



# Copyright, Designs and Patents Act 1988

## 1988 CHAPTER 48

### PART VII

#### MISCELLANEOUS AND GENERAL

##### *Fraudulent reception of transmissions*

#### **297 Offence of fraudulently receiving programmes.**

- (1) A person who dishonestly receives a programme included in a broadcasting <sup>F1</sup> . . . service provided from a place in the United Kingdom with intent to avoid payment of any charge applicable to the reception of the programme commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (2) Where an offence under this section 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.

In relation to a body corporate whose affairs are managed by its members “director” means a member of the body corporate.

#### **Textual Amendments**

- F1** Words in s. 297(1) repealed (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), reg. 2(2), [Sch. 2](#) (with regs. 31-40)

#### **[<sup>F2</sup>297A Unauthorised decoders.**

- (1) A person commits an offence if he—
  - (a) makes, imports, distributes, sells or lets for hire or offers or exposes for sale or hire any unauthorised decoder;

*Status: Point in time view as at 31/10/2003.*

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- (b) has in his possession for commercial purposes any unauthorised decoder;
  - (c) installs, maintains or replaces for commercial purposes any unauthorised decoder; or
  - (d) advertises any unauthorised decoder for sale or hire or otherwise promotes any unauthorised decoder by means of commercial communications.
- (2) A person guilty of an offence under subsection (1) is liable—
- [ on summary conviction, to imprisonment for a term not exceeding six months,
  - <sup>F3</sup>(a) or to a fine not exceeding the statutory maximum, or to both;]
  - (b) on conviction on indictment, to imprisonment for a term not exceeding [<sup>F4</sup>ten] years, or to a fine, or to both.
- (3) It is a defence to any prosecution for an offence under this section for the defendant to prove that he did not know, and had no reasonable ground for believing, that the decoder was an unauthorised decoder.
- (4) In this section—
- “apparatus” includes any device, component or electronic data (including software);
  - “conditional access technology” means any technical measure or arrangement whereby access to encrypted transmissions in an intelligible form is made conditional on prior individual authorisation;
  - “decoder” means any apparatus which is designed or adapted to enable (whether on its own or with any other apparatus) an encrypted transmission to be decoded;
  - “encrypted” includes subjected to scrambling or the operation of cryptographic envelopes, electronic locks, passwords or any other analogous application;
  - “transmission” means—
    - (a) any programme included in a broadcasting <sup>F5</sup> . . . service which is provided from a place in the United Kingdom or any other member State; or
    - (b) an information society service (within the meaning of Directive 98/34/EC of the European Parliament and of the Council of 22nd June 1998 <sup>F6</sup>, as amended by Directive 98/48/EC of the European Parliament and of the Council of 20th July 1998 <sup>F7</sup>) which is provided from a place in the United Kingdom or any other member State; and
  - “unauthorised”, in relation to a decoder, means that the decoder is designed or adapted to enable an encrypted transmission, or any service of which it forms part, to be accessed in an intelligible form without payment of the fee (however imposed) which the person making the transmission, or on whose behalf it is made, charges for accessing the transmission or service (whether by the circumvention of any conditional access technology related to the transmission or service or by any other means).

#### Textual Amendments

- F2** S. 297A substituted (28.5.2000) by S.I. 2000/1175, **art. 2(2)**
- F3** S. 297A(2)(a) substituted (20.11.2002) by 2002 c. 25, **s. 1(4)(a)(5)**; S.I. 2002/2749, **art. 2**
- F4** Word in s. 297A(2)(b) substituted (20.11.2002) by 2002 c. 25, **s. 1(4)(b)(5)**; S.I. 2002/2749, **art. 2**
- F5** Words in s. 297A(4) repealed (31.10.2003) by **The Copyright and Related Rights Regulations 2003** (S.I. 2003/2498), **reg. 2(2)**, **Sch. 2** (with regs. 31-40)
- F6** O.J. L204, 21.7.98, p.37
- F7** O.J. L217, 5.8.98, p.18

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## [<sup>F8</sup>297B 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 297A(1) 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 Police and Criminal Evidence Act 1984 (c. 60) (certain classes of personal or confidential material).
- (3) A warrant under subsection (1)—
  - (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 subsection (1) a constable may seize an article if he reasonably believes that it is evidence that any offence under section 297A(1) has been or is about to be committed.
- (5) In this section “premises” includes land, buildings, fixed or moveable structures, vehicles, vessels, aircraft and hovercraft.]

