



1 **I. BACKGROUND**

2 DISH Network provides copyrighted satellite television programming to millions  
3 of paying customers throughout the United States. (*Duval Decl.* ¶ 7 [Doc. 5-18].) In  
4 order to prevent the unauthorized reception of its programming, DISH Network  
5 encrypts its satellite signals so that viewing requires the use of a DISH Network receiver  
6 and smart card. (*Id.* ¶¶ 8–11.) The receiver processes the signal by locating an  
7 encrypted part of the transmission—known as the entitlement control message—and  
8 forwarding that message to the smart card. (*Id.* ¶ 13.) The smart card then uses its  
9 decryption keys to unlock the message and uncover a control word that is transmitted  
10 back to the receiver to decrypt the satellite signal, thereby allowing the customer to view  
11 the program. (*Id.* ¶¶ 13–14.)

12 Various devices have been manufactured to allow individuals to steal or “pirate”  
13 DISH Network’s programming. (*Id.* ¶ 15.) Among these devices are Sonicview  
14 receivers and iHub adapters. (*Id.* ¶¶ 17–18.) The receivers are programmed with pirate  
15 software and connected to the Internet via an iHub adapter or a built-in Ethernet port.  
16 (*Id.*) The Internet connection allows the Sonicview receiver to obtain the DISH  
17 Network control words from a server, thereby unlocking the DISH Network  
18 programming. (*Id.* ¶ 19.)

19 In 2009, DISH Network filed a lawsuit against Sonicview (the “Sonicview  
20 Lawsuit”) alleging violations of the Digital Millennium Copyright Act (“DMCA”) and  
21 related statutes based on Sonicview’s distribution of piracy devices such as the  
22 Sonicview receiver and iHub adapter. (*See Hagan Decl.* ¶ 8 [Doc. 5-2].) On August 14,  
23 2009, DISH Network filed a motion for a preliminary injunction seeking, among other  
24 things, to enjoin the manufacture and sale of Sonicview’s piracy devices. On March 29,  
25 2010, the court entered an order (the “Sonicview Order”) enjoining Sonicview and  
26 others from “designing, manufacturing, developing, trafficking, selling, and marketing  
27 . . . Sonicview iHubs, and Piracy Software at any physical address or on the Internet. .  
28 . .” (*See Hagan Decl.* Ex. 7 at 12:4–12.)

1 Defendant Whitcomb is a former Sonicview employee. (*Hagan Decl. Ex. 6*, at  
2 120:2–124:4.) At the time the Sonicview Order was entered, Whitcomb was engaged  
3 in selling the Sonicview iHub on eBay. (*Hagan Decl. ¶ 6; Ex. 5*.) In an effort to evade  
4 the order, DISH Network alleges that Whitcomb eventually began selling a “re-  
5 packaged” iHub under the names “Sonicview SV Lan” and “New Link.” (*Mot. for*  
6 *Prelim. Inj.* 4:27–5:2 [Doc. 5-1] (citing *Jaczewski Decl.* [Doc. 5-16], ¶ 4; and *Hagan Decl.*  
7 ¶¶ 3–5, Exs. 2–4).)

8 On February 17, 2011, DISH Network filed this lawsuit against Defendant,  
9 asserting causes of action for violations of the DMCA, Communications Act, and  
10 Electronic Communications Privacy Act (“ECPA”). DISH Network alleges that  
11 Defendant unlawfully manufactures, distributes, and traffics devices intended to  
12 facilitate the unauthorized reception and decryption of DISH Network’s satellite  
13 television programming. (*Compl. ¶ 1* [Doc. 1].) DISH Network also filed a motion for  
14 a preliminary injunction [Doc. 5]. Defendant neither answered the complaint nor  
15 responded to the motion. On April 22, 2011, this Court held a hearing on DISH  
16 Network’s motion for a preliminary injunction, but Defendant did not appear. On April  
17 25, 2011, this Court granted DISH Network’s motion for a preliminary injunction [Doc.  
18 15].

19 Meanwhile, on March 21, 2011, DISH Network requested that the clerk enter  
20 a default against Defendant, and the clerk obliged [Docs. 10, 11]. DISH Network now  
21 seeks an entry of default judgment.

## 22

## 23 **II. LEGAL STANDARD**

24 Federal Rule of Civil Procedure 55(b)(2) governs applications for default  
25 judgment. Default judgment is available as long as the plaintiff establishes that the  
26 defendant (1) was served with the summons and complaint but failed to appear, and  
27 consequently a default was entered; (2) is neither a minor nor an incompetent person;  
28 (3) is neither in military service nor otherwise subject to the Soldiers and Sailors Relief

1 Act of 1940, 50 U.S.C. § 521; and (4) was provided with notice of the application for  
2 default judgment at least seven days before the hearing if the defendant has appeared  
3 in the action. See, e.g., Fed. R. Civ. P. 55; 50 U.S.C. § 521; Twentieth Century Fox  
4 Film Corp. v. Streeter, 438 F. Supp. 2d 1065, 1070 (D. Ariz. 2006).

