UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION
Electronically Filed

DISH NETWORK L.L.C. and SLING TV L.L.C.,	§	Case No. _____
Plaintiffs,	§	
v.	§	
DANIEL SCROGGINS, STEVEN DAUGHERTY, and DSCROGGS INVESTMENTS LLC, individually and collectively d/b/a PRIMESTREAMS,	§	
Defendants.	§	

PLAINTIFFS' ORIGINAL COMPLAINT

Plaintiffs DISH Network L.L.C. ("DISH") and Sling TV L.L.C. ("Sling") file this action against Defendants Daniel Scroggins, Steven Daugherty, and Dscroggs Investments LLC, individually and collectively doing business as PrimeStreams, for violations of the Federal Communications Act, 47 U.S.C. § 605, and Digital Millennium Copyright Act, 17 U.S.C. § 1201.

NATURE OF THE ACTION

1. Plaintiffs are television service providers that deliver programming live and on demand to millions of authorized, fee-paying subscribers in the United States by means of secured internet and satellite communications. Defendants provide an illicit streaming service known as PrimeStreams that allows users to access, without authorization, Plaintiffs' internet communications of television programming that were acquired by circumventing security measures implemented by Plaintiffs.

PARTIES

2. Plaintiff DISH Network L.L.C. is a Colorado limited liability company having its principal place of business in Englewood, Colorado.

3. Plaintiff Sling TV L.L.C. is a Colorado limited liability company having its principal place of business in Englewood, Colorado.

4. Defendant Daniel Scroggins ("Scroggins") is an individual residing in Burlington, Kentucky.

5. Defendant Steven Daugherty ("Daugherty") is an individual residing in Havana, Illinois.

6. Defendant Dscroggs Investments LLC ("DSI") is a Kentucky limited liability company having its principal place of business in Burlington, Kentucky.

7. On information and belief, Scroggins and Daugherty are co-owners of the PrimeStreams service and authorize, control, participate in, and receive direct financial benefits from the infringing activities alleged herein. Scroggins and Daugherty processed payments for their PrimeStreams service through DSI. Scroggins, Daugherty, and DSI are collectively referred to as "Defendants."

JURISDICTION & VENUE

8. The Court has subject matter jurisdiction under 28 U.S.C. § 1331 because Plaintiffs assert claims for violations of 47 U.S.C. § 605 and 17 U.S.C. § 1201.

9. Defendants are subject to personal jurisdiction in this Court pursuant to Fed. R. Civ. P. 4(k)(1)(A) because Defendants, through their PrimeStreams service, have purposefully directed their conduct toward and purposefully availed themselves of the privileges of conducting business in Kentucky, causing injury to Plaintiffs in Kentucky. Defendants DSI and Scroggins are also

subject to personal jurisdiction in this Court because each reside in Kentucky.

10. Defendant Daugherty is also subject to personal jurisdiction in this Court under Kentucky's long arm statute KRS § 454.210(2)(a)1-4.

11. Venue is proper in this Court under 28 U.S.C. § 1391 because a substantial part of the events giving rise to Plaintiffs' claims occurred in this judicial district.

DEFENDANTS' REBROADCASTING SCHEME

12. Plaintiffs deliver television programming to millions of subscribers nationwide using the public internet (the "Programming"). Plaintiffs' internet transmissions of the Programming are secured using digital rights management ("DRM") technologies that include, based upon the subscriber's viewing platform, Google's Widevine DRM, Apple's FairPlay DRM, and Microsoft's PlayReady DRM. Each DRM has a key-based encryption and decryption process that is used to make the Programming accessible to only authorized subscribers that purchased access to the Programming from Plaintiffs and restricts unauthorized access to, copying, and retransmission of the Programming.

13. Defendants' PrimeStreams service was marketed and sold to users through Facebook and web domains that include primestreams.tv, primestreamstv.com, and primehosting.one ("PrimeStreams Domains"). On information and belief, Scroggins registered the PrimeStreams Domains.

14. PrimeStreams was advertised as a subscription-based streaming service providing over 3,000 channels, movies on demand, pay-per-view events, and sports programming, among other content, all for a low monthly fee.

