

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
:
WPIX, INC.,
: WNET.ORG,
: AMERICAN BROADCASTING COMPANIES, INC.,
: DISNEY ENTERPRISES, INC.,
: CBS BROADCASTING INC.,
: CBS STUDIOS INC.,
: THE CW TELEVISION STATIONS INC.,
: NBCUNIVERSAL MEDIA, LLC,
: NBC STUDIOS LLC,
: OPEN 4 BUSINESS PRODUCTIONS LLC
: UNIVERSAL NETWORK TELEVISION, LLC,
: TELEMUNDO NETWORK GROUP LLC,
: WNJU-TV BROADCASTING LLC,
: NBC TELEMUNDO LICENSE LLC,
: 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,

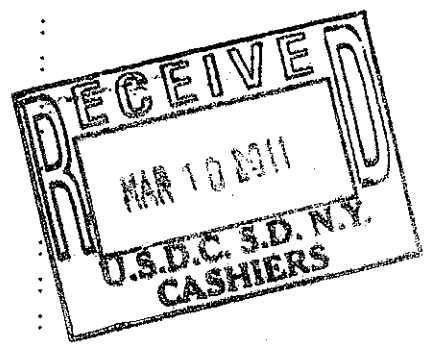
Plaintiffs,

v.

IVI, INC. and TODD WEAVER,

Defendants.
-----X

10 Civ. 07415-NRB



**FIRST AMENDED COMPLAINT FOR DAMAGES AND
PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF**

Plaintiffs WPIX, Inc., WNET.ORG, American Broadcasting Companies, Inc., Disney Enterprises, Inc., CBS Broadcasting Inc., CBS Studios Inc., The CW Television Stations Inc., NBCUniversal Media, LLC, NBC Studios LLC, Open 4 Business Productions LLC, Universal Network Television, LLC, Telemundo Network Group LLC, WNJU-TV Broadcasting LLC, NBC Telemundo License LLC, 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 (collectively, "plaintiffs"), by their attorneys, complain and allege against defendants ivi, Inc. and Mr. Todd Weaver (collectively, "defendants") as follows:

NATURE OF THE ACTION

1. On September 13, 2010, defendants began streaming over the Internet, to subscribers located throughout the world, several New York City and Seattle, Washington broadcast television stations and the copyrighted programming on those stations -- all without the consent of the affected stations or copyright owners. They have since added broadcast stations licensed to the Los Angeles and Chicago markets and now sell access to a total of approximately 65 broadcast stations -- with publicly stated plans to add several more stations from at least the Philadelphia market and to provide that programming via mobile devices and set-top boxes. The purpose of this copyright infringement action is to restrain defendants from exploiting without authorization, and violating plaintiffs' rights in, some of the most valuable intellectual property created in the United States.

2. Defendants offer online access, via the website <http://www.ivi.tv>, to the signals of broadcast television stations owned by several of the plaintiffs and stations on which all of the plaintiffs own copyrighted programming. Defendants are providing this commercial service featuring plaintiffs' programming twenty-four hours a day, every day, without the authorization of any of the affected stations or copyright owners.

3. Defendants-launched their infringing Internet TV service to coincide with the start of the new fall television season -- the week of most season and series premieres (as well as plaintiff Major League Baseball's pennant races and postseason) -- thereby misappropriating some of the most important copyrighted content at a critical time of the year. Defendants originally offered their service to "anyone anywhere in the world," boasting that subscribers could view "New York City broadcast channels anywhere from Paris to Perth to Peru." While defendants now claim their service is not available outside the United States, the service is in fact capable of being accessed throughout the world.

4. Unless restrained by this Court, the loss of control over the distribution of plaintiffs' broadcast signals and copyrighted programming, the preemption of plaintiffs' opportunities to license content over new media, the misappropriation of plaintiffs' ability to exploit foreign markets, and the other unlawful conduct contemplated by defendants threaten plaintiffs with substantial irreparable losses.

5. Beginning the day after defendants commenced their unlawful service, several of the plaintiffs demanded that defendants, no later than the following week, cease and desist from the unauthorized streaming of their signals and programming over the Internet. Defendants initially responded by representing that they were "open to engaging in discussions" to "explore more direct contractual agreements" with certain plaintiffs. A few days later, on September 20,

2010, defendant ivi commenced an improper anticipatory lawsuit in federal district court in Seattle, Washington against some (but not all) of the plaintiffs. *ivi, Inc. v. Fisher Communications, Inc., Civil Action No. 10-cv-1512* (W.D. Wash.). On January 20, 2011, the Seattle court dismissed ivi's action, noting that ivi had acted "disingenuous[ly]" in initiating that litigation.

