

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 16-14372-CIV-MARRA

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

Plaintiffs,

vs.

TONY GRIER,

Defendant.

_____ /

ORDER GRANTING MOTION FOR DEFAULT JUDGMENT

THIS CAUSE is before the Court upon Plaintiffs' Motion for Default Judgment [DE 11]. Plaintiffs allege that Defendant Tony Grier 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. Compl. ¶¶ 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. Compl. ¶ 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. Compl. ¶¶ 17-18; *see also* Declaration of Gregory Duval (DE-11-2).

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. Compl. ¶ 25. Defendant purchased Server Passcodes on or about March 28 and April 1, 2012 and used NFPS to receive and descramble DISH Network copyrighted television programming without authorization. Defendant purchased at least 5 Server Passcodes, each believed to be valid for a one-year period of time. Compl. ¶¶ 26-27,

41; Decl. Christopher Ross ¶ 6.

On August 22, 2016, Plaintiffs filed their Complaint against Defendant. DE 1. Defendant was served on October 11, 2016. DE 8. 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 9. On November 7, 2016, 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 10. To date, Defendant has not sought to vacate this default. On November 21, 2016, 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 the record evidence, support a finding that Defendant intentionally intercepted 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 Ross Decl.

III. DAMAGES

Plaintiffs seek \$10,000 in liquidated statutory damages in their Motion for Default Judgment. Pursuant to 18 U.S.C. § 2520(c)(2)(B)¹ of the Electronic Communications Privacy Act, Plaintiffs are entitled to statutory damages of \$10,000 for Defendant's interception of Plaintiffs' satellite signal. The evidence shows that numerous interceptions took place, although the precise extent is unclear. By buying 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. See, *DIRECTV, Inc. v. Brown*, 371 F.3d 814 (11th Cir. 2004); *DIRECTV Inc. v. Griffin*, 290 F. Supp. 2d 1340, 1348

¹ Plaintiffs have standing to bring a civil action and to recover damages because their electronic communications were "intercepted, disclosed, or intentionally used." 18 U.S.C. § 2520(a).

(M.D. Fla. 2003); *DIRECTV Inc. v. Rawlins*, 523 F.3d 318, 325-26 (4th Cir. 2008).

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 F.App'x 180, 190 (11th Cir. 2005). Because Defendant's violations were willful, 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.

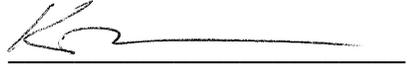
V. CONCLUSION

For the reasons stated above, it is hereby

ORDERED AND ADJUDGED that Plaintiffs' Motion for Default Judgment [DE 11]

is GRANTED. The Court shall concurrently enter judgment against Defendant.

DONE AND ORDERED in Chambers at West Palm Beach, Palm Beach County,
Florida, this 5th day of April, 2017.



KENNETH A. MARRA
United States District Judge