

MEDIA OWNERSHIP: DIVERSITY AND CONCENTRATION

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ON
MEDIA OWNERSHIP: DIVERSITY AND CONCENTRATION

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awesome power, all of us have a special responsibility and obligation to the people of the United States.

Gentlemen, I thank you very much, and I just do not know what words to use. This has been a unique opportunity for the subcommittee.

This is the first time in my memory I have seen the chief executives of the three networks sitting as a panel. The fact that we have spent nearly three hours, and the fact that 12 or 14 members of this subcommittee have participated should indicate to you not only the interest we have, but the high concern we have for what is now transpiring in the United States.

I believe I speak for all when I say that all of you have made compelling and convincing arguments on behalf of your industry, and all I can say is, Jack Valenti, you have got your work cut out for you. Thank you very much.

And now we have the second panel. Mr. Jack Valenti, President and Chief Executive Officer of the Motion Picture Association of America; Mr. Steve Cannell, Steve Cannell Productions of Hollywood; and Mr. James Kellner, President of Fox Broadcasting Company of Los Angeles.

Gentlemen, I thank you for your patience in waiting to appear before us, but I am certain you have noted the intense interest the subcommittee has in the subject matter before us. And so, without any further ado, may I call upon Mr. Valenti?

STATEMENT OF JACK VALENTI, PRESIDENT AND CEO, MOTION PICTURE ASSOCIATION OF AMERICA

Mr. VALENTI. Thank you, Senator.

I listened with great interest to what was said in the previous three hours. In my reading, I remember the trial of Socrates. The trial went on for a long time with all of Socrates' accusers testifying, and finally they allowed him to come forward and present his case. He said, "my accusers have been so convincing, and so reasonable, and so persuasive that I almost believe them." And then he said, "However, scarce a word they said was true.

So I want to deal with what I think are the illusions that have been presented here today. At no time during the three hours that you heard did we address what I think is the central, core issue that leaps beyond a simple rule but goes to the public policy issues that attend the ideas, and the motivations, and the voting record of any Senator and Congressman in this Congress. And that is, what Americans know about news, and entertainment, and sports is pre-eminently borne to them through the television screen in their home. Therefore, in this free and loving land in which we live, our government ought never allow any tiny group of corporate chieftains or corporate entities, no matter how benignly managed, to ever reassert full dominion over prime time television, which is the most pervasive moral, social, political and cultural force in this country.

The networks' monopoly troika just cannot be allowed, no matter the blandishments they have given you, to reinsert, as once they had, full control over prime time television. If we do that, you are going to squeeze the life out of competition. There is a man here

beside me who represents over 200 independent programmers who will tell you why that is so. What you will do is to turn sovereignty of the prime time air waves over to three chief executive officers.

I yield to no man in my affection, and warmth, and regard for Bob Wright, Larry Tisch, and Tom Murphy. Indeed, the highest accolade I could pay them is I would feel comfortable if they were the executors of my will, taking care of my family after I am gone. But I do not want them, or anybody else, taking charge of prime time television, which is exactly what would happen if this rule was collapsed.

By the way, you heard them grouse-and I think properly so—about the cable monopoly, and I have been known to speak a few words on that issue myself from time to time-and yet they come before you, in a strange piece of bewildering irony, and want you to honor them with the same kind of monopoly that they find so dangerous in cable. That is more than irony. And so I want to begin at the beginning.

When the FCC decided to look at the prime time television landscape, what they found, Senator, was a landscape soiled by a tri-monopoly, and so, dismayed by and fearful of what they found, they decided to redirect their whole compass course toward an objective of competition in the marketplace. That is exactly what they did. They constructed the Financial Interest and Syndication Rule.

Simply stated, FISR says, first, you, Mr. Network, cannot extort a piece of the program owned by someone else as a price for getting it on the air. Some of the things that Senator Gore has said are so applicable to this. Number two, FISR said you cannot be in the syndication business, because you will run independents out of business.

Mr. Chairman, in the vast multitude of government rules and regulations, there are scattered among that maze a few that really do work. FISR is a rare regulation. It has done and is doing precisely what, in the public interest, it was created to do.

Because monopoly is endemic in cable, as it is in network prime time, the three networks are also barred from owning cable systems. Thank God for that, because if they were not, they would assert their fiscal authority in such a way that literally three people would have complete authority over what is seen in homes, either wired by cable or over the air, a monopoly in television never before comprehended or tolerated in this country.

What the deluding persuasions of the three chief executives failed to give you was this. What is the reason, what is the seed bed from which springs the so-called network monopoly power? I am going to tell you what it is. It is their total authority, explicit and unchallenged, which allows them to make "yes" or "no" final decisions about what goes on or what does not go on national prime time television.

The three networks in prime time are the only national force in this country. Cable only reaches 54 percent. The independent stations do not have that kind of reach. Only the three networks and their 600-plus affiliates do; and they have total authority to say yes or no. The most powerful media company, Mr. Chairman, Time, Warner, Paramount, Fox, if they all merged, would be helpful and

hapless before a fuzzy-checked little network vice president who said "no, buster, get out of here." They are gone. They do not have any power.

