

Requested by Representative GOMBERG

**PROPOSED AMENDMENTS TO
HOUSE BILL 3442**

1 On page 1 of the printed bill, line 2, after “material” insert “; creating
2 new provisions; and amending ORS 164.864, 164.867, 164.868, 164.869, 164.872
3 and 164.875”.

4 Delete lines 4 through 31 and delete page 2 and insert:

5 **“SECTION 1. (1) As used in this section, ‘interactive computer ser-**
6 **vice’ means any information service, system or access software that**
7 **provides or enables computer access by multiple users to a computer**
8 **server, including a service or system that provides access to the**
9 **Internet and a system operated or service offered by a library or edu-**
10 **catinal institution.**

11 **“(2) The provisions of ORS 164.864, 164.865, 164.866, 164.868, 164.869,**
12 **164.872, 164.873, 164.875 and 164.882 do not apply to:**

13 **“(a) A provider of an interactive computer service unless the pro-**
14 **vider intentionally promotes or solicits content that the provider**
15 **knows to be in violation of ORS 164.864, 164.865, 164.866, 164.868, 164.869,**
16 **164.872, 164.873, 164.875 and 164.882; or**

17 **“(b) Material that is in the public domain.**

18 **“SECTION 2.** ORS 164.864 is amended to read:

19 **“164.864. As used in ORS 164.865, 164.866, 164.868, 164.869, 164.872, 164.873,**
20 **164.875 and 164.882 and this section[, unless the context requires otherwise]:**

21 **“(1) ‘Audiovisual recording function’ means the capability of a device to**

1 record or transmit a motion picture or any part of a motion picture by means
2 of any technology now known or later developed.

3 “(2) ‘Commercial enterprise’ means a business **or enterprise** operating in
4 intrastate or interstate commerce for profit. ‘Commercial enterprise’ does
5 not include:

6 “(a) Activities by schools, libraries or religious organizations;

7 “(b) Activities incidental to a bona fide scholastic or critical endeavor;

8 “(c) Activities incidental to the marketing or sale of recording devices;

9 and

10 “(d) Activities involving the recording of school or religious events or
11 activities.

12 “(3) ‘Fixed’ means embodied in a recording or other tangible medium of
13 expression, by or under the authority of the author, so that the matter em-
14 bodied is sufficiently permanent or stable to permit it to be perceived, re-
15 produced or otherwise communicated for a period of more than transitory
16 duration.

17 “(4) ‘Live performance’ means a recitation, rendering or playing of mu-
18 sical instruments or vocal arrangements in an audible sequence in a public
19 performance.

20 “(5) ‘Manufacturer’ means the entity authorizing the duplication of a
21 specific recording, but [*shall*] **does** not include the manufacturer of the car-
22 tridge or casing itself.

23 “(6) ‘Master recording’ means the master disk, master tape, master film
24 or other device used for reproducing recorded sound from which a sound re-
25 cording is directly or indirectly derived.

26 “(7) ‘Motion picture’ includes any motion picture, regardless of length or
27 content, that is exhibited in a motion picture theater, exhibited on television
28 to paying customers or under the sponsorship of a paying advertiser or
29 produced and exhibited for scientific research or educational purposes. ‘Mo-
30 tion picture’ does not include amateur films that are shown free or at cost

1 to friends, neighbors or civic groups.

2 “(8) ‘Motion picture theater’ means a movie theater, screening room or
3 other venue that is [*being utilized*] **used** primarily for the exhibition of a
4 motion picture.

5 “(9) ‘Owner’ means a person who owns the sounds fixed in a master
6 phonograph record, master disk, master tape, master film or other recording
7 on which sound is or can be recorded and from which the transferred re-
8 corded sounds are directly or indirectly derived.

9 “(10) ‘Recording’ means a tangible medium on which information, sounds
10 or images, or any combination [*thereof*] **of information, sounds or**
11 **images**, are recorded or otherwise stored. Medium includes, but is not lim-
12 ited to, an original phonograph record, disk, tape, audio or video cassette,
13 wire, film or other medium now existing or developed later on which sounds,
14 images or both are or can be recorded or otherwise stored or a copy or re-
15 production that duplicates in whole or in part the original.

