The Inherent Conflict between Competition and Monopoly in Large Industry:

An Examination of the History of Hollywood and The Paramount Anti-Trust Case of 1948

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Preface

This paper will attempt to examine the factors that lead to the famous Anti-trust case against the monopolistic business practices of the major Hollywood studios of 1948 and seeks to understand how, and why, it came to be. In attempting to do so I will also try to frame this within the larger context of the history of motion picture industry in the 50 years prior to 1948, from the invention of moving images in the late part of the 19th Century to the end of World War II.

I will also examine some of the events in the 50 years *after* 1948 and how this anti-trust case affected the future of American cinema. As a filmmaker and cineaste I find it fascinating that the events of 1948 may have informed my love of cinema from an early age.

Hollywood, 1946

In 1946, the Hollywood film industry experienced its most profitable year ever, grossing $1.7 billion dollars *domestically*. This was not only a record for its short 50-year history, but would also be the record for the 50-plus years to come.



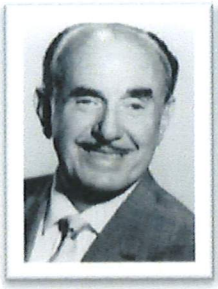
Movie audience - circa1946

During the Second World War Hollywood films had provided easy distraction from the war effort and the uncertainty of the conflict overseas. Now that the war was over, movie attendance immediately swelled as returning veterans and civilians alike poured into theatres to watch almost anything Hollywood had to offer.

The 5 major studios and their owners were on top of the world. The period from 1930 to 1946 is generally considered the Golden Era of Hollywood and its Golden Boys were Adolf Zukor, of Paramount Pictures; Carl Laemmle of Universal; Jack Warner and his 3


Zukor


Laemmle


Warner


Fox


Mayer

brothers of Warner Bros.; William Fox of Twentieth Century Fox, and Louis B Mayer of Metro Goldwyn Mayer. Each was the son of European Jews who had emigrated to America in the late 1800s; each one had got their start in enterprises that "legitimate businessmen" generally avoided (music publishing in New York's Tin Pan Alley, Amusement Arcades, Vaudeville theatres), and they all ended up finding themselves ideally situated to get involved in a risky new industry that no one quite knew what to do with yet, and no one quite trusted either.

Of all these colourful, dictatorial movie moguls of the Golden Era, Louis B. Mayer best epitomizes the mogul and the studio system they created. The consummate businessman, quiet, relentless, driven, creative and dictatorial, Mayer was born Lazar Meir in 1884 to a Jewish family in the Ukraine. The family immigrated to America in 1887; in 1907 Mayer bought his first of five movie palaces in New England. With the profits made from being a movie theatre entrepreneur he moved to Los Angeles in 1918 to form his own production company, Louis B Mayer Pictures Company. In 1924, he was hired to run the new Metro Goldwyn Studios, adding his name to the company


Mayer with Joan Crawford, at the 1953 Oscars

marquee before the year was out. By 1929, though he held no shares in MGM, Mayer was able to gain control of the company by outmaneuvering his boss, Bert Schenck, who was planning to sell the studio to William Fox. Mayer installed himself as studio head where he remained for 27 years.

In today's dizzying world of digital choice, and the many platforms on which we can have our entertainment delivered, it is easy to forget that up until 1946, film, in general and Hollywood in particular, had been virtually unchallenged by any other medium in the delivery of cheap, and readily accessible, mass entertainment since its introduction 50 years earlier. Live theatre was confined to the larger urban centres; the record album was still an expensive novelty during the Depression and WWII; even the advent of broadcast radio in 1930, after initial predictions of cutting into Hollywood's dominance, didn't live up to its anticipated threat. In fact, by 1935 radio had been successfully absorbed by the studios, turning popular radio personalities, such as Bing Crosby or Milton Berle, into new movie stars through their built-in audiences.

> *"In the 1930s Americans went to the movies; in the 2000s they went to a movie. The difference is not merely semantic. In 1938, there were some 89 million movie admissions every week, representing 65 percent of the population of the United States..."*
>
> *"In 2008*, (annual*) *admissions were about 1.4 billion* (approximately 27 million per week, or less that 9% of the population*) *and the box office took in $9.6 billion. Adjusted for inflation this was still not as high as the 1946 box-office gross, which was $18.55 billion in 2008 dollars."* [i]

(*Figures in brackets are my averaging since the 1930s statistics are quoted in *weekly amounts,* while the 2008 statistics are quoted in *annual*)

Yet, despite the staggering success of Hollywood in 1946, the power it must have wielded, and the influence it must have peddled, it was all about to change. And it would never quite recover from these changes, nor be the same again.



The five major studios (*MGM, Paramount, Warner Bros, RKO* and *20th Century Fox*) were once again about to come under the microscope of the US Justice Department for their vertical ownership of the means of production, distribution and exhibition. In addition, Hollywood had also been using its clout to force independent, competitive, exhibitors to accept block bookings of Hollywood product into their theatres - programing many films they didn't necessarily wish to exhibit in order to have access to the ones they did.

