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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

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11 G & G Closed Circuit Events, LLC,  
12 Plaintiff,

13 v.

14 Steven C. Olson and Jackie Olson,  
15 individually and d/b/a Mike's BBQ;  
16 and Mike's BBQ, Inc., an unknown  
17 business entity d/b/a Mike's BBQ,

18 Defendants.

Case No. 20cv02119-LAB-BGS

**ORDER GRANTING  
DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT AND  
DISMISSAL [DKT. 9]**

19 This case arises out of the unauthorized exhibition of a professional boxing  
20 match. Plaintiff G & G Closed Circuit Events, LLC ("Plaintiff"), the commercial  
21 distributor of the program, filed suit against Defendants Steven C. Olson and  
22 Jackie Olson, individually, and d/b/a Mike's BBQ (collectively "Defendants"), for  
23 displaying the program at their establishment without paying the proper licensing  
24 fee. Defendants have filed a Motion for Partial Summary Judgment on Complaint  
25 Counts I and II and Rule 12(b)(1) Dismissal of State Law Counts III and IV  
26 ("Motion"). (Dkt. 9 ("Mot.")) The Court has considered the papers filed in support  
27 of and in opposition to the Motion. The Court **GRANTS** Defendants' motion for  
28 summary judgment on all federal causes of action and **DECLINES** supplemental

1 jurisdiction as to the remaining state law claims, which the Court **DISMISSES**  
2 **WITHOUT PREJUDICE.**

3 **I. BACKGROUND<sup>1</sup>**

4 Plaintiff is a commercial distributor and licensor of sporting events. Plaintiff  
5 was granted the exclusive nationwide commercial distribution rights to the “Saul  
6 ‘Canelo’ Alvarez v. Sergey Kovalev” championship fight program (the “Program”),  
7 which was broadcast on November 2, 2019, at Defendants’ establishment, Mike’s  
8 BBQ, located at 1356 West Valley Parkway, Escondido, CA 92029.<sup>2</sup> (Dkt. 10-1,  
9 Joint Statement of Undisputed Facts (“JSUF”) ¶¶ 1, 9.) On the date in question,  
10 Defendants accessed the Program using an “internet streaming service[ ]”  
11 application, called DAZN, which they downloaded onto their Amazon Fire TV Stick  
12 (“Fire Stick”) and broadcast onto the televisions in their establishment.<sup>3</sup> (Dkt. 9-2,  
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14  
15 <sup>1</sup> To the extent that Plaintiff objects to the evidence produced by Defendants in  
16 support of their Motion, those objections are **OVERRULED** as moot because the  
17 Court doesn’t rely on the objected-to evidence in ruling on Defendants’ Motion.

18 <sup>2</sup> The Court **GRANTS** Plaintiff’s request for judicial notice of the California  
19 Secretary of State business profile for Mike’s BBQ, as attached as Exhibit 1 to  
20 Plaintiff’s Request for Judicial Notice. (Dkt. 11-2, Request for Judicial Notice  
21 (“RJN”), Ex. 1.) A court may take judicial notice of matters of public record if those  
22 facts are not subject to reasonable dispute. *Lee v. City of Los Angeles*, 250 F.3d  
23 668, 688-89 (9th Cir. 2001) (citing *Mack v. S. Bay Beer Distrib.*, 798 F.2d 1279,  
24 1282 (9th Cir. 1986)), *overruled on other grounds by Galbraith v. Cty. of Santa*  
25 *Clara*, 307 F.3d 1119 (9th Cir. 2002).

26 <sup>3</sup> Plaintiff requests that the Court take judicial notice of the DAZN Terms of Use.  
27 However, as explained herein, the Court doesn’t reach a determination of whether  
28 Defendants complied with these terms, and in addition to not finding the Terms of  
Use the proper subject of judicial notice, the Court does not consider this document  
relevant to its present assessment of the issues. Therefore, the Court **DECLINES**  
to take judicial notice of this document. The Court similarly **DECLINES** to take  
judicial notice of the DAZN Frequently Asked Questions on the DAZN website  
because, although websites are typically the proper subjects of judicial notice, the

1 Declaration of Steven C. Olson (“Olson Decl.”) ¶ 17; Dkt. 11-1, Affidavit of Nicolas  
2 J. Gagliardi (“Gagliardi Aff.”) ¶ 13(D).) Plaintiff contends that it had an agreement  
3 with DAZN which granted Plaintiff the exclusive commercial distribution rights to  
4 the Program and limited DAZN’s internet rights to residences. (Gagliardi Aff. ¶ 5.)

