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I'm a bit disappointed in Wednesday's U.S. Supreme Court ruling on Aereo Inc.'s copyright case, though not for the same reason as Aereo users. Broadcasters were threatening to stop broadcasting their content if Aereo was allowed to keep retransmitting it for free, and I was really looking forward to seeing whether they would make good on their threat.

I was pretty sure that this was PR posturing for the sake of influencing the court. But I wasn't entirely sure, and that little bit of uncertainty promised to make things interesting for the next few weeks. Alas, it was not to be. Wednesday's ruling says that no, Aereo cannot stream broadcast television to thousands of users over the Internet. We will never know if Fox would really have stomped its foot and left the airwaves.

Though this may be a loss to economic analysis, it's not exactly a surprise. Aereo's business plan was basically to do an end-run around copyright law, emulating basic cable service without paying retransmission fees to the broadcasters. Obviously, that's an attractive value proposition for Aereo and its customers, but broadcasters argued that it violated the 1976 copyright law that lets them dictate how and when their properties may be transmitted to viewers. The court agreed.

For those who were not following along at home, Aereo provides a Web-based DVR service that allows you to live-stream local television, making it a very good substitute for basic cable. Aereo claimed that it wasn't anything like a cable company, because each user was rented a dime-sized antenna for the duration of the broadcast, and an individual copy of the broadcast was stored on servers for the user's benefit. It was a very clever arrangement that theoretically kept it just this side of legal.

Aereo's business model was what you might call the Rumpelstiltskin Gambit: Build something illegal, but add some elaborate wrinkle that allows you to claim you're within the law. If you do it right, you may just be able to turn straw into gold. There's a tragic flaw in the Rumpelstiltskin Gambit, however: The better your magic, the more likely it is to fail. The better job you do of emulating a desirable but illegal service, the more likely the court is to rule that you are providing that illegal service and shut you down.

Aereo's service was really, really close to what basic cable does. The main differentiating factor was those tiny little antennas. But those tiny little antennas had no business purpose; they existed only in order to allow Aereo to claim that however much it might look like a cable company, however much its viewers might see it as a substitute for cable, however much it might tout its services as an alternative to cable, they were

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really just in the very-short-term equipment-rental business. To the Supreme Court, however, it looked a lot more like a cable company — and therefore, said the court, it cannot stream shows without paying the same transmission fees that the cable companies pay.

Aereo's defenders have pointed to services that do the same thing but less well, such as streaming from your home antenna to your computer. If that's legal, then logically, shouldn't Aereo be legal as well? But in copyright, the ease of emulation matters a lot. A mix tape recorded off the radio is not a very good substitute for a CD, so no one much worried about it. Perfect digital copies downloaded with the click of a button, on the other hand, are very good substitutes for copyright-protected material, and so they attract a lot more unwanted attention from the law.

At some point on the slippery slope, the court says "stop," and while you may point to other points on the slope where it could have stopped instead, that doesn't mean it's obligated to keep rolling. That's not to say that this ruling was inevitable; I could have seen it going the other way. It's just to say that any business built around the Rumpelstiltskin Gambit is taking the risk that a court or a regulator will get the last, magic word, and that however much they stamp their feet or tear their beard, they will nonetheless have to vanish into the night. — *Bloomberg* columnist Megan McArdle

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Former State Sen. Vince Fumo is making the rounds while a federal judge considers his request to launch a lobbying firm. Fumo visited the Senate Democratic Caucus meeting in Harrisburg last week. He also took a tour of the Philadelphia Regional Port Authority's Wholesale Produce Market.

Those seem like excellent places to glad-hand with old friends and allies who might someday become or refer fee-paying clients. Fumo declined to comment yesterday about last week's visits, following the advice of his defense attorney, Dennis Cogan. Cogan last week asked U.S. District Judge Ronald Buckwalter to allow Fumo to "interact with friends, and former colleagues, and other business acquaintances throughout Pennsylvania and New Jersey in order to try to develop a consulting business, and to pursue other business opportunities."

Fumo spent four years in federal prison on public corruption charges and is still on probation. Cogan also asked Buckwalter to let Fumo set up his firm "while his many friends, business and political contacts are potentially in a position to help him find business opportunities." State Sen. Anthony Hardy Williams said Fumo was "warmly received" at the caucus meeting. Williams recalled that Fumo said he is "looking at a business opportunity where I give advice."

Fumo was instrumental, while Gov. Ed Rendell was in office, in pushing for state money to keep the Wholesale Produce Market from being lured from South Philly to New Jersey. The expanded and improved market is now in Southwest Philadelphia. "He was very well-received out at the market," said Jamie McDermott, executive director of the Philadelphia Regional Port Authority. "After all the trials and tribulations he went through to get that place built, this was his first visit." *Philadelphia Daily News*



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