

IPR	Damages for innocent infringement	Acc of profits for innocent infringement	Flagrancy damages
Copyright	No. CDPA s. 97(1) Provisions as to damages in infringement action (1) Where in an action for infringement of copyright it is shown that at the time of the infringement <u>the defendant did not know, and had no reason to believe</u> , that copyright subsisted in the work to which the action relates, the plaintiff is not entitled to damages against him, <u>but without prejudice to any other remedy.</u>	Yes. CDPA s. 97(1) Provisions as to damages in infringement action (1) Where in an action for infringement of copyright it is shown that at the time of the infringement the <u>defendant did not know, and had no reason to believe</u> , that copyright subsisted in the work to which the action relates, the plaintiff is not entitled to damages against him, but <u>without prejudice to any other remedy.</u>	Yes. CDPA 97(2) The court may in an action for infringement of copyright having regard to all the circumstances, and in particular to— (a) the <u>flagrancy of the infringement</u> , and (b) any benefit accruing to the defendant by reason of the infringement, award such additional damages as the justice of the case may require.
Trade marks	Yes.	Yes, but see Kerly.	No.
Patents	No. Patents Act s.62 Restrictions on recovery of damages for infringement (1) In proceedings for infringement of a patent damages <u>shall not be awarded, and no order shall be made for an account of profits, against a defendant or defender who proves that at the date of the infringement he was not aware, and had no reasonable grounds for supposing, that the patent existed</u> ; and a person shall not be taken to have been so aware or to have had reasonable grounds for so supposing by reason only of the application to a product of the word “patent” or “patented”, or any word or words expressing or implying that a patent has been obtained for the product, unless the number of the patent accompanied the word or words in question.	No. Patents Act s.62 Restrictions on recovery of damages for infringement (1) In proceedings for infringement of a patent damages <u>shall not be awarded, and no order shall be made for an account of profits, against a defendant or defender who proves that at the date of the infringement he was not aware, and had no reasonable grounds for supposing, that the patent existed</u> ; and a person shall not be taken to have been so aware or to have had reasonable grounds for so supposing by reason only of the application to a product of the word “patent” or “patented”, or any word or words expressing or implying that a patent has been obtained for the product, unless the number of the patent accompanied the word or words in question.	No.
Unregistered Designs	No. CDPA s.233 Innocent infringement (1) Where in an action for infringement of design right brought by virtue of section 226 (primary infringement) it is shown that at the time of the infringement <u>the defendant did not know, and had no reason to believe, that design right subsisted in the design</u> to which the action relates, the plaintiff is <u>not entitled to damages against him, but without prejudice to any other remedy.</u>	Yes. No. CDPA s.233 Innocent infringement (1) Where in an action for infringement of design right brought by virtue of section 226 (primary infringement) it is shown that at the time of the infringement <u>the defendant did not know, and had no reason to believe, that design right subsisted in the design</u> to which the action relates, the plaintiff is <u>not entitled to damages against him, but without prejudice to any other remedy.</u>	Yes. CDPA s.229 Rights and remedies of design right owner (3) The court may in an action for infringement of design right, having regard to all the circumstances and in particular to— (a) the <u>flagrancy of the infringement</u> , and (b) any benefit accruing to the defendant by reason of the infringement, <u>award such additional damages as the justice of the case may require.</u> (4) This section has effect subject to section 233 (innocent infringement).
Registered Designs	No. s.24B RDA Exemption of innocent infringer from liability (1) In proceedings for the infringement of the right in a registered design <u>damages shall not be awarded... against a defendant who proves that at the date of the infringement he was not aware, and had no reasonable ground for supposing, that the design was registered.</u> (2) For the purposes of subsection (1), a person shall not be deemed to have been aware or to have had reasonable grounds for supposing that the design was registered by reason only of the marking of a product with— (a) the word “registered” or any abbreviation thereof, or (b) any word or words expressing or implying that the design applied to, or incorporated in, the product has been registered, unless the number of the design accompanied the word or words or the abbreviation in question. (2A) The reference in subsection (2) to a relevant internet link is a reference to an address of a posting on the internet— (a) which is accessible to the public free of charge, and (b) which clearly associates the product with the number of the design.	There is no express reservation of other remedies. s.24B Exemption of innocent infringer from liability (1) In proceedings for the infringement of the right in a registered design <u>damages shall not be awarded... against a defendant who proves that at the date of the infringement he was not aware, and had no reasonable ground for supposing, that the design was registered.</u>	No.
Performer's rights	No. CDPA s.191J Provisions as to damages in infringement action (1) Where in an action for infringement of a performer's property rights it is shown that at the time of the infringement <u>the defendant did not know, and had no reason to believe, that the rights subsisted in the recording</u> to which the action relates, the plaintiff is <u>not entitled to damages against him, but without prejudice to any other remedy.</u>	Yes. CDPA s.191J Provisions as to damages in infringement action (1) Where in an action for infringement of a performer's property rights it is shown that at the time of the infringement <u>the defendant did not know, and had no reason to believe, that the rights subsisted in the recording</u> to which the action relates, the plaintiff is <u>not entitled to damages against him, but without prejudice to any other remedy.</u>	Yes. CPDA s.191J (2) The court may in an action for infringement of a performer's property rights having regard to all the circumstances, and in particular to— (a) the <u>flagrancy of the infringement</u> , and (b) any benefit accruing to the defendant by reason of the infringement, <u>award such additional damages as the justice of the case may require.</u>