



# Copyright Act 1956

1956 CHAPTER 74 4 and 5 Eliz 2

## PART III

### REMEDIES FOR INFRINGEMENTS OF COPYRIGHT

#### 17 Action by owner of copyright for infringement

- (1) Subject to the provisions of this Act, infringements of copyright shall be actionable at the suit of the owner of the copyright; and in any action for such an infringement all such relief, by way of damages, injunction, accounts or otherwise, shall be available to the plaintiff as is available in any corresponding proceedings in respect of infringements of other proprietary rights.
- (2) Where in an action for infringement of copyright it is proved or admitted—
  - (a) that an infringement was committed, but
  - (b) that at the time of the infringement the defendant was not aware, and had no reasonable grounds for suspecting, that copyright subsisted in the work or other subject-matter to which the action relates,the plaintiff shall not be entitled under this section to any damages against the defendant in respect of the infringement, but shall be entitled to an account of profits in respect of the infringement whether any other relief is granted under this section or not.
- (3) Where in an action under this section an infringement of copyright is proved or admitted, and the court, having regard (in addition to all other material considerations) to—
  - (a) the flagrancy of the infringement, and
  - (b) any benefit shown to have accrued to the defendant by reason of the infringement,

is satisfied that effective relief would not otherwise be available to the plaintiff, the court, in assessing damages for the infringement, shall have power to award such additional damages by virtue of this subsection as the court may consider appropriate in the circumstances.

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- (4) In an action for infringement of copyright in respect of the construction of a building, no injunction or other order shall be made—
  - (a) after the contraction of the building has been begun, so as to prevent it from being completed, or
  - (b) so as to require the building, in so far as it has been constructed, to be demolished.
- (5) In this Part of this Act “action” includes a counterclaim, and references to the plaintiff and to the defendant in an action shall be construed accordingly.
- (6) In the application of this Part of this Act to Scotland, “injunction” means an interdict and “interlocutory injunction” means an interim interdict, “accounts” means count, reckoning and payment, “an account of profits” means an accounting and payment of profits, “plaintiff” means pursuer, “defendant” means defender and “costs” means expenses.

## **18 Rights of owner of copyright in respect of infringing copies, etc.**

- (1) Subject to the provisions of this Act, the owner of any copyright shall be entitled to all such rights and remedies, in respect of the conversion or detention by any person of any infringing copy, or of any plate used or intended to be used for making infringing copies, as he would be entitled to if he were the owner of every such copy or plate and had been the owner thereof since the time when it was made:

Provided that if, by virtue of subsection (2) of section three of the Limitation Act, 1939 (which relates to successive conversions or detentions), or of any corresponding provision which may be enacted by the Parliament of Northern Ireland, the title of the owner of the copyright to such a copy or plate would (if he had then been the owner of the copy or plate) have been extinguished at the end of the period mentioned in that subsection or corresponding provision, he shall not be entitled to any rights or remedies under this subsection in respect of anything done in relation to that copy or plate after the end of that period.

- (2) A plaintiff shall not be entitled by virtue of this section to any damages or to any other pecuniary remedy (except costs) if it is proved or admitted that, at the time of the conversion or detention in question,—
  - (a) the defendant was not aware, and had no reasonable grounds for suspecting, that copyright subsisted in the work or other subject-matter to which the action relates, or
  - (b) where the articles converted or detained were infringing copies, the defendant believed, and had reasonable grounds for believing, that they were not infringing copies, or
  - (c) where the article converted or detained was a plate used or intended to be used for making any articles, the defendant believed, and had reasonable grounds for believing, that the articles so made or intended to be made were not, or (as the case may be) would not be, infringing copies.
- (3) In this Part of this Act “infringing copy”—
  - (a) in relation to a literary, dramatic, musical or artistic work, or to such a published edition as is mentioned in section fifteen of this Act, means a reproduction otherwise than in the form of a cinematograph film,
  - (b) in relation to a sound recording, means a record embodying that recording,

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- (c) in relation to a cinematograph film, means a copy of the film, and
  - (d) in relation to a television broadcast or a sound broadcast, means a copy of a cinematograph film of it or a record embodying a sound recording of it,
- being (in any such case) an article the making of which constituted an infringement of the copyright in the work, edition, recording, film or broadcast, or, in the case of an imported article, would have constituted an infringement of that copyright if the article had been made in the place into which it was imported; and “plate ” includes any stereotype, stone, block, mould, matrix, transfer, negative or other appliance.
- (4) In the application of this section to Scotland, for any reference to the conversion or detention by any person of an infringing copy there shall be substituted a reference to an intromission by any person with an infringing copy, and for any reference to articles converted or detained there shall be substituted a reference to articles intromitted with.

