

Case No. 16-56843

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DISNEY ENTERPRISES, INC., ET AL.,
Plaintiffs-Appellees,

v.

VIDANGEL, INC.
Defendant-Appellant.

Appeal from the United States District Court
for the Central District of California
Case No. 16-cv-04109-AB (PLAx)
The Honorable André Birotte Jr., Presiding

**APPELLEES' SUPPLEMENTAL APPENDIX
VOLUME 4
(Pages S.A.750 - S.A.957)**

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Kelly M. Klaus
Rose Leda Ehler
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.: CV 16-04109-AB (PLAx)

Date: December 29, 2016

Title: Disney Enterprises, Inc. et al v. VidAngel Inc.

Present: The Honorable **ANDRÉ BIROTTE JR., United States District Judge**

Carla Badirian
Deputy Clerk

N/A
Court Reporter

Attorneys Present for Plaintiffs:

None Appearing

Attorneys Present for Defendants:

None Appearing

Proceedings: [In Chambers] Order Setting Hearing on Plaintiff's Ex Parte Application Requesting an Order to Show Cause Why Defendant Should Not Be Held in Contempt for Violating the Court's Preliminary Injunction Order

The Court is in receipt of all papers filed in connection with Plaintiffs' *ex parte* application requesting an order to show cause why Defendant should not be held in contempt of this Court's December 12, 2016 Order Granting Plaintiffs' Motion for Preliminary Injunction. The Court hereby sets this matter for hearing on Friday, January 6, 2017 at 10:00 AM. **IT IS FURTHER ORDERED THAT** that if the Defendant wishes to present further briefing, their papers shall be filed by no later than 5:00 PM on Wednesday, January 4, 2017. Plaintiffs' response, if any, shall be filed by no later than 5:00 PM on Thursday, January 5, 2017.

IT IS SO ORDERED.

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UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA
 WESTERN DIVISION

DISNEY ENTERPRISES, INC.;
 LUCASFILM LTD. LLC;
 TWENTIETH CENTURY FOX FILM
 CORPORATION and WARNER
 BROS. ENTERTAINMENT INC.,

Plaintiffs and Counter-Defendants,

vs.

VIDANGEL, INC.,

Defendant and Counter-Claimant.

Case No. 16-cv-04109-AB (PLAx)

DECLARATION OF STEPHEN H. KAY FILED IN SUPPORT OF PLAINTIFFS' OPPOSITION TO VIDANGEL'S EX PARTE APPLICATION FOR A STAY

Judge: Hon. André Birotte Jr.

Trial Date: None Set

1 I, Stephen H. Kay, declare as follows:

2 1. I am Senior Vice President, General Counsel of Roku, Inc. The
3 contents herein are based on my personal knowledge and information provided to
4 me by Roku engineers who work on our products and services. If called as a
5 witness, I could and would testify competently to the contents of this declaration.

6 2. I have reviewed a December 21, 2016 pleading captioned "Declaration
7 of Neal Harmon in Support of VidAngel, Inc.'s Ex Parte Application to Stay
8 Preliminary Injunction Pending Appeal or, Alternatively, Pending Decision by the
9 Ninth Circuit on Stay Pending Appeal" ("Harmon Declaration"), in particular,
10 paragraphs 3-4, 7-8, 10 and 12-13, which discuss the VidAngel "application" or
11 "app" channel that operates through Roku players.

12 3. As the developer of an app channel that works with Roku players,
13 VidAngel is responsible for the content that it makes available through the app,
14 subject to VidAngel's compliance with, among other things, Roku's Application
15 Distribution Agreement (<https://docs.roku.com/doc/developerdistribution/en-us>).

16 4. Mr. Harmon refers to VidAngel's re-certification of its app and Roku's
17 "blackout" time periods for certifications. The re-certification process is
18 independent of the individual titles that channel developers like VidAngel offer
19 through their apps. Roku does not require channel developers, like VidAngel, to re-
20 certify their applications in order to add or remove titles from their video catalogs.
21 Accordingly, Roku's application certification "blackout period" has no bearing on
22 VidAngel's ability to manage its own video catalog.

23 I declare under penalty of perjury under the laws of the United States that the
24 foregoing is true and correct, and that this declaration was executed this 23rd day of
25 December, 2016 in Los Angeles, California.

26 
27 _____
28 STEPHEN H. KAY

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Facsimile: (732) 377-0388
18 *Attorneys for Defendant and*
19 *Counterclaimant VidAngel, Inc.*

20 UNITED STATES DISTRICT COURT
21 CENTRAL DISTRICT OF CALIFORNIA
22 WESTERN DIVISION

23 DISNEY ENTERPRISES, INC.;
24 LUCASFILM LTD. LLC;
25 TWENTIETH CENTURY FOX FILM
CORPORATION; AND WARNER
26 BROS. ENTERTAINMENT, INC.,

27 Plaintiffs,

28 vs.

CASE NO. 16-cv-04109-AB (PLAx)

**DECLARATION OF DAVID
QUINTO IN SUPPORT OF
VIDANGEL, INC.'S OPPOSITION
TO PLAINTIFFS' EX PARTE
APPLICATION FOR AN ORDER
TO SHOW CAUSE**

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VIDANGEL, INC.,
Defendant.

The Hon. André Birotte Jr.
Date Action Filed: June 9, 2016

VIDANGEL, INC.,
Counterclaimant,

vs.

DISNEY ENTERPRISES, INC.;
LUCASFILM LTD. LLC;
TWENTIETH CENTURY FOX FILM
CORPORATION; AND WARNER
BROS. ENTERTAINMENT, INC.,

Counterclaim Defendants.

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I, David Quinto, declare as follows:

1. I am the general counsel of defendant and cross-complainant VidAngel, Inc. I make this declaration of my personal and firsthand knowledge and, if called and sworn as a witness, I could and would testify competently hereto.

2. The issuance of the preliminary injunction herein has caused complications that we did not anticipate. As one example, the financial backer of the company responsible both for processing payments made by VidAngel customers using either our Web site or our various apps and for processing VidAngel’s re-purchases of discs from consumers who decide to sell them back has demanded that our payment processor cease doing business with VidAngel. I have been in daily, and frequently several times daily, communication with attorneys for the payment processing firm seeking to resolve the situation. In the meantime, VidAngel has been working to prepare another payment processor to replace the current payment processor, if necessary. In my understanding, that will not be a simple process owing to the facts that the service must operate across multiple apps as well as VidAngel’s Web site, and will need to conform to an entirely different application programming interface for its new payment processor. VidAngel’s new payment processor does not support customer data like the old system did. This change will require new database tables and software for VidAngel and will require new customer support tools to process refunds. Acknowledging these difficulties, I received a message on December 23rd from VidAngel’s payment processor that stated in part: “We understand that switching payment providers can be challenging and any change at this time of year is especially difficult. We will continue to keep you apprised of any key developments and try our best to minimize the disruption to your business in the event of an adverse decision.” The payment processor also said that it might be required to terminate processing for VidAngel as early as December 29.

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1 3. In my experience, when immediate compliance with an injunction
2 would cause a business to suffer a major disruption of its non-enjoined business
3 activities, it is the custom and practice to seek an immediate stay of the injunction to
4 seek a reasonable amount of time in which to comply. In a case I had in this district,
5 for example, Judge Dean Pregerson preliminarily enjoined a business I represented
6 from using its corporate name. Immediate compliance with that order would have
7 required that the business shutter its doors while registering a new corporate name,
8 changing its letterhead, changing its business cards, changing its domain name,
9 changing its Web site, changing its marketing and advertising materials, and so
10 on. My client therefore sought a stay to allow it to continue conducting business
11 operations while undertaking all the tasks required to change its corporate
12 identity. Judge Pregerson understood both that my client was not being
13 contemptuous in failing to comply immediately with the injunction and that
14 immediate implementation of the injunction would cause my client to suffer an
15 unnecessary disruption of its business. He therefore ordered that my client comply
16 within 30 days.

17 4. The parties never briefed or explained to this court the reasons why it is
18 impossible for VidAngel to comply immediately with the preliminary injunction
19 without ceasing business activities entirely. At present, VidAngel has 51
20 employees. They are divided among its 10 departments: Accounting, Customer
21 Support, Design, Executive, Inventory, Legal, Marketing, Stream Team, Tagging,
22 and Tech Team. The work required to implement the preliminary injunction
23 smoothly is extraordinarily labor intensive. As but one example, I am trying to
24 obtain consent-not-to-sue agreements from the various content creators and/or
25 distributors whose content VidAngel makes available. I am doing so because, apart
26 from plaintiffs (joined this week by MGM), none has ever objected to VidAngel's
27 service but VidAngel does not want to risk exposure to intentional infringement
28

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1 claims in light of the rationale behind this Court’s ruling. There are more than 125
2 such entities (including plaintiffs and their affiliates). They are found not just in the
3 United States but in other countries, as well. Before I can request a consent-not-to-
4 sue, I must identify their respective general counsels or outside counsel and obtain
5 contact information for such persons. That arduous process is complicated by the
6 demands on my time occasioned by over-seeing the on-going litigation, responding
7 to concerns raised by investors in our recent Regulation A+ stock offering, apprising
8 both the SEC and our major financial backers of the status of the litigation, and
9 working out the legal details associated with offering new content controlled by
10 VidAngel to prevent our customer base from abandoning us.

11 5. I wish to advise the Court that VidAngel is not contemptuous of the
12 preliminary injunction or the Court’s authority to issue it. Further, I wish to advise
13 the Court categorically that VidAngel will comply with preliminary injunction, fully
14 and immediately, if VidAngel is unable to obtain a stay of its enforcement.

15 6. Plaintiffs’ application for an Order to Show Cause re Contempt is
16 therefore unnecessary. Plaintiffs are requesting that the Court schedule briefing and
17 hear argument concerning whether contempt should be found solely for the purpose
18 of coercing compliance. Because the purpose is to coerce compliance, no sanction
19 may issue if VidAngel is then in compliance with the Court’s order. Accordingly,
20 if either VidAngel is in compliance with the preliminary injunction or enforcement
21 of the preliminary injunction has been stayed before the Court makes a finding of
22 contempt, no sanction may be imposed. Given that VidAngel has unequivocally
23 confirmed that it is not refusing to comply with the Court’s order but will comply
24 *immediately* if it is unable to obtain a stay, there is no need to burden the Court to
25 conduct a contempt proceeding.

26 7. In light of the holidays and pre-existing travel plans for many of its
27 team members, VidAngel’s counsel asked Plaintiffs to stipulate to permit VidAngel
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1 to file its opposition to the *ex parte* application on December 26 or 27. Plaintiffs
2 refused this request. A true and correct copy of this email correspondence is
3 attached as Exhibit A.

4
5 I declare under penalty of perjury under the laws of the United States of
6 America that the foregoing is true and correct.

7 Executed this 23rd day of December, 2016, at Los Angeles, California.

8
9 

10 _____
11 David W. Quinto

12
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EXHIBIT A

Brian Grace

From: Ryan Baker
Sent: Thursday, December 22, 2016 7:20 PM
To: Klaus, Kelly
Cc: Scott Malzahn; Brian Grace; Jaime Marquart; Ehler, Rose; Lunsford, Julie; Bennett, Allyson
Subject: Re: Disney Enterprises, Inc., et al. v. VidAngel, Inc.; USDC Central District Case No. 16-cv-04109 AB (PLAx)

Kelly,

Happy holidays to you and your colleagues, as well!

Best,

Ryan

From: "Klaus, Kelly" <Kelly.Klaus@mto.com>
Date: Thursday, December 22, 2016 at 2:34 PM
To: Ryan Baker <rbaker@bakermarquart.com>
Cc: Scott Malzahn <smalzahn@bakermarquart.com>, Brian Grace <bgrace@bakermarquart.com>, Jaime Marquart <jmarquart@bakermarquart.com>, "Ehler, Rose" <Rose.Ehler@mto.com>, "Lunsford, Julie" <Julie.Lunsford@mto.com>, "Bennett, Allyson" <Allyson.Bennett@mto.com>
Subject: RE: Disney Enterprises, Inc., et al. v. VidAngel, Inc.; USDC Central District Case No. 16-cv-04109 AB (PLAx)

Hi Ryan –

Thanks for your email. Given VidAngel's continued refusal to comply with the Preliminary Injunction, Plaintiffs cannot stipulate to extend VidAngel's time to respond to the ex parte application. VidAngel's conduct is unacceptable and requires the Court's intervention as soon as possible.

I appreciate that you do not take this personally. I have extended courtesies to your team when possible; you have reciprocated, which I appreciate; and I know that practice will continue on both sides when circumstances allow.

Notwithstanding all that is going on, I do wish you and your colleagues the best for the holidays and new year.

Regards,
Kelly

From: Ryan Baker [mailto:rbaker@bakermarquart.com]
Sent: Thursday, December 22, 2016 1:33 PM
To: Klaus, Kelly
Cc: Scott Malzahn; Brian Grace; Jaime Marquart; Ehler, Rose; Lunsford, Julie; Bennett, Allyson
Subject: Re: Disney Enterprises, Inc., et al. v. VidAngel, Inc.; USDC Central District Case No. 16-cv-04109 AB (PLAx)

Kelly,

Hope you're enjoying the holidays. By the looks of it, you're enjoying them more now than you were yesterday! On a related note, would your clients be willing to stipulate to permit VidAngel to file its opposition to your Ex Parte re

Contempt Monday or Tuesday of next week? Many of our team are already traveling for the holidays and at least temporarily unavailable. We would appreciate the courtesy.

Of course, I will not take it personally if we cannot agree to some accommodation.

Please let me know at your earliest convenience.

Thanks,

Ryan

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From: "Ehler, Rose" <Rose.Ehler@mto.com>
Date: Thursday, December 22, 2016 at 12:09 PM
To: "Lunsford, Julie" <Julie.Lunsford@mto.com>, Jaime Marquart <jmarquart@bakermarquart.com>, Ryan Baker <rbaker@bakermarquart.com>, Brian Grace <bgrace@bakermarquart.com>, David Quinto <dquinto@vidangel.com>, Scott Malzahn <smalzahn@bakermarquart.com>, "dpepperman@blechercollins.com" <dpepperman@blechercollins.com>, "Elizabeth.brannen@strismaher.com" <Elizabeth.brannen@strismaher.com>, "mblecher@blechercollins.com" <mblecher@blechercollins.com>, Peter Stris <peter.stris@strismaher.com>, "twagniere@blechercollins.com" <twagniere@blechercollins.com>
Cc: "Klaus, Kelly" <Kelly.Klaus@mto.com>, "Bennett, Allyson" <Allyson.Bennett@mto.com>
Subject: RE: Disney Enterprises, Inc., et al. v. VidAngel, Inc.; USDC Central District Case No. 16-cv-04109 AB (PLAx)

Counsel:

Per chambers rules, Julie's email serves as notice that any opposition papers must be filed 24 hours (or one court day) from this service.

Thank you,
Rose

Rose Leda Ehler
415.512.4071

From: Lunsford, Julie
Sent: Thursday, December 22, 2016 12:05 PM
To: jmarquart@bakermarquart.com; rbaker@bakermarquart.com; bgrace@bakermarquart.com; dquinto@vidangel.com; smalzahn@bakermarquart.com; dpepperman@blechercollins.com; Elizabeth.brannen@strismaher.com; mblecher@blechercollins.com; peter.stris@strismaher.com; twagniere@blechercollins.com
Cc: Klaus, Kelly; Ehler, Rose; Bennett, Allyson
Subject: Disney Enterprises, Inc., et al. v. VidAngel, Inc.; USDC Central District Case No. 16-cv-04109 AB (PLAx)

Counsel:

Attached please find the Ex Parte Application, Klaus Declaration and [Proposed] Order that were e-filed this morning. Please feel free to contact me if you have any questions.

Thank you,
Julie Lunsford

Julie W. Lunsford | Legal Secretary
Assistant to Martin D. Bern, David H. Fry, Kelly M. Klaus & Joshua Patashnik
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10 UNITED STATES DISTRICT COURT
 11 CENTRAL DISTRICT OF CALIFORNIA
 12 WESTERN DIVISION

13

14 DISNEY ENTERPRISES, INC.;
 LUCASFILM LTD. LLC;
 15 TWENTIETH CENTURY FOX FILM
 CORPORATION and WARNER
 16 BROS. ENTERTAINMENT INC.,

17 Plaintiffs and Counter-
 Defendants,

18 vs.

19 VIDANGEL, INC.,

20 Defendant and Counter-
 21 Claimant.

Case No. 16-cv-04109-AB (PLAx)

**DECLARATION OF KELLY M.
 KLAUS IN SUPPORT OF EX
 PARTE APPLICATION FOR
 ORDER TO SHOW CAUSE WHY
 VIDANGEL SHOULD NOT BE
 HELD IN CONTEMPT**

Judge: Hon. André Birotte Jr.

Crtrm.: 7B

Trial Date: None Set

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1 I, Kelly M. Klaus, hereby declare:

2 1. I am admitted to practice before all of the courts of the State of
3 California and this Court. I am an attorney at the law firm of Munger, Tolles &
4 Olson LLP, counsel for Plaintiffs in the above-captioned matter.

5 2. I submit this declaration in support of Plaintiffs' Ex Parte Application
6 for Order to Show Cause Why VidAngel Should not Be Held in Contempt. I have
7 personal knowledge of the facts set forth in this declaration. If called as a witness, I
8 could and would testify competently to the matters set forth herein.

9 3. On December 21, 2016, I contacted VidAngel's counsel in this action
10 regarding Plaintiffs' Ex Parte Application for Order to Show Cause Why VidAngel
11 Should not Be Held in Contempt. I informed counsel that Plaintiffs intended to file
12 this application and explained the basis for the application.

13 4. I asked VidAngel's counsel if VidAngel opposes the relief sought in
14 this application. VidAngel's counsel, David Quinto, told me that VidAngel opposes
15 Plaintiffs' application. Attached as Exhibit A is a true and correct copy of my
16 correspondence to and from VidAngel's counsel.

17 5. Attached as Exhibit B is a true and correct copy of Apple's notice that
18 it will not accept app updates from December 23 to 27, available at
19 <https://developer.apple.com/news/?id=11292016a> (last visited Dec. 22, 2016).

20 6. Attached as Exhibit C is a true and correct copy of VidAngel's Blog
21 post "DECLARATION of Neal Harmon in Support of VidAngel, Inc.'s Ex Parte
22 Application to Stay Preliminary Injunction Pending Appeal," available at
23 [http://blog.vidangel.com/2016/12/21/declaration-of-neal-harmon-in-support-of-](http://blog.vidangel.com/2016/12/21/declaration-of-neal-harmon-in-support-of-vidangel-inc-s-ex-parte-application-to-stay-preliminary-injunction-pending-appeal/)
24 [vidangel-inc-s-ex-parte-application-to-stay-preliminary-injunction-pending-appeal/](http://blog.vidangel.com/2016/12/21/declaration-of-neal-harmon-in-support-of-vidangel-inc-s-ex-parte-application-to-stay-preliminary-injunction-pending-appeal/)
25 (last visited Dec. 22, 2016).

26 I declare under penalty of perjury under the laws of the United States of
27 America that the foregoing is true and correct.

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Executed on December 22, 2016, at San Francisco, California.

 /s/ Kelly M. Klaus
Kelly M. Klaus

EXHIBIT A

From: [David Quinto](#)
To: [Klaus, Kelly](#); [Jaime Marquart](#); [Peter Stris](#); [Brendan Maher](#); [Victor O'Connell](#); [Elizabeth Brannen](#); daniel.geyser@strismaher.com; [Scott Malzahn](#); [Brian Grace](#); [Maxwell M. Blecher](#); [Donald R. Pepperman](#); [Taylor Wagniere](#)
Cc: [Pomerantz, Glenn](#); [Ehler, Rose](#); [Bennett, Allyson](#)
Subject: RE: Notice of Ex Parte re OSC re Contempt
Date: Wednesday, December 21, 2016 5:07:19 PM

Kelly:

This will confirm that VidAngel will oppose Disney's needless application and shameful attempt to use a preliminary determination to destroy VidAngel's business without allowing it even a merits determination much less an opportunity to seek appellate review.

Thanks much,

David Quinto

From: Klaus, Kelly [mailto:Kelly.Klaus@mto.com]
Sent: Wednesday, December 21, 2016 4:51 PM
To: Jaime Marquart <jmarquart@bakermarquart.com>; David Quinto <dquinto@vidangel.com>; Peter Stris <peter.stris@strismaher.com>; Brendan Maher <brendan.maher@strismaher.com>; Victor O'Connell <victor.oconnell@strismaher.com>; Elizabeth Brannen <elizabeth.brannen@strismaher.com>; daniel.geyser@strismaher.com; Scott Malzahn <smalzahn@bakermarquart.com>; Brian Grace <bgrace@bakermarquart.com>
Cc: Pomerantz, Glenn <Glenn.Pomerantz@mto.com>; Ehler, Rose <Rose.Ehler@mto.com>; Bennett, Allyson <Allyson.Bennett@mto.com>
Subject: Notice of Ex Parte re OSC re Contempt

Subject line of my prior email had your subject line from your ex parte notice (used reply to all to get all concerned on your line). Assume you know the subject is Plaintiffs' Notice of Application for Ex Parte re Contempt – but so there's no confusion, here's another email.

From: Klaus, Kelly
Sent: Wednesday, December 21, 2016 4:48 PM
To: 'Jaime Marquart'; David Quinto; Peter Stris; Brendan Maher; Victor O'Connell; Elizabeth Brannen; daniel.geyser@strismaher.com; Scott Malzahn; Brian Grace
Cc: Pomerantz, Glenn; Ehler, Rose; Bennett, Allyson
Subject: RE: Application for Stay of Preliminary Injunction Pending Appeal
Importance: High

Dear Jaime, David et al.,

This is notice that Plaintiffs will be filing an ex parte application, requesting an order to show cause why VidAngel should not be held in contempt for violating

the preliminary injunction. We will ask the Court to hold VidAngel in contempt based on its unilateral decision to absolve itself of the obligation to comply with a lawful, valid, and effective preliminary injunction. We are not aware of any legal authority that would allow a party in VidAngel's position to exempt itself from compliance with an injunction. If you are aware of any such authority, give us the cites now so we can review the cases and address them in our papers.

We also will ask the Court to strike all those portions of Mr. Harmon's declaration (Dkt. 158), purporting to set forth VidAngel's claims of "hardship" in having to comply with the preliminary injunction. Those excuses are baseless for many reasons, including:

Mr. Harmon claims VidAngel is trapped in a "holiday window" for Apple apps. VidAngel is in the claimed corner only because it has painted itself there, having waited until now to think about how to comply with an injunction VidAngel knew Plaintiffs were seeking since June.

Mr. Harmon claims to be concerned about "customer confusion" when customers cannot find a title that VidAngel has no right to stream—and which it has been ordered not to stream. VidAngel communicates with its user base constantly; and its users know very well why Plaintiffs' titles will not be available through VidAngel; and Mr. Harmon already has a sworn declaration on file saying that VidAngel tells users when titles are out of stock.

Moreover, if VidAngel believed it would be difficult to comply with a preliminary injunction, VidAngel should have included those reasons in its opposition to the motion, or in its request for a stay. The newest Harmon declaration is a transparent, improper, and meritless attempt to backfill VidAngel's record.

Please let us know whether VidAngel intends to oppose Plaintiffs' application.

Thanks,
Kelly

Kelly M. Klaus | Munger, Tolles & Olson LLP

355 South Grand Avenue | Los Angeles, CA 90071

560 Mission Street | San Francisco, CA 94105

Tel: 213-683-9238 (LA) | 415-512-4017 (SF)

Kelly.Klaus@mto.com | www.mto.com

EXHIBIT B

[Discover](#)

[Design](#)

[Develop](#)

[Distribute](#)

[Support](#)

[Account](#)

Get Your Apps Ready for the Holidays

November 29, 2016

The busiest season on the App Store is almost here. Make sure your apps are up-to-date and ready for the winter holidays. New apps and app updates will not be accepted December 23 to 27 (Pacific Time), so any releases should be submitted, approved, and scheduled in advance. Other iTunes Connect and developer account features will remain available.



[Learn more about preparing apps for the App Store.](#)

[Back to News](#)

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 355 South Grand Avenue, Thirty-Fifth Floor
 6 Los Angeles, California 90071-1560
 Telephone: (213) 683-9100
 7 Facsimile: (213) 687-3702

8 Attorneys for Plaintiffs

9

10 UNITED STATES DISTRICT COURT
 11 CENTRAL DISTRICT OF CALIFORNIA
 12 WESTERN DIVISION

13

14 DISNEY ENTERPRISES, INC.;
 LUCASFILM LTD. LLC;
 15 TWENTIETH CENTURY FOX FILM
 CORPORATION and WARNER
 16 BROS. ENTERTAINMENT INC.,

17 Plaintiffs and Counter-
 Defendants,

18 vs.

19 VIDANGEL, INC.,

20 Defendant and Counter-
 21 Claimant.

Case No. 16-cv-04109-AB (PLAx)

**SUPPLEMENTAL DECLARATION
 OF KELLY M. KLAUS
 REGARDING VIDANGEL'S
 CONTINUING VIOLATION OF
 PRELIMINARY INJUNCTION,
 FILED IN FURTHER SUPPORT OF
 PLAINTIFFS' OPPOSITION TO
 VIDANGEL'S EX PARTE
 APPLICATION FOR A STAY**

22 Judge: Hon. André Birotte Jr.

23 Trial Date: None Set

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1 I, Kelly M. Klaus, hereby declare:

2 1. I am an attorney with Munger, Tolles & Olson LLP, counsel for
3 Plaintiffs in this matter. I am a member of the California Bar and am admitted to
4 practice before this Court. Except as to matters stated on information and belief, I
5 have personal knowledge of the matters set forth in this supplemental declaration; as
6 to those matters stated on information and belief, I am reliably informed of their
7 contents and believe them to be true. If called as a witness, I could and would
8 testify competently to the facts stated herein.

9 2. I submit this supplemental declaration to bring to this Court's attention
10 additional facts relevant to VidAngel's pending application to stay the Preliminary
11 Injunction: VidAngel not only has refused to remove Plaintiffs' works from its
12 service, but VidAngel is also flouting the Preliminary Injunction by *adding* new
13 releases of Plaintiffs' works as they become available on DVD and Blu-ray Disc.
14 For example, as discussed further below, VidAngel has added Warner Bros.'s *Sully*
15 and *Storks* and Fox's *Miss Peregrine's Home for Peculiar Children* to its service—
16 titles which were not released on DVD until after the Preliminary Injunction was
17 entered.

18 3. VidAngel's defiance of the Preliminary Injunction is flagrant. If
19 VidAngel will not comply with the Preliminary Injunction immediately, Plaintiffs
20 will have no option other than to move *ex parte* for an order to show cause why
21 VidAngel should not be held in contempt.

22 4. VidAngel, like any other party, must comply with the Court's
23 Preliminary Injunction "unless and until this or another court has relieved [it] of that
24 responsibility, through a stay, reversal or modification of the order," regardless of
25 VidAngel's objections to the Injunction. *Armstrong v. Brown*, 857 F. Supp. 2d 919,
26 948 (N.D. Cal.), *order enforced* (Aug. 28, 2012), *order aff'd, appeal dismissed*, 732
27 F.3d 955 (9th Cir. 2013). VidAngel's filing of application to stay the Preliminary
28 Injunction does not itself stay the Preliminary Injunction. "[T]he party to whom the

1 injunction is directed acts (or fails to act) at its peril if it declines to comply while
2 waiting for decision on a stay application.” *Tekkno Labs., Inc. v. Perales*, 933 F.2d
3 1093, 1099 (2d Cir. 1991).

4 5. Our review of VidAngel’s website makes it clear that, notwithstanding
5 the Preliminary Injunction, VidAngel is continuing to add more of Plaintiffs’ works
6 to its service as soon as those titles are released on DVD and Blu-ray Disc.

7 6. Attached as Exhibit A is a true and correct copy of a screenshot of the
8 “New Releases” section of VidAngel’s website as of yesterday, December 19, 2016.
9 The movies were sorted by date, so the most recently added movies appeared first.

10 7. Attached as Exhibit B is a true and correct copy of a screenshot of the
11 “New Releases” section of VidAngel’s website as of today, December 20, 2016.
12 Here, too, the movies were sorted by date, so the most recently added titles appear
13 first. Warner Bros.’s *Sully* and *Storks*. and Fox’s *Miss Peregrine’s Home for*
14 *Peculiar Children* appear in Exhibit B, but not in Exhibit A. In other words, those
15 titles made it to VidAngel’s “New Releases” today. I am informed and believe that
16 *Sully* and *Storks* were released on DVD and Blu-ray Disc today, December 20; and
17 that *Miss Peregrine’s Home for Peculiar Children* was released on DVD and Blu-
18 ray Disc one week ago, on December 13.

