

# EUROPEAN PARLIAMENT



*s e s s i o n d o c u m e n t s*

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A4-0136/98

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## REPORT

on the proposal for a European Parliament and Council Directive on the legal protection of services based on, or consisting of, conditional access  
(COM(97)0356 - C4-0475/97 - 97/0198(COD))

Committee on Legal Affairs and Citizens' Rights

Rapporteur: Mr Georgios Anastassopoulos

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PE 224.322/fin

- Consultation procedure  
simple majority
- \*\*I Cooperation procedure (first reading)  
simple majority
- \*\*II Cooperation procedure (second reading)  
simple majority to approve the common position  
majority of Parliament's component Members to reject or amend the common position
- \*\* Assent procedure  
majority of Parliament's component Members to give assent  
but simple majority under Articles 8a, 105, 106, 130d and 228 EC

- \*\*I Codecision procedure (first reading)  
simple majority
- \*\*II Codecision procedure (second reading)  
simple majority to approve the common position  
majority of Parliament's component Members to adopt a declaration of intended  
rejection of the common position, and amend the common position or confirm its rejection
- \*\*III Codecision procedure (third reading)  
simple majority to approve the joint text  
majority of Parliament's component Members to reject the Council text

DA

DE

EL

EN

ES

FR

IT

NL

PT

FI

SV

Doc 108

## CONTENTS

	<u>Page</u>
Procedural page . . . . .	3
A. LEGISLATIVE PROPOSAL . . . . .	4
DRAFT LEGISLATIVE RESOLUTION . . . . .	13
B. EXPLANATORY STATEMENT . . . . .	14
Opinion of the Committee on Economic and Monetary Affairs and Industrial Policy . . . . .	21
Opinion of the Committee on Culture, Youth, Education and the Media . . . . .	25

By letter of 22 September 1997, the Commission submitted to Parliament, pursuant to Article 189b(2) of the EEC Treaty and Articles 57(2), 66 and 100a of the EC Treaty, the proposal for a European Parliament and Council Directive on the legal protection of services based on, or consisting of, conditional access.

At the sitting of 1 October 1997, the President of Parliament announced that he had referred this proposal to the Committee on Legal Affairs and Citizens' Rights as the committee responsible and to the Committee on Economic and Monetary Affairs and Industrial Policy, the Committee on the Environment, Public Health and Consumer Protection and the Committee on Culture, Youth, Education and the Media for their opinions.

At its meeting of 14 October 1997 the Committee on Legal Affairs and Citizens' Rights appointed Mr Georgios Anastassopoulos rapporteur.

It considered the Commission proposal and the draft report at its meetings of 24, 25 and 26 February 1998 and 14, 15 and 16 April 1998.

At the last meeting it adopted the draft legislative resolution unanimously

The following were present for the vote: De Clercq, chairman; Rothley and Malangré, vice-chairmen; Anastassopoulos, rapporteur; Añoberos Trias de Bes, Arroni (for Florio), Barzanti, Berger, Buffetaut, C. Casini, Cassidy, Falconer, Gebhardt, Janssen van Raay, Lehne, D. Martin, McIntosh, Medina Ortega, Mosiek-Urbahn, Sierra González, Thors, Ullmann, Wieland and Zimmermann.

The opinions of the Committee on Economic and Monetary Affairs and Industrial Policy and the Committee on Culture, Youth, Education and the Media are attached, and the Committee on the Environment, Public Health and Consumer Protection decided on 27 November 1997 not to deliver an opinion.

The report was tabled on 21 April 1998.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

**A**  
**LEGISLATIVE PROPOSAL**

Proposal for a Council Regulation on the proposal for a European Parliament and Council Directive on the legal protection of services based on, or consisting of, conditional access (COM(97)0356 - C4-0475/97 - 97/0198(COD))

The proposal is approved with the following amendments:

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Text proposed by the Commission<sup>(1)</sup>

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Amendments by Parliament

(Amendment 1)  
Recital 2

Whereas the cross-border provision of broadcasting and Information Society services may contribute significantly to the achievement of those objectives;

Whereas the cross-border provision of broadcasting and Information Society services may contribute, from the individual point of view, to the full effectiveness of freedom of expression as a fundamental right and, from the collective point of view, to the achievement of the objectives laid down in the Treaty;

(Amendment 2)  
Recital 3

Whereas the Treaty provides for the free movement of all services provided for remuneration; whereas this right, as applied to broadcasting and Information and Society services, is also a specific manifestation in Community law of more general principle, namely the freedom of expression as enshrined in Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms;

Whereas the Treaty provides for the free movement of services which are, as a rule, provided for remuneration; whereas this right, as applied to broadcasting and Information and Society services, is also a specific manifestation in Community law of more general principle, namely the freedom of expression as enshrined in Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms; whereas this article explicitly recognises the right of the citizens to receive and impart information regardless of frontiers and whereas any restriction of that right must be based on due consideration of other legitimate interests deserving of legal protection;

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<sup>(1)</sup> OJ C 314, 16.10.1997, p. 7.

(Amendment 3)  
Recital 3a (new)

Whereas conditional access systems should not be used for the sole purpose of refusing access for consumers in some Member States to services which are freely available in other Member States;

(Amendment 4)  
Recital 3c (new)

Whereas this Directive should grant protection against illicit (pirated) devices i.e. devices which are explicitly designed or technically adapted for unauthorised reception;

(Amendment 5)  
Recital a (new)

Whereas the recent developments in technology and audiovisual media and their impact on the public also justify extending this legal protection to services provided in the context of a more general economic activity, or at least to some of those services;

(Amendment 6)

Recital 6

Whereas the opportunities offered by digital technologies provide the potential for increasing consumer choice and contributing to cultural pluralism by developing an even wider range of services within the meaning of Articles 59 and 60 of the Treaty; whereas the viability of those services will often depend on the use of Conditional Access in order to obtain the remuneration of the service provider;

Whereas the opportunities offered by digital technologies provide the potential for increasing consumer choice and contributing to cultural pluralism by developing an even wider range of services within the meaning of Articles 59 and 60 of the Treaty; whereas the viability of those services will often depend on the use of Conditional Access in order to obtain the payment for the service provider; whereas accordingly the legal protection of service providers against illicit devices which allow access to these services free of charge seems necessary in order to ensure the economic viability of the services;

(Amendment 7)

Recital 8a (new)

Whereas this Directive is without prejudice of Community or national provisions meant to ensure that a number of broadcasting services, recognised as being of public interest, are not based on conditional access;

(Amendment 8)

Recital 8b (new)

Whereas this Directive is without prejudice of the cultural aspects of any further Community action concerning new services;

(Amendment 9)

Recital 10

10. Whereas the application of the Treaty is not sufficient to remove these internal market obstacles; whereas those obstacles should therefore be removed by providing for an equivalent level of protection between Member States; whereas this implies an approximation of the national rules relating to the commercial activities which concern illicit devices.

