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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

February 5, 1998

Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

Via Hand Delivery

Re: *Ex Parte* Notice, ET Docket No. 97-94 (Streamlining of the Equipment Authorization Process)

Dear Ms. Salas:

This letter provides notice that on February 4, 1998, Stan Durey, Director, Security Programs for General Instrument Corporation, and Faye Morrison, Government Affairs Representative for General Instrument Corporation (the undersigned), met with the following Commission officials in connection with the above-captioned proceeding:

Julius Knapp, Office of Engineering and Technology
John Wong, Cable Services Bureau
Lawrence Clance, Compliance and Information Bureau
David Means, Office of Engineering and Technology (via video conference)
Charles Cobbs, Office of Engineering and Technology (via video conference)

We discussed the equipment authorization process and ways to amend it to help combat theft of cable television signals through the use of illegal descrambling devices. In addition, we discussed recent anti-piracy activity and the status of various court cases against cable pirates. Mr. Durey told about recent trends in pirate technology, including fully integrated theft devices.

The attached materials were handed out during the meeting. They include copies of a recently amended California statute; a recent U.S. Court of Appeals, Ninth Circuit decision; Web pages advertising descramblers; photographs of devices used for the

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illegal reception of cable television programming; and an agenda for the meeting. Please place a copy of them in the docket in the above-captioned proceeding.

Please direct any questions about this matter to me.

Sincerely,

Faye R. Morrison

Faye R. Morrison

Attachments

cc: Lawrence Clance
Charles Cobbs
Julius Knapp
David Means
John Wong

UPDATE ON PIRATE EQUIPMENT IN THE CABLE TELEVISION INDUSTRY

The Equipment Authorization Process

- Current proceeding (ET 97-94) presents options for combating piracy.
- Language of 1994 public notice.
- Enforcement initiatives for industry participants.

Estimates of Loss

Recent Anti-Piracy Activity

Criminal

- Cable Trap and related cases.
- Other federal action.
- State updates.

Civil

- Time Warner cases.
- General Instrument cases.
- Showtime initiative.

Advertising

Pirate Technology Trends

- Fully integrated theft devices.

California State Law

Regarding Theft of Cable TV Services

Amended January 1, 1997

593d. Multichannel video or information services; unauthorized connections; descramblers

(a) Except as provided in subdivision (e), any person who, for the purpose of intercepting, receiving, or using any program or other service carried by a multichannel video or information services provider that the person is not authorized by that provider to receive or use, commits any of the following acts is guilty of a public offense:

(1) Knowingly and willfully makes or maintains an unauthorized connection or connections, whether physically, electrically, electronically, or inductively, to any cable, wire, or other component of a multichannel video or information services provider's system or to a cable, wire or other media, or receiver that is attached to a multichannel video or information services provider's system.

(2) Knowingly and willfully purchases, possesses, attaches, causes to be attached, assists others in attaching, or maintains the attachment of any unauthorized device or devices to any cable, wire, or other component of a multichannel video or information services provider's system or to a cable, wire or other media, or receiver that is attached to a multichannel video or information services provider's system.

(3) Knowingly and willfully makes or maintains any modification or alteration to any device installed with the authorization of a multichannel video or information services provider.

(4) Knowingly and willfully makes or maintains any modifications or alterations to an access device that authorizes services or knowingly and willfully obtains an unauthorized access device and uses the modified, altered, or unauthorized access device to obtain services from a multichannel video or information services provider.

For purposes of this section, each purchase, possession, connection, attachment, or modification shall constitute a separate violation of this section.

(b) Except as provided in subdivision (e), any person who knowingly and willfully manufactures, assembles, modifies, imports into this state, distributes, sells, offers to sell, advertises for sale, or possesses for any of these purposes, any device or kit for a device, designed, in whole or in part, to decrypt, decode, descramble, or otherwise make intelligible any encrypted, encoded, scrambled, or other nonstandard signal carried by a multichannel video or information services provider, unless the device has been granted equipment authorization by the Federal Communications Commission (FCC), is guilty of a public offense.

For purposes of this subdivision, "encrypted, encoded, scrambled, or other nonstandard signal" means any type of signal or transmission that is not intended to produce an intelligible program or service without the use of a special device, signal, or information provided by the multichannel video or information services provider or its agents to authorized subscribers.

(c) Every person who knowingly and willfully makes or maintains an unauthorized connection or connections with, whether physically, electrically, electronically, or inductively, or who attaches, causes to be attached, assists others in attaching, or maintains any attachment to, any cable, wire, or other component of a multichannel video or information services provider's system, for the purpose of interfering with, altering, or degrading any multichannel video or information services provider's system, for the purpose of interfering with, altering, or degrading any multichannel video or information service being transmitted to others, or for the purpose of transmitting or broadcasting any program or other service not intended to be transmitted or broadcast by the multichannel video or information services provider, is guilty of a public offense.

