

Imagine if you will, that you have been the victim of theft, that after the thief settles in court, the theft returns and sues you civilly claiming that during the theft, you stole his property, the same property which you took back from him as he ran away. .

I have encountered a conflict between intellectual property rights and one's constitutional right to personal property and the protection of that personal property. The best way to describe the issues is to first provide a brief description of events which occurred. I write this to address the problem in hopes the intellectual property rights law be reviewed.

I purchased one year of television programming from a Satellite Television Company. It was not a subscription but rather one full year agreement paid in full in advance. In return for full payment I received basic programming and the movie channels. Four months into the year the re-Satellite Company gave me an ultimatum. "Pay us more money for the movie channels or loose them." Realizing this was illegal I asked that unused monies be returned and cancel further programming. The Company refused any refund. Then the day came and the re-broadcaster used there intellectual property right, entered my embedded chip in my receiver in my home and took the movie channels for which I had paid away through altering the Embedded chip. I demanded the return and viewed this as a theft of my programming. I notified my state attorney general's office who claimed this as civil and sit I would have to retain an attorney and sue.

When my states Attorney General said it was civil, I learned the cost to retain an attorney would be \$5000.00 to fight this as a civil matter. *I would like to point out that theft, fraud and Bait and Switch is not a civil matter but rather is stated in statute as a crime. Crimes are prosecuted by the district attorney. Crimes are not mediated in civil court as this one has. To intentionally take something from another with the intent to deprive them permanently is theft. Then to force higher payment for the return of your own property is fraud. The company was sued under the fraud statues by 31 state attorney general's.*

So for much less money I had purchased another access card containing an embedded chip which, when the programming was taken from me, I could then insert the other access card as a method to continue to receive that for which had been stolen. "All consumers with this company purchase there own access card." While the company made the choice to commit fraud and theft, under statutes, I do not have to become it's victim. Our US constitution and our states constitution provides me the right to defend and protect property for which I have paid and am entitled to. It is not theft to take or protect your own property. Thirty one state attorney General's felt as I did. The states attorney general's joined in a class action siting the taking of programming as Theft, Fraud, and Bait and Switch. (See enclosed lawsuit page 6 speaks to pre-meditation) Settled one year later the satellite re-broadcaster settled paying 11 million dollars. One year after this event there is another similar event prompting me to once again have to repair the broken access card. This time a company named USSB is in a one year agreement. USSB are in takes with another satellite company to shift programming which was guaranteed consumers under the USSB agreement. The shift of programming was to be made through chip manipulation then still require subscribers to live out that year with out that programming.

In 2003 the first satellite company then mails a very threatening letter to me stating that they have recently learned of my purchase of the access card I used to protect from their theft. They said they felt my purchase of the second access card was unlawful under 17USC1201 and other various statutes. (See attached letter) That the very programming the re-broadcaster had taken from me triggering the class action for bait and switch, the company now claims, it was I now who took that same programming from them. That they request I now pay them thousands of dollars or be sued in federal court for up to as much as \$100,000.00 using 17 USC 1201 and other statutes. Such a threatening letter was clear evidence of threatening a victim which is illegal. The re-broadcaster was immediately notified and reminded of the former class action. That the card was purchased two weeks prior to the bait and switch some 7 years ago. That the card I purchased was used to block that which the 31 attorney general's classified as bait and switch.

This seemingly made no difference to the company. Insisting that their intellectual property right gives them the right to sue anyone interfering with that intellectual property right and copyright and the right to demand thousands in settlement dollars. That intellectual property provides the right to sue even those who took action to defend themselves from the intellectual property holder's theft.

I was sued in 2003 and initially the company wanted upwards of \$100,000.00 from me. To enhance their case, they made false claims to the court that I programmed chips and that I was in the profitable business of manufacturing access cards to steal programming. All this because I bought an access card to block their theft of my movie channels. I have never seen any machine to program a chip let alone ever sell one. They could never have had any such proof because what they wrote in court documents under penalty of perjury never happened. There was never any support for such a story told to the court. They continued the suit through interrogatories, discovery, and the judge ordered mediation after one and a half years running my legal expenses into the thousands. They were again explained the entire story for the purchase and that I was protecting the movie channels they had unlawfully taken from me and were sued by 31 state attorney generals. Still it made no difference, they said they were going to trial. I then hired another attorney, a trial attorney which cost me thousands more in preparation for trial. When a different attorney appearing on behalf of the company at the mediation, that attorney learned the reason for the purchase, a settlement was reached immediately. That company attorney said it was wrong to sue in light of the previous bait and switch. In her words "this was so wrong." Because the company sued under the private attorney general doctrine, they had immunity and I was denied the right to recovery legal expenses and injuries under any redress. Redress is guaranteed by the constitution but because suing me was "best for the people" (private attorney general doctrine & qui-tam) I was barred from any redress. It also meant this private attorney general sued the victim of the attorney general's own theft for the protection of private property.

