

CableFAX Daily™

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What the Industry Reads First

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Aereo Loses: What's Next?

It might be the end of the world for **Aereo**, but it's far from over for other cloud-DVR providers. Wed's 6-3 Supreme Court decision that Aereo's service infringes on copyright seemed relatively narrow, written in a way that won't impact companies offering DVR and other cloud-based storage services. "We have not considered whether the public performance right is infringed when the user of a service pays primarily for something other than the transmission of copyrighted works, such as the remote storage of content," Justice *Stephen Breyer* wrote in the majority opinion. In addition, "we agree with the Solicitor General that '[q]uestions involving cloud computing, [remote storage] DVRs, and other novel issues not before the Court, as to which 'Congress has not plainly marked [the] course,' should await a case in which they are squarely presented.'" **Cablevision**, which found itself in the middle of the Aereo debate because of its cloud DVR services, said it was "gratified that the Court's decision adopted a sensible middle ground, holding that unlicensed retransmission services like Aereo violate the copyright law, while protecting consumer-friendly, cloud-based technologies, such as RS-DVR. The real winner today is the consumer who will continue to benefit from future innovation." Cablevision believes Aereo's service is unlawful, but disputed the broadcasters' arguments that challenged a 2008 Appeals Court decision on the legality of CVC's remote DVR. Aereo, of course, isn't giving up, with CEO *Chet Kanojia* indicating that he will fight to keep the service, currently in 11 markets, alive. "We are disappointed in the outcome, but our work is not done. We will continue to fight for our consumers and fight to create innovative technologies that have a meaningful and positive impact on our world," he said in a statement, calling the ruling "a massive setback" for consumers. He noted Justice *Antonin Scalia*, who sided with Aereo, called out the majority's opinion as "built on the shakiest of foundations." Writing for the dissenters, Scalia stated that the broadcasters failed to prove that Aereo conducts any public performing of the copyrighted content. He warned the court might not deliver on the promise that the ruling won't affect cloud-storage providers and cable systems "given the impression of its results-driven rule." For now, the ruling is expected to put Aereo out of business, and the over-the-air service provider's options are limited. It could go to Congress, but the chance of getting any relief is slim. Even if it did, the price could be extending the Comm Act's retrans requirements to the company, which would kill the business, one cable lawyer told us. Alternatively, Aereo could claim it's a cable system and thus eligible for the cable compulsory license, which allows the use of rights against payment. The

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Questions: Contact Mary-Lou French at mfrench@accessintel.com or (301) 354-1851.

Enter online at www.cablefaxprogramawards.com

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problem is the 2nd Circuit already found that Internet-based services aren't eligible for the license, the attorney said. The broadcasters could potentially buy Aereo's technology, but "this would be very costly to the TV business in the long-term," according to **Needham & Co** analysts. "Giving ANY economic benefit to a company that has stolen their content, encourages the next VC to fund another, in order to be bought out in the end," they wrote in a research note. For broadcasters, the decision means future technology-based platforms must negotiate with them and other content creators before distributing. At least, that's their hope. In addition, it will be harder for the next content-distribution technology to get funding without the costs of content deals in the business plan, the analysts said.

Aereo Reactions: The broadcasters are smiling. Speaking on **Bloomberg Television**, **CBS** pres/CEO *Les Moonves* said "we expected to win, but it certainly feels good to win as decisively as we did... It's a very good day for our future." And thanks to the **SCOTUS** ruling, "people will have to pay for our content." NAB was triumphant. "Aereo characterized our lawsuit as an attack on innovation; that claim is demonstrably false. Broadcasters embrace innovation every day, as evidenced by our leadership in HDTV, social media, mobile apps, user-generated content, along with network TV backed ventures like **Hulu**," NAB head *Gordon Smith* said, firing back at **Aereo** founder/CEO *Chet Kanojia*'s comments on the ruling (see lede story). Disney simply said "we're gratified the Court upheld important Copyright principles that help ensure that the high-quality creative content consumers expect and demand is protected and incentivized." The ruling disappointed **CEA**, which filed an amicus brief backing Aereo. However, the trade group was pleased that the opinion was narrow enough to allow for future innovation, according to pres/CEO *Gary Shapiro*. That said, the group is concerned that the court, although welcoming innovation, also declared that "to the extent commercial actors... may be concerned with the relationship between the development and use of such technologies and the Copyright Act, they are of course free to seek action from Congress." CEA wants the laws to be clear, instead of having parties seek changes to ambiguous rules. In addition, the ruling could impact the future of broadcasting. As consumers increasingly view content on secondary platforms, "we question how much longer broadcasters can claim to justify their use of public spectrum when they oppose innovative services like Aereo which expand their viewing audience," Shapiro said. **House Commerce** leaders took the opportunity to advocate for their Comm Act Update initiative. "This case underscores the mounting need to modernize the 80-year-old Communications Act, which serves as an important, yet outdated, framework for the communications industry," full committee chmn *Fred Upton* (R-MI) said. The Aereo case highlighted the regulatory uncertainty perpetuated by outdated communications laws, tech subcmte vice chmn *Bob Latta* (R-OH) said. The ruling upset groups such as **Consumer Union**. "We think Aereo was on to something by filling a need for low cost, flexible viewing options. As cable prices keep skyrocketing, the consumer demand will continue to grow for more personalized, affordable ways to watch television," said *Ellen Bloom*, sr dir of federal policy.

