

does not bear or incorporate a statement, label or other mark in accordance with subsection (4) and—

- (a) the work qualifies for copyright protection by reference to the country, territory, state or area, in which it was first lawfully made available to the public, and
- (b) (i) a name purporting to be that of the person who first lawfully made available to the public the work appears on copies of the work as first so made available, or
 - (ii) copies of the work bear or incorporate a statement, label or other mark indicating that a named person first lawfully made available to the public the work,

then, that named person shall be presumed to have been the author of the work or the owner or exclusive licensee of the copyright, as the case may be, at the time when the work was first lawfully made available to the public, unless the contrary is proved.

(8) Where the author of the work is dead or the identity of the author cannot be ascertained by reasonable enquiry, it shall be presumed, unless the contrary is proved —

- (a) that the work is an original work, and
- (b) that the claims made by the plaintiff as to the date on which the work was first lawfully made available to the public and as to the country, territory, state or area in which the work was first so made available are correct.

(9) The presumptions set out in subsections (2) to (8) shall apply to the same extent in any actions relating to an infringement which occurred before the date on which copies of a work were first lawfully made available to the public.

Chapter 13 Offences: Copyright

Offences

140.—(1) A person who, without the consent of the copyright owner —

- (a) makes for sale, rental or loan,
- (b) sells, rents or lends, or offers or exposes for sale, rental or loan,
- (c) imports into the State, otherwise than for his or her private and domestic use,
- (d) in the course of a business, trade or profession, has in his or her possession, custody or control, or makes available to the public, or
- (e) otherwise than in the course of a business, trade or profession, makes available to the public to such an extent as to prejudice the interests of the owner of the copyright,

a copy of a work which is, and which he or she knows or has reason to believe is, an infringing copy of the work, shall be guilty of an offence.

(2) In this section “loan” means a loan for reward and in particular does not include a loan to a family member or friend for private and domestic use, and “lends” shall be construed accordingly.

(3) A person who —

- (a) makes,
- (b) sells, rents or lends, or offers or exposes for sale, rental or loan,
- (c) imports into the State, or
- (d) has in his or her possession, custody or control,

an article specifically designed or adapted for making copies of a work, knowing or having reason to believe that it has been or is to be used to make infringing copies, shall be guilty of an offence.

(4) A person who —

- (a) (i) makes,
- (ii) sells, rents or lends, or offers or exposes for sale, rental or loan,
- (iii) imports into the State, or
- (iv) has in his or her possession, custody or control, a protection-defeating device, knowing or having reason to believe that it has been or is to be used to circumvent rights protection measures, or
- (b) provides information, or offers or performs any service, intended to enable or assist a person to circumvent rights protection measures,

shall be guilty of an offence.

(5) Where copyright is infringed by —

- (a) the public performance of a literary, dramatic or musical work,
- (b) the playing or showing in public of a sound recording, artistic work, original database or film, or
- (c) broadcasting a work or including a work in a cable programme service,

the person who caused the work to be so performed, played, broadcast, included in a cable programme service or shown shall be guilty of an offence whether he rehearses it or had reason to believe that the copyright in the work would be infringed.

(6) An offence shall not be committed under subsection (1) or (5) by the undertaking of an act which under this Part may be undertaken without infringing the copyright in a work.

(7) A person guilty of an offence under subsection (1), (3) or (4) shall be liable —

- (a) on summary conviction, to a fine not exceeding £1,500 in respect of each infringing copy, article or device, or to imprisonment for a term not exceeding 12 months, or both, or

(b) on conviction on indictment, to a fine not exceeding £100,000, or to imprisonment for a term not exceeding 5 years, or both.

(8) A person guilty of an offence under subsection (5) shall be liable —

(a) on summary conviction, to a fine not exceeding £1,500 in respect of such offence or to imprisonment for a term not exceeding 12 months, or both, or

(b) on conviction on indictment, to a fine not exceeding £100,000, or to imprisonment for a term not exceeding 5 years, or both.

False claims of copyright

141. A person who, for financial gain, makes a claim to enjoy a right under this Part which is, and which he or she knows or has reason to believe is, false, shall be guilty of an offence and shall be liable on conviction on indictment to a fine not exceeding £100,000, or to imprisonment for a term not exceeding 5 years, or both.

Order for delivery up in criminal proceedings

142.—(1) The court may, on conviction of a person or being satisfied that there is a *prima facie* case to answer, where the court is satisfied that at the time of the arrest or charge the person had in his or her possession, custody or control —

(a) in the course of a business, trade or profession, a copy of a work, knowing or having reason to believe it to be an infringing copy,

(b) an article specifically designed or adapted for making copies of a work, knowing or having reason to believe that it had been or was to be used to make infringing copies, or

(c) a protection-defeating device,

order that the infringing copy, article or device be delivered up to the copyright owner or to such other person as the court may direct.

(2) An order may be made by the court of its own motion, or on the application of the person bringing a prosecution, and may be made whether or not the person is convicted of the offence, but shall not be made —

(a) after the expiration of the periods specified in section 144(3) as being the limit of the period for delivery up, or

(b) where it appears to the court unlikely that any order will be made as to the disposal of the infringing copies, articles or devices.

(3) A person to whom an infringing copy, article or device is delivered up pursuant to an order made under this section shall retain it pending the making of a final order or decision not to make an order, as the case may be.