

HOLLYWOOD'S TRADE ORGANIZATIONS:
HOW COMPETITION AND COLLABORATION FORGED
A VERTICALLY-INTEGRATED OLIGOPOLY, 1915–1928

BY KIA AFRA

B.F.A., SIMON FRASER UNIVERSITY, 2000

M.A., UNIVERSITY OF CALIFORNIA, LOS ANGELES, 2005

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Date _____

Philip Rosen, Advisor

Recommended to the Graduate Council

Date _____

Lynne Joyrich, Reader

Date _____

Mary Ann Doane, Reader

Approved by the Graduate Council

Date _____

Peter M. Weber, Dean of the Graduate School

VITA

Kia Afra was born on February 26, 1976 in Tehran, Iran. He and his family immigrated to Vancouver, Canada in 1983. There he attended Simon Fraser University where he received his B.F.A. in Film and Minor in History in 2000. After graduation, he worked as a sound editor and post-production technician in Vancouver's film and television industry between 2000 and 2003. Subsequently, he moved to the United States and completed an M.A. in Film & Television Critical Studies at the University of California, Los Angeles in 2005. He received his Ph.D. from Brown University in 2011. His published work has appeared in *Film History: An International Journal*.

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ABBREVIATIONS

AEA	American Exhibitors' Association
AFL	American Federation of Labor
AMPA	Association of Motion Picture Advertisers
AMPE	Association of Motion Picture Exhibitors (of New York)
AMPP	Association of Motion Picture Producers
CPR	Committee on Public Relations
DOJ	Department of Justice
FILM	Exchange Boards of Trade
FTC	Federal Trade Commission
GFC	General Film Company
IATSE	International Association of Theatrical and Stage Employees
IMPPDA	Independent Motion Picture Producers and Distributors of America
MPEA	Motion Picture Exhibitors of America
MPELA	Motion Picture Exhibitors' League of America
MPPA	Motion Picture Producers' Association
MPPC	Motion Picture Patents Company
MPPDA	Motion Picture Producers and Distributors of America
MPTOA	Motion Picture Theater Owners of America
NAMPI	National Association of the Motion Picture Industry
SMPE	Society of Motion Picture Engineers
SRC	Screen Relations Committee
TOCC	Theater Owners' Chamber of Commerce
UEC	Uniform Exhibition Contract
UMPO	United Managers' Protective Organization

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INTRODUCTION:
A PREHISTORY OF THE STUDIO SYSTEM:
FROM THE MPPC TO THE MPPDA

Just as the consolidation of the motion picture industry has tended to parallel that in other well-developed industries of the nation, so has its organization into trade associations. In fact, the motion picture industry has been more successful in this line than has almost any other major industry.

Halsey, Stuart & Co., 1927¹

In preparing for this study, I was confronted with a simply but unanswered question: how and why did the Hollywood studio system emerge? By asking this question, I do not mean to revive the age-old debate over the industry's migration to the Los Angeles area starting in 1907–1912. Geography, climate, genre, open-shop labor, and processes of agglomerate formation in *industrial districts* have all been offered as plausible factors.² Less plausible is the idea that these West Coast pioneers were escaping the Edison Trust and its patent enforcers if only because companies like Biograph, Essanay, Kalem, Lubin, Selig Polyscope, and Vitagraph were already licensed members of the Trust by the time they established seasonal or year-round production in the Los Angeles area.³ By 1915, the trend for concentrating production in Southern California and for coordinating studio policies on local issues was well-established. Yet this is not necessarily the “Hollywood” I have in mind for this project. Rather, the Hollywood I am concerned with here was essentially directed from the studios' executive offices in New York and facilitated by the majors' distribution centers and exchanges across the world.

Hollywood, then, for my purposes, refers not only to the studio lots, personnel, creative talent, and productions, but also to the distribution and promotional assets, exhibition contracts, financial organization, and market structure that came to characterize the American film industry by the 1920s. The question can then be restated: how and why did the American film industry become a vertically-integrated oligopoly? What were the major factors that led to the rise of such an industry structure?

Surprisingly, film historians have offered very few answers to these questions. Most of the relevant literature has focused on the studio system's various components rather than the historical processes that catalyzed its emergence. Where explanations regarding the studio system have provided valuable analysis, it has most often been confined to the period starting with the mass conversions to sound in 1928. At this point, the literature on the studio system becomes much more compelling. Here there are numerous corporate and industrial analyses that offer a recognizable narrative of historical events and processes that shaped the studio system's further development into the 1930s.⁴ Even in this familiar terrain, however, there are gaps and voids, such as the paucity of detailed examinations into the studio bankruptcies and restructurings that shaped the fate of the Hollywood majors in the 1930s. In any case, my own exploration ends where these accounts begin. 1928 is the point at which the narrative explaining the studio system's emergence has essentially run its course. By the time of the large-scale conversions to sound, the studio system had already been established, and most of the events leading up to its formation were years in the past. Sound conversion from 1926 through the early part of the 1930s was part of this trend, but it was not the catalyst behind the formation of the studio system. For that, we have to look to the period leading

up to the studio system itself. The question then becomes how far back we have to look to find meaningful traces of Hollywood's emergence as an industrial structure. One clue lies in locating the downfall of the previous industry formation that dominated the American film industry, the Edison Trust, and in chronicling the rise of newer corporate interests.

To answer that question, I engaged in extensive primary research into the period from 1908 to 1930. A close reading of corporate files, legal documents, financial reports, personal correspondence, and numerous trade papers allowed me to correlate micro-historical events on a week-by-week basis with a macro-historical perspective that spans many years. Out of that history, I distilled the major themes that dominated the industry's own discourse down to a half-dozen leading issues: censorship, antitrust, distributor-exhibitor relations (including distribution contracts, exchanges, theater acquisitions, and circuits), foreign trade, labor issues, and trade practices. In addition, there was also an important subtext: the transition from the Edison Trust that dominated the early 1910s to the independent, feature producers who formed the backbone of a new oligopoly emerging by the tail end of the 1910s. In every case, what bound these dominant issues together was the role of the industry's trade associations. These organizations brought competing members into cooperation for the purposes of collective advantages, whether as producer-distributors or as exhibitors. If they had not existed, the new oligopoly would have no representative force and no institutional manifestation. Moreover, from a historiographic perspective, trade organizations provide a narrative thread linking the Edison Trust to the Hollywood majors. Our understanding of Hollywood's emergence is woefully incomplete without them.

Yet in consulting scholarly accounts of the 1910s and 1920s American film industry, I have often been struck by the lack of attention given to trade associations and their role in the studio system's emergence. Considering that the literature on Hollywood's rise is slim compared with the amount written on the sound era, when the studio system settled into that easily-identifiable oligopoly of five majors and three minors, we should not be surprised if trade associations have been slighted in historical accounts. Indeed, there are few such accounts in print. Moreover, the pre-history of the studio system represents a much more volatile and intriguing era as an oligopoly was only in the process of forming. It is a period that is not nearly as well understood as the studio era itself. In many ways, it is an era that represents a *terra incognita* for film studies: our knowledge of this period is sporadic and our ability to situate its historical events rather limited. What we have offers no comprehensive industrial history, but multiple histories that are specialized to answer specific questions. Most importantly, for my purposes, there is no explanation of how the collapse of one attempt at concentration, the Edison Trust, led to the rise of an oligopoly which by 1920 included Paramount, Loew's/Metro, First National, Goldwyn, Fox, and Universal.

Of course it should be noted that there have been several attempts to explain the studio system's emergence. To remedy our general historical oversight regarding this period, film historians have examined the transition to the American studio system through numerous angles and various methods that address the period between the mid-1910s and the 1930s. Scholars have correlated the emergence of the studio system with the following developments: the growth of features; the proliferation of upscale theaters; the rise of national distribution; the burgeoning Hollywood star system; the

standardization of production and distribution; the transition to the producer system; the development of the classical style; the increased involvement of Wall Street investors; the need for collective effort against censorship; and, most importantly, the advances in vertical integration, which tie together many of the above factors. In many cases, what we have here is a focus on the elements and components of the studio system, and not an historical analysis of how and why the film industry was comprised of a dozen interests that controlled production, distribution, and exhibition by the mid-1920s.

For example, David Bordwell, Kristin Thompson and Janet Staiger address the standardization of production and distribution required by feature film production. They argue that the stylistic demands of classical narrative (i.e., the logic of space, time, and action), combined with exhibitor demands for longer films, literary attributes, greater character development, and psychological depth (which also contributed to the emphasis on stars), necessitated a production system that could facilitate larger productions and more efficient management of industry personnel.⁵ This resulted in the use of continuity scripts, for example, that standardized production under a central producer system in the 1910s. On the one hand, and owing to Staiger's Marxist leanings, *The Classical Hollywood Cinema* attributes the emergence of classicism in part to a Marxist notion of the "mode of production" that is nascent with standardization and centralization in the film industry. On the other, using neo-formalist analysis driven by Bordwell and Thompson, the authors also attribute classicism to the "mode of film practice," which is irreducible to the very concepts outlined under the "mode of production."⁶ For these reasons, *The Classical Hollywood Cinema* is a work of many contradictions and much

complexity. It is truly exemplary as an exercise in aesthetic-industrial analysis, but it offers little in the way of assessing vertical integration and oligopoly.

Writing from a slightly different Marxist perspective from that of Staiger, Janet Wasko discusses the growing involvement of Wall Street and banking interests in Hollywood during the 1920s in *Movies and Money*.⁷ Wasko outlines how much of the studio expansion was funded by investors and stockholders. Accordingly, she is more interested in the history of ownership and finance in the film industry than in the debates over the classical style or the importance of features, stars, theaters, or the mode of production in the transition to the studio system. Unfortunately, Wasko's account is of limited value for a pre-history of Hollywood in that it is devoted mostly to the sound era. It offers only a brief and selective chronicle of Wall Street involvement in Hollywood's foundational period. However, Wasko's observations function as important foundations to build upon, especially when it comes to the role of trade organizations in encouraging industry standardization and attracting banking interests into the industry. It should also be noted that Wasko views the film industry through the lens of political economy, where the emphasis is on the control over the production and distribution of resources in any given economic system. Although these are important considerations in the final analysis, and are reflected in my own analysis, such a method is not always suited to the task of understanding historical progression on the level of how companies interact within a given marketplace. For that model, I have turned to the work of another expert in industrial film history.

In place of Wasko's emphasis on finance and capital, Douglas Gomery and Robert Allen describe a method that examines the corporation by reference to an industry's *basic conditions, structure, conduct, and performance*.⁸ These terms are adapted from standard economic texts on industrial organization.⁹ Basic conditions refer to an industry's supply and demand, including the raw materials, technology, labor conditions, growth, public policies (i.e., the effects of regulation on the marketplace), prices, and sales methods. Market structure addresses the number of buyers and sellers, product differentiation, barriers to entry, and vertical integration. Conduct involves pricing, marketing, research, advertising and legal strategies. Finally, performance reflects the efficiency and success with which an industry responds to social, cultural, and market demands regarding its products. According to Allen and Gomery, the success of the Hollywood majors reflected three essential factors that fall under market structure: product differentiation, control over distribution, and hegemony over exhibition through ownership of a small number of first-run theaters. As many of these concepts are interrelated, the categorizations merely serve to illustrate different components in the analysis. Accordingly, industrial analysis does treat any factor in isolation to the others. Since I am concerned with vertical integration and oligopoly, I am primarily interested in issues of market structure, but conduct, performance, and basic conditions are also referenced throughout this project.

In several of his other texts, Gomery elaborates on the issue of theater acquisitions referenced above. He explains how the basic corporate model of chain exhibition was already in place before the conversion to sound.¹⁰ Moreover, Gomery argues that the transition to sound was calculated and involved collective bargaining and maneuvering on the part of studios that were nonetheless competitors.¹¹ Building on Gomery's

observations, I argue in the last chapter that the conversion to sound did not essentially disrupt the studio system's operations. Rather, it continued trends that were already established; hence, the need to examine the studio system's "pre-history."

Meanwhile, taking yet another approach, Michael Quinn has made an historiographic argument for placing film distribution on the same footing as production and exhibition histories. Quinn addresses Paramount's contributions to early feature distribution and its differences from its competitors, including the General Film Company.¹² Not unlike Tino Balio's analysis of United Artists, Quinn's approach resembles a case study methodology, where the purpose is to examine a single firm, Paramount, in relation to a single development, feature distribution.¹³ His account is commendable as an exploration of an area that still requires much attention, but it also has limitations in terms of its narrow focus on one company.¹⁴ Whereas some authors mentioned above offer an overly generalized account of the transition to the studio system, Quinn's account is focused on one firm and is limited mostly to the 1910s. As I will explain below, I believe that a better approach is one that balances the macro analysis of larger industrial and social trends with the micro analysis of individual firms. Moreover, as far as histories of distribution are concerned, we must establish that missing link between the 1910s and the late-1920s. Only then will we be able to connect the Edison Trust to the Hollywood majors.

The above references are just a few of the more representative and important contributions to the field. There are others who agree or disagree with the authors mentioned above or with their methodologies. Setting aside these debates, however, what

is less understood and analyzed about this period is how vertical integration necessitated two parallel but paradoxical impulses that were interrelated in crucial ways. On the one hand there was competition for distribution, theaters, stars, facilities, fans, patrons, and investors. On the other, there was collaboration and collective action amongst film producers in the face of censorship, antitrust, and other challenges facing the major film manufacturers. The first impulse, for example, accounts for several major industry developments under what Richard Koszarski has termed the “expand or die” mentality: Famous Players-Lasky’s takeover of distributor Paramount in 1916, and later, its theater acquisitions in the face of competition from First National; Loew’s takeover of Metro in January 1920, to add production and distribution to its theatrical holdings, and to meet the challenge posed by Paramount’s expansion into theaters; Fox’s theater expansion and the founding of the Fox Theater Corporation in 1925 in response to the increasing competition from Loew’s, First National and Paramount; Warner Bros.’s acquisition of Vitagraph in 1925 and its move into exhibition circuits in 1928; and Universal’s attempts at vertical integration in the mid-1920s.¹⁵ These developments have been examined to some extent in the existing scholarly literature, including in most of the authors mentioned above, as well as in several studio histories and biographies regarding the 1910s and 1920s.¹⁶ But what is missing from these accounts is an extended contextual analysis that locates theater expansion within a larger scheme beset by distributor and exhibitor relations, antitrust investigation, and Wall Street investment.

As for the second impulse, the necessity for collaboration led to the creation of successive trade organizations that were intended to secure the collective interests of the larger film manufacturers and distributors. This secondary area is even less understood.

The only exceptions occur in accounts of censorship or institutional history that happen to mention the National Association of the Motion Picture Industry (NAMPI) and the Motion Picture Producers and Distributors of America (MPPDA). One such example is Ruth Inglis's assessment of the industry's attempts at self-regulation, which focuses mostly on self-censorship efforts in the 1930s and '40s.¹⁷ However, with regard to the 1910s and early 1920s, Inglis fails to mention the Motion Picture Board of Trade in her discussion of federal censorship in 1915–1916 and devotes all but five pages to NAMPI's five years of operation from 1916 to 1922.¹⁸ Interestingly enough, Inglis describes the relationship between industry trade organizations and the National Board of Review as one of rivalry, therefore contextualizing effectively the need for bringing about self-regulation administered by the trade associations themselves.¹⁹ Her observations will find echo and elaboration in my own account. Yet Inglis simply sidesteps the possibility that trade organizations, although established for the purposes of battling censorship, exercised ulterior objectives in facilitating oligopoly and vertical integration.

A similar disregard for the link between regulation and expansion also applies to histories of the 1910s. For example, Garth Jowett's contextualized account of the Supreme Court's ruling in *Mutual Film Company v. Industrial Commission of Ohio* 236 U.S. 230 (1915) offers a compelling argument for reading the case within the larger history of American Protestantism.²⁰ This influential case denied First Amendment rights to motion pictures, and, thus, sanctified the local and state censorship of films. It also catalyzed efforts to reintroduce a bill on federal censorship (see Chapter 2). Jowett's study looks at the ruling's consequences for social and cultural control over the movies. But Jowett does not identify the inter-relationship between censorship and antitrust

litigation during the same period in which the Edison Trust was facing official disbandment. As we will see in Chapter 1, this was especially important as the *Mutual* ruling defined cinema as “business” and not “art”: this meant that films were subject to the laws of interstate commerce including those of the Sherman and Clayton Acts.

A different kind of oversight characterizes Leslie DeBauche’s chapter on the industry’s collective wartime activities in *Reel Patriotism: The Movies and World War I*. DeBauche makes several important claims on NAMPI’s role in organizing Liberty Loans and Food Drives.²¹ She also addresses George Kleine’s resistance to NAMPI. Yet DeBauche has little to say on NAMPI-exhibitor relations, ignores NAMPI’s efforts on taxes and deposits, and fails to link NAMPI’s cooperation with the government to its conflict with exhibitors. Indeed, a similar criticism would characterize Kristin Thompson’s seminal contribution to American films in the world market, which demonstrates the importance of industry-government relations for film exports during wartime and the postwar era. Thompson offers several key observations on NAMPI’s and the MPPDA’s functions in securing American dominance in international markets.²² However, Thompson’s focus on foreign distribution is too narrow to identify the activities of trade organizations in the context of the factors mentioned above. In their defense, it must be noted that these authors are not primarily interested in the role of trade organizations in oligopoly formation. But it is unfortunate that few have made any connection between the challenges of censorship and regulation and the aspirations of producer-distributor expansion and consolidation. The nexus between the two areas is particularly relevant as producer-distributor trade organizations emerged in this period.

In contrast to the censorship accounts cited above, the works of Richard Maltby and Ruth Vasey offer an important foundation for those interested in the MPPDA's activities beyond censorship itself. Note that Maltby's work examines primarily the MPPDA's cultural and social impact on censorship issues and not the association's role in fighting antitrust or protecting oligopoly. Nevertheless, Maltby rightly makes the connection between the MPPDA's advocacy for self-censorship and its lobbying for self-regulation on antitrust legislation: "while censorship and the regulation of content were important aspects of its work, the Association's central concern was with the threat of legislation or court action to impose a strict application of antitrust laws to the industry."²³ Meanwhile, Ruth Vasey's analysis of the MPPDA's Studio Relations Committee (SRC) also offers several important observations on the late 1920s, but is mostly focused the MPPDA's activities on foreign markets and not the association's collusion with producer-distributors in assisting vertical integration.²⁴ Vasey also posits censorship as a red herring that distracted the independent exhibitors, organized as the Motion Picture Theater Owners of America (MPTOA), from any effective approach against block booking in the late 1920s. According to Vasey, the exhibitors based their grievances on the notion that block booking forced them to exhibit "immoral" and prohibitive films, and, thus, failed to establish an argument against the MPPDA members' trade practices. Although I do not entirely agree with Vasey's assessment here, or Raymond Moley's earlier articulation of a similar claim in *The Hays Office*, her work is an important starting point for understanding the MPPDA's public relations campaign.²⁵ In hoping to expand and refine such observations by Vasey, Moley, and others, I show how the exhibitors were highly active in bringing about antitrust litigation

against the producer-distributors throughout the 1920s, and how this forced the producer-distributors to work through NAMPI and the MPPDA to counter such attacks.

Needless to say, these histories of censorship and antitrust are not essentially concerned with the studio system's emergence. As for the above accounts that do address Hollywood's emergence, it is almost as if such a development were attributable to anything but cooperative action on the part of the producer-distributors. Even Allen and Gomery's case study of the "Formation of the U.S. Film Industry" ignores trade organizations entirely. Yet I argue that competition must be understood alongside cooperation. To Koszarski's "expand or die" motto, I would add "collaborate or collapse." While it is important to acknowledge that competition over stars, theaters, and investors gave impetus to Hollywood's expansion, none of these assets in and of itself could guarantee a marketplace and public profile advantageous to the studio system. If we define the most essential elements of the studio system as vertical integration and oligopoly, then trade associations become not only a facilitator and maintainer for these attributes, but also an institutional manifestation of the oligopoly market structure that defined the Hollywood majors. As I hope to demonstrate, trade associations played a role equal to that of any other factor in determining the rise and continuation of the American studio system. Like the other contributing factors listed above, trade associations on their own do not account for the studio system's emergence. Rather, trade associations help explain Hollywood's ability to fend off the various challenges to vertical integration and oligopoly, including antitrust, censorship, exhibitor opposition, and independent production and distribution.

In contrast with the limited amount of attention given early trade associations in contemporary scholarship, primary and secondary sources from the 1910s and 1920s paint a very different picture. It is for this reason that I rely primarily on these sources. Consider, for example, Halsey, Stuart & Company's report on the industry from 1927, titled "The Motion Picture Industry as a Basis for Bond financing." The report offered a summary of the significant role that trade organizations played in securing and sustaining the market advantages of the Hollywood majors, all of which were by then vertically-integrated companies spanning production, distribution, and exhibition. Specifically, the report praised the MPPDA for its achievements in public relations, business relations, and standardized business practices such as the Standard Exhibition Contract. These activities, the report argued, had made the industry more amenable to Wall Street investors who were appreciative and supportive of the producer-distributor move into exhibition and theater circuits. Indeed, the same investors had provided the majors with the capital resources that they required for theatrical expansion.

We should note that Hollywood's control over distribution was made possible by the MPPDA and the producer-distributor trade associations that directly preceded it, NAMPI (1916–1921), and the Motion Picture Board of Trade (1915–1916). It was these organizations and their various executive and specialized committees that laid the groundwork for the MPPDA's activities after 1921, when NAMPI's producer-distributor members reorganized their association as the MPPDA. On issues such as public relations, censorship, exhibitor relations, business practices, banking, finance, accounting, labor, and foreign trade, the Board of Trade and NAMPI had established an historical precedent that gave the MPPDA direction and context.

Beyond these obvious historical continuities, by tracing Hollywood's producer-distributor trade associations back to the mid-1910s, I aim to demonstrate how the same conditions that account for the collapse of the MPPC (Motion Picture Patents Company) gave birth to the Board of Trade. The MPPC was already facing hard prospects by the time of the District Court's formal order to dissolve its patent pool in October 1915. Founded in September 1916 as the MPPC was awaiting the District Court's decision, the Board of Trade simply took over where the MPPC had left off. The Board offered its members a new institutional venue for organizing producer-distributors in the aftermath of the MPPC's disbandment. By bringing together former MPPC members and independents in a new association, the Board of Trade offered a glimpse of what a Hollywood trade organization might look like if it could be established on a more permanent basis. Turning now to the outline of the different chapters, let us examine the narrative that binds together trade organizations and stages of the Hollywood oligopoly.

Chapter One addresses the impact of two 1915 federal rulings on the development of the film industry: the Supreme Court's February ruling on censorship in *Mutual*; and the District Court's October ruling that ordered the formal dissolution of the MPPC in *U.S. v. Motion Picture Patents Company*. Here, it is important to mention that the latter ruling was as material as it was symbolic. As many other commentators have noted, the MPPC had ceased to function as a patent consortium at least several years earlier as courts had resisted its efforts to enforce those patents. The General Film Company (GFC), which was the MPPC's distribution arm, survived the District Court's ruling, but would never regain its earlier position. The GFC was now severely debilitated by lawsuits boosted by the Court's position on the MPPC. This flood of antitrust litigation

hampered the GFC's ability to capitalize on the production and distribution of feature films, which was necessary if the GFC distributors intended to stay competitive with industry trends in the mid-1910s. Moreover, the censorship ruling was doubly-binding on the GFC, since the Supreme Court's classification of films as "business, pure and simple" in the *Mutual* case meant that films were subject to the laws of interstate commerce, including those of antitrust. What other scholars have treated as two separate events, censorship and antitrust, need to be considered in relation to one another if we are going to understand the effects of the Supreme Court's ruling on the antitrust litigation pending against the MPPC and its distribution arm in the District Court.

As regards the censorship ruling, Chapter 1 also outlines the social history behind censorship and contextualizes the Supreme Court ruling by addressing scholarship that surveys this history. For example, I consider how the nickelodeon boom led to reconsiderations on theater and film regulation. I also examine the spread of censorship from the local levels to that of the state and federal, which helps explain why the Supreme Court's intervention in *Mutual vs. Ohio* was so crucial to the rise of trade organizations. Specifically, the failure of the industry-sponsored National Board of Censorship in preventing the rise of censorship boards gives us insight into the industry's desire for self-regulation and for controlling the public discourse surrounding the debate. As the National Board operated somewhat independently of the producer-distributors, the industry required an organization directly under its own control. Those demands culminated in the Motion Picture Board of Trade.

Chapter Two looks at the founding and operations of the Motion Picture Board of Trade, which existed briefly from September 1915 to June 1916. As noted above, the Board of Trade's founding preceded the MPPC's disbandment by only a few weeks. In bringing together former enemies from the MPPC and the independents, the Board of Trade represented a milestone in industry relations and cooperation. Yet the Board of Trade was plagued by internal divisions and external rivalries that led eventually to its dissolution. The cracks first appeared when a non-member, Paramount, challenged the Board of Trade's authority over the organization's opposition to the Hughes Bill for federal censorship. Given the need to maintain its distribution schedule and block booking operations, Paramount had very good reasons for endorsing its own version of the Hughes Bill. In response, Board of Trade member Metro wavered in its position. The Hughes Bill ultimately failed to leave committee and Paramount pulled its support when Congressman Dudley M. Hughes was unable to ensure that its passing would eliminate state censorship boards. Yet the divisions exposed by the debate over the Hughes Bill continued to grow. These problems were exacerbated a few months later when Metro withdrew from the Board of Trade after the organization refused to cooperate with exhibitors on a joint conference and exhibition in New York City. Ultimately, the Board agreed to coordinate with the exhibitors on the exhibition, and even Paramount reconciled with its peers and reserved space in the Board's exhibition area. But the damage from Metro's resignation was complete. Metro's actions thus killed off the Board of Trade. Nevertheless, producer-distributors had realized that their strength lay in collective action as exercised through trade organizations. This realization led to the creation of NAMPI shortly after the Board of Trade's disbandment in June 1916.

Chapters Three through **Six** examine NAMPI's rise and fall as the most powerful and inclusive trade organization the industry had yet witnessed. NAMPI's charter and membership classes inherited the Board of Trade's scheme for inclusive membership. Yet NAMPI went even further in attempting to bring supply manufacturers and exhibitors into its fold. It succeeded with the former, but enjoyed only short-term associations with the latter. Such outreach to exhibitors was ultimately strategic and meant to secure exhibitor support for issues that benefited the producer-distributors. Thus, NAMPI's olive branch to exhibitors hid its true intentions. At every step, NAMPI employed a divide and conquer strategy that created division amongst the exhibitor ranks. In turn, NAMPI was able to exploit such divisions to neutralize exhibitor grievances on several key distribution practices including arbitration, advance deposits, and block booking. It was also involved in collectivizing the FILM clubs, or FILM Boards of Trade, that represented local exchanges through the United States. These FILM Boards had the power over contracts and arbitration that effectively kept the exhibitors acquiescent in the face of producer-distributor domination over the distribution market. One of the most crucial aspects of the studio system, FILM was centralized under NAMPI's tenure and inherited in its entirety by the MPPDA in 1922. Combined together, these practices helped NAMPI to sustain the industry's barriers to entry for smaller companies. A term that is originally outlined in Chapter 2 with reference to industrial-organization economist Richard Caves, the concept of *barriers to entry* is the key to understanding the function of an oligopolistic market structure, especially as regards the work of trade organizations in sustaining such market barriers in the distribution field. One of the most essential functions of NAMPI was thus to placate exhibitor dissent and fend off

independent challengers. When dissent finally turned to outright rebellion with the establishment of exhibitor booking combines in 1917–1918, NAMPI and the producer-distributors innovated newer ways of forcing exhibitor cooperation, but not before attempting to exploit exhibitor divisions to contain this rebellion. Only when that had failed did the producer-distributor turn to theater expansion.

Faced with the possibility of exhibitor holdouts, vertical integration could now begin in earnest. Thus, in conjunction with NAMPI's activities, the producer-distributors worked to enhance their consolidation over the industry in more direct ways by securing financing for expansion in production, distribution and exhibition. Paramount in particular led the way with its distribution assets, production financing, and its stock and bond offerings for theater expansions. In many ways, Paramount and the other producer-distributors were alarmed by the founding of First National and other combines. Of course, some of this was merely an excuse for greater consolidation. Curiously, as much as First National and Loew's originally opposed the growing power of producer-distributors, by 1920 both had become members of NAMPI and both began to behave in ways that placed them at odds with their former exhibitor allies. Thus, as Loew's and First National were vertically-integrated in the opposite direction, they began to behave like the producer-distributors in NAMPI. Outsiders had become insiders in the NAMPI hierarchy. As the 1920s proved, the same was true of "affiliated" exhibitors who enjoyed links to the producer-distributors that the "independent" exhibitors did not.

While NAMPI's cooperation with the Wilson administration during the war boosted the industry's public profile, the postwar years were not as favorable to its image. Part of

the reason had to do with its president, William A. Brady. Brady had cultivated close ties to various political leaders in the Democratic Party and NAMPI had placed its entire weight behind Democratic candidates in New York. By 1921, when the Harding administration took over on the federal level, and Republicans now controlled the governorship in New York, NAMPI was left with few political allies. In fact, Republican legislators exacted a heavy price for NAMPI's Democratic leanings in the state election. Thus it was no surprise that the industry failed to derail the Lusk-Clayton Bill for the establishment of a censorship board in the all-important state of New York. Yet previous accounts of NAMPI have ignored its success on countering tariffs and taxes during the same period and have focused on its failures. In contrast, the final chapter on NAMPI demonstrates not only its immediate achievements, but also its legacy for the organization that replaced it in March 1922.

Chapters Seven through **Nine** chronicle NAMPI's reorganization as the MPPDA and the latter's first seven years of operation. In turn, the MPPDA inherited NAMPI's entire slate of affairs including anticensorship, self-regulation, exhibitor relations, FILM Boards of Trade, banking and finance, and many other issues. In contrast with NAMPI's free membership provision for the MPELA, the MPPDA made no effort to include exhibitors in its organization. Loew's/Metro was a founding member and First National joined soon afterwards, but the only exhibitor circuits who had representation in the MPPDA were those who were affiliated closely with a major producer-distributor. Moreover, supply and equipment manufacturers were not offered membership, with the exception of Eastman Kodak, which been associated with producer-distributors going back to the MPPC and the General Film Company. Eastman Kodak had also been a

member of NAMPI and its participation in the MPPDA effectively sealed the organization's dominance over the industry.

Upon its founding, the MPPDA faced the immediate problem of dealing with fallout from several scandals involving Hollywood celebrities. The multiple Arbuckle murder trials, the Pickford-Fairbanks marriage controversy in 1920, and the unsolved murder of William D. Taylor on February 1, 1922 had all contributed to the public outrage in the press. Back in December 1921, after exhibitors forced Paramount to withdraw Arbuckle's films from the market, NAMPI's members had already decided to hire former RNC Chairman and current Postmaster General Will Hays as the head of the organization. Since Hays had run Senator Warren Harding's successful presidential campaign in 1920, he had proven himself as a capable public relations manager. Next, in his tenure at the Post Office, he had transformed that defunct organization into an efficient and functional federal office. The fact that Hays had Republic and Presbyterian ties only added to his résumé.

Accordingly, Hays brought credibility to the MPPDA's outreach to civic, religious, and reform groups, which culminated in the founding of the Committee on Public Relations (CPR) in the summer of 1922. The latter represented a new and somewhat temporary phase in industry-civic relations, but did not last beyond a few years. When the CPR's authority was effectively transferred to the Department of Public Relations in March 1925, the MPPDA had now reverted back to the model established under NAMPI's in-house Censorship Committee. The founding of the Studio Relations Committee (SRC) in January 1927 only reinforced the idea that self-regulation was best

orchestrated as an internal affair. No longer would the MPPDA rely exclusively on outside groups to administer such a crucial task.

Hays and the MPPDA also offered invaluable assistance to producer-distributors locked in labor disputes in Hollywood. When Central Labor threatened unionization and walkouts in the summer of 1922, the MPPDA's local office, the Association of Motion Picture Producers (AMPP), worked to prevent the action from going through. Consequently, the AMPP was tasked with handling subsequent labor and contract disputes with workers, technicians, and artistic talent at the studios. By extension, the AMPP also cooperated with local civic organizations to deal with the problem of female extras and migratory labor in the Los Angeles region. One of the AMPP's most important achievements was its role in founding the Academy of Motion Picture Arts and Sciences in May 1927. This exclusive "company union" was organized to blunt labor agitation by Actors' Equity and IATSE. It also provided additional benefits for industry standardization and artistic betterment.

Like NAMPI before it, the MPPDA continued the divide-and-conquer strategy with exhibitors. As the latter had successfully lobbied for bans on advance deposits in New York and other states, the MPPDA responded by enhancing FILM and seeking to impose a Uniform Exhibition Contract that guaranteed exhibitor compliance on security deposits and play dates. Most importantly, the contract also subjected exhibitors to FILM's arbitration process in case of any disagreements between a producer-distributor and exhibitor. The purpose of the Uniform Contract and its accompanying arbitration process was to sustain distribution practices such as block booking and blind selling that

guaranteed a return on investment for the large producer-distributors. This exhibition contract was renegotiated several times during the 1920s, especially at moments when the MPPDA and FILM feared that the government might file charges of antitrust.

These concerns were exacerbated in 1927 with a series of events that demarcated the limits and possibilities for consolidation and expansion. Chapter 9 thus brings us full circle to the themes of censorship and antitrust that we started with in 1915. The same forces that called for federal censorship in 1915–1916 were now demanding that the government breakup the Hollywood oligopoly. Rev. William Sheafe Chase in particular called on the DOJ to file charges on the MPPDA and FILM's arbitration system. The Federal Trade Commission had also carried out individual investigations on Stanley, West Coast Theaters, Eastman Kodak, and Paramount. Often, one case would have an impact on another. For example, when the FTC released its Cease and Desist Order against Paramount in July 1927 it addressed block booking but not theater assets. This was a direct outcome of the Supreme Court's ruling that overturned the FTC's divestment order on Eastman Kodak a few months earlier. When the FTC subsequently attempted a Trade Conference on block booking in October 1927, the event produced only modest concessions from the producer-distributors, who looked to the Paramount case as a model for how to go about in their expansionist plans. Owing to the FTC's actions, the producer-distributors now understood exactly the limits of expansion that the government would tolerate. Long overshadowed by the conversion to sound, the FTC's and DOJ's investigations and rulings against the industry in 1927 and 1928 were decisive in establishing the boundaries and possibilities of vertical and horizontal integration. They were also a reaffirmation of the significant role that the MPPDA had in this history.

¹ Halsey, Stuart & Company, Prospectus, May 27, 1927. The latter is reprinted in “The Motion Picture Industry as a Basis for Bond Financing,” in *The American Film Industry*, ed. Tino Balio (Madison: The University of Wisconsin Press, 1976), 199. This financial report was also printed as a series in *Film Daily* during 1927. For example, the section on trade organizations cited in the quotation comes from “Industry Leader in Trade Organizations,” *Film Daily*, 41 No. 1 (July 1, 1927): 10.

² According to Allen J. Scott, Hollywood’s industrial formation cannot be explained merely by reference to geography or the open shop labor status in Los Angeles. While a derivative of the initial contingencies regarding geography and labor, the film industry’s concentration in Southern California was primarily the result of standard processes of capital and industrial accumulation. For Scott, “industrial districts” like the one that formed in Hollywood in the 1910s are an endemic feature of modern industry. Such industrial zones go through three successive stages, each of which is contingent, but none of which is inevitable. In the first phase, random and/or geographically contingent factors result in the geographical distribution of production units within a given locale. In the second phase, a single location, or a combination of locales, emerges as a model of “nascent agglomeration.” Finally, in the third phase, the agglomerated industry is reinforced by competitive advantages over other industrial locations. It then develops and consolidates its market share as the other locales experience decline. This three-phase model makes it impossible to predict which of the locations outlined in the first phase will emerge as the dominant one of the third phase. The exception is that the dominant one will correspond to the locale that has attained its status through the result of better-managed “increasing-returns effects,” or what are defined as the benefits that accrue to separate firms that are concentrated in a single industrial zone. See Allen J. Scott, *On Hollywood: The Place, The Industry* (Princeton: Princeton UP, 2006), 16–24.

³ George Blaisdell, “Mecca of the Motion Picture,” *Moving Picture World* 25, No. 2 (July 10, 1915): 215–255.

⁴ Aside from the many texts and anthologies already cited throughout this dissertation, some of the more notable contributions on industrial analysis of the 1930s studio system are found in Balio, *Grand Design: Hollywood as a Modern Business Enterprise, 1930–1939* (Berkeley, Los Angeles & London: University of California Press, 1995); Richard Jewell and Vernon Harbin, *The RKO Story* (New York: Arlington House, 1982); Richard Jewell, “A History of RKO Radio Pictures, Incorporated, 1928–1942,” Volumes I & II (Ph.D. Diss., University of Southern California, 1978); and Thomas Schatz, *The Genius of the System: Hollywood Filmmaking in the Studio Era* (New York: Henry Holt & Company, 1988).

⁵ See Bordwell et al., *The Classical Hollywood Cinema* (New York: Columbia UP, 1985).

⁶ Bordwell et al. define the *mode of film practice* as follows: “A mode of film practice is not reducible to an oeuvre (the films of Frank Capra), a genre (the Western), or an economic category (RKO films). It is an altogether different category, cutting across careers, genres, and studios . . . It is this totality that we shall study.” Regardless of the specificities of individual productions, or the developments in institutions, aesthetics and technology, Bordwell et al. posit that the *mode of film practice* is consistent enough to maintain the equilibrium of stylistic choices and options centered on the classical Hollywood style. Ibid., xiii.

⁷ Janet Wasko, *Movies and Money: Financing the American Film Industry* (New Jersey: Ablex Publishing, 1982).

⁸ Gomery’s and Allen’s description of the various aspects of industrial analysis is found in Robert C. Allen and Douglas Gomery, *Film History: Theory and Practice* (New York: Alfred A. Knopf, 1985), 131–152.

⁹ Gomery’s and Allen’s model for industrial analysis is adapted from Frederic Scherer, *Industrial Market Structure and Economic Performance*, 2nd edition (Chicago: Rand McNally, 1980).

¹⁰ Douglas Gomery, *Shared Pleasures: A History of Movie Presentation in the United States* (Madison: University of Wisconsin Press, 1992), 58.

¹¹ Gomery, *The Coming of Sound* (New York & London: Routledge, 2005), 75–76.

¹² See Michael Quinn, “Paramount and Early Feature Distribution,” *Film History* 11, No. 1 (1999): 98–113; and Quinn, “Distribution, the Transient Audience, and the Transition to the Feature Film,” *Cinema Journal* 40, No. 2 (Winter 2001): 35–56.

¹³ Tino Balio, *United Artists: The Company Built by the Stars* (Madison: University of Wisconsin Press, 1976).

¹⁴ Quinn's selective use of the Federal Trade Commission documents also detracts from the strength of his arguments, since he cites only four FTC briefs held at the Margaret Herrick Library and not the vast multi-volume set available in the UCLA Law Library and in other libraries and collections in the United States. By accessing the UCLA collection, I was able to examine the FTC's Paramount case in greater detail. See Quinn, "Paramount and Early Feature Distribution."

¹⁵ Richard Koszarski, *An Evening's Entertainment: The Age of the Silent Feature Picture, 1915–1928* (New York: Scribner, 1990), 80–90.

¹⁶ These bios and studio histories are mostly found amongst the trade press publications and do not necessarily employ academic citation standards. Nevertheless, they do offer relevant observations. For a representative sample, see Michael Freeland, *The Warner Brothers* (London: Harrap, 1983); Susan Fox and Donald G. Rossellini, *William Fox: A Story of Early Hollywood, 1915–1930* (Baltimore: Midnight Marquee Press, 2006); Scott Eyman, *Lion of Hollywood: The Life and Legend of Louis B. Mayer* (New York: Simon & Schuster, 2005); and A. Scott Berg, *Goldwyn: A Biography* (New York: Alfred A. Knopf, 1989).

¹⁷ Ruth A. Inglis, *Freedom of the Movies: A Report on Self-Regulation from The Commission on Freedom of the Press* (Chicago: University of Chicago Press, 1947).

¹⁸ Inglis, 69, 83–87.

¹⁹ *Ibid.*, 89.

²⁰ See Garth S. Jowett, "A Capacity for Evil: The 1915 Supreme Court *Mutual* Decision," in *Controlling Hollywood: Censorship and Regulation in the Studio Era*, ed. Matthew Bernstein (New Brunswick, N.J.: Rutgers UP, 1999), 16–40.

²¹ Leslie M. DeBauche, *Reel Patriotism: The Movies and World War I* (Madison: University of Wisconsin Press, 1997), 104–136.

²² Kristin Thompson, *Exporting Entertainment: America in the World Film Market, 1907–1934* (London: BFI Publishing, 1985), 94–99, 111–124.

²³ Richard Maltby "'To Prevent the Prevalent Type of Book': Censorship and Adaptation in Hollywood, 1924–1934," in *Movie Censorship and American Culture*, ed. Frances G. Couvares (Amherst, M.A.: University of Massachusetts Press, 2006), 102.

²⁴ Ruth Vasey, *The World According To Hollywood, 1918–1939* (Madison: University of Wisconsin Press, 1997).

²⁵ Raymond Moley, *The Hays Office* (New York: Bobbs-Merrill Company, 1945), 65.

CHAPTER ONE:

**PRELUDE TO ASSOCIATION: CENSORSHIP, ANTITRUST, AND THE
INDUSTRY’S PUBLIC RELATIONS CAMPAIGN IN 1915**

As two forms of regulatory policy, censorship and antitrust were long-standing challenges that had confronted motion pictures ever since the nickelodeon boom.¹ Yet most histories of the nickelodeon era (1905–1915) treat censorship and antitrust as two separate and unrelated forms of litigation affecting the American film industry.² In contrast, I argue that censorship and antitrust were related in significant ways and that this interconnection helped lay the grounds for the September 1915 founding of the first producer-distributor trade organization, the Motion Picture Board of Trade (see Chapter 2). It is the purpose of this preliminary chapter to outline the specific nature of the nexus between censorship and antitrust in a way that contextualizes the imminent need for trade organizations. As the rise of a new producer-distributor trade organization was contingent on the decline of the Motion Picture Patents Company (MPPC), the challenges and opportunities embodied in censorship and antitrust culminated in 1915 to forge a nascent form of organization in the American film industry, one that replaced an exclusive patent pool with a more inclusive trade organization.

Caught at the intersection of antitrust and censorship, the MPPC and its distribution arm, the General Film Company (GFC), were forced to lobby against censorship and to establish relationships with other anti-censorship factions, including the New York-based Association of Motion Picture Exhibitors (AMPE), the Motion Picture Exhibitors’ League of America (MPELA), and the National Board of Censorship. As we

will see, the MPPC's forced disbandment in the District Court's ruling in *U.S. v. MPPC* (October 1915) was presaged by the Supreme Court's ruling in *Mutual v. Ohio* (February 1915). Although not directed at the MPPC and GFC members, *Mutual v. Ohio* solidified a legal precedent that defined films as products of commerce and, thus, subject to the laws of interstate commerce under the Sherman Antitrust Act. That legal precedent would have a direct impact on the District Court's decision, when the MPPC's counsel failed in its bid to convince the court that films were not commerce but art. Combined with the MPPC's inability to adapt to feature distribution and its internal rivalries and fissures, the antitrust litigation costs facilitated by the District Court's ruling led to the MPPC's collapse as a force in the American film industry. Simultaneously, the MPPC's functions were replaced by a trade organization that attempted to bring together the remaining MPPC/GFC members and the independents so as better to collectivize their interests.

Before we examine the MPPC's central role in both censorship and antitrust, however, we need to understand how film censorship had become such an immediate threat to the survival of the film industry, one that endangered the Edison Trust and independents like Mutual. Here we must overview the competing rhetoric over the status of cinema, which figured it as either a mature dramatic art or as a mere spectacle and entertainment. This was a debate that informed the *Mutual v. Ohio* decision and coincided with the transitional era (1909–1915), when one- and two-reel films shown in nickelodeons increasingly gave way to four- and five-reel features and the larger theaters exhibiting them. In the process of examining the cinema's cultural and social status, we will also need to unravel theoretical and historical notions of “the public,” since each group in this conflict over censorship purported to speak for the interests of that public

and for an audience that was discursively constructed as either “expert” or “vulnerable” depending on the ideological motivations behind the claim. These assertions about the audience followed a process that classified the audience as a public, and then claimed to speak for that public, or that implemented the proper forms of regulation for a public that, in the form of children, women, and immigrants, was thought to be unqualified in making its own decisions. Our inquiry here will have to examine the status of that public and what possibilities there were for that public to align with the *public sphere* that was dominated not by the audience or by the public itself, but rather by an array of social elites, Progressive reformers, government interests, industry representatives, and commentators in the press. Once we have explored the nature of this public sphere, we will then be able to understand why collectivized action became such a crucial instrument for producer-distributors who realized the need to cultivate positive public opinion and to affect the debates on censorship taking place in the public sphere at large. Such an approach will demonstrate how cultural and social histories of the public sphere in the nickelodeon era are interconnected with the discourse on film censorship and with the institutional history that accounts for the rise of trade organizations.

The first court cases dealing with film censorship date to 1897, a few years after the introduction of the Kinetoscope peepshow machines and only one year after the introduction of Vitascope projectors, but these cases were few and far in between.³ During the cinema’s first years in the U.S., city ordinances requiring permits for vaudeville houses, theaters, and the circus were in effect and applicable to cinema parlors and the earliest nickelodeons, but they were more of a nuisance than an obstacle to film exhibitors.⁴ Apparently, reformers were not avidly concerned with the moving image in

the first decade of its existence from 1894 to 1904, considering it little more than harmless entertainment or a scientific novelty.⁵ Setting aside the reasons behind the nickelodeon boom of 1905–1908, which have been ascribed to everything from increased leisure spending in urban areas and entrepreneurial opportunism to frequent program changes and an evolving exchange system for film distribution, the era witnessed a change in perceptions regarding the cinema's status in American society.⁶ The nickelodeon boom effectively brought the cinema to thousands of more patrons than the earliest peepshows and cinema parlors. But as admission and seating were not scaled based on class as in other forms of dramatic entertainment such as the theater and vaudeville, social reformers and others who feared the cinema's affect on American society felt a greater need to regulate its exhibition.⁷ The reformers were apprehensive about the way in which the nickelodeon audience collapsed and blurred class distinctions. They were growing increasingly alarmed at the cinema's potential as a mass medium outside the regulatory and social constraints that had governed Victorian entertainment.

There was, certainly, a reason behind their concerns as those older regulatory constraints hardly served the ambitions of film producers and nickelodeon operators. To remedy these problems, film manufacturers and exhibitors aimed to differentiate cinema from older forms of entertainment. It was felt that the older licensing systems, such as the ones in place for theaters in New York since 1839, were inadequately suited to the task of cinema regulation.⁸ As early as the rise of vaudeville and concert saloons in the 1870s and '80s, theater owners had attempted to blur the line between concert hall and theater, which created a problem for licensing authorities.⁹ The main issue was that concert hall licenses allowed for liquor sales while theater licenses did not. Theater owners, looking

to maximize profits, preferred to appeal to as broad a demographic as possible. Yet for those theater owners who aspired to middle-class respectability, or for those civic reformers who demanded clearer demarcations between adult and family entertainment, the licensing ambiguities were highly problematic. This hindrance was particularly acute for vaudeville owners who desired to show films and for nickelodeon owners who wanted to convert their theaters to include vaudeville in order to gain middle-class credibility. Consider that in New York City, which housed the largest film market in the U.S., there were generally two kinds of licenses: combining cinema with vaudeville required a hefty \$500 theater license issued by the police department, while exhibiting films only required a \$25 common-show license issued by the mayor's office. After 1907, when the New York Supreme Court granted movie shows an injunction against Sunday blue laws because they did not involve traditional aspects of stage entertainment, vaudeville operators scrambled to retool their programs in favor of film exhibition.¹⁰ Meanwhile, NYC building codes required that any theater with three hundred or more seats had to comply by stringent safety regulations on fire exits, stage size, and lighting.¹¹ Given the financial incentives, most movie houses operated under common-show licenses and kept their capacity below three hundred, at least, until two events changed the exhibiting landscape in New York: the 1912 Motion Picture Ordinance, which increased the common-show license to \$500, and was instituted in order to weed out poorer nickelodeons; and the 1913 law that doubled theater capacity to six hundred and facilitated the larger and more refined movie theaters.¹² By this point, larger movie palaces had been established in most of the major Midwestern and East Coast markets. Thus, nickelodeons, which continued to operate into the mid- and late-1910s, were facing

many more challenges in the transition to feature programs and their attendant requirements for larger and more affluent audiences.¹³

If the costs of entry were so low for nickelodeon exhibitors during the nickelodeon boom, conversely, there was a high rate of turnover for nickelodeon theaters. According to Ben Singer's analysis of *Trow's Business Directory of Greater New York* yearly theater listings, 52 of the 117 listed Manhattan nickelodeons survived from 1908 to 1909, while 93% of the total remaining theaters subsequently went out of business.¹⁴ Although Singer acknowledges that the *Trow's* listings do not account for all the theaters in existence in Manhattan at the time, the differential in numbers itself is rather astonishing.¹⁵ The numbers suggest not only that theaters were going out of business at a staggering rate, but that new theaters under new ownership were established on a monthly basis. For those who were concerned about the middle-class credibility of the cinema, the volatility in nickelodeon ownership contributed to the theater operators' carpetbagger or transient persona. If exhibitors were in business simply to get rich and get out before it was no longer profitable or no longer feasible due to the censorship backlash, they did not have to account for the long-lasting effects of their actions, or so it was assumed.

Considering the exhibition conditions of the nickelodeon era, it is not surprising that film historians have often characterized early cinema as a working-class medium desperately seeking middle-class credibility.¹⁶ In contrast, as both Robert C. Allen and Russell Merritt have argued in their separate works on vaudeville and cinema, the association between vaudeville and film along the lines of middle-class entertainment was there from the beginning and the attempt to gain middle-class credibility was more complicated than previous historians have suggested.¹⁷ Scholars like Singer, in turn, have

criticized this revisionism for overplaying the link between middle-class audiences and early cinema, pointing instead to the very significant alignment of nickelodeons with ethnic and working-class neighborhoods in Manhattan.¹⁸ These potential oversights as outlined in Singer's critique, notwithstanding, Allen's and Merritt's analyses are still worth considering. For both Allen and Merritt, middle-class audiences were already part of cinema and did not suddenly arrive on the scene in the 1910s or later, when larger and more upscale theaters slowly began to replace nickelodeons. Allen, for example, demonstrates how this process occurred as some exhibitors sought to transform their nickelodeons into legitimate theaters offering a combination of film and theatrical entertainment. In the process, these exhibitors charged higher prices in order to attract an upscale clientele willing to pay the premium prices for the more exclusive and refined atmosphere.¹⁹ Like Allen, Merritt argues that middle-class audiences were already part of the movie-going audience and were also enticed through the conversion of nickelodeons into vaudeville theaters. Specifically, Merritt locates the middle-class audience in nickelodeons situated in the business districts and accessible to white-collar workers and their families.²⁰ Looking at case studies as early as Boston in 1903, Merritt demonstrates how nickelodeon theaters were strung together in three strategic areas of the shopping district in downtown Boston.²¹ These nickelodeons were targeted to upscale audiences who either worked or shopped in these areas, demonstrating that even though nickelodeons were considered working-class entertainment, they were not always intended for the working class.²²

As these examples from Allen and Merritt suggest, the nickelodeon boom encouraged a restructuring in the way that city officials granted theater licenses for film

exhibition. Vaudeville and cinema had to be distinguished from saloons and burlesque shows that might cross the lines of family and adult entertainment and they were granted licenses in districts that were off limits to the latter type of establishment. Thus, the nickelodeon boom convinced both the film industry and the civic reformers that the status quo in theater regulation was no longer appropriate or beneficial to their respective interests.²³ Both groups now sought to promote a relationship between cinema and upscale entertainment. The problem that remained was the issue of regulation vs. self-regulation and the authority to speak for the public's interests and well-being, especially when it came to the youth audience.

In order to oversee and regulate the cinema, the reformers were determined to study its audience. Yet their definition of the audience itself was ideologically motivated and discursively constructed to reflect the emerging notions of "child" and "childhood" as a demographic that, on the one hand, required protection from social ills, and, on the other, had to be socialized into a citizenry of productive adults.²⁴ Despite the fact that the nickelodeon audience was only partly comprised of adolescents and juveniles, social reformers focused on these groups because they felt that younger viewers were susceptible to the cinema's unique effects, mainly, its ability to arouse emotions and to glamorize illicit behavior.²⁵ For Lee Grieveson, the regulation and policy surrounding early nickelodeons followed a "Foucauldian" process of studying the film audience and producing knowledge about this demographic.²⁶ Grieveson cites a report on cinema's effects on children commissioned by the City Club of Chicago in April 1907, which suggested that theaters were harmful to children for several reasons: they facilitated an immoral environment; they portrayed immoral content or stories; and they had a hypnotic

effect on children that encouraged them to undertake criminal acts.²⁷ These allegations were to become commonplace, and with some modification they would be repeated many times over in the literature on the cinema's social and psychological effects, most famously in the Payne Fund Studies of the 1930s.²⁸ However, at this earlier point, the reformers' concerns with cinema were part of a larger debate regarding the status of what they believed to be an emerging and ungovernable urban and immigrant lower class.

According to Miriam Hansen, it was the early cinema's alignment with female, urban, working-class, and immigrant masses that demarcated it as an "alternative public sphere," where the unpredictable behavior of early audiences threatened social order and hierarchy.²⁹ Hansen argues that film going performed two divergent functions: it addressed the crisis surrounding traditional forms of sociality and ethnic identity, both of these now having encountered displacement and dissolution as immigrants settled in urban America; and it also reinforced forms of subjectivity and inter-subjectivity demanded by modernity and by consumer culture.³⁰ Crucially, for Hansen, there is a distinction between the pre-narrative cinema's address to a social group and the narrative cinema's address to an individual "spectator" as a private consumer.³¹ In this model, the rise of modern film spectatorship in the transitional era, which brought about the invention of the "spectator" as a function of the text (as distinguished from the "social viewer"), corresponded to the suppression of these alternative reception possibilities in early cinema. Yet that process was never complete: alternative and autonomous reception possibilities remained open.

Hansen's analysis parallels cultural histories of Progressive America that are premised on a sociological opposition between the traditional and the modern.³² In

contrast, we should note that this is only one possible description for the “audience” that then, as now, is as much a product of discursive construction as material or historical reality. Hansen herself has acknowledged this much in her concept of the “public dimension” of spectatorship, which is to be differentiated from the materialist attributes that film historians use to devise the reception context. For Hansen, the public dimension is separate from the “structural conditions” of exhibition, including activities such as star discourses, advertising, and fan culture, and corresponds to the notions of the public sphere and alternative public sphere that Hansen derives from Jürgen Habermas and his critics, Oskar Negt and Alexander Kluge.³³ On the one hand, the tension between the “public dimension” and the “structural conditions” of reception is meant to reintroduce critical theory back into the equation of historical audiences, since the “public dimension” is contingent on the discursive possibilities associated with cultural attributes of subjectivity. On the other hand, the tension and polarization also opens up a terrain of indeterminacy and “autonomy.”³⁴ For my purposes, Hansen’s approach has the advantage of acknowledging the discursive level at which audiences are figured both historically and theoretically. It also has the benefits of positing the public sphere as a contested arena. Significantly, Hansen’s emphasis on the alternative public sphere inherent in the female fascination with Rudolph Valentino poses such subaltern spheres in opposition to the star system’s “industrial-commercial public sphere.”³⁵ Her ideas also dovetail effectively with Walter Lippmann, who noted that the public was merely a “phantom” construction.³⁶ For Lippmann, the notion of the public was useful as a discursive category to which governments and institutions could refer while advancing their own interests.

When Hansen's and Lippmann's ideas on the public sphere are applied to early audiences, they help us contextualize the extensive promotional and advertising material that film manufacturers and distributors marshaled in the mid-1910s in order to affect the consumption and reception of their films. For example, the 1910s were the era in which film manufacturers established fan magazines, contests, consumer activities, tourism, and hundreds of promotions to affect the reception of their films.³⁷ By 1916, the larger producer-distributors like Paramount, which relied on percentage-based rental fees, even entered into the business of building massive in-house advertising divisions that catered to the needs of local film advertising and promotion for exhibitors who booked their films.³⁸ Meanwhile, also in 1916, the advertisers employed by these companies themselves established the Associated Motion Picture Advertisers, which aimed to standardize and enhance the art of film advertising across the industry and to eliminate waste and dishonest advertising.³⁹ In such ways, the industry had established what Hansen has called a "commercial-industrial" public sphere. By extension, however, the industry had invested itself in discursive rhetoric on the status of its audience.

Returning to Grieveson's emphasis on discursive formations of the audience, we might note that, for the reformers, urban youth, women, and immigrants were particularly susceptible to the cinema's adverse potential and that their assembly into dark theaters represented a microcosm of vices occurring outside in society at large. At the same time, the reformers hoped that the cinema would become an instrument for proper socialization, one that could help produce a modern citizenry. The fact that the City Club of Chicago relied on reports from the Chicago Juvenile Courts in order to establish the relationship between theaters and juvenile crime links the emerging discourse on cinema

and censorship to the issues of lower-class, juvenile, and urban delinquency.⁴⁰ That intervention then brought about institutions that reinforced the need for more intervention, in the way that “discourses make possible institutions which, in turn, sustain those discourses.”⁴¹ Once set in motion in a given social climate, the forces of censorship took on a life of their own, sometimes even apart from the civic organizations that sponsored them. Indeed, following the City Club’s study, the Chicago Juvenile Courts undertook its own studies of the cinema’s affects on youth and juvenile crime in 1907, 1909, and 1911. In each case, the study found that the cinema had illicit effects and emphasized the cinema’s “hypnotic” potential, as reminiscent of psychological theories proposed by Gustav LeBron’s *Psychology of the Crowd* and Edward A. Ross’s *Social Control*, which posited that the degree of an individual’s psychological susceptibility was determined by age, ethnicity, race, and gender.⁴² The notion of a scale of psychological vulnerability as premised on ethnic, gendered and age-based criteria will return below in Justice McKenna’s *Mutual vs. Ohio* ruling, and we should keep it in mind when considering subsequent cases of censorship in the cinema. We should also note that the fear of mobs and crowds, which underlines Lebron’s and Ross’s work, became an important site of intervention regarding the status of working-class and inner-city culture as centered on theater regulation.

In the wake of studies commissioned and undertaken in America’s largest urban areas, nickelodeon theaters faced greater restrictions. As larger establishments than cinema parlors, nickelodeons offered new opportunities for regulation, since they packed more people into dark and dingy theater-style rooms of dozens of patrons, thus, raising health and safety concerns. As one 1908 report titled *Cheap Amusement Shows in*

Manhattan described, “Often the sanitary conditions of the showrooms are bad; bad air, floors uncleaned, no provision of spittoons, and the people crowded closely together all make contagion likely.”⁴³ Making matters worse was the belief that the darkness of the theater cloaked inappropriate behavior in the audience between men and women, between adults and minors, and amongst children themselves. To keep the authorities from closing his or her business on health or safety grounds, a nickelodeon manager had to schedule annual fire inspections, abide by all bylaws and regulations regarding seating conditions, heed police bans placed on individual films, and avoid offending religious authorities with regard to Sunday blue laws that prohibited certain kinds of entertainment on the Christian Sabbath. Chicago’s establishment of the police censorship bureau in late 1907 was one of the first manifestations of this trend in the nickelodeon era and followed on the heels of the studies undertaken by the City Club and the Juvenile Courts. Meanwhile, in New York, where the Supreme Court had recently reaffirmed New York’s Sunday blue laws only to have New York’s aldermen undermine its ruling through legislative reform a short time later, Mayor George McClellan revoked all 550 movie licenses on Christmas Eve of 1908.⁴⁴ McClellan wanted to force every theater to reapply for licensing, but his decree was challenged by the Association of Motion Picture Exhibitors and its representative William Fox, a nickelodeon owner who won an injunction against the law only four days after it had been instituted.⁴⁵ While New York exhibitors allied under the AMPE supported Fox in his bid against Sunday blue laws, they were particularly afraid for their future in light of all that had taken place in the month of December 1908. These unsettling events encouraged the newly formed AMPE, a local trade organization that

represented 110 of New York's theater owners, to work with The People's Institute and the MPPC in establishing The National Board of Censorship in the spring of 1909.⁴⁶

As we might gather from these developments, censorship during the nickelodeon era was mostly a local affair with state and national implications. With nickelodeons cropping up across the United States in record numbers after 1905, there was a proportional need to regulate these establishments and to enact broader censorship programs encompassing entire cities, districts, and states. It was not enough that police and fire departments had the authority to order the closing of theaters based on safety concerns or issues of public morality and health, or that city hall could deny building permits to exhibitors looking to establish or expand their operations. Social reformers, represented by women's organizations, children's rights organizations, betterment societies, politicians, and religious groups, demanded further actions against film exhibition. These groups originated from different strata of society, and had varying objectives, but their platform on the whole subscribed to the tenets of Progressivism. Their concerns generally revolved around the belief that urban modernity had created anxieties about social and sexual vices that required regulation, civic engagement, and bureaucracy in order to alleviate.⁴⁷

Progressive organizations of the early 1900s confronted what they perceived as a decay of morals and family brought about by the rapid urbanization of the United States during the 1880s and '90s. Although not opposed to industry and capitalism, they believed that the forces of modernity had to be regulated and curtailed so that they would not disrupt the traditional social fabric as based around the family. Thus, in the area of industry, Progressives enacted worker rights to regulate wages, hours, and working

conditions.⁴⁸ Likewise, in the area of society, Progressives aimed at improving the living conditions of women and children, whom they believed had to be protected from the harmful effects of mass culture afforded to them by the greater emphasis on leisure activity and mass consumption. Progressives differed from older groups such as evangelicals or feminists of the Victorian era in that they were not necessarily opposed to the ruling elite, but drew members from their ranks.⁴⁹ Among Progressives from the era we find many civic, political, and business leaders who took it upon themselves to voice the “public’s” concerns. It is for this reason that Progressive ideology can be described as a belief in deploying bureaucratic organizations in the service of civic and public betterment. By the same token, however, Progressivism also engendered a corporate-state alliance that sought to protect the gains of capitalism after the boom and bust of the 1880s and 1890s, when, in the wake of massive overbuilding and borrowing in the railway industry, the U.S. had faced its greatest financial crisis since the Civil War. This corporate-state alliance is what some historians have called “high” Progressivism to distinguish it from the “low” Progressivism associated with inner-city reformers and women’s rights organizations, who viewed the gains of capitalism and mass culture with a level of suspicion as they created opportunities for social decay.⁵⁰ Accordingly, Progressives, like all other movements, had conflicting objectives. Most of these revolved around women’s roles in society as well as the benefits or detriments associated with mass media and popular entertainment. Although they did not always agree on the function of cinema, they generally agreed that the cinema could be censored and reformed in order to restore family values to mass culture and mass entertainment. Unlike other urban amusements and entertainment, films could easily be censored or reformed

before they were exhibited.⁵¹ Thus, Progressives believed that films could be an important tool for the betterment of society.

It was in this social climate that the industry began to confront broader permit laws and city ordinances for film exhibition, such as the city ordinances in Chicago and New York from 1907 and 1908, respectively. The manufacturers' response was to usurp the Progressives' agenda, and to claim that films had the potential to function as instruments for education and the public good. This strategy was based on a multi-pronged approach aimed at discrediting and silencing the voices behind censorship. As early as 1909, film manufacturers began to advertise the cinema's didactic possibilities by producing educational films and by recruiting religious figures, women's advocates, and children's advocates who would support and lobby for the cinema's potential uplifting role in American society. The MPPC's alliance with The People's Institute and the National Board of Censorship was one such development. Likewise, the threat of local censorship boards was met by a public relations campaign coordinated with the National Board of Censorship that focused on undermining the censors' authority and by producing cinema "experts," including psychologists and sociologists, who would challenge the lay authority of censor boards. As I discuss in a section below, the National Board of Censorship, which committed the industry to a voluntary censorship agreement with an independent civic organization, would serve the industry by substituting for local censorship boards. In order to counter the reformers, then, the manufacturers and industry personnel were involved in the production of a similar kind of knowledge to that which underwrote censorship in the first place. By the time of the *Mutual vs. Ohio* case in 1915, we find that all three tactics (i.e., advocates, experts, and educational films) have been

developed through the auspices of the MPPC itself, even though the latter organization did not always reveal its hand.

Consider the example of Mary Gray Peck of Minneapolis, who addressed the Minnesota Federation of Women's Clubs at the time of the Supreme Court's ruling in February 1915. Peck offered herself as a mouthpiece for the film manufacturers as she listed talking points devised by the industry's anti-censorship propagandists:

Censorship of motion pictures is a mistaken fool idea. Censorship in Europe has ruined everything it touched If a group of men were paid salaries to do censoring it would soon become a political position accompanied by the usual graft and if one man were appointed, for instance, such as Anthony Comstock, the censorship would be ridiculous Moving pictures are not the destroyer of drama. They are the savior. They teach people to appreciate good plays and to want to see them. They are the poor man's theater, library, and school. The best books are made into moving pictures and in a district where there are moving picture houses there is an increase of from 30 to 60 percent in the circulation of the library.⁵²

Peck's emphasis on the educational attributes of motion pictures was further reinforced by the production and distribution of educational films, which the manufacturers saw as crucial in their public relations campaign against censorship. However, there was a problem for manufacturers that hinged on their ability to convince exhibitors of the financial and social advantages accrued by exhibiting educational films. Although many films were available and were screened in churches and schools, the manufacturers needed to publicize the listing of educational films so as to make them more readily available for both public and commercial screenings. In this task they were assisted by the trade papers and by religious and public service authorities who sponsored educational film screenings in churches, community centers, and the YMCA. Rev. W.H.

Jackson's weekly section for *Moving Picture World* during 1915, titled "Motion Picture Educator," was one such example of the assistance that religious figures offered the industry. The section contained articles of interest for those exhibitors looking to program educational and religious subjects. For example, two articles from the January 2, 1915 edition, "Catholics to Use Educational Pictures," which concerned the founding of the Theograph Film Company for the purpose of manufacturing religious subjects, and "The Clergyman as an Exhibitor," where Reverend H.E. Robbins explained why clergymen make for good exhibitors, stressed the importance of motion pictures to religious enlightenment and entertainment.⁵³ Likewise, Rev. E. Boudinot Stockton's "Catalogue of Educational Releases for 1914," published in *Moving Picture World*'s February 6, 1915 and February 13 editions, listed all the education films distributed in the United States from October 1, 1913 to September 30, 1914. It included a subject and cross-referenced index and categorized hundreds of films under the following section headings: "Philosophy," "Religion," "Sociology," "Science," "Applied Science / Industrial Arts," "Fine Arts," "Literature," and "History."⁵⁴ Betraying a conflict of interest, Stockton's preface expressed great appreciation to manufacturers and distributors for their efforts in helping him compile the list. Among the companies mentioned here were several members of the MPPC: Edison, Vitagraph, Essanay, Kalem, and the former member American Pathé. Although their films were not dominant on the list by any measure, the MPPC's efforts in assisting to create the list and arranging for its publication can be attributed to an overall desire to uplift the image of motion pictures. Such collective activities on the part of manufacturers associated with MPPC were essential in organizing an effective public relations campaign against censorship.

Significantly, the drive to regulate film content and exhibition occurred at the same time that Edison and Biograph were trying to monopolize the industry using patents on cameras and projectors. Thus it is important to understand how the two developments were related. Indeed, both censorship and antitrust directed against the film industry had gained significant momentum in the years before 1915 and their relationship was more than incidental. In many ways, the Motion Picture Patents Company (MPPC) and its predecessor, the Association of Edison Licensees (AEL), had acted as proto-trade organizations for producer-distributors looking to create an oligopoly that kept independents out of the burgeoning American film industry. However, these patent pools also functioned to standardize film production and distribution and to offer protection against local and state censorship. In the case of the MPPC, it had two avenues to exercise the collective will of its members: through its own offices and through the offices of its distribution arm, the General Film Company (GFC).

Accordingly, evidence of the GFC's concern with the public's impression of its films is found in its own corporate files and the "Minutes of the Manufacturers' Meetings." These sources reveal that the members did not enjoy the most cordial relationship with exhibitors, despite trying to appease the latter at exhibitor conventions and through the various exhibitor monthlies.⁵⁵ As early as 1910, there was disagreement over which party was responsible for advertising the films, as exhibitors were often reluctant to pay for the promotion of individual films.⁵⁶ There was also concern that exhibitors were unreliable partners in advertising: they lacked the GFC's sensibilities when it came to social acceptability and the cinema. Exhibitors, according to the GFC's minutes, had a tendency to sensationalize the product for their own immediate needs. For

example, the exhibitors advertised titillating material on movie posters that was not contained in the films shown in their theaters or produced by the GFC members.⁵⁷ Given the constant threat of censorship, it was imperative that the film industry not undermine any social standing and credibility that it had left. Although they believed that exhibitors had to be responsible for placing advertisements in local newspapers, the GFC members argued that the actual press releases and promotional materials would henceforth come from the producers themselves. Thus, the GFC agreed to develop its involvement in advertising and promotion. It was with this intention in mind that the GFC devised its own fan magazine in 1911, the *Motion Picture Story Magazine*, and founded a publishing company for \$100,000. The magazine was distributed at fifteen cents a copy.⁵⁸ Each month the *Motion Picture Story* was scheduled to feature a different member company on the cover page. Even at an early stage, the GFC realized the importance of affecting the site of reception directly rather than relying on exhibitors who may not share its specific concerns.

Since the MPPC did not consider exhibitors as a reliable or sufficient partner in the fight against censorship, the Edison Trust had also sought out a relationship with the newly formed National Board of Censorship, which had been created in March 1909 by the People's Institute and its executive secretary, John Collier. The board was comprised of clergymen, doctors, university presidents, businessmen, lawyers, advocates for women and children, and institutions such as the New York School Board, the Society for the Prevention of Crime and the YMCA. The members served limited terms and presided over censorship decisions, but most of the real viewing was undertaken by a staff of over one hundred female volunteers drawn from the institutional members of the board.⁵⁹

They viewed films every week and offered censorship recommendations on issues such as crime, sexual suggestiveness, drug use, and prostitution. Their underlying approach to cinema, however, was consistent with the psychological studies commissioned by the City Club of Chicago in 1907: “Every person in an audience has paid admission and for that reason gives his attention willingly Therefore he gives it his confidence and opens the window of his mind. And what the movie says sinks in.”⁶⁰ This understanding of cinema dovetailed with the theories of psychological susceptibility that I noted above as underwriting the Supreme Court’s *Mutual v. Ohio* ruling in 1915 and shows that the Board differed from other reformers in its means of organizing film censorship and not the ends. In line with its Progressive objectives, therefore, the Board of Censorship represented a compromise between several conflicting interests, with the industry on one side and the reformers on the other. Its expansion from a local board to a national authority on standards was also a product of compromise between different factions in the film industry itself, mainly, those exhibitors belonging to the AMPE and the manufacturers that comprised the MPPC.

We should note here that aside from the MPPC, which was restricted to manufacturers and did not include theater owners (who were limited to exhibition licenses), dedicated trade organizations had existed for several years in the film industry. While the above-mentioned AMPE was an organization confined to the New York area, the most prominent trade organization, the Motion Picture Exhibitor’s League of America (MPELA), was national in its membership. Holding its first convention in 1911, the MPELA represented a platform for exhibitors in bringing together separate branches of exhibitor leagues from across the U.S. It was a hierarchical organization, with local and

municipal leagues represented at the state level and the state level represented at the national. Not all of these organizations participated in MPELA activities, but many were members or were in the process of joining the league. The MPELA's popularity is evidenced by the fact that its membership continued to grow throughout the 1910s, even at a time when competing exhibitor leagues like the American Exhibitors' Association (AEA) attempted to draw its members away. There was also the challenge from the producer-distributors themselves. The latter aimed to siphon off the MPELA's membership by aligning with alternative trade organizations that promised closer cooperation between manufacturers and exhibitors. These alternatives emerged because the MPELA, while allowing membership for exhibitors allied with the MPPC or with the independents, prohibited all manufacturers and distributors. This formal exclusion resulted in many conflicts between the two groups throughout the 1910s as the subsequent chapters will demonstrate. Occasionally, the two groups came together on the issue of censorship.

Despite this conflicted relationship, the MPPC could learn to tolerate the exhibitors' role in establishing the National Board of Censorship. The MPPC also accepted the exhibitors' continued funding assistance for the National Board through the offices of the AMPE and, later, the MPELA. Whatever the differences between the MPPC and the AMPE at this point, the MPPC members believed that the National Board of Censorship could keep exhibitors in line. It is for this reason that the MPPC agreed to fund an organization with such extensive ties to the AMPE. In addition, the National Board, like the MPPC, envisioned itself as a guardian of American interests in keeping foreign films and their "vulgarity" out of the American marketplace.⁶¹ That nationalistic

function was possible because the Board was located in the geographic heartland of the early American film industry. Providing an important strategic incentive for the MPPC, the Board was based in the most important state for film production and exhibition, New York, and continued to play a role in industry self-regulation even after New York instituted a state censorship board in 1921. As Chapter 6 demonstrates, New York's establishment of a censorship commission effectively eliminated the need for the National Board (known as the National Board of Review after 1915) and undermined NAMPI's lobbying efforts.

Collier, for his part, was an advocate for the cinema's potential as an uplifting institution in American society and had authored a published study on the social conditions of film exhibition in America.⁶² As with many other Progressive reformers from the era, Collier believed that cinema could be a force for positive change instead of a sensationalist instrument for vice and crime, as many critics of the cinema had asserted. He also subscribed to a definition of "uplift" that went beyond morality and touched on spiritual and imaginative dimensions that involved the regeneration and redemption of social existence.⁶³ Initially, under Collier's original plan, the National Board would review films in theaters and exhibitors would be responsible to enforce the Board's decisions. A film without a certificate of approval from the National Board, therefore, would be rejected by the majority of exhibitors. In New York, for example, the AMPE advised its numerous members to accede to the advice of the Board and not to exhibit films that lacked a certificate.⁶⁴ Irregardless of these plans, the National Board quickly changed its policies and began to review films at the source and not the destination. Instead of regulating movie screens with its certificate, the National Board invited

manufacturers to consult with the Board and to provide film prints for screening and certificate approval. The MPPC saw this as an opportunity to rid itself and its members of costly local and state censorship, and agreed to preview its films for the National Board, which would then make recommendations for cuts and alterations before the films were distributed to the public. In addition, the Board published a weekly pamphlet regarding its actions on specific films and municipalities. In turn, civic groups who looked to the National Board for guidance on film censorship subscribed to this bulletin.⁶⁵ The MPPC far preferred this method of censorship to local and state efforts, which would necessitate separate cuts for each territory.

In spite of the good auspices of the film industry and some in the Progressive reformer camp such as Collier himself, the Board had only limited success. First of all, none of its decisions were binding on theaters that wanted to show films in New York or elsewhere. To make matters even more confusing, in 1914 the National Board's chairman, Frederic C. Howe, reassured owners of the upscale one-dollar theaters that its recommendations were intended for the five- and ten-cent nickelodeons, thus, compromising its own effectiveness as a national censorship organization.⁶⁶ Officially, on its own record books, the National Board listed that it had reviewed nearly 600 films during a single month in the 1914–1915 theatrical season.⁶⁷ If true, this is indeed a staggering number, when the Board would have had to review thousands of both single-reel and multiple-reel films per year. But when one considers that special releases, such as those offered on the “state rights” or road show basis, were outside the jurisdiction of the Board, the prevalence of the National Board seems diminished as the 1910s unfold.⁶⁸ Since the state rights method and variations thereof were the preferred means for

distributing features of four reels or more, the ascendancy of the feature after 1914 could only undermine the National Board's role as a censorship liaison between manufacturers and exhibitors. The National Board also faced many challenges and controversies regarding decisions on certain kinds of films. For example, as outlined in Kevin Brownlow's and Shelley Stamp's respective analyses of the National Board, vice films proved to be especially difficult topics, insofar as the press and the authorities were concerned. National Board's need to balance censorship complaints with industry interests, while keeping in place its objectivity as a public service institution, created much friction with societal forces and institutions that argued for direct censorship.⁶⁹ These forces included civic organizations such as women's societies and betterment societies dedicated to the tenets of Progressive reformers. Paradoxically, as a result of becoming so closely associated with censorship in the film industry, the reformers became convinced that the National Board was not an independent institution, was beholden to the powerful film manufacturers, and needed to be replaced with federal- or state-legislated censorship.

The proponents of this view gained their major representative in the Smith-Hughes Bill, first proposed in 1914 and later known simply as the Hughes Bill. Written by Rev. William Sheafe Chase of the Episcopal Church in Brooklyn, sponsored by Rev. Wilbur F. Crafts of the International Reform Bureau, and introduced by Congressman Hughes (Democrat–Georgia) to the House Committee on Education, the bill provided for “the creation of commission whose duty it will be to pass on all moving picture reels presented in the United States. Films which do not bear the approval of this commission would not be permitted in interstate commerce.”⁷⁰ The commission would charge one

dollar per film for its services, which was not atypical for film censor boards at the time. Introduced late into the third session of the 63rd Congress, spanning December 1914 to March 1915, the bill did not come up for a vote in 1915 and was put on hold until the 64th Congress convened in December 1915. However, as I will discuss in the next chapter on the activities of the Motion Picture Board of Trade, the Hughes Bill gained significant momentum in 1916 and caused some damaging rifts amongst the producer-distributors. Ironically, in early 1915, the MPPC itself considered the advantages of federal censorship embodied in the Smith-Hughes Bill, but was dissuaded by the National Board and other industry forces.⁷¹ The latter argued that any advantages gained by federal censorship would be offset and undermined by the continuation of local and state regulation. As a commentary from *Moving Picture World* stated, “It should be borne in mind that federal censorship will not in the slightest degree relieve us from state or minor local censorship; it is only an added burden all around.”⁷² The sentiment against federal censorship was echoed in several quarters, but the industry itself was divided over the issue, with some exhibitors expressing support for state censorship boards. As a result of this division, the anti-censorship forces could not agree upon a coherent policy.

Even though the National Board did offer the film industry and especially the MPPC members with some degree of protection from reformers who wanted to censor their films, it could not prevent the rise of local and state censorship boards, nor could it offset the impetus behind demands for federal censorship. Those demands came to fruition with the Supreme Court’s ruling on *Mutual Film Company v. Industrial Commission of Ohio* 236 U.S. 230 (1915), a case that was brought to court on appeal by the Mutual Film Company, which confronted censorship of its films by the state

censorship boards in Ohio and Kansas.⁷³ Mutual had refused to pay for the Ohio board's required fees for screening and approval, since any modifications would be difficult and costly to implement. In turn, theater owners were afraid to exhibit Mutual's films because the Ohio board had not approved them. From examples that we have in Mutual's other conflict zone, Kansas, exhibitors who violated state censorship laws there could expect to pay hefty fines between \$25 and \$100 per reel/per day, and they might even be forced out of business.⁷⁴ The financial burden of censorship alone, let alone the limitations on artistic expression and production demands, was enough for Mutual to challenge the Ohio and Kansas laws on state and constitutional grounds. Although Mutual was an independent and not affiliated with the MPPC, it did cooperate with the National Board like other film manufacturers and distributors. When it came to fighting the Ohio censorship board, Mutual had the backing of many in the industry.

In the days before the Mutual case was set to begin at the U.S. Supreme Court, the National Board dispatched two of its senior executives, Jacob William Binder and Dr. Orrin G. Cocks, to Ohio in what seems like a last-ditch attempt to campaign for repealing the censorship law.⁷⁵ Unbeknownst to their Ohioan interlocutors, Binder and Cock's appeal dovetailed with the National Board's concurrent attempts to affect the national newspaper coverage of its activities (and of film censorship in general) through the creation of a liaison between the film industry and the press.⁷⁶ Leaving aside this controversy, the National Board executives spoke to Ohio civic organizations with the goal of impressing upon them the importance of delegating censorship to the "forum of public opinion" as opposed to secretive and undemocratic censorship bodies.⁷⁷ Although it is nowhere stated in contemporary accounts, the National Board's tactics seem more

than obvious when assessed cumulatively: if only the National Board could convince civic organizations to defer to the press, and if the national press took its cue from the film industry, then censorship could be defeated in Ohio and elsewhere. To make their case, Binder and Cocks explained the inner-workings of the National Board and encouraged the audience members to cooperate with their efforts in keeping film censorship within the public domain. Cocks detailed the National Board's proposal to resolve the state censorship crisis through what he termed the "home rule" system that was already in effect in cities such as New York, St. Louis, Milwaukee, Omaha, Portland, Ore., Pasadena, Los Angeles, Jackson, Miss., Joplin, Mo., and Dallas.⁷⁸ Under this system, the National Board reviewed films as usual and sent out the weekly bulletin that contained all the actions taken on films for that week. According to the National Board, this included 95% of all motion pictures released in the U.S. every year. In addition to the National Board, there was also a local state censorship committee that represented the interests of the people directly and was answerable to them through correspondence. The local commission received the bulletin from the National Board, noting that it represented the public opinion under the National Board's "standards of judgment." This state commission became yet another intermediary between the industry and the public, but it also protected those films that had been "properly censored." Interestingly enough, its responsibilities were curtailed by its lack of expertise: it had to seek outside and professional recommendations in matters of controversy regarding the social problem films, e.g., "white slave traffic"/prostitution, drugs, labor issues, and religious themes. This was consistent with the National Board's claims that local censorship boards were not qualified to pass judgment on issues that require expert opinion.

The two executives also met with the Governor of Ohio, Frank B. Willis. The two men planned to lobby a politician who had been elected on a campaign of reducing government waste, which the film industry interpreted as a desire to rid Ohio of its costly and somewhat redundant state censorship board.⁷⁹ Willis told Binder and Cocks that if the National Board and the Ohio exhibitors could draft a substitute measure that would replace the Ohio censorship board, while respecting the needs of the state when it came to regulation of screen material, he would recommend the program to the state legislature.⁸⁰ Binder and Cocks's most successful meeting was with the former Mayor of Cincinnati, Henry T. Hunt, who upon their encouragement introduced an anti-censorship bill in the Ohio legislature. Unfortunately, this body was composed mostly of Republicans who were unsympathetic to Hunt and his patrons.⁸¹ Thus it is no surprise that the minority party's anti-censorship bill, which called for the disbandment of the Ohio board, would not succeed. By March, a month after the Supreme Court's ruling against Mutual, it was becoming increasingly evident that the bill to overturn censorship in Ohio did not have the support of any of the major institutions in Ohio, including the press, which purported to speak for the public on this occasion.⁸²

Given the cordial nature of the private meetings and public gatherings, the two men returned to New York confident that the forces of anti-censorship would prevail in Ohio. Binder and Cocks even went so far as to boast to the press about their success.⁸³ Although their trip was part of a long-term strategy to undermine censorship, and was simply given urgency by the affairs in the Supreme Court, they could not have been more mistaken about the ebbing tide of censorship in Ohio and across the United States. The National Board lobbied Ohio and other states to enforce "voluntary" systems of

censorship such as the one in place in New York, where the National Board itself was the intermediary between manufacturers and civic demands.⁸⁴ However, we should not assume that the National Board was merely an instrument of the film manufacturers as many critics assumed at the time. By intervening on the issue of censorship between film manufacturers and exhibitors, between the film industry and the public, and between the film industry and state/federal government, the National Board had fulfilled its role as a Progressive institution at the same time that it enhanced its own importance and profile. Ultimately, the case of the National Board is important because it shows why trade organizations needed to exercise direct control over future “voluntary” censorship bodies, since those bodies did not necessarily share the same objectives as the major producer-distributors. Anti-censorship efforts had to be much more closely coordinated with the industry’s concerns regarding national distribution and state rights, for example, both of which were issues implicated in the Mutual’s refusal to accede to the demands of state censorship boards.

Another significant factor involving state censorship was the exhibitors, whose interests often diverged from those of the major producer-distributors. Some exhibitors indeed shared the producer-distributors’ concerns over multiple boards of censorship. Consider the case of a contemporaneous 1915 proposal to establish municipal censorship in Covington, Kentucky. Exhibitors complained that such an action would only add to their burdens and organized through the Kenton and Campbell Motion Picture Exhibitors’ League to lobby against the imposition of another censorship body in the area.⁸⁵ They argued that Kentucky municipalities were already under the censorship umbrella of neighboring Cincinnati, whose output was censored by both the National

Board of Censorship and the Ohio Board at Columbus, Ohio.⁸⁶ If the Kentucky law were to be passed, the exhibitors and the exchanges servicing them would fall under three separate censorship bodies, each with the power to demand a separate edit or cut of any given film. In this particular situation, then, the exhibitors shared the producer-distributors' concerns regarding the impossibility of satisfying separate censorship boards. Consequently, the exhibitors lobbied against the efforts of those who wanted to expand or multiply the role of censorship bodies. Other exhibitors, however, faced with a different set of circumstances, might see an advantage to a state censorship law that precluded the possibility of local censorship. These exhibitors may even prefer to deal with local censors if that could force the film manufacturers to excise material that might be offensive to anyone in the United States (i.e., the lowest common denominator). While state censorship was not envisioned to eliminate local censorship, it would make it less likely and urgent and it would afford the local exhibitor the moral and judicial cover necessary to oppose local censorship forces. Moreover, the additional costs of editing different territorial versions for films would be preferable to a situation in which exhibitors have to close their theaters because of exorbitant penalties.

In this vein, at the same time that the Kenton and Campbell Motion Picture Exhibitors' League was lobbying against the addition of municipal censorship in Kentucky, the Ohio state branch of the Motion Picture Exhibitors' League of America (MPELA) voted 39 to 21 in favor of endorsing the Ohio Censorship Law that manufacturers and distributors like Mutual were fighting against.⁸⁷ One of the delegates, Max Stearns of Columbus, delivered a speech to the delegation that summarized the Ohio exhibitors' concerns. Stearns bemoaned the lack of cooperation between producer-

distributors and exhibitors, but blamed the former for the imposition of the Ohio censorship law.⁸⁸ He stated his preference for federal censorship but argued that, in the absence of such an organization, he supported state censorship. Another delegate, W.C. Bettis of Toledo argued that the only way that the Ohio exhibitors could protect themselves against municipal censorship was to support the establishment of state and federal censorship bodies that could preempt local boards.⁸⁹ As evident from these examples, the possibility for consensus and cooperation amongst exhibitors, producers, and distributors all came down to what advantages each party ascertained in any given situation. But there were simply too many different conditions across the country and across every state for there to be any broad industry consensus on the issue of censorship. The MPELA, while representing many different states, was still in the process of forming into a national exhibitors' trade organization, and, even in 1915, there were local exhibitor leagues on the state and municipal level that had yet to join or were in the process of joining. In Ohio itself, it was not until November 1915 when the Ohio Motion Pictures Exhibitors' Convention, representing a larger contingent than Ohio's original MPELA organization, voted to join that national body and to oppose any form of censorship in accordance with the MPELA's national policy against censorship.⁹⁰ This gave Ohio's exhibitors a united voice within the MPELA's anti-censorship platform, reversing the earlier decision by the MPELA's Ohio contingent, but it came too late to affect the censorship decisions in that state. Moreover, by this point, manufacturers and exchanges had threatened to pass on to the exhibitors the increased expense involved in submitting films to state censorship boards in the form of a "censorship tax," implying that the exhibitors' changed position on state censorship boards may not have been

voluntary after all.⁹¹ Whether all these forces could be marshaled in support of future anti-censorship efforts regarding the establishment of censorship boards, Sunday closures, and other issues affecting the entire film industry remained to be seen.

The industry's extensive efforts having failed to derail the Ohio law, and even more importantly having failed to produce the necessary consensus in order to battle the law, Mutual had no choice but to proceed with its suit against the state of Ohio. The Supreme Court heard its case on January 6 and 7 in 1915. Mutual's legal counsel argued that an Ohio law passed on April 13, 1913 (103 Ohio Laws, 399), which created a censorship board under the supervision of the Industrial Commission, was illegal on the following grounds:

- 1) It was in violation of 5, 6, and 19 of Article 1 in the Ohio State Constitution "in that deprives complainant of a remedy by due process of law by placing it in the power of the board of censors to determine from standards fixed by itself what films conform to the statute, and thereby deprives complainant of a judicial determination of a violation of the law";
- 2) It violates articles 1 and 14 of the Amendments to the U.S. Constitution and article 1 of the Ohio Constitution, because it seeks to censor freedom of speech; and
- 3) "It attempts to give the board of censors legislative power, which is vested only in the general assembly of the state, subject to a referendum vote of the people, in that it gives to the board the power to determine the application of the statute without fixing any standard by which the board shall be guided in its determination, and places it in the power of the board, acting with similar boards in other states, to reject, upon any whim or caprice, any film which may be presented, and power to determine the legal status of the foreign board or boards, in conjunction with which it is empowered to act."⁹²

According to Mutual's counsel, films were the pictorial equivalent of the written press and had to be protected on similar grounds for freedom of expression and freedom of speech. But the court disagreed with the classification of cinema as a form of speech.

Justice Joseph McKenna, writing for the majority, decreed that films were “business, pure and simple,” and should be categorized alongside the circus and other “entertainments” that were conducted for profit and not freedom of speech. The cinema, in short, was not to be understood as an “organ of public opinion,” but rather was simply a form of “spectacle.”⁹³ But what exactly does the word “spectacle” mean here, if the cinema is thought of as an equivalent to the circus? How can we reconcile this definition with what film historians tell us about the cultural status of cinema in the early 1900s and in the so-called transitional era (1909–1915) that marked the rise of features?

I would suggest that McKenna’s terminology is not identical but related to the “cinema of attractions,” which is Tom Gunning’s definition of an early cinema that was premised on non-narrative events and that, in its presentation and exhibition, partook of an atmosphere of urban modernity. Here, the cinema parlor became yet another street attraction in the cluttered landscape of European and American cities, where it competed alongside the circus, street acts, the music hall, and vaudeville. McKenna’s definition has the further distinction of aligning the cinema with the debased conception of motion pictures as mere spectacle, something that, for example, is addressed in Gunning’s description regarding the role of the National Board of Censorship. According to Gunning, the National Board sought to uplift cinema by encouraging moral lessons through the narrative containment of individual scenes: “The Board was not only engaged in eliminating objectionable material from films, but in reinforcing a conception of film narrative as a form of moral discourse, a form that had a responsibility to present ‘moral lessons.’”⁹⁴

In this vein, D.W. Griffith, whom Gunning credits with popularizing the notion of film authorship and thus legitimizing filmic drama in the transitional era, offers his own commentary on the difference between features and the one- and two-reel program. Significantly, Griffith's distinction reinforces the moral dimension that Gunning attributes to film narrative. Griffith's July 1, 1915 speech accompanied the showing of his controversial film *The Birth of a Nation* and was in direct response to the censorship battles of 1915 that confronted his film and the industry at large, including McKenna's ruling, which had explicitly denied that film was a form of "speech":

On the matter of censorship we think there has been very little common sense displayed by the public in general. We will not argue with you about the matter of censorship, for the ordinary motion picture play that goes into the regular five and ten-cent theaters, where programs of five or different pictures are shown in an evening, and where the program is changed nightly, and where it is impossible for the prospective audience to ascertain the quality and matter of each picture that is to be shown. We will agree with you in the argument that for the sake of the children, censorship for this class of pictures should be allowed. But for the motion picture—like the one you are viewing tonight—played at the same place, in the same theater, and under exactly the same conditions as the regular drama of the stage, we demand the same fair treatment the drama is accorded, and we are unable to see why this is not the case The motion picture is a form of speech, as clean and decent and respectable as that of any art mankind has ever discovered. A people that will allow the suppression of this form of speech will also have no hesitancy in suppressing that which we all consider so highly—the printing press.⁹⁵

That Griffith places so much importance on the distinction between short films and features is testament to his importance in the histories of the transitional era, which chronicle the rise of longer films with greater narrative and character development associated with literature and the stage. In *D.W. Griffith and the Origins of Narrative American Film*, for example, Gunning argues that narrative integration, which arose from

around 1908 and was exemplified by Griffith's output at Biograph, was markedly different from the kind of narrative cinema that preceded it.⁹⁶ Gunning points to how industrial and institutional conditions complemented Griffith's textual strategies of foregrounding the act of enunciation in his films, giving shape to what Gunning calls the "narrator system."⁹⁷ In other words, the emergence of the cinema of "narrative integration," as Gunning calls it, corresponded to the enhanced public profile of the director, who was now perceived as the "voice" or "narrator" behind the film.⁹⁸ In terms of textual and formal strategies, for example, this hinged on the development of the chase film, whereby the separate vignettes characteristic of "the cinema of attractions" were tied together through the integration of continuous space and time.

Likewise, in accordance with Gunning's account of narrative as a moral framework or context, Peter Kramer has pointed out in his analysis of comedic violence and early cinema that the linking of individual scenes into cause-and-effect chains of narrative events was not simply a response to changing expectations regarding film length and character development, insofar as commercial requirements dictated longer films.⁹⁹ Rather, narrative framing was a way to enhance the cinema's respectability and its moral standing. Although he does not discuss censorship directly, Kramer implies its threat when he points to how the industry's contemporary rhetoric surrounding narrative integration served the goals of uplifting cinema.¹⁰⁰ Narrative films offered legitimacy as adaptations of literary works that synthesized individual events and embedded discrete spectacles or "attractions" of violence and humor in larger narratives. But possibilities remained for the attractions to outweigh the narrative and for audiences to direct their attention to the individual spectacles instead of the overall narrative.¹⁰¹ According to

Kramer, it was for this reason that the film industry from 1904 onwards focused its rhetoric on the principles of narrative cohesion, even though a contemporary viewer of *The Great Train Robbery* (Edwin S. Porter, 1903) might not engage that film as a unified, cause-and-effect narrative.¹⁰²

In contrast to this industry discourse, and as if to discredit the cinema's potential as something more than circus entertainment, Justice McKenna drew from and cited a long line of judicial precedent that justified municipal censorship and the regulation of motion pictures: *Marmet v. State*, 45 Ohio St. 63; *Baker v. Cincinnati*, 11 Ohio St. 534; *Commonwealth of Massachusetts v. McGann*, 213 Mass. 213; and *People v. Steele*, 231 Ill. 340.¹⁰³ Considering McKenna's definition of cinema as entertainment and spectacle, the prospect for First Amendment protection was not an issue, since the court had already decided that films were not any kind of "speech."¹⁰⁴ If this were not enough, McKenna further noted that, while films could have educational values, they could also be "used for evil" by appealing to an audience's "prurient interests."¹⁰⁵ This meant not only that there was no protection for films under the First Amendment, but that there was reason to suspect films for their harmful effects on children. As Garth Jowett and other commentators have argued, the Supreme Court's ruling was basically illogical, yet in a way that reflected the social and cultural biases of the time.¹⁰⁶ It is a fact that newspapers were also published for profit and that this did not detract from their First Amendment rights. According to Jowett and other film historians who have analyzed the *Mutual vs. Ohio* decision, it was the fear over the cinema's social role that was at stake here and the challenge that it posed to the American Protestant establishment.¹⁰⁷ Although I am not sure I agree with Jowett entirely on the religious nature of the problem. Progressive

reformers were not necessarily interested in sectarianism and came from a variety of denominational and religious backgrounds including Catholicism and Judaism. But Jowett's work does raise an important question: what kind of role was the cinema going to have in American society and who would be allowed to regulate the film industry? It was a question that would resurface several times in the history of American cinema, including in the early 1920s as we will see in later chapters. However, at this point in 1915, before the film industry had proven itself as indispensable to American policy makers during the U.S. involvement in WWI, and before NAMPI and the MPPDA had extended its ties to political circles in Washington, the cinema's cultural and social standing was much more precarious.

Yet there is another part of McKenna's ruling that should concern us here. Mutual's lawyers had argued that the Ohio statute places "an unlawful burden on interstate commerce," since the Mutual Company would be required to edit separate versions for distribution and exhibition in Ohio. McKenna disagreed by pointing to the role of film exchanges, where only those film prints designated for Ohio were subject to censorship.¹⁰⁸ In other words, since the Mutual Company was free to distribute elsewhere in the country, there was no way to establish a case against the Ohio statute on the basis of interstate commerce. This is a key point that is rarely mentioned and often excluded in historical accounts that cover the *Mutual v. Ohio* ruling. The categorization of films as "interstate commerce" was one of the major themes of the 1910s and I will discuss this further in the section on the MPPC antitrust ruling below. Here, Justice McKenna's definition of cinema as "business, pure and simple" is consistent with a concept of motion pictures as a form of interstate commerce, conducted for profit only, and,

therefore, subject to the laws governing interstate commerce, including those of the Sherman Antitrust Act of 1890 and the Clayton Act of 1914. For now it is important to mention that the challenges of interstate commerce, in terms of censorship as well as antitrust, provided a major stumbling block for feature distribution in the mid-1910s. The problem was only solved through consolidation of individual state rights distributors and through the vertical integration of the industry, both of which forced the larger combines to lobby against these industry barriers.

Almost immediately after the *Mutual* ruling, the trade papers were abuzz in commentary decrying the Court's ruling. As we noted above with the example of the Ohio branch of the MPELA that supported the state censorship board, the exhibitors were split on the Supreme Court's decision. Manufacturers, however, were almost unanimously against the decision, as were many of the trade papers, industry commentators, and industry personnel like Griffith himself. For example, condemning both the Supreme Court's decision and the Ohio exhibitors' endorsement of censorship, *Moving Picture World* noted that the decision was a loss for the entire industry. According to the editorial, it set a dangerous precedent for film censorship that was surely to be replicated throughout the United States: "It has placed a very dangerous weapon in the hands of every enemy of the motion picture."¹⁰⁹ Also sounding a note of danger, *Motography* claimed that "censorship is the greatest menace the motion picture business confronts today." The trade paper blamed this menace on a losing public relations campaign and "a present policy of inaction" in the motion picture industry.¹¹⁰ In a follow-up article, *Motography* called for greater lobbying efforts and organization amongst industry members, so that public opinion and the press could be turned against

censorship. According to the *Motography* editorial, the masses had no voice and were represented by legislators and censor boards that appropriated their right to express their opinion on the matter of film censorship.¹¹¹ If only the people were allowed to speak for themselves, reasons *Motography*, they would cast aside the censors who were not their true representatives.¹¹²

These trade paper attacks paralleled those coming from the National Board of Censorship and the manufacturers who claimed that the censors' lacked expertise and representatives of anti-democratic sensibilities. The National Board was particularly vocal in its condemnation of the *Mutual v. Ohio* ruling. At the same time, the Board was optimistic about the prospects of defeating censorship since its own legitimacy and effectiveness were in question. Considering its extensive lobbying efforts in Ohio on the part of producers and distributors, the National Board needed to produce some results. It had to convince the industry that it was still a viable medium through which to organize anti-censorship efforts. Yet the National Board's immediate response highlights J.W. Binder's desperate and unconvincing attempt to draw parallels between the fight against film censorship and the fight against slavery and, thus, creates serious doubts regarding the organization's tactics:

The campaign against legalized censorship of motion pictures in Ohio and throughout the country is by no means closed by the Supreme Court declaring the Ohio law constitutional. The same high judicial body sustained the constitutionality of human slavery by a number of decisions. Yet Abraham Lincoln, backed by the awakened conscience of a majority of the American people, killed it with a stroke of his pen. That was physical slavery. We are fighting for freedom of much more subtle and vital matter—freedom of the intellect and the right to express thought without previous legal restraint. And this battle will be won as was that other great conflict because both contentions are based on eternal truth.¹¹³

Following their initial response, Binder and the National Board held a luncheon for the members of the film community. This even was attended by many prominent studio heads and their representatives. Aside from MPPC members Siegmund Lubin and Vitagraph's Stuart Blackton, the list consisted mostly of independent feature distributors including Adolph Zukor of Famous Players, Carl Laemmle of Universal, William W. Hodkinson of Paramount, Lewis Selznick of World Film Corporation, Felix Malitz of Pathé Frères, and Carl Anderson of Lasky Film.¹¹⁴ To the National Board's relief, the studio heads confirmed their continued monetary and political support for the Board.¹¹⁵ Binder, speaking about the threat that censorship posed to the industry, referred to ten states where censorship bills were in consideration and iterated his belief that the Ohio and Pennsylvania censorship bills were passed because of inaction on the part of the industry, whereas the Indiana and Delaware censorship bills were met with effective lobbying that defeated them.¹¹⁶ Binder also stated his belief that the Oklahoma censorship bill would likely pass, but maintained that the bills would be defeated in all the remaining states.¹¹⁷ In reality, Binder's optimism was misplaced, as other states had already enacted or would enact state censorship boards, including Kansas in 1914 and Maryland in 1916. Where state legislators and governors were unsure about establishing censor boards, such as in the case of Governor Edward F. Dunne of Illinois, it had more to do with financial considerations, state budgets, and the authority of municipal censor boards than the industry's lobbying efforts.¹¹⁸ Meanwhile, in Albany, New York, Binder's and the industry's efforts came to no avail when in 1915 they tried to convince the State Constitutional Convention to grant First Amendment rights for motion pictures in the failed Eisner Amendment.¹¹⁹ Ironically, it was the National Board's very association with

industry members that damaged its reputation amongst politicians and legislators. As a commentary in *Motography* revealed, state legislators were unimpressed if a bill for overturning censorship had been endorsed by the National Board, with one legislator remarking that it was the equivalent of a “mining company with stock for sale.”¹²⁰ The *Motography* editorial suggested that just as the industry required a better public relations campaign aimed at convincing the public to oppose censorship, the National Board needed a public relations campaign to convince policy makers as to its sincerity and competence.¹²¹ Clearly, the National Board had by this point become just as much a liability as an asset to producer-distributors and exhibitors who were looking for relief from censorship legislation.

Binder’s comment above also ignored the fact that the issue of slavery was not resolved by Abraham Lincoln’s “pen,” but by the Civil War, which itself was deferred because of the founding fathers’ refusal to resolve the differences between pro- and anti-slavery factions, not to mention the contradictions between white liberty and black slavery. Likewise, to extend Binder’s analogy, the issue of film censorship was not solved in the *Mutual v. Ohio* ruling because the case simply deferred discussion regarding the cinema’s status as free speech. The Court had resolved that film was merely a form of business and not any kind of “speech,” let alone the kind that is protected by the First Amendment. Moreover, local definitions of “obscenity” as applied by censor boards ignored the changing cultural perceptions of “obscenity,” a concept that the U.S. judicial system has yet to resolve without ambiguity.¹²² What Binder and other industry advocates at the time did understand, however, was that if the National Board of Censorship and the

film industry were going to prevail over the rising tide of state censorship, they would also have to prepare for warfare over who had the right to speak for the public.

For the issue of the public in early American cinema was not so much how the public sphere functioned, or whether alternative public spheres were possible, but the very lack of an effective public sphere and its displacement by the powers that had appropriated the right to speak for that public. It only mattered whether these forces were representatives of the civic reformers, the National Board of Censorship, the MPPC, the independents, the exhibitors, the trade press, or the popular press. While fans could write responses to magazines and express their opinion through their box office patronage or their subscriptions to film clubs and societies, their activities were curtailed and limited by the industry itself. Fan activities, like the general audience itself, were carefully designed and organized by the studios themselves who funded and sponsored fan magazines, contests, and fan mail. As noted above, Hansen has termed these practices the “industrial-commercial public sphere.” Here, I am interested in how such a concept becomes relevant in the context of censorship debates and rhetoric. It seems that whatever public discourse emerged out of fan activities or the public sphere had little to no impact on the issue of censorship in the 1910s. It simply had no direct bearing on the issue of legislation that determined censorship. State legislators did not need to heed to public opinion because there were intermediaries such as civic reformers and religious figures who purported to speak for that “public,” as in the example of the organizations that ultimately usurped the public’s voice in regards to the Ohio censorship board’s legitimacy.¹²³ If the industry were looking for help from its public in the fight against censorship, the fans could not provide that assistance since their voices and opinions

could not reach the relevant quarters of power. Needless to say, the latter were not always interested in hearing those voices.

Although the studio heads and major producer-distributors appear to have acquiesced to the National Board's leadership, there was more going on behind the scenes of the friendly luncheon with Binder. While the manufacturers always kept their options open, and would continue to support the National Board of Censorship, they had just begun to explore an additional and alternative means through which to organize their opposition to censorship. Known as the United Managers' Protective Organization (UMPO), this was the first organization to bring together GFC members, including Biograph, Edison, Vitagraph, Kalem, Kleine, Lubin, and Selig Polyscope, with the following independents: Mutual, Universal, Lasky, Famous Players-Paramount, American Film, New York Motion Picture Corporation, Balboa, International Productions, Kriterion, United, World Film, All Star, Life Photo Film, and Pathé American.¹²⁴ It was a much more impressive gathering than the one that would greet Binder at the National Board's luncheon later in March. At their first meeting on February 18, 1915, just two weeks after the Supreme Court's *Mutual* decision, the UMPO's general counsel, Ligon Johnson, argued that concerted effort on the part of the manufacturers was required in order to defeat the various pending and proposed state censorship bills around the country.¹²⁵ Johnson repeated the industry's standard rhetorical attacks against censorship and its violations of the freedom of speech. He reassured the manufacturers that they had the support of the exhibitor trade organizations in their fight against censorship.¹²⁶ During the general discussion, the MPPC-affiliated manufacturers decided that they needed to secure the support of non-affiliated manufacturers, and to

establish a committee of five members appointed by Johnson that would be responsible for conducting anti-censorship campaigns. Strikingly absent in *Moving Picture World's* coverage of the meeting is any mention of the cooperation between the manufacturers and the National Board of Censorship. Though it is entirely possible that the manufacturers discussed their cooperation with the National Board of Censorship, the *Moving Picture World* did not see it important enough to print. Since the National Board was highly aware of the manufacturers' activities, and could read about them in the trade press, the manufacturers were warning the National Board that it was replaceable and that they were not pleased with its poor achievement on the anti-censorship front. Later, when he vacated his former position, Binder himself would serve as executive secretary for the Motion Picture Board of Trade, demonstrating that the producer-distributors were interested in maintaining some ties to the National Board. But this earlier meeting is momentous because it demonstrated that the UMPO was the first attempt at producer-distributor cooperation on censorship that did not rely outside organizations with different interests from those of the producer-distributors. It must be acknowledged that by no means was this association powerful and unified enough to the point where it could make much of a difference or replace the National Board. Rather, what is important for our purposes is how this nascent form of organization in the UMPO prefigures and facilitates the establishment of a proper trade organization in late 1915. At this point, the producers-distributors will no longer have to delegate their anti-censorship campaigns to outside forces.

In order to be successful at lobbying against censorship, the different factions in the film industry had to put aside their differences and focus their efforts on the battle

against pro-censorship forces. While exhibitors would never fully reconcile with producer-distributors, the latter required the same kind of national trade organization as the former. For that to occur, one more element needed to fall into place. The opposition between the MPPC and the independents needed to be replaced by a more cooperative atmosphere. The MPPC had represented several of the larger manufacturers in the industry against the forces of the independents and those who refused to respect its patent pool, its sixteen key patents, and its licensing schemes. In bringing together the major forces in the U.S. film industry, the MPPC's creation in December 1908 represented a major compromise between Edison and Biograph, which had refused to join the Association of Edison Licensees at the latter's inception in March 1908.¹²⁷ Other members of the Edison Trust included Vitagraph, Selig, Essanay, Lubin, Kleine, Armat, Kalem, Pathé American, as the North American division was known, and the raw stock manufacturer Eastman Kodak, which had conspired with the MPPC members to withhold film stock from non-licensed producers. The list was limited to these companies because Edison had stipulated that only those manufacturers already producing films by March 1908 were eligible to join the MPPC's patent pool.¹²⁸ This ensured that future competitors would be kept out of the business much in the same way that trusts and patent pools in other American industries served large industrial firms. Examples here would include Standard Oil, Bell Telephone, and General Electric, whose patent pool combined the resources of smaller electronics firms, including those of the Edison Electric Company, and established a "board of patent control" with its chief rival Westinghouse in 1896.¹²⁹ The General Electric and Westinghouse compromise, which ended a long-lasting and costly patent war, was therefore a model for the Edison and

Biograph compromise of 1908. Arrayed against the MPPC were the independents, some of whom initially formed the Independent Film Protective Association (IFPA) in 1909, which resembled a trade organization more than a combination or trust. Realizing the need to secure distribution mechanism of their own, several of the IFPA members formed the Motion Picture Distributing and Sales Company in the spring of 1910 for the purposes of independent distribution, and were later split into Mutual Film Company and Universal Film Manufacturing Company.¹³⁰

By withholding licenses for patents on film stock, cameras and projectors, the MPPC could monopolize production and distribution, while, at the same time, bestowing a market advantage to those exhibitors who ran only MPPC-licensed films. But following several court cases starting in 1912, the MPPC's ability to yield power through its patent pool was increasingly undermined. It was now completely disbanded with the District Court's ruling in October 1915, after which point the MPPC's distribution arm, the GFC, continued to function for three more years as a shadow of its former self. For the formal collapse of the MPPC presaged the emergence of an inclusive producer-distributor trade organization that could wield the collective will of not only the former MPPC members but also the independents themselves who now dominated the American film industry in the place of the Edison Trust.

