

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

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

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12
13 FOX BROADCASTING COMPANY,
TWENTIETH CENTURY FOX FILM
14 CORPORATION, and FOX
TELEVISION HOLDINGS, INC.

15 Plaintiffs,

16 v.

17 DISH NETWORK L.L.C., and
18 DISH NETWORK CORPORATION,

19 Defendants.

Case No.

**COMPLAINT FOR COPYRIGHT
INFRINGEMENT AND BREACH
OF CONTRACT**

DEMAND FOR JURY TRIAL

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21
22 Plaintiffs Fox Broadcasting Company, Twentieth Century Fox Film
23 Corporation, and Fox Television Holdings, Inc. (collectively, "FOX") allege the
24 following against Dish Network L.L.C. and Dish Network Corporation
25 (collectively, "DISH"):
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NATURE OF THE ACTION

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2 1. FOX, as well as the other three major broadcast television networks –
3 ABC, CBS and NBC – licenses DISH to retransmit primetime network
4 programming as it is aired through owned-and-operated and affiliated local
5 television stations across the country. FOX also has agreed to license primetime
6 broadcast programming to DISH for video-on-demand service to consumers under
7 certain conditions, including prohibiting fast forwarding through commercials.
8 Commercial advertising is vital to broadcast television, as the robust choices and
9 quality of primetime programming, including such hit shows as FOX’s *Glee*, *The*
10 *Simpsons*, *Bones*, and *Touch*, are possible only because they are supported by the
11 advertising revenues generated from television commercials.

12 2. Recently, DISH – in violation of the copyright laws and its license
13 agreement with FOX – launched its own bootleg broadcast video-on-demand
14 service called PrimeTime Anytime that is available to top-tier DISH subscribers
15 who lease the Hopper set top box from DISH. Once enabled, PrimeTime Anytime
16 makes an unauthorized copy of the entire primetime broadcast schedule for all four
17 major networks every night. DISH advertises this unauthorized library, which is
18 available for eight days and includes approximately 100 hours of programming, as
19 providing “on demand access” to that programming. To make matters worse, DISH
20 operates its bootleg PrimeTime Anytime service so that the copies it makes are
21 viewable commercial free.

22 3. This lawsuit is not about DISH enhancing consumer choice. By
23 stealing FOX’s broadcast programming to create a bootleg video-on-demand
24 service for all network primetime programming, DISH is undermining legitimate
25 consumer choice by undercutting authorized on-demand services and by offering a
26 service that, if not enjoined, will ultimately destroy the advertising-supported
27 ecosystem that provides consumers with the choice to enjoy free over-the-air,
28 varied, high-quality primetime broadcast programming. Nor is this case about

1 traditional DVRs used by consumers to time-shift individual television programs
2 that they select and record, which FOX is not challenging in this action and which
3 are completely different from DISH's unauthorized Primetime Anytime service.

4 4. FOX and its affiliated companies invest hundreds of millions of dollars
5 each year to create and deliver quality primetime television programs. These
6 programs are available over the air free of charge to anyone in the United States.
7 FOX, like all major broadcast networks, is able to offer such copyrighted
8 programming to the public for free over the airwaves because the production,
9 exhibition, and licensing of the programs is supported by commercial advertising.
10 Quite simply, advertisements provide the lion's share of funding for the
11 copyrighted programs that the public enjoys at no direct charge.

12 5. There is a legitimate and varied market for licensed services that
13 provide video-on-demand and programs for instant viewing over the Internet or on
14 mobile devices. FOX's primetime programming is available on demand over the
15 Internet on its website (fox.com), and on Hulu (Hulu.com), and FOX also licenses
16 its programming to Amazon and iTunes, among others, which provide consumers
17 with on-demand access to the programming. FOX's primetime programming is
18 available to Hulu Plus subscribers in a reduced-commercial format, and available
19 commercial-free to consumers who purchase it through Amazon and iTunes. This
20 puts the lie to DISH's claim that its unauthorized and unlicensed video-on-demand
21 service is somehow necessary to enhance "consumer choice." FOX also makes
22 video-on-demand content available to cable and satellite providers such as DISH,
23 but rather than use and comply with its license from FOX for video-on-demand
24 content, DISH chose to steal copyrighted programming to make its own version to
25 interfere with legitimate markets and services.

26 6. DISH's unlawful conduct does not stop there. DISH's Sling Adapter
27 redistributes and streams FOX's programming over the Internet in violation of
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1 copyright law and DISH's agreements with FOX. In doing so, it competes unfairly
2 with licensed providers such as iTunes and Amazon.

