

101ST CONGRESS
2D SESSION

S. 2358

Entitled the "Digital Audio Tape Recorder Act of 1990."

IN THE SENATE OF THE UNITED STATES

MARCH 28 (legislative day, JANUARY 23), 1990

Mr. DECONCINI introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

Entitled the "Digital Audio Tape Recorder Act of 1990."

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be referred to as the "Digital Audio Tape
5 Recorder Act of 1990".

6 **SEC. 2. FINDINGS.**

7 (a) **FINDINGS.**—The Congress finds that—

8 (1) the Congress has been expressly granted the
9 power under article 1, section 8, of the Constitution to
10 promote the progress of science and the useful arts;

11 (2) representatives of the consumer electronics
12 and recording industries have jointly studied possible

1 recommendations to governments about the functions
2 of digital audio tape (hereinafter in this section referred
3 to as "DAT") recorders;

4 (3) taking into account concerns raised in the
5 worldwide music community regarding copyright pro-
6 tection, the industry representatives announced a
7 worldwide agreement in 1989 to make joint recommen-
8 dations to governments, including the United States
9 Government, with respect to DAT technology;

10 (4) the industry representatives agreed to recom-
11 mend for government implementation worldwide the
12 serial copy management system (hereinafter in this
13 section referred to as "SCMS"), a technical system for
14 controlling so-called "serial" copying on DAT
15 recorders;

16 (5) under SCMS, the circuitry which controls the
17 functions of a DAT recorder will be programmed to
18 read certain coding information accompanying the
19 source material and, based on the particular combina-
20 tion of codes it reads, will not prevent unrestricted
21 copying, will not prevent copying but label the copy
22 with a code to restrict further digital-to-digital copying,
23 or will disallow such copying;

24 (6) under SCMS, a DAT recorder will not be pre-
25 vented from making first-generation digital-to-digital

1 copies of original copyright-protected prerecorded
2 music and other material from compact discs, prere-
3 corded DAT cassettes, digital broadcasts, and other
4 digital sources entering through a digital input, but will
5 be prevented from making second-generation digital-to-
6 digital copies of the copies;

7 (7) under SCMS, in recognition of the fact that a
8 DAT recorder at present will be unable to determine
9 whether original prerecorded music or other material
10 entering through an analog input has been coded for
11 copyright protection, a DAT recorder will not be pre-
12 vented from making first-generation and second-gen-
13 eration digital-to-digital copies of the source material,
14 but will be prevented from making third-generation
15 digital-to-digital copies of the second-generation copies;

16 (8). in the event that technological developments
17 permit the circuitry of a DAT recorder to identify
18 copyrighted material entering through an analog input,
19 equivalent limitations on digital copies of copies should
20 apply, but there will be no limitation on serial digital
21 copying of analog material not coded for copyright
22 protection;

23 (9) home taping on conventional analog tape re-
24 corders will not be subject to SCMS and thus will
25 remain unaffected;

1 (10) the benefits of implementing SCMS for DAT
2 recorders will be significant for consumers, the record-
3 ing industry, the consumer electronics industry, and
4 others in the United States;

5 (11) in furtherance of the realization of those ben-
6 efits and to encourage other governments to act ac-
7 cordingly, this Act implements SCMS for DAT record-
8 ers and provides mechanisms for regulatory implemen-
9 tation of solutions with respect to future issues and
10 technological developments;

11 (12) representatives of the consumer electronics
12 and music industries are expected to discuss copyright
13 issues resulting from new technologies, including re-
14 cordable and erasable compact disc players, and to
15 study possible approaches, and to make recommenda-
16 tions to governments, including the United States Gov-
17 ernment, for applying SCMS or another system with
18 greater copying restrictions than SCMS to these new
19 technologies;

20 (13) this Act does not address or affect the legali-
21 ty of private home copying under the copyright laws;

22 (14) the enactment of this Act shall not prejudice
23 consideration of whether or not royalties should be
24 levied for private home copying of copyrighted music;
25 and

1 the primary purpose or effect of which is to avoid, bypass,
2 remove, deactivate, or otherwise circumvent any program or
3 circuit which implements, in whole or in part, the serial copy
4 management system in a digital audio tape recorder or digital
5 audio interface device.

