A huge thanks as well to our speakers today for being with us as we focus on a discussion of mergers and consolidation in the media and entertainment industry and what it means for artists, content providers, journalists, and the public. As we've all seen, the media and entertainment sector have undergone significant transformation over the last decades. Movies and television have have new platforms, distribution, changing options for content creators and viewers. Music albums sales meanwhile have plummeted in favor of streaming subscriptions, and live performances are increasingly an important source of revenue for musicians. For live performances we've also seen changes in how events are promoted and tickets are sold and resold. Alongside these changing technologies and methods of distribution, we've also seen big changes in how these markets are structured. With cable and broadband companies combining and integrating vertically, in 2021 alone industry observers put the total value of media and communications mergers at over $200 billion.

Content has long been distributed through platforms that can give rise to bottlenecks, where a limited number of companies are wielding power over market participants both up and downstream.

consolidation in local news, and specifically its effects on local coverage and coverage of small communities.

When reviewing potentially illegal mergers, we are working to ensure that our analytical methods are keeping up with new market realities. We really want to make sure that our approach to measuring harm that may occur through mergers and acquisitions is rigorous and fully capturing the day to day realities that a range of participants in these markets face. These guidelines really need to reflect the modern economy, and that's why we're so excited to be hearing from you all. I'll just say we are doing these listening sessions in a whole set of sectors and each sector has its own reasons for being critically important. I see news and media and entertainment as really being the lifeblood, in many ways, of our democracy. And so making sure that we're not allowing forms of consolidation that are allowing firms to wield outsized power over how information is distributed in our country is especially important. So AAG Kanter will safe his comments for the end. So I will now kick it over to our first participants, starting with Adam.

Adam:

and other artists, all to bring the best ideas to the public. But after two years of vertical and horizontal mergers, today the network that broadcasts your show also owns the studio that makes it, the IP that it's based on, and the cable infrastructure that brings it to your house. Just six companies now control the production and distribution of almost all entertainment content available to the American public in theaters, on TV, and on streaming services. And the impact on those of us who actually make all this content has been profound.

When I created Adam Ruins Everything in 2015, we pitched it to Tru TV, TNT, TBS, Discovery, and HBO. But today all those buyers have consolidated into a single entity, HBO Max. With fewer employers competing for our labor, they can more easily hold down our wages and set onerous terms for our employment. For example, despite unprecedented growth and record profits, my union has found that median pay for TV writer producers is nearly the same as it was in the '90s, 30 years ago. And years I've been working with an organization called UMAW, Union of Musicians and Allied Workers. And in doing some research with that organization, I learned about the merger between Live Nation and Ticketmaster and started becoming more educated in the fallout of that, and realized that my rate and the lack of increase to my rate and the stagnation that I'd been seeing on an individual level tracked directly with the merger between Live Nation and Ticketmaster. Looking into this more and asking around to friends, I found that the same thing has happened to most of my friends, whether or not they're on tour or working locally.

It's kind of incredible. It's almost too obvious when you start getting into it. And the fallout, on a

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then Amazon with 13%. So we're talking about the biggest corporations in the planet. These three companies, Spotify's not on the level of a corporate level the size of Apple and Amazon, but music they're outsized, are actually double the size of either of those. They run the show. These three together account for 59% of the market. Add the Chinese streaming giant

Damon:

... 10 cent, which has another 13% global share. And four companies control three quarters of streaming globally. My income, even the income of an independent artist like me, I am not a pop star, I'm just trying to make a living as an independent artist as I have scrapping through decades of this. My income is now dependent on these massive companies. We have no negotiating power over their terms, and we have no way around them anymore because of consolidation in the marketplace. And this is the real big problem. The terms they pay are punishing similar to what Marshall was describing. As consolidation has happened and fortunes have been made on the stock market and in corporate boardrooms, the workers who supply the content for these fields are making too little to live on. What we make from streaming is unsustainable for all but a very few artists. The middle class working musicians is being eliminated by this unregulated system.

