

IN THE UNITED STATES DISTRICT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

ZUFFA, LLC, d/b/a The Ultimate Fighting
Championship (UFC),

Plaintiff,

v.

CIVIL ACTION NO. 3:10-CV-2278-M

MANUEL P. OLIVAREZ, individually,
and as officer, director, shareholder,
and/or principal of OLICAT GROUP LLC,
d/b/a Hooley's Tavern and Grill, a/k/a
Hooley's Tavern,

and

OLICAT GROUP LLC, d/b/a Hooley's
Tavern and Grill, a/k/a Hooley's Tavern,

Defendants.

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ORDER AND FINAL JUDGMENT

Before the Court is Plaintiff's Motion for Default Judgment against Olicat Group LLC and Manual P. Olivarez [Docket Entry #18]. For the reasons stated below, the Motion is GRANTED.

I. BACKGROUND AND PROCEDURAL HISTORY

Where, as here, a default has been entered pursuant to Federal Rule of Civil Procedure 55(a), the factual allegations of the Complaint are taken as true.1 Plaintiff Zuffa, LLC ("UFC") is the owner of the distribution rights to a UFC program (the "Event"), broadcast on May 29, 2010 via satellite uplink and retransmitted to cable systems and satellite companies via satellite signal. For a fee, UFC licensed the broadcast of the Event to commercial customers throughout

1 10A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice & Procedure § 2688 (3d ed. 1998).

Texas. UFC retained independent auditors to identify commercial establishments that were exhibiting the broadcast without a license. On May 29, 2010, one of those auditors visited Defendants' bar and grill, was not charged a cover fee, and observed Defendants broadcasting the Event, unlicensed, on ten televisions to 110 people.² With a capacity of 201 people,³ Defendants would have had to pay a minimum license fee of \$1,600 to Plaintiff to lawfully broadcast the Event.⁴ The Court takes as true the factual allegation that Defendants pirated the Event via satellite.

On November 10, 2010, UFC filed an action against Defendants, pursuant to 47 U.S.C. §§ 553 & 605, seeking statutory damages, attorney's fees and costs, and interest. On December 29, 2010, service was properly made on both Defendants, but they have failed to answer or otherwise respond to UFC's Complaint. On February 25, 2011, the clerk issued an entry of default.

II. ANALYSIS

A. Statutory Damages

For a violation of § 605(a), which prohibits the unauthorized interception of interstate wire communications,⁵ Plaintiff may recover statutory damages of not less than \$1,000.00, but no more than \$10,000.00.⁶ As a result of Defendants' default, the Court concludes that Defendants unlawfully intercepted and broadcast the Event. Courts have employed several

² Mot. for Default J., App. Exh. C.

³ *Id.*

⁴ Memo. Law in Supp. of Default J., Exh. A.

⁵ Courts are split as to whether 47 U.S.C. § 553 or § 605 applies to the unauthorized interception and broadcast of cable communications. Compare *International Cablevision, Inc. v. Sykes*, 75 F.3d 123 (2d Cir. 1996) (applying § 605 to interception of satellite signals even after the signals had been picked up by coaxial cables) with *United States v. Norris*, 88 F.3d 462, 468–69 (7th Cir. 1996) (applying § 605 to unauthorized interception transmitted by satellite and § 553 to unauthorized interception of programming transmitted through cable network). The Fifth Circuit recognizes this split in authority, but has yet to address the issue. See *Prostar v. Massachi*, 239 F.3d 669, 673–74 (5th Cir. 2001). Plaintiff urges the Court to follow the Second Circuit in *Sykes*, and the Court agrees to do so. See *Joe Hand Promotions, Inc. v. Garcia*, 546 F. Supp. 2d 383, 385 (W.D. Tex. 2008) (applying § 605) (citing *Sykes*, 75 F.3d 123 (2d Cir. 1996)).