3 7. In sum, DISH, like every other cable and satellite television
4 distributor, received narrow permission to retransmit the signals that include
5 FOX's primetime broadcast. Unlike every other distributor, however, DISH
6 willfully took advantage of its position to make and distribute unauthorized copies
7 of FOX's primetime programming and render them commercial-free on playback,
8 so that DISH could advertise to the world that: "DISH CREATED
9 COMMERCIAL-FREE TV." But DISH has no right to copy and distribute FOX's
10 programs through an unauthorized video-on-demand service. Nor does DISH have
11 the right to distribute FOX's programs over the Internet, or to mobile devices. It is
12 up to FOX – the owner of these valuable rights – to make them available to
13 licensees and consumers under terms and conditions set by FOX, not DISH.

14 15 THE PARTIES

16 8. Plaintiff Fox Broadcasting Company ("FBC") is a Delaware
17 corporation with its principal place of business at 10201 West Pico Blvd., Los
18 Angeles, California. FBC operates the FOX Network, a national broadcast
19 television network with 203 affiliates reaching approximately 99% of all United
20 States households.

21 9. Plaintiff Twentieth Century Fox Film Corp. ("Twentieth Century
22 Fox") is a Delaware corporation with its principal place of business at 10201 West
23 Pico Blvd., Los Angeles, California. Twentieth Century Fox owns copyrights in
24 certain original primetime television programs broadcast on the FOX Network and
25 distributed via other media in the United States and around the world.

26 10. Plaintiff Fox Television Holdings, Inc. ("Fox TV Holdings") is a
27 Delaware corporation with its principal place of business at 10201 West Pico Blvd.,
28 Los Angeles, California. Fox TV Holdings is the parent company of the owned-

1 and-operated local broadcast stations that carry the prime time programming
2 licensed by the FOX Network.

3 11. On information and belief, Defendant Dish Network L.L.C. (Dish
4 Network) is a Colorado limited liability company with its principal place of
5 business at 9601 South Meridian Blvd., Englewood, Colorado. Dish Network is a
6 multichannel video provider, offering television, movies and sports programming
7 through a Direct Broadcast Satellite system to subscribers who pay fees to Dish
8 Network to receive its service. Dish Network receives and retransmits the signals
9 of local FOX stations to its subscribers pursuant to a Retransmission Consent
10 Agreement entered in 2002 with Fox TV Holdings (the "Retransmission Consent
11 Agreement"), most recently amended in 2010.

12 12. On information and belief, Defendant Dish Network Corporation
13 ("Dish Corp.") is a Nevada Corporation with its principal place of business at 9601
14 South Meridian Blvd., Englewood Colorado. On information and belief, Dish
15 Network is wholly owned by Dish Corp.

16 13. On information and belief, each of the defendants was the agent,
17 joint venturer and/or employee of each of the remaining defendants, and in doing
18 the things hereinafter alleged, each was acting within the course and scope of said
19 agency, employment and joint venture with the advance knowledge, acquiescence,
20 and subsequent ratification of each and every remaining defendant.

21 22 JURISDICTION AND VENUE

23 14. This civil action seeks injunctive relief, compensatory damages, and
24 statutory damages for copyright infringement under the Copyright Act, 17 U.S.C.
25 101, *et seq.*, and for breach of contract.

26 15. This Court has exclusive subject matter jurisdiction over the Copyright
27 Act claims pursuant to 28 U.S.C. Sections 1331 and 1338(a), and has pendent
28 jurisdiction over the state law claims under 28 U.S.C. Section 1367.

1 16. This Court has personal jurisdiction over DISH because it does
2 continuous, systematic, and routine business in California.

3 17. Venue is proper in this Court under 28 U.S.C. Sections 1391(b) and
4 1400 because a substantial part of the acts of infringement complained of herein
5 occurred and will continue to occur in this district, and because the Court has
6 personal jurisdiction over the parties.

7
8 **GENERAL ALLEGATIONS**

9 **A. FOX's Copyrighted Primetime Programming**

10 18. FOX is the legal or beneficial owner of the copyrights in numerous
11 primetime programs that have been, or will be, exhibited on the FOX Network (the
12 "FOX Programs"). The FOX Programs include popular and critically-acclaimed
13 television series such as *Glee*, *The Simpsons*, *Family Guy*, *Touch*, and *Bones*. A
14 non-exhaustive list identifying representative samples of the FOX Programs is
15 attached hereto as Exhibit A.

16 19. Each FOX Program is a copyrighted work pursuant to Section 102 of
17 the Copyright Act, 17 U.S.C. § 102. The relevant copyrights have been registered
18 with the United States Copyright Office or will be the subject of an application for
19 registration filed with the Copyright Office.