6. Defendants have publicly claimed that so-called "copyright technicalities" allow ivi to sell its unauthorized service to anyone "anywhere on the planet" simply by paying a semi-annual fee to the Copyright Office that amounts to approximately \$50. Defendants claim ivi qualifies for a thirty-year old "compulsory license" that was enacted to allow "cable systems," under certain circumstances and conditions, to make "secondary transmissions" of "primary transmissions" when permitted by the rules of the Federal Communications Commission ("FCC"). According to defendants no rules whatsoever govern their retransmission of broadcast television signals over the Internet, such as the FCC rules that require consent before retransmitting the signal of a broadcast station.

7. There are no "copyright technicalities" that allow defendants to steal plaintiffs' broadcast signals and copyrighted programming and to fence that valuable intellectual property via the Internet. ivi's Internet TV streaming service is not a "cable system" under, or otherwise eligible for, the compulsory license set forth in Section 111 of the Copyright Act, as defendants claim. Defendants are nothing more than publicity-seeking pirates that use the pretext of a non-existent loophole to exploit the creative efforts of plaintiffs and other broadcast stations and copyright owners for unjust profit.

8. Accordingly, plaintiffs ask that the Court preliminarily and permanently enjoin defendants' unlawful conduct and award damages arising out of defendants' unlawful conduct.

JURISDICTION AND VENUE

9. This action arises under the Copyright Act, 17 U.S.C. §§ 101, *et seq.*

10. This Court has exclusive subject matter jurisdiction under 28 U.S.C. § 1338.

11. Defendants capture the signals of, and programming transmitted by, broadcast television stations in this District -- including those stations owned by several of the plaintiffs and the programming in which several plaintiffs own the copyrights. Most of the plaintiffs are headquartered or have offices in this District and are injured in this District. Venue is properly laid in this Court under 28 U.S.C. §§ 1391 (b) and 1400 (a).

THE PARTIES

12. Plaintiffs are comprised of a broad array of parties injured by defendants' unlawful conduct. They include owners of the commercial and educational stations whose programming the defendants are illegally streaming over the Internet, the nation's major broadcast networks that own and distribute programming on the affected stations, and the owners and distributors of live sports and news programming, educational and documentary programming, motion pictures and television series (including the distributors of programming over the Internet).

13. Plaintiff WPIX, Inc. ("WPIX") is a New York corporation with its principal place of business at 220 East 42nd Street, New York, New York. WPIX is the licensee of television station WPIX, New York, New York. WPIX is the CW Network affiliate in the New York City market and transmits programming over-the-air in that market. Cable systems, satellite services and other multichannel video programming distributors also make WPIX transmissions available to their subscribers upon negotiating for the right to do so under Section 325 of the Communications Act, 47 U.S.C. § 325.

14. Plaintiff WNET.ORG ("WNET") is a New York non-profit educational corporation chartered by the Board of Regents of the University of the State of New York, with its principal place of business at 450 West 33rd Street, New York, New York. WNET is the licensee of non-commercial, educational television station WNET(TV) and of non-commercial, educational television station WLIW(TV), both of which transmit programming over-the-air in the New York market. Cable systems and satellite services also make WNET(TV) and WLIW(TV) programming available to their subscribers at the request of WNET under Sections 338 and 615 of the Communications Act, 47 U.S.C. §§ 338 and 615.

15. Plaintiff American Broadcasting Companies, Inc. ("ABC") is a Delaware corporation with its principal place of business at 77 West 66th Street, New York, New York, and does business as the ABC Television Network and as WABC-TV. ABC is actively engaged in the production and distribution of television programs and other copyrighted works, including programs ABC transmits to numerous broadcast television stations that it owns and operates, and other stations that are affiliated with its ABC Television Network, in the United States. ABC grants these stations the right to broadcast programming within their communities of license. The FCC has licensed ABC to operate the television station identified by the call letters WABC-TV ("WABC"), the signal of which is broadcast to viewers over-the-air in the New York City market. Cable systems, satellite services and other multichannel video programming distributors also make WABC transmissions available to their subscribers upon negotiating for the right to do so under Section 325 of the Communications Act, 47 U.S.C. § 325.

16. Plaintiff Disney Enterprises, Inc. ("DEI") is a Delaware corporation with its principal place of business at 500 S. Buena Vista Street, Burbank, California. DEI is actively engaged in the licensing of its copyrighted properties, and certain of its affiliates are engaged in

the worldwide production and distribution of copyrighted entertainment products, including programs that television broadcast stations and other media outlets transmit or retransmit to the public.

