

United States copyright law

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United States copyright law governs the legally enforceable rights of creative and artistic works in the United States.

Copyright law in the United States is part of Federal law, and is authorized by the U.S. Constitution. The power to enact copyright law is granted in Article I, Section 8, Clause 8, also known as the Copyright Clause, which states:

The Congress shall have Power [. . .] To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.

This clause forms the basis for U.S. copyright law ("Science", "Authors", "Writings") and patent law ("useful Arts", "Inventors", "Discoveries"), and includes the limited terms (or durations) allowed for copyrights and patents ("limited Times"), as well as the items they may protect ("exclusive Right to their respective Writings and Discoveries").

In the U.S., copyright is administered by the United States Copyright Office, a part of the Library of Congress. More information on U.S. copyright law can be retrieved from the the Copyright Office's web site (<http://www.copyright.gov/>) .

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History

The U.S. Congress first exercised its power to enact copyright legislation with the Copyright Act of 1790. The Act secured an author the exclusive right to publish and vend "maps, charts and books" for a term of 14 years, with the right of renewal for one additional 14 year term if the author was still alive. The act did not regulate other kinds of writings, such as musical compositions or newspapers and specifically noted that it did not prohibit copying the works of foreign authors. The vast majority of writings were never registered — between 1790 and 1799, of 13,000 titles published in the United States, only 556 were registered.

Copyright law has been modified many times since to encompass new technologies such as music recording, to extend the duration of protection, and to make other changes. U.S. courts have interpreted this clause of the Constitution to say that the ultimate purpose of copyrights is to encourage the production of creative works for the public benefit, and that therefore the interests of the public are primary over the interests of the author when the two conflict. These rulings have since been formalized into fair use laws and decisions. Certain attempts by copyright owners to restrict uses beyond the rights provided for by copyright law may also subject them to the copyright misuse doctrine, preventing enforcement against infringers.

Key laws regulating U.S. copyrights include:

- Copyright Act of 1790
- Copyright Act of 1909
- Copyright Act of 1976
- Berne Convention Implementation Act of 1988
- Sonny Bono Copyright Term Extension Act of 1998
- Digital Millennium Copyright Act of 1998
- Family Entertainment and Copyright Act of 2005

Statutory provisions relating to copyright currently in effect are codified in Title 17 of the United States Code. Key international agreements affecting U.S. copyright law include:

- Berne Convention for the Protection of Literary and Artistic Works
- Agreement on Trade-Related Aspects of Intellectual Property Rights

The United States became a Berne Convention signatory in 1988, and the treaty entered into force with respect to the U.S. on March 1, 1989. The U.S. is also a party to TRIPS, which itself requires compliance with Berne provisions, and is enforceable under the WTO dispute resolution process. To meet the treaty requirements, protections were extended to architecture (where previously only building plans were protected from copying, not buildings, though currently the law makes exception for reproduction of buildings in photographs or paintings if they are ordinarily visible from a public place), and certain moral rights of visual artists.

Federalism concerns

Historically, copyright protection was provided by a dual system under both federal and state laws. Federal law provided what was commonly called "statutory copyright" and the laws of each state would provide what was called "common-law copyright," even though many states have statutes governing copyright as well.

Roughly speaking, the old "statutory copyright" protected works that were registered and the old "common-law copyright" protected works that were not.

In 1976, however, Congress abolished all state copyright laws by declaring a complete federal preemption of state laws. The federal preemption provision is codified at 17 U.S.C. § 301(a) ([http://www.law.cornell.edu/uscode/17/301\(a\).html](http://www.law.cornell.edu/uscode/17/301(a).html)), which states, in relevant parts:

On and after January 1, 1978, all legal or equitable rights that are equivalent to any of the exclusive rights within the general scope of copyright ... in works of authorship that ... come within the subject matter of copyright ... are governed exclusively by this title. Thereafter, no person is entitled to any such right or equivalent right in any such work under the common law or statutes of any State.

