



Principles Governing Damages in Copyright Infringement Cases

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Intellectual property refers to an invention or a piece of work that is a creation of the mind such as artistic works, literary works, designs, names, symbols and images. These creations are broadly categorized into trademarks, patents, copyright and industrial designs.

Owners of intellectual property have exclusive rights to its use and distribution. Any unauthorized use of these rights is referred to as copyright infringement and will result in a court ordering a variety of remedies, including damages or an account of profits or an injunction.

Claims available for a copyright holder who has exploited his copyright by manufacture and sale include:

- I. lost profit on sales by the defendant he would have made otherwise;
- II. lost profit on his own sales to the extent that he was forced, by the infringement, to reduce his own price; and
- III. a reasonable royalty on sales by the defendant which he would not have made.

When a court assesses the amount payable as damages the following principles are considered:

1. Damages are compensatory only: The measure of damages is to be, as far as possible, that sum of money that will put the injured party in the same position as he would have been in if he had not sustained the wrong.
2. The burden of proof lies on the claimant, with damages assessed to compensate and not to punish the offender
3. Where a copyright owner has licensed his copyright, the damages are the lost royalty.
4. It is irrelevant that the person infringing could have competed lawfully.

At AIP Advocates, we have lawyers who will guide you on legal matters arising from intellectual property while ensuring your interests are protected.

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