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Am. Broad. Cos., Inc. v. Aereo, Inc.

134 S. Ct. 2498 (2014)

MCKENNA STEERE*

BACKGROUND

Respondent, Aereo, Inc. (Aereo), provides a service that allows its subscribers, who pay a monthly fee, to stream television programs over the Internet. Aereo does not own the copyrights to the programs it provides, nor does it have a license to stream the programs publicly. Rather, Aereo's system is comprised of servers and thousands of antennas that are contained in a central warehouse. When a subscriber registers with Aereo, they can select a show they would like to watch based on a local programming list of those currently being broadcast. Once the selection is made, one of Aereo's servers individually assigns an antenna to broadcast the selected program, and the transmission is only made available to the individual subscriber. The antenna tunes to the selected program and saves the data in a folder designated to the specific subscriber until several seconds of the program have been saved. Once enough data is saved the subscriber can stream the copy of their selected program. Petitioners are a collection of copyright owners for many of the programs Aereo streams to its subscribers.

PROCEDURAL HISTORY

The Petitioners brought action against Aereo for copyright infringement, seeking a preliminary injunction in Federal District Court. They asserted that Aereo's unlicensed transmission of their programs infringed upon their right to publicly perform the protected works as defined under the Transmit Clause of the Copyright Act. The district court denied the Petitioners' motion, and a divided Second Circuit Court of Appeals affirmed, stating that Aereo was not performing the works publicly, but rather was privately transmitting the programs, since the transmission was particular to each individual subscriber.

ISSUE

Whether a service such as Aereo's, that allows subscribers to watch television over the Internet at almost the same time as the original television broadcast, fell within the definition of "public performance" stated in the Transmit Clause of the Copyright Act.¹

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DECISION

The Supreme Court reversed and remanded the Second Circuit's decision denying the Petitioners' motion for preliminary injunction against Aereo's transmission of its television programs. The Court held that based on Congress's amendment to the Copyright Act of 1979 (the "Act") specifically including community antenna television (CATV) providers, Aereo's transmissions fell within the Act's definition of "performing" a copyrighted work. Furthermore, the Court held that Aereo's performance was considered "public" under the Act because the transmissions are made to a large group of people who are unrelated and unknown to each other.

REASONING

In addressing the issue of copyright infringement, the Court examined whether under the definitions provided by the Transmit Clause of the Act, Aereo's program transmission system constituted a "performance," and if so, whether the performance was done "publicly."

Looking to the Congressional intent of the 1976 Copyright Act amendment, the Court noted that Congress took three actions that clarified the definition of "performance"—broadening its scope to cover programming transmissions such as Aereo's. The Court identified that one of Congress's primary purposes for the amendment was to overturn two prior cases, *Fortnightly Corp. v. United Artists Television, Inc.*² and *Teleprompter Corp. v. Columbia Broadcasting System, Inc.*,³ in order to bring CATV within the scope of what constituted a performance.

First, Congress amended the Act by adding specific language clarifying that performing an audiovisual work meant "to show its images in any sequence or to make the sounds accompanying it audible."⁴ This extended the definition of a performance to apply to both a broadcaster and a viewer because they both show the program's images in conjunction with making the program's sounds audible.

Second, Congress enacted the Transmit Clause, which clarified that a transmission of a work falls within a performance when the audiovisual works are received beyond where they were originally sent. The addition of the Transmit Clause, the Court reasoned, extended the scope of a performance to include the mere enhancement of a viewer's access to broadcast signals.

Third, Congress added a new section of the Act delineating a complex set of licensing and fees applicable to cable companies for rebroadcasting

1. 17 U.S.C. § 101 (2012) (defining the exclusive right to include the right to "transmit or otherwise communicate a performance . . . of the [copyrighted] work . . . to the public, by means of any device or process, whether the members of the public capable of receiving the performance . . . receive it in the same place or in separate places and at the same time or at different times").

2. 392 U.S. 390 (1968).

3. 415 U.S. 394 (1974).

4. 17 U.S.C. § 106(4) (2012).

copyrighted programs. Therefore, taken as a whole, the Court reasoned that Congress's intent to include cable companies, such as CATV, within the Act's scope of performance was meant to regulate broadcasting providers such as Aereo. Consequently, Aereo could not be viewed as merely an equipment provider, but rather it was performing copyrighted works without permission pursuant to the Transmit Clause.

Next, the Court evaluated the text and purpose of the Transmit Clause to determine whether Aereo was performing the Petitioners' copyrighted works publicly. Aereo argued that the transmission of programs to their subscribers was not public, but rather were individual, private transmissions to each subscriber. The Court found this argument unconvincing. The Court reasoned that the language "transmitting a performance" is not strictly limited to a single act of communication, but can apply regardless of the number of discrete communications. As applied to Aereo, the technological differences behind the transmission of a program do not matter. Aereo's commercial goal is no different from a cable company and Congress intended to protect copyright owners from unlicensed transmission of their works by cable companies. Based on the extensive similarities between Aereo and cable companies, the Transmit Clause applies to both systems, regardless of frequency of transmission. Therefore, the Court held that when a company transmits images in conjunction with the work's audio to a multitude of subscribers, it transmits a performance to all of them regardless of how many transactions occur to produce each transmission.

Additionally, the Court recognized that although the Act does not explicitly define "public" it stipulated that a public performance is any performance for a "large group of people outside of a family and friends."⁵ Consequently, a program is performed "publicly" anytime it is transmitted to a substantial group of people who are unrelated and unknown to each other, generally outside friends and family. The Court highlighted that what constitutes "public" is based on the relationship to the transmitted work. For Aereo, the subscribers streaming the programs did not receive them based on their status as owners or possessors of those programs, and therefore are considered to be part of the "public." Finally, the Court noted the Transmit Clause explicitly states that the "public" may be comprised of individuals temporally or spatially separated. Therefore, Aereo's transmission of copyrighted programs to subscribers over the Internet was considered a public performance even if the technology of each transmission is confined to an individual subscriber.

Lastly, the Court addressed the policy implications of its decision. While Aereo contended that such a broad application of the Transmit Clause would heavily burden new technologies with liabilities Congress did not intend to impose, the Court claimed its application of the Transmit Clause is narrow and would not have a detrimental effect. The Court

5. *Am. Broad. Cos., Inc. v. Aereo, Inc.*, 132 S. Ct. 2498, 2510 (2014).

addressed the limited scope of its decision in two parts: (1) the limitations of “performance,” and (2) “public.”

First, the Court stated that its holding focuses on a specific type of provider operating in a particular situation, and it does not address whether a “performance” would occur in other contexts with different types of providers. Second, the Court highlighted its narrow interpretation of the “public” as a group of individuals paying to watch copyrighted broadcast television programs, who are unrelated to the product being transmitted, and are not within familial and social circles. The Court briefly addressed the concern about the reach of its decision in potentially regulating cloud computing and DVRs, stating that those issues should not be addressed until they are explicitly before the Court. Finally, the Court suggested that if commercial entities are concerned about the implications of the its decision they may seek action from Congress, but that the doctrine of “fair use” may serve as a prophylactic measure against inequitable applications of the Transmit Clause.

The Court ultimately held that Aereo’s transmission of copyrighted television programs without a license constituted a public performance within the meaning of the Transmit Clause of the Copyright Act of 1976, and therefore infringed on Petitioners’ copyrights.