

Approved:
Date
10-07-04

MINUTES OF THE HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE

The meeting was called to order by Chairman Ward Loyd at 1:30 p.m. on March 3, 2004 in Room 241-N of the Capitol.

All members were present except:

Representative Deena Horst- excused
Representative Jeff Goering- absent
Representative Kevin Yoder- absent

Committee staff present:

Jill Wolters, Revisor of Statutes Office
Jerry Ann Donaldson, Legislative Research Department
Nicoletta Buonasera, Legislative Research Department
Connie Burns, Committee Secretary

Conferees appearing before the committee:

Ron Hein
Dennis McIntire
James Frazier

Others attending:

See Attached List.

HB 2835 – Unlawful use of a recording device

Chairman Loyd opened the hearing on **HB 2835**.

Ron Hein, legislative counsel for the motion Picture Association of America, spoke in favor of the bill. The bill prohibits the unauthorized operation of a recording device where a motion picture is being exhibited without the permission of the owner or lessee of the premises and the licensor of the motion picture being exhibited. ([Attachment 1](#))

Dennis McIntire, B&B Theaters, appeared in favor of the bill, which is a critical element in the industry's efforts to combat an ever-growing movie piracy problem. ([Attachment 2](#))

Michael Petricone, Consumer Electronics Retailers Coalition, submitted written testimony with amendments in opposition unless amended. ([Attachment 3](#))

Chairman Loyd closed the hearing on **HB 2835**.

SB 183 – The Interstate Compact for Junveniles

Chairm Loyd opened the hearing on **SB 183**.

James Frazier, Deputy Commissioner of Operations, spoke in favor of the bill. The bill requires the KJJA to adopt and participate in the Interstate Compact on Juveniles (ICJ) within the revised rules, regulations and articles as outlines in the new ICJ. ([Attachment 4](#)) The new/revised Interstate Compact for Juveniles will furth provide for the welfare and protection of juveniles and the public by:

- Holding signatory states accountable for adhering to the ICJ rules, regulation; and articles with violating states facing possible sanctions such as fines and/or suspension/termination of membership to the new compact.
- Allowing for compact administrators to make contracts for the cooperative institutionalization of delinquent youth needing special services in public facilities in member states. The task is currently

being handled through SRS/Interstate compact for the Placement of Children.

- Providing an improved tracking and data system through uniform, computerized reporting, making communication between states faster and more efficient.
- Providing oversight from the legislative, judicial and executive branch of government, as well as victims' groups.

The difference between the house and senate bill is revisor drafting style.

Chairman Loyd closed the hearing on **SB 183**.

SB 183 – The Interstate Compact for Junveniles

Representative Owens moved SB 183 favorably for passage. Representative Crow seconded the motion. The motion carried.

The meeting was adjourned. The next meeting is March 8, 2004.

①

HEIN LAW FIRM, CHARTERED

5845 SW 29th Street, Topeka, KS 66614-2462

Phone: (785) 273-1441

Fax: (785) 273-9243

Ronald R. Hein

Attorney-at-Law

Email: rhein@heinlaw.com

Testimony re: HB 2835
House Corrections and Juvenile Justice Committee
Presented by Ronald R. Hein
on behalf of the
Motion Picture Association of America
March 3, 2004

Mr. Chairman, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for the Motion Picture Association of America (MPAA), the trade association representing the nation's leading producers and distributors of motion pictures on film, home video, the Internet, satellite, cable, subscription and over-the-air television broadcast. MPAA member companies include: the Walt Disney Company, M-G-M Studios, Paramount Pictures, Sony Pictures, Fox, Universal, and Warner Brothers.

The MPAA requested introduction of and strongly supports HB 2835. This legislation prohibits the unauthorized operation of a recording device where a motion picture is being exhibited without the permission of the owner or lessee of the premises and the licensor of the motion picture being exhibited.

We live in a digital age with many positive advantages for individuals and for society. However, the digital age has also added a new dimension to some traditional problems. Plagiarism and copyright infringement have been a problem for writers, artists, and society throughout modern history. However, with the advancement of technology (camcorders, digital imagery, and other photographic techniques), piracy of lawfully protected intellectual property has become more sophisticated, more prolific, and more difficult to address.

The utilization of digital camcorders to pirate newly-released motion pictures has also increased significantly in the recent past. Video recorders are smaller, less obtrusive, easier to conceal, and create higher quality images of the real product. Add the digital element, which permits rapid, sophisticated, high quality duplication of the original, unlike the multiple recording of non-digital recordings in the past, the pirated images can now be spread to a large audience in an incredibly short period of time.

More and more, movies are being stolen from movie theatres by thieves wielding camcorders or other recording devices. Typically, these thieves are organized criminals who illicitly record films early in their theatrical release and in the most damaging

instances, during pre-release or promotional screenings, *before* the film has been commercially debuted. These so-called camcorder pirates sell their master recordings to illicit source labs where they are illegally duplicated, packaged and distributed to bootleg dealers, flea markets and street vendors across the country and overseas.

