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In Victory for WLF, Ninth Circuit Ruling Preserves Property Rights of Copyright Owners

(*Fox Television Stations, Inc. v. Aereokiller, LLC*)

“The exclusive property right granted by the Copyright Act is among the most critically important and economically significant rights that federal law grants to owners of creative works. The Ninth Circuit’s ruling today is welcome news not only for the broadcast entertainment industry, but also for its millions upon millions of customers.”—Cory Andrews, WLF Senior Litigation Counsel

WASHINGTON, DC—The U.S. Court of Appeals for the Ninth Circuit overturned a trial court decision today that would have legitimized a business model based on the unauthorized, for-profit exploitation (via the Internet) of the copyrighted works of others. The decision proved a victory for Washington Legal Foundation, which filed an *amicus curiae* brief in *Fox Television Stations, Inc. et al. v. Aereokiller, LLC et al.* arguing that the district court misapplied federal copyright law by drastically expanding the definition of “cable system” under § 111 of the Copyright Act.

The case involves a copyright-infringement action brought by leading creators, producers, and distributors of original broadcast television programming against Aereokiller, Filmon.tv networks, and associated entities, owners of an Internet service designed explicitly to evade federal copyright law. Using an elaborate network of thousands of tiny antennae, FilmOn X captures over-the-air television broadcasts and retransmits them over the Internet to its paid subscribers—without paying royalties. The case arose in the aftermath of the Supreme Court’s *American Broadcasting Cos. v. Aereo, Inc.* decision, which held that such Internet retransmissions constitute infringing “public performances” of copyrighted works. In a reversal of its position in *Aereo*, FilmOn X contended that it does qualify as a “cable system” under § 111 and is therefore now entitled to a compulsory license at the statutory rate.

Reversing the district court’s judgment in favor of defendants, the panel held that a service that captures copyrighted works broadcast over the air, and then retransmits them to paying subscribers over the Internet without consent of the copyright holders, infringes federal copyright law. Writing for a unanimous panel, Judge O’Scannlain concluded that § 111 is ambiguous on the question presented. Deferring to the Copyright Office’s interpretation—which WLF’s brief urged the court to do—the appeals court held that Internet-based retransmission services are not eligible for the compulsory license that § 111 makes available to “cable systems.”

Celebrating its 40th year, WLF is America’s premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.

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