

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN-GRAND RAPIDS DIVISION

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DIRECTV, Inc., a California corporation,
Plaintiff,

No. 5:03 CV 0061

CLERK OF DISTRICT COURT
SOUTHERN-GRAND RAPIDS, MICH.
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v.

COMPLAINT FOR
COMPENSATORY, STATUTORY
AND OTHER DAMAGES, AND FOR
INJUNCTIVE RELIEF

ROBERT SHEA, ANTHONY GRIMARD,
PHIL CARR, RANDY ENSING, JASON A.
GALE, JEFFREY JONES, STEVE ENSING,
GEOFFREY LAHAM, TAMRA BURNS,
AND ED TREVINO,

Gordon J. Quist
U.S. District Judge

Defendants.

Plaintiff DIRECTV, Inc., through its attorneys, alleges as follows:

INTRODUCTION

1. Plaintiff DIRECTV is the nation's leading direct broadcast satellite system, delivering over 225 channels of television and other programming to more than 10 million homes and businesses in the United States. DIRECTV's television programming currently includes major cable networks, studio movies and special events programming, as well as a variety of sports and other special interests programming. DIRECTV, a California company, has invested more than \$1.25 billion to develop its direct broadcast satellite system.

2. DIRECTV encrypts – electronically scrambles – its satellite transmissions to provide security for and prevent unauthorized viewing of its satellite television programming. DIRECTV offers its television programming to residential and business customers on a subscription and pay-per-view basis only. Each customer is required to obtain a DIRECTV Access Card and other system hardware (including a small satellite dish) and create an account with DIRECTV. Upon activation of the Access Card by DIRECTV, the customer can receive and view in a decrypted format (*i.e.*, unscrambled)

those channels to which the customer has subscribed or otherwise made arrangement to purchase from DIRECTV.

3. On or about May 25, 2001, DIRECTV executed several writs of seizure with the assistance of local law enforcement, upon a mail shipping facility used by several major sources of pirate technologies including Vector Technologies, DSS-Stuff, DSSPro, DSS-Hangout, Whiteviper Technologies, Meadco, PCEase, Intertek Technologies, Shutt, Inc., and Canadian Security and Technology. During and subsequent to the raids, DIRECTV came into possession of a substantial body of sales records, shipping records, email communications, credit card receipts, and other records. Those records evidence defendants' purchases of illegally modified DIRECTV Access Cards and other devices that are designed to permit viewing of DIRECTV's television programming without authorization by or payment to DIRECTV ("Pirate Access Devices"). In reliance upon those records and other information, and upon information and belief, DIRECTV sets forth the allegations in this Complaint.

4. Each defendant is a resident of this District. DIRECTV alleges that defendants have purchased and used Pirate Access Devices

5. Defendants' actions violate the Federal Communications Act of 1934, as amended, 47 U.S.C. §605 and the Electronic Communications Privacy Act ("Federal Wiretap Laws"), 18 U.S.C. §§2510-2521. DIRECTV brings this action to restrain these illegal activities against it.

PARTIES

6. Plaintiff DIRECTV, Inc. is a corporation duly incorporated under the laws of the State of California. DIRECTV has significant interests in maintaining and securing the integrity of its satellite transmissions of television programming, and in prohibiting the unauthorized reception and use of the same.

7. Defendant Robert Shea is a resident of Newaygo, Michigan. Upon information and belief, beginning in or about April 2001, defendant Shea purchased one

or more Pirate Access Devices from Vector Technologies. Defendant placed each order by using interstate or foreign wire facilities, and received his orders via the Postal Service or commercial mail carriers. Specifically, these illegal purchases included the following transaction:

(a) On or about April 13, 2001, defendant Shea purchased a Pirate Access Device, consisting of a printed circuit board device called an Unlooper, from Vector Technologies. The device was shipped to defendant Shea at his address in Newaygo, Michigan.

