

Ala. Code 1975, § 13A-8-81(a)(2)
Transferring Live Performance Without
Consent

The defendant is charged with transferring a live performance without consent.

A person commits the crime of transferring a live performance without consent if he/she knowingly transfers or causes to be transferred, directly or indirectly, by any means, onto a phonograph record, disc, wire, tape, film, videocassette or other article now known or later developed, any live performance, for commercial advantage or private financial gain, without the consent of the owner.

To convict, the State must prove beyond a reasonable doubt each of the following elements:

- (1) The defendant transferred or caused to be transferred, directly or indirectly, by any means, onto a phonograph record, disc, wire, tape, film, videocassette or other article now known or later developed, a live performance;
- (2) The Defendant did so for commercial advantage or private financial gain;
- (3) The Defendant did so without the consent of the owner, **[insert name]; (AND)**
- (4) The Defendant did so knowingly.

Unless the context clearly requires otherwise, the term “owner” shall mean the person who owns, or has the exclusive license in the United States to reproduce or the exclusive license in the United States to distribute to the public copies of the original fixation of sounds embodied in the master phonograph record, master disc, master tape, master film or other device used for reproducing recorded sounds on phonograph records, discs, tapes, films, videocassettes or other articles now known or later developed on which sound is recorded and from which the transferred sounds are directly or indirectly derived, or the person who owns the rights to record or to authorize the recording of a live performance. [13A-8-80]

[Read as appropriate]: This law shall not apply to any person engaged in radio or television broadcasting who transfers, or causes to be transferred, any such sounds other than from the sound track of a motion picture intended

for, or in connection with broadcast or telecast transmission or related uses, or for archival purposes. [13A-8-81(b)]

[Read as appropriate]: In the absence of a written agreement or operation of law to the contrary, the performer or performers of the live performance shall be presumed to own the rights to record or authorize the recording of the live performance. [13A-8-81(e)]

A person acts *knowingly* with respect to conduct or to a circumstance described by a statute defining an offense he/she is aware that his/her conduct is of that nature or that the circumstance exists. [13A-2-2(2)]

If you find from the evidence that the State has proved beyond a reasonable doubt each of the elements of transferring a live performance without consent, then you shall find the defendant guilty of transferring a live performance without consent.

If you find from the evidence that the State has failed to prove beyond a reasonable doubt any one or more of the elements of transferring a live performance without consent, then you shall find the defendant not guilty of transferring a live performance without consent.

If you find the defendant guilty of transferring a live performance without consent, then it shall be your duty to determine the number of offenses as follows:

(a) Each separate manufacture, distribution, sale or transfer at wholesale of any unauthorized recording shall constitute a separate offense;

(b) Determine whether the State has proved beyond a reasonable doubt that the number was not less than 1,000 unlawful sound recordings or not less than 65 audio visual recordings.

(c) You shall enter your verdict on a special verdict form which I will provide you.

[Approved October 18, 2019].