

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF KENTUCKY  
PIKEVILLE DIVISION**

DISH NETWORK L.L.C., a Colorado	)	Case No. 09-CV-38-ART
Limited Liability Company,	)	
ECHOSTAR TECHNOLOGIES L.L.C.,	)	
a Texas Limited Liability Company, and	)	
NAGRASTAR L.L.C., a Colorado	)	
Limited Liability Company,	)	
	)	
Plaintiffs,	)	Electronically Filed
	)	
v.	)	
	)	
DAVID and DONNA SMITH,	)	
	)	
Defendants.	)	
	)	
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**[PROPOSED] FINAL JUDGMENT AND  
PERMANENT INJUNCTION**

The Court, having reviewed the pleadings and supportive documents and evidence filed herein, including the various witness affidavits and declarations and exhibits thereto, having heard argument of counsel, hereby orders and adjudges as follows:

The Court makes the following findings of fact:

Defendant David Smith is a member of the satellite piracy community, where he is known by the internet monikers and aliases “Technofreak”, “Blindscan” and Matchbox, among others. Defendant David Smith operated the internet websites [www.koreanf2a.tv](http://www.koreanf2a.tv) and [www.f2atv.com](http://www.f2atv.com) – both of which provided material assistance to circumvent Plaintiffs DISH Network and NagraStar’s security system and the resulting theft of the encrypted copyrighted programming broadcast on the DISH Network platform. Through these websites, as well as other forums including [www.rapidshare.com](http://www.rapidshare.com), Defendant David Smith posted, distributed

and/or otherwise trafficked in software files and technology-related information that was primarily designed, marketed for and used to circumvent Plaintiffs' security system and gain unauthorized access to the DISH Network programming. Defendant David Smith was paid and otherwise compensated by others for his operation of [www.koreanf2a.tv](http://www.koreanf2a.tv) and [www.f2atv.com](http://www.f2atv.com), as well as his release of DISH Network piracy-related software files and other marketing and/or promotion of satellite receivers and other devices used to circumvent Plaintiffs' security system and gain unauthorized access to DISH Network programming.

Based on the foregoing, the Court finds that Defendant's activities represent a breach of the Digital Millennium Copyright Act ("DMCA") 17 U.S.C. § 1201 *et seq*, in that his activities amount to the offer to the public, and/or trafficking in technology, products, services, devices, components or parts thereof that: (1) are primarily designed or produced for the purpose of circumventing a technological measure that effectively controls access to copyrighted material, or protects the right of a copyright owner; (2) has only limited commercially significant purpose or use other than to circumvent such technological protection measures; or (3) is marketed or promoted for use in circumventing such technological protection measures. 17 U.S.C. § 1201(a)(2) and (b)(1). The Court further finds that this conduct represents a breach of the Communications Act 47 U.S.C. § 605(a) and (e)(4) in that the files and technology made available on these websites was primarily of assistance in the unauthorized interception of the DISH Network satellite signal and did, in fact, assist end-users in the unauthorized interception of the DISH Network satellite signal. 47 U.S.C. 605(a), and (e)(4).

1. Defendants are hereby PERMANENTLY ENJOINED from knowingly:

- a. Offering to the public, providing, posting on the internet, modifying, or otherwise trafficking in any Pirate Software, satellite receivers, Plaintiffs' access cards, or any other satellite pirating device, product, service, component, information, technology, or part thereof, including any device or information for utilization with Control Word Sharing or IKS technology;
- b. Assembling, modifying, selling, advertising, marketing, possessing, transporting and/or distributing through any means any Pirate Software, satellite receivers, or Plaintiffs' access cards;
- c. Destroying, hiding or removing all records, in any form (including electronic form), that evidence, refer, or relate to Pirate Software; satellite receivers and related technology including access cards and dish antenna; communications or correspondence with the owners or operators of satellite related websites, suppliers or distributors of satellite receivers or Pirate Software, suppliers of other satellite television products, devices, equipment or software, purchasers or recipients of pirate software, devices, hardware, or other equipment, or services or know-how concerning satellite television piracy; the identity of any designers, developers, or distributors of Pirate Software; and the identity and quantity of all Pirate Software distributed by Defendant; and
- d. Receiving or assisting others in receiving (including but not limited to assistance offered by providing web posts, MSN chats, email, hypertext

links, or banner advertising) DISH Network's electronic communications without DISH Network's authorization.

- e. Directly or indirectly engaging in any communication with any individual or entity, other than Plaintiffs DISH Network, EchoStar and NagraStar, regarding Plaintiffs' security system or any part thereof, or otherwise disseminated any information or technology related to the decryption of Plaintiffs' encrypted satellite signal.
- f. Testing, analyzing, reverse engineering, manipulating or otherwise extracting codes or other technological information or data from Plaintiffs' satellite receivers, access cards, data stream or any other part or component of Plaintiffs' security system or other technology used to gain access to the DISH Network programming.

(2) This Judgment and Permanent Injunction takes effect immediately.

(3) Should Defendants breach any part of this order or permanent injunction, they shall be subject to damages in the amount of \$110,000 for each such breach or violation, which is the maximum statutory damage permitted per violation under 47 U.S.C. § 605(e)(3)(C)(i)-(ii).

(4) The items seized from Defendants by the United States Marshal pursuant to the Writ of Seizure and currently in the custody of Plaintiffs and their attorneys as substitute custodian are hereby released to the permanent custody and possession of Plaintiffs. All rights or and title Defendants possessed to such items are forfeited, with the exception of 2

laptop computers and certain home video files already returned to Defendant pursuant to agreement between the parties.

(5) This Permanent Injunction was stipulated and agreed to because Defendants have designed, developed, and/or distributed piracy software through the internet (including without limitation via [www.koreanf2a.tv](http://www.koreanf2a.tv), [www.f2atv.com](http://www.f2atv.com) and [www.rapidshare.com](http://www.rapidshare.com)) that enables countless individuals to steal DISH Network programming from which damages are unascertainable and incalculable making the resultant damages irreparable, and the danger is immediate in that Defendants could continue to engage in such conduct if not permanently enjoined by this Court.

(6) The Court retains jurisdiction to enforce this Final Judgment and Permanent Injunction.

(7) The Court further ORDERS judgment in favor of Plaintiffs on each of Plaintiffs' claims under 17 U.S.C. §1201 and 47 U.S.C. §605 in the amount of two million five hundred thousand dollars (\$ 2,500,000).

(8) This is a final judgment. Any and all relief not expressly granted herein is denied. Plaintiffs and Defendants are each to bear their own costs and fees of this suit.

IT IS SO ORDERED.

**DATED:** April \_\_\_\_\_, 2009.

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United States District Court Judge