

**U.S. District Court
District of Columbia (Washington, DC)
CIVIL DOCKET FOR CASE #: 1:13-cv-00758-RMC**

FOX TELEVISION STATIONS, INC., et al v. FILMON X,
LLC, et al
Assigned to: Judge Rosemary M. Collyer
Demand: \$100,000
Cause: 17:101 Copyright Infringement

Date Filed: 05/23/2013
Jury Demand: Plaintiff
Nature of Suit: 820 Copyright
Jurisdiction: Federal Question

Plaintiff

FOX TELEVISION STATIONS, INC.

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Plaintiff

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Plaintiff

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Date Filed	#	Page	Docket Text
05/23/2013	<u>1</u>		COMPLAINT against FILMON X, LLC, FILMON.COM, INC., FILMON.TV NETWORKS, INC., FILMON.TV, INC. with Jury Demand (Filing fee \$ 400 receipt number 0090-3336993) filed by UNIVERSAL NETWORK TELEVISION LLC., TWENTIETH CENTURY FOX FILM CORPORATION, NBC SUBSIDIARY (WRC-TV) LLC., NBC STUDIOS LLC., AMERICAN BROADCASTING COMPANIES, INC., TELEMUNDO NETWORK GROUP LLC., ALLBRITTON COMMUNICATIONS COMPANY, FOX TELEVISION STATIONS, INC., DISNEY ENTERPRISES, INC., OPEN 4 BUSINESS PRODUCTIONS LLC., FOX BROADCASTING COMPANY, INC.. (Attachments: # <u>1</u> Exhibit Exhibit A, # <u>2</u> Exhibit Exhibit B, # <u>3</u> Civil Cover Sheet, # <u>4</u> Summons)(Hussain, Murad) Modified on 8/20/2013 (rdj). (Entered: 05/23/2013)
05/23/2013	<u>2</u>		REPORT on the Filing or Determination of an Action or Appeal Regarding a Copyright. (Hussain, Murad) Modified on 5/24/2013 (rdj). (Entered: 05/23/2013)
05/23/2013	<u>3</u>		NOTICE OF RELATED CASE by All Plaintiffs. Case related to Case No. 2:12-CV-6921 (C.D. Cal.); 2:12-CV-6950 (C.D. Cal.). (Hussain, Murad) (Entered: 05/23/2013)

05/23/2013	<u>4</u>	Corporate Disclosure Statement by ALLBRITTON COMMUNICATIONS COMPANY, AMERICAN BROADCASTING COMPANIES, INC., DISNEY ENTERPRISES, INC., FOX BROADCASTING COMPANY, INC., FOX TELEVISION STATIONS, INC., NBC STUDIOS LLC., NBC SUBSIDIARY (WRC-TV) LLC., OPEN 4 BUSINESS PRODUCTIONS LLC., TELEMUNDO NETWORK GROUP LLC., TWENTIETH CENTURY FOX FILM CORPORATION, UNIVERSAL NETWORK TELEVISION LLC., (Hussain, Murad) (Entered: 05/23/2013)
05/23/2013		Case Assigned to Judge Rosemary M. Collyer. (md,) (Entered: 05/24/2013)
05/24/2013	<u>5</u>	AMENDED COMPLAINT against FILMON X, LLC, FILMON.COM, INC., FILMON.TV NETWORKS, INC., FILMON.TV, INC. with Jury Demand filed by GANNETT CO., INC., CBS BROADCASTING INC., CBS STUDIOS. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B)(rdj) Modified on 8/20/2013 (rdj). (Entered: 05/24/2013)
05/24/2013	<u>6</u>	Electronic Summons (4) Issued as to FILMON X, LLC, FILMON.COM, INC, FILMON.TV NETWORKS, INC., FILMON.TV, INC. (Attachments: # <u>1</u> consent form, # <u>2</u> notice of consent to trial)(rdj) Modified on 8/20/2013 (rdj). (Entered: 05/24/2013)
05/24/2013	<u>7</u>	NOTICE OF CORRECTED CIVIL COVER SHEET by ALLBRITTON COMMUNICATIONS COMPANY, AMERICAN BROADCASTING COMPANIES, INC., CBS BROADCASTING, INC., CBS STUDIOS, DISNEY ENTERPRISES, INC., FOX BROADCASTING COMPANY, INC., FOX TELEVISION STATIONS, INC., GANNETT CO., INC., NBC STUDIOS LLC., NBC SUBSIDIARY (WRC-TV) LLC., OPEN 4 BUSINESS PRODUCTIONS LLC., TELEMUNDO NETWORK GROUP LLC., TWENTIETH CENTURY FOX FILM CORPORATION, UNIVERSAL NETWORK TELEVISION LLC, re <u>1</u> Complaint., (Hussain, Murad) (Entered: 05/24/2013)
05/24/2013	<u>8</u>	LCvR 7.1 CERTIFICATE OF DISCLOSURE of Corporate Affiliations and Financial Interests (AMENDED) by ALLBRITTON COMMUNICATIONS COMPANY, AMERICAN BROADCASTING COMPANIES, INC., CBS BROADCASTING, INC., CBS STUDIOS, DISNEY ENTERPRISES, INC., FOX BROADCASTING COMPANY, INC., FOX TELEVISION STATIONS, INC., GANNETT CO., INC., NBC STUDIOS LLC., NBC SUBSIDIARY (WRC-TV) LLC., OPEN 4 BUSINESS PRODUCTIONS LLC., TELEMUNDO NETWORK GROUP LLC., TWENTIETH CENTURY FOX FILM CORPORATION, UNIVERSAL NETWORK TELEVISION LLC, (Hussain, Murad) (Entered: 05/24/2013)
06/20/2013	<u>9</u>	NOTICE of Appearance by Kerry J. Davidson on behalf of All Defendants (Davidson, Kerry) (Entered: 06/20/2013)
06/20/2013	<u>10</u>	MOTION for Leave to Appear Pro Hac Vice :Attorney Name– Ryan G. Baker, :Firm– Baker Marquart LLP, :Address– 10990 Wilshire Boulevard, Suite 400, Los Angeles, CA 90024. Phone No. – 424–642–7800. Fax No. – 424–642–7850 by FILMON X, LLC., FILMON.COM, INC., FILMON.TV NETWORKS, INC., FILMON.TV, INC. (Attachments: # <u>1</u> Affidavit)(Davidson, Kerry) Modified on 8/20/2013 (rdj). (Entered: 06/20/2013)
06/20/2013	<u>11</u>	MOTION for Leave to Appear Pro Hac Vice :Attorney Name– Jaime W. Marquart, :Firm– Baker Marquart, :Address– 10990 Wilshire Boulevard, Suite

