

DLA PIPER US LLP
Mark H. Hamer (State Bar No. 156997)
mark.hamer@dlapiper.com
Alysson Russell Snow (State Bar No. 225185)
alysson.snow@dlapiper.com
401 B Street, Suite 1700
San Diego, CA 92121
Telephone: (619) 699-2858
Facsimile: (619) 699-2701

Attorneys for Plaintiffs
ECHOSTAR SATELLITE L.L.C.,
ECHOSTAR TECHNOLOGIES CORPORATION
and NAGRASTAR L.L.C.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ECHOSTAR SATELLITE L.L.C., a
Colorado Limited Liability Company,
ECHOSTAR TECHNOLOGIES
CORPORATION, a Texas Corporation,
and NAGRASTAR L.L.C., a Colorado
Limited Liability Company,

Plaintiffs,

v.

VIEWTECH, INC., a California
Corporation, JUNG KWAK, an Individual,
and DOES 1-10,

Defendants.

FILED

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CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY DEPUTY

Case No. '07 CV 1273 W - AJB

PLAINTIFFS' COMPLAINT FOR:

- 1) Violation of the Digital Millennium Copyright Act, 17 U.S.C. § 1201(a)(2);
- 2) Violation of the Digital Millennium Copyright Act, 17 U.S.C. § 1201(b)(1);
- 3) Violation of the Communications Act of 1934, as amended, 47 U.S.C. § 605(a);
- 4) Violation of the Communications Act of 1934, as amended, 47 U.S.C. § 605(e)(4);
- 5) Violation of the Electronic Communications Privacy Act, 18 U.S.C. § 2511(1)(a);
- 6) Unfair Competition in Violation of California Business & Professions Code § 17200;
- 7) Unjust Enrichment.

JURY TRIAL DEMANDED

1 Plaintiffs EHOSTAR SATELLITE L.L.C., EHOSTAR TECHNOLOGIES
2 CORPORATION, (collectively "EHOSTAR") and NAGRASTAR L.L.C. ("NAGRASTAR"),
3 by their undersigned counsel, file this Original Complaint against the above-named Defendants
4 and state as follows:

5 INTRODUCTION & NATURE OF THE ACTION

6 1. Plaintiffs EHOSTAR and NAGRASTAR bring this action against Defendants
7 VIEWTECH, INC., JUNG KWAK, and DOES 1 through 10 (collectively "Defendants") for
8 unlawfully manufacturing, distributing, and otherwise trafficking in devices, components, and
9 technology intended to facilitate the illegal and unauthorized reception and decryption of
10 EHOSTAR's subscription and pay-per-view television programming.

11 2. EHOSTAR is a multi-channel video provider, providing video, audio, and data
12 services to customers throughout the United States, Puerto Rico, and the U.S. Virgin Islands via a
13 Direct Broadcast Satellite ("DBS") system. EHOSTAR uses high-powered satellites to
14 broadcast, among other things, movies, sports, and general entertainment services
15 ("Programming") to consumers who have been authorized to receive such services after payment
16 of a subscription fee (or in the case of a pay-per-view movie or event, the purchase price).

17 3. EHOSTAR operates its DBS Programming under the trade name "DISH
18 Network." To provide customers with a variety of Programming channels, EHOSTAR
19 continues to contract and purchase the distribution rights of copyrighted Programming from
20 providers such as network affiliates, pay and specialty broadcasters, cable networks, motion
21 picture distributors, sports leagues, event promoters, and other content providers.

22 4. Because EHOSTAR generates revenues through the sale of subscription
23 packages and pay-per-view programming, and because the ability to attract and retain the
24 distribution rights for Programming is dependent upon preventing the unauthorized reception of
25 DISH Network Programming signals, all of EHOSTAR's video channels, except for certain
26 promotional channels, are digitally secured.

27 5. EHOSTAR protects DISH Network Programming from unauthorized viewing by
28 using a management and security system ("Security System"), which serves two interrelated

1 functions: (1) subscriber-management—allowing EHOSTAR to “turn on” or “turn off”
2 Programming that a customer ordered, cancelled, or changed; and (2) encryption—preventing
3 individuals or entities who have not purchased DISH Network Programming from viewing it.

4 6. The Security System is comprised of two parts. First, EHOSTAR encrypts
5 (electronically scrambles) its satellite signals using proprietary technology provided by
6 NAGRASTAR. Essentially, NAGRASTAR provides EHOSTAR with “smart cards” (“Access
7 Cards”) that contain a microprocessor component that functions as a security computer to a
8 “conditional access system” known as Digital Nagra Advanced Security Process (“DNASP”).
9 These Access Cards are utilized in the satellite receivers that customers either purchase or lease.
10 Second, the DNASP uses a complex encryption system that is combined with a Digital Video
11 Broadcasting (“DVB”) scrambler/encoding system to effectively protect and encrypt DISH
12 Network Programming.