These practices had come under the scrutiny of the Congress as early as the 1920s and 30s, but first the Great Depression and then the outbreak of the Second World War postponed any action. During the war, the government needed Hollywood, and Hollywood was keen to help. While their stars helped sell war bonds, the major studios provided the masses with entertainment, at home and overseas: feature films, and current events/propaganda in the form of newsreels shown before the features; hundreds of training films for the Army, battlefield documentaries, and popular war movies for the public that carefully portrayed the conflict as it shifted subtly once the US entered the war. Hollywood worked closely with the US Office of War Information (OWI) to ensure their movies' messaging was always consistent with that of the government's.

However, after the war Congress's memory of Hollywood's contribution was short, and by 1947 the investigation was renewed with swift determination. In 1948, the 5 major Hollywood studios were ordered by Congress to divest themselves of their theatre holdings, separating production and distribution from exhibition. They were also banned from using block booking on independent exhibitors along with another 3 studios (*Universal, Columbia, United Artists* – the next 3 largest).

Almost overnight, independent exhibitors, and the public, could choose what films they wanted to screen. And the Hollywood studios would now have to begin relying solely on quality, not quantity, if they wanted to make their money back. And this was just the beginning of a paradigm shift in the way business was to be done in Hollywood.

Three other factors and market forces would come into play shortly to further erode Hollywood's virtual domination of the movie industry. After the war, the fear of Communism and the legacy of the socialist labour movement of the 1930s led to sweeping powers of the House Committee of Un-American Activity (HUAC) and the hysteria of the Communist Witch Hunts. Hollywood, always seen as a den of iniquity of some kind or other over the decades, was an easy target for HUAC. And it lost hundreds of its most talented performers writers and crafts people to the Red Scare. To their discredit, many of the studios complied by instituting *their own* voluntary blacklists.



The Hollywood Ten – the first to be found guilty by HUAC.

Secondly, the invention of the television made an astounding penetration into the American household. Television broadcast coincidently began in 1948, the same year as

the anti-trust ruling. At that time there were less than 1 million television sets in the country; within 10 years there were over 60 million.

Initially laughed at by the studios because of its vastly inferior picture quality, its unlikely success was helped by the third factor that also spelled the ultimate demise of Hollywood's profits: shifting demographics - the young people who went to the movies were now raising families; the mechanized factories of the war effort were now retooled to pump out consumer luxury items, such as affordable automobiles; and transportation networks allowed families to move out of the large urban centres (where most of the cinemas were located) to a place called, *the suburbs*.



Context

While the above three factors contributed to the decline of Hollywood's dominance in the latter half of the last century - and no analysis of Hollywood system would be complete without their mention - this paper will primarily focus on the 1948 decision of the United States Supreme Court in its case, known as, *The US V. Paramount Pictures, Inc.*, and the events that lead up to it during the 1st half of the 20th Century.

After all, Hollywood had been created 30 years earlier in part by its founders' desire to escape the anti-trust practices of the original inventors of moving pictures that prevented them from entering the business on the East coast. Men like Carl Laemmle, who went on to form Universal, fought hard against Thomas Edison's Motion Picture Patents Company's stranglehold on film production, spending many years in court and eventually defeating it in 1915 (*U.S. v. Motion Picture Patent Co.*). How then, by the mid-1920s,

did Hollywood come to adopt almost exactly the same business model as the MPPC and run afoul of Congress over the next 20 years – ending in final defeat in 1948?

Perhaps they didn't see themselves as quite so ruthless as Thomas Edison had appeared to them; perhaps their meteoric were blinded them to the irony of their actions. Or was this perhaps one of the contradictions of large, capital-intensive businesses that seek to stabilize and protect their investment in order to continue manufacturing their product.

The flipside of the problem is the question of competition: "Although insufficient competition may be harmful to an economy, excessively strong competition may be catastrophic"[ii], creating an endless spiral of lower prices, lower quality and too many choices for the consumer to ever decide on a brand loyalty. It can be reasoned that if large companies didn't adopt some kind of proactive, *even aggressive*, approach to this problem they might be forced out of the market place, and then everyone would lose, including the consumer.

Yet another point of view might take into account the backgrounds of these moguls and their empires. Did their ethnicity possibly play a role in how these men chose to deal with many of the crises that loomed before them – to not rock the boat, to go along with, and even assist, the government in return for possible favourable consideration?

The Sherman Antitrust Act of 1890 was brought in to safeguard against the restrictive practices of large companies and cartels of the 19th Century. The law attempted to "prevent the artificial raising of prices by restriction of trade or supply… innocent monopoly, or monopoly achieved solely by merit, is perfectly legal, but acts by a

monopolist to artificially preserve his status, or nefarious dealings to create monopoly, are not."[iii]

So, "*an innocent monopoly by merit*" provided a justification and possibly a *mea culpa* for these studios, to view their business model of vertical integration and block booking as non-restrictive. After all, they became the unlikely moguls of these empires that they built up from nothing; and the merit of their products distinguished themselves with the paying public. Theirs was also a discretionary product, *not* an essential service: no one was *forced* to go to the movies if they didn't want to.

A monopoly is defined by several factors: the practice of profit maximization, price and quality discrimination, high barriers to entry into the market in question, and most importantly, a single seller – the seller produces *all* the output - and, for all practical purposes, *becomes* the industry.

