

**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

**REPLY DECLARATION IN SUPPORT OF APPLICATION FOR ORDER TO SHOW
CAUSE FOR PRELIMINARY INJUNCTION AND RELATED RELIEF**

HADRIAN R. KATZ, hereby declares, pursuant to 28 U.S.C. § 1746, as follows:

1. I am a member of the firm of Arnold & Porter LLP, counsel for plaintiffs, and a member of the bar of this court.
2. I received the opposition of defendant FilmOn.com, Inc. at approximately 1:33 EDT this morning, and proceeded to review the materials. I paid particular attention to the declaration assertedly executed by Mr. Alki David between midnight and 1:33, and noted several paragraphs that appear inconsistent with the actual operation of the FilmOn Web sites.
3. In paragraph 8, the declaration states that “[i]n order for a subscriber to view any programs on FilmOn’s website, the subscriber must first purchase and download proprietary software developed by FilmOn. Upon purchasing this software, the subscriber must enter a license agreement with FilmOn for the right to use the software.” I reviewed the FilmOn Web site this morning. Right clicking on the video indicated that the live NBC, CBS, FOX and ABC

programming is rendered on the Web page in an industry-standard Adobe Flash (version 10,1,102,64) player window without any purchase, download, license agreement, or subscription. Attached as Exhibit 3 hereto is a screen shot of the FilmOn site that I made at 11:40 this morning, showing CBS programming.

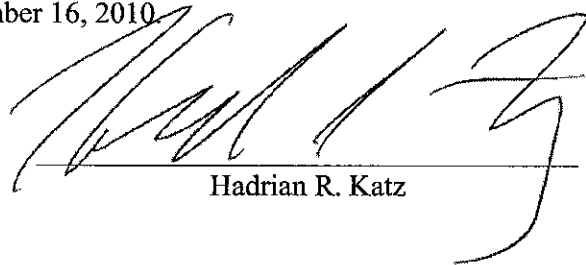
4. In paragraph 12, the declaration states that “[a]ny adult-oriented program accessible through FilmOn is not easily identifiable by a subscriber as such. Upon viewing FilmOn’s website homepage, a subscriber is presented with a number of buttons displaying television stations, including those of the networks. In order to access any adult-oriented station, or even know that such a station is available through FilmOn, a subscriber must scroll through many different stations to locate such a station. Importantly, the proximity of any cable station button to a network station button on the FilmOn website cannot cause the networks irreparable harm, because it can be easily relocated on the website to avoid any perceived harm.” The adult-oriented material does not appear on a computer accessing the FilmOn Web site. It does appear, however, on my mobile phone, an Apple iPhone 4, at the bottom of a list of stations that begins with network stations. Prior to this morning, when I looked at the FilmOn Web site on my phone, I immediately was shown the list of stations available for streaming. This morning, for the first time, I was first asked to enter an electronic mail address and password to access the stations. I deliberately entered a fabricated and invalid electronic mail address to see if any check was made by the system. No such check was made, and I was promptly given access to both network television content, and the “Filthon” XXX-rated content. Attached as Exhibit 4 are photographs of the top and bottom of the FilmOn programming list as rendered on my phone around 10:40 this morning.

5. In paragraph 15, the declaration states that “[i]n order to protect its streams from piracy, FilmOn employs the Common Scrambling Algorithm developed and maintained in accordance with DVB standards, in addition to its own proprietary encryption technology which can lock a video stream between the server and the viewer.” While some encryption may take place while content is streamed over the Internet, FilmOn’s network retransmissions, as noted above, are rendered on a computer in an industry-standard Flash player. There appear to be numerous utilities that enable computer users to capture, store, and recirculate Flash video. I did an Internet search for identification of such utilities, and attach as Exhibit 5 the first page of “about 769,000” such Google entries.

6. I have been reviewing the FilmOn Web site daily since November 2, 2010, and in several instances major changes were made in the appearance of the Web site from one day to the next. Accordingly, while the comments above are accurate as of this morning, I cannot rule out the possibility that FilmOn will make changes in its Web site later today or on future days.

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

Executed in Washington, D.C., on November 16, 2010



Hadrian R. Katz

Exhibit 3

filmon

Live TV now!

Getting started is as easy as 1, 2, 3.

