47th ANNUAL
ENTERTAINMENT SYMPOSIUM
2023 HYBRID SERIES

THE DISRUPTERS, THE DISRUPTED, AND THE DISRUPTED DISRUPTERS

DAY 1 SYLLABUS

May 31, 2023

UCLA School of Law
Ziffren Institute for Media, Entertainment, Technology & Sports Law

The Disrupters, the Disrupted, and the Disrupted Disrupters

47th Annual Entertainment Symposium

Wednesday May 31 | Wednesday June 7 | Friday June 9

Keynote Speaker

Bela Bajaria, *Chief Content Officer*, Netflix

For a decade or more, one of the dominant narratives in the entertainment industry has been the disruption of the legacy players and their businesses by the arrival of deep-pocketed, norm-breaking tech companies. But in the last few years, even these giants have weathered stock price plunges, endured labor conflict as the sequel to a global pandemic and faced the transformative potential of artificial intelligence. This year's Entertainment Symposium will explore how these disruptions have led to an ongoing transformation in traditional business models, production methods, and labor markets, while also highlighting key areas of law. Over the course of the program, an array of distinguished executives, entrepreneurs, attorneys and academics will examine how the entertainment industry's major players have adapted (or failed to adapt) to this challenging and rapidly changing business environment and consider what upstarts will thrive – and what legacy players will survive – in the industry's next phase.

Wednesday, May 31, 2023

5:00 - 5:05 pm (PDT)

Dean's Remarks

PRESENTER:

Dean Russell Korobkin

Interim Dean and Richard C. Maxwell Distinguished Professor of Law, UCLA School of Law

5:05 - 5:50 pm (PDT)

After Covid: The Industry Resets

Three and a half years after Covid's arrival, the industry works to find its footing again. This year's opening session sets the stage with the Symposium's annual status report exploring box office recovery, streaming, and digitally driven advertising. This presentation will explore how streaming maturity and higher interest rates are leading to an end of the "golden age of production," previously fueled by capital and emphasis on growth over profits. It will consider the evolving role theatricals can play in support of streaming, along with a study of the increased divergence between box office success and best picture honorees. It will also explore the many varied definitions of new...and not so new...FAST services. And it will consider these as factors contributing to today's extremely difficult labor environment.

PRESENTER:

Tom Wolzien

Chairman, Wolzien LLC

6:00 - 7:00 pm (PDT)

Dearly Departed: A Review of the Legal and Industry Implications of the Entertainment Job Market

With the widely publicized entertainment layoffs and changing job market, attorneys and executives are faced navigating issues including severance, high level employment agreements and compliance with labor laws. The navigation of these issues within the entertainment industry – from recruitment to termination – also requires a nuanced understanding of industry norms. This panel of experts will help deconstruct the legal and market realities of the dearly departed while also considering how bias can impact the process of hiring, firing and retaining a diverse pool of employees.

MODERATOR

Azi Amirteymoori

Owner/Employment Attorney/Senior HR Consultant, 403 Ops Consulting

PANELISTS:

Connie L. Chen

Principal, Jackson Lewis P.C.

Amanda N. Luftman
Managing Partner, Boren, Osher & Luftman, LLP

Joanna Sucherman
Owner, JLS Media

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Wednesday, June 7, 2023

5:00 - 6:00 pm (PDT)

Representing Everyone, Everywhere, All at Once: Entertainment Industry Conflicts and How to Navigate Them

The John H. Mitchell Panel on Ethics and Entertainment

Attorneys that practice in entertainment can be a relatively small and insular group, negotiating with the same people and companies deal after deal. Attorneys may represent multiple parties on the same side of a transaction including the writer, director, showrunner; and/or cast members on a particular film or television project. These types of repeated and intertwined representations often raise ethical issues. This panel will focus on providing guidance to attorneys in the entertainment industry on complying with their obligations pursuant to the California Rules of Professional Conduct, including advice when an attorney is faced with representing two or more clients on a deal, when clients' interests are ostensibly aligned but become adverse, and the pitfalls of representing various clients in repeated transactions with the same party. It will offer advice on how to avoid stepping over the line and when it may be time to withdraw. Finally, it will look at what happens and explore what to do if faced with a malpractice suit or disciplinary proceedings in this area.

MODERATOR:

Scott L. Cummings
Professor of Law and Robert Henigson Professor of Legal Ethics, UCLA School of Law

PANELISTS:

Amy L. Bomse
Shareholder, Rogers Joseph O'Donnell

Jeffrey M. Davidson
Partner, Covington & Burling LLP

Sally C. James
Partner, Greenberg Glusker LLP

6:10 - 7:10 pm (PDT)

New Frontiers: How Artificial Intelligence Presents New Opportunities (and Risks) for the Entertainment Industry

Artificial Intelligence and machine learning has had a swift impact on society and more particularly, the entertainment industry. Increasingly powerful and sophisticated generative AI presents new opportunities for creators, talent, and studios but also numerous risks for these stakeholders. From copyright questions to labor rights, from virtual production spaces to posthumous deepfakes, it is a time of excitement and trepidation. This panel will discuss these issues from a variety of perspectives, staying abreast of the most recent technological and legal developments in this fast-moving space.

MODERATOR:

Nathaniel Bach
Partner, Manatt, Phelps & Phillips, LLP

PANELISTS:

Travis Cloyd
CEO, WorldwideXR, *Global Futurist*, Thunderbird School of Global Management

Ted Schilowitz
Futurist-in-Residence, Paramount

P.J. Shapiro
Founding Partner, Johnson Shapiro Slewett & Kole LLP

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Friday, June 9, 2023

2:00 - 2:05 pm (PDT)

Welcome

2:05 - 2:20 pm (PDT)

Chairpersons Emeriti Recognition: Matthew C. Thompson & Lawrence Ulman

PRESENTERS:

Elsa Ramo
Co-Chair, UCLA Entertainment Symposium Advisory Committee; Managing Partner & Founder, Ramo Law PC

Craig Wagner
Co-Chair, UCLA Entertainment Symposium Advisory Committee; Executive Vice President, Business Affairs & General Counsel, Paradigm Talent Agency

Christa Zofcin Workman
Co-Chair, UCLA Entertainment Symposium Advisory Committee; Co-President & COO, River Road Entertainment

2:20 - 3:10 pm (PDT)

The Price of a Name: Navigating the World of Fictionalized True Stories and Celebrity Endorsements

Film and television are so often based on the stories of actual people and real-life events. A few recent examples include the films TILL and AIR and the limited series DOPESICK, PAM & TOMMY and THE DROPOUT. Studios and production companies frequently go out of their way to acquire an individual's "life rights" or partner with celebrities to tell their stories. What is the price of a celebrity's name, likeness and life rights? Are life rights necessary to tell someone's story? This panel will explore financial and other issues surrounding the production of fictionalized true stories and content inspired by true events. The panel will also examine the world of celebrity endorsements, the inherent risks in talent lending their names to promote products or services, and how to avoid costly mistakes that can damage a celebrity's reputation or brand in the market.

MODERATOR:

Diana Palacios
Partner, Davis Wright Tremaine LLP

PANELISTS:

Lisa Callif
Founding Partner, Donaldson Callif Perez, LLP

Ann Brigid Clark
Shareholder, Greenburg Traurig

Kevin Vick
Partner, Jassy Vick Carolan LLP

3:10 - 3:30 pm (PDT)

Networking Break

3:30 - 4:20 pm (PDT)

Whose IP Is It Anyway? Source Material and Underlying Rights in Film and TV

So many film and television shows today are based on underlying material. Whether a novel, blog, videogame or television format, literary and underlying rights deals are common in nearly every aspect of filmmaking and television production. This panel will examine issues surrounding source material agreements including granting and reserving rights, reversions when things don't go as planned, copyright termination and the management of a deceased author's estate that controls valuable copyright libraries.

MODERATOR:

Matt Belloni
Founding Partner, Puck

PANELISTS:

Michael Grizzi
Executive Vice President, Motion Picture Legal, Paramount Pictures

Michael Sherman
Partner, Reed Smith

Michelle Weiner
Co-Head of Books Department, Creative Artists Agency

4:20 - 4:30 pm (PDT)

On Popcorn and Purpose: When We Do More Than Entertain

PRESENTER:

Douglas Lichtman
Professor of Law and Faculty Director, Ziffren Institute for Media, Entertainment, Technology & Sports Law, UCLA School of Law

4:30 - 4:50 pm (PDT)

Networking Break

4:50 – 5:45 pm (PDT)

Keynote

Bela Bajaria
Chief Content Officer, Netflix

Ken Ziffren
Partner & Co-Founder, Ziffren Brittenham LLP

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Thank you for your 45 years of service on the Entertainment Symposium Advisory Committee.

You were truly one of a kind and will be greatly missed.

ACKNOWLEDGEMENTS

THE SYMPOSIUM ADVISORY COMMITTEE AND EDITORS WOULD LIKE TO THANK THE FOLLOWING VOLUNTEERS FOR THEIR ASSISTANCE IN THE PREPARATION OF THIS SYLLABUS: LINDEN BIERMAN-LYTLE, DERRICK DAVIS, MATTHEW DRESDEN, STEFAN MALKOUN, MICHAEL MOSKOWITZ, NICOLAS JAMPOL AND SAM TURNER. AS WELL AS THE UCLA SCHOOL OF LAW STUDENT VOLUNTEERS. THE SYMPOSIUM ADVISORY COMMITTEE AND THE EDITORS ALSO WOULD LIKE TO EXPRESS THEIR GRATITUDE FOR THE ASSISTANCE AND SUPPORT GIVEN BY THE UCLA SCHOOL OF LAW AND ITS STAFF, AND ESPECIALLY DEAN RUSSELL KOROBKIN, DOUG LICHTMAN (FACULTY DIRECTOR, ZIFFREN INSTITUTE), CINDY X. LIN (EXECUTIVE DIRECTOR, ZIFFREN INSTITUTE), ANNABEL ADAMS (ASSISTANT DEAN OF COMMUNICATIONS), PATRICIA BIGGI (SENIOR DIRECTOR OF DEVELOPMENT, EXTERNAL AFFAIRS), CALLIE BRAZIL (DIRECTOR OF DIGITAL MARKETING & STORYTELLING, COMMUNICATIONS), TRINH BUI (EVENT MANAGER), DAVID CAPPOLI (DIRECTOR OF WEB OPERATIONS), ADAM CROWLEY (SENIOR DIRECTOR OF EXTERNAL RELATIONS, EXTERNAL AFFAIRS), ZACH DAI (STUDENT WORKER, ZIFFREN INSTITUTE), HARLISHA HAMM (SENIOR DIRECTOR, EXTERNAL AFFAIRS, EVENTS & PROGRAMMING), TOBI KAUFMAN (MAJOR GIFT ANALYST), LAUREN KIM (ASSISTANT DEAN OF ADMINISTRATIVE SERVICES & SPECIAL PROJECTS), FRANCISCO LOPEZ (MANAGER OF PUBLICATIONS AND GRAPHICS DESIGN), VINCE MALLARI (ASSISTANT DIRECTOR OF ALUMNI AND DONOR ENGAGEMENT, EXTERNAL AFFAIRS), ANTHONY SKULICK (DIRECTOR OF ANNUAL GIVING, EXTERNAL AFFAIRS), NENA SOSA (DEVELOPMENT ASSISTANT & EXECUTIVE BOARD LIAISON), GEOFFREY WONG (DIRECTOR OF EVENTS), KRISTEN WONG (PROGRAM COORDINATOR, ZIFFREN INSTITUTE) AND EDEN YEH (STUDENT WORKER, ZIFFREN INSTITUTE).

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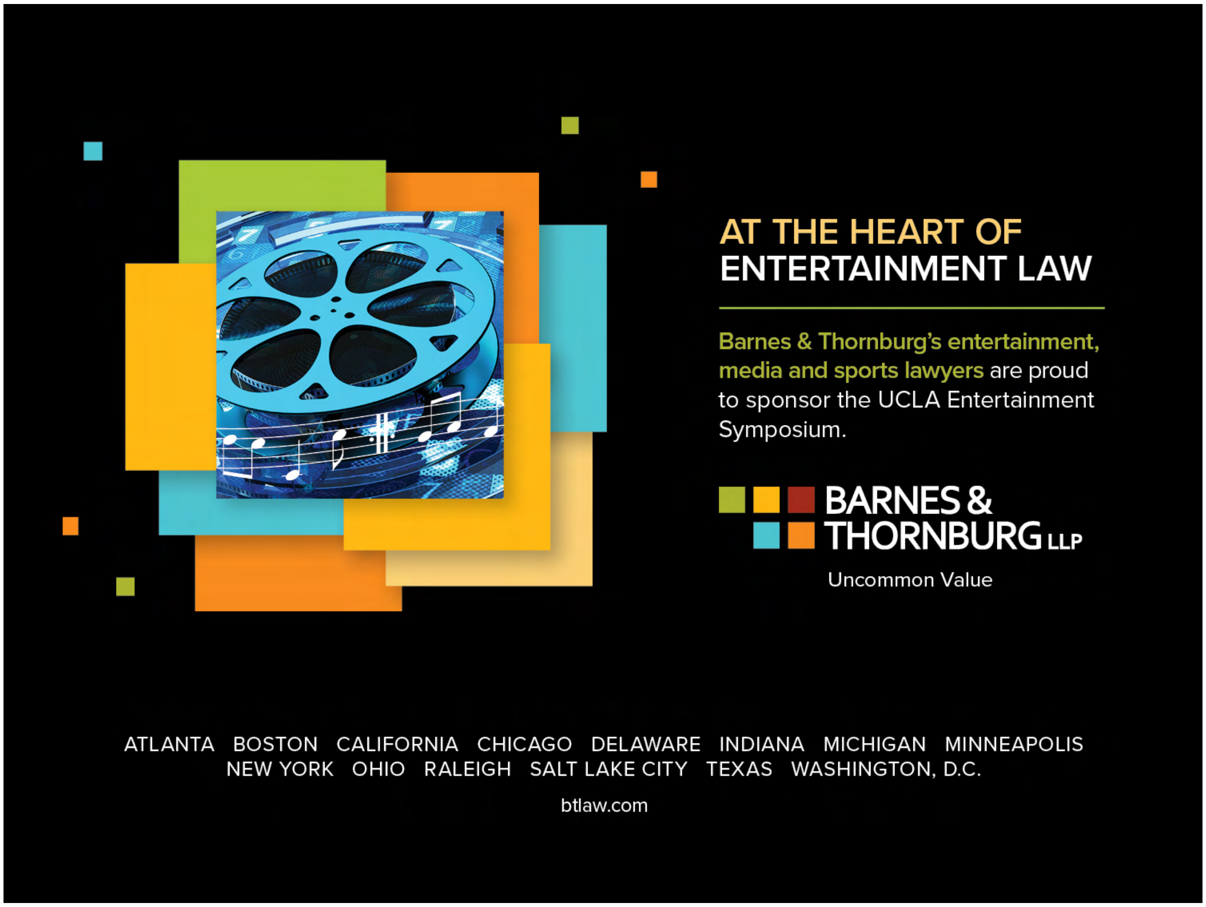

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47th Annual Entertainment Symposium

The Disrupters, the Disrupted, and the Disrupted Disrupters

May 31 | June 7 | June 9

For a decade or more, one of the dominant narratives in the entertainment industry has been the disruption of the legacy players and their businesses by the arrival of deep-pocketed, norm-breaking tech companies. But in the last few years, even these giants have weathered stock price plunges, endured labor conflict as the sequel to a global pandemic and faced the transformative potential of artificial intelligence. This year's Entertainment Symposium will explore how these disruptions have led to an ongoing transformation in traditional business models, production methods, and labor markets, while also highlighting key areas of law. Over the course of the program, an array of distinguished executives, entrepreneurs, attorneys and academics will examine how the entertainment industry's major players have adapted (or failed to adapt) to this challenging and rapidly changing business environment and consider what upstarts will thrive – and what legacy players will survive – in the industry's next phase.