For purposes of this section, each transmission or broadcast shall constitute a separate violation of this section.

(d)(1) Any person who violates subdivision (a) shall be punished by a fine not exceeding one thousand dollars ($1,000), by imprisonment in a county jail not exceeding 90 days, or by both that fine and imprisonment.

(2) Any person who violates subdivision (b) shall be punished as follows:

(A) If the violation involves the manufacture, assembly, modification, importation into this state, distribution, advertisement for sale, or possession for sale or for any of these purposes, of 10 or more of the items described in subdivision (b), or the sale or offering for sale of five or more items for financial gain, the person shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison, by a fine not exceeding two hundred fifty thousand dollars ($250,000), or by both that imprisonment and fine.

(B) If the violation involves the manufacture, assembly, modification, importation into this state, distribution, advertisement for sale, or possession for sale or for any of these purposes, of nine or less of the items described in subdivision (b), or the sale or offering for sale of four or less items for financial gain, shall upon a conviction of a first offense, be punished by imprisonment in a county jail not exceeding one year, by a fine not exceeding twenty-five thousand dollars ($25,000), or by both that imprisonment and fine. A second or subsequent conviction shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison, by a fine not exceeding one hundred thousand dollars ($100,000), or by both that imprisonment and fine.

(3) Any person who violates subdivision (c) shall be punished by a fine not exceeding ten thousand dollars (10,000), by imprisonment in a county jail, or by both that fine and imprisonment.

(e) Any device or kit described in subdivision (a) or (b) seized under warrant or incident to a lawful arrest, upon the conviction of a person for a violation of subdivision (a) or (b), may by destroyed as contraband by the sheriff.

(f) Any person who violates this section shall be liable in a civil action to the multichannel video or information services provider for the greater of the following amounts:
(1) Five thousand dollars ($5,000).

(2) Three times the amount of actual damages, if any, sustained by the plaintiff plus reasonable attorney's fees.

A defendant who prevails in the action shall be awarded his or her reasonable attorney's fees.

(g) Any multichannel video or information services provider may, in accordance with the provisions of Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, bring an action to enjoin and restrain any violation of this section, and may in the same action seek damages as provided in subdivision (g).

(h) It is not a necessary prerequisite to an action pursuant to this section that the plaintiff has suffered, or be threatened with, actual damages.

(i) For the purposes of this section, a "multichannel video or information services provider" means a franchised or otherwise duly licensed cable television system, video dialtone system, Multichannel Multipoint Distribution Service system, Direct Broadcast Satellite system, or other system providing video or information services that are distributed via cable, wire, radio frequency, or other media. A video dialtone system is a platform operated by a public utility telephone corporation for the transport of video programming as authorized by the Federal Communications Commission pursuant to FCC Docket No. 87-266, and any subsequent decisions related to that docket, subject to any rules promulgated by the FCC pursuant to those decisions. *(Added by Stats.1996, c. 1131 (S.B.623), 3.)*

593e. Unauthorized cable television connections, devices, decoders, etc.; offense; penalty; civil liability; damages; injunction; definition

(a) Every person who knowingly and willfully makes or maintains an unauthorized connection or connections, whether physically, electrically, or inductively, or purchases, possesses, attaches, causes to be attached, assists others in or maintains the attachment of any unauthorized device or devices to a television set or to other equipment designed to receive a television broadcast or transmission, or makes or maintains any modification or alteration to any device installed with the authorization of a subscription television system, for the purpose of intercepting, receiving, or using any program or other service carried by the subscription television system which the person is not authorized by that subscription television system to receive or use, is guilty of a misdemeanor punishable by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail not exceeding 90 days, or both. For the purposes of this section, each such purchase, possession, connection, attachment or modification shall constitute a separate violation of this section.

(b) Every person who, without the express authorization of a subscription television system, knowingly and willfully manufactures, imports into this state, assembles, distributes, sells, offers to sell, possesses, advertises for sale, or otherwise provides any device, any plan, or any kit for a device or for a printed circuit, designed in whole or in part to decode, descramble, intercept , or otherwise make intelligible any encoded, scrambled, or other nonstandard signal carried by that subscription television system, is guilty of a misdemeanor punishable by a fine not exceeding ten thousand dollars punishable by a fine not exceeding ten thousand dollars ($10,000) or by imprisonment in the county jail, or both. A second or subsequent conviction is punishable by a fine not exceeding twenty thousand dollars ($20,000) or by imprisonment in the county jail for up to one year, or both.

