

7811

2011-2012 Regular Sessions

I N A S S E M B L Y

May 17, 2011

Introduced by M. of A. MORELLE -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to offenses relating to unauthorized recordings

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivision 6 of section 275.00 of the penal law, as added
2 by chapter 460 of the laws of 1990, is amended to read as follows:

3 6. "Recording" means an original phonograph record, disc, tape, audio
4 or video cassette, wire, film, HARD DRIVE, FLASH DRIVE, MEMORY CARD OR
5 OTHER DATA STORAGE DEVICE or any other medium on WHICH such sounds,
6 images, or both sounds and images are or can be recorded or otherwise
7 stored, or a copy or reproduction that duplicates in whole or in part
8 the original.

9 S 2. The penal law is amended by adding a new section 275.50 to read
10 as follows:

11 S 275.50 RESTITUTION.

12 1. IN ADDITION TO ANY OTHER PENALTY PERMITTED BY LAW, IF A PERSON IS
13 CONVICTED OF AN OFFENSE UNDER THIS ARTICLE THROUGH WHICH HE OR SHE
14 DERIVED PECUNIARY VALUE OR BY WHICH HE OR SHE CAUSED PECUNIARY LOSS TO
15 ONE OR MORE VICTIMS, HE OR SHE SHALL BE SENTENCED TO PAY RESTITUTION TO
16 SUCH VICTIM OR VICTIMS NOT IN EXCESS OF:

17 (A) THE ACTUAL WHOLESALE VALUE OF THE RECORDINGS INVOLVED IN THE
18 OFFENSE;

19 (B) THE ESTIMATED WHOLESALE VALUE OF THE RECORDINGS INVOLVED IN THE
20 OFFENSE IF THE RECORDINGS HAD BEEN LEGALLY MANUFACTURED AND RECORDED; OR

21 (C) THE ACTUAL LOSS TO THE VICTIM.

22 2. FOR PURPOSES OF THIS SECTION, "VICTIM" SHALL INCLUDE AN OWNER OR
23 LAWFUL PRODUCER OF A MASTER RECORDING THAT HAS SUFFERED INJURY AS A
24 RESULT OF THE OFFENSE OR A TRADE ASSOCIATION THAT REPRESENTS AN OWNER OR

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 LAWFUL PRODUCER OF A MASTER RECORDING THAT HAS SUFFERED A FINANCIAL LOSS
2 AS A RESULT OF THE OFFENSE.

3 3. WHEN THE COURT REQUIRES RESTITUTION PURSUANT TO THIS SECTION, THE
4 COURT SHALL MAKE A FINDING AS TO THE AMOUNT THEREOF. IF THE RECORD DOES
5 NOT CONTAIN SUFFICIENT EVIDENCE TO SUPPORT SUCH A FINDING THE COURT MAY
6 CONDUCT A HEARING UPON THE ISSUE.

7 S 3. Subdivision 2 of section 275.45 of the penal law, as added by
8 chapter 460 of the laws of 1990, is amended to read as follows:

9 2. [This] EXCEPT AS PROVIDED IN SECTION 275.50 OF THIS ARTICLE, THIS
10 article shall neither enlarge nor diminish the rights of parties in
11 civil litigation.

12 S 4. This act shall take effect on the first of November next succeed-
13 ing the date on which it shall have become a law.