

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GENERAL INSTRUMENT
CORPORATION OF DELAWARE,
Plaintiff,

v.

NU-TEK ELECTRONICS &
MANUFACTURING, INC.,
Defendant.

Civil Action
No. 93-3854

OPINION

Gawthrop, J.

June 4, 1997

On April 3, 1997, a jury found the defendant, Nu-Tek Electronics & Manufacturing, Inc. ("Nu-Tek"), liable to the plaintiff, General Instrument Corporation of Delaware ("GI"), for the willful violation of § 633(a) of the Cable Communications Policy Act of 1984, codified at 47 U.S.C. § 553(a), with respect to 5,376 cable descrambling devices Nu-Tek had sold. Upon the following reasoning, I shall award damages of \$60,000 in favor of the plaintiff and against the defendant, plus reasonable attorneys' fees.

Standard

47 U.S.C. § 553(a) prohibits the interception or reception, or assistance in the interception or reception, of "any communications service offered over a cable system, unless specifically authorized . . . by a cable operator or as may

otherwise be specifically authorized by law." The Cable Act includes a civil remedy at 47 U.S.C. § 553(c)(1) for "[a]ny person aggrieved by any violation of subsection (a)(1) of this section." If the aggrieved party prevails at trial, it may recover reasonable attorneys' fees. See 47 U.S.C. § 553(c)(2)(C).

A plaintiff may either prove actual damages and profits of the violator attributable to the violation, or opt to recover statutory damages. See 47 U.S.C. § 553(c)(3)(A). If the plaintiff chooses the latter course, it "may recover an award of statutory damages for all violations involved in the action, in a sum of not less than \$250 or more than \$10,000 as the court considers just." 47 U.S.C. § 553(c)(3)(A)(ii). Further, if the court finds that the tortfeasor violated the act willfully and for purposes of commercial advantage or financial gain, it may assess exemplary damages "of not more than \$50,000." 47 U.S.C. § 553(c)(3)(B).

Discussion

GI contends that § 553(c) mandates the multiplication of statutory damages for each and every device supplied to customers after January 1, 1993, in violation of the act. Indeed, the amended § 553(b)(3) provides that "[f]or purposes of all penalties and remedies established for violations of subsection (a)(1) of this section, the prohibited activity established herein as it applies to each such device shall be deemed a

separate violation." 47 U.S.C. § 553(b)(3)(emphasis supplied). GI notes that the courts in both Time Warner Cable of New York v. Freedom Electronics, Inc., 897 F.Supp. 1454, 1459 (S.D. Fla. 1995)("Each converter-decoder manufactured or distributed in violation of § 553 is a separate violation of the statute"), and Columbia Cable TV Co., Inc. v. McCary, 954 F.Supp. 124, 128 (D.S.C. 1996)(quoting § 553(b)(3) to support multiplication of civil damages by the number of devices) adopted this approach. It contends that Congress must have intended courts to multiply statutory damages because otherwise plaintiffs would have an absurd incentive to file one action for each separate violation. It also argues that to hold otherwise would give violators of § 553 a de facto \$60,000 permanent licensing fee because such violators could manufacture or distribute as many boxes as possible without facing greater damages. Consequently, it wishes this court to assess damages of \$60,000 per device, for at least the 3,596 devices manufactured or sold by Nu-Tek after January 1, 1993, for a grand total of \$215,760,000.

Nu-Tek, on the other hand, asserts that because the plain language of § 553(c)(3)(A)(ii) provides for an award of statutory damages of \$250 to \$10,000 "for all violations involved in the action," this court may not multiply the damages by the number of cable boxes distributed in violation of the act. 47 U.S.C. § 553(c)(3)(A)(ii)(emphasis supplied). See Comcast Cablevision of Philadelphia, L.P. v. Roselli, 1997 WL 36957 at *3 (E.D. Pa. Jan. 30, 1997). I agree.

The principal issue here to be decided is whether, under 47 U.S.C. § 553(c)(3)(A)(ii), which sets forth the statutory damages to be assessed following a finding of violation under the act, that dollar amount may be assessed for each and every violation separately, or whether only one statutory damages amount may be assessed, encompassing all of the violations under that one assessment. At first blush, the language of the statute seems clear. Congress chose to use the word "all." "All" means "the whole amount or quantity." Webster's Third New International Dictionary 54 (1986). Thus, one would conclude that there would be but one damages amount to be paid, for a possible sum of \$10,000 in compensatory damages and \$50,000 in the statutory analog to punitive damages.