In their respective histories of the MPPC, Robert Anderson and Scott Curtis survey the causes behind the MPPC's demise. Synthesizing their separate analyses, it is possible to reduce the MPPC's decline to several factors: Kodak's defection in 1911, which ended the MPPC's monopoly on raw film stock produced in the U.S., WWI and the loss of European revenue, infighting and disagreement amongst MPPC members, and

the MPPC's failure to adapt to the emerging feature film marketplace.¹³¹ Curtis's approach is notable in that it specifies how the MPPC failed to capitalize on features when it attempted to fit such product into a pricing and distribution system designed for single-reel films.¹³² Since the MPPC had always offered a *program service* built on a variety of single and two-reel subjects, transitioning to feature distribution meant upsetting the status quo that MPPC customers relied on and had been accustomed to, especially the smaller theaters and nickelodeons that programmed single-reel subjects and serials exclusively.¹³³ These smaller theaters simply could not sustain feature programs. Their admission numbers were not large enough to warrant the increased costs of renting features and holding them for longer runs, and they lacked the advertising services required to promote individual features. Curtis also outlines why MPPC infighting and mistrust contributed to its lack of innovations in the feature market, such as the transition to percentage fees. Fearing their competitors within the MPPC, the smaller members were opposed to charging percentage fees because they were concerned it would create quality distinctions that might not benefit them.¹³⁴ Additionally, MPPC corporate files show that members interested in multiple-reel productions and increased output at an early date in 1911 had trouble with the GFC branch offices. For example, in a series of letters sent from a Branch Manager of the GFC to the Selig Polyscope Company, we learn that Selig's request to increase the weekly output to four releases per week was turned down, and that the Branch Office was having trouble with the distribution of multiple-reel films because of indefinite information on release dates in advance of those projected releases.¹³⁵ But none of this accounts for the debilitating impact that litigation had on the MPPC. Thus, adding to the established accounts of the MPPC's decline, I

would argue that the antitrust litigation against the MPPC affected its ability to function at a fundamental level, while the earlier *Mutual v. Ohio* decision on censorship had already paved the way for antitrust rulings against the MPPC in the course of 1915 and beyond. Although infighting was an important factor, the MPPC members also found themselves at odds with their own distribution company, the GFC. While allied with the MPPC, and including MPPC members on its board, the GFC was a separate entity with separate funding and stockholders. After 1915, these stockholders turned against the MPPC and blamed the latter for the antitrust litigation that implicated the GFC and that had devalued their stock. It is to this momentous but mostly symbolic ruling that we must now turn.

William Fox's Greater New York Film Rental Company filed its case against the MPPC and its distribution arm, the GFC, on August 5, 1912. The GFC had bought out 58 film exchanges in the New York area, while canceling the licenses of ten others, and offering to pay Fox \$150,000 for his exchange.¹³⁶ But Fox refused to sell, and subsequently took the GFC to court when it terminated his regular supply. Fox's counsel argued that the GFC had created an unfair monopoly that damaged his business interests and that it was in violation of the Sherman Antitrust Act governing interstate commerce. But a lower court ruled that the MPPC had a legal right to cancel Fox's license. Although Fox's initial case itself did not result in a ruling against the MPPC or GFC, its notoriety catalyzed the U.S. Department of Justice into filing its own suit against the MPPC.¹³⁷ For the U.S. government and judicial system, the case against the MPPC was to be a crucial test for regulatory laws derived from the Sherman Antitrust Act. In this federal case, the court heard testimony against the MPPC from independents, exhibitors, and exchange

managers for much of 1913 and 1914 and its decision against the MPPC was delivered by Judge Oliver B. Dickinson in *United States v. Motion Picture Patents Co.*, 225 Federal 800 (D.C. Pennsylvania 1915) on October 1, 1915, when he ordered the MPPC to disband and the GFC to divest of its monopoly on film exchanges. Later, in 1917, while this case was on appeal, the Supreme Court sustained the District Court's ruling, and rejected the MPPC's patent infringement suit against Universal in a ruling that set an important precedent for application of the Clayton Act.¹³⁸ Although independents and other enemies of the MPPC welcomed the District Court's initial ruling, their victory against the MPPC was symbolic as the patent pool had been effectively challenged in U.S. courts for several years before the ruling, and was by this point more of a liability than an asset. For example, in 1912 the U.S. Circuit Court had nullified Biograph's and the MPPC's Latham Loop patent in *Motion Picture Patents Co. v. Independent Motion Picture Company*, a highly significant ruling that gave the independents access to cameras and raw stock previously available only to MPPC licensees.¹³⁹ In addition, Fox had resuscitated his case against the MPPC by filing a \$1.8 million suit against the members in January 1915.¹⁴⁰ The October 1915 victory was significant, however, because it marked the end of an era in which a group of the most powerful film manufacturers had attempted to create a monopoly on film production and distribution through the instrument of a patent pool. The U.S. District Court's decision in 1915 merely extended and codified the claims against the MPPC from earlier cases.

While acknowledging the right of the MPPC members to defend their patents for the duration that they were valid, the District Court found that the MPPC's practices went far beyond their legal rights and amounted to a restraint of trade that was in violation of

the 1890 Sherman Antitrust Act and the 1914 Clayton Act, which was passed to reinforce the former.¹⁴¹ Specifically, with reference to legal precedent in the “Bathtub Trust Case” (*Standing Sanitary Mfg. Co. v. United States*, 226 U.S., 20), the U.S. Department of Justice had argued that positive and negative film prints were unpatented articles, and, therefore, could not be restricted in trade and commerce by appeal to associated patents on cameras and projectors.¹⁴² While the District Court’s ruling did not affirm every allegation leveled at the MPPC and outlined in the DOJ’s case and briefing files, the vast testimony that was presented had a significant impact on the court’s decision-making process. In determining these unwritten and implied concerns, Ralph Cassady, Jr. has outlined them in his classic and highly scrutinized account of the MPPC:

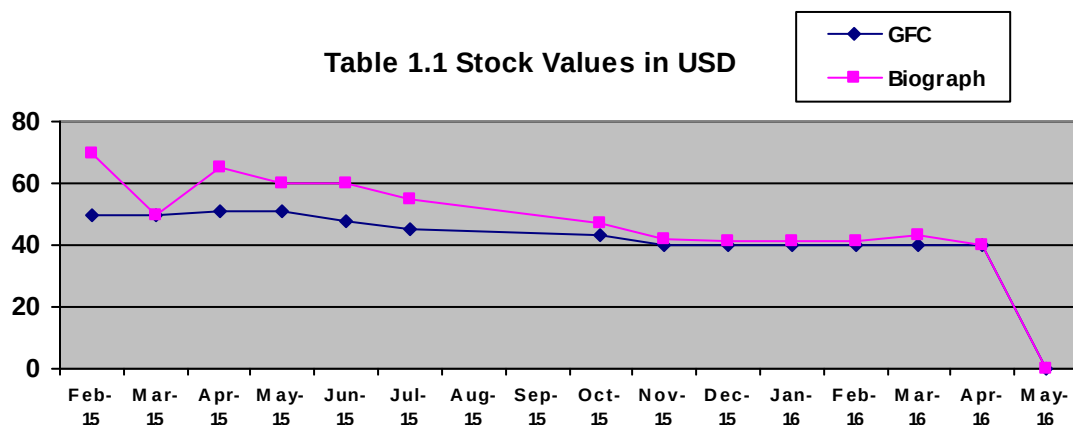
- 1) The attempted control of all industry activities through the use of interlocking agreements;
- 2) The attempted exclusion of new competitors (in certain phases of the industry at least) by vesting the power of granting entrance to those already in the industry;
- 3) The attempted elimination of independent distributors and their replacement with the “Trust” affiliated General Film Company exchanges;
- 4) The fixing of prices for raw film (sold to manufacturers) and for motion pictures (leased to exchanges); and
- 5) The employment of various types of harassing tactics designed to impede the activities of would-be independents in all branches of the industry.¹⁴³

It is important to restate Cassady’s analysis of the U.S. District Court ruling because it allows us to examine the difference between the MPPC’s legal trail and its actual practices in achieving its monopoly over film production and distribution. As Jeanne Thomas Allen has shown in her critique of Cassady’s article, the MPPC made no attempt to regulate the retail of its patent devices to non-licensed theaters and was not in the general business of policing theaters for unlicensed activity.¹⁴⁴ For J.T. Allen, this

kind of calculated restraint in protecting its legal monopoly provided the MPPC with an ability to negotiate with unlicensed interests, proving that it was more interested in using its patent holdings for the purposes of hegemony rather than for the total domination of the film industry, as Cassady seems to assume.¹⁴⁵ This may be a crucial point to examine, because it sets the precedent for the oligopoly that the major producer-distributors would attempt to establish by the 1920s, in that the majors did not intend to control the industry completely. Other cases against the MPPC and GFC followed in the footsteps of the original filings from 1912, but what exactly were the combined effects of these court cases between 1912 and the District Court's ruling in October 1915?

Although a survey of trade paper schedules for film distribution in October 1915 shows the MPPC distribution arm, the GFC, with a sizable slate of offerings, this does not tell the whole story. A closer look at the GFC's distribution schedule from October 1915 reveals that it was strong on one-, two- and three-reel films, but lighter on four- and five- and six-reel features. These GFC features were distributed through alternative means such as the V.L.S.E distributor that combined the resources of Vitagraph, Lubin, Selig and Essanay, and that promised to revolutionize film distribution by offering films on an "open booking" system as opposed to a "block booking" system, where the exhibitor was forced to buy individual films as part of a seasonal package or block.¹⁴⁶ Given the advantages to the V.L.S.E. method, the quantity of features was not the problem here. In fact, for the week of October 16, 1915, the V.L.S.E companies together distributed more features than Paramount (14 features vs. 13), one of the leading feature distributors and a practitioner of the block booking system.¹⁴⁷ Rather, as I noted above in reference to Curtis's account of the GFC, the V.L.S.E's problem was that it charged a

fixed and varied price per foot, while Paramount charged a rental percentage fee that allowed it to reap the benefits of films with greater box office. In the latter system, the increased profits always returned to the distributor. Combined with the extensive court litigation against the GFC members, and their loss of appeal against the U.S. District Court's ruling, this outdated pricing scheme effectively doomed several of the former MPPC members who were still a part of the GFC. Recall from above that the District Court's ruling on the *U.S. v. MPPC* also named its distribution arm, the GFC, as a defendant in the case. In turn, the District Court's ruling that the MPPC had violated antitrust laws was also applicable to the GFC. Consequently, the District Court's decision opened the floodgates of litigation against the GFC, already set in motion by the 1912 filing and, as I argue, by the Supreme Court's ruling in *Mutual v. Ohio*. The District Court ruling also meant that the GFC would turn against the MPPC. By 1917, the GFC had taken the former MPPC members to court for damages, when Perceval L. Waters, acting on behalf of preferred stockholders, filed suit against the former MPPC members to return \$2.5 million to the GFC treasury on the grounds that this sum was paid out to respective manufacturers illegally.¹⁴⁸ Richard A. Roland, also acting on behalf of GFC stockholders, filed suit to recover the value of preferred stock holdings, and alleged that the "illegal conduct of these manufacturers, acting as Directors of the General Film Company, has resulted in its Bankruptcy; and therefore destroyed the value of their stock."¹⁴⁹



Note: Figures on “Bid” Prices Compiled from *Motography* (February 1915–May 1916).
\$0 denotes “no bid” and/or the stock’s withdrawal from trading.

Internal company files, letters, and industry accounts demonstrate that the former MPPC members were also fighting for their lives in several states where local suits had been introduced on the issues of antitrust and unfair trade practices. But these concerns were exacerbated after the U.S. Supreme Court ruled in *Mutual v. Ohio* that films were products of commerce, and, thus, not protected from antitrust legislation that targeted interstate commerce. This was especially damaging to MPPC interests because in defending themselves against the Department of Justice’s antitrust suit their counsel had argued the exact opposite, mainly, that films were works of art and, therefore, not subject to the laws of interstate commerce.¹⁵⁰ Moreover, the Supreme Court’s ruling emboldened antitrust lawsuits against the former MPPC members and the GFC in the months and years after the *Mutual v. Ohio* ruling. Here, as evident in the Stock Values graph above, the immediate effects of *Mutual v. Ohio* ruling were evident in that the GFC’s stock price, along with member company Biograph’s stock price, began to plummet after February 1915. By the time the U.S. District Court delivered its antitrust decision against the MPPC and GFC in October 1915, the GFC’s stock was already low. Although *Mutual*’s

stock price also declined in the same period, Universal's actually increased, thus, nullifying any claims that the entire industry was in decline because of the *Mutual v. Ohio* ruling. It may seem odd that the period between February and October witnessed a greater depreciation in the GFC's and Biograph's stock prices than the period right after the District Court's decision ordering the formal disbandment of the MPPC. Yet if we accept the argument that the *Mutual v. Ohio* ruling gave enhanced traction to antitrust lawsuits targeting the MPPC and GFC members on grounds of interstate commerce laws, then the financial implications of the Supreme Court's censorship ruling become clear. To further assess the other monetary costs involved, consider the court cases listed in the April 16, 1917 letter from their Chief Counsel, Judge R.C. Moon, to the GFC members regarding antitrust litigation pending against them in the U.S. District Court for the Southern District of New York (Table 1.2).

TABLE 1.2 Suits Now Pending: Treble Damage Suits (April 1917) ¹⁵¹		
Name of Plaintiff	Actual Damages	Treble Damages
Theatre Film Service Company of San Francisco	\$200,000.00	\$600,000.00
George Méliès Company	908,000.00	2,724,000.00
Colorado Film Exchange	500,000.00	1,500,00.00
Samuel Schiller	149,000.00	447,000.00
Miles Bros. Inc.	2,325,000.00	6,975,000.00
Chicago Film Exchange	1,004,874.34	3,014,623.00
Standard Film Exchange	247,500.00	742,500.00
Eugene Kline	950,000.00	2,850,000.00
Joseph H. Sampliner	250,000.00	750,000.00
U.S. Film Exchange	200,000.00	600,000.00
Globe Film Services Co.	100,000.00	300,000.00

The treble damage suits were facilitated by the Clayton Act and the District Court's antitrust ruling against the MPPC. They add up to more than \$20 million, a

staggering sum for 1917 and equivalent to \$300 million in 2011. According to Moon, for the defendants to be found guilty in violation of the Sherman Antitrust Act, the plaintiffs' testimony had to establish three factors: "First, that the conspiracy and monopoly claimed in the Government's proceedings shall be fully proved; second, that their business was destroyed or injured by reason of this conspiracy or monopoly; and third, the actual amount of damages suffered by them."¹⁵² Given the precedent set in the U.S. District Court's ruling from October 1915 and Supreme Court's declaration in *Mutual v. Ohio* that films were subject to the laws of interstate commerce, the prospects were looking dim for the former MPPC members. Although the factors that Curtis and Anderson have identified as contributing to the MPPC's decline did play an important role, the antitrust litigation and the censorship ruling on the status of film as interstate commerce were direct attacks on their patents, their distribution assets, and their liquidity. The high costs of defending themselves against endless lawsuits facilitated by the two federal court rulings from 1915 severely drained the MPPC members and made it much more difficult for them to adapt to a changing and volatile American film marketplace, where the GFC's stock had devalued significantly in the period between February and October 1915 and would continue to fall into 1916. By August 1916, trading on the GFC's stock had ceased because of pending litigation and the \$23 stock (down from \$50 at the start of 1915) was withdrawn from *Motography's* weekly listings.¹⁵³ Litigation also led to the resentment that Curtis has noted in MPPC interrelations, where the smaller companies reaped fewer rewards for being part of the MPPC and GFC, and yet were expected to incur an equal amount of burden in regard to lawsuits and litigation costs.¹⁵⁴

Thus, by the end of 1915, the MPPC members were under attack from all sides and from within. While trade papers like *Moving Picture World* continued to list member releases under “General Film Company, Inc.” into 1919, in reality its former members no longer distributed their films under the GFC banner beyond 1917.¹⁵⁵ The GFC finally went into receivership and liquidation on April 30, 1919, when bankruptcy proceedings filed in the U.S. District Court placed the company in the hands of Asa B. Kellogg.¹⁵⁶ Even before this date, the former members had devised other means to distribute films that utilized newer organizations such as the V.L.S.E and K.E.S.E. Despite their best efforts, however, few of the former MPPC/GFC manufacturers managed to survive into the 1920s. Based in Philadelphia, with production locations around the country and annual profit of around \$500,000, Lubin was the first to close its doors when it sold its interests to Vitagraph in August 1916.¹⁵⁷ Kalem, although financially solvent, was also sold to fellow GFC member Vitagraph in 1917 after one of the founding partners passed away and the company was unwilling and unable to transition to feature films.¹⁵⁸ Essanay, which was headquartered in Chicago, and produced the famous Broncho Billy westerns at its Niles studios, announced that it was shifting from programs to specials in March 1918.¹⁵⁹ Essanay simply did not have the funds to continue production at a regular rate, and was soon out of business. Vitagraph had also targeted Essanay for takeover, but decided against it because of the increased costs that would result in a takeover of a company with two unreleased Charlie Chaplin films on its balance sheet.¹⁶⁰ Selig Polyscope, producer of one of the first American film serials, *The Adventures of Kathlyn* (1913), went out of business in December 1919, having released its final films in January 1918.¹⁶¹ William N. Selig himself continued to produce films into the 1930s and to

manage the Zoo property in Eastlake Park as a production rental facility for the emerging Hollywood majors. Thomas A. Edison, whose name was synonymous with the MPPC and with motion pictures in general, sold his Bronx studios in March 1918 for a meager sum of \$150,000 in cash and \$200,000 in stock to the Lincoln & Parker Film Company.¹⁶² The sale did not include rights to the Edison Manufacturing Company, which Edison retained. American Mutoscope and Biograph ceased film production in 1916, after which it continued to reissue its films and to manage its former Bronx studio space under new ownership of the Empire Trust Company well into the 1920s and '30s.¹⁶³ Notable among the MPPC members that survived into the 1920s were Vitagraph, which bought out the other V.L.S.E. shares in 1916 and was later absorbed by Warner Bros. in 1925, and Pathé American, which had divorced itself from the MPPC and GFC in 1914 and consequently avoided the same litigation quagmire that trapped the other members. Pathé American was sold to the U.S. investment firm Merrill Lynch in 1917 and later absorbed into Radio Keith Orpheum (R.K.O.) in 1928, after combining with the Producers' Distributing Corporation, the Keith-Albee-Orpheum circuits, and the Film Booking Office. Realizing the importance of collective action, the industry's survivors were quick to join the producer-distributors' new trade organization, the Motion Picture Board of Trade.

Considering the siege mentality of the film industry at time, when every state and local municipality seemed to be threatening to institute censorship boards and regulations for Sunday blue laws, the Supreme Court's ruling in *Mutual v. Ohio* simply exacerbated an atmosphere of extreme vulnerability. Add to that the volatility of motion picture producing and distributing in the mid-1915s, when companies were formed and dissolved

on a monthly basis, and you get an idea of an industry facing simultaneous crises. With the legitimacy and effectiveness of the National Board curtailed after the censorship gains of 1915, and with the formal disbandment of the MPPC, the industry required new direction and new organization. This was especially challenging at a time when foreign exports, which accounted for 30% of manufacturer profits, were threatened by the war in Europe and bolstered by opportunities in places like South America, where American films now took the place of their European competitors.¹⁶⁴ Producer-distributors, in particular, found new direction in a trade organization that could lobby for their collective interests. We must note, however, that this Motion Picture Board of Trade, as it would be known, was only possible because of several crucial developments that we have covered in this chapter: the MPPC had ceased to exist as a patent pool and its distribution combine, the GFC, was debilitated by law suits and a failure to adapt to features; the National Board of Censorship, which the MPPC, GFC, the independents, and MPELA all supported, was now proven to be ineffective against censorship and in enlisting public opinion; and the American film industry had entered a period of extreme volatility that would only settle down with greater consolidation and organization amongst the separate branches. Beyond the events that facilitated their rise and would demand their attention, trade organizations faced other challenges in relation to producer-distributor interests, including the issues of distribution contracts, exhibitor opposition, trade and tariff laws, and industry combination. All of these required effective lobbying efforts.

¹ Starting in 1905, nickelodeons grew from a few hundred to an estimated 8,000 in 1908. By 1910, there were over 10,000 such storefront theaters in across the United States. It must be noted that there are no conclusive data available for the entire United States, since nickelodeons were established and dismantled on a frequent basis, and their numbers at any given time of year were in a constant state of flux. For estimates on the numbers of theaters in the U.S. during the nickelodeon era, see Douglas Gomery, *Shared Pleasures: A History of Movie Presentation in the United States* (Madison: University of Wisconsin Press, 1992), 18–22; and Eileen Bowser, *The Transformation of Cinema: 1907–1915* (Berkeley, Los Angeles, & London: University of California Press, 1990), 4, 6. A detailed account of the number of nickelodeons in Manhattan, which critiques older estimates and their methods, is also found in Ben Singer, “Manhattan Nickelodeons: New Data on Audiences and Exhibitors,” *Cinema Journal* 34, No. 3 (Spring 1995): 5–35.

² Accounts of 1910s film censorship that do not consider or only minimally address its connection to antitrust include those of Lee Grieveson, Daniel Czitrom, Nancy Rosenbloom, Shelley Stamp, Roberta Pearson & William Uricchio, Kevin Brownlow, and Garth Jowett, all of whom are cited throughout this chapter. Likewise, accounts of 1910s antitrust that do not consider its relation to censorship include those of Robert Anderson, Scott Curtis, and Janet Staiger, all three of whom are also cited in this chapter.

³ As Garth Jowett notes, the first recorded court case dealing with film censorship was *People v. Doris* (1897), in which a New York judge decreed that the pantomime depicting a wedding night was “an outrage to public decency.” See Garth S. Jowett, “A Capacity for Evil: The 1915 Supreme Court *Mutual* Decision,” in *Controlling Hollywood: Censorship and Regulation in the Studio Era*, ed. Matthew Bernstein (New Brunswick, N.J.: Rutgers UP, 1999), 21.

⁴ *Ibid.*

⁵ Roberta E. Pearson and William Uricchio, “‘The Formative and Impressionable Stage’: Discursive Constructions of the Nickelodeon’s Child Audience,” in *American Movie Audiences: From the Turn of the Century to the Early Sound Era*, ed. Richard Maltby and Melvyn Stokes (London: British Film Institute, 1999), 64–75.

⁶ For the reasons behind the nickelodeon boom, see Charles Musser, *The Emergence of Cinema: The American Screen to 1907* (Berkeley, Los Angeles & London: University of California Press, 1990), 417–428.

⁷ See Musser, 432; and Pearson & Uricchio, 64–75.

⁸ Daniel Czitrom, “The Politics of Performance: Theater Licensing and the Origins of Movie Censorship in New York,” in *Movie Censorship and American Culture*, ed. Francis G. Couvares (Amherst: University of Massachusetts Press, 2006), 17.

⁹ *Ibid.*, 18–19.

¹⁰ *Ibid.*, 26.

¹¹ *Ibid.*, 21.

¹² See Czitrom, 21; and Larry May, *Screening Out the Past: The Birth of Mass Culture and the Motion Picture Industry* (Chicago & London: University of Chicago Press, 1980), 56.

¹³ Evidence of an industry split on the issue of nickel theaters is found in industry statistics and commentary from the time. For example, a *Motography* editorial titled “There Can Be No Standard Price” from July 1915 refuses to endorse movie theaters on the basis of “class or price,” arguing instead that every class of exhibition, from five cents to two dollars, is legitimate and that all price points and classes must exist simultaneously as they serve separate audiences. See “There Can Be No Standard Price,” *Motography* 14, No. 2 (July 1915): 65–66. As for the larger movie palaces, they were often converted theaters that offered a mixed program of films and high-class vaudeville, although dedicated movie palaces were also constructed in the early 1910s. Addressing film exhibition in Milwaukee, for example, Gomery cites two examples of dedicated movie palaces that presaged the end of the nickelodeon era in that city: the Princess Theatre and the Butterfly. See Gomery, *Shared Pleasures*, 32–33. Undoubtedly, the most successful theater manager of the era was Samuel “Roxy” Rothapfel, who presented films alongside massive spectacles filled with visual effects, live performances, and a full symphonic orchestra. Such entertainments demonstrated that film exhibition was a complete medium unto itself and that it did not have to be fused with vaudeville. Rothapfel started out in Pennsylvania as a nickelodeon exhibitor in 1908, and worked his way up to the Alhambra in Milwaukee (capacity 3000) in 1911 and the Lyric in Minneapolis (capacity 1700), both of which he converted into movie palaces aimed at providing high-class entertainment to middle- and lower-class audiences. By the time he had made it out to New York City in 1913, where he made a name for himself as a manager at theaters like the Strand Theatre (capacity 3500/daily attendance 10,000), he had

become the most famous showman of the age and hailed in the U.S. as an individual who transformed film exhibition into an audio-visual spectacle rivaling that of opera. This status led *Motography* to commission a weekly column titled "Aid to the Exhibitor," which appeared weekly in that journal starting on February 26, 1916 and ran for several months. Here Rothapfel discussed techniques and practices for enhancing the business and craft of exhibition. For an overview of Rothapfel's career as a showman, see Bowser, 131–132; Andrew R. Heinze, *Adapting to Abundance: Jewish Immigrants, Mass Consumption, and the Search for American Identity* (New York: Columbia UP, 1992), 213–218; and Ross Melnick, "Rethinking Rothapfel," *The Moving Image* 3, No. 2 (Fall 2003): 62–95.

¹⁴ Singer, "Manhattan Nickelodeons," 28.

¹⁵ The *Trow*'s listing of Manhattan movie establishments is at odds with a contemporary report ordered by Police Commissioner Theodore Bingham, which lists over 400, and with Singer's own list, which correlates 221 actual theaters with specific locations. See Singer, "Manhattan Nickelodeons," 6–7.

¹⁶ For example, Kevin Brownlow portrays cinema as a working-class medium seeking middle-class credibility in *The Parade's Gone By* (New York: Alfred A. Knopf, 1968), 8–11.

¹⁷ See Robert C. Allen, "The Movies in Vaudeville: Historical Context of the Movies as Popular Entertainment," in *The American Film Industry*, ed. Tino Balio (Madison: The University of Wisconsin Press, 1976), 57–102; and Russell Merritt, "Nickelodeon Theaters, 1905–1914: Building an Audience for the Movies," in *The American Film Industry*, 83–102.

¹⁸ Singer's critique of Allen rests on several contentions: he challenges Allen on the location of nickelodeons as proof of immigrant and working-class interests in cinema, he opposes Allen's assessment regarding the number of nickelodeons present in immigrant areas, and he accuses Allen of misidentifying areas that immigrants and working-class individuals inhabited. For example, Singer is adamant that Little Italy in Uptown Manhattan was predominantly working-class and not middle-class as Allen has claimed. See Singer, "Manhattan Nickelodeons," 9–12, 23–26.

¹⁹ Allen, 57–102.

²⁰ Merritt, 91–95.

²¹ Ibid.

²² Ibid., 91.

²³ Czitrom, 17.

²⁴ Pearson and Uricchio, 64.

²⁵ Historians provide differing accounts regarding the percentage of children in a typical nickelodeon audience, leading one to conclude that there was no such thing as a "typical" audience and that audiences were too varied, diverse, and locally specific to be categorized under a single banner. For example, Eileen Bowser accepts the standard account that estimates children at 30 percent. Meanwhile Grieveson and Pearson & Uricchio are much more interested in the discursive context for such claims and suggest that these estimates are biased according to the concerns of the various historical sources from which they are derived. See Bowser, 2; and Lee Grieveson, "Why the Audience Mattered in Chicago in 1907," in *American Movie Audiences*, 79–91.

²⁶ Grieveson, "Why the Audience Mattered in Chicago in 1907," 80.

²⁷ Ibid., 81.

²⁸ The findings of the thirteen Payne Fund studies on cinema's affects on children were published in a series of nine monographs in 1933. They were commissioned by the Motion Picture Research Council and were summarized and popularized in Henry J. Forman's *Our Movie Made Children* (New York: Macmillan, 1933), which caused much controversy for the film industry upon its publication. Forman's text, along with the Catholic Legion of Decency's displeasure with the lack of film censorship, had a direct impact on the MPPDA's decision to establish the Production Code Administration (PCA) of 1934 in order to administer the Production Code of 1930, which critics claimed had lacked any regulatory enforcement. The public debacle that resulted from Forman's text also forced the MPPDA to commission a direct refutation of the Payne Fund studies in Raymond Moley's *Are We Movie Made* (New York: Macy-Masius, 1938). What is significant for our purposes is that the arguments regarding children and movies were inherited from the 1910s and solidified in the Supreme Court's decision in *Mutual v. Ohio*, demonstrating how these earlier debates set the stage for decades of public discourse and industry regulation that were to follow.

²⁹ Miriam Hansen, *Babel & Babylon: Spectatorship in the American Film* (Cambridge, Mass.: Harvard UP, 1991).

³⁰ Ibid., 105.

³¹ Ibid., 4.

³² In the area of cultural history, Larry May has already pointed to the same opposition between traditional and modern that drove Progressivism and that characterized the opposing demands of family and mass consumption. May's innovation as a cultural historian is to link this theme, as well as the birth of mass culture in general, to the controversies surrounding film exhibition and censorship. See May, 46.

³³ See Jürgen Habermas, *The Structural Transformation of the Public Sphere: An Inquiry into the Category of Bourgeois Society*, trans. Thomas Burger (Cambridge, Mass.: MIT Press, 1989); and Oskar Negt and Alexander Kluge, *Public Sphere and Experience: Toward an Analysis of the Bourgeois and Proletarian Public Sphere*, trans. Peter Labanyi, Jamie Owen Daniel, and Assenka Oksiloff (Minneapolis: University of Minnesota Press, 1993). Note that, for Habermas, the rise of modern or mass media corresponds with the decline of any kind of public sphere, since the media usurp the potential for communicative rationality, i.e., the guarantee that the conditions of "truthful" communication can be met. Thus, from a Habermasian perspective, Negt and Kluge's conceptualization of media as facilitating a potential "alternative public sphere" is already a non-sequitur.

³⁴ Hansen, 17.

³⁵ Ibid., 245–294.

³⁶ Walter Lippmann, *The Phantom Public* (New York: Macmillan, 1927).

³⁷ An overview of the promotional and advertising practices that manufacturers inaugurated in the 1910s can be found in Janet Staiger, "Announcing Wares, Winning Patrons, Voicing Ideals: Thinking about the History and Theory of Film Advertising," *Cinema Journal* 29, No. 3 (Spring 1990): 1–15. Also, in a separate study, I examine in detail the promotional activities of the Selig Polyscope Company in managing the press surrounding the Selig Movie Special of 1915, which was one of the first attempts to capitalize on the growing business of film tourism. See "'Seventeen Happy Days' in Hollywood: Selig Polyscope's Promotional Campaign for the Movie Special of July 1915," *Film History* 22, No. 2 (2010): 199–218.

³⁸ Staiger argues that Paramount's in-house development of national advertising was based on its reliance on the percentage system, which demanded high turnouts for each film. See Staiger, "Announcing Wares," 13.

³⁹ Ibid., 15. The Associated Motion Picture Advertisers (AMPA) was founded in 1916 in order to address producer dissatisfaction with exhibitors. Its goal was to standardize advertising and promotional methods across the industry, thereby eliminating any form of false and offensive advertising that was likely to attract the attention of censors. See 'Motion Picture Advertisers Co-operate', *Motography* 16, No. 22 (25 November 1916): 1160.

⁴⁰ Grieveson, "Why the Audience Mattered in Chicago in 1907," 82.

⁴¹ Ibid., 80.

⁴² Ibid., 82.

⁴³ "Cheap Amusement Shows in Manhattan: Preliminary Report of Investigation," Papers of the National Board of Review of Motion Pictures (box 170), Rare Books and Manuscripts Department, New York Public Library, quoted in Pearson and Uricchio, 84.

⁴⁴ Czitrom, 24–26, 32–33.

⁴⁵ Ibid., 25–26.

⁴⁶ Ibid., 33–34.

⁴⁷ See Jowett, 19; May; and Grieveson, "Why the Audience Mattered in Chicago in 1907."

⁴⁸ May, 51.

⁴⁹ Ibid., 45.

⁵⁰ Ibid., 46.

⁵¹ Ibid., 52.

⁵² This paragraph from Mary Gray Peck's speech is reprinted in "The Danger of Inaction," *Motography* 13, No. 10 (March 6, 1915): 367. The ignoble citation of Anthony Comstock refers to the infamous Post Office executive and head of the New York Society for the Suppression of Vice who originally proposed the Comstock Act of 1873. The latter banned the circulation of obscene materials through the mail.

⁵³ *Moving Picture World* 23, No. 1 (January 2, 1915): 64–65.

⁵⁴ See Rev. E. Boudinot Stockton, "Catalogue of Educational Releases for 1914," *Moving Picture World* 23, No. 6 (February 6, 1915), 815–818; and Stockton, "Catalogue of Educational Releases for 1914: Part II," *Moving Picture World* 23, No. 7 (February 13, 1915), 971–974.

⁵⁵ MPPC members Kleine, Essanay, and Selig were closely involved in the third annual Motion Picture Exhibitors League Convention when it came to New York's Grand Central Palace in July 1913. Beyond that, the *Selig Monthly Herald*, like many other exhibitor pamphlets, offered "Aids to Exhibitors" including color posters, lobby frames, slides, photographs, color booklets, heralds, and oil paintings of stars. See *Selig Monthly Herald* 2, no. 7 (June 1915): 6.

⁵⁶ "Minutes of Manufacturers' Meeting," November 10, 1910, MPPC Collection (folder 8), Margaret Herrick Library, Academy of Motion Picture Arts and Sciences.

⁵⁷ "Minutes of Manufacturers' Meeting," December 19, 1910, MPPC Collection (folder 8). In response to exhibitor transgression on the issue of false advertising, the MPPC recommends cancellation of exhibitor licenses for the offending parties.

⁵⁸ The GFC appointed J. Stuart Blackton of Vitagraph to found *Motion Picture Story Magazine*., which dropped "Story" from its name in 1914. See "Minutes of Manufacturers' Meeting," November 10, 1910, MPPC Collection (folder 8); and 'Minutes of Manufacturers' Meeting', December 19, 1910.

⁵⁹ May, 54.

⁶⁰ *The Standards of the National Board of Censorship* (New York, 1914), 3, 5, quoted in Czitrom, 35.

⁶¹ Nancy J. Rosenbloom, "Between Reform and Regulation: The Struggle over Film Censorship in Progressive America, 1909–1922," *Film History* 1, No. 4 (1987): 310.

⁶² Jowett, 23.

⁶³ Rosenbloom, "In Defense of Moving Pictures: The People's Institute, The National Board of Censorship and the Problem of Leisure in Urban America," *American Studies* 33, No. 2 (Fall 1992): 50.

⁶⁴ *Ibid.*, 24.

⁶⁵ Shelley Stamp, "Moral Coercion or The National Board of Censorship Ponders Vice Films," in *Controlling Hollywood: Censorship and Regulation in the Studio Era*, ed. Matthew Bernstein (New Brunswick, N.J.: Rutgers UP, 1999), 41–59.

⁶⁶ Frederic C. Howe, "What to Do with the Motion-Picture Show: Shall It Be Censored?" *Outlook* 100 (June 20, 1914): 412, quoted in Merritt, 101–102.

⁶⁷ "Report of the Executive Secretary of the National Board of Review," and "Minutes of the Board," 1916–1918, National Board of Review MSS, New York Public Library, quoted in May, 55.

⁶⁸ Jowett, 24.

⁶⁹ Both Stamp and Brownlow address the controversy surrounding prostitution films such as *Traffic in Souls* (George Tucker, 1913) and *The Inside of the White Slave Traffic* (Samuel H. London, 1914). See Stamp, 41–59; and Kevin Brownlow, *Behind the Mask of Innocence* (Berkeley & Los Angeles: University of California Press, 1990), 70–93.

⁷⁰ *Moving Picture World* 23, No. 7 (February 13, 1915): 965.

⁷¹ Jowett, 24–25.

⁷² *Moving Picture World* 23, No. 7 (February 13, 1915): 955.

⁷³ Justice McKenna declared that the Supreme Court's ruling in *Mutual Film Company v. Industrial Commission of Ohio* 236 U.S. 230 (1915) was also applicable to *Mutual Film Corporation of Missouri v. Hodges* 236 U.S. (248), which named George H. Hodges (governor), Charles H. Sessions, (secretary of state), John S. Dawson, (attorney general), and M.D. Ross (superintendent of public instruction) of the State of Kansas as defendants.

⁷⁴ For example, the cost of exhibiting an unlicensed film in Kansas in 1915 was between \$25–\$100 and was considered a misdemeanor as defined by Chapter 294 (April 1913). See "Motion Picture Laws," *Moving Picture World* 23, no. 3 (January 16, 1915): 357.

⁷⁵ "Striking at Censorship," *Moving Picture World* 23, no. 1 (January 2, 1915): 46.

⁷⁶ For example, during January of 1915, Binder and Cocks attempted to create an effective liaison between the National Board of Censorship and the press in the hope that the National Board could affect the newspaper coverage of the censorship issue. See "Censor Board Meets Newspaper Men," *Moving Picture World* 23, no. 3 (January 16, 1915): 344.

⁷⁷ "Striking at Censorship," 46.

⁷⁸ "Home Rule Plan Suggested," *Moving Picture World* 23, no. 1 (January 2, 1915): 101.

⁷⁹ "Striking at Censorship," 46.

⁸⁰ "Home Rule Plan Suggested," 101.

⁸¹ "Censorship in Ohio," *Moving Picture World* 23, no. 1 (January 2, 1915): 97.

⁸² *Motography* 13, no. 10 (March 6, 1915): 363.

⁸³ "Striking at Censorship," 46.

⁸⁴ Ibid.

⁸⁵ *Moving Picture World* 23, no. 7 (February 13, 1915): 960.

⁸⁶ Ibid.

⁸⁷ *Moving Picture World* 23, no. 8 (February 20, 1915): 1118.

⁸⁸ Ibid.

⁸⁹ Ibid.

⁹⁰ "Ohio Votes to Join National Body," *Motography* 14, No. 19 (November 6, 1915): 939.

⁹¹ The Kansas censorship board charged producer-distributors \$2.00 per reel of film, an added cost that exchanges threatened to pass on to exhibitors in the form of a 10-cent per-reel "censorship tax." This change of strategy was intended to force exhibitors to cooperate with the manufacturers on their anti-censorship efforts. See "Exhibitors to Pay for Censorship, Says Magie," *Motography* 14, No. 6 (August 7, 1915): 237.

⁹² See *Mutual Film Company v. Industrial Commission of Ohio* 236 U.S. 230 (1915).

⁹³ Ibid.

⁹⁴ Tom Gunning, "From the Opium Den to the Theatre of Morality: Moral Discourse and the Film Process in Early American Cinema," *Art and Text* (September–November 1988): 34. Gunning's observations are also quoted in Stamp, 42.

⁹⁵ D.W. Griffith's speech at the Los Angeles Trinity Auditorium is quoted in "Griffith on Censorship," *Motography* 14, No. 3 (July 17, 1915): 119–120.

⁹⁶ Gunning, *D.W. Griffith and the Origins of Narrative American Film: The Early Years At Biograph* (Urbana: University of Illinois Press, 1991), 46–47.

⁹⁷ Ibid., 48–51.

⁹⁸ Ibid.

⁹⁹ Kramer's project serves to complicate histories of the emergence of classicism by pointing to the potential for attractions to exist in the narrative era beyond 1915. He is also able to differentiate the actual deployment of classical narrative techniques from the audience's response and from the industry's own discourse about the tenets of narrative integration. However, in the process, his findings are useful for demonstrating how morality and censorship affected industry practices at the time and how the industry attempted to deal with the threat of censorship by enlisting the principles of narrative construction. See Peter Kramer, "'Clean, Dependable Slapstick': Comic Violence and the Emergence of Classical Hollywood Cinema," in *Violence and American Cinema*, ed. David Slocum (New York & London: Routledge, 2001), 103–116.

¹⁰⁰ Ibid., 111–112.

¹⁰¹ Ibid., 113.

¹⁰² Ibid., 110–113.

¹⁰³ See *Mutual Film Company v. Industrial Commission of Ohio* 236 U.S. 230 (1915).

¹⁰⁴ Ibid.

¹⁰⁵ Ibid.

¹⁰⁶ Jowett, 28.

¹⁰⁷ Ibid.

¹⁰⁸ See *Mutual Film Company v. Industrial Commission of Ohio* 236 U.S. 230 (1915).

¹⁰⁹ *Moving Picture World* 23, no. 9 (February 27, 1915): 1259.

¹¹⁰ *Motography* 13, no. 10 (March 6, 1915): 367–368.

¹¹¹ "The Supreme Court's Decision," *Motography* 13, no. 11 (March 13, 1915): 406.

¹¹² Ibid.

¹¹³ Ibid., 405–406.

¹¹⁴ *Motography* 13, No. 13 (March 27, 1915): 491.

¹¹⁵ Ibid.

¹¹⁶ Ibid.

¹¹⁷ Ibid.

¹¹⁸ The potential for undermining the Chicago censorship board, along with the redundancy and budgetary strains of sustaining two censorship boards, led Governor Dunne to veto a bill that would have established a state censorship board in Illinois in July 1915. See "Will Dunne Veto the Bill?" *Motography* 14, No. 2 (July 10, 1915): 55–56; and "The Governor's Veto," *Motography* 14, No. 3 (July 17, 1915): 109.

¹¹⁹ The film industry's representatives to the 1915 Constitutional Convention in Albany, NY included J.W. Binder of the National Board of Censorship, exhibitor/showman Samuel L. Rothapfel, *Moving Picture World* editor Stephen Bush, V.L.S.E general manager Walter W. Irwin, and producer/director Paul Cromelin. Irwin's plea for adopting the Eisner Amendment, introduced as No. 101 on May 5, 1915, stressed three elements of the industry's anti-censorship rhetoric: first, that the committee was not qualified to pass judgment on film censorship; second, that censorship of the screen would lead to censorship of the press, as there was a slippery slope between the two forms of media; and third, that the decision on censorship should be dependent on the wishes of the public. See "Legislation for Freedom of the Screen," *Motography* 14, No. 2 (July 10, 1915): 65; and "Urge Adoption of Eisner Amendment," *Motography* 14, No. 2 (July 10, 1915): 59.

¹²⁰ *Motography* 13, No. 13 (March 27, 1915): 492.

¹²¹ *Ibid.*

¹²² At the time of the *Mutual* ruling, the Comstock Act of 1873 defined U.S. obscenity laws and was based on the 1868 British case *Hicklin v. Regina* along with the so-called Hicklin test that the U.S. justice system derived from this particular example of English Common Law. In determining whether something was obscene or not, the Hicklin test asked the following question: "whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences." The Hicklin test was superseded by two other cases: *Roth v. United States* 354 U.S. 476 (1957), which reaffirmed legislative authority over the definition of obscenity in works that were "utterly without redeeming social values" as based on "whether [for] the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to the prurient interest"; and *Miller v. California* 413 U.S. 15 (1973), when the court again denied First Amendment protection for obscene materials and reaffirmed "community standards" as the basis for defining "obscenity."

¹²³ A meeting of the Recreation Committee of Ohio, which was comprised of the council of churches, the philanthropic council, the chamber of commerce and representatives of several other institutions and organizations from Ohio, delegated a committee of three individuals, Reverend E.F. Chauncey of Trinity Church, Gardner Lattimer and Mrs. E.M. Fullington, to appear before the judiciary committee of the Ohio senate as representatives of the "public" and argue against the bill that would terminate Ohio's censorship board. See "Censorboards and Reforms are Very Busy: They Work While You Sleep," *Motography* 13, no. 10 (March 6, 1915): 363.

¹²⁴ "Film Manufacturers to Fight Censorship," *Moving Picture World* 23, No. 10 (March 6, 1915): 1420.

¹²⁵ *Ibid.*

¹²⁶ *Ibid.*

¹²⁷ From March of 1908 onwards, the Association of Edison Licensees (AEL) tried to assuage the concerns of exhibitors who were concerned that larger and more established theaters had better access to films. It was one of the first attempts to bring stability to an industry beset by poor standards and excessive litigation, and, thus, can be considered as a kind of industry trade organization meant to collectivize the American film industry's interests in regards to issues as far-ranging as equitable distribution, government interference, state rights, and local censorship. Moreover, by demanding that film exchanges and film exhibitors deal exclusively with Edison's licensed product, the AEL sought to displace independent manufacturers and exchanges and capitalize on Edison's legal victories against patent infringers.

¹²⁸ Robert Anderson, "The Motion Picture Patents Company: A Reevaluation," in *The American Film Industry*, 140.

¹²⁹ *Ibid.*, 141.

¹³⁰ Unlike the GFC, the Sales Company did not initially own exchanges but distributed to independent exchanges. For a comprehensive history of the Motion Picture Distributing and Sales Company, see Max Alvarez, "The Motion Picture Distributing and Sales Company," *Film History* 19, No. 3 (2007): 247–270.

¹³¹ See Anderson, 133–152; and Scott Curtis, "A House Divided: The MPPC in Transition," in *American Cinema's Transitional Era: Audiences, Institution, Practices*, ed. Charlie Keil and Shelley Stamp (Berkeley, Los Angeles & London: University of California Press, 2004), 239–264.

¹³² Curtis, 254–255.

¹³³ *Ibid.*

¹³⁴ *Ibid.*, 256.

¹³⁵ GFC Branch Manager, letter to Selig Polyscope Co., August 26, 1911, MPPC Collection (Folder 10).

¹³⁶ Janet Staiger, "Combination and Litigation: Structures of U.S. Film Distribution, 1896–1917," *Cinema Journal* 23, No. 2 (Winter 1983): 55.

¹³⁷ Ibid.

¹³⁸ Section 3 of the Clayton Act outlawed the patentee's control over unpatented articles sold by the patentee and used with patented articles. See Simon N. Whitney, "Antitrust Policies and the Motion Picture Industry," in *The American Movie Industry: The Business of Motion Pictures*, ed. Gorham Kindem (Carbondale and Edwardsville: Southern Illinois UP, 1982), 162; and *Motion Picture Patents Co. v. Universal Film Manufacturing Co.*, 235 Fed. 398 (2nd Cir. 1916), 243 U.S. 502 (1917).

¹³⁹ See Bowser, 83; and Staiger, "Combination and Litigation," 55.

¹⁴⁰ *Moving Picture World* 23, no. 2 (January 9, 1915): 206.

¹⁴¹ See *United States v. Motion Picture Patents Co.*, 225 Federal 800 (D.C. Pennsylvania 1915).

¹⁴² "In the District Court of the United State for the Easter District of Pennsylvania: October Term, 1914 *United States of America v. Motion Picture Patents Company and others*: Brief for the United States," *Film History* 1, No. 3 (1987): 191, 219–220.

¹⁴³ Ralph Cassady, Jr., "Monopoly in Motion Picture Production and Distribution: 1908–1915," in *The American Movie Industry*, 65.

¹⁴⁴ Jeanne Thomas Allen, "Afterward," in *The American Movie Industry*, 71–72.

¹⁴⁵ Ibid.

¹⁴⁶ For GFC and VLSE release schedules in October 1915, see "Complete Record of Current Films," *Motography* 14, No. 15 (October 9, 1915): 761; "Complete Record of Current Films," *Motography* 14, No. 16 (October 16, 1915): 821; "Complete Record of Current Films," *Motography* 14, No. 17 (October 23, 1915): 873; and "Complete Record of Current Films," *Motography* 14, No. 18 (October 30, 1915): 929. For VLSE's use of "open booking," which allowed exhibitors to run the films they wanted for as long as they wanted, without binding them to an annual timetable or "block" of feature releases, see "Re-Booking Policy a Success: Irwin Discusses Plan," *Motography* 14, No. 12 (September 18, 1915): 567.

¹⁴⁷ See "Complete Record of Current Films," *Motography* 14, No. 16 (October 16, 1915): 821–822.

¹⁴⁸ R.C. Moon, letter to General Film Company, "Report from Judge Moon Regarding General Film Company Litigation," April 16, 1917, MPPC Collection (folder 7).

¹⁴⁹ Ibid.

¹⁵⁰ Staiger has identified the argument that "film is art and not commerce" as a part of the MPPC's defense against antitrust law, but she does not make the connection with the *Mutual* ruling, which inversely stated that "film is commerce not art." See Staiger, "Combination and Litigation," 59.

¹⁵¹ Moon, "Report from Judge Moon Regarding General Film Company Litigation."

¹⁵² Ibid.

¹⁵³ See *Motography* 13, No. 8 (February 20, 1915): 293; *Motography* 15, No. 20 (May 13, 1916): 1114; *Motography* 16, No. 1 (July 1, 1916): 47; and *Motography* 16, No. 8 (August 19, 1916): 456.

¹⁵⁴ Curtis, 246.

¹⁵⁵ For January and February 1919, *Moving Picture World* lists only two Essanay comedies under "General Film Company" alongside manufacturers not formerly associated with the GFC or MPPC. See *Moving Picture World* 39, No. 4 (January 25, 1919): 547; and *Moving Picture World* 39, No. 8 (February 22, 1919): 1114.

¹⁵⁶ "Receiver Chosen for General Film," *Moving Picture World* 40, No. 6 (May 10, 1919): 793.

¹⁵⁷ See Nicholas Roosevelt, letter to Benjamin Hampton, August 3, 1916, Albert E. Smith Papers (Box 4), Department of Special Collections, UCLA; and "Agreement between Lubin Manufacturing Company, of the first part, and Vitagraph Company of America, of the Second Part," August 1916, Albert E. Smith Papers (Box 4).

¹⁵⁸ See Albert E. Smith, "The Beginning," 249, Albert E. Smith Papers (Box 4).

¹⁵⁹ "Essanay Takes Far-Reaching Step," *Motography* 19, No. 13 (March 30, 1918): 1.

¹⁶⁰ Albert E. Smith and James Stuart Blackton, letter to Benjamin Hampton, March 29, 1916, Albert E. Smith Papers (Box 4).

¹⁶¹ For Selig's final week of film releases, see *Motography* 19, No. 4 (January 26, 1918): 194. For the dissolution of the company, see "Minutes of the Board of Directors Meetings," December 31, 1919, Selig Collection (Folder 527), Margaret Herrick Library, Academy of Motion Picture Arts and Sciences.

¹⁶² Charles Musser, *Edwin S. Porter and the Edison Manufacturing Company* (Berkeley: University of California Press, 1991). 475.

¹⁶³ Gene Fernet, *American Film Studios: An Historical Encyclopedia* (Jefferson, N.C. & London: McFarland, 1988), 12.

¹⁶⁴ Although Europe was increasingly cut off during WWI, which had an adverse effect on MPPC members who relied on the European market for a percentage of their revenue, the overall linear footage of American film exports for exposed film increased from the prewar level of 32,690,104 (for the period between July 1, 1913 and July 1, 1914), valued at \$2,282,924, to a high of 158,751,786 (for the period between July 1, 1915 and July 1, 1916), valued at \$6,757,858. While the linear footage decreased for 1917 and 1918, the value of these exports remained \$6.6 and \$5.1 million respectively (not including rentals). As for the South America and Asia-Pacific exports, only those firms that had established distribution for these regions could reap the benefits of the increased trade. Unfortunately for them, most of the GFC members had little or no distribution presence in these markets. See "Exports and Imports Hold Up Well," *Moving Picture World* 37, No. 11 (September 14, 1918): 1546.

CHAPTER TWO:
THE MOTION PICTURE BOARD OF TRADE:
CONSENSUS AND DIVISION WITHIN THE RANKS
(September 1915 – June 1916)

Let's not preach brotherhood—the kind that is usually embodied in the certificate of a league, prevention of trouble, or mutual protection society. I believe the present condition of the business will not allow you to practice it. You would all like to, I know, but somehow it is proven that it can't be done. However, I am going to proclaim patience on your part and fraternalism not on the sleeve or lapel but in your very heart and soul. Rules and regulations never eliminated the crooks in any business . . . Work on day by day—wear rose-colored spectacles when things look blue—await patiently the day of reconstruction in the film business which we are actually passing through right now and withal look to Truth as your standard and practice it whenever and wherever you can at all times and success is bound to be yours.

Walter Bloeser, MPELA Convention, July 13, 1915¹

Those were Walter Bloeser's closing remarks to exhibitors gathered at the fifth annual Motion Picture Exhibitors' League of America (MPELA) convention in San Francisco, California during the week of July 13, 1915. Bloeser, who hailed from the *Chicago Tribune's* advertising department, warned exhibitors not to put their faith in a league or "mutual protection society," but instead to focus on their own interests, business, and ethics. In short, he encouraged individualism amongst exhibitors instead of collectivization. Yet, it is the curious and unexpected context for Bloeser's speech that leads us to question his intentions. Bloeser's recommendations seem at odds with the interests of exhibitors who belonged to an organization that was intent on collectivizing exhibitor interests against several overbearing producer-distributors and their plans to create division and confusion amongst exhibitors. Even though Bloeser did not represent

the producer-distributors directly, his occupation as an advertiser was increasingly tied to the centralized promotion and advertising departments housed in the larger producer distributors. Several of the latter had recently shifted from a traditional strategy that encouraged exhibitors to carry out their own advertising campaigns to a realization that only centralized and highly funded campaigns were effective in promoting the medium of the feature, which required a much greater effort than one- and two-reel shorts or even serials.

Thus, by the end of 1915, Paramount had in place a centralized advertising department that coordinated its efforts with its local exchanges as well as with the traditional advertising agents amongst the clearing houses and the press.² Meanwhile, other producer-distributors like the Fox Film Corporation, which continued encouraging exhibitors to advertise in their local papers, were also contributing to newspaper profits through these local proxies.³ Bloeser, whose livelihood at the *Chicago Tribune* was dependent on ad revenue from the larger producer-distributors as well as on business from exhibitors who followed distributor instructions on promotion and advertising would be expected to offer advice that was beneficial to his principal clients and sponsors. This makes it all the more strange that he was asked to speak at the MPELA conference. But what exactly did Bloeser's emphasis on "reconstruction" mean here? What kind of transformation were the producer-distributors referring to when they constantly reminded exhibitors that things were about to change or that, as one studio head put it using the language of social and economic Darwinism, 1916 would witness the "Survival of the Fittest"?⁴ Most importantly, who would stand to benefit from the threat or fear of such changes?

The answers to these questions can only be answered after we have examined the conflict between producer-distributors and exhibitors, and the remaining divisions within the producer-distributors and exhibitors after the collapse of the Motion Picture Patents Company (MPPC). Understanding the relationship between the external division, which represents the general conflict between the major branches of the industry (i.e., producer-distributors vs. exhibitors), and the internal rivalries, which corresponds to the challenges in collectivizing an industry faction (i.e., distributor vs. distributor, exhibitor vs. exhibitor), is key to understanding the role of the Motion Picture Board of Trade and of the producer-distributor trade organizations that succeeded it. That is to say, the Board of Trade did not resolve these external and internal conflicts, but instead brought them to the surface as had the MPPC previously. The difference here is that the Board of Trade, as with NAMPI after it, was a step in the direction of what was to come and it is important to understand this organization's role as a significant vessel for transforming the producer-distributors into something resembling an organized oligopoly.

The Motion Picture Board of Trade charter was devised and completed in the month of September 1915, just as the MPPC and General Film Company (GFC) were awaiting the final word on whether their patent pool and distribution combine would need to be disbanded. With the District Court's decision on October 1, 1915, the Board of Trade's status was confirmed as a new organization that in many ways replaced the functions of the MPPC. Even a trade paper commentary from the day pointed out that the Board of Trade instituted reconciliation between the GFC/MPPC members and their former rivals amongst the independents, with results that brought together several of the most powerful forces in the film industry:

After keen competition amongst themselves for more than ten years, the men who entertain the public with their motion pictures got together Thursday, September 9, at the Hotel McAlpin in New York City and decided to bury the hatchet by the organization of the Motion Picture Board of Trade of America.⁵

The founding interests included the Vitagraph, Lubin, Selig and Essanay (V.L.S.E.) companies of the MPPC/GFC along with independents and feature distributors, including the Metro Corporation, the Mutual Film Corporation, and, most strikingly, the Fox Film Corporation. Until recently, and as noted in the previous chapter, Fox had been the MPPC's mortal enemy. While court cases against the MPPC/GFC members continued into 1916 and 1917, the Board of Trade represented a new start for relations between former rivals. These major producer-distributors were soon joined by another one of the MPPC's declared foes, Universal, whose industrial stature, wealth, and \$200 stock price brought significant clout to the organization. In fact, Universal dominated the Board of Trade's executive committee along with Metro and Vitagraph, both of which were also assigned important roles and positions amongst the organization's directors and officers.⁶ For example, Vitagraph's co-founder, James Stuart Blackton, served as president of the Board of Trade. More broadly organized than the MPPC/GFC before it, the Board of Trade also included representatives of supply and equipment manufacturers such as Jules E. Broulatour of Eastman, trade paper editors such as Stephen Bush of *Moving Picture World* and William A. Johnston of the *Motion Picture News*, National Board of Censorship representative J.W. Binder, and members of independent film exchanges. While its executive offices were centered in New York City, it also formed a Southern California committee that included publicity writer Mabel

Condon, *Motion Picture News* representative J.C. Jessen, *Moving Picture World* representative Clark Irvine, and the New York Motion Picture Corporation's publicity expert Kenneth A. O'Hara.⁷ This professional and geographic breadth gave the organization a much stronger foundation than the MPPC and indicated that censorship threats against the American film industry had reached the point where broader participation was necessary in order to coordinate defensive action. According to one of its founders, Arthur James of the Metro Corporation, the Board of Trade had three principle goals:

- 1) First, to fight hostile legislation, secure the repeal of unfair laws, carry controversies with censor boards to the courts and to defeat candidates for public office who favor unfair censorship. Under this same head comes also the procuring of favorable legislation and constitutional amendments, which will give the industry greater freedom for development and growth.
- 2) Next in line comes the subject of publicity in eleven states whose legislatures will be in session in the coming months from November to March. Publicity campaigns in behalf of freedom of the industry will be conducted simultaneously in New York, New Jersey, Rhode Island, Kentucky, Louisiana, Maryland, Mississippi, Georgia, South Carolina, Virginia, and Massachusetts.
- 3) The third purpose of the board of trade is commercial, and the plans include the holding of expositions, the securing of fair treatment in the transporting of film by railroads, the recasting of insurance and fire laws and the conducting of a department of credit.⁸

The members of the Board of Trade were organized into six membership classes as outlined in the statement released by the board itself and reprinted in the September 25, 1915 issue of *Motography*. These membership classes were defined as follows:

TABLE 2.1 Board of Trade Membership Classes⁹

Class	Initiation Fee	Annual Dues
1. Manufacturer's Membership, including therein all those engaged in the manufacture of films and supplies and equipment for said industry, including importers and exporters	\$100.00	\$500.00
2. Those engaged in dealing in supplies and equipment relating to said industry	100.00	300.00
3. Those engaged in operating selling exchanges of films used in said industry	10.00	50.00
4. Publishers' Membership, including those engaged in the publishing information and data relating to said industry, and periodicals devoted thereto	25.00	25.00
5. Exhibitors of motion pictures, including therein all classes of such exhibitors and irrespective of whether said exhibitors exhibit for profit or for educational or other approved purposes		
Exhibitor owning theater seating not more than 500	5.00	5.00
Exhibitor owning theater seating not more than 800	5.00	10.00
Exhibitor owning theater seating not more than 1,000	5.00	15.00
Exhibitor owning theater seating not more than 1,400	5.00	25.00
Exhibitor owning theater seating not less than 1,400	5.00	50.00
Miscellaneous. This class of membership shall include and consist of directors of motion pictures, production, scenario writers, actors, operators and the employes [sic] of each and every branch of the said industry	2.00	1.00

With the exception of the Publishers' Class, the members of each class would be allowed to elect two individuals who would serve one-year terms on the board of directors, making for a total of ten directors at any given time. Since the Board of Trade did not survive past the summer of 1916, issues of executive succession and changeover never arose. Yet it is interesting that the Board of Trade's founders were keen to present this institution as democratically formed and as a legitimate outlet for industry-wide concerns. In this way, the Board of Trade was unlike its closest immediate predecessor the MPPC, which was mostly dominated by Edison and Biograph. While there was a hierarchical structure to how the new organization functioned, and while the founders themselves were given preferential treatment in terms of their election to the board of directors, this

was not surprising since the manufacturers themselves paid the highest dues and initiation fees as evident from the chart above.

If the Board of Trade's organization, membership, and hierarchy represented a view onto the emerging oligopoly that would define the American studio system by the end of the 1910s, then there should be no surprise if the conditions outside the organization were somehow mirrored inside the organization. In each case, democratic representation was not the issue. Just as the January 25, 1919 founding of the League of Nations as part of the Treaty of Versailles did not nullify the imbalance of power between nations, or give birth to a truly democratic and egalitarian world order envisioned by League proponents such as President Woodrow Wilson, the role of industry trade organizations during the 1910s was merely a diplomatic manifestation of an underlying strategic reality.¹⁰ The imbalance in power between larger and smaller firms continued, as would the conflict between producer-distributors and exhibitors. In fact, what I hope to present here is evidence that trade organizations like the Board of Trade contributed to developments toward oligopoly and toward vertical integration, which offered possibilities of an endgame that could resolve producer-distributor and exhibitor conflicts once and for all. Generally, then, for the time that it was in operation, the Board of Trade provided a diplomatic outlet for tensions and conflicts that were continuing to consume the American film industry. It is the purpose of this chapter to recount these conflicts and to provide analysis that will explain the Board of Trade's significant role in these developments.

Although the Board of Trade's founders aimed to unify the industry under a single banner in pursuit of the goals outlined by Metro's Arthur James above, several key

developments of 1916 prevented such reconciliation amongst the producer-distributors and between producer-distributors and exhibitors. Two of these developments were interrelated: the Board of Trade's disagreements with Famous Players-Lasky over the Hughes Bill; and the rise of a new industry oligopoly comprising of Famous Players/Lasky/Paramount, Fox, Metro, Pathé, Universal, Vitagraph, and World as the dominant producer-distributors. Accordingly, we will examine these two developments first, before moving on to a third factor: the conflict between producer-distributors and exhibitors that ultimately sealed the Board of Trade's fate in the summer of 1916. Here Metro withdrew its support for the organization after a conflict over exhibitor representation resulted in a failed attempt to organize a joint annual conference held in conjunction with the MPELA. In both cases, a major producer-distributor disagreed with Board of Trade policies, and attempted to undermine the organization by endorsing a competing or opposing objective. For rising corporations like Metro and Famous Players, the vacuum created after the MPPC's formal disbandment, along with the industry's rhetoric of transformation and "survival of the fittest," provided opportunities for strategic maneuvering where each firm could test its potential to affect industry developments. Boundaries of authority and spheres of influence had yet to be determined at this time, thus accounting for the uncertainty in relations amongst the various branches of the industry. This is what Bloeser's quotation above referred to as a period of "reconstruction." For new a form of coordinated and collective organization to emerge in the film industry, one that would replace some of the MPPC/GFC's functions, these uncertainties and undetermined rivalries had to be replaced with some level of cooperation and mutual respect. A

permanent state of war amongst the major producer-distributors was neither beneficial nor sustainable given all the challenges that confronted this vulnerable industry.

Unlike the other producer-distributors, Famous Players had refused to join the Board of Trade from the outset, which meant that its affiliated distributor, Paramount, and its affiliated California producer, the Jesse L. Lasky Company, would also be staying out. Paramount had become such a dominant force in the industry that its own convention in September 1915 rivaled those of the large trade organizations: the Board of Trade and the MPELA.¹¹ Perhaps the Famous Players/Lasky/Paramount combine was looking to assert itself in the industry, and/or perhaps it felt that its interests were not served by joining with other producer-distributors.¹² In either case, Famous Players, like Metro, was powerful enough that it could successfully oppose and derail the Board of Trade's agenda on a variety of fronts. It just so happened that with the threat of state and local censorship on the rise after the *Mutual v. Ohio* decision, along with the collapse of the MPPC in late 1915, 1916 would provide the perfect opportunity for Famous Players/Paramount to show that it had become the major player on the manufacturing and distribution scene, especially where features were concerned. As the Board of Trade members collectively jockeyed to fill the MPPC's place, Paramount single-handedly sought to assure every branch of the industry that it was a dominant force to deal with in early 1916.

Allied with other film manufacturers that relied on Paramount's distribution system and powerful independents like the World Film Corporation, Famous Players proposed its own solution to the problem of film censorship by endorsing the Hughes Bill that had recently been placed back on the congressional agenda. You will recall from the previous chapter that the Smith-Hughes Bill was introduced in December 1914, but did

not come up for a vote during the 3rd session of the 63rd Congress, spanning December 1914 to March 1915. It was reintroduced on December 6, 1915, when the 64th Congress convened, under the title of the Hughes Bill. Its House version was No. 456 and its Senate version No. 2204. The bill called for the creation of a federal board of censorship that would oversee film exhibition in the United States and that would censor films before they could be exhibited in theaters. In citing the need for the establishment of a federal censorship body, Chairman Dudley M. Hughes of the House Committee on Education noted that the existence of the National Board of Censorship reflected the film industry's acquiescence to national censorship, but that the simultaneous establishment of local and state censorship boards had demonstrated the National Board's failure.¹³ Hughes further cited the five percent of films that the National Board did not censor or consider as evidence that its work was incomplete and that it avoided precisely the films that were objectionable to the public. Finally, Hughes pointed out that motion pictures were articles of interstate commerce and that local and municipal censorship created unnecessary hardship for an industry that could be better served by a universal and federally-mandated form of censorship.

The Board of Trade responded immediately to the bill's reintroduction. It requested a congressional hearing at which the industry could argue its case against any adoption of the bill, with the additional provision that congress notify the film community two weeks in advance of the scheduled meetings.¹⁴ That request was only partially granted, as the House Committee on Education on January 6 gave only a single week's notice in designating January 13 through January 19 as the scheduled time to hear arguments in favor and against the bill: each side was supposed to be allocated equal

time. Trade paper commentary before the hearings seemed highly pessimistic, with *Motography* noting that passage of the bill was all but certain and calling for the Board of Trade to place its emphasis on amendments to the bill instead of attempting to defeat it completely, which the editorial viewed as highly unlikely.¹⁵

When the hearings began, the Board of Trade sent its representatives, executive secretary J.W. Binder and legal counsel William M. Seabury, to oppose the measure and to argue against the legacy proponents of the Smith-Hughes Bill.¹⁶ The latter included two firebrands, Rev. Crafts and Rev. Chase, introduced in Chapter 1. Both reverends had participated in the last round of congressional hearings on the Smith-Hughes Bill in the previous congress and many in the industry considered them *persona non grata*. Hughes designated Binder and Crafts in charge of allocating time to their two respective factions: those opposing and those supporting the bill, respectively. With this important concession, the Board of Trade was now a recognized voice for motion picture interests in the halls of government, especially where opposition to federal censorship was concerned. It is significant that the Board of Trade was given this responsibility to represent the interests of not only its own members but also those of the MPELA and the National Board of Censorship.

During his opening remarks to the Committee on Education on Thursday, January 13, Binder laid out a carefully designed argument against federal censorship and scheduled supporting testimony from representatives of all industry branches, including the press. In addition to rejecting the Supreme Court's decision in *Mutual v. Ohio*, which denied films First Amendment rights and legitimized state and local censorship boards, Binder's principal objection to the Hughes Bill concerned its endorsement for what the

industry termed “pre-publicity” censorship, whereby a film was censored before it was ever exhibited. Arguing against the *Mutual v. Ohio* decision, Binder claimed that motion pictures (along with writing and speaking) were a form of “communication” and that pre-publicity censorship by a board of five unelected individuals violated freedom of communication, and, in turn, freedom of the press. Furthermore, Seabury, the Board of Trade’s legal counsel, asserted that the failure of local and state censorship boards had proven that censorship of any kind was ineffective. According to Seabury, this failure nullified any need for the establishment of federal censorship. Aside from the fact that the different boards could contradict one another, Seabury referred to the recent film *Virtue* (Joseph Adelman, 1915). The theater licensing commission had banned the film in New York, where there was no state board for censorship, but the state censorship board in Philadelphia had passed the film. In other words, the film was not shown where there was no organized state censorship board and it was shown where there was a state censor. For Seabury, this contradiction was evidence that the industry was doing just fine without censorship boards. Moreover, according to J.W. Binder, the addition of a centralized board would lead to financial ruin for the industry, since the average annual cost for censorship for a single firm was \$25,000. Binder then asserted that the state boards would not be disbanded after the establishment of the federal board, nor would the former cede authority to the latter. His evidence included official state responses to a letter that he had sent to the governors of Ohio, Pennsylvania, and Kansas. When Hughes inquired if Binder and the Board of Trade had an alternative plan, Seabury suggested that the insertion of “motion pictures” into Sections 211 and 245 of the U.S. Criminal Code was

sufficient to guarantee that lewd films not find their way through the mail for circulation or distribution, whether through foreign imports or through interstate commerce.

After Binder's and Seabury's opening remarks, the Board of Trade provided specific evidence on how the bill violated treaty obligations with foreign countries on the issue of copyright and trade laws. As Paul Cromelin of Cosmopolitan Pictures explained, Section 9 of the Hughes Bill, which withheld copyright from a film that the commission had rejected, would be impossible to implement in the case of imported films and would put film importers like Cosmopolitan out of business. The Board of Trade's intentions were to present objections to the Hughes Bill as based on legal as well as financial grounds. It wanted to broaden the coalition brought together for this purpose. That is why it was important for the Board of Trade and those opposed to federal censorship to reach out to exhibitors, the National Board of Censorship, and the press for support in their campaign against the Hughes Bill.

On Friday, the second night of the hearings, Dr. Cranston Brenton, chairman of the National Board of Censorship, was the first to take the stand when he argued against the Committee's description of the censorship work undertaken by the National Board. Brenton insisted that the National Board operated independently of the producer-distributors, that it screened 99% of all films in its 115 monthly meetings, and that its annual censored footage (i.e., the amount of film excised from censored films) had equaled 500,000 feet in one year. He rejected Crafts's assertion that the National Board's members received monetary compensation for their work, or that their work was incomplete and inadequate, and he contended that the industry's voluntary form of censorship was superior to any system enforced upon the industry from the outside.

When asked by Representative Simeon D. Fess of Ohio about the cinema's affects on children, Brenton iterated the industry's position that parents were responsible for the children and not film exhibitors, an assertion that was reinforced later on in the hearings when representatives of the General Federation of Women's Clubs and the Federation of Child Study accused parents of "criminal negligence" for allowing their unsupervised children to visit theaters. Brenton also suggested that no respectable film manufacturer could censor content that was perfectly suitable for adults or that dealt with the realities of life as expressed in the greatest literature. Brenton argued that such restrictions would effectively stifle the "fifth largest industry in America," as the industry rhetoric often claimed during this era (despite the reality that the film industry was not even in the top twenty of American industries). Reinforcing the industry's polemic, Binder filed a written complaint against the Hughes Bill that listed 69 exchange men and theater operators who purportedly employed 2900 individuals and represented \$113 million of capital investment. Even before the U.S. involvement in WWI, the industry was intent on presenting the film business as crucial to domestic and international trade and as essential to America's economic and political strength in the world. Federal censorship, they argued, would repeal and nullify these gains.

In contrast, Rev. Crafts began his case in support of the Hughes Bill by claiming that federal censorship could guarantee a standardized and steady supply of film that would enhance the motion picture industry's financial potential. Responding to the Board of Trade's argument that the Hughes Bill violated "freedom of the press," Crafts duly cited *Mutual v. Ohio*. He noted that the Supreme Court had specifically nullified the claim that motion pictures were an organ of the press. Crafts also repeated his assertion

that the industry exercised control over the National Board of Censorship and that it was a compromised organization that did not serve the interests of the public. But Crafts was also confronted with opposition from the committee, demonstrating its lack of unanimity on the Hughes Bill. This controversy offered evidence that politicians in Washington might fall prey to the Board of Trade's lobbying efforts. For example, Representative Frederick W. Dallinger of Massachusetts pressed Crafts on the distinction between books and films. Crafts answered that the imagination is not as vivid as the moving picture and that the devil never had such devices in print as the films have available to them through moving pictures. Not satisfied, Dallinger argued that it was the other way around: books were far more damaging because they could be read over and over again, whereas motion pictures were ephemeral images on a screen. The scene or image that was offensive was soon replaced by another. Following this line of thought, Dallinger then asked a question that originated from the industry's own anti-censorship playbook: "Is it not a fact that these things that you find objectionable are in all the best books of fiction that ever have been written, including the Bible, religious books, and public sermons?" Yet Crafts's reply to this analogy was categorical and very revealing in the way that it restated the Supreme Court's decision from *Mutual v. Ohio* along with the precedent already set by reports of juveniles and motion picture exhibition, where cinema was thought to exercise hypnotic effect on its audience:

Well, there are four murders in Hamlet. I go to see Hamlet and I do not go away with a wish to kill people; but if I go and see cowboys killing people in a wild west show, when I come out I feel like getting a pistol and shooting somebody [Audience Laughter].¹⁷

The third night of the hearings on Saturday began with more of the same kind of criticism that Reverend Crafts had directed at the industry. Mrs. John N. Culberston, president of the Women's Interdenominational Missionary Union of Washington, was in charge of time for the proponents of the bill. She called on several individuals, including Rev. Crafts's spouse. Mrs. Crafts testified that she had spent the greater part of her day screening motion pictures and that they were filled with depictions of robbery, adultery, trickery, "white slavery" (i.e., prostitution), and infidelity. Also offering testimony in this vein were other women's advocates, including Emma E. Shelton of the district branch of the W.C.T.U. (Woman's Christian Temperance Union) and Mrs. Edward A. Robinson, who was president of the Mothers' Congress of Maryland, both of whom reaffirmed the immoral content they had viewed in motion pictures. Alongside women's groups, the bill's proponents also called on African American organizations, including Rev. J. Milton Waldron of Washington, Rev. A.C. Garner of the Evangelical Alliance, and Charles M. Thomas, an African American principal of a Washington school, all of whom testified to the adverse effects of motion pictures on youth in their own communities. Thomas described his recent experience at a motion picture house as simply "foul."

In response to these accusations, the Board of Trade's J.W. Binder challenged the bill's proponents to offer evidence that crime amongst youth was directly related to motion picture attendance. In support for his position, he offered a letter from Mary Gray Peck of Geneva, New York, whom we will recall from Chapter 1 as one of the women's advocates supporting the industry's position on censorship and who in our previous example was merely a mouthpiece for the industry's own rhetoric regarding the necessity for a public debate surrounding censorship. Peck was a representative for the Federation

of Women's Clubs and had taught English at the University of Minnesota, where she had served as an assistant professor. The following is an excerpt from the letter to the committee:

I am absolutely opposed to Federal censorship of any art . . . I have for several years been specially interested in the motion picture drama and am well acquainted with the sentiment of women's clubs in all parts of the country as regards moving pictures. I know that there is no demand on the part of the women of the country at large for Federal censorship. I know, further, that there will be a wave of widespread indignation if this proposed bill is pushed through without any popular and organized demand for it . . . Manufacturers have not shown themselves recalcitrant to democratic and constructive censorship. They are interested financially and artistically to develop a new art on the highest plane, and they are, on the whole, going in the right direction.¹⁸

Peck's reference to "democratic and constructive censorship" was an appeal to relegate film censorship debates to the public sphere, and not the insular halls of government, the inhospitable domain of the courts, or to local and state censorship boards, all of which offered greater challenges for industry lobbyists. As if to dovetail with Peck's theme on the public, Binder then spoke on behalf of the newsreel producer, Pathé American, whose business relied on quick turnover for films that were shot in the field, a practice that was difficult and even impossible under a federal censorship regime. This thematic alignment of motion pictures with news was important because the industry's position on motion picture expression relied on an analogy between newsreels and printed news. It was for this reason that many in the industry argued for First Amendment protection that had been denied by the Supreme Court.

The "democratic" theme and the emphasis on public engagement were further outlined in the testimony of Fred J. Herrington, president of the MPELA, who insisted

that the American people had expressed their views against federal censorship in the thousands of encounters that he experienced across the United States, in addition to the polls that had been conducted in San Francisco, Baltimore, Pittsburgh and the state of Ohio. In support of his claims, Herrington cited a list that contained signatures from 100,000 Ohioan residents who were opposed to state censorship of motion pictures. Herrington also insisted that the state censorship board in his home state of Pennsylvania had produced no observable benefit to the industry or to the patrons. According to Herrington, the state board and the local or municipal censorship authorities often contradicted one another. Specifically, Herrington referred to censorship cases surrounding controversial films such as *The Nigger* (Edgar Lewis, 1915) and *The Birth of a Nation*. The latter, for example, was first approved by the state board, rejected by Mayor Joseph G. Armstrong of Pittsburgh, and ultimately approved in an Allegheny County court decision that overruled Mayor Armstrong's ban. It was inferred from Herrington's examples that the inefficiency and contradiction would only be compounded by the addition of federal censorship to a system of local and state censorship that was already broken. That line of argument reinforced the industry's traditional position on local and state censors, who were ridiculed as unqualified in judging the effects of motion pictures on the public or in determining the causal relation between films and criminal activity. As if invoking the rhetorical classification of audiences that we surveyed in Chapter 1, the two sides could not even agree as to the percentage of juveniles that comprised the 12 million daily attendees: the Board of Trade maintained that it was between 8% and 10%, while Rev. Sheaf Chase claimed that it was 33%. Once again, the

public was defined and deployed by the forces that reserved the authority and power to speak for that public.

As I have outlined, the fissures and cracks that appeared in this public debate over federal censorship concerned the opposition between the film industry and the reformers who advocated for greater control over what they perceived as a dangerous medium in the hands of an industry that flouted traditional sources of authority it confronted in the Protestant church and in the halls of government. Sunday blue laws that forbade the exhibition of motion pictures were based on religious observance and respect, but they further represented ideological and strategic attempts to guarantee the church's access to its own congregation. Accordingly, given the conflicted state between the church and the film industry, the Board of Trade had anticipated and prepared for this challenge in their carefully choreographed presentation for the House Committee on Education, where the film industry's contributions to freedom of speech and the American economy were on the forefront. But the Board of Trade's presentation gave no indication of the internal power plays and divisions amongst the producer-distributors. There was an even more significant debate within the film industry itself between those who supported the federal censorship bill and those who opposed. What the film industry and the Board of Trade had not anticipated, however, was that Paramount and its representatives would offer to support the Hughes Bill if a few of their provisions were added to the bill. Yet why would Paramount approve of federal censorship when every other manufacturer and distributor seemed opposed to it?

Ironically, Paramount's source of strength that allowed it to become a dominant feature distributor was also its Achilles heel when it came to the censorship of each film.

Consider how a *Motography* commentary from December 25, 1915, while not directly addressing Paramount's trade practices, offers insight into Paramount's unique situation and the reasons for its support for federal censorship.¹⁹ The commentary makes it clear why state censorship was such a threat to a distributor like Paramount that relied on the percentage system. Recall that the percentage system was based on a percentage of the box office returned to the distributor and its local exchange instead of a flat fee that the exhibitor paid upfront. Some contemporary industry rhetoric tried to present the percentage system as an important innovation in film distribution, one that had satisfied both exhibitors and manufacturers, while streamlining the work of distributors and their local exchanges.²⁰ It was argued that the percentage system rewarded the higher quality films. Yet in truth the percentage system led to the "survival of the fittest," as one commentator put it in November 1915, raising the possibility for greater consolidation in film manufacturing and distribution whereby the "stronger absorbed the weaker."²¹ This was because the smaller companies could not compete with the larger feature distributors, whose films were guaranteed a much greater return on investment. If exchanges only distributed films on a percentage system, the smaller producers, who specialized in shorter films, serials, and low-budget features, and who relied on the flat-fee per-reel system, would not receive the necessary compensation to continue their operations. They would be forced to raise more capital, attract popular stars, directors, and authors, and adopt percentages and block booking in order to overcome a concentrated industry and its barriers to entry.

Addressing the theory and methods of industrial organization, economist Richard Caves has defined an industry's barriers to entry through three key terms: *scale-economy*,

absolute cost, and *product-differentiation*.²² *Scale-economy* barriers to entry occur when firms do not achieve the lowest possible costs prior to gaining a large share of the market. According to Caves, “the greater the output of a single firm that has gained all scale economies relative to the market, the harder it is for a new firm to start out at an ‘efficient’ size.” Substitute “single firm” with Paramount and any smaller distributor for “new firm,” and you get an idea of what was happening in the feature distribution market in the mid-1910s. *Absolute cost* barriers to entry refer to the new firm’s lack of efficiency compared with an established one, and the higher cost involved in producing at the same rate and amount. Often, vertical-integrated companies have an advantage over ones that are not integrated as such. In the example here, a smaller producer looking to enter feature production and distribution is confronted with the difficulties and costs involved in establishing a nation-wide network of feature exchanges, each one of which can cost between \$100,000 and \$200,000 depending on the extent of its facilities and services. Finally, *product differentiation* barriers arise when established firms rely on their brand reputations to outsell their competitors, such as when Paramount deployed stars (e.g., Mary Pickford) and directors (e.g., Cecil B. DeMille) to offset its brand from its competitors. Taken together, the barriers to entry that Paramount helped create in the feature distribution field led to the GFC’s adoption of the percentage system in late 1915, when the GFC declared that its members’ releases would be reduced to 42 films selected on merit and sold on a percentage basis.²³

Yet even for those larger producer-distributors who adopted the percentage system, there were still challenges to be met. Since state and local censorship affected the returns of individual films, a censored film rented on the percentage system created

financial shortfall far in excess to the flat-fee system, where an individual film's success was not as crucial to the distributor's overall business strategy, which relied on quantity and not quality. That was the case with the MPPC members and the GFC on the whole, as short films were their main source of income. As Paramount's feature distribution system relied on a collection of state rights exchanges, federal censorship might benefit Paramount more than it would several of the other film distributors, which still had diversified interests in program as well as feature distribution.²⁴ This is precisely why Paramount requested that the proposed federal censorship board draw its members from the Interstate Commerce Commission, such that Paramount could effectively down two birds with one stone: censorship and interstate commerce restrictions.²⁵

In addition, Paramount, unlike Board of Trade member V.L.S.E., for example, practiced block booking, where a film was sold as part of an annual package that required adherence to a strict schedule. Any disruptions to the schedule caused by censorship delays would reduce profitability and render the entire block booking system inoperable. For all of these reasons, Paramount was uniquely situated to benefit from a federally-mandated censorship board, which would nullify the local and state threats to its percentage system and state rights distribution mechanisms, and would guarantee a predictable schedule for its block booking operations. (Later, as Paramount expanded into exhibition, the percentage system yielded other benefits having to do with takeovers and buyouts, as I explain in subsequent chapters). The larger Paramount became, the more it had to ensure that outsiders could not interfere or disrupt its business practices, and the more barriers to entry it was able erect to dissuade its competitors in the area of feature

distribution. As far as Paramount was concerned, federal censorship was the best way to prevent local and state censorship from hindering its operations.

Paramount's declaration that it would support federal censorship if its provisions were implemented into the Hughes Bill was described by *Motography* as an "eleventh hour bombshell."²⁶ It came as an unprecedented surprise on the last night of the House Committee on Education's hearings, Tuesday, January 25th, and was delivered by attorney Arthur S. Friend. Friend represented the producer-distributor combine consisting of the Paramount Picture Corporation, the Famous Players Company, and the Jesse L. Lasky Feature Play Company, along with two companies that were not affiliated with the Board of Trade: the World Film Corporation and the Equitable Motion Picture Corporation. Although the producers Famous Players and Lasky had not yet officially announced their union with their feature distributor Paramount, they operated as three interconnected and closely integrated film companies.²⁷ Therefore, noting that Paramount represented a single interest, there appeared to be three producer-distributors that favored the Hughes Bill. The majority had opposed any form of federal censorship, as the Board of Trade's presentation to the committee demonstrated. But Friend also produced a letter from Board of Trade member Metro that articulated its support for Paramount's position. This was the first sign of a rift within the Board of Trade that threatened its integrity. With this added support, and on behalf of the interests allied with Paramount, Friend filed a draft bill that proposed to substitute several elements in Hughes's original bill. Friend's statement to the committee argued that only federal regulation could alleviate the sporadic and arbitrary application of local and state censorship in the United States. The statement described how the motion picture industry had attained "vast financial

importance” and had “mushroomed” growth, but that standardization and homogeneity lagged far behind. Federal regulation, Friend argued, would alleviate these problems while eliminating the “get-rich-quick artists” and sensational film producers who plagued the industry with low quality and immoral film productions featuring “scenes of lust and crime.”²⁸

Friend’s statement was not only an endorsement for regulation, but an argument for greater combination in the film industry in the form of “standardization” and “homogeneity,” which were code words for consolidation in American industry. By aligning the smaller producer-distributors with “sensational films,” Paramount was attempting to carve out the moral high ground for its upscale features. However, Paramount was also asserting itself as a leader in the industry, one that was intent on appearing concerned with the interests of exhibitors as well as producer-distributors. The latter accounts for Friend’s insistence that the three divisions in the industry operated as distinct and separate entities whose interests had to be guarded by addition of the following provisions to the Hughes Bill:

- Local offices for the commission in New York and Los Angeles so that the producers, most of whom operate in these cities or vicinity, may have ready access to the supervising authority and prompt consideration of their product.
- Authority to the commission or deputy in charge of a local office to grant or refuse a license. This is necessary to procure prompt action on applications which the producer requires in order to meet his engagements with the distributor, covering a constant and frequent supply of pictures, and which the distributor requires in order to enable the exchanges to supply to the exhibitors the daily and weekly changes covered by their contracts. Delay would certainly be costly and would injure the entire business.
- Provision for condemnation of specific parts of a film which, when the same are eliminated, shall become entitled to license.
- A provision for review by the commission when the commissioner refuses a license, as the determination of the question as to whether a film is entitled to

license is not based upon exact standards, but is a matter of opinion only. It should not be possible for one man, in his discretion, to destroy a large investment represented by a modern photoplay.

- Provision for an appeal to the Court of Appeals of the District of Columbia from a refusal to license. As the determination by the commission would be really arbitrary, because of the absence of legal tests of recognized standards, it is of the greatest importance that the commission should not be vested with supreme power. Where great property interests are involved the citizen should always be afforded an opportunity to have relief from the court if he feels that he has been treated unjustly.
- A provision permitting the producer to transport films prior to application for license. The producer should be free to transport a film from its place of manufacture to the home office, or other place, where it will be cut and trimmed or otherwise repaired for exhibition.
- An exemption from the operation of the act of films exhibited prior to its enactment and films which do not contain any dramatic or fictional element, such as pictures of current events, commonly known as news films and topical reviews, and picture of places and people, geographical nature and commonly known as travel pictures.
- A provision granting discrimination to the commission to issue a permit under which films may be exhibited pending application for license. Such a provision would enable the commission to adjust the burden of temporarily accumulated applications by granting permits, in fact temporary licenses, to producers, whose history and character entitled them to a presumption of complying with the law.²⁹

In addition to these provisions to the bill, Friends requested that his clients have an opportunity to look over the revised bill and present criticisms and suggestions before the committee took any action on the new draft. Considering its long list of provisions, several of which were later incorporated into the industry's self-censorship organizations, Paramount had clearly outmaneuvered the Board of Trade: it had managed to protect industry interests while ingratiating itself with those members of congress in support of federal censorship. Paramount had also managed to create a rift amongst the Board of Trade members, with Metro and Mutual both indicating that they were willing to support Paramount's revised version of the Hughes Bill.³⁰ Symbolically, the language that Metro's president, Richard A. Rowland, used in outlining his support for the revised bill

emphasized “regulation” while rejecting the notion of “censorship,” which carried with it many negative connotations inherent in a system where multiple censorship boards exercised authority over a single region.

Although it may have seemed as a conciliatory gesture, Paramount’s revisions had managed to tame the impetus behind federal censorship and transform it into an instrument that served the larger producer-distributors in their quest to “standardize” and “homogenize” the industry. The Board of Trade’s only compensation in this regard was that several congressmen on the House Education Committee had supported its campaign against the Hughes Bill and that its own suggestions regarding the classification of motion pictures under the Criminal Code were implemented into the alternative Towner Bill, which was addressed to the House Committee on the Judiciary, and was endorsed by many industry personalities beyond the Board of Trade including D.W. Griffith himself.³¹ Moreover, Paramount’s support for federal censorship was contingent on its request that Hughes guarantee the abolishment of local and state censorship boards, a promise that the congressman was not able to make in responding to a letter from Paramount: “There is no assurance I can give that other commissions, state and local, will be discontinued upon the creation of a national commission.”³² Despite the fact that Hughes was keen to build a relationship with Paramount, and implemented Friend’s recommendation and provisions as outlined above into a new version of the bill, his response amounted to a blunt rejection and that jeopardized Paramount’s continued support for federal censorship.

Finally, the Board of Trade could also take comfort in President Woodrow Wilson’s address to the Board of Trade at their first and only annual banquet on January 27, 1916 at the Hotel Biltmore. Wilson’s remarks were presented in an anecdotal and

equivocal manner that made no mention of the word “censorship,” but spoke of the public will and of public responsibilities in a way that implied the necessity for compromise and censorship.³³ Yet the fact that Wilson attended the meeting at all, and the diplomatic manner in which he presented the case for censorship without actually using the term, showed that the Board of Trade had achieved a national standing deserving of a presidential address. Wilson had long appreciated the power of motion pictures and their affect on American and world audiences, and his appearance at the Board of Trade’s banquet marked the beginning of a significant relationship between his administration and the American film industry. None of this, however, was important enough to derail the Hughes Bill at this historical juncture in early 1916. By late 1916, as we will see in the next chapter on NAMPI, the upcoming Presidential election meant that Wilson had to be more balanced in his comments on censorship and the film industry, if only because he realized the political and ideological reach of the motion picture industry.

After the initial hearings, Hughes set about to draft a new version of his bill with Paramount’s suggestions and provisions in tow. The new bill had the support of Famous Players and Lasky, their distribution arm Paramount, as well as Equitable Film Corporation and the World Film Corporation. Reprinted below is the text for the measure at the time of its rewriting after the hearings, including all addenda and revisions that were printed separately:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a Federal motion picture commission be, and the same is hereby, created, to be composed of five commissioners appointed by the President, with the approval of the Senate. One of the commission shall be designated as chairman. The Commission shall be a division of the Bureau of Education in the Department of the Interior.

Sec. 2 That each commissioner shall hold office for six years, except that when the commission is first constituted two commissioners shall be appointed for two years, two for four years, and one for six years. Each commissioner shall thereafter be appointed for a full term of six years, except that any person appointed to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The salary of the chairman shall be \$8,000 a year and of each other commissioner \$7500 a year.

Sec. 3. That the commission may appoint deputy commissioners and other assistants and fix the compensation of each. Actual and necessary traveling expenses shall be allowed to those who travel on the business of the commission. The commission shall be provided with necessary office furniture, stationery, supplies, projecting machines, and appliances necessary for inspection of films: *Provided, however,* That the entire cost of the commission, including salaries and all other expenses, shall not exceed \$100,000 a year.

Sec. 4.—That the commission shall establish and maintain a bureau or sub-office at the city of New York, in the State of New York, at the city of Los Angeles, in the State of California and such other places as the Commission may decide. Each bureau shall be in charge of one of the commissioners, and films may be submitted at such bureaus or at the office of the commission in the city of Washington. The action of the commissioner in charge of such bureau shall be deemed to be the action of the commission, in so far as the granting or refusing of licenses may be concerned. [In the final text, the commissioner's role was modified to include two deputies, whose votes would determine the commissioner's action and who could individually appeal to the Washington office in the case of a disagreement.]

Sec. 5. Before any film shall be submitted to the commission or to any bureau an application shall be made in writing on a form to be provided by the commission which shall set forth the name of the party applying for the license, and the number of linear feet contained in the film, and a short statement of the subject matter thereof. Within one day [or as soon as practicable] of the filing of such application with the commission or any bureau, the commission or the bureau shall set a time for the submission of the film, which shall be in no event more than three days after the date of the filing of the application. At least one of the commissioners or one of the deputy commissioners shall attend upon and be present throughout the exhibition of each film submitted. The party submitting may present such evidence in addition to the film as may be necessary or proper to make clear the purpose and intent of the film. All oral evidence shall be recorded by the commission.

The license applied for shall be granted or refused within one day after the hearing.

Sec. 6. Should any commissioner or any deputy to whom the commission may delegate the duty of considering an application refuse to license any film, the applicant may file with the commission in the city of Washington an application for review, and within five days of the filing of such application and the submission of the film the commission shall review the same and the granting or refusal of the license shall be determined by the concurring votes of at least three of the commissioners after each of those voting shall have attended throughout the exhibition of the film and shall have heard and considered such evidence as the applicant for review has seen fit to offer.

Sec. 7. Should a license be refused after review, as in section six last above provided, the applicant may, at any time within ninety days from the date of such refusal, appeal from the ruling of the commission to the Court of Appeals of the District of Columbia. Such appeal shall be perfected in the following manner, that is to say a petition verified by the applicant shall be filed in the office of the clerk of the said court, setting forth a description of the film and a complete record of the original application for license, the action of the commissioner or deputy, and the action of the commission on application for review. The court shall, on the hearing of such appeal, attend throughout the exhibition of the film and receive such evidence as may be offered by the applicant and by the commission.

Sec. 8. That the commission shall license every film submitted to it and intended for entrance into interstate commerce unless such film or any part thereof is obscene, indecent, immoral, inhuman, or is a reproduction of an actual bull fight or prize fight, or is of such a character that its exhibition would tend to corrupt morals or incite to crime. If the Commission shall not license any film for any of the reasons set forth, it shall furnish to the applicant a written report clearly setting forth the reasons for its rejection, and the part or parts of the film objected to and may grant a license conditioned upon the elimination of such part or parts. The commission may at any time by affirmative vote of not less than two of the commissioners issue a permit for the entrance into interstate commerce of any film to be submitted to it, which permit, however, may be revoked by like vote of the commission on 10 days' notice to the applicant to whom the permit was originally granted. Thereupon the film may be submitted to the commission for license, as though no permit had ever been granted or revoked.

Sec. 9. That when any film has been approved the commission shall issue a license to the film producer or importer in the form adopted by the commission. The license shall describe the film and shall bear a serial number, and shall state its title, the day upon which it was approved by the commission, and the number of linear feet contained therein.

Sec. 10. That no person, and so forth, producer or importer, shall carry or transport or cause to be carried or transported any film from or into any State, Territory, or possession of the United State, unless such film has been licensed by the commission or unless a permit has been granted in respect to such film: *Provided*, That this section shall not be construed as prohibiting the carriage or transportation by the producer of the producer's own film from or into any State,

Territory, or possession of the United States for purposes other than public exhibition.

Sec. 11. That no motion-picture film which has not been licensed, or unless a permit has been granted in respect to such film by the commission, shall be exhibited in any place of amusement or pay or in connection with any business in the District of Columbia, or in any of the Territories of the United States, or in any place under the jurisdiction of the United States.

Sec. 12. That a fee of \$2 [or one large enough to defray the Commission's expenses] shall be charged for each thousand feet of film or a fractional part thereof. Any change or alteration in the film after license, except the elimination of a part, shall be in violation of this Act, and shall also void the license. The fee charge shall be in respect to a single copy and a license or permit having been granted additional copies without limitation as to the number shall be covered by the license or permit.³⁴

Sec. 13. That the commission shall annually, on or before the first day of January in each year, submit a written report to the United States Commissioner of Education. In the report, and from time to time by other means, the commission may recommend films particularly suitable for children, and may make suggestions regarding the recreational and educational uses of motion pictures.

Sec. 14. That any violation of this act shall be punished by a fine of not more than \$1,000, or imprisonment for not more than one year, or both, and the films unlawfully transported, exhibited, or changed shall be confiscated.

Sec. 15. That the fees received by the commission shall be paid monthly into the Treasury of the United States.

Sec. 16. That upon the expiration of six months from the date of approval of this act, and from time to time thereafter, as circumstances warrant, the commission shall reduce the license fee to such a sum as will produce no larger income than is necessary to pay the cost of the commission including salaries and all other expenses.

Sec. 17. That this act shall take effect immediately, except sections ten and eleven, which sections shall take effect three months after date of the approval of this act; but nothing in this act shall apply to films which shall have been exhibited to the public prior to its approval.³⁵

While it is not a line-by-line implementation of Friends's suggestions, the new draft does reflect several of Paramount's provisions. Section 4, for example, endows local offices in New York and Los Angeles with the same authority as the central commission in Washington D.C. in the granting of licenses, and Section 17 exempts films produced before the bill's implementation. What is missing from the bill is an exemption for documentaries and newsreel films, as Paramount had requested, but which is

implemented later upon the recommendation of the Committee on Education.³⁶ More importantly, this final version of the Hughes Bill kept the instrument of pre-publicity censorship in place against the overall wishes of the film industry. Paramount's provisions only called for modifying pre-publicity censorship to give "reputable" distributors the benefit of the doubt, and it was no surprise that Hughes's revised version kept it in place. Hughes's intentions were also reinforced when the House Committee on Education received a letter from the head of the public morals committee of St. Louis, Edwin V.P. Schneiderhahn, alerting them to the National Board of Censorship's failure to censor over 400 "indecent" films listed in the letter.³⁷ Schneiderhahn's letter underlined the need for multiple avenues of censorship, including local, state, and federal, since films could be cut and re-edited at any stage in the censorship process. Armed with such endorsements, Hughes refused to eliminate pre-publicity censorship from the bill at the same time that he made no guarantees regarding the disbandment of local censorship boards in the event that his bill was passed by congress. Better to have many censors than only one board. Furthermore, the fact that four of the ten major producer-distributors of the day were in support of pre-publicity censorship gave Hughes the ammunition that he required.

With the hearings now over and with Paramount in an apparent position of opposing the Board of Trade, the MPELA, and the National Board of Censorship on the issue of federal censorship, the industry debate turned to the pages of trade papers, where each side felt obliged to argue its case. Paramount's president, William W. Hodkinson, struck first with an editorial that outlined Paramount's position while yoking the threat of censorship, and its underlying causes, to the threat of overproduction. For Hodkinson, the

benefits of federal censorship outweighed the threats of local censorship.³⁸ “Federal control,” as he called it in his editorial, would be far preferable to local and state interference in the motion picture industry. The sooner that federal censorship was enacted the better. Since the earlier that the film industry agreed to cooperate with the federal government on the issues of censorship and regulation, the better the terms would be for the industry. Conversely, the more the industry waited, the worse it would get. Considering these alternatives to the Paramount strategy on the Hughes Bill, Hodkinson reasoned that when calls for local censorship had amassed enough momentum, they would undoubtedly culminate in a demand for federal censorship and on terms that would be even more disadvantageous to the industry. Hodkinson further claimed that “ultra-sensational” and “unfit” pictures were damaging the industry’s reputation with the American public and that this state of affairs also contributed to the overproduction that was hurting the industry. According to Hodkinson, 20 five-reel features were distributed every week, far more than the public could consume or the industry could handle profitably, with the result that pictures were distributed at below cost.³⁹ By removing the “unfit” pictures, argued Hodkinson, the industry could return to profitability. Agreeing to federal control was but a small price to pay for defeating the threat of local censorship and weeding out the smaller and unscrupulous manufacturers. As far as Paramount was concerned, the federal control of motion pictures solved two problems under a single initiative.

The responses to Paramount’s position came from two directions: the MPELA, which was now opposed to any form of censorship and the Board of Trade, whose criticisms were delivered in an editorial critique that accompanied the Hodkinson article

in *Motography*. In the Board of Trade's article, its legal counsel William M. Seabury refuted Hodkinson's argument that federal censorship would eliminate local and state censorship, and referenced the MPELA's previously outlined position, noting that most exhibitors were also against the implementation of federal censorship.⁴⁰ Seabury also objected to Hodkinson's attempts to smear his competitors by linking federal censorship to the elimination of other manufacturers, whose films Hodkinson has designated as appealing to the prurient interests. Instead, Seabury pointed to a more sinister motive behind Hodkinson's logic, whereby Paramount had attempted to deploy federal censorship to eliminate its major competitors and those manufacturers that appealed to what film patrons themselves were demanding in place of Paramount's expensive pictures.⁴¹ Seabury acknowledged that some manufacturers produced films that came close to the "border line of impropriety and unlawfulness as possible," but excused their behavior as a sensationalist tactic that helped them compete with Paramount's high production value films and its lucrative roster of stars.⁴² Finally, Seabury downplayed the importance of the Paramount faction by categorizing them as a "relatively small group" of producers-distributors. As we will see directly below, this was an important tactic for the Board of Trade in its disagreements with the Paramount faction.⁴³

Accordingly, the House Committee on Education hearings on the Hughes Bill had exposed a process whereby each party sized up its opponents in the debate over federal censorship. Paramount was asserting itself with both congress and the industry, and exploring ways to enhance its profile as an emergent power in the industry. Likewise, the Board of Trade itself was in the spotlight. The Hughes Bill offered a major test of its effectiveness as an organization guarding film industry interests on the national stage

after having scored some early successes in defeating New York's proposed State Constitution and the reelection of Harold J. Mitchell to the New York Assembly.⁴⁴ The Board of Trade could not afford to be outmaneuvered by Paramount or paralyzed by its own internal divisions over federal censorship. For his part, Hughes, like the other committee members, was gauging the credibility and effective power of the Board of Trade as a representative for the film industry at large. At the same time that he had assigned the Board of Trade the authority to organize the opposition to the bill during the hearings, Hughes challenged the Board of Trade's authority to speak for the entire film industry. For example, Hughes requested that Binder provide the committee with a list of the Board of Trade's members. Reluctantly, and after initial opposition, Binder provided Hughes with the following list, but only when the hearings were over:

Class 1

American Correspondent Film Company
 American Film Company, Inc.
 International Film Service, Inc.
 Lubin Manufacturing Company
 Pathe Freres
 Universal Film Mfg. Company
 Vitagraph Company of America

Class 2

Bell & Howell Co.
 J.E. Brulatour
 Eastman Kodak Co.
 Morgan Lithograph Co.
 Nicholas Power Co.
 Crystal Film Co.
 John A. Eckert & Co.
 Ewald Bros.
 Standard Lithograph Co.

Class 3

Fox Film Corporation
 Metro Pictures Corporation
 Mutual Film Corporation
 V.L.S.E., Inc.
 Universal Film Mfg. Co.
 Victor Film Service
 Central Film Service
 All Star Feature Distributors
 Continental Feature Film Corporation
 Laemmle Film Service

Class 5

14 Exhibitors

Class 6 [Individual Members]

268 Individuals⁴⁵

You will recall from the discussion above that the Board of Trade was organized into classes, depending on the type and level of membership desired and available to the prospective member. By this point in 1916, the Board of Trade had amassed a significant membership that was opposed to the Hughes Bill. Binder was also keen to report that internal divisions within the Board of Trade regarding federal censorship had been resolved and that Metro, which had originally supported Paramount's position against its colleagues in the Board of Trade, was now opposed to the Hughes Bill. Binder could now present a united front to the House Committee on Education, and he provided the latter with statistics that demonstrated the Board of Trade's representative status in relation to the Paramount group.

Production of Pictures [Board of Trade Members]

January, 1916

Total number of subjects produced 340

Total number of reels produced 780

February, 1916

Total number of subjects produced 309

Total number of reels produced 736

Production by Paramount Group

January, 1916	Subjects	Reels
Equitable Film Corporation	4	20
World Film Corporation	4	20
Famous Players	3	15
Jesse Lasky	2	10

February, 1916	Subjects	Reels
Equitable Film Corporation	4	20
World Film Corporation	5	25
Famous Players	4	20
Jesse Lasky	2	10

For Binder, these numbers indicated that while the Board of Trade members accounted for 96% of all film releases, the Paramount group only amounted to 4%—regardless it seems of the value and bookings of their releases, and the specifics of the distribution contract, which told a rather different story.⁴⁶ Despite the exaggerations regarding industry support for the Board of Trade's position, and regardless of how dominant the industry forces aligned with the Board of Trade were in reality, Binder and the Board of Trade had successfully weathered the threat posed by the Hughes Bill. In the process, however, internal divisions within the Board of Trade had been exposed and external conflicts with the Paramount group had created difficulties in the case against

federal censorship. The internal and external divisions would now continue to be tested. Once again, the Metro Film Corporation would prove to be at the center of the internal controversy, but the conflicts with Paramount and federal censorship receded into the background as the external conflict with exhibitors reached the point of threatening the Board of Trade's coherence and integrity as an organization.

At issue between the exhibitors who comprised the MPELA and the producer-distributors represented through the Board of Trade was each party's role in the proposed joint exhibition in New York City. The Board of Trade had demanded that the MPELA accede to its terms for a joint exhibition during the first week of May 1916, but the latter had refused to coordinate an exhibition in which they would be the minority partner and beneficiary. When the sides could not come to an agreement, they organized separate exhibitions: the MPELA's exhibition would take place in Grand Central Palace from May 1 to May 6, while the Board of Trade's exhibition would be located in Madison Square Garden from May 6 to May 14. As a consequence of this controversy, Metro announced in April 1916 that it could no longer tolerate the Board of Trade's "throttle the exhibitor" policies.⁴⁷ The producer-distributor subsequently withdrew its membership from that organization so that it could offer its full support to the MPELA's exhibition.

Metro's decision to ditch its producer-distributor allies in an effort to gain favor with exhibitors was a shrewd business decision. This was only the latest chapter in the long chronicle of producer-distributor and exhibitor relations that we have covered thus far and that characterized this entire period of the American film industry. Yet Metro's action was all the more striking because it had been a charter member of the Board of Trade and had provided several of the most important personnel in its various

committees. For example, Metro's treasurer, Joseph W. Engel, had also served as the Board of Trade's treasurer; Metro's president, Richard A. Rowland, had served on the membership committee; and Metro's Arthur James had served on both the publication committee and the committee on arbitration. Given Metro's importance to the Board of Trade, its departure would lead to the collapse of the Board of Trade only a few weeks later, just after the exhibitions in New York City.

Oddly enough, and perhaps as a consequence of Metro's withdrawal, the Board of Trade managed to reconcile with the MPELA when they reached a compromise deal just prior to the opening of the exhibitions. According to the terms of the agreement, the Board of the Trade would allocate 50% of its exhibition proceeds to the MPELA in return for the latter's participation in making the producer-distributors' event a success.⁴⁸ In exchange, the Board of Trade members were allowed to participate in the MPELA's exhibition, both as a collective and individually. Furthermore, the MPELA would designate 50% of the proceeds from its July exhibition in Chicago to the Board of Trade, which participated in organizing and managing that exhibition. The compromise meant that instead of individual exhibitions run in succession and without mutual cooperation, there were two weeks of interrelated activities encompassing all branches of the industry. That benefited both producer-distributors and exhibitors, and served to increase attendance at both exhibitions, leading to greater advantage for all. Moreover, the profits from the two New York City exhibitions were intended to go towards the industry's campaign against pre-publicity censorship.⁴⁹

When the MPELA's and Board of Trade's exhibitions opened to the public on May 1 and May 6, respectively, the two factions managed to cooperate for the sake of its

success. Exhibitions of this sort offered important promotional and booking opportunities for producer, distributors, and supply & equipment manufacturers, who had always participated in the exhibitors' exhibitions and conventions going back to the first MPELA convention in Cleveland, Ohio.⁵⁰ Metro, having broken all ties to the Board of Trade, maintained a booth at the exhibitors' convention in Grand Central Palace. The producer-distributor Pathé and the producer Thanhouser were also exclusively represented at the exhibitors' exhibition. Board of Trade member Mutual split the difference and had booths at both exhibitions, as did Fox, and Vitagraph. Amazingly, Paramount, which had opposed the Board of Trade all along, now sought cooperation and association with the other producer-distributors. Its booth at the Board of Trade's Madison Square Garden exhibition represented the largest space of any producer-distributor at the event.⁵¹ Paramount was even granted a full day, Thursday, May 11, in honor of its presence at the event.⁵² Its conciliatory gesture, however, was simply too late to save the organization.

