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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CBS BROADCASTING INC., CBS STUDIOS INC., SURVIVOR PRODUCTIONS LLC, Plaintiffs, v. DISH NETWORK CORPORATION, DISH NETWORK L.L.C., Defendants.	CASE NO. ______________ **COMPLAINT FOR:** **(1) COPYRIGHT INFRINGEMENT** **(2) INDUCEMENT OF COPYRIGHT INFRINGEMENT** **(3) CONTRIBUTORY COPYRIGHT INFRINGEMENT** **(4) VICARIOUS COPYRIGHT INFRINGEMENT**

Plaintiffs CBS Broadcasting Inc., CBS Studios Inc., and Survivor Productions LLC, by their counsel, allege against Defendants DISH Network Corporation and DISH Network LLC:

NATURE OF ACTION

1. Plaintiffs bring this action for preliminary and permanent injunctive relief against Defendants' unlawful scheme to profit from a new system for violating Plaintiffs' copyrights in prime-time, network television programming. Defendants market this infringing system in connection with their satellite broadcast services and digital video recorder ("DVR") called "the Hopper." As described more fully below, through the infringing functions of the Hopper, *all of* Plaintiffs' prime-time, network television programs (along with the shows aired on the other national broadcast networks) are copied, on a continuous basis, and stored for eight days, to the Hopper – which provides massive storage capabilities during which the customer can permanently store that programming and view it with all of the individual commercials automatically skipped in their entirety. Significantly, when the viewer is in PrimeTime Anytime mode, the viewer is not in any way selecting the individual programs to be copied or the individual commercials to be skipped.

2. Plaintiffs are among the largest and most successful producers and distributors of television programming in the United States and the world. Plaintiffs are engaged in the business of developing, producing, and/or distributing television programming for exhibition and dissemination, and of licensing those activities to others. In addition to producing (and owning the copyrights in) thousands of television programs, Plaintiff CBS Broadcasting Inc. ("CBS") owns and operates television program services that delivers that programming (or programming created by third parties) to the American public.

3. The Copyright Act, 17 U.S.C. § 101, *et seq.*, provides Plaintiffs with the exclusive rights to reproduce, adapt, distribute, and publicly perform and display their copyrighted television programming. Plaintiffs exercise these rights in an ever-expanding variety of ways, including commercially supported broadcast

television, syndicated television, Internet-based streaming and download services, video-on-demand access via licensed via multichannel video programming distributors ("MVPDs"), and Digital Versatile Discs ("DVDs") and Blu-Ray Discs. At this moment, consumers have access to network television programming through more authorized avenues than ever before. Through the unlawful functions of the Hopper, Defendants are infringing, and threaten to infringe, Plaintiffs' rights to exploit their copyrighted works in these legitimate markets. In doing so, Defendants deprive Plaintiffs of a fair return on their investments in creating and distributing some of the most valuable programming on television. Defendants' conduct is exactly what the copyright laws are intended to prevent.

4. Defendants violate Plaintiffs' exclusive rights by copying, without authorization, Plaintiffs' television programs and delivering these copies to computer hard drives resident in the homes of Defendants' subscribers. This conduct violates Plaintiffs' exclusive rights to reproduce and distribute copies under sections 106(1) and 106(3) of the Copyright Act, 17 U.S.C. §§ 106(1) and 106(3). Through their conduct, Defendants provide their customers with unlawful copies of works. That is straight-forward infringement.

5. To the extent that Defendants claim their customers create the infringing copies, Defendants' scheme is nevertheless unlawful. Defendants knowingly provide ongoing and material technological support to their customers in order to facilitate the automatic creation of infringing copies of prime-time shows and skipping commercials, which renders Defendants contributory infringers. Defendants induce, through their technology, advertising and other conduct, their customers to create unauthorized copies of Plaintiffs' programming in prime time and skip commercials, without viewers selecting which programs to record of which commercials to skip. Finally, Defendant are vicariously liable for their subscribers' conduct, to the extent that is relevant, because Defendants have

the legal and practical right and ability to control the creation of infringing copies of Plaintiffs' works and skipping commercials, from which Defendants obtain direct financial benefits. Defendants' contracts with subscribers allow Defendants to control all programming and service options. In addition, subscribers cannot accomplish the systematic comprehensive prime time copying and commercial skipping at issue without the technological system from Defendants.

