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Xi. Patent, Copyright & Trademark Law

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XI. PATENT, COPYRIGHT & TRADEMARK LAW

A. *Right to Jury Trial Under Copyright Act's Statutory Damage Provision*

The seventh amendment to the United States Constitution provides a right to a jury trial in legal actions.¹ Equitable actions, however, are not subject to the seventh amendment's guarantee of a jury trial.² In 1974, the Supreme Court in *Curtis v. Loether*³ established a test for determining whether the seventh amendment's right to a jury trial attached to statutorily created causes of action.⁴ Under the *Curtis* test, a party is entitled to a jury trial if his cause of action is created by a federal statute that codifies rights and remedies traditionally enforceable at common law.⁵ The action must be both traditionally enforceable and legal in nature.⁶

Federal courts are split on the issue whether the Copyright Act of 1976⁷ contains a constitutional or statutory right to a jury trial in actions where the plaintiff claiming copyright infringement seeks statutory, but not actual damages.⁸ The disagreement arises from ambiguous language

¹ U.S. CONST. amend VII. The seventh amendment provides that "[i]n suits at common law . . . the right of trial by jury shall be preserved . . ." *Id.*; see *Curtis v. Loether*, 415 U.S. 189, 195 (1974). Historically, suits at common law were those actions which were legal, as opposed to equitable, in nature. *Curtis v. Loether*, 415 U.S. 189, 193 (1974). Equitable actions, however, were recognized only in the courts of equity which had discretion to fashion any remedy necessary to achieve a fair settlement. See *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500, 507 (1959) (equity jurisdiction provides remedy where legal remedies inadequate). The framers of the seventh amendment intended the amendment to apply not only to causes of action specifically recognized at common law, but also to suits enforcing rights of a legal nature rather than suits enforcing equitable rights and seeking equitable remedies. *Parsons v. Bedford*, 28 U.S. (3 Pet.) 433, 446-47 (1830).

The Supreme Court has interpreted the seventh amendment to provide a right to a jury trial in actions to enforce statutory legal rights, even if the statutory action at issue did not exist at common law when the seventh amendment was adopted in 1791. See *Dairy Queen, Inc. v. Wood*, 369 U.S. 469, 477 (1962); *Curtis v. Loether*, 415 U.S. 189, 193-95 (1974). Classification of federal civil actions as legal or equitable suits, however, became difficult with the merger of law and equity under the Federal Rules of Civil Procedure, because under the Rules, federal courts now hear both legal and equitable claims together in one action. See *Broadcast Music, Inc. v. Papa John's, Inc.*, 201 U.S.P.Q. 302, 304 (N.D. Ind. 1979).

² *Curtis v. Loether*, 415 U.S. 189, 193 (1974).

³ 415 U.S. 189 (1974).

⁴ See *id.* at 194. The plaintiff in *Curtis v. Loether* filed a claim seeking injunctive relief, actual damages and punitive damages for violations of the Civil Rights Act of 1968. 415 U.S. 189, 189-90 (1974); see 42 U.S.C. § 3604(a) (1976). The Supreme Court held that an action under the Act carried a right to a jury trial because the claim sounded in tort and enforced legal rights. 415 U.S. at 195. The Court found that the right to a jury trial flows from the legal nature of the right to damages created by the Civil Rights Act. *Id.*

⁵ *Curtis v. Loether*, 415 U.S. 189, 194 (1974).

⁶ *Id.* at 195.

⁷ 17 U.S.C. § 504(c) (1976).

