

WHAT IF THE ANTI-BOOTLEGGING STATUTES ARE UPHOLD UNDER THE COMMERCE CLAUSE?

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INTRODUCTION

The Commerce Clause¹ and the Copyright Clause² are in conflict again. In *Feist Publications, Inc. v. Rural Telephone Service Co., Inc.*,³ the U.S. Supreme Court held that “[o]riginality is a constitutional requirement,”⁴ and that non-original compilations could not be protected under

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1. U.S. CONST. art. I, § 3, cl. 8.
2. *Id.* § 8, cl. 8.
3. *Feist Publ'ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340 (1991).
4. *Id.* at 346; see also Sarah Duran, “A Species of Mutant Copyright Law”: An Argument Against Using the Commerce Clause to Protect Databases, 8 TUL. J. TECH. & INTELL. PROP. 87, 94 (2006) (“[i]t is . . . the ‘essence of copyright’ and a constitutional requirement.” (quoting *Feist*, 499 U.S. at 349)).