

## Introduction

On August 2, 2018, the Department of Justice Antitrust Division (referred to here as “the DOJ”) announced that they would be opening up a review of the Paramount Consent Decrees (the “Consent Decrees”). The DOJ’s announcement, along with links to the original Decrees, can be found here: <https://www.justice.gov/atr/paramount-decree-review>.

**UPDATE, August 19, 2018: The DOJ has honored NATO’s request to extend the comment period beyond 30 days and has announced that the comment deadline is extended to October 4, 2018.**

This FAQ document aims to explain what the Consent Decrees are, the practices they forbid, and how interested parties can participate in the DOJ’s review process. This document should not be considered legal advice.

## Frequently Asked Questions

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### 1. What is a consent decree?

A consent decree is a method of resolving a dispute between two parties, in this case the government and certain movie studios, that is similar to entering into a settlement in lieu of further litigation. Essentially, the parties consent to certain terms and conditions in order to avoid further penalty by the government. A court must approve the consent decree and supervise its implementation. In the case of an antitrust consent decree, if the parties agree to abide by the terms, then they can escape antitrust liability on those actions going forward.

Before the late 1970s, consent decrees entered into by the DOJ did not have expiration dates. Therefore, even though the Consent Decrees were entered into in the late 1940s and early 1950s, they are still in effect today. [BACK TO TOP](#)

### 2. What are the Paramount Consent Decrees?

The Paramount Consent Decrees are a collection of consent decrees governing certain practices of certain studios.

In the early years of the motion picture industry, many movie distributors owned theaters, which allowed them to show their movies at favorable terms for themselves. In 1938, the DOJ sued eight major movie studios, alleging that the studios were guilty

of conspiring to fix ticket prices and monopolize the industry through their ownership of theaters and film distribution. The case reached the Supreme Court, which ruled in favor of the federal government. As a result, the studios entered into consent decrees with the DOJ.

Paramount Pictures was the largest studio in this lawsuit, hence why all the decrees are referred to collectively as the “Paramount Consent Decrees.” [BACK TO TOP](#)

### 3. Which studios are subject to the Consent Decrees?

The studios that exist today that are subject to the Consent Decrees are MGM, Paramount Pictures, Sony Pictures, Twentieth Century Fox, Universal Pictures, and Warner Brothers.

Smaller distributors that are owned or majority owned by companies that are bound by the Consent Decrees, such as Focus Features and Fox Searchlight, for example, are also subject to the restrictions of the Consent Decrees. [BACK TO TOP](#)

### 4. Which studios are not subject to the Consent Decrees?

Although the Walt Disney Company existed at the time of the lawsuits, the federal government did not sue them for antitrust violations; therefore, Disney is not a party to the Consent Decrees and is not bound by the restrictions of the Consent Decrees. Studios and distributors that formed after the lawsuits, like A24, Amazon Studios, and STX Entertainment, just to name a few, are not bound by the Consent Decrees. However, the legal parameters set by the Consent Decrees set a strong deterrent and precedent for other studios. [BACK TO TOP](#)

### 5. What practices are forbidden by the Consent Decrees?

The Consent Decrees forbid the studios covered by the Consent Decrees from engaging in the following practices:

1. Price fixing: Studios cannot set minimum ticket prices.
2. Overbroad clearances:
  - a. Studios cannot agree with other distributors or exhibitors to maintain a system of clearances, i.e., stipulating the amount of time between runs of the same movie in specified theaters or within a particular area.
  - b. Studios cannot grant clearances between theaters that are not in “substantial competition.”
  - c. There are narrow circumstances in which clearances are allowed: When specific theaters are in substantial competition with each other and the clearances are deemed to be reasonably necessary.
3. Block booking: Studios cannot condition licensing one film on a requirement to license other features made by the studio. In other words, studios cannot require “block booking,” forcing an exhibitor to license their entire slate in order to show one of their movies.
4. Circuit dealing: The Consent Decrees require that distributors book each movie individually, theater by theater.
5. Owning movie theaters: The Consent Decrees prohibit the studios from owning or leasing movie theaters.

As noted above, these provisions only apply to the distributors that are party to the Consent Decrees, but have been a deterrent to other studios as well. [BACK TO TOP](#)

## 6. Why is the DOJ suddenly reviewing the Consent Decrees?

The Assistant Attorney General for the Antitrust Division, Makan Delrahim, has [described his opposition](#) to the use of consent decrees as a tool to prevent anticompetitive behavior. In April 2018, the DOJ [announced](#) that they would be reviewing nearly 1,300 legacy antitrust judgments (consent decrees that have no expiration date) to decide which ones to terminate. The review of the Consent Decrees is part of that effort. [BACK TO TOP](#)

## 7. If the Consent Decrees are revoked, will these practices become legal?

Not necessarily. Should the Consent Decrees be revoked, the legality of any corporate acts will be reviewed under the various antitrust laws. The principal federal antitrust statutes are the Sherman Act, the Federal Trade Commission Act, the Clayton Act, and the Robinson-Patman Act. The basic objective of the antitrust laws is to eliminate practices that interfere with free competition.

Some prohibited behaviors include: Contracts, combinations, and conspiracies in restraint of trade; monopolization, attempts to monopolize, and conspiracies to monopolize; “unfair methods of competition”; unlawful discrimination in prices between different purchasers; exclusive dealing arrangements; tying arrangements; and requirements contracts involving the sale of commodities, where the effect may lessen competition.

In general, whether a particular act is considered a violation will be reviewed based on whether the restraints on trade are unreasonable. This requires a complex balancing of the pro-competitive benefits of the challenged conduct against the anticompetitive consequences of that conduct, only prohibiting conduct that, on balance, is anticompetitive. Therefore, absent the Consent Decrees, potentially anticompetitive practices will be judged individually based on whether the specific facts are anticompetitive on balance, rather than whether the specific facts violate the Consent Decrees. [BACK TO TOP](#)

## 8. What issues will the DOJ be looking at with regard to the Consent Decrees?

The DOJ has specifically asked interested parties to comment on the following questions:

- Do the Paramount Decrees continue to serve important competitive purposes today? Why or why not?
- Individually, or collectively, are the decree provisions relating to (1) movie distributors owning movie theatres; (2) block booking; (3) circuit dealing; (4) resale price maintenance; and (5) overbroad clearances necessary to protect competition? Are any of these provisions ineffective in protecting competition or inefficient? Do any of these provisions inhibit competition or cause anticompetitive effects?

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- What, if any, modifications to the Paramount Decrees would enhance competition and efficiency? What legal justifications would support such modifications, if any?
- What effect, if any, would the termination of the Paramount Decrees have on the distribution and exhibition of motion pictures?
- Have changes to the motion picture industry since the 1940s, including but not limited to, digital production and distribution, multiplex theatres, new distribution and movie viewing platforms render any of the Consent Decree provisions unnecessary?
- Are existing antitrust laws, including, the precedent of *United States v. Paramount*, and its progeny, sufficient or insufficient to protect competition in the motion picture industry?

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### **9. How can I submit comments?**

In response to NATO's request to extend the comment time period beyond 30 days, the new deadline for submitting comments is October 4, 2018. Comments can be submitted via email at [atr.mep.information@usdoj.gov](mailto:atr.mep.information@usdoj.gov). **[BACK TO TOP](#)**

### **10. What is the timeline for this review?**

The timeline for the review is not known at this time. The DOJ may review the comments in as little as a few months or could take several years. **[BACK TO TOP](#)**

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