		400, Los Angeles, CA 90024. Phone No. – 424–652–7800. Fax No. – 424–652–7850 by FILMON X, LLC., FILMON.COM, INC., FILMON.TV NETWORKS, INC., FILMON.TV, INC. (Attachments: # <u>1</u> Affidavit)(Davidson, Kerry) Modified on 8/20/2013 (rdj). (Entered: 06/20/2013)
06/21/2013		MINUTE ORDER granting <u>10</u> Motion for Leave to Appear Pro Hac Vice; granting <u>11</u> Motion for Leave to Appear Pro Hac Vice. Attorneys Ryan G. Baker and Jaime W. Marquart may appear pro hac vice on behalf of Defendants. Signed by Judge Rosemary M. Collyer on 6/21/13. (lcrmc2) (Entered: 06/21/2013)
06/27/2013	<u>12</u>	ANSWER to <u>5</u> Amended Complaint , COUNTERCLAIM against FILMON X, LLC., FILMON.TV NETWORKS, INC., FILMON.COM, INC., FILMON.TV, INC. by FILMON X, LLC., FILMON.TV NETWORKS, INC., FILMON.COM, INC., FILMON.TV, INC.. Related document: <u>5</u> Amended Complaint filed by CBS STUDIOS, CBS BROADCASTING, INC., GANNETT CO., INC.. (Attachments: # <u>1</u> Supplement Counterclaim)(Davidson, Kerry) Modified on 8/20/2013 (zrdj,). (Entered: 06/27/2013)
06/27/2013	<u>13</u>	Amended COUNTERCLAIM against All Plaintiffs filed by FILMON X, LLC., FILMON.TV NETWORKS, INC., FILMON.COM, INC., FILMON.TV, INC..(Davidson, Kerry) Modified on 8/20/2013 (rdj). (Entered: 06/27/2013)
06/27/2013	<u>14</u>	<i>Amended</i> ANSWER to Complaint (<i>First Amended Version</i>) by FILMON X, LLC., FILMON.COM, INC., FILMON.TV NETWORKS, INC., FILMON.TV, INC..(Davidson, Kerry) Modified on 8/20/2013 (rdj). (Entered: 06/27/2013)
06/28/2013	<u>15</u>	NOTICE of Appearance by Paul March Smith on behalf of FOX BROADCASTING COMPANY, INC., FOX TELEVISION STATIONS, INC., TWENTIETH CENTURY FOX FILM CORPORATION (Smith, Paul) (Entered: 06/28/2013)
07/11/2013	<u>16</u>	NOTICE of Appearance by Murad Hussain on behalf of ALLBRITTON COMMUNICATIONS COMPANY, AMERICAN BROADCASTING COMPANIES, INC., CBS BROADCASTING, INC., CBS STUDIOS, DISNEY ENTERPRISES, INC., GANNETT CO., INC., NBC STUDIOS LLC, NBC SUBSIDIARY (WRC-TV), LLC, OPEN 4 BUSINESS PRODUCTIONS LLC, TELEMUNDO NETWORK GROUP LLC,, UNIVERSAL NETWORK TELEVISION LLC (Hussain, Murad) (Entered: 07/11/2013)
07/11/2013	<u>17</u>	ERRATA (<i>NOTICE</i>) by ALLBRITTON COMMUNICATIONS COMPANY, AMERICAN BROADCASTING COMPANIES, INC., CBS BROADCASTING, INC., CBS STUDIOS, DISNEY ENTERPRISES, INC., GANNETT CO., INC., NBC STUDIOS LLC, NBC SUBSIDIARY (WRC-TV), LLC, OPEN 4 BUSINESS PRODUCTIONS LLC, TELEMUNDO NETWORK GROUP LLC,, UNIVERSAL NETWORK TELEVISION LLC. (Attachments: # <u>1</u> Errata)(Hussain, Murad) (Entered: 07/11/2013)
07/11/2013	<u>18</u>	Unopposed MOTION for Leave to Appear Pro Hac Vice :Attorney Name– John C. Ulin, :Firm– Arnold &Porter LLP, :Address– 777 South Figueroa Street, 44th Floor, Los Angeles, CA 90017–5844. Phone No. – (213) 243–4000. Fax No. – (213) 243–4199 by ALLBRITTON COMMUNICATIONS COMPANY, AMERICAN BROADCASTING COMPANIES, INC., CBS BROADCASTING, INC., CBS STUDIOS, DISNEY ENTERPRISES, INC., GANNETT CO., INC., NBC STUDIOS LLC, NBC SUBSIDIARY (WRC-TV), LLC, OPEN 4 BUSINESS PRODUCTIONS LLC, TELEMUNDO NETWORK GROUP LLC,,

		UNIVERSAL NETWORK TELEVISION LLC (Attachments: # <u>1</u> Declaration, # <u>2</u> Text of Proposed Order)(Hussain, Murad) (Entered: 07/11/2013)
07/11/2013	<u>19</u>	Unopposed MOTION for Leave to Appear Pro Hac Vice :Attorney Name– James S. Blackburn, :Firm– Arnold &Porter LLP, :Address– 777 South Figueroa Street, 44th Floor, Los Angeles, CA 90017–5844. Phone No. – (213) 243–4000. Fax No. – (213) 243–4199 by ALLBRITTON COMMUNICATIONS COMPANY, AMERICAN BROADCASTING COMPANIES, INC., CBS BROADCASTING, INC., CBS STUDIOS, DISNEY ENTERPRISES, INC., GANNETT CO., INC., NBC STUDIOS LLC, NBC SUBSIDIARY (WRC–TV), LLC, OPEN 4 BUSINESS PRODUCTIONS LLC, TELEMUNDO NETWORK GROUP LLC,, UNIVERSAL NETWORK TELEVISION LLC (Attachments: # <u>1</u> Declaration, # <u>2</u> Text of Proposed Order)(Hussain, Murad) (Entered: 07/11/2013)
07/12/2013		MINUTE ORDER granting <u>18</u> Motion for Leave to Appear Pro Hac Vice as to attorney John C. Ulin; granting <u>19</u> Motion for Leave to Appear Pro Hac Vice as to attorney James S. Blackburn. Signed by Judge Rosemary M. Collyer on 7/12/2013. (lcrmc2) (Entered: 07/12/2013)
07/15/2013	<u>20</u>	NOTICE of Appearance by Robert Alan Garrett on behalf of ALLBRITTON COMMUNICATIONS COMPANY, AMERICAN BROADCASTING COMPANIES, INC., CBS BROADCASTING, INC., CBS STUDIOS, DISNEY ENTERPRISES, INC., GANNETT CO., INC., NBC STUDIOS LLC, NBC SUBSIDIARY (WRC–TV), LLC, OPEN 4 BUSINESS PRODUCTIONS LLC, TELEMUNDO NETWORK GROUP LLC,, UNIVERSAL NETWORK TELEVISION LLC (Garrett, Robert) (Entered: 07/15/2013)
07/16/2013	<u>21</u>	MOTION for Leave to Appear Pro Hac Vice :Attorney Name– Julie A. Shepard, :Firm– Jenner &Block LLP, :Address– 633 W 5th Street, Suite 3600, Los Angeles, CA 90071. Phone No. – 213–239–5100. Fax No. – 213–239–5199 by FOX BROADCASTING COMPANY, INC., FOX TELEVISION STATIONS, INC., TWENTIETH CENTURY FOX FILM CORPORATION (Attachments: # <u>1</u> Declaration of Julie A. Shepard, # <u>2</u> Text of Proposed Order)(Smith, Paul) (Entered: 07/16/2013)
07/16/2013	<u>22</u>	MOTION for Leave to Appear Pro Hac Vice :Attorney Name– Richard L. Stone, :Firm– Jenner &Block LLP, :Address– 633 W 5th Street, Suite 3600, Los Angeles, CA 90071. Phone No. – 213–239–5100. Fax No. – 213–239–5199 by FOX BROADCASTING COMPANY, INC., FOX TELEVISION STATIONS, INC., TWENTIETH CENTURY FOX FILM CORPORATION (Attachments: # <u>1</u> Declaration of Richard L. Stone, # <u>2</u> Text of Proposed Order)(Smith, Paul) (Entered: 07/16/2013)
07/17/2013		MINUTE ORDER granting <u>21</u> Motion for Leave to Appear Pro Hac Vice; granting <u>22</u> Motion for Leave to Appear Pro Hac Vice. Attorneys Julie A. Shepard and Richard L. Stone are granted leave to appear pro hac vice in this matter. Signed by Judge Rosemary M. Collyer on 7/17/2013. (lcrmc2) (Entered: 07/17/2013)
07/17/2013	<u>23</u>	ORDER setting Initial Scheduling Conference for September 3, 2013, at 9:45 a.m. The parties are directed to meet and confer as outlined herein. Signed by Judge Rosemary M. Collyer on 7/17/2013. (lcrmc2) (Entered: 07/17/2013)
07/18/2013	<u>24</u>	ANSWER to <u>13</u> COUNTERCLAIM by FOX BROADCASTING COMPANY, INC., FOX TELEVISION STATIONS, INC., TWENTIETH CENTURY FOX

