The End of Competition in Film Distribution: An Argument to Reboot the Paramount Consent Decree

The End of Competition in Film Distribution:

An Argument to Reboot the Paramount Consent Decree

Mario G. Nunez

A Thesis in the Field of Legal Studies

for the Degree of Master of Liberal Arts in Extension Studies

Harvard University

May 2023

Abstract

The movie theater industry of the 1930s saw relationships between movie producers, distributors, and independent exhibitors become tense. Studios and distributors, which made films available to the public, threatened the livelihoods (and existence) of independently owned movie theaters when they decided to compete directly with those smaller businesses. Independent exhibitors throughout the early 1900s continually invested in their theaters and evolved the moviegoing experience for consumers. This evolution was powered by healthy competition among theaters owners. But competition became restrained once the corporate film studios accelerated their expansion in film exhibition. Studios restricted film distribution to their own (or affiliate) exhibitors. Meanwhile, independently owned theaters were coerced into controversial distribution deals in exchange for access to major films. Those deals reduced the number of businesses that truly operated as free enterprises. Many independents reluctantly became extensions of their film suppliers.

Moviegoers in the 1930s ultimately paid higher ticket prices and had fewer film choices once film distributors gained control of non-studio theaters in local markets. Economist Adam Smith warned that allowing corporations too much control could lead towards anti-consumer monopolies. A successful capitalistic economy requires regulation to protect consumer choice and encourage continued evolution of the industry. The SCOTUS ruling in *U.S. v. Paramount Pictures* restored free commerce via precise,

industry-specific regulation. The result, known as the Paramount Consent Decree, accomplished what the Sherman Antitrust Act failed to do.

However, the Paramount Consent Decree was ended August 2022 because the federal court felt the law was no longer relevant. This study explores the history of that regulation and the reasons for its termination. The study argues that the Paramount Consent Decree remains relevant and should remain as a deterrent against organizations that may want to drive out smaller independent theatrical competitors. Historical accounts are used to examine why general antitrust regulation alone (the Sherman Act) would not appropriately protect independent theaters from another attempted takeover. Finally, arguments are made in defense of maintaining the Paramount Consent Decree.

Author's Biographical Sketch

Mario G. Nunez is a movie fan living in the Los Angeles area. One August morning he came upon a news report that mentioned the pending termination of the Paramount Consent Decree. Having never heard of the decree, he investigated the industry-changing law and decided he would study whether the termination was a positive or negative impact of the industry.

Dr. Nunez completed a doctorate in Organizational Leadership in 2007. He has also completed other graduate degrees in research & statistics, business, and project management. Currently, Dr. Nunez is pursuing a graduate degree in legal studies, which he hopes will better prepare him to pursue a juris doctor. He has held a variety of titles over the last 25 years including operations manager, engineer, product planner, and market research manager with organizations such as Nissan North America, Toyota Motors North America, and The Walt Disney Company. Dr. Nunez was as an AMC Theaters operations manager for three years in Ontario, CA shortly after having finished a bachelor's degree at Cal Poly Pomona. The experience at AMC introduced him to movie exhibition and film distribution, which grew into a fascination over the movie business. He enjoys watching movies at home with his wife and two dogs – Wall-e and Olivia (Newton-John).

Dedication

This thesis is dedicated to my wife, Monica Nunez. Several years ago, we each made the decision to pursue a graduate degree in a field that interested us. We have both been working on our programs diligently ever since that day. The continuous clicking heard from each other's keyboard in separate home offices has kept us motivated to ultimately arrive at this point of study.

"Monie," thank you for the continuous check-ins, snack breaks, news updates and runs to Starbucks that kept our minds and typing hands us moving forward. Your encouragement and care are greatly appreciated. Moreover, you are a saint for allowing me to "test shoot" some of my research arguments before I finalized them on paper.

I would also like to extend my thanks and appreciation to my thesis advising team which consists of Dr. Michael Miner and Dr. Jennifer Alpert. Dr. Miner, I very much appreciate you working hard to find me a supportive scholar in Dr. Alpert to help me craft this study. Dr. Alpert, your suggestions and direction were critical in helping me research this topic in greater depth, and your feedback helped me refine my writing style. Thank you for looking at all my drafts and sending your feedback even when the schedule was especially hectic.

Table of Contents

Author's Biographical Sketch v

Dedication vi

List of Tables ix

List of Figures x

Chapter I. The Story Unfolds 1

The Introduction of Film 5

The Movie Theater and Nickelodeon 9

The Movie Palace 11

The Hollywood Studio 13

Chapter II. Distribution Tactics and Smith 16

Tactic: Block-Booking (All or None) 17

Tactic: Overbroad Clearances and Exclusive Arrangements 19

Tactic: Minimum Price Agreements (Price Fixing) 20

What Would Adam Smith Say? 23

Chapter III. The Sherman Antitrust Act: An Unreliable Performer 27

The Sherman Antitrust Act of 1890 28

A Confusing Time for Antitrust Enforcement 30

Federal Trade Commission v. Famous Players-Lasky Corp. (1927) 32

U.S. v. West Coast Theaters (1930) 36

U.S. v. Balaban & Katz Theaters et al (1932) 38

Glass v. Hoblitzelle et al (1935) 40

U.S. v. Interstate Circuit et al (1937-1939).....43

The Consent Decree of 1940.....46

Chapter IV. Industry-Specific Regulation Is Cast 50

Paramount Consent Decree (U.S. v. Paramount) (1945-1948).....51

The Case for Competition.....54

Television: The Unexpected Plot Twist.....57

Impact of Competition on Hollywood Film Production.....58

Impact of Competition on the Movie Theater Industry 61

Chapter V. The Premise for a Reboot.....67

Decision to Sunset the Paramount Consent Decree (2020) 68

The Court's First Argument: The Big 5 Is Gone 73

The Next Argument: The Sherman Antitrust Act Alone Is Enough.....76

The Diminished Role of Brick-n-Mortar Theaters 81

Exploring the Court's Final Argument: 86

Conclusion 88

List of Tables

Table 1. Differences Between District Verdict and Final Paramount Consent Decree. 53

Table 2. Independent Theaters Under Studio Ownership 81

List of Figures

Figure 1. Department of Justice Press Release. 72

Chapter I.

The Story Unfolds

I was a pre-teen in the early 1980s when I had my first encounter with capitalism. Mom and dad had immigrated from Ecuador in the early 70s and by 1980 ran a successful clothing manufacturing business from our home. We made bathrobes for young children which was a unique item (back then) among children's clothing. Mom and dad purchased fabric from a local clothing manufacturer to make those robes. The supplier sold us and several other small entrepreneurs any fabrics leftover from their own production of women's clothing. Each week we made a deal for supplies and hauled that fabric home where we made a new batch of bath robes to sell at the weekend open-air market. The family business was successful and became our primary source of income.

Eventually other small businesses at the local open-air market started selling similar young children's clothing. However, that competition motivated us to experiment with our product line. We introduced variations of our robes – more premium versions, more affordable ones, trendy colors, and personalized ones. Some ideas worked well while others were not worth pursuing. We even established a loyal group of customers. But our success caught the attention of our fabric suppliers. Soon, they too introduced a line of young children's bathrobes. They also stopped selling us the flannel, terry cloth and polyester they supplied us in the past. Producer had become competitor. They not only controlled supply but also had the size and wealth to drive us (and entrepreneurs like us) out of the market. Several fellow small business owners who relied on that supply were eventually driven out of the market. Others took jobs working for the same

manufacturers that put them out of business. I was seventeen when my parents finally decided to exit – but they left the industry to pursue careers in other unrelated areas. I might not have realized it then but what I experienced during those years was similar to the story of movie theaters pre and post the enactment of the Paramount Consent Decree. It was a story about capitalism and monopoly (monopoly's movie nemesis). On a recent drive pre-pandemic, I stumbled upon a news story about how big studio corporations would soon be allowed to swallow up their smaller theater competitors because of a change in law. The story was especially intriguing because the government – the guardian of capitalism – was behind the move to retire a law that protected small independent businesses from large wealthy studios.

Adam Smith (the father of modern economics) wrote about capitalism and monopolies in both *Wealth of Nations* and *The Theory of Moral Sentiments*. Smith argued that entities pursuing self-interests – the attainment of wealth – in a free economy better their societies via the creation of value, efficiencies, and innovation. However, organizations that accumulate too much power, dominance and wealth may become too focused on maximizing their own self-interests and deviate from their moral responsibility of contributing to societal happiness. Organizations bent on control of the market seek monopoly power and do so by restraining competition. A market void of free commerce drives consumer prices up and limits product/service alternatives. A market with no competition also stifles innovation, quality, and experimentation. Those businesses that remain would likely lose their freedom to control pricing and quality if forced to succumb to the conditions of a sole source. This is contrary to how a successful capitalistic economy should work, it discourages individual entrepreneurs like my

immigrant parents to pioneer products or services that improve the American quality of life.

The state of the movie theater industry during the 1930s mirrors Adam Smith's writings and my personal experience of the 1980s. Entrepreneurs created the movie theater industry from the movies they procured from film producers. Those entrepreneurs evolved the theater industry because competition from other theater owners created a contest for consumers. Competition was the catalyst for unique and alternative moviegoing experiences aimed at drawing consumers. Then the studios and film distributors entered the industry and withheld film supply from the independents. Many independents were forced to become affiliates of their suppliers. Movie theater evolution stalled because there were fewer competitors which made experimentation no longer necessary. Film distributors became powerful and dominant. Consumers were forced to pay higher ticket prices and were limited to the films produced by the studios and cartels that dominated their market. Capitalism, which relies on the interaction of several market participants, slowly dwindled.

The Paramount Consent Decree ended the studio's use of unfair, discriminatory, and/or exclusionary business practices in film distribution. By 1950 small and independent theaters were freed from contractual restrictions that forced them to become stagnant. Many again experimented and innovated within the moviegoing experience to introduce unique ways to enjoy newly released films. Competition boosted consumer choice, convenience, and value. The decree protections however ended August 2022 because a federal court assessed that legacy laws such as the Paramount Consent Decree had outlived their purpose and were no longer needed.

This study argues that the Paramount Consent Decree was critical in protecting the independent owner's right to free commerce and economic freedom and therefore should not be ended. Film and theater history have demonstrated the Sherman Antitrust Act alone has been insufficient in protecting independent or small businesses from anticompetitive and exclusionary distribution practices. Competition is critical in offering consumers fair ticket pricing and diverse film choices. Competition also encourages business owners to continually evolve their moviegoing experience to attract new consumers. American history is based on episodes of invention and discovery. The decree promotes such innovation. There is widespread support for maintaining the decree. The 35,000 members of the National Association of Theatre Owners (for example) support keeping the Paramount Consent Decree active.[1]

This study begins with historical background to describe the role of theaters in American culture, and the contributions made by individual entrepreneurs throughout the history of exhibition. This chapter provides examples of the innovation made possible because of independent leaders need to experiment so that they succeed in a free market. The remaining chapters will describe the controversial business tactics that studios and studio-led cartels used to lessen the independent's ability to freely manage their businesses. Those tactics also led to higher prices and limited choices for consumers. In later chapters I will discuss the legal disputes spurred by those controversial tactics. Then, I will speak about how precise, industry-specific regulation ultimately restored competition and ushered in a period of innovation in the moviegoing experience. Finally,

[1] Reuters. (2020, August 7). U.S. Judge ENDS Decades-old Movie Theater Rules Set by Hollywood Studios. CNBC. https://www.cnbc.com/2020/08/07/us-judge-ends-decades-old-movie-theater-rules-governing-hollywood.html

I make the argument that antitrust regulation specific to the film industry should remain. The federal government may not have considered all elements when making its determination that the Paramount Consent Decree was no longer necessary.

The Introduction of Film

Film and exhibition were first introduced in France. The Lumière brothers invented a device that could capture, project, and create film prints. The "cinématographe" (as it was known) came into existence in 1895. The film industry grew and spread into other parts of Europe, Scandinavia, and Russia. Americans embraced films several years later.

Entrepreneurs and inventors introduced Americans to the concept of "moving pictures" during the 1830s. Inventors experimented with ways of creating the illusion of motion from still images. The zoetrope (introduced in 1834) was one successful innovation that realized the potential of creating "moving pictures". A zoetrope housed successive images/drawings inside a drum that when spun made hand-drawn images appear to move. Photography then became common by the mid-1800s. Inventors and photographers turned their focus towards producing a device that could take photographs in rapid succession. The ability to capture sequential photographs sparked interest in creating live action "moving pictures" (now known as movies). American fascination with moving pictures gained traction with the introduction of the Kinetoscope – "an upright wooden cabinet…with a peephole with magnifying lenses in the top…with film

50 feet in length…arranged in a series of spools."[2] The device was introduced by Thomas Edison and William Dickson in 1891. Consumers inserted a penny into the coin slot, place their eyes atop the lens, and rotated the spool to start a short film. Hendricks (1966) states that a 50-foot roll of film reportedly lasted between 20 and 50 seconds depending on the film speed it was recorded.[3]

"Moving pictures" evolved from a singular to group experience once inventors introduced their own projection equipment and entrepreneurs established makeshift movie parlors. Charles Jenkins and Thomas Amat introduced the Phantascope projector in 1895 to audiences at the Atlanta Cotton States Exposition.[4] The Phantascope could project movies across the room onto a large screen. The demonstration proved it was possible to enjoy film screenings in a public/group setting.

Meanwhile, Edison was producing short films at his New Jersey based Black Maria studios. Edison realized the profit potential of film and purchased the patent to the Phantascope projector from Amat. Edison planned to expand his movie production business by combining manufacturing, movie production, film printing, and projection/exhibition under one roof. Edison complemented his acquisition of the Phantascope projector with his own invention the Kinetograph. The Kinetograph recorded and "stored up [image] records and impressions [onto film] for future

---

[2] Robinson, D., and Scorsese, M. (1997). From Peep Show to Palace: The Birth of American Film. Columbia University Press in association with the Library of Congress, Washington, D.C. pp.34.

[3] Hendricks, G. (1966). The Kinetoscope: America' First Commercially Successful Motion Picture Exhibitor. The Beginnings of The American Film; No Statement of Edition (January 1, 1966). There is debate as to the runtime of 50 feet of film, or even whether Edison could accommodate longer lengths of film. However, Gordon Hendricks opinion is used here since he is known as a credible expert in this field.

[4] Cooper, Walter. G. (1896). The Cotton States and International Exposition and South, including the Official History of the Exposition. Atlanta, GA. The Illustrator Company.

reproduction."[5] Kinetographs are known as the world's first motion-picture camera. Edison's enterprise now manufactured and sold Kinetograph cameras and Vitascope (formerly known as Phantascope) projectors to a group of individuals creating a new movie industry. The popularity of moving photographs onto a large screen contributed to the gradual phase out of the single-person Kinetoscope beginning in 1895.[6] Live action filmmaking had finally arrived in the U.S.

The excitement and profit potential of this all-new industry gave rise to our first movie villain. Edison sought full control of the growing movie industry and wanted to maintain dominance by restraining competition. He formed the Motion Pictures Patents Company (aka MPPC or Edison Trust) which combined several film producers and suppliers into an alliance that controlled all film distribution. Edison's control of distribution enabled him to control which movie producers may or may not participate in the industry. The MPPC also protected Edison's patents for film production and projection from patent infringement. Edison required that any studio producing films using equipment employing an Edison patent pay the MPPC a royalty. This requirement gave the MPPC control of most movie production via the threat of patent litigation. Small, independent and/or startup studios unwilling or unable to pay these royalties or unable to secure patent licenses relocated to the West Coast (Hollywood) to be as far away as possible from Edison's threats.

[5] Dickson, W. K. L. and Dickson, A. (2000). History of the Kinetograph, Kinetoscope, and Kineto-phonograph. Museum of Modern Art Publisher, New York City, NY. Quote from pp 15.

[6] The Library of Congress. (n.d.). Early Motion Picture Productions. The Library of Congress. Retrieved July 31, 2022, from https://www.loc.gov/collections/edison-company-motion-pictures-and-sound-recordings/articles-and-essays/history-of-edison-motion-pictures/early-motion-picture-productions/

This episode in American film history illustrates that relationships between the dominant film producers and the smaller market participants were tense from the start. Dominant organizations or cartels employed controversial methods to obtain wealth. But those controversial methods also restrained economic freedom. Smaller film makers found it impossible to experiment with film techniques without having to pay the MPPC high royalty fees. Smaller film exhibitors were prevented from leasing/renting any film owned by the MPPC, which limited their ability to profit from more lucrative film titles. In either case, the Edison Trust operated as a monopoly controlling market participation, access to supply, and minimizing any incentive to advance the film industry forward.

The district court of Pennsylvania restored market competition in the growing movie industry when it dissolved the Edison Trust in 1915. The verdict in *U.S. v. Motion Pictures Patents Company (225 F. 800, E.D. Pa. 1915)* led to a boom in movie production and was a victory for independent movie producers previously locked out of the industry because of licensing restrictions enforced by the MPPC/Edison Trust. The court believed the MPPC's licensing fees and terms were cost prohibitive forcing many film producers to exit the market. The court believed that such policies gave Edison and his partners the power to control which studios may or may not enter participate in the industry. The court concluded that the MPPC's control over film distribution and how it managed its patent licensing were unreasonable restraints on competition and that the behavior resembled a monopoly.[7]

[7] *United States v. Motion Picture Patents Co*., 225 F. 800 (1915). Note: MPCC appealed the decision, but the request was denied. The MPCC was therefore formally/ultimately ended in 1918.

Both the quality of movie production and quantity of movies released increased because of competition and economic freedom. This phenomenon was occurring on both the east coast (where movie studios originated) and west coast (where new studios had set up shop). Film producers continually experimented with cinematography, special effects, and sound integration in a drive to generate "must-see" films. Meanwhile, the number of independently owned movie theaters was growing quickly during 1920s because of the booming demand for movies and movie houses.

The Movie Theater and Nickelodeon

Market competition and economic freedom inspired independent theater owners to evolve the look and feel of their movie theaters. The genesis of many movie theaters was humble with most occupying small and cramped backrooms behind store fronts. Some theater operators operated as roadshows and simply rented space for a few weeks to a couple months. Owners of these backroom theaters and roadshows often found themselves competing for the same local customers. Said competition spurred the need to evolve the experience and create more alluring venues. These improvements came in the form of more comfortable seating, expanded film variety, and food concessions all designed to attract audiences. The more successful theaters were those that differentiated themselves enough to attract customers and retain existing ones. Competition and experimentation therefore were the catalyst to many of the theater features and amenities we enjoy today.

The next evolution came in the form of the "nickelodeon" which came from entrepreneurs continual need to keep experimenting with new ideas as well as a need to

create a more permanent movie space. Vaudeville stage managers recognized the profit potential of movies and included them into their live stage shows. Movies eventually became the featured attraction as film runtimes became longer, storylines more intricate, and the overall image quality improved. Many vaudeville theaters were converted into nickelodeons – a fitting moniker because admission only cost a nickel.[8] Nickelodeons ushered in the period of permanent moving picture theaters. These theaters featured comfortable seating, dedicated projection equipment, and the larger screens than those of traveling roadshows. Their popularity motivated many entrepreneurs to open their own nickelodeons. Within a short time, the growing number of nickelodeons transformed the look and feel of city landscapes. As Singer (1995) writes:

> At the close of 1905 movies were still a relatively marginal amusement, filling brief slots at the end of vaudeville shows or running Sundays in melodrama theaters that aimed to evade New York's blue laws against live performance. Two years later, nickelodeons had revolutionized urban recreation and altered the commercial landscape of Manhattan. Well over three hundred small storefront move theaters known as "nickelodeons", and converted larger theaters screened movies by 1908.[9]

Singer's description highlights how market competition contributed towards a transformation of city landscapes as more entrepreneurs established their own nickelodeons. Owners enjoyed their freedom to experiment with the look and feel of those venues. Owners experimented with flashing exterior marquees, hired outdoor street performers and musicians to draw crowds, and installed large colorful posters to help distinguish their theater from that across the street. Inside the nickelodeons, owners

[8] Britannica, T. Editors of Encyclopedia (2019, September 4). Nickelodeon. Encyclopedia Britannica.

