The New Gatekeepers

How Disney, Amazon, and Netflix Will Take Over Media

August 2023

Writers Guild of America West | Los Angeles, CA | wga.org

Executive Summary

The rise of streaming video over the past decade provided some amount of increased competition and a greater diversity of content than ever before. However, deregulation and mergers have laid the groundwork for a future of increased market power that could soon leave just three companies controlling what content is made, what consumers can watch, and how they can watch it. Disney, Amazon, and Netflix are positioning themselves to be the new gatekeepers of media, growing through acquisitions and using their increased power to disadvantage competitors, raise prices for consumers, and to push down wages for creative workers. Pay and working conditions for writers have become so dire, and media conglomerates so unresponsive, that 11,500 writers went on strike in May 2023. Without intervention, these conglomerates will seize control of the media landscape and the streaming era's advances for creativity and choice will be lost.

These new gatekeepers have amassed market power through mergers and other anti-competitive practices, offering an alarming window into the future of media.

- **Disney** has grown through a series of multibillion-dollar acquisitions, using its power to reduce film output, shut down competing studios, foreclose independent content from its distribution networks, expand control of the labor market, and force creators to give up financial participation in future licensing revenue.
- **Amazon** has gained a sizeable footprint in media in a short time by utilizing the well-documented playbook critical to its ascendance as a tech company. Though anticompetitive behavior and vertical integration, Amazon has harmed competitors, privileged its related business, and abused employer leverage to underpay writers.
- **Netflix** was once an innovative competitor, but is now using its position as the largest streaming service in the world to abuse its leverage as an employer, decrease innovative content spending and raise prices for consumers. The company has cut out independent producers and severely underpaid writers in multiple areas, and a series of recent acquisitions signal its intent to further increase dominance and market power in order to reduce innovative content investment.

Streaming video is now the dominant distribution platform for content, but it is largely unregulated, taking the problems of vertical integration and media consolidation to the extreme. Streaming's dominant employers have used their leverage to erode the sustainability of writing work; further consolidation could result in fewer writers able to earn a living and diminished variety in the marketplace of ideas. It is crucial that antitrust agencies and lawmakers take the following actions to protect the future of media:

1. Block further consolidation;
2. Proactively investigate anti-competitive issues and outcomes; and
3. Increase regulation and oversight in streaming.

Introduction

In 1970, three broadcast networks controlled American television programming. ABC, CBS, and NBC had used their control over the distribution chain of television networks and stations to "restrain and monopolize" prime time entertainment, and viewers could only watch what these three entities deemed worthwhile.[1] In response, federal agencies acted to break up the monopoly with the Financial Interest and Syndication Rules (Fin-Syn), sharply limiting the networks' ability to produce or control the content for their own networks. This antitrust action produced the 1970s "golden era" of television that challenged social and political narratives of the time—the result of a dynamic market of independent producers competing to hire writers, and the three networks competing for ideas.

Since then, a succession of new technologies—cable television, home video, and streaming—has altered the landscape for video programming, with the "increased competition" used to justify deregulation. The rise of online video spurred the creation of more content, more streaming services, and greater diversity of choice than ever before. But within a few short years, professional video programming is likely to once again be monopolized. Disney, Amazon, and Netflix are perfectly positioned to become the new gatekeepers of media, and are being urged by Wall Street to do so.

Rather than compete, Disney, Amazon, and Netflix—like other Big Tech companies Apple, Facebook, and Google—have increased market share and leverage through acquisitions, wielding their control of related markets, and underpricing their services to achieve dominance. Each is now taking anti-competitive vertical integration to an extreme, turning its streaming service into a walled garden for self-produced content—a model built for and dependent on restricting the availability of independent content from competing producers, underpaying creators, and, above all, making future consolidation the name of the industry game.

Spurred on by a blatant Wall Street demand for consolidation, Disney, Amazon, and Netflix are prime candidates for future mergers. Each has demonstrated that it will abuse a position of dominance to disadvantage competing producers and streaming services, reduce output, creativity, and choice in content, and push down wages for creative workers. Unless antitrust agencies and lawmakers prevent future merger activity by dominant firms and step in to preserve and protect the competitive environment for other streaming services, the future of content is in peril.

