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CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 819

**Introduced by Assembly Member Charles Calderon
(Coauthors: Assembly Members Blumenfield, Jones, Lieu,
Portantino, Smyth, and Tran)**

February 26, 2009

An act to amend Sections 350, 653h, 653s, 653u, 653w, 653z, 653aa, and 1202.4 of, and to add Chapter 5.8 (commencing with Section 13849) to Title 6 of Part 4 of, the Penal Code, relating to intellectual property piracy, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 819, as amended, Charles Calderon. Intellectual property piracy. Existing law makes it a crime for a person to willfully manufacture, intentionally sell, or knowingly possess for sale any counterfeit mark registered with the Secretary of State or registered on the Principal Register of the United States Patent and Trademark Office. Existing law imposes specified imprisonment and fines based upon the number

of counterfeit marks involved in the offense and if the person is an individual or a business entity. Existing law also specifies certain imprisonment and fines for a subsequent conviction of this offense and provides other specified penalties if the conduct that was the basis of the conviction has directly and foreseeably caused death or great bodily injury to another through reliance on the counterfeited item for its intended purpose.

Existing law makes it a crime for a person to knowingly and willfully transfer or cause to be transferred any sounds that have been recorded on a phonograph record, disc, wire, tape, film, or other article on which sounds are recorded, with intent to sell or cause to be sold, or to use or cause to be used for commercial advantage or private financial gain through public performance, the article on which the sounds are so transferred, without the consent of the owner. Existing law specifies certain penalties for a violation of these provisions, and certain other provisions regarding the transportation of an article with the knowledge that the sounds thereon have been so transferred without the consent of the owner, if the offense involves the transfer or transportation, or conduct causing that transfer or transportation, of not less than 1,000 of the articles. Existing law also specifies certain other penalties for any other violation of these provisions and for a 2nd or subsequent conviction.

Existing law makes it a crime for any person to transport or cause to be transported for monetary or other consideration within the state, any article containing sounds of a live performance with the knowledge that the sounds thereon have been recorded or mastered without the consent of the owner of the sounds of the live performance. Existing law specifies certain penalties for a violation of these provisions if the offense involves transporting or causing to be transported not less than 1,000 articles. Existing law also specifies certain other penalties for any other violation of these provisions and for a 2nd or subsequent conviction.

Existing law makes it a crime for any person to record or master or cause to be recorded or mastered on any article, with the intent to sell for commercial advantage or private financial gain, the sounds of a live performance with the knowledge that the sounds thereon have been recorded or mastered without the consent of the owner of the sounds of the live performance. Existing law specifies certain penalties for a violation of these provisions if the offense involves the recording, mastering, or causing the recording or mastering of at least 1,000

articles. Existing law also specifies certain other penalties for any other violation of these provisions and for a 2nd or subsequent conviction.

Existing law provides that a person is guilty of failure to disclose the origin of a recording or audiovisual work if, for commercial advantage or private financial gain, he or she knowingly advertises, sells, rents, manufactures, or possesses for those purposes, a recording or audiovisual work that does not disclose the name of the manufacturer, author, artist, performer, or producer, as specified. Failure to disclose the origin of a recording or audiovisual work is punishable by imprisonment in a county jail, imprisonment in the state prison, or a fine, or by both imprisonment and a fine, as specified, depending on the number of articles of audio recordings or audiovisual works involved, and whether the offense is a first offense, or 2nd or subsequent offense.

Existing law provides that every person who operates a recording device in a motion picture theater while a motion picture is being exhibited, for the purpose of recording a theatrical motion picture and without the express written authority of the owner of the motion picture theater, is guilty of a public offense and shall be punished by imprisonment in a county jail not exceeding one year, by a fine not exceeding \$2,500, or by both that fine and imprisonment.

This bill would double the fines that may be imposed for a violation of any of the above provisions.

Statutory law that became inoperative on January 1, 2010, provided that it was a crime, punishable by a fine not exceeding \$2,500, imprisonment in a county jail for a period not exceeding one year, or by both that fine and imprisonment for a person located in California who knew that a particular recording or audiovisual work was commercial, to knowingly electronically disseminate all or substantially all of that commercial recording or audiovisual work to more than 10 other people without disclosing his or her e-mail address, and the title of the recording or audiovisual work. That statutory law also provided that a minor who violated these provisions was punishable by a fine not exceeding \$250 for a first or 2nd offense and by a fine not exceeding \$1,000, imprisonment in a county jail, or by both that fine and imprisonment for a 3rd or subsequent violation.

This bill would again make operative those provisions and would double the fines that may be imposed for a violation of those provisions. By creating a new crime, the bill would impose a state-mandated local program.

Existing law provides that, in addition to any other penalty or fine, a court shall order any person who has been convicted of any violation of certain provisions of law relating to the transfer or transportation of misappropriated recorded music, the transportation of an article containing unauthorized recordation of sounds of live performances, the unauthorized recording of sounds of live performances, or the failure to disclose the origin of a recording or audiovisual work to make restitution to the owner or lawful producer, or trade association acting on behalf of the owner or lawful producer, of the phonograph record, disc, wire, tape, film, or other device or article from which the sound or visual images were derived that suffered economic loss resulting from the violation. Existing law provides how value is to be determined for the purpose of calculating restitution.

This bill would also require a court to order restitution when the person has been convicted of violating certain other provisions of law relating to the manufacture or sale of a counterfeit registered mark and the electronic transmission of all or substantially all of a commercial recording or audiovisual work.

~~Existing law establishes various crime prevention and prosecution programs.~~

~~This bill would create, within the Department of Justice, the Division of Organized Crime and Intellectual Piracy (DOCIP) to investigate and prosecute organized crime in connection with crimes of intellectual property theft, with emphasis on intellectual property theft within the motion picture industry. The bill would require the DOCIP to submit a report to the Legislature with information on disbursements from the Intellectual Property Piracy Prevention and Prosecution Fund.~~

~~The bill would establish the Intellectual Property Piracy Prevention and Prosecution Fund to provide funding for costs incurred by local law enforcement agencies that provide assistance to the DOCIP, as specified.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 **SECTION 1.** *The Legislature finds and declares the following:*

2 *(a) According to a 2007 study by the Institute for Policy*
3 *Innovation, intellectual property piracy, meaning the theft of*
4 *movies, music, software, and video games, costs the United States*
5 *economy \$58,000,000,000 each year.*

6 *(b) The problem of intellectual property piracy continues to*
7 *grow worse. A 2005 Gallup study found that 5 percent of*
8 *Americans had purchased, copied, or downloaded counterfeit*
9 *music in the preceding year. By 2007, this number had jumped to*
10 *9 percent. The percentage of respondents that admitted buying a*
11 *pirated movie rose from 3 percent in 2005, to 6 percent in 2007.*
12 *At the same time, once robust DVD sales have flattened over the*
13 *past few years, while CD shipments to retailers have plummeted.*

14 *(c) The effect of intellectual property piracy on California and*
15 *its citizens is particularly dire. Intellectual property piracy*
16 *adversely affects the California economy, eliminates jobs, and*
17 *damages industry. According to the Business Software Alliance,*
18 *in 2003, software piracy alone cost the California economy more*
19 *than 13,000 jobs, over \$802,000,000 in wages and salaries, over*
20 *\$1,000,000,000 in retail sales of business software applications,*
21 *and roughly \$239,000,000 in total tax losses.*

22 *(d) Intellectual property piracy poses a significant threat to*
23 *consumers, who, through no fault of their own, are often deceived*
24 *or deliberately misled, or both deceived and deliberately misled,*
25 *as to the nature of purchased products, whereby pirated goods*
26 *are palmed off, including in electronic form, as legitimate*
27 *authorized goods.*

28 *(e) A growing number of criminal organizations worldwide are*
29 *involved in intellectual property piracy.*

30 *(f) This act will send a strong signal that California is committed*
31 *to protecting the intellectual property created by California's*
32 *innovation and entertainment industries.*

33 *(g) Finally, by safeguarding the legitimate sale of intellectual*
34 *property, California will increase its tax base, and stimulate the*
35 *economy.*

36 **SECTION 1.**

37 **SEC. 2.** *Section 350 of the Penal Code is amended to read:*

1 350. (a) Any person who willfully manufactures, intentionally
2 sells, or knowingly possesses for sale any counterfeit mark
3 registered with the Secretary of State or registered on the Principal
4 Register of the United States Patent and Trademark Office, shall,
5 upon conviction, be punishable as follows:

6 (1) When the offense involves less than 1,000 of the articles
7 described in this subdivision, with a total retail or fair market value
8 less than that required for grand theft as defined in Section 487,
9 and if the person is an individual, he or she shall be punished by
10 a fine of not more than ten thousand dollars (\$10,000), or by
11 imprisonment in a county jail for not more than one year, or by
12 both that fine and imprisonment; or, if the person is a business
13 entity, by a fine of not more than two hundred thousand dollars
14 (\$200,000).

