

**§ 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 alternative 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 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; 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 ad-