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Los Angeles

Disruptive Convergence:

The Struggle Over the Licensing and Sale of Hollywood's

Feature Films to Television Before 1955

A dissertation submitted in partial satisfaction of the

requirements for the degree Doctor of Philosophy

in Film and Television

by

Jennifer Anne Porst

2014

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ABSTRACT OF THE DISSERTATION

Disruptive Convergence:
The Struggle Over the Licensing and Sale of Hollywood's
Feature Films to Television Before 1955

by

Jennifer Anne Porst

Doctor of Philosophy in Film and Television

University of California, Los Angeles, 2014

Professor John T. Caldwell, Chair

This project is located at the intersection of television and film studies and examines the causes and effects of disruption and convergence in the media industries through a case study of the struggle over Hollywood's feature films on television before 1955. Since television began broadcasting in earnest in 1948, two years after Hollywood saw its box-office revenues decline precipitously from their all-time high in 1946, the important question to ask becomes: why did it take seven years for Hollywood's features to make their way to television? Through an investigation of the efforts made by the film and television industries in the 1940s and 1950s to work towards feature films appearing on television, this project concludes that Hollywood's feature films did not appear on television until 1956, not because of the long held assumptions that the film industry was either apathetic or hostile to the nascent television industry, but rather

as a result of a complex combination of industrial, social, legal, and governmental forces. One of those forces was the “other” prominent antitrust case filed against the studios during this period: the case of the United States v. Twentieth Century-Fox, et al. This project argues that those issues that prevented Hollywood’s feature films from appearing on television before 1955 may well be common to all periods of media industry disruption and convergence, particularly, the contemporary film and television industries and their relationship to digital media.

By illuminating the relationship between the film and television industries during the 1940s and 1950s, this research contributes to important debates in the growing field of Media Industry Studies. It highlights the value of investigating the roles of the various stakeholders, interests, and agendas in the media industries, and of studying the histories of film and television together as they relate to form a more symbiotic story. It demonstrates that media industry disruption and convergence are historical, as well as contemporary phenomena, and shows the importance of investigating the media industries at all moments of change and convergence. The use of archival resources like legal files taps new sources for primary research, and the focus on moments of disruption both historically and contemporarily identifies patterns of behaviors that illuminate the past and anticipate the future.

The dissertation of Jennifer Anne Porst is approved.

Denise R. Mann

Kathleen A. McHugh

Jennifer Holt

John T. Caldwell, Committee Chair

University of California, Los Angeles

2014

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VITA

EDUCATION

2010 C.Phil., Cinema and Media Studies
Department of Film, Television, and Digital Media
University of California, Los Angeles

2008 MA, Cinema and Media Studies
Department of Film, Television, and Digital Media
University of California, Los Angeles

2003 MSED, Secondary Teaching
School of Education and Social Policy
Northwestern University

1998 BA, Communications and Theatre
Department of Film, Television, and Theatre
University of Notre Dame

PUBLICATIONS

Refereed Journal Articles

2013 “The U.S. v. Twentieth Century-Fox, et al. and Hollywood’s Feature Films on Early Television.” *Film History*. 25:4.

2011 “The Influence of Sound on the Visual Style in Renoir’s *Tire au Flanc* and *La Chienne*.” *Studies in French Cinema*. 11:3, Fall. 195-206.

Book Chapters

2014 (Forthcoming) “The Preservation of Competition: Hollywood and Antitrust.” *Hollywood and the Law*. Eds. Paul McDonald, Philip Drake, Eric Hoyt, Emily Carman. London: BFI Publishing, 2014.

Online Publications

2012 “Are Online Channels the Future of Television for Teens?” *In Media Res*. 28 November.

2012 “*Breaking In* a Formula for a Successful Network Sitcom.” *In Media Res*. May 16.

2009 “This is What’s Really Cool About NFL Films: An Interview with Margaret Ruffing-Morris.” *Mediascape*, Fall.

Visual Essay

2009 “Towards a New Genre of Video Games.” Co-created with David O’Grady and Drew Morton. *Mediascape*, Fall.

INTRODUCTION:

Media Disruption, Convergence, and Feature Films on Early Television

With the emergence and proliferation of digital technologies and the Internet in the 1990s and 2000s, convergence became an important topic in cinema and media studies. As defined by Henry Jenkins, convergence describes the ways content flows across multiple media platforms, the cooperation between multiple media industries, and the migratory behavior of media audiences.¹ In the wake of the many seemingly dominant media companies who struggled or failed in the face of the digital media, many observers asked why the older media industries – film and television in particular – failed to take advantage of the potentials of digital media by not making more extensive, and timely, efforts to converge. It appeared as though the existing titans of media had their heads in the sand when it came to digital technologies, and when they finally stole a look, it was too late. These companies and the people who led them, however, did not achieve success in their industries through ignorance or a lack of intelligence. So why did they not successfully defend their market dominance in the face of these new innovations? What prevented them from adapting and taking advantage of these new technologies?

The notion, however, that the seemingly distinct industries of film, television, and digital media work cooperatively is neither new nor exclusive to the contemporary situation. An earlier struggle between old and new media bore an uncanny resemblance to one that followed half a century later. In looking back at that earlier period of technological change when television emerged as a viable, commercial media form, it is clear that many of the same questions and issues of convergence were at play. Over the last few decades, scholars of film and television history have worked to illuminate the relationship between the film and television industries in the 1940s and 1950s. For example, Christopher Anderson, Tino Balio, Michele Hilmes, Edward

Buscombe, Robert Vianello, and Douglas Gomery made significant headway in advancing the understanding of Hollywood's relationship to early television through examinations of Hollywood's ownership of television stations, theatre and subscription television, and production for television.² More recently, David Pierce, Michele Hilmes, Amy Schnapper, and Eric Hoyt offered analyses of the attempts to license or sell feature films to television through broad overviews of the activities of each major film studio in relation to television and a focus on what happened when feature films were eventually released to television.³ However, scholars have not yet adequately explained the struggle over the licensing and sale of Hollywood's feature films to television, and have not examined it through an analysis of the different industrial agendas involved in the negotiations. Neither have they explored the lessons this earlier period holds for understanding contemporary media industries. This project addresses that gap in the fields of television and film history through an investigation of the efforts made by the film and television industries in the 1940s and 1950s to work towards feature films appearing on television. Through extensive archival research, I argue that Hollywood's feature films did not appear on television until 1956, not because of the long-held assumptions that the film industry was either apathetic or hostile to the nascent television industry, but rather as a result of a complex combination of industrial, social, legal, and governmental forces. I argue that those issues that prevented Hollywood's feature films from appearing on television before 1955 pervade other key periods of media industry convergence, particularly, the contemporary film and television industries and their relationship to digital media.

Contemporary economic theory provides a useful tool in understanding both the historical and contemporary periods of media industry disruption and convergence. Joseph Schumpeter, one of the most influential economists of the twentieth century, developed a theory

of innovation called “creative destruction,” which viewed the process of innovation and disruption as one where new technologies can render older technologies, and thereby the companies that produced and sold them, obsolete.⁴ It saw capitalism as a kinetic system where innovators sustain economic growth even while they destroy the value of established companies. Contemporary economic theories like Clayton M. Christensen’s concept of the Innovator’s Dilemma look more closely at the reasons why dominant companies often fail in the face of disruption. Christensen argues that even the most successful, well-managed companies who pay close attention to their markets, listen to their customers, and invest in new technologies, can still manage to lose their market dominance in the face of new, disruptive technologies.⁵ One of the central reasons for that failure is rooted in the distinction between sustaining and disruptive technologies. Sustaining technologies foster improved product performance, much like the invention of sync sound film, which was not a wholly new media and did not compete with film, but offered an improvement to the existing technology. Disruptive technologies on the other hand, bring something very different to the market than was previously available. Products based on disruptive technologies are often cheaper, simpler, smaller, and frequently, more convenient to use.⁶ Disruptive technologies alter the business or social landscape, disrupt the status quo, alter the way people live and work, and rearrange value pools.⁷

When existing media are faced with a disruptive technology like digital media or television, they often fail to smoothly adapt and take advantage of the newer technologies. Consider, for example, the prolonged period of floundering the film, television, and music industries have encountered since the introduction of the Internet in the 1990s. One significant problem they have suffered, as do other dominant firms when faced with disruptions, is that it does not make a lot of sense for existing companies who dominate their market to invest

aggressively in disruptive technologies. The reason for that is largely economic: as a result of the fact that disruptive technologies often offer a cheaper and simpler product or service, they often also have lower profit margins. Additionally, many of the dominant firms' existing, and most profitable, customers initially cannot use products based on disruptive technologies, which are, by contrast, often eagerly adopted by the least profitable customers in the market. As a result, companies who are interested in higher profit margins and beholden to their existing, and most profitable, customers often fail to see the logic in making a serious investment in disruptive technologies until the market is "large enough to be interesting."⁸ By then, it is often too late. In the end, it is not necessarily about companies working harder or smarter, but about the way they are able, or not, to productively approach disruptions in their industries. In order to understand their behavior, as Andrew Currah has argued, "We must examine the *incentives* they face, as well as the organizational and institutional *context* in which executive decision-making takes place."⁹ Those incentives and contexts, both in the 1950s as now, include the legal rights to the films, the geography of windows and deals, fiduciary duties to shareholders, the power of the interests of and contracts with successful retailers and exhibitors, the high risks inherent in producing costly films, contractual obligations with labor organizations, and more.

These problems of media industry convergence and the behavior of the American media companies in the face of disruptive technologies are not exclusive to the contemporary situation, and the same issues, observations, and critiques about the behavior of the media industries today have been made at other points in history when new media or significant technologies were introduced. Analyses of the moments throughout the history of the media industries when a disruptive technology was introduced and the existing industry either adapted or failed to innovate, can help us not only understand those important moments in history, but also

illuminate the issue of disruptive technologies and the media for the contemporary situation and the future. William Uricchio has argued for the importance of this kind of work by claiming that in this moment when contemporary media is undergoing transitions wrought by digital technologies, scholars should adopt a new view of media that benefits from considering other moments of media in transition, and one which demands new sorts of conceptual focus.¹⁰ That conceptual focus should move away from the isolated study of specific media (e.g., film) and toward a view of media as a “web of pre-existing, competing, and alternative media practices.” He believes that such a move would enrich the possible meanings that the study of an isolated medium can generate.¹¹ Similarly, Mark Williams outlined the need for new work in media history that he called “intermedial studies,” or the “examinations of relations between and across specific media at significant historical junctures.”¹² Williams, like Uricchio, sees the rise of digital culture as an impetus to “reunderstand” the history of media and media culture, and he argues there is an emerging emphasis on the “fissures, discontinuities, and synecdoche” of history.¹³ This project attempts to reunderstand the history of media and media culture through an analysis of the earlier moment of media in transition and the relation between the film and television industries at the significant historical juncture when television first developed as a commercial medium.

The Struggle Over Feature Films to Television

One of the most significant “fissures” in media history occurred when television was introduced in the mid-twentieth century. In looking back at this earlier period of technological change when television emerged as a viable, commercial media form, we can see many of the same questions and issues of convergence that confront the industry today. Traditional discourse

about the relationship between the Hollywood studios and early television has often fallen into two camps: (1) Hollywood studios were antagonistic to television until the late 1950s when they realized television was not going away, at which time the studios grudgingly tried to find a way into an industry already dominated by three main networks (NBC, CBS, and ABC); or (2) Hollywood always desperately wanted to get into the television business, but government regulations, and specifically the actions of the Federal Communications Commission, thwarted Hollywood's efforts until the mid-1950s, when studios realized they could produce original content for the new medium.

Those longstanding beliefs about Hollywood's apathy or hostility to television in the 1940s and 1950s have their roots in statements published in the industry trades during that time, such as one in *Radio Daily* on May 4, 1949, by Mal Boyd, Television Producers Association president: "Most of the major film companies are allowing their fear of television as a competitive medium to stand in the way of effective exploitation of their product by video means." That assumption about Hollywood's motivation was then used to explain the fact that studios were unable to find successful inroads to television until the mid-1950s. These trade storylines continued in academic scholarship such as James L. Baughman's chapter in Tino Balio's anthology *Hollywood in the Age of Television*, which states, "As television sharply reduced box office receipts, Warner and others adopted a public pose of hostility toward the home screen. In the early 1950s, studio head Jack Warner had been one of the most vocal proponents of the colony's TV 'boycott.' He had banned TV sets from the lot and forbade them from appearing in any Warner films."¹⁴ Tino Balio, in his anthology *The American Film Industry* made the argument for Hollywood's antipathy by saying, "As TV began to make inroads into movie audiences, Hollywood's first impulse was to maintain a strictly stand-off attitude toward

the new medium. Television was a novelty whose attraction for the public would quickly wane, the hypothesis being ‘They’ll get tired of it soon enough’.”¹⁵ Christopher Anderson, in *Hollywood TV: The Studio System in the Fifties*, echoed Balio’s claim and acknowledged the “movie industry’s legendary antipathy” toward television.¹⁶ All of those works, and others since the 1980s, have acknowledged the *antipathy* or *hostility* storylines, thereby perpetuating them, and then worked in some way to complicate them. The persistence of these storylines reflects a tendency that Charles Musser and Robert C. Allen observed that, “many assertions about the cinema have been passed from one historian to another without ever being verified or challenged.”¹⁷ This case study of the struggle over the licensing and sale of Hollywood’s feature films to television before 1955, works to finally debunk both of those enduring mythologies by analyzing primary documents that illustrate the range of behaviors, resistance, and cooperation involved in facilitating the migration of Hollywood’s content across platforms.

Since Hollywood’s feature films did not appear on television before 1955, the subject has understandably received little attention compared to other aspects of the relationship between film and television in the 1950s such as Hollywood’s ownership of television stations, theatre and subscription television, and production for television. Although Hollywood’s feature films did not appear on television, there were some feature films making their way onto television screens, such as many independently produced films, foreign films, and films that had been repossessed by the Bank of America (which, as a film financier, attempted to recoup its failed film investments by distributing the films to television). Since television began broadcasting in earnest in 1948, two years after Hollywood saw its box-office revenues decline precipitously from their all-time high in 1946, the important question to ask becomes: why did it take seven years for Hollywood’s features to make their way to television? This research question motivated

this project, and its answer provides a key to understanding the behavior of the media industries during this earlier period of convergence as well as in other key moments of convergence and disruption.

The relationship between Hollywood and television in the late 1940s and early 1950s was tumultuous and complex. In 1948, television stations suddenly found themselves with many hours of programming to fill and inadequate resources to meet that demand. Naturally, many of them called upon Hollywood studios looking for films with which they could fill their television schedules. As television grew, Hollywood was dealing with fundamental industrial shifts as the result of the consent decrees that resulted from the Supreme Court's decision in the antitrust case against Paramount, et al.¹⁸ As a result of those shifts as well as the changes occurring in American society as a result of the baby boom, suburbanization and post-war reacculturation, Hollywood saw its box office returns drop from wartime highs to all time lows. During the war, when people had disposable income, but fewer goods to spend it on, they often spent it on the movies. As Hollywood watched that income slowly fade, it would make sense that they would happily take advantage of the new revenue stream of television. If you consider that between 1935 and 1945, the Hollywood studios produced 5,380 feature films and 7,636 short subjects, which totaled approximately 9,342 hours of entertainment, they certainly had enough content in their vaults to supply television with content.¹⁹ Why then were the only feature films that appeared on television prior to 1955 foreign or independent films, or films that had been repossessed by agents like the Bank of America?

This dissertation aims to analyze the very nuanced and complex play of institutional, cultural, and economic forces at work in the late 1940s and early 1950s, in order to more clearly understand the relationship between Hollywood and the emerging television industry, as well as

issues common to all periods of media industry convergence when a disruptive technology was introduced, through an analysis of the struggle over the licensing and sale of Hollywood's feature films to television before 1955.

Research Sources and Methods

This project certainly follows the emerging profile of media industry studies, which has been defined by Michele Hilmes as the study of “those texts and practices that are *not* included in the study of literature, art, music, and drama as they have been structured in the academy over the last hundred years or so. ” Such studies call “into being a radically different conception of the entire process of creative production and reception.”²⁰ In order to complete a study that focuses on those texts and practices that have traditionally been left out of the histories of film and television, it requires a consideration of the many different interests and factions at work in the media industries in the mid-twentieth century. This project is neither a television network-centric history such as William Boddy's *Fifties Television: The Industry and its Critics*, nor a major film studio-centric study like Christopher Anderson's *Hollywood TV: The Studio System in the Fifties*. Rather it deals with all of the sloppy spaces, emerging partnerships, intermediaries, and organization *between* the two mediums. By analyzing the issue of feature films on television before 1955 from a variety of perspectives including film studios, unions and guilds, exhibitors and theatre organizations, etc., my work follows in the footsteps of Jennifer Holt's work in *Empires of Entertainment* where she highlights the roles of various stakeholders, interests, and agendas as part of a “complex dialogue and negotiation of forces that all combined for striking consequences in a relatively short time frame.”²¹ This approach allows for a fuller understanding of the dynamics of negotiation and change during all periods of media industry convergence, and

provides an opportunity for the telling of the histories of many largely marginalized groups such as unions and independent television station owners.

Through the inclusion in this study of the different stakeholders, interests, and agendas, it also makes it possible to have a complete understanding of the industrial structures of the film and television industries at that time, as well as the dynamics between them. Douglas Gomery, in “The Centrality of Media Economics,” argued that, “one needs to hypothesize and understand how a particular form of industrial structure leads to certain corporate conduct.”²² It is that basic understanding of industrial structures and corporate conduct that allows for the comprehension of the texts that an industry produces. In this study, it is only through the analysis of the conflict between the industrial structure of established Hollywood and the flexible and growing structure of television that we can understand many of the decisions made by those in charge. The simple fact that the film industry was well established and television was the young upstart led some studio executives to view working with television as somehow beneath them. The relative chaos of the early years of television also caused hesitation and uncertainty in the film industry as people questioned how best to move forward and feared taking a wrong step. In all cases, it is necessary to understand those behaviors and motivations in order to comprehend the texts the industries produced.

David Hesmondalgh’s work in *The Cultural Industries* compliments Holt and Gomery’s methods and provides a fuller cultural-economic framework for my project. His focus, as well as this project’s, is on analyzing the patterns of change and continuity in the cultural industries, as opposed to change and continuity in the texts produced by those industries or in how audiences understand texts.²³ He also suggests we look at the overall place of cultural production in economies and societies, the ownership and structure of cultural industry businesses, and the

organization of production.²⁴ Because, as he argues, an industry produces culture, but culture also produces industry; it is important to look not only at the industry itself, but also at the larger American culture during that time period and the ways the changes and continuity in the culture at large affected the industries.²⁵ This echoes the argument of Brian Winston in “Breakages Limited,” wherein he argues that patterns of change in the media can be understood as a field wherein three elements – science, technology, and society – intersect.²⁶ In the cultural industries of film, television, and digital media, simply studying economics, industrial structures, science, or technologies will result in a limited understanding of both the industry and its products. Considering the society and culture in which the industry and its products function and circulate, allows for a more nuanced conception of the economics, industry, science, and technology of film and television. In this study, for example, we will see how the Communist witch-hunting and conservative legislation of the 1950s affected the ability of unions to more forcefully lobby for residuals, as well as the ways in which the change from the more liberal politics of the Roosevelt and Truman eras to the more conservative Eisenhower years may have affected the outcome of one of the central conflicts in this story: the antitrust lawsuit the U.S. v. Twentieth Century-Fox et al.

This project looks at this significant moment from the perspective of various stakeholders through the vast number of largely hidden primary documents they left behind. Gathering those primary documents required extensive travel to archives across the country in search of the files of studios, unions, theatres, and television networks; trade publications, house organs, and unions’ and theatre organizations’ communications with their members; and legal documents from court cases. The antitrust case, *United States v. Twentieth Century-Fox, et al.*, in which the Department of Justice attempted to force the Hollywood studios to license or sell their feature films to

television, plays a central role in this project for two reasons. First, although it is certainly less well known than the Paramount antitrust case, which resulted in the divorcement of exhibition from production and distribution, it was extremely significant in terms of its effects on the relationship between the film and television industries. Second, it resulted in the creation of a vast archive of materials related to the struggle over feature films on television before 1955. For the case of the U.S. v. Twentieth Century-Fox, et al., which was filed in 1952 and went to trial in 1955, the Department of Justice had the Federal Bureau of Investigation go through the defendant companies' files and make copies of every document related to the issues of the case. The DOJ's lawyers also conducted numerous interviews, studies, and surveys. Those materials, over thirty thousand pages of documents, are all housed in the National Archives. The transcript from that trial alone consists of over three thousand pages of testimony from the people most involved in these negotiations. The supporting materials in the government's and studios' case files highlight the difficulties the film and television industries had to overcome prior to the appearance of Hollywood feature films on television in late 1955.

Without falling down the theoretical rabbit hole of Donald Rumsfeld's now infamous concept of the "unknown known," it is important to acknowledge that the little scholarly attention this subject has received is due in large part to the often impossible task of showing something that did not happen. Since Hollywood's feature films did not appear on television before 1955, there are no contracts for their sale or lease, and there are no television schedules or ratings information to help scholars describe their appearance on television. If there is no historical record of something happening, there is no way to *show* it and then historians are left to guess. That guess work is what has led to the perpetuation of the two overly simplistic and erroneous storylines that Hollywood was ignorant of the potential of their films on television, or

withheld their films from television in an attempt to destroy their competition. The archive created by the antitrust case against Twentieth Century-Fox, et al., provides the evidence necessary to allow a complete rendering of what happened during this period of disruption and change.

This legal case also provides a unique opportunity to pursue a complex intermedia study because almost every faction of the industry held stakes and the outcome meant the possibility of major industrial change. As a result, the lawyers for all sides maintained copies of documents not only related to their own position on the issue but also from the alternative perspectives. Scholars rarely have the opportunity to study a web of densely intersecting documents as complex as this collection, and the available files include a whole range of documents that existed, not just the polished versions of stories or information that studios often fed to the trades. All of these documents have their own rhetorical purposes and, particularly where a lawsuit is involved, are often created by persons working for their own personal gain. But just as it is important to understand these types of complex industrial negotiations from the viewpoint of not only the studios but also from the various perspectives of the multiple parties involved, so too is it important to analyze these issues using a wide range of data from a variety of sources. While no single document can provide a complete and accurate statement of any truth, one can gain a fuller understanding of the workings of the television and film industries at this time in the dialogue between these multiple interests and perspectives.

Collecting and evaluating all of these materials has been a significant undertaking. In 2009, I conducted research at the National Archives in Laguna Niguel, CA, in the Warner Brothers special collections at USC, the Gene Autry Center, and the Twentieth Century-Fox special collections at UCLA, as well as materials in the archive at the Screen Actors Guild. In

2010, I continued my research at the above archives and traveled to the National Archives and Records Administration in College Park, Maryland; The Film and Music Archives at Brigham Young University; the Wisconsin Center for Film and Theatre Research at the University of Wisconsin, Madison; the Tamiment Library & Robert F. Wagner Labor Archives at New York University; the National Archives and Records Administration in New York, New York; and the John W. Hartman Center for Sales, Advertising & Marketing History at Duke University. The research provided an immense amount of information relating to the efforts made by Hollywood studios, television networks and stations, theatres, the government, unions, and guilds to either facilitate or prevent the exhibition of feature films on television. The resulting dialogue between those voices makes evident the value of legal cases and the archives they create for film and television historians. It also recognizes the multifaceted nature of industrial negotiations, particularly during times of change, by analyzing the issues from the various viewpoints and perspectives involved.

The focus on primary documents, as opposed to secondary accounts, made it possible to piece together a first hand account of what happened from the different players involved. The documents that are collected in the process of a lawsuit are particularly valuable, especially in this case, in that they contain the voices and stories of people who have been left out of other histories and archival collections. In many cases, people even testified in court about erroneous information they had seen in the trades. Although the laws of time and space would not allow for participant observation, by working to understand this historical period and the struggle therein from the point of view of the participants and including their own voices as much as possible, this project incorporates ethnographic methods. The thousands of pages of transcripts of the questioning that occurred during the various trials over the issues related to feature films on

television are essentially interviews of the persons involved. In an effort to allow those people to tell this history in their own words, longer quotes have been used more frequently than they would have been if this study relied solely on secondary sources or more conventional archival materials. By analyzing the transcripts of trials to piece together the history of this case study and to understand the range of people's thinking and behavior in regard to these issues, this project takes ethnographic methods mobilized in the work of scholars such as Sherry Ortner's *Not Hollywood: Independent Film at the Twilight of the American Dream* (2013) and John Caldwell's *Production Culture: Industrial Reflexivity and Critical Practice in Film and Television* (2008) and applies them to history.

When analyzing those sources, we must keep in mind what John Caldwell has argued both in *Production Studies* and in *Production Culture*, that trade accounts are always spun and scripted for some form of vested self-interest, and scholars should understand the industrial reflexivity in trade expressions as forms of local cultural-economic negotiation.²⁷ As a result, many of the archival documents used in this research should not be taken at face value, but should be understood as local negotiations of their larger cultural and industrial context. That is not to say that it is impossible to find any truth in documents, but simply that we should recognize that every document and utterance comes from a certain perspective and is making a particular argument for a particular purpose according to the situation and audience. Every piece of information has a certain bias, but by reading the transcripts from trials along with other primary documents that exist from the time, it enables a more complete and accurate portrait of this time period than might have been possible using primarily secondary sources. By taking into account the many different perspectives of the many different players in this history, this project tells a more complete history of this time period in the pages that follow. This project also

considers the fact that, as William Uricchio has pointed out, the ideological implications of these archival documents are particularly important when considering moments of change and contention in media history.²⁸

Definition of Terms

In confronting a project that deals with such a complicated time with manifold factors and interests involved, it is useful before jumping into the meat of this struggle, to clarify the difference between many of the players, formats, and entities involved. For archival historians, trade and industrial terminologies can be slippery ground, which necessitates a review and breakdown of the central terms in this case before we proceed.

First, we should consider the basic concept of feature films. For the purposes of this project, feature films are defined as those films that are multireel films that typically ran for at least approximately ninety minutes in length, and which were originally intended for theatrical exhibition. This is distinct from films that were made for television, or “spectaculars” as Pat Weaver called them, wherein clips from films would be shown in a television show, sometimes with the same name as the theatrical film, as an advertisement for the theatrical release.²⁹ During the early years of television it was a bit confusing because people who worked in the industry and for the trades were somewhat loose with their terminology, and the word “film” was used for a variety of formats. For example, there was a distinction between live television and filmed television, but they often just called filmed television “film.” For this project, our focus is not on live television or on the film that was produced specifically for television broadcast, but rather on the feature films that were originally produced for theatrical exhibition in the 35mm format.

Another term that becomes particularly murky in the postwar period is “Hollywood” and who is included under that umbrella term. Rather than simply including the major studios, for the purposes of this project, “Hollywood” includes all of the studios that were member studios of the Motion Picture Producers and Distributors Association (MPPDA). That included: Columbia Pictures Corp.; Loew’s, Inc.; MGM; Paramount Pictures, Inc.; RKO Radio Pictures, Inc.; Samuel Goldwyn Studios; Twentieth Century-Fox Film Corp.; Universal Pictures Co., Inc.; Republic Production, Inc.; Hal Roach Studios, Inc.; and Warner Bros. Pictures, Inc.

It is also important to clarify the distinctions between Hollywood and independent producers and studios, as well as between the different kinds of independent producers and studios. Independent films at this time were defined as any films not produced by member studios of the MPPDA. Within that group, however, there are two different groups of independent producers. There are the producers who were independent from the MPPDA studios, but who were members of their own association, the Society of Independent Motion Picture Producers (SIMPP). Included in that association were Vanguard Films, Inc., Edward Small Productions, Inc., Sol Lesser Productions, Inc., Hal Roach Studios, Inc., Majestic Productions, Inc., Empire Productions, Inc., Comet Productions, Embassy Productions, Nero Films, Inc., Cagney Productions, Inc., California Pictures, Inc., Walt Disney Productions, The Chaplin Studio, and Story Productions. SIMPP, as did the MPPDA, entered into contracts with the many unions and guilds in Hollywood, and was therefore limited in their ability to distribute their films to television. Then there were those independent producers who were not members of SIMPP and thereby not subject to the terms of the agreements between that association and the unions and guilds.

There are many unions and guilds in Hollywood whose function is to collectively bargain with the Hollywood studios on behalf of their members. Although the members of the unions and guilds are employed by the producers, and the unions and guilds have contracts with the producers that guarantee minimum requirements for the employment of their members, the unions and guilds are often at odds with the producers when it comes to agreeing on the basic terms of those contracts. There are many unions and guilds in the film and television industries, and those that play a large role in this story include the American Federation of Musicians (AFM), Screen Actors Guild (SAG), the Screen Writers Guild (SWG), which was later known as the Writers Guild of America (WGA), the International Alliance of Theatrical Stage Employees (IATSE), and the American Society of Composers, Authors, and Publishers (ASCAP).

There is also the very fundamental distinction in this context between production, distribution, and exhibition that would benefit from further clarification. Discussions of Hollywood and television at times simplistically conflate the three activities into one broad category—the film industry’s relationship to television—which tends to obscure many of the complexities of the film studios’ approaches to television and which is a pitfall this project will try to avoid. During the early days of television, both the FCC and the consent decrees resulting from the Paramount antitrust case prevented Hollywood from becoming involved in the exhibition of television (i.e., owning networks and stations) but did not keep them from being involved in production and distribution. Other factors prevented the studios from producing for, or distributing to, television, and while both subjects could benefit from further investigation, the distribution of Hollywood’s product (older feature films in particular) to television in the 1940s and 1950s has yet to be fully addressed and is the focus of this project.

Despite the monolithic term, television is not one thing. Just as it is important to clarify the distinction between film production, distribution, and exhibition, it is also important to understand the differences between television networks, independent stations, affiliate stations, and owned and operated stations. They all have different loyalties and responsibilities, and those differences play a large role in their varied attitudes towards feature films on television. The major television networks at this time were ABC, CBS, NBC, and DuMont, and they broadcast their program schedule not directly to viewers, but to their affiliated and owned and operated stations. They produced much of their programming in New York, and earned their revenue from the sale of commercial time during their programs.

Independent television stations were small local operations and were often owned by regional media companies or local businesses such as newspapers or radio stations. They were licensed by the Federal Communications Commission (FCC) to transmit a television signal within a specific market, and in return for the use of that broadcast spectrum, they promised to operate in the public interest. If a station was not affiliated with or owned and operated by a network, they had to produce, purchase, or license all of their own programming. In the early days of television, many stations remained independent because, for example, if there was only one or two stations in a given city, and there were four networks offering them their programming, then the station could choose whichever network's programs they liked best. This competition incentivized the networks to produce better, more original, content, but it also necessitated that networks had a way to actually distribute their content to stations. That required either coaxial cables or delivery of kinescope recordings, and in the early years of television, neither of those means was practical. For example, before the coaxial cable was installed linking the different markets across the United States, stations had to rely on kinescope versions of

programming that was shipped from the network to the station. That was not a very efficient system and the aesthetic quality of the kinescope recordings left a lot to be desired. As a result, the independent stations found themselves with a great deal of airtime and not enough content to fill it.

Although affiliate stations are extremely common in contemporary television, in the 1940s and early 1950s, they were less so. Affiliate stations are local stations that have an agreement with a network that they will broadcast the network's programming. The network provides their affiliates with a schedule of programs, with national or regional commercials included, as well as payment for the stations airtime. The affiliate station does not have to take the network's programs, however, and if they choose not to, then the network can offer them to another station in that area. Just as it was with the independent stations, in the early years of television, it was a challenge to distribute network content to affiliate stations. Therefore, many stations chose not to affiliate with networks until the higher quality coaxial cable system was available to them.

Owned and operated (O&O) stations were stations that, as the name implies, were owned and operated by one of the networks. That was in contrast to affiliate stations that were contracted with a network, but not owned by them. There were regulations against the networks owning stations in every market in the United States, so O&O stations were relatively rare, but since they were owned and operated by the networks, they almost always carried the network's programming. As we will see, the different relationships of these stations types to the networks affected the amount of original programming they needed in order to fulfill their FCC mandated minimum broadcast hours, and thereby influenced their need for feature films to help fill their schedules.

Finally, even the government could not be viewed as one unified force in convergence struggles. In terms of the government agencies involved in this case study of feature films on television, the two major players were the FCC and the Department of Justice (DOJ). It is important to understand the distinctions between them as well as their different approaches to the film and television industries because their different allegiances and motivations often placed them in conflicting roles vis a vis the film and television industries. The FCC's mission, as outlined in the Communications Act of 1934, was to make wire and radio communication services available to the people of the United States, and a central part of their job was licensing radio and, eventually, television stations. The FCC's primary allegiance was to the radio and television industries, so it took steps to thwart Hollywood control of broadcasting by declining to approve studios' applications for networks, stations, and frequencies; the DOJ, however, had different interests. The DOJ is responsible for enforcing the laws of the United States, and, as part of that duty, it is required to investigate and pursue companies suspected of violating the 1890 Sherman Antitrust Act. This led them to engage in legal action against the film studios that attempted to force them to work with television by making their films available to the new medium. While the distinction between these two agencies and their interests may seem self-evident, it is actually quite important because the FCC and the DOJ differ markedly in their intended functions and actions, particularly in this case of the relationship between the film and television industries, and the struggle over feature films on television in particular.

Chapter Breakdown

The chapters in this study have been organized chronologically in order to give a bird's eye view that allows us to better see and understand the complex cross institutional dialogues on

the ground between the different factions involved in the struggles over the licensing and sale of Hollywood's feature films to television. Rather than separating the film and television histories, this project looks at their combined histories as they relate to form one coherent story, or as Jennifer Holt has argued, "as integral pieces of the same puzzle, and parts of the same whole."³⁰ It also aligns with Michele Hilmes' argument that, "Convergence is not a new phenomenon; it is the very hallmark of modern media. Clearly these objects we have designated as technologically determined separate spheres always have converged, and in fact it is academic paradigms that have kept them separate far longer than any logics of production or industrial framework could justify."³¹ And responds to John Caldwell's assertion that, "We need to 'converge' the scholarly methodologies of film and television to fully understand the new, synthetic media."³²

In order to mobilize the argument that the histories of film and television should be considered and told as an aggregate, integrated media history, the chapters have been organized chronologically. This approach, rather than organizing the chapters according to the media specific logic of a film chapter, a television chapter, an exhibitor chapter, etc., avoided significant overlap and unnecessary repetition and better clarified the intermedial practices at work in this period. Although this is largely a narrative historical account of who did what when, it turns the tables on normal narrative explanations of history because it focuses on what prevented Hollywood from getting their feature films on television.

The first chapter, "The War Ends and the Struggle Over Feature Films on Television Begins, 1946-1948," opens in the period post-World War II when television began growing in earnest, and Hollywood saw their box office decline from all time highs to new lows. Many studios had been aware of television since the 1930s and had worked to take advantage of the new medium in a variety of ways, including specifying their television rights for their films in

their contracts. Meanwhile, television stations desperately needed content to fill their FCC mandated minimum time on air, and since they did not have adequate funds to produce original programming to fill that time, they looked to existing films to fill their gaps. Television networks, on the other hand, were content to produce live programming that they could feed out to their affiliated stations. In the face of the declining box office, the exhibitors grew increasingly nervous about what they believed was the threat of television. At this point, the studios still owned their theatre chains, and even though divorcement was on the horizon, as the studios' biggest customers, the theatres held a good deal of sway over the studios. While studios proclaimed their loyalty to their theatres, a number of practical issues that would stand in the way of feature films appearing on television, such as questions of rights and residuals, came to light. By the end of 1948, the FCC's freeze was in place and the Supreme Court had made their decision in regard to the case of the U.S. vs. Paramount Pictures, et al., both of which prompted the industries to regroup and find a more productive and profitable way forward.

Chapter two, "The Freeze Sets In, 1949-1950," begins in a time when new television stations were placed on hold, so the market for audiences was no longer enjoying unfettered expansion. More and more sets were being produced and making their way into homes, however, and AT&T continued to expand the reach of their coaxial cables. The box office continued its decline, and the studios tried to determine the best way forward. Theatre owners were faced with impending divorcement from their studios and concerned about competition from television. They complained mightily about 16mm showings encroaching on their business as well as the films that managed to make their way on television. Studios maintained their loyalty to the theatres, but began to take a more pragmatic approach since the theatres were soon to be cut off from their control. Studios also made continued attempts to negotiate with the unions and guilds

for rights and residual payments for the license or sale of their feature films to television, but with new television unions cropping up, there was even confusion over with whom they should negotiate. Until those issues were resolved, however, Hollywood found other ways to use television to the advantage of their feature films. Studios began creating subsidiary companies to handle their television business, and MCA made their first offers to buy television rights to feature films. Although these years saw no major movement towards the resolution of the issue of feature films on television, they were crucial in terms of positioning the different players for their next moves.

The third chapter, “The Freeze Thaws and Everyone Heads to Court, 1951-1952,” sees a period wherein changes accelerate, resulting in a group of very significant lawsuits that would affect the industries for years to come. Although the studios were selling off their theatre chains, they remained loyal to them as their most valuable customers. Different players in the industry, from the unions to the studios to exhibitors, met in July 1951 for the Council of Motion Picture Organizations (COMPO) convention to address the problems of the industry. Their focus, however, turned quickly to television and how the film industry was dealing with it. Meanwhile creditors like the Bank of America began to force producers to license their films to television, and the studios made more serious efforts to negotiate deals for their films on television. Republic, for example, offered their films starring Roy Rogers and Gene Autry to television in June 1951. They were stopped, however, by Rogers’ lawsuit claiming that Republic did not actually have the right to offer his films to television. Autry quickly followed with a suit of his own, and the industry waited the outcome. The studios were also focused on methods by which they could control their own films on television without the oversight of the FCC: subscription television. There were others working on subscription television, however, and the studios’

refusal to give their films to E.F. McDonald, head of Zenith Radio Corporation, for his Phonevision trial in 1951, led McDonald to complain to his friends in Congress. That complaint, and others, resulted in the Department of Justice filing an antitrust suit against the major studios, their distributors, and theatre organizations alleging they were conspiring against television by withholding their films. Although the FCC's freeze was lifted in April 1952, the various lawsuits brought against the film studios by Rogers, Autry, and the Department of Justice, put a freeze of their own on the movement of films to television.

Chapter four, "Television Saturation and the Threat of a Buyers Market, 1953-1955," examines a period wherein the problems preventing Hollywood's feature films from appearing on television began to work themselves out. Although the theatrical box office continued to decline from 1953 to 1954, by the end of 1954, it had improved a bit thanks to new technologies like Cinemascope and color film, as well as the studios' efforts to advertise their films on television. Once the FCC's freeze had been lifted, television grew again at a rapid rate. As television moved into more homes and more markets, the advertising dollars available to purchase or license films increased. The new stations that were cropping up still needed films to help fill their air time, and although there might have been more money available to them, many stations had simply stopped asking the major studios for their films as they assumed the studios' answer would be no. Meanwhile, the studios produced more content specifically for television through their subsidiaries like Screen Gems, while they continued to determine their rights to their existing libraries and resolve the issues raised in the Rogers and Autry lawsuits. By the end of 1955, the pending legal cases had been decided in court, and many of the studios negotiated in earnest to sell or license their feature films to television.

Finally, by 1956, most of the major issues preventing Hollywood's feature films from appearing on television had been resolved, and distributors like Matty Fox and Eliot Hyman announced the release of RKO's and Warner Bros.' films, respectively, to television. Although this particular set of industrial hurdles had been crossed, they would come back again to haunt the industries at future points of industrials convergence. For example, this nagging legacy from the 1950s reemerged in the 1980s with the introduction of the videocassette, and it returned again in high relief with the introduction of digital media. By more fully understanding the issues that the industries faced at significant moments of change like the 1940s and 1950s, we can better understand not only this period in the '40s and '50s, but also recurring issues at moments of convergence in the media industries. What we will find is what economists James Manyika, Michael Chiu, et al, have argued: "Leaders cannot wait until technologies are fully baked to think about how they will work for – or against – them. And sometimes companies will need to disrupt their own business models before a rival or a new competitor does it for them."³³ This project demonstrates that the Hollywood studios were, in fact, making concerted efforts to find a way to capitalize on the new television medium including exhibiting their feature films on television; but their efforts were thwarted by a constellation of practical obstacles including prohibitive contracts with unions and guilds, an inability to determine and monetize the value of the nascent television medium, questions about the aesthetic quality of television, industrial inertia, and the protestations of theatres.

This project not only illuminates a crucial area of film and television history that has until now been misunderstood, but it responds to Mark Williams' assertion that, "If we are to understand the many and continuous changes in our media environment and ecology, studies that afford a better reckoning of the scale and complexity of prior relations between and across

‘media’ (understood in as complex and multiple a sense as required) will be important in media history.”³⁴ This study of the struggle over the licensing and sale of feature films to television prior to 1955, aims to provide the analytical groundwork that allows us to better understand the contemporary convergence of the “old” media industries with “new” digital media. By studying this period, we can see that convergence is a historical as well as contemporary phenomenon, and applying contemporary theories of convergence and change to this earlier case study helps us to better understand both the historical and contemporary periods of disruption and convergence.

Looking at the behavior of these industries through the lens of the industrial, economic, and legal conditions that largely dictate and constrain the behavior of these media will help to deepen understandings of theories of convergence and the ways in which texts migrate between and utilize different media platforms. In creating a history of this period that documents in detail these struggles and eventual resolutions, this dissertation also highlights the importance of studying the media industries as a whole. Once we as scholars acknowledge the extent to which the previously separated sections of the industry are interrelated, we can see that it is impossible to understand the behavior of one without the other.

Through the analytical lens formed by the intersection of industrial forces, labor groups, economic conditions, legal action, and governmental oversight, we can clearly understand the larger picture of the media industries at that time, and at any time. The media industries are, by their very nature, a complex combination of a variety of forces and interests, and it is only through the understanding of how they work together that we can understand any one of them as well as the larger picture of the media industries. The use of archival materials such as legal files and the transcripts from trials, shows how those previously untapped sources can be invaluable in uncovering many voices that had previously been thought lost to history. They include a

variety of perspectives from key voices that have been largely overlooked and untold in earlier histories from the studios' and networks' perspectives. The uncovering of these resources opens a whole new trove of information for media historians that will help paint a fuller picture of histories that have not been told as well as histories that may have, without these resources, been impossible to tell. It is by excavating these voices and histories and by analyzing the ways they worked together that we can begin to fully understand our media history and its relationship to the present.

CHAPTER ONE:

The War Ends and the Struggle Over Feature Films on Television Begins, 1946-1948

By 1946, the war had ended and everyone was readjusting to normalcy. The film industry, after enjoying a number of extremely profitable years and relatively stable industrial conditions, found itself faced with a number of challenges. The studios anxiously awaited the Supreme Court's decision on their hard fought antitrust case, the U.S. v. Paramount Pictures, et al., which would fundamentally change the film industry. Television began growing again after being put on hold for the war, and from 1946-1948, in the period after the war and before the FCC's freeze, television established itself enough to alarm some film industry leaders. While the networks focused on live programming, local stations found themselves with many hours to fill and not enough programming to fill them with. Meanwhile, the theatres basked in the high attendance rates they experienced during the war, and focused their attention on doing away with the theatre admission tax. Issues related to re-releases and reissues, as well as the rising pressure of anti-communist witch-hunts primarily distracted unions and guilds. There was one common, increasingly unavoidable problem, however: all of these groups were trying to figure out what television would, and could, mean for them, and how best to position themselves to take advantage of it. That Hollywood's feature films could find their way to television screens initially seemed like a natural way in which the two mediums would work together, but everyone quickly discovered that many obstacles existed that would prevent the easy migration of content between the two platforms.

In order to understand the film industry's approach to feature films on television in the 1940s and 1950s, as well as its view of television as a potential force of disruption more generally, it is useful to understand the growth of the television industry from its earliest years.

This prehistory also explains the evolution of the television industry's need for Hollywood's feature films on television.

Although television's commercial development did not mature until after the war, television had actually gotten its start in the 1930s. In 1936 there were approximately a thousand television sets in the United States. Those were mainly owned by corporate executives in the media and related fields who had them in their offices and homes in order to test out the new medium. Some sets were available for sale to the public, and some English sets were being imported to the U.S. at that time.¹

It has often been reported that television had its debut at the World's Fair in 1939, and although the Fair began NBC's first year of a regular television program schedule of fifteen hours a week, a significant amount of programming had been produced and broadcast for a few years prior. In 1936, for example, NBC began a program schedule on television. In those early years, NBC's policy was to "interest sponsors in television in the hope that they would produce programs advertising their product and, through the payment of fees to the National Broadcasting Company for their advertising programs, support the company so that it could make something out of television."² Thomas Hutchinson, then program director for NBC's Pacific Division, recalled their first program was a variety show that included the Pickens Sisters and a skit by Ed Wynn and Graham McNamee who were acting at the time as a team in a radio program. They performed one of their radio sketches for NBC on television. Henry Hull also did a scene from the Tobacco Road play he was in at the time. NBC broadcast a fashion show, dancers from the Roxy Theatre, and film. The films were typically industrial films such as a film Northern Pacific produced that showed the beauties of the parts of the country the railroad served. The Santa Fe Railway, for example, produced films on the Grand Canyon. The objective of the films was to

acquaint the traveling public with the company that serviced that area and put out purely for the purpose of getting people to use those facilities when they traveled. Disney supplied NBC with some short cartoon subjects; General Motors and Ford produced films demonstrating their different lines of cars in action; and American Business Machines made films demonstrating how their electric typewriters, calculators, and other machines worked. In November 1937, an advertisement in the form of a fashion show was presented in cooperation with Saks Fifth Avenue in New York. For the broadcast, three hundred people assembled in a room to watch twelve or fourteen 12-inch tube televisions which each had about an eight by ten inch picture. In 1938, NBC broadcast a show featuring material from the first automobile show in New York. It was one of the first programs where a mobile unit television pickup was used in conjunction with studio and film. For ten weeks in the spring of 1939, NBC broadcast a show called *Your Esso Reporter*, which was a news broadcast by Lowell Thomas. It was sponsored by the Standard Oil Company of New Jersey and was broadcast on television and radio simultaneously.³

By 1939, manufacturers had made a television with a three-foot screen, and there were approximately five thousand sets in the New York area. At that time, anyone who bought a set would let NBC know, and NBC would send him or her a program schedule. Between 1936 and 1941, in addition to NBC, CBS was on the air in New York; Zenith was on the air in Chicago; Don Lee was on in Los Angeles; General Electric in Schenectady; Philco in Philadelphia; and the Balaban and Katz station was on in Chicago. There were also stations on the air in Boston, Kansas City, and Ames, Iowa, and the programming broadcast by all of those stations was similar to the programming on NBC during that time.⁴ From 1936 to 1941, as Hutchinson explained: "All the stations, when they first went into television in this period, did not maintain a regular television program schedule until there was sufficient interest and until there were

sufficient sets sold. But sets were sold, were being bought by the American public, and as sets were sold programs expanded.”⁵

During those early years, advertisers played a central role in television programming, and over ninety advertisers contributed to or worked with NBC.⁶ The close relationship with advertising from such an early stage made it almost inevitable that television as a medium would develop with advertisers as an integral part of their program model. That close relationship also caused film industry personnel to pay less attention to the medium that they considered purely for advertising. According to Herman Selvin, a lawyer who represented Roy Rogers, “If anybody stopped to think about television at all for 1- seconds in that period [1936-1941] they must have known that the cost had to come from somebody, and obviously it would be advertising because [...] certainly these private companies, like NBC and the rest, weren’t going to distribute television free just for the fun of it or in order to perform a public service act.”⁷

The early development of the financial structures of television was complicated by the fact that the FCC did not, until 1941, authorize any licenses for commercial television, and those licenses were what authorized stations to make money. Since commercial television had not been authorized before 1941, programs and advertising could only be put on the air for free.⁸ It was on July 1, 1941, that the FCC granted the first commercial television license to NBC’s station WNBT in New York.⁹ Only then could television really get started as a medium.

When the United States entered the war in 1942, it interrupted the commercial development of television, but it accelerated the research and development of television technologies. Advertisers also took advantage of that time to develop their television operations. For example, Batten, Barton, Durstine & Osborn (B.B.D.&O.), an advertising agency who handled radio programs such as *Burns and Allen* and *The March of Time*, first began

experimenting with television as an advertising tool around 1943.¹⁰ At that point, they had six people on their staff dealing with television. But there were only approximately ten thousand television receivers on the market, and about one half of those were in the New York area.¹¹ Then in 1947, after the war had ended, the FCC gave the “go-ahead” for commercial television to resume.¹² At that time, however, both CBS and RCA were lobbying for the adoption of their color television technologies, and that disagreement led to a wait and see period after the war when new station construction and set sales stalled. No one wanted to commit to a color system without the FCC’s official approval, but they did not want to move forward with investments in black and white only stations or sets if the promise of color television was a near term possibility. When the FCC decided to solve the problem in 1947 by simply not making a decision to authorize either color system, television was, for the foreseeable future, committed to black and white content only. That commitment eliminated, at least for the time being, the uncertainties that existed in the public and industry’s minds and the number of sets in use soared.¹³

By the end of 1947, six television stations held licenses, with sixty construction permits outstanding and nine applications pending. In addition to the six licensees, six newly constructed stations were also furnishing program service. Thirty-three large metropolitan areas and three smaller cities either had or would soon have service from the television stations licensed or under construction. The Commission had a requirement of a minimum of twenty-eight hours of program service by each station per week, but would make exceptions and relax that requirement where necessary. An estimated fifty thousand sets were in the hands of the public, with the bulk in cities that had television broadcast service. The television audience was estimated at three hundred thousand people. Receivers varied in price from about \$250 for table models to \$2,500

for the large floor models, and their viewing screens ranged from five to twenty four inches in size.¹⁴

In 1948, television grew substantially. Early that year there were only about twenty-seven or twenty eight stations operating in the country,¹⁵ but by October there were thirty seven stations operating in twenty one market areas.¹⁶ Gallup found that there were approximately 258,000 television sets in operation, and predicted 600,000 more within the year.¹⁷ J.R. Poppelle, president of the Television Broadcasters Association, reported that between five hundred thousand and seven hundred and fifty thousand television sets were due to come off production lines by the end of 1948, and by January of that year, AT&T had already plowed underground for seven thousand miles of coaxial cable for television service.¹⁸ In May, the coaxial cable for television from Los Angeles to New York was completed. The service, however, still had to catch up, and they were waiting for the insertion of repeater stations, which were expected to be ready in twelve to eighteen months.¹⁹ NBC had interconnected sixteen stations stretching from Missouri to Massachusetts that would be ready by the end of the year.²⁰ In August 1948, four hundred and sixty two advertisers sponsored programs or spot announcements over thirty television stations, which was a 501% jump over August 1947's total of eighty-nine advertisers.²¹

Although television's infrastructure and set production was developing at a rapid pace, the programming still needed to catch up. In September 1948, Wayne Coy, head of the FCC, explained: "Both the quality and the quantity of television programming leave much to be desired at the present time. [...] As to the quality, it is improving steadily as competition increases and as the broadcasting people gain experience. The extension of networking facilities is also providing better program material."²² Despite those challenges, there was still a great deal

of optimism, as seen in David Sarnoff's comments in his address to RCA stockholders at the 30th annual meeting of the corporation in 1949. He reported that 1948 had been RCA's most successful year yet and noted, "Television is not just something added to broadcasting. It is a new industry calling for development of a new art form and for new conceptions in entertainment as well as in equipment. While these problems present great challenges, they also present great opportunities for progress. Therefore, we look forward to the future with confidence."²³

As television grew, the film industry was transitioning from a period of dominance and stability to a period of profound change and uncertainty. In 1946, the film industry enjoyed their highest box office grosses ever, and motion picture attendance hit 4,127,000,000.²⁴ By 1947, the tide was turning and the seven majors (Paramount, MGM, RKO, Warner Bros., 20th Century-Fox, Universal, and Columbia) began showing a decline. That decline, however, was only eight percent in gross returns, while net profits fell 25%. To some this showed that the business was suffering more from rising costs than from slipping revenues.²⁵ Either way, the industry was beginning to lose money.

Then, by 1948, weekly attendance had fallen almost ten percent to sixty seven million. At this point, since television had grown, some observers began blaming television for the decline in the box office. In 1948, however, there were only a few hundred thousand television sets in homes, while the weekly attendance at theatres had dropped by twelve million tickets a week.²⁶ It can hardly be concluded anything more than a very slight influence of television on the theatrical box office, but television was an easy scapegoat for some people in the film industry and negative feelings about the nascent industry began to take hold.

The Film Industry's Attitude Towards Television

One of the factors that significantly determined the decisions and behaviors of the film industry in terms of television, as well as other aspects of their business, was the fact that by 1946, the film industry still functioned as an oligopoly. That meant that the handful of vertically integrated studios that controlled production, distribution, and exhibition dominated the market, and the decisions of one studio influenced the others and vice versa. This differentiated them from many other established companies who face innovation and disruption in that the seeming stability and dominance of an oligopoly provides those involved with a false sense of confidence. Their overconfidence in their market dominance demonstrated what Andrew Currah, in his examination of contemporary media industries as an oligopoly, described as, “A tendency for oligopolists to neglect or even marginalize emerging markets, especially those that are seen to threaten the status quo. Therefore, the behaviour of oligopolist firms tends to reflect, defend and enforce the prevailing structure of the industry, making any kind of radical change difficult to justify or initiate.”²⁷ The strength the studios felt in the market dominance they enjoyed through their oligopoly was about to become their biggest weakness in the face of the disruptive technology of television. That false confidence often expressed itself in the dismissal of television as unimportant. For example, Benjamin Kalmenson, president and domestic sales manager for Warner Bros. Pictures Distributing Corporation, later testified: “As near as I can recollect, in 1948, in my mind at least, television was in its infancy and meant nothing to me, so as the result of that I did nothing.”²⁸

Although that sentiment clearly existed for some, many people in the film industry had been aware of and tracking the development of television from a very early time. Meyer Lavenstein, general counsel for Republic, recalled: “Prior to 1935 our principal concern was the

film laboratory business and we were looking to television as a boom to the film laboratory business because as soon as motion pictures got on television the film laboratory business would be better because then we would be making and processing films, developing and printing not only for the theatres, but also for the homes.”²⁹ This incorrect prognostication underscores the ways that dominant firms can often incorrectly forecast the manner in which consumers will actually use a new technology.

Some studio heads were more inclined to seriously consider the potential relationship between film and television as their companies had closer ties with the nascent television industry. For example, Ned Depinet, president of RKO, recalled that David Sarnoff, having previously owned a controlling interest in RKO, “sent me over a television set for my office, and said, ‘Ned, watch this. We have to watch the development of this thing.’ And he sent me one for my home so I could keep informed. I have been looking at television since it started.”³⁰ Spyros Skouras, president of Fox, reportedly had an intense interest in television since 1936, and “spent a great deal of time and effort in studying and working with the problem.”³¹ Herbert Yates, the president of Republic Studios, remembered that as early as the period between 1937 and 1940: “I was pretty close to the companies that were promoting [television...] There was a good deal said about it among members of the industry and general opinion was, if I remember correctly, that it would very likely be a factor in the entertainment business.”³² Yates recalled talking “many times” to Deke Ailsworth at NBC about “the future of television as he saw it.”³³

It was in 1947 and 1948, when television began its rapid growth and commercial development, that members of the film industry began to move from simply paying attention to the new medium to actively looking for ways to get a foothold in television. Morton Scott, vice president and general manager of Hollywood Television Service, a subsidiary of Republic

Studios, was asked by Yates in late 1947 or early 1948 to start familiarizing himself with the television industry so that “when the time came for Republic to get into the industry, they wanted [Scott] to be an expert on the subject.”³⁴ Fox also made their interest in television official when in 1947, Peter G. Levathes, formerly the assistant to the general sales manager at Fox, was promoted to their head of television, and was “instructed by management to devise ways and means by which Twentieth Century-Fox could get into the television business.”³⁵

By 1948, the momentum was building for the film industry to find ways into television, and it became a central topic of conversation in public and private. In 1948, Jesse Lasky, one of the founders of Paramount, in a speech at a luncheon where he was honored by the National Board of Review for his thirty five years in motion pictures, argued that, “The picture industry better get very close with television soon, somewhere, somehow.” He saw television as a medium for plugging and building new stars and films, and said that film, “instead of viewing video as an enemy, should consider it an adjunct.”³⁶ Lasky had a prescient view that later proved correct as television, particularly in the network era, became the most effective way to promote theatrical feature films. Paramount was in fact one of the studios who moved most aggressively into television in its early years. George T. Shupert of the Television Division at Paramount explained that Paramount had been active in television since 1937, when their vice president, Paul Raibourn, coordinated the purchase of a twenty-nine percent interest in the Allen B. DuMont Laboratories. By 1949, DuMont would become one of the leading television manufacturers. Shupert also recalled that in 1937: “A research staff set up [...] in New York, charged with developing a system for recording television shows on 35-mm film for projection on theatre screens. Ten years and hundreds of thousands of dollars later – on December 10, 1947 to be exact – public announcement was made of a perfected Paramount Video Transcription

System.”³⁷ Paramount also invested in television trailers to promote their films, and on April 22, 1948, Paramount’s first motion picture trailer for *The Big Clock* made especially for television was broadcast on KTLA.³⁸

In 1948, Columbia Pictures also began actively investigating television, and considered buying television stations, making motion pictures for television, and licensing its library of motion pictures to television. They also employed a television expert to examine those possibilities, and he made a report to the company in 1949, as to what he thought the company could do to best exploit its assets in the new medium.³⁹

One of the first things the studios attempted was to purchase or license television stations and channels. Ned Depinet, president of RKO from 1942 to 1952, recalled that the Motion Picture Association of America (MPAA) had regularly discussed plans to obtain television channels from the FCC, particularly for theatre television. He explained:

When television came along, we tried to keep abreast of what it would do, what its ramifications were, what we could do with it to advantage for our industry, outside of using it as an advertising medium. [...] We didn’t know but what the day might come when you would broadcast a picture into a theatre onto the screen and eliminate the necessity of having a booth and an operator. Then we talked of augmenting the entertainment in the theatre, showing a picture and also some sort of a live performance that could be broadcast [on television].⁴⁰

Depinet’s testimony reflects not only a desire for the studios to get into television, but to incorporate television technologies into their film operations in a mutually beneficial way. The idea to eliminate the theatre booth and operators as a result of the broadcast of their feature films into the theatres illustrates creative thinking in terms of the potentials of television for the film industry. However, it also reflects an approach by the studios that, rather than working to understand and exploit the unique qualities of television, continued to approach the new medium in terms of how it could serve the film industry.

Paramount had owned and operated two television stations since 1944, and they established a New York Film Procurement Office to purchase film for their two owned and operated (O&O) stations.⁴¹ By June 1948, Paramount had applied to the FCC for television construction permits or to acquire television permits in San Francisco, Detroit, Cleveland, Cincinnati, Boston, Tampa, and Des Moines.⁴² Fox had also put in requests to the FCC to purchase or build television stations.⁴³ They applied for television construction permits or to acquire television permits in San Francisco, Boston, Seattle, and Kansas City. Warner Brothers had applied to the FCC for television construction permits or to acquire television permits in Los Angeles. In all cases, the FCC contacted the Attorney General to inquire about the comments or views of the DOJ on the applications as well as the qualifications of the studio to hold broadcast licenses as they are related to, but not explicitly dealt with in, the Supreme Court Decisions.⁴⁴ There was some concern, especially in light of the studios impending divorcement from their theatres, that television stations would become a natural substitute for the theatres, and provide an easy avenue for the studios to exhibit their films.

While the studios were busy trying to acquire television stations and channels, one of the most natural fits for television station ownership, the exhibitors, were asleep at the wheel. In September, at the 1948 annual convention of the Theatre Owners of America (TOA), Marcus Cohn, a lawyer-specialist in television, discussed some of the problems of television as they affected the motion picture industry, and he commented specifically on the neglect of exhibitors in securing a share of the limited number of television stations available. He observed, "It is shocking how few exhibitors have taken measures to protect themselves in this matter."⁴⁵ Wayne Coy, chairman of the FCC, was invited to address the TOA's 1948 national convention on the future of television and its impact on the theatre business. He warned the attendees: "Suppose the

theater owner reasons that he was the pioneer in both the visual and aural mass entertainment fields and that he might now try to become a broadcaster himself? If he had had that idea a year or so ago, it would have been a sound one. But today he will find that practically all the channels not assigned are involved in hearings before the FCC. The competition is intense.”⁴⁶ With that pessimistic outlook ringing in their ears and faced with declining box office revenues, theatre owners became increasingly nervous.

One of the ways the studios believed they could utilize television and assuage their exhibitors was through theatre television, and there was a great deal of experimentation with theatre television by most of the studios in the 1940s. In the late 1930s, RCA was conducting tests of their own theatre television system. RCA developed a practical large screen television projector, and they demonstrated their system to the members of the Federal Communications Commission in the spring of 1941, at the New York Theatre in New York. The projector was installed in the front of the theatre balcony and projected an image fifteen feet high by twenty feet wide. The program was fed to the theatre projector by telephone wires from the NBC studios in the RCA building some ten blocks away. The program consisted of live pickups from the studio including a brief ballet sequence and the enactment of a dramatic story. On, May 9, 1941, a preview was given to a theatre, “full of specially invited guests. The lobby resembled a Hollywood premiere, for most of the top executives of the motion picture industry were present.”⁴⁷ The program was broadcast from the NBC studios in Radio City and included the news, a round-table discussion of theatre television, and a dramatic presentation of an episode of one of radio’s then popular programs, “The Parker Family.” Those were followed by a televised motion picture newsreel, and direct from Madison Square Garden, the world middleweight championship bout between Billy Soose and Ken Oberlin.⁴⁸ Although those tests built great

excitement, the development of theatre television, along with the development of television generally, was put on hold for the duration of the War.

By 1944, the people invested in theatre television systems were getting restless, and Paul Raibourn of Paramount addressed the Theatre Panel Meeting at the First Annual Conference of the Television Broadcasters Association, saying, “If the broadcasters are economically unable or don’t want to further television, I assure you that within a few years the theatres will have it and the broadcasters will be far behind, which all present would be very happy about.”⁴⁹ Then in 1947, Paramount began large-screen exhibitions of theatre television in New York City.⁵⁰ By 1948, the FCC had granted Paramount an exclusive theatre-television channel at 7,000 megacycles, far beyond the range of home receivers, so home sets would not be able to pick up the signal. Paramount’s system used an intermediate film method where the image was filmed off of a receiving tube, put through a rapid development and drying process, and then projected onto the full theatre screen. Paramount tested their system in their Paramount Theatre on Broadway on Thursday, April 14, 1948. There were union problems involved in theatre television, however, and IATSE projectionists challenged the IATSE tele-cameramen for jurisdiction.⁵¹ This problem of uncertainty over which unions held jurisdiction over television was one that would echo through all forms of television, from live to filmed to theatre, until the mid-1950s when the disputes would finally be resolved. These territorial intra-union disputes also have parallels in other moments of industrial convergence, as when unions disputed credits for work performed in digital media. The conflicts over whether online media was considered marketing or content, and the creation by the producers guild of a new credit for a “Transmedia Producer,” illustrate the difficulties posed by technological disruption at even the most basic levels.

Spyros Skouras was one of the most dedicated proponents of theatre television, and he claimed that he had approached General David Sarnoff of RCA as early as 1940 to discuss developing a theatre television system. Skouras recalled:

To my surprise, the General invited me one day in his office, some time immediately after the war, and he told me that his research department was developing [...] television which could be available to the theatres within a few years, and he wanted any of the film companies or any of the exhibitors of large circuits to participate in the course of research. Fox joins, and Fox I believe paid over either two and one-half years or three and one-half years either \$250,000 or \$350,000 to develop large screen theatre television. And the development was slow, particularly since the home television was growing fastly, and was affecting our business so substantially.⁵²

Skouras even pushed RCA to develop a color theatre television system, and Frank Folsom of RCA had explained to him that a color system would take at least seven to ten years to develop. Skouras' dedication to theatre television was rooted in his belief that home television would not affect the theatres as long as theatre television existed.⁵³ That was in part, because Fox planned to pick up television broadcasts and screen them in theatres via their theatre television systems, thereby using the free television broadcast to charge admission to the theatres for audiences to watch the programming on the large screen. People in the television industry were predictably unhappy about that prospect, and NBC's Frank Mullen stated publicly that they would resist any attempt by theatres to pick up television shows for theatre television.⁵⁴

Feature Films on Television

Although the studios spent a good amount of energy trying to get into television via stations, channels, and theatre television, they also began investigating the possibilities of licensing or selling their feature films to television. Different factions in the film industry had distinct motivations and reservations about pursuing either the licensing or sale of their feature films to television. But both the piecemeal licensing and wholesale sale of films individually or

in bulk were investigated as options. For example, when Peter G. Levathes was promoted to head of television at Fox in 1947, one of the first things he explored was the potential of the sale of their feature films to television.⁵⁵

The studios certainly wanted extra revenue from the sale of their films to television, and the television industry seriously needed of content to fill their broadcast hours. Feature films provided a natural solution. As Morton Scott, vice president and general manager of Hollywood Television Service, explained: “The running of pictures is probably about as cheap a way for a station to stay on the air as anything else they could use. [...] They have to stay on the air a certain number of hours every day.”⁵⁶ That was the case from the earliest days of television. Thomas Hutchinson, who was in charge of television programming for NBC from 1936 to 1941, recalled that nearly fifty percent of the television schedule at that time consisted of motion picture film. He recalled: “For the most part I would say those films were documentary or advertising films that were prepared by manufacturers, travel agencies, railroads, for distribution to the American public and their sole endeavor in producing those pictures was to get distribution, so that when television offered [the advertisers] a larger audience they were very glad to have those films broadcast.”⁵⁷ A few years later, in 1944, Sidney N. Strotz, vice president in charge of the Western Division for NBC, explained why television desperately needed film: “I don’t think there is enough talent in the world to supply the demand that would have to be met if all television entertainment were put on a live basis. Rehearsal hours, memorizing lines and staging live productions, to say nothing of the mechanical factors like sets and scenery, would make it a formidable if not impossible problem.”⁵⁸

RKO was one of the first studios to experiment with broadcasting their feature films on television. Two of the first theatrical feature films to run on television were RKO’s *Gunga Din*

and *One Man's Journey*, which they licensed for exhibition on NBC in the mid-1930s. It was not commercially sponsored television and RKO did not receive any compensation since they had loaned the films to NBC for experimental purposes.⁵⁹ A few years later, in 1941, in one of the earliest examples of a major studio discussing the licensing or sale of their feature films to television, CBS discussed with RKO the possibility of buying their backlog of feature films. CBS declined to move forward with a deal, however, because as Jack Van Volkenburg, president of the television division of CBS explained: "It involved, after we had analyzed the whole thing, it involved more capital than we cared to devote to this purpose at that time. We had what we thought were better uses for that amount of capital."⁶⁰ Although, perhaps ironically, block booking of the theatres would soon be found illegal by the Supreme Court in the antitrust case against Paramount and the other major studios, buying or selling feature films for television in blocks was common at that time. Even as late as five years after the courts outlawed block booking of films for theatrical use, it remained common practice in television. As Morton Scott of Hollywood Television Service testified in 1952: "In television sales you sell in blocks. That prevents a station from being selective in their buying. Perhaps I shouldn't say that. [...] A station is offered a group of pictures and they buy those in groups. They don't buy individual pictures."⁶¹ Although *Variety* reported that CBS was working on the "wide-scale use of films in television,"⁶² in 1948, CBS was only buying feature films for their New York affiliate station because that was the only station they had at that point. They would pay between \$125 and \$300 for a feature film.⁶³

The relationship between the networks and stations and the difference between independent, affiliate, and owned and operated stations made a significant difference in terms of their attitude toward the use of feature films on television. Most of the networks preferred live

programming because it made the network the primary source of programming rather than TV syndicators and thereby strengthened the networks' ties with their affiliates. Live programming was also cheaper to produce for the networks, at least in the beginning, than purchasing or producing quality filmed programming. Live television also differentiated the medium from film, and networks used the live programming and "quality" anthology series as evidence for the FCC of their service of the public interest.⁶⁴ That being said, in many instances the networks still had no choice but to use films to meet their programming needs. As Jack Van Volkenburg, head of television for CBS, explained, even though CBS preferred live programming, they would use feature films in primetime since it took them "time to build up enough programs of good enough quality to fill up the prime time evening hours."⁶⁵

Independent stations, on the other hand, had an even more difficult time producing content for their programming, and for them feature films were all the more important. Those stations had even less income than the networks since they only had small local audiences to offer to potential sponsors, and therefore smaller revenues from advertising. In order to keep their licenses, however, they had to meet the FCC's minimum requirements for broadcast hours. The FCC had ruled in May 1948, that television stations had to program no more than twelve hours a week during their first eighteen months on the air. That minimum would be stepped up to sixteen, twenty, twenty-four, and twenty-eight hours with each successive six month period on the air. They had to maintain a minimum of a two-hour daily schedule in any five days of the week. The FCC had previously required a minimum of twenty-eight hours of programming for all licensees, but the Television Broadcasters Association had requested that be lowered.⁶⁶

Although in later decades most television stations were affiliated with a network and picked up that network's programming for their primetime hours, during the early years of

television that was not the case. The need for filmed programming was especially strong in 1947-1948 when television was expanding but the nationwide coaxial cable system had not yet linked the major markets.⁶⁷ Local stations could either produce all of their own live programming or find films to license or purchase. Live programming could be very expensive to produce, especially in the quantities these stations needed to fulfill for their obligations to the FCC.

While there were not many stations in operation, often the stations would choose not to affiliate with any one network because that would allow them to pick and choose the programming from a few networks to fill their schedules. For example, if only one station operated in Philadelphia, all four networks (NBC, CBS, ABC, and DuMont) competed to get their programming broadcast on that station. That depended, of course, on whether or not the infrastructure existed to get that programming to the stations either via kinescope recording or cable, and in those early years, that was often not the case. As Peter Levathes, the head of television at Fox described, "Films were usually used on a local basis. A station would buy the film and usually program it either early or late in the evening, because the network programs that came through from New York, or from Hollywood, pre-empted the choice time, so that the use of films was relegated to a secondary position."⁶⁸

Although some stations could get network programming, many television station owners, particularly the owners of independent stations, wanted films to help them fill their airtime. F.M. Flynn, the president of the *New York Daily News*, which owned station WPI, made a speech in April 1948 at an American Television Society luncheon wherein he stressed the importance of film to television and noted, "That makes desirable cooperation with the film industry."⁶⁹ Roswell Metzger, of the Rutrauff & Ryan Advertising Agency, explained that many stations were using features to help build their audiences because: "The television industry was

developed on a pattern similar to the radio. [...] First lots of sustaining time on stations, stations bought features and developed features trying to peddle them, trying to get the listening audience to a size where it was a commercial entity to the advertiser, and they have gradually gotten over the hump, like they did in radio.”⁷⁰

Although the major studios had still not entered any deals to put their features on television, films made their way to television through other means. By 1948, feature films aired for a total of 10.7 percent of total television time in the New York area, according to N.Y. TelePulse Reports. That was second behind “visual sports” which took 23.4% of the time. News, music and musical variety, and film shorts followed with 9.3%, 8.3%, and 8.2%, respectively.⁷¹ In 1946, Paul Alley, television film editor at NBC, wrote a piece for *Radio Age* wherein he explained: “Although many outstanding Hollywood features have been presented on NBC, the major film companies have not as yet released their product for television. But working through independent producers, NBC is able to present an amazingly high standard of motion picture features and short subjects.”⁷² At that time, the networks’ television film editors were not necessarily below the line editors, but managers who procured films for television and oversaw the editing of those films for television time and content.

Many independent producers wanted to sell or license their feature films to television in order to either make up for disappointing box office runs or to simply increase their grosses. In March 1948, for example, Hal Roach made a deal with Regal Television Pictures Corp. of New York to license thirty-two of Roach’s films for television. The deal included fourteen feature films and eighteen “Streamliners,” or four-reelers, which were originally made for theatrical release through United Artists between 1937 and 1941. Roach was able to release these films because they were made prior to AFM’s ban on sound tracks for video.⁷³ In April 1948, WPIX, a

television station owned by the *New York Daily News*, purchased the television rights to twenty-four Alexander Korda films for \$125,000. The newspaper planned to get a sponsor for the films on their station, and wanted to rent out the films to other stations on a package basis. The films included *Lady Hamilton* and *The Private Life of Henry VIII*.⁷⁴ CBS was also reportedly close to a deal for a series of Monogram's films. The network was not sharing details, however, in fear of exhibitor resistance.⁷⁵ David Sarnoff and RCA/NBC were in talks with Arthur Rank for a ten-year deal, which would incorporate swapping television rights for Rank's films for RCA/NBC playing trailers for free. RCA proposed that Rank make his films available after an arbitrary amount of time had passed from their theatrical release date.⁷⁶ Many of these independent producers and foreign producers were able to license or sell their films to television because, as we will see later in this chapter, they were not constrained by many of the contractual and legal limitations that encumbered the major studios.