[9] Singer, B. (1995). Manhattan Nickelodeons: New Data on Audiences and Exhibitors. Cinema Journal, 34(3), pp. 5–35. https://doi.org/10.2307/1225743 Quote is from pp. 5.

created lobby space for comfort, added amenities such as concession stands, and marketed "air-conditioned auditoriums" to draw crowds. By 1908 nearly 8,000 nickelodeons operated nationwide and by 1910 that number grew to 10,000.[10]

The Movie Palace

Movie palaces were the next evolution of the movie theater/nickelodeon and were the result of intensified competition among owners to create a premier movie house. Movie palaces began appearing in the mid-1910s (but slowed by the 1950s). Movie palaces also became destinations because of their lavish architectural designs, artistic décor, upscale amenities, and enormous auditoriums made possible by the substantial investments their owners made in one-upping the competition. Herzog (1981) best describes what one might expect when visiting a movie palace:

> The movie palace was a special type of big city movie theater built in America between 1913 and 1932. Among its most distinguishing characteristics were its numerous appointments, lavish decorations, and enormous size. During the teens the average movie palace had from one thousand to eighteen hundred seats. Large palaces had from eighteen hundred to three thousand seats…but regardless of seating capacity, a theater was not considered a palace unless it had special services like ushers and doormen and elaborate interior decorations…All the iconographic features of the exterior of the move palace were designed to make the front of the theater a "show window" that invited the customer to attend the performance…the deluxe palaces featured a very large and impressive marquee with attraction board and upright which cantilevered out over the box office and sidewalk in front of the theater.[11]

[10] Pickford, M. (n.d.). American Experience: Early Movie Audiences. PBS. pp. 15-16. pphttps://www.pbs.org/wgbh/americanexperience/features/pickford-early-movie-audiences/

[11] Herzog, C. (1981). The Movie Palace and the Theatrical Sources of Its Architectural Style. Cinema Journal, 20(2), pp. 15–37. https://doi.org/10.2307/1224831

Palaces also featured the latest projection technology necessitated by ongoing advances made in film production – including improvements made in image quality, introduction of technicolor (1915) and later the 3-colour process (1932), and changes in aspect ratio (1953). Movies also benefitted by the inclusion of more convincing special effects and integrated recorded dialogue (1927) both which supported better storytelling (and whose inclusion was largely influenced by the film-making approach used in European cinema).[12] The full-length feature film (aka "multi-reeler") replaced short movies giving audiences more reasons to spend more time at local nickelodeons and movie palaces. Several well-known movie palaces remain open today including the 2,041-seat Million Dollar Theater in Los Angeles (1918), the 3,600-seat Balaban and Katz Chicago Theatre (now The Chicago Theater) (1921), the 1,000-seat Grauman's Chinese Theater in Hollywood, CA (1927), and the 2,000-seat United Artists Theater in Detroit, MI (1928).

The palace was another innovation that came from entrepreneurs experimenting with new ways of attracting resistant or untapped customer segments. Affluent Americans tended to avoid the dingy commercial neighborhoods where many nickelodeons were located. Affluent women were also most likely to avoid public experiences that required them to sit in dark rooms with strangers. Aronson (2010) explains that some middle class and many affluent Americans had concerns about how men might behave when in dark auditoriums for extended periods. Movie palaces were generally perceived as a safer place to see movies because they were typically located in nicer, well-kept neighborhoods and frequented by a more affluent audience. Many nickelodeons refurbished their theaters over time to address those concerns and they

[12] Kindem, G. A. (2000). The International Movie Industry (pp. 314–315). essay, Southern Illinois University Press. Carbondale, IL

improved the overall safety and comfort of their auditoriums and/or built new theaters in more nicer locations.[13]

Movie theaters evolved quickly and substantially for two reasons. Competition caused theater owners to realize they needed to implement innovations to attract larger audiences and be more profitable. Freedom allowed theater owners to experiment with features and services that not only attracted customers but also made them loyal patrons. American capitalism is based on the concept that entrepreneurs can profit from their original ideas, and that the government provides a free market in which those entrepreneurs may experiment with their ideas. Up until the 1930s, the theater industry exemplified that concept.

The Hollywood Studio

Studios in the 1930s were large, powerful, and wealthy organizations and they became dominate because of the booming consumer demand for movies. Bailo (1985) writes that Famous Players-Lasky (now Paramount Pictures) was producing two feature films a week, or 104 films per year, in the early 1910s (p.8). Movies such as *Birth of a Nation* (released in 1915) demonstrated how lucrative the theater business had become. *Birth* was a 3-hour experience that earned a staggering $60M in ticket sales (or $1.6B when adjusted for inflation in 2021 when first released).[14] The prospect of a hit film

[13] Balio, T. (1985). American Film Industry. Madison: University of Wisconsin Press. Madison, WI.

[14] Schickel, R. (1984). In D.W. Griffith: An American Life (p. 281). essay, Simon and Schuster. The original title was *The Clansman* but was changed to *Birth of a Nation* in its wide release. Although *Birth of a Nation* was clearly a financial success, actual box office receipts for the film have been debated since at the time exhibitors habitually kept poor records or misreported their earnings.

motivated the studios to not only accelerate film production but also expand into film exhibition.

The movie industry was a vertically integrated one. This meant that a studio controlled all aspects of film production, distribution, and exhibition.[15] A major studio would own all film production resources including movie sets, film labs and print processing, etc.), and tied creative personnel (e.g., actors, writers, producers and directors) to the studio under exclusive long-term contracts.[16] Studios also controlled the distribution rights to the films they produced (or would sell or assign distribution rights to other dedicated film distributors). Finally, studios-distributors also expanded into owning and operating movie theaters – which competed directly with the smaller non-studio theaters.

The largest studios during the 1920s were Paramount Pictures (aka Famous Players-Lasky Corporation), Warner Brothers (established 1923), MGM (or Metro-Goldwyn-Mayer, 1924), RKO Radio Pictures (or Radio-Keith-Orpheum, 1928) and Twentieth Century Fox (1935). These five studios became known as the "Big 5" because of their collective control of film production, distribution, and exhibition. Powell (2013) writes in *Promotional Culture and Convergence* that the Big 5 controlled 75 percent of all film distribution during the 1920s.[17]

---

[15] Hanssen, F. A. (2008). Vertical Integration During the Hollywood Studio Era. SSRN Electronic Journal, pp. 519–543. https://doi.org/10.2139/ssrn.1139383

[16] Golden Age of Hollywood: Movies, Actors and Actresses. (2018, January 9). American Historama. https://www.american-historama.org/1929-1945-depression-ww2-era/golden-age-of-hollywood.htm

[17] Powell, H. (2013). Promotional Culture and Convergence: Markets, Methods, Media. Routledge.

The major studios typically owned their own theaters where they screened their own movies. There were also many independently owned (non-studio) movie theaters in the market. These independents needed to contract with the studio or film distributor to acquire films to show in their auditoriums. However, in many cases the studio or distributor would require that the independent agree to certain conditions in exchange for a film clearance/authorization. These conditions included charging a minimum ticket price, booking films as part of a larger block, and/or other conditions that bound the independent to the studio/distributor for a certain duration. Vertical integration was therefore controversial because it enabled movie producers to control/impact market competition and drive the independent's decision-making. On the other hand, vertical integration allowed the studios to ensure their film releases met high-quality standards for exhibition and content. Several studios including Paramount subscribed to the idea that it was their responsibility to ensure the public enjoyed a consistent product for their money and have access to wholesome family-oriented content. The studios participation in movie exhibition was merely an extension of their mission to provide consumers a quality experience.

Arguably, vertical integration caused the theater industry to become stagnant. Independent owners that joined a studio cartel or became a studio affiliate had no incentive to continue investing in unique experiences when a distributor handed them a guaranteed audience. Vertical integration was also a disservice to the consumer. Distribution deals often required theater owners to charge a minimum ticket price, or prices were high because of the high cost of movie blocks. This also meant that consumers in many areas now found themselves with fewer film choices.

Chapter II.

Distribution Tactics and Smith

Five major studios (aka the "Big 5") controlled most film distribution and nationwide exhibition during the 1930s. The high demand for movies fueled explosive growth and studios continued expanding into new territories by building studio-owned theaters and/or coercing smaller, independently owned theaters to become affiliates.

Interestingly, movie producers and large movie theater chains realized they could profit more by combining into cartels versus competing against each other. Cartels would combine individual production, distribution, and exhibition into an even larger, more dominant organization. The combinations had the benefit of efficiency. Movies were distributed quickly across the largest/dominant theater franchise(s) instead of contracting with many individual theaters. This structure also enabled studios to distribute their films in regions where they had few or no studio-owned theaters. Cartels also established standards for production quality and exhibition consistency. Some studios subscribed to a moral argument that their dominance and control was necessary to protect the public from harmful or offensive content.

Cartels also had significant negative effects on market competition, economic freedom, and consumer experience that outweighed their efficiency and moral argument. Movie cartels of the 1930s aggressively pursued control of the movie theater industry. Therefore, cartels used distribution practices that were exclusionary and predatory to control market competition and individual businesses. This chapter describes the primary tactics the studios and their cartels used in coercing independent businesses to reluctantly

work for the studio versus for themselves. Specifically, this chapter describes the use of block-booking, overbroad clearances, and minimum price deals in film distribution. This chapter also explores the benefits and disadvantages of each commonly used distribution practice during the 1930s and their impact on market competition, economic freedom, and the consumer.

The federal government has reinstated block-booking, overbroad clearances, and minimum price deals as of August 2022. The basis for the decision was that the industry has changed significantly and because of those changes these tactics would not restrain competition and freedom. However, I argue that allowing these tactics to return reduces incentives to innovate and experiment because the dominant market players might use distribution and exhibition to bring individuals under their control.

Tactic: Block-Booking (All or None)

Block-booking is a distribution tactic that required a theater booker to accept all movies in a film "block" whether the booker was interested in one or all of those films. Most bundles contained a mix of feature films (major titles and/or lesser B-movies) or other content (short movies, cartoons, etc.) A theater under contract was required to screen all films in the block once the film was made available.

Block-booking had several benefits for both producers and exhibitors. Studios argued that block-booking ensured that even less anticipated films would receive distribution. A film that achieved mass distribution typically recovered its initial investment which reduced its lease/rent cost when made available to theaters in more

remote markets. Otherwise, the studio would become incapable/unwilling to invest in experimental/artistic film production if it accumulated losses on its less-anticipated titles. Kenny and Klein (1983) illustrate this argument using the diamond trade:

> Blocking [booking] serves to prevent buyers from rejecting parts of a package of products that has been average-priced…If [diamonds] stones were individually priced and buyers were permitted to search through and select the particular stones they wished, the probability of rejection would increase and [seller] would be able to sell the remaining stones in each quality category group only at a lower price.[18]

Block-booking was therefore crucial in securing the funds needed by the studio to produce films of various genres, interests, and budget (versus replicating the same formula of past successes). Some independent theaters supported block-booking because they made film booking easier. A single block may have enough films to fill a theater slate for several months. This advantage reduced any need for the independent to negotiate multiple deals with individual studios. Studios sometimes incentivized independents to take the block by offering the independent exclusive screening rights within his/her territory. The independent in that case gained a guaranteed audience (but at the cost of their economic freedom).

Block-booking however restrained competition, minimized economic freedom, and caused consumers harm. Block-booking contracts often tied independent businesses to a studio or cartel for an extended period. Gil (2005) writes that "many distributors operated in blocks of 13, 26, 52, or 104" which forced the independent to come under studio control for periods of up to 12 months. A large block could also financially ruin

[18] Kenney, R. W., & Klein, B. (1983). The Economics of Block Booking. The Journal of Law and Economics, 26(3), pp. 497–540. Quote found on pp. 539. https://doi.org/10.1086/467048

the independent if one or more films flopped.[19] Theater owners unfortunately had no ability to preview upcoming films within a block because those titles were still in development. Yet, block deals were a take all or nothing proposition. Hence, they were deprived of any ability to make better business decisions (a problem later identified as "blind buying"). Studios also dictated the minimum number of screenings per day. These requirements only amplified how little control the independents now had over their businesses. More importantly, block-booking deals also reduced competition. A theater under contract was obligated to show only films produced by that studio until the block requirements were fulfilled. Consumer choice would therefore be limited to current feature film(s) released by that studio.

Tactic: Overbroad Clearances and Exclusive Arrangements

A film clearance is a studio-issued license authorizing a specific theater to screen a film. Film clearances usually specify the length of the engagement – usually the number of days or weeks that theater will screen the film. A special or exclusive engagement gave select theaters sole exhibition for a specified period.

Studios argued that special engagements enhanced the moviegoing experience for the consumer. Big budget films employed advanced techniques that required state of the art projection, different screen sizes, or specialized sound equipment which most small independents did not have. Consumers were able to enjoy these features the way the

[19] Gil, A. (2005). Breaking the Studios: Antitrust and the Motion Picture Industry. NYU Journal of Law and Liberty, 3(83), pp. 104.

studio intended. Therefore, control over distribution enabled the studio to deliver consumers a consistent, high-quality experience.

Most clearances however granted select exhibitors extraordinary or "overbroad" authorizations which minimized competition. In the case of an exclusive arrangement, the authorization often confined the title to select theaters forcing consumers to theaters they normally might not visit.[20] Overbroad clearances sometimes locked the film to a theater for an especially extended run. The independent therefore would be able to book the film after most consumers had already seen it. Overbroad clearances were controversial for other reasons. The exclusivity ensured that only studio-owned and studio-affiliated theaters profited from major film releases while the independents were deprived of any opportunity to participate. Not surprisingly, several independents were driven out of the market the more they were denied prime distribution.

Tactic: Minimum Price Agreements (Price Fixing)

A studio or distributor sometimes conditioned a film clearance on whether the theater owner agreed to charge a minimum ticket price. Consumers in different neighborhoods or parts of the country may pay various admission prices for the same film.

Studios argued that requiring minimum ticket prices resulted in benefits for smaller theater owners, the film producers, and the consumer. For example, production

[20] Conant, M. (1960). Antitrust in the motion picture industry economic and legal analysis. Berkeley, CA: University of California Press.

costs on major film were high requiring the studio to recover its investment. Studios could only continue making the films consumers demanded if their releases made back their investments and a sizeable profit. Studios subscribed to the argument that continued profitability not only allowed the studios to continue production of high-quality feature films but also enabled them to produce more wholesome, family-friendly content. Studios also argued that films that met their box office targets during the films first run benefitted the smaller independent theater network. Gil (2005) explains this further:

> The industry adopted a minimum admission price system for a number of reasons. First, where the rental fee paid by the exhibitor was to be a percentage of the revenue earned from screening the film, distributors had an interest in setting minimum admission fees because those fees directly determined how much money the distributor would receive.
>
> A second reason for redetermining admission price was that it ensured a differentiated pricing scale for first-run and subsequent-run theaters…Without a system of subsequent-runs, many theaters would not have been able to afford the price of the films. Because of the run system, distributors were able to rent films to subsequent-run theaters at a lower cost…The third reason for fixing admission price was that exhibitors demanded it.[21]

According to Gil, minimum price agreements fast-tracked the studio's ability to recover its investment which then lowered the film's lease/rent rate when released as a second run. Smaller theaters could then afford to lease those films. Those theaters would then attract larger audiences. The owners then could invest additional profits towards making their theaters more modern and comfortable. Studios and their cartels also believed they were within their legal rights to impose minimum ticket prices. In the case

[21] Gil, A. (2005). Breaking the Studios: Antitrust and the Motion Picture Industry. NYU Journal of Law and Liberty, 3(83), pp. 110. https://doi.org/http://www.law.nyu.edu/sites/default/files/ECM_PRO_060965.pdf

of *Shubert Theatre Players Co. v. Metro-Goldwyn-Mayer Distributors* (District Court of Minnesota, January 30, 1936), the court equated the rights of a copyright holder with that of a patent holder:

> A patent holder may set the price at which his manufacturing licensee must sell, the theory being that a patent licensor may impose any condition, the performance of which is reasonably within the reward given by the patent grant. [United States v. General Electric Co., 272 U. S. 476 (1926)]. If the films are considered to be "licensed," the same rule would seem appropriate, because the prevalence of percentage selling and the desire to protect first run revenues gives the distributor a direct interest in theatre prices.[22]

The verdict established that film was intellectual property and therefore the creator may set the 'proper value' of that property.[23] The court also supported the right of the creator to establish other conditions that a seller must follow as part of any business relationship. Both elements of the verdict aligned with the right of a creator/licensor to profit financially from one's own intellectual property.[24] The court also refused to intervene further because it believed film producers were better qualified to determine the fair value of their own creations, but it would intervene if there was evidence of collusion among copyright holders to fix prices.[25]

---

[22] The Motion Picture Industry and the Anti-Trust Laws. (1936). Columbia Law Review, 36(4), pp. 635–652. Quote from pp.650. https://doi.org/10.2307/1116176

[23] Reynolds, H. J. (2013). Introducing Price Competition at the Box Office. UCLA Entertainment Law Review, 20(1). https://doi.org/10.5070/lr8201027162

[24] The United States Department of Justice. (2015, June 25). Chapter 1 : The Strategic Use of Licensing : Unilateral refusals to license patents. The United States Department of Justice. Retrieved September 17, 2022, from https://www.justice.gov/atr/chapter-1-strategic-use-licensing-unilateral-refusals-license-patents#N_44_

[25] Glass v. Hoblitzelle, 83 S.W.2d 796 (Tex. Civ. App. 1935); Shubert Theatre Players Co. v. Metro-Goldwyn-Mayer Dist. Corp. (D. Minn. 1936) (unreported), cited in Note, supra note 35, at 638, 646, 650;

Minimum price agreements however were often used to reduce and/or eliminate competition and force the consumer into paying higher prices. Price agreements were sometimes used in a predatory fashion in territories where a studio or cartel wanted to expand its monopoly power. Studios temporarily discounted the ticket prices at theaters they owned or controlled to draw business away from independents required to charge the higher ticket price. The studio would then purchase or merge the theater into its network once that business could no longer compete. The cartels eventually controlled enough of the market that they dictated what ticket prices consumers paid (since there were no other alternatives).

What Would Adam Smith Say?

Capitalism is an economic system in which "demand and supply freely set prices in a way that can serve the best interests of society."[26] Jahan and Mahmud (2015) state that a successful capitalistic economy relies on several elements. Businesses must be allowed to enter, compete, and exit the market freely. The prices of products and services is determined by the interactions of buyers and sellers. The role of government is to maintain an environment that facilitates competition. And, customers have access to

Sono Art World Wide Pictures v. Lando (County Ct., Allegheny County, Pa. 1931) (unreported), cited in Note, supra note 35, at 650.

[26] Jahan , S., & Mahmud, A. S. (2015). What Is Capitalism? Finance and Development, 52(2), 44–45. https://doi.org/https://www.imf.org/external/pubs/ft/fandd/2015/06/pdf/basics.pdf

alternatives when/if they are dissatisfied with the available choice(s). The authors also reference the writings of Adam Smith regarding a capitalistic society.

Economist Adam Smith believed that when individuals act in their own self-interest, they also benefit society at large. This means that capitalistic markets are especially successful when the sellers (in pursuit of wealth) compete against other sellers to deliver the greatest good for their buyers, and these interactions benefit the whole economy.[27] Smith believed the competition yielded more efficient productivity and increased the variety of goods – benefits to those in the community. Smith also believed that competition provided order and consistency to the economy by discipling/forcing entrepreneurs to become good managers. A good manager should be free to make his/her own operational adjustments in response to fluctuating market conditions. However, Smith's concept of capitalism and an ideal economic society did not describe 1930s film distribution. By 1930 the major studios had not only stopped competing against each other but were using their distribution power to combine, reduce competition, and increase corporate wealth.

Smith instead would have argued that the sellers (studios) of the 1930s exclusively had their own self-interests in mind and not that of the larger society. The studios maintained moral and economic reasons for expanding their control of exhibition – namely, ensuring the public had access to quality, wholesome, family-oriented entertainment plus the economic support to keep making those films. However, I argue those reasons were secondary to corporate greed. Smith warned that an organization with

[27] Kurz, H. D. (2015, March 12). Adam Smith on Markets, Competition and Violations of Natural Liberty. Cambridge Journal of Economics, 40(2), 615–638. https://doi.org/10.1093/cje/bev011. pp 619.

too much power and control over an industry could breed selfishness and greed leading to socially harmful outcomes.[28] For example, the major studios of the 1930s aggressively pursued market share and did so by coercing small independent theaters into deals that reduced competition, deprived them of their freedoms, and limited consumer choice.

Smith subscribed to a limited role of government when regulating economic markets but would have supported regulation to deter and combat behaviors that threatened competition, economic freedom, and consumer choice. In *The Theory of Moral Sentiments,* Smith writes:

> Concern for our own happiness (self-interest) recommends to us the virtue of prudence (self-command), concern for that of other people, the virtues of justice and beneficence –- of which the one restrains us from hurting, the other prompts … (us) to promote that happiness.[29]

Smith refers to a need to establish a moral framework that promotes a well-functioning economic and social system. Smith's vision is one of individuals and/or organizations that put personal self-interests behind the greater "concern for other people" in hopes of building a happier society. The government therefore must enact and enforce regulation that protects the continuation of market competition, economic liberty, and consumer happiness.

