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July 15, 2014

TESLAW E-Newsletter July 15, 2014 ~ Issue No.10

Dear Members,

First of all, I'd like to thank TESLAW for giving me the honor of being chair for 2014-15! Second, please take a few minutes to peruse the TESLAW E-Newsletter, chocked full of interesting news and information. And don't forget about the new issue of the TESLAW Journal, with in-depth legal reviews available on the [TESLAW website](#).

TESLAW's event at the State Bar of Texas Annual Meeting, Ethics and Entertainment, was a rousing success. Get ready next for the [Entertainment Law Institute](#), which will be in Dallas this year on Nov. 6-7! Registration and speaker/topic details are forthcoming.

Please let us know if you have a contribution to the TESLAW E-Newsletter, a Journal article, or if you would like to become involved in a committee or on the TESLAW council.

Very truly yours,
[Craig Crafton](#), Chair
[Entertainment and Sports Law Section](#)

TESLAW Member Spotlight



For over four decades, [Mike Tolleson](#) has played an instrumental role in bringing the entertainment industry to the Lone Star State.

Upon graduating from SMU Law School, and after a year in London, Tolleson moved to Austin to co-found the Armadillo World Headquarters, Austin's flagship music venue during the 1970s. The 'Dillo went on to host such world-renowned acts as AC/DC, The Ramones, Linda Rondstadt, Steely Dan, Bruce Springsteen, Frank Zappa, and Willie Nelson.

In 1974, Tolleson co-produced the very first of Willie Nelson's 4th of July Picnic concerts. A couple of

years later, he served as a consultant for the pilot and first series of *Austin City Limits* on PBS.

By the time the 'Dillo closed its doors, Tolleson had opened a law practice, specializing in entertainment law. He went on to become the president of the Texas Music Association, which lobbied for the creation of the Texas Music Commission, whose work is now carried on by the Texas Music Office.

Tolleson was a co-founder and initial chair of the Entertainment and Sports Law Section of the State Bar and founder of the Entertainment Law Institute (ELI), which offers CLE courses in sports and entertainment law. He has served as director of the ELI since its inception in 1991.

(Note: This year's ELI will be held in Dallas at the Westin Galleria Hotel on Nov. 6 and 7, and will cover subjects such as e-books, the expanding role of band managers, user-generated content, crowd funding, independent film financing, and foreign royalties. [Click here](#) for more info.)

In 2006, the *Austin Chronicle* listed Tolleson as the Best Entertainment Attorney in Austin.

In addition to running a full-service entertainment law practice out of his office in East Austin, Tolleson currently serves as a mentor for the tech incubator [Capital Factory](#), advising startups on company formation, copyright law, and other intellectual property matters.

To be considered for the TESLAW Member Spotlight please submit a short bio (no more than 200 words) and photograph to our E-newsletter editor, [Victoria Helling](#).

Supreme Court Rules Against Aereo Place-and-Time-Shifting Technology Case Note by [Gordon Firemark](#)

On June 25, the United States Supreme Court issued its much-anticipated ruling in *American Broadcasting Co v. Aereo, Inc.*, handing a victory to Hollywood, and dealing a major blow to the respondent, a technology startup backed by media mogul Barry Diller.

Aereo sells a service that essentially allows subscribers to lease small, individual television antennae, and to view the signals received over the Internet. The Southern District of New York denied broadcasters' petition for a preliminary injunction (874 F. Supp. 2d 373 (SDNY 2012)), and the Second Circuit affirmed (*WNET, Thirteen v. Aereo, Inc.*, 712 F. 3d 676 (2013)), later denying a motion for rehearing *en banc* (*WNET, Thirteen v. Aereo, Inc.*, 722 F. 3d 500 (2013)). This appeal followed.

The Court, in a 6-3 opinion penned by Justice Breyer, explored two issues. First, whether what Aereo does is a *transmission* regulated by the U.S. Copyright Act; and second, whether Aereo's service amounts to "Public Performance," and is therefore copyright infringement. Ultimately, the Court ruled in Broadcasters' favor on both points.

First, the Court examined the history behind the so-called "transmit clause," (prior to 1976 two Supreme Court cases (*Fortnightly Corp. v. United Artists Television, Inc.*, 392 U. S. 390, and *Teleprompter Corp. v. Columbia Broadcasting System, Inc.*, 415 U. S. 394) cleared the way for Community-Antenna Television systems to retransmit distant TV signals without paying fees to the original broadcasters), and held that Aereo's service is, for all practical purposes, exactly the type of activity Congress sought to address when it added a "transmit clause" in the 1976 revision of the Copyright Act.

Next, the Court ruled that because the Aereo service was offered to the general public, it amounts to a public performance within the meaning of the Copyright Act. Aereo had claimed that because it transmits from user-specific copies, using individually-assigned antennas, and because each transmission is available to only one subscriber, it does not transmit a performance "to the public." But the Court ruled that "... these behind-the-scenes technological differences do not distinguish Aereo's system from cable systems, which do perform publicly."

Thus, having found that Aereo's activities do indeed violate two provisions of the Copyright Act, the Court reversed and remanded, but went to some lengths to caution that its decision should not be viewed as having wide-ranging effect beyond the specifics of the Aereo service.

Justice Scalia wrote the dissent, and was joined by Justices Thomas and Alito. They favored Aereo's argument that its "performances" were private, due to the single-user, single-antenna business model, and

argued that the majority found Aereo "guilt[y] by resemblance" to cable and CATV systems.

Will the Aereo decision have the wide-ranging implications many in the technology sector fear? Only time will tell.

Gordon Firemark is a sole practitioner in Los Angeles, California, who helps creative and business people in the fields of Theatre, Film, Television and Digital Media make deals that make sense. He teaches Theater Law in Southwestern Law School's Entertainment Law LLM program, and produces the [Entertainment Law Update podcast](#) with his co-host, Texas music lawyer, Tamera H Bennett.

Practice Document

Please find attached to our July E-Newsletter [materials for filing a subpoena re: copyright infringement](#), including comment, cover letter, and declaration, provided by Evan Stone. Evan is an attorney with Stone & Vaughan, PLLC, an infringement litigation practice in Denton, Texas. His firm's primary focus is copyright and trademark infringement, and some patent infringement litigation. His clients are located all over the U.S., with [FUNimation Entertainment](#) being the firm's largest local client. Active cases currently include sales of counterfeit merchandise, online infringement of motion pictures, and passing off of business names and logos.

Send questions, comments, and submissions for the TESLAW E-Newsletter to the E-Newsletter Editor, [Victoria Helling](#).

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