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High Court, Siding with WLF, Upholds Copyright Owners' Exclusive Right of Public Performance

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

“The exclusive right of ‘public performance’ is among the most critically important and economically significant rights that federal law grants to copyright holders. The Court’s ruling today is welcome news not only for the broadcast entertainment industry, but for its millions upon millions of customers.”
—Cory Andrews, WLF Senior Litigation Counsel

WASHINGTON, DC—The U.S. Supreme Court today reversed a lower-court ruling that, if allowed to stand, would have legitimized a business model based entirely on the unauthorized, for-profit exploitation of others’ copyrighted works. The decision marks a victory for the Washington Legal Foundation, which filed an *amicus* brief in the case that charged the Second Circuit with misapplying federal copyright law, in contravention of both the plain text and legislative history of the Copyright Act of 1976.

The case arose from a copyright infringement action brought by leading creators, producers, and distributors of original broadcast television programming against defendant Aereo, Inc. An Internet-based subscription service, Aereo relies on an elaborate network of thousands of tiny antennae to capture over-the-air television broadcasts and retransmit them (for profit and without permission) to its subscribers. In its brief, WLF argued that the Second Circuit’s holding in the case eviscerated the Copyright Act’s exclusive right of “public performance” by holding that the relevant inquiry is the potential audience of a given *transmission*, rather than the potential audience for any particular *performance* being transmitted.

Upon reviewing the Court’s opinion, WLF issued the following statement by Senior Litigation Counsel Cory Andrews: “The exclusive right of ‘public performance’ is among the most critically important and economically significant rights that federal law grants to copyright holders. The Court’s ruling today is welcome news not only for the broadcast entertainment industry, but for its millions upon millions of customers.”

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

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