This discussion also calls to mind several core American virtues which L. Robert Kohls wrote about in *The Values Americans Live By*. Kohls (1984) (an intercultural trainer and former Executive Director of the Washington International Center) stated that the pursuit of goals, equality, pride in accomplishment, and free enterprise are among the

---

[28] Kurz, H. D. (2015, March 12). Adam Smith on markets, competition and violations of natural liberty. Cambridge Journal of Economics, 40(2), 615–638. https://doi.org/10.1093/cje/bev011

[29] Smith, A, (2006). The Theory of Moral Sentiments. Dover Philosophical Classics. Dover Publications, Inc., Mineola, N.Y. p. 263.

values that define American culture.[30] "Equality is, for Americans, one of their most cherished values. This concept is so important for Americans that they have even given it a religious basis." Regarding free enterprise Kohl writes, "Americans believe that competition brings out the best in any individual. They assert that it challenges or forces each person to produce the very best that is humanly possible." Kohl also subscribed to the idea that individuals needed opportunities to be themselves. Competition, he believed, provided those opportunities where individuals could perform at their best levels and achieve economic success. Kohl believed these values defined Americans and American culture. Vertical integration (and the business tactics discussed in this chapter) on the other hand made it difficult for individuals to perform at their highest levels since they were deprived of equality, free enterprise, and their ability to set or pursue goals. The 1930s therefore were a period of slowed innovation in movie theater exhibition among the smaller theaters that had previously pushed boundaries.

[30] Kohls, L. R. (1984). The Values Americans Live By. Meridian House International.

Chapter III.

The Sherman Antitrust Act: An Unreliable Performer

The federal laws that already existed to protect market competition, economic freedom, and consumer happiness were largely ineffective. The Sherman Antitrust Act had been enacted in 1890 to ensure no one firm obtained monopoly power and that consumers had access to fair pricing and choice. By 1930 the law had been amended to increase its effectiveness. However, studios, film distributors, and cartels continued using block-booking, overbroad clearances, and minimum price agreements without legal consequence. This chapter explains the reasons why the federal government failed to enforce antitrust regulation and how the studios (and cartels) continued to increase in dominance.

There are several reasons why the Sherman Act was ineffective in achieving its purpose when it came to film distribution. The 1930s were a period of inconsistent enforcement of antitrust law because the film industry evolved at a faster pace than the Sherman Act. The Sherman Act failed to keep up with the nuances of that business, and it is still not refined enough to prevent today's dominant producers from threatening the livelihoods of the smaller independents. This is especially troubling now (in 2022) because the government has decided to rely purely on the Sherman Act to preserve a free market.

The lure of the movie theaters is as attractive today as it was in the 1930s. Belton (1994) estimates an average 83 million Americans attended movie theaters on a weekly basis between 1929 and 1949 and although that attendance has been on the decline (19

million/week in 1991) it is still an attractive target.[31] Pautz (2002) estimates that approximately 65% of the U.S. population attended movies frequently – even during the Great Depression.[32] It is a resilient market that has lasted economic recession. A working-class Americans could afford the 25-cent admission price in 1925 (adjusted to a value of $4.13 in 2022).[33] There were a staggering 17,000 theaters operating nationwide at the start of the 1930s.[34] Consumers regard moviegoing a fun, entertaining, family-oriented activity. On-screen stories of fantasy, lure of exotic places, and tales of American triumph over adversity gave Americans hope that there was a light at the end of the tunnel.[35]

The Sherman Antitrust Act of 1890

The foundation of all U.S. federal antitrust law is the Sherman Act. This regulation was enacted to protect free commerce by prohibiting organizations to gain

[31] Belton, J. (1994). American Cinema/American Culture. New York, NY: McGraw-Hill.

[32] Pautz, Michelle C., "The Decline in Average Weekly Cinema Attendance, 1930-2000" (2002). Political Science Faculty Publications. 25. https://ecommons.udayton.edu/pol_fac_pub/25 . Author cites Koszarski, Richard. (1990). An Evening's Entertainment: The Age of the Silent Feature Picture 1915-1928. Volume 3. and Finler, Joel W. (1988). The Hollywood Story. New York: Crown Publishers, Inc.

[33] Calculated using the CPI Inflation Calculator at https://www.in2013dollars.com/us/inflation/1925?amount=0.25 on June 1, 2022.

[34] Jaeger, J. (Producer) and Jaeger, J.(Director). (2017). Mainstream: How Hollywood Movies and the New York Media are Promoting the Globalist Agenda. [Video file documentary]. Retrieved from https://www.youtube.com/watch?v=evYyDsmSzdo

[35] Morgan, I., & Davies, P. J. (2018, February 22). Hollywood and the Great Depression: American Film, Politics and Society in the 1930s (1st ed.). Edinburgh University Press.

dominance or control of the industry via unfair methods.[36] The term unfair pointed to illegal or unreasonable tactics. In *North Pacific Railway v. United States* (356 U.S. 1, 1958), the U.S. Supreme Court expanded on the purpose of the law:

> The Sherman Act was designed to be a comprehensive charter of economic liberty aimed at preserving free and unfettered competition as the rule of trade. It rests on the premise that the unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices, the highest quality and the greatest material progress.[37]

The justices aligned with the idea of competition as a vehicle towards "the best allocation of our economic resources, the lowest prices, the highest quality and the greatest material progress" through "unfettered competition." They also aligned with Smith's concept that the role of government was to protect capitalism and economic liberty. An entrepreneur therefore had the right to operate his/her business at-will. The justices were concerned that a single dominant entity in control of market entry, prices, and supply could pose a risk to capitalism.[38]

The Sherman Antitrust Act protects capitalism by banning behaviors that may result in one organization gaining a monopoly via unlawful methods. First, the law prohibits "every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations."[39] The

---

[36] Cseres, K. J. (2005). Competition Law and Consumer Protection. Netherlands: Kluwer Law International Publishers.

[37] *United States v. Crescent Amusement Corporation*, 323 U.S. 180 (1944).

[38] McDonald, P., Carman, E., Hoyt, E., & Drake, P. (2019). Hollywood and the Law. British Film Institute. p. 104

[39] United States Code, 2012 Edition, Title 15 – Commerce and Trade. 15 U.S. Code 1. Trusts, etc., in restraint of trade illegal; penalty.

law originally required that the members had formally entered “a combination, trust, or conspiracy” and impeded free commerce, but later court precedent merely required evidence that the members acted in concert” to accomplish that goal. Second, the Sherman Act bans behaviors that might lead an organization to obtain monopoly power via unlawful methods (e.g., “monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations.”), The text of the regulation addressed episodes in which an organization had already achieved monopoly power and those working towards it. The act was amended multiple times over the years to address environmental changes. The Clayton Act (1914) for example banned mergers and acquisitions that reduced competition and banned exclusive agreements (e.g., contracts in which the distributor puts conditions on the buyer’s freedom to choose what it buys/sells or who it does business with).

A Confusing Time for Antitrust Enforcement

The Sherman Antitrust Act was largely ineffective at restoring market competition and economic freedom even after it had been amended multiple times. There was widespread confusion across jurisdictions as to how to interpret the Sherman Act when producer versus independent legal disputes came to trial. The confusion generated inconsistencies in antirust related verdicts. Some jurisdictions treated these disputes as matters of intellectual property and not antitrust. Therefore, film producers won those cases because under copyright law they had a right to set the price and sale conditions for their creation. The problem of inconsistency was finally resolved in the Supreme Court

case of *United States v. Crescent Amusement Corporation* (323 U.S. 173, 1944) in which the justices wrote, "the Sherman Antitrust Act may apply to the business of exhibiting motion pictures, when a regular interchange of films in interstate commerce is involved."[40] However, the independents endured two decades of unfair business practices and economic oppression by the time that part of the legal debate was finally resolved.

The federal government made matters worse when the Roosevelt administration shielded major corporations from Sherman Act convictions during the Great Depression – the most notable case being *Federal Trade Commission (FTC) v. Famous Players-Lasky Corporation (FPL) et al*. The president protected (beloved) industries from bankruptcy because closures would have lowered already low public morale. The administration enacted the National Industrial Recovery Act of 1933 (NIRA) which allowed industries (including film distribution) to continue using their distribution practices to remain profitable. Article Five of NIRA for example allowed the studios and distributors to take control of admission prices:

> Article 5, subdivision E, part 3, § 1, of the National Industrial Recovery Act [Motion Picture Code] provides: "No exhibitor shall fail at all times to maintain the minimum price of admission specified in any contract licensing the exhibition of any motion picture during the exhibition thereof. This section shall not be deemed to prohibit exhibitors from reducing or increasing their admission scales as they see fit, except as may be prohibited by exhibition contracts.[41]

[40] Douglas, W. O. & Supreme Court of The United States. (1944) U.S. Reports: *U.S. v. Crescent Amusement Co., 323 U.S. 173*. [Periodical] Retrieved from the Library of Congress, https://www.loc.gov/item/usrep323173/.

[41] Glass v. Hoblitzelle, 83 S.W.2d 796, 802 (Tex. Civ. App. 1935).

Surprisingly, NIRA condoned price fixing which prevented an independent owner from freely setting his/her own pricing. Moreover, the administration was preventing these owners from their enjoying their "unalienable right [to their]…pursuit of happiness" as business owners and as written in the U.S. Declaration of Independence. Ultimately, the U.S. Supreme Court declared NIRA unconstitutional in 1935 and the DOJ resumed its investigations of unfair practices within film distribution.

The Sherman Act had no provision for ensuring compliance which led the courts to entrust the defendants to self-police. Studios complied with court orders for short periods but they soon reverted to their past behaviors. Conant (1960) recalls that West Coast Theaters and Balaban & Katz Theaters both lost their lawsuits, were ordered to deal fairly with independent theaters, but gradually returned to business as usual without consequence for several years.[42] Both defendants were later charged with contempt of the court's orders but their cases were delayed so long that each never went to trial.

Federal Trade Commission v. Famous Players-Lasky Corp. (1927)

Federal Trade Commission (FTC) v. Famous Players-Lasky Corporation (FPL) et al (57 F.2d 152 (2d Cir. 1932) is provided as an example of how existing antitrust regulation was ineffective at protecting market competition and an individual's right to economic freedom. The Shermans Act was about 40 years old at the time and had been amended/changed several times.

[42] Conant, M. (1960). Antitrust in the Motion Picture Industry: Economic and Legal Analysis. Berkeley, Calif: University of California Press.

FPL was a New York based studio that produced, leased, transported, and distributed films to movie theaters nationwide. Adolph Zukor and Jesse L. Lasky (two well-known and successful movie producers of the time) merged their two production companies to form FPL. The company distributed films in blocks that required independent theater operators to sign long-term exhibition relationships with FPL. Several independents complained they were being harassed and threatened with physical harm if they refused to deal with FPL. An exhibitor from Middleton, New York testified that FPL bosses threatened him with "goon squad intimidation" tactics after his refusal to sign a five-year block-booking deal.[43] FPL then built a theater across the street from his and sold tickets at lower prices hoping to run him of business. Another exhibitor (J.S. Burnham) testified he was the victim of a negative FPL-led public campaign shortly after refusing to sign a block-booking deal with the defendant. These two examples exemplified what several other independent exhibitors experienced.

The FTC charged Famous Players-Lasky in 1921 with "a conspiracy in restraint of trade in the business of producing, distributing, and exhibiting motion-picture films" and "intimidating or coercing exhibitors of motion-picture films to lease and exhibit films produced by respondents."[44] However, FPL subscribed to a moral defense. Anderson (2014) writes the defendants had earned a reputation for producing superior, wholesome, "clean and thrilling quality entertainment," and that the public supported the way it

[43] Aberdeen, J. A. (2000). Hollywood Renegades: The Society of Independent Motion Picture Producers. Palos Verdes Estates, CA: Cobblestone Entertainment.

[44] United States. (1932). Annual Report of the Federal Trade Commission for 1932. United Stated Government Printing Office. https://www.ftc.gov/sites/default/files/documents/reports_annual/annual-report-1932/ar1932_0.pdf p, 106.

achieved those ends.[45] The defendants had marketed themselves in major magazines as "providers of a standardized quality of entertainment" bringing family members closer together. FPL's ads (like those in the January 1921 issue of Ladies Home Journal) described the company as providers of "entertainment for the whole family undivided."[46] Their tactics, albeit controversial, superseded financial gain and achieved the same goal of societal happiness promoted by both Smith and court precedent. Moreover, FPL added that monopolies in mass communication were increasingly important because it ensured that studios would preserve the same standards for quality and wholesomeness nationwide as more people traveled between cities and remote rural areas. Consumers had a right to be protected from immoral content.[47]

The court on the other hand ordered the defendants to end their use of block-booking as a distribution practice.

> The Commission determined this method [block booking] of distribution to be unfair, and that the purpose and effect of the alternative offer is to coerce and intimidate an exhibitor into surrendering his free choice in the leasing of films, and into leasing films in blocks as offered, thereby denying to such exhibitor the opportunity and profit of leasing and exhibiting certain other films of higher qualities and which such exhibitor's patrons demand and which such exhibitor desires to exhibit.
>
> It is thus concluded by the Commission that this distribution policy lessens competition and tends to create a monopoly in the motion picture industry by tending to exclude from the market and industry independent producers and distributors of films, and denies to the exhibitors freedom of choice in leasing films.[48]

---

[45] Anderson, M. L. (2014). The Historian Is Paramount. Film History, 26(2), pp. 1–30. https://doi.org/10.2979/filmhistory.26.2.1.

[46] Letting Yourself Have a Good Time. (January, 1921). The Ladies Home Journal, 38, 34. https://archive.org/details/sim_ladies-home-journal_1921-01_38/page/n37/mode/2up

[47] Ewen, S. (1996). PR!: A Social History of Spin (pp. 82–101). New York, NY: Basic Books.

[48] *Federal Trade Commission v. Paramount Famous-Lasky*, 57 F.2d 152 (2d Cir. 1932).

The verdict prioritized the legal argument over the moral one in calling block-booking an unfair method of distribution used to pressure independent theaters into "surrendering [their] his free choice in the leasing of films." The court opined that the independent owners had a right to make their own business and economic choices, and that block-booking impaired their right to economic liberty and pursuit of a path towards the greatest profit potential. Moreover, block-booking restrained competition because it converted the independents under contract to exhibit only the films produced or managed by the cartel. For a brief period, it seemed that the Sherman Act had prevailed.

Surprisingly, "Famous Players-Laskey essentially ignored the governments cease-and-desist order and had the decision reversed on appeal in 1932."[49] The U.S. Court of Appeals for the Second Circuit reversed the lower court's decision and reinstated block-booking because FPL was not a truly monopoly as defined under the Sherman Act. The court stated, "there is a lack of monopolization by the respondent and, in fact, lack of ability to achieve a monopoly and therefore [FPL is] not a business operation which would unduly hinder competitors."[50] Therefore, FPL was not the sole film distributor in the territory and hence not a monopoly because the independents could still lease/rent films from other distributors. Gil (2005) writes the reversal was both surprising but not unexpected. Although the defendants controlled a substantial share of film distribution "courts and regulatory agencies were generally more sympathetic to the needs of the film

[49] Anderson, M. L. (2014). The Historian Is Paramount. Film History, 26(2), pp. 1–30. https://doi.org/10.2979/filmhistory.26.2.1 Quote is from pp. 3.

[50] *Federal Trade Commission v. Paramount Famous-Lasky Corp.*, 57 F.2d 152, 155 (2d Cir. 1932).

industry" during the Great Depression.[51] President Roosevelt administration did not want the crippling of a major, national, and beloved industry to lower public morale so his administration temporarily paused market competition and economic freedom.[52] The 40-year old law, despite its amendments and maturity, left the independents scratching their heads.

U.S. v. West Coast Theaters (1930)

In California, the independents were not gaining much legal ground either. Associated First National Pictures (a film distributor) owned and operated West Coast Theaters which consisted of 100 theaters in 30 California cities during the 1920s.[53] Associated combined with Lowe's Inc. – a studio that produced and distributed films. The two organizations combined their distribution and theater divisions making West Coast Theaters the dominant exhibitor and distributor in the Southern California market. Those studios outside the cartel seeking entry into the market by booking through West Coast Theaters were required to make it their exclusive exhibitor. Otherwise, West Coast Theaters blacklisted those studios making it very challenging for them to achieve wide distribution in the future. The cartels behaviors were also predatory. West Coast used its

[51] Gil, A. (2005). Breaking the Studios: Antitrust and the Motion Picture Industry. NYU Journal of Law and Liberty, 3(83), pp. 83–123. Quote appears on p. 104. https://doi.org/http://www.law.nyu.edu/sites/default/files/ECM_PRO_060965.pdf

[52] Aberdeen, J. A. (2000). Hollywood Renegades: The Society of Independent Motion Picture Producers. Palos Verdes Estates, CA: Cobblestone Entertainment.

[53] *United States v. West Coast Theaters et al Defendants.* CCH. Trade Regulation Reports. Supp. IV. 4206 (S.D. Cal. 1930).

dominance to pressure non-affiliated studios into charging West Coast affiliates lower film lease/rent rates than its rivals. Those theaters then used the lower lease/rent rates to undersell nearby independents who would have also booked that film.

The government charged West Coast Theaters with restraint of trade and price discrimination in *U.S. v. West Coast Theaters Inc., (Supp. IV. 4206, S.D. Cal. 1930).* The added that the cartel intended to gain control of the Southern California theater market in violation of the Sherman Antitrust Act. The southern district in California ruled in favor of the government. Judge Cosgrave wrote:

> The defendants are enjoined…[from] excluding said unaffiliated exhibitors from contracting in the course of the aforesaid interstate trade and commerce in motion picture films and…giving certain designated motion picture theatres operated by said defendant, Fox-West Coast Theatres an arbitrary and unreasonable protection over competing theatres operated by unaffiliated exhibitors.[54]

The verdict highlighted the importance of market competition calling the defendants use of exclusionary practices "arbitrary and unreasonable." Moreover, these tactics were also being used to prey on the smaller businesses. The lower rates were being used to undersell rivals and drive them out. The district court therefore agreed the defendants were a "combination and conspiracy to restrain and to monopolize interstate trade and commerce in motion picture films…and in violation of the…Sherman Antitrust Act."[55]

U.S. v. West Coast Theaters Inc. did not change its business practices either. NIRA (1933) was a presidential pause on verdicts that could lead major institutions like

---

[54] The Southern District Court of California, Central Division I. (1930, August.). *United States vs. West Coast Theaters Inc*.. Retrieved September 21, 2022, from https://www.justice.gov/atr/page/file/1144821/download Quote is from Section 6.

[55] *United States v. West Coast Theaters et al Defendants*. CCH. Trade Regulation Reports. Supp. IV. 4206 (S.D. Cal. 1930).

West Coast into bankruptcy. But, the termination of NIRA in 1935 did not improve matters. The court entrusted West Coast Theaters to comply with its order and instructed the organization to self-police. West Coast Theaters resumed its unfair dealing for several more years.

U.S. v. Balaban & Katz Theaters et al (1932)

The case of *U.S. v. Balaban & Katz Theaters et al*, exemplifies the kinds of complaints then common between producers and independent throughout the 1930s. In this case, the defendants used both block-booking and minimum price agreements as part of its distribution practices. The plaintiffs relied on the Sherman Act for relief but it did little to preserve competition and economic liberty.

Balaban & Katz Theaters was a Chicago-based movie theater chain with locations across Illinois, northern Indiana, southern Wisconsin and northeastern Missouri. The chain was a subsidiary of Paramount Pictures and member of a cartel/combination consisting of thirteen film distributors that included United Artists (Film Exchange), the Paramount Famous Players-Lasky Corporation and their Paramount-Publix Theater chain, MGM Distributing Corporation, Warner Brothers Pictures, and the Fox Film Corporation.[56] Thus, the cartel consisted of film producers, distributors, and exhibitors. The studios within the cartel guaranteed film distribution to the theaters owned by cartel members. Balaban & Katz operated the largest theater network in the territory. This

[56] *United States v. Balaban & Katz et al Defendants*, 26 F. Supp. 491 (N.D. Ill. 1939).

arrangement therefore ensured that most major film releases were exclusive to Balaban theaters.

An independent theater was forced to accept a block-booking deal and/or price requirement deal if it had any chance at booking a major release from the cartel. Hence, the cartel controlled which independent theaters could participate in the market. The cartel also largely controlled which movies from non-cartel studios may enter the market. For example, an independent studio could distribute its movie across the Balaban & Katz theater network if it gave the cartel exclusive first-run screening rights. Otherwise, that studio risked not being able to screen future releases within the lucrative Balaban theater network. The cartel controlled approximately 90% of first-run releases in the territory using these tactics.[57] Finally, the cartel divided their territory into smaller sub-territories. This division offered its members several great advantages. Mainly, cartel members that owned theaters benefited from competition-free zones in their sub-territory. Balaban therefore controlled market entry and participation in the region.