10. Whereas the application of the Treaty is not sufficient to remove these internal market obstacles; whereas those obstacles should therefore be removed by providing for an equivalent level of protection between Member States; whereas this implies an approximation of the national rules relating to the commercial activities and other activities, for the most part of an economic nature, which concern illicit devices.

(Amendment 10)

Recital 10a (new)

Whereas it seems necessary to ensure that Member States shall provide adequate legal protection against any individual or group using an illicit device for direct or indirect profit knowingly or with reasonable grounds to know that they will enable or facilitate without authority the circumvention of any effective technological measures designed to protect the remuneration of a legally provided service;

(Amendment 11)

Recital 11

11. Whereas those commercial activities are detrimental to consumers who are misled about the origin of illicit devices; whereas a high level of consumer protection is needed in order to fight against this kind of consumer fraud; whereas Article 129a(1) of the Treaty provides that the Community should contribute to the achievement of a high level of consumer protection by the measures it adopts pursuant to Article 100a.

11. Whereas those activities are detrimental to consumers who are misled about the origin of illicit devices; whereas a high level of consumer protection is needed in order to fight against this kind of consumer fraud; whereas Article 129a(1) of the Treaty provides that the Community should contribute to the achievement of a high level of consumer protection by the measures it adopts pursuant to Article 100a.

(Amendment 12)  
Recital 13a (new)

Whereas the sanctions and remedies provided for under this Directive are without prejudice to any other sanction or remedy for which provision may be made under national law, such as preventive measures in general or seizure of illicit devices;

(Amendment 13)  
Recital 14a (new)

Whereas in accordance with Article 5 of the Treaty, the Member States are required to take all measures necessary to guarantee the application and effectiveness of Community law, in particular by making the penalty chosen effective, proportionate and dissuasive;

(Amendment 14)  
Recital 14b (new)

Whereas when adopting the provisions laid out by this Directive, Member States should be in accordance with the Communication from the Commission to the Council and the European Parliament on the role of penalties in implementing Community internal market legislation which states “only a consistent approach to the question of penalties in the internal market context is capable of ensuring both fair competition under fair trading conditions and the protection of those aspects of the general good covered by common rules”;

(Amendment 15)

Recital 15

15. Whereas this Directive should be without prejudice to the application of national provisions which may prohibit the private possession of illicit devices; whereas this directive is without prejudice to the application of Community competition rules; whereas this directive is without prejudice to the application of Community rules concerning intellectual property rights.

15. Whereas this Directive is without prejudice to any measures by Member States seeking to prohibit the private possession of illicit devices; whereas this directive is without prejudice to the application of Community competition rules; whereas this directive is without prejudice to the application of Community rules concerning intellectual property rights.

(Amendment 16)

Recital 15a (new)

Whereas this Directive is without prejudice to the right of the viewer to have access to free-to-air channels within a conditional access service platform without being required to pay an additional fee beyond the normal charge for accessing the platform;

(Amendment 17)

Recital 16b (new)

Whereas a balance must be secured between the interest of the service providers and copyright holders to be remunerated for their services (by encryption) on the one hand and the interest of the general public not to be excluded more and more from information and cultural events;

(Amendment 18)

Article 1

For the purposes of this Directive:

(a) '*Protected service*' means any of the following services, were provided on the basis of Conditional Access:

- television broadcasting, as defined in point (a) of Article 1 of Directive 89/552/EEC;
- radio broadcasting, meaning any transmission by wire or over the air, including that by satellite, of radio programmes intended for reception by the public;
- Information Society services within the meaning of Article 1.2 of Council Directive 83/189/EEC, as amended by Directive...

For the purposes of this Directive:

(a) '*Protected service*' means any of the following services, were provided on the basis of Conditional Access:

- television broadcasting, as defined in point (a) of Article 1 of Directive 89/552/EEC, in conjunction with Article 2a of that Directive as amended by Directive 97/36/EC<sup>(1)</sup><sup>(1)</sup>;
- radio broadcasting, meaning any transmission by wire or over the air, including that by satellite, of radio programmes intended for reception by the public;
- Information Society services within the meaning of Article 1.2 of Council Directive 83/189/EEC, as amended by Directive...<sup>(2)</sup><sup>(2)</sup>

(Amendment 19)

or the provision of conditional access to the above services as a service in its own right.

This term also covers the provision of conditional access to the above services, considered as a service in its own right.

(Amendment 20)

Article 1(b)

(b) "Conditional Access" means any technical measure and/or arrangement whereby access to the service in an intelligible form is made conditional upon a prior individual authorization aiming at ensuring the remuneration of that service;

(b) "Conditional Access" means any technical measure and/or arrangement whereby access to the service in an intelligible form is made conditional upon a prior individual authorization aiming at protecting the economic value of that service or its content;

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<sup>(1)</sup> OJ L 202, 30.7.1997, p. 60

<sup>(2)</sup> See proposal for a Directive COM(96) 0392 final, OJ C 307, 16.10.1996, p. 11

(Amendment 21)

(c) '*Conditional access device*' means any equipment for software designed or adapted to give access to a protected service in an intelligible form.

(c) '*Conditional access device*' means any equipment or software designed, assembled or adapted to give access to a protected service in an intelligible form.

(Amendment 22)

Article 1(e)

(e) '*Illicit device*' means any equipment or software designed or adapted to give unauthorized access to a protected service.

(e) '*Illicit device*' means any equipment or software designed, assembled or adapted for the sole intended purpose of enabling unauthorized access to a protected service.

(Amendment 23)

Article 3

Member States shall prohibit on their territory all of the following activities:

Member States shall prohibit on their territory all of the following activities:

(a) the manufacture, import, sale or possession for commercial purposes of illicit devices;

(a) the manufacture, import, sale or possession for commercial purposes of illicit devices;

(a1) making available an illicit device for direct or indirect financial gain;

(b) the installation, maintenance or replacement for commercial purposes of an illicit device;

(b) the installation, maintenance or replacement for commercial purposes or for direct or indirect financial gain of an illicit device;

(c) the use of commercial communications to promote illicit devices.