In addition, these stolen movies are released on the Internet (on peer-to-peer networks, chat rooms or auction sites) within days of their theatrical release (or even *before* their theatrical release). In 9 out of 10 instances, those early, pirated copies can be traced back to a video recorded copy of a theatrical presentation. The trend is alarming: 125 major camcorder piracy product labs have been investigated in the US in the first three quarters of 2003, more than twice the number during the same period in 2002. Time Magazine, in their January 19, 2004, issue, contained an excellent article on this problem and how this full-scale piracy occurs. [See copies distributed.]

Obviously, if we can stop the camcorder pirates from recording a master copy in the first place, we will have gone a long way in mitigating the financial damage. That's where this legislation can make all the difference: Currently, even though a movie theater may catch a thief in the act, Kansas law enforcement is not empowered to respond, let alone hold or charge such a thief. This legislation would give theater owners and law enforcement the tools they need to stop movie theft.

HB 2835 would enable the exhibitor and individuals or entities which own the motion picture or its copyright to prosecute the criminals who are video recording the movies illegally in the first instance by prosecuting them for the operation of the video equipment itself. This legislation will enable prosecutors to reduce the amount of piracy which is currently occurring, which some estimate is costing the motion picture industry \$3.5 billion per year. In addition, prosecution of these individuals should assist law enforcement in uprooting the other less visible segments of these piracy schemes.

Regarding the penalties, the economic harm suffered as a result of even one illegitimate copy of a motion picture is great; the penalty borne by the individual responsible for causing the harm should be commensurate. As camcorder piracy becomes more and more organized and sophisticated, strong penalties are necessary as smaller fines and misdemeanor charges simply become a "cost of doing business" for most movie thieves.

It is a crime to steal a DVD or videotape from a retail establishment in Kansas. It should also be a crime to steal the same movie from a theater in Kansas. I respectfully urge the Committee to report HB 2835 with the recommendation that it be passed.

Thank you very much for permitting me to testify, and I will be happy to yield to questions.

HOLLYWOOD ROBBERY

How does a hit movie go from the free market to the black market? TIME retraces the trail

By AMANDA RIPLEY

STUDIO EXECUTIVES, NO STRANGERS TO melodrama, have begun to talk about movie piracy the way FBI agents talk about terrorism: they watch the Web for “chatter,” they embed films with hidden “fingerprints,” and they speak without irony about “changing hearts and minds.” They even use night-vision goggles. It’s not going too far to say they are completely paranoid, which doesn’t mean they are wrong.

On the night of Nov. 29, Warner Bros. transformed more than 500 American theaters into secure compounds for a sneak preview of *The Last Samurai*. The \$140 million Tom Cruise vehicle, designed to transport the star from the screen to the Oscar podium, was filmed on location in New Zealand and Japan with a cast of 750. All the hype, along with the adolescent story line—samurai fight against the Japanese army!—guaranteed the film to be of interest to pirates. And in the age of faster Internet connections, protecting a movie has become like guarding very expensive art. So to prevent an early bootleg from squashing ticket sales, more than 1,000 security guards hand delivered prints of the film to projection rooms. They searched each

PHOTO ILLUSTRATION FOR TIME BY D. W. PINE. GETTY IMAGES (3)



134min

FINE

51/55

IN 2003, MORE THAN 50 MAJOR MOVIES WERE PIRATED BEFORE

facility for recording devices. In lobbies, moviegoers were siphoned through metal detectors. Camera phones were confiscated. As the lights went down and Cruise and his movie-star teeth flickered onto the screen, men and women in dark blazers walked solemnly down the aisles, searching for the pale glow of camcorders through their night-vision goggles. Maybe because this was Los Angeles, the moviegoers didn't seem to notice the paramilitary scene unfolding beside their military fiction.

Last year more than 50 major movies were illegally copied and released even before they came out in theaters, according to the Motion Picture Association of America (M.P.A.A.). But for all the talk about movie piracy, few people understand how it actually works—the stunning velocity at which copies move and how far the studios will now go to hold back this threat. To tell the tale of how films get to black-market stores and shacks across every continent, from Beijing to New York City and to computer hard drives everywhere, *TIME* tracked the winding journey of *The Last Samurai* (full disclosure: Warner Bros. and *TIME* share the same parent company). And the trajectory confirms that movie executives are right to be alarmed. But it also shows that most of their protective acrobatics are, at best, just buying time. The harder it is to get a movie, the more pirates want it. “It’s like a piece of gold,” says one male American downloader. That’s an unsustainable dynamic, says Eric Garland, CEO of BigChampagne, which tracks the most popular entertainment downloads: “You don’t get to go to war with your core customer. You have to court him.”