Although the television networks and stations obtained feature films from independent and foreign sources, the networks never seriously inquired with the major studios as to the availability of their features for television. As Jack Van Volkenburg, the president of the Television Division of CBS, later explained, "We just never have solicited from the majors, because in the early days we had a very distinct feeling that if we could obtain them at all, that we just would not be able to afford the price."⁷⁷ That did not mean that television stations and advertisers did not inquire with the major studios as to the availability of their films. As Peter Levathes of Fox recalled, in 1947:

There were just a few stations on the air, but these stations wanted films, and they wanted films for the purpose of using them as a way of programming themselves during the early times, when they were operating at a loss, and they needed films as filler. [...] That was the spirit of most of the inquiries, and most of the discussions I had with television people, to make films available as incidental programming to the main programming that stations were offering.⁷⁸

Despite the fact that Levathes observed stations using films only as filler, he made a serious investigation of the amounts that Fox might earn for the use of their films on television. He went to the film heads of the affiliated stations in New York including the Columbia Broadcasting Station in New York, the National Broadcasting Station in New York, and to WPIX. He received letters from stations outside New York, and made a trip to Philadelphia to talk to the station manager there about the going rate for motion picture films.⁷⁹ After Levathes made his investigation into prices for Fox's feature films to television, he reported to Skouras: "After talking to various persons in the market, in the television field, that it was our opinion that the television department should proceed to other television activities at that time and postpone any other consideration of utilizing films on television; that this was not very realistic, and we should, at least for that time, abandon any further consideration of films for TV."⁸⁰

At that time, Fox had between seven and nine hundred feature films in their vault, and they believed that they only had one chance to get the sale or licensing of them right. They feared that if they sold their films and it turned out that they could have earned a higher price later; they would be out of luck because they could not go back in time and re-sell them. That made them particularly cautious and hesitant to take any action at all. The fact that they saw television as a very dynamic industry that was growing quickly reinforced their fears. They had a hunch that once television had spread nationwide, they could demand more money for their films.⁸¹ Levathes continued, however, to explore the prices available for the television broadcast of feature films.

The issue of sufficient payment for feature films on television, and what "sufficient" meant to individuals in the film and television industries presented an ongoing obstacle to the sale or licensing of feature films to television. As Spyros Skouras explained to the FCC in 1948:

If I would be offered sufficient money in keeping with the value of our films, I will consider to sell to television. [...] That I could not consider accepting these prices that the television industry was offering to Twentieth Century-Fox, because I would dissipate very valuable assets, because at that time there were not sufficient sets, not sufficient stations, and we could not consider disposing of our merchandise in such a market.⁸²

Rather than releasing their feature films to television, Fox began negotiations in the fall of 1947 with the William Esty Agency, and made a deal to release their newsreel material to Camel cigarettes and NBC. The show later became known as the John Cameron Swazey show. As Peter Levathes recalled, "It was the first time that films in such large quantities became available to television. We put on the air a 10-minute news presentation on film five nights a week, and this brought into play the entire international organization of Twentieth Century-Fox, involving 176 locations throughout the world that supplied film for this project."⁸³ The newsreels Fox gave to television were different than the ones they gave to their theatres. When their camera crews filmed events around the world, they used parts of that footage in a shorter newsreel for theatres, and aired a longer version on television. If, for example, the President of the United States made a speech, the theatrical version of the newsreel would contain only highlights from the speech, whereas they would televise the speech in its entirety.⁸⁴ Fox produced the television newsreels for broadcast five days a week.⁸⁵ Not surprisingly, the fact that Fox supplied content to television did not please Fox's exhibitors, but Fox had larger game plan that motivated them to supply television with newsreels. They not only wanted to earn income from television, they also wanted to ingratiate themselves with the FCC since they had applications for stations and channels pending the FCC's approval.⁸⁶

Fox's experience with the television newsreels was ultimately not a positive one, however, and that only increased the studios' reluctance to deal with television. In an April 1948 memo to Jack Warner regarding Warner Bros. possible entrance into the television newsreel

business, Norman Moray, short-subject sales manager for Warner Bros., explained that they should not “tie up” with one sponsor because they could end up at their mercy, just as Fox was with Camel. Moray continued:

The Fox people tell me that they are fighting constantly and they are not too happy with their deal. Fox’s original deal provided that Camel and NBC would automatically take on the Fox Television News in every affiliated station, as rapidly as these opened up, which ultimately would bring in a pretty fair return. However, it has since developed that NBC can not control their affiliates and at the moment Fox [is] holding the bag.⁸⁷

The studios were used to controlling every aspect of their business, and entering a relationship wherein they had to relinquish control did not particularly interest them. Moray’s memo also makes it clear that the very different industrial structure of television versus the film industry, and the somewhat chaotic nature of the developing television industry at that time, also made the film studios uncomfortable. Perhaps the studios might have had a higher tolerance for those discomforts if they had received more generous offers for their product.

The other major studios echoed Fox’s sentiments regarding the inadequate prices television offered for their features at that time. Not only did the studios believe they would not get a fair price for their features from television, but by broadcasting their features on television, they would lose money at the box office. On May 11, 1948, Barney Balaban, president of Paramount told *Daily Variety* that Paramount had no intention of offering their old films to television either for licensing or sale. He said that even though the television networks had expressed a desire for those films, the interests of the exhibitors was their first concern, and he believed that the current reissue value of their films “far outweighed” what they could make from television.⁸⁸ Jack Warner echoed Balaban’s reservations when he testified in 1948 that he believed that if they released their films to television, it would hurt their business at the box office. As Warner explained, “It is a simple deduction, if you can see something free, I see no

reason why anybody should want to pay for it, irrespective that maybe the films may not be quite as good, or maybe they are even worse, but nevertheless if you can get something free, I see no reason why somebody should want to pay an admission at the box office to a theatre to see the picture.”⁸⁹ Rather than seeing the licensing and sale of their vaults to television as a source of additional revenue, the studios saw it as a lose-lose proposition. As Clayton Christensen observed, “The fear of cannibalizing sales of existing products is often cited as a reason why established firms delay the introduction of new technologies.”⁹⁰ As Christensen has demonstrated, that tactic usually does not end well for those established firms.

Some leaders in the film industry were determined to avoid television no matter the cost. Jack Warner was one of the staunchest critics of television, and in a telegram he wrote to Samuel Schneider at Warner Bros. in March 1948, he made it clear that he had no interest in selling his films to television regardless of the price: “Policy we have adopted here at studio and you do same at home office re television is that we will not at any time give any of our productions shorts cartoons or features to be used for television broadcast irrespective of price they are willing to pay for same. Please be sure this adhered to unless contrary decision made by HM or myself.”⁹¹ A few years later, in 1955, Warner attempted to clarify his true intention behind that telegram by citing the drop in box office revenue Warner Bros. had felt at that time. They had attributed that drop to the “serious inroads” made by television. Warner further explained:

People were asking for television what they call clips from the films, scenes from our pictures, or pictures themselves, in one form or another, short subjects, and so forth, that they could run on television, and we felt – that is, I say ‘we’ – after consultation between my brothers, Mr. Kalmenson, Mr. Schneider and myself, we came to the conclusion that a wire like that was necessary to bring a halt, and stop the exhibition of Warner’s products on television at that time, rather than injure our income, which it had.⁹²

Although many of the studios balked at what they considered low prices offered for their films, by the end of 1948, Wayne Coy, the head of the FCC, remained optimistic about television’s

ability to pay acceptable prices for Hollywood's features. As he declared to the TOA's national convention, much to the theatre owners' dismay: "Everyone knows that television is going to get the very best and the most movies it can buy. Whether its advertiser-sponsors can ever afford the first-run feature films of today remains to be seen. Advertising over television is going to be extraordinarily effective. It should be able to pay accordingly."93

Another problem with airing feature films on television was that the content of feature films was often unsuitable for the all-ages family audience of television. In one example, older motion picture serials that had been televised on KTLA drew protests from audiences who thought the content was "too rough" for younger audiences. In response, the station decided to program more cartoons and fairy tales.⁹⁴ In those early years, the FCC required that when airing a motion picture on television, the station had to announce somewhere in the introduction to the program that it was a motion picture.⁹⁵ Those concerns about the appropriateness of the feature films content for television audiences led to hesitation among the FCC, television stations, and local advertisers and censorship groups. All of which had to be resolved before feature films could make their way to television.

Rights to Films on Television

In order to appear on television, the rights to feature films had to be cleared, and even though most of the studios had started in the 1930s to incorporate television rights in their contracts, the exact meaning of "television" and the definition of what those rights included became points of contention.⁹⁶ Earl R. Collins, president of Hollywood Television Service, a subsidiary of Republic, explained that when the first television stations were put on the air in the

mid-1930s, many people in the film industry believed that feature films would eventually be exhibited on television. Collins said that as a result:

Substantially all talent, story purchase and other motion picture contracts thereafter prepared were prepared with provisions granting to the producer or distributor all television rights of every kind whatsoever in and to the motion pictures and the appearances of all artists therein. It was and is understood throughout the motion picture industry that such so-called 'television rights' provisions were designed to and in fact did give to the producer and/or distributor of the motion picture the exclusive right to license such motion picture for television exhibition freely and without contractual or other restriction, upon whatever terms and conditions and under whatever circumstances were deemed proper by said distributor.⁹⁷

Meyer Lavenstein, general counsel for Republic, supported Collins' account and recalled that their policy had been to include in all contracts Republic made for the employment of actors, and in all contracts for the acquisition of literary material, "a provision confirming that Republic had the right to exhibit and produce and transmit motion pictures by any device, method, or means now or hereafter known, including television as now or hereafter known, and the word 'television' appeared in every contract of that kind made by Republic since the summer of 1935."⁹⁸

The issue of rights also extended to actors appearing on television in either a personal appearance, in roles on a television show, or in feature films. At this time, many actors were still committed to studios through long term contracts, which put the actors very much at the mercy of the studios. In September 1947, the Motion Picture Producers Association took an active role on the issue and announced an edict against actors appearing on television because, "It was agreed that in the present stage of development television appearances are likely to be harmful. The policy does not restrict Paramount on its own station."⁹⁹ They explained that they were going to keep a "close check" on the development of television, so that they could formulate a policy on the matter at a later time.¹⁰⁰

Since many actors were still working under long-term contracts with studios, if the actors worked for another studio, they had to get a loan-out contract for their work. If a studio loaned out their actors to appear in the film of another studio, often the loan out contract contained language restricting the sale or licensing of the film to television. For example, the contract that Mickey Rooney signed with MGM in August 1933, to act in the film *Fire Chief*, prohibited the reproduction or transmission of the film on “all other improvements and devices which are now or may hereafter be used in connection with the production and/or exhibition and/or transmission of any present or future kind of motion picture production.”¹⁰¹ This clause was their way to control all current and future rights to the film in all media, and whether they envisioned television at that time or not, it served to insure that the film did not appear on television.

The issue over actors appearing on television was not only a matter of the studios trying to keep their actors off of television screens. Actors also began suing their studios to keep their films off of television. On April 22, 1948, in one of the first legal actions on this issue, Blanche Mehaffey, an actress, filed suit against Paramount Pictures and Guaranteed Pictures, claiming that they did not have the right to broadcast the film *The Mystery Trouper* on Paramount’s station KTLA without her permission or payment. She asked for \$100,000 for “distorted and uncomplimentary likeness of Miss Mehaffey and damage to her future value in network television.”¹⁰² The suit was eventually dismissed, but the question of the actors’ role in television rights would soon have its day in court through the trials for other lawsuits.

In 1948, studios such as Columbia began taking steps to confront these contractual dilemmas. Columbia undertook a survey for each of the feature films in their library in order to determine exactly what television rights they had and what rights were held or denied by different unions, actors, producing partners, etc. The survey was later described by Columbia’s

lawyers as a “Herculean task” since a minimum of twenty contracts had to be examined for each of the over a thousand features that had been produced prior to 1948. Columbia also had 1,700 short subjects with similar contracts, and the total task was considered “overwhelming.”¹⁰³ Over the next few years, the conflicts over rights to films on television would become a highly litigated problem, and one of the central issues delaying Hollywood’s feature films from reaching television.¹⁰⁴

Television and 16MM

Much of the scholarship on the historical transition of film to television seldom fully accounts for the role played by the technology of film format or film stock. Yet one of the significant obstacles to Hollywood’s feature films appearing on television was the fact that most television stations were equipped only to broadcast films on 16mm and not on 35mm. Charles Weintraub of Quality Films, a distributor of feature films for television, described the reasons why television stations might prefer 16mm to 35mm film as primarily economic:

Firstly, because a station generally pays for the shipping charges. Obviously, a 16mm print, much smaller in size, isn’t as expensive a proposition as a 35mm. Secondly, it is much easier to handle, talking now physically, than a 35mm print. Thirdly, it reduces what is commonly known in our industry as the fire hazard in the various projection rooms of TV stations, because most of the 16mm films are on safety stock, as compared to a lot of the 35mm films made prior to 1948 and 1949, which were on nitrate film. Another advantage, in my opinion, would be the cost of obtaining 16mm projection equipment would be far less than 35mm equipment. [...] It is much easier to store 16mm film than 35.¹⁰⁵

The fire hazards of 35mm nitrate film that Weintraub referred to were perhaps the most costly to mitigate. If any television station wanted to broadcast a 35mm nitrate print they had to not only invest in projection equipment that could handle 35mm nitrate films, but they also had to build a fireproof booth. It was only in May of 1948 that Kodak unveiled their first fireproof 35mm film

to the convention of the Society of Motion Picture Engineers. Kodak estimated, however, that it would take a total of three years before that film was standard in the industry: one year of small-scale experimental use by exhibitors, followed by another one or two years for plant conversion. That meant that until at least 1951, any television station or network who did not want to, or could not afford to, pay the shipping and fireproofing costs of 35mm films, had to use films on 16mm.

The sixteen millimeter film business started in or about 1935, and it received impetus during World War II, when most major producers, including Fox, Warner, RKO, and Republic Productions released sixteen millimeter versions of their product for showing by the Armed Forces, Veterans' Hospitals, the American Red Cross, and the United Services Organization, Inc. (USO). The actual or potential market for sixteen millimeter feature films included, among others: the Armed Forces of the United States, Veterans' Hospitals and various other Government agencies, American Red Cross, and United Services Organization, Inc. (USO); Theaterless towns, hotels, clubs, camps, roadshow men, drive-in theatres, merchants' free shows, coin-operated machines, and private homes; Schools, churches, and charitable organizations; Hospitals, sanatoria, homes of the aged or disabled, and convents; Ships, trains, and planes.¹⁰⁶ In addition, there were some instances during the War when 16mm footage moved from the battlefields to the major studios' theatres. John Ford and William Wyler, for example, shot footage for their war films including *The Battle of Midway* (1942) *The Memphis Belle: A Story of a Flying Fortress* (1944) on 16mm stock. The film was then blown up to 35mm for their theatrical release. The demand for 16mm film by military and auxiliary organizations diminished at the end of the war, but demand from the civilian market increased to such an extent that total distribution of sixteen millimeter films soon became greater than it was during World War II.

The major studios did not necessarily like using the 16mm format as they found the visual quality inferior and the economics of the trade unfavorable, but they produced 16mm prints of their films for the above locations principally to fulfill what they considered their patriotic and civic duty. It also did not hurt that providing prints of their films to locations such as the Red Cross and hospitals resulted in good public relations for the studios. Ned Depinet, former president of RKO, explained that one of the reasons the studios did not use 16mm for theatrical exhibition was because it required the reduction of the optical from 35mm to 16mm, which, when blown up through projection on a big screen, lost a significant amount of clarity. Depinet recalled of the development of 16mm: "It never was supposed to be commercial stock for the theatrical industry. 16 millimeter came along and was developed for home movies, people wanting to make movies of their children in their homes and on their vacations, and then the war, the second World War brought 16mm into prominence, because, being lighter, less weighted, less space required, and projectors being more easily portable, the Army adopted it."¹⁰⁷

The studios had not invested more heavily in the 16mm film business because it did not earn substantial profits for the studios. Peter Levathes, who had run the 16mm division for Fox, explained:

The 16mm business is really a very small business. In my office it was handled by one girl who maintained contact with Films, Inc. It is a business where the prints are moved about through parcel post, because you cannot afford to use air mail or other forms of transportation that are expensive, the way you would in servicing of 35mm establishments. And because of this a print was deemed to be used efficiently if we got two to three bookings a month on it. And this naturally slowed down the whole process of servicing these various categories. The cost of the print was really the key to the economics of this whole operation. If we made too many prints, we could never make any profit.¹⁰⁸

Since the 16mm business was not nearly as profitable as the 35mm business, it was not as well organized or supplied. Levathes described it as a "very loosely organized system of distribution,"

which they considered a source of “terminal revenue” for their films. He said the 16mm market, “was hitting the bottom of the barrel, so to speak, in the liquidation of the product.”¹⁰⁹ With the exception of some drive-in theatres “established in cow pastures,” commercial 16mm theatres did not really exist at that time.¹¹⁰ Additionally, the studios would not service a 16mm location if they deemed it competitive with a 35mm location. Sidney Kramer, head of 16mm business for RKO before 1953, explained that they intended their 16mm business as a supplement to their regular distribution activities and non-competitive to their 35mm theatres.¹¹¹ In order to insure that 16mm remained noncompetitive, the studios would not release 16mm prints to any exhibitor who proposed to show the film within a certain distance of a 35mm theatre. For example, when Bernard Lowenthal, a former 35mm theatre operator in Brooklyn, New York, moved to Miami and attempted to get 16mm prints from the majors to lease to Miami hotels, he received “no’s” across the board. Mr. Furst, the salesman for Universal in New York, explained to Lowenthal that 16mm film was unavailable for Lowenthal because, “it would be in competition to the theatres in the Miami Beach area.”¹¹² The fact that the studios 16mm business was so small and disorganized, combined with the fact that most television stations could only project 16mm films, meant that the two mediums would have to figure out a technological middle ground before Hollywood’s feature films could make their way to television.

Once television production started to boom, it created such an upsurge in the use of 16mm film that there was a shortage of raw 16mm stock. Established firms could not get an increase in their allotments and newer companies could not get their orders filled at all.¹¹³ This increased activity in the 16mm field caused the exhibitors to become “vitally concerned with the problem of competition to 35mm theatres.”¹¹⁴ As Peter Levathes recalled: “They felt that the circulation of 16mm films was an evil. This had been the subject of all kinds of press releases,

this was a celebrated cause among exhibitors and exhibitor associations, this was a great cause, and they called on me to find out what our policy was. And I explained it to them.”¹¹⁵ Ned Depinet later testified that he had been asked by exhibitors “many, many times” to outline RKO’s policy on 16mm film.¹¹⁶

Theatre owners had, in fact, been actively soliciting the studio heads to determine their positions on the release of their films on 16mm and to television. In 1948, Robert Coyne, an executive with the TOA, called on the heads of 16mm operations for the studios to inquire about their 16mm programs and to advise them to discontinue any activities that might injure the 35mm theatres. Coyne reported back that he had met with “great success” in his mission, but Levathes later explained his different recollection of the encounter:

When the TOA, or other such organizations, made contact with film companies they have tendency to exaggerate their effectiveness in dealing with film companies, and Mr. Coyne, [...] wanted to tell the boys back home [...] that he had really done a great thing. In reality, he had accomplished nothing, and I had held his hand for a couple of hours, as any businessman would do when his customers come to him and complain.¹¹⁷

Although Levathes would make it sound as though the theatres were not as important to the studios as the theatres believed themselves to be, the exhibitors were a major factor in the studios’ decision making as far as feature films on television were concerned.

Theatres

In 1939, the Hays office created a report on television for the studios that argued that of all the branches in the film industry affected by television, the exhibitors would be affected the most.¹¹⁸ By the late 1940s, the studios were still vertically integrated, so the theatres were not simply important sources of revenue for the studios, they were owned by the studios. Practically speaking, the studios considered the theatres to be their primary customers, and, as Christensen

warned, “There are times at which is it right *not* [sic] to listen to customers, right to invest in developing lower-performance products that promise *lower* margins, and right to aggressively pursue small, rather than substantial, markets.”¹¹⁹ Although it was the public who actually paid the tickets to see the films, it was the theatres that rented the films from the studios and paid them a share of their box office. The studios should have been thinking of the public as their customers, and then perhaps they would have been more in tune with what they were interested in paying for. The studios had blinders on to some extent, and those were reinforced by the fact that the film industry still enjoyed its oligopoly status. The market dominance they enjoyed through that arrangement, however, caused them to falter in the face of innovation.

The studios’ concern for the well being of the theatres also sprang from the fact that the many heads of the studios at that time had begun their careers in the film business in exhibition. Barney Balaban of Paramount, for example, had spent much of his life in exhibition, running the Balaban and Katz theatres in Chicago.¹²⁰ Nate Blumberg of Universal and Spyros Skouras of Fox also both got their starts in the theatre business.¹²¹ As Skouras described his trajectory in the business:

My brothers and myself, we started in 1914 in a small theatre in the city of St. Louis, Missouri, and [...] we developed a group of theatres known as the Skouras Theatres. Then later we associated ourselves with Warner Bros., and then we terminated the relationship with Warner’s, and then we entered in business for ourselves in New York, the Skouras Theatres [...] At that time the people of the Fox organization approached us to take the management of the West Coast, the present National Theatres [...] and my brother Charlie and myself, we were co-managers of the West Coast and the National Theatres, and then my predecessor, Mr. Sidney R. Kent, now deceased, I succeeded him as president of the Twentieth Century-Fox in 1942.¹²²

By the late 1940s, the Theatre Owners of America was the largest theatre organization in the United States and represented approximately two third of the theatres in the country. Since the theatres were not yet divorced from the studios, the studios had a sort of once-removed

membership in the theatre organization. For example, Fox's National Theatres subsidiary and Paramount Theatres were both members of the TOA. The TOA was interested in getting more studios involved in the organization, and Gael Sullivan of the TOA had approached Spyros Skouras and Barney Balaban and asked them to talk with Nicholas Schenck, the Warner Bros., and RKO to join as members of the TOA.¹²³

The TOA very actively communicated their interests to the studios, and on the issue of feature films on television, they were particularly concerned. In early 1948, for example, the Southern California Theatre Owners Association (SCTOA) began a protest of the sale of Alexander Korda's films to television, and encouraged the nationwide TOA to join their protest. They complained that at least two of the films involved in the deal were still contracted to play in the theatres. SCTOA argued that films that still had theatrical potential or that were contracted for future dates in theatres should not be licensed for television because such action would cut into the revenues of the theatres, and thereby, of the producers.¹²⁴

Protests such as those caused the studios and even television networks to fear the theatres. For example, in 1948, CBS was reportedly close to a deal for a series of Monogram's films, but the network refused to share any details of the deal, reportedly, out of fear of exhibitor resistance.¹²⁵ In January 1948, during negotiations between Republic and Roy Rogers for Rogers' new contract, Rogers expressed an interest in having time off to participate in television programs. Robert Newman, then vice president of Republic, stated that the "exhibitors would never let them get into television because it was competitive." Newman believed that Herbert Yates, president of Republic, would not allow Rogers to appear on television "because of the exhibitor pressure."¹²⁶

Before 1948, when box office returns were still high and before television began quickly spreading, the theatres were largely positive about television, especially in terms of its ability to advertise theatrical feature films and get audiences into the theatres. By May 1948, however, as more films began making their way to television, Ted Gamble issued a statement on behalf of the National Theatre Owners Association proposing a moratorium on deals for films on television “until television finds itself and its place in show business generally.”¹²⁷ Gamble said that television was riding the coattails of the film industry. The theatres believed that they supported the studios financially, and what “we support financially is being used against us. This is as true of video as it is of 16mm films.”¹²⁸ The statement was a shift in rhetoric from the association, and signaled a more trenchantly negative position, particularly on the subject of films on television.

The theaters were in fact so nervous about television that in September 1948, the TOA invited Wayne Coy, the chairman of the FCC, to speak at their convention regarding the future of television and its impact on the theater business.¹²⁹ Although the TOA likely hoped for some reassurance from Coy, his speech only increased any dread they might have felt about the rising tide of television. Rather than providing comfort, Coy practically taunted them by asking, “Can the nation’s 18,000 commercial movie houses hold their own with 39,000,000 home theaters?”¹³⁰

He continued to paint his bleak picture:

You are pondering how you can compete with a diabolical, fiendish screen in the living room that miraculously produces vaudeville, motion pictures, news reels, musical comedy, drama, opera, grand opera, soap opera, circuses, prize fights, football games, world series games, air races – news and history in the making. You are wondering who will stand in the queue, buffeted by the wind, the rain and the snow to see your show when he can see all that without stirring from his easy chair.¹³¹

Coy also implied that the theater owners had missed out on the television juggernaut and tried to explain the FCC’s position by saying, “So you see it is not that we love the theater business less,

but that we are bound by law to love the broadcasting business more. Pursuant to that responsibility, I must tell you frankly that we are going to create just as much television competition as possible.”¹³²

It was therefore no surprise that in October of 1948, one month after Coy’s address, Arthur Lockwood, the president of the TOA, sent a letter to the heads of all the studios alerting them to the fact that the TOA membership had adopted a resolution that “all producing and distributing companies be requested by this Association to completely eliminate the release to television, of all motion pictures of any length, which were made for theatrical exhibition.”¹³³ The TOA asked the studios to advise them of their position on the matter. In the months after this letter was sent, individual theater owners frequently contacted the studios to encourage them to continue to withhold their product from television. Skouras had spoken at the TOA convention,¹³⁴ and he responded to Lockwood’s letter on October 27, 1948, explaining, “So far as Television is concerned, Twentieth Century-Fox is not producing any motion pictures of any length for both theatrical and television release. We have up to this time, not released any of our theatrical shorts for use in this medium.”¹³⁵ A TOA Special Bulletin in November 1948 outlined all of the responses they had received from the studios regarding their policies on films to television. In addition to Fox, Paramount, Warner, RKO, Loew’s, Republic, Columbia, and Selznick had all assured TOA that they were not releasing 16mm films to any locations that might compete with 35mm theatres with some exceptions such as the Red Cross, hospitals, sanitariums, prisons, and some schools or camps for children.¹³⁶

Although feature films on television and the competition from 16mm exhibition were serious concerns for exhibitors, another of the theatres’ preoccupations at this time was the lifting of the 20% tax on admissions. The tax was a holdover from the war, and the theatres

believed that the government “had not kept faith” with the theatre industry by refusing to lift the tax after the war ended.¹³⁷ The Department of Commerce had determined that three-fourths of the annual admissions tax revenues came from movie theatres.¹³⁸ The exhibitors believed that this unfair tax was contributing to their box office woes, and as they spent a good deal of their time and energy lobbying to have the tax repealed.

The American Federation of Musicians (AFM), one of the most powerful unions at that time, was, like the theatre owners, extremely interested in the repeal of the 20% admissions tax and had undertaken a campaign to that end. In addition to movie theatres, the tax also applied to nightclubs, concerts, dances, sports events, theatres, etc. In the AFM’s *International Musician*, they argued: “However justifiable it may have been in wartime, both as a revenue producer and as a means of sopping up excess spending power, the admissions tax is now a severe drawback, imposing a stiff penalty on the whole range of live talent.”¹³⁹ This was not the only subject on which the unions agreed with the theatres.

Unions and Guilds

Another of the major obstacles to Hollywood’s feature films appearing on television was the unions and guilds. Macklin Fleming, lawyer for Columbia, Screen Gems, and RKO, explained that foreign films and independent films were appearing on television because they did not have the constraints of union agreements restricting them. He argued:

From the point of view of a major producing studio, however, they can’t tell the unions to go whistle, because if they sell their pictures to television, and license them on television, and do not reach an agreement with the unions, then they are faced with the possibility of a major strike. [...] If all of the demands of the crafts and Guilds are accepted at face value, over 100 percent of the television receipts would go to those sources.¹⁴⁰

One of the most prominent unions in this struggle was the American Federation of Musicians (AFM). The AFM was organized on October 19, 1896, in Indianapolis.¹⁴¹ As of July 1947, they had 216,000 members. Approximately 32,400 of those members earned their living exclusively as musicians. Twice that number earned part of their living in other professions. About 86,400 members had “either dropped their instruments because there is no work for them” or had quit the business “because of other interests.” Many of them kept their membership for “sentimental reasons.”¹⁴²

In the late 1940s, James C. Petrillo was president of the American Federation of Musicians and of the local chapter of the Chicago Federation of Musicians.¹⁴³ Petrillo was referred to in the press as a “czar” and “the big bad wolf.”¹⁴⁴ Many of those with whom he negotiated also expressed less than favorable opinions of Petrillo. As Ed Fishman, a former orchestra booking agent, explained: “In all my years there has been a fear built up for Mr. Petrillo and for the union, and you do it their way or you don’t do it at all.”¹⁴⁵ Justin Miller, president of the National Association of Broadcasters, agreed saying: “Mr. Petrillo has absolute and dictatorial power over his union and over the ability and opportunity of American musicians to obtain employment. So thorough has been this monopolistic control of the A.F. of M., that virtually no professional musician in the United States or Canada has been able to pursue the field of musical employment without membership in the union.”¹⁴⁶ Allen Weiss, chairman of the Board of Directors of the Mutual Broadcasting System and vice president and general manager of the Don Lee Broadcasting System, recalled that at the time, “We realized the helplessness of the broadcasting industry under the despotic control of one man.”¹⁴⁷ J.N. “Bill” Bailey, the executive director of the FM Association, a nonprofit trade organization composed of FM broadcasters, manufacturer of FM equipment and others whose business is related to FM

broadcasting, compared Petrillo to Stalin, Hitler, and Mussolini.¹⁴⁸ Although those with whom he negotiated may not have held him in high regard, Petrillo was largely beloved by his union's membership, in part for the flack he had to endure as a result of his fighting on behalf of his members.

Petrillo saw his villainization in a slightly different light, and when asked why he had the reputation as a "czar," Petrillo placed a large amount of the blame on what he called the "propaganda machine" of the National Association of Broadcasters. Petrillo explained:

No one was ever more vilified than I have been in the press. I have 260 cartoons in my office from the press of this country, and when I get a little time I read them, and I have a few laughs. If they would spend half of the money that they spend on cartoons vilifying me as the president of this organization, if they would give it to the musicians, we would all be happy. But, that is not the system of the National Association of Broadcasters. [...] Every time I see them, they say: 'Oh, Jimmy, my pal.' And 'You are the squarest guy we ever did business with'.¹⁴⁹

Despite the AFM's power, before 1944 no formal written agreements between the film producers and the Federation existed, but contracts were in effect in the form of the printed regulations of the federation relating to wages, hours, working conditions, et cetera, which the AFM circulated after discussions and negotiations with the producers.¹⁵⁰ It was in 1946, that the so-called "industry contract" with Petrillo was completed.¹⁵¹

Negotiations for the 1946 contract began in early April 1946, and lasted until the end of May 1946. The agreement included such regulations as a guaranteed minimum number of film recording musicians that were to be employed by the studios each year.* It also contained extensive language regulating the use of music and musicians in feature films and in relation to television. In a newsletter to AFM members, Petrillo announced that they had successfully gotten

* The minimums included in that contract were: Loew's/MGM 50, Paramount 45, 20th Century Fox 50, RKO 36, WB 50, Columbia 36, Universal 36, Republic 36. (James C. Petrillo, "International Executive Board Consummates Agreement With Eight Major Motion Picture Producers," *International Musician* (August 1946): 7.)

a clause in the contract that prohibited the use of a film's sound track for anything other than to accompany the film for which the soundtrack was originally made. Petrillo explained, "This provision practically freezes the sound track already made on the shelves. The producer is not permitted to use this sound track in any way except for its original purpose during the term of this contract or after the contract has expired. This means, in effect, that the sound track cannot be used for any other purpose for all time."¹⁵² They also included a clause that stated that those restrictions would be passed on to anyone who purchased the films. So this contract not only prohibited the use of a film soundtrack in any other way than accompanying the film itself (the AFM had been struggling with the sale of recordings of film soundtracks and the "bootlegged" use of film soundtracks on television and radio as background music for other programs¹⁵³), but it explicitly forbade the use of the soundtrack, and thereby, the films, on television. The AFM argued that the films made between 1928, when sync sound was introduced, and 1946 were only intended for theatrical exhibition and that the musicians who performed in those films were paid on a wage scale created for that limited theatrical use. They asserted that if the films were to be broadcast on television, the musicians should be further compensated by additional payments.

At the time of the negotiations for the 1946 contract, the AFM was not able to agree with producers as to what amount and form those additional payments might take, and they instead ended up with the provisions that completely restricted the use of film music and musicians on television.¹⁵⁴ Although there were extensive negotiations with the studios as to the contract and specifically this provision regarding television, the studios all eventually capitulated to the AFM's demands and signed the contract, which was to expire on August 31, 1948.¹⁵⁵ They did, however, agree that if a producer desired in the future to use their films on television, the AFM would negotiate with them to see if they could agree on terms.¹⁵⁶

The contract for each studio was substantially the same, but they were executed as separate contracts with each of the following studios: Columbia Pictures Corp.; Loew's, Inc.; Paramount Pictures, Inc.; RKO Radio Pictures, Inc.; Samuel Goldwyn Studios; Twentieth Century-Fox Film Corp.; Universal Pictures Co., Inc.; Republic Production, Inc.; Hal Roach Studios, Inc.; Warner Bros. Pictures, Inc.¹⁵⁷ The members of the bargaining committee for the studios were Nick Schenck (president) and Joe Vogel (vice president) of Loew's, Barney Balaban (president) of Paramount, Mr. Schneider of Warners, Nate Blumberg and Mr. O'Connor of Universal, Mr. Michael of Twentieth Century-Fox, Jack Cohn (vice president) and Mr. Schneider of Columbia, Mr. Rathbon (president) and Ned Depinet (vice president) of RKO, and Mr. McMann of Republic.¹⁵⁸ There was a subcommittee from the west coast composed of Fred Meyer of Fox, Milton Schwartzwald, general musical director for Universal, and Charles Boren, in charge of industrial relations at Paramount. According to Boren, who was also vice president of the Motion Picture Producers and Distributors Association (MPPDA), the subcommittee acted "as a staff committee for the producers, as a subcommittee advising them upon the contract as it respects operations, its costs, and what demands would mean to us as regards our operations."¹⁵⁹

The Society of Independent Motion Picture Producers (SIMPP) had substantially the same contract as the one negotiated by the majors.¹⁶⁰ Those signing the SIMPP contract with the AFM included: Richard Huntgate for Vanguard Films, Inc.; Thomas L. Walker, vice president, Edward Small Productions, Inc.; Barney Briskin, vice president, Sol Lesser Productions, Inc.; Hugh Huber, vice president, Hal Roach Studios, Inc.; Jules Levey, Majestic Productions, Inc.; D. Hickson, vice president, Empire Productions, Inc.; C.J. Devlin, Benedict Bogeaus Productions, Inc.; Samuel Goldwyn Productions, Inc.; Buddy Rogers, vice president, Comet Productions; Embassy Productions, Inc.; Seymour Neberyel, president, Nero Films, Inc.; William Cagney,

Cagney Productions, Inc.; Cliff Broughton, California Pictures, Inc.’ Gunther R. Lessing, vice president, Walt Disney Productions; Charles Chaplin, the Chaplin Studios, Inc.; Story Productions; R. Schwab, secretary, Sidney Buckman.¹⁶¹

Although these organizations of independent producers signed the contracts with the AMF’s clause against feature film soundtracks appearing on television, the independent producers liked the clause even less than did the majors. Isaac Chadwick was president of the Independent Motion Picture Producers Association, which at that time had thirty-three member companies.¹⁶² Prior to signing the contract, Chadwick organized a dinner meeting for the member companies to meet and discuss the contract. At that meeting, Mr. Brody, the president of Monogram Productions, raised the question of films on television. Chadwick recalled, “Our members had considerable interest because a substantial amount of our revenue had, prior to the making of this contract, been derived from the rental of our pictures to television stations for broadcasting. Mr. Brody then stated that with respect to that clause, if we must sign it, we must, but we felt that it was harmful to our interests and a substantial loss to us.”¹⁶³ Later, when asked whether the Society of Independent Motion Picture Producers objected to the clause restricting their films on television, Anthony J. O’Rourke, Chairman of the Labor Advisory Committee for SIMPP said, “No; there was no protest. The matter had been already agreed to by the major motion-picture producers, and we could hardly expect to get any less than they had granted, and so it was not contested; it was accepted.”¹⁶⁴

The independent producers were aware that the major studios had already tried to gain better terms in their negotiation and had failed. Charles Boren of Paramount recalled that both Barney Balaban and Nicholas Schenck had vigorously opposed the television clause, and it was such a point of contention that:

[It] was kept in suspense, and when we came to the final drafting of the contract [...] we all had notes, preliminary notes of what we had agreed upon, how much we would pay per hour, how many rest periods we were going to have and what bonuses for night work, et cetera, and dealing and collective bargaining agreements. When it came to the television clause, at that time we were still in an impasse, for this was not up to our committee to draft the television clause or anything else, and it was referred actually to the principals. By the principals, I mean the presidents of our companies.¹⁶⁵

However, Burton A. Zorn, special labor-relations counsel for the majors during their negotiations with the AFM in 1946, recalled that although the television provision may have been contentious, it was never really up for negotiation:

Mr. Petrillo made it very clear from the beginning to the end of the negotiations that these television restrictions were an absolute ‘must’; that no contract would be signed by the federation without them; that unless they were agreed to and incorporated in the 1946 labor contract, there would be no music in Hollywood until such time as these provisions were put into a contract, regardless of how long that might be.¹⁶⁶

Zorn explained that the producers made every effort to avoid the inclusion of the television clause in the contract, but they finally signed the contract to avoid having the studios shut down by a musicians’ strike. According to Zorn, Petrillo argued that he did not know enough about television at that point to feel comfortable agreeing to terms. He did say, however, that “when [Petrillo] felt he knew enough about the development of television to determine how to protect the interests of his members, he would then be willing to sit down and negotiate some arrangement.”¹⁶⁷

Charles Bagley, then vice president of the AFM, remembered the negotiations on the issue of feature film music on television slightly differently: “I don’t recall that there was any particular dispute at all. They seemed to realize that [television] was a new project, of which they were all ignorant, and they were willing to go slow at it and find out what it was. [...] It was a realm of uncertainty we were all peering into.”¹⁶⁸

Although some scholars have argued that these restrictions and negotiations were based on a disagreement over residual payments for the work of individual performers, from all of the records available and considering the history of the AFM and residual payments in other media such as musical recordings, it is clear that the AFM's restrictions had much more to do with maintaining employment for as many members of the union as possible. If the musicians had agreed to allow recordings to be used, or for films to appear on television, Petrillo predicted "ruination for the musicians," and in one year fifty percent of his men would "be on the streets."¹⁶⁹ Petrillo explained the cause of his concern in a Congressional hearing in 1947 on the activities of the AFM:

Overnight we lost 18,000 musicians because of Movietone and Vitaphone. [...] We make the Movietone and the Vitaphone. We make the progress that puts us out of business. Five hundred men out there at the most are making pictures for the theatres of the world, [...] where formerly we had 22,000 men working in theatres. [...] No one is big enough to stop progress. We are making progress. We are giving those people the instrument to knock our brains out, and we are trying to find ways and means of not giving them that instrument. [...] They [the studios] have a right to protect themselves. I do not criticize them for it. But why can't we protect ourselves?¹⁷⁰

The broadcasting industry had promised Petrillo that if he eased his restrictions on the musicians in television (not just in feature films but in television and radio more broadly), it would lead to increased employment for the musicians. Petrillo disagreed, however, and argued, "If they [television] are able to go to Hollywood and buy those films from Hollywood, there would be no need to employ musicians in the studios."¹⁷¹ Petrillo also recognized that some of the studios like Paramount and RKO already had significant interests in television, and he was especially suspicious that they would try to use their films on television. As long as he had those restrictions in the contract, the AFM would have recourse to stop any studios from using the films on television.¹⁷² This standoff illustrates the multidirectional competition between the AFM, broadcasters, studios, and exhibitors over leverage in the new television medium. They all

wanted the power to dictate terms and garner the most profits, and they used whatever tools they had at their disposal. For the musicians, their power was in their ability to collectively determine the conditions under which they would work, and they used that power to the greatest extent possible.

Interestingly, Congress and the DOJ suspected that through this clause restricting the use of films on television, the AFM was actually conspiring *with* the studios. Carroll D. Kearns, Chairman of the Congressional subcommittee that conducted the hearings on the AFM asked: “Did you feel there was any motive here that the moving-picture industry may have really down deep liked this clause in that contract?”¹⁷³ And an internal DOJ memo from those investigations states, “Those producers which were integrated with theatre ownership and which feared that television would have an adverse affect on the theatre box offices probably clearly felt it was to their benefit to have such a contract provision to hide behind.”¹⁷⁴ Irving G. McCann, general counsel to the Congressional Committee on Education and Labor, recalled a conversation he had with Donald Nelson, the president of the SIMPP: “I said to Mr. Nelson over the phone, ‘I understand that you have entered into a contract with the A.F. of M. to conspire against free trade and that you have blocked television from the country,’ or words to that effect. He laughed and said, ‘We haven’t conspired with anybody. We were just forced to sign the contract’.”¹⁷⁵

The investigations of the AFM and Petrillo by Congress and the DOJ were indicative of the growing antiunion sentiment in the government at that time. In 1947, the House Un-American Activities Committee began their hearings, and the Committee’s focus on unions weakened the unions’ bargaining power and distracted them from other business. In the mid-late 1940s a number of laws were passed to curb the power of labor unions. During the War, a number of bills were passed, some that the AFL and CIO supported, that limited the ability of

unions to strike in industries that had been taken over by the government for the war effort. After the war, industry leaders in conjunction with some members of congress, worked to extend those limitations to private industry. Their efforts resulted in the Lea Act, which was actually nicknamed “the anti-Petrillo” bill, the Hobbs Act (1946), the Case Bill (1946), and the Strike Curb Bill to name a few.[†] The Taft-Hartley bill, otherwise known as the Labor-Management Relations Act of 1947, restricted the power and activities of unions and most upset the AFM. As Padway, Petrillo’s and AFM’s lawyer, explained: “We say there are a few provisions that are good, of the many, in a very bad bill.”¹⁷⁶

In February and March of 1947, as the House Committee on Education and Labor conducted hearings on proposed labor legislation, including the Taft-Hartley bill, various allegations were made against Petrillo and the AFM for unfair business practices. In April of 1947, the Hon. Fred A. Hartley, Jr., chairman of the Committee, explained that, “Our attention was called to the fact that Mr. Petrillo and the American Federation of Musicians exercise monopolistic control over all commercial phases of musical production, including recordings, radio, movies, and television, and have used their great power to block the technological development of FM radio and of television.”¹⁷⁷ In response to those allegations, Hartley appointed a subcommittee to investigate the complaints against James Petrillo and the AFM. The subcommittee conducted hearings in Washington D.C. and Los Angeles. The subcommittee filed an interim report on December 15, 1947, and then the committee held a full hearing in Congress that began on Tuesday, January 13, 1948. One of the charges the subcommittee levied against the

[†] The Hobbs Act was intended to combat racketeering in disputes between labor and management. It read: “Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined under this title or imprisoned not more than twenty years, or both.” 18 U.S.C. § 371.

AFM was that they had “engaged in a concerted effort to hold back the technological improvements in radio and in television. That you have denied the use of live music through the networks to FM broadcasting stations. That you have forced the movie industry to sign contracts denying the use of any sound track made by members of your federation to television.”¹⁷⁸

Hartley stated that if the committee found evidence that warranted it, he would have the DOJ and other Federal agencies take “appropriate steps” to punish the AFM for acting “against the public interest.”¹⁷⁹

The findings of fact from the 1947 hearings stated: “By virtue of recent labor legislation exempting unions from the restraints which control the activities of private individuals and corporations, James Caesar Petrillo has successfully created a small kingdom within our Republic, over which he rules.”¹⁸⁰ Irving G. McCann, general counsel to the Committee on Education and Labor, wondered, “Whether such a contract comes within the power of a regular labor organization to make, and whether a contract of this character made by business interests and by a labor leader is not, in effect, a violation of the Sherman Act.”¹⁸¹

The allegations that Petrillo and the AFM had blocked the development of radio and television largely stemmed from the international executive board of the AFM’s ruling in February 1945, that members of the AFM should not play for television in any form until further notice.¹⁸² Broadcasters were informed of the AFM’s ban via letter in February 1945. For example, on February 13, 1945, the Don Lee Broadcasting System received a letter from Phil Fischer, the radio representative of the AFM notifying them that: “By order of the international executive board members of the American Federation of Musicians are not permitted to play for television in any form until further notice.”¹⁸³

Petrillo published an explanation of the ban in an issue of the AFM's *International Musician* entitled "Why Members of the American Federation of Musicians Are Not Working for Television and Frequency Modulation Radio." He explained that in February 1945, the International Executive Board had concluded that the introduction and development of television presented the same threat to employment of musicians as did the change from silent to sound movies. Petrillo believed that television offered another example of the potential use of recorded music in supplanting live musicians. At the time, he claimed that television did not employ a single live musician, and that phonograph records, transcriptions and motion picture sound tracks exclusively provided the musical content of telecasts. He described a recent telecast of the opera *Aida* wherein, "Live performers [were] merely mouthing the performances, and the actual singing and orchestral accompaniment being supplied by recordings. Televisers would employ live musicians only on a casual basis and have indicated no present inclination to staff their stations with live musicians."¹⁸⁴

The AFM was concerned that as television progressed, movies would play a greater part in its future, and the majority of television programming would be produced in "canned," or filmed, form, thus eliminating all live radio and television employment. They were determined to avoid the loss of employment they experienced during the transition to sync sound in theatres, and until they had a better idea of how television might affect their employment opportunities, they were simply not going to participate in the medium. Petrillo wrote to the musicians, "We have been fooled so many times and misled by the employers so many times by their saying that every new invention would help us, that if we permit ourselves to fall in line again with that kind of talk, we deserve consequences."¹⁸⁵ Petrillo testified that he was opposed to new technological developments like recordings and television because they were hurting his men, and the problem

was often referred to as “the technological displacement of human labor.”¹⁸⁶ Petrillo said that the iceman would not have approved of the Frigidaire if he had thought it was going to put him out of business, and that the man who drove the horse and wagon would not have gone into the trucking business if he knew the automobile was going to throw him out of a job.¹⁸⁷ As Petrillo so often stated, both bans on recordings and television had their roots in the advent of sync-sound motion pictures. The AFM’s objections to these technologies had to do with the “centralization” and “mechanization” that they saw taking away their main source of employment: playing live music.¹⁸⁸

Members of the broadcasting industry obviously did not agree with Petrillo and the union, and felt as though Petrillo and the AFM were holding their industries hostage. Many of those broadcasters testified in the Congressional hearings. J.R. Poppele, president, Television Broadcasters Association, director of the Mutual Network, and vice president, chief engineer, and secretary of the Bamberger Broadcasting Service, complained to Congress:

Television viewers [...] have been deprived of the operettas, the musical comedies, the first-rate film entertainment, the symphony concerts, and the multitude of other forms of entertainment which are naturally integrated with music. [...] Music and features with which it is integrated always have been and are today admittedly the touchstone of entertainment. The present situation is both tragic and absurd.¹⁸⁹

Allen Weiss, chairman of the Board of Directors of the Mutual Broadcasting System and vice president and general manager of the Don Lee Broadcasting System, explained: “I understand the motion-picture studios, who made sound film and had such film they were willing to lease to us, or rent to us, or sell to us, were deprived by some condition in their contract with the musicians’ union which prohibited the sale to or the use by television stations of any film on which any music was had.”¹⁹⁰ Frank E. Mullen, executive vice president of NBC, testified that there were three restrictions the AFM had imposed and against which NBC has had to struggle.

The first was their ban on live television. The second was the ban on the use on television of films containing a motion picture soundtrack. The third was the prohibition of the duplication for telecasting of any sound-broadcasting program containing instrumental music.¹⁹¹ Mullen said: “We desire to make arrangements whereby motion-picture films of musical performances may be used for television.”¹⁹² Since the broadcasters were aware of the restrictions in the AFM’s contract with the studios against feature film soundtracks appearing on television, it was yet another reason why the networks and stations did not make serious attempts to purchase or license films from the major studios.

At the conclusion of the Congressional hearings in 1948, Hartley explained that the objective of the hearing was to hear the facts and determine whether or not additional legislation was necessary. He asserted that: “It is recommended by the subcommittee that the Taft-Hartley Act and other Federal statutes should be amended so that the monopolistic practices of labor unions which are injurious to the public interest be forbidden.”¹⁹³ Congress concluded that the AFM was engaged in restraint of trade to impede the technological development and public enjoyment of television and referred the matter to the DOJ to investigate whether any action could be taken against them for violation of antitrust laws.

The DOJ had previously brought a case against the AFM in 1942, when the AFM had first tried to ban musical recordings, wherein the Government contended that the objective of the union was to prevent the competition of recorded music with the ‘live’ music produced by the musicians. The DOJ argued that this was a restraint upon commercial competition within the scope of the Sherman Antitrust Act, which outlawed monopolistic behaviors by prohibiting anticompetitive business activities.¹⁹⁴ The court, however, held that the AFM’s ban was nothing more than a form of “closed shop” in which the union sought to prevent not only the

broadcasting of music by non-union musicians, but also the broadcasting of “canned” or recorded music in competition with the “live” music of union members. The court held that this type of activity was not condemned by the Sherman Act, in the light of the Clayton and Norris-LaGuardia Act provisions, which held that as long as a union’s activities were related to negotiations for employment, they were not subject to the Sherman Act.¹⁹⁵ The Clayton and Norris-LaGuardia provisions thwarted the DOJ’s investigations of the AFM well into the 1950s.

Since the Congressional investigation had determined that the behavior of the AFM was unfair, but they had been unable to find that the union had violated any existing laws, Congress passed the Taft-Hartley bill in order to limit the powers of the unions. One of the problems the Taft-Hartley bill created for the AFM in particular was that it interfered with the system of royalty payments the AFM had established for recorded music. In 1942, when recorded music came on the scene and records were used on the radio, it eliminated many jobs for musicians who performed live music. As a result, Petrillo banned recorded music in order to stop the loss of musician employment. He came under pressure by Congress and the aforementioned DOJ suit, and was compelled to work out a deal with the record companies.

In 1943 and 1944, Petrillo negotiated a deal with those companies whereby they would pay royalties from recorded music to a general “welfare” fund for all of the musicians of the AFM.[‡] As the AFM’s trade magazine *The International Musician* reported to the members:

The recording industry was to bear part of the burden of unemployment created by the use of mechanical devices by providing for direct payment to the Federation of money, the amount of which was to be gauged by the number of records sold. This is of course a method unique in the annals of labor organizations, and is so because the musicians’

[‡] The royalty fees ranged from one-quarter cent per thirty-five-cent record; one-half cent per fifty-cent record; three-quarters cent per seventy-five cent record; one cent per one dollar record; two and one-half cents per one and one-half dollar record; five cents per two-dollar record, and two and one-half per cent per record over two dollars, on all pressings sold. (Petrillo. “James C. Petrillo, President,” 10.)

situation was unique, namely that of their manufacturing the very instruments which were causing their slow death.¹⁹⁶

As the article stated, this was the first time that royalty payments were negotiated for the reuse of a performer's work or the use of that work in another medium. It was also unique because it was not meant for the benefit of the musician whose performance was being reused, but for the benefit of all of the musicians who were put out of a job as a result of the reuse of the work. Although this was a system of royalties, the structure and intent of the payments was very different than the royalty and residual payments for performers and artists today. The funds accumulated by the royalty payments were then used to pay AFM members to perform in concerts that were offered free to the public.

The Taft-Hartley Act, however, prohibited royalty payments to musicians who did not participate in the making of the records (or whatever media was subject to the royalties). Apparently, royalties that were paid in this way were not subject to income taxes, whereas royalties paid directly to musicians were subject to income tax. It was suggested in Congressional hearings on the activities of the AFM that one of the reasons Petrillo insisted on this general fund was because he wanted to avoid paying those taxes.¹⁹⁷ However, Petrillo explained: "We feel that the records made by these musicians displace other musicians, and we want some compensation for these records because of the displacement of these other musicians."¹⁹⁸ So the royalties were not only intended to compensate musicians for the reuse of their work, they were to help compensate musicians who lost work as a result of the reuse of the recordings. Had this general welfare fund continued it might have proven useful precedent for royalty payments for feature films on television. However, Taft-Hartley's prohibition of the payment of royalties to a general fund for musicians caused a serious problem since Petrillo's priority was the employment and financial support of all of his musicians. Petrillo's

responsibility was to his membership, and his primary motivation was to keep his musicians employed all the time. He felt that would best happen if everyone needed live music.

So Congress and the DOJ would not allow the AFM to ban the use of musicians' work in recording, radio, or television, but neither would they allow the AFM to use a system of royalty payments the AFM found suitable. They were at an impasse, and feature films on television were caught in the middle. Out of frustration, on January 1, 1948, in addition to the ban on musicians' employment in television, Petrillo reinstated the AFM's ban on the making of musical recordings. His notice to recording and transcription companies read, "The members of the American Federation of Musicians will no longer perform the services provided for" in their previous contract.¹⁹⁹

That ban went into effect just as the 1948 Congressional hearings were starting. Portions of those hearings were broadcast live on radio and television. While the hearings were taking place the networks were negotiating with the AFM for their new contract. Congressman John Lesinski of Michigan asserted: "Would you not agree with me that the holding of congressional investigations of this kind at this time tends to make a farce out of collective bargaining where representatives of management and labor can sit down in a truly American fashion and work out their differences without the pressures and publicity that this kind of hearing necessarily involves?"²⁰⁰ Lesinski suspected that the hearings were being used as a way to intimidate the union and to force them to agree to less favorable terms in their negotiations. Unfortunately for the AFM, Lesinski was a minority voice, and both the hearings and the negotiations continued.

By March 1948, Petrillo explained to his membership that he had been negotiating with the television broadcasters, but he had found that the broadcasters themselves were uncertain as to the future of the medium. Petrillo explained, "For that reason, and many others, it will require

careful thinking and slow progress in order to arrive at an agreement which will protect the interests of the Federation members for the future.”²⁰¹ At the time, Petrillo was working with a very high profile law firm out of New York named Poletti, Diamond, Rabin, Freidin, and Mackay. Charles Poletti was a former lieutenant governor of New York. Milton Diamond was one of the founders of Decca Records, who had resigned in 1946 after amassing a fortune in the music business. One of their junior partners was F.D. Roosevelt, Jr.²⁰² Although the musicians were the relative underdogs in their negotiations, hearings, and lawsuits, they were well represented.

By May some of the locals and members were getting impatient with the union for not resolving the television situation more quickly. Petrillo had, however, just reached an agreement with the broadcasters, which he announced to the AFM locals: “I want to thank the locals and members for being so patient in the television situation. [...] This was one of the most difficult wage situations we have ever faced. Our problem was to set a decent wage scale without hampering the progress of an infant industry that the public has long awaited.”²⁰³ The agreement allowed musicians to appear on television, but it did not address the use of feature films or feature film soundtracks on television.

Although some members may have been impatient with the slow progress in these employment issues, the members of the union still stood behind Petrillo. At the annual AFM convention in June 1948 in Asbury Park, NJ, the members of the AFM showed their support for Petrillo by unanimously adopting a resolution in his support:

Whereas, Anti-labor forces have launched the insinuation that President Petrillo’s speech and actions do not accurately reflect the will and desires of the entire membership of the Federation, now, therefore, Be it resolved, That the delegates to this Convention, for and on behalf of the members of the Locals which have democratically elected them as representatives to the Convention, hereby endorse and applaud the strong actions taken by President James C. Petrillo for the benefit of professional musicians in connection

with recording, radio broadcasting, and other matters affecting musicians' wages and working conditions.²⁰⁴

With the backing of his members, and under pressure from Congress and the DOJ, Petrillo had also been negotiating with the recording companies. Although the Taft-Hartley Act had rendered illegal the royalty plan with the "welfare fund" that the AFM had previously used for recordings, the union found another way around the problem. On December 14, 1948, the AFM reached an agreement with the major recording companies that the recording companies would create a Trust, and they would pay a Trustee for phonograph records which were pressed, manufactured, produced or reproduced, in whole or in part.[§] Although it was largely the same structure as their previous royalty plan with the welfare fund, by virtue of it being a Trust, it was allowable under the law. If the Trust was successful, it could serve as a potential model for royalty payments for feature films on television, but everyone would have to continue to wait before a resolution to that standoff was reached.

Just because the ban on the use of feature films soundtracks on television was in force, it did not mean that the studios did not try to find ways around it. Republic made extensive attempts to find a solution to the problem, and even fundamentally changed the ways they recorded and mixed their soundtracks. Before November 1948, Republic, as well as many of the other studios, had destroyed the individual dialogue and music soundtracks once the film was dubbed. They explained that it was mainly an issue of not having enough storage space for all of those tracks. The problem with that was that if all of the music and dialogue was mixed together

[§] Those fees were calculated based on the following formulas: 1% of the manufacturer's suggested retail price of each record, when such price does not exceed \$1; 1 ½% of the manufacturer's suggested retail price of each record, when such price is more than \$1 but does not exceed \$1.25; 2 ½ cents for each record, the manufacturer's suggested retail price of which is more than \$1.25 but does not exceed \$1.50; 5 cents for each record, the manufacturer's suggested retail price of which is more than \$1.50 but does not exceed \$2; 2 ½% of the manufacturer's suggested retail price of each record, when such price exceeds \$2. ("Trust Agreement With Record Companies," *International Musician* (January 1949): 4, 16.)

on one track, it was impossible to separate out the music from the dialogue. So even if Republic had been interested in releasing their films to television without music, it was impossible unless they were willing to rerecord all of the other dialogue and sound for the film. Once, however, the AFM ban went into place, Republic found storage space under one of their stages and began keeping their individual tracks.²⁰⁵ Republic did attempt negotiations with the AFM in late 1948 with the goal of relaxing their ban on television exhibition of motion pictures.²⁰⁶ At that time, Republic had begun thinking about putting their films on television, but had decided against it because of the “Petrillo situation” and “exhibitor resistance.”²⁰⁷

The Screen Actors Guild (SAG) was another of the most powerful unions in the industry, and played a major role in the negotiations over feature films on television. When SAG was formed in 1937, they had signed a ten-year contract with the producers, and that contract had not included any clauses dealing with television. So when the union began contract renegotiations with the studios in 1948, there was a significant amount of pent up dissatisfaction and a great deal to discuss.

The negotiations began on March 11, 1948, and Ronald Reagan, who was the president of SAG at the time, led their negotiating committee.²⁰⁸ He later explained that related to the issue of feature films on television, “Our contention had been, and still is, that if a producer wants to use a film in theaters and then sell it to TV, the actor has a right to set a price for the two uses, or even refuse to sell TV rights. It is possible that a performer might have an exclusive TV contract and be legally unable to permit use of his screen performance on TV.”²⁰⁹ So the actors claimed that they not only had a right for additional payment for the use of their performance in the television medium, but they asserted a claim to the right to televise the work at all. As we have

seen, most of the major studios had included television rights clauses in their contracts with individual performers since the 1930s, so they were not happy with SAG's assertions.

On Monday, April 12, SAG members were notified that the contract negotiations had broken off, but the guild could not strike until August 1, when their previous contract expired. The points of contention included restrictions on reissues of old films to curb unemployment of actors caused by reissues, a temporary stop-gap clause to preclude the use of theatrical films on television (this clause is identical to the television clause in the producers' contract with musicians), no loan-outs of contract players without the actors' consent, the right of actors to work in other areas of entertainment such as radio and television, and a reduction in the length of term contracts.²¹⁰ On April 14, the American Federation of Labor Film Council, which was composed of most of the studio guilds and unions, voted to support SAG if they decided to call a strike on August 1.²¹¹

SAG took the position that the producers did not have the legal right to sell or license to television their feature films made for theatrical exhibition. In the newsletter for SAG members, they explained: "The Guild will take the position in such negotiations that film made for motion picture theatre exhibition may not be used for television without compensation to the actors to be agreed upon between us as part of a collective bargaining agreement."²¹² Producers, on the other hand, claimed that their previous contract contained an Article 21, which specifically retained television rights for producers. Producers said that if they agreed to SAG's demands, they would be giving up rights they already held.²¹³ SAG, however, argued that there is no major clause covering television rights in their basic agreement, and that Article 21 was only included in some one-week minimum freelance pacts, and term and multiple deals.²¹⁴ B.B. Kahane, vice president of Columbia, recalled:

We very firmly took the position that, having paid an actor for his services in the theatrical picture, the actor was not entitled to any additional payment, that we were entitled to the results and the proceeds of the services; that there was no difference between an actor or anybody else who was paid for a job that was done. They took the position that at the time those contracts were made for their services in theatrical pictures, television was not contemplated, that that was a completely new medium of entertainment, and that for that reason they felt that the compensation that was paid the actors for the theatrical pictures should not be deemed the only payment to be made.²¹⁵

The contract negotiations ultimately took five months, but the studios were unable to reach a compromise with SAG on the issue of feature films on television. Since they had reached an impasse on the issue, they moved forward with the contract without resolving any terms for feature films to appear on television. Reagan later recalled that although they had been unable to reach any agreements on the issue of feature films on television, the new contract contained many improvements for the actors. He explained: “Actors had gotten raises ranging from 52 to 166 percent. Working conditions had been vastly improved and we had wearily agreed to a stopgap clause that settled nothing with regard to movies someday being reissued on television – but then everyone said they’d be crazy to sell their movies to a competing medium.”²¹⁶ The stopgap clause stated that the studios were not allowed to release to television any of their films made after the August 1st date of the new contract. If any studio moved forward with releasing those post-August 1 films to television, SAG had the right to cancel the contract.²¹⁷ Although this stopgap clause left the door open for pre-August 1948 films to television, as long as the AFM’s ban on all feature films to television remained in place, those pre-1948 films would remain in the vaults.

In May 1948, the studios were also negotiating their contract with the Screen Directors Guild, and later that year, both the Directors Guild and the Writers Guild entered into similar agreements with the studios, as had the SAG.²¹⁸ So by the end of 1948, the studios were stuck with union and guild contracts that prohibited the licensing or sale of their feature films to

television, and would not be up for renegotiation for another few years. With these restrictions written into these labor contracts, the prohibitions on feature films appearing on television were adding up. These conflicts with labor over compensation for their work appearing on other platforms prefigured later conflicts in the digital era.

As was evident in the negotiations between SAG and the studios, reissues and rereleases of feature films was a point of contention. That was the case not only in relation to the problem of unemployment as a result of reissues and rereleases, but also in relation to feature films on television. Many studios valued the potential revenue from the reissue or rerelease of their films theatrically more so than they did the revenue they might make off of those same films on television. The studio heads did not believe that there was any value in theatrical reissues and rereleases if they broadcast their films on television, so they chose what they believed to be the more lucrative of the two options: the theatres.

One example of the success of theatrical reissues and rereleases that was often cited by studio heads was the “Realart deal.” By 1947, Universal was experiencing serious financial difficulty and needed to find some way to supplement their revenue. They took the films they had produced from 1933 to 1946, and licensed them to a company called Realart who rereleased the films theatrically. Realart licensed the films for an immediate cash payment to Universal of \$1,750,000 as well as a percentage of the profits. Universal considered that a better deal than what they could have gotten from television, and since the films had been licensed to Realart for use in the theatres, Universal no longer had the option to license them for television use, even if they had wanted to.²¹⁹ Once again, the issue of who owned the rights for use in each medium prevented the use of the films on multiple platforms.

The FCC Freeze and the Paramount Antitrust Decision

One of the reasons the studios privileged theatrical reissues and rereleases over releasing their films to television was the fact that the television industry, although it had grown substantially after the war, had not by this point developed enough to offer large sums of money for films on television. As we have seen, the film studios were watching the television industry and waiting for it to grow to a size where it could offer sums the studios deemed worthy. Then on September 30, 1948, the FCC issued a report and order, which has commonly become known as the “freeze order.” It provided that no new or pending applications for the construction of new TV broadcast stations would be acted upon; and that new and pending applications for modification of existing authorizations would be considered on a case-to-case basis with action thereon depending on the extent to which the requested modification affected the issues in the proceeding.²²⁰ The commission believed that the engineering information upon which they had initially formulated their rules had not been totally accurate, and they wanted to provide time in which they could reconcile technological problems such as overlapping frequencies, UHF versus VHF, and color television. Initially, the freeze was only intended to last a few months. Unfortunately, it ended up lasting until 1952.

Meanwhile, the studios had been watching the television industry grow, and waiting until it expanded to a point where they could get a significant amount of money for their feature films on television. Once the FCC put their freeze in place, it effectively froze the growth of the television industry, and thereby any possibility of Hollywood’s feature films making their way to television. As Peter Levathes recalled: “In 1948, let us say, and this is the year that the Federal Communications Commission placed a freeze on the construction permits that were offered, we sort of suspended consideration of this whole matter [feature films on television] because there

weren't stations going on the air. The thing that we expected to happen did not occur."²²¹ Now the studios were intent to wait until the freeze was lifted because they believed that at that point there would be a significant increase in stations and markets, and thereby advertising dollars to pay for films.²²²

While the FCC was putting the television industry on hold, the film industry was thrown into a massive period of change by the Supreme Court's decision in the Paramount antitrust case. In July 1938, trustbuster Thurman Arnold, the chief of the DOJ's Antitrust Division, had filed a suit against the major Hollywood studios charging them with combining and conspiring to restrain trade unreasonably and monopolizing the production, distribution, and exhibition of motion pictures. When the case was finally decided in favor of the government in 1945, the studios appealed the decision all the way to the Supreme Court.²²³ By March 1948, as the Court was writing its decision, many in the film industry waited with baited breath. The TOA's legal committee, for example, prepared data covering as many phases of the anticipated decision as possible.²²⁴

Then on May 3, 1948, the Supreme Court handed down its 7-1 decision in which they strongly suggested the divestiture of theatres, but left the specifics, however, up to the lower courts to sort out. So the studios knew that divestiture was imminent, but they knew not when. Furthering the delay, the Supreme Court decided that the five majors could not be treated collectively, so their fate had to be determined individually.²²⁵ At that point, some of the majors predicted it could take ten years for all of the dust to settle.²²⁶ The studios, led by Paramount and Fox, eventually decided to work on consent decrees rather than endure further hearings. Although the antitrust suit had initially gotten its start as a result of the complaints of theatre owners about the anticompetitive behaviors of the studios, by 1948, when many theatre owners

saw their box office revenue steadily declining and were faced with the threat of television, many theatre owners were less happy with the prospect of divorce from the studios than they were with the vertically integrated system they had complained about before. In September 1948, Herman M. Levy, the TOA's general counsel, presented a report at the annual TOA convention wherein he complained as to the outcome of the Paramount antitrust case: "These are some of the well nigh disastrous results that have come from that decision: competitive bidding, the loss or splitting of treasured runs, the end of the 'closed' situation, the upheaval of clearance, the restriction against distributors using past relationship as an element in doing business with exhibitors, the possible body blow to buying and booking combines, etc."²²⁷ With rumors swirling of possible consent decrees, the anxious theatre owners wanted to insure that their input would be considered if that process occurred.²²⁸

In the midst of these dramatic changes, the theatre owners and film industry at large struggled to figure out the best path forward. In the May 21, 1948, edition of *Daily Variety*, Arthur Ungar, editor, published a piece titled "Keep Step or Fall Out," wherein he warned the film industry to find ways to work with television. He even suggested that the studios look at the divorce from their theatres as an opportunity to become more active in television.²²⁹ With the divorce from their theatres on the horizon, the studios' relationship with the theatres would significantly change. One of the primary reasons the studios claimed that they kept their feature films from television was to protect the theatres' financial well being. As long as the theatres remained subsidiaries of the studios, the studios had even greater interest in insuring a robust income for the theatres. If the studios, however, were divorced from their theatres, it evened the playing field somewhat for the two sites of exhibition: theatres and television.

Whether or not the decision in the Paramount case would affect the studios allegiance to the theatres remained to be seen.

By the end of 1948, with the FCC's freeze in place, it was clear that television's growth would be slowed for at least a bit, and many in the film industry breathed a sigh of relief. Most of the different parties in the entertainment industry had staked out preliminary positions in relation to films on television. Hollywood studios would be willing to sell or lease their films if they could, but only at prices the television stations could or would not pay. Theatres felt threatened by a potential loss of revenue, and placed a disproportionate amount of blame for their already declining ticket sales on the new television medium, which only increased their paranoia. The unions and guilds did not want to be cut out of any potential revenue from this new medium, and everyone was faced with the basic question of who had the rights to films on television. During this period, these groups were working to stake out their positions, and in coming years, they would be tested against each other. In the larger history of media industry convergence, this initial period represents one in which the parties engage in a sort of peacockery by making dramatic statements and extreme claims that result in temporary stalemates. As the new medium grows, and the potential profits increase, those with money to gain or lose will eventually learn to work together, but that will take some time.

CHAPTER TWO:

The Freeze Sets In, 1949-1950

“We were the bad boys, and we wanted to sell our way.” --- Peter Levathes, general sales manager and director of television, Twentieth Century-Fox¹

If the years before 1948 were a period of showboating wherein the different factions in the industries began claiming and testing their rights in the new television medium, the period between 1949 and 1950 saw everyone dig in their heels and work behind the scenes to investigate possible ways forward. Amidst all of the turmoil and change, everyone wanted to insure their own most profitable future, but those individual interests often conflicted with the interests of others. Meanwhile, Hollywood’s feature films remained on the shelves.

The FCC’s freeze was initially only expected to last a short time, but by the beginning of 1949, as it continued on without end in sight, the television industry sputtered, and the film industry had a chance to further examine the thing called television. As the outcome of the case of the U.S. v. Paramount Pictures, et al., came into full relief, the FCC indicated that the results of that suit would prohibit them from granting Hollywood studios licenses to own television stations. As the studios faced that news and realized that the downward trend in their box office numbers was getting worse, they hired consultants to conduct studies related to their other opportunities in television. Many studios set up subsidiaries or assigned employees to determine their rights and options related to selling their feature films to television. Meanwhile, unions and guilds held firm in their demands for residual payments for films on television, but since the studios were not taking action, no overt conflicts were necessary between the management and labor. The studios, however, were still prohibiting their actors from appearing on television. Theatres hardened their anti-television sentiments as they saw their box office returns fall to even lower levels, and they began to deal with the fallout from divorce mandated by the consent

decrees. Even though the studios were no longer allowed to own their theatres, the theatres still provided them with their primary source of revenue, and the studios were not interested in jeopardizing that. There were, however, still some people in all areas of the industry who plead with others to make a more concerted effort to work with the other medium.

One of the reasons that Hollywood had given as to why they would not release their films to television was the fact that they did not feel that they had been offered sufficient prices by television. If, however, the television industry developed to a point where the market was larger and advertisers were spending more money, the prices offered for feature films could increase. The FCC's freeze had put a damper on the hopes of rapid development in the television industry, but despite the fact that the FCC had instituted their freeze and it was continuing without end in sight, television continued to grow. *Radio Daily* called 1949, "the first big year in the television boom."² By the end of the year there were almost four million receivers in use throughout the country, and ninety-eight stations on the air in fifty-eight cities. That was up from forty-nine stations and 1,200,000 receivers at the end of 1948.³

David Sarnoff, the head of RCA and NBC, wrote in 1950 that 1949 was, "television's first big year. In 1949 television began to exert a powerful impact on the entertainment habits of Americans. Home-life, education, news, politics, sports and all forms of entertainment are beginning to realize the social and economic import of this new art."⁴ Then 1950 was even better, and in 1951, he wrote: "Gross income, profits, dividends to stockholders were larger than ever before and employment increased substantially. Television in performance and growth during 1950 reached proportions that qualify it as one of America's most promising industries."⁵ One of the reasons that RCA was doing so well was that it was also involved in the manufacture of television sets, and more and more sets were being sold at lower and lower prices. Not only were

more television sets being sold, the sets were getting bigger. Television set factories were rapidly shifting to larger screens with indications that receivers under twelve inches would soon be in the minority. By November 1950, fifty eight percent of television sets manufactured were between twelve and fourteen inches, and nineteen percent were fourteen inches or larger.⁶

In 1949, almost three million television sets were produced, and the Radio Manufacturers Association estimated that since the end of World War II, almost four million sets had been manufactured.⁷ In 1950, there were 3,380,000 television households in the U.S., which was approximately 9% of the total households.⁸ Other reports claimed that one out of every seven families in the country owned a television set, and the total was almost six million.⁹ By the end of 1950, television viewers in the Los Angeles area alone had spent over a million dollars for almost 350,000 sets. The total population reached by Los Angeles area television signals was a little over five million, with an average of four and a half persons per set.¹⁰

Not only were there more television sets in American homes, the demographics of television viewers had supposedly shifted. In March 1950, the *Los Angeles Times* Home Audit check as received by KTTV revealed that television had moved from the lower to upper income brackets. The *Times* surveyed 3,600 homes and measured home valuation and standard of living. Twenty seven percent of the television set owners in Los Angeles County were in the wealthy and “well to do” groups. Twenty six percent of the homes in Beverly Hills and Westwood had television sets. Almost twenty three percent of television set owners were listed as being in the lower middle income bracket, and twenty two percent registered in the “below average” group.¹¹

As the number of sets and the income brackets for television viewers was growing, so were the number of available channels and operating stations. By September 1949, AT&T put three additional channels in service along their coaxial cable between New York and

Philadelphia. That made it a total of five channels available to carry programs in the southbound direction, and two for northbound transmission.¹² The networks were expanding their coaxial cable and radio relay capabilities, and by the end of 1950, they had approximately forty-two cities and metropolitan areas connected to the networks. Despite the freeze, by the end of 1950, there were one hundred and six stations in sixty-four cities, as compared with forty-two cities served by seventy-one stations in 1949. The demand for new television stations continued as the FCC received three hundred and fifty one applications for new stations in 1950.¹³

The C.E. Hooper Company had started providing Hooper Ratings as a way to measure audiences for radio in the 1930s. In May 1949, the Hooper Ratings began measuring television audiences, and their measurements covered audiences in twenty-nine cities throughout the country. Monthly reports were based on a random sampling of all telephone homes, and reported on the rating, broadcast audience, and share of the television audience for individual programs.¹⁴ The Hooper Company was purchased by their rival A.C. Nielsen in 1950, and the Hooper Ratings turned into Nielsen Ratings. Whether Hooper or Nielsen measured audiences, the ability to better measure television audience behavior gave confidence to businesses and advertisers that the money they spent on television advertising was reaching a certain number of eyeballs. More reliable audience measurement tools, in combination with larger audiences and increased television markets, meant that more and more advertising dollars were being spent on television content. The more money that was spent on television content, the more money could be offered for feature films on television.

