

THE PUBLIC PERFORMANCE RIGHT IN THE DIGITAL AGE: *CARTOON NETWORK LP V. CSC HOLDINGS*

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Technological innovations test the boundaries and enforceability of copyright protection. New digital technologies are expanding the well-established content-providers' market for broadcast media and creating opportunities for additional revenue for distributor-provided on-demand services. The latest battle between content providers and distributors involves the introduction of centrally housed Digital Video Recorder (DVR) technology. Cablevision Systems Corporation's (Cablevision) proposed remote storage DVR (RS-DVR) would allow customers to record broadcast programming at central servers maintained by Cablevision, rather than on in-home DVR boxes which operate much like a standard video cassette recorder (VCR).¹ RS-DVR customers would access their stored programming at the central facility through a cable box equipped with the RS-DVR software.²

Plaintiffs, owners of copyrights in various movies and television programs, brought suit for declaratory judgment that Cablevision's RS-DVR would infringe their copyrights and for an injunction barring the implementation of the RS-DVR system.³ The plaintiffs alleged direct infringement of their reproduction and public performance rights.⁴ The parties expressly declined to raise issues of fair use or contributory infringement,⁵

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1. *Cartoon Network LP v. CSC Holdings, Inc.*, 536 F.3d 121, 123-24 (2d Cir. 2008).

2. *Id.*

3. *See Twentieth Century Fox Film Corp. v. Cablevision Sys. Corp.*, 478 F. Supp. 2d 607, 609 (S.D.N.Y. 2007), *rev'd*, *Cartoon Network*, 536 F.3d 121.

4. *Id.* at 617. The plaintiffs alleged infringement of their rights "to reproduce the copyrighted work in copies" and "to perform the copyrighted work in public," as codified in 17 U.S.C. § 106(1), (4) (2006).

5. *Id.* at 616 (stating that plaintiffs agreed by stipulation that they were asserting "only claims of direct copyright infringement, and defendants agreed that they would not assert a 'fair use' defense"). For more on the "fair use" defense, see 17 U.S.C. § 107 (2006).