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Role of Online Services in Entertainment Industry Diversity

Government Interest in Media Diversity

The representation of diverse points of view and diverse ownership of businesses within the television industry has long been of interest to Congress. Among other laws, Section 257(b) of the Communications Act [47 U.S.C. §257], enacted as part of the Telecommunications Act of 1996, directs the Federal Communications Commission (FCC) to promote policies favoring “diversity of media voices” and “vigorous economic competition.” Given this statutory direction, the FCC has sought to encourage diversity of viewpoints, as reflected in the availability of media content offering a variety of perspectives as well as diverse programming formats and content. To accomplish this, the FCC has relied on its authority over broadcasters, as well as over cable and satellite services that distribute television programming to consumers. For example, the FCC’s Equal Employment Opportunity (EEO) rules and policies govern employee recruitment by broadcast stations, as well as cable and satellite video programming distributors.

In July 2017, FCC Chairman Ajit Pai chartered the FCC’s Advisory Committee on Diversity and Digital Empowerment (ACDDE), and re-chartered it in July 2019. The ACDDE’s purpose is to issue recommendations to the FCC on “how to empower disadvantaged communities and accelerate the entry of small businesses, including those owned by women and minorities, into the media, digital news and information, and audio and video programming industries, including as owners, suppliers, and employees.” However, structural and technological changes in the television industry are limiting the FCC’s ability to address diversity concerns as more viewers turn to entities that are not subject to FCC regulation, such as online subscription video-on-demand services (SVODs).

Recent Developments

For the last 70 years, broadcast networks, and then cable networks, were the gatekeepers of television programs. While the FCC has never had direct authority over television programming, it has been able to use its oversight of broadcasting and satellite and cable distribution to encourage diversity in programming. For example, when the FCC approved Comcast Corporation’s purchase of NBC Universal’s broadcast television stations, networks, and studios in 2011, the agency required Comcast to distribute 10 new independently owned and operated cable networks. Furthermore, the FCC cited Comcast’s pledge to expand its offering of programming targeting racial and ethnic minority audiences as evidence of Comcast’s commitment to diversity.

Over the last ten years, however, SVODs, such as Netflix, Amazon Prime Video, and Hulu, have attracted an increasing number of subscribers while subscriptions to

cable and satellite services have declined. The growth of SVODs has created additional demand for video programming, particularly for shows that appeal to specific market segments rather than viewers at large.

The Changing Art of Choosing Programs

Traditionally, broadcast television networks have relied on the research firm The Nielsen Company to measure viewership, and have used this information to guide decisions about commissioning new programs. In most cases, the networks work with showrunners.

A showrunner is the creative force behind a television program and has overall managerial responsibility, hiring and overseeing the cast, producers, directors, and crew. According to a 2016 article from the trade publication *Variety*,

Writers used to work their way up through a system and patiently wait their turn to run their own show. But the proliferation of outlets, increasing demand for bold content, and opportunities to scale a show to specific creative needs have combined to open the door for showrunners of various backgrounds and experience levels.

Network executives generally ask a showrunner to produce a pilot—a sample program—and do not commission an entire season of shows until research indicates that the program will attract a sufficiently large audience.

A broadcast network’s goal is to convince as many people as possible within a broad demographic group to tune into the program at a specific time, and then to sell advertising targeting that audience. Cable networks typically target narrower demographic groups, but they still generate revenue from selling advertising aimed at viewers who are watching at a specific time and from convincing cable and satellite operators that their subscribers desire the networks’ programming.

In contrast to broadcast and cable networks, which air programs on fixed schedules throughout a day, SVODs offer subscribers a library of programming on an on-demand basis. Because SVODs generally rely on subscription revenue rather than advertising revenue, they generally judge a program’s success by the number of new subscribers a program attracts or current subscribers it interests rather than by the number of people who watch at a particular time. Thus, for many SVODs, the programming goal is to offer a few high-profile shows that attract many viewers, and then a selection of shows that convinces those viewers to maintain their subscriptions. They have the technical ability to offer more programs at any given time than traditional television networks, and can target their marketing of programs to individual subscribers. They may

therefore find it in their strategic interests to offer programs that appeal to various demographic segments.