The networks say, however, folks, we are in big trouble here, and we have got to have more power. And mind you, Mr. Tisch said to you how he wants a level playing field. What Mr. Tisch did not understand or tell you was FISR is the instrument that provides a level playing field. Without FISR, it is tilted toward the networks.

The networks say they need more revenues and a changing environment, and they need to be freed from restrictions. You know, the networks remind me of what they used to say about the Bourbon dynasty in France, Senator Hollings. They said the Bourbons learn nothing, and they forget nothing.

I would go on to another line, but Senator Breaux just preempted my best line that I have been rehearsing for three days, for God's sakes.

The **CHAIRMAN**. Go ahead. I will listen to it.

Mr. **VALENTI**. Mr. Chairman, I am going to present you this chart again. This is one the networks do not like to see. I did not make this chart up. Broadcasting Magazine did. They are no enemy to the networks. They are not trying to hurt them.

What this shows is the stuff you send to the SEC. It is not what they tell you. It is what they tell their security analysts so they can get their stock up. It shows that these networks have made hundreds of millions of dollars, both in their O&Os and in their networks.

Mind you, Broadcasting analysis says these O&Os—and do not divorce them from the networks—are cash cows. Morgan Stanley says that they have pre-tax profit margins, Senator, of 48 percent, and their networks are doing just fine.

I want to separate out this tin cup, crying for more gruel, because it is an absolute artifice, and everybody in the business knows how well they are doing. And how they can tell you differently with a straight face is absolutely beyond me.

The second reason for change is the network says well, we are all restricted, and everybody else can do whatever they choose to. That is just simply not right.

Mr. Chairman, I am going to tell you—I have another little chart; I always bring my charts with me—this is what the networks can do right now, even as we sit, without one change in anything. They can go into movie production, movie theater ownership, movie distribution, network program production, pay per view, pay television, cable program networks, cable program production, direct broadcast satellite, home video, foreign syndication of their own internally produced shows, book publishing, records, magazines, you name it. As a matter of fact, as has been established by questioning, they are in all these areas right now.

In just 16 months the greatest prize of all is going to be lauded on their noble brow; they are going to be able to produce and own 100 percent of all of their 22 hours of prime time. And if you do not think that strikes terror into the hearts of independent programmers, you are wrong. Because when you own and produce a program, when you have the power to say yes or no, no one can chal-

lenge it. Senator Gore's question to these gentlemen was very, very appropriate.

And do not ever forget that in addition to the networks and the O&Os, they have vast holdings. For God's sake, GE is a \$50 billion corporation. It ranks number three on the Fortune 500. It is one of the Nation's leading defense contractors. More gruel, more gruel. If FISR is ever discarded or if it is ever radically revised, I am telling you, competition dies. It is as simple and as deadly as that. Which is why every independent programmer, large, small, medium sized, every independent television station, every consumer group have all banded together in this coalition to preserve the Financial Interest and Syndication Rule.

Who are the allies of the three networks? Who is clamoring to change this rule? Well, I will tell you. It is the three networks. They ain't got no other. There is nobody else there, because every professional in this business understands with unvarying clarity what the rules of the game are. The networks are in total command, and if you strip away this one leveling portion of the playing field, it is all over.

We are currently engaged in negotiations with the networks, and I hope if there is time here that one of you will ask me a question as to just what is going on in those negotiations. I will be willing to tell you again, with as much clarity and candor as I can, why we cannot reach a deal. We have a specific program on the table that fits exactly what Mr. Murphy and Mr. Wright were talking about being partners; and when they give you this 11 hour/11 hour business, it sounds so sweet and simple. Because under congressional rules, if you are here at 1 and somebody else is 100, you sell at 50, do you not? It does not work that way in our business. I can tell you why this 11/11 is one of the most absurd charades ever born of the mind of man.

Finally, if we are going to deal worthily with great issues, then we have to deal fittingly with important details. I am saying to you, to allow three giant corporations to carve out a larger power and national prime time television would be, in the words of Tallyrand, worse than a crime; it would be a blunder.

I am absolutely fascinated with what I am saying, Mr. Chairman, and I could go on a lot longer, but I will, in the interest of time, conclude; and I hope there are some questions that you might put to us later on.

[The statement and questions and answers follow:]

STATEMENT OF JACK VALENTI, PRESIDENT AND CHIEF EXECUTIVE OFFICER, MOTION PICTURE ASSOCIATION OF AMERICA

Each year, a long time ago, President Lowell of Harvard used to greet the incoming freshman class. He would speak to them about what they could expect to find in the next four years. And then he would conclude with a bit of advice. "Always", he said, "keep your eye on the distant objective and not the one nearest you."

Never was sounder counsel offered. The sinister fate that gets in between public officials and public policy is the neglect of that flawlessly wise admonition.

Let me be specific. In television, this nation has a distinct objective. It is this: Competition above all else in national prime-time television.

