

TITLE 17 - COPYRIGHTS**CHAPTER 5 - COPYRIGHT INFRINGEMENT AND REMEDIES****§ 504. Remedies for infringement: Damages and profits**

(a) **In General.**— Except as otherwise provided by this title, an infringer of copyright is liable for either—

- (1) the copyright owner's actual damages and any additional profits of the infringer, as provided by subsection (b); or
- (2) statutory damages, as provided by subsection (c).

(b) **Actual Damages and Profits.**— The copyright owner is entitled to recover the actual damages suffered by him or her as a result of the infringement, and any profits of the infringer that are attributable to the infringement and are not taken into account in computing the actual damages. In establishing the infringer's profits, the copyright owner is required to present proof only of the infringer's gross revenue, and the infringer is required to prove his or her deductible expenses and the elements of profit attributable to factors other than the copyrighted work.

(c) **Statutory Damages.**—

(1) Except as provided by clause (2) of this subsection, the copyright owner may elect, at any time before final judgment is rendered, to recover, instead of actual damages and profits, an award of statutory damages for all infringements involved in the action, with respect to any one work, for which any one infringer is liable individually, or for which any two or more infringers are liable jointly and severally, in a sum of not less than \$750 or more than \$30,000 as the court considers just. For the purposes of this subsection, all the parts of a compilation or derivative work constitute one work.

(2) In a case where the copyright owner sustains the burden of proving, and the court finds, that infringement was committed willfully, the court in its discretion may increase the award of statutory damages to a sum of not more than \$150,000. In a case where the infringer sustains the burden of proving, and the court finds, that such infringer was not aware and had no reason to believe that his or her acts constituted an infringement of copyright, the court in its discretion may reduce the award of statutory damages to a sum of not less than \$200. The court shall remit statutory damages in any case where an infringer believed and had reasonable grounds for believing that his or her use of the copyrighted work was a fair use under section 107, if the infringer was:

- (i) an employee or agent of a nonprofit educational institution, library, or archives acting within the scope of his or her employment who, or such institution, library, or archives itself, which infringed by reproducing the work in copies or phonorecords; or
- (ii) a public broadcasting entity which or a person who, as a regular part of the nonprofit activities of a public broadcasting entity (as defined in section 118 (f)) infringed by performing a published nondramatic literary work or by reproducing a transmission program embodying a performance of such a work.

(3) (A) In a case of infringement, it shall be a rebuttable presumption that the infringement was committed willfully for purposes of determining relief if the violator, or a person acting in concert with the violator, knowingly provided or knowingly caused to be provided materially false contact information to a domain name registrar, domain name registry, or other domain name registration authority in registering, maintaining, or renewing a domain name used in connection with the infringement.

(B) Nothing in this paragraph limits what may be considered willful infringement under this subsection.

(C) For purposes of this paragraph, the term "domain name" has the meaning given that term in section 45 of the Act entitled "An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions,

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and for other purposes” approved July 5, 1946 (commonly referred to as the “Trademark Act of 1946”; 15 U.S.C. 1127).

(d) Additional Damages in Certain Cases.— In any case in which the court finds that a defendant proprietor of an establishment who claims as a defense that its activities were exempt under section 110 (5) did not have reasonable grounds to believe that its use of a copyrighted work was exempt under such section, the plaintiff shall be entitled to, in addition to any award of damages under this section, an additional award of two times the amount of the license fee that the proprietor of the establishment concerned should have paid the plaintiff for such use during the preceding period of up to 3 years.

(Pub. L. 94–553, title I, § 101, Oct. 19, 1976, 90 Stat. 2585; Pub. L. 100–568, § 10(b), Oct. 31, 1988, 102 Stat. 2860; Pub. L. 105–80, § 12(a)(13), Nov. 13, 1997, 111 Stat. 1535; Pub. L. 105–298, title II, § 204, Oct. 27, 1998, 112 Stat. 2833; Pub. L. 106–160, § 2, Dec. 9, 1999, 113 Stat. 1774; Pub. L. 108–482, title II, § 203, Dec. 23, 2004, 118 Stat. 3916; Pub. L. 111–295, § 6(f)(2), Dec. 9, 2010, 124 Stat. 3181.)

