

State Criminal Laws: Pre-1972 Sound Recordings

| State | Criminal Provision | Statutory Detail | Definition Requires Commercial Activity | Express Exemption for Library-Type Activities | Applies to Libraries (No Exceptions or Limitations) | Library/Archival Exemptions | Other Exemptions |
|----------|---------------------------------|--|---|---|---|--|---|
| Alabama | Ala. Code § 13A-8-80 to -86 | Criminalizes all "manufacture, distribut[ion], transport or wholesale" of "any article with the knowledge that the sounds... are so transferred without consent of the owner" w/o regard to commercial intent (§ 13A-8-81(a)(3)). § 13A-8-81(a)(1) & (2) criminalize unauthorized transfer of sound "for commercial advantage or private financial gain..." "Subdivision (a)(1) of this section applies only to sound recordings that were initially fixed prior to February 15, 1972." § 13A-8-81(e). § 13A-8-82 deals with the unlawful sale or rental of "any recorded device that has been produced, manufactured, distributed or acquired in violation of any provision of this article." § 13A-8-83 is a labeling provision. § 13A-8-84 requires "any state, county or local law enforcement officer to confiscate all recorded material" and related equipment used for purposes not in conformance with the provisions of this article. § 13A-8-85 pertains to damages in a civil action. | | | yes | No expressed exemption. | No other expressed exemptions. |
| Alaska | Alaska Stat. § 45.50.900 | Criminalizes unauthorized "reproduc[ti]on" of sound "for sale." § 45.50.900(a). § 45.50.900(b) provides exemptions. | yes | | | No expressed exemption. (ARL did not determine whether or not there is an exemption for libraries/archives). | § 45.50.900(b) exempts from criminal liability, the reproduction of a sound recording that (1) "is used, or intended to be used, solely for broadcast commercial or educational radio or television stations; or (2) constitutes the verbatim transcript, or other public record, of the proceedings of a judicial, legislative, or administrative agency, department, or other public body for which a charge or fee may or may not be made or collected for the reproduced recording." |
| Arizona | Ariz. Rev. Stat. Ann. § 13-3705 | Criminalizes unauthorized "copying" (in the form of "manufacturing" or "distributing") of sound, with explicit definitions of manufacturing and distributing requiring "intent to obtain commercial advantage or personal financial gain..." § 13-3705(A). § 13-3705(B) provides exemptions. § 13-3705(G) provides definitions. | yes | | | No expressed exemption. (ARL did not determine whether or not there is an exemption for libraries/archives). | § 13-3705(B). Exempts "person or persons engaged in radio or television broadcasting who transfers, or causes to be transferred, any such sounds, other than from the sound track of a motion picture, intended for, or in connection with, broadcast transmission or related uses, including the making of commercials and films, or for archival purposes." (Besek and Jaszi studies concluded that this language within the scope of NY & NJ leaves open the question as to whether this would exempt nonprofit/library institutions - there is no case law or statutory definitions to answer this question - ARL also left this question open). |
| Arkansas | Ark. Code Ann. § 5-37-510 | Criminalizes unauthorized transfer of sound "for commercial advantage or private financial gain." § 5-37-510(b). § 5-37-510(a). Provides definitions. § 5-37-510(c) is a labeling provision. § 5-37-510(d). Provides exemptions. § 5-37-510(h). requires enforcement officers to "confiscate any recording" not in conformance with the provisions of this section. | yes | yes | | § 5-37-510(d)(2) and (3) exempt "any person who transfers or causes to be transferred any sound or image...(2) for an archival purpose" or "(3) for an educational purpose, with no compensation being derived as a result of the transfer." | In addition to exempting library-type activities, § 5-37-510(d) exempts from criminal liability "any person who transfers or causes to be transferred any sound or image: (1) intended for or in connection with radio or television broadcast transmission, for communication media, or a related use...(4) for the internal operation of a business...(5) with prior authorization by a court of competent jurisdiction; or (6) solely for the personal use of the person transferring or causing the transfer if the person transferring or causing the transfer has no intention to evade a provision or intent of this section if proof of intent is an element of the offense." |

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| California | Ca. Penal Code §§ 653h, 653w | Criminalizes unauthorized transfer of sound "with intent to sell or cause to be sold, or to use or cause to be used for commercial advantage or private financial gain..." § 653h(a). At the same time, § 653h(h) exempts "not-for-profit educational institution[s]" that meet certain requirements. § 653h(g) provides an exemption for persons engaged in radio or television broadcasting. § 653h(h) provides another exemption for library-type activities. § 653w. is a labelling provision. § 980. prescribes a term of years for protection. | yes | yes | | "This section does not apply to any not-for-profit educational institution or any federal or state governmental entity, if the institution or entity has a primary purpose the advancement of the public's knowledge and the dissemination of information regarding American's musical cultural heritage, provided that this purpose is clearly set forth in the institution's or entity's charter, by laws, certificate of incorporation, or similar document, and the institution or entity has, prior to the transfer, made a good faith effort to identify and locate the owner or owners of the sound recordings to be transferred and, provided that the owner or owners could not be and have not been located. Nothing in this section shall be construed to relieve an institution or entity of its contractual or other obligation to compensate the owners of sound recordings to be transferred. In order to continue the exemption permitted by this subdivision, the institution or entity shall make continuing efforts to locate such owners and shall make an annual public notice of the fact of the transfers in newspapers of general circulation serving the jurisdictions where the owners were incorporated or doing business at the time of initial affixations. The institution or entity shall keep on file a record of the efforts made to locate such owners for inspection by appropriate governmental agencies." | § 653h(g) exempts from criminal liability any person "engaged in radio or television broadcasting who transfers, or causes to be transferred, any such sounds (other than from the sound track of a motion picture) intended for, or in connection with, broadcast transmission or related uses, or for archival purposes." |
