

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

DISH NETWORK L.L.C., et al.,  
  
Plaintiffs,  
  
vs.  
  
CHRISTOPHER WHITCOMB,  
individually and d/b/a  
www.ProSonicview.com,  
  
Defendant.

CASE NO. 11-CV-333 W (RBB)

**ORDER (1) GRANTING  
MOTION FOR CONTEMPT  
[DOC. 16] AND (2) MODIFYING  
PERMANENT INJUNCTION**

On April 25, 2011, this Court issued an Order Granting Motion for Preliminary Injunction (“PI Order” [Doc. 15]) against Defendant Christopher Whitcomb. On July 15, 2011, Plaintiffs DISH Network L.L.C., EchoStar Technologies L.L.C., and NagraStar LLC (collectively, “DISH Network”) filed the pending motion for civil contempt and modification of the injunction based on Defendant Whitcomb’s alleged failure to comply with the PI Order. Defendant Whitcomb did not file an opposition to DISH Network’s contempt motion.

Meanwhile, on July 18, 2011, this Court issued an Order Granting Motion for Default Judgement against Whitcomb (“Final Judgment Order” [Doc. 17]). The Final Judgment Order awarded DISH Network \$14,440,000 in statutory damages, converted

1 the preliminary injunction into a permanent injunction, and ordered Whitcomb to  
2 destroy certain devices and equipment designed to steal DISH Network’s programming.

3 On September 19, 2011, Whitcomb filed a letter alleging compliance with “all  
4 court orders concerning this case . . . .” (*Def.’s Letter* [Doc. 21].) On September 22,  
5 2011, DISH Network filed a notice that Whitcomb was also in contempt of the Final  
6 Judgment Order. (*Pls.’ Non-Compliance Notice* [Doc. 19].)

7 The Court decides the matters on the papers submitted and without oral  
8 argument. See Civ. L.R. 7.1(d.1). Having read and considered the papers submitted  
9 by the parties, the Court **GRANTS** DISH Network’s contempt motion [Doc. 13], and  
10 **ORDERS** modification of the permanent injunction as set forth below.

11  
12 **I. FACTUAL BACKGROUND**

13 The following factual background is taken from this Court’s July 18, 2011 Final  
14 Judgment Order.

15 DISH Network provides copyrighted satellite television programming to millions  
16 of paying customers throughout the United States. In order to prevent the unauthorized  
17 reception of its programming, DISH Network encrypts its satellite signals so that  
18 viewing requires the use of a DISH Network receiver and smart card. The receiver  
19 processes the signal by locating an encrypted part of the transmission—known as the  
20 entitlement control message—and forwarding that message to the smart card. The  
21 smart card then uses its decryption keys to unlock the message and uncover a control  
22 word that is transmitted back to the receiver to decrypt the satellite signal, thereby  
23 allowing the customer to view the program.

24 Various devices have been manufactured to allow individuals to steal or “pirate”  
25 DISH Network’s programming. Among these devices are Sonicview receivers and iHub  
26 adapters. The receivers are programmed with pirate software and connected to the  
27 Internet via an iHub adapter or a built-in Ethernet port. The Internet connection  
28

1 allows the Sonicview receiver to obtain the DISH Network control words from a server,  
2 thereby unlocking the DISH Network programming.

3 In 2009, DISH Network filed a lawsuit against Sonicview (the “Sonicview  
4 Lawsuit”) alleging violations of the Digital Millennium Copyright Act (“DMCA”) and  
5 related statutes based on Sonicview’s distribution of piracy devices such as the Sonicview  
6 receiver and iHub adapter. On August 14, 2009, DISH Network filed a motion for a  
7 preliminary injunction seeking, among other things, to enjoin the manufacture and sale  
8 of Sonicview’s piracy devices. On March 29, 2010, the court entered an order (the  
9 “Sonicview Order”) enjoining Sonicview and others from “designing, manufacturing,  
10 developing, trafficking, selling, and marketing . . . Sonicview iHubs, and Piracy Software  
11 at any physical address or on the Internet . . . .”