17. Plaintiff CBS Broadcasting Inc. ("CBS") is a New York corporation with its principal place of business at 51 West 52nd Street, New York, New York. CBS is actively engaged in the production and distribution of television programs and other copyrighted works – including programs CBS transmits to numerous broadcast television stations in the United States that are affiliated with its CBS Television Network, including stations that it owns and operates. CBS grants these stations the right to broadcast programming within their communities of license. The FCC has granted CBS the right to operate the television station identified by the call letters WCBS-TV ("WCBS"), the signal of which is broadcast to viewers in the New York City market. Cable systems, satellite services and other multichannel video programming distributors also make WCBS transmissions available to their subscribers upon negotiating for the right to do so under Section 325 of the Communications Act, 47 U.S.C. § 325.

18. Plaintiff CBS Studios Inc. ("CBS Studios") is a Delaware corporation with its principal place of business at 51 West 52nd Street, New York, New York. CBS Studios is actively engaged in the worldwide production and distribution of copyrighted entertainment products, including programs that television broadcast stations and other media outlets transmit or retransmit to the public.

19. Plaintiff The CW Television Stations Inc. is a Delaware Corporation with its principal place of business at 51 West 52nd Street, New York, New York. The FCC has licensed The CW Television Stations Inc. to operate the television station identified by the call letters KSTW ("KSTW"), the signal of which is broadcast to viewers over-the-air in the Seattle-Tacoma

market. Cable systems, satellite services and other multichannel video programming distributors also make KSTW transmissions available to their subscribers upon negotiating for the right to do so under Section 325 of the Communications Act, 47 U.S.C. § 325.

20. Plaintiff NBCUniversal Media, LLC, formerly known as NBC Universal, Inc. (“NBCUniversal”), is a Delaware limited liability company with its principal place of business at 30 Rockefeller Plaza, New York, New York. NBCUniversal is actively engaged, among other things, in the production and distribution of television programs and other copyrighted works, including programs NBCUniversal transmits to broadcast television stations in the United States that it owns and operates, and numerous other stations that are affiliated with the NBC Television Network, which is also owned and operated by NBCUniversal. NBCUniversal grants these stations the right to broadcast programming within their communities of license. NBCUniversal also operates the television station identified by the call letters WNBC-TV (“WNBC”), an FCC-licensed broadcast station that broadcasts to viewers over-the-air in the New York City market. Cable systems, satellite services and other multichannel video programming distributors also make WNBC transmissions available to their subscribers upon negotiating for the right to do so under Section 325 of the Communications Act, 47 U.S.C. § 325. NBCUniversal also licenses its copyrighted works to various media outlets in the United States and elsewhere.

21. Plaintiff NBC Studios LLC, formerly known as NBC Studios, Inc. (“NBC Studios”), is a New York limited liability company with its principal place of business at 100 Universal City Plaza, Universal City, California, and is a wholly owned subsidiary of plaintiff NBCUniversal. NBC Studios is actively engaged in the production and licensed distribution of television programs, including programs that are transmitted to numerous broadcast stations in

the United States affiliated with the NBC Television Network and distributed elsewhere in the world.

22. Plaintiff Open 4 Business Productions LLC (“Open 4 Business”) is a Delaware limited liability company with its principal place of business at 100 Universal City Plaza, Universal City, California, and is an indirect wholly-owned subsidiary of plaintiff NBCUniversal. Open 4 Business is actively engaged in the production and licensed distribution of television programs, including programs that are transmitted to numerous broadcast stations in the United States affiliated with the NBC Television Network and distributed elsewhere in the world.

23. Plaintiff Universal Network Television, LLC (“UNT”) is a Delaware limited liability company with its principal place of business at 100 Universal City Plaza, Universal City, California, and is an indirect wholly-owned subsidiary of plaintiff NBCUniversal. UNT is actively engaged in the production and licensed distribution of television programs, including programs that are transmitted to numerous broadcast stations in the United States affiliated with the NBC Television Network and distributed elsewhere in the world.

24. Plaintiff Telemundo Network Group LLC (“Telemundo”) is a Delaware limited liability company with its principal place of business at 2290 West 8th Avenue, Hialeah, Florida, and is an indirect wholly-owned subsidiary of plaintiff NBCUniversal. Telemundo is, among other things, actively engaged in the production and licensed distribution of Spanish-language television programs, including programs that are transmitted to numerous broadcast stations in the United States affiliated with the Telemundo Network and distributed elsewhere in the world.

25. Plaintiff WNJU-TV Broadcasting LLC (“WNJU”) is a Delaware limited liability company with its principal place of business at 2290 West 8th Avenue, Hialeah, Florida, and is

an indirect, wholly-owned subsidiary of plaintiff NBCUniversal. WNJU operates the television station identified by the call letters WNJU-TV, a Spanish-language FCC-licensed broadcast station that broadcasts to viewers over-the-air in the New York City market. Cable systems, satellite services and other multichannel video programming distributors also make WNJU transmissions available to their subscribers upon negotiating for the right to do so under Section 325 of the Communications Act, 47 U.S.C. § 325.

