

[NO] Implementation of Directive on Conditional Access

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By an Act of 15 June 2001, Stortinget (the Parliament) has amended § 262 of the *Almindelig borgerlig Straffelov* (the General Civil Penal Code) on conditional access to radio and television signals so as to include information society services.

The Parliament sought to implement Directive 98/84/EC on the legal protection of services based on, or consisting of, conditional access. The Directive calls on individual Member States to provide legal protection for information society services provided for remuneration and on the basis of conditional access (e.g. videogram and phonogram-on-demand). The aim of the Directive is to ensure that remuneration is paid for the services in question. In order for the Directive to apply, there must therefore be an economic reason for using conditional access.

Under article 4 of the Directive, Member States are obligated to prohibit commercial activities regarding illicit devices that give unauthorised access to protected services. Such commercial activities might, for example, consist of the sale, distribution, manufacturing or maintenance of illicit devices. The amended § 262(1) of the General Civil Penal Code covers all the commercial activities listed in article 4 of the Directive.

The Norwegian legislator felt that it would be insufficient to forbid only commercial activities relating to illicit devices. The (non-commercial) use of such devices is therefore also a criminal offence under § 262(2) of the General Civil Penal Code, albeit a less serious offence than the infringement of § 262(1). Anyone that accesses a protected service without authorisation by means of illicit devices and therefore obtains a profit, or causes the person entitled to remuneration for the service to sustain a loss, can be punished by fines or by imprisonment for up to six months. The offender's gain is seen as the amount of money s/he saved by using the services without paying the authorisation fee requested. Only those who actually access the protected service are punishable. Those who enjoy the service as a result of someone else infringing the protection are not liable for punishment.

Almindelig borgerlig Straffelov, 1902-05-22 nr. 10, sist endret av Lov 2001-06-15 nr. 57

<http://www.lovddata.no/cgi-wift/wiftldles?doc=/usr/www/lovdata/all/nl-19020522-010.html&emne=straffeloven&>

Directive 98/84/EC of the European Parliament and of the Council of 20 November 1998 on the legal protection of services based on, or consisting of, conditional access, Official Journal L 320, 28/11/1998 p. 0054 - 0057

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31998L0084:EN:HTML>

