REMEDIES FOR COPYRIGHT VIOLATIONS

The infringement of copyright as noted in the last chapter of this study gives rise to a range of remedies, civil & criminal. All the remedies are of far reaching importance in today’s context, particularly given the very considerable quantity of unauthorised copying that is currently rife in the software, records, films and television industries. The precise value of a right must be measured in terms of the remedies that lie for its enforcement. The range of relief provided by law is quite wide and that is the one of the most significant consequences of characterising copyright as property.

This chapter, therefore, examines the issue of copyright remedies. It discusses the nature of remedies, their types etc. It evaluates the attitude of the courts in matter of grant of these remedies. The issuance of injunction both temporary and permanent, quantum and types of damages and Anton Pillor Order are examined in great detail. The questions relating to criminal remedies such as nature of the offences and punishment prescribed are also taken care of.

(A) WHO MAY SUE:

The copyright statutes of the U.K., U.S.A. and India provide that subject to other provisions of the statutes concerned, infringements of copyright shall be actionable at the suit of the owner of the copyright and in any such action, such relief, by way of damages, injunction, accounts or otherwise, shall be available to the plaintiff as is available
in any corresponding proceedings in respect of infringements of other proprietary rights.¹

Thus, as remedies are for the copyright owner, the first issue which is to be considered in any case is the question of ownership of copyright. Under the statutes of the three countries which form subject matter of present study, an “owner of copyright” is either the original owner, or a person deriving title under him by a valid assignment or otherwise.

Under the U.K. Act of 1911, on which was based the Indian Act of 1914, in the case of an assignment of an interest in copyright not in existence at the time of the assignment, the assignee had no right to sue in his own name for infringements of copyright.² The older cases in which courts of equity had enforced the rights of equitable assignees³ were cases of interim injunction only, and unless the legal owner was a party to the proceedings, either as joint plaintiff or as a defendant⁴, a perpetual injunction could only be granted under very special circumstances.

Under the U.K. Copyright Act of 1956, however, provision is made for an assignment by a prospective owner of copyright so that, on the coming into existence of the copyright, the assignee, or a person claiming under him, acquires the legal title forthwith and, consequently, is entitled to sue and obtain all remedies open to an owner of copyright⁵.

It is essential that at the date of the issue of the writ the plaintiff has a legal or equitable title to the copyright, for title is an essential ingredient of the cause of action for infringement and, without any title, the plaintiff has no cause of action.⁶ The cause of action must exist at the date of the issue of the writ. The plaintiff may commence the
proceedings relying on the equitable title to the copyright and get in the legal title afterwards or join the legal owner, but the plaintiff with no title to the copyright can not sue, but acquire a title to the copyright by written assignment subsequently and then obtain the leave of the court to amend so as to validate the writ *ex post facto*. A writ which is issued before the plaintiff has acquired any title to the copyright and before, therefore, the plaintiff has any cause of action, is incurably bad. The plaintiff’s proper cause in such a case is to issue a new writ founded on his new cause of action.

It is also clear that a person who is entitled to call for the assignment of the copyright to him is the owner of the copyright in equity and is entitled to obtain an interlocutory injunction as is an exclusive licensee under written exclusive licence.

On the other hand a mere agent to sell has no such interest in the work as to entitle him to claim relief. A simple licensee is not the owner of the copyright or any interest in it, and can not bring an action. The essence of a licence is a contractual or personal relationship whereby the licensee is permitted to do an act or acts which would, but for the licence, be an infringement. It has been held that the licensee under a "sole licence" could bring an action for infringement in his own name, but had to join the proprietor of the copyright, either as co-plaintiff with himself, or as defendant.

Where a joint proprietorship exists either party may sue; and where a plaintiff has an assignment from some only of several part owners, he is entitled to sue to prevent a stranger from interfering with
his rights\textsuperscript{12}, or even a co-owner\textsuperscript{13}. An exclusive licensee has the same rights of action as the owner of the copyright except against the owner of the copyright, but so that a defendant is to have any defence available which he would have had if the action had been brought by the owner of the copyright. The court may give the plaintiff leave to proceed with his action without the joinder of the copyright owner as a plaintiff or his addition as a defendant\textsuperscript{14}.

Under the U.S. copyright law, a person who claims ownership of copyright or any of its exclusive rights by virtue of a transfer, must submit in the court, the recordation of the document of transfer in the copyright office as a pre-requisite to suit. This is in consonance with the emphasis on registration under the U.S. copyright law. As noted above although an unregistered copyright is valid in U.S., registration of the copyrights must be made before an action for infringement can be commenced\textsuperscript{15}.

The legal or beneficial owner\textsuperscript{16} of an exclusive right under U.S. copyright is entitled to institute an action for any infringement of that particular right committed while he or she is the owner of it\textsuperscript{17}. This is in accordance with the concept of divisibility of copyright ownership introduced into the Copyright Act, of 1976, permitting any of the exclusive rights of copyright to be owned separately. Under the statute, a beneficial owner such as an author who parts with legal title to the copyright in exchange for percentage royalties based on sales or licence fees is a proper party plaintiff. Therefore, a composer of songs who transfered legal title to the copyright to a wholly-owned corporation
was a proper party plaintiff. When a composer assigns copyright title
to a publisher in exchange for the payment of royalties, an equitable
trust relationship is established between the two parties which gives the
composer standing to sue for infringement of that copyright since
otherwise the beneficial owner’s interest in the copyright could be
diluted or lessoned by a wrong-doer infringement. Hence, where
plaintiff composed an original piece of music, later called ABC’s
Monday Night Football Theme which plaintiff assigned to ABC in a
contract providing that the music composed by them and all rights
therein shall be ABC’s sole and exclusive property to do with as (ABC)
wishes, free of any obligation other than as set forth expressly herein,
and composed by the plaintiffs and where ABC, under another contract,
simultaneously assumed certain obligations as publishers to pray plain­tiffs such royalties as might be earned from the exploitation of the
theme, the court stated that although ABC had the right not to exploit
the property, the parties clearly contemplated that it would do so,
resulting in the payment of royalties to the composers by the performing
rights society of which they were members. Otherwise, said the court,
there would have been no point in negotiating lengthy contracts dealing
with the royalties they might realise from the publication and perfor­
manence of their work. Therefore, plaintiff’s right to royalties, although
contingent on ABC’s exploitation of the theme, gave them a sufficient
beneficial interest in the copyright to give them standing to seek judicial
relief under the copyright law against an alleged infringement.

The Copyright Act of 1976 has codified holdings under prior law
that if one holds legal title to a copyright and another holds the equitable title, either expressly or as a trustee, the courts will treat the equitable owner as the copyright proprietor and permit him to maintain an infringement action.\textsuperscript{21} Whereas, under prior law, an exclusive licensee could bring suit only if the copyright owner was joined as a party plaintiff or, if need be, as a party defendant,\textsuperscript{22} exclusive licensees now have standing to sue in their own name and right, without joining the copyright owner, with respect to infringements of the particular exclusive licensed right.\textsuperscript{23}

\textbf{(B) WHO MAY BE SUED :}

\textbf{(i) Primary Infringers :}

The persons who are primarily liable to be sued are individuals and companies who, without the licensee of the owner of the relevant copyright in the work, do, or authorise other persons to do, in relation to that work in the United Kingdom, United States of America and India any or more of the separate and distinct acts which are restricted by the copyright in that work.\textsuperscript{24} Thus, in relation to a published book which is alleged to infringe copyright of the authors, printers, publishers and wholesale and retail sellers are all liable to be sued for infringement of copyright. Persons may also be liable for indirect acts such as importation.\textsuperscript{25} Although authorising does not apply to such acts, a person authorising such an act might be liable as a joint tortfeasor.