(c) Any person who violates the provisions of subdivision (a) shall be liable to the subscription

(a) shall be liable to the subscription television system for civil damages in the amount of the value of the connection and subscription fees service actually charged by the subscription television system for the period of unauthorized use according to proof.

Any person who violates the provisions of subdivision (b) shall be liable to the subscription television system at the election of the subscription television system for either of the following amounts:

(1) An award of statutory damages in an aggregate amount of not less than five hundred dollars ($500) or more than ten thousand dollars ($10,000), as the court deems just, for each device, plan or kit for a device, or for a printed circuit manufactured, imported, assembled, sold, offered for sale, possessed, advertised for sale, or otherwise provided in violation of subdivision (b), to be awarded instead of actual damages and profits.

(2) Three times the amount of actual damages sustained by the plaintiff as a result of the violation or violations of this section and any revenues which have been obtained by the defendant as a result of the violation or violations, or an amount equal to three times the value of the services unlawfully obtained, or the sum of five hundred dollars ($500.00) for each unauthorized device manufactured, sold, used, or distributed, whichever is greater, and when appropriate, punitive damages. For the purposes of this subdivision, revenues which have been obtained by the defendant as a result of a violation or violations of this section shall not be included in computing actual damages.

In a case where the court finds that any activity set fourth in subdivision (b) was committed knowingly and willfully and for purposes of commercial advantage or private financial gain, the court in its discretion may increase the award of damages, whether actual or statutory, by an amount of not more than fifty thousand dollars ($50,000). It shall not constitute a use for "commercial advantage or private financial gain" for any person to receive a subscription television signal within a residential unit as defined herein.

(d) In any civil action filed pursuant to this section, the court shall allow the recovery of full costs plus an award of reasonable attorney's fees to the prevailing party.

(e) Any subscription television system may, in accordance with the provisions of Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, bring an action to enjoin and restrain any violation of this section without having to make a showing of special or irreparable damage, and may in the same action seek damages as provided in subdivision (c). Upon the execution of a proper bond against damages for an injunction improvidently granted, a temporary restraining order or a preliminary injunction may be issued in any such action before a final determination on the merits.

(f) It is not necessary that the plaintiff have incurred actual damages, or be threatened with incurring actual damages, as a prerequisite to bringing an action pursuant to this section.

(g) For the purposes of this section, an encoded, scrambled, or other nonstandard signal shall include, without limitation, any type of distorted signal or transmission that is not intended to produce an intelligible program or service without the use of special devices or information provided by the sender for the receipt of such signal or transmission.

(h)(1) For the purposes of this section, a "subscription television system" means a television system which sends an encoded, scrambled, or other nonstandard signal over the air which is not intended to be received in an intelligible form without special equipment provided by or authorized by the sender.

(2) For purposes of this section, "residential unit" is defined as any single-family residence, mobilehome within a mobilehome park, condominium, unit or an apartment or multiple housing unit leased or rented for residential purposes. *(Added by Stats.1980, c. 1332, p. 4670, 1, urgency, eff. Sept. 30, 1980. Amended by Stats. 1984, c. 336, 1.)*

593f. Unauthorized devices, plans, etc., for decoding or addressing certain over-the-air transmission; misdemeanor

Every person who for profit knowingly and willfully manufactures, distributes, or sells any device or plan or kit for a device, or printed circuit containing circuitry for decoding or addressing with the purpose or intention of facilitating decoding or addressing of any over-the-air transmission by a Multi-point Distribution Service or Instructional Television Fixed Service made pursuant to authority granted by the Federal Communications Commission which is not authorized by the Multi-point Distribution Service or the Instructional Television Fixed Service is guilty of a misdemeanor punishable by a fine not exceeding two thousand five hundred dollars ($2,500) or by imprisonment in the county jail not exceeding 90 days, or both. *(Added by Stats. 1984, c. 833, 1, urgency, eff. Aug. 31, 1984.)*

CONTINENTAL CABLEVISION, INC., Plaintiff-Appellee,
v.
Alvin L POLL; Cabletronics; Darryl S. Poll; Pacific Cable Company, Inc.; Republic Cable Products, Inc., Defendants-Appellants.

No. 96-55308.

United States Court of Appeals, Ninth Circuit.

Argued and Submitted Aug. 4, 1997.

Decided Sept. 2, 1997.

Robert M. Levy, Woodland Hills, CA, for defendants-appellants.

Daniel J. Lefkowitz, William Jung, Daniel J. Lefkowitz, P.C., Jericho, NY, and Michael R. Weinstein, Ferris, Britton & Proctor, San Diego, CA, for plaintiff- appellee.

Appeal from the United States District Court for the Central District of California; David V. Kenyon, District Judge, Presiding. D.C. No. CV-93-02310-KN.

Before: SCHROEDER and O'SCANNLAIN, Circuit Judges, and BURNS, [FN*] District Judge.