Although the conflicts between producer-distributors and exhibitors were temporarily suspended, the exhibition fiasco had exposed deep rifts within the Board of Trade. Metro's departure and its conflict with the other members dealt the final blow to an organization that had lasted less than a year. Equally, however, the Board of Trade's collapse could be explained as a consequence of its inability to attract greater participation from exhibitors and their trade organization, the MPELA, until it was too late. As the two factions were gathered in New York City, Lee A. Ochs, president of the MPELA's New York branch (the New York State Exhibitors' League), released a statement that blamed the Board of Trade for the divisions within the industry and accused the latter of negligence in its fight against censorship.⁵³ Ochs' statement was

damaging, but, by this point in 1916, the Board of Trade appeared to be fracturing from within. When the Board of Trade was finally dissolved in June 1916, the chairman of the executive committee, Walter W. Irwin, explained that, despite its many achievements, the Board of Trade needed to be replaced by a more inclusive organization, one that would court the active participation of the exhibitors and the MPELA.⁵⁴ With the founding of NAMPI in July 1916, the producer-distributors had precisely these intentions, but for reasons that were less than reconciliatory and that betrayed their ulterior motives.

¹ Bloeser's speech is reprinted in "The Leagues Fifth Annual Convention," *Motography* 14, No. 5 (July 31, 1915): 189.

² By December 1916, Paramount's exchanges in Seattle, Denver, Boston, Philadelphia and New York had all established publicity departments that coordinated Paramount's centralized promotional campaigns with exhibitors in their respective territories. See "Seattle Exchange Gets Publicity Dept.," *Motography* 14, No. 24 (December 11, 1915): 1218.

³ For the Fox Corporation's campaign to convince exhibitors on advertising in their local papers, see "Fox Advocates Publicity," *Motography* 15, No. 1 (January 1, 1916): 24.

⁴ This quote is attributed to Richard A. Rowland, president of the Metro Pictures Corporation. See "1916 Will Mark 'Survival of the Fittest,'" *Motography* 15, No. 2 (January 8, 1916): 65.

⁵ "Motion Picture Board of Trade Formed: Will Combat Censorship," *Motography* 14, No. 13 (September 25, 1915): 621.

⁶ "Officers and Directors of the Motion Picture Board of Trade," *Motography* 14, No. 17 (October 23, 1915): 844–845.

⁷ "Board Appoints New Committee," *Motography* 14, No. 26 (December 25, 1915): 1326.

⁸ "Motion Picture Board of Trade Formed," 621.

⁹ *Ibid.*

¹⁰ Although such analogies risk turning into vulgar historicism, nevertheless, it is intriguing to compare the mission statements of trade organizations from this era with President Wilson's language in his famous "Fourteen Points for Peace" (January 8, 1918) address to Congress, whose final point proposed an "association" of nations that assured "mutual guarantees." It was ironic that the U.S. refused to join the League of Nations at its founding in 1919, but no more than it was for Paramount to remain outside the Board of Trade when it had been involved in the discussions leading up to its creation.

¹¹ In-house conventions were common during this era, with every major producer-distributor holding annual conventions for its operatives in the exhibition field, including salesmen, exchange operators, and publicists. Paramount's conventions, however, exceeded in scale the conventions of its rivals. For example, see *Motography's* extensive coverage of Paramount's three-day Chicago convention in the Hotel LaSalle: "Paramount Convention Rouses Enthusiasm," *Motography* 14, No. 12 (September 18, 1915): 551–558.

¹² Unfortunately, the surviving company documents filed in the William W. Hodkinson and Adolph Zukor Collections at UCLA Special Collections and the Academy of Motion Picture Arts and Sciences, respectively, do not help us unravel Paramount's intentions in opposing the Board of Trade, once again pointing to the historiographic limits of gauging corporate actions and the intentions or motives behind them.

¹³ Hughes articulated his position in a report filed after consideration for his censorship bill in the previous congress, or the 62nd Congressional Session. See "Federal Censorship Up Next Week: Night Hearings Arranged," *Motography* 15, No. 4 (January 22, 1916): 157–158.

¹⁴ *Ibid.*, 157.

¹⁵ *Ibid.*, 158.

¹⁶ For the transcript of the hearings on the Hughes Bill, see "Hearings Before the Committee on Education, House of Representatives, Sixty-Fourth Congress, First Session, on H.R. 456, A Bill to Create a New Division of the Bureau of Education to be Known as the Federal Motion Picture Commission, and Defining its Powers and Duties," January 13–19, 1916 (Washington: Government Printing Office, 1916). Coverage of the Hughes Bill meetings can also be found in "Many Protest Against Censorship," *Motography* 15, No. 5 (January 29, 1916): 219–225.

¹⁷ "Hearings Before the Committee on Education," 78.

¹⁸ *Ibid.*, 104.

¹⁹ "The Percentage System and the Censored Film," *Motography* 14, No. 26 (December 25, 1915): 1337.

²⁰ "Possible Effects of a Percentage System," *Motography* 14, No. 22 (November 27, 1915): 1135–1136.

²¹ *Ibid.*

²² Richard Caves, *American Industry: Structure, Conduct, Performance*, Seventh ed. (Englewood Cliffs, N.J.: Prentice Hall, 1992): 22–30.

²³ "Brevities of the Business," *Motography* 14, No. 23 (December 4, 1915): 1199.

²⁴ In March 1915, Paramount raised its capital stock to \$10 million in order to absorb several exchanges handling its program. The exchanges involved in the takeover were owned by Paramount's own franchise owners/directors and included the following territories: W.W. Hodkinson's Progressive Motion Picture

Company of San Francisco, with branches in Seattle and Los Angeles; Hiram Abrams' Famous Players' Film Company of New England, with a branch in Boston; William L. Sherry's Feature Film Company of New York; Raymond Pawley's Famous Film Exchanges of New York, Philadelphia and Washington; and James Steele's Famous Players' Film Service of Pittsburgh. The exchanges not included in the purchase, but still affiliated with Paramount were as follows: the Kansas Feature Film Company of Kansas City, the Famous Players' Star Feature Film Service of Minneapolis, the Southern Paramount Pictures Company of Atlanta, New Orleans and Dallas, the Notable Feature Film Company of Salt Lake and Denver (a subsidiary franchise of San Francisco's Progressive), and the Famous Players' Film Service of Chicago and the Casino Feature Film Company of Detroit, both of which worked as subsidiaries for the Pittsburgh branch. See "Paramount Absorbs Some Exchanges," *Moving Picture World* 23, No. 13 (March 27, 1915): 1910.

²⁵ Paramount's suggestions for drawing the federal censorship board members directly from the existing Interstate Commerce Commission were expressed in a letter to Hughes. See "Hughes Drafts Another Censorship Bill," *Motography* 15, No. 7 (February 12, 1916): 340.

²⁶ "Paramount Censor Plan Before the House," *Motography* 15, No. 6 (February 5, 1916): 283.

²⁷ Refer to Chapter 3 for a detailed account of the early integration amongst Famous Players, Lasky, and Paramount.

²⁸ "Paramount Censor Plan Before the House," 283.

²⁹ *Ibid.*, 283–284.

³⁰ *Ibid.*, 285, 286.

³¹ *Ibid.*, 287.

³² Hughes's response is quoted in "Hughes Drafts Another Censorship Bill," 340.

³³ Charles C. Condon, "Board of Trade Entertains President Wilson," *Motography* 15, No. 7 (February 12, 1916): 356.

³⁴ The House Committee on Education would later modify the proposed fee structure as follows: "License fees of \$2 for 1,000 feet of film for originals and 50 cents for each duplicate copy are provided in this bill. It is estimated that 200 original reels of 1,000 feet each are produced weekly in this country. The best figures obtainable indicate that an average of 25 duplicates are made of each original. The income from the originals would therefore be \$400 per week, or \$20,800 per annum, and from duplicates \$2,500 per week, or \$130,000 per annum. The total income is therefore estimated at \$150,800." See Thomas O. Monk, "National Censorship Bill on Calendar," *Motography* 15, No. 22 (May 27, 1916): 1190.

³⁵ "Hughes Drafts Another Censorship Bill," 337–338.

³⁶ Monk, "National Censorship Bill on Calendar," 1190.

³⁷ Thomas O. Monk, "New Hughes Bill for Prepublicity," *Motography* 15, No. 11 (March 11, 1916): 559.

³⁸ William W. Hodkinson, "Paramount's Side of It," *Motography* 15, No. 11 (March 11, 1916): 559–561.

³⁹ *Ibid.*, 560.

⁴⁰ William M. Seabury, "An Answer to Mr. Hodkinson," *Motography* 15, No. 11 (March 11, 1916): 561.

⁴¹ *Ibid.*, 563.

⁴² *Ibid.*

⁴³ *Ibid.*, 562.

⁴⁴ As a warning to politicians opposing the film industry, the Board of Trade had already scored some early successes, such as when it helped defeat the proposed New York Constitution in November 1915 because the convention in Albany had not been receptive to the industry's delegation. In another example, when Harold J. Mitchell, incumbent from the twenty-first district of New York, ran for reelection in the New York Assembly, one of his main campaign promises was to create a state censorship board for motion pictures. Thankfully for the industry, prompt action defeated Mitchell and temporarily set back these plans. In both cases, the Board of Trade mobilized public dissent by organizing distributors and exhibitors to show theater slides that condemned political positions it felt were detrimental to the industry. See "Why Board of Trade Opposes Constitution," *Motography* 14, No. 20 (November 13, 1915): 1003; and "Board of Trade Scores Victory," *Motography* 14, No. 21 (November 20, 1915): 1069.

⁴⁵ "Hughes Bill in Danger," *Motography* 15, No. 14 (April 1, 1916): 756–757.

⁴⁶ *Ibid.*

⁴⁷ "Metro Quits Board of Trade: Complications Arise Over Exhibitions," *Motography* 15, No. 18 (April 29, 1916): 959.

⁴⁸ “Film Expositions in Harmony: Board of Trade and Exhibitors’ League to Cooperate,” *Motography* 15, No. 19 (May 6, 1916): 1015.

⁴⁹ *Ibid.*, 1016.

⁵⁰ The first MPELA convention in Cleveland, Ohio was held shortly after the League’s creation on September 12, 1910, but the representation was not yet national in scope. Chicago’s convention in August 1912 (officially the “Second Annual,” but in actual fact preceded by two previous MPELA gatherings) was the first MPELA convention with broad national representation from different exhibitor leagues and associations in 17 states. The convention in July 1913 expanded the MPELA’s reach even further, when MPELA members organized a motion picture exposition involving the entire film industry at Grand Central Palace in New York City. Almost every studio, distributor, and supply and equipment manufacturer had a booth or participated. Moreover, by this point, the MPELA’s membership had expanded to three dozen states and territories, including Canada. For the MPELA’s membership numbers, see “Motion Picture Exhibitors’ League,” *Moving Picture World* 17, No. 2 (July 12, 1913): 143–144. For coverage of the 1913 convention, including a list of exhibits a schedule, see “Floor Plan of the Grand Central Palace, New York,” *Moving Picture World* 17, No. 2 (July 12, 1913): 177; “Official Entertainment Program,” *Moving Picture World* 17, No. 2 (July 12, 1913): 209; “The Third National Convention,” *Moving Picture World* 17, No. 3 (July 19, 1913): 301–302, 323; “The First International Exposition,” *Moving Picture World* 17, No. 3 (July 19, 1913): 324–327; and “Last Days of the Convention: Delegates Re-elect President Neff, Representatives of Several States Bolt the Convention to Form New Organization,” *Moving Picture World* 17, No. 4 (July 26, 1913): 409–413, 431.

⁵¹ “Manufacturers’ Exhibits,” *Motography* 15, No. 20 (May 13, 1916): 1073.

⁵² “Expositions in Full Swing,” *Motography* 15, No. 20 (May 13, 1916): 1071.

⁵³ “President Ochs Makes Statement,” *Motography* 15, No. 20 (May 13, 1916): 1072.

⁵⁴ “Board of Trade to be Dissolved: Exhibitors to Share in New Representative Organization,” *Motography* 15, No. 26 (June 24, 1916): 1419.

CHAPTER THREE:
NAMPI AND THE PREWAR PERIOD
(JULY 1916–MARCH 1917)

The National Association of the Motion Picture Industry (NAMPI) was officially founded on July 6, 1916, when producer-distributors gathered at the Hotel Astor in New York City unanimously adopted the report of the sub-committee of twelve prominent individuals, including Jules E. Brulatour (Eastman Kodak), Nicholas Power, J.H. Hallberg, Lee A. Ochs (MPELA), John J. Whittman, L.L. Levine, W. Stephen Bush (*Moving Picture World*), William A. Johnston (*Motion Picture News*), Tracey Lewis, William W. Hodkinson, Jesse L. Lasky (Paramount), and Walter W. Irwin (Vitagraph/V.L.S.E.). The sub-committee had been devised at a meeting one month earlier, on June 6 at Delmonico's in NYC, when the former members of the Board of Trade decided to replace that defunct organization with NAMPI.¹ In putting the matter of a trade organization to the vote, James Stuart Blackton, former president of the Board of Trade and the vice-president and cofounder of Vitagraph, stated it thusly:

Should we or should we not have a trade organization? If we should, now is the time to decide upon it and lay plans for its foundation. Likewise, if we should not have a concrete association within the trade, now is the time to lay the subject to rest for good.

In response to Blackton's call, all but two representatives of the producer-distributor entities raised their hands, with Hodkinson and J.H. Sherman of Paramount as the exceptions: apparently, the latter were afraid to endorse any trade body until they knew

its powers and its plans. Their fears, however, were assuaged with the affirmation that the vote would not bind them to membership in an organization whose bylaws were objectionable to any one member.

Also at this June meeting, Walter Irwin of Vitagraph/V.L.S.E. addressed the former Board of Trade members along with the exhibitors, but in a way that was intended to convey inclusiveness. He claimed that the meeting was not called by the Board of Trade or its representatives and that it was supposed to represent the entire industry, especially the exhibitors with whom he sympathized:

Frankly and honestly speaking the Motion Picture Board of Trade has not been able to fulfill its objects [sic]. It was formed with the best of intentions. It was the intention of everyone who had anything to do with it, that it should gain the confidence of the entire industry and that each branch of the industry should come into it with a proper representation. The fear seems to have existed that the Motion Picture Board of Trade is a manufacturers' association.

Irwin assured the audience that the Board of Trade's former officers and directors were willing to relinquish their posts to others so that new officers could be elected by the entire industry, thus enhancing the inclusiveness of the organization. The charter, too, would be amended to reflect any concerns that the members have. First and foremost, the name could be changed so that it did not "smack too much of manufacturing": hence, the emphasis on "Association" instead of "Board of Trade," which evoked the local trade organizations and exchange associations (i.e., FILM) that were also dominated by the major producer-distributors. According to Irwin, exhibitors demanded to have equal representation in relation to producers, insofar as exchanges and distributors, which were controlled by the producers, would not be allowed separate representation. By

establishing these ground rules, the new organization intended to strike a balance of power between exhibitors and producers-distributors. Its charter reinforced this point with two provisions in the prologue:

First: That the objects and actions of the association should be confined to questions affecting the motion picture industry as a whole.

Second: That this association should furnish a means by which the various branches of the industry may have the opportunity of knowing each other and the respective viewpoints of each upon all questions arising from within the industry, and thus, themselves, to adjust amicably any differences which may arise between two or more branches of the industry.

Yet this is not exactly how things turned out, and NAMPI's charter was in many ways simply a reprise of the Board of Trade's charter and its membership classes, with the exception that the Publishers' and Miscellaneous classes were now combined into one and the MPELA members were assigned free membership in NAMPI:

TABLE 3.1 NAMPI Membership Classes			
Class		Board Directors	Entrance Fee
1.	Producers and importers of motion pictures.	5	\$250
2.	Motion Picture Exhibitors' League of America; membership in good standing in the Motion Picture Exhibitors' League of America shall carry with it membership in this association.	10	(0)
3.	Those engaged in manufacturing, dealing in and importing motion picture supplies and equipment.	5	\$250 (maximum)
4.	Distributors of motion pictures	5	\$250
5.	Miscellaneous	5	\$250 (maximum)

Although the charter espoused equality in its allocation of director positions to each class, in effect its governing board was dominated by the producer-distributors and their allies in the non-exhibitor classes, who at any one time outnumbered the exhibitors in the thirty-member board. The thirty board members were elected out of the committees allocated for each class, and out of these directors the association would elect a president and five vice-presidents. For example, on August 16, 1916, NAMPI named its first

president, William A. Brady of the World Film Corporation, and five vice-presidents including Thomas Furniss of Duluth, Arthur James of Metro, Hiram Abrams of Paramount and Adolph Zukor of Famous Players-Lasky.² These assignments reveal much about the power politics surrounding the major producer-distributors and their role in NAMPI. Recall from the last chapter that Metro and Paramount were the two companies opposed to the Board of Trade's policies on exhibitors and the Hughes Bill, respectively. Now, both companies were firmly entrenched in its successor organization. In fact, Brady's election to NAMPI's presidency was all the more significant because his World Film Corporation was one of the few independent producer-distributors that had backed Paramount's alternative Hughes Bill, albeit when Brady was not yet World's president. A secretary, general counsel, and treasurer were also elected, although, with the exception of the latter, the individuals serving in these positions did not have to be members of the Board of Directors. Here NAMPI's board elected Frederick H. Elliot, secretary, William M. Seabury, general counsel, and J.E. Brulatour, treasurer, in turn, solidifying the relation between NAMPI and the Board of Trade which came before. Seabury had served as the Board of Trade's legal counsel and had featured in its campaign to defeat the Hughes Bill. Likewise, Brulatour of the Eastman Kodak Company had Class 2 membership in that previous organization where he had been very active on behalf of his employer. Only Elliot, formerly Executive Secretary of the Safety First Federation of America, was an outsider, but one who brought legitimacy to NAMPI's dealings with fire prevention regulators, license boards, unions, and other trade organizations. All positions were assigned through elections in the Board of Directors. As the major producer-distributors dominated the board, only those officers were elected who would serve the larger

corporate interests. In this vein, Article III of the Charter granted the right to members to form “subsidiary organizations” under the NAMPI umbrella, allowing for a kind of state within a state, and also giving NAMPI the institutional flexibility it needed in expanding its domain over all other branches of the film industry.

On a more democratic front, the various branch committees of the different classes had the authority to establish their own internal committees, so long as all branches and divisions of NAMPI abided by its basic tenets as outlined in Article VIII – Powers of Directors and Branch Committees:

1. To oppose by such lawful means as the directors may deem proper all legislation, whether national, state or local, deemed by the Board of Directors to be harmful to the welfare and best interests of the motion picture industry as a whole.
2. To advocate and support by such lawful means as the directors shall deem proper all legislation, whether national, state or local, deemed by the Board of Directors to be helpful and beneficial to the welfare and best interests of the motion picture industry as a whole.
3. Such other matters as may from time to time be delegated by any one or more such branch committees to the said Board of Directors, provided, however, that any matter so delegated be not in conflict with the interests of any other branch committee, class or membership of this association.

Like the Board of Trade, NAMPI’s charter facilitated numerous standing committees, which at its founding numbered seventeen, including areas such as membership, finance and auditing, publicity, hostile legislation, censorship, taxation, campaigns, statistics and library, fire prevention regulations and insurance, foreign trade, transportation, copyrights and trade marks (domestic & foreign), standards, labor, industrial economies, and grievances. This was, of course, a much more extensive catalogue of committees than the Board of Trade ever facilitated, and, with some future

additions, would serve NAMPI's interests in wartime once the U.S. interceded in WWI. For now, however, the committees were mostly concerned with censorship, taxation, exhibitor relations, and NAMPI's growth: this final objective would allow NAMPI to establish its legitimacy as the industry's central trade organization, bringing together under its umbrella other local and specialized trade organizations. In order to mobilize on these fronts, NAMPI required unity and concerted effort from all of its members. The first order of business here was to resolve some outstanding issues inherited from the Board of Trade.

Although the industry debate over federal censorship had subsided to some degree after Paramount's reversal on the Hughes Bill, it was by no means resolved. A minority amongst NAMPI members including Pathé and a few others had expressed support for federal censorship and now argued along the same lines that Paramount had previously: the idea here was that federal "regulation" would undermine the establishment of local and state censorship boards.³ These members were allowed to present their views at a two-day NAMPI meeting on September 21–22, when they faced off against opponents of federal censorship.

Speaking for those opposed to federal censorship, D.W. Griffith condemned censorship of any kind, and reminded the NAMPI members that a victory for federal censorship would only embolden advocates for local and state censorship.⁴ Griffith, who had already engaged in a long and bitter campaign against censorship targeting *Birth of a Nation* (1915), would later head NAMPI's committee on censorship.⁵ He used that office to propose the establishment of the Motion Picture Art League, a self-regulating institution that was to oversee ethical matters regarding the limits of artistic expression in

motion pictures.⁶ At the September meeting, Griffith's position against censorship and in defense of cinematic art was echoed in several quarters. For example, Mutual's president, John R. Freuler, sent a supportive letter to be read at meeting. It expressed Mutual's opposition to federal censorship and cited the company's long-standing opposition to censorship on any level (recall Mutual's struggles with the Ohio state censorship board from Chapter 1).⁷ Seabury, who had represented the Board of Trade in its testimony against the Hughes Bill, also expressed his opposition to federal censorship, as did Adolph Zukor, who noted that he had once erroneously supported federal censorship for the same reasons that some NAMPI members continued to do so.⁸ Meanwhile, the MPELA's representatives were given firm instruction from their home organization that they were to oppose censorship of any kind, federal or otherwise.⁹

With the overwhelming majority of their members against federal censorship, NAMPI and the MPELA could present a united front against censorship. One of the first opportunities to marshal NAMPI's resources and its committees in this regard provided itself when congressional legislators threatened to reintroduce the Hughes Bill in the next U.S. Congress. Reacting promptly to this threat, NAMPI sent two delegations in October 1916 to present its case to President Wilson and Charles Evans Hughes, Wilson's Republican opponent in the upcoming presidential election. Included in the Wilson delegation were NAMPI president William A. Brady, chairman of the executive committee, Walter Irwin, executive secretary, Frederick H. Elliot, and other representative members of each class of NAMPI's membership.¹⁰ A similar but much larger delegation interviewed with Hughes. Both candidates for the presidency, incumbent and challenger, expressed their opposition in principle to censorship, but made

no definitive statements. C.E. Hughes in particular was more nuanced and detailed in his responses. He reminded the delegates that he opposed censorship from a legal basis as a practitioner of the law, but not as a political representative of the people. The Republican challenger outlined the bases on which he rejected federal censorship: if it consisted of an unelected and unrepresentative board, and if it stifled freedom of speech and freedom of thought.¹¹ When asked if federal censorship could eliminate local and state censorship, C.E. Hughes suggested that the federal government could make no such guarantees. To the relief of the NAMPI delegates, C.E. Hughes declared that federal censorship constituted a form of “federal action” that was appropriate only as a response to a “federal exigency.” Whether the nation was facing such a challenge or not was not something that C.E. Hughes answered or commented upon, but the delegates were left with the impression that such federal action was not justifiable under present conditions and political circumstances.

The interviews with Wilson and C.E. Hughes represented a marginal or modest success in terms of assisting the industry’s campaign against federal censorship, but they were much more effective at revealing NAMPI’s ability to consolidate and centralize authority amongst the producer-distributors. Once again, industry efforts contributed to the Hughes Bill’s derailment, albeit in this case with some help from the House Committee on Interstate Commerce, which rejected federal control over what it considered state matters. With little prospects for passing the bill, and fearing its demise in committee, the House Committee on Interstate Commerce considered transforming the Hughes Bill into a postal law, in turn, enabling each state to set its own shipment laws regarding motion pictures that it deemed of an “obscene, indecent, lewd, lascivious,

libelous, scurrilous, or defamatory nature.”¹² As NAMPI had lobbied successfully for the ability to ship film through the parcel post, so as to enhance distribution possibilities and immunize distributors against railway strikes and C.O.D. problems through the express companies, a postal law banning shipment of “indecent” films was an apropos response for Congressional members who sought federal regulatory control over film content and distribution.¹³ Yet this resurrection of the Hughes Bill as a postal law also failed to materialize. Excluding the Creel Committee’s governance over wartime film exports, which I will discuss in the next chapter, the producer-distributors would not face another significant attempt at federal censorship until the Upshaw Bill of the 1920s. State and local censorship, however, continued to hamstring the industry and forced it into a reactionary stance where it had no choice but to lobby for unity and self-preservation.

The first major challenge for NAMPI on this front presented itself on November 22, when the Appellate Division of New York’s Supreme Court ruled that Sunday motion picture shows violated state statutes in the case brought to the court by exhibitor Leroy H. Bender.¹⁴ His case was significant because the Exhibitors’ Association had selected Bender for challenging the Sunday law. Bender managed the Silent Theater in Albany, and knowingly violated the state’s exhibition law when he organized a showing on Sunday, July 25 so as to test the state’s response.¹⁵ Subsequently, Bender was arrested for violating the law, but later released based on a writ of habeas corpus. Bender’s case made it all the way to the New York Supreme Court where four judges handed down a significant defeat for exhibitors such as Bender. In a four-to-one vote, the court ruled that the Sabbath law protected employees of motion picture theaters just as it protected the labor force in other industries: motion picture exhibition had to abide by standards

established for all businesses. Since there was a single dissention on the court, the case could eventually be referred to New York's highest body in the Supreme Court. In addition, the ruling affected all areas of New York State except for New York City itself, which was the largest exhibition market in the U.S. Despite these provisions, NAMPI and the MPELA were catalyzed into immediate action only one day after the ruling in Albany.

On November 23, NAMPI executives Brady, Irwin, Seabury, and Zukor gathered with MPELA President Lee Ochs and other NAMPI and MPELA members to organize a campaign against the court's ruling. Speaking to the gathering, Irwin addressed the interests of fans, whom he claimed were the real target of this Sunday ban. "We must not lose this opportunity of doing what we can, and quickly, to aid that public," claimed Irwin, once again demonstrating how the producer-distributors aimed to represent the public's interest.¹⁶ According to Irwin, Sunday showings provided educational opportunities for audiences and allowed families to enjoy entertainment together as opposed to separately, where the family patriarch would often spend his time alone in the saloon. This was a common tactic employed whenever the industry was threatened with Sunday closings: producers and exhibitors responded to these threats by highlighting the value of educational films exhibited on Sundays. Such a message appealed to the Progressive fears about family disintegration due to the vices of alcohol and saloons. Audience interests notwithstanding, Irwin also claimed that Sunday showings accounted for 25% of theater box office in areas where such showings were permissible.¹⁷ NAMPI's position at the meeting was simultaneously endorsed by the Mayor John Purroy Mitchel of New York City, who reinforced the idea that motion pictures served educational

purposes on Sundays. In responding to the court's decision on Sunday shows, Mitchel offered a pessimistic assessment for defeating Judge Gaynor's ruling. However, he suggested that if the case were overturned on appeal, then he would be willing to support a legislative effort to lift the Sunday ban. With NAMPI and the MPELA sensing public support on the issue, the two organizations mobilized against the Sunday law in the hope that they could sway political and public opinion on the issue, thus forcing the New York legislators to reconsider the ban. Accordingly, they sent telegrams to the major newspapers in the state that outlined the importance of Sunday showings and disseminated the points outlined by Irwin above. By December, a joint NAMPI-MPELA committee consisting of Brady, Irwin, Zukor and Ochs was appointed to organize a campaign for distributing hundreds of theater slides and three million audience protest cards to exhibitors.¹⁸ Ultimately, their protestations in the press and at theaters resulted in a wide-scale outcry and the public responded by sending in letters and messages of support for Sunday showings.¹⁹

Several weeks later, and joined by more colleagues, many of the same individuals gathered for the November 23 meetings met on January 2 at Delmonico's in New York City. Judge Samuel Seabury and John B. Stanchfield addressed the crowd. Seabury and Stanchfield gave the NAMPI and MPELA members an update on the Sunday closings affecting motion picture theaters in New York State and offered advice on how to deal with the problem. Bender's case had by now made it to the Court of Appeals, where there was a possibility for overturning the Appellate Court's decision. Judge Seabury described how the law regarding the Sunday Sabbath should be interpreted in two parts: the letter and the spirit. He suggested that the Bender appeal and others like it have to base their

case on the spirit of the law and not its literal interpretation. The advantage they had was that the Appeals Court had never ruled on Sunday showings previously, so there was no legal precedent acting against them within the court's own history. This advantage was only applicable, however, if Sunday showings were not tied to other issues having to do with the Sunday Sabbath, which might complicate the industry's position. Judge Seabury also warned that pursuing the legislative track for overturning the Sunday law would be extremely perilous. In all likelihood, Seabury noted, the legislation that emerged from committee would be burdened by the addition of other forms of leisure activity and entertainment such as baseball games and horseracing.²⁰ According to Seabury, these additions would ensure a prompt defeat for the bill as legislators might interpret it as an attack on the Sabbath's general sanctity. Stanchfield, in turn, spoke of the peril that confronted the industry and offered this dire warning:

You are all secure today because the blow has not fallen. But if the Court of Appeals decision goes against you, it will not matter what your influence in your community, nor what the sentiment of your mayor or your district attorney, regarding Sunday closing, they must close your theaters and if they fail to do so, it is the duty of the governor to remove him from office. Where the people who wish the motion picture theaters closed can now only write to the newspapers they will then, in case the Court of Appeals holds against you, merely have to prefer charges against the local officials who do not enforce the law as interpreted, and the governor must remove them.²¹

Referring to the Bender case specifically, Stanchfield warned that Bender's counsel had failed to distinguish motion picture exhibition from other forms of Sunday "violation," an oversight that would have significant consequences for any future appeals on the Sunday law. According to Stanchfield, the Bender case would prove to be the last case of its kind, unless Bender's counsel should decide to change its tactics and to make a clear

distinction between motion picture exhibition and other forms of labor. As such a legal precaution was not forthcoming, for Stanchfield, the Bender case promised to be disastrous for the industry on the whole.

With the fight against Sunday closures working its way through New York's judicial system and apparently faltering, and with censorship bills pending or active in twenty states, NAMPI in January 1917 affirmed its commitment to self-regulation.²² Heading NAMPI's censorship committee, D.W. Griffith presided over a meeting that produced a binding statement on all members: NAMPI would henceforth aid the prosecution of any film company or individual that produced or exhibited indecent and obscene motion pictures and any film that debased and corrupted morals.²³ Moreover, such violations would be punishable under criminal law. In granting what NAMPI believed was a great concession and an historic gesture that inaugurated producer-distributor attempts at self-regulation, Griffith released a statement addressed directly to the American people. He called on them to cooperate in protecting the industry from the "evils of censorship," and repeated the industry's mantra on film censorship, which compared it with attempts to stifle the printing press. For this campaign to be successful, NAMPI required broader industry support. Addressing exhibitors, the independents, and state rights distributors, NAMPI appealed for general unity. Its censorship committee produced an alarming report published in *Motography's* February 10, 1917 edition (Figure 3.1).²⁴

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Censorship Bills in Twenty States

WM. A. BRADY, PRESIDENT NATIONAL ASSOCIATION, URGES ACTION

CENSORSHIP bills are actually being considered in twenty State legislatures, and are in immediate danger of enactment within days or weeks in at least half of them. This is borne out by the reports now in the hands of the National Association of the Motion Picture Industry. This is probably by no means all, as new bills will be introduced daily until well into February.

The censorship committee of the National Association, headed by David W. Griffith, has been laying down its plans, and is ready to take up the fight in every state, provided only that the support of the producers, distributors and exhibitors of the country is forthcoming.

So far, many of the most representative concerns in the business have put their shoulders to the wheel, but William A. Brady, president of the National Association, stated last week that without the united support of the whole industry it might develop that it would be hopeless to even start to fight. He said:

The situation is away beyond anything that a small group of men can handle. A dozen of us cannot cover the whole country, and, moreover, a dozen of us cannot assure the legislators of the country that the industry is capable of controlling itself. The state superintendent of education of Oklahoma is pushing a censorship bill this year because at the last session a few reputable exchange men promised him something and then the outsiders did not live up to the promises. We have got to go to the country united, both in our ideas and in our pocketbooks, or there is no use of going at all. It is up to every one of us, individually, and the least of us who stays out can gum the whole plan. It is up to the states rights producer and to the maker of one-reel comedies just as much, if not more, than to the biggest concern in the industry. Do they want to avoid censorship, or pay a dollar a reel for examinations in twenty states? It's up to them and I hope you will tell them so.

The Pending Bills

Here is the list of bills already introduced:

Washington, D. C.—Congress is considering a revised edition of the Smith-Hughes bill of last year.

Arkansas—Censorship bill is pending in the legislature, although there is no public demand for it and the newspapers are giving it practically no attention. It is stated that exhibitors are passive and that unless action is taken by the national body the bill will be passed by default. Examination fee provided in the bill is \$2.00 per reel.

Colorado—Censorship bill modeled on Kansas law has been introduced. Parent Teachers' Association having secured recognition by Denver exchanges of the Association's reviewing staff, is opposing legal censorship. The Rocky Mountain Screen Club, however, is much exercised over the situation and is asking help.

Illinois—Two bills are pending giving censorship under another name. One provides that "any place of amusement in which public entertainment of a lewd or indecent character, or tending to corrupt public morals, is given, is declared a public nuisance." Provision for its abatement as a nuisance is given.

one to exhibit "moving pictures of a vulgar or immoral character, or which depict burglaries, train robberies or acts which constitute a felony."

Washington—A bill providing for the censorship of motion pictures in the State of Washington will be introduced this week.

West Virginia—Bill modeled on Pennsylvania law has been introduced. Exhibitors of the State are trying to get together and have been asked for contributions by local lawyers.

Wisconsin—Censorship bill is pending, with considerable feeling against motion pictures back of it. Exchange men and exhibitors are looking to the National Association for help.

The other bill makes it a felony punishable by a fine of \$25 to \$500 and imprisonment for one year, or both, for any manager to present such an entertainment. Sunday closing is provided for in another bill unless half of the receipts go to charity. The exhibitors are organizing, but ask for aid from the National Association. The complete story of the Illinois and Chicago situation will be found on another page in this issue of *MOTOGRAHY*.

Iowa—A bill for censorship in the state of Iowa is being actively pushed and aid is asked.

Kansas—The Kansas Branch of the Exhibitors' League reports that it seems impossible to eliminate censorship altogether as had been hoped. The following is the plan upon which the Kansas League is working. A bill has been introduced reducing the censorship fee from \$2.00 to 50 cents per reel and to have the censoring done by the Welfare Board. The Welfare Board is reported to be friendly to the motion picture people.

Massachusetts—A bill providing for the Board of Censorship with salaries of \$2,000 per year and charging \$1 for single and \$2 for multiple reel pictures was introduced on January 12th.

Michigan—A censorship bill similar to the law of Ohio has been introduced, the charge to producers to be \$1 for single reels and \$2 for multiple reels, etc. Local exchange men and exhibitors are calling for help.

Missouri—Censorship bill has just been introduced providing for a Board of Censors to pass upon both the films and advertising matter.

Nebraska—It is reported that a bill will be introduced into the Nebraska Legislature providing for censorship by a paid state board.

New York—Sunday closing legislation must be fought through. Proposal to tax the industry has resulted in the formation of a committee to investigate. This committee is now holding session.

North Carolina—Censorship bills are pending and there is opportunity to lower the tax in the insurance rate now legalized in that state, if action is taken at once.

Oklahoma—Censorship bill is pending, recommended by the state superintendent of the public instruction, who has made an active campaign in favor of this bill. In a letter to the National Board of Review, this official says: "If the moving picture men who talked to me a year ago had kept their promise and assisted me as they agreed to do, it is very doubtful if I would have made my recommendation this time. I am not in favor of local censorship such as they have in Kansas, but I do believe, in fact know, that this business ought to be regulated in a way not to show some of the pictures to children which are now being shown."

Oregon—A bill making it a felony to manufacture, import, distribute or exhibit any indecent or obscene article, picture, etc., including motion pictures, was introduced on January 15th.

Tennessee—Censorship bill has been introduced at the request of the Council of Women of the State and is being backed by them in the legislature.

Texas—A bill is pending in the legislature closing all motion picture theaters on Sunday.

Utah—Hearing on the censorship bill pending before the Utah legislature is to be deferred until February 1st only. The situation is very serious. The fee is to be \$2.00 for each reel.

Vermont—Two bills are pending, one prohibiting theater owners from admitting children under 15 years not accompanied by parent or guardian, and the other making it a felony for any

Figure 3.1: "Censorship Bills in Twenty States."

It is apparent from this long list that NAMPI and MPELA were overwhelmed at the start of 1917 and that it would take extensive coordination to mount campaigns against every single one of these bills. Setting aside the logistical challenges, however, there was an

advantage to centralizing the anti-censorship activities. Instead of portraying the fight against censorship as local or endemic to specific regions and states, NAMPI was trying to nationalize a series of regional conflicts in order to bolster its own importance.

NAMPI's appeal for industry unity was also a demand for industry acknowledgment. Just as the Board of Trade before it had fought the Hughes Bill at the same time that it attempted to entrench itself as a representative for the industry, NAMPI was building its credibility as the central and dominant authority with the right to act in the industry's interests. For example, NAMPI's plans to coordinate the selection of special matinees for children with Women's Club Magazines and their members indicated an outreach to the Progressive reform community that was similar to what the industry had previously attempted with the National Board of Censorship ("Review" after 1915).²⁵ Rather than relying on the latter, however, the producer-distributors now sought to direct such public image campaigns through NAMPI's own publicity department.

To aid in its attempts at centralization and national reach, NAMPI in November 1916 established Advisory Executive Committees in major films centers such as Los Angeles, California and Chicago, Illinois. The Los Angeles branch initially included Griffith, Thomas Ince, and Mack Sennett and the Chicago branch enlisted George Spoor (Essanay), William N. Selig, Frederick Ireland, and Donald Bell (Bell & Howell).²⁶ Later in early 1917, Bell traveled out to Los Angeles, where he joined up with Zukor and P.A. Powers (Universal), who had also relocated in order to head NAMPI's West Coast division.²⁷ The stated purpose for these local committees was to allow NAMPI members everywhere to benefit from the access that New York members currently enjoyed. These regional branches were semi-autonomous and were organized in exactly the same way as

the parent body in terms of membership classes, rights and duties, but they worked under NAMPI's umbrella. They forwarded all recommendations back to the central body and were given prompt instructions from NAMPI's headquarters in NYC. These regional organizations were also instrumental in promoting NAMPI amongst non-members and in encouraging the latter to join so as to collectivize and guard their interests. Their canvassing efforts along with NAMPI's gaining prominence resulted in the addition of the following producers to NAMPI in November 1916: Arrow, Crystal, Deseret, Erbograph, Evans, F. Powell Productions, Gaumont, Keystone, Kalem, McClure, Niagra, Rolfe, Thanhouser, U.S.M.P. Corporation, and Wharton. NAMPI's membership now included ten distributors, twenty-three producing companies, seventeen of the largest supply and equipment manufacturers and over 100 individual members: by its own account it was aiming for 90% representation for its first-year anniversary.²⁸

NAMPI was also successful in absorbing or affiliating with other trade organizations aside from the MPELA. The Association of Motion Picture Advertisers and the Authors' League of America had both requested and been issued charters of affiliation. A similar deal was in place for the Society of Motion Picture Engineers. During the same period, the Slide Manufacturers of Greater New York, which was comprised of the Machine Manufacturers, Electrical Light and Equipment, Lithographers, Screen Manufacturers, and Carbon Manufacturers, and the Screen Manufacturers of Greater New York also filed for charters from NAMPI. Under the direction of H.F. Coufal of the Novelty Slide Company, the Screen Manufacturers adopted the NAMPI-inspired slogan "Unity of Action Spells Screen Success," (NAMPI's own slogan was "Unity of Action Spells Success") and proposed a charter as follows:

- Standardization of the industry.
- A Mutual working agreement and co-operative arrangement.
- An interchange of data regarding credits, employes [sic] and raw material houses.
- Knowing your competitor as he is, and not as some one else describes him to you.
- Standardization of prices with a fixed minimum.
- The elimination of free samples and free original designs.
- The elimination of free slides.
- The elimination of useless and wasteful advertising.
- The elimination of 'knocking' and illegitimate competitive methods.
- No interference with competitors' employes [sic].
- Duplicating and imitating another's design to be strictly prohibited.
- Legitimate methods only to be employed in securing business.
- All special discounts to be discontinued; terms 30 days net or 2% in ten days.
- Total elimination of graft in any manner, presents and other contributions to the man who gives out the business.
- Establishment of a general buying committee, with consequent saving to all members.
- General advertising campaign, boosting 'Made in New York' lantern slides.
- All disputes or grievances to be properly presented for entire branch to be settled by majority vote.
- Strict observance of all rules and regulations of this branch as well as of the by-laws and constitution of the National Association of the Motion Picture Industry.
- A general circular letter and pamphlet to be prepared for mailing to the trade, setting forth the high cost of material and labor entering into the manufacture of slides and showing that the increase in the cost of slides is absolutely necessary in order for the companies producing same to exist.
- This branch will receive all necessary support and assistance from the 'parent' body and the members of the organization will favor members of this branch with their business.
- This branch to hold its own individual and separate meetings; discuss and settle its own affairs; regulate its own conditions; pass its own rules and regulations and conduct the branch as if it were a distinct body, though affiliated with the National Organization. The Board of Directors of the National Organization will support this branch and help to enforce its proper views.
- No rebating, price refunding, special discounts, or other knifing methods to be tolerated. Books and records of all members to be subject to examination by a committee of men in other lines of the industry or verifying any reports.
- This branch is to have representation by at least one member in the general body, and on the Board of Directors of the National Association. Members of this branch are to meet at least once a month. Each company will have but one vote, and one authorized representative, although a representative of any company may attend the general meetings of this branch.²⁹

Aside from encouraging standardization amongst the supply and equipment manufacturers, this kind of agglomeration benefited NAMPI's efforts in centralizing the industry under its own auspices. Enforcing standardization of prices, quality, and services would improve industry conditions in general. Furthermore, such practices were necessary in the advertising field owing to the increased costs associated with national advertising and in-house promotional departments that the larger producer-distributors had recently founded to promote expensive features.³⁰ Access to the supply manufacturer financial records, as stipulated above, gave NAMPI members oversight over monetary disputes and made it difficult for associated firms to hide profits that may have accrued prior to their NAMPI membership. In this way, producer-distributors gained significant insight into the financial assets, company records, and corporate relationships of firms in the supply manufacturing business, all in the name of promoting industry unity and interests.

Access to financial information and company records in other branches of the industry was also valuable to another area of NAMPI's concerns in this immediate prewar period, that is, the threat of increased taxation. Once again, as was the case with censorship, New York proved to be the battleground. As the GFC's president noted, many other states would simply follow New York's lead on the issue of taxation.³¹ Consider NAMPI's report on motion picture theaters released in advance of the Wheeler Committee's recommendations on motion picture taxation. NAMPI's document was provided to the New York state legislative meeting at the Murray Hill Hotel during March 1917 and was summarized in a *Motography* article from March 24, 1917.³²

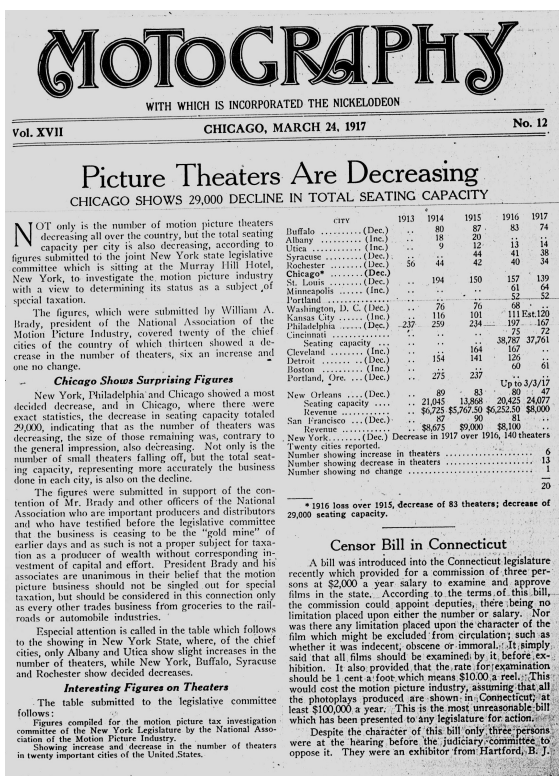


Figure 3.2: "Picture Theaters are Decreasing."

According to NAMPI's records, whose source is not revealed but is likely compiled from access to the affiliated MPELA, the number of theaters in many important film exhibition centers was decreasing, while the seating capacity, contrary to popular opinion, was also decreasing. According to the above report, 83 Chicago theaters were closed between 1915 and 1916, resulting in an astounding loss of 29,000 seats. Setting aside the validity and accuracy of such reports as compiled by NAMPI and its affiliates, what is important here is NAMPI's preemptive and proactive approach to taxation. Although the taxes that the New York state legislature was considering through the Wheeler Committee were aimed at motion picture exhibition, the producer-distributors through NAMPI were again asserting their authority to speak for the industry. NAMPI was attempting to ensure that its own interests were protected throughout the legislative process. As the Wheeler Committee investigated both the issue of taxes and the possibility for establishing a state

licensing board with similar powers and responsibilities as Commissioner George H. Bell in New York City, NAMPI sought to capitalize on a quid pro quo: it would support establishing a state licensing commission, with the power to ban “improper, smutty and indecent pictures,” while it would ask the Wheeler Committee to forego on the proposal for taxation increases aimed at the motion picture industry and the exhibitors specifically. For example, in his testimony to the Wheeler Committee, NAMPI’s president declared that the film industry was not able to bear an added tax burden at the time, and that the other industries in the amusement field, including baseball, musicals, and cabaret, were better situated to withstand such an increase in taxes.³³ At the same time, Brady and Walter Irwin both declared their support for a state commission based along the lines of NYC’s licensing board, and Irwin even professed that Commissioner Bell represented “the thought of the picture loving public.”³⁴ NAMPI’s position here was as conciliatory as it was self-serving: defeating exhibitor taxation in New York would bolster its public image amongst the exhibitors, as they would witness this umbrella trade organization working and achieving results on their behalf. Meanwhile, the backhanded move to support a state licensing bureau modeled on the one in place in NYC merely shifted the censorship burden onto the exhibitors and away from the producer-distributors, who were exempt from its criminal and monetary penalties. When the Wheeler Committee’s report was released only a short time later at the March 1917, it declared that a special state tax on the exhibitors of New York would be unjust because it singled one industry amongst many.³⁵ However, the report cautioned that with business returning to usual in the postwar period, the legislature would once again take up the special tax for theaters. Yet the increased theater and industry taxes and the fierce and

bitter debate surrounding them were closer than many had assumed. The U.S. entered World War I only a few weeks later, forcing state and federal legislators to impose new taxes on what they perceived as a lucrative industry.

In early April 1917, as the U.S. was gearing up for entering World War I, the industry marshaled its resources to assist in preparing the American public for wartime recruiting and fund raising. The Associated Motion Picture Advertisers, producer and NAMPI member Jesse L. Lasky, and New York's exhibitors all contributed to this early effort.³⁶ But the apparent harmonious relations between state and industry hid a far more ominous development. Following the Wheeler Committee's report, a drastic bill was introduced into the New York state legislature. The new bill planned to tax the industry and create a licensing commission for all industry branches: production, distribution and exhibition. The bill proposed a graduating taxation scale for all positive prints and a sliding scale for theater licensing fees as based on audience capacity.³⁷ While the Wheeler Committee had only considered licensing for theaters, the new bill called for a commissioner appointed by the state senate and governor. This commissioner would have extensive powers and would have the sole authority to revoke licenses for any branch. The fees associated with the bill were as follows: \$200 for a producer's license; \$300 for a distributor's license; and anywhere from \$5 to \$200 for an exhibitor's license as based on seating capacity from 300 to over 2000, respectively. Positive film would be taxed based on the cost of the negative per foot, such that the higher the production costs per reel of film, the higher the tax. NAMPI may have assuaged the Wheeler Committee, but it had failed to preempt the introduction of such an extreme measure in the New York state legislature. Nevertheless, as we will see in the next chapter, NAMPI was committed

to fighting against any increased taxation and any proposed licensing bill that would oversee not only the exhibitors but also the producer-distributors as well. Before moving on to NAMPI's wartime activities in Chapter 4, however, I will conclude this chapter by examining two key aspects that defined the conflict between producer-distributors and exhibitors: the issue of advance deposits and the growing consolidation over production and distribution/exchanges. The latter manifested itself in the form of new combines and an emerging network of FILM Boards of Trade, or local exchange organizations that were increasingly under producer-distributor control.

Originating in the prewar era, NAMPI was created not only against the backdrop of proposed state and federal regulation on film content and taxes, but also within the context of growing consolidation in the U.S. film industry. In addition, there were also the continued parallel developments within the exhibitor trade organization, the MPELA, to bring about greater cooperation amongst exhibitors and between exhibitors and the producer-distributors. As NAMPI's Board of Directors included five exhibitors, including MPELA president Lee A. Ochs, there was in this period an attempt to appease and co-opt the exhibitor organization, turning its energies away from hostility against the producer-distributors and towards constructive collaboration on anti-censorship efforts, government regulation (taxes and tariffs), and trade cooperation. When the MPELA members met for their sixth annual convention in Chicago's Hotel Sherman during the week of July 10 to July 18, 1916, the ratification of NAMPI's charter was one of the main actions undertaken, thus solidifying the MPELA's role in founding NAMPI.³⁸ In addition to MPELA participation on NAMPI's Board of Directors, the two organizations attempted collaboration through joint executive meetings and dinners. For example, on

August 17 at Feltman's in Coney Island, a dinner brought together both organizations as they held their respective executive meetings in New York. This established a pattern whereby NAMPI and the MPELA coordinated their monthly executive meetings to occur in the same location so that MPELA executives could attend both occasions.

Despite the veneer of fraternity and equality, throughout the next several chapters we will see a consistent pattern that establishes NAMPI's attempts to co-opt and neutralize the exhibitor trade organization, often by turning one group against another and by exploiting internal fissures within the exhibitor organizations. For now it is important to consider why and how such a conflict between producer-distributors and exhibitors emerged in the first place and what this had to do with NAMPI's founding. In the last chapter on the Board of Trade, I examined how internal conflicts within the producer-distributors and external conflicts with exhibitors informed the U.S. film industry's emerging oligopoly structure after the MPPC's collapse in 1915. My conclusions there suggested that the Board of Trade was a transitional organization that exposed those internal and external conflicts instead of resolving them. However, the Board of Trade also portended the future because it functioned as an instrument for producer-distributor oligopoly, with extensive powers to centralize and represent motion picture industry interests at large. It is no coincidence that NAMPI's foundational period should continue these trends and exacerbate one particular aspect that the Board of Trade period had exposed. Here I am referring to the new oligopoly and new consolidation based around firms such as Metro, Vitagraph, and Famous Players-Lasky.

Looking to the largest combine, consider that Famous Players and Lasky, which had already been operating in conjunction with the distributor Paramount since May 15,

1914, were incorporated as Famous Players-Lasky in the short period between the Board of Trade's dissolution in June 1916 and the authorization of NAMPI's charter in July.³⁹

JULY 15, 1916. PHOTOGRAPHY 117

Famous Players and Lasky Combine

ADOLPH ZUKOR PRESIDENT OF \$12,500,000 CORPORATION

THE numerous rumors, assertions and denials regarding the future activities of the Famous Players Film Company and the Jesse L. Lasky Feature Play Company have been definitely settled with the announcement of the formation of the Famous Players - Lasky Corporation, a consolidation of two pioneers in the presentation of celebrated stars and plays on the motion picture screen. The company is capitalized at \$12,500,000 and its output will be released on the Paramount program.

The officers of the new corporation are Adolph Zukor, president; Jesse L. Lasky, vice-president; Samuel Goldfish, chairman of the board of directors; Arthur S. Friend, treasurer, and Elek J. Ludvig!, secretary. The directors are, in addition to the officers named, Messrs. Cecil B. DeMille, William C. Demorest, Daniel Frohman, Albert A. Kaufman, Frederick G. Lee and Emil E. Shauer.

All the directors are well known in the film industry and have been identified with either of the two companies with the exception of Messrs. Lee and Demorest. Mr. Lee is president of the Broadway Trust Company and Mr. Demorest is president of the Realty Trust Company. The officers of the corporation emphasize the fact, however, that despite these affiliations, none of the capital stock will be offered to the public.

A statement issued by the officers says: "The essential purpose of the consolidation is to meet present conditions in the industry and anticipate the demand for better and more artistic productions. The consolidation will make it possible to utilize to the best advantage the producing facilities and equipment of the Famous Players Studios in New York and the Lasky studios in Hollywood, California, and therefore offers a vastly increased efficiency over the former conditions."

"The Famous Players Film Company has released forty-eight productions a year and the Lasky thirty-six, making a total of eighty-



Adolph Zukor, President. Jesse Lasky, Vice-President. Samuel Goldfish, Secretary.

OFFICERS OF THE NEW FAMOUS PLAYERS-LASKY MERGER.

four feature photoplays a year for the new corporation in addition to the special productions.

"This consolidation brings under the one banner of the new corporation the greatest aggregation of stage and screen stars that has ever been assembled in one producing organization, among the most celebrated of whom are Mary Pickford, Geraldine Farrar, Marguerite Clark, Marie Doro, Pauline Frederick, Blanche Sweet, Hazel Dawn, Lou-Tellegen, Fannie Ward, John Barrymore, Mae Murray, Victor Moore, Donald Brian, Ann Pennington and others.

"Both the eastern and western studios of the newly formed corporation will be immediately enlarged to enable them to cope with the extended producing activities which are planned by the concern and to facilitate the handling of the more elaborate photoplays which are contemplated in addition to the regular releases.

"The Famous Players Film Company was formed in April, 1912, and was the first producing organization in the world to be devoted to the presentation of a yearly program consisting of stage stars in adaptations of successful stage plays and great novels. At that time the motion picture industry had only reached a state of development which comprised the presentation of one, two and three reel productions and the occasional filming of a multiple reel feature.

"The Jesse L. Lasky Feature Play Company was organized in November, 1913, and has dedicated to the same principles as those which governed the Famous Players—the starring of stage celebrities in big productions. Under the Lasky management there have been many notable stars introduced to the photoplay screen, the most celebrated of whom is America's greatest prima donna, Geraldine Farrar."

Lou-Tellegen, Sarah Bernhardt's former leading man, husband of Geraldine Farrar, is also a Lasky player, working at the California studios at present in special dramas.



Two of the new concern's prominent directors: Cecil B. De Mille, on the left, and Daniel Frohman.

Figure 3.3: "Famous Players and Lasky Combine."

According to press releases from the time, the new corporation was capitalized at \$12.5 million. However, the full extent of what Famous Players and Lasky were attempting

would only be revealed in documents and testimony that came to light in the 1920s, when the Federal Trade Commission investigated Paramount for antitrust violations over its block booking practices. The FTC's investigation mostly concerned areas that I will address in the subsequent chapters on Paramount's relationship with exhibitors and its attempts to acquire theatrical concerns. But the reports also revealed important aspects of Famous Players' and Lasky's earlier maneuverings to secure their dominance over Paramount and feature distribution in the period between Paramount's founding in 1914 and its takeover by Famous Players and Lasky.⁴⁰

Simultaneous with its own July 1916 founding, the new Famous Players-Lasky established Artcraft Pictures to handle Mary Pickford's new contract. Starting in the next season, Artcraft became a distributor for high quality pictures between six and ten reels featuring Pickford and other high-profile actors and directors. The average cost for Artcraft features was \$250,000, a large sum for 1916, but characteristic of the higher-end feature budgets.⁴¹ According to Artcraft's president, Walter E. Greene, its first picture, *Less than the Dust* (John Emerson), was released on November 6, 1916 to eighty theaters in the U.S. and Canada.⁴² If accurate, this was an early attempt at a massive and simultaneous national release, which the producer-distributors did not utilize regularly until the early 1920s. Such efforts required a nation-wide advertising campaign to coincide with the film's first release week, meaning that each film had to be marketed and sold as an individual production. Artcraft's founding satisfied Pickford's demands for a greater stake in film rentals and an open booking policy. At the same time, it was a nod to Paramount's product differentiation schemes and offered alternative feature distribution in order to counter exhibitor complaints about block booking and exploitive

salesmanship. Henceforth, Pickford's films were supposed to be sold on a "star-series" basis as outlined in her Arcraft contract, but the FTC reported that Pickford's films were most definitely packaged in blocks with other films.⁴³ However, there were some genuine innovations in Arcraft distribution policies not reported in the FTC account. Arcraft intended to eliminate the studio's traveling salesmen and their exploitive methods in securing exhibitor contracts. Exhibitors now dealt directly with a local exchange's branch manager.⁴⁴ By giving independent producers and exhibitors access to a robust distribution system, Arcraft aimed to make obsolete the state rights and road show distribution practices utilized by independents.⁴⁵ This was because these independent distribution practices undermined the larger producer-distributors' standard distribution channels.

Pickford's return to work at Paramount (she had been on hiatus during the negotiations) also coincided with a drastic reorganization. Hodkinson had since been displaced from Paramount's presidency in an infamous case recounted in the FTC's report on Paramount, as well as in numerous film histories and biographies. These accounts have Zukor conspiring to replace Hodkinson with Abrams in June 1916 so as to complete his control over an integrated production-distribution entity.⁴⁶ Inspired by the FTC's rhetoric but not its detailed account of Paramount's history, many historians have focused exclusively on Zukor's supposed megalomaniac intentions and his irreconcilable differences with Hodkinson over Paramount's relationship to its producing partners and its contract with Pickford.⁴⁷ Yet FTC's account also betrays a more nuanced narrative. From an industrial organization perspective, it is evident that Zukor, Lasky, Samuel Goldwyn, Cecil DeMille, Hiram Abrams, Arthur S. Friend and others representing the Famous Players and Lasky inner circle had jointly participated in a takeover of

Paramount.⁴⁸ These two producing firms had used Paramount's capital stock to purchase 51% of its nine producing affiliates on May 2, 1915, and then on May 20, 1916 acquired 50% of Paramount's capital stock under what was to become the new Famous Players-Lasky in July of that year.⁴⁹ According to the FTC report, the latter action allowed the partners to depose Hodkinson as president, and replace him with an executive who was more supportive of their plans. They achieved this by threatening to withdraw from their contract with Paramount and turn instead to Triangle.⁵⁰ Fearing the breakup of the company and its entanglement in prolonged litigation, Paramount's board of directors sided with the Famous Players and Lasky group and voted to relieve Hodkinson of his duties at the June annual meeting. This was not the result of any great Zukor conspiracy, as the FTC's rhetoric might have us believe. Paramount's directors simply did not want to lose stars like Pickford. The directors were also supportive of plans to bring about an efficient distribution system that returned maximum profits to its franchise holders and investors. What is important about the Hodkinson ejection for our purposes is not Zukor's perceived or actual megalomania or his place in the "great man" version of film history, but rather that Hodkinson's departure represents Famous Players' and Lasky's growing consolidation over their affiliated distribution entity Paramount. After all, the latter had initially been founded as a separate distribution firm in May 1914 serving Famous Players, Lasky, Morosco and Phallas, and had always been one of the premier feature distributors in the country.⁵¹ Most importantly, Mary Pickford was temporarily placated and once again producing films for a Paramount affiliate. Her strike had even helped Famous Players and Lasky gain control of Paramount, raising the possibility that she was not exactly a bystander in their plans against Hodkinson.

Subsequently, in December 1916, only five months after the Famous Players-Lasky merger and just one month after Artcraft's first release, it was announced that Paramount had officially become a subsidiary of the new Famous Players-Lasky Corporation, increasing the new combine's total capital assets to \$22.5 million.⁵² This would make Paramount the world's wealthiest motion picture company, placing it alongside the supply manufacturer Eastman Kodak in terms of assets, sales, and profits. Several years later, Paramount's assets would indeed equal those of Eastman Kodak, but at this point its assets were tied up in stock issues, which hardly represented cash equivalents. Famous Players-Lasky now controlled two dominant feature distributors, Paramount and Artcraft, and their respective 19 and 16 exchanges.⁵³ Zukor continued as president of Famous Players-Lasky, while Abrams, who later served as the president of United Artists, stayed on as Paramount's president. Amongst other notables at the new Famous Players-Lasky, Lasky would serve as vice-president, Friend as treasurer, Cecil B. DeMille as general director, and Samuel Goldfish, later known as "Samuel Goldwyn," would serve as secretary. It was a group of Famous Players-Lasky insiders, and, with the exception of Goldwyn who went on to found his own company, would serve as the backbone to Paramount's executive, production, and financial governance until the late 1920s. All that remained was to attract outside investors from Wall Street, but this would come at a price.

Wall Street financing entered the equation in a significant way in August 1916, when Famous Players-Lasky sought bank financing for its takeover of Paramount in the form of an \$875,000 bond issued by the Irving Trust Company.⁵⁴ For its troubles, Irving Trust was granted a representative on the Famous Player-Lasky board of directors. In

granting an outside financial interest voting rights on the board of directors of a motion picture corporation, Famous Players-Lasky had made an unprecedented move. Despite the fact that many film companies received and were highly dependent on bank financing at the time, including the World Film Corporation and Triangle Film Corporation, it was rare for these contracts to grant banking institutions executive rights on the board of directors.⁵⁵ Requiring more cash, Famous Players-Lasky upped the ante again when it raised \$7.5 million in January 1917 and added and reelected several Wall Street bankers to its board of directors for the term of four years: William H. English, vice-president of Empire Trust Company, John F. Fredericks, German-American Bank, Frederick G. Lee, president of Broadway Trust Company, and William G. Demorest, president of Realty Trust Company and a member of the New York Chamber of Commerce.⁵⁶ Famous Players-Lasky's capitalization was now reported at \$20 million with an additional \$10 million represented by Paramount. Most importantly, its board of directors, like those at the other large film corporations, was beginning to resemble executive rosters from the rest of corporate America.

As producer-distributor consolidation became more ambitious throughout NAMPI's tenure, banking and financial interests also gained significant footholds in an industry that required funding for expansion, thus leading to the necessity for centralizing the industry's fight for respectability. What the industry needed was security from federal, state, and municipal regulators intent on exercising their authority over the motion picture industry. On a corporate front, the industry also required modern and efficient industrial organization so as to placate investor demands. The rise of trade organizations, therefore, was concomitant with the industry's expansion and its

acceptability by Wall Street, all of which will become even more apparent when we reach the MPPDA and its dedicated banking and finance committee. Hence, the logic of cooperative trade organizations and the logic of industrial combines flowed from the same market tendencies towards agglomeration and the pooling of resources by several corporations. This is why NAMPI goals involved standardization and uniformity across the industry.

Paramount's expansion in particular became a model for its competitors. Oligopoly formation did not simply involve a few companies overtaking an entire industry, even though some executives betrayed the hubris of precisely such beliefs (as I demonstrate with Vitagraph below). Rather, the emerging structure of the Hollywood majors was forged through small-scale maneuvers whereby consolidation was achieved through the agglomeration of smaller industry entities and outside financial institutions looking to gain stock in the industry's best performers. Famous Players-Lasky/Paramount was simply one of the better performers and the one with most potential in terms of quality (production value), stars, studios assets, and distribution facilities. Paramount as it existed at the beginning of 1917 was the result of such an agglomerate process whereby smaller firms joined together to form an even greater entity.

A similar kind of agglomeration characterized Vitagraph's expansion, which at one point included the possibility of joining Paramount and others in a scheme devised by Benjamin B. Hampton for May 1916. This was just a few weeks prior to Famous Players-Lasky's 50% buyout of Paramount's stock. An opportunist who enticed Vitagraph's executives, Hampton was soon to be at the head of the General Film Company during its reorganization period, when it continued to function as a distributor even though its stock

was frozen under antitrust litigation.⁵⁷ Yet such litigation and the prospects for a GFC bankruptcy did not seem to deter Hampton's or Vitagraph heads Albert E. Smith and James S. Blackton. They believed that Vitagraph could absorb the GFC and monopolize its robust distribution system in the program field.⁵⁸ Early in 1916, Hampton and his prospective financial backers, which included the Guaranty Trust Company, Thomas F. Ryan, Percival S. Hill of the American Tobacco Company, and John Prentiss of Hornblower & Weeks, devised a plan for a super-combine that brought together Vitagraph with its V.L.S.E. partners, Lubin, Selig and Essanay.⁵⁹ But that was only the first step. From there, the new Vitagraph would buyout the other GFC partners, and then, with cooperation from Hodkinson, would set its sights on Paramount.⁶⁰ Since Paramount had in place a method for distributing features within a program system, and had already achieved name recognition amongst exhibitors, it was highly attractive for outside investors. For delivering Paramount to Vitagraph, Hodkinson was to be generously compensated with \$2 million in preferred stock and \$2.75 million in common stock issued from the new Vitagraph.⁶¹ The partners would then lure Mary Pickford away from Famous Players, which Hampton promised when he signed an option with Pickford on March 18.⁶² As an added bonus, their control over Paramount would keep ambitious studios under lock and key, since they could modify Paramount's distribution terms to punish uncooperative producers.⁶³ All of this was hatched so as to deny a Triangle-Paramount merger deal, which Vitagraph executives believed to be one of the major threats against them.⁶⁴ If the executives and financiers seemed overly-ambitious, their conviction was that in the occasion of a super-combine in 1916, Vitagraph would have to be a party to it.

Working with Hampton, who guaranteed them an initial \$750,000 in financial backing from investors (and a possible coalition with Paramount), Blackton and Smith restructured Vitagraph by offering \$25 million combined in common and preferred stocks (\$10 and \$15 million, respectively) and by selling the original Vitagraph to the new corporation for stock options that represented a value more than three times what Vitagraph's assets were actually worth.⁶⁵ As one of Hampton's promises included delivering Pickford to the new combine, his April 24 letter stating that he was quitting on the Pickford contract jolted Vitagraph's executives.⁶⁶ The executives subsequently rejected Hampton's proposal to buy into Paramount in a May 9 letter, which in turn apparently dissuaded Hampton's backers from putting any more money into the new combine.⁶⁷ Smith was now forced to step into the negotiation process with Pickford so as to save his company's reputation and its financial prospects in the combine.⁶⁸ A contract was drawn up whereby Pickford would form her own producing firm in association with Vitagraph and would produce six eight-reel pictures per year for a weekly salary of \$10,000 plus 55% of her corporation's profits.⁶⁹ The pictures would cost Vitagraph an estimated \$175,000 each and were projected to earn \$930,000 in net profit, which was then divided on the basis of 55% Pickford and 45% Vitagraph.⁷⁰ When the deal with Pickford fell through in the same month, Hampton's backers failed to live up to their \$750,000 pledge, leaving Vitagraph nearly bankrupt.⁷¹ The company was forced to take out a \$1 million loan from the Guaranty Trust Company to pay for its takeover of V.L.S.E., thus creating long-term debts that went unresolved until its sale to Warner Bros. for \$1.5 million in April 1925.⁷² Vitagraph's new stock offerings now resembled an empty shell. Privately, Hampton complained to Smith that investors were avoiding

Vitagraph's stock owing to their association with the GFC.⁷³ Adding insult to injury, Pickford herself went on to sign a similar contract with Paramount that had earlier been refused by Hodkinson.⁷⁴ In hindsight, the incident raises the prospect that Hampton's option simply provided Pickford with leverage over Paramount's board of directors.⁷⁵ Despite these setbacks, however, Vitagraph was not to be excluded from this early wave in consolidation over production and distribution.

Immediately upon the reorganization and loan, Vitagraph absorbed V.L.S.E. in August 1916.⁷⁶ Recall from the previous chapter that Vitagraph was one of the few members of the MPPC that was active in the Board of Trade. Vitagraph's participation in founding NAMPI was further indication of its desire to coordinate action with the major producer-distributors, but the fact that it shared its distributor, V.L.S.E., with three other firms was an impediment for expanding its feature offerings and for competing effectively with Paramount, Metro, Triangle, World, and Fox.⁷⁷ The four companies that created V.L.S.E., Vitagraph, Lubin, Selig, and Essanay, had established a nation-wide network for feature distribution based on the open-booking method. As discussed previously in Chapter 1, this open booking system was inherently disadvantaged against Paramount's block booking and percentage systems. Like Paramount, however, V.L.S.E. operated film exchanges in most important territories of the United States. Its main offices were at 1600 Broadway in NYC and its branch offices were located in 18 key regions that mirrored Paramount's own exchange locations: Seattle, Boston, Los Angeles, Minneapolis, San Francisco, Cleveland, Dallas, Kansas City, Chicago, New York, Cincinnati, Atlanta, Philadelphia, Pittsburgh, Denver, Syracuse, and Toronto/Montreal.⁷⁸ If Vitagraph could mount a successful takeover of V.L.S.E. and transform the latter into

something resembling Paramount's elaborate in-house publicity machine, which provided extensive advertising assistance to exhibitors, then it could finally compete on the same level for feature distribution.

To this end, on the eve of U.S. involvement in World War I, Vitagraph/V.L.S.E. appointed Paul N. Lazarus and N.S. Stronge as the heads for the new divisions of advertising and publicity, respectively, and set them to work with the Carney & Kerr advertising agency, experts in the field of exhibitor advertising.⁷⁹ The Vitagraph sales department created a new trade paper for exhibitors titled *The Vitagraph Exhibitor* (replacing *Vitagraph Life Portrayals*), which it distributed semi-monthly in order to advertise and catalogue its film offerings. It also offered the "Exhibitor's Advertising and Publicity Plan Book" on every single one of the company's Blue Ribbon feature releases. The press kits contained reproductions of posters, lobby displays, advertising electros, musical cues, and suggestions for publicity stunts. They allowed exhibitors who were not located in V.L.S.E.'s exchange centers to coordinate their advertising and musical selection well in advance of play dates.⁸⁰

As Vitagraph had intended these innovations for August 1917, the U.S. entrance into WWI compromised and delayed some of its plans, but there was no question that its takeover of V.L.S.E. and its enhanced publicity department were intended to compete with Paramount's similar corporate structuring and services.⁸¹ According to public statements by its president, Albert E. Smith, Vitagraph by 1917 had grown into a company with \$25 million capitalization, with \$7 million of this amount issued in common and preferred stock.⁸² This was only partially accurate, as Vitagraph's corporate records and company audits from this period contradict such an exorbitant capitalization.

In fact, the \$25 million cited above was for stock offerings and not capital assets or stock issues/holdings. It is more likely that Smith's account was intended to inflate his company's ability to compete with larger firms, at a time when internal company audits listed its combined assets at around \$8.4 million (which itself was questionable).⁸³ All the same, the new Vitagraph/V.L.S.E. was certainly better suited to compete with the other major producer-distributors. During this period, Vitagraph managed to release two five-reel features and three one-reel program shorts a week.⁸⁴ This was Vitagraph's most impressive statistic of all, setting aside its actual or inflated capital assets.

With a greater focus on distribution, the emerging producer-distributors needed to secure their local film exchanges. These outlets formed the backbone for their nationwide distribution networks and would continue to act in this capacity well into the studio era. To ensure the profitability of their film exchanges, distributors looked to local trade organizations representing film exchange collectives, otherwise known as FILM clubs or FILM Boards of Trade. These organizations would set the film rental terms and conditions, arrange for collection services and delivery, and officiate in disputes between distributors and exhibitors. In acting as a credit bureau for transactions between distributors and exhibitors, they coordinated their activities with the Hoy Reporting Service, which was a credit and collections agency and was the distributors' first line of attack against defaulting exhibitors. The service was insurance against an express and delivery system that was not always reliable. Aside from these services, the Hoy agency gave the distributors the effective means to enforce their distribution terms and was an important ally in establishing these exchange trade organizations. Thus, the first FILM Board of Trade was established in Chicago by exchange managers from the Midwest

region in early 1916, including representatives of Paramount, Fox, Metro, Vitagraph, Universal, Selznick-Pictures, and the Hoy Reporting Agency.⁸⁵ Chicago's FILM branch gave rise to many others by March 1917, including New York, Boston, Detroit, St. Louis, Indianapolis, Albany, Syracuse, Milwaukee, New Orleans, Omaha, and Des Moines. More were planned for Kansas City, Salt Lake City, Cleveland, and Pittsburg. Since the distributors owned the film exchanges, the major producer-distributors were in a position to dictate the terms for local disputes, contracts, and terms regarding film rentals. Exhibitors, who lacked any effective representation in FILM, were at the mercy of forces much larger than themselves, especially when the Hoy Reporting Service set its targets on them.

For these local trade organizations to become more effective institutions, and for them to serve the producer-distributors in more efficient ways, their exchange managers sought centralization under both NAMPI and the Hoy Reporting Service. Consequently, in March of 1917, plans were laid for a national convention, bringing together the existing fourteen FILM branches from different areas of the country.⁸⁶ Expectedly, with the U.S. entrance into the war, these plans were delayed and modified, but the impetus remained for national affiliation and centralization of FILM's activities under the auspices of NAMPI.

One important prewar issue that the FILM Boards of Trade were involved in mediating in early 1917 was that of advance deposits, a controversial topic that the MPELA had universally condemned with its resolution of March 1917:

Whereas, under this system the distributors of film have collected in deposits a total sum estimated at more than \$5,000,000 from the motion picture

exhibitors of the United States, and this money is supposedly held in trust by distributors and manufacturers of film as a guarantee of fulfillment of contracts on the part of exhibitors, and, in fact, is used to finance various manufacturing and producing enterprises, thus placing in jeopardy his money.

And whereas, the exhibitor of motion pictures, himself required to guarantee by absolute advance payment, the fulfillment of his entire contract, has come from the distributor no guarantee whatever of fulfillment of contract.

And whereas, the increasing rental price of film has forced the amount of the individual exhibitor's deposit with the various film companies with which he has business relations to an exorbitant figure.

And whereas, the expense of theater operation has risen out of proportion to the rapidly advancing cost of living, forcing exhibitor after exhibitor out of business, large houses and small houses; and the very nature of his business has prevented the exhibitor from advancing his prices in proportion to increased expenses.

And whereas, the deposit system has contributed to this condition within the industry.

And whereas, more and more exhibitors are facing bankruptcy and more and more theaters are dark as a result of the narrowing margin of profit.

And whereas, the deposit system is, for the reasons set forth herein, unnecessary, unfair, unjust—a hardship on every exhibitor and a serious menace to the entire industry.

And whereas, in no other organized industry does such a system exist.

And whereas, if a condition ever existed in the motion picture which excused the establishment of the deposit system, that condition has been eliminated.

Therefore, be it resolved, by the national executive committee of the Motion Picture Exhibitors' League of America, in special session in Chicago, this ninth day of March, 1917, that the deposit system be condemned as unjust, unfair, vicious and dangerous.

And be it further resolved that this committee demand that the manufacturers and distributors of motion pictures act at once in the interests of the entire industry, to abolish the deposit system.

And be it further resolved that this committee calls upon the exhibitors within and without its organization to act unitedly [sic] and forcefully to eliminate the deposit system; to act unselfishly and with courage against the menace to their welfare.

Be it further resolved that a copy of these resolutions be sent to the secretary of each state branch and local of the Motion Picture Exhibitors' League of America, to the head of each manufacturing and distributing company and to the trade press.⁸⁷

The MPELA's resolution addressed many grievances, including higher costs and exhibitor bankruptcy, and rightly or wrongly blamed these on the deposit system.

Advance deposits were required when an exhibitor contracted for a film or block of films. Not all producer-distributors required them at the time of the contract (hence the term “advance deposit”), and the first-run theaters were more likely to pay for advance deposits so as to secure the more prestigious films, whereas second-run and third-run theaters had to wait for these films to be available at the point of sale for cash deposits.⁸⁸ This hierarchical matching system ensured that the best films played at the biggest houses: hence, the wealthier exhibitors were beneficiaries of the advance deposit system even if they provided their voices to the chorus of dissent. Advance deposits had become such a wide scale phenomena that, according to distressed exhibitors, distributors used them to finance studio productions instead of their stated purpose as an insurance policy or lien against void of contract and exhibitor default.⁸⁹

These suspicions were so prevalent that, only one month after the MPELA’s March statement, the Triangle Distributing Corporation and its new president W.W. Hodkinson sought to assuage exhibitor fears by offering bonds through the Fidelity and Casualty Company of New York instead of advance deposits.⁹⁰ The exhibitor would then have to pay a much smaller monthly premium when he or she signed a contract for Triangle films. Ironically, the new plan for bonds in place of advance deposits had been hatched by the very individual, Hodkinson, who was the architect of the deposit system as Paramount’s founder and former president. As Hodkinson explained in a statement released to the press, the cash deposit system that he had established earlier was by now unnecessary because the bonding companies had then refused to associate themselves with companies such as Paramount.⁹¹ Hodkinson claimed that the film industry at that time had yet to acquire the financial stability and clout that it now enjoyed. Although

Triangle's bond offering was more about outmaneuvering its competitors by courting exhibitors and independents, the offer was an indication of exhibitor disdain for the advance deposit system. Triangle was also facing an uncertain future as indicated by the \$1 to \$2 bids on its stock during this period (down from a high of \$9.50 in 1915), suggesting that its abolishment of the deposit system was also an act of desperation for a company that was facing an uncertain future.⁹² Amongst other tactics that Triangle deployed at this time to appeal to exhibitors was the option to book films through the program basis and open booking system and an allowance to discontinue contracts without penalties.⁹³ In contrast, most of the producer-distributors utilized block booking and deposits that forced exhibitors to pay for large blocks of films, while charging them penalties when they cancelled the contract. The only exceptions here were the newly-formed Goldwyn Pictures, which promptly followed Triangle's example, and Vitagraph/V.L.S.E., which had earlier offered films on an open booking system to set them apart as special features: it is customary that newer corporations and smaller distributing entities were more likely to enter the industry by offering films on less profitable terms for a period of time, simply to gain market share and access.⁹⁴ Immediately upon Triangle's announcement, the trade press revealed that several major exhibitors with theater chains and prominent theaters in San Francisco and New Orleans were planning to sign with Triangle.⁹⁵

Following Triangle's apparently successful offer to exhibitors, the Paralta Plays producing company was formed with Carl Anderson as president and executives including chain theater manager Herman Fichtenberg, distributor Nat I. Brown, retailer Herman Katz, and producer Robert Kane. Paralta offered a new franchise system to

exhibitors, one that was similar to but distinct from the state rights method already in place and deployed by independent producers. Whereas in the state rights system the producer would sell the territorial rights to a picture for a flat fee and often in perpetuity, Paralta booked its films on a scaled rental system that reflected the box office potential of the region or “zone” in question and only for a period of several weeks: the greater the potential box office the more the exhibitor would pay for the right to play the picture.⁹⁶

Just as Paralta’s system differed from what the other independents were offering through the state rights territorial sales, it was also notably distinct from the major producer-distributors’ block booking method. Instead of limiting the time the exhibitor could play the film to recoup costs, and distributing the film in a system of clearances whereby the next exhibitor would simply reap all the benefits of the previous run’s local advertising, the film was allowed to run for several weeks at a time and was designated for only that exhibitor on a zone-by-zone basis.⁹⁷ In this way, the exhibitor who funded film advertising was generously rewarded for his or her own efforts. Paralta’s plan could help both producers and exhibitors, and was supposed to reduce waste in distribution, but was likely too radical a disruption to the distributors’ schedule for widespread adoption. Yet the idea of longer runs was attractive even to the larger companies. Later, after 1918, the major producer-distributors indeed salvaged elements of the Paralta plan. In both cases, Triangle and Paralta, compromise with exhibitors was in the air. But would NAMPI members follow these examples and would this allow the producer-distributors to overcome yet another impasse with the exhibitors and their trade organization, the MPELA?

Unlike Triangle's bond offer, and that company's attempts to appease exhibitors, most NAMPI members were not willing to relinquish advance deposits in March 1917. In fact, their actions suggested that they had exactly the opposite intentions. Instead, they worked through the FILM Boards to ensure the deposit system's legitimacy and survival at the same time that they were pushing for the nationalization of these local trade organizations. The public relations aspect of this was crucial. J.L. Friedman, president of the Chicago FILM Board, released this statement regarding the nationalization of FILM in March 1917:

The exchanges, by protecting themselves against exhibitors who fail to meet their obligations, also protect the legitimate exhibitor against "mushroom" competition. In the long run, the F.I.L.M. will prove of more real, practical benefit to exhibitors than any other factor in the business.⁹⁸

"Mushroom Competition" was the term that the larger producer-distributors used to identify independents and independent exchanges that were not members of the FILM Boards of Trade. Moreover, the term "mushroom" signified the newer entities like Triangle and Paralta that were crowding the production and distribution field by offering packages threatening to the industry's status quo. In parallel with Paramount's warning from the last chapter, where the claim was that smaller manufacturers were contributing both to overproduction and to indecent films, the "mushroom" companies here represented the same kind of threat to the major producer-distributors.

Lest exhibitors fear that these local trade organizations were built for one-way traffic, Friedman assured exhibitors that the FILM Boards of Trade also worked for them.

He gave an example of a recent unnamed complainant who filed a several hundred dollar claim against a Chicago exchange and was granted this fine by the Chicago FILM Board's adjudication.⁹⁹ It may have been just one example, and one of the few from this period, but NAMPI and the FILM Boards were hoping that exhibitors took note of their attempts to ensure fair treatment.

Ironically, then, at the same time that NAMPI courted the MPELA and the exhibitors, its members were involved in the consolidation of distributor strength in establishing a nation-wide system of FILM Boards of Trade that would give NAMPI members effective leverage against exhibitors. The call for industry unity emanating from NAMPI's offices was a legitimate cry against the threats of censorship and Sunday closings. Yet such calls were also calculated to enhance NAMPI's profile as an institution representing the entire industry and appearing to lobby on behalf of exhibitor interests. By bringing under its jurisdiction the other industry branches, including exhibitors, advertisers, trade press editors, and supply & equipment manufacturers, NAMPI could enhance its public profile and achieve what its predecessor organization the Board of Trade had only planned but not completed. Yet as the U.S. entered WWI, and NAMPI looked to gain advantage from its wartime activities in cooperation with the federal government, the plans for industry unity were once again threatened by a series of events that would divide producer-distributors and exhibitors.

Although Liberty Loans and patriotic advertising campaigns brought producer-distributors and exhibitors together, issues involving taxes and trade organizations created even greater divisions than before. Moreover, NAMPI enacted a policy that aimed to capitalize on internal divisions amongst the exhibitor ranks. In fact, the period

between April 1917 and November 1918 represented a transformative era for producer-exhibitor relations. For their part, exhibitor trade organizations featured prominently in this conflict as some MPELA members broke off and formed the American Exhibitors' Association (AEA) because of dissatisfaction with the MPELA's corruption and ineffectiveness. Exhibitors would also finally put into action the threats they had always made about reorganizing distribution and building collective distribution entities that placed them on an equal footing with the major producer-distributors. The first such entity was the Film National Exhibitors' Circuit, which set a notable precedent.

Meanwhile, alarmed that such ventures could lead to an exhibition shutout, the producer-distributors concentrated their efforts through NAMPI so as to co-opt exhibitor trade organizations and undermine exhibitor unity. It was only after WWI when these efforts at exhibitor cooption had failed that the major producer-distributors turned to outright hostility. Henceforth, they made plans for complete vertical integration, embarking on theater acquisitions and expansions as we will see in Chapter 5.

¹ *Motography* 15, No. 26 (June 24, 1916): 1419.

² “Brady Made President of Association: Plans Inaugurated for Nation-Wide Political Campaign,” *Motography* 16, No. 10 (September 2, 1916): 523.

³ “Pathe Advocates Federal Censorship,” *Motography* 16, No. 6 (August 6, 1916): 321; and “National Association Attacks Censorship,” *Motography* 16, No. 15 (October 7, 1916): 799–800.

⁴ “National Association Attacks Censorship,” 799.

⁵ For Griffith’s prolonged struggle against censorship targeting *Birth of a Nation*, see “Fighting a Vicious Film,” in Melvyn Stokes, *D.W. Griffith’s The Birth of a Nation: A History of the Most Controversial Motion Picture of All Time* (New York: Oxford University Press, 2007), 129–170. Ironically, according to Stokes, Griffith’s *Birth of a Nation* benefited from the publicity generated from efforts to ban or censor the film and contributed to its status as the most successful U.S. film of its time. See Stokes, 125.

⁶ For Griffith’s proposal on creating the Motion Picture Art League, see “New Campaign Against Censorship: D.W. Griffith Heads National Association Committee,” *Motography* 17, No. 4 (January 27, 1917): 161.

⁷ “National Association Attacks Censorship,” 799.

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ The NAMPI delegation accompanying Brady, Irwin, and Elliot included the following: P.A. Powers, treasurer of Universal, Carl Laemmle, President of Universal, William Sherrill, president of the Frohman Amusement Company, J.H. Hallberg, representing the Supply and Equipment Division, Samuel H. Trigger, manager of the Tremont Theater, Henry Branson Varner, representing the exhibitors, Stephen Bush, of the *Moving Picture World*, William A. Johnston, president of the *Motion Picture News*, Fred Hawley, of the *Motion Picture Directory*, Wid Gunning, L.P. Rogers, Fox Film Company, Britton B. Busch, World Film Corporation, Randolph Lewis, director of publicity, Adam Hull Shirk, *Morning Telegraph*, and W.K. Whipple, *Animated Weekly*. “President Wilson Against Censorship: National Association Committee Also Received by Hughes,” *Motography* 16, No. 17 (October 21, 1916): 901–902.

¹¹ *Ibid.*, 902.

¹² “Convert Hughes Bill to Postal Censor Law: Committee Plans Regulation through Mails,” *Motography* 17, No. 9 (March 3, 1917): 455.

¹³ The new law granting film distributors the right to ship through the parcel post went into effect on January 1, 1917. NAMPI approached the United States Postal Service after a protracted consultation with express companies. We are told that in both cases negotiations through a unified trade organization increased the effectiveness of industry efforts. For example, in December 1916, NAMPI went into negotiations with the express companies over issues of C.O.D. shipment delays, print shipping, and destruction of posters and advertising materials. See “Uncle Sam Will Deliver Films: Films May Now Be Sent By Parcel Post,” *Motography* 17, No. 2 (January 13, 1917): 55; and “The Transportation Situation” *Motography* 16, No. 25 (December 16, 1916): 1309–1310.

¹⁴ “Association Fights Sunday Law: Many Meetings of Committees Held Thanksgiving Week,” *Motography* 16, No. 24 (December 9, 1916): 1263.

¹⁵ “No Sunday Shows: Albany Court Decides Sunday Showing Illegal—Effects Big Portion of New York State But Not New York City,” *Motography* 16, No. 24 (December 9, 1916): 1268.

¹⁶ “Association Fights Sunday Law,” 1263.

¹⁷ *Ibid.*

¹⁸ “Exhibitors Will Test Law: Huge Campaign Planned to Fight Legislation On Sunday Closing,” *Motography* 16, No. 26 (December 23, 1916): 1357.

¹⁹ “Sunday Pictures Petition,” *Motography* 17, No. 9 (March 2, 1917): 438.

²⁰ “Fight Sunday Closing,” *Motography* 17, No. 3 (January 20, 1917): 109.

²¹ *Ibid.*, 110.

²² New York’s law on Sunday showings was not clarified until two years later on April 19, 1919, when Governor Alfred E. Smith signed into law two bills that explicitly legalized Sunday motion pictures and baseball, but still left open the possibility for local bans. In signing the bill, Smith claimed that he was protecting the public against the minority will, as the previous law had been too ambiguous on this crucial point. See “New York’s Sunday Bill Signed,” *Moving Picture World* 40, No. 5 (May 3, 1919): 639–640.

²³ “Producers Unite to Remedy Censorship: Plan Permits Prosecutions by National Body,” *Motography* 17, No. 5 (February 3, 1917): 219.

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- ²⁴ “Censorship Bills in Twenty States,” *Motography* 17, No. 6 (February 10, 1917): 275–276.
- ²⁵ “The Children and the Family Problem,” *Motography* 17, No. 9 (March 3, 1917): 445.
- ²⁶ “Association Adopts ‘Advisory Plan’: Advisory Executive Committees Authorized in All Film Centers,” *Motography* 16, No. 9 (November 4, 1916): 1001.
- ²⁷ “Association Branch Organizing,” *Motography* 17, No. 9 (March 3, 1917): 484.
- ²⁸ “Meeting of Board of Directors,” *Motography* 16, No. 25 (December 16, 1916): 1310.
- ²⁹ “New Firms Join National Association,” *Motography* 16, No. 20 (November 11, 1916): 1056.
- ³⁰ I discuss Paramount’s in-house publicity departments in Chapter 2.
- ³¹ Benjamin Hampton, “Admission Prices and Taxation: State’s Revenue Measures Hurt Theaters and Injure Patronage,” *Motography* 17, No. 9 (March 3, 1917): 439.
- ³² “Picture Theaters are Decreasing: Chicago Shows 29,000 Decline in Total Seating Capacity,” *Motography* 17, No. 12 (March 24, 1917): 601.
- ³³ “Keeping the Screen Clean,” *Motography* 17, No. 12 (March 24, 1917): 603.
- ³⁴ Ibid.
- ³⁵ “New York Legislators Defer Tax: Profits of Exhibitors and Producers Do Not Justify New Levy,” *Motography* 17, No. 13 (March 31, 1917): 653.
- ³⁶ For the industry’s earliest efforts to aid the U.S. government upon its declaration of war on April 6, 1917, see “For National Defense: Many Exhibitors Cooperate with Chairman Jesse L. Lasky of Motion Picture Division of New York’s Mayor Committee,” *Motography* 17, No. 15 (April 14, 1917): 758; and “Rally Industry to Country’s Call: Association of Motion Picture Advertisers to Raise Funds,” *Motography* 17, No. 15 (April 14, 1917): 764. Lasky’s work in particular had secured cooperation from 611 theaters in the NYC area by sending over 35,000 declaration blanks, 1300 slides, and 2000 posters to all the theaters in the region. As a result, the patriotic slides were shown in 90% of theaters in the NYC area and between 200,000 and 225,000 signatures were estimated to have been collected in support of the U.S. war effort.
- ³⁷ “Extensive Picture Tax Proposed: Exhibitors, Producers, and Operators Hit by New York State Plan,” *Motography* 17, No. 16 (April 21, 1917): 805–806.
- ³⁸ See “Convention on at Full Tilt,” *Motography* 16, No. 4 (July 22, 1916): 173; and “National Association Meets,” *Motography* 16, No. 9 (August 16, 1916): 469.
- ³⁹ “Famous Players and Lasky Combine: Adolph Zukor President of \$12,500,000 Corporation,” *Motography* 16, No. 3 (July 15, 1916): 117.
- ⁴⁰ *Federal Trade Commission v. Famous Players-Lasky Corporation et al.*, Brief for the Commission Part I, Docket 835, 32–45.
- ⁴¹ “First Artcraft for October: Mary Pickford Productions to Be Distributed Under New Policy of No Solicitors—Feature Will Establish New Standard of Lavishness,” *Motography* 16, No. 13 (September 23, 1916): 702.
- ⁴² “Artcraft to Handle Headlines: President Greene Talks on New Distributing Organization,” *Motography* 16, No. 19 (November 4, 1916): 1029.
- ⁴³ *Federal Trade Commission v. Famous Players-Lasky Corporation et al.*, Brief for the Commission Part I, Docket 835, 52.
- ⁴⁴ “First Artcraft for October.”
- ⁴⁵ See “Artcraft to Handle Headlines.” A NAMPI resolution from November 28, 1916 reinforced producer-distributor attempts to regulate state rights distribution by specifying that territorial rights be strictly observed. NAMPI feared that state rights buyers were using the system to distribute in territories for which they did not have rights. While this policy seems to protect the independent producers from dishonest state’s rights buyers, it could also serve to limit independent distribution by forcing specific contracts for each region. If an independent had not arranged for local representation in a particular U.S. or Canadian territory, then his films would effectively be banned from entire regions of the domestic marketplace. See “Important Resolutions: Question of Expiration of Actors’ Contract and Territorial Rights Discussed by National Association—Bureau of Information Formed,” *Motography* 16, No. 26 (December 23, 1916): 1358.
- ⁴⁶ For example, see A. Scott Berg, *Goldwyn: A Biography* (New York: Alfred A. Knopf, 1989), 58–59; and Tino Balio, ed., *The American Film Industry* rev. ed. (Madison: The University of Wisconsin Press, 1985), 118. In the FTC’s investigation, Walter E. Greene and Alexander Lichtman testified that they were witness to meetings with Hiram Abrams and Adolph Zukor where the latter hatched his plans for removing Hodkinson from Paramount’s presidency by securing the support of other board members. See *Federal*

Trade Commission v. Famous Players-Lasky Corporation et al., Brief for the Commission Part I, Docket 835, 39–40.

⁴⁷ Quinn in particular demonstrates a more nuanced appreciation for the Paramount reorganization, but still reduces the problem down to a “feud” between Zukor and Hodkinson. See Michael Quinn, “Paramount and Early Feature Distribution,” *Film History* 11, No. 1 (1999): 104. On a methodological level, Quinn does not examine the FTC reports as a problematic historical text, often citing the report as mere fact, when it was devised for the purpose of finding antitrust violations in Paramount’s history. This historiographic observation does not render the FTC report any less informative, but forces the historian to consider the ideological perspectives of those involved in undertaking the Paramount investigation. At the very minimum, it is essential to make a distinction between the FTC’s briefs and the raw interview material and evidence that it collected in its vast 32,000 pages of testimony and supporting evidence.

⁴⁸ The FTC’s report itself had to concede that “[t]he Paramount conspirators were suitably provided for by Zukor in his new company. Each was to continue as manager of the exchange which he had owned at the time of the organization of Paramount, and which after its organization he had operated under a Paramount franchise, for which each was to receive One Thousand Dollars a week and two per cent of the gross revenue. Afterwards Abrams, Steele and Green became directors. Abrams and Green were elected vice presidents.” See *Federal Trade Commission v. Famous Players-Lasky Corporation et al.*, Brief for the Commission Part I, Docket 835, 41.

⁴⁹ See *Federal Trade Commission v. Famous Players-Lasky et al.*, Findings as to the Facts and Conclusion (July 9, 1927), Docket 835, 6.

⁵⁰ In response to Famous Players and Lasky’s proposal to join with the Triangle Distributing Corporation, Hodkinson threatened to sue the two companies for breach of contract. See “Big Triple Merger Completed: Paramount’s Connection Still a Mystery,” *Motography* 15, No. 20 (May 13, 1916): 1075.

⁵¹ At the time of the takeover, it was announced that Paramount would continue to distribute 104 films per year. In other words, a theater contracting with Paramount would receive two films every week. See “New \$22,000,000 Merger.”

⁵² “New \$22,000,000 Merger: Paramount Becomes Subsidiary of Famous Players-Lasky,” *Motography* 16, No. 26 (December 23, 1916): 1362.

⁵³ For a list of Artcraft and Paramount exchanges, see “Paramount Launches New Policy,” *Motography* 16, No. 7 (August 12, 1916): 387; and “Artcraft to Handle Headlines.”

⁵⁴ Janet Wasko, *Movies and Money: Financing the American Film Industry* (New Jersey: Ablex Publishing, 1982), 19.

⁵⁵ One of the prominent examples of a Wall Street banking or finance firm that was firmly entrenched at a studio was case of Crawford Livingston and Otto Kahn who represented Kuhn, Loeb & Co. as president and director, respectively, on board of the Mutual Film Company when it was founded in 1912. See “Mutual Has Spectacular Career,” *Moving Picture World* 38, No. 8 (November 23, 1918): 809. Later, with World Film Corporation’s establishment in 1914, Ladenburg, Thalman & Co. provided financial assistance, and banking interests were present on the company’s board when Lewis J. Selznick was ejected from the presidency in January 1916. As both World and Triangle were ultimately absorbed and disbanded, Wasko concludes that Wall Street investors viewed these two examples as evidence of the film industry’s financial instability. See Wasko, 11–12. While I partially agree with Wasko’s general assessment, her account of Wall Street’s involvement in the film industry understates the significant (and sometimes reckless) role that financiers played in the U.S. film industry in the late 1910s. Her account also ignores two very prominent acquisitions from this era: Merrill Lynch’s takeover of Pathé American in 1917 and the Guaranty Trust Company’s bid for Vitagraph, which I outline in this chapter.

⁵⁶ “Capitalization \$20,000,000,” *Motography* 17, No. 3 (January 20, 1917): 137.

⁵⁷ The plan to bring Hampton into the GFC is described in Ira M. Lowry, letter to George Kleine, September 18, 1916, Albert E. Smith Collection (Box 4). Hampton had proposed a plan to neutralize the preferred stockholders’ lawsuits by paying off the GFC’s debts.

⁵⁸ Smith and Blackton also mention Metro as another possible takeover. See Albert E. Smith and James Stuart Blackton, letter to Benjamin B. Hampton, March 29, 1916, Albert E. Smith Papers (Box 4), Department of Special Collections, UCLA.

⁵⁹ Hampton’s plans are described in Benjamin B. Hampton, letter to Albert E. Smith, March 27, 1916, Albert E. Smith Papers (Box 4). Goldman Sachs & Company is also identified as one of the potential

financial backers in Benjamin B. Hampton, letter to Albert E. Smith, March 22, 1916, Albert E. Smith Papers (Box 4).

⁶⁰ Hampton's extensive correspondence with Hodkinson produced a lengthy and detailed Vitagraph memo on the Paramount Picture Corporation. The memo spelled out precisely how Vitagraph would modify Paramount's operations to make them more efficient. Specifically, Hampton's idea was to buyout Paramount's franchise holders and use Hodkinson's staff at the San Francisco exchange to train the rest of the exchanges. This would allow the exchanges to run at optimized capacity and would neutralize franchise holders who refused to invest in their exchanges or increase their distribution potential. See Benjamin B. Hampton, memo to Albert E. Smith, May 6, 1916, Albert E. Smith Papers (Box 4).

⁶¹ Ibid., Section "A," 2.

⁶² For Pickford's agreement with Hampton, see Mary Pickford, Contract with Benjamin Bowles Hampton: Schedule A, March 18, 1916, Albert E. Smith Papers (Box 4).

⁶³ For example, Paramount was contractually obliged to distribute 24 Famous Players and 24 Lasky films per year, but was currently distributing more due to a temporary contract that allowed 36 for each producer. Since the contract was scheduled to run out in less than two years, Hampton believed that Paramount held significant leverage over Famous Players and Lasky in any future distribution arrangement. See Hampton, memo to Albert E. Smith, May 6, 1916, Section "B," Pages 2–3, Albert E. Smith Papers (Box 4).

⁶⁴ Ibid., Section "C," 1.

⁶⁵ The old Vitagraph, whose assets equaled about \$2 million in early 1916, was essentially sold to the new Vitagraph for \$7,125,000, of which \$3,000,000 was to be issued as 7% Cumulative Preferred Stock at Par and \$4,125,000 as Common Capital Stock at Par. These stocks were derived from the \$10 and \$15 million of common and preferred stock, respectively. This still left Vitagraph having to raise \$17,775,000 so as to make it a "\$25 million" corporation. See "Certificate of Incorporation of the Smith-Blackton Corporation," May 17, 1916, Albert E. Smith Papers (Box 2). For Hampton's initial proposal to Smith, see Benjamin B. Hampton, letter to Albert E. Smith, March 27, 1917, Albert E. Smith Papers (Box 4).

⁶⁶ Hampton's attempts to bring Pickford to Vitagraph, by offering her a much greater weekly salary than the \$2500 she was then making at Famous Players, have already been documented in Benjamin Hampton, *History of the American Film Industry* (New York: Dover, 1970), 146–169; and Quinn, 103–104. In particular, Quinn links the Pickford proposal with V.L.S.E./Vitagraph's attempts to combine with Paramount. What has not been emphasized in either account is that Hampton quit on the Pickford negotiations after he had achieved his goals with the combination, thus forcing Smith to pick up where he left off. It was only then that a \$7,000 weekly offer became a \$10,000 offer with significant bonuses. See Benjamin Hampton, letter to Dennis O'Brien, April 24, 1916, Albert E. Smith Papers (Box 4); Albert E. Smith, letter to Benjamin Hampton, May 9, 1916, Albert E. Smith Papers (Box 4); and Benjamin Hampton, letter to Albert E. Smith, May 19, 1916, Albert E. Smith Papers (Box 4).

⁶⁷ In response to Hampton's plan to buy into the distributor Paramount, Albert Smith wrote a letter in which he claimed that the scheme would only have been possible six weeks prior, when Paramount's relationship with its producers was markedly different. He also suggested that although such a merger would be a sound strategic move against Triangle, by denying them an alliance with Paramount, he did not think it would make much difference. Assessing their current situation, Smith categorically rejected Hampton's plan, claiming that it would leave Vitagraph with six million shares just as "Lasky and Famous Players are looking for a loophole to escape from their contracts with Paramount." Smith feared that joining Paramount would leave his company with enormous debts after having to payout Paramount's stock dividends. See Albert E. Smith, letter to Benjamin Hampton, May 9, 1916, Albert E. Smith Papers (Box 4).

⁶⁸ For Smith's description of these events, and the "conspiracy" that bankers had devised to get a hold of Vitagraph's assets, see Albert E. Smith, "In February 1916, I was called upon by Mr. Benjamin B. Hampton" [Untitled and Undated Document], Albert E. Smith Papers (Box 4).

⁶⁹ The terms of the contract are outlined in a letter Hampton sent to Pickford's agent, Dennis O'Brien, and another letter he sent to Smith. See Benjamin Hampton, letter to Dennis O'Brien, May 5, 1916, Albert E. Smith Papers (Box 4); and Benjamin Hampton, letter to Albert E. Smith, May 19, 1916, Albert E. Smith Papers (Box 4).

⁷⁰ Hampton, letter to Dennis O'Brien, May 5, 1916.

⁷¹ The press reported a bizarre and unlikely incident in which Pickford supposedly walked out of the contract meeting when Smith refused to let her see his family's newborn infant. Smith had suggested that they see the baby after they sign the deal. According to newspaper accounts, the resulting fallout soured

Vitagraph's reported "\$50,000,000" deal to create a massive combine with Hampton and left it with a \$1,000,000 lien on its property. Whatever the validity of these oft-reported tabloid stories, we can be certain that no industry combination with Vitagraph would have amounted to \$50 million at the time and Pickford, who was a seasoned arbitrator, could scarcely have behaved in the way described here. For a later account of the Pickford-Smith altercation, see "Vitagraph Pays \$1,000,000 Debt That Bank Had Wiped Off Books," *The Morning Telegraph* (February 9, 1925): 1, 14.

⁷² Ibid. For the \$1,000,000 loan itself, see "Indenture, The Vitagraph Company of America to Guaranty Trust Company of New York as Trustee," May 24, 1916, Albert E. Smith Papers (Box 4).

⁷³ Benjamin Hampton, letter to Albert E. Smith, July 3, 1916, Albert E. Smith Papers (Box 4).

⁷⁴ For details of Pickford's contract with Paramount, see Memorandum of Agreement between Pickford Film Corporation and Mary Pickford, June 24, 1916, United Artists Collection, Wisconsin Center for Film and Theater Research (WCFTR), Madison, quoted in Tino Balio, "Stars in Business: the Founding of United Artists," in *The American Film Industry*, 159.

⁷⁵ Hampton's option on Pickford provided no penalties in the case of Pickford's void of contract. She simply had to return a \$1000 certified check. Such a low penalty raises doubts about her willingness to leave Famous Players and suggests that she was simply looking for a document that would give her leverage over Paramount in the ongoing negotiations.

⁷⁶ "Vitagraph Absorbs V.L.S.E.: Essanay and Selig to Join Another Distributing Company," *Motography* 16, No. 11 (September 9, 1916): 575.

⁷⁷ In his unpublished memoirs, Albert E. Smith later claimed that Vitagraph had no choice in overtaking V.L.S.E. as exhibitors were disappointed with its partners' films and threatened to cancel distribution contracts. See Albert E. Smith, "The Beginning," 249, Albert E. Smith Papers (Box 1). In contrast, correspondence between Vitagraph personnel and Lubin paints a somewhat different picture, where Hampton and Smith devised an elaborate plan to absorb the three other companies by offering them \$100,000 cash each and millions of dollars of stock issues in the new Vitagraph. Lubin was particularly vulnerable since it was \$625,000 in debt and ultimately had to sell its film assets in order to pay its debtors. See Benjamin B. Hampton, letter to Nicholas G. Roosevelt, July 27, 1916, Albert E. Smith Papers (Box 4); and Benjamin B. Hampton, letter to Albert E. Smith, July 15, 1916, Albert E. Smith Papers (Box 4).

⁷⁸ For a list of V.L.S.E.'s exchange offices and their sales numbers in 1916, see "Office Standings, Week ending March 25, 1916," *The Big Four Family* 4, No. 6 (April 8, 1916): 44.

⁷⁹ "Big Vitagraph Advertising Campaign: Publicity Department Reorganized to Handle Undertaking." *Motography* 17, No. 15 (April 14, 1917): 771.

⁸⁰ Ibid., 772.

⁸¹ Internal company memos and letters show that Vitagraph executives were keenly aware of the disadvantages they faced in competing with Paramount at this time. There was particular concern that Vitagraph had for too long been associated with the General Film Company's regular programs and had to pay greater attention to publicity surrounding its features, so as to set them apart from their program offerings. See Benjamin Hampton, letter to Albert E. Smith, May 19, 1916, Albert E. Smith Papers (Box 4).

⁸² "The High Cost of Amusements," *Motography* 17, No. 8 (February 24, 1917): 385.

⁸³ In June 1916, just prior to consolidation with V.L.S.E., Price Waterhouse & Company listed Vitagraph's combined assets at \$8,383,567.81, including fixed assets at \$564,152.43, inventories at \$977,855.34, accounts receivable at \$337,794.36, and cash at \$476,893.38. The lump sum, however, was ascribed to "general goodwill" at \$5,990,372.30, but is not designated to any source or location office such as New York, London, or Paris. Without accusing the audit firm of any financial malfeasance or dishonesty, it is difficult to understand the source from which this extra capital originated. One thing is certain, if we remove the "general goodwill" from the combined assets, we are left with \$2,393,195.51, which is much closer to the Price Waterhouse & Company audit for Vitagraph in March of the same year. That report lists Vitagraph's total assets at \$1,956,870.53. See Price, Waterhouse & Company, "Vitagraph Company of America, Special Report and Accounts, March 31, 1916," Albert E. Smith Papers (Box 4); and Price, Waterhouse & Co., "Vitagraph Company of America, Balance Sheet, June 1, 1916," Albert E. Smith Papers (Box 4).

⁸⁴ See "Complete Record of Current Films," *Motography* 17, No. 13 (March 31, 1917): 698.

⁸⁵ "For National Film: Chicago F.I.L.M. Club Reorganizes to Prepare for National Show and Rolls Up Sleeves for Task of Forming National Body," *Motography* 17, No. 10 (March 10, 1916): 502.

⁸⁶ Ibid.

⁸⁷ “Plans Made for Coming Convention: Deposit System Decisively Condemned by National Exhibitors’ Committee,” *Motography* 17, No. 12 (March 24, 1917): 609.

⁸⁸ A *Motography* editorial on advance deposits claims that “no producer of low-grade films could induce exhibitors to hand him [sic] their money in advance as a regular practice,” and that “the theater owner who can afford it, and whose competitor cannot afford it, does not look wholly with displeasure on the opportunity to take advantage of the situation.” See “Abolishing the Advance Deposit System,” *Motography* 18, No. 1 (July 7, 1917): 12.

⁸⁹ “Bonds Instead of Deposits,” *Motography* 17, No. 17 (April 28, 1917): 876.

⁹⁰ “Triangle Abolishes ‘Deposit System’: Beginning April 30 Will Accept Bonds from Exhibitors as Security,” *Motography* 17, No. 17 (April 28, 1917): 869.

⁹¹ *Ibid.*, 870.

⁹² Triangle’s low stock price was perhaps a result of speculation regarding its attempts to grow at a fast rate, one that outpaced its capital reserves. For example, the company had just expanded its studio operations at Culver City and Hollywood and it had raised \$3,000,000 to acquire capital stock belonging to its producing units, bringing its capital assets to \$8,000,000. See “Film Market Quotations,” *Motography* 17, No. 12 (March 24, 1917): 649; “Film Market Quotations,” *Motography* 17, No. 15 (April 14, 1917): 807; and “Film Market Quotations,” *Motography* 17, No. 17 (April 28, 1917): 910.

⁹³ “Triangle Makes Important Announcement: Allows Exhibitors Choice of Program or Open Booking,” *Motography* 17, No. 16 (April 21, 1917): 807–808.

