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WLF Calls on High Court to Protect Copyright Owners' Exclusive Right of Public Performance

(American Broadcasting Companies, Inc. v. Aereo, Inc.)

“The Second Circuit’s judicial gutting of copyright holders’ exclusive public-performance right would severely distort a well-functioning marketplace and upend settled expectations among stakeholders, including the viewing public.” – Cory Andrews, WLF Senior Litigation Counsel

WASHINGTON, DC—The Washington Legal Foundation (WLF) this week asked the U.S. Supreme Court to reverse a lower court ruling that, if affirmed, would legitimize a business model based entirely on the unauthorized, for-profit exploitation of others’ copyrighted works. WLF’s brief charges that the U.S. Court of Appeals for the Second Circuit misapplied federal copyright law, contravening the plain text and legislative history of the Copyright Act of 1976.

The plaintiffs, who comprise leading creators, producers, and distributors of original broadcast television programming, brought a copyright infringement action against defendant Aereo, Inc. Using an elaborate network of thousands of tiny antennae, Aereo captures over-the-air television broadcasts and retransmits them (for profit and without permission) via the internet to its subscribers. WLF’s brief asks the Court to reverse the appeals court’s ruling, which held that Aereo does not “publicly perform” a copyrighted television program under the relevant statute when it retransmits a broadcast of that program to its thousands of paid internet subscribers.

The exclusive right of “public performance” is among the most critically important and economically significant rights that federal law grants to copyright holders. In its brief, WLF argues that the Second Circuit’s holding in the case eviscerates the public-performance right by holding that the relevant inquiry is the potential audience of a particular *transmission*, rather than the potential audience for any particular *performance* being transmitted.

Upon filing its brief, WLF issued this statement by Senior Litigation Counsel Cory Andrews: “The decision below has far-reaching consequences for the broadcast entertainment industry. The Second Circuit’s judicial gutting of copyright holders’ exclusive public-performance right would severely distort a well-functioning marketplace and upend settled expectations among the affected stakeholders, including the viewing public. Under the circumstances, Supreme Court intervention to vindicate the rights of the intellectual property owners is imperative.”

WLF is a public interest law firm and policy center that regularly litigates in defense of private property rights, including the rights of intellectual property owners.

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