

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 ALKIVIADES DAVID IN SUPPORT OF  
DEFENDANTS' EMERGENCY MOTION FOR RECONSIDERATION OF THE  
MOTION TO MODIFY THE PRELIMINARY INJUNCTION IN LIGHT OF THE  
HEARST DECISION**

I, Alkiviades David, declare:

1. 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 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.

2. On or around September 5, 2013, I reviewed the Preliminary Injunction Order filed in this action (the "Order"). I discussed the Order with legal counsel and relevant representatives and technology officers of Defendants.

3. Defendants immediately began taking steps to comply with the Order.

4. By September 12, 2013, Defendants had removed all access to plaintiffs' Copyrighted Programming to users logging on to any of the websites or mobile applications operated by Defendants within any area in the United States outside the Second Circuit.

Attached as Exhibit A is a true and correct copy of the Declaration of Compliance filed in this action.

5. This continues to be the case. Users who attempt to access Defendants' services from outside the geographic limits of the Second Circuit are denied access and do not receive the option of accessing any of the unlicensed Copyrighted Programming subject to the Order. Defendants have taken and continue to take measures to ensure this remains the case for as long as the Order remains in effect.

6. It is my understanding that, on or around October 8, 2013 the U.S. District Court of Massachusetts denied a preliminary injunction brought by a television station against Aereo, Inc., which operates a service similar to the service offered by Defendants that is at issue in this case.


7. On that basis, Defendants began testing their technology in anticipation of the possibility that the Order would be lifted as applied to the First Circuit. The testing was only done within the geographic limits of the First Circuit periodically over a span of 2 to 3 days, and only so that Defendants could begin offering their services immediately if the Order was modified so as not to include the First Circuit.

8. During the brief window when the testing occurred, a limited number of users in the First Circuit may have been able to access some of the Copyrighted Programming subject to the Order. As soon as Defendants learned of this, they discontinued testing in the First Circuit. Prior to the Court's issuance of its October 16 order denying Defendants' motion to modify the scope of the injunction in this case, no user of Defendants' services could access plaintiffs' programming through the FilmOn X service. No testing has occurred since.

9. Currently, users who attempt to access Defendants' programming covered by the Order outside of the geographic limits of the Second Circuit are denied access. Defendants continue to take steps to ensure that this remains the case going forward.

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 16, 2013 at Spetses, Greece.

A handwritten signature in black ink, consisting of a large, roughly circular loop with a vertical line through it and a horizontal stroke at the bottom right.

By: \_\_\_\_\_

Alkiviades David

# **EXHIBIT A**

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**DECLARATION OF COMPLIANCE WITH PRELIMINARY INJUNCTION ORDER**

I, Alkiviades David, declare:

1. I submit this declaration to provide a report to the Court regarding defendants' efforts to comply with the Preliminary Injunction Order filed on September 5, 2013 in this action ("the Order"). I have personal knowledge of the facts set forth herein and, if called as a witness, I could and would testify competently thereto.

2. When I refer to "defendants" throughout this declaration, I mean to include myself, FilmOn X LLC, Aereokiller LLC, FilmOn.TV Networks, Inc., FilmOn TV, Inc. and FilmOn.com, Inc. I include myself within the meaning of the term "defendants" only to comply with the Court's request in the Order that I declare as to my compliance with the Order. I have not been served in this matter, have not appeared in this matter and do not by this declaration intend to appear in this matter.

**A. Review and Discussion of the Order**

3. On or about September 5, 2013, defendants reviewed the Order and discussed it with legal counsel.

4. Shortly after receiving and discussing the Order with counsel, defendants discussed the necessary technological steps that would be required to comply with the Order with counsel and one another.

5. I understand that the Order applies throughout the United States, with the exception of the geographic boundaries of the United States Court of Appeals for the Second Circuit. I am informed that Connecticut, New York and Vermont are within the Second Circuit and therefore are outside the geographic scope of the Order.

6. I am further informed that the Order only relates to “Copyrighted Programming” which is a defined term in the Order which defendants have also reviewed.

**B. Technological Efforts to Comply with the Order**


7. The process for ensuring compliance with the Order was fairly straightforward because defendants already utilize a geographically specific database to restrict particular services (i.e., channels) to particular users based upon their designated market areas. Therefore, to ensure that no unlicensed Copyrighted Programming was in any way being retransmitted, streamed, or otherwise publicly performed or displayed within the territories covered by the Order, defendants merely removed all access to the unlicensed Copyrighted Programming to users logging on to any of the websites or mobile applications operated by defendants from within any designated market areas outside the Second Circuit.

8. The above-described restriction was accomplished by removing any available links for such individuals to the Copyright Programming from the web sites and other applications that service individuals logging on from outside the Second Circuit.

9. Defendants are no longer “streaming, retransmitting, retransmitting, or otherwise publicly performing, displaying, or distributing” any unlicensed Copyrighted Programming outside the Second Circuit. Users who attempt to access defendants’ services from within a designated market area outside the Second Circuit do not receive the option of accessing any of the unlicensed Copyrighted Programming subject to the Order.

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 12, 2013, at Athens Greece

By  \_\_\_\_\_  
Alkiviades David