### UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

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Case No. 1:13-cv-00758 (RMC)

Plaintiffs & Counter-Defendants.

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AEREOKILLER LLC, et al.

Defendants & Counter-Plaintiffs.

### **DECLARATION OF SAMUEL BAHUN**

- I, Samuel Bahun, declare as follows:
- 1. I am the Director of Strategic Accounts for MarkMonitor Inc. ("MarkMonitor"). MarkMonitor offers comprehensive solutions and services that safeguard copyright owners' reputations and revenues from online risks. As Director of Strategic Accounts for MarkMonitor, I am responsible for managing the relationships and projects for many of MarkMonitor's major accounts. I have held that position since 2010. The facts contained herein are based on my personal knowledge, my review of records and inquiry of appropriate MarkMonitor personnel. If called as a witness, I will provide testimony regarding the subject matter addressed in this declaration.
- 2. Since May 7, 2013, employees of MarkMonitor have regularly monitored the content available in Washington D.C. on the www.filmon.com website. A MarkMonitor employee utilized a computer that was physically located in Washington D.C. to access the "local channels" category available on the www.filmon.com homepage. The employee then

clicked on links for every "local channel" that was labeled as an "ABC," "CBS," "NBC" and "Telemundo" channel. After each of those channels was selected by MarkMonitor's employee, an advertisement was displayed and then a television broadcast started to play in the video player on the www.filmon.com website. For example, when the channel "ABC Washington" was selected, an advertisement played and then the ABC station in Washington D.C., WJLA-TV, began playing in the video player on the www.filmon.com website. Similarly, when the channel "ABC 7 NY" was selected, an advertisement played and then the ABC station in New York, WNBC-TV, began playing in the video player on the www.filmon.com website. Once the advertisement was complete and the television programming started to play in the video player, MarkMonitor's employee captured a static "screen shot" of the programming made available on the www.filmon.com website in Washington D.C.

- 3. In the course of MarkMonitor's monitoring the www.filmon.com website, I have learned that WJLA-TV is the ABC affiliated television station for the Washington D.C. metropolitan area and WABC-TV is the ABC affiliated television station for the New York City metropolitan area.
- 4. Between May 7, 2013 and May 29, 2013 and June 10, 2013 through the present, MarkMonitor determined that WJLA-TV broadcasts were available for viewing to persons in Washington D.C. that visited the www.filmon.com website. MarkMonitor documented the availability of various WJLA-TV broadcasts on the www.filmon.com website in Washington D.C. by capturing "screen shots" of those broadcasts. True and correct copies of "screen shots" that MarkMonitor captured are attached hereto as Exhibit 1.
- 5. Between May 7, 2013 and May 29, 2013 and June 10, 2013 through the present, MarkMonitor determined that WABC-TV broadcasts were available for viewing to persons in

Washington D.C. that visited the www.filmon.com website. MarkMonitor documented the availability of various WABC-TV broadcasts on the www.filmon.com website in Washington D.C. by capturing "screen shots" of those broadcasts. True and correct copies of "screen shots" that MarkMonitor captured are attached hereto as Exhibit 2.

- 6. In the course of MarkMonitor's monitoring the www.filmon.com website, I have learned that WUSA-TV is the CBS affiliated television station for the Washington D.C. metropolitan area and WCBS-TV is the CBS affiliated television station for the New York City metropolitan area.
- 7. Between May 7, 2013 and May 29, 2013 and June 10, 2013 through the present, MarkMonitor determined that WUSA-TV broadcasts were available for viewing to persons in Washington D.C. that visited the www.filmon.com website. MarkMonitor documented the availability of various WUSA-TV broadcasts on the www.filmon.com website in Washington D.C. by capturing "screen shots" of those broadcasts. True and correct copies of "screen shots" that MarkMonitor captured are attached hereto as Exhibit 3.
- 8. Between May 7, 2013 and May 29, 2013 and June 10, 2013 through the present, MarkMonitor determined that WCBS-TV broadcasts were available for viewing to persons in Washington D.C. that visited the www.filmon.com website. MarkMonitor documented the availability of various WCBS-TV broadcasts on the www.filmon.com website in Washington D.C. by capturing "screen shots" of those broadcasts. True and correct copies of "screen shots" that MarkMonitor captured are attached hereto as Exhibit 4.
- 9. In the course of MarkMonitor's monitoring the www.filmon.com website, I have learned that WRC-TV is the NBC affiliated television station for the Washington D.C.

