

Federal Court



Cour fédérale

Date: 20131203

Docket: T-1618-13

Toronto, Ontario, December 3, 2013

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

**TWENTIETH CENTURY FOX FILM
CORPORATION**

Plaintiff

and

**NICHOLAS HERNANDEZ,
JOHN DOE AND JANE DOE**

Defendants

JUDGMENT

UPON MOTION brought by the Plaintiff (Twentieth Century Fox), heard by me this day, for default judgment, and upon reading the Affidavits of Kaleigh Ruth Miller sworn September 26, 2013 and October 1, 2013; Michael Murphy sworn October 1, 2013; Kevin Suh sworn September 26, 2013, Joel Bowers sworn October 18, 2013 and November 21, 2013 and Patrick Cotter sworn October 16, 2013 and on hearing the submissions of counsel for the Plaintiff:

1. **THIS COURT ADJUDGES AND DECLARES that:**

- a) Copyright subsists in each of The Simpsons Programs and Family Guy Programs (set out more particularly in Schedule “A” and “B”, respectively);
- b) Twentieth Century Fox is the owner of copyright in The Simpsons Programs and Family Guy Programs;
- c) Hernandez has infringed Twentieth Century Fox’s copyright in The Simpsons Programs and Family Guy Programs by: i) copying The Simpsons Programs and Family Guy Programs from television broadcasts or other media; ii) copying The Simpsons Programs and Family Guy Programs onto a computer system; iii) uploading the unauthorized copies of The Simpsons Programs and Family Guy Programs to computer file servers; iv) creating links to the computer file servers that contain the unauthorized copies of The Simpsons Programs and Family Guy Programs; v) communicating The Simpsons Programs and Family Guy Programs to the public in Canada and elsewhere by telecommunication; and vi) enabling the public by means of the Internet and through the WFGO and WTSO websites, to infringe copyright in The Simpsons Programs and Family Guy Programs by downloading, streaming and/or copying the content of the unauthorized copies of The Simpsons Programs and Family Guy Programs, through Internet-enabled devices;

- d) Hernandez' infringement has been in bad faith and for commercial purposes and, he has received revenue from his infringing activities on the false pretence that such activities are lawful; and
- e) Statutory damages, elected by Twentieth Century Fox in this case, would be insufficient to achieve the goal of punishment and deterrence of the offense of copyright infringement in this case. Hernandez's repeated, unauthorized, blatant, high-handed and intentional misconduct, and his callous disregard for the Plaintiff's copyright rights, is deserving of the penalty of punitive damages.

2. **THIS COURT ADJUDGES that** Hernandez, his agents and any other person, corporation or other legal entity under his control, and anyone aware of this Order is enjoined and restrained from, directly or indirectly:

- a) engaging in any Internet transmission, communication or performance of The Simpsons Programs or Family Guy Programs;
- b) infringing Twentieth Century Fox's copyright in The Simpsons Programs and Family Guy Programs, including, without limitation, from: A) providing any service primarily for the purpose of enabling acts of infringement of copyright in The Simpsons Programs or Family Guy Programs by means of the Internet or another digital network; B) capturing broadcast television signals containing The Simpsons Programs or Family Guy Programs and copying the said Programs; C)

communicating The Simpsons Programs or Family Guy Programs to the public in Canada by telecommunication, through Internet-enabled devices; D) producing or reproducing, or causing to be produced or reproduced, all or any substantial part of The Simpsons Programs and Family Guy Programs in any material form; E), installing or uploading unlicensed copies of The Simpsons Programs and Family Guy Programs on computers; F) making unauthorized copies of The Simpsons Programs and Family Guy Programs available over the Internet or another digital network; G) performing in public all or any substantial part of The Simpsons Programs or Family Guy Programs; H) producing or reproducing any of the copyright works contained in The Simpsons Programs or Family Guy Programs or any substantial part of such works; I) selling, distributing, exposing for sale, or offering for sale any of The Simpsons Programs and Family Guy Programs and any wares bearing all or any substantial part of artistic or literary works contained in the said Programs in which copyright subsists; J) possessing, for the purposes of selling, distributing, exposing for sale or offering for sale, copies of any of The Simpsons Programs and Family Guy Programs and any wares bearing all or any substantial part of artistic or literary works contained in the said Programs in which copyright subsists; K) selling, distributing, exposing for sale, or offering for sale copies of any of The Simpsons Programs and Family Guy Programs and any wares bearing all or any substantial part of artistic or literary works contained in the said Programs in which copyright subsists, in any manner which is contrary to limitations and/or license terms appearing on or accompanying the said Programs;

and L) abetting, authorizing or assisting any other person, corporation or other legal entity to do any of the foregoing; and

- c) infringing, by the activities described in this Judgment or in any other manner, the copyright in any other works relating to The Simpsons Programs and Family Guy Programs and/or in respect of which Twentieth Century Fox owns copyright, including but not limited to works which come into existence after the date of this Order.
3. **THIS COURT ADJUDGES that** Hernandez shall deliver up to Twentieth Century Fox, or its solicitors, all copies of The Simpsons Programs and Family Guy Programs and all documents and materials including digital files and computer equipment and peripherals, wares, packaging, labels and advertising materials in his possession, control or power which offend, in any way, this Judgment, pursuant to section 38 of the *Copyright Act*.
4. **THIS COURT ADJUDGES that** Hernandez shall pay to Twentieth Century Fox:
- a) Ten Million Dollars (\$10,000,000.00) as statutory damages pursuant to s. 38.1 of the *Copyright Act*;
 - b) Five Hundred Thousand Dollars (\$500,000.00) for punitive and exemplary damages;

- c) Twentieth Century Fox's substantial indemnity costs, fixed in the amount of \$78,573.25;
- d) Pre-judgment interest on the amounts set out in paragraphs (a) and (b) at the prescribed rate of 1.3% commencing October 2, 2013; and
- e) Post-judgment interest on the amounts set out in paragraphs (a) (b) and (c) at the prescribed rate of 3% commencing from the date of this Judgment.

"Douglas R. Campbell"

Judge