

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

FOX TELEVISION STATIONS, INC., et al.,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 13-758 (RMC)
)	
AEREOKILLER, LLC, et al.,)	
)	
Defendants.)	
)	

**CERTAIN PLAINTIFFS/COUNTER-DEFENDANTS' ANSWER
TO AMENDED COUNTERCLAIM**

Plaintiffs and Counter-Defendants NBC Subsidiary (WRC-TV) LLC, NBC Studios LLC, Universal Network Television LLC, Open 4 Business Productions LLC, Telemundo Network Group LLC, American Broadcasting Companies, Inc., Disney Enterprises, Inc., Allbritton Communications Company, CBS Broadcasting Inc., CBS Studios Inc., and Gannett Co., Inc., (collectively, “Plaintiffs”), by their respective attorneys, hereby answer the allegations contained in the Amended Counterclaim (Dkt. No. 13) (the “Counterclaim”) of Defendants and Counter-Plaintiffs FilmOn X LLC (formerly known as Aereokiller LLC), FilmOn.TV Networks, Inc., Filmon.TV, Inc., and FilmOn.com, Inc. (collectively “Defendants” or “FilmOnX”). Plaintiffs deny all allegations contained in the Counterclaim (including headings and captions) not specifically admitted in this Answer.

1. Plaintiffs admit that Defendants’ purported counterclaim seeks a declaration that their FilmOnX service does not infringe Plaintiffs’ copyrights. Plaintiffs specifically deny that FilmOnX’s technology “serves an important government interest.” The remainder of Paragraph 1 consists of Defendants’ characterizations of their purported Counterclaim and

Defendants' contentions of law, to which no response is required. To the extent the allegations in Paragraph 1 may be deemed to require a response, they are denied.

2. Plaintiffs deny the allegations contained in Paragraph 2.
3. Plaintiffs deny the allegations contained in Paragraph 3.
4. Plaintiffs admit that Defendants' counterclaim purports to be an action for declaratory judgment pursuant to 28 U.S.C. § 2201 and Fed.R.Civ.P. 57 that seeks a declaration regarding the parties' respective rights with respect to the controversy alleged by Defendants in the counterclaim. Except as expressly admitted, Plaintiffs deny the allegations of Paragraph 4.
5. Plaintiffs admit that this Court has exclusive jurisdiction over actions arising under the Copyright Act (17 U.S.C. § 101 *et seq.*) and the Declaratory Judgment Act (28 U.S.C. § 2201). Except as expressly admitted, Plaintiffs deny the allegations of Paragraph 5.
6. Plaintiffs admit the allegations contained in Paragraph 6.
7. Plaintiffs lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 7 and on that basis deny those allegations.
8. Plaintiffs lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 8 and on that basis deny those allegations.
9. Plaintiffs lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 9 and on that basis deny those allegations.
10. Plaintiffs lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 10 and on that basis deny those allegations.
11. Plaintiffs lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 11 and on that basis deny those allegations.

12. Plaintiffs lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 12 and on that basis deny those allegations.

13. Plaintiffs lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 13 and on that basis deny those allegations.

14. Plaintiffs admit the allegations contained in Paragraph 14.

15. Plaintiffs admit the allegations contained in Paragraph 15.

16. Plaintiffs admit the allegations contained in Paragraph 16.

17. Plaintiffs admit the allegations contained in Paragraph 17.

18. Plaintiffs admit the allegations contained in Paragraph 18.

19. Plaintiffs admit the allegations contained in Paragraph 19.

20. Plaintiffs admit the allegations contained in Paragraph 20.

21. Plaintiffs admit the allegations contained in Paragraph 21.

22. Plaintiffs admit the allegations contained in Paragraph 22.

23. Plaintiffs admit the allegations contained in Paragraph 23.

24. Plaintiffs admit the allegations contained in Paragraph 24.

25. Paragraph 25 consists of Defendants' contentions of law and argument, to which no response is required. To the extent the allegations in Paragraph 25 may be deemed to require a response, they are denied.

26. Paragraph 26 consists of Defendants' contentions of law and argument, to which no response is required. To the extent the allegations in Paragraph 26 may be deemed to require a response, they are denied.¹

¹ Plaintiffs lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Footnote 1 to Paragraph 26 and on that basis deny those allegations.