metropolitan area and WNBC-TV is the NBC affiliated television station for the New York City metropolitan area.

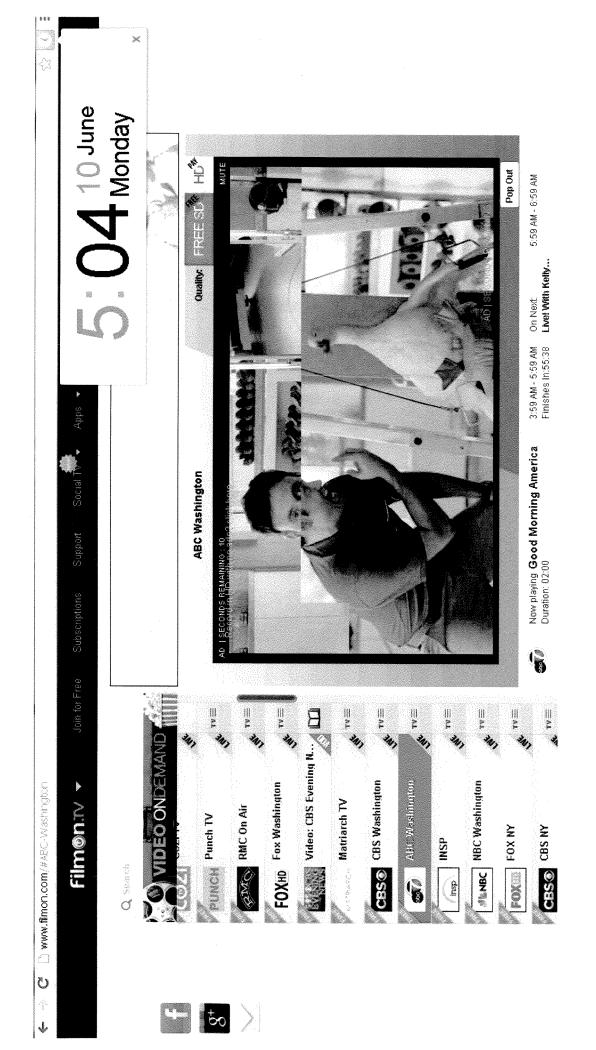
- 10. Between May 7, 2013 and May 29, 2013 and June 10, 2013 through the present, MarkMonitor determined that WRC-TV broadcasts were available for viewing to persons in Washington D.C. that visited the www.filmon.com website. MarkMonitor documented the availability of various WRC-TV broadcasts on the www.filmon.com website in Washington D.C. by capturing "screen shots" of those broadcasts. True and correct copies of "screen shots" that MarkMonitor captured are attached hereto as Exhibit 5.
- 11. Between May 9, 2013 and May 29, 2013 and June 10, 2013 through the present, MarkMonitor determined that WNBC-TV broadcasts were available for viewing to persons in Washington D.C. that visited the www.filmon.com website. MarkMonitor documented the availability of various WNBC-TV broadcasts on the www.filmon.com website in Washington D.C. by capturing "screen shots" of those broadcasts. True and correct copies of "screen shots" that MarkMonitor captured are attached hereto as Exhibit 6.
- 12. Between May 15, 2013 and May 29, 2013, MarkMonitor determined that Telemundo NY broadcasts were available for viewing to persons in Washington D.C. that visited the www.filmon.com website. MarkMonitor documented the availability of various Telemundo NY broadcasts on the www.filmon.com website in Washington D.C. by capturing "screen shots" of those broadcasts. True and correct copies of "screen shots" that MarkMonitor captured are attached hereto as Exhibit 7.
- 13. The screenshots of the www.filmon.com websites attached hereto as Exhibits 1 to 7 were taken by MarkMonitor employees who accessed the websites in the normal course of their duties pursuant to standard MarkMonitor procedures.