At the heart of the issue is a revealed truth: Television is not the same as citrus groves or canned goods or Harley-Davidsons. Or any other American product. Television is more potent, more mystical, because it flies on gossamer wings. What American families see in their homes on a television screen is the single most pow-

erful emotional, social and political force in all the land. We have watched with **terrorizing** fascination the political earthquake in China. And we have been **privy to** where and how the battle is being waged: on television. Moreover, when rebels seize a country, or when the sitting government resists insurrection, the first action taken by each side is to control television, for whoever controls television controls the country. One doesn't need a **political** primer or inspired guidance to confirm the gist of that claim, not only in a political upheaval, but also in the daily **give-and-take** of the commercial marketplace.

What Americans, know, see and hear of news, education, entertainment, and sports is preeminently borne to the home through the television screen. Therefore, unless we knowingly abase the essentials of a free and loving land, our government must, at all costs and in spite of all pressure, never allow a tiny group of corporate entities, no matter how seemingly benign the management, to establish dominion over this most pervasive of all human influences. The network's monopoly trioka cannot be permitted to insert itself into control of national prime-time television, else we squeeze the life out of competition and turn over sovereignty of the prime-time airwaves to three corporate chief executives.

Our national 'distant objective' is to encourage competition. So long as competition is alive and thriving on the television screen, the nation protects itself. But the three networks have a 'short-term objective.' They want to increase their profits. Nothing ignoble about that goal, except the public interest doesn't demand a piling on of network revenues as a requisite for a competitive marketplace.

If ever our long-range objective is blurred by the deluding persuasions of the three national TV networks, the nation is the loser. The evidence against network control is overwhelming. To believe otherwise is to be discolored by the networks illusory arguments.

Let us begin at the beginning, when the Federal Communications Commission, captained by a Chairman of clear eye and resolute will, looked at national prime-time television and found it soiled by a tri-monopoly. The FCC burrowed into the nooks and **crannies** of network programming practices and what they found was a lack of diversity manacled to network dominion of the prime-time airwaves. The networks forceably took a percentage of independent TV producers' shows. Producers had no choice. Only by caving in could they get their program on the network prime-time schedule.

The FCC, dismayed by and even fearful of what they uncovered, moved swiftly to redirect its compass course toward the long term objective of "competition in the TV marketplace."

Listen to the FCC Report and Order of May 4, 1970: "The three networks' combined participation in all evening (6-11 figure which, when added to the number of network-produced shows, reveals a rise from 67.2 percent to 96.7 percent." In a **summation**, the FCC Report and Order said: "The overall result is that, save for about 6 percent or 7 percent of their schedules which were the result of direct dealing between independent producers and sponsors, networks accepted virtually no entertainment program for network exhibition in a **5-year** period in which they did not have financial interests in **syndication** and other subsequent use."

And so, the FCC **constructed** the Financial Interest and Syndication Rule, or in shorthand fashion, FISR. **Simply** stated, FISR prohibited the networks from taking a financial interest in any show **owned** by someone else, and barred the networks for engaging in the syndication business. In the vast multitude of government rules and regulations there has been **scattered** among this maze a few that truly work. FISR is one of those rare regulations that actually has done what, in the public interest, it was created to do. It should **be** noted that the FCC was not alone in its discontent with the network tri-monopoly. In 1974, the Department of Justice filed anti-trust suits against the three networks, charging them with anti-competitive behavior. In 1977 NBC entered into a consent decree. In 1980 ABC and CBS followed suit.

The Department said the networks "have restrained trade [and] have combined to monopolize, attempted to monopolize and monopolized prime time entertainment programming shown on each network."

The Justice Department asserted that the networks engaged in a series of practices inimical to competition. "Prior to the FCC's effectuation of [FISR]," the Justice Department said, the networks "conditioned producers' access to [their] combined and affiliated **group[s]** of television stations upon the producers' relinquishing certain valuable rights and interests."

"It was [the networks'] policy to require independent producers, in conjunction with the grant of a network exhibition license, to give up subsidiary rights and in-

terests in their programs," including distribution rights, merchandising, music and literary rights, and 50 percent of their profits.

It was also the networks' policy to require independent producers to give up "other rights and interests in their programs," including renewal options (at preset prices), exclusivity as against other communications markets, spinoff rights, and the like.

The networks suggest that these practices were on the wane in the years just before the FCC adopted FISR. The evidence collected by the Justice Department showed just the opposite.

What was FISR created to do? FISR's objective was to introduce competition to a prime-time TV market where before precious little had existed. It succeeded, achieving precisely what the FCC had designed to do. FISR gave birth to hundreds of independent programming companies, all hotly competing with each other to the public's benefit. It broke open the barn where independent TV stations had been contained, so that where only 71 independent TV stations existed before the Rule was passed, today there are over 320 in operation. It opened a national TV window onto diversity and change. It spawned a robust first-run syndication market. Before FISR, just three companies bestrode the national prime-time pathway, dictating judgment and ideas. Now, that power, unfit for a democratic society, has been shrunk.