⁹⁴ “Open Booking for Goldwyn Productions: Statement By President Goldfish—Other News Goldwyn,” *Motography* 17, No. 17 (April 28, 1917): 881. In a letter to Hampton from October 1916, concerning Vitagraph distribution, Hodkinson outlined the disadvantages of the open booking system vs. Paramount’s program and block booking contracts: “The tendency, largely due to past advertising of V.L.S.E., is for the exhibitor to encourage a condition of so called ‘open bookings,’ which puts a producer who is trying to compete with an established program, in a very unfortunate position for the following reasons: First: To compete successfully with the established program so as to retain a prestige for his product equal with theirs, he must spend as much money on an average on his productions, or more, considering his output is only half as great. Second: It is impossible to get this money back, because instead of getting an average return on his product good or bad, he is limited largely to a return on his good product that does not compensate for his loss on the inferior product. Now, since all concerns not depending on a regular contract return are making cheaper pictures, they are on an average rented cheaper than a concern like Paramount, and any product rented in competition must be influenced greatly by these prices. The ideal way of course, is to establish a program, but with conditions as they are now, this might prove to be an expensive undertaking, particularly since the difficulties of maintaining a high average grade of product exclusively from one organization, is undoubtedly great.” See William W. Hodkinson, “V Plan,” attachment and letter to Benjamin Hampton, October 10, 1916, Albert E. Smith Papers (Box 4).

⁹⁵ “Triangle Makes Important Announcement,” 808.

⁹⁶ “Exhibitors Benefit by New Plan: \$3,000,000 Paralta Producing Company Brings Forth Unusual Scheme,” *Motography* 17, No. 15 (April 14, 1917): 757.

⁹⁷ “New Plan Favors Theaters: Paralta Plays Gives Exhibitor Control of Picture in Own Territory,” *Motography* 17, No. 17 (April 28, 1917): 867. Note that the clearance system under block booking was supposed to withhold runs in the same theatrical district by spacing them out. However, in practice only the most favored exhibitors enjoyed this privilege in 1917.

⁹⁸ “F.I.L.M. Makes War on Mushrooms,” *Motography* 17, No. 11 (March 17, 1917): 551.

⁹⁹ *Ibid.*

CHAPTER FOUR:
NAMPI IN WARTIME
(APRIL 1917–NOVEMBER 1918)

*There is the same right to free film as there is to free speech or a free press.*¹

George Creel, Committee on Public Information, December 1917

The U.S. finally declared war on the Germany Empire and her allies on April 6, 1917, citing Germany's renewed submarine warfare, its autocratic threat to democracy, and its adverse role in instigating conflict on America's southern flank in ways that violated the Monroe Doctrine for hemispheric dominance.² NAMPI, for its part, was already at war on several fronts: the difference was that instead of one or two battlefields, NAMPI was now fighting on every front imaginable, including taxes, exhibitor disenfranchisement, and the government's wartime censorship. As a result, the association was forced to manage three simultaneous and somewhat interrelated crises. In addition, the industry faced complaints that its stocks were poor investments and that film organizers promised much more to investors than they could deliver. If the producer-distributors were going to draw further capital from Wall Street, the film industry had to demonstrate that it was a sound business with solid foundations in American society and industry.³ Respectability as a patriotic industry in wartime was a key goal here. NAMPI's role in organizing and overseeing industry regulation was crucial to the industry's profile as a venue for sound investment.

There was of course a contradiction in the government's support for the industry and for Creel's unique defense of the motion picture's unrealized First Amendment rights

as espoused in the quotation above. As explained in Chapter 1, motion pictures were categorically denied First Amendment rights in the Supreme Court's *Mutual v. Industrial Commission of Ohio* ruling in February 1915. The ruling established a legal precedent that lasted for over four decades. Yet the U.S. government's attempts to legitimize the motion picture during WWI went against the judicial grain. The government's promising declarations gave hope to NAMPI that it could overturn the *Mutual* case by organizing effective campaigns meant to demonstrate the cinema's role in democratic societies. For the government, however, its support of the motion picture industry was tempered by its needs to control the flow of information both at home and abroad. Of immediate concern on the government censorship front was the state of films already in release that were inconsistent with the ethos of a nation now at war.

One of the best-known antiwar films of the era, Thomas Ince's *Civilization* (1916), was also one of the first barred from exhibition by federal authorities in Pennsylvania, who cited the film's graphic representation of war as a threat to recruitment efforts.⁴ Another picture, *The Battle Cry for Peace* (James S. Blackton and Wilfrid North, 1915), was promptly recalled by Vitagraph for reediting and re-release under the title *Womanhood, the Glory of a Nation* (1917), when the U.S. government objected to its treatment of war on the U.S. home front, including a scene in which a New York mother shoots her own daughters to save them from drunken soldiers.⁵ Whereas the reviewer W. Stephen Bush once encapsulated *Battle Cry*'s first version with the Latin dictum *Si vis pacem para bellum* ("If you want peace, prepare for war"), the new version's ideological message was apparently more overtly pro-war and pro-interventionist according to reviews from the era (unfortunately, both the original and the

reedited version are lost and only a few fragments of the battle scenes survive today).⁶

This nexus of censorship and patriotism alarmed *Motography's* editors, who warned in an editorial that "military censorship" threatened to legitimize "civil censorship."⁷ To avoid interference in motion distribution, it was important for the industry to cooperate with the government and the armed forces as much as possible. Thus, Hanover Film Company's *How Uncle Sam Prepares* (1917) was designed from the outset as a war preparedness picture that enjoyed military cooperation. As a result of such cooperation, the film featured some exclusive images never before seen on American motion picture screens, including footage of submarine hunters off the waters of Marblehead, Massachusetts.⁸ Indeed, the war provided many such patriotic opportunities for individual companies. Ultimately, however, it was the larger trade organizations like NAMPI that stood to benefit from the overall war effort and the coordination with the U.S. government.

Most importantly, it was in this period that NAMPI enhanced its national profile as the major industry representative and liaison to the U.S. government in its wartime efforts. NAMPI's numerous committees now reaped benefits for the organization on the whole. Yet the war also challenged NAMPI to meet the government's demands on taxation, censorship, and the patriotic war effort on bonds, supplies, and food rationing.⁹ Not all of these demands were so easily reconciled with NAMPI's own interests and those of its individual members. It remained to be seen whether NAMPI could successfully maneuver itself in wartime and whether the major producer-distributors' share of U.S. and world film distribution would hold, considering how exports of positive film had risen in the first few years of the war only to drop in 1917.

TABLE 4.1 Annual U.S. Exports of Positive Film: July 1913 – July 1918 ¹⁰		
Year Ending July 1 st	Linear Feet	Value in U.S. Dollars (not including rentals income)
1914 (7/1/13 – 7/1/14)	32,690,104	2,282,924
1915	35,987,460	2,498,504
1916	158,751,786	6,757,658
1917	128,549,816	6,633,291
1918	84,557,376	5,132,528

Furthermore, exhibitors were desperate to break off the shackles of this new oligopoly just as they had rid themselves of the MPPC's old monopoly in the period between 1912 and 1915. Would they find a way to undermine the producer-distributors at their own game? While it was a fact that the exhibitor attempts to expand into distribution posed a challenge to the producer-distributor oligopoly and its representation under NAMPI, by the end of the war, the latter had established itself as the dominant organization representing the entire film industry. Even the exhibitors had to recognize NAMPI's authority. Besides, exhibitors were now split into two trade organizations: the new American Exhibitors' Association (AEA) and the old MPELA. Recognizing NAMPI's status, the two exhibitor organizations agreed to dissolve and to join NAMPI in September 1918, but only if they were allocated equal representation on its boards and committees. As this chapter will outline, the script did not go according to plan, and producer-distributors and exhibitors would again fail to join together in one organization. Yet if this was only a short-lived reconciliation between NAMPI and the exhibitor trade organizations, it was still significant in terms of establishing NAMPI's growing profile as the major trade organization representing the American film industry and its various branches.¹¹ Previously, I outlined NAMPI's emergence, its inheritance of the Board of

Trade's organizational structure and policies, and its first challenges. Here I chronicle NAMPI's establishment as a major institution in the U.S. film industry.

In Chapter 3, I covered NAMPI's response to the New York tax bill. The bill had rattled the young organization and created some doubts about its effectiveness. For our purposes, what is significant about the bill is that it was introduced after politicians had assured NAMPI officials of a benign outcome to the Wheeler Committee's report to the New York State Assembly.¹² Moreover, although the bill had started out as a tax measure, it had become a censorship bill enforcing broad-ranging regulations over the film industry in the form of state licensing. By the end of April, when two hundred representatives of the industry's leading companies gathered at New York's Judiciary Committee meetings in order to defeat the measure, it was still under consideration.¹³ One month later, the bill was effectively halted when a caucus of Republicans in the Senate Judiciary Committee refused to endorse the bill that the New York Assembly had already approved. The tax bill then found its way into the Senate's Committee on Rules, but did not make it out as Majority Leader Elon R. Brown lacked the votes to assure its passage in the Senate.¹⁴ Considering this legislative attrition, NAMPI's role in bringing about the bill's ultimate defeat appears significant. As we saw in the last chapter, NAMPI had marshaled extensive resources to challenge the bill's passing. The Senate Judiciary Committee even adopted NAMPI's language when it claimed that the bill would place an unequal burden on the film industry and that it had little resemblance to the Wheeler Committee's original recommendations.¹⁵ It is also possible, however, that the New York Senate felt relieved of its responsibility for film industry taxation when the federal government began working towards the same goal.

In other words, despite the Wheeler measure's defeat in New York, NAMPI and the film industry now had an even larger problem: a national war tax aimed at both theaters and film distribution. At the start of April 1917, the U.S. determined that it had to raise \$1.8 billion through direct taxation.¹⁶ It had already imposed a wartime theater tax on exhibitors back in August 1914 with the start European hostilities and the loss of revenue from import duties, but this graduated seating tax apparently was not enough for the U.S.'s entrance into the conflict.¹⁷ Government rhetoric and propaganda from the era, which was echoed by the industry itself, stressed how every industry and every individual was expected to contribute and to bear some burden.¹⁸ As part of the Federal War Tax, lawmakers therefore proposed a 10% tax on all theater admissions, including motion pictures and concerts, and a footage tax. The latter was to be assessed at 1.5 cents per foot tax on distributed films comprised of half a cent on the raw stock on which the film was printed and one cent for the final positive distribution print. Five-cent theaters were exempt, since they would have difficulty raising their admissions to meet increased taxes. According to film industry commentary, lawmakers in the Ways and Means Committee of the U.S. House of Representatives singled out amusements based on the theory that these forms of entertainment were not "necessities of life."¹⁹ In contrast, European nations had already determined that places of recreation and amusement were essential for the wartime home front. Although the U.S. military itself had recognized the national importance of motion pictures for recruiting, training, mobilizing, and fund raising, Congress at this point was determined to levy fees wherever and whenever it could.²⁰

With its apparently generous profits and poor public image, the U.S. film industry was an easy target. The war simply provided more opportunities for federal regulators to

aim their sights at an industry they believed had tremendous power as a mass medium. It was a commonplace belief that motion pictures reached more people and held their attention in ways that no other medium could equal, at least, in the years before radio and television broadcasting.²¹ Given the high stakes it was no surprise that regulatory control in the form of federal taxes took over where federal and state censorship threats and enactments had left off in the prewar era. This time, however, federal interference was not simply a threat, as the Hughes Bill had been, but would become a reality in both wartime censorship and wartime tax levies. In each case, federal regulators offered NAMPI a seat at the table so as to foster better working relations and more cooperation between the government and the film industry. That acknowledgment allowed NAMPI and its members to blunt and redirect some of the government's harsher enactments, and worked to soften their impact on the major producer-distributors. At the same time, the burden of taxes would have to be absorbed at some point in the chain, and it was most likely that the industry would force the theater patron to pay for any additional federal tax levied on the film industry. NAMPI's position was complicated since it aimed to pass the burden for the distributors' footage tax onto the exhibitors. At the same time, NAMPI could not afford to alienate all exhibitors for fear that its position as the industry's main representative would be jeopardized.

Upon word of congressional plans, NAMPI members reacted immediately by organizing a meeting in NYC's Times Building.²² Although the members had not been informed of the footage tax against producer-distributors, they were already mobilized to combat the theater tax, which they believed to be an unnecessary burden on smaller theaters, the public, and the industry. NAMPI estimated that the government would

collect between \$75 million and \$100 million annually through the 10% admission tax alone. But instead of charging the tax to the exhibitors, who would simply add the increased amount to the regular ticket price, NAMPI proposed that patrons be forced to purchase a special war ticket that was clearly advertised and identified as a contribution to wartime costs. NAMPI figured that the public would be much more sympathetic towards the industry if they recognized the government's role in forcing inflated ticket prices. Any opposition to the increased price would simply be directed at forces outside the film industry.

Beyond its initial concerns voiced at the first meeting on issue at the Times Building, NAMPI on May 12, 1917 sent a delegation on to Washington to argue against the footage tax that had now come to its attention.²³ Headed by Brady, the NAMPI delegation included Powers of Universal, Cromelin of the International Film Company (here representing the export branch of the industry), and an accountant from Price, Waterhouse, & Co. who testified as to NAMPI's accuracy on industry financial records. In Washington, the NAMPI delegates addressed the Senate Finance Committee, which was holding hearings on industry taxes after the House of Representatives had already approved a version of the war revenue bill. They spoke against the footage tax and what they believed was an unfair burden placed on the film industry. Over the next few weeks, MPELA representatives also presented their views against the tax to the same committee, arguing that their theaters could not absorb the extra costs.²⁴ Milwaukee members of the MPELA declared that many theaters would simply go out of business if they had to pay a tax on 10% to 15% of net receipts. North Carolina's and South Carolina's MPELA members reinforced this sentiment, but also pointed out the practical difficulties involved

in raising prices and adding taxes to 5-, 10-, 15-, 25-, and 50-cent admission prices when dealing with hundreds of tickets. “Change making” on this scale was simply impossible for their vendors and theater operations, especially when the transactions had to occur within a twenty-minute period before the scheduled show. Expectedly, MPELA members shot down NAMPI’s proposal to charge the tax separately, as this did not relieve the problem of “change making.” Under NAMPI’s plan, the war tax tickets would have to be sold alongside the admission ticket, thus not providing any solution to the cashiers’ inability to process hundreds of change transactions. In addition to their protest against “change making,” the exhibitors from the Carolinas also provided statistics that proved their theaters were losing money.²⁵ They pleaded with the Senate to alter the bill so that it would tax profits and not gross sales.

Following up on its original delegation sent on May 12, NAMPI organized a large convention on June 1 at the Belasco Theater, Washington, and made evident to Senate lawmakers its readiness to organize a broad lobbying campaign against the footage tax.²⁶ Here a select group drawn from NAMPI’s committee members accompanied Brady as he sought a hearing with Senator Furnifold M. Simmons, chairman of the Senate Finance Committee. The Senate had already modified the bill to some extent in order to appease NAMPI’s position: taxes on footage would not be charged on film distributed prior to May 9, when the bill was first introduced into the House, and the tax on express shipments was reduced from 10% to 6%.²⁷ Such concessions were welcome but certainly not enough. At the Washington gathering, NAMPI restated its categorical opposition to the footage tax, and continued to advocate for a separate stamp or ticket issued at theaters in place of the proposed theater tax. NAMPI also adopted the MPELA’s position that all

theaters should have to bear the burden for the theater tax. This meant that smaller theaters and five-cent theaters would have to pay their share. Apparently, NAMPI believed that with the latter concession the Senate might abandon the footage tax altogether. That was an optimistic assessment of its own lobbying ability. To NAMPI's disappointment, the bill was only slightly changed on this particular point, despite other revisions in the Senate and proposals by some Senators to reduce its severity.

When the War Revenue Act of October 3, 1917 was finally approved and went into effect on November 1, 1917, only motion picture theaters charging less than 10 cents per ticket were exempt from the admissions tax.²⁸ The footage tax was reduced to .25 cents per linear foot on raw stock and .5 cents per foot on positive prints leased or sold by a manufacturer, distributor or importer. Congress estimated that it could raise \$65 million annually from this tax alone. The film industry, including NAMPI and the MPELA, reacted by condemning the bill and warning that it threatened to put them out of business. Adolph Zukor warned that the combined effect of the taxes levied a 20% increase in the cost of completed film prints.²⁹ As a result, Zukor believed that producers would distribute fewer films. In turn, this would result in lower corporate taxes at both state and federal levels. According to Zukor, no other industry had to endure such a high level of tax on its produced goods. His assertions were not far off. An additional tax threatened simply to eliminate producers as well as the smaller theaters in the nation. Patrons were perhaps hardest hit. In New York, for example, the Rialto Theater was forced to raise its scaled admission prices from 15, 20, and 50 cents to 20, 30, and 60 cents, respectively, while the Strand Theater's tickets went up to 30, 40, and 55 cents.³⁰ Each house had to

simplify and round out the tax surcharge so as to maintain efficiency at the box office for its 60,000 to 70,000 patrons.

Having failed to derail or modify the bill, NAMPI members now moved to ensure that they were not the ones who had to absorb the increased costs brought about by the footage tax. These tactics proved to be highly divisive and alienated some exhibitors who otherwise might not have opposed NAMPI's activities. The members agreed that, in order to pay for the footage tax, distributors would now charge a 15-cent daily tax on every reel distributed to theaters.³¹ The surcharge could produce more than enough to compensate the distributors for the government's tax. Joseph Hopp, president of the Chicago Exhibitors' League, estimated that NAMPI's tax returned over a 100% profit on the government's footage tax. His calculation was based on a 100-run average per reel of 950 feet, which he determined would result in a \$7.13 tax for the producer-distributors, but yielded \$15.00 when passed on to the exhibitor.³² That left \$7.87 per reel for costs associated with negative print wastes. As we saw above, the government's footage tax separated raw and positive prints into separate but overlapping tax categories, meaning that the distributor was taxed twice on the same positive print. Producers were also taxed on negative stock used in the production of their films. With an average 10:1 shooting ratio, the raw footage tax for a five-reel feature added a 5–10% premium on completion costs. According to Price, Waterhouse, & Company, which NAMPI employed to assess the equitable level of footage taxes passed on to the exhibitors, the producers would incur an increase of 16 cents per day per reel of film distributed, which meant that their best option was to charge a 15-cent fee on each reel per day of use.³³

NAMPI's move to pass on these costs was understandable, but it did not sit well with exhibitors. The latter went to great lengths to resist the daily tax, including court actions and boycotts. Cleveland's MPELA branch put on the most spirited of these protests by adopting resolutions against the 15-cent tax and seeking a court injunction against its implementation, an action that ultimately failed.³⁴ Likewise, the MPELA's national president, Lee A. Ochs, declared that its members would not pay the distributors' tax.³⁵ Frank Rembusch, who had helped form the American Exhibitors Association (AEA) after renegade exhibitors walked out of the MPELA convention in Chicago, also rejected the 15-cent tax. Rembusch praised the breakaway producer-distributors like Mutual who had assured exhibitors that the distributor would incur the increased cost.³⁶ The AEA proposed that exhibitors refuse to pay the tax and then retaliate against cancellations of their bookings by filing lawsuits for breach of contract.³⁷ NAMPI's response to those exhibitors who refused to pay the footage tax was demonstrated when it filed legal charges under the Sherman Antitrust Act against the Associated Motion Picture Exhibitors of Brooklyn for violating interstate commerce restrictions.³⁸ The exhibitors countered with a December 29 press statement that ridiculed NAMPI for involving the U.S. government in an internal industry affair and for disrupting unity between exhibitors and distributors: "instead of meeting as real proper business men they find it necessary to hire the most expensive counsel obtainable to secure the machinery of the United States Government to help them compel the exhibitors to accede to an illegal demand."³⁹

In the period of a few weeks, between October 1917 when NAMPI members imposed the reel tax and December when the AEA and MPELA declared their plans for

united action, exhibitor divisions brought about by the Chicago MPELA Convention in July had all but dissipated. Based on the presence of its agents, NAMPI appears to have played a role in promoting division amongst exhibitors at a convention in which its interests regarding the advance deposit system were on the line. But while we may speculate about the timing for the AEA's creation, the stated reason for the AEA's founding was that the 100 or so rebel exhibitors refused to accept Lee Och's reelection as MPELA president.⁴⁰ Immediately upon its founding, on July 20, 1917, the AEA filed a modest bid for membership in NAMPI's exhibitor class. The AEA demanded no specific voting rights and no special privileges like those granted to the MPELA.⁴¹ Oddly, and perhaps fearing retaliation by the MPELA and exhibitors who blamed producer-distributors for instigating a divide and conquer strategy, NAMPI turned down the AEA's membership bid in a 24 to 5 vote by the board of directors on August 27th.⁴² Its Machiavellian intentions notwithstanding, NAMPI would have to amend its bylaws in order to facilitate the AEA's membership application.⁴³ Those clauses explicitly declared the MPELA as the sole exhibitors' league representative. Individual membership was also a possibility for exhibitors, but the AEA was looking for institutional recognition. Ironically, NAMPI's rejection of the AEA's bid assured that AEA members were more likely to reconsider their relationship with the MPELA and were less likely to support NAMPI's position on a variety of issues facing the industry, including taxes and advance deposits.

By August, just one month after the split, the AEA itself had managed to draw an extensive membership nearing that of the MPELA. It now extended to 36 states and had hundreds of members.⁴⁴ By December 1917 when the MPELA and AEA agreed to

coordinate their actions at an exhibitors' unity convention in Washington, D.C., the AEA was represented in 46 states and had approximately 2,786 members.⁴⁵ The two trade organizations produced a joint statement that expressed their opposition to the following practices: the advance deposit system, exorbitant star salaries, waste in the producing and distributing branches, the fifteen-cent per reel tax, the daylight saving plan (as this would reduce the evening hours spent at the cinema), and the Thrift Campaign's suggestion that patrons avoid motion picture theaters.⁴⁶ Despite their opposition to NAMPI on deposits and the reel tax, the exhibitors represented under the Allied Exhibitors' Legislative Committee (named as such because it coordinated legislative action between the AEA and the MPELA) managed to come together with NAMPI in establishing the Legislative Committee of the Motion Picture Industry at the start of 1918.⁴⁷ All three organizations now believed that concerted effort was necessary in order to defeat or amend the nation's War Revenue Act. Unfortunately, these sentiments did not last. NAMPI again found itself confronting a united exhibitor front consisting of the AEA and the MPELA.

As if the irreconcilable positions on block booking, taxes, rentals, and deposits were not enough, First National's founding in May 1917 fundamentally changed relations between producer-distributors and exhibitors. It was especially worrisome when the First National Exhibitors' Circuit announced that it had signed Chaplin to an eight-film \$1,075,000 deal in July 1917. Although First National only came into operation as a distributor one year later in July 1918, its formation had already sent a threatening message to producer-distributors, and its extraction of Chaplin away from Mutual was a sign of more to come. Incorporated in New York City by a nation-wide group of twenty-six exhibitors, including Samuel L. Rothapfel (Rialto Theater, N.Y.), E. Mandelbaum

(Stillman Theater, Cleveland) Frank G. Hall (Strand Theater, Newark), and E.H. Hulsey (Dallas), the circuit brought together assets of companies that cumulatively represented 300 of the largest theaters in the country and an estimated \$30,000,000 in capital assets.⁴⁸ They divided the nation according to their respective regions and rented films on a scaled rate and for as many prints as required. For example, Illinois was rated at a 7% rental fee. This meant that a \$100,000 feature would be available for \$7,000 to the regional franchise holder, who could have as many prints as he required under this single fee. First National's fee structure and collective buying process resulted in a great reduction of costs for feature films. Not only was the percentage system for box office rentals eliminated in this process, but also the advance deposits were replaced by the one-time rental fee. Moreover, block booking was jettisoned altogether as franchise holders could pick and choose which films they ran in their theaters.

All of this undermined the producer-distributors' elaborate distribution system by forcing down the costs of feature rentals. The strategy also threatened to block the producer-distributors out completely. The Fox Film Corporation, itself a proprietor of 27 theaters, betrayed what all the other producer-distributors were fearing when it claimed that the First National exchange would only lead to a theater buying spree as distributors looked to protect their hold on territories and local theater districts across the nation.⁴⁹ To guard its position and avoid a lockout, Fox announced that it was shoring up its theatrical holdings by renting and leasing more theaters in order to ensure an exhibition market for its films in the most essential districts.⁵⁰

Other producer-distributors followed Fox's example, but only after they had exhausted alternatives that were available to them through NAMPI and its negotiations

with the MPELA and the AEA. If exhibitors could be kept within NAMPI's orbit, and if they refused to cooperate with First National or follow its lead, then there would be no need for producer-distributors to move into exhibition at this moment in time. Even though exhibition offered a potentially lucrative market for the producer-distributors, the financial uncertainties of wartime and the high costs of operating theaters that were subject to numerous forms of taxation, licensing, regulation, and censorship made a large-scale move into exhibition a risky endeavor. It was best to convince exhibitors on the importance of maintaining the status quo, instead of declaring war over theaters as the trade article on Fox and First National had announced. In fact, it would be better to define producer-distributor tactics on First National as a form of friendly intimidation. Consider, for example, an October 22, 1918 letter from First National's executive secretary, Henry Schwalbe, to Samuel Goldfish of Goldwyn, which the latter shared with his confident and former colleague, Zukor.⁵¹ In the letter, Schwalbe notes that the exhibitors are impressed that Goldfish wants to bring about a "harmonious working arrangement" between First National and the manufacturers. Schwalbe also notes that First National stockholders should have a meeting with manufacturers, but that the meeting he attended the day before was not encouraging on this front since First National stockholders had complained about manufacturer coercion and intimidation. He ends the letter by expressing First National's desire for bringing about a mutually-beneficial relationship between the two factions, and hopes that Goldfish can help in changing producer-distributor behavior towards the exhibitors.

Unfortunately for the producer-distributors, the First National example had already proved to be contagious several months before October 1918 and it further

emboldened exhibitors to challenge NAMPI's authority in the realm of taxes and deposits as we have seen above. The same leading exhibitors such as Joseph Hopp, who had challenged NAMPI on advance deposits and the reel tax, were organizing to undermine the producer-distributors' control over distribution. Thus, the First National example was soon followed by several other plans for cooperative distribution, including the Affiliated Distributors Corporation, which placed the ad in Figure 4.1 in the May 18, 1918 issue of *Motography*.

MAY 18, 1918. MOTOGRAPHY vii

The "AFFILIATED" Platform

- 1.—To insure EXHIBITOR MANAGEMENT and CONTROL in very fact, as well as promise.
- 2.—To in no way disturb existing booking organizations, but rather to encourage them.
- 3.—To keep the capital of each association in its OWN depository, and under its OWN control.
- 4.—To maintain all the benefits of "Open Booking," and at the same time provide a CONSISTENT and DEPENDABLE schedule of releases.
- 5.—To secure, not only ALL the concessions in rental prices which the combined buying power of exhibitors will earn, but the MAJOR SHARE of all excess profits as well.
- 6.—To distribute the cost of all productions on a fair and business basis to each booking association, and to every member of such an association.
- 7.—To regulate expenditures, according to sound business methods, and to protect exhibitors against excessive salaries, extravagant advertising and pretentious executive offices.
- 8.—To arrange, on behalf of the booking associations now existing, and such others as shall be formed, for an affiliation with a national or central clearing house, upon terms that are JUST and EQUITABLE to all concerned.

Plank No. 1

Minding Their Own Business

EXHIBITORS possess the real values of the motion picture business. Their theatres are the fundamental assets of the industry. Their investments exceed all other investments.

Yet, until this moment, exhibitors have had little to say about the running of the business—scarcely, even, anything to say about the running of their own part of the business.

Their attempts to pool their interests, and thereby exercise the voice in affairs which their combined booking power would give them, has resulted either in the feathering of the nests of a chosen few of their number, or in the financing of the selfish purposes of outsiders.

The reason for this has been, that once having assembled their forces, exhibitors have given over the control of these forces to others.

THE AFFILIATED DISTRIBUTORS CORPORATION HAS BEEN FORMED BY EXHIBITORS, FOR EXHIBITORS, TO KEEP THE CONTROL OF THE EXHIBITORS' BOOKING POWER IN THE HANDS OF EXHIBITORS.

The purpose of the organization is to gain for the exhibitors' booking associations affiliated with it, a definite and consistent supply of meritorious pictures, at price concessions which such combined booking strength will earn—not to take advantage of that strength for selfish interests.

Exhibitors' booking associations, affiliated with this organization, retain ALL of their independence, ALL of their funds, and likewise are WHOLLY responsible for the management of the Affiliated Distributors Corporation.

This management is vested in a Board of Directors, made up of exhibitors, and elected by exhibitors. To make this board fully representative, of all exhibitors, one director is allotted to every hundred days of booking represented.

That a directorate of such representativeness may be relied upon to provide an efficient and trustworthy management, is best attested by the results which are now being obtained by such exhibitor booking units as:

THE EXHIBITORS' BOOKING SYNDICATE, OF NEW YORK.
THE ASSOCIATED THEATRES, OF MINNEAPOLIS.
THE MOTION PICTURE EXHIBITORS' ASSOCIATION, OF ILLINOIS.
THE ASSOCIATED THEATRES, OF INDIANAPOLIS.
THE ASSOCIATED THEATRES, OF CLEVELAND.
THE UNITED EXHIBITORS ASSOCIATION.
THE EXHIBITORS BOOKING ASSOCIATION OF THE INTERMOUNTAIN STATES.
THE NORTH AND SOUTH CAROLINA EXHIBITORS BOOKING ASSOCIATION.
THE EXHIBITORS BOOKING ASSOCIATION OF MICHIGAN.
THE INDIAN EXHIBITORS CIRCUIT, OF PITTSBURGH.

Retaining their present independence, but affiliated in a national organization that will assure the better producers an even more extensive market, these, and other booking associations, now in process of formation, will for the first time in the history of the industry, be in a position to realize the full power of their strength.

That such realization will bring added savings in rentals, and increased returns in the excess profits of each booking association, will be obvious to the most casual investigator.

If you would have a share in these benefits write today to the

Affiliated Distributors Corp.
CHARLES C. PETTUOHN, General Counsel
Permanent Address, Suite 524, Longacre Bldg., 1476 Broadway, New York City

Figure 4.1: *Motography* 19:20

The Affiliated Distributors' executive affairs were assigned to a committee of five individuals, including Hopp (president of the Illinois State Exhibitors' League), Sydney Cohen (president of the New York State Exhibitors' League), Louis Frank (Chicago), Frank Rembusch (Indianapolis) and Kind Perry (Detroit). Aside from Hopp, Cohen and

Rembusch were highly active in exhibitor affairs and organizations, and will figure even more prominently as NAMPI's relations with the exhibitors unfolds over the next two chapters. Affiliated claimed that its members had already pledged 1900 booking days.⁵² Exhibitors themselves chose the films through the individual booking units listed above in the ad and a franchise was then awarded to a producer based on the chosen films. Producers offered franchises were allowed to distribute films through Affiliated, but exhibitors retained a sixty-day cancellation clause.

For both First National and Affiliated, the last week of the war proved to be decisive. On November 9, 1918, First National's signed Pickford away from Paramount in a deal that *Moving Picture World* called "epoch making."⁵³ At the same time, on November 6, Affiliated managed a takeover of the producer-distributor Mutual and thus became in theory completely vertically-integrated entity, even though Mutual was primarily a distributor that produced a few serials on the side.⁵⁴ Pickford's deal with First National making her an independent producer was modeled on that distributor's earlier contract with Chaplin, and her salary was reported to be the highest of any female actress up until that time.⁵⁵ She now had the open booking policy that Paramount had long promised her with Artcraft's founding in 1916. Affiliated Distributors for its part now owned a 51% of Mutual, giving it a controlling interest over an established distribution and production-financing entity. Both developments were alarming to producer-distributors, who mounted further retaliatory efforts in the postwar era as I will outline in the next chapter.

Cooperative booking by itself represented a minor challenge to producer-distributors, since its effects were localized, its results somewhat modest, and its

members few. Booking combines had also raised antitrust concerns that led to government action. For example, in September 1918, the Federal Trade Commission filed suit against the Stanley Booking Corporation of Philadelphia (Jules E. Mastbaum, President) for attempting to control film contracts between producer-distributors and exhibitors by inserting itself as a middleman.⁵⁶ The FTC charged that Stanley, including its booking company and affiliated theaters, had violated antitrust laws by threatening the producer-distributors with a withdrawal or lockout of theater patronage if those same distributors made their films available to Stanley's competitors.⁵⁷ At the same time, according to the FTC, Stanley had used its position with distributors to force independent exhibitors to book exclusively from Stanley's offerings. Despite the FTC's attention to the Stanley example, however, cooperate distribution in the form of First National and Affiliated Distributors took cooperate booking to a new and dangerous level. As well as choking distribution by denying producer-distributors access to some of the best theaters in the country, the exhibitor-distributors infringed directly on production by sponsoring independent producers. In practice, such ambitions seemed plausible, and as the next two chapters will demonstrate, the idea of vertical integration as moving in the opposite direction (exhibition → distribution → production) would hold true for Loew's and First National. Yet by that point theater interests such as the latter two had shifted from representing outside "independents" (i.e., independent from the larger producer-distributors) to emerging as full participants and beneficiaries of the producer-distributor oligopoly, including membership and participation in NAMPI. What is important to understand here is that by the end of the war, First National and Affiliated Distributors had laid the groundwork for these subsequent maneuvers.

The establishment of exhibitor-distributor combines notwithstanding, the final attempt to bring about reconciliation between the united AEA/MPELA faction and NAMPI occurred at the AEA's Chicago convention in September 1918. The tone for this gathering had already been set one month earlier in August, when several exhibitors at the MPELA's Boston convention surprisingly nominated Brady for the post of MPELA president. Although their suggestion was turned down by the MPELA President Lee Ochs and defeated in a 115 to 15 appeal vote, the gesture proved that some exhibitors were keen to bring about a closer working relationship with NAMPI. It was a remarkable gesture as the MPELA had just voted to cease cooperation with NAMPI until that organization conceded to its demands for 50-50 representation between exhibitors and the other branches of the industry.⁵⁸ Brady, who was also up for reelection for NAMPI's presidency, was perhaps hedging his bets when he allowed himself to be nominated for two organizations simultaneously: NAMPI and the MPELA.⁵⁹ Additionally, Brady was offering himself as another institutional bridge between the two organizations. NAMPI's president was hoping to bring about a reconciliation in which he played a major role, thus enhancing his industry profile.

When this August vote failed to cement the relationship between NAMPI and the exhibitors, Brady reconvened his efforts at the joint AEA-MPELA convention in September. Here Brady delivered an impassioned speech imploring for industry unity amongst the separate branches. He was extremely forceful in his demands for industry unification and the self-protection benefits that such reconciliation would yield. Defending NAMPI against ethics charges, Brady denied any accusations that the producer-distributors were "profiteering by the war." He urged exhibitors to cooperate

with the government's war efforts and to refrain from meetings aimed at "secret amalgamations."⁶⁰ All amalgamations should be open to all members and must be transparent overall, Brady stated. When Sam Bullock interrupted Brady's speech with a complaint that NAMPI had ignored exhibitor demands on the war tax, Brady responded by pointing out that it was up to the exhibitors to back these demands with funding for NAMPI's investigatory efforts. As a Cleveland exhibitor who had served on NAMPI's grievance committee, Bullock was familiar with the organization. His attack on NAMPI thus betrayed an important fact, since even he had to acknowledge that NAMPI often represented the entire industry when it came to lobbying efforts on Capital Hill. Brady quickly corrected Bullock by claiming that as NAMPI's head he occupied two positions independently, one for the President's committee and one for NAMPI's presidency. He iterated his stance that his role as NAMPI's president was in no way connected to his service for the government. Brady's protestations notwithstanding, it is apparent that although Brady's presidency and his work for the government were logically separable, President Wilson would never have selected him for the latter if he was not already serving as the former.

Aside from Bullock's interjection, Brady's efforts this time proved successful in swaying exhibitors to his cause. Brady had demonstrated NAMPI's authority as the industry's main representative in its dealings with the U.S. government and he had convinced the exhibitors that they had much to gain by joining the association. On September 3, in a joint meeting at the Hotel Sherman, the AEA and MPELA agreed to the following resolution signed by Alfred S. Black (MPELA) and Sam Bullock (AEA):

1. That the name of the Motion Picture Exhibitors League of America be changed to National Association of the Motion Picture Industry Exhibitors' Branch.
2. That Peter J. Schaefer remain as President.
3. That the secretary be named by A.E.A. directors.
4. That Ernest H. Horstmann remain as treasurer.
5. That Frank J. Rembusch be a member of the increased executive committee and chairman of the same.
6. That ten additional members be elected on the executive committee by A.E.A. directors (twenty in all).
7. That four additional vice presidents be elected by A.E.A. directors to the present four vice presidents.
8. That a by-laws committee be appointed consisting of three members of the Motion Picture Exhibitors' League of America and three members from the American Exhibitors' Association; in case of dispute William A. Brady to decide all points not agreed upon, and his decision to be final.
9. That his agreement become effective on September 4, 1918.⁶¹

Brady's efforts at the August–September convention not only had brought about union between the AEA and MPELA but had laid the foundations for NAMPI's complete integration with the two national exhibitor trade organizations just at the moment that the House Ways and Means Committee had introduced another revenue bill targeting the industry.⁶² Accordingly, on September 17, NAMPI and the exhibitors attended the Senate Finance Committee's meetings on the revenue bill. Together they presented a united front opposed to increased theater taxes as well as the 10% tax on gross rentals.⁶³ Brady and other delegates claimed that since the last revenue bill, the number of motion picture theaters in the U.S. had decreased to 14,000 from 17,000. Echoing Zukor's statement from the previous tax discussions, Brady argued that any increased burden would simply drive more exhibitors and producers out of the business, thus reducing the government's overall tax revenue. In response to their efforts, the Senate Finance Committee modified the House bill. It cut the theater admission tax from two cents to one cent on a ten-cent

ticket. Every five-cent increase above this ticket price would now result in a one-cent tax. The committee also reduced the proposed rental tax to 5%.⁶⁴

Cooperation with the exhibitors had brought about positive effects in regards to the proposed new revenue bill, and the two sides jointly participated in an exposition at Madison Square Garden in early November. As a follow-up to the September 4, 1918 agreement signed by the AEA and MPELA to dissolve their organizations and join NAMPI as its exhibitors' branch, a NAMPI meeting was held on November 14 to decide on the course of action.⁶⁵ Peter J. Schaefer was instructed to draft the necessary amendments to NAMPI's bylaws for exhibitor representation. Since changing the bylaws required the entire organization's consent, a meeting was set for December 10. The two sides also delegated representatives to participate in the U.S. Chamber of Commerce's reconstruction convention in Atlanta. To demonstrate its goodwill towards the exhibitors, NAMPI authorized a resolution that condemned efforts by the American Society of Composers, Authors and Publishers to impose a license tax on motion picture theaters.⁶⁶ Other notable events at the November meeting included the acceptance of membership applications from Robertson Cole, and Photoplay Magazine and the reinstatement of Triangle Film Corporation and its distribution division. Triangle had previously left as a gesture of unity with exhibitors and independents opposed to NAMPI's policy on advance deposits and other industry issues. Finally, aiming to consolidate its role as the industry's main national trade organization, NAMPI offered admission to the important Society of Motion Picture Engineers (SMPE), but was rebuffed owing to the latter's state neutrality in business affairs.⁶⁷

Although the November 11 armistice did not alter NAMPI's plans to absorb the exhibitor organizations, most NAMPI members had other ideas when it came to 50% representation for exhibitors within their organization. These incompatible dual objectives of cooption and subjugation finally clashed on December 10, when a NAMPI roll call failed to generate a quorum.⁶⁸ The producer-distributors had turned their back on the Brady-Schaefer plan to bring the industry together under what can only be described as a super trade organization. NAMPI's members had intentionally refused to attend the meeting so as to defeat any debate on the measure to change the bylaws. Brady was humiliated and the exhibitors were insulted. Worse yet, the latter broke off all relations with NAMPI. The exhibitors further pledged to continue with their independent plans at consolidating their two organizations, a development I will cover in the next chapter. Before turning to the immediate postwar era, however, we need to return to NAMPI's wartime activities in cooperating with the U.S. government. These efforts informed the industry's expectations in the postwar era and reveal what previous accounts of NAMPI have failed to identify as a link between NAMPI's various challenges in this period.

One direct outcome of the federal taxation threat and the footage tax targeting the distributors was that NAMPI became even more determined to cooperate with the government on Liberty Bonds and the Creel Committee. The latter had been established to regulate and censor film content both at home and abroad, including distributor imports and exports. A *Motography* commentary on the Liberty Bonds intended for exhibitors but relevant to producer-distributor intentions stated it thusly:

You have authorized your government to collect money from you in two ways—by taxes and by loans. The loans you get back, with interest. The taxes you never get back except in benefits brought about by their expenditure—and those you get also from the loans. The loans are voluntary; you can lend as much or as little as you wish, or leave them alone. The taxes are compulsory; you pay them whether you want to or not.

If everybody lends—takes Liberty Bonds—higher taxes will not be necessary. If the people will not lend, they will give by way of higher taxes. Very likely that means higher ticket taxes and higher film stock taxes. Certainly it means a still higher cost of living.

The more people you, Exhibitor, induce to buy Liberty Bonds the less likely is it that your taxes will be increased.⁶⁹

Although the war revenue tax went into effect at the beginning of November 1917, the producer-distributors had hoped to preempt its passing by coordinating with the U.S. government early on during the Senate's discussion over the bill. In this effort, NAMPI's designated Liberty Loan Committee organized the first Liberty Loan for the period ending on June 15, 1917. The loan drive raised \$2.5 million from the public.⁷⁰ The committee consisted of Walter W. Irwin, P.A. Powers, B.N. Busch, Lee A. Ochs, and Lewis J. Selznick and was supported by Eastman Kodak's donation of 500,000 feet of raw stock. Industry cooperation allowed the committee to arrange distribution for 30,000 theater slides and 8006 trailers to 15,000 exhibitors around the country.⁷¹

NAMPI's Liberty Loan trailers were 70 feet long and were attached to the head of a reel at the start of a theater's program. A contemporary 1917 reviewer described the effect as follows:

The trailer, which will take over a minute to project, makes much of President Wilson's patriotic words at the close of his speech asking Congress to decree that a state of war existed. The first thing seen, however, is an American flag fluttering in the breeze. Above it stands out the words, "The Liberty Bond." Next appears beneath the flag the latest popular slogan which is being used in the campaign, "The Bond that Binds US All." This is followed by a picture of

President Wilson as he dictates his historic speech. Then spectators have presented the final paragraph: "To such a task we can dedicate our lives and our fortunes with the pride of those who know that the day has come when America is privileged to spend her blood and her might for the principles that give her birth and happiness and the peace which she has treasured." The Trailer concludes with a ringing demand "Do your duty! Buy a U.S. Government Liberty Loan Bond today!"⁷²

Whether the reviewer saw the film or was simply provided with its description from NAMPI, we do not know. As of this writing, the trailer is assumed lost. However, from the description it is evident that it was a trailer consisting of very few shots and some text meant to arouse patriotic appeal in support for the Liberty Bonds. Like other wartime trailers, its ideological purpose was simply to prepare the nation for the sacrifices of war.

The Liberty Bonds trailer was soon followed by other, more elaborate shorts, several of which are still available for viewing at the National Archives. Consider *World War I—Newspaper Headlines, 1917*, a joint U.S.-NAMPI newsreel that announced the U.S. entrance into the war and that suffices as an example of the industry's more sophisticated propaganda.⁷³ In that one-and-a-half-minute film produced by the Department of Defense in collaboration with NAMPI, we get a much greater variety of images and thematic concepts. The first shot is a map of Europe with a German cross emerging from Germany and expanding over the entire image until the map is engulfed, as if suggesting Germany's iron-willed desire for conquest. It is followed by a montage of newspaper headlines superimposed over images of newspaper printers, fire, marching, a man reading a newspaper, and a poster that announces "Beat Back the Hun with Liberty Bonds." The final two shots are both dramatic tracking shots with smooth motion. The first is a moderately fast forward track into space, as the camera moves past men working on gigantic ships sitting in a covered shipyard. It was likely facilitated by a tracking crane

that spanned the entire interior of the shipyard, with a visual effect that was rather sublime and innovative for 1917. This shot, which moves inexorably into a light-filled vanishing point in forward space at the upper-right side of the frame, poetically implies the nation's determination to succeed in its national and industrial endeavors at a future moment beyond the horizon. The next and last shot is a lateral track that follows a warship at sea, now ready for the tasks ahead that the camera does not reveal—as our view is perpendicular to the ship's movement—but that the ship itself and her crew are physically and metaphorically facing.

NAMPI's efforts on the first Liberty Bond were significant and catalyzed the entire industry's involvement in aiding government bonds just two months after the U.S. had entered the war. Moreover, the amount raised from the public was in addition to the \$5 million that the producer-distributors and other industry members had subscribed. The following corporate and personal subscriptions on the first Liberty Loan reveal the industry's commitment and sincerity:

Famous Players-Lasky Corp.	\$500,000
Universal Film Mfg. Co.	\$250,000
Vitagraph and Vitagraph V.L.S.E.	\$139,700
Metro Pictures Corp.	\$110,000
World Film Corp.	\$100,000
International Film Service	\$100,000
Argus Laboratories	\$100,000
Lasky Studios, Hollywood	\$75,000
Pathe Exchange, Inc.	\$35,000
Edwin Thanhouser	\$50,000
Marguerite Clark, Famous Players	\$105,000
Mary Pickford, Artcraft	\$100,000
Douglas Fairbanks, Artcraft	\$100,000
Doris Kenyon, Pathe-International	\$50,000
Fatty Arbuckle Co.	\$41,000
Maxine Elliott, Goldwyn	\$40,000
Mabel Taliaferro, Metro	\$31,000
Individual NAMPI Officers	\$100,000 ⁷⁴

Leading the pack were Famous Players-Lasky and its affiliate, Artcraft, followed by NAMPI members Universal, Vitagraph, Metro, World, and individual NAMPI executives. Aside from the public-image benefits afforded by such a campaign, the producer-distributors were looking for equitable returns and political capital on the money spent. They were also responding to President Wilson's personal appeal to the industry to support the government's wartime activities.

In calling for cooperation between the government and NAMPI, Wilson acknowledged the film medium's role in the dissemination of public information and its ability to speak in a "universal language."⁷⁵ Here it is important to point out that Wilson utilized the technical term "film" instead of the theatrical institution of "cinema," perhaps emphasizing the role of the producer-distributors over that of exhibitors. Accordingly, Wilson suggested that NAMPI's cooperation would bring the motion picture "into the fullest and most effective contact with the nation's needs," and would give recognition to an increasingly significant factor in the development of American national consciousness. For NAMPI, this kind of recognition for the industry and for itself was immeasurably important and Wilson's letter was in some ways a hallmark of NAMPI's ascendancy during this era. Sensing the benefits of cooperating with the government, and hoping to gain some leverage over the taxation and other regulatory concerns that threatened the producer-distributors, the members acted quickly to satisfy Wilson's appeal.

NAMPI's formal response to Wilson came on June 28, 1917, when it established the War Co-operation Committee to work in conjunction with George Creel's Committee on Public Information, Herbert Hoover's U.S. Food Administration, and the American Red Cross.⁷⁶ Brady acted as the committee's president, D.W. Griffith as its chairman, and

Arthur James as its secretary. Its executive committee was drawn from NAMPI's executives, including Zukor, Friend, Irwin, Rowland, Powers, and Ochs. There was also a general committee with several dozen members. NAMPI's membership in mid-1917 included 73 companies and many individuals. The members were divided into 40 producers, 11 distributors, 18 equipment and supply manufacturers, 4 publishers, and resident members of the MPELA.⁷⁷ The companies themselves employed numerous executives, which in turn allowed NAMPI to support many committees without having to pay for the services directly.

Within several weeks of its June founding date, NAMPI's War Co-operation Committee established numerous subcommittees by assigning executive members to the following U.S. government branches: War Department (P.A. Powers, Universal), Navy Department (John Freuler, Mutual), Food Commission (Arthur S. Friend, Famous Players-Lasky), Treasury Department (Zukor, Famous Players-Lasky), Department of Agriculture (Stephen A. Lynch, Triangle), Department of Interior (Richard Rowland, Metro; Samuel Rothapfel, Rialto Theater), Aircraft Division (J.A. Berst, Pathé Exchange), Commission on Camp Training Activities (Samuel Goldfish, Goldwyn; Lee Ochs, MPELA), Commercial Economy Board (Lewis J. Selznick), Shipping Board (William L. Sherrill, Frohman), and the American Red Cross (William Fox).⁷⁸ Each subcommittee was responsible for its own wartime tasks.

For example, the committee responsible to the Department of Agriculture distributed lantern slides that dealt with the canning and preservation of perishable food items to theaters in Massachusetts, Rhode Island, Connecticut, New York, Pennsylvania, and Illinois.⁷⁹ Likewise, the committee dealing with the Food Commission provided

slides and posters that urged food conservation with the motto “Food Will Win the War.”⁸⁰ Publicity material also promoted newsreels by Pathé, Mutual and Universal, which served as the official pictures of the U.S. food administration and for the war effort in general. But not all of these attempts at cooperation yielded camaraderie amongst the producer-distributors.

Pathé Exchange in particular was favored by the U.S. government, which led to a public quarrel between Universal and the Creel Committee. The former accused the latter of conspiring with Pathé to deny Universal the rights to the Allies Official War Review, while at the same time censoring from exhibition Universal’s dramatic feature *The Yanks Are Coming* (1918).⁸¹ A similar controversial relationship emerged when the Creel Committee selected First National to distribute its own film *Pershing’s Crusaders* (1918).⁸² The Creel Committee’s actions here in cultivating links with NAMPI maverick Pathé and NAMPI outsider First National suggest that it may have had ulterior motives quite apart from the government officials who had appointed the organization. By associating with companies that were primarily distributors and not producer-distributors, the Creel Committee’s Division of Films hoped to compete effectively with the industry’s producers by denying them exclusive war coverage. In this way, the Creel Committee planned to make its Division of Films into a profitable venture that, according to its own advertising, had by the end of the war become “one of the largest producers of films in the world.”⁸³ It was an ambitious plan, but newsreel coverage of the war was not so easily monopolized, despite the best efforts of the Creel Committee and its preferred distributor Pathé Exchange.

Other NAMPI-government associations were more cordial than the fierce competition over newsreels. Not as competitive as the newsreels, but no less important to the war effort, the Shipping Board committee produced and distributed films demonstrating America's vast shipbuilding efforts and its laborers' dedication to their cause, while purportedly careful not to reveal the secret locations involved.⁸⁴ Finally, NAMPI-sponsored films for the Army and Navy dealt with recruiting and war efforts, which were handled by the industrial branches within each studio. These efforts were orchestrated in cooperation with the Creel Committee on Public Information, which in September 1917 released a pamphlet that outlined rules and regulation regarding filmed portrayals of the army and navy.⁸⁵ Film producers would have to obtain permission for any film that depicted military activities or industries. In addition, the following kinds of images were banned or required special permission: army fortifications and weapon placements, close views or construction/manufacturing details of weapon systems, troop movements, and any scenes that "misrepresent or arouse prejudice against friendly nations." The regulations also limited access to the battlefield by requiring photographers and cameramen to obtain permits for the purposes of accompanying U.S. forces. Newsreel cameramen would not be allowed to roam freely and their reporting was thus highly censored and controlled by the Committee on Public Information. NAMPI members generally did not have a problem with these provisions as many of their wartime films had already obtained permits and were coordinated with government departments. This was yet another way to overcome the lack of full cooperation between the Creel Committee and NAMPI. Feature films of course proved to be another matter, as I discussed above in the case of Universal's *The Yanks Are Coming*.

Meanwhile, in cooperation with NAMPI, Fox, and the General Film Company, the American Red Cross's Bureau of Pictures produced and distributed several pictures in 1918, including *The Historic Fourth of July in Paris*, *The Soothing Heart of Italy*, and *Of No Use to Germany*.⁸⁶ The films highlighted the organization's work on European battlefields and in hospitals stationed in the effected countries. Their purpose was to reveal the work undertaken with help from U.S. donations. According to the Red Cross, they were offered to exhibitors for a "limited cost," as the organization did not want to be seen as favoring some branches and elements of the industry over others.⁸⁷

NAMPI's film production and distribution activities on behalf of the U.S. government became so prevalent that the next logical step was to establish a film employment bureau, which the association began to explore in September 1917.⁸⁸ NAMPI's position was understandable since such a bureau would give the individual producer-distributors greater leverage in their negotiations with talent and labor. These wartime innovations on labor organization also provided important models for the association's postwar activities, especially in light of the potential to standardize industry contracts so as to benefit the producer-distributors. They also foreshadowed a key development of the postwar film industry insofar as labor disputes and negotiations were significant factors for both NAMPI and the individual members.

Also during this period in the autumn of 1917, Wilson requested that Brady organize state representatives from the exhibitors so as better to serve the purposes of the Liberty Loan efforts. Instead of drawing these individuals exclusively or even primarily from the MPELA or AEA, however, Brady selected many non-affiliated exhibitors.⁸⁹ Although there was some overlap with the MPELA in Brady's assignments, his action

suggests that NAMPI was not interested in empowering the exhibitor trade organizations or allowing the latter to reap the same benefits that producer-distributors enjoyed in their cooperation with the U.S. government. NAMPI's tactics here represented yet another divide-and-conquer strategy and further aroused suspicions amongst exhibitors in the MPELA and AEA camps. This mistrust, however, did not prevent non-affiliated and even affiliated MPELA and AEA exhibitors from coordinating action on future Liberty Loans with NAMPI.

In October, NAMPI inaugurated its second Liberty Loan effort by producing five separate but related motion pictures that dealt thematically with over twenty important events in U.S. history, including the Declaration of Independence. The films were produced by Herbert Rawll with the cooperation of Paramount and NAMPI, and were approved by the U.S. treasury department before release.⁹⁰ Stars, celebrities and government officials were recruited to play historical personages. In addition to numerous others, the films featured President Wilson, Secretary of the Treasury, William G. McAdoo, Thomas Edison, Douglas Fairbanks, William Hart, Pauline Frederick, Ethel Barrymore, Laurette Taylor, and Marguerite Clark. 500 prints were distributed rent-free to theaters around the country. The prints were kept separate so that they were available to the greatest number of theaters and patrons. NAMPI's efforts were producing monetary results as well as building direct connections with politicians and cabinet members featured in its films. This way, another NAMPI-sponsored campaign was much more likely, although in no way should we assume that one Liberty Loan effort simply caused the next one. NAMPI and the U.S. government had already planned for a series of

these loans and the success of one drive simply increased the incentive to organize another round.

The third Liberty Loan campaign commenced on April 6, 1918, the one-year anniversary for the U.S. declaration of war. It eventually raised \$100 million in public subscriptions in addition to \$10 million from the industry itself.⁹¹ Working with Zukor, the Secretary of the Treasury, W.G. McAdoo, sent out another film trailer along with posters and a letter to exhibitors that asked them once again for their cooperation. In one of the posters, “Help Uncle Sam Stamp Out the Kaiser,” a giant shoe with the words “3rd Liberty Bond” printed on its outsole descends on a miniature Kaiser Wilhelm II decked out in cape and sword as the caption reads “Buy U.S. Govt. Bonds.”⁹² Various NAMPI members also distributed posters with themes that addressed the monetary sacrifice required for defending liberty against the German aggressor (Figures 4.2 & 4.3).



Figures 4.2 & 4.3: “Choose!” and “Bonds Are Not a Burden But A Blessing,” *Motography* 19:15 (April 1918).

In response to NAMPI's continued cooperation through its Liberty Loan Committee and its War Co-operation Committee, Secretary McAdoo, George Creel, H.A. Garfield (Fuel Administration), and Herbert Hoover (Food Administration) came to the industry's defense in June 1918 when they declared motion pictures "essential." By this time, the Thrift Campaign movement had gained some momentum amongst public officials. As noted above, these individuals believed that films were non-essential and that cinemas should be ordered closed for the war's duration. Reacting strongly against such claims, George Creel declared that he believed in the motion picture as much as he believed in the press for the purposes of arousing "an enlightened war sentiment."⁹³ This at last was public evidence for a quid pro quo between NAMPI's national campaigns, including its film production and distribution services, and the U.S. government's reciprocal policies on the film industry.

A fourth Liberty Loan followed in October, when NAMPI's Liberty Loan Committee and its chairman, Zukor, promised to raise \$1 billion.⁹⁴ By this point, NAMPI and the industry had produced 35 films dedicated to the war effort, and, according to some rather conservative calculations, had saved the government \$200,000 in production or negative costs alone (the real cost was probably much higher).⁹⁵ 112 prints were struck for each film and distributed through the participating companies via a government shipping frank especially issued for the purpose.⁹⁶ In this way, no money exchanged hands and films were rented out free of charge to exhibitors on a one-day, one-subject per theater basis.

Even Charles Chaplin lent his efforts to the fourth Liberty Loan with *The Bond* (First National, 1918), a ten-minute film that emphasized the “bonds” that tie the Tramp to his friends, his wife, and, ultimately, to the different vocations involved in the war effort. When the film starts, the Tramp lives a happy and trifling existence. He laughs with a friend and he meets and falls in love with a woman, resulting in a humorous marriage scene. But after a sequence where a conscript must defend Lady Liberty from the Kaiser, the Tramp is mobilized into action. He hands Liberty Loan money to Uncle Sam, who spends it on a worker representing “Industry,” who then produces a rifle for an army recruit. The whole action is then repeated with the difference that a naval recruit receives the rifle, suggesting that multiple Liberty Loans are required to fund every branch of the war effort. In the film’s final sequence, the Tramp smashes the Kaiser with a large hammer marked “Liberty Bonds.” The film offered a thrifty contribution featuring Chaplin regulars and simple backdrops and props, but its message was undeniably clear and much appreciated by the government. Other films associated with the fourth Liberty Loan and originally screened at the National Press Club along with Chaplin’s one-reeler included Wallace Reed’s *The Extra Bit*, Mack Sennett’s *It’s A Cinch*, Nazimova’s *Women of France*, Douglas Fairbanks’ *Sic ‘Em Sam*, Geraldine Farrar’s *The Bonds that Tie*, and Alice Joyce’s *The Choice*.⁹⁷ Unfortunately, despite grand plans for the fourth Liberty Loan, October also heralded NAMPI’s announcement that film production would cease due to the influenza epidemic now spreading throughout the continental United States.⁹⁸ Los Angeles and the East Coast centers had already shut down. Old productions were kept in circulation, and theaters that remained open had an opportunity to book such films, but new film production had ceased temporarily.

When the war ended only a month later in November, the fourth Liberty Loan was cut short, but the industry's efforts had already paid some dividends. Aside from problems that I noted above regarding Universal's accusations of favoritism and the unnecessary censorship that had been placed on its films, NAMPI's cooperation with the U.S. government yielded important concessions to the producer-distributors. For example, taxes and export regulations were relaxed by the Creel Committee in July 1918 so as to allow films deemed worthy of educational value.⁹⁹ Previously, NAMPI members had to receive approval for every foot of every film they exported abroad. This restriction had placed severe burdens on distributor exports and contributed to the decline in export numbers I listed at the beginning of the chapter. Relaxing export rules was crucial to revitalizing the lucrative foreign trade. For Kristin Thompson, the Division of Films also played an important role in securing foreign markets against German competition, as U.S. export laws now stipulated that American films could not be shown at theaters showing German product.¹⁰⁰ According to Thompson, the Division of Films had in fact achieved the level of a commercial distributor in many parts of Europe. This meant that it was not simply a competitor with the industry, but that it facilitated American dominance of over those countries where it had undertaken film operations. More significantly perhaps for NAMPI's ambitions, almost all of the U.S. government's wartime motion picture efforts in addition to its Liberty Bonds went through NAMPI's committees or included member affiliation.¹⁰¹ This offered a tremendous boost for NAMPI's public and industry profile, and placed it far ahead of the exhibitor trade organizations that reluctantly acquiesced to its authority and representative breadth, at least in wartime.

As this chapter has demonstrated, NAMPI's relationship with the exhibitor trade organizations faltered as the war came to an end. There were simply too many differences over fundamental policy issues regarding advance deposits and the reel tax. While the next chapter will show how NAMPI continued to jostle for leverage over exhibitors through cultivating links with their trade organizations, it will also outline another trend. The idea that a company could compete effectively simply by conducting business in one or two branches of the industry—as NAMPI producer-distributors and the MPPC before them had believed—was soon replaced by the acknowledgment that a new industry model had emerged. In this model, it did not matter whether one had started out as a producer, distributor or exhibitor. What mattered was the degree to which one could expand into the other branches and overcome various market barriers on the way to concentration. NAMPI's role in this transformative era was to bring these disparate factions together so that the vertically-integrated oligopoly that emerged as the studio system maintained an institutional system for the governance of a mutually-protective trade association.

¹ This was Creel's disposition to a federal court in Fox Film Corporation's case against Chicago censor Major Funkhouser, who had barred Fox's *The Rose of Blood* (1917) from local theaters. See "Same Right to Free Films as Free Speech," *Motography* 18, No. 26 (December 29, 1917): 1334.

² In 1918, the Committee on Public Information outlined the official reasons for the U.S. entrance into WWI. For the official pamphlet, see Samuel B. Harding, *The Study of the Great War* (Philadelphia: McKinley Publishing Company, 1918), 28.

³ For example, a *Motography* editorial from this period recommends that film securities be placed on a sound basis so as to prevent exploitation by organizers who promise but do not deliver on company performance. See "Put Film Securities on a Sound Basis," *Motography* 17, No. 19 (May 12, 1917): 987–988.

⁴ "Films Hit by War Censorship: Pacifist and Unpatriotic Films Censored," *Motography* 17, No. 18 (May 5, 1917): 925–926.

⁵ The film was based on Hudson Maxim's *Defenseless America*, which Henry Ford had famously denounced as fear mongering in the service of war-industry propaganda. For a description of the film's plot, see "The Battle Cry of Peace," *Moving Picture World* 25, No. 8 (August 21, 1915): 1291.

⁶ See W. Stephen Bush "A Great Patriotic Service," *Moving Picture World* 25, No. 9 (August 28, 1915): 1455; and "Films Hit by War Censorship."

⁷ "Military Censorship vs. Civil Censorship," *Motography* 17, No. 18 (May 5, 1917): 931.

⁸ "How Uncle Sam Prepares," *Motography* 17, No. 17 (April 28, 1917): 889.

⁹ Some of NAMPI's wartime efforts are covered in Chapter 4 of Leslie DeBauche's *Reel Patriotism: The Movies and World War I* (Madison: University of Wisconsin Press, 1997), 104–136. DeBauche's account is particularly relevant in regards to the industry's cooperation with the Food Administration and Liberty Bonds. She is also attentive to George Kleine's refusal to accept NAMPI's authority. Unfortunately, DeBauche offers few observations on NAMPI-exhibitor relations, fails to mention contentious issues such as taxes and deposits, and does not link NAMPI's cooperation with the government to its conflict with exhibitors. Setting aside its limited coverage of NAMPI, DeBauche's text offers some excellent and informative observations for those seeking to understand the industry's role during WWI.

¹⁰ A reduction in exports to the United Kingdom over the period of 1916–1918 is much to blame for the overall decrease in export numbers. See "Exports and Imports Hold Up Well," *Moving Picture World* 37, No. 11 (September 14, 1918): 1546; and "Film Imports Still Show Decrease: Statistics Compiled by Department of Commerce Disclose Interesting Figures on Imports and Exports," *Moving Picture World* 38, No. 7 (November 16, 1918): 726.

¹¹ NAMPI also came to the aid of exhibitors in their labor disputes with operators. In one such example, the Allied Amusement Association, which was an exhibitors' organization formed to counter the operators' union, invited NAMPI to mediate between the two factions. However, negotiations were compromised when violence broke out in the form of an after-hours bombing at Andrew Karzas's new \$300,000 Woodlawn Theatre at 863 East Sixty-Third Street in Chicago. See "N.A.M.P.I. Takes Up Chicago Fight: May Adopt Labor Program for Entire Country," *Motography* 19, No. 18 (May 4, 1918): 800; and "Big Chicago Theatre Bombed," *Motography* 19, No. 19 (May 11, 1918): 897.

¹² The MPELA's president, Lee Ochs, later claimed that NAMPI's complacency had brought about the New York tax bill fiasco, since the organization had not been proactive enough in preventing the turn of events when the bill was finally introduced. *Motography's* editorial, for its part, supported Ochs' account. See "A War Tax of Four Cents a Positive Foot!," *Motography* 19, No. 24 (June 15, 1918): 112.

¹³ At the meeting, NAMPI president Brady called the proposed 10% tax on film industry profits an act of discrimination, since regular industries were only taxed at 3% of profits. Other NAMPI members presented statistics regarding the proposed taxes. When the Wheeler Commission had considered the issue of film taxes, it had recommended a raise of \$125,000 per annum. The new measure, however, would tax the industry at \$700,000 annually. If followed by other states, this would lead to an annual \$5,000,000 in industry taxes. Such a high rate of taxation would surely push the industry to utter collapse, or so the industry men argued. For a list of the individuals and company representatives who attended the hearings in the New York State Senate in Albany, see "Fight Against New York Tax," *Motography* 17, No. 18 (May 5, 1917): 917–918.

¹⁴ "New York Tax Killed," *Motography* 17, No. 21 (May 26, 1917): 1078.

¹⁵ Ibid.

¹⁶ "Industry Must Aid in War Tax: Ten Per Cent Levied on Amusement Tickets—One Cent Per Foot on Film," *Motography* 17, No. 20 (May 19, 1917): 1025.

¹⁷ The August 1914 war tax imposed a graduated seating tax on theaters starting at \$25 for the lowest bracket. However, exhibitors claimed confusion over the matter as general amusements were charged a \$10 fee. According to some exhibitors, it was unclear as to whether the motion picture venues were considered theaters or amusements. Finally on November 3, 1914, the Treasury Department clarified its position and insisted that all motion picture theaters were required to pay the general theater tax and not the amusements fee. See "Exhibitors and the War Tax," *Moving Picture World* 23, No. 3 (January 16, 1915): 343.

¹⁸ Industry rhetoric on obligations to the war effort followed immediately after the U.S. declaration of war. For example, John R. Freuler, president of the Mutual Film Corporation, put out a statement announcing his company's full support for the U.S. war effort and promising to use Mutual's resources and connections with theaters to further his country's cause. Naturally, such rhetoric was also self-serving in that the industry emphasized the medium's contributions to mobilization and news reporting. But it could only offer such services if its hands were not tied. Therefore, at the same time that it offered assistance, the industry demanded concessions on censorship and taxation. See John R. Freuler, "Message to Exhibitors," *Motography* 17, No. 17 (April 28, 1917): 868.

¹⁹ "Industry Must Aid in War Tax."

²⁰ At the start of the war, the American Military Relief Association went into the business of film production. Its one-reel comedies, *Follies of the Week*, were produced under the direction of Cullom Holmes Ferrell and featured stage stars such as Raymond Hitchcock, who was then appearing in the stage musical *Betty*. The profits were distributed to American soldiers on the warfront and helped supplement materials not provided by the U.S. military such as candy and tobacco. See "'Follies' for Military Relief," *Motography* 17, No. 20 (May 19, 1917): 1026.

²¹ The U.S. government itself espoused the belief that film could reach the public in ways that no other medium could match, because "it speaks a universal language [that] takes precedent over even the printed word." See "U.S. Representatives at Convention," *Motography* 18, No. (August 4, 1917): 237.

²² "Industry Must Aid in War Tax," 1025.

²³ "War Tax Agitation," *Motography* 17, No. 21 (May 26, 1917): 1077.

²⁴ "War Tax Still Undecided," *Motography* 17, No. 22 (June 2, 1917): 1131–1132.

²⁵ For statistics on the amount these exhibitors were losing, see "War Tax Still Undecided," 1131.

²⁶ "Film Men Convene: Meet at Washington to Fight Footage and Adjust Amusement Tax," *Motography* 17, No. 23 (June 9, 1917): 1192.

²⁷ Ibid.

²⁸ "Industry Meets War Tax: Ten-Cent Theaters Included in Bill—Opinions Varied on Measure," *Motography* 18, No. 16 (October 20, 1917): 797.

²⁹ Ibid.

³⁰ "Patronage Shows No Falling Off," *Motography* 18, No. 20 (November 17, 1917): 1015.

³¹ Some NAMPI members like Mutual refused to pass the war tax on to exhibitors at this time for fear of losing their standing. Other distributors like Triangle and First National, which were not NAMPI members at the time, also sided with the exhibitors and refused to follow NAMPI's lead. See "Producer Shoulders War Tax: Refused to Ask Exhibitor to Pay Fifteen Cent Levy," *Motography* 18, No. 19 (November 10, 1917): 959; and "Fight Over Fifteen-Cent Reel Tax Continues: Distributors Demand Levy Be Passed to Public," *Motography* 18, No. 22 (December 1, 1922): 1121.

³² See "Disposing of the Tax on Film Stock," *Motography* 18, No. 19 (November 10, 1917): 967.

³³ Price, Waterhouse, & Company's report to NAMPI outlined different possibilities for collecting the footage tax: "1. Collect the whole tax from the exhibitor who first leases a print. This would be easy for the manufacturer but unjust to the exhibitor. If the latter happened to get a new copy he would pay the whole tax. Sec. 1007 of the law cited, however, seems to contemplate just this method. 2. Division of the tax among the successive lessees of a print. Unfortunately no one can tell in advance how many times a given print will be leased; the accounting would be burdensome; the plan is not easily worked. 3. An average charge on all film leased; the charge to be sufficient to reimburse the manufacturer for taxes paid. Plan No. 1 is too unjust for serious thought. Plan No. 2 is theoretically correct, but the work it would entail would double the total cost of the tax. It would offer special difficulty in the case of replacements of reels or parts of reels, because such replacements if made after October 1, 1917, would pay footage tax. You would have the anomaly of subjects, some copies of which were not taxed, some partly and some wholly taxable. Upon

the whole the third method appears to be best. If adopted, the charge to exhibitors would take the form of an addition to the rental of a fixed amount per reel per day, the amount being computed as follows: Cost (per reel) of taxes—approximately \$3.75. Number of rental days earned by each print per estimate furnished to us and according to the best information we can obtain—average 50. Cost of tax per rental day, per reel—16 cents. So far as we can ascertain the average of rental days given above is reasonable. The charge would apply on all film, old or new; the manufacturer pays the full tax upon release, and the charge would have to be applied on all film to reimburse the manufacturer's outlay." The text above is quoted in "War Tax Problems Continued Unsolved," *Motography* 18, No. 21 (November 24, 1917): 1072.

³⁴ See "Continue Fight Against Reel Tax: Cleveland Exhibitors are Undaunted by Adverse Court Decision," *Motography* 18:24 (December 15, 1917): 1222.

³⁵ "War Tax Problems Continued Unsolved," 1069–1970

³⁶ Ibid.

³⁷ "AEA Suggests Court Action," *Motography* 18, No. 22 (December 1, 1917): 1122.

³⁸ "Producers Complain of Brooklyn Boycott," *Motography* 18, No. 25 (December 22, 1917): 1287.

³⁹ "Take Up Brooklyn Situation," *Motography* 18, No. 26 (December 29, 1917): 1325.

⁴⁰ For the MPELA's resolution against advance deposits as well as the numbers involved in the walkout, see "Big Chicago Convention Closes," *Motography* 18, No. 5 (August 4, 1917): 221–222.

⁴¹ See "New National Exhibitors' Association: Bolters from M.P.E.L. form American Exhibitors' Association," *Motography* 18, No. 5 (August 4, 1917): 225–226; and "A.E.A. Heads Confer," *Motography* 18, No. 9 (September 1, 1917): 447.

⁴² At the same time that NAMPI was considering AEA's membership bid, Brady and his allies within NAMPI passed a measure that increased the size of its directorate. Four classes would now have their board membership increased from five to seven members, while the MPELA would be granted fourteen board members, up from 10. See "A.E.A. in National Association: Directors Considering Matter," *Motography* 18, No. 8 (August 25, 1917): 395; and "National Association Meets: Application for Membership by American Exhibitors' Association Denied," *Motography* 18, No. 10 (September 8, 1917): 498.

⁴³ See the editorial "Amend N.A.M.P.I. By-laws," *Motography* 18, No. 11 (September 15, 1917): 449–550.

⁴⁴ "Thirty Six States in A.E.A.: New Exhibitors Organization Opens New York Office," *Motography* 18, No. 7 (August 18, 1917): 328.

⁴⁵ For AEA membership numbers in December 1917, see "A.E.A. Now Includes Forty-Six States," *Motography* 18, No. 22 (December 1, 1917): 1138.

⁴⁶ "Peace Declared by Exhibitor Factions," *Motography* 18, No. 26 (December 29, 1917): 1317–1318.

⁴⁷ "Harmony Reigns in United Industry: Exhibitors and Distributors Join Hands For Concerted Effort," *Motography* 19, No. 1 (January 5, 1918): 23.

⁴⁸ "Chaplin to get \$1,075,000: National Exhibitors' Circuit Said to Have Signed World's First Comedian," *Motography* 18, No. 2 (July 14, 1917): 57–58.

⁴⁹ "Fox Declares War on First National," *Motography* 20, No. 2 (July 13, 1918): 58.

⁵⁰ Ibid.

⁵¹ Harry Schwalbe, letter to Samuel Goldfish, October 22, 1918, Adolph Zukor Collection (Folder 1), Margaret Herrick Library.

⁵² "Co-operative Field Getting Crowded," *Motography* 19, No. 17 (April 27, 1918): 783.

⁵³ "First National Signs Mary Pickford," *Moving Picture World* 38, No. 8 (November 23, 1918): 816.

⁵⁴ "Affiliated Takes Over Mutual Film," *Moving Picture World* 38, No. 8 (November 23, 1918): 809.

⁵⁵ "First National Signs Mary Pickford," 816.

⁵⁶ For the details of the FTC's case against the Stanley Booking Company, see "Stanley Corporation is Enjoined: Federal Trade Commission Issues First Order In Motion Picture Field Against Unfair Methods," *Moving Picture World* 37, No. 13 (September 28, 1918): 1869.

⁵⁷ Ibid.

⁵⁸ For coverage of the Boston MPELA convention and Brady's role, see "Peter Schaefer is National League President," *Moving Picture World* 37, No. 5 (August 3, 1918): 655–660.

⁵⁹ "Brady Re-elected Head of NAMPI," *Moving Picture World* 37, No. 5 (August 3, 1918): 661.

⁶⁰ "Factions Get Together in Chicago: Following Inspiring Talk by William A. Brady at A.E.A. Convention Committee of Exhibitors and League Agree to Affiliate with National Association," *Moving Picture World* 37, No. 12 (September 21, 1918): 1691.

⁶¹ Ibid., 1691–1692.

⁶² The new Revenue Bill was introduced on September 3, 1918. See "Revenue Bill Hits Industry: Doubling of Admission Tax but One of Several Imposts Trade Will Have to Meet," *Moving Picture World* 37, No. 12 (September 21, 1918): 1696.

⁶³ "Film Men Get Hearing at Capital," *Moving Picture World* 38, No. 1 (October 5, 1918): 55–56.

⁶⁴ For the reduced rates in the bill's tax proposal, see "Senate Committee Alters Theatre Tax Bill," *Moving Picture World* 38, No. 4 (October 26, 1918): 503; and "Senate Committee Amends Tax Bill: Seating and Admission Imposts Remain Unchanged, but Levy on Rentals is Cut in Half," *Moving Picture World* 38, No. 12 (December 21, 1918): 1318.

⁶⁵ "Association Would Amend By-Laws," *Moving Picture World* 38, No. 9 (November 30, 1918): 930.

⁶⁶ Ibid.

⁶⁷ SMPE refused NAMPI membership in its November convention held in Cleveland. It stated that as a purely technical and scientific organization it could not participate in a business association or trade organization. See "Campe Heads Society of Engineers," *Moving Picture World* 38, No. 10 (December 7, 1918): 1051.

⁶⁸ "NAMPI and Exhibitors Split," *Moving Picture World* 38, No. 12 (December 21, 1918): 1317.

⁶⁹ "The Business Side of Pushing Liberty Bonds," *Motography* 19, No. 15 (April 13, 1918): 701.

⁷⁰ "\$2,500,000 in Liberty Bonds," *Motography* 17, No. 24 (June 16, 1917): 1247.

⁷¹ See "All Industry Aided Loan," *Motography* 17, No. 25 (June 23, 1917): 1304; and "Industry Subscribes \$5,000,000 to U.S.," *Motography* 17, No. 26 (June 30, 1917): 1359.

⁷² "\$2,500,000 in Liberty Bonds," 1247.

⁷³ The newsreel is located at the National Archives in Washington, D.C. For the archival record, see *World War I—Newspaper Headlines, 1917*, 428 NPC 43945.

⁷⁴ For the industry's own subscription amounts in the first Liberty Loan, see "Industry Subscribes \$5,000,000 to U.S.," 1359.

⁷⁵ Wilson's letter to Brady is reprinted in "President Calls Film Industry: Pictures Mobilized to Co-operate With Government," *Motography* 18, No. 3 (July 21, 1917): 121.

⁷⁶ "War Committee Appointed," *Motography* 18, No. 1 (July 7, 1917): 7.

⁷⁷ For NAMPI membership numbers from August 1917, see "New Association Directors," *Motography* 18, No. 6 (August 11, 1917): 294.

⁷⁸ "Film War Committees Appointed: Chairman William A. Brady Names Representative Picture Men," *Motography* 18, No. 6 (August 11, 1917): 283.

⁷⁹ "Theaters Work for U.S.," *Motography* 18, No. 12 (September 22, 1917): 594.

⁸⁰ "Exhibitors to Co-operate: Campaign Arranged for Motion Picture Activities During Food Conservation Week, October 21 to 28," *Motography* 18, No. 15 (October 13, 1917): 754.

⁸¹ "War Film Quiz Demanded in Congress," *Motography* 20, No. 2 (July 13, 1918): 51, 77.

⁸² *Motography's* editorial pointed out that *Pershing's Crusaders* should have been offered to more distributors. It argued that the Creel Committee was helping some distributors, presumably First National and Pathé Exchange, by suppressing similar films by their rivals. See "The Creel Committee's Activities," *Motography* 20, No. 1 (July 6, 1918): 1.

⁸³ For industry commentary that leveled charges of war profiteering against the Creel Committee's Division of Films, see "Patriotism or Profit?," *Motography* 20, No. 2 (July 13, 1918): 50.

⁸⁴ "Screen Aids U.S. Shipping Board: National Association Formulates Plan," *Motography* 18, No. 13 (September 29, 1917): 649.

⁸⁵ The Committee on Public Information's guide is reprinted in "Government Issues Film Guide," *Motography* 18, No. 9 (September 1, 1917): 435–436.

⁸⁶ "Many Red Cross Productions Coming," *Moving Picture World* 38, No. 2 (October 12, 1918): 210.

⁸⁷ Ibid.

⁸⁸ "Film Employment Bureau: National Association of the Motion Picture Industry Inducts Company to Serve as a General Employment Agency," *Motography* 18, No. 13 (September 29, 1917): 650.

⁸⁹ The difference between Brady's list and MPELA membership, for example, can be ascertained by comparing the state appointments with the MPELA's list of members. See "Exhibitors Organizing to Aid U.S.," *Motography* 18, No. 10 (September 8, 1917): 485–486.

⁹⁰ "Industry Aids U.S. Again: Special Picture with '40-Stars-40' to Work for New Liberty Loan," *Motography* 18, No. 15 (October 13, 1917): 745.

⁹¹ "N.A.M.P.I. Plans to Grow With Industry," *Motography* 19, No. 25 (June 22, 1918): 1161.

⁹² “McAdoo Urges Liberty Loan Aid: Asks Screening of Trailer at Every Show,” *Motography* 19, No. 15 (April 13, 1918): 705.

⁹³ Creel’s letter to Charles Hart is reprinted in “U.S. Chiefs Come to Aid of Industry,” *Motography* 19, No. 25 (June 22, 1918): 1155.

⁹⁴ “One Billion for the Fourth Loan,” *Moving Picture World* 38, No. 2 (October 12, 1918): 201.

⁹⁵ “Washington Praises Liberty Films,” *Moving Picture World* 38, No. 2 (October 12, 1918): 202.

⁹⁶ “How to Handle Liberty Loan Prints,” *Moving Picture World* 38, No. 1 (October 5, 1918): 61.

⁹⁷ “Washington Praises Liberty Films,” 202.

⁹⁸ NAMPI’s declaration only spoke for its own members, and not for the many state rights distributors who were free to conduct business as usual, granted that business was in an unusual state owing to the influenza outbreak and the resultant theatre closures. See “Producers Decide to Close Up Shop,” *Moving Picture World* 38, No. 4 (October 26, 1918): 491.

⁹⁹ “Broad Interpretation on Educational: N.A.M.P.I. Reaches Agreement with Committee on Public Information Regarding the Export of Films,” *Moving Picture World* 37, No. 4 (July 27, 1918): 532.

¹⁰⁰ For Thompson’s history of the industry’s relations with the Creel Committee and its Division of Films, see Kristin Thompson, *Exporting Entertainment: America in the World Film Market, 1907–1934* (London: BFI Publishing, 1985), 93–99.

¹⁰¹ Even Pathé, which often acted independently of the association, was ultimately a NAMPI member and participant despite its outsider or maverick status. For example, J.A. Berst of Pathé Exchange served on NAMPI’s powerful executive committee for 1917–1918. See “N.A.M.P.I. Meeting,” *Motography* 18, No. 14 (October 6, 1917): 698.

CHAPTER FIVE:
NAMPI IN THE POSTWAR ERA
(DECEMBER 1918 – DECEMBER 1920)

As it entered the crucial postwar era, NAMPI faced many obstacles. Some challenges were continued from wartime and others entirely new. Having failed to capitalize on its wartime prominence for the purposes of co-opting the MPELA and the AEA, NAMPI was officially excluded from their future plans. With ties officially cut off and worsening, exhibitors now sought to press NAMPI for financial losses incurred when the producer-distributors backed out of the joint Boston Convention for July 1918.¹ There appeared to be no way for the exhibitor factions (MPELA & AEA) and NAMPI to reconcile on fundamental issues. Exhibitors realized the need for a central organization to represent their interests, one that was not compromised by NAMPI interference. The two exhibitor trade organizations were soon joined together as the Motion Picture Exhibitors of America (MPEA) under the leadership of Alfred S. Black. However, the MPEA split when a breakaway New York faction under Sydney S. Cohen formed the Motion Picture Theater Owners of America (MPTOA). As we will see, the MPTOA was more or less independent in a way that even the MPEA was not, and it was for this reason that it became the dominant exhibitors' representative by June 1920. At this point, 700 exhibitors at the MPTOA's Cleveland convention came together to oppose the "producer-exhibitor octopus."² The MPTOA's emergence explains why the independent exhibitors reached out to independent producers and distributors, now represented by their own associations and distribution clearing houses. Together they looked for ways to

undermine and circumvent the majors' lock on production and distribution. These developments did not stop NAMPI and its members from trying to court exhibitor participation on specific issues like censorship and the government's tax policies, but they established a trajectory for industry relations that did not bode well for the survival of the independent exhibitor, who was beset on both sides by firms with ambitious plans for expansion.

Consider that in late October 1918 Adolph Zukor released the following veiled threat in response to First National's impending contract with Pickford, one of Paramount's most-valued assets:

The evil of producing and exhibition coalitions is one of the gravest perils that has ever confronted the motion picture industry. For some time past this condition has been developing and now threatens to halt the industry's progress, if indeed it does not set it back beyond the point at which it first took its place among the organized industries of the day. It has been permitted to develop this far because no one individual, either producer or exhibitor, has dared face the facts himself, and compel other producers and exhibitors to face them with him . . .

If exhibitors establish or rent studios for the production of pictures the producers will have to build theatres, not in order to rebuke the exhibitors, but for the simple reason that that will be the only means open to them to protect their producing investments. Such a condition would result in ruinous competition in both branches of the industry, but the producer would have the advantage because he would already have the goods to sell, and the ability and the experience to make the better pictures.³

Zukor's press release did not refer to First National or Pickford by name, but the message was clearly implied: if exhibitors were going to move into production and distribution, then producers would have to move into exhibition. Zukor warned that such actions by exhibitor combines to bid on stars would force higher rentals for all exhibitors and would ruin the industry. Ironically, given Paramount's plans for the near future, he urged every

branch to stay within its own boundaries so as to ensure a healthy competition. There were even rumors spread by the exhibitors, and later reported as facts in the FTC's investigation, that Zukor attempted to gain control of First National through its directors, although Paramount's actions are a matter of historical interpretation, and suggest overtures for cooperation and merger rather than a motive for wholesale takeover.⁴

Whether or not Paramount would have gained the upper hand in such a merger is perhaps beside the point. The very idea of such a combination apparently encouraged Pickford, Fairbanks, Chaplin, Griffith, and William S. Hart to act on their ambitious plans for independent distribution in the form of United Artists, which was founded only a few months later in February 1919.⁵ UA's founding complicated the producer-distributors' relationship with First National since it posed a threat to both factions. Even though First National's president, Robert Liebler, originally stated that his organization would work with United Artists and its members so that an "understanding may be smoothed out," there were still outstanding issues.⁶ After all, as far as First National was concerned, Chaplin was contracted for six more pictures, despite UA's press release, which claimed that Pickford's and Chaplin's respective contracts with First National would run out in June 1919.⁷ The same press release noted that Hart's contract with Paramount was scheduled to expire in July. Griffith, who had been with Paramount's Artcraft since 1917, was available from the fall of 1919 onwards, and Fairbanks was currently in negotiations to extend his contract with Artcraft, meaning that he could leave if he wished. Of these, only Hart's contract with Paramount was salvaged, when the western star decided against joining United Artists after Paramount offered him a substantial raise.⁸ Meanwhile, in order to produce the necessary films to fulfill his First National contract, Chaplin was

forced to extend his original contract of 8 pictures over 18 months to nine pictures over five years, completing his final First National film in February 1923 with *The Pilgrim*.⁹ Without access to enough theaters, and with Chaplin's releases tied to First National until 1923, United Artists posed a minor threat to producer-distributors like Paramount, Vitagraph, Goldwyn, Metro, Pathé, Universal, and Fox, but it was still a cause for concern owing to the inflationary pressures it placed on star salaries. Indeed, this was one of the industry's main concerns at the time, with Paramount, Goldwyn, and Metro leading the charge for reducing star payrolls and star profiles.¹⁰

It should be pointed out that Paramount's October message to First National was a shot across the bow, and only the first round in a process that consumed the industry for the next several years as producer-distributors and theater circuits jostled over first-run theaters, distribution, and stars. These events were not always hostile. The process whereby the industry's oligopoly was formed involved not only competitive maneuvering, but also mutually-beneficial cooperation and respect. When a new interest such as Loew's or First National entered the national distribution scene, it had to prove that it was willing to play by the rules, and only then was it granted a seat on NAMPI's board of directors. In 1919, both companies proved their cooperative potential by joining or affiliating with NAMPI and the FILM Boards of Trade, which now combined into a national organization under NAMPI's auspices and supervision. As they became vertically integrated, Loew's and First National went from representing a threat to producer-distributor oligopoly to full participants and beneficiaries within their trade association, NAMPI. To its advantage, Loew's was able to maintain representation in both camps (NAMPI and the MPTOA) well into 1921.

In the present chapter, I will address the opening stages for the shift to complete vertical integration, as Paramount prepared a response to the First National and United Artists debacle by investing in the Stanley Theater Company, while Loew's expanded its theater holdings and acquired the producer-distributor Metro. Paramount's aggressive move into exhibition after the war was so alarming that it brought about a direct confrontation with the MPTOA. Thus, in July 1920, independent exhibitors represented through the MPTOA called on Paramount to divest its theater holdings or face continued hostility.¹¹ NAMPI and the producer-distributors also faced challenges on the export front as the U.S. dollar's relatively high value after WWI undermined their ability to export to their biggest market, Europe. Although they were unlikely to affect U.S. monetary policy on Gold Standard exchange rates or to force U.S. banks to honor European credit, NAMPI's leadership here played a crucial role in bringing about more beneficial U.S. trade laws. It was in this period that American cinema became a truly global industry with near domination of world distribution in many countries of Europe, South America, and the Asia-Pacific region. Finally, with the end of the Creel Committee's censorship over wartime film exports, NAMPI's efforts on the censorship front were again focused on domestic, state, and civil challenges.

The end of the Great War may have brought relief to those in the industry who believed that a better future awaited them, but such predictions were overly-ambitious in the short term. Influenza now became an even greater concern and energy and coal rationing were also factors in shutting down theaters on "lightless Mondays," for example. On November 4, 1918, as the war was winding down, 32 NAMPI state representatives sent telegrams that conditions were depressingly poor but slowly

improving.¹² Theaters had been closed across the country owing to the influenza threat, and the business on the whole was suffering greatly. Vitagraph's corporate memos, for example, reported \$290,000 in lost sales due to influenza for the two months of October and November 1918.¹³ As mentioned in the previous chapter, producer-distributors placed a freeze on production for the last month of the war, yet continued to supply older films already in release. Production closures were necessary and practical because many workers became ill, resulting in lost productivity and longer production schedules. The temporary halt, which NAMPI initiated with full industry cooperation, meant that no distributor had an advantage over any other: they were all in it together. At this point, the members were authorized to offer older films already in distribution. NAMPI organized the halt for five weeks. At the end of that time, production was slated to return to normal, which it did in time. With theater closures, however, there was a fundamental threat to producer-distributor revenue. The industry needed to return to normalcy as soon as possible, and that would take several months.

By early 1919, the domestic exhibition market had already experienced the worst of the theater closures. While influenza outbreaks continued to occur in scattered parts of the country, widespread closures effecting entire regions of the country after this date no longer afflicted the exhibition landscape. NAMPI's earlier response in shutting down production while maintaining distribution demonstrated responsibility on its part and showed that the clout it had gained in wartime could effectively be channeled for the benefit of the producer-distributors in maintaining mutually-beneficial standards at a time of crisis. The war had reinforced NAMPI's mandate as a protector of industry interests and its successes set the stage for its ambitious plans in the years after the war. With the

difficulties effectively managed and behind them, NAMPI's members could turn their attention to other pressing matters. Exports, exhibitor relations, and censorship were all important here as all three affected the growth potential of the individual producer-distributors.

After the fiasco of late 1918, when Brady promised the AEA and MPELA membership under NAMPI only to witness NAMPI's executive board reject the proposal for 50% representation, there was now only a remote possibility that an exhibitors' league would affiliate with NAMPI. Brady himself felt professionally humiliated as a result of the failed roll call, and complained that NAMPI was not compensating him enough for his time and expenses in serving as its president.¹⁴ He offered his resignation in early 1919, but NAMPI executives pleaded with him to remain at his post. Subsequently, Brady withdrew his resignation at a Board of Directors meeting on February 24, 1919, and in return was tendered an elaborate honorary dinner at the Ritz-Carleton only three days later.¹⁵ As for the fallout with exhibitors, NAMPI responded by amending its by-laws to allow for individual membership in Class 2 (the exhibitor branch).¹⁶ No longer would exhibitors be granted free membership, or have to join through the defunct MPELA. The new annual fee structure for Class 2 was based on theater seating, from \$6 for up to 400 seats, all the way to \$50 for 3000 seats and over. NAMPI also launched a campaign through its Exhibitor Committee to promote exhibitor membership, but this proved to be an uphill task as only a limited number of exhibitors were likely to join.

At best, NAMPI could prod exhibitors into supporting its policies. In this way, NAMPI aimed to bring about cooperation on censorship, taxes, and export/import laws. For example, when faced with censorship legislation in Oklahoma, Nebraska, North

Carolina, and South Dakota, NAMPI's Censorship Committee threatened to cutoff film distribution to those states if the laws were passed.¹⁷ The threat was telegraphed directly to the exhibitor representatives in those states, and it urged them to cooperate with NAMPI in fighting state censorship bills then in circulation. While possibilities remained for cooperation, especially on issues such as censorship and taxes, there was too much distrust for across the board coordination with exhibitors.

On the national front, the exhibitors had already decided that they were excluding NAMPI from their plans in forming a combined organization that brought together the MPELA and the AEA. The new exhibitors' league was known as the Motion Picture Exhibitors of America (MPEA) and plans were laid for its foundation in early April 1919, when the following temporary officers were appointed: Peter Schaefer, president; Marcus Loew, vice-president; Frank Rembusch, secretary; and Earnest Horstmann, treasurer.¹⁸ These men were not necessarily hostile to the producer-distributors. Curiously, Rembusch and Loew were long-time associates of Brady and Zukor, and they enjoyed a cordial relationship with NAMPI, especially in the case of Marcus Loew. Schaefer had also served as an MPELA representative in NAMPI and had drafted the failed proposal to unify all exhibitors under the NAMPI umbrella as discussed in Chapter 4. Even when they severed relations with NAMPI, it seemed that the exhibitors were having a difficult time finding individuals who were truly independent of the larger producer-distributor concerns.

At the MPEA's inaugural convention in July 1919 at the Hotel Statler in St. Louis, the delegates voted for the organization's president and officers. Rembusch was pitted against Alfred S. Black, an exhibitor from Maine who had also maintained close

ties to Paramount.¹⁹ Although there were no public acknowledgments at the time, it is apparent that Black was Paramount's inside man. After Rembusch failed to receive as much support, Black was elected president. These backstage machinations produced an unfortunate outcome, when the New York State Exhibitors' League withdrew from the convention in protest against the lack of regional representation proposed in the new organization.²⁰ The New York League rejected the disjunction between their membership fees (15% of total), and their representation (1/48th, or roughly 2%), and bemoaned the president's ability to appoint state representatives without regional elections.²¹ It was almost as if the MPEA wanted to control exhibitors from the top down. This led to suspicions regarding the MPEA leadership's priorities and affiliations.

In opposition to the MPEA, the New York League formed the Motion Picture Theater Owners of America (MPTOA), a national organization that promoted its independence from producer-distributors and NAMPI. One of its first orders of business was among the most contentious issues between producer-distributors and exhibitors: "camouflaged advertisements," or product placement.²² These were consumer goods or fashions that appeared in films at an advertising cost that rewarded the producers handsomely. The exhibitors demanded for these ads to be removed from the films, since theater owners never received any profits from the advertising on their screens. With producers netting an estimated \$3,000,000 from product placement in the 1918–1919 season, the exhibitors felt that they were being exploited. In exchange for allowing the ads to remain, the MPTOA demanded a 50% share of producer profits on such advertising. Otherwise, without such an agreement, exhibitors threatened to cut the relevant scenes from the exhibition print.²³

The specifics of their disagreements aside, once again, the exhibitors were split into two factions, and once again NAMPI and its members had interests at stake. For NAMPI, exhibitor cooperation was absolutely necessary in the area of anti-censorship campaigns and the rental tax proposed in the new Revenue Bill. Accordingly, one of the MPEA's first acts in July 1919 was to send Louis F. Blumenthal to Congress in support of repealing Section 800906 of the 1918 Revenue Bill, which dealt with seating and admission taxes.²⁴ NAMPI had previously campaigned on repealing the adjacent Section 800905 regarding the rental tax, so the two organizations were lobbying on similar goals.²⁵ Both were opposed to all sections of the Revenue Bill that applied taxes to the film industry. Yet what the industry needed was more closely coordinated action on these affairs and at least some public attempt on the part of NAMPI to restore ties. That action came in August 1919, only a month after Blumenthal went to congress to lobby against the industry taxes in the Revenue Bill.

When a labor strike between the Actors' Equity Association and the Producing Managers' Association placed NAMPI in the difficult position of having to choose between talent and theater interests, it sided with the latter by ensuring that a theatrical strike could not harm motion picture interests.²⁶ Broadway theaters and stage theaters across the country lost an estimated \$3,298,500 in the strike that lasted four weeks from August to September, but motion pictures were not affected.²⁷ The exhibitors witnessed NAMPI working on their behalf to immunize them from the fate of their stage cousins. Of course, NAMPI's action against Actors' Equity was based on other motivations as well, since this theatrical players' union had inspired New York's film extras and bit players to seek union membership under the American Federation of Labor (AFL). Their

organization, known as the Moving Picture Players, was the brainchild of Mary Manning. Manning had approached a local AFL representative, Hugh Frayne, during the Equity strike and proposed the idea of affiliating with the AFL. The resultant Picture Players union produced 700 members at its first significant meeting on September 8, 1919 in NYC. Speaking on behalf of the new union, the AFL's leaders believed that they could achieve the same results as Actors' Equity, but in less time.²⁸ Membership cost \$1 per person. In return, Picture Players demanded from the studios a closed shop of union-only workers and a minimum of \$7.50 per day. Most alarming for NAMPI, this union recruited aggressively at the members' New York studios. Thus, NAMPI's sympathies were well-placed in the fight between labor and theater managers. NAMPI's actions against labor agitation had the effect of protecting member interests as well as offering an olive branch to exhibitors and theater interests in New York and across the U.S.

At the same time that NAMPI was working to improve its public image amongst exhibitors, it was plotting to solidify its members' control over distribution and exchanges. These contradictory approaches did not nullify one another, but were intended to divide exhibitors on important issues, thus giving NAMPI members leverage in their conflicts with exhibitors. Previously, I discussed NAMPI's relationship with the FILM Boards of Trade. These were local exchange trade organizations dominated by the same producer-distributors who comprised NAMPI's executive board. At the time, just prior to the U.S. entrance into WWI, the FILM Boards of Trade had drawn up plans for a national organization, but these plans were never fulfilled owing to the outbreak of the war. As you will recall, FILM's branches had already affiliated under the Hoy Reporting Agency, giving their local organizations a centralized and standardized form of operation and a

legal means for collecting from uncooperative exhibitors. Now, with the end of the war, the FILM Boards of Trade moved to solidify their relationship with NAMPI. Moreover, they now had greater incentive, since they were feeling more pressure for concessions from the exhibitors. For example, in May 1919, the local FILM branch held a meeting with the New York State Exhibitors' League, which was represented under the future MPTOA breakaway faction of Sydney Cohen. Cohen believed in a much more confrontational approach towards the producer-distributors. He demanded exhibitor representation on FILM's grievance committee, and for a standard contract between distributor and exhibitor, one that put an end to advance deposits.²⁹ The idea of a standard contract would gain hold in the near future with mixed results for the exhibitors. For now, New York's FILM branch merely deferred action on Cohen's demands to its future meetings. Realizing the need for closer cooperation with NAMPI, the FILM branches formed a national organization at their convention in November 1919, which was held in NAMPI's offices in the NYC Times Building.³⁰ The FILM branches applied for and were granted membership as an autonomous entity under NAMPI's charter. Even First National's exchanges participated, with R.C. Seery of First National Chicago Exchange designated as the Western territory's FILM representative. This was the first official indication that the First National Exhibitors' Circuit had interests in common with NAMPI and the producer-distributors. If FILM's branches had brought about greater producer-distributor authority and representation in the affairs of exchanges in the prewar period, their affiliation with NAMPI in the postwar era represented a centralizing effect that officially placed them under its auspices.

The centralization of exchange trade organizations under NAMPI's umbrella was even more significant when placed against the backdrop of theater acquisitions. Paramount, and the other large theater interests, Loew's and First National, may have cooperated through NAMPI and FILM, but they also maintained healthy competition for theaters. If one company announced that was buying or building theaters, the other would have to respond in order to remain competitive. The effect of all this expansion was to forge an oligopoly consisting of industry entities that were wealthy enough to sustain growth. Consider Lewis Innerarity's response as Pathé Exchange president, when responding to NAMPI's call for members to declare their position on cooperative booking in August 1920:

Our policy has at all times been one of unqualified opposition to booking agencies in principle, regardless of the disguise in which they are cloaked . . . The injection of a middleman simply adds another complication to the distribution of film—and the middleman must get his unwarranted profit at the exhibitor's expense . . . But in order to protect our own business against the inroads of competitors who by more or less fictitious ownership or control (either directly or through other corporations) of theatres included in one or more of the larger booking agency groups have sought to nullify any general agreement that might be reached on this subject, we have been obliged to meet this competition, which cannot be regarded but as unfair, and have been obliged to deal with such agencies and expect to continue dealing with such agencies until such time as each distributing company in good faith withdraws its support from all booking agencies, however disguised, and adheres to that determination in both letter and spirit.³¹

Most of the other NAMPI members who responded agreed with Pathé's position, if only tongue-in-cheek as in the case of Paramount. The latter was undoubtedly Innerarity's point of reference in the quotation above: as I will discuss below, Paramount had disguised its theater interests through affiliations with theater circuits. Naturally, one

NAMPI member that did not affirm the association's position was First National, which was the original model for cooperative booking. First National maintained that if cooperative production plans were tolerable then cooperative booking was just as acceptable. Although First National, Paramount, and the other NAMPI members did not agree on every policy, each one of them was caught in a game of brinkmanship where competition and cooperation were both assets. As I have already demonstrated above with the examination of NAMPI and FILM, cooperation was necessary on many fronts if the NAMPI firms hoped to maintain their status as members of an oligopoly that dominated U.S. film production and distribution. This was true even during periods of rapid expansion and competitive maneuvering. Outside of NAMPI, the independent producers and exchanges for their part were left with little choice but to join with exhibitors or with their peers in order to ensure adequate access to first-run theaters.

The first major announcement for theater expansion in 1919 came in March, when Loew's divulged plans for building and remodeling no less than 100 theaters throughout the U.S. Some examples included remodeling the Crescent Theatre in New Orleans to bring its seating capacity up to 2,400 from a previous 1,600, a new \$600,000 theater in Memphis, a new \$1,000,000 Palace in St. Louis, and the takeover of the Golden Theatre in Kansas City.³² Less than a year later, in January 1920, Loew's also acquired the controlling stock in the producer-distributor Metro, whose 1919–1920 season was characterized by a shift to open booking, “fewer and better pictures,” and longer runs, all of which were to accommodate the larger theaters it was now serving.³³ Metro's program system, which offered full exhibition programs consisting of short and long subjects, was abandoned as of August 1919 for 36 of the “fewer and better” productions featuring four

stars or more. Loew's plans for theater expansion may have sounded like a boast, but by the time it merged Metro, the vertically-integrated company could count over 100 theaters under its direct control and many more as contracted for its service. With Metro's absorption, Loew's had the potential to compete alongside First National, Paramount and others by guaranteeing Metro's larger productions access to some of the best and largest first-run theaters in the country. Needless to say that Marcus Loew and Adolph Zukor were longtime friends and business partners going back to their early days in the fur business and the Automatic Vaudeville Company established in 1901.³⁴ In fact, Loew's theaters had always been welcoming towards the Famous Players product. There were even accusations that Loew's theaters enjoyed Paramount's favored status and were colluding with the latter to undermine competing first-run theaters.³⁵ Now the two men at the head of both companies were joined as family when Marcus Loew's son, Arthur, married Zukor's daughter, Mildred, on January 6, 1920.³⁶ The wedding took place just days before Loew's announced its takeover of Metro. While the family link between Paramount and Loew's/Metro only produced nepotistic stock options and never translated into a full business merger between the two industry giants, the message to the rest of the industry was that here lay the potential for a massive combination that could dominate the industry.

Paramount also undertook expansion in 1919, as prefaced by Zukor's warning to First National in October 1918. Its particular case was complicated by the fact that it would need to raise nearly \$10 million in capital for these expansions. For this funding, it looked to Wall Street investment firm Kuhn, Loeb, & Company, whose extensive fall 1919 study on Paramount's finances found that a move into the now profitable realm of

exhibition promised to bring much greater investment to Paramount on the whole.³⁷

Harris D. Connick of American International Corporation was Kuhn, Loeb, & Co.'s investigator for the report on Paramount's finances and later joined the distributor in December of the same year. Several years later, during the FTC's investigation in 1923, Connick testified about his 1919–1921 tenure with Paramount. He noted that Zukor only feared First National and to this end had negotiations with the latter firm so as to guarantee access for Paramount films in First National's franchise theaters: "they wanted to make some arrangement which would do away with competition between the companies in employing stars, buying stories, and in every way."³⁸

Here was yet more testimony that, at the same time that they were competing for access to first-run theaters, Paramount, First National and other major interests sought mutually-beneficial policies in dividing the U.S. film distribution market along the lines of a limited oligopoly. Connick also insisted that First National's thousands of franchise and sub-franchise holders were not as threatening as the numbers would indicate, since only a few hundred of these were larger theaters: the majority of the franchises were represented by small houses. The concern for Paramount was that First National had at least one first-run house in each key city of the U.S. and it wanted to ensure that those theaters were allowed to contract for Paramount films. So while Paramount reached out to First National in order to bring about a negotiated solution to their hostilities, it also set about to protect itself against a possible lockout of its films. To be sure, Paramount offered theater owners incentives for showing its films. For the 1919–20 season starting in September 1919, Famous Players-Lasky promised to offer its films on a selective or open booking basis.³⁹ Each film was supposed to be sold on its own basis, even though in

practice exhibitors that chose selective booking over block booking were offered less profitable contracts and rates. In January, halfway into the 1919–1920 season, Paramount announced that it would also allow exhibitors to view some of the films beforehand. But its strategy could turn negative at times, especially if exhibitors refused to book its films in blocks or to affiliate themselves with Paramount on a “permanent basis.”⁴⁰ This led to predatory tactics to overtake theaters or to force them to show Paramount films.

When the FTC investigated Famous Players-Lasky/Paramount for block booking and antitrust violations starting in 1921, it catalogued the intimidation tactics that Paramount utilized to force theater owners to sell their theaters or to book only Paramount films:

In acquiring or controlling, and in attempting to acquire or control, motion-picture theaters, the respondent conspirators have coerced and intimidated and attempted to coerce and intimidate motion-picture theater owners or exhibitors by diverse means and methods among which were the following, to wit:

- (a) Threatening to build or lease and/or operate theaters in competition with exhibitors who refused to sell or lease their houses;
- (b) Threatening to cut off or interfere with the film service of such exhibitors who refused to so sell or lease their theaters;
- (c) Secretly offering higher rentals, effective upon expiration of leases held by exhibitors who refused to sell or lease such theaters;
- (d) Temporarily reducing the price of admission charged by theaters owned or controlled by the respondents, below that charged by exhibitors who refused to sell or lease their theaters.

In compelling or attempting to compel independent exhibitors to book and exhibit the motion-picture films produced or distributed by Famous Players-Lasky Corporation, these respondent conspirators have coerced and intimidated, and attempted to coerce and intimidate, exhibitors by various means and methods, among which are the following, to wit:

- (a) Threatening to build or lease and/or operate theaters in competition with independent exhibitors who refused to book and exhibit such films;
- (b) Interfering with the film service of such independent exhibitors and causing the cancellation of contracts for service between such exhibitors and producers;

(c) Disparaging independent exhibitors who refused to exhibit such pictures, by means of advertisements placed in newspapers circulated throughout the territory in which such independent exhibitors' theaters were located.

(d) Inducing, and seeking to induce, independent exhibitors who had contracts of release for the exhibition of motion-picture films produced by competitor producers, to cancel such contracts or refuse to make such contracts, by offering to give and giving such exhibitors, motion-picture films produced and distributed by Famous Players-Lasky Corporation, for nominal sums of money, or free of charge.

And in furthering and carrying out the aforesaid conspiracy, said respondents have used various other fraudulent and unfair methods to exclude competitors from producing, distributing or exhibiting their motion-picture films.⁴¹

The FTC's investigation covered a period going back several years before 1921, and its observations here match those outlined in a letter from the office of E.H. Hulsey, owner of the Texas Amusement Company and a First National original franchisee. Hulsey's letter was distributed to exhibitors throughout Texas, Arkansas, and Oklahoma in September 1919.⁴² In this open letter, Hulsey and his associates warned of "a certain distributing company" (i.e., Paramount) that first attempted to buy or lease the exhibitor's theater, then offered a month's contract on the percentage basis so as to force the exhibitor to relinquish his/her detailed box office numbers. Having used the percentage system to spy on the theater in question, the distributor would determine whether the theater was profitable or not.⁴³ The FTC corroborated such tactics by citing Kuhn, Loeb, & Company's 1919 report, which also suggested that collecting box office data was the first step to undertaking theater expansion, especially when it came to estimating profit margins for individual sites.⁴⁴ At this point, the distributor could raise the rental fee, buyout the exhibitor, or build a competing establishment in the same zone, thus taking full advantage of that exhibitor's box office statistics. Hulsey warned exhibitors not to fall for these tricks and to limit the distributor's rental fees to 25% of the gross. A few

months later, Hulsey was fighting an all-out theater war with the Paramount interests as I will expound on below. Strangely enough, Hulsey's earlier dispatches listed Paramount's Realart as one of the alternative distributors of quality product.⁴⁵

Paramount already had anywhere from 6,000 to 9,000 theaters contracted to show its films in 1919 depending on the source that one consults, but the idea that it could be shutout in some markets was unacceptable.⁴⁶ The FTC claimed that Paramount's founding of Realart Pictures was meant to confuse exhibitors into thinking they were acquiring non-Paramount films from a non-Paramount distributor, but Realart's relationship to Paramount was never really in doubt and openly acknowledged in industry discourse.⁴⁷ Hulsey's endorsement is another matter and suggests he was indeed duped. More important than hiding Realart's true corporate identity was the fact that Paramount's theater activities were undertaken under alternative corporate names and shells. In this way, Paramount set out to organize large booking and exhibition circuits, including Stanley and Southern Enterprises, both of which were organized in the summer of 1919.

