

NY Appeals Court OKs Aereo Live Television Service

Larry Neumeister, Associated Press

NEW YORK (AP) — An Internet company offering inexpensive live broadcast television feeds to computers, tablets and smartphones doesn't violate U.S. copyright law, a divided federal appeals court said Monday.

The 2-to-1 ruling by the 2nd U.S. Circuit Court of Appeals cleared the way for Aereo Inc.'s expansion of its \$8-a-month service, which had been limited to New York City until this year. Several weeks ago, the company expanded to New York City suburbs, including New Jersey and parts of Connecticut, and it has announced plans to expand to Boston, Chicago, Philadelphia, Washington and 18 other U.S. markets later this year.

Broadcasters including Fox, ABC, CBS, NBC and others had sued, saying Aereo copies and retransmits their programs as they are first aired without permission.

The ruling came in a preliminary stage of the case in federal court in Manhattan. More evidence must be presented to a lower court judge before she issues a final decision. Other legal challenges have been filed elsewhere against a budding industry that stands to challenge the dominance of cable or satellite companies that offer their licensed programming to consumers.

Aereo positions itself as a cheaper alternative to cable and satellite, though it offers far fewer channels, since it is only retransmitting the broadcast networks freely available to anyone with an antenna. (The exception is Bloomberg TV, the financial news channel that reached a deal with Aereo.)

Broadcasters have said in court documents that allowing Aereo to proceed without licenses could threaten the ability of broadcasters to produce marquee sports or awards show events, including the Academy Awards and the Grammys. They also say cable and satellite operators may decide to adopt Aereo's technology or cause revenues from those paying licensing fees to decline because the content is devalued. And they say Aereo's success would hurt their ability to license content on an on-demand basis over the Internet.

In a majority opinion written by Judge Christopher F. Droney, the appeals court said the Barry Diller-backed Internet company does not appear to violate copyright law because subscribers are assigned to their own tiny antennas at Aereo's Brooklyn

data center. The antennas grab free over-the-air broadcasts, and Aereo streams the video to subscribers over the Internet. Customers can view programs on their computer, tablet or smartphone, receiving the transmissions over the Internet without additional hardware.

The appeals court relied in part on an earlier court case in which judges found that Cablevision System Corp.'s digital video recorder did not violate copyright law by copying and storing programs for each customer's use. A ruling against Aereo would conflict with its earlier decision in the Cablevision case, the majority said.

In a forcefully written dissent, Judge Denny Chin said Aereo violates the Copyright Act and called the company's individual tiny antennas a "sham." He said the company's system was a "Rube Goldberg-like contrivance, over-engineered in an attempt to avoid the reach of the Copyright Act and to take advantage of a perceived loophole in the law."

Chin said the company is able to broadcast things like the Super Bowl live to tens of thousands of subscribers because each subscriber has an individual antenna and a unique copy of the broadcast, thus enabling it to be considered by some in the eyes of the law as a private performance rather than a public one.

"Of course, the argument makes no sense. These are very much public performances," he wrote.

The majority opinion said Aereo is not the first to design systems to avoid copyright liability and noted that the same accusation could be made about Cablevision because the company created separate user-associated copies of each recorded program to comply with copyright law instead of using more efficient shared copies that might have been found to violate copyrights.

Dennis Wharton, executive vice president of the National Association of Broadcasters in Washington, said the group was disappointed.

"We agree with Judge Chin's vigorous dissent and, along with our members, will be evaluating the opinions and options going forward," he said.

CBS said in a statement: "As the courts continue to consider this case and others like it, we are confident that the rights of content owners will be recognized and that we will prevail."

Aereo CEO Chet Kanojia said he was grateful for the ruling, which he said "validates that Aereo's technology falls squarely within the law."

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"We may be a small startup, but we've always believed in standing up and fighting for our consumers," Kanojia said. He added that the decision "sends a powerful message that consumer access to free-to-air broadcast television is still meaningful in this country."

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