

EXHIBIT 7

1 JENNER & BLOCK LLP
Richard L. Stone (Bar No. 110022)
2 Andrew J. Thomas (Bar No. 159533)
David R. Singer (Bar No. 204699)
3 Amy M. Gallegos (Bar No. 211379)
633 West 5th Street, Suite 3600
4 Los Angeles, CA 90071
rstone@jenner.com
5 athomas@jenner.com
dsinger@jenner.com
6 agallegos@jenner.com

7 Attorneys for Plaintiffs
8 Fox Broadcasting Company, Twentieth Century
Fox Film Corp., and Fox Television Holdings, Inc.
9

10
11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**

13
14 FOX BROADCASTING COMPANY, INC.
TWENTIETH CENTURY FOX FILM
15 CORP., and FOX TELEVISION
HOLDINGS, INC.

16 Plaintiffs,

17 v.

18 DISH NETWORK L.L.C. and
19 DISH NETWORK CORP.,

20 Defendants.

Case No. 04529 GJK (STX)
PLAINTIFFS' *EX PARTE*
APPLICATION TO SHORTEN
TIME TO HEAR PLAINTIFFS'
MOTION FOR EXPEDITED
DISCOVERY; MEMORANDUM
OF POINTS AND AUTHORITIES
IN SUPPORT THEREOF

[Proposed Order and Motion for
Expedited Discovery lodged
concurrently herewith]

FILED
12 MAY 24 PM 1:37
CLERK OF DISTRICT COURT
BY: _____

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **TO THE COURT, ALL PARTIES, AND THEIR COUNSEL:**

2 **PLEASE TAKE NOTICE** that pursuant to Rule 6(c)(1)(C) of the Federal
3 Rules of Civil Procedure and Local Rule 7-19, plaintiffs Fox Broadcasting
4 Company, Inc. Twentieth Century Fox Film Corp., and Fox Television Holdings,
5 Inc. (collectively, "Fox") will and hereby do apply *ex parte* to the Court seeking to
6 shorten the time to hear Fox's motion for expedited discovery (the "Motion"). A
7 copy of Fox's Motion is being lodged concurrently herewith.

8 This Application is made on the grounds that good cause exists for
9 shortening time to hear the Motion because Fox intends to imminently file a
10 motion for preliminary injunction seeking to enjoin DISH's ongoing copyright
11 infringement of Fox's copyrighted broadcast television programs. Fox is being,
12 and will continue to be, irreparably harmed by DISH's unlawful conduct. If Fox is
13 required to wait to bring a fully-noticed motion, it would take nearly two months
14 for Fox to obtain important evidence in support of its preliminary injunction
15 motion, thereby defeating the purpose of expedited discovery. Delaying its
16 preliminary injunction motion will also severely prejudice Fox because Dish is
17 presently infringing Fox's copyrights and causing irreparable harm to Fox.

18 Fox is not aware of the identity of outside counsel for defendants DISH
19 Network LLC and Dish Network Corp. (collectively, "DISH") for this matter.

20 //

21 //

22 //

23 //

24 //

25 //

26 //

27 //

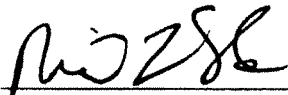
28 //

1 However, Fox will personally serve DISH's registered agent for service of process
2 with a copy of this Application, the Motion, and the Complaint as soon as they are
3 filed.

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: May 24, 2012

JENNER & BLOCK LLP

By: 
Richard L. Stone

Attorneys for Plaintiffs
Fox Broadcasting Company,
Twentieth Century Fox Film Corp., and
Fox Television Holdings, Inc.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. Relief Requested**

3 Concurrent with this Application, Fox has filed a Complaint against DISH
4 for making and distributing unauthorized copies of Fox's valuable, copyrighted
5 television programs. In support of its imminent motion to preliminarily enjoin
6 DISH from further infringing Fox's copyrights, Fox seeks narrowly tailored,
7 expedited discovery consisting of seven document requests and two depositions.
8 There is good cause for *ex parte* relief because it would defeat the purpose of
9 obtaining expedited discovery if Fox's motion for expedited discovery ("Motion")
10 (lodged herewith) had to be noticed and calendared in accordance with regular
11 motion practice.

12 Fox is mindful that this Application is being filed before a holiday weekend
13 and that the Court is closed on Monday, May 28, 2012. However, the irreparable
14 harm faced by Fox, and the scope and extent of Dish's unlawful copyright
15 violations, call out for a highly expedited briefing schedule. Accordingly, Fox
16 seeks an order (1) immediately deeming the Motion filed, (2) permitting DISH to
17 file an opposition brief no later than Wednesday, May 30, 2012, and (3) upon filing
18 of DISH's opposition, deeming the Motion fully briefed and ripe for decision.

