

Steps in the Analysis of a U.S. Copyright Case

1. Existence of a valid copyright
 - The plaintiff must show that the work in question is protected by copyright.
 - Is the work the sort of thing protected?
 - Originality
 - Idea/expression distinction
 - Subject matter
 - Fixation
 - Is this particular work protected?
 - Formalities
 - Duration
 - Restoration
2. Ownership
 - The plaintiff must show that it owned (or had the ability to enforce) the right in question at the time of the alleged infringement.
 - Authorship
 - Transfers
3. Prima facie violation
 - The plaintiff must show that the defendant infringed one of the rights in Section 106 or Section 106A or is secondarily liable for another's infringement of one of those rights.
 - Reproduction right
 - Derivative works right
 - Distribution right
 - Performance and display rights
4. Affirmative defenses
 - If the plaintiff makes a successful prima facie case, the defendant has the opportunity to present an affirmative defense.
 - Fair use
 - First sale
 - Other exceptions to copyright (such as those that apply to particular types of works)
 - Copyright misuse
5. Remedies
 - If the plaintiff's suit is successful, the court awards/imposes remedies. They can include:
 - Equitable relief (injunctions; impoundment and/or destruction of copies)
 - Money damages (actual damages & infringer's profits, statutory damages, punitive damages)
 - Criminal penalties

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