O'SCANNLAIN, Circuit Judge:

*1 We must decide whether there was sufficient evidence of intent to hold manufacturers and distributors of cable converter-decoders civilly liable for assisting customers in the unauthorized reception of cable television programming.

I

Continental Cablevision, Inc. ("Continental") is a multiple system cable television operator which constructs, operates, and maintains cable systems throughout the United States. Continental operates pursuant to franchise agreements awarded by various municipalities and political subdivisions, and it provides cable services to homes and businesses within its franchise areas. Continental's cable television services are private communication signals, not intended for public use, and are offered and made available only to authorized, paying subscribers. The programming Continental offers comes in various packages, which include broadcast television channels, premium channels such as Home Box Office or Cinemax, and pay-per-view services. Subscribers are billed on a monthly basis for each service they select.

To prevent subscribers from receiving and viewing programming services for which they have not paid, Continental encrypts or "scrambles" its premium and pay-per-view channels. A converter-decoder or "black box" is required to view any scrambled programming. The boxes are specifically programmed so as to allow subscribers to access only the amount of cable programming they have purchased. Subscribers generally rent the converter-decoders from Continental, but others sometimes purchase their own equipment from independent manufacturers and distributors.

The converter-decoders which Continental provides to its subscribers incorporate a feature known as "addressability." A converter-decoder is "addressable" if the cable operator may, by remote control, change an individual subscriber's level of service or authorize the viewing of a pay-per- view program without having to send a technician to the viewer's home to make physical adjustments. A central computer sends a signal to the converter- decoder instructing it to descramble the programs requested (and paid for) by customers.

There is a nationwide black market of "pirate" converter-decoders which descramble cable programming and enable some to receive premium and pay-per- view services without paying the cable operator. To protect against this unauthorized reception of cable programming, Continental sends out electronic "bullets" or impulses which disable converter-decoders that are stealing cable signals. In addition, in response to the pirating of cable services, the Federal Communications Commission ("FCC") has promulgated regulations regarding the manufacture, distribution, and use of converter-decoders. These regulations require that any person manufacturing, distributing, or marketing converter-decoders for a cable system have prior FCC approval.

Alvin Poll, Cabletronics, Darryl Poll, West Coast Electronics, Pacific Cable Company, Inc., Cable Equipment Brokerage Co., and Republic Cable Products, Inc. (collectively, "Poll") are manufacturers, distributors, and vendors of cable converter-decoders.

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The equipment that Poll distributed was modified to be both non-addressable and "bullet-proof," and Poll advertised these converter-decoders as such. On October 19, 1992, the Los Angeles Police Department executed a search and seizure warrant for the premises of Pacific Cable Company and Cable Equipment Brokerage. That same day, the Las Vegas Police Department executed a search and seizure warrant for the premises of Republic Cable Products. Thousands of converter-decoders and business documents were seized at both locations. Among the documents seized were sales invoices and correspondence from purchasers who had returned Poll's converter-decoders, complaining that the devices did not descramble all the pay channels offered on the purchasers' local cable television systems

*2 On April 21, 1993, Continental brought this action pursuant to sections 553 and 605 [FN1] of the Communications Act of 1934 (the "Communications Act"), as amended, 47 U.S.C. §§ 553 and 605, [FN2] alleging that Poll manufactured, sold, and distributed converter-decoders while knowing and intending that these devices be used for the unauthorized reception of cable television programming. Section 553(c)(1) grants a private right of action to an aggrieved person for a violation of § 553(a)(1). Section 553 contains both criminal and civil provisions: subsection (b) establishes criminal sanctions and subsection (c) provides for civil remedies. Only civil remedies are involved in this appeal.

Following a court trial on August 1-2, 1995, the district court found Poll jointly and severally liable for 2,244 violations of § 553. The district court assessed damages at the rate of $500 for each converter-decoder sold to Continental's subscribers, for a total damage award of $1,122,000. The district court also entered a permanent injunction, and subsequently entered an order awarding Continental $259,917.80 for attorney fees and $2,393.42 for costs. Poll brought this appeal on February 22, 1996, contesting the court's finding of liability under § 553, and the award of damages and attorney fees.

II

The language of 47 U.S.C. § 553 clearly states that manufacturers and distributors of converter-decoders are liable only if they intend to assist customers in unauthorized reception. The statute reads in material part:

(1) No person shall intercept or receive or assist in intercepting or receiving any communications service offered over a cable system, unless specifically authorized to do so by a cable operator or as may otherwise be specifically authorized by law.

(2) For the purpose of this section, the term "assist in intercepting or receiving" shall include the manufacture or distribution of equipment intended by the manufacturer or distributor (as the case may be) for unauthorized reception of any communications service offered over a cable system in violation of subparagraph (1).