19 I declare under penalty of perjury under the laws of the United States that the
20 foregoing is true and correct.

21 Executed this 20th day of December, 2016 in San Francisco, California.

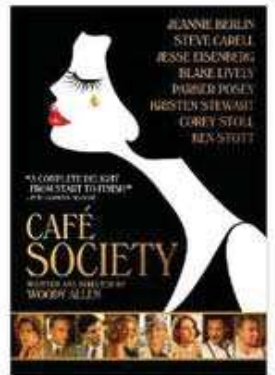
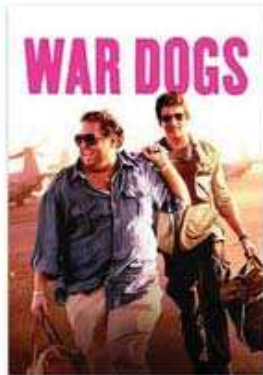
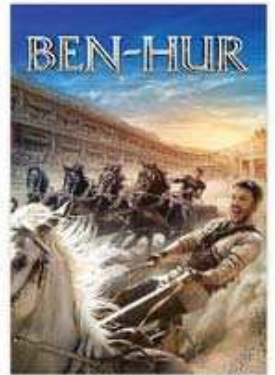
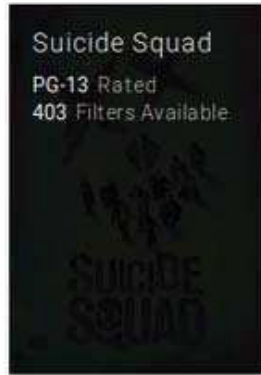
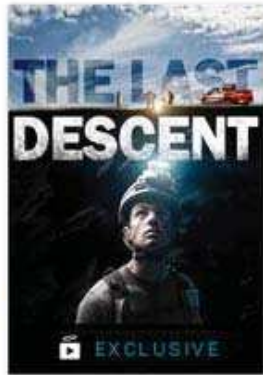
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23 /s/ Kelly M. Klaus

24 Kelly M. Klaus

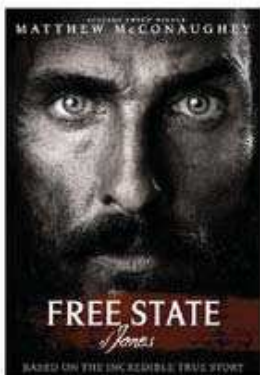
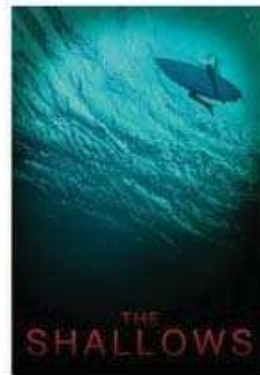
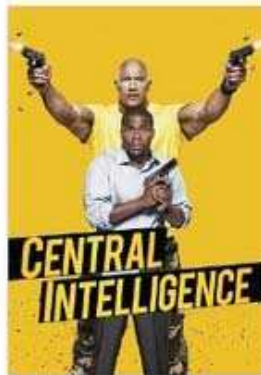
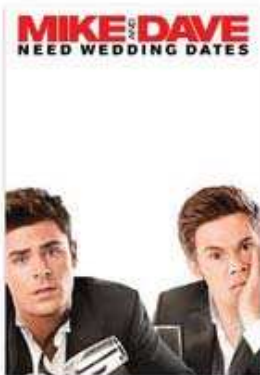
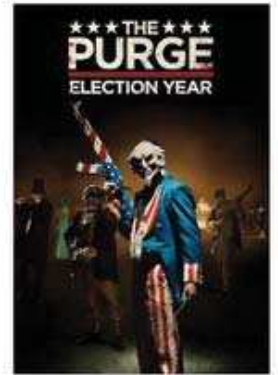
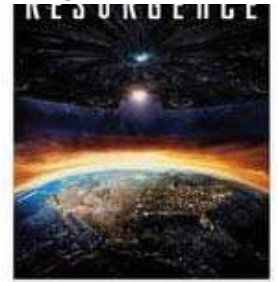
EXHIBIT A

New Releases

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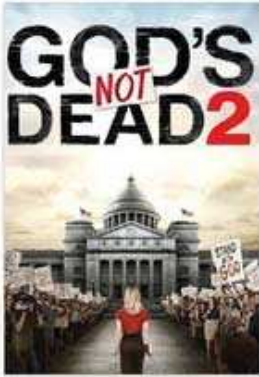


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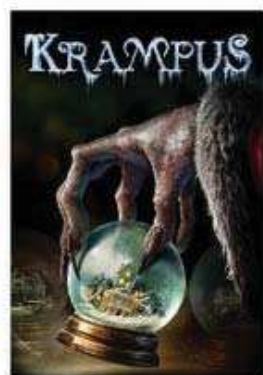
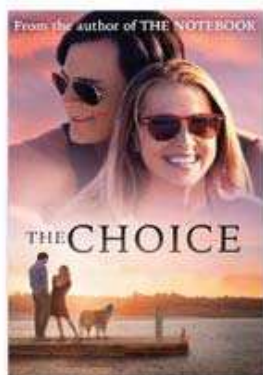
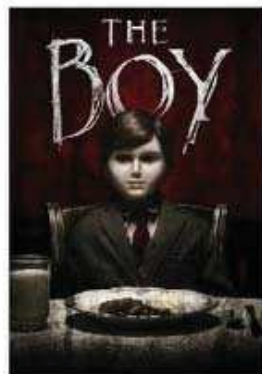
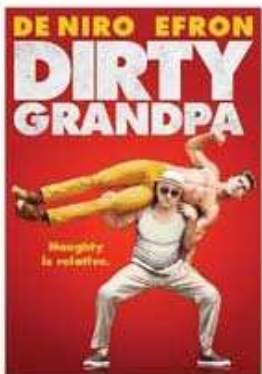
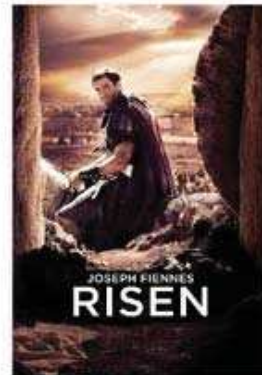
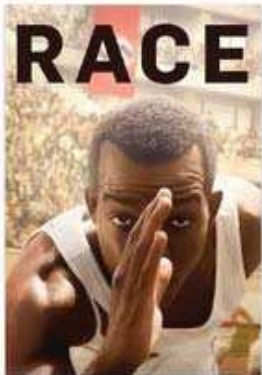
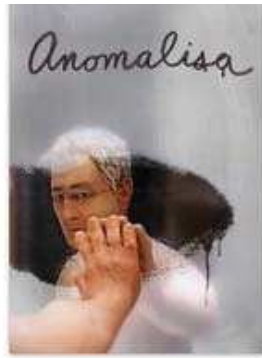


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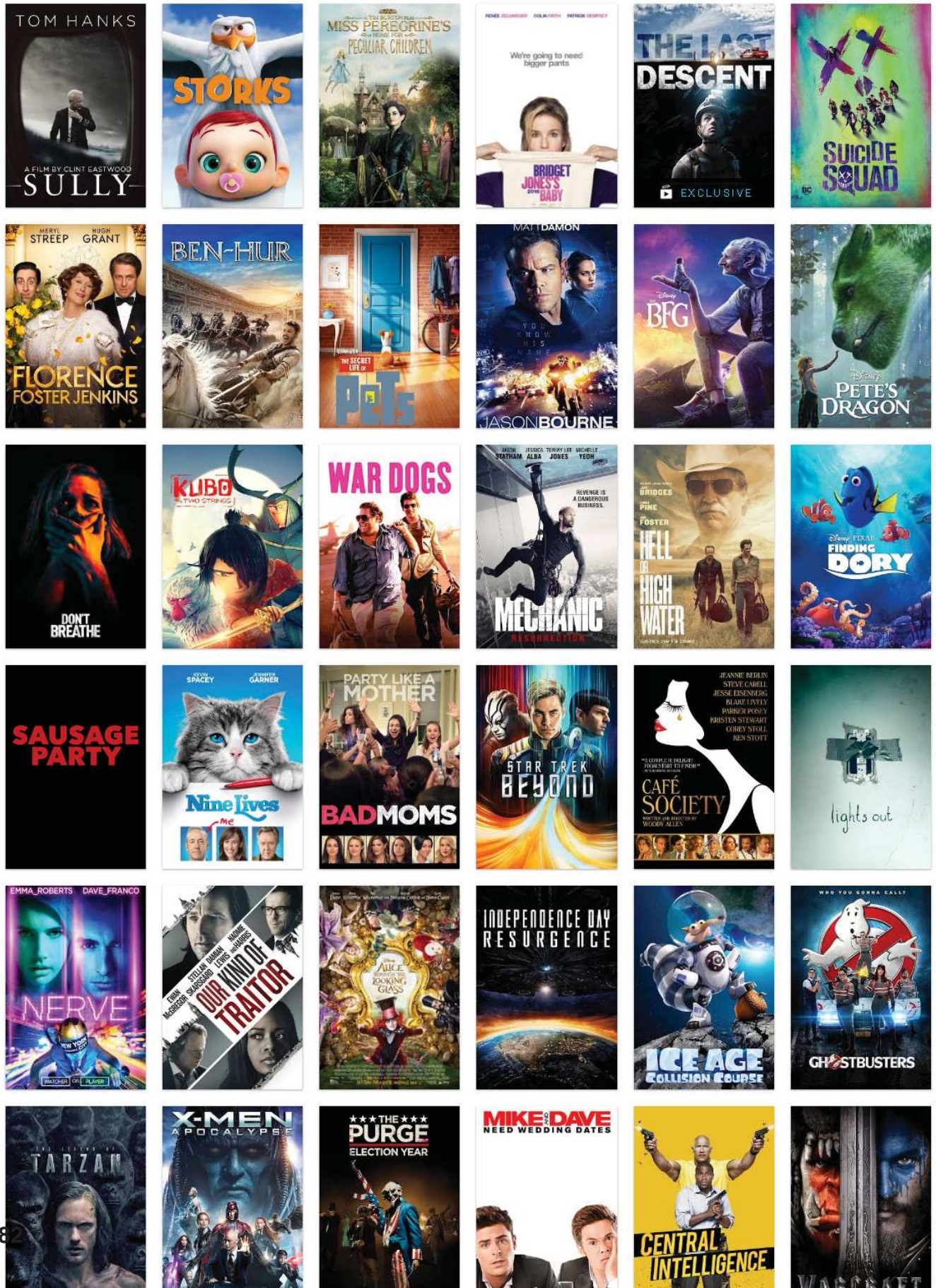
EXHIBIT B

New Releases

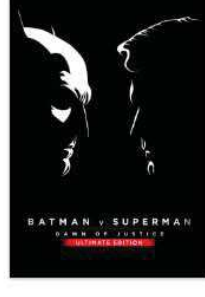
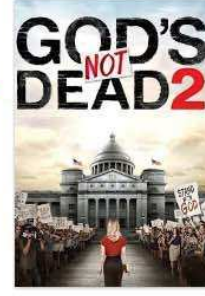
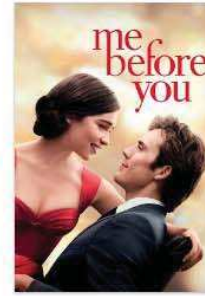
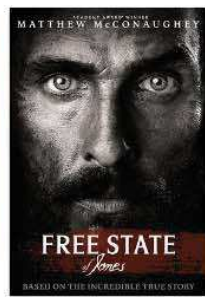


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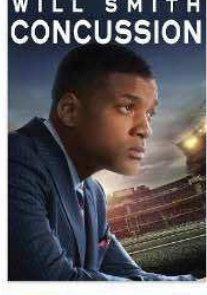
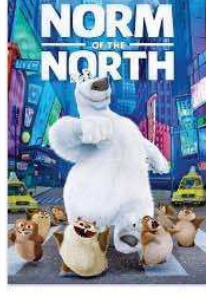
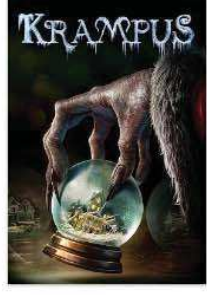
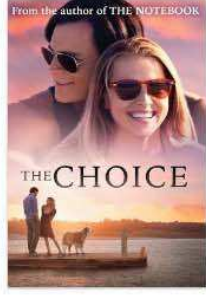
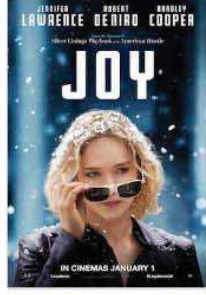
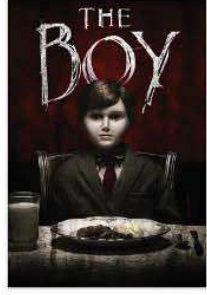
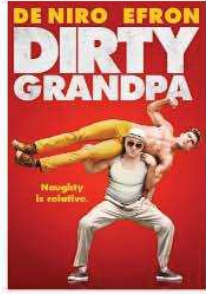
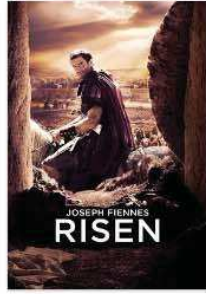
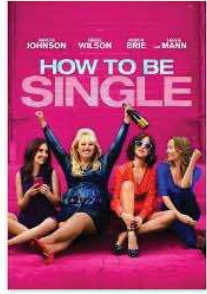
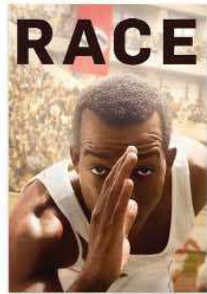
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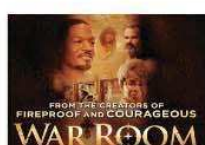
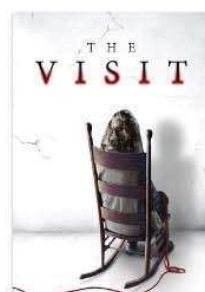
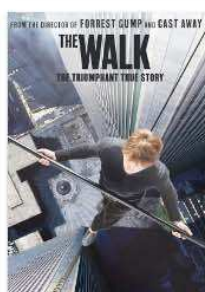
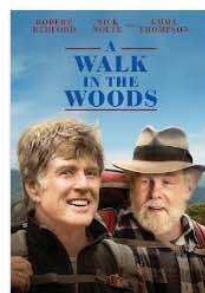
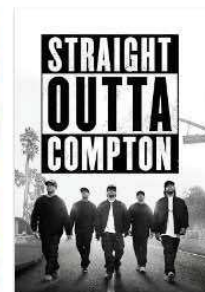
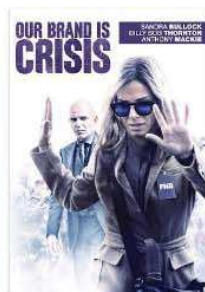
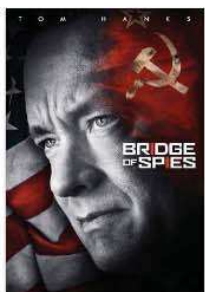
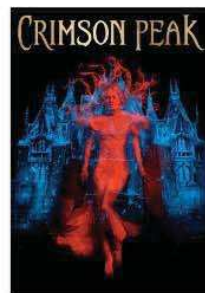
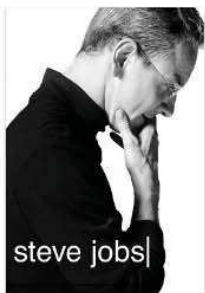
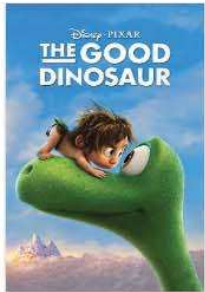
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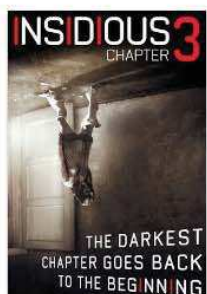
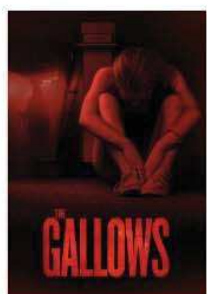
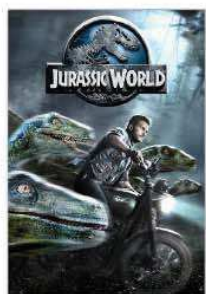
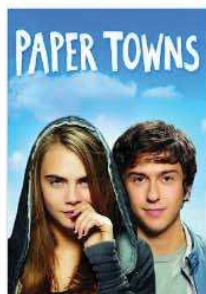
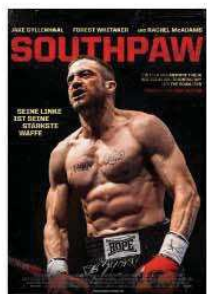
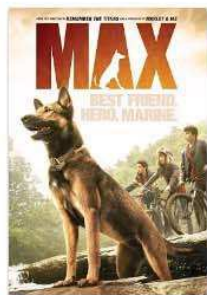
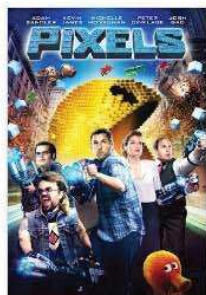
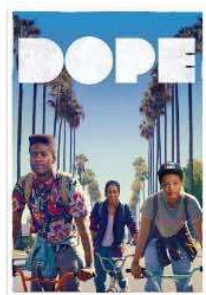
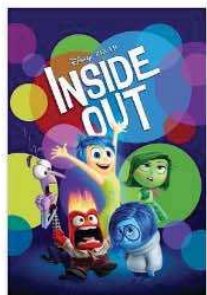
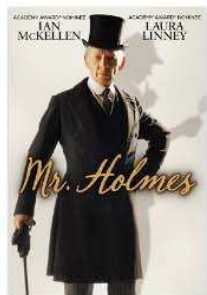
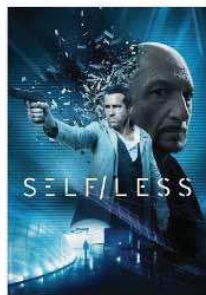
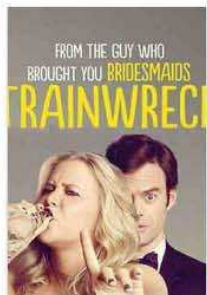
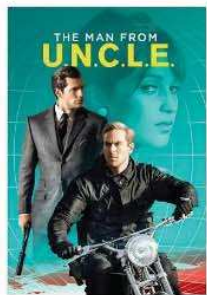
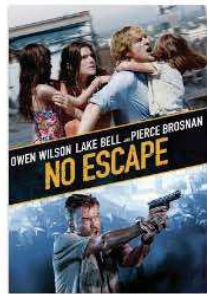
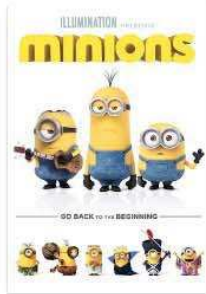
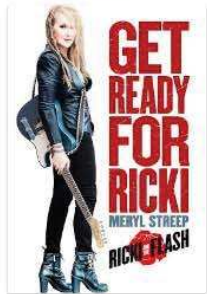
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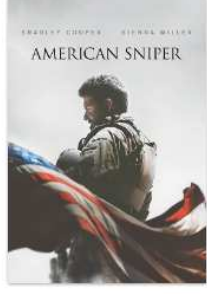
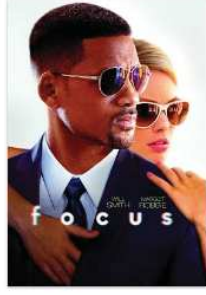
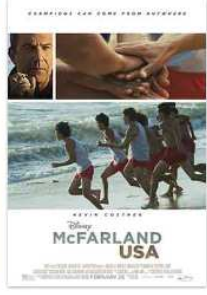
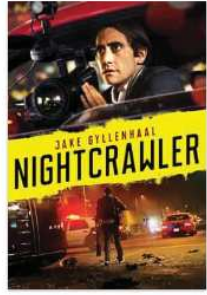
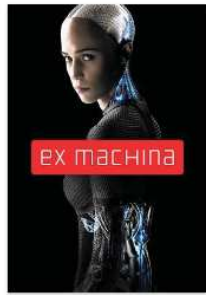
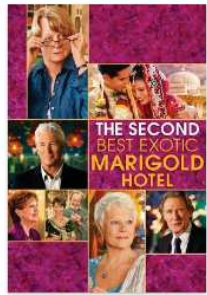
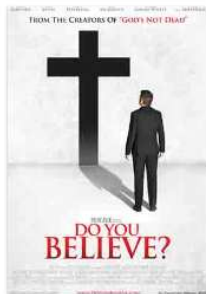
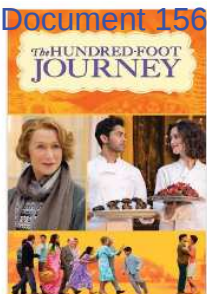
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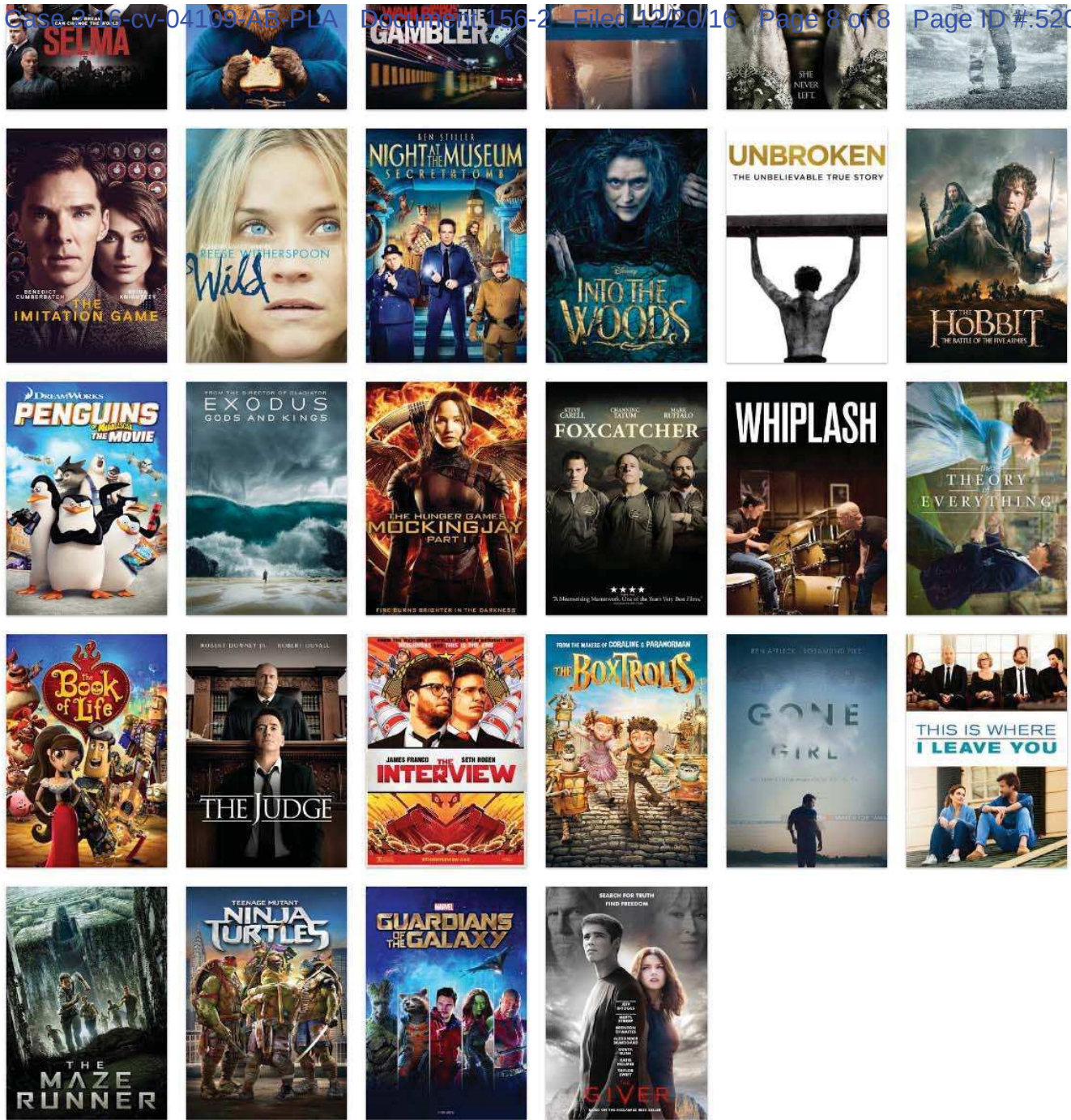
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 12 WESTERN DIVISION

13 DISNEY ENTERPRISES, INC.;
 14 LUCASFILM LTD. LLC;
 15 TWENTIETH CENTURY FOX FILM
 CORPORATION and WARNER
 16 BROS. ENTERTAINMENT INC.,

17 Plaintiffs and Counter-
 Defendants,

18 vs.

19 VIDANGEL, INC.,

20 Defendant and Counter-
 21 Claimant.

Case No. 16-cv-04109-AB (PLAx)

**PLAINTIFFS' OPPOSITION TO
 VIDANGEL'S EX PARTE
 APPLICATION TO STAY
 PRELIMINARY INJUNCTION
 PENDING APPEAL OR,
 ALTERNATIVELY, PENDING
 DECISION BY THE NINTH
 CIRCUIT ON STAY PENDING
 APPEAL**

Filed concurrently:
 (1) Decl. of Rose Leda Ehler

Judge: Hon. André Birotte Jr.

Trial Date: None Set

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INTRODUCTION

Rather than complying with this Court’s December 12 Preliminary Injunction Order (Dkt. 144), VidAngel has continued to operate its illegal service causing further harm to Plaintiffs and enriching VidAngel’s owners. The Court ordered VidAngel to stop infringing Plaintiffs’ rights, but, continuing its pattern of acting unilaterally to further its illegal business *first* and then seeking permission *second*, VidAngel refuses to comply with that Order until the Court rules on its Application for a stay. The Application is meritless and should be denied.

Contrary to VidAngel’s characterization of the Application, VidAngel is asking the Court to reconsider issues that it has already carefully considered and rejected. The issues presented were not close calls. Ripping is illegal and copying and publicly performing without authorization is infringement. The Family Movie Act (“FMA”) is clear and does not excuse VidAngel’s conduct. The FMA’s language is unequivocally reinforced by the legislative history. VidAngel has the right to argue these issues again to the Ninth Circuit, where it will have to establish that this Court abused its discretion in granting the Preliminary Injunction. Nothing in the Application justifies a stay.

In the meantime, VidAngel’s continuing illegal conduct is violating Plaintiffs’ rights and compounding the irreparable harm. VidAngel continues to populate its site with Plaintiffs’ works. *See* Ehler Decl. ¶ 8, Ex. F (VidAngel’s offering, as of today, of numerous of Plaintiffs’ titles, including categories comprised entirely of Plaintiffs’ works, e.g., “Classic Disney,” “Harry Potter Marathon,” and “Star Wars Marathon”). Unless and until this Court tells VidAngel (once again) that it must stop, VidAngel will continue to violate Plaintiffs’ rights. *See id.* ¶ 6, Ex. D (listing numerous of Plaintiffs’ works among “Movies Coming in December”). The Court

1 should deny the Application and order VidAngel to comply with the Preliminary
2 Injunction immediately.¹

3 ARGUMENT

4 **I. VIDANGEL CANNOT MEET THE DEMANDING STANDARDS FOR 5 A STAY**

6 To obtain a stay, VidAngel must show (1) that it is “likely to succeed on the
7 merits” before the Ninth Circuit; (2) that it “will be irreparably injured absent a
8 stay”; (3) that a stay will not “substantially injure” the Plaintiffs; and (4) that “the
9 public interest” favors a stay. *Miller v. Carlson*, 768 F. Supp. 1341, 1342-43 (N.D.
10 Cal. 1991) (citing *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)). “It is not enough
11 that the chance of success on the merits be better than negligible. . . . [M]ore than a
12 mere possibility of relief is required. By the same token, simply showing some
13 possibility of irreparable injury fails to satisfy the second factor.” *Nken v. Holder*,
14 556 U.S. 418, 434-35 (2009) (internal citations and quotation marks omitted).

15 The Court already decided that all of these factors favor *Plaintiffs*. Order at
16 6-20. VidAngel’s Application reargues points the Court already resolved, which is
17 not a proper use of an *ex parte* Application and in any event without merit. *See*
18 *CytoSport, Inc. v. Vital Pharms., Inc.*, 617 F. Supp. 2d 1051, 1084-85 (E.D. Cal.)
19 (rejecting movant’s “attempts to repackage [previously made] arguments” as “not
20 compelling”), *aff’d*, 348 F. App’x 288 (9th Cir. 2009).²

21
22
23 ¹ As directed by the Court, Plaintiffs have posted a bond with the Clerk. Notice of
24 Filing of Preliminary Injunction Bond (Dkt. 151); Notice of Manual Filing (Dkt.
25 152).

26 ² *See also, e.g., Bailey v. Callaghan*, No. 12-11504, 2012 WL 3134338, at *2 (E.D.
27 Mich. Aug. 1, 2012) (“Defendants’ rehashing of their previous arguments does not
28 establish more than a mere possibility of success on the merits. This factor does not
weigh in favor of granting a stay.”); *Novartis Consumer Health, Inc. v. Johnson &*
Johnson-Merck Consumer Pharms. Co., No. 00-5361 (WGB), 2001 WL 493266, at
*1 (D.N.J. Jan. 17, 2001) (defendant “offers no new circumstances to support its

1 **II. PLAINTIFFS, NOT VIDANGEL, HAVE A “STRONG LIKELIHOOD**
 2 **OF SUCCESS,” ORDER AT 8, 11**

3 VidAngel does not even attempt to make the required “*strong showing* that
 4 [it] is likely to succeed on the merits.” *Hilton*, 481 U.S. at 776 (emphasis added).
 5 VidAngel instead claims that it can show “serious legal questions,” which, as it
 6 admits, requires that it also show the “balance of hardships tips *sharply* in its favor.”
 7 App. at 5 (emphasis added). VidAngel cannot show either.³ “[S]erious questions
 8 refers to questions which cannot be resolved one way or the other at the hearing on
 9 the injunction and as to which the court perceives a need to preserve the status quo
 10 lest one side prevent resolution of the questions or execution of any judgment by
 11 altering the status quo.” See *Gilder v. PGA Tour, Inc.*, 936 F.2d 417, 422 (9th Cir.
 12 1991)).

13 To start, VidAngel cannot show that the Ninth Circuit is likely to reverse the
 14 Preliminary Injunction, which the Circuit will review with substantial deference.
 15 *Walczak v. EPL Prolong, Inc.*, 198 F.3d 725, 730 (9th Cir. 1999) (preliminary
 16 injunctions receive limited review under the abuse of discretion standard).

17 **A. VidAngel’s Family Movie Act (“FMA”) Defense Is Meritless**

18 Notwithstanding VidAngel’s continued protests, the FMA does not provide a
 19 defense to VidAngel’s illegal activity. This is clear from the statute’s plain
 20 language and its legislative history. As the Court found, “the FMA exempts only []
 21 ‘the making imperceptible’ of limited portions of a motion picture” and does not
 22 excuse it from complying with other provisions of the Copyright Act. Order at 12.

23 application for a stay [of a preliminary injunction] pending appeal,” and granting the
 24 motion would “effectively be a reconsideration and reversal” of the injunction).

25 ³ The merits and irreparable harm factors are the two “most critical,” and a showing
 26 on both is required. *Nken*, 556 U.S. at 434. For example, in *Silvester v. Harris*,
 27 which VidAngel cites, the court denied a stay, notwithstanding a finding of “serious
 28 legal questions,” because the applicant had not shown that the “balance of equities
 tips sharply in her favor.” No. 1:11-CV-2137 AWI SAB, 2014 WL 6611592, at *4
 (E.D. Cal. Nov. 20, 2014) (cited App. at 4).

1 Moreover, the FMA applies to immunize such “making imperceptible” in the course
 2 of certain transmissions only when the transmissions are made “from an authorized
 3 copy of the motion picture.” 17 U.S.C. § 110(11). It is indisputable VidAngel
 4 streams from *unauthorized* copies. The text is clear that the FMA provides no
 5 defense to VidAngel’s DMCA violation, and the only legislative history addressing
 6 this issue (from the Senate sponsor, Senator Hatch) is clear that it is “not [] a
 7 defense to a claim of violation of section 1201 that the circumvention is for the
 8 purpose of engaging in the conduct covered [by the FMA].” 151 Cong. Rec. S502
 9 (daily ed. Jan 25, 2005).

10 The Court relied on the FMA’s plain language and the legislative history in
 11 rejecting VidAngel’s FMA defense. Order at 8, 12. The questions were not close
 12 before this Court, and they will not be close before the Ninth Circuit. The fact that
 13 no other litigant has made—and thus no other court has had the opportunity to
 14 reject—VidAngel’s baseless arguments may make the questions ones of “first
 15 impression,” App. at 5, but that does not make the questions “serious.” *Cf. In re*
 16 *Flor*, 79 F.3d 281, 284 (2d. Cir 1996) (the “mere presence of a disputed issue that is
 17 a question of first impression” does not mean that a legal question presents
 18 “substantial ground for difference of opinion” for purposes of 28 U.S.C. § 1292(b));
 19 *see generally* 16 Charles Alan Wright, Arthur R. Miller, & Edward H. Cooper,
 20 Federal Practice and Procedure, § 3930 (3d ed. 2008) (“District [court] judges have
 21 not been bashful about refusing to find substantial reason to question a ruling of law,
 22 even in matters of first impression”).

23 **B. VidAngel’s Arguments Regarding *MDY Industries* Are Based On**
 24 **Attorney Rhetoric, Not Evidence**

25 VidAngel likewise has not raised “serious” questions about the potential
 26 application of *MDY Indus., LLC v. Blizzard Entm’t, Inc.*, 629 F.3d 928, 951 (9th Cir.
 27 2010). The Ninth Circuit expressly declined to decide whether the presence of
 28 actual antitrust issues would alter the application of the DMCA. Moreover, the

1 court there was considering a § 1201(a)(2) claim for trafficking in circumvention
 2 technologies, whereas VidAngel clearly violates the § 1201(a)(1) bar on the act of
 3 circumvention. This Court considered and rejected VidAngel’s reliance on *MDY*
 4 *Industries* for exactly these reasons. Order at 8. VidAngel’s “respectful”
 5 disagreement with the Court’s conclusion does not make the question close. App. at
 6 9.

7 Even if VidAngel’s reading of *MDY Industries* were correct (which it is not),
 8 VidAngel still has the burden of showing that it is likely to succeed on its copyright
 9 misuse affirmative defense (which presumably is the same as its antitrust
 10 counterclaims). *See Perfect 10, Inc. v. Amazon.com, Inc.*, 508 F.3d 1146, 1158 (9th
 11 Cir. 2007) (“once the moving party has carried its burden of showing a likelihood of
 12 success on the merits, the burden shifts to the non-moving party to show a
 13 likelihood that its affirmative defense will succeed.”). VidAngel did not even brief
 14 its misuse defense in opposing Plaintiffs’ preliminary injunction motion, let alone
 15 present and argue from evidence supporting such a defense. VidAngel relies on
 16 what is “alleged in VidAngel’s antitrust answer and counter-complaint.” App. 9.
 17 But allegations are not evidence and cannot establish that VidAngel has any chance
 18 of succeeding on this defense. *See Jones v. Loan Correspondents Inc.*, No. 14-
 19 00311-PHX-ROS, 2014 WL 12569385, at *2 (D. Ariz. Mar. 21, 2014) (“mere
 20 allegations are insufficient” to justify a preliminary injunction).⁴

21
 22
 23
 24
 25 ⁴ VidAngel claims that “Plaintiffs have taken away any legitimate alternatives to
 26 VidAngel’s current model.” App. at 9. This attorney rhetoric is contradicted by the
 27 Court’s finding that the ClearPlay model is an alternative. Order at 20. In contrast
 28 to ClearPlay, VidAngel’s “current model” is to rip Plaintiffs’ works from discs (in
 clear violation of the DMCA) and to claim that the FMA gives it full immunity from
 any liability under the DMCA or Copyright Act.

1 **C. VidAngel Failed Completely To Satisfy Its Burden Of Showing Its**
 2 **Fair Use Defense Likely Would Succeed**

3 VidAngel’s fair use defense does not raise “serious” questions. VidAngel
 4 bore the burden of showing likely success on this defense, Order at 13, and
 5 VidAngel failed to meet its burden as to even one of the fair use factors, let alone all
 6 four, *id.* at 13-16.

