

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

Examination of the Future of Media and)	
)	
Information Needs of Communities in a)	GN Docket No. 10-25
)	
Digital Age)	

COMMENTS OF THE INDEPENDENT FILM & TELEVISION ALLIANCE

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The Independent Film & Television Alliance (IFTA) applauds the Commission's Examination of the Future of Media and Information needs of Communities in a Digital Age.¹ We urge the Commission to thoroughly examine the factors which threaten all Americans' access to vibrant, diverse sources of news, information, and programming, including those intended for families and children, and to initiate appropriate actions or further proceedings to identify solutions and establish a framework to protect this important public interest. We focus our comments on the current and future impacts of media consolidation and Internet management practices in connection with news and information sources, content ownership and consumer choice, all of which play a vital role in our lives and our democracy.

IFTA has consistently demonstrated that media consolidation over the last several decades has left little room for programming that is financed and created independently of the major media conglomerates² and has led to the diminishment of diverse and independent perspectives in news, information and programming in all distribution platforms including the Internet. IFTA has also raised concerns about maintaining and protecting an open Internet and supports the Commission's efforts to establish a framework for transparent and nondiscriminatory network traffic management practices so that the Internet remains open to diverse sources of news, information and programming.

¹ Public Notice, GN Docket 10-25 (released January 21, 2010).

² See IFTA public comments in connection with the following FCC proceedings: *2010 Quadrennial Regulatory Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996* (MB Docket No. 09-182) (filed on October 23, 2006); *A National Broadband Plan for Our Future* (GN Docket No. 09-51) (filed on July 22, 2009); *Preserving the Open Internet/Broadband Industry Practices* (GN Docket No. 09-191/WC Docket No. 07-52) (filed on January 14, 2010).

Independent Film & Television Alliance

The Independent Film & Television Alliance (IFTA) is the trade association for the independent film and television industry worldwide. Our nonprofit organization represents more than 150 member companies from 22 countries, consisting of independent³ production and distribution companies, sales agents, television companies and financial institutions engaged in film finance. Collectively, IFTA Members produce over 400 feature films and countless hours of programming annually with U.S. sales revenues of more than \$500 million.

Over the last seven years, independent production companies have produced nearly 80% of all U.S. feature films. Since 1982, IFTA Members have been involved with the financing, development, production and distribution of 64% of the Academy Award Winning Best Pictures[®] including *The Hurt Locker*, *Slumdog Millionaire*, *No Country for Old Men*, *The Departed*, *Lord of the Rings*, *Crash*, *Million Dollar Baby*, *Braveheart*, *Dances with Wolves* and *Gandhi*. In the past year, IFTA Members films have included *The Twilight Saga: New Moon*, *The Last Station*, *Inglorious Basterds* and *Tyler Perry's Madea Goes to Jail*, to name just a few.

IFTA is an active voice for Independents in fighting to regain distribution opportunities that have been lost on the traditional media due to media consolidation and in seeking to protect open access on new and emerging platforms.

Impact of Media Consolidation on Broadcast and Cable Media

The impact of media consolidation on distribution and access to diverse content on broadcast and cable platforms evidences a clear tendency by media conglomerates to favor self-owned or affiliated content. It is reasonable to conclude that if left unfettered, the same

³ “Independent” producers and distributors are those companies and individuals apart from the major studios that assume the majority (more than 50%) of the financial risk for production of a film or television program and control its exploitation in the majority of the world. A list of IFTA Members can be found at www.ifta-online.org.

conglomerates also will act on opportunities to favor self-owned or other major conglomerate news, information, and programming over independent sources on new media platforms.

Major conglomerates are continually consolidating and integrating production studios with major broadcast, cable, and online networks and sites, which has all but eliminated independently produced programming, in particular family programming,⁴ from broadcast television and has drastically reduced opportunities on premium and now basic cable channels and the Internet. The statistics are devastating for a nation that prides itself on offering its citizens open access to diverse programming and competing ideas. Today, five major conglomerates own the national broadcast networks and 24 out of 30 of the top cable channels that offer fiction programming, which are available to over 85% of U.S. cable households.⁵ These same companies produce nearly 80% of all primetime programming,⁶ and they control 85% of the primetime television market share. Additionally, during the years 2002 - 2009, nearly 95% of the scripted series that met the minimum episode requirements for off-network syndication eligibility were produced by the network / major studio conglomerates. The independent share was limited to just one series.

⁴ According to IFTA analysis of data from Baseline Studio Systems and the Internet Movie database (www.imdb.com), between 2002 and 2009, family programming by independent producers accounted for only 18% of the programming on the three major children's programming networks- ABC Family, Cartoon Network and the Disney Channel.

⁵ IFTA analysis of SNL Kagen data (2008 U.S. cable households, "Top 25 MSOs as of December 2008) on National Cable & Telecommunications Association website (*available at* <http://www.ncta.com/Stats/TopMSOs.aspx>) and programming listings provided by MSO websites.

⁶ See Mark Cooper, Ph.D., *The Impact of the Vertically Integrated, Television-Movie Studio Oligopoly on Source Diversity and Independent Production*, Consumer Federation of America, p. 34-35 (2006) (hereafter, "*Cooper Study*"). This study was originally incorporated into IFTA's Comment in the FCC Media Ownership proceeding (MB Docket No. 09-182) and subsequently in *IFTA's Open Internet Comment* as Appendix E.

