

No. 16-56843

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

VIDANGEL, INC.,

Defendant-Appellant,

v.

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

Plaintiffs-Appellees.

On Appeal from the United States District Court
for the Central District of California
Hon. André Birotte Jr.
No. 2:16-cv-04109-AB-PLA

APPELLANT'S APPENDIX

VOLUME 1 OF 3

(Pages 1-290)

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

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

26 Plaintiffs,

27 v.
28

Case No. 2:16-CV-04109-AB (PLAx)

**DECLARATION OF DAVID
QUINTO**

Judge: Hon. André Birotte Jr.

Action Filed: June 9, 2016

1 VIDANGEL, INC.,
2 Defendant.

3
4 VIDANGEL, INC.,
5 Counterclaimant,

6 v.

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

10 Counterclaim Defendants.
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1 I, David Quinto, declare as follows:

2 1. I am the General Counsel of VidAngel, Inc. I have personal knowledge
3 of the facts set forth herein and if called and sworn as a witness, I could and would
4 testify competently hereto.

5 2. Earlier today, this Court issued an Order that denied VidAngel's
6 application for a temporary stay. Given the denial of the requested stay, VidAngel
7 employees at VidAngel were immediately directed to shut the company's movie-
8 streaming servers completely, such that it is no longer possible to stream a movie from
9 VidAngel. Even customers who currently own tens of thousands of discs are unable to
10 watch the content they own. Notwithstanding VidAngel's efforts to avoid having to
11 shut down completely, it is not now technologically possible for VidAngel to comply
12 fully with the Court's Order with respect to plaintiffs' titles while at the same time
13 filtering and streaming titles released by the many, many studios that have neither sued
14 VidAngel nor expressed any complaint concerning its service. VidAngel has therefore
15 been forced to shut down its entire business as a result of the entry of the preliminary
16 injunction and the denial of a stay.

17 3. I hope VidAngel's action today moots plaintiffs' *Ex Parte* Application for
18 Order to Show Cause re: Contempt against VidAngel. Plaintiffs sought only to compel
19 compliance with the preliminary injunction and VidAngel is now in full compliance
20 with it.

21 I declare under penalty of perjury that the foregoing is true and correct. Executed
22 this 29th day of December, 2016 in Los Angeles, California.

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26 David Quinto
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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 DENYING Defendant's Ex Parte Application to Stay Preliminary Injunction Pending Appeal Or Alternatively, Pending Decision by the Ninth Circuit On Stay Pending Appeal (Dkt. No. 147)

This matter is before the court on Defendant VidAngel, Inc.'s ("VidAngel") ex parte application to stay the Court's December 12, 2016 preliminary injunction order granting Plaintiffs' Disney Enterprises, Inc., Lucasfilm Ltd. LLC, Twentieth Century Fox Film Corporation, and Warner Bros. Entertainment Inc. ("Plaintiffs") Motion for Preliminary Injunction. (Dkt. No. 144, "Order.") The Courts Order enjoined VidAngel from copying, streaming, transmitting or otherwise publicly performing or displaying any of Plaintiffs' copyrighted works. (*Id.*) VidAngel was also enjoined from circumventing technological measures protecting Plaintiffs' copyrighted works or engaging in any activity that violates Plaintiffs anti-circumvention right under § 1201 of the Copyright Act, 17 U.S.C. §1201(a), or infringing Plaintiffs' exclusive rights under § 106 of the Copyright Act, 17 U.S.C. § 106. (*Id.*) VidAngel requests that the Order be stayed in its entirety pending resolution of its appeal of the Court's Order to the Ninth Circuit. VidAngel

alternatively moves this Court to stay its Order pending VidAngel's motion to the Ninth Circuit for a stay of the injunction which VidAngel intends to file should the instant motion be denied.

For the reasons set forth below, the court **DENIES** VidAngel's motion for a stay in its entirety.

I. LEGAL STANDARD

Federal Rule of Civil Procedure 62(c) provides that "[w]hile an appeal is pending from an interlocutory order or final judgment that grants . . . an injunction, the court may suspend, modify, restore, or grant an injunction on terms for bond or other terms that secure the opposing party's rights." In determining whether to issue a stay pending an interlocutory appeal, courts must consider: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Hilton v. Braunskill*, 481 U.S. 770, 776, 107 S. Ct. 2113, 95 L. Ed. 2d 724 (1987). "The first two factors of the traditional standard are the most critical." *Nken v. Holder*, 556 U.S. 418, 434, 129 S. Ct. 1749, 173 L. Ed. 2d 550 (2009).

In applying these factors, the Ninth Circuit employs a "sliding scale" approach whereby "the elements of the . . . test are balanced, so that a stronger showing of one element may offset a weaker showing of another." *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011); *see also Leiva-Perez v. Holder*, 640 F.3d 962, 964-66 (9th Cir. 2011) (noting that the sliding scale test for preliminary injunctions described in *Alliance for the Wild Rockies* is the "essentially the same" as the test used in the stay context, and holding that this approach "remains in place" following the Supreme Court's decision in *Nken*). The Ninth Circuit "has adopted and applied a version of the sliding scale approach under which a preliminary injunction could issue where the likelihood of success is such that 'serious questions going to the merits were raised and the balance of hardships tips sharply in [plaintiff's] favor.'" *Alliance for the Wild Rockies*, 632 F.3d at 1131-32. "Serious questions" are those which are "substantial, difficult, and doubtful, as to make them fair ground for litigation and thus for more deliberative investigation." *Senate of State of Cal. v. Mosbacher*, 968 F.2d 974, 977-78 (9th Cir. 1992) (citing *Gilder v. PGA Tour, Inc.*, 936 F.2d 417, 422 (9th Cir. 1991)); *see also Republic of the Philippines v. Marcos*, 862 F.2d 1355, 1362 (9th Cir. 1988) ("'serious questions' refers to questions which cannot be resolved one way or the other at the hearing on the injunction and as to which the court perceives a need to preserve the status quo lest one side prevent resolution of the questions or execution of any judgment by altering the status quo").

II. DISCUSSION

a. Likelihood of Success on the Merits

VidAngel's application for a stay raises the same arguments made in its original opposition to Plaintiffs' motion for a preliminary injunction. (Dkt. No. 42) The Court addressed each of VidAngel's arguments in its Order, and will not repeat the analysis here. For the reasons set forth in the Order, the Court determined that the Plaintiffs have demonstrated a strong likelihood of success on the merits of their claims that VidAngel's service violates Plaintiffs' rights pursuant to § 1201(a) of the Digital Millennium Copyright Act ("DMCA"), 17 U.S.C. § 1201(a), and infringes Plaintiffs' exclusive rights under § 106 of the Copyright Act, *id.* § 106.

A district court's decision regarding preliminary injunctive relief is subject to limited review. *Harris v. Bd. of Supervisors, L.A. Cnty*, 366 F.3d 754, 760 (9th Cir. 2004) (review "limited and deferential") The Ninth Circuit will reverse a district court's issuance of a preliminary injunction only if the district court abused its discretion by basing its decision on an erroneous legal standard or on clearly erroneous factual findings. *Alliance for the Wild Rockies*, 632 F.3d at 1131. Moreover, the Court's factual findings are reviewed for clear error and will not be reversed "as long as [the] findings are plausible in light of the record viewed in its entirety." *Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv.*, 422 F.3d 782, 795 (9th Cir. 2005). Considering the deferential standard of review and the Court's determination that the Plaintiffs have demonstrated a strong likelihood of success on the merits of its claims, VidAngel has not shown that it is likely to prevail on the merits of the appeal.

b. Balance of the Hardships

VidAngel raises similar arguments from its original opposition regarding the harms it will suffer if the injunction is not stayed. Specifically, VidAngel contends that the injunction "threatens to destroy VidAngel's unique market position and its market value" and will cause "serious financial loss." (Dkt. No. 147 at 12.) VidAngel also asserts that the injunction threatens to damage customer goodwill. (*Id.*) The Court addressed these arguments by noting that "[Defendants] cannot complain of the harm that will befall it when properly forced to desist from its infringing activities." *Triad Sys. Corp. v. Southeastern Express Co.*, 64 F.3d 1330, 1338 (9th Cir. 1995). "Where the only hardship that the defendant will suffer is lost profits from an activity which has been shown likely to be infringing, such an argument in defense 'merits little equitable consideration [on an appeal from a preliminary injunction].'" *Id.* (citing *Concrete Mach. Co. v. Classic Lawn Ornaments, Inc.*, 843 F.2d 600, 612 (1st Cir. 1988); accord *Apple Comput., Inc. v. Franklin*

Comput. Corp., 714 F.2d 1240, 1255 (3d Cir. 1983) (in motion for preliminary injunction, district court should not consider the “devastating effect” of the injunction on the infringer’s business). (Order at 21.)

The Court determined that the Plaintiffs demonstrated a likelihood of imminent, irreparable injury in the absence of an injunction. (Order at 16-20.) The Court specifically found that VidAngel’s service caused irreparable harm by undermining Plaintiffs’ negotiating position with licensees and also by damaging goodwill with licensees, some of whom had specifically referenced “unlicensed services like VidAngel’s...during negotiation meetings.” (*Id.* at 18.) VidAngel argues that the Plaintiffs goodwill with licensees will be “largely unaffected pending the outcome on appeal considering this Court’s ruling in Plaintiffs’ favor in the Order.” (Dkt. No. 147 at 13.) The Court is not persuaded by this argument. The evidence in the record shows that Plaintiffs’ irreparable harms specifically arise from VidAngel’s unlicensed use of Plaintiff’s works. Allowing VidAngel to continue offering the Plaintiff’s copyrighted works without a license will only increase these harms.

Based on the foregoing, the Court holds that the balance of the hardships tips sharply in the favor of the Plaintiffs.

c. Public Interest

VidAngel has not sufficiently shown that the public interest supports a stay of the preliminary injunction. Plaintiffs have shown a likelihood of success on the merits of their claims that VidAngel’s service violates § 1201(a), and § 106 of the Copyright Act. As the Court noted in its Order, “it is virtually axiomatic that the public interest can only be served by upholding copyright protections and correspondingly, preventing the misappropriation of skills, creative energies, and resources which are invested in the protected work.” *Warner Bros. Entm’t, Inc. v. WTV Sys.*, 824 F. Supp. 2d 1003, 1015 (C.D. Cal. 2011) (citing *Apple Computer, Inc. v. Franklin Computer Corp.*, 714 F.2d 1240, 1255 (3rd Cir. 1983)). VidAngel essentially restates its argument that an injunction severely undercuts “the public interest in protecting every person’s right to watch filtered content in private.” (Oppo. at 32.) However, VidAngel has not refuted the evidence in the record that indicates that ClearPlay offers a filtering service to Google Play users who access authorized streams from GooglePlay’s licensed service. (Bennett Decl. Ex. A. at 5-6.) VidAngel’s assertions regarding Clearplay’s filtering service are immaterial to the Court’s analysis.¹ The presence of market alternatives to VidAngel’s filtering service belies its claim that an injunction would effectively “end the public’s ability to watch filtered movies.” (Oppo. at 33.)

¹ VidAngel argues that that ClearPlay “does not provide a legal filtering alternative” and is “technically inferior” to VidAngel’s service. (Dkt. No. 147 at 14.)

d. Conclusion

For the foregoing reasons, the Court finds that VidAngel has not shown a likelihood that it will prevail on its appeal, nor has it shown that the balance of hardships tips sharply in its favor or that the public interest is best served by a stay. Therefore, the Court denies VidAngel's motion for a stay in its entirety.

IT IS SO ORDERED.

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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' EX PARTE
APPLICATION FOR AN ORDER
TO SHOW CAUSE WHY
VIDANGEL SHOULD NOT BE
HELD IN CONTEMPT FOR
VIOLATING THE PRELIMINARY
INJUNCTION ORDER (DKT. 144)**

Judge: Hon. André Birotte Jr.

Filed concurrently:

- (1) Declaration of Kelly M. Klaus
(2) [Proposed] Order to Show Cause

EX PARTE APPLICATION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Plaintiffs Disney Enterprises, Inc., Lucasfilm Ltd. LLC, Twentieth Century Fox Film Corporation and Warner Bros. Entertainment Inc. (collectively, "Plaintiffs") will and hereby do apply ex parte for an Order to show cause as to why VidAngel should not be held in contempt for violating this Court's Preliminary Injunction Order (Dkt. 144). Plaintiffs apply to the Court pursuant to Local Rule 7-19 and this Court's Standing Order on ex parte applications. Plaintiffs base this application on this notice of application and application, the attached memorandum of points and authorities, the attached Declaration of Kelly M. Klaus, the other documents in the record referenced in the memorandum and the proposed Order.

Plaintiffs have good cause for this application. The Preliminary Injunction clearly proscribed VidAngel's continued ripping, copying and streaming of Plaintiffs' copyrighted works. Plaintiffs have presented clear and convincing evidence that VidAngel has violated the Order. Supp. Klaus Decl. (Dkt. 156) Exs. A-B. VidAngel admits its continuing violation of the Order and has no valid excuse for refusing to comply. Civil contempt sanctions are therefore proper.

Plaintiffs' counsel has served a copy of this application and all supporting papers on VidAngel's counsel. In accordance with Local Rule 7-19, the names, addresses, telephone numbers and e-mail addresses of VidAngel's counsel are attached at Appendix A.

Plaintiffs' counsel provided notice of this ex parte application to VidAngel's counsel on December 21, 2016. VidAngel indicated that it would oppose.

1 DATED: December 22, 2016

MUNGER, TOLLES & OLSON LLP

2
3
4 By: /s/ Kelly M. Klaus

KELLY M. KLAUS

Attorneys for Plaintiffs

MEMORANDUM OF POINTS AND AUTHORITIES

VidAngel is flagrantly disobeying the Court’s Preliminary Injunction Order (Dkt. 144). VidAngel has no valid justification for refusing to comply with the Court’s Order. The law does not allow VidAngel to unilaterally stay a Court Order by simply requesting a stay. VidAngel does not point to any technical inability to comply with the Preliminary Injunction. VidAngel’s current cries of hardship (in the declaration of its CEO (Dkt. 158)) are nothing more than the predictable consequences of ceasing its illegal business model. VidAngel is arguing *inconvenience*, not inability to comply with the Injunction. Inconvenience is not a basis for refusing to comply with an Injunction, and it does not excuse VidAngel’s contempt. VidAngel has been on notice that an injunction could issue for at least six months now and has only itself to blame for any hardship that flows from its continued pattern of seeking forgiveness rather than permission for violating the law.

VidAngel has brazenly defied the injunction for ten days (and counting)—going so far as to *expand* its service, adding new releases owned by Plaintiffs even after the Court issued the Injunction, and then cavalierly describing that conduct as “not intended to be disrespectful” (while simultaneously saying that VidAngel will start doing it again if the Court grants a stay). The willfulness of VidAngel’s contempt is demonstrated by VidAngel’s unilateral decision to continue operating without first seeking this Court’s permission to continue infringing Plaintiffs’ works during the pendency of its stay request. Plaintiffs request this Court’s immediate intervention to order VidAngel to respect the Court’s Order and stop its infringement.¹

¹ Plaintiffs will appear by telephone or in person at any time the Court wants to hold a hearing on this request. That said, the Ninth Circuit has “repeatedly held [] that finding a party in civil contempt without a full-blown evidentiary hearing does not deny due process to a contemnor.” *United States v. Ayres*, 166 F.3d 991, 995

ARGUMENT

“[C]ourts have inherent power to enforce compliance with their lawful orders through civil contempt.” *Fed. Trade Comm’n v. Productive Mktg., Inc.*, 136 F. Supp. 2d 1096, 1107 (C.D. Cal. 2001) (quoting *Spallone v. United States*, 493 U.S. 265, 276 (1990)). To obtain a civil contempt order, Plaintiffs must show by clear and convincing evidence that VidAngel is violating the Preliminary Injunction. *Ayres*, 166 F.3d at 994. Here, VidAngel admits it is continuing to operate in the face of this Court’s order to stop, and says it will continue to do so unless and until this Court and the Ninth Circuit deny its stay applications.

VidAngel continues to stream all of Plaintiffs’ copyrighted works listed in Exhibit A to the Complaint and numerous of Plaintiffs’ other works. *See* Supp. Klaus Decl. (Dkt. 156); Ehler Decl. (Dkt. 154). Those works comprise more than half of the 2,500+ movies and television shows that VidAngel streams. FAC (Dkt. 77) ¶ 59 (as of September, VidAngel had more than 2,500 titles); Harmon Decl. (Dkt. 158) ¶ 9 (estimating that 56% of the content VidAngel streams is owned or licensed by Plaintiffs). Compounding the injury, VidAngel continued to add new works released by Plaintiffs on DVD to VidAngel’s “New Releases” *after* the Preliminary Injunction issued. *See* Supp. Klaus Decl. ¶ 7, Exs. A, B. VidAngel admits all of this. Harmon Decl. ¶¶ 9, 15.

To avoid contempt, VidAngel bears the burden of showing that it is *unable* to comply with the Order. *FTC v. Affordable Media, LLC*, 179 F.3d 1228, 1239 (9th Cir.1999) (once the moving party has met its burden, “[t]he burden then shifts to the contemnors to demonstrate why they were unable to comply.”). VidAngel has not even attempted to make such a showing. Instead, it tries to excuse its disobedience on the grounds that complying with the order would be a hardship. But the

(9th Cir. 1999) (“Because civil contempt sanctions are viewed as nonpunitive and avoidable, fewer procedural protections for such sanctions have been required.” (quoting *United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 831 (1994))).

1 Preliminary Injunction order was granted based on the very determination by this
 2 Court that the hardship to VidAngel from complying is outweighed by the hardship
 3 to Plaintiffs from VidAngel's continued ripping, copying, and streaming of
 4 Plaintiffs' copyrighted works. The question of balance of hardships has been
 5 decided, and the result was the Preliminary Injunction Order. VidAngel is fully able
 6 to comply with the Injunction. The inconvenience to VidAngel of doing so is
 7 irrelevant. Hence, each of the two arguments VidAngel advances are meritless.

8 First, VidAngel points to the fact that it asked the Court to stay the
 9 Preliminary Injunction pending appeal. Harmon Decl. ¶ 15. That is irrelevant.
 10 Requesting a stay does not stay the Preliminary Injunction. *See Tekkno Labs., Inc.*
 11 *v. Perales*, 933 F.2d 1093, 1099 (2d Cir. 1991) (“[T]he party to whom the injunction
 12 is directed acts (or fails to act) at its peril if it declines to comply while waiting for
 13 decision on a stay application.”). The law is clear that VidAngel must comply with
 14 the Order, “unless and until this or another court has relieved [it] of that
 15 responsibility, through a stay, reversal or modification of the order.” *Armstrong v.*
 16 *Brown*, 857 F. Supp. 2d 919, 948 (N.D. Cal.), *order enforced* (Aug. 28, 2012), *order*
 17 *aff'd, appeal dismissed*, 732 F.3d 955 (9th Cir. 2013). Even if VidAngel were
 18 unaware of the law—which it does not claim—ignorance of the law would not
 19 excuse its contempt. *See In re Dual-Deck Video Cassette Recorder Antitrust Litig.*,
 20 10 F.3d 693, 695 (9th Cir. 1993) (“The contempt ‘need not be willful,’ and there is
 21 no good faith exception to the requirement of obedience to a court order.”).

22 Second, VidAngel relies on a procedurally improper declaration from its
 23 CEO, Neal Harmon.² Harmon Decl ¶¶ 3-13. To be clear, Mr. Harmon does *not* say

24
 25 ² VidAngel was obligated to put into its Opposition to Plaintiffs' Motion for
 26 Preliminary Injunction any and all evidence supporting its argument that compliance
 27 with Plaintiffs' requested injunction (which the Court granted) would cause
 28 VidAngel hardship. VidAngel's post-hoc attempt to offer this evidence by way of
 Mr. Harmon's current declaration is an improper motion for reconsideration. *School*
Dist. No. 1J, Multnomah County v. ACandS, Inc., 5 F.3d 1255, 1263 (9th Cir. 1993)

1 that VidAngel lacks the technical ability to comply with the Preliminary Injunction.
 2 His point instead is that complying with the Injunction on two (or many) services
 3 through which VidAngel illegally streams Plaintiffs’ content could cause VidAngel
 4 logistical headaches and customer “confusion.” *Id.* ¶ 4. Specifically, Mr. Harmon
 5 asserts that if VidAngel complies and removes Plaintiffs’ works, for a period of
 6 several weeks, the Roku and Apple “apps” will not identify Plaintiffs’ titles as
 7 having been removed, so customers who select Plaintiffs’ content through those
 8 apps may experience “confusion” and “ill-will” toward VidAngel if the movies do
 9 not appear after customers have paid VidAngel to stream them. *Id.* ¶¶ 4-10. That
 10 is—VidAngel’s customers would make a purchase and then be annoyed when that
 11 title was not available for streaming and contact VidAngel for a refund.

12 VidAngel’s legal duty is to comply with the Preliminary Injunction—which
 13 VidAngel plainly can do. The fact that customers may be annoyed with VidAngel is
 14 irrelevant. Mr. Harmon’s worry about customers being angry at VidAngel makes it
 15 clear that VidAngel is not trying to preserve the status quo. Instead, VidAngel is
 16 trying to maintain and expand its customer base through the illegal use of Plaintiffs’
 17 copyrighted works, notwithstanding the injunction. Nothing in Mr. Harmon’s
 18 declaration justifies VidAngel’s willful non-compliance with the Preliminary
 19 Injunction:

20 *VidAngel’s claimed inability to modify its “apps” for in-app transactions*
 21 *involving Plaintiffs’ movies does not justify non-compliance:* Mr. Harmon asserts
 22 that a large number of VidAngel customers access Plaintiffs’ works through “apps,”

23 _____
 24 (“The overwhelming weight of authority is that the failure to file documents in an
 25 original motion or opposition does not turn the late filed documents into ‘newly
 26 discovered evidence’” justifying reconsideration). The alleged facts in Paragraphs
 27 3-13 of Mr. Harmon’s declaration were available to VidAngel when it opposed
 28 Plaintiffs’ Motion and when VidAngel moved for a stay. Mr. Harmon’s excuse that
 he “began to investigate how VidAngel could comply with the injunction” only after
 the injunction issued does not justify this post-hoc filing. Harmon Decl. ¶ 2. The
 Court should strike Paragraphs 3-13 of Mr. Harmon’s declaration.

1 using Roku, Apple or similar services. Harmon Decl. ¶ 3. Mr. Harmon asserts that
 2 the Roku and Apple services are now in “holiday blackout periods.” *Id.* As a result,
 3 he asserts, VidAngel cannot remove the icons for Plaintiffs’ movies from the app
 4 interface displays (although it can remove the works themselves), and VidAngel
 5 customers will experience “confusion” if Plaintiffs’ works do not appear after the
 6 customers have selected them. *Id.* ¶ 4. Mr. Harmon claims that this issue leaves
 7 VidAngel with an all-or-nothing choice to remove all titles from Roku and Apple if
 8 VidAngel wants to avoid the resulting customer annoyance. *Id.* ¶¶ 4-8.

9 The “confusion” and “massive customer support issue[s]” that Mr. Harmon
 10 claims to fear are problems entirely of VidAngel’s own creation and can be
 11 solved—in fact, solved easily by discontinuing its illegal streaming business.
 12 VidAngel chose to build a business based on infringing Plaintiffs’ rights. It further
 13 waited until after the Court issued the Preliminary Injunction to start thinking about
 14 complying with the Injunction that it should have been expecting for months. *Id.*
 15 ¶ 2.

16 The risk of VidAngel suffering consumer “ill will,” *id.* ¶ 10, if it cannot
 17 continue to infringe Plaintiffs’ copyrights, is not a valid claim of hardship. *See*
 18 *Triad Sys. Corp. v. Se Express Co.*, 64 F.3d 1330, 1338 (9th Cir. 1995). VidAngel
 19 has been ordered to stop streaming Plaintiffs’ works to its customers, and its
 20 customers have no right to obtain streaming of those works through VidAngel’s
 21 illegal service.

22 Mr. Harmon’s declaration ignores VidAngel’s post-Injunction responsibility
 23 for the claimed Apple “blackout,” as well as all of the streaming platforms where
 24 VidAngel faces none of the purported risks of consumer “confusion”: Mr. Harmon
 25 asserts that VidAngel now is in the “holiday window for Apple” as the result of
 26 Apple’s “two-day review period.” *Id.* ¶ 3. That holiday window runs from
 27 December 23-27. *See* Klaus Decl. (attached hereto) Ex. B. That means, while Mr.
 28 Harmon and his counsel were writing the declaration yesterday, December 21,

1 VidAngel could have been updating the Apple app to remove Plaintiffs’ titles.
 2 Nothing prevented VidAngel from updating the Apple app at any time between
 3 December 12 and December 21. Mr. Harmon instead complains about VidAngel
 4 being in a corner into which it has painted itself. VidAngel’s intransigence is
 5 inequitable and does not shield it from contempt.

6 Mr. Harmon’s declaration does not claim VidAngel would have any problems
 7 with immediately removing Plaintiffs’ content from the numerous other platforms
 8 through which it streams Plaintiffs’ content. These include streams from
 9 VidAngel’s website, as well as other apps, such as Amazon Fire and Google Play.

10 *VidAngel’s claim that complying with the injunction jeopardizes its right to*
 11 *stream other copyright owners’ content is irrelevant:* Mr. Harmon asserts that, if
 12 VidAngel has “to shut down our entire system immediately or disable in-app
 13 purchasing across the board,” VidAngel will not be able to stream the one movie it
 14 is licensed to stream and the 1,000+ titles from non-Plaintiffs that VidAngel has no
 15 license to stream. Harmon Decl. ¶¶ 5-6. Mr. Harmon’s complaints are inapposite.
 16 VidAngel is under Court Order to remove Plaintiffs’ works. How VidAngel
 17 accomplishes that task and whether it decides to continue to stream non-Plaintiffs’
 18 works if they will not enter into a covenant not to sue is VidAngel’s problem, not
 19 Plaintiffs’.³

20 *VidAngel engages in robust communications with its users—they will not be*
 21 *under any illusion why Plaintiffs’ works are not available for streaming:* Mr.
 22 Harmon asserts that VidAngel customers who supposedly “permanently own[]”
 23

24 ³ VidAngel’s worry about customer annoyance is irrelevant, as discussed. It also is
 25 disingenuous. VidAngel already has said that it tells customers that movies are
 26 “out-of-stock” if the number of DVDs metaphorically “sold” to customers exceeds
 27 the number of DVDs in VidAngel’s “vault.” Harmon Decl. in support of Opp. to
 28 Prelim. Inj. (Dkt. 41) ¶ 54(f). VidAngel is fully willing to bear customer annoyance
 when needed as part of the operation of its illegal service. VidAngel cannot use
 similar annoyance as a basis for refusing to comply with the Injunction.

discs in the “vault” will be annoyed if they cannot watch the underlying movies on-demand “with no explanation.” Harmon Decl. ¶ 9. This and other assertions about customer confusion and ill-will are beside the point and are contrary to the facts.

VidAngel communicates with its customers constantly via email, Facebook, Twitter and its “blog,” including about this lawsuit and the Preliminary Injunction. *See, e.g.,* Ehler Decl. in support of Prelim. Inj. (Dkt. 30) Exs. G-I, K-M, O-Q. VidAngel has an entire section of its blog devoted to this litigation. *See Legal Battle*, VidAngel.com, available at <http://blog.vidangel.com/category/legal/> (last visited Dec. 22, 2016). Indeed, VidAngel posted Mr. Harmon’s declaration to that same blog site, and thus has communicated to its customer base the potential limitations of VidAngel’s in-app offerings. Klaus Decl. (attached hereto) Ex. C.

VidAngel claims to have raised \$10 million from its users to litigate this case. Ehler Decl. in support of Opp. to App. to Stay (Dkt. 154) Ex. H. VidAngel has gone public with the announcement of the “launch of VidAngel Studios.” *Id.* Exs. G, H. And VidAngel produced and posted to the Internet a “Special Announcement,” informing customers that VidAngel will continue operating as usual while seeking a stay. *Id.* Ex. H.

VidAngel’s customers are well aware of the Preliminary Injunction. VidAngel can replace Plaintiffs’ works with a video feed explaining the fact that it must comply with the Injunction; it can deal with customer complaints or requests for refund; and it can further communicate with its user base through the numerous communication channels VidAngel actively uses. All these options are available to VidAngel immediately and any inconvenience to VidAngel is the direct result of its decision to operate an infringing service.

* * *

The question on this contempt motion is only whether VidAngel is *able* to comply with the Injunction. Plainly, the answer is yes. VidAngel simply does not

1 want to comply. The Preliminary Injunction is in effect, VidAngel continues to
 2 violate it and expand its infringement, and the Court should accordingly hold
 3 VidAngel in contempt. And while the question of hardship does not matter for the
 4 present motion, it bears noting that VidAngel's flagrant violation of the injunction
 5 provides further evidence that the balance of the equities counsels against
 6 VidAngel's pending motion for a stay. *See Apple, Inc. v. Samsung Elecs. Co. Ltd.*,
 7 No. 12-CV-00630-LHK, 2012 WL 2576136, at *2 (N.D. Cal. July 3, 2012)
 8 ("Ultimately, whether to grant a stay of a preliminary injunction pending appeal is a
 9 matter of equitable discretion, and the propriety of its issue is dependent upon the
 10 circumstances of the particular case.") (quotation marks and alteration omitted); *see*
 11 *also Precision Instrument Mfg. Co. v. Auto. Maint. Mach. Co.*, 324 U.S. 806, 814-15
 12 (1945) ("The guiding doctrine in this case is the equitable maxim that 'he who
 13 comes into equity must come with clean hands.'").

14 A coercive monetary sanction is appropriate here. "Sanctions for civil
 15 contempt may be imposed to coerce obedience to a court order." *Xcentric Ventures,*
 16 *LLC v. Stanley*, No. CV-07-954-PHXGMS, 2009 WL 113563, at *4 (D. Ariz. Jan.
 17 16, 2009) (citing *United States v. Mine Workers*, 330 U.S. 258, 303-04 (1947);
 18 *Perry v. O'Donnell*, 759 F.2d 702, 705 (9th Cir. 1985)). Plaintiffs seek VidAngel's
 19 compliance and ask that this Court impose a per diem fine sufficient to coerce
 20 VidAngel to comply with the Injunction. *Productive Mktg., Inc.*, 136 F. Supp. 2d at
 21 1112 ("imposition of the proposed per diem fine will provide an incentive for
 22 [contemnor] to comply with the court's Order" as proper for civil contempt) (citing
 23 *Ayres*, 166 F.3d at 994). A coercive penalty of \$10,000 to \$20,000 per day is
 24 appropriate. *CBS Broad. Inc. v. FilmOn.com, Inc.*, 814 F.3d 91 (2d Cir. 2016)
 25 (upholding fine of \$10,000 per day for violation of injunction and noting that a
 26 different district court had previously warned that the same company would be fined
 27 \$20,000 per day for any future violations of the court's injunction).

1 DATED: December 22, 2016

MUNGER, TOLLES & OLSON LLP

2
3
4 By: /s/ Kelly M. Klaus

KELLY M. KLAUS

Attorney for Plaintiffs

APPENDIX A

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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,

vs.

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

**DECLARATION OF NEAL
HARMON IN SUPPORT OF
VIDANGEL, INC.'S *EX PARTE*
APPLICATION TO STAY
PRELIMINARY INJUNCTION
PENDING APPEAL OR,
ALTERNATIVELY, PENDING
DECISION BY THE NINTH**

DECLARATION OF NEAL HARMON IN
SUPPORT OF *EX PARTE* APPLICATION TO
STAY

1 VIDANGEL, INC.,
2 Defendant.

**CIRCUIT ON STAY PENDING
APPEAL**

The Hon. André Birotte Jr.

Date Action Filed: June 9, 2016

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5 VIDANGEL, INC.,
6 Counterclaimant,
7 vs.
8 DISNEY ENTERPRISES, INC.;
9 LUCASFILM LTD. LLC;
10 TWENTIETH CENTURY FOX FILM
11 CORPORATION; AND WARNER
12 BROS. ENTERTAINMENT, INC.,
13 Counterclaim Defendants.

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DECLARATION OF NEAL HARMON IN
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1 I, Neal Harmon, declare as follows:

2 1. I am a founder and the Chief Executive Officer of defendant and
3 counterclaimant VidAngel, Inc. I have personal knowledge of the facts set forth
4 herein and if called and sworn as a witness, I could and would testify competently
5 hereto.

6 2. When I learned of the issuance of the preliminary injunction the night
7 of December 12, 2016, I immediately began to investigate how VidAngel could
8 comply with the injunction without going out of business completely and without
9 causing unintended problems for our customers. I realized that we faced the
10 following problems, among others.

11 3. First, unlike ClearPlay (which is able to offer its filtering of Google
12 Play's streaming only to customers who access its eCommerce website online
13 through a desktop browser), VidAngel makes 84.3 percent of its sales through app
14 stores such as Roku, Apple, Google Play, and Amazon Fire TV. To avoid risking
15 disruptions to their users' experience during a critical time of the year, the Apple
16 and Roku stores do not permit modifications to their applications during the holiday
17 season. These hard deadlines for publishing new apps, out of necessity, create
18 earlier deadlines for developers to submit builds of app updates for review and
19 approval by the respective app stores. For example, Roku, which has a thorough de-
20 bug and user-interface testing process before publishing a company's app, will not
21 accept any new app updates after November 15. As of December 12, 2016, this
22 holiday blackout window had already begun for the largest platform through which
23 VidAngel sells content (Roku - over a third of our purchases). Because of its two-
24 day review period, we are now in that holiday window for Apple too, meaning that
25 VidAngel cannot modify its most popular apps until early January.

26 4. If VidAngel were to remove existing titles from its library during the
27 black-out period for modifying apps, the system could not be modified to recognize
28

DECLARATION OF NEAL HARMON IN
SUPPORT OF *EX PARTE* APPLICATION TO
STAY

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1 titles that were no longer available for sale. Those titles would still appear to be
 2 available even though VidAngel had removed them. The only alternative would be
 3 for VidAngel to completely turn off in-app purchasing across the board—which
 4 would prevent VidAngel from offering content that it is directly licensed to filter
 5 and stream or as to which the rights holders have no objection to VidAngel's
 6 service. As a result, during the app black-out period, we are unable to modify our
 7 system to block access to just the plaintiffs' titles without causing major customer
 8 confusion about which titles are and are not available for purchase. To immediately
 9 shutdown, we would have to block access to all titles.

10 5. VidAngel has entered into licenses to filter and stream certain works
 11 released by entities that are not party to the Directors Guild of America's collective
 12 bargaining agreement. For example, on September 12, 2016, we signed an
 13 exclusive licensing contract with Excel Entertainment to filter and stream *The Last*
 14 *Descent* commencing December 15, 2016. If we were required to shut down our
 15 entire system immediately or disable in-app purchasing across the board because we
 16 are currently unable to modify our apps to remove selected titles, we would
 17 necessarily have to block access to any works we are licensed to filter and stream
 18 (because the works catalog and purchasing system are coupled together).

19 6. The rights for our content are controlled by over 125 studios or
 20 distributors, the vast majority of whom have neither joined in the litigation nor
 21 expressed any complaint to VidAngel. Since the injunction issued, we have been
 22 contacting them to let them know that if VidAngel is unsuccessful in obtaining a
 23 stay of the preliminary injunction, it will cease filtering and streaming them and will
 24 also cease buying new DVD and Blu-ray discs of their movies unless they are
 25 willing to enter into a covenant not to sue without waiver of any legal position or
 26 argument for the duration of the appeal. To date, one such company—MGM—has
 27 rejected our request for a covenant not to sue and we have yet to hear from many
 28

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1 others.

2 7. Even if VidAngel were able to update its apps despite the blackout
 3 period, it is not an easy process to modify in-app purchasing. Once a title has been
 4 made available for purchase, rolling it back is not an easy process. This is because
 5 the respective platform providers make in-app purchasing available as an all-or-
 6 nothing option. As a technical matter, VidAngel has the ability completely to
 7 disable in-app purchasing for all titles, but it cannot use the existing in-app
 8 purchasing functionality to restrict certain titles that have previously been made
 9 available for purchase. On the other hand, we cannot turn off in-app purchases
 10 altogether because doing so would prevent us from selling and/or renting other
 11 content.

12 8. In addition, until VidAngel can update its apps after the blackout
 13 period, removing titles would also prevent customers from being able to use the app
 14 functionality that currently enables them to sell back and receive monetary credit for
 15 titles that they previously purchased. This would create confusion and a massive
 16 customer support issue.

17 9. Similarly, more than 20,000 discs in our vault are permanently owned
 18 by VidAngel's customers. Because 56 percent of the discs we sell have content
 19 owned or licensed by the plaintiffs, a similar percentage likely applies to the
 20 permanently owned discs. To immediately block access to all (or all of plaintiffs')
 21 existing titles, would cause a customer-relations nightmare to address the problem of
 22 customers who permanently owned discs that they now could not watch, with no
 23 explanation. VidAngel will need to communicate options to these customers, such
 24 as receiving the physical DVD that they own.

25 10. The app blackout period exacerbates these customer relations and
 26 support issues. That is because until the apps can be updated (including to reflect
 27 direct messaging to customers), there is no practical way to notify our customers of
 28

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1 what we are doing or to let them know that VidAngel will give them credit for
 2 selling their discs back to VidAngel. Although we have our customer's e-mail
 3 addresses, e-mail messages we send to our customers are typically opened only
 4 about 20 percent of the time. As a consequence, many of our apps customers would
 5 likely not understand why our system would neither permit them to sell their discs
 6 back nor give them credit for doing so, or to stream content they previously
 7 purchased and permanently own. We are trying to ensure that customers know
 8 which movies they have purchased, even if they cannot watch them, and that they
 9 have the opportunity to sell those movies back. To avoid creating enormous
 10 consumer ill will, we need time to make our apps ready to explain what is happening
 11 without having movies simply disappear from the apps without notice.

12 11. The company is ill equipped to handle the influx of customer service
 13 requests if it is not afforded that opportunity. In the wake of the preliminary
 14 injunction ruling alone, VidAngel's support tickets doubled from approximately
 15 3,500 to 7000 per week. If VidAngel were forced to shut down without messaging
 16 within the apps to directly explain the situation for its approximately 200,000
 17 customers, its team of 14 people would be unable to address the influx even if they
 18 devoted their holidays entirely to damage control.

19 12. Regardless of the app blackout period, it will take time for VidAngel to
 20 develop updated apps to address the issues that result from the preliminary
 21 injunction order. Because each of the apps is developed to use the interfaces native
 22 to a given platform, there are some functions that must be hard-coded in, such as
 23 how to handle errors, and how to disseminate app notifications. To appropriately
 24 implement drastic changes of the kind necessitated by the preliminary injunction,
 25 such as removing all or a significant number of titles from the site, or removing the
 26 ability to purchase a significant number of movies, work of this nature will be
 27 required. All changes have to be thoroughly vetted and tested before VidAngel can
 28

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1 submit them to the app stores; otherwise, the app review process will reject them
 2 and/or we run the risk of publishing bugs. In addition, VidAngel has to ensure that
 3 any changes do not break older versions of the apps, which customers may continue
 4 to run.

5 13. To avoid the foregoing problems, we estimate that we will require until
 6 January 5, 2017, to modify our Apple app based on our previous experience with its
 7 app store and its resumption date for modifying apps, and until January 25, 2017, for
 8 the Roku apps because it does not permit modifications to be submitted until
 9 January and then requires two weeks for expedited review. Allowing VidAngel that
 10 time would allow at least some of these issues to be mitigated if no stay of the
 11 preliminary injunction order is granted in the interim.

12 14. VidAngel today learned that its payment processing company has
 13 indicated that, absent a stay, it might sever relations with VidAngel as early as next
 14 week.

15 15. On December 20, 2016, plaintiffs complained (through the
 16 Supplemental Declaration of Kelly Klaus) that VidAngel had just added two new
 17 titles they own. This was not intended to be disrespectful or a flout of anything, and
 18 VidAngel has asked for a stay. Nevertheless, to address the concern identified in the
 19 supplemental declaration, VidAngel will not add any other titles owned or licensed
 20 by plaintiffs unless and until it obtains a stay of the preliminary injunction.

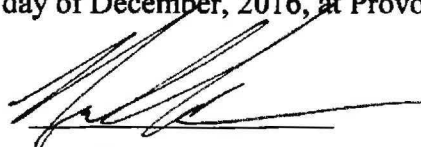
21 16. In conclusion, I would like to emphasize that VidAngel wishes to
 22 operate in a fully lawful manner and fully respects the authority of this Court. It is,
 23 and always has been, VidAngel's intent to comply fully and in all respects with all
 24 orders the Court has issued or may issue. But in view of the facts that VidAngel has
 25 now offered its service for just under two years; the plaintiffs waited 11 months after
 26 receiving written notice explaining VidAngel's service simply to file their complaint
 27 (and never sent any preliminary cease-and-desist letters); the plaintiffs never sought
 28

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1 a temporary restraining order but took another four months after filing suit to
2 conduct discovery and have their motion heard; and the Court understandably took
3 several weeks to consider the parties' various arguments and issue its ruling,
4 VidAngel requests that it be allowed a reasonable time to comply fully with the
5 terms of the preliminary injunction if no stay is granted in the interim.

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

8 Executed on 21st day of December, 2016, at Provo, Utah.

9
10 

11 Neal Harmon

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

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

27 Plaintiffs,

28 vs.

CASE NO. CV16-04109-AB (PLAx)

**VIDANGEL, INC.'S NOTICE OF
APPEAL FROM ORDER
GRANTING MOTION FOR
PRELIMINARY INJUNCTION;
REPRESENTATION STATEMENT**

**PRELIMINARY INJUNCTION
APPEAL**

1 VIDANGEL, INC.,

2 Defendant.

3 VIDANGEL, INC.,

4 Counterclaimant,

5 vs.

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

10 Counterclaim Defendants.

Notice of Appeal

Notice is hereby given that VidAngel, Inc. (“VidAngel”), defendant and counter-claimant in the above-captioned action, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the Court’s Order Granting Plaintiff’s Motion for Preliminary Injunction entered in this action on December 12, 2016 (Dkt. No. 144). A copy of that order from which VidAngel takes its appeal is attached as Exhibit A.

DATED: December 14, 2016 Respectfully submitted,

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Representation Statement

Pursuant to Circuit Rule 3-2(b) and Federal Rule of Appellate Procedure 12(b), the names, addresses and telephone numbers of the parties and their respective counsel are as follows:

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9 **LucasFilm Ltd., LLC, Twentieth Century Fox Film Corporation and**
10 **Warner Bros. Entertainment, Inc.**

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24 DATED: December 14, 2016

Respectfully submitted,

25 By: /s/ Jaime W. Marquart

26 Jaime W. Marquart
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule 5-4.7.2 on December 14, 2016.

/s/ Jaime W. Marquart

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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,

vs.

CASE NO. CV16-04109-AB (PLAx)

**VIDANGEL, INC.'S NOTICE OF
APPEAL FROM ORDER
GRANTING MOTION FOR
PRELIMINARY INJUNCTION;
REPRESENTATION STATEMENT**

**PRELIMINARY INJUNCTION
APPEAL**

1 VIDANGEL, INC.,

2 Defendant.

3 VIDANGEL, INC.,

4 Counterclaimant,

5 vs.

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

10 Counterclaim Defendants.

Notice of Appeal

Notice is hereby given that VidAngel, Inc. (“VidAngel”), defendant and counter-claimant in the above-captioned action, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the Court’s Order Granting Plaintiff’s Motion for Preliminary Injunction entered in this action on December 12, 2016 (Dkt. No. 144). A copy of that order from which VidAngel takes its appeal is attached as Exhibit A.

DATED: December 14, 2016 Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule 5-4.7.2 on December 14, 2016.

/s/ Jaime W. Marquart

Jaime W. Marquart

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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,

vs.

CASE NO. CV16-04109-AB (PLAx)

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

1 VIDANGEL, INC.,
2 Defendant.

APPEAL

[Filed concurrently with: [PROPOSED]
Order; Declaration of Jaime W.
Marquart]

The Hon. André Birotte Jr.

Date Action Filed: June 9, 2016

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6 VIDANGEL, INC.,
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8 Counterclaimant,
9 vs.
10 DISNEY ENTERPRISES, INC.;
11 LUCASFILM LTD. LLC;
12 TWENTIETH CENTURY FOX FILM
13 CORPORATION; AND WARNER
14 BROS. ENTERTAINMENT, INC.,
15
16 Counterclaim Defendants.

1 **TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that Defendant and Counterclaimant VidAngel,
3 Inc. (“VidAngel”) hereby submits this *ex parte* application for the Court to stay its
4 December 12, 2016 order granting plaintiffs’ motion for preliminary injunction (the
5 “Order”) pending appeal, or alternatively, pending a decision by the United States
6 Court of Appeals for the Ninth Circuit on an emergency motion for stay pending
7 appeal, which VidAngel will file if this Court denies this *ex parte* application.

8 Good cause exists to grant this motion because the immediate entry of the
9 preliminary injunction threatens to destroy VidAngel’s unique market position and
10 its market value and goodwill before any resolution of this Court’s preliminary
11 injunction order, let alone the merits, and would cause it serious and disproportionate
12 financial loss.

13 Pursuant to Local Rule 7-19, on December 13, 2016, Baker Marquart LLP
14 conferred with opposing counsel Kelly M. Klaus of Munger Tolles & Olson LLP via
15 email, including undertaking good faith efforts to advise counsel of the date and
16 substance of the proposed *ex parte* application. (See Declaration of Jaime W.
17 Marquart (“Marquart Decl.”) ¶ 2, filed concurrently herewith; *see also id.*, Ex A.)
18 Opposing counsel responded to the meet and confer email by stating that it intends to
19 oppose this application.

20 Pursuant to the Court’s procedure on *ex parte* applications, Baker Marquart
21 served opposing counsel with these *ex parte* papers by email on December 14, 2016,
22 and notified opposing counsel that any opposition to the *ex parte* application must be
23 filed not later than 24 hours (or one court day) after the filing. In accordance with
24 Local Rule 7-19, the names, addresses, telephone numbers and e-mail addresses of
25 Plaintiffs’ counsel are attached at Appendix A.

26 This *ex parte* application is based on this Application, the Memorandum of
27 Points and Authorities, the declaration of Jaime Marquart filed concurrently, all other
28

1 papers and pleadings on file with this Court and all other matters of which this Court
2 may take judicial notice.

3
4 DATED: December 14, 2016

BAKER MARQUART LLP

5
6 /s/ Jaime W. Marquart

Jaime W. Marquart

7 Scott M. Malzahn

8 *Attorneys for Defendant and*
9 *Counterclaimant VidAngel, Inc.*
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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
VIDANGEL'S EX PARTE APPLICATION TO STAY PRELIMINARY
INJUNCTION PENDING APPEAL

I. INTRODUCTION

On December 12, 2016, this Court granted Plaintiffs'¹ motion for a preliminary injunction (the "Order"). Dkt. 144. The Order resolved multiple questions of first impression against VidAngel, including finding that VidAngel is "not the type of defendant" for which the Ninth Circuit intended to contemplate the interplay between the DMCA and antitrust law. Order at 8. The Order recognized that "[b]efore watching a particular movie or television episode, a customer must purchase a physical DVD containing the title from VidAngel. Order at 3. But even though Congress, in the FMA, expressly allowed filtering of performances transmitted to a household for private home viewing and the Supreme Court, in *Aereo*, expressly reserved questions of cloud storage and made clear its intent to refrain from discouraging technological advances, *Am. Broad. Cos. v. Aereo, Inc.*, 134 S. Ct. 2498, 2510-11 (2014), the Order easily reached the technologically and legally questionable conclusion that when VidAngel's customers purchase its DVDs (which VidAngel spent over a third of its capital contributions to buy), they acquire only "the authority to view the DVD, not to decrypt it." Order at 7. On these and other novel issues, the Order resolved questions of exceptional importance and extraordinary practical significance against VidAngel and its customers at every turn, effectively destroying its business model and depriving the public of any meaningful filtering option. It temporarily enjoins VidAngel from "circumventing technological measures protecting Plaintiffs' copyrighted works on DVDs, Blu-rays,

¹ "Plaintiffs" refers collectively to Disney Enterprises, Inc., LucasFilm Ltd., LLC, Twentieth Century Fox Film Corporation and Warner Bros. Entertainment, Inc.

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1 or any other medium; copying Plaintiffs' copyrighted works, including but not
2 limited to copying the works onto computers or servers; and streaming, transmitting,
3 or otherwise publicly performing or displaying any of Plaintiffs' copyrighted
4 works." Order at 22.

5 VidAngel requests that the Order be stayed in its entirety because VidAngel's
6 appeal of the Order presents serious and significant questions of law to be
7 considered by the Ninth Circuit, and VidAngel not only submits that it has strong
8 arguments for appeal and is likely to prevail, but also that the equities and balance of
9 hardships tips sharply in favor of VidAngel and the public. The outcome of this
10 motion is critically important to VidAngel. Although this Court saw the novel legal
11 questions differently, VidAngel developed its business model in good faith after
12 Plaintiffs' opposition to filtering left no viable alternative (not to mention, most of
13 VidAngel's investment in its current model occurred while Plaintiffs unreasonably
14 delayed filing suit). Realistic and meaningful access to filtering by the public, which
15 Congress sought to accomplish through the FMA, also hangs in the balance.

16 The following arguments are not offered to re-argue the preliminary
17 injunction motion, but, rather, to address the elements of a stay request. The
18 significant legal questions raised on VidAngel's appeal will include interpreting the
19 language of the Family Movie Act (and, in particular, the "transmission" language
20 therein) in the context of modern video streaming applications, as well as
21 consideration of the interplay between DMCA anti-circumvention and antitrust law.
22 Moreover, fair use arguments such as those presented by VidAngel are fact-
23 intensive and are generally inappropriate for determination at the preliminary
24 injunction stage. Furthermore, absent a stay of the preliminary injunction, VidAngel
25 stands to suffer severe and irreparable harm while families will be deprived of the
26 ability to legally filter content viewed at home.

27 For these equitable reasons, and others as set forth below, VidAngel
28 respectfully asks the Court to stay the preliminary injunction until the Ninth Circuit

1 has ruled on appeal, or in the alternative, pending a decision by the United States
 2 Court of Appeals for the Ninth Circuit on an emergency motion for stay pending
 3 appeal, which VidAngel will file if this Court denies this *ex parte* application.

4 **II. PROCEDURAL BACKGROUND**

5 In this action, Plaintiffs have sought to permanently enjoin VidAngel from
 6 providing a service for online filtering that gives families the ability to control the
 7 content they view at home. In designing its service, VidAngel has sought to operate
 8 within the language of the Family Movie Act of 2005 (the “FMA”) codified at 17
 9 U.S.C. § 110(11).

10 On August 22, 2016, Plaintiffs moved for a preliminary injunction (Dkt. 27)
 11 and VidAngel opposed that motion. (Dkt. 42.) On September 16, 2016, VidAngel
 12 filed counterclaims against Plaintiffs and various Doe counter-defendants for
 13 antitrust violations, intentional interference with prospective economic advantage
 14 and unfair competition. (Dkt. 77.) Plaintiffs filed a motion to dismiss VidAngel’s
 15 counterclaims (Dkt. 103) which is scheduled for hearing in this Court on December
 16 19, 2016.

17 On December 12, 2016, the Court granted Plaintiffs’ motion for a preliminary
 18 injunction. The Court enjoined VidAngel² from the following activities:

19 (1) circumventing technological measures protecting Plaintiffs’
 20 copyrighted works on DVDs, Blu-ray discs, or any other medium;
 21 (2) copying Plaintiffs’ copyrighted works, including but not
 22 limited to copying the works onto computers or servers; (3)
 23 streaming, transmitting or otherwise publicly performing or
 24 displaying any of Plaintiffs’ copyrighted works over the Internet
 25 (through such websites as VidAngel.com), via web applications
 (available through platforms such as the Windows App Store,
 Apple’s App Store, the Amazon App Store, Facebook or Google
 Play), via portable devices (such as through applications on
 devices such as iPhones, iPads, Android devices, smart phones or
 tablets), via media streaming devices (such as Roku, Chromecast

26 ² The injunction also applies to VidAngel’s “officers, employees, attorneys, and
 27 those acting in concert with them.”
 28

or Apple TV), or by means of any other device or process; or (4) engaging in any other activity that violates, directly or indirectly, Plaintiffs anti-circumvention rights under § 1201 of the Copyright Act, 17 U.S.C. § 1201(a), or infringing by any means, directly or indirectly, Plaintiffs' exclusive rights under § 106 of the Copyright Act, 17 U.S.C. § 106.

(Dkt. 144.)

Pursuant to Federal Rule of Civil Procedure 62(c), VidAngel now seeks a stay of the Order in its entirety pending appeal. Alternatively, VidAngel seeks a stay pending a decision by the Ninth Circuit on a stay pending appeal. VidAngel intends to file a Notice of Appeal shortly, and to pursue its appeal expeditiously.

III. LEGAL ARGUMENT

A. Applicable Legal Standard.

Federal Rule of Civil Procedure 62 vests the power to stay an order pending appeal with the district court. For both the appellate court and the district court, the factors regulating the issuance of a stay are generally the same: (1) the movant's likelihood of prevailing on the merits of the appeal; (2) whether the movant will suffer irreparable damage absent a stay; (3) the harm that other parties will suffer if a stay is granted; and (4) the public interest. *See Hilton v. Braunskill*, 481 U.S. 770, 776 (1987); *Lopez v. Heckler*, 713 F.2d 1432, 1435-36 (9th Cir. 1983).

