ORAL ARGUMENT NOT YET SCHEDULED
DOCKET NO. 18-5214

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,
Plaintiff-Appellant,
v.

AT&T INC.; DIRECTV GROUP HOLDINGS, LLC; and TIME WARNER INC.,
Defendants-Appellees.

On Appeal from the United States District Court for the District of Columbia,
Case No. 1:17-cv-2511 (Honorable Richard J. Leon)

BRIEF OF CINÉMOI NORTH AMERICA AS *AMICUS CURIAE* IN SUPPORT OF APPELLANT UNITED STATES OF AMERICA IN SEEKING REVERSAL OF THE DISTRICT COURT'S DECISION

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August 13, 2018

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

To the undersigned's knowledge and pursuant to Circuit Rule 28(a)(1)(A), except for Cinémoi North America ("Cinémoi"), all parties, intervenors, and *amici* appearing in this Court and below are listed in the Brief for Appellant United States of America. Notwithstanding the foregoing, the undersigned understands that certain consumer groups (collectively, "consumer groups") are also seeking to file an *amicus curiae* brief in support of Appellant.

Pursuant to Circuit Rule 28(a)(1)(B), references to the ruling at issue appear in the Brief for Appellant United States of America.

/s/ Laurence M. Sandell

Dated: August 13, 2018 Laurence M. Sandell

CORPORATE DISCLOSURE STATEMENT

Pursuant to Circuit Rule 26.1(a), and Fed. R. App. P. 29(a)(4)(A) and 26.1, Cinémoi states that no publicly held corporation owns 10% or more of its stock, and that its parent company is Multivision Media International, LLC.

Pursuant to Circuit Rule 26.1(b), and as further explained below, Cinémoi North America states that it is an independent cable network that will be substantially harmed if the merger at issue in this litigation proceeds.

Dated: August 13, 2018

/s/ Laurence M. Sandell
Laurence M. Sandell

REQUIRED STATEMENTS OF *AMICUS CURIAE*

Pursuant to Fed. R. App. P. 29(a)(4)(E), Cinémoi states that:

(i) no party's counsel authored the brief in whole or in part;

(ii) no party or party's counsel contributed money that was intended to fund preparing or submitting the brief; and

(iii) no person—other than the *amicus curiae*, its members, or its counsel—contributed money that was intended to fund preparing or submitting the brief.

Pursuant to Circuit Rule 29(b), Cinémoi represents that Appellant consents, and Appellees do not object, to the filing of this brief. Cinémoi's notice of intent to participate as *amicus curiae* is being concurrently filed herewith.

With respect to Circuit Rule 29(d), to the extent that the consumer groups file a separate *amicus* brief in support of Appellant, Cinémoi submits that separate briefs are necessary. Cinémoi's brief focuses on the harmful effects that the proposed merger will have on Cinémoi and other similarly situated independent cable networks; the consumer groups' *amicus* brief is expected to focus on the proposed merger's harmful effect on consumers.

Beyond the distinct perspectives of the *amici,* the expedited briefing schedule in this appeal rendered it impracticable for the respective counsel of

Cinémoi and the consumer groups to file a joint *amicus* brief on the wide-ranging, harmful effects that would result from the proposed merger.

/s/ Laurence M. Sandell

Dated: August 13, 2018 Laurence M. Sandell

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Steven C. Salop, *Invigorating Vertical Merger Enforcement,* 127 Yale. L.J. 1962 (May 2018)..8, 9, 10

GLOSSARY

MVDPs: Multichannel Video Programming Distributors

Amicus curiae Cinémoi North America ("Cinémoi") supports Appellant United States of America in its opposition to the acquisition of Time Warner by AT&T, and in requesting that this Court reverse and remand the case for a proper analysis under Section 7 of the Clayton Act.[1]

INDENTITY AND INTEREST OF *AMICUS CURIAE*

Cinémoi is an independent, woman-owned, 24-hour, award-winning television network dedicated to providing programming that is designed to lift the image of women and girls in our society. It is defined by high-quality content that reintroduces American audiences to outstanding vintage and contemporary films, as well as to exotic destinations around the world. Cinémoi is the only cable network owned by a woman.[2] Cinémoi is not affiliated with a broadcast station that enjoys retransmission consent, it does not control any sports rights, and it is not part of a bundle of fully distributed channels that would increase its leverage against Multichannel Video Programming Distributors ("MVPDs").