5 In support of its Opposition to the Motion, Plaintiff attaches the affidavits of  
6 two of its investigators, Kevin Karlach and Rudy M. Gubach, who both visited  
7 Mike’s BBQ on November 2, 2019. (Dkt. 11-3, Affidavit of Kevin Karlach (“Karlach  
8 Aff.”); Dkt. 11-4, Affidavit of Rudy M. Gubach (“Gubach Aff.”).) These affidavits  
9 offer some conflicting information. Karlak entered the establishment at 10:18 pm  
10 without paying a cover charge. (Karlak Aff. at 1.) He observed 20 televisions in the  
11 restaurant. (*Id.*) But while he states that he observed the Program playing on a few  
12 of the televisions, which had the DAZN watermark and logo clearly displayed on  
13 the screens, it’s unclear whether the Program was playing on all 20 televisions.  
14 (*Id.*) In the three minutes that Karlak was present at Mike’s BBQ, which has an  
15 approximate capacity of 300 people, he conducted three headcounts of 85 people  
16 each. (*Id.*) Gubach, on the other hand, arrived earlier at 7:05 pm and paid \$10.00  
17 to enter the establishment.<sup>4</sup> (Gubach Aff. at 1.) He counted 13 televisions, of which  
18 only 3 displayed the DAZN boxing Program. (*Id.*) Gubach appears to only have  
19 viewed the undercard event, not the main match between Canelo and Kovalev.  
20 (*Id.*) During the 25 minutes Gubach was there, he conducted three headcounts of  
21 88, 87, and 89 patrons in the establishment. (*Id.* at 2.)

22 On October 29, 2020, Plaintiff commenced this action against Defendants,  
23 alleging violations of 47 U.S.C. §§ 605 and 553, conversion, and violation of  
24 \_\_\_\_\_

25 Court doesn’t consider it relevant to the Court’s analysis in this Order.

26 <sup>4</sup> Gubach states that when he arrived, the hostess informed him that the Program  
27 was sold out and the tables were reserved. (Gubach Aff. at 1.) One of the patrons  
28 at Mike’s BBQ then sold Gubach a seat and gave him a wristband needed to enter  
the bar area where the Program was being displayed. (*Id.*)

1 California Business and Professions Code §§ 17200, *et seq.* In response,  
2 Defendants filed the present Motion.

3 **II. STANDARD OF REVIEW**

4 Summary judgment is appropriate under Rule 56(a) where the movant  
5 “shows that there is no genuine dispute as to any material fact and the movant is  
6 entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). In order to prevail,  
7 a party moving for summary judgment must show the absence of a genuine issue  
8 of material fact with respect to an essential element of the non-moving party’s  
9 claim, or to a defense on which the non-moving party will bear the burden of  
10 persuasion at trial. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Once  
11 the movant has made this showing, the burden then shifts to the party opposing  
12 summary judgment to identify “specific facts showing there is a genuine issue for  
13 trial.” *Id.* at 324. The party opposing summary judgment must then present  
14 affirmative evidence from which a jury could return a verdict in that party’s favor.  
15 *Anderson v. Liberty Lobby*, 477 U.S. 242, 257 (1986). On summary judgment, the  
16 Court draws all reasonable factual inferences in favor of the non-movant. *Id.* at  
17 255. “Credibility determinations, the weighing of the evidence, and the drawing of  
18 legitimate inferences from the facts are jury functions, not those of a judge.” *Id.*  
19 (citation omitted). “The mere existence of a scintilla of evidence in support of the  
20 plaintiff’s position will be insufficient; there must be evidence on which the jury  
21 could reasonably find for the plaintiff.” *Id.* at 242.

22 The Court does not make credibility determinations or weigh conflicting  
23 evidence. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). Rather, the  
24 Court determines whether the record “presents a sufficient disagreement to require  
25 submission to a jury or whether it is so one-sided that one party must prevail as a  
26 matter of law.” *Id.* at 251–52.

