

**§ 412. Registration as prerequisite to certain remedies for infringement**

In any action under this title, other than an action brought for a violation of the rights of the author under section 106A(a) or an action instituted under section 411(b), no award of statutory damages or of attorney's fees, as provided by sections 504 and 505, shall be made for—

(1) any infringement of copyright in an unpublished work commenced before the effective date of its registration; or

(2) any infringement of copyright commenced after first publication of the work and before the effective date of its registration, unless such registration is made within three months after the first publication of the work.

(Pub. L. 94-553, title I, § 101, Oct. 19, 1976, 90 Stat. 2583; Pub. L. 101-650, title VI, § 606(c)(2), Dec. 1, 1990, 104 Stat. 5131.)

HISTORICAL AND REVISION NOTES

HOUSE REPORT NO. 94-1476

The need for section 412 arises from two basic changes the bill will make in the present law.

(1) Copyright registration for published works, which is useful and important to users and the public at large, would no longer be compulsory, and should therefore be induced in some practical way.

(2) The great body of unpublished works now protected at common law would automatically be brought under copyright and given statutory protection. The remedies for infringement presently available at common law should continue to apply to these works under the statute, but they should not be given special statutory remedies unless the owner has, by registration, made a public record of his copyright claim.

Under the general scheme of the bill, a copyright owner whose work has been infringed before registration would be entitled to the remedies ordinarily available in infringement cases: an injunction on terms the court considers fair, and his actual damages plus any applicable profits not used as a measure of damages. However, section 412 would deny any award of the special or "extraordinary" remedies of statutory damages or attorney's fees where infringement of copyright in an unpublished work began before registration or where, in the case of a published work, infringement commenced after publication and before registration (unless registration has been made within a grace period of three months after publication). These provisions would be applicable to works of foreign and domestic origin alike.

In providing that statutory damages and attorney's fees are not recoverable for infringement of unpublished, unregistered works, clause (1) of section 412 in no way narrows the remedies available under the present law. With respect to published works, clause (2) would generally deny an award of those two special remedies where infringement takes place before registration. As an exception, however, the clause provides a grace period of three months after publication during which registration can be made without loss of remedies; full remedies could be recovered for any infringement begun during the three months after publication if registration is made before that period has ended. This exception is needed to take care of newsworthy or suddenly popular works which may be infringed almost as soon as they are published, before the copyright owner has had a reasonable opportunity to register his claim.

AMENDMENTS

1990—Pub. L. 101-650 inserted "an action brought for a violation of the rights of the author under section

106A(a) or" after "other than" in introductory provisions.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-650 effective 6 months after Dec. 1, 1990, see section 610 of Pub. L. 101-650, set out as an Effective Date note under section 106A of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 101, 104A of this title.

**CHAPTER 5—COPYRIGHT INFRINGEMENT AND REMEDIES**

Sec.

- 501. Infringement of copyright.
- 502. Remedies for infringement: Injunctions.
- 503. Remedies for infringement: Impounding and disposition of infringing articles.
- 504. Remedies for infringement: Damage<sup>1</sup> and profits.
- 505. Remedies for infringement: Costs and attorney's fees.
- 506. Criminal offenses.
- 507. Limitations on actions.
- 508. Notification of filing and determination of actions.
- 509. Seizure and forfeiture.
- 510. Remedies for alteration of programing by cable systems.
- 511. Liability of States, instrumentalities of States, and State officials for infringement of copyright.

AMENDMENTS

1990—Pub. L. 101-553, § 2(a)(3), Nov. 15, 1990, 104 Stat. 2750, added item 511.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 104A, 115, 912 of this title.

**§ 501. Infringement of copyright**

(a) Anyone who violates any of the exclusive rights of the copyright owner as provided by sections 106 through 118 or of the author as provided in section 106A(a), or who imports copies or phonorecords into the United States in violation of section 602, is an infringer of the copyright or right of the author, as the case may be. For purposes of this chapter (other than section 506), any reference to copyright shall be deemed to include the rights conferred by section 106A(a). As used in this subsection, the term "anyone" includes any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his or her official capacity. Any State, and any such instrumentality, officer, or employee, shall be subject to the provisions of this title in the same manner and to the same extent as any nongovernmental entity.

