
A BILL FOR AN ACT

RELATING TO COPYRIGHTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the federal
2 Copyright Act of 1976, specifically, 17 U.S.C. section 301(c),
3 explicitly allows states to regulate, until February 15, 2067,
4 rights and interests arising from sound recordings that were
5 fixed prior to February 15, 1972. However, Hawaii law,
6 specifically, chapter 482C, Hawaii Revised Statutes, which was
7 enacted in 1975 to protect against record piracy, places
8 enforcement in the hands of law enforcement without providing
9 artists with adequate civil means to enforce their rights to
10 works that were fixed prior to February 15, 1972. The
11 legislature further finds that artists themselves have the most
12 at stake in enforcing their rights, and that the artists from
13 the golden era of Hawaiian music deserve the same opportunity to
14 profit from their work as that enjoyed by artists in California.
15 Specifically, in California, the United States District
16 Court for the Central District of California, in its 2014
17 decision of *Flo & Eddie, Inc. v. Sirius XM Radio, Inc. et al.*,



1 Case No. CV 13-5693 PSG (RZx) (Sept. 22, 2014), while
2 recognizing that the federal Copyright Act of 1976 explicitly
3 allows states to regulate rights and interests arising from
4 sound recordings fixed prior to February 15, 1972, also held
5 that California Civil Code, section 980(a)(2), recognizes a
6 comprehensive ownership interest in sound recordings fixed prior
7 to February 15, 1972, subject only to the narrow exception
8 included in that statute.

9 The purpose of this Act is to protect, until February 15,
10 2067, all original works of authorship that are embodied in
11 sound recordings, including the public performance of the sound
12 recordings, and are not currently protected by the federal
13 Copyright Act of 1976, as may be amended from time to time.

14 SECTION 2. Chapter 482C, Hawaii Revised Statutes, is
15 amended by adding six new sections to be appropriately
16 designated and to read as follows:

17 "§482C-A Sound recordings fixed prior to February 15,
18 1972. (a) The author of an original work of authorship
19 consisting of a sound recording initially fixed prior to
20 February 15, 1972, has an exclusive ownership interest in the
21 original work until February 15, 2067, against all persons



1 except a person who independently makes or duplicates another
2 sound recording that does not directly or indirectly recapture
3 the actual sounds fixed in the original work, but consists
4 entirely of an independent fixation of other sounds, even though
5 the sounds imitate or simulate the sounds contained in the
6 original work.

7 (b) This section shall not limit, annul, or diminish in
8 any respect any rights, exclusive or otherwise, in sound
9 recordings fixed prior to February 15, 1972, existing under
10 Hawaii common law or civil or criminal statutes. The
11 codification of certain of these rights that give rise to
12 statutory causes of action for the violation of those rights
13 shall not be construed to limit other causes of action under
14 either Hawaii common law or the civil or criminal statutes.

15 (c) Any civil causes of action shall take effect upon the
16 availability of sound recordings for license through one or more
17 collecting societies or rights management organizations.

18 §482C-B Infringement of sound copyright. Subject to
19 section 482C-4, any person who violates the rights of the author
20 or the legal and beneficial owner of the copyright as provided
21 in this chapter is an infringer of the copyright and shall be



1 liable in a civil action by the author or the legal and
2 beneficial owner of the copyright for any and all of the damages
3 and remedies provided in this chapter. The enumeration of any
4 right or remedy under this chapter shall not adversely affect
5 the rights of an author or the legal and beneficial owner of the
6 copyright to pursue criminal penalties under other laws of this
7 State.

8 §482C-C Injunctive relief. (a) Actual or threatened
9 infringement may be enjoined. The court may also order that any
10 copies in the possession or control of any infringer, including
11 any media containing those sound records, be delivered to an
12 officer of the court, or to the author or the legal and
13 beneficial owner of the copyright, to be destroyed.

14 (b) For exceptional circumstances, an injunction may
15 condition future use upon the payment of a reasonable royalty or
16 license fee for a period not to exceed the period of time under
17 which the use could have been prohibited. Exceptional
18 circumstances include, but are not limited to, a material and
19 prejudicial change of position prior to acquiring infringing
20 material that renders a prohibitive injunction inequitable. The



1 alleged infringer shall bear the burden of proof in proving
2 exceptional circumstances.