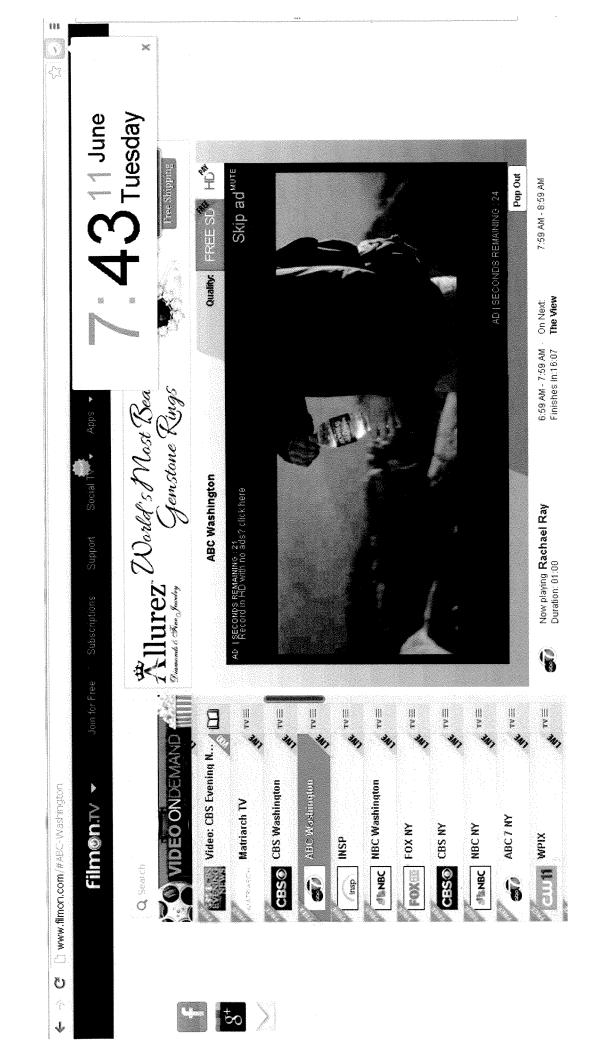
I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

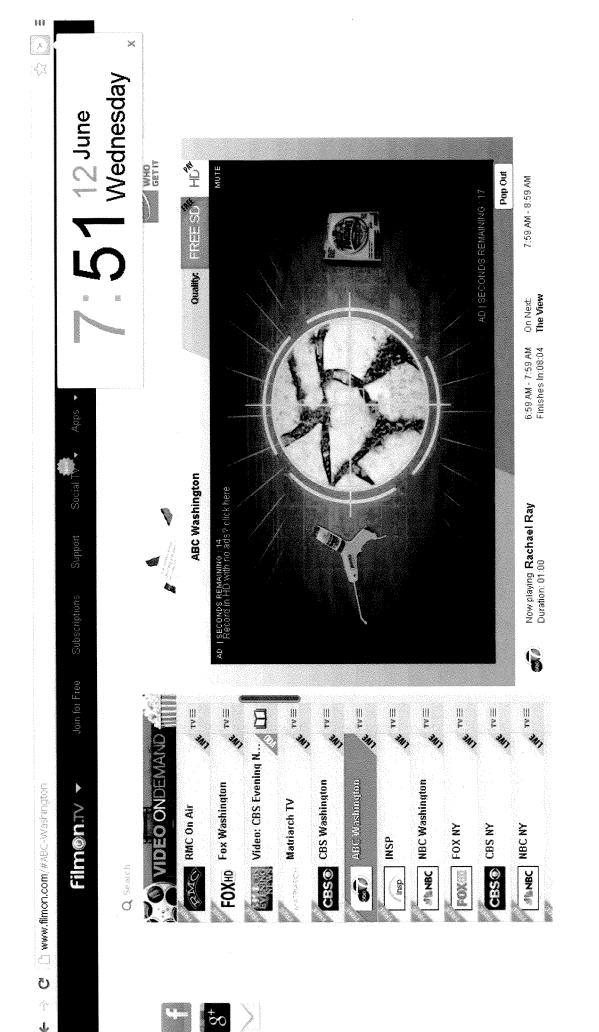
Executed this 10th day of July, 2013 at San Francisco, California.