KEYNOTE

BELA BAJARIA

Chief Content Officer, Netflix

Bela Bajaria was named Chief Content Officer in 2023. Bela was named Head of Global TV in 2020, overseeing English language and local language scripted and unscripted series around the world. Previously, she oversaw local language originals, original series across Europe, the Middle East, Türkiye, Africa, India, Asia, and Latin America. In this role, she managed the teams behind shows such as La Casa de Papel (Spain), The Witcher (Poland), Sacred Games (India), Squid Game (Korea), Blood & Water (South Africa), and Sintonia (Brazil). Bela joined Netflix in 2016 to lead Netflix's push into unscripted programming including the critically acclaimed Queer Eye, Nailed It! and Tidying Up with Marie Kondo. She was previously President of Universal Television. Bajaria has been honored by THR's Women in Entertainment list, Variety's LA Women's Impact Report, named one of TIME's 100 Most Influential People of 2022, and named one of Fortune's Most Powerful Women in 2020, 2021 and 2022. She currently serves on the LA Board of Governors for the Paley Center, the Board of LA's Saban Community Clinic and the Board of Trustees for Meridian International Center.

AZI AMIRTEYMOORI

Owner/Employment Attorney/Senior HR Consultant, 403 Ops Consulting

Graduating from Western Michigan University, Cooley Law School, with a Juris Doctor, Azi was initiated to the HR field in both the legal and insurance industries handling primarily workers compensation cases. She then started her professional career in the public sector with the Los Angeles County Fire Department (LACoFD), Employee Relations Division as a Departmental Civil Service Representative. There she appeared before the Los Angeles County Civil Service Commission Board and represented the Department in all employment matters.

Azi expanded her career in the employee and labor relations field by joining the health care industry, where she was an employee relations manager at UCLA Health and later for the City of Hope (COH), advising and consulting her clients on various employment law matters which included investigations, EEO claims and providing training & development to leadership, all while consulting on business and organizational development.

Experienced in both union and non-union environments, Azi's legal background awarded her the opportunity to successfully negotiate numerous labor-management agreements, and represented her clients in a number of EEO matters.

Owner of 403 Ops Consulting, Azi can help any company, of any size remain in compliance with employment law, and provide the legal & HR expertise needed to keep her clients safe.

Azi is an active member of the California Bar Association and is bilingual in English and Farsi.

NATHANIEL BACH

Partner, Manatt, Phelps & Phillips, LLP

A Los Angeles-based Manatt partner, Nathaniel Bach represents prominent clients in the media, entertainment and technology industries, including film and television studios and networks, artists, brands, retailers, music publishers, producers, entrepreneurs and journalists.

Nat's broad practice spans copyright, trademark, right of publicity, First Amendment, contract, fashion, brand-protection, telecommunications, class action, intellectual property, and cutting-edge artificial intelligence, metaverse, digital assets, cryptocurrency and blockchain matters. In addition to his trial work, he maintains an active counseling practice, working with clients in pre-litigation and other risk-management matters. He has also represented clients in the financial industry in global regulatory and governmental investigations, and has played key roles in various other high-profile transactions and disputes.

Nat maintains an active pro bono practice. He successfully represented Dreamers to obtain a first-in-the-nation injunction blocking the Trump administration's unlawful revocation of the DACA program. Nat also represented one of the first Dreamers unlawfully targeted by the Trump administration, obtaining (after arguing) an unprecedented preliminary injunction that barred ICE and USCIS from falsely calling his client a gang member. He has partnered with diverse legal services organizations including the ACLU of Southern California, Public Counsel, Bet Tzedek, Lawyers Without Borders and the Equal Justice Initiative.

MATT BELLONI

Founding Partner, Puck

Matthew Belloni is an experienced content executive and entrepreneur who has successfully managed large teams of creators, serving as the top editor of a leading entertainment publication and appearing frequently as an analyst on television, as well as practicing law as an attorney in the entertainment industry.

Belloni is currently Founding Partner of Puck, a next-generation digital media company covering the power centers of Hollywood, Silicon Valley, Washington and New York. He joined Puck in May 2021 and writes a twice-weekly newsletter called What I'm Hearing about the entertainment industry.

As editorial director of *The Hollywood Reporter* from 2016 to 2020, Belloni was responsible for editorial content and initiatives at the iconic entertainment media outlet. Belloni oversaw all of *THR*'s editorial properties, including its weekly print magazine; THR.com and its digital verticals; on- and off-platform video content, podcasts and live events.

Over the course of 14 years with *THR*, Belloni served in a number of senior editorial positions, managing a staff of 100 journalists and playing a significant role in the outlet's heralded transformation from a trade newspaper into the entertainment industry's flagship media brand. During this time, THR took home many of publishing's most prestigious honors, including a National Magazine Award for General Excellence by the American Society of Magazine Editors and more than 100 National Arts and Entertainment Journalism awards.

Belloni spearheaded *THR*'s move into audio and video with its roundtable series, Close Up With *The Hollywood Reporter*, which was nominated for a Daytime Emmy Award, and Angelyne, a scripted adaptation of a *THR* article. Belloni also appears regularly as an analyst on NBC Nightly News, CBS This Morning, CNN, CNBC, NPR's The Business and The Bill Simmons Podcast.

Before joining *THR*, Belloni was an attorney at an entertainment law firm in Los Angeles, representing actors, filmmakers and media companies in disputes and litigation. He is an expert on the inner workings of the entertainment industry, and taught a course on Entertainment Journalism at the USC Annenberg School.

Belloni graduated from the University of California, Berkeley with a bachelor's degree in political science and obtained a law degree from the University of Southern California School of Law, where he was a member of the *USC Law Review*.

AMY L. BOMSE

Shareholder, Rogers Joseph O'Donnell PC

Ms. Bomse is co-chair of the Attorney Liability and Conduct Practice Group, and a member of the Complex Commercial Litigation Practice Group. She is also adjunct faculty at the Berkeley School of Law where she teaches legal ethics and the law of lawyering. Her practice focuses on the law of lawyering. She represents lawyer, law firms and clients in a wide variety of disputes involving professional negligence, fiduciary duties, breach of contract. She also counsels and advises lawyer and law firms concerning risk management and legal ethics.

LISA CALLIF

Partner, Donaldson Callif Perez, LLP

As a Founding Partner of Donaldson Callif Perez, Lisa Callif is the go-to attorney for all things clearance. Lisa specializes in representing independent producers and production companies in all aspects of content creation, including equity financing, production and distribution with extensive experience in fair use, copyright and personal rights issues. Lisa is the recipient of numerous prestigious awards – among her many accolades are recognition as a *Hollywood Reporter* Power Lawyer and a *Daily Journal* Top Entertainment Lawyer, as well as her recognition by Variety on the Women's Impact Report and the Best and the Brightest list. Lisa cuts through red tape for her clients and works tirelessly to preserve artists' voices so that they can shine a light on stories that otherwise might not be told.

Along with Partner Michael Donaldson, Lisa has co-written three books: *The American Bar Association's Legal Guide to Independent Filmmaking, Clearance and Copyright*, 4th Edition, and *Clearance and Copyright*, 5th Edition. She regularly publishes articles about emerging issues in entertainment and copyright law, and is often quoted in publications such as the *Wall Street Journal*, *Variety*, *Intellectual Property Magazine* and more. Lisa and Michael were featured on the cover of *LA Lawyer Magazine*, for which they co-authored an article about fair use and its application in documentary films.

CONNIE L. CHEN

Principal, Jackson Lewis P.C.

Connie L. Chen is a principal in the Los Angeles, California, office of Jackson Lewis P.C. Connie's practice focuses on representing employers in all types of employment-related litigation in state and federal courts and in arbitration.

Connie has broad experience litigating single plaintiff and class/representative action cases involving wage and hour, discrimination, harassment, retaliation, wrongful termination, and related claims. She assists employers in a variety of industries, including restaurant, hospitality, retail, logistics, manufacturing, construction, and entertainment.

In addition, Connie defends employers against wage and hour claims before the Division of Labor Standards Enforcement (DLSE), and charges of discrimination before the Workers' Compensation Appeals Board (WCAB), the Department of Fair Employment and Housing (DFEH), and the Equal Employment Opportunity Commission (EEOC). She also routinely provides preventative counseling to employers on policies and practices governing day-to-day workplace issues, including wage and hour compliance, employee handbooks, requests for leave, disability accommodation, employee discipline, layoffs, and terminations.

Connie is admitted in California and New York state and federal courts. While attending law school, she served as production editor of the Cardozo Arts and Entertainment Law Journal.

ANN BRIGID CLARK

Shareholder, Greenberg Traurig

Ann Brigid Clark focuses her practice on transactional entertainment, media and intellectual property matters, including the representation of independent motion picture and scripted and unscripted television production companies, digital media companies, financiers, independent producers, showrunners, writers, directors, artists, musicians and on-screen talent in connection with all aspects of development, production, distribution, promotion and exploitation of motion picture, television, new media, print and music projects.

Ann brings a unique and comprehensive perspective to her practice, having begun her career as an entertainment litigator, and, later, as production counsel for motion picture studios. She often acts in the capacity of an outside business affairs advisor for her clients, structuring and negotiating motion picture finance agreements, the acquisition of rights, first look agreements, merchandising, music licensing, and book publishing agreements.

Ann counsels clients on union and guild matters, licensing, intellectual property rights, and clearance issues. She also counsels sports and entertainment clients with respect to Internet, new media and other promotional, marketing and branding activities. In addition, she has deep experience as production counsel for numerous independent motion pictures with budgets ranging from $2 million to $200 million, and for scripted and unscripted television projects including game shows, competition-based shows and dramatic series, having drafted and negotiated hundreds of agreements with above and below-the-line talent, financiers, bond companies, unions and guilds.

TRAVIS CLOYD

CEO, WorldwideXR, *Global Futurist*, Thunderbird School of Global Management

Travis Cloyd is a seasoned leader and CEO of WorldwideXR (WXR), a cutting-edge technology company based in Beverly Hills. He is also the VP and CTO of CMG (Celebrity Management Group) which for the last 42 years has represented hundreds of historical iconic estates such as UCLA legends Jackie Robinson and James Dean.

He has a proven track record of innovation, entrepreneurship, and strategic management, with a focus on creating and financing immersive state-of-the-art technology companies. As an award-winning producer, XR visionary, and Metaverse educator, he has operated a portfolio of trendsetting businesses, positioning himself as a leading expert in the field. Recently recognized by Forbes as a top 'Next Entrepreneur,' he has also served as the Arts, Music, and Entertainment Ambassador to the GBBC (Global Blockchain Business Council). Plus, a member of the PGA (Producers Guild of America) and the new media council, serving on the education and international committees.

Cloyd is also the Global Futurist at Thunderbird School of Global Business Management, the #1 Masters in Management program in the world, and Senior Advisor to the Dean and Professor of Practice on Global Creative Industries. He was recently awarded the FIU Medallion, the highest honor at Florida International University, for his outstanding contributions to the institution.

Cloyd has produced next-level digital content for government agencies, professional sports leagues, major international studios, iconic brands, legendary actors, global musicians, top athletes, and historical figures throughout his career. He has produced feature films, virtual reality experiences, augmented reality content, and NFT collection drops, and continues to break new ground within the entertainment industry, creating and protecting virtual human IP content based on historical figures for all facets of the diverse XR, Metaverse, and AI ecosystem.

SCOTT L. CUMMINGS

Professor of Law and Robert Henigson Professor of Legal Ethics, UCLA School of Law

Scott L. Cummings is Robert Henigson Professor of Legal Ethics at the UCLA School of Law, where he teaches and writes about the legal profession, legal ethics, access to justice, and local government law. A recipient of the UCLA Distinguished Teaching Award, Professor Cummings is the founding faculty director of the UCLA Program on Legal Ethics and the Profession, which promotes empirical research and innovative programming on the challenges facing lawyers in the twenty-first century, and a long-time member of the UCLA David J. Epstein Program in Public Interest Law and Policy. In 2021, Professor Cummings was selected as the Fulbright Distinguished Chair at the European University Institute and a fellow at the Stanford Center for the Advanced Study in the Behavioral Sciences to study the role of lawyers in strengthening the rule of law. He was awarded a 2023 Guggenheim Fellowship to study the role of lawyers in democratic backsliding.

JEFFREY M. DAVIDSON

Partner, Covington & Burling

Jeffrey Davidson is a trial and appellate lawyer focusing on high-stakes commercial matters. Clients have called on him to deliver results in some of their most important disputes. Jeff also serves as a general counsel to Covington and advises on professional responsibility issues

In a recent trade secret arbitration with $1.8 billion at stake, he obtained a complete defense win on behalf of a major pharmaceutical company. In a recent insurance coverage matter on behalf of a leading corporation, he obtained a $25 million recovery after a contested arbitration hearing. In a third recent matter, he obtained summary adjudication against four insurance companies in a $100-million coverage dispute. Jeff also litigated one of the foundational cases on the foreign application of U.S. antitrust law, obtaining a ruling eliminating a $3.5 billion claim shortly before trial.

Jeff also led a cross-office Covington team representing the University of California in its landmark challenge to the government's rescission of the Deferred Action for Childhood Arrivals (DACA) program, obtained a nationwide injunction reinstating DACA, and successfully defended the injunction on appeal. In Regents of the University of California v. Department of Homeland Security, the Supreme Court agreed that the rescission was improper and set it aside.

MICHAEL GRIZZI

Executive Vice President, Motion Picture Legal, Paramount Pictures

Michael Grizzi is Executive Vice President, Motion Picture Legal, Paramount Pictures, where he leads the team of attorneys in the negotiation and documentation of high-level talent employment, rights acquisition, term deal and related agreements for Paramount's live action and animated features, a role he has held since 2015. Michael received a Bachelor of Science in Speech from Northwestern University, and is an alum of the UCLA School of Law, where he was an editor of the *UCLA Law Review* and graduated Order of the Coif. Following law school, he practiced with Irell and Manella in Los Angeles, where he handled corporate legal matters for a number of public companies. He also served as Vice President of Business and Legal Affairs for New Line Cinema.