[1] Cinémoi supports the arguments for reversal set forth in the brief filed by the United States of America. Cinémoi files this *amicus* brief to provide additional context for the proposed merger's harmful impact on competition from the perspective of an independent, woman-owned, television network.

[2] In December 2017, Oprah Winfrey sold a majority interest in the OWN network—previously the only other woman-owned network—to Discovery Communications.

As a small independent television network, Cinémoi's interest in the instant case is especially strong.[3] Based upon its own industry experience and knowledge, Cinémoi believes that the proposed merger is anticompetitive because it will centralize the power of a combined AT&T and Time Warner entity to control programming content and distribution throughout the United States. This consolidation of power will likely destroy independent networks—like Cinémoi—that are central to innovation, quality of programming, and diversity. Accordingly, the District Court's clearly erroneous ruling must be reversed to protect the public interest. A proper analysis under Section 7 of the Clayton Act[4] is required to preserve both entrepreneurial and consumer choice, as well as access to independent television content. *See* Declaration of Professor Warren Grimes In Support Of Brief Of Cinémoi North America As *Amicus Curiae* (the "Grimes Decl.") in Addendum.[5]

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[3] Cinémoi sought to file an *amicus* brief below to support the United States of America. (Dkt. Nos. 135 and 135-1.) However, the District Court refused to consider any *amicus* briefs filed by interested third parties. (Dkt. No. 147.)

[4] 15 U.S.C. §18

[5] Professor Grimes is the Associate Dean for Research and the Irvine D. and Florence Rosenberg Professor of Law at Southwestern Law School in Los Angeles. Professor Grimes is the co-author of a well-known treatise on antitrust law, *The Law of Antitrust, An Integrated Handbook* (3d ed. 2016). (*See also* Dkt. No. 135-2.)

ARGUMENT

> Antitrust laws in general, and the Sherman Act in particular, are the Magna Carta of free enterprise. They are as important to the preservation of economic freedom and our free-enterprise system as the Bill of Rights is to the protection of our fundamental personal freedoms. And the freedom guaranteed each and every business, no matter how small, is the freedom to compete – to assert with vigor, imagination, devotion, and ingenuity whatever economic muscle it can muster.
>
> - Justice Thurgood Marshall[6]

I. For Independent Cable Networks, the Proposed Merger Will Limit Access and Foreclose Competition in an Already Highly Concentrated Marketplace

Traditional cable programming is supplied by large vertically integrated MVPDs. Aside from digital television, consumers are forced to buy high-priced channel bundles from these MVPDs.[7] Concentration at both content and distribution levels makes it extremely difficult for an innovative, independent network like Cinémoi to access meaningful carriage and offer consumers additional choices in programming.[8]

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[6] *United States v. Topco Associates, Inc*., 405 U.S. 596, 610 (1972).

[7] *See* Warren S. Grimes, *The Distribution of Pay Television in the United States: Let an Unshackled Marketplace Decide,* 5 J. Int'l. Media & Ent. L. 1, 3-4 (2013).

[8] Warren Grimes, *Entrepreneurial Choice: Restoring A Relevant Antitrust Policy,* 68 Case W. Res. 61, 89 (2017) (citing Meg James, *Fox's Chase Carey Calls a la Carte Programming 'a Fantasy,'* L.A. Times (Aug. 8, 2013), *http://articles.latimes.com/2013/aug/08/entertainment/la-et-ct-foxs-chase-carey-calls-ala-carte-a-fantasy-20130808* [https://perma.cc/6LJ7-38JS]).

Independent programmers like Cinémoi are often relegated to the lowest penetrated tiers and typically receive no license fees. Most MVPDs only make channel space available when independent networks agree to pay for carriage through their advertising sales department. In contrast, a channel like Turner Classic Movies (TCM), which is owned by Time Warner and bundled with "must have" channels like CNN and TBS, receives hundreds of millions of dollars per year in license fee revenue and is carried on the most widely penetrated tier. Independent networks like Cinémoi must attempt to compete with TCM and other similar channels using their own resources without the benefit of such license fees.

