



# Copyright, Designs and Patents Act 1988

## 1988 CHAPTER 48

### PART I

#### COPYRIGHT

#### CHAPTER VI

##### REMEDIES FOR INFRINGEMENT

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

**C1** Pt. I Ch. VI (ss. 96-115) applied (with modifications) (1.12.1996) by [S.I. 1996/2967](#), [reg. 17](#) (with [Pt. III](#))

*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)**

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

*Status: Point in time view as at 01/10/1996. This version of this chapter contains provisions that are not valid for this point in time.*

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

## 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.
- (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)

**C3** 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 Monopolies and Mergers Commission) the defendant undertakes to take a licence

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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
  - (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.

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

C4 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.

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

C5 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

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to apply for an order under section 99, may be seized and detained by him or a person authorised by him.

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.

#### *Rights and remedies of exclusive licensee*

### **101 Rights and remedies of exclusive licensee.**

- (1) An exclusive licensee has, except against the copyright owner, the same rights and remedies in respect of matters occurring after the grant of the licence as if the licence had been an assignment.
- (2) His rights and remedies 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.
- (3) In an action brought by an 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.

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

**C6** 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>F2</sup>101A Certain infringements actionable by a non-exclusive licensee**

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

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- (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.]

#### Textual Amendments

- F2** S. 101A inserted (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), **reg. 28** (with [regs. 31-40](#))

## 102 Exercise of concurrent rights.

- (1) Where an action for infringement of copyright brought by the copyright owner or an exclusive licensee relates (wholly or partly) to an infringement in respect of which they have concurrent rights of action, the copyright owner or, as the case may be, the exclusive licensee may not, without the leave of the court, proceed with the action unless the other is either joined as a plaintiff or added as a defendant.
- (2) A copyright owner or exclusive licensee who is added as a defendant in pursuance of subsection (1) is not liable for any costs in the action unless he takes part in the proceedings.
- (3) The above provisions do not affect the granting of interlocutory relief on an application by a copyright owner or exclusive licensee alone.
- (4) Where an action for infringement of copyright is brought which relates (wholly or partly) to an infringement in respect of which the copyright owner and an exclusive licensee have or had concurrent rights of action—
  - (a) the court shall in assessing damages take into account—
    - (i) the terms of the licence, and
    - (ii) any pecuniary remedy already awarded or available to either of them in respect of the infringement;

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- (b) no account of profits shall be directed if an award of damages has been made, or an account of profits has been directed, in favour of the other of them in respect of the infringement; and
  - (c) the court shall if an account of profits is directed apportion the profits between them as the court considers just, subject to any agreement between them;
- and these provisions apply whether or not the copyright owner and the exclusive licensee are both parties to the action.
- (5) The copyright owner shall notify any exclusive licensee having concurrent rights before applying for an order under section 99 (order for delivery up) or exercising the right conferred by section 100 (right of seizure); and the court may on the application of the licensee make such order under section 99 or, as the case may be, prohibiting or permitting the exercise by the copyright owner of the right conferred by section 100, as it thinks fit having regard to the terms of the licence.

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

**C7** Ss. 90-93, 96-98, 101, 102 applied (1.1.1998) by [S.I. 1997/3032](#), [reg. 23](#) (with [Pt. IV](#))

**C8** S. 102(5) extended by [S.I.1991/724](#), [art. 2\(1\)\(n\)](#)

*Remedies for infringement of moral rights*

**103 Remedies for infringement of moral rights.**

- (1) An infringement of a right conferred by Chapter IV (moral rights) is actionable as a breach of statutory duty owed to the person entitled to the right.
- (2) In proceedings for infringement of the right conferred by section 80 (right to object to derogatory treatment of work) the court may, if it thinks it is an adequate remedy in the circumstances, grant an injunction on terms prohibiting the doing of any act unless a disclaimer is made, in such terms and in such manner as may be approved by the court, dissociating the author or director from the treatment of the work.

