

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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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.*

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**DECLARATION OF RYAN G. BAKER IN SUPPORT OF  
DEFENDANTS' EMERGENCY MOTION FOR RECONSIDERATION OF THE  
MOTION TO MODIFY THE PRELIMINARY INJUNCTION IN LIGHT OF THE  
HEARST DECISION**

I, Ryan G. Baker, declare:

1. I am an attorney admitted to practice in the State of California, and a partner at Baker Marquart LLP. I represent the defendants in this action.
2. I submit this declaration in support of Defendants FilmOn X LLC, FilmOn.TV Networks, Inc., FilmOn.TV, Inc. and FilmOn.com, Inc.'s ("Defendants") Emergency Motion for Reconsideration of Motion to Modify the Preliminary 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. On October 15, 2013, at approximately 10:03 a.m. eastern daylight time – several hours before the opposition brief to Defendants' motion to modify the preliminary injunction was filed – I sent Plaintiffs' counsel an email in which I advised them that "I have confirmed that no FilmOn X user in the First Circuit may view your clients' programming using FilmOn X at this time." A true and correct copy of that email correspondence is attached as Exhibit 1.

4. On October 16, 2013, under my direction, my office gave notice pursuant to Local Rule 7(m) to Plaintiffs' counsel that Defendants planned to file an emergency motion for reconsideration of the Court's denial of the motion to modify the scope of the preliminary injunction.

5. On October 16, 2013, Plaintiffs' counsel informed my office that they would oppose Defendants' motion. Attached as Exhibit 2 is a true and correct copy of meet and confer correspondence between my office and counsel for the plaintiffs on the subject of this emergency motion.

6. Defendants brought this motion at the first available opportunity.

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

Executed on October 17, 2013 at London, England.

By: 

Ryan G. Baker

# **EXHIBIT 1**

## Scott Malzahn

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**From:** Ryan Baker  
**Sent:** Tuesday, October 15, 2013 10:26 AM  
**To:** Shepard, Julie A.; Blackburn, James S.  
**Cc:** Scott Malzahn; Wagman, Jennifer L.; Salazar Garcia, Jessica C.  
**Subject:** RE: Fox v. FilmOn (DC Dist.)

No they are not. Read my email.

Sent via the Samsung GALAXY S34, an AT&T 4G LTE smartphone

----- Original message -----

**From:** "Shepard, Julie A." <[JShepard@jenner.com](mailto:JShepard@jenner.com)>  
**Date:** 10/15/2013 18:01 (GMT+00:00)  
**To:** Ryan Baker <[rbaker@bakermarquart.com](mailto:rbaker@bakermarquart.com)>, "Blackburn, James S." <[James.Blackburn@APORTER.COM](mailto:James.Blackburn@APORTER.COM)>  
**Cc:** Scott Malzahn <[smalzahn@bakermarquart.com](mailto:smalzahn@bakermarquart.com)>, "Wagman, Jennifer L." <[JWagman@jenner.com](mailto:JWagman@jenner.com)>, "Salazar Garcia, Jessica C." <[JSalazarGarcia@jenner.com](mailto:JSalazarGarcia@jenner.com)>  
**Subject:** RE: Fox v. FilmOn (DC Dist.)

Ryan

Your statements are belied the attached screenshots showing FilmOn streaming our local Boston broadcasts yesterday.

Julie

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**Julie A. Shepard**

Jenner & Block LLP

633 West 5th Street  
Suite 3600  
Los Angeles, CA 90071  
Tel (213) 239-2207  
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**From:** Ryan Baker [<mailto:rbaker@bakermarquart.com>]  
**Sent:** Tuesday, October 15, 2013 7:04 AM  
**To:** Shepard, Julie A.; Blackburn, James S.  
**Cc:** Scott Malzahn  
**Subject:** RE: Fox v. FilmOn (DC Dist.)

Julie and Jim,

I believe there may have been some press about FilmOn X enabling users to view your clients' programming in the First Circuit and that may have occurred at some point after Judge Collyer's order (I am on vacation abroad and I do not know). Setting aside the fact that any such activity by FilmOn X would not enable any public performance and would not therefore violate Judge Collyer's order, out of an abundance of caution, I have confirmed that no FilmOn X user in the First Circuit may view your clients' programming using FilmOn X at this time.

Please contact me with questions or concerns.

Thanks,

Ryan

Sent via the Samsung GALAXY S®4, an AT&T 4G LTE smartphone

## **EXHIBIT 2**

## Scott Malzahn

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**From:** Ryan Baker  
**Sent:** Wednesday, October 16, 2013 1:50 PM  
**To:** Blackburn, James S.; Scott Malzahn; Shepard, Julie A.; Ulin, John C.  
**Cc:** Kelly Raney  
**Subject:** Re: Fox v. FilmOn (DC Dist)

Jim,

In addition, there are facts that the court did not consider. Specifically, as I stated in my email to you yesterday, FilmOn X took steps to ensure that none of its users could access any of plaintiffs' content prior to the issuance of the court's order. That fact was not considered by the court.