26. Plaintiff NBC Telemundo License LLC (“NBCTL”), formerly known as NBC Telemundo License Co., is a Delaware limited liability company with its principal place of business at 2290 West 8th Avenue, Hialeah, Florida, and is an indirect, wholly-owned subsidiary of plaintiff NBC Universal. NBCTL is the holder of the FCC broadcast licenses under which WNBC and WNJU operate their respective broadcast stations.

27. Plaintiff Office of the Commissioner of Baseball (“BOC”), on behalf of its members, has responsibility for administrative and operational matters relating to Major League Baseball (“MLB”), and is an unincorporated association whose members are the thirty Major League Baseball Clubs. BOC’s headquarters are located at 245 Park Avenue, New York, New York. BOC licenses various broadcast and cable networks the rights to telecast certain MLB games and it owns the copyright in those telecasts. BOC also licenses the distribution of “out-of-market” MLB telecasts over various media, including satellite and cable systems.

28. Plaintiff MLB Advanced Media, L.P. (“MLBAM”) is a limited partnership organized under the laws of the State of Delaware with its principal place of business at 75 Ninth Avenue, New York, New York. MLBAM is the Internet and interactive media arm of Major League Baseball. Pursuant to exclusive licenses from Plaintiff Office of the Commissioner (and the thirty Major League Baseball Clubs), MLBAM is actively engaged in the distribution of

MLB game and event telecasts (MLB Telecast) and other copyrighted works on a worldwide basis via the Internet and wireless networks. Among MLBAM's Internet distribution properties are MLB.com, the Official Site of Major League Baseball, and MLB.TV, a subscription service through which MLB Telecasts are made available to a worldwide audience using personal computers and wireless devices.

29. Plaintiff Cox Media Group, Inc. ("CMG") is a Delaware corporation with its principal place of business at 6205 Peachtree Dunwoody Rd. in Atlanta, Georgia. CMG is an integrated broadcasting, publishing and digital media company that, through its subsidiaries and affiliates, operates, among other businesses, fifteen broadcast television stations. CMG's subsidiary, KIRO-TV, Inc., is the operator of KIRO, the CBS network affiliate in the Seattle-Tacoma market. Cable systems, satellite services and other multichannel video programming distributors also make KIRO-TV transmissions available to their subscribers upon negotiating for the right to do so under Section 325 of the Communications Act, 47 U.S.C. § 325.

30. Plaintiff Fisher Broadcasting-Seattle TV, L.L.C. ("Fisher") is a Delaware limited liability company with its principal place of business at 140 Fourth Avenue, Suite 500, Seattle, Washington. Fisher is the licensee of television station KOMO-TV ("KOMO"), Seattle, Washington, the ABC network affiliate in the Seattle-Tacoma market, including its multicast channel which is affiliated with the this TV program service. Cable systems, satellite services and other multichannel video programming distributors also make KOMO transmissions available to their subscribers upon negotiating for the right to do so under Section 325 of the Communications Act, 47 U.S.C. § 325.

31. Plaintiff Twentieth Century Fox Film Corporation ("Fox") is a Delaware corporation with its principal place of business at 10201 W. Pico Blvd., Los Angeles, California.

Fox (together with its subsidiaries and affiliates) is actively engaged in the worldwide production and distribution of copyrighted entertainment products, including programs that television broadcast stations and other media outlets transmit or retransmit to the public. Fox typically grants these stations and TV networks licenses to broadcast programming on these stations within their local markets only.

32. Plaintiff Fox Television Stations, Inc. ("Fox TV") is a Delaware corporation with its principal place of business at 1211 Avenue of the Americas, New York, New York. Fox TV owns and operates many local broadcast television stations. These stations are actively engaged in the production and distribution of television programs and other copyrighted works in the United States and elsewhere. Among the Fox TV stations are the television stations with the call letters WNYW ("WNYW") and WWOR-TV ("WWOR-TV"), the signals of which are broadcast to viewers over-the-air in the New York City market. The FCC has licensed Fox TV to operate WNYW and WWOR-TV. Cable systems, satellite services and other multichannel video programming distributors also make WNYW and WWOR-TV transmissions available to their subscribers upon negotiating for the right to do so under Section 325 of the Communications Act, 47 U.S.C. § 325.