15. The Programming has been retransmitted on the PrimeStreams service without Plaintiffs' authorization, thereby allowing PrimeStreams users to receive the Programming

without paying the requisite subscription fee to Plaintiffs. Periodic monitoring conducted on a sampling of channels on the PrimeStreams service identified more than one hundred instances where PrimeStreams was configured to retransmit the Programming, including A&E, AMC, GAC Living, and The Cowboy Channel.

16. The Programming retransmitted on the PrimeStreams service was received from Plaintiffs' internet communications. Identifiers unique to Plaintiffs' internet communications were detected when viewing the Programming on the PrimeStreams service, thereby confirming that Plaintiffs' internet communications are the source of the Programming retransmitted on the PrimeStreams service.

17. On information and belief, Defendants directly engage in, aid and abet, or act within the scope of a principal-agent relationship with other persons in establishing subscription accounts with Plaintiffs and using those accounts to obtain the Programming retransmitted on the PrimeStreams service.

18. On information and belief, Defendants directly engage in, aid and abet, or act within the scope of a principal-agent relationship with other persons in circumventing DRMs that control access to the Programming in order to retransmit the Programming on the PrimeStreams service. The DRMs are believed to be circumvented using either a differential fault analysis attack where faults are injected into the DRM to disrupt its operation and create pathways to extract the keys necessary to decrypt the Programming, or a man-in-the-middle attack whereby customized software is used to bypass the DRM by intercepting the Programming passing from the DRM's decryption library to the user's viewing platform.

19. Defendants profit from the PrimeStreams service through the sale of codes that are designed and produced to enable a set-top box or other internet-enabled device to access servers

used to retransmit the Programming on the PrimeStreams service (a "Device Code"). A valid Device Code is required to access the Programming on the PrimeStreams service.

20. Defendants sold Device Codes at the PrimeStreams Domains for approximately $10 per month of access to the PrimeStreams service. Purchasers could also select Device Codes that were valid for longer periods of time or that allowed for additional device connections at varying prices.

21. Defendants also sold Devices Codes at the PrimeStreams Domains in bundles or panels referred to as "Reseller Credits." Device Code panels were marketed and sold to authorized resellers of the PrimeStreams service, which in turn sold the Device Codes to their own customers. Resellers purchased the Device Code panels from Defendants for approximately $2.50 to $4 per month of access to the PrimeStreams service, the price depending on factors such as the quantity purchased. Defendants received payments for Device Code panels by means that included wire transfers to DSI and checks made payable to DSI that were mailed to Daugherty.

22. On information and belief, Defendants' authorized resellers also sold Device Codes for rebranded versions of the PrimeStreams service that offered the Programming, going by names such as Firesticksteve or FSS, Bing TV, and Better Than Cable TV. Defendants are believed to operate the rebranded services as a continuation of, and in the same manner as, the PrimeStreams service.

23. Defendants were notified that their PrimeStreams service violated federal laws and were asked to cease and desist from such activity, as early as September 24, 2021, but PrimeStreams has continued to operate.

CLAIMS FOR RELIEF

COUNT I
Violations of the FCA, 47 U.S.C. § 605(a)

24. Plaintiffs repeat and reallege the allegations in paragraphs 1-23.

25. Defendants received or assisted in receiving Plaintiffs' internet communications of the Programming and then transmitted or assisted in transmitting Plaintiffs' internet communications of the Programming to users of the PrimeStreams service. Defendants divulged and published the Programming to users of their PrimeStreams service that were not entitled to receive the Programming, without Plaintiffs' authorization and in violation of 47 U.S.C. § 605(a).

26. Defendants' violations of 47 U.S.C. § 605(a) were willful and for purposes of commercial advantage and private financial gain.

27. Defendants were aware or had reason to believe their actions violated 47 U.S.C. § 605(a). Such violations have caused damage to Plaintiffs in an amount to be proven at trial. Unless restrained and enjoined, Defendants will continue to violate 47 U.S.C. § 605(a).