Disney: Gatekeeper of Content Production

The Walt Disney Company is the most powerful legacy media conglomerate, growing through acquisition after acquisition to establish unparalleled labor market power and a gatekeeper position in streaming. In 1995, Disney became a vertically integrated film and television studio through its $19 billion acquisition of the ABC broadcast network—taking advantage of the repeal of the Fin-Syn rules two years before, which had discouraged vertical control in television distribution.[2] The company then proceeded to swallow four competing film and television studios between 2006 and 2019: Pixar ($7.4 billion), Marvel Entertainment ($4 billion), Lucasfilm ($4 billion), and Twentieth Century Fox ($71.3 billion), along with acquiring a majority share in Hulu.[3] With each merger, Disney gained market share and leverage against its competitors and its workers, becoming the second-largest distributor of television and online series, the largest employer of television and digital writers, and the second-largest employer of theatrical writers after Netflix.[4]

Major Disney Acquisitions (1995-2019)

Sources: The New York Times, The Observer.

Disney's growing power in an increasingly concentrated market has produced a host of anti-competitive behavior.

- **Reduced output and innovation:** Acquisitions of competing film studios facilitated a sharp decline in Disney's film output—65% between 2009 and 2017—and its employment of writers, with tentpole features reducing the need for innovative research and development while Disney still dominated US box office.[7] Shortly after buying Fox, Disney also shuttered Fox's Blue Sky Studios animation company—a competitor with Disney's own in-house animation studios.[8]

- **Increased vertical integration in streaming:** Following the Fox acquisition, Disney led a trend in aggressively withdrawing library content from other distributors like Netflix in order to funnel its content to flagship streaming service Disney+, with other studios like Time Warner and NBC Universal following Disney's lead.[9] Moreover, Disney's streaming services are now almost exclusively homes for Disney-produced original content, foreclosing these two major streaming services as potential markets for independent producers. In the 2021-2022 season, every original scripted series made for Disney+ was self-produced, along with the vast majority of series on Hulu.[10] This vertical integration will have profound implications for the content production market and for the writers who must sell content to Disney's studios in order to get their work onto Disney's platforms. Industry analyst firm MoffettNathanson anticipates Disney's dominance, projecting that Disney will represent 42% of all domestic streaming subscribers and 49% of domestic streaming revenue by 2025.[11]

- **Increased Prices:** Disney has very quickly become a dominant player in streaming; in August 2022, the company's total streaming subscribership surpassed Netflix's.[12] In a preview of the future,

VERTICAL INTEGRATION: DIMINISHED COMPETITION

Original scripted series for each major subscription streaming service are now primarily produced and distributed by the same company. This emphasis on distributing self-produced content decreases competition across the media landscape, foreclosing opportunities for independent producers and distributors. Non-vertically integrated producers face long odds when trying to sell content to streaming services that are focused on distributing primarily from their own affiliated studios. Meanwhile, new or smaller streaming services can't access the premium content that dominant players are using for their own services. For instance, in addition to pulling Warner content from competing streaming services to launch HBO Max, AT&T also directed the entire 2021 Warner Bros. theatrical slate to HBO Max, foreclosing any open market for the content.[5] As Wall Street analyst firm MoffettNathanson notes, "[T]he streamers have decided to build out and own their own copyright, which accentuates the need to consolidate."[6]

this milestone was followed by an announcement of a 14% to 43% price increase across Disney's streaming services, with more yet to come.[13] The company does not expect to lose many customers despite the fee hikes, reflecting the market power it has already established.[14]

- **Power over creative workers:** Shortly after merging with Fox, Disney unilaterally pressured creators and other entertainment workers to forego their participation in future licensing revenue on Disney shows, a decades-long industry practice for the creative forces behind Disney's valuable content.[15] Disney's size and power, along with its vertical integration, allowed the company to cut pay without losing talent, as writers negotiating against a massive combined producer-distributor cannot walk away from the distributor's poor terms without also leaving the show they created. Disney's labor market dominance is compounded by the powerful intellectual property it has acquired; for instance, writers who want to work on *Star Wars, Indiana Jones*, or most Marvel projects (including *Black Panther, Iron Man, Captain America, Daredevil*, and *X-Men*) have no choice but to work for Disney.

