

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

<b>KINGVISION PAY-PER-VIEW, LTD.</b>	:	<b>CIVIL ACTION</b>
<b>Plaintiff,</b>	:	
	:	
<b>v.</b>	:	
	:	
<b>898 BELMONT, INC.</b>	:	
<b>d/b/a EL TORO BAR, ET AL.,</b>	:	
<b>Defendants.</b>	:	<b>No. 01-CV-2970</b>

**MEMORANDUM AND ORDER**

**SCHILLER, J.**

**February     , 2002**

**I.     INTRODUCTION**

Plaintiff Kingvision Pay-Per-View, Ltd. (“Kingvision”) commenced this action alleging Defendants 898 Belmont, Inc., doing business as the El Toro Bar (“El Toro Bar”), and its owner or manager, Berhanu Degife, pirated pay-per-view closed-circuit television services in violation the Federal Communications Act of 1934, § 705, as amended by the Cable Communications Act of 1984, 47 U.S.C. §§ 605 and 553 (“Cable Act”).<sup>1</sup> Defendants have moved for judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c), contending Kingvision’s action is time-barred. For the reasons set forth below, I grant Defendants’ motion.

**II.    FACTUAL BACKGROUND**

On March 13, 1999, Kingvision exhibited the closed-circuit telecast of the championship boxing match between Evander Holyfield and Lennox Lewis and associated undercard bouts. More specifically, Kingvision contracted with various establishments including theaters, restaurants, and

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<sup>1</sup>PUB. L. NO. 98-549, 98 STAT. 2779 (codified at 47 U.S.C. § 553 (2001) and 47 U.S.C. § 605 (2001)).

bars, granting the right to broadcast the pugilistic events in exchange for a fee. According to Kingvision, the El Toro Bar, without having paid the fee and without authorization, exhibited the closed-circuit telecast to its patrons by intercepting the scrambled transmission of the boxing matches “through the use of illegal decoding devices.” (Am. Compl. ¶ 30). In April 1999, Kingvision conveyed these allegations to the El Toro Bar by letter. (Defs.’ Mot. J. on Pleadings Ex. A). This suit was not brought, however, until June, 2001.

### III. DISCUSSION

The instant dispute arises from the fact that Congress did not provide a statute of limitations when it enacted the Cable Act, requiring courts to borrow limitations periods from analogous state or federal law. Looking to a Pennsylvania statute penalizing theft of cable services, the El Toro Bar argues for the application of a two-year prescriptive period that would bar Kingvision’s claim, as the complaint was filed more than two years after the acts in question. Countering that the Court should apply the three-year period governing actions under the federal Copyright Act, Kingvision takes the position that its suit was brought within the limitations period.

When Congress fails or declines to specify a statute of limitations, “[g]enerally, we presume that Congress intended courts to apply the most closely analogous state statute of limitations.” *Syed v. Hercules, Inc.*, 214 F.3d 155, 160 (3d Cir. 2000) (citing *DelCostello v. Int’l Bhd. of Teamsters*, 462 U.S.151, 158 (1983)). As the Supreme Court has stated, in determining the correct statute of limitations state law is the established “lender of first resort,” although in limited circumstances courts may look to analogous federal law. *North Star Steel Co. v. Thomas*, 515 U.S. 29, 34 (1995). Likewise, courts “decline to borrow a state statute of limitations only ‘when a rule from elsewhere in federal law clearly provides a closer analogy than available state statutes, and when the federal

policies at stake and the practicalities of litigation make that rule a significantly more appropriate vehicle for interstitial lawmaking.” *Reed v. United Transp. Union*, 488 U.S. 319, 324 (1989) (quoting *DelCostello*, 462 U.S. at 172).

Examining first the federal statutes allegedly violated by the El Toro Bar, the Cable Act represents an effort to “discourage the theft of cable services.” *Kingvision Pay Per View, Ltd. v. Wilson*, 83 F. Supp.2d 914, 918 (W.D. Tenn. 2000) (citing H.R. REP. NO. 98-934, at 84 (1984)). Congress crafted § 553 and § 605 to protect cable television companies from unauthorized reception of their transmissions, including piracy through the use of decoder boxes. *See Kingvision Pay Per View, Ltd. v. Boom Town Saloon, Inc.*, 98 F. Supp. 2d 958, 961 (N.D. Ill. 2000); *Cablevision of Connecticut, v. Sollitto*, 109 F. Supp.2d 84, 85 (D. Conn. 2000). To this end, the Cable Act sets forth both criminal sanctions and civil remedies. *See* 47 U.S.C. § 553 (b)-(c). In creating an array of civil remedies, Congress granted aggrieved parties the right to seek injunctive relief, either actual or statutory damages, attorneys’ fees, and costs. 47 U.S.C. § 553(c)(3)(A)-(B), § 605(e).