## **19 Proceedings in case of copyright subject to exclusive licence**

- (1) The provisions of this section shall have effect as to proceedings in the case of any copyright in respect of which an exclusive licence has been granted and is in force at the time of the events to which the proceedings relate.
- (2) Subject to the following provisions of this section—
- (a) the exclusive licensee shall (except against the owner of the copyright) have the same rights of action, and be entitled to the same remedies, under section seventeen of this Act as if the licence had been an assignment, and those rights and remedies shall be concurrent with the rights and remedies of the owner of the copyright under that section;
  - (b) the exclusive licensee shall (except against the owner of the copyright) have the same rights of action, and be entitled to the same remedies, by virtue of the last preceding section as if the licence had been an assignment; and
  - (c) the owner of the copyright shall not have any rights of action, or be entitled to any remedies, by virtue of the last preceding section which he would not have had or been entitled to if the licence had been an assignment.
- (3) Where an action is brought either by the owner of the copyright or by the exclusive licensee, and the action, in so far as it is brought under section seventeen of this Act, relates (wholly or partly) to an infringement in respect of which they have concurrent rights of action under that section, the owner or licensee, as the case may be, shall not be entitled, except with the leave of the court, to proceed with the action, in so far as it is brought under that section and relates to that infringement, unless the other party is either joined as a plaintiff in the action or added as a defendant:
- Provided that this subsection shall not affect the granting of an interlocutory injunction on the application of either of them.
- (4) In any action brought by the exclusive licensee by virtue of this section, any defence which would have been available to a defendant in the action, if this section had not been enacted and the action had been brought by the owner of the copyright, shall be available to that defendant as against the exclusive licensee.
- (5) Where an action is brought in the circumstances mentioned in subsection (3) of this section, and the owner of the copyright and the exclusive licensee are not both plaintiffs in the action, the court, in assessing damages in respect of any such infringement as is mentioned in that subsection,—

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- (a) if the plaintiff is the exclusive licensee, shall take into account any liabilities (in respect of royalties or otherwise) to which the licence is subject, and
  - (b) whether the plaintiff is the owner of the copyright or the exclusive licensee, shall take into account any pecuniary remedy already awarded to the other party under section seventeen of this Act in respect of that infringement, or, as the case may require, any right of action exercisable by the other party under that section in respect thereof.
- (6) Where an action, in so far as it is brought under section seventeen of this Act, relates (wholly or partly) to an infringement in respect of which the owner of the copyright and the exclusive licensee have concurrent rights of action under that section, and in that action (whether they are both parties to it or not) an account of profits is directed to be taken in respect of that infringement, then, subject to any agreement of which the court is aware, whereby the application of those profits is determined as between the owner of the copyright and the exclusive licensee, the court shall apportion the profits between them as the court may consider just, and shall give such directions as the court may consider appropriate for giving effect to that apportionment.
- (7) In an action brought either by the owner of the copyright or by the exclusive licensee,
- (a) no judgment or order for the payment of damages in respect of an infringement of copyright shall be given or made under section seventeen of this Act, if a final judgment or order has been given or made awarding an account of profits to the other party under that section in respect of the same infringement; and
  - (b) no judgment or order for an account of profits in respect of an infringement of copyright shall be given or made under that section, if a final judgment or order has been given or made awarding either damages or an account of profits to the other party under that section in respect of the same infringement.
- (8) Where, in an action brought in the circumstances mentioned in subsection (3) of this section, whether by the owner of the copyright or by the exclusive licensee, the other party is not joined as a plaintiff (either at the commencement of the action or subsequently), but is added as a defendant, he shall not be liable for any costs in the action unless he enters an appearance and takes part in the proceedings.
- (9) In this section “exclusive licence” means a licence in writing, signed by or on behalf of an owner or prospective owner of copyright, authorising the licensee, to the exclusion of all other persons, including the grantor of the licence, to exercise a right which by virtue of this Act would (apart from the licence) be exercisable exclusively by the owner of the copyright, and “exclusive licensee” shall be construed accordingly; “the other party”, in relation to the owner of the copyright, means the exclusive licensee, and, in relation to the exclusive licensee, means the owner of the copyright; and “if the licence had been an assignment” means if, instead of the licence, there had been granted (subject to terms and conditions corresponding as nearly as may be with those subject to which the licence was granted) an assignment of the copyright in respect of its application to the doing, at the places and times authorised by the licence, of the acts so authorised.