20 20. FOX broadcasts the FOX Programs over the air across the United
21 States. The cost of producing, exhibiting, and licensing the FOX Programs is paid
22 for primarily by revenues from the advertisers whose commercials are shown
23 during the programs.

24 **B. Commercial Advertising and the Broadcast Television Business Model**

25 21. Broadcast television, sometimes called "free television" is transmitted
26 over the airwaves by local television stations. The business model for broadcast
27 television is predicated on the sale of commercial advertisements that appear during
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1 periodic breaks in a particular program. Advertisers purchase commercial time or
2 “spots” to promote their own products or services.

3 22. Television advertisers pay more money to have their advertisements
4 featured on television programs with higher viewership. Advertisers also rely on
5 industry research and data that measure the number of viewers who actually view
6 the commercials during a particular program (sometimes called the number of
7 “impressions”). “Prime time” is the block of the television programming schedule
8 that attracts the most viewers, and advertisers therefore are willing to pay the
9 highest prices to have their commercials shown during this time. Television
10 networks and local broadcast stations generally derive significant percentages of
11 their advertising revenues from selling the right to advertise before, during, or
12 immediately after the primetime programming airs. Advertisers will not pay, or
13 will pay less, to have their advertisements placed with and around FOX’s television
14 programming if the advertisements will be invisible to viewers.

15 23. Broadcast television networks such as FOX also earn revenues from
16 retransmission consent agreements with various cable systems, satellite television
17 services, and other multichannel video programming distributors, all of whom pay a
18 fee for the right to retransmit broadcast television signals to their own subscribers.
19 However, the cost of producing high quality primetime programming such as the
20 Fox Programs is financed largely by advertising revenues. If there were no
21 advertising revenues, the free broadcast television business model in the United
22 States would collapse.

23 **C. Secondary Markets for the Distribution and Sale of the FOX Programs**

24 24. FOX’s business model – which is based on industry custom and
25 practice – further monetizes FOX’s content by, among other things, distributing
26 that content via different media and platforms after the programs are first aired on
27 primetime television. For example, a separate and growing market exists for
28 services that permit cable and satellite television subscribers to select from a library

1 of previously-aired television programs for immediate viewing on television. These
2 services are commonly known as video-on-demand or "VOD." VOD programs are
3 distributed after a short window following a program's original air date and time.
4 However, the ability to fast-forward through commercials on VOD is often
5 restricted.

6 25. FOX also distributes the FOX Programs (including premium versions
7 with reduced commercials) through various websites owned in whole or in part by
8 FOX for home viewing, remote viewing, or viewing on mobile devices.

9 26. FOX also distributes ultra-premium versions of the FOX Programs
10 with no commercials via electronic rental and/or sell-through ("ESL") merchants
11 such as iTunes, Amazon, Netflix, and Vudu for home viewing, remote viewing, or
12 viewing on mobile devices.

13 27. FOX recoups part of its substantial investment in creative
14 programming by distributing its primetime programming, at a premium, in
15 commercial-free formats, such as through on-demand television access, on-demand
16 Internet access, and the sale of DVDs and Blu-Ray Discs.

17 28. Therefore, separate markets and channels of distribution exist for
18 consumers who wish to watch the FOX Programs in a reduced-commercial format,
19 a commercial-free format, or a format that can be viewed on mobile devices or
20 computers outside the home. For example, consumers who pay for a Hulu Plus
21 subscription are able to view the FOX Programs on mobile devices with reduced
22 commercials. Consumers may also pay to stream or download the FOX Programs
23 from iTunes or Netflix and watch their favorite programs without commercials on a
24 mobile device.

25 **D. DISH's Unlawful Conduct**

26 29. On information and belief, one of DISH's primary strategies for
27 differentiating itself from its competitors has been to focus on providing on-demand
28 entertainment so as to position itself as an alternative to Netflix. For example, in

1 2011, DISH bought the assets of Blockbuster and launched Blockbuster@Home
2 (originally called Blockbuster Movie Pass). On a web page titled
3 "Blockbuster@Home -- The Netflix Alternative" DISH boasts that its service
4 provides subscribers with the ability to "stream thousands of movies to your TV,
5 iPad®, or computer" and "not only gives customers an alternative to Netflix, it
6 gives you one better."¹ DISH also offers subscribers "thousands of On Demand TV
7 shows and movies" on their computers through the licensed service DISH Online.²

8 30. In March 2012, DISH introduced the Hopper Whole-Home HD DVR
9 System (the "Hopper"). The Hopper is a set-top box leased by DISH to subscribers
10 who purchase DISH's top-tier television packages. The Hopper is essentially two
11 recording systems in one box. It contains a two-terabyte hard drive which is
12 partitioned into two sections, one controlled by DISH and one controlled by the
13 subscriber. The bootleg Primetime Anytime copies are made by DISH and are
14 stored on the DISH-controlled section of the hard drive. There is also a traditional,
15 user-operated DVR that resides on the subscriber-controlled section of the hard
16 drive, which the subscriber can use to select specific programs to record for later
17 home viewing.