McCaskill Goes After Cable Bills: If merger hearings on the Hill haven't made it clear how upset lawmakers are with rising pay TV bills (*Cfx*, 6/25), this should crystalize it. Sen *Claire McCaskill* (D-MO) is asking any consumer who believes they have experienced deceptive or confusing billing practices by a cable, satellite or pay TV company to visit her website and use the "Submit Your Scam" web tool to tell their story. McCaskill, who leads the Senate panel on Consumer Protection, said she is laying the groundwork for a new federal law to bring fairness and transparency to pay TV billing practices.

Google's Android TV: First there was Google TV. Now, **Google** is adding Android TV, which can integrate into smart TVs or set-tops. As with **Amazon's** Fire TV, voice search can find a live TV show, a Google Play movie or a **YouTube** music video. Android TV users can play Android games. Next year's line of 4K TVs from **Sony**, **Sharp** and **TP Vision** will feature it. As with Chromecast, which Google launched last year, Android TV users can cast content from browsers to the TV.

Kilar Sighting: Former **Hulu** CEO *Jason Kilar* and CTO *Richard Tom* offered a peek of their new project. "Vessel," set to launch later this year. Investors include **Benchmark**, **Greylock Partners** and *Jeff Bezos*' personal investment company. What is Vessel? Staging site *Vessel.com* is vague: "We've been busy building a service whose mission is to delight consumers and content creators alike." If you're a video content creator, "we should talk!" the 2 wrote.

30 Rock Goes Back to the '30s: **NBCU** announced extensive upgrades for 30 Rockefeller Plaza, including the recreation of the original art deco era design of the NBC portion of the lobby. The lobby will once again feature a sweeping 16-ft-wide, marble grand staircase and the Mezzanine Rotunda (a circular reception lobby in 1930s style, with a twist—embedded in the bronze silk glass will be two, 60-foot long curved LED screens). Also new will be the Peacock Lounge, a waiting area for audiences for programs filmed at the studios.

BUSINESS & FINANCE

Remembering Glenn: Friends and colleagues gathered to celebrate the life of former **Time Warner Cable** pres/CEO *Glenn Britt* at a lovely memorial service at the American Museum of Natural History in NYC Wed. Fond and tearful recollections of the well-respected leader were in abundance. TWC's chmn & CEO *Rob Marcus* said Britt was "a man of great character," who remained "interested and engaged until the end." Even during their last meeting, Britt asked, "How's our deal going?" His "intellectual curiosity was legendary to the point that would bore others to tears," which drew laughs from the crowd. At the reception, the museum's Hall of Ocean Life filled to the brim with TWC colleagues and others including Time Warner chief *Jeff Bewkes*, **Viacom** pres & CEO *Phillippe Dauman* and **AETN** pres/CEO *Nancy Dubuc*. Those celebrating Britt's life went well beyond cable. *Barry Grove*, fellow Dartmouth alum and executive director of the **Manhattan Theatre Club**, said Britt was indispensable to the nonprofit organization. When deciding whether to don a Dartmouth tie or one featuring Britt's beloved Red Sox, Grove chose the latter: "I think they need it more," he joked. Britt's wife *Barbara* concluded the memorial with recollections of traveling the world with her husband, from the red carpet at Cannes to the Galapagos Islands. They'd imagined a great deal more time together after retirement, she said. But as the song goes, "They can't take that away from me."

