



Wednesday, November 20

Time (EDT)	Session
8:30 a.m.	Breakfast and Registration
9:00 a.m.	Welcome Remarks
9:05 a.m.	The Workplace in the Post Election World Michelle A. Annese , Partner, Proskauer Elise M. Bloom , Partner, Proskauer
9:55 a.m.	The Future of Television: Is the War Over? Robert E. Freeman , Partner, Proskauer
10:45 a.m.	Break
11:00 a.m.	Supreme Court: Year in Review Mark D. Harris , Partner, Proskauer

Speakers:

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To access the materials from this session, please visit:

www.proskauer.com/uploads/2024-sports-law-cle-series



2024

SPORTS LAW CLE SERIES

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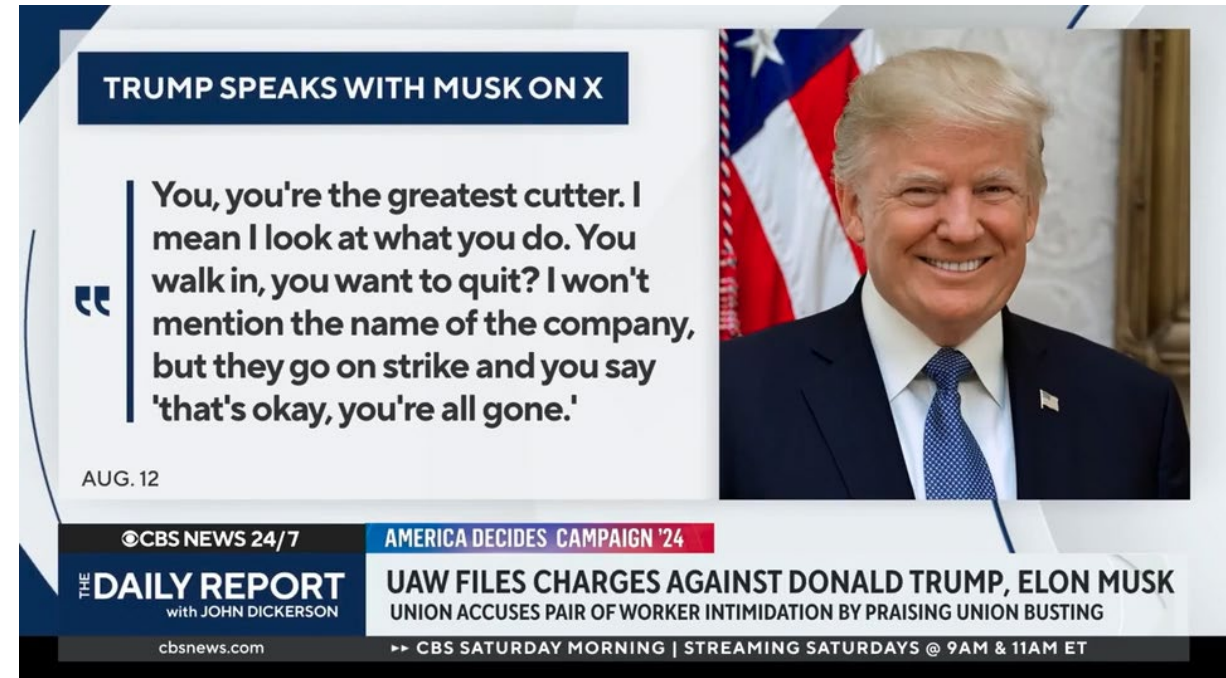
The Workplace In The Post-Election World

Elise M. Bloom & Michelle A. Annese
Partners

November 20, 2024

Proskauer»

Then And Now



The Biden Administration's Labor & Employment Priorities

- Strengthening **Unions**
- Increasing Protections for **Pregnant Workers**
- Diversity, Equity, and Inclusion (**DEI**)
- Preventing **Workplace Harassment**



The New Trump Administration's Labor & Employment Priorities

- **Level the Playing Field** Between Management & Labor
- Increased Focus on **Religious Discrimination**
- Heightened Scrutiny of **DEI Programs**



EEOC's Priorities During Prior Administrations

- During President Trump's first administration:
 - Information Sharing During Conciliation
 - Guidance on Religious Discrimination
- During President Biden's administration:
 - Final Rule Expanding the Pregnant Workers Fairness Act's (PWFA) Coverage
 - Updated the Agency's Workplace Harassment Guidance for the First Time in 30 Years



Current Composition of the EEOC



Charlotte Burrows,
Chair
Term Expires:
July 2028



Andrea Lucas,
Commissioner
Term Expires:
July 2025



Jocelyn Samuels,
Vice Chair
Term Expires:
July 2026



Kalpana Kotagal,
Commissioner
Term Expires:
July 2027



Republican Seat
Vacant Since
Commissioner
Sonderling
Stepped Down in
August 2024

Trump will have the ability to appoint a **new General Counsel** and a **new Commissioner**. Trump also will likely appoint Commissioner Lucas – the only current Republican Commissioner – to be **the new Chair**.

The EEOC: What To Expect Going Forward

- We expect the EEOC to **increase its focus** on the following areas:
 - Diversity, Equity, and Inclusion
 - Religious Discrimination
 - Pregnancy Discrimination
 - Workplace Harassment
 - Artificial Intelligence

“Our mission is to prevent and eliminate discrimination, not impose ‘equitable’ outcomes. . . . There’s never been a better time for companies to take a hard look at their diversity programs.”

- **Commissioner Lucas**, in a Reuters op-ed following the Supreme Court’s June 2023 *Students for Fair Admissions* decision holding that Harvard and UNC’s race-based admissions practices were unlawful.

DEI Programming: Risk Analysis

DEI Initiative	Risk	Description
<i>Monetary Incentives for Diverse Employment Actions</i>	High	Compensation or other monetary incentive practices directly linked to consideration of race, ethnicity and/or gender in decision-making.
<i>Voluntary Affirmative Action Plans</i>	High	Explicit consideration of race, gender or other protected characteristics in hiring and other employment decisions.
<i>Diversity Fellowship or Internship Programs</i>	High	These can be considered as akin to affirmative action plans when open only to diverse candidates.
<i>Diversity Employment Requirements</i>	High	Requirement that an organization employ a certain number or percentage of diverse individuals.
<i>Diverse Mentorship and/or Sponsorship Programming</i>	Medium	Mentorship or sponsorship programs open only to diverse candidates which pairs employees from diverse backgrounds with a mentor or sponsor.
<i>Workforce Diversity Hiring Goals</i>	Medium	Specific goals listed with the aim of increasing representation of diverse employees.
<i>Commitment to measures resulting in increased diverse hiring</i>	Low	Include a variety of employer initiatives, including but not limited to: posting all vacancies and promotions; ensuring posts are easily searchable; increasing recruitment efforts at HBCUs; and increasing number of diversity candidates interviewed.
<i>Supporting Affinity Groups</i>	Low	Supporting the formation and continuation of affinity groups for minorities but should ensure that groups do not limit membership to the demographic the group intends to support.

Options for Navigating DEI in the New Landscape



- Evaluation of risk tolerance.
- Balancing legal compliance with respect for organizational values.
- Reconsider use of monetary and other incentives to increase diversity.
- Expansion of current mentoring programs.
- Review current DEI strategies and public facing documents.
- New areas for DEI exploration:
 - Socioeconomic status
 - First generation/unique circumstances
 - Single family household
 - Geographic diversity (zip codes, urban/rural)
 - Commitment to culture/diversity
 - Partnerships with colleges, especially those that support underserved communities



Other Areas of Interest to the EEOC

- Religious Discrimination
- Pregnancy Discrimination
- Workplace Harassment
- Artificial Intelligence



The Department of Labor Under President Biden

- **Acting Secretary of Labor: Julie Su**
 - Su became Acting Secretary after former Labor Secretary Marty Walsh resigned in February 2023 to lead the NHLPA.
- During President Biden's administration, the DOL engaged in rulemaking in several key areas, including:
 - **Independent Contractors**
 - **Overtime Pay – What's Next?**



The Department of Labor: **What To Expect Going Forward**



- President Trump will **nominate a new Labor Secretary** who is expected to be more business-friendly than Acting Secretary Su.
- The new Labor Secretary's top priority will likely be to **roll back worker-friendly Biden-era rules**, including the independent contractor rule.
- Trump's DOL may also **rescind or modify** Biden's recently issued rule increasing the salary threshold for "white collar" FLSA exemptions.

The NLRB Under President Biden

- President Biden billed himself as **the “most pro-union president ever,”** which was reflected by the NLRB’s actions during his term.
- Over the past four years, the NLRB shifted policy in favor of workers and unions in several ways:
 - **Cemex:** Made it **easier** for unions to gain recognition.
 - **McLaren Macomb:** Made it unlawful to require employees to sign separation agreements containing certain **non-disparagement** or **confidentiality clauses**.
 - **Stericycle:** Made **employer handbook policies** unlawful if they have a “reasonable tendency” to dissuade workers from engaging in concerted activity.
 - **Amazon:** Held that **mandatory “captive audience” meetings** are unlawful.
 - **“Quickie Election” Final Rule:** Introduced **tight timelines** on hearing dates and union elections.
 - **General Counsel Jennifer Abruzzo** targeted **non-competes** and took an expansive view of **joint employer liability**.



Current Composition of the NLRB

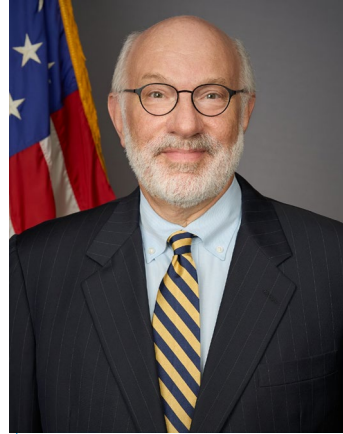


Lauren McFerran,
Chairman
Term Expires:
December 16, 2024

*Renomination
Pending*



Marvin E. Kaplan,
Member
Term Expires:
August 27, 2025



David M. Prouty,
Member
Term Expires:
August 27, 2026



Gwynne A. Wilcox,
Member
Term Expires:
August 27, 2028

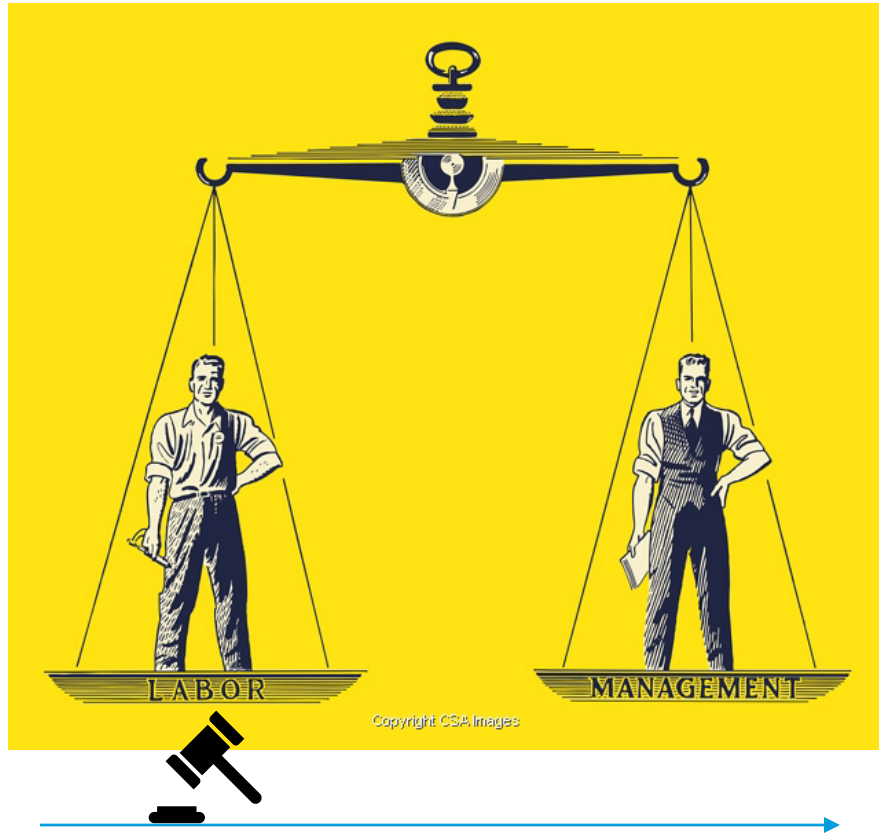


Joshua L. Ditelberg
Nominee
Term Would Expire:
December 16, 2027

*Nomination
Pending*

President Biden **renominated McFerran** to another five-year term. Biden also **nominated Joshua Ditelberg** to fill the open Republican seat. Trump will likely need to wait **until 2026** until he can flip the Board's majority.

The NLRB: What To Expect Going Forward



- Changes to composition of the Board
- Limiting the role of unions
- Reverse worker friendly decisions

President Trump's Potential Impact On The Federal Judiciary

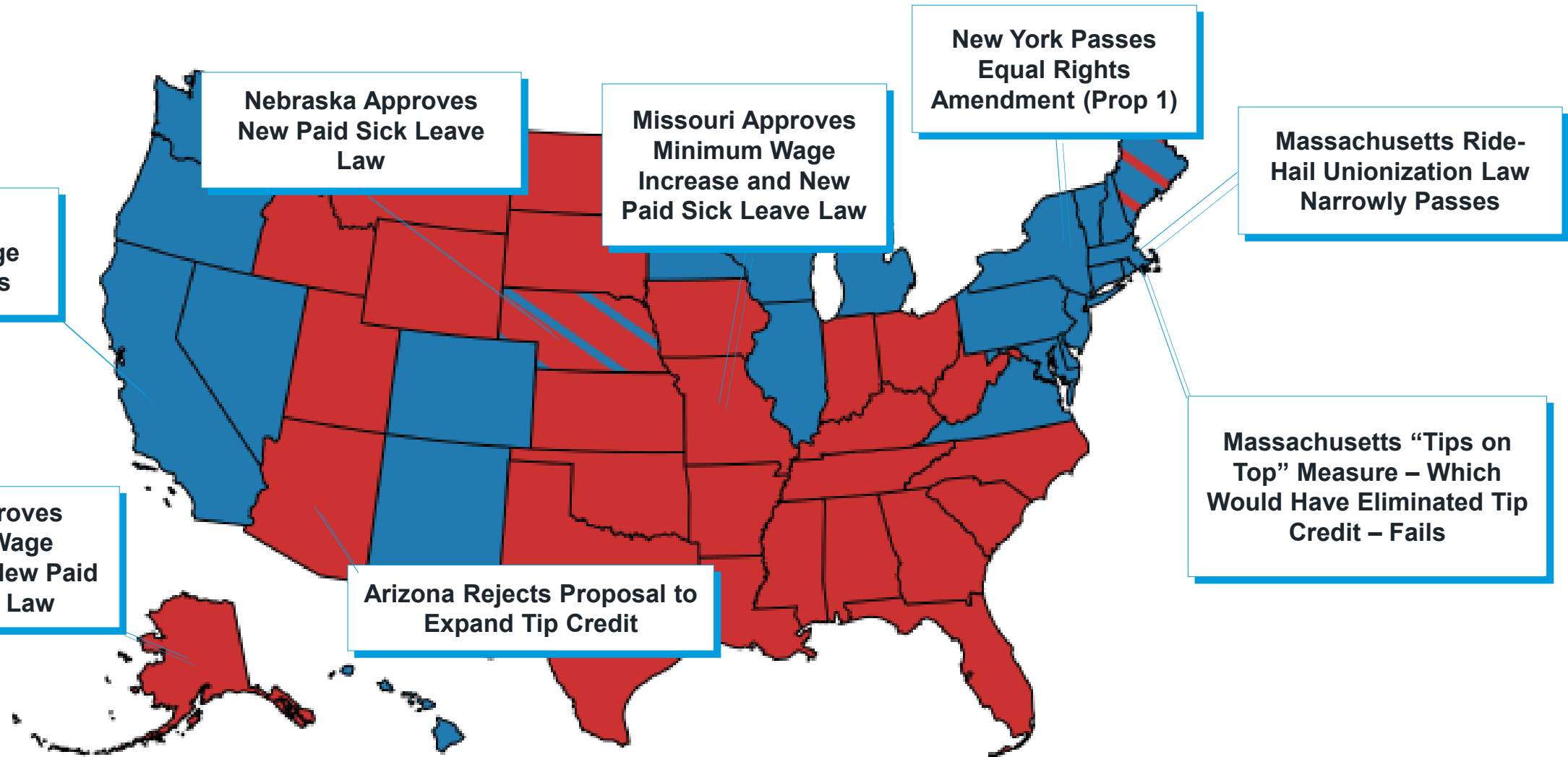
Statistic	Trump's First Administration	Biden Administration (as of Oct. 1, 2024)
Total Number of Article III Judges	234	213
SCOTUS Justices	3	1
Circuit Judges	54	44
District Judges	174	166
Number of Circuits "Flipped"	3 (11th, 2nd, and 3rd Circuits)	1 (2nd Circuit)

A Look At President Trump's New Administration

- Trump has announced his choices for **several key positions in his new administration**, including:
 - Attorney General: **Matt Gaetz**
 - Secretary of State: **Marco Rubio**
 - Secretary of Defense: **Pete Hegseth**
 - HHS Secretary: **Robert F. Kennedy, Jr.**
 - WH Chief of Staff: **Susie Wiles**
 - Deputy Chief of Staff for Policy: **Stephen Miller**
 - EPA: **Lee Zeldin**
 - ‘Border Czar’: **Tom Homan**
 - UN Ambassador: **Elise Stefanik**
 - Homeland Security: **Kristi Noem**
 - Nat. Sec. Adviser: **Mike Waltz**
 - Ambassador to Israel: **Mike Huckabee**



Post-Election State Law Roundup



Other Areas Of Interest For Employers



- President Trump will likely **replace** FTC Chair Lina Khan.
 - Khan has taken an expansive view of the FTC's authority, and most notably, attempted to issue a **nation-wide ban on most non-compete agreements**, which was stayed prior to becoming effective in September.
- **Immigration reform**

A large, crowded stadium at night, illuminated by bright lights. The crowd is cheering, and the stadium's architecture is visible in the background.