13 7. Defendants violated federal and state law by offering to the public, providing, or
14 otherwise engaging in the traffic of devices, components, and technology that are primarily
15 designed to circumvent and/or defeat Plaintiffs’ Security System and ultimately facilitate the
16 unauthorized reception of EHOSTAR’s encrypted satellite signals and DISH Network
17 Programming.

18 PARTIES

19 8. Plaintiff EHOSTAR SATELLITE L.L.C. is a Colorado limited liability company
20 with its principal place of business located at 9601 South Meridian Blvd., Englewood, Colorado
21 80112.

22 9. Plaintiff EHOSTAR TECHNOLOGIES CORPORATION is a Texas corporation
23 with its principal place of business located at 90 Inverness Circle East, Englewood, Colorado
24 80112.

25 10. NAGRASTAR L.L.C. is a Colorado limited liability company with its principal
26 place of business located at 90 Inverness Circle East, Englewood, Colorado 80112.
27 NAGRASTAR is a joint venture between EHOSTAR and the Kudelski Group, a group of
28 companies headquartered in Switzerland.

11. Upon information and belief, Defendant VIEWTECH, INC. ("VIEWTECH") is a California corporation with its principal place of business located at 3830 Oceanic Drive, Suite 409, Oceanside, California 92056. The registered agent for VIEWTECH is Robert Rhine, 3830 Oceanic Drive, Suite 409, Oceanside, California 92056.

12. Upon information and belief, Defendant JUNG KWAK is an individual residing in Oceanside, California.

13. The true names and capacities of Defendants DOES 1 through 10, whether individual, corporate, associate, or otherwise, are masked by monikers used on the Internet and thus unknown to Plaintiffs at this time. Plaintiffs believe that information obtained in discovery will lead to the identification of each Defendant's true name.

14. Upon information and belief, each of the Defendants, including DOES 1 through 10, was the agent and/or principal for one another, was acting within the scope of such agency when engaging in the misconduct alleged herein, and is jointly and severally liable for all damages arising as a result thereof.

JURISDICTION AND VENUE

15. This is a civil action predicated upon violations of the Digital Millennium Copyright Act, 17 U.S.C. § 1201 *et seq.*, the Communications Act of 1934, as amended, 47 U.S.C. § 605 *et seq.*, and the Electronic Communications Privacy Act, 18 U.S.C. § 2511 *et seq.* Therefore, jurisdiction is proper in this Court pursuant to 28 U.S.C. §§ 1331, 1338, 47 U.S.C. § 605(e)(3)(A), 17 U.S.C. § 1203, and 18 U.S.C. § 2520(a). The Court has supplemental jurisdiction over the state law claims asserted herein pursuant to 28 U.S.C. § 1367(a).

16. Personal jurisdiction and venue are proper in this Court pursuant to 28 U.S.C. §§ 1391(b)(1) because at least one Defendant resides within this judicial district and the remaining Defendants reside in California, 1391(b)(2) because a substantial part of the events giving rise to this action occurred in this judicial district, 1391(b)(3) because Defendants may be found in this judicial district and are subject to *in personam* jurisdiction, and 1400(a) because this case asserts the infringement and circumvention of protected copyright materials.

PLAINTIFFS' SECURITY SYSTEM

17. A consumer wishing to subscribe to and receive DISH Network Programming must first have the necessary equipment, which consists primarily of: (1) a satellite dish antenna ("dish"); (2) an integrated receiver/decoder ("receiver" or "set-top box"); and (3) a credit card-sized ECHOSTAR Access Card.

18. A satellite dish can be mounted on a rooftop, deck railing, or other structure at the subscriber's home or business. After proper installation, the dish antenna will receive programming signals from one of ECHOSTAR's satellites, which are then transmitted by wire into the set-top box. The receiver processes and descrambles the incoming signal using the data and encryption technology stored in the ECHOSTAR Access Card. The Access Card is loaded into the receiver through a slot located at the face of the unit.

19. ECHOSTAR provides the Access Cards to customers for use with the receivers for the purpose of enabling authorized access to DISH Network Programming. Absent a subscription to DISH Network, ECHOSTAR will not provide a consumer an Access Card or authorize access to encrypted DISH Network Programming. Subscribers are not authorized to modify or tamper with the Access Card, which are clearly marked as property of ECHOSTAR and must be returned upon request.

20. The ECHOSTAR Access Card is essential to the operation of the set-top box because it contains a secure embedded microprocessor that essentially functions as a small security computer, with secret keys and software that contain technology codes ("Nagra Software") used to communicate with the receiver and enable the descrambling of DISH Network Programming. The Nagra Software and the security components contained in each set-top box are licensed from NAGRASTAR and are copyrighted materials.