7 VidAngel says it intends to challenge the Court’s holding as to two of these
 8 factors (purpose and character of use and effect on the potential market for
 9 Plaintiffs’ works). App. at 10. VidAngel (1) ignores the fact that its use is
 10 commercial (which raises an un rebutted presumption of market harm), *Leadsinger,*
 11 *Inc. v. BMG Music Publ’g*, 512 F.3d 522, 530 (9th Cir. 2008); (2) repeats its legally
 12 unsupported argument that making small amounts of content imperceptible, without
 13 adding new content or commentary, makes its near-verbatim use transformative; and
 14 (3) ignores the evidence of market harm and two of the fair use factors in their
 15 entirety (nature of the works and amount and substantiality of VidAngel’s use).
 16 VidAngel’s fair use defense is not close.

17 **D. VidAngel’s Efforts To Dismiss The Irreparable Harm To Plaintiffs**
 18 **Ignore Controlling Ninth Circuit Authority**

19 Plaintiffs’ irreparable harm is clearly established and supported by evidence
 20 in the record. *E.g.*, Declaration of Tedd Cittadine (Dk.28). VidAngel cannot raise a
 21 serious legal question as to this harm and, instead, simply reiterates its “delay”
 22 argument. App. at 11-12 (repeating verbatim arguments from VidAngel’s opposition
 23 brief at 23-24). VidAngel continues to ignore the controlling Ninth Circuit authority
 24 (which this Court followed) that (1) “delay is but a single factor to consider in
 25 evaluating irreparable injury” and “courts are ‘loath to withhold relief solely on that
 26 ground,’” and (2) “tardiness is not particularly probative in the context of ongoing,
 27 worsening injuries.” *Arc of Cal. v. Douglas*, 757 F.3d 975, 990 (9th Cir. 2014).
 28 Further, this Court made a factual finding—on ample evidence that included Mr.
 Harmon’s testimony—that Plaintiffs acted “reasonab[ly] under the circumstances.”

1 Order at 19. VidAngel has made no showing to that the Ninth Circuit is likely to
2 find this Court abused its discretion in finding irreparable harm.

3 **III. VIDANGEL WILL NOT SUFFER IRREPARABLE HARM ABSENT A**
4 **STAY**

5 In a single paragraph, VidAngel tells this Court that absent a stay, it will
6 suffer hardship due to loss of its “unique market position and its market value,”
7 “serious financial loss,” and harm to its good will because “the Court’s rationale on
8 likelihood of success impugns VidAngel’s entire business model.” App. at 12.

9 First, VidAngel “cannot complain of the harm that will befall it when
10 properly forced to desist from its infringing activities.” *Triad Sys. Corp. v.*
11 *Southeastern Express Co.*, 64 F.3d 1330, 1338 (9th Cir. 1995); *see also Fox*
12 *Television Stations, Inc. v. BarryDriller Content Sys., PLC*, 915 F. Supp. 2d 1138,
13 1147 (C.D. Cal. 2012) (“Defendants have no equitable interest in continuing an
14 infringing activity.”); *Concrete Mach. Co., Inc. v. Classic Lawn Ornaments, Inc.*,
15 843 F.2d 600, 612 (1st Cir.1988) (“Where the only hardship that the defendant will
16 suffer is lost profits from an activity which has been shown likely to be infringing,
17 such an argument in defense ‘merits little equitable consideration’”); *Apple*
18 *Comput., Inc. v. Franklin Comput. Corp.*, 714 F.2d 1240, 1255 (3d Cir. 1983) (in
19 motion for preliminary injunction, district court should not consider even the
20 “devastating effect” of the injunction on the infringer’s business).

21 Second, VidAngel’s argument that the injunction will harm its “market
22 position,” because Plaintiffs are “half of the major studios in this country,” App. at
23 12, admits that its success depends on its infringing use of Plaintiffs’ popular movies
24 and television shows. VidAngel apparently fears that users will switch to services
25 that operate lawfully. As another court held in rejecting a similar argument, this
26 merely “underscores the threat [the infringing service] poses to the plaintiffs.”
27 *WPIX, Inc. v. ivi, Inc.*, 765 F. Supp. 2d 594, 621 (S.D.N.Y. 2011), *aff’d*, 691 F.3d
28 275 (2d Cir. 2012); *see also Fox Television Stations, Inc. v. FilmOn X, LLC*, 968 F.

1 Supp. 2d 134, 139 (D.D.C. 2013) (denying application to stay preliminary injunction
2 and rejecting arguments, also made by VidAngel’s counsel, that infringing service
3 would lose market share to a competitor).

4 Third, VidAngel tells the Court that a stay threatens its existence, but
5 VidAngel is telling the public something else. According to its own press release,
6 “one day after [the Court’s] decision, VidAngel hosted a launch party in Provo,
7 Utah where CEO Neal Harmon outlined an exciting path forward for the company
8 in front of hundreds of fans, investors, employees, and the media.” Ehler Decl. ¶ 9,
9 Ex. G. Mr. Harmon announced “the launch of VidAngel Studios -- something we
10 have been working on for years. Beginning in 2017, we’ll offer original family-
11 friendly content, with technical innovations that will provide a unique experience.”
12 *Id.* In a video linked in the press release, “VidAngel’s Special Announcement”
13 (also posted on Facebook), Mr. Harmon explains that VidAngel will continue to
14 offer family-friendly content, has \$10 million to fund this litigation, will start
15 producing original content in “early 2017,” and has *already* licensed three films that
16 it will stream in December. *Id.* ¶ 11, Ex. H (video *available at*
17 <https://www.youtube.com/watch?v=9bFBchSChaY>) (last visited Dec. 15, 2016).
18 *See FilmOn X, LLC*, 968 F. Supp. 2d at 138 (denying stay application and noting
19 that public still is able to “access material that is properly licensed from copyright
20 holders.”).

21 **IV. IF A STAY ISSUES, VIDANGEL WILL CONTINUE TO ADD**
22 **PLAINTIFFS’ COPYRIGHTED WORKS AND CAUSE PLAINTIFFS**
23 **IRREPARABLE HARM**

24 On the other side of the balance, the harm to Plaintiffs from VidAngel’s
25 continuing illegal activity is substantial and irreparable. “VidAngel’s service
26 undermines Plaintiffs’ negotiating position with licensees and also damages
27 goodwill with licensees.” Order at 18. VidAngel continues to feed new works by
28 Plaintiffs into its infringing system, which means the harm to Plaintiffs “will likely
only increase absent an injunction.” *Id.* at 19. Granting a stay will not preserve the

1 status quo. It will instead magnify the irreparable harm to Plaintiffs. As VidAngel's
2 infringement continues, its liability will also grow making it even less likely
3 VidAngel will be able to satisfy a large damages award.

4 VidAngel once again argues that the harms Plaintiffs face now are the same
5 as those in July 2015 and any further harm would be "marginal." App. at 13; *see*
6 *also* Opp. (Dkt. 42) at 27. But VidAngel has aggressively pursued user growth and
7 investment from July 2015 forward, all the while knowing that a preliminary
8 injunction was possible, if not unavoidable. It is precisely the harm posed by
9 VidAngel's rapid expansion—which threatens the businesses of Plaintiffs'
10 legitimate licensees and thereby Plaintiffs' relationships with them—that the
11 Preliminary Injunction is designed to avoid. VidAngel has vowed in its public
12 securities filings that "its growth will continue at a high rate" and that it will add
13 new titles "at an increasing rate" "for the foreseeable future." Pls.' Supp. RJN, Ex.
14 A (Dkt. 117-2) at RJN-9.

15 Each month VidAngel posts to its blog a list of approximately 100 "new
16 releases" that it intends to add to its service. Ehler Decl. ¶ 6, Ex. D. VidAngel's
17 "New releases coming in December, 2016" promises, among other titles, Warner
18 Bros.'s *Suicide Squad* (2016), Warner Bros.'s *Storks* (2016); Fox's *Miss Peregrine's*
19 *Home for Peculiar Children* (2016); and a number of Christmas movies including
20 Disney's *Mickey's Christmas Carol* (1983) and *Mickey's Once and Twice Upon a*
21 *Christmas* (1991 and 2004). *Id.* at Ex. D. These are just the tip of the iceberg—
22 VidAngel promises that it will "add more than three times this many movies in
23 December, but these are the ones we are definitely adding!" *Id.* VidAngel also
24 continues to use Plaintiffs' movies to market its service through Facebook
25 advertisements, including, Disney's *The BFG* (2016) and *Pete's Dragon* (2016). *Id.*
26 at ¶¶ 4-5, Exs. B, C. VidAngel is also aggressively pursuing more users. It is
27 currently offering a promotion for users to buy a \$30 VidAngel gift card and receive
28 a free Roku. *Id.* ¶ 7, Ex. E. And, VidAngel sent an email asking its users to refer

1 new users in exchange for free credit the day *after* the Preliminary Injunction issued.
2 *Id.* at ¶ 11, Ex. I. The harm to Plaintiffs will only grow as VidAngel adds more of
3 Plaintiffs’ works and more customers.

4 VidAngel argues that Plaintiffs “hope [to] effectively preclude VidAngel
5 from pursuing its case at all, or to severely handicap what is already a battle of
6 David versus several Goliaths.” App. at 13. This is disingenuous. Plaintiffs want
7 VidAngel to stop violating their rights. And VidAngel is no David. It has raised
8 \$10 million and claims that \$5 million will be devoted to litigating this case. Ehler
9 Decl. at ¶ 12, Ex. J.

10 Finally, VidAngel argues that the harms it inflicts “are equally posed by the
11 ClearPlay streaming model.” App. at 13. VidAngel, however, ignores the fact there
12 is no evidence that ClearPlay rips DVDs containing Plaintiffs’ works (thereby
13 violating the DMCA), makes unauthorized copies of Plaintiffs’ works (which
14 VidAngel does), or streams from unauthorized copies. Rather, as even VidAngel
15 concedes, ClearPlay’s DVD filters are designed to work with authorized copies that
16 users have on DVDs; and ClearPlay’s streaming filters appear to work only on
17 authorized streams from Google Play.

18 **V. THE PUBLIC INTEREST FAVORS NOT GRANTING A STAY**

19 The public interest favors upholding copyright protection. VidAngel “offer[s]
20 no reason why this Court, having found that [VidAngel violates] [P]laintiffs’
21 copyrights, should discount the object of copyright law to ‘promote the store of
22 knowledge available to the public’ by ‘providing individuals a financial incentive to
23 contribute to the store of knowledge.’” *WPIX, Inc., v. ivi, Inc.*, No. 10-7415, 2011
24 WL 1533175, at *4 (S.D.N.Y. Apr. 19, 2011) (denying motion to stay injunction of
25 similar Internet infringing service) (quoting *Salinger v. Colting*, 607 F.3d 68, 82 (2d
26 Cir. 2010)); *Apple Comput., Inc., v. Franklin Comput. Corp.*, 714 F.2d 1240, 1255
27 (3d Cir. 1983) (“[T]he public interest can only be served by upholding copyright
28

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8 Attorneys for Plaintiffs

9

10 UNITED STATES DISTRICT COURT
 11 CENTRAL DISTRICT OF CALIFORNIA
 12 WESTERN DIVISION

13

14 DISNEY ENTERPRISES, INC.;
 LUCASFILM LTD. LLC;
 15 TWENTIETH CENTURY FOX FILM
 CORPORATION and WARNER
 16 BROS. ENTERTAINMENT INC.,

17 Plaintiffs and Counter-
 Defendants,

18 vs.

19 VIDANGEL, INC.,

20 Defendant and Counter-
 21 Claimant.

Case No. 16-cv-04109-AB (PLAx)

**DECLARATION OF ROSE LEDA
 EHLER IN SUPPORT OF
 PLAINTIFFS' OPPOSITION TO
 VIDANGEL'S EX PARTE
 APPLICATION TO STAY
 PRELIMINARY INJUNCTION
 PENDING APPEAL**

Judge: Hon. André Birotte Jr.

Trial Date: None Set

22

23

24

25

26

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28

1 I, Rose Leda Ehler, hereby declare:

2 1. I am an attorney with Munger, Tolles & Olson LLP, counsel for
3 Plaintiffs in this matter. I am a member of the California Bar and am admitted to
4 practice before this Court. I have knowledge of the matters set forth below based on
5 my direct involvement in this matter. If called as a witness, I could and would
6 testify competently to the facts stated herein.

7 2. On the evening of December 12, 2016, at or around 8:00 pm PST, I
8 visited the “blog” site that VidAngel maintains with public statements by VidAngel
9 regarding this lawsuit, <http://blog.vidangel.com/category/legal/>. While on that site, I
10 read a posting from that same evening by VidAngel’s CEO, Neal Harmon, regarding
11 an “update on preliminary injunction.” In that post, Mr. Harmon stated that this
12 Court had granted Plaintiffs’ motion for preliminary injunction, and that as a result
13 VidAngel would be removing from its site the content of Plaintiffs and what Mr.
14 Harmon described as “other studios” pending VidAngel’s appeal. Mr. Harmon also
15 stated that during the time this content was down, VidAngel would be working on a
16 redesigned service, and that VidAngel had secured a content license. When I
17 revisited the website on the morning of December 13, 2016, the post that I read on
18 the evening of December 12 had been deleted and replaced.

19 3. The replacement post, which was still on VidAngel’s lawsuit “blog” as
20 of 11 a.m. today, is attached as Exhibit A. This is a true and correct copy of the
21 current post at <http://blog.vidangel.com/category/legal/>. The replacement post
22 states, among other things: “We are seeking a stay of this injunction, but if our
23 efforts fail, we will need to take down the movies of all major studios.” The
24 replacement post further states: “In the meantime, we will be finding and creating
25 family-friendly shows and movies so you can still watch quality content on
26 VidAngel. This will be a gradual process, so please be patient with us.”
27
28

1 4. Attached as Exhibit **B** is a true and correct copy of VidAngel’s
2 Facebook advertisement offering *Pete’s Dragon*, a movie released by Disney in
3 2016.

4 5. Attached as Exhibit **C** is a true and correct copy of VidAngel’s
5 Facebook advertisement offering *The BFG*, a movie released by Disney in 2016.

6 6. Attached as Exhibit **D** is a true and correct copy of VidAngel’s blog
7 post entitled “Movies Coming in December,” posted at
8 <http://blog.vidangel.com/2016/11/18/movies-coming-in-december/> (last visited Dec.
9 15, 2016). This post shows thumbnail images of the movie posters and lists the
10 movies VidAngel intends to newly offer to users in December. The post also states:
11 “We’ll add more than three times this many movies in December, but these are the
12 ones we are *definitely* adding!”

13 7. Attached as Exhibits **E** is a true and correct copy of VidAngel’s
14 Facebook promotion of its “VidAngel Gift Cards with FREE Roku!” In this
15 promotion, VidAngel offers users who purchase a \$30 VidAngel gift card a free
16 Roku device.

17 8. Attached as Exhibit **F** is a true and correct copy of a printout of
18 VidAngel’s website www.vidangel.com/browse (last visited Dec. 15, 2016), which
19 displays titles (including movie posters) of movies and TV shows that VidAngel
20 offers to stream to its users. The “browse” page groups these titles into various
21 categories that appear on the face of Exhibit F.

22 9. Attached as Exhibit **G** is a true and correct copy of VidAngel’s press
23 release dated December 14, 2016 at 8:07 ET posted on PR Newswire. The press
24 release states that “VidAngel will continue to be America’s home for family-
25 friendly content.” It also announces the “launch of VidAngel Studios – something
26 we have been working on for years. Beginning in 2017, we’ll offer original family-
27 friendly content, with technical innovations that will provide a unique experience.”
28

1 10. Attached as Exhibit H is a true and correct copy of a screenshot from
2 VidAngel’s video titled “VidAngel Special Announcement” available on YouTube
3 at <https://www.youtube.com/watch?v=9bFBchSChaY> (last visited Dec. 15, 2016).¹
4 This video contains a statement by Mr. Harmon regarding the court’s issuance of the
5 preliminary injunction, as well as his announcement of VidAngel Studios.

6 11. Attached as Exhibit I is a true and correct copy of a VidAngel user’s
7 comment on the post at <http://blog.vidangel.com/category/legal/> asking: “Wait a
8 minute, I just got a promo email about referring friends to VidAngel (like at 2:00 pm
9 on 12/13). Why are we signing up new customers when there will be no movies to
10 view?”.

11 12. Attached as Exhibit J is a true and correct copy of a news article,
12 available at [http://fox13now.com/2016/12/13/utah-based-movie-filtering-service-](http://fox13now.com/2016/12/13/utah-based-movie-filtering-service-vidangel-to-fight-injunction/)
13 [vidangel-to-fight-injunction/](http://fox13now.com/2016/12/13/utah-based-movie-filtering-service-vidangel-to-fight-injunction/) (last visited Dec. 15, 2016) reporting that VidAngel
14 would use \$5 million of the \$10 million it raised in its mini-IPO to litigate this case.

15
16 I declare under penalty of perjury under the laws of the United States that the
17 foregoing is true and correct.

18
19 Executed this 15th day of December, 2016 in San Francisco, California.

20
21 
22 _____
23 Rose Leda Ehler

24
25
26 _____
27 ¹ Plaintiffs have included a slipsheet with a true and correct copy of a screenshot of
28 the video. If the Court would prefer, Plaintiffs will submit DVDs containing copies
of these videos for the Court’s review.

EXHIBIT G

VidAngel Charts Path Forward, CEO Announces Innovative VidAngel Studios

Filtering company to continue legal fight with Hollywood by appealing preliminary injunction while rolling out its own original, family-friendly content for rabidly supportive fan base



NEWS PROVIDED BY

VidAngel, Inc. →

Dec 14, 2016, 08:07 ET

PROVO, Utah, Dec. 14, 2016 /PRNewswire/ -- VidAngel, the market-leading entertainment platform empowering users to filter language, nudity, violence, and other content from movies and TV shows, is engaged in a high-profile legal battle with Disney, Warner Bros, 20th Century Fox, and Lucasfilm. These Hollywood studios have taken legal action in an effort to gut the 2005 Family Movie Act and prevent VidAngel from lawfully empowering parents and families to filter content on modern devices in their homes.

Yesterday, Judge Andre Birotte, Jr. granted Disney's request for a Preliminary Injunction against VidAngel in the Central District of California. Today, one day after that decision, VidAngel hosted a launch party in Provo, Utah where CEO Neal Harmon outlined an exciting path forward for the company in front of hundreds of fans, investors, employees, and the media.

S.A.0810

"The legal battle for filtering is far from over," said Neal Harmon, CEO of VidAngel.

"We are seeking a stay of the injunction, and are appealing the judge's decision. But as we fight through the legal process, VidAngel will continue to be America's home for family-friendly content.

"That's why today we're announcing the launch of VidAngel Studios -- something we have been working on for years. Beginning in 2017, we'll offer original family-friendly content, with technical innovations that will provide a unique experience."

To watch the video go

to <https://www.facebook.com/VidAngel/videos/667506653433869/>.

In the video, Harmon details:

- VidAngel's path forward in a long legal battle to come, most immediately by filing a motion for a stay on the preliminary injunction.
- The launch of VidAngel Studios, an innovation offering original, family-friendly films created to be filtered on the platform.

About VidAngel

VidAngel is the market-leading entertainment platform empowering users to filter language, nudity, violence, and other content from movies and TV shows. VidAngel's success has been well documented, earning a #1 BestCompany.com user rating and making VidAngel one of the fastest growing entertainment companies in the U.S.

Contact: Press@vidangel.com

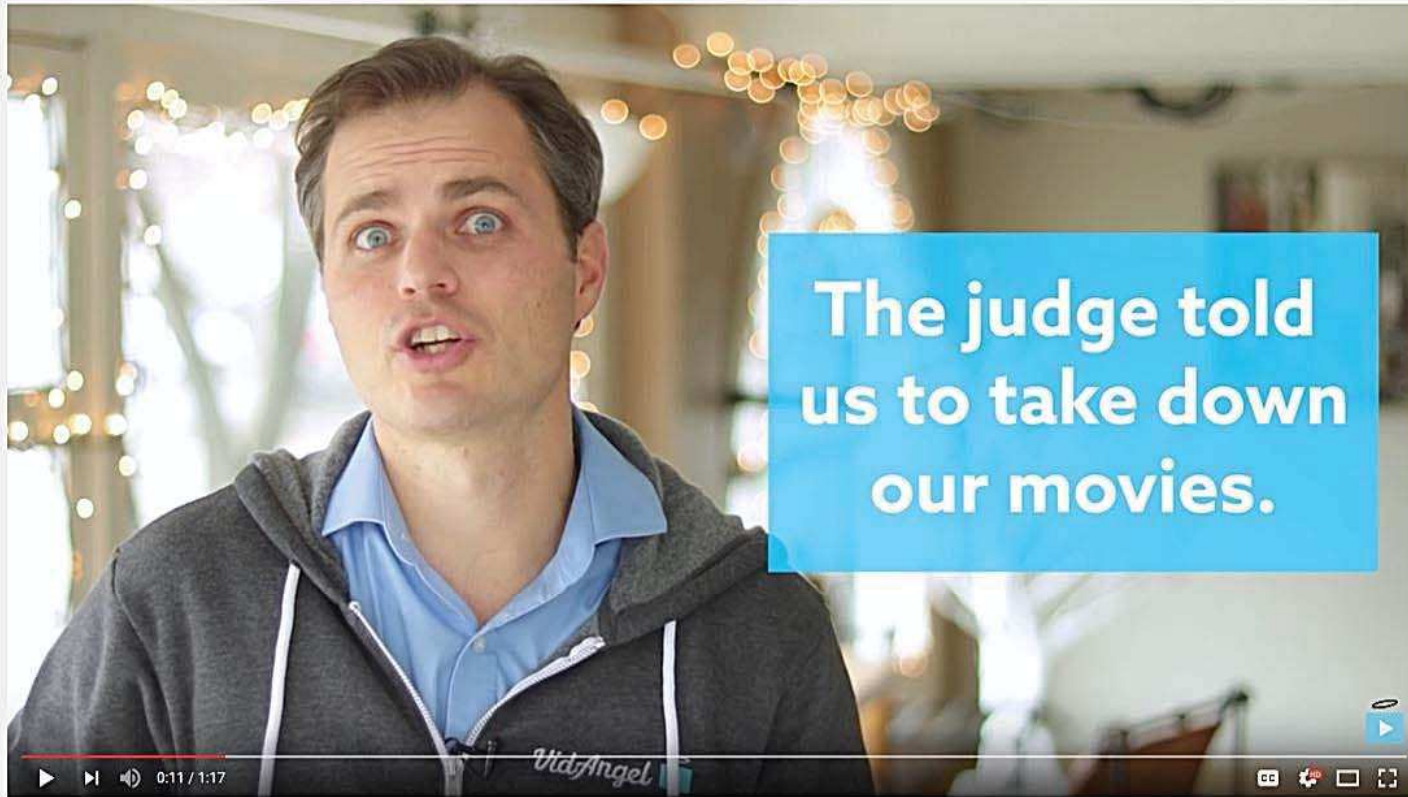
SOURCE VidAngel, Inc.



EXHIBIT H



Search



VidAngel Special Announcement

VidAngel

3,773

2,066 views

+ Add to Share More

137 1

Published on Dec 13, 2016

VidAngel will continue the legal fight for filtering, while also launching original family-friendly content.

[SHOW MORE](#)

Up next Autoplay


- Is VidAngel Legal?**
VidAngel
22,641 views
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- VidAngel's Fate in Limbo as Hearing Concludes with No Decision**
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Quartz
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VidAngel
56,651 views
7:40
- Why Game of Thrones Is the Dirtiest Show on TV?**
VidAngel
458,714 views

EXHIBIT J



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Utah-based movie-filtering service VidAngel to fight injunction

POSTED 10:48 PM, DECEMBER 13, 2016, BY TIFFANY DEMASTERS AND KIERSTEN NUÑEZ, UPDATED AT 07:28AM, DECEMBER 14, 2016

FACEBOOK 205 TWITTER REDDIT PINTEREST LINKEDIN EMAIL



PROVO, Utah -- Utah-based movie-filtering service VidAngel hit a hurdle this week after a federal judge granted a temporary injunction requested by major Hollywood studios, which blocks the company from conducting business.

VidAngel officials say this is only the beginning of the battle, which they plan to take to the Supreme Court.

While the company was hit with the injunction Monday night, Tuesday they announced they'll be launching VidAngel studios, which will create its own family-friendly content.

"The studios have a history of not wanting to play ball in the way families have asked and "It's clear to us the studios don't want this to be possible for families," Harmon said.

VidAngel raised \$5 million to launch their own studios and another \$5 million to take this issue to the Supreme Court.

The company makes it clear it's not trying to get around the law. However, arguing filtering content coming into the home is the law under the Family Movie Act of 2005.

"When you buy a book you're not required to read every page so why should you be required to listen to everything in a movie or see everything in a movie? Why can't you decide it should be edited," said David Quinto, General Council for VidAngel.

Exactly how people who use the service feel.

"They're coming after VidAngel because they say they're the ones that are editing the video when in reality it's me that's editing it. I get to choose if I don't want to watch, or if I don't want to see nudity or hear swear words," said Ogden resident Adam Aurich. Whatever the outcome, it will be big for movie-filtering companies.

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A Fired Disney Employee Reveals The Truth About 'The... Trend Chaser



What Honey Boo Boo Looks Like Today Is



What John Boy Walton Looks Like Now is



A Guide to the Best-Kept Secrets of Seattle By ARCO

Nominate Your Cool School

Big Budah visits a Cool School each week!

S.A.0815

The company is looking forward to VidAngel Studios.

“This provides a path forward for family-friendly content regardless of the outcome of the lawsuit but ultimately because our customers have given us the funds to fight this we believe we will ultimately prevail,” Harmon said.

Company officials say this injunction is a bump in the road. The company says three movies from VidAngel studios will be released this month.

FILED IN: [NEWS](#)
TOPICS: [VIDANGEL](#)

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Nike Internationalist Mid Leather

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10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12 WESTERN DIVISION
13

14 DISNEY ENTERPRISES, INC.;
LUCASFILM LTD. LLC;
15 TWENTIETH CENTURY FOX FILM
CORPORATION and WARNER
16 BROS. ENTERTAINMENT INC.,

17 Plaintiffs and Counter-
Defendants,

18 vs.

19 VIDANGEL, INC.,

20 Defendant and Counter-
21 Claimant.

Case No. 16-cv-04109-AB (PLAx)

**REDACTED VERSION OF
DOCUMENT PROPOSED TO BE
FILED UNDER SEAL**

**SUPPLEMENTAL DECLARATION
OF ROBERT SCHUMANN IN
SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY
INJUNCTION**

Judge: Hon. André Birotte Jr.
Date: October 31, 2016
Time: 10:00 a.m.
Crtrm.: 4

Trial Date: None Set

1 I, Robert Schumann, declare as follows:

2 1. I have personal knowledge of the facts set forth herein, except as to
3 those stated on information and belief and, as to those, I am informed and believe
4 them to be true. If called as a witness, I could and would testify competently to the
5 facts stated herein.

6 2. I submit the following supplemental declaration on behalf of Plaintiffs
7 in the above-referenced action. In addition to the materials listed in my declaration
8 of August 22, 2016, I have reviewed the declarations of Sigurd Meldal and Neal
9 Harmon; the deposition transcript of Tedd Cittadine; and VidAngel's Opposition to
10 Plaintiffs' Motion For Preliminary Injunction. I also have reviewed the other
11 documents identified in Exhibit A hereto and any other documents referenced in this
12 Supplemental Declaration or in my August 22 Declaration.

13 **Dr. Meldal Agrees That CSS, AACS And BD+ Prevent Access To, And**
14 **Copying Of, Content On DVDs And Blu-Ray Discs**

15 3. As I explained in my August 22 Declaration, CSS, AACS and BD+ use
16 a combination of encryption and authentication measures to prevent unauthorized
17 access to or copying of the encrypted content on DVDs and Blu-ray discs. *See*
18 Schumann Decl. ¶¶ 20-34. These mechanisms are designed to ensure that the
19 content on a protected disc will be played only by authorized DVD and Blu-ray
20 players that have the necessary "keys" to decrypt the encrypted content and the
21 required credentials to authenticate the player to the disc drive. Absent the
22 introduction of illegal circumvention technology, DVD and Blu-ray players have
23 those keys and credentials only if they are licensed by the relevant licensing
24 organization, such as the DVD Copy Control Association ("DVD CCA") in the case
25 of CSS; or the Advanced Access Content System Licensing Administrator ("AACS
26 LA") in the case of AACS.

27 4. Although licensed players can decrypt content on discs protected by
28 CSS, AACS or BD+ during playback, licensed players *cannot* decrypt the content

1 on an encrypted disc to allow *copying* of that content. CSS, AACS and BD+ thus
2 ensure that a licensed player will enable the contemporaneous decryption of the disc
3 and playback of content on that viewer. CSS, AACS and BD+ do not otherwise
4 allow for access to that content, including access that would allow the user to copy
5 the content without encryption. In other words, if a user somehow were able to
6 bypass or remove the measures that prevent access and copying, the content still
7 would be encrypted, meaning that the user could not view the content, convert it to a
8 different format or edit that content. The user would need to decrypt the content in
9 order to carry out any of those processes.

10 5. Dr. Meldal agrees with my conclusion that CSS, AACS and BD+ use a
11 combination of encryption and authentication to prevent unauthorized access to the
12 content on DVDs and Blu-ray discs. *See* Meldal Decl. ¶¶ 9-10 (stating that he
13 “agree[s] with [Mr. Schumann’s] descriptions of how CSS, AACS and BD+ each
14 function” and that “[b]y definition, it is impossible to access, view, copy or alter in
15 any way a motion picture contained on an encrypted digital disc without first
16 unlocking the encryption”). He also agrees that, in the absence of software that
17 removes or bypasses the encryption (software that is, as I discuss below, illegal),
18 CSS, AACS and BD+ would prevent the ordinary consumer from copying or
19 otherwise gaining access to the content on encrypted DVDs or Blu-ray discs. *Id.* at
20 ¶¶ 9-10, 12.

21 **Dr. Meldal Agrees That VidAngel Decrypts The Encrypted Content On DVDs**
22 **And Blu-ray Discs**

23 6. As I explained in my August 22 Declaration, because VidAngel uses
24 DVDs and Blu-ray discs to obtain the copies of Plaintiffs’ works that VidAngel
25 streams, VidAngel must first use illegal software to decrypt the encrypted content
26 on the discs in order to allow it to create digital copies of that content (a process
27 generally referred to as “ripping”) and convert it to a useable format. At his
28 deposition, Mr. Harmon described this process as “open[ing] a decrypted version of

1 the files,” and he confirmed that, to complete the process, VidAngel “use[s] a
2 program [it] purchas[ed] called AnyDVD HD.” Ex. B (Tr. 64:6-8). VidAngel’s
3 Director of Technology described VidAngel’s process for decrypting and copying
4 the content on encrypted DVDs even more bluntly: [REDACTED]

5 [REDACTED] See Schumann Decl. Ex. D.

6 7. Dr. Meldal’s declaration confirms that VidAngel accesses and copies
7 content from DVD and Blu-ray discs by using a “software program such as
8 AnyDVD HD.” Meldal Decl. ¶ 37(ii). Dr. Meldal states that VidAngel uses such
9 software “to automatically allow read-access for the purpose of mounting the DVD
10 or Blu-ray files for uploading onto a computer, in the process necessarily removing
11 restrictions on DVD or Blu-ray content access.” *Id.* That is a technical way of
12 saying that VidAngel uses AnyDVD HD and similar products to decrypt the
13 encrypted content on DVDs and Blu-ray discs, so that VidAngel can access the
14 content on those discs and copy that content onto VidAngel’s computer system
15 and/or servers in a usable format. As I have discussed, that is copying that CSS,
16 AACSS and BD+ would prevent in the ordinary course of their operation.

17 8. AnyDVD HD is software that, without authorization from copyright
18 owners or the licensing organizations for CSS, AACSS or BD+, removes or bypasses
19 the encryption measures on DVDs and Blu-ray discs.

20 9. AACSS and BD+ are continually updated in response to software such
21 as AnyDVD HD. In turn, the developers of the unauthorized software will
22 frequently develop new techniques for bypassing the updated protection mechanism.
23 This in essence is a constant process of “cat-and-mouse” between the authorities that
24
25

26 ¹ In this context, [REDACTED] is simply the process of combining multiple files that
27 have been ripped off of a DVD or Blu-ray disc (for example, the audio and video
28 files).

1 license AACS and BD+, and people and entities determined to bypass those
2 protection measures.

3 10. AnyDVD HD enables its customers to receive updates to its illegal
4 circumvention software through an online database. When a customer like
5 VidAngel “buys” AnyDVD HD, that customer is not receiving a one-time product,
6 such as a software file on a computer disc. The customer instead is paying for a
7 subscription, which provides access to whatever is the most up-to-date version of
8 the illegal software. The customer then can use the updated software to circumvent
9 AACS and BD+ on new titles as they are released on Blu-ray discs.