In today's marketplace, the only way to gain meaningful carriage from the cable oligopoly is through retransmission consent, bundling, leveraging sports rights, or agreeing to pay-for-play arrangements. It requires negotiating with vertical firms that control distribution and favor their own content or demand a discriminatory ransom.[9] The problem is pervasive and Cinémoi is by no means unique in having difficulty in gaining access to a distribution on MPVDs tiers.[10]

Against this backdrop, allowing the AT&T and Time Warner merger to

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[9] Warren Grimes, *Entrepreneurial Choice: Restoring A Relevant Antitrust Policy,* 68 Case W. Res. 61, 86 (2017) (herein, "*Entrepreneurial Choice*")(citing a 2007 study commissioned by the FCC which found that cable distributors are more likely to carry their own channels than those of rivals and a lack of evidence of efficiencies in vertical integration of program providers and distributors); Grimes Decl. at ¶ 2.

[10] *Entrepreneurial Choice,* at 86 n. 103; Grimes Decl. at ¶ 2.

proceed on any terms only exacerbates problems of access. Indeed, allowing the merger to proceed will stifle innovation, creativity, and new entrepreneurs in a concentrated industry with high barriers to entry.[11] For example, if an independent network that is carried by AT&T offers good content and begins to win market share, AT&T's best recourse is to eliminate the competitive threat by restricting the independent network's access to viewers. With control of a distribution pathway to more than 172 million cable, internet, and mobile subscribers, AT&T will be in a position to utilize a variety of techniques to favor its own content and disadvantage Cinémoi and other independent channels. Conversely, in a non-vertically integrated market, competition between channels will force Time Warner to improve its content to avoid losing viewers and advertising dollars. Additionally, any shift in revenue to independent networks allows them to invest in additional content and deliver more value to consumers. Either way, consumers benefit from additional choices in a more competitive and innovative market.

As amended, Section 7 of the Clayton Act was intended to prevent precisely this type of anticompetitive merger. As the Supreme Court has observed, Section 7 was amended "to protect small businesses and to stem the rising tide of

[11] American Antitrust Institute, *AAI Applauds Move to Block AT&T-Time Warner Merger, Sets Record Straight on Vertical Merger Enforcement,* Dec. 6, 2017, *www.antitrustinstitute.org/sites/default/files/AT%26T_Time%20Warner%20Commentary_F.pdf* at 1, 6 ("The result [of the merger] is likely to be higher prices and lower quality for consumers, less innovation in video content and distribution, and less diversity in the media.").

concentrations in particular markets . . . ."[12] The goal was to "arrest anticompetitive tendencies in their 'incipiency'"[13] and to address "the danger to the American economy in unchecked corporate expansions through mergers."[14] The type of unrivaled economic concentration of power that would arise from the proposed merger of AT&T and Time Warner would harm independent networks like Cinémoi and others. It must be stopped.

II. The Merger Should Be Enjoined to Protect Competition and Entrepreneurial Choice

Offering meaningful choice is a vital part of competition.[15] The Supreme Court has recognized that consumer choice is one of the goals of competition law.[16] "Meaningful consumer choice exists when market structure allows for new

[12] *Cargill, Inc. v. Monfort of Colorado, Inc.*, 479 U.S. 104, 127 (1986).

[13] *United States v. Philadelphia Nat'l Bank*, 374 U.S. 321, 362 (1963) (citing *Brown Shoe Co. v. United States,* 370 U.S. 294 at 317, 322 (1962)).

[14] *Brown Shoe*, 370 U.S. at 315.

[15] *Entrepreneurial Choice*, *supra* note 8, at 63-64 n.4 (2017) ("the Sherman Act's proponents were not in the least reticent about their goal of protecting the small entrepreneur . . .").