The preemption is complete in all aspects of copyright protection. It covers protection so that a work that falls generally within the subject matter of copyright (such as, a writing) must either qualify to be protected under federal law, or it cannot be protected at all. State law cannot provide protection for a work that federal law does not protect.^[1] It covers enforcement too. A person accused of copyright infringement cannot be prosecuted in state courts.^[2] As a result, the federal courts have exclusive subject-matter jurisdiction over copyright cases.

It should be noted that the preemption clause only applies to works that are covered by the Copyright Act. Works that have "not been *fixed in any tangible medium of expression*" are not covered.^[3] "Examples would include choreography that has never been filmed or notated, an extemporaneous speech, *original works of authorship* communicated solely through conversations or live broadcasts, a dramatic sketch or musical composition improvised or developed from memory and without being recorded or written down."^[4]

Scope of copyright law

The purpose of copyright law is to stimulate the creation of as many works of art, literature, music, and other "works authorship" as possible, in order to benefit the public. The United States recognizes no absolute, natural right in an author to prevent others from copying or otherwise exploiting his work. The copyright laws give authors limited property rights in their works, but for the ultimate purpose of benefiting the public by encouraging the creation and dissemination of more works. The author's interest is secondary to that of the public.

As is the case with other intellectual property doctrines, copyright law attempts to reach an optimal balance between the potential conflicting public interests of:

1. Encouraging creativity by giving exclusive property rights in creations
2. Fostering a competitive marketplace by giving the freest possible public access to works of authorship and the ideas they encompass.

The balance in copyright is drawn by limiting property rights to the author's particular method of expressing an idea or information. Copyright never gives rights in the idea being expressed, or in facts or other elements of the public domain which an author may incorporate into his work. Others are free to express the same idea as the author did, or use the same facts, as long as they do not copy the author's original way of expressing the ideas or facts. In addition, even those rights granted in the author's expression are limited in duration and are subject to certain exceptions permitting public use under limited circumstances.

The United States copyright law protects "original works of authorship," including literary, dramatic, musical, artistic, and certain other intellectual works. This protection is available to both published and unpublished works.

Copyright law includes the following types of works

- Literary
- Musical

- Dramatic
- Pantomimes and choreographic works
- Pictorial, graphic, and sculptural works
- Audiovisual works
- Sound recordings
- Derivative works
- Compilations
- Architectural works

Idea/expression

An important limitation on the scope of copyright protection is the idea/expression dichotomy: While copyright law protects the expression of an idea, it does not protect the idea itself.

The distinction between "idea" and "expression" is a fundamental part of U.S. law, but it is not always clear. From the 1976 Copyright Act (17 U.S.C. § 102 (<http://www.law.cornell.edu/uscode/17/102.html>)):

In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.

A paper describing a political theory, for example, is copyrightable; it may not be reproduced by anyone else without the author's permission. But the theory itself (which is an idea rather than a specific expression) is not copyrightable. Another author is free to describe the same theory in his or her own words without violating copyright law. Courts disagree on how much of the story and characters of a copyrighted novel or film should be considered copyrightable expression.

Compilations and the *sweat of the brow* doctrine

Facts are considered synonymous to "ideas" or "discoveries" under this law and are not copyrightable. By extension, a compilation of uncopyrightable facts is also uncopyrightable. However, § 103 (<http://www.law.cornell.edu/uscode/17/103.html>) of the Copyright Act allows for the protection of "compilations," provided there is an "creative" or "original" act involved in such a compilation, such as in the selection (deciding which things to include or exclude), and arrangement (how they are shown and in what order). The protection is limited only to the selection and arrangement, not to the facts themselves, which may be freely copied.

The Supreme Court decision in *Feist v. Rural* further made clear the requirements that a compilation be original in its composition, in denying protection to telephone "white pages". The *Feist* court rejected what was known as the "sweat of the brow" doctrine, in ruling that no matter how much work was necessary to create a compilation, a non-selective collection of facts ordered in a non-creative way is not subject to copyright protection.

Authorship

Sometimes the identification of a work's "author" is unclear, and there are many court rulings applying to those situations as well. For example, by § 201 (<http://www.law.cornell.edu/uscode/17/201.html>), work done "for hire", that is, specifically at the direction of an employer who pays for the work, is, by default, the property of the employer. In other words, if a company hires a writer to write something specific, the company, not the writer, is considered the "author" of that work and owns the copyrights. Any other work done by that writer on his own without compensation and without using company resources usually is still owned by the writer (though employers often try to claim ownership of such work).