In the United States, the courts have held the following to be proper defendants in a copyright infringement action: publishers,\textsuperscript{26} printers\textsuperscript{27}, vendors\textsuperscript{28}, and the owners of premises on which an infringing
A television station is liable as a vicarious or contributory infringer when it televises an infringing play over its facilities and sponsors of infringing radio or television programmes, which had the power to supervise and control the programme content, have been found liable. Similarly, a corporation which acted as manager for concert artists and which sponsored the creation of local concert associations to provide audiences for artists was held liable as a vicarious and contributory infringer where it knew that the artists used copyrighted compositions in their performances and that neither the local association nor the artists would secure copyrighted licenses. Thus where a television commercial is alleged to infringe the plaintiff's copyright, the advertising agency that prepared the commercial, as well as the advertiser itself and the television station are all potential defendants. In the case of a song, the composer of the song, the record company and its producers, that is, any one who facilitates copying by the infringer, may be sued.

Under all the three jurisdictions, (U.K., U.S.A. & India) if a company has committed one or more of the acts restricted by the copyright in a work, the directors may in certain circumstances be liable for having personally authorised the company to commit acts of infringement. Prima facie directors of a company are not liable simply because they are directors for infringements committed by servants of the company. The position is different, however, if the directors ordered or procured the infringing acts to be done. If the directors themselves directed or procured the commission of the infringing acts they are
liable in whatever sense they did so\textsuperscript{33}. Further, if a company is formed for the express purpose of committing infringing acts the individuals promoting the company will be personally responsible for the consequences\textsuperscript{34}.

At any stage of the proceedings in any cause or matter the court may on such terms as it think just, and either of its own motion or on application, order that there should be added as a party any person who ought to have been joined as a party or whose presence before the court is necessary to ensure that all issues in dispute in the cause or matter may be effectually and completely determined and adjudicated upon. The court may also order to be added any person between whom and any party to the cause or matter there may exist a question or issue arising out of, relating to or connected with any relief or remedy claimed in the cause or matter which in the opinion of the court, it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter. Thus, in an action against an importer, a foreign supplier may be joined or in a case against a retailer of allegedly infringing articles, the importer may be joined\textsuperscript{35}.

(i) \textbf{Joint Tortfeasors, Conspiracy and Contribution} :

In certain circumstances a person may be liable for infringement of copyright by reason of having been a joint tortfeasor. For example, if there is a concerted design by two persons to sell goods which infringe copyright then the parties, who have such a design and execute it, are joint tortfeasors and are both liable for infringement\textsuperscript{36}. This is so
even if the underlying agreement between the parties had been made abroad and one of the parties had done nothing within the jurisdiction. Provided that an act of infringement is in fact committed in the (U.K., U.S.A. or India as the case may be) and it is proved that the defendants had a common design to commit that act. It does not matter whether the agreement which is the basis of such design was made within or outside the jurisdiction, nor does it matter that the person himself has not done any act within the jurisdiction, which taken by itself could be said to amount to a several infringements. It is a case of one tort committed by one of them on behalf and in consent with the other.

Parties to a conspiracy to infringe copyright, or commit acts of passing-off or breach of confidence are also liable to be sued. A conspiracy to injure may be established in cases where there is an agreement between two or more persons to effect an unlawful purpose resulting in damage to the plaintiff. In the case of a conspiracy to injure, the distinction between lawful and unlawful purpose depends upon the actual state of mind of the persons who combined together. In its simplest form the contract is between the deliberate purpose of inflicting injury or causing damage, and the purpose of pursuing a legitimate and, knowing that the result will, in fact, cause injury or damage. Thus, if the predominant purpose or object which the persons combining together have in view is the promotion of their own interests, no action will lie if they are shown to have no real or substantial interests to pursue and that they have vindictive feelings towards the plaintiff, it will be much easier to infer that their true and deliberate
purpose is to inflict injury or damage on the other party. A defendant who is liable in respect of any damage suffered by the plaintiff may recover contribution from any other person liable in respect of the same damage, whether jointly with him or otherwise. In any proceedings for contribution, the amount of contribution recoverable from any person shall be such as may be found by the court to be just and equitable having regard to the extent of that person’s responsibility for the damage in question.

The U.S. Copyright Act 1976, similarly, makes no change in the existing rule that a person who violates any of the exclusive rights of the copyright owner is an infringer and that all who unite in infringement are liable, joint and severally, for damages resulting from such infringement. Although the Copyright Act doesn’t expressly render anyone liable for infringement committed by another. A defendant may be held liable as a contributory infringer if he acts with knowledge of copyright infringing activity to induce, cause, or materially contribute to the infringing conduct of another. But liability can be imposed for vicarious or contributory infringement even without regard to a defendant’s intention to infringe, or his knowledge of the infringement. The dispositive factors in a determination of vicarious liability are whether the defendant had the right and ability to supervise the infringing activities, and had a direct financial interest in such activities.

C INNOCENT INFRINGERS AND CONVERSION:

The relationship between the remedies against infringers and in respect of conversion and detention has given rise to some difficulty
with regard to the liability of defendants. For example, in order to establish that a retailer of books or records is liable for infringement of copyright by selling or offering for sale books and records, it must be proved that the retailer knew at the relevant time that the making of the article in question constituted an infringement of copyright or (in the case of an imported article) would have constituted an infringement of that copyright if the article had been made in the place into which it had been imported. The most common way of fixing the retailer with the requisite knowledge is by giving him express notice by letter of the plaintiff’s allegation of infringement. The copyright laws of the three countries under study have conferred on a plaintiff owner of copyright an independent and separate cause of action for conversion and that knowledge of the infringement on the part of the defendant retailer is not an ingredient of that cause of action. There may, therefore, be a cause of action in conversion against a defendant who, by reason of his innocence of the infringement has not committed any infringement of copyright. On this view, all that is necessary is that there has been an infringement with resulting infringing copies which the defendant possesses and has converted or is threatening to convert to his own use. In other words the remedy in conversion is not confined to those cases where the defendant is an infringer, though it must, of course, be remembered that an innocent defendant has a defence to any pecuniary remedy for conversion of infringing copies.

It has been doubted in U.K., however, whether it is correct to treat the remedy in conversion in the same way as the normal case of an
action for conversion based on actual ownership of the article alleged to be converted. The right in conversion under Copyright Act, arises solely out of the notional attribution of ownership in the substance upon which the infringing work is reproduced. In other words, the right in conversion arises solely out of the infringement and it may be that the innocent possessor of infringing copies is, when sued for conversion, entitled to the same shield (i.e. requirement of knowledge) which exists in respect of a claim against him for infringement.  

