

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

CBS BROADCASTING INC.,  
NBC STUDIOS, INC.,  
UNIVERSAL NETWORK TELEVISION, LLC,  
NBC SUBSIDIARY (KNBC-TV), INC.  
TWENTIETH CENTURY FOX FILM CORPORATION,  
FOX TELEVISION STATIONS, INC.,  
ABC HOLDING COMPANY INC.,  
and DISNEY ENTERPRISES, INC.,

Plaintiffs,

v.

FILMON.COM, INC.,

Defendant.

Case No. 1:10-cv-7532-NRB

**DECLARATION OF MARTIN D. FRANKS**

I, Martin D. Franks, hereby declare under penalty of perjury, that the following statement is true and correct, to my personal knowledge.

1. I am employed as Executive Vice President, Planning, Policy and Government Relations for CBS Corporation ("CBS").

2. I have been with CBS since 1988, when I joined the Company as Vice President, Washington. In 1997, I was named Senior Vice President, CBS Corporation, overseeing the company's corporate relations functions. Later, I became Executive Vice President of CBS Television and Senior Vice President of Viacom Inc., after the former CBS Corporation was acquired by Viacom in May 2000. In September 2005, I was promoted to my present position, several months before Viacom effectuated a corporate restructuring pursuant to which the present CBS Corporation became an independent, publicly-traded company. As presently

constituted, CBS's businesses include, among others, the CBS Television Network, the CBS Television Stations Group, CBS Studios Inc. (which produces and syndicates television programming), CBS International Inc. (which markets CBS-owned programming abroad), Showtime Networks, Inc. (which consists of a variety of premium cable networks) and CSTV Networks, Inc. (which distributes the cable network CBS College Sports).

3. I have managed a wide range of activities for CBS, including oversight of the corporation's activities in Washington, its relations with state and local governments, its corporate philanthropy, and supervision of the CBS Program Practices Department. As CBS's Vice President, Washington, I was deeply involved in the legislative process leading to enactment of the Cable Television Consumer Protection and Competition Act of 1992, which for the first time afforded television stations the right to negotiate compensation for the carriage of their signals by cable operators. Around the same time, I was one of CBS's principal advocates in the ultimately successful effort to repeal the FCC's financial interest/syndication rules, which allowed television network companies to produce, own and market the programs they air, and opened the door to what is now one of CBS's major businesses. Policy and legislative issues relating to the protection of CBS's copyrights and intellectual property are also among my main concerns, including matters such as the so-called "broadcast flag" to protect digital television programming from unauthorized copying and distribution over the Internet.

4. Currently, one of my chief responsibilities is handling CBS's retransmission consent negotiations with multichannel video providers. Accordingly, I am intimately familiar with the kinds of issues that arise in such negotiations.

5. I make this declaration in support of in support of Plaintiffs' Application for an Order To Show Cause for a Preliminary Injunction and related relief, in accordance with rule 65 (b) (1) of the Federal Rules of Civil Procedure. I am personally familiar with the matters set forth herein, and would be competent to testify as to them in Court.

6. The retransmission service of defendant FilmOn.com, Inc. ("FilmOn") was introduced on September 27, 2010. Attached as Exhibit 1 hereto is a press release issued by FilmOn on that day (*Billionaire Alki David Launches First Internet Based True HD Television Service in the United States*, <http://www.prnewswire.com/news-releases/billionaire-alki-david-launches-first-internet-based-true-hd-television-service-in-the-united-states-103891823.html>). The service was described as a paid service accessed by computers that downloaded FilmOn's "HDi Player." My understanding is that during September and October, the operation of the FilmOn service was sporadic and intermittent, as is common with newly introduced Internet services.