Because their business models do not require that every program successfully reach large numbers of viewers, some SVODs have commissioned series from first-time showrunners who draw on ethnically and racially diverse crew and casts. Showrunners, the people who head production companies, are a creative force behind television programs. Along with creative authority, they have overall managerial responsibility, hiring and overseeing the cast, producers, directors, and crew. SVODs typically pre-order entire series of multiple episodes rather than commissioning pilots, potentially eliminating an obstacle to showrunners who lack the financial backing required to produce a pilot.

Each SVOD, however, may have a different programming strategy, depending in part on its corporate owner. Some major broadcast and cable network owners, such as Comcast and The Walt Disney Company, have started their own SVODs that may focus on marketing shows their parent companies already own, rather than investing in first-time showrunners. For example, HBO Max, which is owned by the telecommunications conglomerate AT&T, reportedly paid its sister company, WarnerMedia, more than \$400 million to be the exclusive SVOD distributor of the 1990s-era television series *Friends*. Similarly, when Disney acquired studios and cable networks from 20th Century Fox in 2019, its chief executive officer explained that a major reason for the transaction was to give Disney's SVOD access to Fox's large archive of television programs and movies.

The Changing Art of Movie Exhibition

SVODs are increasingly acquiring and/or commissioning full-length movies in addition to television series. As with television programs, SVODs have different goals from incumbent distributors—in this case, film studios—and may therefore be willing to invest in a more diverse range of movies that individually appeal to smaller audiences.

Bringing a full-length feature film into cinemas is an expensive business: a studio may spend tens or even hundreds of millions of dollars to produce a film or acquire the distribution rights, and as much as \$100 million more to market the film worldwide. Studios mitigate these risks by devoting their resources to sequels of previously successful films, remakes of older movies, or movies based on widely known fictional characters, such as comic books heroes. In contrast, SVODs, when deciding whether to finance an original movie, focus on attracting and retaining subscribers and are not dependent on convincing millions of consumers to purchase tickets at a movie theater.

Unlike a television series director, whose execution of a production is constrained by the vision of the showrunner, a film director has a major role in shaping the creative vision of the production. In 2019, Netflix released 19 original movies from first-time directors (out of 58 original movies) on its service. According to the *Los Angeles Times*, about half of the first-time directors were female, and some directors were from a minority racial or ethnic group.

Film directors disagree about whether producing a movie for SVOD exhibition offers advantages comparable to those of traditional cinema distribution. To qualify for the “Oscar” awards presented by the Academy of Motion Picture Arts and Sciences, a movie must play in a commercial motion picture theater. Several major theater chains have refused to exhibit films commissioned by SVODs unless the SVOD agreed to give them an exclusive 70- to 90-day distribution window before offering the film to its subscribers. Thus, for example, because Netflix did not want to wait this long before distributing *The Irishman* to its subscribers, the movie did not get a wide theatrical release.

Diversity Statistics

Research indicates that while the proportion of movie directors of the most popular movies in the U.S. who are female and/or from a minority or ethnic group has changed over the last decade, it is still relatively small. A January 2020 study by University of Southern California's Annenberg Initiative tracked directors of the 100 highest grossing films released in the U.S. over a 13- year period. According to the study, 10.6% (12 of 113) of directors of films released in 2019 were female, while 16.8% (19 out of 113) were from a minority racial or ethnic group. In comparison, 2.7% (3 out of 112) of directors of films released in 2007 were female, while 12.5% (14 out of 112) were from a minority racial or ethnic group.

Studies indicate similar trends for showrunners overall, as **Table 1** illustrates.

Table 1. Programs Created by Minority and Female Showrunners by Type of Television Programming Packager

	2016 – 2017 Season		2013 – 2014 Season	
	Minority	Female	Minority	Female
Broadcast Network Programs	9.4% (117)	22.2% (117)	3.3% (120)	21.5% (121)
Cable Network Programs	11.2% (188)	22.7% (189)	7.8% (180)	18.2% (182)
Online	16.5% (182)	34.8% (184)	6% (32)	16% (32)
Total U.S. Population	39.4%	50.8%	38.1%	50.8%

Sources: Ralph J. Bunche Center for African American Studies at UCLA, *2019 Hollywood Diversity Report*, pp. 34-36; *2016 Hollywood Diversity Report*, pp. 23-25. CRS analysis of data from the U.S. Census Bureau for 2017 and 2014.

Notes: Table 1 presents percentage of programs and total number of programs in each season. Individual showrunners may create multiple programs.

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