



Ninth Circuit affirms District Court decisions in Hunyh and Oliver creating apparent split with other Circuits. Hunyh and Oliver still owe DIRECTV \$12,000 and \$20,000 respectively.

On September 11, 2007, the Ninth Circuit, in a 2-1 decision, affirmed the District Court decisions in Hunyh & Oliver. The court found that inserting an access card into a receiver is not "assembly" for purposes of 605(c)(4) and that programming an access card is not a modification for purposes of 605(c)(4) because a DirecTV access card is not a device that is primarily of assistance in piracy.

The court went on to discuss the overlap between 605(a) and 605(c)(4) and found that the statute is designed to create different penalties for those who make piracy devices for commercial purposes from those that apply to individual end-users.

The court claimed that in reaching this decision, it was not creating a circuit split with the 5th Circuit's decision in Robson. However, Judge Siler, in a brief two-paragraph dissent, found that the language of the statute was clear and that the decision conflicted with the decisions of the 4th, 5th, and 2nd Circuits.

While disappointed with the Ninth Circuit's decision of the statute in question, there are several other statutes available to allow DIRECTV to protect its rights and seek damages from those who obtain DIRECTV's signal without authorization. DIRECTV plans to seek en banc review of the decision and will continue to pursue collections of the damage awards obtained against Hunyh and Oliver in the amount of \$12,000 and \$20,000 respectively.