

# **ENFORCEMENT OF COPYRIGHTS BY U.S. COURTS**

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# Copyright Enforcement Actions

- **Always brought in Federal courts (rather than state courts (Federal courts have exclusive jurisdiction))**
- **Must be brought by the “owner” (rather than author) of the copyrighted material**
- **Prior to bringing an enforcement action, the copyright must be registered with the U.S. Copyright Office. If registration is done within 3 months after publication or prior to an infringement, the copyright owner is entitled to “statutory damages” and attorney’s fees**

# Remedies for Copyright Infringement

- **Injunctions**
- **Impoundment & destruction or other disposition of infringing articles**
- **Damages & Profits**
- **Costs & Attorney's Fees**
- **Criminal Penalties**

# **Injunctions**

- **Temporary or Permanent**
- **Temporary Injunction is intended to preserve the “status quo” (the existing situation) & prevent further damage to the copyright owner until the case is decided**
- **Issuance of a temporary injunction requires a detailed showing by the copyright owner, including a demonstration that the owner is “more likely than not” to prevail in the case; also a financial bond normally is required to protect against damage in the event the owner’s claim is not sustained**

## **Injunctions (cont.)**

- **Cases often are won or lost based on whether a temporary injunction is issued**
- **If the injunction is issued, this often stops or significantly impairs the “infringer’s” business resulting in significant financial pressure to settle -- or perhaps go out of business**
- **If temporary injunction is not issued, the same situation occurs with respect to the “owner” which may be forced to settle or cease doing business**

## **Injunctions (cont.)**

- **Once a case has been decided, a permanent injunction may be issued as part of the final remedy**



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# **Impoundment & Destruction (or other disposition) of Infringing Articles**

- **At any time while the action is pending, the court may order the impoundment of the allegedly infringing articles “under such terms as it determines to be reasonable” (prevents them from being introduced into the stream of commerce and sold or otherwise disbursed)**
- **As part of the final remedy in the case, the court may order the destruction (or other disposition) of the infringing articles and the means by which they were produced**

# Damages & Profits

- **Damages: Statutory or Actual**
- **Statutory Damages**
  - **Prerequisite is registration within 3 months of publication or prior to infringement**
  - **Don't require proof -- very important**
  - **Statute specifies amount as \$750 - \$30,000; amount is determined by court**
  - **Where infringement is found to be "willful" court may increase "statutory" damages to \$150,000**
  - **Where infringer can demonstrate that infringement was "innocent," court may reduce damages to \$200**



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# **Damages & Profits (cont.)**

- **Actual Damages**
  - **Unlike statutory damages, amount must be proven**
  - **Consists of two components: harm to owner and profits received by infringer as a result of infringing activity (and that are not otherwise taken into account)**
  - **In demonstrating profits, copyright owner must only demonstrate “gross revenue”; infringer is responsible for showing expenses and profit not attributable to infringement**



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# Costs & Attorney's Fees

- **Court may award costs and reasonable attorney's fees to prevailing party (but copyright owner only entitled to these if it has registered the copyright within 3 months of publication or prior to infringement.**
- **Potential entitlement to attorney's fees is important factor in helping balance power between large and small companies; without this (in the absence of timely registration), companies must pay their own attorney's fees even if they win.**

# Criminal Penalties

- **Applicable to anyone who “willfully” infringes a copyright for purposes of “commercial advantage” or “private financial gain” who reproduces or distributes (without the consent of the owner) during a 180-day period 1 or more copies of a copyrighted work with a total retail value of more than \$1,000.**
- **Up to 5 years in prison and/or a fine of up to \$250,000 in cases involving 10 or more copies of a copyrighted work having a total retail value of more than \$2,500; or 10 years in prison and/or a fine of up to \$250,000 if the offense is a second or subsequent offense**



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## **Criminal Penalties (cont.)**

- **Up to 1 year in prison and/or or a fine of \$250,000 in all other cases**
- **In cases involving monetary gain or loss, a fine of up to twice the amount of such gain or loss may be imposed.**

## **Criminal Penalties (cont.)**

- **Often copyright violations occur in conjunction with trademark violations; under U.S. law anyone who traffics in goods or services and uses a counterfeit trademark is subject to a prison term of up to 10 years and/or a fine of up to \$2 million (if a company, then subject to a fine of up to \$5 million). For a second offense, the prison term may go as high as 20 years and the fine as high as \$5 million (\$15 million for a company).**



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