(D) CIVIL REMEDIES:

The Copyright Statutes of the United Kingdom, United States of America and that of India provide the owner of a copyright with a potent arsenal of remedies against an infringer of his work, including an injunction to restrain the infringer from violating his rights, the impoundment and destruction of all reproductions of his work made in violation of his rights, a recovery of his actual damages and any additional profits realized by the infringer or a recovery of statutory damages, and attorneys fees. The U.S. Supreme Court, therefore, rightly referred of a copyright owner’s “potent arsenal of remedies against an infringer.”

(i) Remedy by Injunction:
(a) Temporary Injunction:

The most important remedy for infringement of copyright is an injunction. An injunction may be either interlocutory that is one granted prior to the trial and only until after the trial or further order, or it may be final and permanent.
Applications for interlocutory injunctions are frequently made in actions for infringement of copyright since damages are rarely an adequate remedy for the injury suffered by the plaintiff\textsuperscript{32}. The object of an interim injunction is to give to the plaintiff temporary protection against injury by continuing violation of his rights for which he can not be adequately compensated in damages in the action. This need to protect the plaintiff must be weighed against the corresponding need of the defendant to be protected against injury resulting from his being prevented from exercising his legal rights and for which injury he could not be adequately compensated under the plaintiff's cross undertaking in damages. An interlocutory injunction is, thus, a temporary discretionary and exceptional remedy. It is available before the rights of the parties have been finally determined and, in the case of an ex-parte injunction, even before the court has been appraised of the nature of the defendant's case\textsuperscript{33}. It is no part of the court's function at this early stage in the litigation to try to resolve conflicts of evidence on affidavit as to the facts on which the claims of either party may ultimately depend. The evidence is incomplete because it is not until the trial that it is tested by oral cross-examination. Perfect justice can not be achieved since the court is acting on imperfect information. It is not, therefore, appropriate for the court to decide conflicting questions of fact or difficult questions of law which call for detailed argument and mature consideration.

At the hearing of the application for an interlocutory injunction the court must first be satisfied that the plaintiff has a real prospect of succeeding in his claim for a permanent injunction at the trial\textsuperscript{34}. If the
court is of the view that the claim is frivolous or vexatious an injunction will not be granted. The word "frivolous" and "vexatious", in this context are understood in a somewhat different sense than the same words are when used or on application to strike out a statement of claim or a defence as being frivolous or vexatious. What the affidavit evidence must disclose is that there is a serious question to be tried and that the plaintiff has prospects of success which exist in substance and reality. The plaintiff does not, as was formerly thought, have to establish that he has a strong prima facie case or even a probability that he will succeed at the trial. The burden on the plaintiff is the lesser one of showing an arguable case to be tried.

The position under the United States copyright law is almost similar to one in United Kingdom. Thus the plaintiff under the U.S. law must show irreparable harm from continued infringement and either:

1. a likelihood of success on the merits, or
2. sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping heavily towards the party requesting the preliminary relief.

But because injury normally can be presumed the plaintiff in a copyright case is entitled to a preliminary injunction even without a detailed showing of irreparable harm if the plaintiff demonstrates probable success on the merit or a prima facie case of infringement. In other words, the irreparable injury which must be shown for purposes of obtaining a preliminary injunction will normally be presumed from a showing of copyright infringement, thus making the test for obtaining
In determining the likelihood of success on the merits, factors such as the failure of the defendant, who was present in the court, to testify in denial of copying that was apparent from the close similarity of line drawings to paragraphs in a furniture catalogue and to testify in support of his claim of a common historical source have been considered.

Preliminary injunctive relief may be warranted even where it may be impossible for the copyright owner to gather sufficient proof of his damages. A preliminary injunction is an appropriate remedy where the irreparable harm caused by the defendants can not be adequately calculated or compensated in money damages as where the harm is caused by adverse effects on plaintiff’s marketing strategy, business relationships, good-will, and relations with the public. A United State Court has found a likelihood of irreparable harm justifying a preliminary injunction where industry trade shows in upcoming months would give the defendant an opportunity to pass off his product as his own creation, when, in fact, it was a copy of plaintiff’s creation. And a showing of irreparable harm was held to have been established where the alleged infringer, by marketing his video game, jeopardized the substantial investment plaintiff’s had in their game, in view of the fact that video games are of short-lived nature and in view of the fact that in order to play defendant’s allegedly infringing game, the purchaser must buy defendant’s game console, thus, impacting on plaintiff’s entire video game system and not only sales of the particular game. In determining whether a competitor should be enjoined from infringing...
Copyrights on computer programs is far greater than the cost of their duplication, so that even without the presumption of irreparable harm generally applied in copyright infringement cases, the jeopardy to a computer manufacturing investment and competitive position caused by a competitor’s wholesale copying of many of its key operating programs would satisfy the requirement of irreparable harm needed to support a preliminary injunction.

A preliminary injunction, will however, be denied, where plaintiff fails to make the required showing of probable success on the merits and irreparable harm. Lack of a valid copyright destroys the likelihood of success. In an action by a publisher of religious music against two religious organisations, arising out of the use of unauthorised copies of copyrighted hymnals in various dioceses, based upon the organisations failure to provide adequate direction to dioceses and parishes as to the proper use of such copyrighted material, a preliminary injunction would be denied in view of the defendants lack of authority to supervise or control the infringing activities, the lack of receipt of any financial benefit from such activities, and the ability of the publisher to assess the damages resulting from lost profits.

One commentator believes that keeping in view above decisions, the presumption of irreparable harm explains the great case of preliminary relief in copyright cases. Paul Golstein, while expressing concern that courts may be too quick to grant “coercive relief” when the defendant’s work consists only partly of infringing material, concedes that such caution is rarely observed. As a rationale for the
ready presumption that damages may undercompensate he suggests: "Copyright protects more than the author’s strictly economic interests; her personal, aesthetic and reputational interest may also be at stake." Melville Nimmer suggests as an explanation the transitory value of most copyrights in such fields as "dramatic works, fabric designs and possibly video games." But, as he demonstrates with clouds of citations, the rush to presume irreparable harm is not confined to such alleged ephemera.

The most thorough recent appellate consideration of preliminary injunction tests emphasizes their interdefence. In Concrete Machinery Co v. Classic Lawn Ornaments Inc., Concrete charged Classic with copying its lawn statuary - deer, swans, and such. Classic in the brief preliminary injunction hearing, emphasized differences in the creatures. The trial court denied the injunction, the court of appeals reversed. In addition to expounding substantive principles for finding infringement, the court of appeals made its own positive appraisal of the plaintiff’s likelihood of success, and cautioned against giving undue weight to expected hardship on the defendant if it was banned from the concrete lawn ornament business for the time being. Such solicitude, the court observed, would favor a defendant where principal business was illicit copying. As for the public interest factor, the court said there was clearly a public interest in protecting copyrights, since Congress has beneficially authorized them. This is a conventional quick way of dealing with the public interest.

One emerges from all this weighing of imponderables with a
sense that likelihood of success is the dominant factor. But if the defendant can take arms to oppose a preliminary injunction, it is customarily asserted that the entire matter is entrusted to the discretion of the trial court. The trial court may and will deny the injunction, if the plaintiff does not seem to have much of a case. Nevertheless, a persistent plaintiff, as in concrete, can sometimes avoid the denial. Whatever the reasons, the copyright plaintiff has a distinct edge in a preliminary round that may turn out to be decisive.

