Via electronic mail

March 23, 2022

Holly Vedova, Director
Bureau of Competition
Federal Trade Commission
600 Pennsylvania Ave., NW
Washington, DC 20580
antitrust@ftc.gov

Re: Merger of Amazon.com, Inc. and MGM

Dear Director Vedova,

The Strategic Organizing Center (SOC) and the Writers Guild of America West (WGAW) have forcefully opposed the proposed merger between Amazon.com, Inc. and Metro-Goldwyn-Mayer Studios (MGM) since it was announced. This merger contains all the ingredients for extending and amplifying both the ever-increasing consolidation of the streaming industry and Amazon's steady march at the forefront of that consolidation and power in ways that threaten economic fairness in multiple markets as well as the vitality of our expression, diversity, and democracy. By positioning Amazon to fully utilize its power to advance consolidation in the streaming industry, the merger enables Amazon to expand its dominance across several additional markets to become increasingly self-reinforcing, with unquestionably negative consequences for workers and others in the entertainment ecosystem and beyond.

Indeed, as we continue to study this merger, additional research indicates further compelling reasons the merger should be blocked. We are writing today to provide this new research and urge the Commission to take swift and forceful action to stop this merger.

We have previously provided the Bureau with submissions showing why the merger between Amazon and MGM should not be allowed to proceed. The SOC letters dated August 11, 2021[1] and November 17, 2021[2] furnished substantial research showing the dangers that Amazon's already exclusionary conduct in the streaming industry poses to filmmakers and others in the production and distribution chain in terms of negotiating power, distribution rights and editorial control; for rivals in terms of access to multiple entry points in the streaming market; and for consumers in terms of choice, quality and diversity. The WGAW letter of December 21, 2021 highlighted the dangers of an increasingly vertically and horizontally integrated media and entertainment market and the likely effects on the streaming and

[1] *SOC Letter to the FTC on the Proposed Merger of Amazon.com, Inc. and MGM,* Aug. 11, 2021, https://thesoc.org/wp-content/uploads/2021/08/Strategic-Organizing-Center-MGM-Letter.pdf.

[2] *SOC Letter to the FTC on Proposed Merger of Amazon.com, Inc. and MGM*, Nov. 22, 2021, https://thesoc.org/what-we-do/soc-letter-to-the-ftc-on-petition-re-proposed-merger-of-amazon-com-inc-and-mgm/.

broader entertainment industry, in particular on the creative workforce that drives our vibrant and diverse film industry.[3] In addition, numerous filmmakers and other vital participants in the entertainment ecosystem have added their voices to the Federal Trade Commission (FTC)'s record against this merger, along with 12,560 people who signed a public petition opposing the merger.

In early March, Amazon unilaterally claimed that it had satisfied the FTC's information requests in connection with the merger of MGM, and on March 17 announced it had closed the merger. Subsequently the FTC made clear that it has the ability to challenge a merger even after parties have consummated a deal. We strongly believe that this is an instance where the FTC must challenge a deal post-merger, because of the outsized role Amazon plays in our economy overall, and how the merger would enhance Amazon's ability to leverage its power against workers in the entertainment industry and across different platforms.

Our new research only confirms the urgent case for confronting this merger. As we explain below, the acquisition allows Amazon to acquire not only MGM's content library and studio, but also its premium pay TV network and streaming video service, Epix. The acquisition of this potential rival in the streaming-video-on-demand (SVOD) market would eliminate a direct SVOD competitor to Amazon and is thus likely to harm competition, innovation, quality and consumer choice on this basis. The elimination of a nascent competitor to Amazon in the SVOD market provides further, powerful grounds for why the Commission should challenge Amazon's merger with MGM.

Background

Under the Clayton Act, a merger may not proceed if the effect of the merger may be to substantially lessen competition. In the vertical merger context, a merger raises concerns if it is likely to enhance a firm's power and incentives to exclude or discriminate against the firm's rivals.[4] SOC's previous submissions detail why the merger may harm competition because it would enhance Amazon's power and incentives to exclude and discriminate against rivals in the SVOD market and complementary markets.

