

FILED

2010 MAR 29 PM 12:42

CLERK US DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY  DEPUTY

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

DISH NETWORK, L.L.C. *et al.*

Plaintiffs,

v.

SONICVIEW USA, INC. *et al.*,

Defendants.

Civil No. 09cv1553-L(WVG)

**ORDER GRANTING PLAINTIFFS'  
MOTION FOR PRELIMINARY  
INJUNCTION**

In this action for violation of the Digital Millennium Copyright Act and related statutes, Plaintiffs, who operate a satellite television system, filed a motion for a preliminary injunction to prevent Defendants from allegedly distributing pirate software and hardware which enables individuals to view Plaintiffs' satellite programming without subscription. Defendants opposed the motion. For the reasons which follow, Plaintiffs' motion is **GRANTED**.

The DISH Network satellite television system provides satellite television programming to over 13 million subscribers in the Unites States. Plaintiff DISH Network L.L.C. ("DISH Network") provides programming services through the distribution of encrypted satellite television signals. Plaintiff EchoStar Technologies L.L.C. ("EchoStar") distributes receiver systems and other digital equipment for use with the DISH Network programming. Plaintiff NagraStar L.L.C. ("Nagrastar," collectively "Plaintiffs") provides access cards ("DISH Network Access Card") with encryption capabilities to access the encrypted programming. This system is

/////

1 created so that only paying subscribers have authorized access to view DISH Network's  
2 programming in a decrypted manner.

3 Specifically, DISH Network purchases the distribution rights for copyright-protected  
4 programming from content providers. The programming is transmitted through encrypted  
5 signals to multiple satellites, which transmit the encrypted signals to subscribers' dish antennae,  
6 which are designed to receive the encrypted programming. After the signals reach subscribers'  
7 antennae, the encrypted signals are transmitted by wire into an EchoStar receiver, which  
8 processes and decrypts the incoming signals using data and encryption technology stored in a  
9 DISH Network Access Card loaded into the receiver. The access card communicates with the  
10 receiver to assure that only the signals the subscriber is authorized to receive will be decrypted.  
11 DISH Network employs various security systems to protect its encrypted satellite signals.

12 Defendants Sonicview USA, Inc., Sonicviewra L.L.C., Sonicviewsa L.L.C.,  
13 DontPay4TV, L.L.C., Roberto Sanz, Duane Bernard and Courtney Bernard are allegedly heavily  
14 involved in the manufacture of receivers, software and other devices used to intercept and steal  
15 DISH Network's encrypted signal. Defendants allegedly distribute their pirate technology  
16 through a warehouse, a storefront and numerous websites. In addition, they allegedly offer  
17 pirating software from other websites. Plaintiffs move the court to bar Defendants from  
18 designing, manufacturing, trafficking, selling and marketing (1) 8PSK Turbo Boards, which are  
19 devices required to view satellite signals transmitted using 8PSK modulation and Turbo  
20 "forward error correction;" (2) Sonicview iHubs, which enable Sonicview receivers to connect  
21 to the Internet and receive pirated "control words" or decryption keys to watch encrypted  
22 satellite television programming; and (3) Pirate Software, which are software files used in  
23 conjunction with Sonicview receivers to steal DISH Network programming.

24 Defendants deny that they are involved in interception or stealing of DISH Network  
25 encrypted programming, but claim to be involved in the legitimate business of distributing the  
26 hardware and software necessary for viewing unencrypted free-to-air television programming.  
27 They claim that to the extent their products are used for unlawful purposes, this is done by third  
28 parties and they should not be held responsible for that. Nevertheless, they expressly elected not

1 to oppose a preliminary injunction as to the Pirate Software or 8PSK Turbo Boards. (Opp'n at 4,  
2 5.) They only oppose the motion to the extent Plaintiffs seek a preliminary injunction as to the  
3 Sonicview iHub.