*Presumptions*

**104 Presumptions relevant to literary, dramatic, musical and artistic works.**

- (1) The following presumptions apply in proceedings brought by virtue of this Chapter with respect to a literary, dramatic, musical or artistic work.
- (2) Where a name purporting to be that of the author appeared on copies of the work as published or on the work when it was made, the person whose name appeared shall be presumed, until the contrary is proved—
  - (a) to be the author of the work;
  - (b) to have made it in circumstances not falling within section 11(2), 163, 165 or 168 (works produced in course of employment, Crown copyright, Parliamentary copyright or copyright of certain international organisations).
- (3) In the case of a work alleged to be a work of joint authorship, subsection (2) applies in relation to each person alleged to be one of the authors.

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- (4) Where no name purporting to be that of the author appeared as mentioned in subsection (2) but—
- (a) the work qualifies for copyright protection by virtue of section 155 (qualification by reference to country of first publication), and
  - (b) a name purporting to be that of the publisher appeared on copies of the work as first published,
- the person whose name appeared shall be presumed, until the contrary is proved, to have been the owner of the copyright at the time of publication.
- (5) If the author of the work is dead or the identity of the author cannot be ascertained by reasonable inquiry, it shall be presumed, in the absence of evidence to the contrary—
- (a) that the work is an original work, and
  - (b) that the plaintiff's allegations as to what was the first publication of the work and as to the country of first publication are correct.

## **105 Presumptions relevant to sound recordings and films.**

- (1) In proceedings brought by virtue of this Chapter with respect to a sound recording, where copies of the recording as issued to the public bear a label or other mark stating—
- (a) that a named person was the owner of copyright in the recording at the date of issue of the copies, or
  - (b) that the recording was first published in a specified year or in a specified country,
- the label or mark shall be admissible as evidence of the facts stated and shall be presumed to be correct until the contrary is proved.
- (2) In proceedings brought by virtue of this Chapter with respect to a film, where copies of the film as issued to the public bear a statement—
- (a) that a named person was the author or director of the film,
  - [<sup>F3</sup>(aa) that a named person was the principal director, the author of the screenplay, the author of the dialogue or the composer of music specifically created for and used in the film,]
  - (b) that a named person was the owner of copyright in the film at the date of issue of the copies, or
  - (c) that the film was first published in a specified year or in a specified country,
- the statement shall be admissible as evidence of the facts stated and shall be presumed to be correct until the contrary is proved.
- (3) In proceedings brought by virtue of this Chapter with respect to a computer program, where copies of the program are issued to the public in electronic form bearing a statement—
- (a) that a named person was the owner of copyright in the program at the date of issue of the copies, or
  - (b) that the program was first published in a specified country or that copies of it were first issued to the public in electronic form in a specified year,
- the statement shall be admissible as evidence of the facts stated and shall be presumed to be correct until the contrary is proved.

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- (4) The above presumptions apply equally in proceedings relating to an infringement alleged to have occurred before the date on which the copies were issued to the public.
- (5) In proceedings brought by virtue of this Chapter with respect to a film, where the film as shown in public, broadcast or included in a cable programme service bears a statement—
- (a) that a named person was the author or director of the film, or
  - (b) that a named person was the owner of copyright in the film immediately after it was made,

the statement shall be admissible as evidence of the facts stated and shall be presumed to be correct until the contrary is proved.

This presumption applies equally in proceedings relating to an infringement alleged to have occurred before the date on which the film was shown in public, broadcast or included in a cable programme service.

#### Textual Amendments

**F3** S. 105(2)(aa) inserted (1.1.1996) by S.I. 1995/3297, reg. 5(4) (with Pt. III)

### 106 Presumptions relevant to works subject to Crown copyright.

In proceedings brought by virtue of this Chapter with respect to a literary, dramatic or musical work in which Crown copyright subsists, where there appears on printed copies of the work a statement of the year in which the work was first published commercially, that statement shall be admissible as evidence of the fact stated and shall be presumed to be correct in the absence of evidence to the contrary.