The author of a work is the initial owner of the copyright in it, and may exploit the work herself or transfer some or all the rights conferred by the copyright to others. (Copyright Act &201). The author generally is the person who conceives of the copyrightable expression and fixes it or causes it to be fixed in a tangible form. "Works made for hire" are an important exception of this rule: When a work is "made for hire", within the meaning of the Copyright Act, the employer or commissioning party, who pays for creation of the work, is deemed the author, rather than the employee or commissioned party who actually conceives and fixes the expression (or causes its fixation).

1. Ownership of copyright in joint works. The authors of a "joint works" are co-owners of a single copyright in the work. Copyright Act &101 defines a joint work as "a work prepared by two or more authors with the intention that their contributions be merged into inseparable or independent parts of a unitary whole."
2. Works for hire: If a work is made "for hire" within the meaning of the Copyright Act, the employer or commissioning party, who paid for the work and took the economic risk of it, is deemed the author for copyright purposes and is the initial owner of the copyright. Copyright Act &101 sets forth the two circumstances under which a work may be found to be a work for hire.
 - a) Work prepared by an employee within the scope of his employment. In *Community for Creative Non-Violence v. Reid*, 490 U.S. 730 (1989), the Supreme Court held that the term "employee" in this context should be interpreted according to common law agency principles. If the person doing the work is an "employee" within the meaning of the common law, and the work was done within the scope of his employment (whether the work is the kind he was employed prepare; whether the preparation takes place primarily within the employer's time and place specifications; and whether the work was activated, at least in part, by a purpose to serve the employer), then the work is a work for hire and the employer is the initial owner of the copyright, rather than the employee who actually conceived and fixed the expression.
 - b) Specially ordered or commissioned works. Works created by independent contractors (rather than employees) can be deemed works for hire only if two conditions are satisfied. First, the work must fit into one of nine categories of works enumerated in Copyright Act &101. Second, the parties must expressly agree in a written, signed instrument that the work will be considered a work made for hire.

3. Ownership of copyright in collective works: a collective work is a collection of independent, separately copyrightable works of authorship, such as a newspaper, magazine, or encyclopedia. In the absence of an express assignment of copyright, the author of each individual work in the collection retains copyright in that work. The compiler, or author of the collection, owns copyright in the expression he or she contributed, which is primarily the selection and arrangement of the separate contributions, but may include such things as a preface, advertisements, etc., that the collective author created.

Works by the federal government

For more details on this topic, see Work of the United States Government.

17 U.S.C. § 105 (<http://www.law.cornell.edu/uscode/17/105.html>) , withholds copyright from all publications produced by the United States Government, and its agents or employees while in their employment. All such work is therefore in the public domain in some sense. The specific language is as follows:

Copyright protection under this title is not available for any work of the United States Government, but the United States Government is not precluded from receiving and holding copyrights transferred to it by assignment, bequest, or otherwise.

The intent of the section is to place in the public domain all work of the United States Government, which is defined in 17 U.S.C. § 101 (<http://www.law.cornell.edu/uscode/17/101.html>) as work prepared by an officer or employee of the United States Government as part of that person's official duties. Contractors are not employees.

However, no copyright does not equal full access. Nothing in the law prohibits the United States government from limiting commercial access to its (uncopyrighted) work. This may seem obvious to some: The government produces a lot of top secret materials that are not protected by copyright, but have a lot of other access restrictions. But even in case of non-secret materials there are specific prohibitions against automatic access to work otherwise covered under 17 U.S.C. § 105 for commercial purposes.

