



# 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)—

*Status: Point in time view as at 01/02/1991. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, Part VII. (See end of Document for details)*

- (a) sections 104 to 106 of this Act (presumptions as to certain matters relating to copyright), and
  - (b) section 72 of the <sup>M1</sup>Supreme Court Act 1981, section 15 of the <sup>M2</sup>Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 and section 94A of the <sup>M3</sup>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.

#### Marginal Citations

**M1** 1981 c. 54.

**M2** 1985 c. 37.

**M3** 1978 c. 23.

VALID FROM 31/10/2003

#### [<sup>F1</sup>296Z] Circumvention of technological measures

- (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

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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.]

#### Textual Amendments

- F1** Ss. 296-296ZF and cross-heading substituted (31.10.2003) for s. 296 and cross-heading by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), [reg. 24\(1\)](#) (with regs. 31-40)

VALID FROM 31/10/2003

#### [<sup>F1</sup>296ZB] **Devices and services designed to circumvent technological measures**

- (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.

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- (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.

#### Textual Amendments

- F1** Ss. 296-296ZF and cross-heading substituted (31.10.2003) for s. 296 and cross-heading by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), **reg. 24(1)** (with regs. 31-40)

VALID FROM 31/10/2003

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

- (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.

#### Textual Amendments

- F1** Ss. 296-296ZF and cross-heading substituted (31.10.2003) for s. 296 and cross-heading by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), **reg. 24(1)** (with regs. 31-40)

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*Changes to legislation:* There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, Part VII. (See end of Document for details)

VALID FROM 31/10/2003

## **[<sup>F1</sup>296Z] Rights and remedies in respect of devices and services designed to circumvent technological measures**

- (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)—

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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 (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.]

#### Textual Amendments

- F1** Ss. 296-296ZF and cross-heading substituted (31.10.2003) for s. 296 and cross-heading by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), **reg. 24(1)** (with regs. 31-40)

VALID FROM 31/10/2003

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

- (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.

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- (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.

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### Textual Amendments

- F1** Ss. 296-296ZF and cross-heading substituted (31.10.2003) for s. 296 and cross-heading by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), **reg. 24(1)** (with regs. 31-40)

VALID FROM 31/10/2003

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

- (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.]

### Textual Amendments

- F1** Ss. 296-296ZF and cross-heading substituted (31.10.2003) for s. 296 and cross-heading by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), **reg. 24(1)** (with regs. 31-40)

VALID FROM 31/10/2003

*[<sup>F2</sup>Rights management information]*

### Textual Amendments

- F2** [S. 296ZG](#) and cross-heading inserted (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), **reg. 25** (with regs. 31-40)



*Status: Point in time view as at 01/02/1991. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, Part VII. (See end of Document for details)*

## **296ZG Electronic rights management information**

- (1) This section applies where a person (D), knowingly and without authority, removes or alters electronic rights management information which—
  - (a) is associated with a copy of a copyright work, or
  - (b) appears in connection with the communication to the public of a copyright work, andwhere D knows, or has reason to believe, that by so doing he is inducing, enabling, facilitating or concealing an infringement of copyright.
- (2) This section also applies where a person (E), knowingly and without authority, distributes, imports for distribution or communicates to the public copies of a copyright work from which electronic rights management information—
  - (a) associated with the copies, or
  - (b) appearing in connection with the communication to the public of the work,has been removed or altered without authority and where E knows, or has reason to believe, that by so doing he is inducing, enabling, facilitating or concealing an infringement of copyright.
- (3) A person issuing to the public copies of, or communicating, the work to the public, has the same rights against D and E as a copyright owner has in respect of an infringement of copyright.
- (4) The copyright owner or his exclusive licensee, if he is not the person issuing to the public copies of, or communicating, the work to the public, also has the same rights against D and E as he has in respect of an infringement of copyright.
- (5) The rights conferred by subsections (3) and (4) 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.
- (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).
- (7) In this section—
  - (a) expressions which are defined for the purposes of Part 1 of this Act (copyright) have the same meaning as in that Part; and
  - (b) “rights management information” means any information provided by the copyright owner or the holder of any right under copyright which identifies the work, the author, the copyright owner or the holder of any intellectual property rights, or information about the terms and conditions of use of the work, and any numbers or codes that represent such information.
- (8) Subsections (1) to (5) and (6)(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.

