

Introduced by Senator MurrayJanuary 14, 2005

An act to add Section 653.15 to the Penal Code, relating to crime.

LEGISLATIVE COUNSEL'S DIGEST

SB 96, as introduced, Murray. Peer-to-peer networks: file sharing software.

Existing law provides that it is 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 who is located in California, who knows that a particular recording or audiovisual work is commercial, to knowingly electronically disseminate 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. Existing federal law, through copyright, provides authors of original works of authorship, as defined, with certain rights and protections. Existing federal law generally gives the owner of the copyright the right to reproduce the work and the right to distribute copies of the work to the public. Existing federal law limits the liability of an Internet service provider for copyright infringement for transmitting material under specified conditions.

Existing law also provides that any person who accesses and without permission adds, alters, or damages data or programs that reside in a computer or computer system is punishable by a fine not exceeding \$10,000, by imprisonment in a county jail, or by imprisonment in a state prison for 16 months or 2 or 3 years, or by both fine and imprisonment.

This bill would provide that any person or entity that sells, advertises, or distributes peer-to-peer file sharing software, as defined,

that enables the user to electronically disseminate recordings or audiovisual works over the Internet who fails to exercise reasonable care in preventing use of the software to commit an unlawful act with respect to a commercial recording or audiovisual work, or a violation of provisions related to production, possession, distribution, or advertisement of obscene matter depicting a minor under 18 years of age, or tampering with, interference with, damage to, or unauthorized access to computer data or systems, is punishable by a fine not exceeding \$2,500, imprisonment in a county jail for a period not to exceed one year, or by both that fine and imprisonment.

Because this bill would create a new crime, it would impose a state-mandated local program.

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.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

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

1 SECTION 1. Section 653.15 is added to the Penal Code, to
2 read:
3 653.15. (a) Any person or entity that sells, offers for sale,
4 advertises, distributes, disseminates, provides, or otherwise
5 makes available peer-to-peer file sharing software that enables its
6 user to electronically disseminate commercial recordings or
7 audiovisual works via the Internet or any other digital network,
8 and who fails to exercise reasonable care in preventing use of
9 that software to commit an unlawful act with respect to a
10 commercial recording or audiovisual work, or a violation of
11 Section 311.1, subdivisions (b), (c), or (d) of Section 311.2,
12 Section 311.3, 311.4, 311.10, 311.11, or 502 is punishable, in
13 addition to any other penalty or fine imposed, by a fine not
14 exceeding two thousand five hundred dollars (\$2,500),
15 imprisonment in a county jail for a period not to exceed one year,
16 or by both that fine and imprisonment.

1 (b) As used in this section, “peer-to-peer file sharing software”
2 means software that once installed and launched, enables the user
3 to connect his or her computer to a network of other computers
4 on which the users of these computers have made available
5 recording or audiovisual works for electronic dissemination to
6 other users who are connected to the network. When a
7 transaction is complete, the user has an identical copy of the file
8 on his or her computer and may also then disseminate the file to
9 other users connected to the network.

10 (c) As used in this section “recording” means the electronic or
11 physical embodiment of any recorded images, sounds, or images
12 and sounds, but does not include audiovisual works or sounds
13 accompanying audiovisual works.

14 (d) As used in this section “audiovisual work” means the
15 electronic or physical embodiment of motion pictures, television
16 programs, video or computer games, or other audiovisual
17 presentations that consist of related images that are intrinsically
18 intended to be shown by the use of machines or devices such as
19 projectors, viewers, or electronic equipment, or a computer
20 program, software, or system, as defined in Section 502, together
21 with accompanying sounds, if any.

22 (e) As used in this section, “commercial recording or
23 audiovisual work” means a recording or audiovisual work whose
24 copyright owner, or assignee, authorized agent, or licensee, has
25 made or intends to make available for sale, rental, or for
26 performance or exhibition to the public under license, but does
27 not include an excerpt consisting of less than substantially all of
28 a recording or audiovisual work. A recording or audiovisual
29 work may be commercial regardless of whether the person who
30 electronically disseminates it seeks commercial advantage or
31 private financial gain from that dissemination.

32 (f) As used in this section, “electronic dissemination” means
33 initiating a transmission of, making available, or otherwise
34 offering, a commercial recording or audiovisual work for
35 distribution on the Internet or other digital network, regardless of
36 whether someone else had previously electronically disseminated
37 the same commercial recording or audiovisual work.

38 SEC. 2. The provisions of this act are severable. If any
39 provision of this act or its application is held invalid, that

1 invalidity shall not affect other provisions or applications that can
2 be given effect without the invalid provision or application.

3 SEC. 3. No reimbursement is required by this act pursuant to
4 Section 6 of Article XIII B of the California Constitution because
5 the only costs that may be incurred by a local agency or school
6 district will be incurred because this act creates a new crime or
7 infraction, eliminates a crime or infraction, or changes the
8 penalty for a crime or infraction, within the meaning of Section
9 17556 of the Government Code, or changes the definition of a
10 crime within the meaning of Section 6 of Article XIII B of the
11 California Constitution.