

Copyright, etc. and Trade Marks (Offences and Enforcement) Bill

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Department of Trade and Industry, with the consent of The Lord Razzall, are published separately as HL Bill 71-EN.

Copyright, etc. and Trade Marks (Offences and Enforcement) Bill

CONTENTS

Amendment of the Copyright, Designs and Patents Act 1988

- 1 Penalties for criminal offences
- 2 Search warrants
- 3 Forfeiture: infringing copies, etc
- 4 Forfeiture: illicit recordings
- 5 Forfeiture: unauthorised decoders

Amendment of the Trade Marks Act 1994

- 6 Search warrants

Miscellaneous

- 7 Short title, commencement and extent

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B I L L

TO

Amend the Copyright, Designs and Patents Act 1988 in respect of criminal offences, search warrants, powers of seizure and orders for forfeiture; to amend the Trade Marks Act 1994 in respect of search warrants and powers of seizure; and for connected purposes.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Amendment of the Copyright, Designs and Patents Act 1988

1 Penalties for criminal offences

- (1) The Copyright, Designs and Patents Act 1988 (c. 48) (in this Act referred to as the “1988 Act”) is amended as follows.
- (2) In section 107(4)(b) (criminal liability for making or dealing with infringing articles, etc.), for “two” substitute “ten”. 5
- (3) In section 198(5)(b) (criminal liability for making, dealing with or using illicit recordings), for “two” substitute “ten”.
- (4) In section 297A(2) (criminal liability in relation to unauthorised decoders)—
 - (a) for paragraph (a) substitute— 10

“(a) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum, or to both;” and
 - (b) in paragraph (b), for “two” substitute “ten”.
- (5) This section does not have effect in relation to any offence committed before the commencement of this section. 15

2 Search warrants

- (1) The 1988 Act is amended as follows.
- (2) In section 109 (search warrants: infringing articles, etc.)—

- (a) in subsection (1)(a), for “107(1)(a), (b), (d)(iv) or (e)” substitute “107(1) or (2)”;
- (b) in subsection (4), after “107(1)” insert “or (2)”;
- (c) in subsection (5), after “buildings,” insert “fixed or”.
- (3) In section 200 (search warrants: illicit recordings)– 5
- (a) in subsection (1)(a)–
- (i) for “198(1)(a), (b) or (d)(iii)” substitute “198(1)”;
- (ii) after “importing” insert “, possessing, selling etc.”;
- (b) after subsection (3) insert–
- “(3A) 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 198(1) has been or is about to be committed.”. 10
- (4) After section 297A insert–
- “297B Search warrants” 15**
- (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 20
- (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). 25
- (3) A warrant under subsection (1)–
- (a) may authorise persons to accompany any constable executing the warrant, and 30
- (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. 35
- (5) In this section “premises” includes land, buildings, fixed or moveable structures, vehicles, vessels, aircraft and hovercraft.”.
- 3 Forfeiture: infringing copies, etc**
- After section 114 of the 1988 Act (order as to disposal of infringing copy or other article) insert– 40

“114A Forfeiture of infringing copies, etc.: England and Wales or Northern Ireland

- (1) In England and Wales or Northern Ireland where there have come into the possession of any person in connection with the investigation or prosecution of a relevant offence— 5
- (a) infringing copies of a copyright work, or
- (b) articles specifically designed or adapted for making copies of a particular copyright work,
- that person may apply under this section for an order for the forfeiture of the infringing copies or articles. 10
- (2) For the purposes of this section “relevant offence” means—
- (a) an offence under section 107(1) or (2) (criminal liability for making or dealing with infringing articles, etc.),
- (b) an offence under the Trade Descriptions Act 1968 (c. 29), or
- (c) an offence involving dishonesty or deception. 15
- (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 infringing copies or articles, to that court, or
- (b) where no application for the forfeiture of the infringing copies or articles has been made under paragraph (a), by way of complaint to a magistrates’ court. 20
- (4) On an application under this section, the court shall make an order for the forfeiture of any infringing copies or articles only if it is satisfied that a relevant offence has been committed in relation to the infringing copies or articles. 25
- (5) A court may infer for the purposes of this section that such an offence has been committed in relation to any infringing copies or articles if it is satisfied that such an offence has been committed in relation to infringing copies or articles which are representative of the infringing copies or articles in question (whether by reason of being of the same design or part of the same consignment or batch or otherwise). 30
- (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— 35
- (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 (statement of case)). 40
- (8) Subject to subsection (9), where any infringing copies or articles are forfeited under this section they shall be destroyed in accordance with such directions as the court may give. 45

- (9) On making an order under this section the court may direct that the infringing copies or articles to which the order relates shall (instead of being destroyed) be forfeited to the owner of the copyright in question or dealt with in such other way as the court considers appropriate.

