

# STATE OF NEW YORK

10708

## IN ASSEMBLY

September 18, 2024

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Vanel) --  
read once and referred to the Committee on Judiciary

AN ACT to amend the general business law, in relation to prohibiting bad  
faith assertions of copyright infringement

The People of the State of New York, represented in Senate and Assem-  
bly, do enact as follows:

1 Section 1. The general business law is amended by adding a new article  
2 24-AA to read as follows:

### ARTICLE 24-AA

#### BAD FAITH ASSERTIONS OF COPYRIGHT INFRINGEMENT

##### Section 370. Definitions.

6 370-a. Bad faith assertions of copyright infringement prohibit-  
7 ed.

8 370-b. Penalties.

9 370-c. Severability.

10 § 370. Definitions. The following terms shall have the following mean-  
11 ings:

12 1. "Demand" or "assertion" shall mean a letter, e-mail, or other  
13 communication asserting or claiming that the target has engaged in copy-  
14 right infringement.

15 2. "Target" shall mean a New York resident:

16 (a) Who has received a demand letter or against whom an assertion or  
17 allegation of copyright infringement has been made;

18 (b) Who has been threatened with litigation or against whom a lawsuit  
19 has been filed alleging copyright infringement; or

20 (c) Whose customers have received a demand letter asserting that the  
21 person's product, service, or technology has infringed on a copyright.

22 § 370-a. Bad faith assertions of copyright infringement prohibited. 1.  
23 A person shall not make a bad faith assertion of copyright infringement.

24 2. An assertion of copyright infringement is presumptively made in bad  
25 faith when:

26 (a) The amount demanded by the person making the assertion was not  
27 made in good faith; or

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 (b) The claim or assertion of copyright infringement is based on copy-  
2 righted material that is in the public domain or for which the asserter  
3 lacks the authority to enforce the copyright.

4 3. A court determining whether an amount demanded was made in good  
5 faith shall consider the following factors:

6 (a) the amount of the demand that makes up the cost of the copyrighted  
7 material;

8 (b) the amount of the demand that makes up any reasonable costs and  
9 attorney's fees incurred in making the assertion, provided however that  
10 where the assertion was made through automated means or the costs  
11 incurred to make and communicate the assertion were de minimis, the  
12 court shall find that the cost incurred in making the assertion is zero  
13 dollars;

14 (c) the amount of the demand that makes up damages related to the use  
15 of the copyrighted material, including reputational damages, lost  
16 licensing revenue, lost sales, punitive damages and any other financial  
17 loss associated with the infringement, provided however that a court  
18 shall assess the veracity of such damages and the amount claimed by such  
19 damages;

20 (d) the amount of the demand that makes up any other costs;

21 (e) the amount that is generally awarded for similar claims where a  
22 person asserting copyright infringement prevails, other than such  
23 amounts described in paragraph (b) of this subdivision;

24 (f) the amount that a willing buyer of the relevant copyrighted mate-  
25 rial is willing to pay a willing seller. To determine such amount a  
26 court may examine:

27 (i) existing listings, sales and negotiations for sales, whether pres-  
28 ently or previously occurring;

29 (ii) the cost of other, similar copyrighted material that the asserter  
30 has listed, sold and negotiated, whether presently or previously occur-  
31 ing; and

32 (iii) the overall market for similar copyrighted materials;

33 (g) the ratio between the different categories of all amounts  
34 asserted, in relation to the overall amount of the demand;

35 (h) whether such amounts demanded from the asserter evince an intent  
36 to compel the recipient to settle for a significantly higher sum than  
37 the typical cost of the copyrighted material to avoid the costs of liti-  
38 gating a claim. The court may consider any relevant non-privileged  
39 information in making this determination; and

40 (i) the amount that the asserter would have recovered or did recover  
41 had they been successful or when they were successful in an action to  
42 enforce the copyrighted material, other than such amounts described in  
43 paragraph (b) of this subdivision.

44 4. Where subdivision two of this section does not apply, a court may  
45 consider the following factors as evidence that a person has made a bad  
46 faith assertion of copyright infringement:

47 (a) The demand letter does not contain a reference to the copyrighted  
48 material and the name and address of the copyright owner or owners and  
49 assignee or assignees, if any;

50 (b) The demand letter demands payment of a license fee or response  
51 within an unreasonably short period of time;

52 (c) The claim or assertion of copyright infringement is deceptive;

53 (d) The claim or assertion of copyright infringement is meritless, and  
54 the person knew, or should have known, that the claim or assertion is  
55 meritless;

1 (e) The person or their subsidiaries or affiliates have previously  
2 filed or threatened to file one or more lawsuits based on the same or  
3 similar claim of copyright infringement, and:

4 (i) those threats or lawsuits lacked the information described in  
5 paragraph (a) of this subdivision; or

6 (ii) the person attempted to enforce the claim of copyright infringe-  
7 ment in litigation, and a court found the claim to be meritless; and

8 (f) Any other factor the court finds relevant.