		FILM CORPORATION. Related document: <u>13</u> COUNTERCLAIM filed by FILMON.COM, INC., FILMON.TV NETWORKS, INC., FILMON.TV, INC., FILMON X, LLC.,(Smith, Paul) Modified on 8/20/2013 (rdj). (Entered: 07/18/2013)
07/18/2013	<u>25</u>	ANSWER to <u>13</u> COUNTERCLAIM by ALLBRITTON COMMUNICATIONS COMPANY, AMERICAN BROADCASTING COMPANIES, INC., CBS BROADCASTING, INC., CBS STUDIOS, DISNEY ENTERPRISES, INC., GANNETT CO., INC., NBC STUDIOS LLC, NBC SUBSIDIARY (WRC-TV), LLC, OPEN 4 BUSINESS PRODUCTIONS LLC, TELEMUNDO NETWORK GROUP LLC., UNIVERSAL NETWORK TELEVISION LLC. Related document: <u>13</u> COUNTERCLAIM filed by FILMON.COM, INC., FILMON.TV NETWORKS, INC., FILMON.TV, INC., FILMON X, LLC.,(Garrett, Robert) Modified on 8/20/2013 (zrdj,). (Entered: 07/18/2013)
08/01/2013	<u>26</u>	STIPULATION by ALLBRITTON COMMUNICATIONS COMPANY, AMERICAN BROADCASTING COMPANIES, INC., CBS BROADCASTING, INC., CBS STUDIOS, DISNEY ENTERPRISES, INC., FOX BROADCASTING COMPANY, INC., FOX TELEVISION STATIONS, INC., GANNETT CO., INC., NBC STUDIOS LLC, NBC SUBSIDIARY (WRC-TV), LLC, OPEN 4 BUSINESS PRODUCTIONS LLC, TELEMUNDO NETWORK GROUP LLC., TWENTIETH CENTURY FOX FILM CORPORATION, UNIVERSAL NETWORK TELEVISION LLC. (Attachments: # <u>1</u> Text of Proposed Order)(Smith, Paul) (Entered: 08/01/2013)
08/01/2013	<u>27</u>	Joint MOTION for Preliminary Injunction by ALLBRITTON COMMUNICATIONS COMPANY, AMERICAN BROADCASTING COMPANIES, INC., CBS BROADCASTING, INC., CBS STUDIOS, DISNEY ENTERPRISES, INC., FOX BROADCASTING COMPANY, INC., FOX TELEVISION STATIONS, INC., GANNETT CO., INC., NBC STUDIOS LLC, NBC SUBSIDIARY (WRC-TV), LLC, OPEN 4 BUSINESS PRODUCTIONS LLC, TELEMUNDO NETWORK GROUP LLC., TWENTIETH CENTURY FOX FILM CORPORATION, UNIVERSAL NETWORK TELEVISION LLC (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Appendix, # <u>3</u> Declaration of Julie Shepard, # <u>4</u> Declaration of Sherry Brennan, # <u>5</u> Declaration of Samuel Bahun Part 1 of 5, # <u>6</u> Declaration of Samuel Bahun Part 2 of 5, # <u>7</u> Declaration of Samuel Bahun Part 3 of 5, # <u>8</u> Declaration of Samuel Bahun Part 4 of 5, # <u>9</u> Declaration of Samuel Bahun Part 5 of 5, # <u>10</u> Declaration of Barbara Wall, # <u>11</u> Declaration of Carly Seabrook, # <u>12</u> Declaration of Daniel Kummer, # <u>13</u> Declaration of Marsha Reed, # <u>14</u> Declaration of Rebecca Borden, # <u>15</u> Declaration of William Lord, # <u>16</u> Text of Proposed Order)(Smith, Paul). Added MOTION for Hearing on 8/2/2013 (rdj). (Entered: 08/01/2013)
08/02/2013		MINUTE ORDER. In light of the recently filed <u>27</u> Plaintiffs' Motion for Preliminary Injunction, the parties are directed to the Court's standing order for civil cases, available at http://www.dcd.uscourts.gov/dcd/sites/dcd/files/rmc-civil-ECF-registration.pdf , particularly the provisions regarding courtesy copies of lengthy filings. Signed by Judge Rosemary M. Collyer on 8/2/2013. (lrmc2) (Entered: 08/02/2013)
08/06/2013		MINUTE ORDER. A hearing on <u>27</u> the Motion for Preliminary Injunction shall be held on September 20, 2013, at 2:00 p.m. The Initial Scheduling Conference presently scheduled for September 3, 2013, is hereby VACATED ; scheduling