15 (2) When the offense involves 1,000 or more of the articles
16 described in this subdivision, or has a total retail or fair market
17 value equal to or greater than that required for grand theft as
18 defined in Section 487, and if the person is an individual, he or
19 she shall be punished by imprisonment in a county jail not to
20 exceed one year, or in the state prison for 16 months, or two or
21 three years, or by a fine not to exceed five hundred thousand dollars
22 (\$500,000), or by both that imprisonment and fine; or, if the person
23 is a business entity, by a fine not to exceed one million dollars
24 (\$1,000,000).

25 (b) Any person who has been convicted of a violation of either
26 paragraph (1) or (2) of subdivision (a) shall, upon a subsequent
27 conviction of paragraph (1) of subdivision (a), if the person is an
28 individual, be punished by a fine of not more than one hundred
29 thousand dollars (\$100,000), or by imprisonment in a county jail
30 for not more than one year, or in the state prison for 16 months,
31 or two or three years, or by both that fine and imprisonment; or,
32 if the person is a business entity, by a fine of not more than four
33 hundred thousand dollars (\$400,000).

34 (c) Any person who has been convicted of a violation of
35 subdivision (a) and who, by virtue of the conduct that was the basis
36 of the conviction, has directly and foreseeably caused death or
37 great bodily injury to another through reliance on the counterfeited
38 item for its intended purpose shall, if the person is an individual,
39 be punished by a fine of not more than one hundred thousand
40 dollars (\$100,000), or by imprisonment in the state prison for two,

1 three, or four years, or by both that fine and imprisonment; or, if
2 the person is a business entity, by a fine of not more than four
3 hundred thousand dollars (\$400,000).

4 (d) (1) Except as provided in paragraph (2), in any action
5 brought under this section resulting in a conviction or a plea of
6 nolo contendere, the court shall order the forfeiture and destruction
7 of all of those marks and of all goods, articles, or other matter
8 bearing the marks, and the forfeiture and destruction or other
9 disposition of all means of making the marks, and any and all
10 electrical, mechanical, or other devices for manufacturing,
11 reproducing, transporting, or assembling these marks, that were
12 used in connection with, or were part of, any violation of this
13 section.

14 (2) Upon request of any law enforcement agency and consent
15 from the specific registrants, the court may consider a motion to
16 have the items described in paragraph (1), not including recordings
17 or audiovisual works as defined in Section 653w, donated to a
18 nonprofit organization for the purpose of distributing the goods to
19 persons living in poverty at no charge to the persons served by the
20 organization.

21 (3) Forfeiture of the proceeds of the crime shall be subject to
22 Chapter 9 (commencing with Section 186) of Title 7 of Part 1.
23 However, no vehicle shall be forfeited under this section that may
24 be lawfully driven on the highway with a class 3 or 4 license, as
25 prescribed in Section 12804 of the Vehicle Code, and that is any
26 of the following:

27 (A) A community property asset of a person other than the
28 defendant.

29 (B) The sole class 3 or 4 vehicle available to the immediate
30 family of that person or of the defendant.

31 (C) Reasonably necessary to be retained by the defendant for
32 the purpose of lawfully earning a living, or for any other reasonable
33 and lawful purpose.

34 (e) For the purposes of this section, the following definitions
35 shall apply:

36 (1) When counterfeited but unassembled components of
37 computer software packages are recovered, including, but not
38 limited to, counterfeited computer diskettes, instruction manuals,
39 or licensing envelopes, the number of “articles” shall be equivalent

1 to the number of completed computer software packages that could
2 have been made from those components.

3 (2) “Business entity” includes, but is not limited to, a
4 corporation, limited liability company, or partnership. “Business
5 entity” does not include a sole proprietorship.

6 (3) “Counterfeit mark” means a spurious mark that is identical
7 with, or confusingly similar to, a registered mark and is used, or
8 intended to be used, on or in connection with the same type of
9 goods or services for which the genuine mark is registered. It is
10 not necessary for the mark to be displayed on the outside of an
11 article for there to be a violation. For articles containing digitally
12 stored information, it shall be sufficient to constitute a violation
13 if the counterfeit mark appears on a video display when the
14 information is retrieved from the article. The term “spurious mark”
15 includes genuine marks used on or in connection with spurious
16 articles and includes identical articles containing identical marks,
17 where the goods or marks were reproduced without authorization
18 of, or in excess of any authorization granted by, the registrant.
19 When counterfeited but unassembled components of any articles
20 described under subdivision (a) are recovered, including, but not
21 limited to, labels, patches, fabric, stickers, wrappers, badges,
22 emblems, medallions, charms, boxes, containers, cans, cases,
23 hangtags, documentation, or packaging, or any other components
24 of any type or nature that are designed, marketed, or otherwise
25 intended to be used on or in connection with any articles described
26 under subdivision (a), the number of “articles” shall be equivalent
27 to the number of completed articles that could have been made
28 from those components.

29 (4) “Knowingly possess” means that the person possessing an
30 article knew or had reason to believe that it was spurious, or that
31 it was used on or in connection with spurious articles, or that it
32 was reproduced without authorization of, or in excess of any
33 authorization granted by, the registrant.

34 (5) Notwithstanding Section 7, “person” includes, but is not
35 limited to, a business entity.

36 (6) “Registrant” means any person to whom the registration of
37 a mark is issued and that person’s legal representatives, successors,
38 or assigns.

39 (7) “Sale” includes resale.

40 (8) “Value” has the following meanings:

1 (A) When counterfeit items of computer software are
2 manufactured or possessed for sale, the “value” of those items
3 shall be equivalent to the retail price or fair market price of the
4 true items that are counterfeited.

5 (B) When counterfeited but unassembled components of
6 computer software packages or any other articles described under
7 subdivision (a) are recovered, including, but not limited to,
8 counterfeited digital disks, instruction manuals, licensing
9 envelopes, labels, patches, fabric, stickers, wrappers, badges,
10 emblems, medallions, charms, boxes, containers, cans, cases,
11 hangtags, documentation, or packaging, or any other components
12 of any type or nature that are designed, marketed, or otherwise
13 intended to be used on or in connection with any articles described
14 under subdivision (a), the “value” of those components shall be
15 equivalent to the retail price or fair market value of the number of
16 completed computer software packages or other completed articles
17 described under subdivision (a) that could have been made from
18 those components.

19 (C) “Retail or fair market value” of a counterfeit article means
20 a value equivalent to the retail price or fair market value, as of the
21 last day of the charged crime, of a completed similar genuine article
22 containing a genuine mark.

23 (f) This section shall not be enforced against any party who has
24 adopted and lawfully used the same or confusingly similar mark
25 in the rendition of like services or the manufacture or sale of like
26 goods in this state from a date prior to the earliest effective date
27 of registration of the service mark or trademark either with the
28 Secretary of State or on the Principle Register of the United States
29 Patent and Trademark Office.