16 “(11) ‘Sound recording’ means any reproduction of a master recording.

17 “(12) ‘Videotape’ means a [*reel of tape*] **medium** upon which a motion
18 picture is electronically [*or*], magnetically **or otherwise** imprinted by [*means*
19 *of an electronic video recorder*] **any means** and [*which*] **that** may be used in
20 video playback equipment to project or display the motion picture on a
21 [*television*] screen.

22 “**SECTION 3.** ORS 164.867 is amended to read:

23 “164.867. The provisions of ORS 164.868, 164.869 and 164.872 apply only to
24 persons operating **or supporting** commercial enterprises.

25 “**SECTION 4.** ORS 164.868 is amended to read:

26 “164.868. (1) A person commits unlawful labeling of a sound recording if
27 the person:

28 “(a) Fails to disclose the origin of a sound recording when the person
29 knowingly advertises or offers for **distribution**, sale or resale, sells, resells,
30 rents, leases, or lends or possesses for any of these purposes, any sound re-

1 cording that does not contain the true name and address of the manufacturer
2 in a prominent place on the cover, jacket or label of the sound recording;
3 and

4 “(b) Possesses, **or distributes**, five or more duplicate copies or 20 or more
5 individual copies of recordings produced without consent of the owner or
6 performer and the recordings are intended for sale or distribution in vio-
7 lation of this section.

8 “(2) Unlawful labeling of a sound recording is a Class C felony.

9 **“SECTION 5.** ORS 164.869 is amended to read:

10 “164.869. (1) A person commits unlawful recording of a live performance
11 if the person:

12 “(a)(A) Advertises or offers for **distribution or** sale, sells, rents, trans-
13 ports, or causes the sale, resale, rental or transportation of, or possesses for
14 one or more of these purposes, a recording containing sounds of a live per-
15 formance with the knowledge that the live performance has been recorded
16 or fixed without the consent of the owner; or

17 “(B) With the intent to sell, records or fixes, or causes to be recorded or
18 fixed on a recording, a live performance with the knowledge that the live
19 performance has been recorded or fixed without the consent of the owner;
20 and

21 “(b) Possesses, **or distributes**, five or more duplicate copies or 20 or more
22 individual copies of recordings produced without consent of the owner or
23 performer and the recordings are intended for sale or distribution in vio-
24 lation of this section.

25 “(2) Unlawful recording of a live performance is a Class C felony.

26 “(3) For purposes of subsections (1) and (2) of this section, in the absence
27 of a written agreement or law to the contrary, the performer of a live per-
28 formance is presumed to own the rights to record or fix the performance.

29 “(4) A person who is authorized to maintain custody and control over
30 business records that reflect whether or not the owner of the live perform-

1 ance consented to having the live performance recorded or fixed is a proper
2 witness in a proceeding regarding the issue of consent.

3 “**SECTION 6.** ORS 164.872 is amended to read:

4 “164.872. (1) A person commits unlawful labeling of a videotape recording
5 if the person:

6 “(a) Fails to disclose the origin of a recording when the person knowingly
7 advertises or offers for **distribution**, sale or resale, or sells, resells, rents,
8 leases or lends, or possesses for any of these purposes, any videotape re-
9 cording that does not contain the true name and address of the manufacturer
10 in a prominent place on the cover, jacket or label of the videotape recording;
11 and

12 “(b) Possesses, **or distributes**, five or more duplicate copies or 20 or more
13 individual copies of videotape recordings produced without consent of the
14 owner or performer and the videotape recordings are intended for sale or
15 distribution in violation of this section.

16 “(2) Unlawful labeling of a videotape recording is a Class C felony.

17 “**SECTION 7.** ORS 164.875 is amended to read:

18 “164.875. (1) A person commits the crime of unlawful videotape recording
19 if the person:

20 “(a) Produces for **distribution or** sale any videotape without the written
21 consent of the owner of the motion picture imprinted [*thereon*] **on the**
22 **videotape**; or

23 “(b) Knowingly **distributes or** sells or offers for **distribution or** sale any
24 videotape that has been produced without the written consent of the owner
25 of the motion picture imprinted [*thereon*] **on the videotape**.

26 “(2) Unlawful videotape recording is a Class B misdemeanor.”.

27
