
S T A T U T O R Y I N S T R U M E N T S

2000 No. 1175

TELECOMMUNICATIONS

The Conditional Access (Unauthorised Decoders) Regulations 2000

<i>Made</i> - - - - -	<i>27th April 2000</i>
<i>Laid before Parliament</i>	<i>3rd May 2000</i>
<i>Coming into force</i> - -	<i>28th May 2000</i>

The Secretary of State, being a Minister designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in respect of measures relating to advanced television services including digital conditional access and subscription management services, in the exercise of the powers conferred on him by that section, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Conditional Access (Unauthorised Decoders) Regulations 2000 and shall come into force on 28th May 2000.

Amendments of the Copyright, Designs and Patents Act 1988

2.—(1) The Copyright, Designs and Patents Act 1988(c) shall be amended in accordance with the following paragraphs.

(2) For section 297A there shall be substituted the following section—

“Unauthorised
decoders.

297A—(1) A person commits an offence if he—

- (a) makes, imports, distributes, sells or lets for hire or offers or exposes for sale or hire any unauthorised decoder;
- (b) has in his possession for commercial purposes any unauthorised decoder;
- (c) instals, maintains or replaces for commercial purposes any unauthorised decoder; or
- (d) advertises any unauthorised decoder for sale or hire or otherwise promotes any unauthorised decoder by means of commercial communications.

(2) A person guilty of an offence under subsection (1) is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or to both.

(a) S.I. 1996/266.

(b) 1972 c. 68.

(c) 1988 c. 48; section 297A was introduced by section 179 of the Broadcasting Act 1990 (1990 c. 42) and amended by section 140 of the Broadcasting Act 1996 (1996 c. 55), and section 298 was extended by section 141 of the Broadcasting Act 1996.

(3) It is a defence to any prosecution for an offence under this section for the defendant to prove that he did not know, and had no reasonable ground for believing, that the decoder was an unauthorised decoder.

(4) In this section—

“apparatus” includes any device, component or electronic data (including software);

“conditional access technology” means any technical measure or arrangement whereby access to encrypted transmissions in an intelligible form is made conditional on prior individual authorisation;

“decoder” means any apparatus which is designed or adapted to enable (whether on its own or with any other apparatus) an encrypted transmission to be decoded;

“encrypted” includes subjected to scrambling or the operation of cryptographic envelopes, electronic locks, passwords or any other analogous application;

“transmission” means—

(a) any programme included in a broadcasting or cable programme service which is provided from a place in the United Kingdom or any other member State; or

(b) an information society service (within the meaning of Directive 98/34/EC of the European Parliament and of the Council of 22nd June 1998^(a), as amended by Directive 98/48/EC of the European Parliament and of the Council of 20th July 1998^(b)) which is provided from a place in the United Kingdom or any other member State; and

“unauthorised”, in relation to a decoder, means that the decoder is designed or adapted to enable an encrypted transmission, or any service of which it forms part, to be accessed in an intelligible form without payment of the fee (however imposed) which the person making the transmission, or on whose behalf it is made, charges for accessing the transmission or service (whether by the circumvention of any conditional access technology related to the transmission or service or by any other means).”

(3) For section 298 there shall be substituted the following section—

“Rights and remedies in respect of apparatus, &c. for unauthorised reception of transmissions.

298.—(1) A person who—

- (a) makes charges for the reception of programmes included in a broadcasting or cable programme service provided from a place in the United Kingdom or any other member State,
- (b) sends encrypted transmissions of any other description from a place in the United Kingdom or any other member State, or
- (c) provides conditional access services from a place in the United Kingdom or any other member State,

is entitled to the following rights and remedies.

(2) He has the same rights and remedies against a person—

(a) who—

- (i) makes, imports, distributes, sells or lets for hire, offers or exposes for sale or hire, or advertises for sale or hire,
- (ii) has in his possession for commercial purposes, or
- (iii) installs, maintains or replaces for commercial purposes, any apparatus designed or adapted to enable or assist persons to access the programmes or other transmissions

(a) O.J. L204, 21.7.98, p.37

(b) O.J. L217, 5.8.98, p.18

or circumvent conditional access technology related to the programmes or other transmissions when they are not entitled to do so, or

- (b) who publishes or otherwise promotes by means of commercial communications any information which is calculated to enable or assist persons to access the programmes or other transmissions or circumvent conditional access technology related to the programmes or other transmissions when they are not entitled to do so,

as a copyright owner has in respect of an infringement of copyright.

(3) Further, he has the same rights under section 99 or 100 (delivery up or seizure of certain articles) in relation to any such apparatus as a copyright owner has in relation to an infringing copy.

(4) Section 72 of the Supreme Court Act 1981, section 15 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 and section 94A of the Judicature (Northern Ireland) Act 1978 (withdrawal of privilege against self-incrimination in certain proceedings relating to intellectual property) apply to proceedings under this section as to proceedings under Part I of this Act (copyright).

(5) In section 97(1) (innocent infringement of copyright) as it applies to proceedings for infringement of the rights conferred by this section, the reference to the defendant not knowing or having reason to believe that copyright subsisted in the work shall be construed as a reference to his not knowing or having reason to believe that his acts infringed the rights conferred by this section.

(6) Section 114 applies, with the necessary modifications, in relation to the disposal of anything delivered up or seized by virtue of subsection (3) above.

(7) In this section “appartus”, “conditional access technology” and “encrypted” have the same meanings as in section 297A, “transmission” includes transmissions as defined in that section and “conditional access services” means services comprising the provision of conditional access technology.”

Amendments of the Telecommunications Act 1984

3.—(1) Section 42A of the Telecommunications Act 1984(a) shall be amended in accordance with the following paragraphs.

(2) In subsection (1), after the words “Subsection (2) below applies if a person has in his custody or under his control anything” there shall be inserted the words “(other than an unauthorised decoder as defined in section 297A(4) of the Copyright, Designs and Patents Act 1988)”.

(3) In subsection (3), after the words “Subsection (4) below applies if a person supplies or offers to supply anything” there shall be inserted the words “(other than an unauthorised decoder as defined in section 297A(4) of the Copyright, Designs and Patents Act 1988)”.

Repeals

4. Section 179(1) of the Broadcasting Act 1990(b) and sections 140 and 141 of the Broadcasting Act 1996(c) are repealed.

27th April 2000

Patricia Hewitt,
Minister for Small Business and E-Commerce,
Department of Trade and Industry

(a) 1984 c. 12. Section 42A was introduced by the Telecommunications (Fraud) Act 1997 (1997 c. 4).

(b) 1990 c. 42.

(c) 1996 c. 55.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Directive 98/84/EC of the European Parliament and of the Council on the legal protection of services based on, or consisting of, conditional access (OJ L320, 28.11.98, p.54) (“the Directive”).

The Directive provides for protection against illicit devices which enable or facilitate the circumvention of technological measures designed to protect television and radio subscription services, “information society services” (as defined in the Directive) and conditional access services (which are to be afforded the same legal protection as the other services).

These Regulations amend sections 297A and 298 of the Copyright, Designs and Patents Act 1988 (“the 1988 Act”) and section 42A of the Telecommunications Act 1984 (“the 1984 Act”).

Section 297A of the 1988 Act now covers the activities prohibited by the Directive. The rights and remedies in section 298 now extend to the providers of information society services and conditional access services.

Section 42A of the 1984 Act is amended so as to avoid overlap with the amended section 297A of the 1988 Act.

A Regulatory Impact Assessment is available and can be obtained from the Copyright Directorate, The Patent Office, Harmsworth House, 13-15 Bouverie Street, London EC4Y 8DP.

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