12 Defendant Whitcomb is a former Sonicview employee. At the time the  
13 Sonicview Order was entered, Whitcomb was engaged in selling the Sonicview iHub on  
14 eBay. In an effort to evade the order, DISH Network alleges that Whitcomb eventually  
15 began selling a “re-packaged” iHub under the names “Sonicview SV Lan” and “New  
16 Link.”

## 17 18 **II. PROCEDURAL HISTORY**

19 On February 17, 2011, DISH Network filed this lawsuit and a motion for a  
20 preliminary injunction to enjoin Defendant Whitcomb from selling the Sonicview SV  
21 Lan and New Link. Whitcomb did not respond to the complaint, and did not respond  
22 to the preliminary-injunction motion. On April 25, 2011, after oral argument, this  
23 Court issued the PI Order providing, in pertinent part:

- 24  
25 1. Defendant Christopher Whitcomb, and all directors, officers,  
26 agents, servants, employees, attorneys and all persons and entities  
27 in active concert or participation therewith, including, but not  
28 limited to, manufacturers, distributors, retailers and cooperative  
members are enjoined and must restrain from directly or indirectly:

1 (a) manufacturing, developing, importing, offering to the public  
2 (including, but not limited to, through internet websites or  
3 auctions), promoting, distributing, providing or otherwise  
4 trafficking in Sonicview iHubs, SV Lan adapters, New Link  
5 adapters, or any other device designed to connect to internet  
6 key sharing servers for the purpose of receiving DISH  
7 Network programming without authorization;

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

12 \* \* \*

13 2. No later than three (3) court days from the filing of this Order,  
14 Defendant must provide DISH Network a written accounting of all  
15 assets and property belonging to Defendant, which in the case of  
16 any bank account shall include the account name, number, current  
17 balance, and location of the bank or other custodian holding such  
18 account.

17 (PI Order 7:5–8:28.)

18 After entering the PI Order, on July 18, 2011, this Court issued the Final  
19 Judgment Order against Whitcomb in the amount of \$14,440,000. (*Default Judgment*  
20 *Order 7:21.*) The order also converted the preliminary injunction into a permanent  
21 injunction and required that within 60 days, Whitcomb either (1) file a written  
22 declaration, under penalty of perjury, attesting to the complete destruction of devices  
23 and equipment identified in the order, or (2) contact DISH Network’s counsel to  
24 arrange for DISH Network and/or its counsel to be present to witness the destruction  
25 of the devices and equipment. (*Id.* at 7:22–9:5.)

26 Meanwhile, on July 15, 2011, DISH Network filed the pending motion for civil  
27 contempt and modification of the injunction. DISH Network contends that Whitcomb  
28 is violating the PI Order by, among other things, continuing to distribute devices

1 designed for IKS piracy of DISH Network's satellite television programming. (*Notice of*  
2 *Mt. 1:16–20* [Doc. 16].)

3 On September 19, 2011, Whitcomb filed a letter stating that he has “followed all  
4 court orders concerning this case, including the destruction of all ihubs, newlinks, sv  
5 lans or any other so called piracy devices.” (*Def's Letter 1.*) On September 22, 2011,  
6 DISH Network filed a notice that Whitcomb was also in contempt of the Final  
7 Judgment Order. (*Pls.' Non-Compliance Notice.*)

### 8 9 **III. LEGAL STANDARD**

10 “[C]ourts have inherent power to enforce compliance with their lawful orders  
11 through civil contempt [sanctions].” *Shillitani v. United States*, 384 U.S. 364, 370  
12 (1966); see also *United States v. Yacoubian*, 24 F.3d 1, 5 (9th Cir. 1994). Civil  
13 contempt sanctions are employed for two purposes: (1) to coerce a party into  
14 compliance with a court's order; and (2) to compensate the complainant for any losses  
15 sustained as a result of the violation. See *Whittaker Corp. v. Execuair Corp.*, 953 F.2d  
16 510, 517 (9th Cir. 1992).