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*Changes to legislation: There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, Part VII. (See end of Document for details)*

- (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.

VALID FROM 01/01/1993

*[<sup>F3</sup>Computer programs]*

**Textual Amendments**

**F3** Cross heading and s. 296A inserted (1.1.1993) by [S.I. 1992/3233](#), [reg.11](#)

**<sup>F4</sup>296A Avoidance of certain terms.**

- (1) Where a person has the use of a computer program under an agreement, any term or condition in the agreement shall be void in so far as it purports to prohibit or restrict—
- (a) the making of any back up copy of the program which it is necessary for him to have for the purposes of the agreed use;
  - (b) where the conditions in section 50B(2) are met, the decompiling of the program; or
  - (c) the use of any device or means to observe, study or test the functioning of the program in order to understand the ideas and principles which underlie any element of the program.
- (2) In this section, decompile, in relation to a computer program, has the same meaning as in section 50B

**Textual Amendments**

**F4** [S. 296A](#) inserted (1.1.1993) by [S.I. 1992/3233](#), [reg.11](#).

VALID FROM 01/01/1998

*[<sup>F5</sup>Databases]*

**Textual Amendments**

**F5** [S. 296B](#) and crossheading inserted (1.1.1998) by [S.I. 1997/3032](#), [reg. 10](#) (with [Pt. IV](#))

**296B [<sup>F6</sup> Avoidance of certain terms relating to databases]**

Where under an agreement a person has a right to use a database or part of a database, any term or condition in the agreement shall be void in so far as it purports to prohibit or restrict the performance of any act which would but for section 50D infringe the copyright in the database.

*Status: Point in time view as at 01/02/1991. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, Part VII. (See end of Document for details)*

### Textual Amendments

**F6** S. 296B inserted (1.1.1998) by S.I. 1997/3032, reg. 10 (with Pt. IV)

### *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.

#### **[<sup>F7</sup>297A Unauthorised decoders.**

- (1) A person who makes, imports, sells or lets for hire any unauthorised decoder shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (2) 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 knowing, that the decoder was an unauthorised decoder.
- (3) In this section—

“apparatus” includes any device, component or electronic data;

“decoder” means any apparatus which is designed or adapted to enable (whether on its own or with any other apparatus) an encrypted transmission to be decoded;

“transmission” means any programme included in a broadcasting or cable programme service which is provided from a place in the United Kingdom; and

“unauthorised” in relation to a decoder, means a decoder which will enable encrypted transmissions to be viewed in decoded form without payment of the fee (however imposed) which the person making the transmission, or on whose behalf it is made, charges for viewing those transmissions, or viewing any service of which they form part.]

### Textual Amendments

**F7** S. 297A inserted by Broadcasting Act 1990 (c. 42, SIF 96), s. 179(1)

*Status: Point in time view as at 01/02/1991. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, Part VII. (See end of Document for details)*

VALID FROM 20/11/2002

### [<sup>F8</sup>297B Search warrants

- (1) Where a justice of the peace (in Scotland, a sheriff or justice of the peace) is satisfied by information on oath given by a constable (in Scotland, by evidence on oath) that there are reasonable grounds for believing—
  - (a) that an offence under section 297A(1) has been or is about to be committed in any premises, and
  - (b) that evidence that such an offence has been or is about to be committed is in those premises,
 he may issue a warrant authorising a constable to enter and search the premises, using such reasonable force as is necessary.
- (2) The power conferred by subsection (1) does not, in England and Wales, extend to authorising a search for material of the kinds mentioned in section 9(2) of the Police and Criminal Evidence Act 1984 (c. 60) (certain classes of personal or confidential material).
- (3) A warrant under subsection (1)—
  - (a) may authorise persons to accompany any constable executing the warrant, and
  - (b) remains in force for 28 days from the date of its issue.
- (4) In executing a warrant issued under subsection (1) a constable may seize an article if he reasonably believes that it is evidence that any offence under section 297A(1) has been or is about to be committed.
- (5) In this section “premises” includes land, buildings, fixed or moveable structures, vehicles, vessels, aircraft and hovercraft.]

