

Massimo Macucci
Corso Matteotti, 150/A
I-51016 Montecatini Terme
ITALY

March 15, 1998

To the members of the
Legal Affairs Committee
Brussels
Belgium

Dear Member of the Legal Affairs Committee,

a Directive on the “Legal Protection of Services based on, or consisting of, Conditional Access” is going to be soon examined by the European Parliament. About two years ago a Green Paper on this topic had been issued by the European Commission, asking for feedback from the citizens and the interested parties. In May 1996 I sent a letter, containing the feedback from me and from others, to Commissioner Mario Monti and to the Directorate General for the Internal Market. Unfortunately, our letter remained unanswered, without even an acknowledgment of receipt (a copy of this letter is attached, for further reference).

In our feedback to the Green Paper we expressed our fears that laws on this sensitive topic could unacceptably curtail individual freedom, by restricting the ways in which a citizen may process, for private purposes, the information that he/she receives unsolicited.

I am writing to you to express my concern for some general views presented in the Directive proposal, and, in particular, for the dangerous and unacceptable limitations to individual freedom that might derive from the proposed amendments (dated February 9th, 1998).

The first section of the Directive proposal seems to have aim of demonstrating, with a collection of not so well related arguments, that all conditional access systems are to be treated on an equal footing from a legal point of view. This is an extremely biased view: there is a substantial difference between a cable-tv network, where access to the medium is granted upon acceptance of a service contract, and an encrypted satellite broadcast, where no access to a privately owned medium is necessary. There is, as well, a huge difference between an interactive system involving an active intervention of the user on the service provider's system and an encrypted broadcast transmission, which is sent unsolicited onto everyone's property. As detailed in the attached letter, the closest example we can find to an encrypted broadcast service is that of an encrypted newspaper sent by bulk mail: a law could be made forbidding the sale of the decryption key by somebody different from the original publisher, but a law forbidding private citizens from processing in whichever way they want the information contained in such newspaper, for private purposes, would be in violation of basic individual rights.

Section II of the document accompanying the Directive contains the statement that "regulations that make a distinction based on the origin of the service are incompatible with the principle of the Treaty and will therefore need to be removed". This statement is made without mentioning that such regulations have appeared mostly because service providers refuse to sell subscriptions to citizens living in different countries of the Union, which is much more in contrast with the principle of the Treaty!

While Sections I and II contain so many debatable statements, Section III is largely acceptable, in particular the commentary to Article 3, where a clear distinction is made between "commercial activities that favour the unauthorised reception" and the "unauthorized reception as such".

Section IV contains some of the same very biased statements that were already present in Sections I and II, including the sentence "Whereas this Directive is without prejudice to the application of national provisions which may prohibit the private possession of illicit devices", which is in contrast with the views expressed in the commentary to Article 3.

The original draft of the Directive itself is, instead, reasonable and well targeted, except for some choices of wording, such as that of “illicit devices”, which should rather be defined as “unauthorized decryption devices”, since they become illicit only upon their usage for commercial purposes. The Directive should rather invite member states to abolish any existing law prohibiting private possession and manufacture of such devices.

The proposed amendments (included in the report by Rapporteur Mr. Georgios Anastasspoulous) are for the most part unreasonable, and aiming at unacceptable restrictions of the individual freedom of European citizens. I urge you to read them carefully and to do whatever possible to prevent them from being included in the final version of the Directive.

Let me comment just on paragraph (c2) of Amendement 12: “Member States shall prohibit on their territory all of the following activities:” “(c2) the advertising and *provision of information* concerning *manufacture*, import, sale and availability in general of illicit devices”. This would mean that discussion in public forums about decryption techniques would become illegal, and that, for example, I would do something illegal if I were to answer a question by one of my students (I am teaching a course in Communications Electronics at the University of Pisa) about the encryption used by TV broadcast stations!

Laws severely restricting individual freedom were passed years ago in the United States, as a consequence of the lobbying activities of the pay-tv industry. By rejecting the proposed amendments (and in particular Amendments 4, 5, 6, 9, 12, 13, which are particularly dangerous, and threatening individual freedom) there will be a chance of showing that in Europe the individual rights of the citizens are valued more than the commercial interests of TV broadcasters.

I am available for providing any further information you may deem appropriate, and can be reached at the e-mail address massimo@mercurio.iet.unipi.it or at the following telephone numbers:

Home phone: +39 XXX YYYYYY

Office phone: +39 XX YYYYYY

Mobile phone: +39 YYY XXXXXX

Sincerely Yours,

Massimo Macucci