



Reading List

Copyright Policy and the Future of Television

Tuesday, May 13, 2014



Silicon Flatirons

A Center for Law, Technology, and Entrepreneurship at the University of Colorado

Pro Aereo Articles	
Title: Broadcasters Don't Own the Airwaves Author: Barry Diller	Link: http://online.wsj.com/news/article_email/SB10001424052702304640104579490090761419038-1MyQjAxMTA0MDEwNjExNDYyWj
An op-ed written by Barry Diller, a minority investor in Aereo, supporting Aereo's position in the pending Supreme Court case.	
Title: Brief of Amici Curiae Small and Independent Broadcasters in support of Respondent Author: Jason Schultz	Link: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2419396
This brief provides an interesting perspective on the <i>Aereo</i> case that is out of line with the general arguments. It is a good discussion of the potential value that Aereo could provide to the broadcast industry, at least to certain members of that industry, and the value of the innovation more generally. This brief expands the understanding of the business context in broadcast and the value of innovation in that market.	
Title: Why Johnny can't stream: How Video Copyright Went Insane Author: James Grimmelmann	Link: http://arstechnica.com/tech-policy/2012/08/why-johnny-cant-stream-how-video-copyright-went-insane/
Grimmelmann's article provides an in-depth discussion of the legal underpinnings of the <i>Aereo</i> case and a review of the recent decisions that led Aereo to adopt the streaming model it did.	
Anti-Aereo Articles	
Title: The Demise of the Copyright Act in the Digital Realm Author: Megan Larkin	Link: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2410523
This note takes a decidedly pro-copyright stance in arguing that "the Second Circuit's interpretation eviscerates the meaning of 'public' within the digital realm." Further, this interpretation will have the perverse effect of allowing businesses to structure content delivery systems to circumvent copyright liability, "creating a massive loophole in copyright protection." The paper gives a background on the public performance right, discusses the Second Circuit's holding, and argues that copyright should be protected by "prioritize[ing] function over form and adopt[ing] a delivery-agnostic approach to evaluating copyright infringement."	
Title: Even with Supreme Court Win, Aereo still Might Lose Author: Mark Rogowsky	Link: http://www.forbes.com/sites/markrogowsky/2014/01/11/even-with-a-supreme-court-win-aereo-still-might-lose/
Rogowsky discusses the options that broadcasters might exercise if the Supreme Court finds Aereo's business model legal including taking their broadcasts of the air, providing competing online streaming services, or migrating a small portion of broadcasted content to retransmission-only distribution.	
Title: Broadcaster Blast Nonsensical' Aereo Ruling in Supreme Court Author: Todd Spangler	Link: http://variety.com/2013/biz/news/broadcasters-blast-nonsensical-aereo-ruling-in-supreme-court-response-1200990878/
The article discusses the background of the case, Aereo's technology, and the arguments presented in the Broadcasters' brief before the Supreme Court.	



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Background/Neutral Articles	
Title: Is Aereo the 21 st Century Version of “Rabbit Ears,” or Is It Just Tying Loopholes? Author: Masha Litvinov	Link: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2412106
The article sets the stage by discussing Aereo, the broadcast industry, and copyright jurisprudence. Next, the article reviews the injunction analysis conducted the Southern District of NY Court and the Second Circuit’s review of that decision. The article provides a brief discussion <i>IVI TV</i> and <i>Aereokiller</i> . Finally, the article closes with a discussion of the future impact of Aereo on the industry.	
Title: Challenge to Streaming TV Author: Lyle Denniston	Link: http://www.scotusblog.com/2013/10/challenge-to-streaming-tv/
A Scotusblog article previewing the Aereo debate and discussing the pending cert request before the Supreme Court. While it was published before the Court granted Cert, the article does a good job outlining the legal issues, giving a background on the technology, previewing the arguments of each side, and discussing relevant jurisprudence.	
Title: A Startup, the Supreme Court, and the Future of TV Author: Michael Phillips	Link: http://www.newyorker.com/online/blogs/elements/2014/01/aereo-supreme-court-future-of-television-internet.html
This article does a good job of setting the stage for the Aereo case before the Supreme Court. It briefly discusses Aereo’s business model, the legal issues, the arguments in the briefs, and the larger business implications the Court’s decision might have on the TV market.	
Title: Broadcasters Seek Aereo ‘Plan B’ Author: Amol Sharma and Brent Kendall	Link: http://online.wsj.com/news/articles/SB10001424052702303873604579495942437987118
This article outlines the possible responses broadcasters are considering including their own over the top streaming services or pulling their broadcasts from the air entirely. It does a good job of grounding the legal issues in the potential business implications of the Aereo decision.	
Title: Netflix is Going to Rule TV After All Author: Marcus Wohlsen	Link: http://www.wired.com/2014/01/turns-netflix-going-rule-tv/
This article discusses the Netflix business model and the changing dynamic of content production and consumption in reaction to the entry of the Netflix to the digital media market.	
Title: Can Aereo Disrupt the TV Business? Author: Ken Auletta	Link: http://www.newyorker.com/online/blogs/newsdesk/2013/02/can-aereo-disrupt-the-tv-business.html
Synopsis: A fairly early account of the Aereo business model, this article discusses its disruptive potential and how that model may undermine the traditional business models for cable and broadcast TV. (published Feb. 2013)	