#### Textual Amendments

**F8** S. 297B inserted (20.11.2002) by 2002 c. 25, s. 2(4); S.I. 2002/2749, art. 2

VALID FROM 20/11/2002

### [<sup>F9</sup>297C Forfeiture of unauthorised decoders: England and Wales or Northern Ireland

- (1) In England and Wales or Northern Ireland where unauthorised decoders have come into the possession of any person in connection with the investigation or prosecution of a relevant offence, that person may apply under this section for an order for the forfeiture of the unauthorised decoders.
- (2) For the purposes of this section “relevant offence” means—
  - (a) an offence under section 297A(1) (criminal liability for making, importing, etc. unauthorised decoders),
  - (b) an offence under the Trade Descriptions Act 1968, or
  - (c) an offence involving dishonesty or deception.

*Status: Point in time view as at 01/02/1991. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, Part VII. (See end of Document for details)*

- (3) An application under this section may be made—
  - (a) where proceedings have been brought in any court for a relevant offence relating to some or all of the unauthorised decoders, to that court, or
  - (b) where no application for the forfeiture of the unauthorised decoders has been made under paragraph (a), by way of complaint to a magistrates' court.
- (4) On an application under this section, the court shall make an order for the forfeiture of any unauthorised decoders only if it is satisfied that a relevant offence has been committed in relation to the unauthorised decoders.
- (5) A court may infer for the purposes of this section that such an offence has been committed in relation to any unauthorised decoders if it is satisfied that such an offence has been committed in relation to unauthorised decoders which are representative of the unauthorised decoders in question (whether by reason of being of the same design or part of the same consignment or batch or otherwise).
- (6) Any person aggrieved by an order made under this section by a magistrates' court, or by a decision of such a court not to make such an order, may appeal against that order or decision—
  - (a) in England and Wales, to the Crown Court, or
  - (b) in Northern Ireland, to the county court.
- (7) An order under this section may contain such provision as appears to the court to be appropriate for delaying the coming into force of the order pending the making and determination of any appeal (including any application under section 111 of the Magistrates' Courts Act 1980 (c. 43) or Article 146 of the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)) (statement of case)).
- (8) Subject to subsection (9), where any unauthorised decoders are forfeited under this section they shall be destroyed in accordance with such directions as the court may give.
- (9) On making an order under this section the court may direct that the unauthorised decoders to which the order relates shall (instead of being destroyed) be forfeited to a person who has rights or remedies under section 298 in relation to the unauthorised decoders in question, or dealt with in such other way as the court considers appropriate.]

#### Textual Amendments

**F9** Ss. 297C, 297D inserted (20.11.2002) by 2002 c. 25, s. 5; S.I. 2002/2749, art. 2

VALID FROM 20/11/2002

#### <sup>F10</sup>297D Forfeiture of unauthorised decoders: Scotland

- (1) In Scotland the court may make an order under this section for the forfeiture of unauthorised decoders.
- (2) An order under this section may be made—

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*Changes to legislation: There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, Part VII. (See end of Document for details)*