7. On November 2, 2010, FilmOn issued a press release announcing a major change in the manner of its service's operation. Attached as Exhibit 2 hereto is a copy (*Billionaire Alki David Launches FilmOn Mobile Platform, Providing Free HD Network Television Service for Mobile Devices*, <http://www.prnewswire.com/news-releases/billionaire-alki-david-launches-film-on-mobile-platform-providing-free-hd-network-television-service-for-mobile-devices-106513883.html>). The FilmOn service was now to be largely free, and would be available over mobile telephones and iPad tablets without any need to download a player application:

FilmOn.com, the first online High Definition Television provider, announced today the launch of FilmOn Mobile; the first free, fully functional live television platform for mobile devices including the iPad™, Android™ and BlackBerry™ models. FilmOn Mobile includes programming from all major network TV stations and select cable channels as well as

FilmOn's own branded channels. The service is available at [www.filmson.com](http://www.filmson.com)

FilmOn Mobile does not require an application download. It works seamlessly with the built-in devices' media players using FilmOn's proprietary encrypted service to broadcast live television in HD over a basic 3G connection.

The service currently utilizes Los Angeles and European based affiliates. Additional major cities local affiliate channels including New York, Chicago, Miami, Dallas, Houston and Seattle will be populating the platform in the coming weeks.

The free FilmOn Mobile platform provides HD live viewing of all major networks and free television using Los Angeles and European feeds. The channels include:

ABC (KABC)	KCAL
CBS (KCBS)	Azteca America (KAZA)
NBC (KNBC)	Telemundo (KVEA)
The CW (KTLA)	Univision (KMEX)
FOX (KTTV)	Universal Sports
PBS (KOCE)	KCAL
ION Television (KPXN)	Azteca America (KAZA)
My Network TV (KCOP)	Telemundo (KVEA)
Universal Sports	

8. From our perspective, this change was extremely significant. As a subscription service available only intermittently on computers attached to the Internet by users that download a customized client application and pay a monthly \$10-15 fee, FilmOn's unauthorized retransmissions probably reached only a handful of customers. But as a free service, accessible

anywhere in the world over telephones as well as computers, in standard Web browsers, FilmOn's unauthorized retransmissions may well be reaching millions of users.

9. Unless stopped, the newly expanded activities of FilmOn will cause irreparable harm to CBS and the other television networks. Most importantly, they will cause CBS to lose control of the distribution of its copyrighted programming in ways that could damage its standing with both business partners and consumers. Further, by distributing CBS's programming in digital form over mobile telephone systems and the Internet – without CBS's having any say about the employment of copy protection and conditional access controls – FilmOn exposes CBS to virtually unlimited piracy. And by making CBS's programs available online without charge and in real time, FilmOn preempts CBS's ability to exploit new media markets, while at the same time lessening the value of those programs to traditional providers of linear broadcast programming, whether multichannel distributors, over-the-air television network affiliates (which will potentially lose viewers – and thus advertising revenues – to an out-of-market CBS station) or foreign telecasters.

10. One of the most essential rights belonging to an owner of intellectual property is the ability to control the manner of its distribution, the persons entrusted with its dissemination, and the manner of its display – including the environment in which it appears. CBS is deprived of those rights by FilmOn's unauthorized retransmission of the signals of its owned television stations and its copyrighted programming.

11. For example, CBS has no control of the advertising that may appear on FilmOn's Web site, the other programming that may be offered adjacent to that of its owned television stations, or the technical quality with which its programming is transmitted. All of these factors have the potential to diminish a worldwide brand that CBS has developed over more than six

decades. In particular, FilmOn's retransmission of CBS content is accessible right next to the transmissions of two adult-oriented channels, "Filthon XXX" and "Filthon XXX Latina." While it is difficult to access the former channel on mobile phones, the latter is both aptly named and easily accessed.

12. The unauthorized dissemination of its copyrighted programs over the Internet also exposes CBS to piracy far beyond that of which FilmOn itself is guilty. Internet transmissions are notoriously insecure and intellectual property in digital form is famously susceptible to copying and further unlimited distribution. That is what has given rise to elaborate "DRM" – or digital rights management – technology.

13. CBS distribution agreements with cable operators and others typically require the distributors to employ copy protection measures consistent with existing industry standards. Because FilmOn's dissemination of its programming is unauthorized, CBS has no ability to ensure that appropriate steps are taken to protect its security from further copying and distribution.

14. If FilmOn is permitted to stream CBS's copyrighted programming over the Internet until final adjudication of this action, the value of those programs will likely be irreparably compromised.

