



# Supreme Court Finds Copyright Infringement by Service for Internet Viewing of Broadcast TV

Client Advisories

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In a 6-3 split decision in *American Broadcasting Companies, Inc. v. Aereo, Inc.*, the United States Supreme Court today reversed a recent copyright law decision of the Second Circuit Court of Appeals. Writing for the majority, Justice Breyer finds that a service that allows subscribers to watch broadcast television programs over the Internet at about the same time that the programs are broadcast over the air is a public performance of the programs that constitutes copyright infringement. Since the broadcasters had sought injunctive relief against the service provider, Aereo, the Supreme Court's remanding of the case reopens that avenue of relief to the broadcaster plaintiffs.

Aereo's technology platform involves a system of servers, transcoders and thousands of dime-sized antennas housed in a central warehouse. Using the antenna and transcoder, which translates the TV signals into data that can be transmitted over the Internet, the technology allows a subscriber to watch a show that is currently being broadcast. The subscriber can watch the streamed program on the screen of his personal computer, tablet, smart phone, Internet-connected television, or other Internet-connected device. The streaming continues, a mere few seconds behind the over-the-air broadcast, until the subscriber has received the entire show.

Given that the monthly user fees for Aereo's service are in the range of \$8 to \$12, as opposed to the much higher monthly fees of cable providers, the outcome of this case was widely anticipated in the cable industry and related business as well.

In his dissenting opinion, Justice Scalia (with whom Thomas, J. and Alito, J. agree) is characteristically blunt in saying that "Aereo does not 'perform' at all" and that the Court's decision today disregards "widely accepted rules for service-provider liability and adopting in their place an improvised standard ('looks-like-cable-TV') that will sow confusion for years to come," because, as Justice Scalia, continues, "It is not the role of this Court to identify and plug loop-holes. It is the role of good lawyers to identify and exploit them, and the role of Congress to eliminate them if it wishes."

With the billions of dollars at stake in this case, with sports leagues contemplating taking their games off broadcast TV, and with the Obama Administration lined up solidly behind the broadcaster-plaintiffs, this high visibility copyright case will have important implications. We will keep you informed of new developments as they arise.

If you have questions about or would like to discuss these rulings or other intellectual property issue, please contact a member of Archer's **Intellectual Property Group** in Haddonfield, N.J., at (856) 795-2121, in Philadelphia, Pa., at (215) 963-3300, in Princeton, N.J., at (609) 580-3700, in Hackensack, N.J., at (201) 342-6000, or in Wilmington, Del., at (302) 777-4350.

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