CPTWG MEETING
#128
July 18, 2012

Litigation/Legislative Update

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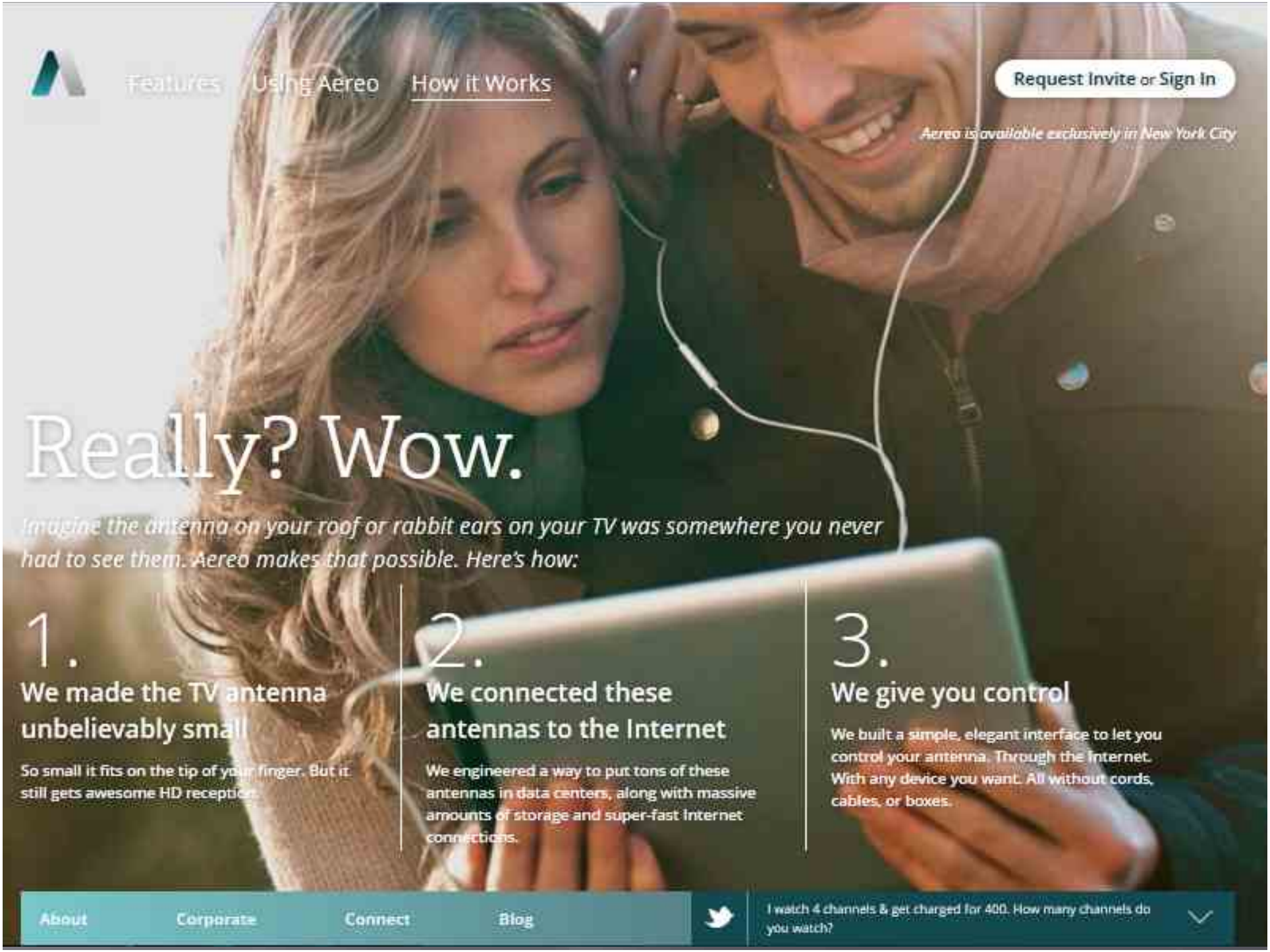
Litigation

- ***ABC v. Aereo & WNET v. Aereo***
- ***NBC v. Dish Network & Fox v. Dish Network & CBS v. Dish Network (The "Auto Hop" Litigation)***
- ***Oracle v. Google***
- ***Omega v. Costco***
- ***Cambridge University Press v. Becker***
- ***U.S. v. Kim DotCom (Megaupload)* Update**


Features
Using Aereo
How it Works
Request Invite or Sign In
Aereo is available exclusively in New York City
Really? Wow.
Imagine the antenna on your roof or rabbit ears on your TV was somewhere you never had to see them. Aereo makes that possible. Here's how:
1.
We made the TV antenna unbelievably small
So small it fits on the tip of your finger. But it still gets awesome HD reception.
2.
We connected these antennas to the Internet
We engineered a way to put tons of these antennas in data centers, along with massive amounts of storage and super-fast Internet connections.
3.
We give you control
We built a simple, elegant interface to let you control your antenna. Through the Internet. With any device you want. All without cords, cables, or boxes.
About
Corporate
Connect
Blog
I watch 4 channels & get charged for 400. How many channels do you watch?