The word "all," however, does seem susceptible to two different meanings. For example, if one goes to a baseball game and says to one's companion that "all the people in this ballpark paid for their tickets," that would mean that each and every one of those spectators has paid for each and every ticket. Thus, notwithstanding the general dictionary definition, there might indeed be some linguistic basis for deciding that the word "all" could be construed either way.

To seek clarification, I turn to the remainder of the statute. In the context of satellite television regulation, set forth in 47 U.S.C. § 605, the statute invariably uses the word "each." One infers that Congress well knew the difference between the two words, and that, prima facie, that difference is

considerable. On the criminal side of the cable TV regulation, the statute was amended in 1992. The maximum penalty is a fine of \$1,000 or imprisonment for six months, but that penalty is greater for the offense when done for purposes of commercial advantage or private commercial gain. See 47 U.S.C. § 553(b)(1). The statute formerly provided that there the defendant could be fined "no more than \$25,000 or imprisoned for not more than one year, or both, for the first such offense, and shall be fined not more than \$50,000 or imprisoned for not more than two years, or both, for any subsequent offense." 47 U.S.C. § 553(b)(2)(amended 1992). Presumably, Congress concluded that that language, together with the general rule of lenity in construing criminal statutes, meant that those numbers were the maximum. Thus, in the 1992 amendment, Congress amended the statute in that regard to provide for such penalties as follows: "For purposes of all penalties and remedies established for violations of subsection (a)(1) of this section, prohibited activity established herein as it applies to each such device shall be deemed a separate violation." 47 U.S.C. § 553(b)(3). In addition, Congress doubled the maximum penalties for first offenses committed for purposes of commercial advantage or private financial gain to \$50,000 or two years' imprisonment, or both, and increased the penalties for subsequent offenses to \$100,000 or five years' imprisonment, or both. See 47 U.S.C. § 553(b)(2). I summarize Congress's choice of words as follows:

	<u>CIVIL</u>		<u>CRIMINAL</u>	
47 U.S.C. §	<u>553</u>	<u>605</u>	<u>553</u>	<u>605</u>
<u>Original</u>	"All"	"Each"	Fine and Jail	"Each"
<u>Amended</u>	"All"	"Each"	"Each such device shall be deemed a separate violation"	"Each"

One observes that when Congress, with lucid statutory clarity, changed the statute on the criminal side to read "each such device shall be a separate violation," yet left unchanged the word "all" on the civil side of the statutory remedies, that distinction is indeed a distinction with a difference, and congressionally so intended. Any ambiguity in the term "all" must be resolved in favor of Congress's apparent belief that one statutory assessment was to encompass all of the violations involved in the action. I thus conclude that the maximum amount of damages to be imposed here are \$10,000 in statutory compensatory damages and \$50,000 in statutory punitive damages.

Turning to what amount would be appropriate, \$10,000 strikes me as the right sum. There was credible testimony to the effect that the thievery of programs using GI's altered devices caused them to suffer injury on the economic market, running the risk that cable companies would switch to using another box, less susceptible to electronic chicanery. It thus caused GI to bring expensive lawsuits such as this one, in order to abate the piracy.

As for the punitive damages here, anything less than \$50,000 would be uncalled for. The defendant, speaking through its president and CEO, Mr. David J. Abboud, made huge sums of money, well knowing that it was - and he was - repeatedly and brazenly flouting the law in so doing. Mr. Abboud's testimony at trial, in which he sanctimoniously sought to profess ignorance of that reality, was an exercise in rank perjury. At \$50,000, he gets off cheap.

Conclusion

For the foregoing reasons, damages will be assessed in this case as discussed. I shall also award GI reasonable attorneys' fees under § 553(c)(2)(C).

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ORDER

AND NOW, this day of June, 1997, for the reasons described in the accompanying opinion and pursuant to the jury's VERDICT of April 3, 1997 for the plaintiff and against the defendant on the plaintiff's claim under the Cable Communications Policy Act of 1984 at 47 U.S.C. § 553, JUDGMENT is entered for the plaintiff and against the defendant in the amount of \$60,000, plus reasonable attorneys' fees.

BY THE COURT:

Robert S. Gawthrop, III,

J.