



# Copyright, Designs and Patents Act 1988

## 1988 CHAPTER 48

### PART II

#### RIGHTS IN PERFORMANCES

*<sup>X1</sup> Supplementary provisions with respect to delivery up and seizure*

#### Editorial Information

**X1** The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

#### **203** <sup>X2</sup> **Period after which remedy of delivery up not available.**

- (1) An application for an order under section 195 (order for delivery up in civil proceedings) may not be made after the end of the period of six years from the date on which the illicit recording in question was made, subject to the following provisions.
- (2) If during the whole or any part of that period a person entitled to apply for an order—
  - (a) is under a disability, or
  - (b) is prevented by fraud or concealment from discovering the facts entitling him to apply,an application may be made by him at any time before the end of the period of six years from the date on which he ceased to be under a disability or, as the case may be, could with reasonable diligence have discovered those facts.
- (3) In subsection (2) “disability”—
  - (a) in England and Wales, has the same meaning as in the <sup>M1</sup>Limitation Act 1980;
  - (b) in Scotland, means legal disability within the meaning of the <sup>M2</sup>Prescription and Limitations (Scotland) Act 1973;

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- (c) in Northern Ireland, has the same meaning as in the <sup>M3</sup>Statute of Limitation (Northern Ireland) 1958.
- (4) An order under section 199 (order for delivery up in criminal proceedings) shall not, in any case, be made after the end of the period of six years from the date on which the illicit recording in question was made.

#### Editorial Information

**X2** The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

#### Marginal Citations

**M1** 1980 c. 58.  
**M2** 1973 c. 52.  
**M3** 1958 c. 10 (N.I.).

### <sup>x3</sup>204 Order as to disposal of illicit recording.

- (1) An application may be made to the court for an order that an illicit recording of a performance delivered up in pursuance of an order under section 195 or 199, or seized and detained in pursuance of the right conferred by section 196, shall be—
- (a) forfeited to such person having performer's rights or recording rights in relation to the performance as the court may direct, or
  - (b) destroyed or otherwise dealt with as the court may think fit,
- or for a decision that no such order should be made.
- (2) In considering what order (if any) should be made, the court shall consider whether other remedies available in an action for infringement of the rights conferred by this Part would be adequate to compensate the person or persons entitled to the rights and to protect their interests.
- (3) Provision shall be made by rules of court as to the service of notice on persons having an interest in the recording, 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.
- (4) Where there is more than one person interested in a recording, the court shall make such order as it thinks just and may (in particular) direct that the recording be sold, or otherwise dealt with, and the proceeds divided.
- (5) If the court decides that no order should be made under this section, the person in whose possession, custody or control the recording was before being delivered up or seized is entitled to its return.

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- (6) References in this section to a person having an interest in a recording include any person in whose favour an order could be made in respect of the recording under this section or under section 114 or 231 of this Act or <sup>[F1]</sup>section 19 of the Trade Marks Act 1994] (which make similar provision in relation to infringement of copyright, design right and trade marks).

#### Editorial Information

- X3** The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

#### Textual Amendments

- F1** Words in s. 204(6) substituted (31.10.1994) by 1994 c. 26, s. 106(1), **Sch. 4 para. 8(2)**; S.I. 1994/2550, **art. 2**

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

- C1** S. 204 extended by S.I. 1991/724, **art. 2(1)(n)**

### <sup>[F2X4]</sup>**204 Forfeiture of illicit recordings: England and Wales or Northern Ireland**

- (1) In England and Wales or Northern Ireland where illicit recordings of a performance 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 illicit recordings.
- (2) For the purposes of this section “relevant offence” means—
- an offence under <sup>[F3]</sup>section 198(1) or (1A)] (criminal liability for making or dealing with illicit recordings),
  - an offence under the Trade Descriptions Act 1968 (c. 29), or
  - an offence involving dishonesty or deception.
- (3) An application under this section may be made—
- where proceedings have been brought in any court for a relevant offence relating to some or all of the illicit recordings, to that court, or
  - where no application for the forfeiture of the illicit recordings 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 illicit recordings only if it is satisfied that a relevant offence has been committed in relation to the illicit recordings.
- (5) A court may infer for the purposes of this section that such an offence has been committed in relation to any illicit recordings if it is satisfied that such an offence has been committed in relation to illicit recordings which are representative of the illicit recordings in question (whether by reason of being 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—

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- (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. 1987/1675 (N.I. 26)) (statement of case)).
- (8) Subject to subsection (9), where any illicit recordings 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 illicit recordings to which the order relates shall (instead of being destroyed) be forfeited to the person having the performers' rights or recording rights in question or dealt with in such other way as the court considers appropriate.]

#### Editorial Information

- X4** The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

#### Textual Amendments

- F2** S. 204A inserted (20.11.2002) by 2002 c. 25, s. 4; S.I. 2002/2749, art. 2
- F3** Words in s. 204A(2)(a) substituted (31.10.2003) by The Copyright and Related Rights Regulations 2003 (S.I. 2003/2498), reg. 26(4)(c) (with regs. 31-40)

#### <sup>X5F4</sup>204B Forfeiture: Scotland

- (1) In Scotland the court may make an order under this section for the forfeiture of any illicit recordings.
- (2) An order under this section may be made—
- (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 illicit recordings only if it is satisfied that a relevant offence has been committed in relation to the illicit recordings.
- (4) The court may infer for the purposes of this section that such an offence has been committed in relation to any illicit recordings if it is satisfied that such an offence has been committed in relation to illicit recordings which are representative of the illicit recordings in question (whether by reason of being 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 illicit recordings to which the application relates a copy of the application, together

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- with a notice giving him the opportunity to appear at the hearing of the application to show cause why the illicit recordings 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.
- (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, illicit recordings to which an application under this section relates shall be entitled to appear at the hearing of the application to show cause why the illicit recordings 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 illicit recordings is made following an application under subsection (2)(a), any person who appeared, or was entitled to appear, to show cause why the illicit recordings 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
  - (b) if an appeal is made within that period, until the appeal is determined or abandoned.
- (13) Subject to subsection (14), illicit recordings forfeited under this section 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 illicit recordings to which the order relates shall (instead of being destroyed) be forfeited to the person having the performers' rights or recording rights 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 [F5section 198(1) or (1A)] (criminal liability for making or dealing with illicit recordings), 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

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- (b) in relation to an order made under subsection (2)(b), the court which imposed the penalty.

#### Editorial Information

**X5** The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

#### Textual Amendments

- F4** [S. 204B](#) inserted (20.11.2002) by [2002 c. 25, s. 4](#); [S.I. 2002/2749, art. 2](#)
- F5** Words in [s. 204B\(15\)](#) substituted (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), [reg. 26\(4\)\(d\)](#) (with [regs. 31-40](#))

### <sup>x6</sup>205 Jurisdiction of county court and sheriff court.

- (1) In England, Wales and Northern Ireland a county court may entertain proceedings under—
- section 195 (order for delivery up of illicit recording), or
- section 204 (order as to disposal of illicit recording),
- [<sup>F6</sup>save that, in Northern Ireland, a county court may entertain such proceedings only]where the value of the illicit recordings in question does not exceed the county court limit for actions in tort.
- (2) In Scotland proceedings for an order under either of those provisions may be brought in the sheriff court.
- (3) Nothing in this section shall be construed as affecting the jurisdiction of the High Court or, in Scotland, the Court of Session.

#### Editorial Information

**X6** The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

#### Textual Amendments

- F6** Words in [s. 205\(1\)](#) inserted by [S.I. 1991/724, art. 2\(8\)](#), [Schedule Part I](#)

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**Changes to legislation:**

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