2024

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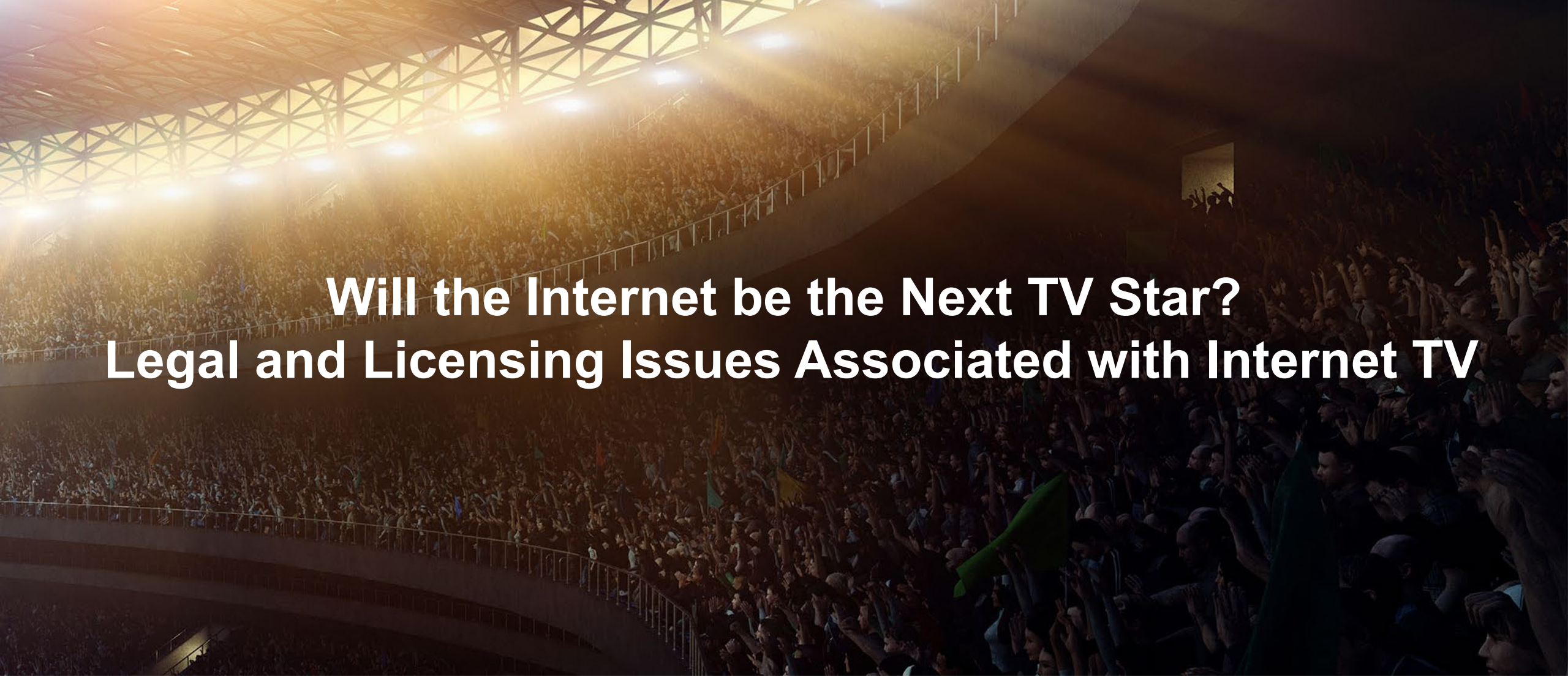
The Future of Television: Is the War Over?

Robert E. Freeman

Co-Head, Tech Media Telecom Group
Member, Sports Group

November 20, 2024

Proskauer»



Will the Internet be the Next TV Star?

Legal and Licensing Issues Associated with Internet TV

Over the Top (Proskauer 2010 CLE)



Unlimited TV episodes & movies instantly over the Internet!

Connect devices like these to your Netflix account to **watch instantly on your TV.**



Wii

[Learn more >](#)



PS3

[Learn more >](#)



XBOX 360

[Learn more >](#)


→



Watch as often as you want, anytime you want.

PLUS

Watch instantly on your computer too!



Plus, watch instantly on iPad and iPhone too!

For only \$2 more a month!

Get unlimited DVDs by mail



Exchange as often as you want.
No late fees - ever!

NETFLIX Conquers the World (2024)

- **Europe, Middle East, and Africa:** 96.13 million subscribers
- **U.S. and Canada:** 84.8 million subscribers
- **Asia Pacific:** 52.6 million subscribers
- **Latin America:** 49.18 million subscribers







Netflix Adds 5M Subscribers as Profits and Margins Soar

The company now has 282.7 million global subscribers.

BY ALEX WEPRIN  OCTOBER 17, 2024 1:06PM



Over the Top (Proskauer 2010 CLE)

Product	Price & availability	Required hardware	Content offered	Full internet?
	\$99 for hardware (available now)	Small set-top box	Selected internet content; Netflix, YouTube, podcasts, Internet radio. Rent movies/TV, stream music and photos from iTunes	No
	\$199 box (from Amazon) not yet available). Original service free	None for original Boxee. Now a set-top box	It began as software to stream internet content to TV, also any media files on your computer. Movies, TV, video content from internet, premium services, "apps." Social features include integration with Twitter, Facebook	Almost, no browser.
	Service is free but requires hardware (range: \$299 - \$1400) Available now.	Sony TV, Blu-ray player, Logitech box.	Brings internet and TV together, also Android apps through a searchable interface. Offers TV, internet, apps. TV content varies depending on user subscriptions	Yes
	\$59 - \$99 (for the box; some apps require subscriptions). Available now.	Set-top box	Makes selected internet content, movies and TV available. Apps offered from a range of partners, including Netflix and Hulu, Pandora	No
	Must buy console (\$200 - \$400). Available now.	Xbox console	A gaming system that now includes a range of features and capabilities. Enables real-time interaction with other Xbox owners. Offers games, movies and TV (rent or buy).	No. Some sites available via widgets (e.g., Facebook, Twitter)
	No cost for the service but you need a compatible TV (hundreds to more than \$1,000 depending on the TV)	Compatible TVs available from Samsung, Sony, Vizio, LG, Toshiba	Provides access to library of widgets/apps from numerous partners: Showtime, CBS, USAToday, YouTube, Facebook, Amazon, others	No. Growing library of internet content available through apps

The majority of these systems do not provide access to the full internet — only Google T

TV Everywhere (Proskauer 2010 CLE)

Time Warner

Time Warner Inc. Announces Widespread Distribution of Cable TV Content Online

June 24, 2009

Comcast and Time Warner Develop Principles for "TV Everywhere Model"

Comcast to Begin National Technical Trial of "On Demand Online"

New York, NY and Philadelphia, PA – Time Warner Inc. (NYSE:TWX) announced today that it has partnered with Comcast Corporation (NASDAQ: CMCSA, CMCSK) to develop broad principles for the TV Everywhere model to guide the distribution of its television content online. The agreement between the companies will make it possible for Comcast customers to access programming from Turner Broadcasting's award-winning entertainment networks free online and on demand. In addition, Comcast announced it will begin a national technical trial of its "On Demand Online" service in July carrying programming from Time Warner's Turner networks TNT and TBS.

The companies endorsed a framework that would bring significantly more television content to customers online in a manner that is consumer-friendly, pro-competitive and non-exclusive. To ensure rapid adoption and deployment of online television content across the industry, a set of principles for the TV Everywhere model was designed to be simple and attractive for any programmer and any video distributor to elect to adopt.

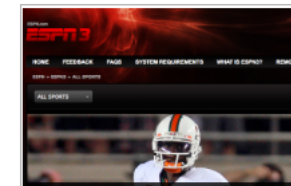
- * More TV content to more people across platforms.
- * Subscribers watch network programming online for no additional charge, using any broadband connection.
- * Best and highest-rated programming made available online.
- * High-quality, consumer-friendly sites for viewing broadband content with easy authentication.
- * New ratings measurement technology.
- * "TV Everywhere is open and non-exclusive; cable, satellite or telco video distributors can enter into similar agreements with other programmers."

New ESPN TV Everywhere Service Begins With Time Warner Cable Deal

By Ryan Lawler | Sep. 2, 2010, 3:53pm | 1 Comment

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Disney and Time Warner Cable have settled their retransmission negotiations, finalizing a deal that will keep ABC, ESPN and Disney networks on Time Warner Cable and Bright House Network cable systems. But the big news from an online video perspective is that Disney is creating the first

TV Everywhere (Proskauer 2010 CLE)



**CATCH ALL THE ACTION
AS IT HAPPENS**
NO MATTER WHERE YOU HAPPEN TO BE

———— **Coming soon** ————
**Two new ways to get all sports,
all the time from ESPN and
Time Warner Cable.**



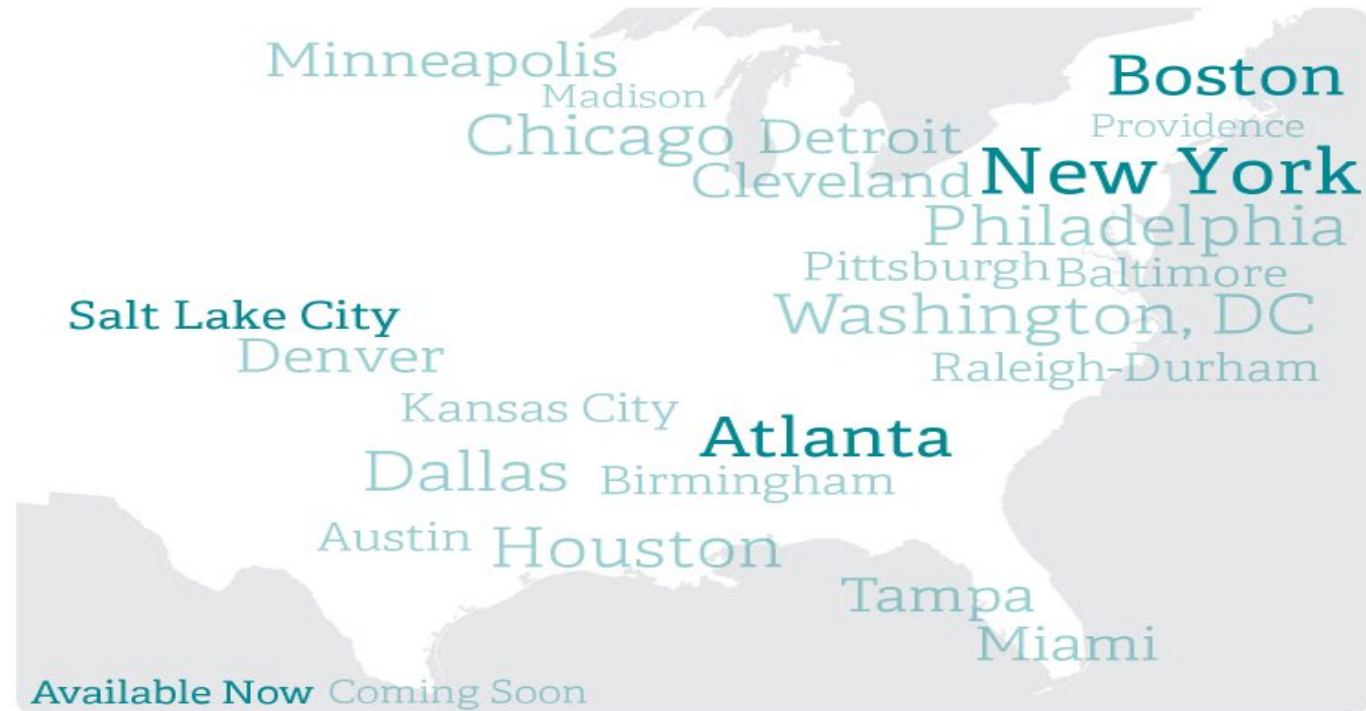
The Future of Television: A Shifting Legal Landscape

Watch live TV online



Where can I get Aereo?

*Aereo is currently available in select areas only, but we are rapidly expanding.
Click on your city below for more details about availability in your area.*



[See Supported Devices](#)

Enter your ZIP to
check availability

Check

Don't see your city?

Tell us where we should come next...

Submit





The *Aereo* Decision – *ABC v. Aereo, Inc.*, 134 S.Ct. 2498 (2014)

- **Holding:** Aereo’s practices are highly similar to those of the CATV systems in prior 70’s era Supreme Court decisions of *Fortnightly* and *Teleprompter*, which prompted Congress to amend the Copyright Act to bring such entities under the law’s scope.
 - **“Aereo is not simply an equipment provider. Rather, Aereo and not just its subscribers ‘perform[s]’ (or ‘transmit[s]’).**
- While there were obvious technological differences between Aereo and the CATV providers, the Court found those differences concerned not the nature of the service but merely the manner Aereo provided it – not enough to take Aereo outside the scope of the Copyright Act.
- The court took great pains to narrow its holding to the particular retransmission of copyrighted broadcast content and not to other technologies such as remote DVR and cloud computing.

Aereo – Impact One Year Later (Proskauer 2015 CLE)

- Thus far, courts have heeded the Supreme Court’s language limiting the ruling to entities that are akin to cable companies.

***Fox v. Dish Network* (C.D. Cal. Jan. 12, 2015):**
“Aereo’s holding that entities bearing an
“**overwhelming likeness**” to cable companies
publicly perform within the meaning of the Transmit
Clause does not extend to DISH Anywhere.”

Cord-Cutting (Proskauer 2015 CLE)

US Consumers Continue to Turn Off Pay TV Subscriptions

The 13 largest US pay TV providers saw worst quarterly net loss ever in Q2 2015

August 26, 2015 | Media & Entertainment



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According to data from [Leichtman Research Group Inc. \(LRG\)](#), the 13 largest pay TV providers in the US, which account for approximately 95% of the market, saw a net loss of 470,855 subscribers in Q2 2015—the worst quarterly drop ever. In all, US pay TV subscribers to the providers studied totaled 94.9 million in Q2 2015.

TV flickers as viewers find new screens

David Crow and Shannon Bond in New York

Share Author alerts Print Clip

Comments

Record numbers of Americans are unplugging their subscriptions

FT

US Pay TV Subscribers and Net Additions, by Provider, Q2 2015

	Subscribers	Net additions
Top cable		
Comcast	22,306,000	-69,000
Time Warner Cable	10,982,000	-43,000
Charter Communications	4,258,000	-30,000
Cablevision	2,637,000	-16,000
Suddenlink Communications	1,102,600	-29,400
Mediacom	879,000	-12,000
Cable One	399,878	-21,455
Other major private companies*	6,395,000	-40,000
Total top cable	48,959,478	-260,855
Satellite		
DirecTV	20,279,000	-133,000
Dish Network**	13,932,000	-81,000
Total satellite	34,211,000	-214,000
Telco		
AT&T U-verse	5,971,000	-22,000
Verizon FiOS	5,765,000	26,000
Total telco	11,736,000	4,000
Total	94,906,478	-470,855

Note: *includes LRG estimates for Cox and Bright House Networks;
**totals and net adds in Q2 2015 include Sling TV
Source: Leichtman Research Group Inc. (LRG) with company reports as cited in press release, Aug 17, 2015

195027

www.eMarketer.com

The Beginning of the End of the TV Industrial Complex



/ MEDIA

Justin Sullivan/Getty Images



By Peter Kafka | [@pkafka](#) | EMAIL | ETHICS

August 10, 2015, 7:27 AM PDT

The Nightmare of Cable TV Is Over

America is living in a golden age of television, largely in thanks to cord cutting.



Justin Mezzell



MEGAN GARBER | JULY/AUGUST 2015 ISSUE

BUSINESS CULTURE ENTERTAINMENT TECH REPORT

The great unbundling: cable TV as we know it is dying

Internet upstarts are pushing incumbents to offer more a la carte options

By Ben Popper on April 22, 2015 10:34 am

95
COMMENTS



Have You Cut the Cable Cord?

