



Copyright, Designs and Patents Act 1988

1988 CHAPTER 48

PART VII

MISCELLANEOUS AND GENERAL

[^{F1}Circumvention of protection measures]

[^{F1}296ZE] Remedy where effective technological measures prevent permitted acts

(1) In this section—

[^{F2}“Marrakesh beneficiary” means a person who—

- (a) is blind,
- (b) has a visual impairment which cannot be improved so as to give the person visual function substantially equivalent to that of a person who has no such impairment, and who is, as a result, unable to read printed works to substantially the same degree as a person without such an impairment,
- (c) has a perceptual or reading disability and is, as a result, unable to read printed works to substantially the same degree as a person without such disability, or
- (d) is otherwise unable, due to a physical disability, to hold or manipulate a book or to focus or move their eyes to the extent that would normally be acceptable for reading;]

[^{F2}“Marrakesh work” means a work in the form of a book, journal, newspaper, magazine or other kind of writing, notation, including sheet music, and related illustrations, in any media, including in audio form such as audiobooks and in digital format, which is protected by copyright, related rights or database rights and which is published or otherwise lawfully made publicly available;]

“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—

Changes to legislation: There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, Section 296ZE. (See end of Document for details)

- (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) [^{F3}Subject to subsection (9A),] 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.

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[But this section does apply where the application of any effective technological ^{F4}(9A) measure to a Marrakesh work prevents the making of an accessible copy of that work under sections 31A, 31B or 31BA, or paragraphs 3A, 3B or 3C of Schedule 2, for the benefit of a Marrakesh beneficiary.]

(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.]

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)
- F2** Words in s. 296ZE(1) inserted (11.10.2018) by [The Copyright and Related Rights \(Marrakesh Treaty etc.\) \(Amendment\) Regulations 2018 \(S.I. 2018/995\)](#), regs. 1(2), **10(2)**
- F3** Words in s. 296ZE(9) inserted (11.10.2018) by [The Copyright and Related Rights \(Marrakesh Treaty etc.\) \(Amendment\) Regulations 2018 \(S.I. 2018/995\)](#), regs. 1(2), **10(3)**
- F4** S. 296ZE(9A) inserted (11.10.2018) by [The Copyright and Related Rights \(Marrakesh Treaty etc.\) \(Amendment\) Regulations 2018 \(S.I. 2018/995\)](#), regs. 1(2), **10(4)**

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