UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

DISH NETWORK L.L.C., SLING TV L.L.C., and NAGRASTAR LLC,	§	Case No. 3:21-cv-00218
Plaintiffs,	§	
v.	§	
ALEJANDRO GALINDO, ANNA GALINDO, MARTHA GALINDO, and OSVALDO GALINDO, individually and collectively d/b/a NITRO TV,	§	
Defendants.	§	

PLAINTIFFS' MOTION FOR DEFAULT JUDGMENT

Pursuant to Federal Rule of Civil Procedure 55(b)(2), Plaintiffs DISH Network L.L.C. ("DISH"), Sling TV L.L.C. ("Sling"), and NagraStar LLC ("NagraStar," and collectively with DISH and Sling, "Plaintiffs") move for default judgement against Defendants Alejandro Galindo, Anna Galindo, Osvaldo Galindo, and Martha Galindo (collectively, "Defendants").

I. CASE SUMMARY

DISH and Sling are television service providers that deliver programming live and on demand by satellite and internet to millions of authorized, fee-paying subscribers in the United States using security technologies provided by NagraStar and other content protection providers. (Dkt. 1, Pls.' Compl. ¶¶ 1, 12-13.)

Defendants Alejandro, his wife Anna, his brother Osvaldo, and his mother Martha Galindo operate an illicit family-run streaming service known as Nitro TV, whereby Defendants acquire DISH and Sling's transmissions of television programming and then retransmit that programming without authorization to users of their Nitro TV service (the "Rebroadcasting Scheme"). (*Id*. ¶¶ 1, 5-8, 16.) Defendants marketed and sold the Nitro TV service to customers and resellers through the web domains nitroiptv.com and tekkhosting.com (together, "Nitroiptv.com"). (*Id*. ¶¶ 14, 22.) Alejandro registered the nitroiptv.com domain and he and his mother Martha registered the assumed business name Tekkhosting in Galveston County, Texas as co-owners. (*Id*. ¶ 14.) Nitroiptv.com served as the face of the Rebroadcasting Scheme and the means by which Defendants monetized their piracy.

Defendants retransmitted DISH Programming and Sling Programming on their Nitro TV service without Plaintiffs' authorization, thereby allowing Nitro TV users to receive such programming without paying the requisite subscription fee to DISH or Sling. (*Id*. ¶ 16.) The DISH Programming retransmitted on the Nitro TV service was obtained from DISH's satellite communications, while the Sling Programming retransmitted on the Nitro TV service was received from Sling's internet communications. (*Id*. ¶ 17.) Defendants circumvented the technological protection measures used to control access to Sling Programming in order to acquire that programming for their Nitro TV service. (*Id*. ¶ 19.)

Defendants profit from the Rebroadcasting Scheme through the sale of codes that are designed and produced to enable set-top boxes or other internet-enabled devices to

access servers used to retransmit DISH Programming and Sling Programming on the Nitro TV service (a "Device Code"). (*Id*. ¶ 20.) Defendants sold Device Codes on Nitroiptv.com starting at $20 per month of access to the Nitro TV service. (*Id*. ¶ 21.) Defendants also sold Device Codes in bundles or panels to authorized resellers of the Nitro TV service who in turn sold the Device Codes to their own customers. (*Id*. ¶ 22.) Osvaldo was responsible for operating the Nitro TV reseller network where he recruited resellers for the Nitro TV service and maintained the Device Code panels sold by Defendants. (*Id*.) Defendants received millions of dollars from the sale of Device Codes using merchant services accounts and bank accounts held in the name of Alejandro, Anna, Osvaldo, and Martha. (*Id*. ¶ 24.) Defendants' actions violate the Federal Communications Act ("FCA"), 47 U.S.C. § 605, and the Digital Millennium Copyright Act ("DMCA"), 17 U.S.C. § 1201.

Defendants failed to respond to Plaintiffs' complaint despite being properly served. (Dkts. 9, 12.) As a result, the Clerk entered default against Defendants. (Dkts. 14, 17.) Default judgment is now appropriate.

