

# CableFAX Daily™

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What the Industry Reads First

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## Flying High: Aereo Gets Another Win, Dissenting Judge Calls Tech a Sham

Another court win for **Aereo** puts the streaming service in a good position, with the **US 2nd Circuit Court of Appeals** denying broadcasters' request for a preliminary injunction. But it ain't over. Broadcasters, which include **Fox, Univision, PBS** and others, expressed disappointment but believe they will ultimately prevail. "Today's decision is a loss for the entire creative community. The court has ruled that it is OK to steal copyrighted material and retransmit it without compensation," the broadcasters said. "While we are disappointed with this decision, we have and are considering our options to protect our programming. In the meantime, we plan to move forward towards a trial on the merits of the case, and on claims that were not impacted by this appeal." In a 2-1 ruling, the 2nd Circuit compared Aereo's system to **Cablevision's** RS-DVR (which won its legal challenge from broadcasters). "Though presented as efforts to distinguish Cablevision [from Aereo], many of plaintiffs' arguments really urge us to overrule Cablevision. One panel of this Court, however, 'cannot overrule a prior decision of another panel,'" said the decision. Broadcasters claim Aereo is publicly performing their copyrighted works without a license. The court rejected the public performance argument, stating that when an Aereo customer watches or records a program, Aereo creates a unique copy of that program on a portion of a hard drive assigned only to that user. "Today's decision... validates that Aereo's technology falls squarely within the law, and that's a great thing for consumers who want more choice and flexibility in how, when and where they can watch television," said Aereo CEO and founder *Chet Kanojia*. "We may be a small start-up, but we've always believed in standing up and fighting for our consumers. We are grateful for the court's thoughtful analysis and decision, and we look forward to continuing to build a successful business that puts consumers first." In his dissent, Judge *Denny Chin* said Aereo is engages in copyright infringement and that its technology platform is "a sham... The system employs thousands of individual dime-sized antennas, but there is no technologically sound reason to use a multitude of tiny individual antennas rather than one central antenna; indeed, the system is a Rube Goldberg-like contrivance, over-engineered in an attempt to avoid the reach of the Copyright Act and to take advantage of a perceived loophole in the law," he wrote. This issue will be brought up repeatedly as the case winds its way through the courts. **Stifel Nicolaus** analysts believe Mon's ruling gives Aereo the edge in the case on

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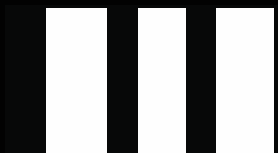
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the merits. However, they noted that broadcasters and content companies can challenge Aereo in courts around the country where Aereo is rolling out its service, and those courts would not be bound by the 2nd Circuit ruling. Aereo is currently in NYC, but in Jan announced plans to make it available in 22 additional cities, including Boston, DC, Salt Lake City and Tampa. Meanwhile, the *WSJ* reported Mon that **AT&T** and **DISH** have talked with Aereo about possibly bundling its service.

**Ratings:** Big Sun night. **AMC's** season 3 finale of "The Walking Dead" on Sun scored its largest audience ever with 12.4mln viewers and 8.1mln 18-49, making the series the #1 program for the night and the week for total viewers and in the demo. The series' season avg for 18-49s is #1 for the broadcast season, outdelivering everything, including "The Big Bang Theory," "Game of Thrones" and "The Bible." On Sun, social media for the season finale ranked first among all TV programs for the day -- "Game of Thrones" Season 3 premiere on **HBO** averaged 4.4mln viewers Sun night, besting the previous high of 4.2mln for the Season 2 finale. The series netted 6.7mln viewers across 3 plays for the night. -- The finale of **History's** "The Bible" on Sun drew 11.7mln total viewers, including 4.6mln 25-54 and 3.8mln 18-49. That is up 14% among total viewers, 18% among 25-54 and 12% among 18-49 vs the previous week.

