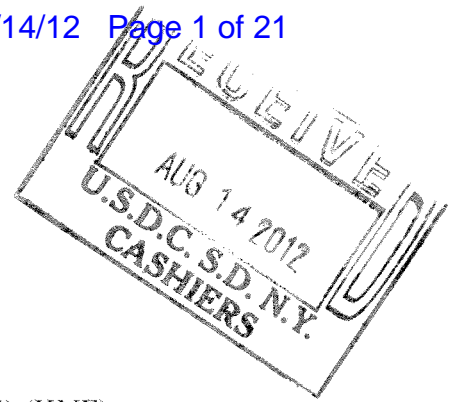


**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**



DISH NETWORK L.L.C.,

Plaintiff,

v.

ABC, INC., AMERICAN BROADCASTING  
COMPANIES, INC., DISNEY  
ENTERPRISES, INC., CBS CORPORATION,  
and NBCUNIVERSAL MEDIA, L.L.C.,

Defendants.

ABC, INC., AMERICAN BROADCASTING  
COMPANIES, INC., and DISNEY  
ENTERPRISES, INC.,

Counterclaimants,

v.

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

Counterclaim  
Defendants.

12 Civ. 4155 (LTS) (KNF)

**FIRST AMENDED DECLARATORY  
JUDGMENT COMPLAINT**

**WITH JURY TRIAL DEMAND**

Plaintiff DISH Network L.L.C. (“DISH”), by and through its attorneys, Orrick, Herrington & Sutcliffe LLP, hereby asserts declaratory judgment claims against defendants: ABC, Inc., American Broadcasting Companies, Inc., Disney Enterprises, Inc. (these ABC entities are collectively referred to as “ABC”); CBS Corporation (“CBS”); and NBCUniversal Media, L.L.C. (“NBC”) (ABC, CBS, and NBC are collectively referred to as “Defendants”).

DISH alleges as follows:

**NATURE OF THE CASE**

1. DISH brings this First Amended Complaint seeking declaratory relief because a real case or controversy exists between it and Defendants. The Defendants and Fox Broadcasting Company (and related entities) (collectively, the “Major Television Networks”) have sought to stifle DISH’s latest technological innovations, PrimeTime Anytime and AutoHop, that allow customers the freedom to enable functionality that allows them to more easily record primetime shows and more effectively choose to skip television commercials during playback of certain of those recorded shows. Even though consumers have had the option, in one form or another, to skip commercials for decades, the Major Television Networks publicly attacked DISH and brought claims against it seeking to eliminate PrimeTime Anytime and AutoHop, the patented technology that allows DISH’s paying subscribers to enable functionality to avoid commercials that they might prefer not to watch, and makes their television watching experience more meaningful and enjoyable. DISH brings this action to obtain a declaration that PrimeTime Anytime and AutoHop comply with DISH’s bargained for contractual rights with the Defendants and, with respect to ABC, the copyright laws of the United States. Ultimately, this case is about freedom of consumer choice, individual families’ choice to elect, if they want, to time-shift their television viewing and watch recorded television without commercials.

2. DISH is the nation’s third-largest pay-television provider, delivering satellite television service to millions of families nationwide. DISH believes that it provides the highest quality programming and technology with the most choices at the best value. DISH subscribers enjoy access to a high definition (“HD”) line-up with more than 200 national HD channels, many international channels, and award-winning HD and digital video recorder (“DVR”) technology.

3. DISH is a party to contracts with each of the Major Television Networks that authorize DISH, among other things, to re-transmit the signals for the content shown on those networks via their owned and operated affiliate stations. DISH is required to pay the Major Television Networks hundreds of millions of dollars per year in re-transmission fees, collected from its subscriber base, for the right to re-transmit those signals – even though the Major Television Networks provide their content at no charge to television viewers with an over-the-air antenna.