(b) The legal or beneficial owner of an exclusive right under a copyright is entitled, subject to the requirements of section 411, to institute an action for any infringement of that particular right committed while he or she is the owner of it. The court may require such owner to serve written notice of the action with a copy of the complaint upon any person shown, by the records of the Copyright Office or otherwise, to

<sup>1</sup> So in original. Does not conform to section catchline.

have or claim an interest in the copyright, and shall require that such notice be served upon any person whose interest is likely to be affected by a decision in the case. The court may require the joinder, and shall permit the intervention, of any person having or claiming an interest in the copyright.

(c) For any secondary transmission by a cable system that embodies a performance or a display of a work which is actionable as an act of infringement under subsection (c) of section 111, a television broadcast station holding a copyright or other license to transmit or perform the same version of that work shall, for purposes of subsection (b) of this section, be treated as a legal or beneficial owner if such secondary transmission occurs within the local service area of that television station.

(d) For any secondary transmission by a cable system that is actionable as an act of infringement pursuant to section 111(c)(3), the following shall also have standing to sue: (i) the primary transmitter whose transmission has been altered by the cable system; and (ii) any broadcast station within whose local service area the secondary transmission occurs.

(e) With respect to any secondary transmission that is made by a satellite carrier of a primary transmission embodying the performance or display of a work and is actionable as an act of infringement under section 119(a)(5), a network station holding a copyright or other license to transmit or perform the same version of that work shall, for purposes of subsection (b) of this section, be treated as a legal or beneficial owner if such secondary transmission occurs within the local service area of that station.

(Pub. L. 94-553, title I, § 101, Oct. 19, 1976, 90 Stat. 2584; Pub. L. 100-568, § 10(a), Oct. 31, 1988, 102 Stat. 2860; Pub. L. 100-667, title II, § 202(3), Nov. 16, 1988, 102 Stat. 3957; Pub. L. 101-553, § 2(a)(1), Nov. 15, 1990, 104 Stat. 2749; Pub. L. 101-650, title VI, § 606(a), Dec. 1, 1990, 104 Stat. 5131.)

#### HISTORICAL AND REVISION NOTES

##### HOUSE REPORT NO. 94-1476

The bill, unlike the present law, contains a general statement of what constitutes infringement of copyright. Section 501(a) identifies a copyright infringer as someone who “violates any of the exclusive rights of the copyright owner as provided by sections 106 through 118” of the bill, or who imports copies or phonorecords in violation of section 602. Under the latter section an unauthorized importation of copies or phonorecords acquired abroad is an infringement of the exclusive right of distribution under certain circumstances.

The principle of the divisibility of copyright ownership, established by section 201(d), carries with it the need in infringement actions to safeguard the rights of all copyright owners and to avoid a multiplicity of suits. Subsection (b) of section 501 enables the owner of a particular right to bring an infringement action in that owner’s name alone, while at the same time insuring to the extent possible that the other owners whose rights may be affected are notified and given a chance to join the action.

The first sentence of subsection (b) empowers the “legal or beneficial owner of an exclusive right” to bring suit for “any infringement of that particular right committed while he or she is the owner of it.” A “beneficial owner” for this purpose would include, for example, an author who had parted with legal title to

the copyright in exchange for percentage royalties based on sales or license fees.

The second and third sentences of section 501(b), which supplement the provisions of the Federal Rules of Civil Procedure [Title 28, Judiciary and Judicial Procedure], give the courts discretion to require the plaintiff to serve notice of the plaintiff’s suit on “any person shown, by the records of the Copyright Office or otherwise, to have or claim an interest in the copyright”; where a person’s interest “is likely to be affected by a decision in the case” a court order requiring service of notice is mandatory. As under the Federal rules, the court has discretion to require joinder of “any person having or claiming an interest in the copyright”; but, if any such person wishes to become a party, the court must permit that person’s intervention.

In addition to cases involving divisibility of ownership in the same version of a work, section 501(b) is intended to allow a court to permit or compel joinder of the owners of rights in works upon which a derivative work is based.