| Colorado | Colo. Rev. Stat. §§ 18-4-601 to -605 | Criminalizes unauthorized transfer of sound "with the intent to sell... or to cause the same to be sold for profit..." and distribution of sound "for sale or resale." § 18-4-602. § 18-4-603 deals with unlawful trafficking in unlawfully transferred articles. § 18-4-604 deals with unlawfully packaged recorded articles. § 18-4-604.3. pertains to the unlawful recording of a live performance. § 18-4-604.7. deals with trafficking in an unlawfully recorded live | yes | | | No expressed exemption. (ARL did not determine whether or not there is an exemption for libraries/archives). | § 18-4-605. exempts from criminal liability (a) Any broadcaster who, in connection with or as part of a radio, television, or cable broadcast transmission or for the purpose of archival preservation, transfers any copyrighted sounds recorded on a sound recording; (b) Any person who transfers copyrighted sounds in the home for personal use and without compensation for such transfer. |
| Connecticut | Conn. Gen. Stat. Ann. §§ 53-142b to -142c | Criminalizes unauthorized transfer of sound "with the intent to sell or cause to be sold, or to use or cause to be used for profit..." § 53-142b. §53-142c. Deals with labelling. | yes | | | No expressed exemption. (ARL did not determine whether or not there is an exemption for libraries/archives). | § 53-142b(c) exempts from criminal liability "any person engaging in radio or television broadcasting who transfers or causes to be transferred any such sounds or images, or both, which are intended for, or in connection with, broadcast transmission or related uses or for archival purposes shall be exempt from any provision of subsection (b) of this section." |
| Delaware | Del. Code Ann. tit. 11, §§ 920–924 | Criminalizes unauthorized transfer of sound "with the intent to sell or cause to be sold," and distribution for purposes of "sale or resale." §920 and 921. § 922 deals with improper labelling. § 923 provides exceptions. § 924 deals with civil litigation. § 924A requires forfeiture or destruction of devices in violation of § 922. | yes | | | No expressed exemption. (ARL did not determine whether or not there is an exemption for libraries/archives). | § 923 exempts from criminal liability "(1) any broadcaster who, in connection with or as part of a radio, television or cable broadcast transmission, or for the purpose of archival preservation, transfers any such sounds recorded on a sound recording; (2) any person who transfers such sounds in the home, for personal use, and without compensation for such transfer; (2) any phonograph record, disc, wire, tape, film or other article upon which sound is recorded where a period of 50 years has transpired since the original fixation of sounds was made by the owner or on the owner's behalf." |
| District of Columbia | D.C. Code Ann. § 22-3214-3214.01 | Criminalizes unauthorized "reproduc[ti]on" or "cop[y]ing" of sound "with the intent to sell, [or] to derive commercial gain or advantage..." § 22-3214. § 22-3214.01 deals with deceptive labeling. | yes | | | § 22-3214(c)(1) exempts "[c]opying or other reproduction that is in the manner specifically permitted by Title 17 of the United States Code." (ARL did not determine whether or not this exemption would apply to nonprofit/library institutions). | Besides the lack of commercial activity, § 22-3214(c)(2) also exempts "[c]opying or other reproduction of a sound recording that is made by a licensed radio or television station or a cable broadcaster solely for broadcast or archival use." (Besek and Jaszi studies concluded that this language within the scope of NY & NJ leaves open the question as to whether this would exempt nonprofit/library institutions - there is no case law or statutory definitions to answer this question - ARL also left this question open). |

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| Florida | Fla. Stat. § 540.11 | Criminalizes unauthorized transfer of sound "with the intent to sell, or cause to be sold," and manufacture/distribution "for commercial advantage or private financial gain." § 540.11(6)(c) exempts "any not-for-profit educational institution" that meets certain requirements. | yes | yes | | § 540.11(6)(c) exempts from criminal liability "any not-for-profit educational institution or any federal or state governmental entity, if all the following conditions exist: (1) The primary purpose of the institution or entity is the advancement of the public's knowledge and the dissemination of information. (2) Such purpose is clearly set forth in the institution's or entity's charter, bylaws, certificate of incorporation, or similar document." (3) Prior to the transfer of the sounds, the institution or entity has made a good faith effort to identify and locate the owner or owners of the articles to be transferred. (4) Despite good faith efforts, the owner or owners have not been located." | § 540.11(6)(a) and (b) provide that criminal liability under this section does not attach to the following persons or conduct: "(a) any broadcaster who, in connection with, or as part of, a radio, television, or cable broadcast transmission, or for the purpose of archival preservation, transfers any such sounds recorded on a sound recording"; "(b) any person who transfers such sounds in the home for personal use and without compensation for such transfer." |
| Georgia | Ga. Code Ann. § 16-8-60 | Criminalizes all unauthorized transfers and distributions of sound w/o regard to commercial intent. § 16-8-60(a). § 16-8-60(b) is a labelling provision. § 16-8-60(c) deals with exemptions. | | yes | | § 16-8-60(c)(2)exempts from criminal liability "any person who transfers or causes to be transferred any such sounds or visual images: (2) For archival purposes..." | § 16-8-60(c)(1) and (2) exempt from criminal liability "any person who transfers or causes to be transferred any such sounds or visual images: (1) Intended for or in connection with radio or television broadcast transmission or related uses...(3) Solely for the personal use of the person transferring or causing the transfer and without any profit being derived from the transfer." |