4. In March 2012, DISH introduced a new HD DVR called the Hopper. The Hopper is one of the most technologically advanced DVRs on the market. It contains two terabytes of hard drive storage, and can record and store up to 2,000 hours, which is twice the capacity of any other DVR on the market. The Hopper also has PrimeTime Anytime capability, an exclusive feature that allows viewers to enable the recording of HD primetime TV programming on ABC, CBS, Fox and NBC, where available. The Hopper will save all of these recordings for up to eight days (at the consumer's option) after they have aired (with the ability for the consumer to store selected recordings for a longer period), storing approximately 100 hours of primetime TV shows on the DVR hard drive, and making it easy to access episodes from the previous night, or the previous week. Viewers can record up to six programs at once and, when the Hopper is connected to companion "Joey" boxes, those recorded programs can be viewed on up to four different televisions in the home.

5. On May 10, 2012, DISH supplemented the Hopper HD DVR with an "AutoHop" feature. AutoHop, using patented technology, works with most shows recorded using PrimeTime Anytime. With AutoHop, a viewer has the option to efficiently fast-forward through commercials with the touch of a button when beginning playback of certain recorded PrimeTime

Anytime shows on the day after the show originally airs, or later. AutoHop works only with shows recorded through PrimeTime Anytime and does not work on live broadcasts.

6. With the introduction of the video cassette recorder (“VCR”), television viewers began to time-shift their television viewing to make it fit their schedules. Along with time-shifting, the VCR permitted viewers to fast-forward through commercials and other portions of a broadcast that they elected not to watch. The DVR was the next generation of VCR, providing the same generally accepted time-shifting capability, and including additional functionality, such as the ability to automatically jump forward thirty seconds at any time during playback. AutoHop allows consumers who are already time-shifting their television viewing to skip commercials more efficiently by automatically fast-forwarding through all commercials at the touch of a button. The commercials are not erased or deleted. They remain on the recording and can be readily viewed at each customer’s individual option. The DISH AutoHop feature does not alter or modify the broadcast signal.

7. The Major Television Networks responded to the AutoHop feature with hostility, calling it “illegal.” These attacks were wholly unwarranted. AutoHop is a legitimate, legal DVR feature, and DISH is in full compliance with copyright law and its retransmission agreements with the Defendants.

8. After DISH filed the original complaint initiating this action on May 24, 2012, CBS, NBC and Fox brought actions against DISH in the Central District of California related to PrimeTime Anytime and AutoHop. Fox asserted claims for breach of contract and copyright infringement. CBS and NBC brought claims for copyright infringement. ABC did not bring a separate action; instead, it answered DISH’s original complaint and asserted counterclaims for breach of contract and copyright infringement.

9. On May 29, 2012, DISH moved by order to show cause in this Court for an anti-suit injunction to enjoin Fox, CBS and NBC from prosecuting their later-filed actions in the Central District of California. Fox, CBS and NBC cross-moved to dismiss DISH's declaratory judgment claims against them. This Court decided those motions by Memorandum Opinion and Order dated July 9, 2012. This First Amended Complaint limits DISH's declaratory judgment claims to those claims that survive pursuant to the July 9 Memorandum Opinion and Order.

10. As described in more detail below, DISH brings this First Amended Complaint for a declaratory judgment that DISH is not directly or indirectly infringing the copyrights of ABC, and that it is in compliance with its contracts with the Defendants.

#### **THE PARTIES**

11. DISH Network L.L.C. is a Colorado limited liability company with its principal place of business at 9601 South Meridian Boulevard, Englewood, CO 80112. DISH Network L.L.C. is a wholly owned subsidiary of DISH DBS Corporation, a Colorado corporation with its principal place of business in Colorado.

12. ABC, Inc. is a New York corporation with its principal place of business at 77 West 66th Street, New York, NY 10023-6298.

13. American Broadcasting Companies, Inc. is a Delaware corporation with its principal place of business at 77 West 66th Street, New York, NY 10023-6298.

14. Disney Enterprises, Inc. is a Delaware corporation with its principal place of business at 500 South Buena Vista Street, Burbank, CA 91505. Disney Enterprises, Inc. maintains offices and conducts business in New York City.

15. CBS Corporation is a Delaware corporation with its principal place of business at 51 West 52nd Street, New York, NY 10019.

16. NBCUniversal Media, L.L.C. is a Delaware limited liability company with its principal place of business at 30 Rockefeller Plaza, New York, NY 10112-0015. NBCUniversal Media, L.L.C. is owned by Comcast Corporation and General Electric Company. Comcast is one of the largest cable television operators and a direct competitor to DISH. Comcast is a Pennsylvania corporation with its principal place of business in Pennsylvania. General Electric is a New York corporation with its principal place of business in Connecticut.

