Television on Your Terms.

Watch Live TV
All the broadcast - ABC, NBC, CBS, FOX, CW & over 20 local channels.

Watch On the Go
Use Aereo on your mobile device, computer, tablet, smartphone, and more.

Record for Later
Record your favorite shows with Aereo's "anywhere" DVR.

Your Favorite Shows
From American Idol to the Super Bowl, access them all with Aereo. Or discover new favorites with powerful search tools and social recommendations.

HD Quality Picture
Advanced signal processing for a crystal clear image.

No Equipment To install
All online. No downloads, no setup, no wires, no clutter.

http://aereo.com
Intel Corp. is developing an Internet-based television service that it hopes to sell to U.S. consumers, a strategic shift by the chip maker as it sets its sights on the crowded pay-TV business.

Intel has for several months been pitching media companies on a plan to create a "virtual cable operator" that would offer U.S. TV channels nationwide over the Internet in a bundle similar to subscriptions sold by cable- and satellite-TV operators, according to people familiar with the effort. Intel wouldn't provide Internet access, which subscribers would obtain separately.

The TV offering would use Intel technology, and in at least some scenarios under consideration, would use Intel's name. In its presentations to media companies, Intel says it is making its own set-top box to carry the TV service, and it has demonstrated an interface for users to browse programs.

Intel has told media companies it hopes to launch a service by the end of 2012, though it faces hurdles such as scarce bandwidth and the high price of TV programming.

In at least some cases, Intel has asked media companies for "rate cards" that lay out what particular channels or types of on-demand programs would cost as part of its subscriptions, but it doesn't appear to have struck programming deals yet, one of the people said.
The new effort would mark a big shift for Intel Chief Executive Paul Otellini, who has made clear his determination to move the company beyond the computer industry. Those efforts so far have include a series of TV-related businesses that have largely failed to gain much traction.

An Intel spokeswoman declined to comment.

Intel's maneuvers come as the broader television business undergoes a major shift, with people spending more time watching video on the Internet and mobile devices.

Several technology and electronics companies have considered offerings that would use the Internet to deliver bundles of live or on-demand TV channels. In recent months, Sony Corp. and Dish Network Corp. have held exploratory talks about creating such services. Others, including Google, Apple Inc. and Microsoft Corp., have spoken with media companies about the concept in the last year or so, but none appear to be moving forward immediately with any talks for the time being, media executives say.

Spokespeople for Sony, Dish, Apple and Microsoft declined to comment. A spokesman for Google, which has declined to comment previously on the topic, couldn't immediately be reached.

Hoping to get more of its chips into consumer living rooms, Intel has for years made the case that more processing power and better software are needed for services that appeal to consumers. But many of its efforts in the field, including a hardware effort called Viiv, and past partnerships with Hollywood content partners, have been scuttled.

Intel in October disbanded a group that had been involved with Google and others developing Internet-equipped set-top boxes and TVs sold directly to consumers. But Intel said it would keep supplying chips for set-top boxes used by some major operators, including Comcast and Iliad SA, a French telecommunications company that sells Internet, TV and phone service.

Last year it hired Erik Huggers, an Internet-services specialist who had helped the British Broadcasting Corp. launch a high-profile service called iPlayer. Mr. Huggers, who in October became general manager of a new group called Intel Media, has announced plans to set up an Intel center in London to work on "user experience" software for TVs. Few other details have emerged about his group's efforts, but he has indicated that TV-related services are part of the focus; in a video of a presentation last summer, Mr. Huggers said the company might "go further up the food chain" in the TV business, beyond offering chips for set-top boxes and assistance to customers.

It remains unclear whether Intel or any other company will succeed in launching virtual cable operators. Programming costs are one big obstacle. Incumbent cable, satellite and telecommunications companies already pay nearly $38 billion per year to license TV channels. Those costs are rising—cutting into video-distribution margins. Any upstart could face even higher costs because smaller operators often have to pay more per subscriber.

A virtual service could theoretically offer smaller or cheaper bundles than traditional cable subscriptions. Intel, for instance, had talked at times about offering, say, 50 channels, rather than 150, according to one of the people familiar with the matter. But media companies are likely to resist such shifts, at least initially, because they make money by selling big bundles of channels via cable operators.
Internet bandwidth could be another problem. Some tech companies have retreated from plans to become virtual cable operators in part because of an inability to guarantee enough bandwidth for high-quality video at all times of day, one media executive said. Cable operators, which also sell high-speed Internet access, could shift to usage-based Internet pricing if more people start consuming their video online. If that happened, consumers watching a lot of online video could end up paying much more for Internet access—cutting into what a virtual cable operator could reasonably charge its subscribers for a package of channels.

But the people familiar with the effort say Intel is undeterred about bandwidth, with technicians who say they can safeguard picture quality even on another company's cables.