By VIKAS BAJAJ AUGUST 21, 2015 2:38 PM 119 Comments



Mike Blake/Reuters

Regional Sports Networks – Dependent on the Bundle (Proskauer 2015 CLE)

- CSN Houston had problems with distribution with major distributors and eventually filed for bankruptcy
 - In 2014, control given to DirecTV and AT&T
 - Trustee still in litigation with Comcast
- PAC-12 Networks & DirecTV failed to reach a carriage agreement before the 2015 season
- TWC unable to secure carriage of the Dodgers RSN SportsNet LA on DirecTV (and its 1.2M subscribers)
- L.A. Clippers still in renewal talks with RSN Fox Prime Ticket (contract expires after 2015-2016 season), and asking for \$100M+/year, closer to what the Lakers make in their RSN deal
 - New owner Steve Ballmer floated idea of launching a subscription, consumer-direct OTT channel for Clippers games, though such a deal would require NBA approval.

CSN Houston's collapse a cautionary tale for regional sports networks

By David Barron Updated 11:55 pm, Sunday, October 5, 2014

✉ f t p r g+

As Comcast SportsNet Houston approaches perhaps its final days, it will be remembered as a cautionary tale of poor timing, questionable decision-making, hundreds of millions of dollars in lost revenue, tens of millions of dollars in legal bills and untold quantities of squandered goodwill and lingering ill will.

It will be, by all accounts, the biggest, most expensive collapse in the 35-year history of regional sports networks, which for years have been viewed as a sure-fire path to prosperity for programmers and franchises.

Clippers OTT threat hardly idle, according to regional sports network watchers

September 3, 2015 | By Daniel Frankel

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5

Could former Microsoft CEO Steve Ballmer really take local video coverage of his newly acquired NBA team over-the-top? After a *New York Post* report surfaced last week that Ballmer is considering doing just that with his Los Angeles Clippers, SNL Kagan kicked the tires on the prospect of an owner familiar with online video tech going OTT -- and found it, well, plausible.

Diamond Sports Group RSNs – Bankruptcy Proceeding

Bally Sports owner declares bankruptcy, citing \$8 billion in debt

MONEY
WATCH

March 15, 2023 / 12:45 PM EDT / CBS/AP



Diamond Sports Group, the largest owner of regional sports networks, announced on Tuesday that it has filed for Chapter 11 bankruptcy. The move comes after it missed a \$140 million interest payment last month.

Diamond Sports Group won't carry 11 MLB teams in 2025 without new deal



Alden Gonzalez, ESPN Staff Writer

Oct 2, 2024, 12:52 PM ET



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379

Diamond Sports Group has submitted a reorganization plan that calls for it to shed broadcasting rights for all but one Major League Baseball team, putting 11 clubs at risk of losing their regional sports network contracts.

Judge approves Diamond Sports Group's deals with NBA, NHL



Alden Gonzalez, ESPN Staff Writer

Sep 3, 2024, 11:41 PM ET



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A federal judge approved Diamond Sports Group's deals with the NBA and NHL on Tuesday, another step forward in the bankrupt operator's nearly 18-month quest to emerge from Chapter 11 reorganization.

Diamond Sports Group branded as FanDuel in new deal

Associated Press

Oct 18, 2024, 04:22 PM ET



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288

SOUTHPORT, Conn. -- The Diamond Sports Group's channels will soon be branded as FanDuel Sports Network.

Diamond Sports Group – Bankruptcy Timeline

- June 2019: To address DOJ antitrust concerns, Disney, which had acquired \$70B worth of FOX assets, agrees to sell the FOX RSNs and is given 90-days to find a buyer
- August 2019: Following an abbreviated auction process, Sinclair buys the RSNs for \$9.6B, which includes more than \$8B in debt
- November 2020: Sinclair announces a \$4.23B impairment charge tied to the RSNs
- February 2021: Sinclair reportedly considers a bankruptcy option for the RSNs
- November 2022: Diamond reports a loss of \$1.2B over three months due in large part to “subscriber erosion.”

Diamond Sports Group – Bankruptcy Timeline

- March 2023: Diamond files for Chapter 11 bankruptcy protection
- October 2024: After more than 18-months, the bankruptcy judge approved the disclosure statement, which is intended to enable creditors to make an informed judgement about the plan to emerge from bankruptcy
- November 14, 2024: Last week, after Major League Baseball dropped an objection challenging the viability of Diamond's future business plans, the Texas bankruptcy court approved Diamond's Chapter 11 plan – the newly-branded group of FanDuel Sports Networks will continue to broadcast 6 MLB teams, 13 NBA teams and 8 NHL teams and will emerge with a significantly downsized debt position (approximately \$200M)

Is the Diamond Bankruptcy Saga Really Over?

DIAMOND'S BANKRUPTCY SAGA IS ABOUT TO END. NOW COMES THE HARD PART.



BY ANTHONY CRUPI

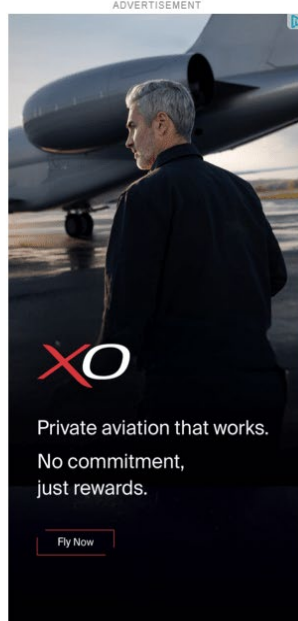
November 15, 2024 5:55am



Renewal talks with the Kansas City Royals are ongoing as the owner/operator of the 16 FanDuel Sports Networks prepares to complete its restructuring.

PHOTO BY LESLIE PLAZA JOHNSON/ICON SPORTSWIRE VIA GETTY IMAGES

After 20 months of monitoring the Diamond Sports Group bankruptcy case, it wasn't at all surprising to hear Judge Christopher Lopez couch his ruling on the long-simmering matter in baseball terms. A self-professed enthusiast of the grand old game, Judge Lopez has peppered his commentary from the bench with asides about



"There's going to be somebody who's going to turn on their television and be able to watch the Detroit Tigers play, and that's really important ... It sounds not-important, but it's important. If you've had a stressful day and you want to ... go home and enjoy the game with family, rooting for your team is just as much a part of the American experience as anything else."

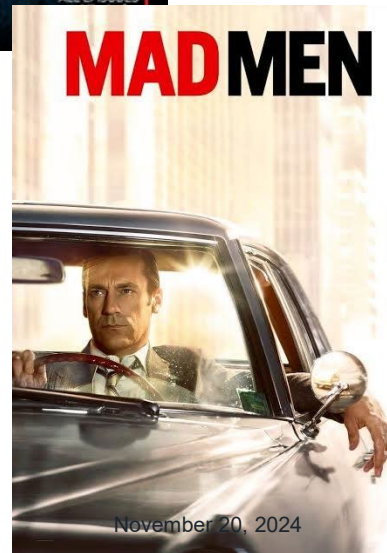
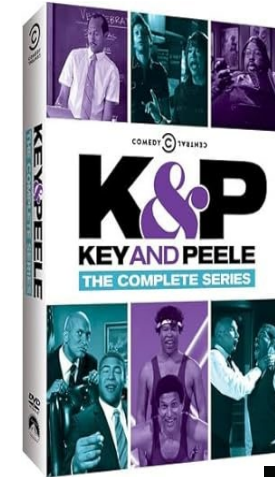
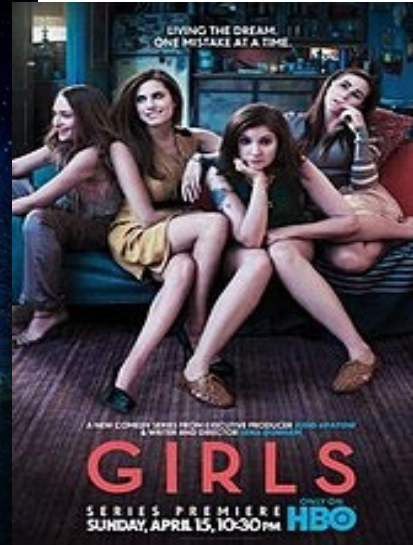
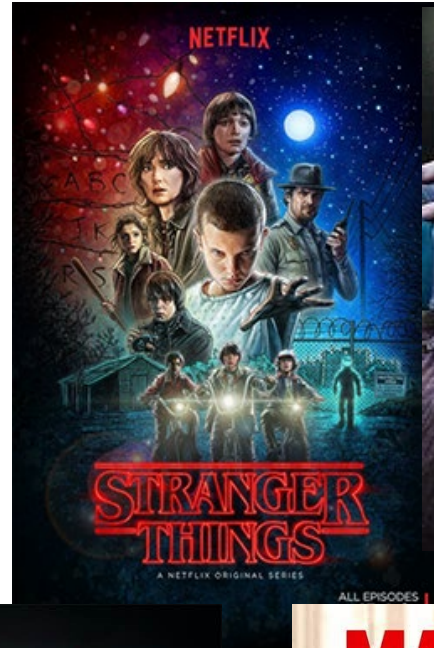
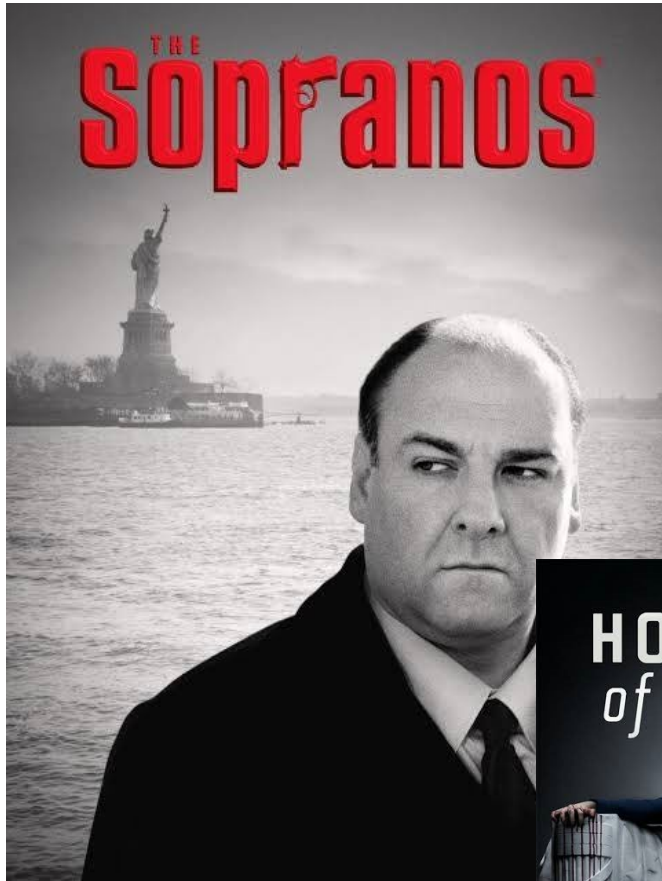
-- Judge Christopher Lopez, Texas Bankruptcy Court

Agenda for Today's Watch Party

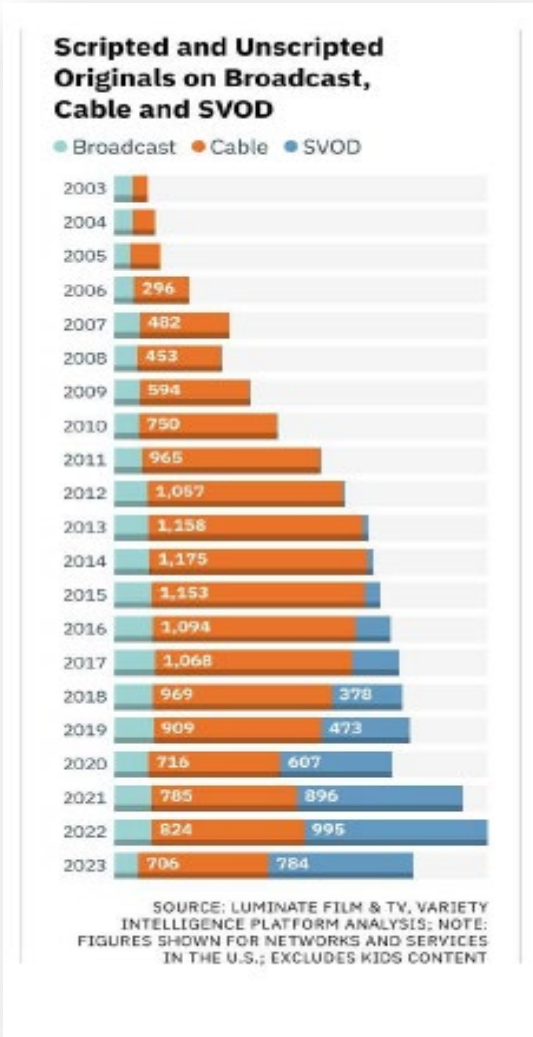
- 1 The Demise of Peak TV: End of the Streaming Wars?
- 2 Trump 2.0 – Media Consolidation on the Way?
- 3 Sports and Streaming
- 4 Venu Litigation
- 5 Additional Legal Developments
- 6 Looking Ahead



Peak TV, Golden Age (1999 – 2023ish)

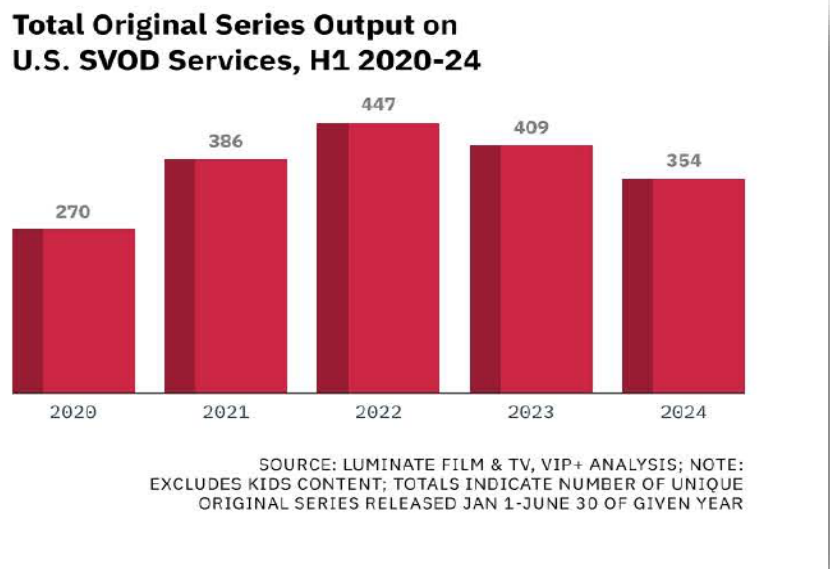
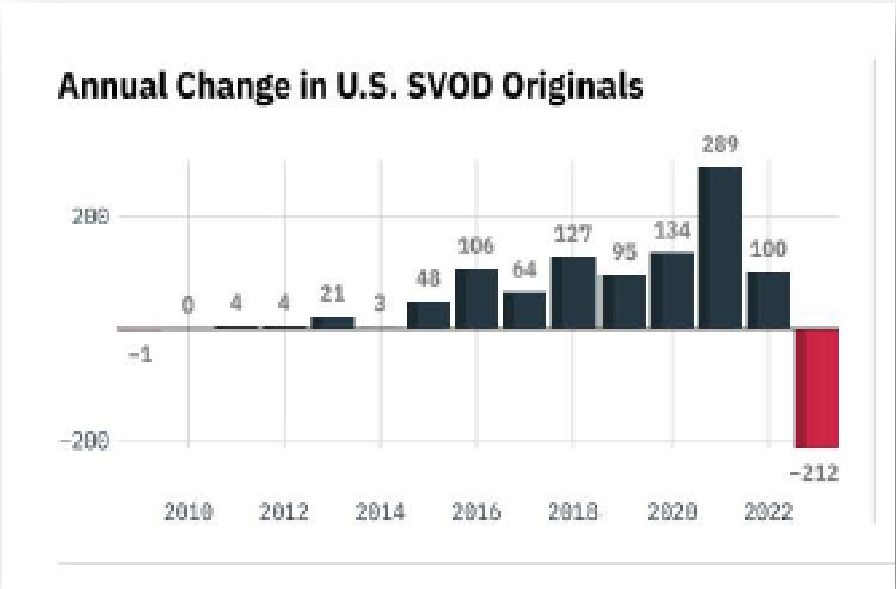


The End of “Peak TV”



Peak TV Is Over, Welcome to Trough TV.
Streaming's golden age has been ending for a while, but it's only now become clear what's replacing it.
BY SAM ADAMS MARCH 05, 2023 • 7:00 PM

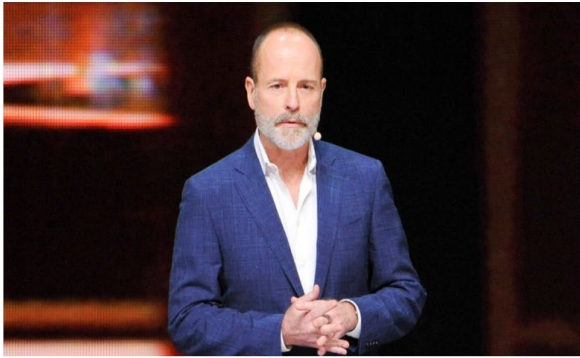
Peak TV Is Over, Welcome to Peak IP
Spinoffs have existed almost as long as TV, but executives are now leaning more heavily into familiar franchises — crowding out original ideas.
BY RICK PORTER MAY 10, 2024 11:09AM



Falloff of Peak TV and Move Toward Profitability

John Landgraf Opens Up About What Led to — and Ultimately Killed — Peak TV

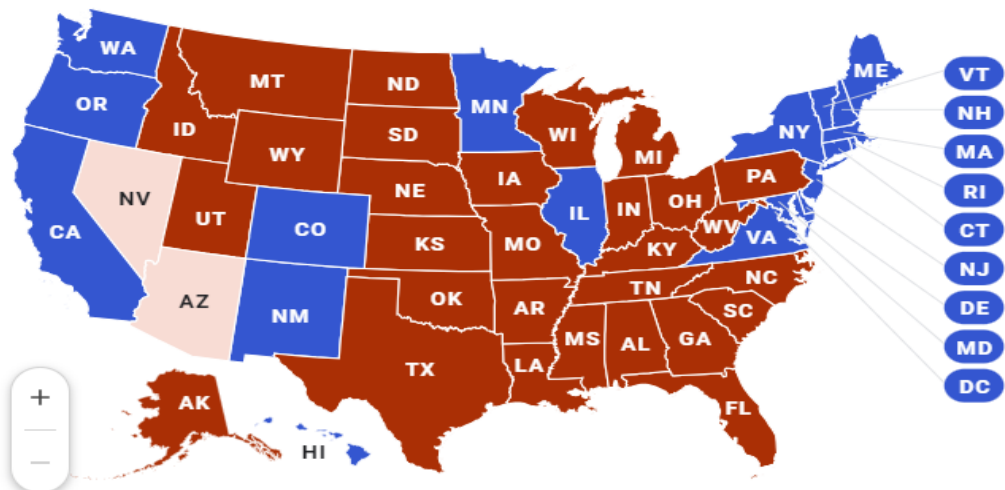
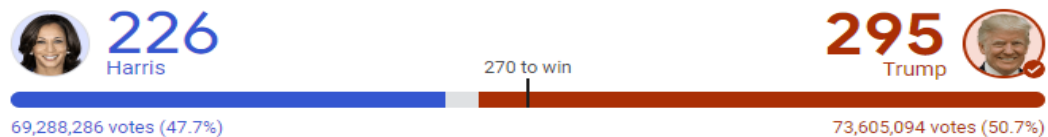
BY LESLEY GOLDBERG FEBRUARY 12, 2024 3:19PM







John Landgraf PAWEŁ KAMINSKI/DISNEY GENERAL ENTERTAINMENT CONTENT/GETTY IMAGES

“The only thing that you can do to get closer to profitability faster is reduce your output.”

