

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 14-23131-CIV-SEITZ

DISH NETWORK L.L.C.,
ECHOSTAR TECHNOLOGIES L.L.C.,
and NAGRASTAR LLC,

Plaintiffs,

vs.

AMARILYS CAO,
Defendant.

ORDER GRANTING MOTION FOR DEFAULT JUDGMENT

THIS MATTER is before the Court on Plaintiffs' motion for default judgment. [DE-10.] Plaintiffs allege that Defendant Amarilys Cao stole Plaintiffs' copyrighted programming by circumventing their security system and decrypting their satellite broadcasts without authorization. Based upon Defendant's default and the documentary evidence Plaintiffs have submitted, the Court shall grant final default judgment for Plaintiffs.

I. BACKGROUND

Plaintiff DISH Network delivers video, audio, and data services to its subscribers. (Compl. ¶¶ 9–10.) It purchases distribution rights for much of its programming from various copyright holders. Through these distribution rights, DISH Network has the authority to protect the copyrighted works from unauthorized reception and viewing. (*Id.* ¶¶ 11–12.)

DISH Network delivers its programming through a direct broadcast satellite system. It first digitizes, compresses, and scrambles the programming. It then transmits the signal to orbiting satellites, which relay it back down to Earth where it can be received by DISH Network subscribers. (*Id.* ¶ 13.)

Plaintiffs EchoStar Technologies and NagraStar respectively make a receiver and a “smart card” that, together, enable subscribers to access DISH Network programming. The receiver processes the incoming satellite signal and forwards an encrypted part of the transmission (the “entitlement control message”) to the smart card. If the customer has the required authorization, the smart card decrypts the entitlement control message to reveal a “control word,” which is then transmitted back to the receiver in order to decrypt the satellite signal. To ensure that customers can only access programming within their subscriptions, DISH Network assigns unique serial numbers to each receiver and smart card. (*Id.* ¶¶ 17–18; *see also* Declaration of Gregory Duval [DE-10-2].)

NFusion Private Server (“NFPS”) is a pirate internet-key-sharing television service that provides end-users with the software and decryption codes needed to descramble DISH Network television programming without paying DISH Network. (*Id.* ¶ 25.) Defendant purchased ten subscriptions to NFPS at various times between May 2011 and January 2012, and used NFPS to receive and descramble DISH Network copyrighted television programming without authorization. Specifically, Defendant used piracy-enabling software to retrieve control words from the NFPS server, which allowed him to decrypt DISH Network programming. (Compl. ¶¶ 26–27, 41; Declaration of Steven Rogers [DE-10-3].)

On August 26, 2014, Plaintiffs filed their Complaint against Defendant. [DE-1.] Defendant was served on September 12, 2014. [DE-6.] Plaintiffs also submitted evidence that Defendant is not an infant, an incompetent, on active duty in the military, or otherwise exempted under 50 App. U.S.C.A. § 521, which protects servicemembers from default judgments. [DE-8]. On October 16, 2014, the Clerk of Court, pursuant to Rule 55(a) of the Federal Rules of Civil Procedure, entered default against Defendant for failure to appear, plead, or otherwise defend this action. [DE-9.] To date, Defendant has not sought to vacate this default. On November 10, 2014, Plaintiffs filed the instant motion for default judgment, to which Defendant has failed to respond. Plaintiffs seek

\$10,000 in statutory damages under 18 U.S.C. § 2520(c)(2)(B) and a permanent injunction.

II. LIABILITY

A court may enter a default judgment against a properly served defendant, who, like Defendant here, failed to timely file a responsive pleading. Fed. R. Civ. P. 55(b)(2). By such a default, all of Plaintiffs' well-pled allegations in the Complaint are deemed admitted. *Buchanan v. Bowman*, 820 F.2d 359, 361 (11th Cir. 1987).