Marc Brandon works in a far corner of the Warner Bros. studio in Burbank, Calif., not far from where the old western back lot used to be. His office is plain and neat, and there was a time when his job was too—back when, as director of antipiracy Internet operations, his chief responsibility was reminding online T-shirt companies that the studio owns Bugs Bunny. Today, Brandon, 30, in jeans and an oversize T shirt, says the pirates dictate his daily schedule. In 2002 some 41 million illegal copies of movies were seized by law-enforcement authorities around the world with assistance from the M.P.A.A. Last year the film industry made \$52 billion—but would have made \$3.5 billion more if not for piracy, according to a Smith Barney estimate released in November. Next year the loss may rise to \$5.4 billion. Brandon can’t

hope to stop bootlegs of Warner Bros. releases from spreading like a virus. It’s a Herculean task just to delay the inevitable. “It’s not a matter of *if*,” he says, “but *when*.” And *when* makes a huge difference. If a high-quality copy is made before a film’s lucrative first weekend in release, the studio can lose tens of millions of dollars.

For *Samurai*, evasive maneuvers began before the film was finished being shot. Every work print of the movie was encoded with a hidden marker so that it could be identified if it was leaked. Even the scripts had codes stamped across every page, each corresponding to the owner’s name. Before sending *Samurai* to dubbing houses, Warner Bros. rendered the copies less piratable by going through every scene and editing out characters not relevant to the particular dubbing job—an exercise that took about three days per cassette. The studio did send out “screener” copies to Oscar voters—a high-risk move—but far fewer than normal.

Studio executives feel so threatened by piracy that they do not even like to dignify it with the word. “It’s a word that has a swash-buckling, cool kind of feel, and that’s not what we’re talking about. This isn’t Johnny Depp on the front of a boat,” says Barry Meyer, chairman of Warner Bros. “It’s theft. It’s shoplifting. It’s grand larceny.”

Many Americans who download movies and buy pirate copies insist that doing so has no effect on their legitimate movie-buying or theatergoing habits. But it would be foolish for Hollywood to ignore the grim prophecy of the music industry—where album sales have dropped 16% since 2000. Right now, the movie industry’s guardian angel is slow technology. Seasoned down-

loaders on a broadband connection generally need eight hours or more to download a film. But 18 months from now, it may take only 2½ hours, according to calculations by BigChampagne. Eventually, “if you can download a movie with sophisticated sight and sound in seconds and have it in your library, you’re not going to buy that in a DVD store. Anyone with even a paltry understanding of human nature understands that,” says Jack Valenti, head of the M.P.A.A.

The weekend of the sneak preview, Brandon got hourly updates from the studio’s Internet-monitoring firm, hoping not to hear that *Samurai* had been scattered across the globe. The off-site security firm (which requested that it not be named) scanned file-trading networks 24 hours a day. It can fire off letters warning Internet service providers about misbehaving users, but its main weapon is the decoy file, which it dispatched by the tens of thousands. Downloaders spent hours pulling down the bait, only to find a mess of ones and zeros. Bored wannabe pirates added to the mass distraction, posting bogus files to get attention and create havoc. The week before the film’s release, *TIME* staffers found online *Samurais* that turned out to be *Scary Movie 3*, *Santa Clause 2* and a porn flick.

By the Monday after the film’s sneak preview, no pirate copies had surfaced. “It was a pretty amazing feat,” Brandon says now, as if describing a matter of national security. “The movie very easily could have been compromised.”

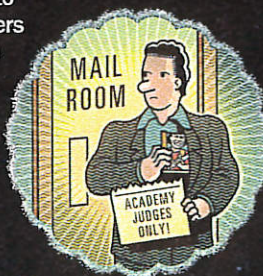
In fact, it wasn’t until Dec. 6 that Brandon finally got the dreaded call. Around 2 p.m., he learned that *Samurai* was online, just one day after its release in theaters. In

A PICTURE-PERFECT CRIME

Old-fashioned bootleg movies were made the hard way, but the highest-quality pirated films—and the

1. LEAK

As many as 10,000 “screeners” of new movies are sent to Academy members and others in the industry. These early, quality copies are the Holy Grails of bootlegs—especially if they are DVDs



2. EDIT

Renegade release groups convert the film into a computer file and may also black out studio identifiers. The groups, such as Centropy or OBUS, then make the movies available online after adding their own special logos for bragging rights



THEY CAME OUT IN THE THEATER

this day and age, that is a victory—which reflects how badly the studios are losing the war. That first pirate of *Samurai* was from a camcorder copy made in a U.S. theater on the day the movie premiered. Warner Bros. has identified the theater using tracking codes hidden in the film but declined to reveal the information, citing ongoing legal investigations. After years of resisting the hard line taken by the music industry, the studio recently decided to take off the gloves and pursue civil litigation against pirates. The M.P.A.A., meanwhile, is investigating 23 American theaters where camcording has occurred. (The first person to be federally charged for camcording, Johnny Ray Gasca, jumped bail two weeks ago in California.)

The *Samurai* copy was posted online under the pirate logo MPT—one of the so-called release groups that upload films and have their own hierarchy. Currently, MPT also claims to have online bootlegs of *Paycheck*, *Big Fish* and *Lord of the Rings: The Return of the King*. Beyond the desire to get something for nothing, serious downloaders relish the technology of pirating for technology's sake. "I'm a geek," says one Indian student living in France. "There's a thrill of it. The first movie I downloaded, it was quite a kick—it was *My Big Fat Greek Wedding*." The day *Samurai* appeared online, a dozen downloaders posted reviews—of the pirate copy. "Video is a little grainy, nothing too bad, color is dead on," wrote someone calling himself Freeder. "Watched this at the theater last night... glad I can watch it again without paying \$20," added another.