Samuel Bahun

### **EXHIBIT 1**







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5:59 AM - 6:59 AM





Live! With Kelly and Michael

Actor Kevin Costner, actor Leo Howard; co-host Jerry Seinfeld; Matchbox Twenty performs.



□ www.filmon.com/#ABC-vVashington Ö Film@n.v <

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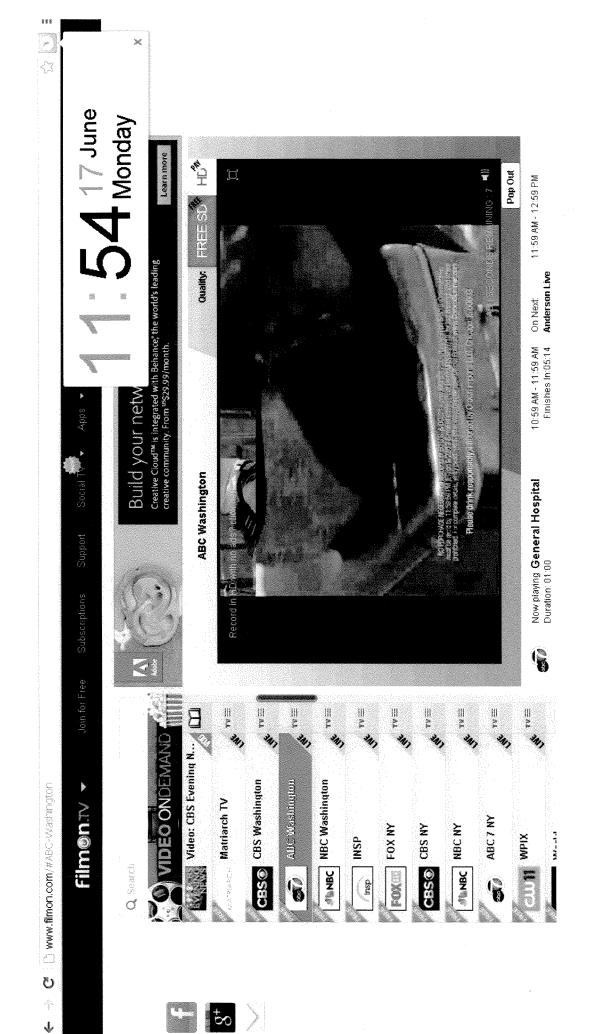
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Good Morning Washington at 6:00











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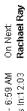














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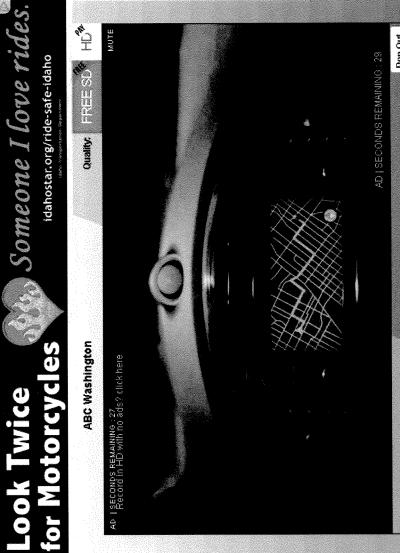
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8:59 AM - 9:29 AM

