

The Future of Streaming: Will Netflix Win the Streaming Wars?

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While completing my undergraduate degree, my media history professor continuously emphasized that the video streaming market would soon become out of control with competition. In support of her opinion, she stated that vast amounts of services would eventually force consumers to go back to using cable. When I retold her opinion circa 2019, no one believed me. It was hard to imagine a reality where additional services could rival Netflix's standard \$12.99 a month cost and vast video library.¹

Currently, Netflix is seemingly as strong as ever, even with price increases and discontinuing the ability to share your Netflix password among multiple devices.² Many had wavering faith in the streaming giant when it lost popular shows like "Friends" and "The Office", but Netflix is regaining strength through the licensing of more and more TV shows from other streaming services.³ Most recently, it has achieved the licensing to HBO's "Sex and the City"⁴ with the show becoming available on Netflix this April.⁵ Netflix is also pursuing live content for the first time in a \$5 billion deal to stream WWE wrestling events.⁶ Netflix will stream 3 hours of wrestling a week from the WWE's "Raw" programming in this 10-year-long deal.⁷

Sitting alongside Netflix as streaming giants are Hulu and Amazon Prime.⁸ Among the smaller, but not quite that small, players are Apple, NBC Universal, Paramount, Disney, and Warner Bros Discovery, which offers HBO's content on the streaming service Max.⁹ Many would call the current state of streaming services an oligopoly, at least from an antitrust perspective.¹⁰

Currently, there are no antitrust regulations in effect that specifically target video streaming services.¹¹ The primary antitrust law in existence today is the Sherman Antitrust Act (Sherman Act).¹² The Sherman Act focuses on combatting unreasonable restraint of trade and monopolization.¹³ The Sherman Act works in tandem with the Federal Trade Commission Act

¹ Jacob Kastrenakes, *Netflix Raises Prices on all Plans in the US*, THE VERGE (Jan. 14, 2022, 3:15 PM), <https://www.theverge.com/2022/1/14/22884263/netflix-price-increases-2021-us-canada-all-plans-hd-4k>.

² See John Koblin, *Netflix Is Said to License 'Sex and the City' From HBO*, N.Y. TIMES (Jan. 24, 2024), <https://www.nytimes.com/2024/01/24/business/media/netflix-sex-and-the-city.html>.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ Lucas Shaw, *Netflix Pays \$5 Billion for 'Raw' in Bet on Live Events*, BL (Jan. 23, 2024, 12:43 PM), https://www.bloomberglaw.com/bloomberglawnews/tech-and-telecom-law/X5LMMU7O000000?bna_news_filter=tech-and-telecom-law#jcite.

⁷ *Id.*

⁸ Meghan E. McDonnel, *Ensuring Fair Competition in the Midst of the Streaming Wars*, 83 OHIO STATE L.J. 641, 643 (2022).

⁹ *Id.*

¹⁰ Megan Elizabeth Norris, *Now Streaming: How Streaming Services are Following in the Antitrust Footsteps of Hollywood's Golden Age*, 31 U. MIA. BUS. L.R. 160, 176 (2022).

¹¹ McDonnel, *supra* note 8, at 643.

¹² *Id.* at 657.

¹³ *Id.*

and the Clayton Act which fight unfair competition methods and mergers that result in monopolization respectively.¹⁴

In 2020, the Department of Justice abandoned the primary rules that governed film and media studios.¹⁵ These were the Paramount Decrees which “served as an artificial line that companies could not cross when expanding, for fear that the government would intervene.”¹⁶ The Paramount Decrees came into effect to combat anticompetitive behavior between the “Big Eight” movie studios during the 1930s and 1940s.¹⁷ They were a list of decrees that movie studios signed in the aftermath of *United States v. Paramount Pictures, Inc.* that made the studios agree to not engage in anticompetitive practices, such as block-booking, price-fixing, and studio ownership of movie theaters.¹⁸ In 2020, the Department of Justice found that the Paramount Decrees were now arbitrary and irrelevant in the modern era of streaming and movie watching.¹⁹

The elimination of the Paramount Decrees deregulates “an already antitrust regulation-deficient industry.”²⁰ The entertainment industry is well known for replacing one oligopoly with another through technological advancements.²¹ The current state of streaming is considered oligopolist because of the small number of dominant competitors creating heightened barriers to entry, the companies being interdependent on one another, and the companies’ heavy investments in advertising.²²

Anticompetitive behavior, I have specifically noticed, is the vertical and horizontal integration of streaming companies. Most movie studios own streaming services and have limited content to their own productions.²³ Vertical integration is considered to violate antitrust laws when it is done with the purpose or intent of being anticompetitive or if the power it creates is anticompetitive.²⁴ The most prominent horizontal merger is Warner Media’s merger with Discovery and their rebrand into Warner Bros Discovery in 2022.²⁵ After this merger, regulators have been monitoring the media giant to ensure that no unreasonable price increases will be enacted.²⁶ Another company that has been aggressively pursuing horizontal integration, to no one’s surprise, is Disney.²⁷ Throughout the last decade, they have acquired Fox, Lucasfilm, and Marvel Studios without seemingly any governmental concern about their acquisitions.²⁸ Disney controls 38% of movie content and owns both Disney+ and Hulu streaming services.²⁹ This is a little ironic as Disney was one of the up-and-coming independent movie studios that benefited from the Paramount Decrees in the 1940s.³⁰

¹⁴ *Id.*

¹⁵ *Id.* at 645.

¹⁶ *Id.* at 647.

¹⁷ *Id.* at 650-51.

¹⁸ *Id.*

¹⁹ *Id.* at 645.

²⁰ *Id.* at 661.

²¹ Norris, *supra* note 10, at 172.

²² *Id.* at 176-77.

²³ *Id.* at 178.

²⁴ *Id.* at 179.

²⁵ *Id.* at 180.

²⁶ *Id.*

²⁷ McDonnell, *supra* note 8, at 663.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* at 650.

Netflix could be seen as the outlier to most of the legacy media companies; Netflix's presence in the entertainment industry could be seen as helping the legacy media companies stay safe from formal antitrust accusations. This is especially true lately with its gaining of content from Disney and Warner Bros Discovery.³¹ Increased licensing rights among the interdependent streaming services are beneficial to the consumer now, but feeding the beast that is Netflix could be bad for the consumer in the long run by allowing Netflix to monopolize the market.³² Netflix could eventually be seen as this generation's Disney: the underdog of their time who turns into the most powerful player in the industry.

With lacking antitrust protections, the future of streaming is still unsure. Maybe my undergraduate professor was wrong, and the increased licensing will move us further away from cable. The ever-expanding media conglomerates and price increases need continuous monitoring in order to give us hints about the future of the entertainment industry.

³¹ See Kastrenakes, *supra* note 1.

³² *Id.*