

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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PARAMOUNT PICTURES CORPORATION and :  
TWENTIETH CENTURY FOX FILM :  
CORPORATION, :

Plaintiffs, :

-against- :

SAMANTHA LADD, :  
d/b/a HOWTOCOPYDVDS.COM; :  
AARON RZADCZYNSKI; and A BEST IMPORTS, :  
d/b/a DVDSQUEEZE.COM, :

Defendants. :

**REPORT AND  
RECOMMENDATION  
TO THE HONORABLE  
WILLIAM H. PAULEY III\***

03 Civ. 3493 (WHP)(FM)

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**FRANK MAAS**, United States Magistrate Judge.

I. Introduction

Plaintiffs Paramount Pictures Corporation (“Paramount”) and Twentieth Century Fox Film Corporation (“Fox”) (together, “Plaintiffs”) seek damages and attorney’s fees arising out of the alleged misuse of their copyrighted material on digital versatile discs (“DVDs”) by defendants Samantha Ladd (“Ladd”), Aaron Rzadczyński (“Rzadczyński”) and Rzadczyński’s company, A Best Imports (“Best”) (together, “Defendants”). On October 20, 2003, after the Defendants failed to answer the complaint, Your Honor ordered the entry of a default judgment against them and referred

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\* This Report and Recommendation was prepared with the assistance of Laureve Blackstone, a first-year student at Brooklyn Law School.

the matter to me for an inquest. (Docket Nos. 53, 56).

Thereafter, by order dated November 20, 2003, I directed the Plaintiffs to serve and file an inquest memorandum by December 22, 2003, accompanied by supporting affidavits and exhibits, setting forth their proof of damages, as well as their proposed findings of fact and conclusions of law. The order gave the Defendants until January 5, 2004 to respond. (Docket No. 57). Although the Plaintiffs' papers were timely filed, Rzaczyński and Best did not submit any opposition papers. Ladd's papers consist of a handwritten note which alleges that the Plaintiffs' claimed damages are "completely false," and that "there is no possible way" she can afford the amount the Plaintiffs demand. (See Docket No. 62). In her note, Ladd also requested that the Court hold an evidentiary hearing once she obtained counsel. Despite the passage of more than five months since Ladd wrote to the Court, no attorney has appeared on her behalf, nor has Ladd submitted any competent proof regarding her profits or the Plaintiffs' damages. I nevertheless have considered Ladd's opposition papers even though they are unsworn and untimely filed.

As set forth below, I recommend that judgment be awarded (a) against Ladd in the amount of \$412,340.57 and (b) against Rzaczyński and Best, jointly and severally, in the amount of \$1,388,751.59.

## II. Standard of Review

In light of the Defendants' defaults, the well-pleaded allegations of the

amended complaint (“Complaint” or “Compl.”) concerning issues other than damages must be accepted as true. See Cotton v. Slone, 4 F.3d 176, 181 (2d Cir. 1993); Greyhound Exhibitgroup, Inc. v. E.L.U.L. Realty Corp., 973 F.2d 155, 158 (2d Cir. 1992); Time Warner Cable of New York City v. Barnes, 13 F. Supp. 2d 543, 547 (S.D.N.Y. 1998); Cablevision Sys. New York City Corp. v. Lokshin, 980 F. Supp. 107, 111 (E.D.N.Y. 1997).

Additionally, although a plaintiff seeking to recover damages against a defaulting defendant must prove its claim through the submission of evidence, the Court need not hold a hearing as long as it has (i) determined the proper rule for calculating damages on the claim, see Credit Lyonnais Secs. (USA), Inc. v. Alcantara, 183 F.3d 151, 155 (2d Cir. 1999), and (ii) the plaintiff’s evidence establishes, with reasonable certainty, the basis for the damages specified in the default judgment. See Transatlantic Marine Claims Agency, Inc. v. Ace Shipping Corp., 109 F.3d 105, 111 (2d Cir. 1997); Fustok v. ContiCommodity Servs., Inc., 873 F.2d 38, 40 (2d Cir. 1989); see also Tamarin v. Adam Caterers, Inc., 13 F.3d 51, 53-54 (2d Cir. 1993) (inquest on damages without hearing improper where based upon “single affidavit only partially based upon real numbers”).

### III. Facts

On the basis of the Complaint and the Plaintiffs’ inquest papers, I find as follows:

A. Jurisdiction

The Digital Millennium Copyright Act (“DMCA”), 17 U.S.C. § 1201, et seq., prohibits “the circumvention of digital walls guarding copyrighted material” and “trafficking in circumvention tools.” Universal City Studios, Inc. v. Corley, 273 F.3d 429, 443 (2d Cir. 2001). In this case, the Plaintiffs allege in their Complaint that the content of their DVDs is protected under the Copyright Act, 17 U.S.C. § 101, et seq. and the DMCA. (Compl. ¶¶ 1-2). The Court therefore has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1338(a).

B. Misuse of Copyrighted Material Distributed by Paramount and Fox

The Plaintiffs each distribute a large number of copyrighted motion pictures on DVD to which they own the exclusive rights. (Id. ¶¶ 8-9). Their DVDs are protected by a copy-protection and access-control system, known as the “Content Scramble System” (“CSS”), which is intended to protect their copyrighted works from digital piracy. (Id. ¶¶ 1,11).

The Defendants have sold computer programs over the Internet which enable users to copy DVDs illegally. (Id. ¶¶ 12-14). These programs, which are marketed on websites such as Ladd’s [www.howtocopydvds.com](http://www.howtocopydvds.com), [www.copyvideogames.com](http://www.copyvideogames.com), [www.copyvideogamesforfree.com](http://www.copyvideogamesforfree.com), and [www.burndvd.org](http://www.burndvd.org), and Rzadczyński’s and Best’s [www.dvd-squeeze.com](http://www.dvd-squeeze.com), have few, if any other purposes.<sup>1</sup> (Id.).

