

CRIMINAL PROSECUTION IN COPYRIGHT CASES

Prohibited Acts

The following acts are prohibited:

Prohibited Acts	Making	Dealing with	Using	Possessing	Communicating to the public	Performing in public
If the person doing the act knows or has reason to believe is an infringing copy.	√	√	√			
Any article which the person doing the act knows or has reason to believe is an infringing copy.	√			√		
Any article specifically designed for the production of copies of a particular copyright work					√	√
Illicit Recordings	√	√	√			

What Defences are Available?

The following are defences to infringements of copyright:

- use for criticism;
- incidental inclusion in other works;
- use for teaching purposes;
- use by libraries; and
- use in legal proceedings.

In addition, where a person or company acts as a “mere conduit” of information, and is essentially just a host for electronic data, then although they are theoretically infringing copyright (through caching data) a defence is available to them as a “host” of the data.

Instituting Criminal Proceedings

Generally it is difficult to bring criminal proceedings for copyright infringement because:

- it is difficult to persuade the police to take action;
- interim relief is not available pending trial (which can take many months to be reached);
- there is a higher burden of proof to be reached – the defendant must be proven guilty beyond all reasonable doubt, rather than just on a balance of probabilities (as is civil proceedings);
- remedies available are not always appropriate. Custody can be a problem and fines awarded can be lower than in civil proceedings (although the criminal courts do have rights to award limited damages). Remedies under civil proceedings (injunction and damages) are usually more useful to business people; and
- criminal courts do not have specialist judges who can handle technical evidence.

An individual can bring criminal proceedings privately as any citizen in England and Wales may do. However, with some crimes the consent of the Attorney-General or Director of Public Prosecutions is required, and the Law Commission is provisionally of the view that this should be the case here.