

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

In re: DIRECTV, INC. cases
_____ /

HON. GORDON J. QUIST

ORDER

The Court has before it several motions to inspect and copy computer hard drive data filed by Plaintiff, DIRECTV, Inc., in the cases set forth below. Pursuant to these motions, Plaintiff requests that the Court issue an Order permitting an independent third party computer technician to perform a limited inspection of the data and/or software contained on the hard drives of Defendants' computers. Plaintiff has also submitted a proposed protective order regarding the production of computer hard drive data. With the exception of Defendant Jacobsen, Defendants have not responded or objected to Plaintiff's motion for inspection and copying. In his response, Defendant Jacobsen states that he does not object to an inspection and copying of his computers, but he requests that all copying be done either at his home or at his store on one day and on a date and time agreed by the parties. Defendant Jacobsen also requests that Plaintiff disclose the name of the person or business to him prior to the copying to allow him the opportunity to raise any objections that he may have to that person or business.

Having reviewed Plaintiff's motions in light of Rules 26 and 37(a)(2) of the Federal Rules of Civil Procedure, the Court concludes that Plaintiff is entitled to the discovery it seeks, subject to reasonable procedures for protecting and ensuring the privacy of the information contained on Defendants' computer hard drives. The Court also finds Defendant Jacobsen's requests to be reasonable. Furthermore, having reviewed Plaintiff's proposed protective order, the Court

determines that it is sufficient to protect against the improper disclosure of Defendants' information. Therefore,

IT IS HEREBY ORDERED that Plaintiff's Motions To Inspect And Copy Computer Hard Drive Data filed in the cases set forth below are **GRANTED**.

IT IS FURTHER ORDERED that the following Protective Order shall govern Defendants' productions of their hard drives for forensic examination:

1. Plaintiff will engage the services of an independent third party computer technician to perform the imaging and extraction of relevant non-privileged data from Defendants' hard drives. Plaintiff shall provide Defendant Jacobsen sufficient notice of the identity of the person or business selected to perform the copying or inspection to permit Defendant Jacobsen an opportunity to raise any objections that he may have. Plaintiff shall also, to the extent reasonably possible, perform the inspection and copying of Defendant Jacobsen's computers at his home or store and on a single date agreed to by both parties.

2. In order to obtain the requested information, the independent third party computer technician will produce a "clone" or "image" of Defendants' hard drives using industry-standard software.

3. The independent third party computer technician will then perform a search of the "imaged" hard drives using the same industry-standard software. The search terms, including variations in type-case and spacing is limited to the following:

Xpflash	extreme hu	pirates den
pirateden	ATSDSS	ATSDSS.com
unlooper	DIRECTV	Dave
H card	Hu card	P2 card
P3 card	P4 card	test card

Testcard	access card	dish
SU2	ISO-7816	Satellite
White Viper	wildthing	Viper
WTX	X code	boot card
Bootcard	auxcard	aux card
Pitou	BasicU	Glitch
Glitching	Glitcher	hex card
hex file	hexfile	Wildthing
Unlooper	DSS	RaYzOr
solder time	N. S. International	Darren Cool
tony schmidt	carl suttle	David McCreary
Tiger Direct	Hideout	G Curtis

4. The independent third party technician will also be permitted to use e-scripts and other third-party software to search the system registry and unallocated cluster areas of the hard drives for systemic artifacts to determine whether and when defendants ever “erased” or attempted to erase hard drive data. This search will recover only useful information, not any additional data.

5. In order to ensure that any privileged information will be protected, the independent third party computer technician will be informed who Defendants’ attorney(s) are, and will segregate all potentially attorney-client privileged or attorney-work product from his search results. He will not disclose any such privileged information to Plaintiff or its attorneys.

6. Neither the independent third party computer technician’s review of privileged information, nor any inadvertent disclosure thereof will constitute a waiver of any privilege of Defendants.

7. The independent third party computer technician will disclose to Plaintiff’s trial counsel whether or not he found potentially privileged information. If Plaintiff’s trial counsel directs, he will provide this information to Defense counsel, who will determine whether Defendants

wish to assert a claim of privilege to the information. Plaintiff reserves the right to move the Court for an *in camera* inspection of any information whose privileged status it disputes.

8. After completing his search of Defendants' hard drives, the independent third party computer technician shall disclose whether or not he found any documents that match the above referenced search criteria. If so, he will provide the information to trial counsel. Determination as to the form, foundation, and admissibility of the information will be made by the judge and or magistrate prior to trial.

9. If the independent third party computer technician's search reveals information or data that cannot be reproduced into paper documents (i.e. computer programming instructions, scripts, execution programs, downloads, etc.) he may provide a printout of the matching files and/or data which will be supplied to trial counsel. Determination as to the form, foundation, and admissibility of the printout information will be made by the judge and/or magistrate prior to trial.

10. If the independent third party computer technician's search reveals relevant information or data matching the above search criteria, he shall be allowed to disclose the stored location of the data and/or the allocation format of the information. Determination as to the form, foundation, and admissibility of the location and/or allocation format of the information will be made by the judge and/or magistrate prior to trial.

11. The independent third party computer technician's analysis shall be limited to the steps set forth in this Order, plus an analysis of the location of files discovered in performing these steps. No further analysis shall be performed without agreement of the parties or Court order.

12. The search of Defendants' hard drives shall be limited to the manner described above and there shall be no modification or deviation of the methods of data extraction without prior written agreement of the parties or order of the Court.

IT IS FURTHER ORDERED that this Order granting Plaintiff's motions be filed in the following cases:

1:03-CV-753	DIRECTV, Inc. v. McIntosh (docket no. 18)
1:03-CV-754	DIRECTV, Inc. v. Castellani (docket no. 26)
1:03-CV-749	DIRECTV, Inc. v. Batchelor (docket no. 21)
1:03-CV-767	DIRECTV, Inc. v. Gentry (docket no. 25)
2:03-CV-101	DIRECTV, Inc. v. Hammers (docket no. 85)
2:03-CV-259	DIRECTV, Inc. v. Jacobsen (docket no. 31)

Dated: September 22, 2004

/s/ Gordon J. Quist
GORDON J. QUIST
UNITED STATES DISTRICT JUDGE