

These notes refer to the Copyright, etc. and Trade Marks (Offences and Enforcement) Act 2002 (c.25) which received Royal Assent on 24 July 2002

COPYRIGHT, ETC. AND TRADE MARKS (OFFENCES AND ENFORCEMENT) ACT 2002

EXPLANATORY NOTES

BACKGROUND

4. In general, intellectual property laws give private rights that can be enforced by the owners of the rights using civil remedies. In addition, criminal offences have been provided in relation to the making for sale or hire or dealing with the following types of illegal material:
 - Copies of material that is protected by copyright, such as music, films and computer software, that have been made without the authorisation of the copyright owner, ie infringing or pirate copies, and articles that are specifically designed or adapted for making infringing copies of copyright material.
 - See the offences in section 107(1) and (2) in Part I of the Copyright, Designs and Patents Act 1988.
 - Copies of recordings of performances that have been made without the authorisation of the performer(s) or a person having recording rights in the performance, ie illicit or bootleg recordings.
 - See the offences in section 198(1) in Part II of the Copyright, Designs and Patents Act 1988.
 - Devices or other apparatus, including software, that allow people to access encrypted transmissions without paying the normal fee for their reception, ie unauthorised decoders for conditional access transmissions where the transmissions can be either broadcasts, including satellite broadcasts, cable programme services or information society services.
 - See the offences in section 297A in Part VII of the Copyright, Designs and Patents Act 1988.
 - Goods, packaging or labels bearing a trade mark that has been applied without the consent of the trade mark owner, ie counterfeit goods, and articles that are specifically designed or adapted for making unauthorised copies of a trade mark for use on such goods and other material.
 - See the offences in section 92 of the Trade Marks Act 1994.

It is these criminal provisions that are amended by the Act.

5. There is considerable overlap between the offences relating to the different material indicated above (and other criminal offences such as those in trade descriptions law and law relating to fraud) in that offending behaviour often falls within the scope of more than one offence. Also, some of the differences between the criminal provisions in these four areas in intellectual property law do not have a basis in the precise nature of the offence. The effect of the Act is to remove some of the differences that are not dictated

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by the nature of the offence by copying certain of the existing criminal provisions in one or more of these areas of intellectual property law into the other areas.