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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 severely distorts a well-defined marketplace and upends settled expectations among the affected stakeholders.”

—Cory Andrews, WLF Senior Litigation Counsel

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

The plaintiffs, 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) over the internet to its subscribers. WLF’s brief asked the Court to grant review to decide whether, under the relevant statute, Aereo “publicly performs” a copyrighted television program when it retransmits a broadcast of that program to thousands of paid subscribers over the internet.

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 argued that the Second Circuit’s holding in the case threatens to eviscerate 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 the following 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 severely distorts a well-defined marketplace and upends settled expectations among the affected stakeholders.”

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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