Disney has plainly demonstrated the strategies it will pursue to gain market power, and the harm that will result from its exercise of that power. In ongoing pursuit of its gatekeeper dominance in streaming, Disney could seek to buy another competing studio or increase its labor market power by acquiring still more valuable intellectual property. The company is poised to control half of the domestic streaming market even before potential acquisitions, with a corresponding level of control over what content gets made and what stories writers can sell to earn a living.

> **"[T]he streamers have decided to build out and own their own copyright, which accentuates the need to consolidate."**
> **- MoffettNathanson**

Amazon: Gatekeeper of Content Distribution

Though Amazon is a newer entrant, in a short period of time it has gained a sizeable footprint in multiple media businesses. Amazon has utilized the well-documented playbook of anti-competitive business practices that have been critical to its ascendancy as a tech company to also become the third-largest video subscription service in the U.S.[16] and a leading gatekeeper in the entertainment industry. Exploitative practices Amazon has employed include predatory pricing, aggressive acquisitions, and establishing, then abusing, its position between competitors and consumers.

- **Integration and acquisition:** Amazon entered the media industry with its Prime Video streaming service in 2006 and followed with its ad-supported streaming service Freevee in 2019.[17] Prime Video is available at no additional cost to a majority of Amazon's 200 million global Prime shipping subscribers,[18] competing less through quality investments and innovation than through leveraging Amazon's size and power in other markets such as e-commerce. The company followed its initial entry with aggressive moves into adjacent businesses. Amazon Studios was founded in 2010 to produce content for the service, and the company introduced Amazon Fire TVs and Fire TV Sticks in 2014 followed by the Amazon Channels store in 2015, positioning Amazon as an intermediary between competing

GeekWire

Amazon closes $8.5B MGM deal, its second-largest acquisition ever

STREAMING AGGREGATION: THE NEW CABLE BUNDLE

Today, nearly 90% of households use streaming devices and smart TVs such as Amazon Fire TV, Roku, and Apple TV+ to access both affiliated and third-party streaming services on their televisions.[19] Amazon's Fire TV platform is tied with Roku's as the largest operators in streaming video devices, each with a 36% market share.[20] This dominance makes access to the Fire TV platform critical for streaming services to reach widespread distribution.

Negotiations between streamers and devices echo carriage negotiations between networks and cable companies. However, they lack even the modest regulation of cable to mitigate the ability and incentive of a vertically integrated company to harm its competitors.

Amazon, Apple, Roku and others also offer "channel stores" where customers can subscribe to their own and third-party apps, offering smaller streamers access to larger customer bases in exchange for a cut of their subscription fees. Some smaller streamers source a substantial share of their domestic subscriber bases through Amazon; the Amazon Channels store accounts for 31% of subscribers to Paramount+ and 63% of subscribers to Showtime.[21]

third-party streaming services and viewers who access content through Amazon devices and its service.[22] Like Disney, Amazon's streaming business forecloses independent competitors in production and distribution. Amazon Studios has never produced a show for an unaffiliated service or network, and during the 2021-2022 season, 86% of online scripted content on Amazon platforms was self-supplied.[23] Most recently, Amazon acquired the historic Metro-Goldwyn-Mayer (MGM) Studios and its valuable library of intellectual property in 2022[24] to bolster its relatively anemic content catalog. This array of interconnected media businesses reaches the entire content value chain, giving the company both the ability and incentive to disadvantage third-party competitors in each market—from content production (Amazon Studios, MGM), to content distribution (Prime Video, Freevee, MGM+), to streaming aggregation/devices (Amazon Channels and Fire TV).

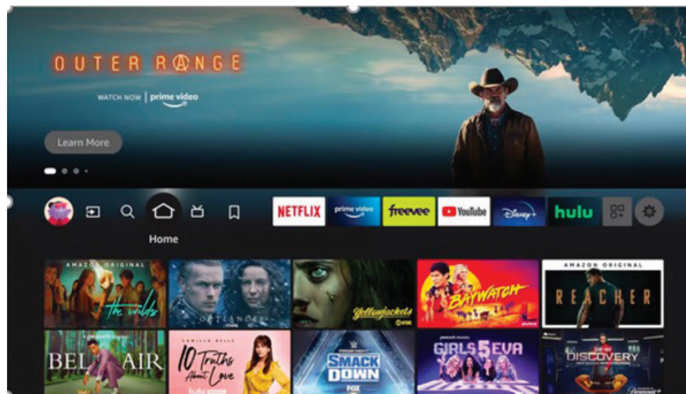
Amazon Media Expansion

Sources: CNET, TechCrunch, Business Insider, Variety

- **Extracting tolls from competitors:** Amazon has been aggressive in using its gatekeeper position to extract tolls from competitors, just as it does in e-commerce with sellers. The company has leveraged its control of viewers with Fire devices to make burdensome demands of third-party streaming services. In exchange for making third-party streaming services available via the Fire interface, Amazon has reportedly demanded that those streaming services license content to Amazon-owned Freevee, provide Amazon shares of their services'