The networks crave a change in the Rule and have publicly clamored for its abolition or radical revision. Therefore, the burden of proof is on them to provide that change is worthy in the public interest. My own judgment is the difference between keeping the Rule and rupturing it is, as Mark Twain once remarked, 'the difference between lightning and the lightning bug.'

To uncage the networks so that they are armed and ready to once again dominate prime-time television is to infect competition with a tri-monopoly virus. The reason? That competition is fragile, at best, and could be shattered if FISR is modified or withdrawn. The public would be the loser. The networks' power lies triumphantly enshrined in their total command of the national prime-time television schedule. Only three men, one at each network, can say "Yes" or "No" to the exhibition of any program on national prime time. The most powerful of all non-network media companies is helpless and hapless before the negative gaze of a fuzzy-cheeked network vice president who says "No."

What gives ABC, CBS and NBC total mastery over prime-time television is their authority, unchallenged and explicit, to make YES or NO final decisions about who gets to be exhibited on national prime time, and who doesn't. It is what armors the three networks in their unique status as Masters of the Gate in national prime-time television, for whoever is turned away at the Gate is exiled from national viewing. The source of that authority springs from an FCC decision over thirty years ago. By assigning both VHF and UHF frequencies in each TV market, the FCC, quite unknowingly, I daresay, guaranteed that only three national networks could ever exist. Why? Because the FCC assigned only three VHF frequencies to most major television markets. Whoever else aspires to be a 'national network' must rely on UHF affiliates, and UHF stations are not as strong nor as well reviewed as the more powerful VHF outlets. "Reach," which is the 'sine qua non' of television marketing, is defined as the number of viewers that can tune into a network program. The "reach" of ABC, NBC and CBS is about 98% of all television homes. At this moment the cable industry cannot "reach" beyond 54.3 percent of US TV homes wired to cable.

This "reach" into practically every American home, unduplicated by any other distribution system, is why the networks have dominating control over national television. Given this immense power, what is the network case for giving them more power?

They say, one, they need more revenues in a changing environment, and two, they are restricted when all others are free to roam the marketplace. The networks remind me of the Bourbon dynasty in France: They learn nothing and they forget nothing. Here, then, are the numbers, the arithmetic of the business. You be the judge: Are the networks in trouble or do their cries of poverty have the resonance of delusion?

The networks complain they desperately need more net revenues. Yet, the towering profits of the networks have produced a huge ballooning in network stock values, a doubling of ABC and CBS stock prices within the last couple of years, and an ever increasing worth of the shares of General Electric, owner of NBC.

In the first quarter of 1989, the networks' profit reports are luminous. Even CBS, the lowest Nielsen-rated network, reported record first quarter earnings, \$56.3 mil-

lion, with the broadcasting group's gain a whopping 194 percent over the comparable period last year. ABC's first quarter net rose 18 percent to \$82.8 million.

Broadcasting magazine, a publication of demonstrated accuracy, and no enemy of the networks, reported that in 1988, from network and owned-and-operated TV station operations, NBC piled up a profit of \$537 million, ABC a profit of \$595 million and CBS a profit of \$195 million. Mind you, the three networks don't publicly break out the cost and revenue numbers for their O&O TV stations and the network apparatus. But Broadcasting's analysis tells us the O&Os are cash cows, immensely valuable, [Morgan Stanley estimates profit margins averaged 48 percent last year], and the network distribution system is very healthy.

Every professional in the business knows that CBS, ABC and NBC would sooner have their fingernails pulled out by a Stillson wrench than give up their O&Os. The network is part and parcel of an enormously profitable operation. The network is the engine that feeds its massively prized TV stations, concentrated in the largest markets in the country. The O&Os of the three networks are fixed forever in the thickly populated cities of the country: ABC owns TV stations in New York, Chicago, Los Angeles, San Francisco, Houston, Philadelphia and Fresno. NBC owns TV stations in New York, Washington, D.C., Chicago, Cleveland, Los Angeles, Denver and Miami. CBS owns TV stations in New York, Los Angeles, Chicago, Philadelphia and is purchasing one in Miami.

People who truly understand today's television marketplace see only too clearly the dominating grasp of the three networks which lies just beneath the seemingly innocent entreaties of their relentless lobbyists.

Consider, too, that network profits are rising in spite of huge fees paid by the networks to license sporting events. The networks claim they lose money on sports, which makes their increased overall profits all the more significant. Sports licensing fees have exploded, rising to the heavens in higher and ever higher fees. NBC's Olympic expenditures, a total of \$500 million for rights purchase and production costs, would finance their entire year-long prime-time entertainment schedule! CBS bid one billion dollars for baseball rights, almost \$1 million per inning, with no "backend" syndication rights. No food stamp folks, these networks. But sports licensing fees have gone crazy because the networks bid against one another. That is what fierce competition yields. But *networks do not bid against each other for prime-time entertainment series*, which the networks "lock in" through options for at least four years at a fixed price. Which is why entertainment series license fees have remained more or less static while sports licensing fees are in orbit.