II. ARGUMENT

A. Plaintiffs Should be Awarded a Default Judgment Against Defendants

The Court may enter default judgment against Defendants because they were each properly served with Plaintiffs' summons and complaint, Defendants failed to plead or defend the case, the Clerk entered default against Defendants, and Defendants are not minors, incompetent, or exempt under the Servicemembers' Civil Relief Act. (Williams Decl. ¶¶ 2-10, Exs. 1-5.) *See* Fed. R. Civ. P. 55(b)(2) (setting forth procedural requirements

for default judgment).[1] Default judgment is proper if the well-pleaded factual allegations in the complaint, which are accepted as true because of Defendants' default, state a plausible claim for relief. *See Nishimatsu Constr. Co. v. Hous. Nat'l Bank*, 515 F.2d 1200, 1206 (5th Cir. 1975) ("A default judgment is unassailable on the merits but only so far as it is supported by well-pleaded allegations, assumed to be true."). Plaintiffs adequately plead Defendants' violations of the FCA and DMCA.

1. Plaintiffs DISH and NagraStar Properly Plead Defendants' FCA Violations

Defendants' violations of the FCA are plead in Counts I and II of Plaintiffs' complaint. Section 605(a) of the FCA provides that "[n]o person not being entitled thereto shall receive or assist in receiving any interstate or foreign communication by radio and use such communication (or any information contained therein) for his own benefit or for the benefit of another not entitled thereto." 47 U.S.C. § 605(a) (quoting third sentence). Satellite communications, such as those provided by DISH, are protected radio communications under section 605(a). *See DirecTV, Inc. v. Robson*, 420 F.3d 532, 537-38 (5th Cir. 2005); *J&J Sports Prods, Inc. v. Enola Invs., L.L.C.*, 795 F. App'x 313, 314 (5th Cir. 2020).

Defendants violated section 605(a) through their operation of the Rebroadcasting Scheme. Defendants received DISH's satellite communications of DISH Programming and

[1] The Court has personal jurisdiction under Fed. R. Civ. P. 4(k)(1)(A) because, among other reasons, Defendants were residents of Texas at all times relevant to the wrongful conduct identified in Plaintiffs' complaint (Compl. ¶¶ 5-7, 10; Dkts. 9, 13; Williams Decl. Exs. 1-4.)

then retransmitted that DISH Programming to customers of their Nitro TV service. (Compl. ¶¶ 1, 16-18.) *See Enola*, 795 F. App'x at 315 (affirming liability under section 605(a) where evidence showed that defendant received a satellite communication of plaintiff's programming and displayed that programming to its customers) (citing *J&J Sports Prods., Inc. v. Mandell Family Ventures, L.L.C.*, 751 F.3d 346, 353 (5th Cir. 2014)). Defendants also sold the Device Codes required to access that DISH Programming on the Nitro TV service. (*Id*. ¶¶ 20-22.) Defendants' actions assisted Nitro TV users to receive DISH Programming without authorization, which benefited Defendants in the form of Device Code revenues and also benefitted their customers by allowing them to avoid paying the required subscription fee to DISH. (*Id*. ¶¶ 16, 26-27.) Defendants therefore violated section 605(a), as plead in Count I. (*Id*. ¶¶ 26-27.)

Defendants' sale of Device Codes also violates section 605(e)(4), which makes it unlawful to distribute "any electronic, mechanical, or other device or equipment, knowing or having reason to know that the device or equipment is primarily of assistance in the unauthorized decryption of … direct-to-home satellite services, or is intended for any other activity prohibited by subsection (a)." The Device Codes sold by Defendants are designed and produced for the purpose of allowing access to servers that support the Nitro TV service and are therefore a "device" or "equipment" for the purpose of section 605(e)(4). (*Id*. ¶ 20.) *See DISH Network, LLC v. Henderson*, No. 5:19-cv-1310 (MAD/ATB), 2020 WL 2543045, at *6 (N.D.N.Y. May 19, 2020) (collecting cases applying section 605(e)(4) to piracy-enabling passcodes); *DISH Network L.L.C. v. Dillion*, No. 12cv157 BTM(NLS), 2012 WL 368214, at *4 (S.D. Cal. Feb. 3, 2012) (finding that section 605(e)(4) applies to

piracy-enabling software files); *DISH Network L.L.C. v. Ward*, No. 8:08-cv-590-T-30TBM, 2010 WL 11507693, at *6 (M.D. Fla. Jan. 8, 2010) (identifying the plain meaning of "device" and "equipment" as "things" with a particular purpose, and holding software is a device or equipment under section 605(e)(4)). Defendants violated section 605(e)(4) because their Device Codes are intended for use in activity prohibited under section 605(a) – receiving DISH Programming without authorization from DISH. (Compl. ¶ 31.)