		<p>matters will be addressed as necessary at the September 20, 2013 hearing. Defendants shall file a response to the Motion for Preliminary Injunction no later than August 15, 2013. Plaintiffs shall file their reply no later than August 23, 2013. Signed by Judge Rosemary M. Collyer on 8/6/2013.(lcrmc2) (Entered: 08/06/2013)</p>
08/06/2013		<p>Set/Reset Deadlines/Hearings: Response to <u>27</u> due by 8/15/2013. Reply due by 8/23/2013. Evidentiary Hearing re <u>27</u> set for 9/20/2013 at 2:00 PM in Courtroom 8 before Judge Rosemary M. Collyer. (cdw) (Entered: 08/08/2013)</p>
08/13/2013	<u>28</u>	<p>MOTION for Leave to Appear Pro Hac Vice :Attorney Name– Amy M. Gallegos, :Firm– Jenner &Block LLP, :Address– 633 W 5th Street, Suite 3600, Los Angeles, CA 90071. Phone No. – 213–239–5100. Fax No. – 213–239–5199 by FOX BROADCASTING COMPANY, INC., FOX TELEVISION STATIONS, INC., TWENTIETH CENTURY FOX FILM CORPORATION (Attachments: # <u>1</u> Declaration of Amy Gallegos, # <u>2</u> Text of Proposed Order)(Smith, Paul) (Entered: 08/13/2013)</p>
08/13/2013		<p>MINUTE ORDER granting <u>28</u> Motion for Leave to Appear Pro Hac Vice. Attorney Amy M. Gallegos may appear <i>pro hac vice</i> for the Fox plaintiffs. Signed by Judge Rosemary M. Collyer on 8/13/2013. (lcrmc2) (Entered: 08/13/2013)</p>
08/14/2013	<u>29</u>	<p>NOTICE of Defendant FILMON X, LLC Name Change by FILMON X, LLC., FILMON.COM, INC., FILMON.TV NETWORKS, INC., FILMON.TV, INC. (Baker, Ryan) Modified on 8/20/2013 (rdj). (Entered: 08/14/2013)</p>
08/15/2013		<p>jf,) (Entered: 08/15/2013)</p>
08/15/2013	<u>30</u>	<p>MOTION for name change by FILMON X, LLC., FILMON.COM, INC., FILMON.TV NETWORKS, INC., FILMON.TV, INC. (Baker, Ryan) Modified on 8/20/2013 (rdj). (Entered: 08/15/2013)</p>
08/15/2013	<u>31</u>	<p>Memorandum in opposition to re <u>27</u> Joint MOTION for Preliminary Injunction MOTION for Hearing filed by FILMON X, LLC., FILMON.COM, INC., FILMON.TV NETWORKS, INC., FILMON.TV, INC.. (Attachments: # <u>1</u> Declaration of Alkiviades David, # <u>2</u> Declaration of Mykola Kutovyy, # <u>3</u> Evidentiary Objections, # <u>4</u> Request for Judicial Notice, # <u>5</u> Certificate of Service)(Baker, Ryan) Modified on 8/20/2013 (rdj). (Entered: 08/15/2013)</p>
08/19/2013		<p>MINUTE ORDER granting <u>30</u> Motion to Amend Caption. Defendant/counter–plaintiff Aereokiller LLC has amended its certificate of formation to change its name to FilmOn X, LLC. The Deputy Clerk shall correct the case caption to replace every instance of "Aereokiller LLC" with "FilmOn X, LLC." Signed by Judge Rosemary M. Collyer on 8/19/2013. (lcrmc2) (Entered: 08/19/2013)</p>
08/23/2013	<u>32</u>	<p>REPLY to opposition to motion re <u>27</u> Joint MOTION for Preliminary Injunction MOTION for Hearing filed by ALLBRITTON COMMUNICATIONS COMPANY, AMERICAN BROADCASTING COMPANIES, INC., CBS BROADCASTING, INC., CBS STUDIOS, DISNEY ENTERPRISES, INC., FOX BROADCASTING COMPANY, INC., FOX TELEVISION STATIONS, INC., GANNETT CO., INC., NBC STUDIOS LLC, NBC SUBSIDIARY (WRC–TV), LLC, OPEN 4 BUSINESS PRODUCTIONS LLC, TELEMUNDO NETWORK GROUP LLC., TWENTIETH CENTURY FOX FILM CORPORATION, UNIVERSAL NETWORK TELEVISION LLC. (Attachments:</p>

		# <u>1</u> Response to Evidentiary Objections, # <u>2</u> Objections to Request for Judicial Notice)(Smith, Paul) (Entered: 08/23/2013)
09/05/2013	<u>33</u>	MEMORANDUM AND OPINION. Signed by Judge Rosemary M. Collyer on 9/5/2013. (lcrmc2) (Entered: 09/05/2013)
09/05/2013	<u>34</u>	PRELIMINARY INJUNCTION. <u>27</u> Plaintiffs' Motion for Preliminary Injunction is granted. The hearing scheduled for September 20, 2013, is converted to a status conference. This preliminary injunction is effective immediately upon posting of \$250,000 bond. See preliminary injunction for details Signed by Judge Rosemary M. Collyer on 9/5/2013.(lcrmc2) (Entered: 09/05/2013)
09/09/2013	<u>35</u>	Injunction BOND filed with the Clerk of the Court on September 9, 2013 pursuant to <u>34</u> in the amount of \$ 250,000 posted by ALLBRITTON COMMUNICATIONS COMPANY, AMERICAN BROADCASTING COMPANIES, INC., CBS BROADCASTING, INC., CBS STUDIOS, DISNEY ENTERPRISES, INC., FOX BROADCASTING COMPANY, INC., FOX TELEVISION STATIONS, INC., GANNETT CO., INC., NBC STUDIOS LLC, NBC SUBSIDIARY (WRC-TV), LLC, OPEN 4 BUSINESS PRODUCTIONS LLC, TELEMUNDO NETWORK GROUP LLC,, TWENTIETH CENTURY FOX FILM CORPORATION, UNIVERSAL NETWORK TELEVISION LLC (rdj) (Entered: 09/09/2013)
09/11/2013	<u>36</u>	Emergency MOTION to Stay <i>Preliminary Injunction</i> by AEREOKILLER LLC,, FILMON X, LLC, FILMON.COM, INC,, FILMON.TV NETWORKS, INC.,, FILMON.TV, INC. (Attachments: # <u>1</u> Declaration, # <u>2</u> Declaration, # <u>3</u> Declaration, # <u>4</u> Text of Proposed Order)(Baker, Ryan) (Entered: 09/11/2013)
09/11/2013	<u>37</u>	Emergency MOTION for Reconsideration re <u>33</u> Memorandum & Opinion, <u>34</u> Preliminary Injunction, by AEREOKILLER LLC,, FILMON X, LLC, FILMON.COM, INC,, FILMON.TV NETWORKS, INC.,, FILMON.TV, INC. (Attachments: # <u>1</u> Declaration, # <u>2</u> Declaration, # <u>3</u> Declaration, # <u>4</u> Text of Proposed Order)(Baker, Ryan) (Entered: 09/11/2013)
09/11/2013	<u>38</u>	Emergency MOTION Judicial Notice re <u>37</u> Emergency MOTION for Reconsideration re <u>33</u> Memorandum & Opinion, <u>34</u> Preliminary Injunction, , <u>36</u> Emergency MOTION to Stay <i>Preliminary Injunction</i> by AEREOKILLER LLC,, FILMON X, LLC, FILMON.COM, INC,, FILMON.TV NETWORKS, INC.,, FILMON.TV, INC. (Attachments: # <u>1</u> Text of Proposed Order)(Baker, Ryan) (Entered: 09/11/2013)
09/11/2013		MINUTE ORDER. Plaintiffs shall respond to <u>36</u> , <u>37</u> , and <u>38</u> FilmOn X's emergency motions no later than 9:00 a.m. Eastern time on September 12, 2013. Plaintiffs may respond in an omnibus filing or by seriatim responses. Signed by Judge Rosemary M. Collyer on 9/11/2013. (lcrmc2) (Entered: 09/11/2013)
09/11/2013		Set/Reset Deadlines/Hearings: Responses to <u>36</u> , <u>37</u> , and <u>38</u> due by 9/12/2013. (cdw) (Entered: 09/11/2013)
09/12/2013	<u>39</u>	Memorandum in opposition to re <u>36</u> Emergency MOTION to Stay <i>Preliminary Injunction</i> , <u>38</u> Emergency MOTION Judicial Notice re <u>37</u> Emergency MOTION for Reconsideration re <u>33</u> Memorandum & Opinion, <u>34</u> Preliminary Injunction, , <u>36</u> Emergency MOTION to Stay <i>Preliminary Injunction</i> filed by ALLBRITTON COMMUNICATIONS COMPANY, AMERICAN BROADCASTING COMPANIES, INC., CBS BROADCASTING, INC.,, CBS STUDIOS, DISNEY