⁶ 47 U.S.C. § 605(e)(3)(C)(i)(II).

methods to determine an appropriate amount of statutory damages pursuant to § 605: (1) factoring in the number of patrons, (2) factoring the cost to purchase the viewing license for the number of patrons, or (3) assessing a flat sum.⁷ Here, the Court finds it reasonable to award \$5,000, approximately treble what would have been the cost had Defendants acquired the viewing license,⁸ to be recovered jointly and severally from Defendants.⁹

B. Willfulness

Under § 605(e)(3)(C)(ii), a court may award further damages, up to \$100,000, if the violation under § 605 was willful and for the purpose of commercial advantage. Although there is no direct evidence that Defendants acted willfully, there is circumstantial evidence of same. “Signals do not descramble spontaneously, nor do television sets connect themselves to cable distribution systems.”¹⁰ The Event was broadcast, without a license, to Defendants’ 110 customers on ten televisions, for commercial advantage.¹¹ Thus, the act was willful under the statute, and an increase in the damage award is appropriate.

In determining the appropriate size of the increase in damages, courts have generally multiplied the original damages amount by some factor to determine the additional amount.¹² Courts have used factors ranging anywhere from three to seven times the damages amount.¹³ This Court finds that a factor of three times the damages amount is appropriate, given the number of patrons and Plaintiff’s requested amount, but lack of evidence of repeated violations. Thus, the damages award will be increased by \$15,000.

⁷See *Joe Hand Promotions, Inc. v. Garcia*, 546 F. Supp. 2d 383, 386 (W.D. Tex. 2008). See also *Time Warner Cable v. Taco Rapido Restaurant*, 988 F. Supp. 107, 111 (E.D.N.Y. 1997) (collecting cases).

⁸*Joe Hand Promotions, Inc.*, 546 F. Supp. 2d at 386.

⁹See *Top Rank v. Tacos Mexicanos*, No. 01-cv-5977, 2003 WL 21143072, at *6 (E.D.N.Y. Mar. 28, 2003).

¹⁰*Kingvision Pay-Per-View, Ltd. v. Scott E’s Pub, Inc.*, 146 F. Supp. 2d 955, 959 (E.D. Wisc. 2001) (quoting *Time Warner Cable v. Goggles Luncheonette, Inc.*, 77 F. Supp. 2d 485, 490 (S.D.N.Y. 1999)).

¹¹*Entertainment by J & J, Inc. v. Al-Waha Enterprises, Inc.*, 219 F. Supp. 2d 769, 776–77 (S.D. Tex. 2002).

¹²See, e.g., *Al-Waha Enters., Inc.*, 219 F. Supp. 2d at 777 (tripling the damages award).

¹³See, e.g., *id.*; *Lauratex Textile Corp. v. Allton Knitting Mills Inc.*, 519 F. Supp. 730, 733 (S.D.N.Y. 1981) (awarding seven times the statutory damage amount).

C. Attorney's Fees

Under § 605(e)(3)(B)(iii), a prevailing plaintiff is entitled to an award of full costs, including reasonable attorney's fees. Plaintiff requests \$2,710.00, which the Court finds reasonable.

III. CONCLUSION

For the reasons stated above, Plaintiff's Motion for Default Judgment is GRANTED.

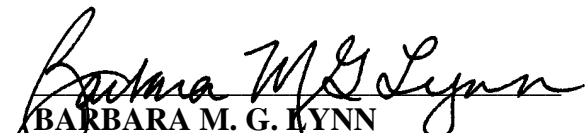
It is therefore **ORDERED, ADJUDGED AND DECREED** that:

- (1) Plaintiff have and recover of and from Defendants the principal sum of FIVE THOUSAND DOLLARS (\$5,000.00), pursuant to 47 U.S.C. § 605(e)(3)(C)(i)(II);
- (2) Plaintiff have and recover of and from Defendants the principal sum of FIFTEEN THOUSAND DOLLARS (\$15,000.00), pursuant to 47 U.S.C. § 605(e)(3)(C)(ii), for Defendants' willful violation of 47 U.S.C. § 605(a);
- (3) Plaintiff have and recover of and from Defendants its reasonable costs and attorney's fees, in the amount of TWO THOUSAND SEVEN HUNDRED TEN DOLLARS (\$2,710.00), pursuant to 47 U.S.C. § 605(e)(3)(B)(iii); and
- (4) All sums awarded above shall bear post-judgment interest at the rate of .24% per annum until paid.

All relief not expressly granted herein is denied.

SO ORDERED.

April 25, 2011.


BARBARA M. G. LYNN
UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF TEXAS