30 (g) An owner, officer, employee, or agent who provides, rents,
31 leases, licenses, or sells real property upon which a violation of
32 subdivision (a) occurs shall not be subject to a criminal penalty
33 pursuant to this section, unless he or she sells, or possesses for
34 sale, articles bearing a counterfeit mark in violation of this section.
35 This subdivision shall not be construed to abrogate or limit any
36 civil rights or remedies for a trademark violation.

37 (h) This section shall not be enforced against any party who
38 engages in fair uses of a mark, as specified in Section 14247 of
39 the Business and Professions Code.

1 (i) When a person is convicted of an offense under this section,
2 the court shall order the person to pay restitution to the trademark
3 owner and any other victim of the offense pursuant to Section
4 1202.4.

5 ~~SEC. 2.~~

6 SEC. 3. Section 653h of the Penal Code is amended to read:

7 653h. (a) Every person is guilty of a public offense punishable
8 as provided in subdivisions (b) and (c), who:

9 (1) Knowingly and willfully transfers or causes to be transferred
10 any sounds that have been recorded on a phonograph record, disc,
11 wire, tape, film or other article on which sounds are recorded, with
12 intent to sell or cause to be sold, or to use or cause to be used for
13 commercial advantage or private financial gain through public
14 performance, the article on which the sounds are so transferred,
15 without the consent of the owner.

16 (2) Transports for monetary or like consideration within this
17 state or causes to be transported within this state any such article
18 with the knowledge that the sounds thereon have been so
19 transferred without the consent of the owner.

20 (b) Any person who has been convicted of a violation of
21 subdivision (a), shall be punished by imprisonment in the county
22 jail not to exceed one year, by imprisonment in the state prison for
23 two, three, or five years, or by a fine not to exceed five hundred
24 thousand dollars (\$500,000), or by both, if the offense involves
25 the transfer or transportation, or conduct causing that transfer or
26 transportation, of not less than 1,000 of the articles described in
27 subdivision (a).

28 (c) Any person who has been convicted of any other violation
29 of subdivision (a) not described in subdivision (b), shall be
30 punished by imprisonment in the county jail not to exceed one
31 year, or by a fine of not more than fifty thousand dollars (\$50,000),
32 or by both. A second or subsequent conviction under subdivision
33 (a) not described in subdivision (b) shall be punished by
34 imprisonment in the state prison or by a fine not to exceed two
35 hundred thousand dollars (\$200,000), or by both.

36 (d) Every person who offers for sale or resale, or sells or resells,
37 or causes the sale or resale, or rents, or possesses for these
38 purposes, any article described in subdivision (a) with knowledge
39 that the sounds thereon have been so transferred without the
40 consent of the owner is guilty of a public offense.

1 (1) A violation of subdivision (d) involving not less than 100
2 of those articles shall be punishable by imprisonment in a county
3 jail not to exceed one year or by a fine not to exceed twenty
4 thousand dollars (\$20,000), or by both. A second or subsequent
5 conviction for the conduct described in this paragraph shall be
6 punishable by imprisonment in the county jail not to exceed one
7 year or in the state prison, or by a fine not to exceed fifty thousand
8 dollars (\$50,000), or by both.

9 (2) A person who has been convicted of any violation of this
10 subdivision not described in paragraph (1) shall be punished by
11 imprisonment in the county jail not to exceed six months or by a
12 fine not to exceed ten thousand dollars (\$10,000), or by both. A
13 second conviction for the conduct described in this paragraph shall
14 be punishable by imprisonment in the county jail not to exceed
15 one year or by a fine not to exceed twenty thousand dollars
16 (\$20,000), or by both. A third or subsequent conviction for the
17 conduct described in this paragraph shall be punishable by
18 imprisonment in the county jail not to exceed one year or in the
19 state prison, or by a fine not to exceed fifty thousand dollars
20 (\$50,000), or by both.

21 (e) As used in this section, “person” means any individual,
22 partnership, partnership’s member or employee, corporation,
23 limited liability company, association or corporation or association
24 employee, officer or director; “owner” means the person who owns
25 the original master recording embodied in the master phonograph
26 record, master disc, master tape, master film or other article used
27 for reproducing recorded sounds on phonograph records, discs,
28 tapes, films or other articles on which sound is or can be recorded,
29 and from which the transferred recorded sounds are directly or
30 indirectly derived; and “master recording” means the original
31 fixation of sounds upon a recording from which copies can be
32 made.

33 (f) This section shall neither enlarge nor diminish the right of
34 parties in private litigation.

35 (g) This section does not apply to any person engaged in radio
36 or television broadcasting who transfers, or causes to be transferred,
37 any such sounds (other than from the sound track of a motion
38 picture) intended for, or in connection with, broadcast transmission
39 or related uses, or for archival purposes.

1 (h) This section does not apply to any not-for-profit educational
2 institution or any federal or state governmental entity, if the
3 institution or entity has as a primary purpose the advancement of
4 the public's knowledge and the dissemination of information
5 regarding America's musical cultural heritage, provided that this
6 purpose is clearly set forth in the institution's or entity's charter,
7 bylaws, certificate of incorporation, or similar document, and the
8 institution or entity has, prior to the transfer, made a good faith
9 effort to identify and locate the owner or owners of the sound
10 recordings to be transferred and, provided that the owner or owners
11 could not be and have not been located. Nothing in this section
12 shall be construed to relieve an institution or entity of its
13 contractual or other obligation to compensate the owners of sound
14 recordings to be transferred. In order to continue the exemption
15 permitted by this subdivision, the institution or entity shall make
16 continuing efforts to locate such owners and shall make an annual
17 public notice of the fact of the transfers in newspapers of general
18 circulation serving the jurisdictions where the owners were
19 incorporated or doing business at the time of initial affixations.
20 The institution or entity shall keep on file a record of the efforts
21 made to locate such owners for inspection by appropriate
22 governmental agencies.

23 (i) This section applies only to such articles that were initially
24 mastered prior to February 15, 1972.

25 ~~SEC. 3.~~

26 *SEC. 4.* Section 653s of the Penal Code is amended to read:

27 653s. (a) Any person who transports or causes to be transported
28 for monetary or other consideration within this state, any article
29 containing sounds of a live performance with the knowledge that
30 the sounds thereon have been recorded or mastered without the
31 consent of the owner of the sounds of the live performance is guilty
32 of a public offense punishable as provided in subdivision (g) or
33 (h).

34 (b) As used in this section and Section 653u:

35 (1) "Live performance" means the recitation, rendering, or
36 playing of a series of musical, spoken, or other sounds in any
37 audible sequence thereof.

38 (2) "Article" means the original disc, wire, tape, film,
39 phonograph record, or other recording device used to record or
40 master the sounds of the live performance and any copy or

1 reproduction thereof which duplicates, in whole or in part, the
2 original.

3 (3) “Person” means any individual, partnership, partnership
4 member or employee, corporation, association, or corporation or
5 association employee, officer, or director, limited liability
6 company, or limited liability company manager or officer.

7 (c) In the absence of a written agreement or operation of law to
8 the contrary, the performer or performers of the sounds of a live
9 performance shall be presumed to own the right to record or master
10 those sounds.

11 (d) For purposes of this section, a person who is authorized to
12 maintain custody and control over business records reflecting the
13 consent of the owner to the recordation or master recording of a
14 live performance shall be a proper witness in any proceeding
15 regarding the issue of consent.

16 Any witness called pursuant to this section shall be subject to
17 all rules of evidence relating to the competency of a witness to
18 testify and the relevance and admissibility of the testimony offered.

19 (e) This section shall neither enlarge nor diminish the rights and
20 remedies of parties to a recording or master recording which they
21 might otherwise possess by law.

22 (f) This section shall not apply to persons engaged in radio or
23 television broadcasting or cablecasting who record or fix the sounds
24 of a live performance for, or in connection with, broadcast or cable
25 transmission and related uses in educational television or radio
26 programs, for archival purposes, or for news programs or purposes
27 if the recordation or master recording is not commercially
28 distributed independent of the broadcast or cablecast by or through
29 the broadcasting or cablecasting entity to subscribers or the general
30 public.