[16] *Nat'l Soc'y of Prof'l Eng'rs v. United States,* 435 U.S. 679, 695 (1978) ("The assumption that competition is the best method of allocating resources in a free market recognizes that all elements of a bargain – quality, service, safety, and durability – and not just immediate cost, are favorably affected by *the free opportunity to select among alternative offers*.") (emphasis added). *See also FTC v. Ind. Fed'n of Dentists*, 476 U.S. 447, 459 (1986) ("[A]n agreement limiting consumer choice by impeding the 'ordinary give and take of the market place,' . . . cannot be sustained under the Rule of Reason.") (quoting *Nat'l Soc'y of Prof'l Eng'rs*, 435 U.S. at 692); *United States v. Cont'l Can Co.,* 378 U.S. 441, 453-56 (1964) (discussing the role played by price differences and buyer preferences in influencing consumer choice and creating competition).

entry and sustainability for small firms that offer what consumers want."[17] Similarly, entrepreneurial choice - the opportunity for a myriad of small businesses to offer a diversity of products and services - is critical to maintaining consumer choice and a well-functioning free market system.[18]

Recent history in the telecommunications industry supports that a permanent injunction is required to protect competition, consumers and small business. For example, the Comcast acquisition of NBC Universal resulted in vertical integration of the country's largest cable and Internet provider with one of the largest video content providers. The result of the combination has made it more difficult for independent networks to get their video programming to consumers.[19] Allowing a further merger will "foreclose . . . smaller rivals and innovative business models."[20]

A permanent injunction will foster competition, which is best served when distributors of video programming are not vertically integrated into content supply.[21] Indeed, the AT&T/Time Warner merger is especially concerning because, for the first time, an MVPD with a truly national footprint is seeking to own content. In all previous cases of vertical consolidation, the vertically integrated MVPD provided service in a limited geographic territory that left

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[17] *Entrepreneurial Choice*, *supra*, n. 8, at 65.
[18] *Id.* at 62-63.
[19] *Id.* at 87, n. 110; Grimes Decl. at ¶ 3.
[20] *AAI Applauds Move to Block AT&T-Time Warner Merger, Sets Record Straight on Vertical Merger Enforcement, supra,* note 6, at 6.
[21] *Id.*

significant swaths of the country controlled by other distributors. Here, since carriage on DIRECTV alone is sufficient to ensure Time Warner content throughout the country, AT&T can artificially raise the price of Time Warner content and competing MVPDs would be required to pay these increases or deny their customers "must have" content. Increases in the price of Time Warner content can only be offset in three ways: (1) by increasing prices to consumers, (2) reducing profit margins, or (3) by eliminating independent channels from the programming budget. For companies competing against AT&T for subscribers, independent channels will be the first target. Competition can only flourish if mergers undermining a competitive structure are blocked consistent with the Clayton Act.[22] Allowing this merger to proceed provides AT&T with both the means and incentive to discriminate against independent programmers like Cinémoi and harm competition.[23]

III. A Permanent Injunction Is Required to Protect the Public Interest

Independent content programmers enhance consumer choice by creating and providing diverse and innovative content that is not the focus of the large media

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[22] *AAI Applauds Move to Block AT&T-Time Warner Merger, Sets Record Straight on Vertical Merger Enforcement, supra,* note 6, at 2, 4.

[23] Steven C. Salop, *Invigorating Vertical Merger Enforcement,* 127 Yale. L.J. 1962, 1977-78 & n. 69 (May 2018) (referencing proposed AT&T-Time Warner merger and illustrating potential harmful impact of vertical mergers between oligopolistic media programmers and distributors resulting in potential "barriers to entry into the content market," and the potential for "consciously parallel decisions not to carry the contrent of new entrants").

conglomerates that dominate cable channels. The vast majority of channels on basic cable are owned by six non-diverse media conglomerates: ABC-Disney, FOX, CBS, Viacom, Comcast, and Time Warner.[24] These businesses also yield tremendous power over politics and are able to use their power to lobby for policies that further enhance their wealth and power. As noted, in this landscape, it is virtually impossible for independent channels to get meaningful carriage. The video programming marketplace has become so challenging and the market power of MVPDs (vis-à-vis independent programmers) so one-sided that the very existence of independent video programmers is at significant risk. The AT&T/Time Warner merger should be enjoined to protect one of the founding goals of the Clayton Act – decentralization of economic power.[25] Allowing a handful of media conglomerates to control content is undemocratic and dangerous to our democracy and First Amendment rights.[26]

Consolidation of power among media conglomerates also stifles diverse programming and diversity in the profession. Opportunity for women and

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[24] Grimes Decl. at ¶ 3.