advertising inventory, and give Amazon 15% to 45% of their monthly revenues.[25] The company has also tried to keep content from unaffiliated streamers like HBO Max within Amazon Channels, where Amazon sells access to other streaming services and demands 30% to 50% of third-party services' monthly revenues.[26] As a gatekeeper, Amazon hosts an unlevel playing field where it can privilege its own services in user interfaces or potentially harvest valuable viewership data of competitors to inform its own content decisions and advertising strategies.

- **Abusing dominance to harm competitors and benefit related businesses:** For several months after the launch of HBO Max in 2020, customers were unable to gain access to the service through Amazon devices. The dispute reportedly stemmed from HBO executives' attempts to retain control of their streaming service over Amazon's demand to keep HBO Max on Amazon Channels, where Amazon would control the user experience and access to viewership data.[27] News commentary suggested that the lack of availability on Amazon Fire devices notably slowed subscriber growth for HBO Max,[28] and when a deal was finally reached months later, the terms reportedly included an extension of WarnerMedia's contract with Amazon Web Services.[29]



Amazon Fire Interface. Source: *The Verge*.

- **Abusing employer leverage:** Amazon claimed that Prime Video had fewer than 45 million domestic subscribers for years—even after analysts estimated it had crossed that threshold[30]—in order to underpay the higher residuals that would be due to writers if the service had more than 45 million subscribers. Only after the Writers Guild of America West (WGAW) filed an Unfair Labor Practice charge against the company with the National Labor Relations Board demanding subscriber information did Amazon finally concede to pay higher residuals based on higher subscriber numbers beginning in July 2021.

Having extended its reach into every corner of media, Amazon has shown the role it seeks to play. It will use its gatekeeper position to determine what services consumers can access on its TVs and devices, and to extract fees from all sides. Amazon's purchase of Metro-Goldwyn-Mayer Studios—its second-largest ever acquisition—shows that the company's intent is to bring its platform monopoly playbook to dominate media.

Netflix: Gatekeeper in Employment

Netflix offers another alarming preview of the future in media. Originally the upstart competitor, innovating and prompting competitive responses from the traditional studios, Netflix has become a powerful incumbent focused on raising prices, vertically integrating, and exerting its dominance over workers.

Netflix pioneered the distribution of movies and television series via online streaming, providing consumers with an alternative to costly cable packages. Though it initially offered licensed movies and series from other studios, Netflix ventured into exclusive original programming in 2011, enlivening competition with traditional networks, buying content from third parties, and increasing employment opportunities for writers. Early investments included premium television series developed in partnership with mid-sized producers such as *House of Cards*, produced

by Media Rights Capital, increasing the market for independent content.[31] In contrast to its competitors, Netflix experimented with production and distribution models by ordering shows straight-to-series and releasing all episodes of a season simultaneously.[32] Netflix also displayed a willingness to give creators significant latitude, to cater to niche audiences with shows like the original comedy *Grace and Frankie*, and to revive cancelled series such as the cult-classic *Arrested Development* after its cancellation by Fox.[33]

Now the largest streaming service in the world with over 220 million paid subscribers,[34] Netflix is no longer a pro-competitive player. The company is pursuing a strategy of pure vertical integration and strategic acquisitions, abusing its leverage as an employer, decreasing innovative content spending, and raising prices for consumers.

