Antitrust and Pricing in the Motion-Picture Industry

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Few industries have undergone the degree of antitrust litigation and scrutiny experienced by the motion-picture industry. Nevertheless, the pricing structure of movie tickets has never a product of free market forces. Since the early 1970s, ticket pricing is particularly puzzling since at any given theater, admission fees are uniform across movies and over time. This Article studies the history of the industry's pricing systems in their legal, economic, and technological contexts. It is shown that, despite the extensive antitrust scrutiny and litigation, the industry's pricing systems have always been shaped or affected by forces with considerable market power. The author studies the present pricing regime and explores the economic justifications for uniform pricing and concludes that none of the justifications relies on sound grounds. It is argued that, in addition to conservatism, vertical restraints, which are illegal under present antitrust laws, have at least some impact on the persistence of the present pricing regime. The author further argues that, given the idiosyncratic characteristics of the industry, a coordinated transition to a non-uniform pricing could be desirable.

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INTRODUCTION

At the box office, moviegoers face a puzzling phenomenon: Tickets to all movies carry the same price tag seven days a week, throughout the year. Most moviegoers may have never questioned this pricing pattern.

1 MICHAEL CONANT, ANTITRUST IN THE MOTION-PICTURE INDUSTRY: ECONOMIC AND LEGAL ANALYSIS vii (1960).

2 The exceptions to this pricing pattern are discussed in Section I.A infra.
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because they were born after it had been established in the early 1970s or because they forgot that once movie tickets were priced differently. Uniform pricing, however, is far from obvious: Sellers normally price their products according to their demand elasticities that vary across products. Box-office pricing has never conformed to this economic principle, although it was not always uniform.

Uniform prices for differentiated goods are common in many markets. For example, all long-distance calls of the same carrier cost the same, different flavors of ice cream or soda of the same brand carry identical price tags, prices of tickets to sports games are generally unrelated to the team identities, and one price per song is charged by many downloadable music providers. Such manifestations of uniform prices are generally explained by regulatory constraints and transaction costs, such as information and menu costs. However, as discussed below, these justifications do not elucidate the uniform pricing regime in movie-theater industry.

The motion-picture industry was born with the twentieth century and has grown into a multibillion-dollar industry. From its incipiency, the industry has been subject to antitrust actions and scrutiny that, as discussed in this Article, have never succeeded in removing artificial constraints from the price mechanisms in the exhibition segment.

Box-office pricing first drew the attention of the antitrust agencies in the second quarter of the twentieth century, when a few large distributors acquired control over admission prices. For twenty years, antitrust actions against these distributors failed to make any difference, until the

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3 Approximately thirty percent of the moviegoers in the United States are younger than twenty-five years old and approximately sixty percent of the moviegoers are younger than forty years old. Motion Picture Association, 2002 U.S. Movie Attendance Study 4 (2003).


7 See Section I.A infra.

8 In 2002, gross box-office receipts totaled 9.5 billion dollar. See Figure 7 in the Appendix. MOTION PICTURE ASSOCIATION, U.S. ENTERTAINMENT INDUSTRY: 2002 MARKET STATISTICS 3 (2003). It is noteworthy that box-office receipts represent only a small portion of the industry revenues, which also include concession sales, licenses to broadcasting, merchandise, Video and DVD sales, and so forth.


10 See Section II.C infra.
1948 Supreme Court decision in *United States v. Paramount Pictures*.\(^{11}\) The *Paramount* Court directly addressed the industry’s pricing structure\(^{12}\) and its decision was followed by decrees that, among other things, prohibited and were designed to prevent distributors’ intervention in admission-price setting.\(^{13}\) This prohibition against distributors’ intervention in admission-price setting is still in force.

At the time, the *Paramount* case was described as “the Government’s greatest economic victory in the sixty year history of antitrust enforcement.”\(^{14}\) Over the years, numerous books and articles have addressed the impact of the *Paramount* decrees on the industry structure and competitiveness.\(^{15}\) Surprisingly, however, box-office pricing and the convergence of the industry to uniform pricing have been neglected in the literature.\(^{16}\)

Although the practice of uniform pricing in the movie-theater industry has not been studied, several scholars and industry professionals referred to it. Some of them argued that setting non-uniform admission fees “is too complex an undertaking that could cause confusion in the minds of

\(^{11}\) 334. U.S. 131 (1948).

\(^{12}\) *Id.* at 141-144.

\(^{13}\) See Subsection II.C.2 infra.

\(^{14}\) Walter Adams, *Dissolution, Divorce, Divestiture: The Pyrrhic Victories of Antitrust*, 27 Ind. L. J. 1, 5 note 18 (1951).


\(^{16}\) For illustration of the neglect of the topic, see Crandall, *Id.*, at 51 (“exploitation . . . of copyrighted motion pictures . . . includes temporal and geographic price discrimination”).

\(^{21}\) BARRY R. LITMAN, THE MOTION PICTURE MEGA-INDUSTRY 45 (1998). Section III.D infra addresses possible problems that price variation may cause by creating confusion among consumers and explains how such problems can be solved.
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consumers,”21 or raised other arguments against price differentiation.22 Many others mounted the advantages of variable pricing.23 Among the latter was Michael Conant, who noted that

[A]dmission prices for films that are not hits and that leave theaters largely empty do not result in admission-price cutting. [E]xhibitors generally consider demand to be relatively inelastic. The question is whether they have tested this hypothesis with price changes for films of different quality.24

This Article fills the gap in the literature on the pricing of the movie-theater industry. It demonstrates how, despite the extensive scrutiny and litigation in the motion-picture industry, the structure of box-office pricing has always been a product of the domination of the upstream market – the distribution segment – by a few powerful players. Indeed, during the years, since the motion-picture industry was born, legal rules regarding manufacturers’ (or distributors’) control over retailers’ prices have changed. However, as discussed in the Article, the type of control over admission prices exercised by distributors has never been legal.25

The Plan of the Article is as follows. Part I of the Article presents the puzzle of uniform prices at the box office and demonstrates that criteria for variable pricing are readily available. Part II studies the history the industry’s pricing systems and their evolution in the shadow of antitrust enforcement. It is shown that the industry has always been subject to forces with considerable market power that either determined or affected the pricing structure of the exhibition segment. Part III explores the justifications for uniform pricing at the box office and concludes that there is no sound economic justification for such a pricing regime. It is argued that the industry’s structure and conservatism inhibit the transition to variable pricing and it is suggested that a coordinated transition could facilitate a non-uniform pricing system. Part IV concludes and addresses the welfare implications of uniform pricing at the box office.


23 See, for example, Stephen Battaglio & Kirk Honeycutt, Bronfman: Event Films Need Event Ticket Prices, HOLLYWOOD REP., Apr. 1, 1998, at 3 (quoting Edgar Bronfman, Jr., at the time the CEO of Universal Pictures, saying: “This is a pricing model which makes no sense, and I believe the entire industry should revisit it”); Paul Sweeting, Imposing Real World on Pix Finds a Buyer, VARIETY, Apr. 13, 1998, at 11; James Surowiecki, What Price Hollywood, NEW YORKER, Jan. 15, 2001, at 38; How easy Does Just About Everything, BUSINESSWEEK, Jan. 28, 2003 (quoting Stelios Haji-Ioannou, the founder of easyCinema: “First thing is price elasticity -- i.e. you reduce the price of something and people will consume more of it. Then, we have the ability to yield-manage, to charge prices according to demand ... I’m taking that idea to cinema”). For a formal treatment of optimal ticket pricing, see Sherwin Rosen & Andrew M. Rosenfield, Ticket Pricing, 40 J. L. & ECON. 351 (1997).


25 See Sections II.C-II.E infra.
I. THE PUZZLE

A. Uniform Prices for Differentiated Goods

The motion-picture industry is all about differentiated products: Consumers consider different movies and different show times to be imperfect substitutes. In free markets, absent unique circumstances, one would expect to observe some price variation across differentiated goods. This economic rationale, however, does not hold at the movie theater’s box office. With a few exceptions, at any given movie theater, tickets are priced uniformly regardless of the popularity of the movie, the day of the week, and the time of the year. The exceptions are typically related to matinees, students, seniors, children, veterans, bulk discount tickets, and discounts to institutions and large groups. Approximately forty percent of the moviegoers are below age twenty-five or above fifty-nine, but there is no public information on how many of them use available discounts. Likewise, no public information on the percentage of tickets sold at regular price is available. The offered discounts create some price discrimination among patrons, but, with the exception of matinees, they do not establish price variation across differentiated products. Price discrimination among patrons is facilitated also through refreshment sales that differentiate between hungry patrons and others. Some limited price variation is utilized indirectly through means other than ticket sales. For example, at the multiplex, the auditoriums with the bigger screens, better sound systems, and newer seats are usually reserved for popular movies.

The unique circumstances that explain uniform prices for differentiated goods in other industries are not present in the movie-theater industry: (i) Admission prices are not regulated; (ii) Exhibitors’ costs vary substantially across movies; (iii) Season tickets and subscriptions are unused.

26 Motion Picture Association, supra note 3, at 4.
28 In several countries, such as Hong Kong, Switzerland, and Hungary, there is price variation across seats in the same theater. For a study of this pricing strategy, see Steven N.S. Cheung, Why Better Seats are Underpriced?, 15 ECON. INQ. 513 (1977).
30 AMC, the second largest theater circuit in the United States, employs in a few selected cities a plan (“MovieWatcher Premium Card”) that allows moviegoers to pay a flat monthly fee and to see up to one movie a day. This plan is similar to movie passes offered by several major theater chains in France. Jill Goldsmith, AMC Tempts Auds With Multi-Pic Card, DAILY VARIETY, Jun. 11, 2001, at 28.
generally not offered; and (iv) Simple schemes of variable pricing are unlikely to entail prohibitive costs or to create confusion among moviegoers.

The puzzle of uniform prices at the movie theater is particularly striking in light of price variation across theaters. Admission fees in certain cities can get as three times higher than in other cities. Similar price differences exist between first- and second-run theaters within the same city. Less considerable, yet material, price variation exists across theaters within the same geographic area, according to their location, design, physical conditions, and other factors. These types of cross-theater price variation indicate that theater circuits invest time and resources in devising and administrating pricing policies; nevertheless, they do not apply the same methods at the intra-theater level.

Simple, available criteria for variable pricing can be easily defined and the reminder of this Part presents two general demand dimensions that could be used profitably for non-uniform pricing.