27. Paragraph 27 consists of Defendants' contentions of law and argument, to which no response is required. To the extent the allegations in Paragraph 27 may be deemed to require a response, they are denied.

28. Paragraph 28 consists of Defendants' contentions of law and argument, to which no response is required. To the extent the allegations in Paragraph 28 may be deemed to require a response, they are denied.

29. Plaintiffs specifically deny that FilmOnX has "sought to serve this important government interest." Plaintiffs lack knowledge or information regarding Defendants' characterizations of its technology and on that basis deny those allegations. The remainder of Paragraph 29 consists of Defendants' contentions of law and argument, to which no response is required. Except as expressly admitted, Plaintiffs deny the allegations of Paragraph 29.

30. Paragraph 30 consists of Defendants' contentions of law and argument, to which no response is required. To the extent the allegations in Paragraph 30 may be deemed to require a response, Plaintiffs respectfully refer the Court to the cited documents for their content, which documents speak for themselves, and otherwise deny the allegations of Paragraph 30.

31. Paragraph 31 consists of Defendants' contentions of law and argument, to which no response is required. To the extent the allegations in Paragraph 31 may be deemed to require a response, Plaintiffs respectfully refer the Court to the cited documents for their content, which documents speak for themselves, and otherwise deny the allegations of Paragraph 31.

32. NBC Studios LLC, Universal Network Television LLC, Open 4 Business Productions LLC, and Telemundo Network Group LLC admit that the context in which the FCC made the statements identified in Paragraphs 30 and 31 was the merger between NBCUniversal, Inc. and Comcast Corporation, which merger ultimately was allowed. NBC Studios LLC,

Universal Network Television LLC, Open 4 Business Productions LLC, and Telemundo Network Group LLC further admit that defendant FilmOn approached an affiliated entity to discuss a possible agreement to license content to FilmOn, but no license was entered into between the parties. Except as expressly admitted, NBC Studios LLC, Universal Network Television LLC, Open 4 Business Productions LLC, and Telemundo Network Group LLC deny the allegations of Paragraph 32. The remaining Plaintiffs lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 32 and on that basis deny those allegations.

33. The allegations in Paragraph 33 are not directed at any of the answering Plaintiffs, and thus no response is required. To the extent the allegations in Paragraph 33 may be deemed to require a response, the answering Plaintiffs lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 33 and on that basis deny those allegations.

34. CBS Broadcasting Inc. and CBS Studios Inc. deny the allegations contained in Paragraph 34. The remaining Plaintiffs lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 34 and on that basis deny those allegations.

35. CBS Broadcasting Inc. and CBS Studios Inc. deny the allegations contained in Paragraph 35. The remaining Plaintiffs lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 35 and on that basis deny those allegations.²

² CBS Broadcasting Inc. and CBS Studios Inc. deny the allegations contained in footnote 2 to Paragraph 35. The remaining Plaintiffs further specifically deny they had any knowledge of the matters alleged in footnote 2 to Paragraph 35. The remaining Plaintiffs lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in footnote 2 to Paragraph 35 and on that basis deny those allegations.

36. Plaintiffs admit that certain of the Plaintiffs in this action brought suit against Aero in the Southern District of New York for violation of their rights under the Copyright Act. Plaintiffs further admit that they sought a preliminary injunction in that case, which request was denied by the district court. Plaintiffs further admit that certain of them brought litigation for copyright infringement against Defendants in the District Court for the Central District of California, and sought a preliminary injunction that was granted. Except as expressly admitted, Plaintiffs deny the allegations contained in Paragraph 36.

37. Plaintiffs admit that certain of the Plaintiffs in this action brought suit against Defendants in the Central District of California for violation of their rights under the Copyright Act. Plaintiffs further admit that certain of them sought and obtained a preliminary injunction in that case enjoining Defendants' violations of their public performance rights under the Copyright Act. Plaintiffs further admit that the injunction granted by the district court in the Central District of California was limited geographically to the territorial boundaries of the Ninth Circuit Court of Appeals, and that the preliminary injunction order currently is on appeal to the Ninth Circuit. Except as expressly admitted, Plaintiffs deny the allegations contained in Paragraph 37.