“There are more streaming services than the market can bear ... I have no idea how they become less; I don’t know if it’s a commercial bundling arrangement .. or whether it has to do with mergers or consolidation or companies being broken up, there are just not going to be seven or eight or nine or 10 or 12 or 15 profitable streaming services. There are going to be four or five or six or three ... ”



All states

	Donald Trump Republican Party	295 electoral votes 73,605,094 votes (50.7%)
	Kamala Harris Democratic Party	226 electoral votes 69,288,286 votes (47.7%)
	Jill Stein Green Party	0 electoral votes 662,167 votes (0.5%)
	Robert Kennedy Independent	0 electoral votes 640,447 votes (0.4%)

NV	Donald Trump Republican Party	50.7% 96% reporting	>
FL	Donald Trump Republican Party	56.1% 99% reporting	>

Show more

US Senate

States	Front-runners	Vote %	
AZ	Ruben Gallego Democratic Party	49.7% 78% reporting	>
NV	Jacky Rosen Democratic Party	47.8% 96% reporting	>

Show more

US House

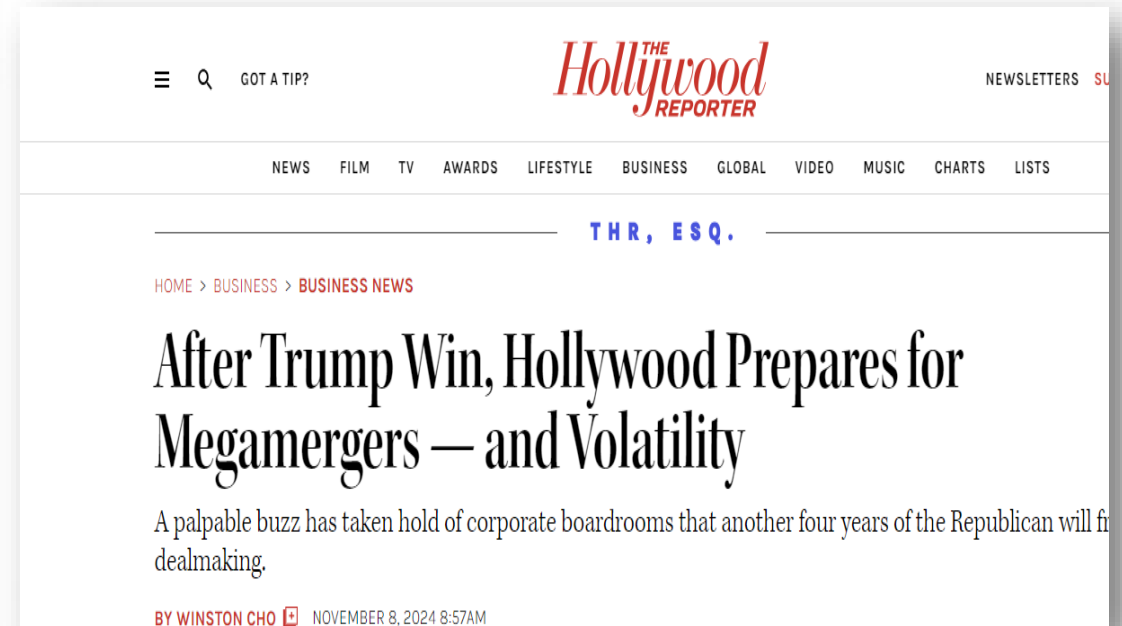
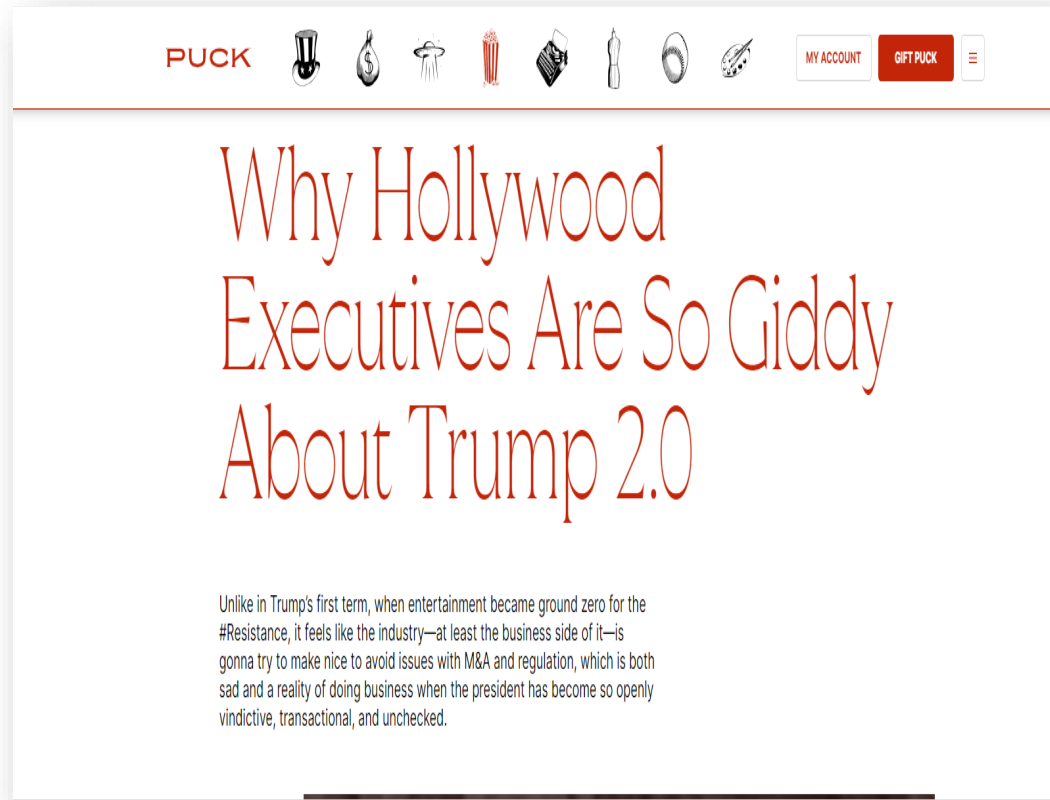
Districts	Front-runners	Vote %	
AK 1	Nick Begich Republican Party	49.5% 76% reporting	>
AZ 1	David Schweikert Republican Party	52.1% 78% reporting	>

Show more

About

The 2024 United States presidential election was the 60th quadrennial presidential election, held on Tuesday, November 5, 2024. [Wikipedia](#)

Trump 2.0: Media Consolidation on the Way?



Trump 2.0: Media Consolidation on the Way?

FINANCE

Wall Street expects Trump presidency will unlock deal-making

PUBLISHED THU, NOV 7 2024 11:00 AM EST | UPDATED THU, NOV 7 2024 12:43 PM EST

Lillian Rizzo
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Annika Kim Constantino
@ANNIKAKIMC

KEY POINTS


- Wall Street dealmakers and corporate leaders expect the flood gates to open on merger and acquisition activity after President-elect Donald Trump takes office in January.
- Deal-making has slowed in recent years, largely due to high interest rates, soaring company valuations and a tight regulatory environment.
- Kroger's takeover of Albertsons and Tapestry's proposed acquisition of Capri have both been scrutinized by regulators and could have a clearer path under a Trump presidency.

WATCH L

[Prefer to Listen?](#)

NOW

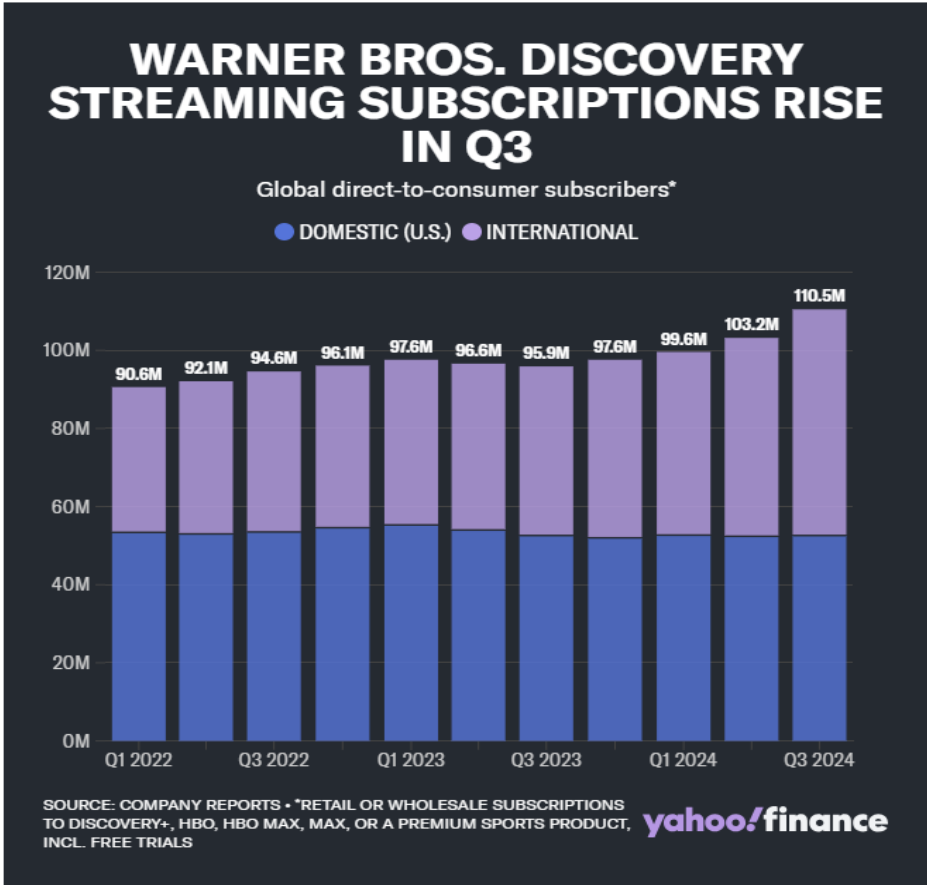
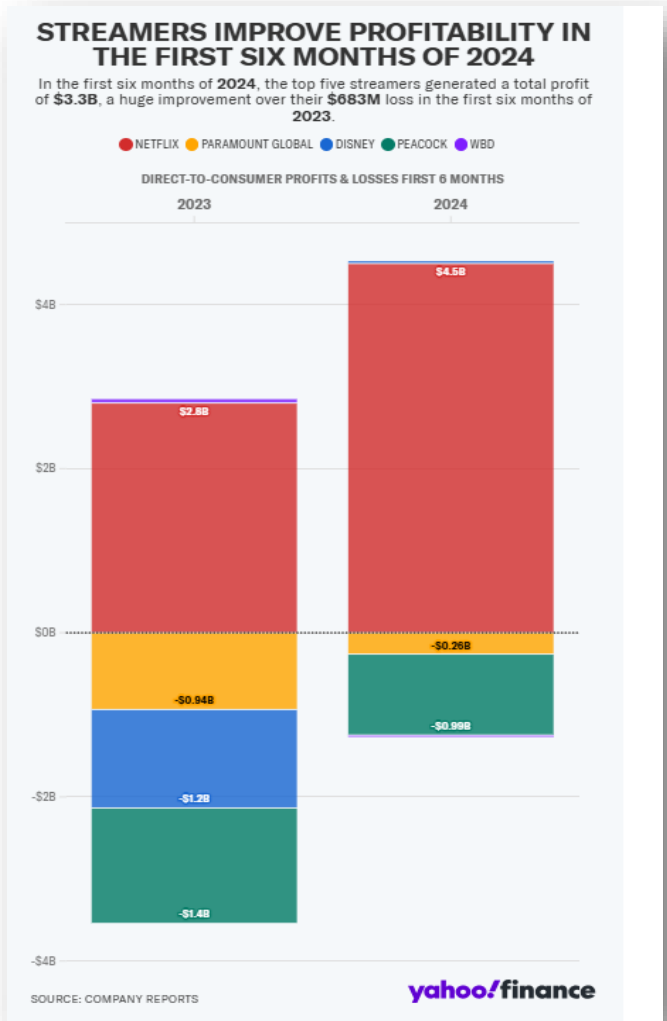
UP NEXT

The Power of 
Wealth Management | Capital

“It does feel like a cloud over the industry is lifting here, and we do think some much needed modernization of the regulations will be forthcoming ... We intend to participate in that, in the M&A in the industry, be it as a buyer as a seller or a merger partner.”

- Chris Ripley, Sinclair CEO

Move Toward Profitability



Streaming was the bright spot in the quarter, with 7.2 million subscribers

The Unbundling of ESPN

ESPN will launch its own streaming service in fall 2025, alongside joint venture

PUBLISHED WED, FEB 7 2024 4:22 PM EST | UPDATED WED, FEB 7 2024 6:23 PM EST



Alex Sherman
@SHERMAN4949

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yahoo!finance

ESPN direct-to-consumer could accelerate cord-cutting: Analyst

KEY POINTS

- ESPN will launch its flagship direct-to-consumer streaming service in the fall of 2025, Disney CEO Bob Iger said Wednesday.

HOLLYWOOD INC.

Can ESPN survive while cable TV dies?

ESPN has a plan to survive cable's demise. It won't be easy.

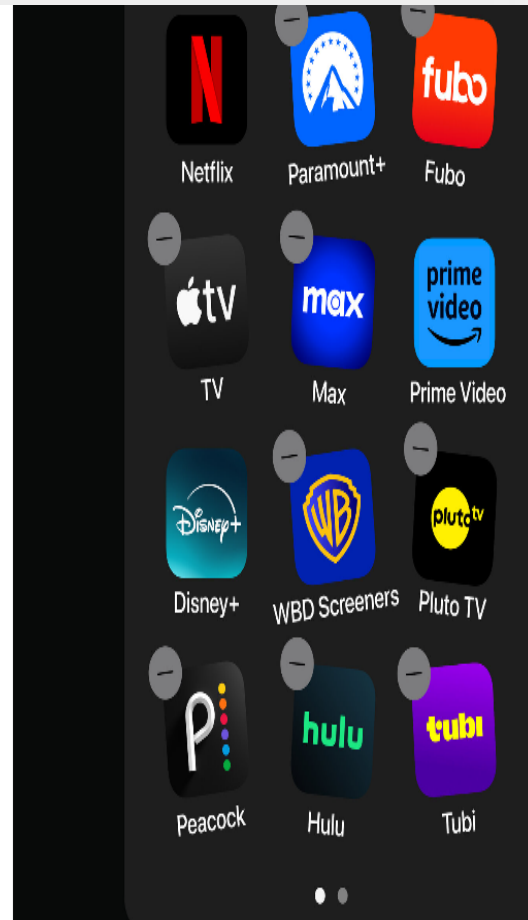
As millions flee cable, ESPN admits, "We have to be everywhere." But the pivot to streaming comes with financial challenges.