Historical and Revision Notes

house report no. 94–1476

In General. A cornerstone of the remedies sections and of the bill as a whole is section 504, the provision dealing with recovery of actual damages, profits, and statutory damages. The two basic aims of this section are reciprocal and correlative: (1) to give the courts specific unambiguous directions concerning monetary awards, thus avoiding the confusion and uncertainty that have marked the present law on the subject, and, at the same time, (2) to provide the courts with reasonable latitude to adjust recovery to the circumstances of the case, thus avoiding some of the artificial or overly technical awards resulting from the language of the existing statute.

Subsection (a) lays the groundwork for the more detailed provisions of the section by establishing the liability of a copyright infringer for either “the copyright owner’s actual damages and any additional profits of the infringer,” or statutory damages. Recovery of actual damages and profits under section 504(b) or of statutory damages under section 504 (c) is alternative and for the copyright owner to elect; as under the present law, the plaintiff in an infringement suit is not obliged to submit proof of damages and profits and may choose to rely on the provision for minimum statutory damages. However, there is nothing in section 504 to prevent a court from taking account of evidence concerning actual damages and profits in making an award of statutory damages within the range set out in subsection (c).

Actual Damages and Profits. In allowing the plaintiff to recover “the actual damages suffered by him or her as a result of the infringement,” plus any of the infringer’s profits “that are attributable to the infringement and are not taken into account in computing the actual damages,” section 504 (b) recognizes the different purposes served by awards of damages and profits. Damages are awarded to compensate the copyright owner for losses from the infringement, and profits are awarded to prevent the infringer from unfairly benefiting from a wrongful act. Where the defendant’s profits are nothing more than a measure of the damages suffered by the copyright owner, it would be inappropriate to award damages and profits cumulatively, since in effect they amount to the same thing. However, in cases where the copyright owner has suffered damages not reflected in the infringer’s profits, or where there have been profits attributable to the copyrighted work but not used as a measure of damages, subsection (b) authorizes the award of both.

The language of the subsection makes clear that only those profits “attributable to the infringement” are recoverable; where some of the defendant’s profits result from the infringement and other profits are caused by different factors, it will be necessary for the court to make an apportionment. However, the burden of proof is on the defendant in these cases; in establishing profits the plaintiff need prove only “the infringer’s gross revenue,” and the defendant must prove not only “his or her deductible expenses” but also “the element of profit attributable to factors other than the copyrighted work.”

Statutory Damages. Subsection (c) of section 504 makes clear that the plaintiff’s election to recover statutory damages may take place at any time during the trial before the court has rendered its final judgment. The remainder of clause (1) of the subsection represents a statement of the general rates applicable to awards of statutory damages. Its principal provisions may be summarized as follows:

1. As a general rule, where the plaintiff elects to recover statutory damages, the court is obliged to award between \$250 and \$10,000. It can exercise discretion in awarding an amount within that range but, unless one of the exceptions provided by clause (2) is applicable, it cannot make an award of less than \$250 or of more than \$10,000 if the copyright owner has chosen recovery under section 504 (c).

2. Although, as explained below, an award of minimum statutory damages may be multiplied if separate works and separately liable infringers are involved in the suit, a single award in the \$250 to \$10,000 range is to be made “for all

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infringements involved in the action.” A single infringer of a single work is liable for a single amount between \$250 and \$10,000, no matter how many acts of infringement are involved in the action and regardless of whether the acts were separate, isolated, or occurred in a related series.

3. Where the suit involves infringement of more than one separate and independent work, minimum statutory damages for each work must be awarded. For example, if one defendant has infringed three copyrighted works, the copyright owner is entitled to statutory damages of at least \$750 and may be awarded up to \$30,000. Subsection (c)(1) makes clear, however, that, although they are regarded as independent works for other purposes, “all the parts of a compilation or derivative work constitute one work” for this purpose. Moreover, although the minimum and maximum amounts are to be multiplied where multiple “works” are involved in the suit, the same is not true with respect to multiple copyrights, multiple owners, multiple exclusive rights, or multiple registrations. This point is especially important since, under a scheme of divisible copyright, it is possible to have the rights of a number of owners of separate “copyrights” in a single “work” infringed by one act of a defendant.