6. The Hopper allows Defendants and their customers to infringe Plaintiffs' copyrights through the following interrelated features:

- The Hopper provides a "PrimeTime Anytime" feature, which copies to the customers' DVR the prime-time TV programming aired on CBS and on the ABC, Fox, and NBC television networks, every evening, on an eight-day rolling basis. Significantly, this feature copies the entire prime-time schedule of all the major networks, without the viewer selecting the specific programs to be copied.
- The Hopper provides what Defendants call the "Auto Hop" feature, which enables the customer to watch the copied PrimeTime Anytime programming with *all* commercial advertising *automatically* skipped – and as more fully detailed below, Defendants market and actively encourage the use of Auto Hop for that purpose. Thus, significantly, the viewer is not in any way selecting the individual commercials to be skipped.
- The Hopper provides a memory capacity of two terabytes (*i.e.*, 2,000 gigabytes), which, Defendants boast, is capable of storing 2,000 hours of recorded video, thus allowing the creation of large libraries of prime-time television. As Defendants themselves acknowledge, "no other company offers" such capacity.

7. Thus, the Hopper effectively provides Defendants' customers with a premium commercial-free channel consisting, at any given point in time, of the copyrighted programming that aired in prime time on all four national broadcast networks in the past eight days, including without limitation, series currently airing on CBS, such as *60 Minutes, Blue Bloods, CSI: Crime Scene Investigation, Survivor, NCIS* and *The Good Wife*, along with the ability to create huge permanent, commercial-free libraries of those works.

8. Plaintiffs have invested billions of dollars in their copyrighted content. the Hopper's methods of copying will deprive Plaintiffs of a vital means of payment for their works and erode the value of Plaintiffs' copyrighted programming. "Prime time" is the bloc of the television programming schedule that attracts the most viewers, and advertisers therefore are willing to pay the highest prices to have their commercials shown during this time. Television networks and local broadcast stations generally derive significant percentages of their advertising revenues from selling the right to advertise before, during or immediately after the prime-time television programming airs. Advertisers will not pay, or will pay less, to have their advertisements placed within and around Plaintiffs' television programming if the advertisements will be made invisible to viewers. Further, Plaintiffs recoup part of their substantial investments in creative programming by disseminating their prime-time programming, at a premium, in commercial-free formats, such as the sale of DVDs and Blu-Ray Discs. The Hopper directly undercuts these legitimate markets for paid access to Plaintiffs' programming. Moreover, the Hopper interferes with Plaintiffs' efforts to make their prime-time programming available to consumers for free through advertising-supported services, such as Internet streaming websites. Views of such websites will decline if Defendants' subscribers have access to commercial-free copies of Plaintiffs' prime-time shows. As a result, Defendants' unlawful conduct impairs

the value of Plaintiffs' works and reduces the incentive for their creation and dissemination. Indeed, Defendants' unlawful conduct attacks the fundamental economic underpinnings of television programming delivery and therefore the very means by which Plaintiffs' copyrighted works are paid for. In this way, Defendants cause harm not only to Plaintiffs, but also to consumers.

THE PARTIES

9. Plaintiff Survivor Productions, LLC is a Delaware limited liability company with its principal place of business at 7800 Beverly Blvd. Los Angeles, California. Plaintiff Survivor Productions LLC is actively engaged in the production of television programming.

10. Plaintiff CBS Broadcasting Inc. is a New York corporation with its principal place of business at 51 West 52nd Street, New York, New York. Plaintiff CBS Broadcasting is actively engaged in the production and distribution of television programs and other copyrighted works.