The Stanley Company of America was created out of several existing interests and theater chains, including the Central Market Street Company, the Sablosky and McGuirk enterprises, the Alexander R. Boyd enterprises, and the Stanley Booking Company of Philadelphia, which I mentioned in the last chapter as a target for the FTC's antitrust investigation into local booking practices. The new Stanley was incorporated in Delaware with a capital stock of \$15 million in June 1919. Stanley had some of the largest and most lucrative theaters of Philadelphia under its control, along with New York's Broadway, Atlantic City's Globe, Camden's Colonial, Harrisburg's Victoria, and

Reading's Hippodrome and Orpheum theaters.⁴⁸ Its president was Jules E. Mastbaum, with the other partners serving as executives on the board of directors. Just two months after the Stanley Company's founding, Zukor was quietly elected to its executive board.⁴⁹ Based on evidence from the FTC's investigation, it is likely that Zukor's appointment had been planned all along. It was Paramount that secured from Kuhn, Loeb & Co. the necessary capital for founding the new Stanley Company. The deal gave Paramount a \$2 million share in Stanley's stock. At the same time, however, and contrary to the FTC's argument and the various film histories based on this source, Stanley's founding was not all Paramount's doing. In fact, as the FTC itself pointed out, Paramount only paid \$500,000 in cash for its share of Stanley. The rest was paid for through the common corporate practice of transferring stock. In this case, Paramount paid for the remaining \$1.5 million in Stanley's stock by transferring 15,000 shares of its own common stock to the new corporation, an amount it reacquired by 1923.⁵⁰ As I argued in Chapter 3, oligopoly formation in the American film industry was an agglomerate process of smaller entities joining together for mutual advantage. The largest of the members would have the upper hand, as in this case Paramount was the wealthiest of the companies that formed Stanley. Yet without broad cooperation from most of the partners, these joint ventures would not have succeeded to the extent that they did succeed. Moreover, the FTC's recent interests in Stanley's activities forced Paramount to enlist the cooperation of legitimate theater interests so as to disavow any antitrust violations.

Another such joint venture arose two months later in August, 1919, when Paramount in coordination with the S.A. Lynch Enterprises began acquiring theaters throughout Texas and other southern states. It was a collaboration that was undertaken

despite evidence of disagreement between the two factions over ownership percentage in the newly-acquired theaters.⁵¹ In other words, Paramount's involvement in Lynch's takeover of theaters was only as an equal and sometimes minority partner, and when the contract favored Paramount, Lynch would simply break it off as he did with the example of the Memphis theaters under consideration in July 1920.⁵² Whatever conflict existed between Paramount and Lynch, it had no effect on exhibitor reactions to their joint venture. Although it is not entirely clear who fired the first shot, Paramount's move into southern exhibition markets in 1919 led to a lockout of Paramount pictures by Hulsey and his allies. These exhibitors had recently formed the United Amusement Company for the purposes of controlling a theater chain that could bar Paramount films in the states of Texas, Oklahoma, and Arkansas.⁵³ Hulsey's earlier warnings against booking Paramount pictures had now turned into a full-scale "theatre war." Surveying this exhibition battlefield, *Moving Picture World* reported that unless theater patrons were able to view Paramount pictures at second-run theaters, they would miss them entirely in places such as Dallas, Fort Worth, San Antonio, Galveston, and Houston.⁵⁴ Exchanges were reported to be diplomatic about the hostilities, but exhibitors were increasingly drawn to one side or the other depending on whether they wanted access to Paramount films or whether they maintained sympathies for Hulsey and his resistance to larger, outside interests. Faced with an across-the-board lockout in some of largest metropolitan areas of Texas, Paramount only became more determined in its drive for theater acquisition and expansion. Accordingly, the next chapter will chronicle these maneuvers by citing the FTC's report on Paramount's acquisition of 40% in the Saenger Amusement Company. By 1920, Adolph Zukor boasted that Paramount had 2200 theaters contracted under the

percentage system. As Zukor explained, many first-run theaters were being converted into long-run houses dedicated entirely to the showing of Paramount films while hundreds of theaters had contracted exclusively for Paramount Artcraft pictures.⁵⁵

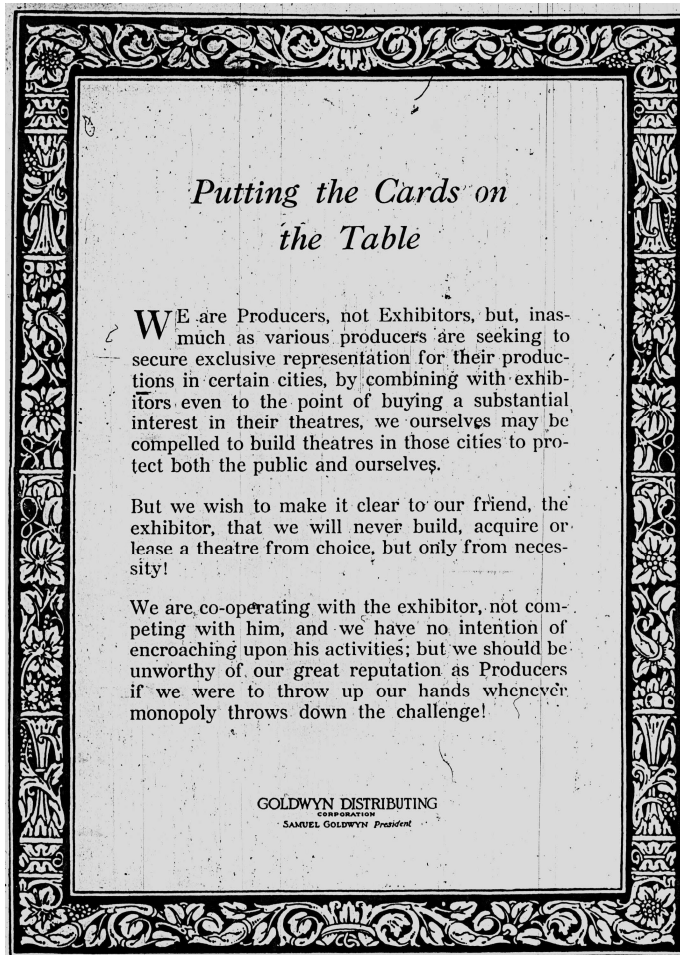


Figure 5.1: "Putting the Cards on the Table," *Moving Picture World* 42:1 (October 4, 1919).

It would be true to say that Paramount's actions in 1919 impacted the industry at large, causing a wave of combination and expansion activities for companies that feared succumbing to the larger interests or that experienced encroachment from both the larger producer-distributors and the exhibitor combines, as evidenced by Goldwyn's address to U.S. exhibitors (Fig. 1).⁵⁶ However, Paramount's behavior was also reactive to the threats posed by First National and United Artists and otherwise simply part of a greater industry

trend towards concentration that had started at the end of the war. Aside from Goldwyn, which received a major influx of Wall Street and corporate investment during 1919, including funds from DuPont, Chase National Bank, Laird & Company, Wilmington Trust, and Central Union Trust Company, the examples of expansion most relevant here include Robertson Cole, World, Federated Exchanges, Pathé Exchange, and First National itself.⁵⁷

Robertson Cole was the newest of the domestic producer-distributors and somewhat underrated at the time by its peers.⁵⁸ Previously this British firm had operated in the international distribution market exclusively and had an extensive capacity on that front, with branches in London, Sydney, Calcutta, Bombay, Singapore, and Rangoon.⁵⁹ *Moving Picture World's* "Foreign Sales Record" for November 1918, for example, shows Robertson Cole as the dominant international distributor with films in most of the world's territories, including Brazil, Argentina, Central America, Scandinavia, France, and the West Indies, in addition to those branch offices named above.⁶⁰ With the November 20, 1918 contract to supply all pictures for the Exhibitors' Mutual Distributing Corporation, following on the heels of Affiliated Distributors' takeover of Mutual, Robertson Cole entered the domestic marketplace in a significant way.⁶¹ As I discussed at the end of the last chapter, exhibitors were heavily invested in the new Mutual Distributing Corporation. Now with a link to Robertson Cole, one of the premier export and import firms in world distribution, these exhibitors had access to a steady flow of domestic and international pictures. For its part, Robertson Cole now enjoyed guaranteed access to theaters. Its vice-president, A.S. Kirkpatrick, further affirmed Robertson Cole's commitment to providing films for the "independent" exhibitor against the larger

combinations that were seeking to dominate the industry.⁶² During 1920, Robertson Cole became one of the top ten producer-distributors in the United States, releasing 40 features in a year that was marked by their transition from program features to “super-specials.”⁶³

TABLE 5.1 Feature Films Distributed (1920) ⁶⁴	
Distributor	Features
Paramount	103
Selznick	71
Fox	65
Pathé Exchange	50
Universal	45
Pioneer	44
First National	43
Vitagraph	40
Robertson Cole	40
Goldwyn	40
Metro/Loew's	25
State Rights & Independents	128
Total	694

Robertson Cole's success followed the same pattern that was in effect with First National and Loew's. By the time it achieved vertical integration in 1920, Robertson Cole had become a full participant in producer-distributor affairs. Accordingly, most film historians know Robertson Cole by its later name, the Film Booking Office (FBO), a vertically-integrated company under Joseph P. Kennedy that was merged into Radio Keith Orpheum (RKO) at the latter's formation in 1928. It thus became an established component of Hollywood's sound-era oligopoly.

The World Film Corporation was founded with investor capital in 1914 and run by Lewis J. Selznick (father of Myron and David O. Selznick) until February 1916, when Arthur Spiegel took over.⁶⁵ After Spiegel's death just a few months later, in April 1916

Brady was chosen to take over at a time when World stock prices were trading as low as \$1 or not at all.⁶⁶ By 1919, Brady had since moved on to devote more of his time to running NAMPI and his independent productions, and World was now under different management. In truth, bankers owned World from Selznick's days until later in 1919, when he returned to overtake the company and absorb its assets.⁶⁷ World had production facilities in Fort Lee, New Jersey and Southern California, and was well-established in film distribution. With intentions to capitalize on the wave of expansion and combination, World joined in a merger with United Theatres and the Peerless Producing Company on January 18, 1919.⁶⁸ The plan was for Peerless to produce the "big special" features, for World to distribute them, and for United Theatres to book them in their theaters and those of other exhibitors. One of the smaller vertically-integrated concerns, World's track record as a distributor meant that it was a company with significant but as yet unfulfilled potential. All of that was absorbed into Selznick-Select Pictures.

Whereas World and Robertson Cole might be considered "independents" before they had become vertically integrated, Federated Exchanges was established by and for independent producers and distributors who otherwise were only involved in a single branch of the industry. Indeed, the term "independent," whose meaning was debated at this time, was most often used to mean a firm that operated in only one branch of the industry and was in no way vertically integrated.⁶⁹ Producer-distributors in NAMPI were by nature vertically integrated, even if they had only recently expanded into the exhibition branch and enhanced their film exchanges. Alarmed at these industry conditions, Federated was founded at the independents' convention in March 1920, when the distribution field looked to be narrowing for smaller concerns after several years of

vitality in the state rights field. It brought together more than two dozen independent producers and exchanges for the purposes of establishing a nation-wide system of distribution and exchanges for independents that faced an uncertain state rights field. In this it was modeled on the Film Clearing House, which had been established at the end of the war in November 1918 to provide a national exchange and distribution system for independents.⁷⁰ Alone the various companies in Federated were no match for the larger concerns in the industry, but together they could hope to establish standards of distribution that were acceptable for theater owners looking to fill their programs with independent product. As evidence of their combined ability, the various firms had brought with them a collective \$100,000 to the March convention, a sum that was immediately capitalized in the new corporation under the leadership of J.L. Friedman.⁷¹ The result was the creation of a film clearing house that rather ambitiously was compared to the Distributing and Sales Company that independents had established in 1909 in order to counter the Edison Trust's monopoly on production and distribution.⁷² Federated had 24 distribution centers in total, representing more than 14 franchise holders or exchanges. The franchises were located in all the major cities of the U.S. such as Boston, Los Angeles, New York, Chicago, Philadelphia, Pittsburgh, Dallas, Detroit, Cleveland, Minneapolis, San Francisco, Atlanta, Seattle, Denver, St. Louis, and Kansas City.⁷³ These distribution centers offered State Rights buyers and theater owners direct access to films produced by independent producers that invested in the company, including Burston Films, Jack Cohen, Harry Sherman, National Film Corporation, A.H. Sawyer, Arrow Film, and the Sydney L. Cohen Corporation of Los Angeles. Together, the producers had the capacity to offer several months of features and program shorts for theaters in most of

the territories of the U.S. This was a feat they could not have accomplished alone on the state rights distribution scheme, where local distributors often lacked the exploitation and advertising expertise to promote and distribute their films successfully. To remedy the problem of advertising and promotion, Federated promised the independent producers a continuous 52-week campaign for exploitation. It also ensured equitable contracts amongst producers, distributors/exchanges, and exhibitors, thus aiming to remedy the mistrust that existed between members and affiliates of the different branches. Suffice it to say that the issue of credibility with theater owners was a crucial one, and it is for this reason that even the more established distributors originated the idea of affiliating with exhibitor booking companies.

Likewise, Pathé Exchange, whose prior corporate activities I discussed in the previous chapters, also looked to expansion and theater affiliation at this time. In November 1919, it formed Associated Exhibitors, which aimed to grant 32 regional franchises for distribution and exhibition purposes.⁷⁴ Franchise holders shared in distribution profits and secured films for their own theaters. This gave local franchise holders input into the pictures they chose to distribute and book. Associated and the other examples cited here offered a variation on the cooperative booking agreements that I discussed in the previous chapter, but these newer affiliations differed in that an established distributor like Pathé Exchange was now the company underwriting the deal. That was much more reassuring to exhibitors who were skeptical about the efficiency and capability of the booking organizations. For Pathé, as with World and Robertson Cole, affiliating with exhibitors was a way of ensuring access to theaters. Whereas Paramount, Fox, Metro/Loew's and others could finance theaters using Wall Street sources, these

distributors sought equal alliances with theatrical interests. First National, of course, was a different case altogether. It was like Loew's in that it represented a theatrical interest that had moved into distribution (and production), but it was unlike Loew's in that it was created through individual franchises. Expansion for First National was therefore a more complicated and problematic process, but was deemed necessary to counter "Wall Street" interference in the exhibition branch.

By 1920, First National was comprised of 600 theaters as franchise holders and affiliates spread out in 34 exchanges in 23 U.S. and Canadian regions. In addition, First National founded First National Pictures in December 1919, offering 60,000 shares of stock in this new corporation.⁷⁵ First National Pictures operated in tandem with First National Exhibitors' Circuit, which was authorized to sell sub-franchises to independent exhibitors affiliated with the former. Each sub-franchise paid a prorated rental fee based on their representative box office percentage of the territory: the larger the interest, the greater the percentage rental fee. First National planned to reach out to more independent exhibitors by offering them affiliation as sub-franchise holders. Under these contracts, smaller exhibitors could easily afford to join with First National. The company now had a two-tiered system of large exhibitor interests represented by the First National Exhibitors' Circuit and smaller or independent exhibitors represented in First National Pictures. Adding to these two branches, First National in March 1920 outlined its plans for the Associated First National Theatres, which funded the expansion activities of the various franchise holders, both large and small.⁷⁶ This allowed for First National members to aid one another through collective means that centralized theater financing.

N.H. Gordon, chairman of so-called Exhibitors' Defense Committee, had organized the plan for the purposes of protecting exhibitors from outside financial interests.

Alarmed at Wall Street's interference in film exhibition, First National claimed that Wall Street speculators wanted control over theaters so as to use motion pictures to mold American public opinion.⁷⁷ First National did not specify why Wall Street would undertake such a conspiracy, but we can assume that issues such as consumerism, labor, and antitrust were the most pertinent to the larger corporations and investors. Considering Kuhn, Loeb & Co.'s funding for Paramount's theater expansions, DuPont et al.'s funding for Goldwyn, and Merrill Lynch's financial takeover of newsreel specialist Pathé in 1917, these claims reflected economic relations without necessarily understanding their cultural, social, or ideological implications. Besides, First National's actions had played a part in forcing Paramount to seek relief from Wall Street. With First National's growth, the prospect for lockout against the producer-distributors was indeed real in limited terms, even though it was hyped by the latter so as to justify their own moves into exhibition. At the same time, while producer-distributors were busy affiliating with theaters and drawing capital from Wall Street, they also had their eye on another lucrative venture: foreign distribution.

Just as Robertson Cole had moved into domestic distribution and exhibition to shore up its international distribution business, many of the producer-distributors now sought to expand their overseas business as insurance against possible lockouts in the domestic marketplace. In this vein, after WWI they expanded their overseas production and distribution capacities, and worked through NAMPI to assure that the U.S. government enforced beneficial trade policies on motion picture distribution. NAMPI's

work in convincing the Creel Committee to open up foreign markets to U.S. films, as cited in the last chapter, played a decisive role when the conflict came to an end. The producer-distributors faced major obstacles, however, including the exchange rate, international and domestic trade barriers, and the need for more theaters in the devastated countries of Europe.

The war had left several European currencies greatly devalued against the U.S. dollar.⁷⁸ The result was that many U.S. companies demanded payment in U.S. dollars for their exports. For example, before the outbreak of hostilities between the U.S. and Germany in January 1917, the exchange rate stood at 5.53 Marks to the U.S. dollar. In February 1920, the exchange rate was at an astonishing 100.50 Marks to the U.S. dollar. The annual averages for 1919, 1920, and 1921 were 32.85, 57.11, and 83 Marks to the dollar respectively.⁷⁹ Even though Germany was a small market for U.S. films, the exchange rate after the war did not help matters for producer-distributors eager to enter the lucrative German market. What was worse for U.S. exporters was that the German government banned U.S. film imports. France and Italy were also affected, where American companies had exported \$187,157 and \$460,447 worth of exposed motion pictures in 1918, respectively.⁸⁰ The Franc lost more than half of its value at 7.31 and 14.20 Francs to the USD in 1919 and 1920, respectively, compared with 5.62 Francs to the USD in 1918, and the Italian Lire went from 5.20 Lire to the USD in 1914 to 20.12 Lire to the USD in 1920, which translates into 400% devaluation.

With European currencies devalued in the postwar period, and with U.S. banks refusing to honor European credit, it was difficult for U.S. distributors to export to these countries while demanding payment at regular U.S. domestic rates.⁸¹ They were forced to

extend credits to the point of jeopardizing their own profits, and, according to exporter Guy Croswell Smith, only the largest pictures were able to make a profit at the disadvantaged exchange rate.⁸² The difficulties in selling to Europe were compounded by the fact that fewer theaters were operating now as compared with before the war.⁸³ As a result of all these barriers, there was a backlog in exports that led to higher inventories that affected the domestic value of those same films, leading one industry expert to suggest a temporary reduction in exports and another to argue for increasing domestic rentals to compensate for foreign losses.⁸⁴ Yet a third position was put forward by Louis Auerbach, president of the Export and Import Company.⁸⁵ Aurbach believed that the industry had entered the era of film importing. This meant that European super productions could be brought into the U.S. at minimal cost to distributors. In a note of ironic foreshadowing that betrayed America's imminent fascination with European films such as *The Cabinet of Dr. Caligari* (Robert Wiene, 1920), Auerbach pointed to German and Swedish films as particularly accomplished and appropriate for importing.⁸⁶ Given the belief that American film exports were threatened by European product, the sense of urgency was felt in many quarters of the industry. In a series of ads, film exporter Chester Beecroft urged the industry to act quickly in lobbying the U.S. government for acceptance of the peace treaty that would guarantee U.S. exports access to European nations currently barring American films, including Germany and Italy.⁸⁷ Recall that the U.S. Congress rejected the Treaty of Versailles as numerous legislators were opposed to a clause in the treaty that delegated issues of war to the League of Nations.⁸⁸ When Beecroft and his supporters referred to a "peace treaty," they were not only calling on the U.S. to sign a peace agreement with the Central Powers, which finally occurred in 1921,

but suggesting that the U.S. should consider joining the League of Nations itself. Beecroft and others like him believed that the exchange rate lay at the heart of U.S. export limitations. To remedy the situation, the U.S. would have to work through international trade agreements and organizations like the League of Nations.⁸⁹ Only in such a way could the U.S. film industry hope to dominate British and French markets.

There were of course currencies that were not affected during the war, including the Swedish kroner and the British pound. The pound thus remained virtually at the same rate throughout this period from .20 pounds to the USD in 1914 to a low of .27 pounds in 1920. Exports to Britain, however, faced other problems such as trade barriers and nationalist sentiments. One way to get around trade barriers was to establish local production facilities and distribution contracts. Paramount had managed exactly such an achievement in 1919 with its British operations under the trifecta of Famous-Lasky Film Service, Picture Playhouses, and Famous Players-Lasky British Producers. The latter, which was a full studio and production company, was established for \$3 million in May of 1919 and was intended to star American and European talent amidst a European atmosphere and setting.⁹⁰ This gave Paramount foreign-based vertical integration, but it resulted in a British anti-Yank exhibitors' movement that threatened all U.S. producer-distributors.⁹¹ Vitagraph had also achieved limited vertical integration abroad with production and distribution facilities in Paris and a distributor in London, while Goldwyn, Fox, and Universal were planning for similar expansion.⁹² But not all producer-distributors were capable or even interested in shifting some production to Europe. Even Paramount and Vitagraph could hardly be satisfied with the state of U.S. exports or the resistance experienced in selective foreign markets. The industry needed a broader

campaign that could open up European markets and render them ripe for U.S. domination as during wartime. For that the producer-distributors required collective action.

As I noted in the previous chapter, NAMPI had already provided relief in wartime by lobbying the Creel Committee for relaxation of U.S. export regulations and by working with the Division of Films to secure American dominance in export markets. But as Kristin Thompson has noted, NAMPI's relationship with the Division of Films was complicated when the latter became a competitor in the distribution business abroad.⁹³ The producer-distributors therefore stood to gain in distribution profits from Europe when the Division of Films was discontinued in February 1919. Having benefited from the Division of Film's activities in wartime, NAMPI continued to bolster its export efforts in the postwar era, with the result that world markets remained open to U.S. exports at a crucial time.

It was only by the middle of 1919 that NAMPI's earlier response to the challenges facing U.S. film exports bore some fruit as exports of exposed film to Europe began to recover. Throughout the latter stages of the war, with British, French and Italian demand declining and with world imports climbing, the U.S. distributors had managed to balance these losses in Europe with gains in Asia-Pacific and South America. For example, while U.S. exports of exposed film to Italy, France, and England declined from a high of \$4,498,872 in 1916 to \$1,385,154 in 1918, exports to all other countries in Europe, Asia-Pacific, and South America went from \$1,802,922 in 1916 to \$2,409,188 in 1918, a modest but notable increase that slightly offset the losses in the major European markets.⁹⁴ Then, beginning in May 1919, the Department of Commerce's numbers on film exports proved that monthly export numbers to England and France had rebounded

respectively to \$150,817 and \$61,745 for March 1919, thus projecting a much better outcome for the 1919 against the lows of 1918.⁹⁵ With these small gains in film exports, and with the promise of expanding their distribution and production facilities across Europe so as to counter any threats at home, the producer-distributors represented through NAMPI now turned their attention to more pressing matters and an old conflict that never ceased to annoy them.

NAMPI's shift to dealing with state and civil censorship concerns following the war brought with it success as well as long-term failure. New York legislators were now willing to consider legalized motion picture shows on Sundays in exchange for the establishment of a state censorship board. At this time, however, they were unable to bring about consensus on state censorship. Nonetheless, the New York legislature went ahead with a new Sunday motion picture bill that Governor Alfred E. Smith's signed into law on April 19, 1919. The bill, which accompanied its sister bill on baseball, legalized Sunday motion picture shows and deferred authority to local districts and municipalities.⁹⁶ Exhibitors organized under the New York Exhibitors' League publicly took credit for defeating the bill, and their efforts were praised in *Moving Picture World*, but NAMPI's leadership and its extensive campaigning and lobbying were also decisive factors.⁹⁷ Regardless of who was responsible, the short-term victory was undermined by long-term consequences. The long-term effect of the legislature's renewed interest in state censorship was that it set into motion a process that culminated in 1921, when Governor Nathan Miller signed into law the establishment of a state censorship board.

NAMPI responded to the censorship threat in several ways during 1919–1920: organizing anti-censorship efforts and lobbying as before, requiring members to submit

films to the National Board of Review, and seeking to enhance its own national profile by cooperating with the U.S. government's Americanization campaign. Of the many anti-censorship campaigns that NAMPI undertook during this period, one of the most ill-advised was when NAMPI's censorship committee lobbied Congressman Joseph Walsh of Massachusetts to introduce a bill that would amend the penal code in order to add films to the category of indecent and immoral literature that was prohibited in interstate commerce.⁹⁸ The bill was supposed to accompany congressional recognition for motion pictures under the First Amendment by way of an amendment to the U.S. Constitution, but, not surprisingly, that part of NAMPI's plan never came to fruition. As it stood, the bill prevented postage and mailing of films deemed to be immoral or improper, and was supposed to recognize motion pictures alongside the printed word, thus nullifying the Supreme Court's decision in *Mutual v. Industrial Commission of Ohio*. The idea was that by categorizing films alongside printed materials, and allowing for a federal law that both protected and censored motion pictures, state censorship and local municipal censorship could be eliminated. Of course, none of this played out as NAMPI had planned. With the law passed by both houses and signed by President Wilson in the first months of 1920, the industry now faced yet another challenge.⁹⁹ The only difference was that the industry itself was directly responsible for federal censorship under the penal code. It was one of NAMPI's great failures and went against its basic principles on the issue of censorship. As we have seen over the last several chapters, trade organizations had mostly opposed any action that legitimized censorship of any variety. The bill simply compounded the industry's problems and certainly did not discourage state and local censorship. In fact,

NAMPI would soon find itself facing one of its greatest challenges in New York's state censorship bill, as the next chapter will outline.

Another NAMPI tactic that developed in this period was for reestablishing ties between the producer-distributors and the National Board of Review, a relationship that as I mentioned previously had been sidelined with the advent of the Board of Trade and NAMPI in 1915–1916. At first, NAMPI believed that founding a self-censorship system would be enough to carry its credibility and prestige into the postwar era and so it announced plans for self-regulation in May 1919.¹⁰⁰ These provisions barred films from distribution and exhibition that the association had deemed improper, but no real mechanism and instrument was provided for in the measures adopted aside from a seal that NAMPI films were required to carry in the opening title.¹⁰¹ NAMPI's real attempts at self-regulation would not occur until 1921 and will be discussed in greater detail in the next chapter. In this earlier instance, NAMPI faced the problem of administering censorship. For that it turned to the Board of Review, which had provided the same function back in the days of the Edison Trust, and, later, the Board of Trade. On August 5, 1919, NAMPI's board of directors voted to adopt a resolution that bound its members to the Board of Review's oversight and appeals process, whereby films were submitted for approval under the latter's auspices.¹⁰² Henceforth, all films distributed by NAMPI members would carry the Board of Review's approval seal, otherwise such films would be banned from distribution in the members' exchanges. Moreover, the public would be discouraged from supporting the banned films at the box office. The association with the Board of Review hardly enhanced NAMPI's public profile or aided in its anti-censorship efforts, as politicians and reformers had long claimed that the Board of Review was a

compromised organization that did not have the best interest of the public in mind.

Collaborating with the Board of Review simply gave NAMPI members a means through which to administer their commitment to self-regulation, as the association itself did not as of yet have the means to undertake or impose any oversight practice. While it did not hurt NAMPI's members, the association with the Board of Review really did not help as much as the producer-distributors had hoped, since state censorship bills were still active in many states. NAMPI required yet another means of countering the censorship menace and for improving and capitalizing on its wartime image as a defender of patriotic American ideals.

The perfect opportunity for regaining some of its wartime standing provided itself when NAMPI joined the U.S. government's Americanization campaign at the end of 1919. On December 17, 1919, Secretary of the Interior Franklin K. Lane called the organization and its executives to his offices.¹⁰³ Recognizing NAMPI's role in wartime, Secretary Lane praised NAMPI for its role in the Liberty Loan drives and its various other activities undertaken in cooperation with the U.S. government. Outlining the considerable challenge in assimilating America's millions of immigrants, Lane spoke of the need for the industry to help in the government's Americanization program, which aimed to promote American values at home and abroad. The Secretary noted that at the time of the U.S. entrance into the war it was estimated that 8.5 million people of reading age in the United States were illiterate in English, and that out of the first 1.6 million men drafted, there were 390,000 who could not write a letter home. After the meeting with Lane, NAMPI's executives were treated to a lunch at the Cosmos Club, where they were addressed by a distinguished panel that included Vice President Marshall, and the

chairmen of the House and Senate committees on education, Congressmen Simeon Fess and Senator William Kenyon, respectively. Marshall echoed Lane's praise for NAMPI and the film industry and also noted their efforts in wartime. With much of the members of the House and Senate committees on education present at the occasion, NAMPI and industry stood to benefit greatly from associating with individuals who held tremendous power over the industry. After all, the latter could once again reignite the threat of federal censorship represented by the earlier Hughes Bill. Brady, almost as if to anticipate the benefits of rekindling his relationship with the federal government, brought up the issue of official recognition for NAMPI and the industry. Rather boldly, NAMPI's president suggested that Congress pass a law that empowers the industry to act as government agents. Note that NAMPI's relationship to the Americanization campaign was similar to its role in the Liberty Loan drives. 52 short films were planned on the same terms as before. Profits paid for the productions, and films were available free of charge to exhibitors. But such official recognition was not forthcoming despite assurances from the government on Brady's request for official status. Nonetheless, a meeting on January 11, 1920 at the Waldorf Astoria cemented NAMPI's role in the Americanization campaign and attracted widespread industry support, including producers, distributors and exhibitors.¹⁰⁴

At this ceremonial two-hour meeting, Secretary Lane outlined in detail the government's position on Americanization and the kinds of films and subjects that were suited to its goals. His speech was partially recounted in the trades, but it was also turned into a full pamphlet that NAMPI and the government distributed at the time.¹⁰⁵ Although some of the specifics in Lane's speech to the industry remain outside the scope of my

discussion here, there are several key points that indicate exactly what the government and Secretary expected from the film industry. Lane warned the industry not to propagandize the problem of assimilating immigrants by presenting the U.S. as a golden land or an imaginary place where no conflicts exist and where justice is universal. He assured his audience that America was not perfect and certainly not what it would become in one hundred years. Accordingly, Lane suggested that the films refrain from “cramming” dogma regarding U.S. history or principles, focusing instead on the “life of America” and its people. Appropriate subjects for films on immigrants might include their experiences in their home countries, their reasons for leaving (poverty, feudalism, discrimination, etc.) and their challenges once they arrive on American shores. In the latter category, Lane outlined plots about immigrants that address the difficulties inherent in adapting to urban modernity, navigating American life, and avoiding Bolshevik and Communist sympathizers whose association would certainly harm them. At this point, Lane assured his audience that immigrants themselves had nothing to do with Communists, and that such agitators were a minority native faction. In fact, he reminded his audience that 414,000 aliens who could have avoided military service chose to enlist, and that they deserved to be recognized as Americans. Lane urged the producer-distributors to be sympathetic to immigrants, to refer to their neighborhoods as “communities” and not “ghettos,” and never to address them through stereotypes or ethnic slurs.

Lewis J. Selznick’s biography of Abraham Lincoln, *The Land of Opportunity* (1920), was the first film released under NAMPI’s Americanization Committee auspices. The film opened on Lincoln’s birthday, February 12, 1920, only one month after Lane’s

speech. Unfortunately, this significant film is presumed lost and only reviews, press releases and Lane's own descriptions can offer any understanding of the film and its reception. Thus, we know that it starred Ralph Ince as Abraham Lincoln and that it was shown nationally in 157 first-run houses on February 12.¹⁰⁶ From Lane's speech, we also know about specific scenes such as the one where Lincoln looks at the map of the U.S. over the fireplace: "He could feel for all those men. He knew the sectional difference that divided them . . . and what they wanted to make of themselves, and what they wanted to make out of this nation . . . Abraham Lincoln looking at the map of the U.S. is to my mind a picture of what must be before each of us in this Americanization movement."¹⁰⁷ From these comments it is at least possible to understand something of the film's basic ideological subtext in showing a great president overlooking and guiding a diverse yet integrated American nation at a time of civil war and national crisis. The themes were not chosen incidentally. Rather the film suggests that, as far as the Americanization Committee was concerned, 1920s America faced similar challenges in terms of ethnic divisions, immigrant assimilation, and threats of civil strife. Everything short of a civil war was implied here.

While a full account of NAMPI films and trailers made for the Americanization campaign is not possible owing to the fact that the films are mostly lost, the general production trend for 1920 in particular met most of Secretary Lane's provisions, if only because films from that year covered alternative topics, including standard melodramas (Rudolph Valentino in *Stolen Moments*, Mary Pickford in *Pollyanna* and *Way Down East*), historical dramas (Brown and Tourneur's *The Last of the Mohicans*), adventure films (Douglas Fairbanks in *The Mark of Zorro*), westerns (William S. Hart in *The Toll*

Gate), and horror films (John Barrymore in *Dr. Jekyll and Mr. Hyde*). All of these films avoided the offensive ethnic stereotypes of kind that Lane prohibits regarding immigrants. Needless to say, African Americans, Native Americans, and Asians were not covered under these provisions. We might consider Griffith's contemporaneous *Broken Blossoms* (1919), for example, and its portrayal of Chinatown as a "ghetto" infested with Opium Dens. Contrast this film with Lon Chaney as a sympathetic Chinese Pacifist in Universal's *Outside the Law* (Todd Browning, 1920), which seems to abide by many of Lane's provisions for immigrant portrayals. Given that Lane's speech addressed European immigrants specifically, the difference between the two films may not provide the best example of a shift in 1920, since U.S. law throughout this period discouraged Chinese immigration in the aftermath of the 1882 Exclusion Act (after 1924, all Chinese immigrants were barred). Nonetheless, when combined with an account of general film trends in 1920, it is evident that producer-distributors met the Americanization Committee's provisions by avoiding controversial immigrant topics in their own films.¹⁰⁸ Irrespective of the problematic status of some of these American films for film historians and race studies today, the government was pleased with NAMPI's cooperation on the Americanization front and its films apparently met Lane's standards.

Unfortunately for NAMPI, the producer-distributors themselves did not benefit much from this renewed cooperation with the federal government, since their problems originated mostly with state governments and their legislatures. For example, at this time in early 1920, New York legislators interfered in the advance deposit debate by enacting the Cotillo Bill, which separated producer-distributors funds from exhibitor deposits: the latter were now kept apart by force of state law.¹⁰⁹ The exhibitors had again struck

against what they perceived was an overwhelming attempt by the producer-distributors to subjugate their branch of the industry and won a small but important victory. The problem for the independents amongst them who were not involved in distribution was that this was only one battle at the start of a decade of “theater wars” that culminated in expansion from every direction.

WWI’s end in effect heralded this new era, when vertical integration started in earnest and was carried to its logical conclusion in the early 1920s with the reign of the “big three,” Paramount, First National and Loew’s/Metro (MGM after 1924), and several other vertically-integrated companies such as Fox, Universal, and Robertson Cole (Film Booking Offices after 1923). Here we have overviewed NAMPI’s challenges as it attempted to pave the way for this vertically-integrated industry with its access to world markets and control over theaters at home and abroad. Even before the war’s end, NAMPI had set the stage for foreign expansion by lobbying for the industry’s export rights. This was crucial because NAMPI had fallen out of favor with the two exhibitor organizations, the MPELA and the AEA. There was no guarantee that NAMPI could reassert itself with their successor, although it did try by maintaining ties to associates in the MPEA. When New York exhibitors walked out of the MPEA, it was replaced by the MPTOA, which presented a truly independent front against consolidation from both sides: exhibitor combines and producers-distributors. NAMPI’s attempts to alter exhibitor behavior had more or less failed by 1919 and what was left was to counter the threat posed by United Artists, Loew’s, First National, and the various exhibitor booking collectives and circuits. Of these, Loew’s and First National would themselves join NAMPI, suggesting that they had as much in common with the producer-distributors as

with their exhibitor comrades. These events caused NAMPI and its members to undertake a series of actions, which, in turn, cause other industry actors to react accordingly or suffer the consequences. Thus, by nationalizing FILM Boards of Trade under its organization, NAMPI expanded the producer-distributors' hold on distribution on the domestic front at the same time that exhibitors were organizing to expand their operations into collective booking. Also at this time, smaller producer-distributors associated themselves with exhibitor combines so as to compete more effectively with the larger companies. The independents, whose operations did not extend beyond more than their own respective branch of the industry, also felt the need to associate amongst themselves and with the other branches. In all areas of the industry, companies were expanding and consolidating.

NAMPI had already experienced the first inklings of the major censorship battles when it confronted a renewed interest in state censorship for New York. NAMPI's immediate response had been to force its members to recognize the Board of Review's authority, but this did not seem to have the desired effect in defeating censorship threats. It also lobbied for a self-defeating postal law that banned indecent films, based on the premise that films would be given protection under the First Amendment if they were categorized alongside literature. Of course, such concession on film and the First Amendment were not forthcoming. By 1920, NAMPI established an Americanization Committee to cooperate with the federal government. This was designed to distract or undermine state censorship efforts and to capitalize on NAMPI's wartime prominence. If Brady had convinced the U.S. Congress that NAMPI's films should be granted protected as official organs of government communication, NAMPI's plans would have succeeded

much more than they did in 1920. Unfortunately, for the organization, these plans did not bear fruit and by December 1920, it was clear that state censorship efforts across the nation were back on track. Much of the renewed interest on censorship had to do with what the Progressive Reformers viewed as their major victory of the past two years: the enactment of prohibition.¹¹⁰ If only they could do for motion picture regulation and Sunday Blue Laws what they had accomplished for alcohol and the saloon. As it was, 1921 was to be NAMPI's last year as an organization. NAMPI's failure to stop New York's drive towards a state censorship board certainly played a role in its demise. But, as the next chapter will explore, NAMPI's failures were somewhat balanced by its successes.

¹ Herbert A. Smith, "Yank Exhibitors Greet Managers," *Moving Picture World* 39, No. 1 (January 4, 1919): 45. For coverage of NAMPI's withdrawal from the July 1918 Boston Convention, see "N.A.M.P.I. Votes Against Exposition," *Motography* 20, No. 1 (July 6, 1918): 13.

² For coverage of the MPTOA's Cleveland convention, including the controversy surrounding Paramount's refusal to retract on its theater acquisitions, see "Exhibitor-Made Steam Roller Quickly Breaks Parliamentary Red Tape and Sweeps Down the Stretch to Victory," *Moving Picture World* 44, No. 12 (June 19, 1920): 1567–1572, 1626.

³ Adolph Zukor, "Producer-Exhibitor Combination Threatens Peril to Industry," *Variety* 12, No. 9 (October 25, 1918): 40–41.

⁴ For the FTC's claims about Paramount's attempt to gain control over First National, see *Federal Trade Commission v. Famous Players-Lasky Corporation et al.*, Brief for the Commission Part I, Docket 835, 58–61; and *Federal Trade Commission v. Famous Players-Lasky Corporation et al.*, Brief for the Commission Part II, Docket 835, 228–231. The FTC based its brief on testimony from James D. Williams and Harry O. Schwalbe, First National's General Manager and Secretary/Treasurer, respectively. In their testimony, the two men claimed that Zukor had first attempted to bribe them away from First National, then, failing that tactic, had proposed that First National join the Stanley Company and form a united front against independents. The second tactic also having failed, Zukor then attempted to force First National's cooperation by threatening buyouts and market lockouts. According to Williams and Schwalbe, all of these tactics failed in bringing about cooperation between Paramount and First National.

⁵ See "Star Combination Was Unexpected: Miss Pickford Declares Formation of Organization Was Brought About By Distributors Themselves," *Moving Picture World* 39, No. 5 (February 1, 1919): 619; and "Los Angeles Settles Down Again," *Moving Picture World* 39, No. 6 (February 8, 1919): 733.

⁶ "Los Angeles Settles Down Again," 733.

⁷ "Star Combination Was Unexpected," 619.

⁸ Tino Balio reports that Paramount offered William S. Hart \$200,000 per picture only if he would stay out of United Artists. See Tino Balio, *United Artists: The Company Built by the Stars* (Madison: University of Wisconsin Press, 1976), 24.

⁹ For a brief history of Chaplin's contract with First National, see "Chaplin's First National Contract Ends Soon," *Motion Picture News* 26, No. 6 (August 5, 1922): 606.

¹⁰ Metro's president, Richard A. Rowland, declared a policy for "fewer and better" pictures minus the bids on million-dollar stars. See "Star System Folly, Says Rowland," *Moving Picture World* 39, No. 1 (January 4, 1919): 53.

¹¹ "Cohen Asks Famous Players to Dispose of Theatres to Independent Exhibitors," *Moving Picture World* 45, No. 2 (July 10, 1920): 177.

¹² "Influenza Epidemic on the Wane," *Moving Picture World* 38, No. 6 (November 9, 1918): 647.

¹³ Albert E. Smith, Memo to the Board of Directors of the Vitagraph Company of America, December 1918, Albert E. Smith Papers (Box 6), Page 2.

¹⁴ Brady's complaints over his salary or lack thereof were an ongoing and annual drama. For example, by late 1920, things had gotten so bad that Brady asked Zukor to intervene with NAMPI's directors so as to offer him appropriate compensation in the face of his impending resignation. See William A. Brady, letter to Zukor, November 29, 1920, Zukor Collection (Folder 3).

¹⁵ "Brady Reconsiders His Resignation," *Moving Picture World* 39, No. 10 (March 8, 1919): 1314.

¹⁶ Ibid.

¹⁷ "Would Bar Film in Censored States: National Association's Committee Declares It Will Stop Delivery Wherever Measures Pass," *Moving Picture World* 39, No. 10 (March 8, 1919): 1312.

¹⁸ "To Form New National Organization," *Moving Picture World* 40, No. 3 (April 19, 1919): 350.

¹⁹ "Exhibitors at St. Louis Convention Elect Black as National President," *Moving Picture World* 41, No. 2 (July 12, 1919): 183.

²⁰ Later, the same New York exhibitors now under the leadership of Sydney S. Cohen accused Black of working for Paramount to help it acquire more theaters.

²¹ "New York State Exhibitors Taking Steps to Form Second National Organization," *Moving Picture World* 41, No. 4 (July 26, 1919): 485.

²² Samuel I. Berman, "Exhibitors League Rochester Meeting Results in Action of Much Importance to Picture Showmen of New York State," *Moving Picture World* 41, No. 8 (August 23, 1919): 1097.

²³ “Letting Film Advertising Profits Slip Through Fingers Is Charity from Showmen, Says Chamberlain,” *Moving Picture World* 41, No. 5 (August 2, 1919): 677.

²⁴ “Exhibitors’ Tax Campaign is On,” *Moving Picture World* 41, No. 4 (July 26, 1919): 486.

²⁵ “Elimination of Rental Tax Sought,” *Moving Picture World* 39, No. 8 (February 22, 1919): 1014.

²⁶ “Almost Total Darkness in Stage Theatres; Picture Theatres are Unscathed,” *Moving Picture World* 41, No. 10 (September 6, 1919): 1451.

²⁷ “Managers, Actors, and Playwrights in Holiday Mood as Strike Ends and Crowds Flock to Theatres,” *Moving Picture World* 41, No. 12 (September 20, 1919): 1775–1776.

²⁸ “Film Players to Ask Closed Shop and More Pay; New Union Now Recruiting in New York Studios,” *Moving Picture World* 41, No. 12 (September 20, 1919): 1776.

²⁹ “F.I.L.M. Club Holds Open Meeting,” *Moving Picture World* 40, No. 7 (May 17, 1919): 1009.

³⁰ “F.I.L.M. Clubs Hold Convention,” *Moving Picture World* 42, No. 3 (November 15, 1919): 329.

³¹ “Expression of Policy of Booking In Groups Voiced by Big Producers,” *Moving Picture World* 45, No. 7 (August 14, 1920): 855.

³² “Marcus Loew to Build 100 Theatres,” *Moving Picture World* 39, No. 12 (March 22, 1919): 1605.

³³ See “Metro Announces Change in Policy,” *Moving Picture World* 40, No. 11 (June 14, 1919): 1630; and “Metro and Marcus Loew Affiliate for Mutual Strength and Growth,” *Moving Picture World* 43, No. 3 (January 17, 1920): 387.

³⁴ Zukor’s early relationship to Marcus Loew is recounted in *Federal Trade Commission v. Famous Players-Lasky Corporation et al.*, Brief for the Commission, Part II, Docket 835, 220.

³⁵ *Ibid.*, 219–228.

³⁶ “Mildred Zukor Weds Arthur Loew Uniting Two Prominent Film Families,” *Moving Picture World* 43, No. 4 (January 24, 1920): 578.

³⁷ The FTC cites Kuhn, Loeb & Company’s 1919 report on Paramount, titled “Survey of the Motion Picture Industry with particular reference to the Famous Players-Lasky Corporation,” as Exhibit 46. However, the document is not cited in its entirety. The reason for this is that the FTC chose to protect the various individuals and corporation involved, along with their various corporate secrets. See *Federal Trade Commission v. Famous Players-Lasky Corporation et al.*, Brief for the Commission Part I, Docket 835, 64–70.

³⁸ Connick’s testimony during the FTC hearings is described and quoted in *New York Telegraph* (April 28, 1923); and “Federal Investigation of Famous Continues,” *Motion Picture News* 27, No. 19 (May 12, 1923): 2261.

³⁹ See Walter E. Greene, “The Selective Booking of Motion Pictures,” *Moving Picture World* 40, No. 13 (June 28, 1919): 1921; and “Famous Players-Lasky Chiefs Give Outlines of Next Season’s Plans,” *Moving Picture World* 40, No. 13 (June 28, 1919): 1919.

⁴⁰ For Paramount’s offer to allow previews in advance of contracts, see “The Selective Booking of Motion Pictures,” 1921; and “Famous Players-Lasky Chiefs Give Outlines of Next Season’s Plans,” 1919–1920. For Paramount’s call on exhibitors to associate themselves with Paramount on a permanent basis, see “Zukor Invites Theatre Managers to Hook Up With Famous Players-Lasky,” *Moving Picture World* 43, No. 2 (January 10, 1920): 241.

⁴¹ *Federal Trade Commission v. Famous Players-Lasky Corporation et al.*, Amended Complaint, February 14, 1923, Docket 835, Paragraph 10, Pages 7–8.

⁴² E.H. Hulsey et al., “To the Exhibitors of Texas, Oklahoma & Arkansas,” September 1919, Zukor Collection (Folder 2).

⁴³ Hulsey’s warning to exhibitors that the percentage system is a tool for spying on exhibitor profits was echoed in James B. Kelley, “Producer Jealous of Showmen Profits,” *Moving Picture World* 43, No. 8 (February 21, 1920): 1208; and Lewis J. Selznick “Percentage for Exhibitors Means Throwing Spotlight On Business Secrets,” *Moving Picture World* 43, No. 10 (March 6, 1920): 1611. Oddly enough, Hiram Abrams of United Artists (and formerly of Paramount) penned the rebuttal to Kelley’s article as published in the same *MPW* edition. Abrams argued that the percentage system was absolutely necessary to finance the more expensive features that exhibitors and the public now demanded. According to Abrams, the percentage system was also a boon to healthy competition whereby the weaker and low-performing pictures were weeded out. See Abrams, “Exhibitor Himself Tries to Retard his Own Money Making Capacity,” *Moving Picture World* 43, No. 8 (February 21, 1920): 1209.

⁴⁴ *Federal Trade Commission v. Famous Players-Lasky Corporation et al.*, Brief for the Commission Part I, Docket 835, 69.

⁴⁵ For example, see “Leading Theatres in Texas and Oklahoma Announce New Policy for New Season Starting Today,” *Dallas Dailies Herald* (August 31, 1919). Hulsey’s ad is also clipped in the Zukor Collection (Folder 2).

⁴⁶ In its Reply Brief to the FTC, which covered the period up to 1923, Paramount downplayed the fact that it had 13,000 contracts out of a possible 18,000 theaters in the U.S., noting that its films were by no means dominant in rural areas and smaller theaters. See *Federal Trade Commission v. Famous Players-Lasky Corporation et al.*, Reply Brief for the Commission, Part I, Docket 835, 74.

⁴⁷ *Federal Trade Commission v. Famous Players-Lasky Corporation et al.*, Amended Complaint, February 14, 1923, Docket 835, Paragraph 9, Page 6.

⁴⁸ “Eastern Theater Merger Announced: Stanley Company of America Formed with Capital of \$15,000,000,” *Moving Picture World* 40, No. 11 (June 14, 1919): 1647.

⁴⁹ “Zukor Elected a Stanley Director,” *Moving Picture World* (August 9, 1919): 836.

⁵⁰ Subsequent to the original transaction on Stanley, Paramount reacquired 7,500 of its own shares at \$100 per share. Later, in 1923, Paramount acquired the remaining 7,500 shares. At this point, Stanley still owed Paramount \$1.25 million. See *Federal Trade Commission v. Famous Players-Lasky Corporation et al.*, Brief for the Commission, Part II, Docket 835, 258.

⁵¹ For evidence of disagreement over percentage ownership and board representation in Southern Enterprise’s proposed theater in Memphis, see S.A. Lynch, letter to Adolph Zukor, July 1, 1920, Zukor Collection (Folder 3).

⁵² *Ibid.*

⁵³ “‘Big Money’ Shows in Theatre War That Is Making Southwest Battle Field of Bitter Opposition Fight,” *Moving Picture World* 42, No. 1 (October 4, 1919): 65–66.

⁵⁴ *Ibid.*, 66.

⁵⁵ For a select list of theaters contracted with Paramount, see Adolph Zukor, “2200 Houses Now Playing Percentage,” *Moving Picture World* 43, No. 11 (March 13, 1920): 1761.

⁵⁶ For another example featuring Goldwyn’s announcement that it would not involve itself in the exhibition side of the business unless it was “forced” to, see “Goldwyn is Averse to Buying Theatres, Says Godsoll, Except Where Compelled To,” *Moving Picture World* 44, No. 8 (May 22, 1920): 1057.

⁵⁷ One million shares of Goldwyn stock were now authorized with 450,000 outstanding. For a list of Goldwyn’s investors, see “Influential Financial Interests Identify Themselves With Goldwyn,” *Moving Picture World* 42, No. 7 (December 13, 1919): 781.

⁵⁸ Paramount, for example, did not recognize Robertson Cole as a major domestic producer-distributor in 1919. See *Federal Trade Commission v. Famous Players-Lasky Corporation et al.*, Reply Brief for the Commission, Part I, Docket 835, 71.

⁵⁹ “All Set for After-the-War Business,” *Moving Picture World* 38, No. 8 (November 23, 1918): 865.

⁶⁰ “Foreign Sales Record,” *Moving Picture World* 38, No. 8 (November 23, 1918): 867.

⁶¹ *Moving Picture World* 38, No. 10 (December 7, 1918): 1090.

⁶² For Robertson Cole’s pledge to independent exhibitors, see “Picture Standardization Will Hurt Industry, Says Kirkpatrick,” *Moving Picture World* 42, No. 9 (December 27, 1919): 1127.

⁶³ “History of Robertson-Cole Shows That Special Has Succeeded Program Picture,” *Moving Picture World* 47, No. 8 (December 25, 1920): 997.

⁶⁴ Distribution numbers were assessed by adding individual productions listed for that year and do not take into account bookings and rentals value. For example, the most successful film of that year, *Way Down East* (Griffith, 1920), was listed as a United Artists release, but made a portion of its \$5 million from road shows. Also note that, aside from the distributors listed here, which account for 566 of the 694 films distributed, there were 128 films from independents that were distributed mostly on a state rights basis. See *Wid’s Yearbook 1920–1921* (New York: Wid’s Films, 1921), 369–377.

⁶⁵ For a brief overview of the World Film Corporation, see Koszarski, *An Evening’s Entertainment*, 64, 66. For the reference to Wasko’s coverage of World’s founding, see Chapter 3, Note 55. When world was merged with the Equitable Motion Pictures Corporation in January 1916, Selznick resigned as general manager and vice-president. In his place, Arthur Spiegel of May, Stern & Co. of Chicago took control of World. See “World Film in Merger,” *New York Times* (January 29, 1916).

⁶⁶ For William A. Brady's appointment to World's active head upon Arthur Spiegel's death in April 1916, see "New Link Joins Stage and Screen," *Motography* 15, No. 17 (April 22, 1916): 927–928. For World's \$1–2 stock price and the cease in trading on its stock in early 1916, see "Film Market Quotations," *Motography* 15, No. 11 (March 11, 1916): 596; and "Film Market Quotations," *Motography* 15, No. 14 (April 1, 1916): 771.

⁶⁷ As Selznick revealed in January 1915, World's entire stock was privately owned by banking interests. See "No Stock for Exhibitors," *Moving Picture World* 23, No. 5 (January 30, 1915): 659.

⁶⁸ "World and United Theatres Merge," *Moving Picture World* 39, No. 5 (February 1, 1919): 599.

⁶⁹ According to an editorial by William A. Johnston, "an independent exhibitor, or distributor or producer is one engaged wholly in the ownership and operation of his own particular branch of the business, and with no such interest in either of the others." See "Independence," *Motion Picture News* 26, No. 14 (September 30, 1922): 1601.

⁷⁰ Although representing independent interests, the Film Clearing House was established with the help of some important financial backers, including brewing magnate and New York Yankees owner Col. Jacob Ruppert, and legal expert and film executive William M. Seabury, whose activities with the Board of Trade and NAMPI were covered in previous chapters. See "New Exchange System to Open," *Moving Picture World* 38, No. 7 (November 16, 1918): 731.

⁷¹ "Federated Film Exchanges Is Formed At Independent Producers Convention," *Moving Picture World* 44, No. 2 (April 10, 1920): 217–218, 252.

⁷² *Ibid.*, 218.

⁷³ "Announcing Federated Exchanges' 24 Distribution Centers," *Moving Picture World* 45, No. 7 (August 14, 1920): 830.

⁷⁴ "Pathe Forms Associated Exhibitors; Showmen to Profit by New Plan," *Moving Picture World* 42, No. 4 (November 22, 1919): 416.

⁷⁵ "First National Announces Details of Exhibitor Co-operation Plans," *Moving Picture World* 42, No. 9 (December 27, 1919): 1113.

⁷⁶ "N.H. Gordon Details Policy to Govern Associated First National Theaters," *Moving Picture World* 43, No. 10 (March 6, 1920): 1615.

⁷⁷ "First National Announces Details of Exhibitor Co-operation Plans," 1114.

⁷⁸ Kristin Thompson makes several observations on the postwar devaluation of European currencies and the challenges that it posed for American film exporters and domestic production. However, she notes that the currency crises did not seriously undermine American film exports and that its threat subsided with currency stabilization of the mid-1920s. See Thompson, *Exporting Entertainment*, 100–104.

⁷⁹ For historical currency conversion between the USD and German Mark, see Lawrence H. Officer, "Exchange Rates Between the United States Dollar and Forty-One Currencies" (2009), Accessed September 2010, www.measuringworth.com.

⁸⁰ "Table I: Value of Exposed Motion Picture Films Exported," *Moving Picture World* 43, No. 9 (February 28, 1920): 1391.

⁸¹ "Foreign Exchange Situation May Force Acceptance of Merchandise," *Moving Picture World* 42, No. 6 (December 6, 1919): 645.

⁸² "Bigger Pictures Only Can Make Money at Present Exchange Rate," *Moving Picture World* 43, No. 9 (February 28, 1920): 1429.

⁸³ "Foreign Exchange Situation May Force Acceptance of Merchandise," 696.

⁸⁴ A *MPW* editorial suggested scaling back U.S. exports until the resumption of normal exchange rates, such that American pictures were not devalued as a result of selling at a loss. See "Suggesting an 'Out' in the Manner of Foreign Exchange," *Moving Picture World* 42, No. 1 (October 4, 1919): 152. Meanwhile, David P. Howells, returning from a trip to Europe, argued that U.S. theater owners would have to bear the burden of higher domestic rentals to compensate for producer-distributor losses on the European market. See "American Producers Directly Affected by Export Situation, Declares Howells," *Moving Picture World* 43, No. 9 (February 28, 1920): 1401.

⁸⁵ In February 1920, Auerbach claimed that company executive Ben Blumenthal had spent 50 weeks of the past year traveling Europe in order to procure films for U.S. import. See Louis Auerbach, "Signs of the Times Indicate That This Is the Era of Film Importing," *Moving Picture World* 43, No. 9 (February 28, 1920): 1403.

⁸⁶ *Ibid.*, 1405.

⁸⁷ See Chester Beecroft, "To Every Man in the Motion Picture Industry," *Moving Picture World* 42, No. 8 (December 20, 1919): 938–939; and Beecroft, "When Shall We Awake?," *Moving Picture World* 43, No. 9 (February 28, 1920): 1394. Thompson also refers to Beecroft as an advocate for a peace treaty between the U.S. and the Central Powers. Among other advantages, this would allow for U.S. loans to Germany, thus stabilizing European currencies and boosting exports. See Thompson, 103.

⁸⁸ For a history of the U.S. negotiations on the Treaty of Versailles and the League of Nations, see Denna Frank Fleming, *The United States and the League of Nations, 1918–1920* (New York: G.P. Putnam, 1932); and Ralph A. Stone, *The Irreconcilables: The Fight Against the League of Nations* (Lexington: The United Press of Kentucky, 1970).

⁸⁹ For an example of opinion supporting Beecroft's position, see *MPW*'s editorial "Settlement of Peace Treaty Vitally Affects the Industry," *Moving Picture World* 42, No. 8 (December 20, 1919): 951.

⁹⁰ "Form \$3,000,000 Company in London," *Moving Picture World* 40, No. 9 (May 31, 1919): 1315.

⁹¹ Paramount's activities in Britain were one of the reasons behind the so-called "anti-Yank" movement of late 1919. In response to accusations by the British Exhibitors Association that Paramount controlled activities in different branches of the British film market, Major N.W. Holden of Picture Playhouses assured the exhibitors that his company was 90% British owned and most certainly not controlled in any way by Paramount. See "'Anti-Yank' Movement in Britain Exposed as Mere Business Quarrel," *Moving Picture World* 42, No. 1 (October 4, 1919): 151.

⁹² Vitagraph had maintained Paris and London distribution centers during WWI, and its profit margins from these offices for the first six months of 1915 were \$11,258.79 and \$120,498.07, respectively. Eventually, in the years after the war, profits from Paris increased to levels comparable to the London office. For example, A Price, Waterhouse & Company report on *Compagnie Vitagraph de France* for the first six months of 1921 shows total assets of \$1,472,578.87, and a profit of \$136,896.77. The assets listed include facilities, properties, and unsold negatives. See Price, Waterhouse & Company, *Vitagraph Company of America, Special Report and Accounts, March 31, 1916*, Albert E. Smith Papers (Box 4); and Price, Waterhouse & Co., *Campaign Vitograph De France, S.A. Paris, Report and Accounts for the Six Months Ended June 30, 1921*, Albert E. Smith Papers (Box 7).

⁹³ Thompson, 99.

⁹⁴ "Film Exports Dropped During War," *Moving Picture World* 39, No. 9 (March 1, 1919): 1172.

⁹⁵ "Export Figures Climbing Steadily," *Moving Picture World* 40, No. 9 (May 31, 1919): 1315.

⁹⁶ "New York's Sunday Bill Signed," *Moving Picture World* 40, No. 5 (May 3, 1919): 639–640.

⁹⁷ For an account of exhibitor activities on the New York Sunday bill, see "Exhibitors Convene at Syracuse," *Moving Picture World* 39, No. 10 (March 8, 1919): 1313; and "Brooklyn Showmen Hail Sunday Bill," *Moving Picture World* 40, No. 5 (May 3, 1919): 640. For NAMPI's own efforts and its cooperation with exhibitors see "Picture Men Make Hit At Albany," and "Sunday Opening Campaign Planned," in *Moving Picture World* 39, No. 12 (March 22, 1919): 1613–1614.

⁹⁸ "Keep Politics Off Screen, Urges Brady; Plan Great Battle Against Censorship," *Moving Picture World* 44, No. 12 (June 19, 1920): 1575.

⁹⁹ "House Passes Bill Prohibiting Transportation of Immoral Films," *Moving Picture World* 43, No. 6 (February 7, 1920): 878.

¹⁰⁰ See "Industry Will Be Its Own Censor," *Moving Picture World* 40, No. 6 (May 10, 1919): 797–798.

¹⁰¹ *Ibid.*

¹⁰² The resolution that committed NAMPI films to the Board of Review's oversight is quoted in full in "Association Meets in Rochester," *Moving Picture World* 41, No. 7 (August 16, 1919): 939–940.

¹⁰³ "Industry at Government's Call Will Aid in Battle on Radicals; Secretary Lane Heads Committee," *Moving Picture World* 43, No. 1 (January 3, 1920): 61–62.

¹⁰⁴ "Industry's Leaders Pledge Support to Lane's Americanization Program," 43, No. 4 (January 24, 1920): 565.

¹⁰⁵ For the pamphlet that reproduces Lane's entire speech, see "The Experience of Immigrants: Some Suggestions for Scenarios on Americanization," From an address by Hon. Franklin K. Lane before the National Association of the Motion Picture Industry, Waldorf-Astoria, January 11th, 1920, Zukor Collection (Folder 2). For *Moving Picture World*'s coverage of Lane's speech, see "Industry's Leaders Pledge Support to Lane's Americanization Program."

¹⁰⁶ "Exhibitors Take Up Their Share in Nation's 'Americanization' Problems," *Moving Picture World* 43, No. 8 (February 21, 1920): 1199–1200.

¹⁰⁷ “The Experience of Immigrants: Some Suggestions for Scenarios on Americanization,” 3–4.

¹⁰⁸ Considering the strength of the U.S. dollar against European currencies and the growing popularity of German films in particular, the filmic portrayal of Europeans that Americans were most likely to see in 1920 were featured in the numerous European imports of that year.

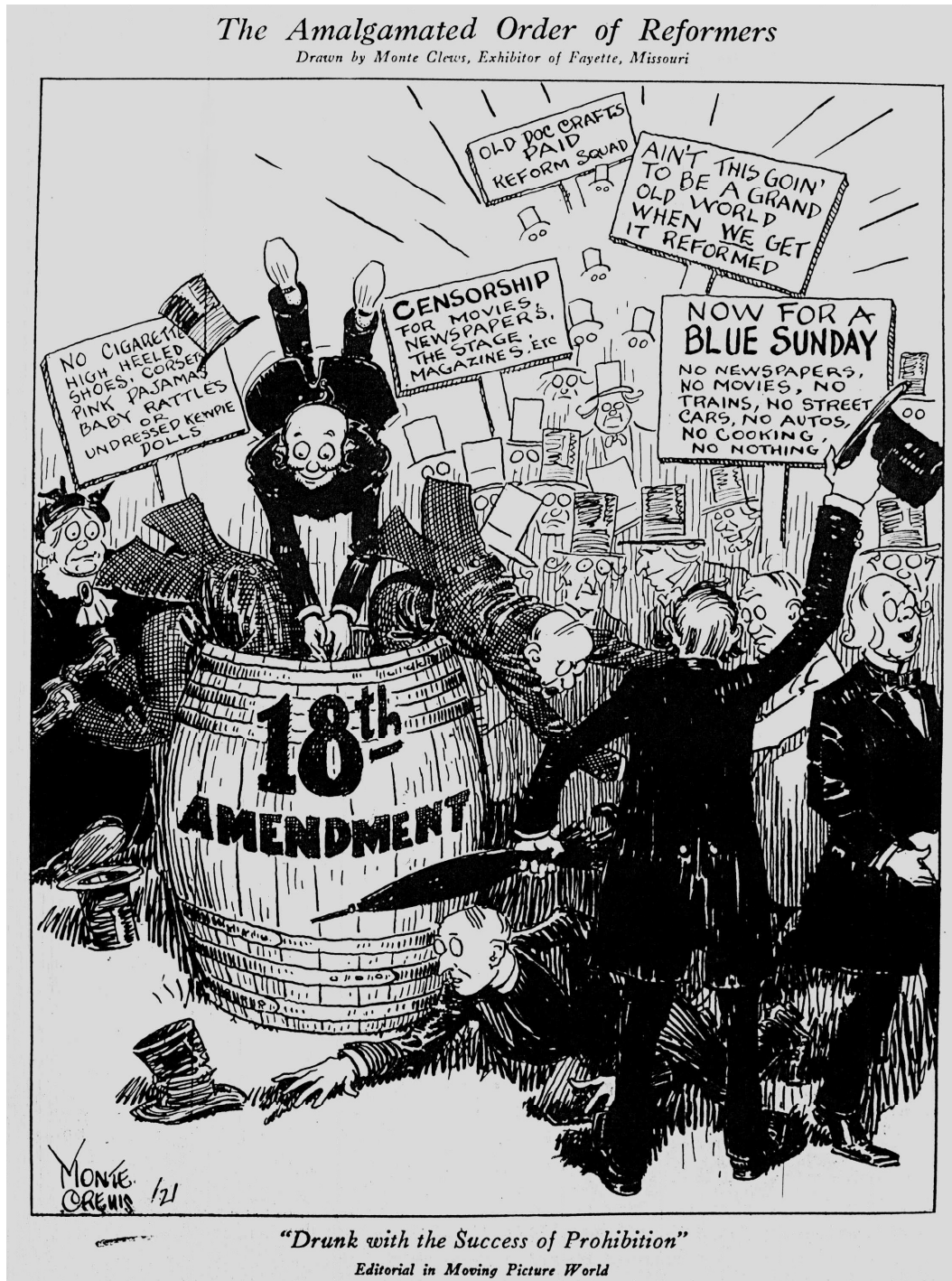
¹⁰⁹ NAMPI’s opposition to the New York motion picture deposit bill, or Cotillo Bill, was based on the argument that it turned deposits into interest-bearing “trusts.” See “Exhibitors and National Association Clash at Albany over Deposits Bill,” *Moving Picture World* 44, No. 4 (April 24, 1920): 543–544.

¹¹⁰ For this interpretation of the Reformist agenda, which links the earlier efforts on Prohibition to the 1920–1921 drive for Sunday Blue laws and entertainment regulation, see “A Definite Proposal,” *Moving Picture World* 47, No. 6 (December 11, 1920): 694; and “Industry is Seriously Threatened as Reformers Besiege Congress,” *Moving Picture World* 47, No. 6 (December 11, 1920): 696.

CHAPTER SIX:

NAMPI'S DECLINE

(JANUARY 1921–DECEMBER 1921)

Figure 6.1: "Drunk with the Success of Prohibition," *Moving Picture World* (January 22, 1921).

NAMPI and the film industry had supported the enactment of prohibition on January 1, 1920, since they believed that every lost patron to the saloon was an additional patron for the cinema.¹ It was only by the end of 1920 that the industry acknowledged how the same Progressive Reform forces behind prohibition were now involved in the various pro-censorship campaigns across the United States (Fig. 6.1). This upsurge in censorship activity was in no small part due to the reformers' success with banning liquor: they viewed cinema as yet another item in the long list of entertainments and pleasures that afflicted the American family. Once again, as with the example of the postal bill from the previous chapter, NAMPI and the industry had misplaced their allegiances and misunderstood the cultural and political context within which the industry was operating. Although their pro-prohibition sensibilities had seldom translated into lobbying, campaigns, or public services, the various sectors of the industry had publicly supported prohibition in their statements, only to realize its unintended consequences by the end of 1920. Most significantly, as direct fallout from this upsurge in censorship activity at the end of 1920, NAMPI now confronted a renewed program for a state censorship board in New York. This would ultimately contribute to the organization's undoing at the end of 1921, when the same producer-distributors decided to form a new organization that continued NAMPI's efforts under a different and more effective leadership. By then, the scandals plaguing the industry, including the Pickford-Fairbanks marriage scandal, had crescendo to a record peak in the aftermath of Roscoe Arbuckle's alleged involvement in the September 1921 death of Virginia Rappé at the St. Francis Hotel in San Francisco. The industry's scandals would only get worse over the next few months, with the unsolved murder of director William Desmond Taylor on February 1, 1922.² In this political

environment, when Paramount and exhibitors were forced to withdraw Arbuckle films from the market, drastic measures were required from the producer-distributors. A change in organization and leadership was at least necessary for the sake of posterity. NAMPI's failures, however, must be understood within a larger context that accounts for its successes in 1921. Scholars and historians like Ruth Inglis, along with their historical counterparts from the 1920s, have rightly blamed NAMPI's demise on its failure to derail the Lusk-Clayton censorship bill in New York and the association's discredited status after congressional attacks on its political activities.³ But these accounts have ignored NAMPI's successes on taxes and tariffs during the same period. By revising the historical record on NAMPI, this chapter will demonstrate that the decision to replace NAMPI with the MPPDA was much more complex. The NAMPI members were concerned about Brady's lack of political credibility in the face of reformer critics, his increasing complaints about compensation, and his relatively limited ties to the new Harding administration. As the next chapter will show, all of these liabilities set Brady apart from his replacement, Will H. Hays.

Before I outline NAMPI's fall from grace and its reorganization as the MPPDA, it is informative to account for the association's attempts to head off the censorship threat. In the first six months of 1921, NAMPI had to move quickly and effectively to blunt further state censorship efforts by devising coordinated action in the form of the "Thirteen Points" document. This remarkable document was a forerunner to the numerous censorship codes that NAMPI's successor, the MPPDA, devised in its campaign for self-regulation in the 1920s and beyond. The document and its affects on film history affirm that NAMPI's efforts on censorship were not as futile as some historians have argued. Instead, NAMPI's

approach towards self-regulation would prove to be a model for the MPPDA, suggesting that the immediate postwar period featured several key developments on this front. Also significant for understanding the MPPDA's future activities, NAMPI's efforts on tariffs and taxes in 1921 provided some important victories in an otherwise poor record and they continued the producer-distributors' collective approach to issues affecting the industry at large. On the whole, then, while NAMPI "failed" to head off the implementation of a state censorship board in New York, it succeeded on other fronts that in the long term proved to be highly beneficial for the producer-distributors.

In the previous chapter, I explored how NAMPI in the postwar era had shifted its efforts in dealing with wartime federal censorship and the Creel Committee to the state censorship campaigns that it now faced. After prohibition's enactment, the renewed interest in state censorship in New York, for example, was only increased. As I explained previously, NAMPI deployed several tactics in order to contain this renewed interest in state censorship. For example, it coordinated with the Board of Review and participated in the government's Americanization campaign in the hope that these activities would impede censorship efforts. By 1921, it was obvious that none of the above had produced the effects that NAMPI had intended. More drastic measures were required, especially in New York where the censorship efforts would culminate in the April passing of the Lusk-Clayton Bill. The latter enforced a state censorship board scheduled to be established only several months later.

Although the exhibitors and the producer-distributors futilely contested the New York bill in the Albany legislature over the next several months, NAMPI's immediate response was to counter any need for a state censorship board in its most lucrative

exhibition market. The renewed cooperation with the Board of Review in 1920 had originated out of the same goal, but NAMPI now realized the need for centralizing self-regulation under its own auspices. As it was, the coordination with the Board of Review carried little credibility with the legislators in Albany and with reformers around the country. The Board of Review's discredited status was especially evident after February 1921, when the *Brooklyn Eagle* published an alleged account of how NAMPI members bribed the Board of Review and steered questionable films towards its most sympathetic members.⁴ Soon after, during the censorship hearings, one female reformer called the Board of Review a "smokescreen" for the industry, while Rev. Wilbur F. Crafts pointed out in conference with NAMPI's leaders that the Board could hardly reprimand or censor its own "paymasters."⁵ Finally, when pushing the Lusk-Clayton bill through the New York Assembly later in April 1921, Walter F. Clayton described the Board of Review as a "fake" and totally ineffective.⁶ With NAMPI's relationship to the Board of Review already discredited before the censorship events of 1921, the producer-distributors required another line of defense against pending censorship bills.

Accordingly, in February 1921, during the same period as the *Brooklyn Eagle's* series on NAMPI, fifteen of the industry's most prominent producer-distributors agreed in principle to establishing their own guidelines, including Paramount, Fox, Universal, First National, Goldwyn, Loew's/Metro, Selznick, Associated Producers, and United Artists.⁷ One month later, their efforts resulted in NAMPI's "Thirteen Points":

RESOLVED: that the National Association of the motion picture industry reaffirms its emphatic protest against the production, distribution and exhibition of all motion pictures which are obscene, salacious, indecent and immoral, and be it further

RESOLVED: that while the creators of the art of the motion picture must in no way be hampered or prohibited from depicting honestly and clearly life as it is, to the end that this art may not be hindered in its movement toward the dignity of other arts, the motion picture should not be prostituted to a use or as a means toward arousing bawdy emotions or pandering a salacious curiosity, or in any other manner injurious to public welfare, and be it further

RESOLVED: to the end that the motion picture be held in that high plane which it has already attained, that the producers of motion pictures refrain from producing such motion pictures

- (a) Which emphasize and exaggerate sex appeal or depict scenes therein exploiting interest in sex in an improper or suggestive form or manner;
- (b) Based upon white slavery or commercialized vice or scenes showing the procurement of women or any of the activities attendant upon this traffic;
- (c) Thematically making prominent an illicit love affair which tends to make virtue odious and vice attractive;
- (d) With scenes which exhibit nakedness or persons scantily dressed, particularly suggestive bedroom and bathroom scenes and scenes of inciting dances;
- (e) With scenes which unnecessarily prolong expressions or demonstrations of passionate love;
- (f) Predominantly concerned with the underworld or vice crime, and like scene, unless the scenes are part of an essential conflict between good and evil;
- (g) Of stories which make drunkenness and gambling attractive or with scenes which show the use of narcotics and other unnatural practices dangerous to social morality;
- (h) Of stories and scenes which may instruct the morally feeble in methods of committing crime or by cumulative processes emphasize crime and the commission of crime;
- (i) Of stories or scenes which ridicule or deprecate public officials, officers of the law, the United States Army, the United States Navy or other governmental authority, or which tend to weaken the authority of the law;
- (j) Of stories or with scenes or incidents which offend the religious belief of any person, creed or sect or ridicule ministers, priests, rabbis, or recognized leaders of any religious sect, and also which are disrespectful to objects or symbols used in connection with any religion;
- (k) Of stories or with scenes which unduly emphasize bloodshed and violence without justification in the structure of the story
- (l) Of stories or with scenes which are vulgar and portray improper gestures, posturings [sic] and attitudes;
- (m) With salacious titles, and subtitles in connection with their presentation or exhibition, and the use of salacious advertising matter, photographs and lithographs in connection therewith, and it is further

RESOLVED: that this association record its intention to aid and assist the properly constituted authorities in the criminal prosecution of any producer, distributor or exhibitor of motion pictures, who shall produce, distribute or exhibit any obscene, salacious or immoral motion picture in violation of the law, to the end that the recognized public good accomplished by the motion picture shall be preserved and advanced, and be it further

RESOLVED: that any member of this association willfully refusing to carry into effect these resolutions, shall be subject to expulsion as a member of the association, and further subject to such other penalties as the association may fix, and be it further

RESOLVED: that all exhibitors, producers and distributors of motion pictures, not members of this association, be urged to co-operate to carry into full effect these resolutions.⁸

The document's signatories included all the major NAMPI members as well as non-members like United Artists and Associated Producers. Together these companies amounted to what the industry claimed was 90% representation of U.S. film producers. Several of these provisions sound familiar in relation to censorship concerns that I covered in Chapter 1. In particular, notice how provision "h" on films that "instruct the morally feeble in the methods of committing crime" recalls debates on cinema and juvenile crime cited in the City Club of Chicago's report from 1907 and repeated in Justice McKenna's *Mutual vs. Ohio* ruling. On the whole, these thirteen provisions represent common complaints that NAMPI members had received from the Board of Review, which would be the immediate context for their origin.

Although the industry reached out to the Catholic Welfare Council and the International Reform Bureau under Rev. Crafts, and received initial endorsements from both groups, NAMPI's Thirteen Points were not administered cooperatively in coordination with outside reformist organizations. Crafts, who attended NAMPI's meeting on the Thirteen Points, called the list the "Magna Charta" of the film industry. Yet only a day later, Crafts changed his mind about NAMPI's abilities to regulate itself. He now

proposed an interstate licensing commission for film distribution.⁹ Despite his initial enthusiasm for the Thirteen Points plan, Crafts argued that the declaration included no plans for implementing the rules and that NAMPI's program lacked any instituted form for regulatory authority either within or outside the industry. Recalling Crafts's role in the Hughes Bill from Chapter 2, it should have been no surprise to the industry that Crafts would support government regulation over film distribution and exhibition. Crafts noted that government oversight and the Interstate Commerce Commission were required in relation to banks and railroads, respectively. According to Crafts, the film industry was no different in that it also demanded government oversight. NAMPI's lessons were thus well-learned. A trade paper commentary on the NAMPI-Crafts fallout summed up the events succinctly when it declared the following: "Screen Will Solve Own Problems: Outside Help Proves Too Unreliable to Be Safe and Helpful."¹⁰ NAMPI could reach out to reformists as much as it wanted to, but the experience with Crafts was particularly damaging to NAMPI relations with politically-active reformists.¹¹ In contrast, the Catholic Welfare Council did hold up its end of the bargain. It continued to support the Thirteen Points in the days after the New York meeting and it promised to hold off on its own censorship campaign. However, NAMPI had already shifted its tactics. The producer-distributors now approached such coordination with great caution.

Looking into the future, Chapter 9 will demonstrate how these provisions were remarkably identical to the MPPDA's "Don'ts" and "Be Carefuls" of 1927 and, ultimately, to the Production Code of 1930. The continuity suggests that NAMPI's work was foundational for the course of self-regulation that the industry embarked upon in the 1930s, when the Production Code promoted institutional self-regulation in place of earlier

attempts to coordinate censorship with outside reformist organizations.¹² As we will see in the next several chapters, NAMPI's one-year experiment with the Thirteen Points was significant because it represented an early attempt at self-regulation. Subsequently, the MPPDA temporarily abandoned this internal system for a cooperative model that was inclusive of reformist organizations, including women's clubs, civic organizations, and religious groups. The period from February 1921 to reorganization of NAMPI as the MPPDA in early 1922, therefore, represents an interregnum where the producer-distributors attempted self-regulation in the early 1920s. Such a practice would not be revived until 1924, when the MPPDA produced the Formula for governing literary adaptations and began to rely less on outside reformist groups and more on its own internal publicity and public relations departments. In the next chapter, I will outline what the MPPDA attempted in the meanwhile when it organized with reformist, religious, and civic groups to form the Committee on Public Relations, which operated semi-independently of the industry.

Unfortunately, as bold a step as they were, the Thirteen Points failed to satisfy censors in New York. NAMPI continued to face problems in implementing and institutionalizing the provisions. As the Thirteen Points had not created a separate or dedicated body within NAMPI that had regulatory power over the process, there was no means to hold individual companies accountable other than through consensus by the board of directors. Even NAMPI's Censorship Committee had no regulatory power over companies that produced illicit films.

With the Thirteen Points in place, and with the Catholic Welfare Council continuing to support the industry's plan for self-regulation, Brady, Griffith, and

NAMPI's executives turned their attention to the proceedings at Albany. Here the Senate Chamber was hearing arguments for and against the Lusk-Clayton Bill.¹³ The bill was originally named after Assemblyman Walter F. Clayton as the Clayton Bill. On account of New York State Senator Clayton Lusk's interest and proprietorship, it was now called the Lusk-Clayton Bill. Lusk had chaired the anti-communist "Lusk Committee" on seditious activities back in 1919 and was especially dedicated to stamping out any forms of liberalism. He was well-connected in the State Senate and therefore represented a formidable opponent for the industry.

Each side in the debate, for and against, was given one-and-a-half hours in which to make its case. Over 100 industry notables were present for the afternoon meeting on Tuesday April 5, 1921. In addition to NAMPI representatives, the MPTOA's president, Sydney Cohen, and attorney, John J. McInerney, were also present. The latter was responsible for scheduling and introducing opposition speakers. Like NAMPI, the MPTOA was against the censorship bill, but the coordination between the two organizations on the matter of the Lusk-Clayton Bill was not significant at this stage. In fact, it was the MPTOA and its attorney, McInerney, who were responsible for coordinating the opposition. This arrangement was in contrast to what had occurred with industry efforts in defeating the Sunday Blue laws in New York. More importantly, recall that it was the Board of Trade and the producer-distributors who had assumed responsibility for organizing the opposition to the Hughes Bill covered in Chapter 2. The exhibitors had no such track record.

Beyond the industry itself, resistance to the bill also came from Democratic Senator James Walker, who offered a staunch rebuttal to his Republican colleagues and

tendered support for his allies amongst the MPTOA specifically. Anti-censorship backing also came from Mary Grey Peck, who now represented the Free Lance Association of Women Writers and who had featured in the Board of Trade's organized campaign against the Hughes Bill. Peck argued that film censorship would never achieve its goals because it was impossible for it to represent the standard for millions of American citizens. Mayor Paul Canfield Jr. of Kingston, New York, also spoke against censorship and cited a report that the New York State Conference of Mayors had produced on censorship in coordination with church, industry, and labor representatives. Others opposed to the bill who took the floor on that day included Rev. L.H. Caswell of the Crawford Memorial Church in the Bronx, and the famous author Rex Beach, who represented the Authors' League of America. Referring to the censor's proposed salary, Beach argued that a "\$7,500 per year person" could not possibly represent the opinions of 10 million New York State citizens. Finally, D.W. Griffith gave another rousing speech in which he defended freedom of speech and condemned censorship as un-American. Taking a middle of the road stance, the National Board of Review's president, E.A. Moree, spoke of the need to establish a "Board of Public Morals." He urged the legislators to include such a provision for all forms of entertainment in their bill. Given the recent controversies surrounding his organization and its relationship with NAMPI, Moree undoubtedly could read the writing on the wall. By this time, the Board of Review had revised its role as a censorship advising body in U.S. history. The Board had partly relinquished this role in late 1915, when it changed its title from the National Board of Censorship. As we have seen in previous chapters, the Board of Review had been sidelined by both the Board of Trade and NAMPI, at least, until 1920. With the establishment of a censorship board in its

home state of New York, the Board of Review was threatened with a loss in credibility and usefulness. It continued to review and approve films and it also housed the industry's National Committee for Better Films as we will see Chapter 7, but its authority could not indemnify films from state censorship boards. The Board's most important actions now involved sponsoring laudable films and had less to do with "censorship" of illicit content. For example, the Board's organization of "book week" with the MPPDA in 1922 proved to be one of its more important undertakings on censorship, regulation, and film betterment in the 1920s.¹⁴

On the other side of the ideological and political divide, support for the Lusk-Clayton Bill came from Rev. O.R. Miller of the New York State Civic League, who did not speak but had already made his views well known, and several others who were assigned floor time. Representing women in support of the bill were Clarence Waterman and Ellen O'Grady, former Deputy Police Commissioner of New York. O'Grady's testimony was most troubling. She kept on repeating the line "I've seen," followed by all the appalling actions she had witnessed in motion pictures, including a scene from an unidentified film where a man had used his teeth to tear off a woman's clothes. Meanwhile, Alexander Rorke, representing the American Defense Society, praised producers who made moral films and enacted self-regulation, but demanded that the people should have their say. In this vein, Howard Riegelman of the United Neighborhood Houses of New York declared that the motion picture industry had had ten years to clean up its act and had failed, thus necessitating state censorship. Topping off the proponents' presentation, John Lord O'Brien of Buffalo, a lawyer and potential Republican nominee for the previous year's gubernatorial election, and Senator Clayton R. Lusk engaged in a

damaging exchange. In the dialogue, the men argued that the industry had promised the very same things four years ago in 1916 and had never delivered on self-regulation.

When all of this was said and done, Brady was given a few minutes in which to reply the accusations and make some closing remarks. He distributed the Thirteen Points agreement to the committee members and declared that the industry, which had already offered its services to the nation in wartime and beyond, was ready, willing, and able to regulate itself. Citing what he believed was the “subtle allusion” to the industry’s personnel and their alleged religious background, Brady deplored the use of religion as a weapon against the producer-distributors. We know from Rev. Chase’s anti-Semitic pronouncements against the industry that proponents of film censorship and regulation had identified the moguls’ religious background as a point of attack and leverage in the 1910s and early 1920s.¹⁵ But religious bigotry was a desperate and marginal tactic that contradicted the Bill of Rights and the belief in religious freedom. As a “weapon” against the industry, it never achieved results equal to that of anti-communism, for example. Brady’s assertion notwithstanding, the proceedings on the Lusk-Clayton Bill were not primarily a forum for prejudice. As evidenced above, proponents of censorship had focused on the industry’s failed self-regulation.

Whatever chances it may have had, the opposition’s campaign did not produce any significant results. The bill was reported out of committee only two days later and was supported in its entirety by Republican State Senators on April 7, 1921. It was approved by the Senate committee approved in a 30 to 18 vote on Monday April 11, 1921, and the Assembly’s Rules Committee approved the same bill for sending out into the floor in a 92 to 17 vote during the same week.¹⁶ Next, on April 16, the Assembly voted 102 to 38 in

support for the bill.¹⁷ All that remained was for the governor to sign it into law. At this point, Governor Nathan L. Miller promised to look over the bill and give his final approval. However, Miller did promise to hold public hearings on the Lusk-Clayton Bill before he signed the document into law. These meetings were held on Tuesday, April 26, when NAMPI spearheaded a drive to convince Miller to use his veto power against the bill.¹⁸

While the MPTOA and the New York exhibitors had been at the forefront of the defense previously, and had been responsible for the industry's failure at the April 5 hearings in the Senate, NAMPI was in the spotlight for this round. Yet it should be understood that NAMPI's task was much greater than the MPTOA's campaign earlier in the month. At the earlier juncture, there was still a chance for defeating the bill in one of the State Senate and Assembly committees before such a bill was even reported to the floor. In contrast, NAMPI had fewer options to prevent the bill's passing. Everything would have to rely on NAMPI's ability to affect Governor Miller's decisions on business and corporate matters in the state.

Accordingly, NAMPI's executives argued that the bill would raise ticket prices and have detrimental effects on the motion picture industry throughout the country. Harris D. Connick of Paramount warned of a 20% increase in film costs. NAMPI again offered its Thirteen Points as the solution to the censorship problem and now delivered a signed statement from 27 of the leading producers that assigned five qualified and disinterested individuals to investigate the industry.¹⁹ Brady also called to the floor Judge Almet F. Jenks, a personal friend of Governor Miller's. NAMPI apparently believed that the governor might consider Jenks's advice with greater weight. To the industry's delight,

Judge Jenks proceeded to attack the bill on many fronts, and reminded Miller that the New York Penal Code already provided for the same kinds of provisions and oversight over motion pictures. Repeating the industry's standard mantra, Jenks suggested that a board of unelected censors had no training or authority in the matter of regulating films in New York. Finally, the MPTOA's new state head in New York, Charles O'Reilly spoke briefly. O'Reilly had recently replaced Sydney Cohen after the latter stepped down to focus on his national role. He complained that if the bill were passed many theaters would have to shut down because they would be subjected to additional costs and taxes.²⁰ Setting aside Jenks's important testimony, the industry's own tactics on censorship had shifted from legal objections to financial ones if only briefly so as to convince Gov. Miller to use his veto. After the bill's passing, this argument was shelved. Henceforth, Gabriel L. Hess of NAMPI's censorship committee declared that the industry would challenge the bill's legality and constitutionality in the court system.²¹

As it stood at the time that Governor Miller signed it into law on May 14, the Lusk-Clayton bill called for the establishment of a board of censorship comprising of three "commissioners" appointed by the governor for a five-year term. Annual salary for the commissioners was pegged at \$7500 plus travelling expenses, and the state appropriated \$70,000 for its first year of operation beginning on August 1, 1921.²² Establishing the offices and facilities for these commissioners was estimated to cost anywhere from \$150,000 to \$400,000. Every film distributed to New York theaters required the approval of the board, which charged a fee of \$3 for each 1000 feet of film and \$2 for each subsequent copy, in addition to a fee for film publicity at \$2 for each 1000 feet.²³ Moreover, the board was also tasked with licensing appropriate advertising. These

provisions, although reduced from the original proposals, were intentionally meant to punish the film industry, and were crafted by New York Republicans who resented the industry's prior political efforts.

Specifically, the film industry had supported incumbent governor and Democrat Alfred E. Smith when he lost the 1920 election to the present governor, Republican Nathan L. Miller. Recall from previous chapters that Smith had supported the industry in its campaign for repealing the Sunday Blue laws and was generally considered the industry's most sympathetic politician in office at that time. The New York Republicans were now simply retaliating for what they perceived was the favoritism that the industry had showed Smith in his attempt to hold off the Republican challenger. In fact, Smith would be back in the governor's mansion in 1922, but by then Miller had signed the Lusk-Clayton Bill into law and repealing it would not be an easy task. One prominent Republican, Major F.H. La Guardia, did speak out against the signing of the bill. The major claimed that, despite any moral or ethical imperative inferred by its language, the bill betrayed an ideological attempt for establishing political control over the film industry.²⁴ La Guardia's claim, which can be read at face value as denigrating his Republican peers for attempting to gain hold over what they perceived as political instrument, can also be interpreted as signaling the larger conflict between traditional authority and the newer cultural and entertainment forms like the cinema, a tension I outlined previously. In this light, the Republican push for a New York censorship board represents another chapter in a much longer narrative that pits traditional forces of authority against a medium that they perceived as potentially disruptive to the social status quo, especially when that instrument fell into what they believed were the wrong hands.

While it produced no real cooperation, the Albany incident had temporarily put a hold on the hostilities within the industry. Some aspects of this ceasefire survived after this period and into the MPPDA era. After all, the war on censorship represented a common front where the two sides had similar objectives. To this end, the industry's immediate action was to prepare itself for cultivating sympathetic candidates for the next New York Assembly, whose elections were scheduled for the fall. In July, NAMPI, the MPTOA, and *Moving Picture World* agreed in principle on a united plan to fight censorship legislation and to undertake the "screen's participation in politics strictly on a non-partisan basis."²⁵ The words describing the objective were carefully chosen so as not to offend either political party. However, the target of the campaign was most certainly a partisan one in nature. This was all the more clear when in August the Associated Motion Picture Advertisers, along with NAMPI and the MPTOA, proposed a coordinated campaign to ensure friendly representation in future state assemblies, including the one in New York.²⁶ The result was the Freedom for the Screen Committee, whose first goal was to vet candidates for the next New York assembly and to identify and defeat the industry's nemeses.²⁷ But NAMPI's anti-censorship political activities ran afoul of conservative politicians supportive of censorship, including Senator Henry L. Myers of Montana. Under cover of the Senate Judiciary Committee, and in proposed cooperation with the Departments of Justice and Commerce, Myers set out to counter what he believed was NAMPI's dangerous challenge to American democracy and "free elections."²⁸ Myers claimed that the producer-distributors had resisted every effort for Federal regulation, including the Hughes Bill. As proof that the public was discontent with the industry, Myers noted that motion pictures had been placed under greater state regulatory oversight

in seven states thus far: Pennsylvania, Ohio, Kansas, Maryland, New York, Massachusetts, and Florida.

Senator Myers's antics on the federal level notwithstanding, NAMPI's state campaign against those assemblymen who supported the New York censorship bill produced modestly impressive results when 35 of the 103 who supported the Lusk-Clayton Bill were voted out of office in the November 8 general election. Unfortunately for NAMPI and the industry, fourteen of those who opposed the censorship bill were also voted out and replaced by individuals whose stance on censorship was unknown. While it is impossible to prove NAMPI's role in engineering an electoral upset for the incumbents, as *Moving Picture World* boastfully claimed at the time, NAMPI's lobbying campaign and efforts likely were responsible for shifting the numbers in favor of candidates whose views were friendly to the industry.²⁹ Equally, the results may simply be based on declining Republican popularity in New York during this particular election cycle. In either case, the Democrats, who had opposed the bill, saw their numbers rise from 28 to 55, while Republicans were reduced down by the same 27-member differential to 95. According to press accounts, some of those associated with bill's passage, including Assembly speaker H. Edmund Machold, Republican members of the New York Assembly, and the governor himself, had earlier come to regret their participation in its passing. This may have been wishful thinking on the industry's part, but, as *Moving Picture World's* editorial mused, why else had Governor Miller taken so long to sign the bill into law?³⁰

NAMPI also scored success on the 5% rental tax, which was planned as part of the 1921 Revenue Bill debated in the House and Senate and whose implementation was outlined in previous chapters. The Treasury Department had estimated that the fiscal year

ending June 30, 1922 would yield \$6 million in fees from the rental tax specifically, in addition to the \$96 million of admission and dues that it collected from theaters.³¹ NAMPI was intent on avoiding that experience for the next year and it campaigned effectively to have the rental tax removed entirely from the bill, despite doubts that such a campaign could produce the intended results.³² With passage of the Revenue Bill assured in the House version, whose only concession to the industry was the elimination of freight taxes, NAMPI's campaign turned to the Senate Finance Committee.³³ Brady's press releases argued that the current Revenue Bill offered relief to every luxury industry, lifting war revenue taxes that Congress had imposed on items such as fur coats, perfume, and fine works of art. In contrast, declared Brady, "no relief of any kind has been accorded the poor man in his theatre."³⁴ According to Brady, the industry was suffering under excessive and unfair taxation that targeted motion pictures exclusively. Unless these burdens were lifted, warned Brady, many producers, distributors, and exhibitors would simply go out of business. In turn, this would reduce the government's revenue from other avenues of industry taxation. You will recognize Brady's argument from previous chapters as now a standard NAMPI tactic against taxation. As a solution, Brady suggested that such taxes be evenly distributed amongst many industries and not simply motion pictures. In coordination with Senator Reed Smoot (R-Utah), NAMPI proposed an alternative non-cumulative manufacturers' sales tax that would replace the three industry taxes then in effect and included in the next Revenue Bill.³⁵ Unfortunately, this proposal was outright rejected. The only concession that the Senators offered the industry at this point was to exempt 10-cent theaters from the admission tax.

Eventually, by the end of October 1921, NAMPI's persistence on the matter had paid off when Senator Smoot managed to convince the other members of the Senate Finance Committee that repealing the rentals tax was in the best interests of the movie patron.³⁶ The House and Senate then conferred on a compromise Revenue Bill that included both the 10-cent exemption and the repeal of the rental tax. The bill was signed by both legislatures in November. Exhibitors attempted to take credit for this victory, but Senator Smoot and the press released statements that credited exclusively NAMPI, Brady, and Saul E. Rogers, a Fox executive who was the head of NAMPI's taxation committee.³⁷ For his part, Brady called the victory NAMPI's greatest achievement since its inception and modestly insisted that its goals were accomplished through efforts by the entire industry and not just those of his organization.³⁸

NAMPI's final campaign involved striking down the proposed tariff bill, a debate that began in late 1921 and produced important results for the industry by April 1922. The Fordney Tariff Bill threatened to impose a 30% ad valorem duty on exposed films. Ad valorem tariffs functioned by taxing a percentage of the value of goods as opposed to a fixed dollar amount. As such, this form of import taxation was particularly aggressive. The bill was named after Joseph Fordney (Michigan), the Republican Chairman of the House Ways and Means committee, who along with Senator Porter McCumber (R-North Dakota), sponsored the bill in the House and Senate, respectively. Once again, Saul Rogers of NAMPI's Tariff and Taxation Committee was dispatched to the Senate Finance Committee hearings held on December 27. Rogers filed a brief with the Senators that outlined the industry's objection. The most important of these objections was the retaliation the Fordney Bill would undoubtedly cause against American exports in

Europe.³⁹ In the brief, which followed his previous testimony, Rogers reminded the Senate committee that American films enjoyed a monopoly on the foreign market and that the tariff could result in a loss of millions of dollars from retaliatory measures that would follow. If that were not enough, Rogers insisted that such a course of events threatened American jobs in the motion picture industry:

At present the American market affords us an opportunity to amortize the cost of production plus a small profit, and our foreign business is practically all profit. If we are confronted with a retaliatory tariff abroad this industry will be compelled, in order to enter the foreign market under favorable conditions to either organize producing companies abroad and carry on a material part of our production abroad as foreign companies, which would throw thousands of people out of employment in this country, or the other alternative would be for us to curtail the cost of production in this country very materially in order to obtain the amortization of production and a reasonable profit in this country, knowing that we will be compelled to speculate in the foreign market for a profit. In the latter event, curtailment of salaries and discharge of a considerable number of employees throughout the entire industry will be necessary and labor employed in this industry will naturally suffer.⁴⁰

According to Rogers, if cost-cutting measures were to be adopted as a result of these developments, the reduction in material expense and production financing would lead to a lowering of standards that could adversely affect the value of American films in the international marketplace. However, if American films were to maintain their standards in the face of such economic conditions abroad, the American consumer would suffer higher prices at home in order to subsidize the lower yields abroad. In either case, argued Rogers, the 30% tariff would hardly suppress foreign films in the domestic marketplace while, at the same time, creating the above complications for the American industry at home and abroad. Rogers's depressing outline of the tariff's possible

consequences was not only a morality tale for American policymakers, but a blueprint for Hollywood's expansion. This becomes all the more clear when considering the activities of the producer-distributors—starting with Paramount in 1919 and continuing with Fox, Goldwyn, Loew's/Metro, First National and Universal into the 1920s—in terms of establishing production facilities or agreements in Europe that could offset import costs in those nations and decrease production costs through an early form of “runaway production.” During this time, for example, Paramount was preparing to distribute *Mistress of the World* (James May, 1922), a UFA/German serial starring Mia May that had been reedited as a feature for American distribution. An increase in tariffs on imports would affect Paramount's German productions intended for U.S. distribution, its exports to Germany, and its relationship with UFA, especially if any retaliatory measures were taken. For all of these reasons, NAMPI's members were united in their opposition to the tariff. NAMPI's efforts paid off at the end of the association's tenure in March 1922, when on April 4, 1922 it was announced that the Senate Finance Committee had rejected the 30% ad valorem rate for imported exposed films.⁴¹ Instead, the Finance Committee had voted to maintain the current rates outlined in the Underwood Bill, where the following rates were in effect: 2 cents/foot on negatives exposed but not developed; 3 cents/foot on negatives exposed and developed; and 1 cent/foot on positives. The final bill itself was not concluded until September 1922, several months after NAMPI had been reorganized as the MPPDA, but its goals had already been achieved. Tariff retaliation from European countries, which had commenced with France's 20% ad valorem tariff on imports in October 1921, was effectively mitigated for the short-term.⁴²

As with censorship, producer and exhibitors did not always agree on the specifics of taxes and tariffs. However, both groups were opposed to theater and rental taxes in general. Indeed, the Revenue Bill debate in the summer of 1921 provided an opportunity for NAMPI and the MPTOA to campaign along similar lines, even if they were not unanimous about who should take credit. The opposition to tariffs was another cooperative area since independent theater owners had just as much to gain from lower tariffs placed on imported films that offered a viable alternative to films from the major U.S. producer-distributors. Nevertheless, despite the fact that they represented the same side in the fight against the Lusk-Clayton Bill, the Revenue Bill, and the Fordney Tariff Bill, and would continue to cooperate on anti-censorship efforts and taxes, the producer-exhibitors and exhibitors resumed some of their divisive tactics.

You will recall from the previous chapter that Sydney Cohen had asked the producer-distributors to sell their theatrical holdings back in 1920. A year later in June 1921, the plea had failed to produce results and industry consolidation was only worsening. The MPTOA's attorney, State Senator James J. Walker, now warned that the industry was in danger from the "trustification" undertaken by Paramount, the other producer-distributors, NAMPI.⁴³ The MPTOA even went so far as to establish a special committee to deal specifically with exhibitor complaints against Paramount, a process to which Paramount executives begrudgingly acquiesced.⁴⁴ By this point, however, the FTC had begun to take interest in Paramount's theater activities, after having previously investigated the affiliated Stanley Company. What followed would be one of the most remarkable investigations in industry history, a 32,000-page detailed account of Paramount's theater acquisitions and expansionary moves from its origins to 1924.⁴⁵

When the FTC released its “Cease and Desist” order and “Findings as to the Facts” in July 1927, it had amassed 17,000 pages of testimony and 15,000 pages of evidential documents. It is a body of evidence referenced in previous chapters, but its observations are even more relevant to the period covered in the present and future chapters as will become evident. In its initial filing from August 1921 and the amended filing from February 1923, whose Paragraph 10 on theater acquisitions was cited in Chapter 5, the FTC accused Famous Players-Lasky and its subsidiaries of anti-competitive practices and monopolization. The initial complaint comprises 15 Paragraphs with the first five dedicated to general descriptions of Famous Players and the other defendants followed by the subsequent claims as abbreviated and paraphrased below:

- Lasky and Famous Players conspired to control the feature film industry through combination and by eliminating competition
- The two companies joined together and acquired a controlling stock in Paramount, which, at the time, distributed 104 features per year to many first-run theaters
- Paramount employed “closed bookings” (block booking) and forced exhibitors of first-run theaters to exclude competitor product; second- and third-run exhibitors were not under the same restrictions and could book any single film they desired
- In July 1916, Famous Players and Lasky also founded a competing distributor, Artcraft Pictures, with the purpose of forcing Paramount’s board to sell the remaining stock of the company so as to retain access to these Artcraft stars
- Paramount affiliated with powerful independents, including Thomas H. Ince, Mack Sennett, Cosmopolitan Pictures (William Randolph Hearst), Mayflower Productions, William Taylor Productions, and William A. Brady
- In May 1919, Famous Players-Lasky founded another distributor, Realart Pictures Corporation (Delaware), which maintained separate distribution offices from those of Paramount and disguised itself as a separate company; this concealed Paramount’s ownership from those exhibitors who rented Realart films based on the idea that they were acquiring non-Paramount product
- In 1919, defendants acquired 50% stock of Black New England Theaters operated by Alfred S. Black and comprising 60 theaters throughout Maine, Massachusetts, Vermont, and New Hampshire, all of which now excluded non-Paramount films
- Defendants acquired stock in Stanley Company of America (Pennsylvania), including its 57 theaters in western New Jersey and Delaware, and the affiliated Stanley Booking Corporation (New York) that was contracted with 92 theaters in

New York; in exchange, Stanley Company acquired 15,000 shares of Famous Players-Lasky; the defendants used these assets to coerce theater owners to sell their theaters and book exclusively the Paramount and Stanley offerings

- Defendants acquired stock in Stephen A. Lynch Enterprises and its theater chain in Atlantic and Gulf states, including from Texas to North Carolina, and Oklahoma, Tennessee, and Arkansas
- In June 1920, defendants acquired 40% stock in Saenger Amusement Company, which controlled 25 theaters and had exclusive rights to book pictures in more than 68 theaters, and created a \$5 million subsidiary corporation, Southern Enterprises, that controlled 140 theaters throughout various Southern states under the direction of its former owner, Stephen A. Lynch; in exchange, Lynch was allocated 40% of the capital stock of Saenger Amusement Company; together, these forces worked to exclude independent product from their screens
- Defendants Acquired the New York Theatre Building, which included the Criterion, the New York Theatre, and the New York Roof, for \$3.2 million
- Defendants acquired the Rivoli and the Rialto, two of the largest and most profitable theaters in New York City
- Defendants acquired stock in Charles Frohman, Inc., which held interest in the Lyceum Theatre and rented the Empire Theatre
- Defendants acquired the Koplar Circuit of 17 theaters in Missouri, now incorporated and operated under the Famous Players-Missouri Corporation
- Defendants have recently spent \$8 million in acquiring and building theaters in Canada
- Defendants acquired theaters in Los Angeles and San Francisco and recently incorporated the Famous Players California Corporation at \$12 million for the purposes of gaining control over the Imperial Partals Theaters in San Francisco and acquiring more theaters throughout that state
- Defendants own interest in Loew's Ohio Theatres, and have other theater assets in Massachusetts, New Hampshire, and Colorado.
- Famous Players-Lasky now owns over 400 theaters throughout the U.S. and Canada and is affiliated with many others, has branch offices in 28 of the major North American cities and world distribution locations, and owns 140 subsidiary corporations; in addition, during one week in 1920 ("Paramount Week"), 6000 U.S. theaters showed nothing but Paramount films and 67 cents of every dollar earned at the box office went to Paramount pictures
- Through these methods, which have led to anti-competitive practices in interstate commerce by limiting access for independents and competitors, Famous Players-Lasky et al. have acted in conspiracy and combination for the purposes of monopoly and have violated Section 5 of the Federal Trade Commission Act and Section 7 of the Clayton Act⁴⁶

In November 1921, Paramount answered the FTC's claims in a paragraph-by-paragraph response and rebuttal.⁴⁷ Most importantly, in response to Paragraph 12 of the

FTC's initial complaint (i.e., Paragraph 4 of the amended complaint), which accused Paramount of conspiring with the Stanley Company to control exhibition in Pennsylvania, Paramount acknowledged its theater acquisition and stock purchases in various theater chains. However, Paramount denied anti-competitive intentions by justifying its actions as necessary to prevent a lockout of its product by First National and its 3000 associated theaters. Paramount also maintained that its stock options on the various theater chains and assets listed above were intended merely as investment holdings and not as an attempt at consolidation or monopoly. Paramount's rebuttal suggested that it was not about to concede any fundamental wrongdoing, at least not when it came to antitrust accusations.

The FTC continued its extensive investigation into the latter part of the decade, and subsequent chapters will make important references to its findings as they become relevant in chronology of events regarding Paramount's theater acquisitions. What is important to understand at this stage in the FTC's opening salvo and Paramount's response is that oligopoly formation in the film industry encountered significant resistance from government regulators and independents who pressured the former to act on antitrust violations. Yet, instead of undermining the Hollywood majors' oligopoly or their anti-competitive violations in acquiring theaters, the FTC's investigation of Paramount actually contributed to the oligopoly's solidification by limiting the growth of its largest and most powerful member. In particular, the FTC and DOJ were more aggressive when it came to horizontal integration. The FTC thus ensured that what started as an oligopoly would not end up as a monopoly controlled by one mega-studio. As we will see in Chapter 9, the Supreme Court in turn placed limits on the FTC's ability to force corporate divestment with its ruling on Eastman Kodak in May 1927. When the FTC's Paramount investigation

ended in July 1927 and its case was closed in 1932, Paramount, MGM, and Fox were effectively held in check from horizontal expansion that completely absorbed a large competitor, at the same time that the FTC was unable to force Paramount to divest its theater chains or refrain from block booking.

Unfortunately, NAMPI's role in the studio system's evolving history has often been misunderstood and underrepresented because it was ultimately replaced by the MPPDA. Thus NAMPI was interpreted as a failed prelude to an organization that has lasted almost nine decades. As this chapter has demonstrated, NAMPI's failures on the Lusk-Clayton Bill, a campaign led by the MPTOA and not NAMPI, were offset by its success on tariffs and the rental tax, which offered significant advantages to producer-distributors well beyond the NAMPI era. What the industry had lost in submitting to the New York Motion Picture Commission's licensing costs it had more than gained in repealing the rental tax and import tariff. The rental tax represented \$5 million saved directly and the import tariff potentially involved millions of dollars in lost revenue for foreign retaliation against the producer-distributors. Industry scandals, especially the Arbuckle affair, were the deciding factor in convincing NAMPI's members that drastic actions were necessary. But what kind of action would be necessary to salvage the industry's sagging public image? The association with the Board of Review earlier and the declaration of the Thirteen Points in February 1921 represented two different approaches to the same problem: the proposed establishment of state censorship boards in New York and other states that did not already maintain such institutions. While the Board of Review had lost much of its credibility, and would rarely be engaged in anti-censorship campaigns in the post-NAMPI era, the idea of cooperating with reformist organizations was at the top

of Will Hays's agenda when he took office several months later in March 1922. Likewise, although the Thirteen Points themselves were never resuscitated in name, the document's provisions became the basis for most self-regulation documents produced by the industry in the 1920s, 1930s and beyond. Accordingly, it is here on the issue of self-regulation and the Thirteen Points where NAMPI's contributions to the MPPDA's future policies and tactics can be fully appreciated.

Moreover, the MPPDA continued some of NAMPI's policies in relation to exhibitors, whom it would always attempt to keep in check through collective bargaining. Theater interests challenged NAMPI in its earliest days before the U.S. involvement in the war. Yet in the aftermath of the war, NAMPI's profile had grown to such proportions that even Loew's and First National could not afford to ignore it as a forum for protecting their own vertically-integrated assets. Loew's/Metro acted as one of the MPPDA's founding members, while First National joined soon afterwards. Meanwhile, those independent exhibitors represented through their own trade organizations found that their activities were closely watched by NAMPI's members. These independents often complained of NAMPI's interference, most famously in the case of Alfred S. Black, who was voted as head of the MPEA. The subsequent fallout between producer-distributors and exhibitors who eventually formed a truly independent trade organization, the MPTOA, led to fundamental changes in how NAMPI and the producer-distributors related to one another. No longer could NAMPI use the exhibitors' trade organizations against them by spreading confusions and division amongst their ranks. With exhibitors forming their own distribution combines, NAMPI's members shifted from the former "soft power" approach to a predatory takeover of theaters, which is fully demonstrated in the FTC's investigation

of Paramount cited above. Fox, Goldwyn, Robertson Cole and others followed a similar if slightly more modest pattern in establishing vertical integration.