Prior to his law career, Michael worked in television production, including on the series "Cheers". He is a lecturer in law at the USC Gould School of Law, where he has taught various Entertainment Law classes since 2008. His professional highlight as an attorney working in features would have to be a toss-up between handling the legal work for the film "Snakes On A Plane" and for the "Jackass" film franchise.

SALLY C. JAMES

Partner, Greenberg Glusker

Sally James, a partner in Greenberg Glusker's Entertainment and Corporate Departments, handles high-level corporate financing transactions alongside deals for A-list talent.

She represents actors, writers, and producers, as well as production companies, talent managers, business managers, and investors. She handles film finance and M&A transactions for established brands and also negotiates deals for entertainment start-ups.

Among her other deals, Sally has represented Chris Hemsworth (HighPost Capital's acquisition of Centr); The Russo Brothers ("The Electric State"); Scriber (launch and talent deals); Ubisoft Entertainment (Netflix's "Assassin's Creed" and "Beyond Good and Evil"); Alice Braga ("Hypnotic," "Dark Matter"); Adewale Akinnuoye-Agbaje ("His Dark Materials," "Our Man From Jersey"); and Silent House Productions ("Carol Burnett: 90 Years of Laughter + Love").

Sally has been recognized in *Variety*'s annual "Dealmakers Impact Report" and "Legal Impact Report," National Law Journal's "Sports and Entertainment Trailblazers list, *Los Angeles Business Journal*'s "Women of Influence: Attorneys" list, The Best Lawyers in America in the practice area of Entertainment Law – Motion Pictures and Television, and Southern California Super Lawyers Rising Stars.

She received her J.D. fromUniversity of California, Los Angeles School of Law, Order of the Coif, and her B.A., *summa cum laude*, from the University of Richmond with a major in Theatre Arts.

RUSSELL KOROBKIN

Interim Dean and Richard C. Maxwell Distinguished Professor of Law, UCLA School of Law

Russell Korobkin is the Interim Dean and Richard C. Maxwell Distinguished Professor of Law at the UCLA School of Law. He has been a member of the UCLA Law faculty since 2001, and he served as Vice Dean for Academic and Institutional Affairs from 2015-2019 and Vice Dean for Graduate and Professional Education from 2019-2022. He is the author *The Five Tool Negotiator: The Complete Guide to Bargaining Success* (Liveright, 2021), *Stem Cell Century: Law and Policy for a Breakthrough Technology* (Yale, 2008), two textbooks -- *Negotiation Theory and Strategy* (Aspen, 3d ed., 2014) and *K: A Common Law Approach to Contracts* (Aspen 3d. ed., 2022) -- and more than 50 journal articles on behavioral law and economics, negotiation, contracts, and health care law. A former San Francisco management consultant and Washington D.C. lawyer, Professor Korobkin earned his undergraduate and law degrees from Stanford University. In addition to UCLA, he has taught full time at the University of Illinois, University of Texas, and Harvard University Law Schools, and he has taught intensive negotiation courses to undergraduates, MBA students and law students at 10 universities on four continents.

DOUGLAS LICHTMAN

Professor of Law and Faculty Director of Ziffren Institute for Media, Entertainment, Technology & Sports Law, UCLA School of Law

Doug Lichtman focuses his teaching and research on topics relating to law and technology. His areas of specialty include patent and copyright law, telecommunications regulation, and information strategy and economics.

Professor Lichtman joined the faculty at UCLA School of Law in 2007 after a tenured teaching career at the University of Chicago. His work has been featured in numerous journals including the *Journal of Law & Economics*, the *Journal of Legal Studies*, the *Yale Law Journal*, and the *Harvard Business Review*. He co-authored *Telecommunications Law and Policy*, a textbook that investigates the federal regulatory regime applicable to broadcast television, cable television, radio, telephony, and the Internet. He also regularly writes in the popular press, with recent pieces appearing in the Los Angeles Times and the policy magazine Regulation.

AMANDA N. LUFTMAN

Partner, Boren, Osher & Luftman, LLP

Amanda N. Luftman represents both employers and employees on a wide range of labor and employment issues. Because Amanda is familiar with and continuously argues opposing perspectives of the same issues, she brings unique value to her clients, whether they are prosecuting or defending employment-related claims.

Amanda's philosophy is "knowledge is power". She routinely educates and counsels employers regarding best practices to comply with California's ever-changing landscape of labor and employment law. She is passionate about providing the most practical business solutions for her clients to achieve compliance with current laws – because Amanda believes in, and actually likes, compliance. Amanda, together with the BOL Employment Team, also drafts and negotiates employment agreements, company policies, and employee handbooks for employers.

When companies fail to "get it right", Amanda represents former employees in their efforts to achieve more favorable separation terms and current employees to assist in the resolution of their differences with their employers. Amanda strives to achieve a speedy and amicable resolution for her clients but will not hesitate to file a lawsuit when necessary. Amanda also assists employees in their negotiations for new employment; reviews and revises employment agreements; and negotiates best employment terms.

Following the first few years of her legal career with Robins, Kaplan, Miller & Ciresi, LLP in Los Angeles, Amanda accepted a position as a Senior Human Resources Consultant with The Walt Disney Company. She thoroughly enjoyed serving in a Human Resources role, as it gave her a very different perspective than her usual viewpoint as the attorney. Ultimately, she returned to her first love, the practice of law. At BOL, Amanda practices what she preaches, as the Managing Partner of the firm.

Ms. Luftman is a committed foodie who loves to stay abreast of the latest additions to the Los Angeles restaurant scene: good food and good live theater makes for a perfect outing. She also enjoys traveling and spending time with family, friends, and yes, her clients, too.

DIANA PALACIOS

Partner, Davis Wright Tremaine LLP

Diana Palacios focuses her practice on media, First Amendment, and intellectual property litigation and counseling. In her practice, she works on a range of matters, including defamation, records and courtroom access, privacy, right-of-publicity, false advertising, copyright, and trademark issues. She also provides pre-publication and pre-broadcast counseling in both English and Spanish for studios, television networks, production companies, and newspapers.

In her litigation practice, Diana defends intellectual property and content-tort claims in state and federal courts, and has experience resolving cases through mediation and arbitration.

TED SCHILOWITZ

Futurist-in-Residence, Paramount

Ted works across leadership and tech teams at Paramount Global, including CBS, CBS Sports, Paramount Pictures, Paramount Plus, MTV, Nickelodeon, BET, PlutoTV and Comedy Central, exploring emerging tech for new forms of entertainment.

Prior to joining Paramount, Ted was the Futurist at 20th Century Fox, where he worked on the evolving art, science and technology of advanced interactive visual storytelling.

Ted was part of the founding product development team at Red Digital Cinema as the company's first employee. Red cameras have won both scientific/technical Oscar and Emmy. Many of the world's biggest movies and TV shows are shot with these ultra high resolution digital movie cameras.

Ted is co-founder of the G-Tech product line of advanced hard drive storage products, the leading brand in that industry. They are implemented worldwide at the highest levels on cinema, television, sports and news production.

Ted has been featured in publications such as *Wired*, *Fast Company*, *The New York Times*, *Variety*, *Hollywood Reporter* and *The Wall Street Journal*. In 2019, Ted was honored at the Variety Hall of Fame event with the Variety Innovation Award.

P.J. SHAPIRO

Partner, Johnson Shapiro Slewett & Kole LLP

P.J. Shapiro is a Founding Partner of Johnson Shapiro Slewett & Kole LLP. He has an extensive film and television practice, representing some of today's most successful on-camera talent as well as many acclaimed film and television producers, directors, writers and content creators. He also represents some of the most celebrated artists in the world of music through a myriad of ventures and business transactions.

P.J. has structured and negotiated groundbreaking transactions in the media and entertainment industries – resulting in both lucrative financial benefits and unprecedented creative control for his clients. He has worked with clients to identify and exploit important and novel ancillary revenue sources, generating lucrative publishing, endorsement, licensing and merchandising deals. P.J. has also helped his clients establish significant commercial ventures across the beauty, apparel, fragrance, automotive, technology and wellness industries. P.J. supports his clients' civic and philanthropic passions by assisting in the creation and execution of foundations devoted to causes including domestic violence education and prevention, mental health advocacy and cancer awareness and treatment.

MICHAEL S. SHERMAN

Partner, Reed Smith LLP

Michael is a partner in Reed Smith's Entertainment and Media Industry Group and leads the firm's motion picture, television and publishing industry group. His practice emphasizes high level transactions focused on these segments of the entertainment and media industries including representation of a diverse group of individual and institutional clients across the motion picture, television, publishing, digital, music, theatre, sports and other related industries.

JOANNA SUCHERMAN

Owner, JLS Media

As a highly visible and seasoned media executive with diverse experience, Joanna Sucherman has simultaneously excelled in both the creative and business ends of the entertainment world. She has spent her career analyzing consumer and industry trends and is respected by clients as both a strategic and innovative thinker.

Sucherman is the Owner of JLS Media, a full-service media consulting agency, where she specializes in high-end executive placement and executive coaching. Through the explosive growth of JLS Media, Joanna has placed senior executives in multiple sectors, specifically focusing on entertainment. Her clients have included global media companies, including Disney, FOX, A&E, Lionsgate, Starz, Blumhouse, NBC, Fremantle, BBC Studios, MarVista Entertainment, 72andSunny, ITV Studios, HRTS, and River Road Entertainment.

Prior to launching her own company, Joanna was an SVP at Sucherman Group, a leading adviser for media organizations. While there, Joanna worked closely with companies on organizational design and development of programming functions within broadcast and cable news organizations.

Prior to joining SG, Joanna spent over a decade in the television broadcast and cable industry, producing a variety of cable television shows. Most notably, Joanna served as Executive Producer on several series at E! Entertainment.

Joanna launched JLS Media in 2015 with the goal of creating a synergistic company that offers both executive placement and executive coaching. She feels that coaching allows her to work closely with her clients, utilizing experience from her previous roles, thus helping clients to shape their careers and focus on long term goals.

Sucherman and her husband Scott Saltzburg live in Los Angeles.

KEVIN VICK

Partner, Jassy Vick Carolan LLP

Kevin Vick is a litigator with more than two decades' experience representing clients in the entertainment, media, technology, sports fashion and other industries. His trial and arbitration experience includes successfully defending motion picture companies and talent agencies in jury and bench trials. Kevin also has represented Broadway producers and sports agencies in arbitration on both the plaintiff's and defense sides. His appellate experience includes successful representations of major internet, media and entertainment clients, as well as individuals. He litigates defamation, copyright, trademark, Section 230, publicity rights, idea submission, invasion of privacy, and anti-SLAPP matters, as well as business disputes involving breach of contract, trade secrets and partnerships. Kevin graduated with honors from Stanford University and Harvard Law School, and clerked for the Honorable Florence-Marie Cooper of the United States District Court for the Central District of California. He has been named a Super Lawyer in Intellectual Property Litigation by *Super Lawyers* magazine since 2015. Kevin speaks Spanish, having lived and worked in Barcelona, Spain for three years between college and law school, and has represented Spanish-language media clients in litigation.

MICHELLE WEINER

Co-Head of Books Department, Creative Artists Agency

Michelle Weiner is Co-Head of the Books Department at leading entertainment and sports agency Creative Artists Agency (CAA). Weiner is based in the Los Angeles office and represents many of the world's leading authors, writers, journalists, bloggers, and podcast creators, including Jenny Han (TO ALL THE BOYS I'VE LOVED), Hillary Jordan (MUDBOUND), Nathan Hill (THE NIX), Garrard Conley (BOY ERASED), Stephanie Danler (SWEETBITTER), Matthew Desmond (EVICTED), Jeffrey Eugenides (MIDDLESEX, VIRGIN SUICIDES, THE MARRIAGE PLOT), Ken Armstrong and T. Christian Miller (ProPublica's AN UNBELIEVEABLE STORY OF RAPE), Maggie Shipstead (SEATING ARRANGEMENTS, ASTONISH ME, GREAT CIRCLE), Jennifer Weiner, Nana Kwame Adjei-Brenyah (FRIDAY BLACK), Flynn Berry (NORTHERN SPY), Ann Napolitano (DEAR EDWARD), and Kathleen Barber (TRUTH BE TOLD), among others.

Weiner began her career as an attorney at Hamrick and Evans. She joined CAA in 2006.

Weiner graduated from Colgate University with a Bachelor of Arts in English and Political Science, and the USC Gould School of Law with a J.D.

TOM WOLZIEN

Chairman, Wolzien LLC

Tom Wolzien is an inventor, analyst, and media executive. He created Wolzien LLC In 2005, after 14 years as a high profile sell-side analyst covering large publicly traded media and cable companies for the Wall Street research firm of Sanford C. Bernstein & Co, more than 15 years at NBC, and early years at local television stations and running an Army combat photography operation in Vietnam.

Since 2005 Wolzien has served as a consultant to senior managers at the largest media and technical organizations, including Warner Bros./Discovery (separately and together), Microsoft, CBS, Sony, and The Directors Guild of America (DGA). At the DGA Wolzien provided industrial research for the Guild's "Forecast Project", setting research groundwork used in four negotiating cycles.

Wolzien holds more than two dozen patents in 16 countries, initially for methods linking mass media and the web ("go" or click to buy button on many cable remotes), and more recently covering management systems to put large numbers of IP video (smartphone) callers on television, and for caller management use in other industries. The global patent portfolio is managed by wholly owned Video River Group LLC.

During 14 years at Bernstein, Wolzien was internationally recognized for ground breaking research on the impact of industrial trends on media and communications companies. In 1995 he was the first on Wall Street to identify the potential of the cable modem and, later, cable telephony. In 2004 he was first to identify the potential what he then called the "internet bypass" or streaming delivery of entertainment video to consumers via broadband connection--the basis of all streaming video content today.

From 1976 to 1991 Wolzien was at NBC in news production and executive management. His positions ranged from White House field producer to an executive producer of scheduled and prime time programs. Beyond presidential campaigns, he led coverage of the nuclear incident at Three Mile Island and historic Began-Sadat Mideast visits. He helped start CNBC as Senior Vice President of Cable and Business Development.

KEN ZIFFREN

Partner & Co-Founder, Ziffren Brittenham LLP

Ken Ziffren is Co-Founder and Partner of Ziffren Brittenham LLP (1979-present), and was a partner at the predecessor law firm of Ziffren & Ziffren from 1966 to 1978.