These familiar equitable factors cannot be reduced to a "set of rigid rules" but rather necessitate "individualized judgments in each case." *Hilton*, 481 U.S. at 777. For instance, the district court, having already ruled against the movant on the underlying legal questions, need not be convinced that the movant has "an absolute certainty of success" on appeal. If serious legal questions exist on the appeal, the Court may grant a stay even if it "believes [its] ruling was correct." *Davila v. Cty of San Joaquin*, 2008 WL 4426669, at *2 (E.D. Cal. Sept. 26, 2008). "Serious questions are substantial, difficult and doubtful, as to make them a fair ground for litigation and thus for more deliberative investigation." *Silvester v. Harris*, No. 11-cv-2137, 2014 WL 6611592, *7 (E.D. Cal. Nov. 20, 2014) (quoting *Gilder v. PGA Tour, Inc.*, 936 F.2d 417, 422 (9th Cir. 1991)). Finally, should the Court have any

1 doubt regarding whether to stay a preliminary injunction, the Court may also stay
 2 enforcement of the injunction only long enough for the Ninth Circuit to rule on a
 3 motion to stay. *See County of Sonoma v. Fed. Housing Fin. Agency*, 2011
 4 WL4536894, at *2 (N.D. Cal. Sept. 30, 2011).

5 **B. VidAngel's Appeal Raises Novel Legal Questions That Create a**
 6 **Substantial Likelihood that the Grant of a Preliminary Injunction**
 7 **in This Case Will Be Reversed.**

8 A movant for a stay of a preliminary injunction pending appeal need only
 9 demonstrate that serious legal questions are raised and that the balance of hardships
 10 tips sharply in its favor. *Lopez v. Heckler*, 713 F.2d at 1435; *In re Pac. Gas and*
 11 *Elec. Co.*, 2002 WL 32071634, at *2 (N.D. Cal. Nov. 14, 2002) (“in an alternative
 12 formulation of the same standard, serious legal questions and a balance of hardships
 13 were the stay denied”). Here, both things are true.

14 **1. This Court's Interpretation of the Family Movie Act Presents**
 15 **a Legal Question of First Impression.**

16 The case raises important questions concerning the construction of the FMA.
 17 The Copyright Act, 17 U.S.C. 110(11) provides: “Notwithstanding the provisions of
 18 section 106, the following are not infringements of copyright: . . . the making
 19 imperceptible, by or at the direction of a member of a private household, of limited
 20 portions of audio or video content of a motion picture, **during a performance** in or
 21 **transmitted** to that household for **private home viewing**, from an authorized copy
 22 of the motion picture, or the creation or provision of a computer program or other
 23 technology that enables such making imperceptible and that is designed and
 24 marketed to be used, **at the direction of a member of a private household**, for
 25 such making imperceptible, if no fixed copy of the altered version of the motion
 26 picture is created by such computer program or other technology.” (Emphasis
 27 added.)

28 Specifically, this case raises the statutory interpretation question whether a

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1 service operating as described above does not violate any of the exclusive rights of
 2 copyright or only a sub-section of those rights. It also raises the question whether a
 3 performance “at the direction of a member of a private household” is a private
 4 performance and, hence, not a violation of an exclusive right of copyright or
 5 whether it is a “public” performance. There is a further statutory interpretation
 6 question whether Congress intended that a system such as ClearPlay’s would permit
 7 filtering and streaming as authorized by the FMA given the undisputed evidence that
 8 the ClearPlay streaming model could not have been implemented in 2005 when the
 9 FMA took effect and that the ClearPlay model requires that it piggy-back on another
 10 provider’s service and can be provided only at the whim of such service provider as
 11 it violates YouTube’s terms and conditions. Finally, it raises the question whether
 12 including an express prohibition of making altered copies impliedly means that it is
 13 not a violation to make unaltered copies as a necessary step in providing the service
 14 authorized by the FMA pursuant to the doctrine of *inclusio unius est exclusio*
 15 *alterius*.

16 In addition, this Court’s Order represents the first time any court has
 17 interpreted the language of the FMA in a “transmission” case involving a filtering
 18 service that transmits a performance to private households via all modern mobile
 19 devices for private viewing.³ The Court reasoned that “[t]he statute clearly requires
 20 that a performance or transmission of filtered content must come from an
 21 “authorized copy” of the motion picture” and found that “[t]he digital content that
 22 VidAngel streams to its customers is not from an authorized copy.” *Id.* VidAngel
 23 contends that such a reading of the FMA renders the first and most important
 24

25 ³ Aside from this case, the only other known decision involving the FMA –
 26 *Huntsman v. Soderbergh*, No. 02-M-1662 (MJW), 2005 WL 1993421 (D. Colo.
 27 Aug. 17, 2005) – concerns a service that supplied customers with a device that they
 28 could use in their home to filter motion pictures in their possession.

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1 provision of the FMA (the one that permits a third party to filter and stream content
 2 of a disc owned by a consumer) meaningless, particularly in the world of modern
 3 mobile devices.

4 Under the FMA, Congress provided that it is not an infringement of copyright
 5 to filter “limited portions of audio or video content of a motion picture” either
 6 “during a *performance in or transmitted to* that household for private home viewing,
 7 from an authorized copy of the motion picture” 17 U.S.C. § 110(11) (emphasis
 8 added). The transmission language in the FMA must be given meaning. As
 9 VidAngel has explained in its opposition briefing, closed systems for video-on-
 10 demand (“VOD”) content prevent a third party from filtering VOD transmissions
 11 without further permissions. Yet, the FMA was intended to allow for filtering to be
 12 *transmitted* to a private household without additional permissions.

13 The FMA must be read to give it purpose. As Judge Learned Hand observed,
 14 “it is one of the surest indexes of a mature and developed jurisprudence . . . to
 15 remember that statutes always have some purpose or object to accomplish.” *Cabell*
 16 *v. Markham*, 148 F.2d 737, 739 (2d Cir. 1945). *See also Stone v. INS*, 514 U.S. 386,
 17 397 (1995) (“When Congress acts to amend a statute, we presume it intends its
 18 amendment to have real and substantial effect.”) The FMA “does not require that
 19 filtering be done with the permission of the content creator or owner, but rather
 20 creates an exemption from copyright and trademark liability for filtering.” H.R.
 21 REP. No. 108-670, at 3 (2004). This Court’s reading effectively requires a filtering
 22 service to receive the same permissions it would have needed from the studios
 23 *before* the FMA’s enactment, particularly in the VOD market (where all
 24 transmissions are encrypted and prevent access to the work for filtering purposes).
 25 Thus, VidAngel’s appeal raises a serious question concerning the statutory
 26 interpretation of the FMA such that the FMA’s language can be given effect.

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2. VidAngel's Appeal Raises Serious Questions Concerning the Interplay between the DMCA and Antitrust Law.

In the Order, this Court distinguished *MDY Indus., LLC v. Blizzard Entm't, Inc.*, 629 F.3d 928, 951 (9th Cir. 2010) from the instant case on the ground that the parties here are not engaged in “trafficking in circumvention technology, and thus is not the type of defendant contemplated by the court in *MDY Indus.*” (Dkt. 144 at 8.) Additionally, this Court dismissed as *dicta* language from that decision stating that future cases may require the court to consider the interplay between the anti-circumvention right and antitrust law. While this Court ultimately concluded that *MDY Indus.* is inapplicable to this case, VidAngel respectfully contends that as to the need to consider the interplay with antitrust law, the reasoning in *MDY Indus.* is sound and applies equally here.

In *MDY Indus., LLC v. Blizzard Entm't, Inc.*, 629 F.3d 928, 948 (9th Cir. 2010), the Ninth Circuit interpreted the DMCA to hold that Section 1201(a) created a new anti-circumvention right distinct from copyright infringement. In doing so, the *MDY* court split from contrasting Federal Circuit precedent that required Section 1201(a) “plaintiffs to demonstrate that the circumventing technology infringes or facilitates infringement of the plaintiff’s copyright (an “infringement nexus requirement”).” *Id.* (citing *Chamberlain Group, Inc. v. Skylink Techs., Inc.*, 381 F.3d 1178, 1203 (Fed. Cir. 2004)).⁴ In making its decision, the *MDY* court did not have to consider the interplay between the enforcement of the DMCA and antitrust law because “there [was] no clear issue of anti-competitive behavior in this case

⁴ The *Chamberlain* court “feared that copyright owners could use an access control right to prohibit exclusively fair uses of their material even absent feared foul use . . . [and] that § 1201(a) would allow companies to leverage their sales into aftermarket monopolies, in a potential violation of antitrust law and the doctrine of copyright misuse.” *MDY Indus.*, 629 F.3d at 949 (emphasis added). VidAngel submits that on this point, *Chamberlain* was correct and *MDY Indus.* reached the wrong conclusion.

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1 because Blizzard does not seek to put a direct competitor who offers a competing
 2 role-playing game out of business and the parties have not argued the issue.” *Id.* at
 3 951. However, the court noted that future cases may require the court to consider
 4 the interplay between the anti-circumvention right and antitrust law. *Id.* That
 5 reasoning applies equally to the anti-competitive enforcement of Section
 6 1201(a)(1)(A)’s access control at issue here. (*See* Dkt. 77.) This is particularly true
 7 in light of the facts alleged in VidAngel’s antitrust answer and counter-complaint
 8 involving Plaintiffs’ anticompetitive conduct with respect to legitimate filtering
 9 services. Plaintiffs have taken away any legitimate alternatives to VidAngel’s
 10 current model then complain that the current model violates the anti-circumvention
 11 right. These adverse, anticompetitive effects are exactly what the Ninth Circuit in
 12 *MDY Indus.* intended future courts to address.

13 Additionally, the Electronic Frontier Foundation (“EFF”) recently filed suit in
 14 the District of Columbia challenging the constitutionality of the precise DMCA
 15 provision, 17 U.S.C. § 1201(a)(1)(A), at issue here. (Dkt. 48-1.) That suit
 16 challenges Section 1201 as being unconstitutionally overbroad and an
 17 unconstitutional prior restraint and speech licensing regime. (Dkt. 48-1.)
 18 VidAngel’s appeal raises many of the same significant legal issues as the EFF suit.
 19 In interpreting the FMA, the Ninth Circuit may correctly be guided by the canon of
 20 constitutional avoidance, and conclude that the FMA authorizes VidAngel’s
 21 transmission of filtered content. *See, e.g., Gallardo v. Lynch*, 818 F.3d 808, 817
 22 (9th Cir. 2016) (describing the canon as follows: “where an otherwise acceptable
 23 construction of a statute would raise serious constitutional problems, the Court will
 24 construe the statute to avoid such problems unless such construction is plainly
 25 contrary to the intent of Congress.”) (citations and internal quotation marks
 26 omitted).

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3. The Fair Use Defense Raises Novel Issues of Law Justifying Reversal.

As Judge Pierre Nelson Leval observed, customary biases in favor of injunctive remedies in conventional cases of copyright infringement have no proper application to a matter in which a fair use defense has been alleged. *Toward a Fair Use Standard*, 103 Harv. L. Rev. 1105 (March 1990). This is particularly true when, as here, a fact-intensive analysis into the transformative nature of the alleged fair use is required. As noted in VidAngel's opposition briefing, VidAngel's filtering service is inherently transformative, in that it turns a film that would not otherwise be welcome in a particular household into a family-friendly production that every member of the family can enjoy. VidAngel users may only access Plaintiffs' works for transformative purposes as VidAngel's system does not allow users to view unfiltered content. VidAngel's data show that the overwhelming majority of its users (96%) apply multiple filters, indicating that VidAngel users derive genuine transformative value from the filtering service, and are not simply using it as a pretense for viewing inexpensive content. And the Ninth Circuit may agree with VidAngel that, contrary to this Court's Order, removal—for example by filtering out obscenity—can be highly transformative.⁵ In addition, because VidAngel does not make fixed copies of filtered works and it purchases thousands of discs to resell to unique customers, its service does not negatively affect the market for Plaintiffs' works (and, in fact, *increases* the market for Plaintiffs' works).⁶ Thus, VidAngel's appeal raises very significant fair use issues and these

⁵ Indeed, one of Plaintiffs' fundamental objections to the FMA was about *editorial decisions*, which Plaintiffs presumably viewed as significant. H.R. REP. NO. 109-33(1) at 69.

⁶ Nor does it follow that the 49% of VidAngel customers who might watch Plaintiffs' works without filters would have purchased them from a source other than VidAngel. *See* Order at 15.

arguments are likely to succeed.

4. There Is a Substantial Likelihood that the Order Will be Reversed Because It Improperly Excuses Plaintiffs' Unprecedented Delay in Seeking an Injunction.

The Court's grant of a preliminary injunction in the face of Plaintiffs' unprecedented delay creates a substantial likelihood that the grant of a preliminary injunction will be reversed by the Ninth Circuit. Even before *eBay* and *Winter* – which mandated an actual showing (rather than a mere presumption) of irreparable harm to obtain an injunction – Courts consistently refused to find irreparable harm in the context of much shorter delays than the sixteen-month delay between VidAngel's first letter to Plaintiffs and the Court's Order. *Oakland Trib., Inc. v. Chron. Pub. Co.*, 762 F.2d 1374, 1377 (9th Cir. 1985) ("long delay before seeking a preliminary injunction implies a lack of urgency and irreparable harm."); 4 MELVILLE B. NIMMER & DAVID NIMMER, NIMMER ON COPYRIGHT § 14.06[A][3][c] (unreasonable delay can defeat irreparable injury and the delay "need not be great"); *Hanginout, Inc. v. Google, Inc.*, 54 F. Supp. 3d 1109, 1132–33 (S.D. Cal. 2014) (seven-month delay in filing suit, and even more before seeking preliminary injunction, was inexcusable); *Valeo Intell. Prop., Inc. v. Data Depth Corp.*, 368 F. Supp. 2d 1121, 1128 (W.D. Wash. 2005) (three-month delay belied claims of irreparable harm). These courts reasoned that denying an unreasonably delayed request for injunctive relief furthers the purpose of such relief – to maintain the *status quo*. See, e.g., *Citibank N.A. v. Citytrust*, 756 F.2d 273 (2d Cir. 1985) (10-week delay following notice of infringement was unreasonable).

As noted extensively in the Declaration of Neal Harmon dated September 12, 2016, VidAngel relied upon Plaintiffs' inaction to its detriment, investing tremendous resources to develop its current business model and customer base during the delay. (Declaration of Neal Harmon ("Harmon Decl."), ¶¶ 25–31.) Plaintiffs have sat on their rights, and the Order rewards that behavior, setting a

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precedent that encourages all copyright holders to wait as long as they like to seek extraordinary relief. After *eBay* and *Winter*, there is no presumption of irreparable harm; accordingly, Plaintiffs' protracted delay in seeking an injunction is accorded even more weight. This delay negates any finding of irreparable harm as a matter of law. None of the cases cited by Plaintiffs excuse their delay, and Plaintiffs' own conduct in similar settings (such as *WTV Systems*) negates any reasonable inference of irreparable harm.

C. VidAngel Will Suffer Severe and Irreparable Harm From the Injunction.

If the injunction is not stayed, VidAngel will suffer significant hardship. The Order threatens to destroy VidAngel's unique market position and its market value before any resolution on the merits and would cause it serious financial loss. Although "over 80 of Plaintiffs' copyrighted works" were available at the time of the preliminary injunction motion, Order at 4, Plaintiffs are half of the major studios in this country. The magnitude of the loss of the ability for VidAngel to conduct its business in light of the injunction ruling is undeniable, because the injunction was not limited to those 80 works. And the Court's rationale on likelihood of success impugns VidAngel's entire business model, and therefore harms its goodwill. As a result of the Order, VidAngel's goodwill will be seriously damaged as customers who have previously come to depend upon VidAngel to filter many popular motion pictures will lose faith in the service. (Harmon Decl. at ¶ 64.) In fact, the entire filtering market will suffer as a result of this injunction.

D. Plaintiffs Will Not Suffer Substantial Harm from A Stay Pending Appeal.

Plaintiffs are four of the world's largest movie studios. A stay of the preliminary injunction that allows VidAngel to continue to offer families the ability to filter streamed film and television content will not significantly impact Plaintiffs' business in a negative manner. Additionally, Plaintiffs' goodwill with its licensees

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1 will be largely unaffected pending the outcome on appeal considering this Court's
 2 ruling in Plaintiffs' favor in the Order. The Order did not find any specific or
 3 quantified harm to goodwill, acknowledging only that it is hard to quantify. Order
 4 at 18. Of course Plaintiffs have an interest in opposing VidAngel's requested stay,
 5 because they hope effectively to preclude VidAngel from pursuing its case at all, or
 6 to severely handicap what is already a battle of David versus several Goliaths.
 7 Having waited more than a year to seek an injunction, Plaintiffs cannot truly claim
 8 to suffer irreparable harm if this Court permits a stay while the Ninth Circuit
 9 evaluates the significant questions at issue. Uncontroverted evidence on the record
 10 shows that the harms Plaintiffs' claimed they were suffering in July 2015 when they
 11 first learned of VidAngel are the same harms that they are allegedly experiencing
 12 now. Any marginal impact will certainly pale in comparison to the damage of
 13 denying a stay to VidAngel and to the public.

14 Still further, there are important issues concerning whether Plaintiffs have
 15 demonstrated that it is suffering any cognizable irreparable injury whatsoever,
 16 especially given that all of the harms from which Plaintiffs could actually be
 17 suffering as a result of VidAngel's service are equally posed by the ClearPlay
 18 streaming model that the Court has identified as a lawful implementation of the
 19 FMA.⁷ And the Ninth Circuit may agree with VidAngel that Plaintiffs cannot
 20 properly establish irreparable harm by extrapolating from their experience with
 21 unabashed pirates to conclude that a service operating openly and attempting to
 22 operate lawfully will cause similar harms.

23
 24
 25 ⁷ As for the unquantified and speculative alleged harm to Plaintiffs' negotiation
 26 position and relationships with authorized distributors due to VidAngel's operation
 27 without a license agreement, Order at 17-18, Plaintiffs' claims are disingenuous
 28 because VidAngel has repeatedly sought to pay Plaintiffs for a license and its DVD
 purchases satisfy the payment requirement.

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1 **E. The Public Interest Is Served by A Stay.**

2 This Court found that “a preliminary injunction is in the public interest”
3 partially because “the evidence in the record shows that another filtering service,
4 ClearPlay, offers filtering to Google Play users who access authorized streams from
5 Google Play’s licensed service” and that “an injunction in this case would not
6 prevent VidAngel or any other company from providing a filtering service similar to
7 ClearPlay’s, and thus wouldn’t negatively impact the public interest in watching
8 filtered content in private.” Order at 20. However, VidAngel initially attempted to
9 employ a similar service to the one ClearPlay now uses and it received notice from
10 YouTube that filtering violated YouTube’s terms of service. (Harmon Decl. at ¶¶ 8-
11 16 and Exhibit A; Supplemental Harmon Declaration dated 10/17/2016 (“Supp.
12 Harmon Decl.”) at ¶ 6.) Notwithstanding Plaintiffs’ suggestion, ClearPlay provides
13 its service without any consent or license from the studios and without paying the
14 studios anything. (Supp. Harmon Decl. at ¶ 6.) After Plaintiffs’ litigation with
15 VidAngel has concluded, they will be free to invoke their terms of service at any
16 time to force Google to shut down ClearPlay’s service. (Id.)

17 In addition, ClearPlay’s service is technically inferior. (Supp. Harmon Decl.
18 at ¶¶ 3-11.) The ClearPlay browser relies solely on YouTube and can only be used
19 by GooglePlay customers. (Supp. Harmon Decl. at ¶ 4.) Its filters frequently stop
20 working and even ClearPlay admits that its video player is choppy. (Id. at ¶¶ 11-12,
21 Exhibit B.) It is also very difficult to use. The ClearPlay browser works only on a
22 Mac or PC computer using a Chrome browser, and only can only be displayed on
23 the TV when the computer is attached to the TV via HDMI cable or by using the
24 “tab-cast” feature of the Chromecast. (Meldal Declaration dated 9/12/2016
25 (“Meldal Decl.”) at ¶ 16 and Exhibit D; Supp. Harmon Decl. at ¶¶ 10-11.) As a
26 result, it is incompatible with most devices and platforms that the public primarily
27 uses to watch movies and television shows. (Supp. Harmon Decl. at ¶¶ 8-9.)

28 Thus, ClearPlay’s service does not provide a legal filtering alternative

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1 because it operates in violation of the YouTube (and Google Play) terms of
 2 service. (Meldal Decl. at ¶¶ 28-20 and Exhibit D; Supp. Harmon Decl. at ¶6.) Nor
 3 does a technically legal but threadbare filtering option serve the important public
 4 interest Congress intended to protect in passing the FMA. That public interest in
 5 protecting every person's right to watch filtered content in private will be greatly
 6 served by a stay pending appeal.

7 Furthermore, in opposition to the preliminary injunction motion, VidAngel
 8 submitted several declarations from family group leaders, religious figures and
 9 public servants (including a former Congresswoman), extolling the virtues of
 10 VidAngel's filtering service. These constituents have come to rely on VidAngel's
 11 user-friendly, universally-available filtering service to view popular content in the
 12 customized manner envisioned by the Family Movie Act. Suspension of the
 13 injunction pending appeal serves that vital public interest.

14 IV. CONCLUSION

15 For the foregoing reasons, VidAngel respectfully requests that the Court stay
 16 its December 12, 2016 order granting plaintiffs' motion for preliminary injunction
 17 pending appeal, or alternatively, pending a decision by the United States Court of
 18 Appeals for the Ninth Circuit on an emergency motion for stay pending appeal,
 19 which VidAngel will file if this Court denies this *ex parte* application.

1 DATED: December 14, 2016

BAKER MARQUART LLP

2 /s/ Jaime W. Marquart

3 Jaime W. Marquart

4 Scott M. Malzahn

5 *Attorneys for Defendant and*
6 *Counterclaimant VidAngel, Inc.*

7
8
9 **CERTIFICATE OF SERVICE**

10 The undersigned hereby certifies that counsel of record who are deemed to
11 have consented to electronic service are being served with a copy of this document
12 via the Court's CM/ECF system per Local Rule 5-4.7.2 on December 14, 2016.

13
14
15 /s/ Jaime W. Marquart

16 Jaime W. Marquart

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APPENDIX A

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION

HONORABLE ANDRÉ BIROTTE JR., U.S. DISTRICT JUDGE

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

PLAINTIFFS AND)
 COUNTERCLAIM DEFENDANTS,)

vs.) No. CV 16-04109-AB

VIDANGEL, INC.,)
)
 DEFENDANT AND)
 COUNTERCLAIMANT.)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

MONDAY, NOVEMBER 14, 2016

10:35 A.M.

LOS ANGELES, CALIFORNIA

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1 LOS ANGELES, CALIFORNIA; MONDAY, NOVEMBER 14, 2016

2 10:35 A.M.

3 - - -

4 THE CLERK: Calling Item No. 2, CV 16-4109-AB,
5 Disney Enterprises, Inc., et al., versus VidAngel, Inc.

6 Counsel, please step forward and state your
7 appearances for the record.

8 MR. KLAUS: Good morning, Your Honor. I'm Kelly
9 Klaus from Munger, Tolles & Olson. I am joined by my
10 colleagues, Rose Ehler, Allyson Bennett, and Glenn
11 Pomerantz, at counsel table for the plaintiffs.

12 MR. QUINTO: Good morning, Your Honor. David
13 Quinto, general counsel of VidAngel, Inc. With me are Jaime
14 Marquart and Brian Grace of the Baker Marquart firm. We
15 also have a video operator who will also show slides.

16 THE COURT: Are we going to play the "Star Wars
17 Rogue One" movie?

18 MR. QUINTO: The filtered version, Your Honor, a
19 lot shorter.

20 THE COURT: No opening credits? Just kidding.
21 All right.

22 Good morning to you all. We have a lot to talk
23 about today. The motion for preliminary injunction -- I had
24 a chance to review the papers. I have a number of
25 questions. I guess I will just start off -- I don't know if

1 it's Mr. Quinto. I want to make sure I understand the
2 business model, and I will ask some questions to help walk
3 me through it.

4 So customer says, "I want to watch 'Star Wars,'"
5 they purchase the DVD legally through VidAngel for \$20.00,
6 let's just -- is that correct?

7 MR. QUINTO: Yes, Your Honor.

8 THE COURT: So then VidAngel decrypts the video in
9 order to make a version that can be streamed back to the
10 customer. Is that correct?

11 MR. QUINTO: Sort of, yes. It could not be
12 streamed without the decryption. It also could not be
13 filtered without the decryption.

14 THE COURT: It's decrypted for both filtering and
15 streaming purposes.

16 MR. QUINTO: Yes. That is a technological
17 necessity today, and it was in 2005.

18 THE COURT: So then the DVD is sold to the
19 customer, and then the DVD is then placed in a vault. Is
20 that correct?

21 MR. QUINTO: Yes, Your Honor. Each DVD is
22 individually barcoded. When a DVD is sold to a customer,
23 the customer owns a specific DVD that is identifiable by its
24 barcode. VidAngel has had an outside independent accounting
25 firm go through and audit the vault to make sure that all

1 the DVDs that are supposed to be there are there and to
2 confirm that no DVD has ever been sold to two customers
3 simultaneously, that there is a one-to-one correspondence
4 between the person who gets to use the DVD and the person
5 who owns the DVD.

6 THE COURT: Okay.

7 MR. QUINTO: And VidAngel even makes sure that the
8 customer cannot -- that the same customer cannot watch the
9 DVD on two devices simultaneously. So you are allowed to
10 watch it only on one device. The entire \$20.00 is paid
11 upfront.

12 THE COURT: Right. Let me go through this just so
13 I understand. The \$20.00 gets paid upfront. The customer
14 streams the movie. VidAngel makes a request or offer to
15 purchase the movie back for \$19.00. Is that -- and then the
16 customer says yes or no.

17 If the customer says yes, then you give them back
18 \$19.00. What happens to that DVD?

19 MR. QUINTO: Well, let me first note that
20 Your Honor's description is almost correct but not quite.
21 So the repurchase price for a DVD declines a dollar a day.
22 The repurchase price for a Blu-ray disk declines \$2.00 a
23 day. So if a customer chooses to sell back within 24 hours,
24 the DVD, the customer would get \$19.00 in store credit.

25 If the customer waits two days --

1 THE COURT: He will get \$18.00. Let's assume they
2 do it in that same day.

3 MR. QUINTO: I want to note that, at this point,
4 there are over 20,000 DVDs that have -- that have been held
5 by the customer so long that there is no sell-back value.
6 So they're being stored for the customers in perpetuity.

7 THE COURT: I understand that, but just work with
8 me here.

9 MR. QUINTO: Yes, Your Honor.

10 THE COURT: Let's say the customer on that day,
11 they watch the movie, and they say, "Okay. I want to sell
12 it back." Then VidAngel gives them a \$19.00 store credit.
13 Okay? Then what happens to that DVD? Does it remain in the
14 vault in perpetuity? Or is it sold again to another
15 customer now that they've bought it back?

16 MR. QUINTO: Yes, it can be sold to another
17 customer. The analogy -- probably all of us, at least
18 members of the Bar are familiar with, would be the college
19 bookstore. We went there at the start of every term, and we
20 looked at the prices of the books, and we had heart
21 palpitations, and the people at the bookstore said, "But
22 take good care of the book. If the professor is using the
23 book again next term, we will buy it back from you at the
24 end of the semester." And we always went to the bookstore
25 early hoping to find used and less expensive copies of the

1 books. It's the same thing.

2 THE COURT: I understand. So what happens, then,
3 the next day when someone wants to watch that same movie?
4 Are they sold a used copy of the video? Or are they sold --
5 what's the price point on that, assuming my scenario, the
6 next day someone wants to watch that same movie?

7 MR. QUINTO: Right. The next customer would pay
8 \$20.00 and would own that DVD for as long as he or she
9 wanted.

10 THE COURT: And then, when they sell it back, then
11 VidAngel owns it to be able to resell to the next person.

12 MR. QUINTO: That's correct. And one of the
13 problems with this model is that, if VidAngel estimates that
14 2,500 people might want to own a DVD of a particular movie
15 simultaneously and VidAngel, therefore, buys 2,500 DVDs to
16 sell to its customers, if it guesses wrong and no more than
17 2,000 watch it at a time, VidAngel has purchased 2,000 --
18 has purchased 500 DVDs that will never be used.

19 On the other hand, if 3,000 people want to watch,
20 VidAngel has to send out of stock notices to 500 customers
21 saying, "Sorry. We don't have it."

22 THE COURT: That's the part I'm not sure I follow
23 then. Because, if you buy 2,000 copies and on Day 1, 2,000
24 people buy it and sell it back; on Day 2, another 2,000
25 people want it. Then it's available for sale; correct?

1 MR. QUINTO: That would be the ideal situation for
2 VidAngel. Yes, Your Honor.

3 THE COURT: And I am just trying to make sure I
4 understand. That's how VidAngel makes its money, by
5 reselling those DVDs; correct?

6 MR. QUINTO: Yes. That's where it derives its
7 revenue.

8 THE COURT: Right.

9 MR. QUINTO: But it's not in the -- it doesn't
10 view itself as in the DVD sale and resale business. The
11 value it adds is the filtering. And 96 percent of all
12 movies rented from VidAngel -- rented, used, sold -- sorry.
13 96 percent of the DVDs sold and watched are watched by
14 consumers who choose two or more filters.

15 THE COURT: What are generally those two or more
16 filters? Because I was going to talk about that in a
17 moment. There is some back-and-forth.

18 Are they really filtering for violence, profanity,
19 what have you? Or are they just filtering out either the
20 opening or closing credits, if you know?

21 MR. QUINTO: It's not just the credits. And I
22 want to say something about the credits, Your Honor, because
23 that's, I think, a real canard.

24 The credit filter didn't exist so that people
25 could game the system. It wasn't installed so that people

1 could choose to filter something they didn't want to see
2 anyway and thereby watch a filtered movie -- thereby watch a
3 streamed movie for a lower price. Rather, Your Honor, today
4 many movies contain outtakes in the credits. And often the
5 most outrageous parts of the movie, some of the largest acts
6 of violence or the bloodiest scenes or the worst language
7 appear in those outtakes in the credits. That's why
8 VidAngel customers insisted on having a closing credits.

9 But the system has been modified. VidAngel
10 represented to the studios in July 2005 that, if they wanted
11 some modification to the system to the technology, VidAngel
12 would be happy to try to accommodate.

13 Now that Disney has raised that as an issue,
14 VidAngel requires that, to watch a movie, if you choose to
15 filter credits, you must also choose to filter something
16 else.

17 THE COURT: What's that something else?

18 MR. QUINTO: Well, Your Honor, if I may, I would
19 ask the Court's indulgence to watch a video that's about
20 2 1/2 minutes long. What it -- I will tell you. It is --
21 it shows a -- it shows exactly what the consumer would see
22 if the consumer went to the VidAngel Web site. And it shows
23 somebody walking through the Web site, choosing the filters.
24 The Court can see what sorts of filters are available and
25 how that system works.

1 THE COURT: Mr. Klaus, I assume you are not
2 standing up just for exercise, and I assume you have some
3 issue with the Court watching the video. So I will let you
4 be heard.

5 MR. KLAUS: Thank you, Your Honor.

6 Two points. One is that we do object to the
7 showing of the video that Mr. Quinto just described. It was
8 provided to us on Saturday evening. The video contains
9 narration by someone -- we assume it's VidAngel's chief
10 operating officer -- but it contains narration that has
11 commentary on why she happens to be selecting particular
12 filters.

13 The part that is very objectionable is that, at
14 the end of the video, there is a comment during the
15 sell-back process where the narrator says there is a certain
16 percentage of DVDs that are permanently owned.

17 Mr. Quinto, during his remarks just now, made a
18 reference to there being 20,000 DVDs that have been checked
19 out for so long that they are permanently owned. That's not
20 in the record. There is zero evidence of that, and so we
21 object to Mr. Quinto's attempt to bring that in in his
22 argument and also to bring it in through the video.

23 The other thing I would say, Your Honor, is I do
24 believe there were some points in the question and answering
25 where Mr. Quinto was describing the system that I would like

1 the opportunity to be heard on. I don't want to break the
2 flow of his question.

3 THE COURT: I can assure you you will have an
4 opportunity to be heard. I just was more focused on the
5 video.

6 Why don't we do this, Mr. Quinto. Let me get
7 through my questions. Let's hear the arguments, and then I
8 will decide if I need to see the video.

9 Mr. Klaus, I understand you are representing your
10 client. It's not in front of a jury. I would like to
11 think -- some might disagree that I have a modicum of
12 intelligence to filter out that which is relevant to these
13 proceedings and that which is not. But your objection is
14 noted. Let me kind of go through this, if I could.

15 Mr. Quinto, I thought you said 96 percent of the
16 people filter -- do some form of filtering in the -- when
17 they engage?

18 MR. QUINTO: Choose more -- choose at least two
19 filters and frequently many more than two filters when they
20 watch the movie.

21 THE COURT: Do you know specifically what those
22 filters are that they're choosing? Is it opening credits?
23 Is it closing credits? Is it violence? Is it profanity?

24 MR. QUINTO: It's all matter of things,
25 Your Honor. I don't know the breakdown among the various

1 categories. VidAngel has 82 general categories of content
2 that can be filtered, including smoking, drinking, violence,
3 blood, guts, gore, sex.

4 THE COURT: You don't keep statistics on what
5 things get filtered out -- or at least you don't have that
6 information today?

7 MR. QUINTO: I don't have that information,
8 Your Honor, but the average number of filters selected is
9 far greater than two. I do know that.

10 And although there are 82 general categories, if
11 one includes the subcategories, there are hundreds of
12 possible filters.

13 And when a consumer goes to the VidAngel site, the
14 consumer can go through the general categories and open them
15 up and look at all the subcategories and decide which
16 specific subcategories to include or can take out an entire
17 category.

18 And as this process goes on, the site will in real
19 time show where in the movie, if it's language, the movie
20 will be muted. And when I say "muted" I mean only the voice
21 track is muted. You still hear the background noises, the
22 music --

23 THE COURT: I'm not challenging the filtering.

24 MR. QUINTO: And if you choose to have scenes
25 deleted, it will show you where. It will show you how much

1 of the movie is being shorted.

2 THE COURT: Okay. Fair enough.

3 Let me go through some of the other questions that
4 I have for you. So I just want to make sure we're clear on
5 this. Disney contends -- and I don't think you are
6 disputing -- that there is no fair use defense to the
7 Digital Millennium Copyright Act violation; is that correct?

8 MR. QUINTO: I'm sorry. That there is no fair use
9 defense?

10 THE COURT: Yes.

11 MR. QUINTO: Yes, there is. And if I may ask the
12 Court to give me a couple of minutes, I would walk the Court
13 through the DMCA argument because it is stuff and nonsense
14 for several reasons as I can demonstrate.

15 THE COURT: I will give you an opportunity. I
16 just want to make sure I understand these are the issues
17 that I had in going through the papers.

18 If I understand your papers correctly, you argue
19 that your business model doesn't violate the DMCA because
20 you buy these authorized copies of these DVDs and then sell
21 them to the customers and then the customers are then able
22 to watch the streamed content that they own without
23 violating the DMCA.

24 Is that a fair statement of your argument?

25 MR. QUINTO: Not quite, Your Honor.

1 THE COURT: Okay. Tell me what I am missing.

2 MR. QUINTO: Sure. The first sentence of the DMCA
3 at Section 1201(a)(1)(A) which is the section that VidAngel
4 is relying on and which, by the way, is the subject of a
5 pending action in the district court for the District of
6 Columbia, seeking to have that precise provision declared
7 unconstitutional. The first sentence says: (Reading:)

8 No persons shall -- no person shall
9 circumvent a technological measure that
10 effectively controls access to a work
11 protected under this title.

12 So there are two requirements for that to apply.

13 THE COURT: I just want to make sure -- I am
14 seeing this stuff on the screen. Has this been shared with
15 opposing counsel?

16 MR. QUINTO: No, but this is just part of the
17 statute --

18 THE COURT: I understand but, Mr. Quinto. You are
19 coming here, putting up these video screens. Then I am
20 going to have Disney jumping up in arms saying, "I haven't
21 seen this." It seems to me, if you are going to go through
22 this whole PowerPoint, you should share it with opposing
23 counsel.

24 Mr. Klaus, I am sure you will object at the
25 appropriate time.

1 MR. KLAUS: I will, Your Honor. I have a complete
2 version of the statute that I am happy to hand up to
3 Your Honor, but I don't mind, for purposes of this
4 discussion right now, if Mr. Quinto goes through this
5 sentence.

6 THE COURT: All right.

7 Go ahead, Mr. Quinto.

8 MR. QUINTO: Thank you.

9 So I have bolded the two critical elements there.
10 First, there must be effective control; and, secondly, it
11 must be of a work protected under Title 17, which is the
12 Copyright Act.

13 We have submitted a declaration from our expert
14 which explains in some detail that the control is quite
15 ineffective. But putting that aside, as a matter of law,
16 there is not an effective control. And if I may now,
17 Mr. Klaus, refer to 17 USC 1201(b)(2)(B).

18 This section defines what it means to have
19 effective protection. It says (reading:)

20 A technological measure effectively
21 protects a right of a copyright owner under
22 this title if the measure prevents, restricts,
23 or otherwise limits the exercise of a right of
24 a copyright owner under this title.

25 So the first requirement here is that there be a

1 right of a copyright owner.

2 THE COURT: Okay. Let me stop you there because
3 Mr. Klaus is standing up.

4 So what is the issue, Mr. Klaus?

5 MR. KLAUS: He is reading from the definition of
6 effective protection and Section 1201(b)(2)(B), whereas the
7 actual definition of what it means to effectively protect a
8 work for purposes of Section 1201(a)(1) is in a different
9 section. It's in Section 1201(a)(3)(B). And what that
10 section -- that's the one that's at issue here.

11 THE COURT: Let me stop you there.

12 We're going to be here all day if we go through
13 this. So just note where you have issue. Then I will give
14 you a chance to respond.

15 Mr. Quinto, continue.

16 MR. QUINTO: So first it must effectively protect
17 the right of a copyright owner. So there must be a right
18 involved. But under the Family Movie Act which provides
19 that a service that meets the requirements of a Family Movie
20 Act is exempt from all the exclusive rights of copyright
21 under that statute, there is no right of a copyright owner
22 here to be protected because the studios don't have any of
23 the -- don't enjoy any of the exclusive rights of copyright
24 vis-à-vis a service operating as required by the Family
25 Movie Act.

1 THE COURT: You are saying that this is exempt
2 under the Family Movie Act? That it's exempt under the
3 Family Movie Act? Is that your contention?

4 MR. QUINTO: The Family Movie Act says that any
5 service operating in accordance with its terms -- that is,
6 17 USC Section 110, Subsection 11, that any service that
7 meets those requirements is -- does not violate any of the
8 exclusive rights of copyright, does not violate Section 106
9 which lists -- which sets forth all the exclusive rights
10 that copyright owners enjoy.

11 THE COURT: So, Mr. Quinto, what's your response?
12 The plaintiff touched upon this -- Disney touched upon the
13 legislative history that suggests that the FMA was not
14 intended to be a defense to a DMCA violation.

15 I think there is some verbiage from Senator Hatch
16 specifically where he states it would not be a defense to
17 claim a violation of Section 1201, that the circumvention is
18 for the purpose of engaging in the conduct covered by this
19 new exemption in Section 110(11), which is FMA.

20 And then he further states that the FMA does not
21 provide any exemption from the anti-circumvention provisions
22 of Section 1201 of Title 17.

23 What's your response to that?

24 MR. QUINTO: Well, several, Your Honor. First,
25 the -- Senator Hatch's statement has to be read in

1 conjunction with all the statements, all the numerous
2 statements in the legislative history, including statements
3 made by Disney's allies that the FMA, if it became law,
4 would provide a blanket immunity, would provide a complete
5 exemption for a service operating under the Family Movie
6 Act.

7 And, in fact, Disney's -- one of Disney's allies
8 making that point that there would be total immunity even
9 complained that, if the FMA became law, teenagers would be
10 deciding what the American public got to watch in the
11 privacy of their homes.

12 Now, obviously, it's the families who decide. But
13 the point is that they recognized that the FMA would provide
14 a total immunity. So how to reconcile those statements?
15 Very easy.

16 At the time, the state of the law was as it had
17 been for hundreds of years in Anglo American jurisprudence,
18 that there is no injury -- that there is no action, there is
19 no actionable harm absent injury, and, therefore, there had
20 to be an injury before there could be a legal wrong, de
21 minimis non curat lex.

22 All the cases at the time reflect -- and this is
23 even acknowledged by the Ninth Circuit in the MDY Industries
24 versus Blizzard Entertainment case at page 951, I believe --
25 that the cases had all required that there be some -- that

1 for it to be actionable under the DMCA, there had to be a
2 nexus between the decryption and some kind of harm to the
3 studios.

4 And a long line of cases, including those from the
5 Federal Circuit and from the Second Circuit, had held that,
6 absent any kind of harm, any kind of injury, there could be
7 no actionable claim under the DMCA.

8 And, of course, the Family Movie Act represented a
9 grand compromise made by Congress that wanted to ensure that
10 American families had the right to enjoy filtered content
11 streamed to them for private in-home viewing,
12 notwithstanding that the studios had sued every company that
13 ever offered filtering services, including several companies
14 that, according to the Register of Copyrights, were
15 operating lawfully under existing law but were sued anyway.

16 And the directors were so opposed to the Family
17 Movie Act that they refused invitations from Congress to
18 provide somebody to testify. So the grand bargain was that
19 Congress fashioned a system to attempt to protect the rights
20 of all stakeholders. The studios were protected in their
21 economic interests in that consumers were required to first
22 lawfully purchase a copy; so the studios were guaranteed a
23 revenue stream because they would sell DVDs.

24 The directors were protected in that services such
25 as VidAngel were prohibited from making any fixed copy of

1 the filtered work and from performing the filtered work
2 publicly. So the only work the public would get to see
3 would be the work that the directors had authorized.

4 The consumers were protected because they would
5 have the right and the ability to watch filtered content in
6 their home, filtered to their specifications.

7 And finally, the fourth stakeholder, the
8 for-profit companies that Congress expressly envisioned
9 would provide the service, knowing that the studios
10 wouldn't, the for-profit companies such as VidAngel were
11 protected in that they would in theory be immune from
12 litigation.

13 And I might add that the studios were suing the
14 company called ClearPlay when the Family Movie Act became
15 law.

16 When it became law, the judge in the ClearPlay
17 action -- and the plaintiffs there included three of the
18 plaintiffs herein -- Disney, Warner Bros., and Fox.

19 THE COURT: I know all about that.

20 MR. QUINTO: Yeah. The judge asked them, "Do you
21 have any claim left?" and they said, "No," and the action
22 was then dismissed.

23 So in all those copyright arguments, infringement
24 arguments that the studios make, are arguments that they
25 recognized were out the window in that case.

1 So in light of this grand compromise, the point
2 was to create a system that did not depend on studio
3 consent.

4 So, obviously, if a service such as VidAngel
5 needed to say -- needed to go to the studios to say, "Well,
6 we have this wonderful statute, the FMA, but it means
7 nothing unless you will grant us permission to decrypt,"
8 would give the studios a veto power, the very thing that
9 Congress wanted to take away from the studios because
10 Congress knew the studios would never say yes.

11 So if one looks at the existing case law at the
12 time, all the cases said that there must be an injury before
13 you could bring an action under the DMCA.

14 Here there is not and cannot be any injury.
15 Remember, the history of the DMCA was it was enacted in
16 response to the rampant file sharing occurring in the music
17 industry and the -- there was a further concern that perhaps
18 one person might decrypt a file and a second person, perhaps
19 in another country, might then share that file worldwide.
20 And Congress wanted to find a way to reach that first person
21 who decrypted the file and thereby made the worldwide
22 infringement possible.

23 Here that potential does not exist. There is no
24 file sharing occurring. Everybody who watches content is
25 somebody who has first lawfully purchased a copy of the

1 work. The studios have derived revenue from every DVD
2 watched by every VidAngel customer. There is no possibility
3 of file sharing. In short, there is no injury.

4 So under existing case law, there could not have
5 been a claim under the DMCA.

6 Further, Your Honor, I would point out that the
7 MDY Industries versus Blizzard case that the studios want to
8 hang their hat on, addresses among other things at page 941,
9 addresses copyright misuse, which, as Your Honor knows, is
10 an affirmative defense that VidAngel has asserted in this
11 case.

12 The Ninth Circuit said (reading:)

13 Copyright misuse is a equitable
14 defense to copyright infringement, and the
15 remedy for copyright misuse is to deny the
16 copyright holder the right to enforce its
17 copyright during the period of misuse.

18 So while the misuse is occurring as to the party
19 alleging copyright misuse, the plaintiffs do not have an
20 enforceable copyright, and having an enforceable copyright
21 is a prerequisite to protection under the DMCA. So for that
22 reason as well, the DMCA does not apply. Finally, I would
23 note in the same case, the same case, the Ninth Circuit at
24 page 951 addressed a situation we have here as well. The
25 Ninth Circuit said --

1 (Reading:) Concerning anti-trust
2 law, we note that there is no clear issue of
3 anti-competitive behavior in this case because
4 Blizzard does not seek to put a direct
5 competitor who offers a competing role-playing
6 game out of business and the parties have not
7 argued this issue. If a Section 1201(a)(2)
8 defendant in a future case claims that a
9 plaintiff is attempting to enforce the DMCA
10 anti-circumvention right in a manner that
11 violates anti-trust law, we will then consider
12 the interplay between this new
13 anti-circumvention right and anti-trust law.

14 And that is precisely the situation here. On
15 December 19, Your Honor will hear the studio's motion to
16 dismiss VidAngel's anti-trust counterclaim and, well, all
17 other counterclaims as well.

18 So, finally, Footnote 12 of that same opinion says
19 that --

20 (Reading:) Like the Chamberlain
21 Court -- referring to the Federal Circuit
22 decision, the principal Federal Circuit
23 decision that had held that there was no DMCA
24 action permissible absent injury --

25 (Reading:) Like the Chamberlain

1 Court, we need not and do not reach
2 relationship between fair use under
3 Section 107 of the Copyright Act and
4 violations of Section 1201, citing
5 Chamberlain.

6 MDY has not claimed that Glider use
7 is a "fair use" of WoW's, World of Warcraft's,
8 dynamic literal [sic] elements. Accordingly,
9 we too leave open the question whether fair
10 use might serve as an affirmative defense to a
11 prima facie violation of Section 1201.

12 So for those various reasons, I submit that the
13 studio DMCA argument is unfounded. And when one goes back
14 to the legislative history to try to understand that
15 comment, I think it's quite clear, especially from other
16 similar remarks, that what Congress was saying or what
17 specific congressmen were saying was that you cannot rely on
18 the FMA to -- as an excuse to justify something that was
19 inexcusable to start with.

20 For example, the studios in their reply papers
21 contend that we had no answer to their point that the -- I'm
22 blanking.

23 Their point that their -- they had quoted language
24 saying that the FMA cannot be used to make legal conduct
25 that was unlawful to start with.

1 Well, to start with, meaning that, if somebody had
2 done something in violation of copyright law, trying to
3 bring it under the penumbra of the Family Movie Act would
4 not then provide a defense.

5 Elsewhere in the congressional record, there is a
6 more specific reference to the notion that one could not,
7 say, obtain bootleg copies of a work and then filter and
8 stream them and thereby gain the protection of the Family
9 Movie Act because there was a copyright violation ab initio
10 at the very outset. And that is precisely the point, that
11 you cannot sanitize something that was wrong at the outset
12 by trying to bring it under the FMA.

13 But when the FMA was enacted, it was and remains
14 today impossible to filter or stream filtered content,
15 indeed stream any kind of content without -- well, to stream
16 the filtered content without first decrypting it. That was
17 a technological measure then. It's a technological
18 necessity now. Nothing has changed. While a work is
19 encrypted, it cannot be filtered, and a filtered work cannot
20 be transmitted.

21 So absent the decryption, the FMA is meaningless.
22 And we have, as Your Honor may have seen, challenged the
23 studios to tell us what the FMA accomplished, what did the
24 FMA add to the law, what new right do people have to watch
25 filtered, streamed content that they didn't have before the

1 FMA was enacted?

2 All we've been told is the FMA does not permit
3 this, the FMA does not permit that, the FMA prohibits
4 something else. The studios have no answer to the question
5 what did the FMA accomplish?

6 And as I have just explained, it accomplished
7 allowing people, allowing American families to watch
8 filtered content filtered to their desire, to their
9 specifications, in the privacy of their homes without
10 suffering a veto from the studios or the directors.

11 THE COURT: All right. Mr. Quinto, let me hear
12 from Mr. Klaus as it relates to this issue, if I could,
13 please.

14 And I have some questions. I would appreciate it,
15 if you wouldn't mind, answering them.

16 The question I had for you really was how -- could
17 you describe at least from your client's perspective a
18 scenario where a company could operate legally under the
19 FMA, if they're not licensed to stream movie content. Is
20 that an impossibility?

21 Because you heard Mr. Quinto talk at length about
22 the fact that -- basically, he says that your client takes
23 the position that the FMA really is -- it can't be utilized
24 in a practical sense.

25 MR. KLAUS: Yes, Your Honor. He's wrong about

1 that. He's wrong about a number of things that he said.
2 There were a number of arguments that Mr. Quinto raised this
3 morning, many of them that are nowhere made in their
4 opposing papers. I have tried to take notes on all of them.

5 But to the beginning, which is that the FMA
6 accomplished nothing when it was passed, absolutely false.
7 What Congress did was it decided that there -- there was
8 existing litigation going on in Utah at the time in 2004 and
9 2005.

10 There were two -- in general, two types of
11 services that were providing filtering. There was one type
12 that was actually making edited copies of movies, the
13 CleanFlicks people. And that's one of the cases that we
14 cited.

15 And it was clear from the language of the statute
16 that the CleanFlicks people who were making copies and then
17 distributing those copies of edited movies to users had no
18 defense. And the Court said, "You don't have a fair use
19 defense either," and we can get to that in a moment.

20 There were another group of companies, one of
21 which the lead one was called ClearPlay. Those were the
22 subject of the Huntsman case which Mr. Quinto has held out
23 the Huntsman decision as saying that the studios essentially
24 said "We have absolutely no claim against any service that
25 filters." Absolutely false.

1 What the Huntsman defendants, the ClearPlay
2 defendants, did was they provided a separate filter that,
3 when somebody had their own DVD lawfully purchased at home
4 in a ClearPlay machine, they could put their DVD in. They
5 could put the ClearPlay filter technology that went over
6 it --

7 THE COURT: And they would filter it.

8 MR. KLAUS: -- and they could play it. So the
9 idea that there was nothing accomplished in the studio's
10 view by the FMA is just false.

11 THE COURT: How is that different from what
12 VidAngel does? Aren't they -- they claim someone has
13 purchased the copy, they have filtered that copy, and then,
14 when they're done with it, they sell it back to the company
15 so someone else can purchase it and then filter it.

16 MR. KLAUS: Well, that requires me to go back to
17 one of the first things that Mr. Quinto said in response to
18 your questions about how the service works. And there were
19 some details I just want to make sure we're clear on.

20 I don't have a stack of DVDs with me, but if you
21 will indulge me, I will use my binder. Unfortunately, there
22 are too many in this case to demonstrate my point.

23 One of the things that Your Honor said, "Was is it
24 the case that the user buys a DVD for \$20.00?"

25 Mr. Quinto said, "Yes."

1 You said, "VidAngel, then, decrypts the DVD?"

2 He said, "Yes." That's wrong.

3 What happens is at the beginning VidAngel buys a
4 stack of DVDs or Blu-ray disks. Imagine this has 500 or
5 2,000 and I take one.

6 If I am VidAngel, what I do is I take this one
7 DVD, and I rip it. I use -- I use software that is plainly
8 circumvention software that's illegal for distribution in
9 the United States. I know it's illegal for distribution in
10 the United States, and I use it to rip the movie out. And
11 from that one DVD I have made a master copy that I then put
12 on to a server, just that one master copy.

13 All the others, the whole stack of 500 or 1,000
14 that they estimate is going to be used, those in the
15 cellophane, those get put in a vault. They have a little
16 barcode. And when somebody goes and says, "I am buying it,"
17 the fiction is that what the customer is buying and
18 streaming is the copy that's over here in the vault.

19 The reality is that, what the customer is seeing,
20 all of them, the thousands of customers who stream the same
21 movie over and over again, they're seeing the copy that was
22 taken from DVD Number 1, and that became the master copy.

23 THE COURT: So let me ask you, then. Would your
24 position change if every time someone purchased a DVD they
25 took one from that stack to the side and put it up on the

1 server?

2 MR. KLAUS: No.

3 THE COURT: And rip it?

4 MR. KLAUS: It would still be ripping. It would
5 still be copying. It would still be publicly performing the
6 movie.

7 THE COURT: What's your response to the notion
8 that -- to Mr. Quinto's point that you can't filter without
9 ripping?

10 MR. KLAUS: That is wrong. We pointed out that
11 there is another service, one of their competitors,
12 ClearPlay, the same company that made the DVDs. They offer
13 a service that -- they offer a service that works in
14 conjunction with authorized streams from Google Play.

15 So Google Play has licenses with copyright owners.
16 They stream -- they will stream movies to you, to you, to
17 everyone in this courtroom for a fee. The fee has built
18 into it the acquisition cost of having to stream a copy.