(c) the use of commercial communications to promote illicit devices, advertising, direct marketing, sponsorship, sales promotion, public relations, etc.,

(c1) advertising concerning the manufacture, import, sale and availability in general of illicit devices;

(c2) advertising concerning activities and measures facilitating unauthorized access;

(Amendment 24)  
Article 4(2)

2. Each Member State shall take the measures necessary to ensure that service providers, whose interests are affected by an infringing activity carried out on its territory, can bring an action for damages and seek for an injunction and, where appropriate, apply for the seizure of illicit devices.

2. Each Member State shall take the measures necessary pursuant to its legislation to ensure that service providers, whose interests are affected by an infringing activity carried out on its territory, can bring an action for damages and seek for an injunction and, where appropriate, apply for the seizure of illicit devices.

## DRAFT LEGISLATIVE RESOLUTION

**Legislative resolution embodying Parliament's opinion on the proposal for a Council Directive on the legal protection of services based on, or consisting of, conditional access (COM(97)0356 - C4-0475/97) - 97/0198(COD))**

**(Consultation procedure: first reading)**

The European Parliament,

- having regard to the Commission proposal to the Council, COM(97)0356 -97/0198(COD)<sup>(1)</sup>,
  - having been consulted by the Council pursuant to Article 189b(2) of the EEC Treaty and Articles 57(2), 66 and 100a of the EC Treaty pursuant to which the Commission submitted the proposal to Parliament (C4-0475/97)),
  - having regard to Rule 58 of its Rules of Procedure,
  - having regard to the report of the Committee on Legal Affairs and Citizens' Rights and the opinions of the Committee on Economic and Monetary Affairs and Industrial Policy, the Committee on the Environment, Public Health and Consumer Protection and the Committee on Culture, Youth, Education and the Media (A4-0136/98),
1. Approves the Commission proposal, subject to Parliament's amendments;
  2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 189a(2) of the EC Treaty;
  3. Calls on the Council to incorporate Parliament's amendments in the common position that it adopts in accordance with Article 189b(2) of the EC Treaty;
  4. Should the Council intend to depart from the text approved by Parliament, calls on the Council to notify Parliament and requests that the conciliation procedure be initiated;
  5. Points out that the Commission is required to submit to Parliament any modification it may intend to make to its proposal as amended by Parliament;
  6. Instructs its President to forward this opinion to the Council and Commission.

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<sup>(1)</sup> OJ C 314, 16.10.1997, p. 7.

## B EXPLANATORY STATEMENT

### I. INTRODUCTION

1. Your rapporteur would first like to congratulate the Commission for its prompt adoption of the proposal for a directive on the legal protection of services based on, or consisting of, conditional access (COM(97)0356 - C4-0475/97). This proposal embodies the views set out in its Green Paper on legal protection for encrypted services in the internal market<sup>(1)</sup> on which the Commission had held wide-ranging consultation to raise the awareness of the Member States and the industries involved about the problems of piracy and to underscore the need for Community action.
2. The European Parliament gave the necessary prompt to take appropriate legal measures to combat piracy in this sector in its resolution of 13 May 1997<sup>(2)</sup> adopting the report submitted by your rapporteur<sup>(3)</sup> and expressing the view that a directive was the most appropriate means of achieving a minimum level of protection in the European Community through the approximation and harmonization of national laws<sup>(4)</sup>. The preference for a directive was a natural consequence of the existing 'legislative fragmentation' in the European Community if account is taken of the wide range of national provisions and the stipulations made by internal market rules and their impact on the free movement of goods. The above report represented an attempt to analyse the nature of piracy in the field of encrypted services and attempted to demonstrate the inadequacy of the existing regulatory framework - at national, international and European level - to deal with the complex problems involved<sup>(5)</sup>.
3. We therefore believe that the proposal for a directive is an important first step in the right direction. It remains to be seen to what extent this step is sufficient to satisfy the European Parliament's call for approximation and harmonization of national provisions at the highest possible level, with a view to 'fulfilling the conditions for progressively discouraging and combatting piracy'<sup>(6)</sup> 'in the most effective and durable manner'<sup>(7)</sup>

### II. POSITION OF THE EUROPEAN PARLIAMENT ON THE GREEN PAPER AND THE GENERAL PROBLEM OF PIRACY IN THE SECTOR UNDER REVIEW

4. Beyond highlighting the need for regulation at European/Community level by means of a directive, the resolution of 13 May 1997 also drew attention to the following issues, the overriding aim of which is the highest possible level of protection for all parties involved:
  - (a) the observation that encoded transmission and retransmission (referred to in the proposal for a directive as 'conditional access services') are directly linked to

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<sup>(1)</sup> See COM(96)0076 - C4-0190/96

<sup>(2)</sup> OJ C 167, 2.6.1997, pp. 31-33

<sup>(3)</sup> See Report by G. Anastassopoulos, A4-0119/97, 2.4.1997

<sup>(4)</sup> Ibid paragraphs 9 and 10

<sup>(5)</sup> See Report A4-0119/97, explanatory statement pp. 8-18

<sup>(6)</sup> See Resolution of 13 May 1997, paragraph 10

<sup>(7)</sup> Ibidem

technological developments in the information society but also affect - indirectly but obviously - intellectual property rights (see paragraph 2 of the resolution); this observation endorses and justifies the extension of legal protection to copyright holders (see paragraph 13);

- (b) the observation, regarding the manner of combating piracy, of 'the need for harmonized common rules in national legislation that provide for civil and criminal penalties for those who produce, market, possess, use, manufacture, sell or install devices or who offer, solicit, advertise or perform services capable of rendering systems of protection ineffective' (i.e. conditional access systems) (see paragraph 6);<sup>(1)</sup>.
  - (c) the option of protecting the encoded service itself or banning 'preparatory activities' (see paragraph 7);
  - (d) finally, the issue of broadening legal protection - as far as is legally feasible - to cover 'all encoded services in respect of which encoding is used to ensure payment of a fee' (see paragraph 12). The European Parliament thus agreed that forthcoming legislation should include all so-called 'information society services', within the meaning of Article 1(2) of Directive 83/189/EEC<sup>(2)</sup> as amended by adoption of proposal for a directive COM(96)0392/final<sup>(3)</sup>
5. In adopting the above positions, the European Parliament took the following two parameters as a basis for effectively combating piracy:
- firstly, the 'realistic' solution of a directive which will leave the Member States free to choose the means to achieve the objective pursued;
  - secondly, the preference for a 'maximalist' approach to the extent of the protection to be provided. This choice is based on the fact that the new technologies are developing - we might say - at the speed of light. There is no point in adopting a regulatory framework which has been overtaken by events by the time it comes into force. This is why we persist with the solution of harmonization 'at the highest possible level'<sup>(4)</sup>, as a gradual and ad hoc approach is not in our view advisable in the given circumstances.
6. It has also been shown moreover that the gradual and ad hoc approach to piracy has adverse effects. Despite the constant technological improvement of decoders, loss of income to service providers in Europe during 1996 - encoded television broadcasts date back to 1995

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<sup>(1)</sup> A position set out in the European Parliament's resolution of 19 September 1996 on the Commission's Green Paper on copyright and related rights in the information society, OJ C 320, 28.10.1996, p. 177, paragraph 33.