⁸ See *McMahon v. Prentice-Hall, Inc.*, 486 F. Supp. 1296, 1299 (E.D. Mo. 1980) (courts

in the Copyright Act and conflicting characterizations of the statutory damage remedy under the Copyright Act⁹ as either legal or equitable.¹⁰ The Copyright Act's statutory damage provision states that the copyright owner may recover between \$250.00 and \$10,000.00 in statutory damages "as the court considers just."¹¹ The Fourth Circuit, in *Gnossos Music v. Mitken, Inc.*,¹² found that the language of the Copyright Act (Act) did not provide a right to a jury trial but held that the seventh amendment provided the right to a jury trial in an action seeking statutory damages under the Act.¹³

In *Gnossos*, six copyright owners brought suit against Mitken, Inc. and Jerry Mitchell, Mitken's principle stockholder, alleging five unauthorized public performances of copyrighted musical works.¹⁴ One of the six copyright owners and two additional copyright owners filed a separate suit against the same defendants alleging two similar copyright infringements.¹⁵ The defendants demanded a jury trial in both suits.¹⁶ The plaintiffs in each suit moved to strike the defendant's jury trial demand and waived any recovery above the \$250.00 minimum statutory damages which section 504(c) of the Copyright Act provides.¹⁷ The district court consolidated the two suits, denied the defendants' jury trial request, and entered judgment for the plaintiffs on five copyright infringement counts.¹⁸ The district court permanently enjoined the defendant's performance of the copyrighted musical compositions and

dispute whether right to jury trial exists in copyright infringement suits seeking statutory damages). Compare *Leimer v. Woods*, 196 F.2d 828, 834 (8th Cir. 1952) (right to jury trial exists under Copyright Act's statutory damage provision) and *Broadcast Music, Inc. v. Moor-Law, Inc.*, 203 U.S.P.Q. 487, 488 (D. Del. 1978) (same) with *Chappell & Co. v. Palermo Cafe Co.*, 249 F.2d 77, 81-80 (1st Cir. 1957) (no right to jury trial exists under Copyright Act's statutory damage provision) and *Broadcast Music, Inc. v. Dici Naz Velleggia, Inc.*, 490 F. Supp. 1342, 1343 (D. Md. 1980) (same).

⁹ 17 U.S.C. § 504(c)(1) (1976). The Copyright Act of 1976 provides that the infringing party is liable either for actual damages and additional profits resulting from the infringement, or for statutory damages. *Id.*

¹⁰ See *Gnossos Music v. Mitken, Inc.*, 653 F.2d 117, 119, 120 (4th Cir. 1981) (statutory damage action under Copyright Act is legal in nature). But see *Twentieth Century Music Corp. v. Frith*, 645 F.2d 6, 7 (5th Cir. 1981) (statutory damage action under Copyright Act is equitable).

¹¹ 17 U.S.C. § 504(c) (1976).

¹² 653 F.2d 117 (4th Cir. 1981).

¹³ *Id.* at 119, 120.

¹⁴ *Id.* at 118.

¹⁵ *Id.*; Brief for Appellant at 3, *Gnossos Music v. Mitken, Inc.*, 653 F.2d 117 (4th Cir. 1981).

¹⁶ 653 F.2d at 118.

¹⁷ *Id.* The plaintiffs in *Gnossos* stipulated that they would not offer proof of actual damages. *Id.* In waiving damages in excess of the statutory minimum of \$250.00, the plaintiffs sought to remove the damage issue from the case and thereby relinquished the possibility of a larger recovery. See Brief for Appellee at 20, *Gnossos Music v. Mitken, Inc.*, 653 F.2d 117 (4th Cir. 1981); note 8 *supra*.

¹⁸ 653 F.2d at 118.

ordered payment of \$250.00 for each infringement.¹⁹ Mitken appealed to the Fourth Circuit.²⁰

On appeal to the Fourth Circuit, Mitken challenged the district court's order denying its motion for a jury trial.²¹ The Fourth Circuit followed Supreme Court precedent that required construction of a statute before reaching questions of constitutional interpretation.²² Thus, the Fourth Circuit considered first whether the Copyright Act's language indicated a congressional intent to provide a jury trial right, before considering seventh amendment requirements.²³

