

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No. CV 17-3672 DMG (JEMx) Date September 8, 2017

Title *Dish Network L.L.C., et al. v. Michael Rios, et al.* Page 1 of 4

Present: The Honorable DOLLY M. GEE, UNITED STATES DISTRICT JUDGE

KANE TIEN

Deputy Clerk

NOT REPORTED

Court Reporter

Attorneys Present for Plaintiff(s)

None Present

Attorneys Present for Defendant(s)

None Present

Proceedings: IN CHAMBERS - ORDER RE PLAINTIFFS' MOTION FOR DEFAULT JUDGMENT [17]

On May 16, 2017, Plaintiffs Dish Network L.L.C. and NagraStar LLC filed their Complaint against Defendants Michael Rios and Steve Rios, which asserted three claims: (1) violations of the Digital Millenium Copyright Act, (2) violations of the Federal Communications Act, and (3) violations of the Electronic Communications Privacy Act (“Complaint”). [Doc. # 1.] Defendants have not appeared in this matter. Accordingly, Plaintiffs requested the Clerk to enter default against Defendants on June 22, 2017. [Doc. # 14.] The Clerk entered default against Defendants on June 26, 2017. [Doc. # 15.] Plaintiffs now move for a default judgment on solely their third cause of action against Defendants (“MDJ”). [Doc. # 17.]

I.

FACTUAL BACKGROUND

Plaintiff Dish Network is a multi-channel video provider that delivers video, audio, and data services to approximately 14 million subscribers throughout the United States via a direct broadcast satellite system, *see* Compl. at ¶ 8, whereas Plaintiff NagraStar is the supplier of proprietary security technology used by Plaintiff Dish Network. *See* Declaration of Christopher Ross (“Ross Decl.”) at ¶ 2. Defendants circumvented Plaintiffs’ security system and intercepted Plaintiff Dish Network’s satellite broadcasts by obtaining NagraStar’s “control words” through a pirate television service, which they then used to decrypt Dish Network’s satellite signal. *See* Compl. at ¶ 7.

II.

ANALYSIS

A. Local Rule 55-1 and *Eitel* Factors

Plaintiffs have complied with the procedural requirements for default judgment. *See* Fed. R. Civ. P. 55(b); C.D. Cal. L.R. 55-1; Declaration of David Van Riper (“Van Riper Decl.”) at ¶¶ 1–6 [Doc. # 17-2]. Moreover, the Court has considered the *Eitel* factors and concludes that

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they weigh in favor of entering default judgment against Defendants. *See Eitel v. McCool*, 782 F.2d 1470, 1472 (9th Cir. 1986). In *Eitel*, the Ninth Circuit set forth a number of factors that courts may consider when evaluating a default judgment application: (1) the possibility of prejudice to the plaintiff; (2) the merits of the plaintiff's substantive claim; (3) the sufficiency of the complaint; (4) the sum of money at stake in the action; (5) the possibility of a dispute concerning material facts; (6) whether the default was due to excusable neglect; and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits. *Id.* at 1472–73.

Plaintiffs will be prejudiced without a default judgment—no other enforceable form of relief against Defendants exists and Plaintiffs have already incurred expenses pursuing their claims. *See PepsiCo, Inc. v. Cal. Sec. Cans*, 238 F. Supp. 2d 1172, 1177 (C.D. Cal. 2002). Plaintiffs have submitted a well-pleaded complaint and the unopposed evidence they submit establishes their claim under the Electronic Communications Privacy Act (“ECPA”). The sum of money at stake is substantial: Plaintiffs request relief in the form statutory damages, injunctive relief, and attorney’s fees. *See infra* Part II.B. Defendants have had several opportunities to defend themselves but have inexcusably chosen not to appear. Lastly, Defendants’ utter failure to appear in this action renders a decision on the merits impractical and triggers the presumption that Plaintiffs’ allegations are true. *See Geddes v. United Fin. Grp.*, 559 F.2d 557, 560 (9th Cir. 1977) (“[U]pon default[,] the factual allegations of the complaint, except those relating to the amount of damages, will be taken as true.”). Given the foregoing, the Court concludes that the entry of a default judgment against Defendants is appropriate.

B. Remedies**1. Statutory Damages**

Under the ECPA, Plaintiffs may recover “the greater of . . . the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation; or . . . statutory damages of whichever is the greater of \$100 a day for each day of violation or \$10,000.” *See* 18 U.S.C. § 2520(c)(2). Plaintiffs seek \$10,000 in statutory damages. MDJ at 7.

When considering whether to award damages under the ECPA, courts consider the following factors:

- (1) the severity or minimal nature of the violation;
- (2) whether there was actual damage to the victim;
- (3) the extent of any intrusion into the victim’s privacy;
- (4) the relative financial burdens of the parties;
- (5) whether there was a reasonable purpose for the violation; and
- (6) whether there is any useful purpose to be served by imposing the statutory damages amount.

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Dish Network L.L.C. v. Gonzalez, No. 1:13-cv-00107-LJO-SKO, 2013 WL 2991040, at *8 (E.D. Cal. June 14, 2013).