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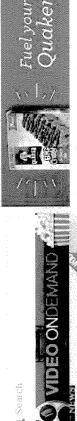
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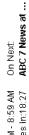




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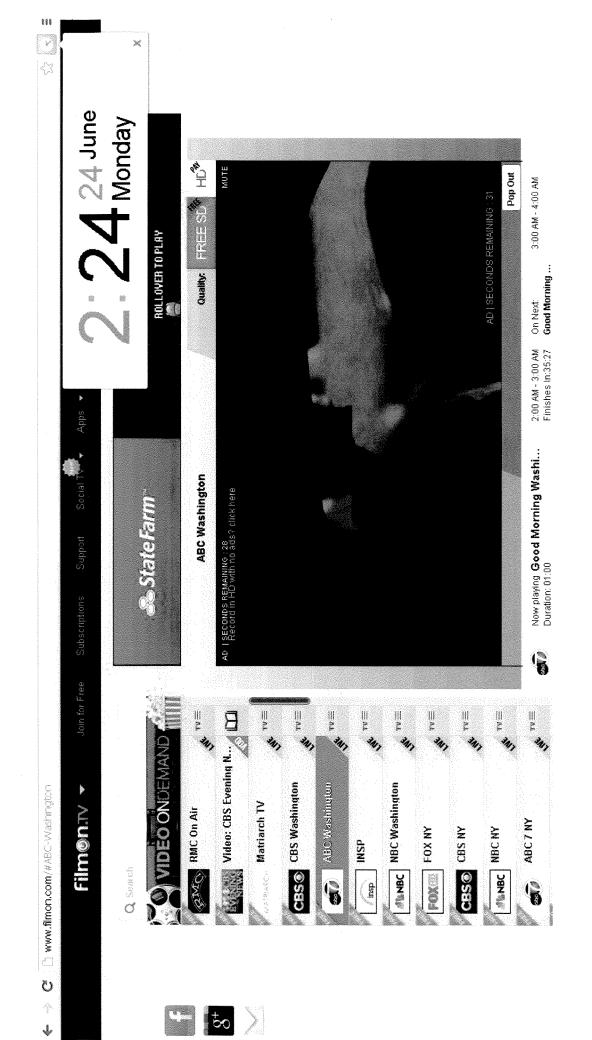
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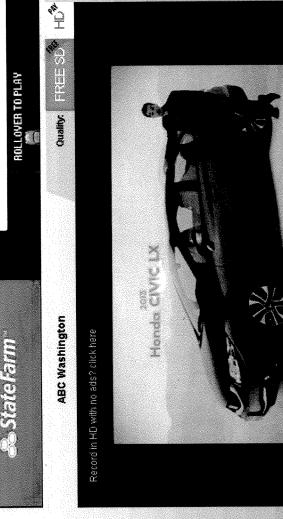
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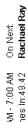
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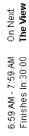
