

13-461 ABC, INC. V. AEREO, INC.

DECISION BELOW: 712 F.3d 676

LOWER COURT CASE NUMBER: 12-2786, 12-2807

QUESTION PRESENTED:

A copyright holder possesses the exclusive right "to perform the copyrighted work publicly." 17 U.S.C. §106(4). In the Copyright Act of 1976, Congress defined the phrase "[t]o perform ... 'publicly'" to include, among other things, "to transmit or otherwise communicate a performance or display of the work ... to the public, by means of any device or process, whether the members of the public capable of receiving the performance or display receive it in the same place or in separate places and at the same time or at different times." *Id.* §101. Congress enacted that provision with the express intent to bring within the scope of the public-performance right services that retransmit over-the-air television broadcasts to the public. Respondent Aereo offers just such a service. Aereo captures over-the-air television broadcasts and, without obtaining authorization from or compensating anyone, retransmits that programming to tens of thousands of members of the public over the Internet for a profit. According to the Second Circuit, because Aereo sends each of its subscribers an individualized transmission of a performance from a unique copy of each copyrighted program, it is not transmitting performances "to the public," but rather is engaged in tens of thousands of "private" performances to paying strangers.

The question presented is:

Whether a company "publicly performs" a copyrighted television program when it retransmits a broadcast of that program to thousands of paid subscribers over the Internet.

JUSTICE ALITO TOOK NO PART. 4/16/2014: Justice Alito is no longer recused.

CERT. GRANTED 1/10/2014