
STATUTORY INSTRUMENTS

2006 No. 1028

The Intellectual Property (Enforcement, etc.) Regulations 2006

Assessment of damages

3.—(1) Where in an action for infringement of an intellectual property right the defendant knew, or had reasonable grounds to know, that he engaged in infringing activity, the damages awarded to the claimant shall be appropriate to the actual prejudice he suffered as a result of the infringement.

(2) When awarding such damages—

(a) all appropriate aspects shall be taken into account, including in particular—

(i) the negative economic consequences, including any lost profits, which the claimant has suffered, and any unfair profits made by the defendant; and

(ii) elements other than economic factors, including the moral prejudice caused to the claimant by the infringement; or

(b) where appropriate, they may be awarded on the basis of the royalties or fees which would have been due had the defendant obtained a licence.

(3) This regulation does not affect the operation of any enactment or rule of law relating to remedies for the infringement of intellectual property rights except to the extent that it is inconsistent with the provisions of this regulation.

(4) In the application of this regulation to—

(a) Scotland, “claimant” includes pursuer; “defendant” includes defender; and “enactment” includes an enactment comprised in, or an instrument made under, an Act of the Scottish Parliament; and

(b) Northern Ireland, “claimant” includes plaintiff.