31 (g) Any person who has been convicted of a violation of
32 subdivision (a), shall be punished by imprisonment in the county
33 jail not to exceed one year, or by imprisonment in the state prison
34 for two, three, or five years, or by a fine not to exceed five hundred
35 thousand dollars (\$500,000), or by both, if the offense involves
36 the transportation or causing to be transported of not less than
37 1,000 articles described in subdivision (a).

38 (h) Any person who has been convicted of any other violation
39 of subdivision (a) not described in subdivision (g) shall be punished
40 by imprisonment in the county jail not to exceed one year, or by

1 a fine not to exceed fifty thousand dollars (\$50,000), or both. A
 2 second or subsequent conviction under subdivision (a) not
 3 described in subdivision (g) shall be punished by imprisonment
 4 in the county jail not to exceed one year or in the state prison, or
 5 by a fine not to exceed two hundred thousand dollars (\$200,000),
 6 or by both.

7 (i) Every person who offers for sale or resale, or sells or resells,
 8 or causes the sale or resale, or rents, or possesses for these
 9 purposes, any article described in subdivision (a) with knowledge
 10 that the sounds thereon have been so recorded or mastered without
 11 the consent of the owner of the sounds of a live performance is
 12 guilty of a public offense.

13 (1) A violation of subdivision (i) involving not less than 100 of
 14 those articles shall be punishable by imprisonment in a county jail
 15 not to exceed one year or by a fine not to exceed twenty thousand
 16 dollars (\$20,000), or by both. A second or subsequent conviction
 17 for the conduct described in this paragraph shall be punishable by
 18 imprisonment in the county jail not to exceed one year or in the
 19 state prison, or by a fine not to exceed fifty thousand dollars
 20 (\$50,000), or by both.

21 (2) A person who has been convicted of any violation of this
 22 subdivision not described in paragraph (1) shall be punished by
 23 imprisonment in the county jail not to exceed six months or by a
 24 fine not to exceed ten thousand dollars (\$10,000), or by both. A
 25 second conviction for the conduct described in this paragraph shall
 26 be punishable by imprisonment in the county jail not to exceed
 27 one year or by a fine not to exceed twenty thousand dollars
 28 (\$20,000), or by both. A third or subsequent conviction for the
 29 conduct described in this paragraph shall be punishable by
 30 imprisonment in the county jail not to exceed one year or in the
 31 state prison, or by a fine not to exceed fifty thousand dollars
 32 (\$50,000), or by both.

33 ~~SEC. 4.~~

34 *SEC. 5.* Section 653u of the Penal Code is amended to read:

35 653u. (a) Any person who records or masters or causes to be
 36 recorded or mastered on any article with the intent to sell for
 37 commercial advantage or private financial gain, the sounds of a
 38 live performance with the knowledge that the sounds thereon have
 39 been recorded or mastered without the consent of the owner of the

1 sounds of the live performance is guilty of a public offense
2 punishable as provided in subdivisions (d) and (e).

3 (b) In the absence of a written agreement or operation of law
4 to the contrary, the performer or performers of the sounds of a live
5 performance shall be presumed to own the right to record or master
6 those sounds.

7 (c) For purposes of this section, a person who is authorized to
8 maintain custody and control over business records reflecting the
9 consent of the owner to the recordation or master recording of a
10 live performance shall be a proper witness in any proceeding
11 regarding the issue of consent.

12 Any witness called pursuant to this section shall be subject to
13 all rules of evidence relating to the competency of a witness to
14 testify and the relevance and admissibility of the testimony offered.

15 (d) Any person who has been convicted of a violation of
16 subdivision (a) shall be punished by imprisonment in the county
17 jail not to exceed one year, or by imprisonment in the state prison
18 for two, three, or five years, or by a fine not to exceed five hundred
19 thousand dollars (\$500,000), or by both, if the offense involves
20 the recording, mastering, or causing to be recorded or mastered at
21 least 1,000 articles described in subdivision (a).

22 (e) Any person who has been convicted of any other violation
23 of subdivision (a) not described in subdivision (d), shall be
24 punished by imprisonment in the county jail not to exceed one
25 year, or by a fine not to exceed fifty thousand dollars (\$50,000),
26 or by both. A second or subsequent conviction under subdivision
27 (a) not described in subdivision (d) shall be punished by
28 imprisonment in the county jail not to exceed one year or in the
29 state prison or by a fine not to exceed two hundred thousand dollars
30 (\$200,000), or by both.

31 ~~SEC. 5.~~

32 *SEC. 6.* Section 653w of the Penal Code is amended to read:

33 653w. (a) A person is guilty of failure to disclose the origin
34 of a recording or audiovisual work if, for commercial advantage
35 or private financial gain, he or she knowingly advertises or offers
36 for sale or resale, or sells or resells, or causes the rental, sale, or
37 resale *of*, or rents, or manufactures, or possesses for these purposes,
38 any recording or audiovisual work, the cover, box, jacket, or label
39 of which does not clearly and conspicuously disclose the actual
40 true name and address of the manufacturer thereof and the name

1 of the actual author, artist, performer, producer, programmer, or
2 group thereon. This section does not require the original
3 manufacturer or authorized licensees of software producers to
4 disclose the contributing authors or programmers.

5 As used in this section, “recording” means any tangible medium
6 upon which information or sounds are recorded or otherwise stored,
7 including any phonograph record, disc, tape, audio cassette, wire,
8 film, or other medium on which information or sounds are recorded
9 or otherwise stored, but does not include sounds accompanying a
10 motion picture or other audiovisual work.

11 As used in this section, “audiovisual works” are the physical
12 embodiment of works that consist of related images that are
13 intrinsically intended to be shown using machines or devices such
14 as projectors, viewers, or electronic equipment, together with
15 accompanying sounds, if any, regardless of the nature of the
16 material objects such as films or tapes on which the works are
17 embodied.

18 (b) Any person who has been convicted of a violation of
19 subdivision (a) shall be punished as follows:

20 (1) If the offense involves the advertisement, offer for sale or
21 resale, sale, rental, manufacture, or possession for these purposes,
22 of at least 100 articles of audio recordings or 100 articles of
23 audiovisual works described in subdivision (a), the person shall
24 be punished by imprisonment in a county jail not to exceed one
25 year, or by imprisonment in the state prison for two, three, or five
26 years, or by a fine not to exceed five hundred thousand dollars
27 (\$500,000), or by both.

28 (2) Any other violation of subdivision (a) not described in
29 paragraph (1), shall, upon a first offense, be punished by
30 imprisonment in a county jail not to exceed one year, or by a fine
31 not to exceed fifty thousand dollars (\$50,000), or by both.

32 (3) A second or subsequent conviction under subdivision (a)
33 not described in paragraph (1), shall be punished by imprisonment
34 in a county jail not to exceed one year or in the state prison, or by
35 a fine not to exceed two hundred thousand dollars (\$200,000), or
36 by both.

37 ~~SEC. 6.~~

38 *SEC. 7.* Section 653z of the Penal Code is amended to read:

39 653z. (a) Every person who operates a recording device in a
40 motion picture theater while a motion picture is being exhibited,

1 for the purpose of recording a theatrical motion picture and without
2 the express written authority of the owner of the motion picture
3 theater, is guilty of a public offense and shall be punished by
4 imprisonment in a county jail not exceeding one year, by a fine
5 not exceeding five thousand dollars (\$5,000), or by both that fine
6 and imprisonment.

7 (b) For the purposes of this section, the following terms have
8 the following meanings:

9 (1) "Recording device" means a photographic, digital or video
10 camera, or other audio or video recording device capable of
11 recording the sounds and images of a motion picture or any portion
12 of a motion picture.

13 (2) "Motion picture theater" means a theater or other premises
14 in which a motion picture is exhibited.

15 (c) Nothing in this section shall preclude prosecution under any
16 other provision of law.