7 min

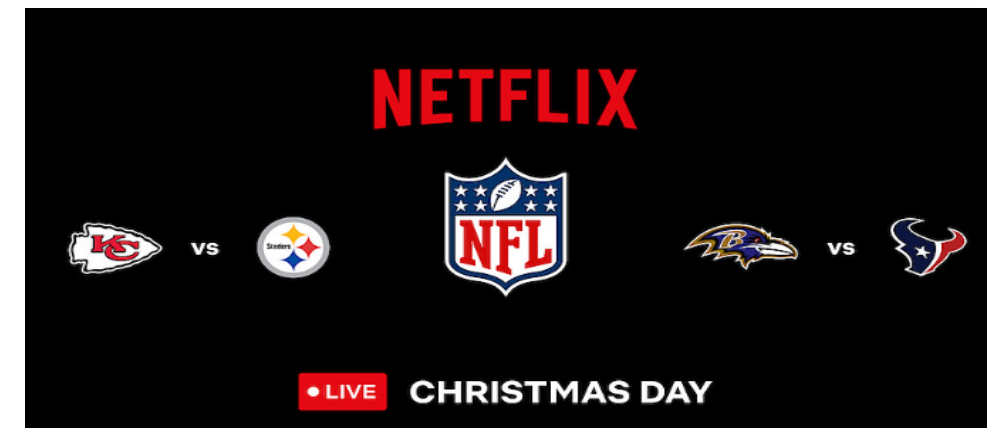
Streaming Strategies – The Drawing Power of Sports

The Future of Streaming (According to the Moguls Figuring It Out)

Who will survive? Die? Thrive? And how? We talked to nearly a dozen top media executives and asked them to predict what lies ahead.



Why Netflix has joined Apple, Amazon, Disney and other streamers in the battle for live sport



Streaming Strategies – Live Sports Can Mean Big Audiences

Dolphins-Chiefs playoff game on Peacock sets streaming record

Associated Press

Jan 15, 2024, 09:06 AM ET

Share Like

163

STAMFORD, Conn. -- Saturday night's AFC wild-card playoff game between the [Miami Dolphins](#) and [Kansas City Chiefs](#) on Peacock set a record for the most-watched event on a streaming service.

According to Nielsen, the Chiefs' 26-7 victory in frigid temperatures averaged 23 million viewers on Peacock, NFL+ and on NBC affiliates in Kansas City and Miami. Nielsen also reported Sunday night that the game had a total reach of 27.6 million.

Sport > Cricket

India vs Pakistan viewing figures break record for Disney+ Hotstar streaming platform

Star Sports has exclusive broadcast rights for the ICC World Cup 2023 in India

Sakshi Gupta • Monday 16 October 2023 14:54 BST • Comments



The 2024 Olympics were a big win for TV of all kinds



/ Both streaming and broadcast TV saw jumps in viewing at the start of the Olympic Games.

By [Emma Roth](#), a news writer who covers the streaming wars, consumer tech, crypto, social media, and much more. Previously, she was a writer and editor at MUO.

Aug 20, 2024, 10:20 AM EDT

Streaming Strategies – Live Sports Can Mean Big Audiences



The Gauge™

Nielsen's Total TV and Streaming Snapshot

July 2024

Total Day | Persons 2+

Linear Streaming (VMVPD/MVPD) Apps have been removed from the Streaming category. They have also been removed from Other Streaming and Hulu and Youtube now reflect usage to Hulu SVOOD and Youtube Main without their respective VMVPD's (Hulu Live and Youtube TV).

Methodology available @ www.nielsen.com/thegauge
Source: Nielsen National TV Panel Data plus Streaming Video Ratings
Percentages may not sum to 100 due to rounding
Copyright © 2024 The Nielsen Company

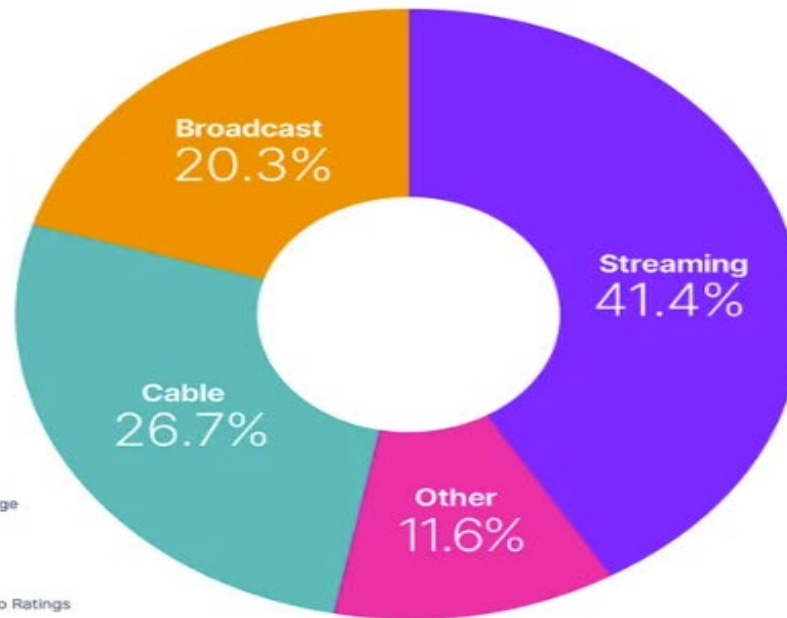


Image: [Nielsen](https://www.nielsen.com/thegauge)

Amid the Disruption, Sports Rights Values Continue to Rise




THR ILLUSTRATION; IMAGES: ELSA/GETTY IMAGES, RICH BARNES/GETTY IMAGES, JAYNE KAMIN-ONCEA/GETTY IMAGES

HOME > BUSINESS > BUSINESS NEWS

Sports TV's Multibillion-Dollar Rights Race: Where the Leaderboard Stands Right Now

The huge escalation in fees is big for the major leagues and a lesson in basic economics for media companies: When something of great value is relatively scarce, the price is going to be high.

BY RICK PORTER  JULY 2, 2024

NBA signs new 11-year media agreements with the Walt Disney Company, NBCUniversal and Amazon Prime Video through 2035-36 season

The new media deals with Walt Disney Company, NBCUniversal and Amazon will expand the reach of NBA telecasts.

Official release

July 24, 2024 4:45 PM

Recent 11-year, \$76B NBA right deal underscores the robust value of sports rights.

Amid the Disruption, Sports Rights Values Continue to Rise

College Football Playoff, ESPN agree to deal through 2031-32



Heather Dinich, ESPN Senior Writer

Mar 19, 2024, 02:47 PM ET

Share Like

792

The College Football Playoff and ESPN have agreed to a new six-year, \$7.8 billion contract that ensures the network will remain the sole media rights holder of the event through the 2031-32 season, it was jointly announced Tuesday.

ESPN, which has held exclusive broadcast rights since the CFP began in 2015, will expand its package for the final two years of the current 12-year contract, which runs through the 2025-26 season. The CFP is unveiling a 12-team format for the 2024-25 season, and ESPN will add all four of the new first-round games each year to the network's existing coverage of the New Year's Six bowls (now the quarterfinals and semifinals) and the CFP National Championship game.

NCAA and ESPN agree US\$920m eight-year deal for 40 college sports championships

Women's March Madness valued at US\$65m following decision to bundle rights.



5 JANUARY 2024

STEVE MCCASKILL

NEWS

Sports Consumption Is Changing

News & Updates

Amazon Prime Video Netflix

Less Than 40% of Gen Z Watch Live Sports on TV; Streaming Needs to Adapt to Keep Young Consumers Engaged

The report should serve as a wake-up call to streamers who take younger audiences for granted, especially as they continue to add live sports.



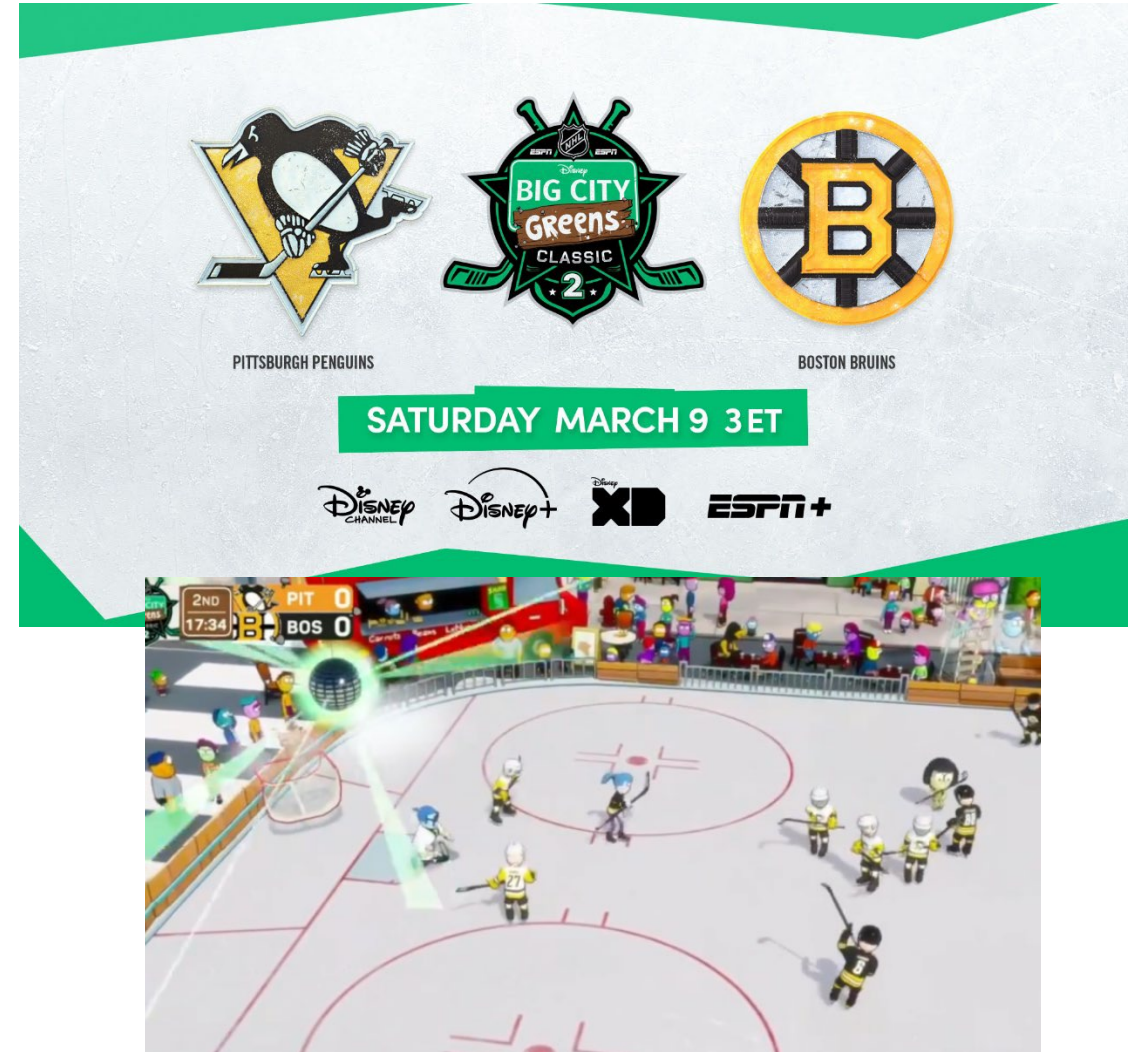
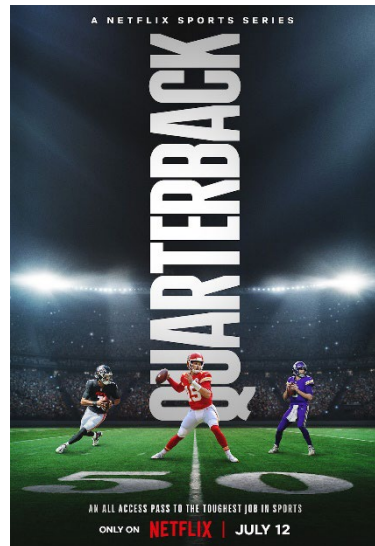
David Satin
May 20, 2024



How consumers engage with the sports they regularly follow by Engaged Sports Fans

	Global total	18-24	25-34	35-44	45-54	55+	Male	Female
Watch live sports on a TV channel	51%	31%	36%	44%	56%	75%	52%	49%
Social media	33%	41%	43%	38%	33%	19%	32%	35%
Watch non-live video content online	25%	32%	31%	28%	24%	16%	28%	21%
Reading sports content in print or online	25%	20%	22%	23%	27%	31%	29%	20%
Watch live streamed video content online	24%	31%	30%	27%	25%	13%	26%	20%
Watch live content on video streaming services	22%	22%	25%	24%	23%	17%	24%	19%
Watch non-live sports on a TV channel	20%	19%	20%	21%	22%	20%	23%	18%
Play sports video games	15%	26%	22%	17%	13%	4%	18%	11%
Listen to sports radio	15%	9%	12%	14%	18%	18%	17%	11%
Visiting team or league websites	14%	14%	15%	16%	15%	12%	18%	10%
Watch non-live content on video streaming services	10%	14%	16%	11%	10%	4%	11%	8%
Listen to sports podcasts	10%	12%	13%	13%	9%	4%	11%	7%
Sports betting	10%	11%	13%	12%	11%	7%	13%	7%
Purchasing live events on Pay-Per-View	6%	8%	8%	8%	5%	2%	7%	5%

Sports Consumption Is Changing



Unbundling – Be Careful What You Wish For... (Proskauer 2015 CLE)

EVERYDAY MONEY SAVING

How the Great Unbundling of Pay TV Could Backfire on Consumers

Money

Brad Tuttle @bradrtuttle | Jan. 8, 2015



Cable TV customers love the idea of paying just for the services they want—and skipping those they couldn't care less about. To see how such an a la carte model could turn to misery, however, look no further than the airline business.



Consumer Sentiment: Sports Streaming Costs for Avid Fans

Why Sports Fans Could Pay Over \$1,000 A Year To Watch Streaming

Maury Brown Senior Contributor

Maury Brown is a national MLB, motorsports, and media reporter



Aug 29, 2024, 11:16pm EDT

Updated Aug 30, 2024, 01:02pm EDT

“For the longest time, sports fans brushed aside the want of cable bundles due to cost. ‘Just give me my sports. I’ll pay for à la carte’ was a refrain.”

- Forbes Article, Aug 2024

Consumer Sentiment: The “Sports Equinox”

SPORTS EQUINOX OFFERS MORE GAMES— AND A MODERN TECH CHALLENGE



BY JACOB FELDMAN

October 29, 2024 5:55am



ESPN's Where to Watch tool has now served five million fans trying to find games on TV.

GETTY IMAGES

Monday night brought the only so-called “Sports Equinox” of 2024, with MLB, NBA, NFL and NHL teams all competing. My issues with the term aside, the occasion offers a chance to survey the current landscape of how we watch games.

Is the Bundle Coming Back?

Apple TV Plus is coming to Prime Video

/ Prime Video customers in the US can soon access Apple TV Plus content for an extra \$9.99 per month.

BUSINESS

The streaming wars bring a new discounted bundle: Disney+, Hulu and Max

JULY 25, 2024 · 2:03 PM ET

Verizon now offers customers access to Netflix and Peacock annual offer

Media contact

Caroline Brooks
caroline.brooks@verizon.com

Save \$275 with new Verizon offer: Buy a year of Peacock and get Netflix's Premium Plan included, on us

Verizon Inks Deal for Free Disney Streaming Bundle for Some Unlimited Customers

The offer comes just weeks after Disney added Hulu content to Disney+.

BY ALEX WEPRIN  APRIL 16, 2024 7:00AM

RSN Bundling

- In October, YES and MSG Networks launched the Gotham Sports App. (under a JV, Gotham Advanced Media and Entertainment, or GAME).
- Locals can watch 7 local teams - the New York Knicks, New York Rangers, New Jersey Devils, New York Islanders, Buffalo Sabres, Brooklyn Nets and New York Yankees -- \$359.99/year and \$41.99/monthly
- Local payTV subs who are authenticated subscribers to MSG or YES will receive the Gotham Sports App at no additional cost.

The Gotham Sports App launches, the exclusive new TV everywhere and DTC streaming home of MSG Networks and the YES Network, has launched



By YES Network

October 9, 2024

Bundles are Already Back

Report: US consumers support bundled services over SVoD

October 2, 2024



Thank you, Jio Platforms, for expanding your video content security partnership with Verimatrix!

TiVo has published its Q2 2024 Video Trends Report which reveals that US consumers are coming back on entertainment spending as the industry works to rebalance and bundle its entertainment offerings.

Report: Streaming bundles gain momentum

September 25, 2024



According to analysis from Omdia, 365 million SVoD subscriptions will be distributed through operator TV, broadband and mobile bundles, representing 20 per cent of the global streaming market. By 2029, bundling is expected to generate 540 million online video streaming subscriptions, or 25 per cent of the global market.

CABLE TV

TVInternetStreamingWhat To WatchResources

Enter Search Term or Zip Code

9 Streaming Bundles to Replace Cable

Our TV experts use their deep knowledge of live and on-demand streaming TV services to create custom streaming bundles for all kinds of cord-cutters.