15. Defendant's actions will also threaten CBS's ability to exploit existing and potential markets for its programming. For example, by making the signals of CBS's owned television stations, and CBS's copyrighted programs, available over mobile phones and the Internet without the Company's consent, FilmOn undermines CBS's own efforts to benefit from the nascent and promising market for online distribution of its programming. At the same time, by making CBS's programming available over the Internet for free – something made possible

only by its copyright infringement – FilmOn jeopardizes the revenues for retransmission of signals that CBS realizes from legitimate cable and satellite operators.

16. FilmOn's use of our content on its Web site and mobile phone site threatens immense harm to CBS's businesses. FilmOn appropriates our right to sell advertising in those of our programs that we choose to make available online – if we control the necessary rights – pursuant to business arrangements and at prices that we determine. It competes, illegally, with CBS's legitimate licensees – including independently-owned television stations affiliated with the CBS Television Network, cable and satellite operators licensed to retransmit the signals of CBS's owned television stations, and the foreign television networks that license CBS product – thereby inevitably diminishing the value of those rights to CBS's lawful customers. It severely undermines CBS's ability to realize licensing revenues from the online distribution of programs it owns. Indeed, it threatens all of the revenue streams that CBS might in the future realize from the distribution of its intellectual property on new media platforms by forcing us to compete with a free alternative – free because the underlying product has been stolen.

17. Broadcast television stations and networks – including those owned by CBS – presently earn most of their revenues from advertising. Through its subsidiary CBS Interactive Inc., CBS is already distributing a number of its network programs online, on an advertiser-supported basis, both through its own Web site TV.com and through authorized Web sites affiliated with the CBS Audience Network. The advertising in the online versions of these programs is unique – that is, it differs from the advertising that appears on the linear television broadcasts of those same programs – and it is sold independently and priced separately from the broadcast ads. These programs are made available on an on-demand basis only *after* the linear broadcasts of the programs have been completed, so that the online audiences are additive to

those for the live broadcast, rather than reducing them. In contrast, the live streaming done by FilmOn competes directly both with the live broadcast itself and with CBS's chosen means of online distribution.

18. FilmOn's illegal activities will certainly not have any positive effect on the prices commanded for advertising on the CBS Television Network. In order to be sold to advertisers, audiences need to be measured. Nielsen Media Research has long been the dominant provider of such measurement with respect to traditional television viewing, and Nielsen is presently working on the development of techniques for estimating the size of online audiences for video programming. Although there are also firms, such as comScore, that currently provide this function, there is no indication that FilmOn has made any arrangements at all for the measurement of viewership to its service.

19. But FilmOn's activities do not only undermine CBS's ability to sell online advertising. They also threaten new and growing revenue streams that are vital for CBS's success.

20. As I have noted above, advertising is the primary revenue source for television networks and stations. However, over the last few decades, technological change and increasing competition from new sources of video entertainment and information have significantly eroded broadcast audiences. This in turn has placed the traditional, advertising-only business model of broadcasters under increasing strain.

21. It is now widely recognized by industry analysts that television networks and stations must develop new revenue streams if they are to prosper. This is also essential if free over-the-air broadcasting is to remain a viable competitor to cable networks – which have long



enjoyed revenues from both advertising and licensing fees – for premiere sports events and other top-quality programming.

22. CBS has responded to this challenge. Most significantly, it has been an industry leader in negotiating cash compensation from cable, satellite and telecom providers for the right to retransmit the signals of its owned television stations. Since becoming an independent company in December 2005, CBS has completed more than 60 cash deals with multichannel providers, including most of the country's largest operators.

23. Retransmission consent is also a growing source of revenue for the broadcast industry as a whole. According to a 2009 SNL Kagan study, retransmission consent revenues reached \$500.1 million in 2008 and were projected to grow to \$738.7 million in 2009, crossing the billion-dollar threshold by 2011. Retransmission consent may therefore be expected to play a key role in ensuring the continued vitality of local television stations.