Because converter-decoders indeed have lawful uses, the statute requires a showing that defendants have the intent to assist in the unauthorized interception or reception to establish liability under § 553. Poll contends that Continental offered no evidence that it intended any of the 2,244 converter-decoder sales to facilitate the viewing of unpurchased programming.

A

Contrary to Poll's bare assertion, there is evidence in the record to demonstrate that it had the intent or knowledge that its devices would be used to receive unauthorized programming. For instance, (1) Poll was not registered with the FCC to sell cable boxes; [FN3] (2) Poll's boxes had been modified to descramble all TV channels including premium channels and pay-per-view; (3) Poll's boxes were non-addressable; (4) Poll advertised its boxes as alternatives to the cable companies' boxes--not as second boxes to be used legally by current cable subscribers; (5) Poll advertised its boxes as being "bullet proof"--that is, as being capable of defeating cable companies' anti- cable theft security measures; [FN4] (6) Poll received letters from customers which indicate that its converter-decoders were used as primary, not as secondary, boxes; and (7) Continental Investigator Dennis Debbaudt's declaration revealed that Poll's boxes were capable of descrambling all of Continental's scrambled channels, including all the premium channels and pay-per-view.

*3 By removing addressability from its converter-decoder devices and modifying them to descramble constant pay-per-view programming, Poll effectively defeated all of Continental's security measures, thereby allowing the user to receive unlimited premium and pay-per-view programming free of charge. [FN5]

B

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The only other circuit court which has squarely addressed § 553 liability is the Seventh Circuit which considered an appeal from the criminal provision of the same statute. [FN6] See United States v. Gardner, 860 F.2d 1391, 1399 (7th Cir.1988), cert. denied, 490 U.S. 1023, 109 S.Ct. 1751, 104 L.Ed.2d 187 (1989). In Gardner, the defendant was convicted of violating § 553 for willfully and knowingly assisting in the unauthorized interception and reception of cable services. He appealed on the ground that "the government failed to establish, and the trial court failed to instruct, that the sole and specific purpose of Gardner's black box was the unlawful interception of cable programming, and that [the customer] actually used the boxes." Id. at 1394. The Seventh Circuit rejected this argument and applied reasoning that we now adopt. Id. at 1397-99.

After reviewing the language and legislative history of the statute, the court concluded that:

> To convict under § 553, the jury was not required to find that the black boxes were sold for the sole and specific purpose of cable piracy, nor that the boxes were actually used illegally. Rather, the jury only needed to find that Gardner intended the black boxes to be used for the unauthorized reception of cable service when he sold the boxes....

Id. at 1399. The fact that the cable boxes that the defendant sold allegedly had both legal and illegal uses did not preclude convicting the defendant of willfully and knowingly assisting in unauthorized interception and reception of cable service.

The same principle applies in this civil case involving a private right of action by an injured cable television system operator. The fact that Poll's boxes had legal uses does not insulate it from civil liability where the evidence establishes that Poll knew and intended the "black boxes" to be used for the unauthorized reception of cable television programming.

III

The final issue to be decided is whether, under 47 U.S.C. § 553(c)(3)(A)(ii), [FN7] statutory damages may be assessed for each and every violation separately, or whether a maximum statutory damages amount encompasses all violations. The district court chose the former interpretation, awarding statutory damages in the amount of $500 for each of the 2,244 devices manufactured and sold by Poll in violation of § 553(a)(1), for a total of $1,122,000.

Continental contends that § 553(c)(3)(A)(ii) mandates the multiplication of statutory damages for each and every device supplied to customers in violation of the Act. It contends that district courts in both Time Warner Cable of New York City v. U.S. Cable T.V., Inc., 920 F.Supp. 321, 328-29 (E.D.N.Y.1996) (quoting § 553(b)(3) to support multiplication of civil damages by the number of devices) and Time Warner Cable of New York City v. Freedom Electronics, Inc., 897 F.Supp. 1454, 1459 (S.D.Fla.1995) ("Each ... converter-decoder manufactured or distributed in violation of § 553 is a separate violation of the statute.") have adopted this approach. Continental responds that the "$10,000 maximum for all violations" interpretation would lead to the absurd conclusion that a party might recover an unlimited amount of actual compensatory damages, while limiting total statutory damages at $10,000 for an unlimited number of violations. Continental also argues that to limit total statutory damages to $10,000 would create a de facto licensing fee to violate the Act, because violators could manufacture or distribute as many boxes as possible without facing greater damages.

