

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
DANVILLE DIVISION

MAR 10 2004

JOHN F. CONCORAN, CLERK
BY: 
DEPUTY CLERK

DIRECTV, INC.,

Plaintiff.

v.

MIKE ROLAND,

Defendant.

)
) Civil Action: 4:03CV51
)
)
)
)
)
)
)
)
)
)

MEMORANDUM OPINION

Before me is DirecTV's theft of services suit against Mike Roland. I heard the bench trial on January 29, 2004, and according to my direction at that time, the parties later filed proposed findings of fact and conclusions of law. I heard oral argument by DirecTV counsel on March 1, 2004, at which Defendant Roland failed to appear. This matter is now ripe for disposition.

I. Findings of Fact

Background

This case is one of thousands of civil enforcement actions Plaintiff has brought around the country to combat the theft of its satellite television services. Plaintiff provides a variety of television programming via encrypted satellite signals which, in order to be viewed, must be decrypted by a programmable access card connected to the customer's television. The decrypting key to the system is the programming on the access card, and subscribers are billed according to the software they order to decrypt chosen television programming. DirecTV is engaged in a battle with "signal pirates" who attempt to surreptitiously decrypt DirecTV's satellite feed without paying for it. In addition, DirecTV works with law enforcement agencies investigating

signal piracy, and counts civil raids and lawsuits against manufacturers, marketers, and customers of pirate access devices among the weapons in its counterpiracy arsenal.

Facts Regarding Defendant Mike Roland

Defendant Roland came to DirecTV's attention when the plaintiff conducted a civil raid on several distributors of pirate access devices. The distributors' records indicate that in May 2001, Roland bought three kits which enable him to reprogram DirecTV access cards without Plaintiff's knowledge. Roland has unwisely chosen to stonewall the discovery process in this action by (1) repeatedly invoking the Fifth Amendment in his November 24, 2003, deposition, in response to Plaintiff's questions directly relevant to this action, and (2) refusing to answer DirecTV's Requests for Admissions. As a result of these actions, on January 16, 2004, Magistrate Judge Crigler ordered that Plaintiff's Requests of Admissions be deemed admitted. These admissions include that the defendant purchased, used, and resold these three kits for the purposes of gaining unauthorized access to DirecTV programming for himself and others.

Upon considering the record, the court finds that the defendant retained one kit to decrypt DirecTV's encrypted signal without authorization for his own use, and sold the other two kits, enabling unknown parties to do the same. Though it is not critical to the damage awards below, I also note that the record shows that Defendant purchased four additional kits using a credit card his mother, Barbara Combs, had secured for her impecunious son, and that he did so without her knowledge or consent.

II. Conclusions of Law

Electronic Communications Privacy Act

Section 605(e)(4) of Chapter 47 of the United States Code, in combination with 47

U.S.C. § 605(e)(3)(C)(i)(II), sets the range of damages awardable to a plaintiff against one who sells a device which the seller knows “is primarily of assistance in the unauthorized decryption of satellite cable programming, or direct-to-home satellite services.” The range of statutory damages, which is the remedy Plaintiff by right has chosen to seek, is \$10,000 to \$100,000 for each device. Fully aware that it was wrong to do so, Roland bought and resold two such devices. Roland is, however, an unsophisticated operator, which places a relatively low cap on the amount of harm he is capable of doing in schemes such as this, and I therefore consider the low end of the statutory range to be sufficient here. Therefore, I award Plaintiff \$10,000 for each of the two kits Defendant resold in violation of 47 U.S.C. §605(e)(4), for a total of \$20,000.

Roland’s actions in retaining one access kit for his personal use is more appropriately addressed under 47 U.S.C. §605(a), which, in combination with 47 U.S.C. § 605(e)(3)(C)(i)(II), allows an aggrieved plaintiff to collect a statutory range of \$1,000 to \$10,000 from one who uses communications without authorization. Unlike the award above, here Defendant’s long-term programming piracy, and his attempts to profit from trading in signal piracy devices, warrants an award at the high end of the statutory range. Therefore, I award Plaintiff \$10,000 for Defendant’s violation of 47 U.S.C. §605(a).