Having led the industry through wartime, having cooperated with government campaigns on food and war bonds, and having ensured the producer-distributors' best interests in the difficult aftermath of WWI, NAMPI had emerged as the most authoritative representative of industry interests ever devised. In particular, stabilizing the industry and achieving a level of respectability alongside other major American industries allowed the producer-distributors to draw essential funds for their expansionist agenda. Goldwyn, Fox, and Paramount all benefited from these advantages in the years after WWI. NAMPI's reorganization as the MPPDA only continued efforts on this front in coordinating the producer-distributors' interests with those of the U.S. government as well as the corporate and financial sectors. Therefore, it is best to understand the MPPDA as a continuation of NAMPI as opposed to a break from its past failures and policies. In attempting to understand the transition from NAMPI to the MPPDA, let us now turn to the MPPDA's foundation, its charter, its members, and its leadership under the very ambitious and talented Will H. Hays.

¹ *Wid's Yearbook* for 1919–1920 encapsulated editorials for and against prohibition, with the former far outweighing the latter. Most respondents argued that prohibition had led to increased receipts at the box office. For example, James D. Williams of First National claimed a 25% increase with saloons closed. See *Wid's Yearbook 1919–1920* (New York: Wid's Films, 1920).

² William Desmond Taylor's unsolved murder from February 1, 1922 contributed significantly to the scandalous atmosphere afflicting the industry and provided further impetus for the producer-distributors in reorganizing themselves as the MPPDA under Will Hays. In recent times, Taylor's murder has produced a cult following, several books, and its own newsletter titled *Taylorology*. See Robert Giroux, *A Deed of Death: The Story Behind the Unsolved Murder of Hollywood Director William Desmond Taylor* (New York: Alfred A. Knopf, 1990); Charles Higham, *Murder in Hollywood: Solving a Silent Screen Mystery* (Madison: University of Wisconsin Press, 2004); Bruce Long, *William Desmond Taylor: A Dossier* (Metuchen, NJ: Scarecrow Press, 1991); and www.taylorology.com, accessed October 1, 2010.

³ Inglis attributes NAMPI's decline in 1921 to its failure in preventing the Lusk-Clayton Bill as well as to the association's discredited status in the aftermath of Senator Myers's attack on NAMPI's political activities. See Ruth A. Inglis, *Freedom of the Movies: A Report on Self-Regulation from the Commission on Freedom of the Press* (Chicago: University of Chicago Press, 1947), 86–87.

⁴ For a brief account of Frederick Boyd Stevenson's *Brooklyn Eagle* exposé on the Board of Review, and its impact on the Progressive movement for state censorship boards, see William Sheafe Chase's *Catechism on Motion Pictures in Interstate Commerce* (Albany, N.Y.: New York Civic League, 1922): 26–27.

⁵ "Nationwide Censorship Agitation Halted by Conference with Crafts," *Moving Picture World* 49, No. 4 (March 26, 1921): 356–357.

⁶ "Censor Bill Passes Assembly; Governor is Expected to Sign it Soon," *Moving Picture World* 49, No. 9 (April 30, 1921): 936.

⁷ "At Last Co-operation is Secured: Committee of Fifteen Representing Big Majority of Producers and Distributors Combine to Eliminate Improper Pictures," *Moving Picture World* 48, No. 8 (February 19, 1921): 902.

⁸ NAMPI's "Thirteen Points" were released to the press in "Producers Take Drastic Steps to Assure 100 Per Cent Screen Productions," *Moving Picture World* 49, No. 3 (March 19, 1921): 240–241.

⁹ "Industry Splits With Reformer," *Moving Picture World* 49, No. 5 (April 2, 1921): 464.

¹⁰ "Screen Will Solve Own Problems: Outside Help Proves Too Unreliable to Be Safe and Helpful," *Moving Picture World* 49, No. 5 (April 2, 1921): 465.

¹¹ "Catholics to Hold Off on Censorship: National Welfare Council Believes Screen Will Redeem its Pledge for 100 Per Cent. Clean Pictures," *Moving Picture World* 49, No. 6 (April 9, 1921): 571.

¹² For the Production Code of 1930, see Motion Picture Producers and Distributors of America, "A Code to Govern the Making of Motion and Talking Pictures," March 31, 1930.

¹³ For coverage of the event, including speeches and commentary, see "Dramatic Scenes Are Enacted in Historic New York Senate Chamber As Brady and Griffith Lead Industry's Battle Against Censorship," *Moving Picture World* 49, No. 7 (April 16, 1921): 684–686.

¹⁴ The Board of Review declared November 12th to 18th of 1922 as "Book Week." The latter aimed to uplift motion pictures by establishing links between films and respected works of literature that they were based upon. To mark the occasion, the Board released a list of 109 films of "artistic," "dramatic," "educational," and "cultural" value that exhibitors could choose from. In particular, the list featured films adapted from children's literature. Films were chosen from all the major distributors, including Paramount, First National, Goldwyn, Vitagraph, Educational Pictures, and Hodkinson. Advertising campaigns and tie-ups were also arranged with the distributors, resulting in one of the largest events ever organized in cooperation with the Board of Review. See "Children's Book Week Scheduled for November 12 to 18," *Motion Picture News* 26, No. 19 (November 19, 1922): 2297–2310.

¹⁵ Rev. Chase was alarmed that such a powerful medium was "controlled" by individuals who supposedly did not share Christian values and beliefs. See Chase, *Catechism on Motion Pictures in Interstate Commerce*, 57.

¹⁶ "Lusk Railroads the Censorship Bill Through New York Senate at Midnight," *Moving Picture World* 49, No. 8 (April 23, 1921): 809.

¹⁷ "Censor Bill Passes Assembly; Governor is Expected to Sign it Soon," 936–937.

¹⁸ "Censorship Compromise Formally Offered Governor Miller By Industry's Leaders; Spokesmen for Producers to File Brief and Serious Consideration is Promised," *Moving Picture World* 50, No. 1 (May 1, 1921): 34–35.

¹⁹ "Text of Proposition Submitted Miller Entailing No Hardship Upon Industry," *Moving Picture World* 50, No. 1 (May 7, 1921): 37.

²⁰ For Cohen's decision to step down from the New York leadership in order to concentrate his efforts on the MPTOA's national role, see "Charles O'Reilly Succeeds Sydney Cohen as Leader of New York Exhibitors," *Moving Picture World* 49, No. 7 (April 16, 1921): 689.

²¹ "Courts Will Pass on Constitutionality of New York Censorship Law, Says Hess," *Moving Picture World* 50, No. 4 (May 28, 1921): 379.

²² "Miller Signs New York Censorship Bill; Reconsiders Intention of Naming Woman," *Moving Picture World* 50, No. 4 (May 28, 1921): 378.

²³ *Ibid.*, 379.

²⁴ "The War Begins," *Moving Picture World* 51, No. 8 (August 20, 1921): 779.

²⁵ "We Call on All the Industry: Exhibitors, Distributors, Producers, Trade Papers and All Elements are Urged to Participate," *Moving Picture World* 51, No. 4 (July 23, 1921): 390.

²⁶ "Plan to Begin Fight on Censors," *Moving Picture World* 51, No. 8 (August 20, 1921): 780.

²⁷ "Freedom for the Screen Committee Formed to Fight Censorship," *Moving Picture World* 52, No. 1 (September 3, 1921): 39.

²⁸ For Myers's U.S. Senate Resolution against NAMPI, see "Asks U.S. Senate to Probe Screen's Politics," *Moving Picture World* 52, No. 2 (September 10, 1921): 149.

²⁹ "New York Voters Defeat Thirty-Five Assemblymen Who Voted for Censorship," *Moving Picture World* 53, No. 4 (November 26, 1921): 389.

³⁰ "Industry's Decision to Enter Politics Comes Like Bomb to New York Assembly," *Moving Picture World* 52, No. 1 (September 3, 1921): 36–37.

³¹ "Congress to Act Soon on Revenue Bill: No Repeal of Three Big Industry Taxes," *Moving Picture World* 51, No. 8 (August 20, 1921): 786.

³² *Ibid.*

³³ The Senate Finance Committee's version of the Revenue Bill restored the freight taxes to 50% of previous levels.

³⁴ "N.A.M.P.I. Marshalls Forces for Fight Over Taxes With Senate Finance Group," *Moving Picture World* 52, No. 1 (September 3, 1921): 38.

³⁵ "Senate Agrees to Exempt Admissions of Ten Cents or Lower from Taxation," *Moving Picture World* 52, No. 5 (October 1, 1921): 515–516.

³⁶ "Millions of Dollars are Saved Industry as Senate Finance Committee Removes the Film Rental Tax," *Moving Picture World* 52, No. 8 (October 22, 1921): 878–879, 884.

³⁷ See "'Who Won 5% Film Rental Tax Repeal?' Controversy Brings Answers from Both Sides," *Motion Picture News* 25, No. 2 (December 31, 1921): 226; "Let These Men Be Praised," *Moving Picture World* 52, No. 8 (October 22, 1921): 876; and Reed Smoot, letter to William A. Brady, December 15, 1921. The latter, along with its accompanying article, "Truth About the Film Rental Tax Is Found in Letter from Smoot to Brady," was printed in *Moving Picture World* 53, No. 7 (December 31, 1921): 1040–1041.

³⁸ "Tax Repeal Victory Now Definitely Won," *Moving Picture World* 53, No. 5 (December 3, 1921): 521.

³⁹ Rogers brief for the Senate Finance Committee is quoted and reproduced in "Saul Rogers Explains Stand Against Proposed 30% Ad Valorem Duty," *Motion Picture News* 25, No. 4 (January 14, 1922): 497.

⁴⁰ *Ibid.*

⁴¹ "Agree on Film Tariff: Senate Committee Changes Rates in the Fordney Bill," *New York Times* (April 5, 1922).

⁴² For France's retaliatory measures against U.S. film imports, culminating in the quota system in effect until 1934, see Jens Ulff-Møller, *Hollywood's Film Wars with France: Film-Trade Diplomacy and the Emergence of the French Film Quota Policy* (New York: University of Rochester Press, 2001). According to Ulff-Møller, France sold out its film industry to the Roosevelt administration by removing quotas in 1934 in exchange for reduced tariffs affecting its wine exports to the U.S. See 61–62.

⁴³ "Senator Walker Insists We Are in Danger of Trustification," *Moving Picture World* 50, No. 6 (June 11, 1921): 595.

⁴⁴ The MPTOA initiated meetings with Paramount that dealt with the producer-distributor's granting of franchise licenses to Alfred S. Black. See "Sub-Committee and Zukor Confer Regarding Hartford-Black Controversy," *Moving Picture World* 52, No. 1 (September 3, 1921): 41–42. For a description of the MPTOA's special committee that dealt with exhibitor complaints against Paramount, see "Sydney Cohen Notifies Famous Players Reparations Committee Has Been Named," *Moving Picture World* 51, No. 4 (July 23, 1921): 393.

⁴⁵ The FTC's investigation of Paramount concluded in July 1927 with its Cease and Desist Order (see Chapter 9), and the case against Paramount was officially closed with the Circuit Court of Appeals ruling in 1932, but most of the evidence considered was from the period before 1925.

⁴⁶ See *Federal Trade Commission v. Famous Players-Lasky et al.*, Complaint (August 30, 1921), Docket 835, 4–10. Trade papers also reported on the FTC’s complaint. For example, see the paragraph-by-paragraph summary of the FTC’s claims against Famous Players-Lasky/Paramount in “Restrain of Trade Alleged Against Famous Players-Lasky by Government,” *Moving Picture World* 52, No. 2 (September 10, 1921): 155, 168.

⁴⁷ *Federal Trade Commission v. Famous Players-Lasky et al.*, Answer to the Amended Complain, Docket 835, 1–6.

CHAPTER SEVEN:
THE MPPDA'S FOUNDATIONAL PERIOD
(JAN 1922 – DEC 1924)

The Motion Picture Producers and Distributors of America (MPPDA) filed its incorporation papers on March 11, 1922. Its by-laws were subsequently adopted at a board meeting on April 7, 1922. The MPPDA's founding members included many of NAMPI's most prominent members: Paramount, Fox, Universal, Vitagraph, Goldwyn, Loew's/Metro, Educational Film Exchange, Select Pictures, and Joseph M. Schenck Productions.¹ These members had secured the services of Will H. Hays on January 17, 1922 for a three-year term beginning on March 5.² As NAMPI itself had only lasted six years, there were no long-term plans for Hays or the MPPDA. No one present at the April meeting could have predicted that Hays would ultimately serve as MPPDA president for over two decades until 1945, when he was replaced by Eric Johnston and the renamed Motion Picture Association of America (MPAA).³ By playing a crucial role in the MPPDA's foundational years, Hays became indispensable to the MPPDA's public image and to its ability to marshal political, institutional, and civic resources in the service of producer-distributor interests.

The original contract between Hays and the MPPDA was signed only a few days after President Warren Harding had announced that he would not prevent his cabinet member from leaving the position of Postmaster General.⁴ As the correspondence between the two men demonstrates, Hays had developed a very close relationship with the President, one that was both professional and personal.⁵ This association would

become all too clear at Harding's untimely death in August 1923, when Hays did his best to console the First Lady Florence Harding and her family. As head of the Republican National Committee, Hays had played an important part in engineering Harding's 1920 election victory and he continued to be involved in Republican affairs, even as his new obligations precluded his direct involvement in partisan politics. Hays gave the producer-distributors a direct link to the White House and to the backstage machinations of the Republican Party, both of which would prove essential to defending industry interests in the 1920s.⁶ In fact, at the time of Harding's death, the President had planned a visit to Hollywood where he was scheduled for studio tours and meetings with industry leaders.⁷ With roots in Sullivan, Indiana and participation in state and national Presbyterian affairs, Hays also bestowed credibility on the industry amongst reform organizations, whose cooperation was essential to the MPDDA's anti-censorship and self-regulation activities in the 1920s. Hays brought with him impeccable credentials, which were marred only slightly by the Hays & Hays law firm's association with the Teapot Dome Scandal that broke out in April 1922.⁸ Most importantly, as evidenced by his speeches during his tenure as MPPDA president, Hays's ability to reconcile corporate interests with Progressive Reform demands made him the ideal candidate for heading the new and transformed NAMPI. NAMPI's members for their part realized that Hays was an experienced campaigner with the extensive political and reformer connections necessary for lobbying on the industry's behalf, especially when it came to censorship, industry regulations, corporate interests, and exhibitor relations.

In hindsight, it is possible to identify a transitional period between October 1921, when the NAMPI members began contemplating the new organization in the aftermath of

the Arbuckle scandal, and April 1922, when the MPPDA was incorporated and established as a replacement association. Industry correspondence and the MPPDA's own documents demonstrate that its name was in use for several months before its official incorporation date.⁹ In other words, the MPPDA was already functioning as a parallel startup association during the same period that NAMPI's operations were winding down. As noted at the end of the last chapter, there were several reasons why NAMPI was replaced by the MPPDA. NAMPI's failure to derail the Lusk-Clayton Censorship Bill in the New York State Legislature was a significant factor, as was the renewed interest in federal regulation and censorship proposed by the likes of Senator Henry Myers (D-Montana) and Rev. William Sheafe Chase of the Society for the Prevention of Crime (amongst other positions he held). During this transitional period between NAMPI and the MPPDA, Rev. Chase testified in front of the Senate Judiciary Committee on the need for federal "regulation" of the motion picture industry.¹⁰ He noted how in 1921 the Federal Trade Commission had begun investigating Paramount for antitrust violations only a few days after Senator Myers had called for an investigation of the industry's involvement in politics. According to Rev. Chase, this action proved that federal intervention was necessary for proper regulation and oversight of the motion picture industry. Rev. Chase also recalled the previous attempt at federal regulation in the Hughes Bill of 1915 (See Chapter 2), which was sponsored by the House Committee on Education but died from inaction in the House itself. He warned that four or five men controlled the U.S. film industry and accused these individuals of using their position to espouse political views to bolster industry-friendly candidates. According to Chase, the producers' political activities undermined American democracy. Chase's and Myers's

separate but related calls for federal regulation over the motion picture industry required an adroit response. As far as NAMPI's members were concerned, only an individual like Will Hays could manage such a challenge.

Beyond the threat of federal regulation and need to prevent and repeal state censorship laws, there was also the incentive to replace William Brady by an individual better suited for the position. Brady had long complained about his position. His yearly threats to resign the NAMPI presidency were a continuing nuisance to the organization and its public relations interests. As a long-time producer and distributor, Brady had intimate knowledge about the industry and had connections with its major players. Through their cooperation with the U.S. government on patriotic activities in the years during and after the Great War, Brady and NAMPI had established themselves as indispensable to the White House and to Congressional leaders. In turn, NAMPI had been granted privileged status as an industry representative. But that is where Brady's usefulness ended. Beyond the industry itself, Brady could muster few important connections. What significant relations he maintained were all but exhausted with the end of Wilson's second term in 1920. With Republicans now in charge of the White House and aiming for control of the House in the next election, Brady was the wrong man to represent the industry. Moreover, Brady and NAMPI were tied together for the entire existence of the organization. By replacing both of them with a new leadership and new organization, the industry was sending a strong message that its approach and policies were undergoing radical change. Plagued with scandals in the press and calls for regulation on Capitol Hill, NAMPI wanted policymakers and the American public to believe that it heard the demands for reform and accountability. Additionally, as Brady

had attempted to bring exhibitors under the NAMPI umbrella only to be refuted by the association's own members, any new rapprochement between the two industry factions would undoubtedly benefit from the credibility that Hays bestowed on the MPPDA.

Finally, the Arbuckle affair and the public's response to the scandal gave urgency to producer-distributor efforts in bringing new leadership to their association. For example, in late September, the New York Theater Owners Chamber of Commerce (TOCC) went on record against the exhibition of Paramount's Arbuckle comedies.¹¹ Fearing that such bans could be extended throughout the country, producer-distributors recognized the need for direct action in order to prevent any harm to Paramount's and the industry's public image. After all, such reformer calls for censorship would surely not end with Paramount or Arbuckle, but would encourage similar bans throughout country that targeted a wide variety of distributors and films.¹²

While NAMPI had many shortcomings, there were also several elements of the association that the MPPDA preserved and enhanced, not the least of which were the incessant campaigns against federal, state, and municipal censorship and the various attempts to affect regulation on issues such as taxes and tariffs. As noted in the previous chapter, NAMPI continued its activities to March 1922 and was able to defeat the Fordney Tariff Bill during this transitional period. Furthermore, at a NAMPI meeting on January 20, 1922, eleven of the major distributors entered into agreements to establish FILM Boards of Trade, along with the accompanying Hoy Reporting Service, in nineteen distribution centers located in eastern and central states.¹³ You will recall from previous chapters that FILM's expansion was one of NAMPI's major achievements. As one of the final actions at a NAMPI committee meeting, this latest expansion and consolidation of

distributor control over exchanges was emblematic of the membership and goals of the MPPDA founders, who were intent on maintaining leverage over exhibitors. At the same time, the same NAMPI members involved in FILM's latest push for control over distribution and exchanges signed a new contract with Will Hays under the MPPDA and assigned executives to the new organization. Under the new organization, the attempt to extend FILM's authority was reinforced with the plans to implement a Uniform Exhibition Contract on exhibitors, a process I cover later in this chapter.

Aside from FILM's expansion, other continuities between NAMPI and the MPPDA included the organization of committees devoted to specific issues of concern, including fire regulations, safe standards, distribution/exhibition contracts, the star system, production economies and standards, labor issues, import and export laws, financial standardization, and banking. Most significantly, just as NAMPI had worked with reform organizations and the National Board of Review, the MPPDA established the Committee on Public Relations headed by Colonel Jason Joy. The MPPDA also planned a campaign to defeat upcoming censorship bills in Massachusetts and other states, while working on repealing the existing censorship board in New York. Accordingly, this chapter will explore the MPPDA's activities for its first few years as well as its efforts to position itself as a successor organization to NAMPI. Simultaneously, it will be important to outline how the MPPDA's actions paralleled and benefited the producer-distributors' growing consolidation over the U.S. film industry just as NAMPI's activities and its conflict with exhibitors had facilitated and encouraged the vertical integration of such companies as Paramount, Loew's/Metro, First National, and Fox up to 1922.

Although we have few documents that demonstrate an internal debate amongst NAMPI members regarding the kind of association that was to replace NAMPI, the MPPDA's by-laws lay to rest any doubts about its purpose and affiliation. Curiously, these by-laws contrasted with its official stated purpose, which was simply to uplift films, promote cinema's entertainment and educational value, and guard against censorship:

The object for which the corporation is to be created is to foster the common interests of those engaged in the motion picture industry in the United States by establishing and maintaining the highest possible moral and artistic standards in motion picture production, by developing the educational as well as the entertainment value and the general usefulness of the motion picture, by diffusing accurate and reliable information with reference to the industry, by reforming abuses relative to the industry, by securing freedom from unjust or unlawful exaction, and by other lawful and proper means.¹⁴

The key line in the MPPDA's stated objectives is "to foster the common interests of those engaged in the motion picture industry." The rest of the paragraph is perfectly transparent insofar as it declares the MPPDA's main purpose as anti-censorship. Yet whose "common interests" were at threat here? Surely, the MPPDA's statement did not represent the entire industry? Already, as we have seen in the events described in Chapters 1 and 2, there were exhibitors who were in favor of state and federal censorship. As far back as 1915, some exhibitors had supported the Hughes Bill for federal censorship and others had opposed the manufacturers on *Mutual v. Industrial Commission of Ohio*. Many exhibitors believed that official censorship from above relieved them from having to deal with local ordinances and bans that could disrupt their business. Thus, "common interests" referred not to the entire industry, but to a limited

and powerful group of producer-distributors who capitalized on the threat of censorship in order to expand their control over distribution and exhibition.

In this vein, the MPPDA only continued NAMPI's efforts in entrenching producer-distributor interests at the expense of exhibitors and independents. Most blatantly, exhibitors were excluded from membership, and those exhibitor-distributor concerns that did join such as Metro/Loew's and later First National signaled that their vertically-integrated concerns were best protected amongst an association with producer-distributors. For example, in betraying his allegiances during this transitional period, Marcus Loew warned his fellow exhibitors that exhibitor booking combines only aggravated the producer-distributors and would result in distribution combines with the ability to dominate the industry.¹⁵ Loew's pronouncement could easily have been an ominous warning to exhibitors and independents regarding the reinvigorated association of producer-distributors they were shortly to face in the MPPDA oligopoly. While NAMPI purported to represent the entire industry through its various inclusive membership classes, the MPPDA's membership classes excluded all exhibitors and supply and equipment manufacturers, with the later and important exception of Eastman Kodak:

- Class A—Consisting of producers.
- Class B—Consisting of distributors of motion pictures.
- Class C—Consisting of individuals appointed by members of Class A.
- Class D—Consisting of individuals appointed by members of Class B; and
- Class E—Consisting of other individuals.

Classes A and B, which were comprised of corporations and individuals, represented the Board of Directors for the association, while classes C and D, consisting

of appointed individuals, were eligible for the Executive Committee. Any member of Class A or Class B had an equal number of votes—equal to the total number of vacancies—to cast for a representative in the respective Classes of C and D. Under this system, Classes A and B were not eligible to vote at regular meetings of the organizations, with the exception of the first annual meeting.¹⁶ At this initial meeting, the members of Classes A and B were to elect their individual representatives in Classes C and D respectively, who henceforth would exercise their membership at all subsequent meetings of the organization. At the time of incorporation, there were five Class A members and thirteen Class B members of the Board of Directors: Albert H.T. Banzhaf, Philip G. Bartlett, Rufus S. Cole, Benjamin P. DeWitt, William Fox, Frank Godsol, D.W. Griffith, Will H. Hays, Siegfried F. Hartman, Karl Kirchway, Harry G. Kosch, Carl Laemmle, Marcus Loew, Saul E. Rogers, J. Robert Rubin, Lewis J. Selznick, George A. Skinner, and Adolph Zukor. These eighteen individuals were also members of Class E because they had acted as the association's incorporators and were thus automatically enrolled as members. In order to join the association as a member of Class A or B, however, a company required a vote of approval by the majority of the members.

The MPPDA could thus limit and expand further membership beyond its original eighteen founders as it deemed most beneficial to the incorporators' interests. In this way, it recalled the Edison Trust's attempts to limit producer-distributor membership in an exclusive association. The MPPDA likewise achieved a similar goal by limiting further membership and reserving for those original members exclusive representation. In addition to the original members, the only major film concerns not a part of the organization were Eastman Kodak and First National. The former applied for and was

granted membership in March 1923, at the same time that it announced a reduction of one quarter cent per foot in negative costs.¹⁷ Eastman's inclusion was highly welcome by the members since it gave them effective traction against independents and exhibitors who otherwise might oppose the MPPDA's producers and distributors. It also provided a welcome infusion of cash that the MPPDA relied on for balancing its finances in 1923.¹⁸ In return, the MPPDA members helped to protect Eastman Kodak's monopolistic position in the production of raw film stock by lobbying on its behalf. The MPPDA's advocacy for Eastman Kodak manifested itself in laws against flammable film stock in both the U.S. and Canada.¹⁹ Since Eastman Kodak was then the only U.S. producer of non-inflammable film stock, or acetate, such laws aided and abetted its monopolistic control over raw stock manufacturing.²⁰ Indeed, at the time that its membership application was accepted in March 1923, the FTC was one month away from filing an antitrust complaint against Eastman Kodak and its sales agent and distributor, Jules E. Brulatour. The FTC claimed that Eastman Kodak manufactured and sold 94% of all raw film stock produced in the U.S. and 96% of all raw film stock used in the U.S. up to March 1920.²¹ According to the FTC, between March 1920 and September 12, 1921, Eastman Kodak's share of total sales declined to 81% due to competition from importers. In response, Eastman Kodak and Brulatour incorporated new laboratories and concerns such as San-Jacq and Paragon and used the newer companies to reassert their monopoly over manufacturing and sales of raw film stock in the U.S. They also conspired with several other firms named in the FTC's case to withhold competing film stock from the U.S. marketplace. Having already set a precedent in its relationship with the MPPC and NAMPI previously, Eastman Kodak joined the MPPDA so as to continue a tradition of

protecting its monopoly against smaller competitors. A relationship with the producer-distributors would allow Eastman Kodak to marshal the MPPDA's resources against the FTC's impending complaint and investigation. Brulatour himself had served important positions in NAMPI, including Chairman of the Supply and Equipment Division and NAMPI Treasurer.²² Not surprisingly, Kodak personnel continued to play an important role in facilitating coordination between the producer-distributors and Eastman Kodak under the new association.

Likewise, First National, realizing the value of MPPDA membership for the purposes of securing distributor advantages against exhibitors and its own competitors, joined the MPPDA as a Class B member on October 16, 1922. First National had remained on the sidelines for six months until it realized that the organization under Will Hays was capable and adept at organizing efforts on behalf of the producer-distributors. The MPPDA, for its part, had selected First National for recruitment into the organization as early as June 1922.²³ At this point, whatever sacrifices First National was making by alienating exhibitors and independents were outweighed by the advantages offered in the MPPDA's exclusive membership. With First National's successful bid for membership in October 1922 and Eastman Kodak's inclusion in March 1923, the MPPDA within one year of its founding could claim truly to represent all the most powerful forces in the U.S. film industry. Furthermore, by the end of 1924, in order to bolster its position in the industry, the MPPDA had created an "Associate Membership Plan" that allowed smaller producers like Rork Productions and Ritz Carlton to join the organization without all of the voting privileges enjoyed by most members.²⁴ Such provisions for associate or "second-class" membership allotted benefits to smaller concerns and independents who

deferred to the MPPDA's authority on industry matters. The MPPDA's tiered membership was thus a de facto embodiment of oligopolistic hierarchy, insofar as the largest concerns had the best representation. During the same period, in December 1924, the MPPDA even considered expanding membership to the public so as to turn the industry's enemies into its friends. The plan here was to undermine the impetus behind censorship by encouraging public participation in the organization's betterment activities.²⁵ While the public membership idea was never implemented, it reveals that the MPPDA ruminated on public participation in its affairs as a tactic that went beyond the affiliation with reform organizations. It also reveals that the MPPDA was ultimately a guarded institution with exclusive rights for its most powerful members.

However, such exclusive representation came at a cost. For the fiscal year of March 5, 1922 to March 4, 1923, the MPPDA had set a budget of \$349,250, with \$235,000 of that sum allocated for salaries.²⁶ Contrary to press accounts, Hays was not receiving \$150,000 per year.²⁷ Rather his salary was \$115,000, which was still very high for such an office in the year 1922 and easily exceeded his previous salary as Postmaster General.²⁸ His new employers also provided for his costly living expenses in Manhattan. More controversially, the MPPDA's assistants and secretaries were not paid anywhere near the amount that Hays received. The highest salaried employee next to Hays was Courtland Smith with \$30,000, and the next highest in line were Hayes, Thomas Patten, and Charles Pettijohn, each at \$12,000. Yet the correspondence in these early years between Hays and the MPPDA staff as recorded in the Will Hays Papers shows that the latter were indispensable to the organization. After all, they were the ones who understood the industry and provided crucial recommendations to Hays on every topic

that the association dealt with in its early period. Hays's salary thus reflected the abovementioned reasons for his tenure, including his political clout and his experience in running political campaigns. For what they paid, therefore, the MPPDA members received the best advisors and political advocate that money could buy in the 1920s. The MPPDA's costs were also divided among the members based on representation level and a sliding scale for assets and profits.²⁹ Larger and more successful firms who were full members paid more than smaller ones, whether full members or not. In this way, the MPPDA's finances reflected the association's institutionalized embodiment of a hierarchy of motion picture interests and their oligopolistic hold on the American film industry.

As with NAMPI, the MPPDA also made provisions for "Affiliated Organizations" (Article IV). The most important affiliates covered in this chapter include FILM, which as mentioned continued a NAMPI tradition, the Motion Picture Producers' Association, and the Committee on Public Relations, whose formation and activities are essential to understanding the MPPDA's anti-censorship efforts and its attempts to ally itself with reform organizations. These organizations and their specific affiliations with the MPPDA will be explored in their respective sections below.

Beyond the Board of Directors and the Membership Classes, the MPPDA's original organizational structure assigned four Officers (President, Secretary, Treasurer, and Assistant Treasurer), an Executive Committee consisting of Directors of Class B, a Finance Committee consisting of the Treasurer and two directors, and the following Standing Committees that continued the work of their NAMPI predecessors: Membership, Censorship, Film Theft, Transportation, Public Relations, Foreign

Relations, and Law. By no means was this a rubberstamp organization. Its president had veto power over all decisions made by the various committees and the Board of Directors. A majority vote by the members was required to overrule the president's veto. This was one of the key differences between the MPPDA and its predecessors, the Motion Picture Board of Trade and NAMPI, since their officers had no such veto power in member affairs. Along with the much higher salaries, the greater authority bestowed upon the MPPDA's executive and officers translated into respect for the organization. In assigning the organization's executives and assistants, Hays surrounded himself with capable and loyal individuals such as the former president of the American Press Association, Courtland Smith (Executive Secretary, New York), and his former secretary, Julia Kelly (Secretary, Washington Office). Other notables on the MPPDA staff included Thomas G. Patten (the MPPDA's Hollywood representative), J. Homer Platten (Acting Treasurer, New York), Charles Pettijohn (Chief Counsel, New York), and J.S. Connolly (Head of the MPPDA's Washington Office).

As the above list suggests, the MPPDA reaffirmed NAMPI's presence in the executive headquarters of the industry, New York, as well as its production center in Los Angeles. Significantly, however, it added an office in Washington, D.C. The necessity of responding to challenges and opportunities in Congress and in the White House required a permanent representative in the capital and such an office gave the MPPDA a much more effective means of engaging with federal policy on the motion picture industry. Meanwhile, the MPPDA's Hollywood office under Thomas Patten was tasked with equally important responsibilities in its first few years. This office had a role in the formation of the Hollywood Studio Club, a YWCA project that aimed to uplift the

industry's image by giving prospective actresses a safe and reputable place of residence. It also established an organization affiliated with the MPPDA, the Association of Motion Picture Producers (AMPP), which coordinated more closely with film producers on the West Coast who were afraid of labor agitation and unionization amongst studio employees. As a Progressive Reform organization that collaborated with American industry, the Young Women's Christian Association (YWCA) believed that the interests of traditional morality and the demands of modern business were compatible and had to be promoted together. Of course, the YWCA's funding depended on this congruence. For its cooperation with the MPPDA, the YWCA in turn exacted a steep price not only for funding of the Hollywood Studio Club building and premises, but also for its various projects around the country.

The MPPDA's need to cooperate with reform organizations and public affairs associations after the Arbuckle scandal dovetailed with Paramount's own better films movement through its subsidiary, Southern Enterprises. As with the other major interest in the U.S. film industry, including First National, Fox, and Metro/Loew's, Paramount's plans for theater expansion and its consolidation over theater interests could hardly advance without the guarantee of minimizing the censorship effects on box office profitability. The urgency of the censorship threat to the studios' bottom line encouraged the establishment of the Committee on Public Relations (CPR), which was a component of the MPPDA itself but with autonomous leadership and decision-making protocols for its affiliated members.³⁰ To lay the foundations for the CPR, Hays invited over 100 of the nation's educational, civic, religious, and welfare organizations to a preliminary meeting on June 22, 1922.³¹ There, the invited delegates and the industry discussed matters of

concern to the MPPDA, including the ways to improve films and the possibility for advancing the production, distribution, and exhibition of educational, religious, and semi-educational subjects without infringing on the rights of commercial exhibitors.³² The results were highly encouraging for the MPPDA and for the industry. Much of this success was due to the MPPDA's ability to situate the context of the debate.

As the opening remarks by H. Turner Jones of the Paramount-owned Southern Enterprises theater chain made evident, the discussion was geared towards specific issues. Of particular concern was the production of educational films and the need to create both desire and support for better films amongst the public.³³ Jones outlined the work of the National Committee for Better Films in bringing together women's organizations in the southern states of Tennessee, Alabama, and Florida for the purposes of improving motion pictures and audience tastes and for defeating censorship measures. States with Better Films Committees included California (28), Kansas (6), Maryland (5), Massachusetts (29), New York (55), Ohio (29), and Pennsylvania (15).³⁴ Together these organizations were part of a Better Films movement consisting of 973 better films committees, civic organizations, religious groups, and educational institutions that received literature and information from the central offices of the National Committee for Better Films. 625 local communities throughout the U.S. had coordinated children's programs and films with their respective exhibitors. In addition, the National Committee for Better Films published a list of films promoted for their educational value and had been cooperating with the National Board of Review, of which it was a subsidiary. Jones suggested that the CPR would likewise serve as an example to local associations and

affiliates around the country. Unbeknownst to Jones's audience, however, there were ulterior motives embedded in Southern Enterprises' project.

As expressed in his contemporaneous four-part series on "Public Relations" published in *Motion Picture News*, Jones believed that commercial advertising and film betterment were coterminous: they were both extensions of a singular activity.³⁵ Jones suggested that fight against censorship was merely another dimension of promotional activity, the purpose of which was to sell Hollywood films to the world. The key to this strategy lay in securing the public's goodwill by proactive engagement with legislation, disseminating favorable information, organizing opposition to censorship, and achieving what Jones called "personalization" for corporate identity and branding: "a corporation is readily classified as dishonest, overbearing, insolent . . . people are not so quick to falsely classify or believe ill of a person." By marshaling civic, religious, and educational associations in the cause of "educational propaganda" and by creating personalized brands for the audience, the industry could shield itself against censorship and other forms of destructive regulation. A private correspondence from Jones to the National Board of Review exposed the motives behind this strategy: "The full significance of Better Films Committees is not recognized at first glance. The organization and proper functioning of one of these Committees means that we have organized our old opposition and are capitalizing their efforts and energies, once exercised against us, to 'sell' our pictures for us."³⁶

Without knowing the subtext to Southern Enterprises' Public Relations Office and its "propaganda" objectives, speakers representing civic, religious, and educational groups expressed their support for Jones's position as stated in his opening remarks.

Subsequently, the delegates tailored their suggestions to the framework established by the MPPDA and its representatives. Instead of laying blame for the industry's image problem at the industry's own doorstep, speakers like Girl Scout President Louise Henry Hoover (Mrs. Herbert Hoover) acknowledged "three positions in the problem": the necessity for educating the public in discriminating tastes, the need for encouraging better films at the source of production, and the demands that the exhibitor book these films at the theaters.³⁷ Some participants like Hugh Frayne of the American Federation of Labor also came out resolutely against any form of compulsory censorship.³⁸ New York State Senator James J. Walker, representing New York's Theater Owners Chamber of Commerce (TOCC), offered a familiar rebuttal of censorship when he claimed that if it had been successful then there would be no need for expanding it at the present time as the screen would already have been cleansed.³⁹ Walker also described how children bribe strangers to obtain entrance into theaters that otherwise are forced to ban them.

Rather than focusing on the negative aspects of films, however, most of the MPPDA's guests touted the educational potential for films. Speaking for the National Health Council, Dr. H.E. Kleinschmidt acknowledged that exhibitors were not keen on educational films and doubted their box office potential.⁴⁰ He suggested that producers develop educational films with greater commercial potential so that exhibitors would be more likely to book them for their theaters. Following up on these suggestions, David S. Beyer of the National Safety Council argued that industrial and educational films had not been developed to their full potential and that the industry ought to develop these areas further. Meanwhile, the YWCA representative, Nelen Davis, offered an anecdote about

her trip to India that underlined the industry's global reach and global responsibility as an educator for women's advocacy in places as far as "the Orient."⁴¹

At the conclusion of the meeting, three representatives, Lee F. Hanmer (Dept. of Recreation, Russell Sage Foundation), Mrs. Oliver Harriman (President, Camp Fire Girls), and Charles A. McMahon (Editor, National Catholic Welfare Council Bulletin), were chosen to form a committee of 15 to 25 for a permanent organization. The new organization was tasked with implementing the goals set out in the MPPDA's articles regarding the betterment and uplifting of motion pictures. Structurally, it included a 1) A General Committee; 2) A Committee of Twenty chosen from the former; 3) A Committee of Five that functioned in between the larger meetings of the organization; and 4) An Executive Officer selected by the Committee on Twenty. The purpose of the Committee on Public Relations was stated in an internal document from June 1922:

The establishment of a channel of inter-communication between the motion picture industry and the agencies instrumental in forming, representing, and interpreting public opinion.

The Employment in a constantly larger degree of motion pictures as a force of citizenship and a factor of social benefit;

The development of wholesome cooperation between the public and the motion picture industry;

And, in general, the furtherance of constructive methods for the definite application of a sympathetic interest in attaining and maintaining high standards of art, of entertainment, of education and of morale in the motion pictures.⁴²

By July, a Committee of Twenty had been formed that included representatives of the following organizations: Community Service, General Federation of Women's Clubs, the American Federation of Labor, Russell Sage Foundation, Camp Fire Girls, National Congress of Mothers and Parent-Teachers Associations, The Boy Scouts of America, The Girl Scouts, The American Legion, Daughters of the American Revolution, the YMCA,

the YWCA, The Women's Trade Union League, and the Federal Council of Churches of Christ in America.⁴³ Adding to the provisions above from June, two more key objectives were now listed under the description of the CPR's purpose. These were made public in the CPR's official press release in September 1922:

The aiding of cooperative movement instituted between the National Education Association and the motion picture producers to direct the making of pedagogic films and their effective employment in the schools.

The encouragement of the effort to advance the usefulness of motion pictures as an instrument of international amity, by correctly portraying American life, ideals and opportunities in pictures sent abroad, and the proper portrayal of foreign scenes and persons in all productions.⁴⁴

The second imperative should sound familiar from NAMPI's pledge on the government's Americanization campaign in 1919 (see Chapter 5) and was merely a continuation of earlier attempts to legitimize the industry by aligning it with a cause championed by the federal government. All the studios were supportive of such cooperation since it benefitted the industry greatly and was neither costly nor divisive. The first provision, however, was much more controversial and had the potential to create deep rifts between producer-distributors, who wanted to appease educational groups that demanded greater support for educational films, and exhibitors, who feared that the spread of such films amongst schools, churches, and civic institutions threatened commercial film exhibition by creating a parallel industry.

Hays himself reflected these concerns when he wrote to the CPR Executive Committee regarding the need for a balanced approach to the problem.⁴⁵ He suggested that while pedagogic films intended for exhibition in America's schools were not a primary concern, the status of semi-religious and semi-educational films was much more controversial. Hays noted that, in developing an organized supply and demand for the

latter types of films, limitations had to be recognized as theater owners paid taxes, rental fees, and charged premium admission prices. This was unlike religious and educational institutions, which were exempt from such monetary and financial burdens. Hays reasoned that the public's interest had priority of all the groups involved in the issue. Nonetheless, he believed that the interests of all had to be considered. To maintain fairness, Hays stated that the market for semi-religious and semi-educational films had to be developed with these concerns in mind. In protecting commercial viability, Hays was not simply protecting the exhibitors. Rather, Hays was ensuring that reformer demands were countered by the industry's economic wellbeing, including the interests of the MPPDA members that were heavily invested in commercial theatres. From the beginning, therefore, the relationship between the MPPDA and the CPR's various reform groups reveals that there was an attempt to balance the economic concerns with cultural demands inherent in such an affiliation. Therein lay both the strengths and the weaknesses of such an alliance.

According to the MPPDA, the organizations affiliated with the CPR represented over 11 million Americans, thus rendering their participation in MPPDA self-regulation a great boon to the industry's public image.⁴⁶ The process by which these organizations agreed to join and the terms by which they pledged to cooperate with the MPPDA involved extensive negotiations. Correspondence between the MPPDA and the Federal Council of Churches, along with the latter's own publications from June and July 1922, for example, suggests that the MPPDA sought out the Federal Council because of its balanced and pragmatic approach to censorship and regulation. A series of four articles by Charles N. Lathrop of the Social Service Commission of the Federal Council made

several key conclusions on the motion picture industry and the exhibition of films that greatly pleased the MPPDA members.⁴⁷ Lathrop claimed that until the “blue law” mentality of censorship advocates and reformers was abated, there would be no improvement in motion picture conditions. He argued that individuals differed widely in regard to what they believed were acceptable standards and that “moralists fail to realize that realistic art is not necessarily immoral because of its frank and intimate treatment of elemental life situations.”⁴⁸ According to Lathrop, betterment could only follow educational development: “the prevalence of the bad picture is due to the prevalence of bad taste and low morals.”⁴⁹ In shifting the emphasis from producers to exhibitors, educators, and audiences, Lathrop seemed to be shifting the responsibility from producer-distributors to the exhibition and reception side of the industry. Nevertheless, in his concluding study Lathrop insisted on the need for “social control” over the industry and acknowledged the need for regulating films at their source in production and distribution. The only question was what kind of control was required. Although Lathrop failed to provide a definitive answer to his own question over regulation, he suggested that cooperation between civic and religious organizations and the film industry was one method that might prove productive. In this way, by emphasizing what is “good” rather than suppressing what is “evil,” and by addressing motion pictures not as evil and troublesome but as instruments of education, Lathrop believed that the project for uplifting motion pictures could be much more successful.

Following Lathrop’s reports, and Hays’s invitation to join the CPR, the Federal Council of Churches offered to cooperate based on a list of demands communicated to the MPPDA on July 11, 1922, just ten days after Lathrop’s last report.⁵⁰ The most

important requirements for the Federal Council were that the producer-distributors help to promote the Federal Council's humanitarian work through newsreels and that the MPPDA secure development in the field of educational films. In addition, the Council insisted that its representatives not be required to pass judgment on individual films. Instead the Federal Council desired to set general guidelines for motion picture production and deal with problems before production had begun on any films that might be problematic.

Negotiations between the civic groups and the MPPDA continued throughout the summer of 1922. By September, the Committee on Public Relations was a functioning organization under the authority of an Executive Committee and "Colonel" Jason S. Joy, who was formerly the executive secretary of the American Red Cross. At this time, Hays wrote to Albert Warner of the great importance he saw in the relationship between the MPPDA and the various civic organizations whose cooperation was essential to defending the industry against censorship threats from states, municipalities, and the federal government.⁵¹ He urged Warner Bros. and the MPPDA to acquiesce to the Committee of Twenty's demands. As part of their contract with the MPPDA, the Committee of Twenty required facilities for preview screenings of films slated for release by MPPDA members, was responsible for communicating back to the members any concerns about illicit content (instead of making such oppositions public and available to the press), and was to promote those films that it deemed acceptable to social standards and exemplary of cinematic art.⁵² Once granted these provisions, the CPR could pass judgment on a variety of censorship issues relating to the industry from individual films to public scandals. Yet the producer-distributors members of the MPPDA and its

executives seemed to have maintained a slightly underestimated conception of the CPR's assigned powers and authority. According to Hays, the arrangement for the MPPDA members was entirely voluntary and any producer-distributor could withhold films from the CPR or ignore its advice entirely.⁵³ Despite Hays's assurance regarding the CPR's limits to infringe on member releases, however, not all MPPDA members were pleased with the results. Warner Bros., which had already voiced its doubts and had been in negotiation with Hays over the CPR matter, complained about the impossibility of appeasing twenty different viewpoints and organizations and suggested that audiences would reject moral lessons in films if they felt any "preachment."⁵⁴ Some reform groups that remained outside the proceedings also registered their opposition and criticized Hays for acting as a "puppet" of the industry, as exemplified in a cartoon clipping from Hays's own files (Figure 7.1).

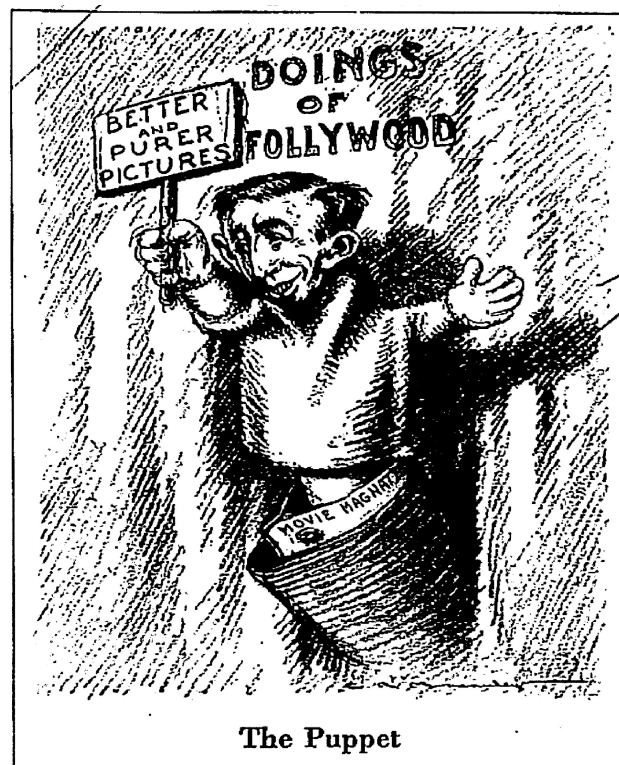


Figure 7.1: "The Puppet" (February 1922), Will Hays Papers.

Puppet or not, Will Hays had bent the CPR members and the MPPDA members into an uneasy and bumpy alliance over the summer of 1922. But what exactly was the relationship between the two factions? Was the CPR simply subservient to the MPPDA, as a YMCA representative and member of the CPR's Executive Committee complained in January 1923?⁵⁵ There are important indications that this was not the case. Why else would these organizations continue to participate in CPR affairs? The CPR's General Committee, which was comprised of civic, religious, and educational organizations, had remained strong at 62 after its first six months in operation. Collectively, these members represented 60 million Americans, according to the CPR's statistics. Meanwhile, the CPR's Executive Committee included 17 organizational members who voted on daily affairs. After the first six months of its operations, a CPR report noted the following accomplishments and advantages that the industry had gained in establishing such an organization.⁵⁶ It stated that the committee facilitated communication between the public and the industry by submitting comments, suggestions, and criticism to the industry. In turn, the CPR communicated information on commendable films to the public and conveyed the challenges that the industry faced in its betterment campaign. The CPR claimed that it had reviewed 128 pictures and promoted its views to its members and had mailed out 385,000 copies of motion picture related literature. The Executive Secretary's correspondence alone amounted to 35,652 letters and his conferences with representatives of different organizations numbered around 500. This was a staggering amount of activity in such a short amount of time and it demonstrates the commitment that the CPR's members had to its success. If they were unsatisfied with industry relations, they certainly did not show it in the first six months of the CPR's operations.

Yet the honeymoon phase between the MPPDA and the CPR came to an end when the two organizations confronted a stark reality at the beginning of 1923. Internal cracks in the CPR and tensions between the two organizations arose in early January 1923 on the occasion of the MPPDA's reinstatement of Arbuckle in his capacity as film producer and showman. Responding to the increased unease as a result of Arbuckle's return to the film industry, Hays held a meeting with the CPR's Committee of Twenty on January 4, 1923.⁵⁷ He gave an impassioned speech on the need for Christian forgiving and for allowing Arbuckle to make a living in the motion picture industry as a producer. Hays noted that Paramount had forgone an \$800,000 investment on three Arbuckle films that were withdrawn at the time of the scandal in September 1921. He suggested that the industry had done its part for the public good and that Arbuckle's return in a behind-the-camera capacity was no cause for alarm but rather a basis for celebrating the notion of Christian redemption. For their part, the CPR representatives listened to Hays respectfully and were very polite and diplomatic in their responses to him, even though it was obvious that the CPR's future as an extension of the MPPDA's public outreach was now in doubt. The CPR committee expressed a wide range of opinions and approaches, with most suggesting that Arbuckle not be reinstated in any substantial capacity and certainly not in a way that would feature him as an onscreen presence. Only Hugh Frayne of the American Federation of Labor argued that Arbuckle had been acquitted and must be treated as an innocent man with full rights to return to his previous career as an actor and comedian.⁵⁸ At the other extreme, Julius Barnes of Chamber of Commerce was completely dissatisfied with the CPR's operations. He wanted neither to censor nor to be censored by the MPPDA. Consequently, Barnes offered his resignation and complained

that the committee was merely a façade for a \$500 million industry with a significant investment to protect. Following up on Barnes's analysis, Dr. Charles H. Judd of the National Education Association noted that the CPR could not hope to influence events in the industry without the proper machinery for censorship implementation. Since Arbuckle films were most popular with America's youth, the CPR believed that it was best that an individual like Arbuckle not be allowed to return to filmmaking lest children were left with the wrong impression about the consequences of misbehavior. Arbuckle may have been acquitted by the courts of the crime of manslaughter, but the litigation had greatly affected the court of public opinion. For example, the press had reported unflattering details about Arbuckle's "bacchanalian" lifestyle, a term that was repeated in the CPR meeting. In speaking for the majority, Mrs. Woodallen Chapman of the Federation of Women's Clubs summarized the committee's position: "Every man has a right to earn a livelihood, but we would not go to the extent of rehabilitating a man at the expense of the nation."⁵⁹ This consensus produced a resolution that acquiesced to Arbuckle's role as a producer of films but never again as an actor in a motion picture.⁶⁰ As the proceedings demonstrated, the MPPDA got exactly what Hays wanted in this particular case, but it was not without compromise and negotiation. The CPR was far from a rubberstamp extension of its MPPDA organizers and its head, Colonel Joy, was not simply another MPPDA employee.

Most significantly, while the MPPDA continued to cooperate with the Board of Review, the CPR's founding gave the producer-distributors another avenue for establishing reformer oversight over their films and it expanded what NAMPI had begun with the Thirteen Points document. The MPPDA now had an official and more effective

mechanism in place for self-regulation. Instead of censoring films, however, the CPR's review process highlighted and identified the films that it deemed deserving of recognition for artistic and moral quality.

(CHECK ✓ FOR YES; MARK X FOR NO)

Title Bella Donna Stars Pola Negri
 Producer George Fitzmaurice Name of Person Seeing F.C.T.
 Director _____ Date of Seeing 3/16/23

Type: (1) Drama ☒ Check Mid: Society _____ Domestic _____ Romantic _____ Rural _____ Comedy-drama _____ Historical _____ Literary _____ Religious _____ Western _____ Northwestern _____ Crook _____ Melodrama _____ Tri-angle _____ Bed-Room Farce _____ Other _____
 (2) Short Comedy _____ (Legitimate _____ Slapstick _____ Bathing Girl _____ Bed-Room _____ Other _____)
 (3) Travel or Scenic _____ (4) News _____ (5) Magazine _____ (6) Educational _____ (7) Other _____

General Theme of Film Amplified & thick & long
 Recommended for selected list of better films? Yes _____ No _____ Remarks _____

Suitable for Juv. (under 12) _____ Youth (12 to 16) _____ Family (*) _____ Adults Only ☒

(Check for more than one group, if applicable to where shown.)
 (*) Pictures for family may be of two kinds: (1) Those suitable for persons of all ages, who go as a group, including children; (2) Also those which may be somewhat mature for the younger members of the family, but which will do them no harm if proper explanation of the play is made to them by the adult members who accompany them.

Outstanding Merits (1) _____
 Or Outstanding Defects (1) plot _____
 Cuts in scenes or wording you would recommend _____
 (Try to identify part of film in which proposed cut occurs, as beginning, middle, near end; or, better yet, by the number of the reel when this is possible.)
 Advertising (Lobby Display, Newspaper, etc.) Satisfactory? Yes _____ No _____ Remarks _____

IMPORTANT MERITS	IMPORTANT DEFECTS
1. Clever, entertaining ☒ interesting	1. Crime, vice or underworld major theme of plot
2. Good and Consistent Plot ☒	2. Criminal or vicious made heroes
3. Fine Acting ☒	3. Detailed methods of crime or vice
4. Artistic and Superior Directorship ☒	4. Cabaret _____ Revelry Scenes _____ Improper Dancing _____ Bathing Girls _____ Unnecessary Bed-room or Bath-room scenes
5. Excellent Photography ☒	5. Brutality, esp. harrowing struggles
6. Appropriate Titles ☒	6. Grottesque details
7. Good Taste ☒	7. Indecency _____ Immorality _____ Vulgarity _____ Suggestiveness
8. Imaginative ☒	8. False ethics, values or ideas of life
9. Fine Character Portrayal ☒	9. Ridicule of social institutions or groups, e. g., home, marriage, laws and their officers, clergy, teachers, etc.
10. Wholesome	10. Arousing prejudice, esp. race and relig.
11. High Ethical Standards	11. Unwholesome details in order to arrive at good moral
12. Of educational or instructional value	12. Inane plot or treatment
13. Accurate in	13. Encourages gambling in horse-racing or prize-fighting
(a) Adaptation from known or well-known story - op. <u>Adm. Director</u>	14. Bar-room scenes
(b) Manners and customs of time	15. Other _____
(c) Standards of class portrayed	
(d) Facts shown, esp. scientific	
14. Other _____	

Please use other side if you do not have space enough on front of sheet.

Figure 7.2: *Bella Donna*, (George Fitzmaurice, 1923), CPR Review Form (March 16, 1923), Will Hays Papers.

When films like Paramount's *Bella Donna*, starring the screen siren Pola Negri, failed to meet the CPR's standards (Figure 7.2), the film would simply be left off the "better films" list. Unlike the National Board of Review's system for its "review cards," where specific scenes were listed for trimming or modification, here no editing or censorship was required and no films could be "rejected" or "accepted with eliminations." Even though there was a small section for listing "proposed cuts," the

reviewer did not identify anything other than the general problem with the plot. In this particular case, no repercussions were instituted other than a proverbial slap on the wrist for Paramount's salacious advertising materials, which claimed that the film had sex allure and involved a seductive and illicit love affair between Negri and Conway Tearle.⁶¹ Despite its ceremonial function, the CPR's scorecard for the film is revealing in many aspects since it demonstrates that the reviewer found "immorality," "improper dancing," "detailed methods of crime," "false ethics," "bad taste," and "ridicule of social institutions." Thematically, the film is described as "Vampire and Christ stuff." Many of the specific concerns, such as the stipulations against religious disrespect, criminal portrayals, and racial prejudice delineate a tradition between NAMPI's Thirteen Points (1921) and the MPPDA's codification of the same provisions in its 1930 Production Code. By creating separate categories for *Juveniles* (under 12), *Youth* (12 to 18), *Family* (Children Accompanied by Adults), and *Adults Only*, the CPR's review process encouraged studios to target their films to specific audiences and demographics if they wished to avoid unnecessary censorship and regulation. Alternatively, the broadest distribution was possible if a film was deemed appropriate for all audiences including *Juveniles*. Unfortunately for the studios, this aspect of the CPR's activity was discontinued under Hollywood's succeeding self-regulatory regimes, notably the Studio Relations Committee and the Production Code Administration. A national rating system based on age demographics in American cinema was not implemented until 1968 with the MPAA's Code and Rating Administration (later the Classification and Rating Administration). But for now in this early MPPDA era, the CPR's review process offered a temporary boost to the MPPDA's public image campaign.

With the new relationship providing dividends on the MPPDA's anti-censorship, betterment, and public image campaigns, the MPPDA began to doubt the need to maintain any association with the Board of Review, especially after the latter's Executive Secretary, W.D. McGuire, passed away in 1923. In an April 1923 memo to Hays, Courtland Smith argued that the continued association with the Board of Review was hurting the MPPDA's efforts to repeal state censorship.⁶² Smith believed that the industry's sponsorship of a censorship body such as the Board of Review legitimized the concept of censorship and hurt the MPPDA's chances of winning a repeal of the New York censorship bill. Indeed, the producer-distributors' financial support for the Board of Review had always been based on preventing censorship in New York and in other states. When New York implemented a state censorship board in 1921, it left the industry with the need to formulate a new strategy.

Beyond organizing the Committee on Public Relations, therefore, the MPPDA's anti-censorship efforts in its first few years confronted the threat of established and proposed censorship boards in states such as New York and Massachusetts respectively. As the former is an early example of the MPPDA's failure in overturning NAMPI-era legislation, and the latter an example of its success in preventing newer censorship legislation, the two campaigns demonstrate limits and possibilities for MPPDA action. Turning first to the MPPDA's success in Massachusetts allows us to gauge the association's extensive efforts in organizing a political campaign to defeat the censorship referendum in that state.

During the summer of 1922, the MPPDA became increasingly concerned with the Motion Picture Bill that had been passed by the Massachusetts State Legislature in its

1921 session. Subsequently, the bill was signed by Governor Channing H. Cox, and was now scheduled for public referendum in the November midterm elections. The referendum itself was the work of NAMPI's campaign for 25,000 signatures filed on August 23, 1921 in Boston to prevent the Motion Picture Bill from becoming law on January 1, 1922.⁶³ With NAMPI's earlier work having forestalled the bill, the MPPDA staff member Jack Connolly now made several recommendations to Hays about how to proceed.⁶⁴ He suggested coordinating with Women's Clubs, teachers' representatives, and religious groups. In addition, Connolly thought it was important to send out publicity through the press that made their case effectively. Previous attempts to enact censorship in Massachusetts had failed under opposition from former Governor Calvin Coolidge, who had vetoed a similar measure in the 1919 Legislative session. But this round was very different. For the first time, the public itself was going vote on an issue of film censorship. Referendum #3, as it was known, was the result of public protests against the censorship bill's legislative enactment, and offered a rare opportunity to defeat state censorship through public debate and participation. For the MPPDA, the circumstances of this bill and its acceptance or rejection by the public were of great importance. The industry had long argued that censorship boards were unrepresentative of public interests and desires. Here finally was a chance for the MPPDA to prove the industry's own rhetoric by working to defeat the measure for a bill that enacted a censorship board not unlike the ones already in place in Pennsylvania, Ohio, Kansas, Maryland, New York, and Virginia. The only difference with Massachusetts proposal was that it called for a one-man board instead of three as in the case of New York, for example. By defeating the Massachusetts Motion Picture Bill, the MPPDA would be well-placed to take on other

such threats in country and it would also arm itself ideologically for undertaking a repeal of New York's censorship board.

According to the Massachusetts Motion Picture Bill's sponsors and supporters amongst the civic and reform organizations comprising the State Committee on Motion Pictures, its purpose was to ensure that Massachusetts uphold its own standards of decency and that the state "stand[s] strongly for the standards of the family, upon which all civilization is based."⁶⁵ The State Committee's pamphlet, which was distributed to newspapers and organizations throughout Massachusetts and that reprised standard reformer complaints against cinema, asserted that next to the home, the church and the school, the motion picture exerted the greatest influence on youth.⁶⁶ It complained that supposed mechanisms in place for censorship were ineffective, since the National Board of Review had no federal jurisdiction and was compromised because of its industry funding. The pamphlet also offered an assessment of Will Hays's effectiveness. It suggested that although Hays is a respectable individual, there is no guarantee that his organization can control the distribution of all films, especially by non-members. There is also no assurance that the MPPDA members will continue to uphold their stated goals and standards when Hays is no longer associated with their organization. In short, the Committee on Motion Pictures believed that Massachusetts had to establish its own guarantees for motion picture "decency" and that it could not rely on industry self-regulation under the National Board of Review or the MPPDA.

Opposing the Massachusetts Committee on Motion Pictures was the Committee of Massachusetts Citizens Against Censorship. The latter was opposed to censorship on constitutional grounds of free speech and free expression and wary of the financial

burdens associated with a censorship board. During the fall of 1922, its chairman, Charles H. Cole was in contact with the MPPDA and the two organizations created a highly effective campaign to ensure the public voted against the bill in the November 7 referendum.⁶⁷ Together they organized over 100 film salesmen and publicity representatives, sending out detailed instructions under “Plan of Campaign” and “Instruction to Field Men.”⁶⁸ Their mission was to coordinate all local activities and publicity in 386 towns and 38 cities of Massachusetts. The MPPDA’s Charles C. Pettijohn was instrumental here in organizing industry representatives throughout Massachusetts. By studying state politics, voting habits, and likely outcomes of the other referendums on the ballot measure in every region of Massachusetts, the MPPDA and the Committee Against Censorship produced a highly sophisticated and detailed account of what would be required to defeat the measure.⁶⁹ By sponsoring a citizens’ group to lead the fight against censorship, the MPPDA could operate outside the limelight, thus deflecting any accusations that the industry was usurping the public’s voice in the censorship debate. An October trade press report on the Massachusetts anti-censorship campaign, for example, made no mention of the MPPDA’s efforts or support, giving credit exclusively to Cole and the Committee Against Censorship.⁷⁰ For their cooperation in the campaign, the MPPDA reassured the Committee Against Censorship that the producer-distributors were committed to the betterment of motion pictures and listed the educational films that the MPPDA members had recently produced.⁷¹ In attempting to affect the public debate further, the MPPDA reached out to newspapers in Boston and Springfield, with the result that it secured opposition to censorship from most of the papers in these markets.⁷²

When the Massachusetts results produced 208,252 for censorship and 553,173 against, the MPPDA read this as a sign of its own capabilities to organize a successful campaign, even though political circumstances in the state had favored such a result.⁷³ For example, Massachusetts' own version of the Volstead Act was also defeated, suggesting that voters who turned out to oppose prohibition also opposed curtailing and censoring entertainment as both were assaults on individual freedoms. Nevertheless, despite the auspicious conditions, Hays's experience in running political campaigns was paying off and his national stature in federal and state politics carried significant weight amongst allies and enemies of the industry. Indeed, Hays boasted in a letter to New York State Senator Theodore Douglas Robinson that the referendum on censorship produced more "No" votes than the votes that Governor Cox received on the same ballot: Cox received 464,873, which was 88,300 fewer than the "No" votes on Referendum 3.⁷⁴ Numerically, the outcome revealed that the censorship issue was if not the most important then the most decisive on the ballot, thus giving the industry's public image a major boost. *Motion Picture News* characterized the momentous event with a heading that befitted the industry's own rhetoric on censorship: "The Public Speaks."⁷⁵ With the Massachusetts victory behind them, the MPPDA members could now turn to another significant fight with a state censorship board. The difference was that this board was already established and causing the industry much grief in increased costs. It also had the potential to effect regulatory legislation in other states. For these reasons, the MPPDA place a high priority on repealing New York's censorship bill, which had now cost the MPPDA members a premium on distribution.

As listed above, there were several state censorship boards in operation in 1922, but New York was particularly troublesome because it represented the industry's largest marketplace for distribution and exhibition. It was for this reason, for example, that the National Board of Review was based in New York, because a film edited for national distribution and one affixed with the National Board's seal of approval was first and foremost required to pass New York's exhibition and distribution laws. Ever since its enactment, however, the New York Motion Picture Commission had displaced the industry-sponsored Board of Review as the most important national and local arbiter of film censorship.⁷⁶ As far as the MPPDA was concerned, the Motion Picture Commission was thus an albatross around the industry's neck. Yet the same November election cycle that defeated censorship in Massachusetts promised hope for the industry in that it returned Albert E. Smith to the New York Governorship after the tenure of Governor Nathan Miller, who had signed the Motion Picture Commission into law in 1921. You will recall that Smith in his previous term as New York Governor had opposed censorship and was identified as one of the industry's most reliable allies in the halls of government anywhere in the United States. With Smith back as governor, the MPPDA had a reliable ally in pursuing one of its founding goals: to eliminate state censorship entirely from the map of the United States. The Committee on Public Relations and its affiliated national organizations provided the necessary legitimacy to argue for industry self-regulation. Meanwhile, the earlier defeat of the "Clean Books Bill" gave the industry false hope that anti-censorship efforts would produce results for a medium not protected by First Amendment rights.⁷⁷ Now Smith's return provided the occasion to push for the repeal of New York censorship, which commenced in the 1923 legislative session and

culminated in the following legislative session with the introduction of the Davison Bill in March 1924.

Unfortunately for the MPPDA, the results in these two separate legislative sessions were not so positive. At least some of the blame can be placed on hubris. As early as March 1923, the MPPDA correspondence shows complacency on the issue. Here the staff discussed the New York censorship repeal as if it were already something that the organization had achieved.⁷⁸ They did not consider failure a likely possibility. Despite the fact that the MPPDA worked extensively in coordinating its anti-censorship message with the press, and had managed to align 526 of the state's 556 newspapers in support of its cause, it had miscalculated the political complications and long-term effects of its partisan support in past and recent state elections, where the industry's association with Democratic candidates was demonstrated in blatant terms.⁷⁹ Even the industry's appointment of Hays could not undo that image of a Democrat-aligned industry. So entwined were industry's interests with partisanship that, as part of his election platform, Governor Smith had promised to help repeal New York's censorship board. Subsequently, during the 1923 legislative session, Smith's Democratic supporters responded to his call and to the MPPDA's lobbying efforts. At this point, Senator Walker introduced a Senate bill to repeal New York's censorship commission and Assemblymen O'Connor and Cuvillier introduced their own respective repeal measures in New York's Assembly. But Republicans and the supporters of the Motion Picture Commission, including Rev. Chase, were able to stymie these plans in the 1923 session based on testimony from a key witness.⁸⁰ As the March 6 debate over these anti-censorship measures demonstrated, the Motion Picture Commission attempted to portray itself an

effective institution that responded to public demands for regulating films that it had already passed or censored. Its Chief Censor, Commissioner George H. Cobb, claimed that just over the last year the Commission had made 3490 eliminations and faced only 54 appeals.⁸¹ Of these 54 appeals, a measly 6 were settled in the Court of the Appellate Division. According to Cobb, what opposition the board had faced was primarily from producers of indecent films. Here Cobb blamed the MPPDA specifically for protecting producer-distributors who had failed to maintain decency standards. He also attacked Hays personally for providing legitimacy to these violators: “And the great regret that I have is that the organization which Mr. Hays represents will lend aid to those renegades in the business and the men of lowest standards in living to put on their nasty screen pictures before the children of this country.”⁸² This failure to enact proper censorship at home, Cobb argued, had led nations like England, Spain, Japan, and Germany to establish censorship boards to deal with the same American films that he considered objectionable. Cobb’s testimony to the committee provided the political clout required to defeat the MPPDA’s anti-censorship measures. It was apparent that the MPPDA had enemies in many corners. Significantly, however, the exhibitors represented by the MPTOA still supported the producer-distributor position on censorship. MPTOA president Charles O’Reilly actually provided the most insightful critique of Cobb’s position when he reminded the committee that countries that censored and banned American did so primarily out of fear for American values and American commercial dominance.⁸³ Contrary to Cobb, O’Reilly believed that Hays and the MPPDA were to be praised for their work in enhancing the work of Americanization in places like China and the Far East. O’Reilly’s rebuttal was simply not enough to change the tide of the proceedings,

which in this particular case had exposed the MPPDA's lack of an effective strategy. The MPPDA simply had not considered the impact of the Motion Picture Commission's testimony regarding the account of its successes and its responsiveness to public demands. The producer-distributors had always maintained that censorship boards represented autocratic and anti-democratic institutions.

Beyond the MPPDA's overconfidence and miscalculation in the 1923 campaign, however, the association made a fundamental tactical error in the next legislative session when it sponsored the various amendments to the New York Penal Code under the Davison Bill in the hope that these provisions would render the censorship commission obsolete and redundant.⁸⁴ This tactic was reminiscent of NAMPI's earlier attempt to preempt censorship by sponsoring an amendment to the Penal Code that placed films alongside books in considerations of public decency. As the producer-distributors had already attempted through earlier trade organizations, including the Board of the Trade and NAMPI, the MPPDA was keen to shift the burden of censorship to theater owners and exhibitors exclusively. The Penal Code thus modified would address film exhibition and hold exhibitors responsible for indecent films shown at their theaters. This brought out opposition to the MPPDA's tactics from the MPTOA and its new president M.J. O'Toole, who expressed his organization's opposition to the Davison Bill for the very reason that it was a calculated effort to target theater owners in place of producers and distributors. In a blunt letter to the bill's sponsor, Frank Trubee Davison of the New York Legislature, O'Toole accused the MPPDA of trying to modify the New York Penal Code to suit producer-distributor interests.⁸⁵ Instead of unifying the producer-distributors and exhibitors in a common fight against New York's censorship board, the MPPDA had

multiplied the potential avenues of litigation that could be utilized to ban or censor films in the state. By supporting modifications to the New York Penal Code it further alienated the MPTOA and the exhibitors at a time when their cooperation was necessary for repealing New York's censorship bill.

With its anti-censorship campaign having succeeded in Massachusetts and several other states (Missouri, Idaho, Texas, Indiana, Minnesota, Michigan, Oregon, Oklahoma, Arkansas, Tennessee and Nebraska), but failing in New York, where a repeal bill never gained the traction that it needed in a Republican dominated legislature, the MPPDA was still in a precarious position.⁸⁶ To add to the local and state censorship challenges, the industry had to face the specter of a renewed effort on the federal level when Rev. Chase and Congressman William Upshaw (D–Georgia) sponsored the Upshaw Bill (H.R. 6821) in the 68th Congress spanning 1923–1925. Chase, whose pro-censorship activities were noted earlier in the chapter, was president of the New York Civic League and a future member of the Federal Motion Picture Council, an organization that lobbied for federal censorship upon its founding in July 1925. Beginning in 1923, Rev. Chase was involved in organizing annual motion picture conferences in Washington, D.C., where he articulated the need for federal regulation of motion pictures.⁸⁷ It was at one of these conferences on January 17, 1923 that the National Conference of Churches endorsed a federal bill for motion picture censorship.⁸⁸ Subsequently, Chase and Upshaw attempted to introduce it into Congress, but failed to get hearings until the next Congress in 1926. This failure, however, did not deter Chase in the meantime. Rev. Chase regularly published articles such as “Cleansing the Screen in New York State” from Henry Ford's controversial *Dearborn Independent*.⁸⁹ In these accounts, the reverend cited reports from

the New York Motion Picture Commission and the Chicago Board of Motion Picture Censorship to prove that films were getting worse and not better. According to these reports, eliminations regarding filmic incidents of incitement to crime, immorality, and indecency were on the rise, suggesting to Chase that censors were efficiently cleansing the screen at the same time that films were getting worse. Noting this trend, the reverend argued that the industry had failed on every single one of its promises and innovations for film betterment, including the National Board of Review, the Thirteen Points, and the appointment of Will Hays. Chase's public pronouncements and publications repeated his standard accusations against the industry: it was controlled by only a few men, some of whom had come under direct antitrust investigation by the Federal Trade Commission.⁹⁰ By implementing federal regulation, therefore, the government could wrest control of the industry away from this oligopoly and allow for independents in all branches to operate freely and openly.⁹¹

Accordingly, the Upshaw Bill called for the creation of a Federal Motion Picture Commission along with the appointment of six individuals not aligned with either political party. Their duty would have been to regulate films before they reached America's movie screens. Specifically, the commission would be tasked with interfering at the script stage and by granting licenses to finished films. The commission would also have the authority to regulate the industry on a variety of matters not directly related to censorship, including distribution and exhibition licenses. With the Upshaw Bill, the ties between censorship and antitrust again manifested themselves as they had throughout the history that we have been covering. These interconnections expose the producer-distributors' fight against censorship as one that was also waged in support of oligopoly.

To the MPPDA's relief, the Upshaw Bill never gained any traction in the 68th Congress or in the subsequent Congressional session when hearings were held on its merits in April 1926.⁹² Nevertheless, its introduction into the national debate had an immediate impact on the MPPDA's strategy.

Whatever assurances Hays and the MPPDA had given civic groups that complained about film adaptations in the 1923–1924 season, it was apparent by the May 1924 announcements for the upcoming season that the industry had resumed its old and controversial practices.⁹³ Consider, for example, the following list of films announced by Paramount as scheduled for release during the period of August 1924 to January 1925, with specific emphasis on salacious titles and sexual innuendo: *Manhandled*, *Changing Husbands*, *Unguarded Women*, *The Enemy Sex*, *Compromised*, *Sinners in Heaven*, *Open All Night*, *The Female*, *Wild Moments*, *Forbidden Paradise*, *Worldly Goods*, *The Cave of Fallen Angels*, *The Coast of Folly*, and *Playthings of Fire*.⁹⁴ Compounding the problem was the fact the 1923–24 season was anticipated as the most costly yet in Hollywood history, with *The Film Daily* anticipating \$100 million in combined studio production costs.⁹⁵ In such a climate, where novels and stories clearly not flattering to the industry's public image were readily available and adapted to the screen, and where so much was at stake in investment and production costs, there arose a need for regulating the practice of filmed adaptation, or at least appearing to do so. The result was an MPPDA standard for adaptation of source materials deemed appropriate for theatrical screens in the United States.

"The Formula," as it was later known, was approved and signed by the MPPDA's Board of Directors on June 19, 1924. Its goals were stated in a brief paragraph:

To prevent the prevalent type of book and play from becoming the prevalent type of picture . . . to avoid the picturization of books or plays which can be produced only after such changes as to leave the producer subject to a charge of deception; to avoid using titles which are indicative of a kind of picture which could not be produced, or by their suggestiveness seek to obtain attendance by deception . . . and to prevent misleading, salacious or dishonest advertising.⁹⁶

Drafted one month after release of a 1924–1925 schedule for films that hardly exemplified the commitment to film betterment, the Formula was in many ways an attempt to cover the industry's tracks and preempt further conflagration with reformers and the CPR. On the surface, the Formula appears to have been instigated at the behest of Hays himself, who was responsible for its original draft on May 24, 1924.⁹⁷ Yet the Formula was also the product of a significant internal critique. An MPPDA board meeting from June 16, for example, featured a spirited argument amongst William Fox, Adolph Zukor and several other representatives of the major producer-distributors on the issue of film titles.⁹⁸ Specifically, the meeting was energized when Fox challenged Hays to provide the members with guidance and leadership, which he believed was lacking. Fox noted that every member company was failing to maintain MPPDA standards. This led to a discussion about the machinery required to implement the Formula. As noted by Fox, the problem was that salacious titles and the advertising that went along with them were monetarily lucrative. At the same time, such films were detrimental to the industry's standing amongst reformers. The solution, argued Fox, was that every company had to be held to the same standards in advance of the upcoming season so that no distributor had an advantage over any other. When Zukor and others suggested a permanent committee, however, Fox rebutted that no committee could possibly overview more than

650 scenarios per year. H.O. Schwalbe of First National also opposed such a measure because his company did not exercise control over every single producer. Having reached an impasse on the machinery for the Formula's implementation, the MPPDA deferred on this essential issue. Nevertheless, the members were reluctant to go back to the reformers empty handed. Therefore, throughout the summer of 1924, the resolution was circulated to other industry organizations, including the affiliated CPR and AMPP, and the non-affiliated Associated Motion Picture Advertisers, the Western Association of Motion Picture Advertisers, the Associated Advertising Clubs of the World.⁹⁹ It was also sent to West Coast Theatres, Inc., a powerful western chain of theaters. These organizations also signed the resolution along with West Coast, thus making it a binding agreement between the MPPDA and its allies in the industry and beyond. According to Hays, the Formula's implementation prevented over 100 optioned books and plays of questionable character from reaching the screen during the course of its first year in operation.¹⁰⁰ Despite these formal agreements and pronouncements, however, the Formula's full effect was not felt until several years later. At this point, the founding of the Studio Relations Committee in 1927 and the drafting of the "Don'ts" and "Be Carefuls" document gave the MPPDA an institutional framework within which to engage in studio negotiations. Without this regulatory framework, the Formula was to remain more of a symbolic gesture than anything else. These later developments are examined in Chapter 9, which covers the period in question. For now, we must turn to some of the MPPDA's other activities in its foundational period.

Aside from censorship concerns, labor affairs regarding studio employees and contract issues between producer-distributors and exhibitors were two other areas where

the MPPDA's efforts were focused in its early period. These issues were especially significant in early 1920s at a time when the studios periodically announced cost-cutting measures and production freezes to deal with the exorbitant production costs and salaries that now afflicted studio filmmaking.

With regard to the labor conflict between studios and contracted employees, the problems began specifically in the summer of 1921, when a so-called "slump" plagued theater attendance and decreased attendance to levels lower than usual for the summer. In actual fact, the decline of admissions tax and the simultaneous rise of rental tax numbers prove that while exhibitors were suffering, the producer-distributors were actually making more money on rentals relative to the overall box office than in 1920 (Figure 3). For 1921, the rental tax numbers were assessed at 5% value, or \$5.9 million, of \$118 rentals. As these taxes represented fixed rates, the discrepancy between lower admissions and higher rentals could only be attributed to higher percentage rental fees normally assessed at around 25–30% of the overall box office.

Admission Tax Returns for 1921 Show Slump While Rental Tax Shows Marked Increase

THE Government figures on admission and rental taxes for the year 1921 are now available. The comparative table submitted below gives the figures by months for 1920 and 1921:

	Admission Tax	
	1921	1920
January	\$7,120,905.18	\$6,707,768.87
February	7,802,776.65	6,166,685.79
March	7,863,785.52	7,085,123.74
April	7,415,568.82	7,033,006.97
May	7,152,375.71	6,623,188.64
June	7,362,487.61	8,338,017.18
July	5,822,972.80	6,463,422.49
August	5,926,818.88	6,879,323.58
September	6,066,936.09	7,369,476.73
October	6,413,426.11	7,932,042.40
November	6,995,338.48	7,982,248.61
December	6,689,702.00	8,363,708.00
Totals	\$82,633,093.85	\$86,944,013.00

	Rental Tax	
	1921	1920
January	\$593,137.22	\$412,979.11
February	470,909.21	295,923.07
March	614,286.92	565,854.47
April	419,177.55	296,800.40
May	442,016.31	389,295.04
June	621,153.50	564,282.29
July	503,431.51	359,077.85
August	538,292.42	654,464.55
September	315,151.16	465,446.03
October	388,616.56	533,472.17
November	567,055.39	383,542.52
December	429,504.00	451,375.11
Totals	\$5,902,731.75	\$5,372,512.61

Figure 7.3: *Motion Picture News* (February 18, 1922).

Nevertheless, using the decreased box office as a pretense for action, NAMPI's producing members organized through a local trade association, the Motion Picture Producers' Association (MPPA), and announced an across-the-board wage decreases in order to cut production costs.¹⁰¹ In founding the MPPA, the studios aimed to preserve Hollywood's open shop status by responding to labor demands in a way that sustained their collective interests.¹⁰² Subsequently, on July 8, 1921, the MPPA implemented a new wage scale and overtime rule.¹⁰³ Universal, for example, made a 12.5% reduction in wages, reducing the hourly wage for the average skilled worker from \$1.00 back down to \$0.875. This reduced rate reflected the original wage before the studios had implemented a voluntary raise in September 1920 in response to labor demands.¹⁰⁴ Likewise, at Goldwyn studios, skilled workers, including sheet and metal workers, painters, ironworkers, plumbers, steamfitters, plasterers and engineers, were now paid at the lowered lower hourly rate of \$0.875.¹⁰⁵ With the new wage scale came a new overtime rule, where regular wage was extended to 10 hours.

In response to the MPPA's action, the Central Labor Council organized a strike. According to Central Labor, the new wage and overtime rules reduced wages by one to three dollars a day, which was unacceptable to the skilled technicians and laborers who lived in a city with such high living costs.¹⁰⁶ In a union letter and pamphlet released in December 1921, Central Labor's Secretary Treasurer, John S. Horn, identified four studios in particular as the main culprits for wage scale reduction and anti-union policies: Famous Players-Lasky (Paramount), Fox, Goldwyn, and Universal.¹⁰⁷ Horn argued that the studios were trying to implement an open shop town while ignoring union demands for negotiation.

A few months after this incident, by the time Hays and the MPPDA took over in March 1922, only one studio, Vitagraph, had a fully unionized workforce and only one other, Universal, had made compromises with unions.¹⁰⁸ At Famous Player-Lasky studios, for example, executives estimated that 50% to 90% of the studio had fallen under the control of the unions at two periods in recent history.¹⁰⁹ During this time, the union representatives called strikes and implicated workers who otherwise might not support them. In a letter released on May 1, 1922, Central Labor reminded the industry that the strike was still on, that it had caused major disruptions to production, and that labor needed to keep pressure on the “big four” studios and the MPPDA.¹¹⁰ When the studios attempted to neutralize the strike by declaring it over in June, Central Labor again released a letter insisting that they would continue to protest as long as the studio workforce received 12% to 25% less than union wages.¹¹¹ According to a Paramount letter to Hays in July, union representatives had become increasingly dictatorial. Paramount warned that this behavior would only worsen if the unions should find themselves in power. To complicate matters further, the International Association of Theatrical Stage Employees (IATSE) and the United Brotherhood of Carpenters and Joiners of America (UB) had both claimed jurisdiction. Nonetheless, Paramount insisted that the labor troubles were contained and that union power was often resisted by their workers. Instead of acquiescing to Central Union’s labor demands or the demands of any other union representatives, Paramount believed that the industry had to isolate the labor leaders from their followers.

With the strike threatening Hollywood’s “open shop” status, Hays and the MPPDA made a concerted effort to reach out to studio employees at an early stage in the

organization's history. As part of "Hays Week" in the last week of July 1922, Hays addressed a crowd of over 30,000 studio employees, dignitaries and movie fans at the Hollywood Bowl in an atmosphere befitting a political convention.¹¹² During this unprecedented event, which was the first such mass gathering of the industry, the entire studio machinery in Hollywood had been brought to a standstill. Studio workers had been let out early at 3 o'clock so that they could attend the meeting. These workers were assigned roped-off sections of the Bowl. With each studio that Hays listed in his opening remarks, the hundreds of employees associated with that company rung bells, used sirens and, in the case of Loew's/Metro, set off canons on distant hilltops to celebrate their studios' achievements. In his hour-long speech, Hays reassured a boisterous crowd that he was not a "dictator" or "czar" as some press reports had claimed. He praised the Hollywood community and called them to action in defeating censorship and producing uplifting films. Hays acknowledged that he did not yet know the motion picture industry as well as he knew the American people, but that he was learning. He suggested that they could only defeat censorship by removing the cause for censorship. Only by cooperating could the industry and all of its employees ensure the betterment of films and the elimination of the censor. Hays remarks were echoed and reinforced by other speakers, including Jesse Lasky, John D. Fredericks (President, Los Angeles Chamber of Commerce), Governor Stephens, Los Angeles Mayor George E. Cryer, and several industry personalities. The sheer size of the gathering at the Hollywood Bowl and the studio roll calls suggest that producer-worker relations were crucial to what Hays and the MPPDA were attempting to achieve. Indeed, during his time in Hollywood, Hays met with labor representatives and assured them that he was sensitive to their concerns.¹¹³ But

the MPPDA would require another avenue for engaging with labor demands, one that was collective and better focused.

The MPPA's work was eventually inherited by the MPPDA itself and its new local representative, the Association of Motion Picture Producers (AMPP). Unlike the MPPA, the AMPP was directly affiliated with and controlled by the MPPDA, which provided for its funding. The close association between the two organizations allowed the MPPDA members to affect labor policy in the area that was most important to domestic film production. After all, by the early 1920s, Southern California's studios and facilities reflected over \$100 million in investment concentrated in an industrial zone for motion picture production, with the MPPDA members representing the lion's share. Founded in the fall of 1923, the AMPP was intended to protect these investments, to uplift the industry's image problem, and to ensure a prompt and equitable solution to the labor problem. At first, the AMPP tackled the local image problem by supporting the Hollywood Studio Club and its efforts in keeping young women out of trouble. These female extras and would-be actresses were a source of controversy in Los Angeles, especially when it came to their afterhours and extracurricular activities. They also accounted for 60% of the extras in Hollywood. While the support for the Hollywood Studio Club brought the industry into cooperation with the YWCA and helped improve Hollywood's relationship with its metropolitan hosts, it was not until January 1926 when the AMPP implemented a wider solution to the problem.¹¹⁴

In founding the Central Casting Bureau (no relation to Central Labor), the AMPP centralized and standardized the studios' hiring of extras and implemented supervision over its 10,000 individuals. It also provided statistical and demographic data about the

workforce. The extras and bit players were now paid according to a uniform wage scale that allocated the appropriate overtime pay. Specifically, women and children were placed under the supervision of Mel Marion, former secretary of the Industrial Welfare Commission. From its own press releases, the AMPP apparently believed that such an appointment could neutralize any criticism about the treatment of women and children in the industry.¹¹⁵ The emphasis standardization also characterized the AMPP's attempt to solve another worker issue with the Studio Basic Agreement in June 1926. This agreement codified wage scales for craft and skilled workers at all the member studios in the Los Angeles area.¹¹⁶ Thus, by its third year in operation, the MPPDA's Hollywood office had devised important solutions to problems that threatened to disrupt studio operations in the Los Angeles area.

Labor problems were certainly a nuisance to Hollywood. Walkouts and strikes were unacceptable to the studios, but during this period they rarely threatened the producer-distributors' bottom line as their distribution contracts with exhibitors. As evident from Central Labor's demands on overtime and wage scales, all that was required to resolve a labor conflict was a minor change in studio contracts that would cost the studio a daily extra of \$1-3 per skilled worker, which was roughly equivalent to a 10% increase in labor costs. With distribution contracts, however, the MPPDA and its members confronted a far greater menace to studio profits than anything that Central Labor could devise.

You will recall from previous chapters that one of NAMPI's great achievements was the establishment and nationalization of FILM Clubs in exchanges throughout the U.S. and Canada. In affiliating with the Hoy Reporting Service collection agency, the

producer-distributors exercised the power of arbitration over contracts between their exchanges and the exhibitors who leased their films. With no means of legal recourse provided to them, exhibitors organized legal action against the FILM Boards of Trade, which resulted in individual states like New York implementing advance deposit laws that forbade the exchanges from charging multiple fees on film rentals. Traditionally, a rental contract for first-run features involved two basic fees aside from the percentage of the gross sent back to the distributor under the percentage system. First, there was a license fee for reserving the film months in advance. Second, there was an advance deposit made a week or two ahead of the scheduled showing at the theater and intended to act as a security fee for the film print and for its exhibition value. But with states like New York, Missouri, and Nebraska instituting advance deposit regulation as we have seen in previous chapters, the advance deposit system had been thrown into disarray. Specifically, these states had instituted laws that forbade the “mingling” or mixing of advance deposits with a studio’s own production funds. The laws stipulated that such funds accrue interest owed to the exhibitor upon the contract’s completion.¹¹⁷ The FILM Boards in turn had been checked on this particular issue, but their effective control over feature film distribution in the U.S. was by no means undermined. They continued to facilitate the further consolidation of distribution within a few companies who owned the exchanges and dictated FILM’s policies. As exhibitor lawsuits and state deposit laws still had the ability to disrupt their operations, the producer-distributors now sought to standardize distribution in a way that protected their investments while reinforcing the centrality of the arbitration process overseen by FILM.

The FILM Boards for their part were comprised of exchange managers and executives belonging to the producer-distributors. However, the men and women overseeing these local trade boards were interested in promoting their own importance as mediators in distributor-exhibitor relations. In fact, they communicated to Hays the importance of FILM's nationalization.¹¹⁸ FILM's growing importance was realized early in the MPPDA's history in June 1922, when the association drafted plans for an overhaul of the existing distribution contracts. The result was a document titled the Uniform Exhibition Contract (UEC). According to the MPPDA, the UEC's purpose was to eliminate waste in exchanges and distribution, reduce rental costs to exhibitors, and, in turn, lead to more affordable ticket prices for the public. As its name suggest, the UEC's novelty rested in the fact that it was intended to be applied universally by producer-distributors and their associated exchanges.

The UEC version adopted by the MPPDA, the FILM clubs, and the TOCC of New York in February 1923 was the result of over six months of negotiations between the MPPDA and the two exhibitor representatives: the TOCC of New York and the MPTOA. The fact that exhibitors had once again been split into several factions is testament to the MPPDA's efforts in supporting State Senator and TOCC leader James Walker against the interests of Sydney Cohen, president of the MPTOA. The fruits of this labor were ultimately harvested long after Walker and Cohen had faced off in April 1922, when the MPTOA dismissed Walker as its legal counsel and accused him of betraying exhibitor interests in favor of the producer-distributors.¹¹⁹ Indeed, some MPTOA members and commentators in the press believed that the producer-distributors under Hays were saboteurs looking to undermine exhibitor organization at any cost.¹²⁰ Thus, the

triangulated negotiations on the UEC and the division in the exhibitor ranks were both legacies of NAMPI's tactics.

Although the full Uniform Contract is too extensive to reproduce here, the letters and memoranda commenting on it are worth examining and citing in some detail. These sources will help us understand the UEC's impact on distributor-exhibitor relations. One notable document from this correspondence is an MPPDA memo from January 1923 intended for readership amongst the MPTOA members who were opposed to the UEC's provisions. In trying to portray the Uniform Contract in a positive light, this memo lays out the supposed benefits for exhibitors:

1. The photoplays to be delivered under the contract are specifically described and identified either by name or by the star who is to appear in them, and the distributor expressly agrees to deliver and the exhibitor to accept all such photoplays, whether released within the contract period or at a later date.
2. The period by which payment for each picture is to precede exhibition has been shortened from seven days to three days in advance of the date of the shipment from the exchange.
3. The contract makes it clear that proper delivery of a print by an exhibitor to a common carrier for shipment to the exchange shall constitute the return of the print by the exhibitor, and that in 'routing' prints the exhibitor is not responsible for transportation charges to the next exhibitor. These changes, designed to conform the contract provisions to the prevailing practice, should eliminate the possibility of friction between the exhibitor and the exchange.
4. The varying amounts required by different distributor as compensation for loss, destruction or injury to film have been uniformly fixed at six cents per foot, which figure represents a substantial reduction of the amounts heretofore required by most distributors.
5. The distributor expressly assumes responsibility for neglect or default on the part of its employees in connection with the delivery of prints in time for the scheduled showing.
6. The distributor expressly agrees not to authorize or license the exhibition of any photoplay in violation of any protection or 'run' clause in the contract.
7. The events in which the distributor may terminate the contract or suspend service for default by the exhibitor have been limited to failure of the exhibitor to play or pay for a picture and 'bicycling' by the exhibitor. In addition, the exhibitor has been given the right to terminate the contract in the event of the intentional

violation by the distributor of any protection or run clause or the distributor's intentional default in delivering any picture to the exhibitor. Thus, each party has the right to terminate the contract only for a material breach going to the essence of the contract by the other party.

8. All arbitrary penalties and other provisions of a penal nature in favor of the distributor have been eliminated.
9. The provision for fixing play dates has been so altered as to give the exhibitor ample notice and opportunity to select his own play dates, and only in case of his failure to do so is the distributor given the right to fix arbitrary play dates on three weeks' notice. Further, this clause only becomes operative if the exhibitor has failed or neglected to come to the exchange and agree with the booker upon mutually acceptable play dates. In no event can the exhibitor be required to show more than one photoplay of any 'star series' every five weeks.
10. The contract will specify what photoplays included therein are re-issued or re-named pictures.
11. For the first time, the exhibitor is exempted from liability for failure to perform the contract due to various causes beyond his control.
12. The provision permitting the distributor to assign the contract has been eliminated. On the other hand, the exhibitor has been given the express privilege to assign the contract without the distributor's consent upon the sale of his theatre.
13. All time limitations upon the right of the exhibitor to file claims and commence actions under the contract have been eliminated, excepting only claims for receipt of the film in a damaged condition.
14. A definite time limit for acceptance of the exhibitor's application has been adopted, and unless the distributor accepts within the specific period, the application shall be deemed withdrawn and the distributor shall forthwith repay any sums paid on account by the exhibitor; and a copy of the application is to be left with the exhibitor at the time of the signing. These provisions should do much to eliminate the evils due to undue delay on the part of the distributors in accepting or rejecting applications signed by the exhibitor, and uncertainly on the exhibitor's part as to the exact provisions of the application which he signed.¹²¹

The impressive list of changes instituted in the standard distribution contract suggests that the producer-distributors were sincere in their attempts to appease exhibitor demands and grievances, at least to a certain extent. In response to TOCC demands, for example, MPPDA executives discussed the possibility of further changes, but ultimately produced a document that hardly addressed the TOCC's demands.¹²² Specifically, on Article 22, which concerned a crucial arbitration clause between exhibitors and exchanges, the MPPDA's legal counsel privately expressed its willingness to accept the

TOCC's modifications calling for joint arbitration in place of FILM's arbitration process.¹²³ However, when the MPPDA authored the final draft of the Uniform Contract in January 1923, the TOCC's recommendations were nowhere to be seen.¹²⁴

Emphatically absent were any modifications that would compromise block booking operations and advance deposits. For example, the TOCC wanted distributors held accountable for delaying or breaking contracts on films sold in series or blocks, but the Uniform Contract reinforced the MPPDA's belief that distributors could not be held accountable for disruptions to the schedule caused by producers. While the TOCC was forced to settle and give its tacit approval, the MPPDA's revisions did not go far enough in satisfying the MPTOA's demands and those of its president, Sydney Cohen. In a February 1923 letter to Hays, Cohen reminded the MPPDA why the Uniform Contract was still unacceptable to his organization.¹²⁵ Beyond the TOCC's concerns already listed above, Cohen complained that the MPPDA had forced the UEC on the exhibitors and had rushed the negotiation process so as to cut off any real debate about the document's merits. Citing a conspiratorial motive, Cohen asserted that the MPPDA's actions were intended to preempt industry fallout from the announcement of Selznick's bankruptcy just a few days later in early February. According to Cohen, the lack of advance deposit protection offered by the UEC would effectively nullify any claims by exhibitors against producer-distributors like Selznick who could no longer remain solvent. Cohen also noted that the MPPDA's actions were part of an orchestrated campaign to undermine independent exhibitors and producers. For example, Cohen argued that MPPDA members offered educational films to community or "nontheatrical" houses that competed with exhibitors yet were not bound by the same tax and film rental burdens. Finally, Cohen

iterated his opposition to producer-distributor theater acquisitions and accused the MPPDA of facilitating industry consolidation and oligopoly.

We should also keep in mind that the new distribution contract not only was intended as a conciliatory gesture towards independent exhibitors but was geared for improving internal MPPDA relations. Standardizing practices in film distribution was essential at a time when the MPPDA members were investing more and more in their theatrical divisions and when a producer-distributor who owned theaters wanted to book films from another producer-distributor member. Through jointly implementing the UEC, the MPPDA members were protecting their distribution and exhibition investments at the same time that they were laying the foundations for the Hollywood oligopoly of the sound era, when access to films and favorable terms were reserved for MPPDA members.

By the end of 1924, the largest MPPDA members held numerous theatrical assets and most had expanded their production facilities. Paramount's holdings were well-documented by the FTC's investigation and were listed as follows: 179 theaters, of which 157 were motion picture houses and 95 classified as first-run. Of the 157, Paramount held controlling interests in 98 theaters, most of which were first run. Its studio properties included the Famous Players Studio in Long Island, the Lasky Studios in Hollywood and production facilities in London. Meanwhile, First National's theater numbers had remained steady over this period. It was affiliated with 639 motion picture theaters under the control of its franchise holders, with 165 of these classified as first-run. Loew's theater numbers were also steady at just over 100 theaters, with 33 of these under direct ownership. More significantly, in April 1924, Loew's was involved in one of the most important mergers of the decade when it added Goldwyn Pictures Corp. and Louis B.

Mayer Productions to its production activities, which included the Metro interest it had already purchased in January 1920. Goldwyn was acquired in return for \$5 million of 7% preferred stock in the new Metro-Goldwyn-Mayer, with annual dividends pegged at \$300,000.¹²⁶ In addition to expanded distribution and exchange properties, Loew's inherited Goldwyn's production studios in Hollywood and the Capital Theatre in NYC. It was estimated that the latter alone could pay for half of the dividends on the amount from MGM's preferred stock transacted in the Goldwyn deal. Although Loew's profits were only modestly improved from 1923 (\$2.95 million vs. \$2.42 million), the new Loew's/MGM had much more capital and assets at hand, and its gross income was now more than double the \$19.6 million it earned in 1923. MGM's accounting records also show that the new consolidated MGM had \$3.85 million of assets in June 1924 at the time the merger was reflected on the combined balance sheet.¹²⁷ Although only slightly higher than the \$3 million Metro had recorded in January, this number was soon to surpass the \$4.5 million mark in August.¹²⁸

The significance of these holdings and affiliations are manifested in first-run distribution statistics gleaned from Paramount's response to the FTC, with the exception that the Metro and Goldwyn numbers are listed as prior to their combination (Table 7.1). In this four-year overview, we can see that MPPDA distributors dominated the most important theaters in New York's theatrical district, which was a key harbinger of other first-class sectors throughout the U.S. and Canada.

TABLE 7.1 Total First Runs in New York Theatrical District (January 1920 to January 1924) ¹²⁹	
Paramount	365
Goldwyn	141
First National	243
Metro	158
Universal	249
Fox	250
Vitagraph	91
Pathé & Associated Exhibitors	178
Hodkinson	58
United Artists & Allied Producers and Distributors	48
Robertson-Cole / Film Booking Offices	148
American Releasing Corporation	40
Realart	65
Selznick/Select	113
Associated Producers	12
Pioneer	22
World	4
Hallmark	10
Preferred/Al Lichtman	8
Warner Bros.	29
Miscellaneous	428
Total	2660

Aside from outright consolidation and vertical integration, there is even evidence of collusion between the larger producer-distributor interests in securing one another's most profitable films. While the FTC's continuing antitrust investigation centered on Paramount's subsidiaries as described in Chapter 5, it also identified Paramount's collaboration with First National and Loew's in securing first-run theaters in districts where its theatrical holdings were not as prominent.¹³⁰ At the same time, Paramount was noted to be withholding its product from Loew's and First National's independent competitors. It was also accused of attempting a takeover of First National by affiliating with the latter's franchise holders in Boston, Philadelphia, Dallas, Los Angeles, San Francisco, Cleveland, and Chicago, where the Balaban & Katz theater circuit, a First National franchise holder, managed Paramount's first-run McVickers Theater.¹³¹ As I have suggested with earlier accusations against Paramount, the FTC's claims about

Paramount's ambitions to absorb First National was an inaccurate description of a process I have ascribed to oligopoly formation. Rather, Paramount was simply securing theater outlets for its product and raising barriers to entry for smaller, newer, and independent competitors. Nonetheless, in response to FTC scrutiny, Paramount played a game of shuffle the deck, reducing and diluting its apparent ownership of subsidiaries while consolidating the more important aspects of its first-run holdings. As the FTC enacted a September 1, 1924 cut off for legal evidence filed in the Paramount case, such strategic maneuvering was enough to confound litigation and prolong the FTC's case for a few more years. Paramount in fact held off on another wave of theater acquisitions until after September 1924, when the case was effectively neutralized. Although the FTC continued to hold hearings on Paramount to the end of 1925, its evidence was limited to the period before September 1924. In the next chapter, we will see how the FTC ordered a reopening of its case against Paramount in April 1926, as the studio and the FTC continued to spar over Paramount's theater acquisitions and the practice of block booking.

Insofar as the FTC investigation demonstrates, Paramount's relationship with Loew's, First National and other vertically-integrated concerns was based on healthy competition as well as extensive cooperation. The latter, however, was essentially facilitated through the offices of the MPPDA, which secured favorable distribution and exhibition terms for its member companies. The FILM Boards and the Uniform Exhibition Contract were essential in this regard and allowed the MPPDA to implement distribution terms that were highly beneficial to its members. Without the consent of the MPTOA and its leaders, however, the UEC had the unfortunate distinction of having

been forced on the exhibitors. Only the TOCC of New York supported any version of the document. The next chapter will chronicle the MPPDA's subsequent round of negotiations on the UEC, when the MPTOA finally gave its approval to a modified version of the document now retitled the Standard Exhibition Contract. The ink had barely dried, however, when regional exhibitor organizations challenged the document and threatened to withdraw from its terms.

In concluding this chapter it should be evident that the former NAMPI members had chosen wisely by appointing Will Hays as president of their new organization. Hays's abilities and standing amongst civic, education and religious reformers, along with his personal abilities as an expert in managing political campaigns, allowed the MPPDA to take on censorship with full force. Notable achievements included the MPPDA's organization of the Committee on Public Relations and its support for the National Board of Review and the National Committee for Better Films. These organizations remained operational because of the MPPDA's patronage and its strategic need for shifting anti-censorship activities to semi-affiliated organizations that maintained public support and legitimacy. Thus the MPPDA like NAMPI before it could disavow accusations of industry interference in film regulation while maintaining that federal, state, and local censorship were unnecessary. Specifically, in the example of the better films movement, it was Paramount's exhibition interests that mobilized anti-censorship activity, suggesting a direct link between vertical integration and anti-censorship.

The MPPDA's campaigns also produced an important early success in preventing censorship in Massachusetts, but failed in the organization's subsequent bid to subvert

the board already in place in New York. As a continuation of NAMPI's efforts on these fronts, the MPPDA was relatively successful and would eventually gather enough political momentum to defeat censorship in New York. At this point, however, it had to face the renewed threats for federal censorship in the Upshaw Bill, whose sponsors endorsed the nexus between industry censorship and antitrust. The result of these continued threats, along with the failure of MPPDA members to prevent the production of salacious films, led to the implementation of "the Formula" in June 1924. Although it did not represent a fundamental shift in policy, the Formula was yet another attempt to please the cinema's reformer opponents. This is despite the fact that the Formula did not gain effective leverage until several years later with the founding of the Studio Relations Committee in 1927. The Formula also allowed the MPPDA to rally support for its authority over industry affairs, since the major organizations and associations in the industry signed an agreement to uphold its tenets on preventing indiscretion in film adaptations.

Finally, I noted that the years 1922–1924 only witnessed the continuation of consolidation and expansion already outlined over the last few chapters. Four or five vertically-integrated concerns had now emerged as the dominant forces in the U.S. film industry: Loew's/MGM, Paramount, First National, Fox, and Universal. Yet one of these concerns, First National, was vulnerable financially. Moreover, as the next two chapters will attest, organizationally First National was unable to withstand a predatory takeover from its competitors. In addition to continued accounts of censorship, labor issues, and FILM Board activities, the final two chapters also provide a detailed account of further consolidation in production, distribution and exhibition, including the expansion of

domestic theater circuits and overseas activity. With the MPPDA in place and with censorship activities having been contained and repulsed on many fronts, the producer-distributor members and their Wall Street backers were keen to expand in terms of the retail sector of the industry: exhibition.

¹ Robertson Cole was one of the companies listed in the initial contract with Hays, but did not join the MPPDA at the association's founding in April 1922. The company had been a member of NAMPI's Distributors' Division and later joined the MPPDA under the name of the Film Booking Office.

² Will H. Hays, letter to George Ade, March 28, 1922, Will Hays Papers, Indiana State Library, Microfilm Collection (Frederick, MD: University Publications of America, 1986), Reels 1–43.

³ The MPPDA's 1945 renaming as the Motion Picture Association of America (MPAA) also created an international division known as the Motion Picture Association (MPA).

⁴ "Hays Will Head Picture Organization; Contract Signed Wednesday in New York," *Moving Picture World* 54, No. 4 (January 28, 1922): 369–370. This article gives January 18 as the signing date, in contrast with Hays's own letter cited above, which notes January 17 as the date.

⁵ Hays's continued professional relationship with the Harding administration is demonstrated by the fact that the President chose him to head the Near East Committee overseeing aid to Christian refugees from the Turkish conflict in October 1922. See "Minutes of the Meeting of the Special Committee on the Near East Emergency at the Hotel Biltmore, Friday, October 13, 1922," Will Hays Papers.

⁶ Based on his extensive interviews with William Fox, Upton Sinclair claims that it was Fox's idea to hire someone from the Republican party, and that his preferred candidate was Will Hays. See *Upton Sinclair Presents William Fox* (Los Angeles: Upton Sinclair, 1933), 161.

⁷ The MPPDA believed that it was impractical for Harding to visit the roughly 40 studios in the Los Angeles region. Instead, the various studio heads were to meet with Harding at a single neutral location: the Fairbanks Studios. See Thomas G. Patten, letter to Will H. Hays, July 5, 1923, Will Hays Papers; and Hal Roach, telegram to Will H. Hays, July 26, 1923, Will Hays Papers.

⁸ The Teapot Dome Scandal, which developed into a major scandal for the Harding administration, involved non-competitive contracts and kickbacks over the Teapot Dome oil fields in Wyoming and the fields at Elk Hills, California. The chief participants were Harding's Secretary of the Interior, Albert B. Fall, and two oil men who had offered bribes for access to the respective fields: Harry Sinclair of Sinclair Oil, and Edward L. Doheny. Doheny was eventually acquitted of the bribery charge, but Fall and Sinclair were found guilty in 1929. Adding to complications for Hays, his law firm, Hays & Hays of Sullivan, Indiana, had provided legal counsel to Sinclair. See David H. Stratton, *Tempest Over Teapot Dome: The Story of Albert B. Fall* (Norman: University of Oklahoma Press, 1998); and Laton McCartney, *The Teapot Dome Scandal: How Big Oil Bought the Harding White House and Tried to Steal the Country* (New York: Random House, 2008).

⁹ As far back as December 1921, the MPPDA had used its new name on official correspondence. For example, see J. Homer Platten, letter to Charlton, December 13, 1922, Motion Picture Association of America Archive, New York (Image Files, Reel 01-0793); hereafter MPAA Files.

¹⁰ "Canon Chase's Attack Fizzles Under Examination by Senate Committee," *Moving Picture World* 54, No. 5 (February 4, 1922): 481, 486, 491.

¹¹ "Exhibitors Withdraw Arbuckle Comedies; Awaiting Action on Murder Charges," *Moving Picture World* 52, No. 4 (September 24, 1922): 382.

¹² In a callous move to capitalize on the Arbuckle scandal, First National re-released films featuring Virginia Rappé in a minor role. It was only after a public outcry and editorial criticism that the films were withdrawn from distribution in respect of the deceased actress at the heart of the Arbuckle murder trial. See "First National Withholds Virginia Rappe Films," *Moving Picture World* 52, No. 4 (September 24, 1921): 395.

¹³ The eleven NAMPI members represented at the meeting were Fox, Paramount, Educational, Universal, Metro/Loew's, Goldwyn, Pathé Exchanges, Pioneer, Robertson Cole, Selznick, and W.W. Hodkinson. Of these only the independent Hodkinson came out against the plan for expanding FILM. See "Film Boards and Hoy Service Put into Nineteen Distribution Centers," *Moving Picture World* 54, No. 5 (February 4, 1922): 480; and "Hays Ship Ready All but the Crew," *Moving Picture World* 54, No. 5 (February 4, 1922): 479.

¹⁴ MPPDA Certificate of Incorporation and By-Laws, April 7, 1922, Will Hays Papers.

¹⁵ "Loew Fights T.O.C.C. During Discussion of Percentage Bookings," *Moving Picture World* 52, No. 4 (September 24, 1921): 392.

¹⁶ See Article V in MPPDA Certificate of Incorporation and By-Laws, April 7, 1922, Will Hays Papers.

¹⁷ Untitled Memo, Will Hays Papers, March 7, 1923.

¹⁸ In a memo to Hays, Courtland Smith lists three MPPDA accounts that Eastman Kodak's fees will pay for in their entirety: fire prevention, legislative matters up to the end of the 1923 legislatures, and various special accounts. See Courtland Smith, Memo to W.H. Hays, March 1923, Will Hays Papers.

