

§ 1323. Recovery for infringement

(a) DAMAGES.—Upon a finding for the claimant in an action for infringement under this chapter, the court shall award the claimant damages adequate to compensate for the infringement. In addition, the court may increase the damages to such amount, not exceeding \$50,000 or \$1 per copy, whichever is greater, as the court determines to be just. The damages awarded shall constitute compensation and not a penalty. The court may receive expert testimony as an aid to the determination of damages.

(b) INFRINGER'S PROFITS.—As an alternative to the remedies provided in subsection (a), the court may award the claimant the infringer's profits resulting from the sale of the copies if the court finds that the infringer's sales are reasonably related to the use of the claimant's design. In such a case, the claimant shall be required to prove only the amount of the infringer's sales and the infringer shall be required to prove its expenses against such sales.

(c) STATUTE OF LIMITATIONS.—No recovery under subsection (a) or (b) shall be had for any infringement committed more than 3 years before the date on which the complaint is filed.

(d) ATTORNEY'S FEES.—In an action for infringement under this chapter, the court may award reasonable attorney's fees to the prevailing party.

(e) DISPOSITION OF INFRINGING AND OTHER ARTICLES.—The court may order that all infringing articles, and any plates, molds, patterns, models, or other means specifically adapted for making the articles, be delivered up for destruction or other disposition as the court may direct.

(Added Pub. L. 105-304, title V, § 502, Oct. 28, 1998, 112 Stat. 2914.)

§ 1324. Power of court over registration

In any action involving the protection of a design under this chapter, the court, when appropriate, may order registration of a design under this chapter or the cancellation of such a registration. Any such order shall be certified by the court to the Administrator, who shall make an appropriate entry upon the record.

(Added Pub. L. 105-304, title V, § 502, Oct. 28, 1998, 112 Stat. 2915.)

§ 1325. Liability for action on registration fraudulently obtained

Any person who brings an action for infringement knowing that registration of the design was obtained by a false or fraudulent representation materially affecting the rights under this chapter, shall be liable in the sum of \$10,000, or such part of that amount as the court may determine. That amount shall be to compensate the defendant and shall be charged against the plaintiff and paid to the defendant, in addition to such costs and attorney's fees of the defendant as may be assessed by the court.

(Added Pub. L. 105-304, title V, § 502, Oct. 28, 1998, 112 Stat. 2915.)

§ 1326. Penalty for false marking

(a) IN GENERAL.—Whoever, for the purpose of deceiving the public, marks upon, applies to, or

uses in advertising in connection with an article made, used, distributed, or sold, a design which is not protected under this chapter, a design notice specified in section 1306, or any other words or symbols importing that the design is protected under this chapter, knowing that the design is not so protected, shall pay a civil fine of not more than \$500 for each such offense.

(b) SUIT BY PRIVATE PERSONS.—Any person may sue for the penalty established by subsection (a), in which event one-half of the penalty shall be awarded to the person suing and the remainder shall be awarded to the United States.

(Added Pub. L. 105-304, title V, § 502, Oct. 28, 1998, 112 Stat. 2915.)

§ 1327. Penalty for false representation

Whoever knowingly makes a false representation materially affecting the rights obtainable under this chapter for the purpose of obtaining registration of a design under this chapter shall pay a penalty of not less than \$500 and not more than \$1,000, and any rights or privileges that individual may have in the design under this chapter shall be forfeited.

(Added Pub. L. 105-304, title V, § 502, Oct. 28, 1998, 112 Stat. 2915.)

§ 1328. Enforcement by Treasury and Postal Service

(a) REGULATIONS.—The Secretary of the Treasury and the United States Postal Service shall separately or jointly issue regulations for the enforcement of the rights set forth in section 1308 with respect to importation. Such regulations may require, as a condition for the exclusion of articles from the United States, that the person seeking exclusion take any one or more of the following actions:

(1) Obtain a court order enjoining, or an order of the International Trade Commission under section 337 of the Tariff Act of 1930 excluding, importation of the articles.

(2) Furnish proof that the design involved is protected under this chapter and that the importation of the articles would infringe the rights in the design under this chapter.

(3) Post a surety bond for any injury that may result if the detention or exclusion of the articles proves to be unjustified.

(b) SEIZURE AND FORFEITURE.—Articles imported in violation of the rights set forth in section 1308 are subject to seizure and forfeiture in the same manner as property imported in violation of the customs laws. Any such forfeited articles shall be destroyed as directed by the Secretary of the Treasury or the court, as the case may be, except that the articles may be returned to the country of export whenever it is shown to the satisfaction of the Secretary of the Treasury that the importer had no reasonable grounds for believing that his or her acts constituted a violation of the law.