### Textual Amendments

**F8** S. 297B inserted (20.11.2002) by 2002 c. 25, s. 2(4); S.I. 2002/2749, art. 2

## [<sup>F9</sup>297C Forfeiture of unauthorised decoders: England and Wales or Northern Ireland

- (1) In England and Wales or Northern Ireland where unauthorised decoders have come into the possession of any person in connection with the investigation or prosecution of a relevant offence, that person may apply under this section for an order for the forfeiture of the unauthorised decoders.
- (2) For the purposes of this section “relevant offence” means—
  - (a) an offence under section 297A(1) (criminal liability for making, importing, etc. unauthorised decoders),
  - (b) an offence under the Trade Descriptions Act 1968, 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 unauthorised decoders, to that court, or
  - (b) where no application for the forfeiture of the unauthorised decoders has been made under paragraph (a), by way of complaint to a magistrates’ court.

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- (4) On an application under this section, the court shall make an order for the forfeiture of any unauthorised decoders only if it is satisfied that a relevant offence has been committed in relation to the unauthorised decoders.
- (5) A court may infer for the purposes of this section that such an offence has been committed in relation to any unauthorised decoders if it is satisfied that such an offence has been committed in relation to unauthorised decoders which are representative of the unauthorised decoders 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)).
- (8) Subject to subsection (9), where any unauthorised decoders 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 unauthorised decoders to which the order relates shall (instead of being destroyed) be forfeited to a person who has rights or remedies under section 298 in relation to the unauthorised decoders in question, or dealt with in such other way as the court considers appropriate.]

#### Textual Amendments

**F9** Ss. 297C, 297D inserted (20.11.2002) by [2002 c. 25, s. 5](#); [S.I. 2002/2749, art. 2](#)

#### <sup>F10</sup>297D Forfeiture of unauthorised decoders: Scotland

- (1) In Scotland the court may make an order under this section for the forfeiture of unauthorised decoders.
- (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 unauthorised decoders only if it is satisfied that a relevant offence has been committed in relation to the unauthorised decoders.
- (4) The court may infer for the purposes of this section that such an offence has been committed in relation to any unauthorised decoders if it is satisfied that such an offence

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- has been committed in relation to unauthorised decoders which are representative of the unauthorised decoders 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 unauthorised decoders 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 unauthorised decoders 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 (c. 46).
- (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, unauthorised decoders to which an application under this section relates shall be entitled to appear at the hearing of the application to show cause why the unauthorised decoders 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 unauthorised decoders is made following an application under subsection (2)(a), any person who appeared, or was entitled to appear, to show cause why the unauthorised decoders 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 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 (c. 46), or
  - (b) if an appeal is made within that period, until the appeal is determined or abandoned.
- (13) Subject to subsection (14), where any unauthorised decoders are forfeited under this section they 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 unauthorised decoders to which the order relates shall (instead of being destroyed) be forfeited to a person who has rights or remedies under section 298 in relation to the unauthorised decoders in question, or dealt with in such other way as the court considers appropriate.

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(15) For the purposes of this section—

“relevant offence” means an offence under section 297A(1) (criminal liability for making, importing, etc. unauthorised decoders), 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.

#### Textual Amendments

**F10** Ss. 297C, 297D inserted (20.11.2002) by [2002 c. 25, s. 5](#); [S.I. 2002/2749, art. 2](#)

### [<sup>F11</sup>298] **Rights and remedies in respect of apparatus, &c. for unauthorised reception of transmissions.**

(1) A person who—

- (a) makes charges for the reception of programmes included in a broadcasting <sup>F12</sup> . . . service provided from a place in the United Kingdom or any other member State,
- (b) sends encrypted transmissions of any other description from a place in the United Kingdom or any other member State, or
- (c) provides conditional access services from a place in the United Kingdom or any other member State,

is entitled to the following rights and remedies.