11. Plaintiff CBS Studios Inc. is a Delaware corporation with its principal place of business at 51 West 52nd Street, New York, New York. Plaintiff CBS Studios Inc. is actively engaged in the worldwide production and distribution of copyrighted entertainment products.

12. Plaintiffs are informed and believe, and therefore allege, that Defendant DISH Network Corporation is organized under the laws of the State of Nevada and has its principal place of business in Englewood, Colorado. Plaintiffs are informed and believe, and therefore allege, that Defendant DISH Network LLC is a wholly owned subsidiary of DISH Network Corporation, is organized under the laws of the State of Colorado, and has its principal place of business in Englewood, Colorado. Plaintiffs are informed and believe, and therefore allege, that each Defendant was the agent, joint venture and/or employee of the other

Defendant, and in doing the things hereinafter alleged, each was acting within the course and scope of said agency, employment and joint venture with the advance knowledge, acquiescence, and subsequent ratification of the other Defendant.

13. Plaintiffs are informed and believe, and therefore allege, that DISH Network Corporation and DISH Network LLC operate the third largest pay television transmission system in the United States, servicing approximately 14 million customers as of September 30, 2011.

JURISDICTION AND VENUE

14. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338, and under the Copyright Act, 17 U.S.C. § 101 *et seq.*

15. This Court has personal jurisdiction over Defendants, and venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391(b). Defendants conduct extensive commercial activities in this State, including in this Judicial District. Further, a substantial part of the events or omissions giving rise to this lawsuit, as well as substantial injury to Plaintiffs, have occurred or will occur in this District as a result of Defendants' acts of copyright infringement and impending acts of copyright infringement, as alleged in detail below. Venue is also proper in this Judicial District pursuant to 28 U.S.C. § 1400(a) in that Defendants may be found in this District in light of their extensive commercial activities in this District.

FACTUAL BACKGROUND

Free Over-The Air, Commercially Supported Broadcasting

16. CBS is one of the four major over-the-air television networks that transmit programming to the public via hundreds of free, local, terrestrial broadcast stations that carry the networks' content. The networks' content is also

transmitted to the public by subscription-based cable and satellite companies, including Defendant DISH Network, which pay license fees to retransmit the content carried on local broadcast stations. The networks, including Plaintiff CBS, both create and license copyrighted content – largely entertainment, news and sports programming – on which the public has come to rely for information and entertainment. Despite constant advances and developments in technology, the four major networks and their affiliated local stations continue to account for a large percentage of all television viewing in the United States, and each attracts more viewers than any network distributed only by cable or satellite providers.

17. A nationwide system of free, over-the-air local television stations, which makes news, information, and entertainment available to virtually all Americans without any need to pay subscription fees, has been a crucial public policy goal in the United States since the advent of television. The creation and acquisition of the copyrighted content that has come to define free, over-the-air television is made possible through commercial advertisements that are shown in each program. Whether viewers watch programming for free over-the-air or through pay services (such as Defendants' service) that retransmit broadcast signals, advertisements provide the primary means of payment for the copyrighted works that the public views. As alleged more fully below, Defendants' infringing system completely blocks the delivery of advertising to viewers and thereby deprives copyright owners of the means by which they are paid for their works. Defendants' conduct diminishes both the value of the works and the incentive to create and distribute original content over the medium. By undermining the economic engine supporting the production of content, Defendants' system threatens to diminish the quantity and the quality of the programming Americans have come to expect and demand.

