



Supreme Court Justices fear hurting other industries with Aereo ruling

Justices criticised Aereo for not paying licensing fees to TV broadcasters but worried about the effect a ruling could have on cloud computing, as the online TV service and broadcasters pleaded their cases during an oral hearing at the US Supreme Court.

ABC Television Stations v Aereo is finally being heard at the Supreme Court, which is expected to deliver a ruling in the case before the end of June. The oral hearing was held on 22 April.

Broadcasters including ABC, CBS, Fox and PBS accuse Aereo of using arrays of thousands of tiny antennas to capture over-the-air transmissions to side step the public performance provision of the US Copyright Act.

As subscribers each view their own personal recording on a computer or mobile device, there is no public

performance of the protected work. As a result, TV broadcasters' rights to control public performances of their works are not infringed, according to Aereo.

During the hearing, Aereo counsel David Frederick said that the TV service creates "user-specific, user-initiated copies [that] are private performances".

The problem for Chief Justice John Roberts was not that Aereo's technology is inherently illegal, but that its "technological model is based solely on circumventing legal prohibitions", while Justice Sonia Sotomayor questioned the TV service's business description.

"Makes secondary transmissions by wires, cables, or other communication channels'. It seems to me that a little antenna with a dime fits that definition [of publicly performing a work]. To subscribing members of the public who pay for such service. I mean, I read it and I say, why aren't they a cable company?"

[readmore p2](#)

AXA launches first .brand

Global insurer AXA is the first brand to launch a TLD.

Its TLD, .axa, will be a trusted string for AXA clients and affiliates. The first website available under the new TLD is domains.axa.

AXA has billed the TLD as "exclusively developed for the AXA insurance group". The Internet Corporation for Assigned Names and Numbers authorised the global insurer's application in December 2013.

Its first .axa website says: "The registration and the use of dotAXA domain names will be therefore exclusively reserved to AXA and its affiliates. When you visit a website with an internet address ending with .axa, you can be certain that it's authorised by AXA and overseen by us."

[readmore p2](#)

Authors Guild: Google Books angers many

Authors, photographers, visual artists, songwriters, and publishers have called for the US Court of Appeals for the Second Circuit to find that Google's mass book digitisation programme violates US copyright law.

Eight amicus briefs were filed in support of the Authors Guild on 14 April, following the advocacy group's 11 April appeal against the District Court for the South southern District of New York ruling.

The district court found in November last year that Google's scanning of millions of books and making snippets of them available online is fair use under US copyright law.

The Authors Guild has been engaged in litigation against Google since 2005.

[readmore p2](#)

Heading to the INTA 2014 Annual Meeting?

Visit IPPro The Internet and Life Sciences at Booth 616 to pick up copies of the publications and meet the team



If you'd like to set up a meeting to find out more about the IPPro brand, send an email to Carlos Northon at: carlosnorthon@ipprotheinternet.com

Curb your piracy

Gabriela Kennedy of Mayer Brown JSM discusses why Singapore is looking to allow rights holders to seek injunctions without first having to prove infringement

FRANKI WEBB REPORTS

How is Singapore proposing to expedite the process through which rights holders obtain injunctions against ISPs?

The proposed legislative changes will enable rights holders to apply directly to the courts to seek injunctions that would require ISPs to block access to infringing websites, without first having to establish the ISPs' liability for copyright infringement.

However, this does not mean that copyright holders can obtain the injunctions without strong supporting evidence.

The provisions are meant to assist rights owners deal with websites that "show a blatant disregard for, and that clearly infringe copyright", such as peer-to-peer file sharing websites.

To succeed in an action under the new provisions, a copyright holder must satisfy the court that the pirate site is being used to "flagrantly infringe copyright".

The provisions set out factors that the court will consider in deciding whether a site flagrantly infringes copyright, for example, if access to the website has been disabled by orders from a court of another country.

In addition, a copyright holder must also demonstrate that the ISP has knowledge that it is being used to access the infringing site.

The order under the new provisions would require an ISP to take reasonable steps to disable access to the website. The ISP will not be subject to criminal sanctions or be required to pay any fines or damages.

Similar provisions introduced in Section 97A of the UK Copyright Designs and Patents Act 1988 (CDPA) has become an established means to curb online piracy. In Twentieth Century Fox Film Corp v Newzbin in 2010, the copyright owner was granted an injunction against Newzbin, a website enabling users to download pirated audio-visual works.

However, going after the owner of the site proved ineffective, because within two weeks of the website ceasing to operate, a new one offering essentially the same services named Newzbin2 appeared at the same URL.

A subsequent order granted under Section 97A blocking access to the website via the ISP proved to be a much more effective solution.

How big of a problem is online copyright infringement in Singapore at the moment?

Like elsewhere in Asia, copyright infringement, in the form of internet piracy, is a serious problem. This may be due to the fact that Singapore is technologically advanced with a high rate of smartphone penetration and widespread high-speed internet availability.

In 2012, Singapore boasted 10.2 million broadband internet connections, for a population of just 5.3 million. The advanced electronic infrastructure has created an environment that is conducive to online copyright infringement.

In a study analysing piracy trends in Australia, New Zealand and Singapore, piracy of movies and television shows was found to be more prevalent among Singaporean respondents than among respondents from Australia or New Zealand.

Approximately 50 percent of Singaporean respondents admitted to having engaged in piracy—an alarming statistic.

Is counterfeiting a big problem in Singapore with its close proximity to China?

As a global trading and business hub, millions of people and goods pass through Singapore's borders each day. However, this feature has made Singapore a popular port for the transshipment of counterfeit goods. Public Prosecutor v Lim Tiong Yee in 2012 is a case example involving goods from China.

The defendant was in the business of sourcing counterfeit mobile telephones and accessories from China, repacking them, and shipping them to Indonesia.

There have also been cases in Singapore involving counterfeit liquor and drugs, which the authorities rightly view as a serious problem.

Most of the counterfeit drugs found in Singapore have been 'lifestyle' drugs offered on the 'fringe' or black market.

Nevertheless, in comparison with other countries within the Asia Pacific region, Singapore is recognised as having a strong intellectual property rights regime. The Singaporean authorities have adopted a strong stance towards coun-

terfeits, and the penalties for counterfeiting in Singapore are severe. Any person found guilty of counterfeiting a registered trademark may be fined up to S\$100,000 (\$80,000), or jailed for up to five years, or both.

The authorities have stepped up their anti-counterfeiting efforts in recent years. Statistics from the Singaporean Police Force's IP Rights Branch show that both the number of raids and the total value of seized goods increased between 2011 and 2012.

In April 2013, the Singapore Police Force conducted a successful raid in which it seized a large quantity of adulterated counterfeit liquor and production equipment worth more than S\$336,000 (\$260,000).

What are the major flaws of the IP system in Singapore?

Most of the concerns raised in relation to Singapore's current IP system are internet or technology related. Not enough has been done to deter end-user software piracy, and there has been a lack of effective enforcement against online peer-to-peer infringement.

Piracy has hit the local television, film and music industries hard. According to statistics from the International Federation of the Phonographic Industry, the value of the music industry plummeted from almost S\$90 million (\$70 million) in 1997 to just S\$20 million (\$16 million) in 2012.

The proposed amendments to the Copyright Act will provide much-needed strength to the enforcement regime. **IPPro**



Gabriela Kennedy
Head of IP Asia
Mayer Brown JSM