Section 501 contains two provisions conferring standing to sue under the statute upon broadcast stations in specific situations involving secondary transmissions by cable systems. Under subsection (c), a local television broadcaster licensed to transmit a work can sue a cable system importing the same version of the work into the broadcaster’s local service area in violation of section 111(c). Subsection (d) deals with cases arising under section 111(c)(3), the provision dealing with substitution or alteration by a cable system of commercials or other programming; in such cases standing to sue is also conferred on: (1) the primary transmitter whose transmission has been altered by the cable system, and (2) any broadcast stations within whose local service area the secondary transmission occurs. These provisions are linked to section 509, a new provision on remedies for alteration of programming by cable systems, discussed below.

**Vicarious Liability for Infringing Performances.** The committee has considered and rejected an amendment to this section intended to exempt the proprietors of an establishment, such as a ballroom or night club, from liability for copyright infringement committed by an independent contractor, such as an orchestra leader. A well-established principle of copyright law is that a person who violates any of the exclusive rights of the copyright owner is an infringer, including persons who can be considered related or vicarious infringers. To be held a related or vicarious infringer in the case of performing rights, a defendant must either actively operate or supervise the operation of the place wherein the performances occur, or control the content of the infringing program, and expect commercial gain from the operation and either direct or indirect benefit from the infringing performance. The committee has decided that no justification exists for changing existing law, and causing a significant erosion of the public performance right.

#### AMENDMENTS

1990—Subsec. (a). Pub. L. 101-650 inserted “or of the author as provided in section 106A(a)” after “118” and substituted “copyright or right of the author, as the case may be. For purposes of this chapter (other than section 506), any reference to copyright shall be deemed to include the rights conferred by section 106A(a).” for “copyright.”

Pub. L. 101-553 inserted sentences at end defining “anyone” and providing that any State and any instrumentality, officer, or employee be subject to the provisions of this title in the same manner and to the same extent as any nongovernmental entity.

1988—Subsec. (b). Pub. L. 100-568 substituted “section 411” for “sections 205(d) and 411”.

Subsec. (e). Pub. L. 100-667 added subsec. (e).

#### EFFECTIVE DATE OF 1990 AMENDMENTS

Amendment by Pub. L. 101-650 effective 6 months after Dec. 1, 1990, see section 610 of Pub. L. 101-650, set

out as an Effective Date note under section 106A of this title.

Section 3 of Pub. L. 101-553 provided that: "The amendments made by this Act [enacting section 511 of this title and amending this section and sections 910 and 911 of this title] shall take effect with respect to violations that occur on or after the date of the enactment of this Act [Nov. 15, 1990]."

#### EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100-667 effective Jan. 1, 1989, see section 206 of Pub. L. 100-667, set out as an Effective Date note under section 119 of this title.

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.

#### CAUSES OF ACTION ARISING UNDER PREDECESSOR PROVISIONS

Section 112 of Pub. L. 94-553 provided that: "All causes of action that arose under title 17 before January 1, 1978, shall be governed by title 17 as it existed when the cause of action arose."

#### FEDERAL RULES OF CIVIL PROCEDURE

Application of Rules, see rule 81, Title 28, Appendix, Judiciary and Judicial Procedure.

#### FEDERAL FORMS OF CIVIL PROCEDURE

Form of complaint for injunction and damages, see form 17, Title 28, Appendix, Judiciary and Judicial Procedure.

#### CROSS REFERENCES

##### Acts of infringement—

Making and distributing phonorecords, see section 115 of this title.

Secondary transmission of primary transmission, see section 111 of this title.

Exclusive jurisdiction of district courts of actions arising under copyright laws, see section 1338 of Title 28, Judiciary and Judicial Procedure.

Importation of copies or phonorecords without authority, see section 602 of this title.

Power of the Congress to regulate copyrights, see Const. Art. I, § 8, cl. 8.

Registration as prerequisite to infringement action and to certain remedies for infringement, see sections 411, 412 of this title.

United States as infringer, action in United States Court of Federal Claims, see section 1498 of Title 28, Judiciary and Judicial Procedure.