The Indian courts have heavily relied on the aforesaid British and American decisions in matters of injunctive remedy in copyright cases. Thus, Avadh Behari Rohatgi J. made following observation in *Penguin Books Ltd. England V. M's India Book Distribution*:

As most infringements of copyrights consist of a continuous process of successive infringing acts such as importation of infringing copies as in this case the most important remedy and in many cases the only effective one is the injunction. This is always in the discretion of the court and the court has to weigh the possible damage to the plaintiff if the injunction is not granted against the possible damage to the defendant if it is granted. Thus, once the infringement and its continuance is proved the plaintiff will usually be entitled to an injunction, but the injunction would not be granted if the damage caused to the defendant by granting the injunction
would be out of all proportion to the seriousness of the infringement or to the possible damage to the plaintiff. In actions for infringement of copyright damages are often not an adequate remedy since there are difficulties in both ascertaining and quantifying such damage as injury to the plaintiff’s property, business and good will.

In this case, Penguin Books Ltd. of England (original plaintiff) brought a suit for perpetual injunction against the respondents. M/s India Book distributors of New Delhi, Bombay, Madras, Calcutta (original defendants) restraining them from infringing Penguin’s territorial copyrights licence in 23 books, the subject matter of the suit. Admittedly India Book Distributors, Bombay are importing, distributing and offering for sale in India, 13 out of these 23 titles, Penguin asked for a temporary injunction in the suit but were denied the same by the lower court. Upholding the plea of Penguin, the Delhi High Court held that the balance of convenience is in favour of Penguins. There is prima facie an infringement of an “exclusive right”. A continuance or repetition of infringement is threatened in future as well. Further, the court took a serious view of the fact that American editions which are infringing copies are being sold at lower prices than the British Penguins.

Similarly in *N.T. Raghunathan and other V. All India Reporter Ltd*[^2], plaintiff, All India Reporter (at the trial court) published a monthly law journal known as the All India Reporter. Apart from reports of judgements of various High Courts in India and of the Supreme Court...
of India it publishes at the head of the reports, notes and head notes on points decided in those judgements. In 1955 the plaintiff commenced the practice of reporting in addition to the judgements, their respective head notes without the original judgements. These it published separately in the monthly parts of its publication and called "Notes of Unreported Cases" or N.U.C. The defendant who is the editor of the law journal called Modern Weekly Notes recently published an "All India Digest, 1951-55, civil, criminal and revenue". In this Digest, he has pirated the notes and head-notes published by the plaintiff in his "NUC"s. The court granted injunction to the plaintiff and observed:

The principles upon which a court grants temporary injunction are well settled, and they are that there must be a bonafide contention between the parties and that on the facts before the court it must be satisfied that there is a probability that the plaintiff is entitled to the relief, or in other words, that he has a prima facie case and if there is a prima facie case the court has to see on which side in the event of success or will lie the balance of inconvenience if the injunction does not issue.8

On the other hand where in a suit for injunction restraining the infringement of copyright and damages the plaintiff sought for issue of a temporary injunction restraining the defendants from selling their books, pending the disposal of the suit, the court held that if the injury with which the plaintiffs were threatened was not irreparable and the
direction by the trial judge to the defendants to keep separate and regular accounts of the sale of their books was sufficient, no case for grant of temporary injunction is made out.

Where only part of a work has been copied, and the part which has been copied from the plaintiff's work can be separated from that which has not been copied, an injunction will be granted only against the objectionable part or parts. But even where a very large proportion of a work of a piratical nature is unquestionably original, if the parts which have been copied cannot be separated from those which are original without destroying the use and value of the original matter, he who has made an improper use of that which did not belong to him must suffer the consequences of so doing, for an injunction will be issued against the whole.

"As to the hard consequences which would flow from granting an injunction", said Lord Eldon, in *Mawman V. Tegg*, "when a very large proportion of the work is unquestionably original, I can say that, if the parts which have been copied cannot be separated from those which are original, without destroying the use and value of the original matter, he who has made an improper use of that which did not belong to him with what belongs to me, and the mixtures be forbidden by law, he must again separate them, and he must bear all the mischief and loss which the separation may occasion if an individual chooses in any work to mix my literary matter which belongs to me; and if the parts of the work can not be separated, and if by that means the injunction, which restrained the publication of any literary matter, prevents also the publication of his
own literary matter, he has only himself to blame”.

(b) **Permanent Injunction**

If the plaintiff succeeds at the trial in establishing infringement of copyright, he will normally be entitled to a permanent injunction to restrain future infringements. The question whether an injunction ought to be granted permanently is one which is determined by reference to the circumstances and state of the law existing at the date when the question falls to be determined and the court’s consideration is not confined to those circumstances existing at the date of the writ.

If, after a trial on the merits, plaintiff succeeds in establishing copyright infringement, he is entitled to a permanent injunction in addition to the recovery of monetary damages. A permanent injunction is particularly appropriate where money damages would not suffice.

(E) **ANTON PILLER ORDER**

In the United Kingdom, in certain cases the High Court has an inherent jurisdiction, or an application made to the court by a plaintiff *ex-parte*, and *in camera*, to take a mandatory order requiring a defendant to permit or allow the plaintiff and his representatives to enter the defendant’s premises, as specified in the order, so as to inspect articles and documents relevant to the proceedings and to remove them or take copies of them. The order does not authorise the plaintiff or his solicitors or anyone else to enter the premises unlawfully against the will of the defendant. It is not a search warrant; the order only authorises entry and inspection by permission of the defendant. The
defendant, therefore, has the safeguard that the plaintiff or his agents must get his permission before entry onto the premises. The defendant is, however, ordered by the *in personam* to give his permission with the result that, if he does not do so, he is in contempt of court.

An Anton Piller Order is only made in the most extreme circumstances, for the form of the order is drastic and its effects are far reaching. This form of order has, in many copyright and passing off cases, proved to be one of great efficacy, because the defendant knows nothing of the proceedings until he is required by the order to admit the plaintiff and his representatives to his premines. So effective have been these orders that the jurisdiction is now frequently exercised in cases of infringement of copyright, passing off, infringement of patent & breach of confidence.

The justification for the exercise of this exceptional jurisdiction is that, on the facts of the particular case, it is essential that the plaintiff should have inspection, so that justice can be done between the parties and where there is grave danger that, if an unscrupulous defendant is forewarned, evidence of vital importance in the litigation will be destroyed or concealed from the court and from the plaintiff, or lost, or taken out of the jurisdiction, so that the plaintiff will be deprived of his remedy and the ends of justice thus defeated.

Great care is taken in the exercise of the jurisdiction and in the framing of the precise terms of the order to safeguard the defendant so as to ensure that no real harm is done to him and that his rights are respected.
CHAPTER 11

Three conditions must be satisfied before the court will make an order: first, the plaintiff must show that he has an extremely strong prima facie case; secondly, the plaintiff must show that he has suffered, or is likely to suffer, very serious and irreparable damage if an order is not made; and, thirdly, there must be clear evidence that the defendant has in his possession incriminating documents or things and that there is a real possibility that he may destroy such material before any inter partes application can be made on notice.