19 **II. There Is Good Cause for Granting this Application**

20 Fox produces valuable, critically-acclaimed television programming for
21 primetime broadcast on its Fox Network, including such hit shows *Glee*, *The*
22 *Simpsons*, *Bones* and *Touch*. The production of these programs – which are
23 essentially broadcast for free over the national airwaves – is financed largely by
24 commercial advertising. Fox granted DISH the narrow right to retransmit Fox's
25 Programs to DISH's satellite television subscribers on a real-time basis. Fox also
26 agreed to license some of these broadcast programs to DISH for video on demand
27 distribution to DISH's subscribers, as long as DISH restricts subscribers from
28 being able to fast-forward or skip commercials.

1 Recently, DISH – in violation of the copyright laws and its license
2 agreement with Fox – launched its own bootleg video on demand service for
3 primetime broadcast television called PrimeTime Anytime that is available to top-
4 tier DISH subscribers who lease DISH’s Hopper set-top box. The Hopper is a split
5 device with two basic functions. One part of it works like a traditional DVR,
6 allowing consumers to record their favorite shows for viewing at a later time.
7 Those traditional DVR features are not at issue in this lawsuit. Instead, this lawsuit
8 focuses on the other half of the Hopper controlled by DISH: once enabled, that
9 part of the Hopper makes an unauthorized copy of the entire primetime broadcast
10 schedule for all four major networks every night. DISH advertises this
11 unauthorized library, which is available for eight days and includes approximately
12 100 hours of programming, as providing “on demand access” to primetime
13 programming. The Hopper then makes Fox’s Programs available to DISH
14 subscribers in a commercial-free format and, through another device called the
15 Sling Adapter, DISH distributes Fox’s commercial-free programs to subscribers
16 via the Internet and to mobile devices.

17 Fox has never authorized DISH to copy or distribute its programs this way.
18 DISH’s conduct is a blatant infringement of Fox’s exclusive copyrights and a clear
19 breach of the parties’ contract. In fact, the parties’ agreement expressly prohibits
20 DISH from providing its subscribers with a commercial-free video on demand
21 service and from distributing Fox’s Programs via the Internet. Fox intends to
22 promptly seek a preliminary injunction.

23 If DISH is not preliminarily enjoined, Fox will be irreparably harmed. First,
24 DISH has essentially hijacked Fox’s valuable copyrights and is exploiting them far
25 beyond DISH’s narrow license for satellite television distribution. Second, DISH’s
26 unlawful copying and distribution of commercial-free versions of Fox’s Programs
27 undermines and threatens to destroy Fox’s own exploitation of its works in the
28 separate markets for video on demand, electronic downloads of commercial free

1 programs, and mobile distribution. Lastly, DISH's unprecedented conduct
2 threatens the very existence of free, advertising-supported broadcast television in
3 the United States. Fox and the other major broadcasters are able to provide quality
4 programming free of charge to millions of Americans because of the revenue
5 generated by commercials. If DISH and other infringers are allowed to flood the
6 market with bootlegged, commercial-free versions of primetime broadcast
7 television, advertisers will quickly stop buying television commercials. Without
8 this financial backing, the entire broadcast television business could collapse.

9 As set forth in the accompanying Motion (lodged herewith), Fox is seeking
10 targeted, narrow discovery concerning important evidence that will support a
11 preliminary injunction, and it easily meets the good cause standard for expedited
12 discovery. However, if Fox is forced to file a fully-noticed motion for expedited
13 discovery, it would need to engage in a pre-filing conference at least ten days
14 before filing the Motion (Local Rules 7-3 and 37-1) and then set a hearing date at
15 least 28 days after the Motion is filed (Local Rule 6-1). By the time Fox's Motion
16 is decided and the expedited discovery served and answered, nearly two months
17 will have gone by. Meantime, Fox will continue to suffer ongoing, irreparable
18 harm. The only way to avoid that prejudice is for the Court to grant this
19 Application and consider Fox's Motion on shortened notice. Fed. R. Civ. P.
20 6(c)(1)(C).

21 **III. Conclusion**

22 For the reasons set forth above, Fox respectfully requests that the Court
23 grant this Application and enter the Proposed Order (1) deeming the Motion filed
24 immediately, (2) permitting DISH to file an opposition brief no later than

25 //

26 //

27 //

28 //

1 Wednesday, May 30, 2012, and (3) upon filing of DISH's opposition, deeming the
2 Motion fully briefed and ripe for decision.

3

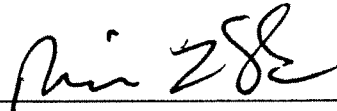
4

5 Dated: May 24, 2012

JENNER & BLOCK LLP

6

7

By: 
Richard L. Stone

8

9

10

Attorneys for Plaintiffs
Fox Broadcasting Company,
Twentieth Century Fox Film Corp., and
Fox Television Holdings, Inc.

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28