A third issue could be many existing TV channels' lack of Internet rights to all of their own shows. That would mean some channels on a service like the one Intel is proposing could be reduced, at least initially, to a selection of shows in an on-demand format, rather than live. That could make a Web offering less competitive.

Some media executives say they believe a real virtual cable service could be two or three years away at the earliest. Others are even more skeptical.

"Several large firms have tried to put that package together and backed off," David Wells, Netflix Inc.'s chief financial officer, said of virtual cable operators in an earnings call in late January. "I don't think that is going to come into existence."
It’s hard to believe we’re not stuck in some strange time warp, as it’s beginning to feel (again) like TV is the next hot thing. Well, really, web TV. For one, The Wall Street Journal today reported that Intel is rumored to be developing a web-based, pay-TV service and reportedly has been pitching media companies on creating a “virtual cable operator” that would offer TV channels to U.S. consumers in a “bundle similar to subscriptions sold by cable and satellite TV operators.” According to these reports, Intel will be offering its own set-top box to carry the service.

Regardless of the fact that the chip company has struggled with consumer-facing (and set-top) offerings, Intel’s purported service would join GoogleTV, AppleTV, and a host of other companies already offering set-top boxes like Roku and Boxee. Of course, as much as everyone ever many want a disruption of the current pay-TV model, Alex Cocotas’ chart shows that current cord-cutting attempts aren’t really having the desired effect.
Aereo, the New York-based startup backed by $20 million+ from IAC recently entered the fray with big plans to actually make a dent in this problem with a cloud-based service that streams over-the-air channels for just $12 a month. (You can read more background on the service here.) Of course, just like so many that have come before it, Aereo seems inherently subject to having to change its DVR-in-the-cloud model or to fighting it out with the networks in court. And now it’s countersuing.

Last week, a group of broadcasters, which includes Fox, Univision, and PBS filed two separate lawsuits against Aereo (with those two groups collectively representing most of the major media outlets in New York City), as well as an injunction based on the grounds of Copyright Act infringements, which if granted, would prevent Aereo from releasing its product on the market.

Shortly thereafter, Aereo released a statement saying, in short, that the broadcasters’ case did not have “any merit.” (Statement and more background here.) The interest in this case also prompted me to take a lengthy look at whether or not Aereo actually has any shot at winning this case. Despite many indications otherwise, I was hopeful.

Speaking at SXSW this weekend, Barry Diller, the Chairman and CEO of IAC (the principal investor in Aereo), made it clear that both he and Aereo expected the broadcast networks to resist, and that the issue would likely be resolved in court. (Obviously it would have been a huge mistake not to prepare for this end.) As reported by CNET, Diller said, “This is not some evil thing … This is absolutely predictable. Media companies have hegemony over broadcast TV and they want to protect it.”

Diller and Aereo are both of the mind that what they’re doing is completely legal — and not only that — they shouldn’t have to pay retransmission fees either. (Under their conception, this is because each customer would own their own antenna and thus have rights to free, publicly transmitted broadcasts of network TV.) Diller said that he’d recently met with reps from the networks in New York and told them:

I said to the broadcasters, ‘One thing that might happen is you’ll get more audience.’ They said, ‘That's fine. Now pay us retransmission money.' I said, 'When you get Radio Shack to pay you some slice of their profit when they sell an aerial, we'll pay you anything you like, but we're not transmitting anything.'

Given the trajectory of this back-and-forth with the networks, the news today that Aereo has officially countersued is expected, but it’s further evidence that neither Diller nor Aereo will be backing down from the battle anytime soon. And given Diller’s penchant for mixing it up with traditional media, and his own cloud as a long-time media exec himself, there aren’t a whole lot of people better suited for this battle.

After all, with the growing interest among big tech companies (and the public) in this issue, it was either Aereo or someone else. Hey, maybe it could be Ora.tv and Larry King! (Probably not.) After writing this post, we heard from Carlos Nicholas Fernandes, the CEO of RecordTV.com, which launched a similar service in Singapore back in 2007. They were taken to court, lost at first, but eventually won against the state-owned broadcaster, MediaCorp in a landmark ruling.

That ruling formed the basis of Optus’ landmark victory in Australia, as it is referenced extensively in the judgement. (No idea what I’m talking about? More here.) The point is that Aereo’s case stands to be a big one. Given what’s at stake, this will probably take a long time to resolve, and could travel all the way up the high courts in appeals, etc. But, given the RecordTV and Optus decisions, there are certainly precedents working in favor of Aereo.
Aereo only filed one suit today, but a company spokesman said that the “second filing will happen in due course.” So, again, it’s clear, this battle is just heating up. Well, not only that, Diller and company want swift resolution, as the IAC CEO is already saying that he expects the service to be in 75 to 100 cities within a year. A bold statement even if it’s not likely to hold true; either way, all those wanna-be cord cutters out there should be paying attention.