4 "A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on  
5 the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the  
6 balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v.*  
7 *Natural Res. Def. Council, Inc.*, \_\_\_ U.S. \_\_\_; 129 S. Ct. 365, 374 (2008). The burden of proving  
8 the foregoing elements is on Plaintiffs as the moving parties. *Marlyn Neutraceuticals, Inc. v.*  
9 *Mucos Pharma GmbH & Co.*, 571 F.3d 873, 877 n.2 (9th Cir. 2009).

10 Plaintiffs claim that Defendants violated 17 U.S.C. Section 1201(a)(2)<sup>1</sup> and 47 U.S.C.  
11 Section 605(a).<sup>2</sup> Section 1201(a)(2) prohibits, among other things, developing and/or  
12 distributing any technology, product or device that,

13 (A) is primarily designed or produced for the purpose of circumventing a  
14 technological measure that effectively controls access to a work protected under  
15 this title; [or]

16 (B) has only limited commercially significant purpose or use other than to  
17 circumvent a technological measure that effectively controls access to a work  
18 protected under this title;

17 17 U.S.C. § 1201(a)(2). Title 47 U.S.C. Section 605(a) provides, in pertinent part, "No person  
18 not being entitled thereto shall receive or assist in receiving any interstate or foreign  
19 communication by radio and use such communication (or any information therein contained) for  
20 his own benefit or for the benefit of another not entitled thereto."

21 Plaintiffs maintain that the purpose of the iHub is to facilitate stealing DISH Network  
22 programming by enabling individuals to view it without subscribing. This device enables  
23 Sonicview receivers to connect to the Internet and receive pirated "control words" or decryption  
24 keys to watch encrypted satellite television programming. (Decl. of Clayton D. Craighead in  
25 Supp. of Mot. for Prelim. Inj., Ex. 6 (Preliminary Analysis of Sonicview FTA Receivers &

---

26  
27 <sup>1</sup> This provision is a part of the Digital Millennium Copyright Act (the "DMCA"),  
17 U.S.C. §§ 1201, *et seq.*

28 <sup>2</sup> This provision is a part of the Communications Act of 1934, 47 U.S.C. §§ 605, *et seq.*

1 Related Components by Nigel Jones (“Jones Report”)) at 8, 80; Decl. of Gregory Duval in Supp.  
2 of Pl.’s Ex Parte Application for Temporary Restraining Order, Writ of Civil  
3 Seizure/Impoundment, Order to Show Cause and Mot. to Seal (“Duval Decl.”) at 8-9.)<sup>3</sup>

4 However, Defendants argue that the iHub has legitimate functions, such as allowing  
5 individuals with Sonicview free-to-air receivers to receive software updates for the receivers  
6 automatically and more conveniently than having to download them from the Internet to their  
7 computer and then transfer them from the computer to the receiver. Defendants also claim that  
8 the iHub allows these individuals to download photos and music to their receivers and use their  
9 television set and sound system for viewing and/or listening. In addition they contend that the  
10 iHub can be used for gaming and that additional uses are planned but not yet developed.

11 Defendants do not deny that the iHub can be used to receive pirated decryption keys and allow  
12 them to access DISH Network programming for free. They claim, however, that to the extent  
13 the iHub is used for this purpose, this is done by third parties not associated with Defendants.

14 Plaintiffs produced evidence, including Defendant Roberto Sanz’ admission that he is  
15 involved in pirating. Specifically, Mr. Sanz admitted that he employed a coder who hacked into  
16 the DISH Network’s security system. (Decl. of [REDACTED] Dated Jul. 10, 2009 in Supp. of  
17 Pls’ Ex Parte Application for Temporary Restraining Order, Writ of Civil Seizure/Impoundment,  
18 Order to Show Cause and Mot. to Seal (“[REDACTED] Jul. 10 Decl.”) at 3.)<sup>4</sup> Mr. Sanz owns and  
19 operates a website at www.ftalife, which is used to distribute pirate software enabling Sonicview  
20 customers to steal DISH Network programming, *i.e.*, circumvent DISH Network’s security and  
21 view its programming without subscription or authorization. (*Id.*; *see also* Declaration of Jerry  
22 Lee Gee in Supp. of Pls’ Ex Parte Application for Temporary Restraining Order, Writ of Civil  
23 Seizure/Impoundment, Order to Show Cause and Mot. to Seal (“Gee Decl.”) at 9.) Defendants  
24 also own and operate other websites which sell pirate hardware and provide links to www.ftalife.  
25 (*Id.* & *exs. thereto*; *see also* Decl. of [REDACTED] in Supp. of Pls’ Ex Parte Application for