## 20 Proof of facts in copyright actions

- (1) In any action brought by virtue of this Part of this Act—

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- (a) copyright shall be presumed to subsist in the work or other subject-matter to which the action relates, if the defendant does not put in issue the question whether copyright subsists therein, and
  - (b) where the subsistence of the copyright is proved or admitted, or is presumed in pursuance of the preceding paragraph, the plaintiff shall be presumed to be the owner of the copyright, if he claims to be the owner of the copyright and the defendant does not put in issue the question of his ownership thereof.
- (2) Subject to the preceding subsection, where, in the case of a literary, dramatic, musical or artistic work, a name purporting to be that of the author appeared on copies of the work as published, or, in the case of an artistic work, appeared on the work when it was made, the person whose name so appeared (if it was his true name or a name by which he was commonly known) shall, in any action brought by virtue of this Part of this Act, be presumed, unless the contrary is proved,—
- (a) to be the author of the work, and
  - (b) to have made the work in circumstances not falling within subsection (2), subsection (3) or subsection (4) of section four of this Act.
- (3) In the case of a work alleged to be a work of joint authorship, the last preceding subsection shall apply in relation to each person alleged to be one of the authors of the work, as if references in that subsection to the author were references to one of the authors.
- (4) Where, in an action brought by virtue of this Part of this Act with respect to a literary, dramatic, musical or artistic work, subsection (2) of this section does not apply, but it is established—
- (a) that the work was first published in the United Kingdom, or in another country to which section two, or, as the case may be, section three, of this Act extends, and was so published within the period of fifty years ending with the beginning of the calendar year in which the action was brought, and
  - (b) that a name purporting to be that of the publisher appeared on copies of the work as first published,
- then, unless the contrary is shown, copyright shall be presumed to subsist in the work and the person whose name so appeared shall be presumed to have been the owner of that copyright at the time of the publication.
- For the purposes of this subsection a fact shall be taken to be established if it is proved or admitted, or if it is presumed in pursuance of the following provisions of this section.
- (5) Where in an action brought by virtue of this Part of this Act with respect to a literary, dramatic, musical or artistic work it is proved or admitted that the author of the work is dead,—
- (a) the work shall be presumed to be an original work unless the contrary is proved, and
  - (b) if it is alleged by the plaintiff that a publication specified in the allegation was the first publication of the work, and that it took place in a country and on a date so specified, that publication shall be presumed, unless the contrary is proved, to have been the first publication of the work, and to have taken place in that country and on that date.
- (6) Paragraphs (a) and (b) of the last preceding subsection shall apply where a work has been published, and—

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- (a) the publication was anonymous, or was under a name alleged by the plaintiff to have been a pseudonym, and
- (b) it is not shown that the work has ever been published under the true name of the author, or under a name by which he was commonly known, or that it is possible for a person without previous knowledge of the facts to ascertain the identity of the author by reasonable inquiry,

as those paragraphs apply in a case where it is proved that the author is dead.

- (7) In any action brought by virtue of this Part of this Act with respect to copyright in a sound recording, if records embodying that recording or part thereof have been issued to the public, and at the time when those records were so issued they bore a label or other mark comprising any one or more of the following statements, that is to say,—
- (a) that a person named on the label or mark was the maker of the sound recording ;
  - (b) that the recording was first published in a year specified on the label or mark ;
  - (c) that the recording was first published in a country specified on the label or mark,

that label or mark shall be sufficient evidence of the facts so stated except in so far as the contrary is proved.

## **21 Penalties and summary proceedings in respect of dealings which infringe copyright**

- (1) Any person who, at a time when copyright subsists in a work,—
- (a) makes for sale or hire, or
  - (b) sells or lets for hire, or by way of trade offers or exposes for sale or hire, or
  - (c) by way of trade exhibits in public, or
  - (d) imports into the United Kingdom, otherwise than for his private and domestic use,
- any article which he knows to be an infringing copy of the work, shall be guilty of an offence under this subsection.
- (2) Any person who, at a time when copyright subsists in a work, distributes, either—
- (a) for purposes of trade, or
  - (b) for other purposes, but to such an extent as to affect prejudicially the owner of the copyright,
- articles which he knows to be infringing copies of the work, shall be guilty of an offence under this subsection.
- (3) Any person who, at a time when copyright subsists in a work, makes or has in his possession a plate, knowing that it is to be used for making infringing copies of the work, shall be guilty of an offence under this subsection.
- (4) The preceding subsections shall apply in relation to copyright subsisting in any subject-matter by virtue of Part II of this Act, as they apply in relation to copyright subsisting by virtue of Part I of this Act.
- (5) Any person who causes a literary, dramatic or musical work to be performed in public, knowing that copyright subsists in the work and that the performance constitutes an infringement of the copyright, shall be guilty of an offence under this subsection.