114B Forfeiture of infringing copies, etc.: Scotland

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- (1) In Scotland the court may make an order under this section for the forfeiture of any—
- (a) infringing copies of a copyright work, or
 - (b) articles specifically designed or adapted for making copies of a particular copyright work. 10
- (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. 15
- (3) On an application under subsection (2)(a), the court shall make an order for the forfeiture of any infringing copies or articles only if it is satisfied that a relevant offence has been committed in relation to the infringing copies or articles. 20
- (4) The court may infer for the purposes of this section that such an offence has been committed in relation to any infringing copies or articles if it is satisfied that such an offence has been committed in relation to infringing copies or articles which are representative of the infringing copies or articles in question (whether by reason of being of the same design or part of the same consignment or batch or otherwise). 25
- (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 infringing copies or articles 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 infringing copies or articles should not be forfeited. 30
- (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. 35
- (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, infringing copies or articles to which an application under this section relates shall be entitled to appear at the hearing of the application to show cause why the infringing copies or articles should not be forfeited. 40
- (8) The court shall not make an order following an application under subsection (2)(a)— 45

- (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. 5
- (9) Where an order for the forfeiture of any infringing copies or articles is made following an application under subsection (2)(a), any person who appeared, or was entitled to appear, to show cause why infringing copies or articles should not be forfeited may, within 21 days of the making of the order, appeal to the High Court by Bill of Suspension. 10
- (10) Section 182(5)(a) to (e) of the Criminal Procedure (Scotland) Act 1995 (c. 46) shall apply to an appeal under subsection (9) as it applies to a stated case under Part II of that Act.
- (11) An order following an application under subsection (2)(a) shall not take effect— 15
- (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. 20
- (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, or
- (b) if an appeal is made within that period, until the appeal is determined or abandoned. 25
- (13) Subject to subsection (14), infringing copies or articles 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 infringing copies or articles to which the order relates shall (instead of being destroyed) be forfeited to the owner of the copyright in question or dealt with in such other way as the court considers appropriate. 30
- (15) For the purposes of this section—
- “relevant offence” means an offence under section 107(1) or (2) (criminal liability for making or dealing with infringing articles, etc.), or under the Trade Descriptions Act 1968 (c. 29) or any offence involving dishonesty or deception; 35
- “the court” means—
- (a) in relation to an order made on an application under subsection (2)(a), the sheriff, and 40
- (b) in relation to an order made under subsection (2)(b), the court which imposed the penalty.”.

4 Forfeiture: illicit recordings

- After section 204 of the 1988 Act (order as to disposal of illicit recording) insert— 45

“204A 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. 5
- (2) For the purposes of this section “relevant offence” means –
- (a) an offence under section 198(1) (criminal liability for making or dealing with illicit recordings),
 - (b) an offence under the Trade Descriptions Act 1968 (c. 29), or 10
 - (c) an offence involving dishonesty or deception.
- (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 illicit recordings, to that court, or 15
 - (b) 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. 20
- (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). 25
- (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 30
 - (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 (statement of case)). 35
- (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. 40
- (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. 45

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 5
 - (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. 10
- (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). 15
- (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 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. 20
- (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. 25
- (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. 30
- (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 35
 - (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. 40
- (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. 45
- (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 II 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. 5
- (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 10
 - (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. 15
- (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. 20
- (15) For the purposes of this section—
- “relevant offence” means an offence under section 198(1) (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. 25
 - “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.”. 30

5 Forfeiture: unauthorised decoders

After section 297B of the 1988 Act (which is inserted by section 2 of this Act) insert—

- “297C Forfeiture of unauthorised decoders: England and Wales or Northern Ireland** 35
- (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. 40
- (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. 45

- (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. 5
- (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. 10
- (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). 15
- (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— 20
- (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 (statement of case)). 25
- (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. 30
- (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. 35

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— 40
- (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. 45
- (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
- (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. 10
- (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). 15
- (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. 20
- (8) The court shall not make an order following an application under subsection (2)(a) – 25
- (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. 30
- (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. 35
- (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 II of that Act. 40
- (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. 45
- (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. 5
- (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. 10
- (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; 15
 - “the court” means –
 - (a) in relation to an order made on an application under subsection (2)(a), the sheriff, and 20
 - (b) in relation to an order made under subsection (2)(b), the court which imposed the penalty.”. 20

Amendment of the Trade Marks Act 1994

6 Search warrants 25

After section 92 of the Trade Marks Act 1994 (c. 26) insert –

“92A 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 – 30
- (a) that an offence under section 92 (unauthorised use of trade mark, etc. in relation to goods) 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, 35
- 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). 40
- (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 92 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.”. 5

Miscellaneous

7 Short title, commencement and extent

- (1) This Act may be cited as the Copyright, etc. and Trade Marks (Offences and Enforcement) Act 2002. 10
- (2) This Act (apart from this section) shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint, and different days may be appointed for different purposes.
- (3) An order under subsection (2) may contain transitional provisions and savings relating to the provisions being brought into force by the order. 15
- (4) This Act extends to Northern Ireland.
- (5) Section 6 and this section also extend to the Isle of Man.

Copyright, etc. and Trade Marks (Offences and Enforcement) Bill

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B I L L

To amend the Copyright, Designs and Patents Act 1988 in respect of criminal offences, search warrants, powers of seizure and orders for forfeiture; to amend the Trade Marks Act 1994 in respect of search warrants and powers of seizure; and for connected purposes.

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