By Randy Harward

Oct 21, 2024 3:44 PM ET | Share

With no contracts and simple-but-affordable packages packed with popular channels, [streaming TV](#) is an attractive alternative to cable TV. But streaming TV also offers a unique customization opportunity: the ability to create your own streaming TV bundles tailored to your interests, while still saving you money over cable.

We compared plans, channel lineups, features, and more from top live TV and on-demand streaming TV services and used the data to build nine custom streaming bundles aimed at specific interests and lifestyles. We also show our work, giving you the information needed to create your own mix-and-match action.

The Bundle Is Back ... and with It the Snark



Streaming Sports Bundle – Venu Sports

Watching Sports Is a Mess. Can a New Streaming Service Fix That?

Sports fans weigh merits of future streaming alliance between Fox, Warner Bros. and ESPN. 'Since I cut the cord, I've been waiting for this.'









Streaming Sports Bundle – Venu Sports

Home > Digital > News May 16, 2024 7:16am PT

Disney, Fox and WBD Unveil Name of Sports-Streaming Venture: Venu Sports

By Todd Spangler ▾



Venu Sports

Venu Sports streaming to cost \$42.99 per month, plans fall launch

Associated Press

Aug 1, 2024, 10:02 AM ET

 Share  Like

  17

LOS ANGELES -- Venu Sports -- the sports streaming platform planned by ESPN, Fox and Warner Bros. Discovery -- will be available for \$42.99 per month with its planned launch in the fall.

Venu Antitrust Litigation

FuboTV v. The Walt Disney Co., No. 24-01363 (S.D.N.Y. Aug. 16, 2024)

- Fubo filed a motion for a preliminary injunction to block Venu from launching
- Fubo also sought to enjoin the Defendants bundling practices claiming that its original goal of providing a streaming service focused on live sports has been hampered by restrictive terms in the contracts with the Defendants, which require Fubo to carry other networks if Fubo wants to carry must-have sports channels
- Fubo also argued that if Venu launches, there will be an exodus from Fubo and result in its ultimate demise


FuboTV sues Disney, Fox, Warner Bros. over sports joint venture

PUBLISHED TUE, FEB 20 2024 3:23 PM EST | UPDATED TUE, FEB 20 2024 5:52 PM EST

Venu Antitrust Litigation

FuboTV v. The Walt Disney Co., No. 24-01363 (S.D.N.Y. Aug. 16, 2024)

Disney, Fox & Fubo Lawyers Clash In NY Court As Venu Sports Antitrust Lawsuit Goes Before Judge

By [Dade Hayes](#) 

August 6, 2024 11:02am

FuboTV Wins Bid to Block Disney-Fox-Warner Sports Streaming Platform Over Antitrust Concerns

The lawsuit alleged that the media giants aim to consolidate control over sports television in a single streaming platform. If allowed to proceed, Fubo said consumers will eventually be forced to pay higher prices.

“Together, they own over 60% of the telecast rights to nationally broadcast live sports, and an even larger share of the most-watched sports like football and basketball and the most-watched events like playoff or championship games ...”

- U.S District Judge Margaret Garnett

Venu Antitrust Litigation – On Appeal

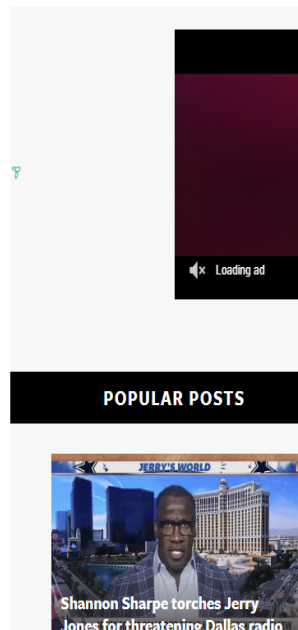
Venu Sports backers claim \$74 million investment in Fubo ruling appeal

ESPN, WBD, and Fox filed an expedited appeal in the ruling putting a pause on Venu Sports, claiming to have already invested millions.



Fubo, Venu Sports logos.

VENU SPORTS By Matt Yoder on 08/27/2024



“We respectfully disagree with the court’s ruling and are appealing it ...”

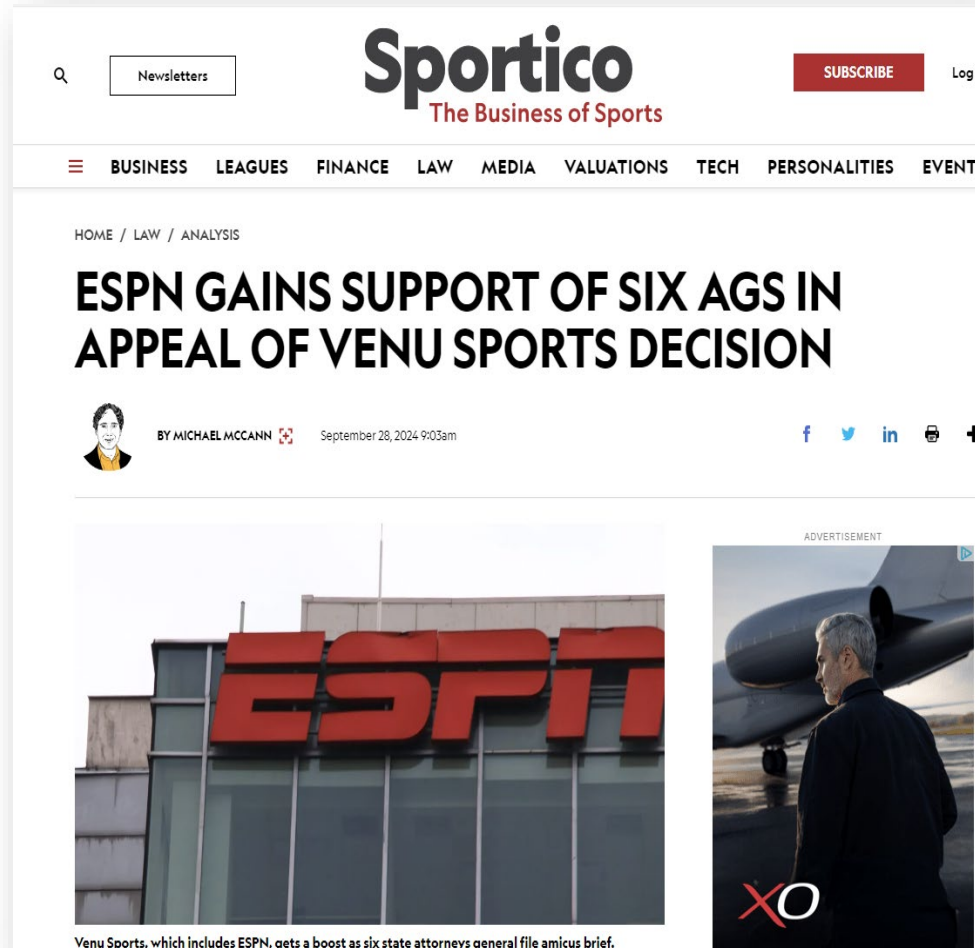
“We believe that Fubo’s arguments are wrong on the facts and the law, and that Fubo has failed to prove it is legally entitled to a preliminary injunction.”

“Venu Sports is a pro-competitive option that aims to enhance consumer choice by reaching a segment of viewers who currently are not served by existing subscription options.”

Venu Antitrust Litigation – On Appeal



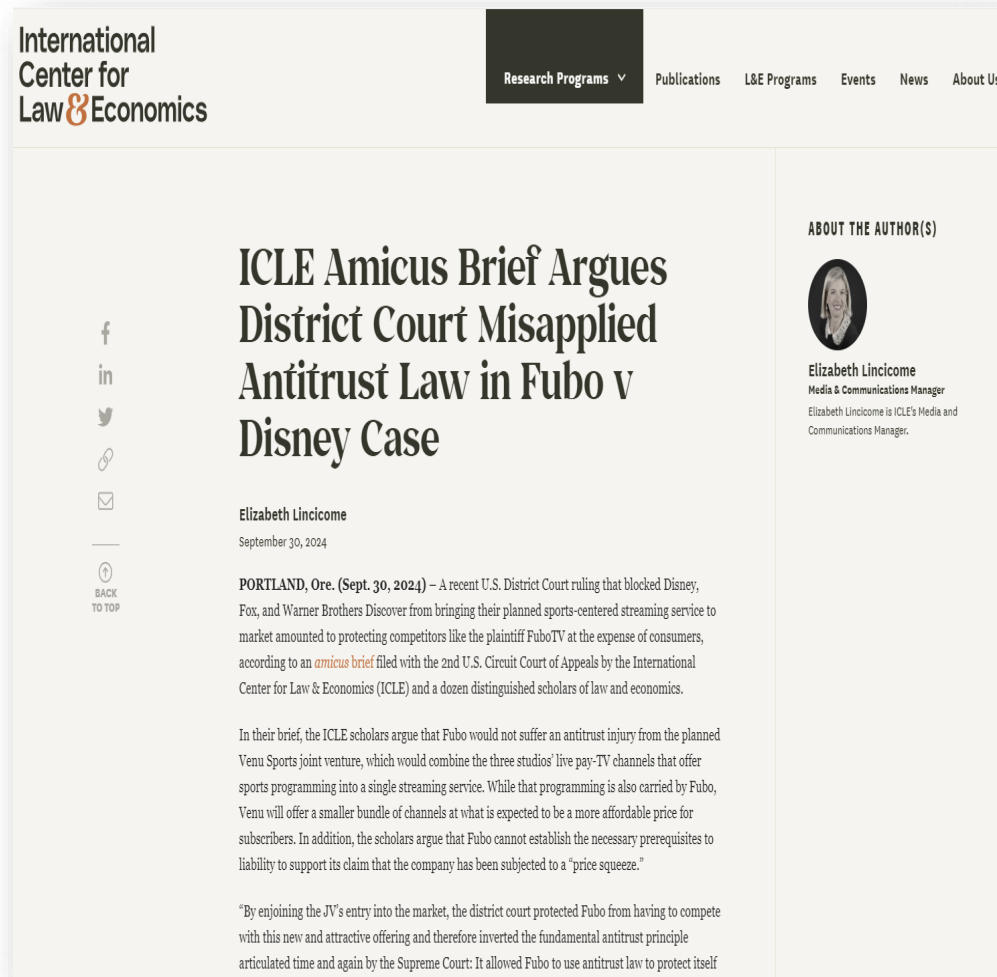
Venu Antitrust Litigation – On Appeal



State AG Brief in support of Appellants:

"The question in this case is whether a court should preliminarily enjoin the introduction of a new product into the market based on concerns raised by a competitor that the product is so superior to what is currently available that it is an existential threat to some existing competitors. Under a proper understanding of antitrust law, and on the current record, the answer is no."

Venu Antitrust Litigation – On Appeal



“By enjoining the JV’s entry into the market, the district court protected Fubo from having to compete with this new and attractive offering and therefore inverted the fundamental antitrust principle articulated time and again by the Supreme Court: It allowed Fubo to use antitrust law to protect itself—a competitor—from competition ...”

“The district court’s enjoining of Venu sacrifices a competitive ‘bird in the hand’—a comprehensive, low-priced live sports-streaming service whose entry would enhance competition in the live pay TV market and benefit consumers—for a highly speculative ‘bird in the bush’ of economically implausible future sports-streaming offerings ... ”

Venu Antitrust Litigation – On Appeal

Fubo-Venu Sports lawsuit becomes political football

The political battle lines have been drawn in the Fubo-Venu Sports lawsuit while the Pre-wrinkle.



Credit: Fubo, Venu Sports

POLITICS

VENU SPORTS

By Daniel Kaplan on 10/25/2024

Why has the fight between Fubo versus Venu Sports – the stayed streaming app from Walt Disney, Fox and Warner Bros. Discovery – become so political?

NEWSROOM / PRESS RELEASES

AUGUST 07, 2024

Warren, Castro, Sanders Urge DOJ, FCC to Scrutinize New Sports Streaming Service From Fox, Disney, and Warner Bros.

"For consumers, this consolidation could lead to higher prices and fewer choices."

Fox, Disney, and Warner Bros. control more than 80% of nationally broadcast sports content: "The market power of its three giant parent companies would enable it to discriminate against competitors and increase prices for consumers."

[Text of Letter \(PDF\)](#)

Washington, D.C. – U.S. Senator Elizabeth Warren (D-Mass.) and Representative Joaquin Castro (D-Texas), joined by U.S. Senator Bernie Sanders (I-VT), wrote to the United States Department of Justice (DOJ) and Federal Communications Commission (FCC), calling on the agencies to closely scrutinize the proposed joint venture between FOX, Warner Bros. Discovery, and Disney subsidiary ESPN that would create a new streaming service named Venu Sports (Venu).


"This massive new sports streaming company would be poised to control more than 80% of nationally broadcast sports and more than half of all national sports content, putting it in a position to exercise monopoly power over televised sports," **wrote the lawmakers.** "The market power of its three giant parent companies would enable it to discriminate against competitors and increase prices for consumers."

The cost of streaming services already [rose](#) by nearly 25% in 2023 as a small group of companies capture viewership, bundle content, and raise prices to maximize profits. 44% of viewers in the U.S. also report that their streaming subscription costs increased over the last year amidst increased bundling and consolidation.

Venu Antitrust Litigation – The Future of Sports Streaming?

Future of sports streaming market, consumer options under further scrutiny after Venu Sports ruling





Additional Legal Developments

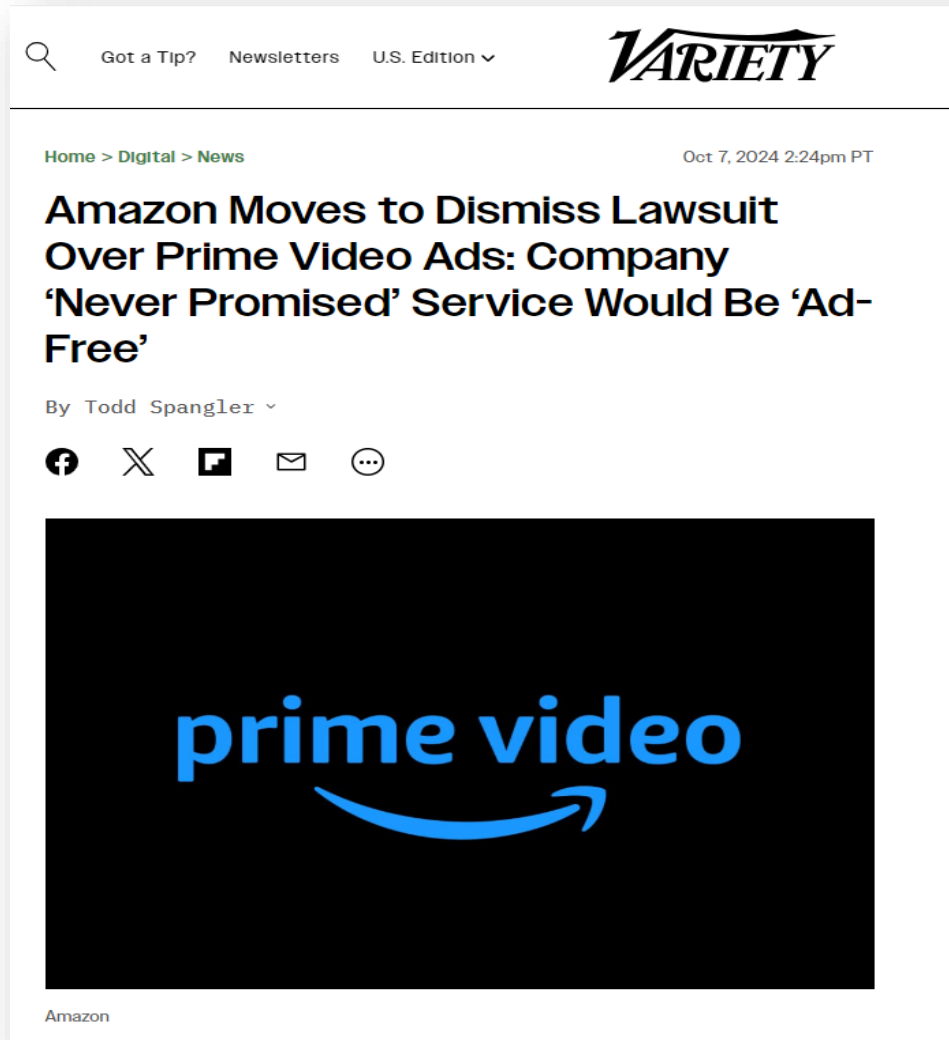
Suit Over Prime Video's Surcharge for Ad-Free Viewing

In re Amazon Prime Video Litig., No. 24-00186 (W.D. Wash.)

- Consumer-related claims brought after Amazon announced in December 2023 that some Prime Video offerings would include limited ads and that members must pay an additional \$2.99/month for ad-free viewing, even those users who previously purchased a yearly subscription – prior to that, Prime members received “commercial-free” access to Prime Video.
- Claims in putative class action: breach of contract, Washington state unfair competition claims, California false advertising
- Additional cases filed (e.g., *Peterson v. Amazon.com, Inc.*, No. 24-00364 (W.D. Wash.), later consolidated into current caption back in June 2024.

