



# Copyright, Designs and Patents Act 1988

## 1988 CHAPTER 48

### PART I

#### COPYRIGHT

#### CHAPTER VI

##### REMEDIES FOR INFRINGEMENT

##### *Rights and remedies of exclusive licensee*

#### **101 Rights and remedies of exclusive licensee.**

- (1) An exclusive licensee has, except against the copyright owner, the same rights and remedies in respect of matters occurring after the grant of the licence as if the licence had been an assignment.
- (2) His rights and remedies are concurrent with those of the copyright owner; and references in the relevant provisions of this Part to the copyright owner shall be construed accordingly.
- (3) In an action brought by an exclusive licensee by virtue of this section a defendant may avail himself of any defence which would have been available to him if the action had been brought by the copyright owner.

**Modifications etc. (not altering text)**

C1 Ss. 90-93, 96-98, 101, 102 applied (1.1.1998) by [S.I. 1997/3032](#), [reg. 23](#) (with [Pt. IV](#))

#### **[<sup>F1</sup>101A Certain infringements actionable by a non-exclusive licensee**

- (1) A non-exclusive licensee may bring an action for infringement of copyright if—

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*Changes to legislation: There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, Cross Heading: Rights and remedies of exclusive licensee. (See end of Document for details)*

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- (a) the infringing act was directly connected to a prior licensed act of the licensee; and
  - (b) the licence—
    - (i) is in writing and is signed by or on behalf of the copyright owner; and
    - (ii) expressly grants the non-exclusive licensee a right of action under this section.
- (2) In an action brought under this section, the non-exclusive licensee shall have the same rights and remedies available to him as the copyright owner would have had if he had brought the action.
- (3) The rights granted under this section are concurrent with those of the copyright owner and references in the relevant provisions of this Part to the copyright owner shall be construed accordingly.
- (4) In an action brought by a non-exclusive licensee by virtue of this section a defendant may avail himself of any defence which would have been available to him if the action had been brought by the copyright owner.
- (5) Subsections (1) to (4) of section 102 shall apply to a non-exclusive licensee who has a right of action by virtue of this section as it applies to an exclusive licensee.
- (6) In this section a “ non-exclusive licensee ” means the holder of a licence authorising the licensee to exercise a right which remains exercisable by the copyright owner. ]

#### Textual Amendments

**F1** S. 101A inserted (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), [reg. 28](#) (with [regs. 31-40](#))

## 102 Exercise of concurrent rights.

- (1) Where an action for infringement of copyright brought by the copyright owner or an exclusive licensee relates (wholly or partly) to an infringement in respect of which they have concurrent rights of action, the copyright owner or, as the case may be, the exclusive licensee may not, without the leave of the court, proceed with the action unless the other is either joined as a plaintiff or added as a defendant.
- (2) A copyright owner or exclusive licensee who is added as a defendant in pursuance of subsection (1) is not liable for any costs in the action unless he takes part in the proceedings.
- (3) The above provisions do not affect the granting of interlocutory relief on an application by a copyright owner or exclusive licensee alone.
- (4) Where an action for infringement of copyright is brought which relates (wholly or partly) to an infringement in respect of which the copyright owner and an exclusive licensee have or had concurrent rights of action—
  - (a) the court shall in assessing damages take into account—
    - (i) the terms of the licence, and
    - (ii) any pecuniary remedy already awarded or available to either of them in respect of the infringement;

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- (b) no account of profits shall be directed if an award of damages has been made, or an account of profits has been directed, in favour of the other of them in respect of the infringement; and
  - (c) the court shall if an account of profits is directed apportion the profits between them as the court considers just, subject to any agreement between them;
- and these provisions apply whether or not the copyright owner and the exclusive licensee are both parties to the action.
- (5) The copyright owner shall notify any exclusive licensee having concurrent rights before applying for an order under section 99 (order for delivery up) or exercising the right conferred by section 100 (right of seizure); and the court may on the application of the licensee make such order under section 99 or, as the case may be, prohibiting or permitting the exercise by the copyright owner of the right conferred by section 100, as it thinks fit having regard to the terms of the licence.

**Modifications etc. (not altering text)**

**C2** Ss. 90-93, 96-98, 101, 102 applied (1.1.1998) by S.I. 1997/3032, **reg. 23** (with Pt. IV)

**C3** S. 102(5) extended by S.I.1991/724, **art. 2(1)(n)**

**Changes to legislation:**

There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, Cross Heading: Rights and remedies of exclusive licensee.