Updates
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A River Runs Through It: The Pandemic's Wave of Change to the Film and Television Industry (and Finding Potential Winners and Losers)

The COVID-19 pandemic is rapidly cutting a wide swath of change in the entertainment industry. Film, television, and other entertainment businesses are experiencing profound disruptions to the status quo. The economic and cultural effects of the pandemic may leave significant portions of the industry on the wrong side of change, including due to the pandemic's acceleration of trends that predated it; other segments and players may be changed inalterably by the pandemic, and yet repositioned for adaptation and potential growth when the crisis abates.

In a three-part series of client alerts, we are taking a look at the COVID-19 pandemic's impact on three key sectors of the entertainment industry—film and television, music, and video games—and providing our thoughts on the likely long-term impact of the coronavirus on these sectors. Here, in part one, we focus on the film and television business.

Hollywood in Crisis

In an industry that was already experiencing upheaval due to disruptive technologies and changing consumer habits, the pandemic is crystalizing film and television industry anxieties of recent years while generating new concerns.

Particularly hard hit are those sectors of the industry that involve in-person gatherings. Movie theaters, many of which were struggling pre-pandemic, have been shut down since mid-March; some are likely to never re-open. The list of cancelled or postponed award shows, festivals, network upfronts, and conventions—so essential to the industry eco-system—is long and continues to grow. According to *Variety*, industry insiders are concerned that "only the strong will survive the fallout," while "weaker businesses and industry traditions . . . will have a hard time enduring the blow of a sudden shutdown."

Even leading media conglomerates that once found strength in diversification are now beset on all sides, as sources of revenue that previously served as safety nets, such as amusement parks, cruise lines, and primetime sports, have been forced to shutter. During one of the busiest times of years for the television industry, pilot season, production has halted on both films and TV shows, leading to uncertainty about the future for workers across the industry, from Teamsters to producers. Some have speculated that the pandemic may be the death knell for the "Peak TV phenomenon."

Just as new installments of their favorite TV shows and movie franchises are put on hold, housebound audiences are spending more time than ever streaming content at home. Established streaming platforms such as Netflix, Amazon Prime Video, Hulu, and YouTube have flourished since the start of the pandemic, as reflected by the $150 million relief fund set up by Netflix at a time when other industry players are furloughing or firing employees, including CEOs. Before the pandemic, Netflix estimated it would gain seven million new subscribers in the first three months of the year, but by the end of March, more than 15.7 million had signed up for the service.

For the film industry, the pandemic's stay-at-home mandate has meant that movie theaters sit empty, "event" movie releases—such as the new James Bond film—are deferred at least until autumn, and the viewing public becomes more accustomed to premium video-on-demand. Competing visions between distributors and theatrical chains, already in sharp relief, appear to be growing more acute as cultural norms and business practices shift further, raising questions as to what post-pandemic viewing habits and distribution practices may look like. Indeed, amidst the pandemic, movies targeted for theatrical release, such as *Trolls World Tour*, have gone directly to premium VOD, with better-than-expected results.

For traditional, over-the-air television the pandemic's intricately entwined and sharp-edged political, economic, and public-health elements have created a best-of-times/worst-of-times phenomenon. The highly localized nature of the public health emergency, especially with a news-hungry public and the heightened importance of municipal and state-level regulation of day-to-day public and business activity, have brought the localized nature of broadcast television to the forefront in a way that we have not seen in memory.

At the national level, even the network evening news broadcasts, which many had begun to regard as relics, have made a resurgence, with a *New York Times* headline declaring, "The Evening News Is Back." The *Times* noted that, while 24/7 cable television and online news outlets had undercut the relevance of evening network news broadcasts in recent years, COVID-19 has resulted in tens of millions of new viewers tuning into these broadcasts every night.

Yet, in another cruel twist of the coronavirus, this new golden age of viewership has not translated into advertising dollars. If the pandemic has made vivid the deeply interconnected nature of the economy, broadcast television displays this interrelationship in living color. The retail and auto industries, each stalwarts of mass audience advertising, have been especially hard hit. Struggling through this period, holding cash tight, and uncertain of the future, advertisers are stepping back from TV and radio, awaiting a return of consumer spending and evaluating both consumers' confidence and their own ad-spend strategies. At the same time, networks and TV groups are reporting in recent investor calls some hopeful signs in some advertiser segments, with some drawn by increased stay-at-home viewership in elusive younger demographics.

Other entertainment companies are having success in the streaming space; Starz, for example, has seen a 142% increase in new subscribers. After initially telling investors to expect 60 million to 90 million subscribers by the end of 2024, Disney saw its new streaming service reach 50 million subscribers merely five months after its launch. Still, success is far from guaranteed. Newly launched streaming services find themselves entering an increasingly crowded field either committed to premium price points when paychecks have slimmed, lacking the "must see" content—such as the 2020 Olympics or long-awaited TV reunions—meant to be the cornerstone of their success, or unable to build out a small library with new content. In response to this last challenge, companies have looked to animation to fill the gaps, at a time when demand for children's programming has increased and animators have found it possible, albeit challenging, to continue to work on projects remotely.

The pandemic has also created unanticipated hurdles for at least one new industry player that has entered the current environment with a notably pre-pandemic business model, Quibi. Its just-launched service, which focuses on bite-size content tailored to digestible, on-the-go viewing from hand-held devices, confronts a stay-at-home world uniquely suited to binge-watching, where there is even an appetite for especially long content.