The U.S. & Indian Copyright Laws do not specifically provide for this drastic remedy in their copyright statutes yet it can be used under the general injunctive powers of the courts.

(F) DAMAGES:

The next remedy in the three jurisdictions in case of infringement of copyright is damages. A holder of copyright will be entitled to recover damages for the infringement of his right. The measure of damage is the depreciation caused by the infringement to the value of the copyright as a cause of action. Thus, if the violator of copyright has dealt with the copyright holder's copyrighted work as if he had a licence, the defendant ought to pay as damages an amount equivalent to the fair fee which he would have had to pay for a licence to do the acts which he has done. There will also be taken into account any loss which the copyright owner has suffered by reason of the diminution of the sales of his work, or the loss of profit which he might otherwise have made, but these will not be taken into account under his head any
benefit which may have accrued to the violator by the use of his work. The fact that the pirated work may have injured the reputation and vulgarised the original is also a fact that may be taken into consideration in assessing the amount of damages\textsuperscript{98}, and generally the damages may be said to be at large\textsuperscript{99}.

In United States, under the Copyright Act of 1976, an infringer of copyright is liable for either (1) the copyright owner’s actual damages and any additional profits of the infringer, or (2), statutory damages\textsuperscript{100}. The Act, thus, resolved the conflict under prior law as to whether actual damages as well as profits were recoverable cumulatively or alternatively\textsuperscript{101}. Under the 1976 Act, the copyright owner may elect, at anytime before final judgement is rendered, to recover, instead of actual damages and profits, as award of statutory damages\textsuperscript{102}, but if the copyright owner elects to recover actual damages and profits and fails to prove either, the court can’t impose statutory damages\textsuperscript{103}.

Although it has been argued that, given the availability of statutory damages, there is no need to have a comprehensive concept of actual damages or of infringer’s profits, this contention has been rejected by a court which noted that since the maximum statutory damages are only $50,000 and an infringing work used as a marketing device could generate much greater profits for the infringer than $50,000 and cause much greater losses to the copyright owner, it would be unsound to infer from the provision for statutory damages a congressional intent to overthrow normal tort damage principles\textsuperscript{104}. Under the statute, the copyright owner is entitled to recover the actual damages
suffered as a result of the infringement, and any profits of the infringer that are attributable to the infringement and "are not taken into account" in computing the actual damages. The "not taken into account" clause eliminates an ambiguity with regard to the possibility of double recovery under the prior law and bars the owner from receiving an additional award of damages based on an infringer's profits: in other words, if the profits the owner would have made but for the infringement are equal to the amount made by selling the copyrighted item, and the owner proves his lost profit, he cannot recover both his lost profits and the profits made by the infringer. On the other hand, if the copyright infringer makes greater profits from the sale of the copyrighted item than the owner lost because, for example, the infringer is a more efficient producer than the owner or sells in a different market, the copyright owner is allowed to capture the additional profit in his damage award even though it does not represent a loss to him. While it may seem wrong to penalize the infringer for his superior efficiency and to give the owner a windfall, the purpose of the law is to discourage infringement: by preventing infringers from obtaining any net profits, it encourages any would-be infringer to negotiate directly with the owner of the copyright that he wants to use rather than stealing the copyright and forcing the owner to seek compensation through the courts. Furthermore, some of this "windfall" may actually be profit that the owner would have obtained from licensing his copyright to the infringer had the infringer sought a licence. On the other hand, it has been said that the statute did not contemplate that a court would award
damages which would provide plaintiff with a windfall\textsuperscript{109}.

The statutory provision making registration a prerequisite to certain remedies for infringement, bars statutory damages for the period before registration but is not a prohibition against the award of actual damages; actual damages are proper for acts of infringement occurring both before or after the effective date of the registration\textsuperscript{110}.

In establishing the infringer's profits, the copyright owner is required to present proof only of the infringer's gross revenue, and the infringer is required to prove his or her deductible expenses and the elements of profit attributable to factors other than the copyrighted work\textsuperscript{111}. Thus, the holder of copyright can make out a prima facie case for an award of infringer's profits by showing the defendant's gross revenues from the sale of the infringing copies, but it is enough to show the defendant's gross revenues from the sale of everything he sold. After the plaintiff proves the defendant's gross receipts, the burden shifts to the defendant to prove any deductible costs or expenses\textsuperscript{112}. Similarly, once a copyright holder establishes with reasonable probability the existence of a casual connection between the infringement and a loss of revenue, the burden shifts to the infringer to show that this damage would have occurred had there been no taking of copyrighted expression\textsuperscript{113}.

An infringer's profit need not be apportioned in direct relation to the amount of material plagiarized. Thus, a publisher's profits from the sale of an infringing book is not apportioned, although the plagiarized material constituted only a comparatively small part of the plaintiff's
work, since the profit was due to the book as a whole, not to any particular part thereof\textsuperscript{114}. Similarly, where plaintiff sold a 5 record album which constituted the only complete set of \textit{Scott Joplin}'s works, as assertion by defendants that since the infringing material which they were not authorised to record filled only one side of 5 record set, and that therefore plaintiffs were only entitled to 10\% of the profits, was properly rejected by the District Court as a meaningless percentage since, as the court observed, the inclusion of the infringing composition made defendant's album the only "complete set" of Joplin's work. Hence, in the absence of evidence by defendant to dispute the contribution of each composition to the marketability of the album, an award of one half the profits from the complete works was not unreasonable\textsuperscript{114}. And if a book is essentially worthless if the infringed material were removed, the entire profits from the sale of such books should be awarded to the holder of copyright\textsuperscript{115}.

(i) \textbf{Statutory Damages}:

Under the U.S. Copyright Act, 1976, a copyright owner may elect, at any time before final judgement is rendered, to recover "statutory damages" instead of actual damages and profits\textsuperscript{117}. Statutory damages may be elected whether or not there is adequate evidence of the actual damages suffered by the copyright owner or of the profits reaped by the infringer\textsuperscript{118}. But normally an action for statutory damages is appropriate where the measure of actual damages is difficult to prove\textsuperscript{119}. A statutory award is made for all infringements involved in the action,
with respect to any one work for which any one infringer is liable individually, or for which any two or more infringers are liable jointly and severally. Thus, one defendant who infringes one copyrighted work is liable for statutory damages no matter how many acts of infringement are involved in the action and regardless of whether the acts are separate, isolated or occurred in a related series. If the action involves the infringement of two or more separate and independent copyrighted works, statutory damages must be awarded for each such work.

Unless the infringement was committed wilfully or the infringer sustains the burden of proving that he was not aware and had no reason to believe that his acts constituted an infringement, the award of statutory damages must be no less than $250 nor more than $10,000 for all infringements involved in the action, with respect to any one work. Within this permissible limit, the amount of statutory damages is within the discretion of the court.

Where the copyright owner sustains the burden of proving, and the court finds, that infringement was committed wilfully, the court in its discretion may increase the award of statutory damages to a sum of not more than $50,000. Proof that a warning of infringement was received and disregarded is essential to show wilful infringement. Where the infringer sustains the burden of proving that he was not aware and had no reason to believe that his or her acts constituted an infringement of copyright, the court in its discretion may reduce the award of statutory damages to a sum of not less than $100.