See Barzanti Report, Doc. A4-0255/96.

<sup>(2)</sup> Council Directive of 28.3.1983 laying down a procedure for the provision of information in the field of technical standards and regulations, OJ L 109, 26.4.1983, p. 8

<sup>(3)</sup> OJ C 307, 16.10.1996, p. 11.

<sup>(4)</sup> See resolution of 13 May 1997, paragraph 10.

in fact - exceeded ECU 200m<sup>(1)</sup>! A figure which is explicable if we consider that there are currently Member States in the Community in which 50% of viewers 'receive' encoded programmes without paying subscriptions to the relevant service providers<sup>(2)</sup>. The imminent liberalization of commerce and international trade - despite the undoubtedly positive impact on economic development - throws the risk of piracy into even sharper relief. The first instance of piracy which affected the European digital video broadcasting group (DVB)<sup>(3)</sup> appeared in the Netherlands with equipment manufactured in Turkey, advertised via the Internet and distributed in the UK. This example is indicative of the rackets that are created and the vicious circle that arises to threaten the European market<sup>(4)</sup>. We would point out that, between 20 September 1996 and early February 1997 alone, over one million advertisements for pirating equipment appeared on Internet<sup>(5)</sup>. According to experts, the quoted figure is in no way exaggerated and the real figure may actually be higher! Moreover, it is undeniable that further liberalization of international trade - as provided for by Article XIX of the fourth section of the General Agreement on Trade in Services (GATS) - will not ease the situation but, on the contrary, is likely to create further breaches in the internal market in Europe with the additional risk of seriously threatening its very foundations. A swift response is therefore required to establish greater protection and cohesion in the internal market. That is precisely the aim of harmonization 'at the highest possible level'.

### **III. PROPOSALS TO STRENGTHEN THE SYSTEM PROPOSED BY THE DIRECTIVE**

#### **A. The Commission's proposal for a directive**

7. If we analyse the Commission's proposal in the terms set out above, we believe it is inadequate. Moreover, we make this assessment without being influenced by the specific reasons underpinning the Commission's position: whether these be tactical, with the gradual approach to the problem seemingly preferable at this stage (possibly because of reactions from the Member States or circles within the Council), or, more simply, for purely technical legislative reasons because the Commission may be planning to regulate certain aspects of the problem by means of further proposals. However, your rapporteur feels compelled to put forward his own proposals which reflect the views hitherto expressed by the European Parliament and represent a more effective manner of dealing with the problem.
8. The system of protection proposed by the Commission may be summarized as follows:

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<sup>(1)</sup> According to data from the AEPOC - Association Européenne pour la Protection des Oeuvres et Services Cryptés (European Association for the Protection of Encoded Works and Services).

<sup>(2)</sup> Source: AEPOC.

<sup>(3)</sup> The DVB group is responsible for standardizing encoding systems for digital radio and television broadcasting, which is an important step towards wider use of encoding technologies and raising the level of security.

<sup>(4)</sup> In so far as piracy usually takes the form of cross-border enterprise with research being carried out in one country, production in another and finally advertising and commercial distribution in a third country.

<sup>(5)</sup> See explanatory statement to report A4-0119/97, p. 9.

- extending protection to all information society services (see Article 1(a)), which should be welcomed;
- on the other hand restricting such protection, only to so-called 'preparatory activities', drawing the line - perhaps rather stringently - at the 'commercial nature' of those activities (see Article 3);
- this excludes from the scope of the proposed directive all other activities which might easily be considered equivalent to 'preparatory activities' as well as possession for private use and unauthorized access;
- finally, the proposal for a directive makes no mention whatsoever of possible means of protection for copyright holders.

## **B. The proposed amendments**

9. Your rapporteur is aware that the spectrum of problems involved in providing protection against unauthorized access to conditional services very frequently creates disputes between the various organizations - of every kind - engaged in activities in the audiovisual and communications sectors. The reason for this is simple: at this stage, owing to competition and efforts to acquire markets, the most important thing is to gain the upper hand over one's immediate competitor, while the main adversary - i.e. the pirate industry - takes second place! We are unable in this report to discuss this fruitless - particularly in the long-term - contest in more detail when the most pressing matter at hand is to find ways of combating the main 'adversary', i.e. piracy<sup>(1)</sup>. We therefore propose extending the system of protection put forward in the proposal for a directive in four (4) specific directions:
- (a) the extension - though not unreservedly - of protection to conditional access services which are not provided only for remuneration (see amendments Nos. 2, 5 and 20);
  - (b) not to restrict the infringing activities set out in Article 3 to the commercial nature of the activities but also to include activities which aim, in more general terms, to produce 'direct or indirect financial gain' (see amendments Nos 9 and 23);
  - (c) to consider unauthorized access to be an unlawful activity in itself (see Article 1(f)) where the user is 'at fault';
  - (d) finally, recognition for owners of intellectual property, where applicable, of the right to bring an action for damages and seek an injunction, which the proposal for a directive recognizes only for service providers.
10. In its resolution of 13 May 1997, Parliament agreed with the Commission's view that 'the measure under review should, ... , cover all encoded services in respect of which encoding is

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(<sup>1</sup>) The public has been made aware of the need to combat piracy in the various Member States. For example, a recent survey in Denmark (December 1997) revealed that 64% of those questioned were in favour of a ban on pirating equipment (source: VILSTRUP STUDY, DECEMBER 1997).

used to ensure payment of a fee<sup>(1)</sup>. It agreed in this respect with the argument that many services encoded for reasons other than securing remuneration are encoded to ensure the integrity and the confidentiality of the message transmitted<sup>(2)</sup> and that the special nature of these interests means that they should be differentiated from services provided for a fee, thereby justifying special legal treatment<sup>(3)</sup>. It is not our task here to make a detailed analysis of whether and why these services should be excluded from the proposed legislation but we would wish to stress that services provided in return for remuneration are not confined to those mentioned by the Commission. The main category involved here are services, i.e. broadcasts, provided by public television operators which encode their television signals because of territorial restrictions imposed by legislation on the protection of copyright. We believe it would be highly discriminatory against those organizations to exclude them from the protection provided by the directive. Moreover, excluding them may have disconcerting implications for their viewing figures and, consequently, the competitive position of public organizations on the television market. It might be objected in this situation that we are leaving it up to authors and other copyright holders themselves to provide their own legal safeguards (as indeed provided by the new agreements signed within the WIPO)<sup>(4)</sup>. The objection would be valid but inconsistent with the Commission's position in this proposal which makes no mention of copyright holders. We therefore believe that Amendment No 20 extending protection and access, subject to authorization so as to protect the economic value of the service and its content, fills an actual gap, while Amendment No 5 - which introduces a new recital - enables the Member States to take account of the special features of some of these services in their own legislation.

