

**Independent Film & Television Alliance® (IFTA®) submission dated August 20, 2018 in response to Topic 3 with respect to Competition and Consumer Protection in the 21st Century Hearings, Project Number P181201.<sup>1</sup>**

---

The online platform business model has unique implications for antitrust and consumer protection law enforcement and policy, particularly as it relates to matters of privacy and security and the free flow of information. Congress is beginning to take notice and question the statutory immunities such as Section 230 of the Communications Decency Act of 1996. At a recent Senate Intelligence Committee hearing on August 1, 2018, Senator Ron Wyden (D-OR) was quoted as saying, “I just want to be clear, as the author of Section 230, the days when these pipes [of information] are considered neutral are over – because the whole point of 230 was to have a shield and a sword, and the sword hadn’t been used and these pipes are not neutral.”

Ensuring that the internet offers content suppliers and users the same protections that are available in the brick-and-mortar environment is critical to maintaining a safe and vibrant online marketplace to deliver independent content to consumers, on the devices and as they wish to receive it. If these platforms are allowed to continue to operate within a policy framework that prioritizes their growth and profit over accountability, American creativity and consumers will be harmed.

As consumer preference continues to evolve, the internet giants have amassed billions of users who are eager to watch professionally produced content on their platforms. According to a recent estimate, about 147.5 million people in the U.S. watch Netflix at least once per month, followed by Amazon Prime Video (88.7 million), Hulu (55 million), HBO Now (17.1 million) and Dish’s Sling TV (6.8 million).<sup>2</sup>

An independent content producer who is unable to access these key distribution outlets is increasingly unable to reach the bulk of the potential audience and is relegated to the open internet – the equivalent of CATV “local access channels” which are known for their tiny viewerships. While there are niche online platforms that deal in certain specialty genres or that focus exclusively on foreign language audiences and content, the mass audience and the revenues generated by advertising and subscription packages are drawn to the major platforms.

The revenues generated by streaming platforms are increasingly important as other forms of home entertainment (including traditional cable and satellite television) decline. They are also now a significant element in securing third-party production finance. Without confidence that independent programming can reach the major online platforms, and that revenues will not be undercut by competition from free illegal copies, this important foundation for financing new independent content will not continue to develop. The internet must be governed in a fair and transparent manner worldwide so that independents can continue to provide consumers “on demand” ways to watch alternative and diverse content.

---

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

<sup>2</sup> <https://variety.com/2018/digital/news/cord-cutting-2018-estimates-33-million-us-study-1202881488/>.

Today, the prevailing internet platforms are closing off the market for independently produced films and television programming through a combination of self-production, acquisition of and reliance upon major studio production houses, and use of strategies designed to reduce the volume of independent content offered on the platform. Those strategies reportedly include unilateral across-the-board reductions in license fees and ad revenue shares for such content, refusal to deal directly with individual small suppliers versus aggregators (packagers), and shifting of advertising placement away from content featuring unpopular themes or imagery. For example, YouTube and Amazon unilaterally lowered license fees they pay the creators of the content which draws users, sponsors and advertisers to their sites.<sup>3</sup>

IFTA calls 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 addition, harm and deceive consumers.

The U.S. is not alone in grappling with questions of competition law as it relates to the internet giants. Most recently, Germany initiated an inquiry into the major platforms<sup>4</sup> and the European Commission has offered an assessment of the rapidly changing economic and regulatory environment in which online platforms are growing.<sup>5</sup>

---

<sup>3</sup> <https://www.indiewire.com/2018/02/amazon-video-direct-lowers-royalty-rates-1201925708/>

<sup>4</sup> <https://promarket.org/german-approach-antitrust-digital-platforms/>; <https://www.insidetechnia.com/2016/06/13/german-competition-authority-publishes-a-working-paper-on-market-power-of-platforms-and-networks/>

<sup>5</sup> <https://www.insidetechnia.com/2016/06/21/the-european-commissions-approach-to-online-platforms-and-the-collaborative-economy/>