B. Weekly and Seasonal Patterns of Demand

The demand for movies is cyclical with respect to the day of the week and the time of the year. The average box-office revenues collected on weekends (Friday through Sunday) account for more than 70% of the average weekly box-office revenues. That is, under present conditions, the demand for movies on weekends is on average about 3.5 times higher than during weekdays. Such a demand pattern suggests that raising admission prices on weekends is likely to bring positive results, even if the price raise discourages some patrons from visiting the theater. This pattern also casts some doubts on the rationale behind low admission prices for matinees on weekends, as it is unclear whether the weekend audiences are those who attend weekday matinees. Indeed, some circuits do not offer matinee rates on weekends and limit some of their discounts to weekdays only. The foregoing suggestions could be further refined through particular analyses

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31 See Section III.D infra.
32 Peter Davis, The Effect of Local Competition on Retail Prices: the U.S. Motion Picture Exhibition Market, Manuscript, London School of Economics (2003).
33 See also William Grimes, Film Price Hits $8.50, But There Are Ways to Save, NY Times, Mar. 13, 1996, at C13 (quoting the executive vice president for marketing of Cineplex Odeon: “Pricing is something that we review at least twice a year on a very specific market-by-market basis”).
34 The quantitative analysis presented in this Part is based on data for all the movies released in the United States between the years 1985 and 1999 (3,523 movies). A detailed description of the data can be found in Liran Einav, Gross Seasonality and Underlying Seasonality: Evidence from the U.S. Motion-picture industry, Manuscript, Stanford University (2003).
35 Loew’s Cineplex, for example, limit some of its bulk discounts (passport cards) only to weekdays. http://www.enjoythereeldeal.com/us_eng/pages/framesets_main/frame_nav2.asp.
of local demand patterns, as the weekend demand is not uniform. In general, for night shows, the demand for movies on Saturdays is the highest and the demand on Sundays is the lowest. Due to this pattern, weekend premia were traditionally (and still are in selective towns) charged on Fridays and Saturdays, or only on Saturdays.

Seasonality patterns, as shown in Figure 1, also offer profitable pricing schemes. The demand during the summer and holidays is much higher than during the rest of the year. Therefore, charging higher prices during these seasons, or giving discounts during the rest of the year would probably result in higher profits.

*FIGURE 1*

![Seasonality in Movie Attendance (1985-1999)]

It is noteworthy that the representation depicted in Figure 1 is somewhat misleading. To some extent, the demand for movies follows the supply that, in turn, is partially determined by the industry beliefs regarding the demand. Notwithstanding, the general attendance trends can be used for ticket pricing.

*See infra note 39 and accompanying text.*


*Einav, supra note 34.*
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Systematic evidence on the profitability of utilizing the time dimension of the demand for movies is unavailable. Since 1996, two major circuits charge higher prices on weekends. Generally, the weekend pricing is employed primarily in towns where there is no competition among local theaters. For the purpose of this Article, these weekend pricing schemes are ignored. If anything, the persistence of weekend pricing offers, in itself, some support to the general argument of this Article.

The 1970 Washington, D.C., market offers some more anecdotal evidence: Several local exhibitors slashed their admission fees on weekdays by 67% and, as a result, significantly increased their box-office revenues and more than doubled their popcorn sales. During the 1980s and 1990s, several circuits revived the practice of discount days, but despite the positive results these policies were abandoned because of per-capita requirements that made the practice unprofitable for exhibitors. In the late 1990s, this policy emerged again and today many theaters have discount days in which they offer tickets at reduced admission prices.

Finally, the Australian market provides another inspiring example for the utilization of the fluctuations in demand over time. In Australia, prices are sensitive to the seasonal demand and special events, such as the Sidney 2000 Olympic Games during which prices were cut aggressively.

C. Specific-Movie Demand

Another possible dimension for price variation is the differentiation across movies. Although the motion-picture industry is notorious for the uncertainty surrounding the commercial success of newly released films,
there are several factors that may assist in predicting general levels of box-office revenues. The most intuitive factor, though often contested, is star participation. Empirical evidence on the contribution of stars to the market success of films indicates that certain movie stars do make a demonstrable difference. Production costs and gross box-office revenues have been found strongly correlated, with simple correlation coefficients of 0.5 to 0.7 for each year between 1985 and 1999. Sequels perform quite similarly compared to the originals, at least in terms of order of magnitude. Other factors that have been found related to commercial success of movies are participation of top directors, ratings, competition from other movies, and advertising. These factors cannot furnish accurate predictions, but they are still reliable enough in the eyes of industry professionals to justify large expenditures for their study.

It is not suggested here that each movie should be priced according to its estimated demand. Such pricing is probably impossible. However, it is submitted that price differentiation across categories of movies may improve financial results. For example, charging premia for event movies, such as high-budget films and sequels of successful films, makes economic sense and may even increase the demand for such movies. By the same token, giving discounts to kid movies and documentaries may

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49 Ravid, supra note 47.

50 Ravid, ibid; Barry R. Litman & Linda S. Kohl, Predicting Financial Success of Motion Pictures: The 80’s Experience, 17 J. MEDIA ECON. 35 (1989); Barry R. Litman & Hoekyun Ahn, Predicting Financial Success of Motion Pictures: The Early 90’s Experience,” in THE MOTION PICTURE MEGA-INDUSTRY 172 (Barry R. Litman ed. 1998).


52 To some extent, event movies may have characteristics of luxury goods, the demand of which increases with their price. For luxury goods, see generally Simon Kemp, Perceiving Luxury and Necessity, 19 J. ECON. PSYCHOL. 591 (1998); Christopher J. Berry, THE IDEA OF LUXURY : A CONCEPTUAL AND HISTORICAL INVESTIGATION (1994). A famous example for the utilization of prices to establish status of luxury goods is the case of the Russian vodka. Marketers of Russian Vodka failed to spur a demand for their product until they purposefully raised prices. See The Princely Profits and Allure of Premium Brands, NY TIMES, Jul. 9, 1989, at F13.
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attract more patrons.

II. A CONCISE HISTORY OF THE INDUSTRY PRICING SYSTEMS

Uniform pricing at the box office in its present form appeared in the early 1970s. The persistence of the practice for more than thirty years adds some mystery to the puzzle of uniform prices, as the length of the period could arguably serve as evidence for the practice efficiency. This Part studies the history of the industry’s pricing systems in their technological, economic, and legal contexts. It is shown how the domination of the upstream market – the distribution segment – by a few powerful players has always influenced the evolution of the industry’s pricing systems.

Systematic data on the dispersion of admission prices could not be collected and, therefore, a quantitative analysis of the pricing systems is not offered. Figure 1 presents a summary of the available information on movie-theater attendance and average ticket prices as periodically published in the industry trade publications. Some distortions in the figures of the average admission prices are possible, as the methodology of calculating these figures is unknown. Nevertheless, a summary presentation of the available data is helpful for understanding the general trends throughout the history of box-office pricing systems.

FIGURE 2*

Prices are adjusted to 2002.
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A. Early Days (1894-1905)

1. Peepshow Machines

The movie-theater industry was born on April 14, 1894, with the opening of the Holland Brothers’ amusement arcade at 1155 Broadway, New York. The Holland Brothers bought from Thomas Edison ten Kinetoscope peepshow machines and arranged them in a converted shoe store in two rows of five, with brass rails for customers to lean on while viewing. Each machine offered a different film that lasted twenty seconds and patrons paid twenty-five cents to view all five machines in one of the two rows.\(^53\) Shortly after the introduction of the Kinetoscope, Edison developed nickel-in-the-slot machines to cut down on exhibitors’ manpower.\(^54\) This innovation might have lowered exhibitors’ operation costs, but practically it also fixed the admission price per movie. Given the length of movies at the time and the fact that they only presented scenes,\(^55\) pricing movies uniformly was commercially warranted. It is difficult, however, to understand the technological constraint on pricing and price competition. This rigid pricing constraint partially explains why the Mutoscope, a penny-in-the-slot machine, took over the peep-show market from Edison.\(^56\)

2. Projecting Machines

Thomas Edison perceived motion pictures as a temporary form of entertainment, publicly declined proposals to develop a projecting machine, and dedicated only limited resources to such a project in a secret laboratory.\(^57\) Other entrepreneurs in Europe, England, and the United

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\(^53\) For the early history of peepshows, see CHARLES MUSser, THE EMERGENCE OF CINEMA: THE AMERICAN SCREEN TO 1907, 12-89 (1990); DAVID ROBISON, FROM PEEP SHOW TO PALACE: THE BIRTH IF AMERICAN FILM 2-51 (1995). Many of Edison’s movies were digitalized and can be found at http://memory.loc.gov/ammem/edhtml/edmhm.html.


\(^55\) Two of the popular movies of that era were a short show of the famous bodybuilder, Eugen Sandow, from 1894, and The Kiss from 1896, that filmed a kissing scene from the play The Widow Jones with May Erwin and John Rice and that presented the first kisses on film. See http://www.sandowmuseum.com/sandowfilm.html.

\(^56\) MacGowan, supra note 54, at 135-136.

\(^57\) TERRY RAMSAYE, A MILLION AND ONE NIGHTS 119-121 (1926); MacGowan, ibid; MAE D. HUETTIG, ECONOMIC CONTROL OF THE MOTION-PICTURE INDUSTRY: A STUDY IN INDUSTRIAL ORGANIZATION 9-12 (1944). Most contemporary scholars believe that Edison perceived motion pictures as a temporary fade and credit Edison’s Assistant, William Kennedy Laurie Dickson, for the invention and development of the Kinetoscope. See, e.g., CHARLES MUSser, THOMAS A. EDISON AND
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States realized the potential of projectors as a necessary means for mass marketing of motion pictures. Independently and simultaneously, they invented projecting machines that were introduced in 1895 and early 1896. Following the public interest in movies on screen, Edison gave his name and sponsorship to one of the fledgling technologies, the Vitavoscope, and soon a rivalry among the various technologies appeared. An important characteristic of this competition was the rapid technological convergence to the Kodak’s 35 millimeter film as the industry standard. This convergence enhanced the competition among producers since exhibitors were not technologically tied to a specific film standard.

Competition, however, was not an indication of profitability. Around 1900, the industry experienced its first box-office downturn, as the public quickly lost interest in the technology. The key to the quick recovery of the industry, two years later, was the creation and development of story films that, among other things, differentiated among the products on the market.

By the end of 1907, motion pictures were presented in thousands of store shows, vaudeville theaters, and amusement parks throughout the country and by many traveling exhibitors. Admission fees charged by these theaters and traveling exhibitors ranged according to the projector’s technology, the movie’s popularity, and the exhibition conditions and location. For example, prices at small vaudeville theaters ranged from ten to thirty cents depending on seat location, while prices at premiere vaudeville theaters in major cities could run as high as $1.50.

His Kinetographic Motion Pictures (1995).

58 Musser, supra note 53, at 91-105; Robinson, supra note 53, at 53-66.
59 Ramsaye, supra note 57, at 223-231.
61 MacGowan, ibid, at 134.
62 Musser, supra note 53, at 297-369. The most celebrated movie of the early story-telling films, although not the first, is The Great Train Robbery that opened in November 1903. See http://memory.loc.gov/ammem/edhtml/gtr.html.
B. Nickelodeons and the Monopolization of Production and Distribution (1905-1915)

1. Uniform Prices at the Nickelodeon

Uniform admission fees as a primary pricing policy in the movie-theater industry first appeared at the nickelodeon theater. The nickelodeons, which sprung up across the country between 1905 and 1914, were named after their early uniform admission fee of five cents per movie and kept the name when their ticket price went up to ten cents. The business concept of the nickelodeon was simple: Offering cheap movies to large numbers of patrons through daily programs that consisted of three to five reels that ran several times a day. The nickelodeons were usually converted dance halls, restaurants, stores, and small vaudevilles. Shows lasted from ten to twenty minutes with a constant turnover of audiences. Charging nickels and dimes facilitated fast turnover of patrons as it saved some transaction time. Movies in that era were standardized, produced in a few forms, had simple plots and no sound, and were priced to exhibitors by the foot. Under such conditions, uniform admission prices were economically reasonable. However, as discussed immediately, a prime reason for the standardization of movies during the nickelodeon age was the monopolization of the production and distribution segments.