			ENTERPRISES, INC., FOX BROADCASTING COMPANY, INC., FOX TELEVISION STATIONS, INC., GANNETT CO., INC., NBC STUDIOS LLC, NBC SUBSIDIARY (WRC-TV), LLC, OPEN 4 BUSINESS PRODUCTIONS LLC, TELEMUNDO NETWORK GROUP LLC., TWENTIETH CENTURY FOX FILM CORPORATION, UNIVERSAL NETWORK TELEVISION LLC. (Attachments: # <u>1</u> Declaration of Julie A. Shepard, # <u>2</u> Objections to Defendants' Supplemental Evidence, # <u>3</u> Objections to Defendants' Request for Judicial Notice, # <u>4</u> Text of Proposed Order)(Smith, Paul) (Entered: 09/12/2013)
09/12/2013	<u>40</u>		Memorandum in opposition to re <u>37</u> Emergency MOTION for Reconsideration re <u>33</u> Memorandum & Opinion, <u>34</u> Preliminary Injunction, , <u>38</u> Emergency MOTION Judicial Notice re <u>37</u> Emergency MOTION for Reconsideration re <u>33</u> Memorandum & Opinion, <u>34</u> Preliminary Injunction, , <u>36</u> Emergency MOTION to Stay <i>Preliminary Injunction</i> filed by ALLBRITTON COMMUNICATIONS COMPANY, AMERICAN BROADCASTING COMPANIES, INC., CBS BROADCASTING, INC., CBS STUDIOS, DISNEY ENTERPRISES, INC., FOX BROADCASTING COMPANY, INC., FOX TELEVISION STATIONS, INC., GANNETT CO., INC., NBC STUDIOS LLC, NBC SUBSIDIARY (WRC-TV), LLC, OPEN 4 BUSINESS PRODUCTIONS LLC, TELEMUNDO NETWORK GROUP LLC., TWENTIETH CENTURY FOX FILM CORPORATION, UNIVERSAL NETWORK TELEVISION LLC. (Attachments: # <u>1</u> Objections to Defendants' Supplemental Evidence, # <u>2</u> Objections to Defendants' Request for Judicial Notice, # <u>3</u> Text of Proposed Order)(Smith, Paul) (Entered: 09/12/2013)
09/12/2013	<u>41</u>	30	MEMORANDUM AND OPINION. Signed by Judge Rosemary M. Collyer on 9/12/2013. (lcrmc2) (Entered: 09/12/2013)
09/12/2013	<u>42</u>	40	ORDER denying <u>36</u> Motion to Stay; denying <u>37</u> Motion for Reconsideration. Signed by Judge Rosemary M. Collyer on 9/12/2013. (lcrmc2) (Entered: 09/12/2013)
09/12/2013	<u>43</u>		RESPONSE TO ORDER OF THE COURT re <u>42</u> Order on Motion to Stay, Order on Motion for Reconsideration <i>Declaration re Compliance</i> filed by AEREOKILLER LLC., FILMON X, LLC, FILMON.COM, INC., FILMON.TV NETWORKS, INC., FILMON.TV, INC.. (Baker, Ryan) (Entered: 09/13/2013)
09/13/2013	<u>44</u>		MEET AND CONFER STATEMENT. (Shepard, Julie) (Entered: 09/13/2013)
09/16/2013	<u>45</u>		STIPULATION <i>RE STAYING THE LITIGATION PENDING APPEAL</i> by FOX BROADCASTING COMPANY, INC., FOX TELEVISION STATIONS, INC., TWENTIETH CENTURY FOX FILM CORPORATION. (Attachments: # <u>1</u> Text of Proposed Order)(Shepard, Julie) (Entered: 09/16/2013)
09/16/2013			MINUTE ORDER. The parties' <u>45</u> Stipulation Regarding a Stay, which the Court construes as a joint motion to stay the case, is granted in part and denied without prejudice in part. The parties request that the case be stayed pending resolution of an appeal of <u>34</u> the Preliminary Injunction, but no appeal has been filed. The joint motion to stay is granted to the extent that the status conference scheduled for September 20, 2013, is vacated so that Defendants may evaluate the possibility of filing an appeal. The motion is denied without prejudice in all other respects. If a timely appeal is filed, the Court will consider an additional joint motion to stay. If no timely appeal is filed, a status conference will be scheduled. Signed by Judge Rosemary M. Collyer on 9/16/2013. (lcrmc2) (Entered: 09/16/2013)

09/16/2013	<u>46</u>	26	NOTICE OF APPEAL TO DC CIRCUIT COURT as to <u>42</u> Order on Motion to Stay, Order on Motion for Reconsideration by FILMON X, LLC, FILMON.COM, INC., FILMON.TV, INC., FILMON.TV NETWORKS, INC.,. Filing fee \$ 455, receipt number 0090-3468883. Fee Status: Fee Paid. Parties have been notified. (Baker, Ryan) (Entered: 09/16/2013)
09/16/2013	<u>47</u>		NOTICE OF APPEAL TO DC CIRCUIT COURT as to <u>34</u> Preliminary Injunction, by FILMON X, LLC, FILMON.COM, INC., FILMON.TV, INC., FILMON.TV NETWORKS, INC.,. Filing fee \$ 455, receipt number 0090-3468890. Fee Status: Fee Paid. Parties have been notified. (Baker, Ryan) (Entered: 09/16/2013)

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA**

FOX TELEVISION STATIONS, INC., et al.

