

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

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

SPONSOR(S): Busatta Cabrera

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

FINAL HOUSE FLOOR ACTION: 112 Y's 1 N's

GOVERNOR'S ACTION: Approved

SUMMARY ANALYSIS

HB 33 passed the House on March 4, 2022, as SB 288.

The True Origin of Digital Goods Act (Act) requires owners or operators of websites that deal in the electronic dissemination of commercial recordings or audiovisual works to Florida consumers to clearly post on their 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 has no fiscal impact on state or local governments.

The bill was approved by the Governor on June 24, 2022, ch. 2022-209, L.O.F., and will become effective on July 1, 2022.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF 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 their 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

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.

Streaming Services

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."

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).

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.

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

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.