

Updates

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DOJ Seeks Public Comments on Paramount Decrees, Creates Critical Moment for Movie Industry



The Antitrust Division of the U.S. Department of Justice (DOJ) last week [announced](#) that it was seeking public comments on the continued viability of the Paramount Consent Decrees, which have regulated how motion pictures are distributed to theaters for the past 70 years. This is part of the DOJ's effort to review and terminate over 1,000 antitrust judgments entered many years ago without termination dates.

Background

Between 1949 and 1952, a series of court decrees were entered against several motion picture companies—including Paramount Pictures, Twentieth Century Fox and Warner Brothers. These decrees prohibited each company from vertically integrating, meaning that they could not both be a distributor of films and an exhibitor. The decrees also prohibited various film licensing practices, including block booking (bundling multiple films into one license), circuit dealing (licensing films to multiple theaters owned by a single circuit), resale price maintenance (setting minimum prices on movie tickets) and granting overbroad clearances (granting exclusive licenses for broad geographic areas).

Since that time, the Paramount Decrees and the movie industry antitrust caselaw from the United States Supreme Court and related cases from federal and state courts have served as a foundation for how competition is supposed to work in the distribution and exhibition of movies. Antitrust claims focusing on alleged restraints on fair access by individual theaters or small theater circuits to desirable first-run commercial films continue to be litigated. Earlier this year, our law firm won a jury verdict on behalf of an independent theater in Palm Desert, California against the third-largest theater circuit in the country that was charged with circuit dealing in that market.

But now the DOJ believes it is time to review whether regulatory restrictions still make sense and whether the consent decrees should be either terminated or modified. "Since the district court entered the Paramount Decrees," DOJ states, "the motion picture industry has undergone considerable change." Unlike in the 1940s,

today most cities have more than just a single theater with a single screen showing one film at a time. Consumers can now view movies at home using their cable or satellite television subscriptions as well as on their smart phones and tablets. Yet issues of fair competitive access to films by individual theaters and small theater circuits, including those offering innovative theater concepts such as dinner-and-a-movie theaters, continue to be the subject of private antitrust litigation.

Critical Moment for Movie Industry

Much of the DOJ's announcement signals its skepticism that the Paramount Decrees are still needed at all. On the other hand, some of the specific questions for which it seeks answers show a willingness to consider modifications in those decrees, as opposed to terminating them entirely. DOJ poses such questions in a context of whether changes would enhance competition. And these questions also involve the context of an industry that in recent years has shown steady trends toward consolidation both of companies distributing movies and of large theater circuits.

This is a critical moment for the industry. Termination or modification of the Paramount Decrees would significantly change how competition is regulated in the movie business. Motion picture producers, distributors and exhibitors should all consider submitting comments to make sure their voices are heard as DOJ considers its next steps.

The deadline for public comments is Tuesday, September 4, 2018. More information and the email address for submitting comments can be found on the [DOJ's website](#).

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