Civil No. 1:13-cv-00758 (RMC)

Plaintiffs/Counter-Defendants,

Hon. Rosemary M. Collyer

v.

FILMON X LLC, et al.

Defendants/Counter-Plaintiffs.

**DEFENDANTS’ JOINT NOTICE OF APPEAL FROM ORDER DENYING
DEFENDANTS’ MOTION FOR RECONSIDERATION;
REPRESENTATION STATEMENT**

Notice of Appeal

Notice is hereby given that Defendants in the above-captioned matter, FilmOn X LLC, FilmOn.tv Networks, Inc., FilmOn.tv, Inc., and FilmOn.com Inc. (collectively, “Defendants”), hereby appeal to the United States Court of Appeals for the District of Columbia from the Court’s September 12, 2013 Order Denying Defendants’ Motion for Reconsideration (Dkt. No. 42) and related Memorandum of Opinion (Dkt. No. 41).

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September 16, 2013

Respectfully submitted,

By: /s/ Ryan G. Baker

Ryan G. Baker (admitted *pro hac vice*)
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/s/ Kerry J. Davidson

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*Attorneys for Defendants and
Counterclaim Plaintiffs FilmOn X, LLC,
FilmOn.TV, Inc., FilmOn.TV Networks,
Inc., and FilmOn.com, Inc.*

Representation Statement

Pursuant to Federal Rule of Appellate Procedure 12(b), the names, addresses and telephone numbers of the parties and their respective counsel are as follows:

1. Appellants FilmOn X LLC, FilmOn.TV Networks, Inc., FilmOn.TV, Inc., and FilmOn.com, Inc.

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Kerry J. Davidson (D.C. Bar No. 456431)
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2. Appellees Fox Television Stations, Inc., Twentieth Century Fox Film Corporation and Fox Broadcasting Company

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- 3. Appellees NBC Subsidiary (WRC-TV) LLC, NBC Studios LLC, Universal Network Television LLC, Open 4 Business Productions LLC, Telemundo Network Group LLC, American Broadcasting Companies, Inc., Disney Enterprises, Inc., Allbritton Communications Company, CBS Broadcasting Inc., CBS Studios, Inc., and Gannett Co., Inc.**

Robert Alan Garrett (D.C. Bar No. 239681)

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

FOX TELEVISION STATIONS, INC., <i>et al.</i>)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 13-758 (RMC)
)	
FILMON X LLC, <i>et al.</i>)	
)	
Defendants.)	

MEMORANDUM OPINION

Plaintiffs, a group that includes over-the-air television broadcasters and programmers, sued Defendants, entities that operate an online service called FilmOn X, for violating their public performance rights for copyrighted television programs. On September 5, 2013, the Court granted Plaintiffs’ motion for a preliminary injunction, concluding that Plaintiffs are likely to succeed on their copyright infringement claim and that all the preliminary injunction factors favor Plaintiffs. *See* Op. [Dkt. 33], Prelim. Inj. [Dkt. 34]. The Preliminary Injunction provided that it would become effective immediately upon the posting of a \$250,000 bond, Prelim. Inj. ¶ 5, and that FilmOn X must certify compliance, under oath, “[w]ithin three court days of the effective date of [the] Preliminary Injunction,” *id.* ¶ 6. For the reasons stated in the Opinion, the Court found that 17 U.S.C. § 502(b) required the Preliminary Injunction to have nationwide effect, but the Court omitted the geographic area of the Second Circuit from the coverage of the Injunction to avoid conflict with that court’s decision in *WNET, Thirteen v. Aereo, Inc. (Aereo II)*, 712 F.3d 676 (2d Cir. 2013). Plaintiffs posted the required bond on September 9, 2013, meaning that FilmOn X must certify compliance with the Preliminary Injunction no later than today, September 12, 2013.

On September 11, FilmOn X filed two emergency motions: an Emergency Motion to Stay the Injunction Pending Appeal and/or to Modify the Injunction, Dkt. 36; and an Emergency Motion for Reconsideration of the Geographic Scope of the Preliminary Injunction and Bond Amount, Dkt. 37. Plaintiffs oppose FilmOn X’s motions. *See* Opp. Mot. Stay [Dkt. 39]; Opp. Mot. Recons. [Dkt. 40].

FilmOn X seeks the following relief:¹

- A stay of the Preliminary Injunction, in its entirety, pending FilmOn X’s appeal to the D.C. Circuit. Mem. Supp. Mot. Stay at 3–11.
- A stay of the Preliminary Injunction in all circuits except for the D.C. Circuit. *Id.* at 11 n.6.
- Modification of the Preliminary Injunction so that it covers only the D.C. Circuit. *Id.* at 11–13; Mem. Supp. Mot. Recons. at 3–8.
- An increase in the bond amount to \$250,000 for each circuit in which FilmOn X is enjoined—*i.e.*, \$2,750,000 for eleven circuits—or an otherwise substantial increase. Mem. Supp. Mot. Recons. at 8–9.

¹ FilmOn X asks the Court to take judicial notice of two categories of evidence: (1) a set of press releases “to show that . . . Aereo, Inc., is currently providing or has plans to provide in the near future[] substantially similar services to those this Court as [sic] now enjoined FilmOn X from providing;” (2) the docket of *Hearst Stations, Inc. v. Aereo, Inc.*, Civ. No. 13-cv-11649-NMG (D. Mass. filed July 9, 2013), “to show that there is a substantially similar pending case in the First Circuit and that there is a hearing on the plaintiff’s motion for preliminary injunction . . . set for September 18, 2013” and to show that the plaintiffs in *Hearst* have filed a Notice of Supplemental Authorities referencing this Court’s Preliminary Injunction. Req. Judicial Notice [Dkt. 38] at 1–3. Plaintiffs oppose the motion. *See* Pls. Objs. Req. Judicial Notice [Dkt. 39-3] at 1–5. As the Court stated in its Opinion, FilmOn X’s request is proper only to the extent that the Court takes judicial notice of the fact that documents have been filed and a hearing scheduled in *Hearst*; the request is denied in all other respects. *See* Fed. R. Evid. 201; *Liberty Mut. Ins. Co. v. Rotches Pork Packers, Inc.*, 969 F.2d 1384, 1388–89 (2d Cir. 1992).