6 (c) EXCEPTION FOR PROFESSIONAL MODELS.—(1)
7 Notwithstanding subsections (a) and (b), the requirements of
8 those subsections shall not apply to a professional model digi-
9 tal audio tape recorder. For purposes of this Act, the term
10 “professional model digital audio tape recorder” means a digi-
11 tal audio tape recorder—

12 (A) which is capable of sending a digital audio
13 interface signal in which the channel status block flag
14 is set as a “professional” interface, in accordance with
15 the standards and specifications set forth in the techni-
16 cal reference document or established under an order
17 issued by the Secretary of Commerce under section 4;

18 (B) which is clearly, prominently, and permanent-
19 ly marked with the letter “P” or the word “profession-
20 al” on the outside of its packaging, and in all advertis-
21 ing, promotional, and descriptive literature, with re-
22 spect to the recorder, that is available or provided to
23 persons other than the manufacturer, its employees, or
24 its agents; and

1 (C) which is designed, manufactured, marketed,
2 and intended for use by recording professionals, in the
3 ordinary course of a lawful business.

4 (2) The capability in a digital audio tape recorder de-
5 scribed in paragraph (1)(A), or the marking of a digital audio
6 tape recorder described in paragraph (1)(B), shall not create
7 any presumption that the recorder is a professional model
8 digital audio tape recorder.

9 (3) In determining whether a digital audio tape recorder
10 meets the requirements of paragraph (1)(C), factors to be con-
11 sidered shall include—

12 (A) whether it has features used by recording pro-
13 fessionals in the course of a lawful business, including
14 features such as—

15 (i) a data collection and reporting system of
16 error codes during recording and playback;

17 (ii) a record and reproduce format providing
18 “read after write” and “read after read”;

19 (iii) a time code reader and generator con-
20 forming to the standards set by the Society of
21 Motion Picture and Television Engineers for such
22 readers and generators; and

23 (iv) a professional input/output interface,
24 both digital and analog, conforming to standards

1 set by audio engineering organizations for connec-
2 tors, signaling formats, levels, and impedances;
3 except that the presence or absence of features referred
4 to in this subparagraph shall not create any presump-
5 tion as to whether or not a digital audio tape recorder
6 is a professional model digital audio tape recorder;

7 (B) the nature of the promotional materials used
8 to market the digital audio tape recorder;

9 (C) the media used for the dissemination of the
10 promotional materials, including the intended audience;

11 (D) the distribution channels and retail outlets
12 through which the recorder is disseminated;

13 (E) the manufacturer's price for the recorder as
14 compared with the manufacturer's price for digital
15 audio tape recorders implementing the serial copying
16 management system;

17 (F) the relative quantity of manufacture of the re-
18 corder as compared to the size of the manufacturer's
19 market for professional digital audio tape recorders;

20 (G) the occupations of the purchasers of the re-
21 corder; and

22 (H) the uses to which the recorder is put.

23 (d) ENCODING OF INFORMATION ON PHONOREC-
24 ORDS.—(1) No person shall encode a phonorecord of a sound
25 recording with inaccurate information relating to the catego-

1 ry code, copyright status, or generation status of the source
2 material so as to improperly affect the operation of the serial
3 copy management system.

4 (2) Nothing in this Act requires any person engaged in
5 the manufacture or assembly of phonorecords to encode any
6 such phonorecord with respect to its copyright status.

7 (e) INFORMATION TO ACCOMPANY TRANSMISSION IN
8 DIGITAL FORMAT.—Any person who transmits or otherwise
9 communicates to the public any sound recording in digital
10 format shall not be required under this Act to transmit or
11 otherwise communicate the information relating to the copy-
12 right status of the sound recording; except that any such
13 person who does transmit or otherwise communicate such
14 copyright status information shall transmit or communicate
15 such information accurately.

16 (f) DEFINITION.—For purposes of this section, the term
17 “manufacture or distribute” means to manufacture, assemble,
18 sell, resell, lease, or distribute in commerce, or to offer for
19 sale, resale, lease, or distribution in commerce.

20 **SEC. 4. SERIAL COPY MANAGEMENT SYSTEM.**

21 (a) PUBLICATION OF TECHNICAL REFERENCE DOCU-
22 MENT.—Within 10 days after the date of the enactment of
23 this Act, the Register of Copyrights shall cause the technical
24 reference document to be published in the Federal Register.

1 (b) **ORDERS OF SECRETARY OF COMMERCE.**—The Sec-
2 retary of Commerce, upon petition by an interested party and
3 after consultation with the Register of Copyrights, may issue
4 an order to implement the serial copy management system
5 set forth in the technical reference document as follows:

6 (1) The Secretary may issue such order for the
7 purpose of permitting in commerce devices that do not
8 conform to all of the standards and specifications set
9 forth in the technical reference document, if the Secre-
10 tary determines that such devices possess the same
11 functional characteristics with respect to regulation of
12 serial copying as, and are compatible with the prevail-
13 ing method for implementation of, the serial copy man-
14 agement system set forth in the technical reference
15 document.