Let me share my own experience quickly. My band sees about three quarters of a million streams per month on Spotify, which is a lot. This last month, the last 28 days for 730,769 streams we grossed $2,192. That's gross. Now, we own our master rights. We're lucky. So we don't share that with a record label. Most bands would split that at least half with a record label, maybe even worse, which means 83% of their record music income is going down to just pennies. You can't survive off it. Even though we own all our stuff, obviously it's not enough. It was in a way when it was a portion of a diverse set of income sources, which is what we had 10 years ago before streaming took over the market. We had significant income from many sources that Spotify particular has driven out of the marketplace by offering equivalent services for free. Physical media, satellite radio, soundtrack licensing, licensing for commercials, all of these have been absorbed by streamings' expansion.

For example, a brand used to have to negotiate directly with us to associate themselves with our music. Now, they can build a playlist on Spotify without my permission, without any payment. They may even pay Spotify for the privilege. We don't know because they would not report that back to us as income that needed to be included as music income. Spotify, Apple, and Amazon have become also producers of audio content, as well as exclusive distributors. And you know very well, I think everybody podcasting like this. We also know in Spotify's case in particular, that they promote that content using privileged access to users.

We know because they're now asking us to pay them for the privilege to boost our songs in their algorithms. They have a program called discovery mode, which has attracted the attention of several congressional members in the House because it looks like Payola. It looks like Payola because it is a word on the radio. But on digital platforms, it's not regulated. We need help from the federal government to restrain the practices of these corporations. We need protection for competition in our industry. We need support from musicians who can no longer earn a sustainable income from recorded work. Thank you so much for your attention to this and for including us in the forum.

Lina Khan:

Thank you so much, Damon. Next we have Russell.

Russell D'Souza:

SeatGeek as their primary ticketing platform. Our industry provides a cautionary tale about how behavioral remedies even when well-intentioned and enforced appropriately can not solve the problems inherent in an anti-competitive merger. It's clear that a merger will harm competition and no divestitures can solve the problem.

I respectfully suggest the right response is to block it, not to permit it with promises of good behavior with the merging parties under a supervisory process. Finally, I recognize that the president's executive order last year affirmed agency's authority to challenge transactions whose previous consummation was in violation of the antitrust laws. If there was ever a candidate for that retrospective review, it is a merger like this one where there is still a supervised consent degree in place and where DOJ has already accumulated a track record of decree violations. SeatGeek cares deeply about this industry and it's time to give fans, teams, artists, and venues, the choice they deserve. It's a privilege to be included in this discussion. Thank you for your time and attention.

Lina Khan:

Thanks so much, Russell. Next we'll go to Julie.

Julie Reynolds:

The workers, meanwhile, are paid low wages that haven't kept pace with inflation. And I want to make clear here, when I say newspaper, I'm referring to a professional news gathering operation. News doesn't have to be printed on a piece of paper in this era of smartphones, but it does need to be reported by trained full-time professionals. That is the role of the community newspaper. It's what we used to call the paper of record. It's the role of a constant watchdog, an overseer, an ombudsman for community concerns, big and small. And blatant corruption is allowed to flourish in broad daylight then we no longer have an informed citizenry. And that is the exact situation that many small communities in the US now find themselves.

It's already too late to prevent the creation of the news duopoly, although some retrospective review could be in order. But I would also suggest that the review process for future news media mergers, even a large chains acquisition of just one small town paper should all be closely scrutinized. These reviews should consider and prioritize the impact of consolidation on subscribers, on news workers, but especially the broader community. And I would suggest that we invite these stakeholders to talk about the harms that they are enduring. I will continue to say it, I am beating a drum, but it is no exaggeration, what is at stake here is our very democracy. Thank you so much.

Lina Khan:

Thank you so much, Julie. Next we'll go to Brooke.