As part of an extensive transactional practice in the entertainment and media industries, Ziffren served as a neutral mediator in resolving the Writer's Guild strike in 1988, acted on behalf of Starz in establishing a premium pay television service in 1994, and served as special outside counsel to the NFL in negotiating contracts with the networks. He also provided counsel to Microsoft in forming MSNBC in 1996, and negotiated for DirecTV with studios on domestic and international pay-per-view agreements. In 2003, 2011 and 2018, Ziffren represented the TV Academy in negotiating the deals for the Emmys to be telecast over the four Networks, and in 2016 he represented the Motion Picture Academy (AMPAS) in implementing a long term extension deal with ABC.

Ziffren is a lecturer and writer on media and entertainment law. He is an Adjunct Professor at UCLA School of Law, teaching seminar courses in Network Television (1998-2004), Motion Picture Distribution (1998-present), and Special Television Issues SVOD/AVOD (2018-present). He also gives an annual presentation to Beverly Hills Bar Association, speaking every year since 2008.

Since 2014, Ziffren has been the "Film Czar" (Senior Advisor to the L.A. Mayor's Office of Motion Picture and TV Production) for the Mayor of Los Angeles, previously serving in this role with Mayor Eric Garcetti and currently serving in this role with Mayor Karen Bass. He is the Founder of the Ziffren Institute for Media, Entertainment, Technology & Sports Law at UCLA School of Law (established in 2016), and is a member of UCLA School of Law's Advisory Board, of which he formerly served as Chairman. He is also a member of the UCLA Campaign Cabinet.

Ziffren obtained his B.A. from Northwestern University, and J.D. from UCLA School of Law (Order of the Coif), where he was editor in chief of the *UCLA Law Review*. After graduation, he clerked for U.S. Supreme Court Chief Justice Earl Warren.

WEDNESDAY, MAY 31, 2023
5:05 - 5:50pm PDT

After Covid: The Industry Resets

Presenter:
Tom Wolzien
Chairman, Wolzien LLC

TABLE OF CONTENTS

AFTER COVID: THE INDUSTRY RESETS

After Covid: The Industry Resets

Outline of Topics/Issues

Three and a half years after Covid's arrival, the industry works to find its footing again. This year's opening session sets the stage with the Symposium's annual status report exploring box office recovery, streaming, and digitally driven advertising. This presentation will explore how streaming maturity and higher interest rates are leading to an end of the "golden age of production," previously fueled by capital and emphasis on growth over profits. It will consider the evolving role theatricals can play in support of streaming, along with a study of the increased divergence between box office success and best picture honorees. It will also explore the many varied definitions of new…and not so new…FAST services. And it will consider these as factors contributing to today's extremely difficult labor environment.

AFTER COVID

THE INDUSTRY RESETS

Tom Wolzien

2023 Entertainment Bar Symposium

Ziffren Institute

UCLA Law

First Streamed May 31, 2023

(Adapted from the Video Presentation)

Hi everyone, the Status Report is back here for the…I can't believe it…fourth year on video. Thanks as always for the return invite to UCLA Law and the Ziffren Institute for Media, Entertainment, Technology & Sports. Well, a bit of covid still here and there, but this is now the AC era—after covid. Of course there was DC…during covid…and before that BC…before covid aka the before times. We'll talk about BC, DC, but mostly AC as the world resets.

For this industry, part of that reset is the evolving and very difficult labor negotiating cycle which I'll touch on at the end of our 45 minutes or so. However, in reality just almost everything we'll talk about today is foundational in some way for the current labor issues.

Our agenda today has no time to dwell on the past, but we will use history and our annual Status Report as platforms …perhaps lessons… for the reset. We'll note the wide recognition this past year that theatricals, are important marketing vehicles for streaming. Think about that 2020 release date on this Top Gun trailer and what a waste it would have been had Paramount stuck it on streaming…like AT&T did with Tenant.

On streaming, we'll explore the robust annual growth that hit a radical deceleration in the just reported first quarter. We'll look at the end to the golden age of production—aka capital funded production with little reliance on consumer revenues, and the job challenges caused by Fed rate hikes. We'll see the continued decline in cable homes, even as connected homes continue to rise and FAST tries to make a splash. Actually we'll try to figure out what the hell FAST is. Not easy to tell.

As part of acknowledging the stunning growth of global connectivity, we'll pay a special tribute to those who have wired the world…and in some really unexpected places we found. And now that awards season is over, we'll explore the evolution in numbers for winners of best picture over the years and show their divergence from box office results.

Four quick items before we start. Most importantly, I want to acknowledge that you are far more expert in individual areas of this industry than I, so please take this presentation as an overview from a 50,000 foot level.

Second, here are my normal disclosures because I think you have a right to know where my family and businesses may be conflicted. My IRA has Disney. Valerie continues to get e-royalties from her 24 mysteries. And after a decade of development we sold our smartphone remote Video Call Center Venture, but kept the intellectual property, Our new, wholly owned Video River Group LLC is now seeing royalties from dozens of patents in 17 countries and other technologies we developed over the past decade doing the smartphone remote work.

Third, except where otherwise identified all research for this educational presentation is from or derived from publicly available sources….lots of them, and... Fourth, except for video shot by Valerie and me, all clips in our review today were recorded from the web which means -- well, some may look like clips recorded from the web, just so you know.

THEATRICAL DISTRIUBTION

Status report--Theatrical distribution first not because it is the most important, but because its a building block to get to the bigger event--streaming. And also because, as I noted last year, theatrical releases establish a price and value floor for streaming—something that appears to be adopted as both Amazon and Netflix announce broader theatrical slates, following similar start-them-in-the-theatres realizations as both Disney and WBD backed off covid-era release approaches.

Last year… and this year so far…big money on big screens once again means some big audiences and big revenue. Sequels and franchises drove the business, led by Top Gun in 2022 and now Super Mario Brothers and Avatar so far in 23. Last year the Black Panther sequal was in second place. In fact every one of the top ten movies in 2022 was a sequel or franchise, and those ten films delivered about half of 2022's still low, but recovering total box of $7.4 billion. That's 64% better than 2021's $4.5 billion, and more than three times the 2020 disaster of $2.1 billion, all of which came before the shut down in March. [1]

[1] All box office statistics and derived analysis based on boxofficemojo.com data.

The box office is coming back, but still has a ways to go to reach 2019's 11.4, or 2018's record $12 billion. As a reference, you had to go back to 1999…and Episode 1 of Star Wars to match the 2022 box office. First quarter of 2023 had the biggest box office gain in any of the 40 pre-covid years before, up 28% over 2022. And thanks to Super Mario Brothers, that was expanding even more by Easter weekend.

As many of you know, I'm curious if sometimes you can see the trends right in front of you, we did again in what's become an annual Easter afternoon video trek for this report to Lyceum multiplex in tiny Red Hook, New York, up the river from our Rhinecliff place. You may recall the Lyceum lot was nearly empty when we first shot it two Easters ago… a bit fuller last year, pretty closely reflecting the starting comeback. Well, this year the cars in the lot had double last year's .   And in fact that matched the numbers. Easter Weekend 2023 at $231m was about double 2022—just like the Lyceum parking lot. And 2022 Easter Weekend box was three times 2021.

And while the year may not quite get back to normal, by mid May, year to date numbers continued to show progress, up 29% from last year, but still a quarter below 2019.

On a global basis last year, first place Avatar was $800 million ahead of Top Gun, but again the top ten were all sequels or franchises. All were western made, except number nine… and that was the China made sequel to 2021's number two grossing global film, the heroic (well, heroic if you happen to be Chinese) story of the Korean war battle of Chengin Reservoir… known in the States as the ugly loss and retreat from Frozen Chosen. That sequel called Water Gate Bridge is the story of trying to blow up a crossing crucial to the American's escape. This one grossed over $600 million US dollars…virtually all in China….and I thought once again delivered some interesting political insights. (Massed soldiers chanting "long live the new China.")

Twenty seventh in the US at $75 million, and 37th globally was Everything Everywhere All At Once, which in the honors business, swept about everything, everywhere.   Considering that Top Gun's US revenue was ten times that of Everything Everywhere, we'll be looking at the evolving negative relationship of box office, screens, and best picture later in this session.

Speaking of screens, while in LA for the awards season, we went back to check out the old Cinerama Dome on Sunset for the third year in a row, to see if there was any progress since it went bankrupt and closed. There had been reports a year ago that ArcLight got a one year liquor license and would reopen under a new name. With reports the 14 screen complex would reopen last year, then this year, now Deadline reports its 2024. By the way, the liquor license is reportedly expiring May 31st… that would be today if you're watching in real time.

All that got me to wondering just how bad Covid was for theatre screens… how many were shut down. Year end numbers from the National Association of Theatre Owners—that different NATO—gave us just about 39,000 screens at the end of 2023, versus 41,172 pre covid in 2019[2]. That decline of only 5% was surprisingly small, at least to me, in what appeared to be a decimated industry. Guess it doesn't cost much when you turn off the lights and send the employees home…or in some cases get bankruptcy protection. Strangely, the closing percentage wasn't much difference with the country's remaining drive-ins, which you'd think would have done well during covid. The remaining drive ins also lost about the same 5% during covid, now at 533, a quarter of number back in 1987.

Now here's another followup. This Hyde Park New York drive-in that I showed you in our 2020 first video session has been up for lease this spring. Turns out the owner is none other than the United States Government, and the National Park Service has been looking for a new operator for the single screen located between the presidential library at FDR's family home on the Hudson river side, and Eleanor Roosevelt's ValKill cottage just east of the drive in.

DIGITAL HOME VIDEO

On the digital home video side, the numbers continued up last year according to the industry's Digital Entertainment Group, pushing 37 billion in '22. It's a long ways from the dark days of a decade ago when DVDs were collapsing, and before digital took off. By the way, now only 2 billion comes from sales and rentals of legacy DVDs, explaining Netflix's recent decision to get out of the DVD rental business….and all those red envelopes. Of course, the bulk of revenues come from subscription streaming SVOD—30 of the 37 billion, up 17% in 2022.[3]

Fair to say, I think, the industry has weathered two storms this century---the death of DVDs and covid because when you put the business together—theatrical spending plus digital home consumption—you get an all time record of $43 billion dollars in direct domestic consumer content spending last year.

[2] https://www.natoonline.org/data/us-movie-screens/
[3] https://www.degonline.org/industry-data/

But the weight of big numbers means all great growth eventually must come to an end, and perhaps we are beginning to see that with SVOD, at least in the US where 82%[4] of the 130 million households—106 million are now streaming content—so there are just not that many left. And ultimately the industry is limited by some combination of how many services a household really needs… and how much a family can afford.

What they can afford, though, are smartphones, 307 million[5] of them used by 85% [6]of adults and generating nearly half the web's traffic. And the vast majority are used to stream content, but not surprisingly more by younger demos, but be careful how you define younger. According to work by Samba[7], younger means starting with GenX or basically people under 60.

VIEWING EVOLUTION

Nielsen data shows just how this is playing out across three general viewing devices. Conventional TVs, including delayed viewing, internet connected TVs which let you stream in addition to watching conventional TV, and internet devices including pads, smartphones, and computers. Over the course of last year overall video consumption climbed 3% from the first through the fourth quarter, but viewing on conventional TVs dropped by 9%, or 18 minutes per day per household. That viewing went to a combination of the connected TVs and the web devices. The connected TVs picked up 10 minutes—split between TV and streaming…and the internet devices picked up 24 minutes—two thirds on smartphones.[8]

So the onslaught on conventional broadcast and cable is coming from two directions at the same time. First, internet connected TVs are sucking away the couch viewers. And second, smartphone video consumers, mostly younger demos, are shifting and adding viewing outside traditional locations. This is certainly bad for conventional TV… and you'd think would be great for streaming..but maybe not quite as much as you'd think.

SUBSCRIPTION VIDEO ON DEMAND

We've got all the earnings reports now from the quarter ending March 31st—and they are good for the past year, but very tough for the quarter.

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[4] MoffatNathanson/HarrisX, All Things Streaming: Q1 Report
[5] https://www.zippia.com/advice/us-smartphone-industry-statistics/#:~:text=There%20are%20307%20million%20smartphone,than%20116%20million%20iPhone%20users.
[6] https://www.pewresearch.org/internet/fact-sheet/mobile/
[7] Samba.tv State of Viewership 2H2022
[8] https://www.nielsen.com/insights/2023/as-media-options-proliferate-quality-audience-data-is-the-key-to-delivering-marketing-impact/

Past year first Globally, The five big US owned subscription video on demand companies that provide numbers reported nearly 13% growth over March a year ago, now more than 640 million subscribers.[9] Newer services in the US and International drove the growth.

Netfix lost 200 thousand subs since March a year ago, down two tenths of a percent to 74,4 million. It did much better globally, up 7% from last year at 158 million. And that was driven by huge, 17% year over year growth in Asia Pacific. Overall, Netflix now has 232 million paying subscribers world wide, down to 5% growth, again thanks to AsiaPacific.

Disney results can be cut multiple ways. Globally the greater Disney was up 12.7% to 231 million subs including ESPN, Hulu and Hotstar in India. Disney plus globally was up 20% to 106 million paid subs, up 36% internationally, and adding 4% Domestically. In the US, all three services were up 7%. And I've got to acknowledge speculation on what happens to Hulu with Comcast's January put comes due for it's third to Disney. Earlier this month Comcast CEO Brian Roberts indicated its all about price. Surprise.

Warner Bros. Discovery's merger coming into its own with the new "Max" repositioning of HBOMAX plus a separate Discovery Plus… Coming out of the quarter WBD reported the 4% paid sub growth in the US to 55 million. WBD's international growth was a robust 14% to 42 million. The combined platforms had just under 100 million subs, up a solid 8%. Thank you "The Last of Us".

Thanks to the Yellowstone spinoffs 1923 and 1883, Paramount Global's platform showed great 50% growth to a respectable 60 million at the end of March.

Peacock from NBCU is climbing, but still way behind with 22 million paying subs, but great growth of 69% from last year's low base.

Then there are the non-reporting companies, the unknowables—Apple and Amazon Prime. We did find quite un-precise guesses for Apple plus on the web: pick you point on a continuum of somewhere between less than 20 million to over 40 million paying subs. Prime continues to befuddle, because nobody but Amazon knows how many free shipping customers consume video.   The only hint was two years ago when a company investor relations person suggested 175 million[10] of 200 million prime subs watched video…world wide.[11]

BUT, that was year over year. When you look at the just reported first quarter of 2023, the growth rates are radically…and disconcertingly different. Domestically every one of the

[9] Reporting company reports for quarter ending March 31, 2023
[10] https://www.fool.com/investing/2021/05/06/people-are-finally-paying-attention-to-amazon-prim/
[11] Alternative views at https://www.enterpriseappstoday.com/stats/amazon-prime-video-statistics.html
And https://www.semrush.com/website/primevideo.com/overview/

reporting companies saw radically reduced growth rates from Q4 to Q1, except Netflix, which was pretty much flat.

