

**1460 FAILURE TO DISCLOSE MANUFACTURER OF RECORDING –
§ 943.209****Statutory Definition of the Crime**

Section 943.209 of the Criminal Code of Wisconsin is violated by one who, for commercial advantage or private financial gain [knowingly advertises, offers for sale or rent, sells, rents or transports a recording that does not contain the name and address of the manufacturer in a prominent place on the cover, jacket or label of the recording] [possesses with intent to advertise, offer for sale or rent, sell, rent or transport a recording that does not contain the name and address of the manufacturer in a prominent place on the cover, jacket or label of the recording].

State's Burden of Proof

Before you may find the defendant guilty of this offense, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following three elements were present.

Elements of the Crime That the State Must Prove

1. The defendant [knowingly (advertised) (offered for sale or rent) (sold) (rented) (transported)] [possessed¹ with intent to (advertise) (offer for sale or rent) (sell) (rent) (transport)] a recording.²
2. The recording did not contain the name and address of the manufacturer³ in a prominent place on the cover, jacket or label of the recording.
3. The defendant acted for commercial advantage or private financial gain.

Jury's Decision

If you are satisfied beyond a reasonable doubt that all three elements of this offense have been proved, you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty.

[ADD THE FOLLOWING IN CLASS H FELONY CASES AND INCLUDE THE QUESTION IN THE STANDARD VERDICT FORM]⁴

[If you find the defendant guilty, answer the following question:

"Did the defendant [knowingly (advertise) (offer for sale or rent) (sell) (rent)⁵ (transport)] [possess with intent to (advertise) (offer for sale or rent) (sell) (rent) (transport)] 100 or more recordings during a 180-day period?"

Answer "yes" or "no."

Before you may answer "yes," you must be satisfied beyond a reasonable doubt that the answer is "yes."]

[ADD THE FOLLOWING IN CLASS I FELONY CASES AND INCLUDE THE QUESTION IN THE STANDARD VERDICT FORM]⁶

[If you find the defendant guilty, also answer the following question "yes" or "no."

"Did the value of the recordings exceed \$2,500?"

Answer "yes" or "no."

Before you may answer "yes," you must be satisfied beyond a reasonable doubt that the answer is "yes."]

COMMENT

Wis JI-Criminal 1460 was approved by the Committee in June 2013.

This instruction is drafted for violations of § 940.209, which are punished as a Class A misdemeanor or as Class I or H felonies, depending on the number of recordings involved and their value. See § 940.209(2). The instruction can be used for either misdemeanor or felony offenses – the basic elements are the same; answers to two special questions at the end will determine which penalty applies.

1. For definition of "possess" see Wis JI-Criminal 920.
2. "'Recording' means a medium on or in which sounds or images or both are stored." Section § 943.206(5).
3. "'Manufacturer' means a person who transfers sounds to a recording." Section 943.206(1).
4. The number of recordings involved, along with their value, determines the penalty:
 - fewer than 100 recordings valued at less than \$2,500 – Class A misdemeanor
 - fewer than 100 recordings valued at more than \$2,500 – Class I felony.
 - more than 100 recordings – Class H felony.

The offense is also a Class H felony if the violation occurs after the person has been convicted under § 940.209. That option is not addressed by the instruction.

The Committee recommends that an extra question be added to determine which penalty applies.

The following form is suggested for the verdict in a case where the Class H felony is charged based on more than 100 recordings being involved:

"We, the jury, find the defendant guilty of failure to disclose the manufacturer of a recording under § 943.209 at the time and place charged in the information."

"We, the jury, find the defendant not guilty.

If you find the defendant guilty, answer the following question "yes" or "no":

[Add the question as adapted in the text of the instruction.]"

5. "[T]he number of recordings that a person rents shall be the sum of the number of times that each individual recording is rented." Section 943.209(3).
6. The number of recordings involved, along with their value, determines the penalty:
 - fewer than 100 recordings valued at less than \$2,500 – Class A misdemeanor
 - fewer than 100 recordings valued at more than \$2,500 – Class I felony.
 - more than 100 recordings – Class H felony.

The Committee recommends that an extra question be added to determine which penalty applies.

The following form is suggested for the verdict in a case where the Class I felony is charged based on the recordings having a value that exceeds \$2,500:

"We, the jury, find the defendant guilty of failure to disclose the manufacturer of a recording under § 943.209 at the time and place charged in the information."

"We, the jury, find the defendant not guilty."

If you find the defendant guilty, answer the following question "yes" or "no":

"Did the value of the recordings exceed \$2,500?"