In addition, certain mergers may harm competition because they would allow a larger, well-established firm to acquire a nascent competitor—a competitor that may grow to constitute a substantial threat.[5] The acquisition of such nascent competitors allows the acquiring firm to eliminate a competitive threat at its incipiency. Such acquisitions may also lead the larger firm to scrap pro-competitive business

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[3] *WGAW Letter to the FTC on Proposed Merger of Amazon.com, Inc. and MGM,* Dec. 21, 2021, https://www.wga.org/uploadedfiles/news_and_events/public_policy/Amazon-MGM_Letter_to_FTC.pdf.

[4] *E.g., Conglomerate Effects of Mergers, Note of the United States,* June 4, 2020, at 2 ("Vertical concerns can arise if there is reason to believe the merged company will have the ability and incentive to exclude competitors or raise its rivals' costs."), https://www.ftc.gov/system/files/attachments/us-submissions-oecd-2010-present-other-international-competition-fora/oecd-conglomerate_mergers_us_submission.pdf.

[5] *See, e.g.,* Noah Joshua Phillips, Comm'r, Opening Address at Chatham House Competition Policy 2020 Conference 2 (Nov. 10, 2020), https://www.ftc.gov/system/files/documents/public_statements/1582986/phillips_remarks_chatham_house_11-10-20.pdf ("Enforcers and policymakers should focus more on issues characteristic of technology markets: acquisitions of nascent competitors, two-sided markets, zero price markets, and so forth.").

practices, neutralizing the competitive pressure to innovate.[6] In such circumstances, a firm may grow to dominate a market through acquisitions in "PacMan" fashion[7] if its merger activity is not adequately policed. Protecting nascent competitors is a vitally important goal of antitrust laws as they have the ability to encourage competitive conduct that is reasonably capable of contributing to the disruption of the incumbent's market power:

> Nascent rivals play an important role in both the competitive process and the process of innovation. New firms with new technologies can challenge and even displace existing firms; sometimes, innovation by an unproven outsider is the only way to introduce new competition to an entrenched incumbent. *That makes the treatment of nascent competitors core to the goals of the antitrust laws.* As the D.C. Circuit has explained, "it would be inimical to the purpose of the Sherman Act to allow monopolists free rei[]n to squash nascent, albeit unproven, competitors at will . . . ."[8]

The Amazon-MGM merger involves just such a nascent competitor whose acquisition by Amazon would eliminate a pro-competitive and increasingly successful potential rival to Amazon's streaming platform.

Like Amazon, MGM produces and distributes content, and has operated its own streaming-video-on-demand (SVOD) platform called Epix Now since 2019.[9] MGM also produces content for unaffiliated streaming platforms and TV networks, and licenses library content to Epix and third parties. MGM's subsidiary, Epix, has long taken a non-exclusive approach to distributing a broad range of content. Epix distributes content from multiple sources including the MGM library, and its own original programming. Consumers have access to this varied content at a wide range of price points and through a variety of viewing channels—premium cable, traditional and digital multichannel video programming distributors and SVOD services. In addition, Epix Now offers consumers original Epix programming, a back-catalogue of content from the MGM library, and third-party content. Epix Now has demonstrated a potential for organic market growth in just the first few years of its existence with its access to the formidable MGM content library and successful investments in original programming.

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[6] STAFF OF H. COMM. ON THE JUDICIARY, 116th CONG., INVESTIGATION OF COMPETITION OF DIGITAL MARKETS: MAJORITY STAFF REPORT AND RECOMMENDATIONS 44 (2020), https://judiciary.house.gov/uploadedfiles/competition_in_digital_markets.pdf?utm_campaign=4493-519 ("Leading economists and antitrust experts have expressed concern that serial acquisitions of nascent competitors by large technology firms have stifled competition and innovation.").

[7] Prepared remarks of Commissioner Rebecca Kelly Slaughter Regarding Non-HSR Reported Acquisitions by Select Technology Platforms, 2010-2019 (Sept. 15, 2021) ("serial acquisitions" reveal a "PacMan strategy" that "can lead to a monopolistic behemoth").