According to *Television*, in 1949 “advertisers no longer had to be sold on television. ‘49 witnessed the change-over of ‘whether to use TV’ to ‘how to use TV’.”¹⁵ In 1949, the total expenditures on television advertising, including expenditures on broadcast time, program

material and commissions to the agencies involved in the sale of time or program material was \$57.8 million. The total cost of all the program material used television-wide was \$33.1 million. The total expenditure for program material used by the television industry on broadcast hours not taken up by network shows was \$7.5 million. Of that, \$2.5 million was spent on feature films.¹⁶

One of the reasons that more advertisers were willing to spend money on television was that the industry was shifting from single sponsorship to, what they called at the time, “shared” or “participation” sponsorship. In August 1949, NBC announced they were opening the three hour timeslot from 8-11PM on Saturday nights to a “new video programming concept whereby the three top Saturday night program hours will be offered as a block for participation sponsorship by 12 non-competitive advertisers.”¹⁷ NBC described the programming as “consistent with the activities of American families on a typical Saturday night out” and they explained that their goal was to allow advertisers with smaller budgets an opportunity to get into “attraction” television.¹⁸ According to a J. Walter Thompson Television Department Report:

The 52-week concept of single sponsorship as accepted in the radio industry, was initially changed in television due to rapidly increasing costs. However, as results of the shared type of advertising became available, the efficiency of the method became apparent. Because the impact of a television commercial is so much greater than that of a radio commercial, regular frequent exposure for a single product is not only unnecessary, but can be an uneconomical use of commercial time.¹⁹

Shared sponsorship also relieved sponsors of the financial burden of single sponsorship, and allowed for greater flexibility for programmers and sponsors.

Despite the fact that networks were expanding and advertisers were finally willing to pay more for television, network sales departments were still unable to charge as much for advertising as they would have liked because of the limited number of stations in many markets. Even though the coaxial cable network had expanded, as a result of the FCC’s freeze on new stations, many cities still only had one or two stations. Although there had been hope among

broadcasters that the freeze would have been lifted by early 1949, by July, it had become clear that even if the freeze was lifted soon, it would be at least two years before newly licensed stations began operation. The result of the limited stations was that during many time periods, there were three or four commercials airing at once, but only one could be carried on the full-interconnected hookup, with the others seen only on smaller networks. There were twenty-one cities connected by AT&T, but thirteen of them only had one station. New York, Chicago, and Washington were the only cities with four or more stations, which was enough for full time affiliation for each of the four networks. Boston had two stations, and their station WBZ-TV only broadcast NBC shows. The same situation existed in Cleveland where WNBK was owned by NBC, and the other three networks shared time on WEWS. Detroit, Baltimore, and Philadelphia each had three stations.²⁰

In 1950, many stations did not necessarily want to carry network programming because they made less money from commercials if they did.²¹ However, the high costs of producing original programming forced stations to give up “free” time to the networks. As Dean Fitzer, general manager of Kansas City Star’s station WDAF-TV explained, “The problem becomes even more vicious when considering that network programming consumes most of an affiliate’s best time.”²² H.V. Akerberg, vice president in charge of station relations for CBS, argued that once the freeze was lifted, that would all change. He said, “When the freeze is lifted and the networks are able to secure primary affiliates, the networks will be able to provide the circulation the advertiser needs.”²³ Despite those limitations, total television broadcast revenues almost quadrupled between 1948 and 1949, and revenues for the networks, the networks’ owned and operated stations, and all other operating stations also increased by approximately the same amount. Then the aggregate TV revenues in 1950, of \$105.9 million, were more than triple the

\$34.4 million for 1949.”²⁴ As the revenues grew higher, so did the potential payments for feature films on television.

One of the issues the FCC hoped to solve during the freeze was the question of whose system of color television they should approve. In September 1949, the FCC began their hearing on color television. Then in January 1950, CBS debuted some color television sets for a month long demonstration to supply data to the FCC so they could decide whether or not to authorize color television.²⁵ In February 1950, RCA demonstrated their competing color television system with improvements that reportedly eliminated color drift that had been a problem in their previous system.²⁶ The FCC’s first and second color reports were issued on September 1, 1950, and October 11, 1950, respectively. Then on October 16, 1950, the FCC began hearing the testimony of those who had concerns about the general issues in those reports. By the end of 1950, the FCC had made no decisions, and their hearings continued until January 31, 1951.²⁷ This delayed the adoption of a color television system and thereby delayed the lifting of the freeze. As the film industry steadily increased the number of color films in production, the issue of color v. black and white would become a significant one for both the television and film industries. Not only would the question of color delay the lifting of the freeze and therefore inhibit the potential growth of television, it also would delay the release of Hollywood’s color films to television.

The Film Industry’s Attitude Towards Television

By 1949, the television industry’s considerable growth had not gone unnoticed by the film industry, nor were reactions to it slow in coming. Many people in the film industry remained optimistic about their prospects in television, and took advantage of the FCC’s freeze to learn

more about the medium. In September 1949, Eric Johnston, president of the Motion Picture Association of America (MPAA), attempted to buoy the spirits of the exhibitors through an address to the annual TOA convention saying the motion picture industry was not:

... going to sit idly by and permit television to be grabbed off exclusively by somebody else. [...] Nobody knows where this sprawling young giant is going, but I do know this: We as an industry aren't going to be caught short by television. We feel honestly and deeply that the motion picture industry has so much to contribute to the usefulness of television in its service to the public. The motion picture theater is already a great center of service to the community. Television would immensely expand the horizon of the community theater. It would add a new dimension. Television and motion picture exhibition are natural allies. And we intend to see that they become allies.²⁸

That year, the MPAA's new television committee approved a continuing study of television as it affected the film industry, and authorized a paid aide to Edward T. Cheyfitz, committee secretary, who worked full time on the association's television activities.²⁹

At this time, multiple studies were underway by people in the film industry to try to determine the effect of television on the theatrical box office. Different groups with different motivations and methods undertook these surveys in different locations, so they all provided slightly different data and conclusions. Paramount did a survey in metropolitan New York that concluded that television ownership cut family theatre attendance by twenty to thirty percent. Those figures differed, however, from a survey released slightly before the Paramount survey, which was conducted in Washington and cited a seventy four percent drop in theatre attendance. Motion picture theatre owners of metropolitan Washington, CBS and NBC, DuMont and the Washington Star had sponsored that earlier study that found a more significant decline. Loew's and Warners were in the theatre owner group and thereby indirectly participated in arranging the survey. Paul Raibourn, Paramount's vice president in charge of television, argued that the Washington figures were "erroneous and misleading."³⁰ In February 1950, Herbert Yates at Republic commissioned a nation-wide survey to try and determine to what extent television was

encroaching on the theatrical box office. It was to run through July 1, and was conducted through Republic's thirty-two film exchanges. The salesmen in each exchange were to make weekly reports on how many video sets were sold in each of their cities and towns, and then they would report the box office of theatres in the areas where sets were sold and compare those figures with theatre grosses from previous years.³¹

All of the surveys offered conflicting information as to television's effect on the theatrical box office, and to add to the confusion, *Variety* reported in 1950 that the drop off in box office revenue was a worldwide problem, and not limited to countries or areas where television had been introduced. As evidence, they quoted Richard Harmel, director of African theatres for the Schlesinger interests in South Africa, as stating that "the box office in his country had declined about the same as in the U.S. He declared, in his opinion, competition from television has little or no affect on theatre attendance, as the b.o. drop exists in every country, whether video exists there or not."³²

Even some theatre owners themselves argued against assigning all of the blame for the declining box office on competition from television. As Gael Sullivan argued in a speech to the annual TOA convention in May 1950, there were many factors affecting the theatrical box office. He said that was particularly true considering the fact that television was still not nation-wide, and as Charles Skouras had observed, even theatres in non-television areas had experienced a significant drop in attendance. Sullivan also cited a United Paramount Theatres report that could not clearly identify television as the dominant factor in their declining grosses. Sullivan concluded with the argument: "It is significant that every survey has shown that television has a mule-kick effect on the movie attendance of those who acquire television sets. The surveys differ only by how hard and high the mule kicks."³³ Regardless of the cause, there had, in fact, been a

significant drop off at the box office. By 1950, weekly theatre attendance had fallen to sixty one million from seventy nine million in 1946 and sixty seven million in 1948. By 1950, there were approximately four million television sets in use, which was a huge increase from two hundred thousand in 1948. However, the weekly theatre attendance had fallen by six million, which was substantially greater than the increase in the number of television sets.³⁴ The greatest loss in weekly movie attendance occurred between 1946 and 1948 when the number of television sets in use rose by less than two hundred thousand – the smallest two year rise since the television industry started. This threw further doubt on television having the sole responsibility for the decline in theatre attendance. As Mitchell Wolfson, chairman of the TOA's television committee, acknowledged, "You can hear and read all sorts of opinions about what television broadcasting has already done to motion picture attendance. It is hard to rely on the many polls and statistics, since they so often appear in conflict."³⁵ The drop in theatre attendance, even if only partially due to the influence of television, made exhibitors nervous and increasingly territorial, and the most obvious object of their ire was their new competitor, television. So any suggestion of feature films, what the theatres considered their domain, showing up on television, was met with increasing hostility.

In March 1950, Columbia got into the prognostication game and hired outside economists to provide their views on the effect of television on the film business. Columbia had observed that by 1949-50 in New York, where there was the greatest concentration of television receivers, their box office business was hurt more substantially than in other areas. As Ralph Cohn described: "As television started to come more and more and more into the homes, and where I was getting constant information on the number of sets that were being sold, we figured that this was something here to stay, and that the so-called legitimate motion picture theatre had a real

competitor.”³⁶ The economists compared areas like New York with areas where television had not yet been introduced, and produced a report titled “The Effect of Television on Motion Picture Theatre Attendance.”³⁷ The study showed that for every two percent increase in television ownership in a given area, one per cent of the box office revenues were lost. They concluded that those losses would continue until television reached a saturation point, which they believed was around sixty to seventy percent set ownership. At that point, they argued, the effect of television on box office revenues would be negligible. Unfortunately, they also believed that saturation point to be some years away.³⁸ That conclusion added further credence to those studios that had adopted a “wait and see” attitude in regards to their feature films on television and to television more generally.

One of the ways the studios attempted to participate in the new television industry was through the ownership of television stations. This was a natural fit for the studios that could use the stations as another exhibition outlet for their existing library of films. The studios also had the physical resources and production experience to create original content for television. Before the FCC instituted their freeze, many studios had applied to own television stations. For example, in the early 1940s, Barney Balaban, then president of Paramount Pictures, and John Balaban, his brother, then secretary-treasurer of the Balaban & Katz theatre circuit, announced that Balaban & Katz was going to pioneer in the television medium just as they had in theatres. They owned one of the first television stations, WBKB, in Chicago.³⁹ Once the freeze was in place, however, and the Supreme Court had delivered its decision in the Paramount antitrust case, some studios decided to withdraw their applications from consideration. In May 1949, Gael Sullivan of the TOA wrote to James Coston of Warner Bros.:

I was – to put it mildly – shocked to learn that Warner Bros. filed a petition with the Commission to withdraw its television application for a construction permit in Chicago.

As I have told you privately on several occasions and as I have stated publicly on numerous occasions, I am absolutely convinced that exhibitors and producers must get into television. They must get in it to protect their present investments and to expand the scope of their present business.⁴⁰

Sullivan had recently been in Washington discussing with “key government people the question of producers and exhibitors going into television.” He left convinced that “the motion picture people will get as good a break as anyone else on their applications,” and he concluded his letter saying, “I tell you frankly that I would consider it catastrophe if Warners turned a ‘cold shoulder’ to television.”⁴¹ It may seem strange that a theatre owner and leader of the TOA would feel so strongly in favor of the studios owning television stations, but there was still a good deal of dissent among theatre owners as to whether or not television was a friend or foe. Many exhibitors still believed that television could be a great partner for the film industry and theatres in particular.

By 1949, some theatre owners, albeit a small number, already owned and operated television stations. Wometco Theatres in Florida, for example, owned the only television station in the state, WTVJ-TV, Channel 4 in Miami.⁴² Mitchell Wolfson who was also the chairman of the TOA’s Television Committee owned Wometco.⁴³ Wolfson explained, “It seemed just as logical to us at Wometco for motion picture exhibitors to become television broadcasters as it was for radio broadcasters to enter into television. After all, we are the experts in what is good visual fare for the people in our communities.”⁴⁴ The TOA’s television committee, under the direction of Wolfson, hoped that exhibitors owning and operating television stations might solve the exhibitor’s television problems. They believed that an exhibitor who was also a licensee of a television station had the potential to receive and distribute special events not only to the home but also to the theatre. Owning a television station would also allow the exhibitors to use that station to advertise the films that were being shown in their theatre.⁴⁵ Wolfson faced

considerable resistance to those views, however, as evidenced in the manner in which he began his discussion of television broadcasting with the members of the TOA: “Now I shall reveal the other side of my split personality. From now on you will be hearing from Mr. Hyde Wolfson, that terrible broadcaster, instead of Dr. Jekyll Wolfson, that nice motion picture exhibitor.”⁴⁶

Whether or not the exhibitors were unanimously in favor of the film industry getting into television station ownership, the question remained as to whether or not the FCC would allow them to own stations. The decision against the studios in the Paramount antitrust case had made the possibility of FCC approval even less certain. When Gael Sullivan, executive director of the TOA, inquired to Wayne Coy, chairman of the FCC, as to the possibility of members of the film industry gaining approval to own or license television stations, Wayne Coy responded:

The Commission has no policy against the issuance of television permits or licenses to motion picture exhibitors, provided they are legally, financially, technically and otherwise qualified to become broadcast licensees. However, I am sure you are aware of the fact that the Commission is considering the questions raised by the court decisions involving violation of the antitrust laws by certain motion picture exhibitors.⁴⁷

Although Coy was somewhat vague, he clearly implied that the members of the film industry would have an uphill battle in terms of gaining approval for television stations. So by January 1950, Fox followed in Warner Bros. footsteps and petitioned the FCC to withdraw its applications to build and purchase stations in Boston, San Francisco, St. Louis, Kansas City, and Seattle. According to *Variety*, Fox believed they had a brighter future in theatre television than in station operation, and since the FCC had recently agreed to hearings on theatre television, Fox was optimistic that would be able to move forward.⁴⁸

Although television station ownership by the film studios provided a clearer route for their feature films to television, theatre television also had promise in terms of creating a new system of distribution, which could be used to deliver films directly into homes. By 1949, many

of the studios and theatre organizations were working to move full speed ahead with theatre television. Those most active in theatre television included Si Fabian, Samuel Pinanski, Schwartz, Leonard Goldenson, Corwin, and Charles Skouras among the exhibitors, and Barney Balaban and Spyros Skouras among the film producers and distributors.⁴⁹ An internal TOA memo illustrated the theatres' optimism about theatre television: "There is sound evidence that theatre television can build box office by adding something to theatre attractions not available in feature films. It may be that theatre television will give the motion picture theatre the dynamic which sound once gave to silent films."⁵⁰ The problem, however, was that they were trying to take television, a disruptive technology, and force it into functioning as a sustaining technology for them. As Christensen warned, "Only those companies that carefully measure trends in how their mainstream customers *use* their products can catch the points at which the basis of competition will change in the markets they serve."⁵¹ The studios still did not quite understand, or were in denial of, the fact that a significant part of the appeal of television was the fact that their true customers, the audience, could stay at home and enjoy the programming. The studios, and certainly the theatres, were determined to force those audiences back to the theatres – even if that meant spending a great deal of money on developing and installing new systems for theatre television.

In those early years, the content screened in experimental theatre television locations was strikingly distinct from the filmed programming usually found in theatres. It included heavyweight title fights, coverage of political speeches and conventions, the President's State of the Union address, and a speech by Winston Churchill. In April of 1949, George Shupert, head of the Television Division at Paramount, explained that even though those events had not been publicized more than thirty minutes beforehand, and in those cases on with a lobby placard:

By giving our customers frequent surprises we believe we have planted the idea that something may be missed by staying away from the Paramount Theatre. A year of programming full-screen theatre television has convinced us that exhibitors can and should use television to stimulate attendance. We've learned that theatre television can be sold on its own merits as an outstanding attraction, can be sold as a far better brand of television than viewers can get at home.⁵²

Theatre television was actually one area in which exhibitors and television broadcasters seemed willing and able to work together. Broadcasters had met and communicated with theatre owners and others in the film industry regarding theatre television, and from some reports the broadcasters did not mind the studios and theatres focusing on theatre television. For example, in April 1949, Gael Sullivan, executive director of the TOA, was communicating with Charles V. Denny, executive vice-president at NBC, regarding theatre television, and Sullivan noted to Denny that theatre television was something “in which both of us are so vitally interested.”⁵³ Denny agreed and “expressed a keen interest in the establishment of this service and the desire of NBC to supply separate or duplicating programs to those exhibitors having theatre television facilities.”⁵⁴

At this time, because of their interest in theatre television, the theatre owners were more actively reaching out to broadcasters than were anyone else in the film industry. In August of 1950, members of the TOA's television committee met with members of the National Association of Broadcasters (NAB) to discuss the relationship between exhibitors, theatre television, and television broadcasters. According to Mitchell Wolfson, head of the TOA's Television Committee, the meeting was a “harmonious and useful exchange” wherein they discussed the ways film theatres and television “generally complimented each other.” Wolfson even reported that: “The National Association of Broadcasters indicated it would welcome a friendly relationship with theatre television operators, with perhaps such operators becoming associate members of that Association.”⁵⁵ That the theatres considered becoming members of the

NAB is somewhat shocking, but many of the theatres were, in fact, thinking of themselves, at least as far as theatre television was concerned, as potential network affiliates.⁵⁶ Charles Denny of NBC had actually outlined three types of programs that might be available for the theatres: 1) programs on which NBC might build specially on order from the theaters for their primary use; 2) special event programs which form part of NBC's programming and are not normally sponsored, such as a Presidential inauguration or an important public address; and 3) NBC's regular programs which are sponsored or are carried on a sustaining basis. For the programs NBC would produce specially for theatres, they would be available for exclusive theatre use. For the other two types of programs, the television broadcast would be the primary use, but arrangements could be made for subsequent or simultaneous showing in theatres.⁵⁷ If the theatres did actually start to function as if they were a network affiliate, it would actually parallel the type of relationship the theatres had with the studios, in that in either case the studios or networks would be the producers of content that the theatres would exhibit. For the theatres, it was still about obtaining quality programming and getting people to buy a ticket to sit in their theatre.

Paramount and United Paramount Theatres (UPT) were among the most vocal supporters of theatre television. On April 5, 1949, George T. Shupert, of the Television Division at Paramount Pictures, Inc., gave a speech to the Colorado Association of Theatre Owners Convention in Denver. He said, "An old proverb tells us to fight fire with fire. We have a modern version at Paramount. It reads: Fight Television with Television! And our strategy is not limited to the use of television as an advertising medium for our pictures."⁵⁸ In 1950, Robert H. O'Brien, secretary and treasurer of UPT, said, "Essentially, the two media [television at home and theatre television] will offer a different kind of entertainment. I am confident that each will be helped by the presence of the other."⁵⁹ He argued the theatre audience distinguished itself

from the home audience by virtue of being a mass audience, not small, disconnected groups. It was also, he said, a disciplined audience, not subject to the distractions of the home.⁶⁰ That year Leonard Goldenson of UPT argued that the potential of theatre television and television generally, “may possibly be as significant as the innovation of sound in the twenties. It may re-energize the industry and give it a shot-in-the-arm similar to that of sound.”⁶¹

Since, however, the FCC had yet to approve broadcast channels for theatre television, and since those in the film industry had serious doubts as to whether the FCC would ever approve those channels, they investigated the possibility of transmitting the theatre television programming using coaxial cable that would not require FCC consent. That would be an incredibly costly system to install, however. If it did work, it could not only make theatre television a possibility, it could have revolutionized the distribution of films to theatres by allowing distribution from a central point of all of the studios’ content via those cables.⁶²

The film industry kept pushing the FCC to consider their applications for the allocation of broadband frequencies for theatre television channels, and finally the FCC agreed to hold hearings on the matter in September 1950. Although the television broadcasters had previously shown themselves amenable to theatre television, some of them, including the National Association of Broadcasters, the Television Broadcasters Association, and the Columbia Broadcasting System, had publicly stated their opposition to granting channels for theatre television.⁶³ The TOA understood the challenge they faced and in an internal memo acknowledged, “We look for a tough fight to gain the channels required to develop theatre television into a nation-wide system. This FCC hearing, we feel, is crucial to the television future of the motion picture industry, and if we fail now, theatre owners will have lost their last chance to compete in the television picture.”⁶⁴ If the broadcasters and networks did voice their

opposition to theatre television, the MPAA had pledged to mount a “strong public relations job” to “overcome such opposition, in addition to the showing at the theatre TV hearing itself.”⁶⁵ The MPAA public relations facilities would be made available for that work, and they would use “movie shorts, press releases, and so forth.”⁶⁶

The fight for theatre television was extremely costly, and even more so at a time when the film industry was suffering financially. The TOA estimated that it would take \$60,000 to cover the initial costs of beginning the preparation of their case for the hearings. That would cover the cost of the TOA television counsel, a consulting engineer on frequency allocations, an engineer who specializes in telephone facilities for carrying television signals, and some of the initial research and administrative expenses required. They also believed that it could take an additional \$50,000 for subsequent exhibit preparations, development of testimony for individual TOA members, travel, secretarial, research, telephone and similar administrative expenses to do an adequate job of presentation.⁶⁷ TOA created a Theatre-TV Research Bureau and established the position of Information Director who would handle “press releases to the trade, speeches, radio & TV broadcasts, demonstrations for exhibitors’ meetings, etc.”⁶⁸ The TOA was even asking its members for loans of \$500 each to pay for the association’s activities in relation to theatre television.⁶⁹

By the end of 1950, the FCC had declined to approve the channels for theatre television. After the FCC’s hearings, Spyros Skouras complained, “I believe we have failed to persuade the FCC to license us with the channels we deserve because we are too inarticulate. Because we have not a common clear understanding of the value of this new medium for our theatres, and because we lack harmony and coordination.”⁷⁰ The theatres hopes of finding inroads to television were, at least temporarily, thwarted, and the expenses they had incurred in the process of their

applications were seemingly for naught. The promise of theatre television had given the exhibitors hope for a profitable role in the future media landscape, and had provided something of a welcome distraction from the fight over feature films on television. With those hopes at least temporarily quashed, the exhibitors' sense of the tenuousness of their position in the industry increased, as did their ire toward their competitor: television.

The exhibitors and studios remained dedicated to finding ways to use television to get audiences in the theatres, and one of the ways they worked to accomplish that was by advertising on television for their theatrical films. Mitchell Wolfson, owner of Wometco Theatres and WTVJ-TV in Florida, believed that television and motion pictures could improve each other by sharing talent and through a competition for audiences. He thought the answer to the threat of television taking audiences away from film theatres was to advertise for theatrical films on television, thereby drawing audiences back to theatres, and even encouraging new audience members to attend.⁷¹ Si Fabian, prominent east coast theater operator, and Charles Skouras, National Theaters president, both indicated their interest in buying television time to air trailers if distributors made them available.⁷² In April 1949, George T. Shupert, head of the Television Division at Paramount Pictures, Inc., gave a speech to the Colorado Association of Theatre Owners Convention in Denver about the high expectations they had for television's ability to publicize their theatrical films:

With all our present-day advertising and publicity, only 15,000,000 of America's 148,000,000 see the average 'A' picture. There are 55,000,000 people in the United States who don't go to the movies at all. 55,000,000 cold prospects that our advertising fails to stir! When television blankets the country, we will be able to go into most of the homes of these 55,000,000 people and make a strong pitch with an appetizing sample of each picture.⁷³

By May 1949, Gael Sullivan, executive director of the Theatre Owners of America, had contacted studios to let them know that the exhibitors were ready and willing to use television

trailers as an advertising medium for motion pictures “when and if they are available.” He suggested a division of responsibility such that the studios would take charge of advertising at a national level, while the theatres would advertise at the local level. Sullivan outlined his conception of the advertising plan: “There should be several trailers made for every picture. Some of 30 seconds duration, some of 1 ½ minutes duration; and perhaps on outstanding features – of 2 ½ minutes duration. This much we know, one trailer cannot be used too long as it becomes boresome. Also spot television trailers’ use – like the ‘saturation’ plan local movies use in radio can be very effective.”⁷⁴ Sullivan and other theatre owners were on board with using trailers on television in part because of the potential to increase box office grosses, but even more so because they did not believe that the use of trailers on television would “give the television industry sufficient revenue to develop this medium any more rapidly than it will develop.”⁷⁵ Barney Balaban, president of Paramount, responded to Sullivan by explaining that some of the same issues that were preventing feature films from appearing on television were also interfering with trailers for those films appearing on television. Balaban said, “We have been working for some time on the development of such trailers and have been watching the situation very closely and with great interest. As you know, one of the principal obstacles has been the action taken by the musicians’ union in banning the use of recorded music for such purposes.”⁷⁶ This conflation of marketing with content and the conflict with labor unions over the use of their work as tools for advertising prefigured the issues at the heart of the WGA’s strike in 2008.

Although those questions over rights for use presented a significant obstacle to the use of film content in television commercials, other concerns also caused problems. Balaban also expressed concerns about the visual quality of those trailers: “I cannot emphasize too strongly the desirability of establishing the highest possible standards for the production of these trailers.

They must show our product and our industry in the best light. It would be most unfortunate if a trailer is poorer in quality than the television program which precedes or follows it. In such instances, the comparison would be harmful and, therefore, should be avoided.”⁷⁷ That concern about the visual quality of their films being damaged if they were broadcast on television was another one that held true both for trailers as well as for feature films.

One of the most significant obstacles for trailers advertising on television for theatrical feature films was the fact that it required cooperation between the production, distribution, and exhibition arms of the industry. That was a difficult task during a time when the industry was enduring major upheaval, and was yet another reason that film seldom had a common front during its negotiations with television.

The Film Industry and COMPO

Although Twentieth Century-Fox ran a two-page ad in *Variety* on May 11, 1950, proclaiming, “Business is Better Than Ever!”,⁷⁸ it was in 1949 and 1950, when the industry really began to feel the downturn in their revenues. As Herbert Yates, president of Republic, recalled: “It was in ’49 and ’50 when we found we were losing business. I was afraid to go on television and aggravate exhibitors.”⁷⁹ Spyros Skouras seemed to feel the downturn more personally, and described television’s impact as causing the close of over six thousand theatres in a three-year period. He explained, “During this period I received letters from the Middle West, from many old friends who lost their theatres. People that owned two and three theatres. Their families and their children, that was their life, that was their career, and their theatres closed. Now, that was a tremendous impact of television on the motion picture industry.”⁸⁰ Those personal loyalties and relationships between many of the studio heads and their exhibitors often

led execs like Skouras to take corporate actions that tended toward conservatism and away from forward thinking and innovation.

In the midst of those financial declines, regardless of personal feelings between studios heads and their exhibitors, the studios were managing their court-mandated divorce from their theatres. Paramount Pictures, Inc. was one of the first studios to complete their divorcement, and their corporation was officially dissolved on December 30, 1949. In its place, two new corporations, one that housed production and distribution and another for their theatres, were formed in accordance with their consent decree. In February 1950, the Federal Statutory Court in New York ordered Warners, Twentieth Century-Fox, and Loew's that the divorcement and divestiture from their theatres be complete within three years time.⁸¹ At the first convention of Paramount's post-consent decree production-distribution unit in New York in January 1950, Barney Balaban said, "On basis of current returns, few if any major distribution wings are turning in substantial profits from the sale of pix divorced from exhibition."⁸² He cited the high costs to make and sell films combined with declining theatre revenues as reasons for those difficulties.

Even though exhibition was being divorced from production and distribution, as was evidenced by Skouras' passionate tale of the exhibitors' woes, the ties between the different segments of the industry remained strong. The Warner brothers, for example, were leaving their theatres in the hands of one of the brothers. Charles Skouras, the head of National Theatres, was Spyros Skouras' brother. Those close ties would mean that many of the studios remained resistant to any actions that might harm the theatres – including releasing feature films to television.

That was not the case for all of the studios, however. At the end of 1950, RKO Radio Pictures' substantial circuit of approximately one hundred first run theatres were put in a separate company.⁸³ Ned Depinet, then president of RKO, explained that he and RKO considered the effect of furnishing their films to television on the box office receipts of their own theatre chain a "very important factor up to the end of 1950 when the theatres were placed in another company and we had nothing whatsoever to do with them. But up to that time it was a very important factor."⁸⁴ This perspective which objectively evaluates the value of theatres and television as sites of exhibition makes much more sense from a business standpoint, and underscores the point that the studios' public pronouncements of loyalty to their theatres was likely exaggerated. As we have seen, there was a whole constellation of obstacles preventing the release of Hollywood's feature films to television, but the studios could ingratiate themselves with the exhibitors by attributing their inability to release their films to television to a choice they made willingly in support of their theatres. Unfortunately for the studios, these declarations of loyalty would come back to haunt them in a future antitrust case.

Regardless of familial ties, declarations of loyalty, or whether or not the studios and their theatres had been officially divorced, a great deal of strife and discord existed in the industry. Those conflicts were exacerbated by the financial downturn faced by the industry. Spyros Skouras observed of the intra-industry discord: "Many times we have seen producers disparaging Hollywood and speaking unfavorably of their competitors or rival productions. Many times we have heard exhibitors speaking ill of their brother exhibitors across the street. This self destructive criticism by producer, exhibitor and distributor has done more to hurt us than all outside criticism."⁸⁵ Skouras also noticed the "avalanche of lawsuits" being brought by exhibitors against distributors. He observed, "These suits have become so numerous and the

amounts involved so vast, that if something constructive is not done by each branch of the industry, working in cooperation with each other branch, to solve this problem, there is not going to be anything left for any of us.”⁸⁶

Some people in the film industry were actually taking steps to broker peace in the film community. The Council of Motion Picture Organizations (COMPO) first organized in 1949, and officially incorporated at their meeting in Chicago in May 1950. The group was an “all-industry public relations body embracing all segments from production and distribution through exhibition. [...] For the first time, with a judicious, forward-thinking program spearheaded by Ned Depinet, the motion picture industry has an instrument for its common weal.”⁸⁷ The organization included members from all areas of the film industry including production, distribution, exhibition, the unions, and even the trade press. They were a professional cultural effort to construct a common film identity at larger scale, but they also focused on more specific concerns that affected multiple areas of the film industry. For example, one of their first priorities was to work for the repeal of the theatre admission tax.⁸⁸

At an August 30, 1949, meeting of COMPO in Chicago, Arthur Lockwood, president of the TOA, remarked, “The mere fact of our presence here is in itself an indication of the desire of all of us to improve the relations among ourselves and with the public which we serve.”⁸⁹ The range of topics that COMPO was expected to handle were illustrated in the seven points Lockwood proposed on behalf of the TOA as issues for discussion: a campaign for eliminating the admission taxes; a united front against restrictive legislation such as censorship; the development of the more extensive use of television trailers to advertise feature films; the elimination of unfair competition and the granting of special favors to other forms of entertainment [i.e. television] to the detriment of the motion picture industry; the necessity of an

all-industry public relations program; the development of a plan to increase the movie-going habits of the American people; the establishment of a research system to provide the industry with accurate information to repel legislative attacks.⁹⁰ With that wide range of issues confronting the film industry at that time, their attention was somewhat scattered.

A year later, many of those concerns had not abated. In August 1950, COMPO's Executive Board had a special meeting at the Astor Hotel in New York City.^{*} They commissioned what they called "Project Box-Office," in order to "find out why our industry is getting less and less of America's amusement dollar, why our box office has not reflected the increase in population in recent years, and why attendance is off."⁹¹ The committee recommended that particular attention be given to an analysis of the effects of TV in the study. They believed that continuing studies of television would provide the industry with "bench marks" so that an intelligent appraisal of progress and trends could be made from future studies.⁹² This commissioning of studies to examine the competition from and potential in television was clearly a common tactic in the film industry at that time. Just as in the 2000s advertisers were hesitant to spend money on advertising in digital media without metrics that could provide concrete evidence of the return on their investments, so too did the film industry in

^{*} Ned Depinet was the President, and Francis S. Harmon was Secretary. In attendance were Executive Board members: Art Arthur (MPIC), Harry Brandt (ITOA), Leo Brecher (MMPTA), Roy Brewer (MPIC), Max A. Cohen (ITOA), Oscar A. Doob (MMPTA), Abel Green (Trade Press), H.V. "Rotus" Harvey (PCCITO), Martin Quigley (Trade Press), Trueman Rembusch (Allied), William F. Rodgers (MPAA), Robert J. Rubin (SIMPP), Gael Sullivan (TOA), Robert J. O'Donnell (Variety Clubs International), Marc Wolf (Variety Clubs International), Nathan Yamins (Allied). The following were present at the invitation of one or more members of the Executive Board: Barney Balaban (MPAA), Maurice Bergman (MPAA), Robert Coyne (TOA), Russell Downing (MMPTA), Leonard Goldenson (TOA), Austin C. Keough (MPAA), Herman Levy (TOA), Edward Lachman (Allied), William Namenson (ITOA), Albert Rogell (MPIC), Fred Schwartz (MMPTA), Morton Sunshine (ITOA), Ezra Stern (TOA), Leon Bamberger (Asst. to Ned E. Depinet), and Henderson M. Richey (Asst. to William F. Rodgers). ("Minutes of Special Meeting: Executive Board of Council of Motion Picture Organizations, Inc.," Page 1, 9 August 1950; Folder "Council of Motion Picture Organizations Inc (COMPO) U1 to U218," Box 8, DOJ Class 60 Antitrust Accession 57A60; National Archives at College Park, MD.)

the late-1940s and early-1950s hope for concrete evidence of the financial promise of their actions and investments.

Theatres

Despite the fact that an organization like COMPO had been formed and was investigating the potential of television for the film industry, as well as the fact that the studios were investing heavily in theatre television, the theatres remained extremely concerned about television, and about feature films on television in particular. Peter Levathes at Fox described the how unpopular his television department was with the theatre organizations: “They were not happy about our engaging in these activities, but we felt that television was an art that was very closely related to motion pictures, and that we had to gain experience in it, and that we had to stay in it to the extent that we could, to explore it, to keep informed about it, and to evolve ways of utilizing it for our financial advantage.”⁹³ Gael Sullivan, in a speech at the annual TOA convention in Atlanta, further illuminated the theatres’ attitudes towards television through the following colorful metaphor about the relationship between film and television:

I have heard it said that the honeymoon in the film business is over. Getting down to the business of a day in day out marriage with a declining box-office is a difficult thing. It is particularly difficult for the theatre exhibitor, when his wife – the film producer, and all the helpers, the stars, writers, directors and skilled technicians – are being coveted by a vigorous, young third party, television.⁹⁴

That Sullivan compared the relationship between the theatres and studios to that of husband and wife reveals the extent to which the exhibitors believed their ties with the studios to be intimate and exclusive.

Although the exhibitors were interested in taking as much advantage of television as possible, and theatre organizations like the TOA took steps to establish a National Television

Committee in 1949, they still vigorously opposed the release of Hollywood's feature films to television. Mitchell Wolfson was named head of the TOA's television committee,⁹⁵ and he advised theatre owners that they should applaud producers and distributors who continued to refuse to make their films available to television. He continued:

All producing and distributing companies should be counseled that a grave danger and injustice would be presented should television be provided with motion picture film designed and created for exhibition in motion picture theatres. The 'giving away' of the industry product on television is economically indefensible from the point of view of the theatres, as well as the producers and distributors who would soon find that they have jeopardized their own income as would be evidenced by the diminishing returns at the box office.⁹⁶

Wolfson further proposed that the TOA keep track of any feature films that appeared on television, so that they could maintain a list of the producers and distributors of those films and the "damage that may be accruing" to the theatres by those "unfair practices." By keeping track of that information, he suggested that theatres would have the option of taking legal action against the producers and distributors.⁹⁷ He later clarified that his position on television was not an entirely negative one. He explained, "I feel positive that television definitely can be used to help the motion picture theatre, provided motion pictures made expressly for motion picture theatre exhibition are restricted to motion picture theatre use."⁹⁸ The theatres had clearly not hesitated to bring legal action against the producers and distributors in the past, and the studios took very seriously these thinly veiled threats as to the possibility of the exhibitors taking legal action against them if they released their films to television.

By 1949, most exhibitor trade magazines contained sections on television.⁹⁹ They included information on the effects of television on theatres, often reported films that had run on television, and contained information about what studios had licensed or sold those films to TV. For example, the TOA Special Bulletin from April 25, 1949, included a list of motion picture

films that had appeared on television in the New York area, and the TOA promised to send monthly lists of additional films made available to television.¹⁰⁰ Gael Sullivan clarified the fact that the list contains some films “which were released for motion picture exhibition by major distributors but made by independent producers and that their distribution rights have reverted to these independent producers who have released these pictures to television.”¹⁰¹ Sullivan’s notice also highlighted the complex nature of the issue of the ownership of rights to these films.

The theatres’ activities regarding films on television was not limited to the studios, however. They also monitored and communicated with the networks. In March 1949, Stanley W. Prenosil, assistant executive director of TOA, contacted the director of the Publicity-Television Department at ABC, asking to receive advance copies of television programs.¹⁰² Later that year, Harry Vinnicof, head of the Southern California Theatre Owners Association, wrote to Gael Sullivan, president of the TOA, inquiring about their “advice and action” in regard to an article that ran in *Variety* the day before reporting: “WCBS in NY is televising two feature films on Saturday nights, with short subjects in between. Prior to the screenings, an announcer on the CBS outlet reads the following: ‘If you were planning to go to the movies tonight – don’t. Stay at home in the comfort of your own living room and see two full-length motion pictures and three short subjects’.”¹⁰³ Many television stations at that time did, in fact, use advertisements such as that to attract viewers for the programming, and it played right to the theatre owners’ greatest fears.

By June 1949, some exhibitors were so nervous about the competition from feature films on television that they were threatening boycotts of the producers’ product. The president of Pictorial Films complained that exhibitors had threatened that if the distributors gave their features to television stations, exhibitors would refuse to play them in their theatres.¹⁰⁴ Although

those threats had been made to Pictorial, most exhibitors stopped short of publicly threatening a boycott. They did, however, not hesitate to publicly express their negative opinions of the release of feature films to television. It was the belief of many theatre owners that the theatres were responsible for the fame and fortune of Hollywood's stars and studios, and that running feature films on television would constitute a betrayal.¹⁰⁵ In 1950, *Variety* reported that prominent exhibitors were "plenty sore about the television stations buying up these old films. They say the American exhibitor will never forgive or forget the film producer who sells his product to television after it makes the rounds of the theatres."¹⁰⁶ Fred Schwartz of the Century Circuit said releasing their features to television would simply be a stupid and foolish stunt on the part of the producer. Leo Brecher, president of the Metropolitan Theatre Association of New York, said, "he would not like it." The Allied board claimed they would be amazed and resentful. So did Walter Reade, Jr., of the Reade circuit. An editorial in *Showman's Trade* called the question a "matter of honor" and came close to explicitly threatening a boycott of such a producer.¹⁰⁷ Many exhibitors privately admitted that they would "get back" at any producers who released their films to television. Trueman Rembusch of Allied, for example, had stated: "I for one am not going to play any producer's pictures who is so traitorous to the motion picture industry as to sell his productions, new or old, to television or Phonevision. I imagine that a great many exhibitors feel as I do."¹⁰⁸ Sam Pinanski stated, "Hollywood will have to make up its mind whom it wants to serve."¹⁰⁹ Although the exhibitors' threats were somewhat hollow, their motivation was to make this conflict a zero-sum game for the studios wherein the studios had to decide between the theatres or television.

From all of those threats, both public and private, the studios were very aware of the theatres' feelings on this subject. For example, in 1949, when Robert Newman, former vice

president at Republic, was asked what impediment other than the 1946 contract the industry had with Petrillo and the AFM kept them from releasing their films to television, Newman answered: “Always the exhibitors... The opposition of the exhibitor... When you are in business and they are your chief customers, you watch their desires pretty carefully.”¹¹⁰ This notion of the customer harkens back to Christensen’s argument about the importance of clearly understanding who the customer is and how they use a product. In this case, the studios continued to think of the *theatres* as their customers, while they should also have been thinking of their *audience* as their customers.

The theatres certainly agreed that they were the studios’ chief customers, and they took that claim even further by arguing that they were the ones responsible for the studios’ success. In March 1950, the TOA asked Herbert Yates, president of Republic, if he would meet with one of their representatives, Mr. Corwin to discuss Republic releasing their films to television and the question of Roy Rogers, one of Republic’s biggest stars, making a deal to star in a television series. Yates asked Roy Rogers and Arthur Rush, Rogers’ representative, to join the conversation. They met at Republic in Yates’ office.¹¹¹ Corwin said he thought it was a mistake for any of the studios to allow their films to be played on television, and he believed any star, any important star going on television would hurt his box office. Yates asked what Republic was supposed to do when they were seeing their income from theatres decline, and Corwin acknowledged their position and requested that “inasmuch as the Theatre Owners of America were largely responsible for the success of Republic and Roy Rogers that [Republic] should hold the line a little longer.” Yates rebutted saying, “In the meantime I notice that exhibitors all over the country are putting in television screens as rapidly as possible, and a number of them are entering permits for telecast stations.”¹¹² Yates said he believed that Republic had to make films

for both theatre and television, and he thought both industries could work together to the profitable end of all concerned.¹¹³

That kind of finger pointing did not stop there, however. The theatres also accused the studios of not producing enough high quality product to attract audiences to the theatres. As Gael Sullivan of TOA complained to *Variety*:

There is an urgent need for more and better pictures in order that the exhibitor may provide consistently good entertainment. This is the responsibility of the producers and if they fail to meet it, exhibitors have no alternative but to encourage, if necessary, help finance independent production. Exhibition has an investment of approximately two and one-half billion dollars in the industry which must be protected.¹¹⁴

Sullivan's statement is interesting, particularly in light of the fact that he made it to *Variety*, in that it adds a new threat to the exhibitors' arsenal: that of funding their own independent productions to insure content for their screens. The theatre owners already considered themselves the financiers of the majors studios' films, so in that light it is not that much of a stretch; however, in the wake of the Supreme Court's mandated divorcement, the threat of the theatres' further independence through financing their own independent features could have made the major studios nervous.

The studios, however, were unwilling to take all of the blame the theatres threw their way. In a speech Spyros Skouras delivered at the TOA's annual convention 1950, he acknowledged the difficulties posed by television, but put the responsibility for the theatres' success or failure back on the theatres. His suggestions included giving producers suggestions for the types of films they want to show. Focusing on superior showmanship and "presenting all productions honestly and fairly to the public in the most agreeable atmosphere you can create in your theatres."¹¹⁵ Skouras also asked theatres to find ways to encourage the public to consider the theatres as a part of the community much as parks, streets, libraries, etc., and to win the heart of

the community through activities like charity drives and collections.¹¹⁶ Finally, he suggested holding film festivals multiple times a year in twenty or more cities because “this would be a positive step in showmanship that would re-acquaint us with the American people.”¹¹⁷ Skouras concluded his speech saying: “As long as I am its [Fox’s] president, I shall do everything in my power to help, especially to help the exhibitor, because I know and feel his problems. I shall try never to disappoint him.”¹¹⁸

One of the issues that complicated the matter of feature films on television relates back to the problem of 16mm versus 35mm. As discussed in the last chapter, most television stations were only equipped with the technology to broadcast films on 16mm rather than 35mm. Another effect of the boom in the use of 16mm film after the war was the fact that those prints began to show up in “unauthorized showings” in places like hotels, and the competition from those showings also caused the theatres concern. For example, the TOA complained to United Artists about the “unfair competition” of 16mm prints of features that had originally been released in 35mm. Paul Lazarus, Jr., assistant to the president of United Artists, met with Myron Blank, chairman of TOA’s 16mm Committee, and followed up with a letter to Blank explaining that UA had no plans to establish their own distribution system for 16mm, but they were working on a deal with a “reputable” 16mm distributor. Lazarus warned:

I call your attention, however, to the fact that this will not completely eliminate present abuses that you and your members have complained about. Those pictures that have already been sold for 16mm distribution, we as a corporation cannot control. There will, consequently be the same undisciplined showings that are now prevalent. As I have told you, all we can hope to do is plug up the dike for the future. And this, I assure you, we are trying to do.¹¹⁹

Most studios that released 16mm prints of their films had a standing policy that those films not be released to any locations that were in competition with their 35mm theatres. As Abe Montague of Columbia explained of their policy regarding 16mm films: “We decided that in no

case where there was reasonable opposition, 16 or 35, would we want to serve our films in 16mm. [...] Our main business, naturally, is the supplying of 35mm to legitimate theatres, and we didn't want in any way, shape or manner to endanger that, in the smallest or in the largest way.”¹²⁰

In a parallel to contemporary concerns about digital piracy, correspondence between theatres owners, theatre organizations, and the studios, described the unauthorized showings of 16mm films as everything from unethical, to obnoxious, to parasitic.¹²¹ In order to deal with what the theatres viewed as the “scourge of 16mm,” the TOA encouraged the theatres to not only monitor the broadcast of feature films on television, but also “vigilance on the part of each and every exhibitor.” They suggested what sounded like a spy network of exhibitors who would, upon hearing that a 16mm film was being screened in a venue that was “harmful” to their theatre, attend the screening to count the attendance and assess the admission price. Then they would write down the information on the cast and any advertising material for the screening. The TOA warned that the exhibitor should record the title of the film because “many times titles are changed from the original release.” The TOA then assured the theatre owners that if they took those steps and forwarded the information they collected to the sales manager of the company that originally released the film, “action will be forthcoming.”¹²² Then at the TOA's annual meeting in May 1950, Abram F. Myers, chairman of the National Committee of the Allied Theatre Owners, “congratulated” producers and distributors who, “after careful consideration of all the factors involved have voluntarily determined and announced it is to the best interests of the film industry not to license their films for non-theatrical exhibitions on such media as television, Phonevision and 16m showings.”¹²³ The fact that the theatres lumped together television, Phonevision, and 16mm showings, however, is notable. Although seemingly

innocuous as they are all largely based in the 16mm format, the fact that the theatres put them all in one category will soon return to haunt them in the form of an antitrust suit, which will be discussed in detail in chapter three.

Television and 16mm showings had theatre owners extremely concerned, but many exhibitors remained skeptical of Phonevision's potential. At the TOA's mid-century convention in October 1950, Mitchell Wolfson observed: "Then there is Phonevision, which I frankly think is the 'flying saucer' of the television industry – everybody has heard about it, no one has really seen it, and I frankly believe it will quietly fade away without hurting anybody."¹²⁴ That may have been wishful thinking on Wolfson's part, but the theatres certainly had a vested interest in downplaying the significance of subscription television because of the fact that it promised the easiest and most direct way that studios could get their feature films on television.

Subscription Television

In this early period of television a few subscription television services attempted to establish themselves, and Phonevision was one of the most prominent. Although the Zenith Radio Corporation had been developing the technology for a while, it was on August 4, 1949, that they asked the FCC to allow a three-month trial run of Phonevision in the Chicago area. Zenith was, along with RCA, one of the major radio manufacturers, and Phonevision was designed as an early pay-per-view system that would allow home audiences to watch feature films that had exhausted their theatrical runs on their home television sets via their phone lines. Their plan was to show first run films, current stage shows, and sports events to approximately three hundred subscribers, who would be asked to "contribute" amounts "equivalent to what regular charges for commercial service might be." The voluntary contributions were intended as

a tool to better gauge the extent of interest in the service, so that when the test period ended and Zenith officially launched the service, they could assign appropriate fees per view. Two hundred and fifty of the subscribers would be in the Lakeview telephone exchange area, and the rest scattered around the city. Special telephone lines would be installed and customers would receive a Zenith receiver and any other necessary equipment. Zenith would use their Chicago station W9XZV for the transmission of the programs, which would be scrambled for viewers without the Phonevision box. Phonevision subscribers could call the telephone company and let them know when they wanted to watch a program. A special signal would then go out from the telephone company, electronically releasing a key in the Phonevision unit that would then allow the program to come in normally.¹²⁵

In February 1950, the FCC granted Zenith approval for a commercial test of Phonevision. As *Variety* described, it “may prove an event that will have the deepest influence on the entertainment business in many decades.”¹²⁶ E.F. McDonald, the president of Zenith Radio Corporation, then contacted film studios asking for permission to license their films for their trial. E.F. McDonald was a minor celebrity for the wealth he accumulated in the radio and automobile industries. His arctic expeditions, radios in tow, had also brought a great deal of attention to both McDonald and his Zenith radios. He had been a serious force in broadcasting for decades, and played a leading role when he founded the National Association of Radio Broadcasters (later the National Association of Radio and Television Broadcasters, and today the National Association of Broadcasters) in 1922.

In March 1950, Cecil B. DeMille appeared at a Phonevision press conference with McDonald. De Mille advised the film industry that, “If some way of turning the home into a box office is found, the motion picture industry must go along. Phonevision is home box office. What

I am urging this industry to do is not to turn its back on progress. Shake your fists or swear but you can't stop it."¹²⁷ De Mille's comments not only prefigure HBO's successful moniker, they point to the fact that Phonevision was an early attempt to deliver a service to home audiences that only HBO was able to do decades later. De Mille also said he would be making his films available for the Phonevision test, but would not specify which ones. He cautioned that, "Commander McDonald has asked help from the industry. If the industry doesn't find a way to extend it to him, he will help himself."¹²⁸ McDonald stated that he had plenty of films for his test, but refused to say which films or to specify who had given them to him. He said that Gael Sullivan, executive director of the TOA, was working to determine who had given films and who had not.

After the press conference, *Variety* reported that, "McDonald prophesied that television will do to motion pictures what films did to vaudeville and legit theatre unless the industry cooperates with the new medium."¹²⁹ Those statements caused the theatres concern, and according to internal TOA memos, they feared that, "The experiments in phonevision or similar developments in home television box office may be disastrous upon movie attendance, should they become effective."¹³⁰ Following McDonald's statements, the studios declined his request to use their films for his new service. In response, McDonald filed a complaint with the Department of Justice about the studios' refusal to deal with him, and the DOJ began an investigation into the studios' position on television.¹³¹

The FCC was also concerned about the studios' dealings with Phonevision. In April 1950, the studios had a hearing before the FCC to oppose the FCC's policy that excluded antitrust violators from entering the television field. During that hearing, Commission members suggested to the studios' counsel that the policy of producers making films available to television stations

would be given great weight in whether or not to approve applications for television stations. The television stations were considered akin to the independent theatres that the studios were so recently convicted of engaging in anticompetitive behavior against. The remedies in the Paramount antitrust case were designed to prevent exactly the kind of anticompetitive behaviors the FCC suspected the studios might be engaged in by refusing to license their films to competitors in television. The hearing had just begun when Senator Charles W. Tobey (R, NH) a member of the Interstate Commerce Committee, released a letter to FCC chairman Wayne Coy that cautioned: “The commission should know whether another monopolistic conspiracy with respect to the use of motion pictures is being hatched by persons seeking licenses of the public airways. A refusal by motion picture producers to deal with Zenith for purposes of its duly authorized experiment would be a significant factor for the commissioner to consider in the matter now before it.”¹³² The Senator’s suspicion that the studios were hatching another monopolistic conspiracy would eventually lead to further investigation of the studios’ behavior in relation to television, and in particular, their feature films on television.

That same month, in a speech at a luncheon held by the Society of Motion Picture and Television Engineers, Spyros Skouras attempted to evoke sympathy for their decision to withhold their films from Phonevision, and remarked: “I am sure that you of all people understand what I am trying to do [in refusing to provide films for the Phonevision test] so as to safeguard the interest of the exhibitors and I hope that our industry will realize the importance of this matter.”¹³³ He also prophesied: “Let those who say that theatres will go out of business because of some gadget installed in homes understand once and for all that the motion picture theatres of America will flourish as they have never flourished before [because of theatre television].”¹³⁴ He announced that Fox planned to install large-screen television in twenty of

their Los Angeles theatres by early 1951. Skouras also advocated the elimination of second features from theatre bills and substituting TV programs for them. In response, Gael Sullivan, executive director of the TOA, announced that the reaction of theatre owners was “overwhelmingly favorable.”¹³⁵ After Skouras’ speech, he received a letter from T.R. Gilliam, the manager of Twentieth Century-Fox in Chicago, stating, “I also have spoken to a few of my friends who are not in any way connected with the motion picture business, and your address has made a very definite impression on them, as they seem to have accepted your statements as representing all of the important companies, that important motion pictures will not be given to television for home consumption.”¹³⁶ Skouras later insisted that his comments were intended solely for the issues of feature films for Phonevision, but he argued that other people had simply misunderstood him to mean feature films to television more broadly. Skouras explained, “I objected to giving any films to Phonevision, in spite of the fact of the pressure that the Department of Justice put upon us. I objected; while the other companies gave it, we did not give.”¹³⁷ Skouras’ comments and his attempt to fight Phonevision with theatre television was another move in this series of moves and countermoves in a long, drawn out, strategic conflict.

McDonald was in the audience during Skouras’ presentation, and afterwards said to reporters, “Theatres are moving into the homes and nothing can stop them. Television, not phonevision, is putting theatres out of business. What hasn’t occurred to Mr. Skouras is that theatre TV and phonevision are almost identical except that phonevision will have a bigger audience and will be cheaper.”¹³⁸ Skouras continued to use theatre television as the counterpoint for Phonevision and as his reasoning for not releasing films for the Phonevision tests. In May 1950, in correspondence between Skouras and McDonald, Skouras explained, “I am opposed to Fox’s giving pictures to phonevision at this time in order to protect the theatres, until they have

installed large screen television.”¹³⁹ It is also interesting, however, that Skouras said “until” the theatres had installed theatre television. Whether or not he was planning to release his films to television once theatre television became operational, he certainly left open that possibility.

The studios refused to participate in Phonevision, in large part, in response to the objections of the theatres that, as we have seen, strongly opposed films running on television in competition with the theatres. The exhibitor organizations commended the action of 20th Century-Fox and other companies, but they also issued warnings of the consequences if they changed their position. Trueman Rembusch stated, “Any producer foolhardy enough to furnish film for the Chicago Phonevision test, I am sure will find a spontaneous resistance toward the acceptance of his pictures by a regular theatre.”¹⁴⁰ Walter Reade, Jr. of the Walter Reade Theatres in New York City, wrote to Spyros Skouras as one of the exhibitors who were completely dependent on Fox’s films, thanking him for continuing to take the position as firmly and positively as he did on the matter of films for television.¹⁴¹ Arthur Lockwood, former president of TOA, viewed Phonevision as a “very serious threat.” M.A. Lightman, Jr., of Tri-State asserted, “it would hurt bad.” Fred Schwartz of the Century Circuit believed that Phonevision and theatres could not exist together, and Trueman T. Rembusch of Allied called it the greatest threat to exhibition conceived to date.¹⁴² Dave Wallerstein, of Balaban and Katz Corporation and co-chairman of the TOA’s Television Committee, wrote to Marcus Cohn: “I am very pleased that we have been able to make their road a rocky one. [... To] me it represents the greatest possible threat to our business, and we should do everything we can to prevent its coming about.”¹⁴³ Once again, the theatres proved themselves willing and able to effect change through mass letter writing campaigns and the casting of dire threats. Granted, the exhibitors

themselves felt threatened for a variety of reasons, but their constant cajoling and issuance of ultimatums must have eventually grown tiresome for the studios.

On two occasions Zenith Radio scheduled trial tests of Phonevision in the Chicago area. Both times the tests had to be postponed – the chief reason being that no major Hollywood studio would release any films for the test. Universal, for example, had received requests in April 1950 and October 1950, to furnish 35mm or 16mm feature films for Phonevision, but Universal told them they could not grant the request.¹⁴⁴ In May 1950, McDonald announced that the test they had planned for September in Chicago was temporarily on hold because they had been unable to get any films from the major studios. Zenith had even offered, “to pay at the same rate as would be charged a conventional theatre of comparable audience.” McDonald suggested that if the studios continued to refuse to license their films for Phonevision, the courts might have to get involved. He explained, “Failure of the test because of refusal of film producers to furnish films would unquestionably make it much more difficult to obtain FCC approval to the adoption and use of Phonevision as a permanent commercial television service.”¹⁴⁵ Since, however, the studios had in mind the possibility of their own systems to deliver their feature films directly to homes, one of their goals was preventing Phonevision from obtaining FCC approval. The studios also did not want to license their films to Phonevision because they wanted to keep them for themselves. By the end of May 1950, when it appeared as though Phonevision was not going to get off the ground, Trueman Rembusch told exhibitors “there was little danger of Phonevision putting them out of business.”¹⁴⁶ It would, however, come back to haunt them in other ways.

In response to the studios’ unwillingness to release their films for Phonevision, McDonald contacted his friends in Congress and filed a complaint with the DOJ about the studios’ refusal to deal with him. As a result, the DOJ began an investigation into the studios’

position on television.¹⁴⁷ The fact that Congress determined the amount of funding received by the DOJ influenced their responsiveness to McDonald and Congress's complaints, but the larger motivation for the DOJ to investigate was their ongoing concern about the studios' anticompetitive behavior. The DOJ's prosecution of the studios for antitrust violations in the Paramount case had been active for over a decade at this point, and the DOJ took very seriously any suspicions that the studios might have continued their anticompetitive behaviors. Whereas in later decades the DOJ, Congress, and the executive branch all adopted neoliberal approaches to antitrust that were friendlier to large corporations, and we see today in cases like Comcast and their mergers with NBC Universal and Time Warner Cable the significant sway held by major media corporations over the DOJ, the FCC, and Congress; the 1950s was one of the last periods when significant antitrust action was undertaken against large corporations on behalf of the complaints of independents.

Films on Television: Scratching the Surface

Phonovision was not the only new system that wanted the studios' films for television; the networks and stations still had a serious need for Hollywood's films. Based on a forty-station sample made by the FCC in 1950, stations were broadcasting an average of fifty-eight hours per week.¹⁴⁸ In March 1950, Frank Mullen, partner in Jerry Fairbanks Co., told the Hollywood Ad Club of "the devouring appetite of TV for filmed shows and produced statistics to show that Hollywood's current output of pictures would only scratch the surface."¹⁴⁹ In May 1950, *Variety* reported that, "Eastern TV stations will buy practically everything Hollywood has to offer providing the price is right. If the cost can be kept within the range of what local and national spot advertisers can afford, orders will come through with every mail delivery."¹⁵⁰ The major

studios were still not releasing their feature films to television, however, so networks and stations relied on the supply of films from independent and foreign producers.

By July 1949, feature films still took up almost 10% of total television broadcast time.¹⁵¹ In February 1950, “about 25% of local sponsored time is film programs. Most popular are the Westerns edited to 60 minutes running time. To split the cost of sponsorship, many stations break their full length features into three ‘acts’ with the intermission providing space for commercials.”¹⁵² Some stations were even borrowing programming techniques from the theatres. In July 1949, for example, WJZ-TV in New York inaugurated a weekly “bargain bill” of double feature films on Tuesdays from 7:30-9:30PM. The films were reportedly going to be “light comedies deemed suitable for summer entertainment, mainly ‘B’ pictures produced between 1940 and 1945.”¹⁵³

Los Angeles stations in particular were heavy users of feature films, and by the end of 1950, the seven L.A. stations were forecast to spend approximately one million dollars on feature films. By this time, many of the stations had exhausted the first runs of feature films that were available for television, and were in their third or fourth runs. Since television had continued to grow, and advertising dollars had grown along with it, the feature films were earning more on their third and fourth runs than they had on their first and even second. An article in *Variety* described the demand: “No other market in the country is laying out this much coin for old footage, which dates back to 1931 and runs to 1945. Big reason for extensive use of old pictures is fact there is no cable from the east nor any connection with Frisco stations here, isolated, must supply own programming other than kinescopes fed to the four stations with web affiliations.”[†]

[†] *Variety* further specified that: “KECA-TV is the only network station devoting a substantial part of its telensing time to pictures. ABC outlet is beaming 16 hours and 15 minutes of pix every week. Other two web stations, KNBH (NBC) and KTTV (Times-CBS) beam three and one-half hours and two hours of film, respectively, each stanza. Starting June 10 KTTV will add three additional hours of film footage per

Despite the large numbers of films being played on Los Angeles stations, Milford Fenster, film manager for television station WOR-TV in New York, which was owned at that time by General Teleradio, Inc., explained that in 1950, feature films only constituted a “minor portion of station programming.” When they used feature films they would air them “during segments other than what is known as Class A. In other words, they were used in what we call fringe time, early in the afternoon late at night.” Class A time was the “major time” from 7:30P until 11PM. B time generally went from 6PM to 7:30PM, and C time included all the rest of the broadcast hours.¹⁵⁴ The discrepancy between Fenster’s use of film and what the stations in Los Angeles were broadcasting highlighted the difference between the ways films were used on television in cities like Los Angeles that were not connected to a network and did not have easy access to kinescope recordings, like stations in cities like New York. For stations in New York and elsewhere in the northeast, it was easier to rely on network programming for their Class A time, and use features in their Class B and C time. Stations in Los Angeles had to use films more regularly in primetime as well as other times because they did not have the easy access to a network or kinescope recordings, and producing their own original programming was financially impossible.

Despite television’s need for feature film content, the major studios were still turning down television requests for their films. That did not mean, however, that they were not still considering and investigating the possibility. In 1949, for example, Fox had their television department investigate the prices being paid for feature films, but they decided that “prices were so pitifully low that it would be improper for [Skouras] as a trustee of his stockholders’ money or his stockholders’ assets to toss Twentieth Century-Fox’ tremendously valuable film library to the

week. KLAC-TV sends out nine hours of film each week; KTSL seven hours of oaters and two and one half hours of features during each five day frame. KFI-TV devotes only two hours and 30 minutes to pix each week. KTLA, the Paramount station, is the largest user of pix among the independent stations, grinding 12 hours and 45 minutes of such programming each week.” (“Old Pix Keep L.A. TV in Biz: 7 Stations Spend \$1,000,000 for Films This Year,” *Daily Variety*, May 31, 1950, 11.)

television market with prices as they were.”¹⁵⁵ Around that same time, the Film Council of New York, a nonprofit, cultural organization composed of people who dealt in motion picture film, film distributors, and other similar people, held a meeting in a hotel in New York. They often held workshops and conferences, and had as one of their central objectives the promotion and use of 16mm informational, educational, and documentary films.¹⁵⁶ Peter Levathes attended the meeting and recalled, “I remember a question from the floor as to whether Twentieth Century-Fox would sell its films to television if it would receive the proper price for it. And I had an offer from one of the men, whose name I don’t recall, he offered me \$25,000 for films.”¹⁵⁷ Levathes later testified that he thought the offer was more of a “heckle” from the audience, and the person never followed up. Fox continued to hold the line that television was developing rapidly, and they wanted to wait until it had grown to such a point that it offered prices for Fox’s films that Fox felt it deserved.¹⁵⁸

RKO took a similar position to that of Fox, and undertook investigations of the potential revenue they could earn from their films on television. Creighton J. Tevlin, vice president in charge of studio operations for RKO from 1948 to 1955, recalled they concluded that the amount of money they could gross was “entirely inadequate” for the quality of their films. He explained:

We further felt that in order to justify the sale of our product to television, that it would have to be on a bulk basis. This would serve the purpose of offering to television a substantial volume of product so that values could be built, and it would also serve the purpose to us of bringing in a worthwhile amount of revenue, and it would put us in a position to negotiate and discharge obligations and liabilities that we might incur by exhibiting these pictures televisionwise.¹⁵⁹

RKO’s commitment to a bulk sale also highlights the fact that at this time the studios still had not determined whether it would be more or less profitable to sell their libraries outright or to license their films on a percentage basis. RKO had clearly determined that a bulk sale was the best option for them at that time, but in the long run, it might not have been the wisest choice.

Jack Warner and Warner Bros. were also holding firm against releasing their films to television and publicly claimed that they had taken that position with their theatres in mind. In order to refute stories that had been floating around to the contrary, on July 13, 1950, Jack Warner announced at a Warner Bros. sales meeting: “And, for the benefit of a few irresponsible gossips, I want to say that the only screens which will carry Warner Bros. Productions will be the screens of motion picture theatres the world over.”¹⁶⁰ Regardless of the fact that the studios’ divorcement from their theatres was moving forward, the studios still considered the theaters as incredibly important because, as Columbia argued, over eighty-five percent of their revenues were derived from theatrical exhibition, and the economic stability of that source of income was of the utmost importance.¹⁶¹ As long as the financial benefits of television remained uncertain, the studios were not willing to risk their relationships with their theaters on the bet that television might someday provide as much revenue as the theaters. However, as Columbia explained, “reports of declining theatre attendance by television set owners and the increasing number of theatre closings were regularly brought to management’s attention.”¹⁶²

United Artists was unburdened by the ownership of theatres, but they were also keeping in line with the other studios’ position against releasing their films to television. They did, however, hedge their bets a bit. In March 1949, Myron Blank and Stan Prenosil of TOA met with Paul Lazarus at United Artists to discuss the exhibitors’ concerns regarding the competition of 16mm films with established 35mm theatres. Lazarus told Blank and Prenosil that, “A contract was being negotiated with Film Classics which would grant that company a franchise for exclusive distribution of U.A.’s 16mm films but with U.A. retaining control of the prints and not allowing them to be shown in competition with established theatres.”¹⁶³ Lazarus pointed out, however, that this would apply only to future product, as many of their older films had already

been sold out-right with no strings attached. Also, UA had developed a policy of not selling any motion picture films to television when the films were still in theatrical distribution. However, the company was retaining its right to sell other films not in theatrical distribution to television, so they did not want to be restricted by any agreement to keep their product off television for any specified length of time. The studio was also retaining television rights for all future films.¹⁶⁴

Even though the major studios were still not selling or licensing their feature films for television, feature films still managed to find their way to television. As in previous years, those films were primarily foreign and independent films. As CBS explained to Mrs. Frank J. Lowell, of the Scarsdale Movie Council, in response to her inquiries in January 1950, most of the films that were available to television had little, if any, theatrical value, which was the major reason they were available for television use. Even though the films had little remaining theatrical value, the network still chose the available films with the best “entertainment value, quality of production, and quality of technique” as well as films that had the “broadest appeal to all age groups.” CBS further explained: “The age limit [of the films] depends upon the producers of motion picture films who are reluctant to release pictures of recent vintage because of their theatrical value. There are other limitations imposed by contractual relations between producers and organizations like ASCAP [American Society of Composers, Authors, and Publishers] and AFM.”¹⁶⁵ When the CBS-TV film department got the rights to air feature films, they offered the films to their affiliates. In March 1949, for example, they offered their affiliates first run rights in their areas to four film packages totaling eighty two features and shorts. The films were all on 16mm and “free and clear of any limitations as to sponsorship or insertion of spots.”¹⁶⁶ Prices were to be based on a percentage of each station’s rate card, starting at fifty five per cent. CBS outlets had a thirty day first refusal on the packages after which they were offered to other

stations. The four packages were made up of fifty-two British features, thirteen Vienna Philharmonic concerts, eight “Strange as it Seems” shorts, and nine “Musical Moods” fillers. The features were for one-time use only.¹⁶⁷

In order to accommodate the demand for feature films on television, new distribution companies were popping up to help distribute any available films to television stations across the country. Most television film distributors were located in New York, a few were on the west coast, and some had branch offices in other major cities. Films were typically rented from these distributors rather than directly from the various movie studios.¹⁶⁸ For example, Cinetel Corporation, run by Edwin Woodruff, was a film purchasing agency that started in 1949, and in July of that year announced that it had signed thirteen stations as subscribers. Cinetel offered films on an “optional acceptance basis, with fees based on station’s rate card: 40 per cent of the hourly rate for features; 20 per cent for two reel shorts and 10 per cent for one reelers.”¹⁶⁹ In May 1950, Cinetel licensed fourteen films to KLAC-TV for \$3,500. In that same month, KTSL leased twenty six films from Toby Anguish for \$6,500, and KNBH paid \$3,500 to lease ten films from a, “New York company. The group includes films released as early as 1934 and as late as 1945, and star people such as Kay Francis, Fred Astaire, and Douglas Fairbanks, Jr.”¹⁷⁰

Quality Films was another distributor of feature films to television that began operating in late 1949 from the General Service Studios in Hollywood. They got their product primarily from independent producers who had made features for theatrical release. They also got some films from the Federal Court in bankruptcy. Their customers were television stations, advertising agencies, and sponsors.¹⁷¹ Charles Weintraub, the president of Quality Films, later recalled, “There was more of a demand, I would say, [for feature films] at the very outset when there were only 102 stations and they were scrambling around trying to find programming. A lot of

merchandise that we call film, which never should have been bought, was bought merely to fill up time.”¹⁷² He continued, “In the early stages of the game when the buyers didn’t know actually what they were buying, if you were a pretty good talker you were able to do better than the guy that wasn’t. There wasn’t any fixed rate. You did the best you could.”¹⁷³

By November 1949, WPIX in New York was supplying twenty-six stations in twenty-two cities throughout the country with film for television. Ed Evans was their director of film programs in charge of national sales. They offered two feature film packages: one comprised of thirty six westerns, and the other included features such as *A Star is Born* (1937 dir. William Wellman) and a group of Alexander Korda films. An average of three hours per week of film was supplied by WPIX to each of the twenty-six stations.¹⁷⁴

Standard Television Corporation was another distributor of feature films to television and had acquired exclusive television rights to seventy-five J. Arthur Rank feature films in December 1949. Rank was a producer and exhibitor who started the Odeon theatre circuit and co-founded the Pinewood Studios in England. By the late 1940s, he was experiencing financial difficulties and neared bankruptcy, which might explain his willingness to sell or license his films to television. All of the films involved in the Standard deal had been produced after 1944. At the time, Irving Shapiro was president of Standard, and Robert S. Benjamin was president of the Rank organization in the U.S. About fifty of the films had never had a theatrical release in the United States, and all of those had been produced since 1947.¹⁷⁵ Among the British stars appearing in the films were Laurence Olivier, Sir Cedric Hardwicke, James Mason, Margaret Lockwood, and Richard Greene. KECA-TV later licensed the films from Standard for an undisclosed amount of money for a two year period in which KECA were to have the rights to exclusive first and second runs.¹⁷⁶

In January 1950, J. Arthur Rank concluded another sale of U.S. television rights to a group of his features. This time Lopert Films, a distributor in New York who typically distributed foreign films to art theatres in America, bought the television rights to a package of thirty of Rank's feature films. Most of the films in this deal, as with the Standard deal, had never been shown in U.S. theatres, and according to *Variety*, Rank sold these films because he realized he would never make headway with them in the theatrical market in the United States. In the deal, Rank specified that Canada be excluded from the area covered by the television broadcast because he still hoped to sell his films for theatrical release there.¹⁷⁷

Variety Film Distributors was another distributor of feature films to television, and in January 1950, they had purchased nine feature films from independent producer Irving Lesser. Most of the films were significantly older, but four of them were fairly recent, including *Make a Wish* (1937 dir. Kurt Neumann), starring Basil Rathbone and Bobby Breen; *Hawaii Calls* (1938 dir. Edward F. Cline), starring Bobby Breen and Ward Bond; *Breaking the Ice* (1938 dir. Edward F. Cline) featuring Charles Ruggles, Bobby Breen, and Dolores Costello; and *Way Down South* (1938 dirs. Leslie Goodwins and Bernard Vorhaus), starring Bobby Breen, Ralph Morgan, and Alan Mowbray. Irving Lesser reportedly had several deals in the works to sell his films for television distribution.¹⁷⁸

Masterpiece Productions in New York also distributed feature films for television, and in February 1950, they sold a package of twenty five "top name pictures" that were made between 1938 and 1943, to Paramount's KTLA for \$27,500. KTLA was to have first and second run rights in Los Angeles. Walter Wanger produced eight of the films, which included *Stagecoach* (1939), *Trade Winds* (1938), *Sundown* (1941), *52nd Street* (1937), *The House Across the Bay*

(1940), *History is Made at Night* (1937), *You Only Live Once* (1937), *Blockade* (1938), and *I Met My Love Again* (1938).¹⁷⁹

During these early years of television when things remained in flux and the structure of the industry (both film and television) had not yet been settled, there were some unusual players distributing films to television. In some cases, managers were functioning as distributors, and in May 1950, Eddie Sherman's motion picture management firm leased thirty-nine old British features to KTSL for \$9,750. Don Hine, the production director for the station, negotiated the deal.¹⁸⁰ Banks were also starting to get in the business of distributing feature films to television. In January 1950, *Variety* reported that five "top banks" were "holding the sack for approximately \$10,000,000 in bad motion picture loans to indie producers. Figure represents almost 15 percent of total \$70,000,000 banks now have invested with Indie producers. [...] They are seriously considering taking over film negatives in several cases."¹⁸¹ The banks planned to sell or license the films to television to try to recoup some of their lost money.