2. The Trust

In view of the commercial promise of motion pictures, many patent battles were fought in courts during the decade following the introduction of projecting machines. In September 1908, the major rivals joined forces and formed The Motion Picture Patents Company, which was commonly known as the “Trust.” The Trust acquired control over the industry by pooling all the patents of any importance in the early-day

65 It is believed that the first nickelodeon opened in Pittsburgh in June 1905. For the birth and early days of the nickelodeons, see MUSSEr, supra note 53, at 417-495. Some inconclusive evidence indicates that already in 1902 a nickelodeon opened in Seattle. Lagos, supra note 64, at 107-108.
66 For important studies of the nickelodeons in Manhattan and Boston, see Robert C. Allen, Motion Picture Exhibition in Manhattan: 1906-1912: Beyond the Nickelodeon, 18 CINEMA J. 2 (1979); Russell Merritt, Nickelodeon Theatres, 1905-1914: Building an Audience for Movies, in The American Film Industry 83 (Tino Balio ed., rev. ed., 1985).
67 Merritt, ibid; Gomery, Shared Pleasures, supra note 63, at 18-33; Stones, supra note 64, at 19-33.
68 See, e.g., Edison v. American Mutoscope, 114 Fed. 926 (2d Cir. 1902); Armat v. Edison, 125 Fed. 939 (2d Cir. 1903); Edison v. Lubin, 122 Fed. 240 (3d Cir. 1903); Edison v. American Mutoscope & Biograph, 151 Fed. 767 (2d Cir. 1907).
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motion-picture industry. To prevent entry into its market, the Trust established a complex nexus of licenses and agreements that restricted transactions among machine manufacturers, film producers, distributors, and exhibitors only to licensed agents. In addition, the Trust entered into an exclusive-dealing agreement with Eastman Kodak, pursuant to which Eastman Kodak sold raw films only to licensed producers and charged them pass-through royalties for the Trust. In return, the Trust’s licensees were obligated purchase raw films only from Eastman Kodak. At the time, Eastman Kodak was the only domestic manufacturer of raw film and the agreement enabled it to maintain its market hold. Likewise, the Trust-Kodak agreement foreclosed potential competitors of the Trust, as it barred access to a major source of a necessary input. On top of these, the Trust aggressively filed patent suits against unlicensed businesses and allegedly hired gunmen and gangsters to deter unlicensed producers.

The control of the Patents Company was further tightened through its distribution arm, The General Film Company, a sister company that was organized in April 1910 by ten licensed producers and film importers. The General Film Company organized its operations by purchasing existing film exchanges rather than establishing new ones. When it began operations in June 1910, there were sixty-nine independent licensed exchanges. Within three months to operations, twenty-three exchanges were acquired. Within another fifteen months, ten independent licensed exchanges lost their licenses, the General Film Company owned fifty-eight exchanges, and the only independent licensed exchange left was William Fox’s Greater New York Film Rental Company. This indirect control of

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69 For the events that led to the formation of the Motion-picture industry, see Eileen Bowser, The Transformation of Cinema, 1907-1915, 21-36 (1990).
70 For a detailed study of the Trust’s constituting documents and side agreements, see Ralph Cassady, Jr., Monopoly in Motion Picture Production and Distribution: 1908-1915, 32 S. Cal. L. Rev. 325, 327-345 (1959).
71 Id., at 333-335.
72 See, e.g., Motion Picture Patents Co. v. New York Motion, 174 Fed. 51 (E.D.N.Y. 1909); Motion Picture Patents Co. v. Laemmle, 178 Fed. 104 (S.D.N.Y. 1910); Motion Picture Patents Co. v. Champion Film, 183 F. 986 (S.D.N.Y. 1910); Motion Picture Patents Co. v. Ullman, 186 F. 174 (S.D.N.Y. 1910); Motion Picture Patents Co. v. Yankee Film, 187 Fed. 1007 (2d Cir. 1911); Motion Picture Patents Co. v. Independent Moving Pictures Co. of America, 200 Fed. 411 (2d Cir. 1912); Motion Picture Patents Co. v. Centaur Film, 217 F. 247 (N.J. 1914); Motion Picture Patents Co. v. Laemmlle, 214 F. 787 (S.D.N.Y. 1914).
73 Ramsaye, supra note 57, at 532-534; Cassady, supra note 70, at 365-366 n. 227.
74 Until 1902, moving pictures were purchased by exhibitors and then resold on secondary markets. Starting 1902, established companies formed film exchanges, purchased films from producers and exhibitors, and rented them to exhibitors. In the Nickelodeon era, exhibitors stopped purchasing films and film distribution was channeled only through exchanges. Mussor, supra note 53, at 366-368, 433-439; Huetzig, supra note 57, at 13.
75 Cassady, supra note 70, at 355-359. It is noteworthy that Professor Cassady believed that the principal goal of the General Film Company was to enhance efficiency in the distribution segment.
the Trust over the distribution segment made it even harder for independent producers and importers to market films and they were forced to rely on unlicensed exchanges or to establish their own exchanges.76

As to intervention in pricing mechanisms, the Trust fixed prices charged by its licensed producers to distributors, but did not administrate prices to exhibitors and to moviegoers.77 However, once the General Film Company took over the distribution segment, it determined the prices to almost all licensed exhibitors.

3. Product Standardization and Box-Office Pricing

The uniform pricing regime of the nickelodeon era was created and maintained by exhibitors, but persisted due to the monopolization of production and distribution by the Motion Picture Patents Company and the General Film Company. This regime fit the standardization of production that was dictated by the Trust: low budget, one-reel length films with assembly-line formulas.78 The standardization eliminated much of the potential product differentiation, thereby sustaining uniform pricing. Notwithstanding, the uniform-price system of the nickelodeon era was not as firm as the today’s uniform-pricing regime. Several filmmakers and actors sparkled through the technological and conceptual barriers of the era and charged premia for their popularity. Exhibitors, in turn, passed on the extra costs of special releases and movies interspersed with stars by raising admission fees for such movies.79 Premia were also charged by some theaters in which there were narrators or players (“talking picture plays”).80

Uniform prices during the nickelodeon age reflected one type of

76 Cassady, ibid, at 362-386; BOWSER, supra note 69, at 73-85.
77 Cassady, ibid, at 341, 346-347.
78 Michael Quinn, Distribution, the Transient Audience, and the Transition to the Feature Film, 40 CINEMA J. 35 (2001); STONES, supra note 64, at 27-33; BOWSER, supra note 69, at 53-71, 103-119 (attributing the standardization of movies primarily to the need for simplifying the plot for a diverse audience of immigrants and the fact that early filmmakers were businessmen and technicians, rather than artists). Various case studies of the nickelodeon era contradict the once-common perception that nickelodeons served primarily poor immigrants and that the demand was for simple short plots that would be understood by such audiences. See, e.g., Allen, Motion Picture Exhibition in Manhattan, supra note 66; MERRITT, supra note 66; HUETTIG, supra note 57, at 18-20 (attributing the Trust’s fixation on standardization to the iner generation’s misunderstanding of the exhibition business). See also Richard Barry, Five Dollar Movies Prophesied, NY TIMES, Mar. 28, 1915, at SM16 (interviewing David Griffith, the American feature pioneer, who linked movie quality to admission prices).
80 BOWSER, ibid, at 19, 44.
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social costs associated with monopolies. The pricing system was efficient given the lack of competition in film technology and quality. However, the lack of competition resulted in a very low variety of products that, in turn, entailed some welfare loss. Therefore, more than anything else, the uniform pricing mirrored the welfare loss of low product diversity.

4. Competition and Product Differentiation

In 1912, multiple-reel films with substantive plots and significant promotion budgets ("features") were successfully introduced to the American public by independent producers and spelled the end of the nickelodeon era and its uniform pricing regime.81 In the same year, the government filed an antitrust action against the Motion Picture Patents Company, the General Film Company, and their members.82 The court dismissed the defendants’ arguments that being a business of dramatic representation, the motion-picture business is a form of art, not of trade. Similarly, it was held that the defendants’ patents did not exempt them from the Sherman Act. The defendants were found to have engaged in unreasonable restraints of trade and to have monopolized commerce in films, cameras, projectors, and accessories. The patent agreements were found to have been made primarily to exclude rivals from the motion-picture business and to control the supply and price of motion pictures.83 Shortly after the defeat in the district court, the Motion Picture Patents Company lost a key patent infringement suit on antitrust grounds. Its tying practices of films to distribution and to projectors were held illegal under Section 3 of the Clayton Act.84 Following these suits, subsequent treble-damage actions,85 and the emergence of the features, the Trust lost its

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81 STONES, supra note 64; BOWSER, ibid, at 191-215; Cassady, supra note 70, at 374-386. See also ADOLPH ZUKOR, THE PUBLIC IS NEVER WRONG: MY FIFTY YEARS IN THE MOTION-PICTURE INDUSTRY 3-4, 19-20, 56-58, 75-89 (describing the introduction of features by independent producers and the general reluctance of the Trust to features. Adolph Zukor was the founder of Famous Players that merged with other companies changed its name several times until it became Paramount). The first features that were hits at the box office were Queen Elizabeth that was imported from France in 1912 and ran for forty minutes, and Quo Vadis that was imported from Italy in 1913, ran for 120 minutes, and priced at $1 for early shows. The breakthrough domestic production was Griffith’s The Birth of a Nation that opened in 1915, ran for 2.5 hours, and scored the highest fee yet of $2. For the debate of the time regarding the pricing of features, see Economics of the Movies, NY TIMES, Dec. 28, 1914, at 8.

82 The brief for the United States can be found in 1 FILM HIST. 187 (1987).


84 Motion Picture Patents Co. v. Universal Film, 235 F. 398 (2d Cir. 1916).

85 See, e.g., Imperial Film Exchange v. General Film, 244 F. 985 (S.D.N.Y. 1915); Sampiner v. Motion Picture, 254 U.S. 233 (1920).
power and in 1918 it was dissolved after one of its pivotal patents was held invalid.86

The demise of the Motion Picture Patents Company and the General Film Company87 left the market for the independent producers and large exhibitors that by then had already accumulated significant market power.

C. The Reign of the Organized Distributors (1915-1950)

1. Transformation of the Industry

a. Structural and Business Developments

General business developments of utilizing economies of scale, “scientific management,”88 and growing production costs led to the organization of large theater circuits and various forms of vertical integration in the industry.89 The consolidation and expansion trends originated in a pursuit of efficiency gains, but continued with a race of the vertically integrated players to accumulate market power through further consolidation and expansion. Between 1915 and 1948, the industry underwent several waves of business expansion and contraction; some of the major industry players merged, others dissolved. For simplicity, the identities of the relevant entities and their transformations are not described. Suffice it to note that during most of the period eight powerful national distributors (“the Organized Distributors”) dominated the industry.90 Five of these distributors integrated production, distribution, and exhibition (“the Majors”);91 other two Organized Distributors

86 The Latham Loop patent that enabled the projection of thousand-foot reels was held invalid in January 1918. Motion Picture Patents Co. Company, v. Calehuff Supply, 248 F. 724 (E.D. Pa. 1918).

87 For a study of the events that led to the decline of the Trust, see Jeanne Thomas, The Decay of the Motion Picture Patents Company, 10 CINEMA J. 34 (1971).

88 The term “scientific management” was coined Frederick Winslow Taylor, the pioneer of efficiency engineering, in his influential book, THE PRINCIPLES OF SCIENTIFIC MANAGEMENT (1911).


