

SANTA ANA POLICE DEPARTMENT

DAVID VALENTIN · CHIEF OF POLICE

TRAINING BULLETIN

"Education promotes professional and responsive law enforcement"

Investigation of Unauthorized Sound and Motion Picture Recordings

Purpose

The purpose of this Training Bulletin is to establish a standardized procedure for the investigation of media piracy and the disposition of pirated CDs and DVDs.

Introduction

The Motion Picture Association of America (MPAA) and the Recording Industry Association of America (RIAA) fully support efforts to enforce laws prohibiting the piracy and/or unauthorized duplication and distribution of motion pictures and audio recordings. These trade associations have contracted private investigators to assist law enforcement officers in the investigation of piracy-related cases and to collect, process, and retain evidence pending court proceedings.

Definitions

1. **Piracy** -The illegal duplication and distribution of sound recordings and motion pictures. For purposes of this bulletin, piracy encompasses pirated, counterfeit, bootleg and any other variety of unauthorized sound recordings and/or motion pictures.
2. **RIAA** -The RIAA is the trade group that represents the U.S. recording industry. RIAA members create, manufacture and/or distribute approximately 90% of all legitimate sound recordings produced and sold in the United States.
3. **MPAA** -The voice and advocate of the American motion picture, home video and television industries. Members of MPAA include:
 - a. Buena Vista Pictures Distribution, Inc.
 - b. Paramount Pictures Corporation
 - c. Sony Pictures Entertainment, Inc.
 - d. Twentieth Century Fox Film Corp.
 - e. Universal Studios LLP
 - f. Warner Bros. Entertainment, Inc.

I. Statutes Dealing With Piracy

It is **NOT** a crime to simply possess a pirated CD or DVD unless you can prove that an individual intended to sell or distribute it. In most cases, the possession of numerous CDs and DVDs, with duplicates of the same title, is sufficient to show intent to sell or distribute.

A. PC 350 (a)

Any person who willfully manufactures, intentionally sells, or knowingly possesses for sale any counterfeit of a mark registered with the Secretary of State or registered on the Principal Register of the United States Patent and Trademark Office (USPTO).

This section is primarily used with pirated **DVD** investigations. The trademark must appear on the packaging, labeling, or on the digital information contained on the disc.

MPAA members have registered all of their trademarks. These organizations will supply copies of the relevant trademarks upon request. In addition to these trademarks, the MPAA has also trademarked their ratings (such as G, PG, PG-13, R, and NC-17). Any unauthorized duplication of trademarks on the packaging of a DVD constitutes a violation of this section. If you intend to charge a suspect with PC 350(a), you must inventory the movies recovered by trademark. It is not necessary to list every single DVD you recover; just enough to show a violation.

The current "fair market value" for a DVD movie is \$19.00. If the total value of the recovered DVDs is less than \$400.00 (less than 22 DVDs) than the crime is classified as a misdemeanor - PC 350(a) (1). If the total value of the recovered DVDs exceeds \$400.00 (22 DVDs) or there are over 1000 counterfeit DVDs recovered, than the crime can be classified as a felony - PC 350(a) (2).

B. PC 653w

*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 or offers for sale or resale, or sells or resells, or causes the rental, sale or resale, or rents, or manufactures, or possesses for these purposes, any recording or audiovisual work, the cover, box, jacket, or label of which **does not clearly and conspicuously disclose the actual true name and address of the manufacturer thereof and the name of the actual author, artist, performer, producer, programmer, or group thereon.** This section does not require the original manufacturer or authorized licensees of software producers to disclose the contributing authors or programmers.*

This section applies to both pirated **CD** and **DVD** investigations. The section essentially states that the true name and address of the manufacturer of any sound recording (CD) or audio visual work (DVD) must bear the true name and address of the person or company who manufactured it. If a subject sells or causes the rental, sale, or resale, or rents, or manufactures, or possesses any music recording or motion picture for these purposes and does not list the name and address of the actual true manufacturer on the cover, box, jacket, or label of the product (CD or DVD) he or she is in violation of the section.

A violation of PC 653w is a felony if 100 CDs or 100 DVDs or more are recovered. CDs and DVDs **cannot** be combined to arrive at this number. A prior conviction of PC 653w will also

make the crime a felony, regardless of the numbers recovered. A first offense or quantity less than 100 amounts to a misdemeanor.

C. PC 653z

(a) 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 two thousand five hundred dollars (\$2,500), or by both that fine and imprisonment.

This statute was enacted to stop the videotaping of movies inside of theaters. The illegal videotaping or “camcording” of motion pictures is the most common way of creating the counterfeit copies that are eventually mass produced and sold on the streets and in other non-traditional locations. The persons who “camcord” movies in theaters are usually tied to larger organizations that produce thousands of counterfeit and pirated motion pictures.