Discussion:

In my case, the company reached into my set top box and turned a part of my embedded chip off with the intent to deprive me forever of the programming for which I had paid unless I paid them more. In response I had ready another access card with another chip which would protect from

that theft of programming. It has been suggested to me that when the company turned my chip off, I should have turned to a civil court and sued for the return of my programming.

It is normal when a dispute should arise when one person violates a civil agreement that the other would sue for specific performance. While the matter at hand gives the appearance of a civil dispute, it is not. What makes a criminal case different than a civil dispute, is that one of the parties decided to break, not a civil law, but rather a criminal law through the unlawful use of an intellectual property right. The act of reaching into my set top box and altering the chip intentionally depriving me of "my" programming which I had paid for in an attempt to profit. Once the programming had been taken the intent was to deprive me of that programming till I would pay more money, or they would never return it or provide refund. Then not only would they profit from the taking of my programming as it had been paid for and taken, but then to ask for more money in order to have my programming returned becomes both theft followed by fraud by way of theft. You cannot take someone's property then leverage that stolen property to get the owner to buy it back. But under intellectual property law, they controlled the switch deep with in the embedded chip and the public does not. Under intellectual property law to take action to stop or protect from the theft through circumvention is illegal. But protection of property is a right granted me under the constitution.

At the point where a person is about to become a victim of a crime of this nature, that person does not have to stand by and become a victim. While a victim always has an option to sue civilly in court "after" having become a victim, that victim has every right to defend and protect there property to stop the crime in progress from occurring. It is a long standing right in the United States the right to own and protect property. This would include television programming which had been bought and paid for, other then month to month, in advance for one year. This has long been established in the history in the United States under the right to liberty. The liberty to defend one's property from theft, the liberty to protect one's property through various levels of force if needed. The defeating of an electronic counter measure in this case is considered such a level of force.

According to Black's Law Dictionary self defense is defined as "that degree of force which is not excessive and is appropriate in protecting oneself or "one's property." When such force is used, a person is justified and is not criminally liable, nor liable in a tort." Based on this definition, it seems that a "reasonable" response is warranted and legal.

Since the inception of the US constitution a person has always had the right to take necessary measures to defend and protect the property they own and have rights to. The issue become even more complicated when the intellectual property rights holder would contend that, even though they have committed bait and switch, fraud and theft, that 17 USC 1203 still provides the right to sue for damages because an individual took defensive action to thwart the crime through the purchase of a chip designed to block or prevent the theft. 17 USC 1201 and 17 USC 1203 does not exempt someone for defeating an electronic counter measure with the express purpose and intent of protecting from a crime perpetrated by the intellectual property rights holder.

Congress must except the premise and possibility of the intellectual property rights holder violating the rights, privileges, and trust held under an intellectual property right or copyright license. "Even a license holder can break the law." In the matter at hand it is contrary to public policy that the intellectual property holder use there trust, and lawful chip access, to take property belonging to another in an attempt to profit. It is a crime after all. Then to ask a court to assist in a court award by forcing the victim of the theft to pay the perpetrator, rewards the perpetrator for the theft. 17 USC 1203 makes no exception from the perpetrator from profiting from crime in a court action against a victim. In fact 17 USC 1201 doesn't even consider such a circumstance.

Where a consumer purchased a product, any product with the intent to use that product to it's full potential, and the intellectual property owner turns off, date stamps, or restricts the use of that product, they have essentially deprived the consumer of the full intended use of the consumer's property. Just as a person who buys an access card to steal programming from a satellite broadcaster is a felony punishable up to 5 years in prison, so too is it a felony to alter a chip and deprive the consumer of that programming they have purchased. Each case is a felony and each is a crime under the law. When the consumer tries to file such a complaint against a satellite broadcaster, such a complaint may be taken serious as was the case with 31 state attorney general's. Then, after the class action is over, 17 USC 1203 gives the perpetrator the right to civil suit those same members, in the prior class action who attempted to block the crime. It should be said that I wrote and spoke with many agencies sworn to uphold these criminal laws and not one would even consider the evidence let alone enforce these felony statutes. This because common thought is that 17 USC 1201 is a superior law to that of a constitutional right to protect property from theft. That 17 USC 1201 is superior to the laws of intentionally filing claims in federal court you know to be false.

I have to say that I faced the dilemma that no agency sworn to up hold the felony laws. That it was apparent this company would get away with perjury in filing the claims they knew to be false and may well secure a civil court award. Where felony crime is permitted, it places the victim in a very unique situation where by they must defend against the crime with any means necessary in the absence of law enforcement. That this 6 Billion dollar company fully intended to destroy me financially and was in the process of doing so. I became very sick needing medical assistance on several different occasions. Fear can be very persuasive. I would have to sign almost anything or face financial ruin.. This because my right to thwart a theft were being ignored and further a federal court being lied to. Federal regulators as well shunned my request to enforce or even investigate these crimes. It was very difficult for others in my own mediation to understand that if I paid the plaintiff an award in this suit, the plaintiff then profits from the original crime. Further, that my defending from a crime of fraud and theft is now being settled in a mediation forum ordered by a court. I cannot understand a law such as 17 USC 1203 or other laws involved, which would assist an intellectual property rights holder, where the intellectual property rights holder used those rights to unlawfully manipulate an embedded chip to commit crime. It is against public policy and asks the court to reward that crime.