| Hawaii | Haw. Rev. Stat. §§ 482C-1 to -5 | Criminalizes unauthorized transfer of sound "with intent to sell or cause to be sold." § 482C-1. § 482C-2 deals with the sale of unlawfully recorded sounds. § 482C-3 pertains to the sale or rental of recording equipment for unlawful use. § 482C-4 provides exemptions. | yes | yes | | ARL found that there was an expressed exemption for libraries/archives. | § 482C-4 exempts from criminal liability "any person who transfers or causes to be transferred any sounds intended for or in connection with radio or television broadcast transmission or related uses, for archival purposes, or solely for the personal use of the person transferring or causing the transfer and with no purpose of capitalizing commercially on such reproduction." (Besek and Jaszi studies concluded that this language within the scope of NY & NJ leaves open the question as to whether this would exempt nonprofit/library institutions - there is no case law or statutory definitions to answer this question - ARL also left this question open). |
| Idaho | Idaho Code §§ 18-7601 to -7608 | Criminalizes unauthorized transfer of sound "with the intent to sell such articles, or cause them to be sold for profit or used to promote the sale of any product." § 18-7603. § 18-7604 deals with penalties. § 18-7605 deals with the confiscation of equipment. § 18-7606 provides exceptions. | yes | | | No expressed exemption. (ARL did not determine whether or not there is an exemption for libraries/archives). | § 18-7606. exempts from criminal liability "any broadcaster, who, in connection with or as part of a radio, television, or cable broadcast transmission, or for the purpose of archival preservation, transfers any such sounds recorded on a sound recording." (Besek and Jaszi studies concluded that this language within the scope of NY & NJ leaves open the question as to whether this would exempt nonprofit/library institutions - there is no case law or statutory definitions to answer this question - ARL also left this question open). |
| Illinois | § 720 Ill. Comp. Stat. 5/16-7, 5/16-8 | Criminalizes unauthorized transfer of sound "with the purpose of selling or causing to be sold, or using or causing to be used for profit..." § 720 ILCS 5/16-7(a). § 720 ILCS 5/16-7(b) provides definitions. § 720 ILCS 5/16-7(e) provides exceptions. § 720 ILCS 5/16-7(b) allows for confiscation or destruction of recordings made in violation of this title. § 720 ILCS 5/16-8 is a labelling provision. | X | | | No expressed exemption. (ARL did not determine whether or not there is an exemption for libraries/archives). | The provision exempts "any person engaged in the business of radio or television broadcasting who transfers, or causes to be transferred, any sounds (other than from the sound track of a motion picture) solely for the purpose of broadcast transmission." 5/16-7(e). |
| Indiana | REPEALED: Ind. Code §§ 35-17-7-1 to -3 (1976) | n/a. Repealed by Pub. L. 148, § 24 (1976). | | | | n/a | n/a |

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| Iowa | n/a § 714.15 Reproduction of Sound Recordings. | § 714.15 Criminalizes the sale, distribution, "transfer...[of] any sounds recorded on a phonograph record, disc, wire, tape, film or other article without the consent of the owner." § 714.15(2) is a labelling provision. § 714.15(3) provides exceptions. § 714.15(4) states that "a person who violates the provisions of this section is guilty of theft." | | | | No expressed exemption. (ARL did not determine whether or not there is an exemption for libraries/archives). | § 714.15(3) exempts from criminal liability any "person who transfers or causes to be transferred sounds intended for or in connection with radio or television broadcast transmission or related uses, synchronized sound tracks of motion pictures or sound tracks recorded for synchronizing with motion pictures, for archival purposes or for the personal use of the person transferring or causing the transfer and without any compensation being derived by the person from the transfer." (Besek and Jaszi studies concluded that this language within the scope of NY & NJ leaves open the question as to whether this would exempt nonprofit/library institutions - there is no case law or statutory definitions to answer this question - ARL also left this question open). |
| Kansas | Kan. Stat. Ann. §§ 21-3748 to - 3751 | § 21-3748 criminalizes the duplication of any sounds recorded on a phonograph with "the intent to sell, rent or cause to be sold or rented..." with knowledge and without the consent of the owner. § 21-3748(b) provides definitions. § 21-3748(c) provides exceptions. | yes | | yes | ARL found that there was an expressed exemption for libraries/archives. | § 21-3748(c) exempts from criminal liability " (1) any broadcaster who, in connection with or as part of a radio or television broadcast or cable transmission, or for the purpose of archival preservation, duplicates any such sounds recorded on a sound recording; (2) any person who duplicates such sounds or such performance, for personal use, and without compensation for such duplication; (3) any sounds initially fixed in a tangible medium of expression after February 15, 1972; or (4) any computer program or any audio or visual recording that is part of any computer program." |
| Kentucky | Ky. Rev. Stat. Ann. § 434.445 | Criminalizes unauthorized transfer of sound "with the intent to sell or cause to be sold for profit..." § 434.445(1). § 434.445(5) provides exemptions. § 434.445(6) requires confiscation or destruction of devices made or used in violation of this Title. | yes | yes | | No expressed exemption. | § 434.445(6) exempts from criminal liability any person "who transfers or causes to be transferred any such sound or images intended for or in connection with radio or television broadcast or cable transmission or related uses, or for archival purposes, or solely for the personal use of the person transferring or causing the transfer and without any compensation being derived by the person from the transfer." (Besek and Jaszi studies concluded that this language within the scope of NY & NJ leaves open the question as to whether this would exempt nonprofit/library institutions - there is no case law or statutory definitions to answer this question - ARL also left this question open). |
| Louisiana | La. Rev. Stat. Ann. §§ 14:223-223.4 | Criminalizes unauthorized transfer, distribution, circulation, etc. of sound "for commercial gain." § 14.223. § 14.223.1 provides definitions. § 14.223.2 provides exceptions. § 14.223.3 deals with penalties. § 14.223.4 deals with civil remedies. | yes | | | No expressed exemption. (ARL did not determine whether or not there is an exemption for libraries/archives). | § 14.223.2 exempts from criminal liability "any person engaged in radio or television broadcasting who transfers or causes to be transferred any such sounds intended for or in connection with broadcast transmissions or related uses or for archival purposes." (Besek and Jaszi studies concluded that this language within the scope of NY & NJ leaves open the question as to whether this would exempt nonprofit/library institutions - there is no case law or statutory definitions to answer this question - ARL also left this question open). |