21. The Nagra Software within each Access Card is supported by two code segments of memory: (1) Read-Only-Memory ("ROM"); and (2) Electronically Erasable Programmable Read-Only-Memory ("EEPROM"). Generally, the ROM code segment contains the intimate knowledge and information regarding Plaintiffs' Security System and how it works; whereas the

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1 EEPROM code segment contains the secret keys enabling the decryption of ECHOSTAR's
2 satellite signal.

3 22. The ROM code segment provides detailed instructions and commands to
4 ECHOSTAR Access Cards and set-top boxes in the normal operation of Plaintiffs' Security
5 System. Access to the proprietary information stored in the ROM code is necessary to unlock the
6 safe containing the secrets to Plaintiffs' Security System.

7 23. The EEPROM code segment stores data and command codes that have been
8 written to ECHOSTAR Access Cards which the ROM code reads from to perform its calculation
9 and operation functions. Moreover, the EEPROM code segment contains secret "transmission"
10 keys and secret "pairing" keys (collectively known as "security keys"). The security keys are
11 used to encrypt and decrypt the communications between the ECHOSTAR Access Card and the
12 set-top box.

13 24. ECHOSTAR communicates with the microprocessor in each Access Card by
14 sending and receiving satellite signals which are routinely updated. The information transmitted
15 to and temporarily stored on the Access Card includes the most recent security keys and software
16 necessary to view DISH Network Programming.

17 25. Plaintiffs' Security System effectively controls access to the copyrighted materials
18 that comprise DISH Network Programming. In addition, the Security System ensures that the
19 protection afforded to such copyrighted works, such as limitations on the dissemination and use in
20 accordance with ECHOSTAR's contractual agreements with content providers, is preserved.

21 THE PIRACY OF DISH NETWORK PROGRAMMING

22 26. Upon information and belief, satellite pirates reverse engineered the Nagra
23 Software in the ECHOSTAR Access Card. As a result, these pirates ultimately copied and
24 acquired the proprietary information stored within the ROM and EEPROM code segments of the
25 Access Card, and compromised Plaintiffs' Security System. The pirate community (commercial
26 and consumer) used this knowledge to develop various types of devices and technology for the
27 sole purpose of illegally descrambling or "pirating" DISH Network Programming.

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1 27. To combat the piracy of DISH Network Programming, Plaintiffs periodically
2 introduce new ECHOSTAR Access Cards that contain updated security codes and software. In
3 addition, Plaintiffs continue to invest in the development and deployment of electronic
4 countermeasures ("ECM") to maintain the integrity of the Security System. An ECM is a
5 command transmitted in the stream of data that targets Access Cards, or clones thereof, that are
6 using known modified software code and disables those Access Cards.

7 **THE SALE AND USE OF FREE-TO-AIR RECEIVERS FOR SATELLITE PIRACY**

8 28. Despite the continuous improvements to Plaintiffs' Security System, satellite
9 piracy continues to proliferate with the ever-growing access and popularity of the Internet. With
10 the Internet as a sword, pirates developed a new way to steal DISH Network Programming by
11 using so-called "free-to-air" receivers ("FTA Receivers"). FTA Receivers are devices that can
12 receive "free-to-air" satellite television signals, which are either not scrambled or scrambled but
13 available free of charge. "Free-to-air" channels do not offer the same type of popular
14 programming found in subscription television packages (e.g. HBO, ESPN, etc.). Instead, "free-
15 to-air" television channels typically include limited ethnic, religious, business, music,
16 information, and advertising content.

17 29. FTA Receivers are similar to the receivers used by ECHOSTAR in that they are
18 set-top boxes, approximately the size of a VCR player, which contain descrambling circuits and
19 software that enables the units to perform designated functions. A variety of FTA Receivers are
20 even equipped with an Access Card reader.

21 30. While FTA Receivers contain many of the same components found in an
22 ECHOSTAR set-top box, the units cannot descramble and receive DISH Network Programming
23 without utilizing the security keys and technology codes found in the Nagra Software (i.e. ROM
24 code segment, EEPROM code segment). Upon information and belief, manufacturers of FTA
25 Receivers developed firmware and components within each unit that will accept and receive
26 illegal pirate software (hereinafter "Pirate Software") that contains the secret keys and codes to
27 Plaintiffs' Security System. Once this technology is downloaded or "flashed" into the FTA
28 Receiver, the unit will illegally receive DISH Network Programming.

1 31. Upon information and belief, the firmware and components within each FTA
2 Receiver that enable the device to accept the download of illegal Pirate Software are (1) a
3 capability that has been designed into each FTA Receiver specifically for Pirate Software; and
4 (2) a capability that has no practical application other than to circumvent Plaintiffs' Security
5 System.