19 And ClearPlay has a service. What we know is what
20 Mr. Harmon has said is he thinks it's similar to the one
21 that VidAngel for a time was trying to use, but they have a
22 service that puts a filter over a stream.

23 Now, I can't tell you that I know all of the in's
24 and out's of it, but based on what we do know, it appears
25 that they have -- it appears to us at least, that what they

1 have done is that ClearPlay has figured out a way to put a
2 filter on top of an authorized stream.

3 So there is some other way. When he says that --
4 he points to us and says, "You have absolutely no answer."
5 He is just not reading our papers. He is not reading the
6 evidence that we put in that shows that there is some other
7 way to do it. Beyond that, Your Honor, the Family Movie
8 Act -- let me get to some of the points that Mr. Quinto
9 raised.

10 So the Family Movie Act -- it's a statute that
11 we're talking about here. We heard a lot this morning about
12 there being a grand bargain, about there being an awareness
13 in the air that the existing law at the time said no injury.
14 None of that, by the way, none of that is in their papers.
15 It's not in their papers for good reason because we would
16 have shown that it was wrong.

17 So it's a statute. And the first and best
18 evidence of what it means for purposes of construing the
19 statute is to look to see what the language is. I'm happy
20 to hand up the language of the statute, Your Honor, if it
21 will be helpful.

22 THE COURT: I think I have it.

23 MR. KLAUS: Let me start with what the Family
24 Movie Act says. Your Honor, I do have two copies of the
25 statute. May I approach.

1 THE COURT: Yes.

2 MR. KLAUS: I have copies --

3 THE COURT: You have provided it to the defense?

4 MR. KLAUS: Yes.

5 THE COURT: All right.

6 MR. KLAUS: Thank you.

7 The text of the statute of the FMA is at Tab 3,
8 Your Honor. This is 17 USC Section 110. And Section --
9 what Section 110 does is it sets out a whole bunch of
10 various exemptions to the exclusive rights of copyright.

11 The Family Movie Act happens to be in
12 paragraph 11, but the preamble, what introduces the entirety
13 of it is, notwithstanding the provisions of Section 106 --
14 doesn't say 1201 which is a separate section of the title --
15 the following are not infringements of copyright.

16 If Your Honor then skips ahead several pages to
17 the actual text -- what is not an infringement is the making
18 imperceptible. That conduct is not an infringement, the
19 conduct of making it imperceptible.

20 And it describes what the requirements are for
21 something to be making imperceptible but not within it. And
22 it makes clear that, if you are making imperceptible during
23 a performance and/or transmitted to the household, it has to
24 be from an authorized copy.

25 THE COURT: Right. But VidAngel says it is an

1 authorized copy. "We bought it. You get money from when we
2 bought it, and they bought it from us." So it's authorized.

3 MR. KLAUS: But it's clearly not authorized,
4 Your Honor, for two reasons. One is -- remember if we go
5 back to the example that I raised at the outset.

6 When Mr. Quinto is having something streamed, it's
7 not coming from the DVD that he supposedly bought. It's
8 coming from the copy that they created by ripping the DVD
9 that they had no authorization to do and the copy that they
10 made and then put onto a server that they have no
11 authorization to make. That's not -- that is simply the way
12 that they are doing it. It is not an authorized copy.

13 THE COURT: Let me play devil's advocate for a
14 second. Isn't that really a function of semantics? They
15 bought it. You don't dispute that they bought those copies.
16 And I assume you don't dispute that you got revenue from
17 that. Their purchase was authorized.

18 They have put this copy of this CD onto the server
19 to use multiple times, but it doesn't negate the fact that
20 their original purchase of the CD -- or DVD, I should say,
21 was an authorized purchase; correct?

22 MR. KLAUS: The original DVD is itself -- the
23 movie that is on that particular DVD is an authorized copy.
24 The copy that is made to the computer server is
25 unauthorized.

1 And that is the -- Your Honor, we think it's plain
2 from the language of the law, but if you look at the
3 Capitol Records versus the ReDigi case, that was the case
4 about moving the used iTunes store purchases, your downloads
5 from iTunes to a server. And what Judge Sullivan said is,
6 "No. You have made a new copy. You have violated the
7 reproduction rights."

8 To answer your question, that is not an
9 authorized -- that's not an authorized copy.

10 THE COURT: From your perspective, then, the only
11 authorized method to do this would be the ClearPlay model
12 where there is a DVD and somehow some way ClearPlay or --
13 has designed sort of a filter onto that DVD so, as it's
14 playing, it can filter.

15 MR. KLAUS: Somebody can do that technology.
16 Somebody could actually try to go out and get a license.
17 And I do want to get under this point, Your Honor, because
18 Mr. Quinto said, "Copyright misuse. That's another reason
19 why you can't enforce your rights."

20 Well, copyright misuse is alleged when they
21 amended their affirmative defenses in the case. They put no
22 facts in to support it. I presume that what the facts are
23 that they are relying on are their anti-trust allegations.

24 This is a preliminary injunction hearing,
25 Your Honor. They are supposed to put in facts into the

1 record, not just hurling statements that the studios don't
2 want this, the studios will never do this, the studios have
3 interfered with us at every turn without pointing to the
4 actual evidence showing it.

5 And the reason they're not doing it is they don't
6 have any evidence. The business plan -- the business plan
7 of VidAngel from the get-go, when it went to this model, was
8 to try to develop a huge base of users so that then, when
9 they would come to the studios to negotiate a license, they
10 would have significant leverage during the licensing
11 negotiations.

12 I am getting a little ahead here, Your Honor, but
13 I would submit that goes directly to the balance of the
14 equities and the hardships and the fact that they have not
15 behaved equitably.

16 THE COURT: Their argument is, look. You let the
17 gnat become a hornet's nest. I mean, when they first
18 approached you, all right. Whatever. Do your thing.
19 You're not a problem. And now people are using it and
20 Disney is says, "Time out. Houston, we have a problem."

21 MR. KLAUS: Let me talk about their delay.

22 THE COURT: I am asking these questions because I
23 just want to hear from the parties. Your answer -- you cite
24 the cases that talk about litigation, the cost of
25 litigation, and things of that nature. But I guess I really

1 would like to hear from you, sort of, did Disney let this
2 gnat turn into a hornet's nest?

3 MR. KLAUS: It's not that we let a gnat turn into
4 a hornet's nest. It's the reality of the world that we live
5 in in 2015, 2016 is that there are a lot of gnats, and a lot
6 of the gnats go away and die of their own weight because
7 they just don't take off.

8 And the law -- the law says that we are entitled
9 to wait and we don't have to bring suit and we don't forfeit
10 the right to obtain a preliminary injunction if they turned
11 into a hornet in the meantime.

12 The reality is that my client spent -- once they
13 received Mr. Quinto's letters, which were not business
14 person to business letters. Mr. Quinto is a very well-known
15 litigator in this city. He addressed his letters not to
16 business development people but to the general counsel of
17 the various companies. It had all the markings of being a
18 letter that was saying, "Here is all the things we're doing.
19 We think we're legal. You go ahead and tell us if you
20 disagree that we're legal."

21 And, in fact, Mr. Harmon said that the one thing
22 he could identify that they might have done actually
23 concretely differently if they had been sued if they
24 perceived some sort of response was to then go off and force
25 us to litigate through the context of a declaratory judgment

1 claim.

2 What the law says is -- again, this is the --
3 starting with the Arc of California case from the
4 Ninth Circuit -- makes it clear that courts are loath to
5 withhold injunctive relief on this basis alone, that you are
6 entitled to see what happens to the harm.

7 And the harm here, Your Honor, is not simply the
8 fact that they grew from 5,000 users during a limited beta
9 test as described in Mr. Quinto's letter to a hundred
10 thousand users and growing with many more projected into the
11 future when we filed suit. It's that this is a service that
12 continues to add works.

13 So we have 79 titles listed in Exhibit A to the
14 Complaint. They continue to add them. If you go to
15 VidAngel today and go to what their press room and news says
16 is, the very first thing that you will see is a whole slew
17 of titles that they're going to add in November, a whole
18 slew of them, a whole bunch of pictures of the DVD covers.

19 And it says "Please stay tuned because there will
20 be more." So Arc of California makes clear that, where you
21 have ongoing, continuing, worsening harm, that can justify
22 relief as well.

23 THE COURT: Mr. Klaus, I appreciate you going back
24 and forth. And I have some other questions -- I am sure you
25 have some other points -- but let's talk about, sort of,

1 this issue for a minute, if we could, a little further.

2 The harm -- isn't the harm really economic? Or is
3 there more than that?

4 MR. KLAUS: The harm is definitely more than
5 economic.

6 THE COURT: Tell me why.

7 MR. KLAUS: For several reasons. First of all,
8 just with respect to the idea that money damages would be
9 adequate here to compensate us for our loss -- wrong.

10 Just taking the 79 works that are at issue in the
11 Complaint, the potential statutory damages just for the
12 infringement of those works is \$11.85 million. And those
13 are just those works. And they're the ones that are
14 continuing to accrue as they continue to add more.

15 There is no evidence that VidAngel would be able
16 to pay an actual damages award at the end of the case.

17 And if you look at the Second Circuit decision in
18 WPIX versus ivi, it's one of many cases. But what the
19 Second Circuit said there was, "This defendant will not be
20 able to pay those damages at the end of the day. Therefore,
21 that is that itself is irreparable harm."

22 Second point -- the other thing is that they are
23 the relationships that we have with our licensees like
24 Google Play, like Amazon and Apple's iTunes who come to us
25 and legitimately negotiate for and receive licenses.

1 You have a service here that has decided that it
2 will appropriate for itself the decision of when, where, for
3 how much, under what circumstances, under what security
4 considerations, under what type of user experience they will
5 make our content available to build their business, to have
6 the money go from their revenues directly to the principals
7 and the owners of their company through their advertising
8 agency. They have made the decision to build a business on
9 the back of our content.

10 And the cases are -- it's the WTV Systems or the
11 Zediva case from this district which outlines in detail the
12 type of harm -- and I will give you the cite for that,
13 Your Honor.

14 THE COURT: I have the case up here.

15 MR. KLAUS: Okay. There is extensive discussion
16 in that opinion. It's hardly alone. They're also in the
17 BarryDriller.com cases from this district as well.

18 There is discussion of the fact that, when a
19 service comes in and says, "We're going to use your content,
20 we're going to build our business based on your content" --
21 and the cases say that that in itself is a harm, it harms
22 your relationship with your licensees.

23 As Mr. Cittadine says in his declaration -- he
24 points to examples of Fox titles that were attached to the
25 Complaint. He says, "Those titles are right now within an

1 exclusivity window for one of our authorized distributors."

2 This happened to be HBO.

3 We have a period of time where they're the only
4 ones -- they're the only service who can stream, and that is
5 there is an economic relationship there. They pay money to
6 get that exclusive right. It's something that we, as the
7 copyright owner, have the right to determine.

8 And when somebody like VidAngel comes in and says,
9 "We're going to help ourselves to this, we're going to
10 make -- we're going to decide what to do," that then, that
11 type of harm has been recognized repeatedly in the law as
12 being irreparable.

13 There is also the point, Your Honor, that there is
14 a -- one of the things that Judge Walter said in the Zediva
15 case is that there is a confusion of what consumer
16 expectations are and consumer beliefs are about what is
17 legal.

18 One of the other things that you will see if you
19 go to the VidAngel site -- and they have a whole blog
20 devoted to this lawsuit. They have lots of statements that
21 say "We're legal. What we're doing is legal." And you are
22 changing the minds of consumers about what is legal when we
23 submit, Your Honor, is the law is clear that what they are
24 doing in terms of ripping DVDs and circumventing is plainly
25 illegal and should be enjoined.

1 They are making copies to computer servers without
2 any authorization to do so, also illegal and infringement.
3 They are streaming, transmitting, performances of the same
4 movie, the same television shows to an enormous public
5 audience without any streaming license, the type that other
6 services have to obtain.

7 If there are other questions you have on the
8 adequacy of money damages -- I did want to turn back to the
9 1201.

10 THE COURT: No, I don't have any further questions
11 on that.

12 MR. KLAUS: Okay. Let me turn back, if I may,
13 Your Honor, to the Section 1201 arguments. And just so
14 we're clear, if you could turn in your binder, Your Honor --
15 I put the text of the DMCA. Section 1201 is behind
16 Tab Number 1. Just so we're clear, what it says is, the
17 first sentence of Subsection (a)(1)(A) --

18 (Reading:) No person shall
19 circumvent a technological measure that
20 effectively controls access to a work
21 protected under this title.

22 Now, the definition section for this particular
23 subsection, circumventing access controls, is on the next
24 page at Subsection (a)(3). And it says "As used in this
25 subsection."

1 And this is important, Your Honor, because the
2 section that Mr. Quinto put up to try to make his argument
3 about there being some connection between a work being
4 protected under this title and the Family Movie Act deals
5 with a separate circumvention violation in a separate
6 definition.

7 The one that controls this case says, first, to
8 circumvent a technological measure means to descramble,
9 decrypt, otherwise avoid, bypass, remove the technological
10 measure without the authority of the copyright owner.

11 They admit in their answer, they admit in their
12 pleadings they circumvent. They say, "We remove the
13 encryption." We'll get to their defenses in a moment, but
14 they plainly do that.

15 The second point is they say a technological
16 measure effectively controls access to a work -- that's in
17 Subsection capital (B) -- if the measure, in the ordinary
18 course of its operation, requires the application of
19 information, a process, or treatment with the authority of
20 the copyright owner to gain access to the work.

21 That's what it means, whether there is -- whether
22 something effectively protects access to the work.

23 Now, Mr. Quinto made a reference to his expert,
24 Dr. Meldahl, having said in his declaration that the
25 protection measures that are at issue here on DVDs and

1 Blu-ray disks don't effectively protect the right of a
2 copyright owner to secure access to the work.

3 This is an important point, Your Honor, because,
4 number one, it wasn't raised in their opposition brief. We
5 did because Dr. Meldahl raised it -- respond to it in our
6 reply brief.

7 The point here on whether something effectively
8 controls access, Dr. Meldahl says, well, CSS, which is the
9 protection measures for DVDs, and AACs and DD Plus which are
10 for Blu-ray disks, those don't effectively control access
11 because there are all these illegal circumvention devices
12 that are out there like any DVD HD which they use.
13 Therefore, it doesn't control it.

14 Just to be clear, the cases, when somebody has
15 raised this argument, have squarely rejected it. There is
16 the 321 Studios against MGM case which we cite in our
17 papers. There is also the RealNetworks decision that we
18 cite in our papers where Judge Patel said this argument is
19 equivalent to somebody saying that, because there are
20 skeleton keys to break through locks, a lock doesn't
21 effectively control acts. And that is just not a tenable
22 reading of the -- that's simply not a tenable reading of the
23 statute.

24 Now, you have it so that the 1201 violation, we
25 would submit, is established. So then we go to the question

1 of whether the Family Movie Act creates an exemption for
2 circumvention. I went through the language of Section 110,
3 which I think makes clear that it is limited to Section 106.

4 With respect to the legislative history,
5 Your Honor asked about the statements that were made by
6 Senator Hatch who was the Senate sponsor of the bill. His
7 statements are at Tab 5 of the binder.

8 And they are at the page at the bottom that has
9 the number Exhibit G, RJN 269. And he was quite clear. He
10 said it would not be a defense to a claim of violation of
11 Section 1201 that the circumvention is for the purpose of
12 engaging in the conduct covered by this new exemption in
13 Section 110(11).

14 Mr. Quinto threw up a whole bunch of statements
15 about why he thought the legislative history actually
16 supported his view that, even though the statute is plain,
17 that the Family Movie Act does not apply to or excuse the
18 Section 1201 violation, why he thought there was necessarily
19 some grand bargain.

20 What he doesn't point to is a single sentence
21 anywhere from any legislator that says something the
22 opposite of what Senator Hatch did. And so if one looks at
23 the actual legislative -- if one looks beyond the statute
24 which is plain as can be, the only specific statement in --
25 by a member of Congress dealing with circumvention is what

1 Senator Hatch said, and the other point in the legislative
2 history that we cited in our papers is that this wasn't an
3 oversight.

4 The House committee actually considered whether or
5 not to say specifically this has nothing to do with
6 Section 1201. They asked the Register of Copyrights whether
7 she thought that would be something that should be added,
8 and Register Peters sent a letter back which we put into the
9 record that said, "No, you don't need to have it." So it
10 showed that Congress actually considered what was being
11 discussed here and decided not to do it. It's not
12 inadvertent. It's not accidental.

13 Let me turn to fair use because you asked
14 Mr. Quinto if there was a concession by VidAngel that fair
15 use is not a defense to circumvention. He said now they're
16 not conceding that even though they didn't say anything
17 about it in their opposition papers.

18 Just to be clear, Your Honor, this isn't an area
19 where there is not case law on this. And I would ask
20 Your Honor to look -- the first and I think still the most
21 authoritative discussion of this is in Judge Kaplan's
22 decision in the Universal versus Reimerdes case. The cite
23 on that is 111 F.Supp.2d 294, and the discussion is around
24 page 322.

25 And just to be clear, the Reimerdes case -- this

1 was the big challenge to the constitutionality of the DMCA
2 circumvention provision. It was brought in New York. It
3 led to -- this very opinion led to the case called
4 United States versus Corley which is the Second Circuit
5 decision which squarely rejected the constitutional denial
6 of fair use arguments that Mr. Quinto was trying to
7 incorporate by reference from the Green case in the
8 District of Columbia. I will get to that in a moment.

9 But what Judge Kaplan said in the Reimerdes case
10 is that this wasn't an oversight that fair use was not a
11 defense to a DMCA claim. The fair use defense is codified
12 at Section 107 of Title 17. Just like Section 110, it
13 starts by saying that notwithstanding the provisions of
14 Section 106 -- meaning fair use is a defense to the
15 violation of those exclusive rights. It is not a defense to
16 a claim of circumvention.

17 What the judge said -- and I won't go through it
18 in excruciating detail -- but he said the legislative
19 history of the DMCA showed that Congress was encouraged to
20 extend the fair use defense to a claim of circumvention.
21 And Congress made the deliberate decision to say, no. That
22 is separate. What circumvention, it is a violation of the
23 law to break through the locks that protect these works.

24 What somebody does with the work later on when
25 they -- if and when they violate one of the exclusive rights

1 of copyright, you then may be able to have that subject to a
2 fair use defense. But until the point where that happens,
3 the violation itself, the act of circumventing is not
4 subject to a fair use defense.

5 Now, the other thing I would point out is that
6 there is a mechanism that Congress did put in place. It's
7 called a Triennial Rulemaking Proceeding by the Librarian of
8 Congress. What happens is every three years various groups
9 come forward and they say, "We think that, when you balance
10 the interests that Congress told you to balance in the
11 statute, this should be added to the list of enumerated
12 exemptions." There is no exemption that the Librarian of
13 Congress has promulgated that covers VidAngel's defense
14 here, simply does not exist.

15 Beyond the Reimerdes case, there is
16 Judge Gutierrez's decision in this district in the
17 United States versus Crippen case, which clearly says fair
18 use is not a defense. There is the Dish Network case that
19 we cited from the Southern District that says that. There
20 is no case that they cited on the other side that says that
21 fair use is a defense.

22 They do say that the MDY Court said, "We don't
23 have to make the decision." But that's not the
24 Ninth Circuit saying there is a fair use defense. That's
25 the Ninth Circuit saying, "We're not going to get involved

1 with this question." So the state of the law now is that
2 there is no fair use defense to the circumvention claim.

3 And, Your Honor, if the -- so there is no Family
4 Movie Act defense to the circumvention claim. There is no
5 fair use defense to the circumvention claim. The -- there
6 is no -- they haven't even put in authority for the
7 proposition that copyright misuse, if they had supported it,
8 which they haven't, would be a defense to a circumvention
9 claim.

10 So what you have at the end of the day is they
11 are -- they have violated in the past. They have made clear
12 they will continue to violate in the future the
13 anti-circumvention provision unless a court tells them, "No,
14 you can't rip disks. This is illegal conduct. You have to
15 stop doing it."

16 That in and of itself is one grounds for an
17 injunction. There are two other claims that we've made,
18 Your Honor. Happy to go into them with as much detail as
19 you would like.

20 The first is the violation of the reproduction
21 right and the violation of the reproduction right to make
22 the copy and to put it on the server so that it can be
23 streamed.

24 Again, we would -- the defenses that VidAngel
25 raises here -- they raise the Family Movie Act as a defense,

1 but the Family Movie Act does not say -- simply does not say
2 that so long as you are filtering, you get to copy to your
3 heart's content, doesn't say it.

4 Is says, "You will not be liable for infringing
5 copyright by reason of the act of making imperceptible."
6 Doesn't say anything about "You also have a right under the
7 statute to make a copy."

8 Second thing they say on the violation of the
9 reproduction right. They say, "Well, the copies that we're
10 making are intermediate copies because they are a means to
11 an end for us to be able to stream."

12 Well, there is nothing intermediate about the
13 copies that are made. They're permanent. They stay on the
14 server. It's the one copy, going back to my example, the
15 one copy that they ripped here that's their master copy.
16 That stays there. That's not intermediate or temporary.

17 And the other point is, Your Honor, the cases that
18 they are relying on, as we've pointed out, the Sega versus
19 Accolade and the Sony versus Connectix case, those
20 intermediate copying is a term of art in copyright law.

21 It deals with a very specific, very particular
22 situation where somebody makes a copy of the interface
23 between two computer programs to discover what the courts
24 have said are the functional elements to allow two computer
25 programs to interoperate. That has nothing to do with what

1 they're doing. They're making copies so that they can
2 stream them to users and make money from the streaming
3 service that they operate.

4 Third claim is the public performance right. And
5 the public performance right, I am happy to go through the
6 statutory definitions of this if you would like, Your Honor.

7 THE COURT: Yes.

8 MR. KLAUS: The defense on this -- twofold.
9 Family Movie Act, to the public performance right. And as
10 said before, Your Honor, what they are doing is they are not
11 streaming from an authorized copy. They are streaming from
12 a master copy to a mass public audience.

13 Nothing in the statute says you get a license to
14 do that, you are excused from the requirement if you are
15 going to operate a streaming business and actually stream
16 the movies yourself, that you are excused from that.

17 The other defense they raise is fair use. Couple
18 of points on fair use. Number one, it's their burden to
19 establish at the preliminary injunction stage. That's the
20 Perfect 10 versus Amazon.com case. Ninth Circuit couldn't
21 be clearer. They haven't come close to showing that they
22 will prevail on their fair use defense.

23 Four factors under fair use, go through them
24 quickly, Your Honor. First factor, ask whether the use is
25 commercial, whether it's transformative. Plainly, it's

1 commercial -- this is a for-profit enterprise that's going
2 on here -- and not transformative under the case law,
3 including the Worldwide Church of God case that we've cited
4 from this circuit, the Monge versus Maya Magazines case that
5 we've cited from this circuit, the Elvis Presley Enterprises
6 case. They are showing movies. They are streaming movies
7 to people for the same intrinsic purpose that we do.

8 The fact that they put filters on and that some
9 language may be skipped over or that some scenes may be cut
10 doesn't change the fact that they are streaming the movies.

11 THE COURT: What about the notion that by taking
12 out -- whatever, smoking, foul language, violence? Doesn't
13 that change the nature of the movie, therefore, at least,
14 from the defendant's perspective, making it transformative?

15 MR. KLAUS: No, it doesn't, Your Honor, and for
16 the following reason, which is the movie that they are still
17 showing is "Star Wars." That's not -- they're not -- what
18 they are advertising to people is "Star Wars." And if two
19 or three minutes is taken out, it's no different than a
20 photograph being cropped in a particular way, which is the
21 case from the Ninth Circuit on the Monge case, the same
22 extrinsic purpose.

23 THE COURT: Even though the violent portions of
24 the movie are taken out? I don't think I have seen -- I am
25 just trying to think of a movie where, if you take out some

1 of the violence, it could change the tenor of the movie.
2 The story is the same, but you are taking out the bloods and
3 guts.

4 MR. KLAUS: You are taking out some things, but
5 the question under the case law is generally whether it's
6 the heart of the work.

7 THE COURT: Your position is, even when you take
8 those things out, "Star Wars" is still "Star Wars," "Fast
9 and Furious" is still "Fast and Furious."

10 MR. KLAUS: Absolutely, Your Honor. And if it was
11 not that case, then when in airplane -- on the airplane when
12 you have seen a movie and it's sitting there so that
13 everybody in the plane can see right in the middle of the
14 cabin and they had -- it says "Edited for inflight service,"
15 what -- if what they were saying is right, that that's a
16 fair use to take that out and transform it in that way, that
17 that's transformative, then that would be a different work.
18 And nobody believes that, Your Honor. Nobody believes that
19 that is somehow a different work.

20 THE COURT: I think at least three or four people
21 over there do.

22 MR. KLAUS: When I say "nobody," let me be clear.
23 No case has ever said that something like that is
24 transformative.

25 THE COURT: I appreciate the clarification.

1 MR. KLAUS: Thank you, Your Honor.

2 The second point, the nature of the work, nature
3 of the work, movies, TV shows are at the heart of copyright
4 protection.

5 Third factor, the amount, the substantiality of
6 the use, with respect to the copying that's being done, it's
7 a hundred percent. It's verbatim.

8 With respect to the amount and substantiality for
9 the stream -- now, you did ask the question, and we don't
10 know for certain, but I believe I heard Mr. Quinto say that
11 on average people select two filters. And the --

12 THE COURT: Ninety-six percent I think he said.

13 MR. KLAUS: Ninety-six percent.

14 But the filters are taken out, still leave the
15 heart of the work. That's what the question is. The
16 question is is it the heart of the work?

17 THE COURT: Is it -- I am going back to this
18 point. I just want to make sure I understand. Is it your
19 view that there is no amount of filtering that really
20 changes a movie from the heart of its work?

21 MR. KLAUS: Your Honor, I can't imagine a filter
22 that would be applied here. They certainly didn't come
23 forward with one in opposition here saying, "Look, user
24 Number 97,322, they took a two-hour movie and they applied
25 so many filters to it that what they got was 90 seconds or

1 they got 2 1/2 minutes." I just don't think that's
2 credible, Your Honor. And, again, it's not verbatim
3 copying. It's the heart of the work that's the test.

4 The fourth factor which the Supreme Court has said
5 is the most important factor is the effect of this on the
6 market for the work.

7 And a couple of points on that, Your Honor. One
8 is, because it's a commercial use, there is a presumption
9 that they have to rebut that they don't harm the market.
10 And the second thing is that the question isn't -- well,
11 what if VidAngel just keeps operating its business this way?

12 That's not what the fourth factor says. The
13 fourth factor says, "You don't just look at VidAngel. You
14 look at what would happen if VidAngel was allowed to do this
15 and lots of other people were allowed to come in and copy.
16 What would the effect of that be on the market for the
17 work?"

18 And it doesn't take a lot of imagination here,
19 Your Honor, to think if what VidAngel is doing is legal,
20 there is nothing stopping another service from setting up a
21 DVD buying and streaming service.

22 The Family Movie Act is content neutral. Doesn't
23 say what you have to take out, doesn't have a requirement of
24 what the percentage of content that's taken out so long as
25 it's limited. Congress left that deliberately open.

1 So you could have -- frankly, another motion
2 picture studio could decide -- one of my clients could
3 decide that they wanted another client's repertoire, and
4 they'll simply go out and buy the DVDs, and they'll put a
5 filter on. They don't have to advertise it as being any
6 particular type of filters.

7 They can say, "You know what? The last ten
8 seconds of the credit, here is the filter for that." And
9 because the statute is content neutral, that could be done
10 that way.

11 There is no reason to think that Congress thought
12 that that was what it was doing with the Family Movie Act,
13 was setting up a massive end-run around these established
14 rights. And there is no reason under the case law to
15 believe that that's not the type of use that if widespread
16 would disrupt and destabilize the entire system.

17 The other point I would say is, respect to
18 evidence that we put in, we put in evidence of user comments
19 that we found and users who have said repeatedly things
20 like, "I really like VidAngel. It's a great service even
21 when I don't use any or most of the filters." We put in
22 cites to YouTube how-to videos that said, "Hey, there is a
23 great new service out there. And do you know what? It's
24 only a dollar a day."

25 People who say on these YouTube videos, "I don't

1 like paying 5.99 to iTunes, and so I will go to VidAngel and
2 I will use a -- I will take a snippet away, like at this
3 point in time the opening or the closing credits." And they
4 say, "This is the service that I will use and it's a dollar
5 alternative."

6 That is, by the way, exactly the way that they
7 have marketed this service. Just to be clear, to come back
8 to the question of the -- whether or not what's going on
9 here is that they're actually selling all that big stack of
10 DVDs and they're just engaging in the repeated sale, we
11 think, Your Honor, that the evidence is clear that the
12 sale/buyback, it's a gimmick. It's a gimmick that was put
13 in place so that, when they were sued, they would be able to
14 say, "Well, we're actually just streaming the content that
15 the user owns."

16 What the evidence shows -- Mr. Quinto made
17 reference to 20,000 -- which is nowhere in the record about
18 there being 20,000 permanently owned copies. That has just
19 been brought in for purposes of this hearing. There is
20 nothing in the record about that.

21 But the important point is what they have said,
22 and when they have said this to the Securities and Exchange
23 Commission in the document that we submitted with our
24 supplemental request for judicial notice. This is their
25 investment prospectus to investors. There they have got to

1 be honest. They have got to completely open the kimono and
2 say, "Here is what's really going on."

3 And what they pointed out is that 99 1/2 percent
4 of all their million and a half transactions that have
5 happened so far have been short term. And the definition of
6 short term is that the movie has been sold back within five
7 hours somebody having rented it. Meaning that this is the
8 way they promote the service.

9 If you go to their Web site, Your Honor, the very
10 first thing you see on the landing page is a video that
11 says -- it doesn't say how does filtering work. It says
12 "How do you get one dollar movies and explained to you in 15
13 seconds." That's the way they have advertised and marketed
14 the program to their users. It is full of incentives to
15 people and reminders to people. "Please sell your movie
16 back now." And that's exactly the way that people have used
17 the system.

18 I -- I believe we've covered irreparable harm,
19 their delay argument.

20 On the balance of the equities, Your Honor, very
21 briefly. First of all, we think the law is clear in the
22 Ninth Circuit there is no hardship to a defendant from
23 having to comply with the law. Those are the -- that's the
24 Triad case and the Cadence case from the Ninth Circuit that
25 we've cited.

1 We also think that VidAngel here behaved
2 inequitably. They decided deliberately that they would
3 pursue a strategy of seeking forgiveness rather than
4 permission.

5 And in the binder that you have, Your Honor,
6 behind Tab 7, one of the documents that we've put in, which
7 is Mr. Harmon responding to a user comment about why they've
8 got to go through this buy/sell back thing, this is what he
9 says in February of 2015. Mr. Harmon says, "We'll have to
10 be" -- he says, "We can't change to a rental," in the bottom
11 paragraph, "We can't change to a rental unless we get
12 licensing from Hollywood. We'll have to be a lot bigger to
13 do that. Until then, we sell DVDs and Blu-rays to you,
14 vault them at our warehouse, and stream you a filtered
15 movie. The buyback system was the most creative way we
16 could come up with in order to offer you the value of a
17 Redbox while staying buttoned up legally."

18 And then at Tab 13, Your Honor, there is an e-mail
19 from Mr. Harmon, the very top, September 29th, 2015. This
20 is him talking to his main investors.

21 And what he says in that second paragraph -- this
22 is where he's talking about why they're going with the
23 dollar a day system. He said, "It worked. This is the
24 model that -- this is the model that worked with consumers.
25 Based on our data, we need to get to around a 20 percent

1 increase in conversion rates to justify the loss in revenue
2 on the SD content" -- that means standard definition.

3 "Given the results, we're running with it because we think
4 it's going to better achieve our goal of building a
5 distribution platform. We need to acquire users as fast as
6 possible."

7 The strategy here, Your Honor, always has been "We
8 will help ourselves to the plaintiffs' content. We will
9 decide how we will do it. We will do it in a way that
10 offers a price advantage, that offers availability
11 advantages to users, and we will build up a user base so
12 that, when we then go and try to negotiate licenses, we'll
13 have better leverage in those licensing negotiations."

14 Manifestly inequitable, Your Honor. In terms of
15 the balancing of the equities, nothing to commend it.

16 The other point I will make, Your Honor, is there
17 are statements that VidAngel makes about the harm --
18 statements that VidAngel makes about the harm to its
19 employees and that it's a small start-up.

20 And we've pointed out again because we have the
21 SEC filing -- and they had to be open and honest with the
22 SEC -- turns out that, in the first half of this calendar
23 year, what they've made through their -- the Freudian slip
24 that Mr. Quinto made, their rental service, but whatever you
25 want to call it, their short-term transactions,

1 \$2.4 million. The amount that they've turned around and
2 paid to Harmon Brothers, LLC, an Internet advertising
3 company that is owned by the same people who own this,
4 \$2.2 million, Your Honor.

5 What they are doing is they are simply cycling the
6 money that they are making from exploiting our content and
7 paying it directly to themselves, to the owners of the
8 business.

9 Final factor, the public interest. Public
10 interest is served by requiring that the law be complied
11 with. And as we pointed out as well, Your Honor, there are
12 alternatives that people can go to who really do want to
13 filter. And there is no --

14 THE COURT: Is there -- you are saying there are
15 "alternatives," in the plural. Isn't there really only this
16 ClearPlay? Or is there another service out there?

17 MR. KLAUS: The streaming service that I am aware
18 of is ClearPlay. I do know that there is ClearPlay. I
19 believe, although I can't quote just off the top of my head,
20 Your Honor -- there are other services that may provide the
21 DVD-type filtering.

22 THE COURT: Other services apart from VidAngel?

23 MR. KLAUS: When I say the "DVD filtering," what I
24 mean is somebody who has a DVD player at home and they get a
25 DVD and they then -- they are then able to watch it that

1 way.

2 THE COURT: Mr. Quinto, you are standing up. Is
3 there something you want to say?

4 MR. QUINTO: Yes, Your Honor. The Court was very
5 generous in allowing me to explain VidAngel's case, and I
6 understand that the studios have a lot of argument they want
7 to present to the Court, but I am cognizant of the time and
8 hoping the Court will allow me a reasonable brief period to
9 respond --

10 THE COURT: Oh, no. We may take a break, but you
11 all aren't going anywhere, if that's your concern, is that I
12 was going to shut off at 12:00. No, that's not my
13 intention. So you are going to have a chance to respond.
14 You may be hungry, but you will have a chance to respond.

15 MR. QUINTO: I can live with hunger, Your Honor.

16 THE COURT: I'm sorry. Mr. Klaus, is there
17 anything further you wish to add?

18 MR. KLAUS: Unless Your Honor has any other
19 questions --

20 THE COURT: I am just curious, while I have you up
21 here. The defendants talk about a security bond. What's
22 your response to that?

23 MR. KLAUS: That a -- looking to the reasonable
24 precedence, what we've cited, the ones that have been
25 entered in cases in this district, including the WTV case,

1 including in the BarryDriller cases, in the range of 50,000
2 to \$250,000, they've asked for a security bond of
3 \$50 million, which is orders of magnitude beyond anything
4 that we're aware of in any remotely analogous context.

5 I would point out, for example, they say that in
6 the Napster case there was a requirement of a \$5 million
7 bond. Couple things to take into consideration there.

8 One was -- it seemed like a long time ago,
9 in 2000, when Judge Patel enjoined the Napster service, it
10 had more than 56 -- maybe 70 million users. It had drawn
11 significant investments, millions and millions of dollars of
12 investments. And it also had arguments that the
13 Ninth Circuit thought merited a stay pending appeal. Turned
14 out they lost on all of them, but the Ninth Circuit stayed
15 them.

16 We think, in this case, the liability is
17 absolutely clear that the idea that somehow this is -- we
18 are interfering with or destabilizing a business that
19 without an injunction will be worth billions of dollars is a
20 pie in the sky and that the bond that's required here should
21 be in line with the cases that -- the cases that we've
22 discussed, the BarryDriller case, the Zediva case -- again,
23 in the range in the low six figures. Doesn't come close
24 even to the Napster level of the type of risk that we're
25 talking about on the other side.

1 THE COURT: Thank you. Let me just check. One
2 moment here.

3 Why don't we take a ten-minute recess. If my
4 eyesight is correct, we'll resume at 12:20, and then I will
5 give you an opportunity to respond. I don't have anything
6 until 1:30, although I would hope that we don't go until
7 then, but I'll give you an opportunity to respond at that
8 time. We'll take a ten-minute recess.

9 MR. QUINTO: Thank you, Your Honor.

10 (Recess taken 12:12 to 12:24 P.M.)

11 THE COURT: Mr. Quinto, before you begin, I just
12 want to ask Mr. Klaus one last question, at least for now,
13 just so it doesn't escape my memory.

14 When you talk about irreparable harm in that vein,
15 you talk about -- and the goodwill, sort of, with licensees.
16 Did -- I just want to make sure I didn't miss the needle in
17 the haystack of paper that's been filed.

18 Have licensees specifically complained? Was there
19 any sort of declarations that talk about, you know, iTunes,
20 Amazon, saying, "Hey, what's going on here? Why am I paying
21 when so-and-so doesn't have to do that?" Is there anything
22 like that? If there is not, that's fine. I just want to
23 make sure -- whether or not I missed that.

24 MR. KLAUS: There is not, Your Honor.

25 THE COURT: There isn't. Okay. Thank you.

1 All right. Mr. Quinto, I'm sure you have a lot to
2 say.

3 MR. QUINTO: I do and first I beg to differ with
4 that last response from opposing counsel.

5 There was a licensee who complained in December,
6 complained to the studios in December 2015, specifically
7 concerning VidAngel's aggressive marketing techniques.

8 So that is the record with respect to complaints
9 with respect to licensees, that there was a complaint in
10 December 2015.

11 THE COURT: Okay.

12 MR. QUINTO: At the time -- well, VidAngel
13 launched its service as a private beta test in January 2015.
14 As I disclosed in my letter to the studios in July 2015, the
15 number of users had grown by 10,000 percent from the end of
16 January to the end of June. And, of course, it took off
17 tremendously when VidAngel went public with its service.

18 I would note that the studios, Disney in
19 particular, opened a VidAngel account on August 6th, 2015.
20 Disney was represented, in the Zediva case, by Mr. Klaus and
21 his colleagues at Munger, Tolles.

22 The privilege log that we were given reflects
23 that, in August 2015, there were a number of communications
24 between the studios and Mr. Klaus. So the studios were
25 clearly taking this seriously as of August 2015.

1 The -- I mentioned a moment ago the Zediva case --
2 that is very instructive, Your Honor. There the defendant,
3 Zediva, had been offering 138 movies for streaming. In
4 July 2015, when I sent my letter to the studios, VidAngel
5 was already offering 750 movies, far more.

6 In Zediva, the studios waited 18 days to file
7 suit, just 18 days. And when they did so, your Honor, they
8 submitted a declaration of counsel that took pains to
9 explain that 18-day delay -- took pains to explain why that
10 18-day delay should not be viewed as unreasonable.

11 The point, obviously, is that, when the studios
12 believe there is a pirate, believe they're being injured,
13 they know how to act quickly.

14 Here, I'm afraid to say, that, we believe, that
15 something quite different is at issue. We have, as the
16 Court knows, made a Regulation A Plus stock offering
17 approved by the SEC.

18 VidAngel announced late last spring that it
19 planned to have the Regulation A Plus stock offering. It
20 was shortly after that that the studios chose to file suit.
21 And that was consistent with the conduct the studios have
22 always engaged in with respect to VidAngel trying to prevent
23 it from offering its service by whatever means possible,
24 including earlier objecting to Google, allowing the service
25 to be based on the Chromecast device, persuading Google that

1 Google would violate its terms of service agreements with
2 the studios if VidAngel could use the Chromecast device to
3 filter. And at several other times, the studios had also
4 pulled the rug out from VidAngel.

5 So we believe that the Complaint was filed for the
6 purpose of trying to disrupt the Regulation A Plus stock
7 offering.

8 In support of that theory, Your Honor, I would
9 note that the studios did not request a temporary
10 restraining order, notwithstanding the claim that they were
11 being irreparably injured. They also did not seek an
12 immediate preliminary injunction. Rather, they scheduled
13 the preliminary injunction hearing for late October.

14 Why? We believe, Your Honor, that they wanted to
15 schedule the preliminary injunction hearing so late that the
16 pendency of the preliminary injunction application would be
17 a proverbial, sort of, Damocles hanging over VidAngel during
18 its Regulation A Plus stock offering.

19 I am happy to say that VidAngel has completed its
20 Regulation A Plus stock offering. It raised over
21 \$10 million in just a few days, and, notwithstanding the
22 threat from the studios, VidAngel has succeeded with that
23 and is moving forward.

24 That I submit is the true rationale for the
25 studios' delay in bringing the action. And I also note

1 that, of the six major motion picture studios, Sony,
2 Universal, and MGM, who were extensively copied on in e-mail
3 messages, indeed the studios exchanged over 1,300 or
4 approximately 1,300 privileged e-mail messages concerning
5 VidAngel before they filed suit, Sony, MGM, and Universal
6 chose not to be involved and have expressed interest in
7 working with VidAngel if VidAngel can overcome the problem
8 caused by the collective bargaining agreement with the DGA.

9 THE COURT: That's all interesting, but how is
10 that relevant to the decision on whether there should be a
11 preliminary injunction -- whether or not these other
12 companies are in the plaintiffs' chair as well?

13 MR. QUINTO: I think it runs to irreparable
14 injury, Your Honor. You have got three companies, three
15 major motion picture studios that are saying, no, there is
16 no irreparable injury that VidAngel is causing.

17 THE COURT: Is that fair to say? Are you saying,
18 by virtue of them not willing to pay lawyers exorbitant
19 fees, that they are saying they agree that there is no
20 irreparable harm?

21 MR. QUINTO: The studios have been --
22 historically, been very quick to act when they believed --
23 when they really believed they were being irreparably
24 harmed.

25 THE COURT: But in fairness, Mr. Quinto -- let me

1 just stop you. You don't know per se -- or do you know that
2 the other studios have said, "No, we don't care what
3 VidAngel does?" I mean, it's one thing to speculate because
4 they're not in the plaintiffs' chair, that's one thing. But
5 I -- it's another to say, "We know that they are not
6 interested in this."

7 MR. QUINTO: I do know that VidAngel has had
8 communications with them, and I do know that they have said
9 that they would be willing to work with VidAngel to allow a
10 filtered streaming service but for the problems posed by the
11 group boycott and the DGA agreement.

12 THE COURT: Let's move on.

13 MR. QUINTO: I would note that the cost to them to
14 join in the litigation would have been fairly de minimis
15 given that they could have used the --

16 THE COURT: Why don't we --

17 MR. QUINTO: -- same counsel.

18 So Your Honor had asked earlier about the most
19 common filters selected. I now have that answer. The most
20 common is female nudity. Following that are filters for the
21 F-bomb and the C word.

22 I believe that the average -- I'm not positive,
23 but I believe that the average number of filters selected by
24 VidAngel users when watching a given movie is 17. In any
25 event, 96 percent -- 96 percent select more than one.

1 And the studios have suggested unfairly that
2 VidAngel is simply an inexpensive, a cheaper, alternative to
3 watching streamed content provided by a provider the studios
4 have agreed to license.

5 That is factually incorrect. Here is why. When a
6 motion picture is released, it goes through a standard cycle
7 by which the studios attempt to maximize the revenue that
8 they derive from that motion picture. And that's perfectly
9 appropriate.

10 First, a new release is shown theatrically in
11 first run motion picture theaters. That's frequently done
12 even if it's a dog because foreign distribution agreements
13 require an American theatrical release.

14 So first is the theatrical release. Then there
15 might be a release to second run motion picture theaters.
16 After that, the studios typically release a collectors
17 edition DVD or Blu-ray that has lots of extra content. It
18 has outtakes. It has interviews with the director, the
19 actors, et cetera. And although those are sold as DVDs,
20 they are very expensive, and VidAngel does not buy them.

21 After that, the studios will release a motion
22 picture for streaming. And at that point, services that
23 have a streaming license can offer that picture to their
24 customers. But VidAngel doesn't have a streaming license
25 for reasons the Court knows well.

1 So VidAngel customers are not able to watch a
2 movie when it's released for streaming.

3 THE COURT: They are able to watch it. They're
4 just not able to watch it on VidAngel.

5 MR. QUINTO: Okay. Fair enough. They're not able
6 to watch a filtered movie, meaning they cannot watch it on
7 VidAngel. They can watch the unfiltered version if they
8 want. That's out there.

9 But if they want to watch a filtered version, they
10 have to wait until the studios finally sell DVDs and Blu-ray
11 disks where VidAngel buys them at retail.

12 Then and only then can VidAngel stream the
13 filtered content, and then and only then can VidAngel
14 customers watch filtered content.

15 So VidAngel is not competing with the streaming
16 services. They get to offer content first. A VidAngel
17 customer has to wait until the studios release the movie in
18 DVD and Blu-ray.

19 Then after that, the studios will typically
20 release a movie for pay television, for the pay cable
21 stations, and finally it will be released for what used to
22 be known as over-the-air television but the stations that --
23 you don't pay for it. So there is that entire cycle, and
24 VidAngel is required to wait its turn.

25 THE COURT: You are saying that VidAngel doesn't

1 jump in line ahead of the other streaming companies that
2 have a license with, in this case, Disney?

3 MR. QUINTO: As an almost universal rule, yes,
4 that's correct. The studios have pointed to two exceptions.
5 One occurred in early 2015 before VidAngel had written to
6 the studios, and the other evidently occurred for purposes
7 of creating a record for this litigation because it occurred
8 earlier this year.

9 And we know from the limited discovery we've had
10 that the studios knew the release date, had determined the
11 release date several months before they released the movie,
12 and they had decided that, in that instance, they would sell
13 streaming customers the right to buy, as they define "buy,"
14 streamed content, at the same time that they would sell DVDs
15 and Blu-ray disks but they would delay for several days
16 releasing the movies to be streamed.

17 So a streaming customer could buy the movie at the
18 same time that VidAngel was offering its service, but a
19 streaming customer who wanted to watch a streamed unfiltered
20 movie without buying it had to wait, I believe, four days
21 after VidAngel acquired the DVDs.

22 Now, had the -- had that caused -- had the studios
23 believed that would cause an irreparable harm, I submit that
24 they would have sent a cease and desist letter to VidAngel,
25 they would have reached out to VidAngel to warn it to wait

1 four days, they would have done something if they had
2 believed that there would be an irreparable injury. They
3 didn't. I would submit they were simply creating a record
4 for the Court.

5 Apart from those two instances, the streaming
6 companies under their licenses get the right to stream well
7 before the studios sell the DVDs and Blu-ray disks that
8 VidAngel depends on to offer its services.

9 Now, the studios have also tried to
10 mischaracterize VidAngel's interest in getting a streaming
11 license as somehow an acknowledgment by VidAngel that its
12 service is not lawful. Nothing could be further from the
13 truth. VidAngel believes that its current service is fully
14 lawful under the Family Movie Act, as I have explained.

15 THE COURT: Let me stop you there. Can we shift
16 then -- you heard Mr. Klaus talk at length about you making
17 copies of these movies onto a server and that violates the
18 production rights that they have. What's your response to
19 that?

20 MR. QUINTO: Sure. I would like to, if I may,
21 just walk the Court through the FMA, through the language of
22 the FMA, and I will explain it in that context.

23 THE COURT: In the interest of time -- I have
24 given you a lot of time. I don't need a recitation of the
25 FMA. I just want some answers to my questions. Just walk

1 me through. What's incorrect about that point? Do those
2 movies, the movies that the purchaser buys, are they copied?
3 Are they put on a server?

4 It seems to me these are somewhat yes-or-no
5 answers, but I'm not as knowledgeable as you all as it
6 relates to the -- how these movies or DVDs end up onto the
7 servers that stream it. So --

8 MR. QUINTO: Sure. Well, Your Honor, Section 110
9 Subsection 11 of the FMA provides that the following are not
10 infringements of copyright -- the making imperceptible by or
11 at the direction of a member of a private household of
12 limited portions of audio or video content of a motion
13 picture during a performance transmitted to that household
14 for private home viewing from an authorized copy of the
15 motion picture.

16 From an authorized copy, not necessarily the
17 customer's authorized copy.

18 THE COURT: So your point is "an authorized copy"
19 means just any authorized copy?

20 MR. QUINTO: Yes, but let me keep going. The
21 statute then provides -- if no fixed copy of the altered
22 version of the motion picture is created by such computer
23 program or other technology.

24 So what the FMA prohibited was not making an
25 intermediate copy or any copy of the original work. It

1 prohibited making a fixed copy of the altered version.

2 And this, again, reflects that you cannot
3 filter -- or at least in 2005, you could not filter a movie
4 and then transmit it without making a copy.

5 THE COURT: What's your response to the Title
6 17 -- USC Section 1201 says "No person shall circumvent a
7 technological measure that effectively controls access to a
8 work protected under this title"?

9 MR. QUINTO: Well, I have several responses,
10 Your Honor.

11 First, as I noted earlier, under 17 USC 110
12 Subsection 11, a service that -- a company that provides the
13 service described therein is not engaging in an infringement
14 of copyright. That's what the entry -- the first line of
15 Section 110 says, "the following are not infringements of
16 copyright."

17 So where there is no copyright infringement, where
18 there is no violation of copyright, the DMCA, by its own
19 terms, doesn't apply. The letter from the Register of
20 Copyrights, Mary Beth Peters, is absolutely consistent with
21 that.

22 She said that no modification of the DMCA was
23 required, obviously, because no modification -- she
24 recommended that DMCA not be -- that there not be an express
25 exception for the DMCA for the obvious reason that no

1 express exception was needed. A service that operates as
2 provided by Section 110 Subsection 11 does not infringe
3 copyright.

4 Further, the Ninth Circuit opinion in the Blizzard
5 case that I discussed earlier further says that there is no
6 infringement so long as a copyright owner is engaging in an
7 abuse of copyright and further says that the DMCA might not
8 apply when the -- it's being used in -- as part of an
9 anti-trust violation. So for all those reasons, opposing
10 counsel is wrong in his construction of the FMA.

11 Does that sufficiently answer --

12 THE COURT: It answers it.

13 MR. QUINTO: There was also discussion about
14 whether it is or was possible to provide streamed, filtered
15 content without decryption.

16 There is no debate that, in 2005, that ability did
17 not exist. As explained in the Meldahl declaration, there
18 is still no such ability today.

19 Now, what counsel was referring to is the fact
20 that ClearPlay -- and, by the way, Your Honor was correct.
21 ClearPlay is the only other surviving filtering company.
22 There are no other filtering companies out there.

23 What counsel was referring to is that ClearPlay
24 uses a system based on the same basic idea that VidAngel had
25 in 2014 with the Chromecast, that it would ride on top of

1 someone else's system, allow someone else to decrypt, and
2 then would filter that content.

3 In VidAngel's case, the studios contacted Google
4 and said, "That is a violation of your terms and service
5 agreement with us." And I submit that the moment the studio
6 litigation with VidAngel is concluded, the studios will go
7 back to YouTube and say, "You're violating our terms and
8 service agreement. You have got to cut ClearPlay off."

9 So ClearPlay, at a minimum, is operating in
10 violation of a terms of use agreement imposed by the
11 studios.

12 But more to the point -- and this is reflected in
13 the Supplemental Declaration we provided from
14 Elizabeth Ellis, the ClearPlay system at its best is
15 extremely limited and offers the consumer, when it works,
16 offers the consumer a really unsatisfactory experience.

17 It works only with a standard definition stream.
18 So it doesn't work at all with high def or Blu-ray, and it's
19 error ridden. It's difficult to sign up for. There are
20 frequent mistakes in its application, and, of course, it
21 works only if a consumer is also purchasing or obtaining
22 content through YouTube.

23 The Google Play plus YouTube combination that
24 ClearPlay relies on was created in 2012. It did not exist
25 in 2005.

1 So as a legal matter, we submit that ClearPlay has
2 no right to do what it's doing and is being tolerated by the
3 studios because it is not very successful. Its business is
4 not growing, and the studios wish to say that it's an
5 alternative to what we're doing.

6 Now, if we go back to first principles, Congress,
7 obviously, wanted to make filtered content available to the
8 American public on a reasonable basis. The studios have
9 raised a number of arguments that, if accepted, would
10 benefit the studios not at all and would serve only to make
11 a service such as VidAngel prohibitively expensive and could
12 potentially be the death knell of cloud computing.

13 Here is why: The studios contend that -- I can
14 imagine if this were several hundred years ago, they would
15 say, "It's okay to make handwritten copies of the Bible but
16 you can't use Gutenberg's printing press because it's an
17 unapproved technology," that we would have to separately
18 filter every DVD, but we couldn't do it just once. We would
19 have to filter every one, which, you know, doing that for
20 every DVD for every customer would mean that the customer
21 would have to pay thousands of dollars to watch a filtered
22 movie.

23 THE COURT: Explain that to me. Why would they
24 have to pay thousands of dollars?

25 MR. QUINTO: Because the process that VidAngel

1 goes through is very expensive. You first decrypt what's on
2 the disk and convert it into a Matroska file, which is an
3 intermediate file that is incapable of being viewed.

4 From there it's put into a different form of
5 intermediate file and various taggers in different parts of
6 the country -- and VidAngel uses a number of taggers and
7 deliberately uses taggers in different parts of the country
8 because they have different sensitivities. So they all go
9 through the same movie, and they tag things that they
10 believe might be objectionable.