Here’s Aereo’s official statement:

Aereo’s business rests on three very well established legal principles: the consumers’ right to access broadcast television, their right to record unique copies of broadcasts for personal use and their right to use remotely located equipment to make their private copies. We firmly believe that Aereo’s technology is lawful. We are confident in the legal process, and we look forward to a prompt resolution of these meritless lawsuits.
A number of major broadcasters and station groups have filed two separate lawsuits in the U.S. District Court for the Southern District of N.Y. against Aereo, which is planning to launch a subscription service on March 14 that would allow users to watch broadcast signals on their smartphones, tablets or any Internet-enabled device.

The lawsuits, which allege violations of copyright laws, ask the court for an injunction to block the service as well as damages and court costs.

In response to one of the suits, the National Associations of Broadcasters issued this statement from NAB executive VP of communications Dennis Wharton: "NAB strongly supports today's legal action against Aereo. Copyright and TV signal protections promote a robust local broadcasting system that serves tens of millions of Americans every day with high quality news, entertainment, sports and emergency weather information. A plaintiffs' win in this case will ensure the continued availability of this programming to the viewing public."

Plaintiffs in the suits include both broadcasters and major studios.

One of the lawsuits filed in Federal Court in N.Y. named the American Broadcasting Companies, Disney Enterprises, CBS Broadcasting, CBS Studios, NBC Universal Media, NBC Studios, Universal Network Television, Telemundo Network Group and WNJU-TV as plaintiffs against Aereo.
This suit charges copyright violations and seeks a preliminary and permanent injunction against Aereo.

A statement from ABC, CBS and NBC issued to B&C notes that "this service is based on the illegal use of our content. Beyond that, we believe the complaint speaks for itself."

In the other suit, PBS, Fox Television Stations, Univision Television Group, the Univision Network, Twentieth Century Fox Film Corp., WNET and Thirteen have joined together as plaintiffs against Aereo.

Full text of the second suit, which alleges copyright violations and unlawful competition, can be found here.

It also seeks to block the Aereo service and seeks damages, attorney fees and court costs.

Aereo, which has raised about $25 million from such backers as Barry Diller, went public with plans in mid-February to initially launch a $12 a month subscription service in New York City on March 14. The company eventually hopes to expand nationwide.

The company notes that the signals for each subscriber are received on separate coin-sized antenna. It then takes those signals, encodes them and sends them out over the Internet, where they can be accessed by iPhones, iPads and other Internet-connected devices.

Because each subscriber has its own antenna located in Aereo's facility and offers dedicated storage for the DVR features, the company claims no copyright violations occur.

At the press conference announcing the service, Aereo founder and CEO Chet Kanojia did, however, admit that they expected challenges, Multichannel News reported.

"We understand that there will be challenges... We are building a transformative business and there will be challenges," he said.

Multichannel News also reported that "The beta version of the service went live on Feb. 9; the company declined to say how many micro-antennas it has deployed but put the number in the ‘thousands.'"

Broadcasters have previously been successful in blocking Internet streaming services in court and they won a major suit last year against ivi TV.

"Aereo has no rights, under any license, statute or case law, to any of the copyrighted programming that is the basis of its subscription only Internet service," the lawsuit filed by ABC, CBS, NBC and others argued. "Aereo just helps itself-without permission and on a round-the-clock basis-to programs created, owned and broadcast by plaintiffs. Although other distributors, including cable and satellite operators and telephone companies, pay to retransmit the same programming, Aereo's business is based on circumventing the carefully balanced distribution system mandated by Congress. That is infringement."
In an email to B&C labeled as a blog post, Mike Schroeder at Aereo noted that "Aereo does not believe that the broadcasters' position has any merit and it very much looks forward to a full and fair airing of the issues....Consumers are legally entitled to access broadcast television via an antenna and they are entitled to record television content for their personal use. Innovations in technology over time, from digital signals to Digital Video Recorders ("DVRs"), have made access to television easier and better for consumers. Aereo provides technology that enables consumers to use their cloud DVR and their remote antenna to record and watch the broadcast television signal to which they are entitled anywhere they are, whether on a phone, a tablet, a television or a laptop."

**Aereo Answers Broadcasters' Lawsuit**

**Argues Its Technology Technology Doesn't Violate Copyright Laws**

George Winslow -- Multichannel News, 3/12/2012 6:41:00 PM

In a response to one of the two lawsuits recently filed in Federal Court for the Southern District of New York by broadcasters and studios seeking to block a subscription service that would deliver broadcast signals to mobile devices, Aereo has filed an answer and counterclaim that vigorously denies it has broken any copyright laws.

Aereo was sued by broadcasters and studios after it announced plans to launch of a $12 a month subscription service in New York City. In the two suits, broadcasters and studios had charged Aereo with copyright violations and had sought to block the service, which is not paying broadcasters and rights holders for their content.

