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## Broadcasters Settle Copyright Dispute With FilmOn

The development occurs after CBS, Fox and NBC score a March victory at one appellate circuit with other decisions loomings.

BY ERIQ GARDNER MAY 15, 2017 1:31PM





"If you want to sell Depends to people, that's fine," says Alki (right with Dick outside the Filmon.tv studio in Beverly Hills). "But if you want to attract the younger audiences, make TV hip and accessible to that audience, you got to change how you deliver it."



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CBS, Fox and NBC have settled with the streaming company FilmOn, bringing an end to a long-running copyright dispute that was pending at several appellate circuits throughout the nation.

The broadcasters sued FilmOn in 2013, around the same time they challenged another streaming company called Aereo for publicly performing copyrighted programming. After Aereo went under thanks to a [Supreme Court ruling](#), FilmOn continued to litigate with the proposition that since the high court justices likened streaming operations to a cable system, it was entitled to a compulsory license under Section 111 of the Copyright Act.

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Section 111 was enacted by Congress in the 1970s thanks to a perception of the burdensome nature of requiring cable systems to negotiate with every copyright owner over the retransmission of channels on public airwaves. FilmOn tendered license fees with the Copyright Office and attempted to take advantage.



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In July 2016, FilmOn **won a shocking decision** from a California federal court judge, who decided that the company founded by billionaire Alki David was likely correct in its interpretation of the law. At the time, the judge ruled “courts consistently reject the argument that technological changes affect the balance of rights as between broadcasters and retransmitters in the wake of technological innovation.”

Even though the broadcasters **won in other states and the District of Columbia**, the decision represented a threat to broadcasters. Fortunately for CBS, Fox, NBC and ABC, the 9th Circuit **reversed the decision in March**. Recently, an attempt for a rehearing before a fuller panel of judges there was rejected.

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The broadcasters have now chosen this moment to settle.

By doing so, they jump ahead of a looming decision from the DC Circuit Court of Appeals. That one posed risks. At the hearing in March, Neal Katyal, an attorney for the broadcasters, took sharp questioning from skeptical appellate judges. Katyal — whose face was featured across cable news on Monday for representing Hawaii against Donald Trump’s immigration order — called the FilmOn case the “**longest oral argument of my life**.”

The settlement has caused FilmOn to withdraw its various appeals. The broadcasters no longer have to worry about a decision by the DC Circuit Court of Appeals (nor the 7th Circuit, reviewing a decision in Chicago, either), which could have primed the way for a redux of Aereo at the Supreme Court. Instead, they can crow about their success at the 9th Circuit and at other district courts and use it as ammunition against future streamers.

According to Ryan Baker, attorney for FilmOn, precise terms of the settlements are confidential.