Plaintiffs' Dissemination of Prime-Time Television Content

18. The majority of Plaintiffs' most valuable programming airs during "prime time," which on the east and west coasts falls between the hours of eight p.m. and eleven p.m. Monday through Saturday, and seven p.m. to eleven p.m. on Sunday (and one hour earlier in the Central and Mountain time zones). Plaintiffs own the United States copyrights in a substantial number of prime-time programs, including successful series currently airing on CBS, such as those listed in Paragraph 7 above. Plaintiffs have registered or filed applications to register with the United States Copyright Office their copyrights in each of the works identified herein, as well as in each of the works listed in the schedule attached hereto as Exhibit A and incorporated herein by this reference.

19. After a program airs on prime-time television, it is, in most cases, made available for viewing via another market, including through on-demand access on MVPD services; online purchase or rental by download (*e.g.*, iTunes and Amazon); mobile phone services; pay-per-view and location-based (*e.g.*, airline) services; and portable media (*e.g.*, DVDs and Blu-Ray Discs); as well as subscription streaming services over the Internet (*e.g.*, Netflix). Further, the programs are often available on authorized Internet sites the day after airing in prime time, supported by unique commercial advertising. Offerings in other media with differing characteristics also exist and are designed to maximize revenues for the copyright owner and any profit participants.

20. Plaintiffs have invested (and continue to invest) substantial sums of money and effort each year to develop, produce, and distribute television programs. The public benefits from Plaintiffs' creative activities, as intended by the U.S. Constitution and the Copyright Act. Plaintiffs recoup their substantial investments in creative programming in a number of ways, including the following:

- **Advertiser Supported Broadcasts.** National networks, including the one owned and operated by Plaintiff CBS Broadcasting Inc., and their owned television stations and independently-owned local affiliates, derive substantial value by selling advertising time during the programs they have created or licensed at enormous cost. Additional revenues are earned by broadcast television networks and their parent companies through fees paid by network-affiliated stations and by licensees of their copyrighted programs in the off-network syndication market. More income is generated by the licensing of programs produced and owned by Plaintiff CBS Studios Inc. to other television networks. These sources of revenue as well are ultimately dependent on the ability of the licensee broadcasters to sell commercial advertising in or adjacent to the programs.
- **Video On-Demand ("VOD") Television Access.** Plaintiffs license cable operators to make copyrighted works available for viewing on demand by their customers as an added benefit of their subscriptions. In addition to license fees from these MVPDs, these arrangements allow for the sale of unique advertising in the VOD versions of the programs owned by Plaintiffs.
- **On-Demand Online Access.** Plaintiffs earn revenue by providing access to their copyrighted works via their websites, the websites of their affiliates, and the websites and services of licensees. Some of these models involve showing advertisements to consumers before, after, or during viewing. These advertisements cannot be skipped or fast forwarded. Other models involve subscription payments to services (such as Netflix) that license Plaintiffs' content to offer to their subscribers commercial-free, payments for the purchase of

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downloaded copies (also generally without advertising), or rental payments (for time-limited windows to view content).

- **Domestic Syndication.** Plaintiffs generate revenue by licensing their copyrighted works for "syndicated" exhibition on both broadcast and non-broadcast television channels. For Plaintiffs, most syndication activity involves delivery of programming that has already aired on the CBS Television Network at an earlier date. In addition to fees paid to Plaintiffs by broadcast and non-broadcast television channels, an additional significant means by which Plaintiffs generate revenue from syndication is through sharing in the advertising revenue resulting from ads within the syndicated programs.
- **Fixed Media**. Plaintiffs generate substantial revenue from the sale or rental for home viewing of authorized copies of their copyrighted works in various formats, including DVD and Blu-Ray Discs. Plaintiffs offer these formats at various price points, with different offerings providing different levels of access to content. These formats typically do not include advertisements, other than occasional "trailers" at the beginning of a disc.

Defendants' Infringing Service

21. On or about March 15, 2012, Defendants made the Hopper available to its customers. The Hopper's "PrimeTime Anytime" option automatically records prime-time programming shows on CBS, NBC, ABC, and Fox, every day, to the customers' DVR, which as alleged above, stores up to 2000 hours of content. (Significantly, the feature copies the prime-time schedule of all the major networks, without the viewer selecting the specific programs to be copied.) The prime-time programming, including that of Plaintiffs, is automatically stored on

the DVR for eight days and can be stored permanently. On or about May 10, 2012, Defendants began offering a companion service, called "Auto Hop," which automatically skips commercials during viewing.