17 The party alleging contempt must demonstrate that the contemnor violated the  
18 court's order by clear and convincing evidence. *Vertex Distrib., Inc. v. Falcon Foam*  
19 *Plastics, Inc.*, 689 F.2d 885, 889 (9th Cir. 1982). The contempt need not be willful and  
20 there is no good faith exception to the requirement that parties obey court orders. *In*  
21 *re Crystal Palace Gambling Hall, Inc.*, 817 F. 2d 1361, 1365 (9th Cir. 1987). In the  
22 Ninth Circuit, four elements must be present to warrant civil contempt sanctions:  
23 (1) the contemnor violated a court order; (2) the contemnor's actions did not amount  
24 to substantial compliance; (3) the contemnor's actions were not based on a reasonable,  
25 good faith interpretation of the order; and (4) the latter three elements must be proved  
26 by clear and convincing evidence. *In re Dual-Deck Video Cassette Recorder Antitrust*  
27 *Litigation*, 10 F.3d 693, 695 (9th Cir. 1993).

28

1 **IV. DISCUSSION**

2 **A. Defendant Whitcomb's distribution of the WizHub violates the PI**  
3 **Order.**

4 DISH Network contends that Defendant Whitcomb is violating the PI Order by  
5 distributing a device known as the "WizHub." Defendant Whitcomb has not responded  
6 to this contention.

7 The PI Order was entered on April 25, 2011. (*See PI Order.*) On June 6, 2011,  
8 DISH Network's hardware expert, Nigel Jones, purchased a device known as the  
9 WizHub from the website [www.flamindeals.com](http://www.flamindeals.com). (*Jones Dec.* ¶ 5, Ex. 1 [Doc. 16-3].)  
10 Defendant Whitcomb is the registrant and administrative contact for  
11 [www.flamindeals.com](http://www.flamindeals.com). (*Hagan Dec.* ¶ 3, Ex. 2.) Additionally, the return address on the  
12 package containing the WizHub matches the address listed for Whitcomb on the  
13 Summons's proof of service (*Jones Dec.* ¶ 6; *Summons 2* [Doc. 9]), and is the same  
14 address from which other enjoined devices were shipped (*Jaczeqski Dec.* ¶ 7 [Doc. 5-  
15 16]). This uncontroverted evidence confirms that Defendant Whitcomb distributed the  
16 WizHub. Thus, the only remaining issue is whether Whitcomb's distribution of the  
17 WizHub violates the PI Order as a "device designed to connect to internet key sharing  
18 servers for the purpose of receiving DISH Network programming without  
19 authorization."

20 After purchasing the WizHub, Jones analyzed the device and determined that it  
21 is virtually identical in both form and function to the enjoined iHub, New Link, and SV-  
22 Lan devices. Jones's detailed analysis is set forth in his declaration, and need not be  
23 repeated here. (*See Jones Dec.* ¶ 8–21.) Based on that analysis, it is clear that the  
24 "WizHub is designed explicitly to circumvent DISH Network's security system and  
25 intercept DISH Network programming via the IKS form of piracy" and the "WizHu b  
26 has no legitimate commercial application." (*Id.* at ¶ 22.) The Court, therefore, finds  
27 Whitcomb is in contempt for violating the PI Order's injunction on marketing and  
28 distribution of IKS piracy devices used to steal DISH Network's programming.

1           **B. Defendant Whitcomb’s continued distribution of access codes designed**  
2           **to enable piracy dongles violates the PI Order.**

3           DISH Network also contends that Whitcomb is violating the PI Order by  
4 continuing to distribute access codes designed to enable piracy dongles to steal DISH  
5 Network programming. Whitcomb has not responded to this contention.