Globally, it was the same story, though Disney's decision not to renew cricket in India for nearly \$3 billion[12] in streaming rights may be able to be blamed for most of the decline. Its even uglier in chart form. But I wonder if we can consider linking three things here – those sub growth rate declines, austerity, reduced release schedules, and churn. Austerity first:

We have come an end to a decade of what I've been calling the golden age of production. It was a decade fueled by capital—both equity and cheap debt---and as growth rates diminish, so does the available capital to chase those last remaining households. And that has manifested itself in reduced production, starting a year ago as Netflix discovered the need for austerity, WBD needed to cover its debt, and general profit-motive rationality prevailed everywhere for the first time in a streaming decade as companies contended with both inflation and the cost of higher interest rates—more on that later.

This new austerity had real-world impact as seen in a significant 28% average reduction in the number of new episodes that aired in the first quarter of this year when compared with the December quarter[13]. Series aired by HBOMax were down 40%. Last quarter of 2022, WBD aired 15 series-seasons worth of new shows, but that was cut to only 9 the first quarter of this year. At Netflix was down 34% with a huge 145 series seasons in Q4 was trimmed to 95 in Q1. Disney was down from 24 to 21. Same at Amazon, 44 to 40 series-seasons. And from 19 at Peacock to 13 in Q1. Paramount was flat in series-seasons, but cut the number of episode by 10%.

To be fair, there could be more than just austerity as a reason for these cuts. It is possible the companies were holding back content in advance of the possibility of the strike that was to come. It is also possible that, even though the cash may have been spent on more series, airing fewer new shows helped improve the March quarter P&L.

Now, if there's less new content, lets go back and consider those domestic subscription video on demand numbers for a moment. And while we do that, we should remember that premium HBO rarely reached more than a third of the basic cable households.

331 million paying svod subs at the end of March, pre the two AAs of Apple and Amazon, divide that by 106 million streaming households and that puts the total of paying subscriptions per household at 3.1. Maybe its aggressive, but lets add another one per month for the two AAs, so

[12] https://www.bbc.com/news/world-asia-india-61793888
[13] Op cit. MoffatNathanson/HarrisX

lets set the average at 4.1. This would be toward the higher end various industry estimates ranging up to nearly 5[14] SVOD subscriptions per household,. Now some research is suggestsing households are paying for more subscriptions, but are watching only a couple a month[15]…a warning sign for churn if there ever was one.

And that's the enemy for the SVOD companies, CHURN, like it was for HBO and Showtime before.. But Churn now is getting a more gentile name—"subscription cycling." Some subscribers only subscribe for the shows they like, then cancel and wait until the next round.

SVOD, particularly Netflix, taught viewers to binge by dropping full seasons of a series at the same time. Remember Stranger Things. Realizing the error, they began splitting shows like Stranger Things it into half seasons,. And now that has evolved to one episode a week, at least for the biggest shows. All to drag the viewer along…and reduce the opportunity to churn out….at least as soon.

Now I'd like to suggest that smart consumers may create a new churn risk. I'll call it "***reverse binging***." Viewers really like to binge… to watch a season in a weekend, or a couple of episodes a night for a week or so. But with "reverse binging" they can do that…and still churn out and reduce their bills. If a viewer waits for the shows from the past few months to become available, then he can resubscribe and binge away.

The advantage of this true subscription cycling approach, of course, is that you could churn out of a service until it released a batch of shows, and then you watch them in a month or two and churn out again, going to another service the next month. Across six months of one service per month you could see everything you want, and reduce your subscriptions down to only one a month, saving hundreds of dollars a year.

Of course the way to counter this is for the streaming companies to limit access to the just a day or a week. But that would no doubt result in the development of a new version of in home recording—a modern Tivo. What goes around, comes around.

FAST

With these challenges on the subscription side, one of the things touted to provide additional streaming revenue is the new FAST channels…and there seem to be hundreds of them. But, if you're like me, you may be just a bit confused about what FAST channels really are…and aren't.

First, they aren't Subscription VOD plus Ads, like Netflix or Hulu or Paramount or now Max. But what are they?

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[14] https://www.yahoo.com/now/svod-viewership-remained-flat-2022-011000513.html

[15] Opcit samba

Are they Free Ad-supported Television like cable or broadcast but distributed over the web? Or are they Free Ad-supported Streaming Television… which probably should be called FASST? And is there a difference between simulcasting for free a conventional linear cable or broadcast channel with ads…

…or a streaming non-broadcast feed with ads.
…or streaming free individual shows with ads all presented from one channel location… but doing so on demand…which we used to know as AVOD or advertising video on demand…now labeled fast.

FAST is probably all of the above, packaged with a great acronym…certainly a better name than when I introduced the idea almost two decades ago calling it the Internet Bypass.

Here are three examples in two channels. ION's FAST feed raises the question of what's different from a broadcast channel. But over at NBCU they're using a FAST channel to target a younger adult news demo with a live streaming program, but also an AVOD component with stories from NBC news shows on other platforms.

Lets try to break down the differences between FAST channels, broadcast and cable channels, and the platforms they may ride—independent distribution like over the air or streaming, or platforms like cable systems or FAST aggregators like Roku, Tubi, Samsung, Pluto, and so on.

Advertising is sold by all three—FAST, Broadcast, and Cable. Because they are on the web, FAST channels can target you, or at least your device, individually. Cable distribution allows household or set top box targeting. And the over the air transmitters of broadcast stations currently reach the whole market. In theory, this should make FAST delivery more targeted.

But when it comes to a second revenue stream, FAST channels don't have one. Only ads. And we need to remember that it took broadcasters nearly a half century to force cable to pay retransmission consent fees. Not only do FAST channels on a platform like Roku NOT get paid…they have to give up 40% [16] or more of their ad revenues to the platform.

Except for simulcasts, splits like this suggest FAST channels will continue to be more like classic independent broadcasters or third level cable nets, with occasional new shows, but generally reliant on syndicated library content.

[16] https://www.nexttv.com/news/roku-turns-the-screws-on-its-fast-channel-partners

By the way, many of the FAST channels showed significant growth in minutes streamed this past year, but were still barely in double digit percentages when compared with the minutes Netflix streams in a day. Even with the most optimistic models I've seen, FAST ad revenues won't amount to more than a percent or so of total advertising dollars a few years out. .

And sometimes that means FAST is not turning out to be fast enough. And maybe that's what Peacock realized when it quit selling new customers its free, totally ad supported version, at the first of the year. Now it's a minimum of $1.99.

ADVERTISING

FAST brings us to Advertising overall. You've tracked this chart with me for the past 15 years, nominal GDP growth in blue, advertising growth in red, foretelling inflation of the 80s, and the big downturns in 91, 2000, 2008, and now the covid years. After that huge post-covid jump in 2021, last year's total ad growth came out at about 8%, that's a bit less than the inflated gdp of 9.2%, with real GDP growth only 2% and the rest inflation . Thanks again this year to Mike Nathanson at MoffetNathanson for allowing me to share his ad and streaming numbers with you.

Legacy media ad growth was a bit over 1%. Once again dominant growth of well over 10% came from digital services like Facebook, YouTube, and Twitter, even as the Internet Advertising Bureau said digital ad growth was much slower than usual. The next few years will tell us whether advertising in the digital services is headed toward a steady state at around a two thirds/one third split with legacy media. Once there is stability in the share of the ad market, the legacy media outlets should find a bit of stability themselves for the first time in two decades.

One final ad note in the I'm not sure quite what it means department, adverting as a percent of GDP over the past two years hasn't been this high since the two bubbles in the early 2000s. Now at one and a quarter percent of GDP, this isn't as extended as the 1.4 percent just before the 2001 crash, but it does equal the percentage going into the 2008 recession. Is this time different? Well, one of things I learned the hard way while working on Wall Street was when they say "this time is different"… be careful. It probably isn't. Just saying.

GLOBAL CONNECTIVITY

On that happy note, lets do some global stats. Global population reached 8 billion last November. While speeds vary widely, mobile internet connectivity now is available to 95% of the world's population. [17] Think about that for a second. 7.6 billion of our fellow humans now have access to mobile internet connectivity—smartphones and devices—according to the industry tracking GSM Association. Of those with access, about 55% [18]are connecting—are using the web.

But put another way, four billion people are online through mobile connectivity. Four billion. But at still leaves a huge, four billion person global digital divide. The connectivity is now there, but the divide… like so many other divides…is now financial.

Besides the 4 billion mobile data users, there are now 1.3 billion[19] wired broadband connections—and I'd guess they not only handle two or three people in each household…. but probably reach billions more people by wifi…with likely operlaps as money-saving wifi is used as a connection alternative for those four billion smartphone users.

And every one of those consumer devices, whether attached by wire or radio, needs to be tied into the global backhaul system. Over the past two years we've talked about the potential of LEOs, low earth orbit satellites, the sexy new thing with relatively minor impact today unless you are in the Ukraine. But in the next generation or two our 5G phones will likely be tied into the satellites as well.

But we should take just a moment to acknowledge the very unsexy, but really stunning global wiring accomplishments over the past two or three decades. ---not just in the cities, but across the global outback and under the oceans.

This is a great animation from Visual Capitalist[20] shows three decades of fibering the oceans, and not just by the traditional telcos. Amazon, Meta, and Google now own 63 thousand miles of undersea fiber. This is what moves your data, whether watching Netflix in India or doing business in Dubai.

17

https://www.gsma.com/r/somic/

18 ibid.

19 https://www.point-topic.com/post/global-broadband-subscriptions-end-2022-fibre-claims-two-thirds

20 https://www.visualcapitalist.com/wired-world-35-years-of-submarine-cables-in-one-map/

Then there's the fibering of our cities and countryside, where there is so much work in the US, at least, that the Wall Street Journal reports[21] a shortage of tens or even hundreds of thousands of fiber splicing experts which may impede the US governments $43 billion plan for nationwide broadband coverage.

And then there's fibering the global outback—I'm talking about the real outback—the bush country of Africa and the jungles of Asia. We ran across two small examples that got me thinking about this incredible accomplishment of wiring locally while connecting globally.

Take Zambia, somewhere between the White Rhinos and the Zambezi River up from Victoria falls we found this new single fiber line running through the bush. One cable, nothing else for miles.

Then there's this one that really got me thinking about doing this section. If you found yourselves on the Ho Chi Minh Trail near the border of Laos in western Vietnam, as Valerie and I did a few months back… OK, a brief back story is needed as to why we would even go find the trail used to deliver supplies from then North Vietnam to the South a half century ago. Here's why:

52 years ago, young lieutenant Wolzien was an Army Signal Corps Director shooting film on the Laotian border, around KheSanh and the Ho Chi Minh trail..and left there for Hawaii to get married in the Army chapel on Waikiki Beach. So for our covid-delayed 50th anniversary trip we went back to the Laotian Border, Khe Sanh, and what's now the called the Ho Chi Minh highway paved, two lanes, yellow lines, complete with suspension bridges…and if you don't believe me… there's our blue dot right there on a Waze screen grab. Waze on the Ho Chi Minh Trail?/ Backstory over.

So if you found yourself on the Ho Chi Minh highway, you'd also notice that there's mostly buried fiber all along the way, connecting the towns and rural villages up and down the western side of Vietnam. Something about beating swords into data cables….

Overall fibering the world has been one of mankind's amazing accomplishments… and to great extent, an unrecognized one. But it is that very fiber that lets the people of the world consume the work of this town…and its counterparts. And that's part of what New York Times columnist

[21] https://www.wsj.com/articles/high-speed-internet-plan-worker-shortage-be83a843

Tom Friedman calls flattening the world. It also makes this a business of the world…with wide professional constituencies and fewer borders.

BOX OFFICE AND BEST PICTURE

As the industry each year honors its top achievers we realize just how diverse and wide spread it has become. And while many would argue not enough, it is interesting to take a look at how this evolution has disconnected traditional box office from perceptions of what is best—as manifested in best picture at the Academy Awards.

Earlier I noted that Everything Everywhere had won about everything everywhere, while bringing in a tenth of the revenue of the most popular movies. I was curious if best pictures ever reflected box office hits, or whether the definition of "best" has always diverged from audience popularity as shown by revenues. So using Box Office Mojo data I went back for the 40 years pre-covid starting in 1979 when Superman led domestic box and Kramer vs Kramer won best picture. I looked at total box for the movies and to be fair to end of year releases, compared that to the industry total for the releasing year and the following year.

The result… there seems to have been a pretty fundament change around 20 years ago or so when winners began to show reduced linkage to popularity at the box office and just basically lower numbers for newer Best Picture winners when compared with winners farther back.. For this chart I compared the average life time box office of each winner to the average revenue of winners across the 40 years. As you can see, no winner since 2004 has beaten the average….and each later year has had the benefit of inflation.

I have tried to understand this disparity in three ways: Winners revenues as a percentage of the two year box office, winner's revenue versus the top grossing film, and to compensate for the large increase in releases, what the winners brought in when compared to the average for each release in that year.

Across the 40 years, the average best picture brought in 1.2% of the two year box office across its history, including any bump it got from winning. Between 1979 and 2004 the average was 1.6%, but in the 15 years starting in 2005 that dropped to only 4 tenths of a percent, a quarter of the earlier period.

Same story when comparing the best picture with the top grossing film. On average, the winner picked up a respectable 40% of the top grosser. It brought in well over half as much in the earlier years, but more recently that dropped to 15%, emphasizing the increased disparity between the popular and what the industry thinks is the best.

Finally, the winners have always done better than the average of all releases, 7 times better across the 40 years. But again, in the first 25 years they did more than 9 times better than the average film, while that dropped to only six times better than average in the 15 pre-covid years, making it difficult to suggest the cause of the disparity is an increase in releases.

So what does all this mean. Lets consider the Academy Awards telecast and the question of relevance in the context of favorite movies. This chart lines up Oscar viewing with the winners' box office revenue. Their declines are fairly consistent. Whatever else may be at play in the selection process for Academy Award winners, it is reasonable to ask why people would watch the Oscars if they don't think their favorite movies have a chance of winning.

FEDERAL RESERVE RATE HIKES

While we're talking about data, lets shift to the ten rate hikes by the Federal Reserve over the past 14 months… and what that might be meaning for the industry. We can't underestimate the impact of higher interest rates on media companies, as they converge with the substantial cost pressures already delivered by inflation overall. The Fed's increased raised rates 5% points, and while companies have different debt terms that put off the full impact of higher rates, there is significant potential impact on jobs as companies try, at least partially, to offset bigger interest payments with force reductions as part of their mitigation strategies. Let me show you.

The top companies in the motion picture and television sector are carrying an estimated 150 billion[22] in debt with about a third each at Disney and WBD, and the rest at Paramount, Fox, Netflix, and Comcast for NBCU. If, hypothetically, all of their interest rates increase the same 5 percentage points as the Fed's, that's an additional $7.5 billion in costs they need to cover, just to stay even, and the $7.5 billion is just interest increases, not other inflationary costs.