In construing the damage provision of the Copyright Act,²⁴ the *Gnossos* court rejected the appellee's argument that the phrase, "as the court considers just," compelled an equitable role for a judge rather than a jury.²⁵ Rejecting the holdings of two other circuits,²⁶ the Fourth Circuit held that the statutory use of "court" could refer to a jury rather than a judge.²⁷ The *Gnossos* court found, however, that the Act's use of "court" was ambiguous and not indicative of any congressional intent to mandate either bench or jury trials in copyright infringement actions seeking statutory damages.²⁸

¹⁹ *Id.* In addition to \$250.00 in statutory damages for each copyright infringement, the *Gnossos* district court awarded the plaintiffs costs, including \$1250.00 in attorney's fees. *Id.*

²⁰ *Id.*

²¹ *Id.*

²² See *Lorillard v. Pons*, 434 U.S. 575, 577 (1978) (courts must attempt statutory construction before resorting to constitutional interpretation); *Curtis v. Loether*, 415 U.S. 189, 192 n.6 (1974) (same). See also *Barber v. Kimbrell's, Inc.*, 577 F.2d 216, 224 n.23 (4th Cir.), cert. denied, 439 U.S. 934 (1978) (courts must attempt statutory construction before reaching constitutional question).

²³ 653 F.2d at 118-19.

²⁴ 17 U.S.C. § 504(c) (1976).

²⁵ 653 F.2d at 119; see text accompanying note 11 *supra*.

²⁶ See *Sid & Marty Krofft Television Productions, Inc. v. McDonald's Corp.*, 562 F.2d 1157 (9th Cir. 1977); *Chappell & Co. v. Palermo Cafe Co.*, 249 F.2d 77 (1st Cir. 1957). In *Sid & Marty Krofft Television Productions, Inc. v. McDonald's Corp.*, the Ninth Circuit held that the issue of statutory damages under the former Copyright Act, Ch. 220, 35 Stat. 1075 (1909), was addressed to the court rather than jury. 562 F.2d at 1177. In *Chappell & Co. v. Palermo Cafe Co.*, the First Circuit similarly interpreted the former Copyright Act's statutory damage provision and found no statutory right to a jury trial in statutory damage claims. 249 F.2d at 80-81.

²⁷ 653 F.2d at 119 (citing *Curtis v. Loether*, 415 U.S. 189, 189-90 (1974) (finding statutory construction of "court" futile where prior seventh amendment decisions require interpretation mandating jury trial); *Barber v. Kimbrell's, Inc.*, 577 F.2d 216, 225 n.26 (4th Cir. 1978) (finding use of "court" indeterminative on question of statutory right to jury trial)).

²⁸ 653 F.2d at 119. In finding the language of the Copyright Act ambiguous, the *Gnossos* court stressed that the Act's language arguably supports an interpretation requiring a jury trial but failed to provide any explanation. *Id.* The *Gnossos* court refused to base its holding on a statutory interpretation which required a jury trial. *Id.* Other courts also have struggled with interpretation of the language of the Copyright Act. See, e.g., *Chappell & Co. v. Palermo Cafe Co.*, 249 F.2d 77, 80 (1st Cir. 1957) (former statute gave no right to jury trial); *Broadcast Music, Inc. v. Papa John's, Inc.*, 201 U.S.P.Q. 302, 304 (N.D. Ind. 1979)

After holding that the statutory language of the Copyright Act did not specifically require a jury trial, the *Gnossos* court considered whether the seventh amendment provided Mitken with the right to a jury trial.²⁹ The *Gnossos* court recognized that the seventh amendment provided a jury trial only on legal, as opposed to equitable, issues.³⁰ The *Gnossos* court asserted that under the Supreme Court's decision in *Curtis v. Loether*,³¹ the seventh amendment requires a jury trial of right if the relevant statute creates rights and remedies analogous to rights and remedies traditionally enforceable in actions at common law.³²

