

# CPTWG MEETING

#130

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*Litigation/Legislative Update*

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# Litigation

- *Fox Television Stations, Inc. v. BarryDriller Content Systems, PLC*
- *Aereo Appeal*
- *Kirtsaeng v. John Wiley & Sons, Inc.*
- *The “Auto Hop” Litigation Update*
- *Kim Dotcom (Megaupload) Update*
- *Additional Cases of Note*





# ***Fox Television Stations, Inc. v. BarryDriller Content Systems, PLC***

- **California federal judge tentatively agrees to grant broadcasters' motion for a preliminary injunction against a digital TV service comparable to Aereo known as Aereokiller or FilmOn.**
- **Headed for a Circuit split over the legality of digitally distributing television content? (Injunction limited in geographic scope given the potential application of Ninth Circuit law differs from Second Circuit law)**



## *Aereo* Appeal (2d Cir.)

- Second Circuit heard oral argument on November 30, 2012
- Unlike in *Aereo* *killer*, U.S. District Court Judge Alison Nathan dismissed networks' motion for preliminary injunction on the ground *Aereo*'s services did not violate public performance right
  - Where a transmission of a work over the Internet is made from a copy of a work made at the direction of and solely for use by a single user, there is no public transmission





# *Kirtsaeng v. John Wiley & Sons, Inc.*

- Supreme Court heard oral arguments on October 29, 2012
- Justices consider the limits of the first sale doctrine in copyright case about the sale of imported textbooks on eBay – much of the argument concerned the “parade of horrors” raised by Kirtsaeng





## *The “Auto Hop” Litigation*

- Judge Dolly Gee denied Fox’s request for a preliminary injunction in November 2012
- Appeal taken and Fox filed its opening brief before the 9<sup>th</sup> Circuit on December 13, 2012
- *Background:* Copyright infringement lawsuits filed by the networks against “Auto Hop,” a feature that allows Dish Network subscribers to record all prime-time shows and automatically skip all commercials





## *Kim Dotcom*

- Probably the digital copyright case/story of the year is the fall of the cyber-locker site Megaupload
- Extradition trial delayed a second time; set to take place in August 2013
- Dotcom is planning to launch a new site (<http://Mega.nz>) that functions as a heavily encrypted service similar to Megaupload
- To avoid reach of the DMCA, Dotcom plans to run his servers with hosting services outside the US



## *Additional Cases of Note*

- *Amaretto Ranch Breedables v. Ozimals Inc.* (N.D. Cal.)
  - Court held Ozimals was a nonexclusive licensee, therefore lacked standing to sue for infringement
- *Authors Guild Inc. v. HathiTrust* (SDNY) – Judge dismissed lawsuit against a group of university libraries over a digital collection of books
- *National Football Scouting Inc. v. Rang* (W.D. Wash.)
  - Judge ruled that pre-draft grades of NFL prospects were sufficiently creative as to warrant copyright protection, but dismissed infringement claim against sports writer on fair use grounds



# Legislative Developments

A nighttime photograph of the U.S. Capitol dome, illuminated against a dark sky. The dome's intricate architectural details are visible, and the surrounding building's facade is partially lit. The text is overlaid on the image in a yellow, serif font.

## United States:

- **H.R. 6480 (Internet Radio Fairness Act)**
  - Would move Internet radio companies to the standard used for determining rates for satellite and cable radio
- **Internet American Moratorium Act of 2012**
  - Bill proposed by Rep. Darrell Issa (R-CA) to create a two-year ban on any new laws, rules or regulations governing the Internet



# Regulatory

- **2012 DMCA Rulemaking**
  - U.S. Copyright Office triennial rulemaking to consider granting exemptions to the DMCA's ban on circumvention to mitigate harms the law has caused to legitimate non-infringing uses of copyrighted works
- **Breaking News DC Circuit Overturns Encoding Rules in FCC's Navigation Devices Order**



# International

- UK rejects automatic porn filters
    - December 2012 joint report by the Home Office and the Department of Education said a public consultation found “little appetite” for default filtering by ISPs
  - UK releases its “Modernising Copyright” report
  - Germany’s lower house of parliament introduces new copyright bill requiring search engines (Google) to pay for news article linking
  - Beijing No. 2 Intermediate People’s Court ordered Apple to pay about \$165,000 to a group of local writers who said the U.S. company sold unlicensed copies of their books online
  - The authors’ works appear to have been published within an app and not as ebooks in the iTunes store
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- The End