

# Libraries, Copyright, and Liability

## [CIVIL LAWSUIT]

### 17 U.S.C. § 504 Remedies for infringement: Damages and profits

#### (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 *willfully*, 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; . . .

## [CRIMINAL LIABILITY]

### 17 U.S.C. § 506. Criminal offenses

#### (a) CRIMINAL INFRINGEMENT. - Any person who infringes a copyright willfully either -

(1) for purposes of commercial advantage or private financial gain, or

(2) 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, shall be punished as provided under section 2319 of title 18, United States Code. For purposes of this subsection, evidence of reproduction or distribution of a copyrighted work, by itself, shall not be sufficient to establish willful infringement.

(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.

(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, or in any written statement filed in connection with the application, shall be fined not more than \$2,500.

(f) Rights of Attribution and Integrity. - Nothing in this section applies to infringement of the rights conferred by section 106A(a).

### **18 U.S.C. § 2319. Criminal infringement of a copyright**

(a) Whoever violates section 506 (a) (relating to criminal offenses) of title 17 shall be punished as provided in subsections (b) and (c) of this section and such penalties shall be in addition to any other provisions of title 17 or any other law.

(b) Any person who commits an offense under section 506 (a)(1) of title 17—

(1) shall be imprisoned not more than 5 years, or fined in the amount set forth in this title, or both, if the offense consists of the reproduction or distribution, including by electronic means, during any 180-day period, of at least 10 copies or phonorecords, of 1 or more copyrighted works, which have a total retail value of more than \$2,500;

(2) shall be imprisoned not more than 10 years, or fined in the amount set forth in this title, or both, if the offense is a second or subsequent offense under paragraph (1); and

(3) shall be imprisoned not more than 1 year, or fined in the amount set forth in this title, or both, in any other case.

(c) Any person who commits an offense under section 506 (a)(2) of title 17, United States Code—

(1) shall be imprisoned not more than 3 years, or fined in the amount set forth in this title, or both, if the offense consists of the reproduction or distribution of 10 or more copies or phonorecords of 1 or more copyrighted works, which have a total retail value of \$2,500 or more;

(2) shall be imprisoned not more than 6 years, or fined in the amount set forth in this title, or both, if the offense is a second or subsequent offense under paragraph (1); and

(3) shall be imprisoned not more than 1 year, or fined in the amount set forth in this title, or both, if the offense consists of the reproduction or distribution of 1 or more copies or phonorecords of 1 or more copyrighted works, which have a total retail value of more than \$1,000.

### **[STATUTE OF LIMITATIONS]**

#### **17 U.S.C. § 507. Limitations on actions**

(a) Criminal Proceedings. - Except as expressly provided otherwise in this title, no criminal proceeding shall be maintained under the provisions of this title unless it is commenced within 5 years after the cause of action arose.

(b) Civil Actions. - No civil action shall be maintained under the provisions of this title unless it is commenced within three years after the claim accrued.

---

See also: How I Learned to Love FAIR USE... or how to bring a \$300,000 lawsuit down to \$0 if you're a library, archive, or nonprofit educational institution (2003) by Mary Minow, Stanford University FAIR USE site at [http://fairuse.stanford.edu/commentary\\_and\\_analysis/2003\\_07\\_minow.html](http://fairuse.stanford.edu/commentary_and_analysis/2003_07_minow.html)