[25] *Brown Shoe*, 370 U.S. at 316, 318, 344; Grimes Decl. at ¶ 4.

[26] *Entrepreneurial Choice*, *supra,* note 8, at 99-100 ("Levels of concentration that may be tolerable in some industries are objectionable in a service and creative component industry so vital to consumers. Vertical integration that may be relatively unproblematic in some industries is likely to be troublesome when providers of popular content wield such leverage over distributors."); Salop, *supra*, note 23, at 1977-78 & n. 69 (referencing proposed AT&T-Time Warner merger and illustrating potential foreclosure effects on new entrants).

minorities in the media is an ongoing problem, as is exemplified by the fact that there is only one woman-owned television network. Additionally, programming itself should represent the diverse voices and viewpoints of all Americans.[27] Creation of film and video programs remains a creative occupation and many producers remain tenaciously independent.[28] These independent film and television producers struggle to get their programming to the public because it requires "negotiating the hurdles of vertically integrated firms that control distribution and favor their own content."[29] The acquisition of Time Warner will only serve to rehash content instead of allowing independent channels to create new programming and cultural visions that can serve the needs and interests of the diverse public. Indeed, the consolidation of power into only a few mainstream, oligopolistic players denies Americans of programming and content that mirrors the true make-up of American society and the diversity that our country was founded upon.[30]

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[27] *AAI Applauds Move to Block AT&T-Time Warner Merger, Sets Record Straight on Vertical Merger Enforcement, supra,* note 6, at 1 ("The result [of the merger] is likely to be higher prices and lower quality for consumers, less innovation in video content and distribution, and less diversity in the media.").
[28] *Entrepreneurial Choice*, *supra,* note 8, at 86.
[29] *Id.* at 86 n. 102-103 (stating, among other things, that the owners of independent channels have publicly complained of difficulties in obtaining distribution, including the CEO of Ovation TV, whose arts and entertainment channel had been dropped by Time Warner Cable); Grimes Decl. at ¶ 2.
[30] Salop, *supra*, note 23, at 1976 (discussing potential harm from vertical mergers: "Foreclosed rivals may be actual or potential competitors. Where potential

CONCLUSION

The District Court's decision is fundamentally flawed and should be reversed. The proposed AT&T and Time Warner merger would result in the largest acquisition in media history and an unprecedented concentration of power in programming and distribution. In addition to the extensive evidence of harm to consumers proffered by the United States of America, the merger will also harm and likely destroy independent networks that are central to innovation, quality of programming, and diversity – the fundamental building blocks of competition in the marketplace. Consistent with a proper application of Section 7 of the Clayton Act, reversal is necessary so that a permanent injunction can be issued to protect competition, including entrepreneurial and consumer choice.

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competitors are foreclosed, the exclusionary conduct can be seen as raising barriers to entry and reducing innovation.")

Respectfully submitted,

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CINÉMOI NORTH AMERICA

Dated: August 13, 2018

PROOF OF SERVICE

I, Laurence M. Sandell, hereby certify that on August 13, 2018, a copy of the foregoing **BRIEF OF CINÉMOI NORTH AMERICA AS *AMICUS CURIAE* IN SUPPORT OF APPELLANT UNITED STATES OF AMERICA IN SEEKING REVERSAL OF THE DISTRICT COURT'S DECISION** was served via the ECF Filing System on all counsel of record.

/s/ Laurence M. Sandell
Laurence M. Sandell

CERTIFICATE OF COMPLIANCE

I hereby certify that this *Amicus Curiae* brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) and 32(a)(7)(B) because the brief contains 2,686 words, excluding the parts of the document exempted by Fed. R. App. P. 32(f) and Circuit Rule 32(e)(1), according to the word-count function of the word processing system used to prepare the brief (Microsoft Word).

This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word for Mac 2011 version 14.6.8 in Times New Roman 14 point font.