This definition is somewhat problematic when applied to the Hollywood film industry of the 1920s, 30s and 40s. There was obviously more than one "seller"; they were not always able to set the price or quality of their product; and the barriers of entry were natural – producing films was *incredibly expensive*; all of the major studios of the 1930s had started out as much more humble affairs decades earlier, before building themselves up to the force they had become. Anyone wishing to enter the film industry by the late 1920s needed to possess deep pockets. In fact, the only studio to come into being fully formed was RKO in 1928, financed by industrialist, Joseph Kennedy, Sr.

Hollywood studio system of that time fit better into the definition of an oligopoly – that is, a market dominated by a small number of sellers. Several aspects of an oligopoly cross-reference with that of a monopoly (profit maximization; high barriers to entry), but there are several key differences: an oligopoly is understood to have a "handful" of sellers that dominate a market, whereas in a monopoly there can be only one. In an oligopoly, the ratio of companies entering and exiting the market is a key factor as this can determine how many are successful at navigating the high entry barriers – and how many are able to *remain* in business once they have. Other factors that distinguish an oligopoly would be the extent of interdependence between this handful of companies, product differentiation between the products offered of these companies; and a perfect knowledge of the cost of the product across these companies produce.

To fully appreciate the position in which the major Hollywood studios found themselves by 1948, it is necessary to go back to the very beginning of the motion picture and the invention of the moving image.

The Beginnings: 1880 - 1915

The history of the evolution of the motion picture does not start in any single country. Once photography had become commonplace in the latter half of 19th Century, inventors and scientists on both sides of the Atlantic began to put their minds to the task of making pictures move. Inventors in America, England, Italy, France, Germany, and even Russia, the countries that had been touched by the Industrial Revolution, turned their enthusiasm towards the task.

It is therefore impossible to date exactly when the motion picture was invented: did it begin in 1872 with the famous experiment by Eadweard Muybridge that captured a race horse in a series of photographs that when played together resembled motion – this experiment, by the way, was the result of a bet made by Leland Stanford, the founder of Stanford University, that all 4 hooves of a galloping horse do in fact leave the ground at the same time.


The Winning Frame


Thomas Edison

The early experiments of Thomas Alva Edison in his laboratories in Menlo Park, NJ were proving promising. In 1890 Edison's longsuffering employee, W.K.L. Dickson, created one of the first examples of moving pictures - Dickson was to create many of the motion picture inventions for which Edison would hold the patent. Entitled, *Monkey Shines* it seems to shows a standing man simply waving his arms. However, the quality of image is so poor that the effect was quite surreal and resembles more an animated Shroud of Turin than a photographic representation of motion.


Monkey Shines #1

The 1st recorded exhibition of a motion picture to a paying audience is generally considered to have occurred in the spring of 1895 either in Paris or in New York City, depending on the criteria used. Regardless, within the year, short films were being screened in all of the countries mentioned above.

The uncertain paternity of the motion picture caused a number of problems, not just for any nation wishing to claim bragging rights as being its birthplace, but equally for the many inventors of this burgeoning industry. This simultaneous evolution presented opportunities for the scores of entrepreneurs who came after them to use the Atlantic Ocean and the distances between large urban centres for the duplication and outright theft of each other's inventions and films.

For the purposes of this paper it will be necessary to narrow our focus to only 2 or 3 pioneers in order to make sense of the 20-year period from roughly 1895 until 1915. In England, R.W. Paul was experiencing much success with his inventions and the theft of other's patents. In France, the Lumiere Brothers, Auguste and Louis, had built their own equipment and were having great success recording real events or staged versions of everyday happenings: workers leaving the family-run factory; feeding Auguste's infant son; a train arriving at a station - in effect creating the first documentaries. The sons of a Lyon industrialist, the brothers were born with the keys to the workshop to build anything they dreamt up for this new medium.



The Lumiere Bros.



Workers Leaving the Lumiere Factory

In America by 1895, Thomas Alva Edison was having further success with his experimentation with moving pictures. Edison is best remembered today as the inventor the phonograph, light bulb and Direct Current electricity, among many other things, and his contribution to the movies was also considerable. Edison, the inventor, was an inspired, driven, at times ruthless, and contradictory individual - any proper biography of

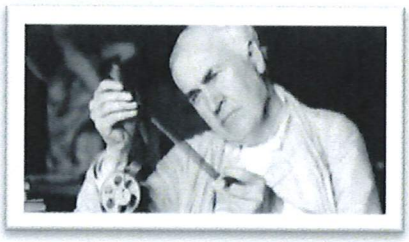
him would fill volumes. However, for our purposes it is important to focus solely on how he helped the development of motion pictures in the United States, and how he eventually also came to hinder it before his exit.


The Kinetoscope

By 1895 Edison had developed (either through direct invention or acquiring another's technology) several peep-show-style exhibition systems, most notably, the Kinetoscope. He guarded their patents zealously. Though he also held patents for several movie cameras by 1890, he focused his attention on his Kinetoscope parlours that were making lots of money. Edison even built a crude movie studio, the world's first, to supply product for his parlours. It consisted of a 20' X 40' black box covered in tar paper with an opening in the roof for light and erected on a Lazy-Susan to rotate with the changing angle of sunlight.


