

February 22, 2018

Attorney General Sessions:

Disney and 21st Century Fox are seeking Justice Department approval for one of the largest media mergers in American history. The proposed consolidation raises obvious 1st Amendment concerns, as a new Disney-Fox company would control a substantial portion of the U.S. entertainment market.

Given Disney's long track record of bullying its competitors, we are deeply concerned that such a merger would also consolidate the two biggest Hollywood studios creating family-friendly content. As DOJ's Antitrust Division weighs the merits of this proposal, we ask that it examine closely the behavior of Disney and Fox toward their competitors specifically with regard to family-friendly entertainment.

In 2005, in the face of vehement opposition from Disney, Congress passed the Family Movie Act (largely codified at 17 U.S.C. § 110(11)). Congress was compelled to offer this protection to American consumers because Hollywood had attempted to drive out of business *every company* that enabled parents to protect their children by filtering mature content families watched in the privacy of their homes. Indeed, Hollywood had refused to make any concessions, even declining to make the cleaner "airline versions" of movies available for private home viewing. This anti-competitive behavior was and is designed to preserve Disney's and Fox's preeminent positions as the leaders in family-friendly entertainment by wiping out companies that might clean their competitors' content, thus allowing their rivals to compete in both the mature and family-friendly market segments simultaneously.

Filtering technology allows parents to remove specific elements of mature content such as violence, strong language, or sexually inappropriate images and sounds from movies and TV shows they watch in private. Disney's (and Fox's) continued efforts to drive the filtering industry out of business is a hot topic among family advocacy groups, whose members especially want to protect their children from messages encouraging sexual objectification.

The Family Movie Act, enacted when DVDs were the prevailing private-viewing technology, escaped legal challenge until recently, when consumer preferences swung dramatically in favor of streamed content and away from the inconvenience and limitations of watching DVDs. At the urging of Disney, Fox, and Warner Bros., the federal courts in the 9th Circuit have now interpreted the Family Movie Act as providing no protection for streaming motion pictures filtered as requested by each viewer.

The studios are instead trying to push Hollywood values into the homes of middle America. In doing so, they have ignored alarms raised by groups such as the Parents Television Council, whose research has shown that the major streaming platforms (such as Amazon, Google, and Netflix) are unsafe for children and lack adequate parental controls.

Importantly, Disney's and Fox's efforts to block filtering have not been limited to the courts but have extended to blatant abuse of their monopoly power. They negotiated a protective bargaining agreement with the Directors Guild of America that obligates all studios subject to that agreement to prevent *any* modification of content—as occurs when a film is filtered.

They have refused to enter into a streaming license agreement with *any* company that allows consumers to watch filtered content, even if that content is filtered at the consumer's specific direction. And their contracts with the streaming services they do license obligate those services to prevent third parties—such as VidAngel, ClearPlay, and others—from filtering their content on modern streaming devices. They have thus unlawfully sought to prevent all competition from companies that filter streamed content.

As you consider the proposed Disney acquisition of 21st Century Fox, we urge you to evaluate the extent to which these companies abide by the spirit and the intent of the Family Movie Act by allowing consumers to use services that inexpensively filter harmful and explicit content from streamed media content they purchase.

Signed,

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