The Court addresses FilmOn X’s arguments in two groups: (1) its request for a stay and (2) its request for reconsideration. As discussed below, the Court concludes that the public benefit is not harmed by issuance of the Preliminary Injunction. While the Injunction remains in place, FilmOn X’s innovative technology can be used by the public, via computer or mobile device, to access material that is properly licensed from copyright holders. The conduct prohibited by the Preliminary Injunction is uncompensated infringement of those holders’ exclusive right to public performance of their works, and the public interest is not harmed by requiring FilmOn X to cease infringement. FilmOn X’s emergency motions will be denied in all respects.

I. STAY

A. Legal Standard

Federal Rule of Civil Procedure 62(c) authorizes courts to stay an injunction pending appeal. To determine whether to grant the stay, the Court must weigh the same four factors it considers when determining whether to grant an injunction: “(1) the likelihood that the party seeking the stay will prevail on the merits of the appeal; (2) the likelihood that the moving party will be irreparably harmed absent a stay; (3) the prospect that others will be harmed if the court grants the stay; and (4) the public interest in granting the stay.” *Cuomo v. NRC*, 772 F.2d 972, 974 (D.C. Cir. 1985) (citing *WMATA v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977)).

B. Analysis

Because the factors bearing on a stay pending appeal are the same factors the Court evaluated in granting Plaintiffs’ motion for a preliminary injunction, the parties’ arguments are mostly the same as those set forth in the Court’s Opinion. FilmOn X’s argument that the injunction should be stayed pending appeal derives from its basic legal position in this

case: that “FilmOn X’s system merely enables consumers to personally make and privately view performances from individual copies, at the consumer’s convenience,” and thus FilmOn X does not infringe Plaintiffs’ public performance rights in their copyrighted material. Mem. Supp. Mot. Stay at 5. Because the conflict between (1) the Second Circuit’s *Aereo II* decision and (2) *BarryDriller*² and this Court’s ruling presents important legal questions that need resolution, FilmOn X asserts that this Court should stay the Preliminary Injunction pending appellate review. Moreover, FilmOn X asserts that it will suffer “grave irreparable harm” if the Injunction is not stayed because “[t]he preliminary injunction does not apply to Aereo or other companies who provide similar remote DVR-like capabilities to consumers,” allowing those companies to seize market share at FilmOn X’s expense. *Id.* at 7–8. Finally, according to FilmOn X, “there is a strong public demand for the technological services offered by FilmOn X,” so the public interest will be served by a stay. *Id.* at 10–11.

Plaintiffs respond that “[t]he mere existence of two non-controlling, widely-criticized cases supporting FilmOnX [*Cablevision* and *Aereo II*] does not create a strong likelihood that the D.C. Circuit will reverse the injunction.” Opp. Mot. Stay at 4. Plaintiffs also assert that the Court should reject FilmOn X’s claim that it will suffer harm based on Aereo not being enjoined, emphasizing that “FilmOnX’s argument boils down to the plea that it should be allowed to continue to infringe because there is another infringing service in operation (Aereo) with which FilmOnX competes.” *Id.* at 5.

FilmOn X’s arguments are not persuasive. The Court weighed the relevant factors—likelihood of success on the merits, possibility of irreparable harm, balance of the harm, and the public interest—in its Opinion and concluded that all four considerations favor Plaintiffs.

² *Fox Television Systems, Inc. v. BarryDriller Content Systems, PLC*, 915 F. Supp. 2d 1138 (C.D. Cal. 2012).

See Op. at 21–33. That conclusion remains in equal force now. Most importantly, Plaintiffs are likely to succeed on the merits of their claim because the Copyright Act and, in particular, the Transmit Clause are clear: “FilmOn X transmits (i.e., communicates from mini-antenna through servers over the Internet to a user) the performance (i.e., an original over-the-air broadcast of a work copyrighted by one of the Plaintiffs) to members of the public (i.e., any person who accesses the FilmOn X service through its website or application) who receive the performance in separate places and at different times (i.e., at home at their computers or on their mobile devices).” *Op.* at 25. In reaching its conclusion, this Court joined *BarryDriller* in respectfully disagreeing with the *Aereo II* court’s reading of the Transmit Clause as myopically focused on the nature of the transmission, not whether the work was publicly performed. The only change FilmOn X has identified is that *Aereo*, its competitor, is not enjoined. But this argument is backwards: FilmOn X claims that the Preliminary Injunction has created irreparable harm because FilmOn X will not be able to keep pace with a similar service that also appears to infringe Plaintiffs’ copyrights. FilmOn X, not *Aereo*, is the defendant in this case; the Court has already concluded that, at least at the preliminary injunction stage, the balance of irreparable harms and the public interest favor an injunction.

FilmOn X has not shown “either a high probability of success and some injury, or vice versa,” as would support a stay of the Preliminary Injunction—in its entirety or even with respect to areas outside the D.C. Circuit—pending appeal. *Cuomo*, 772 F.2d at 974. FilmOn X’s motion to stay will be denied.

II. RECONSIDERATION

A. Legal Standard

Viewing the preliminary injunction as an interlocutory ruling, FilmOn X argues that the Rule 54(b) “as justice requires” standard applies to its motion for reconsideration. *Mem.*

Supp. Mot. Recons. at 2–3 (citing, *inter alia*, *Cobell v. Norton*, 355 F. Supp. 2d 531, 539 (D.D.C. 2005)). Rule 54(b) applies to “any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties.” Plaintiffs respond that the heightened standard of Rule 59(e) for reconsideration of final judgments—not the “as justice requires” standard of Rule 54(b)—applies to preliminary injunctive orders that can be appealed under 28 U.S.C. § 1292(a)(1). *See* Opp. Mot. Recons. at 2–3.

The question is slightly more complex than either party recognizes. In determining whether to treat a motion for reconsideration of a preliminary injunction as a motion to modify the injunction pursuant to Rule 62(c) or as a motion for reconsideration pursuant to Rule 59(e), courts “look beyond the motion’s caption to its substance” and “compare the circumstances existing on . . . the date of entry of the order granting the preliminary injunction, with the circumstances existing when the motion to modify was made.” *Favia v. Ind. Univ. of Pa.*, 7 F.3d 332, 337 (3d Cir. 1993).³ “Modification of an injunction [and treatment under Rule 62(c)] is proper only when there has been a change of circumstances between entry of the injunction and the filing of the motion that would render the continuance of the injunction in its original form inequitable.” *Id.*; *see also Credit Suisse First Boston Corp. v. Grunwald*, 400 F.3d 1119, 1124 (9th Cir. 2005) (“[O]ur task is to determine whether the substance of [the] motion

³ The D.C. Circuit does not appear to have adopted this test, but other circuits have done so in resolving whether a motion to reconsider a preliminary injunction is timely. Even assuming *arguendo* that the Rule 54(b) standard applies, the Court finds that justice does not require reconsideration of the Preliminary Injunction because the Court has not “patently misunderstood a party, [] made a decision outside the adversarial issues presented to the Court by the parties, [or] made an error not of reasoning, but of apprehension,” and there has been no “controlling or significant change in the law or facts . . . since the submission of the issue to the Court.” *Ficken v. Golden*, 696 F. Supp. 2d 21, 35 (D.D.C. 2010) (quoting *Cobell v. Norton*, 224 F.R.D. 266, 272 (D.D.C. 2004)).

was based on changed circumstances.”). When there are no such changed circumstances, the Rule 59(e) reconsideration standard applies.