The case was decided in April 1932 in favor of the federal government. Judge Charles Woodward of the federal southern district said block-booking and pricing requirements in film distribution were exclusionary, predatory, and represented a "conspiracy to restrain trade and monopolize interstate trade and commerce in motion pictures."[58] Judge Woodward added that a studio's ability to assume control of an independent theater's future bookings as a condition for securing a first-run releases

[57] Woodward, D. J. (1939, February 17). *U.S. v. Balaban*. Legal research tools from Casetext. Retrieved January 26, 2022, from https://casetext.com/case/us-v-balaban

[58] *United States v. Balaban & Katz et al*, 26 F. Supp. 491 (N.D. Ill. 1939). Quote is from Section V.

represented an unreasonable restraint of competition and economic freedom. Competition would best be served by ensuring that "the unaffiliated motion picture exhibitors operating in the Chicago loop could secure first run films [and] it would be necessary for them to have access to a substantial number of first run films distributed by one or more of the defendant distributors"[59] The court prohibited Balaban & Katz from requiring block-booking and minimum price conditions as a requirement for film distribution.

Balaban and Katz was instructed to self-regulate but the defendants resumed business as usual because of lax enforcement. The FTC ultimately charged Balaban & Katz with (criminal) contempt in 1939 in *U.S. v Balaban and Katz et al* (26 F. Supp. 491. N.D. Ill. 1939). But that case ceased when the federal government enacted a Consent Decree in 1940 which made this case unnecessary.

Glass v. Hoblitzelle et al (1935)

The ineffectiveness of the Sherman Act was nationwide. In Texas, the case of Glass *v. Hoblitzelle et al* exemplified the challenges various jurisdictions encountered with interpreting the 1890 regulation. Robert Glass owned and operated two small movie theaters in the Dallas, TX area. Glass was frustrated that the major studios and distributors refused to lease films to him unless he also agreed to charge a fixed admissions price (of at least 25 cents) as required by the distribution agreement. The major distributors were part of a larger combination/cartel that consisted of large movie

[59] *United States. v. Balaban & Katz et al*, 26 F. Supp. 491, 495 (N.D. Ill. 1939).

theater chains and major movie studios known collectively as the Interstate Circuit. Interstate Circuit distributed newly released films on 75-day runs/engagements to theaters they categorized as "Class A" theaters. Class A theaters were large, newer movie theaters located within the Dallas area usually owned by large or more prominent theater franchises. Class B theaters (like those owned by Mr. Glass) could book the film once the first-run engagement of 75 days had ended. This policy excluded the smaller or independent theaters from competing for the first 75 days of release.

Karl Hoblitzelle owned and operated Texas Consolidated Theaters – a network of larger, newer Class A movie theaters in the Dallas area. Hoblitzelle and his theater chain were also part of the larger Interstate Circuit. He was also the president of the circuit which gave him substantial control over most film distribution in the Dallas, Texas area. Hoblitzelle not only funneled first-run releases to his own theaters but was also responsible for setting the minimum admissions price for movies released in the territory.

Robert Glass accused Karl Hoblitzelle and R.J. O'Donnell (Hoblitzelle's business partner and General Manager of the Interstate Circuit) and other affiliates of the Interstate Circuit of establishing a cartel that fixed prices and restrained trade in violation of the Sherman Act.[60] *Glass v. Hoblitzelle (*83 S.W.2d 796, Tex. Civ. App. 1935) therefore focused on whether the Class A/B classifications unfairly excluded a group of theaters primarily because of their non-affiliation. Glass also argued that the defendants were part of a concerted action to continue expanding its grip on the Dallas area movie theater

[60] Price Fixing Issue Up in Texas Court. (1934, November 15). Motion Picture Daily, pp. 1.

industry.[61] These tactics needed to stop because they deprived the independents from making choices that would allow them to maximize their revenues.

Karl Hoblitzelle and the other defendants responded that the film distribution practices of setting minimum prices and restricting first-runs to newer, larger theaters were necessary to continue creating higher-quality spaces for consumers. Owners of Class A theaters make large investments in creating a more premium (aka safer and more secure) moviegoing experience for families, and the higher prices made consumer-oriented investments in the building and operations possible. Moreover, the profits generated from higher first-run admission prices lessened the lease/rent rate on a films subsequent run and made it more affordable for Class B theaters to book. Those owners would therefore make more money which they could use to improve their smaller, older venues. Class A theaters were in fact helping the Class B theaters become better.

The court ruled in favor of Karl Hoblitzelle because of confusion regarding the whether the Sherman Act applied in the case. Ultimately, the court believed film distribution was a matter of copyright, and a copyright (or license holder) has the right to set the terms of sale and distribution (including setting a minimum sales price and deciding who may or may not sell the product). The verdict was upheld on appeal. According to the Court of Civil Appeals of Dallas:

> The [district] court correctly overruled these exceptions because the anti-trust laws do not apply to copyrights ….[62]
>
> The owner of a patent right, copyright, or trade-mark, having the exclusive right to manufacture and sell the article protected thereby, and being under no legal obligation to grant such right to another, may impose upon his

[61] Exhibitor Names Texas Circuit in Restraint Action. (1934, December 8). Motion Picture Herald. p. 24.

[62] *Glass v. Hoblitzelle*, 83 S.W.2d 796, 802 (Tex. Civ. App. 1935).

> assignee such restrictions as he may see proper, and to which his assignee will agree, including the price at which the article may be sold, the territory in which it may be manufactured and sold, the material that may be used in its manufacture, or in connection therewith.… The record shows that the films or photoplays designated in the contract had been copyrighted.[63]

Judge Jenkin's verdict affirmed a film producer's right to "impose upon his assignee such restrictions as he may see proper', which made it legal for the creator to require theater owners to charge a minimum admissions price, decide when select theaters may lease the film, and determine "the territory in which [the film] may be sold." The case was yet another example of how the Sherman Act, a 40-year-old regulation by the 1930s, was still ineffective at protecting market competition and economic freedom.

U.S. v. Interstate Circuit et al (1937-1939)

The most notorious of all distribution cartels was (arguably) the Interstate Circuit, which dominated the Texas and New Mexico territory. Interstate conditioned film distribution on block-booking, minimum price agreements, and overbroad clearances. Over time Interstate held control over most of the independent theaters in the region in addition to 100 theaters under the Texas Consolidated Theaters name.[64] The combination/cartel consisted of eight major film studios and distributors such as Paramount Pictures Distribution, RKO Distributors, United Artists Corporation, MGM Distributing Corporation, and Twentieth Century Fox Corporation.

[63] *Glass v. Hoblitzelle*, 83 S.W.2d 796, 801 (Tex. Civ. App. 1935).

[64] *Interstate Circuit, Inc. v. United States*, 306 U.S. 208, 214-15 (1939).

The government accused Interstate of restricting major films to theaters their members owned or were affiliated with. Non-affiliated theaters (e.g., independently owned theaters) could book select films so long as they agreed to charge a minimum ticket price as set by Interstate. For example, non-affiliates under contract charged their customer a minimum ticket price of 40 cents (per adult) for first-run releases or a minimum ticket price of 25 cents (per adult) for second run releases. Non-affiliates were prohibited from combining the cartel's films into promotional double features nor could they sell tickets at a discounted rate. This restriction was highly controversial because cartels were known to undersell the independents in hopes of driving them out of business (after which the cartel would try to purchase the defunct venue).[65]

In 1937 the government charged the Interstate Circuit with antitrust violations in *U.S. v. Interstate Circuit et al (*20 F. Supp. 868, N.D. Tex. 1937). Interstate subscribed to the copyright defense which gave them the right as creators to set the lease/rent film price of their films, license terms, and distribution conditions. This defense was consistent with the verdict in *Glass v. Hoblitzelle,* (83 S.W.2d 796, 797, Tex. Civ. App. 1935).

However, the court for the Northern District of Texas applied the Sherman Act in the dispute and ruled against the Interstate Circuit.

> A contract between the copyright owner of motion picture films and the owner of motion picture theaters restraining the competitive distribution of the films in the open market in order to protect the theater owner from competition of other theaters is not protected by the Copyright Act...
>
> The purpose of the arrangement was to protect the owner of the first-run theaters from competition of subsequent-run theaters, and its effect was to

[65] Orbach, B. (2020, April 22). The Paramount Decrees: Lessons for the Future. The Antitrust Source, 19(5), pp. 1. https://doi.org/https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3583020

> impose undue restraints upon competing theater businesses habitually exhibiting the competitive pictures of different copyright owners, and to enable the favored theater oner to dominate the business of his competitors.[66]

The verdict accomplished several major turning points in antitrust law. First, the court acknowledged that film production and distribution were part of interstate commerce and therefore under the jurisdiction of antitrust law. Second, it determined that tactics such as minimum price agreements and block-booking were anticompetitive and exclusionary. Third, theaters coerced into contracts with Interstate were deprived of their economic freedom. Knaebel (1939) writes that "the trial court found that practically all (independent) exhibitors who bowed to the restrictions would not have done so but for the compulsion of their need of showing the restricted pictures, and that the result was to increase the income of the distributors and Interstate and diminish that of the exhibitors who accepted the restrictions."[67] Finally, the court questioned whether these tactics served any moral purpose. Interstate, like film cartels elsewhere, subscribed to the idea that monopolies in entertainment were critical in ensuring the public had access to high-quality productions and were protected from immoral content. However, the court believed the monopolies were primarily formed to line the pockets of the cartel members. Smith's belief that organizations that acquire too much dominance can become corrupt and/or pursue only its self-interests had come to fruition. Interstate appealed the decision to the U.S. Supreme Court (*Interstate Circuit v. United States 306 U.S. 208, 1939*) and

---

[66] *Interstate Circuit, Inc. v. United States*, 306 U.S. 208, 227 (1939).

[67] Knaebel, E. (1939). *Interstate Circuit v. U.S.* In United States Reports: Cases Adjudged in the Supreme Court at October Term 1938 (pp. 231). Banks & Bros. Law Publishers.

lost. However, the court had no way of enforcing its verdict (and did not want to assume any role in influencing market pricing). Interstate would ultimately return to using minimum price agreements and block-booking in its distribution deals.

The Consent Decree of 1940

The federal government realized the need for robust, industry-specific antitrust regulation for film production and distribution following years of defiance on behalf of the cartels. Court rulings in some cases had sided with the preservation of market competition and economic freedom. However, the industry remained unchanged for several years. The Sherman Act – although 50 years old by 1940 and amended several times – was ineffective at achieving its purpose.

In response, the government began an effort to enact a dedicated, industry-specific regulation that could keep up with the changes and nuances of the industry. The process began when the DOJ charged the five largest studios (aka "Big 5") with conspiracy to monopolize the motion picture industry. These charges included a conspiracy to do each of the following:[68]

- Fix film license terms, runs, clearances, and the minimum admission prices.
- Concertedly engaging in block-booking, blind selling and systematically discriminating in license terms in favor of circuit theaters.
- Conditioning licenses to theaters of their cooperation on receiving similar preferences for their own theaters,
- Excluding independently produced films from their own theaters,
- Excluding independent exhibitors from first and other runs in which defendants operated theaters,

[68] Conant, M. (1960). Antitrust in the Motion Picture Industry Economic and Legal Analysis. Berkeley, CA: Univ. of California Press. p.76

- Using first and early runs in affiliated theaters to control supply of films, runs, clearances and admission prices,
- Pooling profits in cities where two or more defendants operated theaters and,
- Creating a division of territories in the entire United States.

The three minor defendants (aka "Little 3") were charged with combining with the five majors to restrain trade unreasonably and to monopolize commerce in motion pictures. The court instructed both government and the studios to reach a compromise that would promote a more competitive-friendly business environment. That negotiation led to the Consent Decree of 1940, which went into effect September 1, 1941. And, the DOJ would report back to the court on September 1, 1944 as to whether the studios had complied with the agreed upon terms or whether further legal action was necessary.

The decree created a competitive market by requiring film distributors to limit their use of block-booking in deals and slow their expansion into the exhibition industry. The decree restored economic liberty by requiring that film blocks have no more than five films and allowing theater bookers to reject films that could not be previewed. Film distributors therefore hosted film screenings which gave bookers the opportunity to decide whether the film was something they were interested in screening (trade shows minimized the risk of blind-buying). Finally, the decree established arbitration boards in the 31 theater districts that would help settle disputes between distributors and theater operators.[69]

However, the decree (albeit a step in the right direction) fell short of its objectives. For example, Conant (1960) explains that some theater owners found it time-

[69] Time Inc. (1940, November 11). Show Business: Consent Decree. Time Magazine. http://content.time.com/time/subscriber/article/0,33009,849344,00.html.

consuming and expensive to attend the many trade screenings (twice a month) scheduled throughout the year and several of them stopped attending.[70] Studios also found it overwhelming and costly to host trade screenings. Several studios found alternative ways around the decree to expand their theater holdings. Additionally, the studios and the independents abandoned the arbitration system. Several studios refused to contribute towards the cost of setting up and maintaining the boards. Independent theater owners stopped using the boards because they felt the arbitrators favored the studios and distributors in their decision-making.

Unfortunately, the court ended the decree in 1944 because n member of the Little 3 studios agreed to comply. Universal Studios and Columbia Pictures declined to end their use of block-booking since they relied heavily on that tactic for profit and they had little to no holdings in movie theaters.[71] MGM Studios reinstated selling large film blocks (as many as twelve) by 1942.[72] The industry subscribed to the idea that movies "cannot be sold one at a time if the business is to exist."[73]

This chapter provides several examples of how film distributors used vertical integration to control market participation. The Sherman Act was incapable of protecting

---

[70] Conant, M. (1960). Antitrust in the Motion Picture Industry: Economic and Legal Analysis. Berkeley, Calif: University of California Press.

[71] Aberdeen, J. A. (2000). Hollywood Renegades: The Society of Independent Motion Picture Producers. Palos Verdes Estates, CA: Cobblestone Entertainment. Note: United Artists did not own movie theaters nor employed block booking in its deals. Note. The block-booking argument was introduced by C.C. Pettijohn (studio representative for the Big 5) as part of his testimony before the Senate Committee in 1939.

[72] Torre, Paul J. (2009). Block Booking Migrates to Television: The Rise and Fall of the International Output Deal. *Television & New Media*. 10 (6): pp. 501–520. doi:10.1177/1527476409343797 Not all studios increased the size of their blocks. Some retained to the 5 films per block agreement but added other conditions to the distribution deal.

[73] Aberdeen, J. A. (2000). Hollywood Renegades: The Society of Independent Motion Picture Producers. Palos Verdes Estates, CA. Cobblestone Entertainment.

competition and economic freedom. Although that regulation was 50 years old by the time the decree of 1940 was enacted (and had been amended multiple times to strengthen it) it was still ineffective. The Sherman Act failed because it was not interpreted or applied consistency in court disputes. And, it did not address the complexities and nuances of a rapidly evolving industry. The Sherman Act has been amended further but is still robust enough to ensure competition and freedom exist in the industry. The termination of the Paramount Consent Decree by federal order in 2022 reinstates the Sherman Act as the primary antitrust law. The industry however requires antitrust regulation that clearly addresses the unique complexities of this evolving industry. Recall that Adam Smith made the argument that a successful market is dependent on both competition and market regulation, and that regulation is critical towards preventing corporate selfishness and greed from leading to socially harmful outcomes.[74]

[74] Kurz, H. D. (2015, March 12). Adam Smith on markets, competition and violations of natural liberty. Cambridge Journal of Economics, 40(2), 615–638. https://doi.org/10.1093/cje/bev011

Chapter IV.

Industry-Specific Regulation Is Cast

The Sherman Antitrust Act was nearly 60 years old by the end of the 1940s. The Act had been strengthened since its inception via amendments including the Clayton Act in 1914. Nonetheless, film distributors continued expanding their monopoly power using exclusionary and predatory tactics. The Big 5 were "capitalizing on its role as market leader to ensure that new ideas or technologies are not introduced by the competition."[75] The legal system was unable to preserve competition and freedom in film distribution for several reasons. Courts interpreted the regulation inconsistently. The regulation was also too general and some questioned its applicability to the movie industry.

The Paramount Consent Decree was antitrust regulation that specifically addressed the nuances of the film industry and it successfully restored market competition and economic freedom in movie exhibition. It was critical in not only saving independent businesses from corporate takeover but also in protecting consumer value, choice, and innovation in moviegoing. This chapter provides a history of this key regulation and how its elements changed the industry with the restoration of competition and freedom.

[75] Geisst, C. R. (2000). In Monopolies in America: Empire Builders and Their Enemies from Jay Gould to Bill Gates, Oxford University Press. (p. 8).

Paramount Consent Decree (U.S. v. Paramount) (1945-1948)

The original Paramount Consent Decree was enacted in 1946 by the U.S. District Court for the Southern District of New York (*U.S. v. Paramount Pictures*. 66 F. Supp. 323, 357, S.D.N.Y. 1946). That decree was then reviewed and finalized by the U.S. Supreme Court in 1948. The final decree was enacted as the Big 5 studios controlled an estimated "70 percent of the best and largest first-run theaters in the 92 largest cities in the United States" (as stated in *U.S. v. Paramount Pictures, 334 U.S., pg. 167*) and held ownership interests in 17 percent of other theaters nationwide.[76]

In 1945, defendants were formally charged with "conspiracy to and [intent to] restrain and monopolize interstate trade in the exhibition of motion pictures in most of the larger cities of the country and that their combination of producing, distributing and exhibiting motion pictures."[77] The list of charges included the following concerns: [78]

- "Concertedly fixing the license terms before the licensees (theater bookers) have had a fair opportunity to estimate the value and character of the films licensed and before such films were completed or shown." This was known as "blind buying."
- "Concertedly fixing the run, clearance, and minimum admission price terms on which an exhibitor (theater operators) may show pictures through license agreements covering periods of a year or more." This charge referenced how film

[76] *United States v. Paramount Pictures Inc.*, 66 F. Supp. 323, 353 (S.D.N.Y. 1946). There were 18,076 theaters operating in the U.S. in 1945 and the Big 5 had ownership interests in at least 3,100 of them. Paramount and its subsidiaries owned the largest number of sites or a total 1,395 theaters.

[77] *United States v. Paramount Pictures, Inc*., 334 U.S. 131 (1948). https://supreme.justia.com/cases/federal/us/334/131/ The U.S. Supreme Court case summarizes the original charges against the studios in the appeal/syllabus document.

[78] *United States v. Paramount Pictures, Inc.*, 66 F. Supp. 323, 330 (S.D.N.Y. 1946).

distributors required theater operators to charge a minimum price and/or agree to play a film for unusually long engagements (e.g., overbroad clearances).

- "Concertedly conditioning the licensing of one film or group of films upon the licensing of another film or group of films and by conditioning the licensing of films in one theatre or group of theatres upon the licensing of films in other theatres or group of theatres." This charge tackled the legality of bundling multiple films into a single license – or "block-booking."
- "Concertedly discriminating with respect to the license terms granted to theatres in large circuits because such theatres are part of a circuit." This charge tackled discriminatory film distribution – specifically why film distributors restricted major feature films to their own studio-owned and studio-affiliated movie theaters but required non-affiliates to accept one-side contract terms (which gave the Big 5 the ability to control entry/participation in the market).

Both the 1946 and 1948 verdicts in *U.S. v. Paramount Pictures* were enacted to protect the small and independently owned theater industry from exclusionary and predatory film distribution practices. The district court and the U.S. Supreme Court believed the time had come to end vertical integration in the film industry. The Supreme Court however believed the district court had not gone far enough and therefore imposed more substantial changes. The table below describes the differences between the two court decisions.

Table 1. Differences Between District Verdict and Final Paramount Consent Decree.

	The Paramount Consent Decree	
	Consent Decree 1946 (District Court Ruling)	Consent Decree 1948 (U.S. Supreme Court Ruling)
Theater Holdings	• Studio may still own and operate studio-owned theaters. • Must divest themselves of partially owned theaters. • Future theater acquisitions require court approval.	• Studio may no longer own and operate movie theaters (this ended vertical integration). • Must divest themselves of all theater holdings.
Block-booking	• Film distributor may continue to distribute in blocks but must also make films available individually. • Theater bookers may reject up to 20% of films in a block if the film cannot be previewed.	• Complete ban on block-booking. • All films must be distributed individually (studios may not combine multiple copyrights into one block).
Minimum Price Requirements	• Prohibited. Market demand must dictate fair market value.	• Prohibited. Market demand must dictate fair market value.
Overbroad Clearances	• Prohibited. Distributor must extend equal run and film engagement contract terms to each theater regardless of ownership or affiliation.	• Prohibited. Distributor must extend equal run and film engagement contract terms to each theater regardless of ownership or affiliation.
Film Lease/Rent Fee	• Film lease/rent fee must be the same for all theaters regardless of ownership, affiliation, or theater location.	• Film lease/rent fee must be the same for all theaters regardless of ownership, affiliation, or theater location.
Dispute Arbitration Board	• Must revise existing AAA (American Arbitration Association) system. Establish a more streamlined less costly system than the 1940 system.	• Formal AAA is no longer required but theaters and film producers or distributors are free to pursue private arbitration.
Competitive Film Bidding System	• Suggested. Establish a system in which theater owners or bookers decide the fair market lease/rent rate of a film via a bidding system. • Distributor has option to lease/rent or not lease/rent film title at the highest bid.	• Suggestion removed. Smaller theater owners are a disadvantage compared to larger, national theater chains that can afford more.