To determine whether the rule of *Curtis* required jury trials in actions for statutory damages under the Copyright Act, the *Gnossos* court applied a two-part test which the Fourth Circuit fashioned in *Barber v. Kimbrell's, Inc.*³³ Under the *Barber* test, the court first must determine whether the rights and duties created by the statute are analogous to traditionally enforced legal rights.³⁴ The court must then determine whether the remedy sought is legal or equitable in nature.³⁵ If the statutory right is analogous to traditionally enforced legal rights and the remedy sought is legal in nature, the *Barber* test finds a right to a jury trial under the seventh amendment.³⁶

The *Gnossos* court found that the right of action for copyright infringement under the Act was analogous to the traditionally enforced legal right of action for tortious interference with a property right.³⁷ The

("court" in former version of Copyright Act, meant "judge"); *Chappell & Co. v. Cavalier Cafe, Inc.*, 13 F.R.D. 321, 323 (D. Mass. 1952) (interpreting former Copyright Act to require right to jury trial).

²⁹ 653 F.2d at 119-20. To determine the requirements of the seventh amendment, the *Gnossos* court analyzed several Supreme Court cases which clarified the proper interpretation and scope of the amendment. *Id.* The Fourth Circuit found that *Curtis v. Loether*, 415 U.S. 189 (1974) required that a suit to enforce statutory rights be characterized under the seventh amendment's legal/equitable framework to determine whether the amendment guaranteed a jury trial in such a suit. 653 F.2d at 119-20.

³⁰ 653 F.2d at 120; see note 1 *supra*.

³¹ 415 U.S. 189 (1974).

³² 653 F.2d at 120.

³³ *Id.* See *Barber v. Kimbrell's, Inc.*, 577 F.2d 216, 225 (4th Cir. 1978). In *Barber v. Kimbrell's, Inc.*, the Fourth Circuit considered whether the Truth in Lending Act provided a right to a jury trial under the Act's statutory damage provision. 577 F.2d at 225; see 15 U.S.C. § 1640(a)(2)(B) (1976). The *Barber* court first analogized the statutorily created cause of action to traditional common law actions for tort. 577 F.2d at 225. The court characterized the statute as creating a new statutory duty and authorizing statutory damages analogous to punitive damages. *Id.* Punitive damages traditionally are a form of legal relief. *Id.* Because a legal form of relief remedied a breach of the Truth in Lending Act's newly created duty, the Fourth Circuit held that an action under the Act carried the seventh amendment guarantee of a right to a jury trial. *Id.* at 225-26.

³⁴ *Barber v. Kimbrell's, Inc.*, 577 F.2d 216, 225 (4th Cir. 1978).

³⁵ *Id.*

³⁶ See *id.*

³⁷ See 653 F.2d 117, 120 (4th Cir. 1981). The *Gnossos* court found the Second Circuit's decisions in *Screen Gems-Columbia Music v. Metlis & Lebow Corp.* and *Ted Browne Music*

court further found that the Act's statutory damage remedy was legal in nature because the minimum statutory damage remedy was analogous to the ancient legal remedy for recovery of an unpaid debt.³⁸ Additionally, the court found that the limited range of the statutory damages did not change the nature of the remedy.³⁹ Having concluded that the Act's rights and remedies satisfied both prongs of the *Barber* test, the *Gnossos* court held that the seventh amendment required a jury trial of right in actions seeking statutory damages under the Act.⁴⁰ The Fourth Circuit therefore reversed and remanded *Gnossos* to the district court for a jury trial.⁴¹

