

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

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**FOX TELEVISION STATIONS, INC.,)**

***et al.,*)**

**Plaintiffs,)**

**v.)**

**FILMON X, LLC, *et al.,*)**

**Defendants.)**

**Civil Action No. 13-758 (RMC)**

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**FILMON X, LLC, *et al.,*)**

**Counter-Complainants,)**

**v.)**

**FOX TELEVISION STATIONS, INC.,)**

***et al.,*)**

**Counter-Defendants.)**

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**Order Regarding (1) Entry of Partial Judgment and Certification of  
Immediate Appeal Pursuant to Fed. R. Civ. P. 54(b); and (2) Case Schedule**

Having reviewed the parties' Joint Stipulation Regarding (1) Entry of Partial  
Judgment and Certification of Immediate Appeal Pursuant to Fed. R. Civ. P. 54(b)

and (2) Case Schedule (the “Joint Stipulation”), and good cause appearing therefore, it is hereby

**ORDERED** that a final judgment is hereby entered, pursuant to Federal Rule of Civil Procedure 54(b), for Plaintiffs on Defendants’ Second Amended Counterclaim for declaratory relief that they are entitled to a statutory or compulsory license to retransmit Plaintiffs’ copyrighted programming under Section 111 of the Copyright Act, 17 U.S.C. § 111 (the “Section 111 Counterclaim”). The Court expressly **FINDS** that its decision to deny Defendants’ motion for summary judgment on its Second Amended Counterclaim [Dkt. No. 67] (which sought only declaratory relief), and to grant Plaintiffs’ cross-motion for summary judgment on that counterclaim, is a final judgment that Defendants are not entitled to a statutory or compulsory license to retransmit Plaintiffs’ copyrighted programming under Section 111 of the Copyright Act, 17 U.S.C. § 111. This Court will take no further action on Defendants’ counterclaim.

It is **FURTHER ORDERED** that the Court expressly determines that there is no just reason for delay of an appeal of its final judgment on Defendants’ counterclaim to the United States Court of Appeals for the District of Columbia Circuit (the “Section 111 Counterclaim Appeal”). The Court **FINDS** that Defendants’ counterclaim is fully separable from the issues remaining in this case, which relate to Plaintiffs’ damages from Defendants’ copyright infringement,

whether those acts of infringement were committed willfully, the direct or contributory liability of the other defendants in the case for those acts of infringement, and whether any of the other defendants are an alter ego for the corporate defendant FilmOn X, LLC. The Court also expressly **FINDS** that the equities weigh in favor of an immediate appeal of Defendants' counterclaim because immediate appeal will promote justice to the litigants and is in the interest of sound judicial administration for the following reasons: (i) the Court's final judgment on Defendants' counterclaim rejected one of Defendants' primary legal defenses to liability on Plaintiffs' claims of copyright infringement; (ii) Defendants disagree with the judgment and contend that this Court's holding that Internet retransmission services are not eligible for a statutory or compulsory license conflicts with the decision of the Central District of California in *Fox Television Stations, Inc. v. FilmOn X, LLC*, Case No. CV-12-6921, consolidated with *NBCUniversal Media, LLC v. FilmOn X, LLC*, Case No CV-12-6950; (iii) Plaintiffs contend that this Court's judgment is consistent with, among others, the Second Circuit's decision in *WPIX, Inc. v. ivi, Inc.*, 691 F.3d 275, 284 (2d Cir. 2012), cert. denied 133 S. Ct. 1585 (2013), and a decision by a court in the Southern District of New York with respect to the very Internet-based retransmission service at issue in this case (*see CBS Broad. Inc. v. FilmOn.com, Inc.*, No. 10 Civ. 7532(NRB), 2014 WL 3702568, at \*4 (S.D.N.Y. July 24, 2014),

appeal filed, No. 14-3123 (2d Cir. Aug. 26, 2014)); and (iv) Plaintiffs have consented to an immediate appeal of the Court's final judgment on Defendants' counterclaim. Accordingly, the Court **FINDS** no just reason for delaying an appeal of this separable counterclaim.

It is **FURTHER ORDERED** that the parties shall complete discovery on damages and willfulness issues in this Court while the Section 111 Counterclaim Appeal is pending before the Court of Appeals.

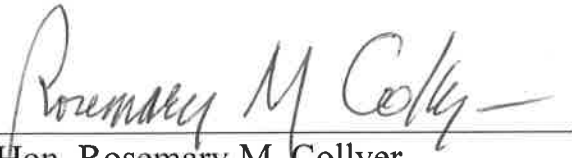
It is **FURTHER ORDERED** that the parties shall submit briefs to this Court to discuss whether the scope of discovery while the Section 111 Counterclaim Appeal is pending before the Court of Appeals also should include issues regarding the liability of defendants for the infringement of FilmOn X, LLC, on the following schedule: (1) Plaintiffs shall file their opening brief on January 15, 2016; (2) Defendants shall file their opposition brief on January 29, 2016; and (3) Plaintiffs shall file their reply brief on February 5, 2016.

It is **FURTHER ORDERED** that no trial shall take place in this Court on the remaining claims in this case until the Section 111 Counterclaim Appeal has been resolved by the Court of Appeals; and

It is **FURTHER ORDERED** that a status conference shall take place before this Court within thirty (30) days of the issuance of an opinion on the Section 111 Counterclaim Appeal to the Court of Appeals.

It is **FURTHER ORDERED** that the fact that Defendants entered into the Joint Stipulation does not constitute a waiver of their argument that this action should have been stayed pending resolution of the action in the Central District of California captioned *Fox Television Stations, Inc. v. FilmOn X, LLC*, Case No. CV-12-6921, consolidated with *NBCUniversal Media, LLC v. FilmOn X, LLC*, Case No CV-12-6950.

Dated: January 4, 2016

  
Hon. Rosemary M. Collyer  
United States District Judge