The Black Maria – the first movie studio, named for its resemblance to a Police Paddy Wagon

Edison's contribution to the history of American film production is indisputable: in 1895 he formed The Edison Film Company, which produced over 3000 films in 20 years and gave future legends, like DW Griffiths, and Mack Sennett, their first break. But over the next 15 years is it is difficult to understand all of Edison's actions and business decisions. He fought vociferously over some of his patents, while letting the patents on other key inventions lapse; his failure to secure patents for his equipment in England allowed British inventor R. W. Paul to manufacture his own cameras based on Edison's design, and sell them back to Americans who could not, *or did not want to*, buy Edison's.



Edison himself did not clearly document why he made this series of odd decisions that, for such a visionary man, seem rather short-sited in the face of all evidence at the time.

For example, Edison seemed to have understood the power of moving pictures well enough, but was convinced that the future lay in peep-show type arcades. Even when Edison finally embraced theatrical exhibition, he remained convinced that the public would not sit through any film longer than one or two reels, or about 15 minutes – despite compelling evidence to the contrary in New York and in Europe where films of 40, 60, and 80 minutes or more were being screened to packed houses.



Advertisement for The Vitascope

By 1900, audiences thirsted for more and new types of product weekly. The public seemed to understand its future potential even before some of its founders perhaps did.

The history of the development of cinema is therefore *also* the history of its development as a medium of expression. As filmmakers and their audiences became more familiar with its ability to tell stories, filmmakers experimented with the use of close ups and editing to further manipulate what to show the audience, and what to leave out. While the first filmmakers had been primarily inventors and men of science, this slowly gave way to other pioneers who grasped that there was much more potential for movies as a storytelling medium, as well as much better ways of exhibiting these stories.

By the 1905 another breed of entrepreneurs were interested in a piece of the action. A small group of businessmen, immigrants of European origin, saw the potential of the movies and wanted in. These men were ideally situated to understand the potential of this new medium and take advantage it. They were mostly sons of Jewish immigrant parents who had fled persecution in Europe and taken up business in the only professions available to them – owning vaudeville theatres, amusement parks and penny arcades, others selling fish or scrap metal salvage – the business that "legitimate" entrepreneurs would not have touched. The theatre was still considered an unfortunate occupation and unsavory profession, and many Gentile businessmen didn't see the arrival of the movies as anything different. Perhaps most appealing to these men was that this new industry had no pre-existing establishment or "Old Boys' Network" to deal with.

These immigrants, Adolf Zukor, Carl Laemmle, the 4 Warner brothers, William Fox and Louis B. Mayer who would later founded Paramount Pictures, Universal, Warner Bros., Twentieth Century Fox, and Metro Goldwyn Mayer, respectively, had all immigrated to America as children with their parents. They were all born within one generation and 500 miles of each other in Eastern Europe.

As Vaudeville entrepreneurs, they were well versed at making money from the popular taste of the public, and were able to see the potential of this new medium. While the inventors, like Edison, were focusing more on protecting their patents than seeing the big picture, these producers, who were used to providing entertainment that required many hands to get it up in front of an audience every night, were quick to see the cost benefit of showing films instead.

At the beginning of the 20th century, oversight of patent law for this new industry was lax and difficult to enforce, making the early days of cinema seem more like the Wild West, with established companies and new entrepreneurs alike stealing each other's films, and technology, outright and claiming them as their own.

By 1905, Edison was becoming increasingly frustrated at the number of competitors now cutting into his business. He complained bitterly that these men were stealing his technology to make their own films, even stealing his films outright, and presenting them to an unsuspecting public – a practice Edison himself was not above. There is an anecdotal story that Edison was so impressed with George Melies' *A Trip to the Moon* (1902) when he visited Paris that he obtained a copy illegally, had dupes made, and exhibited them as his own to great success in America; when Melies brought the film to America shortly after he discovered that he had been scooped which is said to have lead to Melies' financial ruin soon afterwards.



Other entrepreneurs were able to buy their equipment overseas, thereby sidestepping Edison's patents completely. Edison's answer was to drag these "upstarts" through the courts, at times resorting to hired thugs to disrupt their productions and smash their equipment when he felt the courts were not doing their job.



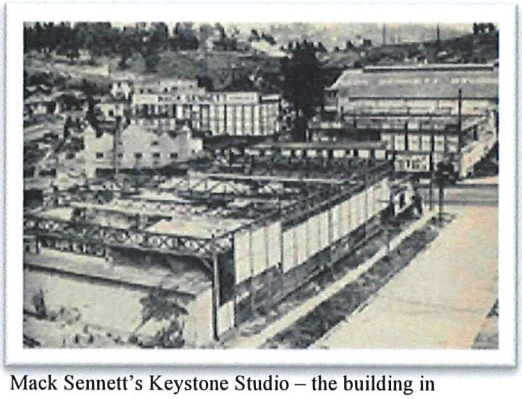
The Edison Trust

In 1908, Edison established The Motion Picture Patent Company with the 9 established production companies in an attempt to control the production and distribution of films in

the US. It quickly became known as *The Edison Trust*, and had the cooperation of many key service providers including Eastman Kodak, which agreed to sell its filmstock *only* to MPPA companies.

The Edison Trust also tried to block the exhibition of foreign films that were proving to be popular with audiences ready for longer, more complex fare. Determined that the public only wanted short films, the Edison Trust then formed The General Film Company to handle the exhibition of the films made by the Trust.

