

1 the preliminary injunction into a permanent injunction, and ordered Whitcomb to
2 destroy certain devices and equipment designed to steal DISH Network’s programming.

3 On September 19, 2011, Whitcomb filed a letter alleging compliance with “all
4 court orders concerning this case” (*Def.’s Letter* [Doc. 21].) On September 22,
5 2011, DISH Network filed a notice that Whitcomb was also in contempt of the Final
6 Judgment Order. (*Pls.’ Non-Compliance Notice* [Doc. 19].)

7 The Court decides the matters on the papers submitted and without oral
8 argument. See Civ. L.R. 7.1(d.1). Having read and considered the papers submitted
9 by the parties, the Court **GRANTS** DISH Network’s contempt motion [Doc. 13], and
10 **ORDERS** modification of the permanent injunction as set forth below.

11
12 **I. FACTUAL BACKGROUND**

13 The following factual background is taken from this Court’s July 18, 2011 Final
14 Judgment Order.

15 DISH Network provides copyrighted satellite television programming to millions
16 of paying customers throughout the United States. In order to prevent the unauthorized
17 reception of its programming, DISH Network encrypts its satellite signals so that
18 viewing requires the use of a DISH Network receiver and smart card. The receiver
19 processes the signal by locating an encrypted part of the transmission—known as the
20 entitlement control message—and forwarding that message to the smart card. The
21 smart card then uses its decryption keys to unlock the message and uncover a control
22 word that is transmitted back to the receiver to decrypt the satellite signal, thereby
23 allowing the customer to view the program.

24 Various devices have been manufactured to allow individuals to steal or “pirate”
25 DISH Network’s programming. Among these devices are Sonicview receivers and iHub
26 adapters. The receivers are programmed with pirate software and connected to the
27 Internet via an iHub adapter or a built-in Ethernet port. The Internet connection
28

1 allows the Sonicview receiver to obtain the DISH Network control words from a server,
2 thereby unlocking the DISH Network programming.

3 In 2009, DISH Network filed a lawsuit against Sonicview (the “Sonicview
4 Lawsuit”) alleging violations of the Digital Millennium Copyright Act (“DMCA”) and
5 related statutes based on Sonicview’s distribution of piracy devices such as the Sonicview
6 receiver and iHub adapter. On August 14, 2009, DISH Network filed a motion for a
7 preliminary injunction seeking, among other things, to enjoin the manufacture and sale
8 of Sonicview’s piracy devices. On March 29, 2010, the court entered an order (the
9 “Sonicview Order”) enjoining Sonicview and others from “designing, manufacturing,
10 developing, trafficking, selling, and marketing . . . Sonicview iHubs, and Piracy Software
11 at any physical address or on the Internet”

12 Defendant Whitcomb is a former Sonicview employee. At the time the
13 Sonicview Order was entered, Whitcomb was engaged in selling the Sonicview iHub on
14 eBay. In an effort to evade the order, DISH Network alleges that Whitcomb eventually
15 began selling a “re-packaged” iHub under the names “Sonicview SV Lan” and “New
16 Link.”

17 18 **II. PROCEDURAL HISTORY**

19 On February 17, 2011, DISH Network filed this lawsuit and a motion for a
20 preliminary injunction to enjoin Defendant Whitcomb from selling the Sonicview SV
21 Lan and New Link. Whitcomb did not respond to the complaint, and did not respond
22 to the preliminary-injunction motion. On April 25, 2011, after oral argument, this
23 Court issued the PI Order providing, in pertinent part:

- 24
25 1. Defendant Christopher Whitcomb, and all directors, officers,
26 agents, servants, employees, attorneys and all persons and entities
27 in active concert or participation therewith, including, but not
28 limited to, manufacturers, distributors, retailers and cooperative
members are enjoined and must restrain from directly or indirectly:

1 (a) manufacturing, developing, importing, offering to the public
2 (including, but not limited to, through internet websites or
3 auctions), promoting, distributing, providing or otherwise
4 trafficking in Sonicview iHubs, SV Lan adapters, New Link
5 adapters, or any other device designed to connect to internet
6 key sharing servers for the purpose of receiving DISH
7 Network programming without authorization;

6 (b) manufacturing, developing, importing, offering to the public
7 (including, but not limited to, through internet websites or
8 auctions), promoting, distributing, providing or otherwise
9 trafficking in serial numbers, authorization codes, or upgrades
10 for Sonicview iHubs, SV Lan adapters, New Link adapters, or
11 any other device designed to connect to internet key sharing
12 servers for the purpose of receiving DISH Network
13 programming without authorization;

12 * * *

13 2. No later than three (3) court days from the filing of this Order,
14 Defendant must provide DISH Network a written accounting of all
15 assets and property belonging to Defendant, which in the case of
16 any bank account shall include the account name, number, current
17 balance, and location of the bank or other custodian holding such
18 account.

