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STATUTORY INSTRUMENTS

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**2003 No. 2498**

**The Copyright and Related Rights Regulations 2003**

**PART 2 U.K.**

**AMENDMENTS OF THE COPYRIGHT, DESIGNS AND PATENTS ACT 1988**

*Technical measures and rights management information*

**Circumvention of protection measures U.K.**

**24.**—(1) For the heading “*Devices designed to circumvent copy-protection*” (appearing before section 296) and for section 296 there shall be substituted—

*“Circumvention of protection measures*

**296 Circumvention of technical devices applied to computer programs**

**296**

- (1) This section applies where—
- (a) a technical device has been applied to a computer program; and
  - (b) a person (A) knowing or having reason to believe that it will be used to make infringing copies—
    - (i) manufactures for sale or hire, imports, distributes, sells or lets for hire, offers or exposes for sale or hire, advertises for sale or hire or has in his possession for commercial purposes any means the sole intended purpose of which is to facilitate the unauthorised removal or circumvention of the technical device; or
    - (ii) publishes information intended to enable or assist persons to remove or circumvent the technical device.
- (2) The following persons have the same rights against A as a copyright owner has in respect of an infringement of copyright—
- (a) a person—
    - (i) issuing to the public copies of, or
    - (ii) communicating to the public,the computer program to which the technical device has been applied;
  - (b) the copyright owner or his exclusive licensee, if he is not the person specified in paragraph (a);
  - (c) the owner or exclusive licensee of any intellectual property right in the technical device applied to the computer program.

(3) The rights conferred by subsection (2) are concurrent, and sections 101(3) and 102(1) to (4) apply, in proceedings under this section, in relation to persons with concurrent rights as they apply, in proceedings mentioned in those provisions, in relation to a copyright owner and exclusive licensee with concurrent rights.

(4) Further, the persons in subsection (2) have the same rights under section 99 or 100 (delivery up or seizure of certain articles) in relation to any such means as is referred to in subsection (1) which a person has in his possession, custody or control with the intention that it should be used to facilitate the unauthorised removal or circumvention of any technical device which has been applied to a computer program, as a copyright owner has in relation to an infringing copy.

(5) The rights conferred by subsection (4) are concurrent, and section 102(5) shall apply, as respects anything done under section 99 or 100 by virtue of subsection (4), in relation to persons with concurrent rights as it applies, as respects anything done under section 99 or 100, in relation to a copyright owner and exclusive licensee with concurrent rights.

(6) In this section references to a technical device in relation to a computer program are to any device intended to prevent or restrict acts that are not authorised by the copyright owner of that computer program and are restricted by copyright.

(7) The following provisions apply in relation to proceedings under this section as in relation to proceedings under Part 1 (copyright)—

- (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 (4).

(8) Expressions used in this section which are defined for the purposes of Part 1 of this Act (copyright) have the same meaning as in that Part.

## **296ZA Circumvention of technological measures**

### **296ZA**

(1) This section applies where—

- (a) effective technological measures have been applied to a copyright work other than a computer program; and
- (b) a person (B) does anything which circumvents those measures knowing, or with reasonable grounds to know, that he is pursuing that objective.

(2) This section does not apply where a person, for the purposes of research into cryptography, does anything which circumvents effective technological measures unless in so doing, or in issuing information derived from that research, he affects prejudicially the rights of the copyright owner.

(3) The following persons have the same rights against B as a copyright owner has in respect of an infringement of copyright—

- (a) a person—
  - (i) issuing to the public copies of, or
  - (ii) communicating to the public,

the work to which effective technological measures have been applied; and

(b) the copyright owner or his exclusive licensee, if he is not the person specified in paragraph (a).

(4) The rights conferred by subsection (3) are concurrent, and sections 101(3) and 102(1) to (4) apply, in proceedings under this section, in relation to persons with concurrent rights as they apply, in proceedings mentioned in those provisions, in relation to a copyright owner and exclusive licensee with concurrent rights.

(5) The following provisions apply in relation to proceedings under this section as in relation to proceedings under Part 1 (copyright)—

(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).

(6) Subsections (1) to (4) and (5)(b) and any other provision of this Act as it has effect for the purposes of those subsections apply, with any necessary adaptations, to rights in performances, publication right and database right.

(7) The provisions of regulation 22 (presumptions relevant to database right) of the Copyright and Rights in Databases Regulations 1997 (SI 1997/3032) apply in proceedings brought by virtue of this section in relation to database right.

