

**FILED** *27*

**JAN 6 2003**

LARRY W. PROPPES, CLERK  
CHARLESTON, SC

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
GREENWOOD DIVISION**

DIRECTV, INC., a California Corporation,  
  
Plaintiff,  
  
v.  
  
Stephen Nicholson,  
  
Defendant.

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Case No.:

**8 03 0042 18**

**COMPLAINT FOR COMPENSATORY  
STATUTORY AND OTHER  
DAMAGES, AND FOR INJUNCTION  
RELIEF**

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 May 25, 2001, DIRECTV executed Writs of Seizure with the assistance of local law enforcement at the mail shipping facility used by several major sources of pirate technologies including Vector Technologies, DSS-Stuff, DSS-Pro, DSS-Hangout, White Viper Technologies, Meadco, Intertek, Shutt Inc., and Canadian Security and Technology.

4. During and subsequent to the aforesaid 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 Defendant's purchases of illegally modified DIRECTV Access Cards or other such products used for the decryption and receipt of DIRECTV's broadcasts ("Pirate Access Devices"). In reliance upon those records and other information, and upon information and belief, DIRECTV sets forth the allegations and this complaint.

5. Defendant is a resident of this District and Division. DIRECTV alleges that Defendant has purchased and/or used Pirate Access Devices that are designed to permit viewing of DIRECTV's television programming without authorization by or payment to DIRECTV.

6. Defendant's actions violate the Federal Communications Act of 1934, 47 U.S.C. § 605; the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2521; and South Carolina common law. DIRECTV brings this action, in part, to restrain these illegal activities against it.

## PARTIES

7. 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.

8. Defendant Stephen Nicholson is a resident of Greenwood, South Carolina. Upon information and belief, beginning in or about August 2000, Defendant Stephen Nicholson purchased one or more Pirate Access Devices from White Viper. Defendant placed each order by using interstate or foreign wire facilities and received his orders via the United States Postal Service or commercial mail carriers. Specifically, these illegal purchases included the following transactions:

(a) On or about August 18, 2000, Defendant Stephen Nicholson purchased a Pirate Access Device called “Viper Reader/Writer” and “Whit” from White Viper. The devices were shipped to Defendant Stephen Nicholson at his address in Greenwood, South Carolina.

(b) On or about November 9, 2000, Defendant Stephen Nicholson purchased a Pirate Access Device called a “Viper Unlooper Enclosure & Viper Reader/Writer Enclosure” from White Viper. The device was shipped to Defendant Stephen Nicholson at his address in Greenwood, South Carolina.

## JURISDICTION AND VENUE

9. This action arises under the Federal Communications Act of 1934, 47 U.S.C. § 605; the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2521; and South Carolina common law.

10. This Court has original jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338, 47 U.S.C. § 605(e)(3)(A) and 18 U.S.C. § 2520(a), and has supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a) over the state law claims asserted herein. Venue is appropriate based on 28 U.S.C. § 1391(b).

**FIRST CLAIM**

**UNAUTHORIZED RECEPTION OF SATELLITE SIGNALS  
IN VIOLATION 47 U.S.C. § 605(a)**

11. Plaintiff DIRECTV repeats and realleges the allegations in Paragraphs 1 through 10 as if set forth fully herein.

12. Defendant has received and assisted others in receiving DIRECTV's satellite transmissions of television programming without authorization in violation of 47 U.S.C. § 605(a).

13. 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.

14. Defendant 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, Defendant 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)**

15. Plaintiff DIRECTV repeats and realleges the allegations in Paragraphs 1 through 14 as if set forth fully herein.

16. By using Pirate Access Devices to decrypt and view DIRECTV's satellite transmissions of television programming, Defendant 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).

17. 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.

18. Defendant 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, Defendant will continue to violate 18 U.S.C. § 2511(1)(a).

**THIRD CLAIM**

**USE AND POSSESSION OF PIRATE ACCESS DEVICES  
IN VIOLATION OF 18 U.S.C. § 2512(1)(b)**

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

20. Defendant has used Pirate Access Devices to decrypt and view DIRECTV's satellite transmissions of television programming with intent to avoid payment of the lawful charges therefore by trick, artifice, deception, use of a device or decoder, and other fraudulent means, without authority from DIRECTV, in violation of 18 U.S.C. § 2512 (1)(b).

21. Defendant has possessed and used Pirate Access Devices, with intent to avoid payment to DIRECTV of the lawful charges for its programming, that are designed in whole or in part to receive subscription television services offered for sale by DIRECTV, without authority of DIRECTV, in violation of 18 U.S.C. § 2512(1)(b).

22. 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.

23. Defendant knew or should have known that possessing Pirate Access Devices was and is illegal. 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, Defendant will continue to violate 18 U.S.C. § 2512(1)(b).

## **FOURTH CLAIM**

### **CONVERSION**

24. Plaintiff DIRECTV repeats and realleges the allegations in Paragraphs 1 through 23 as if set forth fully herein.

25. By importing, possessing and using Pirate Access Devices, Defendant has unlawfully converted to his own use and benefit property belonging to DIRECTV.

26. Such conversion was done intentionally and wrongfully by Defendant to deprive DIRECTV of its proprietary interests and for Defendant's direct benefit and advantage.

27. As a direct and proximate result of Defendant's unlawful acts, DIRECTV has suffered and continues to suffer damages, including lost subscription and pay-per-view revenues and other valuable consideration.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff DIRECTV requests the following:

1. An order determining Defendant's importation, possession, and use of Pirate Access Devices was tortious, wilful, malicious, and for an illegal purpose and that the conduct violated:
  - (A) 47 U.S.C. § 605(a) (unauthorized receipt of signal),
  - (B) 47 U.S.C. § 605(e)(4) (importation of unauthorized decryption devices),
  - (C) 18 U.S.C. § 2511(1)(a) (interception and attempted interception of communication),
  - (D) 18 U.S.C. § 2512(1)(b) (use or attempted use of intercepting device), and
  - (E) the common law of South Carolina.
2. An order, pursuant to 47 U.S.C. § 605(e)(3)(B)(i) and 18 U.S.C. § 2520(b)(1), enjoining Defendant and his agents, employees, servants, and attorneys as well as those acting in concert or participation with them, from importing, possessing, or using Pirate Access Devices.

3. An order directing Defendant to surrender all Pirate Access Devices to the Court for disposition.
4. For each violation of 47 U.S.C. § 605(a), an award of either (A) statutory damages of \$10,000 or (B) actual damages.
5. An award of statutory damages of \$100,000 for each violation of 47 U.S.C. § 605(e)(4).
6. An award of punitive damages for violations of 18 U.S.C. § 2511.
7. For violations of 18 U.S.C. § 2511, the greater of (A) the sum of the actual damages suffered by the plaintiff and any profits made by each Defendant as a result of violation(s) of 18 U.S.C. § 2511 and (B) the greater of \$100 per day for each day of violation(s) of 18 U.S.C. § 2511 or \$10,000.
8. An award of attorney's fees and costs as provided for by 18 U.S.C. § 2520(b)(3) and 47 U.S.C. § 605(e)(3)(B)(iii).
9. Compensatory damages and punitive damages according to the South Carolina common law.
10. Such additional relief as the Court deems just and equitable.

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**COUNSEL FOR PLAINTIFF**

January 3, 2003

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