### **JURISDICTION AND VENUE**

17. DISH brings this action under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202 for a judgment declaring that DISH's AutoHop and PrimeTime Anytime features: (i) do not infringe on any copyrights belonging to ABC; and (ii) do not breach any re-broadcast agreements in force between it and the Defendants.

18. DISH's copyright claims arise under the Copyright Act, 17 U.S.C. §§ 101 *et seq.*, and this Court has federal question jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

19. In addition to federal question jurisdiction over the copyright claims, there is complete diversity between the parties to support jurisdiction over the state-law contract claims, pursuant to 28 U.S.C. § 1332. The amount in controversy exceeds the jurisdictional threshold for a diversity action. In addition, the contract claims against ABC fall within the Court's supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a), because the contract claims form part of the same case and controversy as the copyright claims.

20. Venue in this judicial district is conferred under 28 U.S.C. § 1391 because each Defendant resides within this district. In addition, DISH's retransmission agreements with ABC and CBS, described *infra*, contain mandatory forum selection clauses that, in the case of ABC,

require that this action be brought in this judicial district and, in the case of CBS, authorize this action to be brought either in this judicial district or in the District Court of Colorado.

### **FACTUAL BACKGROUND**

21. A DVR is a consumer electronics device that records video in digital format and saves it to a hard drive. Many set-top boxes (television signal receivers) that pay TV providers supply to their customers contain built-in DVRs. According to Nielsen data, in 2011, approximately 40% of households had DVRs.

#### **The Agreements and the Copyrights at Issue**

22. DISH is a party to contracts with each of ABC, CBS and NBC that authorize DISH to re-transmit broadcast signals containing content shown on those entities' television networks and broadcast by their owned-and-operated affiliates. DISH seeks a declaration that, by providing the Hopper with PrimeTime Anytime and AutoHop to its subscribers, it is not in breach of any of those retransmission agreements.

23. The ABC Retransmission Agreement. ABC, Inc. and EchoStar Satellite L.L.C., the predecessor entity to DISH Network L.L.C., are parties to a "Digital Retransmission Consent Agreement" effective as of September 15, 2005, as amended (the "ABC Retransmission Agreement"), which is governed by New York law. The ABC Retransmission Agreement contains a mandatory forum selection clause that provides for exclusive jurisdiction over any claims between the parties in the federal and state courts located in New York County.

24. The CBS Retransmission Agreement. CBS Corporation and DISH Network L.L.C. are parties to a "Retransmission Consent and Video On Demand Agreement" effective as of January 1, 2012 (the "CBS Retransmission Agreement"), which is governed by Colorado law. The CBS Retransmission Agreement contains a mandatory forum selection clause that provides



for exclusive jurisdiction over any claims between the parties in the federal and state courts located in the Southern District of New York or in the city and state of Colorado.

25. The NBC Retransmission Agreement. NBC Universal Television Networks Distribution, a division of NBC Universal, Inc., the predecessor entity to NBCUniversal Media, L.L.C. and DISH Network L.L.C. are parties to a “Term Sheet: DISH Network L.L.C. – NBC Universal Television Networks Distribution” entered into on April 18, 2008 (the “2008 NBC Agreement”), which incorporates and amends certain “Existing Agreements” between the parties and various affiliated or otherwise related entities (collectively the “NBC Retransmission Agreement”), which is governed by New York law. The Existing Agreements include but are not limited to the “NBC Universal – EchoStar Binding Term Sheet dated December 31, 2005” (the “2005 NBC Agreement”), the Letter Agreement dated June 28, 2000 (the “2000 NBC Agreement”), and the CNBC DBS Affiliation Agreement dated July 11, 1995 (the “1995 NBC Agreement”).

26. ABC claims ownership of the copyrights and copyright registrations for certain primetime shows carried on the ABC television network that DISH re-transmits to its subscribers. This action addresses any existing ABC copyrights in primetime shows that were made available to DISH subscribers who have enabled the Hopper’s PrimeTime Anytime and AutoHop features, as well as any future ABC copyrights in primetime shows made available to DISH subscribers who have enabled the Hopper’s PrimeTime Anytime and AutoHop features. DISH seeks a declaration that the Hopper and its PrimeTime Anytime and AutoHop features do not infringe and will not infringe any such primetime copyrights if operated as currently configured. On information and belief, ABC currently holds any copyright interests in its



primetime shows through defendants American Broadcasting Companies, Inc. and Disney Enterprises, Inc.