8. Defendant Anthony Grimard is a resident of Newaygo, Michigan. Upon information and belief, beginning in or about March 2001, defendant Grimard purchased one or more Pirate Access Devices from Vector Technologies. Defendant placed each order by using interstate or foreign wire facilities, and received his orders via the Postal Service or commercial mail carriers. Specifically, these illegal purchases included the following transaction:

(a) On or about March 15, 2001, defendant Grimard purchased a Pirate Access Device, consisting of a printed circuit board device called an Unlooper, from Vector Technologies. The device was shipped to defendant Grimard at his address in Newaygo, Michigan;

9. Defendant Phil Carr is a resident of Sparta, Michigan. Upon information and belief, beginning in or about May 2001, defendant Carr purchased two or more Pirate Access Devices from Canadian Security. Defendant placed each order by using interstate or foreign wire facilities, and received his orders via the Postal Service or commercial mail carriers. Specifically, these illegal purchases included the following transactions:

(a) On or about May 22, 2001, defendant Carr purchased a Pirate Access Device, consisting of a printed circuit board device called an Unlooper, from Canadian Security. The device was shipped to defendant Carr at his address in Sparta, Michigan; and

(b) On or about May 24, 2001, defendant Carr purchased a Pirate Access Device, consisting of a printed circuit board device called an Unlooper, from Canadian Security. The device was shipped to defendant Carr at his address in Sparta, Michigan.

10. Defendant Randy Ensing is a resident of Coopersville, Michigan. Upon information and belief, beginning in or about March, 2001, defendant Ensing purchased six or more Pirate Access Devices from Vector Technologies. Defendant placed each order by using interstate or foreign wire facilities, and received his orders via the Postal Service or commercial mail carriers. Specifically, these illegal purchases included the following transaction:

(a) On or about March 12, 2001, defendant Ensing purchased six Pirate Access Devices, consisting of six printed circuit board devices called Unloopers, from Vector Technologies. The devices were shipped to defendant Ensing at his address in Coopersville, Michigan.

11. Defendant Jason A. Gale is a resident of Hart, Michigan. Upon information and belief, beginning in or about April 2001, defendant Gale purchased three or more Pirate Access Devices from Canadian Security. Defendant placed each order by using interstate or foreign wire facilities, and received his orders via the Postal Service or commercial mail carriers. Specifically, these illegal purchases included the following transactions:

(a) On or about April 17, 2001, defendant Gale purchased a Pirate Access Device, consisting of a printed circuit board device called an Emulator, from Canadian Security. The device was shipped to defendant Gale at his address in Hart, Michigan;

(b) On or about April 23, 2001, defendant Gale purchased a Pirate Access Device, consisting of a printed circuit board device called an Unlooper,

from Canadian Security. The device was shipped to defendant Gale at his address in Hart, Michigan; and

(c) On or about April 23, 2001 defendant Gale also purchased a Pirate Access Device, consisting of a printed circuit board device called an Emulator, from Canadian Security. The device was shipped to defendant Gale at his address in Hart, Michigan.

12. Defendant Jeffrey Jones is a resident of Hudsonville, Michigan. Upon information and belief, beginning in or about March 2001, defendant Jones purchased two or more Pirate Access Devices from Vector Technologies. Defendant placed each order by using interstate or foreign wire facilities, and received his orders via the Postal Service or commercial mail carriers. Specifically, these illegal purchases included the following transaction:

(a) On or about March 14, 2001, defendant Jones purchased a Pirate Access Device, consisting of a printed circuit board device called an Unlooper, from Vector Technologies. The device was shipped to defendant Jones at his address in Hudsonville, Michigan; and

(b) On or about March 14, 2001, defendant Jones also purchased a Pirate Access Device, consisting of a printed circuit board device called an Emulator, from Vector Technologies. The device was shipped to defendant Jones at his address in Hudsonville, Michigan.

13. Defendant Steve Ensing is a resident of Zeeland, Michigan. Upon information and belief, beginning in or about March 2001, defendant Ensing purchased six or more Pirate Access Devices from Vector Technologies. Defendant placed each order by using interstate or foreign wire facilities, and received his orders via the Postal Service or commercial mail carriers. Specifically, these illegal purchases included the following transaction:

(a) On or about April 18, 2001, defendant Ensing purchased three Pirate Access Devices, consisting of three printed circuit board devices called Unloopers, from Vector Technologies. The devices were shipped to defendant Ensing at his address in Zeeland, Michigan; and

(b) On or about April 18, 2001, defendant Ensing also purchased three Pirate Access Devices, consisting of three printed circuit board devices called Emulators, from Vector Technologies. The devices were shipped to defendant Ensing at his address in Zeeland, Michigan.

