

**\*\*NOT FOR PRINTED PUBLICATION\*\***

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
BEAUMONT DIVISION

DISH NETWORK L.L.C.,	§	
ECHOSTAR TECHNOLOGIES L.L.C.,	§	
AND NAGRASTAR LLC,	§	
	§	
<i>Plaintiffs,</i>	§	CIVIL ACTION No. 1:15-cv-369
	§	
v.	§	JUDGE RON CLARK
	§	
THERESA HORACE AND	§	BRC
DONALD BATES,	§	
	§	
<i>Defendants.</i>	§	

**ORDER GRANTING PLAINTIFFS’ MOTION FOR DEFAULT JUDGMENT**

Plaintiffs Dish Network L.L.C., Echostar Technologies L.L.C., and Nagrastar LLC allege that Defendants Theresa Horace and Donald Bates have violated the Electronic Communications Privacy Act (“ECPA”) by receiving satellite broadcasts of copyrighted programs without paying subscription fees. [Compl., Dkt. # 1, at ¶ 8]. Plaintiffs move for a default judgment against Defendants. [Dkt. # 12]. For the reasons discussed below, the court grants Plaintiffs’ Motion for Default Judgment [Dkt. # 12] and finds that Plaintiffs are entitled to a default judgment against Defendants in the amount of \$10,000.00 and a permanent injunction.

**I. Legal Requirements for Default Judgment**

Rule 55 of the Federal Rules of Civil Procedure sets forth certain conditions under which default may be entered against a party, as well as the procedure to seek the entry of default judgment. The Fifth Circuit requires a three-step process for securing a default judgment. *N.Y. Life Ins. v. Brown*, 84 F.3d 137, 141 (5th Cir. 1996). First, a default occurs when a defendant has failed to plead or otherwise respond to the complaint within the time required by Rule 12 of the

Federal Rules of Civil Procedure. FED. R. CIV. P. 55(a); *N.Y. Life Ins.*, 84 F.3d at 141. Next, the clerk must enter the party's default when it is established by affidavit or otherwise. FED. R. CIV. P. 55(a); *N.Y. Life Ins.*, 84 F.3d at 141. Third, a plaintiff must then apply for a default judgment.

After the clerk enters a default, "the plaintiff's well-pleaded factual allegations are taken as true, except regarding damages." *U.S. for Use of M-Co Constr., Inc. v. Shipco Gen., Inc.*, 814 F.2d 1011, 1014 (5th Cir. 1987). The plaintiff must also establish that the defendant is not a minor, an incapacitated person, or serving in the military.

If the claim is for a sum certain or a sum that can be mathematically calculated the clerk enters judgment. FED. R. CIV. P. 55(b)(1). In all other cases a court may hold a hearing if necessary to conduct an accounting, determine the amount of damages, establish the truth of any allegation by evidence, or to investigate any other matter. FED. R. CIV. P. 55(b)(2).

## **II. Discussion**

### **A. Entry of Default**

Defendants Donald Bates and Theresa Horace live together at 8135 North Part Drive, Beaumont, TX 77708. On October 3, 2015, Mr. Bates accepted personal service of a summons and Complaint at Defendants' home. [Dkt. # 6]. The Court granted Plaintiffs' Motion for Substituted Service of Ms. Horace. [Dkt. # 5]. On November 20, 2015, Plaintiffs served Ms. Horace by affixing a copy of the summons and Complaint to the door of Defendants' home. [Dkt. # 7].

When Defendants did not file an Answer or a motion under Rule 12(b)(6) within 21 days of Ms. Horace being served, Plaintiffs requested an entry of default for each Defendant, stating that Defendants were not infants, incompetent, on active duty in the United States military, or

otherwise exempted under the Service Members Civil Relief Act. [Dkt. ## 8, 9]. The clerk entered entries of default and Plaintiffs filed a Motion for Default Judgment.