*4 Poll, on the other hand, asserts that because the plain language of § 553(c)(3)(A)(ii) provides for an award of statutory damages of $250 to $10,000 "for all violations involved in the action," the district court may not multiply the damages by the number of cable boxes distributed in violation of the Act. It argues that the district court misapplied the statutory limits on damages to each violation, rather than all violations involved in the action. Poll also contends that the statute's $10,000 maximum limit on the total amount of recovery pursuant to § 553(c)(3)(A)(ii) is part of a coherent statutory scheme for awarding civil damages which would be undermined by the district court's interpretation. We agree with Poll's statutory construction.

We first pause to consider the "coherent statutory scheme" for awarding civil damages for § 553(a)(1) violations. A plaintiff may elect either to prove actual damages and profits of the violator attributable to the violation, or to claim statutory damages. See 47 U.S.C. § 553(c)(3)(A). Continental chose the latter course. Contrary to its claim, there is nothing in the least absurd about setting a cap on statutory damages while allowing unlimited recovery of actual damages. We are mindful that "statutory damages may serve completely different purposes than actual damages." Nintendo of America v. Dragon Pac. Int'l, 40 F.3d 1007, 1011 (9th Cir.1994). If an aggrieved party thinks that the

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statutory damages are not adequate, that party may seek to prove actual damages. Continental elected to claim only statutory damages. If an award of $10,000 for each violation is allowed, then few if any plaintiffs would ever avail themselves of actual damages, because recovery of statutory damages, which requires no proof of loss, will likely be as high or higher than actual damages.

This court begins with the "familiar canon of statutory construction that the starting point for interpreting a statute is the language of the statute itself. Absent a clearly expressed legislative intention to the contrary, that language must ordinarily be regarded as conclusive." Consumer Prod. Safety Comm'n v. GTE Sylvania, Inc., 447 U.S. 102, 108, 100 S.Ct. 2051, 64 L.Ed.2d 766 (1980). The language of the statute is quite clear: the aggrieved party "may recover an award of statutory damages for all violations involved in the action, in a sum of not less than $250.00 or more than $10,000.00." We turn to the general dictionary definition. "All" means "the whole amount or quantity," and "sum" means "the aggregate of two or more numbers." Webster's Third New International Dictionary 54, 2289 (1986). By its plain language, Congress clearly intended for the maximum limit on statutory damages to apply to the total award of damages in the action.

Continental, however, argues that Congress amended § 553(b)(3) in 1992 to provide that "[f]or purposes of all penalties and remedies established for violations of [§ 553(a)(1)], the prohibited activity established herein as it applies to each such device shall be deemed a separate violation." Congress enacted this subsection, so Continental's argument goes, to parallel the analogous § 605(e)(3)(C), providing for a separate assessment of statutory damages for each § 605(e)(4) violation. However, we cannot overlook the fact that Congress changed the statute on the criminal side to read "each such device shall be a separate violation," yet left unchanged the word "all" on the civil side of the statutory remedies. That distinction is indeed a distinction with a difference, and congressionally intended as such.

*5 Assuming arguendo that the plain language of § 553(c)(3)(A)(ii) is ambiguous, a review of the amendment and its scant legislative history suggests that, despite the presence of the word "remedies," Congress intended only to bring criminal sanctions for violations of § 553(a)(1) into "conformity" with those for criminal sanctions for violations of § 605(a). See 47 U.S.C. § 553(b)(3) ("separate violation" language in subsection (b) (criminal), as opposed to (c) (civil)); H.R. Conf. Rep. No. 102-862, at 94 (1992), reprinted in U.S.C.C.A.N. 1231, 1276 (stating that amendment "amends § 553(b)" rather than the entire section). In amending § 553(b), Congress increased the criminal penalties for willful violations of § 553(a)(1) for commercial advantage or private financial gain to mirror those in § 605(e)(2). Congress, however, left untouched the disparity in civil damages for willful violations of the respective statutes for commercial advantage or private financial gain. See 47 U.S.C. § 605(e)(3)(C)(ii) (court may enhance award by up to $100,000); id. § 553(c)(3)(B) (court may enhance award by up to $50,000). This is not what one would expect if the intent of Congress was to bring the civil remedies under § 553 into "conformity" with those under § 605.

The Second Circuit embraced the same statutory construction in International Cablevision, Inc. v. Sykes, 997 F.2d 998 (2d Cir.1993). Although our sister circuit had before it only a single violation, we believe its discussion provides persuasive reasoning in support of our statutory interpretation. [FN8] It stated in part:

> Further, the minimum statutory award of $250 under § 553 is for "all violations involved in the action," id. § 553(c)(3)(A)(ii), whereas the minima of $1,000 and $10,000 for violations of § 605(a) and § 605(e)(4), respectively, are to be awarded for "each violation" of the pertinent subsection, id. § 605(e)(3)(C)(i)(II). See also id. § 553(c)(3)(A)(ii) (maximum statutory damages for all violations of § 553 set at $10,000); id. § 605(e)(3)(C)(i)(II) (maximum statutory damages for each violation of § 605(a) and § 605(e)(4) set at, respectively, $10,000 and $100,000).