9 5. With respect to a court's assessment under subdivisions three and  
10 four of this section, a court may consider the following factors as  
11 evidence that a person has not made a bad faith assertion of copyright  
12 infringement:

13 (a) The demand letter contains the information described in paragraph  
14 (a) of subdivision four of this section;

15 (b) Where the demand letter lacks the information described in para-  
16 graph (a) of subdivision four of this section and the target requests  
17 the information, the person provides the information within a reasonable  
18 period of time;

19 (c) The person engages in a good faith effort to establish that the  
20 target has infringed the copyright and to negotiate an appropriate reme-  
21 dy;

22 (d) The person is:

23 (i) the creator or author of the copyrighted material or, in the case  
24 of a copyright filed by and awarded to an assignee of the original crea-  
25 tor or author or joint creator or author, is the original assignee; or

26 (ii) an institution of higher education or a technology transfer  
27 organization owned or affiliated with an institution of higher educa-  
28 tion;

29 (e) The person has demonstrated good faith business practices in  
30 previous efforts to enforce the copyright, or a substantially similar  
31 copyright; and

32 (f) Any other factor the court finds relevant.

33 6. Nothing in this section shall be construed as limiting, expanding  
34 or altering any parties' rights with respect to a copyright infringement  
35 claim brought in a court of competent jurisdiction.

36 7. The fact that a demand was made through automated means, in whole  
37 or in part, shall not be a defense to this section.

38 § 370-b. Penalties. 1. A person who is the recipient of a bad faith  
39 assertion of copyright infringement may bring a civil action in a court  
40 of competent jurisdiction and, upon a finding that the person violated  
41 the provisions of this article, the court shall award such recipient of  
42 a bad faith assertion of copyright infringement:

43 (a) Equitable relief, as the court deems proper;

44 (b) Reasonable attorney's fees and costs;

45 (c) Exemplary damages in an amount of ten thousand dollars or three  
46 times the total of damages, costs, and fees, whichever is greater; and

47 (d) Any other relief the court deems proper.

48 2. A court, in its discretion, may award to any party or attorney in  
49 any action brought under this section costs in the form of reimbursement  
50 for actual expenses reasonably incurred and reasonable attorney's fees,  
51 resulting from frivolous conduct as defined in section 130-1.1 of title  
52 twenty-two of the New York codes, rules and regulations, as amended from  
53 time to time.

54 3. Wherever the attorney general shall find that a person has engaged  
55 in a persistent course of conduct in violation of this article, an  
56 application may be made by the attorney general in the name of the

1 people of the state of New York to a court of justice having jurisdic-  
2 tion to issue an injunction, and upon notice to the defendant of not  
3 less than five days, to enjoin and restrain the continuance of such  
4 violations; and if it shall appear to the satisfaction of the court or  
5 justice, that the defendant has, in fact, violated this section an  
6 injunction may be issued by such court or justice enjoining and  
7 restraining any further violation, without requiring proof that any  
8 person has, in fact, been injured or damaged thereby. In any such  
9 proceeding, the court may make allowances to the attorney general as  
10 provided in paragraph six of subdivision (a) of section eighty-three  
11 hundred three of the civil practice law and rules, and direct restitu-  
12 tion. Whenever the court shall determine that a violation of this  
13 section has occurred, the court may impose a civil penalty of not more  
14 than ten thousand dollars per bad faith assertion of copyright infringe-  
15 ment or three times the total of damages, costs, and fees, whichever is  
16 greater. In connection with any such proposed application, the attorney  
17 general is authorized to take proof and make a determination of the  
18 relevant facts and to issue subpoenas in accordance with the civil prac-  
19 tice law and rules.

20 § 370-c. Severability. If any clause, sentence, paragraph, section or  
21 part of this article shall be adjudged by any court of competent juris-  
22 isdiction to be invalid and after exhaustion of all further judicial  
23 review, the judgment shall not affect, impair or invalidate the remain-  
24 der thereof, but shall be confined in its operation to the clause,  
25 sentence, paragraph, section or part of this article directly involved  
26 in the controversy in which the judgment shall have been rendered.

27 § 2. This act shall take effect on the one hundred eightieth day after  
28 it shall have become a law.