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| Maine | Me. Rev. Stat. Ann. tit. 10, § 1261 | Criminalizes unauthorized transfer of sound "with intent to sell or cause to be sold." § 1261(1). §1261(3) provides definitions. § 1261(5) provides exceptions. | yes | yes | | | § 1261(5) exempts from criminal liability "any person engaged in radio or television broadcasting who transfers or causes to be transferred any recorded sounds as described in subsection 1, other than from the sound track of a motion picture, intended for, or in connection with, broadcast transmission or related uses or for archival purposes...any person who transfers or causes to be transferred any recorded sounds as described in subsection 1 for private use and with no purpose of capitalizing commercially on such reproduction." (Besek and Jaszi studies concluded that this language within the scope of NY & NJ leaves open the question as to whether this would exempt nonprofit/library institutions - there is no case law or statutory definitions to answer this question - ARL also left this question open). |
| Maryland | Md. Crim. Law §§ 7-308 to -310 | Criminalizes unauthorized transfer of sound "with the intent to sell or cause to be sold for profit or used to promote the sale of any product." § 7-308(2)(i). | yes | | | No expressed exemption. (ARL did not determine whether or not there is an exemption for libraries/archives). | Consent of the owner may be a defense, Besides lack of commercial activity there are no other expressed exemptions. |
| Massachusetts | M.G.L.A. 266 § 143 | Criminalizes unauthorized transfer of sound "with intent to sell, rent... or cause to be sold..." § 143A. § 143B deals with the unauthorized reproduction and sale of live performances. § 143C deals with the manufacture, rental, or sale of recorded devices in packaging not bearing reproducer's name and address. § 143D discusses the exceptions to 143 - 143C. § 143E deals with the punishment for violation of 143A to 143C. § 143F and § 143G deal with the unlawful recording of motion picture in a motion picture theater and the penalties involved. § 143H deals with the forfeiture of recordings upon conviction for violation of 143A-143C | yes | yes | | 266 § 143D(a) exempts use "for archival preservation." (ALR interpreted the statutory language to exempt from criminal liability persons engaged in archival preservation. Besek and Jaszi, however, interpreted similar statutory language employed by NJ and NY to be less conclusive, and not necessarily an exemption for library-type activities. | Consent of the owner may be a defense. Besides lack of commercial activity, § 143D exempts any person who transfers "as a part of radio or [TV] broadcast" and local, state or federal law enforcement officers "employing an audiovisual recording function during the lawful exercise of law enforcement duties." |
| Michigan | M.C.L.A. 752.1052 to .1056 (ARL cited incorrect provision) Correct Provision: M.C.L.A. § 752.781 - 85 | Criminalizes unauthorized transfer of sound "with the intent to sell or cause to be sold for profit" § 752.782. § 752.781 defines "owner." § 752.783 deals with the advertising, sale, possession of articles resulting from transfers without consent. | Yes | | | 752.785 exempts "a person who transfers or causes to be transferred sound: (b) For archival, library, or educational purposes." (ARL did not determine whether or not there was a library/archival exemption). | Consent of the owner may be a defense. And besides lack of commercial activity, § 752.785 also exempts "[any] person who transfers or causes to be transferred sound: (a) Intended for or in connection with radio or [TV] broadcast transmission or related uses; (c) Solely for the personal use of the person transferring or causing the transfer and without any compensation being derived by the person..." |
| Minnesota | Minn. Stat. §§ 325E.17 to .20 | Criminalizes all unauthorized transfers and distributions of sound w/o regard to commercial intent. § 325E.17. § 325.18 is a labeling provision. | | yes | | § 325E.19 exempts from criminal liability any person "who transfers or causes to be transferred any recordings...(b) for archival purposes, (c) for library purposes, (d) for educational purposes..." | § 325E.19 exempts from criminal liability "any person who transfers or causes to be transferred any recordings...(e) solely for the personal use of the person transferring or causing the transfer and without any compensation being derived by the person from the transfer." |
| Mississippi | Miss. Code Ann. §§ 97-23-87 to -91 | Criminalizes unauthorized transfer of sound "with intent to sell, rent for a fee, or cause to be sold... or for any financial gain..." § 97-23-87(2)(a)-(b). § 97-23-89 deals with labeling. § 97-23-91 provides the penalties, actions, and remedies available for violation of § 97-23-87. § 97-23-91 provides exceptions. | yes | | | § 97-23-91 exempts from criminal liability the "transfer by a...a librarian or archivist of any such sounds...or for archival purposes only. (ARL did not determine whether or not there is an exemption for libraries/archives). | § 97-23-91 exempts from criminal liability the "transfer by a television operator, radio or television broadcaster...(other than from the sound track of a motion picture) intended for, or in connection with, broadcast transmission, retransmission or related uses..." |

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| Missouri | Mo. Ann. Stat. §§ 570.225--255 | Criminalizes unauthorized transfer of sound "with the intent to sell or cause to be sold for profit..." § 570.225 - 226. § 570.230 criminalizes the sale or offer to sell unauthorized recordings in violation fo § 570.225-226. § 570.235 defines "owner." § 570.240 is a labeling provision and § 570.241 criminalizes the sale of the item in violation of § 570.240. § 570.255 provides exemptions and forfeiture and destruction of devices made or transferred in violation of this title. | yes | | | No expressed exemption. (ARL did not determine whether or not there is an exemption for libraries/archives). | Consent of the owner may be a defense. Besides the lack of commercial activity, § 570.245(1) exempts from criminal liability "any radio or television broadcaster who transfers any such sounds as part of or in connection with a radio or television broadcast transmission or for archival preservation; (2) any person transferring any such sounds at home for his personal use without any compensation being derived by such person or any other person from such transfer; (3) any cable television company that transfers any such sounds as part of its regular cable television service." |
