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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

DISH NETWORK L.L.C., et al.,  
Plaintiffs,  
v.  
JUAN SILVA,  
Defendant.

Case No. 14-CV-04848-LHK  
**ORDER GRANTING PLAINTIFFS'  
MOTION FOR DEFAULT JUDGMENT**  
Re: Dkt. No. 14

Plaintiffs Dish Network LLC, EchoStar Technologies LLC, and NagraStar LLC (collectively, “Plaintiffs”) move for default judgment against Defendant Juan Silva (“Silva”). ECF No. 14 (“Mot.”). Pursuant to Civil Local Rule 7-1(b), the Court finds this matter appropriate for resolution without oral argument and therefore VACATES the hearing set for May 14, 2015. For the reasons set forth below, Plaintiffs’ motion is GRANTED.

**I. BACKGROUND**

**A. Factual Background**

**1. Plaintiffs’ Satellite Television Programming**

Plaintiff Dish Network LLC (“Dish Network”) is a multi-channel video provider that delivers video, audio, and data services to approximately 14 million customers throughout the

1 United States, Puerto Rico, and the U.S. Virgin Islands through a direct broadcast satellite system.  
2 ECF No. 1 (“Compl.”) ¶ 10. Dish Network uses high-powered satellites to broadcast movies,  
3 sports, and general entertainment services to consumers who have been authorized to receive these  
4 services after payment of a subscription fee. *Id.* ¶ 11. Dish Network purchases distribution rights  
5 for the content it broadcasts from providers such as network affiliates, motion picture distributors,  
6 sports leagues, etc. *Id.* ¶ 12. The content distributed by Dish Network is copyrighted, and Dish  
7 Network is required by the copyright holders to protect the works from unauthorized distribution.  
8 *Id.* ¶ 13. Thus, Dish Network broadcasts television programming in an encrypted, or scrambled,  
9 format to limit its distribution only to those authorized to receive the copyrighted programming.  
10 *Id.* ¶ 17-19.

11 Plaintiff EchoStar Technologies LLC (“EchoStar”) provides set-top box receivers, satellite  
12 dish antennas, and other digital equipment for the Dish Network system. *Id.* ¶ 15. Plaintiff  
13 NagraStar LLC (“NagraStar”) provides smart cards and other proprietary security technologies for  
14 use in conjunction with EchoStar’s receivers. *Id.* The security technologies provided by  
15 NagraStar form a conditional access system for the Dish Network system. *Id.* Specifically, each  
16 receiver and smart card is assigned a unique serial number that is used by Dish Network when  
17 activating the equipment. *Id.* ¶ 16. These unique serial numbers allow Dish Network to ensure  
18 that the equipment only decrypts programming and services that the customer is authorized to  
19 receive as part of their subscription package. *Id.* Dish Network is therefore able to “turn on” and  
20 “turn off” programming a customer has ordered, cancelled, or changed. *Id.* ¶ 17. Dish Network is  
21 also able to control which users are able to descramble the programming and services broadcast  
22 via Dish Network’s broadcast satellite system. *Id.* Together, the EchoStar receiver and NagraStar  
23 smart card convert Dish Network’s encrypted satellite signal into viewable programming that can  
24 be displayed on a television of an authorized viewer. *Id.* ¶ 19.

## 25 **2. Piracy of Dish Network Programming**

26 Over the years, many devices and methods have been used by individuals to illegally  
27 decrypt, or “pirate,” television programming. *Id.* ¶¶ 20-25. The black market in piracy devices

1 represents a multimillion dollar industry in the United States. *Id.* ¶ 20. One method of pirating  
2 network programming involves Internet key sharing, or “IKS.” *Id.* ¶ 22. At a high level, IKS  
3 allows users to share the “control words” generated by authorized smart cards which are in turn  
4 used by a receiver to decrypt Dish Network’s satellite signals. *See id.* ¶¶ 23-25. With IKS,  
5 therefore, unauthorized users are able to decrypt Dish Network’s encrypted satellite signal and  
6 view programming without paying a subscription fee to Dish Network. *Id.* ¶ 24-25.

7 A service called NFusion Private Server (“NFPS”) is a subscription-based IKS service. *Id.*  
8 ¶ 25. Members of this service pay an access fee and are able to obtain, over the internet, the  
9 control words necessary to decrypt Dish Network’s satellite signal. *Id.* Francis Philip (“Philip”),  
10 known as “Vgiddy,” sold subscriptions to NFPS. *Id.* ¶ 26. In exchange for a fee, Philip would  
11 provide a NFPS subscriber with a passcode to a server whereby the NFPS subscriber could obtain  
12 the proprietary control words to decrypt Dish Network’s programming. *Id.* ¶ 25. Dish Network  
13 acquired Philip’s business records. *Id.* ¶ 26.