(Added Pub. L. 105-304, title V, § 502, Oct. 28, 1998, 112 Stat. 2916.)

Editorial Notes

REFERENCES IN TEXT

Section 337 of the Tariff Act of 1930, referred to in subsec. (a)(1), is classified to section 1337 of Title 19, Customs Duties.

§ 1329. Relation to design patent law

The issuance of a design patent under title 35, United States Code, for an original design for an article of manufacture shall terminate any protection of the original design under this chapter.

(Added Pub. L. 105-304, title V, § 502, Oct. 28, 1998, 112 Stat. 2916.)

§ 1330. Common law and other rights unaffected

Nothing in this chapter shall annul or limit—

(1) common law or other rights or remedies, if any, available to or held by any person with respect to a design which has not been registered under this chapter; or

(2) any right under the trademark laws or any right protected against unfair competition.

(Added Pub. L. 105-304, title V, § 502, Oct. 28, 1998, 112 Stat. 2916.)

§ 1331. Administrator; Office of the Administrator

In this chapter, the “Administrator” is the Register of Copyrights, and the “Office of the Administrator” and the “Office” refer to the Copyright Office of the Library of Congress.

(Added Pub. L. 105-304, title V, § 502, Oct. 28, 1998, 112 Stat. 2916.)

§ 1332. No retroactive effect

Protection under this chapter shall not be available for any design that has been made public under section 1310(b) before the effective date of this chapter.

(Added Pub. L. 105-304, title V, § 502, Oct. 28, 1998, 112 Stat. 2916.)

Editorial Notes

REFERENCES IN TEXT

The effective date of this chapter, referred to in text, is Oct. 28, 1998. See Effective Date note set out under section 1301 of this title.

CHAPTER 14—UNAUTHORIZED USE OF PRE-1972 SOUND RECORDINGS

Sec.

1401. Unauthorized use of pre-1972 sound recordings.

§ 1401. Unauthorized use of pre-1972 sound recordings

(a) IN GENERAL.—

(1) UNAUTHORIZED ACTS.—Anyone who, on or before the last day of the applicable transition period under paragraph (2), and without the consent of the rights owner, engages in covered activity with respect to a sound recording fixed before February 15, 1972, shall be subject to the remedies provided in sections 502 through 505 and 1203 to the same extent as an infringer of copyright or a person that engages in unauthorized activity under chapter 12.

(2) TERM OF PROHIBITION.—

(A) IN GENERAL.—The prohibition under paragraph (1)—

(i) subject to clause (ii), shall apply to a sound recording described in that paragraph—

(I) through December 31 of the year that is 95 years after the year of first publication; and

(II) for a further transition period as prescribed under subparagraph (B) of this paragraph; and

(ii) shall not apply to any sound recording after February 15, 2067.

(B) TRANSITION PERIODS.—

(i) PRE-1923 RECORDINGS.—In the case of a sound recording first published before January 1, 1923, the transition period described in subparagraph (A)(i)(II) shall end on December 31 of the year that is 3 years after the date of enactment of this section.

(ii) 1923-1946 RECORDINGS.—In the case of a sound recording first published during the period beginning on January 1, 1923, and ending on December 31, 1946, the transition period described in subparagraph (A)(i)(II) shall end on the date that is 5 years after the last day of the period described in subparagraph (A)(i)(I).

(iii) 1947-1956 RECORDINGS.—In the case of a sound recording first published during the period beginning on January 1, 1947, and ending on December 31, 1956, the transition period described in subparagraph (A)(i)(II) shall end on the date that is 15 years after the last day of the period described in subparagraph (A)(i)(I).

(iv) POST-1956 RECORDINGS.—In the case of a sound recording fixed before February 15, 1972, that is not described in clause (i), (ii), or (iii), the transition period described in subparagraph (A)(i)(II) shall end on February 15, 2067.

(3) RULE OF CONSTRUCTION.—For the purposes of this subsection, the term “anyone” includes any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in the official capacity of the officer or employee, as applicable.

(b) CERTAIN AUTHORIZED TRANSMISSIONS AND REPRODUCTIONS.—A public performance by means of a digital audio transmission of a sound recording fixed before February 15, 1972, or a reproduction in an ephemeral phonorecord or copy of a sound recording fixed before February 15, 1972, shall, for purposes of subsection (a), be considered to be authorized and made with the consent of the rights owner if—

(1) the transmission or reproduction would satisfy the requirements for statutory licensing under section 112(e)(1) or section 114(d)(2), or would be exempt under section 114(d)(1), as the case may be, if the sound recording were fixed on or after February 15, 1972; and

(2) the transmitting entity pays the statutory royalty for the transmission or reproduction pursuant to the rates and terms adopted under sections 112(e) and 114(f), and complies