91 These players evolved to Paramount, Loew’s, Radio-Keith-Orpheum (“RKO”), Twentieth Century-Fox Film, and Warner Brother Pictures.
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and the eighth Organized Distributor primarily distributed independent films. Perhaps the most peculiar characteristic of the movie-theater industry during that era was the Majors’ substantial stakes in most of the important theaters in the country. This feature explains their strong interest in admission prices that, as discussed below, determined the pricing structure of the industry.

At the exhibition level, features offered a new form to organize a profitable business: Building large, fancy, and comfortable theaters that could accommodate more than thousand patrons each and charging premia for the convenience, the luxury, and the movie itself. Large theaters of 800 seats and more already appeared in 1909, before the introduction of the features. However, with the arrival of the features, movie palaces of over 1,500 seats mushroomed in major cities and dominated the exhibition segment until the Great Depression. In large theaters, price differentiation was established across seats: Orchestra seats could cost twice as much as balcony seats, which were still more expensive than floor seats.

b. Distributors’ Control over Pricing

Cross-seat price differentiation was not the only, or even the major, development of the era. Beginning the early 1920s, exhibitors were no longer free to set admission prices; rather, virtually all the distribution contracts stipulated minimum admission-price requirements, which reflected a new distribution system. This system integrated three principal marketing practices: intertemporal pricing, film grading, and block-booking.

Intertemporal Pricing. During the nickelodeon age, the price of a given movie was fixed to all exhibitors and was normally determined by its length. Under the new system, theaters were classified according to their affiliation, luxuriousness, age, and location. Based on this

92 Columbia, and Universal.
93 United artists.
94 HUETTIG, supra note 57, at 54-95; CONANT, supra note 1, at 48-57.
95 See STONES, supra note 64, at 28-61; BOWSER, supra note 69, at 121-136. One of the luxuries of the palaces was air conditioning. See GAIL COOPER, AIR-CONDITIONING AMERICA: ENGINEERS AND THE CONTROLLED ENVIRONMENT, 1900-1960 80-109 (1998). For an illustration of the variation in admission fees across theaters of different sizes, see KOSZIRSKI, supra note 89, at 12-13 (1990).
96 Regulation of Motion-Picture Theater Ticket Sale: Hearing Before the Subcomm. Of the Comm. On the District of Columbia, 72d Cong. 8-9, 19-20 (1932) (statements of A. Julian Brylawski, president of the Motion Picture Theater Owners of the District of Columbia, and T. R. Shearer, a moviegoer); STONES, ibid, at 28. See also $10 to See Griffith Film, NY TIMES, Aug. 28, 1920, at 11.
97 BERTRAND ET AL., supra note 99, at 41, 45-49; CONANT, supra note 1, at 69-70. See also Paramount, 66 F. Supp. at 334-341.
98 HOWARD T. LEWIS, THE MOTION-PICTURE INDUSTRY 7 (1933)
classification, a “run-clearance-zone” system was established: In any defined geographic location (“zone”), a given movie played at one theater (“run”), and another theater within the same zone could show the same movie only after a defined period lapsed (“clearance”). This system created a declining pricing that allowed the Organized Distributors and several other players to benefit from the variation in demand elasticities of moviegoers. This system, however, did not equally benefit all exhibitors, as it systematically favored theaters affiliated with the Majors or with large circuits. As a result and given the minimum price requirements, unaffiliated (“independent”) small exhibitors often faced difficulties in attracting audiences.

Within a few years from the establishment of the run-clearance-zone systems, the terms each exhibitor obtained from each one of the eight Organized Distributors became very similar. This convergence of the run-clearance-zone system was not an outcome of a competitive evolutionary process. Defining zoning protection, establishing clearance schedules, and stipulating minimum admission fees were intricate procedures, which were subject to intense negotiations between distributors and exhibitors. It is quite implausible that the outcomes of such negotiations were close to uniform without exploitation of market power by large circuits, some coordination among the distributors, or at least conscious parallelism. Interstate Circuit v. United States illustrates one way of anticompetitive convergence. In Interstate Circuit, the manager of two large circuits that operated in New Mexico and Texas sent an identical letter to the eight Organized Distributors. Each letter named all the Organized Distributors and asked a compliance with two demands as a condition of playing the distributors’ films in first run theaters at a night of admission fee of forty cents or more. One demand was that the admission fee in subsequent runs would not be less than twenty-five cents. The other demand was that patrons of an A movie would not get to watch another feature free, a common practice of the time that was known as “double-features.” All Organized Distributors complied with the demands. A judgment against the defendants was granted on the grounds that the distributors had agreed among themselves.
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to raise the prices of Interstate’s rivals.105

Film grading. One advantage of the leading producers of the time over the Trust they replaced was the understanding of the potential profitability of product differentiation in the motion-picture industry.106 Already before 1920, this understanding was utilized to create several production lines with varying quality that was based on budget, leading actors’ popularity, genre, and story’s quality.107 Films from these production lines were graded as A, B, or C and admission prices were set accordingly.

Block-booking. Block-booking involves licensing of motion pictures as a package with no option given to the exhibitor to select the specific movies in the package. Block-booking was often combined with blind-selling, a practice whereby a distributor licensed a feature before the exhibitor was afforded an opportunity to view it. Since its invention in 1916,108 the practice of block-booking has been, and still is, an endless source for litigation and academic debate.109 For the purpose of this Article, the interesting characteristic of block-booking during the discussed era is that, although exhibitors paid one price for a bundle of movies, admission prices per movie varied across movies and even for premiers.110 In contrast, today, licensing and pricing of films are conducted on a movie-by-movie basis; nevertheless, exhibitors charge one price for all movies.

To summarize, under the new pricing system, administrated by the Organized Distributors, admission prices varied over time, across theaters, and across movies. This new pricing order was illegal and rendered some social loss. The overt practice of minimum admission-price requirements that governed the industry since the early 1920s was nothing but an egregious violation of antitrust laws. Minimum resale-price-maintenance

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105 Id. at 228-232.
106 Quinn, supra note 78. See also Calls on Movies to Reduce Price: Pioneer Film Man Says Five Cents Should be the Admission Fee. No Place for Stars, NY TIMES, Dec. 27, 1914, at 11.
108 RAMSAYE, supra note 57, at *.
110 Cross-movie price variation is less surprising in subsequent runs than in first runs and premiers, because much of the uncertainty regarding the success of the movie is resolved.
agreements, such as stipulation of minimum admission prices in licensing agreements, have been per se violations of the Sherman Act since 1911, when the Supreme Court equated resale price maintenance with horizontal price fixing.111 This per se rule is considered today outmoded, but it is still good law.112 Putting aside legal formalities, several scholars argued that the restrained competition in the exhibition segment did not entail any social losses because practically movies became affordable for all moviegoers.113 However, the territorial allocations of movies created a situation in which in any given geographic area only movies of specific studios played.114 Such a designed limited variety of products necessarily rendered some social loss. Moreover, the control of the Majors over the first-run theaters in the major cities erected barriers to entry at the production and distribution segments because rival producers and distributors had limited outlet for their films.115 These entry barriers, in turn, limited further the potential variety of films and entailed additional social loss.

c. Price Variation Established by Exhibitors

Price variation during the reign of the Organized Distributors was developed also by exhibitors. In addition to the aforementioned cross-seat price variation, exhibitors engaged in a few other pricing practices that utilized various dimensions of the demand for movies. The primary practice was charging, on weekends and during holidays, admission fees higher than the required minimum level.116

Many exhibitors also offered indirect discounts in order to sell tickets below the stipulated minimum price requirements. Prominent examples for such discounts were double features, give-aways, free ladies’ nights, and prizes. Probabilistic indirect discounts (lotteries) in various forms,
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including a chance to win a basket of groceries, became particularly
common when the Great Depression hit the movie theater industry in 1931
and the allowed price cuts were insufficient to attract audiences. During
the National Recovery Administration, 1933-1935, most of these indirect
discounts were prohibited for the sake of “fair competition.” Pursuant to
the National Industrial Recovery Act of 1933, the Administration and the
industry promulgated a Trade Code for Moving Picture Exhibitors that,
to a large extent, provided a legal umbrella for the collusion of the
Organized Distributors. Several provisions of the Code allegedly
intended to protect the interests of independent exhibitors. For example,
the Code prohibited discrimination among theaters, overbuying, coercion,
and bribing (“gratuity”). However, these prohibitions were not enforced.
On May 27, 1935, the Supreme Court declared the National Industrial
Recovery Act unconstitutional and brought to an end the 450 codes that
regulated the country’s major industries. Following the invalidation of
the Code, industry leaders continued to fight publicly against competitive
pricing practices that threatened to undermine the governing pricing
regime at the box office.

117 STONES, supra note 64, at 75-84; BALIO, GRAND DESIGN, supra note 107, at 26-30. As shown in Figure 2, the arrival of the talkies delayed the impact of the Great Depression on the movie-theater industry.

118 Text of Trade Code for Moving Picture Exhibitors, WALL ST. J., Sep. 11, 1933, at 8. See Articles 22 and 27. For enforcement of these prohibitions, see Theatre Accused of Violating Code, NY TIMES, Aug. 22, 1934, at 21.


120 Articles 2, 6, 7, 9, 12, 36, and 41.


The reign of the Organized Distributors illustrates how, under certain circumstances, variable pricing within the same theater is sustainable. The particular conditions that characterized the era were (i) production lines of varying quality and minimum admission-price requirements that each facilitated cross-movie price variation; (ii) recurring demand patterns that were utilized for price variation across show times; and (iii) large theaters that allowed cross-seat price variation. Most of these conditions no longer exist: Ranked production lines and large theaters were conditions idiosyncratic to the era and the causes for their disappearance are discussed below. Minimum admission-price requirements that supported cross-movie price differentiation were banned by the Paramount decrees. Notwithstanding, some conditions that could sustain intra-theater price variation still exist. First, event movies – a particular, distinct production line – are still produced, but since the early 1970s they are priced like other movies. Second, the recurring demand patterns might have changed, but identified recurring demand patterns still exist.

2. The Paramount Case

a. Legal Procedures

While the reign of the Trust was characterized by numerous patent actions, the era of the Organized Distributors enriched the antitrust case law with an unprecedented number of decisions. Although, the

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123 See Sections II.D-II.E infra.

124 See Section II.E. infra. The first event movie that was shown at regular admission price was *Arch of Triumph* starring Ingrid Bergman and Charles Boyer. *Practice of Showing Costly Films at Higher Prices Receives Jolt*, WALL ST. J., Mar. 17, 1948, at 3.

