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Alki David, CBS Trade Barbs After Contempt Ruling

After a judge says FilmOn violated an injunction and a settlement agreement, Alki David accuses the TV network of lying to the judge.

BY ERIQ GARDNER SEPTEMBER 11, 2013 1:24PM





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Alki David: Not just the eccentric billionaire whose TV streaming service FilmOn has been the **object of lawsuits** by the major TV broadcasters, but also the guy who has needled **CBS** over the years by setting up the website [cbsyousuck.com](#) and suing CBS for **contributing to piracy** by distributing P2P software through its CNET subsidiary.

So CBS is welcoming a ruling on Tuesday by a New York federal judge that orders David to hand over \$1.35 million, plus interest, and compels FilmOn to comply with financial terms of a settlement agreement. Now that the ruling has been issued, David and CBS continue to blast each other.

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It was three years ago that the broadcasters sued FilmOn for allegedly stealing their signals. David was sloppy in responding, and his company was hit with an injunction.

Last July, the broadcasters and David agreed to a \$1.6 million settlement, but the ink was hardly dry on it before the terms became public, and **David signaled** that he and the broadcasters weren't done fighting.

The FilmOn founder didn't take down videos that disparaged CBS. He didn't withdraw the lawsuit that charged CBS Interactive with aiding piracy. And he only delivered a payment of \$250,000 — not the \$1.6 million agreed upon — with his lawyer blaming “tax and accounting complications” and explaining that “[w]hile Mr. David is personally extremely well-situated financially, FilmOn.com, Inc. is in no position to make any sort of payment to speak of.”

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Then, there was the existence of David's streaming service, which has evolved into an Aereo-like antennae farm that captures over-the-air TV signals and relays them to subscribers on an individual basis.



separate and distinct from the technology that it was using post-injunction. After the broadcasters demanded that David be held to the terms of the settlement, FilmOn pointed out that the newer technology had been deemed noninfringing in the Aereo dispute. FilmOn said that Fox had not performed its own implied covenant under the settlement agreement by publicly condemning a technology which it knew to be lawful.

“We find that argument unpersuasive because there is ample reason to conclude that Fox had a good faith basis to believe that FilmOn’s technology violated the Injunction,” ruled U.S. District Judge **Naomi Buchwald** on Tuesday. ([Here’s the full ruling.](#))

The judge added that David was not excused from paying the full amount owed. And as for David’s videos concerning CBS, the judge didn’t buy the billionaire’s argument that it was meant to “apply only prospectively,” and that the existence of those videos online wasn’t contemplated by the settlement agreement.

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But the subject that the parties continue to wage a public battle over is whether FilmOn has complied with the injunction in its VOD service. David’s company says it is not infringing plaintiffs’ copyrights because it has acquired rights from third parties, but the judge says that “FilmOn has offered no evidence whatsoever” of that.

David tells *THR* that “it’s easy to catch the networks out in a lie,” saying that he “did provide that information as ‘attorney’s eyes only,’” and that the network’s lawyer failed to



His attorney **Ryan Baker** supports that story, saying that on Aug. 20, he sent CBS counsel a copy of an agreement. And that CBS's lawyer confirmed receipt to him.

And what does CBS say?

The network tells *THR*, “No wonder this lawyer’s client was held in contempt. The court held a complete hearing on this subject and no valid agreement was produced by either this lawyer or his client. Of course no such agreement exists. Would not this lawyer produce such an agreement if it did? The client failed to produce such an agreement, the lawyer failed to produce such an agreement and the court pointed this out in its opinion. Talk of diversionary tactics. This is sour grapes so strong that the fermentation has already begun.”

Needless to say, it’s not over, or at least, Alki David doesn’t think it’s over, contempt order notwithstanding. David also says, “It is good to see CBS squirm over the CNET/Limewire disaster and feel the weight of responsibility in being mostly responsible for the destruction of the entertainment business. That case is still ongoing.”