22. The Hopper is thus specifically designed to function as an on-demand video, and a video library, service. Defendants boast that the Hopper is unlike any other DVR offered by a television service provider. On their website, an image from which is attached hereto as Exhibit B and incorporated by reference, Defendants refer to the Hopper as an "on-demand" service that permits the creation of video "libraries" of copyrighted prime-time content commercial free. For example, Defendants market the Hopper as follows:

> With the Hopper's exclusive feature, PrimeTime Anytime™, three hours of HD primetime programming are available to you On Demand for up to 8 days from initial air date. Plus you can save your favorite primetime content forever. You can also automatically skip commercials in primetime TV – ABC, CBS, FOX and NBC in HD.

23. During an interview while demonstrating the Hopper, a representative of Defendants stated: "I don't think you'd need Hulu or Hulu Plus after this." In other words, Defendants tell their customers that the Hopper can be used as a substitute for Internet-based on-demand services. On legitimate services similar to Hulu, Plaintiffs make their programming available in advertising-supported, rental, purchase, and subscription models.

24. Defendants also tout the Hopper's ability to provide commercial-free, on-demand program libraries to their customers:

> Hate commercials? DISH created commercial-free TV so you can save an hour each night! Now you can automatically skip commercials in primetime TV- on ABC, CBS, FOX and NBC in HD. Only on the Hopper. Only from DISH.

25. Vivek Khemka, vice president of DISH Product Management, described the infringing service as follows:

> With the Auto Hop capability of the Hopper, watching your favorite shows commercial-free is easier than ever before. It's a revolutionary development that no other company offers and it's something that sets Hopper above the competition. … With Hopper, you have access to all primetime HD programs broadcast by the four major networks. Now you can watch many of those shows commercial-free, with Auto Hop.

Irreparable Harm to Plaintiffs As a Result of Defendants' Infringement

26. Defendants' brazen copyright infringement threatens Plaintiffs' ability to earn revenue from their copyrighted works through existing and potential methods of dissemination. Unless enjoined, Defendants' illegal conduct will irreparably injure Plaintiffs in numerous ways that are incapable of calculation or redress through monetary damages. Defendants' unlawful scheme will also ultimately harm the public, because it will divert revenue from the creators and licensors of original programming to Defendants, thereby threatening to decrease the output of copyrighted works and the investment therein.

CLAIMS FOR RELIEF

COUNT I

(COPYRIGHT INFRINGEMENT IN VIOLATION OF THE COPYRIGHT ACT, 17 U.S.C. §§ 101, *ET SEQ.*)

27. Plaintiffs incorporate by reference each and every allegation set forth in paragraphs 1 through 4 and paragraphs 6-26, as though fully set forth herein.

28. Plaintiffs are the copyright owners of the works listed in Exhibit A, as well as many other television programs telecast in the United States, each of which contains a large number of creative elements wholly original to Plaintiffs and which are copyrightable subject matter under the laws of the United States.

29. Plaintiffs have obtained (or have applied for) copyright registration certificates for each work listed in Exhibit A. In doing so, Plaintiffs have complied in all respects with 17 U.S.C. § 101, *et seq.* and all other laws governing federal copyrights.

30. Each of the works listed in Exhibit A, has, with authorization of Plaintiffs, been exploited in strict conformity with the provisions of 17 U.S.C. §§ 401 and 409, *et seq.*, and all other laws governing federal copyright.