125 See, e.g., Binderup v. Pathe Exchange Inc., 263 U.S. 291 (1923); *Famous Players-Lasky Corp.*, 11 FTC 187; Paramount Famous Lasky Corp. v. United States, 282 U.S. 30 (1930); United States v. First Nat’l Pictures, 282 U.S. 44 (1930); *Paramount Famous-Lasky Corp.*, 57 F.2d 152; United States v. Fox West Coast Theaters, 1932-1939 Trade Cas. (CCH) ¶ 55,018 (S.D.Cal. 1932); United States v. Balaban & Katz Corp., 1932-1939 Trade Cas. (CCH) ¶ 55,001 (N.D.Ill. 1932); Walker Theatre Co. v. R.K.O. Distributing Corp., 189 N.E. 162 (Ind.App. 1934); First Nat. Pictures v. Robison, 72 F.2d 37 (9th Cir. 1934); Metro-Goldwyn-Mayer Distributing Corp. v. Kiggins, 200 Wash. 474 (1935); Fox Film Corporation v. Muller, 296 U.S. 207 (1935); Glass, 83 S.W.2d 796; *Perelman*, 9 F. Supp. 729; Paramount Pictures v. United Motion Picture Theatre Owners of Eastern Pennsylvania, Southern New Jersey and Delaware, Inc., 93 F.2d 714 (3d Cir. 1937); *Interstate Circuit*, 306 U.S. 208; Westway Theatre v. Twentieth Century-Fox Film Corp., 113 F.2d 932 (4th Cir. 1940); Gary Theatre Co. v. Columbia Pictures Corp., 120 F.2d 891 (7th Cir. 1941); Schad v. Twentieth Century-Fox Film Corp., 136 F.2d 991 (3d Cir. 1943); United States v. Crescent Amusement Co., 323 U.S. 173 (1944); William Goldman Theatres v. Loew’s, Inc., 150 F.2d 738 (3d Cir. 1945); Bigelow v. RKO Radio Pictures, 150 F.2d 877 (7th Cir. 1945); United States v. Griffith Amusement Co., 334 U.S. 100 (1948); *Schine Chain Theatres*, 334 U.S. 110. See also William F. Whitman, *Antitrust Cases Affecting the
government and private plaintiffs prevailed in many of these cases, they ultimately lost the battle. These cases had only a small impact on the industry. The Paramount case, however, was about to change the face of the industry forever. The government filed a complaint against the Organized Distributors in July 1938, asserting seven major charges: (i) conspiracy to fix film license terms, runs, clearances, and minimum admission prices; (ii) block-booking; (iii) blind-selling; (iv) systematic discrimination against small independent theaters; (v) excluding independent producers; (vi) pooling profits in cities where two or more majors operated theaters; and (vii) effecting a division of territories in the entire United States.

In November 1940, the government and the Majors reached a consent decree that was to last for three years. Among other remedies, the decree (i) limited the freedom of the Majors to expand their exhibition businesses; (ii) acknowledged the right of the distributors to employ reasonable run-clearance-zone systems; (iii) prohibited discrimination among theaters; and (iv) prohibited block-booking of more than five features. In addition, the decree set up an arbitration system that was remarkably similar to the industry’s self-government under the National Industrial Recovery Act. By 1944, only minor changes in the established run-clearance-zone system were achieved and, in August 1944, the government sought modification of the consent decree, including the divorcement of theaters from distribution and production. The case went to trial late 1945 and in June 1946 the District Court for the Southern District of New York issued its opinion. The almost uniform minimum admission-prices requirements of the eight defendants were found
sufficient evidence to infer a horizontal price-fixing conspiracy among the defendants and a vertical price-fixing conspiracy between each defendant and its licensees. The run-clearance-zone system was analogized to a sale of a business with its good will and non-compete covenants. Based on this analogy, a run-clearance-zone system with reasonable clearances and zones restrictions was held lawful and the court listed criteria for examining reasonableness. It was further held that the established uniform system did not result from free and open competition, but from action in concert of the defendants that favored theaters affiliated with the Majors and with large circuits in violation of the Sherman Act. Similarly, block-booking, broad blind-selling, discrimination against small independent exhibitors, certain pooling agreements, and joint interests in theaters were found illegal under the Sherman Act. The requested divorcement of theaters from distribution and production was held harsh and unnecessary.

In December 1946, the court issued a decree pursuant to its opinion. The decree prohibited (i) stipulating minimum admission prices; (ii) agreements to maintain a run-clearance-zone system; (iii) uncompetitive or unreasonable clearances; (iv) licensing pictures in any way other than competitive bidding; (v) block-booking; (vi) broad blind-selling; (vii) discrimination among theaters; (viii) arbitrary refusal to deal; (ix) pooling agreements; (x) joint interests in theaters; (xi) expansion of the Majors’ theater businesses; and several other trade practices.

On appeal to the Supreme Court, most of the district court’s rulings were affirmed. In its opinion, dated May 1948, the Court held that although in many cases acquisitions of joint interests in theaters were products of unlawful practices, in other cases such acquisitions represented

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138 Paramount, 66 F. Supp. at 348-350; Paramount, 70 F. Supp. at 63 (findings 93-96)
139 Blind-selling was not held inherently anticompetitive. Rather, the court held that an exhibitor should have the option to reject a certain percentage of blind-licensed pictures within a reasonable time after they become available for inspection. Paramount, 66 F. Supp. at 350; Paramount, 70 F. Supp. at 63-64 (findings 97-98).
140 Paramount, 66 F. Supp. at 352; Paramount, 70 F. Supp. at 66 (findings 110-111).
143 Paramount, 66 F. Supp. at 355-357; Paramount, 70 F. Supp. at 71 (findings 155-156).
innocent investments. Therefore, it was ruled that the district court erred in failing to inquire into the circumstances under which joint interests were acquired. The Court also held that the district court failed to make necessary findings as to the existence or absence of monopoly power in the market for first-run theaters and erred in its analysis of the Majors’ ownership of theaters. Finally, competitive bidding was held undesirable and impractical. Undesirable, because according to the Court’s view it could favor the exhibitors with the “longest purse” and, impractical, since given the many facets of a bid, often it would be too difficult to identify the highest bid. In addition, the court ruled that competitive bidding would require extensive judicial involvement in the daily operation of the industry business. In light of the central role of competitive bidding in the decree, the Supreme Court remanded the case for the consideration of the entire decree.

On remand from the Supreme Court, and before further hearing in the case, two of the Majors consented to decrees divorcing their theater circuits, divesting certain theaters from the circuits, and enjoining certain practices. The trial court issued its supplemental findings in July 1949. The vertical integration of the Majors was found to aid the conspiracy to fix prices, runs, and clearances and, therefore, was held unlawful. With respect to monopoly power, the court held that the defendants must be viewed collectively, rather than independently, and as such they possessed monopoly power in the distribution and first-run theater markets. In light of the Supreme Court’s ruling on the inadequacy of competitive bidding, the court ruled that divorcement of the exhibition business from production and distribution was necessary. The divestiture orders of certain theaters from the Majors’ circuits were modified in accordance with the Supreme Court’s instructions.

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146 Id. at 152-153.
147 Id. at 166-176.
148 A bid includes the theater properties, the clearance terms, and a price formula for the license.
149 Paramount, 70 F. Supp. at 162-166.
152 Id. at 893-894.
153 In 1945, the Majors owned at least 70% of the first-run theaters in the 92 largest cities and 60% of the first-run theaters in cities with populations between 25,000 and 100,000. The defendants’ share in the domestic film rentals, excluding westerns, was approximately 73%. Id. at 894-895.
154 Id. at 895-896.
155 Id. at 896-900.
to its decision, in February 1950, the court issued a final decree against the six Organized Distributors that did not enter into consent decrees.156

b. Immediate Impact on the Pricing System

The Paramount case attacked and undermined the pricing system established by the Organized Distributors. The Paramount decrees and, particularly, their structural remedies were designed to revive competition in the exhibition segment and prevent leverage of market power. However, at the core of the decrees was the strict prohibition against stipulation of minimum admission prices in license agreements or in any other way. This prohibition was supported by two additional prohibitions: (i) a prohibition against the maintenance of agreements regarding a uniform run-clearance-zone system; and (ii) a prohibition against licensing negotiations in any manner, other than on theater-by-theater and movie-by-movie bases. No less important, the decrees of divorcement and divestiture eliminated the incentives of the Organized Distributors to favor affiliated theaters.

Theaters in the post-Paramount era did not lose their limited monopolistic power in their local territories, as the Paramount decrees did not prohibit the organization of film licensing through run-clearance-zone systems. This feature could allow theaters to price movies according to charge monopolistic prices for popular movies. Furthermore, the prohibition against block-booking and the duty to negotiate licensing on a movie-by-movie basis added to the exhibitors’ pricing calculus the exact costs of each movie.

To summarize, following the Paramount cases, three central legal rules governed the motion-picture industry: (i) a strict prohibition against a direct and indirect stipulation of admission prices by producers and distributors; (ii) a strict prohibition against licensing negotiations in any manner, other than on theater-by-theater and movie-by-movie bases; and (iii) a prohibition against vertical integration between the Paramount defendants and exhibitors. This triangle of rules presumably allowed exhibitors to select which movies they would show and presumably removed artificial constraints on ticket pricing.

156 United States v. Loew’s Inc., 1950-1951 Trade Cas. (CCH) ¶ 62,573 § 8 (S.D.N.Y., 1950). The three majors that did not enter into consent decrees prior to the final decree, signed consent decrees that detailed the divorcement and divestiture of theaters in February 1950 (Twentieth Century-Fox), and January 1951 (Warner Brothers), and February 1952 (Loew’s). United States v. Loew’s Inc., 1950-1951 Trade Cas. (CCH) ¶ 62,765 (S.D.N.Y., 1951) (Warner Brothers consent decree); United States v. Loew’s Inc., 1950-1951 Trade Cas. (CCH) ¶ 62,861 (S.D.N.Y., 1951) (Twentieth Century-Fox consent decree); United States v. Loew’s Inc., 1952-1953 Trade Cas. (CCH) ¶ 67,228 (S.D.N.Y., 1951) (Loew’s consent decree).
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D. Post-Paramount Developments (1950-1970)

During the late 1940s, the movie-theater industry entered a period of deep recession, primarily because of the post World War II economic contraction (1946-1948), dramatic changes in the American leisure consumption patterns, and the advent of the television. 157 Some of these changes are captured in Figure 3 that depicts the percentage of personal expenditures spent at the box office and the corresponding trends in movie-theater attendance. The decline in the movie-exhibition business that started in 1946 and continued monotonously until the 1970s, although the rate of decline diminished over time. In dollar amounts, annual box-office revenues fell from the peak of 1,692 million dollars in 1946 to 942 million dollars in 1962. Adjusted to 2002, the box-office record of 1946 totaled 15,610 million dollar, hit a bottom of 5,519 million dollar in 1964 and gradually climbed to 9,500 million dollars in 2002. 158 The adjusted figures of personal spendings are even more dramatic: the annual personal spending at the box office dropped from 110 dollars in 1946 to 29 dollars in 1963 and since then has never passed the level of 33 dollars. 159 The percentage of personal expenditures spent at the box office reached the peak of 1.28% in 1943 and declined until the 1990s in which it stabilized at a level of 0.11%-0.13%. The latter figures are not adjusted to changes in income; however, given the drastic change in magnitude and together with the other figures they shed some light on the trends at the box office.

157 See generally Crandall, supra note 15. For the impact of the television on movie-theater attendance, see Fredric Stuart, The Effects of Television on the Motion-picture industry: 1948-1960, in The American Movie Industry: The Business of Motion Pictures 257 (Gorham Kindem ed. 1982).

158 See Figure 7 in the Appendix infra.

159 Id.
The foregoing figures present the period of the 1950s-1960s as an era of decline from which the movie-theater industry has never recovered. The developments in attendance patterns, coupled with the entry of independent producers, naturally affected the supply of movies and box-office pricing. As predicted by standard economic models, the major studios responded to the decline in the demand by lowering the supply of movies. In addition, the nature of the supply changed and significantly fewer B and C movies were produced in light of the competition from television, the freedom of exhibitors to select movies, and entry of independent producers.

