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WLF Calls on DC Circuit to Protect Broadcasters Against Copyright Infringement

(*Fox Television Stations, Inc. v. FilmOn X, LLC*)

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—Cory Andrews, WLF Senior Litigation Counsel

WASHINGTON, DC—Washington Legal Foundation today called on the U.S. Court of Appeals for the DC Circuit to uphold a lower-court decision that refused to legitimize a business model based on the unauthorized, for-profit exploitation of the copyrighted works of others. In an *amicus* brief filed in *Fox Television Stations, Inc. v. FilmOn X, LLC*, WLF argues that the district court faithfully applied federal copyright law by declining defendants’ invitation to drastically expand the definition of “cable system” under § 111 of the Copyright Act.

The case arises from a copyright-infringement suit brought by leading creators, producers, and distributors of original broadcast television programming against FilmOn X, an Internet service designed to evade federal copyright law. Using an elaborate network of thousands of tiny antennae, FilmOn X captures over-the-air television broadcasts and retransmits them via the Internet to its paid subscribers. The case is the latest front in an ongoing battle following the Supreme Court’s earlier decision in *American Broadcasting Cos. v. Aereo, Inc.*, which held that Internet retransmissions constitute infringing “public performances” of copyrighted works.

Reversing course in the face of *Aereo*, FilmOn X now contends that it qualifies as a “cable system” under § 111. WLF’s brief urges the DC Circuit not to disrupt the delicate balance that Congress struck in crafting § 111. That balance grants copyright owners a broad, exclusive right of public performance to their work with only limited exceptions. In narrowly defining “cable system,” Congress sought to make television broadcast programming available to isolated, rural areas while incentivizing the creation of new content through copyright protection. WLF’s brief also asks the appeals court to defer to the Copyright Office’s longstanding, consistently held view that § 111 licenses for “cable systems” are limited to inherently “localized transmission services” that retransmit within a local market.

Upon filing its brief, WLF issued the following statement by Senior Litigation Counsel Cory Andrews: “FilmOn seems to think it is open season on broadcast television programming. In urging the Court to hold that Internet-based retransmission services qualify as ‘cable systems’ under the Copyright Act, FilmOn not only seeks to gut copyright holders’ exclusive public-performance rights, but also to severely distort a well-functioning marketplace by upending stakeholders’ settled expectations.”

WLF is a national, public-interest law firm and policy center that regularly litigates in support of the property rights of owners, including owners of intellectual property.