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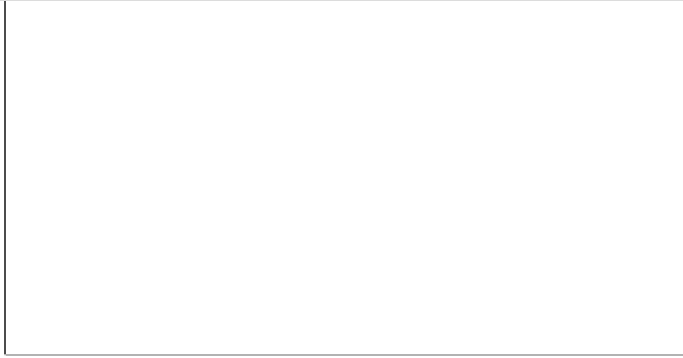
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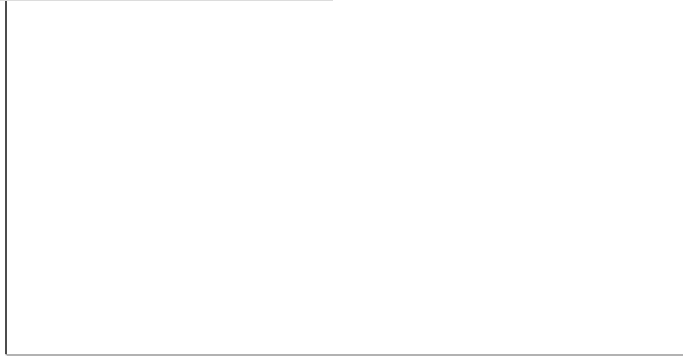
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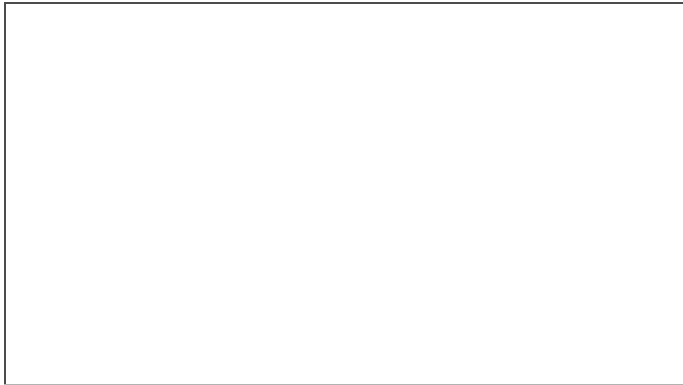
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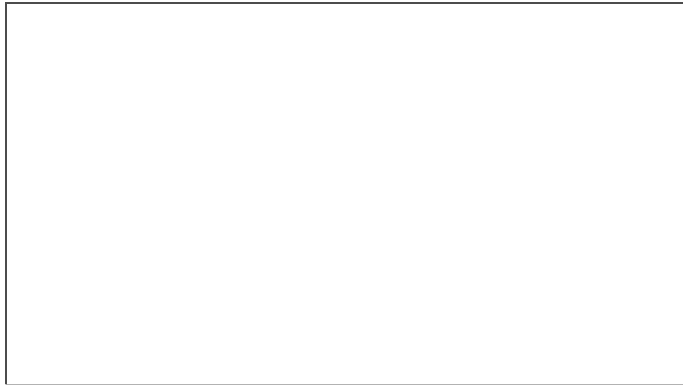
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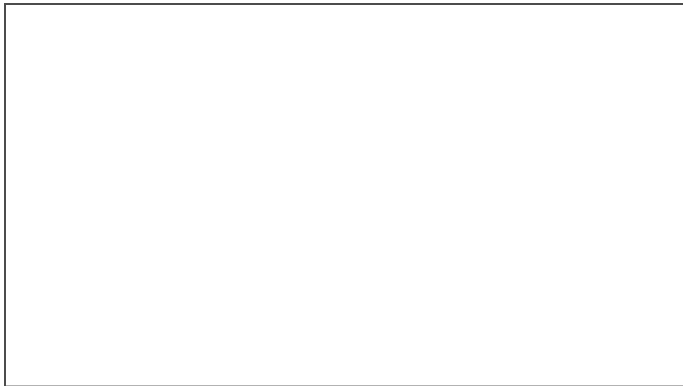
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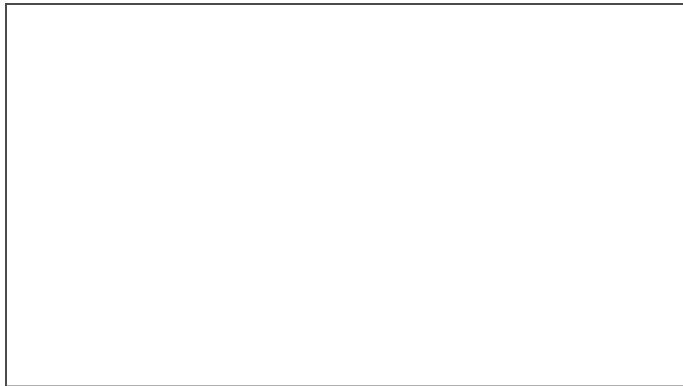
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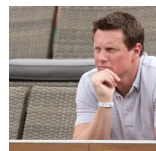
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