But despite these fat sports fees so grandly paid by the networks, their fiscal health was never better, their financial cheeks never rosier.

So we glimpse a scene out of Oliver Twist, the three networks, in baggy clothes, living among the homeless, tin cups in their calloused and scrawny fingers, crying out for "more gruel, more gruel." Frankly, to paraphrase Lord Macaulay, there is no spectacle so ridiculous as the three networks in one of their periodic fits of desolating poverty.

More numbers. In spite of cable, in 1988, 84 percent of all national television advertising was exhibited on the three networks. The three networks took in \$9.6 billion, a rise of 8.7 percent over 1987. Cable extracted but 8 percent of this national advertising fund, with the remaining 8 percent going to barter syndication. The three networks' national ad revenues are more than *ten times that of some 40 national cable networks, combined*.

The networks assert in Washington that cable is cleaning their ratings clock. (I might add that is not what they tell security analysts.) The fact is that in first-quarter 1989, in *all* homes in America watching TV, 70 percent are tuned to network programs. ¹ In non-cable homes (which is about half of the country), viewers in 83 percent of those homes watch network prime time. According to the latest Niensens in all US homes, if you added up the ratings of *all* cable programs, basic and pay—(CNN, ESPN, USA, TNT, HBO, Showtime, Cinemax, etc.)—*their total combined viewership would be 1/4 the audience of the networks!* ² In "cable homes only" the audience for network shows in prime-time is double the combined viewership of all cable programs. Or to put it another way, when folks in cable homes are watching either cable programs or prime-time network programs, *two-thirds* of those watching are tuned into network prime-time programs on network-affiliated TV stations brought into cable homes.

¹ Nielsen "Monthly Cable TV: A Status Report," April, 1989.

² Nielsen Homevideo Index "Cable Activity Report, First Quarter 1989."

The most fierce competitor of the networks is the independent TV station, whose growth flows from FISR. Independent TV stations challenge the networks with popular off-network programs. Without FISR, the independent stations would be exiled from the licensing of these popular shows. No network executive, if he had the power as once he did, would give independent TV stations popular off-network programs to compete with network O&Os and affiliates for audiences. And if the networks reclaim that power, then say "Hello" to speedily increased network profits, and "Goodbye" to independent station competition!

The second reason for change, cry the networks, is: "We are restricted while others can do whatever they choose."

As of now, on this day, at this hour, the networks are *free* to do all and everything that any small or large program production companies can do, *except* enter the two areas where they have behaved anti-competitively and where both the FCC and the Department of Justice found them colliding with good commercial department as well as in conflict with the law: First, the networks cannot extort from a producer an ownership share of his or her program as a price for getting a slot on national prime-time television. Second, the networks cannot be involved in syndication, which would collapse the future of independent TV stations in the land.

Because monopoly is endemic in both cable and network prime-time TV, the three networks are also barred from owning cable systems. Thank God for this. Without this barrier, the networks, with their huge resources, would either combine with cable to create one giant leviathan or assert their fiscal authority to such a dimension that, literally, there would be a vast and darkening assumption of power by a very few over what each family sees or doesn't see in the home, a monopoly over television never before comprehended or tolerated in this land.

Right now, the networks can: enter movie production and movie distribution; operate movie theaters; produce and own cable network programming; own and control pay-per-view facilities; enter the pay-cable arena; produce and market home video material; lease, produce and distribute satellite-to-home programs; and syndicate abroad all their network-produced programs. They are already deeply involved in many of those arenas.

Do not forget that each of the three networks at this moment has giant holdings in other important areas, *in addition* to their immensely valuable owned and operated television stations:

Capital Cities/ABC, with \$4.8 billion in revenues last year, publishes nine daily newspapers, 52 weekly newspapers and shopping guides, 82 magazines in business and consumer news, trade and agricultural publications, data base services and inspirational communications. Moreover, CapCities/ABC owns 80 percent of ESPN and has an interest in Arts & Entertainment and Lifetime, two cable networks.

General Electric, owners of NBC, with just under \$50 *billion* in revenues, ranks third in assets on the Fortune 500 list of the nation's biggest corporations. GE is a leader in over fourteen key businesses including financial services (GE Capital Corporation, which is a billion-dollar-plus lender to cable companies; Employers Reinsurance Corporation; Kidder, Peabody Group), plastics, medical systems, aircraft engines, lighting, industrial and power systems, appliances, aerospace, communications facilities and services, motors, transportation systems, factory automation, as well as an expanding international apparatus. GE is one of the nation's largest defense contractors. It also owns cable network CNBC and a share of the Rainbow network.

Loews Corporation, which registered \$10.5 billion in sales last year, is the controlling stockholder in CBS. **Loews** owns Bulova Watch Company, CNA Financial Group, CNA Insurance Company, Loews Hotels, Lorillard, Inc. (one of the preeminent manufacturers and marketers of cigarettes), and joint ventures in CBS/FOX Home Video.