---

26  
27 <sup>3</sup> Plaintiffs requested the court to take judicial notice of this and certain other  
28 declarations filed in support of their motion for a temporary restraining order. (Req. for Judicial  
Notice in Supp. of Pls’ Mot. for Prelim. Inj., filed Aug. 14, 2009.)

<sup>4</sup> Defendants’ evidentiary objections to this declaration are overruled.

1 Temporary Restraining Order, Writ of Civil Seizure/Impoundment, Order to Show Cause and  
2 Mot. to Seal at 2-3 and [REDACTED] Jul. 10 Decl. at 2 for a complete list of websites.) In turn, the  
3 www.ftalife website promotes and provides links to the pirate hardware websites. Moreover,  
4 pirate software is available for download on Sonicview's corporate website, www.sonicviewusa.  
5 (Decl. of Daniel McMullen in Supp. of Pls' Ex Parte Application for Temporary Restraining  
6 Order, Writ of Civil Seizure/Impoundment, Order to Show Cause and Mot. to Seal ("McMullen  
7 Decl.") at 9.) The pirate software available on www.ftalife and www.sonicviewusa was  
8 designed to work with Sonicview products. (*Id.*; Gee Decl. at 9.) Moreover, the 8PSK Turbo  
9 Boards, a Sonicview product, can only be used for DISH Network and Bell TV piracy. (Jones  
10 Report at 2, 12-77; Decl. of Nigel Jones in Supp. of Mot. for Prelim. Inj. ("Jones Decl.") at 1-2.)

11 Defendants do not attempt to rebut Plaintiffs' detailed evidence which links each  
12 Defendant with piracy of DISH Network programming.<sup>5</sup> Instead, they offer a general denial.  
13 (Decl. of Steve Falvey in Opp'n to Pls' Mot. for Prelim. Inj. ("Falvey Decl.") at 1, 3 ("Sonicview  
14 has no motivation to promote or condone satellite piracy devices of any kind.")) They argue  
15 that the issues pertaining to the Piracy Software and the 8PSK Turbo Boards are irrelevant  
16 because they stipulated to injunctive relief as to those items. Defendants acquiesced in the  
17 preliminary injunction while denying involvement in piracy in general or with the Pirate  
18 Software and the 8PSK Turbo Boards specifically. Plaintiffs' evidence offered in support of  
19 injunctive relief as to the Pirate Software and 8PSK Turbo Boards is relevant to injunctive relief  
20 as to the iHub because it shows Defendants' direct involvement in piracy of DISH Network  
21 programming.

22 The iHub was introduced by Sonicview on or about May 9, 2009. (Jones Report at 81.)  
23 As of early August 2009 Sonicview advertised the iHub as suitable for automatic receiver  
24 software updates, image and music downloading, and gaming. (*Id.* at 81-82.) It was sold on the  
25 Internet for approximately \$100. (*Id.* at 84-86.) However, when Plaintiffs' expert Nigel Jones  
26

---

27 <sup>5</sup> For evidence showing how each Defendant is involved, see Gee Decl. at 8-9;  
28 [REDACTED] Jul. 10 Decl. at 2-3.; Decl. of [REDACTED] Dated Jul. 15, 2009 in Supp. of Pls' Ex Parte  
Application for Temporary Restraining Order, Writ of Civil Seizure/Impoundment, Order to  
Show Cause and Mot. to Seal at 1; [REDACTED] Decl. 1-3.))

1 tested the iHub on August 3, 2009 to upgrade the software on the Sonicview receivers, the  
2 receivers did not interact with the iHub at all, making it useless for this purpose or for the other  
3 uses promoted by Sonicview. (*Id.* at 83-84, 87, 95.)