Independent producers, such as Laemmle and Zukor, immediately cried foul and took their complaints to the US Government. It took 7 years, but in 1915, in *US v. The Motion Picture Patent Company,* The Edison Trust was ordered disbanded; the General Film Company ceased to exist the next year. During those 7 years, many of these independent producers had moved their operations to California where land was cheap, weather was consistent, and the Edison Trust was far away. By 1915 when the Trust was broken up, Hollywood was well established as the new centre of movie production.



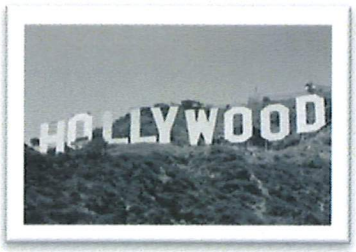
Mack Sennett's Keystone Studio – the building in the foreground is a soundstage (notice its open framework and the white sheets used to defuse the sunlight and light the "interior" sets)

Edison's 20-year domination of the movies was finally broken and he left the business to focus his attention elsewhere. Oddly enough, Edison was to later site D.W. Griffiths' *The Birth of a Nation* as his favourite film. Released in 1915, it ran almost 3 hours in length.

1915 – 1945

By 1915, Edison's dominance of the film industry had now hurt the American Film Industry, hindering its growth and innovation relative to that of the other industrialized nations that had begun experimentation at the same time.

However, two things were happening in the world that would soon change that balance around the globe, though their effects would not be obvious for several more years. First, the independent producers who had set up shop in California no longer had to worry about East coast interference and could now make the kinds of films they felt sure that people wanted to see; and secondly, the First World War was about to devastate all of Western Europe, and with it the flourishing national film industries of these countries. By the time these countries were able to rebuild their industries over the next 10 years, Hollywood had established itself internationally as the dominant film producing country.



The Hollywood Sign – not actually erected until 1923



Zukor, Laemmle and the others suddenly found themselves in the right place at the right time. By 1920, American cinema in the form of Hollywood movies began to distinguish itself by the polished craft of its movies and the redemptive stories it offered audiences.

In just 20 years, moving pictures had grown from an invention into an industry. By 1920, 40% of Americans went to the movies every week; it was now the 5th largest industry in America, behind agriculture, transportation, oil and steel.

But films were also becoming much more expensive to make; the Hollywood Star System had now been in place for 10 years and stars were receiving increasingly astronomical salaries - Chaplin had been making over one million dollars a year since 1917. While he had been the first to do so, by 1920 his salary was far from unique.

In addition to escalating salaries, constant innovations in equipment, competition from the other studios and independent producers, and of course navigating the fickle taste of a public who occasionally rejected certain films outright, meant that the business of making movies for mass entertainment was not for the faint of heart. It is reasonable to see why the studios felt the need to have certain insurances in place to better protect their investment.

The Advent of Sound

One of those innovations, the addition of sound to the movies, was initially resisted by most of the studios because of the associated costs involved in new equipment, and of retrofitting all the theatres they owned. But in 1927, Warner Bros.' *The Jazz Singer* premiered and sound was here to stay. While profits did go up with this new invention, sound added greatly to the cost of each movie. The studios needed to turn more to the banks for help with the interim financing of these pictures.



Sold out opening night of *The Jazz Singer*, Times Square

An additional cost of the talkies was the initial loss of some foreign markets, these new films were now limited by where they could be shown internationally due to language

barriers, and the number of cinemas overseas that would first have to be converted to sound. Silent movies had truly been international from the beginning - as we have seen already in the early days of piracy.

The misplaced enthusiasm of the "Roaring 20s" was mirrored in many of the films being produced during that time and further raised the ire of religious and citizens' groups that felt that films portrayed a lack of morality from which the public needed protection. These groups had first become indignant at the sight of *The Kiss* in 1896 and had remained indignant ever since. Gerald Mast speculates that there might also have been more to this moral outrage, "*Behind the censorship drives of some of these organizations lay a thinly veiled anti-Semitism. The moral deficiencies of the movies were yet another stratagem of the Jewish infidels, once again poisoning the wells of a Christian nation.*"[iv]



The Kiss, 1896, 47 seconds

Interestingly, because of its peep show and penny arcade roots, film was not considered an art form in the eyes of the law for the first half of its life. In a landmark case in 1915 the Supreme Court ruled that motion pictures were a novelty made for amusement and profit only, and not entitled to Constitutional guarantees of freedom of speech – after all, movies were silent, they contained no "*speech*" at all. It would be another 40 years before this ruling would be overturned. While this event is not directly relevant to this paper it does help to explain in part Hollywood's uneasy relationship with the government, and the government's often fickle attitude toward the film industry for much of the 20th Century.

The First Anti-Trust Case

In 1928 the Department of Justice filed its first Anti-trust case against Paramount and the 7 other major studios. The studios were found guilty of violating antitrust laws; block booking was identified as the main problem.

However, in 1929 the Great Depression hit and the sentence was never enforced and was repealed under the Industry Recovery Act. While the common wisdom has always been that people will continue go to the movies in times of trouble, attendance from 1929 to 1933 nevertheless dropped by 30%.

By 1935 the studios had recovered financially and were in good shape again. In 1938 they were back in court under charges of *monopolization in restraint of trade*. As the case gained momentum the studios asked the government to reach an agreement out of court. As a result, the Department of Justice issued a Consent degree in 1940, effectively calling off the suit. There was an expiration date on this decree of June 1st, 1942 but by then America had entered the Second World War.