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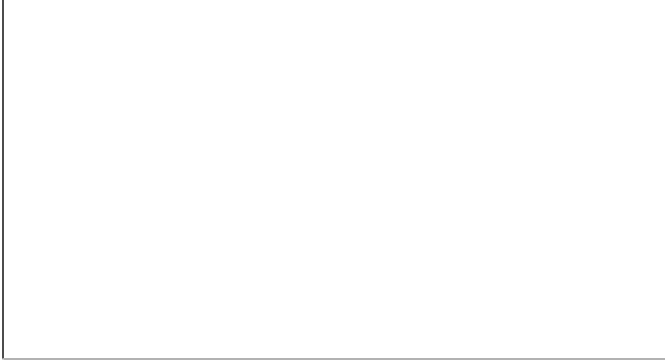
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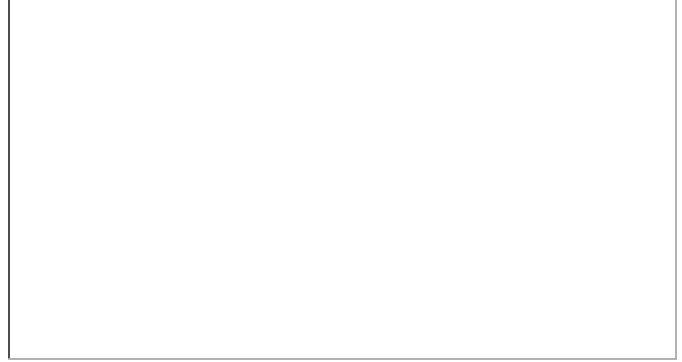
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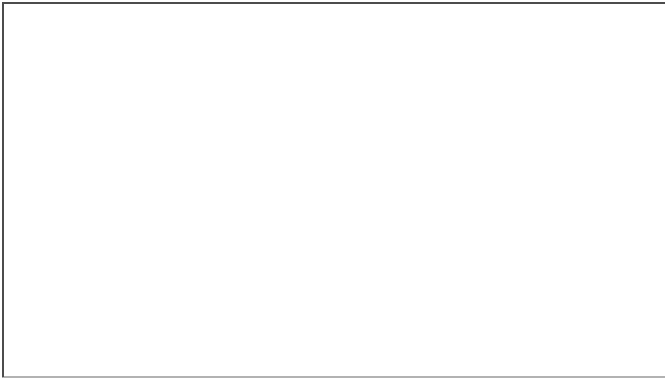
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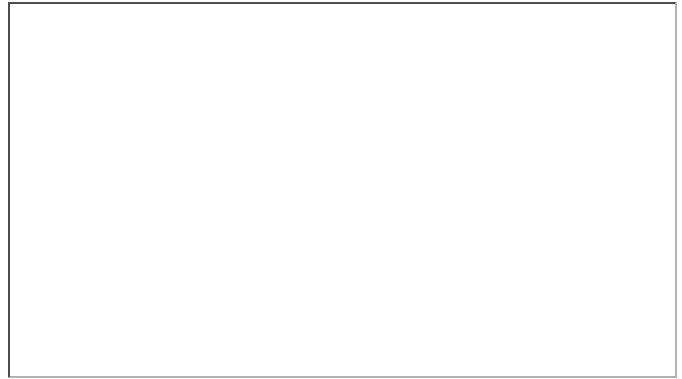
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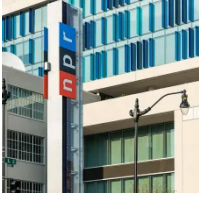
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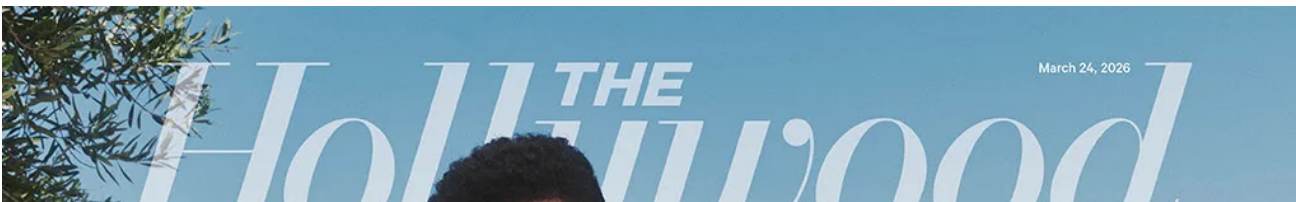
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