Venue in copyright actions, see section 1400 of Title 28.

Works consisting of sounds, images, or both, the first fixation of which is made simultaneously with its transmission, as subject to this section, although not yet registered, see section 411 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 109, 111, 115, 119, 411, 510, 602 of this title.

### § 502. Remedies for infringement: Injunctions

(a) Any court having jurisdiction of a civil action arising under this title may, subject to the provisions of section 1498 of title 28, grant temporary and final injunctions on such terms as it may deem reasonable to prevent or restrain infringement of a copyright.

(b) Any such injunction may be served anywhere in the United States on the person enjoined; it shall be operative throughout the United States and shall be enforceable, by pro-

ceedings in contempt or otherwise, by any United States court having jurisdiction of that person. The clerk of the court granting the injunction shall, when requested by any other court in which enforcement of the injunction is sought, transmit promptly to the other court a certified copy of all the papers in the case on file in such clerk's office.

(Pub. L. 94-553, title I, § 101, Oct. 19, 1976, 90 Stat. 2584.)

#### HISTORICAL AND REVISION NOTES

##### HOUSE REPORT NO. 94-1476

Section 502(a) [subsec. (a) of this section] reasserts the discretionary power of courts to grant injunctions and restraining orders, whether "preliminary," "temporary," "interlocutory," "permanent," or "final," to prevent or stop infringements of copyright. This power is made subject to the provisions of section 1498 of title 28 dealing with infringement actions against the United States. The latter reference in section 502(a) makes it clear that the bill would not permit the granting of an injunction against an infringement for which the Federal Government is liable under section 1498.

Under subsection (b), which is the counterpart of provisions in sections 112 and 113 of the present statute [sections 112 and 113 of former title 17], a copyright owner who has obtained an injunction in one State will be able to enforce it against a defendant located anywhere else in the United States.

#### FEDERAL RULES OF CIVIL PROCEDURE

Injunctions, generally, see rule 65, Title 28, Appendix, Judiciary and Judicial Procedure.

##### Security—

Upon granting injunction pending appeal, see rule 62.

Upon granting preliminary injunction, see rule 65.

Territorial extent of effective service of process, see rule 4.

#### FEDERAL FORMS OF CIVIL PROCEDURE

Form of complaint for injunction and damages, see form 17, Title 28, Appendix, Judiciary and Judicial Procedure.

#### CROSS REFERENCES

##### Acts of infringement—

Making and distributing phonorecords, see section 115 of this title.

Secondary transmission of primary transmission, see section 111 of this title.

Power of court to punish for contempt for disobedience to decrees or orders, see section 401 of Title 18, Crimes and Criminal Procedure.

Works consisting of sounds, image, or both, the first fixation of which is made simultaneously with its transmission, as subject to this section, although not yet registered, see section 411 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 109, 111, 115, 119, 411, 510, 1101 of this title.

### § 503. Remedies for infringement: Impounding and disposition of infringing articles

(a) At any time while an action under this title is pending, the court may order the impounding, on such terms as it may deem reasonable, of all copies or phonorecords claimed to have been made or used in violation of the copyright owner's exclusive rights, and of all plates, molds, matrices, masters, tapes, film negatives, or other articles by means of which such copies or phonorecords may be reproduced.

(b) As part of a final judgment or decree, the court may order the destruction or other reasonable disposition of all copies or phonorecords found to have been made or used in violation of the copyright owner's exclusive rights, and of all plates, molds, matrices, masters, tapes, film negatives, or other articles by means of which such copies or phonorecords may be reproduced. (Pub. L. 94-553, title I, § 101, Oct. 19, 1976, 90 Stat. 2585.)

HISTORICAL AND REVISION NOTES

HOUSE REPORT NO. 94-1476

The two subsections of section 503 deal respectively with the courts' power to impound allegedly infringing articles during the time an action is pending, and to order the destruction or other disposition of articles found to be infringing. In both cases the articles affected include "all copies or phonorecords" which are claimed or found "to have been made or used in violation of the copyright owner's exclusive rights," and also "all plates, molds, matrices, masters, tapes, film negatives, or other articles by means of which such copies of phonorecords may be reproduced." The alternative phrase "made or used" in both subsections enables a court to deal as it sees fit with articles which, though reproduced and acquired lawfully, have been used for infringing purposes such as rentals, performances, and displays.