11. The infringing activities under Article 3 are firstly confined to so-called 'preparatory activities' and secondly focus mainly on the commercial nature of each activity. We believe that in the world of the new technologies such a definition of infringing activities will be incapable of covering the wide range of activities which do not fall within the narrow sense of 'commercial activity' or an activity of a 'commercial nature', but nevertheless produce exactly the same result. Your rapporteur takes the view that there must be a wider definition of infringing activity and we therefore propose as an alternative, activities in pursuit of 'direct or indirect financial gain' regardless of their commercial purpose. The same amendment adds two more points - C1 and C2 - specifically referring to the advertising and dissemination of information relating to unlawful activities, since the term 'commercial communications' mentioned in point C is very restrictive, as already noted above (see Amendments Nos. 23 and 9).
12. As regards unauthorized access as such, your rapporteur had certain misgivings before putting forward an amendment in this connection. The reason for this is that when we refer to access service, we also involve the notion of possession for private use. It is true that the distinction between these two activities is very fine, and therefore difficult to define (as is the distinction between private and 'non private' use!). Moreover, the Commission states unequivocally that it seeks to sanction 'the commercial activities that favour the unauthorized reception, and not

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<sup>(1)</sup> See paragraph 12 of the resolution.

<sup>(2)</sup> Such as for example financial and telecommunications services.

<sup>(3)</sup> Commission Green Paper, COM(96)0076 final, pages 7 and 51

<sup>(4)</sup> World Intellectual Property Organization,

the unauthorized reception as such<sup>(1)</sup>. We agree that the scope for imposing sanctions for such an activity should be kept to the minimum - to achieve the opposite would require such a large-scale operation that there would be a danger of creating a general state of psychosis! Obviously this was not your rapporteur's intention. However, one might justifiably wonder about the effectiveness of legislation which proposes to protect the financial interests of service providers while regarding unauthorized reception of that service as legal! Discussions in the Committee on Legal Affairs and Citizens' Rights concluded that such a provision - if adopted - would cause major problems of interpretation. Your rapporteur therefore decided to withdraw the relevant amendment before the text was put to the vote. However, Amendment No 15 - to the fifteenth recital - leaves to the Member States' discretion the introduction of provisions outlawing and prohibiting possession of illicit devices for private use.

13. Conferring the right to pursue an action for damages on copyright holders would strengthen the system of protection proposed in the directive and would also be in line with Parliament's views hitherto. The Committee on Legal Affairs and Citizens' Rights was, however, divided on this question with the result that the relevant amendment by the rapporteur was rejected - by equal vote! However, there are already corresponding provisions in the two Treaties adopted within the WIPO concerning the rights of the author<sup>(2)</sup> and the rights of performing artists and phonogram producers<sup>(3)</sup>. The Commission may incorporate relevant provisions in the forthcoming proposal for a directive on the rights of authors and related rights in the information society which will be considered by our committee<sup>(4)</sup> Aside from this, your rapporteur considered that the relevant amendment should be adopted to achieve the necessary balance in the information society system.
14. With regard to the question as a whole, your rapporteur considers the contribution of the committees asked for an opinion to be particularly constructive. A large number of the amendments they have proposed provide an additional - sector-by-sector - perspective in analysing the problem of piracy. This applies in particular to Amendment No 5 by the Committee on Economic and Monetary Affairs, which was favoured by your rapporteur, to complete the definition of conditional access in Article 1(b). This amendment - see Amendment No 20 of the report - defines with great precision the object and extent of the legal protection which the directive seeks to provide.
15. The amendments by the Committee on Culture, Youth, Education and the Media seek to ensure:
  - the harmonious coexistence of bodies providing encrypted services - particularly in the broadcasting sector - and broadcasting stations recognized as being in the general interest providing general and unconditional access to information and cultural programmes (see Amendments Nos 7 and 8 in the report);

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<sup>(1)</sup> See COM(97)0356 final, p. 15

<sup>(2)</sup> See Article 11 of the Convention (signed on 20 December 1996 in Geneva).

<sup>(3)</sup> See Article 18 of the Treaty (same date of signature).

<sup>(4)</sup> See proposal for a directive on the harmonization of certain aspects of copyright and related rights in the information society - COM(97)0628 - 10.12.1997

- a strong level of deterrence in the form of sanctions by Member States, firstly in accordance with the principle of subsidiarity (see Amendment No 12 in the report) and, secondly, in fulfilment of their obligations arising from the proper implementation of Community law (see Amendment No 13 of the report)
16. While these amendments are, it is true, embodied in the recitals and do not therefore have force of law, they do have the advantage of establishing the framework within which the directive must be implemented. Concerning the sanctions, one of the recitals quotes an extract from a Commission communication to the effect that 'only a consistent approach to the question of penalties in the internal market context can ensure both fair competition under fair trading conditions and the protection of those aspects of the general good covered by common rules' (see Amendment No 14 of the report). This shows how important it is for the single market that the directive be implemented properly and without hindrance.

#### IV. CONCLUSION

17. On the basis of its rapporteur's observations, the Committee on Legal Affairs and Citizens' Rights decided that the provisions of the proposal for a directive in question must be considerably strengthened so that it could be implemented more effectively and without hindrance in the Member States. It therefore strengthened not only the body of the text but also the framework provided by the recitals by adopting the amendments contained in the report. It accordingly recommends that the proposal for a directive, thus amended, be put to the vote in Parliament.

