

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 96-2836

JOHN W. HEYDEN,

Plaintiff - Appellant,

versus

MULTI-CHANNEL TV CABLE COMPANY, d/b/a Adelphia
Cable Communications; DELMAS HANLEY; JOHN
WOLFORD, Chief of Police; GARY O'CONNELL, City
Manager; CLYDE GOULDMAN, City Attorney; DAVID
TOSCANO, Mayor; KAY SLAUGHTER, City Councilor;
VIRGINIA DAUGHERTY, City Councilor; ALVIN
EDWARDS, City Councilor; THOMAS VANDEVER, City
Councilor,

Defendants - Appellees.

Appeal from the United States District Court for the Western Dis-
trict of Virginia, at Charlottesville. B. Waugh Crigler, Magis-
trate Judge. (CA-96-37-C)

Submitted: April 28, 1998

Decided: May 13, 1998

Before WIDENER, WILLIAMS, and MICHAEL, Circuit Judges.

Affirmed by unpublished per curiam opinion.

John W. Heyden, Appellant Pro Se. John Douglas McKay, David
Carroll Wagner, MCKAY LAW OFFICES, Charlottesville, Virginia;
Christopher John Mugel, Vernon Eugene Inge, Jr., LECLAIR RYAN,
P.C., Richmond, Virginia, for Appellees.

Unpublished opinions are not binding precedent in this circuit.
See Local Rule 36(c).

PER CURIAM:

Appellant appeals from the district court's order dismissing his claim of copyright infringement pursuant to Fed. R. Civ. P. 12(b)(6). We affirm.

Prior to June 1995, Appellant created a video program for the Charlottesville Police Department and received a certificate of copyright registration in September 1995. In July 1995, Appellant asserts that the Defendants broadcast the video program on the local public access cable channel on five different occasions without Appellant's permission. Appellant sought statutory damages of \$20,000 for each copyright violation and attorney's fees.

Under 17 U.S.C. § 412(1) (1994), statutory damages and attorney's fees are not available for the infringement of copyright in an unpublished work commenced before the date of its registration. Appellant fails to establish publication of the video program at any time prior to registering the work. Thus, Appellant failed to state a claim upon which relief could be granted. We have reviewed the record and the district court's opinion and find no reversible error. Accordingly, we affirm. Heyden v. Multichannel T.V. Cable Co., No. CA-96-37-C (W.D. Va., Nov. 20, 1996). We deny Appellant's motion for leave to proceed in forma pauperis as well as the Appellees' motion to dismiss and Appellant's "Motion for Relief from Judgement [sic] or Order."

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED