

Revised & Updated 2010

Camcording and Illegal Recording



Advice for Police

FA  T

Film Distributors' Association

www.film.distributors.org



the cinema exhibitors'
association limited

FACT

The Federation Against Copyright Theft Limited (FACT) is a non profit trade body set up in 1983 to protect the film and broadcasting industry against copyright and trade infringements in the United Kingdom.

FACT, although not a statutory authority or public body, as a private company works within the spirit of the Regulation of Investigatory Powers Act 2000 (RIPA), the Data Protection Act 1998 and the Human Rights Act 1998.

FACT has well established links with the Police, Trading Standards, Her Majesty's Revenue and Customs and other statutory enforcement agencies. Almost exclusively, former police officers and Trading Standards officers staff the organisation and hopefully you will find this helpful during your liaison with the service.

FACT wishes to thank Film Distributors' Association for its financial support to enable the printing of this Guide and the funding of the Reward scheme.

1 | **Illegal Recording/ Camcording**

Recordings made in cinemas using camcorders, mobile phone or other devices account for the source material of over 90% of the counterfeit DVDs and illicit Internet files worldwide. Offenders obtain source material for their pirate copies by using recordings made during public performances.

There is now an increased vulnerability to illegal recording in UK cinemas and FACT is working closely with the cinema industry to address the issues and prevent such activity taking place. Cinemas across the UK are disrupting illegal recording activity on a regular basis.

This guide is designed to assist police officers attending the scene of a suspected illegal recording incident.

2 Offences

Please consider these offences when dealing with offenders.

Offences under the Fraud Act 2006:

There have now been successful convictions under the Fraud Act and we advise that an arrest is effected wherever appropriate.

We note that the Fraud Act does not apply in Scotland.

See R v Cuming, Newport Magistrates Court, Isle of Wight, 13th November 2009

Section 6

Possession etc. of articles for use in frauds

- (1) A person is guilty of an offence if he has in his possession or under his control any article for use in the course of or in connection with any fraud.
- (2) A person guilty of an offence under this section is liable: (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the Statutory maximum (or to both); (b) on

conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine (or to both).

- (3) Subsection (2)(a) applies in relation to Northern Ireland as if the reference to 12 months were a reference to 6 months.

Offences under the Copyright, Designs and Patents Act 1988, including:

Section 107(1)(d)(iv) / (1)(e): distributing an article which is an infringing copy of a copyright work (a) in the course of a business or (b) to such an extent as to affect prejudicially the owner of the copyright (Indictable).

Section 107(2)(a): making an article specifically designed or adapted for making copies of a particular copyright work to be used to make infringing copies for sale or hire or for use in the course of a business (Summary only).

Section 107 (2A): communicating the (copyrighted) work in public (a) in the course of a business or (b) to such an extent as to affect prejudicially the owner of the copyright (Indictable).

Section 7

Making or supplying articles for use in frauds

- (1) A person is guilty of an offence if he makes, adapts, supplies or offers to supply any article:
 - (a) knowing that it is designed or adapted for use in the course of or in connection with fraud, or:
 - (b) intending it to be used to commit, or assist in the Commission of, fraud.
- (2) A person guilty of an offence under this section is liable:
 - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory Maximum (or to both);
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 10 years or to a fine (or to both).
- (3) Subsection (2)(a) applies in relation to Northern Ireland as if the reference to 12 months were a reference to 6 months.

Such behaviour breaches the defendant's terms of admission to the cinema and entitles cinema staff to eject him. Such incidents may lead to public order offences or breaches of the peace requiring police assistance.

3 What you should be looking for

Evidence Required:

Circumstances indicating deliberation, planning and a serious attempt to avoid discovery may provide grounds to suspect a copyright offence:

- Non-compliance with warning notice stating that recording is prohibited.
- Concealment of camera or other recording equipment.
- Use of camera support (tripods/clamps etc) or other special equipment, such as remote viewfinder.
- Use of assistive listening devices to capture soundtrack.
- Presence of accomplices (to conceal the activity)

England and Wales

<< Arrest will normally be necessary to “allow the prompt and effective investigation of the offence or of the conduct of the person in question” (section 24(5)(e) PACE), specifically by questioning and searching the suspect. >> clarify wording

Suitable words on arrest would include:

“You are under arrest for distributing an infringing copy of a film in the course of a business or so as to prejudice the copyright owner”.

Scotland

Detention is an option to “allow the prompt and effective investigation of the offence or of the conduct of the person in question” (section 14 Criminal Procedure Scotland Act 1995), specifically by questioning and searching the suspect.

Suitable words of detention would include:

“You are being detained under section 14 of the Criminal Justice (Scotland) Act 1995 as you are suspected of committing a crime punishable by imprisonment, namely distributing an infringing copy of a film in the course of a business or so as to prejudice the Copyright owner.”

4 Search

A search of the suspect's house may be necessary (on the authority of a Police Inspector) to identify evidence of business activity or distribution, such as:

- Other illegal recording equipment.
- Other illegally recorded copies of films.
- Multiple copies of individual film titles.
- Multiple DVD burners and blank recording media (DVD-Rs)
- Multiple DVD cases, printed sleeves and labels.
- Price lists, business and financial records.
- "File-sharing" software and digital copies of films on computer.
- DVD covers artwork in digital form on computer.
- E-mail, mobile phone text or other correspondence with customers or accomplices

5 Questioning

Suitable lines of questioning to deal with a potential defence, depending on the circumstances of the incident:

1

Did the defendant see the warning notice or trailer stating that recording was prohibited?

2

Was the defendant aware that the film in question had just been released and could be seen only in cinemas?

3

Did the defendant appreciate that distributing copies/making the film available on the Internet before it was officially available on DVD would cause lost sales to the legitimate distributors of the film?

Primary contact for immediate reporting of camcording incidents. Also provision of awareness training for cinema staff, investigation of incidents and liaison with police:

**Theatrical Investigator:
Simon Brown
Email: camcording@fact-uk.org.uk
Direct No: 07920 725725**

Additional FACT contacts if Simon is unavailable:

Out of hours tel: 0800 587 7022

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FACT working in partnership
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