10 11. Dr. Meldal describes AnyDVD HD as “readily available software” that
11 is “easily accessible, despite the fact that much of that software is no longer readily
12 sold in the United States.” Meldal Decl. ¶ 12. Dr. Meldal neglects to mention,
13 however, the reason why such programs are generally unavailable in the United
14 States: They are widely recognized to be illegal ripping software, the sale and
15 distribution of which I understand to be prohibited under the DMCA.

16 12. AnyDVD HD is currently sold by an entity called RedFox, which
17 operates from Belize. *See* Ex. C (screenshot of RedFox page discussing its
18 products, including AnyDVD HD, showing its URL as “www.redfox.bz”). RedFox
19 is a successor to the company SlySoft, which was shut down in February of this
20 year, and which previously sold AnyDVD HD.² During its existence, SlySoft
21 operated from Antigua and Barbuda.

22 13. SlySoft was included—along with sites like ThePirateBay.se and
23 Rapidgator.net—in the Office of United States Trade Representative’s (“USTR”)
24 2013 Out-of-Cycle Review of Notorious Markets, which “identifies select online
25

26 ² *See, e.g.*, ArtsTechnica, “DRM Defeaters Defeated? Slysoft Ceases Operations,”
27 *available at* <http://arstechnica.com/tech-policy/2016/02/drm-defeaters-defeated-slysoft-ceases-operations/>.
28

1 and physical marketplaces that reportedly engage in and facilitate substantial piracy
2 and counterfeiting.” Ex. D at 27. The USTR selects websites for inclusion “both
3 because they exemplify concerns about trademark counterfeiting and copyright
4 piracy on a global basis and because the scale and popularity of these marketplaces
5 can cause economic harm to U.S. and other IPR holders.” *Id.* The USTR report
6 described SlySoft as a company that “sells software that removes region coding and
7 other technological protection measures from optical disks so that they can be
8 viewed and copied without authorization of copyright holders.” *Id.* at 34.

9 14. In 2014, the owner of SlySoft, Giancarla Bettini, was found guilty in
10 Antigua of criminally violating that country’s anti-circumvention law.³

11 15. On February 5, 2016, shortly before SlySoft was shut down, AACS LA
12 requested that the USTR add Antigua and Barbuda as a priority watch country under
13 Section 182 of the Trade Act of 1974 for its “failure to provide adequate remedies to
14 enforce its prohibition on circumvention of technological protections measures.”
15 *See* Ex. E at 46. AACS LA noted that SlySoft’s AnyDVD HD program is “the best
16 known, and to [AACS LA’s] knowledge the most widely used, program for
17 circumventing implementations of AACS Technology and gaining access to the
18 motion picture content protected by [AACS].” *Id.* at 47.

19 16. Dr. Meldal and I agree that, if VidAngel did not use AnyDVD HD or
20 similar products to decrypt DVDs and Blu-ray discs, VidAngel would be not have
21 the ability to: (a) copy the unencrypted digital content from encrypted discs;
22 (b) upload the content onto VidAngel’s internal computer system or third-party
23 servers; (c) convert that content to a format that facilitates streaming; or (d) stream it
24
25

26 ³ *See, e.g.*, DigitalDigest.com, “SlySoft Owner Found Criminally Guilty For Making
27 Blu-ray Ripper,” *available at* [http://www.digital-digest.com/news-63893-Slysoft-
28 Owner-Found-Criminally-Guilty-For-Making-Blu-ray-Ripper.html](http://www.digital-digest.com/news-63893-Slysoft-Owner-Found-Criminally-Guilty-For-Making-Blu-ray-Ripper.html).

1 over the Internet. VidAngel takes all of these actions to operate its streaming
2 service.

3 17. Dr. Meldal states that decryption is necessary for VidAngel to filter
4 content obtained from DVDs and Blu-ray discs. *See* Meldal Decl. ¶ 18. It is
5 fundamental, however, that decryption is necessary for VidAngel to *stream* the
6 content that it rips from DVDs and Blu-ray discs. If VidAngel did not decrypt using
7 illegal circumvention software, VidAngel would not be able convert the protected
8 content into the viewable digital copies that VidAngel uses to stream performances
9 to its customers.

10 18. Dr. Meldal states that he finds VidAngel’s use of AnyDVD HD and
11 similar software to be analogous to the “unlocking” of encryption that occurs when
12 a licensed player is used to lawfully view a DVD or Blu-ray disc. Meldal Decl.
13 ¶ 40. Both processes involve decryption, but they are not equivalent. As I have
14 described above, an authorized DVD or Blu-ray player decrypts a DVD or Blu-ray
15 disc during playback pursuant to a license from the relevant licensing organization.
16 Decryption occurs with authorization and at the same time that the disc is played; no
17 permanent, decrypted copy of the content is made as part of the authorized
18 playback. CSS, AACS and BD+ are specifically designed to *allow* such authorized
19 decryption, while otherwise preventing access to the digital content on the protected
20 disc.

21 19. VidAngel, by contrast, uses illegal ripping software to bypass CSS,
22 AACS and BD+ protection in order to create an unencrypted, permanent digital
23 copy of the content on the disc. I understand that the CSS, AACS and BD+
24 licensing terms do not authorize this type of access. Licensed disc players are
25 specifically designed to prevent—and, in the ordinary course of their operation, do
26 prevent—users like VidAngel from copying unprotected digital content from discs,
27 manipulating that content and streaming it over the Internet.

28

1 20. I therefore disagree with Dr. Meldal that “[i]t is inherent in the
2 decryption process that a local version of the unlocked content be created—be it in
3 memory or storage.” *Id.* ¶ 20. While it is true that licensed CSS, AACS and BD+
4 implementations must decrypt content, that decrypted content must be placed into
5 protected memory, cannot be maintained in that memory for longer than necessary
6 to affect the playback, and represents a minor fraction of the overall content at any
7 point in time. In short, licensed CSS, AACS, and BD+ implementation are allowed
8 to maintain ephemeral snippets of the content in the clear. They are specifically NOT
9 allowed to put it in “other storage” as Dr. Meldal states. As a result, a primary
10 purpose of using illegal ripping software is that, in the ordinary course of their
11 operation, CSS, AACS and BD+ use encryption, among other measures, to prevent
12 access to and copying of content contained on DVDs and Blu-ray discs. People use
13 AnyDVD HD and similar software precisely so that the content on the disc will be
14 stripped of its protective layers and copied to another medium without protection.

15 **Dr. Meldal Agrees That VidAngel Creates Digital Copies Of The Content On**
16 **Blu-ray Discs And DVDs And Uploads That Content Onto Computer Servers**

17 21. My review of Dr. Meldal’s Declaration confirms my original opinion
18 about how VidAngel works. Dr. Meldal uses highly technical terms in his
19 declaration. The process that Dr. Meldal describes is quite straightforward:
20 (a) VidAngel purchases a copy of a movie on DVD or Blu-ray disc (I use “movie”
21 in this Declaration to refer to motion pictures and television programs contained on
22 DVDs or Blu-ray discs); (b) VidAngel inserts a copy of the disc into the optical
23 drive of a computer; (c) AnyDVD HD (or a similar ripping program) runs in the
24 background, decrypting the contents of the encrypted disc; (d) VidAngel copies the
25 content of the disc; (e) VidAngel uploads the digital copy of the content onto
26 computer servers; (f) VidAngel prepares the content for filtering and converts it into
27 the proper format for HTTP Live Streaming (“HLS”); and (g) VidAngel streams the
28 content from a copy of the movie that VidAngel has uploaded to and stored on the

1 computer servers, not from the original DVD or Blu-ray disc. *See* Meldal Decl.
2 ¶ 37.

3 22. Dr. Meldal’s declaration also confirms my original understanding of
4 how VidAngel’s filtering technology works. *See id.* VidAngel streams content to
5 its customers over the Internet via HLS. HLS works by dividing a movie into short
6 segments (generally, no more than ten seconds in length) that the user’s computer
7 then requests, in the correct order, to play the movie. VidAngel’s filtering
8 technology allows it to “tag” segments as containing particular types of content that
9 the user may want to filter. The user then selects which filters to apply.

10 23. When a user chooses to filter a certain type of visual content, such as a
11 fight between two characters, VidAngel’s technology causes the user’s computer not
12 to obtain the stream of the segment that includes that particular piece of visual
13 content. That segment is skipped and never streamed to the user. If a user chooses
14 to filter audio content, VidAngel’s technology creates an *altered* segment that mutes
15 the audio content while leaving the visual content unchanged. The user’s computer
16 then downloads the altered segment, rather than the original segment.

17 24. Dr. Meldal does not dispute that VidAngel [REDACTED]
18 [REDACTED].

19 25. While I agree with Dr. Meldal about how VidAngel’s service operates,
20 I disagree with his conclusion that “VidAngel’s service does not even make a ‘copy’
21 of the original motion picture in any traditional sense.” Meldal Decl. ¶ 38. Based
22 on my review of Dr. Meldal’s declaration, Mr. Harmon’s deposition and VidAngel’s
23 documents, it is my professional opinion that VidAngel makes and stores at least
24 *four* different, digital copies of each work that it offers to its users. Those copies are
25 stored on the third-party servers that VidAngel leases and are streamed to
26 VidAngel’s customers over the Internet.

27 26. Mr. Harmon, for example, testified at his deposition that in order to
28 provide filtering, VidAngel must “make a copy of the M2TS files—or the MPEG 2

1 files” on the discs, and must “make a copy of the disc.” “M2TS” and “MPEG 2” are
2 merely different formats for storing audio-visual content. *See* Ex. B (Harmon Dep.
3 60:4-21). When Mr. Harmon refers to copying the “MPEG 2” and “M2TS” files, he
4 is referring to making a digital copy of the movie content on a DVD or Blu-ray disc
5 (after that content has been decrypted using AnyDVD HD).

6 27. Dr. Meldal similarly refers to copying the content on discs and
7 uploading that content onto third party servers. Meldal Decl. ¶ 37.⁴ That content is
8 ultimately converted into a different format that facilitates HLS streaming.
9 According to Dr. Meldal, VidAngel creates at least four copies of the movie in that
10 format, each at a different “bitrate.” *Id.* ¶ 37(vi)(a).⁵

11 28. Because, as I noted above, HLS operates by dividing content into short
12 segments, which are then downloaded by the customer’s computer and displayed to
13 the costumer in the correct order, VidAngel may not store the digital copies of
14 Plaintiffs’ works as a single file. Rather, at least according to Dr. Meldal’s
15 declaration, *see* Meldal Decl. ¶ 37(b), VidAngel appears to store that content in
16 segments. That the digital copies of the movies may be stored in segments,
17 however, does not mean that they are not copies. It is simply an artifact of how
18 streaming works. If one were to put all of the segments together, one would have
19 the entire movie, and in fact this is exactly what happens when a VidAngel user
20 “views” a movie. Further, these digital copies are the ones that are streamed to the
21
22

23 ⁴ Dr. Meldal refers to copying “Matroska” files. As relevant here, “Matroska” is
24 simply a particular format for digitally storing audio or visual content—in this case,
25 the audio or visual content contained in the Matroska files *is* the digital copy of the
26 movie that VidAngel has ripped from a DVD or Blu-ray disc.

27 ⁵ “Bitrate” is a term that refers to the amount of data allocated to represent the
28 content in its compressed form, typically on average and typically described as bits
per second. Generally, files with higher bitrates allow for higher quality streaming.

1 user: The user's computer requests each segment from VidAngel's servers and plays
2 them in order.

3 29. Dr. Meldal states that VidAngel's technology "does not create any
4 watchable copy of Plaintiffs' works" and notes that "a user can view the contents of
5 each segment [of a movie] only after it has been streamed in sequence, decrypted
6 with the correct keys . . . and rendered with a VidAngel media player." Meldal
7 Decl. ¶ 38. The fact that VidAngel places encryption on the segments it streams
8 does not mean that VidAngel has not copied the movie. The content on DVDs and
9 Blu-ray discs is also encrypted, and cannot be viewed absent decryption. But that
10 does not mean that DVDs and Blu-ray discs do not contain copies of movies.

11 **It Is Possible To Run A Filtering Service Without Circumventing The**
12 **Technological Protection Measures On DVDs And Blu-Ray Discs**

13 30. I understand that VidAngel has argued that it is impossible to run a
14 service that filters streamed movies without using an illegal ripping product such as
15 AnyDVD HD to decrypt DVDs and Blu-ray discs. I disagree with that contention.

16 31. Dr. Meldal himself makes clear that at least one company, ClearPlay,
17 provides filtering without circumvention. *See* Meldal Decl. ¶ 15. Dr. Meldal states
18 that ClearPlay operates by selling a special DVD player that allows customers to
19 apply filters when watching content on DVDs that they have lawfully obtained.
20 ClearPlay's DVD player could not function unless it decrypted the content on DVDs
21 during playback. Dr. Meldal, however, states that ClearPlay has lawfully obtained
22 from DVD CCA the CSS "keys" that allow decryption during playback. Assuming
23 that ClearPlay's DVD Player is properly licensed by the DVD CCA, then that player
24 is *authorized* to decrypt the content on DVDs during playback. I am not aware of
25 any evidence that ClearPlay uses illegal ripping software to remove CSS protections
26 from DVDs without authorization.

27
28

1 32. Dr. Meldal focuses on ClearPlay’s DVD player but, based on my own
2 investigation,⁶ I understand that ClearPlay also operates a streaming service that
3 allows users to filter content that they have lawfully obtained from Google Play
4 (which I understand to be an authorized licensee of Plaintiffs’ movies and television
5 content). I further understand that ClearPlay allows users to stream filtered content
6 to their computers or, through devices such as Apple TV or Google’s Chromecast
7 device, to their televisions. *See* Bennett Decl. Ex. A (ClearPlay streaming FAQ).
8 Because ClearPlay works on top of the stream that a user has lawfully obtained from
9 Google Play, I have no reason to believe that ClearPlay decrypts any encrypted
10 content without authorization.

11 **That VidAngel Uses Encryption In Conjunction With Its Streaming Service**
12 **Does Not Mean That Plaintiffs’ Content Is Secure**

13 33. Dr. Meldal states that the copies of Plaintiffs’ works that VidAngel
14 stores on third-party servers are encrypted. Meldal Decl. ¶ 37. That the content is
15 encrypted, however, does not mean that it is secure. Just as illegal technology like
16 AnyDVD HD can be used to remove encryption from DVDs and Blu-ray discs,
17 encryption can also be broken when that content is delivered via streaming. I
18 understand from reviewing the deposition of Mr. Cittadine that, [REDACTED]
19 [REDACTED].
20 *See* Ex. F (Cittadine Dep. 240:17-241:18).

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⁶ Dr. Meldal references ClearPlay’s streaming service in passing. Meldal Decl. ¶ 15, Ex. D.

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on October 3, 2016, at Reston, Virginia.



Robert Schumann

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9

10 UNITED STATES DISTRICT COURT
 11 CENTRAL DISTRICT OF CALIFORNIA
 12 WESTERN DIVISION
 13

14 DISNEY ENTERPRISES, INC.;
 LUCASFILM LTD. LLC;
 15 TWENTIETH CENTURY FOX FILM
 CORPORATION and WARNER
 16 BROS. ENTERTAINMENT INC.,

17 Plaintiffs and Counter-
 Defendants,

18 vs.

19 VIDANGEL, INC.,

20 Defendant and Counter-
 21 Claimant.

Case No. 16-cv-04109-AB (PLAx)

**REDACTED VERSION OF
 DOCUMENT PROPOSED TO BE
 FILED UNDER SEAL**

**DECLARATION OF ALLYSON
 BENNETT IN SUPPORT OF
 PLAINTIFFS' MOTION FOR
 PRELIMINARY INJUNCTION**

Judge: Hon. André Birotte Jr.

Date: October 31, 2016

Time: 10:00 a.m.

Crtrm.: 4

Trial Date: None Set

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1 I, Allyson Bennett, hereby declare:

2 1. I am an attorney with the law firm of Munger, Tolles & Olson LLP,
3 counsel for Plaintiffs in this matter. I am a member of the California Bar and am
4 admitted to practice before this Court. I have knowledge of the matters set forth
5 below based on my direct involvement in this matter or the direct involvement of
6 other lawyers at my firm. If called as a witness, I could and would testify
7 competently to the facts stated herein.

8 2. Attached as Exhibit **A** are true and correct copies of ClearPlay's
9 Frequently Asked Questions about streaming, *available at*
10 https://www.clearplay.com/t-streaming_support.aspx and a ClearPlay Letter posted
11 to its website explaining that "ClearPlay filtering works together with movies
12 streamed from Google Play." The Frequently Asked Questions document is
13 attached as Exhibit D to the declaration of VidAngel's expert, Sigurd Meldal, but
14 the attachment to the Meldal declaration is not in color.

15 3. Attached as Exhibit **B** is a true and correct copy of screenshot printouts
16 from ClearPlay's Streaming Sign-Up Page, which features a video demonstrating
17 ClearPlay's streaming product. The Video is accessible at
18 <https://try.clearplay.com/streaming-sign-up/> (last visited October 2, 2016).¹

19 4. Attached as Exhibit **C** are true and correct copies of screenshot
20 printouts from VidAngel's Facebook pages, containing user comments.

21 5. Attached as Exhibit **D** are true and correct copies of screenshot
22 printouts from VidAngel's Facebook pages, containing user comments posted since
23 the filing of Plaintiffs' Motion on August 22, 2016.

24 6. Attached as Exhibit **E** are true and correct copies of a screenshot
25 printout of the VidAngel "After Movie" survey in which VidAngel asks its users

26 _____
27 ¹ Plaintiffs have included a slipsheet with a true and correct copy of a screenshot of
28 the video. If the Court would prefer, Plaintiffs will submit DVDs containing copies
of these videos for the Court's review.

1 “Would you have watched [name of movie] without a filter?” This Exhibit also
2 attaches the correspondence from VidAngel’s counsel, Mr. Marquart, to Plaintiffs’
3 counsel, in which Mr. Marquart represents that this document is the “on-line survey
4 questionnaire Mr. Harmon referred to [in his declaration].”

5 7. To date, VidAngel has not disclosed to Plaintiffs the total number of
6 DVDs or Blu-ray Discs (“Discs”) VidAngel has purchased or the number of streams
7 it has made to users. Exhibit AA to the Declaration of Rose Leda Ehler (“Ehler
8 Decl.”) (Dkt. 30) is a document entitled [REDACTED]
9 (“Board Presentation). According to the Board Presentation, VidAngel has provided
10 at least [REDACTED]
11 since August 2015. Ehler Decl. Ex. AA at 315. At deposition, VidAngel’s CEO,
12 Mr. Harmon, testified that since January 2016, VidAngel has made between [REDACTED]
13 [REDACTED] streams. *Id.* Ex. EE Tr. 190:2-8. VidAngel also produced an
14 Excel file containing a line for each Disc VidAngel has purchased (and its inventory
15 number). The bates number for that document is D00195 but I have not attached it
16 because a printout of the file is over 1,000 pages. That Excel file contains
17 approximately [REDACTED] entries, which would correspond to [REDACTED] Discs
18 purchases as of mid-July 2016, when VidAngel stated the spreadsheet was created.
19 A conservative estimate of the ratio of streams to Discs is [REDACTED]
20 [REDACTED]. In other words, based on VidAngel’s documents and
21 information produced to date, it appears that VidAngel on average makes [REDACTED]
22 [REDACTED] streams to different users for each Disc VidAngel has purchased and
23 maintains in its inventory.

24 8. Attached as Exhibit **F** is a true and correct copy of a screenshot printout
25 from VidAngel’s Facebook page showing an advertisement for Disney’s new
26 release, *Captain America: Civil War* (2016).

27 9. Attached hereto as Exhibit **G** is a true and correct copy of a screenshot
28 printout from the Harmon Brothers’ website showing the “Team.”

1 10. Attached hereto as Exhibit **H** is a true and correct copy of
2 correspondence dated July 7, 2016, between Plaintiffs' counsel and VidAngel's
3 counsel. In that correspondence, VidAngel's counsel agreed that Plaintiffs could
4 produce a single witness to testify regarding irreparable harm matters common to all
5 Plaintiffs.

6 11. Attached as Exhibit **I** is a true and correct copy of correspondence
7 dated September 15 and 16, 2016, between counsel for VidAngel, Mr. Marquart,
8 and Plaintiffs' counsel, in which Plaintiffs' counsel requests the production of
9 underlying survey evidence.

10 12. Attached as Exhibit **J** is a true and correct copy of deposition exhibit
11 **No. 41** from the August 11, 2016, deposition of Defendants' Rule 30(b)(6) designee
12 and CEO of VidAngel, Neal Harmon.

13 13. Attached hereto as Exhibit **K** is a true and correct copy of
14 correspondence dated June 10, 2016, between Plaintiffs' counsel and Mr. Harmon
15 asking VidAngel to "stipulate to the entry of a preliminary injunction during the
16 pendency of this litigation." VidAngel considered this request until June 21, 2016
17 when VidAngel's counsel informed Plaintiffs' counsel that it would prefer to litigate
18 the issue.

19 14. Attached as Exhibit **L** is a true and correct copy of correspondence
20 dated July 5, 2016 from Plaintiffs' counsel to VidAngel's counsel regarding the
21 stipulated expedited discovery.

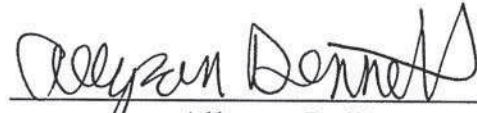
22 15. Attached hereto as Exhibit **M** are true and correct copies of excerpts
23 from the August 11, 2016, deposition of Defendants' Rule 30(b)(6) designee and
24 CEO of VidAngel, Neal Harmon.

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I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 3rd day of October, 2016 in Los Angeles, California.



Allyson R. Bennett

EXHIBIT A



SEARCH MOVIE NAME

Open 10 AM-6 PM MST. 866-788-6992 | HELP

LOGIN | ACTIVATE | SHOP

DOWNLOAD FILTERS

WHAT IS CLEARPLAY?

OUR PRODUCTS

MOVIES

Home > [ClearPlay Streaming Instructions & FAQ](#)

[ClearPlay Streaming Instructions & FAQ.](#)

How does it work?

1. Select your favorite movies to watch from our list of streaming titles (requires Google Chrome). You can pick from our [List of Movies](#) you wish to view.

2. Click "Watch Instantly" at the top of the movie page.

Watch INSTANTLY with ClearPlay Streaming

Captain America: Winter Soldier

After the events of The Avengers, Captain Rogers (aka Captain America) works for S.H.I.E.L.D., helping to keep the world safe. But there is a sinister plot growing inside of S.H.I.E.L.D., and when Nick Fury is taken out, it's up to Captain America to find the traitors and hunt down the mysterious Winter Soldier before an old enemy gets its hands on a weapon that could kill millions.

ClearPlay In Action!

ClearPlay mutes around 15 instances of language, mostly of the mild variety. There is no sexuality or nudity, but this is a grittier, more violent film than previous Marvel offerings. There are numerous beatdowns and gun battles, so things can get a little jumpy during some of the action. With ClearPlay, this would be considered for older teens and up.

Available Formats: DVD Yes

3. You will be taken to our ClearPlay Streaming Player.

CLEARPLAY

LOGIN
To your ClearPlay account.

RENT
Be sure to select the SD version.

WATCH
Enjoy the show! Click the gear to adjust your filter settings.

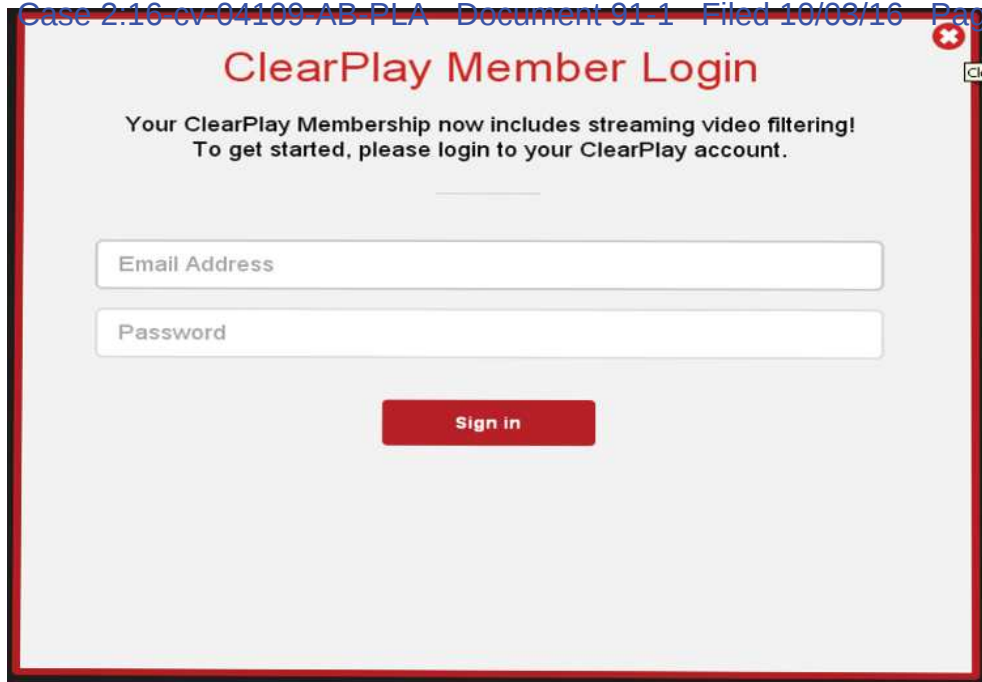
Start My Free Trial
New to ClearPlay? Click here to register and start a free trial.

I'm a Member
Already a member? Sign in to your existing ClearPlay account.

Filter Settings

4a. Log into our online streaming player with your ClearPlay account info.

S.A.0836



ClearPlay Member Login

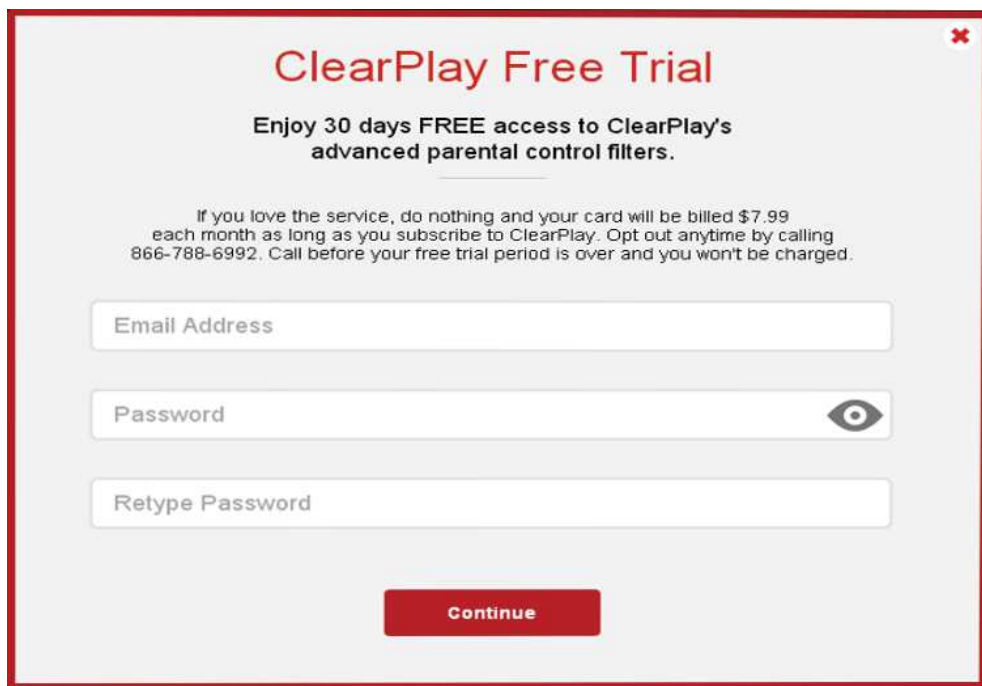
Your ClearPlay Membership now includes streaming video filtering!
To get started, please login to your ClearPlay account.

Email Address

Password

Sign in

4b. If you aren't already a ClearPlay member, you can try it free for 30 days.




ClearPlay Free Trial

Enjoy 30 days FREE access to ClearPlay's advanced parental control filters.

If you love the service, do nothing and your card will be billed \$7.99 each month as long as you subscribe to ClearPlay. Opt out anytime by calling 866-788-6992. Call before your free trial period is over and you won't be charged.

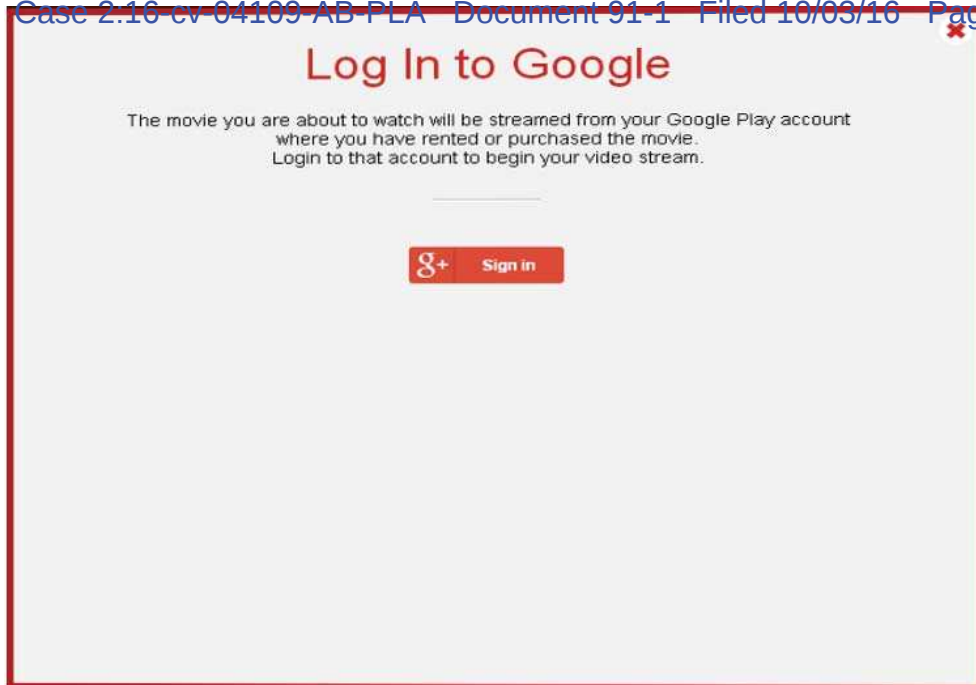
Email Address

Password 

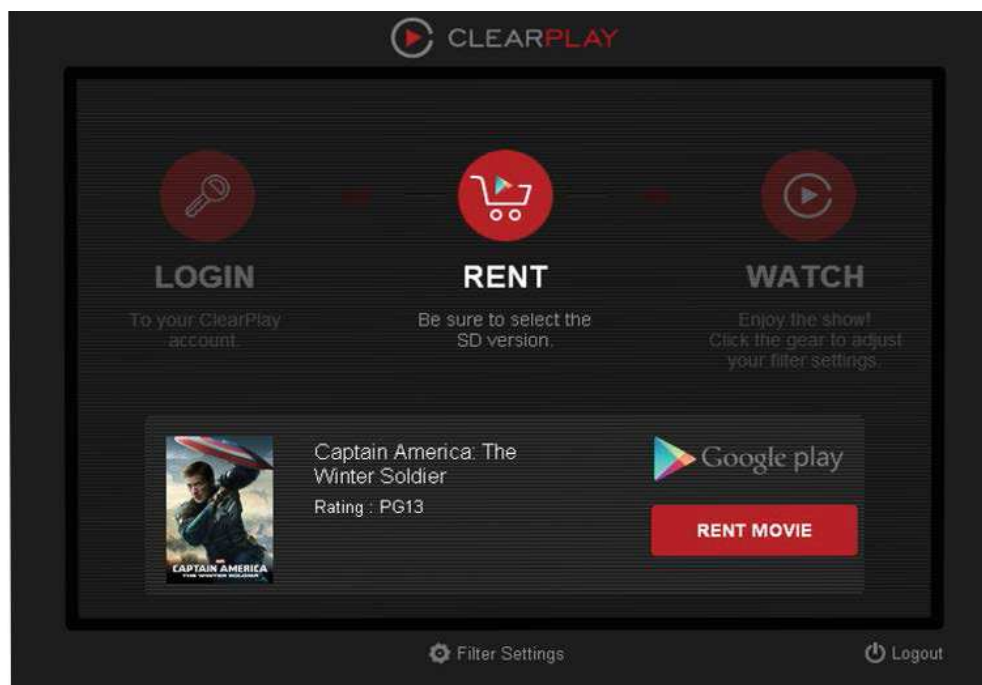
Retype Password

Continue

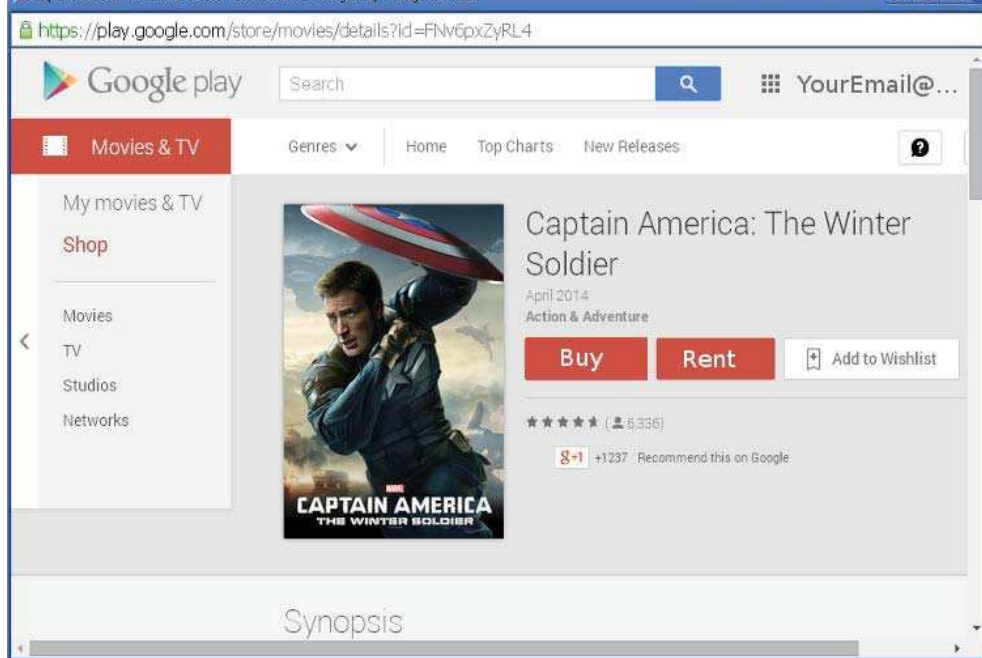
5a. We stream movies from Google Play. Log into your Google Account to confirm the rental/purchase of the movie you want to stream.