33. Plaintiff Tribune Television Holdings, Inc. is a Delaware corporation with a principal place of business at 1813 Westlake Avenue North, Seattle, Washington. Tribune Television Holdings, Inc. is the licensee of television station KZJO, Seattle, Washington. KZJO (formerly KMYQ) is the MyNetworkTV affiliate in the Seattle-Tacoma market. Cable systems, satellite services and other multichannel video programming distributors also make KZJO transmissions available to their subscribers upon negotiating for the right to do so under Section 325 of the Communications Act, 47 U.S.C. § 325.

34. Plaintiff Tribune Television Northwest, Inc. is a Delaware corporation with its principal place of business at 1813 Westlake Avenue North, Seattle, Washington. Tribune Television Northwest, Inc. is the licensee of television station KCPQ, Tacoma, Washington. KCPQ is the Fox network affiliate in the Seattle-Tacoma market. Cable systems, satellite services and other multichannel video programming distributors also make WABC transmissions available to their subscribers upon negotiating for the right to do so under Section 325 of the Communications Act, 47 U.S.C. § 325.

35. Plaintiff Univision Television Group, Inc. ("UTG") is a Delaware corporation with its principal place of business at Glenpointe Centre West, 500 Frank W. Burr Blvd, Teaneck, New Jersey. UTG owns and operates many local broadcast television stations. These stations are actively engaged in the production and distribution of television programs and other copyrighted works in the United States and elsewhere. Among the UTG stations are the television stations with the call letters WXTV-DT ("WXTV") and WFUT-DT ("WFUT"), the signals of which are received by viewers over-the-air in the New York City market. The FCC has authorized subsidiaries of UTG to operate WXTV and WFUT. Cable systems, satellite services and other multichannel video programming distributors also make WXTV and WFUT transmissions available to their subscribers upon negotiating for the right to do so under Section 325 of the Communications Act, 47 U.S.C. § 325.

36. Plaintiff The Univision Network Limited Partnership ("UNLP") is a Delaware corporation with its principal place of business at 9405 N.W. 41st Street, Miami, Florida. UNLP (together with its subsidiaries and affiliates) is actively engaged in the worldwide production and distribution of copyrighted entertainment products, including programs that television broadcast stations and other media outlets transmit or retransmit to the public.

37. Plaintiff Telefutura Network ("Telefutura") is a Delaware corporation with its principal place of business at 9405 N.W. 41st Street, Doral, Florida. Telefutura (together with its subsidiaries and affiliates) is actively engaged in the worldwide production and distribution of copyrighted entertainment products, including programs that television broadcast stations and other media outlets transmit or retransmit to the public.

38. Plaintiff WGBH Educational Foundation ("WGBH") is a charitable, non-profit Massachusetts corporation with its principal place of business at One Guest Street, Boston Massachusetts. WGBH is the leading provider of national primetime programming for the Public Broadcasting Service ("PBS"). Among its award-winning productions are American Experience, Antiques Roadshow, Frontline, Masterpiece, and NOVA. WGBH is also a leading provider of national children's programming, such as Arthur, Between the Lions, and Curious George.

39. Plaintiff THIRTEEN (formerly known as Educational Broadcasting Corporation) is a New York non-profit educational corporation chartered by the Board of Regents of the University of the State of New York, with its principal place of business at 450 West 33rd Street, New York, New York. THIRTEEN is wholly-owned by its parent corporation, plaintiff WNET.ORG. THIRTEEN is actively engaged in the production and distribution of television programs, including the award-winning productions American Masters, Cyberchase, Great Performances, and Nature, and holds or shares copyrights with respect to these productions. THIRTEEN produces or co-produces approximately one-third of the programming distributed in the United States by PBS to its member stations.

40. Plaintiff Public Broadcasting Service ("PBS") is a District of Columbia non-profit corporation with its principal place of business at 2100 Crystal Drive, Arlington, Virginia.

PBS's mission is to promote the advancement of education, culture and citizenship, and in furtherance of its mission, PBS uses television, the Internet and other media. PBS acquires and distributes a wide range of non-commercial television and video programming on behalf of its member stations featuring educational, cultural and entertainment topics. PBS's members include virtually all of the public television stations in the United States.

41. Upon information and belief, defendant ivi, Inc. ("ivi") is a company that has its principal place of business in Seattle, Washington, and has twelve full-time employees.

42. Upon information and belief, defendant Todd Weaver ("Weaver") is a resident of Seattle, Washington, and is ivi's founder, developer, and chief executive officer.

NATURE OF DEFENDANTS' UNLAWFUL CONDUCT

43. On September 13, 2010, defendants began operating their for-profit commercial service that provides subscribers with online access to all of the programming telecast by numerous broadcast television stations serving either the New York, New York or Seattle, Washington markets. Since then, defendants have added to their service the copyrighted programming of broadcast television stations in Los Angeles, California and Chicago, Illinois. Upon information and belief, defendants capture the signals of these stations (the "Stations") in their local markets (New York, Seattle, Los Angeles, and Chicago), transmit those signals to defendants' servers, and then stream the signals over the Internet to customers.