6 32. Commercial pirates acquired, modified, and sold FTA Receivers by: (1) obtaining
7 the FTA Receivers directly from their manufacturer or elsewhere; (2) loading or "flashing" the
8 requisite Pirate Software onto the circuit chips or firmware contained within the FTA Receivers;
9 (3) once "flashed" with the Pirate Software, "testing" the FTA Receivers to ensure the device
10 would receive and descramble DISH Network Programming without authorization from or
11 payment to ECHOSTAR; and (4) ultimately, selling the FTA Receivers to house-hold consumer
12 pirates on the Internet.

13 33. Upon information and belief, commercial pirates recently changed their approach
14 by not actually loading the Pirate Software onto the FTA receivers themselves, but distributing
15 the requisite piracy technology and information to select individuals on websites or Internet
16 discussion "forums" who then offer the Pirate Software to consumers for download. These
17 websites or forums are typically sponsored by many of the commercial pirates, who use this
18 venue to advertise and tout their brand of FTA equipment. This approach, which is prevalent
19 today, permits commercial pirates (including the manufacturers and distributors of FTA
20 Receivers) to assert the misleading claim that they are distributing only "unprogrammed" or
21 "unflashed" piracy devices to consumers.

22 34. In some cases, website forums provide and offer: (1) information and/or
23 instruction, including sources of supply, production information, and product reviews;
24 (2) discussion threads on topics of interest to the piracy community, including software "hacks"
25 or "fixes" designed to restore functionality to ECHOSTAR Access Cards that have been disabled
26 by Plaintiffs' countermeasures; (3) security keys for DISH Network Programming, which are
27 necessary to unscramble programming from an FTA receiver; (4) piracy or "flashing" software
28 files for download to their users; and (5) links and advertisements to other piracy websites that

1 sell FTA Receivers, Pirate Software, or other piracy devices, components, and technology used to
2 steal DISH Network Programming.

3 35. Successful forum sites can have thousands of members, and are often managed by
4 certain users designated by the operating pirate(s) as "administrators" or "moderators." These
5 individuals are typically given the authority to manage the content posted on the forum site.
6 Upon information and belief, the distributors of FTA Receivers provide equipment, updated
7 piracy technology, and information to the administrators or moderators of select forums for
8 distribution.

9 36. The distribution, sale, and use of FTA Receivers for piracy pose a serious threat to
10 ECHOSTAR and NAGRASTAR. Inasmuch as FTA Receivers are not manufactured or sold by
11 Plaintiffs to receive DISH Network Programming, neither ECHOSTAR nor NAGRASTAR can
12 control or regulate the software contained in these devices. As a result, the ECMs traditionally
13 used to combat satellite piracy may not be effective.

14 DEFENDANTS' WRONGFUL CONDUCT

15 37. Defendants directly, and through others acting in concert, distribute and promote
16 the sale of "Viewsat" branded FTA Receivers throughout the United States. Upon information
17 and belief, discovery will show that Defendants sold thousands of these FTA Receivers to
18 consumer pirates for the sole purpose of circumventing Plaintiffs' Security System.

19 38. Similar to other FTA Receivers, it is believed that the satellite equipment
20 distributed by Defendants contains computer firmware and components designed to accept the
21 download of Pirate Software created solely for "Viewsat" branded FTA Receivers. Once flashed
22 with this technology, these FTA Receivers can and will illegally receive DISH Network
23 Programming.

24 39. Defendants import a variety of FTA Receivers from a manufacturer in Asia. Upon
25 information and belief, discovery will show that this manufacturer not only creates the firmware
26 and components within each device, but develops, designs, and updates the requisite Pirate
27 Software with the assistance and support of Defendants.

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40. Upon information and belief, discovery will show that FTA Receivers accept the download of illegal Pirate Software through internal firmware and components that (1) have been specifically designed to communicate with Pirate Software; and (2) have no commercially significant purpose or use other than to circumvent Plaintiffs' Security System.

41. Upon information and belief, discovery will show that Defendants directly, and through others acting in concert, distribute the updated Pirate Software to select website administrators and moderators, who then disseminate this technology to consumers on the Internet. Because Plaintiffs continue to develop technological measures that effectively control access to the copyrighted Programming on the DISH Network satellite platform, the demand for updated Pirate Software remains constant. As a result, the popularity of pirate websites and discussion forums continues to grow.