In addition to all these vast related and unrelated business enterprises owned and controlled by these giant corporations, there is still one more prize awaiting them. In just sixteen months, an element of a Justice Department anti-trust consent decree expires. Each of the three networks will be able to *produce and own 100 percent of all its prime-time programming*. Hear me closely. I said *100 percent*. That means every minute of each network's twenty-two hour weekly prime-time schedule. By producing their own programs, the networks leap beyond FISR, encircling the marketplace with the Rule still in place. That's why the networks do not want to achieve any concord in negotiations with producers. Why should **they**? They will either succeed in demolishing FISR officially, or devastating it unofficially. Why make a deal, when you can't lose? That's why the lifting of this Justice Department consent decree has a terrorizing sound to it.

Do I sound like an anxious paranoid? Not if you understand the definition of a paranoid, which is a fellow who is in possession of all the facts. Examine the recently announced network schedule for the fall.

The three networks *almost tripled* their share of the network-produced-and-owned *prime-time series market* for the 1989/90 season. For the 1988/89 season on NBC, CBS, and ABC produced 0 percent, 3 percent and 2 percent respectively, of all series ordered, including mid-season, for a total of 5 percent. For the 1989/90 season, NBC, CBS and ABC will produce 5 percent, 5 percent and 3 percent of all series ordered, for a total of 13 percent.

The crushing significance of this statistic falls most heavily on smaller, independent producers. The sharp increase in network-owned production for the 1989/90 season came almost entirely at the expense of smaller, non-studio production companies whose market share fell dramatically. Is it the policy of the three networks to gradually put the squeeze on independent producers? If this trend continues, every show available to the public during network prime-time will bear the creative stamp of just three network executives and the sound you will hear is Diversity choking. The independent producers of today, especially the smaller companies, will be network employees tomorrow, reflecting the ideas and views of the network tri-monopoly.

If FISR is ever discarded, or radically revised, then competition dies. It is as simple and deadly as that. Which is why practically every independent production company, every independent TV station, consumer groups and national advertisers are all banded together in a Coalition to Preserve FISR. Whereas the allies of the three networks are: the three networks.

More than revenues is at stake. The very business life of the independent programming and TV station community is put to hazard. But more at risk is a public policy which has baffled, so far, the very few from commanding every television entry into the American home.

That is why so many Americans in and out of the program production and independent television station community plead with the current and soon to be seated FCC Commissioners, plead with members of the Congress, and with the Administration, to keep their eyes on the distant objective and not a short term objective so zealously sought by a very few.

Lack of Competition is always bad for the consumer, but the presence of Competition is always good for the consumer. That is a marketplace truth which cannot be extinguished, and a consumer benefit which cannot be replaced. It is a Truth that the Congress at the peril of the public interest neglects or allows to languish.

If we are to deal worthily with great issues we must first deal fittingly with important details. To allow three giant corporations to carve out larger power in national TV prime-time entertainment would be, to paraphrase Talleyrand, worse than a crime, it would be a blunder.

When a Rule is working, as it was intended to work, when the marketplace is thriving, when competition is alive and robust, is the public interest advancing by bowing to the will of three huge networks, backed by corporations of intimidating power, whose sole aim is to increase the glow of their quarterly income reports?

Let us, then, keep our eye on the distant objective of this nation: The preservation of Competition in the television arena. That, my dear friends in the Congress, is the single most important political issue in any democratic society, especially our own.

QUESTIONS OF SENATOR INOUE AND THE ANSWERS THERETO ^{1/}

Q: Do **you expect** the **network's share of prime-time** audience **to continue to drop? Why?**

Answer: Although network prime-time shares may drop modestly over ~~the~~ next several years, coming off huge shares in previous years, the analysts all agree that the total number of people viewing network programs will increase. Generally, analysts estimate that network viewing shares in all U.S. homes will settle out at about **65%**, from a current level of about 68%.

Network revenues, however, will rise at a compound growth of 6% or higher.

There is plenty of agreement on this subject.

An article in the June 14 issue of Weekly Variety (Tab B) cites a report by the investment banking firm Veronis, Suhler & Associates, respected industry analysts, predicting that: "Some further erosion [of network share] is expected over the next five years, but at a slower rate than over the previous five." The same study, says Variety, "predicts the big three networks will bask in a 6.9% annual compound revenue growth from 1989-93. Moreover, those news items about network-share losses will finally cease in 1993, when network share levels will hold at **63%**."

All analysts agree that the networks are unique. They are the only three enterprises capable of delivering a national audience. This **is** the key to their power. Veronis, Suhler concludes:

"Despite suffering decreases in viewing share, the networks remain the only medium ^{that} can efficiently deliver a large national viewing audience. Although smaller than in the past, the networks' audience remains large enough, in an era of splintering in media alternatives, to keep the networks unique and economically attractive to mass-market advertisers...

^{1/} The Tabs referred to were **not** reproducible.