Once a movie leaks, duplicating plants begin churning out discs by the thousand.



GLOBALIZATION
Bootleg *Samurai* discs bought worldwide, from Venezuela to India to Malaysia

Two and a half years ago, hard copies would hit the street about a week after theatrical releases. Today they're usually out in 48 hours. On Dec. 13, a TIME reporter bought *Samurai* from a stall along Tawee Wong Road in Phuket, Thailand. "We've had *Last Samurai* for three days already," said vendor Nook (not his real name). At his booth, just 50 yards from an official Warner Bros. store, *Samurai* was available with Thai, Chinese or Bahasa Indonesia subtitles. Business has improved, Nook says, since police stopped shaking him down for a monthly \$60 payoff. Now he pays just \$150 a year for an official ID card. Piracy has become so normalized that it has its own bureaucracy. Two days later, a reporter bought *Samurai* in Shanghai. The shopkeeper, who introduced himself as Mr. Wang, displayed thousands of pirated DVDs—from Hitchcock to Schwarzenegger. The DVD cost \$1. It arrived the day before, via pedicab. "If you want to wait a few months, you can come back for a better version," said Mr. Wang.

Piracy is so rampant in parts of Asia that even the pirates have problems with piracy. In Taipei, a copy of *Samurai* purchased over the phone for \$1.76 features the logo "HLW production team/Production: KC" in the upper right-hand corner of the image. The group attached its pirate mark so it can police its own product, speculates Michael Ellis, vice president of Asia-Pacific antipiracy operations for the M.P.A.A. "From a criminal point of view, if someone is taking away your market share, that's a problem." (The Chinese-character subtitles were not always of professional quality. When Tom Cruise says "I would happily kill you for free," it is translated as "At any time, I can back off.") Copies bought in Moscow and New Delhi even list addresses for the pirate "copyright holders." They are likely fake, added to help slip bootlegs past customs agents, Ellis says.

On Christmas Eve, another copy of *Samurai* appeared online and was traced back to a screener that had been sent to Oscar voters. Since Warner Bros. gave out only VHS copies, the bootleg was not of great quality. But its existence is an embarrassment after a year of high-profile debate over the risks of screeners—a beloved industry perk. Valenti of the M.P.A.A. had pushed hard to fight piracy by banning all screeners outright. But independent studios complained the ban would penalize small movies trying to get award nominations. In December the U.S. district court overturned the ban. Last week Sony traced a pirated copy of *Something's Gotta Give* to a screener intended for use by veteran character actor Carmine Caridi, a

low-tech way: by recording with a camcorder in a dark theater. Most are still made by this method, the most damaging to Hollywood—usually come from videos and DVDs used to market new films

3. MASS-PRODUCE

Duplicating houses may use the online bootleg to make thousands of copies. The mills can be big, professional plants or small labs. Most are located in Asia and Russia



4. SELL

Internationally at least, organized crime is heavily involved in piracy. The profit margin is higher than that for heroin, and the risks are lower. Local vendors get the films without knowing where they come from. In China, 95 out of every 100 movies get pirated



ILLUSTRATIONS FOR TIME BY PETER HOEY

member of the Academy of Motion Picture Arts and Sciences. *The Last Samurai* and other pirated screeners have also been traced back to Caridi, according to a source close to the investigation, though it is not yet clear if Caridi had anything to do with leaking the film.

Studios have been loath to acknowledge their own holes in the security net. A 2003 study led by a group of AT&T researchers found that 77% of online pirated films came from weak links within the movie business itself—from Academy members to critics to cinema projectionists. The report was criticized by studio execs, who found its definition of *movie insiders* overly broad. Nevertheless, this past year, some studios have started quietly inserting hidden markers in screeners that identify the owners. Under a new pledge, which 80% of Academy members have signed, anyone found to have leaked a screener can be kicked out of the Academy.

So far, Warner Bros. has traced thousands of online *Samurai* copies and 25 bootlegs from 12 countries to one screener and two camcorder copies. That is not a lot of leaks. But it takes only one. As download-



CHIEN-MIN CHUNG FOR TIME

KIDS IN A CANDY STORE Shoppers in Beijing dig through films priced at 97¢ a pop. Bootleg DVDs are everywhere in China, from the Tibetan Plateau to an alley east of the U.S. embassy

ing speeds increase and camcorder technology continues to improve, studios will be forced to put down the night-vision goggles and invent a new business model for a new world. “Nobody believes you’re going to dissuade people from downloading,” says Garland of BigChampagne. “It’s all about co-opting that content and building businesses around it.”

