

Digital Millennium Copyright Act Damages
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Copyright infringement is much too common these days. To reap the big statutory rewards (of at least \$750 and up to \$150,000 for willful infringements, plus costs and attorneys' fees) from prosecuting infringements, you must have registered your photograph with the U.S. Copyright Office prior to the infringement or within three months of publishing it (making it available to the public).

Most photographers haven't registered their photos, so they must prove "actual damages" from the infringement. Usually, this is your normal license fee plus any profits the infringer made from the unauthorized use of your photo. Often the "profits" damages can be difficult to prove (especially for editorial uses). So you are left with potentially recovering only a license fee. Many infringers then will ignore your demand for payment because they know that it will cost more to sue than what you can possibly recover. Copyright infringement cases have to be prosecuted in federal courts; the filing fee alone is \$350 – about the amount of many standard licensing fees for photos.

But the Digital Millennium Copyright Act – DMCA – provides a great alternative to recover damages for infringements. The DMCA can be found in Section 1200 of the U.S. Copyright Act. Section 1202 makes it illegal for someone to remove your "copyright management information" from your photo to disguise the infringement when used. The great news is that the copyright management information need only be your name, identifying information, or copyright notice to qualify.

Many photographers place watermarks including their name, website, and/or the copyright notice on their images to prevent someone from infringing them. With digital technology, it's fairly easy to crop or clone over the mark. But if you can prove that the infringer removed or altered your information to use your photo in an unauthorized manner, you may recover for that removal under the DMCA. The fines start at \$2500 and go to \$25,000 *in addition* to attorneys' fees and any damages for the infringement.

The pertinent part of the statute is included below:

Section 1202. Integrity of copyright management information . . .

(b) REMOVAL OR ALTERATION OF COPYRIGHT MANAGEMENT INFORMATION.

No person shall, without the authority of the copyright owner or the law:

(1) intentionally remove or alter any copyright management information . . .

(3) distribute . . . copies of works . . . knowing that copyright management information has been removed or altered without authority of the copyright owner . . . knowing . . . that it will . . . conceal an infringement of any right under this title.

(c) DEFINITION. . . . "[C]opyright management information" means *any of the following information* conveyed in connection with copies . . . of a work . . . or displays of a work, including in digital form . . . :

(2) The name of, and other identifying information about, the author of a work.

(3) The name of, and other identifying information about, the copyright owner of the work, including the information set forth in a notice of copyright. . . .

Section 1203. Civil remedies

(b) POWERS OF THE COURT. In an action brought under subsection (a), the court . . .

(3) may award damages under subsection (c);

(4) in its discretion may allow the recovery of costs by or against any party . . . ; [and]

(5) in its discretion may award reasonable attorney's fees to the prevailing party . . .

(c) AWARD OF DAMAGES. (1) IN GENERAL. . . . [a] person committing a violation of . . . 1202 is liable for either

(A) the actual damages and any additional profits of the violator . . . or

(B) statutory damages, as provided in paragraph (3).

(3) STATUTORY DAMAGES. . . .

(B) At any time before final judgment is entered, a complaining party may elect to recover an award of statutory damages for each violation of section 1202 in the sum of *not less than \$2,500 or more than \$25,000*.

And the *even better news*? You don't have to have registered your photo in advance to recover under this statute. So now you have an even better reason to place your name, identifying information, or copyright notice on your photos.



Carolyn E. Wright is a licensed attorney dedicated to the legal needs for photographers. Get the latest in legal information at Carolyn's website, www.photoattorney.com. These and other legal tips for photographers will be available in Carolyn's book, *The Photographer's Legal Guide*, available on her website and in the [NatureScapes.Net online store](#).

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