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CLASS 26:
REMEDIES, DURATION & TERMINATION

CLASS OUTLINE

- Remedies
 - Injunctions
 - Actual Damages
 - (Statutory Damages)
- Duration
- Termination

Remedies

* Section 502 – injunctive relief

Section 503 – impounding & destruction

* Section 504 – monetary damages

(b) – actual damages & profits

(c) – statutory damages

Section 505 – recovery of costs

Section 502 - Injunctions

Plaintiff must show:

1. That it has suffered an irreparable injury;
2. That remedies available at law are inadequate;
3. That, considering the balance of hardships, the remedy is warranted; and
4. That the public interest would not be disserved.

Section 504(b) – Actual Damages & Profits

“The copyright owners 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...the copyright owner is requires 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.”



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Dec-5-1995



Section 504(c) – Statutory Damages

- A P may elect statutory damages (in lieu of actual damages and profits) anytime before final judgment is rendered.
- Damages range from \$750 to 30,000 per work infringed. (A showing of willfulness raises the ceiling to \$150,000; good faith mistaken infringement may reduce the floor to \$200)

U.S. Constitution, Article I, section 8, clause 8

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

“My copyrights produce to me annually a good deal more money than I have any use for. But those children of mine have use for that. I can take care of myself as long as I live. I know half a dozen trades, and I can invent a half a dozen more. I can get along. But I like the fifty years' extension, because that benefits my two daughters, who are not as competent to earn a living as I am, because I have carefully raised them as young ladies, who don't know anything and can't do anything. So I hope Congress will extend to them that charity which they have failed to get from me.”

Movies – avg. theatrical lifespan of 10 weeks; within 6 months, a typical movie has earned pretty much everything it's going to make at the box office; another 4-6 months for home video; by month 9 following theatrical release most movies make it to premium cable; regular cable around month 24. Sequels, where there will be any, come within 5 years.

TV – most TV series lose 1/3 of their value in the first year, and depreciate at roughly 11.4% per year after that.

Music – Most songs lose 65% of their value in the first year following release, and have exhausted the majority of their earnings potential within 5 years from the date of release, reflecting a depreciation rate of 26.7% per year.

Books – Finally, the most successful books earn most of their revenue in the first 3 years, with an annual depreciation rate of 12%.

17 USC Section 104A:

(a) AUTOMATIC PROTECTION AND TERM.—

(1) TERM.—

(A) Copyright subsists, in accordance with this section, in restored works, and vests automatically on the date of restoration.

(B) Any work in which copyright is restored under this section shall subsist for the remainder of the term of copyright that the work would have otherwise been granted in the United States if the work never entered the public domain in the United States.

17 USC Section 203

...(3) Termination of the grant may be effected at any time during a period of five years beginning at the end of thirty-five years from the date of execution of the grant; or, if the grant covers the right of publication of the work, the period begins at the end of thirty-five years from the date of publication of the work under the grant or at the end of forty years from the date of execution of the grant, whichever term ends earlier.

(4) The termination shall be effected by serving an advance notice in writing, signed by the number and proportion of owners of termination interests required under clauses (1) and (2) of this subsection, or by their duly authorized agents, upon the grantee or the grantee's successor in title.