The Hopper and PrimeTime Anytime

27. The Hopper is a best-in-class DVR offered by DISH exclusively to its satellite television customers. DISH introduced the Hopper in mid-March 2012. The Hopper is a premium product that may be purchased or leased by DISH subscribers on defined terms and conditions, and that generally requires the purchase of certain premium programming packages from DISH.

28. The Hopper has been lauded by reviewers as the best whole-home DVR for its intuitive user interface, never-before-seen features and reasonable pricing. The Hopper whole-home HD DVR system makes it easy to enjoy HD programs in multiple rooms. *PCMagazine* named the Hopper an “Editor’s Choice” among DVR products and calls the award-winning and innovative Hopper “one of the best DVRs we’ve ever seen.” The Hopper also received Popular Mechanic’s “Editor’s Choice” award for outstanding achievement in new product design and innovation. The Hopper won the “Best of Show” award at the Consumer Electronics Association’s Line Show in New York City on June 28, 2012.

29. The Hopper’s PrimeTime Anytime capability is a feature that allows viewers to enable the recording of HD primetime TV programming on the Major Television Networks (where available). The PrimeTime Anytime feature can record three hours of primetime programming from up to four Major Television Networks (at the consumer’s option) up to every night (at the consumer’s option), except for Sunday night, when four hours of primetime programming may be recorded. It is expected that customers are watching more broadcast shows with PrimeTime Anytime than they were before, and that viewers are now being exposed

to programs that they might have otherwise missed. Because most broadcast viewing occurs the same day, the PrimeTime Anytime feature, which is capable of making all of primetime available for a full eight days, is expected to increase viewer exposure to the Major Television Networks' primetime shows, and ultimately increase live viewership for the Major Television Networks. PrimeTime Anytime allows DISH customers to watch more and miss less of their favorite network television programs.

30. *ENGADGET* praises the Hopper and its PrimeTime Anytime feature "because it allows us to discover shows anytime after they first aired, so if you learn of a great new show while wasting time at the water cooler, it isn't too late to go home and watch it or choose to save it for a later viewing. It's a step towards a future where we can watch whatever we want without having to plan in advance or consult a list to make sure our shows will be recorded. What else... can we say? It just works."

Dish Unveils Its Latest Innovation, AutoHop

31. On May 10, 2012, DISH introduced a new feature, AutoHop, as part of its PrimeTime Anytime offering on the Hopper DVR. AutoHop is all about customer choice. DISH subscribers are given the choice to enable AutoHop when they start the next-day playback of certain programs recorded using PrimeTime Anytime. With AutoHop enabled, the subscriber has the option to automatically skip commercials during playback. The commercials are not erased or deleted from the recorded program. The commercials are still there if the customer wants to view them. Subscribers may choose not to enable AutoHop for any playback, and must affirmatively choose to skip commercials each time they watch a show. Even when AutoHop is enabled, the customer may still view commercials by using the rewind and fast forward features during the playback of a recorded show.

32. AutoHop is a more efficient way for consumers to achieve what they already do with standard DVRs. A 30-second skip feature is already standard on many DVR remote controls. It permits viewers to automatically skip ahead in a recording, at the touch of a button, completely bypassing a typical 30-second television commercial. The remote controls that come with DVRs supplied by Comcast, an NBC affiliate, can be programmed to include this 30-second skip feature. DISH has provided a 30-second skip feature for years. By pressing the 30-second skip button multiple times, a viewer can elect to bypass the full complement of commercials between show segments. Now, DISH allows the customer to opt to enable an AutoHop feature that is just an extension of this 30-second skip function. Among other things, it avoids the common frustration that occurs when viewers, using the 30-second skip or plain fast-forwarding, overshoot the commercials and fast-forward into the television programming content that they really want to watch.

