Testimony of Ronald D. Moore
On behalf of the Writers Guild of America, West
Thursday, October 22, 2009
United States House of Representatives
Subcommittee on Communications, Technology and the Internet
Video Competition in a Digital Age

Thank you Chairman Boucher, Ranking Member Stearns, and the other esteemed members of the Committee.

It is an honor to testify before you today. My name is Ron Moore, and I am the creator and executive producer of *Battlestar Galactica*. I was also a writer/producer on the TV series *Star Trek: The Next Generation*, *Deep Space Nine, Roswell,* and *Carnivale* and I am currently working on my next project, *Caprica*, a TV series for the SyFy Network.

I've been a working writer in the entertainment business for over two decades, and in that time, the television marketplace has fundamentally changed and in my opinion, not for the better. There are actually fewer places to sell ideas both in terms of the numbers of studios able to buy programming and the numbers of networks available to deliver it. While this might seem counter-intuitive in an environment where the number of cable and satellite channels routinely runs into the hundreds, a closer look reveals that media consolidation has resulted in the vast majority of television shows being produced by a handful of conglomerates and the vast majority of cable channels are also owned by only a small number of companies.

Let's take a moment to look at the raw numbers:

CHART:

Broadcast Network Primetime Fall TV Series

	1989	1999	2009
Independently Produced Series	78%	28%	16%
Media Conglomerate Produced Series	22%	72%	84%

Source: WGAW Analysis

In 1989, the amount of independently produced content on the broadcast primetime networks was nearly 80%. Today it's 16%.

CHART:

Percent Independent	1989	1999	2009
ABC	81%	22%	29%
CBS	83%	27%	4%
CW	--	--	11%
Fox	50%	37%	25%
NBC	84%	32%	10%
UPN	--	50%	--
WB	--	7%	--
Total	78%	28%	16%

Source: WGAW Analysis

A closer look at the individual networks makes the point even more sharply: independent programming on the major networks is disappearing. In the next chart you can see that in the most extreme case independent programming accounts for only 4% of the current CBS fall schedule.

CHART

Significant Program Suppliers	
1989	**2009**
ABC	ABC/Disney
CBS	CBS/Paramount TV
NBC	NBC/Universal
Disney	Warner
Paramount	20th Century Fox
Universal	Sony/Columbia Pictures TV
Warner	Mark Burnett Productions
20th Century Fox	19 Entertainment/Fremantle
Columbia Pictures TV	
Carsey-Werner	
Witt-Thomas-Harris	
Steven Bochco Productions	
Stephen Cannell Productions	

Lorimar Television	
New World	
MGM	
MTM	
Cosgrove-Meurer	

In 1989, there were 18 production companies who where significant suppliers to the broadcast networks. (In terms of this analysis, we define "significant" as having multiple series on the air.) In 2009 there are 8 suppliers. From 18 to 8. And who are those eight? They consist of one true independent – Sony/Columbia Pictures; two producers of reality series based out of the UK – Mark Burnett Productions, and 19/Fremantle; and five major media conglomerates.

The catalyst for this change was the repeal of the Financial Interest and Syndication rules in the 1990's which resulted in a wave of industry consolidation. We went from a system where studios competed with each other for ideas and networks competed with each other for programming to a system where studios and networks are now combined into enormous entities who favor doing business with themselves. Take a look at this chart:

CHART:

2009 Broadcast Network Fall Lineup: Series from In-House Production Studio

Network	% In-House
ABC	48%
CBS	57%
CW	89%
FOX	63%
NBC	86%
Total	66%

Source: WGAW Analysis

66% of the series airing on broadcast television this fall are produced by the network's own in-house studio.

While the repeal of Fin-Syn opened the way for the consolidation, the unrestrained acquisition of cable and satellite channels by the incumbent entertainment conglomerates, using their market power as a coercive motivator, is an important, additional factor.

While cable initially brought new voices into the television medium, the early independent channels have gradually been bought by or merged into the conglomerates, or forced out of business.

Of the 68 most successful cable channels on the dial, we find that 61 of them or 90 percent are owned, either in part or entirely, by a media conglomerate or cable distributor. And on cable's 68 most successful channels, only the Hallmark Channel, C-SPAN, NFL Network, HGTV, Food Network, TV Guide Network, and WGN America are not affiliated with a major cable distributor or media conglomerate. The web of ownership extends to Pay TV networks, such as HBO or Showtime -- all are owned by major media entities.