Here's one way to look at it. Lets assume an an all in number of around $150 thousand per employee for this exercise. This is way above the Bureau of labor statistics $86.060 for the 417,000 people it says are in the Motion Picture and Television sector[23], but that salary number doesn't include actors and other part year employees, and it also doesn't include payroll service

[22] Based on total debt in company reports 12/2023 but attributing $20b of Comcast's total to NBCU.
[23] https://www.bls.gov/oes/current/naics4_512100.htm#00-0000

costs—overhead—so I'm going with a higher number… which makes the results somewhat less ugly.

So, if you divide the 7.5billion by $150k per employee, that would equal 50,000 employees, or 12% staff reduction to cover the increase in interest to match the Fed's hikes.

Now, I could say something gratuitous here, like "Of course everyone hopes to increase revenues…and find other ways to cut costs." But the numbers are the numbers and unless the Fed cuts rates… companies are going to have to find ways to live with higher numbers as their debt rolls over.

CONTRIBUTING FACTORS TO LABOR SITUATION

As I said at the beginning, I'm not going to address the industry's fast evolving labor situation, and to a certain point I'm going to take a pass. From years of negotiations at national tables on the Company side, or working with the DGA across four cycles through those years when it ran its innovative Forecast Project[24], I learned that if you're not actually at the table, you just don 't know. So the best service you can provide is to keep quiet on the specifics.

But you can look at the broad environmental changes that set the stage for both sides. And we've seen all of those in today's presentation. While I'm sure you can add more items, here's my starting list:

1. Inflation and impact on
    a. costs of living of employees,
    b. operating costs by companies,
    c. interest rates driving up borrowing costs and reducing available debt
2. Reduced viewing of linear services
    a. reducing sub fees, and
    b. reducing ad revenues
3. Reduced growth rates of streaming services
    a. Making finite estimates possible for steady post-growth era
    b. Drying up of capital from both equity and debt
4. Forcing focus on profitability, not expansion

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[24] Author represented NBC News in national table negotiations with technical unions and creative guilds during digital transition of the 1980s and served as consulting analyst to the Director's Guild of America from 2007 to 2020 as it developed and updated the Forecast Project presented across the industry's Guilds and senior managements.

a. resulting in diminished production slates

b. resulting in layoffs and general tightening down

5. Forward looking economic uncertainty. Recession, soft landing, maybe we know by early 2024… but that's after new contracts should all be in place.

What an incredibly difficult environment for everyone involved.

ARTIFICIAL INTELLIGENCE (AND LAWYERS)

I thought I should find something to wrap this up with that's a bit more positive… upbeat, even. Some of you may remember this slide. Back in the before times, no matter how bleak the industry, I used to wrap up this session with a rousing group repetition of the phrase, there will always be jobs for lawyers.

Well after covid and with AI, I began to wonder if that was still true. So, of course (with some tongue in cheek) I asked ChatGPT[25]. You might want to listen carefully to the answer…with some pretty weaselly weasel words:

""While it is difficult to predict the future with certainty, it is unlikely that the need for lawyers will disappear entirely. The legal system is a complex and constantly evolving field that requires legal expertise and judgment, and there will always be a need for lawyers to provide legal advice, represent clients in court, and navigate the legal system.

"However, the legal industry is also evolving in response to various factors such as technological advancements, changes in client needs and expectations, and shifting regulatory frameworks. As a result, the types of jobs and skills required in the legal industry may shift over time.

"In particular, the rise of AI and automation has the potential to impact the legal industry, with certain tasks and functions becoming automated or augmented by AI systems. This may change the nature of legal work and the skills required to be successful in the legal industry.

[25] You can see if Chat GPT has changed its mind, or ask it anything else by creating an account at https://chat.openai.com/auth/login?next=%2Fauth%2Flogin%3Fnext%3D%252Fchat

"Therefore, while there may be changes to the types of legal jobs and skills required in the future, it is unlikely that the need for legal expertise and judgment will disappear entirely."

And that pretty ugly summary wraps up my part of this year's Symposium. Thanks to each of you for spending your time with me…and to the Ziffren Institute for the invitation. You'll be able to find a text copy of today's presentation at wolzien.com within a few days.

TW 5/21/23

AFTER COVID
THE INDUSTRY RESETS
Tom Wolzien
2023 Entertainment Bar Symposium
Ziffren Institute UCLA Law
To be Streamed May 31, 2023

Synopsis of Key Data in Video Presentation

1. **Theatrical Distribution:** Sequels and franchises drove the business domestically , led by Top Gun in 2022 and now Super Mario Brothers and Avatar so far in 23. Last year the Black Panther sequel was in second place. Every one of the top ten movies in 2022—domestic or international-- was a sequel or franchise, and in the US those ten films delivered about half of 2022's still low, but recovering total box of $7.4 billion. That's 64% better than 2021's $4.5 billion, and more than three times the 2020 disaster of $2.1 billion, all of which came before the shut down in March. [1] First quarter of 2023 had the biggest box office gain in any of the 40 pre-covid years before, up 28% over 2022.

2. **Digital Home Video:** Numbers continued up last year according to the industry's Digital Entertainment Group, pushing 37 billion in '22 It's a long ways from the dark days of a decade ago when DVDs were collapsing, and before digital took off. The bulk of revenues come from subscription streaming SVOD—30 of the 37 billion, up 17% in 2022.

3. **All Time Record:** Theatrical spending plus digital home consumption reached an all time record of $43 billion dollars in direct domestic consumer spending for content last year.

4. **SVOD Warning Signs:** The weight of big numbers may be beginning to impact SVOD, at least in the US where 82% of the 130 million households—106 million are now streaming content—so there are just not that many left. The five big US owned subscription video on demand companies that provide numbers reported nearly 13% growth over March a year ago, now more than 640 million subscribers. Newer services in the US and International drove the growth. But the just reported first quarter of 2023 showed growth rates are radically…and disconcertingly down from prior quarter and full year.

5. **Overall Viewing Up last year across all devices.** Nielsen data shows internet connected TVs are sucking away the couch viewers and fragmenting viewing between conventional TV and VOD, and smartphone video consumers, mostly younger demos, are shifting and adding viewing outside traditional locations.

6. **FAST definition continues to expand,** now being used for simulcast broadcast on web, original web channel transmissions, and advertising video on demand. Hundreds of channels, but only one revenue stream (unlike broadcast and basic cable networks). A advertising on these channels so far inconsequential.

7. **Advertising:** After that huge post-covid jump in 2021, last year's total ad growth came out at about 8%, that's a bit less than the inflated GDP of 9.2%, with real GDP growth only 2% and the rest inflation . Legacy media grew about 1%, new media over 10%. Advertising as percent of GDP reaching levels similar to just prior to major economic downturns earlier this century.

8. **Global Connectivity:** While speeds vary widely, mobile internet connectivity now is available to 95% of the world's 8 billion population, with, about 55% connecting. Four billion person four global digital divide remains, now financial instead of technical. Additional 1.3 billion[2] wired broadband connections.

9. **Best Picture vs Box Office:** Study shows divergence between box office performance and Best Picture winners two decades ago, with related impact on viewership of Academy Awards telecast.

10. **Fed Rate Hikes Potential Impact on Industry Jobs:** With $150 billion estimated debt, Fed's 5% hike, if translated to industry as debt rolls over, could result in loss of up to 50,000 jobs to cover potential increase of $7.5 billion in interest, again, as debt rolls over.

11. **Labor Contributing Factors:** Difficult environment made worse by contributing economic factors including: a) inflationary costs impact living, operations, and interest; b) reduced viewing of linear services reduces sub fee revenue and advertising; c) reduced growth rates of SVOD result in austerity, production reductions, churn, and d)

back to reduced growth rates; e) forcing focus on profitability not expansion, f) all in an uncertain economic environment.

12. The Future of Entertainment Lawyers according to Chat GPT. [Not giving this one away in this Synopsis, you've got to watch.]

See final text for sourcing and other annotations.

T. Wolzien 5/24/2023

CONTINUING EDUCATION CREDITS

MCLE. UCLA School of Law is a State Bar of California approved MCLE provider. By attending the 47th Annual UCLA Entertainment Symposium Hybrid Series on May 31, 2023, you may earn Minimum Continuing Legal Education credit in the amount of up to **1.75 hours of general credit** (0.75 hour of general credit for After Covid: The Industry Resets and 1 hour of elimination of bias for Dearly Departed: A Review of the Legal and Industry Implications of the Entertainment Job Market).

In order to receive credit, **<u>you must verify your participation</u>**. During each of the two presentations of each weekly webinar, **<u>a unique code word will be announced</u>**. Each attendee will need to input the unique codes in the Google Form provided under the "Resources" header in the bottom left of the weekly webinar window and sent to each attendee at the conclusion of the weekly webinars. Certificates and evaluation forms will be emailed separately upon successful verification of your attendance. If you have any questions and/or issues, please email mcle@law.ucla.edu.

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WEDNESDAY, MAY 31, 2023

6:00 - 7:00pm PDT

Dearly Departed: A Review of the Legal and Industry Implications of the Entertainment Job Market

Moderator:

Azi Amirteymoori

Owner/Employment Attorney/Senior HR Consultant, 403 Ops Consulting

Panelists:

Connie L. Chen

Principal, Jackson Lewis P.C.

Amanda N. Luftman

Managing Partner, Boren, Osher & Luftman, LLP

Joanna Sucherman

Owner, JLS Media

TABLE OF CONTENTS

DEARLY DEPARTED: A REVIEW OF THE LEGAL AND INDUSTRY IMPLICATIONS OF THE ENTERTAINMENT JOB MARKET

DEARLY DEPARTED: A REVIEW OF THE LEGAL AND INDUSTRY IMPLICATIONS OF THE ENTERTAINMENT JOB MARKET

OUTLINE OF TOPICS/ISSUES

WITH THE WIDELY PUBLICIZED ENTERTAINMENT LAYOFFS AND CHANGING JOB MARKET, ATTORNEYS ARE FACED WITH LEGAL CONSIDERATIONS FOR THEIR CLIENTS (AND FOR THEMSELVES) NAVIGATING ISSUES LIKE SEVERANCE, HIGH LEVEL EMPLOYMENT AGREEMENTS AND COMPLYING WITH LABOR LAWS FROM RECRUITING TO FIRING THAT REQUIRE AN UNDERSTANDING OF LABOR LAWS COMPLYING WITH THE ENTERTAINMENT INDUSTRY NORMS OF HOW TO GET AND KEEP A JOB IN THIS INDUSTRY. JOIN OUR PANEL OF EXPERTS TO DECONSTRUCT THE LEGAL AND MARKET REALITIES OF THE DEARLY DEPARTED WHILE ALSO CONSIDERING HOW BIAS CAN IMPACT THE PROCESS OF HIRING, FIRING AND RETAINING A DIVERSE POOL OF EMPLOYEES.

**These materials are presented for educational purposes only and are not intended to replace the advice and consultation of a trained professional.*

LEADER TOOL KIT
What to expect on notification day?

- The night before you conduct your notification calls, you will receive an email from: **Either HR or Employee Relations or the Legal Team**
  - In the email, you will have:
    - **Call Sheet**: This sheet will outline all of the calls that you need to make for following day.
    - **Contact information** for your HRBP (copied on the email) and an Employee Relations point of contact to escalate questions or "warm transfers" to EAP.
- **You will need to update this Call Sheet after <u>every</u> call.**
  - Every 90-minutes you will need to send the updated Call Sheet back to the above email (copying your HRBP).
  - This will be used to inform us of your call statuses, as well as enable us to push the Touchpoint #2 emails to impacted employees.
  - **Critical information you need to verify:**
    - Employee ID & NAME
    - Mobile, email address, and home address
  - **Other relevant information to be noted:**
    - Heat Map, EAP warm transfer, and note **<u>ALL</u>** questions asked. Make note if we need to call the employee back because of unanswered questions.
    - #PAUSE: Before putting anything sensitive in writing, pause and check in with your HRBP or ER POC.
- **Take breaks as you need them.** Some of these conversations may be short, others may be long. Take care of yourself throughout the day.

<u>Here is a list of tips to help you prepare for communicating a layoff to an impacted employee:</u>

- Speak with the employee in a private place. (Ask the employee if they are in an okay place to speak; are they driving?)
- Demonstrate care and respect – it's critical to those being affected by the layoff and the staff that will remain with the Company.
- Try to be yourself (maintain eye contact for those conversations in person) and make the conversation as genuine as possible
- Communicate as honestly and openly as possible
- Stick to the facts and be firm about the Company's decisions. DO NOT make any reassurances or commitments, unless you know them to be 100% accurate.
- Make sure you understand the most applicable Human Resource Policies and Procedures. Be knowledgeable about communicating information such as severance packages, health benefits and the EAP/outplacement services that are being offered.
- If you are asked a question and you don't know the answer, agree to find out and get back to the person.
- Emphasize that making a decision for reduction in force was difficult for everyone. Avoid blaming anyone.
- Be respectful and empathetic. Allow the employee to communicate their feelings and don't be defensive.
- Prepare yourself for the unexpected. Nearly every employee will react differently, so don't be surprised if you see a wide range of emotions.

<u>It is important to understand some of the typical reaction patterns and how to respond to them:</u>

Denial: Employees can't comprehend the information. They feel this is a bad dream.

Response: Give the employee time to digest the information. Then restate the facts (with different phrasing). Empathize with them by saying things like "I know this is quite a shock" or "This may be hard to understand at first". Give the employee direction on what they need to do next. Encourage them to call you or the HR representative if they have questions.
Crying: Some employees may cry or become emotional when they are told that their job has been eliminated – this is normal.

Response: Let the person express some of their feelings. Be sure and have tissue available (if in person). Wait patiently for them to calm down. Emphasize with the shock of the information by sayings things like "I understand." Redirect the conversation to what they need to know and what they need to do. Encourage them to call you or the HR representative if they have questions.
Anxiety: Some employees may feel faint or extremely nervous. Sudden news of this magnitude can launch people into panic. This is information that they may have never considered before and may be thinking about the worst possible impact to their daily living.
Response: Let the person express some of their feelings. Reassure them about the processes and services available to them. Encourage them to call you or the HR representative if they have questions.
Anger: Some employees may respond with anger. This reaction comes from feelings of betrayal, powerlessness and feeling out of control. They may raise their voice, or pound their fist on the table out of frustration. This is a common reaction, but one of the most discomforting to the manager.
Response: Stay calm, use a soft voice to respond and let them express their feelings. Don't try to defend the Company or justify the decision. Empathize with the feelings of betrayal and disbelief without taking sides. Encourage them to call you or the HR representative if they have questions.
Threatening Behavior: Employees who may respond with threatening behavior usually have a history of giving signs or symptoms of this type of behavior.

