

The Public Performance Right in the Digital Environment: A Comparative Analysis

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The public performance right has recently come under close scrutiny in both the United States and Canadian Supreme Courts. The Supreme Court of the United States delivered its much anticipated decision in the *American Broadcasting Companies Inc. v Aereo, Inc.*, F/K/A Bamboom Labs, Inc. (Aereo) on June 25, 2014. In a 6-3 split of the Court, Aereo lost. The public performance right came under scrutiny in the Canadian Supreme Court as well in *Rogers Communications Inc., v. Society of Composers, Authors and Music Publishers of Canada*, 2012 SCC 35, [2012] 2 SCR 283 and *Entertainment Software Association v. Society of Composers, Authors and Music Publishers of Canada*, 2012 SCC 34, [2012] 2 SCR 231. In each instance, the Court was tasked with interpreting the public performance right in the digital environment. There are numerous theories of statutory interpretation that can be applied, but in all cases, "interpretation is a form of decision making whereby interpreters must choose between competing, alternative meanings." Of great concern to the Justices in both these cases is the wider spread ramifications of their decisions and how their interpretations may impact on the public interest and on the very basic tenets of Copyright law: how to strike a balance between innovation on the one hand and rewarding creators on the other. Lyle Denniston described the Supreme Court in *Aereo's* oral arguments as moving "back and forth between killing that novelty by forcing it to pay sizable fees to download copyrighted TV programs, or giving it a fighting legal chance to survive as a cheaper alternative to cable." Both Canadian and American courts were also concerned with the larger issues raised within the digital environment, including net-neutrality issues, the ramifications on cloud computing, and the ability to comply with International treaties. In the face of changing technology, is there a theory of statutory interpretation that best serves all parties? This paper will compare and contrast the interpretive methods used in *Rogers* and *Aereo* and the outcomes of these cases.

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