COUNT II
Violations of the FCA, 47 U.S.C. § 605(e)(4)

28. Plaintiffs repeat and reallege the allegations in paragraphs 1-23.

29. Defendants sell and distribute Device Codes for purposes of divulging and publishing the Programming to users of their PrimeStreams service in violation of 47 U.S.C. § 605(e)(4). Defendants intended for Device Codes to be used in divulging and publishing the Programming to users of their PrimeStreams service that were not entitled to receive the Programming, which is activity proscribed by 47 U.S.C. § 605(a),

30. Defendants' violations of 47 U.S.C. § 605(e)(4) were willful and for purposes of commercial advantage and private financial gain.

31. Defendants were aware or had reason to believe that their actions violated 47 U.S.C. § 605(e)(4). Such violations caused damage to Plaintiffs in an amount to be proven at trial. Unless restrained and enjoined, Defendants will continue to violate 47 U.S.C. § 605(e)(4).

COUNT III
Violations of the DMCA, 17 U.S.C. § 1201(a)(1)(A)

32. Plaintiffs repeat and reallege the allegations in paragraphs 1-23.

33. Plaintiffs use technological protection measures such as the DRMs to effectively control access to their internet communications of the Programming that includes works protected under the Copyright Act. Plaintiffs are authorized to protect the copyrighted content aired on their internet communications from unauthorized reception and viewing and implement these technological protection measures with the copyright owners' consent.

34. The DRMs implemented by Plaintiffs are circumvented to acquire the Programming that is retransmitted without authorization on the PrimeStreams service. On information and belief, Defendants acquire the Programming for the PrimeStreams service by directly engaging in, aiding and abetting, or acting in the scope of a principal-agent relationship with other persons to circumvent that DRMs used to control access to the Programming, in violation of 17 U.S.C. § 1201(a)(1)(A).

35. Defendants' violations of 17 U.S.C. § 1201(a)(1)(A) were willful and for purposes of commercial advantage and private financial gain.

36. Defendants were aware or had reason to believe that their actions violated 17 U.S.C. § 1201(a)(1)(A). Such violations have caused damage to Plaintiffs in an amount to be proven at trial. Unless restrained and enjoined, Defendants will continue to violate 17 U.S.C. § 1201(a)(1)(A).

COUNT IV
Violations of the DMCA, 17 U.S.C. § 1201(a)(2)

37. Plaintiffs repeat and reallege the allegations in paragraphs 1-23.

38. Plaintiffs use technological protection measures such as the DRMs to effectively control access to their internet communications of the Programming that includes works protected under the Copyright Act. Plaintiffs are authorized to protect the copyrighted content aired on their internet communications from unauthorized reception and viewing and implement these technological protection measures with the copyright owners' consent.

39. The DRMs implemented by Plaintiffs are circumvented to acquire the Programming that is retransmitted without authorization on the PrimeStreams service. On information and belief, the DRMs are circumvented using either a differential fault analysis attack or a man-in-the-middle attack carried out as part of the operation of the PrimeStreams service. The PrimeStreams service, or at least a component or part thereof, is primarily designed and produced for the purpose of circumventing the DRMs implemented by Plaintiffs and has only limited commercially significant purpose or use other than to circumvent such DRMs. Defendants violate 17 U.S.C. § 1201(a)(2) by manufacturing, offering to the public, providing, or otherwise trafficking in the PrimeStreams service.

40. Defendants' actions that constitute violations of 17 U.S.C. § 1201(a)(2) have been performed without the authorization or consent of Plaintiffs or, on information and belief, any owner of the copyrighted content provided by Plaintiffs.

41. Defendants violations of 17 U.S.C. § 1201(a)(2) were willful and for purposes of commercial advantage and private financial gain.

42. Defendants were aware or had reason to believe their actions violated 17 U.S.C. § 1201(a)(2). Such violations have caused damage to Plaintiffs in an amount to be proven at trial. Unless restrained and enjoined, Defendants will continue to violate 17 U.S.C. § 1201(a)(2).