42. Defendants' authorized dealers purposefully advertise and promote "Viewsat" branded FTA Receivers on several well-known piracy websites. These websites not only provide consumers with illegal Pirate Software, but offer instruction and information used to unscramble and steal DISH Network Programming. Below are exemplars of typical hyperlink advertisements prominently displayed on pirate websites:



43. Upon information and belief, discovery will show that competition within the FTA industry is volatile and market share is contingent upon the immediate availability of updated Pirate Software. Distributors, such as VIEWTECH, are often pressured to provide consumer pirates with an immediate "fix" to combat a particular countermeasure or ECM utilized by Plaintiffs to prevent the unauthorized reception of DISH Network Programming. VIEWTECH is

1 considered an industry leader because of its commitment to immediately address the demands of
2 the pirate community.

3 44. Indeed, it is believed that JUNG KWAK ("KWAK"), the founder and president of
4 VIEWTECH, not only encourages the distribution of Pirate Software, but often communicates
5 with members of the pirate community on this very issue. Upon information and belief,
6 discovery will show that KWAK has been identified on several well-known pirate websites by the
7 alias "Mr. V," "Mr. Viewsat," or "Viewsat." Operating under these aliases, KWAK has and
8 continues to offer, provide, and traffic in updated Pirate Software, often touting the availability of
9 such technology following the deployment of ECMs by Plaintiffs.

10 45. Aside from direct communication with consumer pirates, it is believed that
11 discovery will show Defendants also utilize the services of an individual known in the pirate
12 community as "Robert Ward," "Veracity," "TheDSSGuy," and "TDG" (collectively "Ward") to
13 promote the sale of FTA Receivers and disseminate pirate technology on several websites,
14 including www.hashhu.com—a venue used by Defendants' authorized dealers to advertise
15 "Viewsat" branded FTA Receivers.

16 46. As an agent for Defendants, Ward acts as a spokesman for "Viewsat" products and
17 provides consumers with updated Pirate Software, information, and instruction necessary to
18 circumvent Plaintiffs' Security System. Defendants are also believed to provide "Viewsat"
19 branded equipment, updated piracy technology, and information to select administrators and/or
20 moderators for distribution on the www.hashhu.com website.

21 47. Upon information and belief, discovery will show that Defendants were and are
22 offering to the public, providing, and otherwise trafficking in FTA Receivers, updated Pirate
23 Software, information, and instruction on several other pirate websites, including but not limited
24 to www.totalfta.com, www.fta-newbies.com, and www.curious-contraptions.com. Similar to the
25 marketing hyperlinks found on the www.hashhu.com website, Defendants' authorized dealers
26 also advertise the availability of "Viewsat" branded FTA receivers on these pirate websites.
27 Defendants are believed to provide such equipment, updated piracy technology, and information
28 to select administrators and/or moderators for distribution on these pirate websites.

CLAIMS FOR RELIEF

COUNT I

(Manufacture of and Traffic in Signal Theft Devices, Components, and Technology in Violation of the Digital Millennium Copyright Act, 17 U.S.C. §§ 1201(a)(2) and 1201(b)(1))

48. Plaintiffs incorporate by reference paragraphs 1 through 47 as if set forth herein.

49. Defendants were and are actively engaged in the business of manufacturing, importing, offering to the public, providing, or otherwise trafficking in the sale of illegal pirate devices, components, and technology in violation of the Digital Millennium Copyright Act ("DMCA"), 17 U.S.C. §§ 1201(a)(2) and 1201(b)(1).

50. The FTA Receivers and corresponding Pirate Software provided by Defendants are: (1) designed or produced by Defendants primarily for the circumvention of Plaintiffs' Security System—a technological measure that effectively controls access to, copying and distribution of, copyrighted works; (2) made available by Defendants despite having no limited commercially significant purpose or use other than to circumvent Plaintiffs' Security System; and/or (3) marketed by Defendants, or through others acting in concert, with knowledge that the devices, components, and technology are used to circumvent Plaintiffs' Security System.

51. Defendants were and are manufacturing, importing, offering to the public, providing, or otherwise trafficking "Viewsat" branded FTA Receivers and corresponding Pirate Software with knowledge that these devices, components, and technology are used to circumvent and defeat Plaintiffs' conditional access technological measures that protect the copyrighted works on the DISH Network satellite platform.

52. Defendants' actions that constitute violations of the DMCA were performed without the permission, authorization, or consent of EHOSTAR, NAGRASTAR, or any owner of copyrighted Programming broadcast on the DISH Network platform.

53. Defendants violated sections 1201(a)(2) and 1201(b)(1) of the DMCA willfully and for purposes of commercial advantage or private financial gain.

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54. Defendants' misconduct has and will continue to cause damage to Plaintiffs in an amount to be proven at trial. Unless permanently restrained and enjoined by the Court, Defendants will continue to violate the alleged provisions of the DMCA.

