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WLF Calls on Ninth Circuit Court of Appeals to Protect the Rights of Copyright Owners

(Fox Television Stations, Inc. v. FilmOn X, LLC)

“In holding that Internet-based retransmission services qualify as ‘cable systems’ under the Copyright Act, the decision below not only guts copyright holders’ exclusive public-performance rights, but it also severely disrupts a well-functioning marketplace and upends settled stakeholder expectations.”

—Cory Andrews, WLF Senior Litigation Counsel

WASHINGTON, DC—Washington Legal Foundation earlier today called on the U.S. Court of Appeals for the Ninth Circuit to reverse a lower-court decision that would legitimize a business model based on the unauthorized, for-profit exploitation (via the Internet) of the copyrighted works of others. In an *amicus* brief filed in *Fox Television Stations, Inc. v. FilmOn X, LLC*, WLF argues that the district court, by drastically expanding the definition of “cable system” under § 111 of the Copyright Act, misapplied federal copyright law.

The case arises from a copyright infringement action brought by leading creators, producers, and distributors of original broadcast television programming against FilmOn X, an Internet service designed 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 is the latest battle in the aftermath of the Supreme Court’s recent decision in *American Broadcasting Cos. v. Aereo, Inc.*, which held that such Internet retransmissions constitute infringing “public performances” of copyrighted works. Reversing course in the wake of *Aereo*, FilmOn X now contends that it qualifies as a “cable system” under § 111 and is therefore entitled to a compulsory license at the statutory rate.

WLF’s brief urges the Ninth Circuit not to disrupt the delicate balance that Congress struck in crafting § 111. That balance grants copyright owners a broad, exclusive right of public performance over their works with only narrowly limited exceptions. In narrowly defining “cable system,” Congress sought to make television broadcast programming available to isolated, rural areas while incentivizing, through copyright protection, the creation of new content. WLF’s brief also asks the appeals court to defer to the Copyright Office’s longstanding, consistently held view that § 111 licenses for “cable systems” are limited to inherently “localized transmission services” that retransmit within a local market.

Upon filing its brief, WLF issued the following statement by Senior Litigation Counsel Cory Andrews: “In holding that Internet-based retransmission services qualify as ‘cable systems’ under the Copyright Act, the decision below not only guts copyright holders’ exclusive public-performance rights, but it also severely disrupts a well-functioning marketplace and upends settled stakeholder expectations.”

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