

PRESIDENTIAL DECREE NO. 343

(Official Gazette. A' 284/22-11-2002)

Harmonization of the Hellenic legislation with the provisions of Directive 98/84 EC of the European Parliament and of the Council of November 20, 1998 for the legal protection of services based on or consisting of the conditional granting of access [subscriber services] (EC L 320/28.11.1998, p. 54).

THE PRESIDENT OF THE HELLENIC REPUBLIC

Considering:

1. The provisions of articles 3, 4 and 5 of the L. 1338/1983 "Application of the European Community Legislation" (A 34), as replaced and modified accordingly with the article 65 of the L. 1892/1990 (A' 101) and the articles 6 paragraph 4 of the L. 1440/1984 (A 70) and 22 of the L. 2789/2000 (A 21)
 2. The P.D 81/2002 (Official Gazette A' 57) concerning the consolidation of the ministries of National Economy and Economics.
 3. The provisions of the article 29A of the L. 1558/1985 (A` 137) along with the article 27 of the L. 2081/1992 (A` 154) and substituted by the article 1 paragraph 2a of the L. 2469/1997 (A` 38).
 4. That from the application of the present decree arises no expense that must be covered by the State Budget.
 5. The report produced by the Council of the Dominion, following a proposal submitted by the ministers of Economy and Economics, Justice, Transportation and Communications and Press and Mass Media, number 407/2002, hereby decide:
-

ARTICLE 1

Purpose

With this decree, the existing Hellenic legislation is harmonized with the provisions of Directive 98/84/EC of the European Parliament and of the Council of November 20, 1998 for the legal protection of the services based on or consisting of the conditional granting of

access (subscriber services), as regards the measures taken against illegal devices providing non-permitted access to subscriber services.

ARTICLE 2

Definitions

(article 2 of Directive 98/84/ÅC)

For the application of the provisions of this decree, the following definitions have the meaning as listed below:

a) Protected service: one of the following services, provided that the service is provided under a remuneration and on the basis of conditional access:

aa) television broadcast, as it is defined at the article 2 paragraph a of the P.D 100/2000 (OFFICIAL GAZETTE. 98 A `),

bb) radio broadcast: the broadcast of radio content to the public by any type of technical method and medium,

cc) every service provided by the information society, comprised in the applications field of paragraph 2, article 2 of the P.D 39/2001 (OFFICIAL GAZETTE. A ` 28),

dd) conditional access services to the above mentioned services,

b) conditional access: any technical measure and/or arrangement whereby the access to the protected service in an intelligible form is provided after a specific authorization,

c) conditional access device: any equipment or software designed or adapted in a way as to make possible the access to a protected service in an intelligible form.

d) illegal device: any equipment or software designed or adapted as to allow the access to a protected service without the previous authorization on behalf of the licensee of the protected service. the devices used without the previous authorization of the licensee but in application of paragraphs 5 and 6 of the article 9 of the L. 2644/1998 (OFFICIAL GAZETTE. A ` 233) are not considered to be illegal.

e) attendant service: the installation, maintenance or replacement of the devices for the conditional access, as well as the provision of commercial communications services related to these devices or to protected services.

***NOTE: According to paragraph 2 of the article 23 of the L.3166/2003 (OFFICIAL GAZETTE. A 178) the following has been defined: "For the private usage of illegal devices, as these specified in article 2 of p.d. 343/2002 (Official Gazette 284 Á), the provisions of articles 5 and 6 of the abovementioned decree apply accordingly, provided that the user knew or was able to know, according to what is dictated by common experience, that the abovementioned usage or possession constitutes an illegal activity. Also considered a private usage, for the application of this paragraph, is the access into the subscriber services via illegal devices, which are not in the user's possession, as well as the usage, for any purpose, of legal devices or the access to the subscriber services through legal devices that are not in the possession of or used by the person acquiring the access, thus constituting an encroachment of the content of the approval of the entity of the protected subscriber service."

ARTICLE 3

Free circulation and provision of services

With the prejudice of what is defined in articles 1 to 14 of the L. 2644/1998, the articles 4, 5 and 6 of the present, as well as of the applicable provisions, for the protected services provided within the Greek country, free are considered to be:

- a) the provision of protected services or attendant services by a licensee of a different state of the European Union and b) the circulation of the devices for the conditional access

ARTICLE 4

Prohibition of illegal activities

(articles 3 and 4 of Directive 98/84/EC).

The practice of the following activities within the Greek country is forbidden:

- a) the manufacture, import, distribution, sale, lease or possession of illegal devices for trading purposes,
 - b) the installation, maintenance or replacement of illegal devices for trading purposes,
 - c) the use of commercial communication methods (such as the filing or broadcasting of relative promotional messages) for the selling of illegal devices or of the afore mentioned activities.
-

ARTICLE 5

Penal and Administrative sanctions

(article 5 of Directive 98/84/EC)

1. A person exercising one or more of the activities mentioned in article 4, is punished with imprisonment of at least one (1) year and a fine varying from five hundred (500) up to fifteen thousand (15.000) euros.