A violation of PC 653z is a misdemeanor. This means that in order to make an arrest you must see the offender actually videotaping or obtain a private persons arrest from someone who saw the crime in progress. If this is not the case, the offender will have to be arrested at a later time pursuant to an arrest warrant.

In order to prove a violation of PC 653z, it is important that you review the recording device and the content that is contained on the videotape. Examine the recording device to make sure it is in proper working condition. Confirm that the suspect actually recorded the motion picture or a portion thereof by playing back what was recorded. Document your observations in your report and book both the videotape and the recording device (camcorder) into evidence.

Any subject that is caught “camcording” in a movie theater may be able to provide valuable information on others involved in the counterfeiting operation. Because the subject may only be paid a small amount of money for his services, he or she may be motivated to assist law enforcement. The MPAA will provide an investigator to assist law enforcement with any further investigation that will need to be conducted.

II. Identifying Counterfeit/Pirated Products

Generally speaking, pirated CDs and DVDs are poor in quality and are sold in nontraditional settings such as flea markets, swap meets, or by street vendors. The prices of pirated CDs and DVDs are well below retail value, usually \$5.00 or less.

Common characteristics of counterfeit or pirated **CDs** and **DVDs**:

1. Poor printing/poor-quality inserts and labels or lack of inserts or labels
2. Poor quality artwork, poor color reproduction, fuzzy pictures or graphics
3. Shrink-wrap is not factory grade quality (loose and poorly applied)

4. True name and address of the manufacturer is not shown, is fictitious, or is incorrect
5. Misspelled words on the inserts and/or disc.
6. No bar code on the packaging or multiple titles with the same bar code sequence on the packaging
7. Release date of title (title is currently showing in theaters)
8. Asian or other foreign characters

III. Conducting and Documenting Pirated CD/DVD Investigations

Upon discovering a vendor selling what you suspect are pirated CDs and/or DVDs, make a mental note of your observations. Your observations provide the probable cause you need to detain the vendor and further your investigation.

If you see a customer making a purchase of what you suspect are pirated CDs/DVDs, allow the purchase to continue and then ask the customer how much he or she paid and what, if anything, the vendor told him or her about the purchased CD/DVD.

If you have developed sufficient probable cause to detain the subject(s) selling what you believe are pirated CDs and/or DVDs, ask them questions to establish that they knew the CDs or DVDs they were selling were pirated/fraudulent.

If you believe that a vendor is in violation of any of the statutes discussed in this training bulletin, place him or her under arrest for the appropriate penal code violation and confiscate all of the CDs/DVDs as evidence.

In all piracy investigations, the investigating officer should attempt to contact a MPAA/RIAA investigator for assistance. These investigators are experts in the field of piracy and will provide the investigating officer a declaration supporting the officer's belief or opinion that the CDs or DVDs are pirated. *In most cases, the MPAA/RIAA investigator will respond to the officer's location or the Santa Ana Police Department to assist the investigating officer with his or her investigation and the collection and packaging of confiscated CDs and/or DVDs.* The MPAA/RIAA investigator will usually retain the CDs/DVDs and dispose of them once they are no longer needed for prosecution. The officer should collect and include a copy of the MPAA/RIAA investigator's declaration and inventory list with his or her report.

Refer to the following contact numbers to assist you in locating an MPAA/RIAA investigator:

| | |
|-------------|--|
| Jim Orr | 714-231-5398, E-mail: jorrinv@aol.com |
| Steve Lopez | 626-825-9928, E-mail: stevelopez@verizon.net |
| MPAA | 800-662-6707 or 818-995-6600 |
| RIAA | 800-564-7422 or 714-236-0830 |

If the MPAA/RIAA investigator cannot respond, discuss your observations with him/her and get his/her opinion. Ask him to e-mail or fax you a declaration to include in your report. Book

all seized CDs/DVDs into SAPD evidence. Always contact the MPAA/RIAA through Jim Orr to provide arrest information.

The victim in a piracy case will either be the MPAA or RIAA. Their respective addresses are as follow:

| | |
|------|---|
| MPAA | 15301 Ventura Blvd., Sherman Oaks, CA 91403 |
| RIAA | 10842 Noel St. #106, Los Alamitos, CA 90720 |

Summary

Both the MPAA and RIAA fully support law enforcement efforts to combat motion picture and music piracy and counterfeiting. The investigative arms of these agencies will provide investigating officers expert technical assistance and support necessary for the prosecution of offenders. This training bulletin serves to provide officers with an overview of the laws governing motion picture and music piracy and [samples](#) to assist officers in completing a thorough report.

Acknowledgment:

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