31. DISH creates Primetime Anytime's "on demand library of approximately 100 hours primetime of TV shows" by recording, without authorization, all programming aired by the four national broadcast networks during primetime hours every night. On information and belief, the programming recorded by DISH through the Primetime Anytime service consists exclusively of copyrighted network programming, including Plaintiffs' copyrighted content. On further information and belief, Defendants' copying in connection with PrimeTime Anytime occurs on a partitioned section of The Hopper's hard drive that is fully under Defendants' ongoing remote control. By creating and distributing unauthorized copies of Plaintiffs' works (including the works listed on Exhibit A) through PrimeTime Anytime in the manner described above, Defendants are engaging in and imminently will engage in a vast number of direct copyright infringements, in violation of sections 106(1), 106(3) and 501 of the Copyright Act, 17 U.S.C. §§ 106(1), 106(3) and 501.

32. The foregoing acts of direct infringement by Defendants are unauthorized and unlicensed by Plaintiffs and are not otherwise permissible under the Copyright Act. Plaintiffs did not consent to Defendants' copying.

33. These acts of infringement have been willful, intentional, and purposeful, in disregard of Plaintiff's rights under the Copyright Act. Defendants know that their acts are infringing and intentionally or recklessly disregard the law by their conduct.

34. These acts have caused and will continue to cause substantial irreparable harm to Plaintiffs that cannot fully be compensated or measured in money to Plaintiffs unless further infringement is enjoined and restrained by this Court. Plaintiffs have no adequate remedy at law because damages would be difficult to ascertain and Plaintiffs should not be expected to suffer the blatant infringement in which Defendants are engaging or threatening to engage. The balance of equities favors Plaintiffs because Defendants could easily cease their operation of the infringing services whereas Plaintiffs' rights will be permanently devalued if the infringing conduct continues. Finally, the public interest favors injunctive relief because the goals of the Copyright Act, including increased creation and output of creative works, will be undermined by the persisting infringements committed by Defendants. Accordingly, pursuant to 17 U.S.C. § 502, Plaintiffs are entitled to preliminary and permanent injunctions prohibiting further infringements of Plaintiffs' copyrights.

COUNT II

(INDUCEMENT OF COPYRIGHT INFRINGEMENT IN VIOLATION OF THE COPYRIGHT ACT, 17 U.S.C. §§ 101, *ET SEQ.*)

35. Plaintiffs incorporate by reference each and every allegation set forth in paragraphs 1 through 3 and paragraph 5 through 30, as though fully set forth

herein.

36. Users of the Hopper's PrimeTime AnyTime feature who record Plaintiff's prime-time shows and use the Hopper's Auto Hop feature to automatically skip commercials otherwise contained in those recordings infringe Plaintiffs' exclusive reproduction rights under section 106 of the Copyright Act, 17 U.S.C. § 106(1).

37. Users of the Hopper's PrimeTime Anytime feature who record Plaintiff's prime-time shows and who store said recordings permanently or for long periods of time for commercial-free viewings at times of their choosing infringe Plaintiffs' exclusive reproduction rights under section 106 of the Copyright Act, 17 U.S.C. § 106(1).

38. Plaintiffs have not authorized persons to engage in the acts described in paragraphs 36 and 37 or consented to such acts.

39. Defendants have induced the infringing acts, and the threatened infringing acts, of their customers described above, in violation of sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501. Defendants provide the Hopper and its PrimeTime Anytime and Auto Hop features with the object of promoting their use for infringement.

40. Defendants' conduct demonstrates Defendants' purposeful promotion of infringement. Among other things:

- Defendants have marketed the Hopper expressly for copying and creating libraries of Plaintiffs' works and then viewing them commercial free.
- Defendants' marketing efforts have included targeting known markets for infringement, including consumers who wish to obtain access to commercial-free programming without payment and consumers who

wish to avoid paying market prices for permanent copies of commercial-free programs.

- Defendants have expressly marketed their services as substitutes for licensed methods of accessing Plaintiffs' works, including iTunes and other video-on-demand services.
- Defendants have refused to use readily available technological means to limit or prevent infringement by their customers. In fact, Defendants expressly designed their services to facilitate infringement and make infringing acts virtually effortless.