Thus, Plaintiffs DISH and NagraStar have sufficiently plead claims for relief based upon Defendants' violations of sections 605(a) and 605(e)(4) of the FCA. *See Henderson*, No. 5:19-cv-1310 (MAD/ATB), 2020 WL 2543045, at *5-6 (entering default judgment and finding Plaintiffs' complaint sufficiently stated violations of sections 605(a) and (e)(4) based upon similar scheme to retransmit DISH Programming and profit from the sale of codes used to access a service carrying that DISH Programming); *DISH Network L.L.C. v. One Box TV, LLC*, No. 8:19-cv-2147-T-30SPF, Dkt. 17 (M.D. Fla.) (same); *DISH Network L.L.C. v. Droid Tech. LLC*, No. 8:19-cv-672-WFJ-AEP, Dkts. 7, 21 (M.D. Fla.) (granting TRO and preliminary injunction and finding Plaintiffs had a likelihood of success on their section 605(a) and (e)(4) claims based on similar facts); *DISH Network L.L.C. v. SET Broadcast LLC*, No. 8:18-cv-01334-VMC-AAS, Dkts. 15, 63 (M.D. Fla.) (same) (attached to Williams Declaration as Exs. 20-22).[2]

[2] DISH and NagraStar each have standing to pursue the FCA claims as a "person aggrieved" under 47 U.S.C. § 605(d)(6) and (e)(3)(A).

2. Plaintiff Sling Properly Plead Defendants' DMCA Violations

Defendants' actions also violate the DMCA as plead in Count III of Plaintiffs' complaint. Section 1201(a)(1)(A) of the DMCA prohibits a person from circumventing a technological measure that effectively controls access to a work protected under the Copyright Act. 17 U.S.C. § 1201(a)(1)(A). To circumvent a technological measure "means to descramble a scrambled work, decrypt an encrypted work, or otherwise to avoid, bypass, remove, deactivate, or impair a technological measure, without the authority of the copyright owner." 17 U.S.C. § 1201(a)(3)(A). "[A] technological measure 'effectively controls access to a work' if the measure, in the ordinary course of its operation, requires the application of information, or a process or a treatment, with the authority of the copyright owner, to gain access to the work." *Id*. at § 1201(a)(3)(B).

Sling uses digital rights management ("DRM") technologies to secure its internet transmissions of Sling Programming and the copyrighted works comprising such programming with the copyright owner's consent. (Compl. ¶¶ 13, 35.) Each DRM has a key-based encryption and decryption process that is used to make Sling Programming accessible to only authorized fee-paying subscribers and restricts unauthorized access to, copying, and retransmission of Sling Programming. (*Id*. ¶ 13.) Sling's encryption-based security technology constitutes an effective access control measure for purposes of the DMCA. *See Universal City Studios, Inc. v. Reimerdes*, 111 F.Supp.2d 294, 318 (S.D.N.Y. 2000) (holding that security measures based on "encryption or scrambling" are effective for purposes of the DMCA).

Defendants acquire Sling Programming for their Nitro TV service by circumventing Sling's DRM technologies 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 Sling Programming, or a man-in-the-middle attack whereby customized software is used to bypass the DRM by intercepting Sling Programming passing from the DRM's decryption library to the user's viewing platform.[3] (Compl. ¶¶ 19, 36.) By circumventing Sling's DRMs, Defendants violated section 1201(a)(1)(A) of the DMCA. (*Id*. ¶¶ 35-36.) *See DISH Network, L.L.C. v. SatFTA*, No. 5:08-cv-01561 JF (PSG), 2011 WL 856268, at *3-4 (N.D. Cal. Mar. 9, 2011) (granting summary judgment on section 1201(a)(1)(A) claim where defendant modified DISH's smartcards to bypass that security technology and access DISH programming); *DISH Network LLC v. Rama*, No. 14-cv-04847-WHO, 2015 WL 217135, at *1-2 (N.D. Cal. Jan. 14, 2015) (finding allegations that defendant circumvented DISH's key-based security system adequately pleaded a violation of section 1201(a)(1)(A)); *Disney Enterprises, Inc. v. VidAngel, Inc.*, 224 F. Supp. 3d 957, 968-69 (C.D. Cal. 2016) (granting preliminary injunction and finding a strong likelihood of success on section 1201(a)(1)(A) claim based on defendant circumventing scrambling technology that protected DVDs and Blu-ray discs for purposes of providing that content to users of their service).