Over the next five years, although the networks' share of television viewing will continue to decline, the absolute number of people **watching** network television should increase modestly. Networks **will** then become a stabilized rather than a declining medium. As a result, network advertising should grow at a higher rate than over the previous five years." (emphasis supplied)

Paul I. Bortz, of Bortz & Co., Inc., a frequent adviser to the networks, in a speech to the ABC affiliates in Los Angeles last June (Tab C), predicted that cable viewing share will rise from 8% today to 15% in **five** years, while network share of prime-time audience will drop to 65%. Cable, viewing however, will **be** split among 20 services or more, while the network share will be divided among just three entities. "What is the mass advertising video delivery medium in the 1990s?" he asks. "It's the networks and their affiliates."

The central fact of network power **is** contained in their rising profit margins and actual profits earned, and their ability to raise **advertising** rates, because of their unfair position in the distribution of national prime-time programming.

A **headline** in the July 3 Issue of Broadcasting magazine (Tab D) trumpets, "Networks **Riding** A Bull Market. . . **1990 Three-Network Earnings** Could Be **Twice Those Of 1988.** (emphasis supplied.) All three networks raised advertising prices, **often** by more than 10% from a comparable period a year earlier.

The article says that because the networks assumed 'little or no decline **in** viewership and sold more advertising units in prime time, the overall dollar figures (for cost **per** thousand viewers) **grew** even **more** dramatically."

The **article** notes stock analyst Jay Nelson of Brown Brothers Harriman is **expecting** CBS to earn roughly \$100

million in 1989, double his earlier estimate of \$50 million. Other analysts (see attached article) also raised their estimates.

The article concludes, "If the profit estimates do prove correct' 1990's profit for ABC, CBS and NBC could exceed \$600 million, or roughly double the amount the three took in last year-excluding acquisition accounting adjustments.'

These figures belie the false phantom of free TV demise invoked by the **networks**. In view of their boosted **profits** and sales, given the rosy forecasts by expert observers, based on the absolute fact that only the three networks can command a national audience' the networks' death chant for free TV is a sham, and it ought to be so branded. Those who monitor the networks for the press and for investment bankers count the networks to be fiscally robust' market strong, without national competitors, and therefore to have unrivaled power in the field.

Take sports. Paul Bortz admitted in his speech to the ABC affiliates that ABC transferred the **Sunday/Thursday** NFL games from its broadcast network to its cable network, ESPN, because the NFL games did not make enough money for the network in prime time.

Again, listen to the networks' own consultants. Bortz advised the networks and their affiliates: "There is one factor I can assure you isn't a root cause of the revenue problems of the television broadcasters. It is the factor that is most often cited as the primary cause of softness in the television marketplace--the development of new distribution channels via cable. . . The current softness in the television advertising market is not due to declining ratings and shares." (emphasis added)

Bortz instead blamed the networks' **strategy** of creating a new **15-second** spot ad category, which increased supply at a time of soft demand. He terms the decision to sell the **15-second**

spots for half the **price** of **30-second** spots "a major mistake" that further depressed advertising prices.

David Poltrack, Senior Vice President of Planning and Research for CBS, in a presentation in New York last December, outlined the results of a study by the CBS Marketing Division on cable's share of viewers (Tab E). Poltrack points out that **cable TV audience growth has slowed as cable penetration growth has slowed** and that audience growth has been greater for the smaller local and regional services than for national, measured cable networks.

He concludes: "With homes passed [by cable] approaching the expected limit and remarketing efforts to-date [sic] **falling** to convert a **significant** number of original cable rejectors, future audience growth based on increased penetration will not approach the growth rate of the past decade." (Tab E, P. 17) This slowdown in cable growth should help to halt the slide in network audience shares.

Finally, MPAA would like to submit to the Subcommittee a study it has commissioned by the independent **firm** ICF Consulting Associates on the economic condition of the networks (Tab F). Its in-depth analysis shows:

* There **are no substitutes** for network advertising. The networks continue to have a unique asset in their ability to reach nearly every U.S. household with an advertising message. Because of this their **financial** base remains firm.

* **Much** of the networks' recent profit performance is explained by general U.S. economic performance and by other factors **peculiar** to recent years rather than by a loss in audience share. Indeed, judging by the performance of network stocks, the stock market has **great confidence** in the networks' **financial performance**. Compared to a broad range of stocks,

the networks performed above expectations and investors have been well rewarded for the risks they have taken, ICF found. The networks' economic arguments, therefore, do not support repeal of FISR.

Q: Motion picture studios now own both cable systems and television stations, and one studio has started the fourth network. When you combine these facts with exclusive distribution contracts, why should Congress not be concerned about what appears to be a significant increase in the market power of the studios?

Answer: The major producers today do not have market power, as the data for the following answer demonstrate clearly. The kinds of activities the committee refers to are very limited in scope. Only one MPAA member company owns cable systems. The other seven do not. One company, Fox, owns seven TV stations and has an ad hoc two-evening-a-week network comprised mostly of small UHF stations. Disney owns one TV station, as does MCA--both independent stations. In no case are these stations market leaders. No other company owns TV stations, although Paramount has purchased an option to acquire an interest in a company which will indirectly own seven UHF stations, two of which are contemplated to be sold.