Brooke Binkowski:

I just wanted to second everything Julie said, and then some. I just... everything everybody has said so far. Thank you so much. So I really I'm glad that Julie, that you said all the things that you said because it really tees me up for my own experience. My name is Brooke Binkowski. I am a third generation journalist. My mom and dad work together. I was raised in a newsroom that was owned by my grandfather, which is how my mom and dad met as a matter of fact. And I always bring that up because it underscores the importance of institutional knowledge in journalism. Knowing how things used to be is very helpful. So I say a lot of stuff that in today's landscape sounds extremely radical and it's not. It's just like, 10 years ago or 20 years ago. I've been working in the industry since 1995 when I was 18.

I just told you all how old I am. And so, first of all, I have an anecdote that I used to illustrate this. I started in radio. I've worked across industries, but radio is my first love and probably my dearest. And I started at a radio station called KOGO in 1995, in San Diego, a news talk station. And I was just a

I was like, "Ha ha, where is everybody? They're going to keep coming along next, right?" And nobody laughed. They're just like, [inaudible 00:31:52]. And that's how it is everywhere. Everywhere is suffering because of this. And I want to make sure that I emphasize this is a national security issue.

Brooke Binkowski:

This is a global security issue because when you have this stuff happening, when you have newsrooms just devastated and journalists out of work... You have people who are working in these newsrooms who are overworked, underpaid and exhausted. They're cribbing off other people's notes and that's how the disinformation gets in. That's how disinformation campaigns happen. There would never be these types of disinformation campaigns if we had the resilience offered by a healthy journalism industry, healthy media industry or anything creative. At this point, is fighting back against the sorts of fascist maneuvers that we see right now and I'm sorry if I seem bombastic or over the top but I'm a debunker. I forgot to say this. I run a site called Truth or Fiction where we debunk disinformation campaigns and I've been working in the counter dis-info and debunking fake news, whatever you want to call it, since 2015 when I left my work at the US Mexico border as a border reporter.

So, I do see how disinformation gets into everything and these mergers in journalism, not only have devastated individual lives, I know people who went from being extremely successful journalists to not even having a place to live because I'm in Southern California, because that's our fate if we run out

Lina Khan:

Thanks so much, Brooke. And next we'll go to Todd.

Todd Achilles:

Great.

Chair Con, Assistant Attorney General Kanter, thank you for the opportunity to participate in this forum. I'm Todd Achilles, the co-founder and CEO of Evoca TV. We are a NextGen TV broadcaster that offers service in Idaho, Colorado, Arizona and Michigan. Americans pay too much and have too few options to watch TV. So, over the last four years, we have harnessed breakthrough new broadcast technology to bring a high quality, low cost alternative to the concentrated TV market. With our innovative media distribution platform, we offer a competitive bundle of pay TV channels using broadcast TV spectrum and an antenna in the home. Our service is particularly valuable in underserved communities with poor infrastructure. Importantly, Evoca represents the first new facilities based media distributor in over 30 years. Independent content owners are eager to distribute through our platform and we have dozens of licensing agreements. However, a handful of large vertically integrated media companies, which all came about from previously approved mergers between the content companies and cable or broadcast distribution companies are refusing to license their content to Evoca even at the highest prices they charge anyone else.

They are withholding content from Evoca because we are a threat to their distribution business. The exclusion is material because the TV network's controlled by these vertically integrated media companies are among the most watched. Using 2021 Nielsen viewership data, 84% of the sports hours watched are under their control. 81% of Spanish programming, 81% of kids programming and 70% of news programming. Beyond these national networks, we face local challenges too. Phoenix is a great example. The recently merged Sinclair Broadcast and Fox Sports Network, which now calls themselves Valley Sports, controls 83% of pro sports events in this market. Sinclair Bally's readily distributes to all the other MVPV's in the market but absolutely refuses to do business with us even though we reach twice as many homes as the local cable company. Hundreds of thousands of Arizona families pay too much or can't access local sports because of this discriminatory conduct.