The *Gnossos* court's statutory construction of the Copyright Act and application of the seventh amendment to the Act's statutory damage provision find support in Supreme Court and Fourth Circuit precedent.⁴² In *Curtis v. Loether*,⁴³ the Supreme Court found that use of the phrase, "the court may grant as relief," in the Civil Rights Act of 1968⁴⁴ did not conclusively envision either a judge sitting in equity, or a judge and jury sitting at law.⁴⁵ In *Barber v. Kimbrell's, Inc.*,⁴⁶ the Fourth Circuit found that the Truth in Lending Act's use of the word "court"⁴⁷ did not specifically contemplate "judge" or "jury."⁴⁸ Thus, the *Curtis* and *Barber* decisions support the *Gnossos* court's conclusion that the Copyright Act's phrase,

Co. v. Fowler supportive of the analogy between copyright infringement actions and tortious interference with property rights. *Id.*; see *Screen Gems-Columbia Music v. Metlis & Lebow Corp.*, 453 F.2d 552, 554 (2d Cir. 1972); *Ted Browne Music Co. v. Fowler*, 290 F. 751, 754 (2d Cir. 1923). Both Second Circuit cases, however, used the tort analogy only for purposes of determining whether the rule of joint and several liability extended to a copyright infringement action. See *Screen Gems-Columbia Music, Inc. v. Metlis & Lebow Corp.*, 453 F.2d 552, 554 (2d Cir. 1972); *Ted Browne Music Co. v. Fowler*, 290 F. 751, 754 (2d Cir. 1923). The analogy should extend also to the characterization of the copyright infringement action as legal. See *Gnossos Music v. Mitken, Inc.*, 653 F.2d at 120.

³⁸ 653 F.2d at 120.

³⁹ *Id.*

⁴⁰ *Id.* at 121. The *Gnossos* court concluded that even if the plaintiff sought both legal and equitable relief in a copyright infringement claim, the seventh amendment right to jury trial on the legal issues would remain unaffected. *Id.* at 120.

⁴¹ *Id.* at 121.

⁴² See, e.g., *Curtis v. Loether*, 415 U.S. 189, 192, 195-96 (1974); *Barber v. Kimbrell's, Inc.*, 577 F.2d 216, 225 (4th Cir. 1978).

⁴³ 415 U.S. 189 (1974).

⁴⁴ 42 U.S.C. § 3612 (1976).

⁴⁵ *Curtis v. Loether*, 415 U.S. 189, 192, 198 (1974). In *Curtis v. Loether*, the Supreme Court found the language of the fair housing provisions in the Civil Rights Act of 1968 plainly indeterminative. *Id.* at 192. The Court held that the seventh amendment provided a right to jury trial because the fair housing provisions enforced legal rights and offered legal remedies. *Id.* at 195-96; see 42 U.S.C. § 3612 (1976).

⁴⁶ 577 F.2d 216 (4th Cir. 1978).

⁴⁷ 15 U.S.C. § 1640(a) (1976).

⁴⁸ *Barber v. Kimbrell's, Inc.*, 577 F.2d 216, 224 n.23, 225 n.26 (4th Cir. 1978). See also *Broadcast Music, Inc. v. Moor-Law, Inc.*, 203 U.S.P.Q. 487, 488 (D. Del. 1978) (language of copyright infringement statute alone indeterminative of jury trial right).

"as the court considers just," did not provide a statutory right to a jury trial.

Several courts construing statutory language similar to that of the Copyright Act of 1976 have found use of "court" to imply a trial without a jury.⁴⁹ The cases that imply a trial without a jury are distinguishable from *Gnossos*. Each decision relied on language of the Copyright Act of 1909 not contained in the present Copyright Act to interpret "court."⁵⁰ The Copyright Act of 1909 expressly authorized the "court" to exercise "discretion" in fixing statutory damages.⁵¹ Courts construing the 1909 Copyright Act focused on the word "discretion" and concluded that "discretion" implied an equitable role for the court.⁵² Congress removed the "discretion" language from the 1976 Copyright Act at issue in *Gnossos*.⁵³ The *Gnossos* court, therefore, properly found cases interpreting the 1909 Act no obstacle to its determination that the 1976 Act was ambiguous on the right to jury trial issue.⁵⁴