Federal and state laws are not copyrighted

Federal statutes are in the public domain and no copyright attaches to them. The same is true of court decisions. It is not difficult to see the motivations behind this:

The citizens are the authors of the law, and therefore its owners, regardless of who actually drafts the provisions, because the law derives its authority from the consent of the public, expressed through the democratic process. (State of Georgia v Harrison Co, 548 F Supp 110, 114 (ND Ga 1982))

Edicts of government, such as judicial opinions, administrative rulings, legislative enactments, public ordinances, and similar official legal documents are not copyrightable for reasons of public policy. This applies to such works whether they are Federal, State, or local as well as to those of foreign governments. (Compendium II: Copyright Office Practices section 206.01[1] (<http://www.faq.s.org/faqs/law/copyright/faq/part3/>) Paragraph 3.6 at 14 February 2006)

In the United States the exclusion of legislation from the scope of copyright laws dates to 1834, when the Supreme Court interpreted the first federal copyright laws and held that "no reporter has or can have any copyright in the written opinions delivered by this Court". In the same case it was argued – and accepted by the Court – that "it would be absurd, for a legislature to claim the copyright; and no one else can do it, for they are the authors, and cause them to be published without copyright ... Statutes were never copyrighted." Further, "it is the bounden duty of government to promulgate its statutes in print". "[A]ll countries ... subject to the sovereignty of the laws" hold the promulgation of the laws, from whatever source, "as essential as their existence." "If either statutes or decisions could be made private property, it would be in the power of an individual to shut out the light by which we guide our actions." (*Wheaton v. Peters*, 33 US (8 Pet) 591, 668 (1834))

That the public interest is the primary determinant is clear from *Banks v Manchester* (128 US 244, 9 S Ct 36 (1888)). In this the United States Supreme Court denied a copyright to a court reporter in opinions of the Ohio Supreme Court, on the grounds that "There has always been a judicial consensus, from the time of the decision in the case of *Wheaton v. Peters*, that no copyright could, under the statutes passed by Congress, be secured in the products of the labor done by judicial officers in the discharge of their judicial duties. The whole work done by the judges constitutes the authentic exposition and interpretation of the law, which, binding every citizen, is free for publication to all, whether it is a declaration of unwritten law, or an interpretation of a constitution or statute."

The law, as thus (widely) defined, is in the public domain, and therefore not amenable to copyright. In *Howell v Miller*, (91 F 129 (1898)) Justice Harlan denied an injunction sought for the compiler of Michigan statutes, holding that "no one can obtain the exclusive right to publish the laws of the state in a book prepared by him." The question of formal ownership of the text of laws and decisions is perhaps secondary to the question of the dissemination of the law.

Exclusive rights

There are five basic rights protected by copyright, and they are sometimes called the five "pillars" of copyright. The owner of copyright has the exclusive right to do and to authorize others to do the following:

- To *reproduce* the work in copies or phonorecords;
- To prepare *derivative works* based upon the work;
- To *distribute* copies or phonorecords of the work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- To *publicly perform* the work, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works;
- To *publicly display* the work, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work.

A violation of any of the exclusive rights of the copyright holder is said to be a copyright infringement.

Transfers and licenses

Three types of transfers exist for copyrighted works.

- Assignment
- Exclusive License
- Non-exclusive License

The first two, assignment and exclusive licenses, require the transfer to be in writing. Nonexclusive licenses need not be in writing and they may be implied by the circumstances. Transfers of copyright always involve one or more of the *exclusive rights* of copyright. For instance, a license may provide a right to perform a work, but not to reproduce it or to prepare a derivative work (adaptation right).

The terms of the license is governed by the applicable contract law, however there is substantial academic debate about to what extent the Copyright Act preempts state contract law principles.

An author, after transferring a copyright, can terminate the transfer under certain circumstances. This right to terminate the transfer is absolute and cannot be waived.

Duration of copyright

Works created in or after 1978 are extended copyright protection for a term defined in 17 U.S.C. § 302. With the passage of the Sonny Bono Copyright Term Extension Act, these works are granted copyright protection for a term ending 70 years after the death of the author. If the work was a work for hire (e.g., those created by a corporation) then copyright persists for 120 years after creation or 95 years after publication, whichever is shortest.