27 **III. DISCUSSION**

28 As an initial matter, Plaintiff requests that the Court deny Defendants’ motion

1 for summary judgment as premature given that no discovery has been conducted  
2 in this case to date. (Dkt. 11 at 5–6.) Rule 56(b) allows a party to file a motion for  
3 summary judgment “at any time until 30 days after the close of all discovery.”  
4 Although the rule also allows the court to deny the motion or order a continuance  
5 for the opposing party to pursue discovery, doing so is only necessary where  
6 additional discovery that could preclude summary judgment is needed. Fed. R.  
7 Civ. P. 56(d) (“If a nonmovant shows . . . it cannot present facts essential to justify  
8 its opposition, the court may: (1) defer considering the motion or deny it; (2) allow  
9 time to obtain affidavits or declarations to take discovery; or (3) issue any other  
10 appropriate order.”). Such is not the case here.

11 In the declaration accompanying its Opposition, Plaintiff lists various  
12 information it hopes to elicit from Defendant in discovery. (Dkt. 11-3 ¶ 15(a)–(o).)  
13 But this information is peripheral and not essential to the resolution of the narrow  
14 issue that is the subject of the present Motion. The critical fact here is that  
15 Defendants used the internet to access the Program on the date in question.  
16 Defendants admit in their affidavit that they used the DAZN internet streaming  
17 service to access the Program (Olson Decl. ¶ 17), a fact corroborated by Plaintiff’s  
18 own investigators (Karlak Aff. at 1; Gubach Aff. at 1), and supported by Plaintiff’s  
19 acknowledgment that DAZN is an “internet based service[.]” (Gagliardi Aff.  
20 ¶ 13(D)). In its Opposition, Plaintiff doesn’t actually dispute that Defendants used  
21 DAZN to access the Program, arguing just that there are some deficiencies with  
22 Defendants’ evidence. (Opp. at 20.) Plaintiff makes a number of immaterial  
23 discovery requests, such as for account numbers and terms of service for  
24 Defendants’ internet and television services providers and information related to  
25 how Defendants signed for their DAZN account. (Dkt. 11-3 ¶ 15.) But this  
26 information isn’t essential for Plaintiff to oppose Defendants’ Motion because it’s  
27 unrelated to whether DAZN is an internet streaming service, a fact Plaintiff never  
28 actually disputes. Plaintiff also seeks discovery related to “[w]hether Defendants

1 did, in fact, have an account with DAZN,” but Defendants’ affidavit already provided  
2 this information. Plaintiff lists no other discovery request that would warrant the  
3 denial or continuance of Defendants’ Motion.

4 Thus, the Court will analyze the narrow issue presented in Defendants’  
5 Motion based on the adequate record before it.

6 **A. Violations of 47 U.S.C. §§ 553 and 605**

7 Defendants argue that they’re entitled to summary judgment on Counts I and  
8 II based on the “internet defense,” because the Program was streamed over the  
9 internet, and 47 U.S.C. §§ 553 and 605 apply only to radio, cable, and/or satellite.  
10 (Mot. at 7.) Defendants additionally argue that they’re entitled to summary  
11 judgment for the following reasons: Plaintiffs’ claims are barred by issue  
12 preclusion; Defendants’ receipt of the Program from DAZN was authorized; and  
13 47 U.S.C. § 605 doesn’t apply to redistributed non-satellite signals. (*Id.* 9–14.) The  
14 Court addresses the internet defense first.

15 The Federal Communications Act (“Communications Act”, 47 U.S.C. § 605  
16 (“Section 605”), prohibits commercial establishments from intercepting and  
17 broadcasting to its patrons radio communications or satellite cable programming  
18 without authorization. *See Kingvision Pay-Per-View v. Guzman*, Case No. C-09-  
19 00217, 2009 WL 1475722, at \*2 (N.D. Cal. May 27, 2009). Section 605 provides,  
20 in relevant part:

21 No person not being authorized by the sender shall  
22 intercept any radio communication and divulge or publish  
23 the existence, contents, substance, purport, effect, or  
24 meaning of such intercepted communication to any person.  
25 No person not being entitled thereto shall receive or assist  
26 in receiving any interstate or foreign communication by  
27 radio and use such communication (or any information  
28 therein contained) for his own benefit or for the benefit of  
another not entitled thereto. No person having received  
any intercepted radio communication or having become  
acquainted with the contents, substance, purport, effect, or



1 meaning of such communication (or any part thereof)  
2 knowing that such communication was intercepted, shall  
3 divulge or publish the existence, contents, substance,  
4 purport, effect, or meaning of such communication (or any  
5 part thereof) or use such communication (or any  
6 information therein contained) for his own benefit or for the  
7 benefit of another not entitled thereto.