After finding no answer to the jury trial question in statutory construction of the Copyright Act, the *Gnossos* court correctly held the seventh amendment guarantee of a right to jury trial applicable to statutory damage actions under the Act.⁵⁵ The *Curtis* and *Barber* decisions support the *Gnossos* court's holding.⁵⁶ In *Curtis* and *Barber*, the Supreme Court and Fourth Circuit respectively held that statutorily created actions encompassed the seventh amendment guarantee when the actions enforced rights analogous to traditionally enforced legal rights and sought remedies legal in nature.⁵⁷

The *Gnossos* court properly used the test fashioned in *Barber* for determining whether the requirements of *Curtis* for finding a jury trial right were satisfied.⁵⁸ A copyright infringement action seeking statutory

⁴⁹ See *Sid and Marty Krofft Television Productions, Inc. v. McDonald's Corp.*, 562 F.2d 1157, 1177 (9th Cir. 1977) (supplemental opinion) (statutory damage provisions directed to court, not jury); *Chappell & Co. v. Palermo Cafe Co.*, 249 F.2d 77, 82 (1st Cir. 1957) (language of Copyright Act of 1909 implies an equitable action and thus does not include right to jury trial); *Broadcast Music, Inc. v. Papa John's, Inc.*, 201 U.S.P.Q. 302, 306 (N.D. Ind. 1979) (former Copyright Act implies no right to jury trial). Compare 17 U.S.C. § 504(c) (1976) with Copyright Act, Ch. 320, 35 Stat. 1075 (1909).

⁵⁰ See *Sid & Marty Krofft Television Productions, Inc. v. McDonald's Corp.*, 562 F.2d 1157, 1177 (9th Cir. 1977) (construing Copyright Act, Ch. 320, 35 Stat. 1075 (1909)); *Chappell & Co. v. Palermo Cafe Co.*, 249 F.2d 77, 82 (1st Cir. 1957) (same); *Broadcast Music, Inc. v. Papa John's, Inc.*, 201 U.S.P.Q. 302, 306 (N.D. Ind. 1979) (same); note 64 *infra*.

⁵¹ Copyright Act, Ch. 320, 35 Stat. 1075 (1909).

⁵² See *Broadcast Music, Inc. v. Papa John's, Inc.*, 201 U.S.P.Q. 302, 306 (N.D. Ind. 1979) (finding that "discretion" implies equitable role for court).

⁵³ See 17 U.S.C. § 504(c) (1976).

⁵⁴ 653 F.2d at 119.

⁵⁵ See *id.* at 120-21.

⁵⁶ See *Curtis v. Loether*, 415 U.S. 189, 194-96 (1974); *Barber v. Kimbrell's, Inc.*, 577 F.2d 216, 225 (4th Cir. 1978).

⁵⁷ See *Curtis v. Loether*, 415 U.S. 189, 194-96 (1974); *Barber v. Kimbrell's, Inc.*, 577 F.2d 216, 225 (4th Cir. 1978).

⁵⁸ See 653 F.2d at 120-21.

damages satisfies the *Barber* test's first prong since a copyright infringement claim is analogous to the traditionally enforced legal action for tortious interference with a property right.⁵⁹ The actions are analogous because both protect a right of ownership.⁶⁰

The *Gnossos* court also correctly found that the remedy of statutory damages under the Copyright Act satisfied the second prong of the *Barber* test. As the *Gnossos* court suggested, an action seeking the remedy of minimum statutory damages fits the analogy to an action for recovery of a debt.⁶¹ The Copyright Act creates the debt to compensate for wrongful use of a copyrighted work.⁶² While the sum of money due is not created by private contract, the debt nevertheless is owed because of the statutory violation.⁶³

Some federal courts, including the First Circuit, have characterized the statutory damage remedy as equitable.⁶⁴ Their precedent is unconvincing. The *Gnossos* court correctly rejected the equity characteriza-

⁵⁹ See *id.* Cf. *Screen Gems-Columbia Music, Inc. v. Metlis & Lebow Corp.*, 453 F.2d 552, 554 (2d Cir. 1972) (copyright infringement analogous to tort); *Ted Browne Music Co. v. Fowler*, 290 F. 751, 754 (2d Cir. 1923) (same). See note 37 *supra*.