The Supreme Court was especially motivated by a need to prevent film distributors from gaining monopoly power at the expense of smaller individual owners. The justices wrote:

> The trade victims of this conspiracy have in large measure been the small independent operators. They are the ones that have felt most keenly the discriminatory practices and predatory activities in which defendants have freely indulged. They have been the victims of the massed purchasing power of the larger units in the industry. It is largely out of the ruins of the small operators that the large empires of exhibitors have been built.[79]

The justices' depiction of the independents as "trade victims" acknowledged the misuse of vertical integration and how that system was being used to deprive individual owners from their pursuit of (economic) happiness and ability to enjoy core American values. Film distributors were vilified by the court. The justices described the studio/distributors as predatory organizations ("larger units of the industry") that built their empire "out of the ruins of small [business] operators." The decree therefore aimed to correct the market by providing protection for free commerce via industry-specific regulation. The installation of industry-relevant regulation was aligned with Adam Smith's belief that law was critical in building and preserving a successful capitalistic economy.

The Case for Competition

The studios continued to defend their use controversial business practices as a legal right, financial necessity, and moral responsibility.[80] Film producers maintained

[79] *United States v. Paramount Pictures Inc.,* 334 U.S. 131, 162 (1948).

[80] Film Quality Tied to Theatre Chains; Proskauer Says Control Gives Sure Outlet, Assures Movies That Can Compete Abroad. (1945, October 10). The New York Times ,p 14.

that as intellectual property owners they were legally entitled to the same rights as patent holders where "the patentee can fix the price at which his licensee may sell the patented article, the owner of the copyright should be allowed the same privilege. It is maintained that such a privilege is essential to protect the value of the copyrighted films" as stated in the Copyright Act (Section 35 Stat. 1075, 1088, 17 U.S.C. 1, 17 U.S.C.A).[81] Studios were reluctant to allow the market demand to determine the value of their properties. Lower than expected revenues impeded a producer's ability to churn out film projects already budgeted, planned or in production. Studios also argued that control of the industry also ensured film releases met high standards for quality and exhibition. Studios (such as Paramount Pictures) took their responsibility further by promoting an image of responsibility towards protecting the public from immoral/questionable content – content that a few smaller independent studios had released in the past. The Motion Picture Production Code (of 1930) had also been enacted to require film releases be of "high moral standards." Producers argued that control of the industry in the hands of responsible studios would ensure that the vast majority of film releases would fulfill the government's goal of mass family-friendly wholesome content.

However, the court did not subscribe to the idea of moral pursuing monopoly. The court had already depicted film producers, studios, and their cartels in a negative light. The justices in fact had described them as predators and "larger units" that had taken advantage of the market's "small operators." The court also opined that Big 5 were primarily profit driven in that they "shared with each other the profits of affiliated

---

[81] *United States v. Paramount Pictures Inc.*, 334 U.S. 131, 144 (1948).

theatres owned or controlled by two or more exhibitor defendants located in the same competitive area and frequently by together operating on the same run in cases where they would be in competition with one another except for such pooling or profit sharing agreements."[82] Also, the court was weary of production-exhibitor combinations because they had historically excluded the independents from participating in free commerce or the nullification of competition.[83] In this regard the justices wrote:

> Co-operation, rather than competition, characterizes their operation, and in view of the exhibitor-defendants' financial strength, control of first-class film distribution, ownership of concentrated numbers of first-run theatres, and especially their combination to reduce competition in exhibition through systems of price-fixing and clearances, such restraints as these agreements impose upon free commerce in motion pictures are far less than reasonable.
>
> The result is to eliminate competition pro tanto both in exhibition and in distribution of films which would flow almost automatically to the theatres in the earnings of which they have a joint interest.[84]

It was evident that the court believed the studios and film cartels had become greedy and corrupt. The court hence described their behavior as "a calculated scheme to gain control over an appreciable segment of the market and to restrain or suppress competition, rather than an expansion to meet legitimate business needs."[85] Small independent businesses had been strong-armed by large powerful "units" into "far less than reasonable" contracts. The Paramount Consent Decree of 1948 therefore ended those behaviors and reinstated competition in the theater industry.

---

[82] *United States v. Paramount Pictures Inc.*, 66 F. Supp. 323, 330 (S.D.N.Y. 1946).

[83] *United States v. Paramount Pictures, Inc*., 66 F. Supp. 323, 351 (S.D.N.Y. 1946).

[84] *United States v. Paramount Pictures, Inc*., 66 F. Supp. 323, 351 (S.D.N.Y. 1946).

[85] *United States v. Paramount Pictures Inc.*, 334 U.S. 131, 174 (1948).

Television: The Unexpected Plot Twist

Television's emergence in the 1940s had a significant historical impact on the movie industry, as its first significant competitor. This bourgeoning medium was an especially popular alternative that contributed to a decline in movie theater attendance. Film studios and movie theaters now had a player to contend with.

Television sets by the 1940s became more affordable and a greater number of households now had them. Moviegoing remained a popular social activity although fewer families frequented movie theaters once TV programming came into households. According to Bomboy (2022) "the audience for television grew tremendously as people stopped going to movie theaters. In 1948, about 90 million people were regular moviegoers. By 1958, that number fell to 46 million people. The audience for television grew to 204 million people in 1958."[86] The number of frequent moviegoers dropped to 40 million by 1950. Gil (2005) states that the increase in television watching and decline in moviegoing was no fad given that in 1946 the average American saw 28 movies a year and by 2005 that number was down to 5 movies a year.[87]

Nonetheless, the 1950s were a period of innovation and expansion in the entertainment industry. Consumers benefitted because they acquired a new way to access entertainment and new programming to go with it. The industry as a result moved forward. The popularity of television forced movie producers to experiment with film production techniques and technologies that may increase the frequency of moviegoing.

---

[86] Bomboy, S. (2022, May 4). The Day the Supreme Court Killed Hollywood's Studio System. National Constitution Center – constitutioncenter.org. Retrieved May 9, 2022, from https://constitutioncenter.org/blog/the-day-the-supreme-court-killed-hollywoods-studio-system

[87] Gil, A. (2005). Breaking the Studios: Antitrust and the Motion Picture Industry. NYU Journal of Law and Liberty, 3(83), pp. 83–123.

Theater owners meanwhile encountered a similar problem. They too needed to experiment with new ways to draw consumers away from home television sets and back into their theaters.

Impact of Competition on Hollywood Film Production

Gunning (2008) writes that "the introduction of commercial television soon after World War II changed a predominately public act of visual entertainment and consumption into a domestic, intimate event…Thus, film in the 1950s became simultaneously larger and smaller, more spectacular and more intimate, offering a range of cinematic experiences."[88] Gunning's statement describes how movies and theatrical exhibition changed following the enactment of the Paramount Consent Decree. In regard to production, fewer movies were being made but those releases were much grander in scale.

Studios no longer had profits coming in from studio-owned theaters by 1950. Film producers profited from a share of ticket sales, film lease/rent fees or a combination of both. Studios produced fewer films in response to slowed consumer demand (thanks to television). Individual studios released 300 films/year during the 1940s but that dropped to less than 100 films/year by 1954.[89] Anderson (1994) writes that television, theater divesture, and lower demand for movies hit some studios especially hard:

---

[88] Gunning, T. (2008). Early Cinema and the Variety of Moving Images. American Art, 22(2), pp. 9–11. https://doi.org/10.1086/591163

[89] Encyclopedia.com. (n.d.). 1950s: Film And Theater 2022. Encyclopedia.com. Retrieved June 22, 2022, from https://www.encyclopedia.com/history/culture-magazines/1950s-film-and-theater

> Throughout the early 1950s, the industry trade press debated whether television ultimately would reveal itself to be friend or foe of the movie studios. As television began its unprecedented expansion following World War II, revenues throughout the motion picture industry plunged dramatically. Warner Bros. suffered some of the worst losses, with net profits falling from a record $22 million in 1947 to $2.9 million is 1953 – a decline of nearly 90 percent in just 6 years. Under conditions that threatened the very existence of the studio system, television served many in the Hollywood community as a convenient stick villain.[90]

Studios dealt with television and less revenue in multiple ways. Some downsized because since fewer movies were now regularly in production. Many of those laid off skilled and production staff, writers and actors/actresses eventually found work in the growing television industry.[91] Others joined to form their own television production companies. Some studios leased unused or idle soundstages to other film producers in feature films or television production. Paramount Pictures (in 1948) entered television production and by 1953 merged with the American Broadcasting Corporation (ABC) Television. In few cases, studios sold portions of their land no longer needed. Conant (1981) writes than some lots were sold to land developers who built new neighborhoods or other commercial uses. "Twentieth Century-Fox sold a major part of its studio property for urban development…Parts of the former Columbia studios were leased to independent producers and the rest sold for alternate uses."[92]

---

[90] Anderson, C. (1994). Hollywood TV: The Studio System in the Fifties. University of Texas Press. pg.2

[91] Reisel, P. (2006, June). Life After the Movies: Former Film Stars Transition Into 1950s Television. Magazine Americana. Retrieved May 9, 2022, from https://www.americanpopularculture.com/archive/film/former_film_stars.htm Movie stars that found successful careers in television include Loretta Young, Eve Arden, Frank Sinatra, Ray Milland, Ann Sothern, among others.

[92] Conant, M. (1981). The Paramount Decrees Reconsidered. Law and Contemporary Problems, 44(4), pp. 79–107. https://doi.org/10.2307/1191225 Quote from pp.83.

Other studios coped with the changes by combing their organizations, but this time for financial efficiency versus market expansion. Conant adds that some studios merged with other film producers to avoid bankruptcy, create more stable organizations, and/or share production risk and costs on especially ambitious big-budget projects. For example, Twentieth Century Fox and MGM discussed the possibility of a merger in 1971. Columbia Pictures merged with Warner Brothers Studios a year later.

> [Twentieth Century] also negotiated unsuccessfully to merge its remaining production facilities with MGM….Columbia and Warner agreed in 1972 to combine studio properties, and Columbia production was moved to Warner's Burbank studio. Parts of the former Columbia studios were leased to independent producers and the rest sold for alternate uses. Warner executives estimated that each firm would save two to three million dollars per year from joint use of the Burbank studios, the largest part being labor savings.[93]

Competition forced the studios to manage their organizations more efficiently, streamline film production, and make shrewder investments in production. Gunning's reference to a "more spectacular and more intimate" experience points to a transition where films employed new technologies, major talent, and spectacular sets designed to pull consumers away from television (Belton, 2013).[94] Several epic films were released during the 1950s and beyond including *The Ten Commandments* (1956), *Ben Hur* (1959), *Lawrence of Arabia* (1962), and *Doctor Zhivago* (1965). Big-budget productions were often risky. Epics like *Cleopatra* (Twentieth Century Fox) and *The Conqueror* (RKO) were two costly highly anticipated films that went overbudget, were delayed releases, and

[93] Conant, M. (1981). The Paramount Decrees Reconsidered. Law and Contemporary Problems, 44(4), pp. 79–107. https://doi.org/10.2307/1191225 Quote from pp.83

[94] Belton, J. (2013). American Cinema/American Culture. McGraw-Hill.

recovered their investments long after their initial release.[95] Competition also pushed studios to experiment with advanced technologies in filmmaking. Studios introduced widescreen formats (e.g., widescreen/cinemascope), more convincing special effects, and improved audio (leading towards Dolby Stereo in 1975) that used multi-speaker and high-fidelity technologies.

Impact of Competition on the Movie Theater Industry

The small and independent theater industry benefitted most following the enactment of the Paramount Consent Decree. Owners now freed from having to abide by distribution requirements began experimenting with new ways to draw larger audiences – especially away from home television sets. Gunning's description of an industry becoming "more spectacular and more intimate, offering a range of cinematic experiences" very much applied to the theater industry.

Competition between local theaters drove a boom in new theater construction beginning the 1950s that lasted into the 1970s. The major studios had slowed down film production, but startups began releasing alternative features. Many writers, camera operators, designers and actors who had been laid off or released from their Big 5 studio contracts were now part of newly formed independent studios. Several startups specialized in special interest, lower budget (B-movies), experimental or art films – genres that enjoyed rising popularity among growing (niche) audiences. Foreign film distribution also increased (especially from Europe) during the early 1950s which led to

[95] Dirks, T. (n.d.). Greatest Box-office Bombs, Disasters and Flops. Filmsite. Retrieved June 15, 2022, from https://www.filmsite.org/greatestflops2.html

the proliferation of "art houses" dedicated to showing that film genre. These startups and their alternative films needed new theaters to show their films.

The most notable new theater construction was the "multiplex." Independents in the 1960s expanded on a concept of multiple small, more intimate auditoriums all within a larger building. Consumers liked having a wide range of choices in one location. Owners liked being able to attract diverse audiences, increase their revenues, and operate their multiplexes with one staff. Multiplexes were often tied to shopping and dining locations which also made them especially appealing places for families and young persons to visit.

The multiplex redefined later theater design. The first U.S. (documented) multiplex in the U.S. is credited to Stanley Durwood who in 1963 converted his one-screen Kansas City theater into a two-screen multiplex. Durwood Theaters (now AMC Theaters) operates 10,562 screens in 946 locations). The popularity of the multiplex set off a "screen wars" in which multiplexes became larger and more spectacular. Some notable multiplexes include the 18-screen Cineplex theater in Toronto, Canada (1979), AMC Ontario 30 Theaters (1996) and Edwards Palace 22 (1997) in Southern California. Ulin (2010) estimates that total screens rose from 23,000 in 1998 to 37,000 in 2000.[96] By 2000, a quarter of all movie theaters in the U.S. were still single-screen locations with some of those in transition towards becoming a multiplex.[97]

[96] Ulin, J. (2010). The Business of Media Distribution: Monetizing Film, TV, and Video Content. Focal Press. p.123.

[97] H, Dade and Bing, J. (2004). Open Wide: How Hollywood Box Office Became a National Obsession. Miramax Books. pp. 311-317. ISBN 1401352006

Another major development was the development of outdoor moviegoing. The drive-in theater concept (originally introduced in 1933) became very popularity among younger moviegoers and families the idea was reintroduced in the 1950s.[98] Theater owners experimented with how to target different target audiences such as families with children, fans of select genres (e.g., horror flicks, B-movies, etc.), and adults-only. Drive-ins merged the ability to enjoy spectacular feature films in a more intimate setting (one's car) with the social aspect of tailgating with friends. There were 155 drive-ins nationwide in 1947 but that number grew to 4,157 drive-in theaters by 1951 (and continued growing into the 1970s).[99] Drive-ins slowly faded out over the next several decades because of rising real estate prices which made it difficult for operators to continue renting or buying land and stay profitable. Now, "more than 75 percent of the remaining drive-ins (around 400) in this country are privately owned small businesses (according to the National Association of Theatre Owners)."[100] Although drive-ins are being phased out their revival exemplifies how theater entrepreneurs continually tried new things to move the industry forward.

The return of competition also prompted independent owners to experiment with marketing and loyalty programs that may attract new consumers and retain existing ones. Theater owners were often barred from discounting or giving away tickets because it reduced the studio/distributors revenue on a film. However, theater owners now needed

[98] The "Drive-In" Movie. (1933, August). Electronics, 6(8), 209. The first patented drive-in theater opened in 1933 in Camden, NJ and was owned/operated by Richard M. Hollingshead, Jr.

[99] Fox, Mark. (2018). Drive-In Theatres, Technology, and Cultural Change. Economics, Management and Financial Markets. 13. 2018. 10.22381/EMFM13220182.

[100] Reid, R. (2008, May 27). The History of the Drive-in Movie Theater. Smithsonian Magazine Online. Retrieved June 16, 2022, from https://www.smithsonianmag.com/arts-culture/the-history-of-the-drive-in-movie-theater-51331221/

ways to draw and retain crowds. Today's more common theater promotions have evolved into well-organized loyalty programs such as club memberships or a subscription program. These programs combine ticket and concessions discounts plus other unique benefits such as member-only screenings, special access and free movie tickets. Non-studio theater franchises such as AMC Theaters for example offers three member tiers within their overall loyalty program. AMC A-List (highest tier) costs $20/month and gives members access to up to three movies a month at any AMC Theater. The lowest tiers are a low cost and free programs that reward returning customers with their priority access to the concession stand and points that may be redeemed for discounts on concessions and free tickets the more they visit. Other non-studio owned chains including Regal Theaters and Cinemark offer similar paid and free loyalty programs that include reward loyalty with complimentary admission, front of line ticket access, and member exclusive food items. Moreover, theater operators now analyze consumer data collected from their loyalty programs to experiment with new offerings that may keep them coming.

The number of innovations intensified as theaters came out of the COVID-19 pandemic. For example, AMC, Regal and other theater chains in the U.S and the UK launched a $3 ticket promotion in 2022 for all movie screenings as part of an organized National Cinema Day (September 3rd) – a campaign that attracted a record 8.1 million moviegoers in the U.S and 1.5 million in the U.K..[101] Local theater owners have also employed very creative promos to beat the competition. Warehouse Cinemas invited

[101] Rubin, R. (2022, September 4). National Cinema Day brought 8.1 million moviegoers to theaters, setting attendance record in 2022. Variety. Retrieved September 4, 2022, from https://variety.com/2022/film/box-office/national-cinema-day-record-movie-theater-1235359889/. In the U.K, 1.5 million moviegoers is three times the average attendance.

consumers to swing a bat to a car with a paid ticket to the movie "Unhinged." That promotion generated a two percent increase in ticket sales.[102] The Warehouse Cinemas chain has also developed other promotional screenings such as 'daddy-daughter' shows and Margarita nights which have increased their attendance on slower days of the week. Cinepolis Theaters is another example of an independent exhibitor that has developed unique ways of attracting consumers. The chain hosts Self-Care Sunday screenings. Consumers are provided with gold undereye patches plus popcorn so that they can experience ten minutes of meditation before the start of selected shows.

Theater owners have also made continual investments in their buildings/auditoriums to stand out from the competition. Theaters introduced many unique features in comfort including stadium seating (1997), wider reclining seats (2011), and seats that fold into beds (2021). Now luxury theaters offer lounges, table-service dining and full-service bars. There are also new movie immersion features that lure audiences such as auditoriums with seats that rumble/move with on-screen action (e.g., DBOX chairs, 2001) and advanced projection technologies (e.g., IMAX, 1971). The decades following the reintroduction of competition and economic freedom opened the flood gates to new ideas and choices.

Regulation in the form of the Paramount Consent Decree restored competition and economic harmony. It was successful regulation because it was precise, industry-specific regulation that addressed the nuances of a complex business. The termination of

---

[102] Whitten, S. (2022, May 1). *'We Do Crazy Stuff': How cinemas are going beyond studio marketing to lure moviegoers back*. CNBC. Retrieved October 10, 2022, from https://www.cnbc.com/2022/05/01/how-cinemas-are-going-beyond-studio-marketing-to-lure-moviegoers-back.html

the decree is cause for concern because it removes relevant, applicable regulation with general antitrust legislation – regulation that has an inconsistent history protecting free commerce and economic liberty in the film industry. That being said, I believe the government should have strengthened the Paramount Consent Decree but not remove it.

Chapter V.

The Premise for a Reboot

In August 2022, a federal court ended the protections under the Paramount Consent Decree. The court argued that the regulation had outlived its purpose and that existing antitrust laws were sufficient to deter studio-distributors from growing a monopoly over exhibition. The ending of the decree legalized the use of block-booking and minimum price requirements in film distribution and allowed those organizations to own movie theaters.

The end of the decree poses a risk to the independent theater community because those smaller businesses must now compete with larger corporations who control film distribution and pricing. The restructuring of the industry is one of less competition and fewer opportunities to exercise economic freedom. Large, more powerful corporations would likely pursue control of the smaller independent theaters in their desire to establish studio-showcases nationwide. This would lead towards a shrinking independent theater network. Consumers would therefore have fewer choices and pay higher prices in the absence of suitable alternatives. The theater industry would become stagnant once any incentive to innovate is removed. Americans would see a resurrection of the 1930s movie industry once industry-specific regulation is ended and the studios control film choices in their communities. The federal court believes that the Sherman Antitrust Act, which has been amended over the years, would prevent the scenarios described. However, I believe that that Sherman Antitrust Act would not by itself prevent film distributors from wanting to increase their profits by dominating the exhibition industry.

This chapter examines the reasons why the federal court decided to end the Paramount Consent Decree and whether the court made an appropriate decision. The argument is made that court prematurely ended the decree and in doing so made it possible to re-boot the anti-competitive conditions that hurt the independent theater industry during the 1930s.