Turning next to relevant state law, a Pennsylvania statute provides a clear and close analogy to the federal law at issue. In order to deter, *inter alia*, the use of devices for theft of services, a Pennsylvania statute specifically prohibits the interception of “transmissions, signals or services over any cable television . . . [or] satellite” distribution system. 18 PA.CON.STAT. ANN § 910(e)(2001). The statute of limitations applicable to actions brought under Section 910 is two years. *See* 42 PA. CON. STAT. ANN. § 5524(7)(2001) (two-year limitations for actions to recover damages not subject to specified limitation period). Along with their overlapping substantive prohibitions, Section 910 and the Cable Act embody nearly identical frameworks of penalties and remedies. Like the Cable Act, Section 910 includes criminal sanctions. Additionally, Section 910's civil remedies parallel

those set forth in the federal statutes; under either Pennsylvania or federal law a plaintiff can seek injunctive relief, statutory or actual damages, attorneys' fees, and costs.<sup>2</sup> For these reasons, Pennsylvania law provides a remarkably close analog to the Cable Act, rendering the imposition a two-year limitations period appropriate. *Cf. Kingvision Pay Per View, Ltd, v. Bowers*, 36 F. Supp. 2d 915, 918 (D. Kan. 1998) (applying two-year statute of limitations for state conversion claims); *Wilson*, 83 F. Supp.2d at 919 (applying three-year statute of limitations period for state conversion claims).

Notwithstanding the preciseness of the analogy between the Cable Act and Section 910, Kingvision argues for the application of the three-year statute of limitations found in the Copyright Act, 17 U.S.C. § 507(b). Several courts, as Kingvisions points out, have borrowed the Copyright Act's three-year period for the purpose of determining when a Cable Act claim is time-barred. *See Prostar v. Massachi*, 239 F.3d 669 (5th Cir. 2001); *Entertainment by J & J, Inc. v. Tia Maria Mexican Rest. & Cantina*, 97 F. Supp. 2d 775 (S.D. Tex. 2000); *Boom Town Saloon, Inc.*, 98 F. Supp. 2d 958; *That's Entertainment of Illinois, Inc. v. Centel Videopath, Inc.*, No. 93-1471, 1993 U.S. Dist. LEXIS 19488 (N.D. Ill. Dec. 9, 1993). In those cases, courts considered whether to borrow the limitation periods for state law conversion claims or the three-year statute of limitations for claims under the Copyright Act. Thus, the cases relied upon by Kingvision address the appropriateness of borrowing the Copyright Act's limitations period when compared to the

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<sup>2</sup>In setting criminal penalties, the Pennsylvania statute references its similarity to the federal Cable Act. *See* 18 Pa.C.S. § 910 (b)(5) (grading an offense under this section includes consideration of prior convictions under the Cable Act). Regarding civil remedies, even the monetary amounts set forth as statutory damages under section 910 and the Cable Act are parallel. *See* 18 Pa.C.S. § 910 (d.1)(3) (allowing awards of statutory damages between \$250 and \$ 10,000 per occurrence absent evidence of exceptional circumstances); 47 U.S.C. § 553 (c)(3)(A)(ii) (same).

limitations period for the widely applicable law of conversion. Consequently, these cases do not predict the proper outcome of the case at bar involving a state statute narrowly crafted to deter cable piracy. Moreover, because Section 910 is parallel in substance and form to the Cable Act, it is the “closer fit” the Supreme Court contemplated as the appropriate source from which to borrow a statute of limitations, *Lampf, Pleva, Lipkind, Prupis & Petigrow v. Gilbertson*, 501 U.S. 350, 357 (1991), precluding Kingvision’s proposed adoption of the Copyright Act’s three-year period.

#### **IV. CONCLUSION**

Accordingly, El Toro Bar’s motion for judgment on the pleadings is granted. Put differently, the El Toro Bar scores an early-round win by technical knockout.

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<b>Defendants.</b>	:	

**ORDER**

AND NOW, this        day of February, 2002, upon consideration of Defendants' Motion for Judgment on the Pleadings and the response thereto, and for the foregoing reasons, it is hereby ORDERED that:

Defendants' Motion (Document No. 8) is **GRANTED**. All claims against  
Defendants are **DISMISSED**.

**BY THE COURT:**

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**Berle M. Schiller, J.**