41. Defendants' inducement of their customers' infringement is, and at all times has been, willful, intentional, and purposeful, in knowing disregard of Plaintiffs' rights under the Copyright Act. Defendants know that their acts are inducing infringing conduct. Defendants intentionally or recklessly disregard the law by their conduct. Plaintiffs have not authorized or consented to defendants' conduct.

42. Defendants' acts have caused and will continue to cause substantial irreparable harm to Plaintiffs that cannot fully be compensated or measured in money unless further infringement by Defendants is enjoined and restrained by this Court. Plaintiffs have no adequate remedy at law because damages would be difficult to ascertain and Plaintiffs should not be expected to suffer Defendants' blatant infringement. The balance of equities favor Plaintiffs because Defendants could easily cease their operation of the infringing services whereas Plaintiffs' rights will be permanently devalued if the infringing conduct continues. Finally, the public interest favors injunctive relief because the goals of the Copyright Act, including increased creation and output of creative works, will be undermined by the persisting infringements committed by Defendants' customers. Pursuant to 17

U.S.C. § 502, Plaintiffs are entitled to preliminary and permanent injunctions prohibiting further infringements of Plaintiffs' copyrights.

COUNT III

(CONTRIBUTORY COPYRIGHT INFRINGEMENT IN VIOLATION OF THE COPYRIGHT ACT, 17 U.S.C. §§ 101, *ET SEQ.*)

43. Plaintiffs incorporate by reference each and every allegation set forth in paragraphs 1 through 3, paragraphs 5 through 30, and paragraphs 36 through 37, as though fully set forth herein.

44. By participating in, facilitating, assisting, enabling, materially contributing to, and encouraging the infringing reproductions of Plaintiffs' works described above in paragraphs 36 through 37, with full knowledge of their illegal consequences, and with the ability to take simple measures to prevent or limit infringement, Defendants are contributing to infringements of Plaintiffs' copyrighted works, in violation of sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501. Defendants make the infringement described above in paragraphs 36 through 37 possible and provide the site and facilities for the infringements.

45. Defendants know or have reason to know of the actual or imminent infringement of Plaintiff's copyrights. Indeed, on information and belief, Defendants monitor their customers' infringing activity and technologically and personally assist their customers throughout their illegal acts. DISH Networks' service agreement with its customers states that it collects information regarding "the programming service options [customers] have chosen." The agreement also states: "When you use our interactive or other transactional television services, the satellite system automatically collects certain information on your use of these services."

46. Defendants' contributions to their customers' infringement have been willful, intentional, and purposeful, in knowing disregard of Plaintiff's rights under the Copyright Act. Defendants know that their acts are contributing to infringing conduct and Defendants intentionally or recklessly disregard the law by their conduct. Plaintiffs have not authorized or consented to Defendants' conduct.

47. Defendants' acts have caused and will continue to cause substantial irreparable harm that cannot fully be compensated or measured in money to Plaintiffs unless further infringement by Defendants is enjoined and restrained by this Court. Plaintiffs have no adequate remedy at law because damages would be difficult to ascertain and Plaintiffs should not be expected to suffer Defendants' blatant infringement. The balance of equities favors Plaintiffs because Defendants could easily cease their operation of the infringing services whereas Plaintiffs' rights will be permanently devalued if the infringing conduct continues. Finally, the public interest favors injunctive relief because the goals of the Copyright Act, including increased creation and output of creative works, will be undermined by the persisting infringements committed by Defendants' customers. Pursuant to 17 U.S.C. § 502, Plaintiffs are entitled to preliminary and permanent injunctions prohibiting further infringements of Plaintiffs' copyrights.