**At the Portals:** The **FCC** Enforcement Bureau has reduced the backlog of indecency complaints by 70% (more than 1mln complaints) since Sept '12, principally by closing pending complaints that were beyond the statute of limitations, "too stale to pursue," involved cases outside of FCC jurisdiction or contained insufficient info. The Bureau is now seeking comments on whether the FCC should make changes to current broadcast indecency policies. This comes after the **Supreme Court** ruled in June in favor of broadcasters who had faced potential fines over programming. The court declined to address the gov't's authority to regulate indecency on broadcast, and FCC chmn *Julius Genachowski* directed staff to review that the Commission's policies are consistent with the 1st Amendment.

**Final Four:** "It's hard to get the image out of your mind," said **CBS** announcer *Jim Nantz* on the dramatic injury of Louisville's *Kevin Ware* in the team's win over Duke Sun. During the game, 1 of the 2 on Sun (winners go to Final Four), the sophomore guard jumped to try to block a 3-point shot but broke his leg (the bone came through his skin). The frightening moment was captured on TV. CBS showed 2 replays of the injury right after it happened, before it focused on reactions of people around Ware. **CBS Sports** chmn *Sean McManus* said due to the graphic nature of the footage, CBS won't air it again. In terms of ratings, **Turner Sports** and CBS Sports' coverage on Sun on CBS averaged an overnight HH rating/share of 8.0/19, up 25% YOY, according to **Nielsen**. The 1st telecast, which saw Michigan defeat Florida, earned a 6.2/16, up 17% YOY. The 2nd telecast window featuring Louisville beating Duke, registered a 9.4/21, up 21% YOY. The hoops coverage across TBS, CBS, **TNT** and **truTV** averaged more than 9.7 mln total viewers-to-date, up 11% from last year's 8.72mln viewers and is the highest average for the NCAA Tournament through the Sun regional finals in 19 years.

**On the Hill:** Rep *Adam Kinzinger* (R-IL) urged passing legislation that would make it US policy to promote a global Internet free from government control and to preserve and advance "the successful multi-stakeholder model that currently governs the Internet," he said in an op-ed on *Politico*. Such legislation "would send a strong signal that the U.S. will not allow repressive regimes to place controls over the free and open use of the Web," he said, noting the **ITU** may continue to move in the direction of increased Internet controls.

**Rebrand:** **AMC** went under the knife and got a new face. The new look and brand positioning, "AMC: Something More," features an updated logo, with letter forms surrounded by a gold box that suggests "both premium quality and popular appeal," the net said. The rebrand aims to reflect the net's commitment to original stories and characters that "defy expectations," AMC said. The net premiered its new look and feel in the season 3 finale of "The Walking Dead" Sun (season 4 returns Oct).

**MTV Star Dies:** *Shain Gandee*, one of the stars of **MTV's** "Buckwild," has died. He was 21. Gandee's body was discovered in a vehicle Mon along with 2 others in Sissonville, WV. Production, which was underway for Season 2, has been suspended. "We are shocked and saddened by the terrible news about Shain Gandee, and those involved in this tragic incident," MTV said. "We are waiting for more information but at this time, our main concern is for the Gandee family and their friends. Our thoughts and prayers are with them. Shain had a magnetic personality, with a passion for life that touched everyone he met, and we will miss him dearly."

# BUSINESS & FINANCE

**Online:** USA launched the next phase of “USA Sync,” the first live second screen content syndication platform. The service allows fans to engage with show content through voting and polling activations that relate to what fans see on-air. It also allows “gamification,” enabling fans to play 2nd-screen games closely tied to on-air content. The social activations encourage fans to commune around on-air shows. The net uses **Watchwith’s** metadata syndication platform to enable its in-house producers to create and distribute the platform.

**Programming:** TBS extended “Conan” through Nov ’15. -- **Animal Planet’s** 6-part series “Ice Cold Gold” will premiere April 21 at 10pm. -- **CNN Latino**, a custom-made Spanish-language programming block show on broadcast stations, has expanded to NY, Orlando, Tampa and Phoenix. -- **Starz** will begin airing *Bindi Irwin’s* “Bindi’s Bootcamp” on **Starz Kids & Family** May 1, 6pm.