All of those cases, whether a more conventional distribution company or not, demonstrate the ways in which the major studios' failure to innovate in terms of distributing film to television allowed for newcomers of all types and from all backgrounds to fill that need. The studios had a major nationwide system of distribution in place that could have been utilized to distribute content to television stations throughout the country. Instead, the studios remained focused on their 35mm business, and allowed these young upstarts to develop systems of distribution for television.

There was such a large demand for feature films on television that the amount of money available to pay for them was increasing by leaps and bounds. By 1949, distributors were paying between two thousand and seventy five hundred dollars for the top feature films for television.

Only a year or two later, that figure had jumped substantially, and they were paying between five thousand and fifteen thousand for the top features for television. In 1949, distributors earned an average of \$7,600 per feature film as its first year earnings. This was the first year earnings and not average gross earnings because distributors would experience a “play-off recovery” for the films, which meant that they would earn about sixty percent of the cost they paid for the film in the film’s first year on television, about thirty percent in the second year, and about fifteen percent in the third year.¹⁸² Television stations, using WOR-TV as an example, would pay between fifty and seventy five dollars for the single run of a feature film. The top price they paid was between \$700 and \$800.¹⁸³ If each distributor was able to license a film to even ten or twenty stations in different broadcast areas, they could easily recoup the money they spent buying the rights to the films, and likely make a nice profit.

One ongoing issue with feature films on television was whether or not the content and aesthetics of the films were suitable for television. There were even questions raised as to whether or not the showing of feature films on television was in the public interest. At this time, one of the FCC’s requirements for television networks and stations was that in order for them to qualify for a license to use a part of the broadband spectrum, they were supposed to broadcast content that somehow served the public interest. In July 1949, it was reported that the FCC was going to “crack down” on television stations whose programming was “not entirely in the public interest.” They cited the use of test patterns used to fill airtime requirements and the repetition of feature films that had already been shown to local television audiences as particularly problematic.¹⁸⁴ Many stations would broadcast feature films multiple times during a week, or even daily, in order to fulfill their FCC required minimum hours on air, but the FCC apparently did not consider that a good use of the public airwaves.

In terms of making sure that the content of feature films was appropriate for a home audience, many television networks and stations relied on the fact that feature films would have had to pass through the MPAA's censorship board before they were granted a theatrical release.¹⁸⁵ Particularly for films that had to pass through the rigorous screening process of the Production Code Administration (PCA), there was confidence that the content would be suitable for the family audiences that watched television at home. That would not apply, however, for the many foreign and independent films that made their way to television without necessarily having obtained approval by the PCA or Hays Office. For those films, the content may not have been as family friendly. Therefore, substantial concern existed over the appropriateness of feature films for television audiences. There was a patchwork of censorship processes and oversight in the television industry at this time. The advertisers had some say in the content if advertising was to be shown with the film, and the FCC could revoke a station's license if they played films whose content was not in the public interest. It was not until the National Association of Broadcasters instituted their Code of Practices for Television Broadcasters in December 1951, however, that television anointed a group to self-censor television content.

In one instance, Harry Bannister, general manager of WWJ-TV, Detroit, in a memo to his staff, outlined some guidelines for their programming:

Our television programming at all times must be so meticulously correct that no portion of our schedule will give offense in the slightest degree to anyone at any time. There must be no use of 'blue' material or of anything susceptible to double entendre. There must be nothing in our schedule which will cause the lifting of an eyebrow by even the most strait-laced in our audience. Appearance, language, intonation, gesture – must all be beyond reproach. Racial comedy types must be avoided. References to God or religion must always be reverent. Crime and drunkenness, when used, must be condemned. A list of all taboos would be too lengthy. In all cases, good taste, propriety and the avoidance of offense must be the ultimate criteria.¹⁸⁶

Those guidelines appear to be very much in line with the MPAA's production code, but, again, it may have presented a problem for films made before the institution of the code or for any foreign or independent films that had not been subject to the censorship of the code.

Censorship issues in relation to films on television were popping up in different states and localities that were reminiscent of those that had caused problems for the film industry prior to the adoption of the MPAA's code for theatrical films. In one case, the Pennsylvania State Board of Censors moved to require its seal on all films aired on Pennsylvania television stations. In response, the J. Walter Thompson (JWT) advertising agency threatened to eliminate films entirely from their television programs. It was a significant enough problem that five Pennsylvania television stations brought a lawsuit against the Board of Censors to stop them. John W. Reber, vice president of JWT, complained that there were another half a dozen outside organizations that imposed even greater restrictions on television content than the censor boards. Other plaintiffs in the lawsuit cited the greater costs entailed by censorship, especially if each state board insisted on the showing of their seal of approval. It also posed a problem in terms of how to manage the timing and placement of the enforced showing of censor board seals in addition to commercials. Some of those who testified against the Pennsylvania State Board of Censor's order were James L. Caddigan of DuMont; Ray Kelly, head of kinescope recording for NBC, Dr. Leon Levy, president of WCAU; Roger W. Clipp, general manager of WFIL; and Donald A. Stewart of WDTV, Pittsburgh.¹⁸⁷

Another issue for films on television was the fact that the aesthetic quality of films broadcast on television remained poor. Not only were the screens averaging only twelve inches, for the television broadcast of feature films most television stations were using standard 16mm projection prints that had high contrast and a wide brightness range that was necessary for

theatrical exhibition, but, when used on television, resulted in empty shadows and monotonous highlights. James Gordon, an engineer for 20th Century-Fox, presented a paper to the American Society of Cinematographers TV research committee wherein he recommended the use of 35mm low contrast, fine grain positive film for television broadcast. That, he argued, would considerably improve the reproduction quality of motion pictures on television, and give films on television the definition it was lacking.¹⁸⁸ The problem, however, remained that most television stations had projection equipment for 16mm films, and could not afford the costs to equip their stations with the projectors and fireproofing necessary for the 35mm nitrate film that was still common at that time. Although the use of 35mm film may have been preferable, it was still not practical.

Even though the quality of the content and aesthetics of films on television was questionable, feature films still earned some of the highest ratings on television, regardless of the time of day they were broadcast. In April 1950, WPTZ in Philadelphia managed to get a 27.1 rating for its *Hollywood Playhouse* show that aired feature films during the day. WPTZ, in an effort to determine the most successful type of programming for the daytime, had analyzed radio schedules and ratings, and found that although soap operas had been successful during the day, they were too expensive for independent stations. WPTZ looked at the success of matinees at the local theaters, and decided that feature films were the answer. They named the timeslot *Hollywood Playhouse*.¹⁸⁹

In order to find enough feature films to program them every day of the week, WPTZ searched for a film package deal that consisted of films of good quality at a price that they could afford. They found Associate Artists Productions who had built up a library of films so that advertisers would be sure of a consistent supply of films on a continuing basis. They offered

WPTZ a choice of over two hundred features on the condition that they would contract with them on a firm basis for the entire package.¹⁹⁰ WPTZ waited until the number of television sets in the Philadelphia area exceeded four hundred thousand and offered advertisers what was at that time a unique rate set up. It was, in fact, unusual enough to merit a detailed description in *Television Magazine*:

Hollywood Playhouse opens with the usual slides and fanfares and the announcer coming in over the fade-down to say: 'WPTZ presents *Hollywood Playhouse*, brought to you today by Kelvinator Refrigerators; Sweetop Cake Icing; Oscar Mayer Meat Products and Freihofer Bread.' While each company name is being announced, a slide showing the product and the company name is shown on the screen. The announcer then goes into the film title and fades off as credits and sound come up. At the time of the first participation announcement – approximately the 12 minute mark – the announcer reads: 'You are watching *Hollywood Playhouse*, today featuring Kay Francis and Bruce Cabot in "Divorce" and brought to you by Sweetop Cake Icing; Oscar Mayer Meat Products; Freihofer Bread and Kelvinator Refrigerators.' The Kelvinator one minute film commercial then segues into the screen. While the announcer is saying 'Freihofer, Sweetop, Oscar Mayer, etc.,' these companies' slides are being shown. Following the full commercial the picture resumes.¹⁹¹

Then, when the second commercial time slot arrived, Kelvinator would move into first place, and one of the four other sponsors aired their one minute commercial. This rotation continued for each of the remaining time slots in the program. By the end of the show, each advertiser had six different brand and title identifications for the cost of a single participation advertisement.¹⁹²

The success of WPTZ's programming and their incredibly high ratings garnered a great deal of attention from both television programmers and advertisers. It reinforced the notion that feature films on television could be incredibly successful, and supported the sensibility of the shift to multiple sponsorship for advertisers. Although scholars such as William Boddy have attributed the shift in television sponsorship from single sponsors to multiple, participation, or "magazine" style sponsorship to Pat Weaver and his NBC spectacles,¹⁹³ clearly local television stations were using that strategy years earlier than the networks. The fact that local stations

would have been the early adopters of this strategy makes sense particularly in light of the fact that one of the main reasons the networks moved to participation sponsorship was to mitigate the ever increasing costs required to produce television content. By spreading the production costs among a group of sponsors, it opened up television advertising to a whole new range of sponsors who could advertise without such intense financial commitment. The difficulties of finding sponsors who could finance entire programs on their own had been a serious problem at the local level since the beginning of television, and whether or not Pat Weaver and other in network television got their ideas for magazine style advertising from the practices of the local stations, the local stations were the real trailblazers in that arena.

Regardless of who was sponsoring them, the fact was that feature films, even feature films that were simply bad films, did very well on television. An August 1950, special film issue of *Television Magazine* reported on the continued success of feature films on television regardless of the quality of the films: The surest bet in television programming is sponsorship of Hollywood movies and Westerns. No other category has consistently come up with such high ratings and at such a low cost. [...] The popularity of movies on television apparently is not affected to any marked degree by a specific feature film.”¹⁹⁴ R.C. Francis, the vice president of Campbell-Ewald, said that the cost of a feature film program including commercials, film, production, etc., was around twenty six hundred dollars a week. That was comparatively inexpensive considering it was the total expense for four hours of programming, live commercials and class A time. Costs for the “slightly vintage films” ran from fifty to one thousand dollars depending on the size of the market, the number of pictures in the package, the quality of film, the number of stations in a city, and whether they were first or second run.¹⁹⁵

As we saw earlier, much to the dismay of the theatres, the television industry was still making a concerted effort to advertise to their audiences the fact that they could, via television, enjoy feature films from the comfort of their homes. In September 1950, Bob Rains at Universal wrote to Duke Wales at the MPPDA, alerting Wales to a commercial that had aired on KECA-TV that told viewers that KECA-TV was going to schedule films as selected by the audience. There were approximately a dozen films listed, and viewers were asked to write in with the names of the films they wanted to see. They ended the commercial by saying, "Why go to the movies and pay your money when you can sit at home, enjoy yourself and still see top films." Rains also noted a statement in *Variety* that the television industry was planning to adopt the expression, "Old movies are better than ever," to combat the film industry's slogan, "Movies are better than ever." Rains saw this as a trend in the television industry, which he believed made it "imperative that a committee be formed to meet with the television industry and see if such statements can't be done away with."¹⁹⁶ This interesting marketing tit-for-tat increased the sense that television was in competition with film, and it reinforced the notion that if feature films appeared on television, audiences would not bother to make a trip to the theatres to see them.

Hopalong Cassidy, Roy Rogers, and Gene Autry

In the late 1940s and early 1950s, some of the most popular and commonly televised films were B-Westerns. Many of them transitioned to television first through locally aired reedited film serials, and eventually through national syndication and network distribution.¹⁹⁷ By May 1950, KTLA, Paramount's station in Los Angeles, was one of the heaviest users of B-Westerns. They aired almost thirteen hours of the genre every week. Hopalong Cassidy was one of the most popular stars of the genre, and his films commanded the highest prices at one

thousand dollars per showing on the third run.¹⁹⁸ Since the appropriateness of film content was a special concern for television broadcasters and audiences, these B-Westerns were perfect film fare for the new television demographic of the suburban, nuclear family with kids.

William Boyd, the actor who played Hopalong Cassidy, was able to release his films to television because he owned the rights to the films himself. Between 1933 and 1943, he starred in fifty-four hour-long films that had been produced by Harry Sherman for Paramount. After Boyd had a series of contract and production disputes with Paramount, he self-produced another twelve films in 1946 and 1947. United Artists distributed those films theatrically. When, in 1948, Boyd believed that the theatrical value of the films had been depleted, he successfully negotiated to purchase the television and nontheatrical rights to the films that had been produced by Sherman, as well as the rights to any future uses of the Hopalong Cassidy character.¹⁹⁹

When Cassidy's films first appeared on television, Cassidy did not have many endorsement deals, or what people at the time called an "extensive commercial tie-up business." After his films had been shown on television for some time and had found success, a very extensive commercial tie-up business developed.²⁰⁰ One of his promotional kits told potential sponsors: "Hoppy is probably the only 'personality' with such all-over power in ALL FORMS of advertising such as TV, radio, newspaper comics, magazines, books, records, movies, etc. [...] Make sure that if Hoppy comes to your town that he is endorsing your products and not your competitors."²⁰¹

In 1949, Hopalong's popularity literally reached dangerous proportions when one of his personal appearances turned into a riot. He had been scheduled to appear at the local department store, John A. Brown Co., to pass out "lucky pocket pieces" to his young fans. The organizers of the event had expected three to four hundred children to attend, but they ended up with a mob of

thirty-five thousand kids. Reports in *Television Daily* described the melee: “The police escort soon lost control of the situation as the wild-eyed small fry overturned showcases and turned the store into a shambles in their enthusiasm. Plans for Hopalong’s grand entry into the store auditorium were dropped hurriedly. He was obliged to sneak up an alley, like a cattle rustler, and enter the store by fire escape.” Cassidy later proclaimed, “This is the most wonderful thing that ever happened to me in 30 years in show business. I never dreamed television would do this to me. It’s wonderful.”²⁰²

By early 1950, Toby Anguish’s Television Pictures Distributing Corporation controlled the distribution of Hopalong’s films, and they were grossing \$1,000,000 per year through television. “Hoppy’s” films were being broadcast in forty-eight of the fifty-eight available television markets. NBC’s owned and operated and affiliated stations were televising the films in the eastern markets, and KTLA broadcast the films in the Los Angeles area. Other markets have been filled in through the lease of the films to independent stations. The stations and NBC affiliates were paying between two hundred and one thousand dollars per film, according to the size of the market in which they are being broadcast.²⁰³

When other studios saw how well westerns, and the Hopalong Cassidy films in particular, were performing on television, they began investigating the westerns they had stored in their vaults and “sounding out” their exhibitors on their reaction to the possibility of selling older westerns to television.²⁰⁴ Monogram had already sold two hundred and fifty of their old westerns to Teleinvest, Inc., a distributor in New York. Some of the studios still had reservations about selling the old films of stars they were still filming, “for fear of rousing exhibs’ ire.”²⁰⁵ And for good reason, as the studios had learned from instances such as one in September 1950, when

Allied Exhibitors, a Midwest chain of theatres, refused to show Gene Autry's films in their theatres because he was appearing on television in films produced directly for television.²⁰⁶

Gene Autry and Roy Rogers, both stars at Republic Studios, had both moved to get involved in television when they noticed the success of Hopalong Cassidy in the medium. Both Rogers and Autry, like Cassidy, had extensive merchandising and licensing deals, and one of the reasons Rogers and Autry decided to get into television was to combat the competition from Cassidy to their merchandising and licensing deals. Rogers' representatives had discussed with Republic the possibility of putting his films on television, but Republic, at the time, "on account of the exhibitors," said no films could go on television. Rogers also said that whether or not Republic could or could not put the films on TV because of the exhibitors, they could never work out a deal because of Rogers' commercial tie-ups.²⁰⁷ The details of the negotiations over Rogers' and Autry's films on television would become a series of lawsuits and appeals that would play a significant role in the larger struggle over feature films on television.

In early 1950, William Arthur "Art" Rush, called Republic and asked to meet with Herbert Yates, the president. In that meeting, Rush explained that he had studied the popularity of Hopalong Cassidy, and called Yates' attention to the extensive advertising campaigns that Cassidy's sponsors were running. Rush also outlined the ways the department stores were selling Cassidy's merchandise, and explained that he and Rogers were concerned that they were going to lose some of their own merchandising business as a result. According to Yates, Rush's plan to combat that competition was to have Republic put Rogers' films on television. Rush had suggested that his company, Art Rush, Inc., could manage the distribution of Rogers' films to television, and he even suggested that he would take on all of Republic's films – not just Rogers'.²⁰⁸ In a letter to Yates, Rush had explained that Quaker Oats was "ready and willing" to

sponsor the films on television and provide local and national advertising for them. He described the transmedia marketing campaign that they planned to set in motion: “Prior to releases on television, all our newspapers, running the Roy Rogers comic strips, the individual stations, Quaker Oats, our 62 licensees, RCA-Victor, our radio show of 561 stations, etc., would bring everything together simultaneously into one gigantic exploitation campaign to put it over the top.”²⁰⁹

In Rush’s meeting with Yates, Yates explained that if Rogers felt like he was losing business to Cassidy, Republic was also suffering as a result of Cassidy’s popularity because the theatres were booking old Hopalong films instead of Republic’s films. Yates offered the example that, “Metro, who never handled that type of picture, put a special campaign on in 24 theatres in and around New York on a weekend showing Hopalong Cassidy pictures.”²¹⁰ The meeting concluded with Yates warning Rush:

That it was time for Rogers to make up his mind whether he could make more money from his merchandise business and television than he could continuing making motion pictures. I reminded, or rather I stated to him, that for a number of years 81 of Rogers’ pictures were distributed throughout the world with heavy publicity and advertising campaigns and his popularity as it stood today was due to those pictures and that publicity and advertising. And I told him that I think that the matter is serious and I advised him to watch his step.²¹¹

Sometime shortly after that meeting, Robert “Bob” Newman, then vice president of Republic, called Petrillo to inquire as to the possibility of the AFM relaxing their restrictions against films on television, and Rush happened to overhear the conversation. Rush asked Newman if his inquiry was in regard to the televising of the Rogers’ films, and Newman confirmed that it was.²¹² Shortly after that conversation, Frederic Sturdy, a lawyer for Rogers, met with Newman. Newman told Sturdy that Republic was going to make ten films available to Sherman & Marquette for Quaker Oats. At that point, Sturdy told Newman that he needed to check the

commercial rights to the films because he believed Republic did not have the rights to release the films to Sherman & Marquette or Quaker Oats. This was the first time that it had been declaratively stated to Republic by Rogers that Republic did not have the commercial rights to his films, and, according to Art Rush, it prompted a great deal of “colorful” language from Newman.²¹³

In February 1950, Rogers met at Republic Studios in Yates’ office with Yates, Newman, Rush, Saal [in charge of Rogers’ publicity for Republic], and a man named Corwin from the TOA. They were discussing whether or not to put Rogers’ films on television to combat the competition from Hopalong Cassidy. Yates had asked Corwin to attend the meeting so that he could share with Rogers the exhibitors’ opinion of motion picture stars, whose films were currently in theatrical release, appearing on television. Yates wanted Rogers to understand why there was some question in Republic’s mind about releasing Rogers’ films to television at that time.²¹⁴ Rush was also told for the first time that Republic claimed to have the right to put old Rogers films on television under commercial sponsorship without Rogers’ consent.²¹⁵ Yates was also concerned about the issues with the American Federation of Musicians in terms of the “exorbitant standby pay” they would have to give the Musicians Union for the music in the films.²¹⁶

It was around that time that Yates was also having meetings with Music Corporation of America (MCA) representatives on the possibility of having them represent Republic in the sale of some of their Roy Rogers or Gene Autry films to television.²¹⁷ MCA wanted to handle the sales of Rogers’ pictures for a “substantial percentage in the deal.”²¹⁸ This negotiation demonstrates yet another of the many ways that film made their way to television in this period, and was an early example of MCA rise as a prominent packager for the film and television

industries. Yates declined the deal with MCA at that time because, “He had to check the distributors and know where he was headed in the television field before he was going to make a deal with anybody.”²¹⁹ Rush said it was “sort of a shock to me that [Yates] would all of a sudden evince interest in the television field.”²²⁰ Yates explained that although MCA did try to buy the television rights to Rogers’ films, the amount they offered was not enough to interest them. He recalled, “I think, if I remember correctly, it was a million or a million five hundred advance and then we participated in the gross income. It was that sort of a deal. [...] Well, they were to take over the television rights outright.”²²¹

Then, in February 1950, Gene Autry read an article in *Variety* that reported that Republic had offered his films to television for one million dollars. The article stated:

For the asking price, the buyer gets the pictures exclusively and in perpetuity for television. Several networks are reported to have entered bids but hold that \$20,000 per picture is too high a price to pay for old westerns. Republic’s package price is said to be based on what the Hopalongs have brought. Last summer Robert Savini, said to represent an eastern syndicate, met the million-dollar price but later withdrew.²²²

Autry himself had previously offered to buy the films, not for television, but to “get them off the market because they were hurting our newer pictures made at Columbia.”²²³ Autry asked Yates if Yates would give Autry an opportunity to meet any other offer for the films, and Autry claimed Yates agreed to do that. Autry never actually made an offer of his own, however, because he understood MCA’s offer to be that of a partnership with Republic rather than a sale of Autry’s films outright.²²⁴ And he could not compete with that.

By that time, Autry was already involved in television in terms of station ownership. Autry bought a fifty percent interest in station KOWL in Santa Monica, CA, during its construction in 1947. It went on the air in July 1947, and in September 1949, Autry sold his half of the station to his co-owner, Art Croghan.²²⁵ In 1949, he had bid on station KTSA in San

Antonio, Texas, but eventually withdrew his bid when faced with competition from the San Antonio Express.²²⁶ He continued to purchase television stations, however, and had a significant business in that field.

In November or December of 1950, Sturdy received a phone call from Herbert Yates, which was, as Sturdy recalled: “I think everybody will agree a most unusual occurrence.”²²⁷ Yates told Sturdy that he had been working on figuring out the issues related to their feature films on television, and he had been checking in with the exhibitors to gauge their feelings on the subject. From those conversations, Yates believed that the exhibitors might not complain if Rogers did not go on television too often. He asked Sturdy what Rogers had in mind and how often he expected to appear on television.²²⁸ Rogers had been negotiating with Quaker Oats about a television deal for a television show and possibly including his older films.²²⁹ Sturdy explained that they had discussed Rogers appearing on television through those shows about once a week. Yates was concerned that once a week was still too often, and was afraid that they would still meet with exhibitor opposition.²³⁰

In another meeting in late 1950, Rogers’ representatives and Republic continued their back and forth on the subject. Robert Newman had a meeting scheduled with Yates and Sturdy. Saul Rittenberg, a lawyer at Loeb & Loeb who represented Republic, was at the studio on another matter, and joined the meeting. They started discussing the possibility of a new deal for Rogers, and the fact that television was presenting a problem. Newman stated something to the effect that Republic had been working on putting Rogers films on television, and Sturdy responded by saying they had a “theory” that might prevent them from doing so. Newman later testified, “I told him we owned all of the rights in those pictures for every type of exhibition, that they were our property entirely, and there was nothing he could do to stop us from putting them

out when we decided to do so.”²³¹ In the next year, these conflicting positions would come to a head.

Hollywood Television, Inc. and Columbia Screen Gems

Republic had not only been working on distributing their Rogers and Autry films to television, around October 1950, they had taken the serious step of forming a subsidiary, Hollywood Television, Inc., to handle their television business. Hollywood Television had about a dozen employees, and their offices were located at Republic Studios in North Hollywood. They would negotiate with the television directors of the advertising agencies in the matter of sales of feature films. Hollywood Television would also negotiate with the advertising agencies regarding possible production for television and the leasing of Republic Production’s facilities for making new product for television.²³²

Although Hollywood Television used the term “sell” in regards to their films, they would actually only rent or lease their films for television but never make any final sale. There was no set price for the films, and every sale or license was a matter of individual negotiation.²³³ Republic would license the pictures and the television stations would handle the advertising within the limits of the license which Republic gave them, and which indicated that the television station had no right whatever to use any of the names or the members of the cast in their advertising or commercials or anything else.²³⁴

The films were processed for television at Consolidated Film Industry, which was also a subsidiary of Republic, but was located in Fort Lee, New Jersey. Since there were time restrictions related to commercials and scheduling for films shown on television, Consolidated would deal with cutting the films down to time. If a film was to be shown on television, Morton

Scott, Hollywood Television, Inc.'s vice president and general manager in charge of production and distribution, would send a cutting continuity to Consolidated advising them that that picture was to be processed or cut for length. For that to happen, a work print needed to be ordered from the negative. Then there was a fine-grain print ordered from the negative, which was cut to conform to the work print cut, and from which the final prints were made. Scott would then receive reports from Consolidated as to which films were completed.²³⁵ In terms of the form in which feature films appeared on television, this example of Consolidated taking on the responsibility of editing the films for television demonstrates the lack of an institutionalized structure and process for films making their way to television. In some cases, as with Consolidated, these lowly labs were tasked with reediting films for television, and in other cases that responsibility lay with the television stations or networks, local censorship boards, film agents or managers, distributors of films to television, and even individual producers or actors who had purchased the rights to their films.

In addition to cutting the films to fit the structure of television the television schedule, Republic also had to contend with their contract restrictions with the AFM. In order to avoid violating the terms of their agreement, the musical score was "redone" by Republic for every film.²³⁶ Although they had to rerecord the musical scores, the AFM only controlled playing musicians, but not singers, so any singing that appeared in the films was not subject to the same restrictions. That did not mean that the singing and dialogue did not present a problem, though. As Morton Scott recalled: "In the majority of instances it is physically impossible to replace the music which was in the original picture, because the track is a composite track for which we have no individual separate tracks."²³⁷ The sound originally existed on separate tracks and was put together on a composite track for the final print. After a period of years, those separate tracks

were thrown away, and all the studios had left was the one composite track from which they could not erase anything without losing everything.²³⁸

As Scott recalled, there were many complications related to editing feature films so that they would work on television. In terms of maintaining the integrity of the story, he explained: “For example, you may have a picture which runs an hour which has an extraneous sequence in it which will come out without having anything at all to do with the story, in which case one fast chop will take care of it. You may have another story which, in order to retain the story line and interest, you may have to make several dozen smaller cuts.”²³⁹ There were also difficulties presented by the varying conditions of the prints, as well as the need to negotiate cuts in a print that had composite audio and video tracks. In those cases, finding a spot to make a cut where both the audio and video could be cleanly cut was a great challenge. As Scott explained, “Some pictures fall very easily, some pictures edit very easily, others are very difficult.”²⁴⁰

Republic was not the only studio to use a subsidiary for their television business. Columbia also took that step through Screen Gems. Columbia had originally started Screen Gems not for television, but to handle their business in the 16mm field. Columbia began actively using 16mm in 1944, but entered the business more seriously in 1948 and 1949. Abe Montague, vice president and general sales manager for Columbia, made a survey of the potential of the 16mm market and investigated doing business with the various companies that existed in the 16mm field. Those included Films, Inc., Harry Post, Film Highlights, Jack Kopstein, Sam Goldstein’s Guaranteed Pictures, Library Films, Official Films, and Film Center. Ultimately, Columbia decided against working with any of those outside companies, and instead opened Screen Gems, which would carry out Columbia’s policy on 16mm.²⁴¹ That Screen Gems initially focused on 16mm and was later considered a natural fit to take over Columbia’s television

business shows how connected those two fields were in the minds of the film industry during this period.

In early 1949, Columbia asked Ralph Morris Cohn, son and nephew of Jack and Harry Cohn, to examine the possibility of their buying a television station, making motion pictures for television, and licensing their library of motion pictures to television.²⁴² Ralph had been in the film business since 1935, and moved to the television industry in 1948 when he started Pioneer Telefilms. Pioneer was not successful, so when Columbia contacted him about preparing a long-range plan for Columbia's entry into the television industry, Ralph agreed. Then on March 25, 1949, Ralph Cohn presented a report to Columbia that proscribed three basic phases: (1) develop technical knowledge as to motion picture production for television by immediately embarking on the production of television commercials, (2) determine what could be done to make the library of Columbia's theatrical product more valuable and usable in television, (3) subsequently, produce programs made exclusively for television.²⁴³

Columbia liked Cohn's report very much, and asked him to run Screen Gems in order to implement the plan. Cohn began that work on June 1, 1949.²⁴⁴ Based on Cohn's report, Columbia decided they did not want to acquire any television stations because they were too expensive.²⁴⁵ They also decided against selling or licensing their feature films to television because, as Cohn argued, "Exhibitor reaction would be extremely unfavorable."²⁴⁶ When asked whether they used a different name to hide the relationship between Screen Gems and Columbia from the exhibitors, Cohn explained: "That was considered. But obviously, since we were quite freely identifying ourselves with Columbia Pictures, and there was no secret about it, and every trade paper that carried any news of our activities identified us as such – if this were to have been done for purposes of subterfuge, it would have been a weak and foolish subterfuge."²⁴⁷ Cohn

later explained that his recommendation had not simply been that they refuse to sell their films to television outright, rather:

My recommendation was that to sell motion pictures in the form in which they were originally made and released to television was a shortsighted policy which would not create the kind of values for Columbia that I believe should be created in terms of a long-range program for television. [...] I also recommended the creation of forewords, beginnings, middles, and ends to be applied to these pictures. New production which would be made to fit these pictures within a framework, so that a property would be created, rather than just the use of old movies on television.²⁴⁸

Despite Cohn's clear recommendations, there was disagreement within Columbia as to Columbia and Screen Gem's policy regarding their feature films on television. There were actually two schools of thought regarding the licensing or sale of their features to television. As Cohn recalled: "We had people in our management that took one side of this discussion, and pursued it, and we had others in management that took the other side of it. We had a negative and a positive group."²⁴⁹

As Cohn indicated through his suggestion that Columbia's feature films be reworked to fit the specific needs of television, he had determined that television and theatrical films were very different art forms. Testifying in 1955, Cohn explained his reasoning as threefold. His first and second points were based on the distinct aesthetic qualities of the two mediums. That included the fact that television screens were significantly smaller than theatre screens, and feature films were shot with the larger theatre screens in mind. His third point had to do with the fact that the viewing conditions in the home were very different than those in the theatre, and as a result, the audience's experience of and approach to television and film were significantly different. He argued:

The audience approach to the television entertainment is considerably different from the audience approach to motion pictures. The sympatic response of a person sitting back in a darkened hall, with other people absorbed by the skill of the actors and what is going on

is completely different from the response of a person sitting in the living room, free to go to the kitchen or the bathroom, free to talk without disturbing anyone else.²⁵⁰

For those reasons, Cohn concluded that content produced for television had to be “materially different” than content produced for theatres.

Cohn’s observations echo William Boddy’s description of the critical debates about the distinct natures of live and filmed programming on early television. As Boddy noted, “The opposition between film’s ‘feel of the past’ and the immediacy of live television created different putative audience paradigms for film and live programs, in which viewers of a live performance were seen as more highly involved than those of film programs.”²⁵¹ In either case, their conclusion was the same: the nature of filmed and live programming and the audience’s experience of each was materially different and required a different approach by producers of the content.

As a result, instead of selling or licensing their film library to television, Columbia decided to produce original films for television. Their idea was that they would take their older features, rework them, put in some new material, and thereby make good television programs at a low cost. They concluded that at that time that was the best way to exploit their older feature films on television.²⁵² In order to rework and remake their older films for television, they still had to make sure that they owned the rights to do so. Even though in 1948 Columbia had begun a review of the rights they held to their films, Columbia’s lawyers had determined that the method that had been previously used in conducting the survey of rights had been inadequate, and a different method would have to be adopted. So Cohn began by reinvigorating that review of rights.²⁵³

Cohn identified two westerns and two one-reel cartoons for which the rights were clear, and he proceeded to work on adapting them for television as a trial run. They worked on cutting

the films down to twenty-two minutes each, and writing and filming a beginning, middle, and end to serve as a framework that would create a “property.” Cohn later recalled:

What we had hoped to do was to build something of continuity, because in my explorations in television and the advertising field, I learned that one thing that advertisers looked for, and which has a great value to them, is the idea of continuity. So that if you see something this week you will come back to it next week. And this was the one ingredient that we didn’t feel that the movies had, as such, and we felt that we could enhance their value to a point where we could get more money for them, make this library worth more to our company.²⁵⁴

In the end, Cohn concluded that his plan was a “beautiful dream” and nothing more because in test screenings with broadcasters, advertisers, and advertising agencies, they found that the cost of making the test films far exceeded the value they had created. As a result, they shelved the project indefinitely.²⁵⁵

When, in 1950, they abandoned the project of reworking their older films for television, Columbia’s board of directors appointed a committee of their own members to revisit the possibility of releasing their feature films to television. They had, since 1949, asked for continuous reports from Screen Gems on the subject, and the board wanted this committee to check those reports for accuracy. For the committee, they selected two persons who were not associated with Columbia’s management, and a Mr. Spingold who was a manager at Columbia. After a thorough review and investigation, the committee confirmed Cohn’s earlier conclusions against releasing their older films to television at that time.²⁵⁶

One of the reasons they reaffirmed that stance was that they were still finding success with theatrical reissues, and they did not want to destroy that potential income by releasing the films to television. In early 1950, Columbia had been offered two hundred and fifty thousand dollars by National Comics for the rights to distribute their serials to television. Since Columbia was still unsure as to the value of their serials in television as opposed to the theatres, as a test of

the potential of the theatrical reissue market, Columbia decided to rerelease their serial *Wild Bill Hickock* to theatres. From the rerelease of that one serial, they made two hundred and seventy five thousand dollars. They considered that a success, especially as compared to the offer of twenty five thousand dollars less for their entire catalog of serials, and they began rereleasing more of their serials to the theatres.²⁵⁷

Other studios and filmmakers were also turning down sales of their films to television in favor of theatrical rereleases. For example, Fox was trying to wring money out of their film vault through the theatres, through gimmicks like their February 1950 “bonus drive” for their salesmen to “liquidate” their older product. Salesmen and branch managers would get a ten percent commission on all rentals from the group of films including many of Fox’s independently made releases such as Korda’s *Karenina* and *Ideal Husband*.²⁵⁸

Harold Lloyd had received an offer of two hundred and fifty thousand dollars from NBC in New York for a package of seventy of his older films, which included thirty one-reelers, twenty two-reelers, and twenty features. Lloyd turned down that offer, as well as an offer from a major studio for the story rights to *The Freshman*, citing the potential theatrical rerelease value, and the fact that he had “too many exhibitor friends to peddle pictures to video.”²⁵⁹

Unions and Guilds

Whether the studios were interested in selling their feature films to television, rereleasing them in theatres, or remaking them for television, they had to deal with the problem of union and guild demands for the reuse of their performances. As Creighton J. Tevlin, a vice president of RKO, explained, “The pattern in connection with all of the Guilds we dealt with was that they were entitled to some compensation in the event these pictures, or pictures they worked on or

contributed to, were exhibited on television in addition to being shown theatrically.”²⁶⁰ By this time, the International Alliance of Theatrical Stage Employees (IATSE), which represented some nineteen or twenty different unions including the carpenters, cameramen, editors, set designers, and many others who were employed in the physical production of films, had begun making demands for television.²⁶¹ There were new groups like the Screen Producers Guild, which was formally organized in 1950, and had the potential to make demands.²⁶² According to CBS, the contracts and demands of the American Society of Composers, Authors, and Publishers (ASCAP) presented yet another obstacle to getting films on television.²⁶³ ASCAP worked to protect their members’ musical copyrights by monitoring their public performances – both live and broadcast. As Saul Rittenberg, a lawyer for Republic, outlined in an interoffice memo, there were no problems related to the use on television of music that had been purchased outright from outside sources or that had been written for Republic productions by its employees, however, “In connection with music specifically licensed for use in particular pictures, there are, in general, two types of problems. One concerns the copyright status of the property, and the other the form of the license.”²⁶⁴

In terms of the copyright status, it was possible that in some cases, although Republic may have licensed perpetual rights to the music from the publisher, the copyright of the composition may have expired. In that case, if the publisher from whom Republic licensed the music did not renew their copyright, then any use of the music by Republic would have constituted an infringement of the rights of the owner of the renewal copyright. Republic could use the music and hope that the publisher had renewed their rights, or hope that no claim would be made against them by whomever renewed the rights.

In regard to the form of the license, most of the licenses granted synchronization rights only for the performance of the film in theatres that held valid performing licenses from the performing rights societies. It was possible that the synchronization rights may not have been extended to television, and Republic would have had to pay additional fees for that use. There was obviously some risk involved from any of those potential problems, and Republic had to decide whether they were willing to tolerate those risks and proceed anyway.²⁶⁵

While those rights issues clearly posed some potentially significant problems, the AFM remained the central obstacle to feature film music appearing on television. The contract the producers had agreed to in 1946 and then in 1948 restricted the use of all music ever recorded at any time by members of the AFM.²⁶⁶ The issues with the AFM were often referred to in the press and among studio heads as the “Petrillo problem.” Reducing the conflicts with the AFM to a personality issue with Petrillo efficiently marketed the obstacle as an individual problem rather than demonizing either the performers or the union as a whole. That was a useful approach for the press in terms of publishing compelling and simplified stories, as well as for the studios that could, through the pillory of Petrillo, avoid the appearance of being antiunion.

At the AFM’s annual convention in 1950, the Screen Composers’ Association, the members of which were also members of the AFM, proposed a resolution strongly endorsing the principle of “payment for re-use and/or multiple usage” of all musical products created by members of the AFM. In their proposal, they said:

Recognizing the inherent dangers of ‘self destruction’ as demonstrated in the phonograph record and sound track fields, we urge that the Federation exert its full strength to preserve the livelihood of its members [...] We ask, therefore, that the American Federation of Musicians study re-use in all its forms and formulate strong measures to obtain payment for those of its members who now receive none.”²⁶⁷

There was clearly some movement among the membership to figure out a method of payment for the reuse of the members' performances, but the problems of recordings and mechanization more generally were still a concern for the union. Phonograph recordings were being used extensively on radio and television and negatively effecting the employment of live musicians. In response, the AFM was attempting to modify copyright laws to prevent the unlimited use of recordings outside the home.²⁶⁸

Since the Taft-Hartley Act had rendered illegal the Recording Fund the AFM had originally set up for royalties for recorded music, in 1949, the AFM switched from the Recording Fund to a new public administered Music Performance Trust Fund. Apparently, General David Sarnoff, chairman of RCA and NBC, had helped Petrillo figure out this solution to the threat from the Taft-Hartley law.²⁶⁹ Ostensibly, Sarnoff had an interest in keeping a fund for musicians operational because the alternative was that the recording industry could be faced with another AFM strike. The trustee of the AFM's new fund, Samuel R. Rosenbaum, an attorney in Philadelphia, was for many years president of station WFIL in Philadelphia and chairman of the Independent Radio Network Affiliates. He was director and vice president of the Philadelphia Orchestra Association.²⁷⁰ The money in the fund was to be expended "in a manner to contribute to the public knowledge and appreciation of music, on the sole basis of the public interest."²⁷¹ All concerts were to be free to the public, and were to be in connection with activities that were: "patriotic, charitable, educational, civic and general public nature, such as, but not limited to, veterans' hospital entertainment programs, juvenile and adolescent social programs, educational programs in schools and institutions of higher learning, patriotic and recruiting drives, symphony society or other musical activities of a non-profit nature, and similar programs and activities."²⁷² The musicians who performed in the concerts were to be paid only union scale.²⁷³ These

conditions were largely the same as those in their original Recording Fund, and the only substantial difference was that the Trust was managed by a public trustee rather than by the AFM.

Even though the AFM had moved on from their Recording Fund to the new Trust Fund, they were still expending a great deal of time and effort to repeal the Taft-Hartley Act through the election of congressmen who were sympathetic to labor. Joseph Keenan, head of the American Federation of Labor's (AFL) League for Political Education, said to the AFM's annual convention in Houston, "The year of 1950 is vital to labor's future." He described the Taft-Hartley Act as "creeping paralysis" for labor.²⁷⁴ At the same conference, William Green, president of the AFL, expressed hope that the new Congress would repeal the Taft-Hartley Act and adopt other pro-union laws. If not, he pledged: "We will be ready in 1950 with the greatest outpouring of voters ever witnessed in this country in an off-year election to throw out of office those Senators and Congressmen who have betrayed the trust of the American people."²⁷⁵

Meanwhile, the AFM was dealing with negotiations on two fronts: with film producers and with television producers and networks. Although the AFM had previously banned the appearance of their musicians on television, they began moving forward with negotiations in regard to musicians performing in productions made directly for television. By June 1950, when the AFM signed the first contracts with television film producers, the four companies who signed agreed to a wage scale and to payments into a second public music fund similar in purpose and operation to then existing Music Performance Trust Fund. One of those four companies was Gene Autry's Flying A Features, Inc.²⁷⁶ In all of these cases, the union was struggling to find methods by which the work of the members could be used in new mediums and technologies without endangering the employment of others of their members. If they could find a solution in another medium, it was possible that solution could be applied to feature films on television.

The studios were still bound by their 1948 contract with the AFM, which restricted the use of the studios' feature films on television. When asked what "dangers" RKO would have been subjected to had they decided to move forward in putting their films on television without reaching an agreement with the AFM, Creighton Tevlin, vice president for RKO, responded, "I know we would be in violation of our agreement with the Musicians Union, and being in violation, I would presume that the union would have no further obligation to us on our agreement, and we would be without music."²⁷⁷ Music was obviously something the studios could not live without.

Since Petrillo, at the negotiations for the 1948 contract, had promised that the restrictions on feature films appearing on television did not forbid further negotiations on the matter, some studios began testing the waters with the AFM to see what kind of deal they could make. Republic, for example, first contacted the AFM in regard to the relaxation of their ban on films on television in mid-1949.²⁷⁸ Then Meyer Lavenstein, a lawyer for Republic, had discussions with AFM starting in the spring of 1950 about an arrangement by which Republic could exhibit their films on television. Even before that, Lavenstein had worked with Yates and Newman in writing and drafting letters and telegrams to be sent to the AFM. Those negotiations continued for approximately eighteen months.²⁷⁹

With those negotiations under way in 1949, the AFM was faced with competition from a new guild, the American Guild of Variety Artists (AGVA), who claimed jurisdiction over musicians who performed on stage and sang, danced, or performed in any way other than, or in addition to, playing an instrument. At the 1949 AFM convention in San Francisco, Petrillo complained: "Someone got the crazy idea that when a musician plays under a spotlight it makes him an actor and he must belong to AGVA. No musician anywhere, any time need belong to

another trade union. [...] We are going to stop this raiding at the outset because we won't give ground."²⁸⁰ A part of the bigger problem in this "jurisdictional war" was that the AGVA was attempting to coopt musicians who performed on live television. In response, the AFM demanded that any musician who had membership in the AGVA resigned that membership and were solely members of the AFM.

Meanwhile, the Screen Actors Guild was faced with similar jurisdictional problems. Although Ronald Reagan later recalled that in 1949, SAG was not paying serious attention to television because, "TV was live and we didn't really think it was our baby";²⁸¹ his account was complicated by the emergence of a competing guild that forced SAG to pay attention to television. In 1949, George Heller, the executive secretary of AFRA (the radio guild), formed the President's Committee of Television Authority (TVA) in New York. The TVA was composed mainly of members of Eastern live talent unions and wanted jurisdiction over all of television which included live and film – films on television as well. SAG disagreed and strongly believed that they clearly had the rights to film in all forms. As Ronald Reagan recalled:

We girded ourselves for battle, but so we could be completely secure in the knowledge our cause was just, we did a lot of soul searching and were reassured in our belief that we had no basis for even pretending a claim to live TV. Among ourselves we came to the conclusion that logically AFRA (the radio union) should expand and take in TV, and the other guilds and unions would do well to follow our lead in forsaking any claims. After several years of expensive bickering, this is of course what happened, and AFRA became AFTRA – the American Federation of Television and Radio Artists.²⁸²

In a meeting in New York on October 5, 1949, at the Hotel Astor, Reagan presented SAG's proposed resolution in regards to the TVA, which was based on his conclusion that there were two areas in TV, one on film and one live. Although they did concede that there was a third gray area of film spot commercials and film inserts. SAG proposed that "1) TVA be established by the International Board of the Four A's [Associated Actors and Artistes of America] to have

jurisdiction over live TV including simultaneous kinescopes of such shows; 2) that SAG and SEG [Screen Extras Guild] have jurisdiction reaffirmed by the Four A's over filmed TV; and 3) the 'gray areas' be submitted to mediation."²⁸³ April 1950, the International Board of the Four A's had agreed to give the TVA authority over all of television – filmed and live.²⁸⁴

SAG was not giving up so easily, however, and in June 1950, they mailed to their members a detailed comparison between SAG's contract proposals for televised motion pictures and the proposals of the TVA. SAG argued that the TVA wanted to take over jurisdiction over actors in televised motion pictures, and outlined the ways they believed that the TVA's proposals would seriously undercut working conditions for motion picture actors. SAG stated that problems with the TVA's proposals were "the result of TVA's complete lack of experience in contract negotiations for actors in motion pictures and TVA's ignorance of the problems of such actors."²⁸⁵ Meanwhile, the Screen Writers' Guild (later to be renamed the Writers Guild of America), which represented writers for theatrical films, was faced with a similar jurisdictional dispute. Three of the four branches of the Authors League – the Dramatists Guild, the Radio Writers Guild, and the Screen Writers Guild were trying to claim jurisdiction over the writers' work in television. Then some writers formed the Television Writers Association, which further complicated the matter.²⁸⁶ The internal disputes between the actors and writers unions over television would continue, and, in both cases, require the intervention of the National Labor Relations Board to resolve.²⁸⁷

Meanwhile, the studios were still locked into their 1948 contract with SAG that allowed for films that had been theatrically released before August 1, 1948, to be sold to television without further compensation to the guild. For any films released after that date, however, producers were required to negotiate a compensation deal before releasing the film or films to

television. Those contract restrictions, in combination with the AFM restrictions, caused RKO to conclude that the best way forward in terms of selling their films to television, was to offer their entire vault, or library, of films in bulk.²⁸⁸ As RKO's vice president Creighton Tevlin explained, "We certainly felt that in dealing with the Musicians Union on the basis of any bulk sale that we made, which would involve millions, we felt that we were not only entitled to, but would receive very important considerations as to terms."²⁸⁹ RKO hoped that if, for example, the AFM demanded five percent of the gross revenue per musician per film, if RKO made a bulk sale and were dealing with one large lump sum, they could talk the union down to an amount that would equal a lower percentage per film. RKO would continue to explore this option, but it would be years before they could finally see all of their stars align and complete a sale of their films to television.

By the end of 1950, while there had been a lot of studying, discussion, and planning that had taken place, no one had yet figured out how to move beyond the gridlock caused by the different desires and motivations of the many factions involved. Everyone was extremely interested in getting the most money possible out of the new medium, but no one had figured out a way to do that without jeopardizing their existing allegiances. This period could, however, be considered the calm before the storm of the next few years when everyone's self-interest shifts from a relatively quiet *détente* to open conflict – oftentimes in the courtroom. It was, in fact, 1950, when different factions of the industry began prophesying a "fast approaching" "showdown" and "crossroads" between film producers, exhibitors, and television. Gael Sullivan warned in a letter to TOA members, "We are fast approaching the crossroads in the relationship of television to the Motion Picture Industry."²⁹⁰ *Variety* reported that a "top industry figure" who wished to remain anonymous, had speculated that a, "Showdown between exhibitors and motion

picture producers over television will come inside of the next 12 months.” The article concluded saying, “Sooner or later, one of the majors will break loose and peddle its own old product to video sources. Once this happens, the dam will break wide open and the battle between exhibs and distributors will be on in full force.”²⁹¹ Although this suggested that the studios were working together in a common front against television, it was clear that they were actually all engaged in their own investigations and posturing to gain the most financial advantage from their feature films on television as possible. As we move out of this period of intensified, but still idle threats, we will see that the battle between the exhibitors and distributors was not the only one brewing, and the next few years will prove to be full of open conflict.

CHAPTER THREE:

The Freeze Thaws and Everyone Heads to Court, 1951-1952

By the beginning of 1951, theatre attendance was continuing its slow downward slide. Studios were producing more films in color and developing more widescreen and 3D technologies in an attempt to stem this tide, but they had not hit bottom yet. Meanwhile, television was growing and advertisers were spending more money on programming and advertising. Theatres, however, were closing, and studios were planning for their divorce from their theatres while anticipating the ramifications of those drastic changes. In the midst of all of this, there were some studios that made serious efforts to sell or license their films to television. Their efforts, however, would not go unnoticed, and some studios ended up in court to defend their rights to put their films on television. They could not win for trying, though, as the Department of Justice also brought a lawsuit against the studios for not selling or licensing their films to television. Many of these struggles were necessary, however, in finally settling some of the questions at the heart of the conflict between film and television. Until those struggles were resolved, Hollywood's feature films would continue to sit in the studios' vaults. The slow slog to that resolution has already begun to illustrate how all of these behind the scenes disputes can result in years of seemingly senseless delay in the convergence of old and new media.

By 1951, the ground under the feet of the both the film and television industries continued to shift. Many of the studios were moving forward with their divorce from their theatres. In mid-1951, Fox's plan for divorce from their theatres was approved in court, and they had two years within which they were to complete the divorce.¹ By the end of September 1952, Fox had officially separated their production and exhibition businesses. Spyros Skouras, Darryl Zanuck, and Joseph Schenck remained with the production company, while

Charles Skouras took over the newly independent National Theaters and George Skouras took over the Metropolitan Theaters, United Artists Theaters, and Skouras Bros. Theaters. Spyros Skouras kept his shares of Skouras Bros. Theaters, but put them in a blind trust.² This kind of division of the company's assets was a common one adopted by the studios, and although the theatre chains were officially divorced from production and distribution, they often remained tied to each other through the close, and often familial, relationships between the heads of the companies.

In the midst of those changes, an article in *Fortune* described the Hollywood studio heads' attitude towards television as: "Plain scared. The major-studio executives by and large are afraid of what will certainly be a bare-knuckle scrap. Part of their reluctance is over the risks involved; their personal fortunes are made and they have little desire to increase them at the peril of being wiped out."³ Many of the studios heads had been involved in the film business for decades, and had yet to retire. The 1950s would see a significant turnover, with many of the old guard stepping down, but in 1951 and 1952, they largely still ran the show. Although they may have been resistant to change and reluctant to deal with television, many of the studios continued investigating the effects of television on their business and their options for taking advantage of the television industry.

By the end of 1952, the outside economists Columbia had hired in 1950 to provide their views on the effect of television on the film business produced a total of five reports. Those included "The Effect of Television on Motion Picture Theatre Attendance" and "The Effect of Television on Current Motion Picture Receipts."⁴ When the economists had completed a report, they would hold a meeting at Columbia, which was often attended by Ralph Cohn; Mr. Schneider, treasurer for Columbia; Leo Jaffe, assistant treasurer and vice president; and Mr.

Wormser who was then controller and later moved to assistant treasurer. Those present would listen to the economist's report, and ask questions back and forth. Ralph Cohn recalled many of the questions they were attempting to find answers to included whether or not the drop in the box office was permanent; whether there might be a saturation point for television after which the box office might improve; and whether there was a way to directly measure television viewership and then compare it to box office attendance.⁵ These reports and Cohn's questions provide an example of the kind of critical, reflexive practices regularly undertaken by the industry in order to theorize its behavior and presence in moving image form. As John Caldwell has argued:

It is difficult to explain the current world of conglomeration, deregulation, repurposing, and globalization *without* fully acknowledging the extent to which textual production – *and the analysis of texts by industry* – stand simultaneously as corporate strategies, as forms of cultural and economic capital integral to media professional communities, and as the means by which contemporary media industries work to rationalize their operations in an era of great institutional instability.⁶

Columbia's use of the economists' reports on television and their theatrical business demonstrates that Caldwell's assertions about these critical industrial practices are applicable to many periods of media history, and this earlier period in particular.

By 1952, those people studying the theatrical box office found that weekly theatre attendance had dropped significantly to fifty five million from the all time high of seventy nine million in 1946. In 1950, it had been at sixty one million attending the theatre each week. Television, on the other hand, was expanding rapidly. By 1952, there were approximately sixteen million television sets in use, which was an increase of twelve million sets in only two years. So although weekly theatre attendance had declined by six million people between 1950 and 1952, the number of television sets in use increased by twice that number.⁷ The greatest loss in weekly movie attendance had actually occurred between 1946 and 1948 when the number of television

sets in use rose by less than two hundred thousand, which was the smallest two year rise since the television industry started. These kinds of conflicting data caused further confusion as to the effects of television on the film industry, and threw further doubt on the argument that television had the sole responsibility for the decline of theatre attendance. Although these data seemed to relieve television of some of the blame for film's woes, there were many people in the film industry who preferred to ignore the complexity and hold onto their television scapegoat. The ongoing lack of certainty in regard to television's effect on the theatrical box office caused further reluctance on the part of the studio heads to take definitive steps in any direction – particularly in terms of releasing their films to television.

Even if television did not deserve the full blame for the film industry's declining box office, it was obvious that television was growing and expanding into more and more homes and markets. By 1951, there were one hundred and eight television stations in the United States.⁸ There were 10,320,000 television households in the United States, and by the end of 1952, that number had grown to 15,300,000. That was a total of 23.5% and 34.2% of households, respectively.⁹ Coaxial cable and microwave relays had also been steadily expanding, and by mid-1951, forty-seven of the American markets were linked. Serious programming challenges remained, however. The sixteen markets that were not connected via coaxial cable or microwave relays could not broadcast network programs except on a film or kinescope recording. Even of the forty-seven markets that were linked, twenty-nine were served only by one station.¹⁰ Individual stations had to be persuaded to take one program from one network over those offered by other networks, and every thirteen weeks all the networks had to sit down together for what was described in *Fortune* as a "horse-trading session, each giving up use of the cable at some time in order to get it at another."¹¹

The struggle for limited station time was a result of the fact that during the FCC's freeze, any network was able to sell to any station regardless of whether the station was its normal affiliate. This caused intense competition between networks to produce the best content, and pushed production costs up. The price for the talent and production of *Texaco Star Theatre*, for example, rose under the pressure from multiple bids from eight thousand dollars a week in 1948, to thirty eight thousand dollars a week in 1951. The total annual budget for the show, including time charges, then rose to around one hundred thousand dollars a week, for an annual yearly budget of almost four million dollars.¹² J.H.S. Ellis, president of the Kudner Agency complained, "TV is getting too rich for the average advertiser's purse, no matter how good it is."¹³ Those rising costs for the production of live television suddenly started to make the payment of larger sums for feature films on television a more reasonable proposition.

Advertisers were spending exponentially more money on television than they had in previous years. The total expenditures on television advertising, including expenditures on broadcast time, program material and commissions to the agencies involved in the sale of time or program material, that occurred in 1952, was \$453.9 million, which was up from \$57.8 million in 1949. The total costs of all the program material used television-wide was \$155.8 million – up from \$33.1 million in 1949. Of the \$155.8 million spent on all television program material, the total expenditures for program material used on broadcast hours that were not taken up by network shows was \$34.1 million. That was an increase from the \$7.5 million that was spent in 1949. Of that \$34.1 million, \$12.3 million was spent on feature films, which was an increase from \$2.5 million in 1949.¹⁴ There was a lot of money being spent on television programming generally, and feature films in specific, and that number kept rising.

Despite, or perhaps because of, those increased costs, the television industry was beginning to finally make some money. Although they had been operating with net losses industry-wide through 1950, in 1951, they began making profits.¹⁵ In 1951, television saw revenues of \$235.7 million, which was more than double the \$105.9 million they made in 1950.¹⁶ That was due, in part, to the increased number of hours being broadcast. Based upon a National Association of Radio and Television Broadcasters' (NARTB) survey for 1951, stations were broadcasting an average of eighty-two hours per week. Then by 1952, stations were broadcasting an average of ninety-six hours per week.¹⁷ With that many hours of air time to fill, Don Fedderson, executive vice president and general manager of the KMTR Radio Corporation, which operated the radio station KLAC as well as the KLAC television station, observed: "Television is like a furnace, you keep throwing the coal in and there doesn't seem to be any saturation point. That seems to be our biggest worry, getting enough product to keep it going."¹⁸ Hollywood still had enormous vaults of film content that could largely solve those problems, but they were not releasing their films yet.

Instead, the film industry was doing everything it could to attract audiences back into their theatres, and theatre owners were noticing shifts in their ticket sales that paralleled the television programming schedule. As S.H. "Si" Fabian, one of the top exhibitors in the nation and a leader of the Theatre Owners of America, observed in July 1952:

Last summer the theatres of this country had a very fine business, without exception in all areas we did a great business, and like a knife cutting right through a piece of cheese, in the middle of September when the big shows came back on television our business went to hell. Why? It just to happened, it's coincidental probably, there was a bad run of product, nothing to play, nothing to keep those people coming to our theatres.¹⁹

Fabian believed that if better quality films of the kind the theatres had in the summer were available through the fall, the theatres would be able to compete with those big new shows and

retain the audience they lost to television. One of the ways the film industry was trying to improve their product was by producing more films in color. In 1949, there were thirty-one color feature films released, which constituted almost eighteen percent of the total releases. That was up from almost twelve percent of total releases in 1947, and fourteen percent in 1948. Then, in 1950, there were thirty-nine color feature films released, which was twenty one percent of total feature releases. In 1951, the studios released fifty-four color feature films, which constituted almost twenty seven percent of their total releases. The studios released sixty-two feature films in color in 1952, which constituted thirty four percent of their total releases.*

While the film industry was embracing color film, the television industry was stuck in black and white. It was not until June 1951, when the Supreme Court upheld the FCC's decision to approve the CBS color television system that the industry could finally move forward with the production of television sets and programming in color. The delays in settling the color television issue had in fact caused a lag in television set sales overall because buyers were wary of purchasing a black and white set if the technology would soon be out of date. Many people simply saved their money and waited to purchase a new color set.²⁰

The timeline of the adoption of color film and television also delayed the appearance of feature films on television. As Ralph Cohn of Screen Gems explained: "It played a part insofar as in [Columbia's] library there was a certain number of color films, and we realized that until there was widespread use of color television both from a broadcasting standpoint and a receiver standpoint the value of those color films couldn't be truly realized on television."²¹ It would be at least a few years before color television set production and ownership overtook the numbers of

* These numbers only reflect the releases of the five major studios who were defendants in the antitrust action *The U.S. v. Twentieth Century-Fox et al.* (Testimony of Alexander Kenneth Beggs, Reporter's Transcript of Proceedings, Pages 1570-1571.)

black and white television sets on the market, and until that occurred, Hollywood's color feature films would remain in their vaults.

COMPO

Meanwhile, the film industry was working on other ways to strengthen their business, and the Council of Motion Picture Organizations (COMPO) was one of their central forums for discussion and planning. A preliminary meeting of COMPO members was held in 1949 in Chicago, but it was at least a year after that before it was formally organized.²² The organization was formed, as Ned Depinet, acting president of COMPO, recalled, "because business was not too good."²³ Depinet later explained that COMPO, "tried to bring in everybody," which included exhibitor associations like the TOA, Allied States, Independent Motion Picture Exhibitors of New York, Metropolitan Motion Picture Theatres of New York, and the Western Motion Picture Exhibitors Association. It also included the Motion Picture Association, the Society of Independent Motion Picture Producers, the Motion Picture Council, trade papers, and the Variety Club.²⁴ The purpose of the organization was "to fight discriminatory entertainment taxes, to plan a comprehensive public relations program, and to allow a free exchange of ideas among the various elements of the motion picture world."²⁵

In late July 1951, COMPO held a three-day meeting at the Beverly Hills Hotel in Beverly Hills, California. Spyros Skouras was unable to attend the meeting, but he sent a telegram that was read to those in attendance:

The COMPO seminar marks the first time that men of production, distribution, exhibition and advertising departments have met together in the history of our industry, and to me there is no meeting that has greater validity and greater opportunity to unify all elements to promote welfare of our business. The need has never been as great as it is today, because all through the country there is better public and press attitude being shown

towards motion pictures. Now is the time to strike and get the benefit of this improved state of mind.²⁶

It was a closed-door meeting, but digests of the talks were made available to reporters after the morning and afternoon sessions. The secrecy was intended to prevent any “dirty linen from being washed out in public,” a delegate explained.²⁷ COMPO did, however, make an audio recording of the proceedings, and portions of the transcript were later provided as evidence in lawsuits. From those transcripts, and the later testimony of those in attendance, a clear picture of the events and discussion of the conference emerge.

There were representatives from many parts of the film industry, and the conversations covered a wide range of concerns held by those in attendance. As B.B. Kahane later recalled, the meeting was convened because business was “quite bad.” Exhibitors attended from all different parts of the country, as well as producers, writers, and directors. There were a “dozen or more” subjects on the agenda, which included advertising, the quality and type of films being produced, and television.²⁸ In the midst of the many pressures on the film industry and the declining box office numbers, this conference illustrated the desire for the different factions in the industry to reach a consensus through confabulation. As Ned Depinet later testified, the meeting “was an effort on the part of all units in this industry to find ways and means to protect ourselves from unfavorable publicity, from confiscatory taxation, from censorship. We wanted to build up good will, we wanted to stay in business.”²⁹

The conference organizers dedicated a full day to the discussion of television. Sidney Meyers of Wometco Theatres in Florida and Ronald Reagan of SAG were co-chairmen for the day. Howard A. McDonnell, vice president in charge of industrial relations at Republic, attended the meeting on behalf of Republic, and recalled others in attendance included exhibitors like Rembusch, Fred Schwartz, Si Fabian, and Rotus Harvey. Producers included Harry Cohn and

B.B. Kahane of Columbia, Frank Freeman from Paramount, Tevlin and Depinet from RKO, Steve Broidy from Monogram, Dembrow from Fox, and Lipton from Universal.³⁰ In his opening comments, Ronald Reagan attempted to inject a little pragmatism and levity, saying, “Regarding the greatest menace which television has to offer, which is the fact that it is free, and it is in the home, I still can’t help but realize that there is a kitchen in every house built in America, and restaurants are still doing a hell of a business.”³¹ Although Reagan’s joke may have gotten a laugh, the mood changed when the conference turned to statements by exhibitors.³²

The exhibitors’ statements generally fell in two different categories. Some of them thought that television, as radio before it, was going to contribute to the success of films in the theatres. Others thought that actors appearing on television would negatively affect the value of motion picture stars in theatrical films.³³ As a moderator, and in the midst of the expressions of dire concern, Ronald Reagan again attempted some optimism:

My own personal view is that television has more problems to worry about than we do. [...] Because the best effort they can put forth on a program on the biggest television shows still cannot command a sizable majority of audience against the ancient, old and cheap motion pictures that they are able to secure for television showing. So we’re worrying about this great vital television, which, like radio when it was a novelty, has made inroads, and yet we are worrying about competition which is coming from the worst and the oldest of our product as being the best thing that television can offer.³⁴

When Fred Schwartz of Metropolitan Theatres in New York took the microphone, he noted the growing tendency of distributors and producers to release their films to television. He continued:

Now it’s true as Mr. Reagan says, that up to this particular point only the old pictures, really old pictures have been released, but the pressure mounts and there is talk of Republic and there is talk of Monogram, and other distributors have mentioned to us that if they go the way of television it will be difficult for them to resist, so in exhibition circles there is naturally a great deal of concern about being forced to compete with motion pictures when those motion pictures are being served for nothing into the home and we have to charge for them.³⁵

Schwartz acknowledged that “marginal” producers might be more tempted to sell their films to television to “recoup a quick dollar,” and clarified that his remarks were not intended for them. Schwartz continued by arguing that by releasing feature films to television the overall value of feature films would be harmed. That, he observed, was largely because of the experience of watching television in the home. Films, he argued, were “carefully nurtured” and deserved to be “carefully exhibited.” He described watching a feature film on television at home as an experience where, “The man has to go in every once in a while and maybe diaper the baby or his wife is bothering him about something here and the doorbell rings, the telephone rings. It’s not conducive to enjoying the picture and he doesn’t blame it on his surroundings, he just says, “Well, the pictures are no good,” and if he’s part of the lost audience you have a hell of a time getting him.”³⁶

Finally, as Howard McDonnell recalled, Rotus Harvey, an owner of theatres in California, interjected and said, “I have heard enough about the pros and cons about television, let’s find out what the Hollywood producers are going to do about it.”³⁷ Y. Frank Freeman was the first of the producers to respond. He explained:

I think the two mediums have got to develop in their own way, separate and apart. I do not believe that the personality who devotes himself to television can ever succeed in motion pictures if he continues his services on television. I do not believe that the personality who devotes his time and effort to motion pictures can ever go on television, [...] and succeed in motion pictures. He so dilutes himself with the public that his peculiar talent or her peculiar talent in the motion picture will have been destroyed, and for that reason [...] we are going to devote our time and talents to the making of motion pictures for theatre exhibition.³⁸

Freeman’s statements were met with enthusiastic applause, and he later explained that his decision to not release his feature films to television was consistent with his above statements because he could not simultaneously release feature films “for dollars to television for free showing to the public and at the same time deny to the individual who is a part of that picture the

right to go dilute himself on television.”³⁹ Freeman concluded his remarks by reassuring the exhibitors that he spoke for the majority of the people in Hollywood when he said that they would remain loyal to the exhibitors because they had built the industry along with producers and distributors into the “greatest industry the world has ever known.”⁴⁰

B.B Kahane took the stage next, and explained that his primary interest and concern was the theatres, and they were going to continue making films for the theatres.⁴¹ He seemed to hedge his bets a bit, however, and reasoned that, “Obviously no company or no individual representing a business can make a statement that never will we go into the television field. I can say, though, that in the foreseeable future there is no plan, no intention of any kind for our company to get into the production of pictures except for theatres, primarily.”⁴² Those statements were met with disapproval by the exhibitors present, and Kahane then attempted to reassure them by saying, “No, no, our business is the making of motion pictures and we have no thought or intention, as I said, of making pictures for television.”⁴³

Creighton Tevlin held the floor next on behalf of RKO. He opened by saying: “I’ll tell you very clearly what our attitude is on television. We are violently opposed to it. I think actions speak louder than words. We do not permit any of our personalities to appear in any way connected with television. We have had very substantial offers from the sponsors from material that we own [...] but I can assure you we’re thinking of nothing but straight motion picture business.”⁴⁴ As we know from RKO’s ongoing negotiations over their feature films on television, Tevlin was clearly talking out both sides of his mouth here. The official duplicity practiced by the studios’ representatives as to their interests in television certainly served them in the short term by preventing an exhibitors’ revolt. Ned Depinet later confirmed that duplicity when he recalled of the discussions: “[The exhibitor] has never got any assurances from me that I

wouldn't sell my pictures to television if the opportunity presented itself. I have always said that for the time being we were not licensing our pictures for television, and we didn't intend to in the immediate future. That is because they never had a price worth a tinker's dam."⁴⁵

At the conference, however, Depinet focused on the ways television could be used in service of the theatres, and specifically talked about using television to advertise theatrical feature films. One example he cited was the fact that the MPAA and its member studios had produced short films that showed the making of feature films and cast the film industry in a positive light. The series was called "The Movies and You" and consisted of twelve short films shot on 35mm and originally distributed theatrically. Once the films had exhausted their theatrical runs, they were printed on 16mm and offered to locations such as schools, hospitals, and the military. They wanted to broadcast those films on television, but, as a result of the fact that the shorts contained clips from old films, faced a number of problems including, Depinet explained, the various guilds, Petrillo, and the AFM.⁴⁶ Both Depinet and Tevlin tried to shift the focus of the conversation away from the threat of television and towards a discussion of what steps the exhibitors could proactively take, which included advertising for feature films on television. As Tevlin said:

I think the exhibitors here should not look to Hollywood entirely for the solution to this television problem. It isn't our battle. Television is in competition with theatres, with the motion picture theatre as an institution. Television isn't in competition with RKO and Metro, only indirectly, and you cannot put this burden on us, you have to get in, advertise, use every means to bring people into the theatre. [... If theatres] are unwilling to spend say the profit they make out of concessions [on advertising] then they are in trouble. Hollywood will not be able to help you.⁴⁷

Tevlin's comments received applause from the audience, but the exhibitors may not have been among those clapping. Si Fabian offered a rebuttal wherein he pointed out all of the "ballyhoo" the theatres have done in their theatres, such as special presentations, vaudeville, organists,

orchestras, Bank Night, and so on. He argued, “We were always selling something in addition to the motion picture, but our primary and most important commodity was and will continue to be the motion picture.”⁴⁸ Fred Schwartz then offered the producers an ultimatum of sorts: “You have to make up your mind, we believe, that you have to choose one thing or the other. We think if you play both ends to the middle, you’ll be coming out on the short end of the stick in the long run.”⁴⁹

After that gauntlet was thrown, the day ended somewhat abruptly when, as Howard McDonnell later recalled, Steve Broidy of Monogram explained to the room that his company had needed additional revenues to help them out of financial difficulties, so they had sold some of their films to television. Broidy complained that the reason he had to turn to television was that the exhibitors “didn’t give him a fair break in the showing of his pictures.” Then, according to McDonnell, “Immediately several theatre men got up and tried to smooth that over and talk it down, but he said the fact remained that he didn’t in his opinion get a fair break, and he had to turn to television to get the extra revenue. The meeting then adjourned almost immediately.”⁵⁰ With that abrupt ending, the conference ultimately closed without any resolution or agreements in terms of the issue of feature films on television.⁵¹ The exhibitors had received assurances from the major producers that they were not, at least for the foreseeable future, planning to release their features to television. It is interesting to note, however, that the producers’ strong assurances to the exhibitors concerning their stance on films on television was often in direct contradiction to the fact that many of these producers were, in fact, actively, and had been for years, investigating the possibility of releasing their features to television. The details of the conference proceedings were supposed to be kept confidential, and no transcripts of the talks were to be made available to the press or public. But the producers’ strong statements, which

they thought they were making behind closed doors to a room full of agitated exhibitors, would later come back to haunt them.

Feature Films on Television

Even though the major studios had still not released their feature films to television, films were nonetheless finding their way on the air. As we heard from Steve Broidy at the COMPO meeting, many of the films that were offered to television were independent films or “B” films. Don Fedderson, president of the Television Broadcasters Association and executive vice president and general manager of the KMTR Radio Corporation, which operated the KLAC radio and television stations, explained that B films were “excellent television fare, because of the comparative values to what is on television. When you go to a motion picture house and you see a “B” picture, you may shrug your shoulders, because your comparative values are *Gone With The Wind* and great pictures. In television a “B” picture is great television fare.”⁵² It was even the case, though, that the aesthetics of early television sets were not capable of handling the visuals of Hollywood’s feature films. As Robert E. Lee, a writer and producer of television, described: “We can’t afford the luxury of low-key emotional lighting that has become so fashionable in motion-picture production in the past five years, because this just comes over on television like mud, and the only way it can be presented on television [...] is by completely reprinting the projecting positive and taking out and in effect producing a television-lighted film.”⁵³

If it was necessary to edit feature films to adapt to the aesthetics of television, it was also necessary to edit films to accommodate one of the central differences between film and television: commercials. Since advertisers paid for television, the entire purpose of the content

they provided was to attract audiences to see the advertisements and purchase their products. Lee described the difficulty of incorporating commercial breaks in films on television:

We have to make a break half way through our television program, [...] which comes to a climax and a curtain which invites the sponsor to come in with his message, and the story then begins again [...] and continues through the second act to the location of another commercial, and then we protect the closing commercial by means of our preview of the following week's program. We are also, in the program content, very much guided by the general wishes of our sponsors. In other words, we do not show, since we have a number of beer sponsors, we do not show bar scenes in which any of our principals are engaged in drinking beverages which might be competitive.⁵⁴

For feature films that were originally produced for theatrical release, concerns about organizing the story to naturally allow commercial breaks and avoid conflicts with sponsors had to be dealt with after they had been produced, which often made for awkwardly placed commercial breaks.

Sponsors did not mind, however, especially if they could broadcast a film that featured stars. Fedderson explained that they had recently purchased several feature films starring actors like Dorothy Lamour, Ann Baxter, and Paul Muni. The films had been produced in the five or six years previous, and although they were not the stars' best films, "The fact that the stars are in them attracts listeners, and then, if the plot is worth a darn, why, we will hold the listeners."⁵⁵ It was even more valuable for sponsors if they could directly involve the films' stars in advertisements. In order to negotiate those deals, BBD&O, for example, would contact stars personally, or their representatives, their agents, or they may go directly to a studio.⁵⁶ In August 1951, Don Fedderson had purchased a group of Jimmy Wakely films from Monogram, and was offering them to advertisers at a set price per film. In addition, Fedderson was "offering the services of Jimmie Wakeley [sic] personally to endorse the product at a specified fee over and above the price of the picture and paid to Wakeley [sic] directly rather than to Monogram."⁵⁷

Wayne Tiss, vice president in charge of the Hollywood office for BBD&O, explained the process from the advertisers' point of view:

We first find out what those films are, who and what persons are in them, and what we are allowed to do commercially. If we find that we are negotiating for a picture that is going to cost considerable money for our client and it stars a star that we certainly would like to get but that commercially we are limited too much from using implied endorsements or implied approval of those products, that very often will hinder the case because we will not go into the purchase of an advertising program.⁵⁸

Many of the major studios were still not allowing their stars to appear on television in any capacity at this time, and since that meant the stars would not be able to participate in endorsements, it would have discouraged advertisers from using their films on television even if the films were available for the advertisers use. Tiss further explained that:

For example, if you took Roy Rogers, [...] if we bought his films for a sponsor, I think that we would have to insist to his agent that we, in the running of those films, [...] would have the right to make some film commercials, that we could insert in there in which Roy Rogers would participate, because we know when we start such a negotiation that the price is going to be high, so therefore if we are going to spend \$2,000,000 or two and a half million dollars a year to advertise one of our client's products – and there are shows that cost that much – then we just couldn't recommend to a client [...] unless we had every opportunity to use Roy Rogers to sell our products.⁵⁹

So advertisers might have paid the higher prices that the studios were hoping they would get for their films for television if the films' stars had been made available for endorsements. With many of the big stars still under long-term contracts with their studios, it was often smaller stars who worked with smaller studios and under less restrictive contracts who found their way to television endorsement deals in the early years of television. These issues of endorsement deals and films on television would come to a head soon, however, when Roy Rogers and Gene Autry sue their studio, Republic to keep their films off television.