14. Defendant Geoffrey Laham is a resident of Grand Rapids, Michigan. Upon information and belief, beginning in or about March 2001, defendant Laham purchased one or more Pirate Access Devices from Vector Technologies. Defendant placed each order by using interstate or foreign wire facilities, and received his orders via the Postal Service or commercial mail carriers. Specifically, these illegal purchases included the following transaction:

(a) On or about March 13, 2001, defendant Laham purchased a Pirate Access Device, consisting of a printed circuit board device called an Unlooper, from Vector Technologies. The device was shipped to defendant Laham at his address in Grand Rapids, Michigan.

15. Defendant Tamra Burns is a resident of Grand Rapids, Michigan. Upon information and belief, beginning in or about March 2001, defendant Burns purchased two or more Pirate Access Devices from Vector Technologies. Defendant placed each order by using interstate or foreign wire facilities, and received her orders via the Postal Service or commercial mail carriers. Specifically, these illegal purchases included the following transaction:

(a) On or about March 6, 2001, defendant Burns purchased a Pirate Access Device, consisting of a printed circuit board device called an Unlooper,

from Vector Technologies. The device was shipped to defendant Burns at her address in Grand Rapids, Michigan; and

(b) On or about March 6, 2001, defendant Burns also purchased a Pirate Access Device, consisting of a printed circuit board device called an Emulator, from Vector Technologies. The device was shipped to defendant Burns at her address in Grand Rapids, Michigan.

16. Defendant Ed Trevino is a resident of Grand Rapids, Michigan. Upon information and belief, beginning in or about May 2001, defendant Trevino purchased one or more Pirate Access Devices from Canadian Security. Defendant placed each order by using interstate or foreign wire facilities, and received his orders via the Postal Service or commercial mail carriers. Specifically, these illegal purchases included the following transaction:

(a) On or about May 18, 2001, defendant Trevino purchased a Pirate Access Device, consisting of a printed circuit board device called an Unlooper, from Canadian Security. The device was shipped to defendant Trevino at his address in Grand Rapids, Michigan.

JURISDICTION AND VENUE

15. This action arises under the Federal Communications Act of 1934, as amended, 47 U.S.C. § 605; the Electronic Communications Privacy Act (“Federal Wiretap Laws”), and 18 U.S.C. §§ 2510-2521.

16. This Court has original jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a), 47 U.S.C. § 605(e)(3)(A) and 18 U.S.C. § 2520(a).

17. Each defendant is a resident of this District. Personal jurisdiction and venue are proper in this District pursuant to 28 U.S.C. § 1391(b).

FIRST CLAIM

UNAUTHORIZED RECEPTION OF SATELLITE SIGNALS

IN VIOLATION OF 47 U.S.C. § 605(a)

18. Plaintiff DIRECTV repeats and realleges the allegations in Paragraphs 1 through 17 as if set forth fully herein.

19. Defendants have received and/or assisted others in receiving DIRECTV's satellite transmissions of television programming without authorization, in violation of 47 U.S.C. § 605(a).

20. Defendants' violations have injured and will continue to injure DIRECTV by depriving DIRECTV of subscription and pay-per-view revenues and other valuable consideration, compromising DIRECTV's security and accounting systems, infringing DIRECTV's trade secrets and proprietary information, and interfering with DIRECTV's contractual and prospective business relations.

21. Defendants knew or should have known that receiving and assisting third persons in receiving DIRECTV's satellite transmissions of television programming without authorization by or payment to DIRECTV was and is illegal and prohibited. Such violations have caused and will continue to cause DIRECTV irreparable harm, and DIRECTV has no adequate remedy at law to redress any such continued violations. Unless restrained by this Court, defendants will continue to violate 47 U.S.C. § 605(a).