CableFAX Daily Stockwatch

Company	06/25 Close	1-Day Ch	Company	06/25 Close	1-Day Ch
BROADCASTERS/DBS/MMDS					
DIRECTV:	84.40	(0.14)	CONCURRENT:	7.50	(0.18)
DISH:	63.13	0.94	CONVERGYS:	21.06	0.34
ENTRAVISION:	5.98	0.34	CSG SYSTEMS:	25.56	0.09
GRAY TELEVISION:	12.20	0.94	ECHOSTAR:	52.60	0.34
MEDIA GENERAL:	20.33	1.86	GOOGLE:	578.65	14.03
NEXSTAR:	48.81	5.80	HARMONIC:	7.41	(0.03)
SINCLAIR:	33.80	4.56	INTEL:	30.88	0.38
MSOS					
CABLEVISION:	17.46	UNCH	INTERACTIVE CORP:	68.93	(0.33)
CHARTER:	152.00	0.94	JDSU:	11.74	(0.01)
COMCAST:	53.21	0.57	LEVEL 3:	43.87	(0.06)
COMCAST SPCL:	52.85	0.54	MICROSOFT:	42.03	0.28
GCI:	11.33	0.33	NIELSEN:	48.23	(0.07)
GRAHAM HOLDING:	716.59	6.00	RENTRAK:	53.73	2.14
LIBERTY GLOBAL:	43.29	0.30	SEACHANGE:	7.78	0.07
LIBERTY INT:	29.12	0.20	SONY:	16.91	0.27
SHAW COMM:	24.60	0.15	SPRINT NEXTEL:	8.54	0.30
TIME WARNER CABLE:	145.21	1.91	TIVO:	12.63	0.03
PROGRAMMING					
21ST CENTURY FOX:	34.88	0.67	UNIVERSAL ELEC:	48.02	0.38
AMC NETWORKS:	60.81	0.19	VONAGE:	3.76	0.08
CBS:	62.48	3.64	YAHOO:	33.25	(0.23)
CROWN:	3.55	0.05	TELCOS		
DISCOVERY:	74.56	0.22	AT&T:	35.26	(0.03)
DISNEY:	83.90	1.22	CENTURYLINK:	36.15	(0.21)
GRUPO TELEVISA:	34.88	0.18	TDS:	25.88	0.53
HSN:	58.30	0.01	VERIZON:	49.41	0.13
LIONSGATE:	28.07	0.12	MARKET INDICES		
MADISON SQUARE GARDEN:	60.38	0.56	DOW:	16867.51	49.38
SCRIPPS INT:	80.73	0.35	NASDAQ:	4379.76	29.40
STARZ:	29.23	UNCH	S&P 500:	1959.53	9.55
TIME WARNER:	69.07	0.83			
VALUEVISION:	5.00	0.01			
VIACOM:	85.20	(0.14)			
WWE:	11.71	0.06			
TECHNOLOGY					
ADDVANTAGE:	2.83	(0.06)			
ALCATEL LUCENT:	3.58	0.05			
AMDOCS:	46.54	(0.71)			
AMPHENOL:	96.13	(0.04)			
AOL:	38.75	(0.01)			
APPLE:	90.36	0.08			
ARRIS GROUP:	31.86	(0.76)			
AVID TECH:	7.50	(0.08)			
BLNDER TONGUE:	0.91	(0.07)			
BROADCOM:	37.16	0.48			
CISCO:	24.72	0.19			



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Think about that for a minute...

It Looks Like a Duck!

Commentary by Steve Effros

By the time you read this you'll have been bombarded by headlines regarding the Supreme Court's decision in the Aereo case. Bottom line: Aereo lost. I'm sure some of the headlines (depending on the editors, writers and perspective of the publication) will suggest that the broadcast industry has been saved from a dire fate. Others will say that the brave new world of the Internet has been grievously injured. Ignore them all.

Essentially the Court, in a very clear, 6-3 decision, said what some of us have been arguing since this whole thing started: Aereo looked like a duck (a "CATV" system), walked like a duck and by all rights should be treated like a duck according to the laws currently written by Congress. Aereo is just another fancy technical way to offer cable television-like service to the public, and Congress, in the Copyright Act of 1976, said those types of services were liable for copyright if they involved local broadcast signals.

That, of course, will not be the end of the discussion. The majority made clear that it was not in any way trying to interfere with "cloud computing" innovations, and the decision was carefully narrow in dealing only with essentially simultaneous transmission of broadcast signals. So, as Justice Scalia said in his dissent, a whole new round of cases theoretically could revolve around Aereo offering only time-delayed distribution of broadcast signals. But he also noted and seemed to support another legal theory that would make that argument fail, as well. Scalia didn't necessarily disagree with the outcome of the decision, he disagreed, as usual, with the way it should have been stated, (his way) or wanted Congress to do it. No matter. Aereo lost.

Essentially the "Cablevision" case allowing remote DVRs was allowed to stand, cloud computing was not jeopardized,



ized, but the high-flying Aereo gimmick was shot down. All as it should be.

Will this stop innovation? Of course not. Will it have a major impact on "the web?" No. Will folks still be able to pick up "free, over the air" broadcast television? Yes. So all the hyperbolic yelling and screaming about this case can now be safely ignored, and we can get back to the important stuff.

The important stuff from my point of view is "Cablevision II". That's a case I wrote about a long time ago and "red flagged" as yet another forward looking legal move by Cablevision, to their credit, to clarify cable's business relationships. First they established the notion that remote DVRs are OK. Now they are challenging the validity of the "tying" arrangements imposed by programmers on cable operators. That's a big one, and they just won a decision in a lower Court, which denied a motion by Viacom to dismiss a suit on the grounds Cablevision had not shown enough evidence of potential antitrust violation for the case to go forward. The case will continue, and it probably is more important, in the long run, than either remote DVRs or Aereo.

There's no secret the cable industry and the programmers have reached cusp in their "negotiations," over program bundling and costs. This case could finally redesign that relationship. It could be one of the few things that saves "smaller" cable operators if the big programmers are prohibited from essentially requiring the carriage of everything they create. It's one to watch, and also provide support. More on that in future columns.

For now, it's been a good week for common sense and duck hunting.

Steve

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