Copyrightable works created before 1978 that had not entered the public domain in 1978 received protection for the § 302 term above with the exception that those copyrights would not expire before 2003. Prior to 1978, works had to be published or registered to receive copyright protection. Upon the effective date of the 1976 Act (January 1, 1978) this requirement was removed and these works received protection despite having not been published or registered. However, Congress intended to provide an incentive for these authors to publish their unpublished works. To provide that incentive these works, if published before 2003, will not have their protection expire until 2048.

All works published in the United States before 1923 are in the public domain; works created before 1978 but not published until recently may be protected until 2047: Sec. 303 (http://www.law.cornell.edu/uscode/html/uscode17/usc_sec_17_00000303----000-.html) .

For works that received their copyright before 1978, a renewal had to be filed in the work's 28th year with the Library of Congress Copyright Office for its term of protection to be extended. The need for renewal was eliminated in 1992, but works that had already entered the public domain by non-renewal did not regain copyright protection. Therefore, works published before 1964 that were not renewed are in the public domain. No additional copyrights will expire (thus entering the public domain) until at least 2019 due to changes in the applicable laws.

Before 1972, sound recordings were not subject to federal copyright, but copying was nonetheless regulated under various state torts and statutes, some of which had no duration limit. The Sound Recording Amendment of 1972 extended copyright to recordings and declared that recordings created before February 15, 1972 (the effective date of the act) would remain subject to state law copyright. The Copyright Act of 1976 maintained this until 2047, which was subsequently extended by the Sonny Bono Copyright Term Extension Act to 2067.^[5] As a result, no sound recording can reliably be considered in the public domain in the United States before that date, even if the recording was in existence before 1923 and even if it originated in another country where it has entered the public domain.^[6]

Procedural issues

Enforcement procedure usually follows this path:

- Send a cease-and-desist letter
- File lawsuit
- Seek a preliminary injunction
- Proceed through trial to arrive at a final decree on permanent injunction and damages

Registration of copyright

While copyright in the United States automatically attaches upon the creation of an original work of authorship, registration with the Copyright Office puts a copyright holder in a better position if litigation arises over the copyright. A copyright holder desiring to register his or her copyright should do the following:

1. Obtain and complete appropriate form. (<http://www.copyright.gov/forms/>)
2. Prepare clear rendition of material being submitted for copyright
3. Send both documents to U.S. Copyright Office in Washington, D.C.

Registration of copyright refers to the act of registering the work with the United States Copyright Office, which is an office of the Library of Congress. As the United States has joined the Berne Convention, registration is no longer necessary to provide copyright protection. However, registration is still necessary to obtain statutory damages in case of infringement.

Copyright Act §407 provides that the owner of copyright in a published or unpublished work may, at any time during the copyright, register the work with the Copyright Office. The purpose of the registration provisions is to create as comprehensive a record of U.S. copyright claims as is possible. To register, the registrant must complete an application form and send it, along with the filing fee and copies or phonorecords of the work, to the Copyright Office.

The Copyright Office reviews applications for obvious errors or lack of copyrightable subject matter, and then issues a certificate of registration.

Registration as a prerequisite to claim of moral rights violation: it's not necessary for any author to register prior to bringing suit for violation of the rights of attribution or integrity in a work of visual art, pursuant to Copyright Act §106A.

Deposit requirement

The United States Copyright Office requires that applicants for registration must deposit with that office copies of the work for which protection is sought. This requirement serves two purposes. First, if an action arises from the infringement of the work, the owner may prove that the material that is infringed is exactly the same material for which the owner has secured a registration. Second, this requirement assists the Library of Congress in building its collection of works.

The Copyright Office has authority to make some exceptions to this rule by regulation, and has done so. Failure to comply with the deposit requirement, as modified by Copyright Office regulations, is punishable by fine, but does not result in forfeiture of copyright.

Infringement

Infringement is defined in 17 U.S.C. § 501 (<http://www.copyright.gov/title17/92chap5.html#501>) . Infringement requires

- a protected work
- the defendant copied the protected work
- the defendant's copying of the protected work was an infringement

If a work is not protectable it cannot be infringed upon. For instance, spoken conversations that are unrecorded ("fixed in a tangible medium of expression") are not protectable. Similarly, if two individuals both create a story that by pure coincidence is nearly identical, but each without knowledge of the other, there is no infringement since there is no copying. Typically this is referred to as the defense of independent creation, however technically this is not a defense since without copying there is not an infringement to begin with. Even if a defendant copied protected works that act might be permissible under one of the defenses or limitations. Fair use is one such defense. Quoting from a book in a review might be a copying of protected material, however this copying may well be permissible under 17 U.S.C. § 107. The fair use factors are described below.