44. To take advantage of defendants' service, including access to all of the programming on the Stations, an individual with Internet access need only (a) access the ivi website (<http://www.ivi.tv/>) on his or her computer; (b) create an account by providing an e-mail address and a password; (c) agree to the terms of an end user license; and (d) pay the defendant a

fee. After a 30-day free trial, that fee is \$4.99 per month. The principal pages of the ivi website explaining this are attached hereto as Exhibit 1.

45. An ivi subscriber may download, install and use on a computer (or other applicable device) the ivi TV application. That application allows the subscriber to access the television programming exhibited by the Stations. For an additional fee of \$0.99 per month, the subscriber is able to copy the programming that defendants stream.

46. Defendants have not obtained the authorization of plaintiffs or, upon information and belief, any other party, to stream over the Internet the signals of the Stations or the programming broadcast by them.

47. Upon information and belief, defendants plan to distribute ivi's TV service including plaintiffs' signals and/or copyrighted programming to iPad, iPhone and Android mobile devices, and have already submitted an "iPad app." Upon information and belief, defendants also plan to distribute their service to users of various third party set-top boxes. *See* Exhibit 2.

48. Within days after defendants commenced their unlawful Internet TV service on September 13, 2010, several plaintiffs demanded that defendants cease and desist from streaming the signals of the stations they owned and the copyrighted programming that they owned. These plaintiffs advised defendants that their continued operation of the ivi service would subject them to liability for, among other things, willful copyright infringement. These plaintiffs hoped to persuade defendants to stop their unlawful conduct without burdening the parties and the courts with unnecessary litigation. To afford defendants a fair opportunity to wind down their service, these plaintiffs gave defendants until Wednesday, September 22, 2010, to cease and desist their infringing activity.

49. On the morning of September 20, 2010, defendant ivi filed a lawsuit in federal district court in Seattle, Washington. *ivi, Inc. v. Fisher Communications, Inc., Civil Action No. 10-cv-1512* (W.D. Wash.). At the same time defendants issued a press release announcing their lawsuit and circulated that press release to various media outlets. Defendants' press release is attached as Exhibit 3. On January 20, 2011, the federal court in Seattle dismissed ivi's declaratory action as an improper anticipatory lawsuit.

50. Defendants have continued to engage in their unlawful activities as alleged above.

**DEFENDANT WEAVER'S
INVOLVEMENT IN IVI'S UNLAWFUL CONDUCT**

51. On information and belief, Mr. Weaver has been personally involved in and personally responsible for (1) ivi's decision to stream plaintiffs' broadcast signals and copyrighted programming over the Internet without plaintiffs' consent; (2) the development of the business model and technological systems employed by ivi in the infringement of plaintiffs' copyrights; (3) the solicitation of financial support for the infringing ivi service; (4) the widespread promotion of ivi's infringing service through public appearances and statements to the press and others; and (5) the decision to continue and to expand ivi's infringing activity following receipt of the plaintiffs' cease and desist letters and the commencement of this lawsuit. Upon information and belief, Mr. Weaver spent several years leading a team that developed the infringing ivi service; he has personally supervised, and has a personal financial interest in, ivi's infringing activities.

52. Upon information and belief, defendant Weaver has been and is the primary actor in the activities of ivi that give rise to plaintiffs' claims; he has had knowledge of, consented to and exercised control over ivi's infringing activities.

53. Upon information and belief, Mr. Weaver has scheduled appearances in New York City and throughout the country to promote ivi's infringing activities. According to ivi press releases, Mr. Weaver scheduled appearances to speak in New York City to promote ivi on October 6, 2010, November 11, 2010 and November 12, 2010. *See* Exhibits 4 and 5. And Mr. Weaver scheduled appearances to promote ivi in San Francisco, California and Las Vegas, Nevada on October 28, 2010 and January 6-7, 2011, respectively. *See* Exhibit 5.

54. As shown on the press release attached as Exhibit 4, on September 13, 2010, Mr. Weaver released the following statements about his infringing ivi service:

- (i) "ivi empowers its users to experience 'TV Anywhere,' offering them major broadcast channels delivered live to their laptop or desktop, anywhere on the planet."
- (ii) "ivi is not another Pirate Bay or Napster trying to gain from others' works. Rather, ivi wishes to work with content owners in helping them to realize new revenue streams and reach more viewers from around the globe The ivi team has spent more than three years developing a compelling technological solution that no other company has come close to matching. ivi enables content owners to protect and monetize their assets while simultaneously giving consumers what they want. We recognize that it is disruptive to existing cable offerings and remain confident that we have adopted a model that is allowed under all applicable laws."

