

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

TRILLER FIGHT CLUB II LLC,
Plaintiff,

v.

ARVIN DE LA SANTOS, et al.,
Defendants.

CV 21-04906 DSF (PVCx)

Order GRANTING in Part and
DENYING in Part Plaintiff's
Motion for Summary Judgment
(Dkt. 36)

Plaintiff Triller Fight Club II LLC moves for summary judgment against Defendants Arvin De La Santos and Your Extra on its claims for copyright infringement, 17 U.S.C. § 501, and violation of the Federal Communications Act, 47 U.S.C. § 605. Dkt. 36 (Mot.). The motion is unopposed. Nevertheless, the Court will evaluate it on the merits. See Cristobal v. Siegel, 26 F.3d 1488, 1494–95 & n.4 (9th Cir. 1994). The Court deems this matter appropriate for decision without oral argument. See Fed. R. Civ. P. 78; Local Rule 7-15. For the reasons stated below, the motion is GRANTED in part and DENIED in part.

I. UNDISPUTED FACTS

Triller is the publisher and copyright owner of an April 17, 2021 broadcast of the “Jake Paul vs. Ben Askren” boxing event (Broadcast). Dkt. 37 (Plaintiff's Statement of Uncontroverted Facts) ¶¶ 1–2. Defendants Santos and Your Extra own and operate the YouTube channel named YourEXTRA. Id. ¶ 4.

The Broadcast was initially transmitted via satellite on an encrypted signal, and subsequently re-transmitted over closed-circuit cable networks. Id. ¶¶ 1–2. At some point, Defendants uploaded a copy

of the Broadcast onto the YourExtra YouTube channel without Triller’s permission. Id. ¶ 5. The uploaded Broadcast was viewed on YouTube. Id. ¶ 8.

II. LEGAL STANDARD

“A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). “This burden is not a light one.” In re Oracle Corp. Sec. Litig., 627 F.3d 376, 387 (9th Cir. 2010). But the moving party need not disprove the opposing party’s case. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986).

The court views the evidence in the light most favorable to the nonmoving party. T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n, 809 F.2d 626, 630 (9th Cir. 1987). “[I]f a rational trier of fact might resolve the issue in favor of the nonmoving party, summary judgment must be denied.” Id. at 631.

III. DISCUSSION

A. Count One: Copyright Infringement

“To prove copyright infringement, a plaintiff must demonstrate (1) ownership of the allegedly infringed work and (2) copying of the protected elements of the work by the defendant.” Unicolors, Inc. v. Urb. Outfitters, Inc., 853 F.3d 980, 984 (9th Cir. 2017) (quoting Pasillas v. McDonald’s Corp., 927 F.2d 440, 442 (9th Cir. 1991)). Here, Triller has demonstrated both elements. Triller owns the copyright to the Broadcast. Plaintiff’s Statement of Uncontroverted Facts ¶ 1. And Defendants uploaded a copy of the Broadcast to their YouTube channel. Id. ¶ 5. Triller is entitled to summary judgment on the issue of Defendants’ liability for copyright infringement.

In its motion, Triller also asks the Court to rule that it is entitled to \$50,000 in statutory damages. Mot. 13. A copyright infringer is

liable for either “(1) the copyright owner’s actual damages . . . or (2) statutory damages” 17 U.S.C. § 504(a). If a copyright owner elects to pursue statutory damages, a court may award damages “with respect to any one work . . . in a sum not less than \$750 or more than \$30,000 as the court considers just.” 17 U.S.C. § 504(c)(1). If the copyright owner proves that the infringement was committed willfully, the Court may award statutory damages as high as \$150,000. *Id.* § 504(c)(2). “The court has wide discretion in determining the amount of statutory damages to be awarded, constrained only by the specified maxima and minima.” *Harris v. Emus Recs. Corp.*, 734 F.2d 1329, 1335 (9th Cir. 1984).

