



Copyright, Designs and Patents Act 1988

1988 CHAPTER 48

PART I

COPYRIGHT

CHAPTER VI

REMEDIES FOR INFRINGEMENT

Offences

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—

Changes to legislation: There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, Section 108. (See end of Document for details)

- (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.
- (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 [^{F1}section 153 of the Sentencing Code], [^{F2}Part II of the Proceeds of Crime (Scotland) Act 1995] or [^{F3}Article 11 of the Criminal Justice (Northern Ireland) Order 1994] (general provisions as to forfeiture in criminal proceedings).

Textual Amendments

- F1** Words in s. 108(6) substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 24 para. 95](#) (with [Sch. 24 para. 447](#), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2
- F2** Words in s. 108(6) substituted (1.4.1996) by virtue of [1995 c. 40](#), ss. 5, 7(2), [Sch. 4 para. 70\(2\)](#)
- F3** 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](#)

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