



# Copyright, Designs and Patents Act 1988

## 1988 CHAPTER 48

### PART VII

#### MISCELLANEOUS AND GENERAL

##### *Devices designed to circumvent copy-protection*

#### **296 Devices designed to circumvent copy-protection**

- (1) This section applies where copies of a copyright work are issued to the public, by or with the licence of the copyright owner, in an electronic form which is copy-protected.
- (2) The person issuing the copies to the public has the same rights against a person who, knowing or having reason to believe that it will be used to make infringing copies—
  - (a) makes, imports, sells or lets for hire, offers or exposes for sale or hire, or advertises for sale or hire, any device or means specifically designed or adapted to circumvent the form of copy-protection employed, or
  - (b) publishes information intended to enable or assist persons to circumvent that form of copy-protection,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 device or means which a person has in his possession, custody or control with the intention that it should be used to make infringing copies of copyright works, as a copyright owner has in relation to an infringing copy.
- (4) References in this section to copy-protection include any device or means intended to prevent or restrict copying of a work or to impair the quality of copies made.
- (5) Expressions used in this section which are defined for the purposes of Part I of this Act (copyright) have the same meaning as in that Part.
- (6) The following provisions apply in relation to proceedings under this section as in relation to proceedings under Part I (copyright)—

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- (a) sections 104 to 106 of this Act (presumptions as to certain matters relating to copyright), and
  - (b) section 72 of the Supreme Court Act 1981, section 15 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 and section 94A of the Judicature (Northern Ireland) Act 1978 (withdrawal of privilege against self-incrimination in certain proceedings relating to intellectual property);
- and section 114 of this Act applies, with the necessary modifications, in relation to the disposal of anything delivered up or seized by virtue of subsection (3) above.

*Fraudulent reception of transmissions*

**297 Offence of fraudulently receiving programmes**

- (1) A person who dishonestly receives a programme included in a broadcasting or cable programme 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.

**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 or cable programme service provided from a place in the United Kingdom, or
  - (b) sends encrypted transmissions of any other description from a place in the United Kingdom,
 is entitled to the following rights and remedies.
- (2) He has the same rights and remedies against a person who—
  - (a) makes, imports or sells or lets for hire any apparatus or device designed or adapted to enable or assist persons to receive the programmes or other transmissions when they are not entitled to do so, or
  - (b) publishes any information which is calculated to enable or assist persons to receive 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 or device as a copyright owner has in relation to an infringing copy.

- (4) Section 72 of the Supreme Court Act 1981, section 15 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 and section 94A of the 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 of this Act applies, with the necessary modifications, in relation to the disposal of anything delivered up or seized by virtue of subsection (3) above.

### **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.
- (2) No such Order shall be made unless it appears to Her Majesty that provision has been or will be made under the laws of that country or territory giving adequate protection to persons making charges for programmes included in broadcasting or cable programme services provided from the United Kingdom or, as the case may be, for encrypted transmissions sent from the United Kingdom.
- (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 or cable programme service, 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 and 298, and this section, “programme”, “broadcasting” and “cable programme service”, and related expressions, have the same meaning as in Part I (copyright).

#### *Fraudulent application or use of trade mark*

### **300 Fraudulent application or use of trade mark an offence**

In the Trade Marks Act 1938 the following sections are inserted before section 59, after the heading “*Offences and restraint of use of Royal Arms*”—

#### **“58A Fraudulent application or use of trade mark an offence**

- (1) It is an offence, subject to subsection (3) below, for a person—

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- (a) to apply a mark identical to or nearly resembling a registered trade mark to goods, or to material used or intended to be used for labelling, packaging or advertising goods, or
- (b) to sell, let for hire, or offer or expose for sale or hire, or distribute—
  - (i) goods bearing such a mark, or
  - (ii) material bearing such a mark which is used or intended to be used for labelling, packaging or advertising goods, or
- (c) to use material bearing such a mark in the course of a business for labelling, packaging or advertising goods, or
- (d) to possess in the course of a business goods or material bearing such a mark with a view to doing any of the things mentioned in paragraphs (a) to (c),

when he is not entitled to use the mark in relation to the goods in question and the goods are not connected in the course of trade with a person who is so entitled.

- (2) It is also an offence, subject to subsection (3) below, for a person to possess in the course of a business goods or material bearing a mark identical to or nearly resembling a registered trade mark with a view to enabling or assisting another person to do any of the things mentioned in subsection (1)(a) to (c), knowing or having reason to believe that the other person is not entitled to use the mark in relation to the goods in question and that the goods are not connected in the course of trade with a person who is so entitled.
- (3) A person commits an offence under subsection (1) or (2) only if—
  - (a) he acts with a view to gain for himself or another, or with intent to cause loss to another, and
  - (b) he intends that the goods in question should be accepted as connected in the course of trade with a person entitled to use the mark in question;and it is a defence for a person charged with an offence under subsection (1) to show that he believed on reasonable grounds that he was entitled to use the mark in relation to the goods in question.
- (4) A person guilty of an offence under this section 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 ten years, or both.
- (5) 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.
- (6) In this section “business” includes a trade or profession.”

### **58B Delivery up of offending goods and material**

- (1) The court by which a person is convicted of an offence under section 58A may, if satisfied that at the time of his arrest or charge he had in his possession, custody or control—
  - (a) goods or material in respect of which the offence was committed, or
  - (b) goods of the same description as those in respect of which the offence was committed, or material similar to that in respect of which the offence was committed, bearing a mark identical to or nearly resembling that in relation to which the offence was committed,order that the goods or material be delivered up to such 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), but shall not be made if it appears to the court unlikely that any order will be made under section 58C (order as to disposal of offending goods or material).
- (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 goods or material have 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.
- (5) A person to whom goods or material are delivered up in pursuance of an order under this section shall retain it pending the making of an order under section 58C.
- (6) Nothing in this section affects the powers of the court under section 43 of the Powers of Criminal Courts Act 1973, section 223 or 436 of the Criminal Procedure (Scotland) Act 1975 or Article 7 of the Criminal Justice (Northern Ireland) Order 1980 (general provisions as to forfeiture in criminal proceedings).