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<sup>1</sup> According to the Complaint, Rzadczyński operates the [dvd-squeeze.com](http://dvd-squeeze.com) website through Best.

Accordingly, the Defendants' activities violate the anti-trafficking provisions of the DMCA, 17 U.S.C. §§ 1201(a)(2) and (b)(1).

C. Relief under 17 U.S.C. § 1203

Section 1203 of Title 17 of the United States Code sets forth the remedies available to a person injured by a violation of 17 U.S.C. § 1201. Pursuant to Section 1203(c)(2), a court must award the complaining party its actual damages. 17 U.S.C. § 1203(c)(2). The complaining party also may recover any additional profits of the violator which were "not taken into account in computing the actual damages," provided that "the complaining party elects to recover those damages before final judgment is entered." (Id.).

The prayer for relief in the Complaint demanded that the Plaintiffs be awarded the "Defendants' profits in such amount as may be found." (Compl. ¶ 3). Through third-party subpoenas, Paramount and Fox and have obtained proof of the Defendants' gross revenues. (See Decl. of Joseph M. Terry, dated Dec. 20, 2003 ("Terry Decl."), Exs. 4-5; Decl. of Steven W. Rouse, dated Oct. 9, 2003 ("Rouse Decl."), Exs. 1-2; Decl. of Cheryl Fujii, dated Oct. 14, 2003 ("Fujii Decl."), Exs. 1-2.) Under the Copyright Act, once a plaintiff has established the infringer's gross revenues, the burden of proving any deductible expenses or profits stemming from works other than the plaintiff's copyrighted work rests with the defendant. 17 U.S.C. § 504(b). Here, Rzadczynski and Best have not submitted any information concerning such offsets.

Moreover, Ladd's submission to the Court indicates only that the Plaintiffs' estimation of her profits is "completely false." (See Docket No. 62). That unsworn and wholly conclusory statement plainly does not warrant any set off.

The records that the Plaintiffs obtained from Internet Billing Company, LLC, d/b/a iBill, included a Monthly Revenue Sales Report for Ladd's iBill account that identifies the payments that Ladd received from the sale of Mega CD DVD-copying software. (Terry Decl. Ex. 5). The report indicates that Ladd received \$124,145.90 in sales revenue from Mega CD through this account. (Id.). Additionally, the declaration of Cheryl Fujii, Legal Projects Coordinator for PayPal, Inc., and exhibits thereto, establish that Ladd received payments of \$288,194.57 for "Top Secret Mega CD" and/or "Mega CD" or "Mega disc" through her PayPal account. (Fujii Decl. Ex. K). Thus, the gross sales revenue that Ladd received through the sale of illegal software through iBill and PayPal totals \$412,340.57.

The Plaintiffs also obtained information from Keynetics, Inc. which provides a service known as ClickBank. (Rouse Decl. ¶¶ 2-4). As the Declaration of Steven W. Rouse, Keynetics' Chief Operating Officer shows, Rzaczyński received payments through a ClickBank account in the name of "dvdsqueeze" in the amount of \$1,388,751.59 between April 2002 and July 2003. (Id. Exs. 1-2)

D. Attorney's Fees

Under the DMCA a court also may exercise its discretion to award a prevailing party its reasonable attorney's fees. 17 U.S.C. § 1203(b)(5). In their papers, the Plaintiffs focus on the factors that allegedly augur in favor of such an award against the Defendants in this case. (See Pls.' Inquest Mem. at 6-8.) Unfortunately, the Plaintiffs have failed to provide any billing records reflecting the hours spent on particular tasks or the billing rates of the timekeepers who performed those tasks. The Plaintiffs also have not adduced any evidence that those billing rates are reasonable. It is settled law, however, that a party seeking an award of attorney's fees in the Second Circuit must support its request with contemporaneous time records that show, "for each attorney, the date, the hours expended, and the nature of the work done." New York State Ass'n for Retarded Children, Inc. v. Carey, 711 F.2d 1136, 1154 (2d. Cir. 1983). Moreover, fee applications that do not contain such supporting data "should normally be disallowed." Id. at 1154. Accordingly, because the Plaintiffs have failed to produce the necessary evidentiary detail, their fee application should be denied.

IV. Conclusion

The Plaintiffs should be awarded judgment against Ladd in the amount of \$412,340.57, and against Rzaczyński and Best, jointly and severally, in the amount of \$1,388,751.59.

V. Notice of Procedure for Filing of Objections to this Report and Recommendation

The parties are hereby directed that if they have objections to this Report and Recommendation, they must, within ten days from today, make them in writing, file them with the Clerk of the Court, and send copies to the chambers of the Honorable William H. Pauley III and to the chambers of the undersigned, at the United States Courthouse, 500 Pearl Street, New York, New York 10007, and to any opposing parties. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 6(a), 6(e), 72(b). Any requests for an extension of time for filing objections must be directed to Judge Pauley. The failure to file timely objections will result in a waiver of those objections for purposes of appeal. See Thomas v. Arn, 474 U.S. 140, 106 S. Ct. 466, 88 L. Ed. 2d 435 (1985); Frank v. Johnson, 968 F.2d 298, 300 (2d Cir. 1992); 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 6(a), 6(e), 72(b).

Dated: New York, New York  
June 18, 2004

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FRANK MAAS  
United States Magistrate Judge

Copies to:

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