

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

FOX TELEVISION STATIONS, INC., et al.

CIVIL ACTION NO. 1:13-cv-00758 (RMC)

Plaintiffs/Counter-Defendants,

v.

FILMON X LLC, et al.

Defendants/Counter-Plaintiffs.

**DECLARATION OF MYKOLA KUTOVYY IN SUPPORT OF
EMERGENCY MOTIONS**

I, Mykola Kutovyy, declare:

1. I submit this declaration in support of (1) Defendants' Motion for Reconsideration of the Geographic Scope of the Preliminary Injunction and Bond Amount and (2) Defendants' Emergency Motion to Stay the Preliminary Injunction Pending Appeal and to Modify the Scope of the Injunction. I have personal knowledge of the facts set forth herein and, if called as a witness, I could and would testify competently thereto.

3. I submitted a declaration in support of FilmOn X's Opposition to Plaintiffs' Motion for Preliminary Injunction. (Dkt. 31-2.) In that declaration, I provided an explanation of FilmOn X's Technology. However, in light of this Court's Opinion Granting Plaintiffs' Motion for Preliminary Injunction, this declaration seeks to further clarify some aspects my previous explanation of the technology and the "one-to-one relationship" between FilmOn X's technological system and its users. When a FilmOn X Technology user chooses to view a program, the FilmOn X system generates a unique copy of a television program that only the particular user may view. That unique copy is stored in a hard-drive directory unique to the specific user, which cannot be accessed by any other user. Thus, although FilmOn X provides

servers and various other equipment, a unique copy of any particular program is only available for viewing by the particular user who made the request, enabling only solely a private transmission.

4. On page 5 of the Memorandum of the Opinion, the Court states, “all dynamic antennas are shared” and, in a footnote, that “[according to *Aereo I*, even static users sometimes share antennas.” A FilmOn X Technology user will never simultaneously “share” an antenna with another user. A “static” FilmOn X Technology user will never “share” his or her antenna. The FilmOn X static antennas are designed to that no sharing may occur. Each time a “dynamic” FilmOn X user logs onto the FilmOn X Technology system, he or she is assigned an antenna that only he or she may control until that user logs off of the system.

5. On page 5 of the Memorandum Opinion, the Court states, “[the video encoder is connected to a ‘distribution endpoint,’ which is a ‘server or group of servers’ that delivers the video and audio to FilmOn X users.” When a FilmOn X Technology user requests content from the FilmOn X website, the data obtained by a particular antenna while allocated to a particular user is not “shared” with or accessible by any other FilmOn X user. That data is completely individualized.

6. At the time the allocated antenna picks up the individualized data, a unique directory assigned specifically to an individual user is created in order to individually store the data received by the allocated antenna.

7. The data has to be processed by the transcoder so it will be in a format that allows it to be transmitted to the user. The transcoding process does not alter or affect the individualized nature of the data.

8. The distribution endpoint, which is made up a server or groups of servers, is the distribution point for the data. It still maintains the completely individualized nature of the transcoded data. There are server partitions within the servers, as well as unique codes that

\\

isolate and maintain individualized nature of each set of data that is sent in response to a user's request for content through FilmOn X's system.

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

Executed on September 11, 2013, at LONDON.

By: 
Mykola Kutovyy