Decision to Sunset the Paramount Consent Decree (2020)

The Southern District of New York and the DOJ announced on August 7, 2020 that it would sunset the Paramount Consent Decree effective August 2022. The DOJ summarized their reasons for the decision in a press release stating:

> The movie industry and how Americans enjoy their movies have changed leaps and bounds in these intervening years...In summary, the Court concluded that the government had offered a persuasive explanation for why termination of the Paramount Decrees serves the public interest in free and unfettered competition. The conspiracy and practices that existed decades ago no longer exist. New technology has created many different movie platforms that did not exist when the Decrees were entered into, including cable and broadcast television, DVDs, and streaming and download services.[103]

In summary, the court agreed with the DOJ's assessment that Paramount Consent Decree should be ended because of three significant changes in today's film industry. These were as follows:

[103] The United States Department of Justice. (2020, November 19). *Federal Court Terminates Paramount consent decrees*. Federal Court Terminates Paramount Consent Decrees. https://www.justice.gov/opa/pr/federal-court-terminates-paramount-consent-decrees

- "The conspiracy and practices that existed decades ago no longer exist." The Big 5 studios originally found guilty of unfair business practices in *U.S. v. Paramount Pictures* were no longer dominant corporations and therefore posed no threat to today's independent theaters.
- "New technology has created many different movie platforms that did not exist when the decrees were entered into." The decree does not address the various new ways films and entertainment are now distributed. Paramount was critical during a time when consumers had only one alternative (brick-and-mortar theaters) to consume movies. Today, physical theaters are a choice among other alternatives such as streaming, DVD/Blu-ray, cable television, and more.
- Legacy restrictions prevented movie producers and distributors from being "free to experiment with different business models that can benefit consumers." The court also believed that the legacy regulation had not kept up with the changes in film distribution and exhibition. Outdated regulation impeded experimentation and progress. Removal of that regulation would instead foster "unfettered competition" which would ultimately benefit consumers.

The decision to end the decree would allow film distributors to reinstate block-booking and own their own movie theaters. This change created an awkward situation in which small independent theaters competed directly with the studios that supplied their films. The change would also potentially reduce the number of film choices available to consumers at local theaters should one (or group of) distributor control a specific market. These anti-competitive scenarios illustrate the opposing arguments to the ending of the

decree. Randy Hester (President of Hometown Cinemas chain and a member of the board of the Independent Cinema Alliance) and Josh Welsh (President of Film Independent) in 2019 cautioned that smaller theaters that show mainstream films and those dedicated to certain genres may cease to exist if revenue-hungry studios take over the industry, and warned that moviegoing could become even more expensive if theater schedules are dominated by [corporate studios and their] big-budget films.[104] Hester adds that an independent's ability to maximize his/her annual revenue is substantially diminished if that operator's slate is contractually tied with mediocre studio-mandated product. Welsh further contends that if the large studios gain control of a theater's slate it could mean that fewer small budget, independent and art films are produced because [larger scale] production focuses almost exclusively on revenue over virtuosity. A reduction in "art houses" (smaller theaters specialize in more niche presentations) would reduce any most incentive for producers to continue making films of that genre if they are not screened the way they were intended (e.g., large screen, large space, public or social setting, etc.). Moreover, the end of smaller theaters reduces the availability of more intimate mainstream theaters preferred by some consumers. This reduction in choice goes against Adam Smith's argument that the maximization of choice and the creation of societal happiness are critical in building a successful capitalistic economy.

Independent theater owners have expressed concerned that ending the decree may lead to even higher ticket prices than those of today. Studio/Distributor film lease pricing

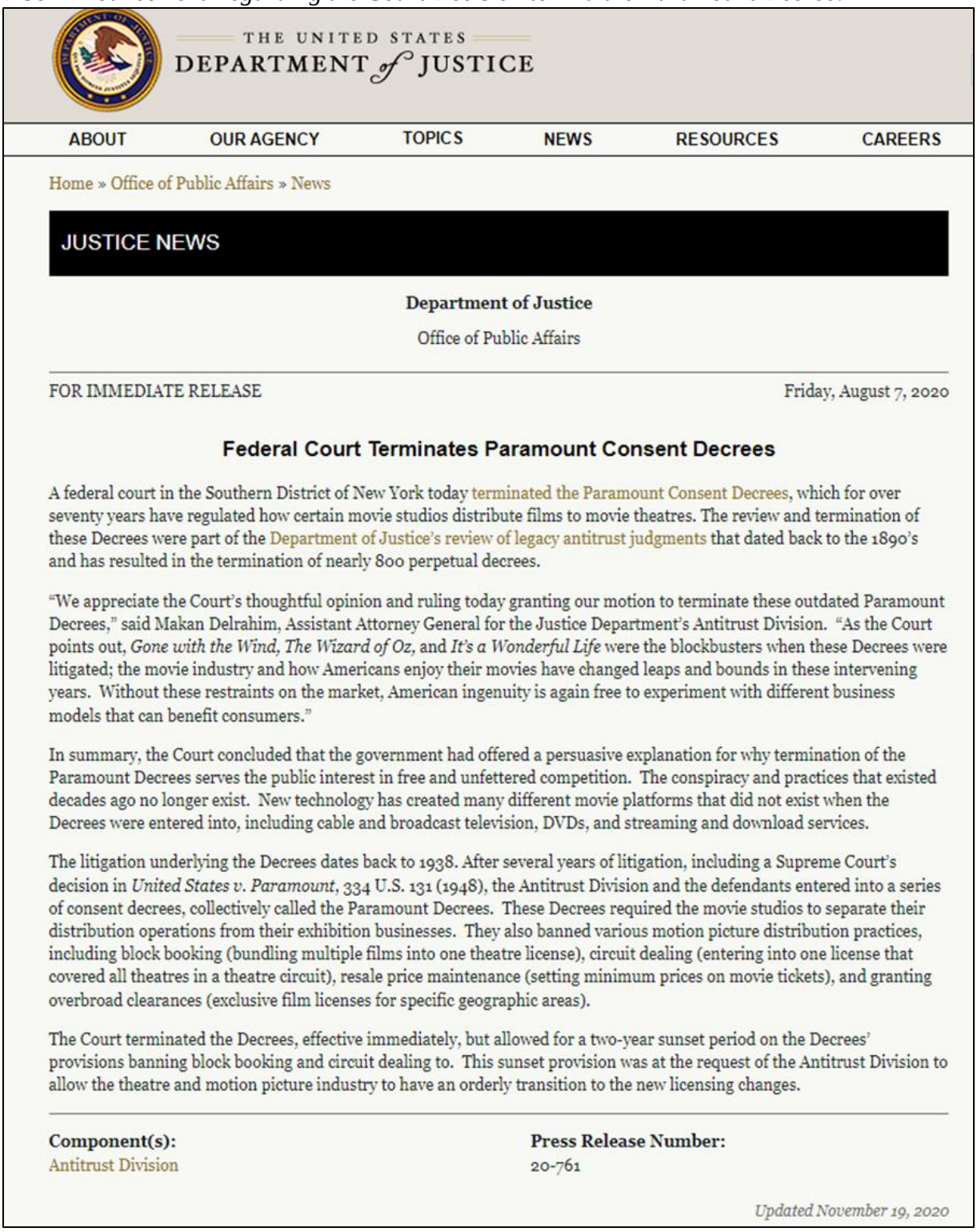
[104] Horowitz-Ghazi, A. (2019, December 6). Why the DOJ is concerning itself with the old anti-trust Paramount Consent Decrees. NPR. Retrieved May 21, 2022, from https://www.npr.org/2019/12/06/785671243/why-the-doj-is-concerning-itself-with-the-old-anti-trust-paramount-consent-decre . Randy Hester is President of the Texas-based Hometown Cinemas chain and a member of the board of the Independent Cinema Alliance. Josh Welsh is President of Film Independent, an organization that supports independent film makers.

on higher-budget or highly demanded releases would likely result in higher ticket prices as was typical during the 1930s. Theaters already charge more on tickets for premium presentations such as those in Dolby, D-Box, and IMAX formats. Those prices rise even higher when distributors charge exhibitors even more for highly anticipated properties. This trend of higher ticket prices would only worsen in the absence of competition and would finally exclude any lower income segments still able to afford family night at the movies. The moviegoing experience once meant for all Americans would finally be reserved for the affluent. A once popular social activity would transition towards becoming an infrequent luxury experience.

These outcomes are made possible if existing industry-specific regulation is removed and the industry is forced to rely on the Sherman Act. The government has provided several valid arguments in favor of terminating the Paramount Consent Decree. However, the termination of the decree also introduces changes in legal environment that would allow organizations to swallow up the independent film industry and expand their dominance. There are elements that should be discussed that the court might not have fully considered that support the argument that the industry needs industry-specific regulation because the Sherman Antitrust Act is not enough.

Figure 1. Department of Justice Press Release.

DOJ Announcement Regarding the Court Decision to End the Paramount Decree.



THE UNITED STATES DEPARTMENT of JUSTICE

ABOUT | OUR AGENCY | TOPICS | NEWS | RESOURCES | CAREERS

Home » Office of Public Affairs » News

JUSTICE NEWS

Department of Justice

Office of Public Affairs

FOR IMMEDIATE RELEASE — Friday, August 7, 2020

Federal Court Terminates Paramount Consent Decrees

A federal court in the Southern District of New York today terminated the Paramount Consent Decrees, which for over seventy years have regulated how certain movie studios distribute films to movie theatres. The review and termination of these Decrees were part of the Department of Justice's review of legacy antitrust judgments that dated back to the 1890's and has resulted in the termination of nearly 800 perpetual decrees.

"We appreciate the Court's thoughtful opinion and ruling today granting our motion to terminate these outdated Paramount Decrees," said Makan Delrahim, Assistant Attorney General for the Justice Department's Antitrust Division. "As the Court points out, *Gone with the Wind*, *The Wizard of Oz*, and *It's a Wonderful Life* were the blockbusters when these Decrees were litigated; the movie industry and how Americans enjoy their movies have changed leaps and bounds in these intervening years. Without these restraints on the market, American ingenuity is again free to experiment with different business models that can benefit consumers."

In summary, the Court concluded that the government had offered a persuasive explanation for why termination of the Paramount Decrees serves the public interest in free and unfettered competition. The conspiracy and practices that existed decades ago no longer exist. New technology has created many different movie platforms that did not exist when the Decrees were entered into, including cable and broadcast television, DVDs, and streaming and download services.

The litigation underlying the Decrees dates back to 1938. After several years of litigation, including a Supreme Court's decision in *United States v. Paramount*, 334 U.S. 131 (1948), the Antitrust Division and the defendants entered into a series of consent decrees, collectively called the Paramount Decrees. These Decrees required the movie studios to separate their distribution operations from their exhibition businesses. They also banned various motion picture distribution practices, including block booking (bundling multiple films into one theatre license), circuit dealing (entering into one license that covered all theatres in a theatre circuit), resale price maintenance (setting minimum prices on movie tickets), and granting overbroad clearances (exclusive film licenses for specific geographic areas).

The Court terminated the Decrees, effective immediately, but allowed for a two-year sunset period on the Decrees' provisions banning block booking and circuit dealing to. This sunset provision was at the request of the Antitrust Division to allow the theatre and motion picture industry to have an orderly transition to the new licensing changes.

Component(s): Antitrust Division

Press Release Number: 20-761

Updated November 19, 2020

The Court's First Argument: The Big 5 Is Gone

The court argued that "the conspiracy and practices that existed decades ago no longer exist." There are two arms to this assessment. First, the original Big 5 defendants no longer pose a threat. Moreover, those former defendants that remain in 2022 have no ability (or higher priorities) to achieve market dominance in their current situation. The industry has new players and film distribution has changed substantially since the case ended. Second, antitrust law (e.g., Sherman Act) has continued evolving and is a sufficient deterrent against organizations that may want to build a monopoly.

The first part of their argument combines the fact that the original Big 5 studios are no longer dominant with the assumption that those defendants would not combine once the Paramount restrictions are lifted. U.S. District Court Judge Analisa Torres opined:

> Given this changing [movie industry] marketplace, the Court finds that it is unlikely that the remaining Defendants would collude to once again limit their film distribution to a select group of theaters in the absence of the Decrees and, finds, therefore, that termination is in the public interest.[105]

Justice Torres's is correct that original Big 5 studios/distributors no longer have the power and dominance they once held because the market has substantially changed. Several of those have slowed or exited feature film production and/or have downsized because of financial reasons. For example, Paramount Pictures continues to produce feature films and operates its own streaming division but it has not produced a

[105] Gardner, E. (2020, August 7). Judge agrees to end Paramount Consent Decrees. The Hollywood Reporter. Retrieved July 7, 2022, from https://www.hollywoodreporter.com/business/business-news/judge-agrees-end-paramount-consent-decrees-1306387/

hit/blockbuster film in the last seven years as it deals with financial losses of about $1B since 2018.[106] The Walt Disney Company purchased Twenty-First Century Fox (originally known as Twentieth Century Fox) film and television for $71 billion in March 2019 for $71 billion.[107] The former Hollywood titan now produces content for Disney's streaming services including Disney+ and Hulu.[108] AT&T purchased Warner Brothers Studios in 2018 and formed the Warner Media organization (then sold several of Warner's media assets to other parties). MGM studios declared bankruptcy in 2010 after multiple box office failures contributing to over $4 billion in debt.[109] Amazon Studios (owned by the online shopping giant amazon.com) purchased MGM for $9 billion in March 2022. Amazon became owner of several iconic intellectual properties such as James Bond, the Pink Panther, and Rocky Balboa once the purchase was complete. RKO stopped producing major feature films following a dizzying ownership history that included Wesray Capital, General Tire, Pavilion Communications (not to mention a tumultuous history of mismanagement lasting several decades). RKO's film and television division sold or licensed much of its intellectual property to other media organizations such as Disney, Universal Studios, Warner Media and Sony Pictures and

[106] Chozick, A., & Barnes, B. (2019, January 17). Paramount was Hollywood's 'mountain.' now it's a molehill. The New York Times. Retrieved July 7, 2022, from https://www.nytimes.com/2019/01/17/business/media/paramount-pictures.html

[107] BBC. (2020, August 12). Disney Ends the Historic 20th Century Fox Brand. BBC News. Retrieved July 7, 2022, from https://www.bbc.com/news/business-53747270

[108] Kit, B. (2022, March 3). 10-plus Movies a Year for Hulu, 'Avatar' (for real!), more 'free guy': 20th century studios president on Company's Future. The Hollywood Reporter. Retrieved July 7, 2022, from https://www.hollywoodreporter.com/movies/movie-news/avatar-death-on-the-nile-sequel-and-free-guy-future-1235103538/

[109] Ovide, S. (2010, November 5). Everything you need to know about the MGM bankruptcy. The Wall Street Journal. Retrieved July 7, 2022, from https://www.wsj.com/articles/BL-DLB-28479

now co-produces smaller feature films for television and streaming services.[110] The health of each Big 5 studio/distributor suggests they lack the resources to organize a monopoly. However, one or more of those studios could improve their revenue streams with the restitution of block-booking and work their way back to dominance as they did during the 1930s.

The original Big 5 may no longer pose a threat but a new crop of studios, producers and distributors now occupy dominant positions within the industry. The Walt Disney Studios, Paramount Pictures, Sony Pictures, Universal Studios, and Warner Brothers Studios today represent the five largest movie producers and distributors – a new Big 5 – in the country. Navara (2021) writes:

> As of September 2021, the so-called "Big Five" – Disney, Paramount, Sony, Universal, and Warner Brothers held about 81% of the movie market in the U.S. and Canada [of 403 films released nationwide]. In 2020, the combined share of the five largest film studios stood below 75%. It was the first time that happened since 2005.[111]

Navara's research indicates that although the original Big 5 have been humbled the threat of a theater industry controlled by studio-distributors remains. Imagine for example that Disney wants to increase its studio revenue using its recently acquired Star Wars franchise. Disney could expedite market coverage by coercing independent theaters into contracts that tie those businesses to the studio for the next 12 or so months. Disney could also choose to purchase struggling theater chains such as Regal Cinemas and convert those locations to Star Wars-only venues. The decree served as a deterrence to

---

[110] RKO Pictures. Moviepedia. (n.d.). Retrieved July 7, 2022, from https://movies.fandom.com/wiki/RKO_Pictures#Reorganization_and_dismantlement

[111] Navarro, J. G. (2021, November 30). Movie studios in the U.S. Statista. Retrieved July 7, 2022, from https://www.statista.com/topics/4394/movie-studios/#topicHeader__wrapper. J. Navarro is a research and media expert primarily covering the Latin America market.

the prevent distributors from limiting choice, minimizing competition, and forcing non-studio theaters to succumb to distribution requirements of a major studio. The end of the decree allows those studios to not only enter exhibition but also control which theaters may or may not participate in what should be a free market.

The Next Argument: The Sherman Antitrust Act Alone Is Enough

Justice Torres contends that antitrust law has evolved over the decades and is stronger, more comprehensive and therefore a sufficient deterrent to those vertically integrated studio-distributors that may want to dominate the industry. She believes that amendments and inclusions such as the Hart-Scott-Rodino Improvement Act (HSR Act), the Clayton Act, and the Celler-Kefauver Act to the Sherman Act have made legacy laws like the Paramount Consent Decree redundant and unnecessary. Therefore, "changes in antitrust law and administration have diminished the importance of the Decrees' restrictions, while still providing protections that will keep the probability of future violations low, [and] the Court finds that termination of the Decrees is in the public interest."[112]

I provide a brief history of these inclusions here to explain the evolution of antitrust law since the 1950s. This way the reader can assess whether antitrust law has matured to a level where the Paramount Consent Decree is either redundant or critical. HSR specifically prohibits entities from combining into cartels that might behave in ways

[112] *U.S. v. PARAMOUNT PICTURES, INC.* 19 Misc. 544 (AT). 13. (UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK August 7, 2020). https://www.justice.gov/atr/page/file/1302816/download

that reduce market competition. This regulation is often used to deter actual and potential anticompetitive behavior by requiring that all merger, joint venture or acquisition be evaluated by the FTC and DOJ before the combination becomes final. HSR also empowered those agencies to examine existing combinations and terminate those if there is evidence of anticompetitive behavior. Blackwell (1972) speaks of another regulation intended to minimize opportunities for anticompetitive behavior. The Celler-Kefauver Act (CKA) was enacted in 1950 to strengthen the Clayton Act, which was merged with the Sherman Act. The CKA reads:

> [N]o corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.[113]

This regulation prohibited corporate mergers and the acquisition of another corporation's assets if "the effect may substantially lessen competition in any industry in any region of the country." CKA closed a loophole in the Clayton Act which inadvertently allowed cartels to acquire or purchase companies that performed relevant services along the supply chain. For example, a film producer might decide to merge with or acquire a company that manufactures film prints, which then enables it to raise the price and distribution of print services/resources of its competitors. CKA put vertical combinations

[113] Blackwell, R. B. (1972). Section 7 of the Clayton Act: Its Application to the Conglomerate Merger. William and Mary Law Review, 13(3), 623–637. This quote appears on pp. 624. https://doi.org/https://scholarship.law.wm.edu/wmlr/vol13/iss3/5

such as those under scrutiny and if necessary, would terminate those relationships if it lessened competition.

However, the U.S. has an inconsistent history of enforcing antitrust regulation which may allow cartels in the meantime to form and use their power and wealth to form local monopolies. Unfortunately, entertainment cartels and combinations like those in the 1930s have already started to pop following the government's announcement to phase out the Paramount Consent Decree. The Sherman Act and its amendments have done little to deter entertainment organizations from forming combinations. Moreover, the court has failed to understand that an evolution in technology and a change in market participants does not indicate a change in market forces and attitudes. For example, online streaming has become the new vehicle for film distribution and exhibition. A studio-distributor may combine their intellectual properties with online distributors. Consider the combination formed between Paramount Pictures distribution HBO (Home Box Office) during the COVID-19 pandemic. Paramount agreed to distribute its feature films exclusively on HBO on a first-run basis and cut out all other services from competing in the online space. HBO has since partnered with Warner Brothers to become its exclusive non-studio exhibitor. Paramount now has launched its own streaming service Paramount+ which makes the studio its own theatrical exhibitor. Also, Apple TV entered into an exclusive deal in 2022 with Skydance Studios to produce feature films exclusively for the streaming service. These relationships became common in the 2020s and reminiscent of the exclusive producer-exhibitor deals of the 1930s.

Sher (2004) supports the argument that the U.S. Supreme Court was historically inconsistent in how it interpreted and enforced the Sherman Act (and its amendments)

early on. For example, federal jurisdictions often interpreted text such as "conspiracy to in restraint of trade" in ways that both allowed and banned continued use of exclusionary, predatory, and anticompetitive tactics in film distribution practices. Sher reminds us that amendments such as the Clayton Act of 1914 were introduced to provide clarity and consistency, but those amendments did not immediately achieve their purpose.