Articles may be impounded under subsection (a) "at any time while an action under this title is pending," thus permitting seizures of articles alleged to be infringing as soon as suit has been filed and without waiting for an injunction. The same subsection empowers the court to order impounding "on such terms as it may deem reasonable." The present Supreme Court rules with respect to seizure and impounding were issued even though there is no specific provision authorizing them in the copyright statute, and there appears no need for including a special provision on the point in the bill.

Under section 101(d) of the present statute [section 101(d) of former title 17], articles found to be infringing may be ordered to be delivered up for destruction. Section 503(b) of the bill would make this provision more flexible by giving the court discretion to order "destruction or other reasonable disposition" of the articles found to be infringing. Thus, as part of its final judgment or decree, the court could order the infringing articles sold, delivered to the plaintiff, or disposed of in some other way that would avoid needless waste and best serve the ends of justice.

CROSS REFERENCES

Acts of infringement—

Making and distributing phonorecords, see section 115 of this title.

Secondary transmission of primary transmission, see section 111 of this title.

Works consisting of sounds, images, or both, the first fixation of which is made simultaneously with its transmission, as subject to this section, although not yet registered, see section 411 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 109, 111, 115, 119, 411, 510, 511, 1101 of this title.

**§ 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 \$500 or more than \$20,000 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 \$100,000. 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 subsection (g) of section 118) infringed by performing a published nondramatic literary work or by reproducing a transmission program embodying a performance of such a work.

(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.)

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

<sup>1</sup> So in original. Probably should be "in".

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 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

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 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.

#### CROSS REFERENCES

##### Acts of infringement—

Making and distributing phonorecords, see section 115 of this title.

Secondary transmission of primary transmission, see section 111 of this title.

Registration as prerequisite for award of statutory damages, see section 412 of this title.

Works consisting of sounds, images, or both, the first fixation of which is made simultaneously with its transmission, as subject to this section, although not yet registered, see section 411 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 109, 111, 115, 119, 401, 402, 405, 411, 412, 510, 511, 1101 of this title; title 28 section 1498.

### § 505. Remedies for infringement: Costs and attorney's fees

In any civil action under this title, the court in its discretion may allow the recovery of full costs by or against any party other than the United States or an officer thereof. Except as otherwise provided by this title, the court may also award a reasonable attorney's fee to the prevailing party as part of the costs.

(Pub. L. 94-553, title I, §101, Oct. 19, 1976, 90 Stat. 2586.)

#### HISTORICAL AND REVISION NOTES

##### HOUSE REPORT NO. 94-1476

Under section 505 the awarding of costs and attorney's fees are left to the court's discretion, and the section also makes clear that neither costs nor attorney's fees can be awarded to or against “the United States or an officer thereof.”

#### CROSS REFERENCES

##### Acts of infringement—

Making and distributing phonorecords, see section 115 of this title.

Secondary transmission of primary transmission, see section 111 of this title.

Costs against United States generally, see section 2412 of Title 28, Judiciary and Judicial Procedure, and rule 54 of Federal Rules of Civil Procedure, Title 28, Appendix.

Registration as prerequisite for award of attorney's fees, see section 412 of this title.

Taxation of costs, see section 1920 of Title 28, Judiciary and Judicial Procedure.

Works consisting of sounds, images, or both, the first fixation of which is made simultaneously with its transmission, as subject to this section, although not yet registered, see section 411 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 109, 111, 115, 119, 411, 412, 510, 511, 1101 of this title.

### § 506. Criminal offenses

(a) CRIMINAL INFRINGEMENT.—Any person who infringes a copyright willfully and for purposes

of commercial advantage or private financial gain shall be punished as provided in section 2319 of title 18.

(b) FORFEITURE AND DESTRUCTION.—When any person is convicted of any violation of subsection (a), the court in its judgment of conviction shall, in addition to the penalty therein prescribed, order the forfeiture and destruction or other disposition of all infringing copies or phonorecords and all implements, devices, or equipment used in the manufacture of such infringing copies or phonorecords.

