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DirecTV defendants send a signal of their own

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Digital satellite provider **DirecTV** has targeted at least 150 Marylanders in a nationwide campaign against consumers it claims purchased equipment to illegally intercept its digital signal. The consumers, however, say the California-based company didn't do its homework — that just because they have certain equipment doesn't mean they're stealing the signal.

"The sad part is that either these people have to give up \$3,500 or they're spending tons of money to defend themselves in federal court," said Sonya Smith-Valentine, a Greenbelt attorney who represents 50 consumers around the state. "They're stuck with huge legal bills because of DirecTV not taking the time to decide if this is someone worth going after."

According to Robert Mercer, director of public relations for DirecTV, the company began the crusade two years ago when, under the Digital Millennium Copyright Act, it asked the government to issue writs of seizure for Internet companies selling certain devices. The government shut down the companies and turned the records over to DirecTV.

The company then sent out letters to around 80,000 people across the country, threatening them with taking legal action if the person did not agree to a settlement — typically about \$3,500 per device.

"If you should choose to reject

this settlement offer, or should you fail to respond, please be advised that we have been instructed by DIRECTV to initiate legal proceedings in Federal District Court, and to seek the award of damages....," DirecTV's Seattle-based attorney Spencer Freeman wrote in the first round of letters.

In some cases, he included a copy of the lawsuit it said the company would file if the consumer did not pay the fee.

So far it has filed 15,125 suits.

But Smith-Valentine said the real problem came when DirecTV failed to do any investigation before sending out letters to everyone who had purchased the devices.

Some of her clients, she said, don't even own a satellite dish, which is needed to intercept the signal. One of her clients is even a DirecTV subscriber who pays for the service every month.

"They could have used that device as a coffee table," she said. "Unless I intercepted your signal and got it free, I've not harmed you because I haven't gotten anything from you."

Mercer, however, said DirecTV did extensive investigations into the purchases and that signal theft is the only possible use for the devices.

"I'd have to ask why then did they go on a piracy Web site to buy these devices. These devices have no other purpose than to steal the signal," he said.

Plus, Mercer said the way DirecTV

reads the statute, mere possession of the device is enough to allow for a private cause of action.

Smith-Valentine, on the other hand, believes the statute isn't so clear. She said using the device to intercept the signal obviously gives rise to a cause of action, but courts have yet to determine whether just having the device is enough.

"It's kind of been up in the air where that part will fall at the end of the day," she said.

In the meantime, some consumers are starting to fight back. Last year, a California resident who received a letter from DirecTV filed a class action suit in Los Angeles County Superior Court. In April, a judge dismissed the action and it is currently on appeal.

The same group filed a \$100 million federal class action in California in August.

Such suits are to be expected, Mercer said.

"We're not surprised that there is that kind of backlash, but the backlash that concerns us is what would come from our 11.8 million honest customers who pay their bill each month and our programmers who don't want their programming distributed for free," Mercer said. "They would be justifiably unhappy with us if we didn't take action."

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