When the war was over and Hollywood had experienced its most profitable year ever, the Justice Department moved quickly to reopen its investigation of the exhibition practices of the studios. As mentioned above, in 1948, *US v. Paramount Pictures Inc.* went after the theatre holdings of the five major studios, plus the block booking practice of these five major studios, and three others who did not own theatres, but were accused of using block booking practices as well.

Block booking ceased as a business model almost over night; and over the next 3 years all of the major Hollywood studios disintegrated their theatre holdings as well, some

more quickly than others. Howard Hughes, who now ran RKO, was perhaps the most proactive; seeing the writing on the wall he ordered his studio to adopt this new model even before the Justice Department had made its final verdict.

The antitrust ruling against Paramount and the other studios had had the objective of making the movie industry more competitive. Banning block booking and vertical ownership of theatres "would force the market place to be more competitive. This competition would deter major studios from producing some of their low quality movies or induce them to upgrade low quality movies to high quality movies through increases in expenditure budgets. Both reactions would decrease the amount of movies produced by the studios affected by the Supreme Court ruling." *iv*

In theory, this would allow the independent producers to fill that gap, but in the end the ruling did not quite have that effect. The elimination of block blocking did allow independent producers to get their films shown, but the divestiture of theatre ownership is not sited as having had a measurable effect on the marketplace: the unforeseen side effect of the shift in demographics and discretionary income after the war led people away from the cinemas regardless of whose films were on the screens.

Post 1948

Now that the major studios' hold on exhibition had been broken, it begs the question, why did they hold on to this business model for so long? After all, it was the very model they had rebelled against 30 years before under the Edison Trust; and in the past 20 years it had come under the intense scrutiny of the Department of Justice and been found in breach on at least 2 separate occasions.

So, why *did* the major studios continue to embrace these practices?

Did they feel they could beat the rap?

Did they think it would go away if they just made nice and helped the government promote the war and its other agendas?

Or did they simply feel they had no other choice in order to protect their industry?

Claims from the plaintiff stated that, "the use of these movie blocks (vertical integration) allowed them firms to market low quality movies jointly with high quality movies…Banning would force low quality movies from major studios to compete with movies from independent studios for screen space" *vi.*

The above claim might seem a bit preposterous at first glance - why should any film *not* have to stand on its own merits in the marketplace? But it is important to remember that by the 1940s when over 60% of Americans were going to the movies every week, the need to provide an uninterrupted stream of movies to a public hungry for distraction, meant that Hollywood had to produce more films than could reasonably be done with any consistent guarantee of quality. Some films had to be conceived, shot and put in theatres in record time and the highest quality could not always be possible. In order to fill this demand and still recoup their costs the major studios felt justified in insuring that these films would be seen by the public.

While the Justice Department wished to "force the market place to be more competitive", they also hoped that their ruling would "deter major studios from producing some of their low quality movies or induce them to upgrade low quality movies to high quality movies through increases in expenditure budgets". But how does one define quality? By the quality of the story? By the amount of money spent on a production? Or by a film's

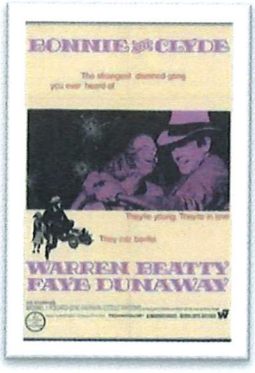
success at the box office? What about those films that are often popular with audiences despite deficiencies in the first 2 criteria?

As with any art form, and film was only declared an art form under the US Constitution in 1953, quality is firmly in the eye of the beholder. And any attempt by government to regulate that eye is a fool's errand – though this has never prevented legislators from occasionally trying.

The Hollywood New Wave 1967 - 1981

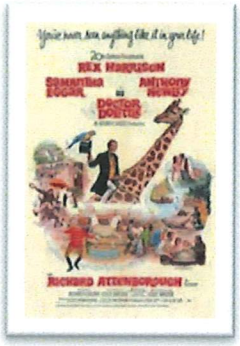
As expected, this new government-mandated competitiveness did not increase the quality of movies, and audiences continued to decline for the reasons stated above well into the 1960s. Since neither the government's logic, nor the studios, came to pass as predicted, what did happen?

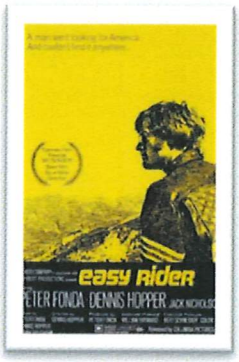
Hollywood floundered for the next 17 years approximately, making films that fewer and fewer people wanted to see. By 1965, the original studio moguls were all gone, deceased or edged out and replaced by executives who answered directly to the companies that now owned the studios. Then slowly, after the mid-1960s, a new bread of filmmakers began to emerge.