Parodies

Although a parody can be considered a derivative work under United States Copyright Law, it can be defended under the fair use doctrine, which is codified in 17 USC § 107. The Supreme Court of the United States stated that parody "is the use of some elements of a prior author's composition to create a new one that, at least in part, comments on that author's works." That commentary function provides some justification for use of the older work. (See *Campbell v. Acuff-Rose Music, Inc.*)

Defenses and limitations

US copyright law includes numerous defenses, exceptions, and limitations. These protect both the boundary with the free expression guarantees of the First Amendment and establish carve-outs to address specific situations.

Some of the most important include:

- Subject matter limitations and the "idea/expression dichotomy". Copyright applies only to certain subject matter, codified within 17 USC 102. Works that are not "original works of authorship fixed in any tangible medium of expression" are not subject to copyright. 17 USC 102(b) codifies that copyright protection does not extend to ideas, procedures, processes, systems, etc. Facts may not be copyrighted. *Feist*.
- The "fair use" exception is codified at 17 USC 107, and states that "the fair use of a copyrighted work ... is not an infringement of copyright."
- The first sale doctrine is codified at 17 USC 109, and limits the rights of copyright holders to control the distribution and display of copies of their works. The owner of a particular copy is entitled to "sell or otherwise dispose of the possession of that copy" and to "display the copy publicly ... to viewers present at the place where the copy is located."
- The "good faith" defense (Section 504(c)(2)) protects educational institutions, libraries, archives, and public broadcasters, by permitting the court to limit statutory damages to only \$200 if they *reasonably* believed their infringement was a fair use under Section 107.
- Sections 108 and 110-122 include specific exemptions for types of works and particular entities, such as libraries (Section 108), public broadcasters (Sections 110 and 118), braille (Section 121), software backup copies (Section 117), "cover license" permitting sound recording covers (Section 115), and jukebox compulsory licenses (Section 116).
- Section 512 ("OCILLA", passed as part of the DMCA in 1998) provides a contingent "safe harbor" for online service providers from secondary liability for their users' copy infringements.

Government infringement

The U.S. government, its agencies and officials, and corporations owned or controlled by it, are subject to suit for copyright infringement. All infringement claims against the U.S. that did not arise in a foreign country must be filed with the United States Court of Federal Claims within three years of the infringing action.^[7] Claims filed in the wrong court are dismissed for lack of subject-matter jurisdiction. The government and its agencies are also authorized to settle the infringement claims out of court.

Provisions for the handicapped

There is specific statutory provision for reproduction of material for the blind or other persons with disabilities. Specific legislation (<http://www.copyright.gov/title17/92chap1.html#121>) permits the reproduction of copyright works in Braille, audio, electronic, Web-Braille (<http://www.loc.gov/nls/reference/factsheets/webbraille2003.html>) , or other necessary formats The program is administered by the National Library

Service for the Blind and Physically Handicapped (<http://www.loc.gov/nls/>) (NLS).

Relief available for infringement

A person whose copyright has been violated (infringed upon) may pursue relief. These remedies, however, require the copyright holder to actively enforce his or her rights. There is no "copyright police" that enforces copyright without the right holder complaining. For example, the FBI investigates cases of criminal infringement (mostly audio and video products), but even then, it does not do so on its own, only on cases where a complaint is received from the copyright holder. The FBI has its own guidelines on which cases to investigate.

Civil remedies

Barring investigation by law enforcement, therefore, a copyright holder must file a lawsuit in federal court to pursue his or her remedies. These remedies fall into two general categories: Injunctions and damages.