[8] C. Scott Hemphill & Tim Wu, *Nascent Competitors*, 168 U. PENN. L. REV. 1879, 1880 (2020) (quoting *United States v. Microsoft Corp.,* 253 F.3d 34, 79 (D.C. Cir. 2001) (en banc) (per curiam)) (emphasis added).

[9] Cynthia Littleton, *MGM's Epix Joins Streaming Market With Epix Now Launch; 'Slow Burn' Docu Series Ordered,* VARIETY*,* Feb. 10, 2019, https://variety.com/2019/tv/news/epix-now-slow-burn-podcast-streaming-launch-1203134315/.

1. **The MGM acquisition will likely eliminate a distribution and exhibition competitor with demonstrable competitive value in the SVOD market.**

Since 2009, MGM's Epix subsidiary has been distributing content from the MGM library to a wide array of at-home viewing exhibition channels including third-party SVOD platforms as well as through traditional and digital multichannel video programming distributors. MGM has licensed library content to Netflix, HBO Max, Hulu and Paramount+, as well as produced original content for other streamers and TV networks.[10] If Amazon is permitted to acquire MGM, this multichannel access for consumers could be eliminated because Amazon could make this content exclusive to its platform.

In addition, Epix's past distribution deals with SVOD platforms demonstrate the competitive value of MGM content in the SVOD market. For example, at various times, Netflix and Amazon entered into limited-duration exclusivity deals with Epix to stream specific, limited content from MGM's library. Though SVOD platforms do not routinely provide viewership data, the competitive value of MGM's content was implied in stock market reactions to announcements of distribution deals with MGM's Epix subsidiary. In 2012, for example, Amazon signed an exclusivity deal with Epix for a small set of MGM titles after Netflix's similar 2010 exclusivity deal expired. Netflix's stock price fell 11 percent in intraday trading in reaction to the news.[11]

MGM continues to distribute MGM content through its Epix subsidiary. In addition, MGM began offering the direct-to-consumer SVOD platform—Epix Now—in 2019, which allowed MGM to capitalize further on the competitive value of its content. This platform competes directly with Amazon's SVOD service. As a standalone SVOD competitor, Epix Now has already demonstrated a potential for market growth in just the first two years of its existence. Third-party analysis shows that in 2021 Epix was the fourth fastest growing subscription streaming app in terms of monthly active users in the U.S.[12] Another independent analysis shows that Epix Now nearly tripled its over-the-top subscribership between Q3 2020 and Q3 2021.[13] Epix Now has the potential to grow into a significant competitor to Amazon's SVOD platform.

2. **AMZ's acquisition threatens to squelch the pro-competitive model that Epix brings to the market for SVOD content distribution.**

MGM's Epix subsidiary has taken a pro-competitive approach to distributing content to consumers. Epix's content is not locked up on the company's own SVOD service, offering a contrast to the strategy taken by Amazon and other SVOD services. Instead, Epix's content is available through multiple distribution channels and third-party services. In addition to multichannel distribution of MGM and

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[10] *WGAW Letter to the FTC on Proposed Merger of Amazon.com, Inc. and MGM,* Dec. 21, 2021, https://www.wga.org/uploadedfiles/news_and_events/public_policy/Amazon-MGM_Letter_to_FTC.pdf.
[11] Ryan Tate, *Netflix Bitten by Amazon Deal,* WIRED*,* Sept. 4, 2012, https://www.wired.com/2012/09/netflix-bitten-by-amazon-deal/.
[12] Hannah Armstrong, *iQIYI and Epix among fastest growing subscription streaming apps,* APPTOPIA*,* Nov. 11, 2021, https://blog.apptopia.com/iqiyi-and-epix-among-fastest-growing-subscription-streaming-apps.
[13] S&P Market Intelligence, Premium Network Census as of Q3 2021. Epix's over-the-top subscribers include all non-traditional multichannel video programming subscriptions, such as subscriptions via apps and virtual multichannel video programming distributors like YouTube TV. *Id.*

third-party content on Epix's linear network and Epix Now, Epix licenses library programming to third party streaming services, including on non-exclusive terms. Epix has licensed content from MGM and other studios to Netflix, Amazon and Hulu; currently, Epix sublicenses Paramount movies to both Paramount+ and Hulu.[14]