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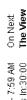
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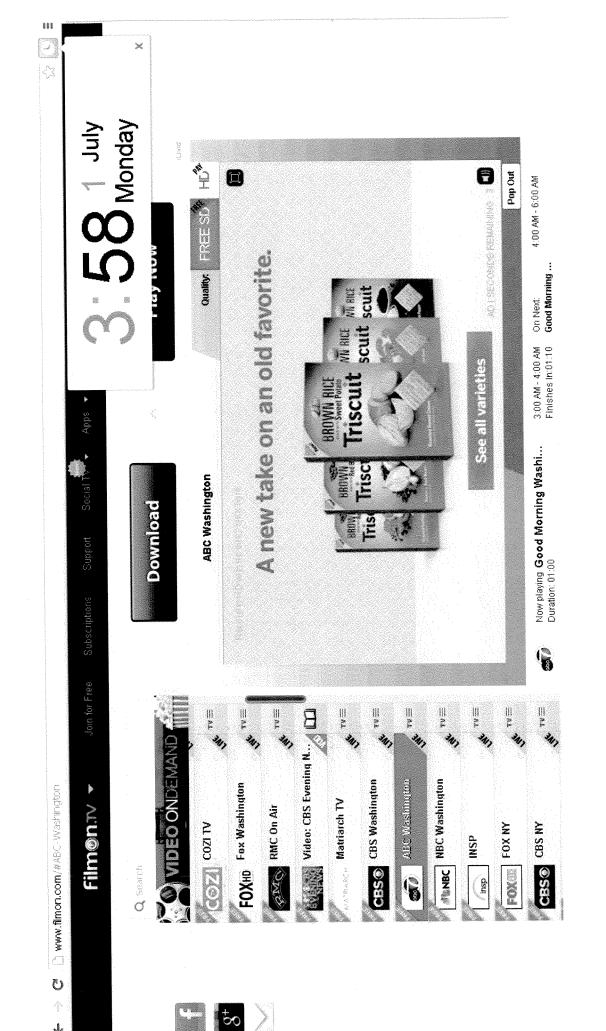
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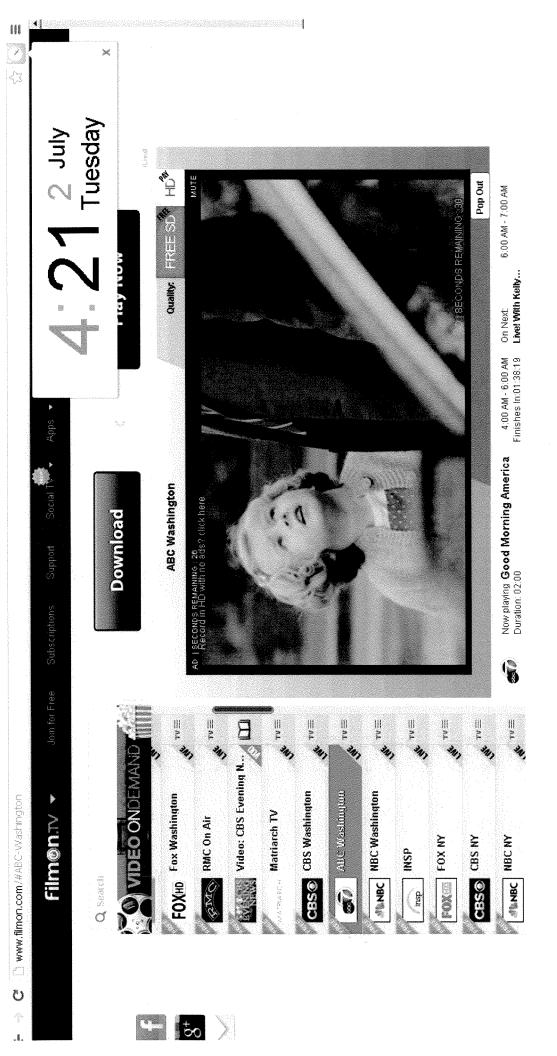
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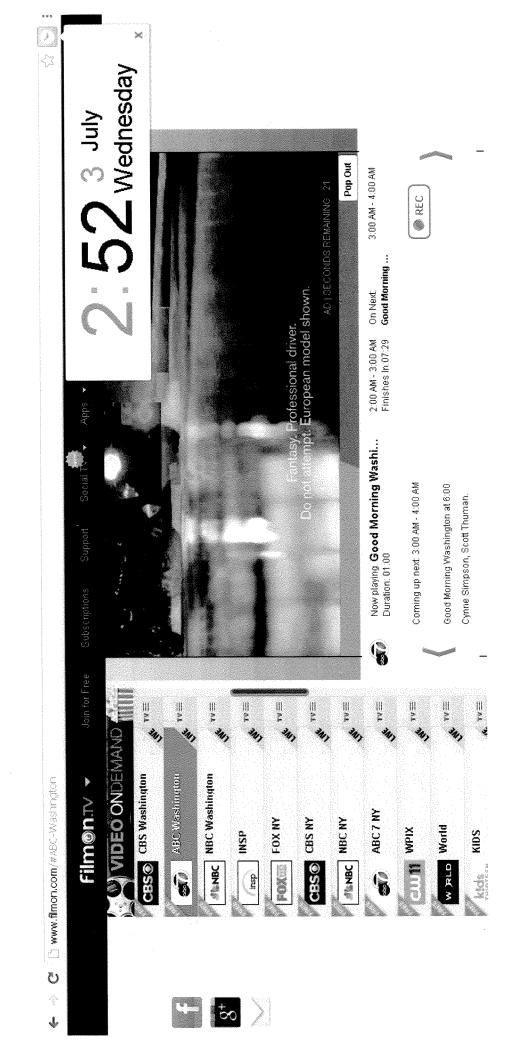
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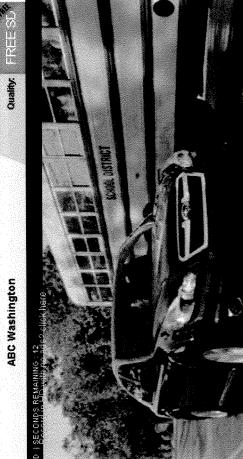
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Live! With Kelly... On Next Finishes In:01:45:44 3:59 AM - 5:59 AM