18 31. When the Hopper was introduced, DISH boasted in a press release that
19 Primetime Anytime "creates an on-demand library of approximately 100 hours of
20 primetime TV shows."³ DISH's website currently touts Primetime Anytime as
21 providing "On Demand access for 8 days to all HD programming that airs during
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26 ¹ <http://dishtv.com/blog/2012/05/07/blockbusterhome-the-netflix-alternative/>.

27 ² <http://www.dish.com/entertainment/movies/#movies-dish-online>.

28 ³ <http://press.dishnetwork.com/press-releases/hopper-whole-home-hd-dvr-system-now-avail/>

1 primetime hours on ABC, CBS, FOX, and NBC without needing to schedule
2 individual recordings.”⁴

3 32. DISH has promoted Primetime Anytime as a substitute for legitimate
4 on-demand services. During an interview while demonstrating Primetime Anytime,
5 DISH’s Vice President Vivek Khemka stated, “I don’t think you’d need Hulu or
6 Hulu Plus after this.”

7 33. DISH creates Primetime Anytime’s “on demand library of
8 approximately 100 hours primetime of TV shows” by recording, without
9 authorization, all programming aired by the four national broadcast networks during
10 primetime hours every night. On information and belief, the programming recorded
11 by DISH through the Primetime Anytime service consists exclusively of
12 copyrighted network programming, including the FOX Programs.

13 34. FOX has not consented to the recording of its copyrighted programs by
14 DISH, or to the distribution by DISH to its subscribers of copies of all of FOX’s
15 primetime programming for subsequent on-demand, commercial-free viewing.

16 35. DISH makes the programming it records through Primetime Anytime
17 available for on-demand viewing without commercials through use of its Auto Hop
18 Feature. Auto Hop, which is exclusive to Primetime Anytime, delivers to viewers
19 the Primetime Anytime recordings without commercials and without the need to
20 fast forward.

21 36. The express, advertised purpose of Auto Hop is to permit subscribers
22 using Primetime Anytime to watch their on-demand copies of network primetime
23 programming commercial free. Auto Hop’s launch was accompanied by a media
24 blitz in which DISH announced that it was now offering “Commercial-free TV.”
25 Advertisements for DISH now boast that “DISH created commercial-free TV.”

26 _____
27 ⁴ <http://www.dish.com/technology/receivers-dvrs/>; *see also*
28 <http://www.dish.com/technology/hopper/> (touting the Hopper as providing “instant
on-demand access to your favorite primetime shows for 8 days.”).

1 37. DISH’s website announces: “WATCH COMMERCIAL FREE TV . . .
2 Now you can automatically skip commercials in primetime TV – on ABC, CBS,
3 FOX and NBC in HD.”⁵ And DISH’s Auto Hop Quick Start Guide instructs
4 subscribers:

5 Here’s where Auto Hop comes into play. When you are
6 ready to watch your recorded PrimeTime Anytime
7 content, simply open the PrimeTime Anytime or DVR
8 menu screen. You will see a small Hopper (red
9 kangaroo) icon beside each show that you may watch
10 commercial free.

11 When you select a show with the Hopper icon, a pop-up
12 message will appear on screen that asks whether you
13 want to enable Auto Hop. Choose ‘yes,’ and simply sit
14 back and watch the show commercial free. Choose ‘no,’
15 and watch with the commercials intact.

16 38. The Quick Start Guide goes on to explain that Auto Hop is “not like
17 fast-forwarding”: “Once you have chosen Auto Hop for your show, you can put the
18 remote control down; you’ve enabled Auto Hop’s patented technology to skip the
19 commercials during your show automatically.”

20 39. Auto Hop operates only on the primetime network programming
21 recorded through Primetime Anytime, and not on non-primetime programming,
22 cable programming, or programming recorded with the DVR that resides on the
23 user-controlled section of the Hopper’s hard drive.

24 40. Based on publicly available information provided by DISH, the
25 Primetime Anytime service operates as follows. Once a subscriber activates the

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27 ⁵ <http://www.dish.com/redirects/promotion/offer2/?WT.srch=1&KBID>
28 =62283&WT.mc_id=GSBNAUTHOP_3194&gclid=CITpuP3GkrACFQ5rhwodOk
Msp

1 service, DISH records all of the programming aired each night by the four
2 broadcast networks during primetime hours (8 to 11 pm Monday through Saturday,
3 and 7 to 11 pm Sunday). Each night of recorded programming is saved for eight
4 days on a section of the Hopper's partitioned 2-terabyte hard drive that is controlled
5 by DISH. During the eight days that the recorded programming is available, the
6 user can select individual programs to watch or save to the user-controlled section
7 of the hard drive for future viewing. The programs the user chooses not to save to
8 the user-controlled section of the hard drive are automatically deleted by the
9 Hopper after eight days.

