

ther event the court may increase the damages up to three times the amount determined.

(c) The court may receive expert testimony as an aid to the determination of damages or of what royalty would be reasonable under the circumstances.

(d) As to infringement prior to, or resulting from a planting prior to, issuance of a certificate for the infringed variety, a court finding the infringer to have established innocent intentions, shall have discretion as to awarding damages.

(Pub. L. 91-577, title III, §124, Dec. 24, 1970, 84 Stat. 1556.)

#### § 2565. Attorney fees

The court in exceptional cases may award reasonable attorney fees to the prevailing party.

(Pub. L. 91-577, title III, §125, Dec. 24, 1970, 84 Stat. 1556.)

#### § 2566. Time limitation on damages

(a) No recovery shall be had for that part of any infringement committed more than six years (or known to the owner more than one year) prior to the filing of the complaint or counterclaim for infringement in the action.

(b) In the case of claims against the United States Government for unauthorized use of a protected variety, the period between the date of receipt of written claim for compensation by the department or agency of the Government having authority to settle such claim, and the date of mailing by the Government of a notice to the claimant that the claim has been denied shall not be counted as part of the period referred to in the preceding paragraph.

(Pub. L. 91-577, title III, §126, Dec. 24, 1970, 84 Stat. 1556; Pub. L. 103-349, §13(u), Oct. 6, 1994, 108 Stat. 3144.)

#### Editorial Notes

##### AMENDMENTS

1994—Subsec. (b). Pub. L. 103-349 substituted “the” for “his” before “claim has been denied”.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-349 effective 180 days after Oct. 6, 1994, see section 15 of Pub. L. 103-349, set out as a note under section 2401 of this title.

#### § 2567. Limitation of damages; marking and notice

Owners may give notice to the public by physically associating with or affixing to the container of seed of a variety or by fixing to the variety, a label containing either the words “Unauthorized Propagation Prohibited” or the words “Unauthorized Seed Multiplication Prohibited” and after the certificate issues, such additional words as “U.S. Protected Variety”. In the event the variety is distributed by authorization of the owner and is received by the infringer without such marking, no damages shall be recovered against such infringer by the owner in any action for infringement, unless the in-

fringer has actual notice or knowledge that propagation is prohibited or that the variety is a protected variety, in which event damages may be recovered only for infringement occurring after such notice. As to both damages and injunction, a court shall have discretion to be lenient as to disposal of materials acquired in good faith by acts prior to such notice.

(Pub. L. 91-577, title III, §127, Dec. 24, 1970, 84 Stat. 1557; Pub. L. 96-574, §19(b), Dec. 22, 1980, 94 Stat. 3351; Pub. L. 103-349, §11, Oct. 6, 1994, 108 Stat. 3142.)

#### Editorial Notes

##### AMENDMENTS

1994—Pub. L. 103-349 in first sentence struck out “novel” before “variety or” and before “variety, a”, and in second sentence struck out “novel” before “variety is distributed”.

1980—Pub. L. 96-574 substituted “either the words ‘Unauthorized Propagation Prohibited’ or the words ‘Unauthorized Seed Multiplication Prohibited’” for “the words ‘Propagation Prohibited’”.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-349 effective 180 days after Oct. 6, 1994, see section 15 of Pub. L. 103-349, set out as a note under section 2401 of this title.

#### § 2568. False marking; cease and desist orders

(a) Each of the following acts, if performed in connection with the sale, offering for sale, or advertising of sexually or asexually reproducible plant material or tubers or parts of tubers, is prohibited, and the Secretary may, if the Secretary determines after an opportunity for hearing that the act is being so performed, issue an order to cease and desist, said order being binding unless appealed under section 2461 of this title:

(1) Use of the words “U.S. Protected Variety” or any word or number importing that the material is a variety protected under certificate, when it is not.

(2) Use of any wording importing that the material is a variety for which an application for plant variety protection is pending, when it is not.

(3) Use of either the phrase “Unauthorized Propagation Prohibited” or “Unauthorized Seed Multiplication Prohibited” or similar phrase without reasonable basis. Any reasonable basis expires one year after the first sale of the variety except as justified thereafter by a pending application or a certificate still in force.

(4) Failure to use the name of a variety for which a certificate of protection has been issued under this chapter, even after the expiration of the certificate, except that lawn, turf, or forage grass seed, or alfalfa or clover seed may be sold without a variety name unless use of the name of a variety for which a certificate of protection has been issued under this chapter is required under State law.

(b) Anyone convicted of violating a binding cease and desist order, or of performing any act prohibited in subsection (a) of this section for