

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

EHOSTAR TECHNOLOGIES)
LLC, *et al.*,)
)
Plaintiffs,) 2:16-CV-354
)
v.)
)
PAULETTE KINCAIDE, *et*)
al.,)
)
Defendants.

DEFAULT JUDGMENT

This matter is before the Court on the Plaintiffs' Motion for Default Judgment, filed by the plaintiffs, Dish Network LLC, Echostar Technologies LLC, and Nagrastar LLC, on October 21, 2016 (DE #9). For the reasons set forth below, the motion is **GRANTED**.

BACKGROUND

On August 5, 2016, the plaintiffs, Dish Network LLC, Echostar Technologies LLC, and Nagrastar LLC (collectively, "DISH Network") filed suit against the defendants, Paulette Kincaide and Linnis Kincaide (collectively, "Defendants"), alleging that Defendants circumvented DISH Network's security technology and intercepted the copyrighted satellite television programming broadcast by DISH Network without paying the required subscription fee. (DE #1.)

According to the complaint, Defendants subscribed to a pirate television service known as NFusion Private Server ("NFPS") that used Internet key sharing ("IKS") to allow Defendants to decrypt DISH Network's satellite signal and view DISH Network programming without authorization. (*Id.* at 2, 5-6.) Through their NFPS subscription(s) Defendants were able to enjoy unlimited access to DISH Network programming, including premium and pay-per-view channels, causing DISH Network lost revenues, costly security updates, and harm to its business reputation and goodwill. (*Id.* at 5-6.) The complaint contains three counts: Count I - circumventing an access control measure in violation of the Digital Millennium Copyright Act, 17 U.S.C. § 1201(a)(1); Count II - receiving satellite signals without authorization in violation of the Federal Communications Act, 47 U.S.C. § 605(a); and Count III - intercepting satellite signals in violation of the Electronic Communications Privacy Act ("ECPA"), 18 U.S.C. § 2511(1)(a) and § 2520. (*Id.* at 7-8.)

Summons was issued as to Defendants on August 5, 2016 (DE #4), and on September 12, 2016, DISH Network filed affidavits indicating that service was executed on Defendants on August 24, 2016 (DE #5 & DE #6). Defendants have not appeared before this Court, nor have Defendants responded to the complaint. The Clerk entered default against Defendants on October 5, 2016. (DE #8.) DISH Network filed the instant motion for default judgment on

October 21, 2016, requesting that the Court grant default judgment against Defendants with respect to Count III, award statutory damages of \$10,000, and enter a permanent injunction. (DE #9.)

ANALYSIS

Federal Rule of Civil Procedure 55 governs the entry of default and default judgments. When a defendant fails to answer a complaint or otherwise defend himself, the clerk can make an entry of default. Fed. R. Civ. P. 55(a); see also *Jackson v. Beech*, 636 F.2d 831, 835 (D.C. Cir. 1980) ("Once a defendant fails to file a responsive answer, he is in default, and an entry of default may be made by either the clerk or the judge."). Entry of default must precede an entry of default judgment. See, e.g., *Hirsch v. Innovation Int'l*, No. 91 CIV. 4130, 1992 WL 316143, at *1 (S.D.N.Y. Oct. 19, 1992). As the Clerk has entered default against Defendants, this Court may now enter a default judgment if appropriate.

In a motion for default judgment, the well-pleaded allegations of a complaint relating to the amount of damages suffered must be proved. *Yang v. Hardin*, 37 F.3d 282, 286 (7th Cir. 1994) (citing *United States v. DiMucci*, 879 F.2d 1488, 1497 (7th Cir. 1988)). Before the entry of default judgment, Federal Rule of Civil Procedure 55(b)(2) provides that the district court "may conduct such hearings or order such references as it deems

necessary and proper" to determine the amount of damages. Fed. R. Civ. P. 55(b)(2). Such proceedings are required unless "the amount claimed is liquidated or capable of ascertainment from definite figures contained in documentary evidence or in detailed affidavits." *Dundee Cement Co. v. Howard Pipe & Concrete Products, Inc.*, 722 F.2d 1319, 1323 (7th Cir. 1983). Here, for the reasons set forth below, and after due consideration of the record including the Complaint (DE #1), the Declaration of Christopher Ross in Support of Plaintiff's Motion for Default Judgment (DE #10-1), relevant portions of Excel files, emails, business records, and website posts obtained during the piracy investigation of NFPS (DEs ##10-2 through 10-10), and the Declaration of Gregory Duval in Support of Plaintiffs' Motion for Default Judgment (DE #10-11), the Court finds that no hearing is necessary.

Under the ECPA, it is unlawful for an individual to "intentionally intercept" any "electronic communication." 18 U.S.C. § 2511(1)(a). "[E]ncrypted satellite transmissions to home satellite dishes are 'electronic communications' within the meaning of the wiretap laws." *U.S. v. Shriver*, 989 F.2d 898, 902 (7th Cir. 1992). DISH Network's encrypted broadcasts are included within that definition. The allegations in the complaint, which are taken as true upon default, are sufficient to establish a claim against Defendants under section 2511(1)(a) of the ECPA in that

Defendants intentionally intercepted DISH Network's encrypted satellite signal in violation of the ECPA. As such, the Court may award DISH Network equitable or declaratory relief as appropriate, actual or statutory damages, punitive damages as appropriate, and reasonable attorney fees and costs. 18 U.S.C. § 2520(a)-(c).

In this case, DISH Network requests statutory damages in the amount of \$10,000. See 18 U.S.C. § 2520(c)(2)(B) (a court may assess "damages of whichever is the greater of \$100 a day for each day of violation or \$10,000"). Because DISH Network has supported its damages request with citations to applicable case law, declarations based on personal knowledge, and other documentary evidence, the Court, in its discretion, finds it appropriate to award DISH Network the requested statutory damages. See *Dundee Cement Co.*, 722 F.2d at 1323.

DISH Network has also requested that a permanent injunction be entered against Defendants. See 18 U.S.C. § 2520(b)(1). A party seeking a permanent injunction must demonstrate:

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

eBay Inc. v. MercExchange, L.L.C., 547 U.S. 388, 391 (2006). Based on the arguments set forth in DISH Network's brief along with the

related evidentiary support, the Court finds that each element in favor of an injunction has been met.

CONCLUSION

For the reasons set forth above, the Motion for Default Judgment (DE #9) is **GRANTED**. Judgment on Count III is hereby **ENTERED**, jointly and severally, against Defendants Paulette Kincaide and Linnis Kincaide in the amount of \$10,000. In addition, Defendants Paulette Kincaide and Linnis Kincaide are **PERMANENTLY ENJOINED** from:

- (1) circumventing or assisting others in circumventing DISH Network's security system, or otherwise intercepting or assisting others in intercepting DISH Network's satellite signal; and
- (2) 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.

DATE: September 25, 2017

/s/RUDY LOZANO
United States District Court