

Copyright Remedies

Damages

Injunction



Date of Preliminary
Injunction/Judgment

Copyright Injunction

“(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.”

17 U.S.C. § 502

Copyright Injunction

- *eBay v. MercExchange*
 - Four Factors:
 - Irreparable Harm
 - No Adequate Remedy at Law
 - Balance of the Hardships
 - Public Interest

Copyright Damages

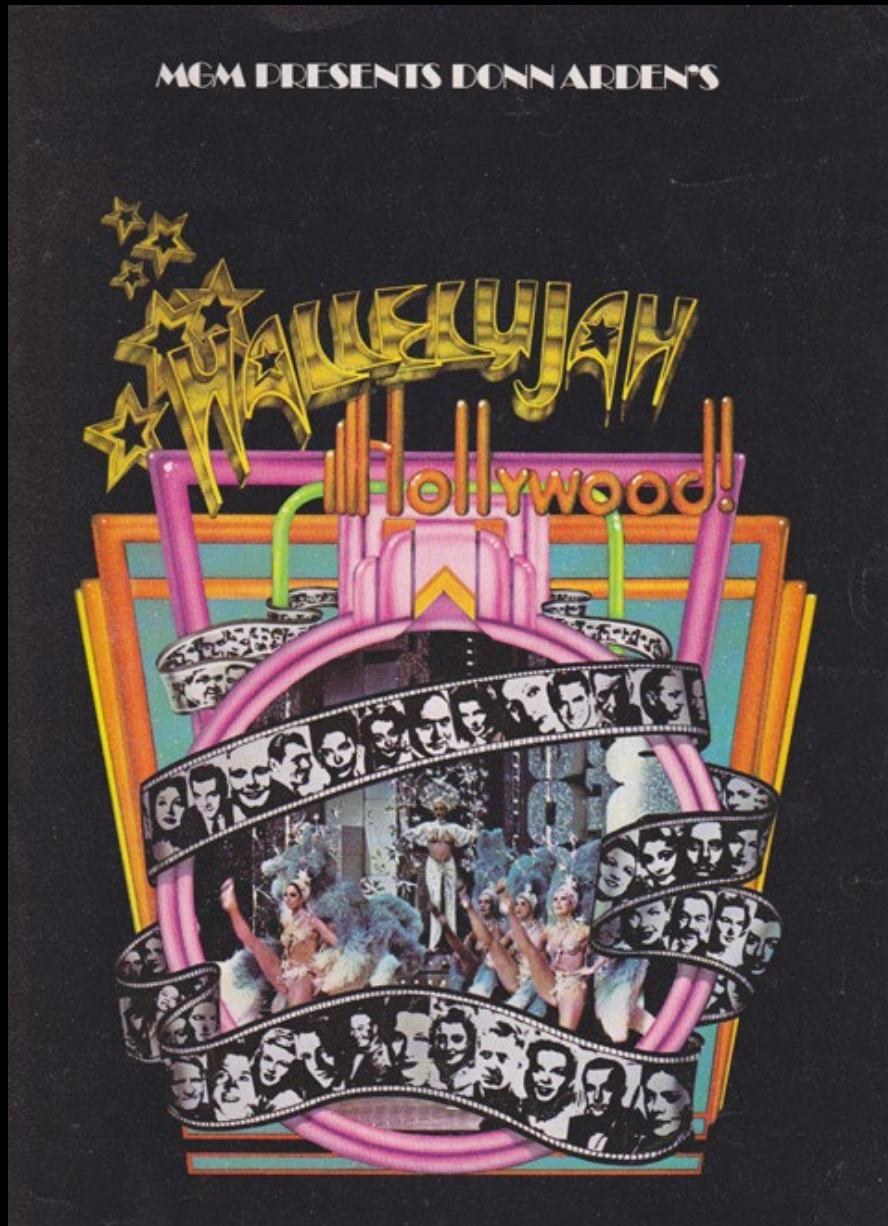
“(a) In General.— Except as otherwise provided by this title, an infringer of copyright is liable for either—

- (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).” 17 U.S.C. § 504

Copyright Damages

“(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.” 17 U.S.C. § 504

Frank Music v. MGM



Frank Music v. MGM

- Actual Damages (lost profits)
 - Theory?
 - Burden?

- Infringer's Profits
 - Overhead expenses?
 - Indirect profits?
 - Apportionment?
 - Burden?

