

THE PARAMOUNT DECREES

United States v. Paramount Pictures, Inc., 334 U.S. 131 (1948)

The Department of Justice recently opened a review of the Paramount Consent Decrees that for over seventy years have regulated how certain movie studios distribute films to movie theatres.

In 1938, the Department filed an antitrust lawsuit alleging that eight major motion picture companies had conspired to control the motion picture industry through their ownership of film distribution and exhibition. The eight original defendants were Paramount Pictures, Inc., Twentieth Century-Fox Corporation, Loew's Incorporated (now Metro-Goldwyn-Mayer ("MGM")), Radio-Keith-Orpheum (dissolved in 1959), Warner Brothers Pictures, Columbia Pictures Corporation, Universal Corporation, and United Artists Corporation. After a trial, the district court found that the defendants had engaged in a wide-spread conspiracy to illegally fix motion picture prices and monopolize both the film distribution and movie theatre markets. On appeal, the Supreme Court sustained those findings. See *United States v. Paramount*, 334 U.S. 131 (1948). Subsequently, each of the defendants entered into a consent decree with the Department (collectively, "the Paramount Decrees").

The *Paramount* case and the resulting decrees significantly altered the structure of the motion picture industry. First, the Supreme Court ordered and the decrees mandate a separation between film distribution and exhibition by requiring the five defendants that then owned movie theatres to divest either their distribution operations or their theatres. Going forward, the decrees prohibited those defendants from both distributing movies and owning theatres without prior court approval. Second, the Supreme Court and the decrees outlawed various motion picture distribution practices including block booking (bundling multiple films into one theatre license), circuit dealing (entering into one license that covered all theatres in a theatre circuit), resale price maintenance (setting minimum prices on movie tickets), and granting overbroad clearances (exclusive film licenses for specific geographic areas).

Since the district court entered the Paramount Decrees, the motion picture industry has undergone considerable change. None of the Paramount defendants own a significant number of movie theatres. Additionally, unlike seventy years ago, most metropolitan areas today have more than one movie theatre. The first-run movie palaces of the 1930s and 40s that had one screen and showed one movie at a time, today have been replaced by multiplex theatres that have multiple screens showing movies from many different distributors at the same time. Finally, consumers today are no longer limited to watching motion pictures in theatres. New technology has created many different distribution and viewing platforms that did not exist when the decrees were entered into. After an initial theatre run, today's consumers can view motion pictures on cable and broadcast television, DVDs, and over the Internet through streaming services.

As a consequence of all of these changes, and the fact that the decrees have been in place for over seventy years, the Department has opened a review to determine whether the decrees should be modified or terminated.

Citations to the original decrees that apply to the remaining Paramount defendants:

- Paramount Pictures, Inc., 1949 Trade Cas. (CCH) ¶62,377 (S.D.N.Y. Mar. 3, 1949)
- Twentieth Century-Fox Corporation, 1950-51 Trade Cas. (CCH) ¶ 62,861 (S.D.N.Y. June 7, 1951)
- Columbia Pictures Corporation (Sony), 1950-51 Trade Cas. (CCH) ¶ 62,573 (S.D.N.Y. Feb. 8, 1950)
- Universal Pictures, 1950-51 Trade Cas. (CCH) ¶ 62,573 (S.D.N.Y. Feb. 8, 1950)

- United Artists, 1950-51 Trade Cas. (CCH) ¶ 62,573 (S.D.N.Y. Feb. 8, 1950)
- Warner Brothers Pictures, 1950-51 Trade Cas. (CCH) ¶ 62,765 (S.D.N.Y. Jan. 4, 1951)
- Loew's (MGM), 1952-53 Trade Cas. (CCH) ¶ 67,228 (S.D.N.Y. Feb. 7, 1952)

THIRTY-DAY PUBLIC COMMENT PERIOD

As part of its review, the Department invites interested persons, including motion picture producers, distributors, and exhibitors to provide the Division with information or comments relevant to whether the Paramount Decrees, in whole or in part, still are necessary to protect competition in the motion picture industry.

In particular, the Department is interested in comments on the following issues:

- Do the Paramount Decrees continue to serve important competitive purposes today? Why or why not?
- Individually, or collectively, are the decree provisions relating to (1) movie distributors owning movie theatres; (2) block booking; (3) circuit dealing; (4) resale price maintenance; and (5) overbroad clearances necessary to protect competition? Are any of these provisions ineffective in protecting competition or inefficient? Do any of these provisions inhibit competition or cause anticompetitive effects?
- What, if any, modifications to the Paramount Decrees would enhance competition and efficiency? What legal justifications would support such modifications, if any?
- What effect, if any, would the termination of the Paramount Decrees have on the distribution and exhibition of motion pictures?
- Have changes to the motion picture industry since the 1940s, including but not limited to, digital production and distribution, multiplex theatres, new distribution and movie viewing platforms render any of the Consent Decree provisions unnecessary?
- Are existing antitrust laws, including, the precedent of *United States v. Paramount*, and its progeny, sufficient or insufficient to protect competition in the motion picture industry?

Note: Comments are due on or before September 4, 2018. Please submit comments via email to atr.mep.information@usdoj.gov.

PRIVACY AND CONFIDENTIALITY NOTICE

Comments and responses thereto may be filed with the court, published in the Federal Register or posted on the U.S. Department of Justice Internet Website. Information that is submitted in connection with this matter cannot be maintained as confidential by the Department of Justice. Written submissions should not include any information that the submitting person or entity seeks to preserve as private or confidential.

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