25 February 1998

**OPINION**  
(Rule 147)

for the Committee on Legal Affairs and Citizens' Rights

on the proposal for a European Parliament and Council Directive on the Legal Protection of Services based on, or consisting of, Conditional Access (COM(97)0356 - C4-0475/97 - 97/0198 (COD)); report by Mr Anastassopoulos)

Committee on Economic and Monetary Affairs and Industrial Policy

Draftsman: Mr Frieder Otto Wolf

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**PROCEDURE**

At its meeting of 12 December 1998 the Committee on Economic and Monetary Affairs and Industrial Policy appointed Mr Wolf draftsman.

It considered the draft opinion at its meetings of 24 February 1998 and 25 February 1998.

At the last meeting it adopted the following conclusions unanimously

The following were present for the vote: von Wogau, chairman; Katiforis and Secchi, vice-chairmen; Wolf (for Soltwedel-Schäfer), draftsman; Areitio Toledo, Arroni, Beres, Billingham, Castagnede, Caudron, de Brémond d'Ars, de Lassus Saint Genies( for Scarbonchi), de Rose, Donnelly, Ettl (for García Arias), Falconer (for Glante), Fayot, Gallagher, García-Margallo, Gasoliba I Böhm, Harrison, Hautala, Hendrick, Herman, Hoppenstedt, Ilaskivi, Kestelijn-Sierens, Konrad, Langen, Lindqvist (for Cox), Lukas, Lulling, McCarthy (for Imbeni), Miller, Murphy, Paasilinna, Peijs, Pérez Royo, Quisthoudt-Rowohl (for Carlsson), Randzio-Plath, Rapkay, Ribeiro, Riis-Jørgensen, Rübig, Skinner (for Kuckelkorn), Tappin (for Metten), Theonas (for Svensson), Thyssen, Torres Marques, Watson and Wibe.

**BACKGROUND**

The market for services based on conditional access is growing rapidly. The business opportunities will depend both on the availability and the legal protection of conditional access techniques. A growing number of "traditional services", ranging from "pay TV" to electronic versions of newspapers and financial information are being established or evolving towards a "conditional access" model. New digital services, like pay-per-view, video-on-demand, electronic publishing, music-on-demand, are emerging. Since all these services are costly to provide, many of them (if not all) will be run under a subscription arrangement or a usage-related tariff, which need encryption or other techniques to protect against unauthorized reception. The development of this sector and the legitimate interests of the content providers are jeopardized by a flourishing industry that manufactures and markets devices giving unauthorized access to such services.

The rapporteur fully endorses what has already been emphasised by the European Parliament and the Council in its Directive 95/47 on Digital Video Broadcasting, "that the introduction and enforcement of efficient anti-piracy legislation at European level will become increasingly necessary". He also refers to the European Parliament's resolution of 13 May 1997 on the Green Paper from the European Commission on "Europe's way to the Information Society" (COM(94)0347 final) wherein the House called on the Commission to present a proposal for a Directive covering all encoded services, including information society services. With the presented proposal for a directive the Commission comply with this demand.

### **The scope of the proposed directive**

The proposal for a directive states that considerable disparities in the level of legal protection against piracy exist in the European Union, and it aims to guarantee the legal protection of encrypted services in the internal market, be they broadcasting services or other digital services. It aims to prohibit and sanction throughout the European Union all commercial activities involving unauthorized access to encrypted services (sale of decoders, smart cards or pirate devices) which are offered to the public on a subscription or usage-related basis. Therefore, it requires the Member States to prohibit:

- the manufacture, import, sale, possession, installation, maintenance or replacement for commercial purposes of an illicit device; and
- the use of commercial communications to promote illicit devices

The proposal demands that any sanctions applied should be effective, deterrent and proportional to the potential impact of the infringement. Service providers would be able to bring an action for damages and to request an injunction and the seizure of illicit devices, when appropriate.

### **Comments**

The rapporteur welcomes the Commission's proposal in general but wants to draw attention to some severe shortcomings:

1. Protection is granted to services provided on a "conditional access" basis, the latter being defined as "any technical measure and/or arrangement whereby access to the service in an intelligible form is made conditional upon a prior individual authorization aiming at ensuring the remuneration of that service". However, there is no evidence for restricting the scope of the Directive to for-payment services provided on a conditional access basis. There are many cases where services can be protected by conditional access without the existence of direct remuneration. In consequence, the scope of the proposed Directive should be enlarged to all services using conditional access to protect the economic value of the services provided. The question to exclude from the protection of the directive "undesirable" services such as pornographic or racist services must be caught by other provisions applying to illegal and harmful content.
2. Copyright holders are not included among the parties who can bring an action under the directive. The rapporteur, however, points to the fact that copyright holders have an interest in the proper exploitation of content they own and one cannot presuppose a common interest between service providers and those who own rights in material transmitted. In conclusion, any person having a proprietary right in the service or creative content should be given the

same rights regarding enforcement, sanction and remedies as the providers of conditional access services.

3. Even though the protection on conditional access services against piracy is necessary for economic reasons, politics has to give due consideration to the effects of an ever growing part of services being encrypted or otherwise protected against “free” accession. There is a serious danger that for the general public, the diversity of information and the possibility to take part in major cultural events is vanishing in encryption and will leave more and more people without any access to valuable services. To keep the balance between the interests of the economic players and those of the general public, the rapporteur suggests that Member States should be asked, and being allowed, to provide for accession to those services, free of charge, for certain public spaces they consider appropriate to fill the information gap for people who are not in the economic position to “buy” their individual access.
4. The rapporteur is against criminalizing people who use their decoder not just in the Member State of (legal) purchase, but in others where its use may be “illicit” because of a discrete copyright arrangement. For these problems other solutions have to be found, e.g. a “lump sum” payment to the copyright holders for all those people watching the service from abroad.
5. The rapporteur agrees with the Commission, that the principle of proportionate sanctions means not bringing criminal procedures against people using illicit devices. However, each Member State shall take the measures necessary to ensure that service providers and copyright holders can bring an action for damages and apply for the seizure and/or the disconnection of illicit devices.

