



Copyright, Designs and Patents Act 1988

1988 CHAPTER 48

PART I

COPYRIGHT

CHAPTER VI

REMEDIES FOR INFRINGEMENT

Supplementary

113 Period after which remedy of delivery up not available

- (1) An application for an order under section 99 (order for delivery up in civil proceedings) may not be made after the end of the period of six years from the date on which the infringing copy or article in question was made, subject to the following provisions.
- (2) If during the whole or any part of that period the copyright owner—
 - (a) is under a disability, or
 - (b) is prevented by fraud or concealment from discovering the facts entitling him to apply for an order,an application may be made at any time before the end of the period of six years from the date on which he ceased to be under a disability or, as the case may be, could with reasonable diligence have discovered those facts.
- (3) In subsection (2) “disability”—
 - (a) in England and Wales, has the same meaning as in the Limitation Act 1980;
 - (b) in Scotland, means legal disability within the meaning of the Prescription and Limitation (Scotland) Act 1973;
 - (c) in Northern Ireland, has the same meaning as in the Statute of Limitations (Northern Ireland) 1958.

- (4) An order under section 108 (order for delivery up in criminal proceedings) shall not, in any case, be made after the end of the period of six years from the date on which the infringing copy or article in question was made.

114 Order as to disposal of infringing copy or other article

- (1) An application may be made to the court for an order that an infringing copy or other article delivered up in pursuance of an order under section 99 or 108, or seized and detained in pursuance of the right conferred by section 100, shall be—
- (a) forfeited to the copyright owner, or
 - (b) destroyed or otherwise dealt with as the court may think fit, or for a decision that no such order should be made.
- (2) In considering what order (if any) should be made, the court shall consider whether other remedies available in an action for infringement of copyright would be adequate to compensate the copyright owner and to protect his interests.
- (3) Provision shall be made by rules of court as to the service of notice on persons having an interest in the copy or other articles, and any such person is entitled—
- (a) to appear in proceedings for an order under this section, whether or not he was served with notice, and
 - (b) to appeal against any order made, whether or not he appeared;
- and an order shall not take effect until the end of the period within which notice of an appeal may be given or, if before the end of that period notice of appeal is duly given, until the final determination or abandonment of the proceedings on the appeal.
- (4) Where there is more than one person interested in a copy or other article, the court shall make such order as it thinks just and may (in particular) direct that the article be sold, or otherwise dealt with, and the proceeds divided.
- (5) If the court decides that no order should be made under this section, the person in whose possession, custody or control the copy or other article was before being delivered up or seized is entitled to its return.
- (6) References in this section to a person having an interest in a copy or other article include any person in whose favour an order could be made in respect of it under this section or under section 204 or 231 of this Act or section 58C of the Trade Marks Act 1938 (which make similar provision in relation to infringement of rights in performances, design right and trade marks).

115 Jurisdiction of county court and sheriff court

- (1) In England, Wales and Northern Ireland a county court may entertain proceedings under—
- section 99 (order for delivery up of infringing copy or other article),
 - section 102(5) (order as to exercise of rights by copyright owner where exclusive licensee has concurrent rights), or
 - section 114 (order as to disposal of infringing copy or other article),
- where the value of the infringing copies and other articles in question does not exceed the county court limit for actions in tort.

- (2) In Scotland proceedings for an order under any of those provisions may be brought in the sheriff court.
- (3) Nothing in this section shall be construed as affecting the jurisdiction of the High Court or, in Scotland, the Court of Session.