
STATUTORY INSTRUMENTS

1996 No. 2185

TELECOMMUNICATIONS

The Advanced Television Services (Industrial Property Rights) Regulations 1996

<i>Made</i>	- - - -	<i>21st August 1996</i>
<i>Laid before Parliament</i>		<i>22nd August 1996</i>
<i>Coming into force</i>	- -	<i>23rd August 1996</i>

The Secretary of State, being a Minister designated⁽¹⁾ for the purposes of section 2(2) of the European Communities Act 1972⁽²⁾ in relation to measures relating to advanced television services including digital conditional access and subscription management services, in exercise of the powers conferred on him by that section and of all other powers enabling him in that behalf, hereby makes the following Regulations: —

Citation and commencement

1. These Regulations may be cited as the Advanced Television Services (Industrial Property Rights) Regulations 1996 and shall come into force on 23rd August 1996.

Interpretation

2.—(1) In these Regulations, “the Directive” means Directive [95/47/EC](#) of the European Parliament and of the Council on the use of standards for the transmission of television signals.⁽³⁾

(2) Words and expressions used in these Regulations shall, unless the context otherwise requires, have the same meaning as in the Directive.

Application

3. These Regulations apply in relation to conditional access to digital television services broadcast to viewers in the European Community, irrespective of the means of transmission.

(1) S.I.1996/266.

(2) 1972 c. 68.

(3) OJNo. L281, 23.11.95, p.51.

Industrial property rights to conditional access products and systems

4.—(1) When granting licences to manufacturers of consumer equipment, holders of industrial property rights to conditional access products and systems shall have the duty (provided for in Article 4(d) of the Directive) to ensure that this is done on fair, reasonable and non-discriminatory terms.

(2) Without prejudice to the generality of paragraph (1) above, taking into account technical and commercial factors, holders of such rights shall have the duty not to subject the granting of licences to conditions prohibiting, deterring or discouraging the inclusion in the same product of —

- (a) a common interface allowing connection with several other conditional access systems; or
- (b) means specific to another conditional access system, provided that the licensee complies with the relevant and reasonable conditions ensuring, as far as he is concerned, the security of transactions of conditional access system operators.

(3) The duties referred to in paragraphs (1) and (2) above are duties owed to any person who may be affected by a contravention of them, and without prejudice to any other cause of action which may arise therefrom —

- (a) any breach of those duties which causes that person to sustain loss or damage shall be actionable in tort at the suit or instance of that person; and
- (b) any condition included in a licence in contravention of the duty referred to in paragraph (2) above shall be void.

(4) In any proceedings in respect of the infringement of any industrial property rights to which the duties referred to in paragraphs (1) and (2) above relate, it shall be a defence for the defendant —

- (a) to show that the infringement consisted only in acts or omissions which would not have constituted an infringement if the holder of such rights had complied with those duties; and
- (b) to undertake to make such payments to the holder of such rights (in respect of both past, present and future use) and to abide by such other fair, reasonable and non-discriminatory terms as the court may order.

(5) Without prejudice to the court's jurisdiction to make a declaration or declarator apart from this paragraph, a declaration or declarator that an act or omission would not, or a proposed act or omission would not, constitute an infringement of any industrial property rights if the holder of such rights had complied or were to comply with the duties referred to in paragraphs (1) and (2) above, may be made by the court in proceedings between the person doing or proposing to do the act or making or proposing to make the omission and the holder of such rights, notwithstanding that no assertion to the contrary has been made by the holder, if it is shown —

- (a) that the person has applied in writing to the holder for a written acknowledgement to the effect of the declaration or declarator claimed, and has furnished him with full particulars in writing of the act in question; and
- (b) that the holder has refused or failed to give any such acknowledgement.

Department of Trade and Industry
21st August 1996

John M Taylor,
Parliamentary Under Secretary of State for
Corporate and Consumer Affairs,

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in respect of licensing industrial property rights to conditional access products and systems for digital television services. They implement in the United Kingdom Article 4(d) of Directive 95/47/EC of the European Parliament and of the Council on the use of standards for the transmission of television signals (“the Advanced Television Services Directive”), as it applies to the holders of such rights.

By regulation 3, the Regulations apply in relation to conditional access to digital television services broadcast to viewers in the Community, irrespective of the means of transmission. The Regulations thus apply whether the digital television services are transmitted by cable, satellite or terrestrial means.

Regulation 4(1) provides that the holders of such rights, when granting licences to manufacturers of consumer equipment, shall have the duty to license on fair, reasonable and non-discriminatory terms. Regulation 4(2) provides that, taking into account technical and commercial factors, such holders shall not subject the granting of licences to certain conditions. The conditions which are prohibited are those which prohibit, discourage or deter the inclusion of a common interface or of means specific to another conditional access system.

Paragraph (3) of regulation 4 provides that contravention of the duties provided for in paragraphs (1) and (2) shall be actionable in tort. Any person affected by a contravention of the duties may enforce them. A condition included in a licence in contravention of paragraph (2) shall be void.

Paragraphs (4) and (5) of regulation 4 provide that the court shall have certain powers, where an act or omission constitutes or might constitute an infringement of the relevant industrial property rights, but would not so constitute an infringement, if the holder had complied or were to comply with the duties imposed by paragraphs (1) and (2). Paragraph (4) provides that the infringer in such a situation shall have a defence, provided that he makes such payments to the holder in respect of past, present and future use of such rights, and abides by such other fair, reasonable or non-discriminatory terms, as the court may order. Paragraph (5) enables a person using such rights to apply to the court for a declaration or declarator of non-infringement.