MGM has invested in the original programming that it distributes on Epix. Between 2017 and 2018, Epix increased its volume of original programming by more than 300 percent.[15] Original content debuting on Epix and available to Epix Now subscribers has included, for example, the multi-award-winning series *Godfather of Harlem* starring Forest Whitaker, *Chapelwaite*, based on a short story by Stephen King starring Academy Award winner Adrien Brody, and *Perpetual Grace, LTD* starring Ben Kingsley.[16] Epix's original content is not exclusively self-supplied, providing additional competition as a content buyer; Epix originals have been produced by third-party studios including Disney, Lionsgate, Paramount and Warner Brothers.

In contrast, evidence indicates Amazon has failed to innovate in services or content in SVOD, instead relying on its massive size and market power in other businesses to compete. Long-standing issues related to user experience have persisted on the Prime Video platform. Users have critiqued the poor SVOD user experience,[17] which reportedly has only deteriorated further in recent years.[18] Industry analysts point out, for example, that Amazon's already vast content library is "haphazardly arranged" and is "genuinely impossible to browse in certain ways, indicating that the streamer has all but given up on the idea that anyone would want to attempt to explore the breadth of their library."[19] With Amazon as owner of MGM's library, its titles might not only become exclusive to Amazon and thus inaccessible elsewhere, but might also fall prey to these longstanding user issues, making access even more difficult.

Additionally, Amazon's content spending illustrates its ability to compete in the SVOD market based on its size and power in adjacent markets rather than through quality investment and innovation. According to analyst estimates, Amazon spent approximately 40% less on content than Netflix in 2021, and just 28% as much as Netflix did on original content[20] despite the established competitive role of

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[14] Cynthia Littleton, *Paramount Pictures Sets New Output and Licensing Pacts With Epix,* VARIETY, Feb. 24, 2021, https://variety.com/2021/film/news/paramount-pictures-epix-movie-output-deal-1234914288/.

[15] Cynthia Littleton, *From 'Pennyworth' to 'Godfather of Harlem,' High-End Dramas Drive Epix at its 10th Anniversary,* VARIETY, Oct. 30, 2019, https://variety.com/2019/tv/features/epix-10th-anniversary-premium-originals-pennyworth-godfather-of-harlem-get-shorty-1203384335/.

[16] *EPIX's Emmy Award-Winning Drama Series "Godfather of Harlem" Begins Production on Season Two,* THE FUTON CRITIC, Nov. 20, 2020, http://www.thefutoncritic.com/news/2020/11/10/epixs-emmy-award-winning-drama-series-godfather-of-harlem-begins-production-on-season-two-985002/20201110epix01/.

[17] *See, e.g.,* TRUSTPILOT, *Lovefilm,* https://nz.trustpilot.com/review/www.lovefilm.com?page=4 (detailing consumer complaints regarding Amazon's management of the LoveFilm streaming service after its acquisition).

[18] Jim Vorel, *Amazon Prime Video's Library Is Now Genuinely Impossible to Browse,* PASTE, Aug. 18, 2021, https://www.pastemagazine.com/movies/amazon-prime/amazon-prime-video-ui-broken-browsing-user-interface-problems-genres/.

[19] Jim Vorel, *Amazon Prime Video's Library Is Now Genuinely Impossible to Browse,* PASTE MAGAZINE, Aug. 18, 2021, https://www.pastemagazine.com/movies/amazon-prime/amazon-prime-video-ui-broken-browsing-user-interface-problems-genres/.