What the data further reveals is the dominance of media conglomerates in the launching of channels, with 66% of channels launched by these companies. In addition, independently-launched channels had a much worse fate than those that started with or succumbed to ownership by an incumbent television conglomerate. We consider successful entrants in the cable market to be channels that can currently reach at least 30 million households. Failed channels are no longer on the air and channels in question are currently on the air but have yet to reach 30 million households.

CHART:

Cable Networks Launched Since 1994					
Successful Entrants		Failed Channels		Channels in Question	
Media Conglomerate Owned	Independently Owned	Media Conglomerate Owned	Independently Owned	Media Conglomerate Owned	Independently Owned
65	12	5	18	20	16

I do want to separate out Cablevision in this discussion. Cablevision actually owns part or the entirety of AMC, the Independent Film Channel and the Sundance Channel. AMC airs the independently produced hit, *Mad Men*, and of course the Independent Film and Sundance channels present mostly independent fare. Of all the channels on the cable dial, they represent a breath of fresh air in the otherwise closed world of corporate control, and they should be commended.

I deal with this reality everyday. There are tremendous pressures on each of the studios to develop programming for their own sister network. Studios are no longer looking for the "best" idea; they are now looking for the idea that best helps their corporate siblings.

For writers, this consolidation has had severe and financial and creative repercussions. As little as ten years ago the writer-producer was an entrepreneur; now they're an employee. Before the repeal of Fin-Syn, writer-producers owned the show, including the syndication rights. In those days, in the event of creative differences with the network, the writer could sell the series elsewhere. For example, when ABC insisted that Norman Lear water down the content of "All in the Family" he decided to take the show to CBS, and the rest is television history. But he was only able to do so because he owned the program. Now, the writer simply gets replaced when creative differences arise. This happened on the CBS series *The Education of Max Bickford* in 2002 when the network replaced the series creators because of their resistance to the network's demand to change the scripts <u>on their own show</u>.

This was the very thing that that triggered the Fin-Syn rules during the Nixon Administration in the first place. The networks at that time had begun extracting ownership positions – complete or partial – in most series on their schedules and Congress at that time saw the dangers of allowing networks to own both the pipe and content it delivered to American homes. President Reagan, himself a member of the entertainment community, later argued against the repeal of the Fin Syn rules, saying it would lead to the very concentration of power we currently see in our country's media landscape.

So. What can be done? If this Committee supports competition in video programming, there are many things you can do.

First, across town today the Federal Communications Commission is taking the first steps to codify Internet Freedom. An open Internet promises to be an extremely competitive marketplace, where small entrepreneurs can be matched up against the media giants of today and thrive. Supporting a free, open and non-discriminatory Internet will allow the next generation of creators and innovators to distribute their own content, and compete for hearts and minds and eyeballs.

Second, we must remember that traditional media still has, by far, the broadest reach into American's homes – a reach that shows no signs of decline. Cable viewership is growing steadily and so the relationships between major cable distributors and programmers needs closer scrutiny. The practice of tying and bundling channels is one practice worthy of examination. Broadcasters often require cable operators, as a condition of carrying popular broadcast stations, to buy other channels – thus locking out valuable space on the dial for new entrants. Some of these bundled channels offer nothing more than a static weather map or a subgenre of music videos. When you learn that these channels have viewing levels in the tens of thousands nationally and revenue in the hundreds of thousands of dollars, you realize this is filler content, whose only purpose is to block other programmers from gaining access to the cable/satellite channels. Whether a la carte cable channel selection will eliminate these barriers is an open question, but it is certainly worthy of further analysis by the FCC and this Committee.

In conclusion, I would like to point out that I have worked for major studios and networks my entire career. From Paramount to HBO to NBC/Universal, where *Caprica* is being shot this very day, I have found success within the corporate structure. These companies are not evil. They are not populated by modern-day robber barons intent on stealing the bread from my children's mouths. These companies are only doing what makes sense to them financially. However, what makes financial sense to a handful of corporations may not be in the best interests of the audience, the television industry itself, or the American people. These companies are run by good and decent people who are simply working within the regulatory environment that they have been given. And therein lies the rub: by setting up an regulatory environment in which there are no barriers to continual corporate consolidation and huge incentives to both centralize power and squeeze out smaller players, even good and decent people will participate in and promote a system that ends up weakening competition, monopolizing power and corrupting the free flow of ideas and opportunities for all. The danger we face is not that we work for evil men and women; it is that good men and women can produce evil results in the absence of the law.

Thank you for the opportunity to appear before you today.