As far as Indian copyright law is concerned, the Copyright Act of
1957 also mentions "damages" as one of the civil remedies available to an owner of copyright against an infringer. Laying emphasis on the system of civil remedies, the Delhi High Court observed in *Penguin Books Ltd. England V M S. India Book Distributors*:

If copyright is to possess any value to its owner, it must be capable of enforcement. Laws in general are enforced in one of the two ways: (i) Publicity by means of the police, custom officers, or similar agency, such as registrar of copyright, or (ii) Privately by legal action taken by the person who suffers from any breaches of the law. Most copyright law falls into the record category, for copyright is an essence of a private legal right. It is for the owner of the copyright to go to court to prevent a wrong from taking place or to seek redress when a wrong has taken place. It is for the copyright owner to seek a 'civil remedy' for any infringement (actual or potential) of his legal interest.

As seen above in most cases in India, the relief which has been claimed in copyright cases was injunctive and, therefore, the law as to damages is not all that developed yet the rules evolved in U.K and U.S. will be good in India wherever need may so arise.

(ii) **Additional Damages**:

The U.K. Copyright Act of 1988 makes provision for the award of additional damages having regard to all the circumstances and in
particular to the flagrancy of the infringement and any benefit accruing to the defendant by reason of the infringement\(^\text{129}\). Where the court having regard, in addition to all other material consideration, to the flagrancy of the infringement and any benefit shown to have accrued to the defendant by reason of the infringement, is satisfied that effective relief would not otherwise be available to the plaintiff, the court in assessing damages for the infringement shall have power to award such additional damages as the court may consider appropriate in the circumstances\(^\text{130}\). The section is directed to providing effective relief for the plaintiff. If, for example, effective relief is available to the plaintiff in respect of another cause of action, such as libel or breach of confidence, relief may not be given by an award of additional damages for the infringement of copyright\(^\text{131}\). It is thought that damages under this section might be appropriate where a defendant adopts a policy of continual infringement, but an injunction is not an appropriate remedy because the defendant reproduces different material on each occasion. Additional damages may also be awarded where the conduct of the defendant has been deceitful and treacherous, thereby obtaining benefits for himself and inflicting on the plaintiff humiliation for which it is difficult to compensate\(^\text{132}\). Flagrancy implies scandalous conduct, deceit including deliberate and calculated infringement where a defendant reaps a pecuniary advantage in excess of the damages he would otherwise have to pay\(^\text{133}\).

In the United States, punitive damages are not available under the Copyright Act of 1976\(^\text{134}\). When an award of statutory damages is made,
particularly under Section 504 (c) (2) providing for an increase of statutory damages to $ 50,000 for wilful infringement, punitive or exemplary damages are inappropriate since the public policy rationale for punitive damages (punishing and preventing malicious conduct) can properly be accounted for in the provisions for increasing maximum statutory damages from $ 10,000 to $ 50,000 per infringement found to be wilful\(^{135}\).

As in United States, the Indian law also does not specifically makes a provision for the award of additional damages in the Act itself yet the courts in its general power to award damages can very well make an award of exemplary damages to meet the ends of justice.

(G) CRIMINAL REMEDIES:

In most cases of copyright infringements, the owners of the copyright resort to civil remedies yet in many cases of wilful infringements, the civil remedies are not considered sufficient and therefore more stringent course is allowed by the copyright statutes of the three countries which form subject matter of the present study i.e. U.K., U.S.A. & India.

Section 107 of the U.K. Copyright, Designs Patents Act 1988 provides that an offence is committed by any person who, without the licence of the copyright owner makes for sale or hire or imports into the United Kingdom otherwise than for his private and domestic use or possesses in the course of a business with a view to committing any act infringing the copyright or in the course of a business sells or lets for
hire or offers or expose for sale or hire or exhibits in public or distributes otherwise than in the course of a business to such an extent as to affect prejudicially the owner of the copyright, an article which is, and which he knows or has reason to believe is an infringing copy of a copyrighted work.

Similarly the 1988 Act declares that a person commits an offence who makes an article specifically designed or adapted for making copies of a particular copyright work, or has such an article in possession knowing or having reason to believe that it is to be used to make infringing copies for sale or hire or for use in the course of a business.

In the same manner, where copyright infringed (otherwise than by reception of a broadcast or cable programme) -

(a) by the public performance of a literary, dramatic or musical work or,
(b) by the playing or showing in public of a sound recording or film,

any person who caused the work to be so performed, played or shown is guilty of an offence if he knew or had reason to believe that copyright would be infringed.

The offences prescribed above are punishable on summary conviction. The offences of making, selling, exhibiting, importing or distributing infringing copies are punishable, for a term not exceeding six months or a fine not exceeding the statutory maximum or both. A person found guilty on conviction will be punished with a fine or imprisonment for a term not exceeding two years or both. A person
guilty of any other offence as mentioned above is liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale or both.

It is further provided that the court before which proceedings are brought against a person for an offence under above section may, if satisfied that at the time of his arrest or charge he had in his possession, an infringing copy of a copyrighted work or he had in his possession, custody or control an article specifically designed or adopted for making copies of a particular copyrighted work, knowing or having reason to believe that it had been or was to be used to make infringing copies, order that the infringing copy or article be delivered up to the copyright owner or to such other person as the court may direct.

Where an offence under Section 107 committed by a body corporate is proved to have been committed with the consent or connivance of a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

As in United Kingdom, so in United States, despite above criminal offences, prosecutions in cases of copyright violations are extremely rare. The U.S. Copyright Act of 1976 at first provided a maximum fine of $10,000 for criminal infringement which could under certain circumstance be raised to $50,000. In 1982, Congress amended the Copyright Act of 1976 to provide that anyone who infringes a copyright wilfully and for commercial advantage or private financial
gain shall be fined up to $250,000 or imprisoned for up to 5 years if the
offence involves a reproduction for distribution, during any 180 day
period, of at least 1,000 phonorecords or copies infringing the copyright
in one or more sound recordings, or of at least 65 copies infringing the
copyright in one or more motion pictures or other audiovisual works. or
is a record or subsequent offence.

A similar fine, or imprisonment for not more than 2 year is to be
imposed if the offence involves a reproduction for distribution, during
any 180 day period, of more than 100 but less than 1,000 phonorecords
or copies or of more than 7 but less than 65 copies infringing the
copyright in one or more motion pictures or other audiovisual works.
For an infringement involving a smaller number of copies or
phonorecords than stated above, the maximum penalty is $25,000 and
imprisonment for one year.

When any person is convicted of criminal infringement, the court
in its judgement of conviction must order the forfeiture and destruction
or other disposition of all infringing copies of phonorecords and all
implements, devices, or equipment used in the manufacture of such
infringing copies or phonorecords\(^{143}\). Where the infringement involves
sound recordings, such sound recordings and the materials used to
make, reproduce or assembled may be seized and forfeited to the United
States\(^{144}\).

Moreover, it is also provided that anyone who knowingly traffics
in a counterfeited label affixed or designed to be affixed to a phonorecord,
or a copy of a motion picture or other audiovisual work, shall be fined
up to $250,000 or imprisoned for up to 5 years or both. For the purposes of this provision the term "counterfeit label" means an identifying label or container that appears to be genuine but is not.