- **Integration and acquisitions:** When it embarked on original programming, Netflix bought original content from a healthy market of independent content producers, with almost all of its original series that season produced by third parties. But the company has steadily increased its share of self-produced content; in the 2021-2022 season Netflix had a 29% share of original online scripted series and 61% of those series were self-produced.[35] Like Amazon, Netflix has never produced a series for another distributor. By pursuing this strategy of vertical integration, Netflix seeks to decrease the price it pays for content—as it stated to investors, producing content in-house "avoid[s] the markup 3rd party studios charge us" and cuts out the "studio middleman."[36] This behavior eliminates earnings for independent producers and the writers who create for them, and increases Netflix's control of the production market. Signaling its intent to increase its dominance and market power, Netflix has now acquired multiple companies in related sectors: film production studio Albuquerque Studios ($30 million), animation studios Scanline VFX and Animal Logic, intellectual property catalogs Millarworld ($30 million) and The Roald Dahl Story Company ($686 million),[37] as well as video game studios Night School Studio, Next Games ($72 million), and Boss Fight.[38]

Netflix Media Acquisitions (2016-2022)

Sources: Yahoo Finance, The Motley Fool, What's On Netflix, Fierce Video

- **Abusing employer leverage:** Netflix has rapidly grown in market share as an employer, rising from being a new entrant to the largest employer of screenwriters and the largest employer of writers for online series (followed by Disney) within just seven years.[39] With increasing leverage over workers, the company has reportedly set a low ceiling on experienced writers' pay, and has attempted to severely underpay writers for their work during series' post-production. Netflix's power is such that it can impose these subpar terms of employment on even the most powerful writer with responsibility for running a given show. Both of these practices appear to be spreading to other major employers, illustrating the ease of tacit coordination among the handful of powerful buyers in the writing labor market. This behavior parallels the "industry-wide standardization of

certain contract terms…in ways that favor publishers over authors" that featured significantly in the U.S. District Court's decision to block the acquisition of Simon & Schuster by Penguin Random House.[40] Finally, Netflix systematically "negotiated" artificially low license fees with itself on more than one hundred original theatrical projects in order to underpay the screenwriters who were due a royalty-like shares of the fees called "residuals." Following a lengthy challenge from the WGAW, Netflix agreed to pay out approximately $42 million in unpaid residual compensation to several hundred writers on those projects.[41]