16 (2) The Secretary may issue such order for the
17 purpose of permitting in commerce devices that do not
18 conform to all of the standards and specifications set
19 forth in the technical reference document, if the Secre-
20 tary determines that the standards and specifications
21 relating generally to digital audio tape recorders and
22 digital audio interface devices have been or are being
23 revised or otherwise amended or modified such that the
24 standards and specifications set forth in the technical
25 reference document are not or would no longer be ap-

1 plicable, and that such devices conform to such new
2 standards and specifications and possess the same func-
3 tional characteristics with respect to regulation of
4 serial copying as the serial copy management system
5 set forth in the technical reference document.

6 (3) The Secretary may issue such order for the
7 purpose of approving standards and specifications for a
8 technical method implementing in a digital audio tape
9 recorder the same functional characteristics as the
10 serial copy management system so as to regulate serial
11 copying of source material in the analog format in an
12 equivalent manner as source material in the digital
13 format.

14 **SEC. 5. REMEDIES.**

15 (a) **CIVIL ACTIONS.**—Any aggrieved person or the At-
16 torney General of the United States may bring a civil action
17 in an appropriate United States district court against any
18 person for a violation of section 3.

19 (b) **POWERS OF THE COURT.**—In an action brought
20 under subsection (a), the court—

21 (1) consistent with the limitation set forth in sub-
22 section (e), may grant temporary and final injunctions
23 on such terms as it may deem reasonable to prevent or
24 restrain violations of section 3;

25 (2) shall award damages under subsection (c);

1 (3) shall direct the recovery of full costs, including
2 awarding reasonable attorney's fees, by an aggrieved
3 person, other than the United States, who prevails;
4 and

5 (4) may grant such other equitable relief as it may
6 deem reasonable.

7 (c) DAMAGES.—(1) An aggrieved person shall be enti-
8 tled to recover damages for violations of section 3, which
9 shall be computed, at the election of the aggrieved person at
10 any time before final judgment is rendered, in accordance
11 with one of the following, but in no event shall the judgment
12 exceed a total of \$1,000,000:

13 (A) The aggrieved person may recover the actual
14 damages suffered by him or her as a result of the vio-
15 lation and any profits of the violator that are attributa-
16 ble to the violation which are not taken into account in
17 computing the actual damages. In determining the vio-
18 lator's profits, the aggrieved person is required to
19 prove only the violator's gross revenue, and the viola-
20 tor is required to prove his or her deductible expenses
21 and the elements of profit attributable to factors other
22 than the violation.

23 (B) The aggrieved person may recover an award
24 of statutory damages for each violation of subsection
25 (a) or (b) of section 3 in the sum of not less than

1 \$1,000 nor more than \$10,000 per device involved in
2 such violation or per device on which a service prohib-
3 ited by section 3(b) has been performed, as the court
4 considers just.

5 (C) The aggrieved person may recover an award
6 of statutory damages for each violation of subsection
7 (d) of section 3 in the sum of not less than \$10 nor
8 more than \$100 per phonorecord involved in such vio-
9 lation, as the court considers just.

10 (D) The aggrieved person may recover an award
11 of statutory damages for each transmission or commu-
12 nication that violates subsection (e) of section 3, in the
13 sum of not less than \$10,000 nor more than \$100,000,
14 as the court considers just.

15 (2) In addition to making an award of damages under
16 paragraph (1), in any case in which the court finds that a
17 violation of section 3 was committed willfully and for pur-
18 poses of direct or indirect commercial advantage or private
19 financial gain, the court in its discretion may increase the
20 award of damages, whether actual or statutory, by an addi-
21 tional amount of not more than \$5,000,000.

22 (3) In any case in which the court finds that the violator
23 was not aware and had no reason to believe that his or her
24 acts constituted a violation of section 3, the court in its dis-

1 cretion may reduce the total award of damages to a sum of
2 not less than \$250.

3 (d) **IMPOUNDING OF ARTICLES.**—At any time while an
4 action under this section is pending, the court may order the
5 impounding, on such terms as it may deem reasonable, of any
6 device or phonorecord that is in the custody or control of the
7 alleged violator and that the court has reasonable cause to
8 believe does not comply with, or was involved in a violation
9 of, section 3.

10 (e) **LIMITATION REGARDING PROFESSIONAL**
11 **MODELS.**—Unless a court finds that the labeling and distri-
12 bution of a digital audio tape recorder as a professional model
13 by a manufacturer, given the factors set forth in subsection
14 (c) of section 3, were without a reasonable basis or not in
15 good faith, the court shall not grant a temporary or prelimi-
16 nary injunction against the distribution of such devices by the
17 manufacturer.