As shown in Figure 2 above, the immediate price response to the changes in the industry was a decline that followed by a significant

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161 See Figure 8 in the Appendix infra; MOTION-PICTURE DISTRIBUTION TRADE PRACTICES—1956: Report of Select Comm. On Small Businesses, 84th Cong. 10-13, 38-39 (1956). See also Stanley W. Penn, Movie Makers to Cut ’59 Output 15% to Post-War Law, Stress Big-Budget Films to Counter Box-Office Slump, NY TIMES, Feb. 4, 1959, at 24.


increase in the average admission price. This upward trend in admission prices continued almost monotonously until the 1970s, with the exception of a sharp price decline in 1954. The price decline of 1954 can be by the partial relief from the twenty-percent federal admission tax and the decrease in number of newly released films. The general upward trend in admission prices should be attributed to three major factors: fewer low-price B and C movies were offered, the collapse of the uniform run-clearance-zone system that allowed neighborhood theaters to raise prices, and the relative demand inelasticity of the audiences that continued to patronize the theater.

The gravitation of the industry toward A movies, during the post-Paramount era, necessarily implied a lower price dispersion, as the product was less differentiated. Explicit price stipulation by distributors was prohibited by the Paramount decrees and, therefore, most of the artificial mechanisms that could sustain price variation across movies were presumably removed. Nevertheless, throughout the 1950s and 1960s there was a clear distinction between pricing of regular and event movies. Exhibitors also maintained the price variation between weekdays and weekends and between prices of different types of seats. Furthermore, in an attempt to attract price-sensitive patrons, exhibitors devised student and senior discounts that were never

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164 In April 1, 1954, the admission tax was cut by ten percent and was completely removed on admissions of 50 cents and less. Exhibitors were specifically instructed to pass on the tax cut to moviegoers. See Admissions Tax on Motion-Picture Theaters: Hearing Before the Comm. On Ways and Means, H.R. 157, 83rd Cong. (1953); Motion-Picture Distribution Trade Practices—1956, supra note 161, at 50; Tax Cut Rules Set: U.S. Warns Ticket Purchasers Must be told of Changes, NY TIMES, Apr. 9, 1954, at 17.

165 See Figure 8 in the Appendix.

166 See, e.g., Penn, supra note 161.

167 For the effects of these factors, see Conant, supra note 1, at 12-15, 138-153; Crandall, supra note 15, at 61-65. There is no public information on estimations of moviegoers’ demand elasticities. However, in 1956 it was estimated that 26% of the adult population attended the movies more than once a month and accounted for 85% of the total theater admission and that seven percent of the adult population attended the movies more than once a week and provided almost 44% of the box-office receipts. Motion-Picture Distribution Trade Practices—1956, supra note 161, at 27-28. Such findings offer a support to the demand inelasticity of the audience that continued to patronize motion pictures. See also Crandall, supra note 15, at 63.


Implicit in this argument is the contention that exhibitors who own the big first-run houses would charge the same admission regardless of the picture being played. The committee questions whether all exhibitors charge the same for a first-run showing of a top attraction as for a run-of-the-mill picture.
consistently adhered.170

Although much of the price differentiation during the 1950s and 1960s was voluntarily maintained by exhibitors, there were many complaints regarding the direct and indirect intervention of distributors in the setting admission prices. However, systematic documentation of the distributors’ compliance with the *Paramount* decrees does not exist. Violations of the structural remedies could be easily detected and punished and, therefore, the prohibition against vertical integration was kept almost intact.171 Conduct related to the maintenance of a uniform run-clearance-zone system could less easily proved and, apparently, some uniformity continued to exist.172 Enforcement of the prohibition against intervention of distributors in setting admission prices was particularly difficult, despite many reported complaints.173 The old minimum admission-price requirements transformed into suggestions, whose ‘cheap-talk’ nature was outside the boundaries of the *Paramount* prohibitions,174 yet their repeating character had a self-enforcing power.175 Such suggestions for

170 See, e.g., *Film Houses Urged to Cut Student’s Fees*, NY TIMES, Feb. 5, 1938, at A5; *Movies to Cut Rates For Young This Week*, NY TIMES, Aug. 23, 1944, at 17; *Movies Lay Plans for Student Rate*, NY TIMES, Mar. 11, 1955, at 19; *Film Patrons Over 60 Offered Lower Prices*, NY TIMES, Jan. 9, 1964, at 37). For Saturday kid shows, see STONES, supra note 64, at 125-130.

171 The divorcement and divestiture of theaters pursuant to the *Paramount* decision was completed only in 1959, primarily because of the difficulties in selling assets of a declining industry. See CONANT, supra note 1, at 107-112. In 1956, the divorced circuits were refused to enter the production business. Motion-Picture Distribution Trade Practices—1956, supra note 161, at 49-50, 56.


173 See also CONANT, supra note 1, at 152.

174 “Cheap talk” is an economic term for a nonverifiable communication that may facilitate a self-enforcing coordination. See Joseph Farrell, *Cheap Talk, Coordination, and Entry*, 18 RAND J. ECON. 34 (1987); Joseph Farrell & Matthew Rabin, *Cheap Talk*, 10 J. ECON. PERSP. 103 (1996). See also Crandall, supra note 15, stating in the context of the motion-picture industry that “few economists would believe that forbidding overt communication among rivals would guarantee competitive market power” (at 56) and that “admission prices are clearly discussed in negotiations of contracts” (at 62).

175 Repeated interactions of players may facilitate a self-enforcing equilibrium that could not be sustained otherwise. See generally DREW FUDENBERG & JEAN TIROLE, *GAME THEORY* 145-200 (1991); Irving Fisher, *Cournot and Mathematical Economics*, 12 Q. J. ECON. 119, 126 (1898) (“no business man assumes . . . that his opponents’ output or price will remain constant any more than a chess player assumes that his opponent will not interfere with his effort to capture a knight”); Robert H. Porter, *A Study of Cartel Stability: The Joint Executive Committee*, 1880-1886, 14 BELL J. ECON. 301 (1983). See also Motion-Picture Distribution Trade Practices—1956, supra note 161, at 46.

An exhibitor who makes a bid in which he states he intends to charge a certain price . . . may be legally free to [charge less, but] it is obvious he would find it
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admission prices could take a suggestive form of recommendations during licensing negotiations or more binding forms, such as raising shares of box-office revenues, per-capita requirements, and punishing exhibitors who charged low admission prices. A conservative conclusion from the existing evidence is that, until the 1970s, the distributors remained active in the determination of admission prices in violation of the Paramount decrees and general antitrust law. As one scholar, who studied the industry during the 1950s-1960s, noted: “For all intents and purposes, the old cartel remained, stripped of its theaters and formal channels of communication.”

E. Modern Times (1970-Present)

Uniform prices in their present form appeared in the early 1970s, but the causes and reasons for the convergence to this pricing system could not be traced. In 1972, The Godfather, a high-profile event movie, opened at regular admission prices and became the highest-grossing film ever. It is quite implausible that all exhibitors across the country decided unilaterally to charge a regular price for The Godfather. Therefore, it is a very reasonable to inference that Paramount, the producer-distributor of the movie, was at least somewhat involved in this pricing transition. Such intervention, if happened, was in violation of the Paramount decrees and the per se rule against maximum resale price maintenance that was in force since 1968. Support to the hypothesis that Paramount intervened in the pricing of The Godfather could not be found. The Godfather, however, set a new norm for event movies. Price variation across movies quickly disappeared after its success.

Price variation across seats apparently disappeared in light of the over

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176 See Problems of Independent Motion Picture Exhibitors, supra note 173, at 5-7; Motion-Picture Distribution Trade Practices—1956, id., at 10-15, 25, 39-41, 46-47. See also CONANT, supra note 1, at 152. For a detailed study of admission price negotiations, see Cassady, Impact of the Paramount Decision, supra note 15, at 165-175.

177 Crandall, supra note 15, at 57. However, a congressional committee that investigated the problems of independent motion-picture exhibitors concluded, in 1956, that Under [the governing distribution] system there is the possibility that a distributor and exhibitor may actually agree between themselves on a certain admission price and thereby be engaging in illegal price fixing. But such danger does not make the system itself necessarily illegal. Motion-Picture Distribution Trade Practices—1956, id., at 46.


capacity of theaters that made it too costly to monitor patrons in the auditorium. Later, when multiplexes and megaplexes started taking over the industry, movie screens shrunk and it became less economically justified to set different prices for different seats. At the multiplex, however, the practice of uniform prices across movies is particularly puzzling because exhibitors often face situations in which tickets for some screens are sold out, whereas most of the seats in other screens are empty. Under such conditions, uniform prices for sold-out screens and empty screen is economically surprising.

Information on the convergence of admission prices to one price throughout the week could not be located. Some reports indicate that at least in 1970, admission prices in New York City were higher on Saturdays than during the rest of the week. However, still in 1970, cuts of weekday admission prices in Washington, D.C., seemed to violate the pricing norm.

Journalistic reports suggest that producers and distributors object deviation from uniform pricing and that they often prevent deviation from the present pricing regime. Such intervention, although never challenged, is illegal under the Paramount decrees that are still in force. The scattered anecdotal evidence suggests, therefore, that producers and distributors sometimes act to discourage deviation from the present pricing regime, but does not indicate that they acted consciously together or unilaterally to bring about the uniform pricing regime. The study of the uniform-pricing puzzle in the next Part of the Article is focused on the economic justifications for uniform pricing and the plausibility that the present pricing regime is sustained, at least partially, by the distributors’ conduct.

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180 In 2002, 27.8% of the theaters had a single screen, 40.6% had two to seven screens, 23.8% had eight to fifteen screens, and 7.8% had more than sixteen screens. [http://www.mpaa.org/useconomicreview](http://www.mpaa.org/useconomicreview). The average number of screens per theater continuously increases. From 1995 to 2002 it went up by over 60%, from 3.89 to 6.27 screens per theater.


182 See supra note 41 and accompanying text.

183 See, e.g., Andrew Hindes, *Multiplex Showdown in Desert*, VARIETY, Mar. 27, 1997, at 9 (“In the event that one or both [of the competing] exhibitors decides to slash admission prices, distributors have the option of selling pictures on a “per capita” basis, collecting a fixed amount per patron.”); Jill Goldsmith, *AMC Tempts Auds With Multi-Pic Card*, DAILY VARIETY, Jun. 11, 2001, at 28 (describing a a discount program of a major theater circuit and quoting the distribution chief of DreamWorks saying that they could not tell exhibitors what to charge, but they could include per-capita requirements in the rental contracts). See also Battaglio & Kirk Honeycutt, supra note 23.

184 In the 1980s, the prohibitions against vertical integration were relaxed. See Fox, supra note 15.
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III. INDUSTRY EXPLANATIONS FOR UNIFORM PRICES

For advocates of the efficient-market hypothesis, the persistence of the uniform pricing regime for more than thirty years could be an evidence for its efficiency. To examine this hypothesis, interviews were conducted with industry executives, scholars, and journalists. Generally, the explanations for the uniform-pricing regime repeated themselves and could be grouped into five categories of economic justifications: (i) concerns that variable pricing would antagonize patrons; (ii) the uncertainty surrounding the success of newly released movies; (iii) concerns that prices would be interpreted as quality signals; (iv) the costs of administrating variable pricing; and (v) concerns that variable pricing would complicate the already complex relationships between exhibitors and distributors. In addition, there were certain allegations regarding the direct and indirect intervention of distributors in the pricing regime. This Part of the Article examines the suggested economic justifications and the possibility that distributors still intervene in the pricing structure of the exhibition segment.