55. As shown on Exhibit 6, on September 23, 2010 Mr. Weaver made the following statements to the press about his infringing ivi service:

- (i) “The reason you can get continuous television is that we are constantly building the file to deliver the best-quality picture, and the time to do that is variable. We could ‘dial down’ the delay, but viewers with slow Internet connections wouldn’t like it. Clearly we’re not a candidate for real-time betting on horse races, and football fans might get a text message about a touchdown before our subscribers see it. But in today’s multiplatform/DVR/mobile/tablet/Internet/TV we think that ‘burst delay’ means less and less to the viewer, and it’s an absolutely acceptable trade-off for a better-quality viewing experience.”
- (ii) “They [broadcasters] are saying we’re infringing on copyright. We’re saying we’re not, according to US copyright law. We point at the same paragraph they point at. It’s really not a multibillion-dollar effort. It is something that is a known legal plan, and so we are plowing forward.”

56. As shown on Exhibit 7, on October 1, 2010 Mr. Weaver made the following statements to the press about ivi’s plans for expansion:

- (i) “it is business as usual. We’re going to continue to add markets. We’re continuing to add a large number of subscribers, and the legal proceedings will continue.”
- (ii) “The broadcasters -- when we met with KING-5 Seattle, here locally in Seattle, it was exactly the same thing as the industry as a whole. Initially there’s major freak-out.”
- (iii) “The roadmap is really about a new device every two to three months. After iPad, which is the hottest device that we’re looking to have out in

the [iTunes] App Store, probably mid-October, then we move to the iPhone because it's a similar device. Then we'll be adding the Android, and after that it's various devices. It's either going to be set-top embedded, like a Roku or Boxee, or we might go straight to Internet-connected TVs like a Vizio."

- (iv) "We have met with them [over-the-top players like Boxee or Roku], a little while ago, before launch. After launch, we haven't reached out to them. However we have had some of their developers contact us for porting to their devices, so there is definitely a demand for it."
- (v) "Seattle is our backyard. It was easy to deploy and get things tested out. We started with Seattle and then added New York, and we're going to be adding Los Angeles, Chicago, and San Francisco."

57. As shown on Exhibit 8 on October 4, 2010, Mr. Weaver made the following statements to the press about ivi's plans for expansion:

- (i) "[W]e're going to be adding markets. Los Angeles is the next market and then we're going to kind of roll right down the markets. Right now, we will probably be adding a new market about every 45 days or so."
- (ii) "[W]e could just have, I suppose, carried the New York stations, but the plan is to roll out all the markets, even though we will have redundancy, especially in the same time zone when they're going to have the same show running on the same time. But the stations have local news that people really do like."

- (iii) “We’re going to be eating [the cable operators’] lunch. That’s the entire point. We are the over-the-top alternative. At some point the big thing is for them to do data, right? So they’ll be a data carrier and there’s going to be a bunch of over-the-top private networks that supply your phone like Skype and movie rentals like Netflix.”
- (iv) “It’s not an easy task to overcome the technological hurdles we have and produce an extremely reliable player. And we also are rolling out to more devices. Broadcasters want to be able to deliver their signals to mobile devices. We can do that today. To port to a new device is really about a three-month cycle. The first device for us is the iPad and then we’re going to follow with the iPhone and move on to Android devices. So the ability to add additional markets, add a channel, negotiate those contracts for those channels and then having the solution for multiple devices put us way ahead of the game. We will just continue to innovate. So if someone decides to follow along later and create a Flash-based website where you can see a couple channels, that’s a small piece of the overall offering that we have.”
- (v) “What we have is a downloadable app that does peer sharing so you always have a continuous TV viewing experience, which is the broadcast model, but we retain every aspect of the transactional Internet.”

58. On October 14, 2010, Mr. Weaver made the following statements to the press about the growth of his infringing ivi service: “In just 30 days, rather than crumbling under NAB assault, we have grown stronger as we galvanize a groundswell of users, becoming the

singular answer to a multi-million viewer problem while simultaneously capturing the world's imagination with our first-to-market live television service.” Exhibit 5.

**COUNT ONE
COPYRIGHT INFRINGEMENT**

59. Plaintiffs hereby incorporate by reference and reallege each and every allegation of paragraphs 1 through 58 above.

60. Plaintiffs (and/or their parents, subsidiaries or affiliates) are the legal or beneficial owners of the copyrights in numerous programs that have been, or will be, exhibited over broadcast television stations and a variety of other media outlets. A non-exhaustive list of such television programs, identifying representative examples of programs in which plaintiffs (and/or their parents, subsidiaries or affiliates) own the pertinent copyright interests, is set forth in Exhibit 9 (“TV Programs”).