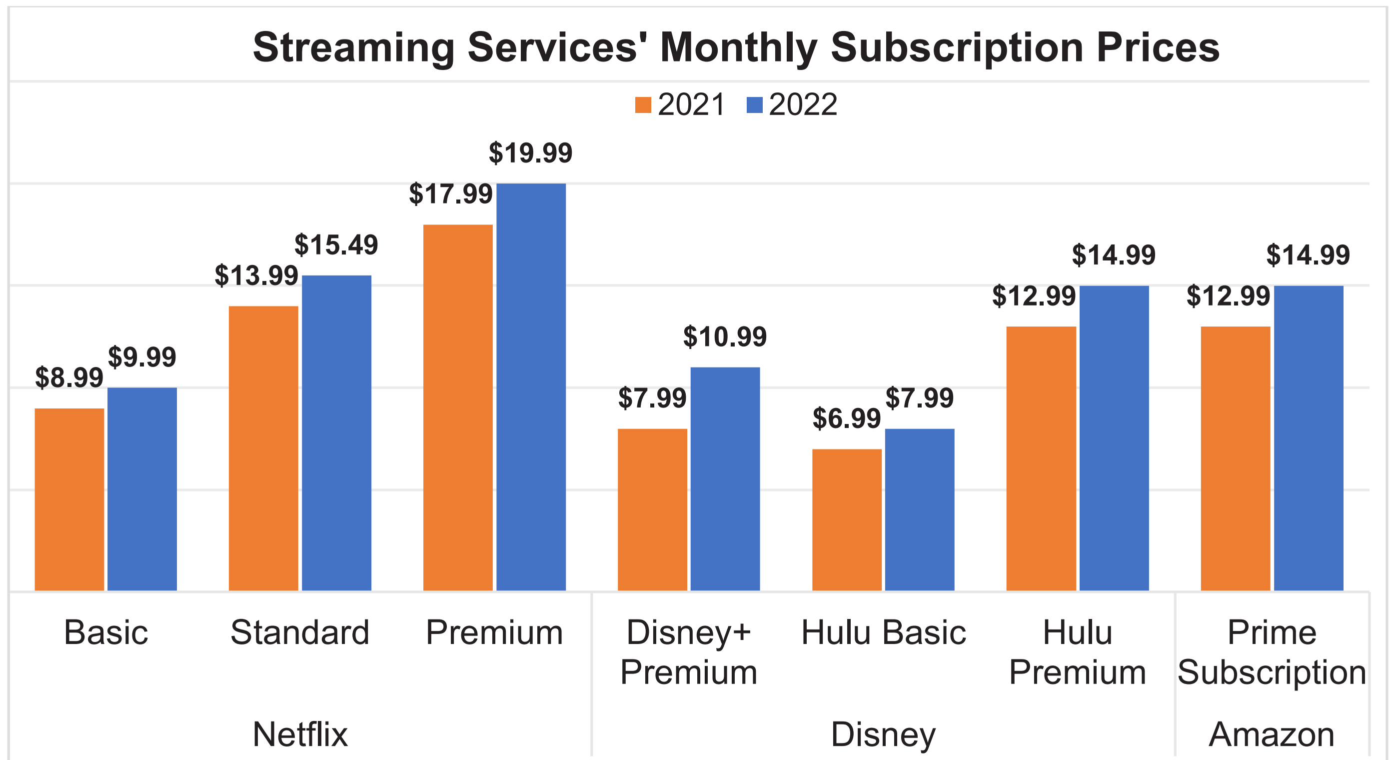
- **Control over creative labor:** If a show produced for Netflix is cancelled—sometimes despite apparent popularity[42]—it is virtually impossible for writers to take the show to other platforms. Thus far, no show wholly produced by Netflix has moved to another service. Only a few shows that are produced by other studios, like *Tuca & Bertie* and *One Day at a Time*, have had the option of moving to another channel or service. Netflix also popularized the now-standard practice among streaming services of releasing limited, if any, viewership information, decreasing writers' and other talents' leverage in employment negotiations by denying them crucial information about the success of their own work.[43]
- **Reduced investment in content:** Netflix's subscriber growth has recently begun to slow; in response, the company is seeking to cut costs on content. Wall Street firms have praised Netflix's transition away from competitive content investment, celebrating its ability to execute layoffs and reduce spending, especially in "niche programming" and "content exploration."[44]
- **Increased subscription fees:** Netflix is facing increasing demands from Wall Street to raise subscription rates. Netflix has already raised the price of all three U.S. tier subscriptions by 11% in the past two years, and more than 25% on its premium subscription in the past three years.[45] Industry analysts have noted that Netflix's ability to raise prices and maintain low subscriber churn is illustrative of its pricing power.[46] As one analyst speculated, "[T]hough initial acceleration to the platform was driven by original content, the new wave of acceleration will likely be driven by pricing."[47]

INVESTOR'S BUSINESS DAILY

TECHNOLOGY

Netflix Price Hikes Popular With One Group: Wall Street Analysts

Netflix's recent actions offer a preview of its future as a content gatekeeper. No longer committed to competitive innovation, the company will slash programming and underpay workers, abusing its dominant position to offer consumers less content—and less innovative content—for more money.



Sources: *The Verge, Investor Business Daily*.

The Future of Media

Without Intervention, the Gatekeepers Will Seize Control

Forbes

As SVOD Growth Slows, Industry Consolidation Is Looming

Disney, Amazon, and Netflix are positioning themselves as the key gatekeepers of media and its vital marketplace of ideas: the dominant firms who decide what content gets made, what consumers can watch, and how they can watch it. The path to this future will be charted by snowballing consolidation; less creativity, choice, and innovation in content; increased downward pressure on writer pay; and higher prices for consumers. Vertical integration means that players in the entertainment market must have both production and streaming distribution arms to remain competitive, a significant hurdle for new entrants, smaller competitors, and independent producers. Meanwhile, each round of consolidation will cause still more reactive consolidation. Some streamers will exit the market or be bought by others. Paramount, Sony, and Warner Bros. Discovery are not likely to remain competitors in scripted online video for much longer, with Wall Street analysts predicting these companies will be candidates for consolidation.[48] Paramount is disadvantaged by a comparative lack of scale, Sony by a lack of vertical integration, and Warner Bros. Discovery appears to be already withdrawing from its investment in HBO Max.