4 Although the iHub was promoted and offered for sale, no user manual or instructions of  
5 any kind was available on Sonicview's website or the websites of its dealers. (*Id.* at 87.)  
6 However, as of May 21, 2009 extensive support for the iHub, including iHub software utility  
7 geared specifically to Sonicview receivers, was available on Internet pirate forums. (*Id.* at 87-  
8 91.) Using the pirate software, the expert was able to use the iHub to steal DISH Network's  
9 programming. (*Id.* at 91-92.)

10 Plaintiffs' complaint alleges that the iHub has no use other than piracy. (Compl. at 12.)  
11 Defendants were served with the complaint during the period of July 27 through July 30, 2009.  
12 On August 4, 2009 Sonicview posted code on the support page of its website, claiming that the  
13 code supported the iHub. (Jones Report at 95-96.) When the expert attempted to upgrade  
14 Sonicview receivers with Sonicview software via the iHub, as represented on the website, the  
15 process did not work. (*Id.* at 96-98.)

16 Even if the problem with upgrading the receiver software via the iHub were corrected, the  
17 expert concluded that using the iHub for this purpose is impractical because the device is  
18 expensive, the software updates do not occur very often (four times in 27 months), and the  
19 iHub's bandwidth is so low that the upgrading takes longer than using the old technology, the  
20 USB drive, which the iHub was ostensibly designed to replace. (*Id.* at 98-100.) However, the  
21 iHub's low bandwidth is sufficient to connect to the Internet and receive pirated "control words"  
22 or decryption keys to watch encrypted satellite television programming, also known as Internet  
23 Key Sharing piracy, which has extremely low bandwidth requirements. (*Id.* at 100; *see also id.*  
24 at 8, 80.)

25 Moreover, the iHub came with a conspicuously displayed 16-digit "serial number" which  
26 uses numbers and letters a through f and works as an authorization code required by pirate  
27 software for accessing DISH Network programming. (*Id.* at 102-109.) The serial number must  
28 be entered correctly. If one digit is entered incorrectly, the ability to access DISH Network

1 programming is lost. (Jones Decl. at 11 n.9.) Because the serial number is required to gain  
2 access to the piracy program, the piracy website must have known Sonicview's serial numbers  
3 for its iHubs. (Jones Report at 109). The expert concluded that the piracy website obtained the  
4 "serial numbers" from Sonicview and that the numbers were intended by Sonicview to act as a  
5 piracy software access code because each "serial number" is too complex to be simply guessed,  
6 and because the purported serial numbers do not follow the format for typical product serial  
7 numbers used in commerce and by Sonicview for its other products. (*Id.* at 102-03, 109; *see*  
8 *also id.* at 104-05.)

9 Based on all of the foregoing, the expert concluded that iHub's only use, or at least the  
10 only practical use, is for satellite television piracy. (*Id.* at 111; *see also id.* at 3.) One can easily  
11 infer from the report that the iHub was designed for this purpose. *See* 17 U.S.C. § 1201(a)(2);  
12 47 U.S.C. § 605(a).

13 Based on the foregoing, Plaintiffs have met their burden of showing the likelihood of  
14 success on the merits of their claims. "Once the moving party has carried its burden of showing  
15 a likelihood of success on the merits, the burden shifts to the non-moving party to show that its  
16 affirmative defense will succeed." *Marlyn Neutraceuticals*, 571 F.3d at 877 n.2 (internal  
17 quotation marks, citations and brackets omitted).

18 Defendants responded to the report by claiming that the iHub's uses are not yet fully  
19 developed because it is only in its Beta release stage. (Falvey Decl. at 4, 11.) However,  
20 Sonicview's website does not describe the product as Beta stage. (Jones Decl. at 4.)  
21 Furthermore, Beta release products are typically not sold to customers as is the case with the  
22 iHub, but are provided for free to sophisticated users for real word testing before the final  
23 version is released for sale to the public. (*Id.*)

24 Defendants also assert that the iHub is already functional for automatic receiver software  
25 upgrades, downloading images and music from the Internet, and gaming, as represented on the  
26 Sonicview website. (Falvey Decl. at 5-11.) Upon review of the process for "automatic"  
27 software upgrading, "without the customers having to lift a finger" (*id.* at 4), it is apparent that  
28 there is nothing automatic about it, it requires the use of a USB drive, which the iHub was

1 ostensibly designed to avoid (*id.* at 5-8), and the outcome of the process is far from certain (*see*  
2 Jones Decl. at 6-8). No documentation is available on the Sonicview website describing the  
3 procedure outlined in Defendants' declaration. (*Id.* at 6.) It is therefore not plausible to imagine  
4 that customers would be able to carry out this complicated upgrade process on their own.