In the answer and counterclaim, Aereo argues "this case concerns the application of established law to an innovative use of familiar technology. Consumers use the Aereo Technology to do no more than what they were entitled to do: access local television broadcasts on the public airwaves using an individual antenna; create unique copies of that broadcast content for their own personal use; and play back their unique recordings to their television or other viewing devices for their personal use."

The response also argued that the case "involves nothing more than the application of settled law to updated technology" and asked for a declaratory judgment against the plaintiffs.

Aereo's response was filed in response to a suit filed by American Broadcasting Companies, Disney Enterprises, CBS Broadcasting, CBS Studios, NBC Universal Media, NBC Studios, Universal Network Television, Telemundo Network Group and WNJU-TV against Aereo.

This suit charges copyright violations. It seeks a preliminary and permanent junction against Aereo as well as damages, attorney fees and court costs.
Aereo also faces a second suit filed in Federal Court for the Southern District of New York naming PBS, Fox Television Stations, Univision Television Group, the Univision Network, Twentieth Century Fox Film Corp., WNET and Thirteen as plaintiffs.

In response to the ABC, CBS and NBC suit, Aereo "admits that it received no written authorization or written consent from plaintiffs to exercise any exclusive rights Plaintiffs may own in copyrighted works but denies that any such authorization or consent is needed for its members to use Aereo Technology or for Aereo otherwise to operate its business."

More specifically the answer avers tha the 'plaintiffs' complaint fails because Aereo merely provides technology...that consumers may use to do what they are legally entitled to do: (1) access free and legally accessible over the air television broadcasts using an antenna; (2) create individual, unique recordings of those broadcasters for personal use;....and record and play back those unique recordings using a remotely-located digital video recorder (DVR) to personal devices."

Many of the legal issues surrounding the case will involve how the court interprets Aereo's technology under existing copyright laws.

In delivering broadcast signals to Internet-connected devices, Aereo receives the broadcast signals for each subscriber on a separate coin-sized antenna. It then takes those signals, encodes them and sends them out over the Internet, where they can be accessed by iPhones, iPads and other Internet-connected devices.

Because each subscriber has its own antenna located in Aereo's facility and because each subscriber has its own dedicated storage space for the DVR features, Aereo argues that no copyright violations occur and that it is simply providing consumers with technology that they "may use to do what they are legally entitled to do."

Broadcasters, however, argued that the technology does not overcome the basic fact that they were not being paid for their copyrighted content.

"Aereo has no rights, under any license, statute or case law, to any of the copyrighted programming that is the basis of its subscription only Internet service," the original lawsuit filed by ABC, CBS, NBC and others argued. "Aereo just helps itself - without permission and on a round-the-clock basis - to programs created, owned and broadcast by plaintiffs. Although other distributors, including cable and satellite operators and telephone companies, pay to retransmit the same programming, Aereo's business is based on circumventing the carefully balanced distribution system mandated by Congress. That is infringement."
Outraged by Long Island City-based Aereo’s attempts to exploit a supposed loophole regarding the transmission of television shows, broadcasters have sued the startup to keep its service from launching on March 14. Experts say the broadcasters may have a legitimate case. If so, the litigation could jeopardize Aereo’s plan to offer its subscribers live streaming of network broadcasts to Web-connected devices such as tablets, smartphones, laptops, and televisions.

Aereo is not talking much these days, a stark change from the fanfare at the February press event held at the headquarters of Internet company IAC in New York, when the new platform was introduced. That same day, Aereo also announced it raised $20.5 million in a Series A funding round led by IAC.

Lawsuits were filed early this month in the U.S. District Court for the Southern District of New York on behalf of two groups of television broadcasters that want Aereo stopped before it begins streaming content to its subscribers. The group of plaintiffs, which includes Fox Television Stations, Univision, and local broadcasters WNET and WPIX, issued a statement that they do not want to stifle new technology for video distribution. However, these plaintiffs claim Aereo’s stream would violate their copyrights and redistribute their shows without compensation. The plaintiffs said Aereo’s arguments were based on a fundamental misunderstanding of copyright law. The complaint calls Aereo “an unauthorized Internet delivery service that is receiving, converting, and retransmitting broadcast signals to its subscribers for a fee.”
The lawsuit seeks compensation for damages and calls for a permanent injunction against Aereo to cease Web retransmission of programming. Thus far Aereo has only commented via a blog post: “Aereo does not believe that the broadcasters’ position has any merit and it very much looks forward to a full and fair airing of the issues.”

Media and television attorney Craig Delsack in New York believes Aereo’s service does fall under federal regulations for retransmission consent, because the platform creates a closed system for distributing signals. “Unless each antenna has a unique address that only goes to that one home,” Delsack says, “it’s a little dicey.”

Aereo claims its service would transmit network shows to private viewers, which would not violate federal copyright and broadcast regulations. The plaintiffs argue the retransmissions would go to a public audience of subscribers. Aereo uses tiny antennae mounted together inside box-shaped units installed around the city. According to Aereo’s portrayal of the service, each user would tap into one antenna. More thorough details about the technology have yet to be revealed, however.