¹⁹ The MPPDA's work on requiring non-inflammable or acetate film stock in facilities that were not properly equipped to deal with nitrate film continued NAMPI's earlier work on this front. In both cases, Eastman Kodak was closely involved in fire regulations. For example, the chairman of NAMPI's Fire Prevention Committee was Jules E. Brulatour, a Kodak representative who was NAMPI's leading figure in negotiations with the National Fire Protection Association and federal representatives on theater fire regulations. See "Nitro-Cellulose Film Stock Prohibition Again Being Considered by N.A.M.P.I.," *Moving Picture World* 53, No. 6 (December 17, 1921): 785.

²⁰ According to an internal MPPDA memo, exhibitors also stood to benefit from nitrate bans in non-theatrical exhibition, since this would remove any competition from educational films in non-commercial exhibition. See "Memorandum to Will H. Hays," April 17, 1923, Page 3, Will Hays Papers.

²¹ See *FTC v. Eastman Kodak Co. et al.*, Complaint, Docket 977, April 19, 1923. Along with George Eastman, Eastman Kodak, Jules Brulatour, and Mark Dintenfass, the FTC's antitrust suit named the following companies as co-respondents: Allied Laboratories Association, Burton Holmes Lectures, Craftsmen Film Laboratory, Kineto Company of America, Erbograph Company, Cromlov Film Laboratories, Palisades Film Laboratories, Claremont Film Laboratory, Film Developing Corporation, Evans Film Manufacturing Company, Republic Laboratories,

²² NAMPI's official membership and committee listings are found in "National Association of the Motion Picture Industry 1921-1922," MPAA Files (Reel 01-0828 to 01-0841).

²³ At the first meeting of the MPPDA's Membership Committee, the following companies were listed as potential recruits for membership: First National, United Artists, Pathé, Douglas Fairbanks Productions, William Randolph Hearts (Cosmopolitan Productions), Thomas Ince, Mary Pickford Productions, Charles Chaplin Productions. See "Minutes of the First Meeting of the Membership Committee," June 1, 1922, MPAA Files (Reel 01-0786).

²⁴ Fred Beetson, letter to Will H. Hays, December 4, 1924, Will Hays Papers (Microfilm).

²⁵ Courtland Smith, Memorandum to Will H. Hays, December 3, 1924, Will Hays Papers.

²⁶ Courtland Smith, "Tentative Budget & Report of Finance Committee," January 1923, Will Hays Papers.

²⁷ "Movie Pleas Hurt By Big Salary Talk: Theatre Owners Say Reported \$150,000 a Year to Hays Gives False Idea of Profits," *New York Times*, December 10, 1921.

²⁸ For Hays's salary, see Courtland Smith, Memo to Will Hays, January 3, 1923, Will Hays Papers.

²⁹ A January 1923 memo from J. Homer Platten to Hays notes that Vitagraph's and Goldwyn's dues were lower than in previous years because their revenues decreased at the same time that Universal's, Fox's, and Famous Players-Lasky's were increasing. For example, Goldwyn's annual dues had declined from \$33,669.48 to \$24,459.24. See J. Homer Platten, Memo to Will Hays, January 8, 1923, Will Hays Papers.

³⁰ Ruth Vasey has also covered the Committee on Public Relations by emphasizing different aspects of this history from what I have presented here. See *The World According To Hollywood*, 30-38.

³¹ The minutes and records for the Waldorf-Asotria meetings are contained in the MPAA Files for June 1922. See "Addresses Delivered at the Get Together Meeting of the Motion Picture Producers and Distributors of America," June 22, 1922, MPAA Files (Reel 01-0388 to 01-0454).

³² The MPPDA's concerns about promoting non-theatrical exhibition in churches, schools, and community centers reflected a need to maintain working relationships with exhibitors throughout the U.S. The MPPDA wanted to refrain from creating non-commercial competition that would undermine regular theaters owned by independents, theater chains, or the MPPDA members themselves. For example, see Hays, letter to Jason S. Joy, October 18, 1922, MPAA Files (Reel 01-0029 to 01-0031).

³³ "Addresses Delivered at the Get Together Meeting of the Motion Picture Producers and Distributors of America," 1.

³⁴ "The National Committee for Better Films: Its Composition, Functions and Direction," March 1922, MPAA Files (Reel 01-0849 to 01-0854).

³⁵ "Public Relations and the Picture Industry," *Motion Picture News* 26, No. 10 (September 2, 1922): 1123.

³⁶ H. Turner Jones, letter to W.D. McGuire, Jr., March 16, 1922, MPAA Files (Reel 01-0855 to 01-0856).

³⁷ "Addresses Delivered at the Get Together Meeting of the Motion Picture Producers and Distributors of America," 32.

³⁸ *Ibid.*, 33-34.

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- ³⁹ Ibid., 40.
- ⁴⁰ Ibid., 30.
- ⁴¹ Ibid., 26–27.
- ⁴² Untitled Document on Committee on Public Relations, June 1922, MPAA Files (Reel 01-0001).
- ⁴³ “Committee of Twenty,” Undated Memo from 1922, MPAA Files (Reel 01-0008, 01-0009).
- ⁴⁴ For the final and official press release outlining the Committee on Public Relation’s purpose and objectives, see “Organizations Plan Cooperation With Hays,” *Motion Picture News* 26, No. 10 (September 2, 1922): 1122.
- ⁴⁵ Will Hays, letter to Jason S. Joy, October 16, 1922, MPAA Files (Reel 01-0029 to 01-0031).
- ⁴⁶ Will Hays, letter to Albert Warner, September 5, 1922, MPAA Files (Reel 01-0024 to 01-0027).
- ⁴⁷ For the first and last of the four articles, see Charles N. Lathrop, “Motion Pictures and the Churches,” June 10, 1922, Will Hays Papers; and “Motion Pictures and the Churches,” July 1, 1922, Will Hays Papers.
- ⁴⁸ “Motion Pictures and the Churches,” June 10, 1922.
- ⁴⁹ “Motion Pictures and the Churches,” July 1, 1922.
- ⁵⁰ Fred Eastman, letter to Will Hays, July 11, 1922, Will Hays Papers.
- ⁵¹ Will Hays, letter to Albert Warner, September 5, 1922, MPAA Files (Reel 01-0024 to 01-0027).
- ⁵² Ibid.
- ⁵³ Ibid.
- ⁵⁴ Harry M. Warner, letter to Will H. Hays, September 20, 1922, MPAA Files (Reel 01-0021 to 01-0023).
- ⁵⁵ “Stenographic Report of the January 4, 1923 Meeting of the Committee on Public Relations,” Page 24, MPAA Files (Reels 01-0086 to 01-0128).
- ⁵⁶ Jason Joy’s report on the CPR’s activities, “Brief Resumé of Facts Pertaining to the Affairs of the Committee to Date,” is included in Lee F. Hanmer, letter to Will Hays, March 23, 1923.
- ⁵⁷ See “Stenographic Report of the January 4, 1923 Meeting of the Committee on Public Relations,”
- ⁵⁸ Ibid., 16.
- ⁵⁹ Ibid., 21–22.
- ⁶⁰ For the Committee on Public Relation’s resolution on reinstating Arbuckle as producer and not actor, see “Resolution,” February 1, 1923, Will Hays Papers.
- ⁶¹ Ralph Hayes, Memo to Will Hays, March 1923, Will Hays Papers.
- ⁶² Courtland Smith, Memo to Will Hays, April 20, 1923, Will Hays Papers.
- ⁶³ “Massachusetts to Vote on Censorship; 25,000 Petitions Demand a Referendum,” *Moving Picture World* 52, No. 1 (September 3, 1921): 45.
- ⁶⁴ Jack Connolly, “Suggestion for Mr. Hays,” July 12, 1922, Will Hays Papers.
- ⁶⁵ Massachusetts’ Committee on Motion Pictures was headed by B. Preston Clark and represented dozens of reform and civic organizations including the Federation of Churches, the League of Catholic Women, the Federation of Women’s Clubs, and the League of Women Workers. See B. Preston Clark, letter to Robert T. O’Brien, October 3, 1922, Will Hays Papers.
- ⁶⁶ The pamphlet for the State Committee on Motion Pictures is enclosed in B. Preston Clark, letter to Robert T. O’Brien, October 3, 1922.
- ⁶⁷ Charles H. Cole outlined the Committee of Massachusetts Citizens Against Censorship’s position in an early October letter to Hays. See Charles H. Cole, letter to Will H. Hays, October 5, 1922, Will Hays Papers.
- ⁶⁸ Charles H. Cole, letter to Will H. Hays, October 29, 1922, Will Hays Papers.
- ⁶⁹ For example, see Cole’s “Plan of Campaign for Boston” and “Instructions to Field Men,” both of which are enclosed in Charles H. Cole, letter to Will H. Hays, October 29, 1922.
- ⁷⁰ “Massachusetts Anti-Censorship Fight is On: Committee of Leading Citizens Waging Campaign Energetically and Intensively,” *Motion Picture News* 26, No. 17 (October 21, 1922): 2007.
- ⁷¹ See Hays, letter to Charles H. Cole, October 14, 1922, Will Hays Papers.
- ⁷² “Memo for Mr. Hays on Newspaper Situation in Boston and Springfield,” September 19, 1922, Will Hays Papers.
- ⁷³ See O’Neill, Memo for Hays, “Impression of Massachusetts Election,” November 1922, Will Hays Papers.
- ⁷⁴ Will Hays, letter to Theodore Douglas Robinson, March 13, 1923, Will Hays Papers.
- ⁷⁵ “The Public Speaks,” *Motion Picture News* 26, No. 21 (November 18, 1922): 2526.

⁷⁶ For example, the controversy over the New York Motion Picture Commission's ban on Goldwyn's *Blind Bargain* (1922) demonstrates that it had displaced the National Board of Review as the most important film censorship institution in New York. See Frank J. Godsol, letter to Motion Picture Commission, November 17, 1922, Will Hays Papers.

⁷⁷ For the MPPDA's attempts to link the defeat of the "Clean Books Bill" to its own anti-censorship efforts on motion picture censorship in New York, see Courtland Smith, Memo to Will Hays, March 31, 1924, Will Hays Papers.

⁷⁸ For an example of the MPPDA's hubris on the New York censorship repeal, see Courtland Smith, Memo to Will Hays, March 22, 1923, Will Hays Papers.

⁷⁹ Ibid.

⁸⁰ For a brief overview of Gov. Smith's attempt to repeal movie censorship in the 1923 New York Legislative session, see "Movie Censor Law Repealer Now in Sight," *Rochester Herald*, December 31, 1923. For minutes recounting the debate on the two Assembly bills and one Senate bill introduced by New York legislators to repeal the Motion Picture Commission, see "In the Legislature of the State of New York," 1–110, Senate Committee on Finance and Assembly Committee on Ways and Means, March 6, 1923, MPAA Files (Reels 01-0859 to 01-0970).

⁸¹ "In the Legislature of the State of New York," 102.

⁸² Ibid., 104.

⁸³ Ibid., 105.

⁸⁴ For the text of the Davison Bill, see "An Act to Amend the Penal Law," State of New York, No. 2025 Int. 1723, March 24, 1924, Will Hays Papers.

⁸⁵ M.J. O'Toole, letter to F. Trubee Davison, January 10, 1925, Will Hays Papers.

⁸⁶ The list of states where censorship was defeated is listed in Will Hays, Telegram to Thomas G. Patten, March 19, 1923, Will Hays Papers.

⁸⁷ For Rev. Chase's explanation of federal regulation embodied in the Upshaw Bill, see Canon William Sheafe Chase, "Why Federal Regulation of Motion Pictures is Necessary," *The Civic Forum* 9, No. 2 (February 1925): 31.

⁸⁸ Chase, "Federal Regulation of Motion Pictures: Why Needed? This is a World Problem," *The Civic Forum* 8, No. 11 (November 1923).

⁸⁹ Canon William Sheafe Chase, "Cleansing the Screen in New York State," *The Dearborn Independent* 26, No. 12 (January 9, 1926): 13–14, 30. Note that Ford's journal contributed to anti-Semitic conspiracies regarding Hollywood studios and that Chase himself had often used language inciting to religious and ethnic prejudice as noted in Chapter 6. Therefore, Chase's claims against the "motion picture trust" should be read in the context of his prejudiced views.

⁹⁰ Chase, "Why Federal Regulation of Motion Pictures is Necessary."

⁹¹ Ibid.

⁹² Hearings for the Upshaw Bill and its Congressional version were held in April and May 1926. See "Hearings Before the Committee on Education, House of Representatives, Sixty-Ninth Congress, First Session, on H.R. 4094 and H.R. 6233, Bills to Create a Commission to Be Known as the Federal Motion Picture Commission, and Defining its Power and Duties," April 14, 1926 – May 4, 1926 (Washington: Government Printing Office, 1926).

⁹³ According to Richard Maltby, civic groups complained to the MPPDA about the following literary adaptations from the 1923–24 season: *Flaming Youth*, *Three Weeks*, *Black Oxen*, and *West of the Water Tower*. See Maltby, "'To Prevent the Prevalent Type of Book': Censorship and Adaptation in Hollywood, 1924–1934," in *Movie Censorship and American Culture*, ed. Frances G. Couvares (Amherst, M.A.: University of Massachusetts Press, 2006), 104.

⁹⁴ For Paramount's 1924 August to January release schedule and its accompanying ads, see *Motion Picture News* 29, No. 20 (May 17, 1924).

⁹⁵ *The Film Daily* estimated distribution and printing costs at \$35 million and \$5 million, respectively, bringing the total projected costs for the 1923–24 season to \$140 million. See "Gigantic Budget," *The Film Daily* (June 14, 1923).

⁹⁶ MPPDA Resolution, June 10, 1924, Will Hays Papers.

⁹⁷ For Hays's original announcement of the Formula, see untitled memo, May 24, 1924, Will Hays Papers.

⁹⁸ See "Proceedings of the Stockholders Meeting, MPPDA," June 16, 1924, Will Hays Papers.

⁹⁹ For resolutions supporting the Formula, see "Appendix: Resolution by the Motion Picture Producers and Distributors of America," June 19, 1924, Will Hays Papers.

¹⁰⁰ See the MPPDA pamphlet titled "The Open Door," March 1925, MPAA Files (Reel 02-1016 to 02-1019).

¹⁰¹ For correspondence on the MPPA's membership list, see W.J. Reynolds, letter to Chas. W. Eyton, December 2, 1922, Will Hays Papers.

¹⁰² According to an *L.A. Times* article from the late 1920s, the MPPA marked the start of a unified labor policy among Hollywood's major producers, a process that culminated with the Basic Studio Agreement in 1926. See "The Forty-Year War for a Free City," *L.A. Times*, Oct 1, 1929, p. 25, quoted in Murray Ross, "Labor Relations in Hollywood," in *The Literature of Cinema* (New York: Arno Press, 1970), 58.

¹⁰³ W.J. Reynolds, MPPA Resolution, July 8, 1921, MPAA Files (Reel 01-0689).

¹⁰⁴ J. Mulbey, letter to Will Hays, June 27, 1922, MPAA Files (Reel 01-0669 to 01-0672).

¹⁰⁵ John S. Horn, "To All Local and Federal Union, Building Trades, and Central Labor Councils, State Federations and Railroad Organizations," December 10, 1921, MPAA Files (Reel 01-0691 to 01-0694).

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.*

¹⁰⁸ Union conditions in Hollywood are described in Frank A. Garbutt, letter to Will Hays, July 12, 1922, MPAA Files (Reel 01-0663 to 01-0666).

¹⁰⁹ Garbutt, letter to Hays, July 12, 1922.

¹¹⁰ George A. Wright and John S. Horn, "To all Building Trades and Central Labor Councils," May 1, 1922, MPAA Files (Reel 01-0695).

¹¹¹ John S. Horn, "To All Building Trades and Central Union Councils in the U.S. and Canada," June 27, 1922, MPAA Files (Reel 01-0679).

¹¹² For an account of Hays's speech at the Hollywood Bowl gathering, see "Hays Given Ovation at Hollywood Meeting," *Motion Picture News* 26, No. 7 (August 12, 1922): 703, 708.

¹¹³ W.J. Reynolds, letter to Frank A. Garbutt, August 3, 1922, MPAA Files (Reel 01-0659 to 01-0660).

¹¹⁴ "Scientific Casting," *Film Daily* 36, No. 39 (May 16, 1926): 5.

¹¹⁵ For the MPPDA's pamphlet on the Central Casting Bureau, see "Helping the 'Extra' in Movies," 1926, MPAA Files (Reels 02-2000 to 02-2003).

¹¹⁶ Fred Beetson, Memo to AMPP Members, June 18, 1926, MPAA Files (Reel 02-2004).

¹¹⁷ One such contemporary example of the anti-deposit law in January 1922 was Goldwyn's case against the Nebraska anti-deposit law. Goldwyn's position was subsequently supported by the Omaha FILM Board of Trade and the other MPPDA members. See "Nebraska Anti-Deposit Law Is Attacked by Distributors as Unconstitutional," *Moving Picture World* 54, No. 4 (January 28, 1922): 371–372.

¹¹⁸ For example, the counsel for the Minneapolis FILM Board of Trade, Benjamin Goldman, wrote Hays on the need to encourage the MPPDA's support for FILM's nationalization. Goldman also argued that FILM provided numerous benefits to the MPPDA members including a direct conduit for exhibitor negotiations, a means of distributing advertising and promotion, and a frontline campaign against censorship. See Benjamin M. Goldman, letter to Will H. Hays, August 26, 1922, MPAA Files (Reel 01-1170 to 01-1173).

¹¹⁹ See "Walker Hotly Retorts to Cohen Statement," and "Walker's Stirring Defense Wins Endorsement of T.O.C.C.," in *Motion Picture News* 25, No. 20 (May 6, 1922): 2536–2537. Walker was certainly the MPPDA's preferred individual to lead the exhibitors as testified by their statements. For example, see Loew's and Hays's support for Walker as reported in "Cohen Re-Elected With Cries of 'Steam Roller Tactics' Made By Opponents," *Motion Picture News* 25, No. 22 (May 20, 1922): 2818; and "Ethics and Politics," *Motion Picture News* 25, No. 20 (May 6, 1922): 2533.

¹²⁰ See "Integrity," *Motion Picture News* 25, No. 21 (May 13, 1922): 2659; and "Ethics and Politics," 2532.

¹²¹ Karl W. Kirchwey, "Memorandum Regarding Changes Effected by Uniform Contract," January 31, 1923, MPAA Files (Reel 01-1119 to 01-1124).

¹²² For a description of the TOCC's recommendations on the Uniform Exhibition Contract, see "Proposed Amendments" enclosed in Bernard Edelhartz, letter to Will H. Hays, June 27, 1922, MPAA Files (Reel 01-1211 to 01-1214); and "MPPDA, Inc.: Substance of Standard Clauses of Proposed Uniform Exhibition Contract." The latter is enclosed in Karl W. Kirchwey, letter to Will H. Hays, September 1, 1922, MPAA Files (Reel 01-1158 to 01-1169).

¹²³ William M. Seabury, letter to Will H. Hays, June 30, 1922, MPAA Files (Reel 01-1208 to 01-1209).

¹²⁴ See “Uniform Exhibition Contract” enclosed in Karl W. Kirchwey, letter to Will H. Hays, January 13, 1923, MPAA Files (Reel 01-1128 to 01-1136).

¹²⁵ Sydney S. Cohen, letter Will H. Hays, February 27, 1923, MPAA Files (Reel 01-1108 to 01-1112).

¹²⁶ “Loew’s, Inc., Enjoys Banner Year,” *Motion Picture News* 32, No. 24 (December 12, 1925): 2764.

¹²⁷ “Statement of Affairs,” June 4, 1924, MGM Accounting Department Records (Box 1), Margaret Herrick Library.

¹²⁸ See “Statement of Affairs,” January 5, 1924, MGM Accounting Department Records; and “Statement of Affairs,” August 12, 1925, MGM Accounting Department Records.

¹²⁹ *Federal Trade Commission v. Famous Players-Lasky Corporation et al.*, Respondent’s Brief, 533.

¹³⁰ See *Federal Trade Commission v. Famous Players-Lasky Corporation et al.*, Brief for the Commission, Part II, Docket 835, 220–230.

¹³¹ *Ibid.*, 228–230.

CHAPTER EIGHT:
THE MPPDA, WALL STREET, AND THEATER CIRCUITS
(1925–1926)

Paramount, First National, and Loew's had accounted for most of the theater expansion up to 1925. Now the other major producer-distributors looked to enhance their theatrical holdings and affiliations. Consequently, the period marked a crucial point of transformation from the burgeoning studio system that we have been chronicling thus far to an interlocking market structure that employed advanced scale economies in production, distribution and exhibition. Earlier technological developments in radio and sound recording now transformed cinema's possibilities. Increasingly, motion pictures were in competition with mass-media entertainment. As Douglas Gomery has pointed out, developments in these industries greatly affected the innovations in sound film.¹ Radio, phonograph music, and vaudeville were all a substitute for and a complement to film entertainment. Radio in particular was an instrument for film advertising and cross promotion at the same time that some believed that its offer of home entertainment was keeping audiences away from movie theaters.² Despite radio's potential to cut into theater attendance or phonograph purchases in the same way that film had undermined vaudeville, the marketplace conditions existed for synergizing these industries.³ Accordingly, the Hollywood majors and their financial backers on Wall Street sought to incorporate elements of these competing forms of entertainment, thereby leading to innovations and developments in sound film. The latter could then emerge as a legitimate substitute for the kinds of presentations and performances accompanying films on

Broadway, for example, where an evening's entertainment on the eve of the sound era consisted of musical performances, songs, comedy shorts, newsreels, and a feature. Sound films could also compete with vaudeville, drawing from the same talent pool while offering a comparable form of popular entertainment to audiences. Such a development was called "film vaudeville." For example, by mid-1927, RCA's Photophone marketed vaudeville sound shorts as a replacement program for Keith-Albee-Orpheum's vaudeville houses that were financially in the red.⁴ Where vaudeville and film presentations had become expensive, cumbersome, and unprofitable, sound films could be booked for reasonable costs in licenses and equipment, and they standardized the product in accordance with the prevailing trend towards national theater chains.

For our purposes, the previous scholarship on sound conversion by Gomery, Donald Crafton, Richard Jewell and others is a point of reference, but only a starting off point for understanding the formation of oligopoly and vertical integration. The conversion to sound may have brought about the rise and fall of particular interests amongst the Hollywood majors, including those of Warner Bros., Fox, and Radio Keith Orpheum (RKO). Sound also created a niche for telecommunication and electronic firms looking to exercise patent rights over yet another entertainment and communications medium. Yet the basic industry structure of vertical integration and limited oligopoly was already set in the years before the mass conversions to sound starting in 1928. Before we can even assess accounts of how producer-distributors and exhibitor chains entered into cooperation with AT&T/Western Electric, Westinghouse, General Electric, and Radio Corporation of America (RCA), we need to look at the state of the industry on the brink of the sound era. As my focus differs from the previous chroniclers of the early sound

and pre-sound eras, the archival resources and references also diverge to include the MPPDA's own history, which has often been left out of these accounts. When the MPPDA has been front and center in accounts of the period, it has often been for different reasons. Thus, while Ruth Vasey and Richard Maltby have both authored important case studies of the MPPDA's role in censorship activities during the late 1920s (as referenced in Chapter 7), the MPPDA's function as a facilitator of oligopoly and vertical integration has not received the same level of scholarly attention, considering that the organization was often accused of precisely such a role.

Significantly, by the end of 1926, ten producer-distributors had established themselves with tiered market shares consistent with Hollywood's sound era.⁵ Loew's and Paramount were the two largest firms, each with annual profits in excess of \$5 million and total assets at \$91.4 and \$143.9 million, respectively.⁶ Following these were the mid-sized companies First National, Fox, Warner Bros., and Universal, with annual profits of approximately \$2 million each and assets in the range of \$15–20 million.⁷ Lower down and in some cases newer were FBO, Producers' Distributing Corporation (PDC), Columbia, and United Artists. All of these were vertically-integrated interests, from Loew's, Paramount's, Fox's and PDC's massive national chains to Columbia's and UA's much more limited holdings in select theatrical markets.

In addition to producer-distributors, there were dedicated theater circuits of varying regional and national presence: Stanley, Saenger, Skouras, West Coast Theaters, Northwest, Orpheum, and Keith-Albee. To acquire theaters, producer-distributors affiliated themselves or gained shares in theatrical circuits. Conversely, to acquire

production and distribution assets, an exhibitor circuit or booking combine could move in the opposite direction. As we have seen from previous chapters, the corporate structures of Paramount, Loew's/MGM, and First National had already demonstrated the usefulness of this strategy. Circuits were specialized to meet the needs incumbent upon successful film exhibition, including distribution, advertising and promotion. By affiliating with a powerful circuit, a distributor could ensure that its films found play dates in the most lucrative theaters and that its promotion and advertising campaigns were coordinated and efficient. There would be no wasted advertising and no concerns about assuring proper clearances and runs at the appropriate theaters. In such a way, a distributor could integrate national and regional promotion so as to have a compounding effect on multiple runs in various cities. Circuits were also a convenient means of dissociating the parent company from its theatrical assets, a tactic that had thus far prevented the FTC from dismantling Paramount's vertically-integrated corporate structure. At the same time, the association with a circuit relieved a producer-distributor of the burdens of theater expansion as the costs were spread across separate but cooperative financial interests. Learning from Paramount's example, Fox, Universal, and Warner Bros. all moved to affiliate with or acquire theatrical circuits in this period. In turn, these producer-distributors worked through the MPPDA to ensure that independent producers and exhibitors were beholden to the interests of the Hollywood majors when it came to securing distribution outlets and exhibition bookings.

The producer-distributors were encouraged in such maneuvering by Wall Street investors who realized the significance of securing and guaranteeing the retail or exhibition end of the industry. Since Wall Street was convinced that theater circuits

accounted for the primary source of revenue in the industry, the producer-distributors were faced with several choices: build a circuit, associate with a circuit, or wait for absorption into a circuit looking for vertical integration. The third option, where Wall Street financial firms engineered takeovers of a producer-distributor, was evident in the examples of PDC, Pathé American and First National. As for the first two options, these characterized how most producer-distributors dealt with the challenges and opportunities that circuits provided. To remain competitive amidst these larger financial plans for consolidation and theater expansion, producer-distributors had to ensure that investors were satisfied with the industry's commitment to corporate management and accounting practices. The MPPDA's establishment of the Banking Procedure and Finance Committee in 1923 had paved the way for the implementation of modern and standardized accounting practices across the industry. This ensured greater participation of investors in the production and distribution ends of the business. While Chapter 1 demonstrated that film industry stocks had played a significant part in industry affairs since the days of the MPPC, by 1925 the value and volume of trading had reached levels equivalent to other mid-sized American industries: film industry stocks now eclipsed any earlier stock offerings. As we will see below, much of this stock activity was focused on providing increased capitalization for theater expansion based on the model that Paramount and Kuhn, Loeb & Company had pioneered earlier in 1919.

Yet such an explosion of activity in theater circuits created greater tension with exhibitors, who complained of a concerted effort on the part of the MPPDA and its members to squeeze independent exhibitors to the margins of the industry.

"Overbuilding" and "Trustification" became popular slogans amongst independents,

especially when these complaints found a receptive ear in the Department of Justice. Sensitive to these accusations, the DOJ launched an eighteen-month antitrust investigation into FILM's arbitration process and the MPPDA's links to the regional FILM Boards of Trade. In turn, the MPPDA reacted to the threat of federal litigation by appointing a joint committee of producer-distributors and exhibitors who worked on recommendations for revising the Uniform Exhibition Contract and its provisions for arbitration. The result was the MPPDA's Standard Exhibition Contract that replaced the UEC in March 1926 and that made provisions for a Board of Arbitration independent of FILM or the exhibitors. Even though the document appears as a concession to exhibitors, it would turn out to be one of the MPPDA's major victories, since it forced exhibitors to agree to the MPPDA's terms and refrain from seeking compensation through state and federal courts. As might be expected, it was more difficult for independent exhibitors to hold the distributors accountable to the terms of the Standard Exhibition Contract. For example, it was common practice for the Hollywood majors to include additional clauses in individual contracts that nullified exhibitor gains in any "Uniform" or "Standard" exhibition contract.

The move for circuits also created anxiety amongst independent producers and state rights distributors, who complained that their films seldom obtained the profitable bookings required to sustain further productions and releases. From these complaints, it is evident that independent producers and distributors now faced even higher barriers to entry. Excluding shorts, comedies, and newsreels, production costs had risen to unprecedented levels. For the 1925–1926 season, \$125 million was spent for 696 features alone, or an average of \$180,000 per feature.⁸ Block booking allowed the larger

companies to recoup their costs, but no such relief was available to independents and their modest production slates. While Chapter 7 demonstrated how larger studios used the higher production costs as a pretext to announce wage cuts, it was the independents that were suffering. Smaller companies with limited production, distribution, and advertising capacity simply could not output the number of films required in such a marketplace that demanded high production value in every major release. Even if they did produce such films, the smaller companies were not guaranteed theatrical outlets. Significantly, while sound would increase the cost per film, the prevailing market conditions by this period had already worked to undermine independent production and distribution. Meanwhile, through such instruments as the Exhibition Contract, the FILM Boards of Trade, and the MPPDA's various committees, the producer-distributors ensured fellow members access to their theaters on equitable terms.

Consolidation at this pace meant that not all the producer-distributors were able to survive. Independents and their allies were often the first targets in any expansionist move. Unifying under the Independent Motion Picture Producers and Distributors of America (IMPPDA), independents were successful in expanding membership in their own trade organization and in providing an alternative to the dominant producer-distributors. Starting in December 1923 with a membership of seven companies, the IMPPDA had grown to include more than two dozen producer-distributors and several dozen film exchanges by the time of its June 1925 convention in Milwaukee.⁹ Furthermore, the IMPPDA's mandate had spread far beyond the state rights field where it was originally concentrated.¹⁰ Mirroring the name but inverting the oligopolistic purposes of the MPPDA, its objective was to protect independents through collective action.

Unfortunately, the IMPPDA's plans to cooperate with independent exhibitors, the MPTOA, and the TOCC did not always yield successful results. Independent distributors were sometimes reluctant to offer their films to independent exhibitors and exhibitors were not always willing to take them over films produced, distributed and marketed by the majors. In one such example from July 1925, Lee Ochs, a former MPELA president and current owner of the Piccadilly Playhouse on Broadway, publicly complained that independents were not interested in his theater.¹¹ In response, independent distributors accused the Piccadilly of booking only big studio products from MGM and First National.¹² Ironically, Ochs sold the Piccadilly to Warner Bros. only a month later in August and was retained as a Warner Bros. theater executive.¹³ Meanwhile, one of the independents' great successes on the production end, the state-of-the-art United Studios in Hollywood, was sold to Paramount for \$5 million in January 1926.¹⁴ United Studios had provided collective studio space for more than a dozen independent producers, and its physical lot had become a symbolic beacon of the independent struggle against a consolidated Hollywood, even though most recently it had served as a studio space for First National productions. The studio's absorption represented a significant expansion in Paramount's West Coast production facilities, especially as the studio entered the sound era. Another ally of the independent movement, Vitagraph relinquished its membership in the MPPDA and accused the organization of protecting monopoly interests.¹⁵ Ironically, Vitagraph was the last surviving remnant of the Edison Trust and had been a founding member of the Board of Trade, NAMPI, and the MPPDA. Yet this legacy manufacturer had fallen on hard times in the 1920s. Vitagraph attempted an alliance with independents and exhibitors in early 1925, but such plans fell through. It was ultimately

absorbed by Warner Bros. in April 1925 under that company's expansionist plans to compete with the other major producer-distributors.¹⁶ Upon the takeover, Warner Bros. had Vitagraph promptly reinstated as an MPPDA member in June 1925, demonstrating the importance of membership in such an exclusive association.¹⁷

At the same time that the majors expanded their theatrical assets at home, they worked on maintaining their distribution dominance over foreign markets where oftentimes 80–90% of all films shown were of American origin. Here the producer-distributors under the MPPDA were faced with several challenges. Most importantly, there was another backlash in the United Kingdom, where the government considered forcing a protective measure to ensure that British productions had access to British screens. Meanwhile, to maintain links to the German market, several MPPDA members affiliated themselves with UFA to subsidize German productions and import them for distribution in the United States. France was potentially another problem country for American distribution. Utilizing the instrument of the League of Nations, France and other European protectionists wanted to create a “Monroe Doctrine” that limited Americans access to European theaters. All of these efforts to counter European protectionist measures required the MPPDA's extensive management and lobbying.

Beyond the move into circuits, the maintenance of exports, and the need to organize a revised exhibition contract, the producer-distributors made alterations to how they dealt with public relations and censorship by founding a Department of Public Relations. This department increasingly inherited the role of the Committee on Public Relations. By founding a new censorship and public relations office, the MPPDA was

revising its outreach to reformist groups. It was also reaffirming its control over the public relations aspect of this work. If reformist groups were less likely to cooperate with the MPPDA because its tactics had failed to alter film production at the source, the MPPDA was also growing tired of having to appease the reformists. The MPPDA no longer wanted to outsource its public image to those individuals who were not under its control. Thus, the 1925–1926 period marks an important shift away from a reliance on reformist groups to an internal division and office responsible for organizing the MPPDA’s anti-censorship efforts. The MPPDA would continue to cultivate relations with reformists, but its tactics had now reverted to those of NAMPI’s old Censorship Committee. Paradoxically, Hays’s new “Open Door” policy promised greater interaction with outside reformist groups and the public, but in fact operated on the basis of a closely orchestrated internal department to counter censorship and uplift the industry’s public image. If the Hollywood majors were forced to reach outward to Wall Street investors, theater circuits, the international film industry, reformist groups, and the public for their prosperity, they had to reach inward to the MPPDA for managing these increasingly complex and critical relationships.

I can see what is going to happen to this industry. Wall Street has come in; and, now, Wall Street will run it. They’ll play checkers with the various concerns, move them around to suit themselves, and their own objectives.¹⁸

In January 1926, *Motion Picture News* ran an editorial that tried to downplay the ominous predictions in the quotation above.¹⁹ Its author, William A. Johnston, who served as the editor-in-chief of *MPN* and was a highly-regarded commentator on the industry, reassured his readers that no such development was taking place. Referring to

two factions in Wall Street, he made a distinction between brokerage houses that buy and sell securities for their clients and investment bankers who underwrite financial structures and merchandize securities to the public. Johnston pointed out that only individuals of the latter type were involved in the film industry and that their goals were not to control the industry. Rather, he suggested that when these investment bankers launched a “financial structure,” there followed only a brief period of banker control. Once the stocks and bonds were sold, the business would transfer into the hands of “trained experts, executives who represent the owners, the industry and the public.” Now if these banking interests were unsuccessful at selling the stock or bonds, Johnston claimed, then they would attempt reorganization or merger. Such was Johnston’s case to his readers, even if the facts as we view them today do not always line up with his explanation. Wall Street’s involvement in the film industry, which we covered in previous chapters, was now reaching unprecedented levels. Every one of the major producer-distributors and theater circuits had stocks that were traded on the New York Stock Exchange. As stock offerings became an essential part of theater expansion and circuit acquisitions, profits and dividends became even more important to majors. By 1926, stock market activity on the film industry greatly resembled other American industries, including commodities, utilities, and technology stocks. No major considerations were made without taking into account stock market ramifications. With respected accounting firms like Price, Waterhouse & Company overseeing standardized accounting and business practices across the industry, and with the MPPDA calling on its members to implement modern business practices befitting of great American industries, the Hollywood majors were now much more attractive investments to Wall Street than previously. The MPPDA’s

Banking Procedure and Finance Committee helped ensure open lines of communication between the industry's executive offices in New York City and their Wall Street counterparts in lower Manhattan. By bringing together financial officers from all the member companies, this committee devised a Uniform Balance Sheet and an outline for "best practices."²⁰ The MPPDA's public relations efforts in this period, which I will cover in a section below, were also a factor in reassuring prospective investors that the industry offered a stable and respectable basis for investment.

For its part, Wall Street responded to the industry's rising status with commendations for studio policies. In one such account originally published in the *Wall Street Journal* and reprinted in the industry's own *Film Daily* in July 1926, an editorial praised the "stabilization" the industry had achieved over the last 10 years despite the inherent uncertainties in box office performance.²¹ Underlying this argument was the belief that the industry had developed immunities to the unpredictable nature of the box office. As the author notes, a producer-distributor's assets were essentially bound up with the projected value of negatives in its vault. Yet materially these negatives had no value. Only with the appropriate promotion, distribution, and exhibition could they equal their value as carried on financial balance sheets. In alleviating such uncertainties, two interconnected factors accounted for the recent advancements in "stabilization": large-scale systematized production and its integration with large chain theaters. According to the article, a half-dozen large producer-distributors controlled 85% of the business, owned or were affiliated with more than a quarter of the theaters, coordinated with banks, ran their businesses on approved financial standards, and had more than 50,000 public shareholders. Amalgamation of smaller interests into larger and vertically-integrated

corporations had made it possible for the industry to provide bankers and financiers the guarantees that facilitated invest. While several companies had appointed bankers to their boards, the *WSJ* editorial argued the studios had guarded their independence from the bankers since their private interests allowed them to retain executive management positions. Specifically, the article pointed to the MPPDA's contributions in promoting standardization on production practices, contracts, distribution, and labor affairs. It also noted that the MPPDA had brought about productive cooperation amongst the producer-distributors, thus encouraging the kinds of practices that made the Hollywood firms more attractive for Wall Street investors. Controversially, the article gave a nod here to block booking as a significant factor in providing the industry with stability and security. By forcing exhibitors to buy in blocks and by acquiring theaters themselves, the major producer-distributors had assured a return on the season's investment in production. Consequently, with such assurances in place, banks were more likely to lend them money. Through such practices, the article concludes, profit fluctuations were now minimized and investment returns better secured.

To assure its readers of the industry's firm position, the *WSJ*'s series of articles on the industry along with the reprints in *Film Daily* also released accompanying statistics meant to demonstrate that the motion picture industry had become as essential as other "necessities" such as bread, tobacco, and chewing gum.²² Admission returns in 1925 were said to reach \$700 million, taxable industry property was at \$720 million (theaters and studios), and the total amount invested in the industry was pegged at \$1.5 billion. The industry employed 500,000 individuals on a permanent basis, consisted of 20,000 theaters with a seating capacity of 18 million, and averaged a weekly attendance of 130 million.

Other articles published in *Film Daily* from the same period reinforced the industry's attractiveness for investors.

TABLE 8.1 Securities and Bonds: Nov 1924 – April 1926 ²³				
Company	Security	Price (\$)	Amount (\$)	Offered By
Famous Players	121,715 Shares Common	90	10,954,350	Offered to Stockholders
Fox Film Corp.	165,000 Shares Class A	43	7,095,000	Offered to Stockholders
Fox Theaters Corp.	500,000 Shares Class A	25	12,500,000	Eisels & King Taylor, Thorne & Co.
B.F. Keith	\$6 million 20-year Bonds	100	6,000,000	Dillon, Read & Co. Lehman Bros. Bankers Trust Co.
Loew's Inc.	15-year Gold Debentures	99½	15,000,000	Dillon, Read & Co. National City Co.
Motion Picture Capital Corp.	40,000 Shares Common 30,000 Shares Common 30,000 Shares Common	17 18 20	680,000 540,000 600,000	Lyman D. Smith & Co. Watson and White Watson and White
Paramount Broadway	25-year Bonds		10,000,000	
Pathé American	\$1,060,000 10-year Bonds	97½	1,033,500	Merrill, Lynch & Co.
Roxy Theaters	125,000 Shares Class A	40	5,000,000	Miliken & Roberts, Inc. Howe, Snow & Bertles Henry Lindsley
	4,250,000 Serial Bonds	98.57		S.W. Strauss & Co.
Saenger Theaters	\$1,500,000 15-year Bonds	99	1,485,000	Hibernia Securities Co. Hemphill, Noyes, & Co. Merrill, Lynch & Co.
Universal Chain Theaters	\$4,000,000 1st Preferred	100	4,000,000	Shields & Co.
Universal Pictures	\$3,000,000 1st Preferred	100	3,000,000	Shields & Co. Dillon, Read & Co.
Warner Bros.	170,000 Shares Class A	10	2,550,000	McClure, Jones & Reed

For example, an *Evening Post* article listed \$84.7 million as the amount Wall Street had underwritten during the 18 months leading up to April 1926 (Table 8.1). The figure was divided amongst producer-distributors, their affiliated theater circuits, and a

few independents. Leading the pack here were Loew's, Fox, Universal, and the Paramount/Famous group. Together these companies accounted for \$62.5 million of all stock offerings, or roughly 74%. B.F. Keith, whose theaters featured vaudeville, were included here because the same theaters also showed films and the company was moving to affiliate with both the Albee circuit and the independent producer-distributor PDC. Excluded from this list was the supply company and MPPDA member Eastman Kodak, whose 1925 stock sales numbered 450,100 common shares, whose assets and income were assessed at \$115 million and \$18.47 million, respectively, and whose stock dividend was \$8 per share.²⁴ Along with the other MPPDA members, Eastman Kodak had retained a significant position in the American film industry to this point in 1926.

TABLE 8.2 Statistical Comparison of Leading Amusement Companies (May 1926)²⁵

Issue	Total Capitalization	Fixed Investments	Working Capital	Inventories	Gross Revenues	Price \$	Current Div.	Yield %
	In Millions of Dollars							
Famous Players	39.72	35.87	19.98	18.21	[68.4] <i>*Not Listed</i>	122	\$8	6.6
First National Pictures	6.11	2.62	6.07	3.23	24.72	99	8	8.1
Fox Film	12.86	11.12	13.25	8.55	15.14	64	4	6.3
Loew's	42.19	35.70	11.48	11.86	56.29	38	2	5.4
Metro Goldwyn	8.53	5.95	12.24	11.82	5.99	23	1.89	8.2
Orpheum Circuit	13.87	30.43	2.76	none	18.14	29	2	6.9
Pathé Exchange	4.61	1.19	5.63	1.03	18.15	49	3	6.1
Universal Pictures	9.06	3.87	6.16	8.03	24.85	93	8	8.6

It was one thing to see how much had been invested, as Table 8.1 conveys, but quite another to know the recommended investment strategies. Accordingly, detailed financial records and balance sheets of the individual companies were also reproduced in these articles. Studio accounting records gave investors a complete picture of their investment prospects. One such example is a statistical table from *The Magazine of Wall Street*, also reprinted in *Film Daily* (Table 8.2). Aside from its practical use for investors, the table reflects market share amongst the major producer-distributors, their stock capitalization, and their company assets. If we add the other large theaters chains (Stanley & West Coast) and Warner Bros. to the list above, and consider that Loew's and Metro Goldwyn were the same company, we are left with the ten largest firms involved in producing, distributing, and exhibiting films in the United States during this period. As reported in financial papers and industry trade papers, collectively these firms posted a combined net profit of \$24 million in the fiscal year 1925.²⁶ Yet such public notices were not transparent as accounts of internal company finances. Numbers were shifted to meet corporate and investor demands. For example, when balancing assets with liabilities, studios would simply create immaterial assets in the form of "goodwill." This asset category accounted for the market value of the studio's brand value minus its physical and material assets in studios, film negatives, star contract, distribution facilities and theaters. Otherwise, a corporation would include stock offerings in its capitalization even when those stocks had not been sold. Indeed, both of the above practices had been prevalent at the struggling Vitagraph, a fact pointed out in Chapter 3. But since these articles also included details of corporate budgets and balance sheets, they offered a more reliable record of company finances. Moreover, this information might preclude a studio

from balancing its budget through makeshift asset categories such as “goodwill,” although most of the major producer-distributors continued to carry such “assets” in their reports from the period.

Despite all the attempts at transparency, however, Paramount’s gross of \$68.4 million (\$23 million of which was theater revenue alone) was not given in these accounts and can only be ascertained from internal financial reports.²⁷ This was likely for reasons having to do with the ongoing FTC investigation against Famous Players and the need to keep separate the various divisions of this vertically-integrated behemoth. Nonetheless, for tax purposes, Paramount had to release its income statistics. From these, Famous Players-Lasky’s reported a profit margin in 1925 was \$5.7 million, as compared with the previous six years: 1919 (\$3.1 million), 1920 (\$5.3 million), 1921 (\$4.7 million), 1922 (\$4.1 million), 1923 (\$4.2 million), and 1924 (\$5.4 million).²⁸ The great discrepancy between 1919 and 1920 is reflective of Paramount’s growth in that year and the expenditures that were required to sustain its theater expansions. Paramount’s numbers thus compared favorably with Loew’s/MGM, the other large and vertically-integrated interest, which posted \$4.7 million in net profit for 1925 and was set to more than double that for 1926.²⁹

With these financial stats in mind, we can see how Wall Street banking interests affected oligopoly formation in the industry by funneling investments into the acquisition of theater assets and circuits. This strategy guaranteed a more secure return on investment across all areas of the industry. When we combine the data from Table 8.1 above, which shows the amount offered in stocks and bonds for financing theater expansion over the

period of January 1925 to April 1926, and Table 8.2, where producer-distributor stocks are obviously benefitting from this influx of investment, we have direct evidence of the impact that Wall Street investors were having in promoting the emerging market structure of the Hollywood majors. From this point forward, as far as the MPPDA and its members were concerned, vertical integration was a prerequisite for attracting capital for expansion in any area of the industry. Curiously enough, *The Wall Street News* actually argued that greater Wall Street investment diversified what was otherwise a concentrated market and proved that the film industry “was no longer in the hands of a few individuals.”³⁰ The journal noted that the seven largest companies in the industry as listed on the New York Stock Exchange had 60,000 shareholders who owned more than 11 million shares. What it left out was an account of the allocation of common vs. preferred stock: the latter accounted for the bulk of these publicly-traded shares, while the former was held in corporate or executive hands, thus retaining the voting rights within the studios’ executive offices.

To understand how all this investment was allocated specifically, we need to look at the producer-distributors’ frenzy over theater acquisitions and circuit affiliations. Regarding the latter, which became crucial in the 1925–26 period, the *Wall Street Journal* and industry commentators compared this form of theater management with the efficiencies associated with tobacco and drug store chains, where costs were reduced through economies of scale (i.e., the increased advantages obtained by expansion).³¹ As manufacturer-owned retail outlets, store chains offered a valuable lesson for the film industry’s producer-distributors who understood the need to secure the proper commercial outlet for their products.³² Even William A. Johnston’s assurances that

independents could defeat such cookie-cutter circuits by offering the public “personality” seemed hollow at best.³³ The process of circuit building was so severe that by 1926 there were calls against “overbuilding” and “over-seating” from certain quarters in the industry.³⁴ Independent exhibitors could see the producer-distributors’ chains moving into their territories and replacing their theaters with those that had access to the most profitable films. In the period from September 1924 to December 1925 alone, *Film Daily* reported theater acquisitions and added affiliations as follows: Fox, 162; First National, 132; PDC, 128; Universal, 114; Paramount, 107; Warner Bros., 16; and Loew’s/MGM, 10.³⁵ 1926 would see similar trends. The aspiring vertically-integrated factions were looking to match the first-run assets and chains held by Paramount and Loew’s, which by January 1926 owned controlling interests in 386 and 158 theaters, respectively.

By November 1925, Fox had issued \$19.8 million in stock offerings so as to fund its theater expansion under the Fox Theater Corporation.³⁶ At this stage, Fox had already acquired 80,000 shares of the 200,000 issued by the West Coast Theater circuit back in July 1925, thus giving the producer-distributor an important stake in its future.³⁷ West Coast Theaters, which was the dominant theater group in Southern California, represented a circuit of more than 100 theaters, with 27 of these in Los Angeles alone. The circuit had absorbed Turner & Dahnken’s First National franchises in California and New York and was also contracted for the entire output of MGM/Loew’s.³⁸ Like other circuits, it represented a crossroads for producer-distributor competition and cooperation, including interlocking mechanisms of distribution, management, and promotion. However, Fox failed in its quest to gain control over West Coast Theaters at this early stage because the latter’s majority stockholders, including Sol Lesser and the Gore

brothers (Abe and Mike), had ultimately refused to sell their shares. In an eleventh-hour plea, these stockholders were persuaded by First National's executives that Fox's control over West Coast Theaters would mean effective control over First National in California and New York.³⁹ As far as the executives were concerned, such a move would severely undermine First National's national standing. While First National was safe for the time being, the controversy over Fox's failed negotiations with West Coast Theaters had exposed First National as a vulnerable organization whose franchise-based leadership structure was prone to internal rivalries, divisions, and contradictory business plans. As we will see below, First National's decentralized leadership structure made it ripe for predatory takeover. Meanwhile, Fox would have to rethink its theater expansion plans. Without effective control over a circuit, Fox could not expect the same kinds of benefits of guaranteed exhibition that Paramount, MGM/Loew's, and other producer-distributors had enjoyed when releasing films or when affiliating with circuits. It was at this point that the Fox Theater Corporation set out to build and acquire the necessary theaters so as to provide the producing and distributing end of its business with the exhibition guarantees and profits that it sought. While Fox's theater acquisitions in 1925 were referenced above, its 1926 plans called for among other projects several large theaters combined with hotels and business districts in San Francisco, St. Louis, and Kansas City.⁴⁰ At least two of these theaters, the Fox Theater in St. Louis and Capitol in San Francisco, were designed for seating capacities in excess of 5000. The total cost for these projects was estimated at over \$13 million. By the end of 1926, Fox's chain was present or building in 25 of the leading markets in the U.S.⁴¹

Universal also acted on plans for theater expansion, but reassured exhibitors that it would only acquire theaters in places where it faced a lockout and not for the purposes of forcing independents out of the business. By 1926 Universal had affiliated itself with two theater circuits, Schine Theatrical Enterprises and Hostettler, giving the producer-distributor access to 94 houses when combined with its own theaters.⁴² At this point, Universal announced that it was forming a separate theatrical division with financing from Dillon, Read & Company, which would own the majority share in the new corporation. Its first actions were to buy the existing Universal theater affiliates and Universal's own holdings. From here there were grand plans for expansion. Under the leadership of Charles B. Paine, the Universal Chain Theatres Corporation's earliest acquisitions were the Sears Circuit and the Capitol Enterprises, giving Universal a powerful position in Kansas and Missouri, and linking efficiently and advantageously with Universal-Hostettler theaters in Iowa and Nebraska.⁴³

Warner's, too, was on the march when it came to theaters, distribution, and exhibition. As one of the smallest companies in the MPPDA, it represented a burgeoning producer-distributor with great ambitions for expansion. In order to realize these goals it required larger production facilities, a nation-wide system of distribution exchanges, and theaters. Warner's most significant theater expansions did not occur until 1928 and involved the Stanley and First National acquisitions chronicled in Chapter 9. Yet by purchasing Vitagraph and its exchanges in April 1925, Warner Bros. built the foundations for its growth in the subsequent period. A pioneering company that had experienced several years of reduced profits and corporate takeover attempts, Vitagraph was sold to Warner Bros. for just over \$1 million. This represented 25% of Vitagraph's estimated

\$4.2 million value.⁴⁴ Albert E. Smith, Vitagraph's president, was kept on the studio payroll for several years as part of the deal, but exercised no authority over the new Vitagraph.⁴⁵ Vitagraph promptly reinstated its MPPDA membership and now distanced itself from its allies amongst the independents. As a former member of the MPPC and GFC, and a founding member of the Board of Trade, NAMPI, and the MPPDA, Vitagraph's long history is informative for understanding the relationship between oligopoly and trade associations in the American film industry. As we have seen from previous chapters, at the height of its business Vitagraph functioned as a complicit member of the NAMPI oligopoly. By the time of the MPPDA, however, Vitagraph had lost its industry position and began cultivating links with independents. It was in this period in 1922 that it filed suit against Paramount for \$6 million in damages, a sum that it was never awarded. With the MPPDA's intervention, the suit was altogether dropped in June 1923.⁴⁶ In 1924 this shift in Vitagraph's policies culminated in its resignation from MPPDA membership whereupon it sought compensation for dues that it had paid. From this point until Warner Bros. purchased Vitagraph in April 1925 and reinstated it in the MPPDA, Vitagraph operated independently of the major producers distributors and did not benefit from that organization's protection. As one of the last-ditch efforts to save Vitagraph, executives John Rock, James Stuart Blackton, and Albert E. Smith contemplated a joint venture with independent exhibitors, including an offer for Sydney Cohen to buy Vitagraph for \$3 million, but were unable to secure the adequate funding for such an endeavor.⁴⁷ They were left with no choice but to accept Warner's undervalued offer. In acquiring Vitagraph, Warner Bros. took hold of its 50 world exchanges: 26 in the U.S., 4 in Canada, 10 in England and 10 in Continental Europe.⁴⁸

Warner Bros. also took over studios at Flatbush New York and in Hollywood, California. Once Vitagraph had been swallowed, Warner Bros. like others in the business looked to First National as the next firm ready for pillaging. These combined assets swelled Warner's holdings and pushed it from a minor player to major producer-distributor capable of competing with Fox and Universal in the middle tier and Paramount and Loew's/MGM at the high end.

Beyond these corporate acquisitions, Warner Bros. had developed an important relationship with Western Electric that would pay numerous dividends in subsequent years. This relationship also had implications for the other MPPDA members. As Gomery and Crafton have already chronicled, Warner Bros. set out in 1926 to bring synchronized sound to motion pictures with the premiere of *Don Juan* (Alan Crosland) in August at the Warners' Theater on Broadway. Debuting alongside recorded orchestral pieces and songs that gave the audience the impression of a "phantom" orchestra in the theater pit, the film's premiere was a tremendous boon for Warner's and Western Electric's Vitaphone.⁴⁹ Although there was no synchronized dialogue in the feature itself, the early technological demonstration evidenced the long process behind sound development. This was a history that culminated not so much in Warner's famous *The Jazz Singer* (Crosland) of 1927, but more importantly in the mass conversions to sound starting in 1928, when Paramount and MGM signed an agreement to adopt Western Electric's system and when RKO entered the field using RCA's Photophone.⁵⁰ Moreover, Hays's congratulatory remarks were included on a short film in the Vitaphone program, thus representing an ominous sign of the MPPDA's developing investment and concerns with sound. As Crafton has noted, the addition of dialogue to films created a whole new

set of censorship problems that the MPPDA was forced to confront in the late the 1920s and early '30s.⁵¹ All of this contributed to revised attempts at self-regulation including the “Don’ts” and “Be Carefuls” of 1927 and the Production Code of 1930. Dialogue was much likely to arouse the ire of censors and any re-cutting was a much more expensive process considering that it required rerecording of the continuous sound track. With synchronized sound, an editor could not simply cut out a few shots or scenes as had been the case previously with silent films. As Crafton notes with example of *Don Juan* as early as 1926, the Chicago censors asked for cutting of scenes in four of its reels, resulting in Warner Bros. having to rescore and rerecord about 40 minutes of film.⁵² The much higher stakes of censorship in the sound era would require the MPPDA’s constant attention. For sound to become an industry standard shared by all the majors, it would have to be endorsed by producer-distributors much higher up the ladder than Warner Bros. or Fox. According to Gomery, the fact that sound innovation was driven initially by Warner Bros. and Fox and not Paramount and MGM, was evidence of long-standing industrial practices. As Gomery explains, mid-sized firms were more likely to experiment only to see the larger companies adopt their methods when they had already been proven as effective business practices.⁵³ In the next chapter, we will see how the Five Company Agreement between MPPDA members not only reflected MGM’s and Paramount’s reluctance to sign on with sound technology before it had been proven but also demonstrated a strategy to avoid patent conflicts that could undermine sound’s box office potential. This strategy protected the existing oligopoly from outside interference while maintaining established barriers to entry for newer concerns now mushrooming in the arena of film sound.

Not to be left behind in securing theaters or new sources of funding, FBO again found itself reacting to the producer-distributors as they moved into the business of circuits. FBO was previously named Robertson Cole and had established itself as a major figure in international film distribution as referenced in Chapter 6. There, I noted that FBO (Robertson Cole) had also sought affiliation with theaters, but had not yet acquired its own. By 1925, the MPPDA's internal memos had identified as the only large producer-distributor not yet a member.⁵⁴ Any such application for membership would there be looked at favorably by the organization. Subsequently, under its new president, Joseph P. Kennedy, FBO joined the MPPDA on March 29, 1926 and inaugurated a \$7.5 million plan for theater expansion alongside its \$10 million allocated for productions.⁵⁵ With these late investments, FBO's major expansion plans did not occur until the 1927–1928 period, which is covered in the next chapter. There I will also briefly chronicle FBO's merger with Pathé and with the Keith and Orpheum Circuits to form Radio Keith Orpheum (RKO) under the aegis of RCA.

Pathé, whose trademark and studio assets would continue as a minor part of this new combine, was next to FBO the only other large distributor that had never joined the MPPDA. It was known for its serials, for its quality distribution outlets, and for its international presence, which of course must be distinguished from its former parent company in France. Since 1917, this American division, Pathé American, had been under the control of the financial company Merrill Lynch. In 1926, Merrill Lynch sold Pathé American, including the famous Pathé Exchange as its distribution business was known, to another investment firm, Blair & Company. The latter planned to join Pathé with the Producers Distributing Corporation (PDC), an MPPDA member with a large chain of

theaters. PDC was the distributing company headed by Cecil B. DeMille upon his leaving Paramount in 1925 and was a distributor for a collective of well-known independent producers. Now the PDC would come under the same kinds of Wall Street financial interest that were busy bringing about combinations elsewhere in the industry.

The latter takeover, however, was not without its difficulties. It demonstrates how independent interests were eventually brought into cooperation with the larger financial and corporate powers. Pathé's sale to Blair & Company in October 1926 involved a straight transaction of all of Pathé's Class B or Preferred Stock, which had the authority to elect six of nine of its board of directors.⁵⁶ In contrast, Blair & Company's plans for joining Pathé with PDC were not so simple. A complicating aspect to Blair & Company's plans was that the Keith-Albee circuit owned 50% of PDC as well as a minority share in Pathé. At the time that Keith-Albee acquired its share in PDC in May 1926, it ran 114 theaters in 25 states and 68 cities, all in coordination with the Orpheum circuit.⁵⁷ Absorbing PDC guaranteed Keith-Albee first-class films for its theaters, thus vertically integrating in the same way that Loew's had when it acquired Metro five years earlier.⁵⁸ Apparently as a response to the Stanley's contemporaneous takeover of several other circuits, including the Strand, Fabian, and Rowland and Clark circuits, Keith-Albee's plan was to remain competitive in an increasingly concentrated industry.⁵⁹ Stanley's circuit, which we examined previously when dealing with Paramount's subsidiaries, now included an unbroken national chain of highly competitive first- and second-run theaters. Although Paramount had since divested of its interests in Stanley, the latter still retained an association with Paramount and with other major producer-distributors. Booking films for its circuit were not so difficult. In contrast, Keith-Albee had no such links with

producer-distributors, and PDC provided it with a minimum of protection against a distributor lockout. With PDC under its control, Keith-Albee had elaborate plans. Its August 1926 announcement of a \$20 million plan to add 20 theaters to its chain in the coming year, for example, demonstrates that it was only growing in stature and ambition.⁶⁰ Any deal to join the Pathé Exchange with PDC would have to take into account the Keith-Albee interests, not to mention Cecil B. DeMille's reported initial opposition to such a takeover of independent interests.⁶¹ By the end of November 1926, when Blair & Company's negotiations were winding down on the deal for PDC, DeMille was no longer opposed to the merger.⁶² In this way, the final "independent" of the producer-distributors was first reeled in by one of the largest circuits, thus forming a vertically-integrated company out several components in a complicated and interlocking financial structure.

The established vertically-integrated firms for their part were not content with the lucrative theaters already under their control. Paramount, which was affiliated with the largest chains in the country, acquired the Balaban and Katz theatrical chain and merged it with its own division to form Publix in June 1926. The transaction was completed along similar lines as in the past, where Paramount offered a portion of its stock to Balaban and Katz stockholders in exchange for a majority share in the chain that included 250 theaters and \$17 million in assets.⁶³ Even after the acquisition, it was estimated that Paramount had \$6 million remaining out of \$20 million capitalized for theater expansion in the period. Balaban & Katz for its part was tasked with managing the combined theaters of the Publix Theater Corporation. The Loew's circuit also laid plans for expansion in 1926. For example, it allocated over \$10 million for building a series of

large theaters in New England with Arthur S. Friend as the local partner.⁶⁴ Friend was tasked with building the theaters, while Loew's would take over management upon their completion. Seating capacity for these new Loew's theaters ranged from 1500 in Derby, Connecticut, to 3500 in Providence, Rhode Island. As large theaters already existed in these locations and newer projects were hardly necessary to service the communities that resided there, Loew's actions were evidence of the kind of overbuilding that independent exhibitors like Sydney Cohen complained about.⁶⁵ In choosing these specific locations, Loew's objective here was to close the geographic gap between Boston and New York by stringing together a circuit that optimized distribution, advertising, and promotional efficiency.

As a consequence of the producer-distributors increased activity on theaters acquisitions and circuit affiliations, the MPPDA was placed in a very difficult position. It was forced to continue shielding its member companies as they progressed in expanding their theatrical assets. Further exhibitor complaints and accusations that the MPPDA was simply an instrument of oligopoly were met by a dual track approach of appeasement and entrenched bureaucracy on distribution contracts. Hays assured the independents and exhibitors that "no small group could dominate the field."⁶⁶ Echoing the *Wall Street Journal's* claims that the influx of investors had diversified the field and diluted its market concentration, Hays pointed to an unnamed producer-distributor that boasted 316,000 shares held by 4,288 individual investors in 45 different states and 12 countries. While such pronouncements amounted to little more than public relations and theatrics, Hays and the MPPDA were tasked with undertaking serious policy decisions. Most importantly, the MPPDA aimed to prevent exhibitor grievances from reaching the courts

and possibly affecting antitrust agitation, such as the ongoing FTC suit against Paramount. That approach necessitated a commitment to the Uniform Exhibition Contract (UEC).

Recall from Chapter 8 that the UEC adopted in February 1923 was supposed to represent a work of compromise between the MPPDA, the FILM clubs, and the Theater Owners' Chamber of Commerce (TOCC) of New York. But owing to its lack of concessions to exhibitors regarding arbitration, block booking and other topics, it was in reality a major achievement for the MPPDA in sustaining the status quo while espousing the rhetoric of compromise and cooperation between producer-distributors and independent exhibitors. Moreover, the UEC was intended to bring about standardized methods for producer-distributors to cooperate amongst themselves, since its provisions regulated distributor-exhibitor transactions between MPPDA members who also owned and operated theaters. Each member could be assured that it was dealing with the other producer-distributors in the group on terms beneficial to both parties. Independent exhibitors often complained that the MPPDA members favored one another when it came to booking MPPDA films in member-owned theaters. The Uniform Contract had only raised such suspicions. Furthermore, the UEC had the dubious distinction of splitting the exhibitors into two warring factions, the TOCC and the MPTOA, with latter refusing to endorse the document signed by the former and accusing the MPPDA of aiding and abetting "monopoly" in the American film industry. Such was the legacy of divide and conquer that the MPPDA had inherited from NAMPI.

Although this state of affairs was sustainable for the MPPDA members for a protracted length of time, by early 1925 independent exhibitors had become increasingly vocal in their condemnation for the UEC. These protests led to an antitrust investigation by the Department of Justice. In its investigation, the DOJ examined the FILM Boards of Trade and the MPPDA's specific relationship with these local trade associations. You will recall that these 32 regional FILM Boards were the trade organizations for the local exchanges. Of course, the MPPDA had always rejected the notion that its members dominated the local FILM Boards. In its response to the Justice Department, the MPPDA maintained that FILM's members were drawn from all distributors, only some of whom were MPPDA members.⁶⁷ However, as the MPPDA members were the dominant distributors in any given location, the MPPDA's producer-distributors in effect controlled FILM and its arbitration boards. Even if their numerical numbers did not account for the majority of distributors belonging to local FILM Boards, their authority was based on the level of monetary support and the extent of their producing and distributing assets. Ironically, Charles C. Pettijohn, who was General Counsel for both the national office of FILM and the MPPDA, had to admit that he received his salary from both groups and that the FILM offices were run out of the MPPDA's New York headquarters.⁶⁸ With the Justice Department watching, the MPPDA had to move quickly to prevent any adverse litigation regarding its coveted FILM Boards of Trade and their role in the disagreements over the exhibition contract. Moreover, a new contract was necessary to bring the thousands of exhibitors under the MPTOA into cooperation with the MPPDA's standardized distribution contract. A new standard exhibition contract would therefore discourage any exhibitors from seeking legal action in the courts.

At issue were essentially the same concerns that exhibitors had articulated in the previous round with the UEC. The exhibitors wanted a contract that protected them from distributor tactics they believed were part of a concerted effort to undermine independents. Exhibitors were especially concerned with anomalies on block booking contracts. For example, the distributor might suddenly change the terms of the contract midstream to advantage of other customers, its own theaters, or alternative distribution outlets like road shows, which undercut a film's profits in its future standard distribution. Alternatively, a distributor might force a block of films onto an exhibitor only to change the contract by substituting different films or films lacking the stars promised in the original contract. All of the above were unacceptable to exhibitors. If advance deposits were collected in some form, exhibitors wanted them kept separate from the producer-distributors' own finances on production financing, for example. In addition, such funds were to be kept in interest-bearing trusts yielding 5% annually.⁶⁹ Most importantly, exhibitors demanded a system of arbitration that was independent from the MPPDA's FILM Boards of Trade.

Thus began another round of negotiations between the MPPDA, the FILM clubs, the TOCC, and the MPTOA. This time, the MPPDA organized a joint committee consisting of members of each organization. These individuals included R.R. Biechele, president of the MPTO of Kansas and Missouri, Saul Rogers, chairman of the MPPDA's Law Committee, Charles C. Pettijohn, MPPDA general counsel, Charles O'Reilly, president of the New York TOCC, Michael J. O'Toole, MPTOA president, and Gabriel L. Hess, MPPDA general attorney. In its first round of extended meetings, which were held over a week in March 1925, the Continuing Committee outlined suggestions for a

new exhibition contract titled the “Standard Exhibition Contract.”⁷⁰ Again, the negotiation process took months: it started in March 1925 and lasted until the summer of 1926. Many revisions and counter-revisions were sent back and forth between the different parties listed above.⁷¹ When the MPPDA’s Standard Exhibition Contract was released in March 1926 it claimed to have the authority of both the exhibitors and the producer-distributors who were represented by their respective trade organizations on the Advisory Committee.⁷² Yet neither side was fully satisfied. The MPPDA members demanded additional modifications that reversed some of the concessions offered to the exhibitors. Producer-distributors who used the Standard Exhibition Contract in this period did so by attaching additional protocols. The negotiation process dragged on for another few months until a final meeting of the joint committee in May 1926 produced the apparent consensus and many of the provisions that the exhibitors had originally demanded.⁷³ Its signatories included Charles O’Reilly, E.V. Richards, W.A. Steffes, and R.F. Woodhull for the exhibitors and Will Hays for the MPPDA. The Standard Exhibition Contract as drafted and released back in March 1926 thereupon became what some in the industry called “a bill of rights.”⁷⁴ For example, exhibitors were now guaranteed protection against violations of the distribution contracts or modifications to film series sold in blocks. Release schedules, runs, and clearances agreed upon by both parties had to be respected and the window within which a contract could be voided was now clarified and standardized. Distributors were no longer supposed to modify the exhibition contract by attaching additional provisions or riders that contradicted any aspect of the standard contract. The regulations governing time of appeal were also tightened. This standardized the process of appeals and the time period within which such

claims had to be brought to the arbitration boards. Most importantly, arbitration itself was now placed under a joint local committee comprised of two FILM Board members and two local exhibitor trade organizations.

Despite all these gains, the MPTOA distanced itself from the document. The MPTOA declared in June that their representative at the May gathering of the joint committee, R.F. Woodhull, had only acted on his own behalf as an individual and not as a voice for the MPTOA.⁷⁵ As far as the MPTOA was concerned, one essential problem that was not resolved with the Standard Exhibition Contract was the practice of cancellation. Although not codified as part of the 22 clauses included in the Standard Contract, the so-called “Optional Cancellation Clause” was printed at the end of the document. Thus, it was up to the distributors to include it any particular contract. The optional clause specified that photoplays listed by title in a contract were non-cancellable while untitled photoplays sold as part of a series were cancellable by either party after the first two films had been exhibited. This was exactly the kind of exploitive clause that exhibitors had attempted to remove from previous exhibition contracts. If exhibitors remained unsatisfied with even this revised version of the standard contract, the MPPDA had no plans for producing yet another version in 1926. Most importantly for the producer-distributors, the MPPDA’s revised standard contract and the association’s apparent willingness to work for compromise with exhibitors had deflected the Department of Justice’s investigation into the MPPDA, FILM clubs and arbitration. After an eighteen-month investigation, the DOJ concluded in August 1926 that the present arbitration system as enacted by the Standard Exhibition Contract, the MPPDA, and the local FILM Boards throughout the 32 exchange centers in the U.S. was legal and preferable to

arbitration through the courts. According to the DOJ, there was no antitrust violation in regard to FILM Boards of Trade. While the report identified areas for improvement, such as strengthening Rule IV of FILM's Rules and Regulations (which governed the issue of arbitration decisions and the blacklisting of exhibitors), and criticized the problem of excessive fees for securities, the report legitimized FILM's arbitration process.⁷⁶

Aside from its direct lobbying with the DOJ and its implementation of the Standard Exhibition Contract, the MPPDA had attempted to blunt exhibitors complaints by launching a counteroffensive on bicycling. Here the MPPDA claimed that distributors lost over \$1 million every year due to this nefarious practice amongst exhibitors. Accordingly, the MPTOA's bulletin called the bicycling threat a smokescreen to distract from the MPPDA's own violations.⁷⁷ Smokescreen or not, the MPPDA's tactics had proven fruitful in derailing the DOJ's antitrust case. Faced with government litigation on antitrust, the producer-distributors had gambled by sticking to their demands. They had worked tirelessly through the MPPDA and the FILM Boards of Trade to ensure their interests were secured at the same time that their expansionist policies threatened independent exhibitors. That FILM's system of arbitration had escaped generally unscathed from the DOJ's antitrust investigation was a significant victory for the forces behind vertical integration and oligopoly. Such advancements only emboldened the MPPDA members as they proceeded on their expansionist plans over the next few years.

If relations with independent domestic exhibitors were strained at best, relations with overseas exhibitors, governments, and markets fared no better. The most important issues that affected the majors' foreign relations were copyright protection, tariff and

quota threats against American films, and joint production and distribution deals with local producer-distributors. As an organization that promoted and protected producer-distributor interests abroad, the MPPDA was directly involved in all three cases.

Copyright protection involved distributed films, music rights, and story rights to published or unpublished literature. The MPPDA wanted to prevent foreign distributors and exhibitors from pirating or copying American films. Such practices were well established in parts of Europe, the Near East and the Far East.⁷⁸ Initially, a distributor might seek relief from foreign governments. Failing that, however, a distributor could condemn copyright violators in local trade papers with the aim of deterring would-be pirates.⁷⁹ Accordingly, concerned about the international piracy threat to its literary and filmed properties, the MPPDA approached the U.S. Department of Commerce so as to clarify the protections offered to films under the International Copyright Union of 1908 (Berne, Switzerland). As the U.S. had not been a signatory to the Berne convention, the MPPDA was looking for some way of protecting its member films by virtue of the simultaneous release in a Union country. For example, Britain's copyright treaty with the U.S. provided protection for American "publications" that were released in Britain within fourteen days of their release in the U.S.

According to the Department of Commerce, the Copyright Union provided films with three categories of protection: the literary work, or scenario; the production (as both performance and concept); and the film negative and its positive prints.⁸⁰ While Article IV of the Copyright Union protected publications in Union countries even when the authors were not citizens or residents of those countries, the Commerce Department identified a gray zone regarding American films simultaneously distributed in Great

Britain, for example, and seeking protection under the Copyright Union in other member countries such as Netherlands.⁸¹ In order to clarify this uncertainty, the MPPDA members would have to arrange for unilateral agreements between the U.S. and the countries that fell under such rules and regulations. Thus, the MPPDA set out to amend and affect U.S. Copyright laws and agreements so as to make individual arrangements with countries like Poland that were of concern.⁸²

Leading up to this period, the MPPDA had already sponsored the ill-fated Dallinger Bill in 1924, which would have forced the United States to enter the International Copyright Union with its 27 member nations.⁸³ In the subsequent 1925–1926 period, the MPPDA continued these pursuits while seeking clarification from the U.S. government and its international trade partners. Ironically, the MPPDA actually opposed the Perkins Bill for U.S. entry into the Copyright Union on grounds that it protected authors and not producer-distributors.⁸⁴ It did sponsor elements of the alternative Vestal Bill (H.R. 13117, 69th Congress) on protecting the “Copyright Registration of Designs,” which would have granted international copyrights over radio, (future) television broadcasting, and films, but again was unsuccessful in achieving secure international copyright protection from other nations.⁸⁵ On the whole, the efforts to bring about a diplomatic or federal resolution yielded few results in these years.⁸⁶ It was several years later when another version of the Vestal Bill (H.R. 11852) was finally signed into law on July 2, 1930 and gave American film companies international protection under U.S. law. Meanwhile, the MPPDA was forced to seek local and regional arrangements in dealing with the piracy threat in those countries that did not respect the U.S. treaty with Britain. For now, the MPPDA had found a loophole in international

protection that was adequate for its purposes in markets that were connected to Britain through the Copyright Union. The MPPDA had also identified the Pan-American Convention of 1914 as a basis on which to protect U.S. films distributed in Latin America and Brazil.⁸⁷ These mechanisms assisted the MPPDA members in their quest to protect their film, literary, and music properties.

Tariff and quota threats from Europe and the British Dominion were another area where the MPPDA was particularly active. In February 1926, the MPPDA reported that 16 nations were considering some form of additional tariff or quota on American imports.⁸⁸ Countries on the list included England, France, Germany, Czechoslovakia, Austria, Hungary, Poland, Cuba, Australia, Italy, Denmark, Sweden, India, Japan, Holland, and Spain. There was even an underhanded attempt by Britain and France to utilize the League of Nations in countering American film dominance in Europe and other parts of the world.⁸⁹ The MPPDA's immediate response to such threats was to lobby the U.S. congress for establishment of a permanent government office representing the interests of the American film industry and the MPPDA abroad.⁹⁰ Through its Washington offices, and the work of its representative Jack S. Connolly, the MPPDA was able to secure a bill that created the Motion Picture Division under the Bureau of Foreign and Domestic Commerce in July 1926.⁹¹ The new department's funding was set at an annual \$30,000. It was tasked with securing the rights of American films in foreign markets and in reporting on legislation and treaties bearing on international film trade. The bureau proved to be a major asset to the MPPDA, but the organization and its members would still have to undertake unilateral actions to protect their assets in foreign markets.

The British situation was especially worrisome. When Paramount moved into the British market using distribution subsidiaries in the immediate postwar era, it had resulted in the “anti-Yank” movement described in Chapter 5. That crisis had been averted through Paramount’s adroit public relations and its conciliatory gestures to British exhibitors. Later in the mid-1920s, the British situation again threatened to boil over. At this time, reports were showing that 80% of films exhibited in British theaters were American in origin, with British films accounting for less than 7% in some cases.⁹² The U.K. government had for some time been alarmed by the U.S. domination of British theater screens and the lack of domestic representation in such an important medium for sustaining both empire and national identity.⁹³ For many years going back to prewar era, it was not uncommon for U.K., Canadian, or Dominion censors to ask that references to the American flag be removed in American films and replaced by substitute shots of a nativist character. During WWI, when American exports surged in the early years of the war, Britain erected tariff barriers with the British War Tax of 1915 that kept out all but largest American distributors. With the end of the war and the dominance of features, such tariffs were no longer effective. By 1925, the U.K. government became convinced that other regulatory measures were required to counter America’s dominance over British screens.

Hoping to spur domestic production at this time, Britain called on the domestic industry to come to an agreement on a quota system. Yet such calls for domestic production pitted British producers against British theaters, who valued the box office potential of American films and were far less interested in any quotas or bans on film imports. Recognizing this division in the British ranks, American producer-distributors

such as MGM, Paramount, and First National had assured British exhibitors in December 1924 that they had no plans for expanding their theater holdings in British territory.⁹⁴ Despite these assurances, however, the Cinematograph Exhibitors Association voted to abolish block booking by a vote of 1704 to 198 in July 1926, suggesting that compromise between exhibitors and distributors was possible when it came to American penetration of the British market.⁹⁵ Attempting to overcome these disagreements, a joint committee of British producers and exhibitors was organized. Its objective was to produce a report on how British production could be revived and British films guaranteed access to Dominion theaters. At this point, however, rather than seeking an internal or domestic resolution, the Joint Film Trade Committee entered into negotiations with the MPPDA starting in March 1926. The British were looking for the MPPDA to relieve them of their government's demands by granting British producers reciprocity rights in the U.S. film market. British producers certainly feared that by granting such reciprocal rights they would undermine their own distribution mechanisms, but in the hope of producing consensus they went along with the suggestions.⁹⁶ The result was a plan drawn up between MPPDA representatives and the British film industry that called for a 1:25 ratio: 1 British film exported to the U.S. for every 25 American films imported in Britain.⁹⁷ To bolster the plan, the MPPDA members agreed to subsidize the British exports at 1/3 of the production costs. Despite these allowances, the reciprocity agreement produced no contracts or results.⁹⁸ In fact, the British committee failed to produce any consensus in its report published in August 1926.

With no concessions from the MPPDA, the Cinematographic Exhibitor Association, the Kinematograph Renters' Society and the British Film Board of Trade

held secret meetings in February 1927.⁹⁹ Here they drafted a protection system for British producers and exhibitors that included a ban on block booking and blind selling. Distributors and exhibitors would now have to be licensed. Most significantly, this quota system required that British distributors and exhibitors respectively allocate 7.5% and 5% of their business to British productions.¹⁰⁰ Over a ten-year period this percentage was to increase gradually to 20%, at which point it was set to expire. After approval by the House of Commons, the Cinematograph Films Act of 1927 became law in 1928. It had an immediate if somewhat unexpected outcome on American film in Britain: the advent of “quota quickies” meant to overcome the quota laws.¹⁰¹ While the rise of British production represented a small threat, and was ultimately displaced when American studios undertook British production and the notorious “quota quickies,” the MPPDA’s tactics in Britain during the 1926 quota negotiations had not produced beneficial results for the American producer-distributors. Unlike the British Dominion of Canada where the MPPDA established a division called the Motion Picture Distributors and Exhibitor of Canada (MPDEC) to secure this extension of its domestic market in terms of distribution contracts and legislative lobbying, no such options were available in Britain itself.¹⁰²

An alternative approach to quota and tariffs was necessary. In fact, such an alternative had already been developed by several of the MPPDA members in another country where protectionist measures had been far more advanced in the years after the Great War. In Germany, where the Kontingent system had been in operation for several years, German films were guaranteed access to German theaters. Under the Kontingent system, the ratio of foreign films to domestic films in 1926 was set at 1:2. In other words, for every foot of foreign film that a distributor offered on the German market there would

have to be two times the amount of domestic film made available by the same distributor. Although the Kontingent system made no guarantees that domestic and foreign films would find the same level of rentals in German theaters, German film production had managed to rebuild after WWI in a way that other European film industries had not. Moreover, according to the German trade publication *Die Lichtbild Bühne*, Germany had built 1580 theaters and added over 600,000 seats from 1918 to 1925, all of which represented a significant economic recovery for German film industry.¹⁰³ Realizing the import and export potential of the German market, the largest American producer-distributors entered into production and distribution contracts with UFA, Germany's largest domestic producer-distributor. These interests were all MPPDA members: Universal, MGM, Paramount, and First National. The most significant of the arrangements with UFA was known as "Parufamet," an acronym for the joint production and distribution contract between Paramount and MGM, on the one hand, and UFA, on the other. Under the terms of the deal finalized in January 1926, Paramount and MGM loaned \$4 million to UFA in exchange for U.S. distribution rights to ten UFA films split evenly between the two American producer-distributors.¹⁰⁴ Although the loan was in some ways a stopgap measure intended to alleviate UFA's financial precariousness, which by the end of 1926 amounted to over 40,000,000 Marks in debt (including stock offerings and loans), it was a significant allocation of funds intended to secure U.S. participation in the broader German film market.¹⁰⁵ Paramount and MGM benefitted from UFA's production capabilities and used their connection to facilitate greater U.S. involvement in German film distribution. In turn, this international coproduction model was then applied to Britain when that country implemented its quota system in 1928. By

working together, Paramount, MGM, and Universal had found a solution to tariff and quota systems in Europe. Likewise, owing to the MPPDA's successful lobbying in Washington, the producer-distributors were now able to collaborate with the U.S. Commerce Department's Motion Picture Division to collect valuable information on export conditions and ensure access to markets on equitable terms.

Producer-distributor collusion in this period was not limited to the Standard Exhibition Contract, the subordination of exhibitors and independents, or the need to maintain American dominance in international markets. After all, the MPPDA's founding purpose was ostensibly one of public relations, the betterment of films, and the abolishment of unfriendly legislature aimed at the film industry. To this end, several functions of the Committee on Public Relations had all but run their course as the MPPDA entered in the 1925–1926 period. Accordingly, Ruth Vasey's study of the MPPDA lists at least three essential drawbacks to the CPR: its organizations, several of which lacked the infrastructure and interest necessary to sustain such a committee, displayed varying levels of participation in the CPR's activities; its committee structure proved unwieldy and unable to deal with crises as they emerged; and its film endorsements were often failures at the box office, with only *The Dramatic Life of Abraham Lincoln* (First National, 1924) having benefited from the CPR's public endorsement.¹⁰⁶ Adding to Vasey's observations, I would note that most films that the CPR was asked to view and pass judgment upon were those eligible for its children's matinee program, where the committee listed 100 films appropriate for showing to youngsters and juveniles at several thousand participating theaters.¹⁰⁷ The idea here was to counter criticism of motion pictures as damaging to youth by coordinating the CPR's

list with CPR-sponsored events through the better films movement.¹⁰⁸ In one such example, the New York Federation of Women's Clubs under the director of CPR member Mrs. Dudley Van Holland organized children's matinees in 42 Greater New York theaters during two weekends in June 1924.¹⁰⁹ The combined number of patrons for the two weekends included 80,000 children.

Aside from the children's programs, other films of a more controversial nature were shown to the CPR, but there was no mechanism for feedback so long as the MPPDA members had no interest in heeding the CPR's demands and observations. For example, when listing a weekly account of films reviewed during the week ending January 10, 1925, the CPR's memo to the MPPDA simply stated that "their appearance on this page is not to be taken as a critique but merely to indicate that full information regarding them may be obtained by inquiring at this office."¹¹⁰ Significantly, only descriptions were included here and no evaluative reviews. What had happened to the lauded organization of over 60 reformist groups with the apparent authority to censor and regulate films?

From the evidence, we may surmise that the CPR had been reduced to what some of its own founders had feared at the very beginning. It may not have started out as a rubber-stamp committee, but by 1925 the CPR had acquired many of the characteristics of such an organization. At the CPR's winter meeting in January 1925, the committee even made an ironic recommendation to affix a seal of quality on MPPDA films indicating that the film had been approved by their organization.¹¹¹ When it came to listing its achievements for 1924, all the CPR could do was refer to the 160 works of

literature that the producer-distributors had themselves chosen to avoid under the Formula.¹¹² It had never been the CPR's role to publicly criticize films or adaptations, only to praise the ones that its members supported. However, the CPR had expected to continue in its advisory role on those pictures that had to be revised or edited. As Margaret Reeve of the National Congress of Parents and Teachers noted in her resignation letter to the CPR in November 1924, the CPR was no longer actively involved in reviewing and regulating MPPDA productions.¹¹³ Reeve claimed that the CPR had only met once over the last year. According to Reeve, the purpose for that meeting was to contain fallout over Paramount's salacious film titles by affirming the Formula of June 1924. Yet not even the Formula could prevent such abuse from continuing. For Reeve, the Formula had only served to provide cover for the industry as it released its standard fare of films with questionable titles.

Reeve's critique is likely an accurate if slightly exaggerated description of the CPR's reduced functions by 1925. The MPPDA had already organized its members' publicity departments into a committee that orchestrated centralized press releases and public relations. These so-called "publicity men" were tasked with ensuring that the press and trade press reported on the industry in a way that was most beneficial to its members' interests. By November 1924, an internal MPPDA memo affirmed that CPR publications and press releases were now to be filtered through the publicity department.¹¹⁴ In addition, the task of in-house censorship and screening was given over to the publicity department.¹¹⁵ The CPR had effectively been reduced to a mouthpiece for the MPPDA's "publicity men." But replacing the CPR outright with another organization would have been too drastic a move. Undoubtedly, it would have led to further resignations from the

CPR's board of directors. Instead, the MPPDA founded a Department of Public Relations in March 1925, and reported in its press releases that the CPR had asked for precisely such an addition so as better to undertake its various tasks.¹¹⁶ In fact, the MPPDA claimed that it was the CPR that had elected its executive secretary, Jason Joy, to be director of the new department. Joy's purpose was to implement the CPR's "Open Door" policy with the public. Under the "Open Door," any group or individual who had suggestions or complaints could lodge them with the Department of Public Relations, which acted as the new liaison between the public and the industry.

Given its endorsement and sponsorship by the CPR, the public relations department was ostensibly under the CPR's directorship. However, internal memos suggest that there was no such supervision.¹¹⁷ In fact, part of the MPPDA's reasoning in establishing the new department was for the CPR to be "placed on a permanent basis" and for its responsibilities to be "transferred" to the Department of Public Relations. In an April 1925 memo from Joy to Hays, the public relations head outlined the policies, functions, and organization of the Department of Public Relations.¹¹⁸ Many of these functions recalled NAMPI's earlier Censorship Committee. Office correspondence from the public was now to go directly to the public relations department, which was also responsible for establishing and maintaining contacts with the nearly 800 national, industrial, fraternal, educational and religious organizations in the country and their 68 million members. The department would now coordinate all publicity and promotion regarding films that exemplified quality standards the MPPDA had espoused. Speakers would be organized who articulated the educational and civic value of motion pictures and the department would further cultivate links with newspapers and trade papers so as

ensure that the MPPDA's message was reaching the intended audience. As for regulation and censorship responsibilities, Joy recommended that the regular Tuesday screenings involving the publicity department be replaced by a system whereby individual companies report issues to the new public relations department. However, Joy was opposed to any role for the department in the management of the children's matinees, which he felt were better coordinated independently of the public relations office. Most significantly, the new department was not to be placed under a "superadvisory [sic] or cooperating committee."

The MPPDA had successfully organized the CPR in 1922 only to transfer many of its functions over to the department of public relations by April 1925. Even those areas that Joy recommended remain outside department's domain, such as children's matinees, were eventually overtaken by the public relations department in 1926.¹¹⁹ Reformists and educational associations were still valued partners in combating censorship and regulation against the industry. With the department of public relations, however, the MPPDA was harkening back to NAMPI's more balanced approach. Once again, external ties with reformists were coordinated through a tightly controlled internal department that specialized in public relations and "propaganda," as the MPPDA's own memos described this practice. The difference was that the MPPDA had Will Hays, who gave the organization legitimacy. With his original three-year contract set to expire in March 1925, the MPPDA members signed Hays to another three year contract, taking his services to 1928. The following year, in June 1926, the MPPDA signed an early and superseding contract with Hays for a term of 10 years to 1936.¹²⁰ By this point in 1926, Hays had proven to be invaluable for the producer-distributors in his public

pronouncements and speaking engagements. Whether he wrote his own speeches or not is beside the point in the same way that contemporary American presidents employed speech writers for giving effect to thoughts that they had conceived and supported. The fact is that Hays had become the public face of the MPPDA and his presence in conferences and public forums always made a difference.

To its credit, the MPPDA entered 1927 with the accomplishment of having forestalled the implementation of censorship in numerous state legislatures where such measures had been debated. Most importantly, thanks to the MPPDA's lobbying efforts and its support for Governor Smith of New York, the latter and his allies had finally prevailed in bringing about important reforms in the New York legislature. Consequently, the New York Motion Picture Commission's regulatory and censorship authorities were transferred to the NY State Department of Education on January 1, 1927.¹²¹ Although this did not terminate censorship immediately in New York, it was a significant achievement for the MPPDA and its public relations office. In 1926 alone, the NY Commission had demanded 1277 deletions in motion picture films distributed in the state. If we consider that each deletion added a premium to the film's overall cost, not to mention the disruption to its release schedule, the amount of extra editing and printing was a major source of irritation to the producer-distributors. Any change in New York's censorship process that reduced the commission's profile and resources was a welcome development.

Spurred on by Wall Street's desire for a secure return on film investments, producer-distributors set out to acquire theatrical assets. Investors believed that

production and distribution had to be guaranteed through control of the retail sector, or exhibition. Producer-distributors could either oblige Wall Street, or the investors would eventually engineer takeovers of their assets by vertically-integrating in the opposite direction, from the purchase of circuits to absorption of producer-distributors. Most of the producer-distributors were spared such a fate because they understood the importance of Wall Street backing in an industry where production financing was now matched by promotional, distribution, and exhibition costs. In helping to bring about standardized business and accounting practices, and in defending the vertically-integrated majors against independent challengers and exhibitors, the MPPDA for its part had gained Wall Street's trust and commendation. Thanks to the MPPDA's efforts in bringing about distributor-exhibitor cooperation on the new Standard Exhibition Contract and its provisions for balanced arbitration, the DOJ's antitrust investigation against the FILM ended with no litigation having been passed against the producer-distributors, their association, or FILM. Another significant victory for the MPPDA was its successful lobbying in establishing the Motion Picture Division at the Bureau of Foreign and Domestic Commerce. This division, which kept updated statistics and foreign export regulations, assisted MPPDA members in their quest to protect their dominant position in international markets by functioning as a liaison with foreign governments. With anti-American measures brewing in England and Continental Europe, and with international copyright not guaranteed to American films, the division would prove to be crucial in its functions as the MPPDA entered the sound era. Finally, by reorganizing the Public Relations Committee as the Department of Public Relations, the MPPDA had embarked on a path very similar to what NAMPI had attempted before with its own censorship and

public relations committees. The idea here was to orchestrate public relations internally instead of contracting it out to an affiliated board of reformist, religious authorities, industrial leaders, and educators who did not necessarily share the MPPDA's objectives. Moreover, the latter had become obsolete with the establishment of the MPPDA's publicity department. In the final chapter, we will see how the trend towards self-regulation was reinforced by the 1927 adoption of the "Don'ts" and "Be Carefuls" and the establishment of the Studio Relations Committee. We will also examine the government's revived antitrust cases against the MPPDA members. In many ways, the 1925–26 years represented a lull in antitrust litigation, specifically when it came to the FTC case against Paramount. In 1927, however, such litigation returned with a vengeance that threatened the very fabric of the studio system itself, including the majors' theater acquisitions and their distribution practices.

¹ Douglas Gomery, *The Coming of Sound* (New York & London: Routledge, 2005), 14–22.

² Several studios used radio advertising and cross-promotion for their films, but the practice was controversial. For example, the Paramount Publix theater chain temporarily abandoned radio tie-ups in September 1926, when it was found that radio advertising was not improving the box office in those markets. Many producers and exhibitors in this period came to believe that radio was competing for the same audience, while others outlined strategies to maximize radio's advertising and promotional effectiveness. See "Radio No Box Office Aid, Publix Finds: Company Abandons Plans for Stations Over Circuit," *Film Daily* 37, 62 (September 13, 1926): 1; "U.A. Broadcast Expected to be Last of Film Star Hook-Ups: Opinion Divided on Effect of Program on Theater Box Office," *Film Daily* 44, No. 1 (April 1, 1928): 1, 4; "Is Radio Menace to Motion Picture Theatre?," *Motion Picture News* 31, No. 3 (January 17, 1925): 229, 237; "Is Radio Menace to Motion Picture Theatre?—II," *Motion Picture News* 31, No. 4 (January 24, 1925): 325, 328; and L.C. Moen, "Selling Pictures Over the Radio," *Motion Picture News* 30, No. 5 (August 2, 1924): 532.

³ For an account of Hollywood's synergistic investments in music licensing and phonograph recordings in the late 1920s, see Katherine Spring, "Pop Go the Warner Bros., et al.: Marketing Film Songs during the Coming of Sound," *Cinema Journal* Vol. 48, No. 1 (Fall 2008): 68–89.

⁴ "Photophone by Pathe may be K.-A.-Orpheum's W.E. 'Talker,'" *Variety* 87, No. 4 (May 11, 1927): 13.

⁵ Gomery offers a slightly different but similarly three-tiered account regarding the majors. However, his focus is on production and not the combined production-distribution attributes that I consider here. Consequently, Gomery's description of where the various companies fit in the specific tiers varies somewhat from my own. His account also leaves out some of the smaller companies that I have included. See Gomery, *The Coming of Sound*, 7–8.

⁶ Note that MGM/Loew's assets are accurate for August 1927. In July 1926, MGM's assets were listed at \$75 million. Also, Paramount's assets do not include the holdings in its \$17 million subsidiary Famous Players Canada. See Maurice D. Kann, ed., *The Film Daily 1928 Year Book* (New York & Los Angeles: The Film Daily, 1928): 812–814, 818–819; and "\$5,244,193 Surplus," *Film Daily* 37, No. 25 (July 30, 1926): 5.

⁷ Assets for these companies in 1926 were as follows: Fox (\$18 million), First National (\$15 million), Warner Bros. (\$15.9 million), and Universal (\$10.1 million). Note that Universal's listed assets do not include its holdings in Universal Chain Theaters. See "Assets \$18,207,766," *Film Daily* 37, No. 29 (August 4, 1926): 1, 11; "\$1,951,485," *Film Daily* 36, No. 6 (April 7, 1926): 1, 3; Kann, ed., *The Film Daily 1928 Year Book*, 828–829; and "\$2,500,000 Universal Notes Offered Today," *Film Daily* 41, No. 5 (July 7, 1927): 1–2.

⁸ "\$24,115,089 Net of 10 Picture Firms," *Film Daily* 37, No. 65 (September 16, 1926): 1, 4.

⁹ "I.M.P.P.D.A. Influence Grows Steadily," *Motion Picture News* 31, No. 24 (June 13, 1925): 2934.

¹⁰ I.E. Chadwick, "Purposes and Plans of the I.M.P.P.D.A.," *Motion Picture News* 29, No. 20 (May 17, 1924): 2335.

¹¹ For complaints on the lack of cooperation amongst independent producers, distributors and exhibitors, see "Lack of Cooperation," *Film Daily* 33, No. 4 (July 5, 1925): 1, 9; and "Independence," *Film Daily* 33, No. 4 (July 5, 1925): 1, 4.

¹² "Lack of Cooperation," 9.

¹³ "Buy Piccadilly," *Film Daily* 33, No. 35 (August 10, 1925): 1.

¹⁴ "Report Deal Close: Famous Buys United Studios for Figure Given as \$5,000,000," *Film Daily* 35, No. 2 (January 4, 1926): 1.

¹⁵ Vitagraph filed its six-month resignation notice with the MPPDA on October 11, 1922. It claimed at the time that its views differed from the MPPDA's position on distributor control over the FILM Boards of Trade and the upcoming revisions to the exhibition contract. However, Vitagraph did not file official resignation papers at the end of the six-month period, thus continuing its official status as an MPPDA member until early 1925. See William M. Seabury, letter to Will H. Hays, October 11, 1922, Will Hays Papers; Seabury, letter to Will H. Hays, October 25, 1922, Will Hays Papers; Seabury, letter to E.J. Ludvigh, October 25, 1922, Will Hays Papers; and Will H. Hays, letter to John B. Rock, January 29, 1925, Will Hays Papers.

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- ¹⁶ "Vitagraph Company Purchased by Warner Bros.," *Motion Picture News* 31, No. 18 (May 2, 1925): 1929.
- ¹⁷ "Vitagraph Back in Hays Organization," *Motion Picture News* 31, No. 26 (June 27, 1925): 3145.
- ¹⁸ "Wall Street," *Motion Picture News* 33, No. 4 (January 23, 1926): 364.
- ¹⁹ Ibid.
- ²⁰ J. Homer Platten, letter to Will H. Hays, January 9, 1924, Will Hays Papers.
- ²¹ "Stabilization," *Film Daily* 37, No. 22 (July 27, 1926): 1, 4.
- ²² "Tremendous Strides," *Film Daily* 37, No. 21 (July 26, 1926): 1, 7.
- ²³ The *Evening Post's* article was reprinted in "Wall Street Bankers Underwrite \$84,687,850," *Film Daily* 36, No. 15 (April 18, 1926): 6.
- ²⁴ See "Stock Fluctuations in 1925," *Film Daily* 35, No. 2 (January 4, 1926): 4; and "Eastman Kodak Assets Total \$113,428,516," *Film Daily* 36, No. 15 (April 18, 1926): 7.
- ²⁵ "Financial Structures," *Film Daily* 36, No. 45 (May 23, 1926): 5.
- ²⁶ The *Wall Street News* article was reprinted as "24,115,089 Net of 10 Picture Firms," *Film Daily* 37, No. 65 (September 16, 1926): 1, 4.
- ²⁷ Kuhn, Loeb & Co., Paramount Publix Report, December 30, 1934, Page 69, Paramount Vertical File Collection (Folder 21), Margaret Herrick Library, Academy of Motion Picture Arts and Sciences.
- ²⁸ "Famous' Balance Sheets Compared," *Film Daily* 37, No. 72 (September 24, 1926): 8.
- ²⁹ "Gross and Net Earnings, Loew's, Inc.," *Film Daily* 37, No. 72 (September 24, 1926): 13.
- ³⁰ See "24,115,089 Net of 10 Picture Firms," 4.
- ³¹ "Picture Houses Like Chain Stores," *Motion Picture News* 32, No. 25 (December 19, 1925): 2994.
- ³² William A. Johnston, "Chain Stores and Chain Theaters," *Motion Picture News* 31, No. 18 (May 2, 1925): 1927.
- ³³ Ibid.
- ³⁴ "Cleveland Overseated in Downtown District," *Film Daily* 38, No. 45 (November 22, 1926): 1, 6.
- ³⁵ "Says 7 Major Units Buy Interest in 669 Theaters Since September '24," *Film Daily* 35, No. 6 (January 8, 1926): 1.
- ³⁶ Fox Theaters' stock offerings included 3.9 million shares of Class A stock issued and outstanding, which was valued at \$17.6 million, and 100,000 shares of Class B stock (i.e., preferred or voting stock) issued and outstanding, which was valued at \$2.2 million. See "18,000 Shares Sold," *Film Daily* 34, No. 42 (November 19, 1925): 3.
- ³⁷ Fox's shares were acquired from Adolph Ramish. See "West Coast Theaters Gross \$15,000,000," *Film Daily* 37, No. 63 (September 14, 1926): 1, 8; "Deals," *Film Daily* 33, No. 7 (July 8, 1925): 1; and "West Coast Theaters Deal Set; Negotiations Off with Fox," *Film Daily* 33, No. 8 (July 9, 1925): 1.
- ³⁸ "West Coast Theaters Deal Set," 2.
- ³⁹ "Like Fiction," *Film Daily* 33, No. 10 (July 12, 1925): 1, 4.
- ⁴⁰ "Fox Plans Houses in Three Cities," *Motion Picture News* 33, No. 8 (February 20, 1926): 883.
- ⁴¹ "Fox Chain to Embrace 25 Leading Cities," *Film Daily* 37, No. 58 (September 8, 1926): 1, 6.
- ⁴² L.C. Moen, "Corporation Formed to Expand Universal Theater Circuit," *Motion Picture News* 32, No. 24 (December 12, 1925): 2765.
- ⁴³ "Capitol Enterprises Deal is Completed," *Motion Picture News* 33, No. 17 (April 24, 1926): 1892.
- ⁴⁴ Vitagraph's latest valuation reflected total assets at \$4.2 million. See James Stuart Blackton, letter to Albert E. Smith, January 7, 1925, Albert E. Smith Papers (Box 8).
- ⁴⁵ As late as 1928, Smith received payments from Warner Bros. See Warner Bros. Comptroller, letter to Albert E. Smith, July 5, 1928, Albert E. Smith Papers (Box 8).
- ⁴⁶ Adolph Zukor, letter to Will H. Hays, June 13, 1923, Will Hays Papers; E.J. Ludvigh, letter to William Marston Seabury, June 13, 1923, Will Hays Papers; and E.J. Ludvigh, letter to Will H. Hays, June 13, 1923, Will Hays Papers.
- ⁴⁷ See John B. Rock, letter to Albert E. Smith, February 25, 1925 Albert E. Smith Papers (Box 8); and John B. Rock, letter to Albert E. Smith, February 27, 1925 Albert E. Smith Papers (Box 8).
- ⁴⁸ "Vitagraph Company Purchased By Warner Bros.," *Motion Picture News* 31, No. 18 (May 2, 1925): 1929.

⁴⁹ For an account of Vitaphone's premier with *Don Juan*, see "New Entertainment Possibilities As Vitaphone Debut Scores," *Film Daily* 37, No. 32 (August 8, 1926): 1, 3; and "Vitaphone," *Film Daily* 37, No. 32 (August 8, 1926): 1, 3.

⁵⁰ Gomery nominates May 11, 1928 as a better candidate for the day on which the sound era began. It was on that day that Paramount and Loew's/MGM signed an agreement with Western Electric's new subsidiary, the Electrical Research Products Incorporated (ERPI) in parent AT&T's New York offices. Accordingly, trade papers such as *Film Daily* agree with Gomery's assessment. However, I must interject that such "birthdays" are symbolic at best. As Gomery's own historical outline attests to, the industry's conversion to sound is better understood as a long process starting in 1926 and continuing through 1929. See Gomery, 1, 87; "Paramount and MGM to Make Talking Pictures," *Film Daily* 44, No. 39 (May 15, 1928): 1; and "W.E. Deals Presage General Use of Talking Pictures," *Film Daily* 44, No. 40 (May 16, 1928): 1, 2.

⁵¹ Donald Crafton, *The Talkies: American Cinema's Transition to Sound, 1926-1931* (Berkeley, Los Angeles & London: University of California Press, 1999), 463-479.

⁵² *Ibid.*, 464.

⁵³ Gomery, 14.

⁵⁴ Fred Beetson, letter to Will H. Hays, December 4, 1924, Will Hays Papers.

⁵⁵ "F.B.O. After Theaters," *Film Daily* 37, No. 13 (July 16, 1926): 1; "\$10,000,000 Budget Planned for F.B.O.," *Film Daily* 37, No. 58 (September 8, 1926): 1.

⁵⁶ "Powerful Banking Group Gets Control of Pathe Exchange," *Film Daily* 38, No. 8 (October 10, 1926): 1.

⁵⁷ "Keith Holdings Embrace 68 Cities," *Film Daily* 36, No. 31 (May 6, 1926): 1.

⁵⁸ "Keith to Enter Production; Contract with P.D.C. Near," *Film Daily* 36, No. 30 (May 5, 1926): 1.

⁵⁹ "225 Houses Under Stanley Wing; Keith Now Half Owner of P.D.C.," *Film Daily* 36, No. 31 (May 6, 1926): 1.

⁶⁰ "\$20,000,000 for Keith-Albee Houses," *Film Daily* 37, No. 49 (August 27, 1926): 1.

⁶¹ "DeMille Won't Talk On Merger Attitude," *Film Daily* 38, No. 37 (November 12, 1926): 1, 4.

⁶² "DeMille Not Opposed to Merger, He Says," *Film Daily* 38, No. 50 (November 29, 1926): 1.

⁶³ Balaban & Katz sold two-thirds of its common stock, or 176,000 of 264,206 shares, to Paramount at \$80 per share for a total of \$14 million. The chain's earning in 1925 were \$1.5 million. See "\$6,000,000 For Growth," *Film Daily* 36, No. 60 (June 10, 1926): 1, 8.

⁶⁴ "Loew Invades New England Field; Deal with A.S. Friend in 8 Towns," *Film Daily* 37, No. 29 (August 4, 1926): 1, 11.

⁶⁵ See "Cohen Finds Menace in Overbuilding," *Film Daily* 36, No. 54 (June 2, 1926): 5; and "Overseating," *Film Daily* 37, No. 8 (July 11, 1926): 3.

⁶⁶ "No Small Group Can Dominate the Field, Says Hays," *Motion Picture News* 31, No. 23 (June 6, 1925): 2755.

⁶⁷ Charles C. Pettijohn, letter to J.W. Cleveland (Department of Justice), June 5, 1925, MPAA Files (Reel 02-0317 to 02-0318).

⁶⁸ *Ibid.*

⁶⁹ Nathan Burkan, letter to Charles L. O'Reilly et al., July 3, 1925, MPAA Files (Reel 02-1241 to 02-1246).

⁷⁰ Gabriel L. Hess, letter to J.W. Cleveland (Department of Justice), June 18, 1925, MPAA Files (Reel 02-0315 to 02-0316).

⁷¹ For an example of the kinds of revisions sent back and forth between the MPPDA and the exhibitors on the Standard Exhibition Contract, see Gabriel L. Hess, Memorandum to Will H. Hays, November 5, 1925, MPAA Files (Reel 02-1220 to 01-1224); and H.M. Richey, letter to Gabriel L. Hess, November 25, 1925, MPAA Files (Reel 02-1225 to 02-1228).

⁷² For the MPPDA's Standard Exhibition Contract, see MPPDA, "Standard Exhibition Contract," March 1, 1926, MPAA Files (Reel 02-2345 to 02-2355). For the Advisory Committee's distributor and exhibitor members, see Memo on Standard Exhibition Contract, February 6, 1926, MPPDA Files (Reel 02-2409).

⁷³ Untitled MPPDA Memo, May 18, 1926, MPAA Files (Reel 02-2271 to 02-2272).

⁷⁴ The full text of the Standard Exhibition Contract was released one month before the MPPDA's official publication. For example, see "Standard Contract," *Film Daily* 35, No. 34 (February 10, 1926): 10-11.

⁷⁵ "Delegates Junk Uniform Contract," *Film Daily* 36, No. 55 (June 4, 1926): 1.

⁷⁶ Department of Justice, "FILM Boards of Trade," August 25, 1926, MPAA Files (Reel 02-1752 to 02-1753).

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- ⁷⁷ “‘Propaganda’ M.P.T.O. Comment on Bicycling,” *Film Daily* 38, No. 5 (October 6, 1926): 1, 10.
- ⁷⁸ “Near East Anti-Piracy Move Urged,” *Motion Picture News* 33, No. 13 (March 27, 1926): 1369.
- ⁷⁹ Ibid.
- ⁸⁰ Bernard A. Kosicki, letter to F.L. Herron, May 19, 1926, MPAA Files (Reel 02-1650 to 02-1652).
- ⁸¹ Bernard A. Kosicki, “Protection of Films Under International Copyright Union,” August 30, 1926, MPAA Files (Reel 02-1604 to 02-1612).
- ⁸² F.L. Herron, letter to John Scheuer, May 26, 1926, MPAA Files (Reel 02-1648 to 02-1649).
- ⁸³ “Memorandum for Mr. Hays,” December 2, 1924
- ⁸⁴ “Industry Opposes Perkins Bill,” *Motion Picture News* 31, No. 10 (March 7, 1925): 993. In a March 1926 letter to the American Bar Association, the MPPDA outlined the areas of concern in the Perkins Bill and the reasons for its support of the alternative Vestal Bill. See Charles C. Pettijohn, letter to Edwin S. Rogers, March 24, 1926, MPAA Files (Reel 02-1699 to 02-1705).
- ⁸⁵ Ibid.
- ⁸⁶ The U.S. did not enter the Copyright Union until decades later in 1989. Earlier, the U.S. was a party to the Interpol resolution of September 8, 1977, which banned international piracy in video recordings. See Berne Convention Implementation Act of 1988, Pub L. No. 100–568, 102 Stat. 2853.
- ⁸⁷ For the text of the Pan-American Convention, see “Convention Between the United States and Other Powers on Literary and Artistic Copyright,” July 13, 1914, MPAA Files (Reel 01-2160 to 01-2175).
- ⁸⁸ “Sixteen Nations Propose Laws to Limit American Films,” *Motion Picture News* 33, No. 7 (February 13, 1926).
- ⁸⁹ “Is British Fight Against American Films Back of This?,” *Film Daily* 33, No. 15 (July 17, 1925): 1. For a brief account of the history behind the International Film Congress hosted by the League of Nations, see Kristin Thompson, *Exporting Entertainment*, 114–115.
- ⁹⁰ Thompson also makes the connection between the European Film Movement to counter American films and the MPPDA’s efforts in lobbying for a Motion Picture Section in the Department of Commerce in 1926. She also notes that this Section was only upgraded to a full Division in 1929. See Thompson, 117–118.
- ⁹¹ “Senate Increases Appropriation: Thirty Thousand Dollars Allowed for Establishment of Motion Picture Division,” *Motion Picture News* 33, No. 13 (March 27, 1926): 1366.
- ⁹² “79.86 Per Cent,” *Film Daily* 37, No. 16 (July 20, 1926): 1.
- ⁹³ An editorial in *Film Daily* expressed the belief that the British row over a possible quota system was an extension of British concerns regarding the maintenance of empire. See “England,” *Film Daily* 37, No. 20 (July 25, 1926): 1, 4.
- ⁹⁴ “No Theater Acquisitions in Britain: Emphatic Declarations by Officials of Metro-Goldwyn, Famous Players and First National,” *Motion Picture News* 30, No. 23 (December 6, 1924): 2930.
- ⁹⁵ Ernest W. Fredman, “Again the ‘Quota,’” *Film Daily* 37, No. 16 (July 20, 1926): 1, 9.
- ⁹⁶ For the text of the British report on ensuring British producers access to British screens, see “British Report,” *Film Daily* 37, No. 40 (August 17, 1926): 11.
- ⁹⁷ Ernest W. Fredman, “1-25 Ration Sought by England; Tentative Reciprocal Plan Drawn,” *Film Daily* 36, No. 58 (June 8, 1926): 1.
- ⁹⁸ Kristin Thompson claims that the MPPDA’s reciprocity offer was simply “ignored.” See Thompson, 118–119.
- ⁹⁹ “License To Be ‘Teeth’ For British Quota,” *Film Daily* 39, No. 50 (March 1, 1927): 1.
- ¹⁰⁰ “British Quota Advances from 7½ to 25 Per Cent in 1935,” *Film Daily* 39, No. 61 (March 14, 1927): 1, 4.
- ¹⁰¹ Kerry Segrave briefly covers the history of British quota system and the Cinematograph Act of 1927. Segrave also demonstrates why the Act had unintended consequences in encouraging “quota quickies” that were dumped on the British market. See Segrave, *American Films Abroad: Hollywood’s Domination of the World’s Movie Screens* (Jefferson, N.C.: McFarland & Company, 1997), 43–46.
- ¹⁰² The Motion Picture Distributors and Exhibitors of Canada fought unfavorable Canadian legislation against MPPDA members and secured distribution and exhibition dominance in the Canadian market. For example, during 1926 the MPDEC adapted the Standard Exhibition Contract for use in Canada. See John A. Cooper, letter to Gabriel L. Hess, March 12, 1926, MPAA Files (Reel 02-2421 to 02-2422).