8 47 U.S.C. § 605(a). In 1984, Congress specifically amended Section 605 and  
9 “added §§ 605(b)–(e) to curb ‘the growing practice of individuals taking down  
10 satellite delivered programming for private, home viewing by means of privately  
11 owned backyard earth stations.’” *DirecTV, Inc. v. Webb*, 545 F.3d 837, 843 (9th  
12 Cir. 2008) (quoting 1984 U.S.C.C.A.N. 4655, 4745). Likewise, the Cable Television  
13 Consumer Protection and Competition Act (“Cable Act”), 47 U.S.C. § 553 (“Section  
14 553”), prohibits “intercept[ing] or receiv[ing] or assist[ing] in intercepting or  
15 receiving any communications service offered over a cable system, unless  
16 specifically authorized to do so by a cable operator.” 47 U.S.C. § 553(a).

17 Defendants contend that summary judgment is appropriate because  
18 Sections 605 and 553 don’t extend to internet broadcasts. Defendants admit, and  
19 Plaintiff’s investigations confirm, that Defendants accessed the Program on  
20 November 2, 2019, via DAZN, which is an internet streaming service. Specifically,  
21 Defendants downloaded the Program onto their Fire Stick using the DAZN  
22 application. They then used that Fire Stick to display the Program on various  
23 television screens at Mike’s BBQ. This entire process involved using the internet,  
24 and at no point did it involve the use of radio, satellite, or cable television. And  
25 neither party makes any allegation that the DAZN service implicates radio, satellite,  
26 or cable signals.

27 Defendants cite to several cases in the Ninth Circuit that support the internet  
28 defense and confirm that the relevant statutes don’t apply to transmissions made  
using the internet. *See, e.g., G & G Closed Cir. Events, LLC v. Rojas*, No.

1 EDCV1800438WDKJC, 2020 WL 7861979 (C.D. Cal. Oct. 5, 2020) (“The Court  
2 finds that the [ ] statutory language is unambiguous and does not support an  
3 interpretation that includes signals besides radio, satellite, and cable.”); *G & G*  
4 *Closed Cir. Events, LLC v. Espinoza*, No. CV 18-07894 WDK-JC, 2020 WL  
5 7861971, at \*1 (C.D. Cal. Oct. 5, 2020) (same); *J & J Sports Prods., Inc. v.*  
6 *Gebreyesus*, No. CV 13-09087 WDK-PLA, 2016 WL 7638191, at \*4 (C.D. Cal. Oct.  
7 18, 2016), *vacated on other grounds*, 2018 WL 3738957 (C.D. Cal. Apr. 9, 2018)  
8 (“[T]he Court declines to extend the interpretation of the relevant statutes to include  
9 unauthorized broadcasts via the internet. Other courts within the Ninth Circuit have  
10 reached similar conclusions.”); *Joe Hand Promotions Inc. v. Spain*, No. CV-15-  
11 00152-PHX-SMM, 2016 WL 4158802, at \*4 (D. Ariz. Aug. 5, 2016) (“The Court  
12 finds that Sections 605 and 553 are inapplicable in this case. These statutes,  
13 originally enacted in 1934, were intended to prevent pirate interception of radio,  
14 satellite, and cable signals.”).

15 Plaintiff asks the Court to decline to follow this case law and suggests that  
16 the Court adopt a more expansive view in its statutory interpretation of Sections  
17 605 and 553. (Mot. at 6–10.) But the intent of Congress was clear in its enactment  
18 of, and later amendments to, the Communications Act and Cable Act: Section 605  
19 applies to communications received via radio or satellite broadcast, and Section  
20 553 applies to cable broadcast. See *DirecTV, Inc. v. Webb*, 545 F.3d 837, 843 (9th  
21 Cir. 2008) (acknowledging that “Congress in 1984 amended and supplemented  
22 the Communications Act” with § 605(a) to address satellite television signal piracy  
23 in addition to the unauthorized receipt and use of radio communications); *Turner*  
24 *Broad. Sys., Inc. v. F.C.C.*, 512 U.S. 622, 632 (1994) (“Congress enacted the 1992  
25 Cable Act after conducting three years of hearings on the structure and operation  
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1 of the cable television industry.”).<sup>5</sup> While the Court agrees that the overarching  
 2 purpose of the Communications Act and Cable Act is to curb piracy, the Court  
 3 declines to expand the scope of the statutes to include internet streaming,  
 4 particularly where these statutes are unambiguous in their text. It is not the Court’s  
 5 responsibility to read into legislation what is not written. *See Connecticut National*  
 6 *Bank v. Germain*, 503 U.S. 249, 253–254 (1992) (“We have stated time and again  
 7 that courts must presume that a legislature says in a statute what it means and  
 8 means in a statute what it says there . . . When the words of a statute are  
 9 unambiguous, then, this first canon is also the last: judicial inquiry is complete.”)  
 10 (internal citations and quotation marks omitted). As one Court noted, “although the  
 11 internet has been in wide usage since the mid-1990s, the legislature has not  
 12 extended the reach of the statutes to include transmissions via the internet and it  
 13 is not the purview of the district court to insert itself and make this determination.”  
 14 *J & J Sports Productions, Inc. v. Thompson*, No. ED-CV-1601939-WDK-PLA, 2019  
 15 WL 13039884, at \*4 (C.D. Cal. Sept. 20, 2019).