### 14 3. Silva’s Conduct

15 According to Philip’s records, Silva purchased multiple subscriptions to NFPS between  
16 March and June 2012, and again in March 2013. *Id.* ¶ 26. Silva used an unauthorized receiver  
17 loaded with piracy software to access the NFPS service. *Id.* ¶ 27. Accordingly, each time Silva’s  
18 unauthorized receiver was tuned to an encrypted Dish Network channel, Silva’s receiver would  
19 retrieve the control word for that channel from the NFPS service. *Id.* Using this received control  
20 word, Silva’s receiver could then decrypt Dish Network’s encrypted satellite signal. *Id.* Once  
21 decrypted, Silva could then view Dish Network programming without having to purchase a  
22 subscription from Dish Network. *Id.*

23 Philip’s records also link Silva to certain posts made on an internet forum. *Mot.* at 7.  
24 These posts reveal that Silva used two receivers in connection with the NFPS service and that his  
25 NFPS service was “working fine” and that he was able to watch “one or 2 movies all the time.”  
26 *Id.* at 7-8. Additional posts suggest that Silva had previously been able to watch Ultimate Fighting  
27 Championship events using this NFPS service. *Id.*

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**B. Procedural History**

On October 31, 2014, Plaintiffs filed their complaint in the instant litigation alleging that Silva’s conduct violated the Digital Millennium Copyright Act, Federal Communications Act, and Electronic Communications Privacy Act. Compl. ¶¶ 29-41. Silva was personally served on November 25, 2014 at 4:44 pm. ECF No. 11. Silva’s answer was therefore due twenty-one days later, on December 16, 2014. Fed. R. Civ. P. 12(a)(1)(A)(i). Silva did not file an answer. On January 6, 2015, Plaintiffs filed a motion requesting that the clerk enter default. ECF No. 12. The clerk entered default on January 14, 2015. ECF No. 13. On January 27, 2015, Plaintiffs filed the instant Motion for Default Judgment on Plaintiffs’ third cause of action, alleging that Silva’s conduct violated the Electronic Communications Privacy Act, 18 U.S.C. §§ 2511(1)(a), 2520 (“ECPA”). ECF No. 14.

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**II. LEGAL STANDARD**

Pursuant to Rule 55(b)(2), the court may enter a default judgment when the clerk, under Rule 55(a), has previously entered the party’s default. Fed. R. Civ. P. 55(b). “The district court’s decision whether to enter a default judgment is a discretionary one.” *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980). Once the Clerk of Court enters default, all well-pleaded allegations regarding liability are taken as true, except with respect to damages. *See Fair Hous. of Marin v. Combs*, 285 F.3d 899, 906 (9th Cir.2002); *TeleVideo Sys. v. Heidenthal*, 826 F.2d 915, 917–18 (9th Cir. 1987); *Philip Morris USA v. Castworld Prods.*, 219 F.R.D. 494, 499 (C.D. Cal. 2003) (“[B]y defaulting, Defendant is deemed to have admitted the truth of Plaintiff’s averments.”). “In applying this discretionary standard, default judgments are more often granted than denied.” *Philip Morris*, 219 F.R.D. at 498 (quotation omitted).

“Factors which may be considered by courts in exercising discretion as to the entry of a default judgment include: (1) the possibility of prejudice to the plaintiff, (2) the merits of plaintiff’s substantive claim, (3) the sufficiency of the complaint, (4) the sum of money at stake in the action; (5) the possibility of a dispute concerning material facts; (6) whether the default was due to excusable neglect, and (7) the strong policy underlying the Federal Rules of Civil

1 Procedure favoring decisions on the merits.” *Eitel v. McCool*, 782 F.2d 1470, 1471–72 (9th Cir.  
2 1986).

3 “When entry of judgment is sought against a party who has failed to plead or otherwise  
4 defend, a district court has an affirmative duty to look into its jurisdiction over both the subject  
5 matter and the parties. A judgment entered without personal jurisdiction over the parties is void.”  
6 *In re Tuli*, 172 F.3d 707, 712 (9th Cir. 1999) (citations omitted).

### 7 **III. DISCUSSION**

#### 8 **A. Jurisdiction**

##### 9 **1. Subject Matter Jurisdiction**

10 This Court has subject matter jurisdiction over Plaintiffs’ claim under the Electronic  
11 Communications Privacy Act, 18 U.S.C. § 2511 *et seq.* because the statute provides a civil cause  
12 of action for any person whose “electronic communication is intercepted” and presents an issue of  
13 federal law. 18 U.S.C. § 2520 (“[A]ny person whose wire, oral, or electronic communication is  
14 intercepted, disclosed, or intentionally used in violation of this chapter may in a civil action  
15 recover from the person or entity . . . which engaged in that violation such relief as may be  
16 appropriate.”); 28 U.S.C. § 1331 (“The district courts shall have original jurisdiction of all civil  
17 actions arising under the . . . laws . . . of the United States.”).