5       Although the iHub can be used to download images and music from the Internet (Falvey  
6 Decl. at 8-9), this is not a practical use for it. To do this, a "downloader program" from the  
7 Sonicview website is required. (*Id.* at 8.) However, the downloader programs available at the  
8 Sonicview website do not work with the iHub. (Jones Decl. at 8-9.) In addition, it appears again  
9 that a USB drive is required for the download. (Falvey Decl. at 9; Jones Decl. at 10.) Moreover,  
10 with iHub's low bandwidth, downloading music takes approximately 50 times longer than using  
11 a USB port. (Jones Decl. at 10.) The iHub also allows two Sonicview customers, each with a  
12 separate receiver and iHub, to play chess with the Sonicview remote controls. (Falvey Decl. at  
13 9-10; Jones Decl. at 10 & n.8.) The experience, however, would not be very satisfying because  
14 of the iHub's low bandwidth and the cumbersome remote controls. (Jones Decl. at 10 & n. 7, 8.)  
15 Sonicview claims to have other games in development. (Falvey Decl. at 11.) However, the  
16 multi-user gaming choices currently on the market require a much higher bandwidth than is  
17 available on the iHub. (Jones Decl. at 10-11 & n.7.)

18       Based on the foregoing, the iHub can be used for purposes other than piracy, but it is very  
19 cumbersome and impractical for those purposes and appears not to be commercially viable for  
20 them. On the other hand, it works very well for piracy. Defendants' argument that the iHub was  
21 designed for legitimate purposes and that third parties hijacked it for pirating is not credible. To  
22 the extent there are legitimate uses, the Sonicview website does not support them, while piracy  
23 websites readily support it. Furthermore, Defendants did not attempt to explain how the iHub's  
24 complex and conspicuously displayed "serial number" happens also to operate as each iHub's  
25 access code for piracy software. (*See* Falvey Decl. at 12.)

26       Particularly when viewing the evidence of iHub's uses in the context of unrebutted  
27 evidence showing each Defendant's connection with the piracy industry, the evidence shows that  
28 the iHub "has only limited commercially significant purpose or use other than" circumventing



1 Plaintiffs' encryption and other security measures, and appears to be "primarily designed or  
2 produced for" piracy or assisting Sonicview customers in piracy. *See* 17 U.S.C. § 1201(a)(2); 47  
3 U.S.C. § 605(a). Accordingly, Plaintiffs have met their burden of making a "clear showing" of  
4 likelihood of success on the merits. *See Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997).

5 Even if the plaintiff demonstrates a strong likelihood of success on the merits, it is not  
6 sufficient to show only a "possibility" of irreparable harm. *Winter*, 129 S. Ct. at 375.

7 Defendants argue that Plaintiffs are not entitled to a preliminary injunction as to the iHub  
8 because they cannot show that they are likely to suffer irreparable harm if the relief is denied.

9 Defendants maintain that Plaintiffs have not been injured at all because they were able to  
10 increase the number of DISH Network subscribers and that, to the extent Plaintiffs have lost any  
11 market share, this is due to their competitors and not to Defendants' activities. (Opp'n at 18-20.)  
12 These arguments are irrelevant to the issue of Plaintiffs' irreparable harm. Even if Defendants'  
13 assertions are correct, this does not diminish the fact that Plaintiffs have shown a strong  
14 likelihood that Defendants are engaging in piracy of Plaintiffs' encrypted programming. Such  
15 piracy resulted in injury to Plaintiffs, even if the injury may be obscured by other market forces.