As far as Indian law on the point is concerned, it is not all that radical as its American counterpart and is similar to one in the United Kingdom. Section 63 of the Copyright Act of 1957 says that any person who knowingly infringes or abets the infringement of the copyright in a work or any other right conferred by this Act shall punished with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees. But where the infringement has not been made for gain in the course of trade or business, the court may impose a sentence of imprisonment for a term of less than six months or a fine less than fifty thousand rupees.

Section 63A which was inserted by the 1994 Amendment provides for enhanced penalties on second and subsequent conviction. It lays down that whoever having already been convicted of an offence under above Section (Section 63) is again convicted of any such offence shall be punishable for the second and for every subsequent offence, with imprisonment for a term which shall not be less than one lakh rupees but which may extend to two lakh rupees.

The Act also punishes a person who knowingly makes, or has in his possession, any plate for the purpose of making infringing copies of any work in which copyright subsists with imprisonment which may
extend to one year, or with fine or with both\textsuperscript{147}.

As to the offences by companies also, Indian law is at par with the British law as discussed above.

An analysis of above provisions in the three countries of our study, thus, reveals that as far as copyright offences are concerned, the requirement of mens rea i.e. guilty mind is invariably insisted upon. Normally it is the element of "knowledge" or "reason to believe" which is being talked about. Then without doubt, United States provides more stringent penalties to the infringers of copyright as compared to United Kingdom and India. There is, therefore, an urgent need to effect further amendment in the Indian law on the issue and make more extensive use of criminal remedies to overcome large scale violations of copyright.
1. U.K. copyright Act 1988, section 96; U.S. Copyright Act 1976, Section 501 (a); Indian copyright Act 1957, Section 55.


3. Sweet V. Cater (1841) 11 Sim. 572; Hazlitt V. Templeman (1866) 13 L.T. 593.


5. U.K. Copyright Act 1956, Section 37 (1).


7. Roban Jig & Tool Co. Ltd. & Elkadart Ltd. V. Taylor & Ors (1979) F.S.R. 130

8. Merchant Adventures Ltd.V. Grew & Co Ltd. (1972) ch. 242; Performing Right Society Ltd. V. London Theatre of Varieties Ltd. Supra note 2; Ward Lock & Co. Ltd. V. Long (1906) 2 ch. 550; University of London Press Ltd. V. University Tutorial. Supra note 4.

9. Nicol V. Stockdale (1818) 3 Swans 687; Petty V. Taylor (1897) 1 ch. 465.


12. Lauri V. Renard (1892) 3 ch. 402.


15. U.S. Copyright Act 1976, Section 411 (a).

16. The “beneficial owner” includes, for example, an author of a work who has transferred legal title to the copyright to a publisher in return for a stipulated royalty based upon the sale of copies of the work. House Rep. No. 94-1476, p 159.
17. U.S. Copyright Act 1976, Section 501 (b).
18. Kamakazi Music Corp. V. Robbouns Music Corp. (SDNY) 534 F Supp 69 (Singer - song writer Banj Manilaw was the sole shareholder of Kamakazi Corp).
19. Cortner V. Israel (CA2NY) 732 Fzd 267.
20. Ibid.
21. Mauning V Miller Music Corp. (DC NY) 174 Supp 192; an author holding legal title to the copyright of a pamphlet for the benefit of another is entitled to sue for infringement. Hanson V. Jaccard Jewelry Co. (CCMo) 32 F 302; A proprietor of a copyright publication may sue for infringement of an article in the publication copyrighted for the benefit of the author of the article. Schellberg V Empringham (DCNY) 36 F 2d 991.
22. Goldwyn Pictures Corp. V Howells Sales Co (CA2NY) 282 Fq.
24. U.K. copyright Act, 1956, Sections 1 (1) and (2) : Doing and authorising the doing are separate acts of infringement; Ash V. Hutchinson (1936) ch. 489. A plaintiff must plead specific authorisation of an actual breach of copyright affecting him; A & M. Records Inc. & Ors. V. Audio Magnets Incorporated (U.K.) Ltd. (1979) F.S.R. 1.
28. Where owner of 23 chain stores had a licensing agreement with a concessionaire who ran its record departments in such a way that the chain store corporation bore none of the business risk of running the department but received 10 to 12 percent of the concessionaire’s gross receipts, vicarious liability would be imposed upon the chain store corporation for the direct infringement committed by its concessionaire on the basis that the chain
store corporation had the power to carefully police the conduct of its concessionaire Shapiro Berstein & Co V. H.L. Green Co. (CAZNY) 316 F 2d 304.

29. Warner Bros, Inc. V. O’Keefe(SD lowal) 468 F supp. 16; Whether or not he pays the performers, the operator of a cafe wherein copyrighted musical compositions are publicly performed for profit is liable for infringement. Harun’s, Inc. V. Theodosiades (ED Pa) 246 F supp 799; The owner and operator of a place of public entertainment for profit is liable for permitting the unlicensed use of musical compositions on his premises and can not escape liability on the ground that the person furnishing the performance is an independant contractor who selects the compositions to be played. Leigh V. Sakkars (FND Cal) 215 USPQ 113.


32. Performing Right Society Ltd. V. Ciryl Theatrical Syndicate (1924) 1 K.B. 1.

33. Performing Right Society Ltd. V. Cisyl Theatrical Ltd. ibid; British Thomson - Houston Co. Ltd. V. Sterling Accessories Ltd. (1924) 2 ch. 33; Mentmore Manufacturing Co. Ltd. V. National Merchandising Manufacturing Co. Inc. (1978) 89 D.L.R. (3d) 195.


36. Moron - Normich Products Inc. V. Inter cen Ltd. (1976) R.P.C. 501; Ash V. Hutchinson, Supra note 24; P.R.S. Ltd. V. Mitchell, etc. Ltd. (1924) 1 K B. 762; Ravenscroft V. Herbert & Anor.
37. Ibid.
38. Sorrell V. Smith (1925) A.C. 700; Crofter Hand Waven Harbis Tweed Co. V. Veitch (1942) A.C. 435.
41. Ibid, Section 2 (1).
43. It has been noted that this is in contrast to the Patent Act which expressly brands anyone who "actively induces infringement of a patent" as an infringer and imposes liability on certain individuals labeled "contributory" infringers. Sony corp of America V. University City Studios, Inc. (US) 78 L. Ed 2d 574.
45. Shapiro, Bernstein & Co. V. H.L. Green Co. Supra note 28.
46. Sireen Gems - Columbia Music, Inc. V. Metlis & Lebow Corp. (CAZNY) 453 F 2d 552.
47. U.K. copyright Act 1956, Section 5(3).
49. W.E.A. Records Ltd. V. Benson King Ltd. (1975) 1 W.L.R. 44.
50. Infabrics Ltd. V. Jaytex Shirt Co. Ltd. Supra note 48.
51. Song corp. of America V. University of City Studios, supra note 43.
53. Hoffmann - La Roche & Co. A.G. V. Secretary of state for Trade and Industry (1975) AC 295; American Cyanamid Co. V. Ethicon
Ltd. (1975) A.C. 396.