17 (PI Order 7:5–8:28.)

18 After entering the PI Order, on July 18, 2011, this Court issued the Final
19 Judgment Order against Whitcomb in the amount of \$14,440,000. (*Default Judgment*
20 *Order 7:21.*) The order also converted the preliminary injunction into a permanent
21 injunction and required that within 60 days, Whitcomb either (1) file a written
22 declaration, under penalty of perjury, attesting to the complete destruction of devices
23 and equipment identified in the order, or (2) contact DISH Network’s counsel to
24 arrange for DISH Network and/or its counsel to be present to witness the destruction
25 of the devices and equipment. (*Id.* at 7:22–9:5.)

26 Meanwhile, on July 15, 2011, DISH Network filed the pending motion for civil
27 contempt and modification of the injunction. DISH Network contends that Whitcomb
28 is violating the PI Order by, among other things, continuing to distribute devices

1 designed for IKS piracy of DISH Network's satellite television programming. (*Notice of*
2 *Mt. 1:16–20* [Doc. 16].)

3 On September 19, 2011, Whitcomb filed a letter stating that he has “followed all
4 court orders concerning this case, including the destruction of all ihubs, newlinks, sv
5 lans or any other so called piracy devices.” (*Def's Letter 1.*) On September 22, 2011,
6 DISH Network filed a notice that Whitcomb was also in contempt of the Final
7 Judgment Order. (*Pls.' Non-Compliance Notice.*)

8 9 **III. LEGAL STANDARD**

10 “[C]ourts have inherent power to enforce compliance with their lawful orders
11 through civil contempt [sanctions].” *Shillitani v. United States*, 384 U.S. 364, 370
12 (1966); see also *United States v. Yacoubian*, 24 F.3d 1, 5 (9th Cir. 1994). Civil
13 contempt sanctions are employed for two purposes: (1) to coerce a party into
14 compliance with a court's order; and (2) to compensate the complainant for any losses
15 sustained as a result of the violation. See *Whittaker Corp. v. Execuair Corp.*, 953 F.2d
16 510, 517 (9th Cir. 1992).

17 The party alleging contempt must demonstrate that the contemnor violated the
18 court's order by clear and convincing evidence. *Vertex Distrib., Inc. v. Falcon Foam*
19 *Plastics, Inc.*, 689 F.2d 885, 889 (9th Cir. 1982). The contempt need not be willful and
20 there is no good faith exception to the requirement that parties obey court orders. *In*
21 *re Crystal Palace Gambling Hall, Inc.*, 817 F. 2d 1361, 1365 (9th Cir. 1987). In the
22 Ninth Circuit, four elements must be present to warrant civil contempt sanctions:
23 (1) the contemnor violated a court order; (2) the contemnor's actions did not amount
24 to substantial compliance; (3) the contemnor's actions were not based on a reasonable,
25 good faith interpretation of the order; and (4) the latter three elements must be proved
26 by clear and convincing evidence. *In re Dual-Deck Video Cassette Recorder Antitrust*
27 *Litigation*, 10 F.3d 693, 695 (9th Cir. 1993).

28

1 **IV. DISCUSSION**

2 **A. Defendant Whitcomb's distribution of the WizHub violates the PI**
3 **Order.**

4 DISH Network contends that Defendant Whitcomb is violating the PI Order by
5 distributing a device known as the "WizHub." Defendant Whitcomb has not responded
6 to this contention.

7 The PI Order was entered on April 25, 2011. (*See PI Order.*) On June 6, 2011,
8 DISH Network's hardware expert, Nigel Jones, purchased a device known as the
9 WizHub from the website www.flamindeals.com. (*Jones Dec.* ¶ 5, Ex. 1 [Doc. 16-3].)
10 Defendant Whitcomb is the registrant and administrative contact for
11 www.flamindeals.com. (*Hagan Dec.* ¶ 3, Ex. 2.) Additionally, the return address on the
12 package containing the WizHub matches the address listed for Whitcomb on the
13 Summons's proof of service (*Jones Dec.* ¶ 6; *Summons 2* [Doc. 9]), and is the same
14 address from which other enjoined devices were shipped (*Jaczeqski Dec.* ¶ 7 [Doc. 5-
15 16]). This uncontroverted evidence confirms that Defendant Whitcomb distributed the
16 WizHub. Thus, the only remaining issue is whether Whitcomb's distribution of the
17 WizHub violates the PI Order as a "device designed to connect to internet key sharing
18 servers for the purpose of receiving DISH Network programming without
19 authorization."