[20] S&P Global Market Intelligence, Amazon Prime estimated streaming programming costs (2021) and Netflix estimated streaming programming costs (2021). Costs are amortized programming costs.

differentiated original content for acquiring and retaining subscribers.[21] Overall, Amazon commits a smaller share of its content budget to original production compared to competitors. In 2021, Amazon spent less than 20% of its content budget on originals while many of its competitors spent over 30%.

Percentage of Content Spend on Original versus Acquired Content[22]	
	2021
Apple TV+	69.4%
Netflix	38.3%
Epix	36.1%
Disney+	33.5%
HBO Max	24.2%
Amazon	18.2%

Amazon's acquisition of Epix may stifle the company's drive to generate quality original content because of its owner's primary focus on driving customers to engage with the larger Amazon Prime platform.[23] Internal documents show that Amazon has considered some of its critical successes—in-house titles that have won awards—to be commercial failures and has cancelled them because they failed to drive Prime subscribership.[24] Amazon's distorted, retail-driven goals suggest, therefore, that Amazon will cancel—or fail to produce—unique, unconventional, innovative or high-quality content if the content fails to push viewers onto Amazon's retail platform in line with the company's retail goals.

3. Amazon has a long history of acquiring potential competitive threats, including in the SVOD market.

This merger must also be viewed in the context of Amazon's prior growth via acquisitions and its tendency to use its resulting power unfairly in adjacent markets. In the last two decades, Amazon has

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[21] Masha Abarinova, *Samsung Ads releases streaming index of domestic smart TV data,* FIERCE VIDEO, March 15, 2022, https://www.fiercevideo.com/video/samsung-ads-releases-streaming-index-domestic-smart-tv-data.
[22] S&P Global Market Intelligence, Amazon Prime estimated streaming programming costs (2021), HBO Max estimated streaming programming costs (2020), Netflix estimated streaming programming costs (2021), Apple TV+ estimated streaming programming costs, 2019-2025 (2022), Disney+ estimated streaming programming costs (2021), Epix/Epix Drive-In Network Economics (2022). Costs are amortized programming costs.
[23] Jason Del Rey, *The making of Amazon Prime, the internet's most successful and devastating membership program,* VOX, March 3, 2019, https://www.vox.com/recode/2019/5/3/18511544/amazon-prime-oral-history-jeff-bezos-one-day-shipping.
[24] Rachel Kraus, *Leaked documents reveal how Amazon's TV shows make them tons of cash,* MASHABLE, March 15, 2018, https://mashable.com/article/amazon-prime-leaked-documents; Nathan McAlone and Carrie Wittmer, *The 13 shows Amazon has canceled, including Emmy winner 'Transparent',* BUS. INSIDER, May 22, 2018, https://www.businessinsider.com/shows-amazon-has-canceled-i-love-dick-one-mississippi-jean-claude-van-johnson-2018-1#i-love-dick-canceled-after-1-season-2017-4.

acquired at least 100 companies,[25] many of which were nascent competitors to Amazon.[26] Through these acquisitions, Amazon has amassed shares in multiple markets simply by neutralizing potential independent competitive threats.[27]

A decade ago, for example, Amazon acquired two of its direct, nascent competitors: Zappos and Quidsi. Both competitors were online retail companies that offered a differentiated consumer proposition to that of Amazon: shoes in the case of Zappos, and baby, pet and other products for Quidsi. Internal documents show that Amazon viewed each as a competitive threat prior to acquiring them.[28] Quidsi, in particular, was beginning to compete with Amazon's price points in multiple product markets, including on diapers and other baby items. Absent acquisition, Quidsi was projected to grow into an increasingly formidable competitor to Amazon in the markets Quidsi served. However, by acquiring Quidsi, Amazon removed a competitive threat. Today, consumers can no longer shop on the Quidsi ecommerce platform; Amazon dissolved the company in 2017.

Amazon also previously acquired a company in the SVOD market, LoveFilm , with negative effects for consumers. LoveFilm offered an online DVD rental platform, dubbed the "Netflix of Europe," before launching an SVOD service in 2011. Less than a year later, as Netflix announced plans to expand internationally, Amazon fully acquired the company.[29] Prior to acquisition, LoveFilm was the leading movie subscription service in Europe.