54. American Cyanamid Co. V. Ethicon Ltd. Ibid.


56. Ibid.

57. Gereshwin V. Whole Thing Co. (F CD Cal) 208 USPQ 557; Rapso Form, Inc. V. Scientific Applications, Inc. (SDNY) 479 F Supp 1027; The plaintiff must make at least a threshold showing of irreparable harm: DC Comics, Inc. V. Crazy Eddie, Inc. (F SDNY) 205 USPQ 1177; Irreparable harm has been shown where a defendant copied advertisements from the plaintiff’s yellow pages directory and used them to solicit advertisements for a competing directory. North Western Bell Tel. Co. V. Bedco of Minnesota, Inc. (DC Minn) 501 F Sup 299.

58. Stevens Liner Associates, Inc. V. Mastercraft Corp. (FSD NY) 208 USPQ 669 (likelihood established by showing a valid copyright, access by the defendant and substantial similarity between plaintiff’s product and the allegedly infringing product).

59. Consumers Union of United States, Inc. V. General Signal Corp. (CA 2 NY) 724 F 2d 1044.

60. Apple computer, Inc. V. Franklin Computer Corp. (CA 3 pa) 714 F 2d 1240; Encyclopedia Britannica Educational Corp. V. Crooks (WD NY) 447 F Supp 243.

61. Apple Computer, Inc. V. Franklin Computer Corp. Ibid.

62. Clark Equipment Co. V. Harlan Corp. (DC kan) 539 F Supp 561.


64. Mosley V. Follett (F SD NY) 209 USPQ 1109.

65. Cassidy V. Bowlin (WD Mo) 540 F Supp 901. Noting that where a wild life photographer’s lithographs were reproduced and distributed without his authority, his business reputation and goodwill had been placed in jeopardy because he was unable to
exercise control over the quality of his copyrighted work and that it might be impossible to gather sufficient proof of the precise measure of his damages since it may be impossible to ascertain to what extent the public has come to associate the plaintiff's name with the inferior works published by defendants.

66. Universal City Studios, Inc. V. J.A.R. Sales, Inc. (F CD Cal) 201 USPQ 679.
67. Albert E. Prince, Inc. V. Metznor (Ed Pa) 574 F Supp
68. Atari, Inc. V. North American Philips Consumer Electronics Corp. (CA 7 111) 672 F 2 d 607.
69. Apple computer, Inc. V. Franklin Computer Corp. Supra Note 60.
71. Building officials & Code Adm, V. Code Technology, Inc. (CAI Mass) 628 F 2d 730, holding that because the proprietor of a copyrighted model building code adopted by Massachusetts is not likely to succeed on the claim that his copyright survived incorporation into the official regulations, a preliminary injunction against publishing the code in another work is not available.
72. F.E.L. Publication, Ltd. V. National Conference of Catholic Bishops, Supra note 70.
73. This is the burden of Timothy J. Meclimon, "Denial of Preliminary injunction in copyright infringement cases: An Emerging Judicially crafted Compulsory License", 10 Colum-VLAJL & Artn 277 (1986).
76. NIMMER, MELVILLE B. & NIMMER, DAVID, NIMMER ON COPYRIGHT, Mather Bender (1991), pp. 14-18
77. Ibid.
78. 843 F2d 600 (1st Cir 1988).
80. McClimon, J. Timothy, supra note 73, at PP.292-93.
81. AIR 1985 Delhi 29, at P.38; Also see Glaxo operations UK Ltd, Middex (England), and others V. Samrat Pharmaceutical, Kanpur, AIR 1984 Delhi 265.
82. AIR 1971 Bom 48.
83. Ibid at p. 49.
87. (1826) 2 Russ. 385; Finn V. Pugliese (1918) 18 S. R. (N.S.W.) 530.
89. Lottie Joplin Thomas Trust V. Crown Publishers Inc (CA 2 NY) 592 F 2d 651.
90. Lauratex Textile Corp. V. Alton Knitting Mills, Inc (SD NY) 519 F Supp 730.
94. Anton Piller K.G. V. Manufacturing Processes Ltd. & Ors, Supra note 91.


97. Birn Bron Ltd. V. Keene & Co. Ltd. (1918) 2 Ch. 281; Fenning Film Service Ltd. V. Wolverchampton, etc, Cinemas Ltd. (1914) 3 K.B. 1171.

98. Hanfstaengl V. W.H. Smith & Sons (1905) 1 Ch. 519.

99. Fenning Film Service Ltd. V. Wolverdhampton, Supra note 97.


100. U.S. Copyright Act 1976, Section 504 (a).

101. Lottie Joplin Thomas Trust V. Crown Publishers, Inc. Supra note 89 (both actual damages and profits recoverable under 1909 Act); Sid. & Marty Krofft Television Productions, Inc. V. McDonald’s Corp. (CA 9 Cal) 562 F 2 d 1157 (actual damages or defendant’s profits recoverable under prior law).

102. U.S. Copyrights Act 1976, Section 504 (c).


105. U.S. Copyright Act 1976, Section 504 (b).

106. Taylor V. Meirick (CA 7 III) 712 F 2 d III2.

107. Ibid.

108. Ibid.
111. U.S. Copyright Act 1976, Section 504 (b).
116. National Research Bureau, Inc. v. Kucker (SD NY) 481 F Supp. 612, holding that if it is found that a directory of shopping centers, containing 900 listings, would have been essentially worthless if it did not contain the 400 listings that infringed plaintiff's copyrighted directory, the entire profits should be awarded to plaintiff.
117. U.S. Copyright Act 1926, Section 504 (c) (1).
118. Harris v. Emus Records Corp. (CA 9 Cal) 734 F2d 1329.
120. U.S. Copyright Act 1976, Section 504 (c) (1).
122. Ibid.
123. U.S. Copyright Act 1976, Section 504 (c) (1).
125. U.S. Copyright Act 1976, Section 504 (2).
126. Doehrer v. Caldwell (F ND 111) 207.
127. U.S. Copyrights Act 1976, Section 504 (c) (2).
128. Supra note 81.
130. Rookes v. Barnard (1964) A.C. 1129; South African Music


133. Ravenscroft V. Herbert & Anon, Supra note 131.

134. Oboler V. Goldin (CA 2 NY) 714 F2d 211.


136. U.K. Copyright, Designs & Patents Act, Section 107 (2) (b).

137. Ibid., Section 107 (3).

138. Ibid., Section 107 (4).

139. Ibid., Section 108 (1).

140. Ibid., Section 110 (1).

141. U.S. Copyright Act 1976, Section 506 (Prior to 1982 amendments).

142. U.S. Copyright Act 1976, Section 506 (a), which provided that any person who infringes a copyright usefully and for purposes of commercial advantage or private financial gain shall be punished.

143. U.S. Copyright Act 1976, Section 506 (b). United States has right to sue for destruction of equipment used in tape piracy of copyrighted musical works as parens patriae, as enforcer of its copyrighted laws, and as protector of copyrights under international treaties. United States V. Brown (SD Miss) 400 F Supp. 656.

144. U.S. Copyright Act 1976, Section 509 (a).

145. Indian Copyright Act 1957, Section 63.

146. Inserted by Copyright (Amendment) Act 1994.

147. Indian Copyright Act 1957, Section 65.