

Because Congress recognizes that copyright infringement is a significant problem that severely damages the U.S. economy, the fines and penalties under the Copyright Act are among the most severe in U.S. law. The remedies are designed to provide substantial deterrence to the infringer and others, in order to limit or prevent future copyright infringement, as well as penalize the infringer for the past conduct, and fully compensate the aggrieved copyright owner and recoup any gain reaped by the infringer.

When someone infringes another person's copyright, the Copyright Act allows the copyright owner to seek several types of damages. First, the copyright owner may elect to recover the actual amount of money he lost as a result of the infringement, along with any additional profits made by the infringer. This is known as "actual damages." Actual damages are intended to put the parties back in the financial position they would have been in had there been no infringement.

Alternatively the copyright owner may elect to recover so-called "statutory damages." To be eligible for this option, the copyrighted work must have been registered with the U.S. Copyright Office before the violation began or, in the case of a published work, within three months of publication. Statutory damages are based on the number of works that were infringed (as opposed to the number of infringing acts, or the number of copies made).

A jury is allowed to set statutory damages for each infringed work in an amount that seems just, taking into account all of the circumstances as well as the per-work range of awards specified by the statute. If the infringement was not wilful, the statutory damages must fall between \$750 and \$30,000 for each infringed work. If the infringement was innocent because the infringer had no reasonable way to know it was infringing, the damages can be reduced to not less than \$200 per work. However, an infringement cannot be innocent when the work contains a copyright notice, as most copyrighted works do. For wilful infringement, the amount may be as much as \$150,000 per infringed work. Inclusion of a copyright notice on a work is often sufficient to permit a jury to find that infringement was wilful.

Where a number of works are infringed by a given course of conduct (*e.g.*, regularly making copies of periodicals or downloading files from the Internet), these penalties can quickly add up to very large liability. Infringement involving digital works and digital networks has, therefore, yielded some striking statutory damage awards. For example, in one court case,

[Lowry's Reports, Inc. v. Legg Mason, Inc](#)

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, a financial institution's practice of e-mailing and posting on its internal network each issue of a copyrighted financial newsletter resulted in the jury assessing more than 200 statutory damage awards totalling nearly \$20 million.

In addition to damages, the court may order the defendant to pay the prevailing copyright owner's attorneys' fees and expenses incurred in bringing the infringement action. Prevailing defendants also may recover their attorneys' fees where the court considers it appropriate.

In addition to the monetary consequences, the copyright owner may also ask the court to temporarily or permanently stop the infringer from further infringement. To do so, the court will issue an injunction, which either prohibits the defendant from performing some infringing act or instructs the defendant to take some action that will undo the infringement.