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MARCH 18, 2008

Mr. Mac Letson Secretary-Treasurer
American Callers Association
P.O. Box 2406
Muscle Shoals, Alabama 35660

Re: Unauthorized duplication of sound recordings

Dear Mac:

I have been asked to address a question for the members of your association concerning the legality and potential civil and/or criminal exposure of individuals duplicating, or having duplicating, sound recordings without the permission of the "owner" of the sound recordings.

Counterfeiting of records differs somewhat from record piracy. Piracy means the unauthorized duplication of sound recordings which are sold openly as manufactured with out the permission of the record company. Counterfeiting means the unauthorized manufacturing and distribution of records under the guise that the records were authorized. Both counterfeiting and piracy are serious offenses and have serious potential consequences.

Prior to 1962 there were no federal laws directly applicable to counterfeiters of records and state laws were non-existent. In 1962, Congress passed its first anti-counterfeiting law and made it a misdemeanor punishable by fine up to \$10,000.00 and up to one year in prison, to knowingly transport, sell, receive or offer to sell in interstate or foreign commerce counterfeited records. In addition to the fine and imprisonment, there are forfeiture provisions contained in the 1962 law concerning the equipment and materials used to do the counterfeiting.

Starting effective February 15, 1972, a federal copyright in sound recordings was established relating to the sound recordings made and published after that date and, effective January 1,

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1978, sound recording, whether published or unpublished, are granted copyright protection.

Typically, there are two separate and distinct copyright interests involved in counterfeiting and piracy. The record company generally owns the copyright in the sounds recorded on the record, tape, CD, etc. and the music publisher typically owns the copyright interest to the music and lyrics. Unauthorized counterfeiting or piracy of the sound recording is a violation of the exclusive right of each copyright owner and is a copyright infringement and subject to a civil action for infringement by the copyright owner. There are numerous possible civil remedies available to each copyright owner including injunctive relief; impounding and destroying the infringing works or materials; actual damages to the copyright owner and any additional profits made by the infringer or statutory damages for one work generally from \$250.00 to \$10,000.00. In addition, there is a (fine of up to \$50,000.00 for willful infringement. The federal courts in enforcing copyright owner's may, and typically do, award costs and attorney's fees to the copyright owner.' Attorney's fees are generally far in excess of the civil damages awards.

Counterfeiting and piracy generally involve criminal infringement of a copyright as well. If the infringement involves willful action for the purpose of commercial advantage or private financial gain, the infringer may be fined up to \$25,000.00 and

Imprisoned for up to one year for the first offense and may be

Fined up \$56,000.00 and imprisoned up to two years for any subsequent offense.

In addition to the federal laws protecting copyrights, most states have enacted strong anti-counterfeiting and anti-piracy statutes. For example, Alabama Code Section 13A-8-80, et seq., makes it a felony to manufacture, distribute or wholesale any article where the sound recording has been knowingly transferred to another sound recording, with intent to sell or cause to be sold, without the consent of the owner. Mere knowing possession of a counterfeited or pirated sound recording is a misdemeanor in Alabama.

Alabama law also provides for civil damages for the actual damages sustained by the copyright owner and punitive damages up to three times the amount of the total cost of producing the illegally recorded material. Alabama also gives the lawful producer of the recorded material (as contrasted to the copyright owners under federal law) a civil cause of action with the same civil damages being available as would in the case of a copyright owner. Each separate manufacturer, distribution, sale or transfer at wholesale of any unauthorized recording constitutes a separate and distinct defense under Alabama law punishable by

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imprisonment of not less than one year and a fine up to \$25,000.00 for the first offense and up to \$50,000.00 and ten years imprisonment for any subsequent offense.

Alabama law seems to close the gap left open by the federal copyright law in that it seems to apply to recordings made prior to the enactment of the federal law in 1962. Even a sound recording recorded prior to 1962 where the federal copyright has expired and the song is "public domain" cannot be transferred to another recording for the purpose of sale or distribution without the consent of the "owner" (defined under Section 13A-8-80 as the person "... who owns the master phonograph record, master disc, master tape, master film or other device used for reproducing recorded sounds on phonograph records, discs, tapes, films or other articles on which sound is recorded and from which the transfer sounds are directly or indirectly derived.")

The unauthorized duplication of sound recording is not only a serious violation of the copyright or sound recording owner's rights but is a serious violation of state or federal criminal law.

Yours truly,

ALMON, McALISTER, ASHE, BACCUS & TANNER

By


Steve A. Baccus

SAB:GPB