#### *Offences*

### 107 Criminal liability for making or dealing with infringing articles, &c.

- (1) A person commits an offence who, without the licence of the copyright owner—
- (a) makes for sale or hire, or
  - (b) imports into the United Kingdom otherwise than for his private and domestic use, or
  - (c) possesses in the course of a business with a view to committing any act infringing the copyright, or
  - (d) in the course of a business —
    - (i) sells or lets for hire, or
    - (ii) offers or exposes for sale or hire, or
    - (iii) exhibits in public, or
    - (iv) distributes, or
  - (e) distributes otherwise than in the course of a business to such an extent as to affect prejudicially the owner of the copyright,
- an article which is, and which he knows or has reason to believe is, an infringing copy of a copyright work.
- (2) A person commits an offence who—



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- (a) makes an article specifically designed or adapted for making copies of a particular copyright work, or
  - (b) has such an article in his possession,knowing or having reason to believe that it is to be used to make infringing copies for sale or hire or for use in the course of a business.
- (3) Where copyright is infringed (otherwise than by reception of a broadcast or cable programme)—
  - (a) by the public performance of a literary, dramatic or musical work, or
  - (b) by the playing or showing in public of a sound recording or film,any person who caused the work to be so performed, played or shown is guilty of an offence if he knew or had reason to believe that copyright would be infringed.
- (4) A person guilty of an offence under subsection (1)(a), (b), (d)(iv) or (e) is liable—
  - (a) on summary conviction to imprisonment for a term not exceeding six 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.
- (5) A person guilty of any other offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale, or both.
- (6) Sections 104 to 106 (presumptions as to various matters connected with copyright) do not apply to proceedings for an offence under this section; but without prejudice to their application in proceedings for an order under section 108 below.

VALID FROM 06/04/2007

#### **[<sup>F4</sup>107A Enforcement by local weights and measures authority.**

- (1) It is the duty of every local weights and measures authority to enforce within their area the provisions of section 107.
- (2) The following provisions of the <sup>M1</sup>Trade Descriptions Act 1968 apply in relation to the enforcement of that section by such an authority as in relation to the enforcement of that Act—
  - section 27 (power to make test purchases),
  - section 28 (power to enter premises and inspect and seize goods and documents),
  - section 29 (obstruction of authorised officers), and
  - section 33 (compensation for loss, &c. of goods seized).
- (3) Subsection (1) above does not apply in relation to the enforcement of section 107 in Northern Ireland, but it is the duty of the Department of Economic Development to enforce that section in Northern Ireland.

For that purpose the provisions of the Trade Descriptions Act 1968 specified in subsection (2) apply as if for the references to a local weights and measures authority and any officer of such an authority there were substituted references to that Department and any of its officers.

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- (4) Any enactment which authorises the disclosure of information for the purpose of facilitating the enforcement of the Trade Descriptions Act 1968 shall apply as if section 107 were contained in that Act and as if the functions of any person in relation to the enforcement of that section were functions under that Act.
- (5) Nothing in this section shall be construed as authorising a local weights and measures authority to bring proceedings in Scotland for an offence.]

#### Textual Amendments

F4 S. 107A inserted (6.4.2007) by 1994 c. 33, ss. 165(2), 172(2); S.I. 2007/621, art. 2

#### Marginal Citations

M1 1968 c. 29.

### 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—
- (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.

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- (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 section 43 of the <sup>M2</sup>Powers of Criminal Courts Act 1973, [<sup>F5</sup>Part II of the Proceeds of Crime (Scotland) Act 1995] or [<sup>F6</sup>Article 11 of the Criminal Justice (Northern Ireland) Order 1994] (general provisions as to forfeiture in criminal proceedings).

#### Textual Amendments

- F5** Words in s. 108(6) substituted (1.4.1996) by virtue of 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 70(2)**
- F6** 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**

#### Marginal Citations

- M2** 1973 c. 62.