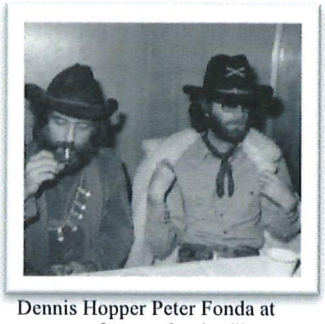
Films like *Bonnie and Clyde* and *The Graduate* in 1967 captured the zeitgeist of the late 60s and got people interested in the movies again. But the studios were still slow to recognize this - Warner Bros. had so little faith in *Bonnie and Clyde* that they offered

Warren Beatty, the star and producer, a 40% back-end deal in lieu of his paltry fee. The film went on to gross 70 million dollars. That same year 20th Century Fox released *Dr. Doolittle,* an expensive musical that flopped spectacularly; ballooning from its original budget of 6 million dollars to 18 million, it only grossed 9 million dollars at the box office.





Then in 1969, *Easy Rider* came out of nowhere and caught the studios by complete surprise - made for $500,000 it made over 41 million dollars. Having lost money for decades now, the heads of these studios in their desperation thought that maybe these young people had the answer.


Dennis Hopper Peter Fonda at press conference for the film.

Suddenly American films were becoming edgy and morally complex. This period became known as *The New Hollywood*, or *The Hollywood New Wave*, (after *The French New Wave* of a decade earlier). It lasted for about 12 years before running its course, but this period revitalized movie attendance for decades to come.

Analysis

The style of films being made during this period reflected much of the larger mood of the country at that time. However, there is also a case to be made that some of the roots of this movement can be traced back to the legal decisions of 1948.

If one of the tenants of the Justice Department ruling had been to possibly improve the quality of the type of movies that were being made by the late 1940s, it could never have foreseen that the loosening the reigns of competition in 1948 would create this kind of an effect in the late 60s and early 70s. Yet their decision did have something to do with the outcome.

The divestiture of movie theatres by the studios and the changing demographics in the late 40s and early 50s meant that 100s of cinemas across North America had closed and were sitting empty. Other independent entrepreneurs in these large urban centres saw this as an opportunity to program foreign language films that were proving popular in their home countries.



These films were *Neo-realist* and *New-wave* films from Italy, France or Japan. These







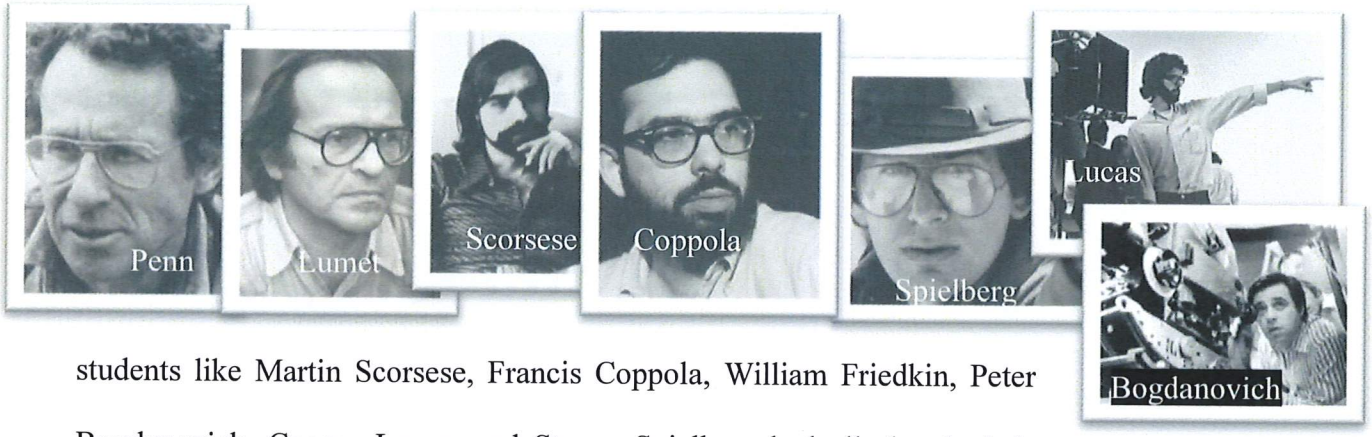


countries had dug themselves out of two World Wars in less than 30 years and the kinds of films they wanted to make reflected this ethos. These films were different from escapist American fare; they explored the human condition, and dealt with larger, more existential questions that didn't necessarily provide clear answers by a film's end. They were all based on original screenplays yet they felt like complicated works of literature.

By the late 50s and early 60s there was a steady stream of foreign films being shown to a

younger American audience living in the urban centres again. This wave of avant-garde films inspired a new generation of young directors, and students studying to become filmmakers, to tell stories with more complexity and depth than any generation before.

Directors like Arthur Penn, Sydney Lumet, who had came up through television; film



students like Martin Scorsese, Francis Coppola, William Friedkin, Peter Bogdanovich, George Lucas, and Steven Spielberg had all absorbed the techniques developed in Europe in the 1950s and 60s and were ready to use them (though Spielberg was more influenced by the epic films of directors like David Lean). Their films would pay homage to the history of film, while developing upon existing genres and techniques, with the addition of a new breed of amoral heroes, increased sexuality, and violence. Their films were often both critically acclaimed and commercially successful. Initially, they were met with resistance by the 60-year old movie executives who still dressed in business suits every day. But as their small movies began to make more and more money, the studio executives had to listen.