By the end of 1951, feature films were still primarily used by local television stations. As Wayne Tiss described, "The network program structure is not the kind that they use films made in motion picture studios to any great degree at all. The programs are live and sent out over the network. However, in individual markets is where the films are, they are purchased by the local

stations.”⁶⁰ Although many feature films were airing with participating sponsorship, many were still airing with single sponsorship. KCEA in Los Angeles would, for example, air a “Triple Theatre, Star One, Star Two, Star Three,” on Monday nights starting at seven o’clock. They would air three feature films in a row sponsored by Chevrolet Company Used Car Dealers. KTLA had a “Movie Feature” that was sponsored by Murphy Motors. The films earned good ratings, and the ratings even held up week after week.⁶¹

Since the ratings for feature films were consistently good, there was intense competition between stations to get the best feature films possible. Even John Balaban, owner of Balaban and Katz Theatres and television station WBKB in Chicago, testified that even though he was a theatre owner, he still worked to acquire good feature films for his television station, because: “If I don’t take it for television, someone else will. If it is a desirable picture, if I don’t take it, someone else will, even at the expense of affecting our theatres. If I don’t take the picture and one of the other stations takes it, it still affects our theatres.”⁶² Although Balaban’s example only includes his local Chicago theatres and television station, it reflects an early form of conglomerate logic that motivates the behavior of many of the larger media conglomerates that develop in the second half of the twentieth century.

Although local stations may have been the primary users of feature films, the networks had film departments, and had been working to purchase or license feature films. CBS, for example, had a film department that had existed for years before 1951. They maintained files on sources of available film products, and kept information on pricing, both what they had paid and what other stations in their areas had paid, which they used to negotiate for prices. They had facilities to “receive, screen, cut, repair, restore, and ship” the films they broadcast.⁶³ Alan Rhone, of the CBS film department, advocated for increasing the activities and power of the department,

especially in terms of their control over feature films on their owned and operated stations. Rhone argued that with such a relatively small number of feature films that were offered to television, it required “constant observation of product sources, information through contacts and the power to buy in quantity or in size of bid.”⁶⁴ If the CBS film department could purchase the films for both the network and their stations, they could better compete with other networks. That would also help with keeping the prices for films low because they could negotiate to buy in bulk and avoid unnecessarily driving up prices by competing with their own stations for films.⁶⁵

Rhone also argued that a stronger network film department would help the network and stations deal with inevitable last minute programming changes. He lobbied for a film department that held vast knowledge of the films they had available, and who could help provide the network and stations with suitable films at the last minute, if necessary. Rhone cited the example of WCBS-TV who had “in procuring for the Early Show and the Late Show has screened a number of films which the Film Dept.’s files and previous knowledge indicated were not suitable.”⁶⁶ A centralized network film department would also streamline the process of procuring, handling, and returning the films, which was, according to Rhone, a problem. With a centralized film department, the time consumed in those processes was much less, because it was, as Rhone described, “one person with proper help, rather than a two location, four headed manoeuvre.”⁶⁷ The CBS Film Department even proposed extending their services to their affiliate stations, as well as their owned and operated stations, “enabling all to share in the greater buying power.”⁶⁸

ABC, the relative newcomer to network broadcasting when it was born out of the Blue Network (formerly the NBC Blue Network) in 1945, also had a film department that would

purchase film for four of its five owned and operated stations. The one exception was their station in Los Angeles. The benefit of the network buying the film for their stations was they could buy the films in bulk rather than competing one film against another. It also made film directors at each owned and operated station unnecessary, which would save the network money.⁶⁹ Don Tatum, in charge of television in the pacific region for ABC, recalled that feature films were appearing on television under a variety of conditions:

There have been many feature-length motion pictures produced originally for theatre consumption which have been telecast in whole over many stations [...] Many of the pictures have been made available for sponsorship and have been sponsored in whole. Many of the pictures have been made available for participating sponsorship, which means the insertion of individual announcements within the body of the motion picture as it is telecast. Many of the motion pictures are shown on a sustaining basis without any sponsorship.⁷⁰

CBS, for example, was playing feature films between 8 and 9PM on Tuesday nights as a sustaining program, and they were paying an average of \$2,500 per film. They had *Johnny Frenchman* (1945), for example, “one of the better Rank pictures,” scheduled for Tuesday, April 24, 1951. Other films CBS had scheduled for that timeslot included *Miss Pilgrim’s Progress* (1950) distributed by Unity, *Backdoor to Heaven* (1939) distributed by Alexander, *One-Third of a Nation* (1939) distributed by Alexander, *The Outsider* (1948) distributed by Commonwealth, *Carmen* (1944) distributed by Screencraft, *Chelsea Story* (1951) distributed by Alexander, and *Dark Interval* (1950) distributed by Alexander. The films ranged in price from \$2,000 to \$2,500 each, and they were all first runs on television with the exception of *Carmen* and *Walls of Malapaga* (1949), which had run in Chicago.⁷¹ They had a chance to get *The Walls of Malapaga*, which had recently won the Academy Award for best foreign picture, for \$4,000. CBS had screened the film and found that “the sub-titles are a minimum since most of the picture is pantomime. [...] We could probably get some special publicity on the Academy Award aspects

of the film.”⁷² This suggestion that they might use the prestige of the film’s Academy Award in order to maximize the publicity of the films indicates the high level of competition films on television had for viewers, as well as the interest by television audiences in higher quality foreign films. This would seemingly contradict the notion of the television audience as only interested in, or satisfied by, ‘B’ quality films.

Although the majority of the films available to the networks were independents or foreign films, the networks still made efforts to procure films from the major studios when possible. In 1951, for example, Creighton J. Tevlin, vice president in charge of studio operations for RKO, negotiated “very seriously” with CBS to sell the backlog of their films to CBS “in bulk.” In June of that year, Tevlin met, along with Noah Deitrich, then chairman of the board of RKO Radio Pictures, in Chicago with Daniel O’Shea and Charles Glett of CBS. Tevlin recalled that he brought with him all of the information he had been able to assemble on the films for which they had been able to clear the rights. They had some contracts, however, that although the language was clear, still posed a problem. For example, as Tevlin explained: “A contract with Irving Berlin, where his compensation on some pictures is determined on the basis of 10 per cent of the gross. Frankly, applying that contract to a television exhibition, I don’t know what the answer would be. I don’t know whether the gross would be what we would receive or what a distributor who distributed for us would receive, or what the broadcaster might receive.”⁷³ That conundrum illustrates once again the problems that arise when the differences inherent in the financial structures of the film and television industry collide.

RKO was asking for a cash sale “in the neighborhood of 10 million dollars.” They were interested in that kind of bulk sale for a few different reasons. First, the company was financially unstable and needed an influx of cash. Second, they hoped that if they went to the unions with

one large sum, they might be able to negotiate better residual payments than the five percent and up per film that the unions were then demanding. Third, since advertising dollars spent on television still had not increased to a level the studios thought worth their while, the studios were afraid of the low returns they might earn from percentage deals, which were based on a percentage of the revenue from advertising. Although O'Shea told Tevlin that he thought that the ten million dollar value was realistic for RKO's film vault, Tevlin recalled: "[O'Shea] felt it would be a bad bargain for CBS, if they purchased these films that it might open the floodgates and the market would become flooded with motion pictures, and anybody who would have been the first one to buy would have a bad deal."⁷⁴ O'Shea suggested that instead of the bulk sale, RKO turn their films over to CBS on a percentage basis, which meant that RKO would receive a percentage of the amount that CBS was able to earn for each broadcast of each film. Tevlin responded that "based on our knowledge of the money being paid by TV stations for pictures and the very second-rate time being devoted to motion pictures, that this was completely unrealistic and we weren't interested."⁷⁵

Their negotiations collapsed at that point as far as the sale of RKO's library to CBS, but they continued discussing the possibility of CBS exchanging "stock on a merger basis to either acquire control of all of RKO. But nothing ever came of that."⁷⁶ Tevlin left his negotiations with CBS convinced that the networks had resigned themselves to using feature films in secondary time slots, and since, as a result, the networks were developing a majority of their own original primetime programming, "as far as they were concerned, the future appeared for motion pictures to be one in which these secondary time slots would always be employed."⁷⁷ Tevlin had actually engaged in talks with other television networks and stations prior to CBS, and when the negotiations with CBS finally fell apart, Tevlin finally concluded that they would not be able to

make a deal “involving any real money.” He explained: “It looks just so hopeless that we decided, right after this Columbia Broadcasting negotiation, to adopt a policy of just forgetting television, let it go its way, let it get what pictures it could, and see if time wouldn’t improve the situation as to values. So I would say for a period of at least six to eight months after these CBS meetings, we just forgot television completely.”⁷⁸

Then, in early 1952, RKO was approached again by parties who “appeared to be very substantial,” so they moved forward with negotiations once again.⁷⁹ At that time, RKO had between six hundred and six hundred fifty feature films that they considered for television. There were many, however, where rights could not be cleared, copyrights had expired and could not be renewed, or cases where the films were so dated that they would not have had any real value for television. After excluding the films for which that was the case, they believed they had between four hundred and four hundred fifty “usable pictures.”⁸⁰ Tevlin recalled that he negotiated with Matty Fox, who had a television distribution company, but he was unable to put together a cash price or give guarantees that RKO could agree to. Then in late 1952, Tevlin was negotiating with Elliott Hyman in New York, when, as Tevlin explained, the controlling interest of RKO was sold by Howard Hughes to a Chicago group headed by a man named Stolkin. It was only a brief two-month period when the Stolkin group controlled RKO, and during that time Tevlin was not involved in the company. When Hughes regained control of the company, Tevlin returned and learned that the Stolkin people had engaged in several negotiations with people in New York to sell their backlog of films to television. From then on Tevlin continued to negotiate “whenever, wherever we could find anyone who appeared to be a substantial buyer. These people included one man who appeared to have very substantial backing. He was a well-known New York film

man, Harry Gold. And these negotiations finally folded. They finally developed to be very complicated and impractical negotiations.”⁸¹

Around that same time, Ned Depinet, then acting as president of RKO, was approached by Jules Levey who was also interested in making a deal for televising some of RKO’s “less important pictures,” and he offered somewhere between five hundred thousand and one million dollars. Depinet had a list put together of those less important pictures, but when Levey saw the list, he was no longer interested. Levey said that he wanted only the good films, and so the deal never went through. Depinet recalled that RKO had many applications for the use of their films on television, but “when it came to talking money, why, there was no money.”⁸²

Depinet and others at RKO had been paying attention to television for a long time, and their relationship to persons in the television and film industries was, by this time, complicated. As Depinet explained: “At one time the president of the National Broadcasting Company, and at one time Mr. Sarnoff was an influential owner of our company. We were in pretty close touch with what was going on.”⁸³ Sarnoff and RCA had owned a controlling interest in RKO until 1939, when RKO came out of receivership. Sarnoff, the Rockefellers, and Floyd Odlum each owned a very large interest in RKO for many years after 1939.⁸⁴ So RKO’s ties with the television industry had existed since television’s earliest years.

RKO’s relationship to their theatres had also become complicated as a result of their court-mandated divorcement. As Depinet explained, he had considered the effect that furnishing their films to television might have on the box office receipts of their own theatre chain a “very important factor up to the end of 1950 when the theatres were placed in another company and we had nothing whatsoever to do with them. But up to that time it was a very important factor.”⁸⁵ That did not mean, however, that RKO did not care about the theatrical box office, and in fact,

Depinet still claimed to be unwilling to gamble their theatrical revenue for what they could make in television.⁸⁶

The comparison between revenues from television and theatres could be misleading, however. Studios still considered the offers they received from television for their films as a price for each “ticket” per audience member who might attend a theatre. For example, as Tevlin explained, if a film was televised to three million people, but the studio was only paid \$7,500 for the film, they were only making a quarter of a cent per viewer. Tevlin reasoned, “We felt that on an economic basis this was completely and utterly ridiculous, and we did not care to enter into that kind of a transaction at the risk of opening the doors so that many other pictures would enter, and our pictures eventually, then, would be lost in the shuffle. Our main economic consideration was to convert into dollars the value that this library represented.”⁸⁷ The idea that the studios might make only a quarter of a cent per viewer does sound ridiculously low if they are using the theatrical box office as a model, but the studios needed to move from that concept of per ticket viewers to the television model wherein there was a mass audience subsidized by advertisers. It was a matter of readjusting their conception of their audience and the basic financial model for the success and worth of their films. It was also in reality a question of whether it was better to have their films sitting in their vaults making zero revenue, versus being shown on television and making a quarter of a cent per viewer. Especially during a time when their revenues were hitting all time lows, it would seem that something would be better than nothing. But studios still clung to their old models and a hope of great success in theatrical reissues and rereleases, which had proven possible, but extremely rare.

Fox, Sol Wurtzel, and the British Films

Fox was one studio that was ostensibly very interested in the reissue and rerelease value of their films. Peter Levathes explained that although they would not consider reissuing many of their films to their theatres, since television had not yet become a truly national advertising medium, releasing them to television would have been “a very wanton dissipation of pictures that would some day have great value for the company.”⁸⁸ Despite those pronouncements, during this time, Fox was actively looking into the prices they could get for their films on television. Fox made an investigation of the prices then being paid by television distributors for use of motion pictures on television, and they found that “B” films could gross between twelve and fifteen thousand dollars. Shortly thereafter, an article appeared in the trades that stated that “B” films could gross \$87,650 from their first showing on television.⁸⁹ When the article appeared in the papers, Sol Wurtzel, a producer, and Al Lichtman, an executive at Fox, were very enthusiastic about what that might mean for their films, and contacted Peter Levathes to discuss their options.⁹⁰

Sol Wurtzel was a producer who had formed Sol M. Wurtzel Productions, Inc. in October 1945, and was in the business of producing B motion pictures for double bills. Previously, Wurtzel had worked for about thirty-five years at Fox. Wurtzel Productions only made eighteen films, which were all distributed by Twentieth Century-Fox. Wurtzel actually had a deal with Fox that was very common for independent production companies wherein Wurtzel produced films for Fox, and Fox put up part of the money for their production. In return, Fox had the distribution rights, which included the television distribution rights. Their business arrangement was an early example of the kind of relationship between major studios and independent producers and production companies that remains common today. Many of the films Wurtzel

produced did not do well at the box office, however, and Wurtzel owed money to both Fox and the bank.⁹¹

Since Fox had a financial interest in the Wurtzel films, Lichtman asked Levathes to have his department conduct a survey of possible prices they could get for the films.⁹² At this point, the theatrical distribution of the films had, as Isidore Kornblum, a lawyer for Fox, explained, “slowed down to a walk.”⁹³ Another of the reasons Fox pursued this deal so actively was because, as Levathes recalled, “Twentieth Century-Fox was feeling the full effects of the various problems that had beset the industry, and it needed ready cash, it needed to show a better profit picture in that year.”⁹⁴ They talked to several distributors of motion picture films for television including Matthew Fox and a man named Sidelman at Hygo Television Films, Inc.⁹⁵ Irving Kahn, the program manager of the television department at Fox, contacted stations in New York.⁹⁶ Ultimately, Levathes ended up negotiating a deal with Unity Television because they were able to offer the largest cash advance for the films.⁹⁷

Once Levathes and Unity had agreed on the terms, Fox cancelled their distribution contract with Wurtzel, released the films to Wurtzel, and provided that Wurtzel would enter into the contract with Unity.⁹⁸ Unity paid a \$250,000 advance, of which Fox received \$200,000 and the Wurtzel Company executed a note for the \$125,000 balance, payable in five years to Fox, and gave them a mortgage on the films to secure it. The contract also stated that the name and trademark of Fox and its affiliates had to be removed from each of the films.⁹⁹ This attempt to camouflage Fox’s intellectual property would, in part, function to avoid any affiliation of these films on television with Fox, and thereby help them avoid the wrath of the theatres. As a judge in a later trial commented, “They had a complete bill of divorcement. All they wanted was their

money, and they got it.”¹⁰⁰ But Levathes insisted that he asked for the removal of the Fox name and logo from the films because:

I knew that the feature films are mutilated by the stations. They re-edit them as they will, they try to accommodate their lengths to their own program requirements, and I was afraid the fact that the films would be mutilated, the fact that they would be adjacent to all kinds of products that we had no control over, that it would protect that trade-mark from a product that was going to be inferior. I didn’t want any implied endorsement on the part of Twentieth Century-Fox for products that would be in the films themselves.¹⁰¹

When asked whether this was an effort to conceal the deal from exhibitors, Levathes replied:

“The minute the deal was made [exhibitors] knew the Wurtzel pictures were released by Fox, and this was something we couldn’t conceal. This was an effort not to have the Twentieth Century-Fox trademark reach the public. The trade knew exactly what was going on.”¹⁰² It was also, practically speaking, likely an attempt to circumvent any contractual obligations they might have had to the unions and guilds and any other rights holders involved in the films. As B.B.

Kahane, vice president of Columbia, later testified:

I think the fact is that when Sol Wurtzel put his independent pictures – pictures to which he had title, - on television, he was not concerned with the production of theatrical pictures, and, therefore, it did not make any difference to him whether the guilds cancelled their contracts. [...] Our company’s business is primarily the production of theatrical pictures. Therefore, if we would have our contracts cancelled, we would destroy a very huge investment. We couldn’t continue the production of the pictures without the services of the actors, obviously, or directors or writers.¹⁰³

So the issue was twofold: in order to release their films to television, producers needed to own, free and clear, the rights to distribute those films to television, and they needed to have an agreement with the unions and guilds as to the terms by which those pictures could be released. If the producer did not have those things, they could distribute their films to television, but at risk of not being able in the future to make or release films theatrically. For some independent producers, that was a risk they were willing to take.

In 1951, Levathes was also busy negotiating for another package of films for television. He had been contacted by Fred Packard, J. Arthur Rank's son-in-law, who asked if Levathes could help him sell certain British films to television that Packard had acquired in England.¹⁰⁴ As Levathes later recalled, "Mr. Packard didn't know his way around in the television business, and he had come to us because we had a television department to help him. And we were to acquire an interest in these films. We were to get paid for making this arrangement."¹⁰⁵ So Levathes met with Milton Fenster at WOR-TV in New York at the office of General Teleradio to offer the films for sale. Also in attendance were executives from General Teleradio including Theodore C. Streibert, who was the president; Julius Seebach, who was vice president in charge of programs; Rufus C. Maddox, who was vice president in charge of sales; and Norman Livingston, who was program manager. Levathes had a group of approximately forty films that became known as the "Packard group" that had been produced in England that he wanted to license to television.¹⁰⁶ Fenster recalled: "[Levathes] said that Fox had decided in some way to get into television distribution, and thought that this might be the opening wedge. And, of course, if we made the deal we would be in a position of being favored on any other product that Fox offered for television."¹⁰⁷ Before they were able to make a deal, Fenster received a call from Levathes who said he was withdrawing his offer. Apparently, Packard had returned to England, and encountered difficulties in securing the rights for the films because a cash deposit was necessary, but Packard did not have access to the amount of cash required. He contacted Levathes and advised him to withdraw the films and cancel the negotiations, which Levathes did. Levathes called Fenster and told him, without explanation, that the films were no longer available.¹⁰⁸ It then took almost two years to clear the titles, and it was not until 1953 that the films actually appeared on television courtesy of Atlas Television.¹⁰⁹

Columbia Screen Gems

During this time, Columbia was also more actively investigating the possibility of releasing their films to television. When Columbia abandoned their plan to recut and reframe[†] their theatrical films for television at the end of 1950, they turned their attention to the licensing of their films to television. Ralph Cohn, the head of Screen Gems, undertook a survey to determine the prices that were being offered at that time for features to television. He surveyed John Mitchell, general sales manager of United Artists Television (a company engaged in the distribution of motion pictures for television), Herb Gelbspan, the New York representative of Hal Roach (he was engaged in supervising the sale of Hal Roach's theatrical motion pictures to television), David Savage, the buyer of television films for CBS owned and operated stations, Beulah Jarvis, a woman employed in a similar capacity by NBC, Nat Fowler, a man in a similar capacity at ABC, Tony Azzato, the film buyer for WPIX (a local station in New York), Sy Weintraub, the head of a distribution organization engaged in the sale of films to television, and Sol Turrell, the head of a company involved in the distribution of pictures for television.¹¹⁰ In June 1951, based on his survey, Cohn concluded "that the prices of films on television were getting better, and that the expansion of the medium was continuing, that sets were being sold continuously at a very good rate, new stations were coming into existence, and if we waited for a while the value of this film to the stockholders of this company, and to this company, would be greater."¹¹¹

[†] Reframing the films was also necessary because the aspect ratio of television at that time was 4:3. Although that was the same aspect ratio used in the silent film period, for sync-sound films, the aspect ratio shifted to 1.375:1. When the studios started experimenting with even larger formats such as 1.85:1, it required more dramatic reframing. There were also occasions when individual wide shots were reframed to create a tighter shot in order to accommodate the visual capability of the smaller television screens.

Then in August of that year, there was movement toward seriously considering releasing their films to television. That was motivated in part by sentiment revealed in a report from B.B. Kahane to Ralph Cohn, which read: “The revenue a company can realize today even from only the stations presently operating may be considerably more than might be realized for the same product from many more stations later, if all the other major companies also make available for television the thousands of films they have in their vaults.”¹¹² That month, there was a meeting in Chicago of Columbia’s officers at which the subject of motion pictures on television was discussed at great length. Present were Harry Cohn, president of Columbia Pictures; Jack Cohn, executive vice-president; Abe Schneider, vice president and treasurer; Abe Montague, vice president and general sales manager; Nat Spingold, vice president; Mr. Jaffe, at that time assistant treasurer of the company; and Mendel Silderberg, counsel for the company in Hollywood. Harry Cohn presented a memorandum to the meeting from a Mr. Tatum who was employed by the Western Division of ABC in Hollywood on the residual value of Columbia’s backlog as it pertained to television. B.B. Kahane presented a report on the many legal, union, and jurisdictional problems that they would face if they released their films to television.¹¹³ Kahane later recalled that he believed that even if they could overcome the issues with the unions and guilds, “with the television industry, really, in embryo, and in its infancy, so to speak, it was a question whether it was advisable at that time to release pictures to television, or should it not be more prudent to wait until the industry grew, as it looked like it was destined to grow, and probably obtain a great deal more revenue if and when you decided to release your pictures on television.”¹¹⁴

Kahane’s own contradictory statements reveal the level of uncertainty and anxiety that existed at the time about wanting to make sure that they released their films to television before

the market was flooded with every other studios' films, but also wanting to wait until the television industry had grown to a point that could allow it to pay prices for the films that the studios thought were fair. It was suggested at that August meeting that Columbia might be able to make ten to twenty million dollars for the release of their films to television. Ralph Cohn subsequently investigated that figure and found, "It was just a dream. There was nobody available. [...] It was purely an idea, but it didn't have any funds in back of it."¹¹⁵

It was the case, however, that by 1952, distributors were paying \$10,000 to \$30,000 for the top feature films for television.¹¹⁶ Those prices would often vary greatly depending on the differences between the television markets. For example, Charles Weintraub, president of Quality Films, a distributor of feature films to television, had tried to sell films to a television station in Milwaukee, and the station offered him between two and four hundred dollars per film. Weintraub believed he could do better than that since Milwaukee by that time had over a half million television sets in use, so he went to Young & Rubicam, the advertising agency that represented Schlitz Brewery, and made a deal with them for \$1,750 for the same film the Milwaukee station had offered only four hundred dollars for. Weintraub explained;

So when you talk about price, it is a pretty fluid thing. In Los Angeles, for instance, in 1950 and '51 there was a sponsor known as Hoffman Television. It was the first one to pay any real money for pictures, the first sponsor. And where the general market in this town was around a thousand or eleven hundred dollars a picture, he paid \$2500 for just one run. Since that time when other sponsors came on, I was able to obtain as high as \$8,000 a picture in Los Angeles.[‡]

[‡] The films Weintraub was able to get \$2,500 for included: *Angel On My Shoulder*, with Paul Muni and Anne Baxter; an English picture called *The Stars Look Down*, with Michael Redgrave and Emlyn Williams; *Powers Girl*, *Song of the Open Road*, *Girl From Manhattan*, and *Sleep My Love*. (Testimony of Charles Weintraub, President of Quality Films, Reporter's Transcript of Proceedings, Pages 842-843, 851.)

The wild west nature of these markets and prices in the early days of television was one reason why the film studios, despite their many studies, was still unable to come to any concrete conclusions about the new industry.

Meanwhile, Ralph Cohn was releasing some of his own feature films to television. Cohn had been an independent producer prior to joining Columbia Screen Gems, and had ownership in five films that he subsequently released to television. When he was later asked why he would release his own films to television, but advise Columbia to withhold theirs, he explained that the films had not earned back their costs by the time they exhausted their theatrical runs, and there were a “considerable number” of outstanding loans against the films. The interest on the loans was accruing, and, as Cohn recalled:

The people who held the mortgages for those loans forced us to put them into television in order to begin to liquidate the loan. I objected to their doing so. I felt that they were doing an uneconomic thing, because of the timing of the putting of the pictures into television, but they insisted they wanted to reduce the amount of the loans and the interest payments, and we had nothing to do but go along with them or face foreclosure.¹¹⁷

That was a common situation faced by independent producers in those days, and was one of the main reasons that feature films ended up on television. Although Cohn had released some of his films to television, albeit against his wishes, Columbia was still waiting for better prices before releasing their feature films to television. Instead, they began producing new motion pictures for television, and by the end of 1955, they had produced several hundred of them.¹¹⁸

Subscription Television

Columbia’s decision to wait before releasing their films to television did not happen without a good deal of debate. At the meeting of Columbia’s officers in August 1951, as they were discussing whether or not to move forward with releasing their feature films to television,

one of their considerations was the possibility of their films having greater value on subscription television. As Ralph Cohn recalled: “We had been told a great many exciting things about subscription television, and at that time comparatively little was known about it. But we were aware of the possibility then that some of these motion pictures could conceivably have a much greater value in subscription television, and had to take that into consideration in making any decision that we were going to make.”¹¹⁹ The hope of subscription television was another reason why film studios hung onto their film libraries. They wanted to be able to take advantage of the revenue they would derive from using those films on pay television, and hoped that if they hung onto their films, they would be able to do exactly that. In 1951, Paramount even took the step of moving into the business of subscription television and purchased International Telemeter. It remained unclear, however, whether or not the FCC had jurisdiction over pay television – especially pay television that was transmitted via cable instead of the broadcast airwaves – and since the studios to that point had not been granted much help by the FCC, the studios were hoping the FCC did not.¹²⁰

In the early 1950s, there were two main competitors of subscription television. The first was Skiatron’s Subscriber-Vision. Skiatron had obtained an experimental license from the FCC, and were awaiting the approval of the FCC for a trial run in the New York area in cooperation with station WOR-TV that would include three hundred homes. In their efforts to acquire films for the test, Skiatron appealed to Eric Johnston, head of the MPAA, for help obtaining “quality” films.¹²¹ Johnston suggested that Skiatron contact each producer and distributor individually, and so in December 1951, they sent letters to the studios asking them to let Skiatron know by January 15th, at the latest, what features they could expect from their companies. Barney Balaban at Paramount received a letter that stated:

It is for this purpose, and to prove to you and others what we already know – that in subscription television Hollywood may tap a fabulous and much-needed new source of revenue that can enlarge the movie audience to an extent undreamed of in the past – that we are appealing for your help. We need motion picture product that is either new or fairly recent, otherwise the true attraction and drawing power of these films, as expressed in the viewers' willingness to pay to see them, will not be clearly established. [...] Skiatron knows and appreciates your reluctance to circumvent the motion picture exhibitor, and we already have made it clear that we are willing to cut him in for his fair share of the profits. Many of the theatre-men reportedly are actually in favor of subscription video which, they feel, gives them a better chance to compete than free home TV.¹²²

Skiatron's proposal to cut the theatres in on the profits is interesting, not only because of their clear acknowledgment of the importance of the theatres in the studios' decision making process regarding their films on television, but also because of the fact that there existed a moment in time when that kind of a deal was a possibility. If the studios had taken Skiatron up on their offer and any of these technologies had moved forward, it would have significantly altered what the television and film industries might look like today. Imagine if the theatres today were cut in for a share of the profits from pay per view or movie channels. It was not the case, however, that all of the exhibitors were in favor of subscription television, and in fact, Skiatron likely exaggerated the point to make their case. The comments of Fred Schwartz of Metropolitan Theatres at the COMPO meeting in 1952, more closely reveal the real feelings of exhibitors regarding subscription television:

There is a much bigger difference between a first and subsequent run as it exists today than there would be in the future between the first and subsequent run if subscription television was the subsequent run. I wouldn't like to compete with a subsequent-run theatre who charged five cents, which is what it might be on a per-person basis, [...] where the person didn't have to get dressed up in the evening, didn't have to go down town and didn't have to worry about parking an automobile, where their natural lethargy would keep them at home. I wouldn't like to be faced with that type of competition. I don't think any theatre can exist if subscription television comes into being.¹²³

There were larger issues, however, with the Skiatron proposal, including the fact that the FCC had apparently not yet authorized the test.¹²⁴

The FCC had authorized a test of the Phonevision system, and since the studios had been under pressure from both the DOJ and the FCC about their previous refusal to make their films available for Phonevision tests, they reluctantly agreed to provide films[§] for a three month test of the Phonevision system in Chicago that ran from January to March of 1951.¹²⁵ As *Fortune* described: “Most of the ninety films were two years old, quite a few had been made a decade ago, and not many were of the quality that would have lured father to the neighborhood theatre on even a hot summer’s night.”¹²⁶ Although the films may not have been the best of the best, the test was still relatively successful. A survey by the National Opinion Research Center of the University of Chicago even showed that on average 7,200 *non-test* television-set owners regularly watched the scrambled films in the evening.¹²⁷ As *Fortune* observed: “Considering that they could get nothing more than an idiotic mélange without an unscrambling device, it is easy to guess that most of the bootleg audience symbolized both a hunger for something better than TV now offers and the frightening ‘wantlessness’ that characterizes many devotees of the medium.”¹²⁸ Although *Fortune* clearly did not have a very high opinion of television and its audience, the fact that over seven thousand television sets were tuned in to watch a scrambled version of a feature film demonstrates the intense desire television audiences had to view those films at home. This serves as a reminder of the fact that in this period before the introduction of

[§] The films that were released for the test by RKO, Samuel Goldwyn Productions, Walt Disney Productions, and Columbia were: RKO: *The Enchanted Cottage* (1944), *Hunchback of Notre Dame* (1939), *I Remember Mama* (1947), *Gunga Din* (1938), *Sister Kenny* (1946), *Bringing Up Baby* (1936), *Tall in the Saddle* (1944), *Sinbad the Sailor* (1946), *Tycoon* (1947), *Murder, My Sweet* (1944), *The Spanish Man* (1945), *From This Day Forward* (1945), *Mexican Spitfire* (1939), *The Great Man Votes* (1938), *Lost Patrol* (1933), and *Back to Bataan* (1944). Samuel Goldwyn Productions: *Wuthering Heights* (1938), *The Bishop’s Wife* (1947), *The Westerner* (1940), *The Little Foxes* (1941), and *Pride of the Yankees* (1942). Walt Disney Productions: *Song of the South* (1946), *The Reluctant Dragon* (1940), and *Bambi* (1942). Columbia: *Texas* (1941), *The Mating of Millie* (1948), *Framed* (1947), *The Swordsman* (1948), *Sahara* (1943), *Lost Horizon* (1937), *Arizona* (1940), *Flight Lieutenant* (1942), *Prince of Thieves* (1940), *I Love Trouble* (1940), and *Destroyer* (1943).

technologies like VHS and DVD that allowed audiences to access and re-watch older films, television was the only way that people could see many of those older feature films again.

Ralph Cohn later recalled Columbia Screen Gems used their participation in the Phonevision test as a way to learn more about the potential of subscription television. He recalled the lesson he took away from the experience:

102 sets of the 300 sets that was used for the test turned it on to see [*Lost Horizon* (1937)], paying \$1.00. It was theoretically worked out that out of this dollar we were to get fifty cents, and the balance was to go for time and maybe for the telephone part of it. [...] On this basis our share from these three showings would have been \$1,650,000, on the basis of the ten million sets, using the same example. And you can multiply that, of course, to see as to what it would be against 37,000,000 sets.¹²⁹

Cohn's calculations, if correct, show some promise for the potential of Phonevision to provide the studios with the kind of revenue from their films on television that they were hoping for. And in actuality, Phonevision was actually more of a competitor to television than it was to the film industry. If approved, it would compete with advertisers for limited prime time viewers, and the prices that Phonevision would be able to pay for content would potentially be much greater than what advertisers could afford. Just think of the cable versus broadcast model today. As E.F. McDonald explained: "If only 25 percent of the existing television sets in Chicago were equipped with Phonevision, and if these Phonevision homes patronized a 9:30-11:00 program in the same percentage [13 per cent] that our test audience did, the station broadcasting the service would get more net revenue than the gross time charges for these hours of all four existing Chicago television stations combined."¹³⁰ In order to move forward, however, Phonevision required the approval of the FCC, and federal attorneys were not sure whether the Communications Act would allow stations whose programming was even in part denied to the general public except on payment of a fee. The fee itself posed a potential problem as it might require the FCC to regulate the fees and thereby take responsibility for the economics of

television in the same way the Interstate Commerce Commission was responsible for the economics of land transportation.¹³¹ That reluctance caused the FCC to delay any decisions on the subject, and Phonevision and Subscriber-Vision were left to wait.

The U.S. v. Twentieth Century-Fox, et al.

Meanwhile, McDonald's complaints to the Department of Justice regarding the film studios refusal to deal with Phonevision had resulted in an ongoing investigation of the film industry and their position on television generally.¹³² Rumors also circulated around exhibitor circles that McDonald had actually bribed his congressman with fifty thousand dollars to convince the Department of Justice to investigate the studios and force them to release their films for the Phonevision test.¹³³

However the case began, in July 1952, the DOJ's investigation led to Attorney General James P. McGranery filing a civil antitrust complaint in the Federal district court in Los Angeles that charged twelve motion picture producing and distributing companies with a conspiracy to restrain interstate commerce in 16mm feature films in violation of the Sherman Act. The defendants were: Twentieth Century-Fox Film Corporation, Warner Bros. Pictures, Inc., Warner Bros. Pictures Distribution Corporation, RKO Radio Pictures, Inc., Republic Pictures Corporation, Republic Productions, Inc., Columbia Pictures Corporation, Screen Gems, Inc., Universal Pictures Company, Inc., United World Films, Inc., Films, Inc., and Pictorial Films, Inc.** Paramount and MGM were not included as defendants in the suit because at the time of the

** RKO both produced and distributed motion pictures in 35mm and 16mm. Warner, Columbia, and Universal each had a wholly-owned subsidiary engaged in the distribution of motion pictures, including 16mm pictures. Those subsidiaries, also named as defendants, were, respectively: Warner Bros. Pictures Distributing Corporation, Screen Gems, and United World Films. The two other distributing companies named as defendants, Films, Inc. and Pictorial Films, primarily distributed 16mm motion picture films for, among others, Fox and Warner.

commencement of the suit, and up to the time of the trial in 1955, they only produced or distributed 16mm films for distribution in foreign countries and to the armed forces, and not for general domestic distribution such as distribution to small commercial 16mm theatres, schools, hospitals, civic groups, and drive-ins.¹³⁴

The complaint contained the actual signatures of attorney general James P. McGranery, acting assistant attorney general Newell A. Clapp, special assistant to the attorney general William C. Dixon, United States attorney Walter S. Binns, and trial attorneys George H. Schueller and Leonard R. Posner. It was unusual that the attorney general would have actually signed the complaint himself, which indicated that they were especially interested in this case and thought it was particularly significant.¹³⁵

While the suit cited 16mm films specifically, its primary focus was television. It involved 16mm films, however, since the advent of commercial television had created a tremendous new demand for 16mm feature films. For television exhibition, 16mm film was more feasible than 35mm both technologically and economically, and it had become the primary format for films on television.¹³⁶ For example, by 1951, of the one hundred and eight television stations in the US, sixty-seven had 16mm projection equipment. Only twenty-two had both 16mm and 35mm projection equipment.¹³⁷ The stations with 35mm equipment were located in larger cities like Syracuse, Los Angeles, San Francisco, Chicago, Boston, Detroit, New York, and Cleveland.¹³⁸

Although the use of films on television might have been the primary concern of the DOJ, their focus on 16mm film necessarily included the other outlets served by 16mm films. As Newell A. Clapp, acting assistant attorney general in charge of the Antitrust Division, explained: “According to the complaint, defendants have imposed arbitrary and unreasonable conditions upon the exhibitions of sixteen millimeter feature films in hospitals, schools, churches and USO

centers, and have prevented the use of these films on television. This suit seeks to prevent defendants from continuing their restrictive system of distributing these films.”¹³⁹ Another complaint regarding the studios’ restrictions on 16mm film had come from a source not mentioned by Clapp: hotels in Miami. Many hotel operators in Miami had shown 16mm prints of feature films free for their guests. The 35mm theatre operators in the area had complained vociferously to the studios about these showings, claiming that they stole potential audience members from their theatres. As a result, the hotel owners had contacted their representatives in Congress as well as the DOJ. Their allegations against the studios for anticompetitive behavior, in addition to the complaints regarding Phonevision, and the fact that the dominant technology in television was 16mm, all led the DOJ to make the antitrust case about 16mm film rather than about films on television.

In the initial filing of the suit, the Theater Owners of America was named as a co-conspirator but not as a defendant.¹⁴⁰ Later, Allied States Association of Motion Picture Exhibitors, Independent Theatre Owners Association, Inc., Metropolitan Motion Picture Theatres Association, Inc., Southern California Theatre Owners Association, and Pacific Coast Conference of Independent Theatre Owners were added as co-conspirators.¹⁴¹ The complaint charged that the defendants and the co-conspirators “engaged in an unlawful combination and conspiracy to limit distribution and restrict exhibitions of 16 millimeter feature films, including the exhibition of such films on television.”¹⁴² The purpose of their conspiracy, the government alleged, was to protect 35 millimeter theaters from competition – especially from television.¹⁴³ attorney general McGranery stated in a DOJ press release, “This suit is filed as part of the continuing program of the Antitrust Division to prevent businessmen and others from combining

to place restrictions upon what members of the general public may see on their television sets.”¹⁴⁴

The DOJ’s complaint also included the following restrictions on the distribution and exhibition of 16mm feature films: refusing to license any one to telecast 16mm feature films; refusing to license the exhibition of 16mm films at locations competitive with established 35mm theatres; limiting the conditions on which licenses for exhibition of 16mm films may be granted, even to approved places of exhibition such as churches, schools, clubs, hotels, drive-ins or other places of exhibition in theatreless towns; imposing arbitrary and excessive clearances between the first release of a feature motion picture of 35mm width and its exhibition on 16mm width; refusing to license the exhibition of 16mm feature films at free merchants’ shows, taverns, in coin-operated machines and refusing to license roadshowmen; reserving for each of the defendants severally, or for some of them jointly, the right to approve or disapprove locations for the showing of 16mm feature films before or after the licensing thereof, with the right to arbitrarily abrogate any license granted for exhibition at any approved location; granting or withholding licenses to exhibit 16mm feature films to such approved or disapproved locations.¹⁴⁵

The complaint further alleged that the defendants, with the assistance of the co-conspirator, had maintained an intricate system to police and enforce those restrictions and blacklisted or boycotted exhibitors who disregarded them.¹⁴⁶ The effects of those actions, the complaint alleged included: the telecasting of the finer feature films to television audiences in the United States has been suppressed; competition in the interstate distribution and exhibition of feature films has been unreasonably restrained; actual and potential exhibitors of 16mm feature films have been foreclosed from significant parts of the United States market; and persons living in theatreless towns or in institutions which prohibit their inhabitants from visiting theatres, have

been denied the opportunity to see other than outmoded feature films.¹⁴⁷ The DOJ wanted the court to order the defendant companies to grant “unrestricted leases and licenses for the exhibition, including telecasting” of the feature films the court “deemed necessary to dissipate fully the consequences of the aforesaid illegal combination and conspiracy.”¹⁴⁸

The DOJ was still going to allow for reasonable clearance periods between runs of the studios’ 35mm films and 16mm films if the exhibition of the 16mm films were “substantially competitive” with the theatres.¹⁴⁹ So the studios could still have used 16mm outlets, including television, as a subsequent run location, but those allowances did not assuage the studios and the theatres. Shortly after the suit was filed, Skouras wrote an editorial in the *Los Angeles Examiner* that opened with the dramatic pronouncement that: “The Department of Justice started last month an antitrust suit against a number of Hollywood motion picture producers to compel them to make their films available to television and TV advertisers. In other words, the motion picture producers are kindly requested to cut their own throats.”¹⁵⁰

Other members of the film industry also issued public complaints about the suit. SAG, for example, issued a press release in August 1952, complaining that the DOJ was attempting to force the studios to give their films to television for free showings, and if that happened, they believed the country’s theatres would be forced to close and the studios would no longer be able to finance the production of their films. SAG’s statement continued:

The Guild Board condemns this action by the Federal Government, which jeopardizes the livelihood of 250,000 workers in the film industry [...] The Guild Board recognizes that old theatrical films which have exhausted their theatre box office possibilities may go into television provided that (1) the producer of the picture sells the television rights of his own free will and not under government compulsion, and (2) the actors in such films receive additional compensation for their television rights.¹⁵¹

SAG sent a copy of the press release to the AFL with a request that they look into the matter, and they also sent a copy to the attorney general, James McGranery. Newell Clapp, the assistant

attorney general responded to that letter on behalf of the DOJ, reiterating the DOJ's concerns and rationale for filing the complaint. In SAG's response, they expressed the following anxieties: "We realize, of course, that the antitrust allegations in this matter must be adjudicated in the courts but we are most disturbed over the impracticality of any court setting 'reasonable clearance periods between runs of a particular feature motion picture in a theatre' and exhibitions of the same motion picture for free viewing on television."¹⁵² They cited the recent example of the successful theatrical reissue of *King Kong* (1933), as the kind of potential that would be destroyed if films were given to television. *King Kong* was a go-to example for members of the film industry as the kind of theatrical potential that older films still had in the theatres, and they invoked it regularly. It was true that the reissue of *King Kong* had done very well at the box office and had grossed almost three million dollars in its reissue. Unfortunately, it was an anomaly, and most films when reissued grossed far less. In response to SAG's request that the matter be investigated, the AFL, at their annual national convention in September 1952, voted to approve a resolution condemning the antitrust suit. The International Alliance of Theatrical Employees, the Screen Actors Guild, and the California State Federation of Labor sponsored the resolution.¹⁵³

The Los Angeles City Council also got involved in the matter, and passed a strongly worded resolution condemning the suit:

NOW, THEREFORE, BE IT RESOLVED, that the City Council of Los Angeles, [...] recognizing the frightful fact that if by government decree our Motion Picture Industry can be forced to sell its finest pictures to Television Companies and advertisers at reduced low prices, set by government, that such a decree would not only be unjust enrichment of one industry at the expense of another, but that the Motion Picture Industry would soon be without production, which would lead to the closing of theatres and eventual bankruptcy of both studios and theatres across the nation.¹⁵⁴

The full text of the resolution is comically hyperbolic, and the Council closes by inviting the leaders of the film industry to confer with them on “ways and means” of how they might exert their influence to protect the film industry’s “constitutional property rights.” Although both the Council’s resolution and SAG’s press release would make it seem as though the DOJ was trying to make the studios give their films for free to television, that was not the case at all. The DOJ wanted the studios to make their films available for sale or lease at reasonable prices set by the studios. The confusion existed, however, as another result of the innate difference between the financial models of the film and television industries. Just because television audiences did not have to purchase a ticket to watch television programming, it did not mean that payment was not made somewhere by someone. It was just that in television, the money changed hands behind the scenes, and that relative invisibility caused the kind of tumult you see in the City Council and SAG statements. The hyperbole was not limited, however, to the producers, unions, and city council.

The theatre owners and associations were particularly upset by the suit, and made their opinions known. Their opinions were so vocal, in fact, that some people began to suspect that it was actually their influence that motivated the studios’ allegedly illegal behavior. A *Los Angeles Times* article that ran shortly after the lawsuit was filed argued, “It is the contention of some members of the television industry that the pressure to keep films from TV distribution comes primarily from the exhibitors rather than from the producers.”¹⁵⁵ The studios and theaters were afraid of what “the menace to the picture industry of 40,000,000 little home theaters” would do to the income from the theatrical business.¹⁵⁶

The theatres were, in fact, afraid of the competition from the television home theatres, particularly if Hollywood’s feature films were made available to them. The theatre organizations

encouraged all of their member theatres to write letters to the Department of Justice, their congressmen, and the President, expressing their opposition to the case. One letter from the Strand Theatre in Lowell, Michigan, charged: “Your anti-trust suit against twelve distributing companies releasing motion picture films elaborates neatly the amount of corruption existing in your department and the United States Government in general. Free enterprise no longer exists. You are protecting and abating parasites who desire product founded solely for the distribution to motion picture theatres.”¹⁵⁷ Another letter from J.C. Mohrstadt Theatres in Hayti, Missouri, made it clear that he would be “very unhappy” if the case was successful and his theatre was forced out of business. He wrote:

I am not a lawyer and don't know the legal implications of such a suit, but I was under the impression that the meaning of the Anti-Trust law was to protect small businesses of this United States, not to destroy them. If the suit you have instituted was won, it would seem to me that you would be creating a monopoly of Television stations that would crush in a single blow, these thousands of small theatre owners.¹⁵⁸

Many of the letters echoed those concerns that by turning over Hollywood's films to television, it would force the theatres out of business. Then there were letters like the one from Frank Lesmeister of the State Theatre in Blair, Wisconsin, which complained:

I have bin reding in the papers and today 1 got the box office and after reding it there 1 tryed to come up whit a ancer but 1 cant find one. If the Goverment will make all the Film Companyes give there films to T.V. before we get them then there is nothing left for us to but close all are theatres, I will try and give you a small examble we have atowen of 850 Pop here and we have six taverns here and all the rest of the places where thay will be showing FREE.TV. and we are paying the Goverment 20 per cent gross admission tax and thay are able to show the same picture FREE ON T.V. where do you think thay will go. not to the theatre but where thay can see it FREE,¹⁵⁹

It seems from the number of spelling and usage errors in this letter from Lesmeister, that he likely did not compose letters often, so the occasion of the suit must have been significant enough motivation to sit him down at a type writer and write and mail the letter. There are literally thousands of letters like these in the files of the Department of Justice. Some of them

typed, some handwritten, and some signed by all of the employees at a particular theatre. The combined effect of that mass of letters is somewhat overwhelming, which was certainly the theatre owners' intention.

In addition to sending letters, theatre owners also passed resolutions regarding the suit. In the resolution passed by the Board of Directors of the Southern California Theatre Owners Association (SCTOA), for example, they argued that the DOJ was "badly informed and mislead in filing the suit because the suit appears to be unreasonable and contrary to common business sense."¹⁶⁰ They cited the importance of the twenty-two thousand theatres that were worth an estimated two and a half billion dollars and employed two million people in the United States, and their integral role in the "American Way of Life by affording the general public entertainment, recreation and education at a charge, nominal by comparison."¹⁶¹ They argued that the money needed to produce new feature films could only be earned through the theatres, and if those theatres were forced into bankruptcy, as they argued would inevitably happen if the DOJ won their case, the film industry would fail. That would, they asserted, in effect encourage monopolistic behavior by the television industry that would then be left without competition. They complained that "the motion picture theatre industry not only has been adversely affected but on the verge of total destruction because of the subtle unfair competition of the television business," and argued that television broadcasters should be making their own original programming that would be "more suitable for their purpose."¹⁶² The SCTOA promised not to request that the DOJ force films produced by and for television to be sold to the theatres, and requested that their senators, state representatives, and the President urge the DOJ to "end this harmful litigation."¹⁶³

The Board of Directors of the Allied Theatre Owners of Indiana, Inc., which represented approximately five hundred independent theatre owners, met on July 29, 1952, in Indianapolis in emergency session to discuss the suit. From that meeting, Trueman Rembusch sent a letter to the attorney general, which asserted:

The motion picture exhibitors of this state have concluded that the suit is so illogical in its pleadings and so drastic in the remedies sought that by its very existence it casts a shadow upon the integrity of the Department of Justice, and implies a definite tie-up between the hierarchy of the Democratic party and the monopoly, television. That conclusion was reached by exhibitors with expert knowledge of production values after making a comparison of the superior television programming given the Democratic National Convention as compared with that given to the Republican National Convention.¹⁶⁴

In this letter, as in many of the other letters and resolutions, the undercurrent of anxiety about hidden political agendas and socialism is evident and reflects the growing anti-Communist paranoia of the time.

Despite the outrageous accusations made against them, the DOJ still took the theatre owners' and associations' concerns seriously, and on August 14, 1952, Clapp and Kramer of the DOJ met with representatives from the major theatre organizations. The theatre groups expressed a fear that a court mandate to license theatrical films to television stations would create unfair competition by practically compelling the producers to accept much lower rentals than those paid by theatres. The DOJ made it clear that if the theatre groups' objective was to persuade them to withdraw the suit, such attempt was fruitless. The DOJ did, however, indicate that they would be willing to give the theatre owners a hearing, if, at a time a consent decree was negotiated, they wished to come forward with constructive suggestions. The DOJ then pointed out that the relief they sought from the suit provides for reasonable clearances and reasonable royalties, and argued that the legitimate interest of theatre owners would be protected by such clearances and payment.¹⁶⁵

The AFM

The antitrust suit against the studios and their distributors did not develop only as a result of E.F. McDonald's complaints about Phonevision or the complaints of hotel owners in Miami, however. The Department of Justice was not immune to the rising tide of antiunion sentiment in the United States government, and they had been pressured by members of Congress to investigate unions, the AFM in particular, for possible antitrust violations. As a result, the DOJ had scrutinized the AFM for years in an attempt to find an antitrust charge that could stick, and the case against the studios actually sprang, in part, from the DOJ's hopes that they could bring antitrust charges against the AFM as well.

Independent producers had for years spurred the DOJ on in their investigations by urging them to take action against the AFM. In May, 1951, for example, I.E. Chadwick, president of the Independent Motion Picture Producers Association, lodged a complaint with the DOJ about the restrictive provisions of contracts between the AFM and the different motion picture producers associations, which prohibited the use in television of the music sound track containing music made by members of the Federation. When Chadwick called the DOJ on July 19th of that year to check on the status of his complaint, he told his contact that although he and his association thought that they had cause to take action against the AFM under antitrust laws, he did not want to file suit because he feared retaliatory action by the AFM. He and other independent producers hoped that the DOJ might take action on their behalf.¹⁶⁶

The DOJ was still harboring strong suspicions that the studios had colluded with the AFM to put that clause in their contract that restricted the use of film soundtracks on television in order to protect their theatres from television competition. In a memo from William C. Dixon,

chief of the Southern California Office of the DOJ to Honorable H.G. Morison, assistant attorney general, on July 31, 1951, Dixon explained:

It appears that all negotiations between the major producers and the American Federation of Musicians were handled in closed or secret conferences [...] As you know, 20th-Century-Fox and the major film producers had at the time this provision was originally inserted in the agreement in 1946, extensive theatre holdings, the value of which would necessarily be adversely affected by the opening up to television of all films made by the independent as well as the major producers.¹⁶⁷

By the end of 1951, the DOJ had to put the matter in an “indefinitely deferred status” not only because they lacked the evidence to prove a conspiracy, but also because, as Richard K. Decker, acting chief of the trial section, explained, the DOJ’s “appropriations are in such poor shape. The situation does not warrant a very high priority at this time because of that.”¹⁶⁸ With the reduction in staff they faced they faced as a result of their inadequate funding, and the fact that they were as a result of the lack of funding finding it difficult to deal with matters they considered of even greater public importance, they chose instead to pursue cases they thought had a greater chance of success.¹⁶⁹ Only a year later, however, in December 1952, the DOJ reopened their investigations of the AFM. William Dixon advocated for testing the legality of the contract provisions in court, and argued that would be beneficial regardless of whether or not they could prove that the AFM had colluded with the studios. The independent producers who were members of the Independent Motion Picture Producers Association had continued their complaints to the DOJ about the AFM’s restrictions, and claimed that they would have been able to release many films to television if it had not been for those restrictions.¹⁷⁰

The AFM was still holding on to those restrictions against music in films appearing on television because they were trying to sustain the employment of the greatest number of musicians possible. They were still concerned about the threat of what they called “mechanized

music.”¹⁷¹ They were feeling the loss of employment in radio and television, and in the AFM’s newsletter from October 1951, Leo Cluesman, secretary of the AFM, wrote:

Today, 2,500 of the radio stations in the country employ no live musicians at all. Federal Communications Commission figures show that these stations play records and transcriptions 60 per cent of their time on the air. Their gross receipts from time-sales run around \$200,000,000, which means that \$120,000,000 of their revenue comes from the playing of mechanized music.¹⁷²

They were concerned that television was going the same way as radio and would use records and film soundtracks in lieu of live musicians whenever possible.

Earlier that year, in April, the AFM had, after two months of negotiations, finally reached a deal with the four major radio and television networks (NBC, ABC, CBS, and Mutual) wherein the networks agreed to pay five percent of their gross revenues derived from their use of television film to the AFM’s Music Performance Trust Fund. This did not cover feature films that had originally been produced for theatrical exhibition – those were still restricted under the AFM’s contract with the studios – but it covered any film made for television that was later rebroadcast. The AFM declared that clause the “most important part of the contracts.”¹⁷³ The AFM hoped that the Trust Fund would not only accrue money that could be used to pay musicians to perform in concerts that were free to the public, thereby providing employment for musicians who had lost work from the use of mechanized music, but that the fees the networks had to pay to the fund for the use of film might provide a disincentive to using film at all. They hoped that the royalty payments might make the use of live talent more competitive with the use of films and kinescope recordings on television.¹⁷⁴ Additionally, if those royalty payments proved successful, it could be used as a model for royalty payments for the use of feature film soundtracks on television.

At the annual convention in 1951, Petrillo was optimistic about the payments to the fund by the networks, but he recognized that the Lea Act and the Taft-Hartley Act were “hamstringing the Federation’s efforts to decentralize live music, and blocking all efforts to insure a more equitable country-wide distribution of employment opportunities.”¹⁷⁵ By the time the AFM had their convention the next year, the Fund had accrued \$186,000, and Petrillo addressed the members: “You can’t build these things overnight. We are trying to create something that we can pass along to the next generation. [...] Television is motion pictures over again, but so far, we know little about where it is going [...] We must keep the royalty principle. What we are battling for is a principle that will help all musicians, not just a few.”¹⁷⁶ Petrillo and the AFM had actually hoped that the FCC’s policies encouraging stations to use local talent and broadcast locally originating programming would help promote the employment of musicians on live television.¹⁷⁷ By July 1952, however, any optimism they might have had about television was waning. Petrillo wrote a column for the *New York Daily Mirror* and the *Post-Hall Syndicate* that observed:

Where music and musicians are concerned I can’t find anything in television, now or in the foreseeable future, to cheer about. [...] Television has neglected its obligations to culture, its sworn duties as a government-licensed facility and its opportunities to become a very great and unique medium of public entertainment by serving the most delectable item on its menu out of a can. Musically, it has gone the way of the theater, the restaurants, the radio and every other form of entertainment susceptible to mechanization.¹⁷⁸

One of Petrillo’s concerns was that even though they had negotiated a deal with the networks for the royalty payments for the use of recorded music on radio and television, TV film producers, radio and television networks and stations had apparently, in an effort to avoid those payments, imported recorded incidental music, themes, bridges and cues that were produced in other countries by foreign musicians who were not members of the AFM and therefore not subject to

the AFM's contractual obligations.¹⁷⁹ It seemed that no matter what Petrillo tried, his musicians still lost work to mechanized music. He turned his attention at that point to urging the creation of a federal Department of the Arts, which would "administer to the needs of the arts and artists just as the Department of Agriculture protects the future of agriculture and the farmers."¹⁸⁰ The movement in government by representatives like Taft to limit the power of unions continued, in part as a response to rising concerns about Communism and its link to the unions, and the AFM hoped that by creating a Department of the Arts and encouraging their members to vote for pro-union representatives in government, they might at least have people in power lobbying on their behalf.¹⁸¹

Meanwhile, the AFM's 1948 contract with the producers was about to expire, and they began negotiations for a new contract in January 1952, at the Hotel Lombardy in Miami Beach, Florida. Petrillo and the other International Executive Board members of the AFM met with representatives of the motion picture studios, including: Nicholas J. Schenck (Loew's), Spyros Skouras (Fox), F. Meyer (Fox), Barney Balaban (Paramount), Y. Frank Freeman (Paramount), L. Lipstone (Paramount), J. Green (Loew's), H. Halpern (Loew's), B. Kahane (Columbia), J. Cohn (Columbia), Ned Depinet (RKO), S. Schneider (Warner Bros.), M. Weiner (Universal), J. Gershenson (Universal), J. O'Connor (Universal), Mr. Black (Republic), Charles Boren (Producers' Association), A. Chamie (Assistant to Mr. Boren), and B. Batchelder (Producers' Association). On the 17th, the first day of negotiations, the AFM gave the studio representatives their proposals. The studio representatives asked for time to study the proposals, and suggested meeting on the 18th for further negotiations. Their conference met from 8PM to 11:45PM on the 18th, and they agreed to a two-year contract extension, the most significant change to which was an increase of 15% to musicians' wages. There was no resolution regarding the use of theatrical

feature film soundtracks on television, so the ban on that use from the 1948 Basic Agreement was to remain in place for another two years.¹⁸²

One of the reasons that the AFM and studios were unable to reach an agreement at that time was because the studios were wary of agreeing to a deal with the AFM on terms, which the studios considered undesirable. Primarily because other unions were waiting and watching to see what kind of deal the AFM would get, so that they could demand the same terms. IATSE, for example, had demanded the same terms as the musicians because, as Richard Walsh, then president of IATSE, had argued, they were “not going to be treated any differently than the musicians.”¹⁸³

A few months later, in June, the AFM board (Petrillo, Bagley, Cluesmann, Steeper, Kenin, Clancy, Ballard, Murdoch) met with representatives from motion picture studios Universal, Columbia, RKO, and Republic (Charles Boren, Morris Weiner, B.B. Kahane, E.J. Scanlon, H. MacDonald, Ben T. Batchelder). They discussed making motion pictures for television, and said they were only interested in new productions and not in releasing their old films for television. The studios asked for a two-year “moratorium” from the conditions of their current contracts, so they could do a trial run of production for television, and then come to an agreement for terms moving forward. The AFM board did not agree to the moratorium.¹⁸⁴

At that same meeting, Mr. Chadwick and Mr. Arnstein, representing the Independent Motion Picture Producers Association, explained that they produced lower budget films, and proposed a deal wherein they would pay the five per cent on the making of new television pictures, but they wanted a to negotiate for a fair price for releasing their older films to television. The AFM had previously suggested that the studios pay the musicians the full amount of their salaries from the original recording of the music if their performances were to be replayed on

television. Chadwick and Arnstein were asking, instead, if they might pay the AFM twelve and a half percent of the original cost for the musicians upon the reuse of their films on television. Unfortunately, the AFM was unhappy with Monogram Pictures at the time because Monogram was selling their films to distributors without having paid the AFM any monies for the reuse of the films. Since Monogram was a member of the IMPPA, the AFM asked for them to first make sure that their members were going to follow their existing agreements.¹⁸⁵

Since the AFM refused to back down on their restrictions on the reuse of their musicians' performances on television, the studios realized that if they wanted to move forward with releasing their films to television, they would either have to completely rerecord the music and sound for their films, or release the films to television without any music at all.¹⁸⁶ In the cases where the studios had only kept the composite sound track, and not the individual sound tracks, rerecording all of the sound and music was their only option.

If a studio had the composite track but not the individual tracks, the only way they avoided having to completely rerecord all of the sound for a film, which would have involved the actors rerecording their lines as well, was by hiring a sort of dummy band to rerecord the music for the film. The musicians would go to the studio, rerecord the music tracks, as a "token for the musicians' union," and those musicians would be paid. The studio would then take that new recording and send one copy to the AFM along with a check, put another copy on the shelf, and go ahead with the use of the original composite sound track for the film on television.¹⁸⁷

Many of the studios decided that practice did not make financial sense. In 1951, for example, Republic estimated the costs to re-edit, re-score, and re-dub films for television would cost approximately \$6,500 to \$7,000 per film. Two thirds of that cost was re-editing and the other third was re-scoring and re-dubbing. That figure depended on how many musicians were

used in the film. Herbert Yates explained that for Roy Rogers' films, for example, they had used a fairly small orchestra for his early films, but after the 1946 contract, Republic was obligated to contract for thirty-five full time musicians from the AFM. Since Republic paid for the musicians whether or not they were using them, they had all thirty-five musicians record the scores for all of their films. If they rerecorded the music in 1952, and had to pay the going rate for musicians in 1952, it was almost twice as expensive as it had been for the original recording with the same number of musicians.¹⁸⁸

One of the reasons Yates had such extensive knowledge of the finances related to the rerecording of film music for television was because he had been seriously investigating the possibilities of releasing Republic's films to television. Republic had actually begun negotiations with the AFM in early 1950, to find a mutually agreeable solution to the sound track ban in their contract. The negotiations continued until May 1951, when they finally reached an agreement.¹⁸⁹ The agreement included the following conditions: that prior to the first broadcast of the film on television, Republic had to pay each musician (\$25), leader (\$50), contractor (\$50), arranger (\$75), and copyist (\$25) who was employed in the original production. If Republic was unable to locate any of those people, they had to make the payment to the AFM's trust. If Republic was unable to determine exactly who, or how many persons, had been employed in the making of the original soundtrack, they had to pay the AFM's trust for twenty musicians, one leader, one contractor, one arranger and one copyist. In all cases, Republic had to make their check to the AFM, who would disburse the money to the musicians. Additionally, Republic agreed to pay the AFM's trust five percent of the gross time charges for any advertising during the films, and five percent of gross revenues from all other use on television of the film or soundtrack. The money the AFM's trust accumulated from Republic's payments would be used to pay musicians to play

in concerts provided free to the public.¹⁹⁰ The contract further acknowledged the possibility that Republic had produced, and might still produce, the aforementioned dummy soundtracks, and that after the new dummy soundtracks were produced, Republic might choose to use the original soundtrack for “various operating reasons.” In that case, “If, after the new sound track has been made, it appears to you that use of the old sound track would be preferable for some or any television broadcasts, you shall have the option of using either the old or the new sound track on any particular television broadcast, as you may choose.”¹⁹¹

Republic was the only major studio at this time to reach an agreement with the AFM, and some of the other studios were not pleased that Republic had gone ahead and made the deal on their own. B.B. Kahane, vice president of Columbia, expressed his opinion of Republic’s deal:

In my mind, there is no validity or justification for any demand of any amount as a repayment for the use of a theatrical film on television, or any other medium, but the demand for five per cent of the gross, or the station charges, in addition to paying the musicians the same amount they were paid when they originally rendered their services in the pictures makes the demand utterly absurd, and, certainly, economically unsound.¹⁹²

Other studio heads were unhappy with Republic’s deal because, as Republic was a member of the MPPDA, they were supposed to negotiate their contracts together with the other member companies, and not strike out on their own.¹⁹³ Clearly, Republic had not followed those rules, and even though the other studios thought the deal struck by Republic was a bad one and were uninterested in it for themselves, they still did not like Republic’s maverick behavior. Republic went out on the limb to make the AFM deal on their own because they, unlike many of the other studios, already had concrete plans to offer their films to television in the very near future.

Among the films they were offering were the films of Roy Rogers and Gene Autry.

Roy Rogers and Gene Autry v. Republic

Roy Rogers and Gene Autry were two of the biggest stars in Westerns, and were pioneers in terms of their early success as transmedia storytellers; their involvement behind the scenes in both film and television; and in their extensive licensing, merchandising, and sponsorship deals. As a result of their multifaceted roles in the film and television industries, they played pivotal parts in the struggle over feature films appearing on television.

Rogers and Autry's role in the story began in February 1951, when Herbert Yates, President of Republic, Fred Sturdy, lawyer for Republic, Art Rush, agent for Roy Rogers, Robert Newman, Vice President of Republic, and Jack Baker, an executive at Republic, met to discuss the possibility of a new contract for Roy Rogers.¹⁹⁴ In that meeting, Yates said that the situation had not changed sufficiently for him to take any chances on putting Rogers' pictures or any of their old pictures on television, but he thought the time was coming very, very soon. He also argued that Rogers should make up his mind which way he wanted to go, whether it was on television or in motion pictures, because he did not believe that Rogers could successfully do both. He said that undoubtedly in the very near future Republic would be compelled to put its entire inventory of old pictures on television and if exhibitors continued their opposition, it might be more profitable to Republic if they changed their policy and devoted the entire time and energy of the studio to making pictures for television only.¹⁹⁵

Sturdy then said it might be more profitable for Rogers not to make pictures for television, but to make some sort of deal with Republic whereby he would get part of the income that Republic would get from televising his old pictures. Yates argued they owned all of the pictures, "lock, stock, and barrel," and they had the right to exhibit them any place they wanted.¹⁹⁶ As Robert Newman recalled: "Mr. Sturdy leaned over to me and whispered, he said, "Remember,

Bob, I have a theory that might stop you,” or words to that effect. And I said, “Look, Fred, there is your man [Yates], tell it to him.” And Mr. Sturdy did... Mr. Yates said that we owned those pictures, and when and if we wanted to release them we would release them, that Rogers had nothing to do with it.”¹⁹⁷ Rush then said it would be impossible for Rogers to get a sponsorship for any pictures that he would make for television provided Rogers’ old films had been offered to television.¹⁹⁸

Yates was not alone in his opinion that actors could only do either films or television – not both. Fred Schwartz of Metropolitan Theatres argued: “I think the use of personalities on television should be carefully guarded for the benefit of the star, for the benefit of the producer, for the benefit of the exhibitor. They’re very valuable and important assets, and they shouldn’t be dissipated.”¹⁹⁹ He believed that if actors appeared on television weekly, the audience would tire of them, and their value in films would disappear. Schwartz was clearly speaking from the theatre owners’ perspective, and it is clear that they were against feature films appearing on television, but other people in the industry held the same opinion. As Ronald Reagan, then president of SAG, argued: “I don’t know of any motion picture star that can go on the screen 26 weeks in a row and get people to come back to see him [in the theatre]. I’ve been shouting that for a long time.”²⁰⁰

Rogers had actually been involved in radio for a number of years, and was working on expanding those deals to include television. He had a very successful radio show with Quaker Oats on the Mutual Network since August 1948, and his contract with Quaker was to end in July 1951.²⁰¹ The Sherman & Marquette Advertising Agency was the agency behind the show.²⁰² Rogers had been negotiating with Sherman & Marquette and Quaker starting in early 1951, for the terms of a new contract, which was to include television.²⁰³ Quaker would have been happy

to continue with just the radio show, but Rogers and Rush were only interested in doing radio and television together.²⁰⁴ Quaker wanted to do a half-hour television show on film called *The Roy Rogers Television Show*, which would be shown in the Quaker time slot on NBC from 5:00 to 5:30PM EST.²⁰⁵

In March 1951, Rush told Yates that he was only going to be able to make a deal for Rogers on television with Quaker Oats provided Republic would agree to keep Rogers' old pictures off television for a year. As Rush recalled, Yates wanted to shoot Rogers' show on the Republic lot, which interested Rush and Rogers because they could use the same crews that had worked on Rogers' films. Rush further described his conversation with Yates:

I told him that I felt that we should do 26 on the initial production year, and he said that [...] I could tell Quaker Oats and Sherman & Marquette that he would not release the old films on television against us for a period of a year. [...] I believe this was in connection with the reaction that he might have gotten from the distributors that a half-hour series of Roy Rogers television films would be a test in the eyes of the theatres throughout the country.²⁰⁶

Yates had a slightly different recollection of the conversation, and later said that he had told Rush that he could make no promises that he would not release Rogers' old films to television for a year. He did, however, have another offer he thought might interest Rogers. He said Republic would make four films a year with Rogers for theatre distribution. Rogers would go on television for Quaker Oats, and either Rush or Republic would produce those shows for Quaker Oats. Republic would put up half the money for both groups of pictures and Rush would put up the other half, and they would own and enjoy a 50-50 split in the profits.²⁰⁷ This suggestion of profit sharing gets to one of the central issues in all of these conflicts. Everyone wanted to position themselves to get as big a slice of the profits as possible. One of the major problems, however, was the fact that for decades the major studios had enjoyed complete control and dominance of the film industry. That dominance was threatened by the decisions in the

Paramount antitrust case as well as the introduction of television. The studios had enjoyed and gotten comfortable in their position of power, and now behaved like an only child who was suddenly confronted with the need to share his toys with a new younger sibling. For a period of time, the studios did all they could to keep their profits to themselves and retain control, but eventually relented and began exploring opportunities for partnerships, as in Yates' suggestion for working with Rogers, Rush, and Quaker Oats.

The problem with Yates' refusing to guarantee that they would not release Rogers' films to television for a year was that, as Arthur Marquette explained: "I would say if [Rogers' old films] were sold to somebody other than a client of Sherman & Marquette, we probably would not consider him at all for radio and television for a client of ours."²⁰⁸ Quaker wanted exclusivity with Rogers on television – especially in light of the investment needed for Rogers' proposed new television pictures.²⁰⁹ And since Sherman & Marquette only had a thirty-minute time slot on NBC, they did not want to purchase Rogers' old films, which were too long for those time slots, at that time. When Quaker Oats wanted that guarantee from Republic that they would not put Rogers' pictures on television for at least a year, Yates reportedly said: "No, we won't do that unless we can participate in Rogers' earnings from Quaker Oats on television, have some sort of an interest in his merchandise company."²¹⁰ Yates suggested that they would participate in all earnings made after the date of the signing of the contract, but not before.²¹¹

Later in March, Rush met with Yates again and told Yates that he had seen Frank Folsom, the president of RCA, and Joe McConnell, the president of NBC, who were in negotiations to broadcast the Rogers/Quaker show, and Rush thought as long as Yates was going to New York and knew both Folsom and McConnell, Yates should stop in and see them.²¹² Yates met with McConnell, and according to Yates, "McConnell was quite cute about the whole affair. I asked

him quite a few questions, and his answers indicated to me that there was such a deal going on [between NBC, Quaker Oats, Sherman & Marquette, and Rogers] but he didn't see why in any way Republic Pictures should be interested.”²¹³

The negotiations for a new deal between Rogers and Quaker finally fell apart in April.²¹⁴ Then, in May, Marquette and Quaker chose not to renew Rogers' existing contract for the Quaker Oats radio show, and chose not to move forward with a television show because “they were worried about the old pictures then, what would be done.”²¹⁵ Marquette later testified that the reason they did not renew Rogers' radio contract was because their negotiations over television collapsed. He said, “It was our best judgment that going either route with Rogers on television was a bad business risk.”²¹⁶ By “either route” he meant, “Either hoping to sponsor the old pictures some time at Republic's price or making special TV pictures in the face of the fact that the old pictures might some day become available.”²¹⁷

In late April 1951, after the Quaker Oats deal was gone, Rush travelled to New York again to see Frank Folsom and Joe McConnell at RCA/NBC, to discuss the possibility of another deal with Rogers. The proposed deal was for radio and television and was similar to the one they had tried to work out with Quaker Oats.²¹⁸ In the new deal, Rogers would be employed by NBC for a basic term of ten years. In their negotiations, they also discussed an “escape clause” in the event that Republic put Rogers' films on television, which would give NBC the absolute right to terminate the contract at any time if the films were put on television.²¹⁹ Although Rush was in talks with NBC, the show itself was to be sponsored by General Foods and their Post cereal division, and General Foods wanted to deal directly with Rogers. Benton & Bowles was General Foods' advertising agency, and as Walter Frank Craig, vice president in charge of radio and television for Benton & Bowles, explained:

We wanted to buy this program from an independent packager, we didn't want to buy it from NBC. Therefore we didn't want Mr. Rush to sell himself or sell Mr. Rogers to NBC and then we would buy it from NBC. We wanted to buy it direct. And since the NBC arrangement was not yet in final form, or nothing had been signed, NBC agreed that we could buy it this way and said that they would somehow or other make their deal concur with our contracts.²²⁰

Just as Quaker had balked at the possibility that Rogers' old films might make their way to television, Ed Ebel, of General Foods, and Phil Cleland, of the Benton & Bowles advertising agency explained to Rogers and Rogers' wife and costar, Dale Evans, over dinner at La Rue's on the Sunset Strip^{††} that they wanted to reserve the right to cancel their contract in the event that Rogers' old films showed up on television.²²¹ Craig explained that they estimated that time and talent of the television show would run a little over two million dollars a year, and close to three million dollars total would likely be spent on the program.²²² They did not want to jeopardize the success of that kind of investment with competition from their own star.