Id. at 1007 (emphasis added). With the aforementioned exceptions, district courts also have interpreted § 553(c)(3)(A)(ii) to apply to the total award of damages rather than the amount of damages for each violation. See, e.g., Cablevision Systems Corp. v. Muneyyirci, 876 F.Supp. 415, 422 (E.D.N.Y.1994) (interpreting $10,000 as maximum award for multiple violations); International Cablevision, Inc. v. Noel, 859 F.Supp. 69, 78 n. 6 (W.D.N.Y.1994) (same), rev'd on other grounds, International Cablevision, Inc. v. Sykes, 75 F.3d 123 (2d Cir.1996); American Cablevision of Queens v. McGinn, 817 F.Supp. 317, 320 (E.D.N.Y.1993) (same).

*6 Unless and until Congress changes the word "all" in

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§ 553(c)(3)(A)(ii) to "each," it is inappropriate for a court to multiply a civil damage award under § 553 based on the number of violations involved in a single action.

IV

For the foregoing reasons, the district court's judgment as to the finding of § 553 liability is AFFIRMED. The district court's statutory damages award is REVERSED and REMANDED for further proceedings not inconsistent with this opinion. AFFIRMED in part; REVERSED in part; REMANDED.

Each party to bear its own costs.

FN* Honorable James M. Burns, Senior United States District Judge for the District of Oregon, sitting by designation.

FN1. The district court held that Poll's actions did not violate § 605. Because Continental subsequently dismissed its cross-appeal on this issue, we do not consider § 605 liability in this appeal.

FN2. Congress enacted both § 553 and the provision that ultimately became § 605(e)(4) as part of the Cable Communications Policy Act of 1984 ("Cable Act"), which amended the Communications Act of 1934. Section 553 was "primarily aimed at preventing the manufacture and distribution of so-called 'black boxes' and other unauthorized converters which permit reception of cable service without paying for the service." H.R.Rep. No. 98-934, at 84 (1984), reprinted in 1984 U.S.C.C.A.N. 4655, 4721.
At the same time as providing for the protection of services offered over a cable system in § 553, the Cable Act made substantial amendments to § 605 of the Communications Act. The existing § 605 was retained without alteration as § 605(a), and four new subsections, designated as subsections (b)-(e), were added. The new provisions were intended to address "the growing practice of individuals taking down satellite delivered programming for private, home viewing by means of privately owned backyard earth stations." 130 Cong. Rec. S. 14, 286 (October 11, 1984) (statement of Sen. Packwood), reprinted in 1984 U.S.C.A.N.N. at 4745.

FN3. Contrary to Poll's position, Poll stipulated that the "FCC promulgated regulations regarding the manufacture, distribution and use of converter-decoders [which] require any person manufacturing, distributing or marketing converter-decoders for a cable system in the United States to have prior FCC authorization and approval" and that "none of the defendants have applied for or received FCC authorization to market, sell or manufacture converter-decoders." Joint Pre-Trial Order, August 18, 1995.

FN4. Poll admits as much in its brief: "Defendants themselves modified the converter-decoders which they sold to remove the addressability feature and to activate all channels which the subscriber could be purchasing from the cable company. In order to protect their products from being damaged by 'bullets,' Defendants included a 'bullet-proof' feature in their converter-decoders." (Appellant's Opening Brief at 7) (citations omitted).

FN5. Alvin Poll himself admitted that purchasers would be able to receive unlimited pay-per-view programming without a cable operator's authorization or knowledge:
Q: Now, the devices that you offer descramble pay per view on a constant basis, correct? A: Yes.
Q: And are not addressable, so that a cable operator cannot determine whether or not pay per view is being viewed; is that correct?
A: Yes.
Q: And as a consequence, the cable company can't bill your customer, if pay per view is being viewed; is that correct?
A: If they were watching with their own box; and then, watching the same movie using my box in another room, they certainly can.
Q: Well, wouldn't it be fair to say that if your customer turns on pay per view using your box, then the cable operator has no way of knowing and no way of billing that viewing; is that correct?
A: That's correct.
(Testimony of Alvin Poll, August 2, 1995).

FN6. See also Time Warner Cable of New York v. Cable Box Wholesalers, Inc., 920 F.Supp. 1048, 1053 (D.Ariz.1996); Time Warner Cable of New York City v. Freedom Electronics, 897 F.Supp. 1454, 1459 (S.D.Fla.1995); Oceanic Cablevision, Inc. v. M.D. Electronics, 771 F.Supp. 1019, 1025 (D.Neb.1991).