##### 18 **2. Personal Jurisdiction**

19 There is no applicable federal statute governing personal jurisdiction in this case.  
20 Therefore, California state law applies. *Panavision Int’l v. Toepfen*, 141 F.3d 1316, 1320 (9th Cir.  
21 1998) (citing *Core–Vent Corp. v. Nobel Indus. AB*, 11 F.3d 1482, 1484 (9th Cir. 1993)).  
22 California courts “may exercise jurisdiction on any basis not inconsistent with the Constitution of  
23 this state or of the United States.” Cal. Civ. Proc. Code § 410.10. Accordingly, as long as the  
24 requirements of the Due Process Clause of the United States Constitution are satisfied, this Court’s  
25 exercise of personal jurisdiction over Silva is proper. *See Panavision*, 141 F.3d at 1320. “Due  
26 process requires that a defendant have minimum contacts with the forum ‘such that the  
27 maintenance of the suit does not offend traditional notions of fair play and substantial justice.’”

1 *Brainerd v. Governors of the Univ. of Alberta*, 873 F.2d 1257, 1259 (9th Cir. 1989) (quoting *Int'l*  
2 *Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)). “Personal jurisdiction may be founded on  
3 either general jurisdiction or specific jurisdiction.” *Panavision*, 141 F.3d at 1320.

4 The Supreme Court recently stated that “[f]or an individual, the paradigm forum for the  
5 exercise of general jurisdiction is the individual’s domicile.” *Goodyear Dunlop Tires Operations*  
6 *v. Brown*, 131 S.Ct. 2846, 2853 (2011). The Court concludes that the Complaint adequately  
7 alleges that Silva is domiciled in California. Specifically, Plaintiffs allege in the Complaint that  
8 Silva “resides in and regularly conducts business in the State of California” and that Silva “is an  
9 individual that resides at 1130 Kimberly Ct., Hollister, California 95023.” Compl. ¶¶ 2, 8.  
10 Moreover, Silva was personally served at this address on November 25, 2014, at 4:44 p.m. ECF  
11 No. 11. Accordingly, the Court concludes that general jurisdiction over Silva is proper.

12 **B. Plaintiffs’ Claim for Damages**

13 Upon review of Plaintiffs’ Complaint, Motion for Default Judgment, and supporting  
14 papers, the Court concludes that Plaintiffs have sufficiently alleged violations of the ECPA, and is  
15 entitled to monetary and injunctive relief for the reasons stated below. Accordingly, factors two  
16 through four of *Eitel*—the substantive merits of plaintiffs’ claim, the sufficiency of the complaint,  
17 and the amount of money at stake—favor entry of default judgment. *See Eitel*, 782 F.2d at 1471.

18 Plaintiffs adequately plead a claim for relief under the ECPA, specifically under 18 U.S.C.  
19 § 2511(1)(a). The ECPA makes it unlawful to “intentionally intercept” an “electronic  
20 communication,” such as an encrypted satellite broadcast of television programming. *See id.*; *see*  
21 *also* § 2510(12). According to the complaint, Silva purchased multiple subscriptions to the NFPS  
22 service. Compl. ¶ 26. Silva accessed the NFPS service by using an unauthorized receiver loaded  
23 with piracy-enabling software. *Id.* ¶ 27. Each time Silva tuned his receiver to an encrypted Dish  
24 Network channel, the control word for that specific channel was requested from the NFPS server.  
25 *Id.* In response, the NFPS server returned the control word to Silva’s receiver, which used the  
26 control word to decrypt Dish Network’s encrypted satellite signal, permitting Silva the ability to  
27 view Dish Network’s programming without authorization. *Id.* Silva’s interception was the

1 product of several deliberate acts directed at exploiting the NFPS service, and therefore was  
2 intentional and not inadvertent. *Id.* at ¶¶ 26-28, 39-41.

