



# 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 <sup>M1</sup>Limitation Act 1980;
- (b) in Scotland, means legal disability within the meaning of the <sup>M2</sup>Prescription and Limitation (Scotland) Act 1973;
- (c) in Northern Ireland, has the same meaning as in the <sup>M3</sup>Statute of Limitations (Northern Ireland) 1958.

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- (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

- M1** 1980 c. 58.  
**M2** 1973 c. 52.  
**M3** 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 [F1section 19 of the Trade Marks Act 1994] (which make similar provision in relation to infringement of rights in performances, design right and trade marks).

#### Textual Amendments

- F1** 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**

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

**C1** S. 114 extended by S.I. 1991/724, art. 2(1)(n)

VALID FROM 20/11/2002

**[<sup>F2</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 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)).

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- (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

**F2** 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>F3</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.
- (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

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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**

**F3** 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>F4</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**

**F4** Words in s. 115(1) inserted by S.I. 1991/724, art. 2(8), Schedule Pt. I

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