33. DISH's AutoHop feature promotes consumer autonomy. Viewers have skipped commercials for decades. Viewers commonly use the commercial break as a time to get up and momentarily leave the room. Ever since the advent of the remote control, viewers have changed channels or muted the sound during commercial breaks. And, since the advent of the VCR and DVR, viewers playing back a show have fast-forwarded through commercials. DISH is simply making it easier for viewers to refuse to be a captive audience and to exercise the well-accepted choice to skip a commercial.

34. Viewers skip commercials for a multitude of reasons. For example, many parents may choose to shield their children from commercials. They may do so for the purpose of avoiding a child's exposure to undesired promotions that are geared specifically to appeal to children or for the purpose of avoiding a child's exposure to advertisements with adult content.

35. DISH subscribers are already paying for their television service. DISH passes along hundreds of millions of dollars collected from its subscriber base to the Major Television Networks in the form of re-transmission fees. DISH's subscribers, private home viewers sitting in their living rooms, may fairly choose for themselves the content that they do and do not want to watch, and have paid for the right to do so.

36. A technology analyst for USA Today described AutoHop as a "huge change for the media industry and a clear indication that the consumer is in control." *Dish's Auto Hop Skips Commercials in Recorded Shows*, USA TODAY, May 9, 2012.

37. DISH is not the only company to offer automatic commercial-skipping functionality to the home consumer. For example, automatic commercial-skipping is already available as an add-in to the Windows Media Center.

38. DISH does not alter the broadcasters' signals. AutoHop is not available with live television viewing. It only becomes available upon playback of certain recorded PrimeTime Anytime shows on the day after the shows originally aired.

39. DISH is party to various agreements with the Major Television Networks, including agreements with ABC, CBS and NBC as set forth above. These agreements authorize DISH to re-broadcast and re-transmit the Major Television Networks' television signals to DISH subscribers in exchange for annual fees in the hundreds of millions of dollars. DISH was the first company to advocate the payment of retransmission fees to broadcasters. In recent years, DISH has agreed to significant rate increases for broadcast content.

DISH Is In Compliance With Its Retransmission Agreements.

40. DISH is in compliance with the ABC Retransmission Agreement, and does not violate that Agreement by making PrimeTime Anytime and AutoHop available to subscribers.

The ABC Retransmission Agreement includes provisions granting DISH “Retransmission Consent” and certain rights with respect to “Carriage” at §§ 1 and 2. The ABC Retransmission Agreement also includes a provision governing “Unauthorized Use” at § 12. DISH is acting within its rights under these and all other sections of the ABC Retransmission Agreement, and is not otherwise in violation of the ABC Retransmission Agreement by making PrimeTime Anytime and AutoHop available to DISH subscribers.

41. DISH is in compliance with the CBS Retransmission Agreement, and does not violate that Agreement by making PrimeTime Anytime and AutoHop available to subscribers. The CBS Retransmission Agreement includes provisions granting DISH “Retransmission Consent” and certain rights with respect to “Carriage of Station” at §§ 2 and 3 and with respect to Signal Quality at § 6. The CBS Retransmission Agreement also grants DISH rights with respect to “Other Content” at § 4, which addresses Video on Demand. The CBS Retransmission Agreement includes prohibitions relating to “Unauthorized Use” at § 23. DISH is acting within its rights under these and all other sections of the CBS Retransmission Agreement, and is not otherwise in violation of the CBS Retransmission Agreement by making PrimeTime Anytime and AutoHop available to DISH subscribers.

42. DISH is in compliance with the NBC Retransmission Agreement, and does not violate that Agreement by making PrimeTime Anytime and AutoHop available to subscribers. The 2000 NBC Agreement includes a provision granting DISH “Retransmission Consent” at § 6, as amended by §13 of the 2008 NBC Agreement (referring to the terms and conditions of the Existing Agreements relating to retransmission consent). The 2008 NBC Agreement includes provisions relating to “PPV/VOD Film and TV Content” and “Advance Product Offering/TV FOD” at §§ 9 and 10. The 2008 NBC Agreement also includes provisions relating to “Technical

Requirements” at § 11 and in Exhibit B to that agreement. DISH is acting within its rights under these and all other sections of the NBC Retransmission Agreement and is not otherwise in violation of the NBC Retransmission Agreement by making PrimeTime Anytime and AutoHop available to DISH subscribers.