10 41. The copying done by DISH through Primetime Anytime is
11 fundamentally different from the copying done by consumers who record programs
12 using traditional DVRs. A key difference is that DVRs are controlled by the
13 consumer, not the cable or satellite provider. A DVR user can record any program
14 on any channel he or she receives, and can start and stop the recording
15 instantaneously, at any time during the recording process, using a remote control.
16 None of this is true of Primetime Anytime. For example, the DISH subscriber
17 cannot command Primetime Anytime to record specific channels; Primetime
18 Anytime will always record all four broadcast networks and never any other
19 channels. The DISH subscriber cannot command the Primetime Anytime system to
20 record specific programs; Primetime Anytime always records the entire primetime
21 schedule, including programs the subscriber has no interest in and will never watch.
22 The DISH subscriber cannot command Primetime Anytime to instantly start or stop
23 recording; Primetime Anytime cannot be activated or deactivated during primetime.

24 42. By offering Primetime Anytime, DISH is not merely providing its
25 subscribers with a passive file storage device. DISH actively controls and is
26 involved in the operation of all aspects of the Primetime Anytime system. Unlike a
27 traditional DVR, the Primetime Anytime service was specifically and deliberately
28 architected by DISH so that DISH can record, and/or encourage and facilitate the

1 unauthorized recording of, hundreds of hours of copyrighted television programs
2 and distribute those copies in a revised format so they can be viewed commercial-
3 free by the subscriber. On information and belief, Primetime Anytime is able to
4 record all four networks simultaneously on a single tuner because DISH transmits
5 the four networks' signals from a single satellite transponder. While Primetime
6 Anytime is activated, DISH records all network primetime programming on the
7 DISH-controlled portion of the Hopper hard drive. On information and belief,
8 DISH then inserts data markers into the recorded Primetime Anytime copy of each
9 program and stores that copy on the DISH-controlled portion of the Hopper hard
10 drive for further transmission and distribution.

11 43. The Hopper also includes a standard DVR, which resides on the user-
12 controlled portion of the hard drive, and which is separate and apart from
13 Primetime Anytime. The subscriber can use this DVR to select, record, save, and
14 play back programming. The use of this DVR to record and play back individual
15 programs selected by the user for later viewing in the home is not at issue in this
16 lawsuit.

17 44. DISH also distributes copyrighted programming over the Internet to
18 subscribers' computers and mobile devices through its Sling Adapter. The Sling
19 Adapter is a device which, when connected to a DISH set-top box such as the
20 Hopper, streams live television programming and DVR recordings over the
21 Internet, where they can be remotely viewed on DISH's website from any computer
22 with Internet access or from any mobile device running DISH's Remote Access
23 application. On information and belief, DISH subscribers using the Sling Adapter
24 can view Primetime Anytime programming without commercials using the Auto
25 Hop feature.

26 45. By making its bootleg, commercial-free, on-demand programming
27 available over the Internet and on mobile devices via Sling, DISH is usurping rights
28 it never negotiated for and does not possess, in order to compete unfairly with

1 authorized providers such as iTunes and Amazon, who pay for the right to offer
2 commercial-free VOD versions of FOX programming to their customers.

3 **E. DISH's Breaches of the Retransmission Consent Agreement And Letter**
4 **Agreement**

5 46. DISH does not have the right to copy and distribute FOX
6 programming in the ways described above. Under the Retransmission Consent
7 Agreement, DISH does not have the right to use FOX's signal to create a VOD
8 service where Fox programming can be viewed commercial free.

9 47. In 2010, the Retransmission Consent Agreement between FOX and
10 DISH was amended by a Letter Agreement. The Letter Agreement states that FOX
11 will make available to DISH on a VOD basis all primetime series for which FOX
12 provides VOD content to any multichannel video programming distributor.
13 Although FOX has offered VOD content to DISH, DISH has never availed itself of
14 its VOD rights under the Retransmission Consent Agreement.

15 48. In the event that FOX provides VOD content to DISH pursuant to the
16 Letter Agreement, the Letter Agreement expressly protects FOX against the
17 distribution of VOD content without commercials. Specifically, if DISH offers
18 FOX VOD content to its subscribers, the Letter Agreement requires DISH to
19 disable fast-forward functionality during all advertisements, and expressly provides
20 that such fast-forward disabling is a necessary condition to the distribution of the
21 FOX content via VOD.