SECOND CLAIM

UNAUTHORIZED INTERCEPTION OF ELECTRONIC COMMUNICATIONS

IN VIOLATION OF 18 U.S.C. § 2511(1)(a)

22. Plaintiff DIRECTV repeats and realleges the allegations in Paragraphs 1 through 21 as if set forth fully herein.

23. By using Pirate Access Devices to decrypt and view DIRECTV's satellite transmissions of television programming, defendants intentionally intercepted, endeavored to intercept, or procured other persons to intercept or endeavor to intercept,

DIRECTV's satellite transmission of television programming, in violation of 18 U.S.C. §2511(1)(a).

24. Defendant's violations have injured and will continue to injure DIRECTV by depriving DIRECTV of subscription and pay-per-view revenues and other valuable consideration, compromising DIRECTV's security and accounting systems, infringing DIRECTV's trade secrets and proprietary information, and interfering with DIRECTV's contractual and prospective business relations.

25. Defendants knew or should have known that such interception of DIRECTV's satellite transmissions of television programming was and is illegal and prohibited. Such violations have caused and will continue to cause DIRECTV irreparable harm, and DIRECTV has no adequate remedy at law to redress any such continued violations. Unless restrained by this Court, defendants will continue to violate 18 U.S.C. § 2511(1)(a).

THIRD CLAIM

POSSESSION OF PIRATE ACCESS DEVICES

IN VIOLATION OF 18 U.S.C. 2512(1)(b)

26. Plaintiff DIRECTV repeats and realleges the allegations in Paragraphs 1 through 25 as if set forth fully herein.

27. Defendants possessed and used Pirate Access Devices, knowing or having reason to know that the design of such devices render them primarily useful for the purpose of surreptitious interception of DIRECTV's satellite transmissions of television programming, and that such devices, or any components thereof, have been or will be sent through the mail or transported in interstate or foreign commerce, in violation of 18 U.S.C. § 2512(1)(b).

28. Defendants' violations have injured and will continue to injure DIRECTV by depriving DIRECTV of subscription and pay-per-view revenues and other valuable consideration, compromising DIRECTV's security and accounting systems, infringing

DIRECTV's trade secrets and proprietary information, and interfering with DIRECTV's contractual and prospective business relations.

29. Defendants knew or should have known that possessing Pirate Access Devices was and is illegal and prohibited. Such violations have caused and will continue to cause DIRECTV irreparable harm, and DIRECTV has no adequate remedy at law to redress any such continued violations. Unless restrained by this Court, defendants will continue to violate 18 U.S.C. § 2512(1)(b).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff DIRECTV requests that this Court grant the following relief:

(1) Find the defendants' conduct in importing, possessing and using Pirate Access Devices violates 47 U.S.C. § 605(a), and 18 U.S.C. §§ 2511(1)(a) and 2512(1)(b), and further find that defendants' violations were willful, malicious or for a tortious or illegal purpose;

(2) In accordance with 47 U.S.C. § 605(e)(3)(B)(i), and 18 U.S.C. § 2520(b)(1), enjoin and restrain defendants, and persons controlled directly and indirectly by defendants, from importing, possessing, or using Pirate Access Devices, and further order defendants to surrender all Pirate Access Devices;

(3) In the event of a default, in accordance with 18 U.S.C. § 2520(c)(2)(B) and 18 U.S.C. § 2511, an award of statutory damages of \$10,000 for each violation of 18 U.S.C. § 2511(a)(2) alleged herein, and a further award of DIRECTV's reasonable attorneys' fees and costs in the amount of \$850;

(4) In the event of trial, an award of either (a) statutory damages in accordance with 47 U.S.C. § 605(e)(3)(C)(i)(II), and 18 U.S.C. § 2520(c)(2), or (b) compensatory and punitive damages in accordance with 47 U.S.C. § 605(e)(3)(C)(i)(I), and 18 U.S.C. § 2520(c)(2), and DIRECTV's reasonable attorneys' fees and costs in accordance with 47 U.S.C. § 605(e)(3)(B)(iii), and 18 U.S.C. § 2520(b)(3);

(5) For such additional relief as the Court deems just and equitable.

DATED: May 20, 2003.

Respectfully submitted,

**HONNIGMAN MILLER SCHWARTZ
& COHN**

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