> **"This has to become a less competitive industry…they need to consolidate"**
> **- Michael Nathanson**

Wall Street, with its rapacious demand for profits, is unenthusiastic about even the current level of competition in streaming video, and insists on further consolidation in order to lower spending on content and enable higher prices. Wall Street analyst Michael Nathanson argued recently that "This has to become a less competitive industry…they need to consolidate,"[49] while another analyst recommends that Disney sell Hulu and buy Netflix.[50] If a few competitors drop out of the streaming business, the few services remaining will be able to reduce content spending and increase subscription prices without a commensurate loss of customers. Recent price hikes at Netflix, Disney+, and Hulu are only the beginning; Wall Street is pushing media towards an environment of comfortable collusion among a small number of mega-firms.

Meanwhile, the labor market for writing is already squeezed by employer abuse that grows worse with the increasing power of media gatekeepers. In recent years, employer abuses including shorter and more precarious employment for lower-level writers and caps on experienced writer pay have spread through the industry to become "standard," threatening writers' ability to sustain careers. The accumulation of market power enables these companies to undervalue writing services and the writers who supply them. Further consolidation will leave writers with only a few potential employers, and these dominant content buyers will have a significantly decreased incentive to innovate. Writers will see even more downward pressure on their wages, and fewer will be able to make a living from their writing, in turn reducing output, creativity, and diversity of content.

Action is Required to Protect Competition

When the Fin-Syn rules were abandoned, deregulation was justified based on the growth of basic cable, which purported to offer more competition for broadcast networks. However, this deregulation was almost immediately followed by more consolidation, with production entities, broadcast networks, and cable networks combining into a handful of media conglomerates. A few related regulations, such as Program Access and Dual Network rules,[51] remain in place in an effort to counter the anti-competitive incentives of vertical integration and the importance of a multiplicity of voices in media, respectively.

But the past few years have seen streaming video replace cable and broadcast as the dominant distribution platform for content, taking the problems of vertical integration and media consolidation to the extreme without any regulation at all. For instance, while the Dual Network rule prohibits Disney from owning two of the four major broadcast networks and have thus prevented Disney from buying the Fox broadcast network, no such rule precludes Disney from owning Disney+ and Hulu—two of the four largest streaming services in the U.S.—or from combining them into a single entity, as the company has suggested it may do in the coming years.[52] The Federal Communication Commission regularly investigates the state of competition in broadcast and cable along with key public interest issues like diversity in media ownership, but no regulatory body is currently overseeing such questions—or creating Fin-Syn-like protections—in streaming video. Recent moves from the Department of Justice and the Federal Trade Commission to aggressively target harmful mergers and unfair methods of competition are a promising shift after years of inaction, but more action is needed.

Media's history is rife with attempts at monopolization. When regulators and enforcers in the 1970s saw an environment similar to today's, with three powerful companies controlling content, they stepped in. The Federal Communications Commission and the Department of Justice, through regulation and antitrust enforcement, crafted

the Fin-Syn rules, ushering in a “golden age” of independent production. The current environment calls for similarly bold, sweeping action.

Recommendations

Antitrust agencies and lawmakers must pursue multiple paths of action to address the accumulation of gatekeeper power and its threat to the future of media:

1. Block further consolidation. Disney, Amazon, and Netflix have all demonstrated that they view acquisitions as a key strategy for gaining market power, and Wall Street actively demands consolidation in this market to increase profits. These three gatekeepers are likely candidates for future merger activity which would increase their control over what content is made, how consumers can access it, and how creators are compensated for it. Any mergers in media and entertainment involving significant streaming players should be blocked, including acquisitions of smaller or potential competitors.

2. Proactively investigate anti-competitive issues and outcomes. As detailed above and in the WGAW’s *Broken Promises* report,[53] rounds of anti-competitive mergers and the growing power of key gatekeepers are pushing media towards extreme vertical integration and a future of tight control by just a few firms. Antitrust agencies should thoroughly investigate the state of competition in this industry, including merger outcomes that have reduced competition, how vertical integration is increasing the power of these gatekeeper firms, and the monopsony power of media employers.

3. Increase regulation and oversight in streaming. The media and entertainment industry plays a key role in U.S. society and culture, where the free exchange of ideas and diversity of content support the broader public interest. As content has moved from regulated markets of broadcast and cable to the unregulated venue of streaming, the government oversight that is crucial to maintaining effective and healthy competition—particularly in an industry that tends toward consolidation—has failed to keep up. Whether through agency rulemaking or legislation, new rules against anti-competitive self-preferencing behavior or rules requiring a certain level of independent content on streaming services are necessary to level the playing field.

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