## **296ZB Devices and services designed to circumvent technological measures**

### **296ZB**

(1) A person commits an offence if he—

- (a) manufactures for sale or hire, or
- (b) imports otherwise than for his private and domestic use, or
- (c) in the course of a business—
  - (i) sells or lets for hire, or
  - (ii) offers or exposes for sale or hire, or
  - (iii) advertises for sale or hire, or
  - (iv) possesses, or
  - (v) distributes, or

(d) distributes otherwise than in the course of a business to such an extent as to affect prejudicially the copyright owner,

any device, product or component which is primarily designed, produced, or adapted for the purpose of enabling or facilitating the circumvention of effective technological measures.

(2) A person commits an offence if he provides, promotes, advertises or markets—

- (a) in the course of a business, or
- (b) otherwise than in the course of a business to such an extent as to affect prejudicially the copyright owner,

a service the purpose of which is to enable or facilitate the circumvention of effective technological measures.

(3) Subsections (1) and (2) do not make unlawful anything done by, or on behalf of, law enforcement agencies or any of the intelligence services—

- (a) in the interests of national security; or
- (b) for the purpose of the prevention or detection of crime, the investigation of an offence, or the conduct of a prosecution,

and in this subsection “intelligence services” has the meaning given in section 81 of the Regulation of Investigatory Powers Act 2000.

(4) A person guilty of an offence under subsection (1) or (2) is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding three months, or to a fine not exceeding the statutory maximum, or both;
- (b) on conviction on indictment to a fine or imprisonment for a term not exceeding two years, or both.

(5) 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—

- (a) the device, product or component; or
- (b) the service,

enabled or facilitated the circumvention of effective technological measures.

### **296ZC Devices and services designed to circumvent technological measures: search warrants and forfeiture**

#### **296ZC**

(1) The provisions of sections 297B (search warrants), 297C (forfeiture of unauthorised decoders: England and Wales or Northern Ireland) and 297D (forfeiture of unauthorised decoders: Scotland) apply to offences under section 296ZB with the following modifications.

(2) In section 297B the reference to an offence under section 297A(1) shall be construed as a reference to an offence under section 296ZB(1) or (2).

(3) In sections 297C(2)(a) and 297D(15) the references to an offence under section 297A(1) shall be construed as a reference to an offence under section 296ZB(1).

(4) In sections 297C and 297D references to unauthorised decoders shall be construed as references to devices, products or components for the purpose of circumventing effective technological measures.

### **296ZD Rights and remedies in respect of devices and services designed to circumvent technological measures**

#### **296ZD**

(1) This section applies where—

- (a) effective technological measures have been applied to a copyright work other than a computer program; and
- (b) a person (C) manufactures, imports, distributes, sells or lets for hire, offers or exposes for sale or hire, advertises for sale or hire, or has in his possession for commercial purposes any device, product or component, or provides services which—
  - (i) are promoted, advertised or marketed for the purpose of the circumvention of, or
  - (ii) have only a limited commercially significant purpose or use other than to circumvent, or

(iii) are primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of,

those measures.

(2) The following persons have the same rights against C as a copyright owner has in respect of an infringement of copyright—

(a) a person—

(i) issuing to the public copies of, or

(ii) communicating to the public,

the work to which effective technological measures have been applied;

(b) the copyright owner or his exclusive licensee, if he is not the person specified in paragraph (a); and

(c) the owner or exclusive licensee of any intellectual property right in the effective technological measures applied to the work.

(3) The rights conferred by subsection (2) are concurrent, and sections 101(3) and 102(1) to (4) apply, in proceedings under this section, in relation to persons with concurrent rights as they apply, in proceedings mentioned in those provisions, in relation to a copyright owner and exclusive licensee with concurrent rights.

(4) Further, the persons in subsection (2) have the same rights under section 99 or 100 (delivery up or seizure of certain articles) in relation to any such device, product or component which a person has in his possession, custody or control with the intention that it should be used to circumvent effective technological measures, as a copyright owner has in relation to any infringing copy.

(5) The rights conferred by subsection (4) are concurrent, and section 102(5) shall apply, as respects anything done under section 99 or 100 by virtue of subsection (4), in relation to persons with concurrent rights as it applies, as respects anything done under section 99 or 100, in relation to a copyright owner and exclusive licensee with concurrent rights.

(6) The following provisions apply in relation to proceedings under this section as in relation to proceedings under Part 1 (copyright)—

(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 (4).

(7) 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 enabled or facilitated an infringement of copyright.

(8) Subsections (1) to (5), (6)(b) and (7) and any other provision of this Act as it has effect for the purposes of those subsections apply, with any necessary adaptations, to rights in performances, publication right and database right.

