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STATUTORY INSTRUMENTS

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**2000 No. 1175**

**The Conditional Access (Unauthorised Decoders) Regulations 2000**

**Amendments of the Copyright, Designs and Patents Act 1988**

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

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

**“297A Unauthorised decoders.**

(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.

(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

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(1) 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.

- (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<sup>(2)</sup>, as amended by Directive 98/48/EC of the European Parliament and of the Council of 20th July 1998<sup>(3)</sup>) 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—

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

- (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 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

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

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

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 “apparatus”, “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.”