17 ~~SEC. 7.~~

18 *SEC. 8.* Section 653aa of the Penal Code is amended to read:

19 653aa. (a) Any person, except a minor, who is located in
20 California, who, knowing that a particular recording or audiovisual
21 work is commercial, knowingly electronically disseminates all or
22 substantially all of that commercial recording or audiovisual work
23 to more than 10 other people without disclosing his or her e-mail
24 address, and the title of the recording or audiovisual work is
25 punishable by a fine not exceeding five thousand dollars (\$5,000),
26 imprisonment in a county jail for a period not exceeding one year,
27 or by both that fine and imprisonment.

28 (b) Any minor who violates subdivision (a) is punishable by a
29 fine not exceeding five hundred dollars (\$500). Any minor who
30 commits a third or subsequent violation of subdivision (a) is
31 punishable by a fine not exceeding two thousand dollars (\$2,000),
32 imprisonment in a county jail for a period not to exceed one year,
33 or by both that imprisonment and fine.

34 (c) Subdivisions (a) and (b) do not apply:

35 (1) To a person who electronically disseminates a commercial
36 recording or audiovisual work to his or her immediate family, or
37 within his or her personal network, defined as a restricted access
38 network controlled by and accessible to only that person or people
39 in his or her immediate household.

1 (2) If the copyright owner, or a person acting under the authority
2 of the copyright owner, of a commercial recording or audiovisual
3 work has explicitly given permission for all or substantially all of
4 that recording or audiovisual work to be freely disseminated
5 electronically by or to anyone without limitation.

6 (3) To a person who has been licensed either by the copyright
7 owner or a person acting under the authority of the copyright owner
8 to disseminate electronically all or substantially all of a commercial
9 audiovisual work or recording.

10 (4) To the licensed electronic dissemination of a commercial
11 audiovisual work or recording by means of a cable television
12 service offered over a cable system or direct to home satellite
13 service as defined in Title 47 of the United States Code.

14 (d) Nothing in this section shall restrict the copyright owner
15 from disseminating his or her own copyrighted material.

16 (e) Upon conviction for a violation of this section, in addition
17 to the penalty prescribed, the court shall order the permanent
18 deletion or destruction of any electronic file containing a
19 commercial recording or audiovisual work, the dissemination of
20 which was the basis of the violation. This subdivision shall not
21 apply to the copyright owner or to a person acting under the
22 authority of the copyright owner.

23 (f) An Internet service provider does not violate, and does not
24 aid and abet a violation of subdivision (a), and subdivision (a) shall
25 not be enforced against an Internet service provider, to the extent
26 that the Internet service provider enables a user of its service to
27 electronically disseminate an audiovisual work or sound recording,
28 if the Internet service provider maintains its valid e-mail address
29 or other means of electronic notification on its *Internet* Web site
30 in a location that is accessible to the public.

31 For the purposes of this section, “Internet service provider”
32 means an entity, to the extent that the entity is transmitting, routing,
33 or providing connections for Internet communications initiated by
34 or at the direction of another person, between or among points
35 specified by a user, of material placed online by a user, storing or
36 hosting that material at the direction of a user, or referring or
37 linking users to that material.

38 (g) For purposes of this section:

39 (1) “Recording” means the electronic or physical embodiment
40 of any recorded images, sounds, or images and sounds, but does

1 not include audiovisual works or sounds accompanying audiovisual
2 works.

3 (2) “Audiovisual work” means the electronic or physical
4 embodiment of motion pictures, television programs, video or
5 computer games, or other audiovisual presentations that consist
6 of related images that are intrinsically intended to be shown by
7 the use of machines or devices such as projectors, viewers, or
8 electronic equipment, or a computer program, software, or system,
9 as defined in Section 502, together with accompanying sounds, if
10 any.

11 (3) “Commercial recording or audiovisual work” means a
12 recording or audiovisual work whose copyright owner, or assignee,
13 authorized agent, or licensee, has made or intends to make available
14 for sale, rental, or for performance or exhibition to the public under
15 license, but does not include an excerpt consisting of less than
16 substantially all of a recording or audiovisual work. A recording
17 or audiovisual work may be commercial regardless of whether the
18 person who electronically disseminates it seeks commercial
19 advantage or private financial gain from that dissemination.

20 (4) “Electronic dissemination” means initiating a transmission
21 of, making available, or otherwise offering, a commercial recording
22 or audiovisual work for distribution on the Internet or other digital
23 network, regardless of whether someone else had previously
24 electronically disseminated the same commercial recording or
25 audiovisual work.

26 (5) “E-mail address” means a valid e-mail address, or the valid
27 e-mail address of the holder of the account from which the
28 dissemination took place.

29 (6) “Disclosing” means providing information in, attached to,
30 or discernable or available in or through the process of
31 disseminating or obtaining a commercial recording or audiovisual
32 work in a manner that is accessible by any person engaged in
33 disseminating or receiving the commercial recording or audiovisual
34 work.

35 (h) Nothing in this section shall preclude prosecution under any
36 other provision of law.

37 ~~SEC. 8.~~

38 *SEC. 9.* Section 1202.4 of the Penal Code is amended to read:

39 1202.4. (a) (1) It is the intent of the Legislature that a victim
40 of crime who incurs any economic loss as a result of the

1 commission of a crime shall receive restitution directly from any
2 defendant convicted of that crime.

3 (2) Upon a person being convicted of any crime in the State of
4 California, the court shall order the defendant to pay a fine in the
5 form of a penalty assessment in accordance with Section 1464.

6 (3) The court, in addition to any other penalty provided or
7 imposed under the law, shall order the defendant to pay both of
8 the following:

9 (A) A restitution fine in accordance with subdivision (b).

10 (B) Restitution to the victim or victims, if any, in accordance
11 with subdivision (f), which shall be enforceable as if the order
12 were a civil judgment.

13 (b) In every case where a person is convicted of a crime, the
14 court shall impose a separate and additional restitution fine, unless
15 it finds compelling and extraordinary reasons for not doing so, and
16 states those reasons on the record.

17 (1) The restitution fine shall be set at the discretion of the court
18 and commensurate with the seriousness of the offense, but shall
19 not be less than two hundred dollars (\$200), and not more than ten
20 thousand dollars (\$10,000), if the person is convicted of a felony,
21 and shall not be less than one hundred dollars (\$100), and not more
22 than one thousand dollars (\$1,000), if the person is convicted of
23 a misdemeanor.

24 (2) In setting a felony restitution fine, the court may determine
25 the amount of the fine as the product of two hundred dollars (\$200)
26 multiplied by the number of years of imprisonment the defendant
27 is ordered to serve, multiplied by the number of felony counts of
28 which the defendant is convicted.

29 (c) The court shall impose the restitution fine unless it finds
30 compelling and extraordinary reasons for not doing so, and states
31 those reasons on the record. A defendant's inability to pay shall
32 not be considered a compelling and extraordinary reason not to
33 impose a restitution fine. Inability to pay may be considered only
34 in increasing the amount of the restitution fine in excess of the two
35 hundred-dollar (\$200) or one hundred-dollar (\$100) minimum.
36 The court may specify that funds confiscated at the time of the
37 defendant's arrest, except for funds confiscated pursuant to Section
38 11469 of the Health and Safety Code, be applied to the restitution
39 fine if the funds are not exempt for spousal or child support or
40 subject to any other legal exemption.

1 (d) In setting the amount of the fine pursuant to subdivision (b)
2 in excess of the two hundred-dollar (\$200) or one hundred-dollar
3 (\$100) minimum, the court shall consider any relevant factors,
4 including, but not limited to, the defendant's inability to pay, the
5 seriousness and gravity of the offense and the circumstances of its
6 commission, any economic gain derived by the defendant as a
7 result of the crime, the extent to which any other person suffered
8 any losses as a result of the crime, and the number of victims
9 involved in the crime. Those losses may include pecuniary losses
10 to the victim or his or her dependents as well as intangible losses,
11 such as psychological harm caused by the crime. Consideration
12 of a defendant's inability to pay may include his or her future
13 earning capacity. A defendant shall bear the burden of
14 demonstrating his or her inability to pay. Express findings by the
15 court as to the factors bearing on the amount of the fine shall not
16 be required. A separate hearing for the fine shall not be required.