- (a) on an application by the procurator-fiscal made in the manner specified in section 134 of the Criminal Procedure (Scotland) Act 1995 (c. 46), or
  - (b) where a person is convicted of a relevant offence, in addition to any other penalty which the court may impose.
- (3) On an application under subsection (2)(a), the court shall make an order for the forfeiture of any unauthorised decoders only if it is satisfied that a relevant offence has been committed in relation to the unauthorised decoders.
- (4) The court may infer for the purposes of this section that such an offence has been committed in relation to any unauthorised decoders if it is satisfied that such an offence has been committed in relation to unauthorised decoders which are representative of the unauthorised decoders in question (whether by reason of being of the same design or part of the same consignment or batch or otherwise).
- (5) The procurator-fiscal making the application under subsection (2)(a) shall serve on any person appearing to him to be the owner of, or otherwise to have an interest in, the unauthorised decoders to which the application relates a copy of the application, together with a notice giving him the opportunity to appear at the hearing of the application to show cause why the unauthorised decoders should not be forfeited.
- (6) Service under subsection (5) shall be carried out, and such service may be proved, in the manner specified for citation of an accused in summary proceedings under the Criminal Procedure (Scotland) Act 1995 (c. 46).
- (7) Any person upon whom notice is served under subsection (5) and any other person claiming to be the owner of, or otherwise to have an interest in, unauthorised decoders to which an application under this section relates shall be entitled to appear at the hearing of the application to show cause why the unauthorised decoders should not be forfeited.
- (8) The court shall not make an order following an application under subsection (2)(a)—
  - (a) if any person on whom notice is served under subsection (5) does not appear, unless service of the notice on that person is proved, or
  - (b) if no notice under subsection (5) has been served, unless the court is satisfied that in the circumstances it was reasonable not to serve such notice.
- (9) Where an order for the forfeiture of any unauthorised decoders is made following an application under subsection (2)(a), any person who appeared, or was entitled to appear, to show cause why the unauthorised decoders should not be forfeited may, within 21 days of the making of the order, appeal to the High Court by Bill of Suspension.
- (10) Section 182(5)(a) to (e) of the Criminal Procedure (Scotland) Act 1995 shall apply to an appeal under subsection (9) as it applies to a stated case under Part 2 of that Act.
- (11) An order following an application under subsection (2)(a) shall not take effect—
  - (a) until the end of the period of 21 days beginning with the day after the day on which the order is made, or
  - (b) if an appeal is made under subsection (9) above within that period, until the appeal is determined or abandoned.
- (12) An order under subsection (2)(b) shall not take effect—
  - (a) until the end of the period within which an appeal against the order could be brought under the Criminal Procedure (Scotland) Act 1995 (c. 46), or

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- (b) if an appeal is made within that period, until the appeal is determined or abandoned.
- (13) Subject to subsection (14), where any unauthorised decoders are forfeited under this section they shall be destroyed in accordance with such directions as the court may give.
- (14) On making an order under this section the court may direct that the unauthorised decoders to which the order relates shall (instead of being destroyed) be forfeited to a person who has rights or remedies under section 298 in relation to the unauthorised decoders in question, or dealt with in such other way as the court considers appropriate.
- (15) For the purposes of this section—
- “relevant offence” means an offence under section 297A(1) (criminal liability for making, importing, etc. unauthorised decoders), or under the Trade Descriptions Act 1968 (c. 29) or any offence involving dishonesty or deception;
- “the court” means—
- (a) in relation to an order made on an application under subsection (2)(a), the sheriff, and
- (b) in relation to an order made under subsection (2)(b), the court which imposed the penalty.

#### Textual Amendments

**F10** Ss. 297C, 297D inserted (20.11.2002) by 2002 c. 25, s. 5; S.I. 2002/2749, art. 2

### **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.

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- (4) Section 72 of the <sup>M4</sup>Supreme Court Act 1981, section 15 of the <sup>M5</sup>Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 and section 94A of the <sup>M6</sup>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.

#### Marginal Citations

- M4** 1981 c. 54.  
**M5** 1985 c. 37.  
**M6** 1978 c. 23.

### 299 Supplementary provisions as to fraudulent reception.

- (1) Her Majesty may by Order in Council—
- provide that section 297 applies in relation to programmes included in services provided from a country or territory outside the United Kingdom, and
  - provide that section 298 applies in relation to such programmes and to encrypted transmissions sent from such a country or territory.

<sup>F11</sup>(2) .....

- (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 [<sup>F12</sup>, 297A] and 298, and this section, “programme”, “broadcasting” and “cable programme service”, and related expressions, have the same meaning as in Part I (copyright).

#### Textual Amendments

- F11** S. 299(2) repealed by [Broadcasting Act 1990 \(c. 42, SIF 96\)](#), ss. 179(2)(a), 203(3), [Sch. 21](#)
- F12** S. 299(5): ", 297A" inserted by [Broadcasting Act 1990 \(c. 42, SIF 96\)](#), [s. 179\(2\)\(b\)](#)



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

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

In the <sup>M7</sup>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—
  - (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

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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).

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### **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.

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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.”.

#### Marginal Citations

M7 1938 c. 22.

#### *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.

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(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.
- (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.

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- (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.

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

- C1** Power of appointment conferred by s. 305(3) partly exercised: [S.I. 1989/816](#), 955, 1032, 1303, 1990/1400, 2168

**306 Short title.**

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

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**Changes to legislation:**

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