In the mid-1990s, two major developments severely limited the marketplace choices for independent producers and distributors: (1) the elimination of the Financial Interest / Syndication Rules ("fin/syn") and removal of the related consent decrees; and (2) the subsequent vertical integration of major studios with the major national broadcast television and then cable networks. The public was left with limited programming because the same five major studio conglomerates that produce their own programming also act as gatekeepers for the majority of U.S. distribution in all media. The networks claimed that the expiration of the fin/syn rules would create more competition, both by allowing the networks to become producers and because the emerging cable channels would provide outlets for an increased amount of programming. Unfortunately, this has not been the outcome. To the contrary, the removal of those regulations, which in essence guaranteed a certain level of competition in video programming, has permitted a rapid acceleration of consolidation, vertically integrating major studios with the very cable channels that might otherwise have been new distribution outlets.

The consolidation of production and distribution entities has allowed major conglomerates to prefer their own programming, or that of other major conglomerates, because it is in their commercial interests to leverage ownership of distribution platforms with control of content. The impact is to dull or eliminate competition and to present consumers with only "home brand" programming. Without government regulation or oversight, the opportunities for diverse and independent sources of news, information and other programming will be limited.

Media Consolidation and Threats to the Open Internet

The U.S. broadband marketplace is dominated by just a few major players with Comcast 19.3%, ATT 21.1%, Verizon 11.3%, and Time Warner 10.8%, making up over 62% of the broadband market. A close examination of the lack of competition in the broadband industry in

terms of both network providers and their video on demand service offerings will conclude that in the absence of a clear regulatory framework, and in the face of increasing consolidation and exclusive partnerships among broadband providers and major studio content providers, the Internet will not remain "open" for long. In the absence of a framework which protects diverse sources and voices, independent producers and the public foresee an Internet that, like television and cable before it, reflects the internal business and profit motivations of a few major conglomerates to prefer self-owned or affiliated content offered through a small number of highlighted, marketed or otherwise favored program services.

Already we are seeing the concentration and consolidation of the Internet destination sites such as Hulu.com with the major conglomerates that own it (Universal, Fox and Disney) so that programming offered is primarily repeats of what has already aired or been offered by these companies on other consolidated platforms. Comcast cites its ability to use NBC/Universal content to populate its "TV Everywhere" initiative as one of the reasons behind its desired merger with NBC/Universal.⁷ Such initiatives may sound beneficial but are merely mechanisms that recycle programming found on the already consolidated platforms of television and cable, which do not provide diverse sources for Americans and leave little room for independently sourced programming.

It is critical that the same conglomerates that have consolidated and controlled traditional media are not allowed to act as gatekeepers for the Internet as it evolves into a dominant distribution platform. It is also critical that such conglomerates are not allowed to discriminate and manipulate the speed or services which they provide to the public in order to favor self-

⁷ See Comcast's FCC filing *In the Matter of Applications for Consent to the Transfer of Control of Licenses* (from GE to Comcast) filed January 28, 2010, pages 59-66 (noting that one of the purposes to merging with NBC is to provide NBC content on its "TV Everywhere" online VOD platform).

owned or other major conglomerate content. The American public must be able to rely on network management principles outlined in the Commission's 2005 Internet Policy Statement,⁸ as well as additional principles of nondiscrimination and transparency,⁹ to prevent large network operators from discriminating against independent and diverse sources of content that are used to better inform and enlighten American culture. Without such regulations, the economic forces evident in traditional media will inevitably push broadband providers to prefer their own content, services and applications and deprive the public access to alternative and diverse voices.

IFTA Advocacy on Media Consolidation and Content Diversity

IFTA has been active in drawing attention to media consolidation obstacles to content diversity on all platforms. The Commission has asked that in order to avoid duplication of filings, it will review the record in certain proceedings. Therefore, IFTA respectfully requests the Commission to review its public comments filed or to be filed in the below proceedings. All statistical information provided in these Comments has already been (or will be) cited by IFTA and provided as Appendices in the following proceedings:

- *2010 Quadrennial Regulatory Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996* (MB Docket No. 09-182);
- *A National Broadband Plan for Our Future* (GN Docket No. 09-51);
- *Preserving the Open Internet/Broadband Industry Practices* (GN Docket No. 09-191/WC Docket No. 07-52); and

⁸ *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities*, Policy Statement, 20 FCC Rcd 14986 (2005).

⁹ See FCC NPRM *Preserving the Open Internet/Broadband Industry Practices* (GN Docket No. 09-191/WC Docket No. 07-52) p. 41-49.

- *Empowering Parents and Protecting Children in an Evolving Media Landscape* (MB Docket No. 09-194).

In addition, IFTA President and CEO Jean M. Prewitt has testified on behalf of IFTA before the recent U.S. House Judiciary Committee hearing on media competition in connection with the proposed merger of Comcast and NBC/Universal on February 28, 2010, advocating for the protection and promotion of diverse sources in programming. The written testimony and the video testimony are available at http://judiciary.house.gov/hearings/hear_100225.html. Finally, the Commission asked for studies which would be valuable in this proceeding - IFTA recommends a study on the impact of vertically integrated media oligopolies on source diversity by Mark Cooper, PhD.¹⁰

Conclusion

IFTA and its Members strongly support this Examination and any further proceedings that may promote greater programming choices for the American public with respect to media, news and information in the future and create a framework for an open Internet for such diverse programming. This and other proceedings examining the future of media, media consolidation, competition in video programming, and Internet policies and network management rules are vital to America's future economic well-being, cultural growth and social enrichment. Thank you for your time and attention.

Respectfully submitted,

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¹⁰ Available in *IFTA's Open Internet Comment* at Appendix E.