11 So as I said earlier, there are 82 general tagging
12 categories, but with the subcategories there are many
13 hundreds.

14 So you have a number of people doing this. You
15 have somebody who has to watch and review to make sure that
16 all the tags are correctly placed --

17 THE COURT: That happens now; right?

18 MR. QUINTO: Yes.

19 THE COURT: Okay.

20 MR. QUINTO: But that happens once -- right now
21 that happens once per movie. And what the studios are
22 saying is that it should happen once per disk, which is
23 crazy.

24 THE COURT: But doesn't the filtering -- but it's
25 interesting because every user or customer might have

1 different filters; correct?

2 MR. QUINTO: Correct.

3 THE COURT: So you are saying that your client has
4 done it one time and so they are able to filter out any of
5 all of the different 82 options when they click on?

6 MR. QUINTO: What they do is they tag everything
7 that might be objectionable -- and the tags fall into 82
8 broad categories and numerous subcategories. Then after
9 that's done, the movie is chopped up into little tiny
10 bits --

11 THE COURT: I understand your point.

12 MR. QUINTO: A maximum length is ten seconds, but
13 many, many bits are shorter. Might be half a second, a
14 second, two seconds. And those bits contain something that
15 has been tagged or frequently contained something --

16 THE COURT: Let me ask you this, Mr. Quinto. Do
17 you believe that the FMA contemplated streaming when it was
18 enacted?

19 MR. QUINTO: Of course, on its face, the making
20 imperceptible by or at the direction of a member of a
21 private household -- so private household telling third
22 party do something -- make imperceptible at my direction
23 limited portions of audio/video content of a motion picture
24 during a performance transmitted to that household for
25 private home viewing, in other words, streaming. So you

1 filter it, and then you transmit it or streamed. I think it
2 couldn't be clearer that that's what the FMA intended.

3 And part of the problem -- as a side note, part of
4 the problem with the legislative history is, as the Court
5 knows, every two years Congress ends and we get a new
6 Congress. When one Congress ends, everything that's pending
7 is out the door and legislation has to be reintroduced in
8 the following Congress.

9 So there was a Family Movie Act of 2004 that was
10 pending when that Congress ended. Significantly, the 2004
11 version was not identical to the 2005 version. The 2004
12 version contemplated only the service or device used in the
13 house to filter content there.

14 So it was only with the 2005 version that the
15 streaming was added. And that was done actually at
16 ClearPlay's request because it could see that that was the
17 future, that consumer preferences would change, that
18 consumers would want to be able to watch content
19 immediately. They wouldn't want to have to go to a store to
20 buy a disk or order a disk to be delivered to them. They
21 wouldn't want to have to insert it into a special DVD player
22 at home and be tied to watching it on family television.
23 They might want to watch it on their laptop. They might
24 want to watch it on their iPad, on their tablet. They might
25 want to watch it on their smartphone. They would want to

1 have such freedom.

2 And that is what this portion of the Family Movie
3 Act allows. And it's what -- it's why this portion is so
4 important because this is the portion that American families
5 today want to use. This is how you make filtered content
6 available to the American public now.

7 But having to do the whole process -- and let me
8 just finish with the process of preparing a movie -- so it's
9 then --

10 THE COURT: Mr. Quinto, I don't need you to finish
11 the process. I think I understand the process.

12 MR. QUINTO: Okay. So counsel stated incorrectly
13 that VidAngel keeps a -- or stores a permanent copy of the
14 filtered work. Not true. All VidAngel does is put all
15 those little tiny bits up in the cloud and then, when a
16 consumer requests a movie with specific filters, VidAngel
17 sends the instructions concerning what bits to transmit to
18 the consumer.

19 THE COURT: I think what Mr. Klaus was saying
20 what's stored is not the filtered content. It's the
21 original content. So someone wants to watch "Star Wars,"
22 VidAngel copies it and takes that copy -- puts it on the
23 cloud, for lack of a better term, and the actual DVD or
24 Blu-ray disk is stored. That's stored. But there is this
25 copy that remains that is used over and over -- that is the

1 source by which the filtering -- the filtering mechanism
2 pulls its information from. It's not from that original DVD
3 that the person purchased.

4 MR. QUINTO: I think he was talking about two
5 things, Your Honor. Yes, there is a sense in which there is
6 a copy stored on the cloud.

7 THE COURT: And you believe that that is
8 authorized?

9 MR. QUINTO: Clearly.

10 THE COURT: Why?

11 MR. QUINTO: Well, again, let's go back to the
12 statute. Even assuming all those encrypted bits constitute
13 a copy, even though, if you -- if a third party were somehow
14 to intercept and collect all those bits, the third party
15 would have no way to arrange them to reconstitute the movie.
16 It's sort of like saying a book that has gone through a
17 shredder is still a book.

18 THE COURT: Are you talking about the filtered
19 movie?

20 MR. QUINTO: I'm talking about the unfiltered
21 movie. I think Mr. Klaus was talking about two things.

22 So first let's talk about what's stored in bits.
23 What's stored in those little tiny bits in the cloud, which
24 are floating around and would not be -- are not a copy in
25 the sense that, if you were somehow to gain access to the

1 cloud and intercept those bits, you could say, "Aah, I have
2 got the movie."

3 It would be analogous to saying the book went
4 through a shredder. I have got all the shredded papers; so
5 there is a sense in which I have the book. In a sense, yes.
6 But it's not -- the book wouldn't be readable. The movie is
7 not watchable, and those bits are encrypted.

8 But importantly, at this point nothing is altered.
9 Everything is tagged, and things are broken up into little
10 tiny bits that reflect the tags, but it's still the original
11 work up there.

12 Now, the statute -- going back to the statute --
13 says that the service is lawful if no fixed copy of the
14 altered version of the motion picture is created. It
15 doesn't prohibit the creation of making a copy of the
16 original. What's prohibited is making a copy, a fixed copy
17 of the altered version.

18 And the doctrine of the inclusion of one to the
19 exclusion of the other applies here. Congress has expressly
20 said, "It's not a problem. It's a problem only if you make
21 the altered version." So implicit in that is that it's fine
22 to make a copy of the unaltered version.

23 Now, the second copy that I think Mr. Klaus was
24 talking about is so now you have all these little encrypted
25 bits floating around in the cloud, and a consumer chooses a

1 movie and selects the filters.

2 So if the consumer selects what I believe is the
3 average number of filters selected, 17, bits that don't
4 include anything falling within those 17 categories will be
5 transmitted to the consumer.

6 Now, the bits are stored by Google in the cloud,
7 and Google's default is to keep that arrangement of bits for
8 24 hours in case any other consumer decides to order, to
9 request the same movie with the exact same filters during
10 that 24-hour period.

11 But that is simply Google's default. It's not
12 something -- it's not necessary for the service. It's not
13 something that Google -- that VidAngel requests. It's
14 entirely unnecessary to VidAngel's service and is not
15 something that VidAngel is responsible for.

16 Now, I talked about the effect that Mr. Klaus's
17 argument would have on cloud computing. Apart from the fact
18 that it would prohibitively expensive to go through this
19 whole process with respect to every disk as opposed to every
20 movie and apart from the fact that it would totally
21 undermine congressional intent to make filtered content
22 readily available to American families if carried to its
23 logical conclusion, it would be the death of the cloud
24 because you would have enormous numbers, enormous quantities
25 of identical works stored there.

1 So, for example, if instead of having one copy of
2 a movie broken up into hundreds and hundreds of little bits
3 you had, say, 2,500 copies of that movie broken up into
4 2,500 times as many little bits, one can readily see how
5 quickly storage space in the cloud would be exhausted.

6 So for this reason, the cloud computing companies
7 intervened in the Aereo case to call this to -- this problem
8 to the attention of the Supreme Court.

9 And they also have their own technological
10 measures to try to weed out duplicate copies so that they
11 are not keeping 2,500 copies of something when one copy
12 would suffice.

13 And, again, Mr. Klaus's argument is totally
14 divorced from prejudice, from harm, from irreparable injury.
15 Whatever the effect on the studios is from having a movie
16 decrypted and being made available to VidAngel's users, that
17 effect is identical whether it's one copy that's decrypted
18 or 2,500 copies that are decrypted.

19 The effect on the studios is no different. This
20 is just a case of the dog in the manger, the dog who gets no
21 benefit from being in the manger, occupies the manger to
22 deny the animals that would benefit, to deny them of that
23 benefit.

24 Now, let me turn to irreparable injury. It's
25 preliminarily -- I note that it's -- and has been for five

1 years now -- well established that irreparable injury may
2 not be presumed but must be proved. Winter and Salinger say
3 that.

4 Irreparable injury is discussed only in the
5 declaration of Mr. Cittadine. Mr. Cittadine begins with the
6 proposition that VidAngel is your stereotypical pirate,
7 maybe even an archetype pirate. But he starts with that
8 proposition. VidAngel is a pirate.

9 From there he says, "Well, based on the studio's
10 experience with pirates, we can anticipate the following
11 harms."

12 Now, as I said, VidAngel began offering its
13 service over 22 months ago. It went public in August of
14 2015. The studios have had an account since
15 August 6th, 2015. And VidAngel has had incredible growth
16 since then.

17 In fact, the two best months for month-over-month
18 growth were November and December of 2015. Notwithstanding
19 the 22-month history, the studios have not identified any
20 actual injury.

21 All they have is Mr. Cittadine's declaration that,
22 based on his experience with pirates, this is what could be
23 expected. But -- so that raises the question is VidAngel a
24 pirate? I submit that pirates don't spend millions of
25 dollars to buy authorized copies of plaintiffs' works. Or

1 studios' works. Here, as of today, VidAngel has spent just
2 shy of \$1.7 million to buy authorized copies of DVDs.

3 THE COURT: Mr. Quinto, how do you respond to
4 Disney's contention that you or your client has pleaded
5 financial hardship and would not be able to pay off any
6 final judgment? And they cite to a number of cases that
7 suggest that that fact in and of itself might make an
8 injunction appropriate.

9 MR. QUINTO: As follows, Your Honor. First, the
10 damages calculation was based on the assumption that the
11 studios would, A, prove willful copyright infringement, not
12 ordinary copyright infringement, but willful; and, B, based
13 on the assumption that having proved willful copyright
14 infringement, the Court would choose to award the maximum
15 statutory damages per infringement.

16 So we have -- those are two assumptions that I
17 don't think should -- two assumptions that should be
18 weighed.

19 Beyond that, VidAngel's monthly revenues are now
20 in excess of \$1 million. We've just completed a
21 Regulation A Plus stock offering, as Your Honor knows, in
22 which we terminated it after we had raised a little over
23 \$10 million. So that's now in the bank. So there is plenty
24 of money to pay any kind of reasonable damages award, should
25 there be one.

1 But I notice that in other cases such as ReDigi,
2 preliminary injunction was denied. In another case, the
3 Court held that, because the defendant had kept very
4 accurate records, damages could be calculated and,
5 therefore, there was no need, it would be inappropriate to
6 impose a preliminary injunction.

7 So for those reasons, Your Honor, I submit that
8 there is no irreparable injury here.

9 THE COURT: All right. Can you talk a little bit
10 about claim of fair use. And I guess I would like to hear a
11 little about, sort of, the transformative prong. Is it your
12 position that, once they apply the filter, it's now changed
13 the movie?

14 It strikes me that, filter or not, "Trolls" is
15 "Trolls," "Star Wars" is "Star Wars." It may not have a
16 curse word or a scene but the movie, the heart of the movie,
17 doesn't change, does it?

18 MR. QUINTO: Your Honor, I wish the studios agreed
19 with that proposition because, if they agreed with it, they
20 would surely sell us a streaming license.

21 Their basis for withholding a streaming license is
22 that the filtering alters the content of the movie,
23 significantly changes the director's vision. But if it's
24 really the same thing, there is no basis to withhold the
25 streaming license.

1 I think it's self-evident that the -- that what we
2 do is transformative. For example, the Ninth Circuit has
3 held that taking a thumbnail photo is a transformative
4 use -- using a thumbnail photo or republishing a thumbnail
5 is a transformative use of a full photograph even though
6 it's of the exact same image because it has a different
7 purpose. It satisfies a different need.

8 And here we have 50 percent of -- over 50 percent
9 of VidAngel customers who say they would not watch certain
10 movies without filtering, just wouldn't watch it at all.

11 THE COURT: Is the filter of content or just
12 opening credits?

13 MR. QUINTO: No, no, no. It's content. The
14 opening credits was never an issue. The studios were
15 complaining about the closing credits. And as I explained,
16 there was a very good reason for that.

17 And, again, going back to my letter of last July,
18 I told the studios that, if they had any problems with what
19 we were doing, we would be happy to work with them, modify
20 our service.

21 Consistent with that, when we read in their papers
22 filed with this Court that they thought that allowing
23 filtering of a closing credits was a way to game the system,
24 we changed that and now you may still -- if you want to
25 filter closing credits, you have to filter something else as

1 well. That is no longer sufficient.

2 Another thing they complained of was the
3 automatic -- that consumers could choose -- when they
4 purchased a movie, they could choose the automatic sellback
5 feature.

6 Studios complained about that. We eliminated it.
7 So now it's up to the consumer to decide -- the consumer no
8 longer has that option to have that done automatically. The
9 consumer has to affirmatively go back to VidAngel when he or
10 she is done with the movie and say, "Now I want to sell it
11 back" and -- surprise. The average sellback time is now
12 over 24 hours; so VidAngel's profits have increased. So
13 thank you, studios.

14 So this is clearly transformative because it opens
15 movies to a new audience. And even with respect to existing
16 audiences, such as parents who might be willing to watch the
17 movies themselves, it opens the movie up further because
18 those parents who are willing to watch the movie themselves
19 might not be willing to watch with their children.

20 THE COURT: That makes it transformative?

21 MR. QUINTO: Yes. Of course. It's a different
22 use. It's a purpose.

23 Now, remember, with the thumbnail images, nothing
24 was filtered, nothing was removed. It's just that the
25 thumbnail served a different purpose than the full

1 high-resolution photograph because it allowed consumers to
2 quickly look at photographs and decide which ones they may
3 want to acquire in the high definition version.

4 THE COURT: Okay. I got your point, Counsel. I'm
5 going to just give you a few minutes to wrap up because I
6 want to hear from the moving party before we end this
7 proceeding.

8 MR. QUINTO: Counsel has also suggested that what
9 VidAngel is doing is somehow attempting an end-run around
10 established rights of copyright, and they've envisioned
11 filtering services that can filter anything.

12 Well, that problem was discussed in Congress, and
13 it's reflected in the legislative history. Congress
14 considered trying to limit the content that could be
15 filtered to things that families find offensive or things
16 that the American Medical Association, the American
17 Pediatric Society had found, had declared that in over
18 2,000, studies could cause injury to -- permanent injury to
19 children such as the repeated exposure to violence on screen
20 as a child had been demonstrated to lead to a "propensed"
21 likelihood of exhibiting violent conduct by some
22 individuals, as adults.

23 So they considered that, but then they considered
24 the First Amendment and said, "Well, under the
25 First Amendment, we cannot allow -- we cannot decide that

1 certain things can be eliminated but not other things." So
2 owing to the First Amendment, they said, "Well, people have
3 to be able to filter whatever they want."

4 Now, counsel raised the specter, incorrectly, that
5 perhaps somebody could decide that it had an objection to
6 one thing and just filter that one thing out of movies and
7 go into competition with the streaming services -- maybe
8 just arbitrarily filter out the closing credits or the
9 opening credits. Nonsense.

10 Under the Family Movie Act, it's the individual
11 family owner, family member, who decides what gets filtered.
12 So the individual member of the family purchasing the
13 content has to decide what is filtered, not some competitor
14 choosing to filter only credits and compete.

15 Secondly, as a practical matter, that doesn't work
16 anyway because the movie goes through the whole release
17 cycle, and, if you are trying to operate under the Family
18 Movie Act, as counsel has suggested, then you have to wait
19 until the movie comes out on DVD and Blu-ray disk.

20 So if Warner Bros. wanted to compete with
21 Universal, Universal would be able to stream its movies for
22 as long as it wanted before it released those movies on DVD,
23 and Warner Bros. wouldn't be able to compete by offering
24 some kind of filtering service until Universal had finally
25 released the content on DVD. So the specter that one studio

1 would compete with another is stuff and nonsense.

2 THE COURT: Anything further, Mr. Quinto?

3 MR. QUINTO: No, Your Honor, but I would like to
4 reserve three minutes, if I may, to respond to --

5 THE COURT: You have had over an hour -- or close
6 to an hour, I should say. I am not inclined to do that.
7 But let me -- I just have a couple of questions of -- I'm
8 sorry. I'm drawing a blank on the name -- Mr. Klaus. And I
9 have an afternoon criminal calendar; so I have to get to
10 that in a moment as well.

11 Mr. Klaus, the question I have for you is I
12 thought I heard Mr. Quinto -- and I may have misheard it --
13 saying that the VidAngel -- they have to wait in line just
14 like everyone else. What's your response to that, that they
15 don't gain an advantage or jump on consumer's access to
16 movies? What's your response to that?

17 MR. KLAUS: That's not true. They wait in line
18 until the DVD release date. And the moment there is a DVD
19 release, they then go into competition with other services
20 who may or may not have access to the content in that
21 window.

22 THE COURT: Who would not have access to the
23 content during that window?

24 MR. KLAUS: During that window. And there are
25 some distributors, whether they are streaming services,

1 whether they are sometimes subscription services like
2 Netflix, for example --

3 THE COURT: I just want to make sure I understand
4 the time line. You are suggesting a DVD gets released on X
5 date. Netflix may not be authorized to stream on that date.

6 MR. KLAUS: Correct.

7 THE COURT: iTunes, if a DVD is released, iTunes
8 may or may not be authorized to release on that date?

9 MR. KLAUS: There are a couple of important
10 concepts that Mr. Quinto jumbled together, and let's be sure
11 that we break them apart.

12 One is he talks about whether they are available
13 for access on a streaming service. And a streaming
14 service -- let's take iTunes, for example -- may have two
15 different types of streams that it can offer. One is the --
16 where you buy the movie through iTunes. You pay a higher
17 price, 19.99 to buy, than you would for the one-night
18 rental. That's the essence of the window.

19 And depending on the particular company's
20 relationship with a particular service -- and it varies
21 because this is the subject of commercial negotiations
22 between copyright owners and services. A service may get
23 the ability to have the purchase where it's in your
24 permanent iTunes collection. It may have the ability to
25 rent on a nightly or daily basis. They may get them on the

1 same date. They may get them on different dates. Those are
2 two different points.

3 The DVD release date, however, once that is --
4 and, again, each studio makes its own decision about how it
5 wants -- how and when it will release its content.

6 The DVD release date may be the same date that you
7 have content that's available for purchase. The DVD release
8 date may be the same date that you have content available
9 for a single day rental. It really does depend.

10 But this idea that somehow they -- what Mr. Quinto
11 is saying is, "We're not in competition with those services
12 because we have to wait in line for the DVD," is just not
13 true. Whether he may be in competition on a particular
14 movie for a day or a five-day or a week period, that may in
15 some cases be true, may not be true.

16 What is clear is that VidAngel views itself as
17 being in competition with these other services. Why else
18 would -- if Mr. Quinto's statement is the Netflixes, the
19 other streaming services of the world, they serve a
20 different market that we don't care about. Why do they have
21 an entire section that you can filter their movies for
22 things that are not available on Netflix if they don't view
23 themselves as being in competition with something that's
24 available on Netflix?

25 THE COURT: Isn't the answer to that "We have

1 these movies, but we have them in a format so that those
2 that might be offended by strong language, nudity, violence,
3 you can watch them through our service"?

4 MR. KLAUS: Well, so -- but they -- my point to
5 you, Your Honor, is they are making them available for a
6 significantly lower price than they're available on the
7 other services. They are promoting the fact that they make
8 them available for the price. And users are not oblivious
9 to this, Your Honor. And I just point to you to a couple of
10 examples of what we pointed out in our papers.

11 THE COURT: Go ahead, briefly. I remember reading
12 about the users saying, "Hey, I can get this quicker,
13 easier."

14 MR. KLAUS: Yeah. "We bought 'Star Wars'" -- I am
15 just reading from page 9 of our opening brief. "We bought
16 'Star Wars.' We sold it back for a total of \$1.00 when it
17 was, like, \$5.00 to rent on Amazon. Even if you don't need
18 the content cleaned, it's a great video service."

19 Same comments to that effect on page 17.

20 THE COURT: I am going to jump around for a
21 minute. What's your response to -- what's the purpose of
22 the Family Movie Act? The Family Movie Act was enacted for
23 a reason, to allow those individuals to watch content --
24 watch feature films, what have you, in a manner that is not
25 objectionable to that individual family.

1 MR. KLAUS: Subject to the requirements of the
2 statute, Your Honor, subject to the requirements of the
3 statute.

4 And the best evidence again of what Congress
5 ultimately intended, setting aside all the -- I have got one
6 version in 2004 and another version that the Congress in
7 2005 -- focusing on the language of the statute,
8 Your Honor -- what the language of the statute says is that
9 it has to be from an authorized copy.

10 When Mr. Quinto was going through his argument
11 about why it was clear that Congress intended for there be
12 streaming, he very noticeably stopped right before the
13 critical language that the transmission that is subject to
14 the exemption that the Family Movie Act creates has to be
15 from an authorized copy.

16 THE COURT: Right. But he says -- we've kind of
17 gone over this before. He says it is an authorized copy.
18 I, customer, buy a DVD, and so I am -- VidAngel is giving
19 the customer that authorized copy.

20 MR. KLAUS: But then, as I think Mr. Quinto
21 ultimately conceded when he said, in a sense, there is a
22 copy in the cloud, the copy in the cloud is a different
23 copy. It is not the copy that the consumer -- even
24 indulging in the fiction that the consumer owns the DVD,
25 even though only four people have ever requested to get

1 their DVD back and 99 1/2 percent have returned them as the
2 rental that Mr. Quinto described earlier today within the
3 five-hour period, even indulging that fiction, the copy from
4 which the movie is streamed, from which it is transmitted,
5 is the copy that they have made to the cloud.

6 They do apply filters to it, but it's still not an
7 authorized copy. And, again, Your Honor beyond the language
8 of the statute, this is another area where the legislative
9 history actually did discuss this issue.

10 It's again in Senator Hatch's statement which is
11 at Tab 5 of my binder. Senator Hatch said -- this is the
12 only -- by the way, the only legislative history that's in
13 the record that speaks to the question of transmission and
14 performance.

15 (Reading:) An infringing
16 performance in a household or an infringing
17 transmission of a performance to a household,
18 those are not rendered non-infringing by
19 Section 110(11) by virtue of the fact that
20 limited portions of audio or video content to
21 the motion picture being performed are made
22 imperceptible during such performance or
23 transmission in a manner consistent with that
24 section.

25 The only legislative history, absolutely, the only

1 one that speaks to this transmission issue is that
2 statement. So if the statute wasn't clear -- and we believe
3 it is clear that what they are doing is plainly a
4 violation -- the only legislative history that's on point
5 specifically says that the argument that they are making is
6 wrong.

7 THE COURT: All right. Anything further,
8 Mr. Klaus?

9 MR. KLAUS: One brief point, Your Honor, because
10 Mr. Quinto was very liberally saying that the plaintiffs in
11 this case had gone to Google and had directed Google not --
12 to shut off support, to stop the Chromecast filtering,
13 et cetera. We went round and round -- I went round and
14 round with Mr. Harmon at his deposition on this to ask him
15 what the specific evidence was that he had.

16 We put this -- it's in -- Tab 15 of our binder are
17 all of the excerpts from Mr. Harmon's deposition transcript.
18 Between pages 273 and 277 are the pages in question, and I
19 said to Mr. Harmon --

20 (Reading:) Tell me every fact you
21 have to believe that one of the plaintiffs in
22 this case went to Google and said to Google,
23 "cut off service, cut off support for them."

24 And Mr. and Mr. Harmon said, "Well,
25 I have seen things that I got from WikiLeaks"

1 that suggest there are provisions and
2 contracts.

3 He says, "I am suspicious about the
4 timing."

5 And on page 277, I said to him -- and I am reading
6 277 of the deposition transcript. This was page 70 of
7 Exhibit M from Miss Bennett's Reply Declaration.

8 (Reading:) I want to be very
9 precise here, Mr. Harmon. Do you believe that
10 a studio -- or multiple studios went to Google
11 and specifically said "Do not provide support
12 to VidAngel"?

13 ANSWER: I don't have that
14 information, but that's what we believe based
15 on the facts that we have.

16 So I say that, Your Honor, when Mr. Quinto stands
17 here and says that we have constantly gone to other services
18 and told them not to do business with VidAngel, he has in
19 fact no evidence to support that. That's simply conjecture
20 that he's put in for the benefit of the hearing.

21 THE COURT: Thank you, Mr. Klaus.

22 Mr. Quinto, do you have something urgent that you
23 need to bring to the Court's attention?

24 MR. QUINTO: I will limit myself to 30 seconds.
25 The Court may strictly --

1 THE COURT: I wish I had my civil trial clock
2 here. I would put you to that, but go ahead.

3 MR. QUINTO: Thank you, Your Honor.

4 First, if the studios were really concerned that
5 VidAngel, by relying on the Family Movie Act, can charge
6 consumers \$1.00, they would license VidAngel to stream. If
7 they did that, VidAngel would not only be happy to but would
8 be required to, by economics, charge as much as anybody
9 else.

10 Second, Mr. Klaus was incorrect about the number
11 of DVDs permanently owned. It's 12 percent of all DVDs that
12 are permanently owned that have no sellback value, and
13 that's over 20,000.

14 THE COURT: Twelve percent of people ask for the
15 movies to come back?

16 MR. QUINTO: Twelve percent of all DVDs --

17 THE COURT: But he was talking about how many
18 people asked to have the movies sent back to them. I think
19 that was four percent.

20 MR. KLAUS: That was four disks total, Your Honor.

21 THE COURT: Sorry.

22 MR. KLAUS: And, again, I will say there is no
23 evidence in the record to support the 12 1/2 percent
24 statement that Mr. Quinto is now --

25 THE COURT: I am more concerned -- I think his

1 point was how many people said, "Give me the DVD back"?

2 MR. QUINTO: Somewhere around four, six, somewhere
3 in that vicinity. But, of course, the DVD is unfiltered.
4 They have the right and VidAngel will mail it to them. So
5 it's a true sale, not a rental.

6 But more to the point, people who want to watch
7 filtered content have kept over 20,000 DVDs that now have no
8 sellback value.

9 THE COURT: Okay.

10 MR. QUINTO: Final point, Your Honor. The comment
11 that an infringing performance is not rendered acceptable
12 because it was decrypted and was transmitted under the --
13 filtered and transmitted under the Family Movie Act is
14 perfectly logical.

15 It means that, if somebody unlawfully obtains a
16 DVD, then it cannot be decrypted and filtered and thereby
17 gain the protection of the Family Movie Act. That's what it
18 means.

19 THE COURT: All right. Thank you, both counsel.
20 I appreciate the robust arguments on both sides of this. I
21 am going to take a little time to review some of my notes as
22 well as some of the evidence in the case, and the matter
23 will remain under submission until the Court issues its
24 final order. I am certain I will see you on December 19th.
25 So until then, thank you.

1 MR. KLAUS: Thank you, Your Honor.

2 MR. QUINTO: Thank you.

3 THE CLERK: All rise. This Court is in recess.

4 (Proceedings concluded at 1:41 p.m.)

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CERTIFICATE

I hereby certify that pursuant to Section 753,
Title 28, United States Code, the foregoing is a true and
correct transcript of the stenographically reported
proceedings held in the above-entitled matter and that the
transcript page format is in conformance with the
regulations of the Judicial Conference of the United States.

Date: December 13, 2016.

/S/ CHIA MEI JUI _____

Chia Mei Jui, CSR No. 3287

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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

Plaintiff,

v.

VIDANGEL, INC.,

Defendant.

Case No. 2:16-cv-04109 – AB (PLAx)

**ORDER GRANTING PLAINTIFFS’
MOTION FOR PRELIMINARY
INJUNCTION**

Pending before the Court is Plaintiffs’ Disney Enterprises, Inc., Lucasfilm Ltd. LLC, Twentieth Century Fox Film Corporation, and Warner Bros. Entertainment Inc. (“Plaintiffs”) Motion for Preliminary Injunction. (“Mot.” Dkt. No. 26-1.) Plaintiffs seek to enjoin Defendant VidAngel Inc. (“VidAngel”) from [1] violating Plaintiffs’ rights pursuant to § 1201(a) of the Digital Millennium Copyright Act (“DMCA”), 17 U.S.C. § 1201(a), by circumventing technological measures that effectively control access to Plaintiffs’ copyrighted works on DVDs and Blu-ray discs; and [2] infringing by any means, directly or indirectly, Plaintiffs’ exclusive rights under § 106 of the Copyright Act, *id.* § 106, including by reproducing or publicly performing Plaintiffs’ copyrighted works.

Plaintiffs bring this motion on the grounds that they are likely to succeed on the merits of their claims and that they will suffer irreparable harm, absent an injunction.

1 Plaintiffs contend that the balance of equities tips decidedly in their favor, and an
 2 injunction is in the public interest. Furthermore, Plaintiffs contend that VidAngel's
 3 defenses to violating Plaintiff's rights are meritless and thus Plaintiffs are entitled to a
 4 preliminary injunction against Defendants. VidAngel filed an opposition and the
 5 Plaintiffs filed their reply. The Court heard oral arguments from the parties on
 6 November 14, 2016 and took the matter under submission. Upon consideration of the
 7 parties' arguments, papers and the case file, the court hereby **GRANTS** the motion for
 8 preliminary injunction.

9 **I. BACKGROUND**

10 **a. Factual and Procedural Background**

11 **i. Plaintiffs and Their Copyrighted Works**

12 Plaintiffs are in the business of producing and distributing motion pictures and
 13 television programs. ("Compl." Dkt. No 1 ¶ 19.) Plaintiffs invest considerable effort
 14 and resources each year to develop, produce, distribute and publicly perform their
 15 Copyrighted Works. (*Id.* at ¶ 25.) Plaintiffs own and have the exclusive U.S. rights to
 16 reproduce and publicly perform their Copyrighted Works, including by means of
 17 streaming those works over the internet to the public. (*Id.* at ¶ 25.) Plaintiffs
 18 distribute and license their content for home entertainment across a number of
 19 channels. (*Id.* at ¶ 27.) These include, among others: (1) physical Discs; (2) digital
 20 download through services like iTunes, VUDU or Amazon Video; (3) on-demand
 21 streaming for short-term viewing on a per transaction fee (e.g., iTunes Store or Google
 22 Play Store); or (4) subscription on-demand streaming (e.g., Netflix or Hulu).
 23 (Cittadine Decl. ¶ 9.)

24 Plaintiffs strategically release their content across different distribution
 25 channels and to different licensees over time, a process called "windowing." (*Id.*)
 26 The value and price for each offering is tailored to the willingness of customers (and
 27 licensees) to pay for those offerings. (*Id.*) Plaintiffs often negotiate higher licensing
 28 fees in exchange for granting a licensee the exclusive right to perform a movie or
 television show during a particular time period. (*Id.*) Plaintiffs assert that online and
 digital distribution channels have become increasingly important revenue sources. (*Id.*
 ¶ 10.)

1 **i. VidAngel's Service**

2 VidAngel offers more than 2,500 movies and television episodes for purchase
3 on its website. Answer/Counterclaim ("CC," Dkt. No. 77 ¶ 59.) VidAngel purchases
4 physical copies of each of these titles in DVD format. (*Id.*) VidAngel enters each
5 DVD it has purchased into an inventory management application database and assigns
6 a unique barcode to each physical disc case. (*Id.* at ¶ 60.) VidAngel then uses a
7 commercially available software program to decrypt a copy of each individual title.
8 (Meldal Dec., ¶ 37(ii).) After decryption, VidAngel creates "intermediate" files.
(*Oppo.* at 17.) VidAngel tags the files for over 80 types of potentially objectionable
content. (Meldal Dec., ¶¶ 33-38.)

9 Before watching a particular movie or television episode, a customer
10 must purchase a physical DVD containing the title from VidAngel. (CC ¶ 63.) The
11 purchase price for each DVD is \$20. (*Id.* ¶ 64.) To purchase a disc, users must logon
12 to the VidAngel website. First-time users are required to provide an email address to
13 establish a unique user ID and create a password. (*Id.*) Once a purchase transaction
14 has occurred, the disc is removed from available inventory and the title is transferred
15 to that customer's unique user ID. (*Id.* at 65.) VidAngel typically maintains
16 possession of the physical DVD on behalf of the purchasers, but purchasers may
17 request that the DVD be sent to them or retrieve the DVD from VidAngel's offices.
18 (*Id.* ¶ 63.)

19 After a customer purchases a physical DVD they are shown a listing of the
20 various types of potentially objectionable content identified in the purchased work, as
21 well as the number of occurrences of each such type of content within the work. (*Id.*
22 ¶ 62.) The user then selects the types of content he or she wishes to have silenced or
23 deleted. (*Id.*) Each user must apply at least one filter in order to view a video. (*Id.* ¶
24 30.) After selecting filters, a subscriber is able to view the stream instantaneously on
25 any VidAngel-supported device, including Roku, Apple TV, Smart TV, Amazon Fire
26 TV, Android, Chromecast, iPad/iPhone and desktop or laptop computers. (*Id.* ¶ 66.)

27 Once a user has viewed a stream, the user may re-sell the DVD
28 back to VidAngel for a partial credit of the \$20 purchase price. (*Id.* ¶ 68.) The
sellback price decreases \$1 per night for standard definition (SD) purchases and \$2
per night for high-definition (HD) purchases. (*Id.*) Once a user sells the movie back
to VidAngel, the user's access to the title is terminated and the remaining balance is
credited back to the user's VidAngel account. (*Id.*) For example: A \$20 SD disk is
owned for 2 nights at \$1 per night and sold back for \$18 in sell-back credit. (*Id.*) If a
VidAngel customer keeps a DVD for more than 20 days, he or she can either view it

1 through the VidAngel platform in perpetuity, sell it back for \$1 or \$2 in credit, or
2 VidAngel will send the DVD to the customer, if requested. (*Id.*)

3 At the time of this motion, VidAngel offered over 80 of Plaintiff's copyrighted
4 works on their website. (Compl. Ex. A.; Ehler Decl. Ex. EE at Tr. 27:19-29:14.)
5 Plaintiffs have not provided authorization, permission or consent to VidAngel to copy
6 or publicly perform the Copyrighted Works, or to exercise any other rights affecting
their copyrights with respect to the Copyrighted Works. (Compl. ¶ 29.)

7 On June 9, 2016, Plaintiffs commenced this action by filing a complaint against
8 Defendants. (Complaint, Dkt. No. 1.) On July 5, 2016, Defendants filed an answer
9 and counterclaim. (Dkt. No. 11.) On August 22, 2016, Plaintiffs filed a Motion for
10 Preliminary Injunction. (Dkt. No. 27) On September 16, 2016, Defendants filed an
11 Amended Answer and Affirmative Defenses, as well as First Amended
12 Counterclaims. (Dkt. No. 77.)

13 II. LEGAL STANDARD

14 Injunctive relief is "an extraordinary remedy that may only be issued upon a
15 clear showing that plaintiff is entitled to such relief." *Winter v. Natural Resources*
16 *Defense Council*, 555 U.S. 7, 129 S. Ct. 365, 376, 172 L. Ed. 2d 249 (2008). The
17 purpose of a preliminary injunction is to preserve the status quo and the rights of the
18 parties until a final judgment on the merits can be rendered. *U.S. Philips Corp. v.*
19 *KBC Bank N.V.*, 590 F.3d 1091, 1094 (9th Cir. 2010). A party seeking preliminary
20 injunctive relief must establish that they are (1) likely to succeed on the merits; (2)
21 that they are likely to suffer irreparable harm in the absence of preliminary relief; (3)
that the balance of equities tips in their favor and (4) that an injunction is in the public
interest. *Am. Trucking Ass'n, Inc. v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th
Cir. 2009).

22 Alternatively, "serious questions going to the merits' and a hardship balance
23 that tips sharply toward the plaintiff can support the issuance of an injunction,"
24 provided that the plaintiff also shows irreparable harm and that the injunction is in the
25 public interest. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1132 (9th
26 Cir. 2011); A "serious question" is one on which the movant "has a fair chance of
success on the merits." *Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415,
1421 (9th Cir. 1984).

27 The elements of this test are "balanced, so that a stronger showing of one
28 element may offset a weaker showing of another." *Alliance for the Wild Rockies*, 622

1 F.3d 1045, 1049–50 (9th Cir. 2010), rev’d on other grounds, 632 F.3d 1127 (9th Cir.
 2 2011). However, the applicant must demonstrate that immediate or imminent
 3 irreparable harm is likely: “Speculative injury does not constitute irreparable injury
 4 sufficient to warrant granting a preliminary injunction. A plaintiff must do more than
 5 merely allege imminent harm sufficient to establish standing; a plaintiff must
 6 demonstrate immediate threatened injury as a prerequisite to preliminary injunctive
 7 relief.” *Caribbean Marine Servs. Co. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988)
 8 (emphasis in original) (internal citations omitted); see also *Fin. & Sec. Prods. Ass’n v. Diebold, Inc.*, Case No. C 04-04347 WHA, 2005 WL 1629813, *6 (N.D. Cal. July 8, 2005) (“Irreparable harm must not be speculative or merely alleged to be imminent . . .”).

9 “[A] preliminary injunction is customarily granted on the basis of procedures
 10 that are less formal and evidence that is less complete than in a trial on the merits.”
 11 *Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981). Therefore, the Federal Rules
 12 of Evidence do not strictly apply to preliminary injunction proceedings. *See, e.g., Republic of the Philippines v. Marcos*, 862 F.2d 1355, 1363 (9th Cir. 1988) (en banc);
 13 *Flynt Distrib. Co. v. Harvey*, 734 F.2d 1389, 1394 (9th Cir. 1984). The Court is
 14 permitted to consider inadmissible evidence in deciding a motion for a preliminary
 15 injunction. *Id.* This flexibility exists because “[t]he urgency of obtaining a
 16 preliminary injunction necessitates a prompt determination” and makes it difficult for
 17 a party to procure supporting evidence in a form that would be admissible at trial. *Id.*
 18 “While district courts may consider inadmissible evidence in the context of a
 19 preliminary injunction, this does not mean that evidentiary issues have no relevance to
 20 this proceeding. Such issues, however, properly go to weight rather than
 21 admissibility.” *Am. Hotel & Lodging Ass’n v. City of Los Angeles*, 119 F. Supp. 3d
 22 1177, 1185 (C.D. Cal. 2015) ¹

23
 24
 25 ¹ Both sides make numerous evidentiary objections. In light of the relaxed evidentiary standard for
 26 preliminary injunction proceedings, the Court need not rule on admissibility. However, the Court has
 27 considered the likely admissibility of the evidence in determining whether the Plaintiff demonstrated a
 28 likelihood of success on the merits, for purposes of the preliminary injunction. Where the Court has
 expressly relied on evidence that is subject to an evidentiary objection, the Court has overruled the objection.

III. DISCUSSION

a. Plaintiffs Have Demonstrated A Likelihood of Success on the Merits.

i. Plaintiffs' DMCA Claim

Section 1201(a)(1)(A) of the Digital Millennium Copyright Act provides that “No person shall circumvent a technological measure that effectively controls access to a work protected under this title.” A technological measure effectively controls access to a copyrighted work if, “the measure, in the ordinary course of its operation, requires the application of information, or a process or a treatment, with the authority of the copyright owner, to gain access to the work.” 17 U.S.C. § 1201(a)(3)(B). Plaintiffs use Content Scramble System technology (“CSS”), among other technologies², in order to prevent unauthorized access to the content on DVDs. (Schumann Decl. ¶¶ 20, 27). “CSS is a technological measure that effectively controls access to copyrighted works, namely, copyrighted DVD content.” *Realnetworks, Inc. v. DVD Copy Control Ass’n*, 641 F. Supp. 2d 913, 933 (N.D. Cal. 2009).

Plaintiffs contend that VidAngel circumvents the technological protection measures on Plaintiffs DVDs. The DMCA specifies that “to ‘circumvent a technological measure’ means to descramble a scrambled work, to decrypt an encrypted work, or otherwise to avoid, bypass, remove, deactivate, or impair a technological measure, without the authority of the copyright owner.” 17 U.S.C. § 1201(a)(3)(A). VidAngel admits that it “uses a commercially available software program to automatically allow read-access for the purpose of mounting the DVD [and Blu-ray] files for uploading onto a computer, in the process removing restrictions on DVD [and Blu-ray] encryption.” (Dkt. No. 77, ¶ 120(b)). VidAngel argues that this activity doesn’t amount to circumvention because they are only decrypting DVDs to allow them to be viewed in another way, a procedure known as re-formatting or “space shifting.” (Oppo at 17.) VidAngel asserts that the practice of “space-shifting” is legal when it is performed for disc purchasers who elect to have their DVD content streamed to them rather than receiving the physical discs. (*Id.*) The Court finds no support for VidAngel’s position.

Multiple courts have declined to adopt an exemption for space-shifting. In *321 Studios v. MGM Studios, Inc.*, 307 F. Supp. 2d 1085, 1096 (N.D. Cal. 2004), the court held that the purchase of a DVD does not give to the purchaser the authority of the copyright holder to decrypt CSS. The court in *321 Studios* cited a Second Circuit

² The TPMs that protect Plaintiffs’ content on DVDs and Blu-ray discs include the CSS (for DVDs) and the Advanced Access Content System (“AACS”) and/or BD+ (for Blu-ray discs). (Compl. ¶ 32.)

1 decision that directly addressed issues of DVD copying and the DMCA. In *Universal*
 2 *City Studios v. Corley*, 273 F.3d 429, 444 (2d Cir. 2001), the defendants argued "that
 3 an individual who buys a DVD has the 'authority of the copyright owner' to view the
 4 DVD, and therefore is exempted from the DMCA pursuant to subsection
 5 1201(a)(3)(A) when the buyer circumvents an encryption technology in order to view
 6 the DVD on a competing platform." The court responded that Section 1201(a)(3)(A)
 7 only exempts from liability those "who would 'decrypt' an encrypted DVD with the
 8 authority of a copyright owner, not those who would 'view' a DVD with the authority
 9 of a copyright owner." *Id.* The purchase of a DVD only conveys the authority to
 10 view the DVD, not to decrypt it.³ VidAngel has not offered any evidence that the
 11 Plaintiffs have either explicitly or implicitly authorized DVD buyers to circumvent
 12 encryption technology in order to view the DVD on a different platform such as
 13 VidAngel's streaming service.

14 The Librarian of Congress, and the Register of Copyrights, also recently
 15 declined to adopt an exemption that would allow circumvention of access controls on
 16 lawfully made and acquired audiovisual works for the purpose of noncommercial
 17 space-shifting or format-shifting. Exemption to Prohibition on Circumvention of
 18 Copyright Protection Systems for Access Control Technologies, 80 Fed. Reg. 65944
 19 (Oct. 28, 2015) (to be codified at 37 C.F.R. pt. 201).

20 VidAngel also argues that the Family Home Movie Act of 2005 ("FMA")
 21 provides an exemption for decrypting DVDs for the purpose of accessing a disk to
 22 filter audio and visual content. VidAngel asserts that the provisions of the FMA
 23 render their circumvention lawful because "the making of a decrypted copy [is] the
 24 necessary first step in making a lawfully purchased DVD capable of being filtered."
 25 (Dkt. 11 ¶ 61.) (Counter-Complaint). The FMA, codified in 17 U.S.C. § 110(11),
 26 specifically carves out an exemption from copyright infringement for:

27 "the making imperceptible, by or at the direction of a member of a
 28 private household, of limited portions of audio or video content of a
 motion picture, during a performance in or transmitted to that household
 for private home viewing, from an authorized copy of the motion picture,
 or the creation or provision of a computer program or other technology
 that enables such making imperceptible and that is designed and

³ VidAngel asserts that former Solicitor General Don Verrilli, "while representing the major record labels and movie studios" in *Metro-Goldwyn-Mayer Studios, Inc. v. Grokster*, 545 U.S. 913 (2005), assured the Supreme Court that his clients agreed that space shifting is legal. (Oppo. at 17.) (emphasis added). However, Don Verrilli specifically stated that "*The record companies*, my clients, have said, for some time now...that it's perfectly lawful to take a CD that you've purchased, upload it onto your computer, put it onto your iPod. (RJN Ex. B at 53. (Tr. of *MGM v. Grokster* Oral Argument at 12.)) (emphasis added). This statement did not involve movie studios, nor did it address space-shifting in the context of copying DVDs.

1 marketed to be used, at the direction of a member of a private household,
 2 for such making imperceptible, if no fixed copy of the altered version of
 3 the motion picture is created by such computer program or other
 4 technology”

5 17 U.S.C. § 110(11). Neither the plain language nor the legislative history of the
 6 FMA support VidAngel’s position. In fact, the legislative history directly contradicts
 7 VidAngel’s assertion that the FMA provides an exemption to the anti-circumvention
 8 provisions of the DMCA. Senator Orrin Hatch, who introduced the FMA to the U.S.
 9 Senate, stated that the FMA “does not provide any exemption from the anti-
 10 circumvention provisions of section 1201 of title 17.” 150 Cong. Rec. S.11852-01 at
 11 S11853 (Statement of Senator Hatch) (RJN Ex. G at 269).⁴ Senator Hatch further
 12 stated that “It would not be a defense to a claim of violation of section 1201 that the
 13 circumvention is for the purpose of engaging in the conduct covered by this new
 14 exemption in section 110(11).” *Id.*

15 Finally, VidAngel states that in *MDY Indus., LLC v. Blizzard Entm’t, Inc.*, 629
 16 F.3d 928, 951 (9th Cir. 2010) the Ninth Circuit court expressly cautioned against
 17 DMCA application when, as here, antitrust issues are present. (Oppo at 18.) A close
 18 reading of the *MDY Indus.* decision shows that the court actually declined to consider
 19 the interplay between the anti-circumvention right and antitrust. *MDY Indus.*, 629
 20 F.3d at 950. The court advised that they would consider this issue “If a § 1201(a)(2)
 21 defendant in a future case claims that a plaintiff is attempting to enforce its DMCA
 22 anti-circumvention right in a manner that violates antitrust law.” VidAngel is not
 23 alleged to have violated § 1201(a)(2) of the DMCA, which prohibits trafficking in
 24 circumvention technology, and thus is not the type of defendant contemplated by the
 25 court in *MDY Indus.* VidAngel’s remaining arguments also fail.⁵

26 For the foregoing reasons, Plaintiffs have shown a strong likelihood of success
 27 on the merits of their claim that VidAngel has violated, and continues to violate,
 28 section 1201(a)(1)(A) of the Digital Millenium Copyright Act by circumventing
 technological measures that effectively control access to Plaintiffs’ copyrighted works
 on DVDs and Blu-ray discs.

⁴ Because legislative history is a matter of public record, which is not subject to reasonable dispute, the court will take judicial notice of this item. *See* FED.R.EVID. 201(b). *See also* *Palmer v. Stassinios*, 348 F.Supp.2d 1070, 1077 (C.D. Cal. 2004) (taking judicial notice of legislative history materials...because they "constitute judicial facts sufficiently capable of accurate and ready determination.")

⁵ VidAngel makes a very brief assertion that the remedies section of the DMCA makes clear that to redress violations, courts “may not impose a prior restraint on free speech,” 17 U.S.C. § 1203(b)(1). (Oppo. at 18.) VidAngel has not sufficiently briefed this issue nor otherwise argued it before the court. Therefore the Court will not reach this argument.

ii. Plaintiffs' Copyright Infringement Claims

Plaintiffs must satisfy two requirements to present a prima facie case of direct infringement: (1) they must show ownership of the allegedly infringed material and (2) they must demonstrate that the alleged infringers violate at least one exclusive right granted to copyright holders under 17 U.S.C. § 106. Plaintiffs have sufficiently demonstrated ownership of the copyrighted works identified in the complaint by providing certificates of registration issued by the Copyright Office. (Klaus Decl. Exs. A-RR.) A certificate of registration is "prima facie evidence of the validity of the copyright and of the facts stated in the certificate." 17 U.S.C. § 410(c). VidAngel has not disputed that it currently offers all of the works listed in Exhibit A to the complaint and states that it will continue to offer these works and other future releases, unless enjoined. (Ehler Decl. Ex. EE at Tr. 27:19-29:14; 30:3-20; 31:6-37:4.) VidAngel also does not dispute the validity of Plaintiffs' copyrights. Therefore, the only factor at issue in this case is whether Defendants have violated at least one exclusive right granted to Plaintiffs as copyright holders.

1. VidAngel Violates Plaintiffs' Exclusive Right To Reproduce Their Works By Making Copies

One of the rights granted by Section 106 of the Copyright Act is the exclusive right "to reproduce the copyrighted work in copies." 17 U.S.C. § 106(1). VidAngel admits to making copies of Plaintiffs' works onto a computer system and third-party servers. (Ehler Decl. Ex. EE at Tr. 58:1-4.) The Ninth Circuit in *MAI Sys. Corp. v. Peak Computer, Inc.*, 991 F.2d 511, 518 (9th Cir. 1993) stated that transferring digital work "from a permanent storage device to a computer's RAM [or storage]" infringes the reproduction right." Although, the *MAI Sys. Corp.* decision addressed the infringement of computer software, the same analysis applies to the digital transfer other types of copyrighted work. *Tiffany Design, Inc. v. Reno-Tahoe Specialty, Inc.* 55 F. Supp. 2d 1113, 1121 (D. Nev. 1999)("the digitization or input of any copyrighted material, whether it be computer code or visual imagery, may support a finding of infringement notwithstanding only the briefest of existence in a computer's RAM.")

VidAngel claims that their copies of Plaintiffs' works are only "intermediate" copies and not "copies" as defined by the Copyright Act. VidAngel's process of copying involves several steps. First, VidAngel decrypts the DVDs. (Oppo. at 17.) After decryption, VidAngel creates "intermediate" files. (*Id.*) VidAngel tags the files for over 80 types of content, and breaks them into approximately 1,300 fragments that contain no more than 10 seconds of content, then encrypts those fragments, and stores them in a secure, access-controlled location in the cloud. (Meldal Dec., ¶¶ 33-38.)

1 VidAngel asserts that these fragments are not capable of being watched until
 2 “VidAngel software assembles the segments in sequence, and for each segment
 3 decrypts the content, displays it and then discards the segment.” (Meldal Dec., ¶
 37(xiii)).

4 VidAngel contends that case law regarding the reproduction right under §
 5 106(1) draws a clear distinction between unlawful copies, which can be viewed by
 6 consumers, and lawful “intermediate” copies, which cannot be viewed. (Oppo. at 10.)
 7 VidAngel argues that since their intermediate copies are unable to be viewed by
 8 consumers, they are not “copies” as defined by the Copyright Act and, as a matter of
 9 law, do not give rise to infringement claims. (*Id.*) Defendants cite the Ninth Circuit’s
 10 decision in *Sega Enters. v. Accolade, Inc.*, 977 F.2d 1510 (9th Cir. 1992) as support
 11 for their proposition that “intermediate” copying does not violate the Copyright Act.
 12 However, the court in *Sega* stated that “on its face, the language of 17 U.S.C. § 106(1)
 13 unambiguously encompasses and proscribes ‘intermediate copying’” *Id.* at 1518. 17
 14 U.S.C. § 101 provides that “in order to constitute a “copy” for purposes of the
 15 Copyright Act, the allegedly infringing work must be fixed in some tangible form,
 16 “from which the work can be perceived, reproduced, or otherwise communicated,
 17 *either directly or with the aid of a machine or device.*” (emphasis added). VidAngel’s
 18 fragmented copies may not be able to be perceived directly by consumers, however
 19 they are able to be perceived with the aid of VidAngel’s software. Thus the copying
 20 performed by Defendants falls within the category of acts that are proscribed by the
 21 statute.

2. VidAngel Violates Plaintiffs’ Exclusive Right To Publicly Perform Their Copyrighted Works

19 Another of the rights granted by Section 106 of the Copyright Act is the
 20 exclusive right “in the case of . . . motion pictures and other audiovisual works, to
 21 perform the copyrighted work publicly.” 17 U.S.C. § 106(4). What constitutes a
 22 public performance for purposes of Section 106(4) is defined by the Copyright Act in
 23 Section 101. “Under Section 101(2), the “transmit” clause, a performance is public if
 24 someone: transmits or otherwise communicates a performance or display of the
 25 work...to the public, by means of any device or process.” *Warner Bros. Entm’t, Inc.*
 26 *v. WTV Sys.*, 824 F. Supp. 2d 1003, 1009 (C.D. Cal. 2011). A transmission is made
 27 “to the public” if “the relationship between ...the transmitter of the performance, and
 28 the audience...is a commercial, ‘public’ relationship regardless of where the viewing
 takes place.” *Id.* at 1010;

Plaintiffs assert that services like VidAngel’s violate the public performance
 right, despite the fact that the performances are transmitted privately for in home

viewing. The court in *On Command Video Corporation v. Columbia Pictures Industries*, 777 F. Supp. 787 (N.D. Cal. 1991), held that a hotel’s “electronic rental” system infringed the public performance right, despite the fact that the hotel’s service transmitted performances from the main office to individual hotel rooms. The court held that the “relationship between the transmitter of the performance...and the audience,” was “a commercial, ‘public’ one regardless of where the viewing takes place.” *Id.* at 788. Likewise, the court in *Warner Bros. Entertainment Inc. v. WTV Systems, Inc.*, held that a service which streamed the contents of DVDs from DVD players purportedly assigned to individual users also violated the public performance right. 824 F. Supp. 2d at 1006-07, 1010. The Supreme Court in *Am. Broad. Cos. v. Aereo, Inc.*, 134 S. Ct. 2498 (2014) (“*Aereo*”), held that internet streaming of copyrighted material captured from over-the-air broadcast signals by thousands of separate antennae, each of which was purportedly assigned separately to individual subscribers, infringed the public performance right.