Aereo’s platform lets users view broadcast network programs on Web-connected TVs and mobile devices for a $12 per month subscription. The service also offers a Web-based DVR for recording shows for personal viewing. The initial plan is to offer the service first in the New York area where Aereo’s antennae have been installed around the city. The company’s blog states consumers have the right to use Aereo’s remote antennae to privately view broadcast shows.

From a certain perspective, the litigation is not all that surprising. Broadcasters are known to play hardball with cable operators by allowing channels to go dark on cable services if financial terms are not agreed upon. As innovators continue to create new platforms to broadcast television shows, Delsack says, questions will also likely arise about compensation. “We’ve seen broadcasters pull content from Hulu because they’re not getting the revenue they wanted from it,” he says. So no one should be shocked, he says, if the tech world sees more legal battles such as the one Aereo faces now.
UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

WNET, THIRTEEN, FOX TELEVISION STATIONS, INC., TWENTIETH CENTURY FOX FILM CORPORATION, WPIX, INC., UNIVISION TELEVISION GROUP, INC., THE UNIVISION NETWORK LIMITED PARTNERSHIP, and PUBLIC BROADCASTING SERVICE, 

Plaintiffs, 

v.

AERO, INC. dba BAMBOOM LABS, INC.,

Defendant.

Civil Action No. ___

COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES

Plaintiffs WNET, THIRTEEN, Fox Television Stations, Inc., Twentieth Century Fox Film Corporation, WPIX, Inc., Univision Television Group, Inc., The Univision Television Network Limited Partnership, and Public Broadcasting Service (collectively, “Plaintiffs”), by and for their Complaint against Defendant Aereo, Inc. dba Bamboom Labs, Inc. (“Aereo”), aver as follows:

NATURE OF THE CASE

1. On March 14, 2012, in New York City, Aereo will publicly launch an unlicensed service that streams television programming over the Internet to paying subscribers’ computers, mobile phones and tablets. Aereo’s new service will take broadcast television signals for the New York-area television stations – as Aereo touts “All the broadcasts - NBC, ABC, CBS, PBS, FOX, CW” – and retransmit them over the Internet to Aereo subscribers. Aereo has not licensed this television programming from those who own it. Nor has it sought or received consent from
the television signal owners. Thus, for $12 a month, Aereo will provide unlimited streams of
Plaintiffs’ television broadcasts over the Internet in direct competition with Plaintiffs. According
to Aereo: “With Aereo you can now watch live, broadcast television online. ... No cable
required. ... Watch the Big Game from Anywhere. ... Follow it live from your mobile or
tablet.”

2. To accomplish this, Aereo claims to have deployed multiple antennas at its
facilities in New York to receive over-the-air broadcasts of Plaintiffs’ television programming.
Aereo converts those broadcasts to a digital format that can be transmitted over the Internet, and
then “streams” the broadcasts from Aereo’s computer servers, over the Internet, to Aereo’s
paying subscribers. Aereo’s subscribers can receive those unlicensed Internet transmissions and
thus watch broadcasts of Plaintiffs’ television programming on any Internet-enabled device.
Aereo’s announced plan is to launch first in New York City, expand nationwide, and eventually
worldwide.

3. Copyright law, however, does not permit Aereo to appropriate to itself the value
of Plaintiffs’ television programming by retransmitting it over the Internet without proper
licenses. It simply does not matter whether Aereo uses one big antenna to receive Plaintiffs’
broadcasts and retransmit them to subscribers, or “ions” of “tiny” antennas, as Aereo claims it
does. No amount of technological gimmickry by Aereo — or claims that it is simply providing a
set of sophisticated “rabbit ears” — changes the fundamental principle of copyright law that those
who wish to retransmit Plaintiffs’ broadcasts may do so only with Plaintiffs’ authority. Simply
put, Aereo is an unauthorized Internet delivery service that is receiving, converting and
retransmitting broadcast signals to its subscribers for a fee.

5. The rights to transmit Plaintiffs' programming over the Internet and to portable devices are extremely valuable. Plaintiffs ask that the Court enjoin Aereo's unauthorized Internet television service and award damages arising out of Aereo's unlawful conduct.
NATURE OF DEFENDANT’S UNLAWFUL CONDUCT

25. On information and belief, Aereo began testing its online television business in April 2011, when it began offering an “invitation-only beta” test of the Aereo service to residents of New York and Connecticut.

26. On February 14, 2012, Aereo announced that it would open its service to the public on March 14, 2012. That same day, Aereo began offering subscriptions to New York City residents through its website www.aereo.com. The subscriptions will become active on March 14 and will cost $12 per month after an initial 30-day free trial.

27. In press conferences and media interviews, Aereo has stated its intent to expand to other television markets across the United States.

