

/\* BBS LEGAL GUIDE COMMENTARY: Here's the Chapter of the copyright code that defines the scope of infringement of copyright, and the remedies that a copyright owner has if the copyright is infringed \*/

## CHAPTER 5. COPYRIGHT INFRINGEMENT AND REMEDIES

### Section

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### S 501. Infringement of copyright

(a) Anyone who violates any of the exclusive rights of the copyright owner as provided by sections 106 through 118 [17 USC SS 106-118], or who imports copies or phonorecords into the United States in violation of section 602 [17 USC S 602], is an infringer of the copyright.

(b) The legal or beneficial owner of an exclusive right under a copyright is entitled, subject to the requirements of section 205(d) and 411 [17 USC SS 205(d) and 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 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 [17 USC S 111(c)], 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) [17 USC S 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.

#### S 502. Remedies for infringement: Injunctions

(a) Any court having jurisdiction of a civil action arising under this title [17 USC SS et seq.] may, subject to the provisions of section 1498 of title 28 [28 USC S 1498], 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 proceedings 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.

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

(a) At any time while an action under this title [17 USC SS 101 et seq.] 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.

/\* You have probably heard of seizures of BBS equipment due to allegations ((or proof)) of distribution of commercial software. This section is the civil counterpart of seizure. \*/

(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.

#### S 504. Remedies for infringement: Damages and profits

(a) In general. Except as otherwise provided by this title [17 USC SS 101 et seq.], 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 \$250 or more than \$10,000 as the court considers just. For the purposes of this subsection, all the parts of the 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 \$50,000. 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 \$100. 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 fair use under section 107 [17 USC S 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 [17 USC S 118(g)] infringed by performing a published nondramatic literary work or by reproducing a transmission program embodying a performance of such a work.

/\* The library community is very active in the drafting of the copyright code. For very good reason, libraries want significant protection for their employees. Therefore, if there is a copyright item there is a very limited exception for employees of the non-profit entity. However, this can not be relied upon to permit the posting of anything which is not distributable. Can a BBS be a non-profit archive? If the BBS is in fact non-profit, then it can. However, this defense will not apply to a claim of infringement UNLESS the software is distributable. \*/

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

In any civil action under this title [17 USC SS et seq.], 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 [17 USC SS 101 et seq.], the court may also award a reasonable attorney's fee to the prevailing party as part of the costs.

## S 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 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 [17 USC S 106 (1), (2), or (3)], or the copyright in a motion picture afforded by subsections (1), (3), or (4) of section 106 [17 USC S 106(1), (3) or (4)] 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 for imprisoned for not more than two years, or both, for any subsequent offense.

(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.

/\* Under copyright law if someone removes a copyright notice

(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 [17 USC S 409], or in any written statement filed in connection with the application, shall be fined not more than \$2,500.

## S 507. Limitations on actions

(a) Criminal proceedings. No criminal proceeding shall be maintained under the provisions of this title [17 USC SS 101 et seq.] 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 [17 USC SS 101 et seq.] unless it is commenced within three years after the claim accrued.

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

(a) Within one month after the filing of any action under this title [17 USC SS 101 et seq.], 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.

## S 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) [17 USC S 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 procedure 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 [19 USC SS 1 et seq.], (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 or 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; and baggage under the provisions of the customs laws contained in title 19 [19 USC SS 1 et seq.] shall be performed with respect to seizure and forfeiture of all articles described in subsection (1) by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General.

#### S 510. Remedies for alteration of programing by cable systems

(a) In any action filed pursuant to section 111(c)(3) [17 USC S 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 [17 USC S 501], the remedies provided by sections 502 through 505 [17 USC SS 502-505], 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 [17 USC S 501], the remedies provided by sections 502 and 505 [17 USC SS 502-505], 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) [17 USC S 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.