**People:** **Esquire Net** (nee **G4**) named *Patrick Condo* vp, brand and creative. -- **Sportsman Channel** hired TV vet *Marc Fein* as evp, programming and prod. Fein most recently served as founder and pres of his own TV sports and ent consulting firm. Before that, he worked with Sportsman chief *Gavin Harvey* at **Versus** (now **NBC Sports Net**) as evp, programming, prod and biz ops.

## CableFAX Daily Stockwatch

Company	4/1 Close	1-Day Ch	Company	4/1 Close	1-Day Ch
<b>BROADCASTERS/DBS/MMDS</b>					
DIRECTV:	56.74	0.15	CSG SYSTEMS:	20.72	(0.47)
DISH:	38.04	0.14	ECHOSTAR:	38.38	(0.59)
DISNEY:	56.69	(0.11)	GOOGLE:	801.19	7.00
GE:	23.08	(0.04)	HARMONIC:	5.77	(0.02)
NEWS CORP:	30.60	(0.16)	INTEL:	21.43	(0.41)
<b>MSOS</b>					
CABLEVISION:	14.80	(0.16)	JDSU:	13.26	(0.1)
CHARTER:	103.78	(0.4)	LEVEL 3:	20.13	(0.16)
COMCAST:	41.38	(0.41)	MICROSOFT:	28.61	0.01
COMCAST SPCL:	39.17	(0.24)	RENTRAK:	21.02	(0.96)
GCI:	8.71	(0.46)	SEACHANGE:	11.68	(0.21)
LIBERTY GLOBAL:	73.66	0.28	SONY:	16.60	(0.8)
LIBERTY INT:	21.04	(0.33)	SPRINT NEXTEL:	6.25	0.04
SHAW COMM:	24.40	(0.32)	TIVO:	12.42	0.03
TIME WARNER CABLE:	96.24	0.18	UNIVERSAL ELEC:	23.34	0.09
VIRGIN MEDIA:	49.24	0.27	VONAGE:	2.88	(0.01)
WASH POST:	446.10	(0.9)	YAHOO:	23.50	(0.03)
<b>PROGRAMMING</b>					
AMC NETWORKS:	61.86	(1.36)	<b>TELCOS</b>		
CBS:	45.74	(0.95)	AT&T:	37.25	0.56
CROWN:	2.05	UNCH	VERIZON:	49.22	0.07
DISCOVERY:	77.98	(0.76)	<b>MARKET INDICES</b>		
GRUPO TELEVISA:	26.49	(0.12)	DOW:	14572.85	(5.69)
HSN:	54.35	(0.51)	NASDAQ:	3239.17	(28.35)
INTERACTIVE CORP:	43.91	(0.78)	S&P 500:	1562.17	(7.02)
LIONSGATE:	23.45	(0.32)			
OUTDOOR:	8.89	(0.03)			
SCRIPPS INT:	63.80	(0.54)			
STARZ:	21.51	(0.64)			
TIME WARNER:	57.62	UNCH			
VALUEVISION:	3.22	(0.24)			
WWE:	8.75	(0.07)			
<b>TECHNOLOGY</b>					
ADVANTAGE:	2.33	UNCH			
ALCATEL LUCENT:	1.32	(0.01)			
AMDOCS:	35.95	(0.3)			
AMPHENOL:	73.52	(1.13)			
AOL:	38.37	(0.12)			
APPLE:	428.91	(13.75)			
ARRIS GROUP:	16.93	(0.24)			
AVID TECH:	6.47	0.20			
BLNDER TONGUE:	1.25	(0.05)			
BROADCOM:	34.22	(0.46)			
CISCO:	20.83	(0.07)			
CLEARWIRE:	3.24	UNCH			
CONCURRENT:	7.92	0.01			
CONVERGYS:	16.85	(0.18)			

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