VidAngel argues that their service does not engage in public performances because VidAngel streams filtered versions of motion pictures created at the direction of and owned by its customers. (Oppo. at 11.) VidAngel cites the *Aereo* decision as support. There, the Supreme Court declared that a transmission of a copyrighted program is not made to “the public” when it is made “to those who act as owners or possessors of the relevant product.” *Am. Broad. Cos. v. Aereo, Inc.*, 134 S. Ct. at 2510. Assuming *arguendo* that VidAngel’s buy/sellback service creates a valid ownership interest in a DVD, this ownership would only apply to the physical DVD, not the digital content that VidAngel streams to paying subscribers. Subscribers view a stream from a master copy stored on a server, not a DVD temporarily “owned” by the user. Furthermore, lawful ownership of a DVD only conveys authorization to view the DVD, not to decrypt it for the purpose of viewing it on an alternative platform. *See* discussion *supra* Section III.A.i. Therefore, VidAngel’s customers are not lawful “owners or possessors” of the digital content that is streamed via VidAngel’s service. Finally, VidAngel’s argument that *Aereo* holds that the public performance right is not infringed when the user pays for something other than the transmission of copyrighted works, is unsupported. (Oppo. at 11.) In *Aereo*, the Supreme Court specifically stated that they had “not considered whether the public performance right is infringed when the user of a service pays primarily for something other than the transmission of copyrighted works.” For the foregoing reasons, the Court holds that Plaintiffs have shown a strong likelihood of success on the merits of their claims that VidAngel has violated, and continues to violate, 17 U.S.C. § 106(1) and 17 U.S.C. § 106(4), by creating copies of Plaintiff’s copyrighted material, and publicly performing Plaintiff’s copyrighted material.

3. VidAngel's FMA Defense for Copyright Infringement

The Family Home Movie Act is codified in 17 U.S.C § 110(11). It provides an exemption from copyright infringement for:

the making imperceptible, by or at the direction of a member of a private household, of limited portions of audio or video content of a motion picture, during a performance in or transmitted to that household for private home viewing, from an authorized copy of the motion picture, or the creation or provision of a computer program or other technology that enables such making imperceptible and that is designed and marketed to be used, at the direction of a member of a private household, for such making imperceptible, if no fixed copy of the altered version of the motion picture is created by such computer program or other technology.

Plaintiffs assert, and the Court agrees that the FMA exempts only (1) “the making imperceptible” of limited portions of a motion picture; and (2) “the creation or provision of a computer program or other technology that enables such making imperceptible.” 17 U.S.C § 110(11). VidAngel’s contends that the FMA expressly provides that a third party may filter and transmit content as specified by a lawful owner of a copy so long as a fixed copy of the altered content is not created. However, this assertion is unsupported by the clear language of the statute. (Oppo. at 12.) The statute clearly requires that a performance or transmission of filtered content must come from an “authorized copy” of the motion picture. The digital content that VidAngel streams to its customers is not from an authorized copy. VidAngel streams from a digital copy that it acquires by circumventing technological protection measures on Plaintiff’s DVDs in violation of § 1201(a) of the DMCA. *See* discussion *supra* Sections III.A.i, III.A.ii.2. Furthermore, the requirement that the filtered content come “from an authorized copy” is a clear indication that the FMA is not intended to displace a copyright holder’s exclusive reproduction right under section 106(1) of the Copyright Act. The last sentence of the FMA also provides that: “Nothing in paragraph (11) shall be construed to imply further rights under section 106 of this title, or to have any effect on defenses or limitations on rights granted under any other section of this title or under any other paragraph of this section.” 17 U.S.C § 110(11). This language directly contradicts VidAngel’s argument that a filtering service that complies with the FMA, need not satisfy any other provisions of the Copyright Act. (Oppo. at 15.) The evidence in the record and the unambiguous language of the FMA show that (1) VidAngel’s service does not comply with the express language of the FMA, and (2) The FMA does not provide a defense to VidAngel’s violations of sections 106(1) and 106(4) of the Copyright Act.

1 iii. VidAngel's "Fair Use" Defense

2 VidAngel asserts that they are making "fair use" of the copyrighted works as
3 provided in 17 U.S.C. § 107 of the Copyright Act. The pertinent language of that
4 section reads as follows:

5 Notwithstanding the provisions of sections 106 and 106A, the fair
6 use of a copyrighted work, including such use by reproduction in copies
7 or phonorecords or by any other means specified by that section, for
8 purposes such as criticism, comment, news reporting, teaching (including
9 multiple copies for classroom use), scholarship, or research, is not an
10 infringement of a copyright. In determining whether the use made of a
work in any particular case is a fair use the factors to be considered shall
include:

11 (1) the purpose and character of the use, including whether such
12 use is of a commercial nature or is for nonprofit educational purposes;

13 (2) the nature of the copyrighted work;

14 (3) the amount and substantiality of the portion used in relation to
15 the copyrighted work as a whole; and

16 (4) the effect of the use upon the potential market for or value of the
17 copyrighted work.

18 1. Purpose and Character of the Use.

19 The "purpose and character of use" factor in the fair use inquiry asks "to what
20 extent the new work is transformative" and does not simply "supplant" the original
21 work and whether the work's purpose was for or not-for-profit. *Mattel Inc. v. Walking*
22 *Mt. Prods.*, 353 F.3d 792, (9th Cir. 2003) (citing *Campbell v. Acuff-Rose Music, Inc.*,
23 510 U.S. 569, 579 (1994)). VidAngel does not dispute that they profit from the use of
24 Plaintiffs' works. Commercial use of copyrighted material is "presumptively an
unfair exploitation of the monopoly privilege that belongs to the owner of the
copyright." *Leadsinger, Inc. v. BMG Music Publ'g*, 512 F.3d 522, 545 (9th Cir. 2008)
25 (citing *Sony Corp. of Am. v. Universal City Studios, Inc.*, 464 U.S. 417, 451 (1984)).
26

27 VidAngel argues that their filtering service is transformative in that it alters the
content of the works as seen by different viewers in different ways. (Oppo. at 20.)
28 The Supreme Court has said that a use is transformative if it "adds something new,

1 with a further purpose or different character, altering the first with new expression,
 2 meaning or message." *Campbell*, 510 U.S. at 579. VidAngel's service does not add
 3 anything to Plaintiff's works. It simply omits portions that viewers find objectionable.
 4 The court in *Clean Flicks of Colo. v. LLC v. Soderbergh*, 433 F. Supp. 2d 1236 (D.
 5 Colo. 2006), rejected a fair use defense from defendants that provided a service which
 6 is similar to that of VidAngel. In *Clean Flicks*, the court ruled that defendants' editing
 7 of objectionable content was not transformative because it added nothing to the
 8 copyrighted works, and only removed "a small percentage of most of the films." *Id.* at
 9 1241. Furthermore, the Ninth Circuit has held that works are transformative when
 10 "the works use copy-righted material for purposes distinct from the purpose of the
 11 original material." *Elvis Presley Enters. v. Passport Video*, 349 F.3d 622, 629 (9th
 12 Cir. 2003). Notwithstanding the edits made by users, VidAngel's use of plaintiff's
 13 works serves the "same intrinsic entertainment value that is protected by Plaintiffs'
 14 copyrights", and is thus not transformative. *Id.* VidAngel's commercial use of the
 15 copyrighted works, coupled with non-transformative nature of the edited copies weigh
 16 heavily in favor of the Plaintiffs under the first statutory factor in the fair use analysis.

17 **2. Nature of the Copyrighted Work**

18 "The second statutory factor, 'the nature of the copyrighted work,' § 107(2),
 19 draws on Justice Story's expression, the 'value of the materials used.'" *Campbell v.*
 20 *Acuff-Rose Music, Inc.*, 510 U.S. 569, 586 (1994) (citing *Folsom v. Marsh*, 9 F. Cas.
 21 342, 348 (C.C.D. Mass. 1841)) "This factor calls for recognition that some works are
 22 closer to the core of intended copyright protection than others, with the consequence
 23 that fair use is more difficult to establish when the former works are copied."
 24 *Campbell*, 510 U.S. at 586. For example, the Ninth Circuit has held that "works such
 25 as original songs, motion pictures, and photographs taken for aesthetic purposes, are
 26 creative in nature and thus fit squarely within the core of copyright protection." *Elvis*
 27 *Presley Enters. v. Passport Video*, 349 F.3d 622, 629 (9th Cir. 2003) (citing *Sony*
 28 *Corp. v. Universal City Studios, Inc.*, 464 U.S. 417 (1984)). This factor also weighs in
 29 favor of the Plaintiffs.

30 **3. Amount and Substantiality of the Portion Used in** **Relation to the Copyrighted Work as a Whole**

31 The third factor in the fair use analysis evaluates both the quantity of the work
 32 taken and the quality and importance of the portion taken. *Campbell*, 510 U.S. at 586.
 33 "This factor calls for thought not only about the quantity of the materials used, but
 34 about their quality and importance, too." *Id.* at 577. The evidence in this case shows
 35 that VidAngel copies Plaintiff's works in their entirety. (Ehler Decl. Ex. EE at Tr.
 36 112:19-113:2.) The Supreme Court in *Campbell* advised that the verbatim copying of

1 "a substantial portion of the infringing work" is a relevant inquiry in the fair use
 2 analysis. *Id.* at 588. VidAngel does not dispute that they copy a substantial portion of
 3 the Plaintiff's copyrighted works. Instead VidAngel simply states that their viewers
 4 never watch exact copies of the original films, due to the requirement that each user
 5 must apply at least one filter. Defendants also assert that the filtered versions of the
 6 movies are not substitutes for the Plaintiff's works. However, the Supreme Court in
 7 *Campbell* held that "a work composed primarily of an original, particularly its heart,
 8 with little added or changed, is more likely to be a merely superseding use, fulfilling
 9 demand for the original. *Id.* The heart of a copyrighted work is the portion that is the
 10 "most likely to be newsworthy and important in licensing serialization." *Campbell*,
 11 510 U.S. at 586. Despite the fact that VidAngel's service omits portions of each
 12 work, the essential storyline, cinematography, and acting portrayals remain
 13 unchanged. These elements are the heart of the movie. Courts consistently find that
 14 the performance of the "heart" of a copyrighted work weighs against a fair use
 15 determination. *See Campbell*, 510 U.S. at 586; *Elvis Presley Enters.*, 349 F.3d at 630;
 16 *L.A. News Serv. v. Tullo*, 973 F.2d 791, 798 (9th Cir. 1992). *Arista Records LLC v.*
 17 *Myxer Inc.*, 2011 U.S. Dist. LEXIS 109668 (C.D. Cal. Apr. 1, 2011). Accordingly,
 18 the Court finds that this factor weighs in favor of the Plaintiffs.

14 4. Effect of the Use Upon the Potential Market For or 15 Value of the Copyrighted Work

16 The fourth factor in the fair use analysis considers current market harm and
 17 "whether unrestricted and widespread conduct of the sort engaged in by the defendant
 18 . . . would result in a substantially adverse impact on the potential market' for the
 19 original." *Campbell*, 510 U.S. at 590 (citations omitted). As discussed above,
 20 Plaintiff's use of Plaintiff's copyrighted works is commercial and non-transformative.
 21 The Ninth Circuit has held that when "the intended use is for commercial gain," the
 22 likelihood of market harm "may be presumed." *Leadsinger, Inc. v. BMG Music*
 23 *Publ'g*, 512 F.3d 522, 531. (9th Cir. Cal. 2008).

24 VidAngel argues that their service does not harm the market for Plaintiff's
 25 copyrighted works because filtered movies are not a substitute for Plaintiff's
 26 unfiltered movies. (*Oppo.* at 21.) VidAngel also asserts that their filtering service
 27 actually increases the market for Disney's works. (*Id.*) VidAngel attempts to support
 28 their arguments by offering customer survey results that indicate that over 51% of
 VidAngel customers would not watch their offerings without filtering. The survey
 results are ultimately detrimental to VidAngel's arguments. The fact that 49% of
 VidAngel's customers would view movies without filters shows that VidAngel's
 service does serve as an effective substitute for Plaintiff's unfiltered works, for
 approximately half of VidAngels users. Furthermore, the fact that VidAngel's

1 streams are “composed primarily” of Plaintiff’s works, including the heart of the
 2 work, “with little added or changed” makes the streams “more likely to be a merely
 3 superseding use, fulfilling demand for the original.” *Campbell*, 510 U.S. at 586.
 Therefore, the Court finds that this factor also weighs in favor of the Plaintiffs.

4 At trial, the defendant in an infringement action bears the burden of proving fair
 5 use. *See Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 590 (1994). “Because
 6 ‘the burdens at the preliminary injunction stage track the burdens at trial,’ once the
 7 moving party has carried its burden of showing a likelihood of success on the merits,
 8 the burden shifts to the nonmoving party to show a likelihood that its affirmative
 9 defense will succeed.” *Perfect 10, Inc. v. Amazon.com, Inc.*, 508 F.3d 1146, 1158 (9th
 10 Cir. 2007) (citing *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546
 11 U.S. 418, 429 (2006)). Plaintiffs have shown a likelihood of success on their DMCA
 12 and Copyright Infringement claims, therefore VidAngel bears the burden of showing
 that they are making fair use of the Plaintiffs Copyrighted works. Based on the
 analysis of the aforementioned factors, the Court finds that VidAngel has not met this
 burden.

13
 14 **b. Plaintiffs Have Demonstrated A Likelihood of Imminent Irreparable**
 15 **Injury.**

16 Following the Supreme Court’s decisions in *eBay Inc. v. MercExchange*,
 17 *L.L.C.*, 547 U.S. 388 (2006), and *Winter v. Natural Resources Defense Council*, 555
 18 U.S. 7 (2006), the Ninth Circuit concluded that it is no longer appropriate to apply a
 19 presumption of irreparable harm in trademark and copyright cases. *See, e.g., Herb*
 20 *Reed Enters., LLC v. Fla. Entm’t Mgmt.*, 736 F.3d 1239, 1249 (9th Cir. 2013)
 (“Following eBay and Winter, we held that likely irreparable harm must be
 21 demonstrated to obtain a preliminary injunction in a copyright infringement case. . . .”
 It is not enough, moreover, that the claimed harm be irreparable; it must be imminent
 22 as well. *Caribbean Marine Servs. Co., Inc. v. Baldrige*, 844 F.2d 668, 674 (9th Cir.
 1988); *see also Amylin Pharmaceuticals, Inc. v. Eli Lilly and Co.*, 456 Fed. Appx.
 23 676, 679 (9th Cir. Cal. 2011) (“[E]stablishing a threat of irreparable harm in the
 24 indefinite future is not enough”). Speculative injury does not constitute irreparable
 25 injury sufficient to warrant granting a preliminary injunction. *Caribbean Marine*
Servs., 844 F.2d at 674 (citing *Goldie’s Bookstore, Inc. v. Superior Court*, 739 F.2d
 26 466, 472 (9th Cir. 1984)). Applying these standards, a party seeking injunctive relief
 27 must adduce evidence of likely irreparable harm and may not rely on “unsupported
 28 and conclusory statements regarding harm [the plaintiff] might suffer.” *Herb Reed*
Enterprises, 736 F.3d at 1250. “Those seeking injunctive relief must proffer evidence

1 sufficient to establish a likelihood of irreparable harm." *Id.* at 1251.

2 Plaintiffs argue that they will suffer irreparable harm in the absence of a
3 preliminary injunction. First, Plaintiffs argue that VidAngel's service interferes with
4 their basic right to control how, when and through which channels consumers can
5 view their copyrighted works. (Mot. at 27.) Where defendants operate an "infringing
6 service without the normal licensing restrictions imposed by Plaintiffs, [it] interfere[s]
7 with Plaintiffs' ability to control the use and transmission of their Copyrighted works,
8 thereby, causing irreparable injury." *Warner Bros. Entm't, Inc. v. WTV Sys.*, 824 F.
9 Supp. 2d 1003, 1012 (C.D. Cal. 2011). Plaintiffs' provided a declaration from Tedd
10 Cittadine, Senior Vice President of Digital Distribution at 20th Century Fox Home
11 Entertainment. Cittadine testified that Plaintiffs' exclusive rights under copyright are
12 critical to providing Plaintiffs the opportunity to earn a return on their substantial
13 investments. (Cittadine Decl. ¶¶ 7-8.) Plaintiffs exercise their rights through
14 agreements with authorized distributors. Some licenses grant the licensee an
15 exclusive time window for performing a title. (*Id.* ¶ 15.) The price for such a license
16 is based, in part, on the promise and scope of exclusivity. (*Id.*) Plaintiffs often
17 negotiate higher licensing fees in exchange for granting a licensee the exclusive right
18 to perform a movie or television show during a particular time period. (*Id.*) Because
19 VidAngel operates without any license and performs Plaintiffs' works during
20 negotiated exclusivity periods it interferes with Plaintiffs' exercise of their exclusive
21 rights and frustrates Plaintiffs' ability to negotiate for similar rights in the future. (*Id.*
22 ¶¶ 17, 36.)⁶

23 Second, Plaintiffs argue that VidAngel threatens harm to Plaintiffs'
24 relationships and goodwill with authorized distributors by undermining their ability to
25 provide licensed offerings. (Mot. at 28.) Plaintiffs assert that this harm continues to
26 grow as VidAngel adds more users and encourages them to stream through VidAngel
27 rather than a licensed service. Plaintiffs assert that this poses a threat to the businesses
28 of Plaintiffs' legitimate licensees and, in turn, to Plaintiffs' relationships with them
and the goodwill Plaintiffs have worked to create. (Cittadine Decl. ¶¶ 18-22.) Tedd
Cittadine states that Plaintiffs' clients worry about unlicensed services in the market
that compete with their business on unfair terms. (*Id.* ¶ 19.) He also states that
licensees have complained in partnership meetings, and especially in negotiations, that
it is difficult to compete with services like VidAngel who do not act pursuant to
licensing restrictions. (*Id.*) Cittadine states that licensees specifically complain that it
is difficult to compete with unlicensed services' low-cost offerings. (*Id.*)

⁶ Cittadine declared that at the time of his declaration VidAngel was offering (at least) two of
Plaintiffs' works—The Martian and Brooklyn—during periods these works are exclusive to an
authorized licensee, HBO. (Cittadine Decl. ¶ 30.)

1
2 VidAngel argues that Plaintiff's alleged harms are speculative and that there is
3 no evidence of actual harm to Plaintiffs other than the declaration of Tedd Cittadine.
4 (Oppo. at 27.) In *Fox TV Stations, Inc. v. FilmOn X LLC*, 966 F. Supp. 2d 30 (D.D.C.
5 2013), the court considered a similar argument in an analogous case. There, the
6 defendants, like VidAngel, operated an unlicensed service that transmitted the
7 plaintiff's copyrighted performances over the internet. The plaintiffs argued that
8 defendant's service caused several types of irreparable harm including "undermining
9 Plaintiff's positions in negotiations" and damaging "Plaintiff's goodwill with their
10 licensees." *Id.* at 49. The defendants argued that plaintiff's alleged harms were
11 "insufficiently speculative and 'unsupported by any evidence.'" *Id.* at 50. The court
12 found that Plaintiffs had sufficiently supported their alleged harms "with evidence that
13 Defendant had not controverted, including a sworn declaration from a senior executive
14 who states that cable companies have already referenced businesses like [Defendant's
15 business] in seeking to negotiate lower fees." *Id.* Similarly, in *ABC v. AEREO, Inc.*,
16 874 F. Supp. 2d 373, (S.D.N.Y. 2012) the court held that harm to a plaintiff's
17 negotiating position was not speculative where senior executives had provided sworn
18 statements indicating that licensees had expressed concerns about unlicensed service
19 providers in negotiations. (*Id.* at 388-89). Here, the Plaintiffs have provided
20 uncontroverted evidence that VidAngel operates their service without a license, and
21 offers Plaintiff's works during exclusivity periods that Plaintiff negotiated with
22 licensees. Furthermore, Plaintiffs have offered Tedd Cittadine's sworn declaration
23 stating that unlicensed services like VidAngel's had been specifically referenced as a
24 concern during negotiation meetings with licensees. The Court finds that this is a
25 sufficient showing that VidAngel's service undermines Plaintiffs negotiating position
26 with licensees and also damages goodwill with licensees.

19 VidAngel also contends that any damage their service might cause to Plaintiffs
20 is economic in nature and thus doesn't qualify as irreparable harm. (Oppo. at 28-29.)
21 However, harm to one's negotiating position and/or goodwill with licensees is
22 difficult to quantify. In *Fox Television Stations, Inc. v. BarryDriller Content Sys.,*
23 *PLC*, 915 F. Supp. 2d 1138, 1147 (C.D. Cal. 2012) the court held that harm to a
24 plaintiff's negotiating position was irreparable because it was "neither easily
25 calculable, nor easily compensable." (quoting *Warner Bros. Entm't, Inc. v. WTV Sys.*,
26 824 F. Supp. 2d at 1013)). "And it is well-established that harm to one's reputation,
27 goodwill, or relationships-all of which may result from future copyright infringement
28 may constitute irreparable harm." *Kelly v. Primco Mgmt.*, 2015 U.S. Dist. LEXIS
181288 *, 2015 WL 10990368 (C.D. Cal. Jan. 12, 2015); *See, e.g., Rent-A-Center,*
Inc. v. Canyon Television & Appliance Rental, Inc., 944 F.2d 597, 603 (9th Cir. 1991)
(noting that damage to one's reputation or goodwill, because it is difficult to calculate,
qualifies as irreparable harm).

1
2 VidAngel also asserts that Plaintiff's delay in filing an injunction belies their
3 claims of irreparable harm. VidAngel states that they notified the Plaintiffs about
4 their service with two letters in July and August 2015. (Oppo. at 22.) VidAngel
5 asserts that these letters described their business model, including the fact that
6 VidAngel: (1) "purchases the DVD or Blu-ray disc for the customer and stores it in a
7 physical vault;" (2) "streams" the contents of the disc to the customer in a filtered
8 format chosen by the customer; and (3) then "re-purchase[s] the disc at a discount
9 from the sale price. . . based on the length of time the customer has owned the disc."
10 (*Id.*) VidAngel added that it had grown from 43 to 4848 users in just under six
11 months. (*Id.*) Plaintiffs filed for a preliminary injunction on August 22, 2016. (Dkt.
12 No. 27.) VidAngel contends that Plaintiff's delay of more than one year before
13 requesting a preliminary injunction is inconsistent with a claim of irreparable harm.

14 Courts have held that "long delay before seeking a preliminary injunction
15 implies a lack of urgency and irreparable harm." *Oakland Trib., Inc. v. Chron. Pub.*
16 *Co.*, 762 F.2d 1374, 1377 (9th Cir. 1985). However, "delay is but a single factor to
17 consider in evaluating irreparable injury" and "courts are 'loath to withhold relief
18 solely on that ground.'" *Arc of Cal. v. Douglas*, 757 F.3d 975, 990 (9th Cir. 2014)
19 (citing *Lydo Enters., Inc. v. City of Las Vegas*, 745 F.2d 1211, 1214 (9th Cir. 1984)).
20 Furthermore, "tardiness is not particularly probative in the context of ongoing,
21 worsening injuries."

22 Plaintiffs assert that when they first learned of VidAngel, it was in "limited
23 beta" and had fewer than 5,000 users—which would not lead legitimate streaming
24 licensees to "notice (let alone complain)." (Cittadine Decl. ¶¶ 35-36.) Plaintiffs state
25 that they monitored VidAngel and investigated their claims, and once VidAngel
26 started marketing itself more aggressively, expanded its content offering, and posed a
27 more significant threat of harm, Plaintiffs filed this action and sought a preliminary
28 injunction. *Id.* In, *ABC v. AEREO, Inc.*, the court found no undue delay under
analogous circumstances. There, the plaintiffs "were aware of [the service's]
existence for roughly a full year before seeking [an] injunction," 874 F. Supp. 2d at
401. The court ruled that the plaintiffs' delay, which was "based on the limited
availability of Aereo's service, its status in beta testing, and the prospect that litigation
was unnecessary until it became clear that Aereo posed a viable threat of harm," was
reasonable and did not suggest that plaintiff's harms were reparable. *Id.* Additionally,
VidAngel admits it intends to continue to stream Plaintiff's works and add other
future releases, unless enjoined. (Ehler Decl. Ex. EE at Tr. 27:19-29:14; 30:3-20;
31:6-37:4.) Plaintiffs' delay in seeking an injunction was reasonable under the
circumstances, their alleged irreparable harms are ongoing, and will likely only
increase absent an injunction.

1
2 Based on the foregoing, the Court holds that Plaintiffs have sufficiently shown
3 that they will suffer irreparable harm in the absence of an injunction.

4 **c. Balance of Hardships Weighs in Favor of the Plaintiffs**

5 An injunction may not issue unless the balance of hardships tips sharply in
6 favor of the moving party. *International Jensen, Inc. v. Metrosound U.S.A., Inc.*, 4
7 F.3d 819, 822 (9th Cir. 1993). In this case, Plaintiffs have demonstrated that the
8 balance of hardships tips sharply in their favor. Defendants claim that an injunction
9 would cause them to suffer an unimaginable financial hardship. However, the Ninth
10 Circuit has held that "[Defendants] cannot complain of the harm that will befall it
11 when properly forced to desist from its infringing activities." *Triad Sys. Corp. v.*
12 *Southeastern Express Co.*, 64 F.3d 1330, 1338 (9th Cir. 1995). "Where the only
13 hardship that the defendant will suffer is lost profits from an activity which has been
14 shown likely to be infringing, such an argument in defense 'merits little equitable
15 consideration [on an appeal from a preliminary injunction].'" *Id.* (citing *Concrete*
Mach. Co. v. Classic Lawn Ornaments, Inc., 843 F.2d 600, 612 (1st Cir. 1988);
accord Apple Computer, Inc. v. Formula Int'l, Inc., 725 F.2d 521, 523 (9th Cir. 1984)
(in motion for preliminary injunction, district court should not consider the
"devastating effect" of the injunction on the infringer's business.)

16 Accordingly, the Court concludes that the balance of hardships tips sharply in
17 favor of Plaintiffs.

18 **d. A Preliminary Injunction is in the Public Interest**

19
20 VidAngel argues that the public interest in protecting every person's right to
21 watch filtered content in private would be severely undercut by the issuance of a
22 preliminary injunction. This argument strongly relies on VidAngel's characterization
23 of its service as the only filtering service under the FMA that supports streaming
24 digital content to mobile devices, tablets, and Smart TV's. However, the evidence in
25 the record shows that another filtering service, ClearPlay, offers filtering to Google
26 Play users who access authorized streams from GooglePlay's licensed service.
27 (Bennett Decl. Ex. A. at 5-6.) An injunction in this case would not prevent VidAngel
or any other company from providing a filtering service similar to ClearPlay's, and
thus wouldn't negatively impact the public interest in watching filtered content in
private.

28 On the other hand, "it is virtually axiomatic that the public interest can only be

1 served by upholding copyright protections and correspondingly, preventing the
 2 misappropriation of skills, creative energies, and resources which are invested in the
 3 protected work." *Warner Bros. Entm't, Inc. v. WTV Sys.*, 824 F. Supp. 2d 1003, 1015
 4 (C.D. Cal. 2011) (citing *Apple Computer, Inc. v. Franklin Computer Corp.*, 714 F.2d
 5 1240, 1255 (3rd Cir. 1983)). Accordingly, the Court concludes that a preliminary
 6 injunction is in the public interest.

7 IV. AMOUNT OF SECURITY

8 Federal Rule of Civil Procedure 65(c) provides that "[t]he court may issue a
 9 preliminary injunction or a temporary restraining order only if the movant gives
 10 security in an amount that the court considers proper to pay the costs and damages
 11 sustained by any party found to have been wrongfully enjoined or restrained." The
 12 Ninth Circuit has recognized that Rule 65(c) invests the district court "with discretion
 13 as to the amount of security required, if any." *Barahona-Gomez v. Reno*, 167 F.3d
 14 1228, 1237 (9th Cir. 1999) (citing *Doctor's Assoc., Inc. v. Stuart*, 85 F.3d 975, 985 (2d
 15 Cir. 1996)).

16 VidAngel asks the court to impose a substantial bond of \$50,000,000 because
 17 an injunction threatens to put VidAngel out of business before any resolution on the
 18 merits and would cause it serious financial loss. VidAngel contends that this
 19 substantial bond is required because, "A party that is wrongfully enjoined may be
 20 limited to the amount of the bond as its recovery. *Buddy Sys., Inc. v. Exer-Genie, Inc.*,
 21 545 F. 2d 1164, 1168 (9th Cir. 1976). However, Defendants also admit that Plaintiffs
 22 are well funded and established giants in the entertainment industry. (Oppo. at 35.)
 23 Plaintiffs have considerable assets to respond in damages if VidAngel is found to have
 24 been wrongfully enjoined.

25 Plaintiffs contend that analogous cases have required security bonds well below
 26 \$1 million. *See, e.g., BarryDriller*, 915 F. Supp. 2d at 1149 (rejecting request for \$15
 27 million bond in favor of \$250,000); *Zediva*, 824 F. Supp. 2d at 1015 (\$50,000);
 28 *FilmOn X*, 966 F. Supp. 2d at 50 (\$150,000). The Court finds no substantial
 distinctions between this case and the cases cited by Plaintiffs. Based on the Court's
 findings regarding Plaintiffs' likelihood of success on the merits, irreparable harm, the
 balance of hardships and public interest, and considering the bond amounts in
 analogous cases, the Court finds that a bond in the amount of two hundred and fifty
 thousand dollars (\$250,000.00) is satisfactory.

1 **V. CONCLUSION**

2

3 For the foregoing reasons, the Court **GRANTS** Defendant's Motion for

4 Preliminary Injunction. (Dkt. No. 27.) Defendants, as well as their officers,

5 employees, attorneys, and those acting in concert with them are temporarily enjoined

6 from:

7 (1) circumventing technological measures protecting Plaintiffs'

8 copyrighted works on DVDs, Blu-ray discs, or any other medium;

9 (2) copying Plaintiffs' copyrighted works, including but not limited to

10 copying the works onto computers or servers;

11 (3) streaming, transmitting or otherwise publicly performing or

12 displaying any of Plaintiffs' copyrighted works over the Internet (through

13 such websites as VidAngel.com), via web applications (available through

14 platforms such as the Windows App Store, Apple's App Store, the

15 Amazon App Store, Facebook or Google Play), via portable devices

16 (such as through applications on devices such as iPhones, iPads, Android

17 devices, smart phones or tablets), via media streaming devices (such as

18 Roku, Chromecast or Apple TV), or by means of any other device or

19 process; or

20 (4) engaging in any other activity that violates, directly or indirectly,

21 Plaintiffs anti-circumvention right under § 1201 of the Copyright Act, 17

22 U.S.C. §1201(a), or infringing by any means, directly or indirectly,

23 Plaintiffs' exclusive rights under § 106 of the Copyright Act, 17 U.S.C. §

24 106.

25 Plaintiff is ordered to post a bond in the amount of \$250,000.

26 **IT IS SO ORDERED.**

27 Dated: December 12, 2016

28 
HONORABLE ANDRÉ BIROTTE JR.
UNITED STATES DISTRICT COURT JUDGE

cc: FISCAL

EXHIBIT A

Filed Pursuant to Rule 253(g)(2)
File No. 024-10596



**Offering Circular
October 19, 2016**

**VIDANGEL, INC.
249 N. University Ave.
Provo, Utah 84601
(760) 933-8437**

**\$5,000,000 Minimum Offering Amount (1,666,667 Shares of Class B Nonvoting Common Stock)
\$11,250,000 Maximum Offering Amount (3,750,000 Shares of Class B Nonvoting Common Stock)**

VIDANGEL, INC., a Delaware corporation, referred to herein as VidAngel or the Company, is offering a minimum of \$5,000,000 and a maximum of \$11,250,000 of its Class B nonvoting common stock, or our Class B Common Stock. The offering will consist of a minimum of 1,666,667 and a maximum of 3,750,000 shares of our Class B Common Stock at an offering price of \$3.00 per share, or the Offered Shares. Unless terminated earlier by the Company in its sole discretion, this offering will terminate on the earliest to occur of (i) the date on which we sell the maximum number of Offered Shares, or the Maximum Offering, (ii) the date on which the ruling is issued by the court on a motion for a preliminary injunction in connection with litigation we are engaged in with Disney Enterprises, Inc., et al., or the Disney Litigation, or (iii) December 31, 2016. See “**DESCRIPTION OF THE BUSINESS – Legal Proceedings.**” We refer to any of these three dates as the Termination Date. The initial closing date will occur at the Company’s sole discretion and may be any date after the Company has received and accepted subscriptions for at least the minimum number of Offered Shares and before the Termination Date. If, on the initial closing date, we have sold less than the maximum Offered Shares, then we will hold one or more additional closings for additional sales, up to the maximum number of Offered Shares, through the Termination Date. Purchases of Shares in excess of \$5,000 must be transmitted by investors directly by either wire transfer or electronic funds transfer via ACH to a non-interest bearing escrow account maintained by Issuer Direct. Purchases of Shares in the amount of \$5,000 or less may be submitted through an investor’s VidAngel customer account in accordance with the billing information for such investor at www.vidangel.com, and will not be held in the escrow account maintained by Issuer Direct, but will be held in a separate non-interest bearing account held by VidAngel. Upon achieving the minimum offering amount and the initial closing of this offering, the proceeds for the offering will be distributed to the Company and the Offered Shares will be issued to the investors. If the minimum offering amount is not sold, the proceeds from the offering will be promptly returned to investors without interest. The minimum purchase requirement is fifty (50) Offered Shares (\$150); however, we can waive the minimum purchase requirement on a case to case basis in our sole discretion. We expect to commence the sale of the Offered Shares as of the date on which the Offering Statement of which this Offering Circular is a part is declared qualified by the United States Securities and Exchange Commission.

The date of this Offering Circular is October 19, 2016

	Price to Public	Expense Reimbursements ¹	Proceeds to Company ²	Proceeds to Other Persons
Per Offered Share:	\$ 3.00	\$ 0.00	\$ 3.00	\$ 0
Minimum Offering Amount:	\$ 5,000,000	\$ 0.00	\$ 5,000,000	\$ 0
Maximum Offering Amount:	\$ 11,250,000	\$ 0.00	\$ 11,250,000	\$ 0

¹ We do not intend to use commissioned sales agents or underwriters. Please refer to the section entitled “**PLAN OF DISTRIBUTION**” of this Offering Circular for additional information regarding distribution of the Offered Shares

² Does not include estimated offering expenses including, without limitation, legal, accounting, printing, advertising, travel, marketing, blue-sky compliance and other expenses of this offering, as well as transfer agent fees and fees payable to Issuer Direct. Offering expenses are estimated at \$280,000 if the Minimum Offering Amount is raised and \$430,000 if the Maximum Offering Amount is raised. See “**PLAN OF DISTRIBUTION**”.

Generally, no sale may be made to you in this offering if the aggregate purchase price you pay is more than 10% of the greater of your annual income or net worth. Different rules apply to accredited investors and non-natural persons. Before making any representation that your investment does not exceed applicable thresholds, we encourage you to review Rule 251(d)(2)(i)(C) of Regulation A. For general information on investing, we encourage you to refer to www.investor.gov.

An investment in the Offered Shares is subject to certain risks and should be made only by persons or entities able to bear the risk of and to withstand the total loss of their investment. Prospective investors should carefully consider and review the RISK FACTORS, beginning on PAGE 6.

THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION, OR THE COMMISSION, DOES NOT PASS UPON THE MERITS OR GIVE ITS APPROVAL TO ANY SECURITIES OFFERED OR THE TERMS OF THE OFFERING, NOR DOES IT PASS UPON THE ACCURACY OR COMPLETENESS OF ANY OFFERING CIRCULAR OR OTHER SELLING LITERATURE. THESE SECURITIES ARE OFFERED PURSUANT TO AN EXEMPTION FROM REGISTRATION WITH THE COMMISSION; HOWEVER, THE COMMISSION HAS NOT MADE AN INDEPENDENT DETERMINATION THAT THE SECURITIES OFFERED ARE EXEMPT FROM REGISTRATION.

This Offering Circular is following the offering circular format described in Part II of Form 1-A.

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SUMMARY

*This summary of the Offering Circular highlights material information contained elsewhere in this Offering Circular. Because it is a summary, it may not contain all of the information that is important to your decision of whether to invest in the Offered Shares. To understand this offering fully, you should read the entire Offering Circular carefully, including the **Risk Factors** section. The use of the words “we,” “us,” “the Company,” “VidAngel,” or “our” refers to VidAngel, Inc., except where the context otherwise requires. The term “Bylaws” refers to the bylaws of VidAngel, Inc. The term “Certificate” refers to VidAngel, Inc.’s certificate of incorporation, as amended. The “Stockholders Agreement” refers to the Stockholders Agreement of VidAngel, Inc. The term “Governing Documents” refers to the Certificate, Bylaws and Stockholders Agreement.*

VidAngel, Inc. is the leading entertainment filtering company, giving families the choice to remove objectionable content from movies they watch in their homes. By letting viewers customize content and watch “however the BLEEP they want”, VidAngel believes it offers the greatest degree of personal choice in the entertainment marketplace.

The Company

In 2013, four brothers, Neal, Daniel, Jeffrey, and Jordan Harmon, founded VidAngel, a filtering company that gives viewers the choice to remove objectionable content, such as violence, sex, nudity and/or language, from authorized copies of movies and television programs. The Harmon brothers, as fathers of children aged newborn to ten, were searching for a better way to watch quality content with their kids. They founded VidAngel to give their families, and all other families, greater personal choice in the movies and television programs they watch at home. VidAngel’s purpose is not only to allow families to watch “however the BLEEP they want,” but to protect an individual’s legal right to customize the content they watch at home. Today, management believes that VidAngel is the leading filtering company, with applications, or Apps, available on all major platforms, and that the potential demand for VidAngel’s service is significant.

The Company was formed as a Utah limited liability company on October 22, 2013, pursuant to a Certificate of Formation filed with the State of Utah’s Department of Commerce and that certain Operating Agreement of the Company, dated December 13, 2013, by and among the Company and its members. Subsequently, the Company was converted into VidAngel, Inc., a Delaware corporation, on February 12, 2014, pursuant to Articles of Conversion filed with the State of Utah’s Department of Commerce.

The Company has authorized capital stock consisting of 25,000,000 shares of common stock, par value \$0.001 per share, or common stock, of which 21,250,000 shares have been designated as Class A voting common stock, or the Class A Common Stock, and 3,750,000 have been designated as Class B Common Stock.

Investors in this offering will acquire our Class B Common Stock and become holders of our Class B Common Stock, or our Class B Common Stockholders, with respect to their ownership of Offered Shares. Upon investors’ receipt of Offered Shares purchased in this Offering, they will become bound by our Bylaws, Certificate and Stockholders Agreement. Our Bylaws, Certificate and Stockholders Agreement govern the various rights and obligations of our stockholders, including the Class B Common Stockholders.

On June 9, 2016, Disney Enterprises, Inc., Twentieth Century Fox Film Corporation, and Warner Bros. Entertainment, Inc. (three of the six major studios), joined by LucasFilm Ltd., LLC, or, collectively, the Plaintiffs, filed a federal lawsuit against VidAngel, or the Disney Litigation, alleging two claims: (a) copyright infringement, and (b) violation of the Digital Millennium Copyright Act (or the DMCA, codified at 17 U.S.C. Sections 1201-04). The Plaintiffs are seeking monetary damages, costs, and attorneys’ fees from VidAngel, as well as preliminary and permanent injunctions prohibiting VidAngel from continuing to engage in the alleged violations. VidAngel contends that its business is expressly allowed by the Family Movie Act of 2005 (or the FMA, largely codified at 17 U.S.C. Section 110(11)) and by the doctrine of “fair use).” VidAngel has alleged counterclaims asserting that the Plaintiffs are engaged in anti-competitive behavior. The Disney Litigation is currently at a very early stage. VidAngel plans to use a substantial portion of the proceeds of this offering to defend the Disney Litigation, including by prosecuting its counterclaims, through appeal. If VidAngel loses the Disney Litigation, the loss will have a material adverse effect on VidAngel’s financial condition and on its ability to continue business operations. See **“RISK FACTORS-We are engaged in current litigation, the outcome of which, if not favorable to VidAngel, would have a material adverse effect on us and our ability to continue our business operations” on page 7 and “DESCRIPTION OF OUR BUSINESS-Legal Proceedings-Disney Litigation” on page 28.**

Taxation

We are taxed as a subchapter C Corporation, and, as such, we are required to pay federal income tax at the corporate tax rates on our taxable income.

Securities Offered

We are offering a minimum of 1,666,667 and a maximum of 3,750,000 shares of our Class B Common Stock in this offering with a minimum purchase requirement of fifty (50) Offered Shares; however we can waive the minimum purchase requirement in our sole discretion. If we sell at least the minimum number of Offered Shares, or the Minimum Offering, on or before the Termination Date, then we will close on the Minimum Offering, or the Initial Closing, and this offering will continue until terminated on the earlier of (i) a ruling on the Disney Litigation; (ii) the date on which we sell the maximum number of Offered Shares, or the Maximum Offering, or (iii) December 31, 2016. See “**DESCRIPTION OF THE BUSINESS – Legal Proceedings.**” The Initial Closing will occur at the Company’s discretion on any date after the Company sells at least the Minimum Offering and before the Termination Date. If on the Initial Closing date we have sold less than the Maximum Offering, we will hold one or more additional closings, or Additional Closings, in our sole discretion for additional sales, up to the Maximum Offering, until the Termination Date. Purchases of Shares in excess of \$5,000 must be transmitted by investors directly by either wire transfer or electronic funds transfer via ACH to a non-interest bearing escrow account maintained by Issuer Direct. Purchases of Shares in the amount of \$5,000 or less may be submitted through an investor’s VidAngel customer account in accordance with the billing information for such investor at www.vidangel.com, and will not be held in the escrow account maintained by Issuer Direct, but will be held in a separate non-interest bearing account held by VidAngel. Upon the Initial Closing, the proceeds collected for such closing will be disbursed to the Company and the Offered Shares for such closing will be issued to investors. If a closing does not occur for any reason, the proceeds for such closing will be promptly returned to investors, without interest and without deduction.

Investors in the Offered Shares will become our Class B Common Stockholders. Our Class B Common Stock is common nonvoting equity and contains no preferences as to other classes of our capital stock.

Class B Common Stockholders are not entitled to vote their Class B Common Stock, including in the election of directors. See “**SECURITIES BEING OFFERED – Description of Certificate and Bylaws.**”

Our ability to pay dividends depends on both our achievement of positive cash flow and our Board’s discretion in declaring dividends. For our most recent fiscal year ended December 31, 2015, we realized a net loss of \$1,382,016. The Company has never declared or paid cash dividends on its capital stock. The Company currently intends to retain any future earnings to finance the growth and development of its business and therefore does not anticipate paying any cash dividends for the foreseeable future. The order and priority of our dividends is further described in “**SECURITIES BEING OFFERED – Dividends.**”

Management

*The Company is governed by our certificate of incorporation, as amended, or our Certificate, and our bylaws, or our Bylaws. The following summary describes material provisions of our Certificate and our Bylaws as those documents pertain to the management of the Company, but it is not a complete description of our Certificate, our Bylaws or any combination of the two. A copy of our Certificate and our Bylaws are filed as exhibits to the Offering Statement of which this Offering Circular is a part. See “**SECURITIES BEING OFFERED – Description of Certificate of Formation and Bylaws.**”*

Board of Directors

Subject to our stockholders’ rights to consent to certain transactions as provided under the Delaware General Corporate Law, or DGCL, the business and affairs of the Company are controlled by, and all powers are exercised by, our board of directors, or our Board. Our Board is required to consist of not fewer than three (3) nor more than five (5) directors, the exact number to be set from time to time by the Board. Our Board is comprised of Paul Ahlstrom, Neal Harmon and Dalton Wright. Our Board is elected each year at the annual meeting of Class A Common Stockholders, to hold office until the next annual meeting and until their successors are elected and qualified. Any newly created directorships resulting from an increase in the authorized number of directors and any vacancies occurring in our Board may be filled by the affirmative vote of the remaining directors. A director may resign at any time, and the Class A Common Stockholders may remove a director at any time, with or without cause, by the affirmative vote of a majority of stockholders voting in such decision. As Class B Stockholders, investors in this offering will have no rights to vote in the election or removal of members of our Board.

The DGCL provides that stockholders of a Delaware corporation are not entitled to the right to cumulate votes in the election of directors unless its certificate of incorporation provides otherwise. Our Certificate does not provide for cumulative voting.

Our Board may designate one or more committees. Such committees must consist of one or more directors. Any such committee, to the extent permitted by applicable law, will have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Company.

Officers

The Board has the authority to select the officers of the Company. Under our Bylaws, the officers are required to consist of a Chairman of the Board, a Chief Executive Officer, or CEO, a Secretary and a Treasurer. In addition, the Board may elect one or more Vice Chairmen, President, Chief Financial Officer and Vice Presidents, and such other offices as the Board may determine. Two or more of the aforementioned offices may be held by the same person. Our officers are: (i) Neal Harmon, CEO; (ii) Jeffrey Harmon, Chief Marketing Officer; (iii) Elizabeth Ellis, Chief Operating Officer, or COO; (iv) Patrick Reilly, Director of Finance and Secretary; and (v) David Quinto, General Counsel.

At the first meeting of the Board following the annual meeting of stockholders, the Board appoints the officers, however the Board may also empower the CEO to appoint subordinate officers and agents for us. Each officer so elected holds office until such officer's successor is elected and qualified or until the officer's earlier resignation or removal. Each officer is required to perform such duties as are provided in the Bylaws or as the Board may from time to time determine. Subject to the rights, if any, of an officer under any employment agreement, any officer may be removed, with our without cause, by the affirmative vote of a majority of the Board. An officer may resign at any time by giving notice to the Board. Our CEO is in charge of the general affairs of the Company, subject to the oversight of the Board. In case any officer is absent, or for any other reason the Board may deem sufficient, the CEO or the Board may delegate the powers and duties of such officer to any other officer or to any director.

Transfer Restrictions

The Company's Class B Common Stock is subject to the terms and conditions of our Stockholders Agreement. The following summary describes material provisions of our Stockholders Agreement as this document pertains to our Class B Common Stock, but it is not a complete description of our Stockholders Agreement. A copy of the form of our Stockholders Agreement is filed as an exhibit to the Offering Statement of which this Offering Circular is a part. See "SECURITIES BEING OFFERED – Description of Stockholders Agreement."

Investors in our Class B Common Stock will be subject to the restrictions on transfer set forth in our Stockholders Agreement. Under the terms of our Stockholders Agreement, transfer of shares of our Class B Common Stock will be subject to a right of first refusal exercisable first by the Company, second, by our Class A Common Stockholders, and, third, by our remaining Class B Common Stockholders party to the Stockholders Agreement. Prior to any transfer or proposed transfer of shares, the transferring shareholder, or the Seller, is required to give written notice to us and to the remaining stockholders of such proposed transfer. The certificates for our Class B Common Stock will be legended to reflect these restrictions.

Summary Risk Factors

An investment in our Offered Shares involves a number of risks. See "RISK FACTORS," of this Offering Circular. Some of the more significant risks include those set forth below.

- An investment in our Offered Shares is a speculative investment, and therefore, no assurance can be given that you will realize your investment objectives.
- We intend to retain all our earnings for the future operation and expansion of our business and do not anticipate making any cash distributions at any time in the foreseeable future.
- Over our past two fiscal years, we have experienced aggregate net losses.
- We have limited operating history upon which to base an investment decision.
- We are new and face all the risks of an early-stage company.
- We are engaged in current litigation, the outcome of which, if not favorable to VidAngel, would have a material adverse effect on us and our ability to continue business operations.
- If our efforts to attract and retain customers are not successful, our business will be adversely affected.
- Changes in competitive offerings for entertainment video, including the potential rapid adoption of piracy-based video offerings, could adversely impact our business.

- The long-term and fixed cost nature of our content commitments may limit our operating flexibility and could adversely affect our liquidity and results of operations.
- If we are not able to manage change and growth, our business could be adversely affected.
- If we fail to maintain or, in new markets establish, a positive reputation with customers concerning our service, including the content we offer and the ease of use and accuracy of our content filters, we may not be able to attract or retain customers, and our operating results may be adversely affected.
- We face risks, such as unforeseen costs and potential liability in connection with content we acquire, filter and/or distribute through our service.
- Any significant disruption in or unauthorized access to our computer systems or those of third parties that we utilize in our operations, including those relating to cybersecurity or arising from cyber-attacks, could result in a loss or degradation of service, unauthorized disclosure of data, including customer and corporate information, or theft of intellectual property, including digital content assets, which could adversely impact our business.
- If the technology we use in operating our business fails, becomes unavailable, or does not operate to expectations, our business and operating results could be adversely impacted.
- Changes in how network operators handle and charge for access to data that travel across their networks could adversely impact our business.
- Our reputation and relationships with customers would be harmed if our customer data, particularly billing data, were accessed by unauthorized persons.
- If our trademarks and other proprietary rights are not adequately protected to prevent use or appropriation by our competitors, the value of our brand and other intangible assets may be diminished, and our business may be adversely affected.
- Intellectual property claims against us could be costly and result in the loss of significant rights related to, among other things, our web site, filtering technology, our recommendation and merchandising technology, title selection processes and marketing activities.
- We are engaged in legal proceedings that could cause us to incur unforeseen expenses and could occupy a significant amount of our management's time and attention.
- We are dependent on our management to achieve our objectives, and our loss of, or inability to obtain, key personnel could delay or hinder implementation of our business and growth strategies, which could adversely affect the value of your investment and our ability to pay dividends.
- This is a fixed price offering and the fixed offering price may not accurately represent the current value of us or our assets at any particular time. Therefore, the purchase price you pay for the Offered Shares may not be supported by the value of our assets at the time of your purchase.
- We may change our operational policies and business and growth strategies without stockholder consent, which may subject us to different and more significant risks in the future.

Interest of Management and Related Parties

We have entered into a Promotion and Services Agreement for marketing services with Harmon Brothers LLC, or HB, a company in which our co-founders and executive officers, Neal Harmon and Jeffrey Harmon, own substantially all the equity. We have entered into an Investors Rights and Voting Agreement with certain of our significant investors, creating certain board rights. We have also recently entered into an employment agreement with our General Counsel.

Reporting Requirements under Tier II of Regulation A

Following this Tier II, Regulation A offering, we will be required to comply with certain ongoing disclosure requirements under Rule 257 of Regulation A. We will be required to file: an annual report with the SEC on Form 1-K; a semi-annual report with the SEC on Form 1-SA; current reports with the SEC on Form 1-U; and a notice under cover of Form 1-Z. The necessity to file current reports will be triggered by certain corporate events. Parts I & II of Form 1-Z will be filed by us if and when we decide to and are no longer obligated to file and provide annual reports pursuant to the requirements of Regulation A.

CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS

This Offering Circular contains certain forward-looking statements that are subject to various risks and uncertainties. Forward-looking statements are generally identifiable by use of forward-looking terminology such as “may,” “will,” “should,” “potential,” “intend,” “expect,” “outlook,” “seek,” “anticipate,” “estimate,” “approximately,” “believe,” “could,” “project,” “predict,” or other similar words or expressions. Forward-looking statements are based on certain assumptions, discuss future expectations, describe future plans and strategies, contain financial and operating projections or state other forward-looking information. Our ability to predict results or the actual effect of future events, actions, plans or strategies is inherently uncertain. Although we believe that the expectations reflected in our forward-looking statements are based on reasonable assumptions, our actual results and performance could differ materially from those set forth or anticipated in our forward-looking statements. Factors that could have a material adverse effect on our forward-looking statements and upon our business, results of operations, financial condition, funds derived from operations, cash available for dividends, cash flows, liquidity and prospects include, but are not limited to, the factors referenced in this Offering Circular, including those set forth below.

When considering forward-looking statements, you should keep in mind the risk factors and other cautionary statements in this Offering Circular. Readers are cautioned not to place undue reliance on any of these forward-looking statements, which reflect our views as of the date of this Offering Circular. The matters summarized below and elsewhere in this Offering Circular could cause our actual results and performance to differ materially from those set forth or anticipated in forward-looking statements. Accordingly, we cannot guarantee future results or performance. Furthermore, except as required by law, we are under no duty to, and we do not intend to, update any of our forward-looking statements after the date of this Offering Circular, whether as a result of new information, future events or otherwise.

RISK FACTORS

An investment in our Offered Shares is highly speculative and is suitable only for persons or entities that are able to evaluate the risks of the investment. An investment in our Offered Shares should be made only by persons or entities able to bear the risk of, and to withstand the total loss of, their investment. Prospective investors should consider the following risks before making a decision to purchase our Offered Shares. To the best of our knowledge, we have included all material risks to investors in this section.

General Risks of an Investment in Us

An investment in our Offered Shares is a speculative investment and, therefore no assurance can be given that you will realize your investment objectives.

