



Leyendecker & Lemire, LLC
An Intellectual Property and Business Law Firm



COPYRIGHT INFRINGEMENT

Copyrights are infringed when a third party violates one or more of a copyright holders exclusive rights as set out in Section § 106 of the Copyright Act. Therefore the alleged infringer must have copied or reproduced the protected work, created an unauthorized derivative work, distributed unauthorized copies of the work, performed the work in public without authorization, or in the case of sound recordings performed the work by means of digital audio transmission. It is important to note that if the third parties acts do not violate any of the above (e.g. as private performance), then infringement does not exist.

To maintain an action of copyright infringement one must prove 1) Ownership of a valid copyright in the work, 2) copying by the defendant, and 3) that the defendant's copying constitutes a improper appropriation. While the analysis into whether a third party has committed copyright infringement seems fairly straight forward, it is actually a complex legal analysis full of hidden traps that can be quite dangerous (or at minimum mind- boggling) for the unwary. Additionally, infringement comes in several different flavors including Direct, Contributory infringement, vicarious liability, and inducement liability. If you believe that someone has infringed your copyright or you have been accused of copyright infringement, you should consult an attorney who specifically practices copyright law - of course we encourage you to contact us.

A copyright holder has several different remedies available to them in the event that a third party has infringed one of their exclusive rights. One form of immediate relief is a preliminary injunction. This allows the copyright holder to keep the infringer from engaging in the infringing conduct. Essentially, the court enters an order that bars the defendant from taking certain actions, such as selling alleged infringing merchandise or preventing the release of a movie or book. Preliminary injunctions are usually determined by the court soon after the complaint is filed by the plaintiff.

Copyright owners can also impound and destroy copies claimed to have been used to violate the copyright owner's exclusive rights. In order to do so, the court must conduct a hearing in which both parties present their case. A lot of times, courts are not willing to destroy the articles and will opt to have the infringing articles transferred to the plaintiff to do with them as they wish.

In terms of monetary compensation, copyright owners have the choice of recovering actual damages and profits of the infringer or statutory damages. Since actual damages and the infringer's profits may be hard to prove many of plaintiffs opt for statutory damages. For most infringements the statutory damages range from \$750.00 to \$30,000.00 per work infringed. If the plaintiff can prove that the infringement was "willful", the court can increase

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the amount to \$150,000.00 per work infringed. In addition in some circumstances, copyright infringement may also be a criminal offense.

Leyendecker & Lemire, LLC is a Denver-based law firm offering a full spectrum of Intellectual Property, Business and Entertainment related legal services for entrepreneurs, individual inventors, and businesses of all sizes. We pride ourselves in providing large firm quality, but with personalized service and attention the large firms do not provide to their smaller clients. Our strength is working with a client from the beginning of his/her venture to maximize the venture's value and potential, as well as, help minimize the risk of legal disputes. Call (303) 768-0123 or e-mail us at info@coloradoiplaw.com today to see how we can help you!

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