¹⁰³ *Die Lichtbild Bühne*'s statistics on German exhibition listed 3878 theaters and 1.4 million seats in 1925. These stats were reproduced in "Some Figures," *Film Daily* 37, No. 14 (July 18, 1926): 12.

¹⁰⁴ "The UFA Situation," *Film Daily* 35, No. 1 (January 3, 1926): 1.

¹⁰⁵ "UFA Facing New Crisis in Financial Affairs," *Film Daily* 38, No. 62 (December 13, 1926): 1, 2.

¹⁰⁶ Vasey, *The World According to Hollywood*, 33–38.

¹⁰⁷ See "Statement from: Motion Pictures Producers and Distributors of America," October 26, 1924, Will Hays Papers.

¹⁰⁸ *Ibid.*

¹⁰⁹ Committee On Public Relations, "Resume of Activities For Week Ending June 21, 1924," MPAA Files (Reel 02-2035 to 02-2037).

¹¹⁰ Committee On Public Relations, "Resume of Activities For Week Ending January 10, 1925," MPAA Files (Reel 01-1889 to 01-1892).

¹¹¹ Lee F. Hanmer, letter to C.A. McMahon, January 27, 1925, MPAA Files (Reel 02-0213 to 02-0216).

¹¹² *Ibid.*

¹¹³ Margaret Reeve, letter to Lee F. Hanmer, November 18, 1924, MPAA Files (Reel 01-2420 to 01-2421).

¹¹⁴ "Memorandum to Will H. Hays," November 19, 1924, Will Hays Papers.

¹¹⁵ The MPPDA confronted a grim reality in January 1925, when it had to confront the New York Motion Picture Commission's eliminations in member releases for 1924. A total of 100 eliminations were made from 70 films. In response, the MPPDA gathered the publicity department, screened the eliminations, and decided that in almost every case the censored material should not have been included in the film. Subsequently, the publicity men were tasked with weekly screenings and suggestions. See "Suggested Letters on Censors' Eliminations," January 7, 1925, Will Hays Papers.

¹¹⁶ For the MPPDA's press release on the Department of Public Relations and its "Open Door" policy, see "The 'Open Door' Policy in the Moving Picture Industry," March 23, 1925, MPAA Files (Reel 02-1020 to 02-1021).

¹¹⁷ An MPPDA draft resolution from March 1925 states that the Public Relations Department will "take over the functions and activities of the present Committee on Public Relations." In next draft, this description was changed to suggest that the new Public Relations Department was only "enlarging" the function of the CPR. See "Action Recommended by the Business Committee," March 1925, MPAA Files (Reel 02-0867 to 02-0871).

¹¹⁸ Jason S. Joy, Memo to Will H. Hays, April 27, 1925, MPAA Files (Reel 02-0857 to 02-0866).

¹¹⁹ See "Memorandum for Gov. Milliken," June 26, 1926, MPAA Files (Reel 02-2026 to 02-2032).

¹²⁰ "Hays Makes Agreement to Head Industry for Ten More Years: Agrees to Extend Contract at Request of M.P.P.D.A. Board of Directors," *Film Daily* 36, No. 71 (June 23, 1926): 1.

¹²¹ "N.Y. Censor Deletions Total 1,277 in 1926," *Film Daily* 39, No. 18 (January 21, 1927): 1, 4.

CHAPTER NINE:
TESTING THE LIMITS OF EXPANSION:
THE DOJ AND FTC CONFRONT HOLLYWOOD
(1927–1928)

In many ways, this concluding chapter brings us full circle to the interconnected themes that we started with in 1915: censorship and antitrust. Like the Board of Trade and the National Association of the Motion Picture Industry (NAMPI) before it, the MPPDA was ostensibly established to fight censorship. However, just like its predecessors, the MPPDA functioned as an organization designed for protecting oligopoly. By January 1927, the MPPDA had 23 members. It was soon to add United Artists in April, bringing the total to 24.¹ *Variety*'s statistics for the first-half of 1927 reported that just six of these producer-distributors and their affiliated theater circuits accounted for \$26 million of the \$45 million in profit listed for the industry's main three branches.² The amount represented a 58% market share divided amongst half-a-dozen MPPDA members and their affiliated circuits: Paramount, MGM/Loew's, Fox, Warner Bros., Universal, and First National.³ The numbers here also reflected the fact that concentration in exhibition was just as pronounced as that in production and distribution. Although there were estimated to be at least 15,000 full-time theaters (and up to 20,000 total theaters) in the U.S. serving 50 million patrons in weekly attendance, the Stanley Company claimed that 34 million of these individuals attended only 3,400 theaters.⁴ This meant that 23% of all theaters netted 68% of the total attendance. On the eve of the mass conversions to sound, the majors had already demonstrated that affiliating with a small

percentage of theaters could have profound monetary implications so long as these exhibition assets consisted of premium facilities in the best locations. With their first-run theater assets and circuit affiliations, the MPPDA members were easily able to dominate the domestic distribution and exhibition markets. A similar trend was in order abroad where 80% of films shown in European countries like France were of American origin. The conversion to sound did not in any way disrupt the existing vertically-integrated market structure or the majors' market share. Rather, the sound era simply amplified trends that were already in place. While it is important to acknowledge that sound innovation and licensing had effects on the industry at large, especially as regards mergers and theater assets, the studio system was born out of a complex interrelationship amongst Wall Street, Hollywood, and Washington that has for far too long been relegated to the shadow cast by the scholarship on sound. Redressing this imbalance is therefore one of the main objectives of the present chapter.

Ironically, given the high degree of industry concentration, even contemporaries in the 1920s were drawing the parallels between the Edison Trust and the MPPDA. In the previous chapter, I chronicled the Department of Justice's eighteen-month investigation into the MPPDA, the FILM Boards of Trade, and the members' 32 exchanges throughout the United States. While the DOJ's findings stopped short of citing the MPPDA and FILM for antitrust violations, they were a warning of more official challenges to the majors' hold over three branches of the industry. Just as the U.S. Supreme Court had ordered the disbandment of the Edison Trust in October 1915, there was now a real threat that the DOJ's investigation on the MPPDA and FILM could lead to similar action against the most recent oligopoly in the industry. Having inspired the latter investigation,

the Federal Trade Commission's antitrust case against Paramount had significant ramifications on government scrutiny of the film industry. The FTC's ruling was finally delivered in the Cease and Desist order of July 1927. Here the FTC demanded that Paramount relinquish the practice of block booking, cease any hostile actions against independent exhibitors, and refrain from acquiring any more theaters. Most significantly, the FTC had dropped its case against Paramount's existing theater assets and chains and had changed its charge of "monopoly" to "intent to monopolize."

Subsequently, as a follow-up to the Paramount cease and desist order, and to alleviate the general block booking problem ailing the exhibitors, the FTC organized a Trade Conference in October 1927. At this point, the paths of censorship and antitrust crossed once again: among other grievances, including anti-competitive violations, the exhibitors claimed that block booking forced them to show unscrupulous films. Bringing together both sides in the debate, the FTC hoped for an industry resolution that emphasized self-governance and self-regulation. To this end, the conference designated a committee of six producer-distributors and exhibitors tasked with drafting a new Standard Exhibition Contract. The FTC's involvement now added urgency to the lazy negotiations. In actual fact, the negotiations were simply an extension of the MPPDA's ongoing consultation with exhibitors since April 1927, when the Theater Owners Chamber of Commerce (TOCC) expressed its dissatisfaction with the latest standard contract. These efforts eventually yielded another Standard Exhibition Contract in coordination with the TOCC and the Motion Picture Theater Owners of America (MPTOA) in March 1928, several months after the FTC's Trade Conference. In affirming the MPPDA's preferred method of dealing with exhibitors and in legitimizing the

“commercial system of arbitration” embodied in the standard contract, the FTC had offered a major concession to the producer-distributors. At the same time, however, the FTC’s Trade Conference also produced a “Code of Ethics” that called on the rest of the producer-distributors to cease and desist from some of the more egregious practices under block booking or face an FTC investigation à la Paramount. The MPPDA’s contributions to the conference included an affirmation of its new “Don’ts” and “Be Carefuls” and a Distributors’ Statement of Principles (or “Statement on Policy”) on block booking. While the MPPDA was in earnest when it came to the self-regulation over censorship, there were no significant concessions here on block booking or other anti-competitive practices, just smoke and mirrors so as to maintain a public façade of MPPDA conciliation. Again, the MPPDA utilized divide and conquer strategies to infiltrate the MPTOA. In turn, independents organized the Allied States Association, a rival exhibitor trade organization that refused compromise with the MPPDA. These exhibitors found a sympathetic ear in Senator Smith Brookhart (R-Iowa), who introduced an anti-block booking bill in December 1927. If passed, the Brookhart Bill would have severely undermined the Hollywood majors’ ability to maximize scale economies in production and distribution. Just as in the NAMPI era, the producer-distributors found themselves working through trade associations to undermine and overtake independents and exhibitors.

On the censorship and labor front, the MPPDA continued to reinforce its self-regulatory bureaucracy and to bolster its ability to maintain Hollywood’s “open shop” status, respectively. To bolster self-censorship, the MPPDA added a Studio Relations Committee under the direction of Jason Joy in January 1927. Later in May 1927, it

resuscitated NAMPI's Thirteen Points in the similar "Don'ts" and "Be Carefuls," which listed 11 subjects to avoid and 26 to handle with care in motion pictures. The SRC was an extension of the MPPDA's Hollywood branch, the Association of Motion Picture Producers (AMPP), whose earlier activities I covered in Chapter 7. In their respective studies of the MPPDA, Ruth Vasey and Richard Maltby have both outlined the SRC's function as a liaison between the MPPDA and the members' studios in the Los Angeles area, specifically as regards both domestic and international censorship. My purpose here is to provide some additional context. Specifically, I am interested in how the SRC's activities relate to the narrative I have been tracing on the MPPDA's shift towards an internal apparatus for dealing with censorship issues. Such a transformation was necessary as the MPPDA was keen to demonstrate that it was prepared to regulate itself on a variety of trade practices and issues. Moreover, on the labor front, the MPPDA's Hollywood branch was also instrumental in forming the Academy of Motion Picture Arts and Sciences in May 1927. Although the Academy served many functions, its founding was essentially a preemptory action against the International Association of Theater and Stage Employees (IATSE) and Actors' Equity. The MPPDA aimed to prevent these unions from creating a closed shop in the Hollywood studios and organizing disruptive strikes as IATSE had threatened on December 1, 1926.

As another thread linking 1915 to 1927, Rev. William Sheafe Chase, whom you will recall from Chapter 2's coverage of federal censorship and the Hughes Bill, was now advocating for antitrust investigations into the MPPDA and its members. Chase had continued his censorship crusade through the Federal Motion Picture Council that met annually since 1923 and was formally incorporated in 1925. The council had published

pamphlets condemning the MPPDA and was one of the supporters of the Upshaw Bill for federal censorship (See Chapter 7). Accordingly, antitrust represented an evolutionary step in Chase's advocacy for federal regulation over the film industry. Specifically, Chase was upset that the Department of Justice's investigation into the MPPDA and the FILM Boards of Trade had not yielded any action against the industry, only a mild reprimand. In a July 1927 letter to President Calvin Coolidge, Chase accused the Attorney General with negligence. The reverend called for a regulatory commission that would deal with the industry monopoly that he and many exhibitors believed was being orchestrated by the MPPDA.⁵ Chase's wish was not too far off, as congressional leaders arranged for numerous investigations into the MPPDA's operations.

The MPPDA members now faced what *Film Daily* called a "double-barreled" attack on block booking.⁶ From one side, there was the Federal Trade Commission's Code of Ethics for motion picture distribution. From the other side, there was the Brookhart Bill and its many supporters amongst lawmakers, reformists, and exhibitors. Beyond these regulatory concerns, the FTC and DOJ announced that they were closely monitoring the new wave of mergers in the industry, including Warner Bros.'s takeover of Stanley and First National, and Keith-Albee-Orpheum's merger with Pathé Exchange and RCA. Remarkably, 1928 came to an end as the MPPDA was able to defeat these challenges to its members' lucrative and essential distribution system. At the same time, however, the fury of congressional and federal action aimed at the industry had demarcated the limits of expansion for the largest members. The FTC's investigation and 1927 Cease and Desist Order on Paramount translated into a broader Cease and Desist in the FTC's Code of Ethics for the entire industry. Paramount's example thus became a

litmus test for expansionist activities and vertical integration. The majors had to balance the demands of investors with the limits outlined by the FTC and DOJ.

Undoubtedly, one of the MPPDA's most important achievements in this period was its role in founding the Academy of Motion Picture Arts and Sciences in May 1927. A task that was delegated to the MPPDA's Hollywood branch, the AMPP, the Academy represented a bold attempt to undermine union and labor agitation in the Los Angeles-area studios. Earlier in 1926, IATSE had threatened to organize strikes. IATSE's actions called for a technicians' walkout in response to demands for negotiations on wages, hours, and working conditions. The action was scheduled for December 1, 1926, but it never went into effect. AMPP representatives had reached a last-minute agreement with IATSE president, William F. Canavan, for the establishment of a joint permanent committee that included five producer representatives and five trade union presidents.⁷ Despite narrowly averting a shutdown at the studios, the AMPP members feared greater labor agitation, especially from Actors' Equity. Studio executives believed that actions had to be taken to preempt further labor and craft organization. To achieve these goals, Louis B. Mayer suggested a Motion Picture Forum controlled entirely by the studios but offering a medium through which grievances might be negotiated and resolved.⁸ It would include a board of arbitration that resolved producer-employee disputes much like the Film Boards of Trade used arbitration to deal with distributor-exhibitor conflicts. Mayer's suggestion was not adopted in its entirety but modified so that the guild appeared independent from producer-distributors and thus could muster legitimacy throughout the industry.

The result was the Academy, an industry-sponsored “company union” that purported to represent five industry branches under a single roof: actors, directors, producers/executives, technicians, and writers. Its charter called for the promotion of harmony, the reconciliation of internal differences, the protection of the industry, and the advancement of the arts and sciences of motion pictures.⁹ It also retained aspects of Mayer’s arbitration system under a so-called “Conciliation Committee” (Article XIII) made up of five representatives from the different branches. This committee was tasked with handling disputes. In addition, there was a separate membership committee. The initiation fee was \$100 and the monthly fees were \$5 for full membership, but this was no open organization. All applications had to be approved through the membership committee. In addition to these committees, each industry branch nominated three members for the Academy’s Board of Directors, which was responsible for conducting its everyday business and affairs and for electing its president and officers. As an added benefit, the Academy supervised industry standardization, including technical experiments on incandescent lighting and sound devices in 1928, and organized the annual Academy awards for outstanding achievements in studio motion pictures.¹⁰

Douglas Fairbanks, an individual highly respected by his fellow thespians, acted as the first president. Beyond Fairbanks, the Academy’s roster of stars was truly impressive. 300 such film personalities and executives attended its inaugural banquet on May 11, 1927 at the Hotel Biltmore in Los Angeles, including Mary Pickford, Frank Lloyd, Cecil B. DeMille, Joseph M. Schenck, Louis B. Mayer, Will Hays, Conrad Nagel, and Frank Niblo, who acted as toastmaster for the evening.¹¹ In his speech, Nagel assured the attendees that the Academy had no intention of overstepping or conflicting with existing

labor, trade and craft organizations.¹² He could point to the fact that every guild and union including Actors' Equity had representation at the Academy. Mayer, for his part, praised the MPPDA and Hays, and stated his firm belief that the producers, actors, and directors of the Academy could achieve the same unity that the MPPDA had achieved through its negotiations with other branches of the industry.¹³

The Academy's founding in May 1927 occurred at a highly critical moment for the MPPDA members and was coordinated as a preliminary measure to secure cooperation ahead of studio salary cuts planned for the summer. Initially, however, producer-distributors overestimated their ability to dictate to the Academy on labor terms and contracts. At a June 22 meeting of the Hollywood Chamber of Commerce attended by all AMPP members, 16 producing companies adopted Paramount's plan for a 10% salary cut for non-contract studio employees earning over \$50 per week.¹⁴ Union employees, who represented 30% of the workforce, were exempt.¹⁵ This included carpenters, electricians, painters, stage hands, musicians and prop men. The AMPP members had aimed their sights on the contract employees that had no such protection: actors, writers, directors, and other artists. The plan, which had originated after an earlier June meeting between the MPPDA's producer-distributors in New York, also called for studios to negotiate voluntary salary cuts with these contract players. The *Los Angeles Examiner's* Arthur Brisbane estimated that the cuts would save the industry \$200,000 a week or about \$10 million a year.¹⁶ As soon as the plan was announced, it was met with opposition from Actors' Equity. The latter was joined in the protest by writers and technicians, including the American Society of Cinematographers.¹⁷ Surveying the immediate after-effects, the producers feared that they had unwittingly bolstered Equity's

gains throughout the studio ranks. A June 27 meeting of the Academy's Board of Directors, which included AMPP members Mayer and J. Schenck, attempted to mediate the conflict by releasing a statement that called on the producer-distributors to postpone the cuts until August 1.¹⁸ The producer-distributors responded by rescinding and withholding the cuts. An outsider to the Academy's debate, Jesse Lasky of Paramount continued to believe that the concession to the Academy was unnecessary and that it had weakened the producer-distributors' position.¹⁹ Yet even Lasky recognized the need to utilize the Academy resolution to the producers' advantage. Likewise, Cecil B. DeMille, a highly active member of the AMPP, argued in a letter to Will Hays that the studios had mismanaged their public announcements on the price cuts, but that the Academy was indispensable to the conflict with Equity.²⁰ If the Academy failed to produce a compromise between producers and their employees, it would hasten its doom as an organization that was designed to counter Actors' Equity.

To remedy the situation, the producer-distributors worked through the Academy to organize a series of conferences in July.²¹ These extensive conferences addressed the high production costs that afflicted the industry and the plans to reduce studio overhead, but they achieved little in the way of a negotiated settlement to the issue of cuts. In some ways, the conferences exposed the fallacy behind the studios' position, since detailed discussion over production costs by directors like King Vidor evidenced the inefficiency at the heart of the Hollywood system. For example, in May the studios announced record production costs for the following year.²² Paramount had allocated \$25 million to production as opposed to \$22 million in the previous year. The other studios fared no better: MGM, \$18 million; Universal, \$15 million; Fox, \$12 million; First National, \$12

million; United Artists, \$12 million; and Warner Bros., \$9 million. The truth was that the studios' investors wanted greater efficiency and reduced overhead in labor costs: the salary cuts were simply a ruse to satisfy Wall Street expectations.²³ However, the proposed cuts created such tremendous opposition that the AMPP members had to rethink their strategy. As a result, the salary deductions were not universally instituted. Still, the producer-distributors had to confront Actors' Equity for its potential to cause even more trouble. Faced with Equity's demands for a closed union shop and an eight-hour workday, the producer-distributors called for actors to boycott Equity and to accept the Academy's authority as an arbiter in labor issues and contracts.²⁴ Equity subsequently dissolved the executive committee of its Los Angeles branch in December and claimed that the committee had sold out to the Academy and the studios.²⁵ Equity's exit was a tremendous boon to the Academy, which now produced a new actors' free-lance contract that responded to demands for regulating hours without undermining studio labor practices and the six-day work week.²⁶ This was followed by standard contracts for other studio workers. Actors' Equity did not cease its activities at this point, but the Academy had served its short-term purpose for the MPPDA and its Hollywood branch. It was also an important demonstration of the MPPDA's successful attempt to regulate labor contracts through a guild that was semi-affiliated with the studios. In contrast, when it came to censorship activities, the MPPDA was increasingly reliant on internal departments as opposed to outside affiliations.

As noted in Chapter 8, the 1924–1925 period had commenced an important shift away from the MPPDA's reliance on outside reformist, educational, and civic groups embodied in the Committee on Public Relations towards its internal Publicity Department

and the Department of Public Relations. In January 1927, the MPPDA initiated another significant action towards self-regulation by founding the Studio Relations Committee under the auspices of the Association of the Motion Picture Producers (AMPP) in Hollywood, California. Headed by Jason Joy, who had steered both the Committee on Public Relations and its offshoot, the Department of Public Relations, the SRC was tasked with direct and preemptive negotiations with the studios in the Los Angeles area. Its purpose was to uphold the Formula of 1924 (see Chapter 7), whereby controversial projects based on literature and plays were altered or terminated in the pre-production process, thus saving the MPPDA members the costs and negative publicity associated with censorship. By October 1927 at the time of the Trade Conference, the SRC could boast that out of 162 films that it had consulted on since June 8, only two had run into censorship problems in distribution and exhibition.²⁷ To bolster this self-regulatory posture, the SRC in May 1927 drafted a new resolution that listed 11 forbidden topics and 23 (later 26) more that were to be handled with great caution and care. Forbidden topics included white slavery, profanity, nudity, scenes of childbirth, miscegenation, excessive or lustful kissing, sex perversion, sex hygiene or venereal disease, the ridicule of clergy or law enforcement, and national or racial insults.²⁸ A comparison between these taboo subjects and those listed in NAMPI's Thirteen Points from 1921 (Chapter 6) reveals their exact lineage, with the previous ban on underworld crime now having been relegated to a list of merely cautionary topics. Even the phrasing and word choice were exactly the same in many of the taboo subjects. Just as the Department of Public Relations and the SRC recalled NAMPI's preferred method of dealing with censorship and publication relations in its earlier Censorship Committee, the new list of banned and cautionary

subjects was literally a page out of NAMPI's book. Popularly known as "The Don'ts" and "Be Carefuls," it was later reformulated in the Production Code of 1930. This was yet another variation on the NAMPI's original Thirteen Points, now with the addition of an explanatory preamble and framework written by Father Daniel Lord, S.J. and Martin Quigley of *Exhibitors Herald*.²⁹ Earlier in October 1927, however, the new list of banned and cautionary subjects allowed the MPPDA to arrive at the FTC's Trade Conference with more ammunition to demonstrate that it was a responsible organization deserving of respect in its self-regulatory goals and achievements.

As a pivotal moment for 1927, the FTC's October Trade Conference provided a diplomatic stage for the expression of exhibitor grievances against the producer-distributors. The conference itself was announced in July 1927, immediately following the FTC's Findings as to the Facts and Conclusion and its Cease and Desist order on the matter of *FTC v. Famous Players-Lasky et al.*³⁰ In that order, the FTC's seven-year on-and off-again investigation into Paramount's distribution and exhibition activities culminated in a ruling that was paradoxically both damning and exonerating at the same time. The FTC's Findings as to the Facts and Conclusion were recorded in eleven succinct paragraphs that assessed the cumulative evidence collected in the case up to 1924 and examined in previous chapters (see Chapter 6).³¹ These paragraphs addressed Paramount's conspiracy to hinder competition in production, distribution and exhibition of motion pictures in interstate and international commerce, as stated in Paragraph Five of the FTC's Findings. However, the Findings themselves imposed no legal action. They were simply a basis for other charges against Paramount. More importantly, the FTC filed a Cease and Desist order that specified in three categories what the FTC demanded

from Paramount. As the FTC's only decree in the case, the three orders allowed Paramount to escape from the proceedings without any real constraints placed on its operations:

IT IS NOW ORDERED, That respondents Adolph Zukor, Jesse L. Lasky and Famous Players-Lasky Corporation, and each and all of said respondents, their officers, directors, agents, representatives and employees, cease and desist:

1. From continuing in force, recognizing, complying with, carrying into effect or enforcing, or attempting to comply with, carry into effect or enforce the conspiracy heretofore made or entered into by and among the respondents or any of them, or by and among the respondents or any of them and any other person or person, for the purpose of lessening and restraining competition, and restraining trade or commerce among the several States, or with foreign nations, in the business of producing, distributing and exhibiting motion picture films for profit or the business of producing and distributing such films, and from making or entering into any like conspiracy among themselves or any of them, or among themselves or any of them and any other person or persons, for any of the purposes above set forth and enumerated in this paragraph of this order.

2. From leasing or offering to lease for exhibition in a theater or theaters motion picture films in a block or group of two or more films at a designated lump sum price for the entire block or group only and requiring the exhibitor to lease all such films or be permitted to lease none; and from leasing or offering to lease for exhibition such motion picture films in a block or group of two or more at a designated lump sum price for the entire block or group and at separate and several prices of separate and several films, or for a number or numbers thereof less than the total number, which total or lump sum price and separate and several prices shall bear to each other such relation as to operate as an unreasonable restraint upon the freedom of an exhibitor to select and lease for use and exhibition only such film or films of such block or group as he may desire and prefer to procure for exhibition; or shall bear such relation to each other as to tend to require an exhibitor to lease such entire block or group or forego the lease of any portion or portions thereof; or shall bear such relation to each other that the effect of such proposed contract for the lease of such films may be substantially to lessen competition or tend to create a monopoly in any part of the certain line of commerce among the several States, or with foreign nations, involved in said proposed sale, to-wit: the business of the production, distribution and exhibition of motion picture films to the public, or the business of production and distribution, or of production or distribution of moving picture films for public exhibition.

3. From building, buying, leasing or otherwise acquiring, or threatening so to do, any theater building or buildings or theater or theaters, for the purpose and

with the intent or with the effect of intimidating or coercing an exhibitor or exhibitors of motion picture films to lease or book and exhibit motion picture films produced or offered for lease or leased by respondent Famous Players-Lasky Corporation.

IT IS FURTHER ORDERED, That the said respondents, within sixty days from and after the date of the service upon them of this order, shall file with the Commission a report or reports in writing setting forth in detail the manner and form in which they are complying and have complied with the order to cease and desist hereinabove set forth.

IT IS FURTHER ORDERED, That the charges in the complaint herein as against the respondents, Realart Pictures Corporation, The Stanley Company of America, Stanley Booking Corporation, Black New England Theaters, Inc., Southern Enterprises, Inc., Saenger Amusement Company, Jules Mastbaum, Alfred S. Black, Stephen A. Lynch and Ernest V. Richards, Jr., be, and the same, hereby dismissed.

IT IS FURTHER ORDERED, That so much of the charges in the complaint herein as against the respondents, Adolph Zukor, Jesse L. Lasky and Famous Players-Lasky Corporation as are not embraced in the findings of fact heretofore made by the Commission in this case, or in the above and foregoing order to cease and desist, be, and the same are, hereby dismissed.³²

Interestingly enough, the FTC had dismissed the claims against the very theater chains that Paramount had established in order to gain immunity from federal investigators. For example, the charges against Stanley, Saenger, and Southern Enterprises were summarily dismissed in response to briefs filed by those companies. As the case progressed, the FTC became less concerned with theater circuits and more concerned with block booking. By the time of the closing sessions in January 1927, the FTC had revised its charge of “monopoly” to that of “intent to monopolize.”³³ It is true that Paramount had diluted and shuffled its interests in Stanley and Saenger to the extent where the charges of conspiracy investigated up to 1924 were no longer relevant. As for Paramount’s newer association with Balaban and Katz, this was noted under Paragraph

Ten of the FTC's findings, which cited Paramount's 65% ownership in the circuit and its 69 theaters. However, even though the Balaban and Katz holdings were categorized under "hindering competition," the FTC's July 1927 Cease and Desist order sidestepped the issue of Paramount theater circuits altogether. This was because the FTC had just suffered a major defeat when the Supreme Court overturned its order divestment order on Eastman Kodak.³⁴ In a May 1927 ruling, the Supreme Court had declared that the FTC had no authority to force a company to divest of physical properties that it already owned, even if those properties were initially obtained in order to impede fair competition. It also stated that the FTC's jurisdiction involved "administrative" duties and not judicial power.

The Supreme Court thus dealt its own "double-barreled" attack on the FTC's antitrust case against Eastman Kodak. Combined with Paramount's indirect ownership, the immunity on divestment afforded by the Eastman Kodak case was an important lesson for other producer-distributors looking to expand through the association with circuits. *FTC v. Paramount* had vindicated an important model for theater expansion, one that we have already seen replicated by other MPPDA members in previous chapters. As I will outline below, such methods of integrating production, distribution, and exhibition through the agglomerate merger of independent companies were also followed by Stanley, Warner Bros., and Radio Keith Orpheum (RKO). At the same time, the FTC case against Paramount spelled out in great detail the limits for such expansionary moves, a threat that Fox had to consider seriously as it tried unsuccessfully to acquire Loew's/MGM. Permanent associations and wholesale takeovers of circuits were likely to arouse an FTC or DOJ investigation. Horizontal integration was particularly suspect as it was in the case of Fox's \$50 million stock takeover of Loew's/MGM in June 1929, which

ultimately proved too large to swallow for its peer in the aftermath of the 1929 Stock Market Crash.³⁵ Although the DOJ did not prevent Fox's deal for Loew's/MGM, it set a 45% ownership limit for the number of shares that Fox could acquire. Since Fox went into bankruptcy and was forced to sell its MGM stock and holdings, the DOJ was never called into action. As for the charges against Paramount/Famous Players, Paramount's immediate response to the FTC's Cease and Desist order was that it would appeal through legal avenues.³⁶ Paramount simply ignored the sixty-day deadline for the Cease and Desist order and announced that it was not instituting any policy changes on distribution contracts.³⁷ It took the FTC another year to file a petition against Paramount in the U.S. Circuit of Appeals for the Second Circuit, New York. Considering the long appeals process, Paramount believed that any consequences from the FTC order were years in the future. Indeed, the FTC's order on Paramount was not resolved until four years later in 1932, when the Appeals Court overturned the FTC's decision and ruled that Paramount's declining market share in feature distribution was evidence that there was "free competition" and "lack of monopoly."³⁸ Following Franklin D. Roosevelt's election and the industry's participation in talks surrounding the National Recovery Act's "Code of Fair Competition" in 1933, the majors were spared from further government action on block booking until after 1935, when the Supreme Court ruled that the National Recovery Act was unconstitutional.³⁹ From that point, it took five years for the 1940 consent decree signed by Paramount, Loew's/MGM, Twentieth Century Fox, Warner Bros. and RKO that temporarily placed a ban on blind selling, block booking in blocks of more than five, and that required the studios to inform the Department of Justice in the instance of more theater acquisitions.⁴⁰ From the FTC's initial Cease and Desist until 1940, therefore,

Paramount was never forced to implement any of the above. It continued to restrain competition, practice block booking, and to build, buy and lease theaters with or without the intent of intimidation. Part of the problem was that the first and third points in the FTC's order were so vague as to render them of questionable effectiveness. The ban on block booking, however, was much better defined, even though it only banned block booking in cases where an exhibitor complained of coercion. In summary, the FTC's epic case against Paramount et al. and its conspiracy to hinder competition had yielded a single yet contested ruling on block booking that was never implemented.

Even the stock market was unimpressed with the FTC's July 1927 finding and order. As *Variety* noted, Paramount's stock actually increased from \$93 3/8 per share to 94 5/8 on Monday July 11, 1927, the first day of trading after the ruling.⁴¹ Subsequently, the stock held steady over the course of the week when investors concluded that the FTC's order was mostly an empty gesture. By Thursday of the same week, Fox Film stock moved up several points to close at \$57 per share and Loew's, Inc. was holding at \$50 per share.⁴² A cloud hanging over film investments was now lifted. In the following week, on July 20, 1927, Paramount's stock was trading as high as \$100 and only went up from there until reaching \$116 by early January 1928.⁴³ Investors apparently believed that no real action had been taken and that at worst an appeal process would last years in which time there would be ample opportunity for negotiation. According to *Variety*, the market ascertained that the FTC's ruling was "water that has gone under the bridge."⁴⁴

Nonetheless, the FTC believed that it had sent a message to the other producer-distributors who also practiced block booking and intimidation. This would include every

major producer-distributor aside from United Artists. Certainly, independent exhibitors were jubilant in response to the FTC's Cease and Desist order and perhaps overestimated its ultimate effectiveness in confronting the MPPDA members. The ruling also contributed to the holdout on signing next season's contracts.⁴⁵ Holdouts occurred because the MPPDA had decided to advance and standardize the sales season from May to August, and also for reasons having to do with the number of films available. Now there was the added belief that the FTC decisions had altered the rules on distribution and block booking. Therefore, the exhibitors adopted a "wait and see" attitude as far as next season's product was concerned. But there were also concerns that banning block booking might have the unintended outcome of raising film rentals for individual films not sold as part of a block.

Irrespective of the stock market's reaction, and intending to capitalize on the industry's uncertainties and fears in the wake of the Cease and Desist order against Paramount, the FTC moved immediately to organize the Trade Conference on block booking and other matters of contention between the producer-distributors and exhibitors. The conference was announced in July and scheduled for October. You will recall from the previous two chapters the MPPDA's customary tactics when faced with antitrust or exhibitor challenges involved negotiation a new Standard Exhibition Contract that gave the impression of a conciliatory approach. This was intended to stave off further government or exhibitor protests against the majors' distribution practices. The pattern was now well-established. By April 1927, for example, the exhibitors under the TOCC had again agitated for changes to the Standard Exhibition Contract.⁴⁶ In advance of a meeting of the joint distributor and exhibitor Advisory Committee in May, they wanted

numerous modifications to the Standard Contract of December 1926 and made recommendations on the arbitration rules for the New York district. The most important of these modifications to the Standard Contract concerned the liability for print damage under Article 1 and the regulation of second-run and third-run theaters under Article 9.⁴⁷ Exhibitors were also concerned that the existing contract had not yielded the results in arbitration revisions that they were expecting and were alarmed at the rider clauses that the studios affixed to contracts at their own discretion, such as those regarding road shows or yearly franchises.⁴⁸ The MPPDA at first rejected the TOCC's demands, noting that the last contract was drafted only recently and was not in practice long enough to gauge its results.⁴⁹ Thus, the Advisory Committee meeting in May only produced a minor distributor concession on the standing order clause, which required distributors to inform exhibitors 45 days in advance of the expiration of their seasonal and annual contracts.⁵⁰ This would give exhibitors slightly more time to organize new contracts with another distributor if necessary. The meeting did not address the TOCC's prioritized grievances and for important reasons. As I noted above, the MPPDA had pushed back the sales season to August, meaning that whatever concessions were made after this point would not affect next season's contracts.⁵¹ It is no surprise that towards the end of August we find the MPPDA now in the process of negotiating the TOCC's demands for further revisions to the Standard Contract.⁵² The negotiations were now all the more urgent as the FTC's activities in July 1927, along with the TOCC's emboldened demands, had necessitated that the MPPDA prepare itself for a showdown in October. By engaging in negotiations on yet another Standard Exhibition Contract in association with exhibitors, the MPPDA planned to arrive at the Trade Conference with ammunition that could

sustain its members' use of block booking and prolong the system of arbitration administered under FILM. Of course, the MPPDA made no real concessions here to the TOCC during August and September.⁵³ It was merely buying time until the existing contracts were signed. It therefore entered the Trade Conference with a mixed record and facing continued agitation from exhibitors, especially those independents who had organized booking combines to counter the trend of MPPDA-affiliated theater circuits.

For example, during the same month as the FTC's ruling against Paramount in July, the MPPDA announced that its members were boycotting exhibitor booking combines.⁵⁴ Specifically, the MPPDA members targeted two booking combines. One was the Affiliated Theatrical Utilities Corporation, which represented 139 theaters in New York and Pennsylvania and was under the direction of Fred Zimmerman and Nikitas Dipson. This was a more urgent concern and had been informed of a ban in June.⁵⁵ The other was the Associated Theaters of Ohio under the direction of Charles L. Casanave and supposedly operated in cooperation with the Zimmerman-Dipson circuit. By late July, 30 theaters of the Associated Theaters of Ohio also found themselves on the banned list when MPPDA-affiliated exchanges refused to recognize or deal with their combine.⁵⁶ The MPPDA's internal documents show that it had been investigating the Zimmerman-Dipson circuit and its affiliates for several months before this time, so this was no rash gesture against the FTC ruling.⁵⁷ Rather, it was a strategic move to undermine any ruling from the FTC on block booking and any resolutions that would result from the Trade Conference planned for October. Nonetheless, the MPPDA's actions against booking combines threatened its relations with a broad range of exhibitors under the TOCC and the MPTOA, including those who were not a party to booking combines. In response to

the MPPDA's action, for example, the TOCC held a meeting on July 14.⁵⁸ Here the exhibitors threatened to sue for "allocation of product" and to charge the distributors as an anticompetitive monopoly. Among those speaking were Leo Brecher, Billy Brandt, the TOCC's former head, Charles O'Reilly, and MPTOA president R.F. Woodhull. These men outlined in precise terms the state of the industry as it affected exhibitors. Brecher accused the producers affiliated under the MPPDA of dealing only with theaters and chains in which they had invested, with the result that independent exhibitors in the New York area were unable to book first-run films. He noted that the recent studio announcements on cost-cutting in production were a consequence of producer-distributor involvement in exhibition, since films were not returning the profits that the producers had hoped. He also offered a remedy that was embodied in a TOCC resolution passed in the current session. Brecher suggested that exhibitors were willing to pay more for films so long as they were sold on an open market as opposed to the "favored few" policy. Speaking after Brecher and building on his themes, O'Reilly exposed the fiction espoused by the practitioners of block booking, mainly, that it was an efficient and cost-effective means of wholesale film distribution. O'Reilly argued that the neighborhood exhibitor was receiving "skimmed milk" and that instead of lowering the exhibitor's costs, block booking added a premium to his or her costs. Furthermore, O'Reilly noted, the independent exhibitor had to work around the protection period secured by the larger circuits affiliated with the distributors. Such protections were spatial and temporal in terms of granting exclusive rights over where and when a film could be exhibited: they could extend for dozens of miles around a preferred theater and last many weeks. In conclusion, O'Reilly lambasted the MPPDA for preventing Will Hays from "exercising

his duty” and suggested that if the industry couldn’t amend itself, then the government would surely intervene. Later in the meeting, Brandt addressed the delegates. He argued against any such resolutions as those endorsed by Brecher and O’Reilly as he believed they would be essentially ineffective in bringing about any change in the distributors’ behavior. Brandt’s suggestion was that the TOCC use its organizational powers to function as a massive booking combine for the 600 theaters under its membership umbrella. Not all agreed. Speaking for the MPTOA, R.F. Woodhull cautioned the exhibitors in the TOCC against any rash actions. He urged cooperation with the other elements in the industry and stressed exhibitor unity. Given Woodhull’s conciliatory position towards the producer-distributors, it was no surprise that Woodhull’s MPTOA had recently voted to allow producer-distributor chains membership in this organization that had always been exclusively for exhibitor.⁵⁹ The vote to include MPPDA-affiliated circuits in the MPTOA was a controversial move met by internal divisions and threats of withdrawal at the MPTOA’s Columbus, Ohio convention in June 1927. It was a remarkable turn of events for an organization once led by Sydney Cohen and other champions of the independent cause, as chronicled in previous chapters.

Like NAMPI before it, the MPPDA had always counted on divisions amongst the exhibitor ranks as a foil against any concerted effort that could undermine the producer-distributors’ position in the industry. After all, as mentioned previously in a discussion on the advance deposit system in Chapter 3, not all exhibitors were equal. Some of the larger interests benefited from the status quo system whereby they secured the first-run films against the interests of their smaller competitors. Now with advance deposits having encountered legislative opposition in the early 1920s, the producer-distributors had to

rely on other means for regulating access to first-run films, for securing deposits, and for providing tiered access. As I noted in Chapter 7, the MPPDA responded to state bans on advance deposits by drafting the Uniform Exhibition Contract in June 1922 and by integrating the distributing contracts with FILM's arbitration system. With broad producer-distributor move into theater circuits in 1925, the protection system long-practiced by the producer-distributors now acquired a more significant function: only affiliated theaters and theaters owned by the other majors received the most lucrative films. These practices now reinforced the inequalities that had always characterized the majors' distribution system and the tiered service offered to exhibitors. Although the FTC's Trade Conference aimed to alleviate some of these problems and address complaints by the independent exhibitors, this was hardly the outcome.

The first problem arose when selecting the delegates who were allowed to vote at the conference.⁶⁰ As the FTC was fully aware, not all exhibitors were members of an exhibitor trade organization.⁶¹ There had to be some other method for selecting independent exhibitor delegates. For that, the FTC turned to the arbitration boards. Since the 32 exchanges and corresponding FILM arbitration boards functioned as the battleground for the conflicts over block booking, protections, and other exhibitor grievances, the FTC decided that it was best if the three exhibitor members of the local arbitration boards selected their respective exhibitor delegates to the Trade Conference. Two delegates were allocated for each exchange, amounting to 64 regional representatives in total: one exhibitor owning or affiliated with less than five theaters; and one exhibitor affiliated with a circuit of at least five theaters or more.⁶² Neither one of these exhibitors was supposed to have a connection to the producer-distributors, but the

fact that the FTC allocated half of the delegates to theater circuits meant that such affiliations were inevitable. A look at the roster of delegates at the Trade Conference reveals that many indeed were exhibitor members of the MPTOA.⁶³ However, among all exhibitor delegates were representatives of the larger theaters and theaters that were serviced by MPPDA-affiliated distributors or circuits. In contrast with the fixed number of votes allocated to exhibitors, each producer and distributor who attended was also allocated a vote. The final breakdown of delegates was thus as follows: producers (43), distributors (25), exhibitors associated with producer-distributors (59), and independent exhibitors (66). The FTC had added 2 delegates to the independents, as exhibitors from New Jersey complained about the selection process. Even with such corrections the balance is evident in the numbers above: producer-distributors and their allies numbered 127 while independent exhibitors numbered 66. Before it even began, the Trade Conference was destined to be a contested and controversial affair, especially for the independent exhibitors, producers, and distributors who were the most disadvantaged in the present system.

The proceedings and minutes of the October Trade Conference are recorded in great detail in a 429-page document filed by the FTC upon the completion of the conference.⁶⁴ In addition, the FTC also filed a 51-page follow-up statement on November 21, 1927.⁶⁵ From these documents and from additional reports on the conference in the trade press, it is possible to reconstruct the proceedings and account for the various interests involved. At the centerpiece of the conference was the Code of Ethics, which the FTC had devised as a way of encouraging the industry's self-sufficiency in trade regulations and practices. In inaugurating the conference, Abram F. Myers, chairman of

the FTC and president of the proceedings, announced that the FTC believed in the industry's self-governance, but warned that the FTC would have to act on its own if the industry failed to endorse a Code of Ethics acceptable to a majority of the delegates.⁶⁶ Myers reminded the delegates of the FTC's July Cease and Desist order against Paramount and the practice of block booking and suggested that the FTC's decision had been well-received amongst the industry and the public. Also speaking on opening day, Sydney Cohen, formerly of the MPTOA, was far less conciliatory. He launched into his customary tirade against the producer-distributors, accusing them of stifling competition and conspiring together to engender monopoly control over the industry. According to Cohen, the producer-distributors achieved these objectives by artificially reducing the amount of quality films available, by withholding these films from independents, and by working together to limit access to the best films. The solution to the industry's problems, argued Cohen, was that the producer-distributors had to divest themselves of their theater assets. The MPPDA, however, had come to the Trade Conference prepared to counter negative claims against its organization and its producer-distributor members. It had drafted a distributors' statement of principles on block booking and it offered its new resolution on 11 forbidden topics and 26 cautionary topics as evidence of its commitment to film betterment and self-regulation. The latter was codified into the conference proceedings as Distributors Resolution No. 2, immediately following Resolution No. 1, which restated the MPPDA's commitment to the Formula of June 1924.⁶⁷ MPPDA executives had also begun working with exhibitors on revisions to the Standard Exhibition Contract and convinced the FTC to support the MPPDA's continuing efforts in coordinating with a joint producer-distributor and exhibitor Advisory Committee.

In formulating the Code of Ethics, the FTC collected numerous resolutions by each group, including the producers, distributors and the exhibitors. The resolutions were put to a vote and recorded by the FTC in its report. The most important of these had to do with a statement of policy on block booking introduced by distributors and subsequently endorsed by the exhibitor delegates:

1. The sales method known as block booking shall not be used for the accomplishment of any illegal purpose.
2. No distributor will require as a condition of permitting an exhibitor to lease its pictures that such exhibitor shall also lease pictures of another distributor.
3. If an exhibitor shall claim within a reasonable time period to the date fixed for the exhibition of any picture included in any block leased by him that such picture will be offensive to the clientele of his theater because of racial or religious subject matter, such claim shall be arbitrated by the board of arbitration of the proper zone, and, if sustained, such exhibitor shall be relieved of obligation to take and pay for such picture.
4. If any exhibitor who has purchased an entire block of picture offered by any distributor so elects within a reasonable time period to the date fixed for exhibition of any picture intended in such block, such exhibitor may refuse to take such picture by paying one-half of the allocated price thereof, provided that the pictures so rejected out of any block shall not exceed 10 per cent of the number included in such block and if a rejected picture is resold by the distributor, one-half of the net price received on such resale shall be credited against the exhibitor's obligation in respect of such picture up to the amount of such obligation.
5. Reissues will not be included in any block with new pictures.
6. News reels and short subjects will not be included in any block with features, and the lease of news reels or short subject blocks shall not be required as a condition of being permitted to lease features blocks or vice versa.
7. The matters dealt with by paragraphs 3 and 4 shall be covered by appropriate provisions to be included in the new standard form of contract.⁶⁸

Notice that the “Six Points” resolution on block booking does not ban such a practice. It merely states that block booking will not be used for any “illegal purpose.” This was the single most important concession made by the distributors, even though they insisted that it was not legally binding and simply a matter of company ethics and policy. In legal terms, they were concerned about preempting the outcome of Paramount’s appeal on the Cease and Desist order against block booking, which all the MPPDA members had rejected. The provisions regarding films by other producer-distributors, newsreels, reissues and offensive pictures were minor obstacles for the MPDPA members. Next to the first point, the other concession here is the exhibitor’s right to cancel up to 10% of a block so long as that exhibitor pays for 50% of the rental costs for all cancelled films. In addition, the FTC itself rejected the exhibitors’ resolution calling for arbitration jurisdiction over the exhibition of “entertainment” film in non-theatrical venues. Only on one other point did the exhibitors score a minor victory: Exhibitor Resolution No. 9 called for producer-distributors to deliver films as advertised in contracts where stars, directors, and scenarios were explicitly named or described. Thus, the MPPDA escaped the Trade Conference having safeguarded FILM’s arbitration process, the Standard Exhibition Contract, and the practice of block booking. As for why the exhibitors would accept such a watered-down resolution on block booking is not surprising given the divergence of interests I noted above between the circuits and the independents. Those exhibitors who understood the advantages offered to them by the arbitration system, the FILM Boards, block booking, and the protection contracts were not going to sacrifice their position by endorsing resolutions that undermined their position or their relations with the producer-distributors. For example, consider Exhibitor Resolution No. 5, which

would have prevented producer-distributors from purchasing or affiliating with theaters in order to intimidate other exhibitors into signing distribution contracts. Here the exhibitors affiliated with circuits and the producer-distributors voted with the latter against their fellow exhibitors.⁶⁹

Despite the paltry concessions and the lack of any legally-binding framework, leaders of the exhibitor organizations including R.F. Woodhull of the MPTOA and Fred Desberg of the Affiliated Exhibitors generally hailed the conference as portending a new “spirit of cooperation” between different factions in the industry.⁷⁰ Maurice Kann’s editorial in *Film Daily* was more cautious, and noted that the issue of block booking would remain unresolved until the courts had ruled on the Paramount case.⁷¹ At the other end of the spectrum was the TOCC, which claimed that the conference had only brought into sharp relief the necessity for the establishment of an open market. According to the TOCC, a series of regulatory actions against the producer-distributors was required, including the forced divestment of their theater circuits.⁷² Otherwise, the industry would develop into a closely guarded “Trust” within a year. In FTC’s own follow-up report, Chairman Myers noted that it was unfair to target Paramount exclusively and not the other practitioners of block booking.⁷³ As far as the FTC was concerned, the trade conference had been merely a step in this direction. Myers recommended that the FTC now move to replicate its Cease and Desist order with Paramount’s competitors and peers. The independent exhibitors were enamored enough by Myers’s tenure as FTC chairman that the Allied States Association hired him as president and general counsel in December 1928, at a time that he was still serving as FTC Chairman.⁷⁴ Upon leaving the

post in March, he became Allied's president and proceeded to continue his attacks on the producer-distributors from his new post.

The FTC had given the industry an opportunity to comply with its order on Paramount and block booking. Having failed to produce the intended outcome, the FTC now contemplated further action against the producer-distributors such as a recommendation that the issue on block booking go to the courts. However, before pursuing any action against Paramount or the other producer-distributors, the FTC awaited the results of several other ongoing developments, including the consequences of the trade conference, the continuing negotiations between the producer-distributors and exhibitors on the new Standard Exhibition Contract, and the congressional hearings on the Brookhart Bill targeting block booking.⁷⁵ As 1928 began, these interconnected events threatened to create a snowball effect of government scrutiny and litigation against the MPPDA and its members.

The immediate outcome from the trade conference was that it increased the possibility for federal action against the industry. In turn, this threat reinvigorated the MPPDA's intentions on revising the Standard Exhibition Contract. The MPPDA's goal here was to appease those exhibitors who were willing to cooperate and to reject litigation against the producer-distributors. Thus, the negotiations involving the joint distributor-exhibitor Advisory Committee continued into 1928, when a large conference in Chicago brought together the two sides. In moving the conference location from its originally-intended locale in New York to Chicago, the MPPDA hoped to avoid a confrontation with the New York-based TOCC. Recall from above that the TOCC and

MPPDA had failed to reach agreement on the revisions to the Standard Exhibition Contract in the summer of 1927. Upset at these tactics, the TOCC protested that the change in location from New York to Chicago was meant to deprive it of input into the new contract.⁷⁶ The MPPDA planned to make only a few concessions such as the ones it had already accepted in the FTC's trade conference. There was no intention here to entertain the broader demands as the TOCC's independent members had in mind. Such concessions were not necessary as the Standard Contract debate in February was reminiscent of the FTC's Trade Conference in October. As a *Film Daily* editorial noted, independent exhibitors in Chicago were facing opposition from two factions: producer distributors and their exhibitor allies and affiliates.⁷⁷

Protests and injustices aside, 18 states were represented at the February conference in Chicago. Although many producer-distributors and exhibitors attended, the joint Advisory Committee was ultimately responsible for drafting the contract and for filing it with the FTC. This was the first time that a standard exhibition contract received federal sanction. Exhibitor demands included a ban on added clauses to the contract, a revised arbitration process that did away with "compulsory arbitration," and the end to protection schemes and block booking. But the producer-distributors refused to address the block booking issue on the basis that it was not relevant to contractual relations addressed under the Standard Contract. The MPPDA did offer a concession on added clauses, declaring that these would no longer be supported by the Standard Contract. The producer-distributors also iterated their commitment to the "Six Points" on block booking.⁷⁸ Negotiations continued throughout the month of February, with progress having been declared in bringing about a contract favorable to both sides. In February,

when the new Standard Exhibition Contract and the corresponding Arbitration Rules were released, the revisions were consistent with the resolutions arrived at earlier in the FTC's Trade Conference and described above.⁷⁹ To the exhibitors' dismay, arbitration remained compulsory, but the documents on the whole reinforced the FTC's Code of Ethics. The new contract was slated to go into effect on May 1, 1928. Having resolved an important impediment to their aspirations for self-governance, the MPPDA now had to confront more ominous events unfolding against the backdrop to the FTC's Trade Conference and the new Standard Exhibition Contract.

In the aftermath of the FTC's Paramount order in July and its Trade Conference with the industry in October, Congressional leaders and long-time enemies of the industry began to take interest in the issue of block booking. Several bills were proposed to reign in the practice and to establish federal regulation over the industry. A convergence of antitrust and censorship interests threatened to capitalize on the recent industry scrutiny undertaken by the Department of Justice and the FTC. As noted in the introduction to this chapter, the most vocal advocate for federal censorship over the industry, Rev. Sheafe Chase, was now calling for a broader investigation into the MPPDA itself as an organization created to protect anticompetitive practices from government scrutiny. At the opening of the congressional season in November 1927, the long-time reformer lobbied congress to investigate the DOJ's and FTC's of related cases against the producer-distributors and the MPPDA. In assessing censorship alongside antitrust, Chase believed that the problem of immoral films was related to the problem of the MPPDA's role in sustaining producer-distributor monopoly. To reform the movies, first it was necessary to reform the industry that produced and distributed them. More

importantly for Chase, recall that his campaigns for federal control over film content had not been successful in the past, including most recently in Upshaw Bill hearings of April 1926. A change of tactics that targeted the industry along the lines of investigations already under way by the DOJ and FTC had a much greater chance of yielding results. This did not mean a compromise on censorship, but rather a strategic reassessment of the best way in which to undermine the MPPDA and the Hollywood majors that it protected.

Responding to such calls for federal scrutiny over the motion picture field, Republican Sen. Brookhart sponsored the most important of the congressional bills against the producer-distributors during this period. Introduced in December 1927 during the 70th Congress, the Brookhart Bill (S-1667) sought to ban block booking, blind selling, and protectionist and allocation measures that allowed producer-distributors to favor some exhibitors over others.⁸⁰ Its house version was sponsored in bipartisan manner by Congressman Clarence Cannon (D-Missouri) and introduced in January 1928. It also enjoyed the sponsorship of independent exhibitors like Frank J. Rembusch, who had served as a representative for the independents at the FTC's Trade Practice Conference.⁸¹ In support of the bill, the TOCC went so far as to organize a large "Rally for Liberty" at the Hotel Astor in NYC.⁸² Only the MPTOA, which now included the MPPDA-affiliated circuits in its membership, cautioned against "federal control" over the industry. This charge became a political football: independents claimed that it was diversionary tactic, while the MPPDA and its exhibitor allies countered by highlighting the bill's provisions for federal intervention in the motion picture industry.⁸³ In either case, the Brookhart Bill added urgency to the negotiations between the producer-distributors and the exhibitors and provided a significant boost to the independents' demands. For example, at the

Chicago meeting on the Standard Exhibition Contract described above, the delegates considered amendments to the contract in direct response to the stipulations against block booking outlined in the Brookhart Bill. But as far as Brookhart was concerned, the possibility for such concessions on the Standard Contract only reinforced the need for congressional intervention.⁸⁴

Whatever the outcome of such negotiations, Brookhart was determined to advance with his cause in “a fight to the finish.” Far beyond block booking, which was its focus, Brookhart’s intention was to break-up the vertically-integrated assets of the Hollywood majors. A reformer and fervent prohibitionist, Brookhart believed that the industry required immediate federal intervention and regulatory control at the same time that his public pronouncements vehemently denied aspirations for “federal control” over the industry.⁸⁵ To this end, the Brookhart Bill was referred both to the DOJ for a study of its legality and to the Committee on Interstate and Foreign Commerce, which commenced hearings on the bill starting on February 27. In the run-up to the hearings, the MPPDA released a pamphlet on the Brookhart Bill that outlined the bill’s supposed illegality and false premises.⁸⁶ Charles C. Pettijohn, the MPPDA’s general counsel, drafted the brief and expressed his goal to place it in the hands of every member of Congress.⁸⁷ He also organized through the 32 Film Boards of Trade to arrange for a signature campaign across the United States.⁸⁸ Pettijohn’s main objection to the Brookhart Bill as articulated in the pamphlet was that the bill deprived producers and distributors the right to choose their own customers. As the MPPDA argued, the Circuit Court of Appeals and the Supreme Court had both ruled to uphold the right of film manufacturers to withhold their products from retailers so long as there was no attendant

conspiracy, coercion, or intimidation. According to the MPPDA, there was no parallel here with the Supreme Court's ruling on the MPPC, as the Edison Trust had been a patent pool that denied exhibitors access to technology that was required to operate their businesses: "There is no analogy between a copyrighted film and a patented mechanical device." The fact that the MPPDA went out of its way to point out dissimilarities between its members' current practices and those of the MPPC was testament to the MPPDA's fear that its members, the FILM Boards of Trade, and its own association could be charged with anti-competitive practices. Given all the attention the industry had received, this was a definite possibility.

At the hearings, MPPDA representative Pettijohn responded to Brookhart's allegations that the industry was run as a "monopoly" and "trust."⁸⁹ Pettijohn asserted that there was no such conspiracy since monopoly implied an absence of competition. As evidence of "fair competition," Pettijohn noted that the MPPDA's ten producer-distributors accounted for only 410 of 852 films made in 1927. This was highly misleading and did not take into account the MPPDA's disproportionate share of film rentals and profits, which I noted above. Moreover, Pettijohn claimed that the Standard Contract and arbitration process had served the industry well in saving time and expenses for both sides. He noted that of the 10,000 cases the FILM arbitration boards adjudicated on every year, only a few reached the courts. Such evidence was proof that the industry's existing arbitration process represented a great savings to the federal government and to the states. Arbitration was evidence that the industry was capable of self-regulation. Exhibitors were also recruited to support the MPPDA's position. For example, the Motion Picture Theater Owners of Arkansas wrote to its two Senators, T.H. Caraway and

Joe T. Robinson, to inform them of three ways in which the Brookhart Bill undermined exhibitors: the end of protection in the open market; the prospect that every film would now be sold as a “special,” thus increasing its cost; and the interference from the government on the arbitration process, which would cause delays and interruptions in distribution damaging to the entire industry.⁹⁰

All of the above counterclaims were necessary to the MPPDA’s defense if only for the sake of public posterity. But to secure effective defeat of the Brookhart Bill in the present congressional session, something else was necessary. The MPPDA had to attack the fundamental legitimacy of the bill. Sen. Brookhart and his supporters Rembusch, Brecher, and Rev. Chase had criticized the FTC’s and DOJ’s handling of investigations into the producer-distributors. Furthermore, they had called for congressional oversight. But now this tactic was turned against them. Here the MPPDA argued that the Brookhart Bill overstepped congressional boundaries. If its purpose was to undermine anti-competitive practices, then this counted as infringement on the jurisdiction delegated specifically to the FTC and DOJ. Even the slightest possibility that congress had overstepped its boundaries and jurisdiction was enough to damn the Brookhart Bill in its present and future incarnations in the Senate.⁹¹ By April, even Brookhart recognized that his bill had no chance to leave committee and reach the Senate floor.⁹² Time constraints were certainly a factor here. Equally important, however, was the fact that the DOJ had resuscitated its antitrust investigation into the MPPDA, ten of its distributors, and the affiliated 32 Film Boards of Trade and was preparing to schedule a trial as of April 1928.⁹³ The latter development more or less precluded the need for congressional action

on the industry at this time. It also put the industry on notice that its merger activities and distribution monopoly were under scrutiny.

Despite the added investigatory heat during this period, the industry's mergers and combinations seemed to proceed without abatement in 1927 and 1928. The various FTC and DOJ cases against the industry had demarcated the limits and possibilities for expansion. Within such boundaries, however, the majors believed that they were immune from antitrust action. It is not a coincidence that Loew's announced a \$50 million theater expansion plan immediately following the FTC's January 1927 closing arguments against Paramount, where, as I noted above, the commission had dropped all charges against Paramount's circuits and theater assets.⁹⁴ As a result, MGM/Loew's domestic and foreign theaters assets would rise to 400 individual locations. There was also a well-publicized plan to acquire United Artists, but this ultimately fell through when UA decided that there no advantages to be gained for pooling its distribution assets with those of MGM.⁹⁵

At the same time as Loew's announcement in February 1927, *The Wall Street Journal* reported a flurry in merger discussions and *Film Daily* headlined its February 7 edition with the caption "Merger Talk on Again."⁹⁶ The first tangible evidence for this renewed interest in mergers occurred at the end of the month, when two theater circuits took control of First National Pictures after months of negotiations and over a year of growing affiliations between First National franchise holders and the two circuits. The West Coast Theaters, which was 35% owned by Fox, and the Stanley Company of America had obtained a majority of First National's 60,000 shares.⁹⁷ Stanley, whose Eastern headquarters and theater assets were closer to First National's executive offices

in New York, was tasked with the company's management. It was reported at the time that Fox and Stanley were in competition in Philadelphia's exhibition market.⁹⁸ Bringing the two companies together under joint ownership in First National was a way to preempt further hostilities and resulted in coordinated exhibition between Fox and Stanley in Philadelphia.⁹⁹ The merger also provided Stanley's and West Coast's combined 365 theaters access to the facilities of a producer-distributor, including exchanges throughout the country and studios at Burbank, California. In addition to the industry, bankers were also involved in the deal. The New York firm Hayden, Stone & Co. held interests in First National and West Coast Theaters and was responsible for negotiations with Stanley's financial representatives, E.B. Smith of Philadelphia. Like many other mergers that I have chronicled, this was not a case of one company swallowing another, but a carefully designed interconnected system of financial relations that allowed industry executives and financial investors to reduce risks as they facilitated a more concentrated and protected industry. In this vein, Stanley and West Coast turned their attention to horizontal integration with other circuits, including Finkelstein and Ruben (126 theaters), Keith-Albee, Skouras, North American (approximately 100 theaters), and Saxe (45 theaters).¹⁰⁰ Stanley's bids for the mergers with F&R and Keith Albee fell through, but Wesco, the holding company for West Coast Theaters, was successful in its bids for North American and Saxe.¹⁰¹ By the end of 1927, Wesco had controlling shares in the following circuits in addition to its own West Coast Theaters chain: North American (100%), Golden State Theater Corp. (80%), Pacific Northwest Theaters (92%), Saxe Amusement Company (100%), the Frank Amusement Company of Waterloo, Iowa (75%) and the Golden State Theater and Realty Corp. (20%).¹⁰²

The Stanley and Wesco maneuvers represented ambitious plans on the part of theater circuits and their financial backers. But two producer-distributors would ultimately carve up the two circuits amongst themselves, when Fox acquired the remaining shares of West Coast Theaters in January 1928 and Warner Bros. gained controlling shares in Stanley and First National in September 1928. Fox's acquisition of the Richard Hoyt block of Wesco shares, which included shares held by Hayden, Stone & Co. and several First National franchise holders, gave Fox nearly 100% control over Wesco's capital stock and the circuit's 300 theaters in California, Oregon, Washington, Montana, Nevada, and Iowa.¹⁰³ This gave Fox a total of 340 theaters under direct control. The merger was followed by an ambitious theater plan to spend \$150 million on a circuit of large first-run theaters over the next two years. Each theater in this chain of over two dozen was slated to have a seating capacity of 5000 or greater. In addition, Fox now held joint control over First National with Stanley, and had plans to acquire the latter. When this deal fell through, Warner Bros. stepped in and acquired both Stanley and First National.¹⁰⁴ According to some accounts, Warner Bros. had been planning for some time to make such a move.¹⁰⁵ Moreover, a connection between the boards of Warner Bros. and Stanley facilitated the combination, as Goldman Sachs had representation in both companies through Waddell Catchings.¹⁰⁶ Warner Bros. financed the deal using its own common stock as well as cash. 80% of Stanley's common stock was converted into Warner Bros. common stock, while the remaining 20% were bought out at \$57.50 per share.¹⁰⁷ To gain a majority stock in First National, Warner Bros. offered \$3.8 million for the company's 19,000 shares at \$200 per share.¹⁰⁸ This meant that Warner Bros. now controlled three out of six of First National's board of trustees, while the remaining three,

along with its representative stock, were owned by First National franchise holders and Fox. Combined with its Stanley share, Warner Bros. now owned 42,000 of the 71,000 shares issued. Warner's acquisitions had catapulted it into the upper echelon of the majors. First National and Stanley were valued at \$15 million and \$83 million, respectively. Stanley brought to the deal its 275 theaters spread out over seven states, while Warner Bros. could offer its distribution system, exchanges, production facilities, and, most importantly, its Vitaphone sound system. Warner Bros. also set its sights on the vaudeville and film circuit Keith Albee Orpheum as talent pool for its Vitaphone pictures, but the latter deal was never completed. Such mergers were attractive for circuits as they offered them access to sound technology.

As Douglas Gomery has outlined in *The Coming of Sound*, Warner Bros. and Fox had both capitalized on sound early on by investing in their respective sound systems, Vitaphone and Movietone, and by funneling their profits into expansion. Early Vitaphone in the summer of 1926 featured filmed vaudeville, while Movietone distinguished itself with the first sound newsreels in April 1927. Both systems were also employed to synchronize musical accompaniment for silent films. A month after the April demonstration, Fox announced that it was reducing the prices of Movietone installations from \$16,000 per theater down to as low as \$2,000.¹⁰⁹ This was necessary as Fox was impatient to wait for demand to rise to the point where prices could come down. Fox was also concerned with Vitaphone's head start and wanted to make up for lost time. Warner's Vitaphone license from Western Electric had been granted in April 1926 and utilized a phonographic sound-on-disc system that was synchronized with the film on playback. In contrast, Fox's Movietone featured a variable density sound-on-film system

derived from the Theodore Case patent it had acquired in July 1926. Yet Movietone also required licensed Western Electric equipment for sound recording and its reproduction in theaters, including Western Electric microphones, amplifiers and loud speakers.¹¹⁰ After its request for licensing sound equipment was rejected by Western Electric's competitor, RCA/General Electric, it was granted a sublicense from Warner's Vitaphone in exchange for 8% of all gross revenues in December 1926.¹¹¹ To avoid any unnecessary litigation, a cross-licensing agreement in January 1927 allowed Vitaphone and Fox-Case to employ each other's systems.¹¹² This would also permit theaters to install systems that played both formats.¹¹³

Compatibility between sound systems was thus a major obstacle to early sound at the same time that it was a lucrative source for licensing. Given Warner Bros.' success with Vitaphone by 1927, Western Electric was determined to spread the technology throughout the industry and to head off competition from other emerging systems. To achieve this goal, Western Electric created Electrical Research Products, Inc. (ERPI). But as long as Warner Bros. received royalties from every theater with a Vitaphone or Western Electric installation, no competitors would sign with the system.¹¹⁴ Thus, Western Electric renegotiated its license agreement with Warner Bros. in May 1927, when the Vitaphone patents and contracts were transferred to ERPI. In return, Western Electric paid Warner Bros. \$1.3 million and signed an agreement not to license ERPI equipment at a rate lower than the Vitaphone rate.¹¹⁵ Western Electric now was free to pursue negotiations with the other producer-distributors. Despite ERPI's best efforts, however, such agreements would have to wait for another year.

Complicating the matter was the fact that the MPPDA members not involved in sound had signed the “Five Companies” agreement in February 1927.¹¹⁶ This agreement called for the standardization of sound systems in motion pictures and for their availability on equitable terms to all producer-distributors and exhibitors. To maintain oversight of these developments, the agreement established a joint industry committee amongst the signatories: Paramount, MGM, Universal, First National and PDC (Producers Distributing Corporation). It was also agreed that no company would enter the sound field until the other four had made their decisions. Signed just a few months before Western Electric’s renegotiated contract with Warner Bros., and a few days after a failed agreement for the five companies to invest in Vitaphone, the standardization agreement played a role in delaying Paramount’s and MGM’s forays into sound production and exhibition until May 1928.¹¹⁷ At this point, both companies contracted with ERPI, as did United Artists.¹¹⁸ By the end of the summer, Paramount’s theater division, Publix, had equipped 180 of its theaters with the Western Electric system: the goal was for 300 by the end of the year.¹¹⁹ Meanwhile, ERPI’s competitor, RCA, had failed to entice Paramount and other studios to sign on with its Photophone system after demonstrations and negotiations starting in March 1927.¹²⁰ It now had to devise a new strategy to enter the motion pictures. In order to reap the benefits of its investment in its variable area sound-on-film system, RCA would have to create its own vertically-integrated company. Therefore, it set out to combine Pathé/Producers Distributing Corporation (PDC), the Keith-Albee Orpheum circuit, and the Film Booking Offices (FBO) to form Radio Keith Orpheum (RKO). A brief background on this deal is necessary to understand its significance in terms of building on a pattern of mergers that was already established.

Moreover, RKO's formation shows how a large outside interest could overcome the industry's barriers to entry through small-scale maneuvers that resulted in a company much greater than simply the sum of its parts.

RKO came into existence through a series of mergers and takeovers during 1927–1928. In April 1927, two months after Fox's stock purchase in Wesco, the Keith-Albee and Orpheum film and vaudeville circuits merged with two small-sized producer-distributors, Pathé and PDC (Producers' Distributing Corporation).¹²¹ Henceforth, Pathé Exchange absorbed PDC's distribution assets and gained the rights to distribute Cecil B. DeMille productions such as the bible epic *King of Kings* (1927). Pathé's profits for 1926 had only amounted to \$899,677, but it had a robust distribution system and assets amounting to around \$10 million.¹²² As I noted in Chapter 8, by the end of 1926, Keith-Albee already owned 50% of PDC, a minority share in Pathé, and was affiliated with the Orpheum circuit. At the time they acquired Pathé in April 1927, the Keith-Albee and Orpheum circuits controlled over 700 vaudeville and combination theaters and posted merged exhibition assets of \$63 million.¹²³ J.J. Murdock, Keith-Albee's general manager, assumed the presidency of the new company, while the board of directors included Orpheum president, Mark F. Heiman. Keith-Albee Orpheum's maneuvers to absorb producer-distributors had come just in time. A few months later in July 1927, there were reports that Stanley's vaudeville combination houses were shifting to motion picture exhibition exclusively.¹²⁴ Not all of Keith-Albee Orpheum's houses were suitable for motion pictures and it was by no means planning to abandon vaudeville like the Stanley example above. Perhaps only 100–200 theaters were appropriate for dedicated motion picture exhibition. Nevertheless, with its stellar reputation for vaudeville and its

vertically-integrated assets in place, the new company offered an attractive outlet for RCA and its sound process, Photophone. It was for this reason that RCA, which had already acquired a share in Joseph P. Kennedy's Film Booking Offices (FBO) in January 1928, moved to add Keith-Albee Orpheum and Pathé to its holdings in August.¹²⁵ Kennedy at the time was acting as a business advisor for Pathé, president of FBO, and chairman of the board of Keith-Albee Orpheum such that the executive link between the Keith-Albee Orpheum and RCA/FBO groups had already been established.¹²⁶ Moreover, Keith-Albee Orpheum also owned stock in FBO. After RCA agreed to purchase Kennedy's FBO share, the deal was finally completed in October, when RCA created RKO Pictures as a holding company to absorb its new assets.¹²⁷ The combination of the two groups completed RCA's bid for control over Kennedy's FBO, Keith Orpheum's theater circuits, and Pathé/PDC, and created synergistic possibilities for RCA's radio and broadcasting assets. The financial benefits, however, were not immediately apparent. From January to August 1928, FBO's and Keith-Albee Orpheum's losses amounted to over \$1 million.¹²⁸ Pathé, whose stock was divided amongst Keith-Albee Orpheum, Kennedy and others, posted \$2 million in losses in its last financial report for the year 1927. Despite these obstacles, RKO, which was valued at \$71 million exclusive of Pathé, was now ranked in the top five with the other vertically-integrated majors and was represented at the MPPDA through FBO's membership. RCA, which guaranteed Photophone's interchangeability with Western Electric systems, proceeded to install sound systems in its own theaters and those of other exhibitors and circuits throughout 1929.¹²⁹ By the end of 1930, 1189 theaters were equipped with RCA Photophone.¹³⁰ Thanks to the precedent established by the other majors, RKO had achieved vertical

integration without causing much fanfare from the government. For example, in response to the initial steps in the merger, the DOJ investigated the Keith-Albee Orpheum formal union in January 1928, but never filed any charges.¹³¹ The DOJ's practice was now to advise combinations as to potential antitrust issues before they had occurred and not afterwards when legal action might be required and perhaps even illegal, as stipulated by the Supreme Court in the FTC's case against Eastman Kodak. Such was Paramount's legacy.

Mergers and combinations might occur without direct MPPDA involvement, but the MPPDA's actions in defending its members against government antitrust had paved the way for more of the same. The MPPDA's Standard Exhibition Contract and its ban on exhibitor combines had also secured market share and upheld barriers to entry for independent producers, distributors, and exhibitors. Only RKO was able to overcome these barriers and it did so with the assistance of significant financial assets in the industry and beyond, including FBO and PDC, two large theater circuits, Keith-Albee and Orpheum, and the producer-distributor Pathé Exchange. Meanwhile, the MPPDA's self-censorship activities and its participation in the Trade Conference demonstrated to the DOJ and FTC that it was capable of self-regulation. In turn, the DOJ, FTC, and the Supreme Court all contributed to demarcating the industry's boundaries for expansion. Legislative pressure through the Brookhart Bill threatened to infringe on DOJ and FTC jurisdiction and was ultimately rejected as beyond congressional authority. The FTC's action on Paramount itself was stunted after the Supreme Court's ruling overturned the FTC's earlier order that would have forced divestment on Eastman Kodak. Consequently, the FTC revised its charge of "monopoly" to "threaten to monopolize" and dropped

demands that Paramount divest its theater chains. That action invited a flurry of merger activity, once the industry had realized how expansion might be secured. This led directly to theater expansion for Fox and Warner Bros. as well as to the formation of RKO later in October 1928. Although the conversion to sound played a significant role in such maneuvers, the elements that defined the studio system were already in place.

Hollywood's corporate structure was thus a product of mergers, financial investment, regulation, and barriers to entry. Sound provided new avenues for investment, combination, collaboration, and competition, but the importance of market share, barriers to entry, and vertical integration remained consistent throughout the studio system's existence. The sound era simply extended industrial trends that were already established. In helping the majors navigate the transition to the 1930s studio system, the MPPDA like NAMPI before it had proved that it was essential. Many more challenges and opportunities awaited the MPPDA after 1928 and into the 1930s, but its institutional guardianship over the concentrated structure that defined the American studio system was now well-established as was the oligopoly itself.

¹ For the MPPDA's welcome letter to United Artists, see Will H. Hays, letter to Joseph M. Schenck, April 7, 1927, MPPDA Files (Reel 04-0586).

² Based on an estimate of \$2.5 trillion invested in the industry, *Variety* concluded that its profit margin was among the lowest in American industry. See "Small Profit for Big Investment," *Variety* 87, No. 5 (May 18, 1927): 3. *Variety*'s numbers, although based on estimates, resemble the industry's own internal financial records. Compare *Variety*'s numbers, for example, with the more detailed industry stats listed in J. Robert Rubin, letter to The Senate Committee of Interstate Commerce, March 6, 1928, MPPA Files (Reel 04-0974 to 04-0980).

³ Not included in the report was the raw stock manufacturer and MPPDA member Eastman Kodak, which had posted \$19.86 million for profit in 1926 and was by far the largest company in the industry's fourth branch representing supplies and equipment. See Kann, ed., *The Film Daily 1928 Year Book*, 804–806.

⁴ "\$185,000,000 Estimate as Rentals Paid Yearly," *Film Daily* 41, No. 5 (July 7, 1927): 7.

⁵ "Justice Department Hit for Failure to Prosecute: Congress to Probe Cause No Action Was Taken, Chase Says," *Film Daily* 41, No. 15 (July 19, 1927): 7.

⁶ "Block Booking Facing Double-Barreled Attack in Congress and by Commission," *Film Daily* 42, No. 64 (December 15, 1927): 1–2.

⁷ "Committee of Ten to Pass on Differences," *Film Daily* 38, No. 52 (December 1, 1926): 1, 9.

⁸ "M.P.'s New Academy of Arts to be Announced at Dinner May 11," *Variety* 87, No. 3 (May 4, 1927): 9.

⁹ "Academy of Motion Picture Arts and Sciences: Constitution and By-Laws," June 20, 1927, MPPA Files (Reel 03-0025 to 03-0039).

¹⁰ The Academy's technician branch made the initial request for the Mazda incandescent lighting tests. Preliminary tests were conducted at the Warner's studios starting in February 1928 and were followed up by extensive demonstrations in April, when the Academy held an exhibition on the tests in advance of the conference it sponsored for the Society of Motion Picture Engineers. See J.T. Reed et al., letter to Louis B. Mayer et al., November 22, 1927, MPPDA Files (Reel 03-0468); and "Academy Sponsors Test on Incandescent Use," *Film Daily* 43, No. 33 (February 8, 1928): 4.

¹¹ A brief account of Academy's inaugural banquet is found in "Academy Lauded," *Film Daily* 40, No. 37 (May 13, 1927): 1, 6.

¹² Paul Lehnhardt, Jr., "Verbatim Transcript of Address of Conrad Nagel," MPPA Files (Reel 03-0064 to 03-0073).

¹³ Lehnhardt, "Verbatim Transcript of Address of Louis B. Mayer," MPPA Files (Reel 03-0040 to 03-0054).

¹⁴ "Salary Reductions and Economy," June 23, 1927, MPPA Files (Reel 03-1328 to 03-1333).

¹⁵ "Union Men to Escape Coast Salary Slash," *Film Daily* 40, No. 74 (June 27, 1927): 1, 8.

¹⁶ Brisbane's article is quoted in Fred Beetson, letter to AMPP members, June 25, 1927, MPPDA Files (Reel 03-1327). The *Examiner*'s position in support of the cuts was perhaps not surprising since William Randolph Hearst often supported the producer-distributors in industry matters.

¹⁷ D.B. Clark, president of the American Society of Cinematographers, expressed his dismay at the producers' action in Clark, letter to Fred Beetson, June 27, 1927, MPPA Files (Reel 03-1316 to 03-1319). Likewise, John Francis Natteford of the Screen Writers Guild, wrote the Association of Motion Picture Producers of his organization's rejection of the cuts in Natteford, letter to the AMPP, June 29, 1927, MPPA Files (Reel 03-1325).

¹⁸ See "Meeting of the Board of Directors of the Academy of Motion Picture Arts and Sciences," June 27, 1927, MPPDA Files (Reel 1326).

¹⁹ Jesse L. Lasky, letter to Will H. Hays, July 13, 1927, MPPA Files (Reel 03-1286 to 03-1291).

²⁰ Cecil B. DeMill, letter to Will H. Hays, July 9, 1927, MPPA Files (Reel 03-1311 to 03-1312).

²¹ Frank J. Stover, "Conferences of Representatives of Producers' Branch with Representatives of Other Branches at the Biltmore Hotel, Los Angeles," July 14–30, 1927, MPPA Files (Reel 03-0074 to 03-0361).

²² "27–28 Picture Producing Calls for Production Costs of \$100,000,000," *Variety* 87, No. 4 (May 11, 1927): 4.

²³ "Wall St. Discusses Economy Program," *Film Daily* 40, No. 75 (June 28, 1927): 4.

²⁴ "Academy to Draft Pact as Equity Withdraws," *Film Daily* 42, No. 64 (December 15, 1927): 6.

²⁵ "Equity Will Retain Coast Office: Dissolved Committee Members Now Must Act as Individuals," *Film Daily* 42, No. 65 (December 16, 1927): 6.

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- ²⁶ "Agreement Ratified by Directors of Academy," *Film Daily* 42, No. 68 (December 22, 1927): 5.
- ²⁷ See "Resume of the Dinner Meeting of the Studio Relations Committee Held in the Offices of the Association," October 19, 1927, MPPA Files (Reel 03-1212 to 03-1226).
- ²⁸ "Report of the Sub-Committee on Eliminations," May 24, 1927, MPPA Files (Reel 03-1232 to 03-1234).
- ²⁹ Motion Picture Producers and Distributors of America, "A Code to Govern the Making of Motion and Talking Pictures," March 31, 1930.
- ³⁰ "Companies Respond to Plans for Parley on 'Trade Abuses,'" *Film Daily* 41, No. 17 (July 21, 1927): 1.
- ³¹ See *Federal Trade Commission v. Famous Players-Lasky et al.*, Findings as to the Facts and Conclusion (July 9, 1927), Docket 835, 1–15.
- ³² See *Federal Trade Commission v. Famous Players-Lasky et al.*, Order to Cease and Desist (July 9, 1927), Docket 835, 1–3.
- ³³ "Trade Commission Ends Famous Case," *Film Daily* 39, No. 24 (January 28, 1927): 1, 3.
- ³⁴ *Federal Trade Commission v. Eastman Kodak*, 274 U.S. 619 (May 31, 1927).
- ³⁵ For Fox's ill-fated attempt to absorb MGM/Loew's through a 400,000-share (\$50 million) stock purchase a few months before the October Stock Market Crash of 1929, and the company's subsequent 1930 bankruptcy, see Upton Sinclair, *Upton Sinclair Presents William Fox* (Los Angeles: Upton Sinclair, 1933), 75–152, 287–314.
- ³⁶ "Paramount to Appeal Decision of Trade Commission, Zukor Says," *Film Daily* 41, No. 9 (July 12, 1927): 1, 5.
- ³⁷ "Paramount Not Planning Any Policy Changes," *Film Daily* 41, No. 10 (July 13, 1927): 3.
- ³⁸ For example, the court noted that Paramount's share of the total number of features distributed had declined from 17% in 1919 to 12% to 1923. Of course, this hardly accounts for Paramount's share of rentals and bookings, thus exposing the court as having based its statistics on data that was not relevant to the charges at hand. See *Federal Trade Commission v. Paramount Famous-Lasky Corporation et al.*, 57 F.2d 152 (Circuit Court of Appeals, Second Circuit, April 4, 1932).
- ³⁹ For a history of the industry's participation in the National Recovery Act's Code of Fair Competition, see Giuliana Muscio, *Hollywood's New Deal* (Philadelphia: Temple University Press, 1997): 117–126.
- ⁴⁰ *Ibid.*, 143–196.
- ⁴¹ "Paramount Stock, Ignoring Trade Commission, Scores Again," *Variety* 87, No. 13 (July 13, 1927): 8.
- ⁴² "Quotations," *Film Daily* 41, No. 9 (July 12, 1927): 2.
- ⁴³ "Quotations," *Film Daily* 41, No. 16 (July 20, 1927): 2; and "Quotations," *Film Daily* 43, No. 3 (January 4, 1928): 2.
- ⁴⁴ "Paramount Stock, Ignoring Trade Commission, Scores Again," 8.
- ⁴⁵ "Block Booking Decision Held Causing Exhibitor Hold-Outs," *Film Daily* 41, No. 15 (July 19, 1927): 1, 6.
- ⁴⁶ Charles L. O'Reilly, letter to E.V. Richards, April 21, 1927, MPPA Files (Reel 04-0159 to 04-0161).
- ⁴⁷ James Mathews, letter to Gabriel L. Hess, April 22, 1927, MPPA Files (Reel 04-0124 to 04-0128).
- ⁴⁸ Theater Owners Chamber of Commerce Memo, May 10, 1927, MPPDA Files (Reel 04-0111).
- ⁴⁹ Gabriel L. Hess, letter to James Mathews, April 27, 1927, MPPA Files (Reel 04-0122 to 04-0123).
- ⁵⁰ "Memorandum of the Meeting of the Advisory Committee of Exhibitors," May 11, 1927, MPPA Files (Reel 04-0096 to 04-0100).
- ⁵¹ A different interpretation of the negotiations surrounding the Standard Exhibition Contract is offered in an article in *Film Daily*, which claims that producer-distributors were eager to amend the contract ahead of the 1927–28 season. It remains to be seen, however, why distributors would hasten to amend the contract in ways that were not beneficial to their interests. See "Contract Changes at Exhibitor Meet," *Film Daily* 40, No. 34 (May 10, 1927): 1, 6.
- ⁵² Gabriel L. Hess, letter to Harry Suchman, August 23, 1927, MPPDA Files (Reel 04-0068).
- ⁵³ A TOCC letter to the MPPDA in September shows that the MPPDA had not yet offered the exhibitors the concessions they wanted on the Standard Exhibition Contract. See Harry Suchman, letter to Gabriel L. Hess, September 12, 1927, MPPA Files (Reel 04-0066 to 04-0067).
- ⁵⁴ "Distributors Refuse to Sell Film to any Booking Combine," *Film Daily* 41, No. 14 (July 18, 1927): 1, 24.
- ⁵⁵ "Distributors Refused to Serve Affiliated Chain," *Film Daily* 41, No. 14 (July 18, 1927): 24.
- ⁵⁶ "Combines, Exchanges at Loggerheads in O.," *Film Daily* 41, No. 15 (July 19, 1927): 1, 6.

⁵⁷ The MPPDA's investigation into the Zimmerman-Dipson and Casanave booking combines is evident in numerous documents. For example, see

⁵⁸ "TOCC May Sue for Allocation of Product," *Film Daily* 41, No. 12 (July 15, 1927): 1, 3, 8.

⁵⁹ Ralph Wilk, "Distributor-Exhibitors Organization invited to Join Association," *Film Daily* 40, No. 59 (June 9, 1927): 1, 2.

⁶⁰ M. Markham Flannery of the FTC was the individual in charge of organizing the rules for attendance at the Trade Conference. He described the considerations behind the selection process in a letter partly reprinted in "Applesauce," *Film Daily* 42, No. 1 (October 2, 1927): 1, 4.

⁶¹ "Industry Soon to Name Trade Parley Parties," *Film Daily* 41, No. 68 (September 20, 1927): 1, 5.

⁶² Federal Trade Commission, "Trade Practice Conference for the Motion Picture Industry," 1928, MPPA Files (Reel 03-1855).

⁶³ "Exhibitors Speed Selection of Delegates to Trade Parley," *Film Daily* 42, No. 1 (October 2, 1927): 1, 12.

⁶⁴ Ralph Stemm, "Official Report of the Proceedings Before the Federal Trade Commission, In the Matter of Trade Practice Conference, Motion Picture Industry, New York City, Convened October 10, 1927," MPPDA Files (03-1390 to 03-1829).

⁶⁵ Federal Trade Commission, "Trade Practice Conference for the Motion Picture Industry," 1928, MPPA Files (Reel 03-1830 to 03-1857).

⁶⁶ "Myers Says Code Must Be Set," *Film Daily* 42, No. 9 (October 11, 1927): 5.

⁶⁷ For the resolutions on the Formula and the MPPDA's new list of banned and cautionary topics, see Stemm, "In the Matter of Trade Practice Conference," 86–101. The exhibitors recorded no objections to these resolutions, but asked for time to study the specific language used and its implications.

⁶⁸ "Trade Practice Conference for the Motion Picture Industry," 11.

⁶⁹ Charles F. Hynes, "Concessions Made to Halt Deadlock as Parley Closes Sessions," *Film Daily* 42, No. 14 (October 17, 1927): 1, 6.

⁷⁰ "How They View Conference," *Film Daily* 42, No. 14 (October 17, 1927): 7.

⁷¹ "Reflection," *Film Daily* 42, No. 14 (October 17, 1927): 1.

⁷² The TOCC's statement after the Trade Conference listed five regulatory measures that were required to bring about an open market: a ban on producer-distributor theater ownership; the abolishment of block booking and blind selling; early sales contracts; protection and favoritism; and open booking for independent producers and exhibitors. See "Trustification Held Menacing Industry: T.O.C.C. Offers Remedy For Declared Dangers," *Film Daily* 42, No. 51 (November 30, 1927): 8.

⁷³ Abram F. Myers, "Memorandum to the Commission," February 28, 1928. The latter is included in "Trade Practice Conference for the Motion Picture Industry," 13–14.

⁷⁴ "Abram F. Myers Signs 3 Year Contract to Head Allied Association," *Film Daily* 46, No. 66 (December 18, 1928): 1, 4.

⁷⁵ "Commission Action Hinges on Block Booking Bills: 'Cease and Desist' Order Awaits Congress Airing of Practices," *Film Daily* 43, No. 35 (February 10, 1928): 1.

⁷⁶ Sol Raives, letter to Will H. Hays, January 9, 1928, MPPA Files (Reel 04-003 to 04-004).

⁷⁷ Maurice Kann, "The Contract," *Film Daily* 43, No. 30 (February 5, 1928): 1, 3.

⁷⁸ "New Contract Effective in May; Minor Points to be Cleared Up," *Film Daily* 43, No. 45 (February 23, 1928): 1, 2.

⁷⁹ The Standard Exhibition Contract of May 1, 1928 was reprinted in full in "Complete Text of Uniform Contract," *Film Daily* 43, No. 49 (February 28, 1928): 6–8. The Arbitration Rules were reprinted in "Arbitration Under the New Contract," *Film Daily* 43, No. 51 (March 1, 1928): 6–7.

⁸⁰ For the text of the Brookhart Bill, see "Brookhart Bill Aims at Regulation," *Film Daily* 42, No. 64 (December 15, 1927): 10.

⁸¹ "Brookhart Seeks Speed in Acting on His Bill," *Film Daily* 43, No. 14 (January 17, 1928): 1, 5.

⁸² "Brookhart Bill Drive Gets Impetus at T.O.C.C. Rally," *Film Daily* 43, No. 23 (January 27, 1928): 1, 4–5.

⁸³ Ibid.

⁸⁴ "Contract Changes Not to Forestall Brookhart Bill," *Film Daily* 43, No. 18 (January 22, 1928): 1.

⁸⁵ "Sen. Brookhart Hits Statement Bill Provides Federal Control," *Film Daily* 43, No. 27 (February 1, 1928): 1, 8.

⁸⁶ See Charles C. Pettijohn, "Memorandum in re Brookhart Bill." The latter was included as an attachment in Charles C. Pettijohn, letter to Will H. Hays, January 30, 1928, MPPA Files (Reel 04-0998 to 04-1005). This pamphlet was also partially reproduced in "Producers'-Distributors' Brief on Brookhart Bill Declares it Illegal," *Film Daily* 43, No. 42 (February 19, 1928): 4-6.

⁸⁷ Pettijohn, letter to Will H. Hays, January 30, 1928.

⁸⁸ Charles C. Pettijohn, "To the Secretaries of all Film Boards of Trade," January 12, 1928, MPPDA Files (Reel 04-1006).

⁸⁹ See "Legislation Only Relief Sen. Brookhart States," *Film Daily* 43, No. 49 (February 28, 1928): 1, 3; and "Monopoly is Denied: Statement Keynote of Defense in Hearings Today," *Film Daily* 43, No. 51 (March 1, 1928): 1, 3.

⁹⁰ M.A. Lightman, letter to Senator Joe T. Robinson, April 20, 1928, MPPA Files (Reel 04-0946 to 04-0947).

⁹¹ The Brookhart Bill was subsequently reintroduced twice in consecutive congressional sessions over the years and failed both times.

⁹² "Brookhart Bill Dead: Senator Sees No Chance For Action Before Congress Adjourns," *Film Daily* 44, No. 29 (May 3, 1928): 1.

⁹³ "Gov't To Push Suit; Trial Expected Soon," *Film Daily* 44, No. 26 (April 30, 1928): 1.

⁹⁴ "\$50,000,000 Loew Program, Theaters Here and Abroad," *Film Daily* 39, No. 31 (February 6, 1927): 1, 4.

⁹⁵ "United Artists-MGM Merger Reported Off as 'Mary and Doug' Oppose," *Film Daily* 39, No. 69 (March 23, 1927): 1, 2.

⁹⁶ *The Wall Street Journal* (February 5, 1927). The latter is quoted in "Merger Talk on Again," *Film Daily* 39, No. 32 (February 7, 1927): 1.

⁹⁷ "Stanley and West Coast Get Control of First National; Former to Manage," *Film Daily* 39, No. 52 (March 3, 1927): 1.

⁹⁸ "Fox and Others Reported Being Sought as Factors in Big First National Pool," *Film Daily* 39, No. 58 (March 10, 1927): 1, 3.

⁹⁹ Subsequent to the First National deal, *Film Daily* reported that Fox and Stanley were now coordinating exhibition dates in Philadelphia. See "Stanley and Fox Switch Dates in Philadelphia," *Film Daily* 40, No. 17 (April 20, 1927): 1, 2.

¹⁰⁰ See "West Coast-North American Deal Sought in Conference," *Film Daily* 39, No. 61 (March 14, 1927): 1, 2; and "Bringing of F. & R. and Saxe Into F.N. Pool Reported Near," *Film Daily* 39, No. 63 (March 16, 1927): 1, 2.

¹⁰¹ "See Wesco-Saxe Deal as Forerunner of More," *Film Daily* 42, No. 48 (November 27, 1927): 3, 14.

¹⁰² "All Wesco in Fox Deal," *Film Daily* 43, No. 22 (January 26, 1928): 1, 10.

¹⁰³ Ibid.

¹⁰⁴ "Warner Completes Purchase of Stanley Circuit Control," *Film Daily* 45, No. 63 (September 13, 1928): 1, 7.

¹⁰⁵ For Gomery's account of the Warner Bros. takeover of First National and Stanley, including the important role historically ascribed to Waddell Catchings, see Gomery, *The Coming of Sound*, 116-118.

¹⁰⁶ "Warner Deal for F.N. Talked At Meeting," *Film Daily* 45, No. 56 (September 5, 1928): 1, 6.

¹⁰⁷ "Warner Completes Purchase of Stanley Circuit Control."

¹⁰⁸ "Warners Buy First National," *Film Daily* 45, No. 73 (September 25, 1928): 1, 7.

¹⁰⁹ "Plan to Sell Movietones at \$2,000 Each," *Film Daily* 40, No. 40 (May 17, 1927): 1, 2.

¹¹⁰ "Movietone Films Ready for Market; Four Films a Week Planned," *Film Daily* 39, No. 47 (February 25, 1927): 1, 7-8.

¹¹¹ Gomery, 50.

¹¹² "Fox and Vitaphone Exchange Licenses on Talking Films," *Film Daily* 39, No. 5 (January 6, 1927): 1, 4.

¹¹³ "Movietone Films Ready for Market," 8.

¹¹⁴ Warner's Vitaphone royalties were not derived from installations, which were contracted through Western Electric, but through a royalty fee of 10 cents on every theater seat in a facility serviced by Vitaphone. According to *Film Daily*, if the Warner Bros. and Western Electric arrangement continued to 1928, Warner Bros. would receive \$45,000 every week from the 300 theaters licensed with Vitaphone. This

would amount to \$2.34 million for the year. Note that the numbers are based on an average seating capacity of 1500 for each of the 300 theaters. See "300 Vitaphones to be Operation Jan.," *Film Daily* 39, No. 37 (February 13, 1927): 1.

¹¹⁵ For a brief history of the Western Electric and Warner Bros. dealings leading up to the May 1927 license transfer agreement with ERPI, see Gomery 41–43.

¹¹⁶ "Five Companies in Talking Film Deal," *Film Daily* 39, No. 45 (February 23, 1927): 1, 5.

¹¹⁷ In addition to the firms involved in the five company agreement, FBO was also a party to these talks on Vitaphone investment. See "Conferences Fail in Deal on Vitaphone," *Film Daily* 39, No. 35 (February 10, 1927): 1, 5.

¹¹⁸ "W.E. Deals Presage General Use of Talking Pictures," *Film Daily* 44, No. 40 (May 16, 1928): 1, 2.

¹¹⁹ "Sound for 300," *Film Daily* 45, No. 56 (September 13, 1928): 1.

¹²⁰ The "Five Companies" group entered into negotiations with RCA immediately following their formation. See "Five Companies in Pool Seek Deal for Photophone," *Film Daily* 39, No. 53 (March 4, 1927): 1, 2. For a more detailed account of the failed negotiations between Paramount and RCA over Photophone, see Gomery 80–81.

¹²¹ "Pathe-P.D.C.-K.A. & Orpheum Deal Ready for Stockholders," *Film Daily* 40, No. 18 (April 21, 1927): 1, 3.

¹²² Pathé's Consolidated Balance Sheet was reprinted in "Pathe's Financial Condition," *Film Daily* 40, No. 19 (April 22, 1927): 12.

¹²³ "Keith-Orpheum Booking into 724 Houses Now," *Film Daily* 43, No. 3 (January 4, 1928): 1, 2.

¹²⁴ "Vaudeville Makes Bow in Favor of Pictures," *Film Daily* 41, No. 2 (July 3, 1927): 1, 16.

¹²⁵ RCA, along with its parent company, General Electric, and Westinghouse, acquired shares in FBO in January 1928. RCA then proceeded to acquire stock in Pathé and Keith-Albee Orpheum in August 1928. See "Sound Devices Available to Industry Through FBO Deal," *Film Daily* 43, No. 4 (January 5, 1928): 1, 8; and "RCA Reported in Control of Pathe, FBO, and K-A-O," *Film Daily* 45, No. 35 (August 10, 1928): 1, 3.

¹²⁶ "RCA Reported in Control of Pathe, FBO, and K-A-O,"

¹²⁷ Kennedy retained a share in Pathe, but later sold it to RKO. See "RCA to Get K-A-O: Kennedy to Retire From Two Firms Under Deal Ratified Friday," *Film Daily* 46, No. 6 (October 7, 1928): 1.

¹²⁸ The industry's financial reports for 1928 are found in Maurice D. Kann, ed., *The Film Daily 1929 Year Book* (New York & Los Angeles: The Film Daily, 1929), 834–862.

¹²⁹ The issue of interchangeability was hotly contested in 1928, as RCA Photophone attempted to grab a market share for its system against Western Electric's dominant system. Eager to break into the market, RCA claimed that the two systems were interchangeable, while Western Electric's ERPI cautioned customers that it made no such guarantees. See "Interchangeability between RCA and W.E. Now Assured," *Film Daily* 45, No. 37 (August 13, 1928): 1.

¹³⁰ *The 1931 Motion Picture Almanac* (New York: Quigley Publishing Company, 1931), 12.

¹³¹ "Government Probes Merger of Keith-Albee and Orpheum," *Film Daily* 43, No. 9 (January 11, 1928): 1, 8.

CONCLUSION:
FROM THE EDISON TRUST TO THE HOLLYWOOD MAJORS:
TRADE ORGANIZATIONS AND HISTORIOGRAPHY

Given its fine-grained research basis, this account has attempted to render microhistory on a macro-historical stage. By deploying a weekly and sometimes daily yardstick for historical analysis, I have charted 13 years of industry development during an era that is vastly underrepresented in the existing scholarship. A legitimate question that can and should be asked of every historical study is whether the construction of a linear and causal narrative is an appropriate medium for understanding complex historical processes that defy simple cause-and-effect models. What if all such models were in effect false constructs that reveal more about the methodological preferences and deficiencies of the historian instead of the complexities that the historian has attempted to convey? Thus, every history is also an example for historiography, even if this is not acknowledged. How can such a vast history of events from the mid-1910s to the late-1920s be rendered in terms that are attentive to the inherent limitations of such a project?

One option is to deny linear history altogether, positing instead a model that enumerates historical events without any claims as to the larger interrelations amongst them. Indeed, at times when this work has immersed itself in micro-historical data, it might seem that it is raising the possibility of a history that branches out in every direction. Of course, some may encourage non-linearity, but works that are nonlinear in construction are few and far in between. Instead of offering history in a familiar narrative, nonlinear history emphasizes the impossibility of positing cause and effect relationship

between two events and of reducing a single event down to a single cause. While I have not adopted such a method, the concept of nonlinear history raises many challenges for linear history itself, which I will outline below.

Another approach is to build the macro-history out of micro-historical foundations. Here it is informative to note that the method of microhistory is in essence the practice of reading the particular as a unique yet representative example of the general. According to Carlo Ginzburg, microhistory reveals aspects that are excluded in survey histories, but that are just as relevant to the macro perspective.¹ Thus, the fine-grained scale is compatible with the objectives of a macro-historical framework that attempts to render history in broader terms. But how can these micro-historical events form into a meaningful and broader narrative? How does a January 1916 Congressional meeting on the Hughes Bill for federal censorship convey the deepest and most significant rifts that existed within the Board of Trade and between the latter and Paramount? This was such an isolated event that anything but a microhistory would have failed to reveal it as significant. Moreover, we would have missed the significance behind Paramount's initial support for a federally-mandated motion picture regulation that ensured the standardized film distribution schedules so amendable to block booking and percentage contracts. In turn, reading out from the events surrounding the Hughes Bill, we noted how Paramount's opposition to the Board of Trade was related to the power struggles in the aftermath of the MPPC's collapse. These were the same power struggles that caused rifts inside the Board of Trade and between the latter and the exhibitors. Thus, a close reading of the Hughes Bill hearings gave form to a macro-history that placed the Board of Trade as transitional institution between the MPPC and NAMPI,

when a new oligopoly was in the process of forming. Nonetheless, the problems of correlating microhistory and macrohistory betray a more fundamental limitation in causal analysis and sequence.

Surveying the historiographic problems associated with causal history, David Hackett Fischer has categorized such tendencies under the “Fallacies of Causation” and noted that historians are confronted with an array of problems in identifying and isolating meaningful antecedents to the events they describe and narrate.² As I am concerned with the developments that catalyzed vertical integration and oligopoly in the American film industry, Fischer’s *fallacies* have been an ever present reminder of the limitations as well as the possibilities of causal analysis. Several fallacies in particular are relevant to the present study. First and foremost, there is the well-known fallacy of *post hoc, propter hoc* (If B after A, then A caused B), which assumes causation between two events when there is none. This is a problem whenever positing an historical series of events such as I have attempted.

For example, just because the Board of Trade’s September 1915 founding coincided with the MPPC’s court-ordered disbandment a few weeks later does not mean that the anticipated decision against the Edison Trust necessarily affected or “caused” the Board of Trade’s founding. Without claiming such a sequence of events, I have simply argued that the MPPC’s collapse created an opportune moment in which to realign the American film industry along a trajectory that led to the rise of the Hollywood majors. I then noted that the Board of Trade inherited many of the MPPC’s functions. Thus my argument does not rely in this case on establishing *causation* between the MPPC’s

collapse and the Board of Trade's founding. Another part of my argument here addressed the nexus between censorship and antitrust. These were two forms of regulatory policy brought together in the two significant court rulings affecting the industry in 1915, *Mutual v. Ohio* and the *U.S. v. MPPC*. I have argued that that in order to understand the significance of these rulings it is necessary to recognize how the denial of cinema as "art" or "speech" in the Supreme Court's ruling on *Mutual* subjected films to the laws of interstate commerce, including antitrust. While this undermined the MPPC's chances in its own case it also legitimized lawsuits against the MPPC and its distribution arm, the GFC. For the national feature distributors like Paramount, antitrust legislation was anathema to their operations. Thus, the MPPC's decline was catalyzed by the very developments that necessitated collective and collaborative action. In turn, these events led to the rise of the Board of Trade, and, subsequently, NAMPI and the MPPDA. In terms of causation, therefore, it is more accurate to say that the same conditions that led to the MPPC's collapse led to the rise of trade organizations and the new oligopoly that they represented.

As for the other fallacies relevant here, they include the *reductive fallacy* and the *fallacy of indiscriminate pluralism*. In the first, complexity is reduced to simplicity; in the second, complexity exceeds causal definition. Both are false. It is best not to oversimplify an historical sequence at the same time as it is essential not substitute complexity and detail for logical explanation. With the latter fallacies in mind, I have not recounted every action of the producer-distributor trade organizations, for that would be unnecessary and cumbersome. According to Fischer, this would also leave the reader faced with too many causal components and not enough delineation between them. For

that reason, I have focused instead on the narrative that links the events of the mid-1910s to the rise of the Hollywood majors. To render such a narrative in a meaningful and informative manner, I have chosen to examine the role that trade associations played in formulating and defending this new oligopoly. Of course, as my title suggests, trade organizations were far from monolithic. They represented a crossroads for the industry, pitting factions and sides against one another, while fostering cooperative action on issues where such collective action was necessary and prudent. They even contributed to power struggles as we have seen with Metro's and Paramount's conflicts with the Board of Trade, Vitagraph's uneasy relationship with the MPPDA, and the independents' struggles with both NAMPI and the MPPDA. Yet through all these rivalries and divisions, NAMPI and the MPPDA each served a valuable purpose for companies with the ambition to control the domestic and international film market.

Ostensibly founded to combat censorship and to unify the industry, producer-distributor trade organizations functioned to narrow competition in ways that undermined independent producers, distributors, and exhibitors. Whatever challengers appeared in the form of exhibitor booking combines and theater circuits such as First National, Associated, Stanley, West Coast Theaters, Keith-Albee, and Orpheum, these were ultimately at the mercy of the same forces that were financial supporters of the studios. Subsequently, each one of these companies was absorbed to produce a vertically-integrated entity that brought together separate interests for a collective good. In every case, once a competitor to the producer-distributors had grown large enough, it was admitted to their trade organization. Thus, smaller companies agglomerated into larger ones, and these larger companies collectivized to protect their market share. The logic of industrial

agglomeration that resulted in combines paralleled the logic behind trade organizations that brought separate interests together for the collective good.

For reasons that I mentioned in the introduction, I have deliberately limited my study to the end of 1928, when the sound era began in earnest. At this point, the existing scholarship on the studio system is much more vast and informative. Readers will therefore note that what has been attempted here reflects not simply a desire to understand the origins of the studio system but, on a historiographic level, to establish a connection between the scholarship on the MPPC, represented by Anderson, Staiger, Cassady, Jr., Curtis and others, and the accounts of the sound era in Gomery, Crafton, Jewell, and Schatz. Certainly, existing histories of the 1910s and 1920s are still relevant, but these accounts have made no connections between trade organizations and oligopoly, and they have not addressed the activities of trade organizations beyond their role in combating censorship. Yet this is precisely the essence of my argument.

As an historical arc that linked 1915 to 1928, Chapter 9 chronicled how censorship and antitrust were now connected through the calls for regulatory action against the MPPDA and its members. Rev. Chase who supported the Hughes Bill in 1916 and Upshaw Bill in the mid-1920s was now calling for a broad regulatory commission to oversee both censorship and antitrust actions against the MPPDA. Having narrowly escaped the DOJ's investigation into its Film Boards of Trade, the MPPDA itself was identified as a facilitator and embodiment of oligopoly. Thus, my argument on trade organizations and oligopoly has simply been lifted from the historical record itself and is not an outside imposition of a framework that is alien to the material that it describes.

Whether we choose to accept the study's broader conclusions on the pre-history of the studio system as relevant and valid, we still must accept that historical personages themselves understood the MPPDA as an embodiment of a new "Trust," one that they believed had blossomed in its place. If we accept the narrative that begins with censorship and antitrust in 1915 and leads to the Hollywood majors, then we must also accept the role of producer-distributor trade organizations in facilitating this history.

¹ Carlo Ginzburg, "Microhistory: Two or Three Things That I Know about It," trans. John and Anne C. Tadeschi, *Critical Inquiry* 20, No. 1 (Autumn 1993): 10–35.

² Fischer's useful listing of these causal fallacies is as follows: *post hoc, propter hoc* (If B after A, then A caused B); *cum hoc, propter hoc* (If A and B occur together, then A caused B, or B caused A); *pro hoc, propter hoc* (placing effect before the cause); *the reductive fallacy* (reducing complexity to simplicity and confusing necessary causes with sufficient causes); *the fallacy of indiscriminate pluralism* (number of causal components is not defined); *the fallacy of identity* (a cause that must resemble its effect); *the fallacy of absolute priority* (presumes a first term in any causal series); *the fallacy of reason as cause* (mistakes causal order for logical order); and *the fallacy of responsibility as cause* ("confuses a problem of ethics with a problem of agency in a way which falsifies both"). See David Hackett Fischer, *Historians' Fallacies: Toward A Logic of Historical Thought* (New York: Harper, 1970), 164–186.

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