20 After purchasing the WizHub, Jones analyzed the device and determined that it
21 is virtually identical in both form and function to the enjoined iHub, New Link, and SV-
22 Lan devices. Jones's detailed analysis is set forth in his declaration, and need not be
23 repeated here. (*See Jones Dec.* ¶ 8–21.) Based on that analysis, it is clear that the
24 "WizHub is designed explicitly to circumvent DISH Network's security system and
25 intercept DISH Network programming via the IKS form of piracy" and the "WizHu b
26 has no legitimate commercial application." (*Id.* at ¶ 22.) The Court, therefore, finds
27 Whitcomb is in contempt for violating the PI Order's injunction on marketing and
28 distribution of IKS piracy devices used to steal DISH Network's programming.

1 **B. Defendant Whitcomb’s continued distribution of access codes designed**
2 **to enable piracy dongles violates the PI Order.**

3 DISH Network also contends that Whitcomb is violating the PI Order by
4 continuing to distribute access codes designed to enable piracy dongles to steal DISH
5 Network programming. Whitcomb has not responded to this contention.

6 According to Jones’s declaration, the WizHub came with a 16 character code that
7 is printed on a label affixed to the WizHub packaging. (*Jones Decl.* ¶ 18.) The code is
8 used to configure the WizHub. (*Id.*) Once configured, the WizHub interacts with the
9 Sonicview IKS server to allow the unauthorized viewing of DISH Network
10 programming. (*Id.* at ¶ 19.) The code, therefore, acts as an access code “for Sonicview
11 receiver piracy software and the corresponding Sonicveiw IKS server.” (*Id.*)
12 Additionally, the code can be used to revive some of the devices enjoined by the PI
13 Order. (*Id.* at ¶ 20.) Based on this uncontroverted evidence, the Court finds that
14 Whitcomb is in contempt for violating the PI Order’s prohibition on the continued
15 marketing and distribution of authorization codes for IKS piracy dongles..

16
17 **C. Defendant Whitcomb failed to provide an accounting in violation of**
18 **the PI Order.**

19 DISH Network next contends that Whitcomb has failed to comply with the PI
20 Order by not providing an accounting. Whitcomb has not responded to this
21 contention.

22 The PI Order specifically ordered that “[n]o later than three (3) court days from
23 the filing of this Order, Defendant [Whitcomb] must provide DISH Network a written
24 accounting of all assets and property belonging to Defendant” (*PI Order* 8:24–28.)
25 According to the declaration of DISH Network’s counsel, Chad Hagan, Whitcomb “has
26 not provided any accounting of assets to Plaintiffs or Plaintiffs’ counsel” (*Hagan*
27 *Decl. in Support of Contempt* ¶ 7.) Defendant Whitcomb does not refute this contention.

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1 Accordingly, the Court finds Whitcomb in contempt for failing to provide DISH
2 Network an accounting as required by the PI Order.

3
4 **D. Defendant Whitcomb has failed to comply with this Court's Final**
5 **Judgment Order.**

6 Defendant Whitcomb contends that he has complied with this Court's Final
7 Judgment Order. As proof, Whitcomb's September 19, 2011 letter enclosed a picture
8 of the purportedly destroyed devices and equipment. (See *Letter 2.*) DISH Network
9 disputes that Defendant Whitcomb complied with the Final Judgment Order. The
10 Court agrees with DISH Network.

11 The Final Judgment Order required Whitcomb to either file a declaration "under
12 penalty of perjury" stating that he had destroyed the enjoined piracy devices and
13 equipment or to contact DISH Network's counsel so that they could observe the
14 destruction of the devices and equipment. (*Final Judgment Order* 8:24–9:5.) A review
15 of the docket in this case confirms that Whitcomb has not filed a declaration under
16 penalty of perjury attesting to the destruction of the enjoined devices and equipment.
17 (*See Docket in 11cv 333.*) Whitcomb's September 19, 2011 letter is insufficient because
18 it is not signed under penalty of perjury.

19 Additionally, DISH Network's counsel has filed a declaration under penalty of
20 perjury stating that Whitcomb "failed to contact DISH Network's counsel to arrange
21 for DISH Network and/or its counsel to be present to witness the destruction of piracy
22 devices." (*Hagan's 9/22/11 Dec.* ¶ 7 [Doc 19-1].) Thus, Whitcomb has failed to comply
23 with the Final Judgment Order.