Fortunately, Colorado is the exception. In Colorado, we have access to independent content that's not vertically integrated. In Denver and Colorado Springs, we are growing as fast as we can build set top boxes. We have sustainable margins at a $25 a month service price and among the industry's lowest churn. Coloradans love our service because we make regional sports accessible and we save families over $700 a year. When you compare our experience in Arizona with that in Colorado, you could see that the pro enforcement voices who have long warned about these vertical mergers, they were right. We see it firsthand. It's not a theory anymore. These vertically integrated companies are using content to protect distribution and distribution to protect content. It's also important to acknowledge that the justification this handful of vertically integrated media titans gives us for refusing to let Evoca distribute their content at their standard rates. It's not only odd, it's all odd in the same way among the companies.

We have seen both explicit and implicit evidence of coordinated behavior to boycott Evoca and exclude us from the distribution market. It's summary allowing the consolidation of content and distribution not only created moats to protect their content businesses but also made it easier and more likely for them to coordinate the protection of their distribution businesses. I urged the FTC and DOJ, not only to look harder at future mergers that combine content companies

Peter:

Thanks, Kevin. Our next speaker is John Bergmayer.

John Bergmayer:

Hello. My name is John Bergmayer. I work at the public advocacy group, Public Knowledge. And in my work, I represent consumers and speak to many smaller media companies. Many of whom say they're afraid to speak publicly of their experiences for fear of retaliation from major business partners. Consolidation concentration loosens media regulations and new technology and new business models have upended the media industry, which is fragmenting and consolidating at the same time in a world. And those same companies own almost two thirds of the musical compositions created and still under copyright.

Peter:

Thank you, John. And our next speaker is Brian Hess.

Brian Hess:

Thank you. I represent Sports Fans Coalition. Founded in 2009, we are a national nonprofit advocacy group devoted to representing fans wherever public policy impacts the games we love. We're best known for leading the campaign to end the FCC sports blackout rule, which we accomplished in 2014. We're also the creators of the sports betters bill of rights, a set of consumer protection principles that should accompany legalization of sports betting. Opening the ticket resale market and combating ticket fraud has been a priority of ours for many years. And in 2018, we participated in the FTCs online event ticket workshop. Today, I hope to reiterate some of those concerns and call on the commission to do more to protect consumers from the monopolistic practices of companies like Ticketmaster.

When Ticketmaster and Live Nation merged, the DOJ estimated that the Live Nation Ticketmaster merger would increase the HHI to more than 6900, astronomically higher than the 1800 that the horizontal merger guidelines considered to be a highly concentrated market. Nonetheless, the deal was given the green light and since 2010, no new competitive entrants have emerged as a significant competitor to Ticketmaster in the primary live event ticketing market. As the industry's dominant primary ticketer, Ticketmasters restrictive ticketing policies artificially depressed supply, being higher than normal prices on both the primary and secondary markets. They embrace non-transferrable ticketing practices, which creates a burden for consumers, limiting the ability for fans to transfer, giveaway or resale tickets that they have rightfully purchased.

While this may increase the barriers to ticket scalping, it also prevents fans who purchased a ticket and can no longer attend the event from easily giving that ticket away to a friend, family member or charity and possibly recouping their cost. This of course assumes the fan was fortunate enough to get the ticket in the first place. Thanks to widespread and undisclosed ticket hold-backs and special agreements with secondary ticket brokers, less than half of the tickets on average for a live event are ever made available to the public. Of that smaller supply of tickets, brokers utilizing ticket buying bot software continue to acquire large numbers of tickets despite the anti-scalping technology employed by Ticketmaster and threat of prosecution under the BOTS Act. Especially now as live events begin happening again, I'd like to call on the commission to reengage with the consumer advocates who called the reforms in 2018 and actively seek to protect consumers from the anti-competitive practices rampant in the marketplace. Thank you. I

Peter:

Thank you, Brian. And that concludes our comments from members of the public. I'll now turn it back over to Assistant Attorney General Kanter.

Jonathan Kanter:

Thank you, Peter. And thank you to all the folks who bravely stood up to provide public comments. It's not lost on us that speaking out publicly against monopolies requires courage. It requires the ability to go up against very powerful companies and interests. And so, we recognize that and also appreciate how you shared your stories and shared your firsthand experiences. We need that information in order to understand what's working in our process, but frankly, what's not working in our process. And as we're revising the merger guidelines, we're mak