PRAYER FOR RELIEF

Plaintiffs request a judgment against Defendants as follows:

A. For a permanent injunction under Fed. R. Civ. P. 65, 47 U.S.C. § 605(e)(3)(B)(i), and 17 U.S.C. § 1203(b)(1) that prohibits Defendants, and any officer, agent, servant, employee, or other person acting in active concert or participation with any of them that receives actual notice of the order, from:

1. Receiving or assisting others in receiving, transmitting or assisting others in transmitting, divulging, or publishing DISH or Sling's internet communications of television programming or the content of such communications without authorization, including through the PrimeStreams service or any similar streaming service;

2. Selling or distributing any device or equipment that is intended for divulging or publishing DISH or Sling's internet communications of television programming or the content of such communications, including codes or credits used to access the PrimeStreams service or any similar streaming service;

3. Circumventing a DRM or any other technological protection measure that controls access to DISH or Sling's internet communications of television programming, including through the use of DISH or Sling subscription accounts to provide the programming for the PrimeStreams service or any similar streaming service;

4. Manufacturing, offering to the public, providing, or otherwise trafficking in the PrimeStreams service or any similar streaming service, codes or credits used to access

the PrimeStreams service of any similar streaming service, or any other technology, product, service, device, component, or part thereof that:

a. is primarily designed or produced for circumventing a technological measure employed by DISH or Sling that controls access to copyrighted works;

b. has only limited commercially significant purpose or use other than circumventing a technological measure employed by DISH or Sling that controls access to copyrighted works;

c. is marketed for purposes of circumventing a technological measure employed by DISH or Sling that controls access to copyrighted works;

B. For an order impounding and allowing Plaintiffs to take possession of and destroy any codes or credits used to access the PrimeStreams service, any technologies used in circumventing the DRMs, and any other device, equipment, or technology in Defendants' possession, custody, or control that the Court believes to have been involved in a violation of the FCA or DMCA, pursuant to 47 U.S.C. § 605(e)(3)(B)(i) and 17 U.S.C. § 1203(b)(2);

C. For an order permanently transferring all domain names that Defendants used in connection with the PrimeStreams service to Plaintiffs;

D. For an order requiring Defendants to preserve and turn over to Plaintiffs all hard copy and electronic records regarding persons involved in the PrimeStreams service;

E. Award Plaintiffs the greater of (1) their combined actual damages together with Defendants' profits that are attributable to the violations identified in Count I, or (2) statutory damages up to $10,000 for each violation of 47 U.S.C. § 605(a), pursuant to 47 U.S.C. § 605(e)(3)(C)(i)(I)-(II). In either scenario, the damages should be increased by $100,000 for each violation, in accordance with 47 U.S.C. § 605(e)(3)(C)(ii);

F. Award Plaintiffs the greater of (1) their actual damages together with Defendants' profits that are attributable to the violations identified in Count II, or (2) statutory damages up to $100,000 for each violation of 47 U.S.C. § 605(e)(4), pursuant to 47 U.S.C. § 605(e)(3)(C)(i)(I)-(II);

G. Award Plaintiffs the greater of (1) their actual damages together with Defendants' profits that are attributable to the violations identified in Count III, or (2) statutory damages up to $2,500 for each violation of 17 U.S.C. § 1201(a)(1)(A), pursuant to 17 U.S.C. § 1203(c)(2) and (c)(3)(A);

H. Award Plaintiffs the greater of (1) their actual damages together with Defendants' profits that are attributable to the violations identified in Count IV, or (2) statutory damages up to $2,500 for each violation of 17 U.S.C. § 1201(a)(2), pursuant to 17 U.S.C. § 1203(c)(2) and (c)(3)(A);

I. Award Plaintiffs their attorneys' fees and costs under 47 U.S.C. § 605(e)(3)(B)(iii) and 17 U.S.C. § 1203(b)(4)-(5);

J. For a complete and accurate accounting of all profits and other benefits received by Defendants as a result of the wrongful conduct identified in this complaint;

K. For pre and post-judgment interest on all damages awarded by the Court, from the earliest date permitted by law at the maximum rate permitted by law; and

L. For such additional relief as the Court deems just and equitable.

Dated: May 11, 2022.

Respectfully submitted,

/s/ Spencer K. Gray

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