⁶⁰ See 653 F.2d at 120. *Screen Gems-Columbia Music, Inc. v. Metlis & Lebow Corp.*, 453 F.2d 552, 554 (2d Cir. 1972); *Ted Browne Music Co. v. Fowler*, 290 F. 751, 754 (2d Cir. 1923).

⁶¹ 653 F.2d at 120; *Chappell & Co. v. Pumpernickel Pub, Inc.*, 79 F.R.D. 528, 530 (D. Conn. 1977); *Chappell & Co. v. Cavalier Cafe, Inc.*, 13 F.R.D. 321, 323 (D. Mass. 1952). The *Gnossos* court's holding that the statutory damage remedy is a form of legal relief finds support in *Chappell & Co. v. Pumpernickel Pub, Inc.*, and *Chappell & Co. v. Cavalier Cafe, Inc.* See *Chappell & Co. v. Pumpernickel Pub, Inc.*, 79 F.R.D. at 530; *Chappell & Co. v. Cavalier Cafe, Inc.*, 13 F.R.D. at 323. *Pumpernickel Pub* and *Cavalier Cafe* held that the statutory damage remedy under the Copyright Act was a legal form of relief, analogous to the common law action for recovery of a debt upon a statute. See *Chappell & Co. v. Pumpernickel Pub, Inc.*, 79 F.R.D. at 530; *Chappell & Co. v. Cavalier Cafe, Inc.*, 13 F.R.D. at 323.

⁶² *Chappell & Co. v. Cavalier Cafe, Inc.*, 13 F.R.D. 321, 322-23 (D. Mass. 1952).

⁶³ See *Chappell & Co. v. Pumpernickel Pub, Inc.*, 79 F.R.D. 528, 530-31 (D. Conn. 1977) (statutory damage claim would have been common law action for recovery of debt upon statute); *Chappell & Co. v. Cavalier Cafe, Inc.*, 13 F.R.D. 321, 323 (D. Mass. 1952) (same).

⁶⁴ See *Chappell & Co. v. Palermo Cafe Co.*, 249 F.2d 77, 81, 82 (1st Cir. 1957) (entire copyright claim evoking equity jurisdiction or court); *Broadcast Music, Inc. v. Dici Naz Velleggia, Inc.*, 490 F. Supp. 1342, 1343 (D. Md. 1980) (statutory damage claim seeks equitable relief); *Broadcast Music, Inc. v. Papa John's, Inc.*, 201 U.S.P.Q. 302, 306 (N.D. Ind. 1979) (statutory damage claim traditionally equitable); *Cayman Music, Ltd. v. Reichenberger*, 403 F. Supp. 794, 796 (W.D. Wis. 1975) (statutory damage claim essentially equitable). The most convincing argument for an equity characterization of the statutory damage provision of the Copyright Act analogizes the remedy to the equitable remedies of restitution and backpay awards under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e) (1976). See *Broadcast Music, Inc. v. Papa John's, Inc.*, 201 U.S.P.Q. 302, 306 (N.D. Ind. 1979). The court in *Broadcast Music, Inc. v. Papa John's, Inc.* contended that restitution, backpay awards, and the Copyright Act's statutory damage remedy each force the statutory violator to disgorge money or profit unlawfully gained. See *id.* at 306. *But see* text accompanying note 65 *infra*. The *Papa John's* court concluded that the statutory damage remedy of the Copyright Act was equitable. 201 U.S.P.Q. at 306. Thus, the *Papa John's* court found no jury trial right in a copyright infringement action for statutory damages. *Id.*

tion of the statutory damage remedy because the remedy flows from a specific statutory grant, not from the court's general equity power.⁶⁵ Equity power, by contrast, generally operates outside statutory confines.⁶⁶