Accordingly, Plaintiff Sling's well-pleaded allegations, which are taken as true, establish that Defendants violated the DMCA.

[3] Because Defendants failed to participate in this action, Plaintiffs are unable to identify which method was used by Defendants to circumvent Sling's DRMs.

B. Plaintiffs Should be Awarded Statutory Damages Against Defendants

The FCA authorizes Plaintiffs to recover statutory damages for Defendants' violations of section 605(a) in the amount of $1,000 to $110,000 for each violation, and from $10,000 to $100,000 for each violation of section 605(e)(4). 47 U.S.C. § 605(e)(3)(C)(i)(II), (ii). The DMCA also authorizes an award of statutory damages for each violation of section 1201(a)(1)(A) "in the sum of not less than $200 or more than $2,500." 17 U.S.C. § 1203(c)(3)(A). Such damages may be awarded at the default judgment stage without conducting a hearing provided that "the amount claimed is a liquidated sum or one capable of mathematical calculation" and is supported by "detailed affidavits establishing the necessary facts." *UA Corp. v. Freeman*, 605 F.2d 854, 857 (5th Cir. 1979); *see also James v. Frame*, 6 F.3d 307, 310 (5th Cir. 1993).

Plaintiffs DISH and NagraStar request statutory damages of $1,000 for each of Defendants' violations of section 605(e)(4) – significantly less than the $10,000 to $100,000 per violation range authorized by the statute. 47 U.S.C. § 605(e)(3)(C)(i)(II). Each Device Code distributed by Defendants constitutes a separate violation of section 605(e)(4). *See id*. § 605(e)(4) ("[T]he prohibited activity established herein as it applies to each such device shall be deemed a separate violation."); *see also DISH Network L.L.C. v. Sonicview USA, Inc.*, No. 09-cv-1553-L(9WVG), 2012 WL1965279, at *13 (S.D. Cal. May 31, 2012) ("Section 605(e)(4) is violated by each distribution of a piracy device.").

Due to Defendants' default and failure to participate in this case, Plaintiffs did not have the benefit of obtaining discovery directly from the Defendants to identify the total number of Device Codes sold. However, Plaintiffs were able to obtain information from

Defendants' merchant service providers and financial institutions for purposes of identifying an approximate number of Device Codes sold by Defendants and in turn calculate statutory damages. The account records provided to Plaintiffs show that Defendants sold at least 100,363 Device Codes. (*See* Williams Decl. ¶¶ 13-17, Exs. 9-16.) Therefore, statutory damages should be awarded in the amount of $100,363,000 (100,363 x $1,000), jointly and severally against Defendants.

The requested damages are reasonable and conservative for several reasons. *First*, the number of Device Codes attributed to Defendants is based solely upon records obtained from PayPal, Stripe, Zelle, Square, and Cash App, which are payment processing services that Defendants used to receive payments from their sale of Device Codes. (*Id*.) Defendants, however, used at least three additional services to receive Device Code payments, including Facebook Pay, Coinbase, and Paymentech, which were identified through documents provided by Nitro TV resellers and various deposits to Alejandro's Wells Fargo bank account and Martha's Chase bank account totaling more than $5,500,000. (*Id*. ¶19-21, Exs. 17-19.) The exact number of Device Code sales that were processed through these additional services is unknown and thus the transactions were excluded from the statutory damages calculation. (*Id*.)