(c) FRAUDULENT COPYRIGHT NOTICE.—Any person who, with fraudulent intent, places on any article a notice of copyright or words of the same purport that such person knows to be false, or who, with fraudulent intent, publicly distributes or imports for public distribution any article bearing such notice or words that such person knows to be false, shall be fined not more than \$2,500.

(d) FRAUDULENT REMOVAL OF COPYRIGHT NOTICE.—Any person who, with fraudulent intent, removes or alters any notice of copyright appearing on a copy of a copyrighted work shall be fined not more than \$2,500.

(e) FALSE REPRESENTATION.—Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409, or in any written statement filed in connection with the application, shall be fined not more than \$2,500.

(f) RIGHTS OF ATTRIBUTION AND INTEGRITY.—Nothing in this section applies to infringement of the rights conferred by section 106A(a).

(Pub. L. 94-553, title I, §101, Oct. 19, 1976, 90 Stat. 2586; Pub. L. 97-180, §5, May 24, 1982, 96 Stat. 93; Pub. L. 101-650, title VI, §606(b), Dec. 1, 1990, 104 Stat. 5131.)

#### HISTORICAL AND REVISION NOTES

##### HOUSE REPORT NO. 94-1476

Four types of criminal offenses actionable under the bill are listed in section 506: willful infringement for profit, fraudulent use of a copyright notice, fraudulent removal of notice, and false representation in connection with a copyright application. The maximum fine on conviction has been increased to \$10,000 and, in conformity with the general pattern of the Criminal Code (18 U.S.C.), no minimum fines have been provided. In addition to or instead of a fine, conviction for criminal infringement under section 506(a) can carry with it a sentence of imprisonment of up to one year. Section 506(b) deals with seizure, forfeiture, and destruction of material involved in cases of criminal infringement.

Section 506(a) contains a special provision applying to any person who infringes willfully and for purposes of commercial advantage the copyright in a sound recording or a motion picture. For the first such offense a person shall be fined not more than \$25,000 or imprisoned for not more than one year, or both. For any subsequent offense a person shall be fined not more than \$50,000 or imprisoned not more than two years, or both.

#### AMENDMENTS

1990—Subsec. (f). Pub. L. 101-650 added subsec. (f).

1982—Subsec. (a). Pub. L. 97-180 substituted “shall be punished as provided in section 2319 of title 18” for “shall be fined not more than \$10,000 or imprisoned for not more than one year, or both: *Provided, however,* That any person who infringes willfully and for purposes of commercial advantage or private financial gain the copyright in a sound recording afforded by

subsections (1), (2), or (3) of section 106 or the copyright in a motion picture afforded by subsections (1), (3), or (4) of section 106 shall be fined not more than \$25,000 or imprisoned for not more than one year, or both, for the first such offense and shall be fined not more than \$50,000 or imprisoned for not more than two years, or both, for any subsequent offense”.

#### EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-650 effective 6 months after Dec. 1, 1990, see section 610 of Pub. L. 101-650, set out as an Effective Date note under section 106A of this title.

#### CROSS REFERENCES

Acts of infringement subject to this section—

Making and distributing phonorecords, see section 115 of this title.

Secondary transmission of primary transmission, see section 111 of this title.

Costs or prosecution taxable in non-capital proceedings, see section 1918 of Title 28, Judiciary and Judicial Procedure.

Trafficking in counterfeit labels for phonorecords and copies of motion pictures or other audiovisual works, see section 2318 of Title 18, Crimes and Criminal Procedure.

Works consisting of sounds, images, or both, the first fixation of which is made simultaneously with its transmission, as subject to this section, although not yet registered, see section 411 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 101, 109, 111, 115, 119, 411, 501, 509 of this title; title 18 section 2319; title 19 section 1595a.

### § 507. Limitations on actions

(a) **CRIMINAL PROCEEDINGS.**—No criminal proceeding shall be maintained under the provisions of this title unless it is commenced within three years after the cause of action arose.

