

MAKING/DISTRIBUTING MATERIAL INFRINGING COPYRIGHT

Copyright, Designs and Patents Act 1988

- 107.- (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 -
 - (i) sells or lets for hire, or
 - (ii) offers or exposes for sale or hire, or
 - (iii) exhibits in public, or
 - (iv) distributes, or
 - (e) distributes otherwise than in the course of a business to such an extent as to affect prejudicially the owner of the copyright, an article which is, and which he knows or has reason to believe is, an infringing copy of a copyright work.
- (2) A person commits an offence who-
- (a) makes an article specifically designed or adapted for making copies of a particular copyright work, or
 - (b) has such an article in his possession,
- knowing or having reason to believe that it is to be used to make infringing copies for sale or hire or for use in the course of a business.
- (2A) A person who infringes copyright in a work by communicating the work to the public-
- (a) in the course of a business, or
 - (b) otherwise than in the course of a business to such an extent as to affect prejudicially the owner of the copyright, commits an offence if he knows or has reason to believe that, by doing so, he is infringing copyright in that work.

Maximum Sentence:

Copyright, Designs and Patents Act 1988, s.107

Offence under section 107(1)(a),(b),(d)(iv) or (e)

Indictment: 10 years imprisonment and/or Unlimited Fine

Summarily: 6 months imprisonment and/or the statutory maximum Fine (£5,000) (for offences committed before 8 June 2010)
6 months imprisonment and/or £50,000 Fine (for offences committed on or after 8 June 2010)

Offence under section 107(1)(c),(d)(i)-(iii) or (2)

Summarily: 3 months imprisonment and/or the statutory maximum Fine (£5,000) (for offences committed before 8 June 2010)
3 months imprisonment and/or £50,000 Fine (for offences committed on or after 8 June 2010)

Offence under section 107(2A)

Indictment: 2 years imprisonment and/or Unlimited Fine

Summarily: 6 months imprisonment and/or Level 5 Fine (£5,000) (for offences committed before 1 January 2011)
3 months imprisonment and/or Level 5 Fine (£5,000) (for offences committed on or after 1 January 2011)

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>		<u>Starting Point</u>	<u>Sentencing Range</u>
Offence under section 107(1)(a),(b),(d)(iv) or (e)	Small number of counterfeit items	Community Order	Community Order* to 3 months Custody
	Larger number of counterfeit items	3 months Custody	Community Order* to 6 months Custody
Offence under section 107(1)(c),(d)(i)-(iii) or (2)		Community Order	Fine to Community Order
Offence under section 107(2A)	Small amount of material	Fine	Fine to Community Order
	Larger amount of material	Community Order	Community Order to 3 months Custody

*Where appropriate, the Court may consider imposing a high level fine as an alternative to a Community Order.

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
<ol style="list-style-type: none"> 1. High degree of professionalism 2. High level of profit 3. Purchaser at risk of harm (e.g. from counterfeit medicines/health supplements) 	<ol style="list-style-type: none"> 1. Mistake or ignorance about provenance of goods

Relevant Cases:

NI Cases:

R v Rymacki and Jankowski [2013] NICC 20
R v Mahoney [2016] NICA 27

English Cases:

1. R v Yanko [1996] 1 Cr App R(S) 217
2. R v Du'Kett [1998] 2 Cr App R(S) 59
3. R v Adam [1999] 1 Cr App R(S) 403
4. R v Gleeson [2002] 1 Cr App R(S) 112
5. R v Woolridge [2006] 1 Cr App R(S) 13
6. R v Hatton [2008] 1 Cr App R(S) 74
7. R v Brayford [2011] 1 Cr App R(S) 109
8. R v Nimley [2011] 1 Cr App R(S) 120

Notes:

N/A