

Benjamin Aaron Shapiro (SBN 254456)
12330 Magnolia Blvd., #114
Valley Village, CA 91607
Telephone: (818)620-0137

Attorney for Defendant
THE ORIGINAL TALK RADIO NETWORK, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

BRAVE NEW FILMS 501(c)(4),

Plaintiff,

vs.

MICHAEL WEINER aka MICHAEL
SAVAGE and ORIGINAL TALK RADIO
NETWORK, INC.,

Defendants

) Case No.: CV 08-4703 SI

) **DECLARATION OF BENJAMIN AARON**
) **SHAPIRO IN SUPPORT OF**
) **DEFENDANT THE ORIGINAL TALK**
) **RADIO NETWORK, INC.'S MOTION**
) **FOR SUMMARY JUDGMENT**

) Date: April 3rd, 2009

) Time: 9:00 a.m.

) Location: Courtroom

Honorable Susan Illston

I, BENJAMIN AARON SHAPIRO, hereby declare that:

1. I am an attorney at law duly licensed to practice before all courts of the State of California, and before the Northern District of California.

2. I am one of the California attorneys for defendant THE ORIGINAL TALK RADIO NETWORK, INC. (“OTRN” or “Defendant”), and I am the attorney of record for OTRN in this Action.

3. I have personal knowledge of all matters addressed in this declaration, and could testify competently thereto if called upon to do so.

4. On or before September 29, 2008, on behalf of OTRN, I reviewed several hundred videos posted on YouTube concerning The Michael Savage Show (the “Show”) and/or

1 MICHAEL WEINER, aka MICHAEL SAVAGE (“**Savage**”) for possible copyright
2 infringement, with respect to OTRN’s copyright claims with respect to the Show.

3 5. In reviewing the videos, I did not pursue videos which did not involve use of
4 content from the Show in which OTRN claims the copyright.

5 6. I also reviewed those videos which involved use of content from the Show to
6 evaluate whether, in my opinion, they involved legitimate fair use of OTRN’s content from the
7 Show, under the applicable fair use statutory provisions and precedents, as I understand them.
8 Although the number of videos was voluminous and the task was time consuming, I did review
9 each video, and did not pursue any demand as to those videos which, in my good faith opinion,
10 constituted legitimate fair use of OTRN content from the Show.

11 7. I then drafted a proposed letter to YouTube’s “DMCA Complaints” demanding
12 removal of content from the Show which I believed was posted on YouTube in violation of
13 OTRN’s copyright claim to the Show (the “**09/29/08 Notice**”) and prepared an attachment
14 which listed the 259 videos which I had personally reviewed and concluded constituted
15 copyright violations which did not involve legitimate fair use of content taken from the Show
16 (the “**Attachment**”).

17 8. I drafted the 09/29/08 Notice to serve as an initial demand to YouTube to remove
18 videos which I believed to be in violation of OTRN’s copyright with respect to the Show. It
19 was not designed or represented to be a formal “takedown notice” under 17 U.S.C. §512(f), and
20 did not include certain specific information which would be included in any such formal
21 “takedown notice”.

22 9. The document attached as “**Exhibit A**” to OTRN’s motion for summary
23 judgment and supporting documents (the “**Motion**”) is a revised version of the text of the
24 09/29/08 Notice, with a true and correct copy of the Addendum, as drafted by me, attached.

25 10. At the time I caused the 09/29/08 Notice to be issued, I had no knowledge of
26 either: (i) the case of *Savage v. CAIR* previously pending in the above-captioned court (the
27 “**CAIR Case**”); or (ii) an assignment by OTRN of the copyright of the October 29, 2007
28

1 **PROOF OF SERVICE BY E-MAIL**

2 I am employed in the County of Sacramento, California. I am over the age of eighteen
3 years and not a party to the within case. My business address is 1787 Tribute Rd., Suite D,
4 Sacramento, California 95815. On February 27, 2009, I served the attached

5 **DECLARATION OF BENJAMIN AARON SHAPIRO IN SUPPPORT OF**
6 **DEFENDANT THE ORIGINAL TALK RADIO NETWORK, INC.'S MOTION**
7 **FOR SUMMARY JUDGMENT**

8 on the interested parties in the above captioned action by E-mail as follows:

9
10 **Anthony T. Falzone:**
11 falzone@stanford.edu, asmith@law.stanford.edu

Christopher Kay Ridder:
cridder@stanford.edu

12 **Julie Angela Aherns:**
13 jaherns@law.stanford.edu

Sheila Marie Pierce:
Sheila.poerce@bingham.com,
ruth.difalco@bingham.com

14 **William Frederick Abrams:**
William.abrams@bungham.com

15 I declare under penalty of perjury that the foregoing is true and correct, and that this declaration
16 was executed on February 27, 2009 at Sacramento, California.
17

18 _____
19 /s/

20 Pam Sauter
21
22
23
24
25