6           According to Jones’s declaration, the WizHub came with a 16 character code that  
7 is printed on a label affixed to the WizHub packaging. (*Jones Decl.* ¶ 18.) The code is  
8 used to configure the WizHub. (*Id.*) Once configured, the WizHub interacts with the  
9 Sonicview IKS server to allow the unauthorized viewing of DISH Network  
10 programming. (*Id.* at ¶ 19.) The code, therefore, acts as an access code “for Sonicview  
11 receiver piracy software and the corresponding Sonicveiw IKS server.” (*Id.*)  
12 Additionally, the code can be used to revive some of the devices enjoined by the PI  
13 Order. (*Id.* at ¶ 20.) Based on this uncontroverted evidence, the Court finds that  
14 Whitcomb is in contempt for violating the PI Order’s prohibition on the continued  
15 marketing and distribution of authorization codes for IKS piracy dongles..

16  
17           **C. Defendant Whitcomb failed to provide an accounting in violation of**  
18           **the PI Order.**

19           DISH Network next contends that Whitcomb has failed to comply with the PI  
20 Order by not providing an accounting. Whitcomb has not responded to this  
21 contention.

22           The PI Order specifically ordered that “[n]o later than three (3) court days from  
23 the filing of this Order, Defendant [Whitcomb] must provide DISH Network a written  
24 accounting of all assets and property belonging to Defendant . . . .” (*PI Order* 8:24–28.)  
25 According to the declaration of DISH Network’s counsel, Chad Hagan, Whitcomb “has  
26 not provided any accounting of assets to Plaintiffs or Plaintiffs’ counsel . . . .” (*Hagan*  
27 *Decl. in Support of Contempt* ¶ 7.) Defendant Whitcomb does not refute this contention.

28

1 Accordingly, the Court finds Whitcomb in contempt for failing to provide DISH  
2 Network an accounting as required by the PI Order.

3  
4 **D. Defendant Whitcomb has failed to comply with this Court's Final**  
5 **Judgment Order.**

6 Defendant Whitcomb contends that he has complied with this Court's Final  
7 Judgment Order. As proof, Whitcomb's September 19, 2011 letter enclosed a picture  
8 of the purportedly destroyed devices and equipment. (*See Letter 2.*) DISH Network  
9 disputes that Defendant Whitcomb complied with the Final Judgment Order. The  
10 Court agrees with DISH Network.

11 The Final Judgment Order required Whitcomb to either file a declaration "under  
12 penalty of perjury" stating that he had destroyed the enjoined piracy devices and  
13 equipment or to contact DISH Network's counsel so that they could observe the  
14 destruction of the devices and equipment. (*Final Judgment Order* 8:24–9:5.) A review  
15 of the docket in this case confirms that Whitcomb has not filed a declaration under  
16 penalty of perjury attesting to the destruction of the enjoined devices and equipment.  
17 (*See Docket in 11cv 333.*) Whitcomb's September 19, 2011 letter is insufficient because  
18 it is not signed under penalty of perjury.

19 Additionally, DISH Network's counsel has filed a declaration under penalty of  
20 perjury stating that Whitcomb "failed to contact DISH Network's counsel to arrange  
21 for DISH Network and/or its counsel to be present to witness the destruction of piracy  
22 devices." (*Hagan's 9/22/11 Dec.* ¶ 7 [Doc 19-1].) Thus, Whitcomb has failed to comply  
23 with the Final Judgment Order.

24  
25 **V. CONCLUSION & ORDER**

26 DISH Network has provided clear and convincing evidence that Whitcomb has  
27 violated this Court's PI Order. Additionally, Whitcomb's most recent failure to comply  
28 with the Final Judgment Order demonstrates his continued contempt for this Court's



1 orders. Accordingly, the Court **GRANTS** DISH Network's motion for contempt [Doc.  
2 16] and **ORDERS** the Permanent Injunction modified as follows:

3 1. Defendant and any of his officers, agents, servants, employees, and those  
4 acting in active concert or participation with him who receive actual  
5 notice of this Order are enjoined and must restrain from directly or  
6 indirectly:

7 (a) manufacturing, developing, importing, offering to the public  
8 (including, but not limited to, through internet websites or  
9 auctions), promoting, distributing, providing or otherwise trafficking  
10 in Sonicview iHubs, SV Lan adapters, New Link adapters, WizHubs,  
11 or any other device designed to connect to internet key sharing  
12 servers for the purpose of receiving DISH Network programming  
13 without authorization;

