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ON  
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VOLUME ONE

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SWEET & MAXWELL

**COPINGER AND SKONE JAMES**

**on**

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**FIFTEENTH EDITION**

**BY**

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## FOREWORD

While the revisions contained in this edition have not been as great as in the fourteenth edition, the work involved has nevertheless been substantial. Quite apart from absorbing the Supplement published in 2002, which ran to nearly 600 pages, the biggest single item we have had to deal with has of course been the 2003 Regulations which implemented the 2001 Directive on the Harmonisation of Certain Aspects of Copyright and Related Rights in the Information Society (which we have referred to simply as the Information Society Directive). Its tendrils extend throughout the 1988 Act and thus through many chapters of the work. Other changes are described in more detail, below. There have also been a number of relevant decisions of the House of Lords since the last edition and over a dozen important cases in the Court of Appeal. At the same time, there have been numerous first instance and Commonwealth decisions, not forgetting decisions of the European Court of Justice. We have also had to cope with the explosion since the last edition of online reporting, which has meant that almost no utterance of any Judge in this field, however unguarded, passes unnoticed.

Turning to the detail of what is new, while Chapter 3 (Requirements for Copyright Protection) deals with the changes to the regime of wireless, cable and internet broadcasting, the opportunity has been taken to rewrite the early sections, dealing with protected subject matter and the originality requirements. Chapter 7 (The Rights of a Copyright Owner: Primary Infringements) includes a treatment of the new communication to the public right as well as digesting the substantial body of new case law. Chapter 9 (Permitted Acts) has been extensively revised to take into account the changes on implementation of the Information Society Directive and numerous reported decisions in the area. In Chapter 10 (Crown, Parliamentary and Other Rights) the section on enforcement of Crown copyright has been rewritten to cover the wholesale revisions of HMSO's licensing structure which have taken place over the last few years. This Chapter also has a new section dealing with the Directive on the Re-use of Public Sector Information. Chapter 13 (Design Right, Unregistered Community Design and the Protection of Works of Industrial Application), as well as dealing with the new case law since the last edition, covers the Community Unregistered Design Right and the difficult decision of the Court of Appeal in *Lambretta Clothing*. Chapter 15 (Circumvention of Protection Measures and Rights Management Information) has been substantially rewritten following implementation of the Information Society Directive and the cases of *Sony v Owen* and *Sony v Ball* are discussed at length. The scope of the Chapter has also been extended to include a

separate section on rights management information. In Chapter 18 (Database Right), we have been able to take account of the decisions of the European Court of Justice in *The British Horseracing Board v William Hill Organisation Ltd* and *Fixtures Marketing Ltd v Oy Veikkaus Ab*. Chapter 22 (Civil Remedies) has been generally updated to take into account the Civil Procedure Rules and includes a new section on pre-action behaviour. It contains rewritten sections on interim injunctions (covering important cases such as *Ashdown v Telegraph Group, A v B*, the *Ashworth Hospital* litigation and *Cream Holdings v Banerjee*) and damages (discussing the cases of *Blayney v Clogau* and *Nottinghamshire Healthcare* amongst others). It also contains new sections on the conduit, caching and hosting defences, injunctions against service providers and non-exclusive licensees' rights of action. In Chapter 23 (Criminal Remedies and Customs Seizure) there is a revised treatment of the burden of proof in the light of *R v Johnstone, Attorney General's Reference No. 4 of 2002* and the Human Rights Act, together with a discussion of sentencing, now that the penalties for offences have been dramatically increased. The section on customs seizure has been substantially rewritten to take account of two new Community Regulations and one new UK Regulation. Chapter 24 (International Treaties) contains new sections on the Three-Step Test of the Berne Convention, which applies to exceptions to reproduction rights and has been extended to the WCT, WPPT and the TRIPs Agreement, in the context of which it has been the subject of a WTO Panel decision on section 110(5) of the United States Act. The section on the TRIPs Agreement now deals with the question of the direct effect of TRIPs and the section on Council of Europe Conventions covers a number of new instruments, including the Convention on Cybercrime. Chapter 25 (Community Law) takes into account the entry into force of the Treaty of Amsterdam and covers the considerable body of new relevant case law from the European Court of Justice. It naturally deals in depth with the Directives which are new since the last edition, including the Directives on the Information Society, Artists' Resale Right and Enforcement. More generally, with 14 Directives in 12 years, the chapter describes the ambitious programme of harmonisation of copyright undertaken by the EC Commission to date as well as prospects for further harmonisation and possible codification in the future. Chapter 26 (The Protection of Copyright Works Abroad) takes into account no fewer than 38 entirely new national copyright laws and amendments to a further 44. Chapter 27 (Exploitation of Rights in Particular Industries) has been substantially revised to take into account recent developments, such as ever increasing internet use and controversial issues such as file sharing. Chapter 28 covers the latest proposals for EC action to regulate collecting societies. In Chapter 29 (Control of the Exercise of Copyrights and Related Rights), the competition section has been rewritten to take account of the comprehensive institutional changes, both European and domestic, introduced since the last edition. The revised discussion of Article 81 covers the rash of

recent Commission decisions on sports broadcasting, together with the *IFPI Simulcasting* case and developments in respect of the Santiago agreement. The important case of *IMS Health* is considered in depth.

Volume 2, as before, contains a comprehensive collection of materials. The 1988 Act is in danger of sinking under the encrustation of amendments and is in need of statutory restatement. The notes to the various sections set out the earlier versions of the Act where this will be helpful in understanding how it has evolved.

We have had considerable help from others in preparing this new edition and our thanks are due to them. Apart from our Specialist Editors, who are all listed on the Editors' page, we have had great assistance from colleagues in Hogarth Chambers, in particular, Ashley Roughton with Chapter 23 (Criminal Remedies) and Chapter 29 (Control of Rights), George Hayman with Chapter 21 (Rights of Confidence), Alexander Learmonth with Chapter 21 (Goodwill), Nicholas Saunders with Chapter 18 (Database Right) and Victoria Jones with research on a myriad of points and at the proof-reading stage. We also received considerable help with Chapter 15 (Copy Protection Circumvention) and Chapter 16 (Fraudulent Reception) from John Cahir (Herchel Smith Research Fellow, Queen Mary Intellectual Property Research Institute, University of London). The Patent Office was extremely open and helpful in discussing the thinking behind some of the amendments to the 1988 Act made on implementation of the Information Society Directive and was also very efficient in allowing us to look at the consultation submissions on the implementing Regulations. We would also like to thank Guy Holborn and the staff of Lincoln's Inn Library for their help and unflinching enthusiasm in running down some of the more obscure material.

We are indebted to our publishers at Sweet & Maxwell who have done an extraordinary job in turning our manuscript into the finished product in a very short space of time. It is a tribute to them that we have been able to include a discussion of the European Court of Justice's decisions in the *British Horseracing Board* and *Fixtures Marketing* cases, which were only published on November 9, 2004. As with the last edition, the present edition is also available online via Westlaw UK, as part of the practice area specific Westlaw UK Intellectual Property service.

We occasionally receive comments from readers and these are always very welcome and almost always helpful. With regular Supplements planned we are able to take these comments into account reasonably promptly. We encourage readers to contact us at Hogarth Chambers, 5 New Square, Lincoln's Inn, London WC2A 3RJ or by email to [barristers@hogarthchambers.com](mailto:barristers@hogarthchambers.com), marked "Copinger".

We have attempted to state the law as at September 1, 2004, although where possible we have included subsequent developments.

Kevin Garnett QC  
Gillian Davies  
Gwilym Harbottle



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