

Civil Action No. 13-758 (RMC)

Dkt. 52-1, Ex. A) (Hearst Order).² The district court in *Hearst* dealt with copyright infringement issues similar to those already addressed here and came to the opposite conclusion. *Hearst* denied an over-the-air broadcast network's request for preliminary injunction against Aereo, Inc., a direct competitor of FilmOn X, finding that the broadcast network was not likely to succeed on the merits as Aereo's "interpretation [of 17 U.S.C. § 106] is a better reading of the statute." *Hearst*, Civ. No. 13-11649-NMG, at *13.

FilmOn X has provided no basis for the Court to modify the Preliminary Injunction. *See Singh v. George Wash. Univ.*, 383 F. Supp. 2d 99, 101 (D.D.C. 2005) (reconsideration may be permitted when a court has patently misunderstood a party, has made a decision outside the adversarial issues presented to the court by the parties, has made an error not of reasoning but of apprehension, or where a controlling or significant change in the law or facts has occurred since the submission of the issue to the court.) FilmOn X erroneously refers to the *Hearst* decision as the "law of the First Circuit." Emergency Mot. [Dkt. 52] at 2. In fact, *Hearst* was decided by a district court, not by the First Circuit. A contrary decision by a co-equal court in another district involving different parties does not represent a change in controlling law.

Further, it appears that FilmOn X may be acting in defiance of this Court's Preliminary Injunction, possibly by retransmitting Plaintiffs' copyrighted broadcast programming in the Boston area. *See Opp'n to Emergency Mot.* [Dkt. 53]. Accordingly, it is hereby

ORDERED that FilmOn X's emergency motion to modify the Preliminary Injunction issued on September 5, 2013 is **DENIED**; and it is

² The Court takes judicial notice of the Hearst Order as requested by FilmOn X. *See Fed. R. Civ. P.* 201; *Covad Commc'ns Co. v. Bell Atlantic Co.*, 407 F.3d 1220, 1222 (D.C. Cir. 2005) (permitting judicial notice of facts contained in public records of other proceedings).

FURTHER ORDERED that no later than October 21, 2013, FilmOn X shall show cause, in writing, why it should not be held in contempt of the September 5, 2013 Preliminary Injunction.

Date: October 15, 2013

/s/
ROSEMARY M. COLLYER
United States District Judge