

## Aereo Claims Networks Refuse to Produce Documents Showing ‘Fair Use’ in © Infringement Action

Aereo Inc. told a New York federal court Friday that CBS Broadcasting Inc. and other networks have refused to hand over evidence showing how their business is harmed by Aereo’s streaming service, saying the information is crucial to the networks’ claim that Aereo’s technology infringes their copyrights.

Aereo is seeking documents from the major television networks supporting their contention that its service, which allows its subscribers to stream and record TV programming over the Internet, is substantively different from existing digital video recording technology. The networks claim Aereo’s business infringes their public performance right to their copyrighted shows.

“Plaintiffs are challenging a specific way that consumers are accessing and recording otherwise free-to-air broadcast television,” Aereo said. “In doing so, they open themselves to discovery on the question of how Aereo technology harms them in a way that is different than existing technologies acknowledged to be legal.”

The documents Aereo requests include the networks’ per-program advertising revenue. The company sent the networks a letter Feb. 1 requesting the documents, but the networks have refused to produce all the documents it has requested, the company claims.

The information Aereo requested concerns the networks’ alleged damages. The company says the documents it seeks will be used to develop one of its primary defenses in the case: that its service is protected under the fair-use doctrine.

In July, U.S. District Judge Alison J. Nathan rejected the networks’ bid for an injunction, finding that Aereo’s service was legal under the Second Circuit’s 2008 ruling in a case known as *Cablevision*, which held that remote-storage digital video recorders did not constitute a public performance.

Like *Cablevision*’s DVRs, Aereo’s system creates unique copies of shows and transmits them directly to the users that request them, so the performances are private and not a violation of the Copyright Act, Judge Nathan ruled. The Second Circuit heard oral arguments on the networks’ appeal in November.

Fox Broadcasting Co., Univision Communications Inc., WNET Thirteen and PBS are represented by David J. Bradford, Scott B. Wilkens, Steven R. Englund of Jenner & Block LLP and Bruce P. Keller and Michael R. Potenza of Debevoise & Plimpton LLP. ABC Inc., CBS, NBCUniversal Media LLC, Disney Enterprises Inc. represented by Bruce P. Keller and Michael R. Potenza of Debevoise & Plimpton LLP.

Aereo is represented by John C. Englander, R. David Hosp and Mark Puzella of Goodwin Procter LLP, Michael S. Elkin and Thomas P. Lane of Winston & Strawn LLP, and Seth D. Greenstein of Constantine Cannon LLP.

The cases are [WNET et al. v. Aereo Inc.](#), case number 1:12-cv-01543, and [ABC Inc. et al. v. Aereo Inc.](#), case number 1:12-cv-01540, in the U.S. District Court for the Southern District of New York.