**17.6 Copyright Infringement—Ownership of Valid Copyright—Definition**

**(17 U.S.C. §§ 201**–**205)**

The plaintiff is the owner of a valid copyright in [*identify work[s] allegedly infringed*] if the plaintiff proves by a preponderance of the evidence that:

1. the plaintiff’s work is original; and

2 the plaintiff [is the author or creator of the work] [received a transfer of the copyright] [received a transfer of the right to [*specify right transferred, e.g., make derivative works, publicly perform the work, etc.*]].

**Comment**

Under the Copyright Act, the party claiming infringement must show ownership. *See Lamps Plus, Inc. v. Seattle Lighting Fixture Co*., 345 F.3d 1140, 1144 (9th Cir. 2003) (“Ownership of the copyright is ... always a threshold question.” (quoting *Topolos v. Caldewey*,698 F.2d 991, 994 (9th Cir. 1983))).

Under the Copyright Act, no copyright infringement exists if an “owner of a copy of a computer program . . . mak[es] . . . another copy or adaptation of that computer program” for certain purposes, such as when is an “essential step” in using the program. 17 U.S.C. § 117(a)(1). To determine whether a party is an “owner of a copy” of a computer program, the court looks to whether the party has “sufficient incidents of ownership” over the copy of the software program. *Oracle Int’l Corp. v. Rimini St., Inc*., 123 F.4th 986, 997 (9th Cir. 2024) (deciding this question by reviewing “the totality of the parties’ agreement”); *see* 17 U.S.C. § 202 (“Ownership of a copyright . . . is distinct from ownership of any material object in which the work is embodied.”).

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