16 Defendants also argue that to the extent Plaintiffs suffered any harm, it is only economic.  
17 "[E]conomic injury alone does not support a finding of irreparable harm, because such injury can  
18 be remedied by a damage award. . . . However, . . . intangible injuries such as damage to . . .  
19 goodwill, qualify as irreparable harm." *Rent-a-Center, Inc. v. Canyon Television and Appliance*  
20 *Rental, Inc.*, 944 F.2d 597, 603 (9th Cir. 1991).

21 Plaintiffs' harm caused by Defendants' pirating activity goes beyond the loss of potential  
22 subscribers and income. Plaintiffs' ability to attract and retain distribution rights for copyrighted  
23 programming is dependent on preventing unauthorized descrambling of the satellite signals.  
24 (Duval Decl. at 4.) The iHub, with its ability to receive decryption keys from the Internet,  
25 damages Plaintiffs' reputation and goodwill, undermines their ability to obtain and retain the  
26 distribution rights for copyrighted programming, and interferes with their contractual and  
27 prospective business relations. (*Id.* at 4, 11.) Furthermore, NagraStar is in the business of  
28 ensuring the integrity of the scrambling technology it sells. The pirating activity facilitated by

1 the iHub damages its reputation and goodwill in the satellite television industry. (*Id.*)  
2 Defendants' activity, including the distribution of the iHub, allows numerous individuals to  
3 infringe on trade secrets and confidentiality of Plaintiffs' proprietary information pertaining to  
4 the security of the satellite signals. (*Id.* at 11-12.)

5 Assuming that the harm injury could be adequately compensated with monetary damages,  
6 it does not appear that Defendants are in the position to pay a large damage award. Inability to  
7 pay a large damage award can support a finding of irreparable harm. *Metro-Goldwyn-Mayer*  
8 *Studios, Inc. v. Grokster, Ltd.*, 518 F. Supp. 2d 1197, 1217 (C.D. Cal. 2007). According to  
9 Defendants, Sonicview USA, Inc. is a small company with six employees, without large  
10 financial resources, and "needs the money." (Falvey Decl. at 1, 11.)

11 Finally, "[i]n a copyright infringement action. . . [a] showing of a reasonable likelihood of  
12 success on the merits raises a presumption of irreparable harm." *Triad Systems Corp. v.*  
13 *Southeastern Exp. Co.*, 64 F.3d 1330, 1335 (9th Cir. 1995), overruled on other grounds as  
14 discussed in *Gonzales v. Texaco*, 344 Fed. Appx. 304, 306-07 (9th Cir. 2009); *see also Cadence*  
15 *Design Sys., Inc. v. Avant! Corp.*, 125 F.3d 824, 827 (9th Cir. 1997); *Marlyn Neutraceuticals*,  
16 571 F.3d at 877 (trademark infringement). Plaintiffs assert that Defendants are stealing or  
17 assisting others in stealing encrypted copyrighted programming in violation of the DMCA, 17  
18 U.S.C. Section 1201(a)(2). Defendants have not come forward with evidence to rebut the  
19 presumption. Accordingly, Plaintiffs have established they will suffer irreparable harm if  
20 preliminary relief is denied.

21 Next the court must determine whether the balance of equities tips in Plaintiffs' favor.  
22 *See Winter*, 129 S. Ct. at 374. If a preliminary injunction is denied, Plaintiffs likely will suffer  
23 irreparable harm. On the other hand, if preliminary injunction is granted, Defendants claim their  
24 business will be damaged because the iHub is needed for them to stay competitive. (Falvey  
25 Decl. at 11; *see also id.* at 3-4.) Based on review of the evidence submitted in support of and in  
26 opposition to the likelihood of Plaintiffs' success on the merits, it appears that Defendants are  
27 knowingly engaging in satellite program piracy, an infringement activity. *See* 17 U.S.C.  
28 § 1201(a)(2). "[A] defendant who knowingly infringes another's copyright cannot complain of

1 the harm that will befall it when properly forced to desist from its infringing activity.” *Cadence*  
2 *Design Sys.*, 125 F.3d at 829 (internal quotation marks and citation omitted); *see also id.* at 830.  
3 Based in the foregoing, the balance of equities tips in Plaintiffs’ favor.