3 §482C-D Damages; general; exemplary. (a) The author or
4 the legal and beneficial owner of the copyright may recover
5 damages for infringement. At the option of the author or the
6 legal and beneficial owner of the copyright, damages may be
7 calculated based upon either:

8 (1) The actual loss sustained by the author or the legal
9 and beneficial owner of the copyright that is caused
10 by infringement and the unjust enrichment caused by
11 the infringement that is not taken into account in
12 computing actual loss; or

13 (2) Statutory damages calculated in the amount of not less
14 than \$750 nor more than \$30,000, as the court deems
15 appropriate.

16 (b) Where there is evidence of wilful or malicious
17 infringement, the court may award exemplary damages in an amount
18 not exceeding three times any award made under subsection (a).
19 The court, in its discretion, may enter judgment for an amount
20 not to exceed three times the lost profits and damages incurred
21 by the author or the legal and beneficial owner of the copyright



1 and award reasonable attorneys' fees to the author or the legal
2 and beneficial owner of the copyright when the court finds that
3 the infringers committed the wrongful acts knowingly or in bad
4 faith.

5 §482C-E Attorneys' fees. In any civil action under this
6 chapter, the court, in its discretion, may allow the recovery of
7 full costs by or against any party other than the State or an
8 officer thereof. Except as otherwise provided by this chapter,
9 the court may also award a reasonable attorneys' fee to the
10 prevailing party as part of the costs.

11 §482C-F Sound recording statutory licensing; rights
12 management organization. (a) Public performance of a sound
13 recording shall be subject to statutory licensing as described
14 in this section. The performer and the author or the legal and
15 beneficial owner of the copyright of a sound recording shall be
16 entitled to be paid equitable remuneration for the public
17 performance or its communication to the public by
18 telecommunication.

19 (b) A person who performs a published sound recording in
20 public or communicates it to the public by telecommunication
21 shall pay royalties for a license to the collecting society or



1 rights management organization selected by the author or the
2 legal and beneficial owner of the copyright to collect fees,
3 distribute fees, and represent members who are authors or legal
4 and beneficial owners of copyrights.

5 (c) In negotiating statutory licenses in accordance with
6 this section, any author or the legal and beneficial owner of
7 the copyright of sound recordings and any entities performing
8 sound recordings affected by this section may negotiate and
9 agree upon the royalty rates and license terms and conditions
10 for the performance of the sound recordings and the
11 proportionate division of fees to be paid among the authors or
12 the legal and beneficial owners of the copyright, and may
13 designate common agents on a nonexclusive basis to negotiate,
14 agree to, pay, or receive payments.

15 (d) For licenses granted under this chapter for
16 performances by interactive services or for performances that
17 exceed the sound recording performance complement:

18 (1) The author or the legal and beneficial owner of the
19 copyright of sound recordings affected by this section
20 may designate a collective society or performing
21 rights organization to act on its behalf to grant



1 licenses and receive and remit royalty payments;
2 provided that the author or the legal and beneficial
3 owner of the copyright shall establish the royalty
4 rates and material license terms and conditions
5 without recourse to any agreement with, or in
6 combination or concert with, any other authors or the
7 legal and beneficial owners of copyrights of sound
8 recordings; and

9 (2) Entities performing sound recordings affected by this
10 section may designate common agents to act on their
11 behalf to obtain licenses and collect and pay royalty
12 fees; provided that each entity performing sound
13 recordings shall determine the royalty rates and
14 material license terms and conditions without recourse
15 to any agreement with, or in combination or concert
16 with, any other entities performing sound recordings.

17 (e) License fees from sound recordings covered by this
18 chapter shall be allocated as follows:

19 (1) A featured recording artist who performs on a sound
20 recording that has been licensed for a public
21 performance shall be entitled to receive payments from



1 the author or the legal and beneficial owner of the
2 copyright of the sound recording in accordance with
3 the terms of the artist's contract; and

4 (2) A nonfeatured recording artist who performs on a sound
5 recording that has been licensed for a public
6 performance shall be entitled to receive payments from
7 the author or the legal and beneficial owner of the
8 copyright of the sound recording in accordance with
9 the terms of the nonfeatured recording artist's
10 applicable contract or other applicable agreement.