### 109 Search warrants.

- (1) Where a justice of the peace (in Scotland, a sheriff or justice of the peace) is satisfied by information on oath given by a constable (in Scotland, by evidence on oath) that there are reasonable grounds for believing—
  - (a) that an offence under section 107(1)(a), (b), (d)(iv) or (e) has been or is about to be committed in any premises, and
  - (b) that evidence that such an offence has been or is about to be committed is in those premises,he may issue a warrant authorising a constable to enter and search the premises, using such reasonable force as is necessary.
- (2) The power conferred by subsection (1) does not, in England and Wales, extend to authorising a search for material of the kinds mentioned in section 9(2) of the <sup>M3</sup>Police and Criminal Evidence Act 1984 (certain classes of personal or confidential material).
- (3) A warrant under this section—
  - (a) may authorise persons to accompany any constable executing the warrant, and
  - (b) remains in force for 28 days from the date of its issue.
- (4) In executing a warrant issued under this section a constable may seize an article if he reasonably believes that it is evidence that any offence under section 107(1) has been or is about to be committed.
- (5) In this section “premises” includes land, buildings, moveable structures, vehicles, vessels, aircraft and hovercraft.

#### Marginal Citations

- M3** 1984 c. 60.

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## 110 Offence by body corporate: liability of officers.

- (1) Where an offence under section 107 committed by a body corporate is proved to have been committed with the consent or connivance of a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.
- (2) In relation to a body corporate whose affairs are managed by its members “director” means a member of the body corporate.

*Provision for preventing importation of infringing copies*

## 111 Infringing copies may be treated as prohibited goods.

- (1) The owner of the copyright in a published literary, dramatic or musical work may give notice in writing to the Commissioners of Customs and Excise—
  - (a) that he is the owner of the copyright in the work, and
  - (b) that he requests the Commissioners, for a period specified in the notice, to treat as prohibited goods printed copies of the work which are infringing copies.
- (2) The period specified in a notice under subsection (1) shall not exceed five years and shall not extend beyond the period for which copyright is to subsist.
- (3) The owner of the copyright in a sound recording or film may give notice in writing to the Commissioners of Customs and Excise—
  - (a) that he is the owner of the copyright in the work,
  - (b) that infringing copies of the work are expected to arrive in the United Kingdom at a time and a place specified in the notice, and
  - (c) that he requests the Commissioners to treat the copies as prohibited goods.
- [<sup>F7F7</sup>(3A) The Commissioners may treat as prohibited goods only infringing copies of works which arrive in the United Kingdom—
  - (a) from outside the European Economic Area, or
  - (b) from within that Area but not having been entered for free circulation.
- <sup>F7</sup>(3B) This section does not apply to goods entered, or expected to be entered, for free circulation, export, re-export or for a suspensive procedure in respect of which an application may be made under Article 3(1) of Council Regulation (EC) No. 3295/94<sup>F8</sup> laying down measures to prohibit the release for free circulation, export, re-export or entry for a suspensive procedure of counterfeit and pirated goods.]
- (4) When a notice is in force under this section the importation of goods to which the notice relates, otherwise than by a person for his private and domestic use, [<sup>F9</sup>subject to subsections (3A) and (3B), is prohibited]; but a person is not by reason of the prohibition liable to any penalty other than forfeiture of the goods.

### Textual Amendments

- F7** S. 111(3A)(3B) inserted (1.7.1995) by [S.I. 1995/1445](#), [reg. 2\(2\)](#)
- F8** O.J. No. L341, 30.12.94, p.8.
- F9** Words in s. 111(4) substituted (1.7.1995) by [S.I. 1995/1445](#), [reg. 2\(3\)](#)

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

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## **112 Power of Commissioners of Customs and Excise to make regulations.**

- (1) The Commissioners of Customs and Excise may make regulations prescribing the form in which notice is to be given under section 111 and requiring a person giving notice—
  - (a) to furnish the Commissioners with such evidence as may be specified in the regulations, either on giving notice or when the goods are imported, or at both those times, and
  - (b) to comply with such other conditions as may be specified in the regulations.
- (2) The regulations may, in particular, require a person giving such a notice—
  - (a) to pay such fees in respect of the notice as may be specified by the regulations;
  - (b) to give such security as may be so specified in respect of any liability or expense which the Commissioners may incur in consequence of the notice by reason of the detention of any article or anything done to an article detained;
  - (c) to indemnify the Commissioners against any such liability or expense, whether security has been given or not.
- (3) The regulations may make different provision as respects different classes of case to which they apply and may include such incidental and supplementary provisions as the Commissioners consider expedient.
- (4) Regulations 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.
- (5) Section 17 of the <sup>M4</sup>Customs and Excise Management Act 1979 (general provisions as to Commissioners' receipts) applies to fees paid in pursuance of regulations under this section as to receipts under the enactments relating to customs and excise.