Second, even with respect to the five of eight payment processing services that were considered in calculating damages, not all transactions in those account records are included. (*Id*. ¶¶ 12-18.) Rather, only transactions referencing the number of Device Codes purchased and transactions which correspond with the prices at which Device Codes were offered for sale on Nitroiptv.com were included. (*Id*.) Defendants received a number of

other payments that were not considered when calculating the number of Device Codes sold, but which more than likely represented the sale of additional Device Codes – given that these payments were processed using the same payment processing accounts and many referenced the Nitro TV service. (*Id*. ¶ 18.) In addition, there were numerous payments received from Nitro TV resellers that were excluded because the number of Device Codes purchased could not be accurately determined as the payment amounts did not match the pricing on Nitroiptv.com – which may be attributable to factors including price changes and special pricing for certain resellers. (*Id*.) If Defendants had participated in this action and been subject to discovery concerning the payments that Defendants received rather than default, more extensive violations of section 605(e)(4) may have been established.

Third, the $1,000 per violation requested by DISH and NagraStar is substantially less than the statutory maximum of $110,000 for each violation of section 605(a), and even below the $10,000 statutory *minimum* for violations of section 605(e)(4). *See* 47 U.S.C. § 605(e)(3)(C)(i)(II), (ii); *see also DISH Network L.L.C. v. Dillion*, No. 3:12-cv-00157-CAB-KSC, Dkt. 47 (S.D. Cal.) (awarding $100,000 for each violation of section 605(e)(4)); *DISH Network L.L.C. v. Whitcomb*, No. 3:11-cv-0333 W (RBB), Dkt. 17 (S.D. Cal.) (awarding $10,000 per violation of section 605(e)(4)) (attached to Williams Declaration as Exhibits 23-24.)

Enhanced statutory damages, while not requested, are appropriate in this case given the willfulness of Defendants' misconduct. (Compl. ¶¶ 15, 32.) Defendants circumvented Sling's DRM technologies to obtain Sling Programming and then retransmitted that programming, along with DISH Programming, to tens of thousands of users of Defendants'

Nitro TV service – ultimately profiting from the scheme through the sale of Device Codes to those users. (*See* Compl. ¶ 24 [quoting statements on Nitroiptv.com where Defendants claim to have gained more than 45,000 customers in just one year].) Defendants also sold Device Codes that were designed for the purpose of enabling a set-top box or other device to access the servers used to retransmit DISH and Sling Programming. (*Id*. ¶ 20.) And, Defendants' advertising for the Nitro TV service emphasized converting customers from cable or satellite television services such as those provided by DISH. (*Id*. ¶ 15.) Defendants did not retransmit DISH and Sling Programming by accident; rather, Defendants deliberately misappropriated and retransmitted that programming to serve their own financial interest.

Defendants also have a history of involvement with television piracy. More than a year before Plaintiffs filed this lawsuit, Alejandro was sued by several Hollywood studios for copyright infringement as a result of his operation of Nitro TV.[4] (*Id*. at 4 n.1.) Despite the filing of that lawsuit and a preliminarily injunction issued against Alejandro, Defendants chose to disregard the law and continue to operate and sell the Nitro TV service through their network of resellers. (*See* Compl. ¶ 23 n.2 [explaining that Defendants' transitioned their resellers to rebranded versions of the Nitro TV service in response to the California lawsuit]; Williams Decl. Exs. 9, 11, 14, 16-17 [showing Device Code sales after the California lawsuit was filed]). Defendants' actions were willful and carried out for the

[4] On March 23, 2021 the Hollywood studio plaintiffs added Anna, Osvaldo, and Martha as defendants. *See* Case No. 20-cv-03219, (Dkt. 112).

purpose of financial gain in the form of Device Code revenues, which would justify enhanced damages had such relief been requested.

Finally, Plaintiffs DISH and NagraStar are not requesting attorney's fees or costs, which must be awarded to an aggrieved party that prevails on its claim under section 605 of the FCA. *See* 47 U.S.C. § 605(e)(3)(B)(iii). In addition, Sling is not requesting any damages, attorney's fees, or costs for Defendants' violations of the DMCA. *See* 17 U.S.C. § 1203(b)(3)-(5). Accordingly, additional monetary relief is available to Plaintiffs but such relief is not being requested in the default judgement.

