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2010 SEP 15 P 1:49

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*CV PVT*

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

ADR

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DIRECTV, Inc., a California corporation,

Plaintiff,

v.

**CV 10- 4142 PVT**  
Civil Action No.

ANH THU XUAN PHAM, Individually, and  
as officer, director, shareholder, and/or  
principal of ANH THU RESTAURANT,  
INC., d/b/a ANH THU RESTAURANT,

and

ANH THU RESTAURANT, INC., d/b/a  
ANH THU RESTAURANT,

Defendants.  
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COMP.

1 **PLAINTIFF'S ORIGINAL COMPLAINT**  
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3 1. Plaintiff, DIRECTV, sues ANH THU XUAN PHAM, Individually, and as  
4 officer,director, shareholder, and/or principal of ANH THU REASTAURANT, INC., d/b/a ANH  
5 THU RESTAURANT, and ANH THU RESTAURANT, INC., d/b/a ANH THU RESTAURANT,  
6 (referred to hereinafter as "Defendants"), and states as follows:  
7

8 **I. JURISDICTION**

9 2. This lawsuit is brought pursuant to the Cable Communications Policy Act of 1984,  
10 47 U.S.C. § 521, *et seq.* (The "Act"), as an action for declaratory and injunctive relief and damages  
11 for the improper receipt, transmission, and exhibition of satellite programming signals in violation  
12 of the Act. This Court has jurisdiction of the subject matter to this action under 28 U.S.C. §1331.  
13 Pursuant to which the United States District Courts have original jurisdiction of all civil actions  
14 arising under the Constitution, laws or treaties of the United States.

15 3. This Court has personal jurisdiction over the parties in this action. Defendants to this  
16 action had or have an agent or agents who has or have independently transacted business in the  
17 District of California and certain activities of Defendants giving rise to this action took place in the  
18 District of California; more particularly, Defendants' acts of violating federal laws and the  
19 proprietary rights of DIRECTV, Inc., as distributor of the satellite programming transmission signals  
20 which took place within the Northern District of California. Moreover, upon information and belief,  
21 Defendants have their principal place of business within the District of California; thus, this Court  
22

COMP.

1 has personal jurisdiction over Defendants.

2  
3 **II. VENUE**

4 4. Venue is proper in this judicial district under 28 U.S.C. §1391(b) as a substantial part  
5 of the events or omissions giving rise to the claim occurred within Santa Clara County, which is  
6 within the District of California [28 U.S.C. § 84(a)].

7  
8 **III. PARTIES**

9 5. Plaintiff, DIRECTV, Inc. (referred to hereinafter as "DIRECTV"), is at all times  
10 relevant hereto a corporation incorporated under the laws of the State of California. DIRECTV is  
11 a major distributor of satellite programming doing business throughout the United States. Through  
12 its operations, DIRECTV provides interstate direct broadcast satellite programming to subscribers  
13 with specialized satellite receiving equipment who pay for the programming via a subscription fee  
14 and obtain a programming license from DIRECTV in return for a subscription. The obvious result  
15 of a user subscription is that users can then watch programs on their televisions and/or listen to  
16 certain high quality audio programs communicated electronically by DIRECTV via satellite (referred  
17 to hereinafter as the "Satellite Programming"). DIRECTV holds proprietary rights to the Satellite  
18 Programming it transmits and DIRECTV is the owner of and/or a lawfully designated distribution  
19 agent for such Satellite Programming.

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21 COMP.



1 commercial gain, at the lower residential rates can surreptitiously gain access to DIRECTV  
2 programming without proper authorization by subscribing to DIRECTV services under a residential  
3 account and then installing/moving the equipment to their businesses and utilizing those services in  
4 a commercial environment.

5 12. On or about, and prior to, February 20, 2010, Defendants had a residential account  
6 with DIRECTV under Account No. 045850136.

7 13. Without obtaining valid commercial exhibition rights, the Defendant willfully received  
8 and displayed Satellite Programming to the public and for commercial benefit or financial gain;  
9 specifically, Defendants received and displayed, among other programs, the UFC #110 Pay-Per-View  
10 program. Such Satellite Programming was displayed without authorization from DIRECTV.

11 14. Defendants, without entitlement, without prior permission or authorization from  
12 DIRECTV, and without having paid DIRECTV for the right to receive, broadcast, use or display  
13 DIRECTV's Satellite Programming in the commercial establishment known as ANH THU  
14 RESTAURANT, have received, assisted in receiving, transmitted, assisted in transmitting, divulged,  
15 published and displayed the content and substance of DIRECTV's Satellite Programming at such  
16 Defendants' place of business, ANH THU RESTAURANT. Without authorization, Defendants  
17 displayed and/or published such Satellite Programming to their customers and others. Defendants'  
18 conduct violates several federal statutes, including 18 U.S.C. §§2511 and 2512, and 47 U.S.C. §605,  
19 and laws of the District of California. Moreover, Defendants' acts were unauthorized, willful, and  
20 for purposes of direct or indirect commercial advantage or private financial gain.

21 COMP.





1 private financial gain.

2 24. Due to Defendants' willful conduct, DIRECTV is entitled to statutory damages in an  
3 amount not less than \$10,000 and up to \$100,000 for each willful violation of 47 U.S.C. §605(a).

4  
5 **Count 2 - Damages for Violations of 18 U.S.C. §2511**

6 25. DIRECTV realleges the allegations contained in the foregoing paragraphs of this  
7 Complaint and incorporates such allegations as if fully set forth herein.

