

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

**DECLARATION OF JOHN C. ULIN IN SUPPORT OF PLAINTIFFS' RESPONSE TO  
THE ORDER TO SHOW CAUSE WHY DEFENDANTS SHOULD NOT BE HELD IN  
CONTEMPT OF THE SEPTEMBER 5, 2013 PRELIMINARY INJUNCTION**

I, John C. Ulin, declare as follows:

1. I am an attorney licensed to practice law in the State of California, and I am a partner at Arnold & Porter LLP, counsel of record for Plaintiffs 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, the "NBC Plaintiffs"). As used herein, the term "Plaintiffs" means the NBC Plaintiffs and all the other plaintiffs in this action. I submit this declaration in support of Plaintiffs' Response To The Order To Show Cause Why Defendants Should Not Be Held In Contempt Of The September 5, 2013 Preliminary Injunction. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, I could and would testify competently to such facts under oath.

2. Attached to my declaration as **Exhibit 1** is a true and correct copy of relevant excerpts from the following article: Todd Spangler, *Broadcasters Win Preliminary Injunction Against Internet-Video Streamer FilmOn X*, Variety (Sept. 5, 2013), available at <http://variety.com/2013/biz/news/fox-wins-preliminary-injunction-against-internet-video-streamer-filmon-x-1200600254/>.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 24th day of October, 2013 at Los Angeles, California.

  
\_\_\_\_\_  
John C. Ulin

# EXHIBIT 1



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# *Broadcasters Win Preliminary Injunction Against Internet-Video Streamer FilmOn X*

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***(<http://variety.com/2013/tv/news/fox-shuffles-almost-human-premiere-for-nfl-boost-1200749281/>)***

***[TV \(HTTP://VARIETY.COM/V/TV/\)](http://variety.com/v/tv/)06:03 pm***

***Fox Shuffles ‘Almost Human’ Premiere for NFL Boost (<http://variety.com/2013/tv/news/fox-shuffles-almost-human-premiere-for-nfl-boost-1200749281/>)***

The U.S. District Court for D.C. Circuit issued a preliminary [injunction \(http://variety.com/t/injunction/\)](http://variety.com/t/injunction/) Thursday against [FilmOn \(http://variety.com/t/filmon/\)](http://variety.com/t/filmon/) [X \(http://variety.com/t/x/\)](http://variety.com/t/x/), barring the company from redistributing TV [broadcasters \(http://variety.com/t/broadcasters/\)](http://variety.com/t/broadcasters/)’ signals over the [Internet \(http://variety.com/t/internet/\)](http://variety.com/t/internet/).

“This Court concludes that the [Copyright Act \(http://variety.com/t/copyright-act/\)](http://variety.com/t/copyright-act/) forbids [FilmOn X \(http://variety.com/t/filmon-x/\)](http://variety.com/t/filmon-x/) from retransmitting Plaintiffs’ copyrighted programs over the Internet,” U.S. District Judge Rosemary Collyer wrote in the decision granting TV broadcasters’ motion for a preliminary injunction.

The decision — which applies nationwide — has implications for [Aereo](http://variety.com/t/aereo/) (<http://variety.com/t/aereo/>), a similar Internet streaming service sued by broadcasters. New York-based Aereo, whose backers include IAC chairman Barry Diller, has won legal victories against broadcasters in New York federal courts, including a decision in July by the [Second Circuit Court of Appeals](http://variety.com/2013/digital/news/fox-may-pursue-aereo-case-to-u-s-supreme-court-1200563420/) (<http://variety.com/2013/digital/news/fox-may-pursue-aereo-case-to-u-s-supreme-court-1200563420/>) denying the request by TV networks to shut down the service.

Plaintiffs in the FilmOn case include the four major national broadcast television networks — ABC, CBS, [Fox](http://variety.com/t/fox/) (<http://variety.com/t/fox/>), and NBC — as well as other distributors, rights holders and D.C.-area television stations.

In a statement, Fox said, “We are pleased, but not surprised, that that the court recognized that the commercial retransmission of our broadcast signal without permission or compensation is a clear violation of the law. This decision should finally put the matter to rest, and will hopefully discourage other illegal services from attempting to steal our content.”

[Alki David](http://variety.com/t/alki-david/) (<http://variety.com/t/alki-david/>), CEO of FilmOn, said in an email to *Variety* that he planned to appeal the decision.

“The judge is clearly in (the broadcasters’) pockets,” David wrote. “From the day they filed in DC I suspected they had influence in the courts there. There is something so very rotten in corporate America and it makes me sad. Anyway... I’m on my yacht in (the) Mediterranean at the moment so they can kiss my hairy Greek ass. This is just a temporary setback we will win on appeal.”

In December 2012, U.S. District Judge George Wu granted an injunction preventing FilmOn (previously known as “[Aereokiller](http://variety.com/t/aereokiller/)” (<http://variety.com/t/aereokiller/>)) from transmitting the station signals in California and other states, although he refused to extend the ban nationwide. In his decision, Wu ruled that what FilmOn was doing was a public performance, even if there were one-to-one transmissions to private homes.

Both Aereo and FilmOn have argued that their services are legal because they use discrete, individual antennas dedicated to specific users. The companies say they are effectively renting access to antennas, while customers control the tuning and recording.

But Judge Collyer disagreed with that line of argument.

“This system, through which any member of the public who clicks on the link for the video feed, is hardly akin to an individual user stringing up a television antenna on the roof,” she wrote in the decision. “FilmOn X, which is a commercial service retransmitting Plaintiffs’ television performances, is in no meaningful way different from cable television companies, whose relationship with broadcasters such as Plaintiffs was the primary motivation for the 1976 (Copyright) Act’s enactment.”

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September 6, 2013 at 5:46 am (<http://variety.com/2013/biz/news/fox-wins-preliminary-injunction-against-internet-video-streamer-filmon-x-1200600254/#comment-list-wrapper>)