“To prove ‘willfulness’ under the Copyright Act, the plaintiff must show (1) that the defendant was actually aware of the infringing activity, or (2) that the defendant’s actions were the result of ‘reckless disregard’ for, or ‘willful blindness’ to, the copyright holder’s rights.” *Louis Vuitton Malletier, S.A. v. Akanoc Sols., Inc.*, 658 F.3d 936, 944 (9th Cir. 2011) (quoting *Island Software & Computer Serv., Inc. v. Microsoft Corp.*, 413 F.3d 257, 263 (2d Cir. 2005)). Triller has demonstrated that even if Defendants were not actually aware that their conduct constituted copyright infringement, Defendants at the very least recklessly disregarded that possibility or were willfully blind to it. The Broadcast was not available to the non-paying public, having been transmitted over encrypted satellite signal and closed-circuit cable networks. Plaintiff’s Statement of Uncontroverted Facts ¶¶ 1–2. Defendants did not pay for the Broadcast. *Id.* ¶ 7. Any rational jury would therefore conclude that Defendants copied the Broadcast knowing, or ignoring the possibility, that doing so would infringe on Triller’s rights.

In arguing for \$50,000 in statutory damages, Triller primarily relies on its assertion that “at least one thousand people chose to watch the Broadcast on the YouTube Channel rather than purchasing it from Plaintiff for \$50, causing \$50,000 in damages to Plaintiff.” Mot. 13. Triller arrives at its estimate of one thousand lost sales after asserting that “Defendants made several hundred dollars by gaining about one thousand followers and one million video views on the YouTube

Channel.” *Id.* And Triller bases this estimate on graphs generated by a third-party company approximating the total video views on the YourExtra YouTube Channel in the weeks following the April 17, 2021 Broadcast. Dkt. 36-1 (Gura Decl.) ¶ 5; Dkt. 36-2, Ex. B.

The Court first notes that the graphs Triller provides are not admissible evidence in their current form. Triller provides a declaration asserting that the graphs were provided by Social Blade, an “online tracker of social media statistics and analytics.” Gura Decl. ¶ 5. However, “[t]o satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.” Fed. R. Evid. 901(a). A declaration that a printout is a true and correct copy of what the proponent claims it is, in combination with “circumstantial indicia of authenticity,” is generally enough to establish authenticity. *Ouellette v. Stericycle Specialty Waste Sols., Inc.*, No. 14-CV-06265 SJO (VBKx), 2014 WL 12966280, at *2 (C.D. Cal. Oct. 15, 2014). Indicia of authenticity can take the form of “distinctive newspaper and website designs, dates of publication, page numbers, and web addresses.” *Ciampi v. City of Palo Alto*, 790 F. Supp. 2d 1077, 1091 (N.D. Cal. 2011). Here, the graphs provided by Triller contain no such indicia of authenticity. They do not contain web addresses, logos, or anything else to show that they were obtained from Social Blade. As such, the graphs are not admissible, and the Court does not consider them.

Even if the graphs were admissible, Triller provides little evidence of their accuracy. Importantly, Triller does not explain how the data for the graphs were obtained, *e.g.*, whether they were obtained manually, from software that crawled YouTube’s website, or directly from YouTube. Moreover, even if the Court accepted the authenticity and accuracy of the graphs, the graphs purport to show the total number of views on the YourExtra YouTube channel, not the total number of views attributable to the uploaded Broadcast. And because Triller does not provide evidence as to when Defendants uploaded the Broadcast to their YouTube channel, a fact-finder has no means to infer from the graphs the number of views attributable to the uploaded

Broadcast, much less the amount of money the uploaded Broadcast caused Triller to lose.

Summary judgment for damages exceeding the statutory minimum is not appropriate based on the information before the Court.

Triller additionally seeks the recovery of attorneys' fees and costs. Mot. 16. The Copyright Act permits the Court to award fees and costs to the prevailing party "in its discretion." 17 U.S.C. § 505. In making such a decision, "the district court should consider, among other things: the degree of success obtained on the claim; frivolousness; motivation; objective reasonableness of factual and legal arguments; and need for compensation and deterrence." Maljack Prods., Inc. v. GoodTimes Home Video Corp., 81 F.3d 881, 889 (9th Cir. 1996). As the issue of statutory damages has not yet been decided, the Court cannot adequately consider "the degree of success obtained on the claim."