### **58C Order as to disposal of offending goods or material**

- (1) Where goods or material have been delivered up in pursuance of an order under section 58B, an application may be made to the court for an order that they be destroyed or forfeited to such person as the court may think fit.
- (2) Provision shall be made by rules of court as to the service of notice on persons having an interest in the goods or material, 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.

- (3) Where there is more than one person interested in goods or material, the court shall make such order as it thinks just.
- (4) References in this section to a person having an interest in goods or material include any person in whose favour an order could be made under this section or under sections 114, 204 or 231 of the Copyright, Designs and Patents Act 1988 (which make similar provision in relation to infringement of copyright, rights in performances and design right).
- (5) Proceedings for an order under this section may be brought—
- (a) in a county court in England, Wales and Northern Ireland, provided the value of the goods or material in question does not exceed the county court limit for actions in tort, and
  - (b) in a sheriff court in Scotland;
- but this shall not be construed as affecting the jurisdiction of the High Court or, in Scotland, the Court of Session.

#### **58D Enforcement of section 58A**

- (1) The functions of a local weights and measures authority include the enforcement in their area of section 58A.
- (2) The following provisions of the Trade Descriptions Act 1968 apply in relation to the enforcement of that section 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 under s.28).
- (3) Subsection (1) above does not apply in relation to the enforcement of section 58A in Northern Ireland, but the functions of the Department of Economic Development include the enforcement of 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.

- (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 58A above 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.”.

*Provisions for the benefit of the Hospital for Sick Children*

**301 Provisions for the benefit of the Hospital for Sick Children**

The provisions of Schedule 6 have effect for conferring on trustees for the benefit of the Hospital for Sick Children, Great Ormond Street, London, a right to a royalty in respect of the public performance, commercial publication, broadcasting or inclusion in a cable programme service of the play “Peter Pan” by Sir James Matthew Barrie, or of any adaptation of that work, notwithstanding that copyright in the work expired on 31st December 1987.

*Financial assistance for certain international bodies*

**302 Financial assistance for certain international bodies**

- (1) The Secretary of State may give financial assistance, in the form of grants, loans or guarantees to—
  - (a) any international organisation having functions relating to trade marks or other intellectual property, or
  - (b) any Community institution or other body established under any of the Community Treaties having any such functions,with a view to the establishment or maintenance by that organisation, institution or body of premises in the United Kingdom.
- (2) Any expenditure of the Secretary of State under this section shall be defrayed out of money provided by Parliament; and any sums received by the Secretary of State in consequence of this section shall be paid into the Consolidated Fund.

*General*

**303 Consequential amendments and repeals**

- (1) The enactments specified in Schedule 7 are amended in accordance with that Schedule, the amendments being consequential on the provisions of this Act.
- (2) The enactments specified in Schedule 8 are repealed to the extent specified.

**304 Extent**

- (1) Provision as to the extent of Part I (copyright), Part II (rights in performances) and Part III (design right) is to be found in sections 157, 207 and 255 respectively; the extent of the other provisions of this Act is as follows.
- (2) Parts IV to VII extend to England and Wales, Scotland and Northern Ireland, except that—
  - (a) sections 287 to 292 (patents county courts) extend to England and Wales only,
  - (b) the proper law of the trust created by Schedule 6 (provisions for the benefit of the Hospital for Sick Children) is the law of England and Wales, and
  - (c) the amendments and repeals in Schedules 7 and 8 have the same extent as the enactments amended or repealed.

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- (3) The following provisions extend to the Isle of Man subject to any modifications contained in an Order made by Her Majesty in Council—
- (a) sections 293 and 294 (patents: licences of right), and
  - (b) paragraphs 24 and 29 of Schedule 5 (patents: effect of filing international application for patent and power to extend time limits).
- (4) Her Majesty may by Order in Council direct that the following provisions extend to the Isle of Man, with such exceptions and modifications as may be specified in the Order—
- (a) Part IV (registered designs),
  - (b) Part V (patent agents),
  - (c) the provisions of Schedule 5 (patents: miscellaneous amendments) not mentioned in subsection (3) above,
  - (d) sections 297 to 299 (fraudulent reception of transmissions), and
  - (e) section 300 (fraudulent application or use of trade mark).
- (5) Her Majesty may by Order in Council direct that sections 297 to 299 (fraudulent reception of transmissions) extend to any of the Channel Islands, with such exceptions and modifications as may be specified in the Order.
- (6) Any power conferred by this Act to make provision by Order in Council for or in connection with the extent of provisions of this Act to a country outside the United Kingdom includes power to extend to that country, subject to any modifications specified in the Order, any provision of this Act which amends or repeals an enactment extending to that country.

### **305 Commencement**

- (1) The following provisions of this Act come into force on Royal Assent—
- paragraphs 24 and 29 of Schedule 5 (patents: effect of filing international application for patent and power to extend time limits);
  - section 301 and Schedule 6 (provisions for the benefit of the Hospital for Sick Children).
- (2) Sections 293 and 294 (licences of right) come into force at the end of the period of two months beginning with the passing of this Act.
- (3) The other provisions of this Act come into force on such day as the Secretary of State may appoint by order made by statutory instrument, and different days may be appointed for different provisions and different purposes.

### **306 Short title**

This Act may be cited as the Copyright, Designs and Patents Act 1988.