

What History Can Teach Us About the Inadequate-Remedy-at-Law Requirement and Copyright Injunctions

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Our Supreme Court has held that as a general matter an injunction cannot issue if there is an adequate remedy at law. This follows, according to the Court, because the standard for when injunctions may issue derives directly from the practice of the English Court of Chancery around 1789, which followed the same principle. This paper posits that the Supreme Court's reading of general Chancery custom is inapposite in copyright cases and that as a matter of historical practice, the Chancery never inquired into whether a copyright plaintiff had an adequate remedy at law. Given the Supreme Court's preference for considering the equitable practices of the Chancery in England circa 1789, the Court could hold today, without running afoul of traditional equitable principles, that a copyright injunction can issue without regard to the adequacy of money damages. I have reached my conclusion only after undertaking the most comprehensive treatment of the subject to date. I have reviewed all known copyright-infringement suits brought in the Court of Chancery from 1660 to 1800, most of which are unreported and only available in the National Archives in Kew, England. I have traveled to England two times for this purpose and will visit again in June. I have also reviewed early copyright-infringement suits (circa 1557-1660) in tribunals other than the Chancery, such as the Court of Assistants. The Court of Assistants heard nearly all infringement suits from 1557 to around 1660, and I argue that its jurisprudence influenced the way the Court of Chancery would later approach the award of an injunction, much as the law of the merchant came to influence the practices of the courts of common law and equity. My thesis is possible in part because the Supreme Court has never squarely addressed whether the inadequacy requirement should be treated differently, or even discarded, in copyright cases. The Court has declined to address the issue in numerous cases, including most recently last term in *eBay, Inc. v. MercExchange, LLC*. Particularly revealing is a concurrence in *eBay* in which several Justices urge lower courts to consider the inadequacy requirement in light of historical practices.