A final looming question for all scripted content, whether film, online streaming, or broadcast and cable television, is whether new, original, and premium content can be produced before the tail of pre-COVID content runs its course. The forced shutdown of filming and production during the pandemic leaves an ever-widening gap in the content-creation cycle. Joining the categories of hand sanitizer, toilet paper, and beef, we may be approaching a never-before-seen content shortage.

Predictions

When we—consumers, viewers, audiences of every kind—emerge from the pandemic in search of a new "normal," the media and entertainment industry we see may look familiar on the surface, but it is likely to be changed utterly. Some of the developments that we can foresee on the other side of the pandemic:

- As 2021's calendar fills up with events that were postponed this year, not all may survive the rescheduling dance; as Rob Gabel, CEO of video measurement firm Tubular Labs, observes, "If you're not a tentpole event, or No. 1 or 2 in your niche, you're in trouble. It comes to the question, 'Are you a must-attend—or a nice-to-attend event?' It's survival of the fittest." Another trend may be toward smaller, more exclusive events (perhaps with an online component for those reluctant to travel) at which social distancing will be easier to maintain.
- Innovative solutions, such as the Cannes Film Festival's plan to turn its famed Marché du Film into a virtual marketplace, are likely to replace expensive, outdated traditions such as the networks' traditional 'upfront' presentations to advertisers, in which Disney's former CEO Bob Iger anticipates the company will no longer participate.
- As studios struggle to find new dates for postponed films on a calendar that is a delicate balance at the best of times, the theatrical release window will shorten for many films to accommodate audiences used to watching films at home. The day-and-date release that exhibitors have fought against for so long may be here to stay—indeed, many films may never make into a theater at all.
- For their part, exhibitors may find new life in audiences that realize how much they miss the experience of going to the movies. The vision expressed by George Lucas and Steven Spielberg that films will come to resemble Broadway plays—with fewer movies being released in theaters for higher ticket prices and longer theatrical windows—may yet be on the horizon.
- With at-home viewing habits potentially changed by the quarantine, movie distributors may increasingly look to replace or couple traditional theatrical release with premium video on demand (VOD).
    - This shift in movie distribution may result in further consolidation in the theatrical industry. The trend toward an emphasis by theaters on the movie-going "experience," with a premium on seating, food-and-beverage services, and, more generally, the social experience of seeing a movie as part of an audience may become still more pronounced as a response to both VOD and the potential prospect of smaller audiences, whether because of decreased demand (for example, audiences fearful of non-socially distant seating) or the need for adaptive, socially distanced seating. In this potential environment, an emphasis on the in-theater experience could generate more per-seat revenue given the favorable margin on enhancements to the movie-going experience.
    - Moreover, we can envision a new symbiosis between movie theaters and traditional live theater, with each trying to recoup quarantine losses and adapt to new revenue opportunities. For example, Britain's National Theater has invested heavily in bringing the live theater experience to a broader world through high-quality filming of live theater productions that are then shown in movie houses. This trend could accelerate and grow a new revenue stream in which live theater finds, and brings to movie theaters, new audiences. At the same time, the outreach of performers through YouTube and Instagram, and the sudden availability of a rich catalogue of theatrical performances by video, could also lay the groundwork for live-on-video streaming directly to homes and devices (although restrictions imposed by rights holders and under union agreements may need to be addressed).
- Animation may transition permanently to remote work, worrying some workers that their jobs may ultimately be outsourced to non-union talent overseas.
- Without sports to justify the cost of their cable package, cord-cutting may surge as consumers elect to save money by switching exclusively to streaming—although they may be selective about which streaming services they maintain as well. Piracy may surge in tandem, as others decide not to pay for their content at all.
- The anemic advertising market, if it continues for an extended period, could also accelerate the drive toward consolidation in the broadcast television industry. We see the potential for several phenomena in television:

    - Depending on the accessibility of the capital markets, we may see further M&A activity in the drive toward consolidation and expense-reduction synergies.
    - As a cash-preserving alternative to M&A, we can envision station groups looking to creative service arrangements by which they produce and distribute distinctive news and programming, while sharing and reducing operating costs.
    - The potential for both phenomena may depend in important part on regulatory developments at the FCC, where deregulation of longstanding broadcast ownership rules has been stalled by judicial review of the Commission's administrative procedures. A sense of economic urgency may accelerate the FCC's execution of regulatory changes, which could bring FCC regulation of television not only into the 21st century, but make them crucially more up-to-the-minute at a time of deep industry crisis.

Concluding Thoughts

Hollywood loves a happy ending; unfortunately, none is likely to emerge for the film and television industry in the wake of the coronavirus pandemic. Painful transformation and disruption that, absent the pandemic, may have occurred over a decade or two will now be taking place over just a few years. But Hollywood and its legacy media siblings on the East Coast have been constantly reinventing themselves ever since Thomas Edison and W. K. L. Dickson developed the first motion picture camera in 1892. The industry has survived—and, after initial resistance, embraced—the shift from silent films to talkies, and the rise of television, the internet, and peer-to-peer file sharing. It even survived the 1918 Spanish Flu pandemic, albeit through "cataclysmic change" to the industry. And like the hero in a big-budget action movie, Hollywood will emerge from the current pandemic, shaken and scarred—but very much alive to fight another day.

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In forthcoming updates, we will turn to the music and video game sectors of the entertainment industry. Also, please see our earlier client alerts on how disruptive technologies and the open access/open source legal frameworks are being used to combat the coronavirus.

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