11 (f) The author or the legal and beneficial owner of the
12 copyright of the exclusive right to publicly perform a sound
13 recording by means of a digital audio transmission shall
14 allocate the author's or the legal and beneficial owner's
15 receipts from the statutory licensing of the sound recording to
16 recording artists in the following manner:

17 (1) Twenty-one per cent of the receipts shall be deposited
18 in an escrow account managed by an independent
19 administrator jointly appointed by the authors or the
20 legal and beneficial owner of the copyrights of sound
21 recordings and the American Federation of Musicians,



1 or any successor entity, to be distributed to
2 nonfeatured musicians, whether or not members of the
3 American Federation of Musicians, who have performed
4 on sound recordings;

5 (2) Twenty-one per cent of the receipts shall be deposited
6 in an escrow account managed by an independent
7 administrator jointly appointed by the authors or the
8 legal and beneficial owner of copyrights of sound
9 recordings and the American Federation of Television
10 and Radio Artists, or any successor entity, to be
11 distributed to nonfeatured vocalists, whether or not
12 they are members of the American Federation of
13 Television and Radio Artists, who have performed on
14 sound recordings; and

15 (3) Forty-five per cent of the receipts shall be
16 allocated, on a per sound recording basis, to the
17 recording artist, the artists featured on the sound
18 recording, or the persons conveying rights in the
19 artists' performance in the sound recordings.

20 (g) If the author or the legal and beneficial owner of the
21 copyright of a sound recording licenses an affiliated entity the



1 right to publicly perform a sound recording by means of a
2 digital audio transmission under this section, the author or the
3 legal and beneficial owner of the copyright shall make the
4 licensed sound recording available on no less favorable terms
5 and conditions to all bona fide entities that offer similar
6 services; provided that if there are material differences in the
7 scope of the requested license with respect to the type of
8 service, the particular sound recordings licensed, the frequency
9 of use, the number of subscribers served, or the duration, then
10 the author or the legal and beneficial owner of the copyright
11 may establish different terms and conditions for those other
12 services.

13 (h) The limitation set forth in subsection (g) shall not
14 apply in the case where the author or the legal and beneficial
15 owner of the copyright of a sound recording licenses:

- 16 (1) An interactive service; or
17 (2) An entity to perform publicly up to forty-five seconds
18 of the sound recording and the sole purpose of the
19 performance is to promote the distribution or
20 performance of that sound recording.



1 (i) The author or the legal and beneficial owner of a
2 copyright in sound recordings may freely negotiate licenses for
3 the sound recording individually; provided that civil remedies
4 for infringement under this chapter shall not be available
5 unless the sound recording is made available for license through
6 a collecting society or performing rights management
7 organization."

8 SECTION 3. Section 482C-4, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "[+]§482C-4[+] **Lawful uses; [defined.] limitations on**
11 **exclusive right.** This chapter shall not apply to any person who
12 transfers or causes to be transferred any sounds [~~intended for~~
13 ~~or in connection with radio or television broadcast transmission~~
14 ~~or related uses, for archival purposes, or solely for the~~
15 ~~personal use of the person transferring or causing the transfer~~
16 ~~and with no purpose of capitalizing commercially on such~~
17 ~~reproduction.] or publicly performs any work, in its current
18 form, for non-commercial educational use, archival use, or "fair
19 use" as the term is used in the federal Copyright Act of 1976,
20 as may be amended from time to time, or transfers or causes to
21 be transferred or publicly performs the work under a negotiated~~



1 or statutory license for transfer or performance of the sound
2 recording."

3 SECTION 4. In codifying the new sections added by section
4 2 of this Act, the revisor of statutes shall substitute
5 appropriate section numbers for the letters used in designating
6 the new sections in this Act.

7 SECTION 5. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 6. This Act shall take effect upon its approval.



Report Title:

Copyright; Sound Recordings

Description:

Protects sound recordings fixed prior to 02/15/1972 against unauthorized public performance. Protects any right in sound recordings fixed prior 02/15/1972 existing under Hawaii common law, or civil or criminal statutes. Establishes civil remedies for violations. (HD1)

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