22 49. The Letter Agreement expressly prohibits DISH from frustrating or
23 circumventing, or attempting to frustrate or circumvent, the protections granted to
24 FOX under the Letter Agreement, which include the protections against
25 commercial-free VOD described above.

26 50. DISH does not have the right to distribute FOX programming over the
27 Internet via Sling either. The Letter Agreement expressly states that DISH shall not
28 retransmit or otherwise distribute FOX's signal by means of the Internet, broadband

1 or any other online technology or wireless or cellular technology (such as cell
2 phones, tablets, or PDAs).

3 **FIRST CLAIM FOR RELIEF**

4 **(Direct Copyright Infringement)**

5 51. FOX hereby realleges and incorporates by reference each and every
6 allegation of Paragraphs 1-50, above.

7 52. Without the permission or consent of FOX, DISH has reproduced and
8 distributed, and unless enjoined will continue to reproduce and distribute, FOX's
9 copyrighted works, including but not limited to the FOX Programs listed in
10 Exhibit A.

11 53. Specifically, DISH has made, and unless enjoined will continue to
12 make, copies of such works by recording them through the operation of its
13 Primetime Anytime service.

14 54. On information and belief, DISH has made, and unless enjoined will
15 continue to make, copies of such works by reproducing them as part of the process
16 by which it renders them commercial-free through Auto Hop.

17 55. DISH causes and carries out the unauthorized copying of FOX's
18 works by reproducing those works onto the DISH-controlled portion of its
19 subscribers' Hopper set-top boxes as part of the Primetime Anytime service, and by
20 reproducing those works in connection with the process by which it renders them
21 commercial-free through Auto Hop.

22 56. DISH has made, and unless enjoined will continue to make, copies of
23 such works through the operation of the Sling Adapter.

24 57. Without permission or consent of FOX, DISH has distributed and
25 unless enjoined will continue to distribute FOX's copyrighted works by providing
26 DISH subscribers with an unauthorized video-on-demand service for primetime
27 television including the FOX Programs, and by distributing copies of the FOX
28

1 Programs through the Primetime Anytime system that it designed and operates, in a
2 format that allows for commercial-free viewing.

3 58. DISH has also exceeded the scope of its license agreements with FOX
4 by streaming and/or distributing copies of the FOX Programs over the Internet via
5 the Sling Adapter in direct contravention of FOX's contractual rights. DISH is
6 directly liable for these acts of infringement under the Copyright Act.

7 59. DISH's reproduction and distribution of the FOX Programs as
8 described above constitutes infringement of FOX's exclusive rights under copyright
9 law in violation of 17 U.S.C. §§ 106(1), 106(3) and 501.

10 60. DISH has also exceeded the scope of its license from FOX to transmit
11 the FOX Programs to the public in violation of FOX's exclusive rights under
12 17 U.S.C. §§ 106(4) and 501.

13 61. DISH is directly liable for these acts of infringement under the
14 Copyright Act.

15 62. The infringement of FOX's rights in each of its copyrighted works
16 constitutes a separate and distinct act of infringement.

17 63. DISH's acts of infringement are willful, intentional, and purposeful, in
18 disregard of and with indifference to FOX's rights .

19 64. As a result of DISH's willful copyright infringement, FOX has been
20 and will continue to be irreparably harmed.

21 65. Unless restrained by the Court, DISH will continue to engage in such
22 willful copyright infringement.

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1 **SECOND CLAIM FOR RELIEF**

2 **(Secondary Copyright Infringement)**

3 66. FOX hereby realleges and incorporates by reference each and every
4 allegation of Paragraphs 1-65, above.

5 67. As an alternative theory to its direct infringement claim, in the event
6 that DISH contends that the unlawful copying described herein is done by its
7 subscribers, FOX further alleges the following:

8 68. The unauthorized copying of the FOX Programs is a violation of
9 FOX's exclusive rights under 17 U.S.C. § 106. Among other things, and without
10 limitation, this conduct amounts to the unauthorized reproduction of FOX's
11 copyrighted works.

12 69. The unauthorized copying of the FOX Programs that DISH enables,
13 encourages, and facilitates as described above is without FOX's consent and not
14 otherwise permissible under the Copyright Act.

