



# Copyright, Designs and Patents Act 1988

## 1988 CHAPTER 48

### PART I

#### COPYRIGHT

#### CHAPTER VI

#### REMEDIES FOR INFRINGEMENT

#### *Offences*

#### **107 Criminal liability for making or dealing with infringing articles, &c.**

- (1) A person commits an offence who, without the licence of the copyright owner—
- (a) makes for sale or hire, or
  - (b) imports into the United Kingdom otherwise than for his private and domestic use, or
  - (c) possesses in the course of a business with a view to committing any act infringing the copyright, or
  - (d) in the course of a business —
    - (i) sells or lets for hire, or
    - (ii) offers or exposes for sale or hire, or
    - (iii) exhibits in public, or
    - (iv) distributes, or
  - (e) distributes otherwise than in the course of a business to such an extent as to affect prejudicially the owner of the copyright,
- an article which is, and which he knows or has reason to believe is, an infringing copy of a copyright work.
- (2) A person commits an offence who—

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- (a) makes an article specifically designed or adapted for making copies of a particular copyright work, or
  - (b) has such an article in his possession,
- knowing or having reason to believe that it is to be used to make infringing copies for sale or hire or for use in the course of a business.
- (3) Where copyright is infringed (otherwise than by reception of a broadcast or cable programme)—
- (a) by the public performance of a literary, dramatic or musical work, or
  - (b) by the playing or showing in public of a sound recording or film,
- any person who caused the work to be so performed, played or shown is guilty of an offence if he knew or had reason to believe that copyright would be infringed.
- (4) A person guilty of an offence under subsection (1)(a), (b), (d)(iv) or (e) is liable—
- (a) on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or both;
  - (b) on conviction on indictment to a fine or imprisonment for a term not exceeding two years, or both.
- (5) A person guilty of any other offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale, or both.
- (6) Sections 104 to 106 (presumptions as to various matters connected with copyright) do not apply to proceedings for an offence under this section; but without prejudice to their application in proceedings for an order under section 108 below.

VALID FROM 06/04/2007

#### **[<sup>F1</sup>107A Enforcement by local weights and measures authority.**

- (1) It is the duty of every local weights and measures authority to enforce within their area the provisions of section 107.
- (2) The following provisions of the <sup>M1</sup>Trade Descriptions Act 1968 apply in relation to the enforcement of that section by such an authority as in relation to the enforcement of that Act—
  - section 27 (power to make test purchases),
  - section 28 (power to enter premises and inspect and seize goods and documents),
  - section 29 (obstruction of authorised officers), and
  - section 33 (compensation for loss, &c. of goods seized).
- (3) Subsection (1) above does not apply in relation to the enforcement of section 107 in Northern Ireland, but it is the duty of the Department of Economic Development to enforce that section in Northern Ireland.

For that purpose the provisions of the Trade Descriptions Act 1968 specified in subsection (2) apply as if for the references to a local weights and measures authority and any officer of such an authority there were substituted references to that Department and any of its officers.

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- (4) Any enactment which authorises the disclosure of information for the purpose of facilitating the enforcement of the Trade Descriptions Act 1968 shall apply as if section 107 were contained in that Act and as if the functions of any person in relation to the enforcement of that section were functions under that Act.
- (5) Nothing in this section shall be construed as authorising a local weights and measures authority to bring proceedings in Scotland for an offence.]

#### Textual Amendments

**F1** S. 107A inserted (6.4.2007) by 1994 c. 33, ss. 165(2), 172(2); S.I. 2007/621, art. 2

#### Marginal Citations

**M1** 1968 c. 29.

### 108 Order for delivery up in criminal proceedings.

- (1) The court before which proceedings are brought against a person for an offence under section 107 may, if satisfied that at the time of his arrest or charge—
- (a) he had in his possession, custody or control in the course of a business an infringing copy of a copyright work, or
  - (b) he had in his possession, custody or control an article specifically designed or adapted for making copies of a particular copyright work, knowing or having reason to believe that it had been or was to be used to make infringing copies,
- order that the infringing copy or article be delivered up to the copyright owner or to such other person as the court may direct.
- (2) For this purpose a person shall be treated as charged with an offence—
- (a) in England, Wales and Northern Ireland, when he is orally charged or is served with a summons or indictment;
  - (b) in Scotland, when he is cautioned, charged or served with a complaint or indictment.
- (3) An order may be made by the court of its own motion or on the application of the prosecutor (or, in Scotland, the Lord Advocate or procurator-fiscal), and may be made whether or not the person is convicted of the offence, but shall not be made—
- (a) after the end of the period specified in section 113 (period after which remedy of delivery up not available), or
  - (b) if it appears to the court unlikely that any order will be made under section 114 (order as to disposal of infringing copy or other article).
- (4) An appeal lies from an order made under this section by a magistrates' court—
- (a) in England and Wales, to the Crown Court, and
  - (b) in Northern Ireland, to the county court;
- and in Scotland, where an order has been made under this section, the person from whose possession, custody or control the infringing copy or article has been removed may, without prejudice to any other form of appeal under any rule of law, appeal against that order in the same manner as against sentence.

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- (5) A person to whom an infringing copy or other article is delivered up in pursuance of an order under this section shall retain it pending the making of an order, or the decision not to make an order, under section 114.
- (6) Nothing in this section affects the powers of the court under section 43 of the <sup>M2</sup>Powers of Criminal Courts Act 1973, section 223 or 436 of the <sup>M3</sup>Criminal Procedure (Scotland) Act 1975 or [<sup>F2</sup>Article 11 of the Criminal Justice (Northern Ireland) Order 1994] (general provisions as to forfeiture in criminal proceedings).

#### Textual Amendments

**F2** Words in s. 108(6) substituted (9.1.1995) by S.I. 1994/2795 (N.I. 15), art. 26(1), **Sch. 2 para. 13**; S.R. 1994/446, **art. 2**

#### Marginal Citations

**M2** 1973 c. 62.

**M3** 1975 c. 21.

### 109 Search warrants.

- (1) Where a justice of the peace (in Scotland, a sheriff or justice of the peace) is satisfied by information on oath given by a constable (in Scotland, by evidence on oath) that there are reasonable grounds for believing—
- that an offence under section 107(1)(a), (b), (d)(iv) or (e) has been or is about to be committed in any premises, and
  - that evidence that such an offence has been or is about to be committed is in those premises,
- he may issue a warrant authorising a constable to enter and search the premises, using such reasonable force as is necessary.
- (2) The power conferred by subsection (1) does not, in England and Wales, extend to authorising a search for material of the kinds mentioned in section 9(2) of the <sup>M4</sup>Police and Criminal Evidence Act 1984 (certain classes of personal or confidential material).
- (3) A warrant under this section—
- may authorise persons to accompany any constable executing the warrant, and
  - remains in force for 28 days from the date of its issue.
- (4) In executing a warrant issued under this section a constable may seize an article if he reasonably believes that it is evidence that any offence under section 107(1) has been or is about to be committed.
- (5) In this section “premises” includes land, buildings, moveable structures, vehicles, vessels, aircraft and hovercraft.

#### Marginal Citations

**M4** 1984 c. 60.

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## **110 Offence by body corporate: liability of officers.**

- (1) Where an offence under section 107 committed by a body corporate is proved to have been committed with the consent or connivance of a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.
- (2) In relation to a body corporate whose affairs are managed by its members “director” means a member of the body corporate.

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