

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

TERRIER MEDIA BUYER, INC.
d/b/a COX MEDIA GROUP,

Plaintiff,

v.

DISH NETWORK L.L.C.,

Defendant.

No. _____

COMPLAINT FOR DAMAGES

Plaintiff Terrier Media Buyer, Inc. d/b/a Cox Media Group (“CMG”) brings this Complaint against Defendant DISH Network L.L.C. (“DISH”) for copyright infringement. This Complaint is based on CMG’s investigation to date. Based on knowledge as to itself and its own actions, and on information and belief as to all other matters, CMG alleges as follows.

INTRODUCTION

1. DISH is willfully infringing CMG’s copyrights by unlawfully capturing and retransmitting broadcast signals from 13 local TV stations owned by CMG. The Copyright Act expressly provides for enhanced statutory damages to punish and deter such brazen and knowing violations of the law.

2. CMG’s stations broadcast TV programming to the public for free via over-the-air signals. Many households, however, pay to view this programming through cable, satellite, or internet providers’ services. Under federal law, such pay-TV providers must secure broadcasters’ consent to retransmit their signals, and must also obtain a license to retransmit copyrighted programming. This is generally accomplished through retransmission consent agreements between broadcasters and pay-TV providers.

3. DISH is a pay-TV provider. It captures broadcast signals from CMG's stations and then retransmits those signals and the copyrighted content that the signals carry to its customers.

4. In the past, DISH has obtained CMG's consent to retransmission and paid to use CMG's exclusive right to publicly perform copyrighted content. However, at 7:00 pm Eastern Time on January 18, 2020, CMG's consent for DISH to retransmit the signals of CMG's stations expired.

5. Despite knowing that CMG had withdrawn its consent, DISH chose to continue capturing and retransmitting the broadcast signals of 13 of CMG's stations. DISH has thereby willfully infringed CMG's copyrights and should be ordered to pay enhanced statutory damages under 17 U.S.C. § 504.

PARTIES

6. Plaintiff Terrier Media Buyer, Inc. d/b/a Cox Media Group is a Delaware corporation with its principal place of business at 1 Manhattanville Road, Suite 201, Purchase, NY 10577 and headquarters at 223 Perimeter Center Drive, Atlanta, GA 303461.

7. Defendant DISH Network L.L.C. is a Colorado limited liability company with its principal place of business at 9601 S. Meridian Blvd., Englewood, CO 80112. It maintains an office at 500 North Michigan Ave., Suite 1920, Chicago, IL 60611.

RELEVANT NON-PARTIES

8. Northwest Broadcasting, Inc. is a Delaware corporation with its principal place of business at 2111 University Park Drive, Suite 650, Okemos, MI 48864.

9. NBI Holdings, LLC is a Delaware limited liability company with its principal place of business at 1 Manhattanville Road, Suite 201, Purchase, NY 10577.

STANDING

10. CMG has standing to institute this infringement action concerning the exclusive right of public performance because CMG is a “legal or beneficial owner of an exclusive right under a copyright.” 17 U.S.C. § 501. In addition, a broadcaster may sue if a satellite carrier violates 17 U.S.C. § 122. *Id.* § 501(f)(1).

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a) because this is a civil action seeking damages for copyright infringement under the Copyright Act, 17 U.S.C. § 101 *et seq.*

12. This Court has personal jurisdiction over DISH because it maintains an office within the District, and it has contractually submitted to personal jurisdiction here.

13. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because DISH maintains an office within the District, and it has contractually agreed to this forum.

RELEVANT STATUTES

14. The Copyright Act grants copyright owners several “exclusive rights to do and to authorize” particular uses of their works. 17 U.S.C. § 106. One of these exclusive rights is “in the case of . . . audiovisual works, to perform the copyrighted work publicly.” *Id.* § 106(4). This is known as the exclusive right of public performance.

15. TV broadcast stations monetize the copyrighted content that they broadcast over the air for free via advertising revenue and retransmission consent fees paid by, among others, cable, satellite, and internet providers.

16. The Copyright Act provides that the exclusive right to “perform the copyrighted work publicly” under § 106(4) includes the exclusive right to transmit a performance of the work to the public.

17. The Copyright Act further states that performing or displaying a work “publicly” means:

- (1) to perform or display it at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered; or
- (2) to transmit or otherwise communicate a performance or display of the work to a place specified by clause (1) or to the public, by means of any device or process, whether the members of the public capable of receiving the performance or display receive it in the same place or in separate places and at the same time or at different times.

Id. § 101. Accordingly, the unauthorized transmission of a broadcast containing copyrighted works is an infringement of the exclusive public performance right.

18. The Copyright Act thus brings broadcast retransmissions within the broad scope of the exclusive right of public performance. Moreover, Congress has also passed compulsory licensing schemes to allow the retransmission of broadcasts that contain copyrighted works by certain categories of pay-TV services that meet certain criteria, including: by “cable systems,” *id.* § 111(c); by “satellite carriers” retransmitting “distant signals” to “unserved households,” *id.* § 119; and by “satellite carriers” transmitting “into the station’s local market,” *id.* § 122. Each of those compulsory licensing schemes is further conditioned on compliance by the licensee cable system or satellite carrier with the “rules, regulations, or authorizations of the Federal Communications Commission,” which include, at the broadcast station’s election, negotiation of “retransmission consent” terms pursuant to § 325(b) of the Communications Act. *See* 47 U.S.C. § 325(b).

19. CMG relies on its exclusive rights named in the Copyright Act, and its affiliated stations rely on the retransmission consent regime to earn fees and money from advertising to support broadcast programming.

SUBSTANTIVE ALLEGATIONS

I. The Governing Retransmission Agreement.

20. DISH and Northwest Broadcasting, Inc. entered into a retransmission consent agreement dated June 6, 2018 (the “Northwest Retransmission Agreement”). The Northwest Retransmission Agreement governed DISH’s retransmission of all local TV stations listed on “Exhibit A” to that Agreement as of June 6, 2018.

21. The Northwest Retransmission Agreement also provided that any station acquired by Northwest Broadcasting, Inc. or any “Affiliate” after June 6, 2018, would be added to “Exhibit A,” “notwithstanding” any other retransmission agreement an acquired station previously had. Critically for this case, this “After-Acquired Stations” provision means that any station acquired by Northwest Broadcasting, Inc.’s parent, NBI Holdings, LLC (“NBI Holdings”), after June 6, 2018, would be added to “Exhibit A” and would be governed by the Northwest Retransmission Agreement, notwithstanding any other retransmission agreement.

22. On December 17, 2019, Terrier Media Buyer, Inc. acquired NBI Holdings, and subsequently NBI Holdings acquired 13 local TV stations from Cox Enterprises, Inc. and certain of its affiliates (the “Legacy Stations”). The Legacy Stations include:

- a. WSB, Atlanta, GA (ABC)
- b. WFXT, Boston, MA (FOX)
- c. WSOC, Charlotte, NC (ABC)
- d. WHIO, Dayton, OH (CBS)
- e. WFOX, Jacksonville, FL (FOX)
- f. WHBQ, Memphis, TN (FOX)
- g. WFTV, Orlando, FL (ABC)
- h. WPXI, Pittsburgh, PA (NBC)

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.