15 70. DISH is liable under the Copyright Act for the infringing acts of DISH
16 subscribers as a contributory copyright infringer. DISH, through its own conduct,
17 has induced, caused, encouraged, assisted and/or materially contributed to this
18 infringing activity. DISH has actual and constructive knowledge of the direct
19 infringement of FOX's copyrights by DISH subscribers. Indeed, DISH actively
20 promotes the infringements as a reason to purchase its products and services,
21 provides tools that are indispensable to these infringements, in particular the
22 Hopper set-top box and Primetime Anytime service, and continuously facilitates the
23 infringements including by, among other things, encouraging subscribers to use
24 PrimeTime Anytime to copy FOX's copyrighted works and storing the
25 unauthorized copies on the DISH-controlled section of the Hopper's hard drive.

26 71. DISH is vicariously liable under the Copyright Act for the infringing
27 acts of DISH subscribers. DISH has the right and ability to supervise and/or
28 control the infringing conduct of users of Primetime Anytime. *First*, DISH has

1 made a deliberate decision to offer its users features that are specifically designed to
2 enable widespread infringements, when it could have prevented or greatly limited
3 that conduct by declining to offer or to facilitate or support use of those unlawful
4 features. *Second*, DISH specifically designed Primetime Anytime (and provided
5 ongoing assistance to its customers) to encourage the reproduction of copyrighted
6 works. *Third*, DISH's regular involvement is an indispensable link in its
7 customers' infringing conduct.

8 72. DISH has a direct financial interest in the infringement of FOX's
9 copyrights by DISH subscribers. DISH's economic success is directly tied to the
10 popularity of the infringing conduct that they seek to encourage. Indeed, the
11 infringing capabilities of Primetime Anytime – specifically that it creates
12 unauthorized copies of primetime network programming for commercial-free
13 viewing – are the Hopper's principal selling points.

14 73. DISH is liable under the Copyright Act for inducing the infringing acts
15 of DISH subscribers. DISH took active steps to encourage its subscribers to use
16 Primetime Anytime to infringe FOX's copyrights. DISH distributed the Hopper
17 with the Primetime Anytime service with the intent that its subscribers use
18 Primetime Anytime to infringe FOX's copyrights, as evidenced by its numerous
19 advertisements and user manuals which encourage subscribers to activate
20 Primetime Anytime in order to continuously record all primetime network
21 programming and watch it on demand without commercials.

22 74. DISH's acts have been willful, intentional and purposeful, in disregard
23 of and with indifference to FOX's rights.

24 75. As a result of DISH's conduct, FOX has been and will continue to be
25 irreparably harmed.

26 76. Unless restrained by the Court, DISH will continue to engage in such
27 willful copyright infringement.
28

1 **THIRD CLAIM FOR RELIEF**

2 **(Breach of Contract)**

3 77. FOX hereby realleges and incorporates by reference each and every
4 allegation of Paragraphs 1-76, above.

5 78. FOX has fully performed all obligations required of it under the
6 Retransmission Consent Agreement, as amended by the Letter Agreement, except
7 to the extent prevented or excused by DISH's breaches or other wrongful conduct.

8 79. DISH has materially breached the Retransmission Consent Agreement,
9 as amended by the Letter Agreement, by providing to its subscribers commercial-
10 free FOX Programs on demand, via the Primetime Anytime system and Auto Hop
11 feature. Because the Letter Agreement provides protections against the distribution
12 of commercial-free FOX Programs on demand, DISH has breached its express
13 contractual obligation not to take any actions intended to frustrate or circumvent, or
14 attempt to frustrate or circumvent, the protections granted to FOX under the Letter
15 Agreement.

16 80. DISH has also materially breached the Retransmission Consent
17 Agreement, as amended by the Letter Agreement, by distributing the signals of
18 FOX stations over the Internet via its Sling Adapter product and service. DISH's
19 actions relating to the Sling Adapter product and service violate the Letter
20 Agreement, which prohibits distribution via the Internet.

21 81. FOX has been damaged as a direct and proximate result of the
22 breaches set forth above.

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1 **FOURTH CLAIM FOR RELIEF**

2 **(Breach of the Implied Covenant of Good Faith)**

3 82. FOX hereby realleges and incorporates by reference each and every
4 allegation of Paragraphs 1-81, above.

5 83. By providing to its subscribers commercial-free FOX Programs on
6 demand, via the Primetime Anytime service and Auto Hop feature, and by
7 distributing the signals of FOX stations over the Internet via its Sling Adapter
8 product and service, DISH has deprived FOX of the right to receive benefits under
9 the Retransmission Consent Agreement, as amended by the Letter Agreement.

10 84. DISH's conduct constitutes a breach of the implied covenant of good
11 faith and fair dealing implicit in every contractual relationship.

12 85. FOX has been damaged as a direct and proximate result of DISH's
13 breach of the implied covenant of good faith and fair dealing.