Warning Signals:

- An employee who is frequently disgruntled, files complaints and grievances
- An employee who bullies others verbally, physically or in writing
- An employee who has a sense of entitlement to upward mobility
- An employee who has disdain for authority
- An employee who has been known to react in a physical way such as throwing or breaking things

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Response: During the meeting, if someone becomes threatening, stay calm and use a soft voice. Be patient, reassuring and non-threatening. If you feel uncomfortable at any time, suspend the discussion and alert HR and your ER POC. If this occurs in- person, use your judgment. Remove yourself from the situation and notify Security.

<u>LEADER SCENARIO TALKING POINTS:</u>

There are several potential scripts that may be leveraged over the next several days:

- **Scenario 1:** No Changes to the role at this time. (Not severance eligible) – Leader only
- **Scenario 2:** Role Elements Changing Slightly. (Not Severance Eligible) – Leader only
- **Scenario 3:** Role elimination. (Not severance eligible) – Leader only

<u>SCENARIO 1</u>: NO CHANGES TO ROLE AT THIS TIME. (NOT SEVERANCE ELIGIBLE)

- At this time, your role has not changed.

- Your work location, responsibilities, and leadership remain the same.
- We are going to work with you to gain a deeper understanding of the work you manage. I'd really appreciate your help with business continuity and sharing what you know.
- As we continue through this journey together, your positive attitude, professionalism, and knowledge will be relied upon to drive our business forward.

SCENARIO 2: ROLE ELEMENTS CHANGING SLIGHTLY. (NOT SEVERANCE ELIGIBLE)

- At this time, your role with the Company remains, although marginal elements of your role will change in that you will be …
  - Responsible for ….
  - Reporting to…
  - Moved to a new segment…
  - Relocated (within 50 miles) …
  - Your title is now, as a result of efforts to harmonize titles…
- We are going to work with you to gain a deeper understanding of the work you manage. I'd really appreciate your help with business continuity and sharing what you know.
- As we continue through this journey together, your positive attitude, professionalism, and knowledge will be relied upon to drive our business forward.

SCENARIO 3: ROLE ELIMINATION – (NOT SEVERANCE ELIGIBLE) – Leader Only

Leader welcomes employee into the meeting. I hope you are well.

- Are you in a quiet, private location for our conversation? Is anyone around? We have some private messages that we would like to share with you.
- I want to start by thanking you for your patience and professionalism during this highly ambiguous time. I know the past several months have been challenging at times.
- None of us could have imagined how significantly the pandemic would impact us and how long it would go on. As we look ahead, we continue to face a tremendous amount of uncertainty, and it is clear that we will need to continue with modified operations.
- I'm sure by now you have heard the announcement that we can no longer sustain the size of our workforce with current operations. As a result, we have had to eliminate or reduce many of our roles across several lines of business.
- *FLEX:* Your role has been eliminated. We know that this news is not easy to hear. We have some information to share:
  - **TA Roll-Back:**
    - Your TA position has been eliminated. You are moving back to your prior role effective immediately.

  CONVERSATION ENDS HERE

  - **Last Day:** Your last day at the Company will be [INSERT DATE].
    - For separation dates to be the following, notification must be completed on/by October 5, 2023.
    - **Non BE (Salaried, O&T, and HNU) December 4, 2023**
      - **BE Salaried** – **December 16, 2023**

    - **Active Status:** You will remain on active status until your separation date. You are not expected to work during this time. Use this time to focus on you. Do not worry about your pending work.

- **Furlough Status:** Your status will change from furlough to **paid status**. You will be able to accrue PTO until the date of your separation. You are not expected to work during this time. (Will now be paid weekly)

- **Off-Boarding:** I am sure you have many questions regarding your personal belongings and how you may return Company equipment (if applicable). Don't worry about this right now. We will ensure you will be able to schedule an appointment to pick up/drop off these items at a later date (but before your separation date).

I know you are processing all of this. I need to confirm some information. EE ID, Mobile, email address, & home address.

- You will receive an email from Employer with the following information:
  - Warn Notice Letter
  - Link to available resources (LifeCare, Career Sourcing, Resume building, etc.) to schedule an appointment to speak with someone from Human Resources.

I would like to thank you for your dedication and commitment shown each and every day to your Cast and Guests. We appreciate the hard work and contributions that you have made to the business. **Do you have any questions I can answer for you?**

Reactive FAQs:

1. **How many times should I call the employee?**
   - Call the employee three times, before moving on to the next person. After the 3rd call, leave a voicemail identifying yourself and inform the employee to text you (their name and an ideal time for you to call them back that day.)
     - *Hello, this is [name]. I am calling you speak with you about your role. Please text me back at [insert number] with your name and an ideal time to call you back today. Thank you.*
   - PAUSE – You cannot advance your calls if the Leader (of the other people you have to call) has not yet been notified. Contact your Lead if you have any questions.
   - If the employee you are calling does not have a mobile device, use your judgment. Leave a voicemail asking them to leave a good time for you to call them back.
2. **May I block my number when calling the employee?**
   - No, you should not block your number when calling the employee.
3. **Downgrades: How many days do I have to make a decision?**
   - While this question may not be applicable to your calls – Someone being offered a downgrade opportunity has 5-calendar days (from the notification date) to make a decision about the opportunity.
4. **What day am I being separated from the Company? (example only)**
   - For separation dates to be the following, notification must be completed on/by October 5, 2023.
     - **Non BE (Salaried, O&T, and HNU) December 4, 2023** and **BE Salaried** – **December 16, 2023**
     - **Executives** – **December 22, 2023**
5. **What if I need language assistance for the call? Language Assistance Needed?** Usually employers have a vendor for this type of support

THE FEEDBACK LOOP… from Performance to Terminations with Dignity

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Learning Objectives

1. Talk about creating a safe work environment
2. Discuss the importance of providing feedback – why bother?
3. Creating a positive work environment
4. Learn to deliver timely and direct feedback
5. Understand when to deploy progressive discipline

Naturally Leads to Productivity in the Workplace

TRUST

SUPPORT

VISIBILITY

CAMARADERIE

COMMUNICATION

Set the Tone: Create *GOOD* Workplace Communication

1. Communicate workplace rules, procedures, and expectations

2. Provide regular feedback

3. Conduct performance reviews

****Practical Note**: An Employee Handbook is a great tool for managers to use as a reminder of the company's policies and appropriate behaviors in the workplace.

Address Challenges…

1. Despite best efforts to maintain a positive, productive work environment, issues do occur
2. When a challenge is presented, handle the situation **promptly**, fairly, and consistently
3. Provide guidelines and clear expectations to ensure fairness and consistency, which in turn reduces the likeliness of turnover and litigation (i.e. reduce costs)

and Stop To Assess *before* you provide feedback

Consider the whole picture:

Ensure you have a full understanding of the issue and that you have an accurate and impartial assessment of the employee's conduct/performance

The Importance of Feedback – Why Bother?

1. Uphold workplace standards and expectations
2. Provide employee with information needed to improve
3. Helps identify employees who have no interest in and/or ability to improve
4. It is FAIR – workplace surprises aren't fair
5. And oh by the way…. feedback reduces the chances of litigation

Practical note: Feedback can be a powerful tool to help improve otherwise lackluster performance or attitude by an employee.

To Give Feedback Successfully:

1. Be TIMELY
2. Be SPECIFIC
3. Be FACTUAL (not interpretive)
4. Be DIRECT
5. Be PREPARED

Time is of the Essence

1. Avoid delaying or putting off feedback
2. Promptness creates a direct and clear connection between the issue and the feedback
3. A delay can result in the erroneous belief that the issue was not serious

And Follow Up Is Essential

PROGRESSIVE DISCIPLINE QUIZ

1. You've just had a conversation with Jill about her recent absences. In accordance with your company's progressive discipline policy, this is a first verbal warning. If Jill does not improve her attendance, the next step would be a written warning. Verbal warnings do not require documentation.

   True

   False

2. Will is a good employee. He's reasonably productive, well-liked, and respected by coworkers. Rita tells you that Will hangs around her office, tells jokes she doesn't appreciate, and tells Rita that she is "boring." Rita has complained to you that Will "bothers" her.

Since you have a good relationship with Will, you take him aside and ask him to "tone it down." You do not document this conversation because it seems like a minor incident, or perhaps simply a personality conflict. Will's work performance is generally good, so no discipline seems necessary.

True

False

PROGRESSIVE DISCIPLINE QUIZ

3. You have decided that you must terminate Chris for excessive absences. You feel even more justified when you discover, just days before his termination, proof that he is embezzling funds. You've already got extensive documentation of the serious absence problem, so while you confront him with the embezzlement at the termination meeting, your documentation only reflects the absenteeism.

   This won't cause a problem because you already have plenty of justification for terminating him regardless of the embezzlement. True or false?

   True
   False

4. During a break time, you are summoned to the company parking lot where two of your female employees are on the ground fighting. You want to suspend both of them immediately. But because of a progressive discipline system, you cannot suspend an employee for fighting on company property without first giving a verbal warning and then, if it happens again, a written warning. True or false?

   True
   False

PROGRESSIVE DISCIPLINE QUIZ - ANSWERS

The best answers to the questions are all "false".*

*You'll have to email me if you want to know more! – anluftman@bollaw.com

When is Disciplinary Action Appropriate?

‘Is that Net or Gross ?’

Performance Planning,
Performance Management,
Progressive Discipline… What's the Difference?

Performance Planning is an opportunity to ____________ and _______________ our employees for optimum __________________.

Performance Management is an opportunity to provide ____________ to employees to obtain ___________.

Progressive Discipline is a system of discipline where the ______________ increase upon ____________________.

Progressive Discipline may also be known as: positive discipline programs, performance improvement plans, or corrective action procedures.

Performance Planning, Performance Management, Progressive Discipline… What's the Difference?

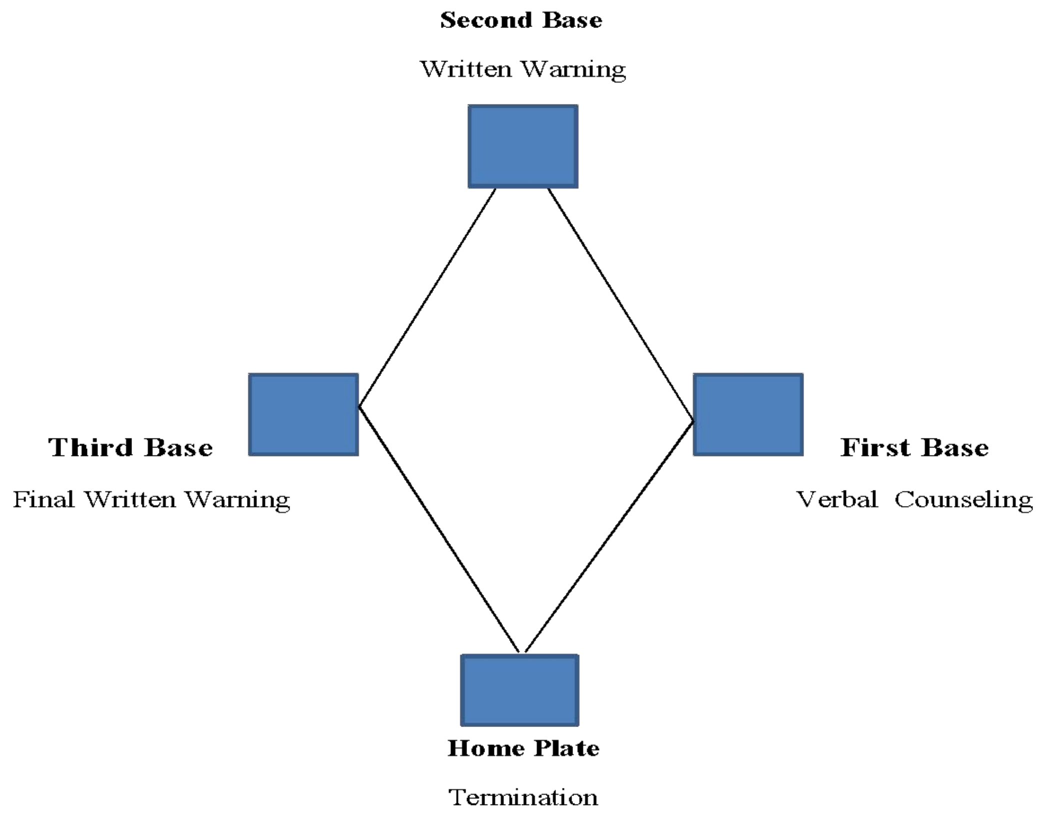
Performance Planning is an opportunity to __train__ and __coach__ employees for optimum _performance__.

Performance Management is an opportunity to provide __feedback__ to employees to obtain _results_.

Progressive Discipline is a system of discipline where the __consequences__ increase upon _repeat violations_.

Progressive Discipline may also be known as: positive discipline programs, performance improvement plans (PIPs), or corrective action procedures.

Baseball Diamond of Discipline



When is it Time to Terminate?

Analyze the risk involved:

1. Does the employee possess a protected characteristic?
2. Has the employee engaged in protected activity recently?
3. Length of Employment
4. Rank of Employee
5. Temperament of Employee
6. Will it be a surprise? [Surprise terminations = litigation]
7. Reason for termination

“Do’s” of a Termination Meeting

Do:

1. Prepare your documents
2. Bring a witness
3. Provide short but general reason(s) for termination
4. Deliver your documents
5. End the meeting

“Don’ts” of a Termination Meeting

Avoid:

1. Debating with employee about reasons(s) for termination
2. Failing to provide reason(s) for termination
3. Sugar-coating reason(s) for termination

REMEMBER…

1. Create a Safe Workplace

2. Communicate Expectations

3. Provide Regular and Direct Feedback

4. Surprise Terminations = Litigation

5. Terminate with Dignity

Thank you!

BOL | LAW

California Film Tax Credit Hits Snag Over Industry Diversity

Variety

April 13, 2023

VARIETY

Length: 735 words

Body

Gov. Gavin Newsom's push to extend the California film and TV tax credit has hit a snag over the issue of industry diversity.

Newsom's budget proposal includes extending the $330 million filming incentive, which is currently set to expire in 2025, for an additional five years.

But *at a hearing last month*, Assemblyman Phil Ting, who chairs the Budget Committee, faulted the California Film Commission for failing to produce diversity data for productions that have already received tax benefits. He also questioned the need to "rush" the extension without first seeing the data.

State law requires the commission to produce annual reports - starting in January 2022 - on the diversity of projects. After the hearing, the commission *belatedly posted* the first annual report on its website.

After reviewing it, Ting said the numbers show that the studios have much more work to do.

"The studios need to really demonstrate a lot more results before we can move forward with any further tax credit," Ting told Variety in an interview on Wednesday. "We may need to wait a year... California provided the money, but they didn't provide the jobs to a diverse group of Californians."

Over the last two years, legislators have made diversity a central focus as they consider the tax credit program.

In 2021, the Legislature approved a new $150 million incentive for the construction of soundstages, which included a bonus for productions that meet diversity hiring goals.

