

**Cable/Home Commc'n Corp. v. Network Prods., Inc.,  
902 F.2d 829 (11th Cir. 1990)**

Year	1990
Court	United States Court of Appeals for the Eleventh Circuit
Key Facts	Plaintiffs Home Box Office, Inc. and Showtime/The Movie Channel, Inc. alleged that defendants infringed the encryption software plaintiffs used to limit access to their cable programming. Defendants, video production company Network Productions, Inc. and its president Shaun Kenny, financed the production and distribution of decryption software that incorporated substantial portions (86%) of plaintiffs' copyright protected software for the express and widely publicized purpose of giving non-subscription viewers access to plaintiffs' programming. The district court ruled that defendants were liable for willful, direct and contributory infringement. Defendants appealed, asserting fair use.
Issue	Whether defendants' use of plaintiffs' software to create decryption software that gave non-subscribers access to plaintiffs' cable television programming was fair use.
Holding	The Eleventh Circuit upheld the lower court's finding that defendants' decryption software infringed plaintiffs' software and was not fair use. The court held that none of the four statutory factors supported defendants' fair use defense. In particular, the court found that the defendants' "flagrant commercial purpose" in using virtually all (86%) of plaintiffs' copyrighted computer program to achieve the descrambling of plaintiffs' encrypted television signals did obvious damages to plaintiffs' present and future markets.
Tags	Eleventh Circuit; Computer program
Outcome	Fair use not found

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