In case of convictions for the activities described at elements a), b) and c) of the article 4, the confiscation of the illegal device and all assertive equipment is ordered.

2. As a result of a decision of the NCRTV., issued after a complaint filed by every individual with legal interest, to the legal or physical entity practicing one or more of the activities mentioned at article 4, the administrative sanction of fine may be enforced, for a sum rising up to three hundred thousand (300.000) euros. In case that the illegal activities are related to a service provided by the information society, as described in paragraph 2 of the article 2 of the PD 39/2001, which doesn't constitute a radio or television broadcast service, the aforementioned administrative sanction is enforced by the National Telecommunications and Post Commission. For the enforcement and the definition of the amount of the fine, the knowledge of the individual that the relevant activity was illegal, the economic benefit he/she acquired from this activity, as well as the possible recidivism, are taken into particular account.

Prior to the issue of the enforcement act for the aforementioned administrative sanction, the person accountable is invited to present in written or in any other handy way his/her outlook regarding the issue, in accordance to the course described at the relevant provisions.

The sanction described at this paragraph is an enforcement order and is collected in accordance to the provisions of the Code of Collection of Public Revenues.

3. In application of the paragraphs 1 and 2, the activity of the cases of. a) and b) of the article 4 constitute a self-contained violation for any illegal device.

***NOTE: In accordance to paragraph 2 of the article 23 of the L.3166/2003 (OFFICIAL GAZETTE. A' 178) the following was determined:

"For the private usage of illegal devices, as is specified in article 2 of p.d. 343/2002 (Official Gazette 284 A), the provisions of articles 5 and 6 of the abovementioned decree apply, provided that the user knew or was able to know, according to what is dictated by common experience, that the abovementioned usage or possession constitutes an illegal activity. Also considered a private usage, for the application of this paragraph, is the access into the

subscriber services via illegal devices, which are not in the user's possession, as well as the usage, for any purpose, of legal devices or the access to the subscriber services through legal devices that are not in the possession of or used by the person acquiring the access, thus constituting an encroachment of the content of the approval of the entity of the protected subscriber service."

ARTICLE 6

Legal remedies

(article 5 of Directive 98/84/EC)

1. For the remedy of any type of damage and harm caused by the activities described in article 4, the person/s holding a legal interest can file a law suit claiming compensation, in accordance to the provisions of the Civil Code and the Code of Civil Procedure.

The person/s holding a legal interest can also request interim measures, in accordance to the provisions of articles 682 of the Code of Civil procedure and the articles 63 and 64 of the L. 2121/1993 (OFFICIAL GAZETTE. A' 25).

2. In any case of practicing the activities described at article 4, the person/s with a legal interest can request by the competent court to order the cease of all relevant activities as well as the omission of its resume in the future. If the court judges for the cease of the illegal activity or its omission in the future, it may thread the payment of a fine, in case of a resume; The penalty may rise up to a thousand and five hundred (1.500) euros in favor of the complainant and, in case such a request was submitted, imprisonment up to one (1) year.

The previous quotation is applicable also when the decision for the cease and omission is issued on a request for interim measures. In any other case articles 947 and 1047 of the Civil Practice Code are applicable.

3. The licensees for the provision of services under subscription described in article 1 of the L. 2644/1998 as well as the Program administrators in accordance to article 3 of the same law, are considered, in any case, as having a legal interest for the use of the legal remedies described in this article.

***NOTE: According the paragraph 2 of the article 23 of the L.3166/2003 (OFFICIAL GAZETTE. A 178) the following is determined:

"For the private usage of illegal devices, as is specified in article 2 of p.d. 343/2002 (Official Gazette 284 A), the provisions of articles 5 and 6 of the abovementioned decree apply, provided that the user knew or was able to know, according to what is dictated by common experience, that the abovementioned usage or possession constitutes an illegal activity. Also considered a private usage, for the application of this paragraph, is the access into the subscriber services via illegal devices, which are not in the user's possession, as well as the usage, for any purpose, of legal devices or the access to the subscriber services through legal devices that are not in the possession of or used by the person acquiring the access, thus constituting an encroachment of the content of the approval of the entity of the protected subscriber service."

ARTICLE 7

Entry into force

As entry into force of the present decree is set the 29th of May 2000, with the exclusion of articles 5 and 6, the validity of which starts as soon as the specific is promulgated at the Official Gazette.

The minister of Press and Mass Media undertakes the responsibility to promulgate and execute the present decree.

Athens, 14th of November 2002

THE PRESIDENT OF THE HELLENIC REPUBLIC

CONSTANTINE STEFANOPOULOS

THE MINISTERS OF

ECONOMY AND ECONOMICS

JUSTICE

NIKOLAOS CHRISTODOULAKIS

FILIPPOS PETSALNIKOS

TRANSPORTATION AND

COMMUNICATIONS

CHRISTOS VERELIS

PRESS AND

MASS MEDIA

CHRISTOS PROTOPAPAS