No assurance can be given that investors will realize a return on their investments in us or that they will not lose their entire investment in our Offered Shares. For this reason, each prospective investor of our Offered Shares should carefully read this Offering Circular. **ALL SUCH PERSONS OR ENTITIES SHOULD CONSULT WITH THEIR ATTORNEY OR FINANCIAL ADVISOR PRIOR TO MAKING AN INVESTMENT.**

We do not intend to pay dividends for the foreseeable future.

We intend to retain all of our earnings for the future operation and expansion of our business and do not anticipate making any cash distributions at any time in the foreseeable future.

Over our past two fiscal years, we have experienced aggregate net losses.

We recorded net losses of \$777,916 in fiscal 2014 and net losses of \$1,382,016 in fiscal 2015, resulting in an aggregate net loss of \$2,159,932 over our last two fiscal years. If our ability to generate positive net income remains inconsistent in the future, the value of our Class B Common Stock would likely be materially and adversely affected.

Our future indebtedness may limit our ability to declare and pay dividends and may affect our operations.

Although we don't anticipate doing so in the near future, we may seek debt financing eventually to assist with the financing of our future operations. Our ability to make principal and interest payments with respect to any such debt incurred depends on future performance, which performance is subject to many factors, some of which will be outside of our control. In addition, most of such indebtedness will likely be secured by substantially all of our assets and will contain restrictive covenants that limit our ability to distribute cash and to incur additional indebtedness. Payment of principal and interest on such indebtedness, as well as compliance with the requirements and covenants of such indebtedness, could limit our ability to pay dividends to our stockholders, if at all. Such leverage may also adversely affect our ability to finance future operations and capital needs, or to pursue other business opportunities and make results of operations more susceptible to adverse business conditions.

We have limited operating history upon which to base an investment decision.

We are an early-stage company in which you may lose your entire investment. We began operations in 2013. Because we have a limited operating history, we are unable to provide significant data upon which to evaluate fully our prospects and an investment in our securities. Our ability to succeed and generate operating profits and positive operating cash flow will depend on our ability, among other things, to:

- Develop and execute our business model;
- Attract and maintain an adequate customer base;
- Raise additional capital as contemplated in this offering, if necessary in the future;
- Pending and potential lawsuits threatening our ability to provide our services; and
- Attract and retain qualified personnel.

We cannot be certain that our business strategy will be successful in the long-term because this strategy is still relatively new and even if successful, we may face difficulty in managing our growth. As an early-stage company, we will be particularly susceptible to the risks and uncertainties described in these risk factors.

We are new and face all the risks of an early-stage company.

We may encounter challenges and difficulties frequently experienced by early-stage companies; including:

- A lack of operating experience;
- Increasing net losses and negative cash flows;
- Insufficient revenue or cash flow to be self-sustaining;
- An unproven business model;
- Difficulties in managing rapid growth.

We are engaged in current litigation, the outcome of which, if not favorable to VidAngel, would have a material adverse effect on us and our ability to continue our business operations.

We are currently engaged in the Disney Litigation, as well as litigation with ClearPlay, Inc., or the ClearPlay Litigation, and plan to use a substantial amount of the proceeds of this offering in our defense in the Disney Litigation. If the Disney Litigation were to be decided against VidAngel, it would have a material adverse effect on not only our financial condition but our ability to continue business operations. See “**DESCRIPTION OF THE BUSINESS – Legal Proceedings**” below for a detailed summary of our current litigation.

Risks Related to Our Business

If our efforts to attract and retain customers are not successful, our business will be adversely affected.

We have experienced positive customer growth since launching the latest version of our service in December 2014. Our ability to continue to attract customers will depend, in part, on our ability to consistently provide our customers with compelling content choices, a quality experience for selecting and viewing TV shows and movies, and dynamic filtering solutions set to the customer’s preferences. Furthermore, the relative service levels, content offerings, pricing and related features of competitors to our service may adversely impact our ability to attract and retain customers. Our main direct competition is ClearPlay, Inc., or ClearPlay, which also offers a filtering service. Other entertainment video providers that do not currently offer a filtering service, such as multichannel video programming distributors, Internet-based movie and TV content providers (including those that provide pirated content) and brick-and-mortar DVD rental outlets, including without limitation Netflix, Amazon Prime, Vimeo, Hulu, and Xfinity OnDemand, could become direct competitors in the future. If consumers do not perceive our service as valuable, including if we introduce new or adjust existing features, adjust pricing or service offerings, or change the mix of content in a manner that is not favorably received by them, we may not be able to attract and retain customers. In addition, many of our customers try our service resulting from word-of-mouth advertising from existing customers. If our efforts to satisfy our existing customers are not successful, we may not be able to attract new customers, and, as a result, our ability to maintain and/or grow our business will be adversely affected. Customers may cease to use our service for many reasons, including the need to cut household expenses, unsatisfactory availability of content, competitive services providing a better value or experience, and customer service issues not being satisfactorily resolved. We must continually add new customers both to replace departed customers and to grow our business beyond our current customer base. Given, in particular, that our content costs are largely fixed in nature, we may not be able to adjust our expenditures or increase our (per customer) revenues commensurate with a lowered growth rate such that our margins, liquidity and results of operation may be adversely impacted. If we are unable to compete successfully with current and new competitors in retaining existing customers and attracting new customers, our business will be adversely affected. Further, if excessive numbers of customers cease using our service, we may be required to incur significantly higher marketing expenditures than we currently anticipate to replace these customers with new customers.

Changes in competitive offerings for entertainment video, including the potential rapid adoption of piracy-based video offerings, could adversely impact our business.

The market for entertainment video is intensely competitive and subject to rapid change. Through new and existing distribution channels, consumers have increasing options to access entertainment video. The various economic models underlying these channels include subscription, transactional, ad-supported and piracy-based services. All have the potential to capture meaningful segments of the entertainment video market and could offer filtering services in the future. Piracy, in particular, threatens to damage our business, as its fundamental proposition to consumers is so compelling and difficult to compete against: virtually all content for free and some content available has already been edited for objectionable content. Furthermore, in light of the compelling consumer proposition, piracy services are subject to rapid global growth. Traditional providers of entertainment video, including broadcasters and cable network operators, as well as Internet-based e-commerce entertainment video providers, are increasing their Internet-based video offerings. Several of these competitors have long operating histories, large customer bases, strong brand recognition and significant financial, marketing and other resources. They may secure better terms from suppliers, adopt more aggressive pricing, and devote more resources to product development, technology, infrastructure, content acquisitions and marketing. New competitors may enter the market or existing providers may adjust their services with unique offerings or approaches to providing entertainment video. Companies also may enter into business combinations or alliances that strengthen their competitive positions. If we are unable to successfully or profitably compete with current and new competitors who do or may offer filtering services in the future, our business will be adversely affected, and we may not be able to increase or maintain market share, revenues or profitability.

The long-term and fixed cost nature of our content commitments may limit our operating flexibility and could adversely affect our liquidity and results of operations.

In connection with obtaining video content, we typically purchase significant quantities of physical DVDs or Blu-ray discs in anticipation of customer demand, the payment terms of which are not tied to customer usage or the size of our customer base. Given the multiple-year duration and largely fixed cost nature of purchasing physical DVDs and Blu-ray discs, if customer acquisition and retention does not meet our expectations, our margins may be adversely impacted. To the extent customer base and/or revenue growth do not meet our expectations, our liquidity and results of operations could be adversely affected as a result of large capital expenditures for physical DVDs and Blu-ray discs. In addition, the long-term and fixed cost nature of our purchasing physical DVDs and Blu-ray discs may limit our flexibility in planning for, or reacting to changes in our business and the market segments in which we operate.

We are devoting more resources to the development, marketing and distribution of filtered content, including TV series and movies. We believe that filtered content can help differentiate our service from other offerings, enhance our brand and otherwise attract and retain customers. To the extent our ability to provide customers with custom content filters does not meet the Company's and our customers' expectations, in particular, costs, viewing and popularity, our business, including our brand and results of operations may be adversely impacted.

If we are not able to manage change and growth, our business could be adversely affected.

We are expanding our operations, scaling our filtering service to effectively and reliably handle anticipated growth in both customers and features related to our service, ramping up our ability to provide customers with custom content filters, as well as continuing to operate our service within the U.S. As we scale up our filtering service, we are developing technology and utilizing third-party "cloud" storage services. As we ramp up our offering of content filters, we are building out crowd-sourcing expertise in a number of distinct roles, including video viewers, video taggers, video reviewers and video publishers. If we are not able to manage the growing complexity of our business, including improving, refining or revising our systems and operational practices related to our video operations and filtering content, our business may be adversely affected. See "DESCRIPTION OF THE BUSINESS."

If we fail to maintain or, in new markets establish, a positive reputation with customers concerning our service, including the content we offer and the ease of use and accuracy of our content filters, we may not be able to attract or retain customers, and our operating results may be adversely affected.

We believe that a positive reputation is important to attract and retain customers who have a number of choices for obtaining entertainment video. To the extent our content, particularly our content filters, is perceived as low quality, or our failure to sufficiently filter offensive or otherwise undesired content to customers, our ability to establish and maintain a positive reputation may be adversely impacted. Furthermore, to the extent our marketing, customer service and public relations efforts are not effective or create a negative consumer reaction, our ability to establish and maintain a positive reputation may be adversely impacted. As we expand into new markets, we need to establish our reputation with new customers. To the extent we are unsuccessful in creating positive impressions, our business in new markets may be adversely impacted.

Changes in how we market our service could adversely affect our marketing expenses and our customer base may be adversely affected.

We utilize a broad mix of marketing and public-relations programs, including social media sites such as Facebook, YouTube and Twitter, to promote our service to potential customers. We may limit or discontinue the use or support of certain marketing sources or activities if advertising rates increase or if we become concerned that customers or potential customers deem certain marketing practices intrusive or damaging to our brand. If the available marketing channels are curtailed, our ability to attract new customers may be adversely affected.

If companies that promote our service determine that we negatively impact their businesses, decide to compete more directly with our business, enter a similar business, or choose to exclusively support our competitors, we may no longer have access to certain marketing channels. If we are unable to maintain or replace our sources of customers with similarly effective sources, or if the cost of our existing sources increases, our customer base and marketing expenses may be adversely affected.

We face risks, such as unforeseen costs and potential liability in connection with content we acquire, filter and/or distribute through our service.

As a distributor of content, we face potential liability for negligence, copyright and trademark infringement, or other claims based on the nature and content of the materials that we acquire, filter and/or distribute. We also may face potential liability for content used in promoting our service, including marketing materials and features on our Web site such as customer reviews. As we expand our offering of content filters, we have become responsible for costs of producing content maps and other features. We also take on risks associated with filters, such as producing filters that do not seamlessly stream content but rather produce an unsatisfactory experience to the viewing customer. To the extent we do not accurately anticipate costs or mitigate risks, including for content that we obtain but ultimately do not make available on our service, or if we become liable for content we acquire, filter and/or distribute, our business may suffer. Litigation to defend such claims could be costly and the expenses and damages arising from any liability or unforeseen production risks could harm our operating results. We may not be indemnified or insured against such claims or costs of these types. See **“DESCRIPTION OF OUR BUSINESS – Legal Proceedings.”**

If studios, content providers, content distributors or other rights holders refuse to sell us their content or other rights on terms acceptable to us, our business could be adversely affected.

Our ability to provide our customers with a filtering service depends on studios, content providers, wholesale content distributors and other rights holders upon whom we rely to produce and/or provide us the content we redistribute, filter, and stream to our customers.

If the studios, content providers, wholesale content distributors and other rights holders are not willing or able to sell us physical content on terms acceptable to us, our ability to filter content remotely to our customers would be adversely affected and/or our costs could increase. Many of the methods by which we purchase physical media from the studios, content providers, wholesale content distributors or other rights holders could cease offering new content to our service relatively quickly. The actions of such parties, as well as other actions we may take could impair the availability of new content for streaming through our service on short notice. As competition increases, we may see the cost of programming increase. We focus on programming an overall mix of content that delights our customers in a cost efficient manner. Within that context, we are selective about the titles we purchase for inclusion in our service. If we do not maintain a compelling mix of content for filtering, our customer acquisition and retention may be adversely affected.

We rely upon a number of partners to make our service available on their devices.

We currently offer customers the ability to receive filtered content through a host of Internet-connected screens, including TVs, digital video players, television set-top boxes and mobile devices. We have agreements with various tech companies and distributors to make our service available through the television set-top boxes of such service providers. We intend to continue to broaden our capability to transmit filtered TV shows and movies to other platforms and partners over time. If we are not successful in maintaining existing and creating new relationships, or if we encounter technological, content licensing, regulatory or other impediments to delivering our filtered content to our customers via those devices, our ability to grow our business could be adversely impacted. Furthermore, the devices are manufactured and sold by entities other than us and while these entities should be responsible for the devices' performance, the connection between us and those devices may nonetheless result in customer dissatisfaction toward the Company and such dissatisfaction could result in claims against us or otherwise adversely impact our business. In addition, technology changes to our product functionality and offering of content filters may require that partners update their devices. If partners do not update or otherwise modify their devices, our service and our customers' use and enjoyment could be negatively impacted.

Any significant disruption in or unauthorized access to our computer systems or those of third parties that we utilize in our operations, including those relating to cybersecurity or arising from cyber-attacks, could result in a loss or degradation of service, unauthorized disclosure of data, including customer and corporate information, or theft of intellectual property, including digital content assets, which could adversely impact our business.

Our reputation and ability to attract, retain and serve our customers is dependent upon the reliable performance and security of our computer systems and those of third parties that we utilize in our operations. These systems may be subject to damage or interruption from earthquakes, adverse weather conditions, other natural disasters, terrorist attacks, power loss, telecommunications failures, and cybersecurity breaches. Interruptions in these systems, or with the Internet in general, could leave our service unavailable or degraded, or otherwise hinder our ability to deliver filtered content to our customers. Service interruptions, errors in our software or the unavailability of computer systems used in our operations could diminish the overall attractiveness of our service to existing and potential customers.

Our computer systems and those of third parties we use in our operations are vulnerable to cybersecurity breaches, including cyber-attacks such as computer viruses, denial of service attacks, physical or electronic break-ins and similar disruptions. These systems periodically experience directed attacks intended to lead to interruptions and delays in our service and operations as well as loss, misuse or theft of data. Any attempt by hackers to obtain our data (including customer and corporate information) or intellectual property (including digital content assets), disrupt our service, or otherwise access our systems, or those of third parties we use, if successful, could harm our business, be expensive to remedy and damage our reputation. We have implemented certain systems and processes to thwart hackers and protect our data and systems. To date hackers have not had a material impact on our service or systems however this is no assurance that hackers may not be successful in the future. Our insurance does not cover expenses related to such disruptions or unauthorized access. Efforts to prevent hackers from disrupting our service or otherwise accessing our systems are expensive to implement and may limit the functionality of or otherwise negatively impact our service offering and systems. Any significant disruption to our service or access to our systems could result in a loss of customers and adversely affect our business and results of operation.

We utilize our own communications and computer hardware systems located either in our facilities or in that of a third-party Web hosting provider. In addition, we utilize third-party "cloud" computing services in connection with our business operations. We also utilize our own and third-party content delivery networks to help us deliver TV shows and movies in high volume to our customers over the Internet. Problems faced by us or our third-party Web hosting, "cloud" computing, or other network providers, including technological or business-related disruptions, as well as cybersecurity threats, could adversely impact the experience of our customers.

We rely upon certain third party cloud computing service providers to operate certain aspects of our service and any disruption of or interference with our use of such services from our providers would impact our operations and our business would be adversely impacted.

Several third party cloud computing services providers provide VidAngel with a distributed computing infrastructure platform for business operations, or what is commonly referred to as a "cloud" computing service. We have designed our software and computer systems so as to utilize data processing, storage capabilities and other services provided by such providers. Currently, we run the vast majority of our computing using such third party cloud computing services. Given this, along with the fact that we cannot easily switch our operations to another cloud provider, any disruption of or interference with our use of such services from our providers would impact our operations and our business would be adversely impacted.

If the technology we use in operating our business fails, becomes unavailable, or does not operate to expectations, our business and operating results could be adversely impacted.

We utilize a combination of proprietary and third-party technology to operate our business. This includes technology we have developed or that has been assigned to us, such as our Content Delivery and Filtering Solution, Filter Curation Platform, and our Remote Media Ownership Management. We also use technology to recommend and merchandise content to our consumers as well as to enable fast and efficient delivery of content to our customers and their various consumer electronic devices. For example, we have built and deployed our video on a content delivery network, or CDN. To the extent Internet Service Providers, or ISPs, do not interconnect with our CDN, or if we experience difficulties in its operation, our ability to efficiently and effectively deliver our content and our offering of content filters to our customers could be adversely impacted and our business and results of operation could be adversely affected. Likewise, if our recommendation and merchandising technology does not enable us to predict and recommend titles that our customers will enjoy, our ability to attract and retain customers may be adversely affected. We also utilize third party technology to help market our service, process payments, and otherwise manage the daily operations of our business. If our technology or that of third parties we utilize in our operations fails or otherwise operates improperly, our ability to operate our service, retain existing customers and add new customers may be impaired. Also, any harm to our customers' personal computers or other devices caused by software used in our operations could have an adverse effect on our business, results of operations and financial condition. See **"DESCRIPTION OF THE BUSINESS—Our Intellectual Property."**

If government regulations relating to the Internet or other areas of our business change, we may need to alter the manner in which we conduct our business, or incur greater operating expenses.

The adoption or modification of laws or regulations relating to the Internet or other areas of our business could limit or otherwise adversely affect the manner in which we currently conduct our business. In addition, the continued growth and development of the market for online commerce may lead to more stringent consumer protection laws, which may impose additional burdens on us. If we are required to comply with new regulations or legislation or new interpretations of existing regulations or legislation, this compliance could cause us to incur additional expenses or alter our business model.

Changes in laws or regulations that adversely affect the growth, popularity or use of the Internet, including laws impacting net neutrality, could decrease the demand for our service and increase our cost of doing business. The failure to adopt laws protecting strong net neutrality could also increase the cost of doing business. On February 16, 2015, the U.S. Federal Communications Commission, or FCC, adopted net neutrality rules intended, in part, to prevent network operators from discriminating against legal traffic that transverses their networks and to prevent Internet Service Provider, or ISP, abuses at interconnection points. The FCC's authority to adopt these rules is currently under review by the U.S. Circuit Court of Appeals for the District of Columbia. To the extent network operators attempt to use this ruling to extract fees from us to deliver our traffic or otherwise engage in discriminatory practices, or if the U.S. Circuit Court of Appeals for the District of Columbia invalidates the rules, our business could be adversely impacted. Within such a regulatory environment, coupled with potentially significant political and economic power of local network operators, we could experience discriminatory or anti-competitive practices that could impede our growth, cause us to incur additional expense or otherwise negatively affect our business.

Changes in how network operators handle and charge for access to data that travel across their networks could adversely impact our business.

We rely upon the ability of consumers to access our service through the Internet. If network operators block, restrict or otherwise impair access to our service over their networks, our service and business could be negatively affected. To the extent that network operators implement usage based pricing, including meaningful bandwidth caps, or otherwise try to monetize access to their networks by data providers, we could incur greater operating expenses and our new customer acquisition and retention could be negatively impacted. Furthermore, to the extent network operators create tiers of Internet access service and either charge us for or prohibit us from being available through these tiers, our business could be negatively impacted.

Most network operators that provide consumers with access to the Internet also provide these consumers with multichannel video programming. As such, many network operators have an incentive to use their network infrastructure in a manner adverse to our continued growth and success. While we believe that consumer demand, regulatory oversight and competition will help check these incentives, to the extent that network operators are able to provide preferential treatment to their data as opposed to ours or otherwise implement discriminatory network management practices, our business could be negatively impacted.

Privacy concerns could limit our ability to collect and leverage our customer data and disclosure of customer data could adversely impact our business and reputation.

In the ordinary course of business, and in particular in connection with merchandising our service to our customers, we collect and utilize data supplied by our customers. We currently face certain legal obligations regarding the manner in which we treat such information. Other businesses have been criticized by privacy groups and governmental bodies for attempts to link personal identities and other information to data collected on the Internet regarding users' browsing and other habits. Increased regulation of data utilization practices, including self-regulation or findings under existing laws that limit our ability to collect and use data, could have an adverse effect on our business. In addition, if we were to disclose data about our customers in a manner that was objectionable to them, our business reputation could be adversely affected, and we could face potential legal claims that could impact our operating results.

Our reputation and relationships with customers would be harmed if our customer data, particularly billing data, were accessed by unauthorized persons.

We maintain personal data regarding our customers. This data is maintained on our own systems as well as those of third parties we use in our operations. With respect to billing data, such as credit card numbers, we do not store such information on our servers, but rely on third party services that are PCI DSS compliant for storing and accessing billing information. We take measures to protect against unauthorized intrusion into our customers' data. Despite those measures, we, our payment processing services and other third-party services we use could experience an unauthorized intrusion into our customers' data. In the event of such a breach, current and potential customers may become unwilling to provide the information to us necessary for them to become customers. Additionally, we could face legal claims for such a breach. The costs relating to any data breach could be material, and we currently do not carry insurance against the risk of a data breach. For these reasons, should an unauthorized intrusion into our customers' data occur, our business could be adversely affected.

We are subject to payment processing risk.

Our customers pay for our service using a variety of payment methods, including credit and debit cards. We rely on internal systems as well as those of third parties to process payments. Acceptance and processing of these payment methods are subject to certain rules and regulations and require payment of interchange and other fees. To the extent there are disruptions in our payment processing systems, increases in payment processing fees, material changes in the payment ecosystem, such as large re-issuances of payment cards, delays in receiving payments from payment processors and/or changes to rules or regulations concerning payment processing, our revenue, operating expenses and operating results could be adversely impacted. In addition, from time to time, we encounter fraudulent use of payment methods, which could impact our results of operation, and, if not adequately controlled and managed, could create negative consumer perceptions of our service.

If our trademarks and other proprietary rights are not adequately protected to prevent use or appropriation by our competitors, the value of our brand and other intangible assets may be diminished, and our business may be adversely affected.

We rely and expect to continue to rely on a combination of proprietary information, invention assignment, non-competition and arbitration agreements with our employees, consultants and third parties with whom we have relationships, as well as trademark, copyright, patent and trade secret protection laws, to protect our proprietary rights. We may also seek to enforce our proprietary rights through court proceedings. We have applied and we expect to apply for trademark registrations and the issuance of patents from time to time. Such applications may not be approved, third parties may challenge any copyrights, patents or trademarks issued to or held by us, third parties may knowingly or unknowingly infringe our intellectual property rights, and we may not be able to prevent infringement or misappropriation without substantial expense to us. If the protection of our intellectual property rights is inadequate to prevent use or misappropriation by third parties, the value of our brand and other intangible assets may be diminished, competitors may be able to mimic our service and methods of operations more effectively, the perception of our business and service to customers and potential customers may become confused in the marketplace, and our ability to attract customers may be adversely affected.

We currently hold various domain names relating to our brand, including www.vidangel.com. Failure to protect our domain names could adversely affect our reputation and brand and make it more difficult for customers to find our web site and our service. We may be unable, without significant cost or at all, to prevent third parties from acquiring domain names that are similar to, infringe upon or otherwise decrease the value of our trademarks and other proprietary rights.

Intellectual property claims against us could be costly and result in the loss of significant rights related to, among other things, our web site, filtering technology, our recommendation and merchandising technology, title selection processes and marketing activities.

Trademark, copyright, patent and other intellectual property rights are important to us and other companies. Our intellectual property rights extend to our technology, business processes and the content on our web site. From time to time, third parties may allege that we have violated their intellectual property rights. If we are unable to obtain sufficient rights, successfully defend our use, develop non-infringing technology, or otherwise alter our business practices on a timely basis in response to claims for infringement, misappropriation, misuse or other violation of third-party intellectual property rights, our business and competitive position may be adversely affected. Many companies are devoting significant resources to developing patents that could potentially affect many aspects of our business. There are numerous patents that broadly claim means and methods of conducting business on the Internet. Defending against intellectual property claims, whether they are with or without merit or are determined in our favor, would result in costly litigation and the diversion of technical and management personnel. It also may result in our inability to use our current web site, streaming technology, our recommendation and merchandising technology or inability to market our service and merchandise our products. As a result of such dispute, we may have to develop non-infringing technology, enter into royalty or licensing agreements, adjust our merchandising or marketing activities or take other actions to resolve the claims. These actions, if required, may be costly or unavailable on terms acceptable to us. We are currently engaged in litigation with Disney Enterprises, Inc., et. al., or the Disney Litigation. An adverse decision from the court in connection with this litigation would adversely affect our financial condition and our ability to continue business operations. See “**DESCRIPTION OF THE BUSINESS – Legal Proceedings**” below for a detailed summary of our current litigation.

We are engaged in legal proceedings that could cause us to incur unforeseen expenses and could occupy a significant amount of our management's time and attention.

From time to time, we are subject to litigation or claims that could negatively affect our business operations and financial position. We are currently involved in the Disney Litigation and plan to use a substantial amount of the proceeds of this offering in our defense. As we grow, we expect the number of litigation matters against us to increase. These matters have included copyright infringements, which are typically expensive to defend. Litigation disputes could cause us to incur unforeseen expenses, could occupy a significant amount of our management's time and attention and could negatively affect our business operations and financial position. See "USE OF PROCEEDS TO ISSUER" and "DESCRIPTION OF THE BUSINESS – Legal Proceedings" below for a detailed summary of our current litigation.

We may seek additional capital that may result in stockholder dilution or others having rights senior to those of our Class B Common Stockholders.

From time to time, we may seek to obtain additional capital, either through equity, equity-linked or debt securities. The decision to obtain additional capital will depend on, among other things, our business plans, operating performance and condition of the capital markets. If we raise additional funds through the issuance of equity, equity-linked or debt securities, such securities may have rights, preferences or privileges senior to the rights of our Class B Common Stock and our stockholders may experience dilution.

We may lose key employees or may be unable to hire qualified employees.

We rely on the continued service of our senior management, including our CEO and co-founder Neal Harmon, members of our executive team, other key employees, and the hiring of new qualified employees. In our industry, there is substantial and continuous competition for highly-skilled business, product development, technical and other personnel. We may not be successful in recruiting new personnel and in retaining and motivating existing personnel, which may be disruptive to our operations. See "DIRECTORS, EXECUTIVE OFFICERS AND SIGNIFICANT EMPLOYEES."

We are dependent on our management to achieve our objectives, and our loss of, or inability to obtain, key personnel could delay or hinder implementation of our business and growth strategies, which could adversely affect the value of your investment and our ability to pay dividends.

Our success depends on the diligence, experience and skill of our Board and officers. Neal Harmon is our director and our Chief Executive Officer. Jeffrey Harmon is our Chief Marketing Officer. Elizabeth Ellis is our Chief Operating Officer. Patrick Reilly is our Director of Finance. David Quinto is our General Counsel. With the exception of Mr. Quinto, we have neither employment agreements with, nor key man insurance for, any of our officers and the loss of any of them, but particularly Messrs. Harmon, could harm our business, financial condition, cash flow and results of operations. Any such event would likely result in a material adverse effect on your investment.

Risks Relating to the Formation and Internal Operation of the Company

You will have only limited rights regarding our management, therefore, you will not have the ability to actively influence the day-to-day management of our business and affairs.

Our Board will have sole power and authority over the management of the Company, subject only to the requirements of the DGCL. See "SECURITIES BEING OFFERED – Description of Our Certificate of Incorporation and Bylaws." Therefore, you will not have an active role in the Company's day-to-day management. Further, as a holder of non-voting common stock, you will have no right to vote in the election or removal of directors, nor will you have the right to vote on major corporate actions that are subject to the approval of the Class A Stockholders.

We may change our operational policies and business and growth strategies without stockholder consent, which may subject us to different and more significant risks in the future.

Our Board determines our operational policies and our business and growth strategies. Our directors may make changes to, or approve transactions that deviate from, those policies and strategies without a vote of, or notice to, our stockholders. This could result in us conducting operational matters or pursuing different business or growth strategies than those contemplated in this Offering Circular. Under any of these circumstances, we may expose ourselves to different and more significant risks in the future, which could materially and adversely affect our business and growth.

Our management will have significant control over our operations by virtue of the equity ownership in us by entities controlled by our director, co-founder and CEO, Neal Harmon.

Mr. Neal Harmon is one of our three directors, our co-founder and our CEO. Further, Harmon Ventures LLC owns 49.63% of the Class A Common Stock of the Company and Harmon Ventures LLC is owned by Neal, Jeffery, and Daniel Harmon, who are brothers. Further, through their respective ownership, they collectively control the voting of 8,938,520 shares of our Class A Common Stock. Messrs. Harmon collectively control sufficient Class A Common Stock to significantly influence the election of our board of directors, and actions requiring the consent of a majority of the Class A Common Stockholders and this will remain unchanged following completion of this offering. See **“SECURITY OWNERSHIP OF MANAGEMENT AND CERTAIN SECURITY HOLDERS.”**

The ability of a stockholder to recover all or any portion of such stockholder’s investment in the event of a dissolution or termination may be limited.

In the event of a dissolution or termination of the Company, the proceeds realized from the liquidation of the assets of the Company will be distributed among the stockholders, but only after the satisfaction of the claims of third-party creditors of the Company. The ability of a stockholder to recover all or any portion of such stockholder’s investment under such circumstances will, accordingly, depend on the amount of net proceeds realized from such liquidation and the amount of claims to be satisfied therefrom. There can be no assurance that the Company will recognize gains on such liquidation, nor is there any assurance that common stockholders will receive a distribution in such a case.

The Board and our executive officers will have limited liability for, and will be indemnified and held harmless from, the losses of the Company.

The Company will indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Company) by reason of the fact that he is or was a director, officer, employee or agent of the Company, or is or was serving at the request of our Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interest of the Company, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. A successful claim for such indemnification could deplete the Company’s assets by the amount paid. See **“SECURITIES BEING OFFERED – Description of Certificate of Incorporation and Bylaws”** below for a detailed summary of the terms of our Certificate and Bylaws. Our Certificate and Bylaws are filed as exhibits to the Offering Statement of which this Offering Circular is a part. See **“SECURITIES BEING OFFERED – Fiduciary Duties and Indemnification.”**

The video-filtering industry is subject to rapid technological change. We must continue to enhance and improve our technology.

Our current software and related web-based technology is developed and in use. We may, however, use a substantial amount of the proceeds of this offering to modify and enhance our current web site, filtering platform, content offering, and offering of content filters. We must continue to enhance and improve the performance, functionality and reliability of the systems upon which our business model is built.

The development of any software is characterized by rapid technological change, rapid introduction or changes in user requirements and preferences, short development cycles, frequent introduction of new products and services, new technologies and the emergence of new industry standards and practices that could render our existing technology obsolete. Our success will depend, in part, on our ability to continue to develop new technologies to enhance our existing technology in order to address the varied needs of existing and new customers and respond to technological advances and emerging industry standards and practices on a cost-effective and timely basis. The development of our proprietary technology involves significant technical and business risks. We may fail to use new technologies effectively or to adapt our proprietary technology and systems to customer requirements or emerging industry standards. If we are unable to adapt to changing market conditions, strategic partner and customer requirements or emerging industry standards, that will have a material adverse effect on our ability to succeed.

Our business may be subject to regulatory or legislative changes.

The Company may face government regulation and legal uncertainties in connection with its business. There may be a number of federal, state or local legislative or regulatory proposals under consideration of which the Company is not aware or which may be considered or adopted in the future. Any new legislation or regulation, or the application or interpretation of existing laws or regulations, may negatively impact the Company's growth, impose additional burden on the Company or alter how the Company does business. This could decrease the demand for our services, increase our cost of doing business or otherwise have a material adverse effect on the Company's business, results of operations and financial condition.

Risks Related to Conflicts of Interest and Interested Transactions

We use the marketing services of HB, which is owned by our founders and officers, Neal Harmon and Jeffery Harmon.

Messrs. Neal Harmon and Jeffery Harmon hold ownership interests in HB, an advertising agency which is now known for several of the world's most successful viral video campaigns (including Squatty Potty with 100 million views, PooPourri with 36 million views, Purple with 45 million views, among others). HB is in the business of providing Internet-based and multi-media promotion and marketing services. The Harmon brothers simultaneously started the ad agency HB at the inception of VidAngel so that our marketing team would have outside income. After we had built a successful VidAngel product and began to rapidly grow, HB had already built a clientele and resources to service large ad campaigns for its clients. VidAngel hired HB as an independent contractor after the terms and conditions to engage it was authorized and approved by the Board. Mr. Neal Harmon recused himself from the decision. Although, the Board will continue to review the HB marketing agreement annually, our co-founders, the Harmon brothers will continue to benefit from such agreement for so long as we engage them. See "INTEREST OF MANAGEMENT AND OTHERS IN CERTAIN TRANSACTIONS."

Members of our Board and our executive officers will have other business interests and obligations to other entities.

Neither our directors nor our executive officers will be required to manage the Company as their sole and exclusive function and they may have other business interests and may engage in other activities in addition to those relating to the Company, provided that such activities do not compete with the business of the Company or otherwise breach their agreements with the Company. We are dependent on our directors and executive officers to successfully operate the Company, and in particular Mr. Neal Harmon. Their other business interests and activities could divert time and attention from operating our business.

Risks Related to the Offering and Lack of Liquidity

There has been no active public market for our Class B Common Stock prior to this offering, and an active trading market may not be developed or sustained following this offering, which may adversely impact the market for shares of our Class B Common Stock and, along with the restrictions in our Stockholders Agreement, make it difficult to sell your shares.

Prior to this offering, there was no active market for our Class B Common Stock. We do not know the extent to which investor interest will lead to the development and maintenance of a liquid trading market, if at all. No assurance can be given that the market price of shares of our Class B Common Stock will not fluctuate or decline significantly in the future or that Class B Common Stockholders will be able to sell their shares when desired on favorable terms, or at all. Most transfers of the Offered Shares are also subject to other restrictions on transfer set forth in our Stockholders Agreement.

This is a fixed price offering and the fixed offering price may not accurately represent the current value of us or our assets at any particular time. Therefore, the purchase price you pay for the Offered Shares may not be supported by the value of our assets at the time of your purchase.

This is a fixed price offering, which means that the offering price for our Offered Shares is fixed and will not vary based on the underlying value of our assets at any time. Our Board has determined the offering price in its sole discretion. The fixed offering price for our Offered Shares has been based on an internal valuation analysis of the Company as a whole. Although we believe the valuation to be fair as of the date it was determined, the fixed offering price established for our Offered Shares may not be supported by the current value of our Company or our assets at any particular time.

The entire amount of your purchase price for your Offered Shares will not be available for investment in the Company.

A portion of the offering proceeds will be used to pay legal fees and expenses incurred in connection with the Disney Litigation, research and development expenses, advertising and marketing expenses and general working capital for the operation and management of our Company. See “**PLAN OF DISTRIBUTION**.” Thus, a portion of the gross amount of the offering proceeds will not be available for investment in the Company. See “**USE OF PROCEEDS TO ISSUER**.”

If investors successfully seek rescission, we would face severe financial demands that we may not be able to meet.

Our Offered Shares have not been registered under the Securities Act of 1933, or the Securities Act, and are being offered in reliance upon the exemption provided by Section 3(b) of the Securities Act and Regulation A promulgated thereunder. We represent that this Offering Circular does not contain any untrue statements of material fact or omit to state any material fact necessary to make the statements made, in light of all the circumstances under which they are made, not misleading. However, if this representation is inaccurate with respect to a material fact, if this offering fails to qualify for exemption from registration under the federal securities laws pursuant to Regulation A, or if we fail to register the Offered Shares or find an exemption under the securities laws of each state in which we offer the Offered Shares, each investor may have the right to rescind his, her or its purchase of the Offered Shares and to receive back from the Company his, her or its purchase price with interest. Such investors, however, may be unable to collect on any judgment, and the cost of obtaining such judgment may outweigh the benefits. If investors successfully seek rescission, we would face severe financial demands we may not be able to meet and it may adversely affect any non-rescinding investors.

Not All Investor Funds Will Be Held by a Third Party Escrow Agent.

Purchases of Shares in excess of \$5,000 must be transmitted directly by investors by either wire transfer or electronic funds transfer via ACH to a non-interest bearing escrow account maintained by Issuer Direct. Purchases of Shares in the amount of \$5,000 or less may be submitted through an investor's VidAngel customer account in accordance with the billing information for such investor at www.vidangel.com, and will not be held in the escrow account maintained by Issuer Direct, but will be held in a separate non-interest bearing account held by VidAngel until the Minimum Offering is sold. Upon achieving the minimum offering amount and the initial closing of this offering, the proceeds for the offering will be distributed to the Company and the Offered Shares will be issued to the investors. If the Minimum Offering is not sold or the offering does not close for any reason, the proceeds from the offering will be promptly returned to investors without interest in accordance with Securities Exchange Act Rule 10b-9. Although VidAngel will segregate offering proceeds we receive in a separate account, we will not be bound by the terms and conditions of a legally enforceable escrow agreement regarding the escrow and disbursement of these funds.

Risks Related to Our Stock Ownership

Provisions in our governing documents and under Delaware law could discourage a takeover that stockholders may consider favorable.

Our charter documents may discourage, delay or prevent a merger or acquisition that a stockholder may consider favorable because they provide for a right of first refusal on behalf of the Company, and if the Company declines to exercise its rights to purchase a stockholder's shares, then that offer is extended to existing shareholders.

As a Delaware corporation, we are subject to certain Delaware anti-takeover provisions. Under Delaware law, a corporation may not engage in a business combination with any holder of 15% or more of its capital stock unless the holder has held the stock for three years or, among other things, the board of directors has approved the transaction. Our board of directors could rely on Delaware law to prevent or delay an acquisition of us.

Financial forecasting may differ materially from actual results.

Given the dynamic nature of our business, and the inherent limitations in predicting the future, forecasts of our revenues, contribution margins, net income and number of total and customers and other financial and operating data may differ materially from actual results. Such discrepancies could cause a decline in the price of our Class B Common Stock.

Risks Related to Benefit Plan Investors

Fiduciaries investing the assets of a trust or pension or profit sharing plan must carefully assess an investment in our Company to ensure compliance with ERISA.

In considering an investment in the Company of a portion of the assets of a trust or a pension or profit-sharing plan qualified under Section 401(a) of the Code and exempt from tax under Section 501(a), a fiduciary should consider (i) whether the investment satisfies the diversification requirements of Section 404 of ERISA; (ii) whether the investment is prudent, since the Offered Shares are not freely transferable and there may not be a market created in which the Offered Shares may be sold or otherwise disposed; and (iii) whether interests in the Company or the underlying assets owned by the Company constitute "Plan Assets" under ERISA. See "**ERISA CONSIDERATIONS.**"

DILUTION

VidAngel is offering a minimum of 1,666,667 and a maximum of 3,750,000 shares of our Class B Common Stock at an offering price of \$3.00 per share. We have previously issued stock options for the acquisition of Class A Common Stock pursuant to our Stock Incentive Plan with a weighted average exercise price of \$0.56 per share. We also closed three rounds of financing on November 28, 2015, during which we sold Class A Common Stock for a weighted average price of \$0.64 per share. The aggregate average price between the exercise price for stock options issued pursuant to the Stock Incentive Plan and the price of shares of Class A Common Stock issued pursuant to the two rounds of financing on November 18, 2015 is \$0.62, or \$2.38 less per share than the Offered Shares.

Under our Stock Incentive Plan, we granted options exercisable for 1,022,811 shares of Class A Common Stock to our directors, officers, employees and consultants as equity incentive compensation. The weighted average exercise price of those outstanding options is \$0.56 per share, or \$2.44 average less per share than the Offered Shares. Currently, there are outstanding (i) options exercisable for 10,000 shares of Class A Common Stock with an expiration date of April 11, 2024, and an exercise price of \$0.18; (ii) options exercisable for 79,311 shares of Class A Common Stock with an expiration date of May 5, 2024, and an exercise price of \$0.18; (iii) options exercisable for 10,000 shares of Class A Common Stock with an expiration date of October 10, 2024, and an exercise price of \$0.18; (iv) options exercisable for 10,000 shares of Class A Common Stock with an expiration date of November 3, 2024 and a strike price of \$0.30; (v) options exercisable for 225,000 shares of Class A Common Stock with an expiration date of April 15, 2025, and an exercise price of \$0.50; (vi) options exercisable for 135,500 shares of Class A Common Stock with an expiration date of April 17, 2025, and an exercise price of \$0.50; (vii) options exercisable for 70,000 shares of Class A Common Stock with an expiration date of May 11, 2025, and an exercise price of \$0.50; (viii) options exercisable for 70,000 shares of Class A Common Stock with an expiration date of July 17, 2025, and an exercise price of \$0.50; (ix) options exercisable for 120,000 shares of Class A Common Stock with an expiration date of November 18, 2025, and an exercise price of \$0.50; (x) options exercisable for 134,250 shares of Class A Common Stock with an expiration date of February 11, 2026, and an exercise price of \$0.82; and (xi) options exercisable for 158,750 shares of Class A Common Stock with an expiration date of August 10, 2026, and an exercise price of \$0.82. Of the outstanding stock options, options exercisable for 326,000 shares of common stock were granted with no vesting period, and options exercisable for 696,811 of Class A Common Stock have vesting periods between 36 to 48 months from their vesting dates which range from April 11, 2014 to July 20, 2016.

On November 28, 2015, VidAngel conducted three separate financings involving the issuance of convertible promissory notes during which we raised an aggregate amount of \$2,919,460 in exchange for the issuance of notes convertible into 3,526,896 shares of Class A Common Stock with an average per share conversion price of \$0.54, and sold an additional 1,065,755 shares of Class A Common Stock at a price of \$0.94 per share. In the second convertible note financing, Alta Ventures Mexico Fund I, LP, of which our director, Paul Ahlstrom, is the managing director, purchased convertible promissory notes convertible into 618,119 shares of Class A Common Stock for \$409,397 with an average per share conversion price of \$0.66, or \$2.34 average less per share than the Offered Shares, and purchased an additional 426,302 shares of Class A Common Stock for \$400,000, or \$0.94 per share, which is \$2.06 less than the Offered Shares.

PLAN OF DISTRIBUTION

We are not selling the shares through commissioned sales agents or underwriters. We will use our existing website, www.vidangel.com, to provide notification of the offering. This Offering Circular will be furnished to prospective investors at www.vidangel.com/invest via download 24 hours per day, 7 days per week on our website. Our website and Issuer Direct's website will be the exclusive means by which prospective investors may subscribe in this offering.

The Offered Shares will be issued in one or more closings. For the Initial Closing and each subsequent Additional Closing, proceeds for subscriptions over \$5,000 must be transmitted directly by wire or electronic funds transfer via ACH to the specified bank account maintained by Issuer Direct pursuant to the instructions in the subscription agreement. Such funds will be kept in a non-interest bearing escrow account maintained by Issuer Direct until the Initial Closing and the Minimum Offering is sold. Proceeds for subscriptions of \$5,000 or less will be held in a separate non-interest bearing account by VidAngel until the Initial Closing and the Minimum Offering is sold, and may be submitted through an investors VidAngel customer account in accordance with the billing information for such investor at www.vidangel.com. Upon each closing, any proceeds collected for such closing will be disbursed to the Company and the Offered Shares for such closing will be issued to investors. We must sell the Minimum Offering if any shares are to be sold at all. The separate non-interest bearing account will be opened by VidAngel prior to the date of qualification of the offering statement of which this Offering Circular is a part and will remain open until the Termination Date. The subscription agreement is available at www.vidangel.com/invest. If, on the Termination Date, investor funds are not received in respect of the Minimum Offering, then all investor funds that were deposited into either the separate non-interest bearing account with us or into the escrow account with Issuer Direct will be returned promptly to investors in accordance with Securities Exchange Act Rule 10b-9.

Technology, Anti-Money Laundering and Transfer Agent Services

Issuer Direct has been engaged to provide certain technology, anti-money laundering and transfer agent services in connection with this offering. The Company has agreed to pay Issuer Direct a facilitation fee equal to \$5.00 per domestic investor for the anti-money laundering check and technology services for each subscription agreement executed via electronic signature on www.vidangel.com. For transactions conducted on Issuer Direct's website, the Company has agreed to pay \$25.00 for the same service. We have also engaged Issuer Direct to serve as transfer agent for the offering and have agreed to pay a \$2,500.00 account set up fee. Issuer Direct is also entitled to certain other itemized administrative fees, including (i) up to \$15.00 per investor (depending on whether subscription is by ACH or wire transfer) for processing incoming funds, (ii) \$25.00 per physical stock certificate request (which will be only provided upon request and fee payment by the VidAngel customer requesting the certificate), and (iii) \$25.00 per wire transfer for outbound funds to us upon the closing of this offering. For the Company, the itemized fees payable to Issuer Direct will not exceed a maximum of \$150,000. Issuer Direct is not participating as an underwriter of the offering and will not solicit any investment in the Company, recommend the Company's securities or provide investment advice to any prospective investor, or distribute the Offering Circular or other offering materials to investors. All inquiries regarding this offering should be made directly to the Company.

Offering Expenses. We are responsible for all offering fees and expenses, including the following: (i) fees and disbursements of our legal counsel, accountants and other professionals we engage; (ii) fees and expenses incurred in the production of offering documents, including design, printing, photograph, and written material procurement costs; (iii) all filing fees, including blue sky filing fees; (iv) all of the legal fees related to the registration and qualification of the Offered Shares under state securities laws (not to exceed \$600,000 in the aggregate); and (v) all costs of Issuer Direct's services.

Pricing of the Offering

Prior to the offering, there has been no public market for the Offered Shares. The initial public offering price was determined by us. The principal factors considered in determining the initial public offering price include:

- the information set forth in this Offering Circular;
- our history and prospects and the history of and prospects for the industry in which we compete;
- our past and present financial performance;
- our prospects for future earnings and the present state of our development;
- the general condition of the securities markets at the time of this offering;
- the status of litigation we are engaged in; and
- other factors deemed relevant by us.

Investment Limitations

Generally, no sale may be made to you in this offering if the aggregate purchase price you pay is more than 10% of the greater of your annual income or net worth. Different rules apply to accredited investors and non-natural persons. Before making any representation that your investment does not exceed applicable thresholds, we encourage you to review Rule 251(d)(2)(i)(C) of Regulation A. For general information on investing, we encourage you to refer to www.investor.gov.

As a Tier 2, Regulation A offering, investors must comply with the 10% limitation to investment in the offering. The only investor in this offering exempt from this limitation is an accredited investor, an "Accredited Investor," as defined under Rule 501 of Regulation D. If you meet one of the following tests you should qualify as an Accredited Investor:

- You are a natural person who has had individual income in excess of \$200,000 in each of the two most recent years, or joint income with your spouse in excess of \$300,000 in each of these years, and have a reasonable expectation of reaching the same income level in the current year;
- You are a natural person and your individual net worth, or joint net worth with your spouse, exceeds \$1,000,000 at the time you purchase Offered Shares (please see below on how to calculate your net worth);
- You are an executive officer or general partner of the issuer or a manager or executive officer of the general partner of the issuer;
- You are an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or the Code, a corporation, a Massachusetts or similar business trust or a partnership, not formed for the specific purpose of acquiring the Offered Shares, with total assets in excess of \$5,000,000;
- You are a bank or a savings and loan association or other institution as defined in the Securities Act, a broker or dealer registered pursuant to Section 15 of the Securities Exchange Act of 1934, as amended, or the Exchange Act, an insurance company as defined by the Securities Act, an investment company registered under the Investment Company Act of 1940, as amended, or the Investment Company Act, or a business development company as defined in that act, any Small Business Investment Company licensed by the Small Business Investment Act of 1958 or a private business development company as defined in the Investment Advisers Act of 1940;
- You are an entity (including an Individual Retirement Account trust) in which each equity owner is an accredited investor;
- You are a trust with total assets in excess of \$5,000,000, your purchase of Offered Shares is directed by a person who either alone or with his purchaser representative(s) (as defined in Regulation D promulgated under the Securities Act) has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective investment, and you were not formed for the specific purpose of investing in the Offered Shares; or

- (viii) You are a plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has assets in excess of \$5,000,000.

Offering Period and Expiration Date

This offering will start on or after the date this Offering Circular is declared qualified by the SEC and will terminate on the Termination Date.

Procedures for Subscribing

If you decide to subscribe for Offering Shares in this offering, you should:

Go to www.vidangel.com/invest, click on the “**Invest Now**” button and follow the procedures as described.

1. Electronically receive, review, execute and deliver to us a subscription agreement; and
2. If your subscription price is greater than \$5,000, deliver funds directly by wire or electronic funds transfer via ACH to the specified bank account maintained by VidAngel.
3. If your subscription price is \$5,000 or less, you may (i) pay for your subscription price through a purchaser's VidAngel customer account in accordance with the billing information for such purchaser at www.vidangel.com. or, (ii) if greater than \$1,000, transmit funds directly by wire or electronic funds transfer via ACH to the specified account maintained by VidAngel per the instructions in the subscription agreement we will bill your customer account in accordance with your billing information at www.vidangel.com.

Any potential investor will have ample time to review the subscription agreement, along with their counsel, prior to making any final investment decision.

The Company has engaged Issuer Direct to provide certain technology and administrative services in connection with the offering, including the online platform by which subscribers may receive, review, execute and deliver subscription agreements electronically.

Right to Reject Subscriptions. After we receive your complete, executed subscription agreement and the funds required under the subscription agreement have been received, we have the right to review and accept or reject your subscription in whole or in part, for any reason or for no reason. We will return all monies from rejected subscriptions immediately to you, generally without interest and without deduction.

Acceptance of Subscriptions. Upon our acceptance of a subscription agreement, we will countersign the subscription agreement and issue the shares subscribed at closing. Once you submit the subscription agreement and it is accepted, you may not revoke or change your subscription or request your subscription funds. All accepted subscription agreements are irrevocable.

Under Rule 251 of Regulation A, **non-accredited, non-natural investors** are subject to the investment limitation and may only invest funds which do not exceed 10% of the greater of the purchaser's revenue or net assets (as of the purchaser's most recent fiscal year end). A **non-accredited, natural person** may only invest funds which do not exceed 10% of the greater of the purchaser's annual income or net worth (please see below on how to calculate your net worth).

We may engage a broker-dealer registered with the Securities and Exchange Commission and a member of the Financial Industry Regulatory Authority, to perform administrative functions in connection with this offering, such as serve as registered agent where required for state blue sky requirements, but in no circumstance will such broker-dealer solicit a securities transaction, recommend our securities, or provide investment advice to any prospective investor.

NOTE: For the purposes of calculating your net worth, or Net Worth, it is defined as the difference between total assets and total liabilities. This calculation must exclude the value of your primary residence and may exclude any indebtedness secured by your primary residence (up to an amount equal to the value of your primary residence). In the case of fiduciary accounts, net worth and/or income suitability requirements may be satisfied by the beneficiary of the account or by the fiduciary, if the fiduciary directly or indirectly provides funds for the purchase of the Offered Shares.

In order to purchase Offered Shares and prior to the acceptance of any funds from an investor, an investor will be required to represent, to the Company's satisfaction, that he is either an accredited investor or is in compliance with the 10% of net worth or annual income limitation on investment in this offering.

USE OF PROCEEDS TO ISSUER

Net proceeds to the Company from this offering are anticipated to be \$10,820,000, assuming we sell the Maximum Offering, and \$4,720,000, assuming we sell the Minimum Offering, following the payment of offering costs. Set forth below is a table showing the estimated sources and uses of the proceeds from this offering.

	<u>Minimum Offering</u>	<u>% of Offering Proceeds</u>	<u>Maximum Offering Amount</u>	<u>% of Offering Proceeds</u>
Gross Proceeds	\$ 5,000,000	100.00%	\$ 11,250,000	100.00%
Estimated Offering Expenses ⁽¹⁾	\$ 280,000	5.60%	\$ 430,000	3.82%
Net Proceeds	\$ 4,720,000	94.40%	\$ 10,820,000	96.18%
Research and Development	\$ 500,000	10.00%	\$ 2,000,000	17.78%
Advertising and Promotion	\$ 900,000	18.00%	\$ 4,750,000	42.22%
Legal Fees and Expenses ⁽²⁾	\$ 2,000,000	40.00%	\$ 3,000,000	26.67%
Working Capital ⁽³⁾	\$ 1,320,000	26.40%	\$ 1,070,000	9.51%
Total Use of Proceeds	\$ 5,000,000	100.00%	\$ 11,250,000	100.00%

(1) Estimated offering expenses include legal, accounting, printing, advertising, travel, marketing, blue-sky compliance and other expenses of this offering, as well as transfer agent fees.

(2) Legal Fees and expenses associated with the Disney Litigation.

(3) We intend to use approximately 94.40% of the gross offering proceeds if the Minimum Offering is sold or 96.18% of the gross offering proceeds if the Maximum Offering is sold to manage our business and provide working capital for operations. These amounts may be used to pay expenses relating to salaries and other compensation to our officers, employees.

DESCRIPTION OF OUR BUSINESS

General

In 2013, four brothers, Neal, Daniel, Jeffrey, and Jordan Harmon, founded VidAngel, a filtering company that gives viewers the choice to remove objectional content, such as violence, sex, nudity, and/or language, from authorized copies of movies and television programs released on discs. The Harmon brothers, as fathers of children aged newborn to ten, were searching for a better way to watch quality content with their kids. They founded VidAngel to give their families, and all other families, greater personal choice in the movies and television programs they watch at home. VidAngel's purpose is not only to allow families to watch "however the BLEEP they want," but to protect an individual's legal right to customize the content they watch at home. Today, management believes that VidAngel is the leading filtering company with Apps, available on all major platforms, and that the potential demand for our service is significant.