Awarding DISH and NagraStar damages of $100,363,000 is therefore reasonable in this case. *See Nagravision v. Zhuhai Gotech Tech. Co.*, No. 4:15-cv-00403, Dkt. 29 (S.D. Tex.) (granting default judgment and awarding damages of $101,851,800 for violations of the FCA and DMCA); *DISH Network L.L.C. v. Digital TV Cre, S.R.L.*, No. 4:17-cv-02711, Dkt. 22 (S.D. Tex.) (granting default judgment and awarding $249,757,500 for violations of the DMCA); *EchoStar Satellite LLC v. ViewTech, Inc.*, No. 07cv1273 BEN (WVG), Dkt. 181 (S.D. Cal.) (granting summary judgment and awarding $214,898,600 for violations of the DMCA); *EchoStar Satellite L.L.C. v. Global Techs., Inc.*, No. 2:07-cv-05897-JZ-PLA, Dkt. 279 (C.D. Cal.) (granting summary judgment and awarding $626,260,000 for DMCA violations) (attached to Williams Declaration at Exs. 25-28).

C. Plaintiffs Should be Awarded a Permanent Injunction Against Defendants

The federal statutes under which Plaintiffs filed suit, the FCA and DMCA, expressly allow for permanent injunctive relief. *See* 47 U.S.C. § 605(e)(3)(B)(i); 17 U.S.C. § 1203(b)(1). In order to receive a permanent injunction, Plaintiffs must demonstrate: "(1)

that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction." *eBay, Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006). Plaintiffs satisfy each requirement for a permanent injunction.

1. Plaintiffs are Irreparably Harmed and Have No Adequate Remedy at Law

The Fifth Circuit recognizes that loss of goodwill, loss of ability to control business reputation, and lost profits each constitute irreparable harm. *See Valley v. Rapides Parish Sch. Bd.*, 118 F.3d 1047, 1056 (5th Cir. 1997) (finding irreparable harm based upon potential damage to reputation); *Emerald City Mgmt., L.L.C. v. Kahn*, 624 F. App'x. 223, 224-25 (5th Cir. 2015) (finding irreparable harm where loss of control over reputation and goodwill could not be quantified); *Fla. Businessmen for Free Enter. v. Hollywood*, 648 F.2d 956, 958 n.2 (5th Cir. 1981) ("A substantial loss of business may amount to irreparable injury if the amount of lost profits is difficult or impossible to calculate ... ."). Plaintiffs are irreparably harmed by Defendants' violations of the FCA and DMCA and have no adequate legal remedy for at least two reasons.

First, Plaintiffs lose revenues and market share to an extent that cannot be fully determined. (*See* Eichhorn Decl. ¶ 4.) Defendants assist customers in receiving DISH Programming and Sling Programming without purchasing the requisite subscriptions from DISH and Sling. (*Id.*) Quantifying Plaintiffs' loss that results from Defendants' misconduct

is impractical as the number of Defendants' customers that received DISH Programming and Sling Programming without authorization, and would have otherwise properly subscribed through DISH and Sling, is not easily determined. (*Id*.) Absent an injunction, there is nothing to stop Defendants from continuing to circumvent Sling's DRM and attract customers through their unauthorized retransmission of DISH Programming and Sling Programming. Thus, the harm resulting from Defendants' Rebroadcasting Scheme is irreparable and cannot be completely corrected by an award of monetary damages. *See Dillion*, 2012 WL 368214, at *4 (finding irreparable harm in analogous case because "[i]t would be very difficult to quantify Plaintiffs' lost revenue"); *Coxcom, Inc. v. Chaffee*, 536 F.3d 101, 112 (1st Cir. 2008) (granting permanent injunction and finding irreparable harm in light of the relative inability to detect cable piracy and the magnitude of lost revenues).

Second, piracy harms Plaintiffs' business reputation and goodwill. (Eichhorn Decl. ¶ 5.) Plaintiffs' business reputations are built on and depend on delivering DISH and Sling Programming to authorized subscribers in a secure manner. (*Id*.) Defendants, by circumventing Sling's security technology and assisting their customers in receiving DISH and Sling Programming without authorization, harm Plaintiffs' reputations and interferes with the contractual and prospective business relationships of Plaintiffs, including relationships with channel providers that license their programming to DISH and Sling and customers for NagraStar's security technology. (*Id*.) Calculating Plaintiffs' reputational harm and lost sales caused by Defendants' piracy is inherently difficult, if not impossible. (*Id*.) Defendants are free to continue with their infringing conduct that damages Plaintiffs' reputations and goodwill if not permanently enjoined.