24. Another major revenue source threatened by FilmOn's infringement – one which is also not dependent on the vagaries of the advertising market – is the licensing of CBS-owned programming abroad. Indeed, foreign syndication (through CBS International Inc.) is one of the fastest growing revenue sources provided by any of CBS's businesses. FilmOn makes no secret of the fact that its free retransmissions of CBS content are apparently available world wide.

25. I have described CBS's realization of additional advertising revenues by making some of its network programs available over the Internet on a post-broadcast, on-demand basis. Licensing multichannel providers to exhibit that programming to their customers is another promising way for us to monetize our content.

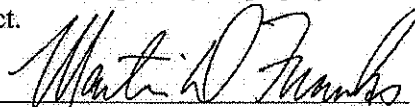
26. Last July, CBS reached a comprehensive, 10 year programming agreement with Comcast, the nation's largest owner of cable systems. While the terms of that agreement are confidential, expanded access to CBS content for Comcast's video-on-demand and online platforms was an essential part of that deal.

27. The revenue opportunities I have just described are all threatened by FilmOn's misappropriation of our content. Simply put, multichannel providers will not pay significant amounts of money to be able to provide their subscribers with delayed, on-demand access to CBS programs online if those same programs are available live – and free – from a free-rider such as FilmOn. Nor will those multichannel providers ignore, in negotiations for the carriage of CBS's owned television stations on their traditional distribution platforms, the real-time availability of those signals on FilmOn's service. By the same token, television stations affiliated with the CBS Television Network will find their exclusive right to air network programming in their communities diluted by unauthorized competition from FilmOn – and by the FilmOn imitators that will inevitably follow if its piracy is not stopped. The same will be true of foreign telecasters who pay large sums for the exclusive right to exhibit CBS's copyrighted programs in their territories.

28. CBS's ability to market distribution rights to its copyrighted programming to subscription services such as Netflix will also be undermined by FilmOn's activities. The market for the sale of CBS programming on DVDs, and for electronic sales and rentals through services such as iTunes, will also be affected.

29. For these reasons, CBS and the other plaintiffs will suffer immediate and irreparable injury unless the court acts to enjoin FilmOn's service.

I declare under penalty of perjury that the foregoing is true and correct.



MARTIN D. FRANKS

Executed on November 8, 2010

Exhibit 1



Billionaire Alki David Launches First Internet Based True HD Television Service in the United States

## **FilmOn Debuts Entertainment Revolution With True HD Television Online**

### **Free Live HD Player Download Available Now**

LOS ANGELES, Sept. 27 /PRNewswire/ -- Following its successful launch in the U.K. in 2009, FilmOn.com, the first online High Definition Television provider, today announces the public launch of its U.S. Virtual Cable Website, FilmOn.com (<http://www.FilmOn.com/>). The announcement was made today by FilmOn, Inc. Founder and Chairman Alki David.

FilmOn.com offers U.S. consumers a revolutionary way to watch HD Television on the PC or mobile device. The Los Angeles-based service includes over 30 premium free to air television channels and premium international Satellite channels, including CBS, ABC, NBC, KCAL, FOX, KTLA, Russia Today, BBC News, RAI Sports, Dubai Sports, TVE Spain, SCUZZ , FLAUNT and many more. Packages also include premium FilmOn movie channels and FilmOn pay-per-view.

Starting today, consumers can download the free HDi Player at FilmOn.com and instantly start watching a large selection of live television channels and premium movie channels from their PC or mobile device. A trial service is available prior to registration.

To begin watching their favorite channels in real HD over basic broadband, users pay a monthly subscription fee of \$9.95. The average home broadband speed in America is approximately 5 Mb per second. HD video speed from the FilmOn service runs under 1 Mb per second. Customers can also watch in lower speeds on their mobile broadband devices but still in HD quality picture and Dolby 5.1 stereo sound.

The FilmOn platform provides data analysis supported by standardized television and internet industry ratings systems. This data provides broadcasters and advertisers with highly advanced reporting on audience behavior.

"Our platform is designed to be easily customized for broadcasters and advertisers who wish to get into the online broadcast business quickly and with minimal expense. FilmOn is currently in negotiations with all major cable providers and plans to provide complete syndicated cable television services throughout the U.S. in 2011," said Alki David, Chairman of FilmOn, Inc.

