

Second Circuit Denies En Banc Review of Aereo

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The U.S. Court of Appeals for the Second Circuit denied today a petition for review, en banc, of an earlier decision by a three-judge panel of the Court that had ruled in favor of Aereo and against broadcasters in a case that originated in the Southern District of New York.

On April 1, 2013, the panel concluded in the case that Aereo's service did not violate the broadcasters' exclusive right to "publicly perform" their copyrighted television programs. Broadcasters asked the full Second Circuit Court to review that decision, but a majority of judges declined to rehear the case. Two judges issued a strong dissent, explaining that the panel decision had "already had a significant impact on the entertainment industry" because it threatened to undermine the retransmission consent regime vital to broadcast television.

Although the order denying rehearing is a disappointment for broadcasters, the decision is limited to broadcasters' request for a preliminary injunction on the "public performance" issue. The case against Aereo is moving forward in the district court, where the parties have asked the court to rule on other aspects of the broadcasters' copyright claims.

In a case involving a similar Internet streaming service, FilmOn X (originally "Aereokiller"), a federal district court in California ruled in favor of broadcasters and granted a preliminary injunction prohibiting the service from operating within the states encompassed by the Ninth Circuit. FilmOn X has appealed that decision to the Ninth Circuit, which is scheduled to hear argument on August 27th.