

UNAUTHORIZED TRANSFER OF SOUND RECORDINGS

The defendant is charged with the unauthorized reproduction and transfer of sound recordings in violation of section 143A of chapter 266 of our General Laws. In order to prove the defendant guilty of this offense, the Commonwealth must prove four things beyond a reasonable doubt:

First: That the defendant directly or indirectly transferred or caused to be transferred sounds that had been recorded on a (phonograph record) (disc) (wire) (tape) (film) (video cassette) (sound recording);

Second: That the defendant knew he (she) was transferring such sounds;

Third: That the defendant did so without the consent of the owner of the master recording from which the transferred sounds were derived; and

Fourth: That the defendant intended to sell or to rent or to transport the recorded copy, or to play it in a public performance for profit, or intended to cause one of those things to happen.

See Instructions 3.140 (Knowledge) and 3.120 (Intent).

General Laws c. 266, § 143A also punishes selling such a recording with knowledge that the sound transfer was made without the consent of the owner. The model instruction may be appropriately adapted in such cases.

SUPPLEMENTAL INSTRUCTION

If the evidence suggests at least 100 sound recordings or 7 audiovisual recordings.

If the Commonwealth has proved to you beyond a reasonable doubt that the defendant is guilty of this offense, you must then go on to determine how many unlawful recordings were made. You need to consider that question only if you find the defendant guilty, so that I will know which range of sentences the law permits in this case.

So if your verdict is guilty, you must also indicate on your verdict slip which of three possible ranges the number of unlawful recordings falls into: the first range is between (1 and 99 sound recordings) (1 and 6 audiovisual recordings), the second range is between (100 and 999 sound recordings) (7 and 64 audiovisual recordings), and the third range is between (1000 or more sound recordings) (65 or more audiovisual recordings). Your selection of the appropriate range must be based on facts that the Commonwealth has proved to you beyond a reasonable doubt.

G.L. c. 266, § 143D.