## CONCLUSIONS

The Committee on Economic and Monetary Affairs and Industrial Policy calls on the Committee on Legal Affairs and Citizens' Rights, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission

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Amendments by Parliament

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(Amendment 1)  
Recital 17 (new)

Whereas there is a need to ensure that users of national services are not deprived of these services through their encryption;

(Amendment 2)  
Recital 18 (new)

Whereas a balance must be secured between

the interest of the service providers and copyright holders to be remunerated for their services (by encryption) on the one hand and the interest of the general public not to be excluded more and more from information and cultural events;

(Amendment 3)  
Recital 20 (new)

Whereas the service providers which use conditional access for their services should secure the access to those categories of individuals who would otherwise be excluded from access to these diversified information and cultural programmes by granting access to adequate public institutions;

(Amendment 4)  
Recital 21 (new)

Whereas it is important to give due consideration to the interests not only of the service providers of conditional access but also of the copyright holders in materials transmitted through such services;

(Amendment 5)  
Article 1(b)

(b) "Conditional Access" means any technical measure and/or arrangement whereby access to the service in an intelligible form is made conditional upon a prior individual authorization aiming at ensuring the remuneration of that service;

(b) "Conditional Access" means any technical measure and/or arrangement whereby access to the service in an intelligible form is made conditional upon a prior individual authorization aiming at protecting the economic value of that service or its content;

9 February 1998

## **OPINION**

(Rule 147)

for the Committee on Legal Affairs and Citizens' Rights

on the proposal for a European Parliament and Council Directive on the Legal Protection of Services based on, or consisting of, Conditional Access (COM(97)0356 - C4-0475/97 - 97/0198 (COD)); report by Mr Anastassopoulos)

Committee on Culture, Youth, Education and the Media

Draftsman: Phillip WHITEHEAD

## **PROCEDURE**

At its meeting of 25 November 1997, the Committee on Culture, Youth, Education and the Media appointed M. Whitehead draftsman.

It considered the draft opinion at its meetings of 8 December 1997, 19 January 1998 and 5 February 1998.

At the last meeting it adopted the following conclusions unanimously.

The following took part in the vote: Pex, chairman; Baldi, vice-chairman; Whitehead, draftsman (for Morgan); Augias, Colajanni (for Evans pursuant to Rule 138(2)), Darras (for Ahlquist), De Coene, De Esteban Martin (for Añoveros Trias de Bes), Guinebertière, Elchlepp (for Junker), Heinisch, Kerr, Kuhne, Leperre-Verrier, Monfils, Perry, Rynnänen, Sanz Fernandez, Seillier, Tongue and Vaz da Silva.

## **INTRODUCTION**

The decision to draft a Directive on the Legal Protection of Services based on, or consisting of Conditional Access, has been widely welcomed. It should be read in the context of the wider debate about convergence and its consequences, with regard to regulation, the public interest in a dynamic market system and the sometimes competing claims of intellectual property rights holders and more general cultural concerns, to which the Commission has addressed itself. The Directive is a specific element in the Commission's stated aim to produce "a coherent framework of technological, regulatory and support actions" by 2000 to encourage what its Communication (COM [97] 157 of 6 April 1997) calls "the vigorous growth of electronic commerce in Europe." The legal protection of encrypted services, offered to the public for remuneration is the principal concern of Directive COM[97]356. The Culture Committee notes that such services, offered to all subscribers prepared to pay for authorised access to the system, occupy a growing part of the range of 'new' (and not-so-

new) broadcasting and interactive services which preoccupied it in the debate of "Television Without Frontiers".

These services can now be offered in a variety of ways; on-line to personal multi-media computers, through cable TV, pay-radio and telephone lines. All those who provide access to such services in exchange for a subscription lose financially if the devices used to decrypt the signal are pirated. So do the major service providers themselves, while any fall in their profitability will affect, in turn, what they are able and willing to pay to the content providers. Thus the diversity and range of content with all its cultural implications, stands to lose indirectly from piracy. Pay-TV will be the largest source of revenue for films, for example, by the end of the century. The diversion of such income to pirates who are entirely parasitic upon the system will have clear and harmful consequences, for pay-TV films, for pay-per-view events and for electronic publishing provided on-line to the home computer through encryption. The Digital Broadcasting Project (DVB), which has adopted a Common Scrambling Algorithm for all DVB decoders in Europe, claims that piracy already causes 200 million ECUs in lost revenue annually. These losses are passed on to the consumer in either higher charges or less varied services. Those who purchase pirated devices, sometimes unwittingly, will also suffer once the conditional access operator changes the system and nullifies the illegal decoder.

The Directive notes that there are substantial disparities in legal protection across Europe. Broadcasting systems have been built upon national and cultural priorities in terms of communication, with the emphasis on what has been broadcast rather than what is received by broadcasting and other means. Some Member States have not evolved a process of regulation for the illicit reception of services provided by conditional access. Operators, for obvious reasons, welcome the Directive's proposal to bring about an equivalent level of protection in all Member States, as a key Single Market measure. They are supported in this by the creative industries.

The Culture Committee has carefully considered the principal criticisms of the Directive from industry, in the light of its own remit. These criticisms centre on what is excluded, and unusually they call for a more proactive role in policing the process of domestic and business reception of conditional access services. They can be summarised as (a) the so called "loophole" which allows the private possession or use of a pirate de-coding device, (b) the failure to protect encrypted services not "offered for remuneration", (c) the need to be able to take legal action against the producers of pirate devices in each and every Member State involved, wherever they will ultimately be used. The cultural implications can be profound, and will be discussed in turn.

#### **(a) Private Possession of Illicit Devices**

In a cautious preamble which reflects the divisions in the Council on this issue the Directive says that "the application of national provisions ... may prohibit the private possession of illicit devices". Some already do so, but the discretionary approach has been attacked by the industry, which would prefer to see private possession criminalised throughout the European Union. There is an echo here of the drugs debate; does possession for private users encourage trafficking, and thus large-scale crime, or should it be treated more tolerantly? There is no doubt about the scale of the crime, where the manufacture and circulation of devices is concerned. Linked with GSM clonation, electronic lock-breaking in on-line services, and illegal content on the Internet, it is very big business indeed.

Electronic crimes must be resolutely combatted, but the Culture Committee questions whether fining or locking up ordinary citizens who have purchased an illicit device is the answer. First, the proper target is the manufacture, import, marketing and maintenance of the devices, for which service

providers will be able to bring actions for damages when their protected system has been broken into by pirates. This must include commercial use. A case in point would be the current phenomenon in the UK where a number of British public house owners are diverting the signal intended for live transmission of English Premier League football matches to Norway, so that they can be screened for customers. The service provider, Sky, and the content provider both lose revenue. The Football Association Premier League argues that since this diversion can be effected by decoders which can be bought perfectly legitimately in Norway it is necessary to define as an illicit device any equipment which may provide unauthorised access to a protected service.

