

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WPIX, INC., WNET.ORG, AMERICAN BROADCASTING COMPANIES, INC., DISNEY ENTERPRISES, INC., CBS BROADCASTING INC., CBS STUDIOS INC., THE CW TELEVISION STATIONS INC., NBC UNIVERSAL, INC., NBC STUDIOS, INC., UNIVERSAL NETWORK TELEVISION, LLC, TELEMUNDO NETWORK GROUP LLC, NBC TELEMUNDO LICENSE COMPANY, OFFICE OF THE COMMISSIONER OF BASEBALL, MLB ADVANCED MEDIA, L.P., COX MEDIA GROUP, INC., FISHER BROADCASTING-SEATTLE TV, L.L.C., TWENTIETH CENTURY FOX FILM CORPORATION, FOX TELEVISION STATIONS, INC., TRIBUNE TELEVISION HOLDINGS, INC., TRIBUNE TELEVISION NORTHWEST, INC., UNIVISION TELEVISION GROUP, INC., THE UNIVISION NETWORK LIMITED PARTNERSHIP, TELEFUTURA NETWORK, WGBH EDUCATIONAL FOUNDATION, THIRTEEN, and PUBLIC BROADCASTING SERVICE,

Plaintiff,

v.

IVI, INC. and TODD WEAVER,

Defendants.

Docket No. 10 Civ. 7415 (NRB)

**DECLARATION OF TODD WEAVER IN OPPOSITION TO MOTION FOR
PRELIMINARY INJUNCTION**

I, Todd Weaver, hereby declare as follows:

1. I am the Chief Executive Officer of ivi, Inc. I am over eighteen years of age and make this declaration based on personal knowledge.

2. ivi is an entity having a principal place of business in Seattle, Washington and which receives over-the-air broadcasts of television content that originates with others. ivi began providing its secondary transmissions of such television content to consumers on September 13, 2010.

3. ivi then makes the original content from the primary transmissions available to consumers who download the ivi TV player and pay for the subscription service. In particular, ivi receives signals transmitted by FCC-licensed broadcast stations in Seattle and New York. The ivi TV player allows paying consumers to receive the television content over the Internet, using wires, cables, or other communication channels, in the same way that cable or satellite television consumers are able to play the identical content using a set top box or similar player.

4. ivi's system is capable of operating in a peer-to-peer manner, but at present it does not use a peer-to-peer configuration and does not distribute over-the-air broadcasts outside the United States.

5. The ivi technology uses a closed system in which the television content is directed specifically and exclusively to paying subscribers over the Internet. The ivi content is encrypted and is only decrypted and formatted in small increments shortly before viewing by ivi subscribers. Thereafter the content is rendered unusable, removed, and cannot readily be captured or passed along by consumers. Accordingly, ivi subscribers cannot view the television content in any other software other than the ivi TV player that has a paid subscription for that content.

6. The ivi TV player accommodates various compression levels, including enhanced definition (ED), standard definition (SD), and others. The picture compression is automatically adjusted by the ivi TV player to deliver the best quality for the viewer's Internet connection. It is typical for Internet television sites, like Hulu, to adjust picture quality to accommodate the bandwidth available to the viewer.

7. I am familiar with a host of commercially available tools for capturing and copying television content using standard computer software. It is much easier to copy content received by traditional cable services using a host of readily available software programs that allow consumers to capture video and post it on YouTube or otherwise pass it along over the Internet.

8. I understand that the SHVERA Report further describes the AT&T system as one in which the broadcast signals are acquired, processed, encrypted, and encoded at a main facility and then transmitted to subscribers using Internet Protocols. The ivi Internet TV service works the same way. ivi also acquires, processes, encrypts, and encodes the received broadcast signals and transmits them using Internet Protocols, just like AT&T.

9. The ivi system also operates within a controlled geographic area and over a secure, closed transmission path. It is a “closed” system in that transmissions are directed to specific subscribers and nonsubscribers cannot access the transmissions in any way that would allow them to gain access to the actual television content. ivi also controls the geographic area of distribution using tools that determine the actual location of the computer operating the ivi TV player, and do not solely rely on self-reported geographic indicators such as billing addresses or phone numbers.

10. I am aware that many media companies already place their own content on the Internet, giving it away for free without encryption. For example, using Hulu.com, television shows from NBC, Fox, ABC, and other sources are provided for viewing on the Internet for free. Attached as Exhibit 1 is a true and correct copy of information available from www.hulu.com which states that Hulu is operated independently but owned by other companies that include NBC Universal, News Corp., The Walt Disney Company, and others. Exhibit 1 further explains that Hulu offers television content from many networks, including many of the plaintiffs in this lawsuit. In addition, it explains that the Hulu television content is free, and can be emailed or otherwise passed along freely to others over the Internet. Still further, it acknowledges that the

videos from Hulu are available on 40 other websites, as well as “a growing network of personal blogs, fan sites, and other Web sites where users choose to embed the Hulu player.” Hulu further makes the television content available on mobile phones.

11. Hulu seeks to restrict its transmissions to the United States in a manner that appears to be the same as that used by ivi. I also understand that Hulu.com is not licensed by the FCC.

12. Most, if not all, of the major television networks also make these same television shows available for viewing on the Internet at their own websites such as abc.com, nbc.com, and others. Major League Baseball likewise makes available all of its postseason playoff games for viewing on the Internet at www.mlb.com.

13. In addition, I am aware that YouTube is widely used by consumers to upload television content to the Internet, and that such content originally comes from a variety of sources such as over-the-air broadcasts, cable, satellite, or websites such as Hulu.

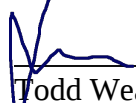
14. Although ivi was well aware that the FCC does not regulate the Internet, ivi nonetheless approached many media companies before it began commercial secondary transmissions. Thus, long before invoking the benefits of the statutory license ivi approached many media companies in an effort to enter into specific agreements rather than the statutory license. Consistent with the Media Companies’ desire to restrict competition, ivi was turned away and no agreements were reached.

15. The Media Companies state that advertising measurement agencies do not currently measure ivi’s viewers, and therefore the number of viewers of a program will be undercounted. To the contrary, the measurement agencies will accept such data and account for it. ivi has contacted such agencies and will submit its viewership data.

16. The Media Companies contend that ivi would not face any real harm in “delaying the launch” of their service until after a final adjudication on the merits. That proposition is false.

A preliminary injunction would likely shut down ivi's entire business, foreclosing any ability to generate any revenue during the pendency of the litigation.

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



Todd Weaver
October 21, 2010