17 (e) The restitution fine shall not be subject to penalty
18 assessments authorized in Section 1464 or Chapter 12
19 (commencing with Section 76000) of Title 8 of the Government
20 Code, or the state surcharge authorized in Section 1465.7, and
21 shall be deposited in the Restitution Fund in the State Treasury.

22 (f) Except as provided in subdivisions (q) and (r), in every case
23 in which a victim has suffered economic loss as a result of the
24 defendant's conduct, the court shall require that the defendant
25 make restitution to the victim or victims in an amount established
26 by court order, based on the amount of loss claimed by the victim
27 or victims or any other showing to the court. If the amount of loss
28 cannot be ascertained at the time of sentencing, the restitution
29 order shall include a provision that the amount shall be determined
30 at the direction of the court. The court shall order full restitution
31 unless it finds compelling and extraordinary reasons for not doing
32 so, and states them on the record. The court may specify that funds
33 confiscated at the time of the defendant's arrest, except for funds
34 confiscated pursuant to Section 11469 of the Health and Safety
35 Code, be applied to the restitution order if the funds are not exempt
36 for spousal or child support or subject to any other legal exemption.

37 (1) The defendant has the right to a hearing before a judge to
38 dispute the determination of the amount of restitution. The court
39 may modify the amount, on its own motion or on the motion of
40 the district attorney, the victim or victims, or the defendant. If a

1 motion is made for modification of a restitution order, the victim
2 shall be notified of that motion at least 10 days prior to the
3 proceeding held to decide the motion.

4 (2) Determination of the amount of restitution ordered pursuant
5 to this subdivision shall not be affected by the indemnification or
6 subrogation rights of any third party. Restitution ordered pursuant
7 to this subdivision shall be ordered to be deposited to the
8 Restitution Fund to the extent that the victim, as defined in
9 subdivision (k), has received assistance from the Victim
10 Compensation Program pursuant to Chapter 5 (commencing with
11 Section 13950) of Part 4 of Division 3 of Title 2 of the Government
12 Code.

13 (3) To the extent possible, the restitution order shall be prepared
14 by the sentencing court, shall identify each victim and each loss
15 to which it pertains, and shall be of a dollar amount that is sufficient
16 to fully reimburse the victim or victims for every determined
17 economic loss incurred as the result of the defendant's criminal
18 conduct, including, but not limited to, all of the following:

19 (A) Full or partial payment for the value of stolen or damaged
20 property. The value of stolen or damaged property shall be the
21 replacement cost of like property, or the actual cost of repairing
22 the property when repair is possible.

23 (B) Medical expenses.

24 (C) Mental health counseling expenses.

25 (D) Wages or profits lost due to injury incurred by the victim,
26 and if the victim is a minor, wages or profits lost by the minor's
27 parent, parents, guardian, or guardians, while caring for the injured
28 minor. Lost wages shall include any commission income as well
29 as any base wages. Commission income shall be established by
30 evidence of commission income during the 12-month period prior
31 to the date of the crime for which restitution is being ordered,
32 unless good cause for a shorter time period is shown.

33 (E) Wages or profits lost by the victim, and if the victim is a
34 minor, wages or profits lost by the minor's parent, parents,
35 guardian, or guardians, due to time spent as a witness or in assisting
36 the police or prosecution. Lost wages shall include any commission
37 income as well as any base wages. Commission income shall be
38 established by evidence of commission income during the
39 12-month period prior to the date of the crime for which restitution

1 is being ordered, unless good cause for a shorter time period is
2 shown.

3 (F) Noneconomic losses, including, but not limited to,
4 psychological harm, for felony violations of Section 288.

5 (G) Interest, at the rate of 10 percent per annum, that accrues
6 as of the date of sentencing or loss, as determined by the court.

7 (H) Actual and reasonable attorney’s fees and other costs of
8 collection accrued by a private entity on behalf of the victim.

9 (I) Expenses incurred by an adult victim in relocating away
10 from the defendant, including, but not limited to, deposits for
11 utilities and telephone service, deposits for rental housing,
12 temporary lodging and food expenses, clothing, and personal items.
13 Expenses incurred pursuant to this section shall be verified by law
14 enforcement to be necessary for the personal safety of the victim
15 or by a mental health treatment provider to be necessary for the
16 emotional well-being of the victim.

17 (J) Expenses to install or increase residential security incurred
18 related to a crime, as defined in subdivision (c) of Section 667.5,
19 including, but not limited to, a home security device or system, or
20 replacing or increasing the number of locks.

21 (K) Expenses to retrofit a residence or vehicle, or both, to make
22 the residence accessible to or the vehicle operational by the victim,
23 if the victim is permanently disabled, whether the disability is
24 partial or total, as a direct result of the crime.

25 (4) (A) If, as a result of the defendant’s conduct, the Restitution
26 Fund has provided assistance to or on behalf of a victim or
27 derivative victim pursuant to Chapter 5 (commencing with Section
28 13950) of Part 4 of Division 3 of Title 2 of the Government Code,
29 the amount of assistance provided shall be presumed to be a direct
30 result of the defendant’s criminal conduct and shall be included
31 in the amount of the restitution ordered.

32 (B) The amount of assistance provided by the Restitution Fund
33 shall be established by copies of bills submitted to the California
34 Victim Compensation and Government Claims Board reflecting
35 the amount paid by the board and whether the services for which
36 payment was made were for medical or dental expenses, funeral
37 or burial expenses, mental health counseling, wage or support
38 losses, or rehabilitation. Certified copies of these bills provided
39 by the board and redacted to protect the privacy and safety of the
40 victim or any legal privilege, together with a statement made under

1 penalty of perjury by the custodian of records that those bills were
2 submitted to and were paid by the board, shall be sufficient to meet
3 this requirement.

4 (C) If the defendant offers evidence to rebut the presumption
5 established by this paragraph, the court may release additional
6 information contained in the records of the board to the defendant
7 only after reviewing that information in camera and finding that
8 the information is necessary for the defendant to dispute the amount
9 of the restitution order.

10 (5) Except as provided in paragraph (6), in any case in which
11 an order may be entered pursuant to this subdivision, the defendant
12 shall prepare and file a disclosure identifying all assets, income,
13 and liabilities in which the defendant held or controlled a present
14 or future interest as of the date of the defendant's arrest for the
15 crime for which restitution may be ordered. The financial disclosure
16 statements shall be made available to the victim and the board
17 pursuant to Section 1214. The disclosure shall be signed by the
18 defendant upon a form approved or adopted by the Judicial Council
19 for the purpose of facilitating the disclosure. Any defendant who
20 willfully states as true any material matter that he or she knows to
21 be false on the disclosure required by this subdivision is guilty of
22 a misdemeanor, unless this conduct is punishable as perjury or
23 another provision of law provides for a greater penalty.

24 (6) A defendant who fails to file the financial disclosure required
25 in paragraph (5), but who has filed a financial affidavit or financial
26 information pursuant to subdivision (c) of Section 987, shall be
27 deemed to have waived the confidentiality of that affidavit or
28 financial information as to a victim in whose favor the order of
29 restitution is entered pursuant to subdivision (f). The affidavit or
30 information shall serve in lieu of the financial disclosure required
31 in paragraph (5), and paragraphs (7) to (10), inclusive, shall not
32 apply.

33 (7) Except as provided in paragraph (6), the defendant shall file
34 the disclosure with the clerk of the court no later than the date set
35 for the defendant's sentencing, unless otherwise directed by the
36 court. The disclosure may be inspected or copied as provided by
37 subdivision (b), (c), or (d) of Section 1203.05.