14
15 **PRAYER FOR RELIEF**

16 WHEREFORE, FOX prays for judgment as follows:

17 1. For an order preliminarily and permanently enjoining and restraining
18 DISH and its officers, agents, servants, and employees and all those in active
19 concert or participation with them, from directly committing, aiding, encouraging,
20 enabling, inducing, causing, materially contributing to, or otherwise facilitating the
21 unauthorized reproduction or distribution of the FOX Programs without consent;

22 2. For a Declaratory Judgment under 28 U.S.C. §§ 2201(a) and 2202, that
23 DISH has infringed FOX's copyrights in violation of 17 U.S.C. § 101, et seq.
24 through the conduct alleged herein;

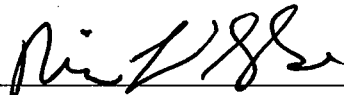
25 3. For an award of compensatory and statutory damages, costs, and
26 reasonable attorneys' fees in accordance with 17 U.S.C. §§ 504 and 505 and other
27 applicable law;

1 4. For damages for breach of contract and breach of the implied covenant
2 of good faith and fair dealing in an amount to be determined at trial; and

3 5. For such other relief as the Court may deem just and proper.
4

5 DATED: May 24, 2012

JENNER & BLOCK LLP

6
7
8 By: 
Richard L. Stone

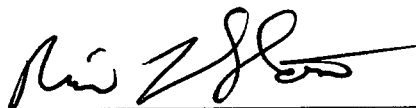
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10 Attorneys for Plaintiffs
11 Fox Broadcasting Company,
12 Twentieth Century Fox Film Corp.,
13 and Fox Television Holdings, Inc.
14

15 **DEMAND FOR JURY TRIAL**

16 Plaintiffs hereby demand a jury trial.
17

18 DATED: May 24, 2012

JENNER & BLOCK LLP

19
20
21 By: 
Richard L. Stone

22
23 Attorneys for Plaintiffs
24 Fox Broadcasting Company,
25 Twentieth Century Fox Film Corp.,
26 and Fox Television Holdings, Inc.
27
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EXHIBIT A

Illustrative Copyright Registrations

No.	Program Title	Broadcast Date	Copyright Owner	Screenplay Registration¹	Broadcast Station
1.	American Dad; "Toy Whorey"	05/13/2012	Twentieth Century Fox Film Corporation	PAU-3-536-825	FBC
2.	Bob's Burgers; "Bad Tina"	05/13/2012	Twentieth Century Fox Film Corporation	PAU-3-588-234	FBC
3.	Bob's Burgers; "Beefsquatch"	05/20/2012	Twentieth Century Fox Film Corporation	PAU-3-588-236	FBC
4.	Bones; "The Past in the Present"	05/14/2012	Twentieth Century Fox Film Corporation	PAU-3-611-816	FBC
5.	The Cleveland Show; "Mama Drama"	05/13/2012	Twentieth Century Fox Film Corporation	PAU-3-547-800	FBC
6.	The Cleveland Show; "All You Can Eat"	05/20/2012	Twentieth Century Fox Film Corporation	PAU-3-571-939	FBC
7.	Family Guy; "Tea Peter"	05/13/2012	Twentieth Century Fox Film Corporation	PAU-3-544-437	FBC
8.	Family Guy; "Family Guy Viewer Mail #2"	05/20/2012	Twentieth Century Fox Film Corporation	PAU-3-560-983	FBC
9.	Family Guy; "Internal Affairs"	05/20/2012	Twentieth Century Fox Film Corporation	PAU-3-560-985	FBC
10.	Glee; "Props"	05/15/2012	Twentieth Century Fox Film Corporation	PAU-3-611-825	FBC
11.	The Simpsons; "How I Wet Your Mother"	05/13/2012	Twentieth Century Fox Film Corporation	PAU-3-571-923	FBC
12.	The Simpsons; "Ned 'N Edna's Blend Agenda"	05/13/2012	Twentieth Century Fox Film Corporation	PAU-3-586-023	FBC

¹ Audiovisual applications pending.

No.	Program Title	Broadcast Date	Copyright Owner	Screenplay Registration ¹	Broadcast Station
13.	The Simpsons; "At Long Last Leave"	05/20/2012	Twentieth Century Fox Film Corporation	PAU-3-571-922	FBC
14.	The Simpsons; "Lisa Goes Gaga"	05/20/2012	Twentieth Century Fox Film Corporation	PAU-3-576-622	FBC
15.	Touch; "Music of the Spheres"	05/10/2012	Twentieth Century Fox Film Corporation	PAU-3-606-242	FBC
16.	Touch: "Tesselations"	05/17/2012	Twentieth Century Fox Film Corporation	PAU-3-612-007	FBC