TV startup shakes up US broadcasters with court win

April 7 2013, by Rob Lever

File picture for illustration shows a customer looking at television setsin a department store. A startup whose business model is based on tiny antennas receiving over-the-air television for online viewing by subscribers has put the US broadcast industry on the defensive.

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Aereo made headlines on April 1 with a preliminary court victory over the major broadcasters, which had sought to shut down the service for copyright infringement.

The case, which is still pending, is seen by some as a potentially groundbreaking test: for consumers, whether they can "shift" TV viewing to the Web through a third party; and for broadcasters, whether they can maintain control of their content.

Aereo, which is backed by media mogul Barry Diller, launched in early 2012 in the New York area and was immediately sued by the major broadcast networks—ABC, NBC, CBS and Fox—for copyright infringement.

The company claims its actions are legal, because it is not rebroadcasting, but giving subscribers a personal antenna in its New York warehouse that enables them to watch live TV or record it for later viewing.

A US appeals court panel agreed with Aereo, in a preliminary decision on a request for an injunction to shut down the service. A full hearing in the case is still pending.

The court ruled 2-1 that Aereo was not retransmitting "public performances," which would be banned under copyright law, but merely allowing customers to rent antennas to receive and record free broadcasts.

"Aereo's system creates a unique copy of that program on a portion of a hard drive assigned only to that Aereo user," the appeals court said, upholding a lower court decision.

Chet Kanojia, Aereo's founder and chief executive, said the ruling

"sends a powerful message that consumer access to free-to-air broadcast television is still meaningful in this country and that the promise and commitment made by the broadcasters to act in the public interest in exchange for the public's spectrum remains an important part of our American fabric."

Some called the ruling a victory for consumers, saying it will allow them to get out from constraints from cable companies, which call the shots for most US TV viewers.

Mitch Stoltz of the Electronic Frontier Foundation called the court decision "a win for Aereo, its customers and for future innovators with the audacity to improve the TV-watching experience."

Stoltz said the ruling "gives companies like Aereo an incentive to put TV technology firmly under the viewer's control."

Aereo "looks like a good idea" for a "broken industry," said independent analyst and consultant Jeff Kagan.

"This is an industry where where prices keep going up every year," he added. "The cable companies keep giving people more channels but the average customer watches only five or 10 channels. We may be coming into a time when customers are going to have options."

Ed Black at the Computer & Communications Industry Association said the case is "a test of the legitimacy of the cloud computing industry."

The court "agreed with us that users should be able to access their own, lawfully acquired content in the cloud without the fear of being branded pirates," Black added.

But the National Association of Broadcasters, which represents the main

networks, said it was "disappointed" the the court declined to shut down what it called "illegal operations" that violate copyright laws.

NAB spokesman Dennis Wharton said he was encouraged by the dissenting opinion which said Aereo's system of individual antennas is a "sham" designed "to avoid the reach of the Copyright Act."

It remains unclear if Aereo will pose a threat to broadcasters or the cable industry. The company has declined to say how many subscribers it has, but estimates are only a few thousand in the New York area, with plans to launch in more than 20 additional cities soon.

Richard Greenfield of BTIG Research said the TV landscape is shifting with Aereo and other kinds of streaming services, and broadcasters need to face the challenge.

"As long as Aereo exists for consumers, it significantly changes the leverage imbalance that has dominated (retransmission) negotiations," he said.

"The more markets Aereo expands to, the greater the retrans leverage shifts."

Greenfield said broadcasters "need to accept Aereo's legality and figure out how to deal with the implications to their business."

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