/s/ Laurence M. Sandell
Laurence M. Sandell

ADDENDUM

DOCKET NO. 18-5214

In the

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For the

District of Columbia

UNITED STATES OF AMERICA,

Plaintiff-Appellant,

v.

AT&T INC.; DIRECTV GROUP HOLDINGS, LLC; and TIME WARNER INC.,

Defendants-Appellees.

On Appeal from the United States District Court for the District of Columbia,
Case No. 1:17-cv-2511 (Honorable Richard J. Leon)

DECLARATION OF PROFESSOR WARREN GRIMES IN SUPPORT OF BRIEF OF CINEMOI NORTH AMERICA AS AMICUS CURIAE IN SUPPORT OF THE UNITED STATES OF AMERICA IN SEEKING REVERSAL OF THE DISTRICT COURT'S DECISION

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DECLARATION OF PROFESSOR WARREN GRIMES

I, Warren Grimes, declare as follows:

1. I am the Associate Dean for Research and the Irvine D. and Florence Rosenberg Professor of Law at Southwestern Law School in Los Angeles. My scholarship focuses on antitrust law. I am the co-author of a well-known treatise on antitrust law, *The Law of Antitrust: An Integrated Handbook* (3d ed. 2016). I have written extensively on antitrust and the media, including numerous articles on competition issues specifically in the cable and telecommunications industry. My article, *The Distribution of Pay Television in the United States: Let an Unshackled Marketplace Decide,* 5 J. Int. Media & Entertainment L. 1 (2014) was reprinted in a symposium of outstanding entertainment and telecommunications articles for that year. A true and correct copy of my C.V. is attached hereto as **Exhibit A**. I have received no compensation for submitting this declaration, and the views expressed herein are mine alone and should not be attributed to Southwestern Law School. If asked to testify I could and would do so truthfully.

2. I submit this declaration in support of the amicus curiae brief filed by Cinémoi North America ("Cinémoi"). Based upon my research and scholarship, the serious concerns raised by Cinémoi with respect to the proposed $85 billion merger between AT&T Inc. (the largest seller of subscription television) and Time Warner Inc. (one of the three largest providers of video content) are warranted. As I note in my recent article, *Entrepreneurial Choice: Restoring A Relevant Antitrust Policy*, 68 Case W. Res. 61 (2017), independent programmers face a myriad of challenges in gaining access to carriage: "To do so requires negotiating the hurdles of vertically integrated firms that control distribution and favor their own content or demand discriminatory ransom." *Id*. at 86. Indeed, Cinémoi is not alone; other independents have

repeatedly complained of the difficulty in obtaining distribution. *See id*. n. 102 & 103 (citing FCC study finding that cable distributors are more likely to carry their own channels than those of rivals and complaints by other independent channels).

3. In this circumstance, an AT&T and Time Warner merger, which would be the largest media merger in history, can only exacerbate the existing barriers to entry for independents in a highly concentrated cable market dominated by 6 media conglomerates: ABC Disney, Fox, CBS, Viacom, Comcast, and Time Warner. Indeed, Comcast's earlier acquisition of NBC Universal has reportedly contributed to difficulties among small content providers getting their video programming to consumers. *Entrepreneurial Choice: Restoring A Relevant Antitrust Policy* at 87. Given the national footprint of Direct TV, the AT&T and Time Warner merger would raise even greater concerns for independent programmers like Cinémoi.

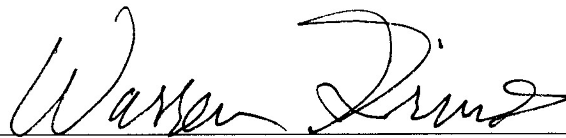
4. A fundamental goal of antitrust law and policy is to maintain entrepreneurial choice, including the preservation of independent and small businesses that drive innovation. *Entrepreneurial Choice: Restoring A Relevant Antitrust Policy* at 70 ("Recent empirical evidence supports anecdotal accounts that small firms are often a superior engine for innovation.") As I have explained: "Preserving entrepreneurial choice . . . serves a number of fundamental antitrust goals: (1) preserving efficiency; (2) preserving small players who are central to innovation; (3) improving the quality of life for both those who sell and those who buy; and (4) protecting democratic values by diversifying wealth and power." *Id*. at 94. The AT&T and Time Warner merger would, based upon my research and scholarship, hamper independent programmers like Cinémoi in competing, thereby reducing entrepreneurial choice and, as a consequence, ultimate consumer choice in the market.

