

---

STATUTORY INSTRUMENTS

---

**2003 No. 2498**

**The Copyright and Related Rights Regulations 2003**

**PART 2**

**AMENDMENTS OF THE COPYRIGHT, DESIGNS AND PATENTS ACT 1988**

*Sanctions and remedies*

**New criminal offences**

**26.**—(1) Section 107 shall be amended as follows—

(a) after subsection (2) there shall be inserted—

“(2A) A person who infringes copyright in a work by communicating the work to the public—

(a) in the course of a business, or

(b) otherwise than in the course of a business to such an extent as to affect prejudicially the owner of the copyright,

commits an offence if he knows or has reason to believe that, by doing so, he is infringing copyright in that work.”;

(b) after subsection (4) there shall be inserted—

“(4A) A person guilty of an offence under subsection (2A) is liable—

(a) on summary conviction to imprisonment for a term not exceeding three 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.”.

(2) In the following provisions—

(i) section 109(1)(a);

(ii) section 109(4);

(iii) section 114A(2)(a);

(iv) section 114B(15);

for the words “section 107(1) or (2)” there shall be substituted “section 107(1), (2) or (2A)”.

(3) Section 198 shall be amended as follows—

(a) after subsection (1) there shall be inserted—

“(1A) A person who infringes a performer’s making available right—

(a) in the course of a business, or

(b) otherwise than in the course of a business to such an extent as to affect prejudicially the owner of the making available right,

commits an offence if he knows or has reason to believe that, by doing so, he is infringing the making available right in the recording.”;

(b) after subsection (5) there shall be inserted—

“(5A) A person guilty of an offence under subsection (1A) is liable—

- (a) on summary conviction to imprisonment for a term not exceeding three 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.”.

(4) In the following provisions—

- (a) section 200(1)(a);
- (b) section 200(3A);
- (c) section 204A(2)(a);
- (d) section 204B(15);

for the words “section 198(1)” there shall be substituted “section 198(1) or (1A)”.

### **Injunctions against service providers**

**27.**—(1) After section 97 there shall be inserted—

#### **“Injunctions against service providers**

**97A.**—(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.”.

(2) After section 191J there shall be inserted—

#### **“Injunctions against service providers**

**191JA.**—(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 a performer’s property right.

(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.
- (4) Section 177 applies in respect of this section as it applies in respect of Part 1.”.

### **Rights and remedies of a non-exclusive licensee**

28. After section 101 there shall be inserted—

#### **“Certain infringements actionable by a non-exclusive licensee**

**101A.**—(1) A non-exclusive licensee may bring an action for infringement of copyright if—

- (a) the infringing act was directly connected to a prior licensed act of the licensee; and
- (b) the licence—
  - (i) is in writing and is signed by or on behalf of the copyright owner; and
  - (ii) expressly grants the non-exclusive licensee a right of action under this section.

(2) In an action brought under this section, the non-exclusive licensee shall have the same rights and remedies available to him as the copyright owner would have had if he had brought the action.

(3) The rights granted under this section are concurrent with those of the copyright owner and references in the relevant provisions of this Part to the copyright owner shall be construed accordingly.

(4) In an action brought by a non-exclusive licensee by virtue of this section a defendant may avail himself of any defence which would have been available to him if the action had been brought by the copyright owner.

(5) Subsections (1) to (4) of section 102 shall apply to a non-exclusive licensee who has a right of action by virtue of this section as it applies to an exclusive licensee.

(6) In this section a “non-exclusive licensee” means the holder of a licence authorising the licensee to exercise a right which remains exercisable by the copyright owner.”.