

*These notes refer to the Copyright, etc. and Trade Marks (Offences and Enforcement) Act 2002 (c.25) which received Royal Assent on 24 July 2002*

# **COPYRIGHT, ETC. AND TRADE MARKS (OFFENCES AND ENFORCEMENT) ACT 2002**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These explanatory notes relate to the Copyright, etc. and Trade Marks (Offences and Enforcement) Act 2002 which received Royal Assent on 24 July 2002. They have been provided by the Department of Trade and Industry in order to assist the reader of the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. These notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

### **SUMMARY**

3. This Act amends the criminal provisions in intellectual property law, more specifically the law relating to copyright, rights in performances, fraudulent reception of conditional access transmissions by use of unauthorised decoders and trade marks. The Act brings about some rationalisation of these criminal provisions by removing some of the differences. The three areas in which rationalisation is provided by the Act are maximum penalties for certain offences in intellectual property law, police search and seizure powers relating to offences and court orders on forfeiture of illegal material that may have been seized during investigation of offences. The Act does not make any changes to the scope of criminal offences in intellectual property law so that the type of behaviour that can give rise to an offence remains the same.

### **BACKGROUND**

4. In general, intellectual property laws give private rights that can be enforced by the owners of the rights using civil remedies. In addition, criminal offences have been provided in relation to the making for sale or hire or dealing with the following types of illegal material:
  - Copies of material that is protected by copyright, such as music, films and computer software, that have been made without the authorisation of the copyright owner, ie infringing or pirate copies, and articles that are specifically designed or adapted for making infringing copies of copyright material.
    - See the offences in section 107(1) and (2) in Part I of the Copyright, Designs and Patents Act 1988.
  - Copies of recordings of performances that have been made without the authorisation of the performer(s) or a person having recording rights in the performance, ie illicit or bootleg recordings.
    - See the offences in section 198(1) in Part II of the Copyright, Designs and Patents Act 1988.

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- Devices or other apparatus, including software, that allow people to access encrypted transmissions without paying the normal fee for their reception, ie unauthorised decoders for conditional access transmissions where the transmissions can be either broadcasts, including satellite broadcasts, cable programme services or information society services.
  - See the offences in section 297A in Part VII of the Copyright, Designs and Patents Act 1988.
- Goods, packaging or labels bearing a trade mark that has been applied without the consent of the trade mark owner, ie counterfeit goods, and articles that are specifically designed or adapted for making unauthorised copies of a trade mark for use on such goods and other material.
  - See the offences in section 92 of the Trade Marks Act 1994.

It is these criminal provisions that are amended by the Act.

5. There is considerable overlap between the offences relating to the different material indicated above (and other criminal offences such as those in trade descriptions law and law relating to fraud) in that offending behaviour often falls within the scope of more than one offence. Also, some of the differences between the criminal provisions in these four areas in intellectual property law do not have a basis in the precise nature of the offence. The effect of the Act is to remove some of the differences that are not dictated by the nature of the offence by copying certain of the existing criminal provisions in one or more of these areas of intellectual property law into the other areas.

## **COMMENTARY ON SECTIONS**

### ***Section 1***

6. This section raises the maximum penalty for conviction on indictment for the offences referred to in sections 107(4), 198(5) and 297A(2) in Parts I, II and VII of the Copyright, Designs and Patents Act 1988, relating to those making for sale or hire or dealing in material infringing copyright, illicit recordings infringing performers' rights and unauthorised decoders for conditional access services respectively. The new maximum penalty is an unlimited fine and/or up to 10 years in prison to reflect the seriousness of these crimes and to bring the penalties into line with the existing ones for similar trade marks offences. The changes made by the Act are to increase the maximum prison term from 2 years to 10. In addition, and for the same reason of consistency, this section also adds the option of six months in prison to the penalty for summary conviction in section 297A(2).