Producers compete fiercely with one another to offer the best programming to the widest possible audience through the greatest number of avenues. They vie with each other for writers, directors, actors, editors, composers--in short, all the talent required to produce quality programming.

The major production companies not only with each other but with network producers and independent producers, any filmmaker with a camera, a vision and the talent to carry that vision through. There is no limitation on who can make a movie or produce programming. No matter how large its size, a major studio cannot produce quality on demand. Like any other producer, the studio takes its risks in the marketplace of public opinion. This is true in selling programming to the networks and cable TV, in theaters, videocassettes, syndication and foreign markets.

There is no artificial barrier to entering the production market contrary, **production** is characterized by ease of entry. Program production is the entertainment industry's "software," and like computer software, any novice programmer with basic skills who can produce and sell product can enter the business. There is no technical barrier. No one needs a permit or government license. With the open market created in part by the Financial Interest and Syndication Rule and the consent decree limitations on network production, independent producers in particular have grown and prospered.

Program producers have **many options** to finance and produce programming. The same is true for distribution and syndication. Major studios often perform distribution or syndication services, for a fee, for smaller producers who wish to take advantage of their national distribution capacity. But independent producers can, and do, distribute and syndicate their own product if they wish, or turn to myriad syndicators competing with the major studios.

As for exclusive distribution contracts, exclusivity is a restraint on the rights of the **seller** of the program, not the buyer. An exclusive contract, which the networks and some cable networks demand' limits the seller's ability to shop programming around. The fact that TV programming is usually sold on an exclusive basis is a reflection on **the market power of the buyer**, not the seller.

Finally, as demonstrated below, when the benchmark tests of market competition are applied to the businesses at issue in the FISR debate--prime-time TV program production and TV program syndication--it becomes **numerically clear** that those markets are not concentrated' that the system in fact is in balance.

Q: Isn't it true that the major studios are bankers for the independent studios, meaning that they are the primary sources of capital for the smaller producers?

Answer: The term "independent studios" refers, we assume, to independent producers of television programming, or those producers that, in general, do not have a physical plant or distribution capability. Independent television producers find financing through a wide variety of financial arrangements. As production costs and deficits continue to increase, external sources of funding become that much more important to the independents, although some independents, such as Stephen Cannell and Aaron Spelling, self-finance production deficits. Wall Street has been another source of capital to certain independents. The studios are a third source of funding. We believe that association with a major studio provides an independent with a well-financed, well-directed partnership with a player that has a long-term stake in the television business, is not tied to one network and has every incentive to maximize the value of the program in every possible market. Successful series such as GOLDEN GIRLS are examples of the results achieved through partnerships between independent producers and major studios.

Senator INOUE. Thank you very much, Mr. Valenti. You have not disappointed us.

May I call upon Mr. Cannell?

STATEMENT OF STEVE CANNELL, STEVE CANNELL PRODUCTIONS

Mr. CANNELL. Thank you, Mr. Chairman. I feel like I should do a dance or something to get this going.

My name is Stephen J. Cannell, and I am the Chief Executive Officer of Cannell Productions, and we are the producer of prime time television programming. And I am here to plead for the future of independent production companies and the thousands of people that work in the independent production field, because without the Financial Interest Rule, I certainly would not be in business today. Unless it is retained, I think we are all certainly going to be forced out of business in the future. So plead I must here.

First, let me tell you how I got here. I have been in the TV production business for 18 years. I started at Universal where I worked for eight years as a contract writer, eventually becoming a writer, producer and creator of such shows as "The Rockford Files," "Baretta," "Baa Baa Black Sheep," among others. And because of an entrepreneurial streak inherited from my father, I decided in 1979 to leave Universal and do something quite extraordinary. I decided I would try to set up my own studio, one man with a dream. I would write, and produce, and own my own programs.

And I was advised by the studio executives not to do it, but I was encouraged by ABC. You see, they wanted more independent producers, so they would not have to deal with the very powerful studios. They wanted diversification. They said it enhanced their creative options, and because they could not own the programs themselves. They actually encouraged my defection from Universal, and I went into business. ABC guaranteed me three pilots, and Stephen J. Cannell productions was born.

Since 1980 we have produced more than three-quarters of a billion dollars worth of programs and 17 different series, including "The A-Team," "Riptide," "Hunter," "Greatest American Hero," "Hardcastle and McCormick," "Tenspeed and Brownshoe," "Wise-guy," "21 Jump Street," among others. And with five hours of programming on the air for this coming fall, Cannell Productions has become the second largest programmer of prime time television in the industry.

It was a difficult trip with many sleepless nights trying to solve my cash flow problems and my network relationship problems, twice almost going bankrupt. But I made it through only to find out that there is a possibility that the very rule which 10 years ago made it possible for me to attempt this venture may be repealed, allowing networks to take a piece of my off-network syndication rights, instantly making my company an indentured servant to them. And if the Financial Interest and Syndication Rule is overturned, I think my choice is to either close up my company and go to work for the networks or stop working.

And if you doubt this, take a look at the current TV season. And we heard from the network executives here how they have not