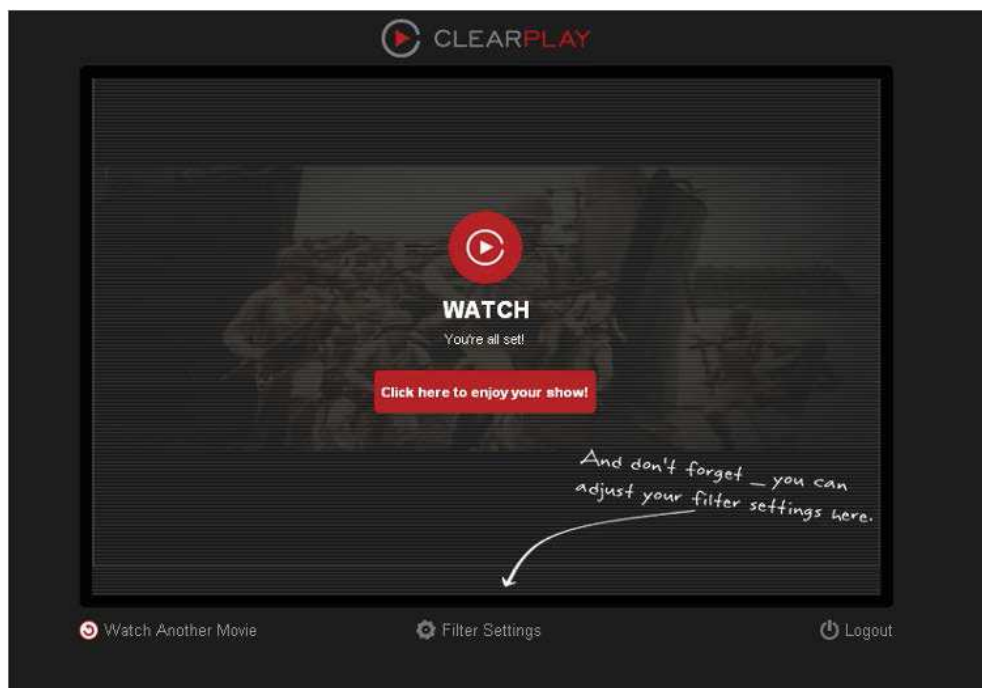
5b. If you have not rented/purchased the movie you will be asked to rent or buy the movie in a new pop up window.



5c. Confirm rental or purchase terms (rentals are available within a limited timeframe after confirmation).



6. Change your filter settings at the bottom of the screen and enjoy the show!



Enjoy The Stream!

- Does it cost extra?

Rental and purchase fees may apply but the filtering service is included free with your Clearplay membership

- Do I need the wireless FilterStik to make it work?

Nope. The FilterStik is only used for our players.

- What devices can I use to watch the movie?

Currently, Mac or PC.

S.A.0839

-Can I adjust what I want to filter out?

Of course! Before the movie starts you can adjust your filter settings below the

player window.

-Which movies can I watch?

All the movies listed on our streaming [movie list](#). (There are a lot.)

- Does this work on all streaming services?

ClearPlay Streaming works exclusively with rentals and purchases made through Google Play.

- If I watch the movie directly on Google Play will it be filtered?

No. After renting/purchasing the movie at Google Play, begin filtered playback by clicking the ClearPlay Streaming individual movie page.

- Can I use Google's Chromecast?

If you have a Chromecast then you can mirror your desktop or laptop to your TV by using the Chrome Browser "cast" feature. Be aware that we have seen some slowness with the video being playing on the TV when mirroring.

NOTE: Do not click on the "cast" icon on the ClearPlay streaming player. This will play the movie on your TV through the Chromecast but it will not be filtered."

- Can I use Apple Air Play?

If you have an Apple TV then you can use Air Play to mirror your laptop to your TV. This works natively for Safari on a Mac product. If you are on a windows platform then there are several third party software's that will mirror your laptop or desktop to your Apple TV.

- How Can I display the movie on my TV?

If you're using a laptop or desktop that has an HDMI port you can use an HDMI cable to go from your computer to the TV. There are plenty of tutorials on the web that will walk you through how to do that with your computer and Operating System. If your computer does not have an HDMI cable port you can also use cables like VGA to HDMI or DVI to HDMI, depending on how your computer is set up. You can find them on Amazon or at any electronic store.

-Why won't the movie play after renting/purchasing it?

Be sure you're using the latest version of **Google Chrome** to stream it (other browsers tend to run into caching problems). If you're experiencing problems, or really want to try a different browser, clearing your browser's cache can help. Here's how:

[Internet Explorer](#)

[Mozilla Firefox](#)

[Google Chrome](#)

[Apple Safari](#)

I cleared my browser's cache and I'm still getting an error message when I try to watch my movie.

ClearPlay filtering is applied to the movie as it streams from Google Play, so if you're running into issues your best bet is to check Google Play [support documentation](#).

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[What Is ClearPlay?](#)

[Reviews](#)

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Filtering & Streaming. Together.

Dear Friend,

"It's amazing," a friend reminded me, "that movies cost the studios umpteen million dollars to make, but only cost me a few dollars to see..."

Even more amazing is when a favorite movie inspires me, challenges me to be better, and truly entertains my whole family. Certainly not every movie accomplishes this, but when one does, it is worth every dollar!

At ClearPlay we have a favorite word. Together. ClearPlay filtering works together with movies streamed from Google Play. We launched this service during Christmas of 2013. The filtering is included in ClearPlay's \$7.99 monthly membership, and the price of a movie from Google Play ranges from \$2.99 to \$19.99. Together this is fair for everyone.

I invite you to gather the family, with the comfort and confidence that this is the legal way to filter streaming movies.

As always, Enjoy the Show!
Together.

Matt
ClearPlay CEO

A handwritten signature in blue ink that reads "Matt".

First month free.

Monthly price after free month ends: \$7.99

Join Free For A Month

S.A.0841

EXHIBIT B



ClearPlay - Filtering & Streaming. Together.

available at: <https://try.clearplay.com/streaming-sign-up/>

EXHIBIT K

MUNGER, TOLLES & OLSON LLP

560 MISSION STREET
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FACSIMILE (415) 512-4077

355 SOUTH GRAND AVENUE
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TELEPHONE (213) 683-9100
FACSIMILE (213) 687-3702

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CARY B. LERMAN
GREGORY P. STONE
BRAD D. BRIAN
BRADLEY S. PHILLIPS
GEORGE M. GARVEY
WILLIAM D. TEMKO
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JOSEPH D. LEE
MICHAEL R. DOYEN
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SUSAN E. NASH
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MARK R. SAYSON
PETER E. GRATZINGER

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RAY S. SEILIE
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JASMINE M. ROBERTS
JENNIFER A. JONES
LAURA K. LIN
JEFFREY M. OSOFSKY
GREGORY M. SERGI
ACHYUT J. PHADKE
DAVID A. TAYLOR
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JESSE MAX CREED
JOHN M. GILDERSLEEVE
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SARAH L. GRAHAM
JESSICA BARCLAY-STROBEL
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ANYA J. GOLDSTEIN
KAREN A. LORANG
KURUVILLA J. OLASA
KEVIN H. SCOTT
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HANNAH E. SHEARER
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ROSE LEDA EHLE
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NASSIM NAZEMI
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(1922-2008)

June 10, 2016

Writer's Direct Contact
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(415) 644-6917 FAX
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VIA EMAIL AND FEDEX

Neal Harmon
VidAngel, Inc.
294 N. University Ave.
Provo, UT 84601

Re: Disney Enterprises, Inc., et al. v. VidAngel, Inc., No. 2:16-cv-04109
United States District Court for the Central District of California

Dear Mr. Harmon:

We represent the Plaintiffs in the above-captioned lawsuit, which we filed yesterday against VidAngel in the United States District Court for the Central District of California. For your convenience, I have enclosed a copy of the filed complaint. We are arranging formal service on VidAngel as well.

As you know, the Plaintiffs develop, produce and distribute copyrighted motion picture content in the United States and throughout the world. Plaintiffs have exclusive rights under the Copyright Act, including to copy the works and perform them publicly. VidAngel's service is infringing those rights. It also appears that VidAngel is circumventing access-control measures on Plaintiffs' DVDs and Blu-ray discs in order to access and copy Plaintiffs' works, in violation of Section 1201 of the Digital Millennium Copyright Act. VidAngel is infringing Plaintiffs' rights in numerous works, including those on the representative list and in new works as Plaintiffs release them.

MUNGER, TOLLES & OLSON LLP

Neal Harmon
June 10, 2016
Page 2

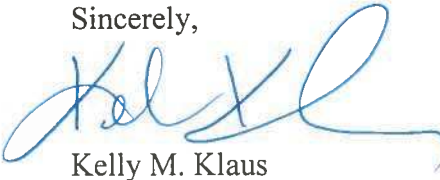
VidAngel must immediately stop its unlawful use of Plaintiffs' works. Plaintiffs would prefer for VidAngel to cease its unlawful conduct voluntarily. This would avoid having to burden the Court with a preliminary injunction motion; it also would save the parties the expense of litigating such a motion. Please let us know immediately whether VidAngel will cease its unlawful use of Plaintiffs' works and stipulate to the entry of a preliminary injunction during the pendency of this litigation.

If VidAngel will not agree voluntarily to halt its infringement of Plaintiffs' works, we will move for a preliminary injunction. If we have to move for a preliminary injunction, we would like to agree to a schedule for the parties to conduct targeted discovery and to brief such a motion.

I am sure that you will promptly retain legal counsel in connection with this lawsuit and forward this letter to them. It is imperative that your counsel contact me as soon as possible to discuss these matters. If we do not hear back from counsel representing you within the next week, we will file a request with the Court to enter a schedule for a preliminary injunction motion.

Please be advised that this letter does not waive any of the Plaintiffs' rights, all of which are expressly reserved. Thank you for your attention to this matter.

Sincerely,



Kelly M. Klaus

KMK:jl
Enclosure

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 2 KELLY M. KLAUS (SBN 161091)
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8 Attorneys for Plaintiffs

9

10 UNITED STATES DISTRICT COURT
 11 CENTRAL DISTRICT OF CALIFORNIA
 12 WESTERN DIVISION
 13

14 DISNEY ENTERPRISES, INC.;
 LUCASFILM LTD. LLC;
 15 TWENTIETH CENTURY FOX FILM
 CORPORATION and WARNER
 16 BROS. ENTERTAINMENT INC.,

17 Plaintiffs and Counter-
 Defendants,

18 vs.

19 VIDANGEL, INC.,

20 Defendant and Counter-
 21 Claimant.

Case No. 16-cv-04109-AB (PLAx)

**REDACTED VERSION OF
 DOCUMENT PROPOSED TO BE
 FILED UNDER SEAL**

**DECLARATION OF ROSE LEDA
 EHLER IN SUPPORT OF
 PLAINTIFFS' MOTION FOR
 PRELIMINARY INJUNCTION**

 Judge: Hon. André Birotte Jr.

Date: October 24, 2016
 Time: 10:00 a.m.
 Crtrm.: 4

Trial Date: None Set

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1 I, Rose Leda Ehler, hereby declare:

2 1. I am an attorney with Munger, Tolles & Olson LLP, counsel for
3 Plaintiffs in this matter. I am a member of the California Bar and am admitted to
4 practice before this Court. I have knowledge of the matters set forth below based on
5 my direct involvement in this matter or the direct involvement of other lawyers at
6 my firm. If called as a witness, I could and would testify competently to the facts
7 stated herein.

8 2. The parties agreed to exchange expedited discovery covering a number
9 of mutually agreed categories in advance of Plaintiffs' Motion for Preliminary
10 Injunction. Attached as Exhibit **A** are true and correct copies of a VidAngel Press
11 Release and various advertisements produced by VidAngel. Also included within
12 this exhibit are true and correct copies of screenshot printouts from various sites,
13 including VidAngel's website (www.vidangel.com), YouTube
14 (<https://www.youtube.com/vidangel>)¹, Facebook
15 (<https://www.facebook.com/VidAngel/>) and Twitter
16 (https://twitter.com/VidAngel/with_replies), that contain VidAngel advertisements
17 and marketing messages. In these marketing materials, VidAngel compares its
18 service with licensed legitimate on-demand streaming services and/or offers titles
19 not available on on-demand streaming services and at a lower cost than such other
20 services charge.

21 3. Attached as Exhibit **B** are true and correct copies of internal documents
22 produced by VidAngel that discuss its marketing strategy of comparing itself to
23 legitimate on-demand streaming services.

24 _____
25 ¹ Plaintiffs have included a slipsheet with a true and correct copy of a screenshot
26 from "VidAngel ad with Matt Messe from Studio C" and hyperlink to
27 <https://youtu.be/9XOjdARr87I> (last visited Aug. 21, 2016). If the Court would
28 prefer, Plaintiffs will gladly submit DVDs containing copies of these videos for the
Court's review.

1 4. Attached hereto as Exhibit **C** is a true and correct copy of a screenshot
2 printout of VidAngel’s Blog (<http://blog.vidangel.com>) containing a user comment
3 that states: “I could watch Star Wars 7 on VidAngel (only filtering one small thing)
4 for \$1 before any other video streaming service had it available. If you guys are
5 allowed to rip, stream and resell DVDs, the other streaming services will want to do
6 it too—it’s only fair.” This document bears the Bates number PL0000394.

7 5. Attached hereto as Exhibit **D** is a true and correct copy of a document
8 produced by VidAngel in response to discovery requesting documents sufficient to
9 show VidAngel’s total number of users. This document bears the Bates number
10 D02374.

11 6. Attached hereto as Exhibit **E** is a true and correct copy of an article
12 downloaded from the internet, titled “VidAngel Streaming Service: Don’t Like
13 Offensive Content in Movies? No Problem” by Jim Probasco of Benzinga. The
14 article features an interview with VidAngel CEO, Neal Harmon, in which he says
15 that, “if you charge people to use a filter, the market shrinks [from 47%] to less than
16 1% of Americans.” The document bears the Bates numbers PL0000531-33.

17 7. Attached hereto as Exhibit **F** is a true and correct copy of a printout
18 from the RedFox.bz website that explains the company was started by “former
19 SlySoft developers and staff” and an article posted on *TorrentFreak* that explains
20 that the owner of SlySoft had been “found guilty of providing tools to circumvent
21 AACS encryption.”

22 8. Attached as Exhibit **G** are true and correct copies of screenshot
23 printouts from various sites, including VidAngel’s Blog, Facebook and Twitter that
24 contain VidAngel marketing in which it highlights that it prices its service at \$1 a
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1 day. This low price is only because VidAngel does not pay licensing fees.
2 VidAngel has posted two videos to YouTube explaining its “buy-sellback” process.²

3 9. Attached as Exhibit **H** is a true and correct copy of a screenshot
4 printout from VidAngel’s Twitter page containing a user comment, asking why
5 VidAngel prices individual episodes of television series the same price as individual
6 motion pictures. VidAngel responds that they are “[w]orking on Season pricing.”
7 The document bears the Bates number PL0000341.

8 10. Attached as Exhibit **I** are true and correct copies of screenshot printouts
9 from various sites, including from Facebook, Twitter and YouTube³, containing
10 VidAngel user comments, in which the commenters extoll the benefits of VidAngel
11 as compared to other on-demand streaming services, including that VidAngel
12 streams new releases, that it has titles not available on other streaming services, and
13 that VidAngel charges a lower price than those services. Also included are press
14 and blog articles from USA Today, Benzinga and ArtofBeingCheap.com discussing
15 VidAngel as a competitor to licensed on-demand streaming services.

16 11. Attached as Exhibit **J** are true and correct copies of screenshot printouts
17 from various sites, including Facebook, Twitter, and VidAngel’s website containing
18 marketing messages promoting VidAngel’s addition of *Star Wars: The Force*
19

20 ² Plaintiffs have included a slipsheet with true and correct copies of screenshots
21 from “How \$1 Movies Work on VidAngel Sellback” and hyperlink to
22 <https://youtu.be/wvcF4x1d0xo> (last visited Aug. 21, 2016) as well as “How
23 VidAngel \$1 Movies Work in 15 Seconds” and hyperlink to
24 <https://youtu.be/map6EIP41bY> (last visited Aug. 21, 2016). If the Court would
25 prefer, Plaintiffs will gladly submit DVDs containing copies of these videos for the
26 Court’s review.

27 ³ Plaintiffs have included a slipsheet with a true and correct copy of a screenshot
28 from “VidAngel – An Honest Review” and hyperlink to
<http://youtu.be/KG7xgmDHF40> (last visited Aug. 21, 2016). If the Court would
prefer, Plaintiffs will gladly submit DVDs containing copies of these videos for the
Court’s review.

1 Awakens to VidAngel’s list of available titles on April 5, 2016, and showing that it
2 was available for streaming that day.

3 12. Attached as Exhibit **K** are true and correct copies of screenshot
4 printouts from VidAngel’s Facebook and Twitter pages, containing user comments
5 and VidAngel’s responses regarding VidAngel’s decision to remove the auto-
6 sellback feature and the credits filter.

7 13. Attached as Exhibit **L** are true and correct copies of screenshot
8 printouts from VidAngel’s Twitter page, containing user comments complaining
9 about the quality of the viewing experience on VidAngel.

10 14. Attached as Exhibit **M** is a true and correct copy of a VidAngel Blog
11 post, dated May 18, 2016, titled, “Is VidAngel’s service legal?” The document
12 bears the Bates numbers PL0000198-202.

13 15. Attached as Exhibit **N** are true and correct copies of screenshot
14 printouts from various sites, including Facebook, Twitter, and VidAngel’s Blog,
15 showing VidAngel marketing new releases, including *The Revenant* (2015),
16 *Zootopia* (2016), *Deadpool* (2016), *Kung Fu Panda 3* (2016), *Batman v. Superman:*
17 *Dawn of Justice* (2016) and *Keanu* (2016).

18 16. Attached as Exhibit **O** are true and correct copies of VidAngel Blog
19 posts, setting forth VidAngel’s response to this lawsuit. The publications include
20 advertisements for t-shirts representing the Plaintiffs as “Darth Mickey with the fox-
21 tail on the broom.” Another VidAngel Blog post describes this lawsuit as letters
22 between “pen-pals.”

23 17. Attached hereto as Exhibit **P** is a true and correct copy of a VidAngel
24 blog post and accompanying user comments that discuss the “buy-sellback”
25 transaction.

26 18. Attached hereto as Exhibit **Q** is a true and correct copy of a screenshot
27 printout from Twitter, in which VidAngel posted that filtering “nudity/graphic
28

1 violence/f-bomb” from Fox’s *Deadpool* omits only 14 minutes of total running time
2 from that motion picture.

3 19. Attached hereto as Exhibit **R** is a true and correct copy of deposition
4 exhibit **10** from the August 11, 2016, deposition of Defendants’ Rule 30(b)(6)
5 designee and CEO of VidAngel, Neal Harmon.

6 20. Attached hereto as Exhibit **S** is a true and correct copy of deposition
7 exhibit **14** from the August 11, 2016, Rule 30(b)(6) deposition of Mr. Harmon.

8 21. Attached hereto as Exhibit **T** is a true and correct copy of deposition
9 exhibit **17** from the August 11, 2016, Rule 30(b)(6) deposition of Mr. Harmon.

10 22. Attached hereto as Exhibit **U** is a true and correct copy of deposition
11 exhibit **19** from the August 11, 2016, Rule 30(b)(6) deposition of Mr. Harmon.

12 23. Attached hereto as Exhibit **V** is a true and correct copy of deposition
13 exhibit **21** from the August 11, 2016, Rule 30(b)(6) deposition of Mr. Harmon.

14 24. Attached hereto as Exhibit **W** is a true and correct copy of deposition
15 exhibit **22** from the August 11, 2016, Rule 30(b)(6) deposition of Mr. Harmon.

16 25. Attached hereto as Exhibit **X** is a true and correct copy of deposition
17 exhibit **23** from the August 11, 2016, Rule 30(b)(6) deposition of Mr. Harmon.

18 26. Attached hereto as Exhibit **Y** is a true and correct copy of deposition
19 exhibit **26** from the August 11, 2016, Rule 30(b)(6) deposition of Mr. Harmon.

20 27. Attached hereto as Exhibit **Z** is a true and correct copy of deposition
21 exhibit **27** from the August 11, 2016, Rule 30(b)(6) deposition of Mr. Harmon.

22 28. Attached hereto as Exhibit **AA** is a true and correct copy of deposition
23 exhibit **30** from the August 11, 2016, Rule 30(b)(6) deposition of Mr. Harmon.

24 29. Attached hereto as Exhibit **BB** is a true and correct copy of deposition
25 exhibit **33** from the August 11, 2016, Rule 30(b)(6) deposition of Mr. Harmon.

26 30. Attached hereto as Exhibit **CC** is a true and correct copy of deposition
27 exhibit **37** from the August 11, 2016, Rule 30(b)(6) deposition of Mr. Harmon.
28

1 31. Attached hereto as Exhibit **DD** is a true and correct copy of deposition
2 exhibit **38** from the August 11, 2016, Rule 30(b)(6) deposition of Mr. Harmon.

3 32. Attached hereto as Exhibit **EE** are true and correct copies of excerpts
4 from the August 11, 2016, deposition of Defendants' Rule 30(b)(6) designee and
5 CEO of VidAngel, Neal Harmon.

6 33. Attached hereto as Exhibit **FF** is a true and correct copy of a screenshot
7 printout from Twitter, in which a user comments: "@VidAngel and you took away
8 censoring the end credits which was an easy choice if I didn't really want to censor
9 anything!"

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1 I declare under penalty of perjury under the laws of the United States that the
2 foregoing is true and correct.

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Executed this 22nd day of August, 2016 in San Francisco, California.



Rose Leda Ehler

EXHIBIT A



WATCH MOVIES HOWEVER THE BLEEP YOU WANT

For Immediate Release

VidAngel Lets Customers Stream Filtered Movies for One BLEEPING Dollar

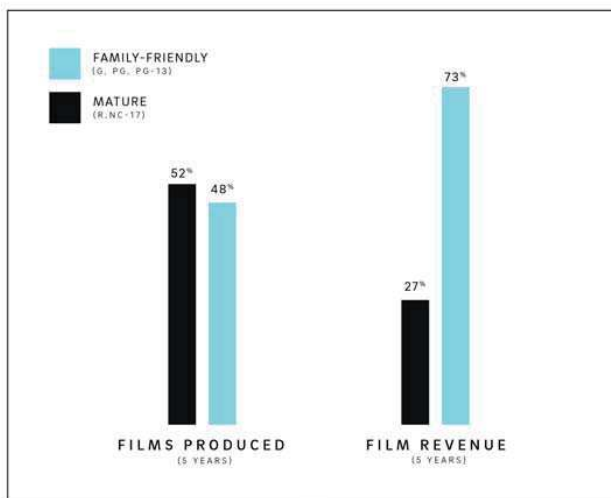
\$2.5 Million Raised in Seed Funding

SALT LAKE CITY—October 1, 2015—VidAngel allows parents to cut violence, profanity and/or nudity out of movies and TV shows for the net price of \$1 (both filter and movie included). Unlike Amazon, Google Play, and iTunes, which charge up to \$4.99 for streaming, VidAngel costs only \$1 per movie, allowing viewers to watch 5 movies for the price of 1 ([see how net \\$1 sell-back works HERE](#)). All filters are completely personalized, with customers selecting exactly what to cut from the film. The company has already raised \$2.5 million in seed funding.

VidAngel allows streaming on Apple TV, Roku, Chromecast, computer, tablet, or smartphone. It requires no subscription, no custom hardware, and no additional purchase, thus eliminating any need to run to the red-painted box at the grocery store. In addition to SD videos, HD videos are available for net price of \$2.

Over half of all movies produced are rated R or NC-17. Yet almost 3/4 of revenue is generated by family-friendly movies (G, PG, PG-13), indicating that consumers want more family-friendly content than Hollywood is currently producing. “Family-friendly films make almost 3 times the revenue as mature films,” says Neal Harmon, CEO of VidAngel. “We bridge the gap between what Hollywood wants to make and what families want to watch. The demand is incredibly high. Our sales are doubling every couple of months because individuals and families choose to cut out nudity, violence, and swearing to fit their personal preferences.”

SHORTAGE OF FAMILY-FRIENDLY CONTENT



SOURCE: BOX OFFICE MOJO REPORT HTTP://BOXOFFICEMOJO.COM/YEARLY/VIEW2-MFA&P=.HTM



WATCH MOVIES HOWEVER THE BLEEP YOU WANT

For years, Hollywood has created different cuts of their movies to reach different audiences: the studio cut for theaters, the FCC cut for airlines, the director's cut for film buffs, and the unrated cut for prurient audiences. Now VidAngel lets you create "Your Cut." But rather than unilaterally deciding what is appropriate for customers, VidAngel allows each person to choose what he or she wants to cut, according to personal preferences.

"People often ask if this is public censorship," Harmon continues. "Absolutely not. Directors have the right to create whatever kind of content they want to create. We don't endorse censorship of their content in the public sphere. But in the privacy of the home, it is the individual's legal right to watch that content in the way they choose. That right is protected by law." (Family Entertainment and Copyright Act of 2005)

VidAngel customers can choose exactly what they want to filter—such as turning off only F-words, nude scenes, or any other configuration. 50,000 users have already customized 100,000 movies, a number that will grow dramatically now that VidAngel is open for public use.

"Now you can watch movies with the kids without bad words, violence, nudity or sex scenes," states Russ Warner, past CEO for ContentWatch in Huffington Post. "Pick a movie... decide which words and scenes to remove, and then hit play! It's very simple." And setting VidAngel up is so easy, anyone can do it.

The VidAngel seed financing of \$2.5 million dollars came from institutional and angel investors including TPP Capital Advisors, early backer of Omniture; Kickstart Seed Fund; Alta Ventures; and high-profile angel investors Warren Osborn, Blu-ray packaging pioneer for Hollywood; and John Richards, former CEO of CleanFilms. The \$2.5 Million in seed funding has allowed the company to launch its public BETA of its popular and unique movie viewing service.

About VidAngel

VidAngel is founded by the Harmon brothers, who believe strongly that everyone should have the freedom to decide what to watch in their own home. Because the Harmons are movie lovers with young children, they understand the high demand for content that is both high-quality and family-friendly. They are best known for creating award winning YouTube sensations with tens of millions of viewers. They launched award winning YouTube breakthroughs like [Orapup](#), and [Poo~Pourri](#). www.VidAngel.com

Press Contact:
Dave Vance
VidAngel
208-313-7805
press@vidangel.com

From: **Dave Vance** d.vance09@gmail.com
Subject: [Blog Name] - Help Families Watch Clean Movies for \$1
Date: October 13, 2015 at 12:05 PM
To: Jordan Allen jallen@vidangel.com



Hi [name],

As you are well aware, moms everywhere are constantly trying to find clean, safe entertainment for their families. We at VidAngel.com would like to team up with [blog name] to make this possible — and give you some compensation in return.

What is VidAngel?

VidAngel.com is a streaming service similar to Netflix that allows parents to cut violence, language, and/or sex/nudity out of movies and TV shows. It allows you, as the parent, to decide exactly what your family should and should not be watching, in a totally legal way.

In addition to making movies clean, VidAngel also makes them cheap (\$1 for SD, \$2 for HD) using a sellback option described in [this video](#). *Watching a movie on VidAngel is up to 80% cheaper than watching with another service* (iTunes, Amazon Video, Google Play).

What is the VidAngel Affiliate Program?

- A VidAngel Affiliate creates an account at ShareASale.com, connects with VidAngel's profile, and uses the ads/links provided by VidAngel to send readers from their blog/site to VidAngel.com.
- A VidAngel Affiliate earns \$7 for each new customer they send our way that watches a movie from our service.

Visit our [Affiliate Program Page](#) for more information.

And if that's not enough...

We would like to offer you \$25 VidAngel credit so you can fully test the service before promoting it on [blog name].

We would love to team up with you and give families the service they've wanted for so long! Let us know what you think, and feel free to contact me with any questions!

Jordan Allen | Assistant Marketing Director
Email: jallen@vidangel.com
Phone: 801-671-3991
Check out our [new site!](#)

7/20/2016

Screen Shot 2016-07-15 at 5.01.39 PM.png

You Retweeted

 **Neal Harmon** @nealsharmon · Apr 8

First direct comparison we've had to Netflix in the media :) benzinga.com/small-business... Netflix is an amazing company.



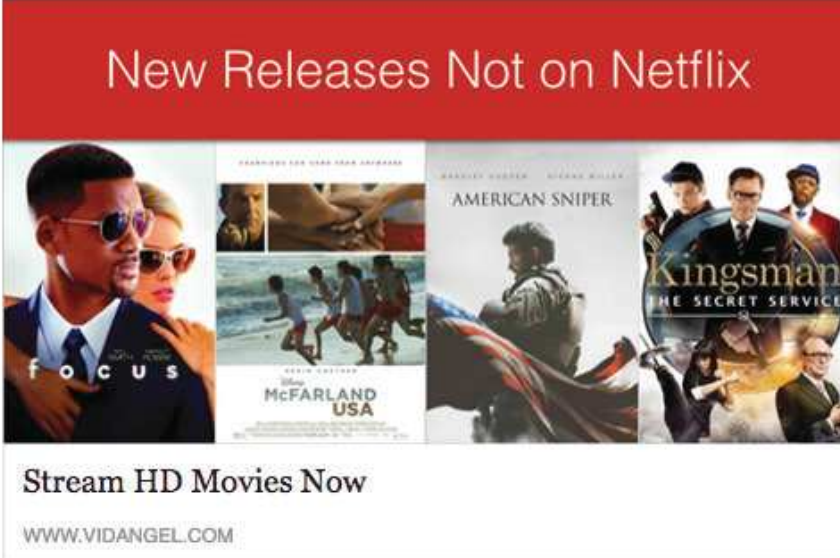
How To Watch 'Star Wars: The Force Awakens' For \$1 On A Legitimat...
There's a streaming service available that may be unfamiliar to the masses. It's not reached the societal consciousness the way Netflix, Inc. (NASD... benzinga.com

  3  8 

7/20/2016

Screen Shot 2016-07-15 at 4:56:42 PM.png

Watch newly released movies not on Netflix for just \$2 with sellback!



New Releases Not on Netflix

Stream HD Movies Now

WWW.VIDANGEL.COM

The advertisement features a red header with the text "New Releases Not on Netflix". Below the header is a row of four movie posters: "Focus" (Will Smith and Margot Robbie), "McFarland USA" (Kevin Costner), "American Sniper" (Bradley Cooper), and "Kingsman: The Secret Service" (Matthew McConaughey). Below the posters is a white box with the text "Stream HD Movies Now" and the website "WWW.VIDANGEL.COM".