Fittingly, *The Last Samurai* is a movie about men fighting to protect their archaic way of life. Their customs stand no chance

of surviving. But the samurai fight on anyway, barreling into battle with their swords drawn against the cannons and artillery guns that boom into the future. At press time, *Samurai* had earned \$98 million in theaters; and according to BigChampagne, about 49,000 copies are bouncing around on the Internet, for free. —*With reporting by* **Desa Philadelphia/Los Angeles, Matthew Forney/Shanghai, Robert Horn/Bangkok, Joyce Huang/Taipei, Paul Quinn-Judge/Moscow, Sara Rajan/New Delhi and Grant Rosenberg/Paris**

A Pirate and His Penance

If there are movies worth the risk of a felony indictment, surely *The Hulk* is not among them. It is a truth Kerry Gonzalez now appreciates daily. Gonzalez, 24, was an insurance underwriter in New Jersey last June: a nice kid with gelled hair, a college degree and no criminal record. Then he put a copy of *The Hulk* up on the Web—two weeks before it opened in theaters. Within weeks, a million people had downloaded it; movie geeks had panned the film online based on Gonzalez’s copy, which had unfinished special effects; and the FBI was looking for him. Gonzalez was sentenced to six months house arrest, three years of probation and a \$7,000 fine. And so he became Hollywood’s perpetrator poster boy, one of the few movie uploaders to be prosecuted in the U.S.—but definitely not the last.

For a man who has lost

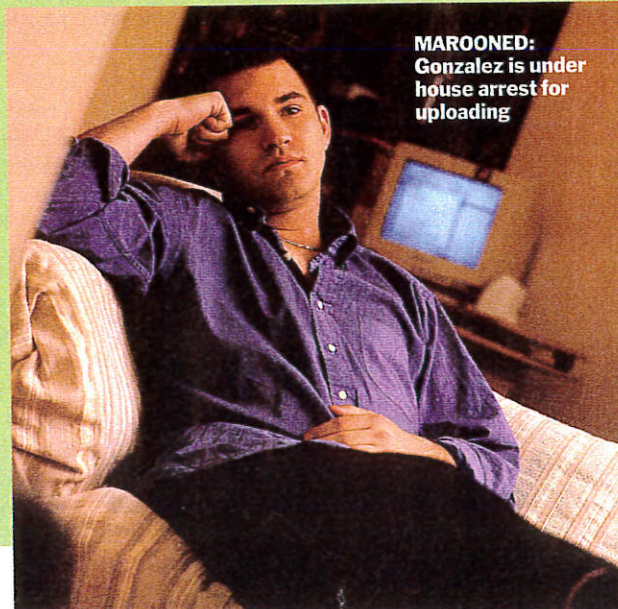
his job, his freedom and even his best friend because of a movie he has never seen, Gonzalez seems surprisingly accepting of his punishment. “They had to do it to someone—and it was me. So what can you do?” he says, serving up a weary smile.

Gonzalez got his copy of *The Hulk* from a buddy who

worked at an ad firm that had received an early work print. He didn’t have much interest in the movie, but he knew that if he put it online, the more-exclusive chat groups would let him pull down other, better films. “I don’t like paying for movies,” he says. So he digitized the VHS copy and then used basic editing software to block the “Property of Universal” crawl running across the screen,

along with a serial number. Aware that what he was doing was wrong, he vacillated for three days before posting *The Hulk* to a server in the Netherlands. “So many people do it, you never think you’re going to get caught.”

Universal unblocked the serial code and quickly traced the copy to Gonzalez. The studio pushed for the maximum sentence of one year in federal prison, claiming the piracy had cost it an estimated \$66 million (a spokeswoman declined to explain how that figure was calculated). Gonzalez now has a job selling cars. He must wear an electronic-monitoring bracelet around his ankle to ensure he goes only to work and then home. “People will come by once in a while,” he says, “but I find myself watching TV and playing video games a lot of the time.” He says he would like to do a public-service announcement against file sharing, but so far, Universal hasn’t been interested. —*By Amanda Ripley/Hamilton, N.J.*



MAROONED: Gonzalez is under house arrest for uploading

SHONNA VALESKA FOR TIME

②

TESTIMONY IN SUPPORT OF KANSAS
HB 2835

THANK YOU CHAIRMAN LOYD, AND MEMBERS OF THE COMMITTEE.

MY NAME IS DENNIS MCINTIRE. I AM WITH B&B THEATERS BASED IN KANSAS. I REPRESENT THE MEMBERS OF UNITED MOTION PICTURE ASSOCIATION, WHICH REPRESENTS THEATER OWNERS FROM BOTH KANSAS AND MISSOURI. THE NUMEROUS THEATER OWNERS IN KANSAS REPRESENT MORE THAN 120 THEATER COMPLEXES THAT EMPLOY MORE THAN FIFTEEN HUNDRED KANSAS RESIDENTS. THIS TRANSLATES INTO APPROXIMATELY 11 MILLION DOLLARS IN ANNUAL WAGES.

I AM HERE TO URGE YOUR SUPPORT OF HOUSE BILL 2835 CRIMINALIZING THE UNAUTHORIZED USE OF A RECORDING DEVICE, SPECIFICALLY FOR THE FILMING OF A MOTION PICTURE BEING SHOWN IN MOTION PICTURE THEATRES.

LET ME EXPLAIN WHY.

