

## *Secondary Copyright Remedies*

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The recent call for a Next Great Copyright Act provides an opportunity to rethink aspects of copyright law that have thus far been constrained by the existing statutory structure. Others have proposed changes to secondary liability or to copyright remedies, but in addition to thinking about those areas individually, much could be gained by thinking about their intersection. Because the law of secondary liability in copyright is primarily judge-made law, there has been little opportunity to tailor remedies in cases of secondary liability. Liability is liability and results in the full panoply of statutory remedies being available. But secondary liability raises issues of technological innovation and freedom of expression beyond those raised with respect to direct liability. When immunity is the only tool available to address those concerns, it rightly meets resistance. Limiting remedies might be a better way to address those concerns, while still recognizing the importance of adequate copyright enforcement. Some possibilities include limiting or eliminating statutory damages, replacing damages measures with more restitutionary ones, and heightening the copyright owner's burden of proof with respect to remedies.

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