<https://drive.google.com/drive/folders/0B2onm9GeBvjbdHdLcmpTN3JqYlk>

1/1


S.A.0860

EXHIBIT A

D 14629


7/20/2016

Screen Shot 2016-07-15 at 4.56.09 PM.png

 **VidAngel**
Written by Harmon Brothers [?] · January 29 ·

Stream movies NOT on Netflix for one BLEEPING dollar! (per night with sellback)

Not on Netflix



Stream Any Filtered Movie for \$1

WWW.VIDANGEL.COM [Learn More](#)

<https://drive.google.com/drive/folders/0B2onm9GeBvjbdHdLcmpTN3JqYlk>

1/1

S.A.0861

EXHIBIT A

D 14627

7/20/2016

Screen Shot 2016-07-15 at 4.55.54 PM.png



VidAngel

Written by [Harmon Brothers](#) [?] · January 29 ·

Stream movies NOT on Netflix for one BLEEPING dollar! (per night with sellback)

Not on Netflix

Stream Any Filtered Movie for \$1

WWW.VIDANGEL.COM [Learn More](#)

**VidAngel**
Sponsored · 

 Like Page

Seventh Son is now on VidAngel! Watch for only \$2 with sell back.
<https://www.vidangel.com/movies/seventh-son/>



Seventh Son in HD

iTunes: \$5.99
Amazon Instant: \$5.99
Google Play: \$5.99
VidAngel: \$2 with sell-back



Seventh Son | VidAngel

MOVIES MINUS THE BOSOMS, BLOOD & BAD WORDS. VidAngel.com - Sign up for FREE! Choose any new release or pick from 700 movies & shows. Protect your family from swearing, violence and nudity in streaming movie rentals. In a time of...

VIDANGEL.COM



Like Page

Stream Chappie in HD for less!
<https://www.vidangel.com/movies/chappie/>



Chappie | VidAngel

MOVIES MINUS THE BOSOMS, BLOOD & BAD WORDS. VidAngel.com - Sign up for FREE! Choose any new release or pick from 700 movies & shows. Protect your family from swearing, violence and nudity in streaming movie rentals. In the near...

VIDANGEL.COM



Like Page

Watch the most requested VidAngel movie of the year for just \$2 with sell back!



AMERICAN SNIPER
THE MOST LETHAL SNIPER
IN U.S. HISTORY

iTunes: \$4.99
Amazon Instant Video: \$4.99
Google Play: \$3.99
VidAngel: \$2 with sell-back

American Sniper | VidAngel

MOVIES MINUS THE BOSOMS, BLOOD & BAD WORDS. VidAngel.com - Sign up for FREE! Choose any new release or pick from 700 movies & shows. Protect your family from swearing, violence and nudity in streaming movie rentals. U.S. Navy...

VIDANGEL.COM

ViaAngel WATCH LOGIN

Watch Movies & TV However the **BLEEP** You Want

Computers TV Smart Phones

WATCH ANY MOVIE FOR \$1*

Roku Chromecast Apple TV Android Apple iPhone

”

WE'VE DONE VIDEOS. WE'VE DONE YOUR PAYBACK (S MADD II) AND YOUR SERVICE (FRIEND Y YOU HAVE A FEW CUBS GMEZ IN ME

— JOHN M —

Save on Popular New Releases

\$1 SD \$2 HD VIDAANCE	\$4.99 SD \$5.99 HD YUNES	\$4.99 SD \$5.99 HD AMAZON VIDEO	\$4.99 SD \$5.99 HD GOOGLE PLAY
------------------------------	---------------------------------	--	---------------------------------------

WATCH ANY MOVIE FOR \$1*

”

VIDAANCE SCENE © BE. HE PETS TO FU LIES OF ON IN MOVIE \$ REAMING

— BILLY M —

How Do I Watch for Just \$1 with Sellback?

- 1 BUY IT**
(you own it)
- 2 STREAM IT**
(on any supported device - even on the BLEEP you want)
- 3 KEEP IT OR SELL IT BACK**
(\$1 credit per movie with sellback*)

WATCH ANY MOVIE FOR \$1*

”

I WANT TO SEE YOU KNOW HOW MUCH I LOVE YOUR SERVICE VIDAANCE IS US BIMP Y TAN AS TO THANK YOU

— TAMMY S —

Freedom to Filter

- 1**
Movies are crowd-filtered for consistency "tagged" for (initially offensive) content so you don't have to.
- 2**
Choose your fit later. You can give it two weeks to perfectly match your personal preferences.
- 3**
Enjoy your movie however it is available.



WATCH ANY MOVIE FOR \$1*

”

I LOVE BING AS TO PICK AND CHOOSE WHAT I WANT AND HEAR

— JENNY M —

7/20/2016

image.png



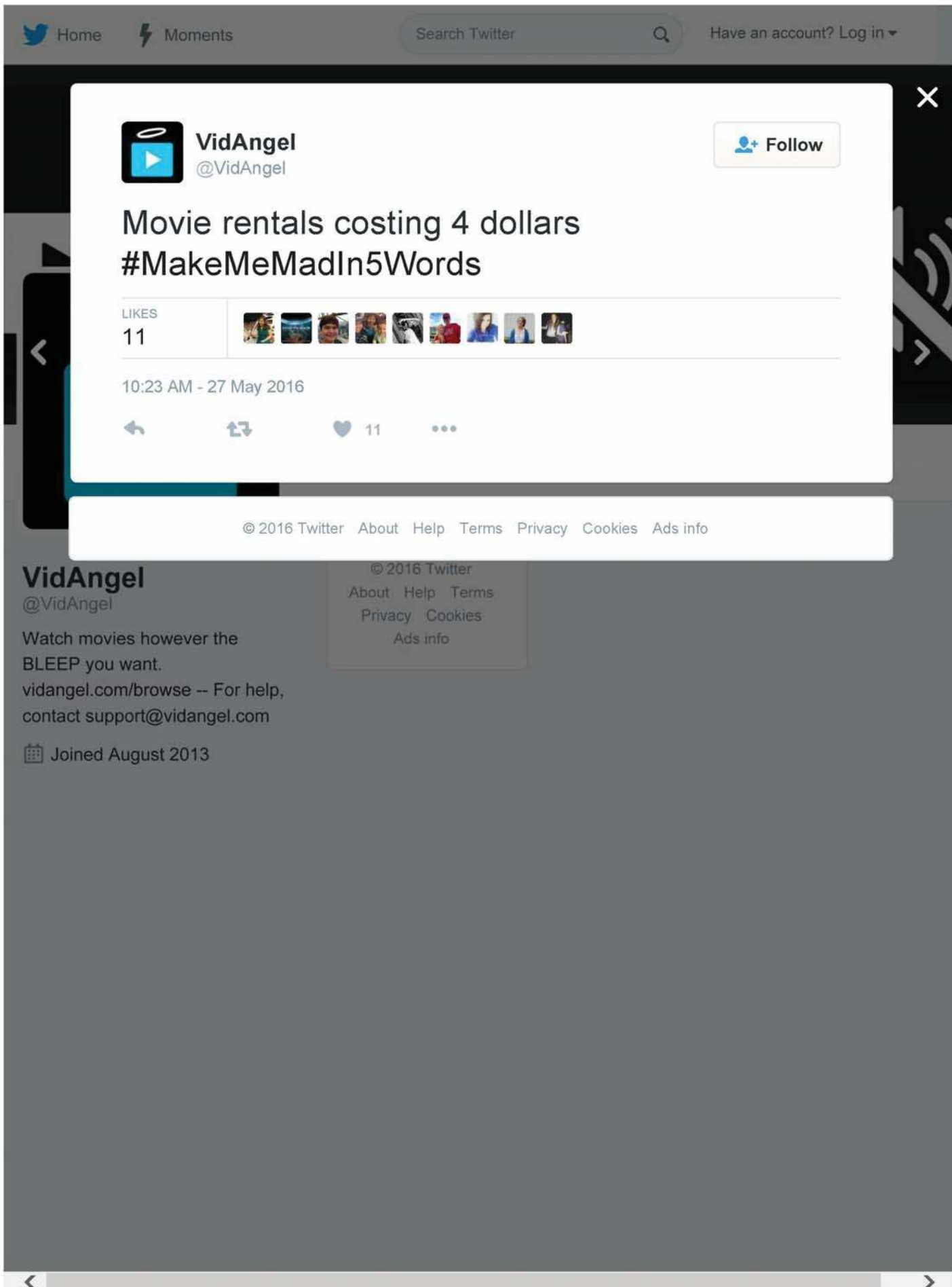
<https://drive.google.com/drive/folders/0B2onm9GeBvjbdHdLcmpTN3JqYlk>

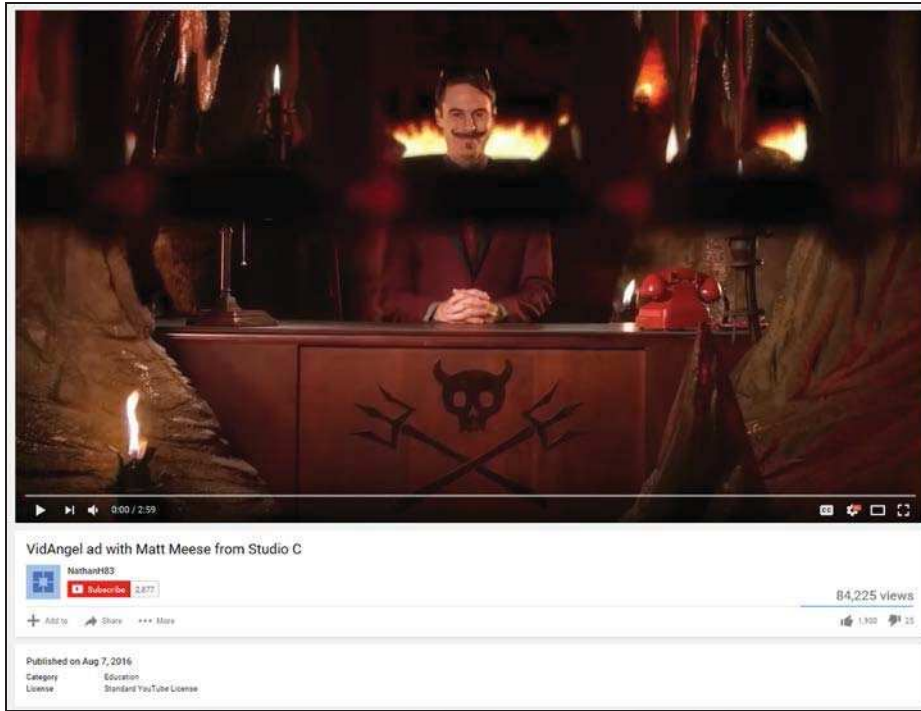
1/1

S.A.0867

D 14607

EXHIBIT A





VidAngel ad with Matt Meese from Studio C

available at: <https://youtu.be/9XOjdARr87I>

PL0000541

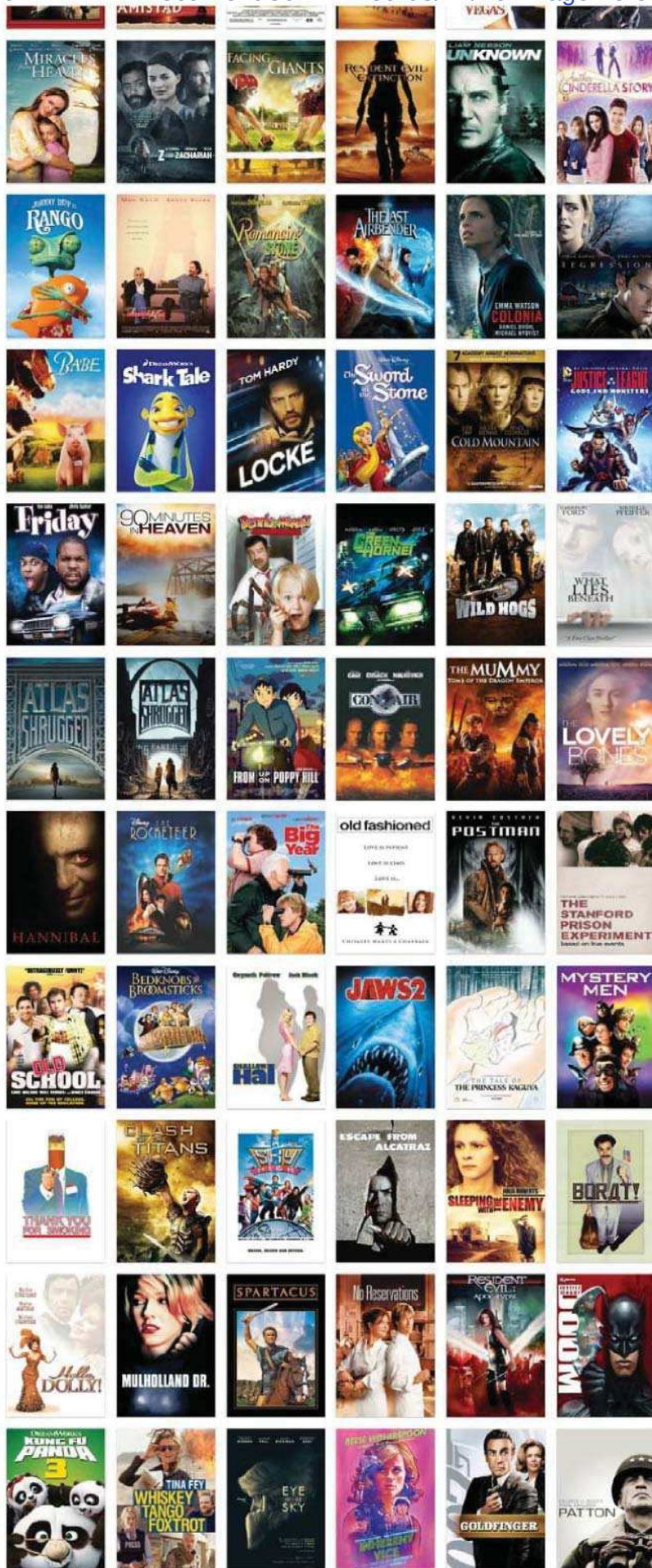
Not on Netflix



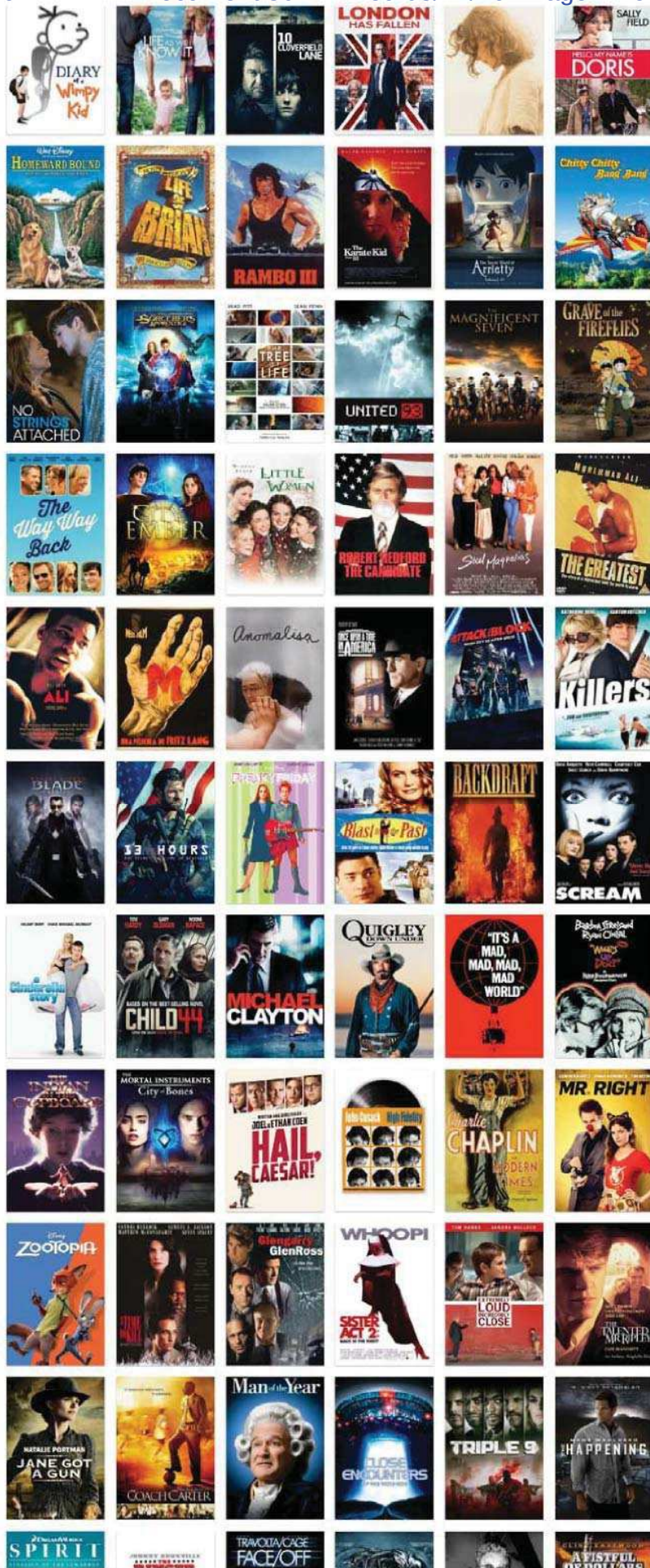
[Click here for help](#)







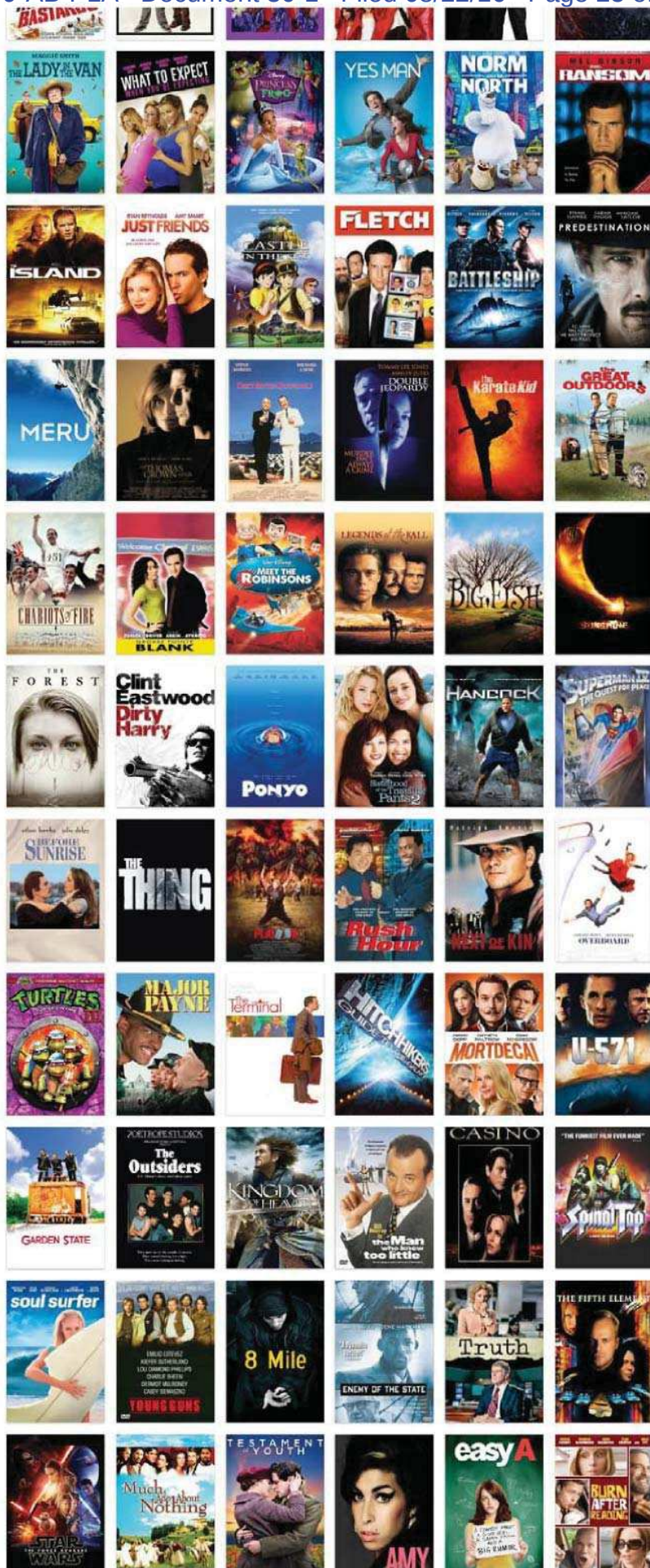






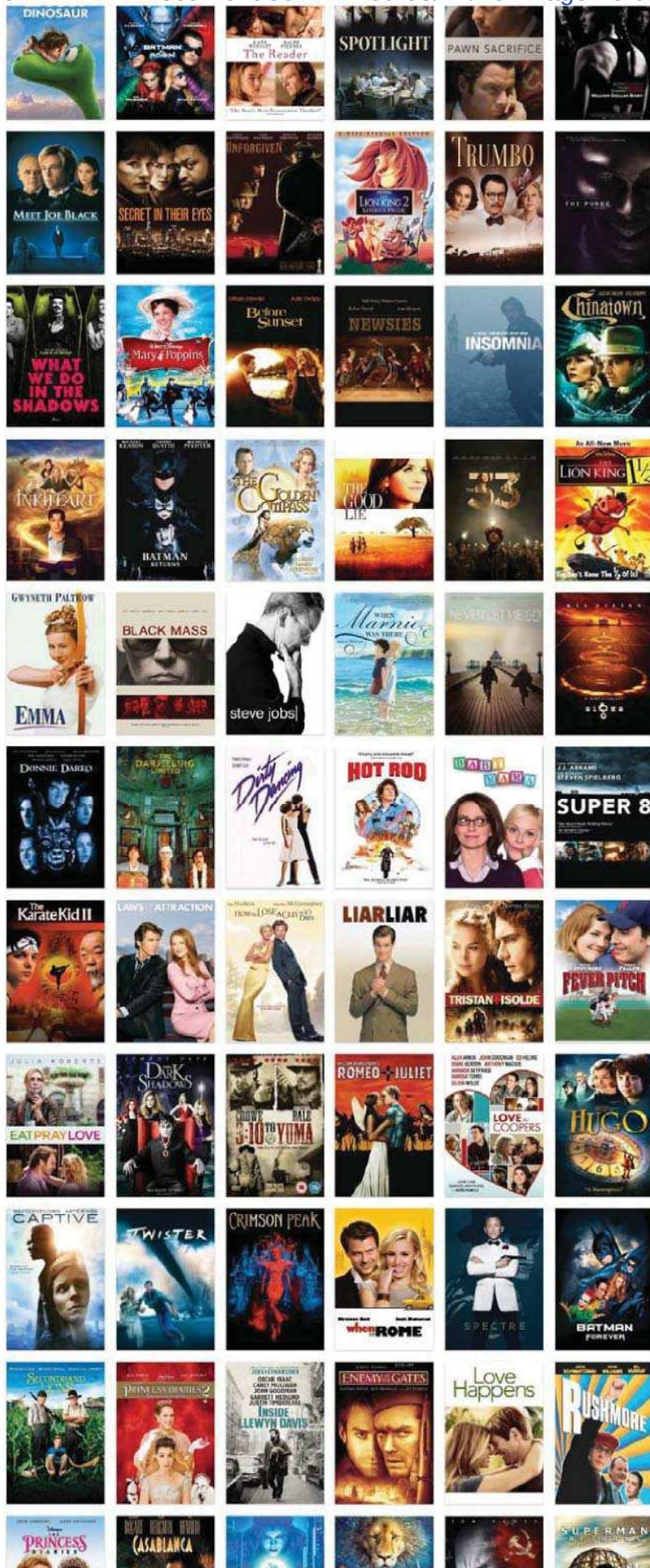


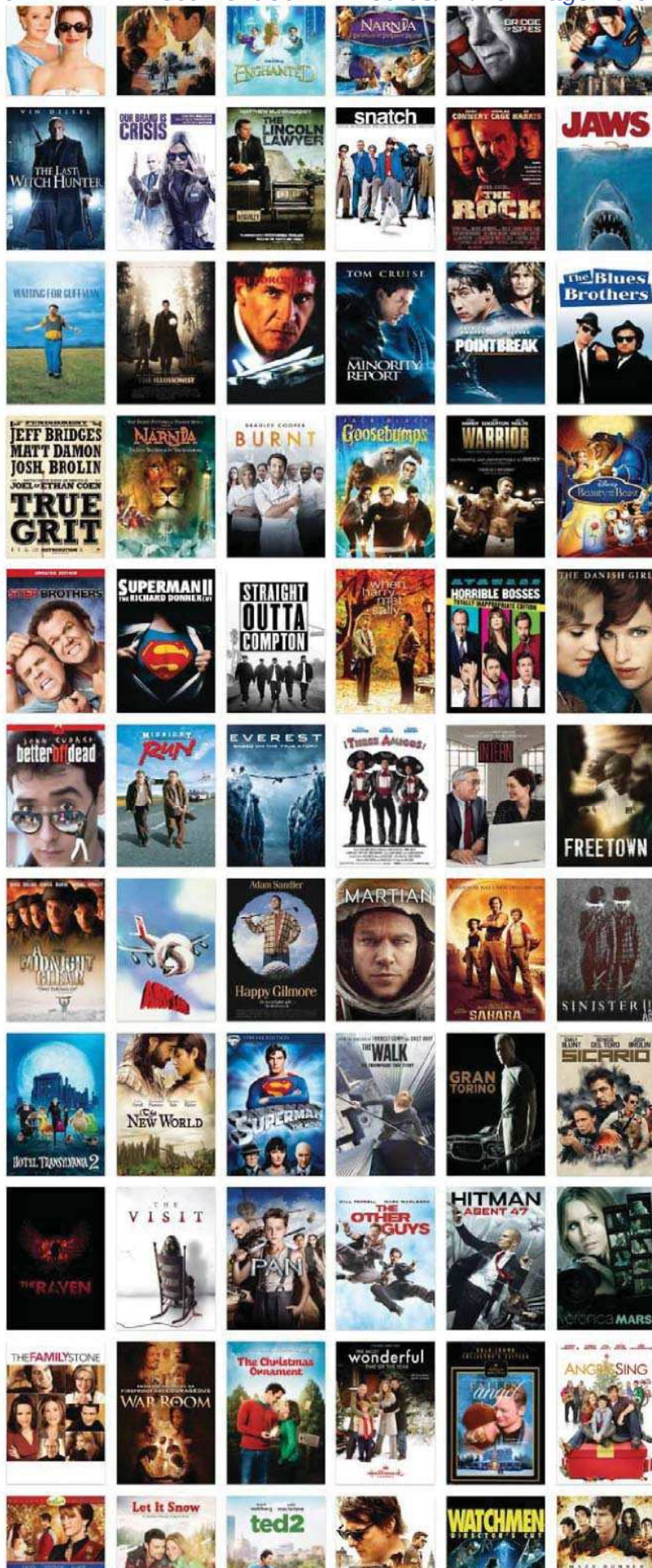
















< BACK


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EXHIBIT C



SIGN UP

LOGIN



Randall

July 15, 2016 at 5:27 am

I was under the impression that the studios don't really care about the filtering aspect of the service, only about the streaming part. Their argument is that a lot of people watch movies on VidAngel not because the movie needs filtering, but because the movie is only \$1 (basically RedBox online). Before you discreetly removed the ability to filter the credits, people were watching movies essentially unfiltered just by "filtering" the opening and/or closing credits. In that way, you had a massive competitive advantage – I could watch Star Wars 7 on VidAngel (only filtering one small thing) for \$1 before any other video streaming service had it available. If you guys are allowed to rip, stream, and resell DVDs, the other streaming services will want to do it too – it's only fair.

[↩ Reply](#)

EXHIBIT G

VidAngel



SIGN UP

Streaming is Now Only 1 BLEEPING Dollar for all SD Movies*

[October 30, 2015](#) [Press](#) [Madeleine Flynn](#)



You may have noticed things have been changing around here. Everything is prettier and wittier.

The best change of all is that EVERY SD movie on our site is now only \$1 with sellback. No tax. No fees. No extra pennies. ONE DOLLAR! In fact, we are so tired of pennies that we are rounding your credit up to the nearest dollar. For the cherry on top, our new "Auto-sellback" feature means you don't even have to remember to sell it back. What kind of wizardry is this? We don't have magical powers – we just like you. That's why it's now \$1 for all SD movies.

To make life simpler, we have changed all movies to the same price: \$20. HD, SD, new release, the 1930s Wizard of Oz... there is no discrimination. All movies and TV shows** are now \$20. This means no more confusing prices when you are picking your Friday night flick.

Here's a summary of our recent shenanigans:

All SD Movies are now \$1 with sellback.

All movies and tv shows, both HD and SD, are now \$20 to keep for good.

We created a new, prettier website and logo.

* SD Movies can now be sold back for \$1 less than purchase price, meaning you only pay \$1 for up to 24 hours of unlimited viewing of that particular film.

** You may be thinking, why do TV shows cost just as much as movies? That is a great question! We just want to make your experience as simple as possible by standardizing the prices across all shows. The TV shows will still only be \$1-\$2 with sell-back. In the future, we will be creating a way to buy whole seasons of TV shows if you want to keep the episodes. So hold tight if that's what you're looking for.

← *Our Website is no longer UGLY*

VidAngel Policy: Can I watch VidAngel without filters? →

*52 thoughts on "Streaming is Now Only 1 BLEEPING Dollar for all SD Movies**"*



Steve

October 31, 2015 at 4:51 am

Love what you guys are doing! Quick question—in the past I purchased some movies through Google Play to use via Vidangel. Is it still possible to play movies I have previously purchased or is rental/sellback the only option now?

Thanks!

Reply

November 14, 2015 at 3:25 am



Annoyed

Why would you change it to \$20 an episode!? That money is not credited back to our credit card. It's credited back to your website so that we have to keep renting your movies if we want to ever get our money back. It's a sham and I am very disappointed. I love what you guys do but if you expect to keep customers, you should stop trying to trick them.

Reply



Anonymous

November 14, 2015 at 6:07 am

Why would you change it to \$20 an episode!? That money is not credited back to our credit card. It's credited back to your website so that we have to keep renting your movies if we want to ever get our money back. It's a sham and I am very disappointed. I love what you guys do but if you expect to keep customers, you should stop trying to trick them.

—
source:va_support_update_bot

Reply



Janae

November 14, 2015 at 6:09 am

We apologize for any misunderstanding. We are not trying to be deceiving in any way. We are happy to refund your card for any remaining credit in your account, at any time. We say so right in the video on our homepage, as well as in our terms and conditions. We have a very thorough write up of how our system works on numerous pages on our website. We are trying to be as clear as possible because we know the whole buying and selling thing can be a little confusing. We want our service to be 100% legal, and to do so; you must own your movie while filtering it. Hence, the Buy with Sell-Back process.

If you would like to read more about the details of our Sell-Back process, we have a great explanation here:

http://help.vidangel.com/knowledge_base/topics/how-does-vidangel-sell-back-work

—
source:va_support_update_bot

Reply



Chris

December 12, 2015 at 5:22 am

This comment is just silly, completely ignorant, you have only yourself to blame for your confusion since the info is clearly stated in several places on the website

Reply



Jennifer

November 15, 2015 at 1:01 am

If I own a movie I bought on Amazon am I able to filter it with vidangel?

Reply



Anonymous

November 15, 2015 at 1:02 am

If I own a movie I bought on Amazon am I able to filter it with vidangel?

—
source:va_support_update_bot

Reply



Liz

November 16, 2015 at 6:52 pm

Dear Jennifer,

Thanks for your interest in VidAngel. Unfortunately, we don't have access to your Amazon movies, so our filters will not work with them. SD Movies through VidAngel are only \$1 though, so it would be easy to watch with

us instead.

—

source:va_support_update_bot

Reply



Anders

November 16, 2015 at 1:59 am

Can I ever use my credits to bring my account to a \$0 balance without purchasing a movie to keep?

Seems I am constantly buying movies for \$20 and selling back, leaving my account with a endless \$19 credit that I can never spend. Make sense?

Reply



Anonymous

November 16, 2015 at 3:22 am

Can I ever use my credits to bring my account to a \$0 balance without purchasing a movie to keep?

Seems I am constantly buying movies for \$20 and selling back, leaving my account with a endless \$19 credit that I can never spend. Make sense?

—

source:va_support_update_bot

Reply



Janae

November 16, 2015 at 6:41 pm

Here is an explanation that will hopefully help you understand a little better. You are welcome to cash out your credits at any time.

For us to legally offer filtered movies, you must **own** the movie while filtering it. To make this as affordable and user-friendly as possible, we have created an instant “Sell-Back” option to buy the movie back from you and put the credit into your VidAngel account.

No hassle, no fuss, just enjoy your movie, sell it back, and only pay \$1.00 for your SD movie.