THIS LEGISLATION IS A CRITICAL ELEMENT IN THE INDUSTRY'S EFFORTS TO COMBAT AN EVER-GROWING MOVIE PIRACY PROBLEM. THERE ARE CLEAR LAWS PUNISHING THOSE WHO STEAL VIDEOS FROM RETAIL ESTABLISHMENTS. WE DESERVE

SIMILAR PROTECTIONS. WE NEED THE LEGAL TOOLS THIS BILL PROVIDES TO MAKE THIS HAPPEN. CURRENTLY, WE HAVE NO LEGAL RECOURSE OR PROTECTION TO STOP THESE THIEVES.

PIRACY CLEARLY EATS AWAY AT OUR LIVELIHOOD, AS MOVIE ATTENDENCE WILL DWINDLE.

THIS MUST BE STOPPED NOW.

PIRACY LEFT UNCHECKED WOULD CONTRIBUTE TO A LOSS OF JOBS, BUSINESS REVENUE AND EVEN TAX REVENUE TO THE STATE.

I APPLAUD THE KANSAS LEGISLATURE'S CONSIDERATION OF THIS MEASURE AND URGE IT'S SWIFT ENACTMENT.

THANK YOU FOR YOUR CONSIDERATION, AND I WILL BE HAPPY TO ANSWER ANY QUESTIONS.



Consumer Electronics Retailers Coalition



www.ceretailers.org

March 2, 2004

VIA FACSIMILE
Fax: 785-296-1153

Page 1 of 2

Representative Ward Loyd
Chairman, House Corrections and Juvenile Justice Committee
Kansas State Legislature
Statehouse
300 Southwest 10th Avenue
Topeka, KS 66612-1504

Re: **House Bill 2835 – OPPOSE UNLESS AMENDED**

Dear Chairman Loyd:

On behalf of the Consumer Electronics Association (CEA, www.ce.org) and Consumer Electronics Retailers Coalition (CERC, www.cerc.org), we are writing to highlight our concerns with H.B. 2835 and also to present amendments that address our concerns.

CEA is the leading trade association representing the consumer technology industry. CEA represents more than 1,500 corporate members who design, make and sell consumer electronics products. CERC, whose members include major consumer electronics retailers, is a public policy trade association dedicated to the concerns of consumer electronics specialty and general retailers, and their customers.

Though H.B. 2835 is aimed at objectionable use of camcorders in movie theaters, the broad language of the legislation would threaten normal retail activity and outlaw fair use behavior that the federal courts have upheld as legal. The exemption included for retail establishments in Subsection (d), Paragraph (2) of the legislation is far too narrow, and its presence assumes this legislation would scrutinize all audiovisual recording activities, including "fair use" activities, that are legal under federal copyright law.

While not limited in apparent scope, H.B. 2835 uses without qualification the same language as the U.S. copyright law, "motion picture" – which is so broad as to encompass any series of related images -- and then goes further to cover a "part" thereof, which could be a single frame or bit of sound. Taken as plainly written, it would mean that one cannot turn on a digital television, which temporarily stores and then reproduces a series of images, or a PC, or access the Internet, in any "facility" without advance written authorization from the "licensor" of whatever might next be displayed. Such requirements would make it difficult for Kansas consumers to view content in offices, universities, schools, libraries and even local cable television facilities - in addition to in retail establishments.

Legislation to prevent retailers from making illegal copies of movies for commercial purposes is redundant because those activities are already illegal under federal copyright law. On the other hand,

House Corr & JJ
Attachment 3

3-03-04

Representative Ward Loyd
March 2, 2004
Page 2

if the aim of H.B. 2835 is to prevent people from making illegal copies of movies in movie theaters, then CEA and CERC recommend incorporating the attached amendments to the bill so that it is focused on that specific offense. The amendment clarifies that the bill address conduct occurring in movie theatre auditoriums, rather than to other conduct that is not the target of the bill.

CEA and CERC would be happy to work with the Corrections and Juvenile Justice Committee and with private sector proponents to make sure that law-abiding Kansas consumers do not have to worry about being susceptible to branding as criminals for legal conduct in a retail establishment, university or school.

Sincerely,



Michael Petricone
CEA Vice President, Technology Policy



Marc Pearl
Executive Director, CERC

cc: Members of the House Corrections and Juvenile Justice Committee

Session of 2004

HOUSE BILL No. 2835

By Committee on Federal and State Affairs

2-11

AN ACT defining and classifying the crime of unlawful use of a recording device.

Be it enacted by the Legislature of the State of Kansas:

Section 1. (a) Unlawful use of **an audiovisual recording function of a recording device** is knowingly operating, in ~~any a movie theater auditorium in which a motion picture product is being shown, so as to record from the motion picture product facility where a motion picture is being exhibited, an audiovisual recording function of a device~~ without the consent of the owner or lessee of such facility ~~and of the licensor of the motion picture being exhibited.~~

(b) Unlawful use of a recording device is a class A nonperson misdemeanor on conviction of the first offense. Unlawful use of a recording device is a severity level 9, nonperson felony on conviction of a second or subsequent conviction.