The deal was potentially very lucrative for Rogers in that he would participate in the profits from syndication of the show. Once NBC had recouped the money they had spent in producing the show, then the profits from syndication would be divided between NBC and Rogers. They also discussed an arrangement whereby NBC had the option during the ninety days after delivery of each episode, to sell or syndicate them, and after that ninety day period Rogers would have the power to compel NBC to sell or syndicate the episodes.²²³

Then in June 1951, in the midst of those negotiations, Hollywood Television, Inc. sent out a letter to approximately one hundred and thirty people, mainly directors of various advertising agencies throughout the United States, offering to license Rogers' motion pictures for television exhibition.²²⁴ One of the reasons Republic felt free to make that offer was that their

^{††} La Rue was located at 8633 Sunset Blvd., but, sadly, it has since been demolished and a Nicole Miller store resides in that location. (Bruce Henstell, "In Celebration of Restaurants Past: Restaurant History: What Are They Now?" *The Los Angeles Times*, September 29, 1994.)

negotiations with Rogers over the renewal of his contract with Republic had fallen through the month before. They had not been able to agree on a renewal or extension because Rogers was asking for the right to make a film with another studio and he wanted to go on TV, and Mr. Yates would not give in to either of those demands.²²⁵ During those negotiations, Yates was still arguing that, “neither the studio nor the artist could serve two masters, the theatre was one thing and television another, and that you could not serve two masters, that they could not go on TV, and Roy was crazy to even think of going on TV.”²²⁶

After Hollywood Television sent out the letter offering their films to television, Republic then had a preview screening of some of the films they were offering for representatives from the advertising agencies and networks. Approximately twenty-five men showed up each day. Hollywood Television’s sales pitch included their argument that the films they were offering were of better quality than those that had been obtainable before, and that they were films that were new to television with personalities to a large extent who had not before appeared on television. They also asserted that their catalog represented a greater number of films than perhaps they could obtain from any other distributor, which would make it more convenient for ordering because they would only have to do business with one firm rather than a half a dozen.²²⁷

They were only offering fifty-two of Rogers’ films that had been completed before January 1942, and that were produced under his 1937 contract.²²⁸ That number was chosen because at that time, films were sold for television in groups of thirteen, twenty-six, thirty-nine, and fifty-two. That was the case in part, because of the number of weeks in a year, and in part, because operating in quarterly segments based on thirteen made it easier for stations to coordinate their programming. For example, if a station purchased one block of thirteen films, then they knew that they had three segments of thirteen left to fill.²²⁹

The price Hollywood Television was asking for licensing a group of at least thirteen Roy Rogers' films for national exhibition was \$30,000 per run for one run, and \$25,000 per run for two runs. So, if someone licensed thirteen films for one run, they would have to pay \$390,000 to show each film once in each of the sixty-three television markets in the United States at that time. Republic was also offering Gene Autry's and Red Ryder's films. Autry and Ryder's films, however, were offered for less than Rogers' films. For example, for Autry's films, Hollywood Television was asking for \$20,000 per film for one run, and \$17,500 per film for two runs. As a condition of the deal, the purchaser would have to pay the five percent fee to the AFM in addition to the licensing fee to Hollywood Television.²³⁰ Even though Hollywood Television was offering their films to television, the minutes from a meeting of Republic's Board of Directors on June 21, 1951, show that they were still not completely committed to following through with any sale. The minutes report that the Directors concluded: "To proceed with caution before making any commitments; that all phases of the television business, including the desirability of producing directly for television, were being thoroughly studied."²³¹

They would have to proceed with caution because on June 23, 1951, Rogers filed a suit against Republic Productions and Hollywood Television Service and asked for a temporary restraining order to prevent them from selling or licensing his feature films to television.²³² The next month, the judge issued a Preliminary Injunction restraining and enjoining Republic and Hollywood Television Service, pending the outcome of the trial, from leasing, selling, licensing, or permitting others to use the voice or likeness of Rogers of his horse Trigger or any of their motion pictures for advertising purposes. They were, however, allowed to use them for the purpose of advertising the motion pictures themselves.²³³ In the meantime, Hollywood Television had received an offer for Rogers' films that was, as Yates argued, "extremely

favorable and productive of substantial profit.”²³⁴ The terms of the deal were reportedly: “An offer from a highly reliable distributor of motion pictures on television to license said fifty-two motion pictures for television exhibition at the rate of one picture per week per television station for a period of three years, no picture to be exhibited more than [...] once per year [...] The total consideration payable under this offer would have resulted in the present receipt by defendants of the total sum of \$3,900,000.00, exclusive of commissions, advertising or other sales expenses.”²³⁵ Because of the lawsuit and the restraining order against them, Republic was not able to accept the offer.²³⁶ Yates actually believed that he could have made an even better deal for Rogers’ films if he had a chance because Westerns were especially popular on television at the time, and Republic was among the first of the larger studios to release their westerns to television. He was afraid that “the television market for ‘Westerns,’ and particularly ‘Westerns’ starring [Rogers], is presently at its zenith, and that the demand therefor and the available return therefrom will decline substantially in the very near future.”²³⁷ Not only was Republic not able to accept any offers for Rogers’ films for television, no one was interested in buying the television rights to the films once Rogers suit had been filed because, as Yates explained, “They don’t want to get involved. They don’t want to get involved in lawsuits.”²³⁸ Wayne Tiss, vice president at advertising agency Batten, Barton, Durstine & Osborn, disagreed with Yates’ assessments, and did not believe that any experienced advertiser would make an offer “remotely approaching” the \$3.9 million Yates claimed he received for Rogers’ films, “unless the sponsor of said program expected to indicate to the public that Roy Rogers in fact approved of or endorsed the product of the sponsor.”²³⁹

Meanwhile, Rogers moving forward with negotiations for his television show. In June 1951, Rush went with Rogers and Dale Evans to New York where they met with advertising

agencies in an effort to sell their half-hour television show. They met with John Reeber at J. Walter Thompson, and with representatives from the McCann-Erickson Advertising Agency, Ruthroff & Ryan Advertising Agency, Benton & Bowles Advertising Agency, and Young & Rubicam Advertising Agency.²⁴⁰ All the agencies asked Rush about what would happen if Republic released Rogers' old films to television, and after Rush explained that they would likely go into litigation on it, although none of them specifically said they would not pick up the proposed television show because of the possibility of Rogers' old films appearing on television, their interest diminished because of it.²⁴¹

Even though Hollywood Television could not move forward with releasing Rogers' films to television, they had licensed one hundred seventy of their other films to KTTV for a local license, and KTTV had commenced showing those films five or six weeks before the Rogers' trial began. Neither Rogers' nor Autry's films were included in the films licensed to KTTV.²⁴² The films on KTTV were shown with spot commercials at the beginning, middle, and end of each film from a variety of sponsors. KTTV had the right to three runs within a period of eighteen months for each film, and at the end of those eighteen months or the completion of the third run, whichever happened first, the films could be sold again by Hollywood Television. An effort was being made to establish as a custom of the trade that one station in an area would be similar to a first-run theatre where they would get the first license to show a particular film, and during that license, other stations would be precluded from licensing or exhibiting that film.²⁴³

That did not necessarily mean, however, that the price went down for each run. For the Hopalong Cassidy films, for example, their first run got \$250; then for the second run, the price was \$500; \$700 for the third and fourth runs; and the sixth and seventh runs were \$1,000 all in the same market on different stations. The bulk of the runs in that instance were on KTLA, but

the last run or two were on KNBH, which was the NBC station in Los Angeles. The prices went up because of Hopalong Cassidy's increased popularity and the increased number of television sets in the area.²⁴⁴

In order to make their films suitable for use on television, Hollywood Television would reprocess their films and cut them down to a length of 53 ½ minutes, but often, films were licensed to television stations in their original length. In those cases, the television station would cut the film down to 53 ½ minutes in their own editorial rooms, or occasionally run them at their original length. The 53 ½ minute's duration allowed for six minutes of advertising at the beginning, end or middle, and then half a minute for the station break.²⁴⁵

Even though Hollywood Television was enjoined from releasing Rogers' films to television, they moved forward with reprocessing twenty six of Rogers' films for television. Generally, in order to get the Rogers' films down to the 53 ½ minute limit, they would try to shorten chase sequences or fight scenes. Apparently, it was common for Rogers' films to have been "padded" for extra time by extending chase and fight scenes in order to make sure the films were long enough for the theatres. The cost of reprocessing or recutting these films was estimated at \$6,500 each. That included re-editing, re-cutting, and re-scoring the music, and one answer print (the very first print that is struck). Then it cost approximately \$150 for each additional print.²⁴⁶ From those figures, particularly when they are combined with necessary payments to unions and guilds, it is clear why the studios actually needed to hold out for higher payments for their films on television. Those higher payments were necessary if the studios were to recoup the costs necessary to reprocess their films for television, much less make any profit.

The trial for Rogers' case against Republic began on September 13, 1951, in the District Court in Los Angeles with Judge Pierson M. Hall presiding. Not only did the judge say he was

“not much of a picture fan,” he did not own a television set and had seen “very few television programs.”²⁴⁷ There were actually quite a few points during the trial when the lawyers, judge, and Rogers spent considerable time trying to define television and figure out how it worked technologically, formally, and economically. For example, Herman Selvin, one of Republic’s lawyers from the firm of Loeb & Loeb, at one point noted:

I think I understand the general principle of a television set, and what is actually referred to as the screen, that is the thing on which you see the image, is actually the business end of a very large tube which is called a cathode ray tube... And which, if I understand it, if I remember some earlier experiences properly, is actually the thing which is also the basis of what we know now as radar. Television and radar are substantially the same thing, actually.²⁴⁸

They had these discussions in order to distinguish the difference between exhibition on television as opposed to exhibition in the theatres. That was only one of the complex issues the judge had to wrestle with in this case.

Republic’s defense was relatively simple. They argued that their contracts gave them the perpetual right to use Roy Rogers’ name and likeness for the purpose of advertising the films, which they owned. They also argued that during their contract negotiations, Republic wanted, and Rogers agreed to, “unqualified television rights.”²⁴⁹ Rogers signed his first contract with Republic on October 13, 1937, which ran until he signed his second contract with them February 28, 1948.²⁵⁰ The 1948 contract lasted until May 27, 1951, and from 1937 to 1951, Republic continuously employed him.²⁵¹ In Rogers’ earliest contract, Republic had specifically claimed television rights to the films. In 1937, as Selvin, Republic’s lawyer, explained, they were “contracting for the future” since they did not know what form television might take.²⁵² They drew a parallel to the rights of motion picture producers to films made before and after the introduction of sound film, and noted earlier cases wherein it had been decided that the rights to

films made before sound film existed, and before the parties involved had even contemplated sound films, those rights nevertheless had been granted to include sound film.²⁵³

Not only did Republic claim the television rights to their films, they also held copyright for all of the films in question. As Selvin argued: “The proprietor of a copyrighted composition or production, to which the services and efforts of employees contributed, is the absolute and unqualified owner of the results of that employee’s services and is unlimited in the right which can be made of that material under the copyright law.”²⁵⁴ Further, Republic argued that in their most recent contract negotiations with Rogers, in 1948, as Saul Rittenberg, an attorney for Republic, recalled: “The conversations were that we were to have unlimited, unqualified television rights; that we were to have television rights. There was no discussion of what that meant or what that included in its scope. We said unlimited and that is what we meant.”²⁵⁵

Rogers’ argument was more complicated. In defense of Republic’s claim that according to their contracts, they held the television rights to Rogers’ films, Rogers said that he had never considered television when he was making his films.²⁵⁶ He testified: “I think it was experimental right up until ’48, before it really got going, and there wasn’t any sponsored show, I don’t think, up until that time, or I hadn’t heard much about them. I think it is experimental until it starts getting – becoming commercial.”²⁵⁷ He claimed that in 1937, he was just happy to have a job, so he signed the contract without examining the contract in any detail.²⁵⁸ Rogers argued that he first considered television in early 1948, and he talked with Rush before his 1948 contract negotiations about whether or not his films could appear on television. Rogers claimed that he did not remember whether or not his representatives discussed with Republic the issue of his films appearing on television.²⁵⁹ As the Judge observed: “Everybody in making a business deal

lets sleeping dogs lie until they start barking. And here television started barking and everybody started looking at the contract.”²⁶⁰

The central problem of the case, however, was not over whether or not Republic held television rights, because, according to Rogers’ contracts, they clearly had those rights. The problem was that television was by its nature a medium funded by advertising, and the role of advertising in television and its relationship to the actors and feature films that appeared on television was the actual point of contention. As Sturdy, Rogers’ lawyer, explained: “This lawsuit had nothing to do with television, it had to do with the right to use Mr. Rogers’ name or likeness or voice for advertising purposes.”²⁶¹ In Rogers contract, Republic had given Rogers the right to his own name and likeness except in the films themselves and in the advertising for the films. Rogers argued that Republic, by virtue of their contracts, only held the rights to using Rogers name and likeness for the purposes of advertising the films themselves, but Republic, by offering the films to television, was claiming the right to license the films for the purpose of advertising products other than motion pictures.²⁶²

Rogers was basically arguing that under the terms of his contract, Republic would have been allowed to use the films on television, just not on any program that had commercial sponsorship. As the judge explained, “The lawsuit is here over not the right to telecast the pictures, but the right to telecast them for commercial purposes.”²⁶³ One problem arose, however, when the judge and lawyers tried to define commercial television, and in the course of that discussion, found themselves wrestling with the distinction between commercial and sustaining programs. In a sustaining program, as Rogers described: “There appears at the beginning an announcement, which might be in the form of a sign or a spoken announcement, to the effect that the particular station or the particular network, as the case may be, presents such-and-such a

program. So, for example, it would start out with an announcement saying, “KTTV now presents Movietime. Our feature for tonight is such-and-such a star in such-and-such a picture.”²⁶⁴ The sustaining programs did not have the backing of a sponsor, and were paid for by the station in order to meet the FCC’s required minimum number of broadcast hours. They also included programs like news shows or other programs intended to fulfill the FCC’s requirements for providing programming in the public interest. Rogers’ lawyers ended up arguing that even “sustaining programs,” or a program paid for by the television station itself, were still in effect commercially sponsored because the broadcast of the film served as an advertisement for the station.²⁶⁵

Republic’s lawyers tried to rebut Rogers’ arguments by offering the fact that movie theatres presented advertisements in advance of their films. In fact, the majority of theatres sold space for advertisements to play as a part of their film programs. Even as far back as 1940, of the 19,974 theatres in operation in the United States, 11,500 sold space for advertising. By 1952, of the approximately 23,026 theatres in the United States, 17,680 sold advertising space.²⁶⁶ Selvin asked: “Is there any difference, aside from the fact that in one case the audience is seated in front of their respective television sets and in the other case they are seated inside the theatre, between that type of presentation and the presentation in a theatre where all that happens is that the theatre, say the Ritz Theatre now proudly presents Roy Rogers in Apache Rose?”²⁶⁷ Rogers, in turn, argued that the fundamental difference between film and television audiences was that “in the motion picture the picture is furnished to the patrons by the patrons themselves paying for it, whereas on a television broadcast the picture is furnished to them by the sponsor.”²⁶⁸

The problem of advertising also encompassed the issue of implied endorsements and possible conflicts with Rogers existing endorsement deals. Starting in 1938, Rogers claimed that

he had been encouraged by Republic to license his name, voice, and likeness for various commercial purposes such as advertising, rodeos, personal appearances, and radio.²⁶⁹ As Rogers recalled, he used to stop by Yates' office quite often for no particular reason – just to talk – and he was during that time struggling to try to make a living, so the subject of a salary increase came up during one of the times he was in Yates' office. In response to Rogers' request, Yates suggested that Rogers develop some outside income from his radio, commercial tie-ups, personal appearances, and things like that.²⁷⁰ Rogers believed that Yates' suggestion was in lieu of an increase in salary from Republic.²⁷¹

By the time of the trial in 1952, Rogers had some sixty or seventy licenses out.²⁷² During 1950 alone, they had sales during of over twenty million dollars worth of merchandise by some seventy-four manufacturers who were licensed by Mr. Rogers to utilize his name and likeness.²⁷³ Since Republic had encouraged those enterprises, Rogers now believed that Republic should not interfere by diluting his business by “throwing a lot of his old pictures on, because obviously, if other people can get pictures, or people can see pictures free, or if they can see a feature that may have cost anywhere from [...] \$50,000 to \$200,000 or \$300,000, that you cannot compete with those on your modern specially made T.V. films, all of which are less expensive.”²⁷⁴

Rogers' lawyers argued that sponsors for television were interested in exclusivity, and “We feel that if [Rogers' old films] are permitted to go out to any and all stations throughout the country on what they call a syndication basis or a series basis, to be sponsored by anybody that will pay the money, that he would be irreparably damaged. A man's name is something you cannot measure in money, your Honor, and once it is gone, it is gone.”²⁷⁵ As Wayne Tiss, of BBDO, argued, if Rogers' films were shown on television under commercial sponsorship it

would limit his ability to license his name or likeness for advertising purposes. Because, as he explained:

If a Roy Rogers picture was sold, let's say, in Ames, Iowa, to be used on a television station on which there may be three or four commercials cut into this film [...] even though Roy Rogers was not involved in those commercials, and let's say one of them [...] is on for a bread that is made in Ames, Iowa, if at the same time Roy Rogers was attempting to sell a television show of his own [...] to the Wonder Bread Company or the Continental Baking Company, they would not find it quite a good idea to sponsor that program because they would never know when another bread would show up on a Roy Rogers show over which they had no control.²⁷⁶

Both Yates and William Golden, in the publicity department at MGM, argued, however, that by Republic airing Rogers' films on television, Rogers would gain exposure to larger audiences, which would increase the sale of any of the products he was associated with.²⁷⁷

This case was further complicated by the fact that in granting the rights to the name and likeness of Roy Rogers, they were talking about Rogers' actual name because Rogers always played himself. In other words, the character that the actor Roy Rogers portrayed was always a cowboy called Roy Rogers.²⁷⁸ Before Rogers joined Republic, he appeared under his birth name, Len Slye. Shortly after joining Republic, Rogers used the name Dick Weston, but just before he started his first picture, Republic gave him the name Roy Rogers.²⁷⁹ In 1942, he had legally changed his name as well, so his film credits read, "Roy Rogers played by Roy Rogers."²⁸⁰

Rogers was concerned that audiences who viewed his old pictures on a sponsored television program would associate his name and likeness with the product being sponsored, and that television would create an even stronger association than radio because television audiences could both see and hear him.²⁸¹ That concern was heightened because, as Rogers explained: "Without the control of the sponsorship, your Honor, they could put it on any kind of a program they wanted to, such as beer or whisky, cigarettes, which would cause irreparable damage to the name, because we have been very careful with that."²⁸²

Wayne Tiss, vice president in BBD&O's Hollywood office, testified that they had done research that indicated that audiences associated the advertised product with the stars, and understood an implied approval by the star of the product. That implied endorsement, or at least the sense that Rogers did not disapprove of the products, even extended to products that appeared in a "spot commercial" situation.²⁸³ Tiss further argued that sponsors were interested in the value of the name, reputation, and sincerity of an actor. He explained that any commercial advertising programs based on a show starring Rogers would want to trade on the name and goodwill Rogers had built up with his audiences over many years. The advertisers would hope that they would be able to "capture" the goodwill towards Rogers and connect it with their own products.²⁸⁴ Rogers argued that he had worked hard over the years to maintain a good reputation, and he did not want to dilute the value he had accrued by allowing his films to appear on television without his control over the sponsorship. Further, he argued: "I think the release of my old pictures would dilute the possibilities not only of me making a living, but if they weren't controlled and were run an awful lot of times, it would make your name just like a new song that comes out, it is sung so much that people get sick of hearing it. [...] They have just about ruined Mr. Cassidy through the same idea. They have run his pictures and re-run them."²⁸⁵ Republic, however, argued that Rogers was not concerned about the effect of televising his films on his reputation or his other endorsement deals; what he was concerned about was that if those films went on television, he might not be able to get a job in television, either to appear live or in half-hour pictures. They believed he was concerned about suppressing the competition of his films.²⁸⁶

It was the case that during the trial Rogers was working on a contract with NBC and General Foods.²⁸⁷ Rogers' radio program, sponsored by General Foods Corporation's Crinkles Breakfast Cereal, actually began broadcasting nationwide on October 5, 1951, on NBC.²⁸⁸

Rogers had begun production on his first television films even earlier, in July 1951.²⁸⁹ His production company was called Frontiers, Incorporated, and they made twenty six minute western action films that ran in half hour time slots.²⁹⁰ Rogers intended the films to appear on a commercially sponsored television program.²⁹¹ By the end of 1951, Rogers had made four television series, but they had not appeared on television yet.²⁹²

The judge presented his decision in the case on October 18, 1951.²⁹³ He said that he believed the main question in the case was: is there a limit on the method by which Rogers' pictures can be exhibited or transmitted?²⁹⁴ As the judge explained: "The case has been long, and there has been a great deal of testimony, but after all it resolves [sic] around the interpretation of the contracts between the parties. [...] Each one of the counsel claimed the contracts were clear and unambiguous, but as proof of the fact that they are ambiguous is that they each spell out exactly a contrary meaning from what appears to each counsel to be very clear terms."²⁹⁵ The judge concluded that Republic had the right to televise their films, but they did not have the right to televise them under commercial sponsorship or to use them for advertising, commercial, or publicity purposes for anything other than advertising the films themselves. He upheld Rogers' right to control any commercial sponsorship, advertising, or publicity to which his name, voice, or likeness were attached for anything other than the films themselves.²⁹⁶

Although the judge had specified that Republic had the right to televise their films, but not under commercial sponsorship, he complicated that by asserting that sustaining programs were actually commercial in nature. He explained:

It seems to me that any use by a sponsor of Roy Rogers' name, voice, or likeness in connection with any product, whether that is used as an attention getter or as a direct or indirect endorsement or otherwise, is a commercial use, as the whole purpose is to sell something, whether a tangible article such as a shoe or a boot, or an intangible article, such as a service which is given by radio or television. And hence I must come to the

conclusion that the use of the pictures on radio or television on a sustaining program is a commercial use.²⁹⁷

Perhaps ironically, the judge based his opinion of the commercial nature of sustaining programs on language contained in Republic's contract with the AFM, and he argued that "Republic itself has recognized, by its voluntary execution of that contract, that the use of these films or any films on the sustaining program by the television station itself or by a radio program itself is a commercial use."²⁹⁸ Through this decision that determined that both commercial and sustaining programs were commercial in nature, the judge essentially legally defined television as advertising.

Republic filed an appeal to the United States Court of Appeals for the Ninth Circuit on February 25, 1952.²⁹⁹ However, since the decision in favor of Rogers meant that the court's injunction against Republic selling or licensing their films to television was upheld, Republic was prohibited from offering Rogers' films to television until the appeals court made their decision.³⁰⁰ Republic continued moving forward, however, with releasing their other films to television,³⁰¹ but the lower court's decision had put Republic in a difficult situation in regard to their other contracts. As a result of this case, Republic wanted to revise the language in their contracts in order to make sure that in the future they had unqualified rights to exhibit their films on television. However, since Republic was appealing the decision in the case, they were concerned that if they revised the language in their contracts, it would signal to the courts that they did not believe that their old contracts gave them those unqualified rights, and thereby would extend the limits of the Rogers' decision to all of their old contracts.³⁰²

Although Republic planned to move forward with licensing their films that did not feature Roy Rogers to television, Gene Autry was working to make sure that his films were not among them. When Rogers was awarded the temporary restraining order from the court in June

1951, preventing Republic and Hollywood Television from releasing his films to television, Gene Autry announced through his spokesperson that he, too, would take legal action, if necessary, to prevent the showing of his Republic films on television.³⁰³ On July 31, 1951, Autry sent a letter to Republic Productions and Hollywood Television Service demanding that they withdraw their offers to license Autry's films to television. Republic refused stating that they intended to exercise the rights they had in regards to their films.³⁰⁴ Gene Autry then waited for the outcome of Rogers' trial, and when he saw that Rogers had won his case, Autry filed his own suit against Republic for unfair competition, declaratory relief, and an injunction to stop Republic from releasing his films to television.³⁰⁵ The trial began on Tuesday, March 11, 1952.³⁰⁶

In the Rogers trial, the judge had allowed a great deal of discussion as to not only the contracts themselves, but also the negotiations that led to those contracts. Since the language of the contracts was in dispute, the judge thought it pertinent to investigate the intentions of the different parties in relation to the language. In Autry's case, however, the judge was not interested in that kind of evidence, and therefore the trial was much shorter than Rogers' trial had been.³⁰⁷ Autry's lawyers tried to argue, "you can't in every case of interpretation of a contract, particularly a technical contract, as these contracts are, interpret those contracts unless you have evidence concerning the circumstances under which they were executed, and so forth."³⁰⁸ The judge remained unconvinced, and that restriction hindered, to a certain extent, Autry's lawyers in making their case.

Republic's argument in the Autry case was substantially the same as it had been in the Rogers case. As Selvin, Republic's lawyer, explained: "We base our case on the rights that we claim we have out of the relationship of employer and employee in the first place, and out of the

contracts in the second place.”³⁰⁹ Autry worked for Republic under four contracts between July 1936 and May 1947, when his last contract terminated, and he made fifty-six films for Republic during that time. Selvin argued that Autry, as an employee of Republic, had agreed to render his services in, among other things, the production of films. Selvin further argued that Republic held, by virtue of their employment contracts with Autry, the sole and exclusive ownership of all the results and proceeds of the services rendered by Autry in the course of his employment by Republic, and likewise has the sole and exclusive right to sell, license or use, or to authorize or appoint others to sell, license or use the films, for any purpose and in any manner whatsoever.³¹⁰ Since their contracts gave them the right to use those films for any purpose and in any manner whatsoever, they argued that included the right to exhibit the films on television.

Autry’s argument was substantially the same as the argument Rogers used in his case. They contended that since television was a commercial medium, the use of Autry’s films on television constituted commercial advertising. They even said they were not concerned with television except as it related to commercial advertising.³¹¹ As Martin Gang, Autry’s lawyer, explained: “Our position is that under no contract does Republic have the right to commercial advertising with reference to Gene Autry in any way, shape or form except to use his name to advertise the picture in which he rendered services for Republic. That is as simply and bluntly as I can say it.”³¹² Autry’s lawyers echoed the judge’s decision in the Autry case, and argued that even sustaining programs were commercial in nature because it advertised the station, which had a service to sell and time to sell.³¹³

Autry, like Rogers, argued that he had signed his contracts with Republic with the understanding that his films were only to be shown in the theatres. He explained: “It was my understanding that I was to make those pictures to be shown in theatres where an admission is

charged. If they wanted to use my picture to put in a newspaper to advertise the theatre, or the theatre where the picture was showing, they had that right. They never had the right, as far as I was concerned, to ever use my name for any other means of advertising.”³¹⁴

As in the Rogers’ case, Autry was concerned about the use of his films on television without any limitation as to who the advertisers might be. There were two potential problems with that, as Autry saw it. The first was that the public might believe that Autry was implicitly endorsing those products.³¹⁵ Second, they were concerned about the fact that those advertisements might conflict with Autry’s existing endorsement deals. At the time of the trial, Autry’s lawyers argued that Autry had earned a million and a half dollars from his endorsement deals.³¹⁶

Just as was the case with Roy Rogers, Gene Autry played a character named Gene Autry in his films. Like Roy Rogers, Autry had worked to cultivate a wholesome image, and he was especially concerned about advertisements for products like beer, liquor, and cigarettes appearing alongside his films if they were released to television.³¹⁷ As Autry’s lawyer argued, “There is a form of hero worship in the minds and thoughts of many of his fans.”³¹⁸ Republic argued that the License Agreement through which the films were proposed to be exhibited on television, expressly prohibited “any advertising [or] any statements which may be understood to be an endorsement of any sponsor by any actor or actress appearing therein or that any such person is connected or associated with Station or any Sponsor.”³¹⁹

In addition to Autry’s concern about television advertising adversely affecting his image, he believed the reediting the films would have to endure in order to work on television would further damage his image. Just as they had with Rogers’ films, Republic wanted to edit Autry’s films to 53 or 53 ½ minutes each in length, thus permitting approximately seven minutes of

advertising in an hour television program.³²⁰ Autry's lawyer explained one of the many objections they had to the possible reediting and reuse of Autry's films on television:

It would be unfair to the public to show vintage pictures cut up in any fashion that Republic decided to cut them up, showing clothes that were out of style, showing old automobiles, showing Mr. Autry wearing heavy make-up, all of which would be to the great disadvantage of Mr. Autry in his present efforts. That these pictures would be sold indiscriminately to advertisers and would do great injury to the audience that Mr. Autry has built up, and to his reputation and esteem with that audience, since he could not control the advertiser or the products.³²¹

Republic's lawyers asked then whether Autry also objected to his older films being rereleased in the theatres. Gang responded, saying, "Yes, but the economies protect him there, because they have to put on them, 'A re-release,' as will be seen when you see one of these pictures. The audience knows that, and the theatre owners pay very little money for the old pictures because they are old pictures."³²² It was also the case that if Autry's older features had been rereleased theatrically, they would likely have run in subsequent run theatres. The physical distinction between first and subsequent run theatres also helped define films as newer or older. As Gang obliquely pointed out, films that ran on television at that time did not necessarily indicate clearly the year they had originally been produced. For an actor like Autry who was at that time trying to rebrand himself as a "modern" western star, the television broadcast of his older, more traditional, westerns could easily disrupt those attempts to rebrand himself.

There was also disagreement as to the nature of advertising in television versus advertising in a motion picture theatre. According to Roswell Metzger, vice president in charge of radio and television for the Rutrauff & Ryan advertising agency in Chicago, the advertising in theatres had a different association in the audience's mind than does the advertising on television. He explained that audiences were attracted to theatres by the films that were being run there, and it is the films that build up an audience for the advertising that runs in theatres. Further, he

argued that audiences in theatres did not associate advertising in theatres with the films being shown; rather they connected them with the theatres and understood they were an additional source of revenue for the theatres. Autry's lawyers agreed and argued that it was the goal of the advertiser on radio and television to associate as closely as possible the star of the program with the product or service being advertised (for example, the integrated advertisements in the *Burns and Allen Show*), but that was not true with advertisements shown in motion picture theatres.³²³

Another concern expressed by Autry's lawyers during the trial was the fact that a part of Autry's income as stipulated in his loan-out contracts was ten percent of the gross box office receipts. When Autry made this agreement with Republic, the box office was the only source of revenue for the films, but if Republic started earning income from television for these films, and it was not included in these loan out contracts, then Autry would lose that potential income.³²⁴

Just as in Rogers' case, Autry was extremely concerned about the release of his films to television damaging the income he was making, and hoped to make, from producing films for television. By the time of the trial, Autry was very involved in television, and owned at least a couple television stations. By April 1948, for example, he owned a fifty percent share of KOWL in Santa Monica, California, and 2/5 of the shares of KAPO, Tucson. He was also approved by the FCC to buy station KOOL in Phoenix, Arizona.³²⁵ He also had a radio show on CBS that was sponsored by Wrigley, and he was working on a deal with CBS and Wrigley for a television show that would tie in with his existing radio show.³²⁶ By the time Hollywood Television Service offered to license Autry's films in June 1951, Autry had already established a production company, Flying A Pictures, to make content for television, and as Judge Ben Harrison noted in his opinion on the case, "Thus Republic, by offering the pictures produced under the various contracts, entered the plaintiff's old pictures in competition with his present productions much to

the displeasure of the plaintiff.”³²⁷ Although today older films are accessible in a variety of different ways, they are not seen as competition for new films or television shows, but in this early period of television, they were viewed as competitive particularly in terms of potential dilution of the stars’ value for audiences and advertisers. It was that devaluation that both Rogers and Autry were attempting to avoid.

The decision in Autry’s case was filed on May 13, 1952, and unlike the decision in the Rogers’ case, the judge ruled in favor of Republic. He denied Autry’s petition for an injunction to stop Republic and Hollywood Television Service from selling Autry’s films to television for commercial sponsorship. Judge Harrison ruled that Autry’s claim was “untenable” and “unfair” in seeking to prevent Republic “from enjoying the full share of the profits to be derived from said photoplays.”³²⁸ The judge’s opinion concluded:

Finally to boil this case down to substance, the plaintiff is seeking to prevent Republic from televising the photoplays in which plaintiff starred, his complaint being that sponsored televising of a photoplay is “commercial advertising”. Plaintiff is attempting to do indirectly what he knows he cannot do directly – i.e. inducing the court to find that the present method of televising motion pictures is “commercial advertising”. It is my view that television of motion pictures is a form of entertainment and not “commercial advertising”.³²⁹

The judge continued that since the broadcast of films on television was a form of entertainment and not advertising, the use of the films on television did not constitute unfair competition, and Republic was free to use them on television. He concluded, “If plaintiff is worthy of his hire, certainly Republic is entitled to the full use of the fruits of his labor.”³³⁰ Just as Republic had when they lost the Rogers’ case, Autry filed for an appeal on August 26, 1952.³³¹

When the Rogers’ trial began, and throughout the course of both of the trials, the motion picture and television industries were watching with “keen interest.”³³² Interestingly, these cases provided a rare instance in which the film studios were working together with the television

stations and networks, and there were a number of television industry personnel who testified on Republic's behalf.³³³ But the larger importance of the case was the fact that, as an article in *The New York Times* explained, "Unusual interest surrounds the case because it involves a hitherto untried legal issue which might well hold the key to the whole future of the showing on television of movies that were originally made for theatrical purposes."³³⁴ Although Autry's and Rogers' lawsuits and the judges' decisions were different, the two cases together posed basic questions about the issue of personal and corporate rights relative to the licensing and sale of films as advertiser sponsored television programs. For that reason, they held industry-wide importance.³³⁵ With the filing of Rogers' lawsuit, many people in the film industry thought that other actors would follow in Rogers' footsteps and attempt to prevent the sale of their old films to television. Some television sponsors became skittish about licensing old films because of possible legal entanglements.³³⁶ John Dales, Jr., executive secretary of the Screen Actors Guild, stated that he believed the outcome of the Rogers' case to be of great significance to all motion picture stars.³³⁷

Although it was not one of the central issues in the Rogers and Autry cases, one point that was raised during Autry's case was concern about payment to Autry for the reuse of his films on television. At that time, based on the agreements between SAG and the film producers, the rights holders of a film did not have to pay anything to actors for their work in films made before 1948, that were to be reused on television. That was the same for the Screen Writers Guild and Screen Directors Guild. As far as the unions and studios were concerned, for their pre-1948 films, the studios would only have to pay residuals to the AFM, and the language in contracts for the bulk sale of film libraries usually put the responsibility of clearing rights and residuals with the buyer of the films, and relieved the seller studios of their responsibilities to the unions with regard to

the films. Although in 1947 and 1948, there had been some effort by television stations and networks to check that those people distributing films to television actually clearly held the rights to televise the films, by the early fifties, television stations and networks took a warranty of the rights and an indemnity with respect to the rights. As Don Tatum, in charge of television in the Pacific region for ABC, explained: “Where we have any reason to question or suspect the lack of right, we either make investigations or drop consideration of the pictures. And in most cases we are influenced by the reliability and the standing and the credit of those persons and concerns with whom we are doing business. We normally do not attempt to check individually each case.”³³⁸ Those people or companies who purchased the rights to televise the films often had agreed in their contracts with the films’ producers that they would pay any royalty payments due to the actors in the films.³³⁹

By the end of 1952, the jurisdictional disputes between SAG and the TVA were finally resolved. In September of that year, SAG argued to the International Board of the Four A’s that since the Four A’s had given TVA authority over television in 1950, the TVA had been unable to secure a single contract for their members, except for contracts covering actors’ work in live television. By that time, the separation of live and film television had been certified by several NLRB elections which were brought against SAG by TVA and all of which were won by SAG. SAG asked the Four A’s to rescind its gift of authority over television to TVA, and to pass a resolution giving SAG authority over motion pictures – including motion pictures for television. The resolution was passed without dissent.³⁴⁰ Now that the jurisdictional disputes had been resolved, SAG could move forward confidently with entering contracts with the film producers. The TVA eventually became a part of AFRA, which became AFTRA.

SAG, like the AFM, was very concerned at this time about loss of employment for their members. They blamed the Taft Hartley Bill for a significant loss of employment to non-Guild members. Ronald Reagan, then president of SAG, commented at the meeting of COMPO in 1951, that even though, “The greatest pool of acting skill and talent that has ever been assembled in the world is right here in Hollywood, seven thousand Screen Actor Guild members,” in the fourteen months preceding, four thousand non-Guild members had been given jobs that should have gone to members.³⁴¹ This problem of finding ways to insure adequate employment for the unions’ members is one that the unions continued to fight yet still persists today.

Things may have been looking up in terms of the new potential employment opportunities for actors, however, because in April 1952, the FCC finally lifted their freeze. Since June 1951, they had taken smaller steps that resolved outstanding questions regarding television technologies that had allowed the industry to start moving forward again. For example, on June 21, 1951, the FCC adopted their Third Report wherein they stated that although they were unable at the time to totally lift the freeze as had been requested by some broadcaster, they finally announced their decisions from their hearings on color television. Then on July 12, 1951, the FCC issued their Fourth Report and Order, which allocated frequencies in the 470-500 megacycle frequency band for television broadcasting. Later that month, they adopted their Fifth Report and Order, which amended their freeze order to allow case-by-case consideration of “applications by existing licensees and permittees for special temporary authority to increase power within certain defined limits.”³⁴² Those decisions had allowed for the manufacturers to move forward more confidently with the production of new television sets, and also started the process again on approving licenses for in that higher frequency band. Those moves by the FCC finally made the expectation of a large increase in the potential television audience a reality, and

led to the hope that that growth would substantially increase the commercial value of, and thereby profits from, releasing any films to television.³⁴³

The FCC finally lifted their Freeze on April 11, 1952, when it adopted the Sixth Report and Order amending the Commission's rules and regulations and engineering standards regarding television broadcasting. According to the FCC's Eighteenth Annual Report, their Sixth Report and Order lifted the "freeze" on the authorization and construction of new television stations; assigned seventy UHF channels and twelve VHF channels; announced a new nationwide table of television frequency assignments, which made available over two thousand assignments in 1,291 communities, thereby quintupling the number of available assignments; and changed the frequencies of thirty of the then existing 108 VHF stations.³⁴⁴ This significant expansion of the television landscape excited many people in the film industry about the potentials of the medium. In a meeting of Republic's Board of Directors shortly after the FCC lifted their freeze, the Chairman of their board expressed a great deal of optimism about the prospects for their activities in television.³⁴⁵ The growth of the television industry that had been forecast once the freeze was lifted came to fruition, and as of December 31, 1952, the FCC reported 129 stations on the air.³⁴⁶

By the end of 1952, even though the FCC's freeze had been lifted and studios had made their first serious moves to get their feature films on television, the problems of residual payments to unions and guilds, and the objections of theatre owners remained. The theatre problem was solved in part by the studios' divorcement from their theatres as mandated by the Paramount Consent Decrees, but new, more significant, problems had arisen. With the Rogers and Autry suits, the entire industry awaited the results of the appeals, which could take years. The new antitrust lawsuit also gave the studios great pause, as they did not want to do anything

that would jeopardize their position and leave them bound by undesirable consent decrees. They were losing money at the box office, and another potentially lengthy, expensive lawsuit was the last thing they wanted to endure. The results of some of their studies of television had suggested, however, that the saturation point for television sets and stations would come sometime in the next couple years, so they hoped a resolution was in sight. Now it was to see who could resolve these remaining thorny issues first and avoid a possible buyers market.

Whereas the past few years saw a good deal of posturing and foot stomping by various factions in the industries, in this period different parties took their claims to court. This follows the major trends of behavior that occur during period of industrial disruption and convergence, and highlights the importance of the intersection between the media industries and the law. By taking their conflicts to the courts, the parties allowed judges to decide questions about such fundamental issues as the nature of television itself. As we have seen, and will see in the next chapters, these cases largely dictate not only how the industry operates, but also what content appears where, how, and when.

CHAPTER FOUR:

Television Saturation and the Threat of a Buyer's Market, 1953-1955

Just as the law played a fundamental role in shaping the media industries and their content, so too did governmental agencies and their policies regarding the media. The FCC not only made decisions that affected the film industry by thwarting their aspirations of television station ownership, their actions in the imposition and lifting of the “freeze” significantly affected the growth of the television industry and thereby the release of feature films to television. Just as the FCC’s decisions today regarding net neutrality will largely determine the future of media via the Internet, so too did their decisions in this early period of television determine the course of that medium. By 1953, as the FCC’s freeze lifted and television expanded rapidly, television station still needed films to fill their air time but were forced to show foreign and independent films as the studios continued their struggle to resolve their issues related to their feature films on television. More studios were divorced from their theatres, and the theatrical box office had continued its decline. In the face of that changing landscape, studios continued to work on improving theatre attendance, but turned even more attention to the possibilities for their features on television. Culminating with the end of the antitrust suit in December 1955, this period would see the resolution of many of the key issues still preventing feature films from appearing on television: e.g. questions over rights to films on television, television saturation, the value of films on television, and payment to performers for the reuse of their work in the new television medium.

Without the restrictions of the FCC’s freeze, television was on the rise. The FCC reported 356 stations on the air as of December 31, 1953, which was up from 129 in December 1952.¹ Then by 1955, of the 582 authorized commercial TV stations, 458 were on the air.² Over ninety

percent of the people of the country were within service range of at least one television station, and two or more stations served about seventy five percent.³ In 1953, there were 20,400,000 television households in the United States, and by 1955, that number had risen to 30,700,000. That was a total of approximately forty five percent and sixty five percent of total households, respectively.⁴ In 1954, stations were broadcasting an average of one hundred hours per week, and an average of 15.7 hours a week of station time consisted of feature films.⁵ The use of feature films had steadily increased from 8.5 hours a week in 1950, to 10 hours in 1951, to 12 hours in 1952, and 15.1 hours in 1953.⁶

Total expenditures on television advertising were also increasing. That included expenditures on broadcast time, program material, and commissions to the agencies involved in the sale of time or program material. In 1952, the total advertising expenditures on television had been \$453.9 million, and by 1954, that had almost doubled to \$809.1 million. The total costs of all the program material used television-wide was \$267.6 million, which was up from \$155.8 million in 1952, and only \$33.1 million in 1949. That meant an increase of 708 percent from 1949 to 1954. One of the reasons costs were on the rise was because the number of television sets in use had increased a whopping 3350 times between 1946 and 1955. By 1955, there were thirty-three million sets in use, which represented about eighty percent of the homes in the United States.⁷ With more money being spent on advertising and the purchase of television sets, that meant higher revenues for the television industry, and in 1954, the total revenues of the industry were \$593 million, which was a thirty seven percent increase over 1953.⁸ With more money circulating in the television industry, more money was available to purchase or lease Hollywood's feature films.

The television networks were doing so well, in fact, that by December 1955, there were rumors that NBC and CBS were working to purchase two motion picture studios in order to solve many of their problems with programming. As reported in *The Hollywood Reporter*, “The rumors have not spared any motion picture company, though the most talked-of rumor has been NBC negotiating for MGM control. Films in the vaults, production facilities and know-how, with the possibility of a star roster, would make the first network to gain such control a power that might walk away with the marbles.”⁹ The fact that the networks considered purchasing movie studios highlights not only how successful they had become, but also their great need and desire for access to the films in Hollywood’s vaults. One of the reasons the networks could even think about purchasing one or more of the film studios was the fact that, while the television industry was booming, the motion picture industry was still watching their box office revenues drop. From 1946 to 1954, motion picture attendance declined from 4.127 billion to 2.52 billion.¹⁰ Weekly attendance dropped by seven million from fifty six million a week in 1952, to forty eight million per week in 1954.¹¹ Many people in the film industry continued to blame television for their woes. Ned Depinet complained: “Box office has already gone down from television competition. The pictures that are on television right now are hurting us very severely.”¹² Spyros Skouras argued that on his recent trip around the world to promote Cinemascope, he observed that, “Where there is no television the attendance of theatres is as great as was in the United States during the years of 1946 to 1948. Where is television, for instance, where it has made its appearance, as presently in the United Kingdom, the attendance has declined. If it was not for the television, [...] the motion picture industry today would be equally as prosperous as other great American industries.”¹³ Although Skouras had reportedly seen those conditions for himself, the data on the effect of television on the theatrical box office was still a point of contention.

Even though many studios and exhibitor organizations had for years been commissioning studies on the effects of television, for their own business reasons, and in order to defend themselves against the DOJ's antitrust suit, many of the studios continued to hire researchers to produce new studies. Alexander Kenneth Beggs, a senior economist at the Stanford Research Institute, completed one of the largest studies. In March 1955, he began a study of the "economic facts with relationship to the television market for feature films and the attractiveness of these films for motion picture producers-distributors for the period 1945 through 1954."¹⁴ Beggs had a team that consisted of another senior economist, three research economists, two statisticians, a research psychologist, and a financial analyst. According to Beggs, they reviewed all the existing literature on the matter from government and industry sources, and then developed their approach to the problems they identified. They then collected data from public sources, motion picture producers and distributors, and surveys of the television industry, advertising industry, and television and motion picture audiences.¹⁵ Beggs and his team also spoke with representatives from distributors of films to television including General Teleradio, Unity Films, Argyle, Hygo, Associated Artists, the United States representative of the J. Arthur Rank organization; the George Bagnells and Associates organization, M.A. Alexander Productions, Inc., Artists Distributors, Inc., Combined Television Pictures, Inc., J. Hughie Davis Company, Howard C. Brown Productions, Films Classic Exchange, and Chesapeake Industries (also sometimes known as Pathe Industries). The advertising agencies they spoke with included J. Walter Thompson Company, Cunningham & Walsh, and Young & Rubicam. Among the national advertisers they interviewed were Leber Brothers, General Electric, Chrysler Corporation, General Motors, and "probably one or two others."¹⁶

The study identified what Beggs called a “severe decline” in the level of the average monthly attendance of theatres in Los Angeles and Denver, and an “even more severe decline” in the net operating profit per theatre. He found that the dates when new television stations were established in those cities corresponded to the decline in attendance and profitability of the theatres. For example, the first station was established in Los Angeles in 1947, and the first station was established in Denver in 1952. There was a constant decline in theatre attendance in Los Angeles beginning in 1947, but theatre attendance in Denver remained constant until 1952, when the television station was established and theatre attendance began declining.¹⁷ This decline was not related necessarily to the showing of feature films on television, but to the impact of television more generally. As Judge Yankwich, the judge in the antitrust trial, remarked, “People have just so much time to devote to being entertained.”¹⁸

Beggs and his team also conducted extensive studies of film and television audiences in order to determine to what extent their film attendance and television viewing affected one another. They interviewed people in Denver, San Francisco, Portland, and Lubbock, Texas. They found that approximately eighty percent of the people both attended films in the theatres and watched television. Fifteen percent watched television only. Four and a half percent attended motion pictures only, and the remaining one percent was split between people who have access to television but do not watch it, and people who neither watch television nor attend movie theatres. So the vast majority of the American audience was an audience for both film and television.¹⁹

Of those people who both watch television and attend movie theatres, approximately twenty three percent reported that they would attend movie theatres less if higher quality older feature films were shown on television. Approximately seventy seven percent, however,

indicated that showing higher quality older feature films on television would not affect their movie going habits. That percent who would attend movies less if higher quality films were on television reported that they attended movies more often than did the average population, but they also expressed greater difficulty in going to the theatre. Some of the obstacles they provided were babysitter problems, the distance to go to the theatre, and the high price of theatre tickets. Almost half of those people said that they would attend the theatres more frequently if the ticket prices were lower. Given the choice between a present favorite television show, a good Hollywood movie, or that same movie shown on television, sixty percent of them said they would prefer to go to the theatre to see the Hollywood movie. Eighty two percent of them said that they wanted an opportunity to see old movies that they liked again. Beggs and his team concluded that there would be a saturation point for the losses the film industry might suffer if their films were shown on television. He argued that the closer the country got to saturation in terms of the ownership of television sets, the lower the potential level of financial loss the film industry could see.²⁰

Economists hired by Columbia drew similar conclusions. They found that for every two per cent increase in television ownership in a given area, one per cent of the motion picture box office revenues were lost. That is to say, if twenty percent of a given area owned television sets, ten per cent of the motion picture box office would be lost. They also argued for a saturation point, which they believed would occur when sixty to seventy percent of a given area owned television sets. At that point, the effect on box office revenues would be negligible. They believed they were approaching, or had in some areas, hit that point in 1954.²¹

Since Hollywood had not yet been able to release their existing films to television, and since they had available facilities and production personnel, by 1955, many of the studios had

begun producing films for television. As Spyros Skouras testified, “We feel that the television is of great value to the American public, in serving the public, and we wanted to cooperate. That is the reason presently we are producing films exclusively for television.”²² In producing films for television, Skouras was actually still thinking of television in terms of the ways it could increase his theatrical box office. For example, he explained that Fox had produced a version of *Laura* for television because they hoped that it might revive interest in the property and allow Fox to remake or reissue the film theatrically. As Skouras explained, “We are trying the two media to cooperate with each other. We will give them our products, and they give us their facilities to create a greater market.”²³

Columbia was one of the most active studios in producing content for television through their subsidiary Screen Gems. They made their first pictures directly for television in early 1951, and between then and the end of 1955, they had produced somewhere between six hundred and seven hundred and fifty television programs. They distributed the programs themselves through their eight sales offices throughout the country. Those sales offices were separate from Columbia’s offices, which focused solely on the distribution of films to theatres.²⁴

Hollywood was producing close to twenty percent of primetime programming and close to forty percent of the average television station’s daily schedule. That meant that Hollywood produced ten times as much film for television as it did for theatrical exhibition.²⁵ Considering how significant this income had become as a portion of their total gross, it was reasonable that the studios might have delayed the release to television of their less-profitable feature films. That way, they could insure a robust market for the film they produced specifically for television.

Meanwhile, the studios were proceeding with their court-mandated divorcement from their theatres. RKO, Warners, and Fox were all divorced from their theater chains by the

beginning of 1953.²⁶ Warner Bros. Pictures, Inc., for example, ceased doing business on February 28, 1953, and dissolved on March 17, 1953. New corporations were organized and took over the production and distribution business formerly operated by that corporation.²⁷ Warner Bros. offices in Hollywood were then primarily for the production of their films and the delivery of negatives to their labs in either Burbank or Brooklyn, NY. Their New York office was the distribution center, the advertising center, and the center for any business other than the making of films. Jack L. Warner was vice president of Warner Bros. and was in charge of the Burbank operations. Major Albert Warner (Jack's brother), Sam Schneider, and Benjamin Kalmenson ran the New York operations.²⁸ Harry M. Warner was the president of Warner Bros. and, as Jack described, "We contact him quite often in general discussions of policy, of things we are doing, business in general, and he advises us from time to time."²⁹ Regardless of this divorcement, the theaters were still incredibly important to the studios because, as Columbia argued in 1955, over 85% of their revenues were derived from theatrical exhibition, and the economic stability of that source of income was of the utmost importance.³⁰

When asked how important he considered the theatres, Spyros Skouras explained: "that is our existence. The theatres are our main outlets."³¹ He argued that their highest grossing film, *The Robe* (1953), had taken in over sixteen million dollars in the United States, and even their smallest films grossed over a million dollars at the box office.³² Skouras predicted that if the studios were to license their films to television:

Definitely the majority of the small theatres of America would close their doors. At least eight to ten thousand. [...] Also the development of the wide screen, such as Cinemascope of the Twentieth Century-Fox people, plays such a great part. It revived interest of the people to go the movies. It helps somewhat, but not sufficient that we can say that the small theatres of America can be saved if the entertainment that they sell with admission later on is offered to the public gratis.³³

Skouras argued that Fox would be "in the red" if those small theatres closed.³⁴

The theatres remained concerned about television and the competition that would result if the studios released their feature films to television. They were also particularly concerned about subscription television. At a meeting of the TOA in 1954 TOA, S. H. Fabian and Mitchell Wolfson, co-chairmen of the Theatre Television Committee, reported that:

TV is raiding our vaults for star product of yesteryear and organizing deep flanking movement to disrupt our source of supply and immobilize our patrons in their homes through metered TV. Should toll TV obtain green light from FCC, it would be an attempt to eliminate the middle man, every exhibitor in U.S., and encourage direct producer-to-consumer buying. This is shadow on TV horizon, but is grave threat.³⁵

The concept of making content available direct to consumers prefigures many of the distribution strategies that have become common in the digital era through companies like Netflix and Hulu. It also serves as another example of producers attempting to maintain, or gain, control of as much of the system of production, distribution, and exhibition as possible.

The exhibitors' concerns about feature films on television had in some cases progressed to hostility between the theatres and the studios. Walter Reade Jr., president of Walter Reade Theatres, for example, had made comments to the press disparaging Republic and their dealings with television – specifically their having offered their films to television. In response to a letter from Yates wherein Yates outlined Republic's attitude toward television, Reade indignantly stated that he and his theatres had been one of the main supporters of Republic over the years, and had always given Republic "top terms" and "top playing time" for their films. He continued:

If Republic was going to be in the big league, I felt you should act like big league and not fly by nights, which in my opinion is the way films found their way to Television before your company made large numbers available. Whether I am right in my contention, or you are right in your contention, I guess only history will tell. I [...] feel that we cannot support you so long as your policy concerning TV is as indefinite and ambiguous as I feel it is at the present time.³⁶

With many theatre owners such as Reade expressing concern and outrage over the studios' working with television, many of the studios worked to help bolster their theatrical revenue

through the use on television of, what Jack Warner called, “hooks” or “come-ons” for their films.

As Warner described:

We found it successful to show a short teaser or commercial on other programs throughout the year. And we do that on the Ed Sullivan show as often as we can. [...] We do that with all programs, television programs [and] we grasped at this idea as a good business move in the matter of making and distribution of film, and in advertising our pictures to let the public know about our contemplated and public productions.³⁷

In addition to the boost in box office revenue the theatres experienced from advertising on television, another thing they could celebrate was that they had made progress in repealing the twenty percent theatre admissions tax. In May 1953, bills were introduced in Congress to repeal the tax.³⁸ As reported in the AFM’s *International Musician*: “The motion picture theater owners have put on an impressive campaign to win support. The fact that so many identical bills were introduced was no accident; it was the result of this intensive campaign.”³⁹ The AFM and the theatres were on the same page in terms of their opposition to the admissions tax. The tax affected the AFM as well since many of their musicians played in non-motion picture theatres. When the bills were introduced to Congress, however, those that had the greatest likelihood of passing only exempted motion picture theatres from the admissions tax, while other amusements and theaters featuring live performances would still be subject to the tax. In that case, organizations like the AFM spoke out against the repeal of the tax because they feared that by repealing the tax on motion picture theatres, but not live theatres, all theatres would be inclined to show motion pictures rather than feature live music, and the musicians would once again be faced with a loss of employment.⁴⁰ The AFM would have to wait for their relief, however, because in 1954, the admissions tax, but only for motion picture theatres, was repealed.⁴¹

Another way the studios tried to bolster their theatre attendance was by developing visual and aural systems that were bigger and better than what television was offering in the home. One

of the ways they did that was through the increased production of color film. Since the FCC had dragged their feet on the authorization of color television technologies, the studios moved forward with increasing the number of color films they produced. In 1953, the studios released seventy-eight feature films in color, which constituted fifty percent of their total releases. Then in 1954, the studios released ninety-seven feature films in color, which was almost seventy percent of the total releases. That was an increase from only nine percent in 1946, twelve percent in 1947, fourteen percent in 1948, eighteen percent in 1949, twenty one percent in 1950, twenty seven percent in 1951, and thirty four percent in 1952.* Until color television became a reality, however, these films were destined for theatrical release only.

In addition to color films, the studios moved forward with developing wide screen technologies like Cinemascope, Cinerama, Vista-Vision, and Todd-AO. As B.B. Kahane, vice president of Columbia, testified: “We strive to present our pictures in the largest size we can. We have recently gone from small screens to large screens, to get a better presentation. And of course we don’t think there is any comparison between a picture shown on a large screen in a theatre and a 10 or 12 or 21 or even a 27 inch screen in a house.”⁴² Not only would these larger format films be less suitable for viewing on a smaller television screen, it helped differentiate television from film and, the studios hoped, attract audiences to the theatres. As Ned Depinet recalled:

The trend has been to give the public a larger picture on the wall to counteract as best the industry can the effects of the small postage stamp effect of television [...] And I think that the tendency of the industry is going to be to develop these methods in order to improve the pictures on the screen and cover a larger vista, and that is one of the major improvements in the last few years, spearheaded by Cinerama.”⁴³

* These numbers only reflect the releases of the five major studios who were defendants in the antitrust action *The U.S. v. Twentieth Century-Fox et al.* (Testimony of Alexander Kenneth Beggs, Reporter’s Transcript of Proceedings, Pages 1570-1571.)

Adopting these systems required a large investment on the part of the theatre owners, and Skouras worked hard to encourage theatres to improve their systems in order to draw audiences away from their free home television. As Skouras explained, “Better projection, better sound, and better entertainment to the public. As I believe only by superior entertainment of the movies that they could bring back the people from their homes, from free home television. Otherwise you have to give them better entertainment than the home television.”⁴⁴ Some theatre owners were convinced, however, that 3D, which required a smaller investment from theatre owners, was the best option. N.A. Taylor, an operator of a sixty-theatre Canadian theatre circuit, agreed saying, “The third dimension process is the answer to television.”⁴⁵ Even more so than larger format films, 3D films could not play on television screens.

In contrast to 3D, systems like Skouras’ CinemaScope was so expensive because, in addition to requiring new screens and adjustments to theatre seating arrangements, it also required the theatres to purchase improved sound systems. Many theatre owners balked at the expense, especially after Fox had made it clear that their exhibitors had no choice but to install the system because Fox would only be releasing their new films with their new soundtracks. Skouras defended his position saying, “We believed and still believe that the full four channel sound track gives much superior entertainment to the public than the optic, the single optical. [...] For your information, we carried this battle alone on a world-wide basis, and to the extent that is unbelievable the difficulties that we have encountered, and the obstacles we had to overcome in order to convince the exhibitors.”⁴⁶ In the end, the exhibitors’ objections were too great, and Fox had to relax its policy and provide their films to theatres with the theatres’ choice of either the magnetic or optical soundtrack. Although Skouras had not made as much progress as he would have liked in terms of the theatres adopting his CinemaScope system, by 1954, the

box office had actually seen some improvement, which was in large part due to the revenues from these larger format films. As Ned Depinet explained, “Cinemascope came into the industry, Cinerama came in, there have been these new mediums, large screens, a lot of money spent, and a lot of effort made, and I think there was a little improvement due to this tremendous effort made by the industry.”⁴⁷ Whether or not the improvements in the box office made the expenses worthwhile was a point of some debate. The push for these widescreen technologies was, however, an example of Christensen’s observation that when dominant firms are faced with disruptive technologies, they often double down on their investment in their existing technology. They spend a great deal of money working to improve the existing technology, in this case film, and satisfy their existing customers, but in the process, they often further removed themselves from the possibility of successfully innovating and adapting to the new technology.

Compelling evidence exists, though, that the studios were interested in developing these new technologies not only so that they could differentiate Hollywood films from television and lure audiences back to the theaters, but because they wanted to play one partner, the theatres, against the other, television. The studios recognized that once these new widescreen and 3D technologies became standard for the theaters, the theatres would not object as much if their older, black and white films appeared on television. Then the studios would have more freedom to distribute their older, less in demand, films to television without the concern of retribution from the exhibitors.

This possibility came to light when in the spring of 1953, when, in response to the financial downturn experienced by Fox, some of the Fox stockholders challenged the management. Charles Green was one of the stockholders who carried a proxy on that challenge, and he approached Skouras and demanded that Fox immediately sell their films to television.

Skouras refused “point-blank” on the grounds that if they did that, the theatres would be put out of business because of the “unfair competition of free Television.” He “added, however, that once CinemaScope and other new systems for improved theatre entertainment are installed in all of the theatres and the old type of motion pictures become obsolete, that these films could be made available to Television without injury to anyone.”⁴⁸ Skouras’ reasoning was that they still wanted to protect their exhibitors, who were their main source of income, but once the theatres had installed the CinemaScope system, they would no longer be interested in showing older, black and white, “flat” films. At that point, Fox could sell their “flat” films to television without upsetting or affecting the income of the theatre owners.⁴⁹

By 1955, Skouras and Fox were still working on Cinemascope, and they had made significant progress. Out of twenty three thousand theatres in the United States and Canada, sixteen thousand of them had installed the CinemaScope system. As Skouras testified, “So in time, when all the theatres and all the producers will use the new techniques, and the flat will be outmoded, out of style, probably the flat pictures will be available to the television.”⁵⁰ Although there was the possibility that Skouras was using his desire to wait until all theatres had CinemaScope installed as an excuse to delay the release Fox’s films to television, there were others in the film industry who had similar plans.

Jack L. Warner recalled that at some point between 1954 and 1955, they made a deal with a company called Guild Films for a series of approximately one hundred and ninety Warner Bros. black and white cartoons for television. Warner, who had previously spoken out against television, explained their rationale: “I thought it was all right at that time to sell the cartoons to television, for a very simple reason. Color television was here, it was advancing by leaps and bounds, and unless we got these black and white cartoons sold at that time, we figured they

would be valueless in a matter of years.”⁵¹ The studios sensed a sort of sweet spot between the development of color film and color television, when enough theatres would have color, widescreen films that they would not mind older black and white films being sold to television, and before color television had developed enough that television no longer had interest in black and white films. Other studios followed suit, and in 1954, Columbia, for example, released over one hundred black and white one-reel cartoons to television. They also released about sixteen westerns, and two or three British features.⁵² With many of the conflicts between actors, the DOJ, and unions and guilds still outstanding, these small steps to release some films on television represented the best the studios could do at that time. It also signaled their willingness to release their films to television as soon as they were able.

Theatre and Subscription Television

In addition to the color and widescreen systems, the studios also continued their efforts to get their theatre television systems off the ground. One of the primary objectives of the Motion Picture Association’s Television Committee during this time was the rise of theatre television and the necessity of applying to the Federal Communications Commission for channels to be set aside for theatre television. They also devoted a great deal of time and money to preparing their case for the upcoming FCC hearings.⁵³ The FCC hearings had begun in the fall of 1952, and continued until the spring of 1953, and focused on deliberation on the allocation of part of the UHF spectrum for theatre television.⁵⁴ It became an opportunity for members of the television industry to take out any ill will they were harboring against the people in the film industry. For example, the National Association of Radio and Television Broadcasters (NARTB) was upset about “malicious and unprincipled” statements some exhibitors had made to the press about

television broadcasting, and the NARTB was planning to use the FCC's hearings as an opportunity to "strike back" at the exhibitors.⁵⁵

The hearings ended with the FCC once again denying the studios' petitions on the grounds of their previous monopolistic practices.⁵⁶ The FCC institutionalized their rationale for those decisions through their Nineteenth Report and Order, issued on June 25, 1953, which determined that theatre television was "essentially a service which should be performed by communications common carriers. It further determined that there is nothing in the Communications Act or the Commission's rules which would prevent a common carrier from rendering this specialized type of service on frequencies set aside for general common carrier use."⁵⁷ They said that they would consider applications for the use of those frequencies, however, on their "individual merits," and would include in those considerations, among other things, whether the applications met the standards of public, interest, convenience, or necessity.⁵⁸ The FCC's decision did not mean, however, that the studios gave up their efforts. By late 1955, Fox, for example, was still working to get their Eidophor system off the ground, and hoped within a few months to hold public tests of the system. Fox had invested large sums of money in the system, which was developed in Switzerland by the Polytechnic Institute of Zurich as early as 1940, along with General David Sarnoff, RCA, and General Electric. As Skouras recalled:

We feel through this system we will be able to supply a number of theatres throughout the United States with such superior entertainment that the public will return to the theatres. [...] It took Twentieth Century-Fox over 18 million dollars to launch Cinemascope on a world-wide basis. And, also, it will take equally as much to launch the Eidophor. But we feel that the large screen theatre television [...] will be of great service to the theatres of the world.⁵⁹

Fox was investing large sums of money in the CinemaScope and Eidophor systems, and they were asking their exhibitors to do the same. During a period when the studios and theatres were

struggling anyway, these gambles would ultimately not provide the return on investment that Skouras hoped for.

Another method that continued to preoccupy the FCC and the studios whereby the studios' feature films could have reached television was subscription television. In their Nineteenth Report and Order in 1953, the FCC not only made a statement as to theatre TV, they also made a statement on subscription television that posed many questions they faced regarding the service. They included whether or not subscription television was in the public interest; legal questions such as whether subscription television falls within the definition of "broadcasting" as it is defined by the Communications Act or whether it is a common carrier or other radio service; and engineering questions of where the service could be fit in the already crowded radio spectrum.⁶⁰ Rather than providing a definitive decision or outlining a path forward for subscription television, the FCC's statement outlined the unresolved problems that existed regarding subscription television. Regardless of the FCC's indecision, Skiatron's Subscriber-Vision and Zenith's Phonevision were still working to move forward. Skiatron, for example, held a closed circuit experimental demonstration in cooperation with WOR-TV, New York, from June 10th to the 17th, 1953.⁶¹

By December 1953, with the FCC's repeated denial of the studios' petitions for channels for theatre television, and in the face of subscription television upstarts Skiatron and Zenith, the studios had begun looking into subscription television for themselves. The subscription television services that Skiatron and Zenith were developing, however, were intended to work either through phone lines or existing broadcast frequencies, and were therefore subject to the FCC. Since the FCC had been dragging its feet on the approval of Skiatron's and Zenith's systems, Ralph Morris Cohn, head of Columbia's Screen Gems, remarked, "It is difficult to

predict whether subscription television in any form, using the public airways, will ever come into being.”⁶² For that reason, the studios had begun looking into subscription television that would be transmitted into homes via cables, thereby, the studios hoped, bypassing the FCC.⁶³

In February 1955, the FCC was once again seriously considering subscription television, and invited comments as to whether or not their rules should be amended to allow television stations to provide subscription service. They noted that, “Any such authorization involves a basic change in the American system of broadcasting and raises substantial questions of a legal, technical and policy nature.”⁶⁴ The comment period ended in September 1955, and by that time the FCC received more than twenty five thousand comments in the form of formal documents, letters, postcards, etc. That was a larger response that the FCC had received for any previous case in their history, and the comments were enough to fill seventy reference volumes. The FCC then needed time to process the comments and decide how to proceed.⁶⁵

While the FCC was taking comments on subscription television, the studios were still investigating how they might develop subscription television via cables. As Ralph Cohn explained: “There is before the public of the country a system of subscription television that doesn’t require the approval of the FCC. It doesn’t require the allocation of channels. [...] Wire television. Television that is brought to your home by the use of wire. It is possible to have subscription television without the Federal Communications Commission allocation of channels.”⁶⁶ The theatres, on the other hand, were going to great lengths to fight subscription television in all forms. The TOA’s Television Committee, had, in early 1955, hired a group of professionals to help them in their campaign against subscription television. They included lawyers from the Washington law offices of Cohn and Marks, the public relations firm of Robert S. Taplinger & Associates, Dallas Smythe, a research professor at the Institute of

Communications at the University of Illinois, and for technical assistance, John V.L. Hogan of Hogan Laboratories in New York. By October of that year, the Television Committee reported that through “steady stream of press releases,” their public relations team had provided the press with information from their research. Those press releases had been included in “major articles” in magazines such as *Collier’s*, *The Saturday Evening Post*, and *Cosmopolitan*. The Committee had also gotten “newspapers from coast to coast ran our views; every trade paper was sent weekly summations on the latest polls; and television and radio programs were used as forums to present the facts. And wherever the facts were presented, our position became stronger and stronger.”⁶⁷ Members of the Committee had also debated people from Zenith on television and radio shows, and engaged in letter writing campaigns to the FCC and representatives in Congress.⁶⁸ They believed that through those efforts, they had been able to turn the tide against subscription television. As Judge Yankwich described during the antitrust trial: “[The TOA] claimed credit for stopping it. They seemed to talk as though they know what the FCC is going to do, and they claim credit for stopping pay television.”⁶⁹ They may have been correct, at least in part, since by the end of 1955, the FCC had not granted any channels for Zenith or Skiatron’s subscription television services.

The studios were also finding it difficult to solve the problem of how to make subscription television via cables financially profitable. The existing cable infrastructure was limited and largely controlled by AT&T, who was willing to lease those cables to the studios, but only at exorbitant rates. It would not be until decades later, with the introduction of satellite technologies that enabled the large-scale adoption of cable television, that subscription television in the form the studios were envisioning would become a reality. In the meantime, it meant that

one more of the studios' hoped for methods of releasing their films to television had been thwarted.

Unions and Guilds

Even if the studios had been able at that time to figure out the puzzle of subscription television, they still faced the problem of the demands of the unions for the reuse of their theatrical feature films on television. The producers continued to hold their position that they had paid everyone once, and since the producers owned the exhibition rights, they believed they could exhibit the films as they pleased without having to make additional payments for those showings. As Macklin Fleming, lawyer for Columbia, Screen Gems, and RKO, explained in late 1955: "The problem is that the unions say that the television is a new and different medium from motion pictures, and that when their work is performed on television, they are entitled to added compensation, -- more pork chops."⁷⁰ As we saw in the deal the AFM made with Republic, the musicians demanded five percent of the gross proceeds from sales of films to television, plus rerecording fees for the musicians. SAG had demanded anywhere from twelve and a half to fifteen percent of gross proceeds of sales to television, and the directors, writers, and craft unions were also demanding extra compensation for their theatrical films that were broadcast on television.⁷¹

The International Alliance of Theatrical Stage Employees (IATSE), which represented some nineteen or twenty different unions at the time, was another group that started creating headaches for the studios at this time. The unions they represented included the carpenters, cameramen, editors, set designers, and many others who were employed in the physical production of films. Richard Walsh, then president of IATSE, had negotiated a contract with the

Association of Motion Picture Producers in 1953, but had not been able to reach an agreement as to payments for the use of films on television. One of the sticking points at that time for IATSE was the deal that Republic had made with the AFM. IATSE was demanding to get, at least from Republic if not the other studios, the same terms that had been granted the AFM.⁷² Since the other producers had disliked the deal Republic made with the AFM, they certainly were not going to embrace it now. B.B. Kahane, vice president of Columbia, described their negotiations in October 1955 with IATSE:

They started way back a number of years ago to take the position that if any payment was made to [...] other Guilds or Unions, that they were not to be treated, to use the language of the president of the International Union, as stepchildren, but that they expected a similar payment. We have not resolved that question. As a matter of fact, there was a negotiation just concluded last Friday with the IATSE for a new contract, a three-year contract, and the question was brought up, the issue discussed, and tabled.⁷³

The studios remained unable to find common ground with the unions on these issues, but many of them continued to work on moving forward with putting their films on television. By 1955, Republic had released some of their pre-1948 features to television, and they paid the AFM according to the deal they had struck with them, but Republic had not made any residual payments to the Directors, Writers, or Actors guilds.⁷⁴ RKO, for one, continued to pursue a bulk sale of their films to television. They believed that was the best course of action because they hoped it would allow them to strike a better deal with the unions and thereby earn better lump sum compensation for the loss of any potential theatrical reissues.⁷⁵

Although groups like IATSE had begin causing the studios' headaches, the AFM continued to be a bigger thorn in the side of the studios than any other union. In January 1954, the AFM's contract with the studios expired, and the members of the AFM board met in Miami Beach with representatives from the studios to negotiate a new agreement. The studios were represented by Charles Boren; M. Benjamin; A. Chamie; B. Batchelder, Association of Motion

Picture Producers, Inc.; Barney Balaban; Y. Frank Freeman; L. Lipstone, Paramount Pictures Corp.; B.B. Kahane, Columbia Pictures Corp.; W.C. Michel; F. Meyer, Twentieth Century-Fox; M. Weiner; J. O'Connor; J. Gershonson, Universal; T. Black; Howard McDonnell, Republic; S. Schneider; E. De Patie, Warner Bros. The AFM was represented by Petrillo and members of the International Executive Board, including Charles L. Bagley, Leo Cluesmann, Harry J. Steeper, Herman D. Kenin, George V. Clancy, Stanley Ballard, William J. Harris and Walter M. Murdoch, as well as Studio Representative Phil Fischer, and John te Groen, president of the AFM's Local 47 from Los Angeles.