FN7. Section 553(c)(3)(A)(ii) reads: (ii) the party aggrieved may recover an award of statutory damages for all violations involved in the action, in a sum of not less than $250.00 or more than $10,000.00 as the court considers just.

FN8. At oral argument, Continental asserted that Sykes did not consider the 1992 amendments and, thus, it is not on point. We disagree. Although the Second Circuit did not discuss the amendments as such, we note that the amendments became effective December 5, 1992, that Sykes was submitted April 22, 1993, and that the court cited to the 1993 version in its opinion.

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ɜT is marked by its yearly introduction of new and im
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- ñSingle/Dual 800 MHz Tuners
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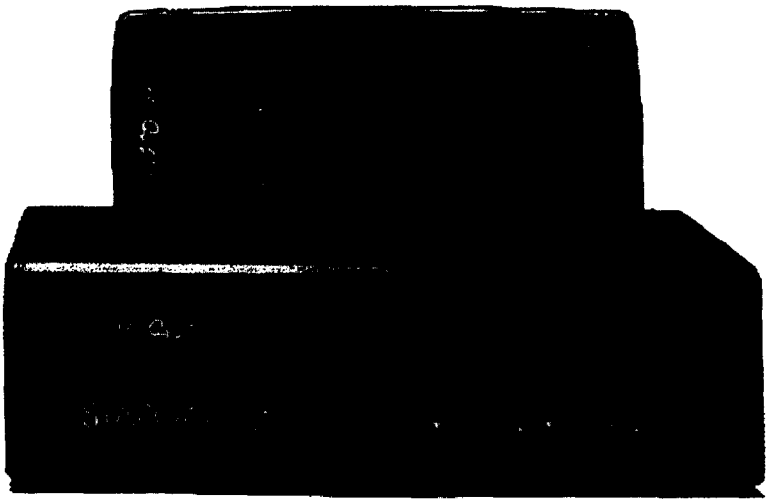
- ñPowerful Infrared Remote
- ñHRC/STD/IRC Switchable



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- ñDecoder Loops
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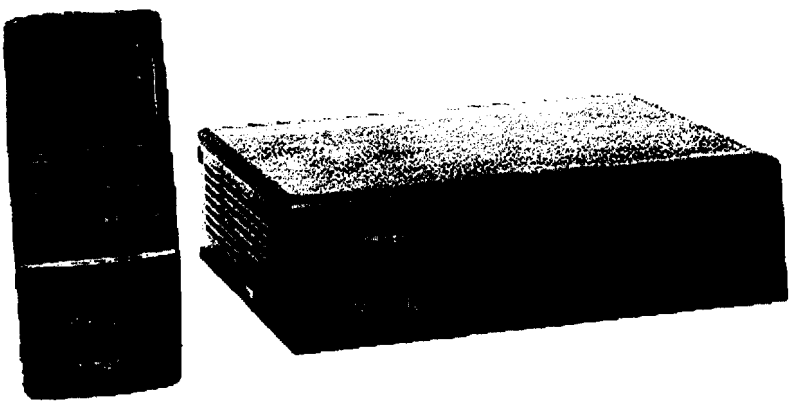

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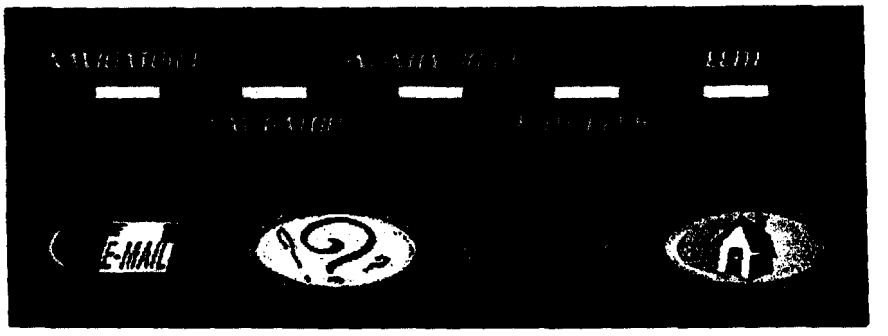
- ñAutomatic Fine Tuning w/manual override



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Are you an individual or a company? My answer is ..

[B] If a company, what kind? My answer is ..

IF OTHER, type here.

[C] How did you hear about us? My answer is ..

IF OTHER, type here.

Tell us about us

[A] Which product or products interest you the most?

My answer is ..

If more than one, type here.

[B] Which feature or features interest you the most?

My answer is ..

If more than one, type here.

Tell us about our Website

[A] Was it easy to find the information you were looking for?

My answer is ..

[B] Did you find the site informative and useful? My answer is ..

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[D] Why or why not?

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