(c) The owner or lessee of a **movie theater auditorium facility** where a motion picture **product** is being exhibited or the licensor of the motion picture **product** being exhibited, or the authorized agent or employee thereof, who alerts law enforcement authorities of an alleged violation of this section shall not be liable in any civil action arising out of measures taken by such owner, lessee, licensor, agent or employee in the course of subsequently detaining a person that the owner, lessee, licensor, agent or employee in good faith believed to have violated this section while awaiting the arrival of law enforcement authorities, unless the plaintiff can show by clear and convincing evidence that such measures were manifestly unreasonable or the period of detention was unreasonably long.

(d) This section shall not apply to:

(1) A person operating an audiovisual recording device as part of such person's lawfully authorized investigative, law enforcement, protective or intelligence gathering duties as a lawfully authorized investigative, law enforcement, protective or intelligence gathering employee or agent of the state or federal government; or

~~(2) a person operating an audiovisual recording function of a device in a retail~~

~~establishment solely to demonstrate the use of such device for sales purposes.~~

(e) Nothing in this section shall prevent prosecution under any other provision of law which provides a greater penalty.

(f) As used in this section:

(1) "Audiovisual recording function" means the capability of a device to record or transmit a motion picture or any part thereof by means of any technology now known or later developed.

~~(2) "Facility" does not include a personal residence.~~

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

4

Juvenile Justice Authority



HOUSE CORRECTIONS & JUVENILE JUSTICE COMMITTEE

SENATE BILL 183 INTERSTATE COMPACT ON JUVENILES

March 3, 2004

Denise L. Everhart, Commissioner
James Frazier, Deputy Commissioner of Operations

Thank you for the opportunity to appear before you today in support of Senate Bill 183. Senate Bill 183 requires the Kansas Juvenile Justice Authority (KJJA) to adopt and participate in the Interstate Compact on Juveniles (ICJ) within the revised rules, regulations and articles as outlined in the new ICJ.

The Kansas ICJ office, operated by the Juvenile Justice Authority, has sole responsibility for providing oversight for all juveniles who leave or come into the state under ICJ provisions. The ICJ provides for the welfare and protection of juveniles and the public by providing for the cooperative supervision of probationers and parolees (conditional release offenders), and the prompt and safe return of juveniles who have run away, escaped or absconded.

The new/revised Interstate Compact for Juveniles will further provide for the welfare and protection of juveniles and the public by:

- Holding signatory states accountable for adhering to the ICJ rules, regulations and articles with violating states facing possible sanctions such as fines and/or suspension/termination of membership to the new compact.
- Allowing for compact administrators to make contracts for the cooperative institutionalization of delinquent youth needing special services in public facilities in member states. The task is currently being handled through SRS/Interstate compact for the Placement of Children.
- Providing an improved tracking and data system through uniform, computerized reporting, making communication between states faster and more efficient.
- Providing oversight from the legislative, judicial and executive branch of government, as well as victims' groups.

Kansas averages 336 juvenile transactions per year through the Interstate Compact on Juveniles office. The number of cases is not expected to be impacted by this bill; however, SB 183 will result in a moderate increase in the workload of the current KJJA ICJ. The effectiveness and efficiency of the office are expected to improve dramatically with the enactment of this new compact. Changes foreseen include:

Accountability. One of the flaws of the current compact is that it has no authority to hold states accountable for the implementation of ICJ rules, regulations and articles. The new compact will make signatory states accountable for adhering to the ICJ rules, regulations and articles. Those states violating the new compact rules, regulations and articles may be sanctioned with fines and/or suspension or termination of membership to the new compact. To assure that Kansas adheres to the new compact in a timely manner, an assistant is needed to provide a timely response to incoming and outgoing requests for supervision, requests for home evaluations, progress reports and in meeting the five (5) day return time frame for runaway juveniles.

New Cases. It is not unusual to find a number of out-of-state juvenile probationers/parolees residing in Kansas or Kansas' juvenile probationers and parolees residing in other states, unbeknownst to compact administrators and without formal authority by the interstate compact. It is the goal of the new compact to bring states into compliance with mutually agreed upon rules, resulting in an increase in the number of compact cases as the states account for these "stealth" moves and provide appropriate supervision and care. The new compact also calls for compact administrators to make contracts for the cooperative institutionalization in public facilities in member states for delinquent youth needing special services. The task is currently being handled through SRS/Interstate Compact for the Placement of Children.

Training. Local law enforcement agencies, juvenile detention centers, court service officers, community case managers, juvenile intake offices and intensive supervision probation officers will require training on the new compact rules and regulations. This will require traveling time out of the office.

New Technology. One of the main problems voiced by ICJ administrators, agency administrators and field staff is that business conducted through the compact is too slow (see Executive Summary of *Perspectives from the Field on the Interstate Compact on Juveniles*). The new compact calls for a more timely method of sharing of information on juvenile transfers to "insure immediate notice to jurisdictions where defined offenders are authorized to travel or to relocate across state lines." (Article I) To assist with facilitating a more timely method of information sharing, the new compact will establish a better tracking/data system through uniform, computerized reporting. Additionally, the compact calls for all ICJ offices to have a scanner, thus allowing documents to be scanned and emailed over the Internet. This will require the ICJ compact administrator to spend time entering the data in the tracking system and scanning the numerous documents associated with the request for supervision by another state.