| Montana | Mont. Code Ann. §§ 30-13-141 to -147 | Criminalizes transfer of sound "with the intent to sell or cause to be sold for profit..." MCA § 30-13-142(1)-(2); and penalizes those who "advertise, offer for sale or resale, sell or resell, or distribute or possess for such purposes any sound recording... without the consent of the owner." MCA § 30-13-143(1)-(2). § 30-13-141 defines "owner" & "sound recording." § 30-13-144 is a labeling provision. § 30-13-147 says that 30-13-141 - 146 does not limit civil litigation. | yes | yes | | § 30-13-141 - 30-13-147 do not apply to: transfers for bona fide educational purposes (provided no direct pecuniary gain). MCA § 30-13-146(3) (ARL did not determine whether or not this would apply to nonprofit/library institutions). | Besides lack of commercial activity, § 30-13-141 - 30-13-147 do not apply to: "any broadcaster who, in connection with a radio, [TV], or cable broadcast transmission or for the purpose of archival preservation, transfers any sounds recorded on a sound recording." § 30-13-146(1). (Besek and Jaszi studies concluded that this language within the scope of NY & NJ leaves open the question as to whether this would exempt nonprofit/library institutions - there is no case law or statutory definitions to answer this question - ARL also left this question open). Also exempt are transfers for personal use w/out compensation. § 30-13-146(2) |
| Nebraska | Neb. Rev. Stat. §§ 28-1323 to -1326 | Criminalizes all unauthorized transfers and distributions of sound w/o regard to commercial intent. § 28-1323 - 24. § 28-1326 defines the penalty as a Class II misdemeanor. | | yes | | § 28-1325(2) & (4) exempts use "by an educational institution, school, or other person for instructional or educational uses," and "for archival purposes." | § 28-1325(1) exempts transfers "intended for or in connection with radio or [TV] broadcast transmission or related uses." And § 28-1325(3) exempts transfers "solely for the personal use of the person transferring or causing the transfer and without any compensation being derived by the person from the transfer." |
| Nevada | Nev. Rev. Stat. Ann. § 205.217 | Criminalizes all unauthorized transfers, distributions, and sales of sound w/o regard to commercial intent. § 205.217. | | X | | "This section does not apply to any person who transfers or causes to be transferred... for archival purposes..." § 205.217. | Also exempts transfers intended for the connection with radio/TV broadcast transmission and personal use (w/out |
| New Hampshire | N.H. Rev. Stat. §§ 352-A:1 to -A:5 | Criminalizes unauthorized transfer of sound "with the intent to sell such article or cause it to be sold or to be used for profit," and distribution "if such person knew or should have known that such article (a) embodies any sounds transferred... without the prior express written consent of the owner." § 352-A:2. § 352-A:1 defines "owner." § 352-A:3 is a labeling provision. § 352-A:4 reserves rights for civil litigation. § 352-A:5 discusses the criminal penalties. § 638:6-a deals with counterfeit recordings, "any person who sells or rents counterfeit recordings...." | yes | X | | § 352-A:2(III)(b)(2) exempts use for "archival purposes." | Besides lack of commercial activity, the provision also exempts the transfer of sound recordings intended for or in connection with: broadcast radio/TV transmission and home/personal use (w/out compensation). § 352-A:2(III)(b)(1)&(3). |

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| New Jersey | N.J. Stat. § 2C:21-21 | Criminalizes unauthorized transfer of sound "with intent to sell... or to use the sound recording to promote the sale of any product..." N.J.S.A. § 2C:21-21c. § 2C:21-21b defines "sound recording" and "owner." § 2C:21-21d allocates penalties. § 2C:21-21f provides exemptions. | yes | | | No expressed exemption. (ARL did not determine whether or not there is an exemption for libraries/archives). | Besides lack of commercial activity, the provision also exempts transfers of sound recordings in connection with broadcast transmission for radio & TV "or for purposes of archival preservation, transfers any sounds or images recorded on a sound recording or audiovisual work." § 2C:21-21f(1). (Besek and Jaszi studies concluded that this language within the scope of NY & NJ leaves open the question as to whether this would exempt nonprofit/library institutions - there is no case law or statutory definitions to answer this question - ARL also left this question open). Additionally, it exempts transfers for personal use (w/out deriving a profit) and transfers made by any law enforcement officer engaged in the official performance of his duties. § 2C:21-21f(2)-(3). |
| New Mexico | Current Provision: NMSA 1978 § 30-16B-2 - 6 | NMSA 1978 § 30-16B-3 criminalizes unauthorized transfer for sale (or with the intent to sell) for commercial advantage. § 30-16B-2 defines "owner" and "recording." § 30-16B-4 is a labeling provision. § 30-16B-6 provides exemptions. | yes | | | No expressed exemption. (ARL did not determine whether or not there is an exemption for libraries/archives). | Besides lack of commercial activity, the provisions do not apply to "any radio or [TV] broadcaster who transfers any recording as part of, or in connection with, a radio or [TV] broadcast transmission or for archival preservation." § 30-16B-6A. (Besek and Jaszi studies concluded that this language within the scope of NY & NJ leaves open the question as to whether this would exempt nonprofit/library institutions - there is no case law or statutory definitions to answer this question - ARL also left this question open). Also exempt are recordings defined as a public record. § 30-16B-6B. And the transfer of recordings for personal use (w/out compensation). § 30-16B-6C. |
| New York | N.Y. Penal Law § 275.00-45 | Criminalizes unauthorized transfer of sound "with the intent to rent or sell, or cause to be rented or sold for profit, or used to promote the sale of any product..." § 275.05 - 30. The NY Penal Law includes different degrees of penalties for the prohibited unauthorized uses of the sound recordings. § 275.05 - 00 defines "owner" and "recording." § 275.05 - 40 is a labeling provision. And § 275.05 - 45 provides limitations. (included in the appendix is the legislative history of the criminal provisions) | yes | | | No expressed exemption. (ARL did not determine whether or not there is an exemption for libraries/archives). | Besides lack of commercial activity, the article does not apply to "any broadcaster who, in connection with or as part of a radio, [TV], or cable broadcast transmission, or for the purpose of archival preservation, transfers any such recorded sounds or images." § 275.45(1)(a). (Besek and Jaszi studies concluded that this language within the scope of NY & NJ leaves open the question as to whether this would exempt nonprofit/library institutions - there is no case law or statutory definitions to answer this question - ARL also left this question open). Transfers for personal use (w/out compensation) are also exempt. § 275.45(1)(b). Lastly, § 275.45(2) says that "this article shall neither enlarge nor diminish the rights of parties in civil litigation." |
