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Ninth Circuit to Hear Oral Argument in Case Deciding Statutory Rights of Copyright Owners

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

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—Cory Andrews, WLF Senior Litigation Counsel

WASHINGTON, DC—The U.S. Court of Appeals for the Ninth Circuit will hear oral argument on Thursday, August 4 at 9:00 a.m. in Pasadena, California, to consider whether to overturn 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. The appeals court’s decision in *Fox Television Stations, Inc. v. FilmOn X, LLC*, will clarify whether the definition of “cable system” under § 111 of the Copyright Act is broad enough to include Internet-based retransmissions. [WLF Senior Litigation Counsel Cory Andrews is available to discuss the lawsuit and its broader implications.](#)

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. 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.

WLF’s *amicus* brief in the case 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 very 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.”

In anticipation of oral argument, WLF issued the following statement by Senior Litigation Counsel Cory Andrews: “In holding that Internet-based retransmission services qualify as ‘cable systems,’ the decision below not only guts copyright holders’ exclusive public-performance rights, but it also severely distorts the marketplace and upends settled expectations among stakeholders.”

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