State Council. The new compact calls for each compacting state to form a State Council to provide oversight and advocacy concerning that state's participation in Interstate Commission activities and other duties as may be determined by that state, including but not limited to development of policy concerning operations and procedures of the compact within that state. The State Council shall consist of one (1) representative from the legislative, judicial and executive branch of government, victims groups and the compact administrator, deputy compact administrator or designee.

The following additional duties and responsibilities will create the need for an additional employee to assist with the implementation of the new Interstate Compact on Juveniles:

- New responsibility for the placement of juvenile offenders in treatment facilities, which is currently handled by SRS.
- Increase in cases as a tracking system is implemented, allowing states to more accurately account for juvenile offenders being supervised through ICJ.
- Increase in time spent on seeing that responses to requests for supervision and the return of runaway juveniles are met in a timelier manner, avoiding imposition of penalties by the Interstate Commission.
- Increase in time spent on training local law enforcement agencies, juvenile detention centers, court service officers, community case managers, juvenile intake offices and intensive supervision probation officers on the new compact rules, regulations and articles.
- Increase in time spent entering data into the new juvenile tracking system and in scanning documents to improve the timely manner in which information is shared between compact states.
- Time spent in participating in the newly formed State Council.

The new ICJ Commission can enact additional duties, when and if the new compact is passed.

The fiscal Impact is estimated at \$46,700. This cost includes the state's assessment for establishing the new Interstate Commission and its annual operating expenses, the formation and operation of a state council, participant's training, office supplies and one additional FTE. These expenses are broken down as follows:

| | |
|---|--------------|
| - Projected State Assessment (establish and maintain new National Commission and overhead) | \$17,000 |
| - Formation of State Council (travel, lodging, expenses at yearly meeting) | 1,000 |
| - Senior Administrative Specialist salary | 25,000 |
| - Computer, printer, office supplies, office space | 1,700 |
| - Training: ICJ Conference (held twice annually) | 1,000 |
| - In-State Training (travel, guidebook, etc.) | <u>1,000</u> |
| | \$46,700 |

JJA is currently a member of the Association of Juvenile Compact Administrators (AJCA). It is very important that Kansas be a part of and has a functional role in the re-organization of the new Interstate Compact on Juveniles. Senate Bill 183 would allow for the Interstate Compact on Juveniles system in Kansas to be a much more effective tool for the Kansas Juvenile Justice Authority, Social and Rehabilitation Services, as well as the other states who are members of the Compact. Your consideration is appreciated.

James Frazier, Deputy Commissioner of Operations
Kansas Juvenile Justice Authority

EXECUTIVE SUMMARY

The Interstate Compact on Juveniles, referred to as the ICJ or Compact, was established in 1955 to manage the interstate movement of adjudicated youth, the return of non-adjudicated runaway youth, and the return of youth to states where they were charged with delinquent acts. As the population managed by the ICJ has grown, various juvenile justice authorities have identified problems associated with the Compact. At the same time these concerns were growing, the Association of Juvenile Compact Administrators, which governs the Compact, and members of the Council of Juvenile Correctional Administrators tracked the review of a similar compact that manages the interstate movement of adult probationers and parolees. The adult compact manages larger numbers of cases, but is similar in many ways to the ICJ.

Review of the adult compact included a national survey in 1998 to collect statistics on compact activity and to solicit opinions from officials at various levels of corrections organizations. The results were useful in documenting problem areas and opinions from the field for changes desired with the adult compact. Through an arrangement between the Office of Juvenile Justice and Delinquency Prevention and the National Institute of Corrections, the NIC Information Center conducted a similar survey on the Interstate Compact on Juveniles. The current project included surveys of three audiences within the juvenile justice system.

1. Juvenile Compact administrators,
2. Juvenile justice agency administrators, and
3. Field staff of juvenile justice agencies.

Summary of Survey Findings

- The ICJ manages an estimated 15,000 active cases that have been transferred from the state where a youth was adjudicated to another state for supervision (approximately one case is managed by the ICJ to every 7.7 cases managed by the adult compact).
- States responding to the survey indicate that approximately one-third of the requests to transfer cases are denied by the receiving states.
- On average, 1.59 full-time staff positions are assigned to manage Compact business at the state level.
- Using the same nine-point rating scale, all three surveyed groups rated the overall Compact performance as slightly above the mid-point, in the "Adequate" range.
- The most common problems cited with the Compact are listed below.
 1. Conducting business through the Compact is too slow and cumbersome.
 2. Response of sending states to violations, and efforts to return violators to sending states, present a range of conflicts and inconsistent practices.
 3. Too many youth are allowed to relocate before receiving states receive notice of the move or have approved the transfer.
- The most common recommendations to improve the Compact are listed below.
 1. Better enforcement and accountability measures.
 2. More training regarding the Compact for local judges and other state and local juvenile justice officials.
 3. Improve the quality and speed of communication procedures within the Compact.