Wiretap Act

Section 2511(a) of the Wiretap Act, 18 U.S.C. 2510 et seq., prohibits the intentional interception and use of electronic communications such as the ones in this case, and Section 2520 creates a civil cause of action for Section 2511 violations. Section 2520(c)(2)(B) indicates that the court *may* assess statutory damages “of whichever is the greater of \$100 a day for each day of violation or \$10,000.” Though in prior cases I have declined to award discretionary Section 2520

damages because to do so would be double counting, given that Roland's conduct is more egregious than that of a defendant who simply buys one decrypting kit for their personal use, Section 2520 damages are appropriate here. Though I would not hesitate to find that Roland has gained unauthorized access to Plaintiff's programming on a daily basis for nearly three years, thus meriting an award in excess of \$90,000, Plaintiff's counsel has not asked that I take that step. Therefore, I award Plaintiff the statutorily dictated amount of \$10,000 for Defendant's violation of 18 U.S.C. §2511.

Conversion

In Virginia, the tort of conversion "encompasses 'any...act of dominion wrongfully exerted over property in denial of the owner's right, or inconsistent with it.'" United Leasing Corp. v. Thrift Ins. Corp., 247 Va. 299, 305 (1994), quoting Universal C.I.T. Credit Corp. v. Kaplan, 198 Va. 67, 75 (1956). Roland wrongly converted DirecTV's scrambled signal into viewable unscrambled television programming without authorization, and thus perpetrated the tort of conversion against the plaintiff.

Compensatory damages have been sufficiently covered in the \$40,000 awarded to this point. However, punitive damages are in order. Sometimes known as "exemplary damages" or "smart money" on the theory that the damage award will serve as an example to deter the defendant and others from engaging in the wrongful behavior, Virginia allows punitive damages to be awarded "where there is misconduct or malice...as evinces a conscious disregard of the rights of others." PGI, Inc. v. Rathe Prods., Inc. 265 Va. 334, 345 (2003). Such has been the nature of Roland's misconduct, for which I award Plaintiff \$2,000 in punitive damages.

Injunctive Relief

Under 47 U.S.C. §605(e)(3)(B)(i), a court is empowered to grant final injunctions it deems reasonable to prevent or restrain violations of §605(a). It is appropriate to do so here. Defendant is hereby permanently enjoined from receiving, assisting in receiving, transmitting, assisting in transmitting, divulging, or publishing DirecTV satellite transmissions without DirecTV's authorization. Defendant is to surrender to DirecTV all illegally modified access cards and pirate access devices in his possession or control.

Attorneys' Fees and Costs

Courts are instructed to "direct the recovery of full costs, including awarding reasonable attorneys' fees to an aggrieved party who prevails." 47 U.S.C. § 605(e)(3)(B)(iii). DirecTV has submitted an affidavit and associated documentation of a total of \$27,269.99 in attorney fees and costs. The costs are \$1,884.85 and all are recoverable. The attorney fees claimed total \$25,385.14. The average hourly rate appears to be in the \$160 an hour range, which I consider excessive for the routine nature of this action. Further, though I realize trial preparation is a time intensive task, and commend the preparedness of plaintiff's counsel, I think the number of hours spent on this action to also be excessive. At the March 2, 2004, closing argument, Plaintiff's counsel noted the seeming excessiveness of the cost and fees request, and commented that were it not for Roland's stonewalling, the cost and fees award would likely fall in the \$10,000 to \$12,000 range. This strikes me as about right, notwithstanding Roland's uncooperative behavior, which increased the attorneys' fees incurred by counsel for Plaintiff. I deem \$10,000 to be reasonable attorneys' fees. The total award of costs plus attorneys' fees is thus \$11,884.85.

Award Recap

Electronic Communications Privacy Act	\$30,000
Wiretap Act	10,000
Conversion (Punitive Damages)	2,000
Costs and Attorneys' Fees	<u>11,884.85</u>
Total Award	\$53,884.85

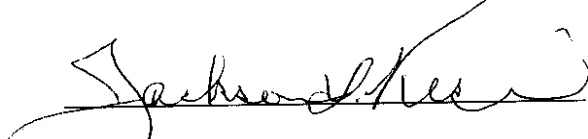
III. Conclusion

Judgment will be entered in favor of the Plaintiff in the total amount of **\$53,884.85**.

Defendant is **PERMANENTLY ENJOINED** from unauthorized use of DirecTV services and is to **SURRENDER** to DirecTV his pirate access device[s] and access card[s] as indicated above.

The Clerk is directed to send certified copies of this Memorandum Opinion and accompanying Order to counsel of record and to Defendant Mike Roland.

Entered this 10th day of March, 2004.


Senior United States District Judge