5:59 AM - 6:59 AM

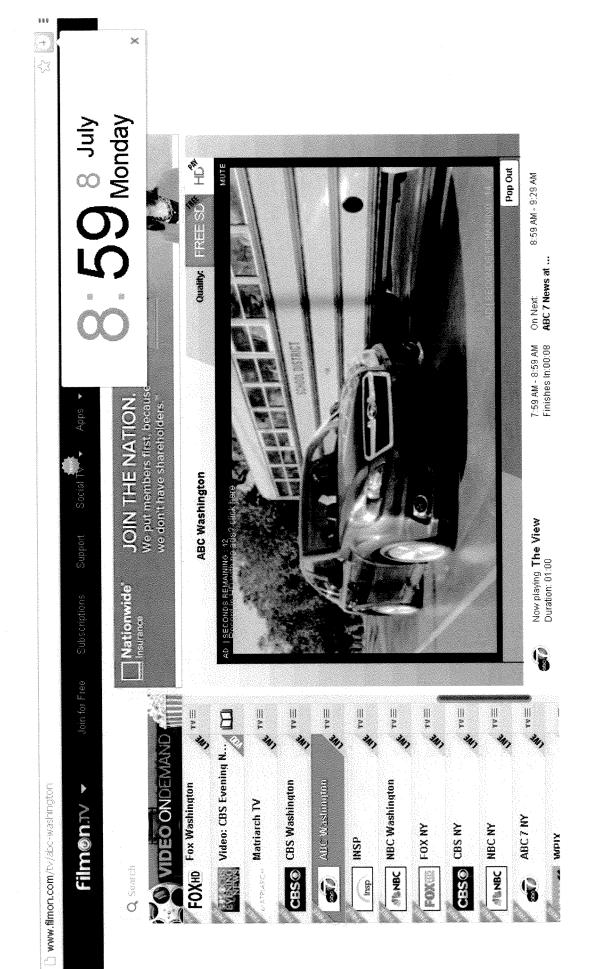
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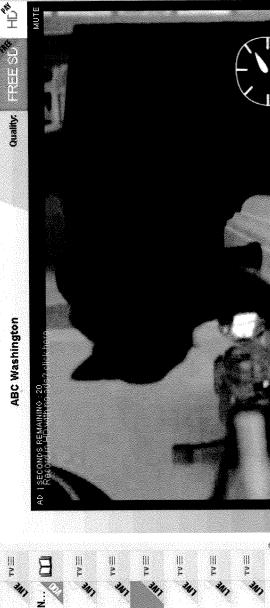
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5:59 AM - 6:59 AM Finishes In:08:01

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