> Over the next two decades, the Supreme Court convincingly dashed the hopes of many Clayton Act proponents and eviscerated the intended purpose of section 7. In a series of decisions, the Court interpreted section 7 to allow businesses, through technical formalisms, to effectively and completely circumvent any governmental challenge to a business combination that represented even the most egregious concentration in a market.[114]

Sher's research concluded that amendments to general antitrust law (i.e., the Clayton Act to the Sherman Act) took time to become effective as "technical formalisms" were dialogue to achieve a consistent understanding. Eventually rulings became consistent as the federal courts heard more movie industry antitrust cases. A shift towards general antitrust law in the absence of the decree would likely require years of precedent before achieving consistent application and enforcement.

The court may have also underestimated a film producers desire to re-enter the film exhibition industry. Justice Torres concluded that "the termination of the decrees serves the public interest in free and unfettered competition." This statement implied that film producers would be pro-competition even if it meant less profit. But there is evidence to the contrary as studios and producers have over the years returned to theater ownership. Studio corporations have taken advantage of a softening in law that allows

[114] Sher, Scott A, Closed But Not Forgotten: Government Review of Consummated Mergers Under Section 7 of the Clayton Act, 45 Santa Clara L. Rev. 41 (2004). Retrieved July 8, 2022 from http://digitalcommons.law.scu.edu/lawreview/vol45/iss1/2 Quotes from pp. 48.

them to participate in exhibition. "The Court decided [in *U.S. v. Paramount Pictures*] that the most sensible fix was forcing the studios to divest themselves of cinemas. But their decision stopped short of forever banning them from theatre ownership."[115] During the 1980s the U.S. Supreme Court allowed studios to again purchase theaters on the condition that their ownership was in local venues and that the ownership would not restrain market competition.[116] The change set off a boom in studio acquisitions of theaters. The New York Times captured the frenzy in a 1986 article describing several noteworthy acquisitions:

> The acquisition of movie theaters by the big movie distributors began over a year ago with Columbia's purchase of the Walter Reade chain. But it has intensified during the last few months under the impetus of MCA's acquisition of a 50 percent interest in Cineplex Odeon. Paramount followed by purchasing theaters in Seattle and New York, and Cannon bought Commonwealth, the nation's sixth largest chain with 425 screens.
>
> Today, the phenomenon is still growing. Over the weekend Tri-Star - which already has a tentative agreement to buy the 1,300 United Artists theaters - announced that it would buy the 250-screen Loews chain. And Gulf & Western, the parent company of Paramount Pictures, absorbed the 360-screen, Los Angeles-based Mann Theaters. Before the dust settles, 3,000 to 4,000 of the best-located movie theaters in the biggest cities will be owned or partially controlled by the movie studios.[117]

The industry and the number of theaters or theater chains owned by the end of the 1980s resembled that of the 1930s.

---

[115] Reconsidering the Consent Decrees. Reconsidering the Consent Decrees | Film Journal International. (n.d.). Retrieved January 17, 2022, from http://fj.webedia.us/columns/reconsidering-consent-decrees

[116] Aberdeen, J. A. (2000). Hollywood Renegades: The Society of Independent Motion Picture Producers. Palos Verdes Estates, CA. Cobblestone Entertainment.

[117] Harmetz, A. (1986, October 23). Film Studios Buying Up Theaters in Major Cities. The New York Times, p. 20.

Table 2. Independent Theaters Under Studio Ownership

1983	Tri-Star Pictures purchased the Lowes Cineplex theater chain.
1986	Universal Pictures purchased a 49% stake in the Cineplex Odeon theaters.
1986	Warner Brothers and Paramount Studios combined to purchase the Mann Theaters network.
1987	Columbia Pictures took ownership of Lowes Cineplex following its merger with Tri-Star Pictures.
1989	Sony Pictures purchased Lowes Cineplex.
1989	The Walt Disney Company/Studios purchased a controlling interest in the Pacific Theaters chain. The 'El Capitan' (Hollywood) and 'The Crest (Westwood Village, CA) both came under Disney ownership by 1991.
1998	Sony and Universal Pictures become co-owners of Lowes Cineplex.
2020	Streaming service Netflix purchased the Egyptian Theater in Hollywood and announced plans to show only Netflix produced films there.
2021	Amazon Studios in talks to purchase the AMC Theaters chain (rumored).

Notable Theater Acquisitions by Studios Since 1983.

Studios and distributors are corporations and as such as primarily motivated by profit and not necessarily the consumer. The fact that studio-distributors have actively acquired theatrical properties where possible indicates their interest in exhibition. The termination of the decree makes it easier for the studio-distributors to expand their presence in the theater industry. Their increased participation/interest in exhibition would therefore cause a reduction in the number of independently owned theaters.

The Diminished Role of Brick-n-Mortar Theaters

Justice Torres also stated that "the movie industry and how Americans enjoy their movies have changed leaps and bounds in these intervening years…New technology has created many different platforms." Her opinion points to the increased popularity of

tech-based entertainment consumption and consumer shift away from brick-and-mortar theaters. Specifically, Justice Torres said

> In today's landscape, although there may be some geographic areas with only a single one-screen theater, most markets have multiple movie theaters with multiple screens simultaneously showing multiple movies from multiple distributors.
>
> There also are many other movie distribution platforms, like television, the internet and DVDs, that did not exist in the 1930s and 40s. Given these significant changes in the market, there is less danger that a block booking licensing agreement would create a barrier to entry that would foreclose independent movie distributors from sufficient access to the market.

Her opinion minimizes the role and importance of traditional movie theaters in American culture. I agree that brick-n-mortar theaters are among a myriad of choices when it comes to movie consumption. I also agree that the popularity of theaters has declined because of new tech-based alternatives which has contributed to declining theater ticket sales. In 2002 theaters sold over 1.58 billion tickets but sales fell to 1.31 billion tickets by 2018 and fell yet again to 1.23 billion tickets by 2019 (even though roughly the same number of major films were released each year).[118] Ticket sales plummeted to 221.8 million tickets sold (and 23 film releases) at the start of the COVID-19 pandemic. The pandemic nearly bankrupted several major chains including AMC Theaters which recovered after resuming operations in early 2021 (and a $506 million stock offering).[119] Other chains have been less fortunate. Cineworld (the second largest theater chain worldwide and owner of owns Regal Cinema) filed for Chapter 11 bankruptcy in

[118] Movie Market Summary 1995 to 2021. (n.d.). Annual Ticket Sales. Retrieved February 27, 2021, from https://www.the-numbers.com/market/

[119] Brooks, K. J. (2021, January 25). AMC Theatres Escapes Bankruptcy Thanks to $917M Cash Infusion from investors. CBS News. Retrieved September 10, 2022, from https://www.cbsnews.com/news/amc-movie-theater-avoid-bankruptcy/

September 2022.[120] These episodes illustrate a slower than expected return of audiences to theaters post-pandemic and may suggests that theaters do not have the draw they once did.

However, the court should not underestimate the value of brick-and-mortar theaters especially when many tech-based alternatives are still in their infancy. Small and independent theaters and their owners represent core American values such as individualism, free enterprise, ingenuity, and optimism. Also consider that there is an industry of independent and budding film producers and distributors. Many of these artists specialize in niche content such as foreign, experimental, and art films and they do not have the benefit of a big-budget production/studio deal but still need a space to premiere their art.[121] A shortage of "free from studio controlled" screens would reduce any incentive for this segment of the industry to continue cinematic experimentation, advance the arts and film sciences, and give consumers the opportunity to enjoy a wider selection of genres.

Brick-and-mortar theaters also provide a unique moviegoing experience that cannot be replicated at home. Theaters provide a space for consumers who want to see feature films on the large screen format the producer intended, and to do so in a social setting. Tom Hanks echoed this sentiment in 2020 when he stated that brick-and-mortar theaters will retain an important role in the industry especially in regards to blockbuster

[120] Goldsmith, J. (2022, September 8). Sparks Fly Over Cineworld Bailout, but Judge Says: "I'm not going to sleep until we get those employees paid"; bankrupt chain has just $4m cash on hand. Deadline. Retrieved September 10, 2022, from https://deadline.com/2022/09/cineworld-regal-cinemas-bankruptcy-1235111953/

[121] Crucchiola, Jordan. (2020, October 1). On the future of (going to the) movies. Retrieved February 27, 2021, from https://www.wired.com/story/on-the-future-of-movies/

films, which were intended for the big screen (a thought shared by other Hollywood celebrities).[122] Some producers prefer that their films be screened in brick-and-mortar theaters until online streaming revenues can outperform in-person ticket sales.[123] The theater industry has proven to be resilient and should not be underestimated. Several film releases in the wake of the pandemic have generated record sales. The films *Top Gun: Maverick, Minions: Rise of Gru, and Spiderman: No Way Home, Black Panther: Wakanda Forever* and *Jurassic World: Dominion* are among several films generating over $200 million in sales domestically post pandemic. *Avatar: The Way of Water* is on its way to earning over $3 billion in U.S. ticket sales. According to the Motion Picture Associate (MPA):

> [The year] 2021 marked the onset of our industry's rapid rebound… In the U.S., the combined theatrical and home/mobile entertainment market in 2021 was $36.8 billion, a 14% increase compared to 2020, but notably overtaking the 2019 figure of $36.1 billion… This report clearly demonstrates that our industry is powerful and resilient…Last year alone, more than 940 films entered production.[124]

The importance of theaters as a social and art space should not be overlooked and their profit potential should not be underestimated. Industry-specific regulation would protect

[122] Shafer, E. (2020, December 27). Tom Hanks Says Movie Theaters WILL 'Absolutely' Survive Covid-19, Calls shift to streaming a 'DUE' Change. Retrieved April 28, 2021, from https://variety.com/2020/film/news/tom-hanks-says-movie-theaters-will-absolutely-survive-covid-19-calls-shift-to-streaming-a-due-change-1234875104/

[123] Simon, M. (2021, February 25). Can Movie Theaters Survive the Storm of the Century? Retrieved April 28, 2021, from https://thehill.com/changing-america/opinion/540561-can-movie-theaters-survive-the-storm-of-the-century

[124] Motion Picture Association. (2022). (publication). 2021 Theme Report: Chairman's Letter. pp. 1–67. Washington, DC. Quote from pp.3.

these art-advancing, historically important, social building venues, and their independent business owners from corporate takeover.

There is no doubt that new tech-based platforms offer consumers several advantages over brick-n-mortar theaters – namely convenience, ease of access, arguably lower cost versus traveling to a theater location. However, the court may be prematurely betting on tech-based formats as a replacement for traditional theaters. Streaming services for example have garnered much financial success. The popularity of services such as HBO Max, Netflix, Amazon Prime Video, Paramount+, Hulu, and Disney+ are undisputed and for many these services have become their first-run exhibitor of choice. Disney+ reported 54.5 million subscribers in May 2020 and 152.1 million by the third quarter 2022.[125] Netflix reported 220.7 million subscribers as of August 2022.[126] Several studio executives recently reduced the number of "in-theater only" days from 90 to 45 days so that they could quickly release their feature films on their service (or the service they partnered with). In some cases, studios have bypassed the theater circuit altogether and streamed their new releases exclusively online.

However, it is still early to say streaming services are a replacement of traditional movie theaters. Streaming content became available in 1991 and its popularity boomed decades later primarily because theaters were forced to shut down during the COVID-19 pandemic. Today, there are a growing number of Americans abandoning streaming

---

[125] (2022, August 10). The Walt Disney Company Reports Third Quarter and Nine Months Earnings for Fiscal 2022. Retrieved September 10, 2022, from https://thewaltdisneycompany.com/app/uploads/2022/08/q3-fy22-earnings.pdf.

[126] Goldsmith, J. (2022, August 11). Disney's Streaming Services Passed Netflix in Total Subscriptions – Update. Deadline. Retrieved September 11, 2022, from https://deadline.com/2022/08/disney-just-passed-netflix-in-total-streaming-subscribers-1235089361/

subscriptions. Fitzgerald (2023) of Forbes Magazine explains the many reasons why streaming organizations are losing customers – namely, the increasing cost of individual services, proliferation of services, loss of interest in available content, and the return to brick-n-mortar theaters. Fitzgerald's research states that over 15% of Americans are among those that do not use a streaming service, up 2.8 percentage points compared to October 2022.[127] Netflix, the largest of all streaming services, lost over a million subscribers in 2022.[128] The service has since increased its subscriber base and currently boasts 223 million subscribers worldwide. Most other online streamers experienced similar yet unpredictable highs and lows in their subscriptions throughout 2022. The uncertain future and unpredictability of streaming subscription rates (the most popular of tech-based alternatives) suggests that brick-n-mortar movie theaters are not riding into the sunset and the government should therefore maintain industry-specific regulation to protect competition and the economic freedom of those players remaining in the market.

Exploring the Court's Final Argument:

Justice Torres also concludes that "without these restraints on the market, American ingenuity is again free to experiment with different business models that can benefit consumers." The opinion supports the concept that fewer restrictions/barriers

[127] Fitzgerald, T. (2023, January 30). Surprise: More and more people are cutting their streaming TV services. Forbes. Retrieved February 12, 2023, from https://www.forbes.com/sites/tonifitzgerald/2023/01/27/surprise-more-and-more-people-are-cutting-their-streaming-tv-services/?sh=f9048ae292dc

[128] Maas, J. (2022, July 28). Netflix lost 970,000 subscribers in Q2, beating its estimate by more than 1 million subs. Variety. Retrieved February 12, 2023, from https://variety.com/2022/tv/news/netflix-subscribers-q2-earnings-1235318787/

promotes innovation that best serves the public interest. Justice Torres added that the decree had already "put an end to Defendants' collusion and cartel and, in their absence, the market long-ago reset to competitive conditions. Both the market structure and distribution system that facilitated that collusion are no longer the same." Film distribution disputes therefore "simply shifts the mechanism for [antitrust] enforcement into regular, existing channels."

This opinion is similar to the courts' original argument that existing antitrust law is enough to prevent a repeat of 1930s film distribution practices. The court did not specify how the public would best be served by the termination of the decree. Therefore, Justice Torres hypothesizes that ending the Paramount Consent decree would encourage producers and exhibitors to cooperate on new, unique, pro-consumer ideas.

However, the court's decision to remove the decree merely brings the industry back to a place where a lack of robust regulation could promote anti competition. It is possible that without the precision of industry-specific regulation that we are prone to repeat the tumultuous history of the 1930s. The Paramount Consent Decree focused on the intricacies of the film and exhibition industry. Hence, we may again come to a point where regulation like the Paramount Consent Decree is again needed. Adam Smith supported the idea that regulation helped curtail a corrupt organization from acting on its desire to purely pursue its self-interests. The termination of the decree therefore feels as if the legal system is taking an unnecessary risk. The more optimal path may be to strengthen or modernize the existing Paramount Consent Decree. A more precise, industry-specific regulation such as Paramount regulation offers the benefit of being

formed from the complex history of the industry while also addressing the unique nuances of the business. The Sherman Antitrust Act does not offer those advantages.

Conclusion

The movie industry has played a large role in American culture. Movies have entertained, inspired, and comforted Americans for over 100 years. Individuals have evolved the industry through ongoing experimentation. As a result, movies and movie theaters became larger, grander, and more comfortable. The industry kept growing and changing because individuals and business owners were motivated by competition and freedom to continue innovating to become successful. Movies personified all that was wonderful about participating in a thriving capitalistic society.

The movie industry has also been fraught with tension, controversy, and legal disputes. Film producers eventually entered the exhibition industry and aggressively expanded nationwide. Unfortunately, they also preyed on the smaller business owners and drove competition out of the market. Movie exhibitors complained that the producers used exclusionary and anticompetitive tactics to obtain undeserved monopolies. Producers and exhibitors faced off in court several times between the 1930s and 1940s because of those arguably unfair business practices. Court verdicts were often not in favor of the smaller independent business owners. Studios and studio-theater circuits were left to continue expanding their dominance.

The Paramount Consent Decree of 1948 placed restrictions on how studios could participate in the exhibition market. The decree reset the market by restoring

competition. Competition would ensure consumers a fair value and small business owners economic liberty. The decree prohibited use of tactics that were exclusionary, anticompetitive, and predatory. Ironically, the Sherman Antitrust Act was insufficient in preventing the dominant studios from expanding their control. Industry-specific regulation meanwhile ushered in a new era of rapid innovation which improved moviegoing for consumers.

Economist Adam Smith (the father of modern economics) warned that corporations that control too much of an industry often restrain competition. This dominance becomes monopoly power which reduces the focus towards fostering societal happiness. The role of government is to enact appropriate regulation that may deter entities from restraining free commerce. Regulation however must be precise in addressing the intricacies of complex industries to more effectively thwart threats to freedom and fee commerce. Otherwise, entrepreneurs have little reason to continue participating, innovating, and serving the needs of their communities.

Justice Analisa Torres believed the public would be best served by the termination of the Paramount Consent Decree. Her opinion was that removal of legacy regulation might encourage innovation and cooperation between producers and exhibitors. However, Justice Torres' vision faces challenges. Producers and exhibitors have a long history of tension which complicates their ability to truly work cooperatively. The termination of the decree would likely make cooperation even less likely because (in the absence of the restrictions) film producers and smaller independent exhibitors are now direct competitors. Relying on existing antitrust regulation is not enough to protect the smaller independent businesses from corporate studios.

A more optimal solution would be to push for a modernized version of the Paramount Consent Decree and not its termination. The exhibition industry would better benefit from having industry-specific regulation and its impact would only be strengthened when updated to reflect industry changes over the last 50 years. I therefore echo the concerns and direction expressed by the Director's Guild of America, which stated:

> In this new Gilded Age, the Department of Justice's recent move to end the Paramount Consent Decrees is a step in the wrong direction. While the motion picture and television industry has changed in the 70 years since the first Decree was signed, many of those changes – precipitated by new tech giant entrants – call for greater, not lesser, antitrust oversight… To defend competition in the motion picture marketplace, the DOJ must combat predatory and monopolistic practices.[129]

The inclusions made to the existing decree would better protect and preserve the rights of small and independent business owners while maintaining free commerce and economic freedom in film distribution. Effective regulation protecting free commerce and economic freedom would encourage smaller and independent exhibitors to continue evolving the moviegoing experience. Moreover, a thriving independent theater industry would encourage new and budding producers to continue exploring new, experimental, or artistic genres which advance America's film culture. Consumers meanwhile benefit from greater value, enjoyment, and choice. This is the kind of success and prosperity that I imagine my parents would have been especially proud of as new Americans.

[129] McNary, D. (2019, December 2). Directors Guild Opposes Government's Move to End Paramount Consent Decrees. Variety. Retrieved January 15, 2023, from https://variety.com/2019/film/news/directors-guild-paramount-consent-decrees-1203421344/

Works Cited

Aberdeen, J. A. (2000). Hollywood Renegades: The Society of Independent Motion Picture Producers. Palos Verdes Estates, CA. Cobblestone Entertainment.

Anderson, C. (1994). Hollywood TV: The Studio System in the Fifties. University of Texas Press.

Anderson, M. L. (2014). The Historian Is Paramount. Film History, 26(2), pp. 1–30. https://doi.org/10.2979/filmhistory.26.2.1

Aquilina, T. (2022, March 1). AMC is Charging More for 'The Batman' Tickets as part of a 'Variable Pricing' Experiment. EW.com. Retrieved May 23, 2022, from https://ew.com/movies/amc-charging-higher-prices-for-the-batman-tickets/

Balio, T. (1985). American Film Industry. Madison: University of Wisconsin Press. Madison, WI.

BBC. (2020, August 12). Disney Ends the Historic 20th Century Fox Brand. BBC News. Retrieved July 7, 2022, from https://www.bbc.com/news/business-53747270

Belton, J. (1994). American Cinema/American Culture. New York, NY: McGraw-Hill.

Belton, J. (2013). American Cinema/American Culture. New York, NY: McGraw-Hill.

Blackwell, R. B. (1972). Section 7 of the Clayton Act: Its Application to the Conglomerate Merger. William and Mary Law Review, 13(3), pp. 623–637. https://doi.org/https://scholarship.law.wm.edu/wmlr/vol13/iss3/5

Bomboy, S. (2022, May 4). The Day the Supreme Court Killed Hollywood's Studio System. National Constitution Center – constitutioncenter.org. Retrieved May 9, 2022, from https://constitutioncenter.org/blog/the-day-the-supreme-court-killed-hollywoods-studio-system

Britannica, T. Editors of Encyclopedia (2019, September 4). Nickelodeon. Encyclopedia Britannica.

Brooks, K. J. (2021, January 25). AMC Theatres Escapes Bankruptcy Thanks to $917M Cash Infusion from Investors. CBS News. Retrieved September 10, 2022, from https://www.cbsnews.com/news/amc-movie-theater-avoid-bankruptcy/

CPI Inflation Calculator at https://www.in2013dollars.com/us/inflation/1925?amount=0.25 on June 1, 2022.