With the exception of the third factor (which is inapplicable), all of these factors weigh in favor of awarding statutory damages. Defendants deliberately circumvented Plaintiffs' security measures to intercept copyrighted content. Plaintiffs suffered actual harm in the form of damage to their reputations and goodwill and lost programming revenues and profits. Those injuries create financial burdens for Plaintiffs, which on this record outweigh the burden on Defendants because the latter have not shown how a \$10,000 award would harm their finances. There was no useful purpose for Defendants' decision to unlawfully intercept Dish Network's content. Finally, a \$10,000 award of statutory damages may deter future conduct violative of the ECPA. Therefore, the Court awards \$10,000 in statutory damages to Plaintiffs.

2. Injunctive Relief

In their Complaint, Plaintiffs request a permanent injunction preventing Defendants from circumventing Plaintiffs' security system and/or receiving without authorization Dish Network's satellite transmissions of television programming. The ECPA authorizes courts to award "such preliminary and other equitable or declaratory relief as may be appropriate." See 18 U.S.C. § 2520(b)(1). Courts grant injunctive relief even in situations of default as long as the requirements are met. *Amini Innovation Corp. v. KTY Int'l Marketing*, 768 F. Supp. 2d 1049, 1057 (C.D. Cal. 2011).

To establish that injunctive relief is warranted, Plaintiffs must show (1) irreparable harm; (2) lack of adequate remedies at law; (3) that the balance of hardships weighs in their favor; and (4) that an injunction is in the public interest. *Id.* Plaintiffs establish that they will suffer irreparable harm in the form of damage to reputation and good will, legal remedies are inadequate because these harms are difficult to quantify, the balance of hardships weighs in Plaintiffs' favor because Defendants suffer only the cost of their illegal conduct, and the public interest would be served by an injunction because it would effectuate the underlying goal of copyright law (*i.e.*, to prevent the misappropriation of the skills, creative energies, and resources invested into protected work). The Court thus finds that a permanent injunction barring Defendants from circumventing Plaintiffs' security system and/or receiving without authorization Dish Network's satellite transmissions of television programming is appropriate.

3. Attorney's Fees

Under the ECPA, a court may award "a reasonable attorney's fee and other litigation costs reasonably incurred." 18 U.S.C. § 2520(b)(3). An award of reasonable attorney's fees in a default judgment motion is also appropriate under the Local Rules. See L.R. 55-3. Under Local Rule 55-3's schedule, and consistent with the Court's award of \$10,000 in statutory damages,

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Plaintiffs' counsel is entitled to \$300 plus 10% of the amount over the \$1,000 minimum, for a total fee award of \$1,200 (\$300 + \$900).

**III.
CONCLUSION**

In light of the foregoing, Plaintiffs' motion for a default judgment is **GRANTED**. The Court will enter judgment as follows:

1. Judgment shall be entered in favor of Plaintiffs Dish Network L.L.C. and NagraStar LLC and against Defendants Michael Rios and Steve Rios on Plaintiffs' Electronic Communications Privacy Act claim in the total amount of \$10,000 in statutory damages under 18 U.S.C. section 2520(c)(2), plus \$1,200 in attorney's fees.
2. Defendants, and anyone acting in active concert or participation with Defendants, are hereby permanently enjoined from:
 - a. circumventing or assisting others to circumvent Dish Network's security system, or otherwise intercepting or assisting others to intercept Dish Network's satellite signal;
 - b. testing, analyzing, reverse engineering, manipulating, or otherwise extracting codes, data, or information from Dish Network's satellite receivers, smart cards, satellite data stream, or any other part or component of the Dish Network security system.
3. The Court retains jurisdiction over this action for two years for the purpose of enforcing this final judgment and permanent injunction.

IT IS SO ORDERED.

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CENTRAL DISTRICT OF CALIFORNIA**

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MINUTES OF IN CHAMBERS - ORDER RE PLAINTIFFS' MOTION FOR DEFAULT JUDGMENT by Judge Dolly M. Gee: Plaintiffs' motion for a default judgment [17] is GRANTED. The Court will enter judgment as follows: (1) Judgment shall be entered in favor of Plaintiffs Dish Network L.L.C. and NagraStar LLC and against Defendants Michael Rios and Steve Rios on Plaintiffs' Electronic Communications Privacy Act claim in the total amount of \$10,000 in statutory damages under 18 U.S.C. section 2520(c)(2), plus \$1,200 in attorney's fees. (2) Defendants, and anyone acting in active concert or participation with Defendants, are hereby permanently enjoined from: (a) circumventing or assisting others to circumvent Dish Network's security system, or otherwise intercepting or assisting others to intercept Dish Network's satellite signal; (b) testing, analyzing, reverse engineering, manipulating, or otherwise extracting codes, data, or information from Dish Network's satellite receivers, smart cards, satellite data stream, or any other part or component of the Dish Network security system. (3) The Court retains jurisdiction over this action for two years for the purpose of enforcing this final judgment and permanent injunction. Court Reporter: Not Reported. (gk)

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