Triller's motion for summary judgment is GRANTED as to liability for copyright infringement and a finding of willfulness and DENIED as to the issue of damages and fees.

B. Count Two: Violation of Section 605 of the Communications Act

The relevant portion of section 605 of the Communications Act states:

No person not being entitled thereto shall receive or assist in receiving any interstate or foreign communication by radio and use such communication (or any information 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 meaning of such communication (or any part thereof) knowing that such communication was intercepted, shall divulge or publish the existence, contents, substance, purport, effect, or meaning of such communication (or any part thereof) or use such communication (or any information

therein contained) for his own benefit or for the benefit of another not entitled thereto.

47 U.S.C. § 605(a). Importantly, section 605 applies only to “communication by radio” or “radio communication.”

Section 553 of the Communications Act is similar to section 605 except that it prohibits the unauthorized receipt or interception of “any communications service offered over a cable system.” Id. § 553(a)(1). The House Report on section 553 notes that “situations arising with respect to the reception of services which are transmitted over-the-air (or through another technology), but which are also distributed over a cable system, continue to be subject to resolution under section 605 to the extent reception or interception occurs prior to or not in connection with, distribution of the service over a cable system.” H.R. Rep No. 98-934, at 83 (1984). Courts have therefore interpreted “§ 605 to apply to the unlawful interception of cable programming transmitted through the air” and “§ 553 to apply to the unlawful interception of cable programming while it is actually being transmitted over a cable system.” United States v. Norris, 88 F.3d 462, 469 (7th Cir. 1996); see also TCI Cablevision of New England v. Pier House Inn, Inc., 930 F. Supp. 727, 735 (D.R.I. 1996) (holding that section 605 applies to “those who intercept cable television signals before they begin to travel through the cable”).

Here, Triller has provided only an admission from Defendants that they uploaded a copy of the Broadcast to their YouTube channel. Plaintiff’s Statement of Uncontroverted Facts ¶ 5. Triller has not provided evidence showing that the copy of the Broadcast was received “by radio” or otherwise constituted an “intercepted radio communication.” Although the Broadcast was initially transmitted via satellite, it was subsequently re-transmitted over cable networks. Id. ¶ 2. Defendants therefore could have obtained a copy of the Broadcast as it was being transmitted through the air, as it was being transmitted over a cable, or even after it had arrived at its destination. Because section 605 applies only if the Broadcast was received or intercepted while it was being transmitted through the air, the

evidence provided by Triller is insufficient to establish a violation of that section. Triller's motion is DENIED as to its second cause of action.

C. Count Three: Vicarious Copyright Infringement

Triller brings its final claim under a theory of vicarious copyright infringement. "The Copyright Act does not expressly render anyone liable for infringement committed by another." Sony Corp. of Am. v. Universal City Studios, Inc., 464 U.S. 417, 434 (1984). However, well-established common law principles impose liability for vicarious infringement "when one profits from [another's] direct infringement while declining to exercise a right to stop or limit it." Luvdarts, LLC v. AT&T Mobility, LLC, 710 F.3d 1068, 1071 (9th Cir. 2013).

Although Triller has provided evidence of copyright infringement committed by Defendants, Triller has not provided any evidence of copyright infringement committed by third parties. Triller is therefore not entitled to summary judgment on its claim for vicarious copyright infringement, and the motion is DENIED as to Triller's third cause of action.

IV. CONCLUSION

The Court GRANTS in part and DENIES in part Triller's motion for summary judgment. The motion is GRANTED as to liability for copyright infringement and a finding of willfulness. It is DENIED as to all other issues.

IT IS SO ORDERED.

Date: July 13, 2022


Dale S. Fischer
United States District Judge