

**2003 DRAFTING REQUEST**

**Bill**

Received: **11/27/2002**

Received By: **rkite**

Wanted: **As time permits**

Identical to LRB:

For: **Marlin Schneider (608) 266-0215**

By/Representing: **himself**

This file may be shown to any legislator: **NO**

Drafter: **rkite**

May Contact:

Addl. Drafters:

Subject: **Trade Regulation - other**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Schneider@legis.state.wi.us**

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Cable television copy protection mechanisms

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**Instructions:**

Redraft 2001 AB 910

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rkite 12/06/2002	jdyer 12/06/2002		_____			
/1			rschluet 12/11/2002	_____	sbasford 12/11/2002	mbarman 12/11/2002	

FE Sent For:

*None  
needed*

<END>

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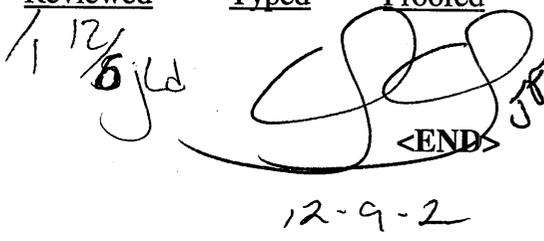
Instructions:

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		1/12/02 jld					

FE Sent For:


  
 12-9-2

<END>

jld

**2001 ASSEMBLY BILL 910**

2003 BILL

March 14, 2002 - Introduced by Representative SCHNEIDER. Referred to Joint Committee on Information Policy and Technology.

Regen

1 AN ACT *to create* 100.2065 of the statutes; **relating to:** prohibiting persons who  
2 provide broadcast and cable television services from transmitting  
3 programming that is encrypted in a certain manner.

*prevents*

*from recording the programming*

***Analysis by the Legislative Reference Bureau***

This bill prohibits the provider of any broadcast audio or video service or any cable television telecommunications service from transmitting from this state any programming that is encrypted in ~~such~~ a manner that ~~the programming may not be recorded by~~ the recipient of the programming for the recipient's personal use. Current federal law specifies the extent to which a recipient may record programming for personal use.

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

4 SECTION 1. 100.2065 of the statutes is created to read:

5 **100.2065 Encryption of audio and video programming prohibited. (1)**

6 In this section:

7 (a) "Broadcast service" has the meaning given in s. 196.01 (1m).

ASSEMBLY BILL 910

SECTION 1

*to the extent permitted under federal law*

1 (b) "Cable television service" has the meaning given s. 196.01 (1p).

2 (2) No person who provides a broadcast service or a cable television service may  
3 transmit from this state <sup>any</sup> programming that is encrypted in such a manner that <sup>that</sup> ~~that~~  
4 ~~programming may not be recorded by a~~ recipient of the programming <sup>prevents the</sup> for the  
5 recipient's personal use unless the personal use is prohibited under federal law

(END)

D-note  
↓

*from recording the programming*

DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

0959/1 dn  
LRB-0332/1 dn  
RNK:hmt:jf

February 26, 2002 } date

jld

I have placed the encryption prohibition created in this draft in chapter 100 of the statutes. That chapter is generally administered by DATCP. If it was not your intention to have DATCP administer this prohibition, please let me know and I will redraft accordingly.

It is possible that a court might conclude that the encryption prohibition created in this draft is preempted by federal law. Generally, federal law preempts state law if Congress has expressed an intent to occupy a given field. The encryption issue concerns the fields of radio and television broadcasting and of copyright. Both of these complicated areas are heavily regulated under federal law. Furthermore, the FCC has been involved in the proposed license for an encryption technology for digital television known as DFAST (Dynamic Feedback Arrangement Scrambling Technique). This technology would enable the program provider to mark a given program with instructions about whether the program may be recorded. The recording device will not be able to record a program for which a "no copy" instruction is given. Because the FCC appears to support the right of a content provider to scramble or encrypt its programming, and because the broadcasting and copyright fields are heavily regulated under federal law, it is possible that a challenge to the prohibition created in this draft on preemption grounds might be successful. If you would like me to research this area in greater depth, please let me know.

Robin N. Kite  
Legislative Attorney  
Phone: (608) 266-7291  
E-mail: robin.kite@legis.state.wi.us

This is a redraft of 2001 Assembly Bill 910. Please note that the language in this draft has been revised. The revisions are for purposes of clarity only. They do not make any substantive changes to the draft.

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0959/1dn  
RNK:jld:rs

December 9, 2002

This is a redraft of 2001 Assembly Bill 910. Please note that the language in this draft has been revised. The revisions are for purposes of clarity only. They do not make any substantive changes to the draft.

It is possible that a court might conclude that the encryption prohibition created in this draft is preempted by federal law. Generally, federal law preempts state law if Congress has expressed an intent to occupy a given field. The encryption issue concerns the fields of radio and television broadcasting and of copyright. Both of these complicated areas are heavily regulated under federal law. Furthermore, the FCC has been involved in the proposed license for an encryption technology for digital television known as DFAST (Dynamic Feedback Arrangement Scrambling Technique). This technology would enable the program provider to mark a given program with instructions about whether the program may be recorded. The recording device will not be able to record a program for which a "no copy" instruction is given. Because the FCC appears to support the right of a content provider to scramble or encrypt its programming, and because the broadcasting and copyright fields are heavily regulated under federal law, it is possible that a challenge to the prohibition created in this draft on preemption grounds might be successful. If you would like me to research this area in greater depth, please let me know.

Robin N. Kite  
Legislative Attorney  
Phone: (608) 266-7291  
E-mail: robin.kite@legis.state.wi.us

**Emery, Lynn**

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**From:** Schneider, Marlin  
**Sent:** Wednesday, December 11, 2002 8:53 AM  
**To:** LRB.Legal  
**Subject:** Draft review: LRB-0959/1 Topic: Cable television copy protection mechanisms

It has been requested by <Schneider, Marlin> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB-0959/1 Topic: Cable television copy protection mechanisms

## Barman, Mike

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**From:** Barman, Mike  
**Sent:** Wednesday, January 22, 2003 11:12 AM  
**To:** Baldus, John  
**Cc:** Rep.Schneider  
**Subject:** Requested PDF's



03-0938/1



03-0938/1dn



03-0943/1



03-0945/1



03-0946/1



03-0947/1



03-0958/1



03-0959/1



03-0959/1dn



03-0972/1



03-0972/1dn

*Mike Barman*

Mike Barman - Senior Program Asst. (PH. 608-266-3561)  
(E-Mail: [mike.barman@legis.state.wi.us](mailto:mike.barman@legis.state.wi.us)) (FAX: 608-264-6948)

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Legislative Reference Bureau - Legal Section - Front Office  
100 N. Hamilton Street - 5th Floor  
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