



# Copyright, Designs and Patents Act 1988

## 1988 CHAPTER 48

### PART I

#### COPYRIGHT

#### CHAPTER VI

##### REMEDIES FOR INFRINGEMENT

###### *Rights and remedies of copyright owner*

#### **96 Infringement actionable by copyright owner.**

- (1) An infringement of copyright is actionable by the copyright owner.
- (2) In an action for infringement of copyright all such relief by way of damages, injunctions, accounts or otherwise is available to the plaintiff as is available in respect of the infringement of any other property right.
- (3) This section has effect subject to the following provisions of this Chapter.

#### **Modifications etc. (not altering text)**

**C1** Ss. 90-93, 96-98, 101, 102 applied (1.1.1998) by [S.I. 1997/3032](#), [reg. 23](#) (with [Pt. IV](#))

#### **97 Provisions as to damages in infringement action.**

- (1) Where in an action for infringement of copyright it is shown that at the time of the infringement the defendant did not know, and had no reason to believe, that copyright subsisted in the work to which the action relates, the plaintiff is not entitled to damages against him, but without prejudice to any other remedy.

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- (2) The court may in an action for infringement of copyright having regard to all the circumstances, and in particular to—
- (a) the flagrancy of the infringement, and
  - (b) any benefit accruing to the defendant by reason of the infringement,
- award such additional damages as the justice of the case may require.

**Modifications etc. (not altering text)**

**C2** Ss. 90-93, 96-98, 101, 102 applied (1.1.1998) by [S.I. 1997/3032](#), **reg. 23** (with **Pt. IV**)

VALID FROM 31/10/2003

**[<sup>F1</sup>97A Injunctions against service providers**

- (1) The High Court (in Scotland, the Court of Session) shall have power to grant an injunction against a service provider, where that service provider has actual knowledge of another person using their service to infringe copyright.
- (2) In determining whether a service provider has actual knowledge for the purpose of this section, a court shall take into account all matters which appear to it in the particular circumstances to be relevant and, amongst other things, shall have regard to—
  - (a) whether a service provider has received a notice through a means of contact made available in accordance with regulation 6(1)(c) of the Electronic Commerce (EC Directive) Regulations 2002 (SI 2002/2013); and
  - (b) the extent to which any notice includes—
    - (i) the full name and address of the sender of the notice;
    - (ii) details of the infringement in question.
- (3) In this section “service provider” has the meaning given to it by regulation 2 of the Electronic Commerce (EC Directive) Regulations 2002.]

**Textual Amendments**

**F1** S. 97A inserted (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), **reg. 27(1)** (with **regs. 31-40**)

**98 Undertaking to take licence of right in infringement proceedings.**

- (1) If in proceedings for infringement of copyright in respect of which a licence is available as of right under section 144 (powers exercisable in consequence of report of [<sup>F2</sup>Competition Commission]) the defendant undertakes to take a licence on such terms as may be agreed or, in default of agreement, settled by the Copyright Tribunal under that section—
  - (a) no injunction shall be granted against him,
  - (b) no order for delivery up shall be made under section 99, and

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- (c) the amount recoverable against him by way of damages or on an account of profits shall not exceed double the amount which would have been payable by him as licensee if such a licence on those terms had been granted before the earliest infringement.
- (2) An undertaking may be given at any time before final order in the proceedings, without any admission of liability.
- (3) Nothing in this section affects the remedies available in respect of an infringement committed before licences of right were available.

#### Textual Amendments

**F2** Words in s. 98(1) substituted (1.4.1999) by [S.I. 1999/506, art. 23](#)

#### Modifications etc. (not altering text)

**C3** Ss. 90-93, 96-98, 101, 102 applied (1.1.1998) by [S.I. 1997/3032, reg. 23](#) (with [Pt. IV](#))

### 99 Order for delivery up.

- (1) Where a person—
  - (a) has an infringing copy of a work in his possession, custody or control in the course of a business, or
  - (b) has 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 has been or is to be used to make infringing copies,the owner of the copyright in the work may apply to the court for an order that the infringing copy or article be delivered up to him or to such other person as the court may direct.
- (2) An application shall not be made after the end of the period specified in section 113 (period after which remedy of delivery up not available); and no order shall be made unless the court also makes, or it appears to the court that there are grounds for making, an order under section 114 (order as to disposal of infringing copy or other article).
- (3) A person to whom an infringing copy or other article is delivered up in pursuance of an order under this section shall, if an order under section 114 is not made, retain it pending the making of an order, or the decision not to make an order, under that section.
- (4) Nothing in this section affects any other power of the court.

#### Modifications etc. (not altering text)

**C4** S. 99 extended by [S.I. 1991/724, art. 2\(1\)\(n\)](#)

### 100 Right to seize infringing copies and other articles.

- (1) An infringing copy of a work which is found exposed or otherwise immediately available for sale or hire, and in respect of which the copyright owner would be entitled to apply for an order under section 99, may be seized and detained by him or a person authorised by him.

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The right to seize and detain is exercisable subject to the following conditions and is subject to any decision of the court under section 114.

- (2) Before anything is seized under this section notice of the time and place of the proposed seizure must be given to a local police station.
- (3) A person may for the purpose of exercising the right conferred by this section enter premises to which the public have access but may not seize anything in the possession, custody or control of a person at a permanent or regular place of business of his, and may not use any force.
- (4) At the time when anything is seized under this section there shall be left at the place where it was seized a notice in the prescribed form containing the prescribed particulars as to the person by whom or on whose authority the seizure is made and the grounds on which it is made.
- (5) In this section—

“premises” includes land, buildings, moveable structures, vehicles, vessels, aircraft and hovercraft; and “prescribed” means prescribed by order of the Secretary of State.
- (6) An order of the Secretary of State under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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