COUNT IV

(VICARIOUS COPYRIGHT INFRINGEMENT IN VIOLATION OF THE COPYRIGHT ACT, 17 U.S.C. §§ 101, *ET SEQ.*)

48. Plaintiffs incorporate by reference each and every allegation set forth in paragraphs 1 through 3, paragraphs 5 through 30, and paragraphs 36 through 37, as though fully set forth herein.

49. Defendants have the right and ability to supervise and control the infringing conduct of their customers described above in paragraphs 36 and 37.

DISH Networks' contract with their customers states:

> We may add, delete, rearrange and/or change any and all programming, programming packages and other Services that we offer, as well as the prices and fees related to such programming, programming packages and Services, at any time, including without limitation, during any term commitment period to which you have agreed.

50. Defendants' regular involvement in their customers' copying is an indispensable link in such infringing conduct. Defendants control their customers' ability to record prime-time content and go to great lengths and efforts to enable their customers to skip entire commercial segments. In order to achieve this goal, Defendants must study the shows that are transmitted and make certain data available to the devices resident in the homes of customers. Absent Defendants' conduct, customers simply could not automatically skip commercials.

51. On information and belief, all of the infringing activity is actively monitored by Defendants. DISH Networks' service agreement with its customers states that it collects information regarding "the programming service options [customers] have chosen." The agreement also states: "When you use our interactive or other transactional television services, the satellite system automatically collects certain information on your use of these services."

52. Defendants also receive a direct financial benefit from the infringement described above in paragraphs 36 through 37 above. Plaintiff is informed and believes, and therefore alleges, that Defendants have attracted, obtained and retained customers as a result of their infringing offerings. The PrimeTime Anytime and Auto Hop features constitute draws to Defendants' services. Defendants actively advertise the infringing capabilities of the Hopper. And, Defendants receive subscription payments from customers who possess the

Hopper.

53. Defendants' refusal to stop or limit its customers' infringements has been willful, intentional, and purposeful, in knowing disregard of Plaintiffs' rights under the Copyright Act. Defendants know that their acts are contributing to infringing conduct and Defendants intentionally or recklessly disregard the law by their conduct. Plaintiffs have not authorized or consented to Defendants' conduct.

54. Defendants' acts have caused and will continue to cause substantial irreparable harm to Plaintiffs that cannot fully be compensated or measured in money unless further infringement by Defendants is enjoined and restrained by this Court. Plaintiffs have no adequate remedy at law because damages would be difficult to ascertain and Plaintiffs should not be expected to suffer Defendants' blatant infringement. The balance of equities favor Plaintiffs because Defendants could easily cease their operation of the infringing services whereas Plaintiffs' rights will be permanently devalued if the infringement continues. Finally, the public interest favors injunctive relief because the goals of the Copyright Act, including increased creation and output of creative works, will be undermined by the persisting infringements committed by Defendants' customers. Pursuant to 17 U.S.C. § 502, Plaintiffs are entitled to preliminary and permanent injunctions prohibiting further infringements of Plaintiffs' copyrights.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court enter judgment in their favor and against Defendants, and each of them, as follows:

(a) On Counts I through IV, preliminarily and permanently enjoin, pursuant to 17 U.S.C. § 502, Defendants, their respective officers, agents, servants, employees, and those persons in active concert or participation with Defendants, or any of them, from inducing infringement or directly, contributorily, and/or vicariously infringing by any means, including but not limited to specifically in connection with the Hopper's PrimeTime Anytime and Auto Hop features, Plaintiffs' exclusive rights under the Copyright Act, including, but not limited to any of Plaintiffs' rights in any of the works listed on Exhibit A, and from licensing any other person to do the same;

(b) award Plaintiffs statutory damages in accordance with 17 U.S.C. § 504 and other applicable law;

(c) award Plaintiffs costs and reasonable attorneys' fees in accordance with 17 U.S.C. § 505, and other applicable law; and

(d) award Plaintiffs such further and additional relief as the Court may deem just and proper.

DATED: May 24, 2012

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