5 Entry of default judgment is within the trial court's discretion. See Taylor Made  
6 Golf Co. v. Carsten Sports, Ltd., 175 F.R.D. 658, 660 (S.D. Cal. 1997) (Brewster, J.)  
7 (citing Lau Ah Yew v. Dulles, 236 F.2d 415, 416 (9th Cir. 1956)). In making this  
8 determination, the court may consider the following factors: (1) the possibility of  
9 prejudice to the plaintiff, (2) the merits of the plaintiff's substantive claim, (3) the  
10 sufficiency of the complaint, (4) the sum of money at stake in the action, (5) the  
11 possibility of a dispute concerning the material facts, (6) whether the default was due  
12 to excusable neglect, and (7) the strong policy underlying the Federal Rules of Civil  
13 Procedure favoring decisions on the merits. Eitel v. McCool, 782 F.2d 1470, 1471–72  
14 (9th Cir. 1986).

15 Upon an entry of default, the factual allegations in the plaintiff's complaint,  
16 except those relating to damages, are deemed admitted. See Televideo Sys., Inc. v.  
17 Heidenthal, 826 F.2d 915, 917–18 (9th Cir. 1987). Where the amount of damages  
18 claimed is capable of mathematical calculation or is a liquidated sum, the court may  
19 enter a default judgment without a hearing. Davis v. Fendler, 650 F.2d 1154, 1161 (9th  
20 Cir. 1981).

### 21 22 **III. DISCUSSION**

#### 23 **A. Default Judgment Against Defendant Is Proper.**

24 The Court finds that a default judgment against Defendant is warranted. DISH  
25 Network has followed all proper channels in serving and attempting to engage  
26 Defendant in this lawsuit. (See Doc. 9.) The clerk of the court has entered a valid  
27 default against Defendant. (See Doc. 11.) Defendant is not a minor, an incompetent  
28 person, or a member of the military. (*Req. for Entry of Default, Decl.* ¶¶ 3–4 [Doc. 10-

1 11.) Furthermore, the Eitel factors support an entry of default judgment. DISH  
2 Network's claims against Defendant are well-pled and the requested damages  
3 straightforward. There is no dispute concerning the material facts of the case because  
4 Defendant has failed to participate in this action in any way. Moreover, Defendant was  
5 personally served, ensuring he knows about the suit and thus making his failure to  
6 participate inexcusable. Accordingly, the Court finds that default judgment is  
7 appropriate.

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9 **B. DISH Network Is Entitled to Statutory Damages.**

10 Section 605(e)(4) of the Communications Act provides that

11 [a]ny person who manufactures, assembles, modifies, imports, exports,  
12 sells, or distributes any electronic, mechanical, or other device or  
13 equipment, knowing or having reason to know that the device or  
14 equipment is primarily of assistance in the unauthorized decryption of  
15 satellite cable programming, or direct-to-home satellite services, . . .

16 has violated the Act and is subject to penalties. 47 U.S.C. § 605(e)(4). The aggrieved  
17 party is entitled to recover actual damages and profits or "statutory damages in a sum  
18 not less than \$10,000, or more than \$100,000, as the court considers just," for each  
19 violation. Id. § 605(e)(3)(C)(i)(II).

20 Here, DISH Network alleges that Defendant sold a minimum of 1,444 piracy  
21 devices. (*Mot. for Default J.* 4:8–15.) DISH Network supports this claim with  
22 voluminous exhibits of Defendant's Paypal records, which detail each of the 1,444  
23 transactions. (*See Id., Ex. 2.*) Consequently, DISH Network is entitled to the  
24 \$14,440,000 it requests, as that figure represents the minimum statutory damages  
25 mandated by the Communications Act.

26 **C. DISH Network Is Entitled to a Permanent Injunction.**

27 Both the DMCA and the Communications Act authorize courts to grant  
28 permanent injunctions. 17 U.S.C. § 1203(b)(1); 47 U.S.C. § 605(e)(3). A permanent  
injunction should be granted where the plaintiff shows that (1) it has suffered an

1 irreparable injury; (2) the available legal remedies are inadequate; (3) the harm to the  
2 plaintiff if the injunction is not granted outweighs the harm to the defendant if granted;  
3 and (4) granting the injunction would not disserve the public interest. eBay Inc. V.  
4 MercExchange, L.L.C., 547 U.S. 388, 391 (2006).

5 Here, the unauthorized access of DISH Network programming via Defendant's  
6 piracy devices costs DISH Network more than \$100,000 each month. (*Mot. for Default*  
7 *J.* 8:1–4.) These devices can be used to deprive DISH Network of its rightful proceeds  
8 for long and indeterminate periods of time. Furthermore, a mere monetary award will  
9 not stop Defendant from continuing to reproduce DISH Network's equipment, resulting  
10 in further grievous harm. See Apple Inc. v. Psystar Corp., 673 F. Supp. 2d 943, 949–50  
11 (N.D. Cal. 2009). For these reasons, the Court finds that the injury to DISH Network  
12 is irreparable and that a mere monetary award is an inadequate remedy.