3 Plaintiffs seek statutory damages of \$10,000 pursuant to 18 U.S.C. § 2520(c)(2). Under  
4 this section, Plaintiffs may recover the greater of either (a) actual damages, (b) statutory damages  
5 of \$100 per day for each day of violation, or (c) statutory damages of \$10,000. *Id.* Because Silva  
6 has defaulted and not participated in this litigation, Plaintiffs are unable to establish either (a)  
7 actual damages or (b) the number of days that Silva was in violation of the ECPA. Accordingly,  
8 Plaintiffs seek to recover statutory damages of \$10,000 pursuant to 18 U.S.C. § 2520(c)(2)(B)  
9 (“the court may assess as damages . . . statutory damages of . . . \$10,000.”). “Because Congress  
10 has expressly authorized a court to award damages of \$10,000, the Court cannot conclude that this  
11 amount is per se unreasonable such that it would preclude or weigh against the entry of default  
12 judgment. This factor weighs in favor of default judgment.” *Dish Network LLC v. Gonzalez*, No.  
13 13-cv-107-LJO-SKO, 2013 WL 2991040, at \*4 (E.D. Cal. June 14, 2013). Accordingly, the Court  
14 awards Plaintiffs statutory damages of \$10,000.

15 **C. Plaintiffs’ Claim for Injunctive Relief**

16 Plaintiffs also seek permanent injunctive relief pursuant to 18 U.S.C. § 2520(b)(1). Under  
17 the ECPA, the Court may award “such preliminary and other equitable or declaratory relief as may  
18 be appropriate.” *Id.* The Supreme Court has held that a permanent injunction is warranted where  
19 the plaintiff shows: “(1) that it has suffered an irreparable injury; (2) that remedies available at  
20 law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering  
21 the balance of the hardships between the plaintiff and defendant, a remedy in equity is warranted;  
22 and (4) that the public interest would not be disserved by a permanent injunction.” *eBay Inc. v.*  
23 *MercExchange, LLC*, 547 U.S. 388, 391 (2006). For the reasons stated in Plaintiffs’ Motion, the  
24 Court agrees that Plaintiffs are entitled to permanent injunctive relief.

25 Plaintiffs seek to enjoin “Defendant, and anyone acting in active concert or participation  
26 with Defendant” from:  
27

1 A. circumventing or assisting others to circumvent DISH Network’s  
2 security system, or otherwise intercepting or assisting others to  
intercept DISH Network’s satellite signal;

3 B. testing, analyzing, reverse engineering, manipulating, or  
4 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.

5 ECF No. 14-7 at 3. The Court concludes that the terms of the permanent injunction, as proposed  
6 by Plaintiffs, are sufficiently precise and that the scope of the injunction is adequately tailored “to  
7 restrain acts which are of the same type or class as unlawful acts which the court has found to have  
8 been committed or whose commission in the future, unless enjoined, may be fairly anticipated  
9 from the defendant’s conduct in the past.” *Orantes-Hernandez v. Thornburgh*, 919 F.2d 549, 564  
10 (9th Cir. 1990). Accordingly, Plaintiffs’ request for permanent injunctive relief is granted.

11 **D. Remaining *Eitel* Factors**

12 The Court concludes that the remaining enumerated *Eitel* factors are consistent with entry  
13 of default judgment in this case. Regarding the possibility of a dispute concerning material facts  
14 (factor 5), the alleged facts are readily verifiable through records, and there is a low likelihood that  
15 Silva could successfully contest them. *See also TeleVideo*, 826 F.2d at 917-18 (“The general rule  
16 of law is that upon default the factual allegations of the complaint, except those relating to the  
17 amount of damages, will be taken as true.” (citation omitted)). As to whether default was due to  
18 excusable neglect (factor 6), Plaintiffs provided sufficient proof of service, *see* ECF No. 11, Silva  
19 never responded or filed any papers, and no circumstances indicate excusable neglect by Silva.  
20 Finally, regarding the possibility of prejudice to Plaintiffs and public policy concerns (factors 1  
21 and 7), adjudication on the merits is not possible because Silva has not participated in this case,  
22 and Plaintiffs may have no recourse if default is denied. Accordingly, no relevant factors preclude  
23 default judgment in this situation.

24 **IV. CONCLUSION**

25 For the foregoing reasons, Plaintiffs’ motion for default judgment is GRANTED. The  
26 Clerk shall enter judgment against Silva in accordance with this order, specifically:

- 27 • \$10,000 statutory damages for violations of 18 U.S.C. §§ 2155(1)(a) and 2520(a), and



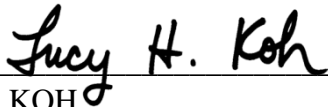
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- immediate permanent injunctive relief enjoining Mr. Juan Silva, and anyone acting in active concert or participation with, or at the direction or control of Mr. Silva, from (1) circumventing or assisting others to circumvent DISH Network’s security system, or otherwise intercepting or assisting others to intercept DISH Network’s satellite signal and (2) testing, analyzing, reverse engineering, manipulating, or 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.

The Court retains jurisdiction over this action for two years for the purpose of enforcing this final judgment and permanent injunction. The clerk shall close the case file.

**IT IS SO ORDERED.**

Dated: May 12, 2015

  
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LUCY H. KOH  
United States District Judge