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- (6) The preceding provisions of this section apply only in respect of acts done in the United Kingdom.
- (7) A person guilty of an offence under subsection (1) or subsection (2) of this section shall on summary conviction—
- (a) if it is his first conviction of an offence under this section, be liable to a fine not exceeding forty shillings for each article to which the offence relates;
  - (b) in any other case, be liable to such a fine, or to imprisonment for a term not exceeding two months:
- Provided that a fine imposed by virtue of this subsection shall not exceed fifty pounds in respect of articles comprised in the same transaction.
- (8) A person guilty of an offence under subsection (3) or subsection (5) of this section shall on summary conviction—
- (a) if it is his first conviction of an offence under this section, be liable to a fine not exceeding fifty pounds;
  - (b) in any other case, be liable to such a fine, or to imprisonment for a term not exceeding two months.
- (9) The court before which a person is charged with an offence under this section may, whether he is convicted of the offence or not, order that any article in his possession which appears to the court to be an infringing copy, or to be a plate used or intended to be used for making infringing copies, shall be destroyed or delivered up to the owner of the copyright in question or otherwise dealt with as the court may think fit.
- (10) An appeal shall lie to a court of quarter sessions from any order made under the last preceding subsection by a court of summary jurisdiction; and where such an order is made by the sheriff there shall be a like right of appeal against the order as if it were a conviction.

## **22 Provision for restricting importation of printed copies**

- (1) The owner of the copyright in any published literary, dramatic or musical work may give notice in writing to the Commissioners of Customs and Excise (in this section referred to as “the Commissioners”)—
- (a) that he is the owner of the copyright in the work, and
  - (b) that he requests the Commissioners, during a period specified in the notice, to treat as prohibited goods copies of the work to which this section applies:
- Provided that the period specified in a notice under this subsection shall not exceed five years and shall not extend beyond the end of the period for which the copyright is to subsist.
- (2) This section applies, in the case of a work, to any printed copy made outside the United Kingdom which, if it had been made in the United Kingdom, would be an infringing copy of the work.
- (3) Where a notice has been given under this section in respect of a work, and has not been withdrawn, the importation into the United Kingdom, at a time before the end of the period specified in the notice, of any copy of the work to which this section applies shall, subject to the following provisions of this section, be prohibited:

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Provided that this subsection shall not apply to the importation of any article by a person for his private and domestic use.

- (4) The Commissioners may make regulations prescribing the form in which notices are to be given under this section, and requiring a person giving such a notice, either at the time of giving the notice or at the time when the goods in question are imported, or at both those times, to furnish the Commissioners with such evidence, and to comply with such other conditions (if any), as may be specified in the regulations; and any such regulations may include such incidental and supplementary provisions as the Commissioners consider expedient for the purposes of this section.
- (5) Without prejudice to the generality of the last preceding subsection, regulations made under that subsection may include provision for requiring a person who has given a notice under subsection (1) of this section, or a notice purporting to be a notice under that subsection,—
  - (a) to pay such fees in respect of the notice as may be prescribed by the regulations ;
  - (b) to give to the Commissioners such security as may be so prescribed, in respect of any liability or expense which they may incur in consequence of the detention, at any time within the period specified in the notice, of any copy of the work to which the notice relates, or in consequence of anything done in relation to a copy so detained;
  - (c) whether any such security is given or not, to keep the Commissioners indemnified against any such liability or expense as is mentioned in the last preceding paragraph.
- (6) For the purposes of section eleven of the Customs and Excise Act, 1952 (which relates to the disposal of duties), any fees paid in pursuance of regulations made under this section shall be treated as money collected on account of customs.
- (7) Notwithstanding anything in the Customs and Excise Act, 1952, a person shall not be liable to any penalty under that Act (other than forfeiture of the goods) by reason that any goods are treated as prohibited goods by virtue of this section.