A Real Dispute Exists Between The Major Television Networks and DISH

43. The Major Television Networks have made unwarranted public attacks on the AutoHop feature, and reserved all rights to commence litigation against DISH. Shortly after the AutoHop feature’s May 10, 2012 introduction, executives for CBS and NBC made public remarks sharply critical of AutoHop. These remarks were made in New York, during the television “up-fronts,” at which the Major Television Networks showcase their offerings for the next television season to advertisers.

44. After DISH commenced this action, the four Major Television Networks brought copyright infringement claims against DISH, and ABC and Fox also brought claims for breach of contract. ABC asserted its copyright and contract claims as counterclaims in this action. Fox brought contract and copyright claims against DISH in the Central District of California, in *Fox Broadcasting Company, et al., v. DISH Network L.L.C., and DISH Network Corporation*, No. CV 12-04529-GHK (SHx). CBS and NBC brought copyright claims against DISH in the Central District of California, in *CBS Broadcasting Inc., et al. v. DISH Network Corporation and DISH Network L.L.C.*, No. CV 12-4551-PA (JCGx) and *NBC Studios, LLC, et al. v. DISH Network Corporation and DISH Network L.L.C.*, No. CV 12-04536-DMG (FFMx).

45. After the AutoHop feature was released, Fox, CBS and NBC began rejecting advertising from DISH featuring the Hopper. These Defendants had previously accepted advertisements for the Hopper, prior to the introduction of AutoHop.

46. Based on these statements and actions, as well as an article in THE HOLLYWOOD REPORTER citing anonymous network sources that stated that the Major Television Networks were consulting with counsel and examining their agreements with DISH in the expectation of filing litigation against DISH alleging claims of copyright infringement and breach of contract, a substantial controversy arose and DISH was reasonably apprehensive that it would be the target of litigation at the time that it filed the original complaint. Among other things, the claim by anonymous network sources in the press that DISH may have breached its contracts with the Major Television Networks created a real and immediate substantial controversy over the proper interpretation of those contracts.

**COUNT ONE (ABC)**

**DECLARATORY JUDGMENT: NO COPYRIGHT INFRINGEMENT**

47. DISH incorporates by reference all allegations contained in paragraphs 1 through 46 of this First Amended Complaint, as though fully set forth herein.

48. An actual substantial controversy exists between DISH and ABC on copyright infringement, as evidenced by the fact that ABC has asserted copyright infringement counterclaims against DISH in this action. ABC claims copyright ownership in the programs it offers during primetime on the ABC television network and further alleges ownership of copyright registration in those programs. DISH's making Primetime Anytime and AutoHop available to customers does not directly or indirectly infringe any ABC copyrights in primetime shows as aired on the ABC television network.

49. ABC's attack on the features available with DISH's Hopper DVR has the potential to damage DISH and its customers who are rightfully and fairly using: (1) AutoHop to more efficiently fast-forward through commercials; and (2) PrimeTime Anytime to more



efficiently record primetime programs. This controversy is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment as to non-infringement.

50. A declaratory judgment on non-infringement would serve a useful purpose in clarifying or settling the legal issues between DISH and ABC.

51. A judgment declaring that DISH is not directly or indirectly infringing on those copyrights owned by ABC in primetime shows aired on the ABC television network now, and in the future, would finalize the controversy between the parties and offer them relief from uncertainty.

**COUNT TWO (ALL DEFENDANTS)**

**DECLARATORY JUDGMENT: NO BREACH OF AGREEMENTS**

52. DISH incorporates by reference all allegations contained in paragraphs 1 through 51 of this First Amended Complaint, as though fully set forth herein.

53. An actual, substantial controversy exists between DISH and the Defendants as to whether DISH is in compliance with its retransmission agreements. PrimeTime Anytime and AutoHop do not violate any contracts between DISH and the Defendants. The Defendants' attack on DISH's innovative new products has the potential to damage DISH and its customers who are rightfully using: (1) AutoHop to more efficiently fast-forward through commercials; and (2) PrimeTime Anytime to more efficiently record primetime programs. This controversy is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

54. DISH is in compliance with all relevant provisions contained in the ABC Retransmission Agreement, including but not limited to §§ 1, 2 and 12, and has not breached the ABC Retransmission Agreement by making PrimeTime Anytime and AutoHop available to subscribers.

