

August 20, 2018

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex C)
Washington, DC 20580

Electronically submitted via www.regulations.gov

**Re: Competition and Consumer Protection in the 21st Century Hearings, Project
Number P181201¹**

The Independent Film & Television Alliance® (IFTA®) respectfully submits these comments in response to the above-referenced matter as the Federal Trade Commission (FTC or Commission) considers whether broad-based changes in the economy, evolving business practices, new technologies, and international developments warrant adjustments to competition and consumer protection law, enforcement priorities, and policy.

IFTA strongly believes that as a matter of public policy the consumer interest requires wide access to an ongoing supply of creative content, ranging from major blockbuster films to the diverse and unexpected creative productions of independent companies and individuals. We support the FTC's comprehensive review of the state of antitrust and consumer protection law and policy in the nearly quarter-century since the Pitofsky Hearings and appreciate this opportunity to provide the unique perspective of the independent sector of the film and television industry.

As producers of much of the innovative audiovisual content that propels the digital economy, IFTA and its members are strong supporters of measures that promote competition, ensure consumer protection, and foster diversity in programming and choice for consumers. IFTA has long been on record with regard to the competitive challenges facing independent producers in today's marketplace, arising from the integration of major broadcast, cable and broadband companies and the extraordinary growth of a handful of online platforms, all of whom now produce and promote their own programming. Independent program suppliers today have limited leverage in negotiating for access, good placement, marketing, and revenue shares with these conglomerates and thus consumer access to such independent programming is under threat.

At the same time, encouraging the growth of online platforms and services has been prioritized as a matter of policy over protecting the public from traffic in illicit content, which

¹ See [83 Fed. Reg. 38307 \(August 6, 2018\)](#).

has generated profit for the platforms and services at the expense of legitimate rights holders, among other interests. With this backdrop, there is a growing and serious concern in the United States and worldwide about the lack of responsibility and accountability exercised by major internet platforms toward harmful and illegal activities taking place on their services, resulting in a toxic environment to conduct business and reach consumers.

The commercial reality is that the major online platforms and distributors of content hold market power that is unbalanced to the detriment of program suppliers and consumers. This reality combined with the lack of meaningful platform responsibility to avoid illegal content means that the FTC must be even more vigilant in its efforts with respect to competition and consumer protection. With a small number of large online platforms wielding massive control over the content that consumers view today, there is a heightened need for intervention to achieve the Commission's mission to protect consumers by preventing anticompetitive, and unfair business practices, and enhancing informed consumer choice.

About IFTA and its Member Companies

Based in Los Angeles, IFTA is the trade association for the independent motion picture and television industry worldwide, representing 140 companies in 20 countries, the majority of which are small to medium-sized U.S.-based businesses² which have financed, produced and distributed many of the world's most prominent films, including **80% of the Academy Award® winners for "Best Picture" since 1980.**

Independent films and television programs are **made in every genre and budget level by those companies** (that take on the majority of the financial risk for the production and control the licensing of its distribution to third parties around the world. Unlike the six major MPAA studios,³ independents do not own worldwide distribution channels and they completely depend on third-party distributors around the world. In many cases, these distributors also become key investors in the film through minimum guarantee license commitments in advance of production in exchange for the exclusive right to distribute the finished product in their particular territory. Those agreements are then used as collateral to secure bank loans to support the physical production. Increasingly, these advance distribution deals, which are critical to independent production finance, involve the major online platforms and services.

Our sector accounts for **over 70% of all films produced in the U.S.** and the jobs generated by that economic activity. For calendar year 2017, U.S. independent production companies shot 551 feature films. This resulted in over 36,363 full time jobs directly related to this production activity and another 109,611 full time jobs for the various vendors that service the film industry. Combined, both classes of employees earned over \$15.03 billion. Total business revenue that resulted from this production activity totaled over \$23.04 billion in economic output. Independent production generated over \$3.12 billion in income and sales tax for both the federal government and individual state governments. Federal government share of income tax received was over \$1.97 billion. A thriving online marketplace directly impacts the

² A complete list of IFTA Members is available online at: <http://www.ifta-online.org>.

³ Walt Disney Studios Motion Pictures; Paramount Pictures Corporation; Sony Pictures Entertainment Inc.; Twentieth Century Fox Film Corporation; Universal City Studios LLC; and Warner Bros. Entertainment Inc.

independent sector's revenue streams and thus its ability to sustain business operations and to employ American workers.

Collectively, **IFTA members generated revenue over \$4.8 billion in 2017**, of which approximately \$2 billion came from foreign (non-U.S.) markets and \$2.8 billion from domestic activity. With over half of IFTA member companies' revenue earned in the U.S. each year, IFTA has a strong interest in preserving the health and fostering growth of a safe and competitive digital marketplace.

The economic ability of the independent film and television industry to continue to offer diverse and unexpected programming will determine whether consumers have true choices across today's many content viewing avenues. IFTA's comments focus on the extent to which the major online platforms and distributors are failing to take responsibility for the integrity of the marketplace which they now control and have been allowed to amass the power to act as gatekeepers to that marketplace, to the detriment the health of the broad-based distribution infrastructure that is necessary to fuel ongoing independent production and provide consumer choice.

IFTA joins other representatives of the creative industries to call upon the Commission to exercise its broad investigatory authority under the FTC Act to examine how the dominant internet platforms engage in practices that harm competition in the creation and distribution of copyrighted works, and, in doing so, harm consumers.

As recommended in the Notice, IFTA will file a separate comment for each topic posed by the Commission where the experience of IFTA members may be of greatest assistance in the evaluation of the current marketplace.⁴ We hope the results will lead to targeted and effective dialogue and improvement toward achieving the FTC's vision of a vibrant economy characterized by vigorous competition and consumer access to accurate information.

⁴ See IFTA's specific responses to Topics 1, 3, 6, and 8 in the instant proceeding.