After acquisition, consumers complained about Amazon's stewardship of LoveFilm.[30] Many reported that the innovative features that had drawn them to the service had been degraded. Consumers cited poor customer service, a deterioration of the company's popular DVD postal service, and a glitch-ridden user experience for online services including for accessing SVOD content.

In 2013, LoveFilm was discontinued in Scandinavia. A year later, Amazon discontinued LoveFilm's SVOD service altogether, absorbing its content into the Prime Video platform. In 2017, Amazon shuttered

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[25] STAFF OF H. COMM. ON THE JUDICIARY, 116th CONG., INVESTIGATION OF COMPETITION OF DIGITAL MARKETS: MAJORITY STAFF REPORT AND RECOMMENDATIONS 405-413 (2020), https://judiciary.house.gov/uploadedfiles/competition_in_digital_markets.pdf?utm_campaign=4493-519

[26] *See* NON-HSR ACQUISITIONS BY SELECT TECHNOLOGY PLATFORMS 2010-2019 (July 1, 2020) (showing the top 5 U.S. technology companies, including Amazon, completed more than 819 acquisitions that were not subject to HSR pre-merger filing requirements).

[27] *E.g.,* Prepared remarks of Commissioner Rebecca Kelly Slaughter Regarding Non-HSR Reported Acquisitions by Select Technology Platforms, 2010-2019 (Sept. 15, 2021) (noting dangers of serial acquisitions to competition).

[28] Timothy B. Lee, *Emails detail Amazon's plan to crush a startup rival with price cuts,* ARS TECHNICA*,* July 30, 2020, https://arstechnica.com/tech-policy/2020/07/emails-detail-amazons-plan-to-crush-a-startup-rival-with-price-cuts/; Annie Palmer and Jordan Novet, *Amazon bullies partners and vendors, says antitrust subcommittee,* CNBC*,* Oct. 6, 2020, https://www.cnbc.com/2020/10/06/amazon-bullies-partners-and-vendors-says-antitrust-subcommittee.html.

[29] Josh Halliday, *Amazon takes full control of Lovefilm,* THE GUARDIAN*,* Jan. 20, 2011, https://www.theguardian.com/technology/2011/jan/20/amazon-buys-lovefilm.

[30] Mark Sweney, *Amazon takes on Netflix with rebrand of LoveFilm video-on-demand service,* THE GUARDIAN*,* Feb. 21, 2014, https://www.theguardian.com/technology/2014/feb/21/amazon-lovefilm-revamp-film-tv-rental; TRUSTPILOT*, Lovefilm,* https://nz.trustpilot.com/review/www.lovefilm.com?page=4.

LoveFilm's online DVD rental service, dissolving the company.[31] Amazon's acquisition of LoveFilm thus eliminated this company as an innovative standalone competitor in the SVOD market.

4. The merger will harm competition, consumers and content creators.

As detailed above, failure to challenge Amazon's acquisition of MGM will eliminate a nascent competitor and squelch the pro-competitive opportunities Epix offers. The merger will have further, negative impacts on competitors and consumers.

With regard to home entertainment competitors, Epix's distribution model allows a variety of participants in the aggregate home entertainment market to derive revenue from the distribution of MGM content. This includes cable and satellite companies that sell Epix channels as part of carriage deals with MGM and streaming device companies that derive revenue from consumers downloading Epix's apps on their platforms.

Amazon's merger-and-acquisitions track record suggests the company would likely close down MGM's Epix subsidiary and make MGM content exclusive to its Prime Video platform just as it did, for example, with LoveFilm's content library. This would prevent a variety of market participants from earning the revenue currently associated with Epix's distribution of MGM content to their platforms. Furthermore, even if Amazon did not wind down the Epix subsidiary, the merger will likely enhance Amazon's power and incentive to wield Epix's multichannel distribution of MGM content as a form of leverage over the companies that currently license this content. [32] For example, as we have previously detailed, Amazon reportedly conditioned SVOD competitors' access to consumers through its market-leading streaming device on discriminatory contractual demands that self-preference and force competitors to patronize other lines of Amazon's business.[33] It is possible that Amazon could similarly withhold carriage of Epix as a comparable form of leverage over entertainment media companies that currently derive revenue from distributing MGM content in this manner.