The Court finds that FilmOn X has not identified any change in circumstances from the entry of the Preliminary Injunction just seven days ago. Accordingly, the Court applies the Rule 59(e) reconsideration standard. *See GSS Group Ltd. v. Nat’l Port Auth.*, 680 F.3d 805, 812 (D.C. Cir. 2012) (quoting *District of Columbia v. Doe*, 611 F.3d 888, 896 (D.C. Cir. 2010)). “A Rule 59(e) motion is discretionary and need not be granted unless the district court finds that there is an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice.” *Fox v. Am. Airlines Inc.*, 389 F.3d 1291, 1296 (D.C. Cir. 2004) (quoting *Firestone v. Firestone*, 76 F.3d 1205, 1208 (D.C. Cir. 1996)). A Rule 59(e) motion is not “simply an opportunity to reargue facts and theories upon which a court has already ruled.” *New York v. United States*, 880 F. Supp. 37, 38 (D.D.C. 1995). Nor is it an avenue for a “losing party . . . to raise new issues that could have been raised previously.” *Kattan v. District of Columbia*, 995 F.2d 274, 276 (D.C. Cir. 1993); *see also Oceana, Inc. v. Evans*, 389 F. Supp. 2d 4, 8 (D.D.C. 2005) (“Rule 59 was not intended to allow a second bite at the apple.”).

B. FilmOn X’s Contention of “Factual Errors”

The Court first addresses FilmOn X’s assertion that the Court has “several material misunderstandings regarding Defendants [sic] technology, which greatly impacted the Court’s Opinion.” Mem. Supp. Mot. Recons. at 5. In seeking reconsideration, FilmOn X explains its technological process anew, arguing that “[w]hile it is true Defendants’ technology relies on such devices as servers and encoders to facilitate the process when a user requests an antenna and content,” there is no copyright violation because “Defendants’ service is based

entirely on a ‘one-to-one relationship’ between a unique copy of a copyrighted work and an individual FilmOn X user.” *Id.* at 6–7 (citation omitted).

This argument misses the mark. The technological explanation set forth in the Motion for Reconsideration is completely consistent with the Court’s understanding of how FilmOn X operates as set forth in its Opinion. *See Op.* at 5–8. FilmOn X’s claims of “confusion” and “factual errors,” *Mem. Supp. Mot. Recons.* at 8, are nothing more than transparent collateral assaults on the Court’s legal conclusion that “the artifice of one-to-one is baldly wrong.” *Op.* at 28 n.12. The Opinion addressed and rejected all such legal arguments. Accordingly, there is no clear error or new evidence to justify reconsideration.

C. Scope of Injunction

As to the scope of the injunction, FilmOn X argues that “Defendants, and the other circuits, should not be denied the ability to consider [the] merits and decide themselves which law is more in line with that circuit.” *Mem. Supp. Mot. Recons.* at 4; *Mem. Supp. Mot. Stay* at 11–12 (“[T]he other varying circuits should have the opportunity to decide for themselves whether [FilmOn X’s service] is legal or not.”). Moreover, FilmOn X complains that its competitor Aereo “is already in large markets throughout the United States and has clear plans to expand in many others” but is not enjoined, allowing Aereo to capture market share and profits while FilmOn X is enjoined. *Mem. Supp. Mot. Recons.* at 4–5.

The arguments advanced by FilmOn X fail in two respects: they neither undo the clarity of the Copyright Act, as explained in the Court’s Opinion at pages 21 through 29, nor do they confront the lucidity of 17 U.S.C. § 502, which requires any injunction that “prevent[s] or restrain[s] infringement of a copyright” to “be operative throughout the United States.” More fundamentally, at this stage, FilmOn X has offered no “intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest

injustice,” and thus there is no reason for the Court to reconsider its Preliminary Injunction. *See Fox*, 389 F.3d at 1296. If other courts issue contrary rulings, FilmOn X may file a motion to modify this Court’s injunction.

D. Bond Amount

FilmOn X’s argument as to the bond amount is that the *BarryDriller* court found \$250,000 appropriate for an injunction covering the Ninth Circuit, so this Court should require that amount for *each* judicial circuit covered by this Court’s Order or otherwise impose a “substantially larger bond amount.” Mem. Supp. Mot. Recons. at 8–9.

“The language [in Rule 65(c)] ‘in such sum as the court deems proper’ has been read to vest broad discretion in the district court to determine the appropriate amount of an injunction bond.” *DSE, Inc. v. United States*, 169 F.3d 21, 33 (D.C. Cir. 1999) (citation omitted). For the reasons stated in the Opinion, *see* Op. at 34–35, \$250,000 is “sufficient to protect [FilmOn X] from loss in the event that future proceedings prove that the injunction issued wrongfully.” *Monzillo v. Biller*, 735 F.2d 1456, 1461 (D.C. Cir. 1984) (quoting *Edgar v. Mite Corp.*, 457 U.S. 624, 649 (1982) (Stevens, J., concurring)). FilmOn X has offered nothing beyond the mere say-so of counsel that \$250,000 would not be sufficient to cover its potential losses, and Plaintiffs have more than sufficient resources in the unlikely event that the injunction was erroneously issued *and* FilmOn X incurs more than \$250,000 in losses.

III. CONCLUSION

For the reasons stated above, FilmOn X’s Emergency Motion to Stay the Injunction Pending Appeal and/or to Modify the Injunction, Dkt. 36 and Emergency Motion for Reconsideration of the Geographic Scope of the Preliminary Injunction and Bond Amount, Dkt. 37, will be denied.

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

FOX TELEVISION STATIONS, INC., <i>et al.</i>)	
)	
Plaintiffs,)	
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v.)	Civil Action No. 13-758 (RMC)
)	
FILMON X LLC, <i>et al.</i> ,)	
)	
Defendants.)	
)	

ORDER

For the reasons set forth in the Opinion issued contemporaneously herewith, it is hereby

ORDERED that FilmOn X’s Emergency Motion to Stay the Injunction Pending Appeal and/or to Modify the Injunction, Dkt. 36, and Emergency Motion for Reconsideration of the Geographic Scope of the Preliminary Injunction and Bond Amount, Dkt. 37, are **DENIED**.

Date: September 12, 2013

/s/
ROSEMARY M. COLLYER
United States District Judge