ABC v. Aereo & WNET v. Aereo (SDNY)

- Background:
  - Copyright infringement lawsuits filed by the major networks and other NYC broadcasters against Aereo, a Barry Diller-backed over-the-top Web video subscription service
  - Aereo streams local TV stations' signals to customers over the Internet without the permission of the stations
  - Aereo's argument in response to the infringement claim relied heavily on the *Sony* and *Cablevision* decisions

ABC v. Aereo & WNET v. Aereo

- **Preliminary Injunction Denied:**
  - July 11th – U.S. District Judge ruled against broadcasters, denied injunction against Aereo
  - Not prohibited from providing service to its customers during trial
  - Unless reversed on the law, decision after trial ultimately turns on the specific technology used by Aereo

Judge's Decision:

  - Facts – single antenna, single copy "transmitted"
  - Bound by 2nd Cir. *Cablevision* precedent

- **Broadcasters immediately appealed denial of PI**

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SAVE AN HOUR PER NIGHT*

Great TV just got better! Now you can automatically skip commercials in primetime TV – on ABC, CBS, FOX and NBC in HD. Only with the Hopper.
Only by DISH.

EASY AS 1-2-3!

1. Select the commercial-free option.
2. Put down the remote.
3. Sit back, relax, and enjoy!

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Learn more about the Hopper >>

MORE ABOUT THE HOPPER

The Hopper from DISH is the fastest, most powerful and technically advanced Whole-Home HD DVR system in the industry.

- You can automatically skip commercials in primetime TV – on ABC, CBS, FOX and NBC in HD
- Record up to 6 HD shows at once during primetime[1]
- Records and stores up to 2,000 hours – the most available from any TV provider![2]

THE HOPPER IS FREE
WHEN YOU SIGN UP FOR DISH

Order Now

The "Auto Hop" Litigation

- CBS, Fox and NBC networks filed copyright infringement lawsuits against Dish Network 's "Auto Hop" feature allowing Dish subs to automatically skip all commercials during prime-time shows – records and holds all network shows for eight days
- Networks win forum battle; copyright dispute against Dish's new ad-skipping technology to be heard in CA court
- Networks allege direct, contributory and vicarious infringement as well as inducement to infringe
- *Sony* re-visited?

Oracle v. Google (N.D. Cal.)

- Oracle sued Google for copyright infringement related to the use of 37 Java APIs on the Android mobile O/S
- Google had copied certain elements (names, declaration and header lines) of the Java APIs
- Judge William Alsup ruled in favor of Google, concluding that the structure, sequence and organization of the Java APIs not copyrightable:

  > "So long as the specific code used to implement a method is different, anyone is free under the Copyright Act to write his or her own code to carry out exactly the same function or specification of any methods used in the Java API"

Omega v. Costco

- Originally Omega won first sale case
- Costco filed copyright misuse action
- District court granted summary judgment on the grounds Omega's copyright infringement action was barred by copyright misuse defense
- Appealed to the 9th Circuit
- Citing Supreme Court's *Mazer v. Stein* decision, Omega argued copyright holder is granted limited monopoly to control distribution and importation of its copyrighted design as incorporated into a non-copyrightable manufactured product (i.e., a watch)

Cambridge University Press v. Becker (N.D. Ga.)

- **Facts**:
  - Fair use in educational context
  - Publishers sued Georgia State University officials over the use of unlicensed digital book excerpts in course materials
- **Ruling**:
  - In most cases, Judge Orinda Evans held copying was a fair use – of the 99 works at issue, she found GSU liable for five infringement claims
  - "Additional" factors considered: (1) whether limited unpaid copying of excerpts will deter academic authors from creating new academic works, and (2) whether reduction of permissions income resulting from such copying will appreciably diminish plaintiffs' ability to publish scholarly works and therefore not promote the spread of knowledge
  - 340 page decision!

Kim DotCom Update

- Megaupload founder still in midst of New Zealand extradition battle
- NZ High Court recently ruled warrants used to search his home invalid, seizure of evidence (computers, drives, servers, etc.) illegal and release of evidence to FBI was violation of a treaty between US and NZ, making the extradition case now more difficult
- Extradition hearing delayed until next year: Butoff
- NZ Extradition Judge calls US the “enemy”

Legislation

United States:

- June 25th IPEC issued public comment request regarding Administration's new IP enforcement strategy
  - IPEC notice listed 10 option/questions, covering from potential changes to international regulation to private sector information sharing

International:

- European Parliament rejects ACTA by an overwhelming margin
- Mexico signs; but Senate?
- Canadian Parliament passes the "Copyright Modernization Act" (Bill C-11) – major overhaul of copyright law

International

- *UsedSoft v. Oracle* (European Court of Justice)
  - July 3 decision involved company reselling used software
  - Oracle sued claiming re-sale of its software specifically violated terms of its license agreement
  - EU Court of Justice ruled first sale right applied, even if software downloaded from rightholder's website – cannot contract away certain rights granted under copyright (if you are buying a license, license can be resold)
  - "It makes no difference, in a situation such as that at issue in the main proceedings, whether the copy of the computer program was made available to the customer by the rightholder concerned by means of a download from the rightholder's website or by means of a material medium such as a CD-ROM or DVD."
  -

International

- *SingTel Optus Pty Ltd v. National Rugby League*
  - Federal Court of Australia three-judge panel overruled Justice Rares' decision that Optus' TV Now service does not violate Australian copyright law
  - Found Optus was the maker (or Optus *and* subscriber) of the recordings
  - Australia law different than US (*Cablevision*)
  - Judges wrote, "There is nothing in the language, or the provenance, of [private and domestic use exception] to suggest that it was intended to cover commercial copying on behalf of individuals."
  - Petition pending before Australia's High Court


Thank You
Jim Burger