COUNT II

(Facilitating the Unauthorized Decryption and Reception of Satellite Signals in Violation of the Communications Act, 47 U.S.C. § 605(a))

55. Plaintiffs incorporate by reference paragraphs 1 through 54 as if set forth herein.

56. Defendants were and are assisting others, namely those purchasing "Viewsat" branded FTA Receivers and downloading the corresponding Pirate Software from websites, to intercept and receive ECHOSTAR's encrypted satellite transmissions without authorization and for their own benefit in violation of 47 U.S.C. § 605(a).

57. Defendants were and are assisting, directly or indirectly, with the design, manufacture, development, assembly, modification, solicitation, and/or distribution of "Viewsat" branded FTA Receivers and corresponding Pirate Software with knowledge, or having reason to know, that such devices and technology are used primarily to assist in the unauthorized interception and decryption of direct-to-home satellite services in violation of 47 U.S.C. §§ 605(a).

58. Defendants violated 47 U.S.C. § 605(a) of the Communications Act willfully and for the purpose of direct or indirect commercial advantage or private financial gain.

59. Defendants' misconduct has and will continue to cause damage to Plaintiffs in an amount to be proven at trial. Unless permanently restrained and enjoined by the Court, Defendants will continue to violate the alleged provisions of the Communications Act.

COUNT III

(Manufacture and Sale of Signal Theft Devices and Technology in Violation of the Communications Act, 47 U.S.C. § 605(e)(4))

60. Plaintiffs incorporate by reference paragraphs 1 through 59 as if set forth herein.

61. Defendants were and are engaged in the business of designing, manufacturing, developing, assembling, modifying, importing, exporting, selling, or otherwise distributing

1 "Viewsat" branded FTA Receivers and corresponding Pirate Software to facilitate the illegal use
 2 and reception of ECHOSTAR's encrypted satellite transmissions without authorization in
 3 violation of 47 U.S.C. § 605(e)(4).

4 62. Defendants were and are assisting, directly or indirectly, with the design,
 5 manufacture, development, assembly, modification, solicitation, and/or distribution of "Viewsat"
 6 branded FTA Receivers and the corresponding Pirate Software with knowledge, or having reason
 7 to know, that such devices and technology were and are used primarily to assist in the
 8 unauthorized interception and decryption of direct-to-home satellite services in violation of
 9 47 U.S.C. § 605(e)(4).

10 63. Defendants violated 47 U.S.C. § 605(e)(4) of the Communications Act willfully
 11 and for the purpose of direct or indirect commercial advantage or private financial gain.

12 64. Defendants' misconduct has and will continue to cause damage to Plaintiffs in an
 13 amount to be proven at trial. Unless permanently restrained and enjoined by the Court,
 14 Defendants will continue to violate the alleged provisions of the Communications Act.

15 **COUNT IV**

16 **(Unauthorized Interception of Electronic Communications in Violation of the Electronic** 17 **Communications Privacy Act, 18 U.S.C. § 2511(1)(a))**

18 65. Plaintiffs incorporate by reference paragraphs 1 through 64 as if set forth herein.

19 66. Defendants were and are intentionally intercepting, endeavoring to intercept, or
 20 otherwise procuring other persons to intercept or endeavor to intercept ECHOSTAR's encrypted
 21 satellite transmissions in violation of the Electronic Communications Privacy Act ("Wiretap
 22 Act"), 18 U.S.C. § 2511(1)(a), by facilitating the use of "Viewsat" branded FTA Receivers,
 23 components, and corresponding Pirate Software.

24 67. Defendants knew that the interception of ECHOSTAR's encrypted satellite signals
 25 was and is illegal and prohibited.

26 68. Defendants violated section 2511(1)(a) of the Wiretap Act for a tortious or illegal
 27 purpose, or for purposes of direct or indirect commercial advantage or private financial gain.

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69. Defendants' misconduct has and will continue to cause damage to Plaintiffs in an amount to be proven at trial. Unless permanently restrained and enjoined by the Court, Defendants will continue to violate the alleged provisions of the Wiretap Act.

COUNT V

(Unfair Competition in Violation of California Business & Professions Code § 17200)

70. Plaintiffs incorporate by reference paragraphs 1 through 69 as if set forth herein.

71. Defendants' promotion, distribution, and provision of piracy devices, components, and technology which are primarily designed to circumvent Plaintiffs' Security System and steal DISH Network Programming constitute unlawful and unfair business acts and practices within the meaning of California Business and Professions Code § 17200 *et seq.*

72. Defendants' unlawful business acts and practices, as alleged herein, violate provisions of the Digital Millennium Copyright Act, 17 U.S.C. § 1201 *et seq.*, the Communications Act of 1934, as amended, 47 U.S.C. § 605 *et seq.*, and the Electronic Communications Privacy Act, 18 U.S.C. § 2511 *et seq.*

73. Defendants' business acts and practices, as alleged herein, are unfair because any utility gained by Defendants' misconduct is outweighed by the gravity of the consequence to Plaintiffs and the general public, and/or Defendants' misconduct is immoral, unethical, oppressive, unscrupulous, or substantially injurious to Plaintiffs and the general public.