Suit Over Prime Video's Surcharge for Ad-Free Viewing

In re Amazon Prime Video Litig., No. 24-00186 (W.D. Wash. Filed Feb. 9, 2024)



- Amazon “never promised—to Prime members or anyone else—that Prime Video would be always, or entirely, ad free”
 - Prime Terms: “From time to time, Amazon may choose in its sole discretion to add or remove Prime membership benefits”
- Amazon argues that the Prime Video terms only govern users who signed up to Prime Video as a standalone “video-only subscription”, which is separate from an Amazon Prime subscription that includes Prime Video and other benefits

Net Neutrality – A Decade Ago



**All Internet Service Providers
(ISPs) must treat all online
traffic equally**

Net Neutrality: Some Key Milestones

- **2010:** The FCC approved the Open Internet Order, imposing net neutrality rules for the first time
- **2014:** A court ruled that the FCC is not entitled to impose net neutrality rules on services that are not common carriers.
- **2015:** The FCC issued a new Open Internet Order, reclassifying ISPs as Title II services and giving the FCC clear authority to enforce net neutrality. A federal court upheld the rules despite objections from ISP advocate groups.
- **2017:** The FCC (1st Trump Administration) rolled back the Open Internet Order despite congressional efforts to stay the repeal.

Net Neutrality: Some Key Milestones

- **2018:** Several state attorneys general sued the FCC to allow states to restore net neutrality rules
- **2019:** A federal appeals court ruled that the FCC cannot block state- or local-level net neutrality enforcement. Multiple states, including California, Oregon and Washington, subsequently passed net neutrality laws.
- **2024:** The FCC restored net neutrality rules rescinded during the 1st Trump administration. The order bans ISPs from deliberately changing customer network speeds.

Brief Update on Net Neutrality

F.C.C. Votes to Restore Net Neutrality Rules

Commissioners voted along party lines to revive the rules that declare broadband as a utility-like service that could be regulated like phones and water.

▶ Listen to this article · 3:38 min [Learn more](#)



Court blocks FCC's net neutrality rules from going into effect again

The Sixth Circuit Court of Appeals has blocked net neutrality rules the Federal Communications Commission voted to restore last April.

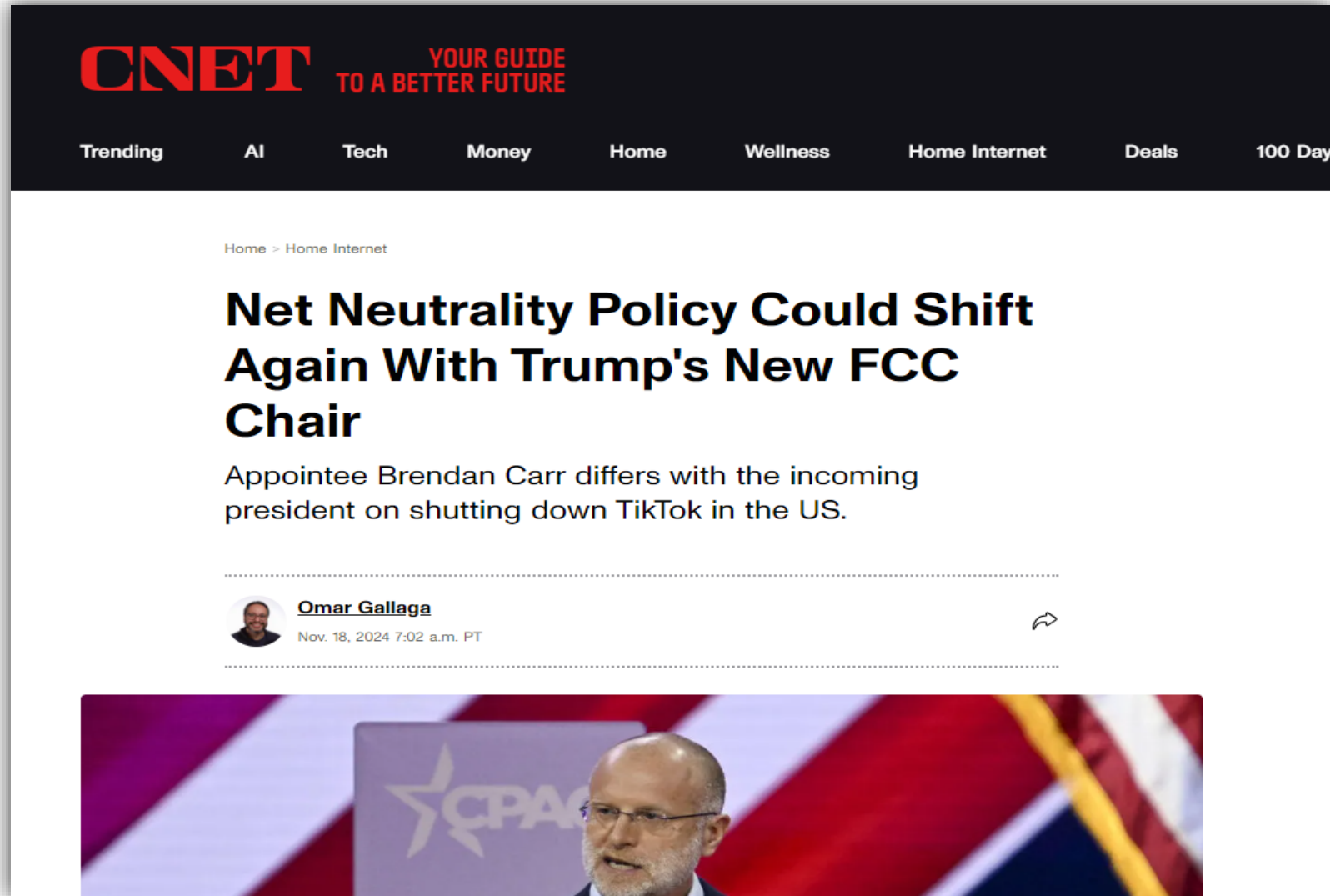
BY KEELY QUINLAN · AUGUST 2, 2024

6th Circ. Wrestles With Reach Of FCC's Net Neutrality Powers

By [Christopher Cole](#) · [Listen to article](#)

Law360 (October 31, 2024, 9:02 PM EDT) -- Sixth Circuit judges on Thursday sought to clear up what one described as a "close call" over how much authority Congress gave the [Federal Communications Commission](#) to regulate internet traffic when lawmakers overhauled telecommunications law in 1996.

Brief Update on Net Neutrality



FCC Proposed “Reportable Blackout” Disclosure Rule

Before the	
Federal Communications Commission	
Washington, D.C. 20554	
In the Matter of)
)
Reporting Requirements for Commercial) MB Docket No. 23-427
Television Broadcast Station Blackouts)
)
NOTICE OF PROPOSED RULEMAKING	
Adopted: December 19, 2023	Released: December 21, 2023

- **FCC:** “We tentatively conclude that the timely provision and compilation of blackout information would allow the Commission and the public to systematically track and analyze information on broadcast station blackouts on MVPD platforms across the country.”


FCC Proposed “Reportable Blackout” Disclosure Rule

Cable Cos. Seek Looser TV Blackout Reporting Rules At FCC

By [Jared Foretek](#) ·  [Listen to article](#)

Law360 (October 31, 2024, 9:57 PM EDT) -- A major cable industry trade group is asking the [Federal Communications Commission](#) to scale back proposed blackout reporting requirements, arguing that heightened reporting mandates should only apply to blackouts of major network feeds.

- **Affiliate Associations:** “As a basic policy matter, the Commission will not benefit consumers by adding new regulations to traditional MVPDs, while leaving their most effective competitors [i.e., vMVPDs] entirely free of such regulations.”



Future of TV

Future of TV – Unpredictable?

John Landgraf Opens Up About What Led to — and Ultimately Killed — Peak TV

BY LESLEY GOLDBERG FEBRUARY 12, 2024 3:19PM

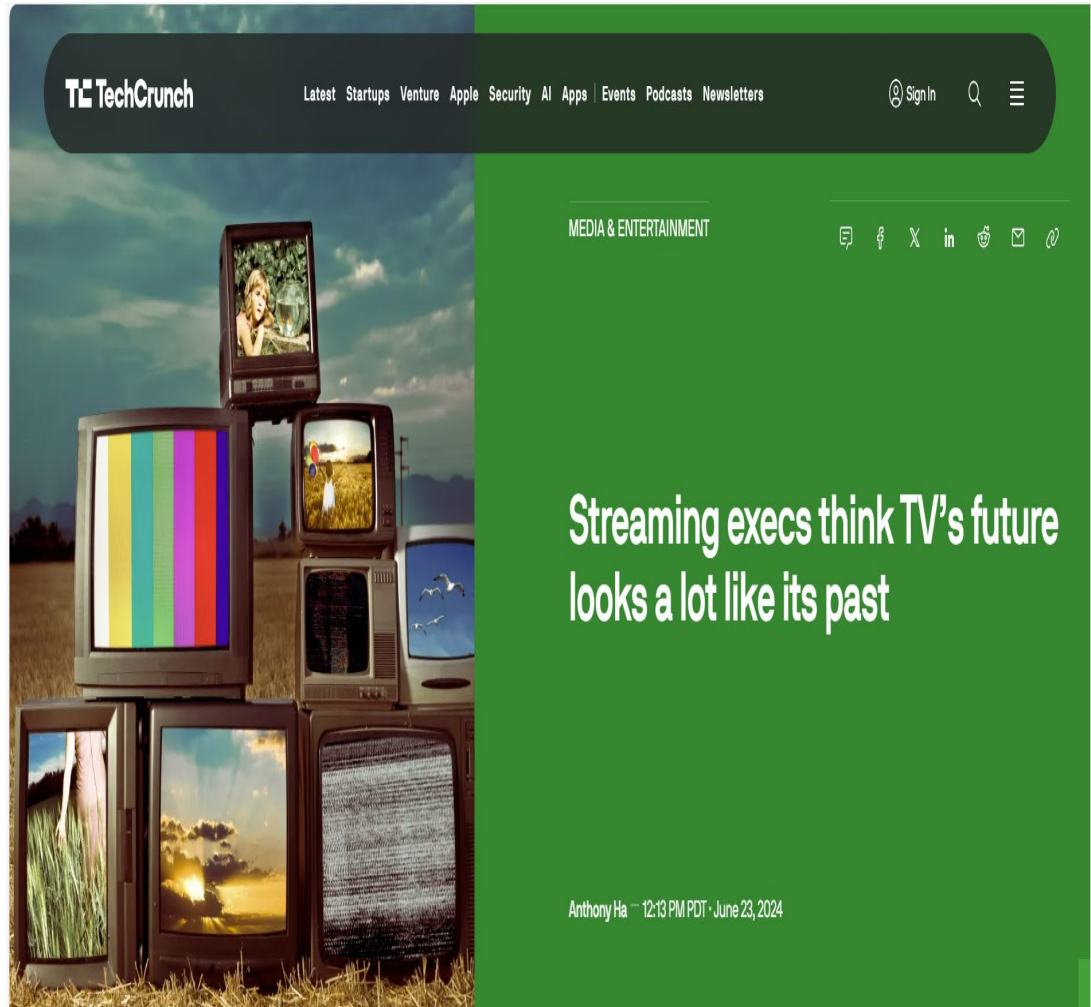


John Landgraf PAWEŁ KAMINSKI/DISNEY GENERAL ENTERTAINMENT CONTENT/GETTY IMAGES

Q: Looking at the next 20 years of this industry, can you make a prediction about where we're going to be?

A: I can't [predict the future], because the things that really shock you are the things that you can never imagine.

Future of TV – Will It Look Like the Past?



“[S]treaming ... won’t be all that different from the old cable TV ecosystem. Some things will be better ... some will be worse ... and there might be different players at the top. But in many ways, it will feel like the same old TV.”

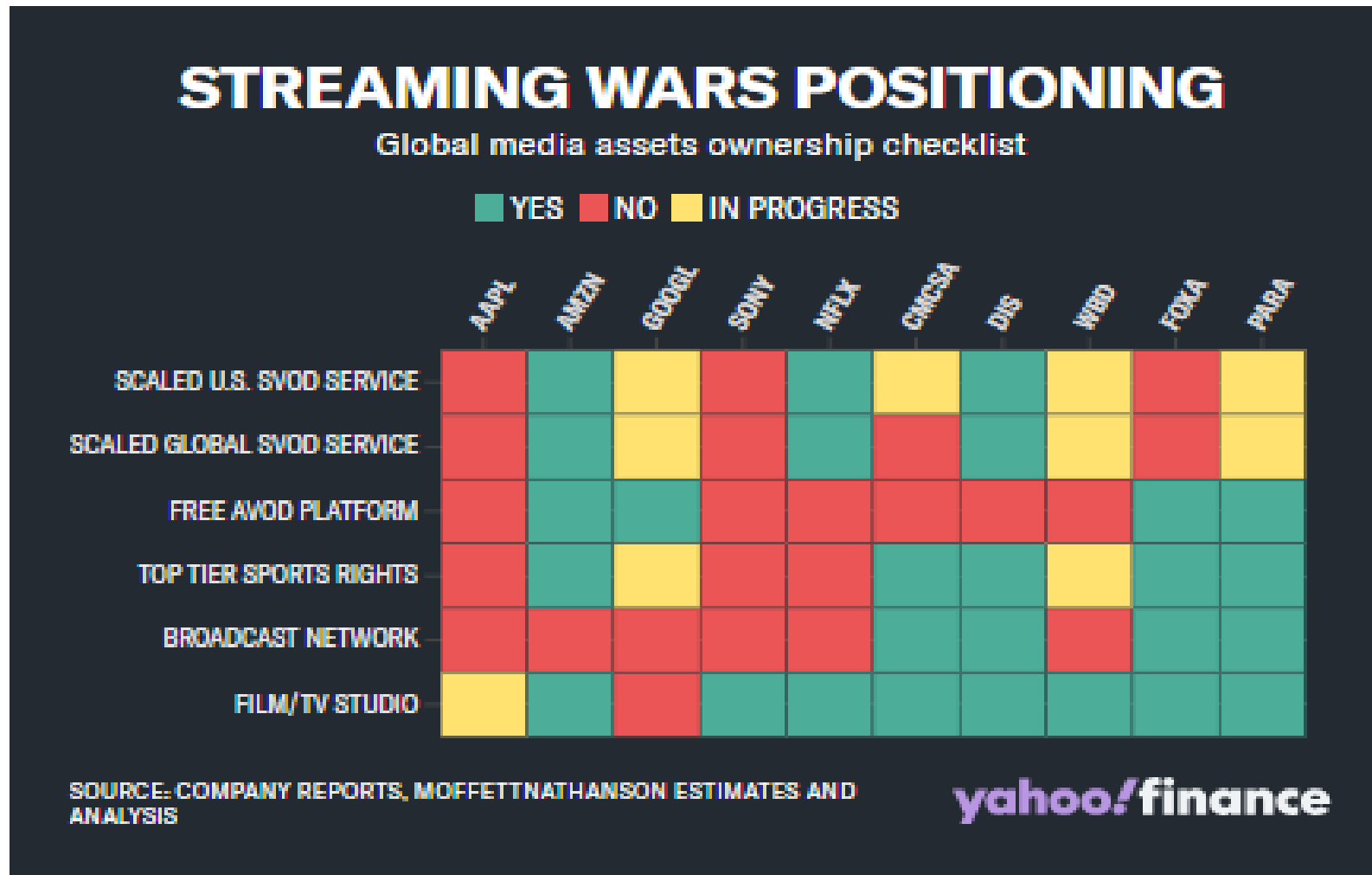
Something's Got to Give ...



Something's Got to Give ...



