

Division 5-Offences

OFFENCE UNDER SECTION 121 OF COPRYIGHT ACT

Criminal liability for making or dealing with infringing objects

121.-(1) A person who, other than pursuant to a copyright licence-

- (a) makes for sale or hire;
- (b) imports into the Fiji Islands otherwise than for that person's private and domestic use;
- (c) possesses in the course of a business with a view to committing any act infringing the copyright;
- (d) in the course of a business-
 - (i) offers or exposes for sale or hire;
 - (ii) exhibits in public; or
 - (iii) distributes;
- (e) in the course of a business or otherwise, sells or lets for hire; or
- (f) distributes otherwise than in the course of a business to such an extent as to affect prejudicially the copyright owner,

an object that is, and that the person knows or our ought reasonably to know is, an infringing copy of a copyright work, commits an offence.

(2) A person who-

(a) makes an object specifically designed or adapted for making copies of a particular copyright work; or

(b) has such an object in the person's possession,

when the person knows or ought reasonably to know that the object is to be used to make infringing copies for sale or hire or for use in the course of a business, commits an offence.

(3) Subject to subsection (4), a person who-

(a) causes a literary, dramatic, or musical work to be performed, if the performance infringes copyright in the work; or

(b) causes a sound recording or film to be played in public or shown in public, if the playing or showing infringes copyright in the sound recording or film,

and who knows or ought reasonably to know that copyright in the work or in the sound recording or visual image, as the case may be, would be infringed by the performance, playing or showing respectively, commits an offence.

(4) Nothing in subsection (3) applies in respect of infringement of copyright by the reception of a broadcast or cable programme.

(5) A person who commits an offence under this section is liable on conviction-

(a) in the case of an offence against subsection (1), to a fine of \$5,000 for every infringing copy to which the offence relates, but not exceeding \$50,000 in respect of the same transaction, and to imprisonment for 12 months;

(b) in the case of an offence against subsection (2) or (3) to a fine of \$50,000 and to imprisonment for 12 months;

(c) in the case of a second or subsequent offence against subsection (2) or (3), to a fine of \$100,000 and to imprisonment for 2 years.

(6) Sections 116 to 119 (which relate to presumptions) do not apply to proceedings for an offence against this section.

(7) Nothing in subsection (1) applies in relation to a literary work or an artistic work that-

(a) relates to a medicine that has been imported by the State pursuant to section 2 or 2A of the Pharmacy and Poisons Act (Cap 115); and

(b) has been made, copied, published, adapted or distributed in a place outside the Fiji Islands by or with the licence of the owner of the copyright in the work in that place.

Search warrants

122.-(1) If a magistrate is satisfied by information on oath by a police officer that there are reasonable grounds for believing-

(a) that an offence under paragraph (a), (b), (e) or (f) of section 121 (1) 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,

the magistrate may issue a warrant authorising a police officer to enter and search the premises, using such reasonable force as is necessary.

(2) A warrant under this section-

(a) may authorise persons to accompany the police officer executing the warrant, and

(b) remains in force for 28 days from the date of its issue.

(3) In-executing a warrant issued under this section a police officer may seize any article which the officer reasonably believes is evidence that an offence under section 121(1) has been or is about to be committed.

Order for delivery up in criminal proceedings

123.-(1) The court before which proceedings are brought against a person for an offence against section 121 may, if satisfied that, at the time of the defendant's arrest or charge-

(a) the defendant had in his, her or its possession, custody or control in the course of a business an infringing copy of a copyright work; or

(b) the defendant had in his, her or its possession, custody, or control an object specifically designed or adapted for making copies of a particular copyright work, knowing that the object had been or was to be used to make infringing copies,

order that the infringing copy or object be delivered up to the copyright owner or to any other person the court directs.

(2) An order may be made under subsection (1) by the court of its own motion or on the application of the prosecution, and may be made whether or not the defendant is convicted of the offence, but must not be made-

(a) more than 6 years after the date on which the infringing copy or object was made; or

(b) if it appears to the court unlikely that an order will be made in the proceedings under section 125.

(3) Sections 116 to 119 (which relate to presumptions) apply to proceedings for an order under this section.

(4) A person to whom an infringing copy or other object is delivered up pursuant to an order under this section must retain the copy or object pending the making of an order, or a decision not to make an order, under section 125.

Liability of officers of body corporate

124. If a body corporate is convicted of an offence against section 121, every director and every person concerned in the management of the body corporate is guilty of the offence,

if it is proved that the act that constituted the offence took place with his or her authority, permission, or consent.

Division 6-Disposal of Infringing Copy or Other Object

Order as to disposal of infringing copy or other object

125.-(1) An application may be made to the court for an order that an infringing copy or other object delivered up pursuant to an order under section 111 or 123 or seized pursuant to section 112 or 122 be-

(a) forfeited to the copyright owner; or

(b) destroyed or otherwise dealt with as the court thinks fit.

(2) In considering what order (if any) should be made under subsection (1), the court must have regard to-

(a) whether other remedies available in proceedings for infringement of copyright would be adequate to compensate the copyright owner and to protect the interests of the copyright owner; and

(b) the need to ensure that no infringing copy is disposed of in a manner that would adversely affect the copyright owner.

(3) Before making an order under subsection (1), a court must issue directions as to the service of notice on persons who have an interest in the copy or other object.

(4) A person who has an interest in a copy or other object which is the subject of an application under subsection (1) is entitled-

(a) to appear in proceedings for an order under this section, whether or not the person is served with notice; and

(b) to appeal against any order made, whether or not the person appears in the proceedings.

(5) An order made under subsection (1) does not take effect until the end of the period within which notice of an appeal may be given or, if before the end of that period notice of appeal is duly given, until the final determination or abandonment of the proceedings on the appeal.

(6) If there is more than one person interested in a copy or other object, a court may direct that the object be sold, or otherwise dealt with, and the proceeds divided, and make any other order it thinks just.

(7) If a court decides that no order should be made under this section, the person in whose possession, custody, or control the copy or other object was before being delivered up is entitled to its return.

Affidavit evidence of subsistence and ownership of copyright

126.-(1) At the trial of a cause, being-

(a) an action brought under of this Part; or

(b) a prosecution for an offence against this Act,

proof of-

(i) the subsistence, at a particular time, of copyright in the work or other subject-matter to which the action or prosecution relates; or

(ii) the ownership, at a particular time, of the copyright in that work or other subject-matter,

may, subject to subsection (2), be given by affidavit.

(2) If a party to a cause referred to in subsection (1) desires in good faith that the person who made an affidavit referred to in that subsection that is proposed to be used in the cause be cross-examined with respect to the matters in the affidavit, the affidavit may not be used in the cause unless the person who made it appears as a witness for such cross-examination or the court in which the cause is being tried, in its discretion, permits the affidavit to be used without the person so appearing.