16 Thus, because the Court finds the internet defense to be valid and there are  
 17 no genuine issues of fact material to that defense, Defendants’ motion for summary  
 18 judgment as to Counts I and II is **GRANTED**. Given that the Court has concluded  
 19 that Defendants’ summary judgment motion succeeds on the internet defense, the  
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21 <sup>5</sup> The Ninth Circuit also recognizes the inherent differences between cable and  
 22 satellite broadcast. Cable television typically relies on “cable or optical fibers strung  
 23 aboveground or buried in ducts to reach the homes or businesses of subscribers.”  
 24 *In re Nat’l Football League’s Sunday Ticket Antitrust Litig.*, 933 F.3d 1136, 1147  
 25 n.3 (9th Cir. 2019) (quoting *Turner Broad. Sys., Inc. v. F.C.C.*, 512 U.S. 622, 627  
 26 (1994)) (internal quotations omitted). Satellite television signals, on the other hand,  
 27 “are broadcast through the air and can be received—or intercepted—by anyone  
 28 with the proper hardware.” *DirecTV, Inc.*, 545 F.3d at 841. These clear distinctions  
 lend to the Court’s conclusion that Sections 553 and 605 were each intended to  
 target specific means of signal transmission and were not meant to each apply to  
 any and all methods of communication.

1 Court need not reach Defendants’ remaining arguments in favor of summary  
2 judgment.

3 **B. Supplemental Jurisdiction Over Remaining State Law Claims**

4 The Court hasn’t considered the merits of Plaintiff’s state law claims that  
5 remain pending in this action. The Court’s jurisdiction in this case is predicated on  
6 the existence of claims arising under federal law, namely 47 U.S.C. §§ 553 and  
7 605. A district court “‘may decline to exercise supplemental jurisdiction’ if it ‘has  
8 dismissed all claims over which it has original jurisdiction.’” *Sanford v.*  
9 *MemberWorks, Inc.*, 625 F.3d 550, 561 (9th Cir. 2010) (quoting 28 U.S.C.  
10 § 1367(c)(3)). Because the Court has granted summary judgment as to both the  
11 Section 553 and Section 605 claims over which it has original jurisdiction, it has  
12 discretion to decline to exercise supplemental jurisdiction over any remaining state  
13 law claims. 28 U.S.C. § 1367(c); *Sanford v. MemberWorks, Inc.*, 625 F.3d 550,  
14 561 (9th Cir. 2010) (“[I]n the usual case in which all federal-law claims are  
15 eliminated before trial, the balance of factors to be considered under the pendent  
16 jurisdiction doctrine . . . will point toward declining to exercise jurisdiction over the  
17 remaining state-law claims.”). The Court exercises that discretion here and  
18 **DISMISSES WITHOUT PREJUDICE** Plaintiff’s claims for conversion and for  
19 violation of California Business and Professions Code section 17200.

20 **IV. CONCLUSION**

21 For the reasons set forth above, the Court **GRANTS** Defendants’ motion for  
22 summary judgment as to Plaintiff’s federal claims, and **DECLINES** to exercise  
23 supplemental jurisdiction over Plaintiff’s state law claims, which are **DISMISSED**  
24 **WITHOUT PREJUDICE**. Accordingly, this Order disposes of all claims and  
25 concludes the litigation in the matter. The Clerk of Court is instructed to enter  
26 judgment in favor of Defendants on Counts I and II and terminate the case.

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**IT IS SO ORDERED.**

Dated: September 20, 2021



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Honorable Larry Alan Burns  
United States District Judge