### ***Sections 2 and 6***

7. **Section 2** applies the existing provisions in section 109 of Part I of the Copyright, Designs and Patents Act 1988 allowing the police to obtain search warrants to all the offences in section 107(1) and (2), including those only triable in the magistrates' courts. The equivalent provision in section 200 of Part II of the 1988 Act is applied to all the offences in section 198(1) by this section. Equivalent search warrant provisions are introduced by section 2 for the offences in section 297A of Part VII of the 1988 Act.
8. These provisions are in addition to any powers available to the police as a result of the Police and Criminal Evidence Act 1984 (PACE), but should ensure that there are no impediments to a full investigation of offending behaviour in the areas indicated which could still remain if PACE alone were to apply. The existing search warrant provisions in sections 109 and 200 allow a justice of the peace (or in Scotland, a sheriff or justice of the peace) to grant a warrant where information/evidence on oath leaves him satisfied that there are reasonable grounds for believing that an offence has been or is about to be committed and there is evidence of this on the premises.

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9. Powers of seizure of evidence that an offence has been or is about to be committed that are already provided in section 109(4) where a warrant obtained under that section is executed are also introduced by section 2 into section 200 and the new search warrant provision relating to the offences in section 297A.
10. **Section 6** introduces search warrant and seizure provisions corresponding to those that are introduced or amended by section 2 for Parts I, II and VII of the Copyright, Designs and Patents Act 1988 for the offences in section 92 of the Trade Marks Act 1994 relating to counterfeit goods and articles for making them. This section also extends to the Isle of Man, since the Trade Marks Act 1994 also does.

### **Sections 3, 4 and 5**

11. **Section 3** reproduces in Part I of the Copyright, Designs and Patents Act 1988 provisions corresponding to those in sections 97 and 98 of the Trade Marks Act 1994, allowing forfeiture of infringing goods. Thus, section 3 provides forfeiture provisions for goods infringing copyright, ie infringing copies, and articles specifically designed or adapted for making such copies. Section 97 relates to forfeiture in England, Wales and Northern Ireland and section 98 is a modified version relating to forfeiture in Scotland.
12. The existing forfeiture provisions in trade marks law apply in England, Wales and Northern Ireland where items have come into the possession of a person in connection with the investigation or prosecution of one of the offences, or a related offence under the Trade Descriptions Act 1968, or any offence involving dishonesty or deception. They allow a court to order forfeiture of infringing goods both where a person has been prosecuted for an offence and where there is no prosecution, although in both cases the court must be satisfied that an offence has been committed in relation to the goods. In Scotland, the forfeiture provisions apply where a person has been convicted of one of these offences or on application by the procurator-fiscal. The court can order destruction of goods or release to another person with conditions. Broadly similar provision is introduced by section 3 into Part I of the 1988 Act.
13. **Section 4** introduces forfeiture provisions, very similar to those in section 3, into Part II of the Copyright, Designs and Patents Act in respect of goods that infringe rights in performances, ie illicit recordings.
14. **Section 5** introduces forfeiture provisions, very similar to those in section 3, into Part VII of the Copyright, Designs and Patents Act in respect of devices that permit fraudulent reception of conditional access transmissions, ie unauthorised decoders used to access transmissions such as satellite television without payment.

### **COMMENCEMENT**

15. **Section 7** provides for the provisions of the Act to be brought into force by a commencement order. It is envisaged that this will occur about 2 months after Royal Assent. The Government will disseminate information about the effects of the Act, particularly amongst public sector enforcers.

### **HANSARD REFERENCES**

The following table sets out the dates and Hansard references for each stage of this Act through Parliament.

<i>Stage</i>	<i>Date</i>	<i>Hansard Ref.</i>
<b>House of Commons</b>		
Introduction	18 July 2001	Vol 372 Col 307
Second Reading	23 November 2001	Vol 375 Col 628-638

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<i>Stage</i>	<i>Date</i>	<i>Hansard Ref.</i>
Committee	9 January 2002	Hansard Standing Committee C
Report and Third Reading	12 April 2002	Vol 383 Col 285-295
<b>House of Lords</b>		
Introduction	15 April 2002	Vol 633 Col 683
Second Reading	10 May 2002	Vol 634 Col 1418-1430
Order of commitment discharged	18 June 2002	Vol 636 Col 624
Third Reading	16 July 2002	Vol 637 Col 1095
<b>Royal Assent - 24 July 2002</b>	House of Lords Hansard Vol 638 Col 821	
	House of Commons Hansard Vol 389 Col 1080	