Copyright Remedies

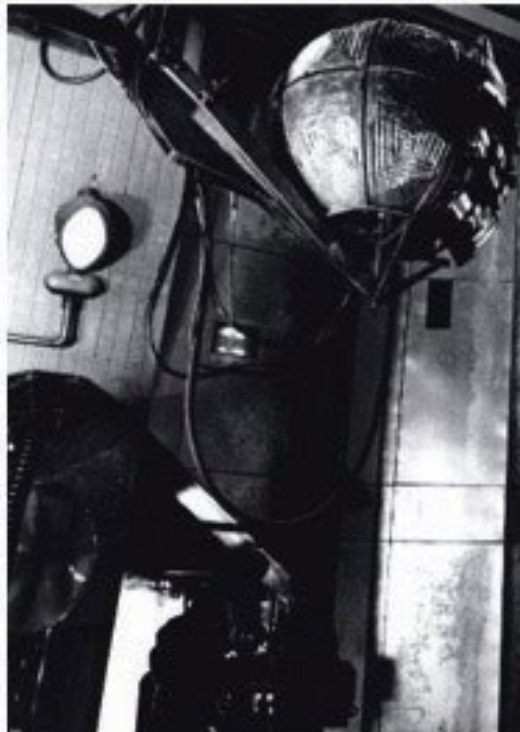
Problem 4-51. Lebbeus, a writer and artist, writes a surrealist novel that features an elaborate, futuristic torture chamber with a distinctive chair attached to moving rails on a wall. He draws a picture of the chair and uses it to illustrate the cover of his novel. Pinnacle Entertainment, a major movie studio, releases *Seven Apes*, a science-fiction movie whose plot is entirely unlike Lebbeus's novel, but which in one 90-second scene features a chair on rails strikingly similar to the one on the book cover. Assume that the court determines that Pinnacle has copied the chair from Lebbeus, and that it has no legal defense. What is the appropriate remedy? Should Lebbeus be entitled to enjoin distribution of *Seven Apes*? How would a court determine the appropriate share of profits from the movie?

Copyright Remedies



A TERRY GILLIAM FILM

TWELVE
MONKEYS



Copyright Damages

“(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 . . . an award of statutory damages for all infringements involved in the action, with respect to any one work . . . 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 . . . infringement was committed willfully, the court in its discretion may increase the award of statutory damages to a sum of not more than \$150,000.”

17 U.S.C. § 504

Copyright Damages

Problem IV-59. Like thousands of other Internet users, Jammie Thomas-Rasset received a cease-and-desist letter and settlement offer from the RIAA alleging that she was engaging in unauthorized sharing of copyrighted sound recordings. After Ms. Thomas-Rasset refused to settle, several record companies brought suit for copyright infringement. At trial, plaintiffs presented evidence that the defendant had shared over 1,000 sound recordings. They sought statutory damages for 24 particular recordings. Other evidence at trial indicated that the defendant had destroyed her hard drive just prior to her deposition, that her distinctive online alias was associated with the sharing of the files in question, and that she had changed her story on several occasions. The jury found that the defendant had knowingly infringed the plaintiff's worked and assessed \$80,000 per song, resulting in a total award of \$1.92 million.

1. You are the trial judge. The defendant seeks to overturn this verdict as grossly excessive and hence in violation of the Due Process Clause of the U.S. Constitution. Her counsel relies upon *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996), where the Supreme Court struck down as grossly excessive a punitive damage award of \$2 million for a distributor's failure to disclose that an automobile had been repainted after being damaged prior to delivery. The Court emphasized the low level of reprehensibility of conduct and 500 to 1 ratio between the award and the actual harm suffered. What would do you rule? What factors guide your determination? To what extent should deterrence and the difficulty of detecting online infringers affect your analysis?

Copyright Attorney 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.”

17 U.S.C. § 505

Copyright – Criminal

“(a) Criminal Infringement.—

(1) In general.— Any person who willfully infringes a copyright shall be punished . . . if the infringement was committed—

(A) for purposes of commercial advantage or private financial gain;

(B) by the reproduction or distribution, including by electronic means, during any 180-day period, of 1 or more copies or phonorecords of 1 or more copyrighted works, which have a total retail value of more than \$1,000; or

(C) by the distribution of a work being prepared for commercial distribution, by making it available on a computer network accessible to members of the public, if such person knew or should have known that the work was intended for commercial distribution.” 17 U.S.C. § 506

Copyright – Criminal

“The term “financial gain” includes receipt, or expectation of receipt, of anything of value, including the receipt of other copyrighted works.” 17 U.S.C. § 101

- at least 1 year, up to 10, for (a)(1)(A)
- at least fine, up to 6 years for (a)(1)(B)
- at least 3, up to 10 for (a)(1)(C)