(9) The provisions of regulation 22 (presumptions relevant to database right) of the Copyright and Rights in Databases Regulations 1997 (SI 1997/3032) apply in proceedings brought by virtue of this section in relation to database right.

## **296ZE Remedy where effective technological measures prevent permitted acts**

### **296ZE**

(1) In this section—

“permitted act” means an act which may be done in relation to copyright works, notwithstanding the subsistence of copyright, by virtue of a provision of this Act listed in Part 1 of Schedule 5A;

“voluntary measure or agreement” means—

- (a) any measure taken voluntarily by a copyright owner, his exclusive licensee or a person issuing copies of, or communicating to the public, a work other than a computer program, or
- (b) any agreement between a copyright owner, his exclusive licensee or a person issuing copies of, or communicating to the public, a work other than a computer program and another party,

the effect of which is to enable a person to carry out a permitted act.

(2) Where the application of any effective technological measure to a copyright work other than a computer program prevents a person from carrying out a permitted act in relation to that work then that person or a person being a representative of a class of persons prevented from carrying out a permitted act may issue a notice of complaint to the Secretary of State.

(3) Following receipt of a notice of complaint, the Secretary of State may give to the owner of that copyright work or an exclusive licensee such directions as appear to the Secretary of State to be requisite or expedient for the purpose of—

- (a) establishing whether any voluntary measure or agreement relevant to the copyright work the subject of the complaint subsists; or
- (b) (where it is established there is no subsisting voluntary measure or agreement) ensuring that the owner or exclusive licensee of that copyright work makes available to the complainant the means of carrying out the permitted act the subject of the complaint to the extent necessary to so benefit from that permitted act.

(4) The Secretary of State may also give directions—

- (a) as to the form and manner in which a notice of complaint in subsection (2) may be delivered to him;
- (b) as to the form and manner in which evidence of any voluntary measure or agreement may be delivered to him; and
- (c) generally as to the procedure to be followed in relation to a complaint made under this section;

and shall publish directions given under this subsection in such manner as in his opinion will secure adequate publicity for them.

(5) It shall be the duty of any person to whom a direction is given under subsection (3)(a) or (b) to give effect to that direction.

(6) The obligation to comply with a direction given under subsection (3)(b) is a duty owed to the complainant or, where the complaint is made by a representative of a class of persons, to that representative and to each person in the class represented; and a breach of the duty

is actionable accordingly (subject to the defences and other incidents applying to actions for breach of statutory duty).

(7) Any direction under this section may be varied or revoked by a subsequent direction under this section.

(8) Any direction given under this section shall be in writing.

(9) This section does not apply to copyright works made available to the public on agreed contractual terms in such a way that members of the public may access them from a place and at a time individually chosen by them.

(10) This section applies only where a complainant has lawful access to the protected copyright work, or where the complainant is a representative of a class of persons, where the class of persons have lawful access to the work.

(11) Subsections (1) to (10) apply with any necessary adaptations to—

- (a) rights in performances, and in this context the expression “permitted act” refers to an act that may be done by virtue of a provision of this Act listed in Part 2 of Schedule 5A;
- (b) database right, and in this context the expression “permitted act” refers to an act that may be done by virtue of a provision of this Act listed in Part 3 of Schedule 5A; and
- (c) publication right.

## **296ZF Interpretation of sections 296ZA to 296ZE**

### **296ZF**

(1) In sections 296ZA to 296ZE, “technological measures” are any technology, device or component which is designed, in the normal course of its operation, to protect a copyright work other than a computer program.

(2) Such measures are “effective” if the use of the work is controlled by the copyright owner through—

- (a) an access control or protection process such as encryption, scrambling or other transformation of the work, or
- (b) a copy control mechanism,

which achieves the intended protection.

(3) In this section, the reference to—

- (a) protection of a work is to the prevention or restriction of acts that are not authorised by the copyright owner of that work and are restricted by copyright; and
- (b) use of a work does not extend to any use of the work that is outside the scope of the acts restricted by copyright.

(4) Expressions used in sections 296ZA to 296ZE which are defined for the purposes of Part 1 of this Act (copyright) have the same meaning as in that Part.”.

(2) After Schedule 5 there shall be inserted, as Schedule 5A, the Schedule which is set out in Schedule 3 (new Schedule 5A to the Copyright, Designs and Patents Act 1988).

**Changes to legislation:**

There are currently no known outstanding effects for the The Copyright and Related Rights Regulations 2003, Section 24.