| North Carolina | N.C. Gen. Stat. Ann. § 14-432 - 37; N.C. Gen Stat. Ann. § 66-28 | Criminalizes unauthorized transfer of sound "with the intent to sell or cause to be sold..." and manufacture/distribution "for profit." NCGSA § 14-433. § 14-432 defines "owner." § 14-434 is a retailing provision. § 14-435 is a labeling provision. § 14-436 states that owners "shall have a cause of action in the courts of this State for all damages resulting from the violation, including actual, compensatory and incidental damages." (civil action for damages) | yes | | | No expressed exemption. (ARL did not determine whether or not there is an exemption for libraries/archives). | Besides lack of commercial activity, § 14-433 does not apply to "any person engaged in webcasting or radio or [TV] broadcasting who transfers, or causes to be transferred, any such sounds other than from the sound track of a motion picture intended for, or in connection with webcast, broadcast or telecast transmission or related uses, or for archival purposes." § 14-433(c) (Besek and Jaszi studies concluded that this language within the scope of NY & NJ leaves open the question as to whether this would exempt nonprofit/library institutions - there is no case law or statutory definitions to answer this question - ARL also left this question open). It also exempts ISPs "who solely provide a conduit for access to the Internet" from third party violation of this Article. § 14-433(c). |

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| State | Criminal Provision | Statutory Detail | Definition Requires Commercial Activity | Express Exemption for Library-Type Activities | Applies to Libraries (No Exceptions or Limitations) | Library/Archival Exemptions | Other Exemptions |
|--------------|--|--|---|---|---|--|--|
| North Dakota | N.D. Cent. Code §§ 47-21.1-01 to -06 | Criminalizes unauthorized transfer of sound "with the intent to sell or cause to be sold for profit, or used to promote the sale of any product," or distribute for purposes of "sale or resale." NDCC, 47-21.1-02. 47-21.1-03 is a labeling provision. 47-21.1-04 and 47-21.1-06 deal with forfeiture/destruction of recordings/devices and penalties. 47-21.1-05 deals with exemptions. | yes | | | No expressed exemption. (ARL did not determine whether or not there is an exemption for libraries/archives). | Besides lack of commercial activity, the provisions do not apply to "any broadcaster who, in connection with or as part of a radio, [TV], or cable broadcast transmission, or for the purpose of archival preservation, transfers any sounds recorded on a sound recording." NDCC, 47-21.1-05. (Besek and Jaszi studies concluded that this language within the scope of NY & NJ leaves open the question as to whether this would exempt nonprofit/library institutions - there is no case law or statutory definitions to answer this question - ARL also left this question open). Also exempt are transfers for personal use (w/out compensation), and judicial or administrative proceedings pursuant to law. NDCC, 47-21.1-05. |
| Ohio | Ohio Rev. Code Ann. § 1333.52 | Criminalizes unauthorized "transcrib[ing]" of sound "with intent to sell..." RC § 1333.52(A) - (B) | yes | | | No expressed exemption. (ARL did not determine whether or not there is an exemption for libraries/archives). | Besides lack of commercial activity, the provision exempts "transcription by a radio or [TV] broadcaster... in connection with a radio, [TV] or cable broadcast transmission, or for archival purposes." (Besek and Jaszi studies concluded that this language within the scope of NY & NJ leaves open the question as to whether this would exempt nonprofit/library institutions - there is no case law or statutory definitions to answer this question - ARL also left this question open). And "any person who transcribes sounds for personal use." RC § 1333.52(C)(1)-(2) |
| Oklahoma | 21 Okla. Stat. Ann. §§ 1975-1981, §§ 1865-1869. Repealed by Laws 1991, c. 82, § 8, emerg. Eff. Apr 18, 1991. | Criminalizes unauthorized "reproduc[ion] for sale." 21 Okl.St. Ann. § 1976. § 1975 defines "owner" and "sound recording." § 1977 deals with the unlawful sale or offer for sale of sound recordings. § 1978 deals with the unlawful transfer of a sound recording or performance for unauthorized sale. § 1979-80 are labeling provisions. § 1981 deals with the confiscation/preservation/disposition of the sound recording in regards to violation of the provisions. | yes | | | No expressed exemption. (ARL did not determine whether or not there is an exemption for libraries/archives). | Besides lack of commercial activity, this provision shall not apply "to motion pictures or other audiovisual works." § 1976A |
| Oregon | Or. Rev. Stat. § 164.864 - 73 | Criminalizes unauthorized "reproduc[ion] for sale." ORS § 164.865. § 164.864 defines "owner" and "recording." § 164.866 states that nothing in the provisions "limits or impairs the right of a person injured by the criminal acts of a defendant to sue and recover damages from the defendant in a civil action." § 164.867 makes it clear the § 164.868-872 only applies to commercial uses. § 164.868 is a labeling provision. § 164.869 deals with the unlawful recording of a live performance. (§ 164.870 & 872 have been repealed) § 164.872 deals with the unlawful labeling of a videotape recording. | yes | | | No expressed exemption. (ARL did not determine whether or not there is an exemption for libraries/archives). | Exemptions for intended use "for broadcast by educational radio or television stations." § 164.873(2)(a). Also exempts sound recordings defined as public records or legislative records. § 164.873(2)(b)-(c). (ARL did not determine whether or not these exemptions would apply to nonprofit/library institutions). |
