

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JOE HAND PROMOTIONS, INC.	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	
	:	No. 97-3373
NEW THIRD WORLD, INC. and NOEL	:	
KARASANYI, individually and as	:	
principal owner of New Third	:	
World, Inc.	:	
Defendants.	:	

MEMORANDUM-ORDER

GREEN, S.J.

June , 1998

Presently before the court is Plaintiff's unopposed Motion for Default Judgment against Defendants New Third World, Inc. and Noel Karasanyi. Plaintiff alleges that Defendants illegally broadcasted the Mike Tyson v. Frank Bruno fight on March 16, 1996. Plaintiff owned the exclusive rights for the Commonwealth of Pennsylvania for the non-residential display of the Tyson v. Bruno boxing match as well as the "undercard" matches prior to the Tyson v. Bruno match. The Tyson v. Bruno event was transmitted to the Commonwealth of Pennsylvania via satellite from outside the Commonwealth of Pennsylvania. Plaintiff states that it is unable to determine the exact nature or means of the interception of the signal, however, Plaintiff alleges that in order for the Defendants to receive the signal and exhibit the fight without authorization, something willful and active had to be done.

According to Plaintiff, had Defendants purchased the event from Plaintiff, the event would have cost \$17.50 multiplied by the establishment's Fire Occupancy Code. The investigator who

was present at Defendants' establishment on March 16, 1996 states in his affidavit that the boxing event in question was in fact broadcasted at the Defendants' establishment. Plaintiff does not know the Fire Occupancy Code of Defendant's establishment, but the investigator states in his affidavit that the approximate capacity of the establishment is 100 people.

Plaintiff brings the present action pursuant to 47 U.S.C. § 605. Section 605(a) prohibits the unauthorized interception and publishing of any intercepted radio communication. Id. § 605(a). Under § 605(e)(3), a party may recover statutory damages for each violation of subsection (a) in a sum of not less than \$1,000 or more than \$10,000, as the court considers just. 47 U.S.C. § 605(e)(3)(C)(i)(II). Section 605(e)(4) prohibits the unlawful modification of device or equipment, knowing or having reason to know that the device or equipment is primarily of assistance in the unauthorized decryption of satellite cable programming, or is intended for any other activity prohibited by subsection (a) of this section. Id. § 605(e)(4). For each violation of § 605(e)(4), a party may recover statutory damages in a sum not less than \$10,000 or more than \$100,000, as the court considers just. Id. § 605(e)(3)(C)(i)(II). Section 605(e)(3) also provides that if the court finds that the violation was committed willfully and for purposes of commercial advantage, the court in its discretion may increase the award of damages in an amount not more than \$100,000 for each violation. Id. § 605(e)(3)(C)(ii).

Plaintiff requests the maximum statutory awards under § 605

(e) for a total of \$210,000. This court concludes that the requested damages are unwarranted. A default judgment and damages therefrom are entered on the pleadings. In this case, Plaintiff alleges in the Complaint that upon information and belief, the Defendant used an illegal satellite receiver and/or an illegal cable converter to intercept the broadcast. Plaintiff does not, however, present any admissible evidence to support this averment and has no first-hand knowledge as to how the interception took place. Therefore, this court will not award any damages under § 605(e)(4) for the modification of device or equipment as Plaintiff has not stated with specificity how the interception took place. This court also concludes that Plaintiff has failed to allege facts sufficient to justify a statutory penalty based upon a violation that was both willful and for the purpose of commercial advantage.¹ Finally, this court exercises its discretion under the statute to find statutory damages for the exhibition of the Tyson v. Bruno event against Defendants in an amount of \$1,750.00.²

¹ In the present action, Plaintiff has joined together several unrelated defendants. This manner of joinder may encourage defendants not to defend the suit individually, and on the present state of the record, Plaintiff's right to punitive damages has not been established.

² Before judgment could be entered, this court required Plaintiff to submit an affidavit from a person with personal knowledge as to the maximum Fire Occupancy Code of Defendants' establishment. In response to this court's request, Plaintiff submitted an affidavit of an investigator who estimated the capacity of Defendants' establishment. The award of damages is based on the cost of \$17.50 multiplied by the estimated capacity of the establishment made by the investigator.

Pursuant to § 605(e), the court "shall direct the recovery of full costs, including awarding reasonable attorneys' fees to an aggrieved party who prevails." 47 U.S.C. § 605(e)(3)(B)(iii). This court will consider attorneys' fees and costs in a separate motion by Plaintiff. Given the fact that the claims in the present action were made against multiple defendants, Plaintiff is instructed to set out with precision, including the necessary time-keeping records, exactly which time and costs were associated with each particular defendant.

An appropriate Order follows.

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World, Inc.	:	
Defendants.	:	

ORDER

AND NOW, this day of June, 1998 upon consideration of Plaintiff's Motion for Default Judgment against Defendants New Third World, Inc. and Noel Karasanyi, IT IS HEREBY ORDERED that Plaintiff's Motion is GRANTED in an amount of \$1,750.00 plus reasonable attorneys' fees to be submitted by the Plaintiff under separate motion. Pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, final judgment on the present motion will be entered when all claims involved in the above-captioned matter have been adjudicated.

BY THE COURT:

CLIFFORD SCOTT GREEN, S.J.