(b) **CIVIL ACTIONS.**—No civil action shall be maintained under the provisions of this title unless it is commenced within three years after the claim accrued.

(Pub. L. 94-553, title I, § 101, Oct. 19, 1976, 90 Stat. 2586.)

#### HISTORICAL AND REVISION NOTES

##### HOUSE REPORT NO. 94-1476

Section 507, which is substantially identical with section 115 of the present law [section 115 of former title 17], establishes a three-year statute of limitations for both criminal proceedings and civil actions. The language of this section, which was adopted by the act of September 7, 1957 (71 Stat. 633) [Pub. L. 85-313, § 1, Sept. 7, 1957, 71 Stat. 633], represents a reconciliation of views, and has therefore been left unaltered.

#### CROSS REFERENCES

Limitation on prosecution, trial, or punishment of non-capital offenses generally, see section 3282 of Title 18, Crimes and Criminal Procedure.

### § 508. Notification of filing and determination of actions

(a) Within one month after the filing of any action under this title, the clerks of the courts of the United States shall send written notification to the Register of Copyrights setting forth, as far as is shown by the papers filed in the court, the names and addresses of the parties and the title, author, and registration number of

each work involved in the action. If any other copyrighted work is later included in the action by amendment, answer, or other pleading, the clerk shall also send a notification concerning it to the Register within one month after the pleading is filed.

(b) Within one month after any final order or judgment is issued in the case, the clerk of the court shall notify the Register of it, sending with the notification a copy of the order or judgment together with the written opinion, if any, of the court.

(c) Upon receiving the notifications specified in this section, the Register shall make them a part of the public records of the Copyright Office.

(Pub. L. 94-553, title I, § 101, Oct. 19, 1976, 90 Stat. 2586.)

#### HISTORICAL AND REVISION NOTES

##### HOUSE REPORT NO. 94-1476

Section 508, which corresponds to some extent with a provision in the patent law (35 U.S.C. 290), is intended to establish a method for notifying the Copyright Office and the public of the filing and disposition of copyright cases. The clerks of the Federal courts are to notify the Copyright Office of the filing of any copyright actions and of their final disposition, and the Copyright Office is to make these notifications a part of its public records.

### § 509. Seizure and forfeiture

(a) All copies or phonorecords manufactured, reproduced, distributed, sold, or otherwise used, intended for use, or possessed with intent to use in violation of section 506(a), and all plates, molds, matrices, masters, tapes, film negatives, or other articles by means of which such copies or phonorecords may be reproduced, and all electronic, mechanical, or other devices for manufacturing, reproducing, or assembling such copies or phonorecords may be seized and forfeited to the United States.

(b) The applicable procedures relating to (i) the seizure, summary and judicial forfeiture, and condemnation of vessels, vehicles, merchandise, and baggage for violations of the customs laws contained in title 19, (ii) the disposition of such vessels, vehicles, merchandise, and baggage or the proceeds from the sale thereof, (iii) the remission or mitigation of such forfeiture, (iv) the compromise of claims, and (v) the award of compensation to informers in respect of such forfeitures, shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions of this section; except that such duties as are imposed upon any officer or employee of the Treasury Department or any other person with respect to the seizure and forfeiture of vessels, vehicles, merchandise;<sup>1</sup> and baggage under the provisions of the customs laws contained in title 19 shall be performed with respect to seizure and forfeiture of all articles described in subsection (a) by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General.

(Pub. L. 94-553, title I, § 101, Oct. 19, 1976, 90 Stat. 2587.)

<sup>1</sup> So in original. The semicolon probably should be a comma.

## CROSS REFERENCES

Acts of infringement subject to this section—

Making and distributing phonorecords, see section 115 of this title.

Secondary transmission of primary transmission, see section 111 of this title.

Trafficking in counterfeit labels for phonorecords and copies of motion pictures or other audiovisual works, see section 2318 of Title 18, Crimes and Criminal Procedure.

Works consisting of sounds, images, or both, the first fixation of which is made simultaneously with its transmission, as subject to this section, although not yet registered, see section 411 of this title.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 109, 111, 115, 119, 411 of this title; title 18 section 2318; title 19 section 1595a.