Injunctions: Copyright Act §502 authorizes courts to grant both preliminary and permanent injunctions against copyright infringement and against violations of the author's rights of attribution and integrity in works of visual art. There are also provisions for impounding allegedly infringing copies, phonorecords, and other materials used to infringe, and for their ultimate destruction upon a final judgment of infringement.

Damages and/or profits: Section 504 of the 1976 Act gives the copyright owner/author a choice of recovering: (1) their actual damages and any additional profits of the defendant; or (2) statutory damages.

Equitable relief

Both temporary and permanent injunctions are available to prevent or restrain infringement of a copyright.^[8] Where the infringer is the government, however, injunctions are not available and the copyright holder can only seek monetary damages.^[8]

One form of equitable relief that is available in copyright cases is a seizure order. At any time during the lawsuit, the court may order the impoundment of any and all copies of the infringing products. The seizure order may include materials used to produce such copies, such as master tapes, film negatives, printing plates, etc. Items that are impounded during the course of the lawsuit can, if the plaintiff wins, be ordered destroyed as part of the final decree.

Monetary damages

A copyright holder can also seek monetary damages. Injunctions and damages are not mutually exclusive. One can have injunctions and no damages, or damages and no injunctions, or both injunctions and damages. There are two types of damages: actual damages and profits, or statutory damages.^[9] During the course of the lawsuit, the copyright holder can ask the court for both, in the alternative. However, at the end of the case, they are mutually exclusive: Only one can be awarded and not the other.^[10]

Actual damages are the actual losses suffered by the copyright holder as a result of the infringement. Profits are the profits gained by the wrongdoer as a result of the infringement. In theory, the copyright holder can recover both his or her own actual damages, and also the wrongdoer's profits.

Statutory damages are available as an alternative to actual damages and profits.^[10] This is sometimes preferable if actual damages and profits are either too small, or too difficult to prove, or both. There are, however, situations where statutory damages are not available. 17 U.S.C. § 412 (<http://www.law.cornell.edu/uscode/17/412.html>) provides:

- Statutory damages are not available if the work is unpublished and the infringement began before the effective date of its registration.
- Statutory damages are not available if the work is published but the infringement commenced after the first publication and before the effective date of its registration, unless registration is made within three months after the first publication.

Statutory damages are calculated per work infringed.^[10] Statutory damages range from a few hundred dollars to hundreds of thousands:

- Statutory damages range from \$750 per work to \$150,000 per work
- In case of "innocent infringement", the range is \$200 to \$150,000 per work. "Innocent" is a technical term. In particular, if the work carries a copyright notice, the infringer cannot claim innocence.^[11]
- In case of "willful infringement" (again, "willful" is a technical term), the range is \$750 to \$300,000 per work.

Damages in copyright cases can be very high. In *Lowry's Reports, Inc. v. Legg Mason Inc.*,^[12] a 2003 lawsuit between a publisher of stock analysis newsletters against a company that buys one copy of the newsletters and makes multiple copies for use in-house, the jury awarded damages - actual damages for some newsletters and statutory damages for other newsletters - totaling \$20 million.

Attorney's fees

Cost and attorney fees: Copyright Act §505 permits courts, in their discretion, to award costs against either party and to award reasonable attorney fees to the prevailing party.

The court may (but is not required to) award to the "prevailing party" a reasonable attorney's fees.^[13] This applies to both the winning plaintiff (right holder) and the winning defendant (accused infringer).^[14] However, attorney's fees award is not available against the government. Like statutory damages, attorney's fees are not available if the work infringed is not registered at the time of infringement.

Criminal penalties

In addition to the civil remedies, the Copyright Act provides for criminal prosecution in some cases of willful copyright infringement. There are also criminal sanctions for fraudulent copyright notice, fraudulent removal of copyright notice, and false representations in applications for copyright registration. The Digital Millennium Copyright Act imposes criminal sanctions for certain acts of circumvention and interference with copyright management information. There are not criminal sanctions for violating the rights of attribution and integrity held by the author of a work of visual art.

Criminal penalties for copyright infringement include:

- A fine of not more than \$500,000 or imprisonment for not more than five years, or both, for the first offense.
- A fine of not more than \$1 million and imprisonment for not more than 10 years, or both, for repeated offenses.