(2) He has the same rights and remedies against a person—

- (a) who—
  - (i) makes, imports, distributes, sells or lets for hire, offers or exposes for sale or hire, or advertises for sale or hire,
  - (ii) has in his possession for commercial purposes, or
  - (iii) instals, maintains or replaces for commercial purposes, any apparatus designed or adapted to enable or assist persons to access the programmes or other transmissions or circumvent conditional access technology related to the programmes or other transmissions when they are not entitled to do so, or
- (b) who publishes or otherwise promotes by means of commercial communications any information which is calculated to enable or assist persons to access the programmes or other transmissions or circumvent conditional access technology related to the programmes or other transmissions when they are not entitled to do so,

as a copyright owner has in respect of an infringement of copyright.

(3) Further, he has the same rights under section 99 or 100 (delivery up or seizure of certain articles) in relation to any such apparatus as a copyright owner has in relation to an infringing copy.

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- (4) Section 72 of the <sup>M1</sup>Supreme Court Act 1981, section 15 of the <sup>M2</sup>Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 and section 94A of the <sup>M3</sup>Judicature (Northern Ireland) Act 1978 (withdrawal of privilege against self-incrimination in certain proceedings relating to intellectual property) apply to proceedings under this section as to proceedings under Part I of this Act (copyright).
- (5) In section 97(1) (innocent infringement of copyright) as it applies to proceedings for infringement of the rights conferred by this section, the reference to the defendant not knowing or having reason to believe that copyright subsisted in the work shall be construed as a reference to his not knowing or having reason to believe that his acts infringed the rights conferred by this section.
- (6) Section 114 applies, with the necessary modifications, in relation to the disposal of anything delivered up or seized by virtue of subsection (3) above.
- (7) In this section “apparatus”, “conditional access technology” and “encrypted” have the same meanings as in section 297A, “transmission” includes transmissions as defined in that section and “conditional access services” means services comprising the provision of conditional access technology.]

#### Textual Amendments

**F11** S. 298 substituted (25.5.2000) by S.I. 2000/1175, art. 2(3)

**F12** Words in s. 298(1)(a) repealed (31.10.2003) by The Copyright and Related Rights Regulations 2003 (S.I. 2003/2498), reg. 2(2), Sch. 2 (with regs. 31-40)

#### Marginal Citations

**M1** 1981 c. 54.

**M2** 1985 c. 37.

**M3** 1978 c. 23.

## 299 Supplementary provisions as to fraudulent reception.

- (1) Her Majesty may by Order in Council—
  - (a) provide that section 297 applies in relation to programmes included in services provided from a country or territory outside the United Kingdom, and
  - (b) provide that section 298 applies in relation to such programmes and to encrypted transmissions sent from such a country or territory.
- <sup>F13</sup>(2) .....
- (3) A statutory instrument containing an Order in Council under subsection (1) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) Where sections 297 and 298 apply in relation to a broadcasting service <sup>F14</sup> . . . , they also apply to any service run for the person providing that service, or a person providing programmes for that service, which consists wholly or mainly in the sending by means of a telecommunications system of sounds or visual images, or both.
- (5) In sections 297 [<sup>F15</sup> 297A] and 298, and this section, “programme” [<sup>F16</sup> and “broadcasting”], and related expressions, have the same meaning as in Part I (copyright).

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#### Textual Amendments

- F13** S. 299(2) repealed by [Broadcasting Act 1990 \(c. 42, SIF 96\)](#), ss. 179(2)(a), 203(3), **Sch. 21**
- F14** Words in s. 299(4) repealed (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), reg. 2(2), **Sch. 2** (with regs. 31-40)
- F15** S. 299(5): ", 297A" inserted by [Broadcasting Act 1990 \(c. 42, SIF 96\)](#), **s. 179(2)(b)**
- F16** Words in s. 299(5) substituted (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), reg. 2(1), **Sch. 1 para. 3(3)** (with regs. 31-40)



**Status:**

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