

**PROPOSAL FOR A DIRECTIVE
ON THE LEGAL PROTECTION OF SERVICES BASED ON, OR
CONSISTING OF, CONDITIONAL ACCESS**

UNICE COMMENTS

1. GENERAL REMARKS

UNICE welcomes the Commission proposal for a directive on the legal protection of services based on, or consisting of, conditional access[COM(97) 356 final]. It agrees with the Commission that the absence of an equivalent level of legal protection of conditional access services in all member states prevents the internal market from operating smoothly.

UNICE therefore supports harmonisation of the protection of conditional access services, which will play a major role in the development of the information society. These services should benefit from strong legal protection against unauthorised access across the entire European Union.

The directive proposed by the Commission should be seen as a particular issue in the context of the legislation in the information society. Therefore, it should be limited to the specific problem of restrictions concerning any equipment or software intended to circumvent technical measures and/or arrangements intended to control individual access to a protected service. The beneficiaries of the new right should be those who offer the service.

2. DEFINITIONS (ART. 1)

First of all, UNICE would like to stress that licit and illicit devices may be and are in most cases technically identical products. The definition of art 1(e) therefore needs to be tightened up in order to take this into account.

UNICE is of the opinion that the limitation of protection to "Services where conditional access aims at ensuring remuneration of the service" is too narrow.

There are cases where services are subject to conditional access in order to protect the economic value of the service but without a direct remuneration from users. For instance, some services can be mainly advertising-supported, some could be packaged together with pay channels, or provided free as promotional incentive. Conditional access can also be used on fee and non-fee services to identify or control the users and to manage use of the service, or simply to limit reception for certain users or certain areas where the relevant rights have been duly cleared. Art 1 (b) should therefore be amended accordingly.

3. INFRINGING ACTIVITIES (ART. 3)

UNICE regrets to note that the list of infringing activities focuses on illicit devices. It neglects other acts, such as providing illicit services, or committing acts of unauthorised access, which can be detrimental without necessarily involving illicit devices. UNICE therefore believes that this article should be amended to take this into account.

Thus, infringing activities should therefore include, irrespective of whether they are carried out with any commercial purpose or for private financial gain:

- provision of services which allow or facilitate unauthorised access to protected services;
- use and possession of illicit devices;
- dissemination of information which allows or facilitates unauthorised access to protected services;
- illicit reception, performance and further distribution of protected services.

Finally, the "sale" should be further specified as covering any economic acts of "putting into circulation" or "making available for use", including sale, rental, lending, licensing or distribution.

However, as stated above, UNICE can only stress that what constitutes an illicit device has to be defined more precisely in order not to impede the manufacture, sale and import of licit devices. Manufacturing of illicit devices shall only be prohibited in cases where they have function(s) specifically designed to give unauthorised access. It should be borne in mind that devices may

be manufactured for export purposes to countries where their use will be lawful even if installation in a EU country would be illegal.

4. SANCTIONS (ART. 4)

Consistent with point 3, the sanctions should include the disconnection of illicit services.

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