55. DISH is in compliance with all relevant provisions contained in the CBS Retransmission Agreement, including but not limited to §§ 2, 3, 4, 6 and 23, and has not breached the CBS Retransmission Agreement by making PrimeTime Anytime and AutoHop available to subscribers.

56. DISH is in compliance with all relevant provisions contained in the NBC Retransmission Agreement, including but not limited to § 6 of the 2000 NBC Agreement and §§ 9, 10, 11 and 13 of the 2008 NBC Agreement, and has not breached the NBC Retransmission Agreement by making PrimeTime Anytime and AutoHop available to subscribers.

57. A judgment that DISH, while making AutoHop and/or PrimeTime Anytime available to its customers using the Hopper HD DVR, remains in compliance with its agreements, including with the implied covenant of good faith and fair dealing, with the Defendants, would serve a useful purpose in clarifying or settling legal issue between DISH and the Defendants.

58. A judgment declaring that DISH is not in breach of the retransmission agreements, including a declaration that DISH is not in breach of the implied covenant of good faith and fair dealing, would finalize the controversy between the parties and offer them relief from uncertainty.

#### **PRAYER FOR RELIEF**

DISH prays for the following relief:

59. The Court enter a judgment declaring that DISH has not, willfully or otherwise, directly or indirectly infringed any copyrights owned, or to be owned, by ABC in primetime shows aired on the ABC television network by making the PrimeTime Anytime and AutoHop

technology available to customers for their use in connection with the recording and playback of primetime shows;

60. The Court enter a judgment declaring that DISH is acting within its rights under the ABC Retransmission Agreement, the CBS Retransmission Agreement, and the NBC Retransmission Agreement in making the PrimeTime Anytime and AutoHop technology available to customers for their use in connection with the recording and playback of primetime shows;

61. That DISH be awarded its costs in connection with this action; and

62. The Court grant to DISH any other and further relief as may be just and proper.

**DEMAND FOR JURY TRIAL**

63. DISH hereby demands a trial by jury.

Dated: New York, New York  
August 14, 2012

Respectfully submitted,

ORRICK HERRINGTON & SUTCLIFFE LLP



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*Attorneys for DISH Network L.L.C.*

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

DISH NETWORK L.L.C.,

Plaintiff,

v.

ABC, INC., AMERICAN BROADCASTING  
COMPANIES, INC., DISNEY  
ENTERPRISES, INC., CBS CORPORATION,  
and NBCUNIVERSAL MEDIA, L.L.C.,

Defendants.

ABC, INC., AMERICAN BROADCASTING  
COMPANIES, INC., and DISNEY  
ENTERPRISES, INC.,

Counterclaimants,

v.

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

Counterclaim  
Defendants.

12 Civ. 4155 (LTS) (KNF)

**DECLARATION OF SERVICE**

Thomas Backiel hereby declares as follows:

1. I am not a party to the above case, am over eighteen years old, and am employed at the law firm Orrick, Herrington & Sutcliffe LLP, 51 West 52<sup>nd</sup> Street, New York, NY 10019.
2. On August 14, 2012, I served via U.S. First Class Mail, true and correct copies of the First Amended Declaratory Judgment Complaint upon:

Kevin T. Baine  
Thomas G. Hentoff  
Hannah M. Stott-Bumsted  
Stephen J. Fuzesi  
James M. McDonald  
Williams & Connolly LLP  
725 Twelfth Street, N.W.  
Washington, DC 20005

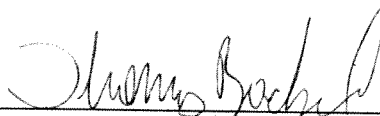
Jane G. Stevens  
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Mitchell Silberberg & Knupp LLP  
12 East 49th Street, 30th Floor  
New York, NY 10017

Robert Rotstein  
Patricia H. Benson  
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Mitchell Silberberg & Knupp LLP  
11377 West Olympic Boulevard  
Los Angeles, CA 90064-1683

by placing the same in a sealed envelope, postage prepaid, addressed to the above in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York  
August 14, 2012



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Thomas Backiel