The Company was formed as a Utah limited liability company on October 22, 2013 pursuant to a Certificate of Formation filed with the State of Utah's Department of Commerce and that certain Operating Agreement of the Company, dated December 13, 2013, by and among the Company and its members. Subsequently, the Company was converted into VidAngel, Inc. a Delaware corporation, on February 12, 2014, pursuant to Articles of Conversion filed with the State of Utah's Department of Commerce.

The Operations of the Company

Management believes that VidAngel offers the greatest degree of personal choice in the entertainment marketplace by selling DVD and Blu-ray movies and television shows on disc and providing its users the technology to filter and view their movies and TV shows remotely on modern devices such as cell phones, tablets, set top boxes (e.g. Apple TV, Roku, Amazon Fire TV, etc.), computers and, we anticipate, in the future, gaming consoles and smart TVs.

In connection with offering its filtering service, VidAngel resells DVD and Blu-ray movies and television shows on discs to our customers for a fixed price of \$20.00 per disc, or the Sale Price. Upon purchase of such disc, our customer agrees to have us retain physical custody of the disc. Once our customer finishes watching the purchased content through its chosen platform, they may choose either to keep the purchased title or sell the disc back to us at a reduced repurchase price, or the Repurchase Price. If customers elect to return their discs to us, the Repurchase Price offered by VidAngel reflects the (i) format of the disc and (ii) total number of 24-hour periods our customers have owned their discs. The Repurchase Prices paid by VidAngel are currently the Sales Price less \$1.00 per 24-hour period for each DVD, and \$2.00 per 24-hour period for each Blu-ray disc. Our customers have access to our content filtering technology for use with a specific disc for as long as they own it. Our service allows our customers to direct their individual viewing experience by removing certain audio or video segments that contain material considered objectionable by our customer. Once a customer chooses to sell the disc back to us, their access to our content filtering technology for that disc terminates and VidAngel's obligations to such customer are complete.

To provide a remote filtering service, VidAngel has developed the following core proprietary technologies:

1. Patent-pending Remote Media Ownership Management System
2. Patent-pending Crowd-based Tagging System
3. Patented Seamless Streaming and Filtering System

VidAngel believes that one of the most crucial systems in maintaining a lawful business is the first system for RMOM. This system ensures that VidAngel does not sell any DVD or Blu-ray discs without owning the media. This system ensures that all copyright holders are compensated for their copyrighted works. VidAngel engaged an independent third party to conduct a Service Organization Control Report, or SOC 2 Type 1, to report on controls for the Processing Integrity Principle. The report, which is as of January 27, 2016, includes our Infrastructure, Software, People, Procedures and Data.

Under the direction of our CEO, VidAngel currently operates with five management teams: the Tech Team, the Marketing Team, the Digital Content Team, the Finance Team and the Legal Team.

The Tech Team is led by our Director of Technology, Jarom McDonald, PhD, who oversees all technology employees and contractors who contribute technical support, application development, and front and back-end development and maintenance of the system. The Marketing Team is led by our CMO who oversees the Director of Marketing and any marketing interns. The Marketing Team is responsible for all content creation and advertising relating to the growth of the Company. The Digital Content Team is led by our COO, who oversees all employees involved in customer service, inventory management, streaming and tagging. The Digital Content Team is responsible for providing users with the best possible customer experience. The Finance Team is led by our Director of Finance who oversees all employees involved in finance, accounting and purchasing. The Legal Team is led by our General Counsel, who is responsible for all Company legal matters and litigation oversight.

Target Demographics

VidAngel offers its filtering and RMOM services to the U.S. movie and TV show home entertainment market, which is highly competitive. The Company has examined various considerations with regards to the marketability and desirability for its services, including a cost analysis compared to its closest competitors, examined the Company's unique profile, and examined its target consumer markets. We believe our core target market is the "Values Audience" segment, some 52 million adults of the U.S. population representing 37% of the entertainment market whose religious faith is extremely important to them and is a part of their daily lives. The Company believes the Values Audience demonstrates stronger overall concern about the explicit content that they, and their family members, are exposed to in TV shows and movies. VidAngel believes that within the Values Audience segment, parents will tend to take a particular interest in the Company's services.

Method of Distribution

VidAngel offers its filtering application and RMOM through a host of Internet-connected screens, including TVs, digital video players, television set-top boxes and mobile devices. VidAngel has agreements with various technology companies and distributors to make our service available through the television set-top boxes of service providers. Our Apps allow for purchasing of Blu-ray and DVD discs within the App, which requires that we share between 20 and 30 percent of our revenue with these technology distribution partners for the discs purchased on their platforms (Apple, Google, Amazon, and Roku). We intend to continue to broaden our capability to sell and deliver discs on other platforms and partners over time. We rely on certain third-party cloud service providers to operate certain aspects of our business. For VidAngel to legally offer filtered movies, users must own the disc while filtering it. To make this as affordable and user-friendly as possible, we have created an instant "Sell-Back" option to buy the disc back from customers and put the credit from the repurchase into the customer's VidAngel account.

Quick Overview: (using a \$20.00 disc)

1. BUY THE DISC – Users pay the retail price of \$20.00 as an initial credit card payment.
2. USER WATCH FILTERED- Users choose their own filters according to their preferences and watch their disc on their favorite device.
3. USERS SELL THE DISC—When finished within 24 hours, users may sell back the disc, \$18.00 for Blu-ray or \$19.00 for DVD, for instant credit to a user's VidAngel account for their next purchase. Within 48 hours, users may sell back the disc for \$16.00, for Blu-ray, or \$18.00, for DVD, of instant credit. The sell back price continues to decrease by \$2.00 per day for Blu-ray's, and \$1.00 per day for DVD's until no sell back value remains.

When customers are ready for the next disc, the credit is already in the customer's VidAngel account and will automatically be applied to their purchase. Customers may continue to buy and sell discs with account credit and pay only \$2.00 per Blu-ray disc. Customer's credit cards will be only charged if the customer's account credit is lower than the retail price of the next disc the customer wishes to purchase. If a customer's account balance is less than the cost of the disc, the customer will be charged the small difference to bring the account balance up to that amount. If the disc price is lower than the customer's credit balance, the customer will have no charge and their purchase will be entirely paid with credit. For example: If a customer has \$15.00 in their account and wants to buy a \$20.00 disc, the customer's credit card will be charged the \$5.00 difference. When a customer sells the disc back after the \$2.00 watch price, the customer's VidAngel account will be credited the remaining \$18.00. As a customer continues to use the account credit, the customer may have small charges of varying sizes depending on the retail price of the disc the customer purchases next.

Marketing and Advertising

VidAngel utilizes a broad mix of marketing and public relations programs, including social media sites such as Facebook, Youtube and Twitter, to promote our service to potential customers. VidAngel also relies extensively on word-of-mouth from our existing customers who have enjoyed a positive experience from use of our service. We also rely on the marketing services of HB, who is in the business of providing internet-based and multi-media promotion and marketing services, including the design, implementation and execution of promotional and web-based advertising campaigns. See **“Interest of Management and Others in Certain Transactions and Other Conflicts of Interest—Affiliated Transactions.”**

Cost Comparisons to our Competitors

When compared to our primary filtering competitor, ClearPlay, VidAngel believes we are substantially more attractive on the basis of cost, filtering and efficiency. When compared to other streaming services, we believe VidAngel still represents a significantly better value proposition on the basis of its unique RMOM. Whereas streaming services can cost up to \$4-\$5 per a movie, VidAngel, through its RMOM, permits a user to watch a movie for as little as \$1 with the “Sell-Back” option.

Our Intellectual Property

We rely on a combination of patent, copyright, trademark and trade secret laws in the United States and other jurisdictions, as well as license agreements and other contractual documents, to protect our proprietary technology. We rely on a number of registered and unregistered trademarks to protect our brand. As of the date of this Offering Circular, we have one registered trademark “VidAngel,” and five unregistered trademarks, “VidMap,” “VidTag,” “watch however the BLEEP you want,” “watch movies however the BLEEP they want,” and “watch movies & TV however the BLEEP you want.” VidAngel, Inc. owns numerous Internet domain sights and websites, including: www.vidangel.com; www.vidangle.com; www.viddevil.com; www.stopjarjar.com; www.cleantube.com; and www.kleentube.com. As of the date of this Offering Circular, in the United States, we have been issued a U.S. patent for seamless streaming and filtering, filed on March 31, 2015 with an expiration date of March 30, 2035, and have two patent applications for: (i) curating filters for audiovisual content, or Filter Curation Platform (U.S. Patent Application No. 14/621972), and (ii) a method and system for a remote media ownership management, or RMOM, apparatus, system and method (U.S. Patent Application No. 11/608165), pending for examination. Our patent and pending patents are discussed in further depth below.

Patents

Seamless streaming and filtering. We currently own a patent for a Seamless streaming and filtering (the “Streaming and Filter Solution”) method and system (U.S. Patent Application. No. 14/674,364, filed on March 31, 2015; U.S. Patent No. 9,363,561 issued on June 7, 2016). The Streaming and Filtering Solution is designed to smoothly filter content streamed over HTTP Live Streaming, or HLS. HLS streams content, e.g. movies, by dividing the content into a series of short media segment files. The client requests each of the media segment files identified by the HLS index file, and the server transmits each media segment file upon the client’s request. The Streaming and Filtering Solution generates a content map for a movie, the content map identifying all parts of a movie with filterable content (e.g. vulgarity, sex/nudity, violence, etc.). The content map generates categories and subcategories of filterable elements (e.g. Vulgarity (category): “f---”(subcategory)). The content map may be generated in a variety of ways, e.g. by a human who watches a movie and documents the characteristics of filterable elements in the movie; through a community or crowd-based approach; programmatically; or in any other way by which filterable elements may be identified. For example, the content map may identify time periods during the movie which may be filtered for language, e.g., the “sh—” word at minute: second marker 45:39.5-45:40. A content map entry may include identification of the temporal (e.g. minute markers during the movie), spatial (e.g., area of display to be cut, cropped, kept, blurred, or otherwise filtered), and audible (e.g. channels or other content aspects containing filterable content) dimensions of filterable content in the movie (or other type of content), or other characteristics of a particular filterable element. The client selects its own preferences, which may be based on a particular user or person, the physical location to which content is being streamed, or any other criteria for determining how to filter content. For example, preferences may indicate that the “f---” should be entirely muted, but that, for the “crap” word, the volume should be merely turned down halfway. The Streaming and Filtering Solution dynamically generates a media segment file as directed by the user’s preferences, and the file is then transmitted to the client without ever placing the filtered media segment file in fixed storage. Generating a filtered media segment may comprise omitting an entire segment, omitting one or more chronological segments of the media segment file, completely muting all audio, partially turning down all sound, muting only one or more of all of the audio channels, turning down the sound on one or more of the audio channels, turning up the sound on one or more audio channels, cropping the video, blurring all or part of the video, replacing all or part of the video, or any other audio, visual, or other effect or manipulation known in the art.

Curating Filters for Audiovisual Content. We own a patent application for a curating filters for audiovisual content, or Filter Curation Platform, method and system (U.S. Patent Application No. 14/621972 filed February 13, 2015). The Filter Curation Platform enables users to curate and access custom filters to adapt the playback of audiovisual content. The Filter Curation Platform may enable users (i.e. video viewers, video taggers, video reviewers and video publishers), which have different roles, to create one or more video tags for a movie, and thereby create a full or partial video map for the movie. A video tag is a short description of a segment/clip of a multimedia file. A video tag includes a type, start time, end time, and a category. Examples of video tag categories may include positive and negative categories, such as action, dramatic, scary, alcohol/drugs, profane/crude language, sex/nudity, and violence, among other categories. A video tagger may create video maps for audiovisual content. A video reviewer is a user who may review video maps for mistakes, make corrections, and provide feedback on the video maps created by video taggers. A video publisher is a user who may prepare, finalize, and publish video maps to a multimedia portal. Multiple video taggers may tag the same portions of a movie, and a video reviewer may access the video maps from multiple video taggers. The process may be iterative in many ways, so that multiple video taggers, video reviewers and video publishers may prepare, review, edit and pass among each other video maps in various orders and workflows. Once the video map has been published, the video viewer, via a media player interface may define filters using a video map of the movie. The video viewer may customize the filter to display (or make audible) some categories or specific segments of filterable content, but not others. Video maps may receive scores from video users, such as receiving one halo for poor quality and up to five haloes for excellent quality. In some cases, video taggers, video reviewers and video publishers may receive cash consideration for their services.

Apparatus, System and Method for Remote Media Ownership Management. We also own a patent application for a remote media ownership management, or RMOM, apparatus, system and method (US. Patent Application No. 11/608165) filed December 7, 2006. RMOM is an apparatus, system and method that allows a consumer to deposit physical media units, or PMUs or Content, such as music CDs or movies, with the RMOM's transfer facility, where such a deposit is listed on an ownership register, in exchange for the user's ability to access their Content remotely. Users are not only able to access the Content they have physically deposited with RMOM, but users are also able to buy and sell Content to and from other users by use of the RMOM's trading system. The RMOM may collect monetary commissions for the operator and applicable taxes. The RMOM may further comprise a media verification component configured to identify damaged incoming Content as an acceptable representation of ownership of the Content. For example, a music CD with scratches such that the media on the music CD is not playable with the standard CD player may nevertheless clearly be a genuine copy of the music CD. In the example, depending upon the law where the system operates, a digital media equivalent may be provided to the owning user of the damaged incoming Content when the owning user requests access to the content of the music CD. The RMOM overcomes previous limitations in the art by allowing users to access and trade Content without the constraints and risks of maintaining the Content at the location of the user.

In addition, we seek to protect our intellectual property rights by implementing a policy that requires all of our employees and independent contractors involved in development of intellectual property on our behalf to enter into agreements acknowledging that all works or other intellectual property generated or conceived by them on our behalf are our property, and assigning to us any rights, including intellectual property rights, that they may claim or otherwise have in those works or property, to the extent allowable under applicable law.

Despite our efforts to protect our technology and proprietary rights through enforcement of our intellectual property rights, licenses and other contractual protections, unauthorized parties may still copy or otherwise obtain and use our software and other technology. As we continue to expand our operations, effective intellectual property protection, including copyright, trademark and trade secret protection may not be available or may be limited in foreign countries. Significant impairment of our intellectual property rights could harm our business or our ability to compete. Further, companies in the communications and technology industries frequently own large numbers of patents, copyrights and trademarks and may threaten litigation or file suit against us based on allegations of infringement or other violations of intellectual property rights. We are currently subject to, and expect to face in the future, allegations that we have infringed the intellectual property rights of third parties, including our competitors and non-practicing entities. See "DESCRIPTION OF OUR BUSINESS – Legal Proceedings."

Competition

Our primary competitor in providing a filtering service is ClearPlay. ClearPlay operates a membership fee-based filtering service that allows users to filter content they find objectionable. ClearPlay users select the movie they want to watch on ClearPlay's website, then rent the Standard Definition movie on Google Play, and return to the ClearPlay website where they select their filters before watching the movie. ClearPlay offers hardware for use by users to watch filtered content on their TV, such as the ClearPlay Blu-Ray and DVD Player and the FilterStik. The FilterStik is a USB-sized device that can be plugged into a viewing platform, such as a standard DVD player, in order to filter content; however, no additional hardware is needed to use ClearPlay's services from either a PC or Mac. It is possible for ClearPlay users to transmit the filtered movie from their computer to TV by methods such as connecting their computer to their TV with an HDMI cable. As of August 4, 2016, ClearPlay charges a membership fee of \$7.99 a month or \$79.99 annually. In addition to membership fees, ClearPlay users must pay the full retail rental or purchase price for the content they intend to filter and view. VidAngel believes it offers a better value, as well as a higher quality and more user-friendly service than ClearPlay for modern media consumption devices. ClearPlay and VidAngel were previously engaged in litigation regarding patent rights. ClearPlay was also engaged in other litigation, which ultimately resulted in the invalidation of many of ClearPlay's patent claims. We believe ClearPlay will reassert one or more of its patent claims against us in the near future. Such litigation could have a material adverse effect on our business operations were we not to prevail. See "**Description of Our Business—ClearPlay Litigation.**"

Research and Development

During the fiscal years ended December 31, 2014 and 2015, we spent \$35,990 and \$310,754, respectively, on research and development activities relating to our technology.

Employees

As of June 30, 2016, we employed a total of 20 full-time and 24 part-time individuals. None of our employees are covered by a collective bargaining agreement.

Legal Proceedings

VidAngel currently is, and from time to time might again become, involved in litigation. Litigation has the potential to cause us to incur unexpected losses, some of which might not be covered by insurance but can materially affect our financial condition and its ability to continue our business operations.

Disney Litigation

On June 9, 2016, the Plaintiffs initiated the Disney Litigation against VidAngel in the United States District Court for the Central District of California, or the California District Court. They alleged two claims: (a) that VidAngel requires, but does not have, the Plaintiffs' authorization to make digital copies of the Plaintiffs' copyrighted works and thus violates 17 U.S.C. Sections 106(1) and (4), and (b) that VidAngel violates Section 1201 (a)(1)(A) of the DMCA by circumventing a technological measure that effectively controls access to works protected under the Copyright Act. The Plaintiffs are seeking monetary damages, costs, and attorneys' fees from VidAngel, as well as preliminary and permanent injunctions prohibiting VidAngel from continuing to engage in the challenged conduct.

VidAngel filed its Answer and Counter-Complaint on July 12, 2016, asserting that its technology does not infringe on the Plaintiffs' rights and otherwise complies with applicable law. Among other defenses, VidAngel argues that the circumvention of technological access-control measures in making digital copies of copyrighted works is: (a) authorized by the FMA, which permits the filtering and transmission of copyrighted material owned by third parties, and (b) is further permitted under the DMCA by the "fair use" doctrine. VidAngel has also alleged numerous counterclaims against the Plaintiffs, including that the Plaintiffs are engaging in an unreasonable restraint on interstate trade in violation of Section 1 of the Sherman Antitrust Act and Section 4 of the Clayton Antitrust Act (codified at 15 U.S.C. Sections 1 and 5, respectively). The Plaintiffs have reserved October 31, 2016, on the California District Court's calendar to argue their motion seeking the entry of a preliminary injunction. The Plaintiffs filed and served their motion on August 22, 2016. VidAngel filed and served its opposition to the motion on September 12, 2016, and the Plaintiffs filed a reply in support of the motion on October 3, 2016.

The Plaintiffs have additionally said that they plan to schedule a motion to dismiss VidAngel's counterclaims for hearing on December 19, 2016.

Due to the nature of the claims and counterclaims, as well as the very early stage of the litigation, VidAngel is unable to predict the eventual result or estimate the amount of any potential liability or recovery. VidAngel plans to use a substantial portion of the proceeds of this offering to defend the Disney Litigation, including by prosecuting its counterclaims. If the Disney Litigation is decided adversely to VidAngel, it would have a material adverse effect on VidAngel's financial condition and its ability to continue business operations.

ClearPlay Litigation

In 2014, VidAngel (then doing business as VidAngel, LLC), responded to a contention by ClearPlay, Inc., or ClearPlay, that we were infringing on certain ClearPlay patents by suing ClearPlay in the United States District Court for the Central District of California (the case later moved to Utah). In doing so, we requested judicial determinations that our technology and service did not infringe eight patents owned by ClearPlay and that the patents were invalid. In turn, ClearPlay counterclaimed against VidAngel alleging patent infringement. On February 17, 2015, the case was stayed pending inter parties review by the United States Patent and Trademark Office's, or the USPTO's, review of several of ClearPlay's patents. We were not a party to or involved in the USPTO's review of those patents. Owing to those proceedings, on May 29, 2015, the Utah trial court closed the case without prejudice to the parties' rights to reassert any or all claims later. In July and August 2015, many of ClearPlay's patent claims, including many of the claims asserted against VidAngel, were ruled unpatentable by the USPTO. Some of ClearPlay's other patent claims were upheld and still others were never challenged in the USPTO. Following the USPTO's rulings, ClearPlay appealed some of the USPTO's invalidity decisions to the United States Court of Appeals for the Federal Circuit. These findings of invalidity were all affirmed by the court on August 16, 2016. The Utah District Court's order staying this litigation instructed ClearPlay to contact the Court within two weeks of the final Inter Partes Review decision after which the Court would set a telephonic status conference. It has been over a year since the Inter Partes Review decisions were issued. We believe ClearPlay will reassert its surviving claims in the near future and that the litigation could have a material adverse effect on VidAngel's business operations if Clearplay were to prevail. See **"RISK FACTORS - We face risks, such as unforeseen costs and potential liability in connection with content we acquire, filter and/or distribute through our service."** See also **"RISK FACTORS—We are engaged in current litigation, the outcome of which, if not favorable to VidAngel, would have a material adverse effect on us and our ability to continue our business operations."**

DESCRIPTION OF OUR PROPERTIES

As of the date of this Offering Circular, our primary assets are our Intellectual Property and the contracts we have entered into directly.

We lease our office facilities at 249 North University Avenue, Provo, Utah, under a month-to-month lease. We currently rent our offices for \$1,750.00 a month. We do not currently own or lease any other real property. *See* “**DESCRIPTION OF BUSINESS**” for more information.

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

Forward Looking Statements

This Offering Circular contains certain forward-looking statements that are subject to various risks and uncertainties. Factors that might cause or contribute to such differences include, but are not limited to, those discussed on Page 5 of this Offering Circular under the heading "CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS".

We assume no obligation to revise or publicly release any revision to forward-looking statements contained in the Offering Circular, unless required by law.

Overview

VidAngel is a reseller of Blu-ray and DVD discs and offers a large variety of movies and TV shows on discs, in both formats, for purchase on our website, www.vidangel.com. Upon purchase of such disc at the Sales Price, our customer agrees to have us retain physical custody of the disc. As part of the purchase transaction, we include access to our proprietary and patented content filtering technology that provides our customers with ultimate control over the purchased content and allows for seamless removal and/or muting of content deemed objectionable by our customers. Once our customer finishes watching purchased content, they may choose to either keep the purchased title or to sell the disc back to us at a reduced price. If customers elect to return their disc to us, the Repurchase Price offered by VidAngel reflects the (i) format of the disc and (ii) total number of 24-hour periods our customers own their discs. Our customers have access to our content filtering technology for use with a specific disc for as long as they own it. Our service allows our customers to direct their individual viewing experience by removing certain audio or video segments that contain material considered objectionable by our customer. Once a customer chooses to sell the disc back to us, their access to our content filtering technology for that disc terminates and VidAngel's obligations to such customer are complete.

Revenue Model

Each disc is sold to our customers for the Sales Price of \$20.00 per disc. Upon purchase of such disc, our customer agrees to have us retain physical custody of the disc. If customers elect to return their disc to us after viewing the purchased content, VidAngel offers a Repurchase Price for the disc. The Repurchase Prices paid by VidAngel are currently the Sales Price less \$1.00 per 24-hour period for each DVD, and \$2.00 per 24-hour period for each Blu-ray disc.

VidAngel separates its revenue transactions into two (2) groups. Those groups are defined by the length of total time of disc ownership. For clarity purposes, the groups are defined as "short-term ownership" and "long-term ownership." Currently, the majority of our transactions exist within the short-term ownership category. These customers currently account for 99.5% of all transactions through July 31, 2016. The remaining 0.50% of all transactions are from the long-term ownership category.

For transactions in the short-term ownership category, revenue is recognized on a daily basis for each 24-hour period a disc is owned. The amount of revenue recognized is equal to the Sales Price less the Repurchase Price and depends on the format of the disc. The average revenue per transaction through July 31, 2016 was \$1.54 for transactions in the short-term ownership category.

For transactions in the long-term ownership category, revenue is recognized using a subscription model, or ratably over the expected term/life of the customer. The average revenue per transaction through July 31, 2016 was \$18.49 per transaction in the long-term ownership category.

For our fiscal year ended December 31, 2015, we earned \$415,517 in revenue, of which \$383,288 is attributed to short-term owners, and \$32,229 is attributable to long-term owners.

For the six months ended June 30, 2016, we earned \$2,405,430 in revenue, of which \$2,334,658 is attributed to short-term owners, and \$70,772 is attributable to long-term owners.

Growth Opportunity

According to PricewaterhouseCoopers, transaction-based home video is the fastest-growing segment of the streaming market, and is projected to reach \$8.5 billion by 2019 (with a 2014-19 Compound Annual Growth Rate or CAGR of 25.6%)¹. Management believes that the market for filtered content is largely untapped, as opposition from content creators and agreements with distribution channels and partners make the process overly burdensome, and costly for the average consumer. In April 2005, the Family Entertainment and Copyright Act was signed into law and included provisions that exempted as a violation of copyright law "...the creation or provision of a computer program or other technology that enables...[the] making imperceptible [of limited portions of audio or video content of a motion picture,] and that is designed and marketed to be used, at the direction of a member of a private household...". In May 2016, VidAngel commissioned an independent third-party study by the NRG Research Group to determine the percentage of American consumers who would be interested in or more likely to use a service similar to VidAngel's. The study estimated the size of the home entertainment audience at 140.2 million Americans, and indicates that 40% of such audience said they will "definitely" or "probably" use the service, with 19% indicating that they will "definitely" use the service.

¹ Pricewaterhouse Coopers Global Entertainment and Media Outlook 2015

Management believes that this study confirmed the existence of a significant market that is being underserved, and that VidAngel holds the unique advantage of being the only company that currently provides this market with the ability to view and remove content on the most popular devices and platforms available on the market today, such as cell phones, tablets, set top boxes (e.g. Apple TV, Roku Amazon Fire TV), and computers, and, in the future, gaming consoles and Smart TVs. VidAngel began privately testing its technology in December 2014 and launched publicly in August 2015. Since launching publicly in August of 2015 to the period ending June 30th, 2016, VidAngel has seen significant growth and user adoption, with transaction growth of over 2,600% and user growth of over 1,800%. Management believes that this growth is merely a small percentage of the potential market, and that as VidAngel continues to improve its technology, and releases new versions of our application to work on the devices and platforms used by consumers today, that its growth will continue at a high rate for the foreseeable future.

Growth Strategy

VidAngel employs a three pillar marketing strategy that includes digital acquisition, customer retention, and customer sharing:

Digital acquisition:

VidAngel uses highly targeted digital ads to attract customers, including:

- Marketing videos produced with innovative ad agency Harmon Brothers;
- Banner ads produced in-house;
- Targeted advertising on Facebook, YouTube, Roku, and soon other set-top box platforms; and
- Advertising with podcast and video channels

Customer activation and retention:

VidAngel continues to refine its customer acquisition funnel with rigorous A/B testing of customer emails, landing page layout, and design of various platforms. VidAngel also keeps its customers active by engaging through entertaining emails, social media posts, blog posts, customer service, and similar methods of outreach.

Customer sharing:

According to VidAngel customer surveys, roughly half the members of VidAngel's customer base were referred by friends. To capitalize on word of mouth advertising, VidAngel plans to continue incentivizing customers to share VidAngel with friends through the use of sharing incentives and gamification.

Operating Results

VidAngel operates on a fiscal year basis from January to December.

First six month of Fiscal Year 2016 (1/1/2016 – 6/30/2016)

In the first six months of 2016, we focused our efforts on growth. We started by adding new content to the library of titles available for purchase on our application in order to meet the demand of our existing customer base. We closed out fiscal year 2015 with approximately 1,500 titles available for purchase, and during the first six months of 2016 have added over 1,000 new titles. We continue to add new titles at an increasing rate, and plan to continue for the foreseeable future.

In conjunction with adding new titles, we have continued to advertise our service aggressively. In the first six months of 2016, we spent \$2,353,396 on advertising related to our service. The aggressive advertising campaign resulted in the addition of over 144,700 new VidAngel customers. Revenues generated from all customers during the first six months of 2016, were \$2,405,430, an increase of 3,600% from the first six months of 2015, or 578% of the total revenue from fiscal year 2015. We plan to maintain our aggressive spending on advertising, for the foreseeable future, in order to further stimulate the growth of our customer base.

VidAngel had a net loss of \$2,219,233 for the first six months of fiscal year 2016. This loss was largely related to the increased advertising spend to fuel user growth.

Fiscal Year 2015 (1/1/2015 – 12/31/2015)

In fiscal year 2015, we began early beta testing of a new version of our service. The new service removed many of the obstacles that limited the original version, and management believes it began to show promise immediately. Over the first eight months of fiscal year 2015, VidAngel refined and improved the technology of the new version, while allowing a limited number of users to preview the service, and assist in troubleshooting. The response from beta testers was promising and VidAngel generated revenues of \$126,877 from January 1, 2015 through August 31, 2015. In late August 2015, VidAngel opened access to the platform to the public, and began marketing the product aggressively. The use of the service increased dramatically and VidAngel generated revenues of \$288,640 from September 1, 2015, through December 31, 2015.

Following the release to the general public, we became aware that the architecture of the current technology would not support the growing user base, and we invested a significant amount of capital and resources into updating the architecture to handle a much larger user base, and that could scale up to meet increased demand.

VidAngel had a net loss of \$1,382,016 for the fiscal year ended December 31, 2015.

Fiscal Year 2014 (1/1/2014 - 12/31/2014)

In fiscal year 2014, VidAngel released the first version of its service that allowed customers to filter movies and videos available on YouTube and the Google Play Hollywood library. Initial customer signup response was strong, but the service suffered from technical limitations, no high definition content, limited support and an unstable customer experience. Actual usage was extremely low. Management began exploring alternative strategies and, after creating the current model, the service was ultimately terminated.

VidAngel had a net loss of \$777,916 for the fiscal year ended December 31, 2014.

Liquidity and Capital Resources

As of June 30, 2016, we had cash on hand of \$1,480,525. We also expect that the proceeds from this offering will improve our financial performance by providing additional capital necessary to advertise our service more aggressively and by enabling us to make our application usable on additional device platforms, thereby making access to our service simpler, and by enhancing our service by improving the technology for delivery to our customers. We have not identified any additional material internal or external sources of liquidity as of the date of this Offering Circular.

Short Term Liquidity

VidAngel has no short term liquidity requirements as of the date of this Offering Circular.

Long-Term Liquidity

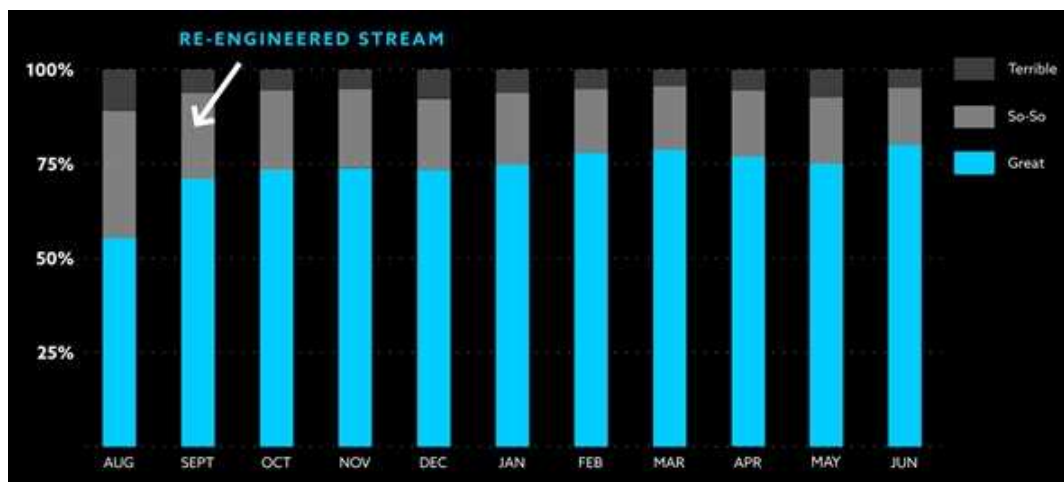
VidAngel has no long term liquidity requirements as of the date of this Offering Circular.

Trend Information

VidAngel experienced substantial monthly transaction growth since our public launch in August 2015. We processed and delivered 497,980 transactions for the month ended June 30, 2016, compared to 18,089 in August 2015, and have recognized over \$2.4M in revenue related to transactions for the first six (6) months of Fiscal Year 2016. The number of active users who purchased a disc in June 2016 was 110,251, compared with 5,770 when we launched to the public in August 2015, which represents growth of over 1800%.

Our customer's experience using our Apps, has improved significantly for every device on which our product is currently available. For example, out of 5 stars possible, our Apple app store rating has increased from 2.5 stars to 4.9 stars; our Google Play app has improved to 4.8 stars; our Roku app to 4.5 stars; our Kindle app to 4.4 stars; and our Amazon Fire TV app to 4.6 stars.

Customer satisfaction has consistently grown as we've improved our technology over time as seen in the chart below. The percentage of customers rating their experience with us as great has increased from just above 50 percent to over 80 percent. We are continuously testing and working on changes to our technology and content delivery network which management believes will further increase the performance of our product, and subsequently the customer satisfaction gains we have seen to date.



Source: This chart was generated from 139,435 responses to a VidAngel survey sent to customers upon completion of a purchase transaction.

DIRECTORS, EXECUTIVE OFFICERS AND SIGNIFICANT EMPLOYEES

Subject to our stockholders' rights to consent to certain transactions, the business and affairs of the Company are controlled by, and all powers are exercised by, our Board. Our Board shall consist of not fewer than three (3) nor more than five (5) directors, the exact number to be set from time to time by the Board. We currently have three directors: Neal Harmon, Paul Ahlstrom and Dalton Wright. Our Board shall be elected each year, at the annual meeting of stockholders, to hold office until the next annual meeting and until their successors are elected and qualified. Any newly created directorships resulting from an increase in the authorized number of directors and any vacancies occurring in our Board, may be filled by the affirmative vote of a majority of the remaining directors. A director may resign at any time, and the stockholders may remove any director or the entire Board at any time, with or without cause, by the affirmative vote of a majority of stockholders voting in such decision.

Our Board has retained our executive officers to manage our day-to-day operations, our library of movies, our intellectual property and other investments, subject to the supervision of our Board. Neal Harmon is currently our Chief Executive Officer, Patrick Reilly is currently our Director of Finance, Elizabeth Ellis is currently our Chief Operating Officer and Jeffery Harmon is currently our Chief Marketing Officer. Our executive officers have accepted their appointment, or nomination to be appointed, on the basis of the compensation to be paid to them. See **"COMPENSATION OF DIRECTORS AND EXECUTIVE OFFICERS – Remuneration of Executive Officers and Managers of Our Company"** for more information. Our executive officers will serve for such period as the Board determines, subject to the terms of any employment agreements we enter into with them, or their earlier death, resignation or removal. Our Board may remove our executive officers subject to the terms of any employment agreements we enter into with them. See **"COMPENSATION OF DIRECTORS AND EXECUTIVE OFFICERS – Employment Agreements"** for more information.

The individuals listed below are our executive officers and directors. The following table and biographical descriptions set forth certain information with respect to the individuals who currently serve as our directors and executive officers:

Name	Position	Age	Term of Office	Hours/Year (for part-time employees)
Neal Harmon*	Chief Executive Officer, Director	38	October 2013	n/a
Jeffery Harmon*	Chief Marketing Officer	33	October 2013	n/a
Elizabeth Ellis	Chief Operating Officer	39	June 2015	n/a
Patrick Reilly	Director of Finance	35	January 2014	n/a
David Quinto	General Counsel	61	August 2016	n/a
Paul Ahlstrom	Director	53	February 2014	n/a
Dalton Wright	Director	36	February 2014	n/a

*Neal Harmon and Jeffery Harmon are brothers.

Biographical Information

Biographical information regarding our directors and executive officers is set forth below.

Neal Harmon, Chief Executive Officer, Director. Neal has served as VidAngel, Inc.'s Chief Executive Officer since he helped co-found the company in 2013. Neal is a member of Harmon Ventures LLC, a Utah limited liability company, the Company's largest stockholder. He also is a managing member of Harmon Brothers, LLC, a marketing agency he co-founded with his brothers. Neal worked for Orabrush, Inc. from 2009 to 2013, a company he co-founded, where he served in such capacities as Chief Operating Officer and as a member of the board. Since 2005, Neal has also worked for the Neal S Harmon Company, a Utah corporation, as a consultant, entrepreneur and investor, engaging in such activities such as designing and creating a trucking logistics dashboard to connect shippers and private fleets, among web-based and other projects. Neal received his master's degree from Brigham Young University in Instructional Psychology and Technology in 2002, and his undergraduate degree from Brigham Young University in American Studies in 2001.

Jeffery Harmon, Chief Marketing Officer. Jeffery is a co-founder and Chief Marketing Officer of VidAngel, Inc. He is currently a managing-member of Harmon Brothers, LLC, a Utah limited liability company, which is an online-focused advertising and marketing company. Jeffery co-founded Orabrush, Inc. in 2009 and served as its CEO from 2009-2010. He continued to serve as Chief Marketing Officer and Co-Founder of Orabrush from 2010 to 2013. He is currently active with other start-up companies and concepts. He attended Brigham Young University from 2006 to 2008, where he studied business marketing, tradition marketing, internet marketing and business administration.

Elizabeth Ellis, Chief Operating Officer. Liz has served as Chief Operating Officer at VidAngel, Inc. since 2016, where her duties include overseeing all operating procedures and staffing. From 2009 until she started her tenure at VidAngel, Inc., Liz was the Director of Human Relations and Office Manager at Orabrush, Inc., where she oversaw personnel and was responsible for various operational tasks. Liz holds a B.S. from Brigham Young University.

Patrick Reilly, Director of Finance. Patrick began providing consulting services to VidAngel, Inc. in March 2014, and joined as the Director of Finance in February 2016. Patrick oversees all accounting and finance duties, including but not limited to budgeting, forecasting, auditing, financial statement preparation and funding at VidAngel, Inc. Patrick served as Financial Controller at Moki Mobility, Inc. a computer software company, from 2013 to February 2016, where he was responsible for finance and accounting duties. From 2009 to 2013, Patrick was the Vice President of Finance and Financial Controller at Allegiance, Inc., where he was responsible for all finance and accounting duties of the company. Patrick graduated from Utah Valley University in 2005 with a B.S. in Business Administration with concentrations in finance and banking.

David Quinto, General Counsel. David joined VidAngel, Inc. as our General Counsel in August 2016. David was a co-founder and partner at Quinn Emanuel Urquhart & Sullivan LLP from 1987 through 2014, and along with Phyllis Kupferstein, founded Kupferstein Manuel & Quinto, LLP in 2014. From 2015 through 2016, David was a partner with the international, full service firm Davis Wright Tremaine LLP. He has represented numerous "Fortune 500" companies, including Avery Dennison, Lockheed Martin, Samsung, Louis Vuitton, Mattel, Johnson Controls, Hilton Hotels, Grendene S.A., and Sae-A Trading Co. Ltd., as well as the Academy of Motion Picture Arts and Sciences, the Academy of Television Arts and Sciences, the Producers Guild of America, and the America's Cup Organizing Committee. David has expertise in trade secret, trademark, trade dress, copyright, unfair competition and complex business disputes. He published a treatise that analyzed the application of tort law to the Internet titled "*Law of Internet Disputes*," published by Aspen Law and business and he co-authors a practitioners guide to trade secret protection and litigation nationally, published by LexisNexis (4th ed. 2016). David graduated with his J.D. from the Harvard Law School in 1982, and received his B.A. from Amherst College in 1977.

Paul Ahlstrom, Director. Paul joined VidAngel as our director in 2014. Paul has served as Managing Director of Alta Ventures Mexico Fund I, LP since 2010, where his responsibilities include all aspects of investor relations, evaluating a business's products or services for potential investment opportunity, creating deal flow, negotiating the terms and conditions in each of the company's financing, serving as a board member of portfolio companies, and preparing financial statements and financial analysis. Over his career, Paul has directly participated in more than 125 venture capital investments and previously represented vSpring Capital on the boards of Ancestry.com, which was sold in 2007 to a private equity firm and went public in 2009 (NASDAQ:ACOM), Senforce, which was sold to Novell (NASDAQ:NOVL), and Altiris (NASDAQ:ATRS), which went public and was then sold to Symantec. (NASDAQ:SYMC), GlobalSim and Aeroprise. Mr. Ahlstrom has also served as an advisor and board to many successful venture-backed startups including Rhomobile sold to Motorola, SpaceMonkey, SendMi, Convert.com and Jott. Paul is the author of popular startup book *Nail It Then Scale It*, and received his B.A. in Communications from Brigham Young University.

Dalton Wright, Director. Dalton joined VidAngel, Inc. as our director in 2014. Dalton has been a partner at Kickstart Seed Fund, L.P. since 2013, a seed-stage investment fund that develops close relationships with universities, angel groups and entrepreneurs to launch high-growth start-ups in both Utah and the Mountain West. Dalton serves as a director of numerous other corporate boards. From 2009 to 2012, Dalton was Senior Associate and Founding Team Member at Alta Mexico Ventures, a seed, venture and growth capital fund targeting high growth companies in Mexico. Dalton graduated from the Wharton Business School at the University of Pennsylvania with his M.B.A. in 2014, and holds a B.A. in finance from the University of Utah.

COMPENSATION OF DIRECTORS AND EXECUTIVE OFFICERS

Messrs. Harmon, Ms. Ellis, Mr. Reilly and Mr. Quinto receive compensation for acting in their capacities as our executive officers. We reimburse Messrs. Ahlstrom and Wright for their expenses incurred in acting in their capacity as a director. See – *Remuneration of Executive Officers and Directors of the Company*” below for more detailed information.

Remuneration of Executive Officers and Directors of the Company

Set forth below is a table of remuneration that our executive officers and directors received for our fiscal year ended December 31, 2015.

Name	Capacity in which Compensation Was Received	Cash Compensation (\$)	Other Compensation (\$)	Total Compensation (\$)
Neal Harmon	CEO	\$100,000	n/a	\$100,000
Elizabeth Ellis	COO	\$100,000	Indeterminate(1)	\$100,000
Jeffery Harmon	Director of Marketing	\$100,000	n/a	\$100,000
Paul Ahlstrom	Director	n/a	n/a	\$n/a
Dalton Wright	Director	n/a	n/a	\$n/a

(1) On July 17, 2015, Ms. Elizabeth Ellis was granted stock incentive options exercisable for 50,000 shares of VidAngel’s Class A Common Stock with an option price of \$0.50 per share and on August 10, 2016, Ms. Ellis was granted stock incentive options exercisable for 28,000 shares of VidAngel’s Class A Common Stock with an option price of \$0.82 per share, both pursuant to the terms and conditions of our Stock Incentive Plan. These options will vest in substantially equal annual increments over a four-year period.

Employment Agreements

We have recently entered into an employment agreement with Mr. David Quinto with respect to his position as our General Counsel. Mr. Quinto’s employment begins on August 1, 2016, has no specified term, and will require him to devote his time and attention during normal business hours to the business and affairs of the Company and the Company’s affiliates. By entering this agreement with Mr. Quinto, we have attempted to ensure Mr. Quinto is available to defend VidAngel in the Disney Litigation through the court of appeals and all the way to the Supreme Court, if necessary.

Mr. Quinto's employment agreement provides for an initial base salary of \$350,000, payable semi-monthly, which will thereafter be subject to potential annual increases based on his performance after review by our Board which must approve any salary increase. Mr. Quinto has also been granted an option exercisable for 219,792 shares of Class A Common Stock.

If Mr. Quinto's employment is terminated by us without "cause," or by him for "good reason," within 12 months of a "change of control" (each as defined in the applicable employment agreement), Mr. Quinto will be entitled to receive accelerated vesting of 100% of his option.

If Mr. Quinto's employment is terminated by us without "cause" or by the executive for "good reason" prior to July 31, 2021, and provided the Company is conducting business in the United States substantially unimpaired by any injunction, Mr. Quinto will be entitled to receive severance pay in the form of the continued payment of his base salary, at the rate in effect as of the date of termination and in accordance with the Company's customary payroll practices, until July 31, 2021. If the Company's business operations in the United States are substantially impaired such that the Company cannot operate profitably, Mr. Quinto will be permitted to draw down on a cash collateral account established by VidAngel to secure payment of Mr. Quinto's cash compensation to ensure he can continue his defense of VidAngel in the Disney Litigation. Mr. Quinto's right to receive the severance pay will be subject to the delivery of a release of claims in favor of the Company.

Mr. Quinto's employment agreement also required him to enter into a Proprietary Information, Invention Assignment, Non-Competition and Arbitration Agreement with the Company.

Stock Incentive Plan

In an effort to further the long-term stability and financial success of the Company by attracting and retaining personnel, including employees, directors and consultants for the Company, the Company adopted its 2014 Stock Incentive Plan, or our Stock Incentive Plan, in February 2014. There are 2,534,544 shares of Class A Common Stock in VidAngel authorized for issuance through our Stock Incentive Plan. As of the date of this Offering Circular, options exercisable for 1,022,811 shares of our Class A Common Stock have been granted under our Stock Incentive Plan, and of those options granted, options exercisable for 5,000 shares of Class A Common Stock in VidAngel have been exercised. Through the use of stock incentives, the Stock Incentive Plan will stimulate the efforts of those persons upon whose judgment, interest and efforts the Company is and will be largely dependent for the successful conduct of its business and will further the identification of those persons' interests with the interests of the Company's stockholders.

The Stock Incentive Plan is administered by our Board. The board has the power and sole discretion to grant or award a stock incentive, or an Award, to any employee of, director of, or consultant to the Company, each a Participant, who, in the sole judgment of our Board, has contributed, or can be expected to contribute, to the profits or growth of the Company. Our Board also has the power and sole discretion to determine the size, terms, conditions and nature of each Award to achieve the objectives of the Award and the Stock Incentive Plan. This includes, without limitation, the Board' ability to determine: (i) which eligible persons shall receive an Award and the nature of the Award, (ii) the number of securities to be covered by each Award, (iii) the fair market value of such securities, (iv) the time or times when an Award shall be granted, (v) whether an award shall become vested over a period of time, according to a performance-based or other vesting schedule or otherwise, and when it shall be fully vested, (vi) the terms and conditions under which restrictions imposed upon an Award shall lapse, (vii) whether a change of control exists, (viii) factors relevant to the satisfaction, termination or lapse of restrictions on certain Awards, (ix) when certain Awards may be exercised, (x) whether to approve a Participant's election with respect to applicable withholding taxes, (xi) conditions relating to the length of time before disposition of securities received in connection with an Award is permitted, (xii) notice provisions relating to the sale of securities acquired under the Stock Incentive Plan, and (xiii) any additional requirements relating to Awards that the Board deems appropriate.

SECURITY OWNERSHIP OF MANAGEMENT AND CERTAIN SECURITYHOLDERS

The Company has: 25,000,000 shares of common stock par value \$0.001 per share, authorized, of which 21,250,000 shares have been designated as Class A voting common stock, or the Class A Common Stock, and 3,750,000 have been designated as Class B Common Stock. As of the date of this Offering Circular, we have 18,008,908 shares of Class A Common Stock issued and outstanding.

Capitalization

As of the date of this Offering Circular, Harmon Ventures, LLC, or Harmon Ventures, owned indirectly by our CEO, Mr. Harmon, and his two brothers, Jeffrey Harmon and Daniel Harmon, owns 8,938,520 shares of our common stock. Alta Ventures Mexico Fund I, LLC, or Alta Ventures Mexico Fund I, owns 3,160,318 shares of our common stock. Osborne Companies, LC, or Osborne Companies, owns 2,222,733 shares of common stock. Various unaffiliated investors own the remaining shares of common stock.

The following table sets forth those executive officers, directors and other security holders holding 10% or a greater percentage of any class of shares, as of the date of this Offering Circular.

Title of Class	Name and Address of Beneficial Owner	Amount and Nature of Beneficial Ownership	Amount and Nature of Beneficial Ownership Acquirable	Percent of Class
Class A Common Stock	Harmon Ventures, LLC 1154 Holly Cir Provo, UT 84604	8,938,520 shares	N/A	49.63%
Class A Common Stock	Alta Ventures Mexico Fund I, LLC 3315 Mayflower Avenue, Suite #1 Lehi, U T 84043	3,160,318 shares	N/A	17.55%
Class A Common Stock	Osborne Companies, LC 4290 North Vintage Circle Provo, UT 84604	2,222,733 shares	Options exercisable for 66,000 shares of Class A Common Stock	12.33%

Upon closing of the Minimum Offering, Harmon Ventures will own approximately 46.41% of our total outstanding shares of capital stock, Alta Ventures Mexico Fund I will own approximately 16.41% of our total outstanding shares of capital stock, and Osborne Companies, LC will own approximately 11.54% of our total outstanding shares of capital stock. Upon closing of the Maximum Offering, Harmon Ventures will own 41.08% of our total outstanding shares of capital stock, Alta Ventures Mexico Fund I will own 14.52% of our total outstanding shares of capital stock, and Osborne Companies, LC will own 10.22% of our total outstanding shares of capital stock. See “**COMPENSATION OF DIRECTORS AND EXECUTIVE OFFICERS – Stock Incentive Plan**” above.

Our Board may, from time to time, also cause shares of capital stock to be issued to directors, officers, employees or consultants of our Company or its affiliates as equity incentive compensation under our Stock Incentive Plan, which shares will have all benefits, rights and preferences as our Board may designate as applicable to such shares.

INTEREST OF MANAGEMENT AND OTHERS IN CERTAIN TRANSACTIONS AND OTHER CONFLICTS OF INTEREST

Affiliated Transactions

Promotion and Marketing Services Agreement with Harmon Brothers LLC.

VidAngel entered a "Promotion and Marketing Services Agreement" or the HB Marketing Agreement, with Harmon Brothers LLC, or HB. HB is owned by Neal Harmon, Jeffrey Harmon, and Daniel Harmon. HB is in the business of providing internet-based and multi-media promotion and marketing services, including the design, implementation and execution of promotional and web-based advertising campaigns. HB's services to the Company are divided into two categories: creative and production services and optimization and distribution services. For creative and production services, HB invoices the Company at cost according to each employee or consultant's personal hourly, billable rate. VidAngel also pays all of HB's expenses incurred in producing promotional and web-based advertising, including without limitation, props, food and catering onset, facility rentals, travel, equipment rentals, and other costs of production. For optimization and distribution services, VidAngel pays HB a percentage-based fee for the management of third-party adspend (Adwords, Facebook, etc.) which drives traffic to the content produced, co-produced or otherwise created by HB, for VidAngel. The percentage-based management fee continues for the life of the content. In exchange for the promotion and advertising services from HB, including third-party adspend billed at cost, VidAngel paid \$0 to HB in 2014, \$344,739 to HB in 2015, and \$2,166,989 to HB through June 30, 2016.

Employment Agreement with our General Counsel, David Quinto

We have recently entered into an employment agreement with Mr. David Quinto with respect to his position as our General Counsel. Mr. Quinto's employment began on August 1, 2016, has a five year term, and will require him to devote his time and attention during normal business hours to the business and affairs of the Company and the Company's affiliates.

Mr. Quinto's employment agreement provides for an initial base salary of \$350,000, payable semi-monthly, which will thereafter be subject to potential annual increases based on his performance after review by our Board which must approve any salary increase.

Investor Rights and Voting Agreement

The Company entered into an Investor Rights and Voting Agreement, or Investor Agreement, dated February 27, 2014 with certain of VidAngel's investors, including Alta Ventures Mexico Fund I, the manager of which is Paul Ahlstrom, one of our directors. The Investor Agreement requires us to provide certain information and inspection rights, provides for confidentiality, and requires the parties to this agreement to vote their respective shares of common stock in a manner which maintain the number of directors on our Board at no more than five and to elect as a director an individual designated by Alta Ventures Mexico Fund I for so long as it owns at least 1,000,000 shares of our common stock.

The Company is permitted to enter into transactions with, including making loans to and loan guarantees on behalf of, our directors, executive officers and their affiliates; so long as the person or persons approving the transaction on behalf of the Company acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interest of the Company. We do not have any outstanding loans or loan guarantees with any related party, and, as of the date of this Offering Circular, we do not have any intentions to enter into any such transactions.

SECURITIES BEING OFFERED

General

The Company is offering a minimum of 1,666,667 and a maximum of 3,750,000 of our Class B Common Stock at a price of \$3.00 per share (\$5,000,000 and \$11,250,000, respectively). The minimum subscription is fifty (50) Offered Shares (\$150); however, we can waive the minimum subscription on a case to case basis in our sole discretion. The Offered Shares are common equity and are not entitled to any preferences regarding distributions. *See* “**Distributions**.”

This offering will terminate on the Termination Date, provided that if we have received and accepted subscriptions for the Maximum Offering on or before the Termination Date, then this offering will terminate when all Offered Shares have been sold, whichever occurs first. If, at the Initial Closing, we have sold less than the Maximum Offering, we will hold Additional Closings, up to the Maximum Offering, through the Termination Date. Purchases of Shares in excess of \$5,000 must be transmitted by investors directly by either wire transfer or electronic funds transfer via ACH to the escrow account maintained by Issuer Direct. Purchases of Shares in the amount of \$5,000 or less may be submitted through an investor's VidAngel customer account in accordance with the billing information for such investor at www.vidangel.com, and will not be held in a non-interest bearing escrow account by Issuer Direct, but will be held in a separate non-interest bearing account held by VidAngel. Upon each closing, the proceeds collected for such closing will be disbursed to the Company and the Offered Shares for such closing will be issued to investors. If a closing does not occur for any reason, the proceeds for such closing will be promptly returned to investors, generally without interest (within one business day) and without deduction.