38. Plaintiffs admit that amicus briefs were filed in the Second Circuit and the Ninth Circuit in support of Aero and Defendants, respectively. The remainder of the allegations of Paragraph 38 consist of Defendants' characterizations of those amicus briefs, to which no response is required. Except as expressly admitted, to the extent that any response to the allegations contained in Paragraph 38 is required, Plaintiffs deny those allegations.

39. Paragraph 39 consists of Defendants' characterizations of an amicus brief of the Computer & Communications Industry Association, to which no response is required. To the

extent that any response to the allegations contained in Paragraph 39 is required, Plaintiffs deny those allegations.

40. Plaintiffs admit that a divided panel of Second Circuit Court of Appeals affirmed the district court's preliminary injunction decision in the Aereo case. Plaintiffs further admit that the affirmance occurred during the pendency of Defendants' appeal to the Ninth Circuit of the preliminary injunction order issued against Defendants by the district court for the Central District of California. Except as expressly admitted, Plaintiffs deny the allegations of Paragraph 40.

41. Certain of the allegations contained in Paragraph 41 consist of purported quotations from other documents and communications, which documents and communications speak for themselves. Plaintiffs otherwise deny the allegations contained in Paragraph 41.

42. Plaintiffs admit that their complaint in this action against Defendants alleges claims for copyright infringement against Defendants, and seeks injunctive relief and damages. Except as expressly admitted, Plaintiffs deny the allegations contained in Paragraph 42.

43. Plaintiffs admit that Defendants' counterclaim seeks a declaratory judgment. Plaintiffs lack knowledge or information regarding Defendants' purported motivations for filing their counterclaim, and on that basis deny the remainder of the allegations contained in Paragraph 43.

44. Plaintiffs hereby incorporate by reference their responses to the above allegations in Paragraphs 1-43, as set forth above.

45. Plaintiffs admit that they contend Defendants are engaged in copyright infringement, and that there exists an actual and justiciable controversy between the parties

regarding Defendants' copyright infringement. Plaintiffs deny the remaining allegations contained in Paragraph 45.

RESPONSE TO PRAYER FOR RELIEF

The paragraphs of the Counterclaim containing Defendants' "prayer for relief" do not require a response. To the extent that those paragraphs are deemed to require a response, Plaintiffs deny that Defendants are entitled to any of the relief requested in the Prayer for Relief.

AFFIRMATIVE DEFENSES

Without conceding that it bears the burden of proof as to any of these defenses, Plaintiffs allege the following affirmative defenses to the allegations set forth in the Counterclaim.

FIRST AFFIRMATIVE DEFENSE

The Counterclaim fails to state a claim upon which relief can be granted, including because Defendants' claims are ambiguous, vague, and/or unintelligible. Plaintiffs aver that Defendants' claims do not describe the events or legal theories with sufficient particularity to permit Plaintiffs to ascertain all defenses that may exist.

SECOND AFFIRMATIVE DEFENSE

The Counterclaim is barred, in whole or in part, by the doctrine of unclean hands.

RESERVATION OF DEFENSES AND AFFIRMATIVE DEFENSES

Plaintiffs have not knowingly or intentionally waived any applicable defenses and explicitly reserve the right to assert any additional defenses and affirmative defenses as this actions proceeds. Plaintiffs further reserve the right to amend their Answer and/or defenses accordingly, and/or to delete defenses that Plaintiffs determine are not applicable as this action proceeds.

WHEREFORE, Plaintiffs pray for judgment on Defendants' Counterclaim as follows:

1. That Defendants take nothing by way of their Counterclaim;
2. That Plaintiffs recover their costs, including reasonable attorneys' fees, pursuant to 17 U.S.C. § 505; and
3. For such other and further relief as the Court may deem just and proper.

Dated: July 18, 2013

Respectfully Submitted,

/s/ Robert A. Garrett
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Inc., Allbritton Communications Company, CBS
Broadcasting Inc., CBS Studios Inc., and Gannett
Co., Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on July 18, 2013, a true and correct copy of the foregoing ANSWER TO AMENDED COUNTERCLAIM was served by electronic means through the Court's CM/ECF filing system.

/s/ Robert A. Garrett
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