Six major studios (Loew's, Inc., MGM, Warner Bros., Twentieth Century-Fox, Paramount, Universal, and Columbia) agreed to continue the existing contract, for four years, starting in February 19, 1954, with a five percent increase in wages throughout. Since Republic had reached a separate deal with the AFM for the release of their films to television, they were to negotiate their contracts with the AFM separately. RKO was hoping to also find some arrangement with the AFM for their films to appear on television, and so they were also going to negotiate separately. In both cases, Petrillo was going to handle the negotiations on behalf of the AFM on his own.⁷⁶

It is unclear what exactly happened during the AFM's negotiations with the studios to precipitate this, but in the minutes of the meeting AFM's International Executive Board from February 1954, it noted that, "President Petrillo mentions that Nicholas Schenck of MGM has always been very cooperative with the Federation and feels it would be a nice gesture in recognition and appreciation of his attitude if the Board would elect him an Honorary Member of the Federation."⁷⁷ The Board agreed, and they decided to present Schenck with a gold membership card.⁷⁸ Although the AFM left their negotiations with the studios feeling very happy

with Nicholas Schenck in particular, the fact that they had not been able to agree on any new way forward for films on television meant that the studios were stuck with the agreement they had reached with the AFM in 1946: that the studios would not use the musical soundtracks for their films on television.⁷⁹

The main concern for the AFM remained the loss of employment their musicians faced as a result of “mechanized music.” They were still working to repeal the Taft-Hartley law because they believed it weakened their ability to negotiate strongly on their own behalf.⁸⁰ They were hopeful, however, that in mid-1955, since the American Federation of Labor (AFL) was in the process of merging with the Congress of Industrial Organizations (CIO), that merger would “exert a powerful force in bringing about some sort of control of this trend toward rule by the machine.”⁸¹ In an AFM newsletter from June 1953, Leo Cluesmann, secretary of the AFM, wrote about an article in the *New York Journal of Commerce* that warned that, “What recordings did to musicians television is about to do to millions of workers in banks, factories and almost every field of wage earning, to greater or lesser degree.” It described, for example, bank tellers who would be replaced by ATM machines that could show on a television screen an image of the depositor’s account information. They reported that a New York City savings bank already “services a depositor in this mechanical way,” and each of the systems lay off seven skilled tellers.⁸² Although Clusemann was certainly not wishing for mass unemployment, he noted, “if this continues, there may be a whole army of unemployed, which should eventually arouse the public to a realization that something must be done to offset the effect of these labor-saving devices.”⁸³ Petrillo also joined the chorus of voices expressing concern about the loss of employment caused by new technologies. In mid-1955, he wrote a series of articles for the AFM newsletters on “Man, Machine, Music and Musicians.” It provided a history of mechanization

and automation in relation to musicians, and what he called “technological unemployment.”⁸⁴

Petrillo concluded that, “It all boils down to the fact that we who create the machine must not be destroyed by it.”⁸⁵ What exactly they could do to stop the loss of employment was the million-dollar question.

That same year, a committee within the AFM presented the results of a study they had done on the problem of unemployment of the professional musician to the AFM’s annual convention. They concluded that there were several causes to blame for their unemployment. In radio, it was the use of records made by Federation members, which displaced live music. In television, it was the use of records for background music along with performers who pantomime vocal performances to create the illusion that live music was being played. They expanded the scope of the problems created by television even further in that they claimed that people were choosing to stay at home and watch television instead of patronizing taverns and nightclubs where musicians could be performing live music.⁸⁶

The funds the AFM had developed to help mitigate the loss of employment among their members were still operating, and in 1954, the AFM renewed their Trustee Administrated Music Performance Trust Fund and the Television Film Fund for another five-year term.⁸⁷ Those funds received five percent of the gross revenues from television sound tracks and tape recordings from the four major networks. In 1954, the funds spent almost two and a half million dollars for seventeen thousand public performances in which nearly two hundred thousand musicians took part.⁸⁸

There were disputes arising, however, within the AFM as to how those funds should be spent. The money related to the use of feature film music on television was of particular concern. From the deal the AFM had made with Republic and other independent producers, by mid-1955,

Los Angeles area musicians had been paid approximately eight hundred thousand dollars for the rescoring of films for television. At the AFM's annual conference in June 1955, Petrillo explained that their policies on film on television and filmed television had been "a ten-year experiment," but that he had no intention of diverting any future rescoring revenues to the TV royalty fund.⁸⁹

Despite Petrillo's declaration, the International Executive Board changed its policy with respect to these "rescoring fees" and resolved that they should be made to the trust fund instead of to the individual musicians who originally were employed to make the film, and appropriate changes were subsequently made in the applicable agreements.⁹⁰ That change was meant to eliminate the complications inherent in trying to coordinate and distribute any "rescoring fees" the AFM had previously tried to procure for their members. The musicians in the AFM's Local 47, which represented the musicians in Los Angeles, many of whom were employed in the making of the soundtracks for Hollywood's films, were unhappy with that arrangement.

In the AFM Executive Board's mid winter meeting in January and February 1956, Cecil F. Read, vice-president of Local 47, appeared and argued that the money should revert to the musicians who made the recordings rather than going to the Trust Fund. He threatened that the Local and their musicians would take the AFM to court if the Board did not do as they asked.⁹¹ The Board responded by reiterating the fact that the Trust funds were established to reduce the loss of employment caused by the use of mechanical music. They explained: "To grant the requests of Local 47 would wipe out the Fund, thereby depriving musicians all over the country of this little employment, and turn the money over to the already well-paid musicians who do the recording and produce the mechanical music. It is therefore, on motion made and passed, decided not to grant the requests."⁹² After that meeting, the members of the Local 47, unhappy

with the Board's decision and with what they viewed as ineffectual leadership by those in charge of their Local, attempted a coup of their local board members. They were unsuccessful, and the members who attempted the coup were charged with violating the union's by-laws and called to a hearing in front of the AFM Executive Board in May 1956. In the Board's decision, they again reviewed the problem of unemployment as caused by mechanized music, and reiterated the value of the Trust Fund. They quoted a letter Petrillo had sent to the local 47 members in October 1955, which explained that the clauses in the contracts the AFM had with the studios that restricted the use of feature films on television, as well as all negotiations and deals they made since then, were made for the benefit of all AFM members and not just those who were employed in the making of the films. The Board found the leaders of the coup guilty of violating the by-laws of the union and expelled them from the AFM. They were, however, eligible to reapply for membership after a period of time.⁹³

The members of the AFM's Local 47 were not the only ones concerned about the activities of the AFM. The DOJ continued their investigations of the union. The DOJ remained concerned that the union was essentially dictating the conditions under which the product of the producers (film) could be sold to their customers (television). The DOJ hypothesized that this could mean that unions more generally could stipulate the prices and conditions on the sales of say automobiles or homes in order to get the wages they wanted for their union members. In an internal DOJ memo from 1954, George Haddock, a lawyer with the DOJ, explained: "I believe it is a dangerous and bad thing for a union to dictate the use which an employer may make of his property, but I think it is doubtful that we could win such a case in the light of the broad phraseology of the Clayton and Norris-LaGuardia Acts and the liberal interpretation of those acts by the Supreme Court."⁹⁴

By 1955, the DOJ had been running in circles on this issue for eight years. They had, in 1947, concerns which they still held in 1955, that even if the studios “willingly or even joyfully acquiesced in this contract,” unless the DOJ could prove that they had colluded with the AFM in the creation of the contract provision that restricted the use of the studios’ films on television, the AFM would be exempt from prosecution under the Sherman Antitrust Act by virtue of the Clayton and Norris-LaGuardia Acts.⁹⁵ Those acts protected unions from prosecution under the Sherman Act as long as the unions’ activities in question were nonviolent and conducted in relation to securing the terms and conditions for the employment or wages of their members. Haddock argued, however, “it might be considered desirable to bring the suggested case, even if there is serious question about winning it, in order to point to the need for congressional action to limit the scope of the exemptions for union activity directly affecting competition.”⁹⁶ Finally, in September 1956, after nine years of off-and-on-again investigations, the DOJ concluded for the final time that they did not have enough evidence to prove a restraint of trade against the AFM under the current laws, and closed their case for good.⁹⁷

By 1955, although the AFM had made an agreement with some of the studios for the release their pre-1948 films to television, the Writers Guild, Directors Guild, and SAG had not made any agreement regarding their pre-1948 films, and their contracts gave them the power to cancel their contracts with the producers if the studios released any of their post-1948 films to television. Creighton J. Tevlin, vice president in charge of studio operations for RKO from 1948 to 1955, testified: “I have heard of agreements that were made between the Screen Actors Guild and an independent producer, and I had the detail of that. But I know of no agreement that has yet been reached that defines the terms that a major studio would pay the Screen Actors Guild, or the members, in the event the major studio backlogs are put on television.”⁹⁸

The unions also had the option of bringing lawsuits against the studios in the event the studios moved to put their films on television without first reaching an agreement with the unions. B.B. Kahane explained that they had received notice from attorneys for the guilds warning the studios that they reserved their right to bring suit against the producers if their films were released to television.⁹⁹ Kahane further recalled an independent company called Lippert Productions that released to television feature films that had been produced after 1948, and was then threatened by SAG with the cancellation of their contract unless the company would agree to make additional payments to the actors. As Kahane explained, Lippert eventually agreed to pay “12 ½ per cent of the original salaries they received on the picture if the income from the television medium was \$20,000 or less, and 15 per cent if the income was more than \$20,000. Later I understand that Allied Artists also released several pictures to television and made a similar arrangement with the Actors Guild on the same terms.”¹⁰⁰ In interoffice memos from Republic, they also cite the Lippert case as a sort of canary in the coal mine for them to watch for, and noted, “Lippert is now sparring with SAG for a deal to permit him to release new theatrical pictures on TV.”¹⁰¹ To further complicate matters, the Screen Extras Guild, the Screen Actors Guild’s sister guild, was also asking the producers to make five percent additional payments to extra players when films produced for theatrical distribution were televised or re-issued. This residual payment also held for extras when films made for television were re-used after the initial use.¹⁰²

Although the negotiations for payments for the reuse of actors feature films on television was an important issue for SAG, in 1954, the union, along with the Hollywood AFL Film Council, were somewhat preoccupied by the issue of employment lost to runaway productions. The Film Council issued a press release in May 1954, outlining Senator Thomas Kuchel’s pledge

to the Film Council to “do everything within his power to help the unions solve a growing unemployment problem caused by ‘runaway’ foreign production of movies by American producers who go abroad to take advantage of lower wage rates.”¹⁰³ At SAG’s annual meeting in November 1953, Leon Ames, SAG’s first vice president, echoed the AFM’s concerns, and argued, “The most serious problem facing the actor is lack of employment – the great decrease in available acting jobs, caused by a decrease in the number of pictures being produced in this country.”¹⁰⁴ The anxieties about the loss of employment resulted in the unions taking a harder line in negotiations over residual payments for films on television than they might have otherwise.

One of the other reasons actors were feeling nervous about employment stability was the fact that by 1955, many actors had been freed of their long-term studio contracts. One benefit of that freedom was that actors who were no longer committed to studios on a long-term contract basis were no longer subject to the studios’ restrictions on actors appearing on television. By that time many studios were actually encouraging actors to make appearances on television to promote theatrical films. This change in their tune could also be attributed to the fact that the actors were no longer such large investment risks for the studios, and therefore, the studios believed there was more benefit to be had in the boost to theatrical box office from the actors’ appearing on television, than any of the potential risks they faced when they “owned” the actors. With more actors turning up on television to publicize films, SAG was confronted with the issue of compensation for actors appearing in what they called “pressure pictures.” As a result, the SAG Board adopted an addition to their Rule 23 for SAG members which stated that the union considered an actor’s appearance on television for an interview to be a performance, and “that the appearance of actors in such television films, without compensation, would be harmful to the

employment of other actors, in that such programs take the place of other programs in which actors would be employed at their usual and customary compensation.”¹⁰⁵ The SAG board argued that it was “conduct unbecoming a member” to appear on television in a pressure picture without compensation equal to their usual television film salary.¹⁰⁶ The issue of compensation for “pressure pictures” again highlights the ongoing conflicts presented by the need to define and monetize newer mediums and their relationship to existing media. In the case of film, the financial structures were relatively straightforward: a customer pays for a theatre ticket, and a portion of the income from the sale of that ticket is paid to the theatre and a portion is paid to the distributor and producer. The financial model for television, however, is much more complex, and particularly in these early years of television, actors, unions, studios, and even the courts struggled to identify the exact nature of television programming and the monetary value of work in that medium. These conflicts arose again after the introduction of digital media and were seen in high relief during the studios’ standoff with the WGA over the issue of content versus marketing and the value and payment for writers’ work in the new media.

Even though the studios’ seven-year contracts with actors were going by the wayside, by 1953, many actors were still working under their existing long-term contracts. In those cases, if an actor wanted to make a film with another studio, they would require a loan out agreement from their “home” studio. If the actor’s home studio included in the loan out contract any stipulations restricting the film’s appearance on television, the borrowing studio was bound by that limitation. For example, in an agreement made May 11, 1953, for Columbia to borrow Rock Hudson from Universal to play “Ben” in Raoul Walsh’s *Gun Fury* (originally titled and contracted as *Ten Against Caesar*) co-starring Donna Reed, it stated that Columbia would not be prohibited from televising the film as long as they obtained all the required consents from unions,

guilds, and any other necessary persons. It went on to stipulate that Columbia could “not to cause or authorize said photoplay to be televised until such time as it is your practice to televise or permit the televising of your other feature photoplays of comparable class and quality produced by you during the same period that said photoplay was produced.”¹⁰⁷ Not only did Universal want Columbia to assume responsibility for clearing the various rights and consents for the film with the unions and guilds, but Universal also wanted to make sure that Columbia would not at some point dump the film on television while withholding from television the feature films of their own stars.

The comment in Hudson’s contract related to “comparable class and quality” points to another concern of the actors that was shared by the studios: the negative effects of the often lower-quality aesthetics of television. In the late 1940s, Abe Montague, vice president and general sales manager of Columbia, viewed a private Phonevision screening of *Gilda* (1946) and found the results “disturbing. The artistic and photographic values of the picture were completely destroyed in telecasting. The important Columbia star, Rita Hayworth, did not televise well.”¹⁰⁸ In 1951, Darryl Zanuck wrote to Spyros Skouras regarding a request he had received from Tyrone Power for Power to appear in a short film for television. Zanuck stated he did not believe it a good idea for any of Fox’s stars to appear on television until Fox was sure that television could photographically serve both the star’s and the companies’ best interests.¹⁰⁹ Indeed, for a time, female artists were not permitted on television at all because the studios were “afraid that the photography for the female [was] very bad in television and could do nothing but hurt the personality.”¹¹⁰ However, as time passed and technologies improved, the studios’ and actors’ fears subsided although the studios’ desire to feature their stars and films in only the best aesthetic circumstances lingered far into the 1950s.

The questions over who owned what television rights continued to be a sticking point for the release of films to television. In 1954 and 1955, Republic's legal department was working through the contracts for their films to determine "whether and to what extent there existed legal objections to the use of the sound track which included music in connection with television exhibition of the pictures."¹¹¹ Although Republic had successfully worked out a deal with the AFM, they were still confronted with the problem of the music copyrights and other rights restrictions that had made their way into their contracts. In early 1955, they discovered, for example, that when editing films for television broadcast, they were contractually obligated to "retain at least one visual, vocal, musical number by 'The Sons of the Pioneers', exclusively, although others in addition to the Sons of the Pioneers may be photographed in the respective scene or scenes in which said musical number is used."¹¹² There were at least five films for which that was the case, including *On the Old Spanish Trail* (1947), and *The Gay Ranchero* (1948).¹¹³

When asked whether or not he was aware of the difficulties of clearing film rights for television, Creighton Tevlin, vice president of RKO, explained: "Well, I was very conscious of that, and so were other executives, our legal department, and the complications that might arise with respect to an individual picture were so many and so diverse in character, that I just couldn't possibly remember all of the items that would have to be taken into account."¹¹⁴ For instance, some authors of literary material had retained the television rights, but some of them had only retained the rights to the material on live television. Music rights were particularly complex because some composers had retained the rights to the musical score for television, but in other instances the copyrights had expired or were set to expire soon. In those cases, the studio had to determine when exactly the copyrights might expire and who was then vested with the right of

renewal. Tevlin recalled that they attempted to make a complete survey of all of their rights, but “the work was so voluminous that we never actually completed a full survey of the whole library.”¹¹⁵ As a result, RKO had to deny many requests to license or purchase their films because they did not have clear ownership of all of the rights for reuse on television.¹¹⁶ Tevlin explained that it was in light of those complex factors, in addition to the possibility of negotiating better deals with the unions, that RKO had decided the best course of action would be to attempt a bulk sale of their library, thereby more easily clearing these complications.¹¹⁷

By March 1953, United World Films had received requests from broadcasters and distributors to television for the use of their films on television. They included ABC Television Center (San Francisco, CA), Southland Industries, Inc. and WOAI-TV (San Antonio, TX), KLX-TV (Oakland, CA), KLAC-TV (Hollywood, CA), KFI-TV (Los Angeles, CA), Bremer Broadcasting Corp. (Newark, NJ), Earl Scheib (Los Angeles, CA), Don Lee Broadcasting System (Hollywood, CA), Wilfred Naylor (Birmingham, AL), WTTV (Bloomington, IN), WNBF-TV (Binghamton, NY), and WTVN (Columbus, OH). Those requests were denied because United World Films did not have the television rights to the features concerned.¹¹⁸

By the end of 1955, Columbia was still attempting to determine the rights to their motion picture library. This was a process they had begun in 1948.¹¹⁹ Screen Gems had been able to clear the rights for television to over one hundred Westerns and a number of other features.¹²⁰ They were able that year to release seventy-two westerns to television, in addition to two or three they had released the year before.¹²¹ This was a change from the policies they had adopted in 1952, wherein they decided to hold off on releasing their films for television. They made this move to release some of their films to television in 1955, their westerns in particular, because of a number of factors, which Ralph Cohn recalled:

First, the beginning of a leveling off process in the prices that were being received for certain pictures, certain types of pictures, that were playing on television. Secondly, the fact that the large network shows were beginning to use up more and more of what had been known as local station option time, which meant that there would be less playing time on the television stations for feature pictures, and, as a consequence, the demand for them could considerably lessen, plus the fact that the sales department of the company advised us at that time that the reissue value of these pictures was comparatively negligible.¹²²

Even though they had determined the time was right to release some of their films to television, they would not be able to release the rest of their films until they had resolved the remaining questions over television rights. Conflicts over rights to films for their use on television were widespread and led to many companies and individuals appearing in court to assert or defend their rights. In August of 1955, Judge Yankwich in the District Court in Los Angeles commented that they “had all sort of sorts of litigation relating to who has television rights as to what, and we have quite a series of decisions which rule on certain specific contracts. So whatever they say in the contract doesn’t mean anything, except their own doubts as to what their rights are.”¹²³

Rogers and Autry Rehearings

The Roy Rogers and Gene Autry cases against Republic remained two of the most significant cases regarding the rights to films on television. It took a couple years, but Republic’s appeal of the lower court’s decision in the Rogers’ case finally went to court in 1954. The original decision in the Rogers’ case found that Republic had the right to televise their films, but they did not have the right to televise them under commercial sponsorship or to use them for advertising, commercial, or publicity purposes for anything other than advertising the films themselves. The judge upheld Rogers’ right to control any commercial sponsorship, advertising, or publicity to which his name, voice, or likeness were attached for anything other than the films themselves.¹²⁴

In June 1954, the Court of Appeals overturned the lower court's decision and argued that on the basis of Rogers' contracts, the restrictions regarding advertising were restrictions upon the use of Rogers' name, voice and likeness, not upon Republic's use of Rogers' acting or the motion picture. Judge Bone explained that Rogers, "was paid full measure for his services in creating these films, and has specifically relinquished 'all rights of every kind and character whatsoever in and to the same perpetually'."¹²⁵ The court decided that Republic could exercise their ownership and rights to the product of Rogers' employment, whether or not such exercise involved exhibition in connection with commercial advertising.

The judge found the restrictions in the contract which involved advertising were restrictions upon the use of Rogers' "name, voice and likeness," not upon Republic's use of Rogers' "acts, poses, plays and appearances" or the product thereof. They explained that the fact that Rogers' name, voice, and likeness are contained in and throughout the motion pictures in which he appears was only superficially confusing, and the close reading of the contracts made it clear that the words were used definitively and distinctly in different cases.¹²⁶

Rogers appealed that decision all the way to the Supreme Court, who, in November 1954, sent the case back to the District Court to enter judgment for Republic.¹²⁷ At the District Court's rehearing in December 1954, Republic's lawyer complained that the studio had suffered a significant loss of income from the injunction that prevented them from exhibiting Rogers' films on television that they had been subject to for the three years prior. He added that in that same time, Rogers had the benefit of "unfettered competition" on television as a result of the same injunction.¹²⁸ It was true that Republic had actually made a significant amount of money from the licensing of their other films to television, and could potentially have made significantly more had they been free to license Rogers' films as well. In 1951, Republic made \$208,749.56

from the licensing of their films to television, and in 1952, the first full year after they offered their films to television, they made \$1,034,912.17. By June 1953, they had been on track to make \$1.5 million for the year.¹²⁹ Had they been able to release the Rogers and Autry films as well, they might have exponentially increased those sums.

On December 23, 1954, the court finally dissolved the injunction that had prohibited Republic from releasing Rogers' films to television.¹³⁰ But Rogers appealed the decision once again and asked the court to modify or clarify its mandate and protect his motion picture and non-motion picture (i.e. the name, voice and likeness) rights. It was not until August 1955, that Rogers' had exhausted his appeals, and the matter was finally put to rest.¹³¹

In June 1954, just when the appeals court was overturning the lower court's decision in the Rogers case, the appeals court upheld the previous decision in Autry's case in favor of Republic. In the lower court's decision, Judge Harrison had ruled that Autry's claim was "untenable" and "unfair" in seeking to prevent Republic "from enjoying the full share of the profits to be derived from said photoplays."¹³² The judge's opinion concluded that televising motion pictures was a form of entertainment and not "commercial advertising." Therefore, the contracts placed no restrictions upon Republic in the use of the films, and their use on television did not constitute unfair competition.¹³³ Judge Harrison had also granted Republic the right to "cut, edit and otherwise revise and to license others (to do otherwise)... in any manner, to any length and for any purpose..."¹³⁴

The Court of Appeals upheld the previous court's ruling with some modifications, however.¹³⁵ They affirmed the district court's decision that Republic should not be enjoined from cutting Autry's motion picture performances and showing them on commercial television, but they disapproved of the parts of the decision where they believed the district court went beyond

the issues presented to them. Judge Bone explained that although Republic had the right to edit the films and license others to do the same, it was possible that:

Such cutting and editing could result in emasculating the motion pictures so that they would no longer contain substantially the same motion and dynamic and dramatic qualities which it was the purpose of the artist's employment to produce. And although appellees unquestionably have the right to exhibit the motion pictures in connection with or for the purpose of advertising commercial products of all sorts, we can conceive that some such exhibitions could be so 'doctored' as to make it appear that the artist actually endorses the products of the programs' sponsors.¹³⁶

So, the Appeals Court prevented Republic from editing the pictures to less than fifty-three minutes of running time; from presenting them as other than feature films; and from permitting them to be exhibited in connection with advertising in a manner that would suggest that Autry endorses the product of the sponsors of the program. Autry was pleased with those modifications and considered them a "substantial victory." The ruling clearly established the right of studios having clear title to films to present them on TV in connection with advertising, but at the same time, the court recognized that actors were entitled to protection against unrestricted exploitation for advertising purposes. These rulings in favor of Republic cleared the way for them to release Rogers and Autry's films for television exhibition. There were a total of one hundred and forty one films involved, and Republic immediately began negotiations to televise them in the Fall of that year.¹³⁷

These two cases were extremely significant not only because they caused Republic to delay the release of many of their higher quality feature films to television for almost four years, but many of the other studios also held off releasing their films to television until the matter was resolved out of fear that their actors might file similar suits. The cases were also important because they posed basic questions about the personal and corporate rights and privileges relative to the sale or lease of movies as advertiser-sponsored entertainment. The cases therefore

had industry-wide importance and the Appeals Court decisions were regarded as having established precedent.¹³⁸ They also demonstrate the ways in which the law via legal hair splitting can directly impact and determine what appears onscreen and the aesthetics of that content.

Feature Films on Television

By the time the Rogers and Autry cases were decided, the demand for feature films on television had grown substantially. That was due in part to the additional requirements for programming, and in part to increased advertising dollars that were available to pay for program material.¹³⁹ Since the FCC lifted their freeze, television had expanded at an incredibly fast rate, but the facilities and personnel for producing original television content, especially for local stations, had not kept up with that pace of growth. That meant that everyone was looking for feature films.

Some of the more successful distributors of films to television at that time included: Mr. Sidelman of Argyle and Hygo, New York; Mr. Mayer of Unity Films, New York; Dwight Martin of General Teleradio, New York; Kenneth Hyman, Associated Artists, New York; Leslie Roberts for the J. Arthur Rank organization; George Bagnall of George Bagnall Associates, Beverly Hills; Mr. Alexander of M.A. Alexander Productions, Inc.; Mr. Lyons of Artists Distributors, Inc.; Mr. Byers of Combined Television Pictures, Inc.; Mr. Brown of Howard C. Brown Productions.; and Mr. Tarbor of Film Classics Exchange.¹⁴⁰

The Bank of America (BOA) was also distributing their own films to television at this time. When filmmakers, often independent filmmakers, borrowed money from the Bank to finance their films, their agreements often stipulated that if the filmmaker was unable to repay their loans, then the film and its rights would revert to the Bank. As the 1950s progressed and the

studios functioned more as financiers, they largely adopted the BOA's business model. Charles Weintraub of Quality Films, another distributor of films to television, recalled the story of one film's journey back to the BOA's possession:

There was, for instance, Enterprise Films, whose personnel were such men as David Loew, Charles Einfeld, who has a company. They were doing pretty well. They made a picture called Body and Soul with John Garfield that made an awful lot of money, but then they got trapped into making a picture called Arch of Triumph that cost millions of dollars, and as I understood from Tom Dean of the bank, never got its print cost back. Those pictures were all cross-collateralized so they all fell in one group back in the vaults of the bank.¹⁴¹

So the Bank of America had a lot of films in their possession that had already unsuccessfully exhausted their theatrical run. With the advent of television, the BOA finally had a way to recoup some of their money on those films. Channel 9, KHJ, in Los Angeles, for example, ran a "Million Dollar Movie Theatre" with films acquired from the BOA, wherein they broadcast a film every night for five or six consecutive nights in the same time slot – usually 9PM. This program ended up attracting a large, and stable audience, which attracted the attention of other sponsors who wanted to emulate the success of that program. When sponsors could be confident that their money would be well spent, they became willing to spend more money on films on television.¹⁴²

Since the television industry was still growing, and the distribution of feature films to television had not yet settled itself into an established system like the distribution of films to the theatres, the distributors often dealt with a range of people to actually get the films on air. Charles Weintraub of Quality Films, another distributor of feature films to television, described their clients at this time as including: "Primarily television stations, advertising agencies, occasionally a sponsor directly. There is a fourth one, however, which has sprung up lately, and that is station reps. They represent certain stations and they may do the buying at one central

point.”¹⁴³ Quality Films dealt with approximately one hundred and forty of the four hundred and fifty stations in existence at that time.¹⁴⁴

In terms of the prices the distributors were charging for their films, it varied widely and for a wide range of reasons. Weintraub explained: “It is a rather ambiguous question, because each film perhaps is a little different. I could get a quarter of a million dollars for *Gone With the Wind*, and couldn’t get \$25 for some other picture. [...]: I think and honestly feel that one of the most important factors is who is the sponsor in the particular local market that is interested in playing motion pictures.”¹⁴⁵

The size of a particular market also played an important role. In terms of smaller markets, Weintraub described the pricing per hour as determined by a variety of factors. There was a guidebook called *Standard Rates and Data*, which listed all of the stations in the United States and designated the hourly rates for time that the stations charged to their sponsors. Those amounts varied from one hundred dollars an hour all the way up to \$3,500 an hour, depending on the size of the market and station. Smaller stations also had fixed rates for spot announcements, where they might charge anywhere from fifteen to twenty-five dollars for a local sponsor to purchase one or two minutes within a given hour. If the station calculated the total amount they could charge for advertisements in an hour of programming, then they knew how much they could afford to spend on a film. If a distributor knew from the *Standard* guidebook that a station could only afford to spend X dollars on a film, they would not waste anyone’s time trying to demand significantly more. As Weintraub explained, “I have found out that in most of the small markets you take what you can get. There isn’t much leeway to holler or argue or tell them you have something better.”¹⁴⁶

Sponsors who paid to advertise during feature films on television found it to be very worth their while. Dr. Ross Dog Food, for example, was one of the larger sponsors in the Los Angeles area at that time. They sponsored a program on Channel 13 called “Million Dollar Theatre,” which purported to have the better “A” films for television. As a result of Dr. Ross’ advertising on television, the orders they received for their dog food became so great that they had to take a break from advertising on television and spend their money and energy on expanding their facilities to meet the demand. When Dr. Ross’ “Million Dollar Theatre” went off the air, the other stations lowered their offers for feature films from eight thousand dollars per film to thirty five hundred dollars per film. Channel 5, the Paramount station, was the exception because they had larger sponsors in Barbara Ann Bread and Star-Kist Tuna. They would offer five or six thousand dollars per film. Weintraub argued that if Barbara Ann Bread and Star-Kist Tuna dropped their programs, then the other stations would try to pay even less.¹⁴⁷

There were also some completely random factors that affected particular markets and the rates for films therein. Weintraub described one example in Chicago of a used car dealer named Jim Moran who was the biggest user of feature films on television in that area. He broadcast the films on WGN, the *Chicago Tribune* station, and would pay \$2,000 to \$2,500 for a single run of a film. At one point, Moran and his partner, George Domet, had a big fight and Domet left to open up his own Pontiac agency. Domet decided that he wanted to beat his ex-partner, “whom he now hated,” by getting feature films of his own for television and paying higher rates for them. So he called “everybody in the business” and offered them \$3,500 per film. Many distributors jumped at that deal, but Moran was not about to back down. He had “a lot of tax money” and decided to offer \$7,500 per film, “which was unheard of.” Moran eventually succeeded in putting Domet out of business, but when he tried to work the price per film back down again, it

was not so easy. As Weintraub explained, “It is harder to get back than it is to go up, so he is now paying five to six thousand dollars out of a market that paid only two thousand or twenty-five hundred.”¹⁴⁸

Although Weintraub described \$7,500 as a large amount to pay for a feature film for television, the Stanford study had found that by 1954, some distributors paid between twenty-five and fifty thousand dollars for the top feature films.¹⁴⁹ By 1955, CBS was paying up to ten thousand dollars per feature film. However, they would get six or seven broadcasts of each film that they paid that much money for.¹⁵⁰ That was a result of the fact that, whereas films were generally sold in single runs in 1950, by 1955 they were generally sold in multiple runs. So television stations paid distributors a good deal more money for the films in 1955, but on a per-run basis, it was actually less expensive than it was in 1950. If, for example, the top price stations paid for a film in 1955 was \$8,000, they were getting multiple runs from the film. Whereas the top price they paid for a film in 1950, was \$700-800, but they were only able to play the film one time.¹⁵¹

By 1955, the total expenditure for program material used by the television industry on broadcast hours not taken up by network shows was \$67.1 million – up from \$34.1 million in 1953, and \$7.5 million in 1949. Of that \$67.1 million, \$21.9 million was spent on feature films – up from \$2.5 million in 1949, and \$12.3 million in 1952. In each of the years, the expenditures by the industry on feature film represented roughly a third of the total costs of program material used for non-network hours. That meant that the increase in feature film expenditures by the industry was about 776 percent between 1949 and 1954.¹⁵²

With the prices being paid for feature films increasing, the net earnings of the distributors of feature films to television were also increasing. By 1954, distributors earned an average of

fifty thousand dollars per feature film as its first year earnings. That was up from seventy six hundred dollars in 1949. Those amounts represent the first year earnings for the films, and not average gross earnings because distributors would experience a “play-off recovery” for the films, which meant that they would earn about 4/7s of the cost they paid for the film in the film’s first year on television, about 2/7s in the second year, and about 1/7 in the third year. Distributors of feature films to television reported that the distribution costs of putting the films on television accounted for about 25% of their play-off revenue, or the total amount they earned from television stations during the run of the film. Profits to the distributors were about 25%, which left about 50% of the play-off revenue as the price paid to the sources of the feature films.¹⁵³

By 1954, not only were the prices being paid for feature films on television much higher, the number of films available to television had increased. There were in excess of thirty six hundred feature films available to television in 1954, which was an increase from the twelve hundred that had been available in 1951. Feature films accounted for approximately twenty five percent of the total non-network hours between 1950 and 1954.¹⁵⁴ Feature films took up a huge amount of television time, but broadcasters would need even more films to sustain that rate of use.

Despite their popularity, feature films were still primarily used during non-network hours, which meant time other than primetime, which ran from eight o’clock to ten o’clock. From the studios’ perspective, that was a problem because, as Peter Levathes, the head of television at Fox described, it was not “a proper use” of feature films on television. He explained:

Columbia Broadcasting, or NBC, to my knowledge, has never put on the air, on a network basis, a motion picture feature film originating in New York at what is deemed to be prime time. [...] These are the choice times when the number of sets are large, the number of sets in use is very large, the audiences are very large, and where advertisers are willing to pay more money than they are for other pieces of time.¹⁵⁵

Kenneth Beggs, of the Stanford Research Institute (SRI), after making a study of the television industry's expenditures on feature films, testified that he knew of "no case in which a feature film has been used, up to the end of 1954, on national network time as a network show. They are non-network program material."¹⁵⁶ When they considered whether or not persons in the television industry could have spent more money on feature films, Beggs concluded that "if feature films had been used and were usable as network program material, there apparently were many more dollars that could have been paid for them, much more than what was actually expended by television for feature films."¹⁵⁷ In this way, the studios attempted to lay blame for the fact that Hollywood's feature films had not shown up on television at the feet of the networks.

In conducting their study, the researchers from Stanford spoke with national advertisers and advertising agencies. They found that the advertisers had concluded generally that feature films were too long to be used as network programming.¹⁵⁸ The advertisers explained that since they had to cut feature films to approximately fifty-four minutes in order to accommodate a one-hour program, leaving six minutes for commercials, many of the advertisers feared that those drastic cuts would damage the quality of the film itself. If the sponsor wanted to use the feature film for more than an hour of time, they had to purchase so much broadcast time that it was no longer an economic form of advertising investment. Joint sponsorship might have provided a solution to that problem, but many advertisers still disliked joint advertising since they believed that it decreased the product identification of the program with a particular sponsor or a particular sponsor's products.

That importance of the link between the program and the sponsor's products was highlighted in letter from Jack Devine, of the J. Walter Thompson Agency, in November 1953, to John K. Herbert, vice president of NBC. Devine warned NBC that they were very concerned

that CBS was beating NBC in the ratings. Devine cautioned Herbert that, “In the event the October and early November ratings do not show an improvement of the NBC position, a change in policy may be in order.” Devine then suggested that NBC could improve by embracing “concentration, continuity, and frequency,” which he argued were hallmarks of the most effective use of any medium. Devine continued:

Also, ideally, there should be developed an identity between program and product. Without this identity many advertisers feel that they can spend their money with greater concentration, continuity and frequency in places other than network television. There are many who feel that the chief weakness of the divided segment plan is just such lack of identity per dollar invested.¹⁵⁹

Another possible deterrent for advertising agencies to pursue the use of feature films, especially during network primetime hours, was the fact that advertising agencies made commissions on the shows they produced.¹⁶⁰ They certainly had to work harder to produce original content for television than they did if they simply licensed or purchased feature films, but there may also have been a greater profit for them in producing their own original content. Ultimately, Beggs and the Stanford researchers found that many national advertisers had not considered feature films for television because they doubted that they could adapt feature films to their advertising needs in the same way that they could a filmed or live show made especially for television.¹⁶¹ That does not mean, however, that feature films were never shown on the networks. In December 1955, for example, ABC-TV acquired an additional group of one hundred British films, produced by J. Arthur Rank, that were similar to those being used on ABC’s Sunday evening “Famous Film Festival.”¹⁶² Those films provided enough material for twenty weeks of ABC’s afternoon series, after which time all of the films would be rerun once, and some twice. ABC sold the commercial sponsorship in sixty- and ninety-second spots, and there was to be a maximum of three sixty-second spots and one ninety second commercial during each half hour.

That was in addition to a five second opening and closing “billboard” for each advertiser in that segment.¹⁶³

Although CBS still used primarily live and original programming for television during primetime, they were still “always after additional feature films.” However, they were not soliciting them from the major studios.¹⁶⁴ Jack Van Volkenburg, president of CBS Television, explained: “Well, we just never have solicited from the majors, because in the early days we had a very distinct feeling that if we could obtain them at all, that we just would not be able to afford the price, and weren’t sure we could get them at all.”¹⁶⁵ That feeling continued through 1955, although television networks did not know for certain it was true since they just stopped asking at a certain point. Van Volkenburg admitted that television’s impression that the majors would not sell their features at reasonable prices came largely from reports they read in the trade journals.¹⁶⁶ And as Spyros Skouras testified: “At no time the networks approached, at least, Twentieth Century-Fox to offer us sufficient money on a prime time. The impression we received from the inquiry from insignificant sources, not from the important people of the industry, they offered us off time, and not the prime time.”¹⁶⁷

If feature films still had not been used extensively during network primetime hours, they were increasingly important to local stations that had time to fill. Milford Fenster, film manager for television station WOR-TV in New York, which was owned at that time by General Teleradio, Inc., explained that by 1955, the station used a “great deal more” film than it did in 1950. He said, “Film has become a more integral part of our programming, and, as a matter of fact, constitutes our major programming. Hence the task of satisfying that need has become that much greater, and, in addition those handling films have come into more authority than they had back in 1950.”¹⁶⁸

Of WOR-TV's approximately one hundred eighty eight hours on the air each week, sixty four of those hours were feature films. Fenster even described feature films as "the lifeblood of the programming of an independent station."¹⁶⁹ He explained the distinction between the financial models of the networks as opposed to independent stations, and the economic advantages the networks enjoyed as a result:

Say in New York, it is faced with the competition of the Columbia Broadcasting System, the National Broadcasting System, and the American Broadcasting System, all of whom originate programs in various cities and carry those programs to its member affiliated or owned stations throughout the entire country. In that way the cost of the production of the show is borne to a great extent by all of the stations that pick up the telecast, and by the sponsor who pays for the cost of that telecast. In the instance of a local station, it must originate every program that goes over its airways, as a result of which it gets no contribution in any shape or form from any other station. It absorbs the entire program cost and must live by the income it receives for the locally-originated broadcast.¹⁷⁰

Fenster further explained that, unlike the networks, WOR-TV did not produce much of their own live programming because the costs would be too great, and with their lower budgets, the quality of the shows would not be able to compete with the higher production values of the network shows. Those lower quality shows would also negatively affect interest from sponsors, and a vicious cycle would ensue. WOR had found great success with feature films on television, though, and it was the case that all of the stations in New York used feature films at that time. WCBS, for example, used feature films on their late show, early show, late-late show and late matinee. WOR-TV had a Gene Autry and Roy Rogers show wherein they played Autry and Rogers features. They also had a matinee show at 1PM Monday through Sunday, a late night feature at 11:30PM every night, and another film from 4-6AM related to an all-night show they were airing.¹⁷¹ Fenster argued that the Autry and Rogers films were particularly valuable since they had been produced with substantially higher budgets than typical westerns, and had more general appeal than the average western. Fenster explained that, "More than that, they are more

family entertainment because they are in the nature of feature productions. But even more than that, they give you continuity of character throughout the entire series and employ the services of Gene Autry and Roy Rogers who today are the best known western stars.”¹⁷² The success of those films and the importance of the continuity of character provided impetus for the serialization of television that would soon become common practice. Additionally, the higher production values WOR looked for in their films may have contributed to the success of their program, “Million Dollar Movie,” which earned ratings as high as 84 on the Telepulse Ratings Service. That meant that virtually everyone in New York with a television set viewed the program. Fenster said, “The ratings have been consistently high for the programs, and by far exceeded anything that we had anticipated when the program was first designed.”¹⁷³

WOR-TV licensed their films from every one of the television distributors including Quality Films, Standard Television, Unity Television, National Telefilms Associates, Associated Artists Productions, and the film division of General Teleradio.¹⁷⁴ Fenster believed there were approximately three thousand films available to television stations at that time, but very few, if any, of them had never been shown before on television, and even that number of films was not enough to meet the demand of the stations.¹⁷⁵ It was not unusual for a station to show a film six, seven, or eight times in the course of a year or eighteen months.¹⁷⁶ However, that did not necessarily apply to smaller markets where there were only one or two stations. Stations in those smaller markets did not rerun as many films as multi-station markets.¹⁷⁷

WOR-TV had also shown a “considerable amount” of English film as well as independently produced films from the United States. The widespread use of foreign films on television during the late 1940s and early 1950s exposed American audiences to international locations and different filmmaking techniques. Although the increase in runaway productions

after World War II has often been attributed to factors such as economic incentives and the preferences of soldiers who served in foreign locations during the War, the fact that American television regularly broadcast foreign films to home audiences certainly influenced studios' willingness to shoot in foreign locations and audiences' interest in seeing those films.

One of the reasons that WOR-TV showed so much foreign and independent film was that the major studios had never offered their films to WOR-TV. Fenster had never taken the initiative to ask the major studios for their films because, as he explained, "The general impression in the entire field is that it would be a useless thing to do. We have read many reports in the trade papers that various people have tried without success, and felt that there wasn't much point in our trying to do it."¹⁷⁸ Since they had enough film content from foreign and independent sources, and those films did well in the ratings, there was not an urgent need to try to gain access to the majors' vaults especially when they were reportedly closed for business.

When WOR-TV obtained a feature film for broadcast, they were then allowed to edit the film themselves in order to conform to their time segments. As Fenster explained: "We do have many skilled persons who can do the job. They screen the films first, re-screen them if they like, and then go through and take out the footage that must be taken out in order to program the film for an hour and a half time slot."¹⁷⁹ In fact, they had eight men on their staff working as "re-editors."¹⁸⁰

Although the demand for feature films had grown, people were paying more for them, and they were very successful in the ratings, most of the higher quality films from the major studios were still not available to television. The Stanford Research Institute's study, in fact, found that for films that were released theatrically in 1946, the average feature film box office revenue of the feature films that were never released to television was \$1,477,000, while

the average feature film box office revenue of feature films that were eventually released to television was \$541,000. From that great discrepancy, Beggs concluded that: “If one should take box-office performance as a measure of relative quality of feature films, these data would indicate that since the average box-office revenue of those features which never did get on television were far in excess of the box-office revenue of those that did get on television, that perhaps those that were not released [to television] were of much higher quality.”¹⁸¹ When a Mr. Burke of *Radio-TV Daily*, spoke at a meeting of the National Television Film Council in 1953, he stated, “Television without movies would be nothing – they are the background of programming on the local level.”¹⁸² But Burke also mentioned one of the biggest gripes of the home viewer: “Why are so many of the features crime or class B rejects?”¹⁸³ The answer was that it was not for lack of trying.

Jack Van Volkenburg of CBS explained that they were simply obtaining films “wherever it is possible to obtain it. There are many distributors of this type of product, both in New York and in other cities, and they have rather substantial sales forces, and they call upon our film buyers with great frequency, and offer the product that they have.”¹⁸⁴ That product still mainly consisted of British films and old independent films.¹⁸⁵ Van Volkenburg testified that they would always be “very interested” in the films of the major studios, but no films from the majors had ever been offered to them.¹⁸⁶

Some advertising agencies had received offers from higher profile independent film producers including Samuel Goldwyn and David O’Selznick. By 1955, Peter G. Levathes, who had previously worked at Fox as, among other things, their head of television, worked for Young and Rubicam who were the largest purchasers of television time in America. At some point in late 1953, or early 1954, Levathes had lunch with Sam Goldwyn at the Oak Room of the Plaza

Hotel in New York. Goldwyn offered Y&R twenty-six feature films for television. Levathes offered Goldwyn one hundred thousand dollars per film, but Goldwyn rejected the offer as “ridiculous.” Then in mid-1955, David O’Selznick offered eleven films to Young & Rubicam, and was asking a quarter of a million dollars per film. As Levathes recalled, “We rejected the offer because we couldn’t find an advertiser who was willing to pay this figure.”¹⁸⁷

Meanwhile, some of the major studios were making moves to license some, if not all, of their films for use on television. In 1953, Twentieth Century-Fox licensed about four blocks of feature films to television. There were, as Milford Fenster from WOR-TV described them, the “Fox groups,” which included the “Wurtzel groups,” the “Charley [sic] Chans,” a group of English films, and others.¹⁸⁸ In total, there were somewhere between ninety and one hundred films. As discussed in earlier chapters, Fox had begun negotiations for the licensing of these films to television in 1951, but it took their lawyers almost two years to resolve the many rights issues related to the films.¹⁸⁹

Spyros Skouras was still definitely not a proponent of releasing Fox’s feature films to television, and believed that television was an impudent upstart who was merely trying to use film in order to get the upper hand and then relegate film to second class status. In 1955, he argued: “They wanted to use an important industry, who is rendering great services, beyond that of the common man point of view, also from an information point of view, on the worst scale, as a makeshift to build up an industry, and to sell through advertisements, to sell other products, so the motion picture industry would become an instrument of merchandising other people’s products.”¹⁹⁰ But there were a number of reasons that caused Skouras to decide to release these particular films to television. One of those reasons was that Fox felt comfortable licensing these films to television because they “didn’t feel that this type of product would have too serious an

effect on theatre revenue. [...] Because they were, you might say, B pictures.”¹⁹¹ Skouras had concluded that those groups of films were about the same quality as the other films he had seen on television, and that, as Fox’s lawyer described, “it wouldn’t hurt his company any more to have a few more old dogs there than there were already, so he accomplished the purpose of getting some more money for his corporation without harming them, he thought.”¹⁹² They were, in fact, able to make a decent amount of money from the films. The Wurtzel films, for example, were licensed to Major Attractions for a period of twenty-eight months, and the gross from stations was almost six hundred thousand dollars.¹⁹³

Fox decided to release their Charlie Chan films because although they had at one point owned the literary rights to Charlie Chan, they decided to stop producing them and sold those rights to another producer. That producer had made new films based on the stories, and had already licensed those newer films to television. Since Fox no longer held the literary rights, could therefore not make any new Charlie Chan films, and the newer Charlie Chan films from the other producer had already been released to television, Fox went ahead and licensed their old Charlie Chan films to television. The Charlie Chan films were especially useful for Fox for television because, as Levathes explained: “They were the largest series of films, that is, the Charlie Chans – Charlie Chan was a literary property, and we had made one sequel after another over the years, so there were over 20, I believe, all of the same family, and this was a very desirable circumstance for television, because in television it is very desirable to have a continuity of the same type of material.”¹⁹⁴ Skouras explained that in this situation they still experienced resistance from theatre owners. He recalled: “Now, we were opposed, by the way, by some of the exhibitors, but we didn’t pay attention to them. I had sympathy for their position,

I want you to understand that, I always felt the consequence of what could happen to these people if all the films would be available.”¹⁹⁵

One of the most significant reasons that Fox decided to go ahead with the sale because they needed to increase their profit and loss statement in order to make a good showing at the end of their fiscal year.¹⁹⁶ When Skouras sold those films to television, he claims that he was “conscience-stricken. I knew that it would not help the theatres.”¹⁹⁷ But he had to do it in order to make his year-end profit and loss statement look better, and since the British films had not really run in domestic theatres anyway, there was less risk of theatre backlash.

Even beyond the financial returns that Fox directly enjoyed from these films, the experience of releasing them to television allowed Fox an opportunity to learn more about the larger market for their films in television. As Levathes explained, in all of the deals they not only received a percentage of the gross, they also gained access to the distributors contracts, so that they “could have a pulse on the market.” That allowed them to get valuable experience in the market and determine just how large the market actually was. Levathes admitted that, “We knew that there would come a time in the evolution of television when we would have to face up to the fact it would be advantageous for us to release other films to television, more valuable films.”¹⁹⁸ As we have seen from the numerous studies the studios conducted and commissioned on the promises of television, they were very interested in getting as much data as possible to support their decision-making. The direct experience and knowledge Fox gained from their test run leasing these groups of films to television was potentially more valuable than the money Fox made from the deals themselves.

Warner Bros., meanwhile, was still only making general inquiries as to the prices their films might garner from their release to television. Benjamin Kalmenson was the president and

domestic sales manager for Warner Bros. Pictures Distributing Corporation which was a wholly owned subsidiary of Warner Bros., and distributed Warner Bros.' films, rented the films, and leased the films to theatres.¹⁹⁹ At that time, the Warner brothers, Kalmenson, and a Mr. Schneider discussed any business decisions. Since some of them were located in New York, while others were located in Los Angeles, they often communicated by phone, in letters, or telegrams.²⁰⁰ Regarding their feature films on television, as Jack Warner explained, Kalmenson raised the possibility of "selling some of our older pictures in a group of, say, 52 pictures, a year's programs, one a week [...] I know one company he probed with, and beyond that I don't know, ABC Television Company [...] And the money was so small an amount of money, so insignificant in amount in comparison with the monies we deal with in our practice in general that we decided not to sell the pictures."²⁰¹ Despite Warners' description of Kalmenson's probing, by the end of 1955, Warner Bros. had never made a serious effort to determine how much money their films might make from television.²⁰² Jack Warner, at that point, explained: "As of this day, we haven't any particular policy. Our policy is flexible. It is wide open, with whatever success to our company can be made."²⁰³

At that time, Universal had also never sold, leased, or licensed any 35mm or 16mm feature films for television.²⁰⁴ They were, however, engaged in talks to do so. Charles Weintraub of Quality Films, for example, claimed that he was negotiating a deal with Universal for a series of approximately ninety-seven westerns that had been produced between 1933 and 1946.²⁰⁵ Len White, of the J. Walter Thompson advertising agency, also said, in an internal JWT memo from November 1955, that he had heard from Luke Blumberg, the son of Nate Blumberg at Universal, that the studio planned to sell a block of ten pictures for about \$375,000 for a seven year lease. The films included an early Noel Coward film and some Abbott & Costello films, among others.

White mentioned that, “For reasons peculiar to Blumberg, they have not offered the pictures to Matty Fox,” and thought that Norman Gluck at United World Films would handle the deal.²⁰⁶

Columbia Screen Gems was also dipping their toes a bit more seriously in the television waters. Although they had been holding off for some years on the release of their films to television, in the spring of 1955, they began talks with NBC about licensing some of their catalog. Ralph Cohn explained that the company had noticed a rise in the use of “spectaculars” on television, and believed that the older films in their vaults were of higher quality than those being broadcast and “could make better spectaculars than the spectaculars.”²⁰⁷ They also believed that using their films as spectaculars on television would give them an opportunity to “bring to the attention of the public current theatrical features playing in theatres.”²⁰⁸ As a result, they began discussions with NBC about televising a group of thirteen of Columbia’s films as monthly spectaculars.²⁰⁹ NBC was not, however, seeing eye to eye with Columbia in terms of a price for the films. As Cohn testified: “At the moment that [price] is the principal question, although there are still some doubts on the part of the networks as to the complete acceptability of these pictures in the role for which we see them.”²¹⁰ B.B. Kahane, vice president of Columbia, argued of the companies who had put their feature films on television: “I think it was rather a matter of self-preservation. I understand from them that they were practically at the point of bankruptcy, and that they sought refuge by taking some of the revenue that was available to them from television.”²¹¹ Apparently, since Columbia had not reached a point of financial desperation, they did not feel compelled to make any deals they found less than optimal.

RKO

Although Kahane argued that Columbia was not in financial dire straits, that may not have been the case for RKO, who by this time was experiencing a great deal of turmoil and financial difficulty. As we have seen, RKO had actually been in and out of discussions with television interests since 1941, about selling or licensing their films for television. As RKO's lawyer, Fleming, described, their negotiations failed for two main reasons. First, buyers wanted RKO's films on a percentage basis, which meant they would make payments out of earnings if and when they were made. And second, they blamed "the attitude of the broadcasting companies themselves, who at this time appeared to look on motion pictures as an inferior form of entertainment, relegated to poor hours, and for which they would be willing to pay only minimum prices."²¹²

Even though their negotiations continued to fail, through 1953, Creighton Tevlin, vice president of RKO, continued to meet with, as he described, "anybody who wanted to talk about these pictures." After their first attempt at a negotiation failed, he met with Dan O'Shea from CBS again, but O'Shea's "interest on behalf of CBS had not changed."²¹³ Meaning CBS still insisted on participation rather than cash payments for the films. Tevlin explained:

Anybody that would approach you, if they wanted to buy the library, when you started talking about \$15,000,000, they had a token payment to make. Maybe they would pay \$5,000,000 down, maybe they would pay \$2,000,000 down. But the net final result would be that you would speculate on their efforts, and on what TV stations would pay them, to determine whether you would or would not get what you felt was the value of your product.²¹⁴

RKO felt that the values they had attached to their vault was fair and reasonable, and they did not feel it was wise to assume the risk of entering a deal based on speculation. Howard Hughes had also carried on negotiations in Los Angeles, as Ned Depinet, former president of RKO described, "over a long period of time for the disposal of our library."²¹⁵ Depinet argued that, "If somebody

wants to buy our library for television, let them put the money on the line. Maybe they can buy it. We never had to make the decision of whether we would sell it or not, because nobody ever made us a legitimate offer.”²¹⁶ When claims were made that RKO had actually not engaged in negotiations to the extent they said they did, Depinet countered that most of their negotiations were not a part of the public record for two reasons. First, is something we know to be true, that “Mr. Hughes was a pretty secretive man.”²¹⁷ Second, as Depinet argued, “If you want to make a good deal to see your pictures to television, you don’t go and parade around the world and tell everybody that you are going to sell your pictures to television. You try to be tough, thinking maybe you would get a better price. If you traded in business, you would know you would never get anywhere by telling anybody you can buy these pictures cheap, and we will sell you anything you want.”²¹⁸ The fact that many of the ongoing negotiations were kept largely secret was also motivated in part by the studios’ desire to avoid the wrath of their theatres. It also resulted, however, in the cultivation and perpetuation of the myth that Hollywood was not interested in licensing or selling their features to television.

In 1954, RKO made some progress, however, and as Creighton J. Tevlin recalled, it “was a very important year as far as negotiations were concerned.”²¹⁹ Tevlin had been talking with David Baird, who was the head of the Baird Foundation, and Baird made an offer that involved the purchase of all of RKO’s assets. Baird’s plan was to separate RKO’s film library from the physical assets of the company, so that he could offer the films to television and merge the physical assets with another company. Tevlin recalled: “Well, this deal became complicated, again, based upon two things. One, the schedule of payments to be made; and, second, Mr. Hughes’ desire that RKO as a company be perpetuated and not closed up and merged with some other distributor.”²²⁰ As a result, those negotiations fell through.

When Tevlin's negotiations with Baird collapsed, Tevlin began talking with a group in New York that included the three largest theatre circuits: the Stanley Warner Theatres, the Paramount Theatres, and National Theatres. They also made an offer to buy RKO, and as a part of the total purchase price, they had offered twelve million dollars as the value of RKO's films on television. That deal also fell through, however, because it was based again on a partial payment up front, with the balance of the purchase price to come from future profits, and RKO could not accept those terms.²²¹

By this time, the word was getting around that RKO was interested in selling their film library. As Charles Weintraub of Quality Films recalled, he first learned that the RKO films were being made available for television when his friend came to Los Angeles from New York with a certified check for five million dollars. When Weintraub asked his friend what the check was for, he replied, "Try to buy the RKO pictures."²²²

Then, in late 1954, RKO, through an attorney representing Howard Hughes, began negotiations in New York with Elliott Hyman and General Teleradio. General Teleradio had extensive holdings in broadcasting, including television WOR-TV in New York, and the major interest in the Mutual Broadcasting System. In 1954, they had formed a syndication department, known as the Film Division, that would obtain the rights to distribute films on a national basis and then contract with stations to license those features.²²³

Again, the terms of that deal were that a group would purchase RKO, RKO's films would be turned over to General Teleradio, and the remainder of the company would proceed as a film company.²²⁴ General Teleradio was the owner of television station WOR-TV in New York, and General Teleradio had experienced great success with films on television through WOR-TV. Most significantly, their experience with their show, "Million Dollar Movie." The first package

of films they used for that show, they licensed from Bank of America. There were thirty films in that package which included *Magic Town* (1947), *Body and Soul* (1947), *The Arch of Triumph* (1948), and *Ruthless* (1948). Milford Fenster, film manager for WOR-TV, claimed that the films were “very well received” by the public.²²⁵ General Teleradio paid approximately \$45,000 for the package of films, which, at the time, was the highest price paid for feature films for television. The films were a great success, though, and the station made a great deal of money on them.²²⁶ As Fenster explained, “It gave us a position in the city that we never had had before. It brought to the station advertisers of a caliber we never had before, and it made money and got us an audience and got people talking about us. It was a success from every possible angle.”²²⁷ That success significantly influenced General Teleradio’s interest in buying RKO.²²⁸

Meanwhile, as the negotiations with General Teleradio were under way, RKO decided to approach television networks directly to discuss possible deals for the use of their films on television. As Tevlin recalled, in late March or early April of 1955, RKO’s advertising agency made a presentation to Tevlin and others at RKO on Walt Disney’s Mickey Mouse Club program that was airing on ABC. It aired for an hour, five days a week, at five o’clock. ABC had been able, based on the value of Disney’s name, to attract national sponsors on a fifty-two week a year basis. This successful deal gave RKO hope that they might be able to, as Tevlin explained:

Approach TV on some plan other than a program sale plan, because if the sponsorship of a program would be national sponsorship, and if it would be anything like a Disney program that could run five days – the same program five days a week, and four different sponsors every day, with the multiplication factor it meant 20 sponsors for a single program, and we examined this, and it was quite evident to us that this type of percentage, if you have something important enough to justify it, would give the program probably \$100,000 worth of revenue, or at least \$75,000 on the basis of a one-hour program, and perhaps \$100,000, and as the program would increase in rating, if the time changes were fixed, then the program would earn more.²²⁹

So RKO decided to approach NBC with a similar plan, wherein they would supply a quality film every week for a year, and the film would be broadcast on the same day in every market and rerun until “it had achieved saturation.”²³⁰ Tevlin and RKO began negotiations with the Foote, Cone & Belding advertising agency and Pat Weaver, president of NBC. Their proposed deal would allow for NBC to keep the time charges, and any program revenue would go to RKO. After their initial meeting, Foote, Cone & Belding reported to Tevlin that Pat Weaver was “very enthusiastic” about the idea. They had discussed running the films as an afternoon matinee program, and the films would run for two hours with time included for eight station breaks. Weaver asked Tevlin to put together a program that represented what they would deliver in the first year, and RKO did so. They hoped they might start their program in September 1955, but as Tevlin recalled, “Weaver was always busy, or away from his office, and would send messages through a local representative, and, finally, he passed on the information that it looked too difficult to him to line up affiliated stations, in that he was running into two difficulties.”²³¹ One of those was the fact that RKO was interested in broadcasting the film in each market on multiple days of the week, but the local stations did not want to have the same program more than one day because they feared that on the second or third day, viewers would change to another channel. RKO argued that viewers from other channels might shift over to the NBC station, but NBC also pointed out that if a station in one market ran the film two days a week and another station ran it three days a week, NBC was left with a very disorganized program schedule. Tevlin became frustrated that the negotiations were not progressing, and asked Weaver to simply quote RKO a price for the time because they would consider buying it and presenting the program as their own. If they went that route, they could have had their own advertising agency work on getting different sponsors for them. As Tevlin recalled, “The reply to that was

that that was completely out of order and against all the rules of television, that they only sell their own time, and that they didn't want anybody to be in some kind of a brokerage situation. So we got down to the point finally where this thing looked hopeless, and we were in the midst of negotiations with General Teleradio, that involved the sale of the whole company, so we just called off everything with NBC."²³² That was in July 1955, when RKO was finally able to agree on terms with General Teleradio, which involved their purchase of all of Howard Hughes' stock in RKO, and he was the sole owner, for twenty five million dollars cash.²³³ That amount broke down to approximately eleven million dollars for the book value of RKO, and the balance for the value of their film library.²³⁴ At that time, they had approximately nine hundred and forty five feature films in their vault.²³⁵

By the end of 1955, RKO's films were owned in part by General Teleradio and in part by Matty Fox who had been working as a distributor of films to television since the late 1940s. Fox headed C&C Television, which was a subsidiary of the C&C Super Corporation, which controlled various business unrelated to the film industry. Fox also had an interest in the Skiatron subscription television system.²³⁶ After General Teleradio's purchase of RKO, Fox offered them \$12.5 million to purchase the rights to most of their feature films. In their deal, General Teleradio kept the rights to the library for the six markets it owned, while Fox took the rights to the rest of the country. Additionally, General Teleradio was to retain for two years the right to license the one hundred and fifty best films in the library to television, and Fox had the rights to the rest of the films in the library and the rest of the country.²³⁷

Two of the main reasons that the studios began working in late 1954 and into 1955 to release their films to television were the belief that television had reached its saturation point, and the studios' fear of a buyers' market for films on television. Economists had been arguing

for years that there was a television saturation point on the horizon, when television had infiltrated enough homes that the film industry would no longer experience any additional decline in their box office from television competition. Many studios believed they had hit that saturation point by the end of 1954, and Macklin Fleming, a lawyer for Columbia, Screen Gems, and RKO, argued that was one of the primary factors that motivated Columbia to sell some of their films to television.²³⁸

Studios were also getting nervous that if one studio sold their films to television, and there was suddenly a flood of product available to television, a buyers' market would result that would lower the value of all films on television. As Spyros Skouras wrote in April 1954, to Samuel Goldstein of the Western Massachusetts Theatres, "We have no present intention of letting the ropes down, as you put it, but whether or not we do in the future will depend on what the other companies do since we do not, naturally, want to be martyrs."²³⁹ They were trying to balance a desire to wait for the saturation point against the perils of waiting too long and being the last ones to the party.

Reissues, Rereleases, and Remakes

One of the studios' hesitations in terms of licensing their films to television was that they still did not want to relinquish what they believed to be a highly lucrative market for the theatrical reissue and rerelease of their films. There were a few examples the studios pointed to repeatedly as examples of the potential success their films could find if rereleased to the theatres. The "Realart Deal," for example, was a deal Universal made with the Realart Company in June 1947, where Universal licensed the films they had produced between 1933 and 1946, to Realart, so Realart could rerelease the films theatrically. In other words, Realart was carrying out a re-

issue function rather than Universal carrying it out itself.²⁴⁰ Realart licensed the films for an immediate cash payment to Universal of \$1,750,000 as well as a percentage of the profits.²⁴¹ Between 1947 and early 1955, Realart made approximately twenty one million dollars from rentals of these films to theatres. Of that revenue, Universal was paid almost seven million dollars. That averaged out to about twenty thousand dollars per film for Universal.²⁴²

As Ned Depinet, former president of RKO, explained, “RKO reissued or re-released a number of its pictures. That is a custom that has been in vogue almost since the beginning of feature films, and from 1946 on RKO relied very substantially on reissue revenue to maintain its organization and to keep it in business.”²⁴³ Approximately twenty five percent of RKO’s total releases from 1946 to 1954 were reissues, and approximately fifteen million dollars of revenue was derived from the reissue of those eighty some-odd features.²⁴⁴ RKO’s most successful reissue was *King Kong*, which, in 1952, grossed \$1,361,000, or almost twice as much as it had originally grossed in 1933. They claimed that their reissues averaged between one hundred thousand and five hundred thousand per film, which was significantly more money than they had ever been offered by television.²⁴⁵

Many of the films that succeeded as theatrical rereleases did so because there were no other ancillary markets at that time, so when a new generation came along who had not seen the film in its initial theatrical run, a rerelease allows their only opportunity to see the film. Ned Depinet explained that no one could explain for certain what the exact life of the theatrical distribution of a feature film was or why one film had a longer and more successful life than others. Depinet described his views on rerelease success and failure:

Society dramas and namby-pamby pictures don’t reissue as well as hard hitting sensational pictures, but for anyone to say that a picture has completed its theatrical exhibition does not know what he is talking about. Mr. Goldwyn had quite a library some years ago, and he sold a license for three years for them to be reissued, and somebody

paid him a substantial sum of money. They were reissued, and the license expired, and now Mr. Goldwyn is reissuing them himself and taking in more money than he took in the first time. I don't know what the life is. On our KING KONG, the fourth time it went out it did more business than the three previous times put together, absolutely.²⁴⁶

Fox also used their profits from theatrical reissues as a reason not to license their films to television. As Spyros Skouras explained, he had refused to offer Fox's films to television because television offered their films to audiences for free, whereas Fox could gross eight to ten times on a theatrical reissue that they were offered for their films on television. Skouras claimed that since 1946, Fox had earned almost twenty million dollars from their theatrical reissues, and he did not believe television could match that amount.²⁴⁷

Beyond the financial comparisons, Peter Levathes actually believed that releasing feature films to television would make it impossible for them to reissues them to the theatres because, "the public would have seen the films, and they wouldn't pay admission to see something that they had received on the air free of charge."²⁴⁸ Levathes agreed with Depinet, and argued that no one could predict which films might be successful as a theatrical reissue in the future. He explained that since conditions in the society and culture are constantly changing, it was impossible to predict which films might one day have resonance with an audience. He explained, "For example, a picture called OX BOW INCIDENT, when it was released, it did not do very well, but it had certain sociological implications, and it was released later, and it did very well."²⁴⁹

Ralph Cohn agreed with Levathes that once a film had been played on television, it had no further theatrical value because once an audience had seen it once, or multiple times, on television, they would no longer be interested in seeing it in the theatre. He believed that was compounded by the fact that if an audience could see the films at home on television for free, they would never pay to see it in the theatre. Cohn testified that theatrical reissues had earned

Columbia “substantial sums of money.”²⁵⁰ He explained that was because the income was nearly all profit, and “because they were amortized films, films that had been almost completely amortized, and all we had on them was print costs. So they played a very important part in the final result of our operation.”²⁵¹ In light of this almost pure profit the studios earned from their theatrical reissues, Alexander Beggs, of the Stanford Research Institute, whose study was financed by the studios and for whom he was a witness, concluded that as far as he could calculate, the income that would have been available from the studios’ exploitation of the films in their vaults on television would not have compensated for the loss they would have incurred through destroying the reissue and rerelease value of their old films.²⁵²

The potential value of remaking an older feature film for theatrical release was another source of potential profit that the studios did not want to give up by releasing their films to television. In each of the years 1946 through 1954, re-made feature films actually constituted a decent portion of the studios’ total production, ranging from almost four percent of their total production in 1950, to as high as twelve percent of their total production in 1953.²⁵³ As Spyros Skouras testified that Fox was remaking three or four of their older films a year.²⁵⁴ If the studios released their films to television, they would have relinquished their rights to remake that story. As Jack Warner explained: “Instead of having to purchase a story for X amount of dollars, you have the story there gratis, because those are the terms under which we buy stories, the right to remake them. So you see there is a tremendous amount of money sometimes in the actual buying of a story. If you will give this particular story to television, I feel in my judgment, and the judgments of the men who run our company, that you would lose the possibility of remaking that film again.”²⁵⁵ Warner’s argument does not take into consideration that the studios could have included in their contract the fact that they retained the story rights for theatrical remakes. He

excluded that option because it was the case that some of the studio heads actually wanted to avoid releasing their films to television because they wanted to remake their old films, not for the theatres, but for television. In May 1954, for example, Jack Warner and Benjamin Kalmenson went to the ABC offices in New York and discussed a deal for Warner Bros. to produce thirty nine television programs of one hour each based on three of their older feature film properties. They were *Casablanca* (1942), *Cheyenne* (1947), and *King's Row* (1942). By the end of 1955, Warner Bros. had produced almost twenty of the thirty-nine programs they were calling *Warner Bros. Presents*. It aired on ABC every Tuesday night from 7:30PM to 8:30PM. As Jack Warner recalled, one of their primary motivations in producing those programs was to drive audiences back to their theatres by including advertisements in their television program. Those included segments they called "Behind the Camera," which showed how their new features were made and included clips from coming attractions.²⁵⁶ In this sort of roundabout way, Warner Bros. was using their vault on television, but it was still in service of driving audiences back into their theatres.

The U.S. v. Twentieth Century-Fox, et al.

In the midst of all of those negotiations, one of the biggest pieces of the puzzle of the major studios' feature films on television was about to fall into place when the antitrust case of the U.S. vs. Twentieth Century-Fox, et al., finally made its way to trial. Although the suit was filed in July 1952, it did not go to trial until September 1955. The intervening years were spent with various motions, objections, and interrogatories filed by both sides. By October 1954, the government complained to the judge that "under all of these circumstances, there is strong reason to believe that the interrogatories propounded by the defendants some two years after the filing

of the complaint, were filed to vex and harass the plaintiff and to cause delay in the ultimate trial of this case on the merits.”²⁵⁷ In December 1954, in preliminary proceedings, Judge Harry Westover indicated the priority of the case for the Department of Justice and the courts in saying, “The head of the antitrust department was in here not so long ago, and I assured him that when this case was ready for trial, we would clear the decks and give it priority, I mean get rid of the other cases and give it priority.”²⁵⁸

Shortly after that, on January 20, 1955, the DOJ named the other major theatre associations as co-conspirators in the case. Co-conspirators are charged with agreeing to commit a criminal act and doing something to help facilitate an agreement to commit a crime, which in this case was the violation of the Sherman Antitrust Act by restraining the trade of 16mm films. Since it was the producers and distributors who held the rights to license or sell their films to television and other 16mm outlets, they were the defendants, while the exhibitors, without direct control over the licensing or sale of the films, remained co-conspirators. The DOJ, however, was attempting to prove that the pressure the exhibitors exerted on the producers and distributors was a major factor in what the DOJ alleged was the producers’ and distributors’ illegal behavior. As the judge commented at one point: “If they [the producers] get any more pressure letters from exhibitors, the producers will be appearing in the position of an unwilling bride being forced to act, which is not very usual for a co-conspirator.”²⁵⁹

The Theatre Owners of America had originally been named as a co-conspirator, but now the list was expanded to include Allied States Association of Motion Picture Exhibitors, Independent Theatre Owners Association, Inc., Metropolitan Motion Picture Theatres Association, Inc., Metropolitan Motion Picture Theatres Association, Inc., Southern California Theatre Owners Association, Pacific Coast Conference of Independent Theatre Owners, and the

Council of Motion Picture Organizations, Inc.²⁶⁰ The theatre owners and their associations were not happy with that turn of events, and at one point, the lawyer Samuel Flatow of the DOJ half-jokingly commented to the judge that, “Sir, I think I would have to be very careful with my life if I walked into TOA today.”²⁶¹

Before the case had a chance to make it to trial, however, some of the defendants agreed to consent decrees. A consent decree is a settlement between parties to a criminal case or lawsuit in which the company agrees to take specific actions without admitting fault or guilt for the situation that led to the lawsuit. Companies often agree to consent decrees instead of continuing the case through a trial or hearing, or in return for the government not pursuing criminal penalties.²⁶² Republic Pictures and Republic Productions were two of the first companies to enter consent judgments in the case on September 12, 1955. It required Republic within ninety days to license or offer for licensing on 16mm, eighty percent of the films which they had released for 35mm theatrical exhibition in the United States during the second preceding calendar year. It also restrained them from refusing to license, etc., said feature films and fixing the conditions thereof.²⁶³ The ninety-day deadline for Republic to offer their films to television would have occurred in mid-December, so for the studios that were concerned about a possible buyers’ market, this would have been alarming news.

Both Republic and the judge wanted to make sure it was understood by the industry and the public that the fact that they had agreed to a consent decree did not mean they had admitted guilt. As the judge noted: “Mr. Flatow [special assistant to the attorney general] came in and stated that some of the defendants were desirous of consenting to a decree. I notice one of them said officially the other day the decree did not mean a thing, that they were not doing anything, they just agreed to it because it was a way of saving lawyers’ fees. That was Republic’s

president.”²⁶⁴ The judge also emphasized that the fact that some of the defendants had entered a consent decree would not influence him against the remaining defendants.²⁶⁵

There had also been indications that Pictorial Films was experiencing financial difficulties and might enter a consent decree. In November 1954, Loeb and Loeb told the court that they were withdrawing as attorneys for Pictorial Films because Pictorial had been “unresponsive and uncooperative in communications and access to information” and Pictorial had not paid Loeb and Loeb for their work.²⁶⁶ So it was not a big surprise when on September 21, 1955, Pictorial Films, Inc., and Films, Inc. followed Republic’s lead and entered consent decrees. Both Pictorial’s and Films’ consent decrees say basically the same thing as the Republic decree, with the one difference being that Pictorial’s and Films’ decree simply says “Said defendant is ordered and directed to license or offer for licensing in good faith, directly or through distributors, to Government and other outlets its feature films available for 16mm exhibition.” So rather than specify the studios license or offer eighty percent of their films, as the Republic decree had, it just said “its films.”²⁶⁷

Republic, Pictorial, and Films, Inc., were not as financially strong as the other studios that were their co-defendants. Republic, in particular, was involved in a number of different lawsuits at that time (the Rogers and Autry suits to name only a couple), which took a significant toll on their finances. It was also the case that all of the defendant companies were seriously concerned that the judge would find them guilty. That fear was based largely in a statement made by Supreme Court Justice Douglas in his opinion in the recently decided antitrust case against Paramount, et al. Douglas argued that it was “not always necessary to find a specific intent to restrain trade or to build a monopoly in order to find that the anti-trust laws have been violated. It is sufficient that a restraint of trade or monopoly results as the consequence of a defendant’s

conduct or business arrangements.”²⁶⁸ Since the studios had endured the long and expensive process of that earlier antitrust case, they had been very careful not to create anything that could be used as evidence of anticompetitive behavior. Douglas seemed, however, to argue that evidence of a conspiracy or the intention to conspire was not necessary to be found guilty of violating the antitrust act. It merely required that the effects of a company’s actions were anticompetitive. Based on that opinion, it was even more likely that the studios could be found guilty in the case against Twentieth Century-Fox, et al. If that was a distinct possibility, and since Republic, Pictorial, and Films’ finances were especially weak, they wanted to avoid additional, and potentially unnecessary if they were facing an inevitable guilty verdict, lawyers fees for the trial and enter agreements with the government that they could negotiate as much in their favor as possible.

