



# Copyright, Designs and Patents Act 1988

## 1988 CHAPTER 48

### PART I

#### COPYRIGHT

#### CHAPTER VI

#### REMEDIES FOR INFRINGEMENT

##### *Presumptions*

#### **104 Presumptions relevant to literary, dramatic, musical and artistic works.**

- (1) The following presumptions apply in proceedings brought by virtue of this Chapter with respect to a literary, dramatic, musical or artistic work.
- (2) Where a name purporting to be that of the author appeared on copies of the work as published or on the work when it was made, the person whose name appeared shall be presumed, until the contrary is proved—
  - (a) to be the author of the work;
  - (b) to have made it in circumstances not falling within section 11(2), 163, 165 or 168 (works produced in course of employment, Crown copyright, Parliamentary copyright or copyright of certain international organisations).
- (3) In the case of a work alleged to be a work of joint authorship, subsection (2) applies in relation to each person alleged to be one of the authors.
- (4) Where no name purporting to be that of the author appeared as mentioned in subsection (2) but—
  - (a) the work qualifies for copyright protection by virtue of section 155 (qualification by reference to country of first publication), and
  - (b) a name purporting to be that of the publisher appeared on copies of the work as first published,

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the person whose name appeared shall be presumed, until the contrary is proved, to have been the owner of the copyright at the time of publication.

- (5) If the author of the work is dead or the identity of the author cannot be ascertained by reasonable inquiry, it shall be presumed, in the absence of evidence to the contrary—
- (a) that the work is an original work, and
  - (b) that the plaintiff's allegations as to what was the first publication of the work and as to the country of first publication are correct.

## **105 Presumptions relevant to sound recordings and films.**

- (1) In proceedings brought by virtue of this Chapter with respect to a sound recording, where copies of the recording as issued to the public bear a label or other mark stating—
- (a) that a named person was the owner of copyright in the recording at the date of issue of the copies, or
  - (b) that the recording was first published in a specified year or in a specified country,

the label or mark shall be admissible as evidence of the facts stated and shall be presumed to be correct until the contrary is proved.

- (2) In proceedings brought by virtue of this Chapter with respect to a film, where copies of the film as issued to the public bear a statement—
- (a) that a named person was the [F<sup>1</sup>director or producer] of the film,
  - [F<sup>2</sup>(aa) that a named person was the principal director, the author of the screenplay, the author of the dialogue or the composer of music specifically created for and used in the film,]
  - (b) that a named person was the owner of copyright in the film at the date of issue of the copies, or
  - (c) that the film was first published in a specified year or in a specified country,
- the statement shall be admissible as evidence of the facts stated and shall be presumed to be correct until the contrary is proved.

- (3) In proceedings brought by virtue of this Chapter with respect to a computer program, where copies of the program are issued to the public in electronic form bearing a statement—
- (a) that a named person was the owner of copyright in the program at the date of issue of the copies, or
  - (b) that the program was first published in a specified country or that copies of it were first issued to the public in electronic form in a specified year,
- the statement shall be admissible as evidence of the facts stated and shall be presumed to be correct until the contrary is proved.

- (4) The above presumptions apply equally in proceedings relating to an infringement alleged to have occurred before the date on which the copies were issued to the public.

- (5) In proceedings brought by virtue of this Chapter with respect to a film, where the film as shown in public [F<sup>3</sup>or communicated to the public] bears a statement—
- (a) that a named person was the [F<sup>1</sup>director or producer] of the film, or

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- [<sup>F4</sup>(aa) that a named person was the principal director of the film, the author of the screenplay, the author of the dialogue or the composer of music specifically created for and used in the film, or,]  
(b) that a named person was the owner of copyright in the film immediately after it was made,

the statement shall be admissible as evidence of the facts stated and shall be presumed to be correct until the contrary is proved.

This presumption applies equally in proceedings relating to an infringement alleged to have occurred before the date on which the film was shown in public, broadcast or included in a cable programme service.

- [<sup>F5</sup>(6) For the purposes of this section, a statement that a person was the director of a film shall be taken, unless a contrary indication appears, as meaning that he was the principal director of the film.]

#### Textual Amendments

- F1** Words in s. 105(2)(a)(5)(a) substituted (1.12.1996 with effect in relation to films made on or after 1.7.1994) by S.I. 1996/2967, **regs. 18(4)(a)**, 36 (with Pt. III)  
**F2** S. 105(2)(aa) inserted (1.1.1996) by S.I. 1995/3297, **Pt. II reg. 5(4)** (with Pt. III)  
**F3** Words in s. 105(5) substituted (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), **reg. 2(1)**, **Sch. 1 para. 8(1)(c)** (with regs. 31-40)  
**F4** S. 105(5)(aa) inserted (1.12.1996 with effect in relation to films made on or after 1.7.1994) by S.I. 1996/2967, **reg. 18(4)(b)** (with Pt. III)  
**F5** S. 105(6) added (1.12.1996 with effect in relation to films made on or after 1.7.1994) by S.I. 1996/2967, **reg. 18(4)(c)** (with Pt. III)

## 106 Presumptions relevant to works subject to Crown copyright.

In proceedings brought by virtue of this Chapter with respect to a literary, dramatic or musical work in which Crown copyright subsists, where there appears on printed copies of the work a statement of the year in which the work was first published commercially, that statement shall be admissible as evidence of the fact stated and shall be presumed to be correct in the absence of evidence to the contrary.

**Status:**

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**Changes to legislation:**

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