, to post their identifying information on the website.

⁸ PC Mag Digital Group, *Streaming Service*, <https://www.pcmag.com/encyclopedia/term/streaming-service> (last visited Jan. 13, 2022).

⁹ 17 U.S.C. § 512 (2)(b)-(d). U.S. Copyright Office, *The Digital Millennium Copyright Act: Section 1202- Copyright Management Information Protection*, <https://www.copyright.gov/dmca/> (last visited Jan. 13, 2022). See also U.S. Copyright Office, *Section 512 Report*, pp. 1, 8 (May 2020), available at <https://www.copyright.gov/policy/section512/section-512-full-report.pdf> (last visited Jan. 13, 2022).

¹⁰ U.S. Copyright Office, *Section 512 of Title 17: Resources on Online Service Provider Safe Harbors and Notice-and-Takedown System* (May 21, 2020), <https://www.copyright.gov/512/> (last visited Jan. 13, 2022). See also 17 U.S.C. §§512(b)-(d)

¹¹ See also U.S. Copyright Office, *Section 512 Report*, pp. 10 (May 2020), available at <https://www.copyright.gov/policy/section512/section-512-full-report.pdf> (last visited Jan. 13, 2022).

¹² *Id.* at 31-32, citing Google, *How Google Fights Piracy* (2018), https://www.blog.google/documents/25/GO806_Google_FightsPiracy_eReader_final.pdf (last visited Nov. 23, 2021). See also Google Transparency Report, available at <https://transparencyreport.google.com/copyright/overview> (last visited Jan. 13, 2022).

¹³ 18 U.S.C. 2319C, "Illicit Digital Transmission Services."

¹⁴ The act of offering copyrighted material for download without specific license or authorization is separately classified a felony under the No Electronic Theft (NET) Act, but this provision did not cover streaming copyrighted material. 17 U.S.C. 506. See also Michael Antonucci, *New Legislation: CASE Act and Protecting Lawful Streaming Act* (Mar. 18, 2021), <https://www.mondaq.com/unitedstates/trademark/1047506/new-legislation-case-act-and-protecting-lawful-streaming-act> (last visited Jan. 13, 2022).

The bill provides an effective date of July 1, 2022.

B. SECTION DIRECTORY:

Section 1: Amends s. 501.155, F.S.; requiring certain information be provided on certain websites.

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 seek injunctive relief based on improper notice, and assist such parties in identifying illegal displays of their performances.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Although the Act allows owners, assignees, authorized agents, and licensees of commercial recordings and audio-visual works to seek injunctive relief, it is uncertain whether they would be able to successfully bring such an action because Florida courts may not have jurisdiction over such bad actors or respondents.

For a court to exercise jurisdiction over a respondent, it must have both subject matter jurisdiction and personal jurisdiction, which is determined by the court based on the respondent's contacts with

the state.¹⁵ A non-resident respondent may have sufficient contacts with Florida if he or she commits acts expressly enumerated in Florida's long-arm statute.¹⁶ 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.¹⁷ 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.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill captures a wide array of behaviors due to the broad definitions of the terms "commercial recording or audiovisual work," "electronic dissemination," "performance," and "display" used. As a result, many private individuals having a website may be required to disclose their true and correct name, physical address, and telephone number or e-mail address or be subject to the Act.

Also, the true target for the injunction and further consequences of the Act are likely those websites that do not provide the identifying information or that are located in another jurisdiction.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

¹⁵ *Caiazza v. American Royal Arts Corp.*, 73 So. 3d 245, 250 (Fla. 4th DCA 2011).

¹⁶ *Id.* S. 48.193, F.S.

¹⁷ *Caiazza v. American Royal Arts Corp.*, 73 So. 3d 245, 250 (Fla. 4th DCA 2011).