24
25 **V. CONCLUSION & ORDER**

26 DISH Network has provided clear and convincing evidence that Whitcomb has
27 violated this Court's PI Order. Additionally, Whitcomb's most recent failure to comply
28 with the Final Judgment Order demonstrates his continued contempt for this Court's

1 orders. Accordingly, the Court **GRANTS** DISH Network's motion for contempt [Doc.
2 16] and **ORDERS** the Permanent Injunction modified as follows:

3 1. Defendant and any of his officers, agents, servants, employees, and those
4 acting in active concert or participation with him who receive actual
5 notice of this Order are enjoined and must restrain from directly or
6 indirectly:

7 (a) manufacturing, developing, importing, offering to the public
8 (including, but not limited to, through internet websites or
9 auctions), promoting, distributing, providing or otherwise trafficking
10 in Sonicview iHubs, SV Lan adapters, New Link adapters, WizHubs,
11 or any other device designed to connect to internet key sharing
12 servers for the purpose of receiving DISH Network programming
13 without authorization;

14 (b) manufacturing, developing, importing, offering to the public
15 (including, but not limited to, through internet websites or
16 auctions), promoting, distributing, providing or otherwise trafficking
17 in serial numbers, authorization codes, or upgrades for Sonicview
18 iHubs, SV Lan adapters, New Link adapters, WizHubs, or any other
19 device designed to connect to internet key sharing servers for the
20 purpose of receiving DISH Network programming without
21 authorization;

22 (c) receiving or assisting others in receiving without authorization
23 DISH Network's satellite signals or other electronic
24 communications originating from DISH Network's system;

25 (d) transferring, removing, encumbering, or permitting withdrawal of
26 any assets or property belonging to Defendant and related to
27 Defendant's trafficking in Sonicview iHubs, SV Lan adapters, New
28 Link adapters, WizHubs, and serial numbers, authorization codes,

1 or upgrades for Sonicview iHubs, SV Lan adapters, New Link
2 adapters, and WizHubs, whether real or personal, tangible or
3 intangible, including cash, bank accounts of any kind, stock
4 accounts, bonds, and title to Defendants' business property;

5 (e) destroying, hiding, or altering any books or records, whether in hard
6 copy or electronic form, concerning the satellite receiver business or
7 finances of Defendant, including invoices, purchase orders, receipts,
8 shipping records, banking or investment records, or any documents
9 that identify manufacturers, exporters, importers, dealers, or
10 purchasers of Sonicview receivers, 8PSK Turbo Boards or modules,
11 Sonicview iHubs, SV Lan adapters, New Link adapters, WizHubs,
12 software for these devices, and serial numbers, authorization codes,
13 or upgrades for Sonicview iHubs, SV Lan adapters, New Link
14 adapters, and WizHubs, or persons involved in operating any IKS
15 server or receiving control words from same; and

16 (f) operating and/or providing public access to the websites
17 www.prosonicview.com and www.flamindeals.com. Defendant and
18 all others who receive notice of this Order, including but not limited
19 to domain hosts and/or website hosts, are ordered to immediately
20 cease making the www.prosonicview.com and www.flamindeals.com
21 websites and their contents available on the internet by taking the
22 websites and their contents offline, and to immediately freeze,
23 preserve, and not destroy, alter or modify the
24 www.prosonicview.com and www.flamindeals.com websites and
25 their contents, including all records and documents relating to these
26 websites;

27 2. No bond shall be required.

28 The Court also finds that based on Defendant Whitcomb's continued failure to
comply with this Court's orders, coercive sanctions are necessary. Additionally, DISH

1 Network is entitled to compensation for having to file the contempt motion.
2 Accordingly,

3 **IT IS FURTHER ORDERED** that no later than 5:00 p.m. on October 14,
4 2011, Defendant must file with the Court an affidavit setting forth in detail the manner
5 and form in which Defendant has complied with the terms of the modified Permanent
6 Injunction set forth herein. Said affidavit must specifically address the steps Whitcomb
7 has taken to comply with the sections of this Court's orders violated, as set forth above
8 in section IV.

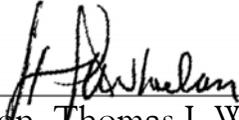
9 **IT IS FURTHER ORDERED** that failure to comply with the modified
10 injunction order set forth herein and to file said affidavit by the appointed time will
11 result in sanctions against Defendant at the rate of \$1,000.00 per day, payable to the
12 Court.

13 **IT IS FURTHER ORDERED** that failure to comply with the modified
14 injunction order set forth herein and to file said affidavit by 5:00 p.m. on October 21,
15 2011, in addition to monetary sanctions, will result in Defendant's imprisonment until
16 such time as Defendant comes into full compliance with this Order.

17 **IT IS FURTHER ORDERED** that DISH Network is entitled to recover its
18 reasonable attorney's fees and costs incurred in bringing its contempt motion. Within
19 twenty-one (21) days of this Order, DISH Network shall file an attorney declaration
20 setting forth the reasonable attorney's fees and costs incurred for the Court's
21 consideration.

22 **IT IS SO ORDERED.**

23
24 DATED: October 4, 2011

25
26 
27 _____
28 Hon. Thomas J. Whelan
United States District Judge