Nonprofit libraries, archives, education institutions and public broadcasting entities are exempt from criminal prosecution.

See also

- Bridgeman Art Library Ltd. v. Corel Corporation
- Copyright Clearance Center
- Digital Millennium Copyright Act
- International Copyright Act
- Public Domain Enhancement Act
- Sweat of the brow
- United States copyright law in the performing arts
- United States No Electronic Theft Act
- United States patent law
- United States trademark law

Cases

Fixation

- White-Smith Music Publishing Company v. Apollo Company (1908)
- Midway Manufacturing Co. v. Artie International, Inc. (1982)

Originality

- Burrow-Giles Lithographic Co. v. Sarony (1884)
- Feist Publications v. Rural Telephone Service (1991)

Idea/expression dichotomy

- Baker v. Selden (1880)
- Computer Associates Int. Inc. v. Altai Inc. (1992)

Fair use

- Suntrust v. Houghton Mifflin (11th Cir. 2001) (re. Parody)

References

1. ↑ H.R. Rep. No. 1476, 94th Cong., 2d Sess., at 131 (1976)
2. ↑ *Crow v. Wainwright*, 720 F.2d 1224 (11th Cir. 1983), *cert. denied*, 469 U.S. 819 (1984)
3. ↑ S. Rpt. 94-473
4. ↑ S. Rpt. 94-473. *See also* Legislative history of Pub.L. 94-553
5. ↑ 17 U.S.C. § 301 (<http://www.law.cornell.edu/uscode/17/301.html>)
6. ↑ *Capitol Records v. Naxos of America* (2005). New York Court of Appeals.
7. ↑ 28 U.S.C. § 1498(b)-(c).
8. ↑ *a b* 17 U.S.C. § 502 (<http://www.law.cornell.edu/uscode/17/502.html>)
9. ↑ 17 U.S.C. § 504 (<http://www.law.cornell.edu/uscode/17/504.html>)
10. ↑ *a b c* 17 U.S.C. § 504(c) ([http://www.law.cornell.edu/uscode/17/504\(c\).html](http://www.law.cornell.edu/uscode/17/504(c).html))
11. ↑ 17 U.S.C. § 402(d) ([http://www.law.cornell.edu/uscode/17/402\(d\).html](http://www.law.cornell.edu/uscode/17/402(d).html))
12. ↑ *Lowry's Reports, Inc. v. Legg Mason Inc.*, 271 F. Supp. 2d 737 (D. Md. 2003)
13. ↑ 17 U.S.C. § 505 (<http://www.law.cornell.edu/uscode/17/505.html>)
14. ↑ *Fogerty v. Fantasy*, 510 U.S. 517 (1994)

External links

United States

- United States Copyright Office (<http://www.copyright.gov/>)
- Copyright Office list of circulars (<http://www.copyright.gov/circs/US/>)
 - Circular 21, Reproduction of copyrighted Works by Educators and Librarians (<http://www.copyright.gov/circ/circ21.pdf>)
- USPTO Stopfakes.gov Small Business Resources (<http://www.uspto.gov/smallbusiness/>)
- Congressional Research Service (CRS) Reports regarding copyright (http://digital.library.unt.edu/govdocs/crs/search.tkl?q=copyright&search_crit=subject&search=Search&date1=Anytime&date2=Anytime&type=fo)
- Cornell University: Guide to copyright terms in the U.S. (http://www.copyright.cornell.edu/training/Hirtle_Public_Domain.htm)
- U.S. Copyright Office (<http://lweb.loc.gov/copyright/>) Registration and searching of copyrights

- Copyright Timeline: (<http://www.arl.org/pp/ppcopyright/copyresources/copytimeline.shtml>) A History of Copyright in the U.S.
- Copyright and Culture (http://www.asc.upenn.edu/usr/chunter/copyright_and_culture.html) by Christopher D. Hunter
- Text of every version of U.S. Copyright Act (<http://law.copyrightdata.com/>) for 1909 to the present
- Flow-charts and tables (<http://chart.copyrightdata.com/>) to determine copyright status of a work

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