



United States Copyright Office

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By Email and First-Class Mail

July 16, 2014

Mr. Matthew Calabro
Aereo, Inc.
280 Summer Street
Boston, MA 02210

Re: Section 111 Statement of Account Filings

Dear Mr. Calabro:

Invoking the statutory license for secondary transmissions by cable systems in 17 U.S.C. § 111, Aereo, Inc. (“Aereo”), has tendered to the U.S. Copyright Office fourteen statements of account (“SOAs”) covering reporting periods from January 1, 2012 through December 31, 2013, along with associated royalty and filing fees totaling \$5,310.74.

In the view of the Copyright Office, internet retransmissions of broadcast television fall outside the scope of the Section 111 license.¹ Significantly, in *WPIX, Inc. v. ivi, Inc.*, 691 F.3d 275 (2d Cir. 2012), the Second Circuit deferred to and agreed with the Office’s interpretation of Section 111. As explained in that case, Section 111 is meant to encompass “localized retransmission services” that are “regulated as cable systems by the FCC.” *Id.* at 284 (quoting 57 Fed. Reg. 3284, 3292 (Jan. 29, 1992)). We do not see anything in the Supreme Court’s recent decision in *American Broadcasting Cos. v. Aereo, Inc.*, 134 S. Ct. 2498 (2014), that would alter this conclusion.

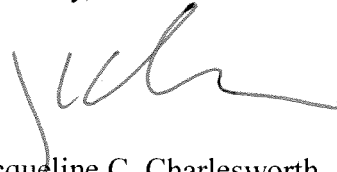
According to established Copyright Office practice, the Office may accept Aereo’s SOA filings without comment; accept them provisionally, either taking no position or commenting upon any reservations we may have about the filings; or refuse the filings as not eligible under the compulsory license. *See* 53 Fed. Reg. 17962, 17963 (May 19, 1988). For the reasons discussed above, the Office does not believe Aereo qualifies for the Section 111 statutory license, and will not process Aereo’s filings at this time.² In recognition of the fact that Aereo has raised the

¹ *See, e.g.*, U.S. Copyright Office, *A Review of the Copyright Licensing Regimes Covering Retransmission of Broadcast Signals* 91-99 (1997); *Copyright Broadcast Programming on the Internet: Hearing Before the Subcomm. on Courts and Intellectual Property of the Comm. on the Judiciary*, 106th Cong. 25-26 (2000) (statement of Marybeth Peters, Register of Copyrights).

² Because Aereo does not appear to be eligible for the statutory license, the Office does not at this time address other potential concerns about the adequacy of Aereo’s filings under Section 111.

issue before the courts, however, the Office will not refuse Aereo's filings but will instead accept them on a provisional basis.³ Aereo should be aware that, depending upon further regulatory or judicial developments, and/or based upon the Office's own further review of the issue, the Office may subsequently determine that it is appropriate to take definitive action on Aereo's filings, which could include rejection of the statements.

Sincerely,



Jacqueline C. Charlesworth
General Counsel and Associate Register
of Copyrights

cc: Mr. Ramon Rivera, Aereo, Inc.

³ We also note the pendency of a proceeding before the Federal Communications Commission concerning whether internet-based services may be treated as "multichannel video programming distributors" for purposes of communications law, the outcome of which could impact the analysis under Section 111, as Section 111 limits the statutory license to retransmission services that are "permissible under the rules, regulations, or authorizations of" the FCC. *See Media Bureau Seeks Comment on Interpretation of the Terms "Multichannel Video Programming Distributor" and "Channel" As Raised in Pending Program Access Complaint Proceeding*, MB Docket No. 12-83, DA 12-507 (released Mar. 30, 2013), available at <http://www.fcc.gov/document/media-bureau-seeks-comment-interpretation-mvpd-and-channel>.