5. I have consistently supported the government's challenge to this merger. In December of 2017, I co-authored with Professor Christopher Sagers an opinion editorial arguing that the AT&T and Time Warner merger would result in "likely major injuries to competition, including to new entrants or small and creative content providers, to independent and efficient distributors, and to consumers bearing the brunt of higher prices and more limited choices." Warren Grimes and Chris Sagers, *DOJ's lawsuit to halt AT&T-Time Warnder deal is the right thing to do*, Los Angeles Daily Journal, December 4, 2017.

6. I support Cinémoi's amicus brief that urges reversal and remand for a proper analysis under Section 7 of the Clayton Act. Reversal is necessary in order to preserve both entrepreneurial and consumer choice, and access to independent television content.

I declare under the laws of the United States of America that the foregoing is true and correct.

Executed this 10th day of August, 2018, at Los Angeles, California.



WARREN GRIMES

EXHIBIT A

CURRICULUM VITAE
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POSITION

Associate Dean for Research & Irving D. & Florence Rosenberg Professor of Law, Southwestern School of Law.

Teach antitrust, legislation, business associations and unfair competition and consumer protection law. Associate Professor 1988-1992; Full Professor since 1992. Faculty Adviser, Journal of Law & Trade in the Americas (renamed Sw. J. Int'l L.) 1994-2012. Chair of Curriculum Comm., 1994. Chair of Faculty Development Comm., 1998, 2017-2018. Chair of Ad Hoc Committee on Grading Reform, 2005; Chair of Ad Hoc Examination on Bar Exam Preparation, 2007. Sabbatical Leave (2002-2003).

PRIOR TEACHING POSITIONS

Adjunct Professor, Georgetown University Law Center, Washington, D.C., 1985 to 1988
Taught seminar on International and Comparative Antitrust Law.

Adjunct Professor, Columbus School of Law (Catholic University), Washington, D.C., 1984
Taught antitrust and advanced antitrust seminar.

PREVIOUS POSITIONS

Chief Counsel, Subcommittee on Monopolies and Commercial Law, Committee on the Judiciary, U.S. House of Representatives, 1980-1988.
Worked with subcommittee staff of 8 to provide counsel and support on antitrust, constitutional, and bankruptcy issues, and in matters involving impeachment of federal judges.

Assistant to the General Counsel, Federal Trade Commission, Washington, D.C. , 1978-1980
Represented agency at OECD meetings and in other international antitrust negotiations; represented FTC in federal court proceedings.

FTC Representative, President's Reorganization Task Force, Washington, D.C., 1977-1978
Appointed by FTC Chairman to serve on President Carter's OMB reorganization task force to assess adequacy of Federal Government's legal representation in court.

Attorney, Office of the General Counsel, FTC, Washington, D.C., 1974-1977
Represented FTC in federal court litigation; supervised junior attorneys' work; received Chairman's Superior Service Award for work on *In re Line of Business Reports*, 595 F.2d 685 (D.C. Cir. 1978), *cert. denied*, 439 U.S. 958.

Attorney Adviser, Office of Legal Counsel, Department of Justice, Washington, D.C., 1972-1974
Wrote legal opinions for Justice Department, White House, and other agencies on statutory and constitutional issues, including impeachment and Presidential impoundment of appropriations.

Research Fellow, Max Planck Institute for Competition Law, Munich, Germany; Max Planck Institute for Public & Int'l Law, Heidelberg, Germany, 1969-1972

Received research fellowship from Volkswagen Foundation for American lawyer interested in teaching; research and writing on consumer and advertising law (1969).

Associate Attorney, O'Melveny & Myers, Los Angeles, California, 1968-1969
General litigation, corporate, tax, and labor law matters.

COMMISSIONS AND CONSULTING

Member, Advisory Board, American Antitrust Institute, Washington, D.C. (since 1998), Senior Research Fellow since 2002.

