



New Tennessee Law Criminalizes Password Sharing for Entertainment

If you live in Tennessee you should think twice before giving your Netflix password to a friend. On May 30, 2011, Governor Bill Haslam signed House Bill 1783/Senate Bill 1659 into law. The new statute, Public Chapter No. 348, criminalizes the use of the login information of an account for any “entertainment subscription services.” Such services include Netflix, the popular video-on-demand service, as well as Rhapsody, a similar site dedicated to streaming music.

Given that the capital of Tennessee is also the country music capital of the world, it is little wonder that the music industry would wield enough clout to lean on legislators to protect the state’s principal export. In an age when revenue from the sales of music is down and declining, purveyors of that art form must have fingers in every hole in the dike, one of the biggest being the unlicensed sharing of music via the internet.

Mitch Glazier, executive vice president of public policy for the RIAA, said the bill is a necessary protective measure as digital technology evolves. The music industry has seen its domestic revenue plunge by more than half in 10 years, from \$15 billion to \$7 billion, he said.

While the purported target of the measure was “hackers and thieves who sell passwords in bulk,” there is no exception in the new law for those who loan their individual passwords to family and friends and have no intent to traffic in passwords.

While those who share their subscriptions with a spouse or other family members under the same roof almost certainly have nothing to fear, blatant offenders — say, college students who give their logins to everyone on their dormitory floor — could get in trouble.

Bill Ramsey, a criminal defense lawyer from Nashville, expressed doubt that the law would be used to punish family members living together from sharing subscription services. He reckoned that these household transactions would be “difficult to detect.” But “when you start going north of 10 people, a prosecutor might look and say, ‘Hey, you knew it was stealing,’” Ramsey said.

Specifically, the scope of the law was described by one of the chief sponsors of the bill passed on the House side. “What becomes not legal is if you send your user name and password to all your friends so they can get free subscriptions,” said Representative Gerald McCormick (R-Chattanooga).

Under the terms of the legislation, any of the entertainment subscription services that have a reasonable belief that they are being deprived of revenue due to the sharing of login information may





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file a complaint of theft with law enforcement.

In the Volunteer State, there are two broad categories of theft: theft of property and theft of services. This law appends the unlawful use of entertainment subscription services to stealing cable television or "dining and dashing" (leaving a restaurant without paying the bill) in the list of services, theft of which is a crime.

Reportedly, "Tennessee would become the first state to update its theft-of-cable laws for the 21st century and address the new trend toward Internet delivery of entertainment, according to the Recording Industry Association of America."

Naturally, those most savvy in the use of the internet for their entertainment are opposed to the law. "I think it's stupid," college student Josh Merbitz said of the law. The 20-year-old music education major at Middle Tennessee State University told Yahoo News that he "watches Netflix movies online using the password of his friend's father, with the father's permission."

Permission or no, the use of another's password to obtain movies, television programs, or music is stealing in Tennessee and it will be punished as such.

The applicable punishments attached to violations of the law are set forth below:

Theft of property or services is: (1) A Class A misdemeanor if the value of the property or services obtained is \$500 or less; (2) A Class E felony if the value of the property or services obtained is more than \$500 but less than \$1,000; (3) A Class D felony if the value of the property or services obtained is \$1,000 or more but less than \$10,000; (4) A Class C felony if the value of the property or services obtained is \$10,000 or more but less than \$60,000; and (5) A Class B felony if the value of the property or services obtained is at least \$60,000. This bill specifies that "services" includes entertainment subscription services. This bill specifies that any victim of theft of services would have legal standing to report the offense to law enforcement and to testify in support of corresponding criminal charges. This bill specifies that the theft of property or services valued at \$500 or less would be a Class E felony instead of a Class A misdemeanor if such offense is the offender's second or subsequent offense after July 1, 2011, which involves theft of entertainment subscription services.

An amendment added by the state senate:

adds to present law by specifying that a person commits theft of services by intentionally obtaining services by forgery or false statement, in addition to deception, fraud, coercion, false pretense or any other means, to avoid payment for the services. This amendment removes the bill's provision that makes the theft of property or services valued at \$500 or less a Class E felony if such offense is the offender's second or subsequent offense after July 1, 2011, which involves theft of entertainment subscription services.

July 1, 2011 is the date the act takes effect.

There is a vagueness in the key terms of the law that has attracted the attention of some of the measure's detractors. A public defender, David Doyle, commented on just this shortcoming in the new statute. He wondered if the term "entertainment subscription" might be broadly defined to include a magazine subscription or a health club membership. That is to say, could a person be prosecuted under the law if he passed along to a friend last week's issue of a magazine to which the former subscribes?

Notice of the law is a critical component of the law in Tennessee. If time reveals that a zealous district



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attorney corps is applying the law to magazine lenders or one-time borrowers of a sibling's sign-on information, there may be need to more narrowly tailor the law to fit the behavior for which it was originally enacted to eliminate.



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