The Company and stockholders are governed by our Certificate and Bylaws. *See* “**Description of Certificate of Incorporation and Bylaws**” below for a detailed summary of terms of our Certificate and Bylaws. Our Certificate and Bylaws are filed as an exhibit to the Offering Statement of which this Offering Circular is a part. The Company has: 25,000,000 shares of common stock, par value \$0.001, authorized, of which 21,250,000 shares have been designated as Class A Common Stock, and 3,750,000 have been designated as Class B Common Stock. Our Board has the right to create, authorize and issue new shares in the Company, including new classes, provided that it may not authorize or issue shares senior to the rights and preferences of our common stock without the consent of the common stockholders holding a majority of the outstanding shares of each class of common stock.

Registrar, Paying Agent and Transfer Agent for our Offered Shares

Duties

Issuer Direct Corporation will serve as the registrar and transfer agent for our Offered Shares. We will pay all fees charged by the transfer agent for transfers of our Offered Shares except for special charges for services requested by a Class B Common Stockholder.

There will be no charge to our Class B Common Stockholders for disbursements of our cash dividends, if any, although we do not anticipate issuing dividends for the foreseeable future. We will indemnify the transfer agent, its agents and each of their respective stockholders, directors, officers and employees against all claims and losses that may arise out of acts performed or omitted for its activities in that capacity, except for any liability due to any gross negligence or intentional misconduct of the indemnified person or entity.

Resignation or Removal

The transfer agent may resign, by notice to us, or be removed by us. The resignation or removal of the transfer agent will become effective upon our appointment of a successor transfer agent and registrar and its acceptance of the appointment. If no successor has been appointed and has accepted the appointment within 30 days after notice of the resignation or removal, our Board, or a designee of our Board, may act as the transfer agent and registrar until a successor is appointed.

Dividends

No dividends to investors in our Offered Shares are assured, nor are any returns on, or of, an investor's investment guaranteed. Dividends are subject to our ability to generate positive cash flow from operations. All dividends are further subject to the discretion of our Board. It is possible that we may have cash available for dividends, however, we anticipate retaining all of our earnings for the future operation of the Company and do not anticipate making any cash distributions in the foreseeable future.

Our Board, in its sole discretion, may determine from time to time to declare and pay dividends out of any funds legally available therefore. The Company has never declared or paid cash dividends on its capital stock. The Company currently intends to retain any future earnings to finance the growth and development of its business and therefore does not anticipate paying any cash dividends for the foreseeable future.

Liquidating Preferences

Upon the dissolution and liquidation of the Company, no stockholder will receive a preference in the distribution of liquidation proceeds. Liquidating distributions will be shared *pari passu* among our common stock.

Basis for Dividends

The Company's ability, and our Board's decisions, to issue dividends to our stockholders will be based upon the operating results of the Company. Our Board has discretion over whether to declare and pay dividends to our stockholders, however, we do not anticipate issuing any dividends for the foreseeable future.

Description of Certificate of Incorporation and Bylaws

The Company is governed by our certificate of incorporation, or our Certificate, and our bylaws, or our Bylaws. The following summary describes material provisions of our Certificate and our Bylaws, but it is not a complete description of our Certificate, our Bylaws or any combination of the two. A copy of our Certificate and our Bylaws are filed as exhibits to the Offering Statement of which this Offering Circular is a part.

Board of Directors

Subject to our stockholders' rights to consent to certain transactions as provided under the Delaware General Corporate Law, or DGCL, the business and affairs of the Company are controlled by, and all powers are exercised by, our board of directors, or our Board. Our Board is required to consist of not less than three (3) nor more than five (5) directors, the exact number to be set from time to time by the Board. Our Board is comprised of Paul Ahlstrom, Neal Harmon and Dalton Wright. Our Board is elected each year at the annual meeting of stockholders, to hold office until the next annual meeting and until their successors are elected and qualified. Any newly created directorships resulting from an increase in the authorized number of directors and any vacancies occurring in our Board may be filled by the affirmative vote of the remaining directors. A director may resign at any time, and the stockholders may remove a director at any time, with or without cause, by the affirmative vote of a majority of stockholders voting in such decision.

The DGCL provides that stockholders of a Delaware corporation are not entitled to the right to cumulate votes in the election of directors unless its certificate of incorporation provides otherwise. Our Certificate does not provide for cumulative voting.

Our Board may designate one or more committees. Such committees must consist of one or more directors. Any such committee, to the extent permitted by applicable law, will have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Company.

Officers

The Board has the authority to select the officers of the Company. The officers consist of a Chairman of the Board, a Chief Executive Officer, or CEO, a Secretary and a Treasurer. In addition, the Board may elect one or more Vice Chairmen, President, Chief Financial Officer and Vice Presidents, and such other offices as the Board may determine. Two or more of the aforementioned offices may be held by the same person. Our officers are: (i) Neal Harmon, CEO; (ii) Jeffrey Harmon, Chief Marketing Officer; (iii) Elizabeth Ellis, Chief Operating Officer, or COO; (iv) Patrick Reilly, Director of Finance and Secretary; and (v) David Quinto, General Counsel.

At the first meeting of the Board following the annual meeting of stockholders, the Board appoints the officers, however, the Board may also empower the CEO to appoint subordinate officers and agents for us. Each officer so elected holds office until such officer's successor is elected and qualified or until the officer's earlier resignation or removal. Each officer is required to perform such duties as are provided in the Bylaws or as the Board may from time to time determine. Subject to the rights, if any, of an officer under any employment agreement, any officer may be removed, with or without cause, by the affirmative vote of a majority of the Board. An officer may resign at any time on giving notice to the Board. Our CEO is in charge of the general affairs of the Company, subject to the oversight of the Board. In case any officer is absent, or for any other reason the Board may deem sufficient, the CEO or the Board may delegate the powers and duties of such officer to any other officer or to any director.

Fiduciary Duties and Indemnification

The Company shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, or Proceeding (other than an action by or in the right of the Company), by reason of the fact that he is or was a director, officer, employee or agent of the Company, or is or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against all liability and loss suffered and expenses reasonably incurred by such person in connection with any such Proceeding. The Company shall be required to indemnify a person in connection with a Proceeding initiated by such person only if the Proceeding was authorized by the Board.

Company Stock

The Company may issue up to 25,000,000 shares of capital stock, of which 25,000,000 shares will be common stock, par value \$0.001 per share of which 21,250,000 shares have been designated as Class A Common Stock, and 3,750,000 have been designated as Class B Common Stock.

Stockholder Rights

Voting

Class B Common Stockholders will not be entitled to vote other than as required by law. Only holders of Class A Common Stock are entitled to one vote for each share of Class A Common Stock held of record on all matters on which the holders of shares of Class A Common Stock are entitled to vote.

Meetings

The annual meeting of the stockholders shall be held at such date, time and place, if any, as shall be determined by the Board and stated in the notice of the meeting. Special meetings of the stockholders shall be called pursuant to resolution approved by the Board, chairperson of our Board, the Chief Executive Officer or President (in the absence of a Chief Executive Officer) or by Class A Common Stockholders holding shares of Class A Common Stock in the aggregate entitled to cast votes not less than ten (10%) percent of the votes at that meeting. The only business which may be conducted at a special meeting shall be the matter or matters set forth in the notice of such meeting.

Dividends and Liquidations

Upon any liquidation, dissolution or winding up of the Company, whether voluntary or involuntary, a Liquidation Event, the assets and funds of the Corporation available for distribution to its stockholders, if any, shall be distributed common stockholders, pro rata, then outstanding.

Amendment

Class A Common Stockholders may amend, alter or repeal our Certificate and our Bylaws.

Description of our Stockholders Agreement

Our Class B Common Stock is governed by our Stockholders Agreement. The following summary describes material provisions of our Stockholders Agreement, but it is not a complete description of our Stockholders Agreement. A copy of our Stockholders Agreement is filed as an exhibit to the Offering Statement of which this Offering Circular is a part.

Transfer restrictions.

Investors in our Class B Common Stock will be subject to the restrictions on transfer set forth in our Stockholders Agreement. Under the terms of our Stockholders Agreement, transfer of shares of our Class B Common Stock will be subject to a right of first refusal exercisable first by the Company, second, by our Class A Common Stockholders, and, third, by our remaining Class B Common Stockholders pursuant to the Stockholders Agreement. Prior to any transfer or proposed transfer of shares, the transferring shareholder, or the Seller, is required to give written notice to us and to the remaining stockholders of such proposed transfer. The certificates for our Class B Common Stock will be legended to reflect these restrictions.

Restrictions Imposed by the USA PATRIOT Act and Related Acts

In accordance with the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, or the USA PATRIOT Act, the securities offered hereby may not be offered, sold, transferred or delivered, directly or indirectly, to any “unacceptable investor,” which means anyone who is:

- a “designated national,” “specially designated national,” “specially designated terrorist,” “specially designated global terrorist,” “foreign terrorist organization,” or “blocked person” within the definitions set forth in the Foreign Assets Control Regulations of the United States, or U.S., Treasury Department;
 - acting on behalf of, or an entity owned or controlled by, any government against whom the U.S. maintains economic sanctions or embargoes under the Regulations of the U.S. Treasury Department;
 - within the scope of Executive Order 13224 — Blocking Property and Prohibiting Transactions with Persons who Commit, Threaten to Commit, or Support Terrorism, effective September 24, 2001;
- a person or entity subject to additional restrictions imposed by any of the following statutes or regulations and executive orders issued thereunder: the Trading with the Enemy Act, the National Emergencies Act, the Antiterrorism and Effective Death Penalty Act of 1996, the International Emergency Economic Powers Act, the United Nations Participation Act, the International Security and Development Cooperation Act, the Nuclear Proliferation Prevention Act of 1994, the Foreign Narcotics Kingpin Designation Act, the Iran and Libya Sanctions Act of 1996, the Cuban Democracy Act, the Cuban Liberty and Democratic Solidarity Act and the Foreign Operations, Export Financing and Related Programs Appropriations Act or any other law of similar import as to any non-U.S. country, as each such act or law has been or may be amended, adjusted, modified or reviewed from time to time; or
- designated or blocked, associated or involved in terrorism, or subject to restrictions under laws, regulations, or executive orders as may apply in the future similar to those set forth above.

ERISA CONSIDERATIONS

An investment in us by an employee benefit plan is subject to additional considerations because the investments of these plans are subject to the fiduciary responsibility and prohibited transaction provisions of ERISA and restrictions imposed by Section 4975 of the Code. For these purposes the term “employee benefit plan” includes, but is not limited to, qualified pension, profit-sharing and stock bonus plans, Keogh plans, simplified employee pension plans and tax deferred annuities or IRAs established or maintained by an employer or employee organization. Among other things, consideration should be given to:

- whether the investment is prudent under Section 404(a)(1)(B) of ERISA;
- whether in making the investment, that plan will satisfy the diversification requirements of Section 404(a)(1)(C) of ERISA; and
- whether the investment will result in recognition of unrelated business taxable income by the plan and, if so, the potential after-tax investment returns.

The person with investment discretion with respect to the assets of an employee benefit plan, often called a fiduciary, should determine whether an investment in us is authorized by the appropriate governing instrument and is a proper investment for the plan.

Section 406 of ERISA and Section 4975 of the Code prohibit employee benefit plans from engaging in specified transactions involving “plan assets” with parties that are “parties in interest” under ERISA or “disqualified persons” under the Code with respect to the plan.

In addition to considering whether the purchase of Offered Shares is a prohibited transaction, a fiduciary of an employee benefit plan should consider whether the plan will, by investing in us, be deemed to own an undivided interest in our assets, with the result that our operations would be subject to the regulatory restrictions of ERISA, including its prohibited transaction rules, as well as the prohibited transaction rules of the Code.

The Department of Labor regulations provide guidance with respect to whether the assets of an entity in which employee benefit plans acquire equity interests would be deemed “plan assets” under some circumstances. Under these regulations, an entity’s assets would not be considered to be “plan assets” if, among other things:

- (1) the equity interests acquired by employee benefit plans are publicly offered securities - i.e., the equity interests are widely held by 100 or more investors independent of the issuer and each other, freely transferable and registered under some provisions of the federal securities laws;
- (2) the entity is an “operating company”—i.e., it is primarily engaged in the production or sale of a product or service other than the investment of capital either directly or through a majority-owned subsidiary or subsidiaries; or
- (3) there is no significant investment by benefit plan investors, which is defined to mean that less than 25% of the value of each class of equity interest is held by the employee benefit plans referred to above.

We do not intend to limit investment by benefit plan investors in us because we anticipate that we will qualify as an “operating company”. If the Department of Labor were to take the position that we are not an operating company and we had significant investment by benefit plans, then we may become subject to the regulatory restrictions of ERISA which would likely have a material adverse effect on our business and the value of our common stock.

Plan fiduciaries contemplating a purchase of Offered Shares should consult with their own counsel regarding the consequences under ERISA and the Code in light of the serious penalties imposed on persons who engage in prohibited transactions or other violations.

ACCEPTANCE OF SUBSCRIPTIONS ON BEHALF OF PLANS IS IN NO RESPECT A REPRESENTATION BY OUR BOARD OR ANY OTHER PARTY RELATED TO US THAT THIS INVESTMENT MEETS THE RELEVANT LEGAL REQUIREMENTS WITH RESPECT TO INVESTMENTS BY ANY PARTICULAR PLAN OR THAT THIS INVESTMENT IS APPROPRIATE FOR ANY PARTICULAR PLAN. THE PERSON WITH INVESTMENT DISCRETION SHOULD CONSULT WITH HIS OR HER ATTORNEY AND FINANCIAL ADVISERS AS TO THE PROPRIETY OF AN INVESTMENT IN US IN LIGHT OF THE CIRCUMSTANCES OF THE PARTICULAR PLAN.

REPORTS

We will furnish the following reports, statements, and tax information to each stockholder:

Reporting Requirements under Tier II of Regulation A. Following this Tier II, Regulation A offering, we will be required to comply with certain ongoing disclosure requirements under Rule 257 of Regulation A. We will be required to file: an annual report with the SEC on Form 1-K; a semi-annual report with the SEC on Form 1-SA; current reports with the SEC on Form 1-U; and a notice under cover of Form 1-Z. The necessity to file current reports will be triggered by certain corporate events, similar to the ongoing reporting obligation faced by issuers under the Exchange Act, however the requirement to file a Form 1-U is expected to be triggered by significantly fewer corporate events than that of the Form 8-K. Parts I & II of Form 1-Z will be filed by us if and when we decide to and are no longer obligated to file and provide annual reports pursuant to the requirements of Regulation A.

Annual Reports. As soon as practicable, but in no event later than one hundred twenty (120) days after the close of our fiscal year, ending December 31, our Board will cause to be mailed or made available, by any reasonable means, to each Stockholder as of a date selected by the Board, an annual report containing financial statements of the Company for such fiscal year, presented in accordance with GAAP, including a balance sheet and statements of operations, company equity and cash flows, with such statements having been audited by an accountant selected by the Board. The Board shall be deemed to have made a report available to each stockholder as required if it has either (i) filed such report with the SEC via its Electronic Data Gathering, Analysis and Retrieval, or EDGAR, system and such report is publicly available on such system or (ii) made such report available on any website maintained by the Company and available for viewing by the stockholders.

Tax Information. On or before June 30th of the year immediately following our fiscal year, which is currently January 1st through December 31st, we will send to each stockholder such tax information as shall be reasonably required for federal and state income tax reporting purposes.

Stock Certificates. We do not anticipate issuing stock certificates representing Offered Shares purchased in this offering to the Class B Common Stockholders. However, we are permitted to issue stock certificates and may do so at the request of our transfer agent. The number of Offered Shares held by each Class B Common Stockholder, will be maintained by us or our transfer agent in the Company register.

INDEPENDENT AUDITORS

The balance sheet of VidAngel as of the fiscal years ended December 31, 2015 and 2014, and the statements of operations, stockholders' equity and cash flows of VidAngel for each of the two years ended December 31, 2015 and 2014, have been included in this Offering Circular and have been audited by Tanner LLC, independent auditors, as stated in their report appearing herein.

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VidAngel, Inc.

Financial Statements as of December 31, 2015 and 2014 for the Years Then Ended

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VIDANGEL, INC.

Interim Financial Statements

As of And For the Six Months Ended June 30, 2016 and 2015

Notice to Reader

Our auditors have not reviewed the unaudited interim financial statements for the six months ended June 30, 2016 and 2015. These financial statements and the notes thereto have been prepared by the Company's management in accordance with accounting principles generally accepted in the United States of America using management's best judgments, consistent with prior periods, and should be read in conjunction with the audited financial statements for the years ended December 31, 2015 and 2014.

VIDANGEL, INC.
Balance Sheets

As of June 30, 2016 and December 31, 2015 (Unaudited)

	<u>June 30, 2016</u>	<u>December 31, 2015</u>
<u>Assets</u>		
Current assets:		
Cash and cash equivalents	\$ 1,480,525	\$ 1,910,880
Accounts receivable	689	11,868
Prepaid expenses and other	<u>299,083</u>	<u>34,517</u>
Total current assets	1,780,297	1,957,265
Movie inventory	886,253	206,887
Property and equipment, net	<u>34,510</u>	<u>2,780</u>
Total assets	<u>\$ 2,701,060</u>	<u>\$ 2,166,932</u>
<u>Liabilities and Stockholders' Equity (Deficit)</u>		
Current liabilities:		
Accounts payable	\$ 222,494	\$ -
Accrued expenses	35,789	86,530
Deferred revenue	<u>3,248,449</u>	<u>669,341</u>
Total current liabilities	<u>3,506,732</u>	<u>755,871</u>
Commitments and contingencies		
Stockholders' equity (deficit):		
Common stock, \$0.001 par value, 25,000,000 shares authorized; 18,008,908 and 18,003,908 shares issued and outstanding, respectively	18,009	18,004
Additional paid-in capital	3,510,568	3,508,073
Accumulated deficit	<u>(4,334,249)</u>	<u>(2,115,016)</u>
Total stockholders' equity (deficit)	<u>(805,672)</u>	<u>1,411,061</u>
Total liabilities and stockholders' equity (deficit)	<u>\$ 2,701,060</u>	<u>\$ 2,166,932</u>

See accompanying notes to financial statements.

VIDANGEL, INC.
Statements of Operations

	<u>June 30 ,</u> <u>2016</u>	<u>June 30,</u> <u>2015</u>
Revenues, net	\$ 2,405,430	\$ 64,291
Operating expenses:		
Cost of revenues	815,284	51,544
Selling and marketing	2,836,930	50,689
General and administrative	629,120	125,086
Research and development	353,904	40,777
Total operating expenses	4,635,238	268,096
Operating loss	(2,229,808)	(203,805)
Other income (expense):		
Interest income	10,602	-
Interest expense	(27)	-
Other expense, net	-	(8,508)
Total other expense, net	10,575	(8,508)
Loss before income taxes	(2,219,233)	(212,313)
Provision for income taxes	-	-
Net loss	<u>\$ (2,219,233)</u>	<u>\$ (212,313)</u>

See accompanying notes to financial statements.

VIDANGEL, INC.
Statements of Stockholders' Equity (Deficit)**For the Six Months Ended June 30, 2016 and the Year Ended December 31, 2015 (Unaudited)**

	<u>Members'</u> <u>Interest</u>	<u>Common Stock</u> <u>Shares</u>	<u>Amount</u>	<u>Additional</u> <u>Paid-in</u> <u>Capital</u>	<u>Accumulated</u> <u>Deficit</u>	<u>Total</u> <u>Stockholders'</u> <u>Equity</u> <u>(Deficit)</u>
Balance as of January 1, 2015	\$ -	13,411,257	\$ 13,411	\$ 584,766	\$ (733,000)	\$ (134,823)
Convertible notes payable and related accrued interest converted to common stock	-	3,526,896	3,527	1,915,933	-	1,919,460
Issuance of common stock, net of issuance costs of \$5,000	-	1,065,755	1,066	993,934	-	995,000
Stock-based compensation expense	-	-	-	12,098	-	12,098
Contingent beneficial conversion feature	-	-	-	1,342	-	1,342
Net loss	-	-	-	-	(1,382,016)	(1,382,016)
Balance as of December 31, 2015	-	18,003,908	18,004	3,508,073	(2,115,016)	1,411,061
Exercise of stock options	-	5,000	5	2,495	-	2,500
Net loss	-	-	-	-	(2,219,233)	(2,219,233)
Balance as of June 30, 2016	<u>\$ -</u>	<u>18,008,908</u>	<u>\$ 18,009</u>	<u>\$ 3,510,568</u>	<u>\$ (4,334,249)</u>	<u>\$ (805,672)</u>

See accompanying notes to financial statements.

VIDANGEL, INC.
Statements of Cash Flows

For the Six Months Ended June 30, 2016 and 2015 (Unaudited)

	<u>June 30, 2016</u>	<u>June 30, 2015</u>
Cash flows from operating activities:		
Net loss	\$ (2,219,233)	\$ (212,313)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	5,795	1,047
Decrease (increase) in:		
Accounts receivable	11,179	-
Prepaid expenses and other assets	(264,566)	7,131
Movie inventory	(679,366)	(31,736)
Increase (decrease) in:		
Accounts payable and accrued expenses	171,753	(25,091)
Deferred revenue	2,579,108	92,474
Net cash used in operating activities	<u>(395,330)</u>	<u>(168,488)</u>
Cash flows from investing activities:		
Purchase of property and equipment	<u>(37,525)</u>	<u>-</u>
Cash flows from financing activities:		
Proceeds from convertible notes payable	-	335,417
Exercise of stock options	<u>2,500</u>	<u>-</u>
Net cash provided by financing activities	<u>2,500</u>	<u>335,417</u>
Net change in cash and cash equivalents	(430,355)	166,928
Cash and cash equivalents at beginning of year	<u>1,910,880</u>	<u>172,216</u>
Cash and cash equivalents at end of period	<u>\$ 1,480,525</u>	<u>\$ 339,145</u>
Supplemental disclosure of cash flow information:		
Cash paid for interest	\$ 27	\$ -

See accompanying notes to financial statements.

VIDANGEL, INC.
Notes to Financial Statements

For the Six Months Ended June 30, 2016 (Unaudited)

The interim financial information presented should be read in conjunction with the entity's latest annual audited financial statements.

- 1. Basis of Presentation** The accompanying financial statements have been prepared by the Company, without audit, and reflect all adjustments which are, in the opinion of management, necessary for a fair statement of the results for the interim periods presented. The financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America (GAAP) for interim financial reporting. Certain information and footnote disclosures normally included in financial statements prepared in accordance with GAAP have been condensed or omitted pursuant to such rules and regulations. It is the opinion of management that the financial statements reflect all adjustments which are necessary for a fair presentation of the financial position, results of operations and cash flows for the interim periods presented. The results of operations for the six months ended June 30, 2016 are not necessarily indicative of the results expected for the entire fiscal year.

2. Description of Organization and Summary of Significant Accounting Policies

Organization

VidAngel, Inc. (the Company) was incorporated on November 13, 2013 as a Utah limited liability Company. On February 7, 2014, the Company converted to a Delaware corporation. The Company resells Blu-Ray and DVD discs to its customers. The Company includes access to proprietary content filtering technology as part of the transaction. With the purchase of the disc, and access to the technology, the customer then has the ability to stream a customized version of the disc to their location for viewing on many of today's most popular devices. After they are finished with a disc, the customer has the option to sell the disc back to the Company at a reduced price. The sell-back price varies depending on the type (Blu-Ray or DVD) of the disc, and the number of days the customer owned the disc.

Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect reported amounts and disclosures. Accordingly, actual results could differ from those estimates. Key management estimates include the estimated life of the customer's ownership of a disc, valuation allowances for net deferred income tax assets, and valuation of stock-based compensation.

VIDANGEL, INC.**Notes to Financial Statements*****Continued*****For the Six Months Ended June 30, 2016 (Unaudited)****2. Description of Organization and Summary of Significant Accounting Policies*****Continued******Cash and Cash Equivalents***

The Company considers all highly liquid investments with original maturities to the Company of three months or less to be cash equivalents. As of June 30, 2016 these cash equivalents consisted of money market accounts.

Movie Inventory

Movie inventory includes DVD and Blu-Ray discs purchased by the Company for resell, not in excess of realizable value. Movie inventory is recorded at the lower of cost or market, with cost being determined on a first in, first out method. The Company periodically reviews inventories for excess supply, obsolescence, and valuations above estimated realizable amounts, and provides a reserve to cover these items. Management determined that no allowance for obsolete inventory was necessary as of June 30, 2016.

Property and Equipment

Property and equipment are stated at cost less accumulated depreciation and amortization. Depreciation and amortization are calculated using the straight-line method over the estimated economic useful lives of the assets or over the related lease terms (if shorter) as follows:

Office and computer equipment	3 years
Leasehold improvements	1 year

Expenditures that materially increase values or capacities or extend useful lives of property and equipment are capitalized. Routine maintenance, repairs, and renewal costs are expensed as incurred. Upon sale or other retirement of depreciable property, the cost and accumulated depreciation and amortization are removed from the related accounts and any gain or loss is reflected in the statement of operations.

Impairment of Long-Lived Assets

The Company reviews its property and equipment, and other long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying amount of the assets may be impaired. If it is determined that the estimated undiscounted future cash flows are not sufficient to recover the carrying value of the asset, an impairment loss is recognized in the statements of operations for the difference between the carrying value and the fair value of the asset. Management does not consider any of the Company's assets to be impaired as of June 30, 2016.

VIDANGEL, INC.**Notes to Financial Statements*****Continued*****For the Six Months Ended June 30, 2016 (Unaudited)****2. Description of
Organization
and Summary
of Significant
Accounting
Policies
*Continued******Revenue Recognition***

The Company resells Blu-Ray and DVD discs to its customers for a fixed price of \$20. Upon purchase of the disc, the customer agrees to have the Company retain physical custody of the purchased disc until such a time that the customer either requests to have the disc shipped to them directly, or the customer decides to sell the disc back to the Company at an agreed upon price, which reduces \$1 per day for DVD discs, and \$2 per day for Blu-Ray discs. During the time that the customer owns the disc, the Company gives the customer access to a patented video streaming technology that permits the customer to direct their individual viewing experience by allowing them to remove certain audio or video segments that contain material that may be considered objectionable by a member of the private household. Access to this technology is available during the entire period of which the customer owns the disc purchased from the Company, and is extinguished upon the customer selling the disc back to the Company. Revenue is recognized when all of the following criteria have been met: (1) persuasive evidence of an arrangement exists, (2) services have been rendered, (3) the Company's price to the buyer is fixed or determinable, and (4) collectability is reasonably assured.

The Company separates its revenue transactions into two pools based on length of time of disc ownership – short-term and long-term ownership of discs.

Transactions that have a short-term ownership of a disc exhibit a very short ownership time period, usually on average selling the disc back to the Company within 5 hours. For these transactions, the Company recognizes revenue on a daily basis, in an amount equal to the daily reduction in the sell-back price from the customer to the Company (\$1 or \$2 per day), and ceasing upon the customer's sell-back of the disc. Approximately 99.5% of the Company's transactions are short-term.

Transactions that have a long-term ownership exhibit a longer period of time of ownership – in excess of 20 days. A majority of the customers entering long-term transactions appear to be building a library of movie titles, and may own the associated discs indefinitely. The Company estimates the expected period of the long-term transactions, and recognizes revenue based on a subscription model, or ratably over the expected term. Cash received from customers prior to recognition of revenue is recorded as deferred revenue.

Advertising

Advertising costs are expensed as incurred. Advertising expenses totaled \$2,353,396 for the six months ended June 30, 2016.

VIDANGEL, INC.**Notes to Financial Statements*****Continued*****For the Six Months Ended June 30, 2016 (Unaudited)****3. Commitments
and
Contingencies*****Litigation***

The Company is involved in legal proceedings from time to time arising in the normal course of business. The Company has received, and may in the future continue to receive, claims from third parties. Management, after consultation with legal counsel, believes that the outcome of these proceedings may have a material impact on the Company's financial position, results of operations, or liquidity.

Current and future litigation may be necessary to defend the Company and its customers by determining the scope, enforceability, and validity of these claims. The results of any current or future complex litigation matters cannot be predicted with certainty, and regardless of the outcome, litigation can have an adverse impact because of defense and settlement costs, distraction of management resources, and other factors. Additionally, these matters may change in the future as the litigation and factual discovery unfolds. Legal fees are expensed as incurred. Insurance recoveries associated with legal costs incurred are recorded when they are deemed probable of recovery.

The Company assesses whether there is a reasonable possibility that a loss, or additional losses beyond those already accrued, may be incurred ("Material Loss"). If there is a reasonable possibility that a Material Loss may be incurred, the Company discloses an estimate or range of the amount of loss, either individually or in the aggregate, or discloses that an estimate of loss cannot be made. If a Material Loss occurs due to an unfavorable outcome in any legal matter, this may have an adverse effect on the financial position, results of operations, and liquidity of the Company. The Company records a provision for each liability when determined to probable, and the amount of the loss may be reasonably estimated. These provisions are reviewed annually and adjusted as additional information becomes available.

The Company is involved in various litigation matters and believes that any reasonably possible adverse outcome of these matters could potentially be material, either individually or in the aggregate, to the Company's financial position, results of operations and liquidity. As of the date of the independent auditors' report management has determined an adverse outcome is not yet probable or estimable, and has not accrued any estimated losses related to these matters. Expectations may change in the future as the litigation and events related thereto unfold. For the six months ended June 30, 2016 the Company incurred \$99,950 in legal and litigation costs, which are included in general and administrative expenses in the accompanying statements of operations.

VIDANGEL, INC.**Notes to Financial Statements*****Continued*****For the Six Months Ended June 30, 2016 (Unaudited)**

- 4. Related Party Transactions** The Company has a marketing services contract with an entity owned by one of the Company's stockholders. For the six months ended June 30, 2016, the Company incurred expenses of \$2,166,989, to the related party for marketing services.
- 5. Subsequent Events**
- Litigation***
As described more fully in Note 3, the Company is subject to claims and litigation that arise in the normal course of business. Management reviews those claims and believes none of them meet the standard for accrual or disclosure. In August 2016, a motion for preliminary injunction was filed in District Court in attempt to stop the operations of the Company while the litigation is resolved. The initial complaint was filed in June 2016, and was brought against the Company for infringing on exclusive rights under the Copyright Act and for violating the Digital Millennium Copyright Act. The Company believes its legal position has merit, and is vigorously defending the matter. The potential loss associated with the lawsuit is not estimable and the probability of the loss is unknown.
- Employment Agreement***
On July 21, 2016, the Company hired an attorney as in-house general counsel. The associated employment agreement includes certain common stock option modifications, severance terms in certain circumstances, and the establishment of a cash collateral account.
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VIDANGEL, INC.

**Financial Statements as of December 31, 2015 and 2014
and For the Years Then Ended**

Together with Independent Auditors' Report

INDEPENDENT AUDITORS' REPORT**To the Board of Directors and Management of
VidAngel, Inc.**

We have audited the accompanying financial statements of VidAngel, Inc. (the Company), which comprise the balance sheets as of December 31, 2015 and 2014, the related statements of operations, stockholders' equity, and cash flows for the years then ended, and the related notes to financial statements.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to error or fraud.

Auditors' Responsibility

Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditors' judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to error or fraud. In making those risk assessments, the auditors consider internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of VidAngel, Inc. as of December 31, 2015 and 2014, and the results of its operations and its cash flows for the years then ended, in accordance with accounting principles generally accepted in the United States of America.

/s/ Tanner LLC
Salt Lake City, Utah

July 29, 2016

VIDANGEL, INC.
Balance Sheets**As of December 31,**

	<u>2015</u>	<u>2014</u>
<u>Assets</u>		
Current assets:		
Cash and cash equivalents	\$ 1,910,880	\$ 172,216
Accounts receivable	11,868	-
Prepaid expenses and other	<u>34,517</u>	<u>20,013</u>
Total current assets	1,957,265	192,229
Movie inventory	206,887	6,234
Property and equipment, net	<u>2,780</u>	<u>4,015</u>
Total assets	<u>\$ 2,166,932</u>	<u>\$ 202,478</u>
<u>Liabilities and Stockholders' Equity (Deficit)</u>		
Current liabilities:		
Accounts payable	\$ -	\$ 65,522
Accrued expenses	86,530	4,301
Deferred revenue	669,341	395
Convertible notes payable	<u>-</u>	<u>267,083</u>
Total current liabilities	<u>755,871</u>	<u>337,301</u>
Commitments and contingencies		
Stockholders' equity (deficit):		
Common stock, \$0.001 par value, 25,000,000 and 15,000,000 shares authorized, respectively; 18,003,908 and 13,411,257 shares issued and outstanding, respectively	18,004	13,411
Additional paid-in capital	3,508,073	584,766
Accumulated deficit	<u>(2,115,016)</u>	<u>(733,000)</u>
Total stockholders' equity (deficit)	<u>1,411,061</u>	<u>(134,823)</u>
Total liabilities and stockholders' equity (deficit)	<u>\$ 2,166,932</u>	<u>\$ 202,478</u>

See accompanying notes to financial statements.

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VIDANGEL, INC.
Statements of Operations

Years Ended December 31,

	<u>2015</u>	<u>2014</u>
Revenues, net	\$ 415,517	\$ 19,265
Operating expenses:		
Cost of revenues	256,831	93,232
Selling and marketing	699,773	210,167
General and administrative	468,396	452,407
Research and development	310,754	35,990
Total operating expenses	1,735,754	791,796
Operating loss	(1,320,237)	(772,531)
Other income (expense):		
Interest expense	(52,435)	(2,047)
Other expense, net	(9,344)	(3,238)
Total other expense, net	(61,779)	(5,285)
Loss before income taxes	(1,382,016)	(777,816)
Provision for income taxes	-	(100)
Net loss	<u>\$ (1,382,016)</u>	<u>\$ (777,916)</u>

See accompanying notes to financial statements.

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VIDANGEL, INC.
Statements of Stockholders' Equity**For the Years Ended December 31, 2015 and 2014**

	Members'	Common Stock		Additional	Accumulated	Total
	Interest	Shares	Amount	Paid-in	Deficit	Stockholders'
				Capital		Equity
						(Deficit)
Balance as of January 1, 2014	\$ 26,343	-	\$ -	\$ -	\$ -	\$ 26,343
Net loss	(44,916)	-	-	-	(733,000)	(777,916)
Conversion from LLC to C-Corp	18,573	10,000,000	10,000	(28,573)	-	-
Issuance of common stock, net of issuance costs of \$3,000	-	3,411,257	3,311	593,689	-	597,000
Issuance of common stock for services	-	-	100	17,900	-	18,000
Stock- based compensation expense	-	-	-	1,750	-	1,750
Balance as of December 31, 2014	-	13,411,257	13,411	584,766	(733,000)	(134,823)
Convertible notes payable and related accrued interest converted to common stock	-	3,526,896	3,527	1,915,933	-	1,919,460
Issuance of common stock, net of issuance costs of \$5,000	-	1,065,755	1,066	993,934	-	995,000
Stock- based compensation expense	-	-	-	12,098	-	12,098
Contingent beneficial conversion feature	-	-	-	1,342	-	1,342
Net loss	-	-	-	-	(1,382,016)	(1,382,016)
Balance as of December 31, 2015	\$ -	<u>18,003,908</u>	<u>\$ 18,004</u>	<u>\$ 3,508,073</u>	<u>\$ (2,115,016)</u>	<u>\$ 1,411,061</u>

See accompanying notes to financial statements.

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VIDANGEL, INC.
Statements of Cash Flows

For the Years Ended December 31,

	<u>2015</u>	<u>2014</u>
Cash flows from operating activities:		
Net loss	\$ (1,382,016)	\$ (777,916)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	2,879	2,095
Contingent beneficial conversion feature	1,342	-
Issuance of common stock for services	-	18,000
Stock-based compensation expense	12,098	1,750
Loss on sale of assets	1,555	-
Decrease (increase) in:		
Accounts receivable	(11,868)	-
Prepaid expenses and other assets	(14,504)	(18,773)
Movie inventory	(200,653)	(6,234)
Increase (decrease) in:		
Accounts payable and accrued expenses	71,167	49,721
Deferred revenue	668,946	395
Net cash used in operating activities	<u>(851,054)</u>	<u>(730,962)</u>
Cash flows from investing activities:		
Purchase of property and equipment	<u>(3,199)</u>	<u>-</u>
Cash flows from financing activities:		
Proceeds from issuance of common stock, net	995,000	597,000
Proceeds from convertible notes payable	1,597,917	267,083
Net cash provided by financing activities	<u>2,592,917</u>	<u>864,083</u>
Net change in cash and cash equivalents	1,738,664	133,121
Cash and cash equivalents at beginning of year	172,216	39,095
Cash and cash equivalents at end of year	<u>\$ 1,910,880</u>	<u>\$ 172,216</u>
Supplemental disclosure of cash flow information:		
Cash paid for interest	\$ -	\$ -
Cash paid for income taxes	-	-
Supplemental disclosure of non-cash investing and financing information:		
Convertible notes payable and related accrued interest converted to common stock	\$ 1,919,460	\$ -
Conversion of LLC to C-Corp	-	28,573

See accompanying notes to financial statements.

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VIDANGEL, INC.
Notes to Financial Statements

December 31, 2015 and 2014

**1. Description of
Organization
and Summary
of Significant
Accounting
Policies**

Organization

VidAngel, Inc. (the Company) was incorporated on November 13, 2013 as a Utah limited liability Company. On February 7, 2014, the Company converted to a Delaware corporation. The Company resells Blu-Ray and DVD discs to its customers. The Company includes access to proprietary content filtering technology as part of the transaction. With the purchase of the disc, and access to the technology, the customer then has the ability to stream a customized version of the disc to their location for viewing on many of today's most popular devices. After they are finished with a disc, the customer has the option to sell the disc back to the Company at a reduced price. The sell-back price varies depending on the type (Blu-Ray or DVD) of the disc, and the number of days the customer owned the disc.

Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect reported amounts and disclosures. Accordingly, actual results could differ from those estimates. Key management estimates include the estimated life of the customer's ownership of a disc, valuation allowances for net deferred income tax assets, and valuation of stock-based compensation.

Concentrations of Credit Risk

The Company maintains its cash and cash equivalents in bank deposit accounts which, at times, exceed federally insured limits. At December 31, 2015 and 2014, the Company had approximately \$1,660,000 and \$19,000 of cash and cash equivalents that exceeded federally insured limits. To date, the Company has not experienced a loss or lack of access to its invested cash and cash equivalents; however, no assurance can be provided that access to the Company's invested cash and cash equivalents will not be impacted by adverse conditions in the financial markets.

Major vendors are defined as those vendors having expenditures made by the Company which exceed 10% of the Company's total cost of revenues. Concentrations of vendors were as follows for the year ended December 31, 2015:

Vendor A	69%
Vendor B	18%

There were no vendor concentrations for the year ended December 31, 2014.

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VIDANGEL, INC.
Notes to Financial Statements
Continued

December 31, 2015 and 2014

**1. Description of
Organization
and Summary
of Significant
Accounting
Policies
Continued**

Cash and Cash Equivalents

The Company considers all highly liquid investments with original maturities to the Company of three months or less to be cash equivalents. As of December 31, 2015 and 2014, these cash equivalents consisted of money market accounts.

Movie Inventory

Movie inventory includes DVD and Blu-Ray discs purchased by the Company for resale, not in excess of realizable value. Movie inventory is recorded at the lower of cost or market, with cost being determined on a first in, first out method. The Company periodically reviews inventories for excess supply, obsolescence, and valuations above estimated realizable amounts, and provides a reserve to cover these items. Management determined that no allowance for obsolete inventory was necessary as of December 31, 2015 and 2014.

Property and Equipment

Property and equipment are stated at cost less accumulated depreciation and amortization. Depreciation and amortization are calculated using the straight-line method over the estimated economic useful lives of the assets or over the related lease terms (if shorter) as follows:

Office and computer equipment	3 years
Leasehold improvements	1 year

Expenditures that materially increase values or capacities or extend useful lives of property and equipment are capitalized. Routine maintenance, repairs, and renewal costs are expensed as incurred. Upon sale or other retirement of depreciable property, the cost and accumulated depreciation and amortization are removed from the related accounts and any gain or loss is reflected in the statement of operations.

Impairment of Long-Lived Assets

The Company reviews its property and equipment, and other long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying amount of the assets may be impaired. If it is determined that the estimated undiscounted future cash flows are not sufficient to recover the carrying value of the asset, an impairment loss is recognized in the statements of operations for the difference between the carrying value and the fair value of the asset. Management does not consider any of the Company's assets to be impaired as of December 31, 2015 and 2014.

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VIDANGEL, INC.
Notes to Financial Statements
Continued

December 31, 2015 and 2014

**1. Description of
Organization
and Summary
of Significant
Accounting
Policies**
Continued

Revenue Recognition

The Company resells Blu-Ray and DVD discs to its customers for a fixed price of \$20. Upon purchase of the disc, the customer agrees to have the Company retain physical custody of the purchased disc until such a time that the customer either requests to have the disc shipped to them directly, or the customer decides to sell the disc back to the Company at an agreed upon price, which reduces \$1 per day for DVD discs, and \$2 per day for Blu-Ray discs. During the time that the customer owns the disc, the Company gives the customer access to a patented video streaming technology that permits the customer to direct their individual viewing experience by allowing them to remove certain audio or video segments that contain material that may be considered objectionable by a member of the private household. Access to this technology is available during the entire period of which the customer owns the disc purchased from the Company, and is extinguished upon the customer selling the disc back to the Company. Revenue is recognized when all of the following criteria have been met: (1) persuasive evidence of an arrangement exists, (2) services have been rendered, (3) the Company's price to the buyer is fixed or determinable, and (4) collectability is reasonably assured.

The Company separates its revenue transactions into two pools based on length of time of disc ownership – short-term and long-term ownership of discs.

Transactions that have a short-term ownership of a disc exhibit a very short ownership time period, usually on average selling the disc back to the Company within 5 hours. For these transactions, the Company recognizes revenue on a daily basis, in an amount equal to the daily reduction in the sell-back price from the customer to the Company (\$1 or \$2 per day), and ceasing upon the customer's sell-back of the disc. Approximately 99.65% of the Company's transactions are short-term.

Transactions that have a long-term ownership exhibit a longer period of time of ownership – in excess of 20 days. A majority of the customers entering long-term transactions appear to be building a library of movie titles, and may own the associated discs indefinitely. The Company estimates the expected period of the long-term transactions, and recognizes revenue based on a subscription model, or ratably over the expected term.

Cash received from customers prior to recognition of revenue is recorded as deferred revenue.

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VIDANGEL, INC.
Notes to Financial Statements
Continued

December 31, 2015 and 2014

**1. Description of
Organization
and Summary
of Significant
Accounting
Policies
*Continued***

Stock-Based Compensation

Stock-based payments made to employees, including grants of employee stock options, are measured using a fair value-based method. The related expense is recorded in the statements of operations over the period of service.

Advertising

Advertising costs are expensed as incurred. Advertising expenses totaled \$430,084 and \$67,044 for the years ended December 31, 2015 and 2014, respectively.

Income Taxes

Income taxes are provided for the tax effects of transactions reported in the financial statements and consist of taxes currently due plus deferred taxes related primarily to differences between the tax bases of assets and liabilities. The deferred taxes represent the future tax return consequences of those differences, which will either be taxable or deductible when the assets and liabilities are recovered or settled. Deferred income tax assets are reviewed periodically for recoverability, and valuation allowances are provided when it is more likely than not that some or all of the deferred income tax assets may not be realized.

The Company believes that it has appropriate support for the income tax positions taken and to be taken on its tax returns and that its accruals for tax liabilities are adequate for all open tax years based on an assessment of many factors including experience and interpretations of tax laws applied to the facts of each matter. The Company files income tax returns in the U.S. federal jurisdiction and certain state jurisdictions. With few exceptions, the Company is subject to U.S. federal and state and local income tax examinations by tax authorities for years ending December 2015, 2014, and 2013.

Subsequent Events

Management has evaluated events and transactions for potential recognition or disclosure through July 29, 2016, which is the day the financial statements were available to be issued.

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VIDANGEL, INC.
Notes to Financial Statements
Continued
December 31, 2015 and 2014

2. Property and Equipment

Property and equipment consisted of the following as of December 31:

	<u>2015</u>	<u>2014</u>
Computer equipment	\$ 4,730	\$ 6,285
Leasehold improvements	3,199	-
	7,929	6,285
Less accumulated depreciation and amortization	(5,149)	(2,270)
	<u>\$ 2,780</u>	<u>\$ 4,015</u>

Depreciation and amortization expense on property and equipment for the years ended December 31, 2015 and 2014 was \$2,879 and \$2,095, respectively.

3. Convertible Notes Payables

Convertible notes payable were due various investors with an annual interest rate equal to 7%, and a maturity date of November 7, 2015. The notes were secured by substantially all of the assets of the Company. The notes were converted into shares of common stock during 2015. Certain notes raised in June 2015 were converted into shares of common stock pursuant to a contingent beneficial conversion feature, totaling \$1,342. The balance of the convertible notes payable as of December 31, 2015 and 2014 was \$0 and \$267,083, respectively.

4. Commitments and Contingencies

Litigation

The Company is involved in legal proceedings from time to time arising in the normal course of business. The Company has received, and may in the future continue to receive, claims from third parties. Management, after consultation with legal counsel, believes that the outcome of these proceedings may have a material impact on the Company's financial position, results of operations, or liquidity.

Current and future litigation may be necessary to defend the Company and its customers by determining the scope, enforceability, and validity of these claims. The results of any current or future complex litigation matters cannot be predicted with certainty, and regardless of the outcome, litigation can have an adverse impact because of defense and settlement costs, distraction of management resources, and other factors. Additionally, these matters may change in the future as the litigation and factual discovery unfolds. Legal fees are expensed as incurred. Insurance recoveries associated with legal costs incurred are recorded when they are deemed probable of recovery.

VIDANGEL, INC.
Notes to Financial Statements
Continued
December 31, 2015 and 2014

**4. Commitments
and
Contingencies**
Continued

Litigation - continued

The Company assesses whether there is a reasonable possibility that a loss, or additional losses beyond those already accrued, may be incurred ("Material Loss"). If there is a reasonable possibility that a Material Loss may be incurred, the Company discloses an estimate or range of the amount of loss, either individually or in the aggregate, or discloses that an estimate of loss cannot be made. If a Material Loss occurs due to an unfavorable outcome in any legal matter, this may have an adverse effect on the financial position, results of operations, and liquidity of the Company. The Company records a provision for each liability when determined to probable, and the amount of the loss may be reasonably estimated. These provisions are reviewed annually and adjusted as additional information becomes available.

The Company is involved in various litigation matters and believes that any reasonably possible adverse outcome of these matters could potentially be material, either individually or in the aggregate, to the Company's financial position, results of operations and liquidity. As of the date of the independent auditors' report management has determined an adverse outcome is not yet probable or estimable, and has not accrued any estimated losses related to these matters. Expectations may change in the future as the litigation and events related thereto unfold. During 2015 and 2014 the Company incurred \$38,906 and \$262,394, respectively, in legal and litigation costs, which are included in general and administrative expenses in the accompanying statements of operations. Also see Note 8.

Operating Leases

The Company leases office facilities under a month-to-month operating lease. Rental expense under operating leases was \$9,545 and \$5,000 for the years ended December 31, 2015 and 2014, respectively.

5. Stock Options

Stock Options

The Company's 2014 Stock Incentive Plan (the Plan), originally approved on February 27, 2014, provides for the grant of incentive stock options, nonqualified options, stock appreciation rights, and shares of restricted stock. Under the terms of the Plan, there are 1,034,544 shares of common stock available for grant to employees, officers, directors and consultants. The Board of Directors determines the terms of each grant. Generally, the options have a vesting period of 4 years with 1/48th vesting on each monthly anniversary of the vesting reference date over the four-year period, thereafter, and have a contractual life of ten (10) years. Certain stock options have provisions to accelerate vesting upon the occurrence of certain events. There are 299,733 and 915,233 shares available for grant under the Plan as of December 31, 2015 and 2014, respectively.

VIDANGEL, INC.
Notes to Financial Statements
Continued
December 31, 2015 and 2014

5. Stock Options
Continued

Stock-based compensation expense for the years ended December 31, 2015 and 2014 was \$12,098 and \$1,750, respectively. As of December 31, 2015 and 2014, the Company had \$94,556 and \$106,654, respectively, of unrecognized stock-based compensation costs related to non-vested awards that will be recognized over a weighted-average period of 4 years.

The following sets forth the outstanding common stock options and related activity for the years ended December 31, 2015 and 2014:

	Number of Options	Weighted Average Exercise Price Per Share
Outstanding as of January 1, 2014	-	\$ -
Granted	188,813	0.186
Exercised	-	-
Forfeited	(69,502)	0.186
Outstanding as of December 31, 2014	119,311	0.190
Granted	625,500	0.500
Exercised	-	-
Forfeited	(10,000)	0.186
Outstanding as of December 31, 2015	734,811	0.450

The following summarizes information about stock options outstanding as of December 31, 2015 and 2014:

2015				
Number of Options Outstanding	Weighted Average Remaining Contractual Life (Years)	Weighted Average Exercise Price	Number of Options Exercisable	Weighted Average Exercise Price
99,311	8.39	\$ 0.18	69,690	\$ 0.18
10,000	8.85	0.30	3,900	0.30
625,500	9.45	0.50	60,790	0.50
734,811			134,380	

VIDANGEL, INC.
Notes to Financial Statements
Continued
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5. Stock Options
Continued

2014				
Number of Options Outstanding	Weighted Average Remaining Contractual Life (Years)	Weighted Average Exercise Price	Number of Options Exercisable	Weighted Average Exercise Price
109,311	9.38	\$ 0.18	63,062	\$ 0.18
10,000	9.85	0.30	500	0.30
<u>119,311</u>			<u>63,562</u>	

The fair value of each stock-based award granted was estimated on the date of grant using the Black-Scholes option-pricing model with the following assumptions:

	2015	2014
Risk-free interest rate	1.31 – 1.69%	1.49 – 1.68%
Expected stock price volatility	50%	50%
Expected dividend yield	0%	0%
Expected life of options	5 years	5 years

As of December 31, 2015 and 2014, the aggregate intrinsic value of options outstanding was \$268,919 and \$0, respectively. As of December 31, 2015 and 2014, the aggregate intrinsic value of options outstanding and exercisable was \$52,644 and \$0, respectively.

Expected option lives and volatilities were based on historical data of the Company and comparable companies in the industry. The risk free interest rate was calculated using similar rates published by the Federal Reserve. The Company has no plans to declare any future dividends.

6. Related Party Transactions

The Company has a marketing services contract with an entity owned by one of the Company's stockholders. During 2015 and 2014, the Company incurred expenses of \$375,870 and \$0, respectively, to the related party for marketing services.

VIDANGEL, INC.
Notes to Financial Statements
Continued
December 31, 2015 and 2014

7. Income Taxes

The provision (benefit) for income taxes differs from the amount computed at federal statutory rates as follows:

	<u>2015</u>	<u>2014</u>
Federal income tax at statutory rates	\$ (469,919)	\$ (264,457)
State income tax at statutory rates	(45,064)	(25,526)
Change in valuation allowance	512,083	288,557
Other	2,900	1,526
	<u>\$ —</u>	<u>\$ 100</u>

Significant components of the Company's net deferred income tax assets (liabilities) are as follows as of December 31:

	<u>2015</u>	<u>2014</u>
Current:		
Accruals and reserves	\$ 264,401	\$ 19,410
Valuation allowance	(264,401)	(19,410)
	<u>\$ —</u>	<u>\$ —</u>
Long-term:		
Net operating loss carryforwards	\$ 542,350	\$ 276,004
Depreciation and amortization	374	(372)
Valuation allowance	(542,724)	(275,632)
	<u>\$ —</u>	<u>\$ —</u>

As of December 31, 2015, the Company has net operating loss (NOL) carryforwards available to offset future taxable income, if any, of approximately \$1,454,000, which will begin to expire in 2034.

The utilization of the NOL carryforwards is subject to annual limitations under Section 382 of the Internal Revenue Code. Section 382 imposes limitations on a corporation's ability to utilize its NOL carryforwards if it experiences an "ownership change." In general terms, an ownership change results from transactions increasing the ownership of certain stockholders in the stock of a corporation by more than 50% over a three-year period.

The Company has concluded that there are no significant uncertain tax positions requiring disclosure, and there are no material amounts of unrecognized tax benefits.

VIDANGEL, INC.
Notes to Financial Statements
Continued
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8. Subsequent Events

Litigation

As described more fully in Note 4, the Company is subject to claims and litigation that arise in the normal course of business. Management reviews those claims and believes none of them meet the standard for accrual or disclosure. In June 2016, a complaint was brought against the Company for infringing on exclusive rights under the Copyright Act and for violating the Digital Millennium Copyright Act. The Company believes its legal position has merit, and is vigorously defending the matter. The potential loss associated with the lawsuit is not estimable and the probability of the loss is unknown.

Stock Repurchase Agreement

On January 21, 2016, the Company entered into a stock repurchase agreement with one of the shareholders. The agreement was for the shareholder to sell to the Company and the Company agreed to purchase from the shareholder 397,350 shares of the Company's common stock for \$325,000.

Employment Agreement

On July 21, 2016, the Company hired an attorney as in-house general counsel. The associated employment agreement includes certain common stock option modifications, severance terms in certain circumstances, and the establishment of a cash collateral account.

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VidAngel, Inc.

\$11,250,000 Maximum Offering Amount (3,750,000 Shares of Class B Nonvoting Common Stock)

\$5,000,000 Minimum Offering Amount (1,666,667 shares of Class B Nonvoting Common Stock)

Offering Circular

October 19, 2016
