

1 for default judgment were mailed to Defendant. See ECF No. 12. Defendant did not appear at the
2 hearing.

3 **B. Factual history**

4 Plaintiff is a distributor of sports and entertainment programming. It purchased the rights to
5 broadcast a February 6, 2010 championship fight between Randy Couture and Mark Coleman,
6 together with undercard bouts, televised replay, and color commentary (collectively, the
7 “Program”). It then entered into sublicenses with third parties such as casinos, bars, and social
8 clubs, allowing the sublicensees to exhibit the Program to their patrons. The Program was
9 broadcast in interstate commerce by means of an encrypted transmission, and only Plaintiff's
10 sublicensees were entitled to decrypt that transmission.

11 On the day of the broadcast, Gary Gravelyn (“Gravelyn”), an investigator hired by Plaintiff,
12 observed an exhibition of the Program in Chot Nho Café. Defendant was not a sublicensee entitled
13 to exhibit the Program. Gravelyn entered the premises without paying a cover charge and observed
14 the Program on twelve televisions. Decl. of Affiant at 2. Between 8:25 p.m. and 8:30 p.m., he
15 performed three headcounts, noting the presence of thirty-five, thirty-seven, and thirty-nine people
16 by each respective count. Id. at 2-3. The declaration indicates the capacity of Chot Nho Café as
17 seventy-five and that Gravelyn observed a satellite dish and did not observe a cable box. Id. at 2.

18 **II. DISCUSSION**

19 The Federal Communications Act of 1934, 47 U.S.C. § 605 et seq. prohibits commercial
20 establishments from intercepting and broadcasting satellite cable programming without a license. It
21 provides a private right of action in federal court. Plaintiffs may request that courts award actual or
22 statutory damages between \$1,000 and \$10,000 for each violation of section 605. 47 U.S.C. §
23 605(e)(3)(C)(i). Damages of up to \$100,000 may be awarded for willful violations. 47 U.S.C. §
24 605(e)(3)(C)(ii).

25 “[U]pon default the factual allegations of the complaint, except those relating to the
26 amount of damages, will be taken as true.” Geddes v. United Fin. Group, 559 F.2d 557, 560 (9th
27 Cir. 1977) (citing Pope v. United States, 323 U.S. 1 (1944); Flaks v. Koegel, 504 F.2d 702, 707 (2d
28 Cir. 1974)). Plaintiff seeks damages pursuant to § 605, which “requires proof that a defendant has

1 ‘(1) intercepted or aided the interception of, and (2) divulged or published, or aided the divulging
2 or publishing of, a communication transmitted by the plaintiff.’ ” California Satellite Systems v.
3 Seimon, 767 F.2d 1364, 1366 (9th Cir. 1985) (citing National Subscription Television v. S & H
4 TV, 644 F.2d 820, 826 (9th Cir. 1981)).

5 Plaintiff alleges in its complaint that it transmitted the Program, that Defendant unlawfully
6 intercepted the Program, and that Defendant exhibited the Program. Compl. ¶¶ 9-13. Plaintiff seeks
7 \$10,000 in statutory damages pursuant to 47 U.S.C. § 605(e)(3)(C)(i)(II), \$100,000 in enhanced
8 damages pursuant to 47 U.S.C. § 605(e)(3)(C)(ii), and \$1,100 in damages for conversion.

9 **A. Statutory damages pursuant to 47 U.S.C. § 605(e)(3)**

10 Under 47 U.S.C. § 605(e)(3) the Court may award statutory damages between \$1,000 and
11 \$10,000 for a violation of the Act. Plaintiff contends that the maximum award against Defendant is
12 necessary to deter future violations. Plaintiff has presented evidence of the capacity of the
13 establishment as seventy-five, which served thirty-five, thirty-seven, and thirty-nine persons during
14 Gravelyn’s headcounts, and the Program was shown on twelve televisions. These factors suggest
15 that maximum damages are not warranted. The Court finds that an award of \$7,000 is sufficient
16 under the circumstances.

17 **B. Enhanced damages pursuant to 47 U.S.C. § 605(e)(3)(C)(ii)**

18 47 U.S.C. § 605(e)(3)(C)(ii) provides for an enhanced damage award of up to \$100,000
19 when “a violation was committed willfully and for purposes of direct or indirect commercial
20 advantage or financial gain.” 47 U.S.C. 605(e)(3)(C)(ii). Plaintiff alleges that Defendants’
21 interception of the program was willful and for purposes of commercial advantage or private gain.
22 Compl. ¶ 13.

23 Plaintiff has brought to the attention of the court a 2010 case, 5:10-5723 EJD, which
24 alleged Defendant unlawfully broadcast another program on December 19, 2009. That case was
25 filed after the events at issue in this action. The presence of the 2010 case therefore is not
26 particularly probative of Defendant’s willfulness during the events at issue here. The 2010 case,
27 however, ended in a default judgment against Defendant, indicating that the event in this case was
28 not the first time Defendant unlawfully broadcast a program at Chot Nho Café.