B. Motion for Default Judgment.

As a result of Defendants' failure to appear and the clerk's entry of default, the well-pleaded facts in Plaintiffs' Complaint are taken as true in their Motion for Default Judgment. *Shipco*, 814 F.2d at 1014.

Under the ECPA, it is unlawful for a person to "intentionally intercept" any "electronic communication." 18 U.S.C. § 2511(1)(a). Encrypted broadcasts of satellite television programming, such as those transmitted by DISH Network, constitute "electronic communications" under this statute. *DirecTV, Inc. v. Bennett*, 470 F.3d 565, 567 (5th Cir. 2006).

Plaintiffs state that on March 11, 2013, Defendants bought a one-year subscription to a pirate television service known as Nfusion Private Server ("NFPS"). [Compl., Dkt. # 1, at ¶ 26]. Defendants then allegedly used the NFPS to view Plaintiffs' encrypted electronic signals without authorization. [Compl., Dkt. # 1, at ¶ 27]. These pleaded facts, taken as true, establish a violation of § 2511(1)(a).

C. Monetary Damages

"[A] private right of action is allowed under 18 U.S.C. § 2520 for violations of § 2511." *Bennett*, 470 F.3d at 569. Under § 2520(c)(2)(A)–(B), damages are "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." 18 U.S.C. § 2520(c)(2)(A)–(B).

Plaintiffs have asserted that Defendants were intercepting encrypted communications for well over a year. On March 11, 2013, Defendants purchased a one-year subscription to NFPS

from Francis Philip. [Dkt. # 12-3, Ex. 1]. Using the username “num1seed,” [Dkt. # 12-5, Ex. 3], Defendants made online posts discussing their use of NFPS on February 26, 2014, April 4, 2014, and July 15, 2014. [Dkt. ## 12-6 (Ex. 4), 12-7 (Ex. 5), 12-8 (Ex. 6)]. Given these assertions, which are taken as true in a default judgment proceeding, Plaintiffs’ request for statutory damages in the statutory minimum amount of \$10,000.00 is justified.

D. Permanent Injunction

Plaintiffs seek a permanent injunction under § 2520(b)(1) of the ECPA, which allows for “such preliminary and other equitable or declaratory relief as may be appropriate.” A plaintiff seeking a permanent injunction must demonstrate the following:

- (1) It has suffered an irreparable injury;
- (2) Remedies available at law, such as monetary damages, are inadequate to compensate for that injury;
- (3) Considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and
- (4) The public interest would not be disserved by a permanent injunction.

*eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006).

Plaintiffs have demonstrated an irreparable injury that cannot be fully compensated for through monetary damages. The breach of their security systems has resulted in lost profits, necessitated the need for the development of further security measures, and potentially undermined Plaintiffs’ reputation to deliver secured content. This is sufficient to establish an irreparable injury. *See Macrovision v. Sima Prods. Corp.*, No. 05 CIV. 5587 (RO), 2006 WL 1063284, at \*3 (S.D.N.Y. Apr. 20, 2006) (“If [plaintiff] is unable to prevent the circumvention of its technology, its business goodwill will likely be eroded, and the damages flowing therefrom extremely difficult to quantify.”).

The balance of hardships favors entry of a permanent injunction, in that Defendants’ only hardship will be compliance with federal law. The public interest will be served by enjoining

piracy of copyrighted works. Plaintiffs have satisfied the four factors required for entry of a permanent injunction.

### **III. Conclusion**

It is therefore ORDERED that Plaintiff's Motion for Default Judgment [Dkt. # 12] is GRANTED and Plaintiffs are entitled to recover \$10,000.00 in statutory damages from Defendants. Defendants are jointly and severally liable for the statutory damages.

It is further ORDERED that Plaintiffs' request for a permanent injunction is GRANTED, as set out in a separate ORDER OF PERMANENT INJUNCTION.

So ORDERED and SIGNED this 22 day of February, 2016.



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Ron Clark, United States District Judge