



ENFORCEMENT NO LEGAL ADVICE!

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WHY AND WHAT

Piracy and counterfeiting

- Unfair competition
- Industry losses
- Consumers ripped off
- Subsidising criminal activities

Remedies

- Criminal [societal interests]
- Civil [private interests]

INFRINGEMENT

Infringement [direct and indirect – authorisation]

- Copying of a work (Section 16(1)(a) CDPA)
- Distributing infringing copies of a work to the public (16(1)(b) CDPA)
- Perform, show or play the work in public (16(1)(c) CDPA)
- Communicate the work to the public (16(1)(d) CDPA)
- Adapt (i.e. arrange) a work (16(1)(e) CDPA)

INFRINGEMENT STANDARD

Standard to assess infringement

- Objective similarity and causal connection
- Substantial part [qualitative test, not quantity]

[Francis Day and Hunter v Bron [1963] CH 587]

[Hawkes v Paramount (1934) 1 Ch 593]

Example: Ed Sheeran v Sami Chokri decision [2022] [EWHC](#) 827 (Ch)

www.lbc.co.uk/news/ed-sheeran-has-won-copyright-battle-shape-of-you/

[www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/Ch/2022/827.html&query=\(sheeran\)](http://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/Ch/2022/827.html&query=(sheeran))

CRIMINAL

- Section 107 CDPA

(1) A person commits an **offence** who, **without the licence** of the copyright owner—

(a) makes for sale or hire, or

(b) imports into the United Kingdom otherwise than for his private and domestic use, or

(c) possesses in the course of a business with a view to committing any act infringing the copyright, or

(d) in the **course of a business** —...

an article which is, and which he **knows or has reason to believe** is, an infringing copy of a copyright work.

CRIMINAL

Prosecuted by

- Trading Standards
- Crown Prosecution Service
- Customs and Revenue
- DWP

➤ Up to ten years prison

Example unlicensed music download service

R v Wayne Evans [2017] EWCA Crim 139

No profit but deterrence – 12 months

CIVIL

High Court

- Specialised IP judges generally

IPEC [Intellectual property enterprise court]

- Multi or small track [<£10.000]

www.gov.uk/guidance/take-a-case-to-the-intellectual-property-enterprise-court

Copyright Tribunal

- Conflicts re CMO licensing

General info: www.gov.uk/topic/intellectual-property/crime-and-infringement

CIVIL REMEDIES

Remedies (main)

- damages
- additional damages,
- account of profits
- interim and
- final injunctions

CIVIL - TIMELINE

- Letter before action
- Claim
- Pleadings
- Case management conference [e.g. identify key issues and potential costs]
- Trial (following disclosure)
- Judgment

- [Appeal (Court of Appeal

- Supreme Court]

CIVIL – SPECIAL CASES RESTRAINT OF TRADE

Since the 70ties cases within the music industry developing criteria which are now part of industry contracts:

- Relative bargaining power of the parties and the consideration paid.
- Duration including any possible extension
- Exclusivity and scope of agreement
- Publishers and record companies obligations
- Independent legal advice
- Consultation on use with composer

WEBSITE BLOCKING ORDERS

- Situation
- Legal Framework S 97A CDPA – Art 8 (3) InfoSoc Dve
- Criteria applied in BPI v Sky 2013 (J Arnold) - simplified
 - The internet access providers are service providers
 - Access providers and their users infringe copyright (reproduction and cttp)
 - The internet access providers have actual knowledge (notifications)
 - The orders are proportional

LIMITATIONS OF LIABILITY

- Mere conduit
- Caching
- Hosting
- No Monitoring obligation (but duty of care?)

Take down notice

Digital Services Act package

Directive copyright in the DSM (Article 17)

INDUSTRY

- Legal framework (copyright)
- Enforcement/ Code of Practice/ search engines
- Business models
- Education/ Get it right from a genuine side
- PIPCU

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