13 Furthermore, enjoining Defendant from conducting illegal activity does him no  
14 legally recognizable harm. See Apple Inc., 673 F. Supp. 2d at 950; see also ClearOne  
15 Commc'ns, Inc. v. Chiang, 608 F. Supp. 2d 1270, 1281 (D. Utah 2009). Granting the  
16 injunction would additionally serve the public interest. See Metro-Goldwyn-Mayer  
17 Studios, Inc. v. Grokster, Ltd., 518 F. Supp. 2d 1197, 1222 (C.D. Cal. 2007) (holding  
18 that a permanent injunction was warranted in a copyright infringement case because  
19 "[t]he public interest in receiving copyrighted content for free is outweighed by the need  
20 to incentivize the creation of original works"). In light of these considerations, DISH  
21 Network is entitled to a permanent injunction against Defendant enjoining the further  
22 manufacture and sale of piracy devices that enable unauthorized access to DISH  
23 Network's copyright-protected broadcasting.

24  
25 **D. DISH Network Is Entitled to an Order Requiring Defendant to Destroy**  
26 **Its Piracy Devices.**

27 The DMCA provides that a court "may, as part of a final judgment or decree  
28 finding a violation, order the remedial modification or destruction of any device or

1 product involved in the violation that is in the custody or control of the violator.” 17  
2 U.S.C. § 1203(b)(6). Other courts within the Ninth Circuit have ordered the  
3 destruction of devices that violate the DMCA as part of an order of default judgment.  
4 See Autodesk, Inc. v. Flores, 2011 WL 337836, No. 10-CV-01917-LHK, at \*11 (N.D.  
5 Cal. Jan. 31, 2011); Photo Resource Hawai’i, Inc. v. Am. Hawai’i Travel Inc., 2007 WL  
6 4373549, Civil No. 07-00134 DAE-LEK, at \*5, \*8 (D. Haw. Dec. 12, 2007), report and  
7 recommendation adopted by 2008 WL 41425 (D. Haw. Jan. 2, 2008). Consequently,  
8 this Court finds that an order mandating the destruction of Defendant’s piracy devices  
9 is an appropriate equitable remedy.

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11 **E. Attorney’s Fees and Costs Are Denied Without Prejudice.**

12 The Communications Act mandates an award of attorney’s fees and costs to a  
13 prevailing aggrieved party. 47 U.S.C. § 605(e)(3)(B)(iii). However, DISH Network’s  
14 motion for default judgment fails to identify and detail any of the fees and costs incurred  
15 as a result of this litigation. Accordingly, the Court denies attorney’s fees and costs  
16 without prejudice.

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18 **IV. CONCLUSION AND ORDER**

19 For the reasons discussed above, the Court **GRANTS** DISH Network’s motion  
20 for default judgment [Doc. 13]. The Court **ORDERS** as follows:

- 21 1. Defendant shall pay DISH Network statutory damages of \$14,440,000.
- 22 2. A permanent injunction is hereby issued enjoining Defendant Christopher  
23 Whitcomb and all directors, officers, agents, servants, employees,  
24 attorneys, and all persons and entities in active concert or participation  
25 therewith, including, but not limited to, manufacturers, distributors,  
26 retailers and cooperative members, from directly or indirectly:
  - 27 (a) manufacturing, developing, importing, offering to the public  
28 (including, but not limited to, through Internet websites or

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auctions), promoting, distributing, providing, or otherwise trafficking in Sonicview iHubs, SV Lan adapters, New Link adapters, or any other device designed to connect to Internet key sharing servers for the purpose of receiving DISH Network programming without authorization;

(b) manufacturing, developing, importing, offering to the public (including, but not limited to, through Internet websites or auctions), promoting, distributing, providing, or otherwise trafficking in serial numbers, authorization codes, or upgrades for Sonicview iHubs, SV Lan adapters, New Link adapters, or any other device designed to connect to Internet key sharing servers for the purpose of receiving DISH Network programming without authorization; and

(c) receiving or assisting others in receiving without authorization DISH Network's satellite signals or other electronic communications originating from DISH Network's system.

3. Defendant is hereby ordered to destroy all Sonicview iHubs, SV Lan adapters, New Link adapters, or any other device designed to connect to Internet key sharing servers for the purpose of receiving DISH Network programming without authorization, as well as any equipment used in the manufacture of such devices, within 60 days of the date of this order. Defendants must either:

(a) file with this Court within the above-mentioned 60-day period under penalty of perjury a written declaration attesting to the complete destruction of all Sonicview iHubs, SV Lan adapters, New Link adapters, or any other device designed to connect to Internet key sharing servers for the purpose of receiving DISH Network programming without



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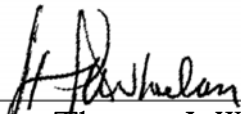
authorization, as well as any equipment used in the manufacture of such devices; or

(b) contact DISH Network's counsel to arrange for DISH Network and/or its counsel to be present to witness the destruction of the piracy devices.

4. DISH Network is denied attorney's fees and costs without prejudice. DISH Network is hereby ordered to submit any request for attorney's fees and costs with documentation within 60 days of the date of this order.

**IT IS SO ORDERED.**

DATED: July 18, 2011

  
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Hon. Thomas J. Whelan  
United States District Judge