

Competition and Consumer Protection in the 21st Century Hearings — Project Number P181201

Joint comments of: **Association of Performing Arts Professionals Dance/USA**
Future of Music Coalition League of American Orchestras OPERA America
PEN America Performing Arts Alliance
Theater Communications Group

In his opening remarks on October 15, 2018, FTC Commissioner Rohit Chopra highlighted “creators of content, news, and works of art, including photography and video” among the list of relevant stakeholders whose participation and needs as “sellers” in the cultural marketplace are worthy of thoughtful consideration.

Today, we comment as organizations that represent and advocate on behalf of artists, musicians, filmmakers, writers, and other arts, culture and media institutions. As the FTC’s series of hearings comes to a close, we appreciate the opportunity to share our view of the marketplace and to voice the need for collaboration between organizations such as the undersigned with the FTC to understand and address the impacts of consolidation across markets.

The FTC’s series of hearings has surfaced strong evidence of the need to consider new approaches to evaluating competition. While the FTC has defined citizens’ interests and consumer welfare primarily in terms of price effects in the last few decades, many are now asking whether a more robust analytical framework that better captures a broader array of potential harms might be more appropriate. In future evaluation of potential competition problems, and as market players narrow, we would encourage the FTC specifically to consider impacts on diversity of expression, and to protect healthy markets throughout the arts and culture supply chain.

Just as journalists and news media have expressed concern about the potential gatekeeper power exercised by large technology firms over the news and informational ecosystem, arts and culture creators and presenters are increasingly reliant on a handful of dominant platform companies to be able to reach audiences. On the media industry side, much has been written about the difficulties faced by local news media in the digital media platform environment characterized by consolidation of ownership. We have seen diminishing capacities for cultural coverage in local print and broadcast media.

On the publishing side, these effects run quite parallel and various organizations have stepped

forward to voice concern. For example, in the context of a proposed merger between two of the largest printers and distributors in the book and long-form magazine printing market--Quad and LSC--Open Markets, the Authors Guild, and PEN America together [called](#) on the Department of Justice to block the merger to avoid a deal that would ultimately become a straightforward "merger to monopoly" situation. The Department ultimately chose to step in and block the QUAD-LSC merger to avoid these very market ills.

And in other sectors, we know that platform business models can have unique implications for antitrust and consumer protection law enforcement, because they operate at unprecedented scale. When platforms reach sufficient scale to dominate their specific sector of the marketplace, they can effectively make rules for how cultural creators and presenters are able to reach audiences, patrons, and donors. This also can have implications for diversity of expression. Artists' and arts organizations' work generates vast amounts of data, but too often, that data is not made available to them to use to connect with audiences. All of this risks limiting healthy cultural market competition.

Together, we believe FTC engagement with artists, writers, musicians, and artistic and cultural organizations can help prevent these adverse events across an array of sectors for cultural creators. We know one characteristic of healthy competitive cultural markets is the ability to sustain diverse modes of expression with radically different estimations of the potential scale of their audiences. The concerns of larger media companies may sometimes intersect with individual creator and community concerns, but they are distinct, so the FTC has a special responsibility to be attentive to the concerns of artists in their capacity as small business owners. Over the course of their careers, individual creators may work with an array of for-profit and nonprofit partners in their specific business, but they all benefit from healthy competitive markets characterized by openness, transparency, and choice. Nationally, the nonprofit arts and culture industry generated \$166.3 billion of economic activity during 2015 —\$63.8 billion in spending by arts and cultural organizations and an additional \$102.5 billion in event-related expenditures by their audiences.

While the hearings have come to a close, we hope that they represent the beginning of a new and broadened conversation about the methods and mechanisms which may support healthy and competitive markets. We ask that FTC make proactive efforts to engage with communities around the country to assess impacts on diversity of expression and the needs of content creators in any relevant merger reviews, investigations, drafting of guidelines and best practices, or consideration of enforcement actions. In particular, we urge the FTC to make strong use of its newly created Technology Task Force to establish open and ongoing lines of communication with the full diversity of the cultural sector.

We look forward to engaging with the Commission to support expression across markets that is diverse, robust, and competitive.