4 Last, Plaintiffs must show that an injunction is in the public interest. *Winter*, 129 S. Ct. at  
5 374. “A preliminary injunction is an extraordinary remedy never awarded as of right. . . . In  
6 exercising their sound discretion, courts of equity should pay particular regard for the public  
7 consequences in employing the extraordinary remedy of injunction.” *Id.* at 376-77. Defendants  
8 argue that access to technology for viewing free-to-air satellite programming is in the public  
9 interest. The court does not disagree. However, Defendants do not maintain that the iHub is  
10 required for viewing free-to-air programming. Its only apparent use related to viewing free-to-  
11 air programming is to facilitate software upgrades for the receivers. As discussed above, the  
12 iHub is not suited for this purpose and Sonicview’s website does not support it. Moreover, it  
13 appears to have been designed for the purpose of stealing programming which is not free-to-air.  
14 Manufacturing, advertising and selling such devices in violation of federal law is not in the  
15 public interest. The DMCA expressly allows for preliminary injunctive relief, 17 U.S.C.  
16 § 1203(b)(1), reflecting a legislative determination that enjoining pirating activity before trial is  
17 in the public interest.

18 Federal Rule of Civil Procedure 65(c) provides that no preliminary injunction “shall issue  
19 except upon the giving of security by the applicant, in such sum as the court deems proper, for  
20 the payment of such costs and damages as may be incurred or suffered by any party who is found  
21 to have been wrongfully enjoined or restrained.” “Rule 65(c) invests the district court with  
22 discretion as to the amount of security required, *if any.*” *Jorgensen v. Cassidy*, 320 F.3d 906,  
23 917 (9th Cir. 2003) (emphasis in original, internal quotation marks and citation omitted).

24 Plaintiffs have requested that no bond be required in this case because of the strong  
25 likelihood of success on the merits. (Pls’ Mem. of P.&A. at 22.) Although Defendants  
26 vigorously opposed Plaintiffs’ motion with respect to the iHub, they did not oppose their request  
27 that no bond be required. The burden is on the party affected by the injunction to present  
28 evidence that a bond is needed, so that the district court is afforded an opportunity to exercise its

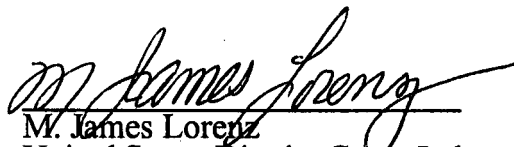
1 discretion in setting the amount of the bond. *Connecticut Gen. Life Ins. Co. v. New Images of*  
2 *Beverly Hills*, 321 F.3d 878, 883 (9th Cir. 2003). Because Defendants do not oppose foregoing  
3 the bond, Plaintiffs' request that no bond be required is granted.

4 Based on the foregoing, Plaintiffs' motion for preliminary injunction is **GRANTED**.  
5 Accordingly, Defendants and all directors, officers, agents, servants, employees, attorneys and  
6 all persons and entities in active concert or participation therewith, including, but not limited to,  
7 manufacturers, distributors, retailers and cooperative members, are hereby **ENJOINED** from  
8 designing, manufacturing, developing, trafficking, selling and marketing 8PSK Turbo Boards,  
9 Sonicview iHubs, and Pirate Software at any physical addresses or on the Internet, including at  
10 www.sonicviewusa.com, www.kingsatellite.com, www.xtraba.com, www.extremesats.com,  
11 www.satfire.com, www.megadropshippers.com, www.satster.com, www.speedyfta.com,  
12 www.pansat3500sd.com and www.ftalife.com.

13 For the reasons stated in the July 23, 2009 order of this court, the Clerk is hereby directed  
14 to file under **SEAL** the unredacted version of this order.

15 **IT IS SO ORDERED.**

16  
17 DATED: March 29, 2010

  
M. James Lorenz  
United States District Court Judge