| Pennsylvania | 18 Pa. C.S.A. § 4116 | Criminalizes unauthorized transfer of sound "with the intent to sell or cause to be sold..." PCSA § 4116(b). § 4116(a) defines "owner." § 4116(c) provides exceptions and § 4116(d) deals with the manufacture, sale or rental of a recording of a live performance without the consent of the owner. § 4116(e) is a labeling provision. The remainder of the provision deals with the penalties and damages available. | yes | | | No expressed exemption. (ARL did not determine whether or not there is an exemption for libraries/archives). | Besides lack of commercial activity, the provision exempts "any person engaged in radio or [TV] broadcasting who transfers, or causes to be transferred... in connection with broadcast or telecast transmission... or for archival purposes." § 4116(c)(1). (Besek and Jaszi studies concluded that this language within the scope of NY & NJ leaves open the question as to whether this would exempt nonprofit/library institutions - there is no case law or statutory definitions to answer this question - ARL also left this question open). Additionally, "Subsection (b) shall not apply to... sound recordings fixed on or after February 15, 1972." § 4116(c)(2). |

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| State | Criminal Provision | Statutory Detail | Definition Requires Commercial Activity | Express Exemption for Library-Type Activities | Applies to Libraries (No Exceptions or Limitations) | Library/Archival Exemptions | Other Exemptions |
|----------------|--|--|---|---|---|---|---|
| Rhode Island | R.I. Gen. Laws § 6-13.1-15; R.I. Gen. Law § 42-8.1-7 | Criminalizes all unauthorized transfers and distributions of sound w/o regard to commercial intent. 1956 § 6-13.1-15(b)(1)-(3). R.I. Gen. Law § 42-8.1-7 deals with the Administration of state archives; "state archivist, whenever it appears to him or her to be in the public interest, is authorized:... shall make provisions for the preservation, arrangement, repair and rehabilitation, duplication and reproduction, description, and exhibition of records transferred to him or her..." § 42-8.1-7(c) | | yes | | "This section does not apply to any person who transfers or causes to be transferred any sounds or images intended... for archival purposes." 1956 § 6-13.1-15(d). R.I. Gen. Law § 42-8.1-7 may act as an "exception" for archivists. | Also exempts transfers "in connection with radio or [TV] broadcast transmission or related uses... or solely for personal use... without any compensation being derived..." 1956 § 6-13.1-15(d). |
| South Carolina | S.C. Code Ann. §§ 16-11-910 to -950 | Criminalizes unauthorized transfer of sound "for commercial advantage or private financial gain... with the intent to sell or cause to be sold..." § 16-11-910. 915 deals with prohibitions relative to live performances. 930 is a labeling provision - illegal distribution of recordings without name and address of manufacturer and designation of featured artist. | yes | | | No expressed exemption. (ARL did not determine whether or not there is an exemption for libraries/archives). | Besides the lack of commercial activity, the only exception is that "the provisions of this article do not apply to sounds or calls of wild birds or animals." § 16-11-950. (ARL did not determine whether or not this would apply to nonprofit/library institutions). |
| South Dakota | S.D. Codified Laws Ann. §§ 43-43A-1 to -7 | Criminalizes unauthorized transfer of sound "with the intent to sell or cause to be sold..." and distribution of "any such article on which sounds have been so transferred." SDCL § 43-43A-2. § 43-43A-1 defines "owner." § 43-43A-3 is a labeling provision. § 43-43A-5 & § 43-43A-6 have been repealed and § 43-43A-7 provides that each transaction is a separate offense. | yes | | | No expressed exemption. (ARL did not determine whether or not there is an exemption for libraries/archives). | Besides lack of commercial activity, the provisions do not apply to "any person engaged in radio or [TV] broadcasting who transfers... any recorded sounds as a part of a radio or [TV] broadcast or for archival preservation." § 43-43A-4(1). (Besek and Jaszi studies concluded that this language within the scope of NY & NJ leaves open the question as to whether this would exempt nonprofit/library institutions - there is no case law or statutory definitions to answer this question - ARL also left this question open). Transfers for personal use (w/out compensation) and any judicial or administrative proceedings pursuant to law. § 43-43A-4(2) - (3). |
| Tennessee | Tenn. Code Ann. § 39-14-139 | Criminalizes unauthorized "reproduc[ti]on for sale," and transfer of sound "with intent to sell it or cause it to be sold or use it or cause it to be used for commercial advantage or private financial gain..." § 39-14-139(b)(1) - (d). | yes | | | No expressed exemption. (ARL did not determine whether or not there is an exemption for libraries/archives). | Besides lack of commercial activity, there are no other expressed exemptions. |
| Texas | Tex. Bus. & Com. Code Ann. §641.001 - 054 | Criminalizes unauthorized "reproduc[ti]on for sale," and transfer of sound "with intent to sell the recording or cause the recording to be sold..." § 641.051. 001 defines "owner" and "recording." 052 deals with the unauthorized recording of live performance and 054 is a labeling provision. | yes | | | No expressed exemption. (ARL did not determine whether or not there is an exemption for libraries/archives). | Besides lack of commercial activity, there are no other expressed exemptions. Consent of the owner may be a defense. § 641.051(1) - (3). |
| Utah | Utah Code Ann. §§ 13-10-3 - 8 | Criminalizes unauthorized transfer, distribution, circulation, or making available of sound "for sale or profit," or "for a fee, rental, or any other form of compensation." § 13-10-4. § 13-10-6 provides that each violation is only a misdemeanor. § 13-10-7 states that these provisions only apply to sound recordings fixed before February 15, 1972. And § 13-10-8 defines "recording." | yes | yes | | Does not explicitly exempt libraries or archives but § 13-10-5(1)(b) exempts "any person transferring any such sounds without any compensation being derived by this person or any other person from the transfer." (ARL considered this an exemption for libraries/archives) | Besides the lack of commercial activity, the provisions also do not apply to, "any person engaged in radio or [TV] broadcasting or cable [TV] who transfers, or causes to be transferred, any of the sounds referred to [in these sections] (other than from the sound track of a motion picture) intended for, or in connection with, broadcast transmission or for archival purposes." § 13-10-5(1)(a) (Besek and Jaszi studies concluded that this language within the scope of NY & NJ leaves open the question as to whether this would exempt nonprofit/library institutions - there is no case law or statutory definitions to answer this question - ARL also left this question open). The provisions also "shall neither enlarge nor diminish the rights of parties in civil litigation." § 13-10-5(2). |