18 (f) **REMEDIAL MODIFICATION AND DESTRUCTION OF**
19 **ARTICLES.**—As part of a final judgment or decree finding a
20 violation of section 3, the court shall order the remedial
21 modification, if possible, or the destruction of any device or
22 phonorecord that does not comply with, or was involved in a
23 violation of, section 3 that is in the custody or control of the
24 violator or that has been impounded under subsection (d) of
25 this section.

1 (g) DEFINITION.—For purposes of this section, the term
2 “device” does not include a phonorecord.

3 SEC. 6. DEFINITIONS.

4 (a) IN GENERAL.—As used in this Act—

5 (1) the term “aggrieved person” means—

6 (A) any person engaged in the manufacture
7 or assembly of any digital audio tape recorder or
8 any phonorecord;

9 (B) any person who is a copyright owner of
10 any work embodied in a phonorecord; and

11 (C) any association, representative, or agent
12 of any person described in subparagraph (A) or
13 (B);

14 (2) the term “commerce” means commerce be-
15 tween or among any of the States, or between any of
16 the States and any foreign nation;

17 (3) the term “digital audio interface device”
18 means any machine or device, whether or not devel-
19 oped as of the date of the enactment of this Act, and
20 whether or not included with or as part of some other
21 device, that supplies a digital audio signal through a
22 “non-professional interface”, as the term “non-profes-
23 sional interface” is used in the Digital Audio Interface
24 Standard in part I of the technical reference document

1 or in an order of the Secretary of Commerce under
2 section 4(b) (1) or (2);

3 (4) the term “digital audio tape recorder” means
4 any device, whether or not developed as of the date of
5 the enactment of this Act, and whether or not included
6 with or as a part of some other device, that is intended
7 or marketed for the primary purpose of making a sound
8 recording in a digital format on magnetic tape;

9 (5) the term “interested party” means any person
10 engaged in the manufacture or assembly of any digital
11 audio tape recorder or any phonorecord, or any asso-
12 ciation, representative, or agent of such person;

13 (6) the term “person” includes “anyone” as that
14 term is used in section 501(a) of title 17, United States
15 Code;

16 (7) the term “serial copy management system”
17 means the system for regulating serial copying by digi-
18 tal audio tape recorders that is set forth in the techni-
19 cal reference document or in an order of the Secretary
20 of Commerce under section 4;

21 (8) the term “State” means any of the several
22 States, the District of Columbia, and any common-
23 wealth, territory, or possession of the United States;

24 (9) the term “technical reference document”
25 means the document entitled “Technical Reference

1 Document for Digital Audio Tape Recorder Act of
2 1990”, as such document appears under the proceed-
3 ings of the Senate in the Congressional Record for
4 March 28, 1990; and

5 (10) the terms “analog format”, “copyright
6 status”, “category code”, “generation status”, and
7 “source material” mean those terms as they are used
8 in the technical reference document.

9 (b) **COPYRIGHT DEFINITIONS.**—Except as otherwise
10 provided, all terms used in this Act shall have the same
11 meanings as those terms are given in title 17, United States
12 Code.

13 **SEC. 7. EFFECT ON OTHER LAW.**

14 This Act does not affect any right or remedy, or any
15 limitation on such right or remedy, held by or available to
16 any person under title 17, United States Code. Nothing in
17 this Act creates or affords any greater or lesser rights with
18 respect to private home copying of a copyrighted work than
19 any rights afforded under title 17, United States Code.

20 **SEC. 8. AMENDMENT TO TITLE 17, UNITED STATES CODE.**

21 (a) **IN GENERAL.**—Chapter 5 of title 17, United States
22 Code, is amended by adding at the end the following:

23 **“§ 511. Effect of Digital Audio Tape Recorder Act of 1990**

24 “The Digital Audio Tape Recorder Act of 1990 does
25 not affect any right or remedy, or any limitation on such right

1 or remedy, held by or available to any person under this title.
2 Nothing in the Digital Audio Tape Recorder Act of 1990
3 creates or affords any greater or lesser rights with respect to
4 private home copying of a copyrighted work than any rights
5 afforded under this title.”.

6 (b) CONFORMING AMENDMENT.—The table of sections
7 at the beginning of chapter 5 of title 17, United States Code,
8 is amended by adding at the end the following:

“511. Effect of Digital Audio Tape Recorder Act of 1990.”.

9 **SEC. 9. EFFECTIVE DATE.**

10 This Act shall take effect on the date of the enactment
11 of this Act, but shall not apply to any device or phonorecord
12 manufactured or assembled before such date.

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