**§ 510. Remedies for alteration of programing by cable systems**

(a) In any action filed pursuant to section 111(c)(3), the following remedies shall be available:

(1) Where an action is brought by a party identified in subsections (b) or (c) of section 501, the remedies provided by sections 502 through 505, and the remedy provided by subsection (b) of this section; and

(2) When an action is brought by a party identified in subsection (d) of section 501, the remedies provided by sections 502 and 505, together with any actual damages suffered by such party as a result of the infringement, and the remedy provided by subsection (b) of this section.

(b) In any action filed pursuant to section 111(c)(3), the court may decree that, for a period not to exceed thirty days, the cable system shall be deprived of the benefit of a compulsory license for one or more distant signals carried by such cable system.

(Pub. L. 94-553, title I, § 101, Oct. 19, 1976, 90 Stat. 2587.)

## HISTORICAL AND REVISION NOTES

## HOUSE REPORT NO. 94-1476

Section 509(b) specifies a new discretionary remedy for alteration of programming by cable systems in violation of section 111(c)(3): the court in such cases may decree that, “for a period not to exceed thirty days, the cable system shall be deprived of the benefit of a compulsory license for one or more distant signals carried by such cable system.” The term “distant signals” in this provision is intended to have a meaning consistent with the definition of “distant signal equivalent” in section 111.

Under section 509(a), four types of plaintiffs are entitled to bring an action in cases of alteration of programming by cable systems in violation of section 111(c)(3). For regular copyright owners and local broadcaster-licensees, the full battery of remedies for infringement would be available. The two new classes of potential plaintiffs under section 501(d)—the distant-signal transmitter and other local stations—would be limited to the following remedies: (i) discretionary injunctions; (ii) discretionary costs and attorney’s fees; (iii) any actual damages the plaintiff can prove were attributable to the act of altering program content; and (iv) the new discretionary remedy of suspension of compulsory licensing.

## CROSS REFERENCES

Secondary transmission of primary transmission as subject to this section, see section 111 of this title.

Works consisting of sounds, images, or both, the first fixation of which is made simultaneously with its transmission, as subject to this section, although not yet registered, see section 411 of this title.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 111, 119, 411, 511 of this title.

**§ 511. Liability of States, instrumentalities of States, and State officials for infringement of copyright**

(a) IN GENERAL.—Any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his or her official capacity, shall not be immune, under the Eleventh Amendment of the Constitution of the United States or under any other doctrine of sovereign immunity, from suit in Federal court by any person, including any governmental or nongovernmental entity, for a violation of any of the exclusive rights of a copyright owner provided by sections 106 through 119, for importing copies of phonorecords in violation of section 602, or for any other violation under this title.

(b) REMEDIES.—In a suit described in subsection (a) for a violation described in that subsection, remedies (including remedies both at law and in equity) are available for the violation to the same extent as such remedies are available for such a violation in a suit against any public or private entity other than a State, instrumentality of a State, or officer or employee of a State acting in his or her official capacity. Such remedies include impounding and disposition of infringing articles under section 503, actual damages and profits and statutory damages under section 504, costs and attorney’s fees under section 505, and the remedies provided in section 510.

(Added Pub. L. 101-553, § 2(a)(2), Nov. 15, 1990, 104 Stat. 2749.)

## EFFECTIVE DATE

Section effective with respect to violations that occur on or after Nov. 15, 1990, see section 3 of Pub. L. 101-553, set out as an Effective Date of 1990 Amendment note under section 501 of this title.

**CHAPTER 6—MANUFACTURING REQUIREMENTS AND IMPORTATION**

Sec.	
601.	Manufacture, importation, and public distribution of certain copies.
602.	Infringing importation of copies or phonorecords.
603.	Importation prohibitions: Enforcement and disposition of excluded articles.

## CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 912 of this title.

**§ 601. Manufacture, importation, and public distribution of certain copies**

(a) Prior to July 1, 1986, and except as provided by subsection (b), the importation into or public distribution in the United States of copies of a work consisting preponderantly of nondramatic<sup>1</sup>

<sup>1</sup> So in original. Probably should be “nondramatic”.