

Ala. Code 1975, § 13A-8-83
Selling, Renting or Transferring Recorded Device Not Containing
True Name & Address of Manufacturer

The defendant is charged with selling, renting or transferring a recorded device not containing the true name and address of the manufacturer.

A person commits the crime of selling, renting or transferring a recorded device not containing the true name and address of the manufacturer if he/she sells, rents or transfers for commercial advantage or private financial gain, or possesses for the purpose of sale, rental or transfer by any manufacturer, distributor or wholesaler or retail merchant a recorded device and that device does not contain on its packaging the true name and address of the manufacturer.

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

- (1) The Defendant sold, rented or transferred for commercial advantage or private financial gain, or possessed for the purpose of sale, rental or transfer by any manufacturer, distributor or wholesaler or retail merchant a recorded device;
- (2) The recorded device did not contain on its packaging the true name and address of the manufacturer, **[insert name and address]; (AND)**
- (3) The defendant acted **[Insert appropriate mens rea element - See Use Notes]**.

The term “*recorded device*” means the tangible medium upon which sounds or images are recorded or otherwise stored, and includes any phonograph record, disc, wire, tape, videocassette, film, or other medium now known or later developed on which sounds or images are recorded or otherwise stored. [13A-8-83]

The term “*manufacturer*” shall not include the manufacturer of the cartridge or casing itself, but shall mean the manufacturer of the actual recorded material. [13A-8-83]

If you find from the evidence that the State has proved beyond a reasonable doubt each of the elements of selling, renting or transferring a recorded device not containing the true name and address of the

manufacturer, then you shall find the defendant guilty of selling, renting or transferring a recorded device not containing the true name and address of the manufacturer.

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 selling, renting or transferring a recorded device not containing the true name and address of the manufacturer, then you shall find the defendant not guilty of selling, renting or transferring a recorded device not containing the true name and address of the manufacturer.

If you find the defendant guilty of selling, renting or transferring a recorded device not containing the true name and address of the manufacturer, then it shall be your duty to determine the number of offenses as follows:

(a) Each separate sale, rental or possession for sale or rental of any recording shall constitute a separate offense;

(b) Determine whether the State has proved beyond a reasonable doubt that the number was not less than 100 unlawful sound recordings or not less than 7 unlawful audio visual recordings.

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

Use Note

The statute does not state a specific mens rea element. Insert the appropriate mens rea element considering the indictment and the evidence before the court. There are few, if any, strict liability offenses in the Code. See Commentary for 13A-2-3 and 13A-2-4(b). There are four mens rea elements in the Alabama Code: intentionally, knowingly, recklessly and with criminal negligence. See 13A-2-2.

1. A person acts intentionally with respect to a result or to conduct described by a statute defining an offense when his/her purpose is to cause that result or to engage in that conduct. [13A-2-2(1)]

2. 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)]

3. A person acts recklessly with respect to a result or to a

circumstance when he/she is aware of and consciously disregards a substantial and unjustifiable risk that the risk will occur or that the circumstance exists. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. [13A-2-2(3)]

4. A person acts with criminal negligence with respect to a result or to a circumstance when he/she fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation. A court or jury may consider statutes or ordinances regulating the defendant's conduct as bearing upon the question of criminal negligence. [13A-2-2(4)]

[Approved October 18, 2019].