European Commission: Green Paper on legal protection for encrypted services in the Single Market

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The European Commission has adopted a Green Paper on the legal protection of encrypted services in the Single Market. The Green Paper covers all services which are encrypted in order to ensure payment of a fee, in other words all services, transmitted or re-transmitted by any technical means, whose signal is scrambled or otherwise modified so as to restrict its reception to specific users. This category includes traditional encrypted broadcasts (pay television), new broadcasting services (digital television, pay-per-view, near video on demand) and certain information society services (video on demand, games supplied on request and interactive teleshopping).

This is a fast developing market, thanks in particular to the advent of digital technology, which will allow communication capacity to increase. Moreover, because of their specialized nature, these services are bound to need a cross-border market. Their growth is, however, according to the Commission, being jeopardized by piracy, with a booming unofficial decoder manufacturing industry springing up alongside authorized manufacturers. It produces and markets, without the consent of operators, unlawful devices (decoders, smart cards) that enable individuals to gain access to the service without paying the subscription fee. To put an end to this practice, some EU Member States have adopted specific rules prohibiting the manufacture and distribution of illicit decoders: some are in the process of doing so, and others do not yet have anyu specific legislation.

After analysing the different approaches taken in national rules, the Green Paper concludes that the fact that the Member States do not all have an equivalent level of legal protection prevents the Single Market from operating properly. This, according to the Commission, creates a number of obstacles to the free movement of encrypted services and decoders and numerous distorsions of competition between operators in the various Member States.The present fragmented approach to legislation is seen by the trade as a major barrier to the development of a European market in the new encrypted services. Given this situation, the Green Paper considers the case for the Commission proposing an initiative to harmonize national laws in this area. Such an initiative would prohibit the manufacture, sale, importation from third countries, possession for either commercial or personal use, installation and commercial promotion of decoders designed to permit access to encrypted services without the encryptor's authorization. The unauthorized decoding of encrypted services would also be

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banned. Member States would have to adopt effective, proportionate and deterrent penalties for any breaches of these rules and would have to enable any interested party to make a claim for damages. The Green Paper will form the basis for wide-ranging consultations to be held with interested parties between now and 31 May in order to enable the Commission to take a final decision, in the course of this summer, on whether Community action is needed and, if so, what form it should take.

European Commission, Green Paper on the legal protection of encrypted services in the Single Market, 6 March 1996.

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