Chozick, A., & Barnes, B. (2019, January 17). Paramount Was Hollywood's 'Mountain.' Now It's a Molehill. The New York Times. Retrieved July 7, 2022, from https://www.nytimes.com/2019/01/17/business/media/paramount-pictures.html

Conant, M. (1960). Antitrust in the Motion Picture Industry Economic and Legal Analysis. Berkeley, CA: Univ. of California Press.

Cooper, Walter. G. (1896). The Cotton States and International Exposition and South, including the Official History of the Exposition. Atlanta, GA. The Illustrator Company.

Crucchiola, Jordan. (2020, October 1). On the Future of (Going to the) Movies. Retrieved February 27, 2021, from https://www.wired.com/story/on-the-future-of-movies/

Cseres, K. J. (2005). Competition Law and Consumer Protection. Netherlands: Kluwer Law International Publishers.

De Vany, A., & McMillan, H. (2004). Was the Antitrust Action that Broke Up the Movie Studios Good for the Movies? Evidence from the Stock Market. American Law and Economics Review, 6(1), pp. 135–153. http://www.jstor.org/stable/42705447

Dickson, W. K. L. and Dickson, A. (2000). History of the Kinetograph, Kinetoscope, and Kineto-phonograph. Museum of Modern Art Publisher, New York City, NY.

Dirks, T. (n.d.). Greatest Box-office Bombs, Disasters and Flops. Filmsite. Retrieved June 15, 2022, from https://www.filmsite.org/greatestflops2.html

Douglas, W. O. & Supreme Court of The United States. (1944) U.S. Reports: U.S. v. Crescent Amusement Co., 323 U.S. 173. [Periodical] Retrieved from the Library of Congress, https://www.loc.gov/item/usrep323173/

Encyclopedia.com. (n.d.). 1950s: Film and Theater 2022. Encyclopedia.com. Retrieved June 22, 2022, from https://www.encyclopedia.com/history/culture-magazines/1950s-film-and-theater

Ewen, S. (1996). PR!: A Social History of Spin (pp. 82–101). New York, NY: Basic Books.

Exhibitor Names Texas Circuit in Restraint Action. (1934, December 8). Motion Picture Herald.

Faughnder, R. (2021, October 16). Netflix Takes Over Bay Theater at Caruso's Palisades Village. Los Angeles Times. Retrieved September 12, 2022, from https://www.latimes.com/entertainment-arts/business/story/2021-10-15/netflix-takes-over-bay-theater-at-carusos-palisades-village#:~:text=Netflix%20is%20taking%20over%20another,pandemic%20struck%20U.S.%20movie%20houses

Federal Trade Commission v. Paramount Famous-Lasky et al, 57 F.2d 152 (2d Cir. 1932).

Federal Trade Commission. (2017, December 15). The Antitrust Laws. Federal Trade Commission. https://www.ftc.gov/tips-advice/competition-guidance/guide-antitrust-laws/antitrust-laws

Feiner, L. (2021, May 17). AT&T Battled the DOJ to Buy Time Warner, Only to Spin It Out Again Three Years Later. CNBC. Retrieved July 7, 2022, from https://www.cnbc.com/2021/05/17/att-fought-doj-for-time-warner-only-to-spin-out-three-years-later.html

Film Quality Tied to Theatre Chains; Proskauer Says Control Gives Sure Outlet, Assures Movies That Can Compete Abroad. (1945, October 10). The New York Times. Retrieved July 10, 2022 from https://www.nytimes.com/1945/10/10/archives/film-quality-tied-to-theatre-chains-proskauer-says-control-gives.html

Finler, Joel W. (1988). The Hollywood Story. New York, NY: Crown Publishers, Inc.

Fitzgerald, T. (2023, January 30). Surprise: More and more people are cutting their streaming TV services. Forbes. Retrieved February 12, 2023, from https://www.forbes.com/sites/tonifitzgerald/2023/01/27/surprise-more-and-more-people-are-cutting-their-streaming-tv-services/?sh=f9048ae292dc

Fox, M. (2018). Drive-In Theatres, Technology, and Cultural Change. Economics, Management and Financial Markets. 13. 2018. DOI: 10.22381/EMFM13220182

Gardner, E. (2020, August 7). Judge Agrees to End Paramount Consent Decrees. The Hollywood Reporter. Retrieved July 7, 2022, from https://www.hollywoodreporter.com/business/business-news/judge-agrees-end-paramount-consent-decrees-1306387/

Geisst, C. R. (2000). In Monopolies in America: Empire Builders and Their Enemies from Jay Gould to Bill Gates, Oxford University Press.

Gil, A. (2005). Breaking the Studios: Antitrust and the Motion Picture Industry. NYU Journal of Law and Liberty, 3(83), pp. 82-103. https://doi.org/http://www.law.nyu.edu/sites/default/files/ECM_PRO_060965.pdf

Glass v. Hoblitzelle, 83 S.W.2d 796 (Tex. Civ. App. 1935); *Shubert Theatre Players Co. v. Metro-Goldwyn-Mayer Dist. Corp.* (D. Minn. 1936) (unreported), cited in Note, supra note 35, at 638, 646, 650; Sono Art World Wide Pictures v. Lando (County Ct., Allegheny County, Pa. 1931) (unreported), cited in Note, supra note 35, at 650.

Glass v. Hoblitzelle, 83 S.W.2d 796 (Tex. Civ. App. 1935).

Golden Age of Hollywood: Movies, Actors and Actresses. (2018, January 9). American Historama. https://www.american-historama.org/1929-1945-depression-ww2-era/golden-age-of-hollywood.htm

Goldsmith, J. (2022, August 11). Disney's Streaming Services Passed Netflix in Total Subscriptions – Update. Deadline. Retrieved September 11, 2022, from https://deadline.com/2022/08/disney-just-passed-netflix-in-total-streaming-subscribers-1235089361/

Goldsmith, J. (2022, September 8). Sparks Fly Over Cineworld Bailout, But Judge says: "I'm not going to sleep until we get those employees paid"; Bankrupt Chain Has Just $4m Cash on Hand. Deadline. Retrieved September 10, 2022, from https://deadline.com/2022/09/cineworld-regal-cinemas-bankruptcy-1235111953/

Gunning, T. (2008). Early Cinema and the Variety of Moving Images. American Art, 22(2), pp. 9–11. https://doi.org/10.1086/591163

Hanssen, F. A. (2008). Vertical Integration During the Hollywood Studio Era. SSRN Electronic Journal, pp. 519–543. https://doi.org/10.2139/ssrn.1139383

Harmetz, A. (1986, October 23). Film Studios Buying Up Theaters in Major Cities. *The New York Times*, p. 20.

Hendricks, G. (1966). The Kinetoscope: America' First Commercially Successful Motion Picture Exhibitor. The Beginnings of The American Film; Unknown Edition (January 1, 1966).

Herzog, C. (1981). The Movie Palace and the Theatrical Sources of Its Architectural Style. Cinema Journal, 20(2), pp. 15–37. https://doi.org/10.2307/1224831

Horowitz-Ghazi, A. (2019, December 6). Why the DOJ is concerning itself with the old anti-trust Paramount Consent Decrees. NPR. Retrieved May 21, 2022, from https://www.npr.org/2019/12/06/785671243/why-the-doj-is-concerning-itself-with-the-old-anti-trust-paramount-consent-decre

Interstate Circuit, Inc. v. United States, 306 U.S. 208 (1939).

Jaeger, J. (Producer) and Jaeger, J.(Director). (2017). Mainstream: How Hollywood Movies and the New York Media are Promoting the Globalist Agenda. [Video file documentary]. Retrieved from https://www.youtube.com/watch?v=evYyDsmSzdo

Jahan , S., & Mahmud, A. S. (2015). What Is Capitalism? *Finance and Development*, *52*(2), 44–45. https://doi.org/https://www.imf.org/external/pubs/ft/fandd/2015/06/pdf/basics.pdf

Jewkes, J. (1953). Monopoly and Economic Progress. *Economica*, *20*(79), 197–214. https://doi.org/10.2307/2551293

Katz, B. (2021, March 23). What WB & Cineworld's New Multi-year Deal Means for Theatrical Movies. Retrieved April 27, 2021, from https://observer.com/2021/03/hbo-max-warnerbros-cineworld-regal-box-office/

Kaufman, J. C. and Simonton, D. K. (2014). The Social Science of Cinema. Oxford University Press.

Kenney, R. W., & Klein, B. (1983). The Economics of Block Booking. The Journal of Law and Economics, 26(3), pp. 497–540. Quote found on pp. 539. https://doi.org/10.1086/467048

Kindem, G. A. (2000). The International Movie Industry (pp. 314–315). essay, Southern Illinois University Press. Carbondale, IL

Kit, B. (2022, March 3). 10-plus Movies a Year for Hulu, 'Avatar' (for real!), More 'Free Guy': 20th century Studios President on Company's Future. The Hollywood Reporter. Retrieved July 7, 2022, from https://www.hollywoodreporter.com/movies/movie-news/avatar-death-on-the-nile-sequel-and-free-guy-future-1235103538/

Knaebel, E. (1939). Interstate Circuit v. U.S. In United States Reports: Cases Adjudged in the Supreme Court at October Term 1938 (pp. 231). Banks & Bros. Law Publishers.

Kohls, L. R. (1984). The Values Americans Live By. Meridian House International.

Koszarski, Richard. (1990). An Evening's Entertainment: The Age of the Silent Feature Picture 1915-1928. Volume 3.

Kurz, H. D. (2015, March 12). Adam Smith on Markets, Competition and Violations of Natural Liberty. Cambridge Journal of Economics, 40(2), pp. 615–638. https://doi.org/10.1093/cje/bev011

Letting Yourself Have a Good Time. (January, 1921). The Ladies Home Journal, 38, 34. https://archive.org/details/sim_ladies-home-journal_1921-01_38/page/n37/mode/2up

Letwin, W. (1981). Law and Economic Policy in America the Evolution of the Sherman Antitrust Act. Univ. of Chicago Press.

Maas, J. (2022, March 15). HBO Max and Discovery Plus will be Combined Into One Platform. Variety. Retrieved September 7, 2022, from https://variety.com/2022/tv/news/hbo-max-discovery-plus-combined-streaming-service-bundle-1235204060/

Maas, J. (2022, July 28). Netflix lost 970,000 subscribers in Q2, beating its estimate by more than 1 million subs. Variety. Retrieved February 12, 2023, from https://variety.com/2022/tv/news/netflix-subscribers-q2-earnings-1235318787/

McDonald, P., Carman, E., Hoyt, E., & Drake, P. (2019). Hollywood and the Law. British Film Institute.

McKittrick, C. (2019, February 9). The History of Hollywood's Major Movie Studios. LiveAbout. https://www.liveabout.com/big-six-movie-studios-4151130

McNary, D. (2019, December 2). Directors Guild Opposes Government's Move to End Paramount Consent Decrees. Variety. Retrieved January 15, 2023, from https://variety.com/2019/film/news/directors-guild-paramount-consent-decrees-1203421344/

Mendelson, S. (2022, September 11). Box office: 'Top Gun: Maverick' Passes 'Frozen ii' as 'Minions 2' Tops $900 million. Forbes. Retrieved September 12, 2022, from https://www.forbes.com/sites/scottmendelson/2022/09/11/box-office-top-gun-maverick-passes-frozen-ii-as-minions-2-tops-900-million/?sh=6d198f342b40

Morgan, I., & Davies, P. J. (2018, February 22). Hollywood and the Great Depression: American Film, Politics and Society in the 1930s (1st ed.). Edinburgh University Press.

Movie market Summary 1995 to 2021. (n.d.). Annual Ticket Sales. Retrieved February 27, 2021, from https://www.the-numbers.com/market/

Navarro, J. G. (2021, November 30). Movie Studios in the U.S. Statista. Retrieved July 7, 2022, from https://www.statista.com/topics/4394/movie-studios/#topicHeader__wrapper

Northern Pacific Railway v. United States. 356 U.S. 1, (1958).

Orbach, B. (2020, April 22). The Paramount Decrees: Lessons for the Future. The Antitrust Source, 19(5), pp. 1. https://doi.org/https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3583020

Orbach, Barak. (November 1, 2019). Interstate Circuit and Conspiracy Theories. University of Illinois Law Review 1447 (2019), Arizona Legal Studies Discussion Paper No. 19-02, Available at SSRN: https://ssrn.com/abstract=3332447

Ovide, S. (2010, November 5). Everything You Need to Know About the MGM Bankruptcy. The Wall Street Journal. Retrieved July 7, 2022, from https://www.wsj.com/articles/BL-DLB-28479

Pautz, Michelle C., "The Decline in Average Weekly Cinema Attendance, 1930-2000" (2002). Political Science Faculty Publications. 25. https://ecommons.udayton.edu/pol_fac_pub/25

Pickford, M. (n.d.). American Experience: Early Movie Audiences. PBS. https://www.pbs.org/wgbh/americanexperience/features/pickford-early-movie-audiences/

Powell, H. (2013). Promotional Culture and Convergence: Markets, Methods, Media. New York, NY: Routledge.

Price Fixing Issue Up in Texas Court. (1934, November 15). Motion Picture Daily, pp. 1.

Reconsidering the Consent Decrees. Film Journal International. (n.d.). Retrieved January 17, 2022, from http://fj.webedia.us/columns/reconsidering-consent-decrees

Reid, R. (2008, May 27). The History of the Drive-in Movie Theater. Smithsonian Magazine Online. Retrieved June 16, 2022, from https://www.smithsonianmag.com/arts-culture/the-history-of-the-drive-in-movie-theater-51331221/

Reisel, P. (2006, June). Life After the Movies: Former Film Stars Transition Into 1950s Television. Magazine Americana. Retrieved May 9, 2022, from https://www.americanpopularculture.com/archive/film/former_film_stars.htm

Reuters. (2020, August 7). U.S. Judge ENDS Decades-old Movie Theater Rules Set by Hollywood Studios. CNBC. https://www.cnbc.com/2020/08/07/us-judge-ends-decades-old-movie-theater-rules-governing-hollywood.html

Reynolds, H. J. (2013). Introducing Price Competition at the Box Office. UCLA Entertainment Law Review, 20(1). https://doi.org/10.5070/lr8201027162

RKO Pictures. Moviepedia. (n.d.). Retrieved July 7, 2022, from https://movies.fandom.com/wiki/RKO_Pictures#Reorganization_and_dismantlement

Robinson, D., and Scorsese, M. (1997). From Peep Show to Palace: The Birth of American Film. Columbia University Press in association with the Library of Congress, Washington, D.C.

Rubin, R. (2022, September 4). National Cinema Day brought 8.1 million moviegoers to theaters, setting attendance record in 2022. Variety. Retrieved September 4, 2022, from https://variety.com/2022/film/box-office/national-cinema-day-record-movie-theater-1235359889/

Schickel, R. (1984). In D.W. Griffith: An American Life (p. 281). essay, Simon and Schuster.

Shafer, E. (2020, December 27). Tom Hanks SAYS Movie Theaters WILL 'Absolutely' Survive Covid-19, Calls shift to streaming a 'DUE' Change. Retrieved April 28, 2021, from https://variety.com/2020/film/news/tom-hanks-says-movie-theaters-will-absolutely-survive-covid-19-calls-shift-to-streaming-a-due-change-1234875104/

Sher, S., (2004). Closed But Not Forgotten: Government Review of Consummated Mergers Under Section 7 of the Clayton Act, 45 Santa Clara L. Rev. 41 (2004). Retrieved July 8, 2022 from http://digitalcommons.law.scu.edu/lawreview/vol45/iss1/2

Simon, M. (2021, February 25). Can Movie Theaters Survive the Storm of the Century? Retrieved April 28, 2021, from https://thehill.com/changing-america/opinion/540561-can-movie-theaters-survive-the-storm-of-the-century

Singer, B. (1995). Manhattan Nickelodeons: New Data on Audiences and Exhibitors. Cinema Journal, 34(3), pp. 5–35. https://doi.org/10.2307/1225743

Smith, A, (2006). The Theory of Moral Sentiments. Dover Philosophical Classics. Dover Publications, Inc., Mineola, N.Y.

The "Drive-In" Movie. (1933, August). Electronics, 6(8), 209.

The Library of Congress. (n.d.). Early Motion Picture Productions. The Library of Congress. Retrieved July 31, 2022, from https://www.loc.gov/collections/edison-company-motion-pictures-and-sound-recordings/articles-and-essays/history-of-edison-motion-pictures/early-motion-picture-productions/

The Motion Picture Industry and the Anti-Trust Laws. (1936). Columbia Law Review, 36(4), pp. 635–652. https://doi.org/10.2307/1116176

The Southern District of California. Central Division. I. (1930, August.). United States vs. West Coast Theaters Inc.. Section 6. Retrieved September 21, 2022, from https://www.justice.gov/atr/page/file/1144821/download

The Walt Disney Company. (2022, August 10). The Walt Disney Company Reports Third Quarter and Nine Months Earnings for Fiscal 2022. Retrieved September 10, 2022, from https://thewaltdisneycompany.com/app/uploads/2022/08/q3-fy22-earnings.pdf

Time Inc. (1940, November 11). Show Business: Consent Decree. Time Magazine. http://content.time.com/time/subscriber/article/0,33009,849344,00.html

Torre, Paul J. (2009). Block Booking Migrates to Television: The Rise and Fall of the International Output Deal. Television & New Media. 10 (6): pp. 501–520. DOI: 10.1177/1527476409343797

Ulin, J. (2010). The Business of Media Distribution: Monetizing Film, Tv, and Video Content. Focal Press.

United States Code, 2012 Edition, Title 15 – Commerce and Trade. 15 U.S. Code 1 - Trusts, etc., in restraint of trade illegal; penalty.

United States Department of Justice. (2015, June 25). Chapter 1 : The strategic use of licensing : Unilateral refusals to license patents. The United States Department of Justice. Retrieved September 17, 2022, from https://www.justice.gov/atr/chapter-1-strategic-use-licensing-unilateral-refusals-license-patents#N_44_

United States Department of Justice. (2015, June 25). Competition and Monopoly: Single-firm conduct under Section 2 of the Sherman Act : Chapter 1. The United States Department of Justice. Retrieved March 3, 2022, from https://www.justice.gov/atr/competition-and-monopoly-single-firm-conduct-under-section-2-sherman-act-chapter-1

United States Department of Justice. (2020, August 7). The Paramount Decrees. The United States Department of Justice. Retrieved April 14, 2022, from https://www.justice.gov/atr/paramount-decree-review

United States Department of Justice. (2020, November 19). Federal Court Terminates Paramount consent decrees. Federal Court Terminates Paramount Consent Decrees. https://www.justice.gov/opa/pr/federal-court-terminates-paramount-consent-decrees

United States v. Balaban & Katz et al Defendants, 26 F. Supp. 491 (N.D. Ill. 1939).

United States v. Crescent Amusement Corporation, 323 U.S. 180 (1944).

United States v. Motion Picture Patents Co., 225 F. 800 (1915).

United States v. Paramount Pictures, Inc., 66 F. Supp. 323 (S.D.N.Y. 1946).

United States v. Paramount Pictures, Inc., 334 U.S. 131 (1948). Retrieved from https://supreme.justia.com/cases/federal/us/334/131/

United States v. West Coast Theaters et al. CCH. Trade Regulation Reports. Supp. IV. 4206 (S.D. Cal. 1930).

United States. (1932). Annual Report of the Federal Trade Commission for 1932. United Stated Government Printing Office. https://www.ftc.gov/sites/default/files/documents/reports_annual/annual-report-1932/ar1932_0.pdf

United States. Bureau of Labor Statistics. (1960, August 1). Gross hours and earnings of production workers in manufacturing. FRASER. Retrieved May 27, 2022, from https://fraser.stlouisfed.org/title/employment-earnings-60/august-1960-20153/gross-hours-earnings-production-workers-manufacturing-340949

University of Minnesota. (2021, January 13). Monthly Labor Review / U.S. Department of Labor, Bureau of Labor Statistics. v.42: No.3 (1936). HathiTrust. Retrieved August 3, 2022, from https://babel.hathitrust.org/cgi/pt?id=umn.31951d02381081b&view=1up&seq=188

Wages and Hours of Labor. (1929). Monthly Labor Review, 28(5), pp. 179–197. http://www.jstor.org/stable/41813601

Whitten, S. (2022, May 1). 'We Do Crazy Stuff': How Cinemas Are Going Beyond Studio Marketing to Lure Moviegoers Back. CNBC. Retrieved October 10, 2022, from https://www.cnbc.com/2022/05/01/how-cinemas-are-going-beyond-studio-marketing-to-lure-moviegoers-back.html

Woodward, D. J. (1939, February 17). *United States. v. Balaban*. Legal research tools from Casetext. Retrieved January 26, 2022, from https://casetext.com/case/us-v-balaban