The procedure of the federal court system does not permit the defendant from bringing out the fact they were only defending from a theft until the actual trial or until and if mediation is ordered. Mediation is the last step after the long process before a trial is held. Then the trial portion cost is \$25000.00 for private attorney and the consumer just doesn't have that. Just defending against such a suit where the consumer was protecting his property is almost certainly

brings about considerable financial devastation for a family. Under these same laws, a federal civil suit can be brought against a person for simply having purchased an embedded chip on an access card where suspicion alone is present. There needs to be no proof until a trial is held under the civil code. Many such suits to date have been brought.. A standard of proof is only required at the trial and not before. Most cannot afford the trial in order to defend there actions which then leads to leveraged award payment. (Pay us or face financial ruin of a trail) Because people cannot afford the trial, the intellectual property rights holder or a large corporation is paid in a settlement allowing for the profiting from a fraud committed by the company.

The company comes to court and asserts and represents themselves as a copyright holder which conveys the trust of the copyright license. In the complaint filed in federal court for 17 USC 1201 or other applicable statutes where intellectual property rights come into play, there is no enforcement of perjury where the intellectual property rights owner, in the original summons and complaint makes statements they know to be false or untrue. One such statement is that the intellectual property rights holder contends non-payment when in fact the person they are suing has receipts for having paid for the right. That the intellectual property rights owner tells the court that a person purchased an access card with an embedded chip, then fails to say anything to the court about the fact that the chip was purchased to defend against an unlawful manipulation of the embedded chip. Then says nothing of the intellectual property owner altered to take programming and sell back to the consumer again at a higher price. Then says nothing of a prior determination in another court or says nothing of the class action.

I think everyone can agree that this law was not implemented to be used as a method to permit the intellectual property rights owner to use those rights in a way to permit violations of criminal laws. My suggestion is, like other laws, where intellectual property rights were used to violate criminal laws, such as through the unlawful manipulation of an embedded chip, and in doing so constitutes theft or fraud, that use of 17 USC 1203 or other statutes relating to civil actions, be made unavailable to the intellectual property holder from use in damage suits against the victims of those same crimes.

Will these occurrences increase in the next three years.

There is little doubt that these occurrences will increase as they already have in the past. It is profitable to sue under 17 USC 1203 and other statutes. With Embedded chips being placed in more and more things sold to consumers the frequency of unlawful manipulation will increase by both the consumer and the manufacturer or Intellectual property right holder. In the past, a company might limit the life of a product by using parts apt to wear out early, today an embedded chip is given specific instructions which can cause premature failure or even instruction to simply stop working on a given date. This is not a problem if disclosed to the buyer upon purchase. The problem comes however when there was no disclosure to the buyer and embedded instructions which control the product causes the product to stop before it's time. This then becomes a case of fraud by misrepresentation and can rise to the level of criminal fraud.

As consumer's become more tech savvy regarding embedded chips and the internal instructions with in, the incidents of the consumer modifying a chip or finding a work around will increase. While in those cases a manufacturer' will decide to sue the consumer under 17 USC 1203 where violations have occurred, manufactures will face consumers whose product terminated early because of instruction with in the embedded chip. That the consumer will claim, and rightfully so in some cases that the manufacturer intentionally alter a chip to deceive or defraud the consumer to enhance there own profit. Manufacturers and corporations are profit driven and the embedded chip, modification closed to the public, is fertile grounds for passive or active manipulation of a product. In my own case, the satellite company used a satellite stream for which they were licensed to unlawfully enter "my" embedded chip on my access card and take from me programming for which I had paid. While this was a blatant and active abuse, there will be more and more far more subtle or passive abuses such as the case of Hewlet Packard and the chip with in the Ink Cartridge.

First and foremost however the consumer has to be protected from these abuses. A billion dollar corporation suing an individual who earns only \$30,000 per year is not a level playing field. Even though a corporation may have committed a fraud, the corporation has enough money to simply bankrupt an individual financially and intentionally will do so. Using leverage like this a consumer can be forced into signing almost any agreement of settlement the corporation wishes as I was. With such power, intellectual property holders can place Gage orders in such settlement agreement which would conceal the reporting of a corporations unlawful and illegal manipulation of embedded chips as well.

I have first hand information of such events and as a retired police officer am convinced that unless measures are taken, this will be a growing problem both for consumers and for corporations. Certain respect for courts and laws will diminish where a company committing fraud collects from the victim. The more a corporation attempts to modify a chip to the detriment of the consumer, the result you will find consumers opting to combat this through defeating electronic counter measures to protect property from theft or diminished capacity or use. If needed I can appear there to give specifics to which I have now experienced personally.