8 26. For a further cause of action, DIRECTV alleges that Defendants intentionally  
9 intercepted, endeavored to intercept, or procured other persons to intercept electronic  
10 communications from DIRECTV. Defendants further disclosed or endeavored to disclose to others  
11 the contents of electronic communications, knowing or having a reason to know that the information  
12 was obtained through the interception of electronic communications in violation of 18 U.S.C. §2511.  
13 Defendants further intentionally used or endeavored to use the contents of electronic  
14 communications, knowing or having reason to know that the information was obtained through the  
15 interception of electronic communications in violation of 18 U.S.C. §2511.

16 27. DIRECTV is a person whose electronic communications are being intercepted,  
17 disclosed and/or intentionally used in violation of 18 U.S.C. §2511.

18 28. Due to Defendants' wrongful conduct, DIRECTV is entitled, under 18 U.S.C. §2520,  
19 to the greater of the sum of (1) actual damages suffered by DIRECTV and the profits made by the  
20 Defendants as a result of their conduct, or (2) statutory damages in an amount the greater of \$10,000

1 or \$100 per day for each day Defendants acted in violation of 18 U.S.C. §2511.

2  
3 **Count 3 - Civil Conversion**

4 29. DIRECTV realleges the allegations contained in the foregoing paragraphs of this  
5 Complaint and incorporates such allegations as if fully set forth herein.

6 30. By virtue of the conduct set forth above, Defendants have unlawfully converted  
7 DIRECTV's property for their own commercial use and benefit.

8 31. Such conversion was done intentionally and wrongfully by Defendants to deprive  
9 DIRECTV of its proprietary interests, and for Defendants' direct commercial benefit and advantage.

10 32. Due to Defendants' wrongful conversion of DIRECTV Satellite Programming,  
11 DIRECTV suffered damages.

12  
13 **VI. REQUEST FOR INJUNCTIVE RELIEF**

14 33. DIRECTV realleges the allegations contained in the foregoing paragraphs of this  
15 Complaint and incorporates such allegations as if fully set forth herein.

16 34. DIRECTV further alleges that unless restrained by this Court, Defendants will  
17 continue to receive, intercept, transmit, and exhibit the Satellite Programming, illegally and without  
18 authorization, in violation of 47 U.S.C. §605. Defendants intercepted and publicly exhibited the  
19 Satellite Programming without authorization on at least one (1) occasion and DIRECTV cannot  
20 practicably detect or determine each occasion on which Defendants have intercepted and publicly

1 exhibited the Satellite Programming.

2 35. The violations of 47 U.S.C. §605 set forth above have caused and will continue to  
3 cause DIRECTV irreparable harm.

4 36. DIRECTV cannot practicably determine the loss of subscribers and lost revenues  
5 resulting from Defendants' unlawful conduct. In addition to diminishing DIRECTV's revenues,  
6 Defendants' unlawful conduct injures DIRECTV's reputation and goodwill as well as its ability to  
7 attract and finance the future acquisition, production, and distribution of quality programming,  
8 thereby impairing DIRECTV's ability to enhance its future growth and profitability.

9 37. DIRECTV has no adequate remedy at law to redress the violations set forth above.

10

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## VII. PRAYER

12 WHEREFORE, Plaintiff, DIRECTV, INC., prays that this Court enter judgment in its favor  
13 and against Defendants, and:

14 a. Declare that Defendants' unauthorized interception, reception, and public  
15 commercial exhibition of DIRECTV's electronic communications, or its assistance  
16 in the performance of such unauthorized actions, were in violation of 18 U.S.C.  
17 §2511 and 47 U.S.C. §605, and that such violations were committed willfully and for  
18 purposes of direct or indirect commercial advantage and private financial gain;

19  
20 b. In accordance with 18 U.S.C. §2520(b)(1) and 47 U.S.C. §605(e)(3)(B)(I), enjoin  
21 Defendants, and Defendant corporation and establishment, their owners, officers,  
22 agents, servants, employees and attorneys, and all persons in active concert or  
23 participation with any of them from (i) interfering with DIRECTV's proprietary  
24 rights; (ii) intercepting, receiving, divulging, or displaying DIRECTV's Satellite  
25 Programming without prior written consent of DIRECTV; and (iii) further violations;  
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- c. Award DIRECTV statutory damages in the amount of the greater of \$10,000 or \$100 per day for each day Defendants violated 18 U.S.C. §2511 or, alternatively, DIRECTV requests judgment for actual damages, plus damages equal to any profits attributable to the Defendants' violations of 18 U.S.C. §2511;
- d. Award DIRECTV statutory damages in the amount of \$10,000 for each violation of 47 U.S.C. §605, plus an additional \$100,000 for each violation pursuant to 47 U.S.C. §605(e)(3)(C)(ii); alternatively, DIRECTV requests judgment for actual damages, plus damages equal to any profits attributable to the Defendants' violations of 47 U.S.C. §605;
- e. That the Court award punitive damages; and
- f. That this Court award DIRECTV its costs, including reasonable attorney's fees, prejudgment interest and post-judgment interest, and such other relief to which DIRECTV may be entitled.

Dated: August 25, 2010  
Ellenville, New York


Respectfully submitted,

DIRECTV, Inc.

BY: 

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 Our File No. DTVZ10-5CA-N01

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