28. Aereo has designed, developed and operates specialized systems as part of its online television business, and has full knowledge of, and control over, how these systems work. Aereo has described the systems used in its online television business as “incredibly complex,” and has not permitted Plaintiffs the opportunity to see its systems in action or learn details of how they actually work.

29. Based on information and belief, Aereo has established one or more facilities in the New York metropolitan area at which Aereo receives programming broadcast on local television stations, including but not limited to WPIX, WNET, WLIW, WNYW, WWOR, WXTV, and WFUT. Aereo then transmits those broadcasts to its data center(s), where it encodes the programming for Internet transmission and then streams the programming over the Internet to its subscribers. Aereo makes these Internet streams, including retransmissions of the TV Programs, available to Aereo subscribers 24 hours a day, seven days a week. Indeed, Aereo’s website confirms that the Aereo service streams to Aereo users “[a]ll the broadcasts - NBC, ABC, CBS, PBS, FOX, CW & over 20 local channels,” including “Your Favorite Shows.”
30. When Aereo retransmits the images and accompanying sounds of Plaintiffs’ copyrighted audiovisual works to subscribers of the Aereo service, it performs Plaintiffs’ copyrighted works publicly in violation of Plaintiffs’ exclusive rights under Section 106(4) of the Copyright Act, 17 U.S.C. § 106(4).

31. The public performance right provides the economic foundation upon which the television production and distribution industries rest. Program suppliers such as PBS, Fox, and UNLP license their works for public performance through various distributors, including broadcast networks and broadcast stations. Program suppliers and broadcasters produce and license works for public performance on cable and satellite television, as well as over the Internet and through other media.

32. The Copyright Act’s right of public performance applies broadly to television distribution. Congress described the public performance right as extending to “not only the initial rendition or showing, but also any further act by which that rendition or showing is transmitted or communicated to the public.” H.R. Rep. No. 94-1476, at 63 (1976). As examples Congress indicated that “a broadcasting network is performing when it transmits [a] performance; a local broadcaster is performing when it transmits the network broadcast; [and] a cable television system is performing when it retransmits the broadcast to its subscribers . . . .” Id. Congress emphasized that a performance may be accomplished by “all kinds of equipment for reproducing or amplifying sounds or visual images, and . . . systems not yet in use or even invented.” Id.

33. Congress described the concept of “public” performance in similarly broad terms. In particular, a public performance includes “acts that transmit or otherwise communicate a performance . . . of the work to the public by means of any device or process.” Id. at 64.
Congress explained that such transmission “include[s] all conceivable forms and combinations of wired or wireless communications media, including but by no means limited to radio and television broadcasting as we know them.” Id. It added that “[e]ach and every method by which the images or sounds comprising a performance … are picked up and conveyed is a ‘transmission,’ and if the transmission reaches the public in any form, the case comes within the scope of” the public performance right. Id. (emphasis added). Indeed, the Copyright Act explicitly provides that a transmission of a performance is public even if members of the public receive the transmission in separate places and at different times. 17 U.S.C. § 101.

34. Plaintiffs have never authorized Aereo to make public performances of their copyrighted works, and Aereo has expressly and rightly disclaimed entitlement to any statutory performance license.

35. Accordingly, whenever Aereo captures and retransmits a broadcast of Plaintiffs’ copyrighted works, it infringes Plaintiffs’ exclusive right of public performance.

36. As part of Aereo’s process of encoding live television broadcasts for Internet retransmission and making such retransmissions, Aereo also reproduces Plaintiffs’ copyrighted works in violation of Plaintiffs’ exclusive rights under Section 106(1) of the Copyright Act, 17 U.S.C. § 106(1).

37. To perform such encoding and retransmission, Aereo must reproduce programming transmitted by broadcasters, including the TV Programs, on computers at its facilities. On information and belief, these copies persist for a period of more than transitory duration.
38. Plaintiffs have never authorized Aereo or its subscribers to make reproductions of their copyrighted works.

39. Accordingly, whenever Aereo or its subscribers reproduce any of Plaintiffs’ copyrighted works in connection with Aereo’s retransmission of live broadcasts of those works over the Internet, Aereo infringes Plaintiffs’ exclusive reproduction rights.