Thanks,

Ryan

Ryan G. Baker

Baker Marquart LLP

Direct: (424) 652-7801

[rbaker@bakermarquart.com](mailto:rbaker@bakermarquart.com)

[www.bakermarquart.com](http://www.bakermarquart.com)

**From:** <Blackburn>, James Blackburn <[James.Blackburn@APORTER.COM](mailto:James.Blackburn@APORTER.COM)>  
**Date:** Wednesday, October 16, 2013 11:43 PM  
**To:** Scott Malzahn <[smalzahn@bakermarquart.com](mailto:smalzahn@bakermarquart.com)>, Julie Shepard <[JShepard@jenner.com](mailto:JShepard@jenner.com)>, "Ulin, John C." <[John.Ulin@APORTER.COM](mailto:John.Ulin@APORTER.COM)>  
**Cc:** Ryan Baker <[rbaker@bakermarquart.com](mailto:rbaker@bakermarquart.com)>, Kelly Raney <[kraney@bakermarquart.com](mailto:kraney@bakermarquart.com)>  
**Subject:** RE: Fox v. FilmOn (DC Dist)

Scott,

Plaintiffs oppose FilmOnX's motion.

Regards,  
Jim

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James S. Blackburn  
Partner

Arnold & Porter LLP

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Los Angeles, CA 90017-5844

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[James.Blackburn@aporter.com](mailto:James.Blackburn@aporter.com)  
[www.arnoldporter.com](http://www.arnoldporter.com)

**From:** Scott Malzahn [<mailto:smalzahn@bakermarquart.com>]  
**Sent:** Wednesday, October 16, 2013 1:24 PM  
**To:** Blackburn, James S.; Shepard, Julie A.; Ulin, John C.  
**Cc:** Ryan Baker; Kelly Raney  
**Subject:** RE: Fox v. FilmOn (DC Dist)

Jim,

The Court's ruling was clearly erroneous, failed to consider controlling authority, and is manifestly unjust. We believe that the Court should have modified the injunction in light of the *Hearst* decision to prevent a manifest injustice arising from the conflict between two district court decisions.

Scott

**From:** Blackburn, James S. [<mailto:James.Blackburn@APORTER.COM>]  
**Sent:** Wednesday, October 16, 2013 11:57 AM  
**To:** Scott Malzahn; Shepard, Julie A.; Ulin, John C.  
**Subject:** RE: Fox v. FilmOn (DC Dist)

Scott,

Before we can respond to your question, please provide us with the legal and/or factual basis on which FilmOnX seeks reconsideration. We will then discuss the matter with our clients and get back to you.

That said, we are surprised, to say the least, that FilmOnX is seeking reconsideration of an order issued less than 24 hours ago. We cannot think of a single factual or legal change that could have occurred in that time period that would justify FilmOnX's request. Rather, FilmOnX's proposed reconsideration motion seems to be only the latest in a series of efforts by FilmOnX to modify the geographic scope of the preliminary injunction. Judge Collyer has rejected FilmOnX's efforts in this regard twice already. A third attempt, without any new facts or law, would be baseless, most likely futile, and almost certainly a waste of the Court's and Plaintiffs' time and resources. Plaintiffs reserve their right to seek sanctions should FilmOnX file what is essentially a motion for reconsideration of yesterday's denial of your motion for reconsideration of the same issue.

Regards,  
Jim

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James S. Blackburn  
Partner

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[www.arnoldporter.com](http://www.arnoldporter.com)



**From:** Scott Malzahn [<mailto:smalzahn@bakermarquart.com>]  
**Sent:** Wednesday, October 16, 2013 10:48 AM  
**To:** Blackburn, James S.; Shepard, Julie A.  
**Subject:** Fox v. FilmOn (DC Dist)

Julie and Jim,

I work with Ryan Baker on the above referenced matter. Defendants intend to apply to the court, on an *ex parte* basis, for reconsideration of the Court's denial of the motion to modify the scope of the preliminary injunction in light of the *Hearst* decision.

I will serve you with copies of the papers when they are completed. I anticipate filing this evening or Thursday morning.

Please indicate whether or not your clients will oppose defendants' motion.

Thanks,

Scott M. Malzahn  
Baker Marquart LLP  
10990 Wilshire Blvd., Fourth Floor  
Los Angeles, CA 90024  
Main: (424) 652-7800  
Direct: (424) 652-7821  
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