

AMENDMENTS

2002—Subsec. (a). Pub. L. 107-273 substituted “122” for “121”.

1999—Subsec. (a). Pub. L. 106-44 substituted “121” for “118”.

Subsec. (e). Pub. L. 106-113, §1000(a)(9) [title I, §1011(b)(3)], substituted “performance or display of a work embodied in a primary transmission” for “primary transmission embodying the performance or display of a work”.

Subsec. (f). Pub. L. 106-113, §1000(a)(9) [title I, §1002(b)], added subsec. (f).

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 1999 AMENDMENT

Amendment by section 1000(a)(9) [title I, §1002(b)] of Pub. L. 106-113 effective July 1, 1999, and amendment by section 1000(a)(9) [title I, §1011(b)(3)] of Pub. L. 106-113 effective Nov. 29, 1999, see section 1000(a)(9) [title I, §1012] of Pub. L. 106-113, set out as a note under section 101 of this title.

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.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 109, 111, 115, 119, 122, 411, 510, 512, 1101 of this title; title 47 section 338.

§ 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 en-

joined; 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.

(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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 109, 111, 115, 119, 122, 411, 510, 512, 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 or phonorecords may be reproduced.” The alter-

native 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 109, 111, 115, 119, 122, 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 \$750 or more than \$30,000 as the court considers just. For the purposes of this subsection, all the parts of a compilation or derivative work constitute one work.

(2) In a case where the copyright owner sustains the burden of proving, and the court finds, that infringement was committed will-

fully, the court in its discretion may increase the award of statutory damages to a sum of not more than \$150,000. In a case where the infringer sustains the burden of proving, and the court finds, that such infringer was not aware and had no reason to believe that his or her acts constituted an infringement of copyright, the court in its discretion may reduce the award of statutory damages to a sum of not less than \$200. The court shall remit statutory damages in any case where an infringer believed and had reasonable grounds for believing that his or her use of the copyrighted work was a fair use under section 107, if the infringer was: (i) an employee or agent of a nonprofit educational institution, library, or archives acting within the scope of his or her employment who, or such institution, library, or archives itself, which infringed by reproducing the work in copies or phonorecords; or (ii) a public broadcasting entity which or a person who, as a regular part of the nonprofit activities of a public broadcasting entity (as defined in 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.

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

(Pub. L. 94-553, title I, § 101, Oct. 19, 1976, 90 Stat. 2585; Pub. L. 100-568, § 10(b), Oct. 31, 1988, 102 Stat. 2860; Pub. L. 105-80, § 12(a)(13), Nov. 13, 1997, 111 Stat. 1535; Pub. L. 105-298, title II, § 204, Oct. 27, 1998, 112 Stat. 2833; Pub. L. 106-160, § 2, Dec. 9, 1999, 113 Stat. 1774.)

HISTORICAL AND REVISION NOTES

HOUSE REPORT NO. 94-1476

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

Subsection (a) lays the groundwork for the more detailed provisions of the section by establishing the liability of a copyright infringer for either “the copyright owner’s actual damages and any additional profits of the infringer,” or statutory damages. Recovery of actual damages and profits under section 504(b) or of statutory damages under section 504(c) is alternative and for the copyright owner to elect; as under the