From the beginning of the trial, however, Judge Yankwich seriously disliked the DOJ’s lawyers who were trying the case. The west coast judge and the studios’ lawyers who had tried cases many times before the judge, had different styles than the east coast lawyers from the DOJ. As the judge explained to Flatow, one of the DOJ’s lawyers, on the first day:

Listen, you have got to learn one thing, which counsel [for the studios] have learned. Nobody makes a set speech in my court, you see. If you do, you will be deprived of finding out what is in my mind. And therein western judges differ from eastern judges. That is, we are talkative judges. In other words, you will know before you get through just how I feel about certain things. In the second place, you deprive us of a lot of fun.²⁶⁹

About a month later, the judge was still giving the DOJ lawyers a difficult time. At one point the judge admonished them, saying that he was upset that the DOJ had not used more of their west coast attorneys to try the case, and he hoped that message was “transmitted to Washington.” Yankwich said he was tired of having to lecture all the time to the DOJ’s east coast lawyers, who were “unfamiliar with the rules of evidence and unfamiliar with the local practices.”²⁷⁰ Although

the judge was clearly fed up with the DOJ's lawyers, he had a great deal of experience working with the studios' lawyers and was friendly with them. He had heard many cases involving the film industry, including the case of *Franchon & Marco, Inc. v. Paramount Pictures, Inc., et al.* That was another antitrust case wherein Franchon & Marco, who owned and operated theatres in Los Angeles and elsewhere, claimed that distributors and other theatre owners and operators had combined to control eighty percent of the supply of films. They claimed that with that monopoly of distribution they refused to release films to the Baldwin Theatre on first run day and date. They claimed they are confined to a twenty-one day clearance, and the suit was not concerned with price fixing, but exclusively with runs and clearances. In that case, the judge found in favor of the defendants and concluded that there had been no combination or conspiracy.²⁷¹ Homer Mitchell, a lawyer from O'Melveny & Myers, had represented some of the studios in the Franchon & Marco case, and was again representing the studios in the Twentieth Century-Fox antitrust case. Judge Yankwich's track record demonstrated his preference for the studios as well as his reluctance to find them guilty on antitrust charges.

That reluctance was due in part to the fact that the judge clearly loved Hollywood and had a soft spot for those who ran the studios and held other positions of power in the film industry. When Spyros Skouras was on the witness stand, for example, the judge praised him as being a "profound man," and talked at length with Skouras about the judge's opinions on films that were remade and made especially for television. Skouras pandered right back and told the judge that he would take his "wonderful advice" straight back to his television department.²⁷² The judge often talked about the movies he had recently seen, and many of the disparaging remarks he made about the east coast lawyers from the DOJ seemed to be made in an attempt to ingratiate himself with the studios and their lawyers. These cultural affinities and cultural

aspirations between Judge Yankwich and Hollywood directly affected the case, as well as other cases heard by the judge, and thereby significantly affected the basic structure and output of the film industry. This demonstrates the important ways in which social relations within local cultures can influence industry as much as economics and the law itself.

One of the significant obstacles the DOJ's lawyers had created for themselves, and that seemed to frustrate the judge, was the fact that they had based their case on the restraint of 16mm film. Although the DOJ's lawyers had specified that they were particularly concerned with television, they had put themselves in the nearly impossible position of building a case that encompassed the entire field of 16mm films. By 1955, that included exhibition not only on television, but also to select theatres in areas where there was no 35mm competition, hotels, churches, schools, hospitals, the Red Cross and other military outposts, etc.

In terms of revenue, the 16mm market was a very small one for the studios. For example, in 1954, Warner Bros. earned a total of \$36,892,000 in 35mm film revenue, as compared to \$614,000 in 16mm revenue. The 16mm revenue was made from \$538,000 in sales to government agencies, and only \$76,000 in sales to the non-government market.²⁷³ That same year, Twentieth Century-Fox earned \$59,126,000 in revenue from 35mm distribution, and \$365,000 in 16mm distribution.²⁷⁴ Universal Pictures and United World Films made \$651,000 in revenue from non-government 16mm rentals, and \$41,347,000 from 35mm rental revenue domestically.²⁷⁵ The 16mm feature film market ranged between 1.1 and 1.8 percent of total domestic feature film revenue.[†] Since the market did not offer the studios large financial profits, the production and distribution of 16mm films remained a small and somewhat disorganized business – certainly

[†] These numbers only reflect the revenue of the defendant companies in the *U.S. v. 20th Century Fox et al*, so they do not include Paramount or MGM. (Testimony of Alexander Kenneth Beggs, Reporter's Transcript of Proceedings, Pages 1448-1449.)

when compared to the sophisticated systems the studios had built for the production and distribution of 35mm films.

The DOJ chose to focus on 16mm films, in part, because they had received numerous complaints from, among other locations, hotels in Miami who had complained that the studios were refusing to license their 16mm films to them. 16mm was also the dominant format used in television. Quality Films, for example, dealt with approximately one hundred and forty of the four hundred and fifty stations in existence at that time, and of those stations, only about fifteen had 35mm equipment. Those stations were located in the “key markets” like Los Angeles, Chicago, and New York.²⁷⁶ In terms of the networks and their stations, in 1955, CBS had four owned and operated stations in New York, Chicago, Milwaukee, and Los Angeles. There was 35mm projection equipment in all those cities except Milwaukee, and all four cities had 16mm equipment. By 1955, CBS had about two hundred affiliate stations, which, for the most part, had 16mm projection equipment. Philadelphia was the only affiliate station that had 35mm equipment. As Jack Van Volkenburg, president of CBS’s Television Division, explained, “They are the isolated case, certainly, rather than the rule.”²⁷⁷

By 1955, of the almost four hundred television stations in operation in the United States, ninety five percent of them had only 16mm equipment. There eighteen stations that had both 16mm and 35mm equipment, and only one only had 35mm equipment alone. The stations with 35mm equipment were located in the larger markets in Los Angeles, San Francisco, Chicago, Boston, Detroit, New York, and Cleveland.²⁷⁸ While the logic behind their focus on 16mm is somewhat understandable, proving that the studios colluded to restrain the trade of 16mm films not only to television, but also to the other 16mm locations like hotels, was an extremely complex and nearly impossible task.

The studios' defense was a relatively straightforward one: they denied all allegations and asked for the dismissal of the case and the recovery of their costs from the government.²⁷⁹ Many of the studios did admit that their decisions as to whether or not to approve or deny the licensing of 16mm films to certain locations had been based on whether or not the location in question would be in competition with their existing 35mm theatres. Universal, for example, argued that their denials for licensing 16mm films for exhibition were based on whether or not the proposed locations would substantially and adversely affect theatrical exhibition of their 35mm features.²⁸⁰ The studios denied, however, that those decisions were made as a part of a conspiracy with the other studios. They all argued that they had acted independently and made decisions based on their own best interests. Some studios did try to lay the blame at the feet of others like the AFM. Republic, for example, argued that they were not legally free to grant any requests to license their films for television without special agreement with, or written consent from, the American Federation of Musicians, by reason of prior agreements between Republic and the AFM.²⁸¹

In the years before the case went to trial, the studios also changed their tune in court filings regarding important points such as whether or not anyone in their company had meetings or conference regarding the licensing or sale of their films to television. In their initial filings, the studios had, across the board, denied that any conversations of that type had taken place. In the meantime, however, the DOJ had the FBI visit the studios and their co-conspirators and make photocopies of any and all documents they could find related to the issues in the case. As we have seen, the studios were, in fact, engaged in numerous discussions about the licensing and sale of their feature films to television, so they ultimately revised their responses to answer "yes" they had, in fact, had meetings or conferences regarding selling their films to television.²⁸²

During the trial, the heads of the studios who appeared as witnesses were all specifically asked what their policies were regarding feature films on television. Their responses, much like their behaviors in regards to feature films on television, varied slightly, but shared certain commonalities. Ned Depinet, who had been president of RKO until October 1952, testified that their policy had been “one of watchful waiting.” He explained:

If anybody has ever come forward with a price that we thought was commensurate, we probably would have had a tough decision to make as to whether we want to turn our backs on 20,000 exhibitors who have patronized us over the years, in order to give our product to television. But we have never had to make that decision, because there has never been a price involved that we thought was worth a tinker’s hoot.²⁸³

When asked whether or not the reason he had not put RKO’s films on television was because they were afraid of reprisals from exhibitors, Depinet answered, “Oh, no. I didn’t want to kill the goose that laid the golden egg [...] I didn’t want to trade a known business for one that is unknown. I don’t know where television is going. I knew I was getting my revenue from legitimate theatres, and it was a very good business.”²⁸⁴

Spyros Skouras, when asked what the general policy of Twentieth Century-Fox had been with respect to licensing feature film for use on television, explained that they had opposed the release of their films to television because they could not get prices from television that would compensate for the losses they would experience at the theatrical box office if their films appeared on television. Skouras continued that as a company, they had to make fifty-five to sixty million dollars a year from their “live inventory” and therefore had to protect their main source of income – the theatres. Skouras explained that by “live inventory” he meant the films that had not yet amortized (i.e. paid off their costs), and that it took sixty-five weeks for a film to be completely amortized.²⁸⁵

The studios also answered the charge that they were trying to crush the competition of television by highlighting their activities in the television industry more broadly. Those activities included things like producing content for television, theatre television, etc. During the questioning of Peter Levathes, he argued, “In view of the nature of the argument that is being advanced that poor little television is being starved by these powerful conspirators, I believe the fact that they are trying to cooperate in some ways, at least, has some bearing upon their relationship, just as the fact that they themselves are now using the medium, as Mr. Skouras testified, bears upon the matter.”²⁸⁶

Ultimately, the defendant film studios claimed that they had not entered into any agreement with each other as to their films on television, but that they were always aware of and paying attention to what each other were doing with respect to that issue. The judge at one point virtually made their case for them when he stepped in to explain his understanding of the behavior of companies in an oligopolistic industry:

[Professor Sutherland, an economist] coined this phrase of “monopolistic competition,” and he points to the fact that a person in deciding that a man engaged in the production of goods for the market and seeking to sell it is consciously and unconsciously always aware of what the others in the field are doing. But he says that that is not even a tacit agreement, it is merely because, as he explained elsewhere, and as I and others who did not adopt his theory have stated repeatedly, when you are living in an interrelated market, and you are dealing with an oligopoly – we like that word – and that is where the customers are many and the manufacturers are few, at all times you may be conscious of it.²⁸⁷

If the studios had any fears that they might be found guilty, that statement by Yankwich should have caused them to rest easy. The writing was on the wall, and eventually, the trial that began on September 20, 1955, was decided on December 5, 1955, in favor of the defendants.²⁸⁸ The judge found that although the actions of the different studios were similar, the government was unable to prove that the studios’ practices were the result of any contract, concert, combination,

or conspiracy.²⁸⁹ As Herman Levy, general counsel for the TOA, noted after the decision was made: “This is a decision of the greatest importance in industry history. The industry was fortunate to have had a jurist of Judge Yankwich’s capabilities and conscientiousness sitting on the case.”²⁹⁰ Then on December 27, 1955, the consent judgment between the government and Republic, Films, Pictorial, and Warner Bros. Distributing Corp. was stayed, which meant that they were no longer required to offer their films for licensing within a certain period of time.²⁹¹

Although the *U.S. vs. Twentieth Century-Fox, et al.* has not received as much attention in film and television histories as other cases (such as the now-notorious antitrust case against Paramount and others that resulted in the divestiture of the studios’ theaters), it profoundly impacted the film and television industries and the ways they eventually negotiated to broadcast Hollywood feature films on television in the mid-1950s. While it was necessary to resolve the many obstacles this project has detailed in advance of selling or licensing the studios’ feature films to television, the studios move to sell their films in 1955, directly resulted from this antitrust case and its eventual resolution. The case helped motivate the studios to resolve the issues that were keeping their films off television, and it is largely because of this case that Hollywood feature films showed up on television when they did, and neither sooner nor later.

By the end of 1955, the film industry breathed a sigh of relief over the victories they had won in court. With the resolution of the Rogers, Autry, and antitrust lawsuits, the studios’ divorcement from their theatres, and the AFM deal for pre-1948 films, the studios were free of many of the restrictions that had prevented their films from appearing on television. While there were still many details to be worked out, and some studios would still take time to license or sell their films to television, by 1956, the first announcements were made regarding the major studios’ libraries making their way to television.

CONCLUSION:

The Sale of Hollywood's Feature Films to Television and Media Industry Disruption and Convergence

By the beginning of 1956, many of the disruptions of the previous decade that had occurred in the film and television industries as well as American society and culture had begun to settle down. The FCC had resolved many of the core issues that had caused conflict and chaos in the early years of television, and many of the industrial structures and programming forms had matured and stabilized. The studios had finally come out the other side of their long engagement with the Paramount antitrust case and the restructuring of their companies that was mandated by the courts had taken place. Many of the contract and residual disputes, lawsuits, and aesthetic and financial questions in relation to feature films on television had finally been resolved, so that the studios had not only begun to license and sell their films to television, but had become more involved in the production and exhibition of television as well.

The resolution of those issues, combined with the motivation provided by the threat of a guilty verdict in the antitrust case, *The U.S. vs. Twentieth Century-Fox, et al.*, prompted what has been widely acknowledged as the studios' move into television in the mid-1950s. For example, William Boddy argued that the trigger for the flood of feature films to television in the mid-1950s was Howard Hughes's sale of the RKO film library, and while this may have been true in part (RKO's sale certainly played into the other studios' fear of waiting too long and finding themselves in a buyer's market), the move by RKO and others to license or sell their films to television only happened once the forces aligned at the end of 1955, to resolve all of the many aforementioned issues.

Hollywood's Feature Films Make Their Way to Television

Although by the end of 1955, RKO had sold its library and Republic had licensed substantial portions of their films to television, it would take another six years before all of the other major studios sold their pre- and post-1948 films to television. Some studios began selling portions of the libraries in 1956, because it was at that time that the AFM agreed to allow the studios to release their pre-1948 films to television if they paid 5% of the revenue from that sale or lease to the AFM. They did not, however, reach an agreement on their post-1948 films, and that was one of the reasons that for a period of years after 1956, there was an influx of pre-1948 films to television, but not post-1948 films. These issues of royalty and residual payments were vigorously debated between the producers and all of the unions and guilds, including the AFM, through the remainder of the 1950s.

1956 was, in fact, a very busy year in terms of feature films appearing on television. In January 1956, Matty Fox announced his plans, through his company C&C Television, to sell the RKO films he had purchased in 1955, to television.¹ By mid-1957, C&C estimated its revenues from the RKO library at twenty five million dollars.² Also in January 1956, Len White reported to his colleagues at J. Walter Thompson that Republic was ready to lease another group of films to television for a price of about \$125,000.³ At that time, Eliot Hyman purchased the rights to the Warner Bros. library of pre-1948 films for twenty one million dollars. Warner Bros. chose to sell the library outright rather than licensing their films for two reasons. First, the cash infusion from the sale boosted the value of the company's stock for the brothers Warner who were at that time considering retirement. Second, it helped save them money on taxes as the revenue from a sale was taxed at a lower rate than the income from rentals because the profits from a sale were taxed as capital gains rather than income.⁴

Even Spyros Skouras whose close ties with exhibitors had made him such an opponent of releasing films to television, by February 1956, was seriously working on a plan to release Fox's pre-1948 films to television. Irving Asher, the 20th Century-Fox television chief, had discussed with Bill Paley, Pat Weaver, and Tom McAvity "the possibility of doing ninety minute film spectacles. While Asher is reluctant to go into any project of this type, he tells me Skouras is urging him to make such a deal with Paley. At the moment Asher does not know whether he will win his point but says Skouras is highly in favor of this idea."⁵

Then in May 1956, Fox licensed fifty-two of the films they had produced between 1935 and 1947, for a ten-year period to Eli Landau at National Telefilm Associated. The terms included the payment of two million dollars to Fox, with the possibility of future revenues if National Telefilm's profits reached a certain level. Fox was apparently happy with that deal, because in November 1956, they signed a much larger deal with National Telefilm. That deal included Fox licensing to National Telefilm three hundred and ninety of their pre-1948 films for seven years at a minimum price of thirty million dollars. Fox clearly wanted a piece of the lucrative business of films on television because, as a part of the deal, they bought a fifty percent interest in National Telefilm's television syndication business, and agreed to produce four television pilots. Skouras had not completely overcome his reluctance to release his films to television, however, and in 1958, he was quoted as arguing the studios should not sell or lease their post-1948 films to television.⁶

Those films that were making their way to television were, in fact, doing very well financially. By July 1956, *Television* reported that twenty five hundred feature films had been released to television in the previous thirteen months, and Columbia reported an income of

almost ten million dollars on its feature sales to television. Warner Bros. said it had earned fifteen million dollars in television sales that year.⁷

Although Lew Wasserman has often been given credit for discovering the potential value of studios' film vaults on television,⁸ it was not until years after those other studios had started selling their films that Wasserman and MCA were able to make a deal for Paramount's films. In 1958, Paramount sold the rights to their pre-1948 feature film library to EMKA, a subsidiary of the Music Corporation of America, for fifty million dollars. Paramount kept the theatrical rights to a few of their films, including those made by Cecil B. DeMille. One of the reasons Paramount had held onto their rights longer than the other studios was the fact that they were especially interested in, and convinced of, the promise of pay television.⁹ In all of the above instances, the studios were forced to review all of the contracts for each and every film in order to make sure that they were able to sell the rights.

It took until 1960, however, before the studios were able to negotiate a deal with the unions that covered both their pre- and post-1948 films. The studios' willingness in 1960 to agree to terms with the unions was largely due to the fact that the networks were preparing to finally convert to color television, which would eventually diminish the value of any black and white films the studios had in their libraries.¹⁰ The Writers Guild, for example, went on strike in January 1960, and as Miranda Banks reported in her excellent history of the Writers Guild of America, "gained the right to a fixed percentage from the studios' royalties, and, later, won residuals on television reruns and on the broadcasting of cinematic films on television."¹¹ The guild also won "a percentage of post-1948 film sales to television, and compensation for pay television, just in case it would become a significant force in future markets."¹² In lieu of

agreeing to residual payments for films made before 1960, the producers agreed to a one-time six hundred thousand dollars payment for past service into the WGA's pension and welfare fund.¹³

In 1960, SAG and DGA were also negotiating contracts with the studios that covered television rights to their post-1948 films. The stopgap clause in SAG's 1948 contracts had kept most of the studios' films that were made after 1948 off television. Some independent producers had sold their post 1948 films to television, and in keeping with the clause, had negotiated settlements with the guild. On March 7, 1960, the issue of television revenues led the Screen Actors' Guild to strike for the first time in its sixty-year history. Ronald Reagan, then SAG president, ended the strike on April 19, 1960, and entered into a collective bargaining agreement with every major studio except MCA and Universal.

SAG's agreement was somewhat similar to the one the studios reached with the WGA. The studios agreed to pay \$2,625,000 to establish pension, health and welfare plans for their actors, and they further agreed to contribute six percent of the net television revenues of films made after February 1, 1960, to those plans. In exchange, SAG agreed not to bring compensation claims for films made prior to February 1, 1960 that were released to free television.¹⁴ Any actor who was a member of SAG, therefore, was thereafter unable to assert any compensation claims.

Once the WGA and SAG strikes were resolved in 1960, Warner Bros. leased a large package of their post-1948 films to a television distributor, and in 1961, Fox announced a deal with NBC for a program called "Saturday Night at the Movies." The deal included a package of thirty-five features that NBC purchased from Fox for twenty five million dollars. NBC debuted the series on September 23, 1961, with *How to Marry a Millionaire*. ABC then followed suit in 1962, by programming a package of United Artists' feature films on Sunday nights as their "Hollywood Special."¹⁵

After that long and drawn out struggle of over a decades worth of conflicts, lawsuits, and strikes, just to get Hollywood's feature films on television, one might expect that Hollywood would have learned some lessons about how to more successfully manage periods of disruption and convergence, and particularly to facilitate the migration of their content across platforms. Unfortunately, Hollywood, and later television (once it had existed long enough to be considered "older" media) have doomed themselves to repeat these same conflicts at other moments of disruption. In studying historical periods such as this, scholars gain a better understanding of the industries, their behaviors, and their creative output.

Contemporary Disruption and Convergence

Especially in light of the contemporary disruption of the existing media industries by digital media, and the internet in particular, it is instructive to analyze earlier periods when the film and television industries experienced extreme pressure and change. The case study of the struggle over feature films on television provides clear insight into the motivations, priorities, and characters of the different players involved. The introduction of television profoundly disrupted the film industry at a time when they were already experiencing dramatic change. This study not only helps us fully understand the early history of television, it illuminates the history of the film industry at one of the most significant moments in its evolution, and thereby gives us better insight into the contemporary period of media industry disruption and convergence.

When we consider the extreme turmoil the film and television industries have experienced in the wake of the introduction of digital media, it is somewhat shocking how many of the same issues and obstacles faced by the film and television industry in the 1940s and 1950s have returned to once again challenge the media industries. Just as television disrupted the film

industry by introducing new screens that allowed content to be enjoyed in the home, digital technologies introduced new screens in computers, tablets, and smartphones, that allow audiences to enjoy their content anywhere, anytime. How that content migrates between those platforms, just as was the case with the migration of feature films to television, is a source of great conflict.

The film industry is a somewhat unique industry in that it has, and still does to a large extent, operated as an oligopoly. As a functioning oligopoly, it has, and still does, operate in a largely inflexible and conservative manner that privileges its proven methods of success over innovation and risk. As economist Andrew Currah explained in his study of the oligopolistic behavior of the media industry: “There is a tendency for oligopolists to neglect or even marginalize emerging markets, especially those that are seen to threaten the status quo. Therefore, the behaviour of oligopolistic firms tends to reflect, defend and enforce the prevailing structure of the industry, making any kind of radical change difficult to justify or initiate.”¹⁶ In the study of Hollywood’s response to television, we certainly saw the film industry’s reluctance to embrace radical change. Similarly, the contemporary film and television industry has been reluctant to make any radical accommodations for the challenges of digital media. A one senior vice president of a studio, when asked about his company’s resistance to adapting to the introduction of digital media, responded with a question that has been posed repeatedly in the industry over the last hundred years: “‘Why deliberately upset a system that works?’”¹⁷ That seems like a question that could have been torn from the pages of the transcript from the antitrust trial over feature films on television in 1955.

Not only are oligopolies resistant to relinquish the behaviors that have brought them success, when confronted with challengers, they often invest more heavily in the expansion of

their existing media. In the 1950s, that meant the investment by the studios in things like their widescreen technologies that made their existing business bigger and better. Today, for example, the media companies have again been spending large amounts of their capital, not on radical innovations, but on technologies like 3D and HD that improve up on their existing offerings and differentiate their content from mobile or online content.

This oligopolistic behavior continues to impede Hollywood's adoption of the internet and the potential promise it holds in terms of expanding the industry. Although the behavior of these companies may be rational and fiscally advisable in the short-term because it seeks to minimize risk and maximize quarterly earnings, it is potentially damaging in the long-term.¹⁸ When oligopolies are institutionally incapable of exploring and defining the new parameters of a disruptive technology, they leave it, as Currah concluded, to the "creative and economic margins of the entertainment industry, with the support of 'independent' content, which is subject to fewer legal restrictions in a digital or physical commodity form."¹⁹ This may eliminate risk, but it also eliminates some potential successes.

Another characteristic of an oligopoly is that the executives in the firms have large incentives to focus on their larger, proven markets, thereby sustaining growth and protecting the company's market capitalization.²⁰ This was clearly evident in many of the studio heads' focus in the '40s and '50s on their larger theatrical market as opposed to the much smaller market of television. As Ned Depinet testified: "I didn't want to kill the goose that laid the golden egg [...]. I didn't want to put them out of business. I didn't want to trade a known business for one that is unknown. I don't know where television is going. I knew I was getting my revenue from legitimate theatres, and it was a very good business."²¹ Just as with the CEOs of media companies today, those studio heads were responsible to stockholders who wanted to see

increasing profits and steady growth. If that is the priority, it creates a culture wherein it is difficult to take risks or accept failure, even if it is in the pursuit of future success. In a 2008 study, for example, Ernst & Young found that CEO's of the major media companies were more focused on protecting their traditional business than pursuing digital opportunities, largely because they saw greater profits coming in from their traditional businesses than they did from digital. For example, one CEO explained that "digital media may not be as economically attractive as old media." Another complained that "media is trading analog dollars for digital dimes."²²

The heads of existing media companies balk when confronted by the rates and profits for content in a new media or platform largely because it is difficult to establish the value of content in the new media. That is often made more difficult because the heads of existing media companies are often comparing the values of the two mediums as though they are comparing apples to apples, which is not the case. For example, one CEO said, "The ability to persuade consumers to pay fair value for content is critical."²³ Another CEO took that one step further and argued: "The major challenge is getting people to pay for content – not what is 'fair' but what they used to pay."²⁴ We also saw that sentiment arise among studio heads when offered deals for their films on television. They did not believe that they were getting the fair value for their work in the new medium. They expected to get at least the same amount for the content from television as they did from their theatres. They expected each audience member to pay the same amount for a "ticket" to view their films, whether or not the films were years old, and whether or not they were at home in front of their television or in a movie theatre.

One of the reasons that in the '40s and '50s, as now, content providers complain that they cannot make as much money for their content in the new medium as they would like is because

advertisers are also confused as to how to get the most value out of the new medium and are therefore reluctant to spend large amounts of money. Just as advertisers in the early days of television waited for concrete ratings information to show them where they could spend their money for assured successes, so too have advertisers today been hesitant about taking risks without better data analytics and media measurement tools to point them in the right direction. They want to be able to measure their return on investment, or, as Ernst & Young described, “They need the tools to demonstrate that they are winning in the market.”²⁵

Not only are there concerns about not getting enough value out of newer technologies, there are concerns about the devaluing of property in the existing media if it is shown on the new platform. Just as in the 1940s and ‘50s the theatres complained to the studios that showing films on television would ruin any potential value the films had in the theatres, as Alisa Perren has observed, today affiliate stations are objecting to online streaming of programming “on the grounds that it devalues their status as the initial site for original network content.”²⁶ Just as the studios argued to their theatres in the 1950s, today, “the networks have been able to mediate this issue to some extent by arguing that streaming serves primarily promotional purposes.”²⁷

We can also look to videogames for examples of this destructive mindset at work. In the case of Nintendo, for years they have dug in their heels and insisted on only developing and releasing games for their own hardware systems. But as mobile devices increased in popularity, Nintendo’s sales have decreased. Their strategies have so seriously backfired that in January 2014, they were forced to take a step that is almost unheard of and dramatically lower their financial forecast, in large part because they expected to sell nearly seventy percent fewer of their new Wii U consoles than expected.²⁸ With fewer console sales, that means fewer sales of games. Although the sale of a \$.99 app may not be as sexy as the sale of a \$300+ Wii U, if

Nintendo would embrace mobile gaming and develop versions of their games, both old and new, for devices such as the iPad, they could enjoy an entirely new stream of revenue. If we consider Chris Anderson's theory of the long tail, a million small sales can be much more profitable than a few larger sales.²⁹ But as Greg Richardson, CEO of online games company Rumble, observed of Nintendo's predicament: "It's a classic challenge of having to disrupt yourself. They have to fail against their old playbook fundamentally before they take a step back to assess, 'Who are we?' Clearly, the present is not the past."³⁰

Another example of the very practical issues that can prevent existing industries from taking advantage of newer technologies and media are the often significantly different financial models of the incumbent media and the newer media. For example, when Chris Sacca, a venture investor, technology adviser, and entrepreneur who manages a portfolio of more than fifty consumer web, mobile, and technology start-ups, was working at Google sometime around late 2005, he met with music company executives and offered to sell their music through Google, but at the music companies' prices and on their terms. He expected the executives to jump at the chance, but their only response was to ask how much cash he could guarantee them in the first year. It was at this moment that Sacca realized one of the fundamental differences between the two industries: Hollywood was used to getting paid yearly in cash, while Silicon valley was used to getting paid every four years in equity. The stockholders of the publicly traded Hollywood studios expected to see healthy income every year, whereas the venture capitalists and owners of the Silicon valley startups worked according to a fundamentally different value exchange that often assumed not to see a return on investment until a few years in the future.³¹ Those key differences in their basic operational models and expectations of what "success" meant to their shareholders and investors created a significant enough obstacle to prevent them from working

together in an intelligent way. You could see that mindset at work in the difficulties RKO faced when trying to make a deal, in that they wanted a lump sum payment for their films, whereas the television industry wanted to pay them a percentage of future profits. As Denise Mann observed in *Wired TV*, “Their tendency to return to old patterns and profit centers, which reinforces their reluctance to rethink their creative and business models.”³²

Another area of contention that demonstrates the need for existing media companies to fundamentally rethink their financial models to incorporate new technologies is piracy. As one CEO of a contemporary media company argued: “Absolutely need to restrict piracy – if everything is free, you can’t make investments in the franchise.”³³ The studios in the ‘40s and ‘50s were also on a crusade against their version of piracy: the unlicensed showing of 16mm films. That fight did not turn out particularly well for the studios as it was a part of what prompted the DOJ to slap the studios with the antitrust suit, the U.S. vs. Twentieth Century-Fox, et al.

If we consider piracy in light of the argument made by Chris Anderson in *Free*, however, what might appear to be given away “free,” actually has the potential to create an incredible amount of revenue. However, that would require producers to shift their view of their market and their notion of who their customers actually are.³⁴ When in the 1950s, studio heads and theatre owners saw television as content that was given away to customers for free, they had a difficult time understanding that the basic financial model of television was simply a different, more complex, one than that for film. Similarly today, producers see the internet as the land of the free, when companies like Google and Facebook are clearly incredibly profitable. Existing media companies just have to figure out how to adapt to these new profit models.

Netflix has found great success in digital media, and that is due in part to the fact that they have considered piracy not as something that has to be defeated at all costs, but as another tool to improve their business. That is not to say that they encourage piracy, and surely they would prefer to have customers legally paying for their content, but they have accepted that piracy is a perhaps unavoidable characteristic of digital media, and have decided to use it as a source of information about their audience. As *The New York Times* described it: “Stopping online piracy is like playing the world’s largest game of Whac-A-Mole.”³⁵ Instead of wasting their energy and resources playing that game, Netflix is using the information from pirating websites to determine the genre of shows and films their viewers might be interested in and therefore the type of content they will produce or license. As Kelly Merryman, vice president of content acquisition at Netflix, described: “With the purchase of a series, we look at what does well on piracy sites.”³⁶ Merryman said, for example, that Netflix decided to license the show *Prison Break* because it had been popular on piracy sites. This is not to suggest that media companies should let down their gates and offer all of their content for free, but they have to accept the qualities of a new technology – both good and bad – and try to find ways to use them for their advantage rather than trying to beat them into submission.

One of the central reasons that existing companies, both now and in the past, may be reluctant to invest early in new technologies because they do not want to dilute the profitability of their portfolio in the short term, but economists have found that “companies that reallocate resources early to capture trends often have higher returns and are more likely to survive long term.”³⁷ Unfortunately, today, as we saw in the ‘40s and ‘50s, many companies prefer to wait until newer markets are large enough to be interesting. For example, Ned Depinet explained: “Our policy, frankly, about television has been one of watchful waiting. [...] And we figured

there was a strong financial advantage to accrue to our company to await the development of this industry.”³⁸ We see that same attitude today. As a senior vice president at one of the major Hollywood studios explained: “We need to open up our libraries and get legal content out there [...] onto the Internet [...] to drive consumer adoption, tackle piracy and grow the market [...] the flipside is that the market is too small to warrant our investment. *But* and here’s the Catch-22 [...] the market can’t grow if we don’t take that risk and license content. It’s a real dilemma that will take a courageous move by one of the studios to resolve.”³⁹ Just as the film industry waited for the saturation point for television in the homes, media companies today waited for the “media saturation index,” which measured the level of adoption of broadband access and consumer internet-enabled devices. Ernst & Young found that for “every increase in the number of devices, there is a corresponding multiplicative increase in the amount of internet data traffic consumers generate. So while the number of devices grows by 20% annually, the amount of traffic in terms of usage that those devices consume is growing even faster at 32%.”⁴⁰

The problem with waiting until a market is large enough to be interesting, however, is that the companies who are participating in those newer markets end up establishing themselves as leaders in that market, and gain experience and expertise that later entrants find difficult to replicate.⁴¹ Take the example of YouTube and Hulu. The studios did not launch Hulu until 2008 – only a little over two years after YouTube went live. In those two years, YouTube was able to dominate the market for online video, and in terms of traffic to the site, was exponentially more successful than Hulu has been. This example shows how business leaders cannot wait until they witness success by other companies in newer technologies before they get involved. They need to think further into the future, and be willing to take risks on smaller markets that might become larger markets tomorrow.⁴²

One obstacle that prevented studios from putting their content online on sites like Hulu, however, was the questions over rights. As Alisa Perren described, for example, NBC had a difficult time gaining the rights to show *ER* on Hulu and NBC.com, which caused a long delay before they appeared online.⁴³ Those same issues over the rights to content in a new medium were litigated in the early 1950s in the Rogers and Autry cases. In those cases, the studios tried to claim the all television rights to their films as early as the 1930s, but because in the case of Rogers and Autry, television was not a known quantity to all parties involved in the contract, it was subject to legal testing decades later. This inability to understand the exact nature of a future media like television or digital media may make it nearly impossible for companies to claim the rights to a media before it exists. Of course, they do try to claim those rights in their contracts, but whether or not they will hold up in court once they are faced with the reality of the new media is another matter. Take, for example, the case of Napster, which was fundamentally a case about what it meant to own and use the rights to a piece of music on the internet. The courts had to debate and determine the very nature of the internet as opposed to audio CDs or cassette tapes. So while the record labels' contracts contained language in their contracts that protected their rights in all media, the fact that the internet presented wholly unimagined possibilities for the use of their content resulted in prolonged legal battles that delayed all parties in the case from making progress in dealing with the new medium.

In terms of limitations from restrictive existing contracts, one of the best examples of the problems that can result is the demise of Blockbuster Video. Their bankruptcy is one of the most significant failures that occurred in the face of the introduction of digital technologies. From the outside, it seemed as though Blockbuster should have been perfectly positioned to innovate and take advantage of the introduction of digital media. They simply had to take their physical rental

business and move it online, just as Netflix eventually did to great success. Blockbuster certainly made errors of judgment along the way, including their focus in the early 2000s on defending their turf against the young upstart Netflix, rather than looking at how they could improve their own service.⁴⁴ There were more practical issues, however, such as legacy leases with studios for their rental videos, which forced Blockbuster to continue doing business as usual. Even if Blockbuster had been interested in adjusting their business model, issues like their legacy leases and their overreliance on their investments in, and income from, their brick and mortar business would have made it extremely difficult, if not impossible, to innovate at a pace rapid enough for their survival. They needed to have identified the potentially disruptive technology early enough to have adapted their contracts before these technologies had begun to exert their disruptive powers in the economy and society.⁴⁵

When you consider contracts in the media industries, you have to consider the contracts with the unions and guilds. The willingness to invest in both the proven and currently profitable technologies, as well as exploring new, and possibly disruptive, technologies is a burden that rests not only with business leaders, but also with other groups such as unions and guilds. They also have a responsibility to prepare for disruptive technologies, because, as we saw highlighted in the AFMs struggle with “mechanized music,” new media can upset the “older ways of doing things and [render] old skills and organizational approaches irrelevant.”⁴⁶ The question of labor and training the labor force to work with the new technologies is another matter. As we saw happen with the unions and guilds in the ‘40s and ‘50s, the introduction of television provided a challenge not only in terms of the value of their work when reused in another medium, but the very real, and potentially more dangerous fact that the disruptive technology of television actually displaced work and in many cases rendered performers of all types unnecessary.

With the introduction of digital media, we saw similar challenges appear, albeit in a slightly different way. Whereas with the introduction of television the unions and guilds complained that the mechanized medium of television was limiting their employment opportunities and reusing their work without compensation, since the introduction of digital media, the media companies have asked writers and actors to produce content for the internet or mobile devices that was, at least initially, uncredited and unpaid. Once again union and guild members were faced with the basic questions of what employment looks like for them in the new media, and how can they insure they are fairly compensated for it?

The WGA strike in 2007-2008 was a direct result of the standoff between the guild and the producers over payment and credit for digital content. While the unions and guilds are understandably hesitant about entering agreements with the producers that they will later regret (i.e. the low rates they originally agreed to for their work on VHS and DVD), in order to ensure their financial security, they should take the responsibility of preparing as much as possible for the future, so that they can better position themselves to deal successfully with new media and technologies. In the era of post-Fordist flexibility, when there are so often conflicts between labor and management, the industry should also consider the more difficult question of what is the moral obligation of employers when their labor force is confronted with these types of challenges? The concept of Flexicurity, for example, as taken from European Labor Law, endorses flexible and reliable contractual agreements between management and labor; the availability of comprehensive lifelong learning strategies for workers; and sustainable systems that protect all members of society. That balance between the rights and responsibilities of all concerned is necessary to insure a productive future for all.

Just as the unions and guilds need to work to better anticipate disruptive technologies, so do regulators and policy makers. As an example of the problems that can occur when that does not happen, one of the CEO's of a contemporary media company observed: "Structural and regulatory uncertainty is an understatement. Regulators are confused. They are looking at an evolving animal and saying, 'How do I tax it?'"⁴⁷ We saw this same uncertainty reflected in the FCC's debates over subscription television, and the FCC's behavior more generally in the early years of television illustrated their confusion as to how best to proceed in terms of regulating the new media.

Today one of the most salient examples of that confusion can be seen in the conflicts over net neutrality, and the basic question of whether or not the FCC has the power to regulate the internet. The problems that have arisen around the issue of net neutrality provide a perfect example of how the language in regulation can determine the future use and limitations of media by existing media companies and consumers. A decision by a federal appeals court in January 2014, determined that regulations put in place in 2010, that limited internet service providers like Verizon from making deals with companies like Netflix or Amazon to allow those companies to pay more to stream their products to viewers through faster "express lanes" online, were not legal because, the court argued, the Internet is not considered a utility under federal law, and is therefore not subject to those kinds of common carrier regulations. Verizon had told the court that if those rules had not been in place, they would already have been exploring those commercial arrangements.⁴⁸ As Jennifer Holt has argued, "Content companies can deal with today's turbulence most strategically, particularly as it exists in the policy realm, by thinking with tomorrow's logic."⁴⁹ I would argue that the same could be said for regulators and policy makers, and since the people who set policy have multiple responsibilities that are often in

conflict when disruptive technologies emerge, citizens also have a responsibility to educate themselves about disruptive technologies and advocate on their behalf by engaging with policy makers on issues that matter to them. In the example of net neutrality, the cable and internet providers will certainly lobby Congress and the FCC on their own behalf, and citizens need to educate themselves about what is at stake and lobby for their own right to equal access to information.

In examining these many parallels, the intention is not to develop a teleological history where media industry convergence in the 1950s leads to convergence in the 2000s, and reveals some magical truth about the obstacles presented by industrial and technological disruptions. It does seem, however, that lessons can be learned to help better account for subsequent changes and shifts. This historiographic process is less about distilling what “causes” any of the conflicts and problems than about understanding the nature of the recurrence of selective industrial blindness. In the course of that understanding, it might be possible to uncover some keys to removing those blinders.

One of the keys to success when faced with potentially disruptive technology is, as Christensen argued, the need for dominant firms to create autonomous organizations built around the disruptive technology. In that way, the dominant firms align themselves with the new technologies rather than ignoring or fighting them.⁵⁰ We saw examples of this tactic at work in the ‘50s with the creation of Hollywood Television and Screen Gems, which were separate, but affiliated, companies of Republic and Columbia, respectively. Both of those companies enabled Republic and Columbia to more successfully converge their existing film businesses with television, and enabled a smoother transition of their films to television. In today’s Hollywood, many media companies are either, as a study by Ernst & Young of innovation in the media

industry described them, “born-digital” or “born-again.”⁵¹ Born-digital companies include those like Facebook and Netflix, whereas born-again companies include the existing media companies who now have to redefine who they are in the world of digital media. If an existing media company can create a subsidiary company that is tasked with developing their business in the new media, the existing media company could benefit from its “born-digital” subsidiary, and use its relationship with that subsidiary to help manage its own relationship with the disruptive media. Creating autonomous organizations to build business around new technologies can create an opportunity for a balance of risk and growth between the existing companies and their new, innovative offshoots.

Especially in light of the inertia inherent in oligopolies, independent companies today, just as they were in the 1950s with television, have seen some of the most success in being born-again in digital media. As Alisa Perren observed, smaller companies like Magnolia Pictures and IFC Direct that have more modest financial expectations for their films have been able to experiment more aggressively than major studios with releasing their films with day and date releasing.⁵² Many observers believe that day and date releasing will be the future of film distribution, and these companies will have experience and infrastructure accrued before the majors are able to take their first steps in that direction. Perren also found that Magnolia and IFC have been “among the most active buyers of completed films in recent years. They acquire a wide range of lower-budgeted American independents and imported films on the cheap from producers desperate to make even a small amount of money back on their investments.”⁵³ This is exactly what we saw in the 1950s with the rise of the companies who distributed films to television. They were independent companies with modest financial expectations, and would buy their films from desperate independent producers. Examples of these tendencies exist in even

earlier period of disruption. These problems have repeated themselves since the earliest periods of film history. As Charles Musser observed in his overview of the American film industry before 1907: “Ironically, the very dynamics of change that favored consolidation and rationalization frequently worked against those in a dominant position. Change was commonly introduced by those companies or individuals who were at a competitive disadvantage.”⁵⁴ Media companies today should look towards a more flexible model as practiced by independent companies as a way to not only expand their profits, even if minimally at first, but more importantly as a way to get a foothold in the new system of distribution and exhibition that will eventually solidify itself with or without them.

Denise Mann’s work has found similar examples of success on the margins. She observed that, “In the past decade, in particular, *‘the industry’* has expanded to include large numbers of younger, smaller, independent-minded sub-companies and units – transmedia production companies, digital marketing agencies, and even lone digital artists – that have intentionally aligned themselves with Silicon Valley’s work ethos over Hollywood’s.”⁵⁵ Hollywood needs to reflect on these successes and determine how they can catch up. If it has to do with the fact that Silicon Valley creates a culture that encourages flexibility, innovation, and ingenuity, all of which are characteristics of digital media, Hollywood needs to figure out how to adapt and embrace those qualities. That may mean that they have to create smaller subsidiary companies who are charged with innovating – not just a digital division that can be pushed aside and is still subject to the structure and culture of their larger corporate parent, but a company that has autonomy and is allowed to take risks and accept failure as the cost of experimentation. That company would then be able to ignore the present desires of the old media company’s customers because they may not be useful in the future, and instead work to figure out the new market for

the disruptive technology. It would also allow for resource allocation to develop business in new technologies rather than focusing on making the business of the old media more profitable. This strategy would allow companies to balance the consistent improvement of their successful products with the adoption and promotion of new technologies.⁵⁶ Studying these smaller intermediaries not only helps us better understand their role in these historical case studies, it also allows us to more clearly understand the historical and contemporary media industries as a whole – from the ground- and middle-up, as it were, rather than from the top down.

In the end, the key is the ability to anticipate future disruption and convergence, and the willingness to adapt early enough to take advantage of it. As Christensen argued, that is especially difficult for successful firms because it fundamentally goes against the grain of what they have done to achieve success in the first place. He argued that when faced with disruptive technologies good management itself is a root cause of failure among existing media companies because they play the game the way it has always been played. He explained that, “The very decision-making and resource-allocation processes that are key to the success of established companies are the very processes that reject disruptive technologies: listening carefully to customers; tracking competitors’ actions carefully; and investing resources to design and build higher-performance, higher-quality products that will yield greater profit.”⁵⁷ Since it is virtually impossible for anyone to accurately predict future technological innovations and the ways consumers might use them, the key then is not to plan for a specific disruptor, but to plan for flexibility.⁵⁸ Media companies should embrace the fact that they cannot and do not know where the technologies will go, and they should have a plan to adapt to working with whatever arises.

With digital technologies in particular, the rate of change has been significantly faster, and that has made the need for flexibility and quick adaptation all the more essential. At each

moment when a new disruptive technology is introduced, the existing media are faced with the challenge of adapting or perishing. As we have seen, the losers are often the ones who are least flexible, such as theatre owners or Blockbuster Video whose large investments in their brick and mortar operations left them unable to easily adapt and innovate. Even if they adapt, it is possible that another disruptive technology may come along and devalue their adaptation. But if media companies can learn from the challenges, successes, and failures experienced in the history of media convergence and disruption, perhaps they can better adapt in the future.

Unlike many of the histories of the film and television industries in this period, this project has demonstrated how long and gradual Hollywood's sale process actually was, and the extent to which it involved all aspects of the film and television industries. It illustrates the extent to which moments of convergence are fraught with systematic, overlapping, institutional confusions that are eventually resolved through often-unpredictable methods. Some behaviors and conflicts were settled in the courts; some in lengthy negotiations; some on the basis of personal relationships and affinities; and some out of sheer habit and inertia. Through understanding issues like the studios' concern about the value of their theatrical reissues and rereleases helps to discern the rationalizations of the media industry itself about how media works.

One of the most significant lessons from this project, however, is the extent to which the media studies have arbitrarily kept film, television, and digital media studies separate for too long, when, in reality, the histories of film and television are intricately and essentially interwoven. Even in a case study as seemingly specific as the struggle over the licensing and sale of Hollywood's feature films to television before 1955, the degree to which this story necessarily expanded to include the involvement of almost every aspect of the film and television industries

clearly demonstrated the ways in which it is impossible to truly understand the behavior and content of one media without the other. Just as in the butterfly effect where a small change at one place in the system can result in large differences elsewhere, the complex web of relationships and interests in the media industries, both past and present, influence each other in often subtle but important ways, and only by moving forward with a coherent media history can we fully appreciate the awesome complexity of the media industries and their products.

APPENDIX I: PEOPLE

One of the great boons of utilizing transcripts from trials is the fact that when a witness is called to testify, they are often asked to begin their testimony by describing their background as it relates either to the specific issues at hand or to their experience in the film and television industries more generally. This appendix is a collection of some of those biographical details. They are neither exhaustive nor complete, but aspire to create a database of some of the players, large and small, in this history.

1. Mr. E. James Osborne
 - a. Osborne & Ward [formerly Osborne & Harvey], CPAs
 - b. Roy Rogers' financial advisor
2. Kurtz and Ferguson
 - a. Roy Rogers first agents 1938-1939
3. Ben Roscoe
 - a. Helped Roy Rogers with bookings, publicity, etc. 1939-1941
4. William Arthur [Art] Rush
 - a. Roy Rogers' agent after May 1941
 - b. Had worked with Rogers since the beginning of 1941, but they only signed a contract on May 23, 1941¹
 - c. Rogers' agent in connection with talent contracts, appearances, and engagements – he did not handle financial matters²
 - d. Preferred the term “manager” to agent, but he was a licensed agent by the State of California's Department of Employment, franchised by the SHE, and American Federation of Radio Artists (AFRA), and American Guild Variety Artists (AGVA). He established his corporation in 1939 as Art Rush, Inc.³
 - e. In addition to running his own company, he had been the head of artists' relations and recordings for RCA-Victor from 1943 to 1948⁴
 - f. Represented Rogers, Dale Evans, The Mellow Men Quartette, and Robert Armbruster, the musical director at NBC and RCA-Victor⁵
5. Frederic H. Sturdy
 - a. Lawyer for Roy Rogers starting around 1946
 - b. Worked for the firm Gibson, Dunn and Crutcher⁶
6. Mr. Ed Ruskin
 - a. Agent in New York who got Rogers his first “tie-ups”
 - b. Worked in Republic's advertising department⁷
 - c. Worked with Rogers until about a year after Rogers signed with Rush
7. Mr. Saal
 - a. Publicity for Republic. Organized and accompanied Rogers on his first personal appearance tours for Republic in 1938
8. Mr. Stephen Edwards
 - a. Head of advertising and publicity in Republic's New York office⁸
 - b. Did a couple jobs for Republic in 1938, and had been permanently connected with them since 1941.⁹
 - c. Started in 1941 as a publicity man, a contract man for newspapers and magazines. Was hired by Charles Reed Jones, who was in charge of the department at that

time. Worked in that job until 1943 when the department was broken up between advertising and publicity, and Edwards was made director of publicity in 1943 until 1945, when the department was put back together and Edwards was made director of advertising-publicity.¹⁰

- d. At time of trial, he supervised in an executive capacity the operation of the advertising and publicity department, which is broken down into several smaller departments, each of which operates under an assistant who is responsible to him:
 - i. Art department – makes up advertising ads, does creative work on broadsides, does posters and lobbies and various advertising accessories
 - ii. Advertising department – makes up press books, broadsides, copy on broadsides, handled all production engravings and the general handling of advertising in the department
 - iii. Publicity department – plans publicity material, feature stories, pictures and developing publicity ideas for planting in general magazines, fan magazines, newspapers.
 - iv. Promotion department – responsible for working with the theatres and exhibitors throughout the country in the promotion of various contests and promotion plans in connection with theatres, and also is responsible for keeping Republic's branch offices informed about what is going along as far as promotion is concerned.¹¹
- 9. Charles Reed Jones
 - a. Head of advertising and publicity for Republic in New York before Steve Edwards¹²
- 10. Mr. Siegel
 - a. A Republic producer
- 11. Mr. Goldstein
 - a. A lawyer for Republic who handled Rogers' 1937 contract negotiations¹³
- 12. Arthur F. Marquette
 - a. General partner of advertising agency Sherman & Marquette Advertising Agency in Chicago
 - b. Has as their clients Quaker Oats Company and the Colgate Company¹⁴
 - c. Worked from 1934 until 1937 as an account executive on certain Quaker Oats products for the Lord & Thomas Advertising Agency
 - d. When he started Sherman & Marquette on October 15, 1937, they were given certain billing of the Quaker Oats Company and have continued in that capacity ever since¹⁵
- 13. Don Lourie
 - a. President of the Quaker Oats Company
- 14. Don Douglas
 - a. Vice president in charge of advertising for Quaker Oats¹⁶
- 15. Mr. Philo Harvey
 - a. Worked with Rogers between 1942 and 1949 as a lawyer and also was involved in the business end of any legal problems that came up¹⁷
 - b. Was a part of the Rohr company and handled, along with Rush, a lot of Rogers' appearances¹⁸
- 16. E. James Osborne

- a. Had been a business manager and financial advisor to various individuals since 1927¹⁹
 - b. Was in business with Philo Harvey under the firm name of Osborne & Harvey
 - c. 1940 Was brought in as Rogers' business manager with Harvey – Harvey was the lawyer and Osborne was the accountant (Osborne & Ward – now Osborne & Harvey)
 - d. Handled the financial record keeping for Rogers²⁰
- 17. Gibson, Dunn & Crutcher
 - a. Rogers' lawyers after 1945 or 1946²¹
- 18. Larry Kent
 - a. Vice president of Art Rush, Inc.
 - b. Handled the negotiations during pre-production on Rogers' first television films²²
- 19. Edwin Zabel
 - a. Connected with Fox West Coast Theatres
 - b. Formed Linda Pictures, Inc. in 1950 with Rogers and Republic to produce a film starring Rogers²³
- 20. Frank Folsom
 - a. President of the Radio Corporation of America (in 1951)
- 21. Joe McConnell
 - a. President of NBC (in 1951)²⁴
- 22. Niles Trammel
 - a. Chairman of the Board of NBC and head of the TV operations (1951)²⁵
- 23. Morton William Scott
 - a. Vice president and general manager in charge of production and distribution for Hollywood Television, Inc.²⁶
 - b. Heads the "operation of the processing of the old pictures which are being prepared for television"²⁷
 - c. Was first employed by Republic as a musical director on specific films, and later he became the head of the music department as musical director over all the product²⁸
 - d. Supervised and conducted negotiations with the television directors of the various advertising agencies throughout the US, with respect to the licensing of motion pictures for television exhibition²⁹
- 24. Earl R. Collins
 - a. President of Hollywood Television Service, Inc.
 - b. Since 1925 had been actively engaged in the distribution and exhibition of motion pictures both as a theatre exhibitor and as a manager of motion picture film exchanges³⁰
 - c. During World War II, was in the US Navy as Motion Picture Officer in charge of the Naval, Marine and Coast Guard theaters and film exchanges in San Pedro and San Diego³¹
 - d. Since WWII and until he started as president of Hollywood Television Service, he was employed by Republic Pictures as Western district and division manager in charge of its film exchanges³²
- 25. Lester Nelson

- a. Had worked as Assistant Comptroller for Republic, and during time of Rogers' trial was working as Secretary-Treasurer of Hollywood Television, Inc.³³
26. Thomas H. Hutchinson
- a. From 1949-1951 was in charge of a television school in NYC that taught students about the manner and use of television equipment so that they could gain employment in the television industry – in the production end of the industry³⁴
 - b. Worked in theatre until 1928 when he went into radio with NBC in San Francisco as a writer and producer-director
 - c. In 1930, he was made an executive of NBC in San Francisco, and was eventually made program manager of NBC's Pacific Division³⁵
 - d. Was program manager of NBC's Pacific Division for two years during which time he coordinated the all of the programs that were broadcast by NBC over the Pacific Division which included the Coast and as far west as Denver
 - e. He then began working for the McKee & Albright Advertising Agency to handle the West Coast end of a program they were broadcasting out in CA – originally the Wheatena program "Raising Junior," but then the name was changed to Wheateneville. It was originally written in New York, but they wanted a West Coast production and Hutchinson took over the operation of that program.³⁶
 - f. After two years with McKee & Albright, he returned to New York and went back to work for NBC in the radio department as a radio director and producer for NBC. He supervised and directed radio programs that were broadcast nationally from New York, such as Major Bowes, Irene Rich, Lucky Strike, and Philip Lord. His original agreement with NBC was that they would put him in charge of their television operation as soon as it started so that he went back to NY with them in 1935 and in 1936 he was put into the television division of NBC.³⁷
 - g. Was in charge of television programming for NBC from 1936 to 1941. He had to find programs to put on the air to be broadcast as television programs. During that period they produced some 50 full-length plays (e.g. "When We Were Married" that was playing on Broadway). Variety shows with live casts including Broadway stars. Some appearances by Hollywood stars. Gertrude Lawrence was playing in a Broadway play at that time and did a scene from Susan and God with the theatre cast live on television.³⁸
 - h. When left NBC in 1941, went to work for Ruthroff & Ryan, an advertising agency in New York, and produced radio programs, and produced Lever Bros.' first experimental television program, on WABD in New York. He started that with them when he was handling that television program for Lever Bros. and the radio account for Ruthroff & Ryan³⁹
 - i. 1943 went to RKO to form the RKO television production corporation. He was production head of their television activities.⁴⁰
 - j. 1945 became a consultant and worked for KFIL in setting up their television station in Philadelphia, also with the station in Providence, Rhode Island.⁴¹
 - k. Also between 1945 and 1949 producing television programs for various advertising agencies and clients in New York. Handled the Swift program for a year and a half, produced programs for Sheffield Farms, for the pharmaceutical companies⁴²
 - l. Wrote "Here is Television" in 1946⁴³

27. William R. Golden

- a. Publicist @ MGM since 1943
- b. Conducts the special service division of the publicity department. Negotiates commercial tie-ups. Coordinates studio activities with national exploitation campaigns. Responsible for pre-release showings of films in LA area – sneak previews, press previews, and premiere openings. Handles clearances for armed forces installation appearances of their players and other benefit appearances of their players.⁴⁴
- c. Was the point of contact with various representatives of manufacturing companies in their dealings with the studio, and in instituting commercial tie-ups with MGM's players and those companies – ex. Margaret O'Brien, June Allyson, Butch Jenkins, Lana Turner, Esther Williams, Van Johnson, Greer Garson, Gloria De Haven, Deborah Kerr, etc.⁴⁵
- d. From 1927 to 1939, was active in the operation of hotels and restaurants in Boston in cooperation with his father.
- e. From 1939-1942, associated with Bellows & Company, importers of fine foods and accessories from all over the world, as a retail manager of their West Coast operation. Also had experience in the wholesale operations with that company.⁴⁶

28. Meyer H. Lavenstein

- a. General counsel for Republic since 1935, when Republic was first organized
- b. He "discussed and worked out the capital structure and the agreements relating to the organization and the functioning of these corporations, and the financing of the corporations."⁴⁷
- c. Had been general counsel, director and a member of the executive committee for Consolidated Film Industries too⁴⁸

29. Gordon E. Youngman

- a. Lawyer at Bautzer, Grant, Youngman & Silbert
- b. In April 1931, went to RKO as assistant secretary and assistant general counsel. In April 1941 became vice president and general counsel at RKO. February 1949 moved to California and became vice president in charge of commitments, and in 1950 became vice president in charge of the studio, and remained that until January 1, 1951, when he went into private practice.⁴⁹

30. Samuel Rosenbaum

- a. Trustee appointed by the American Federation of Musicians to collect royalties⁵⁰

31. Jake Flax

- a. Republic's Washington branch manager. Baltimore was included in the Washington territory.⁵¹

32. National Screen Service

- a. Serves the entire film industry with the distribution of press books and accessories⁵²
- b. Press books are created by home office advertising publicity departments and paid for by distributors⁵³
- c. When a film was released, the film studio would send a broadside to 15,000 exhibitors in the US. Then, along with accessories, the press book was available in the National Screen branches, of which there were approximately thirty-two. When the theatre operator gets the broadside, if they want to get the press book,

they went to their local National Screen Service. Republic also sent their branches a quantity of press books that went to exhibitors to interest them in booking the films. So they were used as an advertising medium too.⁵⁴

33. Harry Ormiston

- a. Exploitation manager at Universal Studios for 15 years prior to trial
- b. Handled tie-ups that came in and decided whether or not they were suitable for their films⁵⁵

34. Don Tatum

- a. In charge of television in the pacific region for ABC, and also general manager of ABC's Los Angeles television station, KECA-TV.⁵⁶ Had been in that role for the three months prior to the Rogers' trial.
 - i. Supervised operations of their San Francisco television station, and looked out for the interests of their network business on the coast, which included the production and procurement of programs and talent, and some sales activity. As manager of the local station, his duties were generally administrative in nature, covering all aspects of the business.⁵⁷
- b. Prior to working at ABC, worked for three years as an officer and director of the Don Lee Broadcasting System, engaged in radio and television broadcasting
- c. Before Don Lee Broadcasting, practiced law in LA and Hollywood specializing in broadcasting matters. He was Pacific Coast counsel for the Radio Corporation of America and their subsidiaries including NBC, the Victor Division of RCA, and what was originally known as the Blue Network Company, which, after it was sold by RCA, became the American Broadcasting Company, and various independent television stations – radio stations, and associations of radio stations.⁵⁸

35. Don J. Feddersen

- a. Executive vice president and general manager of the KMTR Radio Corporation which operates KLAC radio station and KLAC television. Had been involved with that company since its beginning in 1945 in radio, and they went on the air in television in 1948.⁵⁹
- b. Before KMTR, he worked as president of the Palo Alto Radio Corporation, which owned the radio station KYA in San Francisco. He joined that company in July 1942.⁶⁰
- c. President of the Television Broadcasters Association
- d. Harry Gershon, a lawyer for Republic, believed Feddersen would be a “first class witness” for Republic in their Rogers suit because Feddersen was “tall, blonde, extremely good-looking, personable, forthright, knows what is he talking about, speaks fluently and well.”⁶¹

36. Richard A. Moore

- a. At time of Rogers' trial, had been general manager of television station KTTV for three months
- b. Before that, he was director of television for the American Broadcasting Company, Western Division, and manager of KECA-TV for two years. He preceded Don Tatum.
- c. Before that, had been business manager and attorney of the television division of the American Broadcasting Company in New York.

- d. Before that, he was an attorney in the legal department of ABC.⁶²
 - e. His responsibilities have included handling negotiations and business matters in connection with the opening of the ABC television network and stations, which included pretty generally all phases of the operation. In LA it had been direction of television network activities on the Coast, programming, and the management of the local station, now the management of the Los Angeles Times station in LA. Included programming, contracts and discussions and negotiations with advertisers or prospective advertisers.⁶³
37. Saul N. Rittenberg
- a. Attorney since 1935 – primarily motion picture work
 - b. Worked at firm of Loeb & Loeb – originally Loeb, Walker & Loeb⁶⁴
 - c. Loeb & Loeb had represented Republic Productions, Loew's Incorporated, Universal Pictures, Samuel Goldwyn, and some other independents⁶⁵
 - d. Was involved in the negotiations over Rogers 1948 contract with Republic⁶⁶
38. Robert "Bob" V. Newman
- a. Executive at Samuel Goldwyn Productions, Inc. since March 5, 1951
 - b. Before Goldwyn, worked for Republic Productions as assistant secretary and then vice president from June 1944 to March 1951⁶⁷
 - c. Before working at Goldwyn was a producer of Broadway plays and was Bill Goetz's executive assistant at Twentieth Century Fox "handling stories."⁶⁸
 - d. Participated in negotiations over Rogers 1948 contract with Republic⁶⁹
39. Herbert J. Yates
- a. Worked as Chairman of the Board of Republic Pictures since its organization in '35ish⁷⁰
 - b. President of Republic Productions, Inc.
 - c. Divided his time between New York (5 months a year), Hollywood (5 months a year), and foreign territories (2 months a year)⁷¹
 - d. Duties included the determination of policy with respect to talent contracts and renewals and renegotiations thereof, public relations with respect to star talent under contract to defendant and, more recently, with respect to the licensing of motion pictures for television exhibition⁷²
 - e. Worked in the motion picture business since 1912 in New York. He helped engineer the "merger of three or four companies and gave them the Republic name. We did that because these three companies owed us a great deal of money and we felt that that was the only way to liquidate it. That was in 1935 or thereabouts."⁷³
 - f. Started with Hedwig Laboratories around 1912 or '14. Eventually became Republic Laboratories and then that was later changed to Consolidated.⁷⁴
 - g. Until 1942 was more involved in "getting the finance and sales department going" and in advertising rather than the production end in Los Angeles as he was in 1951⁷⁵
40. Walter Frank Craig
- a. Vice president in charge of radio and television for Benton & Bowles, Incorporated, an advertising agency⁷⁶
 - b. B&B was one of the top 10 advertising agencies in the nation making a little over \$50 million a year⁷⁷

- c. Craig started in the entertainment business when he was 9 years old (1910) with a musical comedy company in St. Louis, MO, worked every Friday and Saturday and went to school during the week and worked neighborhood theatres on weekends
 - d. Kept his business going through high school and stopped when he started college.
 - e. Dropped out of college and moved to New York to be an actor
 - f. "I spent two years, a little more than two years, in vaudeville playing the Keith and Orpheum circuits. And out of that I went into musical comedy. And from about 1922 to '30, I was in musical comedy, in and out of New York, and in 1930 I went into the radio business by becoming program director of the World Broadcasting System, which was a transcription company. I was attempting to set up a network by transcription. After three years with the World Broadcasting System I went into business for myself and was an independent radio package producer from 1933 to about 1938, I believe, a little more than five years I stayed in that business."⁷⁸
 - g. Produced shows for "Coca-Cola and Chevrolet, and Wheatena – gee! That's a long time ago. Life Savers, United Drug Company. I had good clients. I was the largest independent producer at that time, the biggest volume. And, as a matter of fact, the reason I quit it was because the doctor said they would be patting me in the face with a spade in six months or so if I didn't stop. So I gave it up and took a long vacation, and then came back into the advertising business."⁷⁹
 - h. "Came back into business as a radio consultant for Street and Finney, an advertising agency in New York. I was with them a couple of years and E.J. Noble, who I had worked for as an independent producer putting programs on for Life Savers, bought a station called WMCA in New York and I became the program director of WMCA." Around 1940⁸⁰
 - i. "Late in 1942 the war had come along, I believe, and budgets on WMCA were all down and they weren't going to do enough programming to interest me and I went into Benton & Bowles as the radio director of Benton & Bowles, and subsequently became a vice president and then became vice president in charge of both radio and television."⁸¹ Works in NY
 - j. General Foods is a client and Craig was handling the Rogers-General Foods deal on behalf of General Foods⁸²
 - k. Proposed a deal wherein they would have Rogers exclusively for radio and television with certain privileges which they usually allow in exclusive deals: he could do two guest performances for a non-competitive product during any 13-week term of the contract.⁸³
41. Zachary J. Rottman
- a. Head of Republic Production's Contract Department
 - b. Prepared contracts and supervised the maintenance of contract files and records relating to the commencement and completion of photography on each motion picture produced by Republic⁸⁴
42. David Lipton
- a. National Director of Advertising and Publicity for Universal Pictures Company, Inc. since January 1949 through Rogers trial

- b. Since 1922, worked in various executive capacities in motion picture, radio and television advertising and publicity⁸⁵
 - c. Duties included supervising and directing activities with respect to commercial advertising and promotions of the motion picture, radio and television artists under contract to the various films by whom Lipton was employed, including, among others, Universal Pictures, Columbia Pictures, and Columbia Broadcasting System⁸⁶
- 43. Wayne Tiss
 - a. Worked for Batten, Barton, Durstine & Osborn, one of the three largest advertising agencies in the world, since 1937
 - b. Vice president and in charge of Hollywood, CA, office
 - c. Handled all radio and television matters for agency⁸⁷
- 44. Mitchell J. Hamilburg
 - a. Agent Autry hired in 1938 to handle Autry's licensing, commercial advertising work⁸⁸
- 45. Mr. Goldenhorn
 - a. Autry's attorney in 1936
 - b. Deceased at the time of the trial in 1952⁸⁹
- 46. Sam Wolf
 - a. Autry's attorney in 1938⁹⁰
- 47. John O'Melveny @ O'Melveny & Myers and Mr. Jackson W. Chance
 - a. Autry's attorneys in 1942
 - b. O'Melveny represented Autry on all of his commercial business through time of trial in 1952⁹¹
 - c. Autry: "A couple years ago or three, when I came out of the Army, we had a suit with Republic at that time, and Mr. O'Melveny also represented Paramount Pictures, and he asked me if I would obtain the services of Mr. Gang because he felt that he was trying to represent me and Paramount at the same time, and he stepped out of the case. But he represents me on all of my commercial business to date."⁹²
- 48. Gang, Kopp & Tyre
 - a. Autry's attorneys after 1946 – handled his work in motion pictures and radio⁹³
- 49. Ruthrauff & Ryan Advertising Agency
 - a. Worked for the Wrigley Company⁹⁴
- 50. Morton W. Scott
 - a. Vice president and general manager of Hollywood Television Service, Inc.
 - b. Worked with Hollywood Television since its formation in about November 1950⁹⁵
- 51. Roswell W. Metzger
 - a. Worked for advertising agency Rutrauff & Ryan in Chicago for 19 years⁹⁶
 - b. Vice President in charge of Radio and Television⁹⁷
 - c. Had been in the radio business since 1923, and from radio went to R&R
 - d. Served two terms on the Board of Governors of the Four A's (the Associated Advertising Agencies of America)⁹⁸
- 52. Motion picture theatre advertising companies
 - a. Alexander Film Company

- b. A.V. Cauger Service, Inc.
 - c. Reid H. Ray Film Industries, Inc.⁹⁹
- 53. Martin Allen
 - a. Advertising agency account man (“contact people whom you wish to secure as clients, attempt to sell them advertising. If you do sell them and secure them as clients, then you handle, produce, write and conduct the advertising campaigns for them.”)¹⁰⁰
- 54. Saul Rittenberg
 - a. Attorney at Loeb and Loeb since 1935¹⁰¹
- 55. Robert E. Lee
 - a. Became involved in radio in 1935 as a radio announcer in Ohio¹⁰²
 - b. Made some television broadcasts in England in 1938
 - c. Wrote a book, Television, The Revolution, published by Duell, Sloan and Pierce in 1946 – DeForrest wrote the introduction and consulted on the book¹⁰³
 - d. Was involved in writing and producing for TV in the US for the “past few years”¹⁰⁴
 - e. Had been one of a few people to develop the Armed Forces Radio Service during WWII¹⁰⁵
- 56. Jacob J. Milstein
 - a. Worked in motion pictures since 1918¹⁰⁶
 - b. Worked for MGM (1924-1935 as western sales manager – licensed motion pictures to theatres), Republic (1935-1937 vice president in charge of sales in NYC), Edward Small, David Loew, Sam Wood, and Hugh Herbert¹⁰⁷
- 57. Jam Handy
 - a. Company in Colorado Springs called Alexander Films¹⁰⁸
 - b. “They made short commercials for merchants or manufacturers, probably cigarettes, Coca-Cola, or anything of that type, and they were very short pictures, and they were given to the exhibitor, and the exhibitor was paid a fee for running them.”¹⁰⁹
- 58. Howard Ketting
 - a. Vice president, director, and account executive at Ruthrauff & Ryan, Incorporated, an advertising agency
 - b. Prepared advertising material for clients, such as billboards, magazine advertising, newspaper advertising, radio commercials, radio shows, television shows¹¹⁰
 - c. Wrigley Company was one of his accounts – worked for the advertising department at Wrigley before Ruthrauff & Ryan¹¹¹
- 59. Armand L. Schaefer
 - a. Produced Autry’s films while he was at Republic in 1934-1936¹¹²
 - b. Also produced Autry’s films at Columbia and for Flying A (television)¹¹³
- 60. Colin Dexter
 - a. Has worked for the Alexander Film Company, an organization that has existed for 33 years and produces and distributes short-length motion picture advertising films, for 7-8 years¹¹⁴
 - b. Sells space on theatre screens to merchants, whereby they supply the short-length advertising films that are to be displayed there, advertising some particular product or service¹¹⁵

- c. Were more than 16,000 theatres in the U.S. that took those advertising films from Alexander Film Company and four other advertising businesses who do the same thing as Alexander Film Company¹¹⁶
 - d. In 1951, AFC sold \$10 million of theatre space to advertisers¹¹⁷
 - e. Business increased 12% between 1950 to 1951¹¹⁸
61. Bill Brennan
- a. Program director on Channel 2, KNXT – a local affiliate of CBS
 - b. Before that worked for Columbia Broadcasting System starting in 1941 – after the war worked a series of jobs in radio¹¹⁹
62. Harry Lubcke
- a. Consulting engineer – has worked in television since 1929
 - b. Assistant Director of Research for Farnsworth Television in San Francisco, Director of Television for Don Lee Broadcasting System (then KNXT the CBS station in LA) from 1930 to 1948 or '49, a short period with CBS, and clients in the television field at the present time¹²⁰
 - c. Don Lee station transmitted television programs over the air from December 1931 on¹²¹
63. Peter G. Levathes
- a. From 1953 – at least 1955 worked in advertising at Young and Rubicam as the vice president in charge of the media – his department did all the buying of television time, radio time, magazine and newspaper space
 - b. Prior to Y&R he had worked at Fox from 1937-1953 as the assistant to Spyros Skouras and then in 1945 as the assistant to the general sales manager – in 1947 became the manager of short subjects and the director of television – supervised the distribution of 16mm film
 - c. Was the vice president and general manager of Twentieth Century-Fox Television Productions, which was organized shortly after he became the head of television for Fox
64. William Clark
- a. Was the head of the short subjects division at Fox before Peter Levathes
65. Ralph Morris Cohn
- a. Son and nephew of Jack and Harry Cohn
 - b. Involved in film production from 1935 to 1948
 - c. 1949 became vice president and general manager of Screen Gems (a 100% owned subsidiary of Columbia Pictures Corp that produces and distributes motion pictures for television)
 - d. 1948 he had started the company Pioneer Telefilms which was not successful, and officers of Columbia approached him to talk to him about their interest in television
66. Abe Montague
- a. Began working in the motion picture business in 1908
 - b. Worked for Columbia Pictures starting in 1929
 - c. 1923 – 1929 worked as an independent distributor for Columbia Pictures known as CBC in the New England territories

- d. In 1955 was vice president, general sales manager, and director of Columbia. As general sales manager he promoted sales for the company, created sales policies, and watched and followed them through
 - e. Columbia never owned theatres, but they maintained a system of exchanges throughout the country for theatrical distribution of their motion pictures
67. Benjamin B. Kahane
- a. Practiced law from 1912 to 1920 – was admitted to the Bar in Illinois, New York, and California
 - b. Actively and exclusively entered the film business in 1919
 - c. In 1955 was vice president of Columbia Pictures Corporation – had worked with them a little less than twenty years
68. Jack L. Warner
- a. In 1955, vice president of Warner Bros. in charge of the production of the films
 - b. Had been in the motion picture business for about fifty years¹²²
69. Benjamin Kalmenson
- a. In 1955, president and domestic sales manager for Warner Bros. Pictures Distributing Corporation
 - b. Worked out of the New York offices
 - c. By the mid-1950s, had been in the film business for twenty-eight years¹²³
70. Howard A. McDonnell
- a. Vice president in charge of industrial relations at Republic in early 1950s¹²⁴

INTRODUCTION NOTES

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¹³ *Ibid.*, 46.

¹⁴ James L. Baughman, "The Weakest Chain and the Strongest Link: The American Broadcasting Company and the Motion Picture Industry, 1952-60," in *Hollywood in the Age of Television*, ed. Tino Balio (Boston: Unwin Hyman, 1990), 91-114.

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⁸⁵ Ibid., 1767.

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⁸⁹ Testimony of Isidore B. Kornblum, Reporter's Transcript of Proceedings, Volume 12, Pages 1195-1196, 12 October 1955; Civil Case 14354-Y, U.S. v. Twentieth Century-Fox, et al.; Southern District of California, Central Division (Los Angeles); Records of the United States District Court, Record Group 21; National Archives at Riverside, Perris, CA.; Testimony of Peter G. Levathes, Reporter's Transcript of Proceedings, Page 2244.

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CHAPTER FOUR NOTES

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