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### **Marginal Citations**

**M4** 1979 c. 2.

### *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 <sup>M5</sup>Limitation Act 1980;

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- (b) in Scotland, means legal disability within the meaning of the <sup>M6</sup>Prescription and Limitation (Scotland) Act 1973;
  - (c) in Northern Ireland, has the same meaning as in the <sup>M7</sup>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.

#### Marginal Citations

- M5** 1980 c. 58.  
**M6** 1973 c. 52.  
**M7** 1958 c. 10 (N.I.).

#### 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 [<sup>F10</sup>section 19 of the Trade Marks Act 1994] (which make similar provision in relation to infringement of rights in performances, design right and trade marks).

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### Textual Amendments

**F10** Words in s. 114(6) substituted (31.10.1994) by 1994 c. 26, s. 106(1), **Sch. 4 para. 8(2)**; S.I. 1994/2550, **art. 2**

### Modifications etc. (not altering text)

**C9** S. 114 extended by S.I. 1991/724, **art. 2(1)(n)**

VALID FROM 20/11/2002

## [<sup>F11</sup>114A Forfeiture of infringing copies, etc.: England and Wales or Northern Ireland

- (1) In England and Wales or Northern Ireland where there have come into the possession of any person in connection with the investigation or prosecution of a relevant offence—
  - (a) infringing copies of a copyright work, or
  - (b) articles specifically designed or adapted for making copies of a particular copyright work,that person may apply under this section for an order for the forfeiture of the infringing copies or articles.
- (2) For the purposes of this section “relevant offence” means—
  - (a) an offence under section 107(1) or (2) (criminal liability for making or dealing with infringing articles, etc.),
  - (b) an offence under the Trade Descriptions Act 1968 (c. 29), or
  - (c) an offence involving dishonesty or deception.
- (3) An application under this section may be made—
  - (a) where proceedings have been brought in any court for a relevant offence relating to some or all of the infringing copies or articles, to that court, or
  - (b) where no application for the forfeiture of the infringing copies or articles has been made under paragraph (a), by way of complaint to a magistrates’ court.
- (4) On an application under this section, the court shall make an order for the forfeiture of any infringing copies or articles only if it is satisfied that a relevant offence has been committed in relation to the infringing copies or articles.
- (5) A court may infer for the purposes of this section that such an offence has been committed in relation to any infringing copies or articles if it is satisfied that such an offence has been committed in relation to infringing copies or articles which are representative of the infringing copies or articles in question (whether by reason of being of the same design or part of the same consignment or batch or otherwise).
- (6) Any person aggrieved by an order made under this section by a magistrates’ court, or by a decision of such a court not to make such an order, may appeal against that order or decision—
  - (a) in England and Wales, to the Crown Court, or
  - (b) in Northern Ireland, to the county court.
- (7) An order under this section may contain such provision as appears to the court to be appropriate for delaying the coming into force of the order pending the making

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and determination of any appeal (including any application under section 111 of the Magistrates' Courts Act 1980 (c. 43) or Article 146 of the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)) (statement of case)).

- (8) Subject to subsection (9), where any infringing copies or articles are forfeited under this section they shall be destroyed in accordance with such directions as the court may give.
- (9) On making an order under this section the court may direct that the infringing copies or articles to which the order relates shall (instead of being destroyed) be forfeited to the owner of the copyright in question or dealt with in such other way as the court considers appropriate.]