With regard to consumers, Epix's distribution model currently provides access to MGM content through a variety of platforms. This creates healthy competition between home entertainment companies, including between cable, satellite, and streaming aggregators, who must compete for viewers on the basis of price and the quality of user experience. MGM also licenses its titles to SVOD platforms individually, often in the form of transactional video on demand (TVOD) offerings. The acquisition and likely absorption of Epix's catalogue exclusively into Amazon's streaming service will likely harm consumers by depriving them of a range of alternative, independent choices for the consumption of MGM content, including a nascent standalone SVOD service, Epix Now.

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[31] Sarah Perez, *Amazon kills its European DVD rental biz, Lovefilm,* TECH CRUNCH*,* Aug. 14, 2017, https://techcrunch.com/2017/08/14/amazon-kills-its-european-dvd-rental-biz-lovefilm/.

[32] *SOC Letter to the FTC on Proposed Merger of Amazon.com, Inc. and MGM,* Aug. 11, 2021, https://thesoc.org/what-wedo/soc-letter-to-ftc-on-amazon-mgm-merger (regarding Amazon streaming device carriage disputes).

[33]Jessica Toonkel, *WarnerMedia Extended AWS Deal to Win Key HBO Max Concession,* THE INFORMATION*,* Jan. 8, 2021, https://www.theinformation.com/articles/warnermedia-extended-aws-deal-to-win-key-hbo-max-concession.

Additionally, Amazon's acquisition of MGM will harm content creators, eliminating a buyer of writers' content and an outlet for its reuse, while increasing the industry's vertical integration and therefore making further consolidation among content producers more likely.[34] Fewer buyers of content means less creativity and choice, and consolidation diminishes writers' leverage against their powerful employers.

In this regard, we note numerous filmmakers and other key workers and businesses in the entertainment ecosystem have added their voices to the FTC's record against this merger in spite of fears of retaliation by many of them, and 12,560 people have signed a public petition opposing the merger because it would "reduce consumer choice, further harm competition in the ever more important streaming video market, and squeeze BIPOC [Black, Indigenous, and people of color] production opportunities and diverse voices in film."[35]

Conclusion

The merger between Amazon and MGM Studios will harm competition in SVOD and related markets in a number of ways, including by eliminating a nascent competitor to Amazon. Because of the harm to competition the acquisition of MGM's Epix represents—including eliminating a competing content producer and streaming service, negatively affecting video content quality, potentially diminishing revenue for other market participants, and increasing Amazon's ability to further leverage its position against SVOD rivals—we urge the Commission to challenge the merger.

As we continue to bring forward evidence of the danger this merger poses to competition, consumer choice and free speech in the SVOD ecosystem, our organizations also note the latest criminal referral by the House Judiciary Committee to the Department of Justice stemming from Amazon's allegedly false testimony before Congress, which should belie the notion that an acquisition by Amazon in the streaming market will benefit any party other than Amazon itself. In the face of the behavior demonstrated by Amazon throughout its historical quest for dominance, permitting this merger to go unchallenged is simply not an option. This merger presents an opportunity to confront and quell Amazon's growing and unobstructed influence over our economy and society. It is our firm hope the Commission will seize it.

Sincerely,

Michael R. Zucker
Executive Director
Strategic Organizing Center

Laura Blum-Smith
Director of Research and Public Policy
Writers' Guild of America West

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[34] *WGAW Letter to the FTC on Proposed Merger of Amazon.com, Inc. and MGM,* Dec. 21, 2021, https://www.wga.org/uploadedfiles/news_and_events/public_policy/Amazon-MGM_Letter_to_FTC.pdf.
[35] *SOC Letter to FTC Forwarding Petition "Tell the FTC to Block the Amazon-MGM Deal!"* Nov. 22, 2021.