A. Perceived Fairness

Businesspersons often believe that price changes, which are perceived by consumers as unfair, are undesirable.185 Coca-Cola, for example, took fire for introducing a vending machine that adjusted prices to the weather conditions.186 Economists, who have studied this intuition, argue that it deters businessmen from taking full advantage of the law of supply and demand.187 In the context of entertainment industries, Arthur Okun noted that

implicit contracts or conventions … introduce a concept of fairness in the relations between suppliers and customers whereby price increases based on cost increases are generally accepted as fair, but many that might be based on demand increases are ruled out as unfair. That analysis leaves many specific questions unanswered. Some forms of peak-load pricing by utilities or transport are accepted (even by regulators) as fair; some hotels in college towns charge especially high rates on football

weekends. On the other hand, firms in the sports and entertainment industries offer their customers tickets at standard prices for events that clearly generate excess demand.\footnote{Arthur M. Okun, Prices and Quantities: A Macroeconomic Analysis (1981).}

The standard analysis of perceived fair prices is focused on the reference transaction,\footnote{Kahneman et al., Fairness as a Constraint on Profit Seeking, supra note 187.} which here is the purchase of a movie ticket. Presently, all moviegoers are accustomed to uniform admission prices and this transactional experience may create the assumption that exhibitors’ costs do not vary across movies. Accordingly, modifying admission prices uniformly in accordance with changes in general costs may be more acceptable than setting different prices for different movies and different show times. For example, charging higher prices on weekends and holidays may antagonize patrons because it would be perceived as an act to increase exhibitors’ profits in an unfair fashion. As the president of the National Association of Theatre Owners put it: “We want people to get in the habit [of visiting the theater] on a regular basis and to see as many movies a year as possible. To build that kind of loyal clientele, you can’t bounce admission prices around them.”\footnote{Bill Kartozian, president of the National Association of Theater Owners, in response to the 1998 call of Edgar Bronfman, Jr., to revise the pricing system (see supra note 23). See also Weiler, Are Lower Prices Coming?, supra note 116: [Paramount’s] stabilization of admission . . . will perhaps prove to be the biggest boon to moviegoers in the long run. The policy of juggling prices according to the demand for tickets has been the public’s most frequent cause of complaint. It was not uncommon for a person to join a long street line when the admission was priced at 95 cents, only to find upon reaching the ticket window a half hour later that the tariff had been upped another 25 cents or more.}

According to this point of view, pricing movies in any way other than uniformly is likely to backfire.\footnote{Kahneman et al. pointed out that “psychological studies of adaptation suggest that any stable state of affairs tend to become accepted eventually, at least in the sense that alternatives to it no longer readily come to mind.” Kahneman et al., Fairness as a Constraint on Profit Seeking, supra note 187, at 730-731. In the same spirit, Franciosi et al. conducted several experiments and showed that although a transition path to a new equilibrium may be affected by fairness considerations, equilibrium outcomes reflect standard economic models. 28. Robert Franciosi et al., Fairness: Effect on Temporary and Equilibrium Prices in Posted-Offer Markets, 105 Econ. J. 938 (1995).} Despite the difficulties that fairness perceptions may present, it can hardly justify uniform admission prices. Box-office experience of patrons provides a basis for fairness judgment merely because of its regularity, not due to any intrinsic justice.\footnote{Khneman et al. pointed out that “psychological studies of adaptation suggest that any stable state of affairs tend to become accepted eventually, at least in the sense that alternatives to it no longer readily come to mind.” Kahneman et al., Fairness as a Constraint on Profit Seeking, supra note 187, at 730-731. In the same spirit, Franciosi et al. conducted several experiments and showed that although a transition path to a new equilibrium may be affected by fairness considerations, equilibrium outcomes reflect standard economic models. 28. Robert Franciosi et al., Fairness: Effect on Temporary and Equilibrium Prices in Posted-Offer Markets, 105 Econ. J. 938 (1995).}

No sophisticated schemes and ploys are needed to change the present reference transaction; in fact, simple marketing mechanisms could do the trick. The general rule is that
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consumers may be hostile towards price increases, but always welcome discounts.\textsuperscript{193} Therefore, discounts during weekdays and slow seasons and discounts for certain movie categories could establish a non-uniform pricing system without antagonizing patrons. Once such a pricing regime is established, price modifications for specific movie categories or show times are unlikely to violate fairness perceptions since the reference basis has been altered. The aforementioned perceptive asymmetry between discounts and surcharges is important: For human beings, it is easier to forgo discounts than accepting surcharges.\textsuperscript{194} Therefore, although charging ‘summer prices’ and canceling ‘winter discounts’ in the first week of May are economically equivalent, the latter is likely to be more accepted. More generally, a successful transition to variable pricing could be facilitated through simple framing strategies.\textsuperscript{195}

Furthermore, since charging higher prices for event movies was a successful practice in the past and is still successful in several international markets,\textsuperscript{196} there is no reason for believing that patrons would perceive such a practice as unfair.

B. Demand Uncertainty

Demand uncertainty is perhaps the most mentioned cause for the difficulties in pricing movies. Industry professionals and scholars


\textsuperscript{194} THALER, id.

\textsuperscript{195} See generally John Gourville & Dilip Soman, Pricing and the Psychology of Consumption, HARV. BUS. REV., Sep. 2002, at 90; Richard J. Harris & Mark A. Joyce, What’s Fair? It Depends on How You Phrase the Question, 38 J. PERSONALITY & SOC. PSYCHOL. 165 (1980). Several studies show that consumers are susceptible to explanations regarding the reasoning of pricing and alter the fairness perceptions following such explanations. See, e.g., Yew-Kwang Ng, Economic Efficiency versus Egalitarian Rights, 41 KYKLOS 215-237 (1988) (demonstrating how a short explanation may affect consumers’ acceptance for a restaurant surcharges on Saturday night reservations). See also Broadway Movies to Put Price at $2, NY TIMES, Aug. 7, 1923, at 20 (explaining the reasons for high admission prices in selected theaters for special premieres); RAMSAE, supra note 57, at 710 (quoting an announcement of Paramount explaining the reasons for price variation: “Owing to the enormous salary which it has been necessary to pay Miss [Mary] Pickford in order to secure her services, all future releases will be first released to big city theaters charging a minimum price of twenty-five cents.”); $3 for Movie Ticket? Theater Owners Here Explain Why, Supra note 169.

\textsuperscript{196} See, e.g., Monte Mackenzie, Rising Boxoffice, HOLLYWOOD REP., Sep. 21, 1993, at S1 (tickets to Jurassic Park were profitably sold in Japan for a premium of 67%); Cathy Meils, Czech Public Tests Ticket Hike, DAILY VARIETY, Jan. 8, 1997, at 39 (tickets to Evita and Independence Day were sold in the Czech Republic at significant premia); Cathy Meils, Titanic’ Raises Tab, DAILY VARIETY, Feb. 2, 1998, at 13 (tickets to Titanic were sold in the Poland for a 67% premium); Jonathan Watts, ‘Austin’ goes for cheap in Japan, HOLLYWOOD REP., June 29, 1999, at 59 (tickets to Austin Power: The Spy Who Shagged Me were sold in Japan for 45% less than the regular price to attract young audiences).
commonly use the phrase “Nobody Knows Anything” 197 to describe the unpredictability of movies’ success. 198 The problem is focused on pricing of a movie before its opening, because much of the uncertainty is revealed after the first weekend on the screens. 199 Ex-post modifications of initial admission prices in light of the premier’s success and the resulting cascade seem undesirable: Price cuts are likely to be perceived as quality signals and may discourage patrons rather than increase the demand 200 and price increases may antagonize patrons and have a chilling effect.

Figure 4 demonstrates one facet of the demand uncertainty in the industry that precludes the devising of price differentiation across genres. 201 It is shown that, within each genre, the variance of the box-office revenues is too high to allow profitable price variation across genres.

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197 The phrase was coined by screenwriter William Goldman in ADVENTURES IN THE SCREEN TRADE: A PERSONAL VIEW OF HOLLYWOOD AND SCREENWRITING 39 (1984).
198 For a thorough study of the uncertainty in the motion-picture industry, see DE VANY, supra note 45.
199 Einav, supra note 34.
200 Section III.C infra deals with admission prices as quality signals.
201 The data for the foregoing analysis includes all the films released in the United States between 1985 and 1999.
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**FIGURE 4**

*Figures in parentheses represent the standard deviation for each genre. Figures are adjusted to 1999, including changes in population.*

Presentations of other criteria that fail to predict box-office success are abundant in the literature. The demand uncertainty argument, however, is too broad and, despite its popularity, the argument does not explain the puzzle of uniform admission prices. First, the argument fails to explain the uniformity of admission prices over time. As discussed, some of the patterns of the demand for movies have a recurrent nature and could be easily incorporated into the pricing of tickets with a high degree of certainty. In particular, the uncertainty regarding the success of new movies has nothing to do with possible differentiation across seasons or differentiation between weekdays and weekends.

The counter argument of industry professionals is that the emphasis on weekends is misleading since given the short screen lives of movies the

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*See De Vany, supra note 45.*
most important weekend is the first one. As shown in Figure 5, depending on the genre, box-office revenues on the first weekend normally count for significantly more than ten percent of total revenues and can get higher than thirty percent. The weekend argument represents two concerns. First, it is argued that weekend pricing would divert moviegoers to weekdays and, therefore, the total revenues would be lower than under uniform pricing. Second, it is firmly believed that “[i]f it doesn’t open, you are dead;” namely, if a movie does not create a cascade on the first weekend, its success chances at the box office and secondary markets are low. Both concerns reflect an unexamined hypothesis that the demand on weekends is very elastic. However, the general descriptive statistics of weekend movie attendance and existing weekend pricing policies suggest that this hypothesis is wrong. Moreover and no less important, no explanation could be found for uniform prices across seasons.

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203 See, e.g., Loews Cineplex Entertainment Corp., Form 10-K 4 (2001)

204 MARK LITWAK, REEL POWER: THE STRUGGLE FOR INFLUENCE AND SUCCESS IN THE NEW HOLLYWOOD 84 (1986).


206 See supra note 34 and accompanying text.
With respect to price variation across movies, empirical evidence indicates that the demand uncertainty is not as great as popularly argued and that the determinants of success in the industry are not totally random. \( ^{207} \) Exhibitors may be unable to predict box-office revenues of most movies, but identifiable event movies are likely to succeed better at the box office.

C. Unstable Demand

Another common explanation for the uniform prices is that, under non-uniform pricing regime, patrons would perceive the price as a quality signal. According to this view, price differentiation would deter patrons away from low-priced movies. In economic terms, the concern is that the demand for movies is unstable, \( ^{208} \) where the instability point is the uniform price.

Figure 6 illustrates a hypothetical case of unstable demand. The demand curve behaves normally above and below the uniform price. The discontinuity point \( (p^{U}) \) is the uniform price, at which a slight deviation

\(^{207}\) See Section I.C supra.

downwards would result in a sharp drop in the demand.