4. Where the infringements of one work were committed by a single infringer acting individually, a single award of statutory damages would be made. Similarly, where the work was infringed by two or more joint tortfeasors, the bill would make them jointly and severally liable for an amount in the \$250 to \$10,000 range. However, where separate infringements for which two or more defendants are not jointly liable are joined in the same action, separate awards of statutory damages would be appropriate.

Clause (2) of section 504 (c) provides for exceptional cases in which the maximum award of statutory damages could be raised from \$10,000 to \$50,000, and in which the minimum recovery could be reduced from \$250 to \$100. The basic principle underlying this provision is that the courts should be given discretion to increase statutory damages in cases of willful infringement and to lower the minimum where the infringer is innocent. The language of the clause makes clear that in these situations the burden of proving willfulness rests on the copyright owner and that of proving innocence rests on the infringer, and that the court must make a finding of either willfulness or innocence in order to award the exceptional amounts.

The “innocent infringer” provision of section 504 (c)(2) has been the subject of extensive discussion. The exception, which would allow reduction of minimum statutory damages to \$100 where the infringer “was not aware and had no reason to believe that his or her acts constituted an infringement of copyright,” is sufficient to protect against unwarranted liability in cases of occasional or isolated innocent infringement, and it offers adequate insulation to users, such as broadcasters and newspaper publishers, who are particularly vulnerable to this type of infringement suit. On the other hand, by establishing a realistic floor for liability, the provision preserves its intended deterrent effect; and it would not allow an infringer to escape simply because the plaintiff failed to disprove the defendant’s claim of innocence.

In addition to the general “innocent infringer” provision clause (2) deals with the special situation of teachers, librarians, archivists, and public broadcasters, and the nonprofit institutions of which they are a part. Section 504 (c)(2) provides that, where such a person or institution infringed copyrighted material in the honest belief that what they were doing constituted fair use, the court is precluded from awarding any statutory damages. It is intended that, in cases involving this provision, the burden of proof with respect to the defendant’s good faith should rest on the plaintiff.

Amendments

2010—Subsec. (c)(2). Pub. L. 111–295 substituted “section 118 (f)” for “subsection (g) of section 118”.

2004—Subsec. (c)(3). Pub. L. 108–482 added par. (3).

1999—Subsec. (c)(1). Pub. L. 106–160, § 2(1), substituted “\$750” for “\$500” and “\$30,000” for “\$20,000”.

Subsec. (c)(2). Pub. L. 106–160, § 2(2), substituted “\$150,000” for “\$100,000”.

1998—Subsec. (d). Pub. L. 105–298 added subsec. (d).

1997—Subsec. (c)(2). Pub. L. 105–80 substituted “the court in its discretion” for “the court it its discretion”.

1988—Subsec. (c)(1). Pub. L. 100–568, § 10(b)(1), substituted “\$500” for “\$250” and “\$20,000” for “\$10,000”.

Subsec. (c)(2). Pub. L. 100–568, § 10(b)(2), substituted “\$100,000” for “\$50,000” and “\$200” for “\$100”.

Effective Date of 1999 Amendment

Pub. L. 106–160, § 4, Dec. 9, 1999, 113 Stat. 1774, provided that: “The amendments made by section 2 [amending this section] shall apply to any action brought on or after the date of the enactment of this Act [Dec. 9, 1999], regardless of the date on which the alleged activity that is the basis of the action occurred.”

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Effective Date of 1998 Amendment

Amendment by Pub. L. 105–298 effective 90 days after Oct. 27, 1998, see section 207 of Pub. L. 105–298, set out as a note under section 101 of this title.

Effective Date of 1988 Amendment

Amendment by Pub. L. 100–568 effective Mar. 1, 1989, with any cause of action arising under this title before such date being governed by provisions in effect when cause of action arose, see section 13 of Pub. L. 100–568, set out as a note under section 101 of this title.