

UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF COLUMBIA

FOX TELEVISION STATIONS, INC., et al.

Plaintiffs,

v.

FILMON X, LLC, et al.

Defendants.

Civil Action No. 1:13-cv-00758-RMC  
Hon. Rosemary M. Collyer**JOINT REPORT OF THE PARTIES PURSUANT TO LOCAL RULE 16.3(C)**

Pursuant to Rule 26(f) of the Federal Rules of Civil Procedure, Local Rule 16.3(c), and the Court's August 6, 2013 minute order setting the Scheduling Conference for September 20, 2013 at 2:00 p.m., plaintiffs Fox Television Stations, Inc., Twentieth Century Fox Film Corporation, Fox Broadcasting Company, 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") and defendants FilmOn X, LLC, FilmOn.TV Networks, Inc., FilmOn.TV, Inc., and FilmOn.com, Inc. (collectively, "FilmOn X") submit this Joint Report ("Joint Report").

**1. Neutral Statement of Case**

In this lawsuit, Plaintiffs assert that FilmOn X's Internet retransmission service violates their rights under the Copyright Act. Plaintiffs allege that they have not authorized FilmOn X to retransmit local over-the-air broadcasts of their copyright programming over the Internet.

Plaintiffs have brought claims for copyright infringement. On August 1, 2013, Plaintiffs filed a motion for a preliminary injunction, which this Court granted on September 5, 2013. Plaintiffs also seek permanent injunctive relief, as well as statutory and other damages.

FilmOn X denies each of Plaintiffs' allegations. FilmOn X also denies it is directly or secondarily infringing Plaintiffs' copyrights. FilmOn X has asserted various affirmative defenses including, but not limited to, fair use.

## **2. Joint Request to Stay Proceedings Pending FilmOn X's Appeal**

On September 5, 2013, this Court granted Plaintiffs' motion for preliminary injunction. (Dkt No. 34). On September 12, 2013, this Court denied motions brought by FilmOn X for reconsideration and a stay of the injunction. FilmOnX intends to appeal. The parties mutually agree that this case should be stayed before this Court pending a decision from the U.S. Court of Appeals for the District of Columbia Circuit, and they will be submitting a stipulation regarding the stay for this Court's consideration. Accordingly, below, the parties have not provided dates for the exchange of initial disclosures, dates for the completion of fact and expert discovery, or dates for trial. The parties do set forth the other matters that were agreed upon during the early meeting of counsel process.

## **3. Preservation of Discoverable Information**

Counsel have notified their respective clients about their obligations to preserve discoverable information (documentary and electronic). The parties agree that text messages to mobile phones (MMS and SMS) and voicemail messages need not be preserved or collected.

## **4. Discovery Phases**

The parties agree they should conduct written, documentary, and deposition fact discovery, to be followed by expert discovery as permitted by the Federal Rules of Civil

Procedure. The parties do not believe discovery should be conducted in any phases other than fact discovery and expert discovery.

**5. Discovery Subject Matter**

Without waiver or limitation, Plaintiffs will seek discovery bearing on liability, defenses and damages, including on the following subjects: (a) FilmOn X's service; (b) FilmOn X's alleged infringement of Plaintiffs' copyrights; (c) Plaintiffs' alleged irreparable harm; (d) FilmOn X's alleged fair use defense and any of its other defenses; and (e) Plaintiffs' alleged statutory damages.

Without waiver or limitation, FilmOn X will seek discovery on the following subjects: (a) Plaintiffs' claims and allegations; (b) alleged fair use and other defenses noted in FilmOn X's Answer; and (c) Plaintiffs' allegations of irreparable harm and damages.

**6. Coordination with Related Cases**

This case is related to *Fox Television Stations, Inc., et al. v. FilmOn X, et al.*, Case No. CV 12-6921-GW(JCx) (C.D. Cal.) and *NBCUniversal Media, LLC, et al. v. Barry Driller, Inc., et al.*, Case No. CV 12-6950-GW(JCx) (C.D. Cal.) (collectively, the "California Actions"). The California Actions are currently stayed in light of the pending appeal of the injunctions issued in the California Actions.

The parties agree they will use their best efforts to coordinate the timing of depositions with the related cases in order to avoid duplicative depositions. However, the parties are not waiving their rights to each take full and complete depositions as permitted by the Federal Rules of Civil Procedure. The parties reserve their right to take depositions of the other parties' witnesses separate from the California Actions, and to apply the limitations on the number and length of depositions set forth in the Federal Rules separately.

## **7. Electronic Discovery**

The parties have agreed to produce electronically stored information in .tif format if practical or, in the alternative, in .pdf or other format following a meet and confer between counsel regarding the form of production. The parties reserve the right to request production of electronically stored information in native or other format, if they reasonably believe that there is a specific need that cannot otherwise be met. The parties further reserve their rights to request production of electronically stored information from any data source where relevant information may be obtained, and to object to production of electronically stored information on any appropriate ground, including, without limitation, those set forth in Federal Rules of Civil Procedure, Rule 26(b)(2)(B).

## **8. Protective Order**

The parties agree that it will be necessary for a protective order to be entered in this case prior to the commencement of discovery. The parties believe that they will be able to work out the terms of a mutually acceptable protective order.

## **9. Attorney-Client Privilege and Attorney Work Product**

The parties agree on the following procedure:

If a party, through inadvertence, produces any document or information that it believes is immune from discovery pursuant to the attorney-client privilege and/or work product doctrine/privilege, such production will not be deemed a waiver of those privileges, and the producing party may give written notice to the receiving party that the document or information produced is deemed privileged. The receiving party must immediately return the document and all copies. The producing party will then add those documents to its privilege log. The return of the document(s) and/or information to the producing party will not preclude the receiving party from later moving the Court to compel production of the returned documents and/or information.

The parties' protective order will include a claw-back provision and other procedures dealing with the inadvertent production of privileged materials and work product.

The parties agree that privilege logs will not be required for (1) communications between parties and their outside counsel that occurred after the California Actions commenced; and (2) the work product of outside counsel, not disclosed to a third-party or entity not subject to a joint defense or common interest privilege.

#### **10. Complex Case Designation**

The parties agree this case should not be designated as a Complex Case. The case presents no unusual legal issues. The Manual for Complex Litigation should not apply to this case.

#### **11. Motions**

##### **Motions for Preliminary Injunction**

On September 5, 2013, this Court granted Plaintiffs' motion for a preliminary injunction against FilmOn X (Dkt. No. 34).

##### **Dispositive or Partially Dispositive Motions**

The parties anticipate filing summary judgment and/or summary adjudication motions.

#### **12. Alternative Dispute Resolution ("ADR")**

The parties have conducted a court-ordered mediation with a private mediator in the California Actions. They believe it is premature to discuss settlement at this juncture in this action.

#### **13. Amendment of Pleadings / Additional Parties**

Plaintiffs may seek leave to add additional defendants. The parties will meet and confer and attempt to amend the pleadings by stipulation.

Additionally, Plaintiffs may seek leave to amend the complaint to identify new copyrighted works that are alleged to have been infringed by FilmOn X up to the time of trial.

**14. Jury Trial**

The parties have each requested a jury trial. Plaintiffs' preliminary estimate for trial is 2 weeks. FilmOn X's preliminary estimate for trial is 7-10 days. The parties do not anticipate severance, bifurcation, or other changes in the standard order of proof at trial.

Dated: September 13, 2013

/s/ Julie A. Shepard

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