The allegations in Plaintiffs' Complaint, in conjunction with record evidence, support a finding that Defendant "intentionally intercept[ed]" an "electronic communication" in violation of 18 U.S.C. § 2511(1)(a). First, DISH Network's satellite television broadcasts are "electronic communications." *See, e.g., DIRECTV, Inc. v. Brown*, 371 F.3d 814 (11th Cir. 2004) (affirming judgment arising out of interception of satellite broadcasts). Second, Plaintiffs have submitted evidence that Defendant purchased NFPS subscriptions and then used his access to the NFPS server to intercept and decrypt Plaintiffs' copyrighted satellite television programming without authorization. (*See Rogers Decl.*)

III. DAMAGES

Plaintiffs seek \$10,000 in liquidated statutory damages under 18 U.S.C. § 2520(c)(2)(B).¹ Because this is a liquidated sum, default judgment may be entered without a hearing. *Jenkins v. Clerk of Court, U.S. Dist. Court, S. Dist. of Fla.*, 150 Fed. Appx. 988, 989 (11th Cir. 2005) (citing *United Artists Corp. v. Freeman*, 605 F.2d 854, 857 (5th Cir. 1979)). However, an award of liquidated damages under this section is discretionary. *DIRECTV, Inc. v. Brown*, 371 F.3d 814, 818 (11th Cir. 2004).

¹ Plaintiffs have standing to bring a civil action and to recover damages because their electronic communications were "intercepted, disclosed, or intentionally used." *Id.* § 2520(a).

In exercising this discretion, courts have looked at the following factors:

- 1) "the duration of the interception or the extent of the disclosure," *DIRECTV, Inc. v. Griffin*, 290 F. Supp. 2d 1340, 1348 (M.D. Fla. 2003) (citation omitted);
- 2) "whether there was a reasonable purpose for the violation," *DIRECTV, Inc. v. Rawlins*, 523 F.3d 318, 325–26 (4th Cir. 2008) (citation omitted);
- 3) "whether the defendant profited from the interception," *Griffin*, 290 F. Supp. 2d at 1348; *see also Brown*, 371 F.3d at 818;
- 4) "whether there was actual damage to the victim," including "the extent of any intrusion into the victim's privacy," *Rawlins*, 523 F.3d at 325;
- 5) "the defendant's ability to pay an award of statutory damages," *Griffin*, 290 F. Supp. 2d at 1349;
- 6) "whether there was any useful purpose to be served by imposing the statutory damages amount," *Rawlins*, 523 F.3d at 326, including "whether the defendant has already been punished in some other proceeding," *Griffin*, 290 F. Supp. 2d at 1348.

In light of these factors, the Court finds that statutory damages of \$10,000 are warranted. The evidence shows that Defendant profited from the interception: he purchased ten NFPS subscriptions, at least some of which he resold to various customers. (Rogers Decl. Exs. 18–20.) It is also clear that numerous interceptions took place, although the precise extent is unclear. (*Id.*) By buying and reselling NFPS subscriptions, Defendant damaged DISH Network by compromising its security system and depriving it of potential revenue from customers with a proven willingness to pay for programming. In contrast, there was no reasonable purpose for Defendant's violation, and by defaulting, Defendant has failed to demonstrate any inability to pay. Awarding statutory damages would thus serve the useful purposes of compensating Plaintiffs and deterring theft for profit.

IV. INJUNCTIVE RELIEF

A plaintiff seeking a permanent injunction under 18 U.S.C. § 2520(b)(1) must demonstrate that (1) it has suffered an irreparable injury; (2) remedies at law, such as monetary damages, are inadequate to compensate for that injury; (3) considering the balance of hardship between plaintiff and defendant, a remedy in equity is warranted; and (4) the public interest would not be disserved by a permanent injunction. *See eBay, Inc. v. MercExchange, LLC*, 547 U.S. 388, 391 (2006).

Plaintiffs satisfy these requirements. The well-pled allegations and record evidence demonstrate that Defendant profited by circumventing Plaintiffs' security system and decrypting their satellite broadcasts without authorization. This has caused Plaintiffs "loss of control of reputation, loss of trade, and loss of goodwill," which constitute irreparable injury. *Ferrellgas Partners, L.P. v. Barrow*, 143 Fed. Appx. 180, 190 (11th Cir. 2005). Because Defendant's violations were willful and for profit, Defendant is likely to continue these violations in the absence of an injunction. As there is no countervailing public interest in this case, the equities favor injunctive relief.

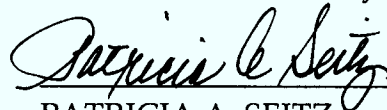
V. CONCLUSION

For the reasons stated above, it is hereby

ORDERED that

Plaintiffs' Motion for Default Judgment [DE-10] is GRANTED. The Court shall concurrently enter judgment against Defendant.

DONE AND ORDERED in Miami, Florida, this 10th day of December, 2014.



PATRICIA A. SEITZ

UNITED STATES DISTRICT JUDGE