38 (8) In its discretion, the court may relieve the defendant of the
39 duty under paragraph (7) of filing with the clerk by requiring that

1 the defendant's disclosure be submitted as an attachment to, and
2 be available to, those authorized to receive the following:

3 (A) Any report submitted pursuant to subparagraph (C) of
4 paragraph (2) of subdivision (b) of Section 1203 or subdivision
5 (g) of Section 1203.

6 (B) Any stipulation submitted pursuant to paragraph (4) of
7 subdivision (b) of Section 1203.

8 (C) Any report by the probation officer, or any information
9 submitted by the defendant applying for a conditional sentence
10 pursuant to subdivision (d) of Section 1203.

11 (9) The court may consider a defendant's unreasonable failure
12 to make a complete disclosure pursuant to paragraph (5) as any of
13 the following:

14 (A) A circumstance in aggravation of the crime in imposing a
15 term under subdivision (b) of Section 1170.

16 (B) A factor indicating that the interests of justice would not be
17 served by admitting the defendant to probation under Section 1203.

18 (C) A factor indicating that the interests of justice would not be
19 served by conditionally sentencing the defendant under Section
20 1203.

21 (D) A factor indicating that the interests of justice would not
22 be served by imposing less than the maximum fine and sentence
23 fixed by law for the case.

24 (10) A defendant's failure or refusal to make the required
25 disclosure pursuant to paragraph (5) shall not delay entry of an
26 order of restitution or pronouncement of sentence. In appropriate
27 cases, the court may do any of the following:

28 (A) Require the defendant to be examined by the district attorney
29 pursuant to subdivision (h).

30 (B) If sentencing the defendant under Section 1170, provide
31 that the victim shall receive a copy of the portion of the probation
32 report filed pursuant to Section 1203.10 concerning the defendant's
33 employment, occupation, finances, and liabilities.

34 (C) If sentencing the defendant under Section 1203, set a date
35 and place for submission of the disclosure required by paragraph
36 (5) as a condition of probation or suspended sentence.

37 (11) If a defendant has any remaining unpaid balance on a
38 restitution order or fine 120 days prior to his or her scheduled
39 release from probation or 120 days prior to his or her completion
40 of a conditional sentence, the defendant shall prepare and file a

1 new and updated financial disclosure identifying all assets, income,
2 and liabilities in which the defendant holds or controls or has held
3 or controlled a present or future interest during the defendant's
4 period of probation or conditional sentence. The financial
5 disclosure shall be made available to the victim and the board
6 pursuant to Section 1214. The disclosure shall be signed and
7 prepared by the defendant on the same form as described in
8 paragraph (5). Any defendant who willfully states as true any
9 material matter that he or she knows to be false on the disclosure
10 required by this subdivision is guilty of a misdemeanor, unless
11 this conduct is punishable as perjury or another provision of law
12 provides for a greater penalty. The financial disclosure required
13 by this paragraph shall be filed with the clerk of the court no later
14 than 90 days prior to the defendant's scheduled release from
15 probation or completion of the defendant's conditional sentence.

16 (g) The court shall order full restitution unless it finds
17 compelling and extraordinary reasons for not doing so, and states
18 those reasons on the record. A defendant's inability to pay shall
19 not be considered a compelling and extraordinary reason not to
20 impose a restitution order, nor shall inability to pay be a
21 consideration in determining the amount of a restitution order.

22 (h) The district attorney may request an order of examination
23 pursuant to the procedures specified in Article 2 (commencing
24 with Section 708.110) of Chapter 6 of Division 2 of Title 9 of Part
25 2 of the Code of Civil Procedure, in order to determine the
26 defendant's financial assets for purposes of collecting on the
27 restitution order.

28 (i) A restitution order imposed pursuant to subdivision (f) shall
29 be enforceable as if the order were a civil judgment.

30 (j) The making of a restitution order pursuant to subdivision (f)
31 shall not affect the right of a victim to recovery from the Restitution
32 Fund as otherwise provided by law, except to the extent that
33 restitution is actually collected pursuant to the order. Restitution
34 collected pursuant to this subdivision shall be credited to any other
35 judgments for the same losses obtained against the defendant
36 arising out of the crime for which the defendant was convicted.

37 (k) For purposes of this section, "victim" shall include all of
38 the following:

39 (1) The immediate surviving family of the actual victim.

- 1 (2) Any corporation, business trust, estate, trust, partnership,
2 association, joint venture, government, governmental subdivision,
3 agency, or instrumentality, or any other legal or commercial entity
4 when that entity is a direct victim of a crime.
- 5 (3) Any person who has sustained economic loss as the result
6 of a crime and who satisfies any of the following conditions:
- 7 (A) At the time of the crime was the parent, grandparent, sibling,
8 spouse, child, or grandchild of the victim.
- 9 (B) At the time of the crime was living in the household of the
10 victim.
- 11 (C) At the time of the crime was a person who had previously
12 lived in the household of the victim for a period of not less than
13 two years in a relationship substantially similar to a relationship
14 listed in subparagraph (A).
- 15 (D) Is another family member of the victim, including, but not
16 limited to, the victim's fiancé or fiancée, and who witnessed the
17 crime.
- 18 (E) Is the primary caretaker of a minor victim.
- 19 (4) Any person who is eligible to receive assistance from the
20 Restitution Fund pursuant to Chapter 5 (commencing with Section
21 13950) of Part 4 of Division 3 of Title 2 of the Government Code.
- 22 (5) Any governmental entity that is responsible for repairing,
23 replacing, or restoring public or privately owned property that has
24 been defaced with graffiti or other inscribed material, as defined
25 in subdivision (e) of Section 594, and that has sustained an
26 economic loss as the result of a violation of Section 594, 594.3,
27 594.4, 640.5, 640.6, or 640.7 of the Penal Code.
- 28 (l) At its discretion, the board of supervisors of any county may
29 impose a fee to cover the actual administrative cost of collecting
30 the restitution fine, not to exceed 10 percent of the amount ordered
31 to be paid, to be added to the restitution fine and included in the
32 order of the court, the proceeds of which shall be deposited in the
33 general fund of the county.
- 34 (m) In every case in which the defendant is granted probation,
35 the court shall make the payment of restitution fines and orders
36 imposed pursuant to this section a condition of probation. Any
37 portion of a restitution order that remains unsatisfied after a
38 defendant is no longer on probation shall continue to be enforceable
39 by a victim pursuant to Section 1214 until the obligation is
40 satisfied.

1 (n) If the court finds and states on the record compelling and
 2 extraordinary reasons why a restitution fine or full restitution order
 3 should not be required, the court shall order, as a condition of
 4 probation, that the defendant perform specified community service,
 5 unless it finds and states on the record compelling and
 6 extraordinary reasons not to require community service in addition
 7 to the finding that restitution should not be required. Upon
 8 revocation of probation, the court shall impose restitution pursuant
 9 to this section.

10 (o) The provisions of Section 13963 of the Government Code
 11 shall apply to restitution imposed pursuant to this section.

12 (p) The court clerk shall notify the California Victim
 13 Compensation and Government Claims Board within 90 days of
 14 an order of restitution being imposed if the defendant is ordered
 15 to pay restitution to the board due to the victim receiving
 16 compensation from the Restitution Fund. Notification shall be
 17 accomplished by mailing a copy of the court order to the board,
 18 which may be done periodically by bulk mail or electronic mail.

19 (q) Upon conviction for a violation of Section 236.1, the court
 20 shall, in addition to any other penalty or restitution, order the
 21 defendant to pay restitution to the victim in any case in which a
 22 victim has suffered economic loss as a result of the defendant's
 23 conduct. The court shall require that the defendant make restitution
 24 to the victim or victims in an amount established by court order,
 25 based on the amount of loss claimed by the victim or victims or
 26 any other showing to the court. In determining restitution pursuant
 27 to this section, the court shall base its order upon the greater of the
 28 following: the gross value of the victim's labor or services based
 29 upon the comparable value of similar services in the labor market
 30 in which the offense occurred, or the value of the victim's labor
 31 as guaranteed under California law, or the actual income derived
 32 by the defendant from the victim's labor or services or any other
 33 appropriate means to provide reparations to the victim.

