PUBLIC CONSULTATION ON PIRACY PROTECTION FOR SERVICES PROTECTED BY CONDITIONAL ACCESS SYSTEMS

BEUC statement
Introduction

The digital technologies influence and change the way we think and behave in the modern world. The access to knowledge, communication, online services, e-commerce etc. is continuously extending and changes our economic, social and cultural life. It brings new opportunities but also challenges consumers’ rights in the digital environment.

For a digital world and market to function well, it is imperative that the legal and contractual framework is clearly set out. The consumers shall have clear rights in the digital world and these rights shall not be eroded by new technology and unclear and/or unreasonable contract terms.

BEUC wishes to underline that conditional access (the payment of a fee to access content) is not a phenomenon reserved to television broadcasting; even though during the ten years since the adoption of Directive 98/84/EC pay-TV has been the foremost area in which the directive has functioned.

As Natali Helberger1 writes in her book “Controlling access to content”:2

“The electronic management and enforcement of exclusive rights and the controlled distribution of digital content to individualized customers, is not a strategy that is specific to broadcasting. The possibility to target niche areas, collect remuneration, control content and maintain individualized commercial relationships with customers are aspects that make the use of electronic access control techniques equally attractive for, for example, the internet sector.”

Given that this directive will affect more and more consumers’ access to digital content and services, BEUC wishes to express via this statement its concerns about the consumer protection aspects of the conditional access directive.

Consumers rights in the digital world

When entering into the digital reality and acquiring cultural (digital) content the consumer has to face both new and some more common challenges.

From BEUC’s point of view, the starting point must be that whatever the content is (music, film, software), whatever way of distribution is used (download, streaming) and whatever platform it is presented on (TV, radio, Internet), it should be made clear what consumers can and cannot do and whether a digital service is adequately designed to meet the necessary level of consumer protection. In any case, existing legislation should apply and be properly enforced.

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1  http://www.ivir.nl/staff/helberger.html
2  Natali Helberger “Controlling access to content – regulating Conditional Access in Digital Broadcasting”, point 5.3.
We would thus like to point out the rights consumers should have in the digital environment. In particular, we would like to refer to our Consumer Rights Digital Campaign\(^3\) and also point to our members’ achievements in that respect (e.g. the Danish consumer Council Charter \(^4\) and the Norwegian Consumer Council Charter \(^5\)...). Consumers’ rights in the digital environment should include:

- **Right to choice, knowledge and cultural diversity** - The consumer should be able to watch and/or listen to content when he/she wants to.

- **Right to the principle of “technical neutrality”** - The consumer should be able to carry on with his/her usual TV viewing habits, even though TV broadcasts are digitized. BEUC deplores the fact that the Digital Video Broadcasting technology that is included in new television sets, is set up to allow the broadcaster to hinder consumers from recording and watching recordings as they see fit according to their own preferences.

- **Right to interoperability of content and devices** - The consumer should be able to move content between players and decide which player, platform or software, meets his/her needs.

Many types of content are locked to and can only be played on a particular type of player. You should be able to move purchased content to the player you prefer, for example from a PC to an MP3 player. Moving content between players and applications might also be necessary for consumers with disabilities to both access and use content, for example to be able to read an e-book with a screen reader or have it read out loud by a computer.

- **Right to the protection of privacy** - The consumer must be able to use digital content without being monitored. By purchasing or using digital content, you leave digital traces. Additionally, the content you have purchased or programs you use may send information back to the seller or others. Everyone should be able to use digital services without being under surveillance or having their activity stored by others without an informed and explicit consent from the consumer.

E.g. the DVB-CDMC is a content protection and copy management that is designed to protect content after it has been received by a consumer to ensure that the usage is managed in accordance with rights granted. Under such rights management systems, it is crucial that the consumers’ privacy is respected.

- **Right to benefit from technological innovations without abusive restrictions** - There are indications that industry is trying to impose the so-called “broadcast flag” in Europe, i.e. a sequence of digital bits embedded in a digital television program that indicates what can be done with recordings. To this end, broadcasters are developing Content Protection and Copy Management Systems by which they can control the detailed functionality of receiving devices. In other words, once imposed, you may not be able to record your favourite television show on your home video recorder and play it back later unless you meet certain criteria set by the broadcaster.


Open standards and non-proprietary systems/platforms

For the consumer, healthy and de facto competition between the different stakeholders is vital. The consumer needs to successfully change his or her provider without having to change all of his/hers material equipment, or be forced to learn a different user interface. These practices would have a deterrent effect on consumers’ motivation to change provider.

To reach a functioning market it is essential to avoid such lock-in factors.

Contractual matters

Even though the contracting parties in the sense of Article 6 of the Access Directive are the conditional access operator and the broadcaster, the conditions on which the access is granted to consumers will have to be based on both legal and contractual terms. On this topic, BEUC is relying on the European Commission to take into account the underlying needs for protection of the consumer in the digital environment, and look towards the Directive on unfair contract terms in this aspect.

Digital Rights Management (DRM) systems

On this issue, BEUC wishes to point to our position on the European Commission’s Communication on Creative Content Online in the Single Market. In summary, BEUC points out that:

- Digital Right Management (DRM) seems to no longer be a preferred means to curb unauthorized uploading and downloading of copyrighted works;
- Making a DRM that is functioning and consumer friendly at the same time is difficult;
- Improving interoperability is necessary to support a pro-competitive market; and that
- Information about DRMs functionality or existence is less important than the functionality the DRM implies (e.g. if a CD is labelled as copy protected and slows down the PC because of its necessary software, the consumer is informed but this information is of no value to the consumer).

BEUC both recognizes and acknowledges the consumer issues within the subject matter of conditional access. Yet, we will restrain from going into details at this stage of the process.

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