74. Defendants' unlawful and unfair business acts and practices have proximately caused and will continue to cause substantial and irreparable injury to Plaintiffs, including loss of current and/or potential subscribers, dilution of goodwill, confusion of potential customers, and injury to reputation.

75. Unless permanently restrained and enjoined by the Court, Defendants' wrongful business activities will continue to violate the alleged unfair competition laws of California.

COUNT VI

(Unjust Enrichment)

76. Plaintiffs incorporate by reference paragraphs 1 through 75 as if set forth herein.

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77. Defendants intentionally usurped for themselves, and through others acting in concert, Plaintiffs' trade secrets, proprietary information, revenues, and other property rights for the purpose of, among others, enhancing the commercial value of Defendants' products and technology by effectuating, and assisting others in effectuating, the circumvention of Plaintiffs' Security System.

78. Upon information and belief, discovery will show that Defendants are currently in possession of: (1) Plaintiffs' trade secrets and proprietary information, including but not limited to, portions of the security keys and codes contained within the Nagra Software that are used to illegally circumvent Plaintiffs' Security System; (2) devices, components, and technology designed to intercept and decrypt ECHOSTAR's satellite signals; and (3) monies or other proceeds unlawfully obtained through the promotion, distribution, and sale of piracy devices, components, and technology designed to steal DISH Network Programming.

79. As a direct and proximate result of the unlawful and improper acts alleged herein, Defendants have been unjustly enriched by garnering lost profits and goodwill from ECHOSTAR. The amount of profits unjustly realized by Defendants cannot be readily ascertained by ECHOSTAR without an accounting of Defendants' business records.

80. Unless permanently restrained and enjoined, Defendants' misconduct has and will continue to unjustly enrich Defendants and cause further damage to ECHOSTAR in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs ECHOSTAR and NAGRASTAR seek judgment against Defendants as follows:

A. For a grant of permanent injunctive relief restraining and enjoining Defendants, and their employees, agents, representatives, attorneys, and all persons acting or claiming to act on their behalf or under their direction or authority, and all persons acting in concert or in participation with them, from:

(1) offering to the public, providing, or otherwise trafficking in any FTA Receivers, Pirate Software, or any other device, component, or technology, or part thereof,

1 through the www.hashhu.com, www.totalfta.com, www.fta-newbies.com, and www.curious-
2 contraptions.com websites, any other Internet website, or in any other way that:

3 (a) is primarily designed or produced for the purpose of circumventing
4 Plaintiffs' Security System, including the encryption and access control protection contained in
5 the software on ECHOSTAR's Access Cards, or any other technological measure adopted by
6 Plaintiffs that effectively controls access to copyrighted Programming on the DISH Network
7 platform;

8 (b) have only a limited commercially significant purpose or use other
9 than to circumvent Plaintiffs' Security System, including the encryption and access control
10 protection contained in the software on ECHOSTAR's Access Cards, or any other technological
11 measure adopted by Plaintiffs that effectively controls access to copyrighted Programming on the
12 DISH Network platform;

13 (c) is knowingly marketed by Defendants and/or others acting in
14 concert with Defendants for use in circumventing Plaintiffs' Security System, including the
15 encryption and access control protection contained in the software on ECHOSTAR's Access
16 Cards, or any other technological measure adopted by Plaintiffs that effectively controls access to
17 copyrighted Programming on DISH Network; and

18 (2) assembling, modifying, selling, and/or distributing any FTA Receivers or
19 Pirate Software knowing or having reason to know that such device or software is primarily of
20 assistance in the unauthorized decryption of direct-to-home satellite services through the
21 www.hashhu.com, www.totalfta.com, www.fta-newbies.com, and www.curious-contraptions.com
22 websites, any other Internet website, or in any other way; and

23 (3) assisting others in receiving (including assistance offered by providing
24 hypertext links or banner advertising) ECHOSTAR's electronic communications without
25 ECHOSTAR's authorization through the www.hashhu.com, www.totalfta.com, www.fta-
26 newbies.com, and www.curious-contraptions.com websites, any other Internet website, or in any
27 other way.