Newsom's proposal to extend the $330 million program *would also include a diversity incentive*. Under the current draft, productions that fail to make a good faith effort to hire a diverse workforce would lose up to 4% of their credit allocation.

In both instances, the goal is to make productions "broadly reflective" of the state's demographics.

The data released by the commission shows that white people are overrepresented in the industry workforce, compared to the state's population, while Latinos and Asian Americans are underrepresented.

For the first time, the film commission also released diversity data on a project-by-project basis for 16 productions that have received state tax credits.

Some projects, like the Latino-themed TV series "Mayans M.C." on FX and the Netflix film "Me Time," did hire a diverse workforce.

In the interview, Ting argued that shows that diversity is achievable.

"The productions that cared about diversity did really well across the board. You could see it," he said. "For the projects that didn't care, they did poorly."

He also noted that the Laborers union *is heavily Latino*, which helps boost Latino representation across the board. But on the whole, he said the industry?s track record is poor.

"California did its part and got them the resources to stay in California," he said. "They didn't really do their part and employ a representative cross section of the people living in California."

Assemblywoman Wendy Carrillo, who has led efforts on diversity in Hollywood, said she found the data "shocking," and noted that the commission only posted it after lawmakers demanded it.

"I'm glad the numbers have been released," she said. "It's unfortunate the numbers reflect what we already felt."

The California Film Commission has touted its efforts to encourage diversity through the Career Readiness Program and the Career Pathways Program, both of which serve a clientele that largely comes from underrepresented groups.

Carrillo suggested that the state could learn from training programs in other states about how to ensure that graduates are set up for a career, rather than just placed in a job.

The governor's proposal would require productions to submit a diversity workplan, which would set hiring goals on race, ethnicity, gender and disability status. The productions would later have to show that they either hit their goals or made a good faith effort to do so to receive their full credit allocation.

By putting the onus on the productions to set the goals, the state is seeking to work around the restrictions of Proposition 209, the ballot measure that outlawed affirmative action in state hiring and contracting.

More from Variety

George Takei, Simu Liu Among Those Expressing Outrage at California Lunar New Year's Eve Shooting Where 10 Were Killed *Gov. Newsom Aims to Make California Film Tax Credit Refundable, in Boost to Studios* *California Film Tax Credit Program Grows to $2.3 Billion in Direct Spending*

Load-Date: April 13, 2023

Netflix Employee Trust Erodes Amid Layoffs As Ex-Staffers Say Company Culture Is Changing

Budget cuts and a corporate memo that tells staff that the streaming giant "may not be the best place for you" if they won't work on content "you perceive to be harmful" has fomented dissent.

By J. Clara Chan

May 27, 2022 8:50AM

A few months ago, Netflix began circulating an internal Google Doc containing revisions to the company's culture memo. The document garnered some 10,000 comments from employees before the final product — published on Netflix's jobs site — was released to the public earlier in May.

Notes included a directive for employees to "spend [Netflix] members' money wisely" and a reminder that leaders also needed to be held accountable for following company values. But there was one section in particular, on "artistic expression," that stood out to some staffers.

"Not everyone will like — or agree with — everything on our service," the note specifies, ending with a message aimed directly at staffers: "Depending on your role, you may need to work on titles you perceive to be harmful. If you'd find it hard to support our content breadth, Netflix may not be the best place for you."

The updated entry appeared to be a direct response to internal and public outcry at the streaming giant last October in response to The Closer, a Dave Chappelle comedy special that included multiple transphobic jokes. Though Netflix received plenty of public backlash and co-CEO Ted Sarandos admitted he "screwed up" his initial responses to staffers' concerns at the time, the streamer has gone on to announce a deal with Chappelle for four more comedy specials and has taken a harder line toward what it deems as "artistic freedom" — even at the potential expense of its own staffers — as part of its company culture.

"In 2021, speaking out about what is in the best interest of the business was still a part of the culture," a former Netflix employee tells The Hollywood Reporter. "With the re-write, … Netflix has made it clear that the new order is 'if you don't like it, leave.'"

While most organizations today typically have a document outlining values, Netflix stood out in 2009 when CEO Reed Hastings publicly released the company's approach to management in the form of a 125-slide deck that included seemingly radical concepts at the time, like unlimited vacation and "avoid rules." The deck, which was since revised into a formalized culture memo, served as the inspiration behind Hastings' 2020 book, No Rules Rules.

But this month's memo change comes during a period of major upheaval for Netflix, which is contending with a slowdown in subscriber growth as competitors like Disney breathe down the streamer's neck. During the first quarter of the year, Netflix lost 200,000 subscribers and expects to lose an additional 2 million more in Q2 — losses that have cratered the company's stock and have employees and investors alike worried about the future growth of the once high-flying and high-spending streamer. To help stave some of those losses, Netflix has begun experimenting in new areas of business, like advertising and video games — the former of which Hastings was once staunchly opposed to.

But as with any company trying to cut down costs, Netflix is reining in its spending growth and has implemented two rounds of major layoffs within the span of a month, with the latest round cutting 150 full-time staffers, or about 2 percent of the company's total workforce, and several dozen contractors working in Netflix's editorial division — some of whom were brought on just months ago and worked specifically on channels meant to serve underrepresented identities like Strong Black Lead, Con Todo, Most and Netflix Golden.

The social channels are all run within Netflix’s marketing division and are meant to elevate Netflix’s programming geared toward specific audiences and build strong communities with viewers. Strong Black Lead, for example, launched in 2018 as a way to promote Netflix’s programming featuring Black talent and creators and build a meaningful community with Black audiences year-round. Since then, the marketing brand has launched original video series, a podcast and has amassed 804,000 followers on Instagram and more than 253,000 followers on Twitter.

Following that success, Netflix’s marketing team went on to launch additional channels like Con Todo, for Latino communities; Most, for LGBTQ+ audiences; and, just recently, Golden, for the Asian diaspora. Each of those channels count several thousands of followers across Instagram and Twitter.

Netflix said the editorial cuts, which were made across all social channels — not just the identity-focused ones — are part of a larger strategy to have social content be created in-house, rather than by outside contractors. The company also let go a number of staffers in the family and animation divisions in the last round of layoffs and has dropped animated projects in the works from Ava DuVernay and Meghan Markle, though Netflix has said those series were scrapped due to creative reasons.

“We are making changes to how we support our publishing efforts, including bringing some of this important work in-house,” a Netflix spokesperson said. “Our social channels continue to grow and innovate, and we are investing heavily in them.”

Though the social accounts are still running, laid-off editorial staffers are questioning Netflix’s commitment to diversity, given that many of the contractors said they were encouraged to join Netflix because of its perceived focus on supporting writers, editors and creators from diverse backgrounds.

In addition to promoting the specific identity-focused social channels, Netflix has emphasized its commitment to inclusion with recent financial pledges, including by moving $100 million, or 2 percent, of its financial holdings to banks that support Black communities and creating a $5 million fund to invest in Black creators and businesses. The streamer has also focused on improving the diversity of its own staff; last year, Netflix said women made up half of its global workforce, while roughly half of its U.S. workforce were from the global majority, according to the company’s 2021 diversity report.

“There was so much talk about how Netflix was committed to diversity and inclusion, and I think a lot of us who were brought on really believed that,” a second former editorial staffer at Netflix who was impacted by the recent round of layoffs, notes. “The writers really make up a lot of the incredible content that you see on those channels and [bring] really broad, diverse perspectives, so it is a shame that we were all let go.”

It also didn’t help that, according to two contractors who spoke with THR, the two rounds of layoffs came with very little notice. (Netflix’s contractors are employed by outside agencies, and at least one of the agencies — Made by Fabric — appears to have shut down entirely following the recent round of layoffs.)

“They’re having to reimagine themselves,” a third former editorial staffer who was laid off in April adds of the changes at Netflix. “It’s just such a corporate thing [where] somebody high up who makes, you know, $10 or $20 million a year makes a bad decision or puts off dealing with a problem and people on the ground have to suffer because of it. That definitely sucks.”

That isn't to say layoffs or firings at Netflix are particularly unusual at the streamer, which notably has a "keeper test" that guides the company's approach to firing. ("If a team member was leaving for a similar role at another company, would the manager try to keep them? Those who do not pass the keeper test (i.e., their manager would not fight to keep them) are given a generous severance package so we can find someone even better for that position," Netflix's culture memo states.)

But with the most recent round of layoffs being determined by "business needs rather than individual performance," as a Netflix spokesperson said at the time, employees noted the loss of trust among staffers. "This feels like they really lost control of the narrative, like it's out of control," another Netflix insider adds. "The trust has been eroded."

As for how Netflix will handle future employee dissent, the updated memo regarding "artistic expression" will also be put to the test in light of a new comedy special from Ricky Gervais, which includes multiple jokes about trans women. Netflix has not responded to repeated requests for comment on Gervais' special, and if the company's handling of the Chappelle special is any indicator, it is likely that the streamer will once again come out in support of the comedian.

"It used to be part of the culture, and people saw that as empowering them to speak up and out. The new culture memo makes it clear that creative is now protected from having to listen to anyone's opinions they don't agree with," the first former Netflix employee says. "It's a real shame, because if they're not listening to employees who are minority-affiliated, and they aren't tracking viewer activity through this lens either, then they're operating in a cultural black box."

Inside the Firing of Victoria Alonso: Her Oscar-Nominated Movie 'Argentina, 1985' at Center of Exit (Exclusive)

The longtime Marvel executive's attorney said in a statement of the firing: "Victoria, a gay Latina who had the courage to criticize Disney, was silenced."

By Borys Kit

March 24, 2023 1:30PM

The Oscar-nominated film Argentina, 1985 was at the center of last week's sudden firing of longtime Marvel Studios executive Victoria Alonso, The Hollywood Reporter has learned.

Alonso was one of eight producers on the Argentine historical drama, which was distributed by Amazon and competed for the best international feature Oscar. However, by assuming that role, she breached her contract — several times — according to sources. After repeated warnings, the situation came to a head the week after the Academy Awards and ultimately led to her termination. It was a seismic shake-up at Marvel, where for years Alonso was part of the holy trinity — along with Marvel Studios boss Kevin Feige and co-president Louis D'Esposito — who led the Marvel Cinematic Universe to ever-greater heights.

According to insiders, Alonso breached a 2018 agreement that included the company's standards of business conduct, which states that employees cannot work for competing studios.

Sources say that Alonso did not ask permission to work on Argentina, 1985, nor did she give notice. (However, an IndieWire piece published last month on the film stated that she did have permission.) When Disney found out about the project and the violation, her longtime service and veteran status led the company to give her a dispensation on the condition that she not work on the movie further. She was also not to promote it or publicize it in any way. The situation of a top executive working on a movie outside company confines was deemed serious enough to involve the management audit team and a new memo was signed, according to an insider.

A rep for Disney declined to comment.

Alonso's attorney, Patty Glaser, released a statement after the initial publication of this story. Said the attorney: "The idea that Victoria was fired over a handful of press interviews relating to a personal passion project about human rights and democracy that was nominated for an Oscar and which she got Disney's blessing to work on is absolutely ridiculous. Victoria, a gay Latina who had the courage to criticize Disney, was silenced. Then she was terminated when she refused to do something she believed was reprehensible. Disney and Marvel made a really poor decision that will have serious consequences. There is a lot more to this story and Victoria will be telling it shortly—in one forum or another."

Argentina, 1985 premiered in September 2022 at the Venice International Film Festival, and soon the drama was on the awards track. Alonso then found herself front and center in the film's campaign, attending screenings, sitting on panels and doing interviews.

According to sources, she was reminded of her agreement and her breach several times, but the campaigning continued. She even appeared on the Oscars arrivals carpet not as a Marvel executive associated with that studio's multi-nominated Black Panther: Wakanda Forever, but rather as Argentina, 1985′s producer, walking with the film's director, Santiago Mitre.

What also rankled Disney executives was that while she was busy promoting Argentina, 1985, her purview over Marvel's visual effects — as president of physical and postproduction, visual effects and animation production — was busier than ever.

Throughout the last year or so, as Marvel pumped out an unprecedented number of series and movies, a general impression emerged that VFX artists were not being well-treated by Marvel, attributed to factors including long hours, drum-tight deadlines and a lack of a singular vision.

Releases including the February film Ant-Man and the Wasp: Quantumania were catching flak for subpar visual effects work while Alonso herself became more and more polarizing.

"You can only ask a person to stay until 1 a.m. working on VFX shots for so long before things start to break," says one postproduction source. Another postproduction talent says they have avoided working with Marvel because of Alonso's reputation for being challenging.

Still, she had her supporters, including Eternals star Salma Hayek, who called her the "best jefa ever" in a December 2021 post.

In any case, things came to a head post-Oscars, and Alonso was terminated for cause.

For the Buenos Aires-born Alonso, Argentina, 1985 was a personal tale. The feature stars Ricardo Darín as Julio César Strassera, the prosecutor who led the case against the country's military Junta whose reign of military terror led to the disappearance of 30,000 people. "I've made a lot of stories about superheroes," Alonso told IndieWire in the story published last month. "And I've always wanted to tell a story about what happened in Argentina, because I should have been one of those 30,000 people."

Alonso's firing shocked the town because of its sudden nature, and because the reasons for it were unknown. Some speculated that Alonso was being silenced because she was outspoken about Florida's so-called "Don't Say Gay" bill, which Gov. Ron DeSantis signed in March 2022. "As long as I am at Marvel Studios, I will fight for representation," Alonso, who is gay, said at the time, recounting at the 2022 GLAAD Media Awards of how she spoke with then-Disney CEO Bob Chapek for 45 minutes on the topic. Added the exec to the crowd, "So I ask you again Mr. Chapek: please respect—if we're selling family—take a stand against all of these crazy outdated laws." Disney took a stand against the bill, resulting in a clash with the state government and ultimately the loss of a special tax status. It is a move that will likely cost the company millions.

But other sources say that being vocal had only increased Alonso's profile within the company. She was asked to represent the company on the board of GLAAD, joined the company's Pride 365 leadership team and made a deal with the company's publishing division to write a memoir.

In any case, the VFX industry will be closely watching what follows. Marvel is one of the most lucrative clients for VFX houses because of the scope of its work — its tentpoles regularly have in excess of 2,000 VFX shots, sometimes more than a whopping 3,000 per movie.

It is unclear who will take over for Alonso in the interim (at least some vendors are working with VFX producer Jen Underdahl for now). But insiders acknowledge whoever assumes her duties officially will face similar challenges as Alonso, who helped put out the unprecedented 18 films, TV shows and specials that Marvel released in 2021-22.

Says one VFX pro: "Whatever criticisms are being leveled against her, she's not an island. Part of the problem is the aggressive release schedules."

That aggressive schedule could already be in the rearview mirror, however, as returning Disney CEO Bob Iger has stated an intention to slow down Marvel's output.

Carolyn Giardina and Aaron Couch contributed to this report.

This story was updated to include a statement from Alonso's attorney.

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