Member, Advisory Board, Max Planck Institute for Innovation and Competition, Munich, Germany since 2009.

Member, ABA Section of Antitrust Law, Task Force on the Antitrust Division of the U.S. Department of Justice (1988-89).

Consultant, National Commission on Judicial Discipline & Removal, 1992-1993.

Member, Selection Committee for Jerry S. Cohen Award (Outstanding antitrust scholarship), since 2008.

EDUCATION

J.D., Univ. of Michigan Law School, Ann Arbor, Michigan, 1965-1968
S. Anthony Benton Memorial Award (to graduate outstanding in constitutional and international law); Assistant Editor, Michigan Law Review; Order of the Coif; Research Assist. to Prof. John Jackson on GATT book; Assist. Resident Dir. of men's undergraduate dormitory; Legal Intern, Office of Legal Adviser, U.S. Department of State (Summer 1967).

B.A., Stanford University, Stanford, California, 1961-1965
History major; economics and German minors; Dean's list in final two years; Vice President of Institute for International Relations (organized conference on international disarmament); Stanford in Germany Program; Stanford Band and Glee Club.

BAR MEMBERSHIPS AND OTHER ORGANIZATIONS

Member - State Bar of California (January 1969)(currently inactive); admitted to U.S. Courts of Appeals for D.C., 2d, 9th, and 10th Circuits.

Member - American Bar Association, Antitrust Section.

Chair, Executive Comm., Antitrust & Trade Regulation Section, LA Cty Bar Assoc. (1998-99) (Member of Exec. Comm. 1989-2008)).

AWARDS

Irving D & Forence Rosenberg Professor of Law, appointed in 2016.

Jerry S. Cohen Memorial Award for Outstanding Antitrust Scholarship (2007), presented to Lawrence A. Sullivan and Warren S. Grimes for THE LAW OF ANTITRUST: AN INTEGRATED HANDBOOK (2d ed. 2006).

Irwin R. Buchhalter Professor at Southwestern, 1998-1999.

FTC Chairman's Superior Service Award, 1979

BOOKS

THE LAW OF ANTITRUST: AN INTEGRATED HANDBOOK (with Lawrence A. Sullivan & Christopher L. Sagers) (3d ed. West Group, 2015).

ANSCHWÄRZUNG UND VERGLEICHENDE WERBUNG IM RECHT DER USA (1974) (Commercial Disparagement and Comparative Advertising in U.S. Law -- in German).

MAJOR PUBLICATIONS AND PAPERS

Entrepreneurial Choice: Restoring a Relevant Antitrust Policy, 68 CASE W. RES. L. REV. 61 (2017).

The FIFA World Cup and Dysfunctional Television Distribution in the United States, 21 J. International L. 155 (2015).

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A Dynamic Analysis of Resale Price Maintenance: Inefficient Brand Promotion, Higher Margins, Distorted Choices, and Retarded Retail Innovation, 55 ANTITRUST BULL. 101 (2010).

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A Tale of Two Ski Towns: New Perspectives on a Dominant Firm's Refusal to Deal with a Rival, in TECHNOLOGY AND COMPETITION, CONTRIBUTIONS IN HONOUR OF HANNS ULLRICH (Joseph Drexl et al. eds 2009), available at SSRN: http://ssrn.com/abstract=1656125.

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Illinois Tool Works, Inc. v. Independent Ink, Inc., Requirements Tie-Ins and Intellectual Property (w. Lawrence A. Sullivan), 13 SW. J. L. & TRADE IN AMERICAS 335 (2007).
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Counterproductive Incentives for Innovation? Exclusionary Conduct in the Sale of an IP Product, 36 INTERNATIONAL REVIEW OF INTELLECTUAL PROPERTY AND COMPETITION LAW 214 (2005).

A Study in Merger Enforcement Transparency: The FTC's Ocean Cruise Decision and the Presumption Governing High Concentration Mergers (w. John E. Kwoka), ANTITRUST SOURCE (May 2003), available at <www.antitrustsouce.com>.

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How Your Rising Cable Bill Is Making Sports Teams and Star Players Rich, Op-Ed, Los Angeles Times, March 31, 2014.

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