28 /////

1 B. For an Order impounding all electronic copies of Pirate Software, FTA Receivers,
2 or other circumvention or signal theft technology, components, or devices in the custody or
3 control of Defendants or related entities that the Court has reasonable cause to believe were
4 involved in a violation of the Digital Millennium Copyright Act, 17 U.S.C. § 1201 *et seq.*

5 C. For an Order directing Defendants to preserve and maintain all records, in any
6 form (including electronic form), that evidence, refer, or relate to: FTA Receivers, Pirate
7 Software, communications or correspondence with suppliers of software, hardware, or other
8 equipment or know-how concerning satellite television piracy, including any dealer, distributor,
9 or manufacturer of FTA Receivers.

10 D. Award Plaintiffs the greater of its actual damages together with any profits made
11 by Defendants that are attributable to the violations alleged herein, or statutory damages in the
12 amount of up to \$100,000 for each violation of 47 U.S.C. § 605(e)(4), pursuant to 47 U.S.C. §
13 605(e)(3)(C)(i).

14 E. Award Plaintiffs the greater of its actual damages together with any profits made
15 by Defendants that are attributable to the violations alleged herein, or statutory damages in the
16 amount of up to \$2,500 for each violation of 17 U.S.C. §§ 1201(a)(2) and 1201(b)(1), pursuant to
17 17 U.S.C. §§ 1203(c)(2) and 1203(c)(3)(A).

18 F. Award Plaintiffs the greater of its actual damages together with any profits made
19 by Defendants that are attributable to the violations alleged herein, or statutory damages in the
20 amount of \$100 per day for each violation of 18 U.S.C. § 2511(1) or \$10,000, pursuant to
21 18 U.S.C. § 2520(c)(2).

22 G. Award Plaintiffs punitive damages afforded by law pursuant to 18 U.S.C.
23 § 2520(b)(2), and in equity for unjust enrichment.

24 H. For an accounting and restitution by Defendants of all gain, profit, and advantages
25 derived from Defendants' unlawful and unfair business acts and practices.

26 I. For an award of Plaintiffs' costs, reasonable attorneys' fees, and investigative fees.

27 ////

28 ////

1 J. For pre- and post-judgment interest on all profits and damages granted by this
2 Court in accordance with the law.

3 K. For such other and further relief as the Court deems just and proper.

4
5 DATED: July 13, 2007

6 Respectfully submitted,

7 DLA PIPER US LLP

8 By: 

9 Mark H. Hamer

Alysson R. Snow

10 Attorneys for Plaintiffs
11 ECHOSTAR SATELLITE L.L.C.,
12 ECHOSTAR TECHNOLOGIES
13 CORPORATION and NAGRASTAR L.L.C.
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JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

ECHOSTAR SATELLITE L.L.C., a Colorado Limited Liability Company, ECHOSTAR TECHNOLOGIES CORPORATION, a Texas Corporation, and NAGRASTAR L.L.C., a Colorado Limited Liability Company

DEFENDANTS

VIEWTECH, INC., a California Corporation, JUNG KWAN an Individual, and DOES 1-10

2007 JUL 13 PM 2:13

(b) County of Residence of First Listed Plaintiff Arapahoe
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (if Known)

BY _____ DEPUTY

(c) Attorney's (Firm Name, Address, and Telephone Number)

Mark H. Hamer
Alysson R. Snow
DLA PIPER US LLP
401 B Street, Suite 1700
San Diego, CA 92101-4297
619-699-2858

'07 CV 1273 W - AJB

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input checked="" type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities—Employment <input type="checkbox"/> 446 Amer. w/Disabilities—Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 Violation of the Digital Millennium Copyright Act, 17 U.S.C. § 1201(a)(2); and 17 U.S.C. § 1201(b)(1);
 Violation of the Communications Act of 1934, as amended, 47 U.S.C. § 605(a); and 47 U.S.C. § 605(e)(4);
 Violation of the Electronic Communications Privacy Act, 18 U.S.C. § 2511(1)(a).


Brief description of cause:

For Violations of the Digital Millennium Copyright Act, the Communications Act, and the Electronic Communications Privacy Act, for unlawful manufacturing, distributing and otherwise trafficking in devices, components, and technology intended to facilitate the illegal and unauthorized reception and decryption of plaintiffs' subscription and pay-per-view television programming.

PAID \$350- 711307 BH RPT# 140403

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION DEMAND ☐ CHECK IF ES ONLY DEMAND ☒ JURY DEMAND: ☒ Yes ☐ No
UNDER F.R.C.P. 23

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE July 13, 2007 SIGNATURE OF ATTORNEY OF RECORD 

FOR OFFICE USE ONLY
RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

**UNITED STATES
DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

140403 - BH

**July 13, 2007
14:18:40**

Civ Fil Non-Pris

USAO #: 07CV1273 CIVIL FILING

Judge.: THOMAS J WHELAN

Amount.: \$350.00 CK

Check#: BC# 6214

Total-> \$350.00

**FROM: ECHOSTAR V. VIEWTECH
CIVIL FILING**