61. Each such TV Program is an original audiovisual work that has been fixed in a tangible medium of expression and constitutes copyrightable subject matter within the meaning of Section 102 of the Copyright Act, 17 U.S.C. § 102. Each such TV Program has been registered with the United States Copyright Office or is the subject of an application for registration filed with the Copyright Office. Representative examples of the copyright registration certificates or other documentation demonstrating compliance with Sections 408 (f) and 411 of the Copyright Act, 17 U.S.C. §§ 408 (f) & 411, and implementing Copyright Office regulations, corresponding to the TV Programs identified in Exhibit 9, are attached hereto as Exhibits 10 to 113.

62. Each TV Program has been created or licensed for exhibition by plaintiffs (and/or their parents, subsidiaries or affiliates), the transmissions of which the defendants are streaming without authorization as part of its ivi service. On information and belief, defendants have

streamed as part of ivi's unauthorized service, each TV Program and numerous other works in which plaintiffs own copyrights.

63. Under Section 106 of the Copyright Act, 17 U.S.C. § 106, plaintiffs (and/or their parents, subsidiaries or affiliates) own the exclusive rights, among others, to reproduce in copies their copyrighted works, to distribute copies to the public of their copyrighted works, to publicly perform their copyrighted works, to publicly display their copyrighted works, and to make derivative works based upon their copyrighted works.

64. Under Section 106 of the Copyright Act, 17 U.S.C. § 106, plaintiffs (and/or their parents, subsidiaries or affiliates) also own the exclusive rights to authorize others to exercise the rights set forth in the preceding paragraph 63.

65. Neither the plaintiffs nor any other person authorized by plaintiffs have granted any license, permission or authorization to defendants to exercise any of the rights set forth in paragraph 63 or to authorize others to exercise such rights, respecting the TV Programs or any other works in which plaintiffs (and/or their parents, subsidiaries or affiliates) own copyrights.

66. In offering the ivi service, defendants have exercised and will exercise (or have authorized or will authorize others to exercise) one or more of plaintiffs' exclusive rights set forth in paragraph 63 respecting the TV Programs and other works in which plaintiffs (and/or their parents, subsidiaries or affiliates) own copyrights.

67. Defendants have committed and will commit each act of copyright infringement with the knowledge that they were not authorized to exercise any of the rights (or authorize others to exercise any of the rights) set forth in paragraph 63 respecting the TV Programs and other works in which plaintiffs (and/or their parents, subsidiaries or affiliates) own copyrights. Defendants' conduct thus has constituted and will constitute willful copyright infringement.

68. As a result of defendants' willful copyright infringement, plaintiffs have been and are being irreparably harmed.

69. Unless restrained by the Court, defendants will continue to engage in such willful copyright infringement.

**COUNT TWO
SECONDARY COPYRIGHT INFRINGEMENT**

70. Plaintiffs hereby incorporate by reference and reallege each and every allegation of paragraphs 1 through 69 above.

71. Through the creation, maintenance and operation of their unauthorized Internet TV service, defendants ivi and Weaver induce, contribute to, and are vicariously liable for any copyright infringement committed by their subscribers.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray that this Court enter judgment in plaintiffs' favor and against defendants as follows:

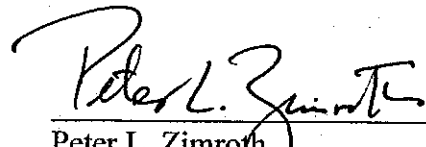
A. Adjudge and declare, pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 (a) & 2202, that defendants have infringed plaintiffs' copyrights in violation of 17 U.S.C. § 101 *et seq.* by operating the ivi service and engaging in the conduct described above;

B. Issue a preliminary and permanent injunction enjoining and restraining defendants and their officers, agents, servants, and employees and all those in active concert or participation with them, from infringing plaintiffs' exclusive rights under the Copyright Act by offering the ivi service and engaging in the conduct described above;

C. Award plaintiffs their damages, costs and reasonable attorneys' fees in accordance with 17 U.S.C. §§ 504 and 505 and other applicable law; and

D. Award such other and further relief as the Court shall deem just and appropriate.

By:



Peter L. Zimroth
ARNOLD & PORTER LLP
399 Park Avenue
New York, New York
(212) 715-1000
peter.zimroth@aporter.com

-- and --

Robert Alan Garrett
Hadrian R. Katz
C. Scott Morrow
ARNOLD & PORTER LLP
555 Twelfth Street, N.W.
Washington, D.C. 20004
(202) 942-5000
robert.garrett@aporter.com
hadrian.katz@aporter.com
scott.morrow@aporter.com

Counsel for Plaintiffs

Dated: March 9, 2011