NETWO
MOON"
CLOSE
MASH
ROBERT DE NIRO
TAXI DRIVER
JACK NICHOLSON
FIVE EASY PIECE
THE EXORCIST
SORCERER
Clint Eastwood
Dirty Harry
PAT GARRETT AND BILLY THE KID
JACK NICHOLSON
ONE FLEW OVER THE CUCKOO'S NEST
DEER HUNTER
"Chinatown"
1900
BERNARDO
American Graffiti
Where were you in '62?
JAWS
ROY SCHEIDER
ROBERT SHAW
RICHARD DREYFUSS
Apocalypse Now
STANLEY KUBRICK
CLOCKWORK ORANGE
The Future is here.
THX 1138
THE STING
Deliverance
Walkabout
STAR WARS
Marlon Brando
Last Tango in Paris
The Black Stallion
AL PACINO
in DOG DAY AFTERNOON
WOODY ALLEN
DIANE KEATON
TONY ROBERTS
CAROL KANE
PAUL SIMON
JANET MARGOLIN
SHELLEY DUVALL
CHRISTOPHER WALKEN
COLLEEN
The most devastating detective story of this century.
REDFORD/HOFFMAN
"ALL THE PRESIDENT'S MEN"
GENE HACKMAN
"THE CONVERSATION"
THE EPIC AMERICAN WAR MOVIE THAT HOLLYWOOD HAS ALWAYS WANTED TO MAKE BUT NEVER HAD THE GUTS TO DO BEFORE."
shamp
ACADEMY AWARD
Jack Nicholson
The damndest thing you ev
MASH
Highest Rating!
Doyle is bad news- but a good cop.
BARBRA STREISAND
RYAN O'NEAL
"WHAT'S UP DOC?"
One guy just wants to kill her.
'klute'
THE FRENCH CONNE
The story of a gambling man and a dazzling lady and the empire they fashioned from the wilderness

While the early New Hollywood films had been relatively low-budget affairs, the enormous success enjoyed by Friedkin, Spielberg, and Lucas with *The Exorcist*, *Jaws*, and *Star Wars* respectively, changed the way films were marketed and exhibited, which in turn gave rise to the modern "blockbuster" and the "wide release", inducing the studios to focus heavily on trying to produce enormous hits.

The 1980s and the Road to Modern Hollywood

There are many humourous, *and not so humourous*, anecdotes about the privileges, and responsibilities, that were handed to these often irresponsible talents in the 1970s. By the end of the 1970s the increasing indulgence of these young directors did not help their artistic longevity. Often they went over schedule, and over budget, at times bankrupting themselves, or the studio. The most famous examples of this was Michael Cimino's *Heaven's Gate*, which single-handedly bankrupted United Artists in 1981. *Heaven's Gate* is often cited as the film that brought the Hollywood New Wave to an end. The studios had grown accustomed to this new marketing paradigm these filmmakers had helped introduce, but had had enough of the wild rides it took to get their films finished.

By 1980 all of the major studios were owned by multi-national corporations, often with unrelated backgrounds, such as Gulf and Western (an oil company) which aquired Paramount. The executives now in charge moved away from auteur-driven projects and focused almost exclusively on safer, more predicable fare. Instead of a single producer developing his own material and nurturing it to the screen, films were now being developed by committees of producers with very little direct knowledge of the craft. A detailed review of the films of the 1980s (or the 1990s and 2000s for that matter) reveals only a handful of films comparable to the creative output of the 1970s.

Post Script

But the late 1960s is where I came in - as a young movie-goer still in elementary school. Born in 1957 I was 10 years old when I insisted on being taken to see *Bonnie and Clyde.* (in contrast my Grandmother took me to *Dr. Doolittle* and I remember being at a loss for words to describe what a misfire of a film it was; it would be years before I would use words like "*bloated*", "*inept*" or "*wildly uneven*")

I was electrified by the films that were being made at the time. I had no sense, however, that this was part of a new Hollywood movement. I imagine that I simply thought this was how films were made. The 1970s were a phenomenal time for American cinema and I saw as many films as I was allowed, convincing my parents to take me to the restricted ones, like *A Clockwork Orange.*

By the late 70s, now at university, I started seeing many of the foreign films that critics had been hailing and these new American directors were made reference to, and thought that the world simply made great films, all the time.

It wasn't until years that I realized just how interconnected all these developments and movements were. As with any other art form, each one new movement built on the last, before inspiring the next. Like the studio heads of the 1920s and 30s, these directors had also found themselves in the right place at the right time – in the vacuum left by the old studio heads, and just before the corporations that owned these studios solidified their holdings into the entities we know them as today, with wide releases, bigger budgets and safer films.

FIN

Footnotes:

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i Pg. 258, *A Short History of the Movies* - Gerald Mast and Bruce F. Kawin, 11th Edition Ispn-13 978-0-205-75557-8

ii Pg. 85, *Competition: The Hidden Costs of the Invisible Hand* – Michael Perleman, Challenger/March-April 2001

iii Richter Concrete Company v. Hilltop Basic Resources, Inc (Ohio, 1981)

iv Pg. 122, *A Short History of the Movies* - Gerald Mast and Bruce F. Kawin, 11th Edition Ispn-13 978-0-205-75557-8

v Pg. 16, *An Empirical Investigation of the Paramount Antitrust Case*, Ricard Gil, UC-Santa Cruz

vi Pg. 17, *An Empirical Investigation of the Paramount Antitrust Case*, Ricard Gil, UC-Santa Cruz