40. By commercially exploiting Plaintiffs’ programming without authorization, Aereo seeks to compete directly with Plaintiffs and their lawful licensees and authorized retransmitters, and further take advantage of and undermine Plaintiffs’ substantial creative and financial investment in the creation and broadcast of their programming and broadcasts. Aereo further free rides on Plaintiffs’ substantial investment in their broadcasting infrastructures. Aereo is willfully, wantonly and unfairly exploiting Plaintiffs’ programming and broadcasts for its own commercial benefit.
41. Aereo’s infringing and unlawful conduct is causing and will cause Plaintiffs’ substantial and irreparable injury by, among other things, undermining their business relationships with, and Plaintiffs’ ability to license their content to, both traditional transmitters of television programming and new services that deliver television programming and motion pictures to portable devices via the Internet. These services include Internet-only services such as iTunes and Hulu, and authorized offerings by cable, satellite, broadband, and mobile telecommunications providers. Aereo’s conduct thus interferes with Plaintiffs’ current relationships with these companies and with Plaintiffs’ ability to license these and other companies going forward. Aereo’s conduct also interferes with Plaintiffs’ own websites, from which Plaintiffs stream their content. In addition, Aereo’s conduct prevents Plaintiffs from enforcing their standards for high quality and security that are an integral part of Plaintiffs’ decision-making concerning any licensing or distribution of their works. Furthermore, Plaintiffs will lose the ability to measure viewership of their programming by Aereo subscribers, which will adversely affect Plaintiffs’ ability to sell advertising, obtain sponsorships, and otherwise derive value from their programming. In short, Aereo’s unlawful conduct injures Plaintiffs’ ability to use their programming for their own benefit.
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AMERICAN BROADCASTING COMPANIES, INC., DISNEY ENTERPRISES, INC., CBS BROADCASTING INC., CBS STUDIOS INC., NBCUNIVERSAL MEDIA, LLC, NBC STUDIOS, LLC, UNIVERSAL NETWORK TELEVISION, LLC, TELEMUNDO NETWORK GROUP LLC, WNJU-TV BROADCASTING LLC,

Plaintiffs,

v.

AEREO, INC.,

Defendant.

Case No. 12-Civ-1540 (AJN)

ECF CASE

ANSWER AND COUNTERCLAIM


This case involves nothing more than the application of settled law to updated technology—settled law that establishes conclusively that Aereo’s business is entirely lawful. Plaintiffs’ Complaint fails because Aereo merely provides technology (the “Aereo Technology”) that consumers may use to do what they are legally entitled to do: (1) access free and legally accessible over-the-air television broadcasts using an antenna; (2) create individual, unique recordings of those broadcasts for personal use, see Sony Corp. of America v. Universal City Studios, Inc., 464 U.S. 417 (1984); and (3) record and play back those unique recordings
utilizing a remotely-located digital video recorder ("DVR") to personal devices, see Cartoon Network LP v. CSC Holdings, Inc., 536 F.3d 121 (2d Cir. 2008). When a consumer is accessing broadcast television using the Aereo Technology, he or she is using a specific individual antenna that is tuned and used only by that consumer for the duration of that access. Aereo, through the Aereo Technology, simply provides to its members the convenience of locating at a remote facility the type of equipment that they could otherwise have and use at home. Accordingly, Plaintiffs' claims are without merit and Aereo is entitled to judgment in its favor on its counterclaim set forth below.

COUNTERCLAIM

This case concerns the application of established law to an innovative use of familiar technologies. Consumers use the Aereo Technology to do no more than what they are entitled to do: access local television broadcasts on the public airwaves using an individual antenna; create unique copies of that broadcast content for their own personal use; and play back their unique recordings to their televisions or other viewing devices for their personal use.

INTRODUCTION

1. The Aereo Technology operates within the confines of three well-established principles of telecommunications and copyright law. First, it has been well-settled since the Radio Act of 1927 that the airwaves are owned by the public and licensed to broadcasters for the benefit of the public interest, convenience, and necessity. See 47 U.S.C. § 151 et seq.

2. Second, consumers have an equally well-established right to record for their own personal use the programming content to which they have legal access. See Sony Corp. of America v. Universal City Studios, Inc., 464 U.S. 417 (1984).

3. Third, companies that merely supply remote technological means that customers can use to make personal recordings and play them back are not liable for copyright infringement as to the recorded programming content. See Cartoon Network LP v. CSC Holdings, Inc., 536 F.3d 121 (2d Cir. 2008).

4. The Aereo Technology rests squarely on these three bedrock legal principles. Aereo members use a remotely located antenna to receive local over-the-air programming content and a remotely located DVR to record unique copies of that content for their personal use. When a consumer is accessing broadcast television using the Aereo Technology, he or she is using a specific individual antenna that is tuned and used only by that consumer for the duration of that access. Aereo members can then play their unique copies back to themselves on an Internet-connected television or other personal device such as a mobile phone or tablet.

5. Aereo has been forthcoming and transparent about its technology and intentions. Beginning in the Spring of 2011, Aereo launched a website which described its business concept and announced that it was conducting Beta testing on the Aereo Technology. Aereo was also open about the fact that it planned to publicly launch the Aereo Technology in early 2012. Since
at least April 2011, Aereo and the Aereo Technology have been the subject of significant media coverage. Indeed, beginning as early as April 2011, Aereo executives met with high-level executives of certain of the Counterclaim Defendants and described the Aereo Technology in these meetings.

6. On February 14, 2012, Aereo publicly announced that it intended to make its technology available to the public on March 14, 2012. As of the day that this lawsuit was filed, Aereo had not received any cease and desist letter or other demand not to launch.
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THE PARTIES

7. Counterclaim Plaintiff Aereo is a New York corporation with its principal place of business in Long Island City, New York. Aereo offers the Aereo Technology to customers in the New York City broadcast area.

