[US] Court Denies Preliminary Injunction against Ad-Skipping Services

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Jonathan Perl
Locus Telecommunications, Inc.

On 7 November 2012, a United States District Court in Los Angeles rejected a petition for a preliminary injunction filed by Fox Broadcasting ("Fox") that asked the Court to block DISH Network (“DISH”) from providing its advertising-skipping DVR services "AutoHop" and "PrimeTime Anytime" (collectively "Services") to its customers. The new Services allow DISH’s customers to record primetime television shows on broadcast networks, save them for up to eight days, and skip past commercials in the recorded shows. Fox argued that DISH should be blocked from providing the Services because they are a “bootleg, commercial-free video-on-demand service that would irreparably harm the television industry by threatening the billions of dollars spent each year on commercials”. DISH countered, however, that the Services are merely an improvement on existing recording devices that enable customers to record commercial-free programming, which have been accepted by the industry and judicially approved as “fair use” under the federal Copyright Act.

Even though DISH hailed the ruling, which was placed under seal to allow both parties to redact confidential trade information, as a “victory for common sense and customer choice”, it remains unclear whether the ruling is a complete victory for DISH because the Court also found that DISH likely committed copyright infringement and breached its contract with Fox by making copies of Fox’s programming.

In a statement released shortly after the decision was announced, DISH’s Executive Vice President and General Counsel praised the ruling as an important decision that underscores “the U.S. Supreme Court’s decisions that consumers have a right to enjoy television as they want, when they want, including the reasonable right to skip commercials, if they so choose”. The statement also shed further light on the decision, noting that the Court found it likely that: (1) Fox has not established that is has suffered irreparable harm as a result of DISH’s making the quality assurance copies; (2) DISH customers using “PrimeTime Anytime” cannot be liable for copyright infringement; (3) copies made using “PrimeTime Anytime” do not infringe on Fox’s exclusive reproduction rights under Federal copyright laws; (4) AutoHop does not violate the Video-On-Demand provisions of the 2010 retransmission consent agreement between Fox and DISH (“RTC”); and (5) neither of the Services constitutes unauthorized distribution under Federal copyright laws. Fox has already appealed the decision, acknowledging that it was

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“disappointed the court erred in finding that Fox’s damages were not suitable for a preliminary injunction”.

Statement by Dish Executive Vice President and General Counsel

http://about.dish.com/press-release/corporate/dish-cheers-ruling-autohop-primetime-anytime

Appeal filed by Fox

http://www-deadline-com.vimg.net/wp-content/uploads/2012/11/Notice-of-Appeal__121109232842.pdf

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