FIGURE 6

The question of whether ticket prices are perceived by the consumers as quality signals, thereby affecting their demand, is an empirical one and has never been tested. Notwithstanding, no result of such an empirical test may support the unstable-demand argument. First, the argument fails to explain why admission fees are not determined according to the recurring demand patterns. Lower prices on weekdays and slow seasons do not convey any quality signals. Second, assuming that ticket prices may convey quality signals, price differentiation can still be employed in order to increase revenues. Charging higher prices for event movies is unlikely to have any negative effect on the demand for other movies, as patrons clearly distinguish between “regular” and event movies. Similarly, different admission fees for movies that target different audiences are unlikely to unstable the demand for less pricey movies. For example, lowering prices for documentaries and kid movies may increase the demand for these movies rather than shrink it. Thus, the unstable-demand argument applies only to price differentiation across movies with a similar profile; however, such differentiation is economically unjustified in the first place.

D. Transaction and Confusion Costs

Administrating variable pricing could entail certain costs. For
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example, differentiating between movies would necessitate monitoring mechanisms to prevent patrons from purchasing tickets for a low-price movie and watching a premium-price movie. Similarly, variable pricing may result in a complicated price menu that could confuse moviegoers.

In practice, however, the problem is not material. Discounts during slow seasons are unlikely to entail any costs or to create confusion among patrons. Weekend pricing and premium rates for event movies may complicate the price menu, but could hardly be confusing if a simple, consistent pricing is adhered.

Moreover, monitoring mechanisms that are needed to prevent arbitrage at the multiplex are not much different from the mechanisms already employed by exhibitors. Today, some screens are sold out and others are not and, therefore, exhibitors must monitor the patrons entering to sold-out movies; otherwise, patrons who could not purchase a ticket to a sold-out movie could use a ticket to another movie. Put simply, the arbitrage opportunities today are even greater than under a regime in which a token premium is charged for event movies.

E. Agency Problem

At the box office, the interests of exhibitors and distributors may diverge although they share revenues. For the exhibitor, a dollar spent by a patron on refreshments is better than a dollar spent on a ticket; the exhibitor’s markups from refreshment sales are more than 80% and are not shared with the distributor. Therefore, the exhibitor’s interest is not necessarily to maximize box-office revenues.

A related argument is that the practice of uniform prices is a product of the fact that the exhibitor is a servant (agent) of more than one master (principal). At the multiplex, movies of several distributors are shown at the same time. Consequently, aligning the interests of the exhibitor with those of the distributors is not only about popcorn sales. Different admission prices for different movies would require exhibitors to establish monitoring systems for each screen to avoid arbitrage across movies, particularly across movies of different distributors. Therefore, from the standpoint of each distributor, the transition to non-uniform pricing presumably involves some risks, as its receipts would depend on the interactions of its licensed exhibitors with other distributors and the effectiveness of the exhibitors’ monitoring systems.

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The agency-problem argument suffers from four major weaknesses. First, the high markup on refreshments cannot explain, in itself, the neglect of box-office revenues, which are still the major source of revenues for exhibitors.211 Second, had exhibitors focused only on refreshment revenues, they would have set lower uniform admission fees to attract more patrons. Third, price differentiation along the reoccurring demand patterns would not affect the problems of multiple principals since the same patterns apply to all movies. Last but not least, as discussed above, exhibitors already employ monitoring mechanisms that seem to suffice for a non-uniform pricing regime.

F. Distributors’ Interests, Conservatism, and Unilateral Transition

Several industry professionals, who were interviewed for this Article, indicated that the major distributors object to changes in the present pricing structure and act – directly or indirectly – against such changes.213 A recent example for such actions could be found in a letter from United International Pictures, one of the six largest Hollywood distributors, to Mr. Stelios Haji-Ioannou, a pricing entrepreneur who wished to match pricing to demand elasticities:214

We have concluded that your business model is unlikely to lead to a sustainable increase in aggregate rentals and on this basis that we should not begin a business relationship.215

There are three standard explanations for the distributors’ objections to non-uniform pricing: First, unwillingness to change the status quo between distributors and exhibitors; a change that could ultimately lead to revisions in the customary distribution of box-office revenues. Second, cross-movie price variation might accelerate ego wars in the industry since producers and directors would like their movies to be priced at premium. Third, uniform pricing enables distributors to compare between neighboring exhibitors and optimize movie allocation. Variable pricing, particularly price variation across movies, would complicate such a


213 See also supra note 183.

214 How easy Does Just About Everything, BUS. WK., Jan. 28, 2003 (quoting Stelios Haji-Ioannou, the founder of easyCinema: “First thing is price elasticity – i.e. you reduce the price of something and people will consume more of it. Then, we have the ability to yield-manage, to charge prices according to demand ... I’m taking that idea to cinema”). See also http://www.easycinema.com/general/AboutUS.aspx.

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comparison.\textsuperscript{216} Another explanation, more theoretical, is that the distributors wish to eliminate double markup.\textsuperscript{217} Where a manufacturer (a producer or distributor) and a retailer (an exhibitor) have some market power, each adds a markup that reflects its relative market power. Under such circumstances, consumers face two markups instead of one. This double markup motivates firms either to integrate vertically or to use vertical restrictions, such as resale price maintenance, to increase joint profits. In the motion-picture industry, a distributor’s exclusive right to market a specific movie conveys some market power. Correspondingly, most exhibitors enjoy some market power in their geographic locations either because they are the only theater in town or because the movies they show are licensed exclusively to them in their geographic area.\textsuperscript{218} The traditional solution to double markup, resale price maintenance, is prohibited by the \textit{Paramount} decrees. Uniform pricing also eliminates double markup because it prevents exhibitors from adding a markup that reflects their market power. However, this mechanism is very rudimentary since exhibitors absorb much of the distributors’ markup (distributors’ share of box-office revenues) and cannot pass it on to patrons. Thus, to the extent that the double-markup argument plays a role in the persistence of the uniform-pricing regime, it is because of the distributors’ interests and at the expense of the exhibitors’ interests.

The foregoing discussion suggests that distributors act in a certain degree to prevent substantial deviations from the uniform pricing regime. The analysis shows that, given the \textit{Paramount}’s prohibition against intervention in box-office pricing, in certain circumstances uniform pricing serves better the distributors’ interests than variable pricing. At the same time, distributors’ objections and actions against variable pricing are either ignored by the Justice Department or beyond the scope of the \textit{Paramount} decrees. Therefore, it is possible that the \textit{Paramount} decrees could be both violated by the maintenance of the uniform-pricing regime and constitute a partial explanation for the persistence of the practice.

The inevitable question is why exhibitors do not switch to non-uniform pricing, if they would be better off by doing so. The answer to this

\textsuperscript{216} See Motion-Picture Distribution Trade Practices—1956, supra note 161, at 46.


\textsuperscript{218} It is noteworthy that market power is not a necessary condition for price discrimination. See, e.g., Luis Locay & Alvaro Rodriguez, \textit{Price Discrimination in Competitive Markets}, 100 J. POL. ECON. 954 (1992); Michael E. Levine, \textit{Price Discrimination Without Market Power}, YALE J. REG. 1 (2002). This Article, however, is focused principally on price variation across differentiated goods and not on price discrimination.
question seems to be a combination of conservatism and fear of retaliation. Conservatism is the adherence of the industry to an established practice without examining its justifications.\textsuperscript{219} In the exhibition market, conservatism seems to be fed by the unexamined concerns, discussed in the previous Sections, that the transition to non-uniform pricing would be financially disadvantageous. The fear of retaliation refers to exhibitors’ concerns that distributors would react to a unilateral transition to non-uniform pricing by disadvantageous licensing, such as by allocating promising movies to rivals and by licensing such movies late in their screen lives.

IV. CONCLUDING REMARKS

This Article demonstrated that the persistence of a particular business practice is not necessarily proof of its efficiency. The Article further illustrated how socially undesirable pricing systems could form, evolve, and survive in the shadow of the law even in a high-profile industry, such as the motion-picture industry.

It is difficult to estimate the welfare implications of uniform pricing at the box office. The analysis in this Article indicates that the transition to non-uniform pricing is likely to benefit exhibitors and patrons. Exhibitors could increase profits through simple, non-uniform pricing regimes and patrons’ admissions would be better related to their demand elasticities. Refining box-office pricing according to moviegoers’ demand elasticities implies that patrons’ opportunities to watch films would be more related to their preferences. Price-sensitive patrons could watch movies at low rates during the week, on matinees, or after the initial demand for a newly released movie would be saturated. Time-sensitive patrons could watch movies on weekend nights and premiers of event movies. Since the distributors’ share of revenues is a percentage of box-office receipts, direct financial results are likely to be positive for them too. It is possible that, for producers and distributors, numbers of patrons on opening weekends are more important than immediate revenues. If this is true, weekend pricing may be undesirable from their perspective. It is unclear, however, whether changes in the numbers of patrons on opening weekends would entail any social-welfare implications.

The history of box-office pricing reveals that, despite extensive antitrust litigation and scrutiny, ticket pricing has never been subject to free market pricing mechanisms. Rather, throughout the history of the

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exhibition industry, producers and distributors have had some influence on the pricing structure of admission prices. Distributors' impact on box-office pricing has been attained through egregiously illegal practices or through circumventing existing legal rules. In particular, half a century after the Paramount decrees, distributors still play an active role in box-office pricing decisions, although the type and degree of intervention have changed.

The findings of this Article suggest that the Justice Department has failed in its goal to release the exhibition segment from the distributors' grip at least in one aspect: the price to the consumer. The prime reason for this failure are the post-Paramount focus on practices that are unrelated directly to box-office pricing, such as vertical integration, block-booking, blind-selling, and split agreements. If the cause for neglecting distributors' impact on box-office pricing is the modern approach toward vertical price control, then the Paramount decrees should be modified accordingly. However, at least formally, the prohibition against intervention in box-office pricing is still in force.

Much of the discussion on price variation at the box-office has focused on variation across movies. Establishing such price variation is an intellectual challenge. However, devising price variation across show times and seasons is simple and there are no good explanations for the general uniform pricing over time. This Article suggests that conservatism and fears of retaliation are the prime constraints on the transition to non-uniform pricing. At least the latter concern could be greatly mitigated through a coordinated transition to non-uniform pricing. For example, an industry’s decision to cut weekday and winter admission prices by ten percent. Such coordination, however, is generally unlawful, as antitrust law prohibits price coordination among competitors. A one-time exception to this general prohibition seems warranted in the case of the movie-theater industry in order to facilitate a more competitive pricing structure and open the industry’s door to the law of supply and demand.

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220 "Split agreements" refer to agreements among competing exhibitors that allocate the first right to negotiate with distributors for licenses to show upcoming films. These agreements strengthen the bargaining position of exhibitors. See generally William J. Borner, Motion Picture Split Agreements: An Antitrust Analysis, 52 FORDHAM L. REV. 159 (1983); Stanley I. Ornstein, Motion Picture Distribution, Film Splitting, and Antitrust Policy, 17 HASTINGS COMM. & ENT. L. J. 415 (1995).
APPENDIX: INDUSTRY STATISTICS

FIGURE 7

Spendings at the Box Office (1929-2002)*

* Figures are adjusted to 2002
DATA SOURCES: NATO, ENCyclopedia OF EXHIBITION (2003-2004); Economic Report of the
President 2003, Appendix B-14; The Motion Picture Almanac (1929-1945; 2002), US Census
Bureau.

FIGURE 8

Film Releases (1930-2002)*

* Figures until 1981 included only releases of the major studios. No systematic data is available for
releases of non-major studios prior to 1982.