34 (r) (1) In addition to any other penalty or fine, the court shall
 35 order any person who has been convicted of any violation of
 36 Section 350, 653h, 653s, 653u, 653w, or 653aa that involves a
 37 recording or audiovisual work to make restitution to any owner or
 38 lawful producer, or trade association acting on behalf of the owner
 39 or lawful producer, of a phonograph record, disc, wire, tape, film,
 40 or other device or article from which sounds or visual images are

1 derived that suffered economic loss resulting from the violation.
 2 For the purpose of calculating restitution, the value of each
 3 nonconforming article or device shall be based on the aggregate
 4 wholesale value of lawfully manufactured and authorized devices
 5 or articles from which sounds or visual images are devised, unless
 6 a higher value can be proved in the case of (A) an unreleased audio
 7 work, or (B) an audiovisual work that, at the time of unauthorized
 8 distribution, has not been made available in copies for sale to the
 9 general public in the United States on a digital versatile disc. The
 10 order of restitution shall also include reasonable costs incurred as
 11 a result of any investigation of the violation undertaken by the
 12 owner, lawful producer, or trade association acting on behalf of
 13 the owner or lawful producer. "Aggregate wholesale value" means
 14 the average wholesale value of lawfully manufactured and
 15 authorized sound or audiovisual recordings. Proof of the specific
 16 wholesale value of each nonconforming device or article is not
 17 required.

18 (2) As used in this subdivision, "audiovisual work" and
 19 "recording" shall have the same meaning as in Section 653w.

20 ~~SEC. 9. Chapter 5.8 (commencing with Section 13849) is added~~
 21 ~~to Title 6 of Part 4 of the Penal Code, to read:~~

22
 23 ~~CHAPTER 5.8. INTELLECTUAL PROPERTY PIRACY PREVENTION~~
 24 ~~AND PROSECUTION ACT OF 2010~~
 25

26 ~~13849. (a) This act shall be known and may be cited as the~~
 27 ~~Intellectual Property Piracy Prevention and Prosecution Act of~~
 28 ~~2010.~~

29 ~~(b) The Legislature finds and declares the following:~~

30 ~~(1) According to a 2007 study by the Institute for Policy~~
 31 ~~Innovation, intellectual property piracy, meaning the theft of~~
 32 ~~movies, music, software, and video games, costs the United States~~
 33 ~~economy fifty-eight billion dollars (\$58,000,000,000) each year.~~

34 ~~(2) The problem of intellectual property piracy continues to~~
 35 ~~grow worse. A 2005 Gallup study found that 5 percent of~~
 36 ~~Americans had purchased, copied, or downloaded counterfeit music~~
 37 ~~in the preceding year. By 2007, this number had jumped to 9~~
 38 ~~percent. The percentage of respondents that admitted buying a~~
 39 ~~pirated movie rose from 3 percent in 2005, to 6 percent in 2007.~~

1 At the same time, once robust DVD sales have flattened over the
2 past few years, while CD shipments to retailers have plummeted.

3 ~~(3) The effect of intellectual property piracy on California and
4 its citizens is particularly dire. Intellectual property piracy
5 adversely affects the California economy, eliminates jobs, and
6 damages industry. According to the Business Software Alliance,
7 in 2003, software piracy alone cost the California economy more
8 than 13,000 jobs, over eight hundred two million dollars
9 (\$802,000,000) in wages and salaries, over one billion dollars
10 (\$1,000,000,000) in retail sales of business software applications,
11 and roughly two hundred thirty-nine million dollars (\$239,000,000)
12 in total tax losses.~~

13 ~~(4) Intellectual property piracy poses a significant threat to
14 consumers, who, through no fault of their own, are often deceived
15 or deliberately misled, or both deceived and deliberately misled,
16 as to the nature of purchased products, whereby pirated goods are
17 palmed off, including in electronic form, as legitimate authorized
18 goods.~~

19 ~~(5) A growing number of criminal organizations worldwide are
20 involved in intellectual property piracy.~~

21 ~~(6) This act will send a strong signal that California is committed
22 to protecting the intellectual property created by California's
23 innovation and entertainment industries.~~

24 ~~(7) Funds provided pursuant to this act will be used to foster
25 innovation and to provide local law enforcement and prosecutors
26 the tools they need to effectively fight intellectual property piracy.~~

27 ~~(8) Finally, by safeguarding the legitimate sale of intellectual
28 property, California will increase its tax base, and stimulate the
29 economy.~~

30 ~~(e) Funds provided pursuant to this act are intended to ensure
31 that law enforcement and prosecutors are equipped with the
32 necessary personnel and equipment to combat successfully
33 intellectual property piracy, which includes piracy of movies,
34 music, software, and video games.~~

35 ~~13849.1. (a) There is hereby created, within the Bureau of
36 Investigation and Intelligence of the Department of Justice, the
37 Division of Organized Crime and Intellectual Piracy (DOCIP) to
38 investigate and prosecute organized crime in connection with
39 crimes involving intellectual property theft, with an emphasis on
40 intellectual property theft within the motion picture industry.~~

1 ~~(b) The DOCIP shall prepare and submit to the Legislature an~~
2 ~~annual report with information on the number and types of~~
3 ~~investigations and prosecutions funded by the Intellectual Property~~
4 ~~Piracy Prevention and Prosecution Fund.~~

5 ~~(c) For purposes of this chapter, “organized crime” shall have~~
6 ~~the same meaning as is specified in subdivision (d) of Section~~
7 ~~186.2.~~

8 ~~(d) For purposes of this chapter, “intellectual property” means~~
9 ~~property that results from original creative thought, such as patents,~~
10 ~~copyright material, and trademarks.~~

11 ~~13849.2. (a) There is hereby established the Intellectual~~
12 ~~Property Piracy Prevention and Prosecution Fund to provide total~~
13 ~~or partial reimbursement for costs incurred by local law~~
14 ~~enforcement agencies assisting the DOCIP in ongoing~~
15 ~~investigations or prosecutions, or both, of organized crimes~~
16 ~~involving intellectual property theft.~~

17 ~~(b) Upon appropriation by the Legislature, the Controller shall~~
18 ~~make payments from the fund, upon the approval of the Attorney~~
19 ~~General, to local law enforcement agencies that provide substantial~~
20 ~~assistance to the DOCIP in connection with open investigations~~
21 ~~or court proceedings, or both, against organized crime involving~~
22 ~~intellectual property theft, including, but not limited to, all of the~~
23 ~~following:~~

24 ~~(1) Counterfeit goods.~~

25 ~~(2) Copyright infringement.~~

26 ~~(3) Trademark infringement.~~

27 ~~(4) Pirated CDs.~~

28 ~~(5) Pirated DVDs.~~

29 ~~(6) Pirated computer software.~~

30 ~~(c) Investigations of intellectual property theft related to motion~~
31 ~~pictures shall receive the highest priority in making disbursements~~
32 ~~from the fund.~~

33 ~~(d) Notwithstanding Section 1463.001, all fines resulting from~~
34 ~~prosecutions by the DOCIP shall be deposited in the fund.~~

35 SEC. 10. No reimbursement is required by this act pursuant to
36 Section 6 of Article XIII B of the California Constitution because
37 the only costs that may be incurred by a local agency or school
38 district will be incurred because this act creates a new crime or
39 infraction, eliminates a crime or infraction, or changes the penalty
40 for a crime or infraction, within the meaning of Section 17556 of

1 the Government Code, or changes the definition of a crime within
2 the meaning of Section 6 of Article XIII B of the California
3 Constitution.

4 SEC. 11. This act is an urgency statute necessary for the
5 immediate preservation of the public peace, health, or safety within
6 the meaning of Article IV of the Constitution and shall go into
7 immediate effect. The facts constituting the necessity are:

8 In order to ensure public peace against the accelerating problem
9 of intellectual property piracy, it is necessary for this act to take
10 effect immediately.