The problem is that any such action would also cover citizens of one Member State who wished to have access to programmes in their own language or idiom whilst resident in another. National services are beginning to vanish into the ghettos of encryption. Many users may be left with no legitimate access to such services, if they are locked away more for copyright protection, than for remuneration. Others will wish to use their decoder not just in the member state of purchase, but in others where its use may be "illicit" because of a discrete copyright arrangement. It makes no more sense to criminalise them than it would to prohibit them using video recordings made in their country and language of origin. The Culture Committee considers that such a restriction would be an unreasonable restraint of the citizen's right to access his or her own cultural heritage. A Norwegian living in the UK should not be subject to harassment for possessing decoders purchased to access Norwegian programming not otherwise available.

However, the Directive needs to be absolutely explicit about the circumstances in which individuals knowingly co-operate in the purchase, operation or maintenance of devices for commercial purposes, whilst distinguishing them from those whose unwitting possession should not be subject to the rigour of the law. The Culture Committee understands the concern of conditional access operators that appropriate penalties must be levied for fraudulent misuse, in the spirit of Article 5 of the Treaty, and that no Member State should be impeded or deterred from maintaining its own punitive system as it sees fit. The appropriate recitals are appended.

#### **(b) Protection of Non Remunerated Services**

The exclusion of non-remunerated services from the Directive has been much criticised. If conditional access systems are to be protected the protection should not be withheld simply because they do not charge the going rate. Many traditional public service broadcasters, both state and advertising-financed, are encrypting their services to protect content and copyright beyond their national borders. As digital multiplex systems develop, in which they are involved, encryption will become more widespread. So will simulcasting of services in different media. This protection cannot come within the ambit of the anti-piracy measures set out for the remunerated services, but it must be clearly ensured in the developing body of Community copyright legislation.

The Culture Committee considers that the special position of public service broadcasters is imperiled here. Currently they offer a wide variety of programming free-to-air or on receipt of a general subscription. They face sustained competition from Pay-TV and pay-per-view operators. If they are to continue to meet their obligations to the less well-off they will need to provide unremunerated access to many of their newly encrypted services. Without full protection of copyright, they will find it harder to acquire material, since rights owners may well prefer to sell to those who offer the double protection offered by anti-piracy measures applied to remunerated conditional access systems.

Equally their lack of protection will increase their costs in protecting and seeking remedies from those who pirate their output. Pirates will consider all unprotected services fair game.

For these reasons the Culture Committee believes that the non-remunerated conditional access services cannot have the protection of the Directive but that their rights must be adequately and efficiently protected in forthcoming copyright proposals. The issue of how much is charged is not the critical distinction where protection from piracy is concerned. Further, a recital must be added to the Directive making it clear beyond doubt that it is without prejudice to the right of the viewer to have access to free-to-air channels within a conditional access service platform, subject only to the basic charge for accessing it. Otherwise the unintended consequence of the Directive would be to drive all broadly based programmes into the ring-fenced wilderness of remuneration for everything, regardless of the public good.

### **(c) Cross-Border Law Enforcement**

The Culture Committee accepts that Member States should move towards a common system of penal sanctions where the victims of piracy can complain to the law enforcement agencies in the country of its perpetration and gain effective redress. The industry's plea that this phenomenon can be compared with money laundering (where the Member States have agreed on common penal sanctions) is persuasive. We can hardly argue for common European policies of cultural advancement if we shun common methods for protecting the area of electronic communications which in the right hands, will be a force for pluralism and diversity in the European media. The age of convergence requires that we look again at how this diversity can be enhanced, in a symbiotic relationship between the citizen, the providers, the Community - and those applicant states which need to understand that those who enter the Union leave all methods of cultural and copyright piracy behind them.

## **CONCLUSIONS**

The Committee on Culture, Youth, Education and the Media calls on the Committee on Legal Affairs and Citizens' Rights, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1  
Recital 5a (new)

Whereas encoded services not offered to viewers in return for remuneration shall receive an appropriate level of protection under copyright legislation for service providers in all Conditional Access broadcasting;

Amendment 2  
Recital 5b (new)

Whereas the encoding of broadcasting services should not unreasonably withhold those services from the general viewer if they were originally offered for non-remunerated use;

Amendment 3  
Recital 8a (new)

Whereas this Directive is without prejudice of Community or national provisions meant to ensure that a number of broadcasting services, recognised as being of public interest, are not based on conditional access;

Amendment 4  
Recital 8b (new)

Whereas this Directive is without prejudice of the cultural aspects of any further Community action concerning new services;

Amendment 5  
Recital 10a (new)

Whereas it seems necessary to ensure that Member States shall provide adequate legal protection against any individual or group using an illicit device for commercial purposes, knowingly or with reasonable grounds to know that they will enable or facilitate without authority the circumvention of any effective technological measures designed to protect the remuneration of a legally provided service;

Amendment 6  
Recital 13a (new)

Whereas the sanctions and remedies provided for under this Directive are without prejudice to any other sanction or remedy for which provision may be made under national law, such as preventive measures in general or seizure of illicit devices;

Amendment 7  
Recital 14a (new)

Whereas in accordance with Article 5 of the Treaty, the Member States are required to take all measures necessary to guarantee the application and effectiveness of Community law, in particular by making the penalty chosen effective, proportionate and dissuasive;

Amendment 8  
Recital 14b (new)

Whereas when adopting the provisions laid out by this Directive, Member States should be in accordance with the Communication from the Commission to the Council and the European Parliament on the role of penalties in implementing Community internal market

legislation which states “only a consistent approach to the question of penalties in the internal market context is capable of ensuring both fair competition under fair trading conditions and the protection of those aspects of the general good covered by common rules”;

Amendment 9  
Recital 15a (new)

Whereas this Directive is without prejudice to the right of the viewer to have access to free-to-air channels within a conditional access service platform without being required to pay an additional fee beyond the normal charge for accessing the platform;

Amendment 10  
Article 1(e)

(e) “*Illicit Device*” means any equipment, software, designed or adapted to enable or facilitate unauthorised access to a protected service.

(e) “*Illicit Device*” means any equipment, software, technology, which is marketed, distributed, designed or adapted to enable or facilitate unauthorised access to a protected service.

Amendment 11  
Article 4, paragraph 2

2. Each Member State shall take the measures necessary to ensure that service providers, whose interests are affected by an infringing activity carried out on its territory, can bring an action for damages and seek for an injunction and, where appropriate, apply for the seizure of illicit devices.

2 Member States shall ensure that providers of protected services, whose interests as protected by this Directive are affected by an infringing activity carried out on their territory, have access to appropriate remedies, including bringing an action for damages and obtaining an injunction or other preventive measure, and where appropriate, applying for disposal of illicit devices outside commercial channels and the disconnection of illicit services ;