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| State | Criminal Provision | Statutory Detail | Definition Requires Commercial Activity | Express Exemption for Library-Type Activities | Applies to Libraries (No Exceptions or Limitations) | Library/Archival Exemptions | Other Exemptions |
|---------------|---------------------------------------|--|---|---|---|--|---|
| Vermont | n/a | n/a (The only statute discussing sound recordings in VT is 9 VSA § 2479a - Truth in advertising and producing musical performances - "No person shall advertise or conduct a live musical performance or production in VT through false, deceptive, or misleading affiliation, connection, or association w/a performing group or a recording group, except under one or more of the [listed] requirements...") | | | | n/a | n/a |
| Virginia | Va. Code Ann. §§ 59.1-41.1 to -41.6 | Criminalizes unauthorized transfer of sound "with the intent to sell, rent or cause to be sold or rented..." and manufacture/distribution "[f]or commercial advantage or private financial gain..." § 59.1-41.2. § 59.1-41.1 defines "owner." § 59.1-41.3 deals with the unlawful use of certain recording devices and § 59.1-41.4 is a labeling provision. § 59.1-41.5 and § 59.1-41.6 deal with the confiscation of recording devices and the penalties for violating the provisions. | yes | | | No expressed exemption. (ARL did not determine whether or not there is an exemption for libraries/archives). | Besides the lack of commercial activity, § 59.1-41.2 exempts "any person engaged in radio or [TV] broadcasting who transfers, or causes to be transferred, any sounds other than from the sound track of a motion picture intended for, or in connection with broadcast or telecast transmission or related uses, or for archival purposes." (Besek and Jaszi studies concluded that this language within the scope of NY & NJ leaves open the question as to whether this would exempt nonprofit/library institutions - there is no case law or statutory definitions to answer this question - ARL also left this question open). |
| Washington | Wash. Rev. Code Ann. §§ 19.25.010-900 | Criminalizes unauthorized "reproduc[ti]on for sale," and transfer of sound "with intent to sell it or cause it to be sold or use it or cause it to be used for commercial advantage or private financial gain..." § 19.25.020. 010 defines "owner" and "recording." § 19.25.020. 030 deals with the use of recording of live performance without consent of the owner. § 19.25.020. 040 is a labeling provision. § 19.25.020. 050 defines the penalties for violating § 19.25.020. 020 & § 19.25.020. 030. § 19.25.020. 100 deals with truth in music advertising. | yes | | | No expressed exemption. (ARL did not determine whether or not there is an exemption for libraries/archives). | Besides the lack of commercial activity, § 19.25.020. 810 exempts "any recording used or intended to be used only for broadcast by commercial or educational radio or [TV] station where no recording is made of the broadcast." (Besek and Jaszi studies concluded that this language within the scope of NY & NJ leaves open the question as to whether this would exempt nonprofit/library institutions - there is no case law or statutory definitions to answer this question - ARL also left this question open). § 19.25.020. 820 exempts "any recording defined as a public record of any court, legislative body, or proceedings of any public body...." |
| West Virginia | W. Va. Code § 61-3-50 | Criminalizes unauthorized transfer of sound "for commercial advantage or private financial gain... with intent to sell for profit..." § 61-3-50(a). | yes | yes | | § 61-3-50(d)(5) exempts "educational institutions, when the purpose of such reproduction is limited and used for... archival or educational purposes." | Besides lack of commercial activity, the provision also exempts "[TV] and radio stations licensed by the federal communications commission or to education institutions, when the purpose of such reproduction is limited and used for criticism, comments, news reporting, archival or educational purposes." § 61-3-50(d)(5). |
| Wisconsin | Wis. Stat. § 943.206 - 209 | Criminalizes unauthorized transfer of sound "with intent to sell or rent the recording..." § 943.207. 206 defines "owner" and "recording." § 943.207. 208 deals with the recording of a performance without the consent of the performance owner. And § 943.207. 209 is a labeling provision. | yes | | | No expressed exemption. (ARL did not determine whether or not there is an exemption for libraries/archives). | Besides lack of commercial activity, the provision does not apply to "transfer by a cable [TV] operator or radio or [TV] broadcaster of any recorded sounds, other than from the sound track of a motion picture, intended for, or in connection with, broadcast or other transmission or related uses, or for archival purposes." § 943.207(4)(a) (Besek and Jaszi studies concluded that this language within the scope of NY & NJ leaves open the question as to whether this would exempt nonprofit/library institutions - there is no case law or statutory definitions to answer this question - ARL also left this question open). The provision also exempts the transfer of a recording "intended for possible use in a civil or criminal action or special proceeding in a court of record." § 943.207(4)(b). |

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|---------|--------------------------------------|---|---|---|---|---|---|
| Wyoming | Wyo. Stat. Ann. §§ 40-13-201 to -206 | Criminalizes all unauthorized distribut[ion], and unauthorized transfer "with intent to sell or to cause to be sold for profit..." § 40-13-202. § 40-13-201 defines "owner." § 40-13-204 provides that 5 or more duplicate copies or 20 or more individual copies w/out consent are prima facie evidence that they are intended for sale (in violation of § 40-13-202). § 40-13-205 provides the penalties. | yes | yes | | § 40-13-206(a)(iii) exempts uses "solely for educational purposes." | Consent of the owner may be a defense. Besides the lack of commercial intent, § 40-13-206(a)(i) also exempts "any broadcaster who, in connection with or as part of a radio, [TV] or cable broadcast transmission or for purpose of archival preservation, transfers any such sounds recorded on a sound recording." (Besek and Jaszi studies concluded that this language within the scope of NY & NJ leaves open the question as to whether this would exempt nonprofit/library institutions - there is no case law or statutory definitions to answer this question - ARL also left this question open). Also exempt is "any person who transfers such sounds in home, for personal use" (w/out compensation). § 40-13-206(a)(ii). And "any common carrier whose services or facilities are merely contracted for and used by another for the purpose of transferring sound." § 40-13-206(a)(iv). |