

Supreme Court Finds Aereo's Streaming Practice is Copyright Infringement

Streaming television programs on request via the Internet using a remote antenna is a direct infringement of the program's copyright, the U.S. Supreme Court ruled, reversing an appellate court that found the practice did not violate the U.S. Copyright Act.

The Supreme Court in a 6-3 decision said Aereo, Inc.'s practice was no different than cable television's practices, which are "within the scope of the Copyright Act." To the extent that Aereo's service is different than cable television, "those differences are not adequate to place Aereo's activities outside the scope of the Act," the court observed. Cable television companies negotiate royalty rates with the copyright owners of the programs they rebroadcast.

Aereo allows its subscribers via its website to select a television show for viewing. Aereo then assigns an individual antenna to pick up the program over the airways, includes a several second delay, and then streams the program to the subscriber over the Internet. Aereo had argued that it did not need to pay royalties because it was simply facilitating a private viewing of programs for its subscribers. Television producers, marketers, and broadcasters who owned the copyrights in many of the programs that Aereo was streaming sued Aereo for its practice, claiming copyright infringement.

The Supreme Court found that, by streaming the program, Aereo was "performing" the program as the term is defined in the Copyright Act. The court also determined that the streaming was a "public" performance under the Transmit Clause of the Copyright Act even though the streaming was to an individual computer or television. The court said it makes no difference from a copyright perspective how the program is technically captured and sent to the subscriber.

The case had been closely watched because of a concern that to find Aereo's practice was copyright infringement could impose copyright liability on other new technologies. The court's majority attempted to dispel this fear by noting, "We cannot now answer more precisely how the Transmit Clause or other provisions of the copyright Act will apply to technologies not before us."

The dissent stated that, because the subscriber selected the program to be streamed, Aereo "cannot be held directly liable for infringing the Networks' public-performance right." The dissent also noted that Aereo may be liable as a secondary infringer but that "is yet to be determined."

American Broadcasting Cos., Inc. et al. v Aereo, Inc., Supreme Court No. 13-461, issued June 25, 2014.