- 1** Download it.
- 2** Try it.
- 3** Sign up!

FREE
DOWNLOAD
HDI
player



About Us

Watch Live

FilmOn

Download Now
Watch Live TV/HDI
iPad & Droid
Play BattleCam!

BE ON
TV
ON
TV

Download Now
Watch Live TV/HDI
iPad & Droid
Play BattleCam!

Download Now
Watch Live TV/HDI
iPad & Droid
Play BattleCam!

Download Now
Watch Live TV/HDI
iPad & Droid
Play BattleCam!

Download Now
Watch Live TV/HDI
iPad & Droid
Play BattleCam!

Download Now
Watch Live TV/HDI
iPad & Droid
Play BattleCam!

Download Now
Watch Live TV/HDI
iPad & Droid
Play BattleCam!

Download Now
Watch Live TV/HDI
iPad & Droid
Play BattleCam!

Exhibit 4

AT&T M-Cell



10:39 AM

96%



Welcome, alki.david@sacrook.com!

Log out



KCAL 9



KTLA



ion Life



KVCN



KTTV - Fox



AT&T M-Cell

10:42 AM

95%



FilmOn Docu



FilmOn Drama



FilmOn Horror



Adult XXX



Filthon XXX Latina

to the top

Please use WiFi!



Exhibit 5



utility capture flash video X Search

Instant is on v

About 769,000 results (0.23 seconds)

Advanced search

Everything

Images

Videos

More

Washington D.C., DC

Change location

Show search tools

Capture Flash video (.flv) and RTSP/MMS streams from Video Web sites

10:00am

This utility allows you to capture .flv (Flash Video) files and RTSP/MMS video streams while the Web browser download and play them inside a Web page. ...
www.nirsoft.net/utills/web_video_capture.html - Cached - Similar

Play offline/Save flv video files from Web browser cache

WebVideoCap - Capture Flash video (.flv) and RTSP/MMS streams from Video Web ...
www.nirsoft.net/utills/video_cache_view.html - Cached - Similar
Show more results from nirsoft.net

Flash Movie Extractor Scout 1.91 - Handy utility that allow you to ...

Dec 22, 2006 ... capture flash movie frames into JPG, TIFF, PDF or PNG images ... Handy utility that allow you to view ans save flash (SWF, FLV, EXE, ...
www.filetransit.com/view.php?id=24612 - Cached - Similar

flv capture free download

Language: English; License: Free; Description: Automatically save YouTube and other FLV videos. ... later This utility allows you to capture flv (Flash ...
en.softonic.com › Design & Photography › Screen Capture - Cached - Similar

How to record/download/capture/save Adobe Flash .FLV video HTTP ...

Capture Flash .FLV HTTP video stream with freeware PIAFCTM. PIAFCTM is a network data capturing utility that provides both packet capturing and HTTP (Web) ...
all-streaming-media.com › FAQ › Recording media stream - Cached - Similar

CamStudio - Free Screen Recording Software

So if there are any Visual C++ programmers out there that have Flash, video encoding ...
2009 CamStudio.org - Free Streaming Video Desktop Capture Software ...
camstudio.org/ - Cached - Similar

Software Download: Capture Flash Movie

FlashSnap is a powerful tool designed to Capture Macromedia Flash Movie as a picture or ...
Main Kw: flash design, flash software, flash tool, flash utility ...
www.sharewareconnection.com/titles/capture-flash-movie.htm - Cached - Similar

How to save Streaming Media

(some files are impossible to get without a streaming recorder utility). *** also see http://all-streaming-media.com/record-video-stream/. FLV Files (Flash ...
www.infocellar.com/software/streaming-media.htm - Cached

Pure Mac: Screen Capture - Software for Macintosh

Flash-It is a screen-capture utility for Apple Macintosh computers. Snapz Pro X is a quantum leap in video capture technology, adroitly capturing full ...
www.pure-mac.com/screen.html - Cached - Similar

save flash files from web pages and cache Adobe flash player and ...

This utility allows you to capture Flash Video files and RTSP streams while the Web browser download and play them inside a Web page. After the entire video ...
capture-flash.qarchive.org/ - Cached - Similar

1 2 3 4 5 6 7 8 9 10

Next

View customizations Search Help Give us feedback

Google Home Advertising Programs Business Solutions Privacy About Google