"FilmOn represents cable television without the cables and cable boxes, delivering the service through mobile devices including Android and iPhone, in real HD quality. Customers can also hook-up their PC's to enjoy the FilmOn HDi service on their existing home entertainment systems." said Alex Hartman, Executive Vice President of FilmOn.com Inc.

FilmOn.com offers additional features which are upgraded regularly to the player to enhance viewing experiences, including full-screen view, electronic program guide, Digital Video Recorder and much more.

Through its social networking platform BattleCam.com, FilmOn offers features that enable users to easily broadcast live, clip, share and embed videos on other web sites, including blogs and social networking sites. Additionally, FilmOn.com's search feature helps users to find premium video content online even if it is not directly available on FilmOn.com.

FilmOn.com TV has been in public beta since October 2009. The response from customers has exceeded management expectations. Several million viewers have watched television via FilmOn.com.

FilmOn gives advertisers the opportunity to connect their brands with premium content online, interact with highly engaged consumers and extend their reach via FilmOn.com's partners. Additionally, FilmOn offers and is committed to the continued development of new and innovative online advertising experiences. Currently, FilmOn advertisers include: Coca-Cola, Best Buy, Google, GM, Intel, Nissan Unilever, Wal-Mart and others.

#### **ABOUT FilmOn.com Inc.**

FilmOn.com Inc. was founded in March 2009 by FilmOn.com Plc, a Berlin-listed public company (2F0A-BER) and is operated independently by a dedicated U.S. management team with offices in Los Angeles and London..

#### **ABOUT Alki David**

Having starred in several films and television series, such as THE BANK JOB and THE GRID, Alki David is also listed as the 45th richest man in the United Kingdom by Times Magazine's "Rich List." He is a serial internet entrepreneur and shipping magnate. Most recently, David received national attention when he publicly offered a prize of \$1 million to anyone who streaks naked before President Obama, as a promotion for FilmOn's social networking site BattleCam.com.

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Exhibit 2





"FilmOn is providing the next logical step in entertainment as mobile devices have become an integral part of our lives," said Alki David, founder, FilmOn. "Free television has always been available to TV set owners. I believe television should be equally as free and readily available to all mobile device owners as well."

### **Accessing FilmOn Mobile**

FilmOn Mobile is available to mobile users with an Internet connection with at least 3G speed. Mobile users can log on to [www.filmson.com](http://www.filmson.com) from any compatible mobile device. The device will automatically begin streaming the FilmOn platform. The built-in interface allows users to switch channels from the channel icons.

### **Built for Networks and Content Owners**

FilmOn's advanced data management coupled with comScore's media beacon offers content owners, networks and advertisers highly advanced reporting on audience behavior and a brand new collection of media and market data tools, expanding the film & television industries' reach into the dynamic world of Internet distribution

In 2004 FilmOn filed several patents for the accounting of content for branded players and branded site, specifically for the delivery of live and VOD video content. FilmOn is utilizing these patents by providing FilmOn technology to third party broadcasters and publishers.

"FilmOn will provide TV station and cable channel partners with a dynamic branded distribution platform that prevents content piracy while providing a worldwide promotional platform and an intuitive advertising user network that produces detailed viewer analytics that will facilitate new online advertising revenues," said David Ferrara, president, FilmOn. "FilmOn is currently in negotiations with major cable providers and plans to provide complete syndicated cable television services throughout the U.S. in 2011."

### **Premium Content**

FilmOn also provides a premium package of stations that includes adult content, specialty content genre channels such as Horror, Thriller, Documentaries and Sports and international channels that include a mixture of music, movies, sports and news including:

- BBC News
- Bloomberg International
- CNN International
- Dubai Sports
- Flaunt
- Horse & Country
- More Music
- Rai Sports
- Scuzz Music
- Sky News
- Viva
- Wedding TV

### FilmOn's Own Branded Channels

- BattleCam TV
- FilmOn Documentaries
- FilmOn Drama
- FilmOn Martial Arts
- FilmOn Music

### ABOUT FilmOn.com Inc.

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