Quick Overview: (using a \$20 movie)

1. **BUY THE MOVIE** – Pay the retail price of \$20. (initial credit card payment)
2. **WATCH FOR \$1.00** – \$1.00 (per day for SD movies) is deducted from the \$20 credit. (\$2.00 HD).
3. **SELL THE MOVIE** – When finished, “Sell it Back” for \$19.00 of instant credit to your VidAngel account for your next purchase.

When you're ready for the next movie, the \$19 credit already in your VidAngel account will automatically be applied to your purchase. Your card will be charged \$1 to bring your account up to the \$20 purchase price. You will then continue to buy and sell movies with account credit and pay only \$1.00 per night for SD movies. With every \$1 per night, you get back \$19 in credit and the process repeats with each new movie.

—
source:va_support_update_bot

Reply



Lindsey

November 23, 2015 at 7:20 am

I actually wanted to start buying my movies here and just keep everything all in one place, but a lot of the movies offered I could probably get lower. Is there going to be any more structuring in the future to balance that out? Like older movies being a lower price? I'm happy to basically use this as a rental service, but it would be nice to use it for more than that.

Reply



Will

December 15, 2015 at 4:39 am

You want them to be lower than \$1?

Reply



Becky
SCHOFIEL
D

June 4, 2016 at 5:10 pm

Does this service work with dish network?

Reply



Neal
Harmon

June 10, 2016 at 9:14 am

No, it does not.

Reply



Adam
goodman

November 26, 2015 at 1:07 am

Absolutely love it! Thank you!

Reply



Anonymous

November 26, 2015 at 1:09 am

Absolutely love it! Thank you!

—
source:va_support_update_bot

Reply

November 26, 2015 at 1:09 am

Absolutely love it! Thank you!



Anonymous

—
source:va_support_update_bot

Reply



Leisha

November 26, 2015 at 1:40 pm

Wow, I appreciate the service you are providing to the public. Thank you so very much! It is refreshing to watch a movie without all the profanity, crude jokes etc. I am referring you to everyone I know.

Reply



Anonymous

November 26, 2015 at 3:39 pm

Wow, I appreciate the service you are providing to the public. Thank you so very much! It is refreshing to watch a movie without all the profanity, crude jokes etc. I am referring you to everyone I know.

—
source:va_support_update_bot

Reply



Anonymous

November 26, 2015 at 3:39 pm

Wow, I appreciate the service you are providing to the public. Thank you so very much! It is refreshing to watch a movie without all the profanity, crude jokes etc. I am referring you to everyone I know.

—
source:va_support_update_bot

Reply



Scott

December 8, 2015 at 5:31 am

When's season 4 of Homeland going to be done? I love VidAngel

Reply



Anonymous

December 8, 2015 at 6:40 pm

When's season 4 of Homeland going to be done? I love VidAngel

—

source:va_support_update_bot

Reply



Anonymous

December 8, 2015 at 6:40 pm

Homeland 4 is done. It should be live any day now.

—

source:va_support_update_bot

Reply



Chris

December 12, 2015 at 5:26 am

Love the service but I have an Amazon fire and I'm tired of using my computer to watch, any word on the Amazon fire app? Willing beta tester here!

Reply

January 2, 2016 at 12:44 am

You're in luck: https://www.vidangel.com/support/tv_fire



Neal
Harmon

Reply



Anonymous

December 17, 2015 at 11:43 pm

Can i watch vidangel on ps4 or xbox1

Reply



Neal
Harmon

January 2, 2016 at 12:44 am

In the future you will be able to.

Reply



Kenneth
Crawford

May 13, 2016 at 3:37 pm

Do you have an email on the next gen apps?

Reply



Kenneth
Crawford

May 13, 2016 at 3:37 pm

I meant eta.

Reply



Nikhil
Khanna

December 28, 2015 at 11:53 pm

Two things

1. The process for getting the refund back to my credit card is not clear in the steps (even in the posts and in the help section all it says is you can get the entire credit back- but doesnt exactly say how). Rest of the steps are pretty detailed. there is also no button to request the refund.
2. the whole thing that once you buy and resell the remainder of the credit is used for your next purchase sellback doesnt seem to work with apple tv app ... i have like 36 dollars of credit... and the app didnt factor in my existing credit at all while making the next purchase

Reply



Neal
Harmon

January 2, 2016 at 12:35 am

We have published a fix for this and we're waiting for Apple to approve the fix.

Reply



Nikhil
Khanna

December 28, 2015 at 11:56 pm

take the 1st one back... i just went through the long version and it seems the steps are detailed out... just not simple... the second thing still remains

Reply



January 2, 2016 at 4:58 am

I'm confused about the sell back time period. A lot of the explanations mention specifically selling back within 24 hours to get the \$18/\$19. Does

Jon

the sellback price reduce after 24 hours? If so how much?

Reply



Neal Harmon

January 7, 2016 at 8:45 pm

\$1 per day for SD and \$2 per day for HD.

Reply



James

January 2, 2016 at 5:48 am

Love the concept. \$1 per movie is great! I really hope you come up with something different for the TV shows soon. I'd love to go through House of Cards, but not for \$39! We stopped watching it on Netflix because of the vulgarity and nudity. I love what you do, but for binge watching TV shows, the price is just too steep. Is a subscription service in future? I'd drop Netflix and sign up in a heartbeat! Thanks.

Reply



Neal Harmon

January 7, 2016 at 8:45 pm

We're working on a better option for TV shows.

Reply



January 17, 2016 at 1:06 am

I can't wait! I just finished watching all 4 season of Game of Thrones using your rental model. I would have bought them (and I still will!) if

William
Munn

the season cost wasn't so prohibitive. In the meantime, I'll probably hold off watching any other TV shows.

Such a fantastic service you provide. My only other request is PS4 support as soon as possible.

Keep up the great work.

Reply



Brad

January 16, 2016 at 9:07 am

I was really excited to find your service. I have been looking for a way to watch Game of Thrones edited for quite some time. I was really disappointed to learn of your pricing model for TV shows. There are 4 seasons you currently offer. Each season has 10 episodes. At your current pricing that is \$20 per season. That's \$80 to watch your current library and that's at the not keep the video pricing. I can't justify spending that amount of money for essentially "renting" a TV show I've been wanting to see. I've noticed you've said that you are working on a better option for the TV shows but do you know what kind of time frame we are looking at? And can you give us any sort of idea as to what approach on a pricing model your headed toward? Thanks for your hard work and feed back.

Reply



Jennifer

February 27, 2016 at 12:01 am

Loving the service as we are trying it for the first time. I'm wondering about the "auto sellback". Does it sell back right when you finish watching the movie or after 24 hours?

Reply



February 27, 2016 at 3:24 pm

Right after you finish the movie (or right at 24 hours if you never finish it)

Neal
Harmon

Reply



Kate Harris

February 29, 2016 at 3:39 pm

My ROKU does not give Vid-Angel as an optional program – I have a 3.1 version of ROKU – do I need newer? Or what do I need to do?

Reply



Neal
Harmon

March 5, 2016 at 2:31 pm

It should be in the Roku store. Here are the linking instructions:

https://www.vidangel.com/support/tv_roku

Reply



Joanna

March 28, 2016 at 3:43 pm

Hi! Love love love your site! I tell people about it all the time! Quick question, I fly sometimes, and I like to “rent” and download a movie for my flight on my phone/tablet to be able to watch it without wifi. Is it possible to do this with vidangel phone app?

Reply



Neal
Harmon

April 1, 2016 at 9:23 pm

We’re working on an update to support this on the iPhone. It currently works on Android.

Reply



Christian Koehle

March 28, 2016 at 4:44 pm

Any progress on when you can purchase seasons of shows? I would love to own all of the Games of Thrones Seasons but there doesn't seem to be an option other than pay a ton of money at this point. Thanks!

Reply



Brent

March 28, 2016 at 7:29 pm

under your current model, if I were to purchase 5 seasons of the walking dead from netflix it would cost me 8\$, and from you almost 70\$. I love your service but that is a serious WTF(iltered) situation.

looking forward to at least an update on the "shows" situation. thanks.

Reply



Neal Harmon

April 1, 2016 at 9:23 pm

working on it

Reply



Shaun Moynihan

April 22, 2016 at 7:29 pm

The reason Vidangel can filter these movies is because they purchase the actual episodes, movies. For example, Vidangel owns 500 copies of The Matrix and therefore can only rent out 500 filtered versions at a time. That's why sometimes you will see a HD version of a movie as unavailable.

Reply



Neal Harmon

April 30, 2016 at 10:04 pm

Yes, we have a disc in the vault for every owner on our system. If we don't own one, we can't sell one and that's why you will see out of stock notices at times.

Reply



Mishqueen

April 30, 2016 at 11:59 am

Soooo, who are the poor saps who have to watch unfiltered movies in order to save the rest of us from having to see stuff we don't like? My hat is off to them, sir. Thank them for me for taking a hit for the team. (hopefully, they don't mind)

Please make a big announcement when tv gets cheaper. I don't know why that seems so expensive, even if you do 2 episodes for the price of one so they are the length of a movie, it still feels high. I recognize the time and effort is the same for you guys. However, when they are full seasons for a price, I'm in!

Reply



Neal Harmon

April 30, 2016 at 10:02 pm

Everyone who tags agrees to tag stuff they already watch so no one "takes one for the team." But we're grateful for the tagging community... it's tedious work and works really well because of their efforts.

Reply

Leave a Reply

Your email address will not be published. Required fields are marked *

Comment

Name *

Email *

Website

Post Comment



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VidAngel

April 21 · 🌐

How VidAngel \$1 Movies Work in 15 Seconds.

Website: www.vidangel.com

YouTube Version: <https://youtu.be/map6EIP41bY>



946K Views

👍 Like 💬 Comment ➦ Share

👍❤️😱 1.6K

Chronological ▾

647 shares

View previous comments

2 of 238



Buddy Toliver Any movie you want, even new releases, for \$1. If something feels too good to be true, it often is. Editing aside, Vidangel sets their service up to be a "purchase" and then buyback, but is very very similar to what everyone else calls VOD. The lawsui... See More

Like · Reply · July 23 at 11:37am · Edited



Buddy Toliver From the complaint filed by the movie industry - "VidAngel's "Buy, Watch, Sell Back" is a fiction that fails to hide VidAngel's real business: providing a VOD streaming service to users in return for a daily fee." This gets me fired up because so many ... See More

Like · Reply · Yesterday at 4:52am



Write a comment...





VidAngel

January 21 · 🌐

Streaming Star Wars cheaply via VidAngel. Thanks USA Today for the shout-out!

<http://www.usatoday.com/.../streaming-star-wars-che.../78503994/>



Streaming 'Star Wars' cheaply via VidAngel

VidAngel allows you to stream "Star Wars" but it takes a few steps and \$20 initially.

USATODAY.COM

👍 Like

💬 Comment

➦ Share

👍 69

Chronological ▾

View 1 more comment



Brett Culp 👍

Like · Reply · January 23 at 4:56am

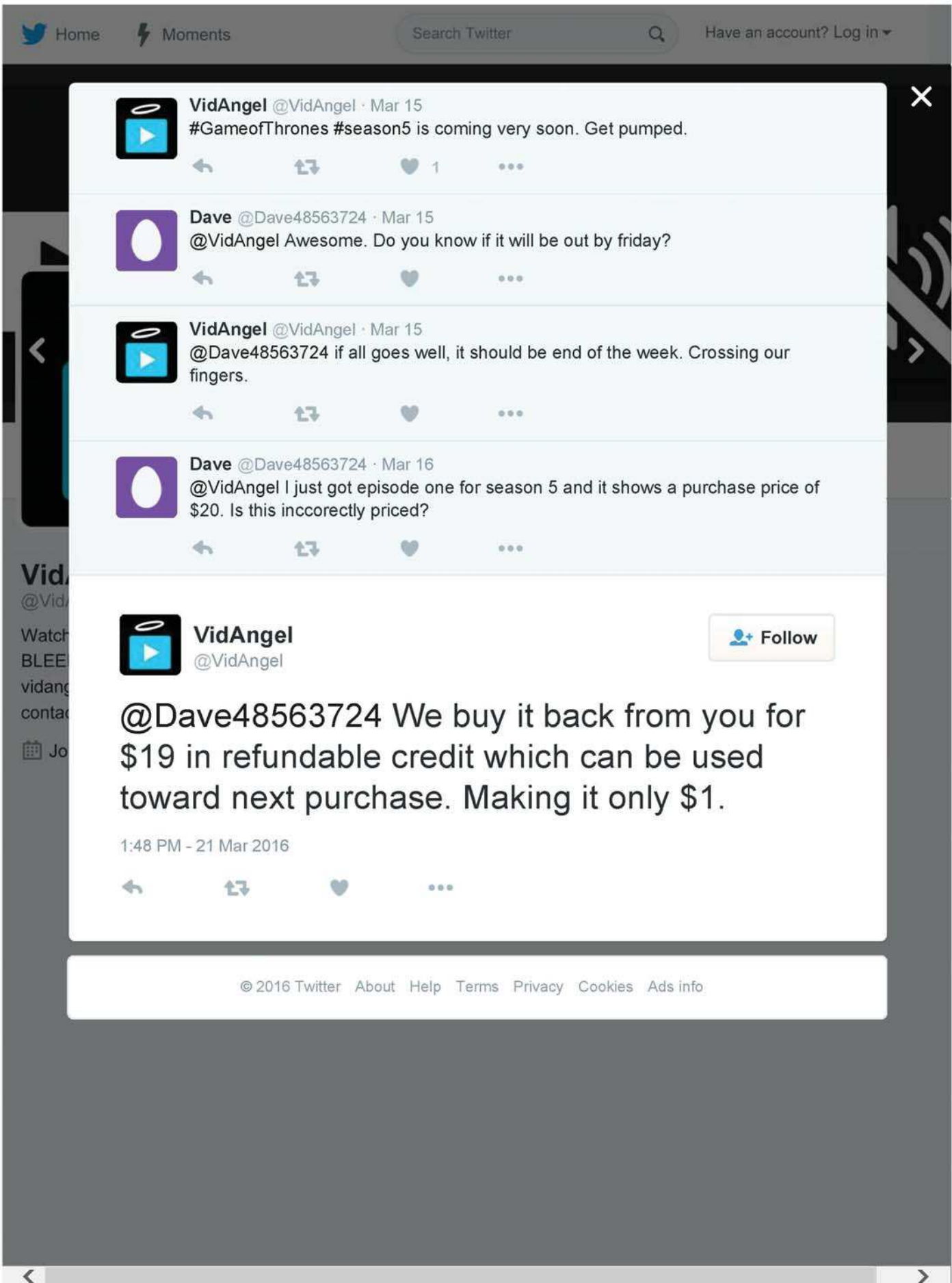


Amy Sharpe Carrie

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Write a comment...







VidAngel

June 7 · 🌐



Zootopia.

Welcome to the urban jungle.

Watch for \$1 per night with sellback and filters!

<https://www.vidangel.com/movie/zootopia>



Zootopia

VIDANGEL.COM

👍 Like

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👍❤️😄 1.3K

Chronological ▾

46 shares



VidAngel

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"Finding Dory" is in theaters! Watch other movies by the creators here...



Stream Any Filtered Movie for \$1 (per day w/sellback)

Sign up for a free VidAngel account today to watch movies for \$1 a day w/sellback. VidAngel gives you freedom to filter movies according to your viewing preference.

WWW.VIDANGEL.COM

[Learn More](#)

👍 3

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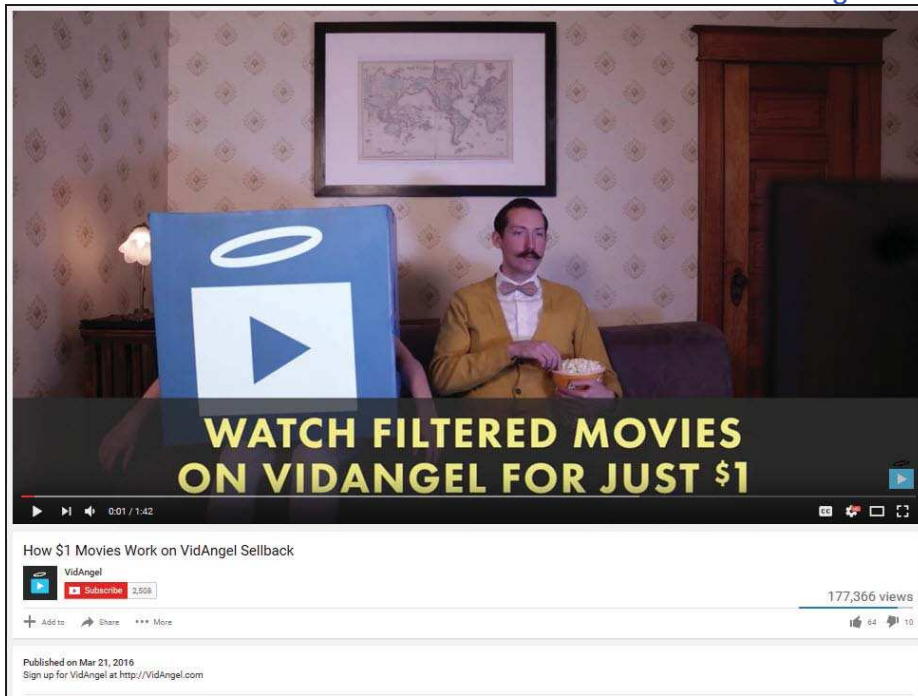


Stream Any Filtered Movie for \$1

Watch "Zootopia" on VidAngel for One Dollar! (per day with sellback)



Stream Any Filtered Movie for \$1
Watch "The Good Dinosaur" for one
BLEEPING dollar! (per night with sellback)



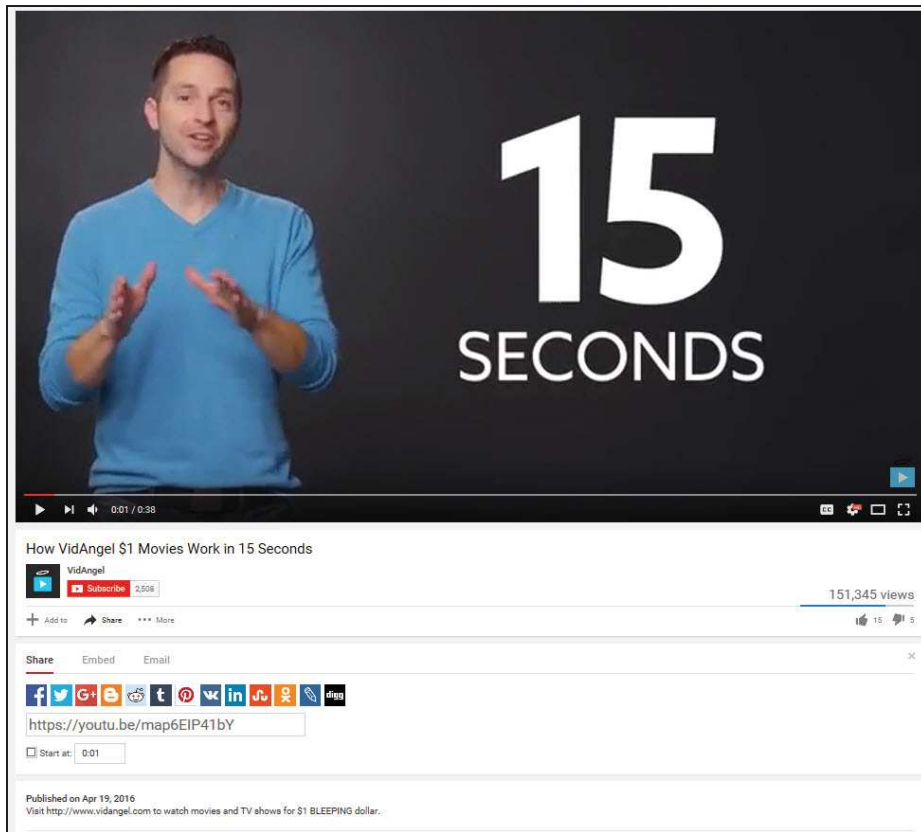
How \$1 Movies Work on VidAngel Sellback

available at: <https://youtu.be/wvcF4x1d0xo>

PL0000234

S.A.0913

EXHIBIT G



How VidAngel \$1 Movies Work in 15 Seconds

available at: <https://youtu.be/map6EIP41bY>

PL0000158

EXHIBIT J



VidAngel
@VidAngel



attn: STAR WARS: THE FORCE AWAKENS IS HERE

vidangel.com/movie/star-war...

#StarWarsTheForceAwakens #DVDrelease



RETWEETS

5

LIKES

9



10:46 AM - 5 Apr 2016





VidAngel

April 5 · 🌐

Star Wars: The Force Awakens.

The force is calling to you. Just let it in.

<https://www.vidangel.com/movie/star-wars-the-force-awakens>



Star Wars: The Force Awakens

VIDANGEL.COM

👍 Like

💬 Comment

➦ Share



👍❤️😱 238

Chronological ▾

32 shares

The screenshot shows a web browser window with the URL <https://www.vidangel.com/movie/star-wars-the-force-awakens>. The VidAngel logo is in the top left, and 'LOGIN' and 'SIGN UP' buttons are in the top right. The main content area features a movie poster for 'Star Wars: The Force Awakens' on the left. To the right of the poster, the title 'Star Wars: The Force Awakens' is displayed. Below the title, it says 'RATED PG-13—0 / 139 FILTERS ENABLED'. There are two pricing options: '\$1.00 SD w/sellback' and '\$2.00 HD w/sellback'. A circular badge with '100' and the word 'INSPIRING' is also present. A blue button says 'SIGNUP TO WATCH FOR \$1*'. A short description follows: '(2015) Lucas film and visionary director J.J. Abrams join forces to take you back again to a galaxy far, far away as Star Wars returns with Star Wars: The Force Awakens.' At the bottom left of the poster area, there is a 'WATCH TRAILER' link with a play button icon.

The screenshot shows a web browser window with the address bar displaying <https://www.vidangel.com/movie/star-wars-the-force-awakens>. The VidAngel logo and navigation menu (MOVIES, SHOWS, PURCHASES, SEARCH, MENU) are visible at the top. The main content area features a video player showing a scene from the movie. Below the video player, the text reads "STAR WARS: THE FORCE AWAKENS, RATED PG-13 - 1 / 139 FILTERS ENABLED". To the left of the text is a movie poster for "Star Wars: The Force Awakens". To the right is a blue "BUY BACK" button. Below the poster and text, there is a "100 INSPIRING" badge and a short description: "(2015) Lucas film and visionary director J.J. Abrams join forces to take you back again to a galaxy far, far away as Star Wars returns with Star Wars: The Force Awakens." Below this are links for "SHARE THIS MOVIE" and "HIDE THIS MOVIE". At the bottom left of the browser window is the Windows taskbar with icons for Start, File Explorer, Edge, and Chrome. At the bottom right is the system tray showing the time as 5:52 PM on 4/5/2016 and a "Click here for help" link.

Stream "Star Wars: The" x

https://www.vidangel.com/movie/star-wars-the-force-awakens

Star Wars: The Force Awakens

SAVE FILTERS

RATED PG-13

FILTERS ON	RUN TIME	TIME W/ FILTERS
0 / 139	2:18:05	2:18:05

PLEASE SET FILTERS TO WATCH YOUR MOVIE

[WHY ARE FILTERS REQUIRED?](#)

Movie Filters

MISCELLANEOUS

ALL FILTERS ON / OFF

- [CLOSING CREDITS \(1\)](#)
- [OBJECTIONABLE/DISTURBING \(1\)](#)

LANGUAGE

- [BLASPHEMY \(2\)](#)
- [PROFANITY \(3\)](#)

[Click here for help](#)

Start | Internet Explorer | Google Chrome | 5:50 PM 4/5/2016

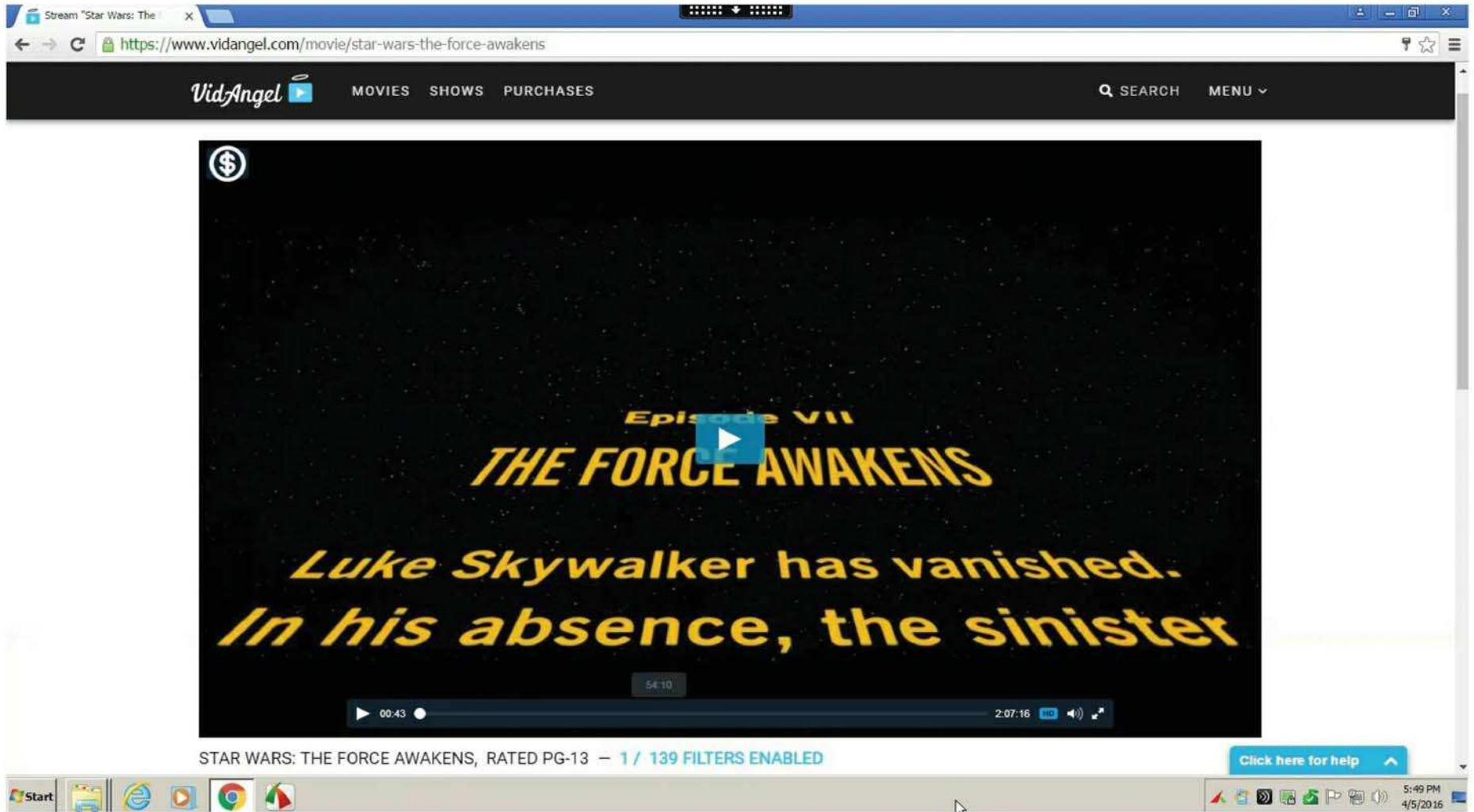


EXHIBIT DD

**REDACTED VERSION OF
DOCUMENT PROPOSED TO BE
FILED UNDER SEAL**

EXHIBIT EE

**REDACTED VERSION OF
DOCUMENT PROPOSED TO BE
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9

10 UNITED STATES DISTRICT COURT
 11 CENTRAL DISTRICT OF CALIFORNIA
 12 WESTERN DIVISION

13

14 DISNEY ENTERPRISES, INC.;
 LUCASFILM LTD. LLC;
 15 TWENTIETH CENTURY FOX FILM
 CORPORATION and WARNER
 16 BROS. ENTERTAINMENT INC.,

17 Plaintiffs and Counter-
 Defendants,

18 vs.

19 VIDANGEL, INC.,

20 Defendant and Counter-
 21 Claimant.

22

23

24

25

26

27

28

Case No. 16-cv-04109-AB (PLAx)

**REDACTED VERSION OF
 DOCUMENT PROPOSED TO BE
 FILED UNDER SEAL**

**DECLARATION OF ROBERT
 SCHUMANN IN SUPPORT OF
 PLAINTIFFS' MOTION FOR
 PRELIMINARY INJUNCTION**

Judge: Hon. André Birotte Jr.
 Date: October 24, 2016
 Time: 10:00 a.m.
 Crtrm.: 4

Trial Date: None Set

DECLARATION OF ROBERT SCHUMANN

I, Robert Schumann, declare as follows:

1. I have been retained by Plaintiffs as an expert in this litigation. I have personal knowledge of the facts set forth herein, except as to those stated on information and belief and, as to those, I am informed and believe them to be true. If called as a witness, I could and would testify competently to the facts stated herein.

2. I have worked in the computer and technology industry for the past 31 years. In 1985, I received a Bachelor of Science in Computer Science from Rochester Institute of Technology. Since that time, I have worked in various facets of the computer industry, in connection with the design and development of computer software, computer networking systems, computer automation, consumer electronics, large-scale database processing, physical and electronic Audio/Video distribution systems, digital security and other content-protection systems. During this time, I have been personally involved in and overseen the development and licensing of sophisticated technical specifications including work on industry-standard specifications for digital content processing and security; the design and development of software in a variety of computer languages, including C++; the design and development of consumer electronics products and devices, including hardware DVD players, web-based services and the integration and licensing of third-party software packages, technologies and associated technical specifications.

3. I have seventeen issued and pending United States Patents, many of which involve digital content protection and consumer products. I was a founding member of the Digital Watermarking Alliance, an industry trade group for digital watermarking, and have spoken extensively at trade shows and other professional venues on content security.

4. From August of 1999 until October 2008, I was President and General Manager of Cinea, Inc. Cinea specialized in developing and operating content

1 VidAngel and the deposition testimony of Neal Harmon, it is my professional
2 opinion that VidAngel operates as follows.

3 8. VidAngel delivers content to users by streaming that content over the
4 Internet. In this context, “streaming” simply means the delivery of content to a
5 user’s device over the Internet. Here, VidAngel streams content to consumers
6 using, among other technologies, a video content delivery protocol called HTTP
7 Live Streaming, or HLS. Rather than using a single huge file, HLS divides the
8 content into many short media segments, with each segment generally lasting
9 between two and ten seconds and downloaded by the user’s device individually. At
10 the beginning of an HLS streaming session, the user’s device downloads an index
11 file, which provides the device a list of segment files that the device can then request
12 and play in order to watch the content.

13 9. VidAngel’s filtering technology allows it to [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED] Until the lawsuit was filed, one category of filterable content
18 that VidAngel offered was skipping the opening or closing credits. [REDACTED]
19 [REDACTED]

20 10. When a user streams a movie or television show from VidAngel, the
21 filtering technology [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]

27 11. [REDACTED]
28 [REDACTED]

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]

12 12. Based on my review of VidAngel’s documents and the deposition
 13 testimony of Neal Harmon, I believe that [REDACTED]

14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]

22 **VidAngel Obtains Plaintiffs’ Content On DVDs And Blu-ray Discs**

23 13. To implement its streaming service, VidAngel requires a digital copy of
 24 Plaintiffs’ films and television content. To acquire the digital version of a particular
 25 piece of content VidAngel purchases copies of Plaintiffs’ movies and television
 26 shows on DVDs and Blu-ray discs, circumvents the digital content protection
 27 associated with the Blu-ray and DVD content and then copies that content onto its
 28

1 servers. This process of removing content protection then copying the unprotected
2 content is popularly referred to as “ripping.”

3 14. A DVD, or “Digital Versatile Disc,” is a high capacity digital storage
4 medium, which can store data such as personal files, emails, etc. Depending on its
5 configuration, a DVD can store up to a maximum of 18 gigabytes of data. By
6 comparison, a typical audio CD will store about 700 megabytes of data. Since one
7 gigabyte equals 1024 megabytes, a 9 gigabyte DVD holds many times more—more
8 than 12 times more—data than a 700 megabyte CD.

9 15. DVDs’ large capacities allow them to store motion pictures (movies).
10 DVDs used to store motion pictures will most often hold approximately 9 gigabytes
11 of data. Content on DVDs is stored in a Standard Definition format. This format is
12 a relatively low-resolution format (640x480 pixels per frame) and thus provides a
13 good picture but not a modern High Definition image.

14 16. Blu-ray discs are a newer high capacity storage medium. The term
15 “blu-ray” refers to the blue laser that is used to read the disc. Blu-ray discs can store
16 even more data than DVDs. A Blu-ray disc can store a maximum of 128 gigabytes
17 of data, and, when used for motion pictures, will most commonly hold about 50
18 gigabytes—more than five times the storage capacity of the typical DVD. Content
19 on Blu-ray discs is encoded in a high definition format, typically 1080P, which
20 represents an image of 1920x1280 pixels per frame. Blu-ray discs have a
21 significantly higher image quality than DVD discs due to their denser pixel count.