8. Upon information and belief, Counterclaim Defendant American Broadcasting Companies, Inc. (“ABC”) is a Delaware corporation with its principal place of business at 77 West 66th Street, New York, New York, and does business as the ABC Television Network and as WABC-TV. The FCC has licensed ABC to operate the television station identified by the call letters WABC-TV (“WABC”), the signal of which is broadcast to viewers over the air in the New York City market.

9. Upon information and belief, Counterclaim Defendant Disney Enterprises, Inc. (“DEI”) is a Delaware corporation with its principal place of business at 500 S. Buena Vista Street, Burbank, California.

10. Upon information and belief, Counterclaim Defendant CBS Broadcasting Inc. (“CBS”) is a New York corporation with its principal place of business at 51 West 52nd Street, New York, New York. The FCC has licensed CBS to operate the television station identified by
the call letters WCBS-TV (“WCBS”), the signal of which is broadcast to viewers in the New York City market.

11. Upon information and belief, Counterclaim Defendant CBS Studios Inc. (“CBS Studios”) is a Delaware corporation with its principal place of business at 51 West 52nd Street, New York, New York.

12. Upon information and belief, Counterclaim Defendant NBCUniversal Media, LLC (“NBCUniversal”) is a Delaware limited liability company with its principal place of business at 30 Rockefeller Plaza, New York, New York. The FCC has licensed NBCUniversal to operate the television station identified by the call letters WNBC-TV (“WNBC”), the signal of which is broadcast to viewers in the New York City market.

13. Upon information and belief, Counterclaim Defendant NBC Studios, LLC (“NBC Studios”) is a New York limited liability company with its principal place of business at 100 Universal City Plaza, Universal City, California, and is a wholly owned subsidiary of Counterclaim Defendant NBCUniversal.

14. Upon information and belief, Counterclaim Defendant Universal Network Television, LLC (“UNT”) is a Delaware limited liability company with its principal place of business at 100 Universal City Plaza, Universal City, California, and is a wholly owned subsidiary of Counterclaim Defendant NBCUniversal.

15. Upon information and belief, Counterclaim Defendant Telemundo Network Group LLC (“Telemundo”) is a Delaware limited liability company with its principal place of business at 2290 West 8th Avenue, Hialeah, Florida, and is a wholly owned subsidiary of Counterclaim Defendant NBCUniversal.

16. Upon information and belief, Counterclaim Defendant WNJU-TV Broadcasting
L.L.C (“WNJU-TV”) is a Delaware corporation with its principal place of business at 2290 West 8th Avenue, Hialeah, Florida, and is a wholly owned subsidiary of Counterclaim Defendant NBCUniversal. The FCC has licensed WNJU-TV to operate the television station identified by the call letters WNJU-TV (“WNJU”), the signal of which is broadcast to viewers in the New York City market.

JURISDICTION AND VENUE

17. This is an action for declaratory judgment pursuant to 28 U.S.C. § 2201 and Fed. R. Civ. P. 57, seeking a declaration of the rights and/or other legal relations of the parties to this litigation with respect to an actual controversy arising under the copyright laws of the United States, 17 U.S.C. § 101 et seq.


FACTS

20. Aereo has developed a television antenna that is very small—about the size of a dime.

21. The development of these miniature antennas allows, for the first time, for the practical remote placement of a consumer’s antenna. Each member uses an individual antenna when he or she uses Aereo’s system.
22. Each member also has access to a remote storage DVR. Using this remote storage DVR, Aereo members can initiate recordings or play back their previously recorded programs. Program recordings by Aereo members are embodied in individual, unique copies specifically identified with each member, and are available only to that member.

23. One need look no further than the fact that consumers are entitled to access over-the-air broadcast television and the holdings in *Sony* and *Cartoon Network* to confirm that the Aereo Technology is lawful.

24. Accordingly, Aereo is entitled to a declaratory judgment that Aereo does not violate the Copyright Act.

**CLAIMS FOR RELIEF**

**COUNT I**
(Request for Declaratory Judgment)

25. Aereo repeats and realleges the allegations set forth in paragraphs 1-24 herein.

26. In light of Counterclaim Defendants’ Complaint against Aereo, there exists an actual and justiciable controversy between Aereo and Counterclaim Defendants as to whether Aereo infringes any of Counterclaim Defendants’ copyrights.

WHEREFORE, Aereo respectfully requests that this Court enter judgment in its favor and against Counterclaim Defendants:

a. declaring that the use of the Aereo Technology does not infringe, and that Aereo does not otherwise infringe, any of Counterclaim Defendants’ copyrights;

b. awarding Aereo its costs and attorneys’ fees in accordance with 17 U.S.C. § 505 and other applicable law; and

c. granting Aereo such further relief as the Court deems just and proper.