The *Gnossos* court's characterization of the Copyright Act's statutory damage provision as "legal" in nature was appropriate in light of Congress' intent in enacting the damage provision. Like the legal remedy of actual damages, the statutory damages created by Congress are compensatory.⁶⁷ The action for copyright infringement remains one for compensatory damages with recovery of at least a minimum amount.⁶⁸ Congress apparently intended no change in substantive jury trial rights of parties involved in copyright infringement actions. Instead, Congress sought to substitute a statutory remedy where actual damages are not provable.⁶⁹ Congress provided the statutory advantage to copyright owners because a copyright represents a property interest difficult to value.⁷⁰ By authorizing substitution of statutory damages for actual damages, Congress simply has limited by statute the range of ordinary damages.⁷¹ The *Gnossos* court properly concluded that the seventh amendment's requirement of the right to a jury trial extended to actions seeking minimum statutory damages under the Copyright Act because the statutory damage provision does not alter fundamentally the object of the traditionally legal action for actual damages resulting from a copyright infringement.⁷²

The *Gnossos* holding guarantees a right to a jury trial in copyright infringement actions in the Fourth Circuit where the plaintiff seeks

⁶⁵ See *Chappell & Co. v. Pumpernickel Pub, Inc.*, 79 F.R.D. 528, 530 (D. Conn. 1977) (statutory damages authorized by statute, not equity power); *Chappell & Co. v. Cavalier Cafe, Inc.*, 13 F.R.D. 321, 322 (D. Mass. 1952) (statutory damages do not flow from equity power). *But see Broadcast Music, Inc. v. Papa John's, Inc.*, 201 U.S.P.Q. 302, 305-06 (N.D. Ind. 1979) (statutory damages under Copyright Act flow from court's equitable jurisdiction).

⁶⁶ See *Chappell & Co. v. Pumpernickel Pub, Inc.*, 79 F.R.D. 528, 530 (D. Conn. 1977) (statutory damages authorized by virtue of statute, not exercise of general equity powers).

⁶⁷ *Douglas v. Cunningham*, 294 U.S. 207, 209 (1935) (statutory damages to recompense for injury done copyright owner); *Campbell v. Wireback*, 269 F. 372, 375 (4th Cir. 1920) (statutory damages compensate for injuries caused by infringing party); *Chappell & Co. v. Pumpernickel Pub, Inc.*, 79 F.R.D. 528, 530 (D. Conn. 1977) (statutory damages under Copyright Act are compensatory); *Chappell & Co. v. Cavalier Cafe, Inc.*, 13 F.R.D. 321, 322-23 (D. Mass. 1952) (statutory damages compensatory and analogous to legal remedy of treble damages under other statutes).

⁶⁸ See *Chappell & Co. v. Cavalier Cafe, Inc.*, 13 F.R.D. 321, 322 (D. Mass. 1952).

⁶⁹ See *Douglas v. Cunningham*, 294 U.S. 207, 209 (1935) (former statute, Copyright Act, Ch. 320, 35 Stat. 1075 (1909), statutory damage provision adopted for situations where proof of actual damages difficult); *Broadcast Music, Inc. v. Papa John's, Inc.*, 201 U.S.P.Q. 302, 305 (N.D. Ind. 1979) (statutory damage remedy created by Congress where actual damages not provable).

⁷⁰ See *L.A. Westermann Co. v. Dispatch Printing Co.*, 249 U.S. 100, 104, 108 (1919); Brief for Appellee at 7, 11, *Gnossos Music v. Mitken, Inc.*, 653 F.2d 117 (4th Cir. 1981).

⁷¹ 653 F.2d at 120.

⁷² See *id.* at 121.