22 17. Subject to the security and encryption restrictions discussed below,
23 both DVDs and Blu-ray discs are viewable either on a television (using a stand-
24 alone DVD player or Blu-ray player) or on a computer with a DVD or Blu-ray drive
25 and specialized playback software.

26 18. DVDs and Blu-ray discs offer many advantages over VHS cassettes,
27 including a much better viewing experience, but they also make a more attractive
28 target for individuals to copy their content without authorization. When one copies

1 the contents from a VHS tape, the quality of the copy is less than that of the original.
2 The same is not true for digital formats like DVDs and Blu-ray discs. For those
3 formats, the copy and the original are of the same quality. Further, digital copies are
4 much easier to distribute than analog copies. Accordingly, a movie that has been
5 copied can easily be uploaded online and distributed around the world. There are,
6 therefore, security measures that can be used for both DVDs and Blu-ray discs to
7 protect their contents.

8 19. Based on my review of VidAngel’s documents, my own review of the
9 VidAngel service, and the deposition testimony of Neal Harmon, I believe that
10 VidAngel almost always uses [REDACTED] as the source of the digital copies rather
11 than [REDACTED]. This allows VidAngel to make higher quality copies of the movies and
12 television shows. VidAngel will use [REDACTED] as the source for their ripped content
13 only when [REDACTED] are unavailable [REDACTED]

14 [REDACTED]

15 [REDACTED] See Ex. D.

16 **CSS Is An Effective Access-Control System For DVDs**

17 20. Plaintiffs in this case use the Content Scramble System (“CSS”) in
18 order to protect their copyrighted works on DVDs. CSS is a digital rights
19 management system that prevents access to—but not viewing of—digital copies of
20 works stored on DVDs in order to prevent effective copying. Both DVD player
21 manufacturers and DVD content distributors can obtain authorization to use CSS
22 only through a license from the DVD Copy Control Association (“DVD CCA”). A
23 license allows a DVD player manufacturer to obtain the necessary requirements and
24 specifications for building a CSS-compliant DVD player (i.e., one that is capable of
25 lawfully accessing and playing a DVD that is protected by CSS) and for obtaining
26 access to the necessary “keys” that enable the content on a CSS-protected DVD to
27 be lawfully unscrambled.

28

1 21. CSS uses several layers of different types of protection mechanisms,
2 including authentication, encryption, secure storage of encryption keys, time-
3 variable session keys, and other technological measures. CSS works slightly
4 differently depending on whether the user is using a computer or a standalone DVD
5 player to access a DVD disc. Because I understand VidAngel to use a computer to
6 circumvent CSS protections from DVDs, this declaration focuses on the aspects of
7 CSS that control access to CSS-protected content with computers.

8 22. CSS has control measures that operate across three different mediums:
9 the DVD disc itself, software players (players that are implemented primarily as
10 software on computer systems) and the DVD drive (an optical DVD Disc reader that
11 is capable of operating as an internal or peripheral component of a personal
12 computer or other computing device). First, the data on the DVD disc is encrypted,
13 with decryption “keys” stored in areas of the disc that are inaccessible without
14 software that implements CSS. Second, the DVD drive provides an additional layer
15 of protection. It requires authentication, which requires that receiving software
16 programs are trustworthy, and uses other methods of encryption before it will
17 transmit certain types of information from the disc.

18 23. For example, CSS provides for a “locking” mechanism, whereby a
19 computer’s DVD Drive will not allow access to CSS-protected content on a DVD
20 disc unless and until the DVD Drive has confirmed that the software seeking access
21 is an authentic CSS-compliant DVD player that can be trusted. If the DVD player
22 software is unable to provide this authentication, indicating to the DVD drive that it
23 is “safe” to release the DVD data, then the protected contents of the DVD will
24 remain “locked” in the DVD drive.

25 24. CSS also utilizes encryption. Encryption selectively scrambles the
26 video stream. Only devices that have access to the “decryption keys” can
27 descramble the data. This encryption provides an additional layer of copy- and
28 access-protection to the protection provided by the “locking” mechanism. Thus,

1 even if one were able to defeat the “locking” mechanism and gain unauthorized
2 access to the protected files on the DVD disc, the data would be scrambled and thus
3 neither viewable nor playable.

4 25. In addition to encryption, CSS utilizes an “authentication” mechanism,
5 which requires that an authorized player engage in a bi-directional dialogue with the
6 DVD Drive before playing back the video content of a DVD disc. This
7 authentication mechanism further ensures that the DVD content cannot be played
8 back unless such authentication with the DVD Drive is successful. Authentication
9 with the DVD Drive will fail if the DVD being played is not in the DVD Drive.

10 26. Notably, the process described above allows a licensed-DVD player to
11 enable the *viewing* of an authorized DVD’s contents. The DVD CCA license
12 prohibits DVD players from copying, or enabling the copying of, the content on a
13 CSS-protected DVD.

14 **AACS And BD+ Are Effective Access-Control Systems For Blu-ray Discs**

15 27. In order to protect the copyrighted content on Blu-ray discs, all
16 Plaintiffs use the Advanced Access Content System (“AACS”), and Twentieth
17 Century Fox Film Corporation (“Fox”) additionally uses BD+ protection for content
18 on Fox’s Blu-ray discs. Like CSS, both AACS and BD+ effectively prevent access
19 to the digital content on Blu-ray discs, while still allowing the viewing of that
20 content through the use of licensed Blu-ray players. Also similar to CSS, Blu-ray
21 player manufacturers and Blu-ray content distributors can obtain authorization to
22 use AACS and BD+ only through the authorized licensing organization.

23 28. Like CSS, AACS uses a combination of encryption and authentication
24 to protect the content on Blu-ray discs. The content on a Blu-ray disc is encrypted.
25 It can be decrypted only by using certain “keys,” called “Title Keys.” Each Title
26 Key is also encrypted, using a different key generated from the “Media Key” (which
27 is necessary to decrypt the encrypted Title Key) stored on the Blu-ray disc, along
28 with the encrypted Title Key. The place where the Media Key is stored is called the

1 “Media Key Block.” In addition to storing Keys, the Media Key Block also
2 provides a mechanism whereby certain Blu-ray players can be prevented from being
3 able to play back content if the players become compromised.

4 29. The Blu-ray disc also contains a Volume ID, which is an identifier
5 stored on the disc.

6 30. In order to play content protected by AACS, licensed Blu-ray players
7 contain several “Device Keys” that allow the players to decrypt the content on the
8 Blu-ray disc. First, the Blu-ray player must decrypt the Media Key Block, which
9 provides the player with the Media Key. Second, the player must obtain the Volume
10 ID, which requires the player to have the correct certificate from the licensing body
11 that develops and licenses AACS (the Advanced Access Content System Licensing
12 Administrator (“AACS LA”). Only by using both the Volume ID and the Media
13 Key can the player decrypt the Title Key, which is, in turn, used to decrypt the
14 encrypted content on the Blu-ray disc.

15 31. In the absence of the appropriate keys and certificate, even if one were
16 able to copy the contents off a Blu-ray disc onto another storage device, the content
17 would still be encrypted. Thus, the content would be neither viewable nor playable.
18 Nor would a user be able to manipulate this encrypted content, such as by editing
19 the content or changing the files from one format to another.

20 32. BD+ is a second, optional, layer of protection that can be used on top of
21 AACS. BD+ is a protection system that is implemented through the use of security
22 programs that are specific to a particular movie title (or a particular version of that
23 movie title) that are included on the Blu-ray disc. Those programs are then read and
24 executed by a special BD+ software module, known as a “virtual machine,” that is
25 included in licensed Blu-ray players. When executed by the Virtual Machine, the
26 BD+ security programs can perform various functions, including determining
27 whether the Blu-ray player has been compromised.


28




1 33. In addition, when a disc is protected by BD+, the files on the disc can
2 be scrambled in a way that is specific to the relevant title. The BD+ virtual machine
3 then obtains the title-specific code from the disc as well as a “fix-up” table that
4 allows the virtual machine to descramble the scrambled content. In the absence of a
5 licensed Blu-ray player, the content would remain scrambled and could not be
6 viewed or played.

7 34. A key feature of both the AACS and BD+ protection systems is the
8 ability to dynamically change, over time, components of the system and thus allow
9 content owners to continually update their security protocols. Thus, entities that
10 seek to illegally remove AACS and/or BD+ protections from Blu-ray discs can do
11 so only if they are also able to continually update their software.

12 **VidAngel Removes The Encryption From CSS-Protected DVDs And BD+ And**
13 **AACS-Protected Blu-ray Discs And Copies The Unencrypted Contents To Its**
14 **Internal Computer System**

15 35. As noted above, in order to obtain digital copies of Plaintiffs’ content,
16 VidAngel must copy that content off of DVDs and Blu-ray discs. VidAngel does so
17 as follows:

18 36. Regardless of whether VidAngel uses DVDs or Blu-ray discs,
19 . In the
20 ordinary course, however, those files would remain encrypted by CSS, AACS
21 and/or BD+. Accordingly, even if VidAngel could copy the files, it could not view
22 them, play them, or manipulate them. VidAngel admits that it uses a product called
23 AnyDVD HD to remove CSS protection from DVDs and AACS and BD+
24 protection from Blu-ray discs.

25 37. VidAngel places the disc, whether it be a Blu-ray disc or a DVD 
26  AnyDVD HD then runs in the background,
27 circumventing the encryption from the DVD or Blu-ray disc. 

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[REDACTED]

[REDACTED].

38. AnyDVD HD is a well-known, windows-based circumvention software that allows for read-access to DVDs protected by CSS and Blu-ray discs protected by AACS and BD+, in the process removing those protections from the Blu-ray and DVD discs.

39. AnyDVD is currently sold by RedFox. RedFox is based in Belize. According to RedFox’s website, RedFox is run by developers and staff members of the former company SlySoft,¹ whose owner was previously convicted in a foreign jurisdiction of providing tools to circumvent AACS encryption.² SlySoft, whose logo was a red fox, was shut down earlier this year due to “regulatory requirements.”³

VidAngel Prepares The Digital Files Obtained From The DVD And Blu-ray Discs For Filtering And Streaming

40. After obtaining the digital contents of DVDs and Blu-ray discs, VidAngel prepares the content for filtering and streaming. [REDACTED]

[REDACTED]

¹ See “About,” RedFox.bz available at <https://www.redfox.bz/en/about.html> (last visited Aug. 21, 2016).

² Slysoft DVD Ripper Owner Found Guilty in Criminal Action, TorrentFreak available at <https://torrentfreak.com/slysoft-dvd-ripper-owner-found-guilty-in-criminal-action-140403/> (last visited Aug. 21, 2106).

³ See Eric Bangeman, “DRM Defeaters Defeated? SlySoft Ceases Operations”, ArsTechnica.com, available at <http://arstechnica.com/tech-policy/2016/02/drm-defeaters-defeated-slysoft-ceases-operations/> (last visited Aug. 21, 2016); see also SlySoft, available at <http://www.slysoft.com/> (last visited Aug. 21, 2016).

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED].

20 **By Removing The Encryption From DVDs And Blu-Ray Discs And Allowing**

21 **The Digital Content Of The Discs To Be Copied Onto A Computer In A**

22 **Useable Format, VidAngel Circumvents The Technological Measures Designed**

23 **To Prevent The Accessing And Copying of Copyrighted Content On DVDs And**

24 **Blu-ray Discs**

25 43. As described above, VidAngel not only accesses and copies files off of

26 DVDs and Blu-ray discs, but it does so in a way that allows the files to be viewed,

27 played, and edited. None of those functions would be possible if CSS, AACS or

28 BD+ protections remained in place. Rather, VidAngel uses the circumvention

1 software, AnyDVD HD, to remove the encryption from DVDs and Blu-ray discs to
2 make a usable copy of the digital content on the discs.

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on August 22, 2016, at Reston, Virginia.



Robert Schumann

S.A.0938

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UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA
 WESTERN DIVISION

DISNEY ENTERPRISES, INC.;
 LUCASFILM LTD. LLC;
 TWENTIETH CENTURY FOX FILM
 CORPORATION and FOX BROS.
 ENTERTAINMENT INC.,

Plaintiffs and Counter-
 Defendants,

vs.

VIDANGEL, INC.,

Defendant and Counter-
 Claimant.

Case No. 16-cv-04109-AB (PLAx)

**DECLARATION OF TEDD
 CITTADINE IN SUPPORT OF
 PLAINTIFFS' MOTION FOR
 PRELIMINARY INJUNCTION**

Judge: Hon. André Birotte Jr.

Date: October 24, 2016

Time: 10:00 a.m.

Crtrm.: 4

Trial Date: None Set

1 I, Tedd Cittadine, declare as follows:

2 1. I am the Senior Vice President, Digital Distribution at 20th Century
3 Fox Home Entertainment, which is part of Plaintiff Twentieth Century Fox Film
4 Corporation (“Fox”). I submit this declaration in support of the motion by Plaintiffs
5 in this action for a preliminary injunction. Except as to those matters stated on
6 information and belief, the facts stated herein are known to me personally. As to
7 those matters stated on information and belief, I am informed of the facts and
8 believe them to be true. If called upon and sworn as a witness, I could and would
9 testify competently to the contents of this Declaration.

10 **INTRODUCTION**

11 2. In my position, I generally oversee our digital business, including the
12 negotiation of digital distribution agreements in the United States and Canada with
13 third party companies who provide our copyrighted entertainment content (motion
14 pictures and television shows, collectively “content”) directly to customers. We
15 refer to these business partners as our “clients.” I have worked in digital distribution
16 in various roles at Fox since 2009.

17 3. From my professional experience, I am familiar with Fox’s efforts to
18 partner with our clients to distribute our content to consumers across a range of
19 digital viewing options. Through publicly available sources, such as industry
20 publications and the media, I also have knowledge about the analogous efforts of
21 other motion picture studios and the general means by which other studios,
22 including the other Plaintiffs in this action, distribute their content.

23 4. I understand that Defendant VidAngel, Inc. markets a service that
24 allows consumers to stream our content, and the content of other creators of motion
25 pictures and television shows, over the internet for a fee of \$1 or \$2 a day. This sort
26 of consumer offering—daily access to a particular movie or television show—is
27 known generally as on-demand streaming. VidAngel does not have a license
28 agreement with Fox to copy, distribute or transmit Fox’s copyrighted content.

1 8. The lynchpin of our business is our ability to charge for the right to
2 reproduce, distribute, perform or otherwise use our intellectual property. Being able
3 to control the exploitation of the exclusive rights we hold in our copyrighted works
4 is crucial to this endeavor. Copyright protection ensures this control, which allows
5 us to earn returns on our substantial investment and to continue producing film and
6 television content in the future.

7 9. We offer Fox content to the public through a range of offerings that
8 meet customer demand and at retail price points (set by our clients) tailored to those
9 choices. Currently, Fox (as I understand is also true of the other Plaintiffs),
10 individually and through our affiliates and licensees, offer the following options:

- 11 • Customers can see our movies in the theater;
- 12 • they can buy a copy on DVD or Blu-ray Disc (“purchase a physical
13 Disc copy”);
- 14 • they can download and license long-term digital rights to a copy
15 through a service like iTunes or Amazon Video (“purchase a digital
16 download copy”);
- 17 • they can rent a physical copy at a brick-and-mortar store or kiosk, like
18 Redbox;
- 19 • they can rent a movie on demand for a limited period of time through a
20 cable, satellite, or internet video-on-demand platform, such as iTunes
21 or Google Play (transactional “on-demand streaming”);
- 22 • they can access and view a movie on demand through a subscription
23 streaming service like Netflix, Hulu, HBO NOW or HBO GO¹
24 (subscription “on-demand streaming”);

25
26 ¹ HBO offers HBO NOW as a standalone on-demand streaming service. HBO GO
27 also streams on-demand but is included with the HBO cable television subscription
28 channel.

- 1 • they can watch it on a subscription cable television channel like HBO;
- 2 or
- 3 • they can, eventually, watch it for free on network television.

4 Each of these options is known as a “distribution channel” and is designed to
5 provide different value to consumers matched to their willingness to pay. My
6 business focuses on the multiple online distribution channels.

7 10. Fox’s digital distribution business has become increasingly important
8 in recent years, and we are always looking for new opportunities to grow our
9 business and respond to consumer demand through partnerships with current and
10 new clients.

11 11. Fox’s partnerships with clients take time and resources. Including
12 myself, we have approximately 73 individuals who work full time either negotiating
13 or maintaining our relationships with our digital clients.

14 12. We have also been very deliberate in our digital strategy and the terms
15 and conditions on which we have agreed to license our content to online services
16 like VUDU, iTunes, Google Play, Netflix and others. Just by way of general
17 example, Fox’s agreements for streaming often include, among other terms:
18 (a) detailed provisions requiring technological measures to protect the security of
19 the transmission of the content to ensure against unlawful access, copying and
20 piracy, (b) provisions requiring a certain level of quality for the content’s display, to
21 ensure that consumers are receiving appropriate value, and (c) restrictions on
22 making the content available during certain blackout periods where other clients
23 have paid for exclusive distribution rights. Unlicensed services such as VidAngel
24 act independent of these terms, thereby undermining our business and the market
25 more generally.

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1 making our movies available during windows occupied by different distribution
2 channels or exclusivity periods held by one or more specific clients, thus interfering
3 with Fox's contractual commitments, its relationship with its clients and its ability to
4 negotiate similar deals in the future.

5 16. I am aware that VidAngel has interfered with legitimate services'
6 negotiated rights by offering Plaintiffs' content during exclusive windows. The
7 most salient example—albeit of a non-Fox title—is *Star Wars: The Force Awakens*
8 (2015), owned by Plaintiff Lucasfilm. It is well known that *The Force Awakens* was
9 an immensely popular motion picture. Its release to the home entertainment market
10 was very much anticipated and scheduled for April 5, 2016. Public reports made
11 clear that it would be available on DVD, Blu-ray Disc and digital download, but that
12 it would *not* be offered for on-demand streaming in that same window. On the very
13 same day, April 5th, VidAngel released *The Force Awakens* for on-demand
14 streaming, thereby competing directly with these other exclusive viewing options
15 and preempting legitimate on-demand streaming services.

16 17. Although *Star Wars: The Force Awakens* is not a Fox title, unlicensed
17 use of such a popular film concerns me. VidAngel's conduct shows that it has
18 interfered and (unless enjoined) will continue to interfere with exclusive windowing
19 rights, undermining our clients' ability to maximize the value of the rights we grant
20 them and, in turn, harming Fox's relationships with them and ability to negotiate for
21 similar rights in the future.

22 ***VidAngel Harms Plaintiffs' Relationships With Clients By Undermining Their***
23 ***Ability to Provide Licensed Offerings***

24 18. Fox's relationships with the companies that distribute and perform our
25 content are very important. The success of our business is very much intertwined
26 with the success of their business.

27 19. Our clients worry about unlicensed services in the market that compete
28 with their business on unfair terms. They complain to us in partnership meetings,

1 and especially in negotiations, that it is difficult to compete with services that, like
2 VidAngel, do not act pursuant to licensing restrictions. This is especially true for
3 unlicensed services that do not pay for the content they exploit. Our clients
4 complain that it is difficult to compete with unlicensed services' low-cost (or even
5 free) offerings. As a result, these unlicensed services are a problem for the entire
6 legitimate market for home entertainment, and in particular, for the online
7 distribution market.

8 20. VidAngel is a quintessential example of the sort of unlicensed service
9 that undermines the market for authorized content and interferes with our client
10 relationships. VidAngel markets itself as offering discounted streaming—a mere \$1
11 or \$2 per day for movies and television episodes. In contrast, licensed services'
12 transactional on-demand streaming retail prices typically are \$2.99 to \$5.99 per
13 rental and their digital download prices typically are \$9.99 to \$19.99 for a
14 permanent copy. By offering consumers on-demand streaming at a lower price—
15 which VidAngel can offer only because it misappropriates Fox's content—
16 VidAngel threatens the business of all of our clients who have negotiated legal,
17 authorized licenses for those rights.

18 21. VidAngel's marketing and advertising further threatens to confuse
19 consumers and upset the balance between on-demand streaming and physical
20 rentals. VidAngel operates an on-demand streaming service but some of its
21 marketing compares it to physical DVD rental services, like Redbox. This threatens
22 to confuse consumers because the two distribution channels offer different value
23 propositions. Fox makes its titles available in physical disc form to Redbox, which
24 generally operates in a *later* window than on-demand streaming services and only
25 offers physical rentals. Because consumers generally have a lower willingness to
26 pay in later release windows, Redbox charges a lower price to consumers (e.g., \$1
27 per night for DVD rentals from its kiosks). In contrast, on-demand streaming
28 services operate in an earlier window and have the rights to stream Fox's content

1 over the internet, which many consumers find more convenient. VidAngel’s
2 marketing confuses the two—seemingly trying to convince consumers that they can
3 have the value of on-demand streaming of newer releases for the price of a Redbox
4 rental. By confusing consumers as to the different value propositions, VidAngel
5 threatens to undermine our clients’ abilities to provide their licensed offerings.

6 22. These harms, in particular, only worsen as VidAngel grows. As a
7 relative matter, a very small and unknown unlicensed service does less harm
8 because it does not pose a serious threat to our clients’ businesses. Once an
9 unlicensed service reaches a certain size or level of notoriety, however, the threat
10 increases dramatically. I am aware that VidAngel, in recent months, has been
11 aggressively marketing its service to consumers and has grown its user-base
12 substantially. This concerns me because as VidAngel continues to grow and gain
13 consumers (at the expense of lawful services) the threat to our relationships with
14 clients and the market for authorized streaming will only increase.

15 ***VidAngel Harms Plaintiffs’ Ability To Secure And Protect Their Content***

16 23. VidAngel takes away Fox’s right to control the security with which our
17 content is transmitted to the public. This undermines the steps that Fox and the
18 other Plaintiffs take to prevent unauthorized access, illegal copying, and piracy—
19 problems that threaten serious harm to our industry.

20 24. The internet has been a very valuable tool for digital distribution of our
21 content, especially with the rise of mobile devices. However, the internet can also
22 be used to access, copy and exploit our content on a mass scale. Our industry has
23 responded to this challenge by developing rigorous digital rights management
24 (“DRM”) technology and other means of ensuring the security of digital streams and
25 copies transmitted over the internet.

26 25. Before Fox grants any client the right to stream or digitally distribute
27 our content, we do a thorough and detailed review of the service’s security
28 protocols. After investigating these security measures, we negotiate stringent

1 security and protection requirements that the client must follow. Our agreements
2 also contain provisions for steps a client must take if there is a breach of that
3 security. Because VidAngel's transmission of Fox's content is unlicensed, Fox has
4 not had the ability to vet and negotiate security protocols to protect our content
5 when streamed by VidAngel. Likewise, Fox has no recourse if whatever security
6 measures VidAngel does use fail.

7 ***VidAngel Undermines Our Ability To Insist On Quality Controls, Which In Turn***
8 ***Threatens The Continued Development Of The Online Market***

9 26. VidAngel's unlicensed service further threatens the development and
10 growth of the on-demand streaming market. Fox works closely with its clients to
11 ensure that customers receive an optimal viewing experience. Customers' positive
12 experiences with on-demand streaming encourages them to use licensed services
13 more. This is important to the continued and sustained growth of the on-demand
14 streaming market, and to digital home entertainment more broadly.

15 27. VidAngel harms consumers' perceptions of the on-demand streaming
16 market by providing a sub-optimal consumer experience, thereby tarnishing
17 consumer perception of on-demand streaming generally and discouraging
18 consumers from using legitimate on-demand streaming services. For instance,
19 before granting a client the rights to transmit our movies, Fox vets that entity to
20 ensure that it will provide a high-quality viewing experience to customers. In
21 contrast, Fox has no control over the quality of the transmission of the movies from
22 VidAngel and thus I worry that poor quality transmissions could lead to consumer
23 dissatisfaction and damage to consumer perception of on-demand streaming.

24 28. A bad viewing experience could also tarnish consumers' views of Fox
25 and our branded content. Consumers may come to associate the poor quality with
26 the Fox film they were attempting to watch (in addition to, or instead of VidAngel).
27 We want the movie-watching public to have the best possible experience so they
28

1 continue to choose watching movies and television, and Fox-branded content in
2 particular, for their entertainment.

3 29. I understand that VidAngel may tell its customers that certain movies
4 are “out-of-stock.” This message of unavailability is inconsistent with the idea of
5 video “on demand” and risks causing consumer frustration and confusion, thereby
6 hurting the broader on-demand streaming market. This is of particular significance
7 since the “always available, never out of stock” character of on-demand streaming is
8 one of the essential differentiating characteristics of the on-demand experience from
9 that of traditional, physical DVD rental (e.g. Redbox).

10 30. I also understand that VidAngel limits the number of devices to which
11 a consumer can stream. The ability to stream on several devices for personal or
12 family use (e.g. mobile phone and tablet) is another value proposition of the on-
13 demand streaming market. Again, this availability across a number of devices
14 differentiates on-demand streaming from physical DVD rentals and is important to
15 encouraging consumers to purchase from authorized on-demand services.

16 31. Fox invests significant amounts of money to market and promote the
17 availability of its various motion pictures and television shows for on-demand
18 streaming. Fox also expends substantial effort and resources in working with our
19 clients to ensure the best possible viewing experience for consumers. These efforts
20 will be hampered if VidAngel’s sub-optimal experience turns consumers away from
21 the on-demand streaming market and Fox’s movies and television shows.

22 ***The Harms That VidAngel Causes Are Immediate And Irreparable***

23 32. VidAngel threatens immediate harm to Fox because it directly
24 interferes with exclusive releases to particular licensees. For example, Fox grants
25 HBO exclusive windows for certain movies, in which they are not available for on-
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1 demand streaming on other services.³ Right now, both *The Martian* (2015) and
2 *Brooklyn* (2015) are within these HBO exclusive windows. Customers can watch
3 them on the HBO subscription cable channel through on-demand streaming on HBO
4 NOW or HBO GO. They are not available on other on-demand streaming services.
5 VidAngel nonetheless has these same movies available for on-demand streaming on
6 its service—directly impacting HBO’s exclusive window.

7 33. Likewise, VidAngel threatens immediate harm to Fox because it
8 interferes with the exclusive windows for other distribution channels. New releases
9 are first released to distributors that sell digital download copies. Shortly thereafter
10 they are released for purchase on physical Disc. During these initial release
11 windows, they are typically not available for on-demand streaming. VidAngel,
12 however, offers newly released titles soon after they are released for purchase on
13 physical Disc. Accordingly, for each new release that VidAngel offers, it interferes
14 with the exclusive window that iTunes, Google Play, VUDU and others have to sell
15 digital downloads before the title becomes available for on-demand streaming.

16 34. The threat from each of the harms that I have described above has
17 increased and continues to increase as VidAngel grows in size and more
18 aggressively markets its service. Specifically, each new Fox title that VidAngel
19 adds to its service poses a new threat to Fox’s ability to control its copyrighted
20 works and that work in particular.

21 35. I am informed and believe that, in or around July 2015, VidAngel’s
22 outside counsel sent letters to the General Counsel of Fox’s corporate parent (and
23 the General Counsels of the corporate parents of the other Plaintiffs as well as other
24 motion picture studios) regarding its service. I understand from reviewing that letter
25 that VidAngel at that time claimed to have fewer than 5,000 users and was still in a
26

27 ³ During these windows consumers can purchase permanent copies of Fox’s movies
28 through purchasing a physical Disc copy or a digital download copy.

1 “limited beta test.” That letter does not say when VidAngel planned to launch its
2 service publicly. I am informed and believe that my colleagues in Fox’s legal
3 department, in conjunction with legal counsel through the Motion Picture
4 Association of America (“MPAA”), immediately commenced investigation of
5 VidAngel’s potential liability. I am further informed and believe that Fox’s legal
6 department, in conjunction with counsel for the other Plaintiffs, continued to
7 monitor VidAngel’s activities and growth through the first part of 2016 as VidAngel
8 began to more aggressively market its service, ultimately filing suit on June 9.

9 36. VidAngel’s growth has been cause for concern. Our clients would not
10 notice (let alone complain) about a service with a mere 5,000 users, but one with
11 100,000 users is much more problematic. I am not aware of any specific complaints
12 about VidAngel, but know that VidAngel’s presence as one more, quickly growing,
13 unlicensed service in the market will frustrate our client relationships, negotiations
14 and the growth of the on-demand streaming market more generally.

15 37. It is my strong belief that these harms to our relationships with clients
16 and the on-demand streaming market, though they are likely to be very significant,
17 will be extremely hard to measure in dollar terms. It will be extraordinarily difficult
18 to assess what impact VidAngel has on the on-demand streaming market, and how
19 much of that it is a result of negative consumer experiences with services like
20 VidAngel, and even more difficult to assess the effect on Fox of the disruption of its
21 relationships with legitimate licensees.

22 38. For these reasons, Fox and the Plaintiffs will suffer immediate and
23 irreparable injury unless the Court enjoins VidAngel’s service.

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1 I declare under penalty of perjury under the laws of the United States that the
2 foregoing is true and correct.

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Executed on August 22, 2016 at Century City, California.



Tedd Cittadine

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16 *Attorneys for Defendant and
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18 UNITED STATES DISTRICT COURT
 19 CENTRAL DISTRICT OF CALIFORNIA
 20 WESTERN DIVISION

21 DISNEY ENTERPRISES, INC.;
 LUCASFILM LTD. LLC;
 22 TWENTIETH CENTURY FOX FILM
 CORPORATION and WARNER
 23 BROS. ENTERTAINMENT INC.,

24 Plaintiffs and Counter-
 Defendants,

25 vs.

26 VIDANGEL, INC.,

27 Defendant and Counter-
 28 Claimant.

Case No. 16-cv-04109

**STIPULATION REGARDING
 PRELIMINARY INJUNCTION
 BRIEFING AND HEARING
 SCHEDULE**

Judge: Hon. André Birotte Jr.

Ctrm: 4

1 Plaintiffs and Counter-Defendants Disney Enterprises, Inc., Lucasfilm Ltd.
2 LLC, Twentieth Century Fox Film Corporation, and Warner Bros. Entertainment
3 Inc. (collectively, “Plaintiffs”) and Defendant and Counter-Claimant VidAngel, Inc.
4 (“Defendant”) (Plaintiffs and Defendant are jointly referred to as the “Parties”), by
5 and through their respective counsel of record, hereby stipulate to the following
6 briefing schedule and hearing date for Plaintiffs’ Motion for a Preliminary
7 Injunction, subject to the approval of the Court:

8 WHEREAS, Plaintiffs filed their Complaint on June 9, 2016, Dkt. No. 1;

9 WHEREAS, Defendant filed and served its Answer and Affirmative Defenses
10 to Complaint and Counter-Complaint on July 13, 2016, Dkt. No. 11;

11 WHEREAS, Plaintiffs have informed Defendant that they intend to file a
12 Motion for a Preliminary Injunction;

13 WHEREAS, the Parties have met and conferred and agreed to conduct limited
14 expedited discovery across several agreed-upon categories of documents and
15 witness testimony related to Plaintiffs’ Motion and Defendant’s Opposition thereto;

16 WHEREAS, the Parties also have met and conferred and agreed to a proposed
17 briefing schedule and hearing date on Plaintiffs’ Motion; and

18 WHEREAS, the Parties believe that good cause exists for the briefing and
19 hearing schedule proposed herein, provided that the schedule will be convenient for
20 the Court.

21 IT IS HEREBY STIPULATED between Plaintiffs and Defendant, by and
22 through their undersigned attorneys:

- 23 • Plaintiffs’ Motion for Preliminary Injunction will be filed and served on
24 August 22, 2016;
- 25 • Defendant’s Opposition will be filed and served on September 12, 2016;
- 26 • Plaintiffs’ Reply will be filed and Served on October 3, 2016; and
- 27 • If convenient for the Court, the Motion shall be noticed for hearing October,
28 17, 2016, at 10:00 am.

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DATED: July 22, 2016

MUNGER, TOLLES & OLSON LLP

By: /s/ Kelly M. Klaus
KELLY M. KLAUS
Attorneys for Plaintiffs

DATED: July 22, 2016

BAKER MARQUART LLP

By: /s/ Jaime Marquart
JAIME MARQUART
Attorneys for Defendant

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of San Francisco, State of California. My business address is 560 Mission Street, Twenty-Seventh Floor, San Francisco, CA 94105-2907.

On July 22, 2016, I served true copies of the following document(s) described as **STIPULATION REGARDING PRELIMINARY INJUNCTION BRIEFING AND HEARING SCHEDULE** on the interested parties in this action as follows:

Ryan G. Baker
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BY CM/ECF NOTICE OF ELECTRONIC FILING: I electronically filed the document(s) with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on July 22, 2016, at San Francisco, California.



Marsha Poulin