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

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

25 (d) transferring, removing, encumbering, or permitting withdrawal of  
26 any assets or property belonging to Defendant and related to  
27 Defendant's trafficking in Sonicview iHubs, SV Lan adapters, New  
28 Link adapters, WizHubs, and serial numbers, authorization codes,

1 or upgrades for Sonicview iHubs, SV Lan adapters, New Link  
2 adapters, and WizHubs, whether real or personal, tangible or  
3 intangible, including cash, bank accounts of any kind, stock  
4 accounts, bonds, and title to Defendants' business property;

5 (e) destroying, hiding, or altering any books or records, whether in hard  
6 copy or electronic form, concerning the satellite receiver business or  
7 finances of Defendant, including invoices, purchase orders, receipts,  
8 shipping records, banking or investment records, or any documents  
9 that identify manufacturers, exporters, importers, dealers, or  
10 purchasers of Sonicview receivers, 8PSK Turbo Boards or modules,  
11 Sonicview iHubs, SV Lan adapters, New Link adapters, WizHubs,  
12 software for these devices, and serial numbers, authorization codes,  
13 or upgrades for Sonicview iHubs, SV Lan adapters, New Link  
14 adapters, and WizHubs, or persons involved in operating any IKS  
15 server or receiving control words from same; and

16 (f) operating and/or providing public access to the websites  
17 [www.prosonicview.com](http://www.prosonicview.com) and [www.flamindeals.com](http://www.flamindeals.com). Defendant and  
18 all others who receive notice of this Order, including but not limited  
19 to domain hosts and/or website hosts, are ordered to immediately  
20 cease making the [www.prosonicview.com](http://www.prosonicview.com) and [www.flamindeals.com](http://www.flamindeals.com)  
21 websites and their contents available on the internet by taking the  
22 websites and their contents offline, and to immediately freeze,  
23 preserve, and not destroy, alter or modify the  
24 [www.prosonicview.com](http://www.prosonicview.com) and [www.flamindeals.com](http://www.flamindeals.com) websites and  
25 their contents, including all records and documents relating to these  
26 websites;

27 2. No bond shall be required.

28 The Court also finds that based on Defendant Whitcomb's continued failure to  
comply with this Court's orders, coercive sanctions are necessary. Additionally, DISH

1 Network is entitled to compensation for having to file the contempt motion.  
2 Accordingly,

3 **IT IS FURTHER ORDERED** that no later than 5:00 p.m. on October 14,  
4 2011, Defendant must file with the Court an affidavit setting forth in detail the manner  
5 and form in which Defendant has complied with the terms of the modified Permanent  
6 Injunction set forth herein. Said affidavit must specifically address the steps Whitcomb  
7 has taken to comply with the sections of this Court's orders violated, as set forth above  
8 in section IV.

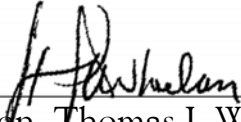
9 **IT IS FURTHER ORDERED** that failure to comply with the modified  
10 injunction order set forth herein and to file said affidavit by the appointed time will  
11 result in sanctions against Defendant at the rate of \$1,000.00 per day, payable to the  
12 Court.

13 **IT IS FURTHER ORDERED** that failure to comply with the modified  
14 injunction order set forth herein and to file said affidavit by 5:00 p.m. on October 21,  
15 2011, in addition to monetary sanctions, will result in Defendant's imprisonment until  
16 such time as Defendant comes into full compliance with this Order.

17 **IT IS FURTHER ORDERED** that DISH Network is entitled to recover its  
18 reasonable attorney's fees and costs incurred in bringing its contempt motion. Within  
19 twenty-one (21) days of this Order, DISH Network shall file an attorney declaration  
20 setting forth the reasonable attorney's fees and costs incurred for the Court's  
21 consideration.

22 **IT IS SO ORDERED.**

23  
24 DATED: October 4, 2011

25  
26   
27 \_\_\_\_\_  
28 Hon. Thomas J. Whelan  
United States District Judge