For this additional reason, Plaintiffs are irreparably harmed and the remedies available at law, such as monetary damages, are inadequate to completely compensate Plaintiffs for that injury. *See Dillion*, 2012 WL 368214, at *4 (finding irreparable harm in part because "piracy harms the reputation of Plaintiffs" and "[i]t would be very difficult to quantify Plaintiffs'…reputational damage and make Plaintiffs whole"); *Macrovision v. Sima Prods, Corp.*, No. 05 Civ 5587 (RO), 2006 WL 1063284, at *3 (S.D.N.Y. Apr. 20, 2006) ("If [plaintiff] is unable to prevent the circumvention of its technology, its business goodwill will likely be eroded, and the damages flowing therefrom extremely difficult to quantify.").

2. The Balance of Hardships and Public Interest Favor an Injunction

Plaintiffs will be irreparably harmed without an injunction for the reasons stated above. In contrast, an injunction will only cause Defendants to cease from profiting from their unlawful conduct, which should not be given any weight in this balancing of hardships. *See Lakedreams v. Taylor*, 932 F.2d 1103, 1110 n.12 (5th Cir. 1991) ("Where the only hardship that the defendant will suffer is lost profits from an activity which has been shown likely to be infringing, such an argument in defense merits little equitable consideration.") (quoting *Concrete Mach. Co. v. Classic Lawn Ornaments, Inc.*, 843 F.2d 600, 612 (1st Cir. 1988)); *Cadence Design Sys., Inc. v. Avant! Corp.*, 125 F.3d 824, 829 (9th Cir. 1997) (finding that profits lost from the enjoined sale of infringing goods is not a recognizable harm). Accordingly, the balance of hardships tips decidedly in favor of granting a permanent injunction.

Likewise, it is beyond debate that the public interest is served by enjoining activities that violate federal law. *See Dillion*, 2012 WL 368214, at *5 ("[T]he public has a strong interest in the enforcement of anti-piracy legislation."); *Coxcom*, 536 F.3d at 112 ([T]he fourth factor, the public interest, further supports the issuance of the injunction: the public has an interest in the enforcement of federal statutes."). The requirements for a permanent injunction are therefore satisfied.

III. CONCLUSION

For the foregoing reasons, the Court should grant Plaintiffs' motion for default judgement and order as follows:

1. Defendants are liable on Counts I-III of Plaintiffs' complaint alleging violations of 47 U.S.C. §§ 605(a); 605(e)(4), and 17 U.S.C. § 1201(a)(1)(A);

2. Plaintiffs DISH and NagraStar are awarded $100,363,000 in statutory damages against Defendants, jointly and severally, for Defendants' violations of section 605(e)(4);

3. Defendants' violations of 47 U.S.C. §§ 605(a); 605(e)(4), and 17 U.S.C. § 1201(a)(1)(A) warrant a permanent injunction barring 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:

a. Receiving or assisting others in receiving DISH's satellite communications or the content of such communications without authorization from DISH, including through the Nitro TV service or any similar internet streaming service;

b. Selling or distributing any device or equipment that is intended for receiving or assisting others in receiving DISH's satellite communications of television programming or the content of such communications, including codes or credits used to access the Nitro TV service or any similar internet streaming service;

c. Circumventing a DRM or any other technological protection measure that controls access to Sling's programming, including through the use of Sling subscription accounts to provide Sling programming for the Nitro TV service or any similar internet streaming service.

Dated: February 25, 2022.

Respectfully submitted,

HAGAN NOLL & BOYLE LLC

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CERTIFICATE OF SERVICE

I certify that on February 25, 2022, Plaintiffs' Motion for Default Judgment, Declaration of Maleeah Williams, and Declaration of Bert Eichhorn were served by certified mail, return receipt requested, on Defendants pursuant to Local Rule 5.5, at the following addresses which are Defendants' last known residences:

Alejandro Galindo and Anna Galindo
311 Scenic View
Friendswood, Texas 77546

Osvaldo Galindo
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