#### Textual Amendments

**F11** Ss. 114A, 114B inserted (20.11.2002) by 2002 c. 25, s. 3; S.I. 2002/2749, art. 2

VALID FROM 20/11/2002

#### <sup>F12</sup> 114B Forfeiture of infringing copies, etc.: Scotland

- (1) In Scotland the court may make an order under this section for the forfeiture of any—
- (a) infringing copies of a copyright work, or
  - (b) articles specifically designed or adapted for making copies of a particular copyright work.
- (2) An order under this section may be made—
- (a) on an application by the procurator-fiscal made in the manner specified in section 134 of the Criminal Procedure (Scotland) Act 1995 (c. 46), or
  - (b) where a person is convicted of a relevant offence, in addition to any other penalty which the court may impose.
- (3) On an application under subsection (2)(a), the court shall make an order for the forfeiture of any infringing copies or articles only if it is satisfied that a relevant offence has been committed in relation to the infringing copies or articles.
- (4) The court may infer for the purposes of this section that such an offence has been committed in relation to any infringing copies or articles if it is satisfied that such an offence has been committed in relation to infringing copies or articles which are representative of the infringing copies or articles in question (whether by reason of being of the same design or part of the same consignment or batch or otherwise).
- (5) The procurator-fiscal making the application under subsection (2)(a) shall serve on any person appearing to him to be the owner of, or otherwise to have an interest in, the infringing copies or articles to which the application relates a copy of the application, together with a notice giving him the opportunity to appear at the hearing of the application to show cause why the infringing copies or articles should not be forfeited.
- (6) Service under subsection (5) shall be carried out, and such service may be proved, in the manner specified for citation of an accused in summary proceedings under the Criminal Procedure (Scotland) Act 1995.



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- (7) Any person upon whom notice is served under subsection (5) and any other person claiming to be the owner of, or otherwise to have an interest in, infringing copies or articles to which an application under this section relates shall be entitled to appear at the hearing of the application to show cause why the infringing copies or articles should not be forfeited.
- (8) The court shall not make an order following an application under subsection (2)(a)—
- (a) if any person on whom notice is served under subsection (5) does not appear, unless service of the notice on that person is proved, or
  - (b) if no notice under subsection (5) has been served, unless the court is satisfied that in the circumstances it was reasonable not to serve such notice.
- (9) Where an order for the forfeiture of any infringing copies or articles is made following an application under subsection (2)(a), any person who appeared, or was entitled to appear, to show cause why infringing copies or articles should not be forfeited may, within 21 days of the making of the order, appeal to the High Court by Bill of Suspension.
- (10) Section 182(5)(a) to (e) of the Criminal Procedure (Scotland) Act 1995 (c. 46) shall apply to an appeal under subsection (9) as it applies to a stated case under Part 2 of that Act.
- (11) An order following an application under subsection (2)(a) shall not take effect—
- (a) until the end of the period of 21 days beginning with the day after the day on which the order is made, or
  - (b) if an appeal is made under subsection (9) above within that period, until the appeal is determined or abandoned.
- (12) An order under subsection (2)(b) shall not take effect—
- (a) until the end of the period within which an appeal against the order could be brought under the Criminal Procedure (Scotland) Act 1995, or
  - (b) if an appeal is made within that period, until the appeal is determined or abandoned.
- (13) Subject to subsection (14), infringing copies or articles forfeited under this section shall be destroyed in accordance with such directions as the court may give.
- (14) On making an order under this section the court may direct that the infringing copies or articles to which the order relates shall (instead of being destroyed) be forfeited to the owner of the copyright in question or dealt with in such other way as the court considers appropriate.
- (15) For the purposes of this section—
- “relevant offence” means an offence under section 107(1) or (2) (criminal liability for making or dealing with infringing articles, etc.), or under the Trade Descriptions Act 1968 (c. 29) or any offence involving dishonesty or deception;
- “the court” means—
- (a) in relation to an order made on an application under subsection (2)(a), the sheriff, and
  - (b) in relation to an order made under subsection (2)(b), the court which imposed the penalty.

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#### **Textual Amendments**

**F12** Ss. 114A, 114B inserted (20.11.2002) by 2002 c. 25, s. 3; S.I. 2002/2749, art. 2

### **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),

[<sup>F13</sup>save that, in Northern Ireland, a county court may entertain such proceedings only]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.

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#### **Textual Amendments**

**F13** Words in s. 115(1) inserted by S.I. 1991/724, art. 2(8), Schedule Pt. I

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**Changes to legislation:**

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