Future of TV – How to Compete in the New Order





2024

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Supreme Court: Year in Review

Mark D. Harris
Partner

November 20, 2024

Proskauer»

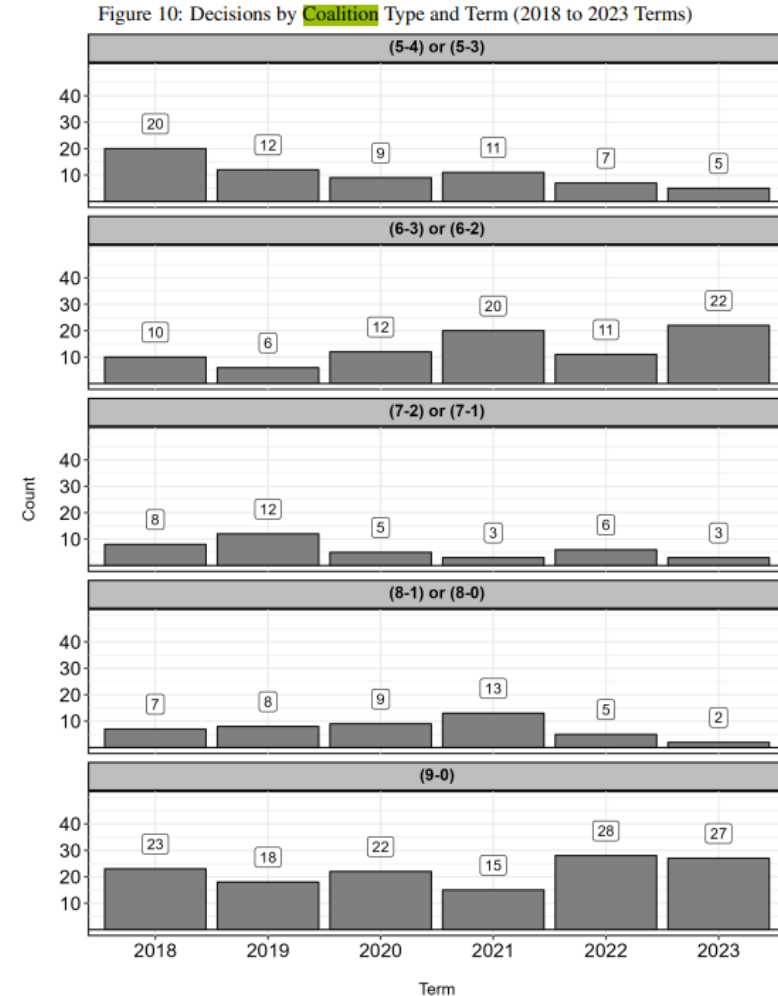


October Term 2023: A Year In Review

October Term 2023 | By the Numbers

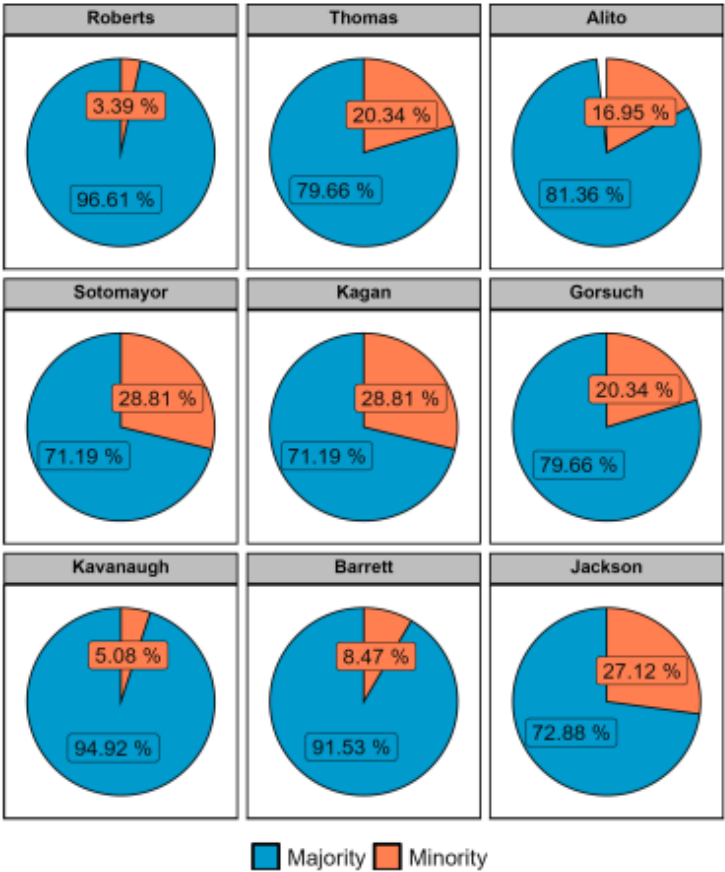
- 56 merits opinions
- 19 (34%) unanimous decisions, and 4 (7%) 5-4 cases.
- Each justice authored on average 6 opinions of the court
- 152 total opinions
 - 56 majority
 - 60 concurring
 - 36 dissenting

Sources: *Supreme Court Statistics, 2023 Term*, Harv. L. Rev. (November 2023); Adam Feldman & Jake Truscott, *Supreme Court 2023/2024 Stat Review*, EMPIRICALSCOTUS (July 1, 2024).



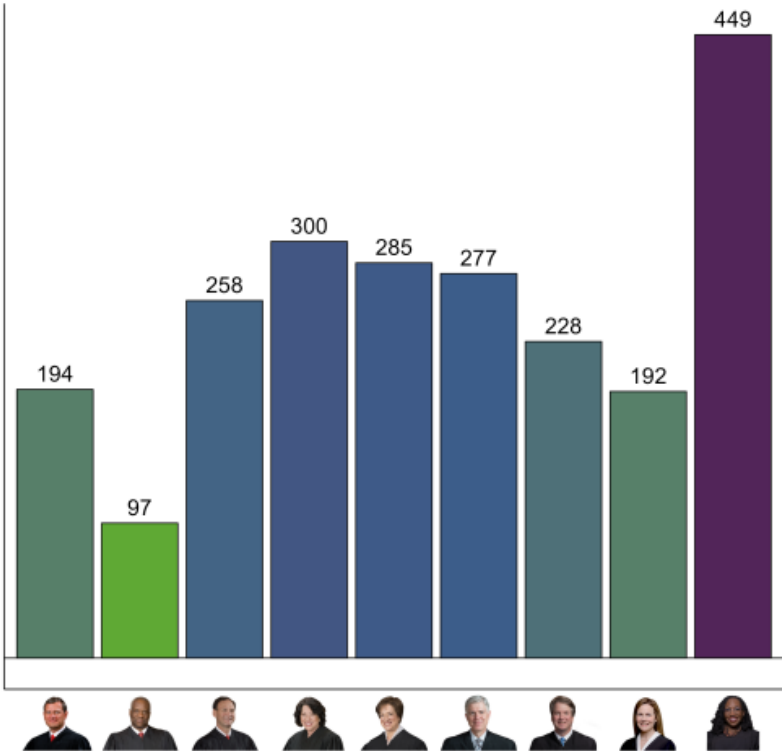
Still the Roberts Court | Jackson Remains Strong

Figure 15: Frequency in Majority by Justice (OT2023)



Oral Argument – Time for Arguments

















Figure 7: Total Time Speaking (Minutes) by Justice (OT2023)



Source: Adam Feldman & Jake Truscott, *Supreme Court 2023/2024 Stat Review*, EMPIRICALSCOTUS (July 1, 2024).

Agreement by Justice

















Table 29: Justice-Level Agreement (2023 Term)

								
	79.66							
	82.76	89.66						
	71.19	50.85	53.45					
	71.19	50.85	53.45	96.61				
	76.27	83.05	82.76	61.02	61.02			
	94.92	77.97	84.48	69.49	69.49	74.58		
	88.14	81.36	81.03	69.49	69.49	77.97	89.83	
	69.49	52.54	58.62	91.53	91.53	62.71	71.19	67.8

Source: Adam Feldman & Jake Truscott, *Supreme Court 2023/2024 Stat Review*, EMPIRICALSCOTUS (July 1, 2024).

Agreement by Justice | The Most Agreement

















Table 29: Justice-Level Agreement (2023 Term)

								
	79.66							
	82.76	89.66						
	71.19	50.85	53.45					
	71.19	50.85	53.45	96.61				
	76.27	83.05	82.76	61.02	61.02			
	94.92	77.97	84.48	69.49	69.49	74.58		
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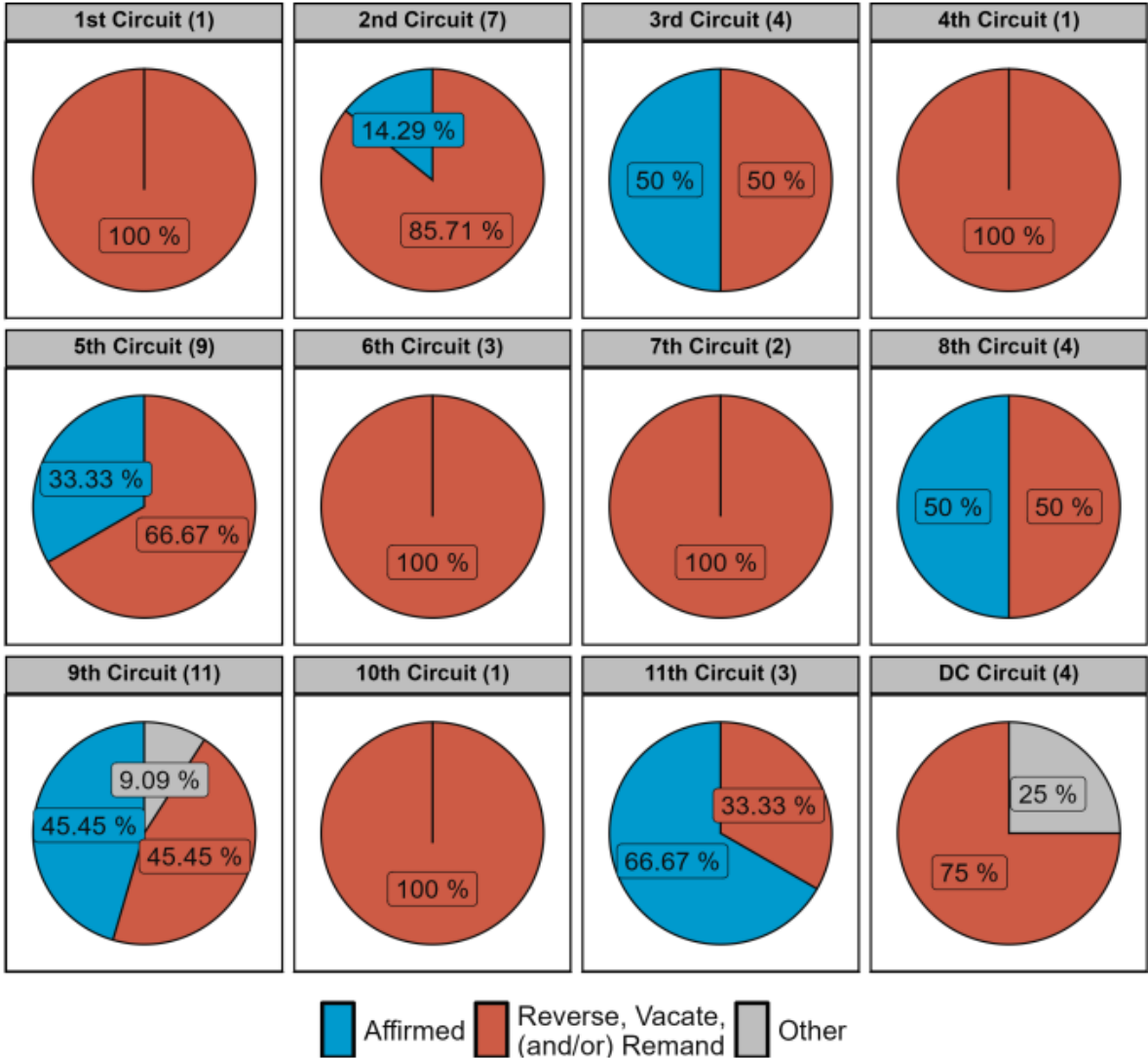
Agreement by Justice | The Least Agreement

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Source: Adam Feldman & Jake Truscott, *Supreme Court 2023/2024 Stat Review*, EMPIRICALSCOTUS (July 1, 2024).

The Supreme Court and the Circuit Courts



Source: Adam Feldman & Jake Truscott, *Supreme Court 2023/2024 Stat Review*, EMPIRICALSCOTUS (July 1, 2024).



October Term 2023: Key Cases



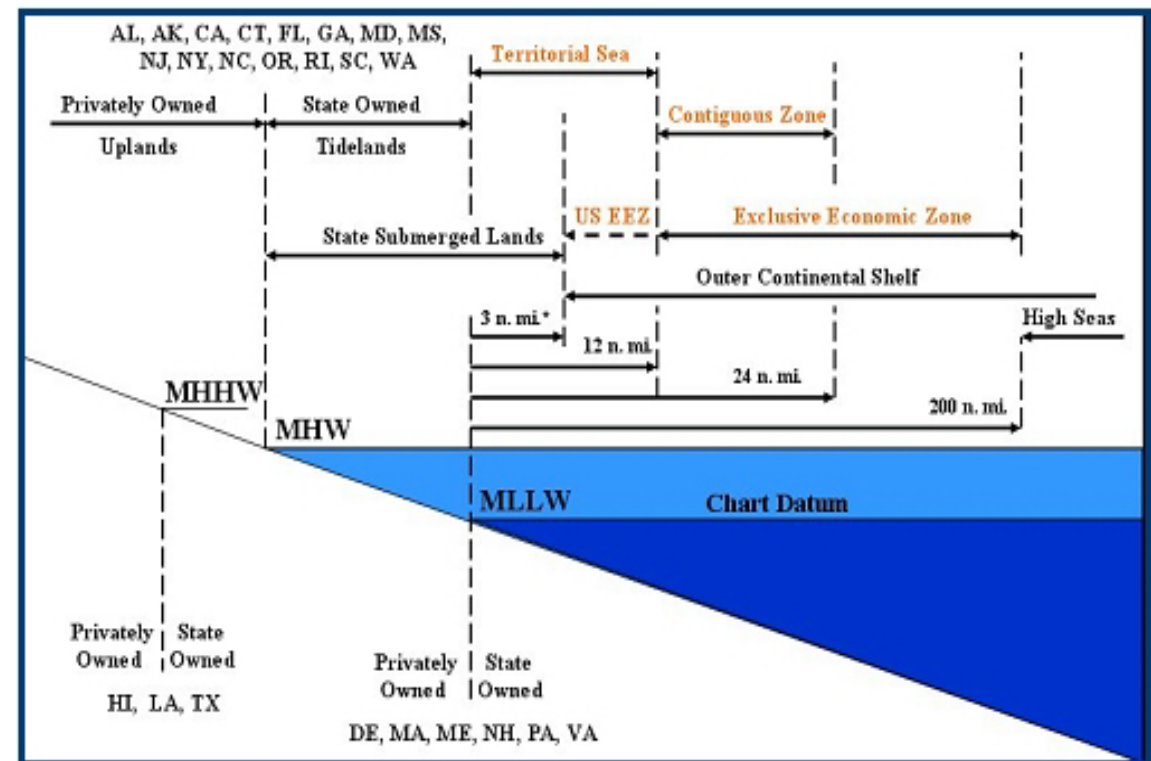
Loper Bright Enterprises v. Raimondo

Loper Bright v. Raimondo | Background

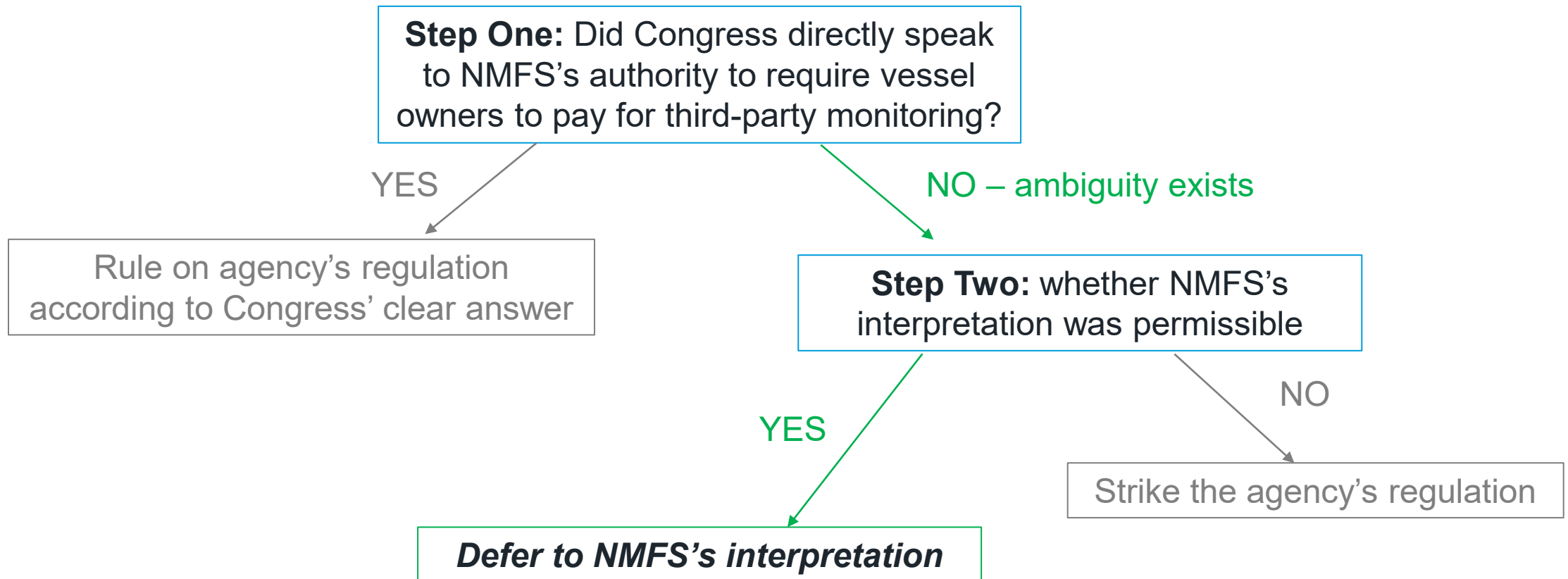
National Marine Fisheries Service (NMFS)



Magnuson-Stevens Fishery Conservation and Management Act (MSA)



Loper Bright v. Raimondo | The Chevron Approach



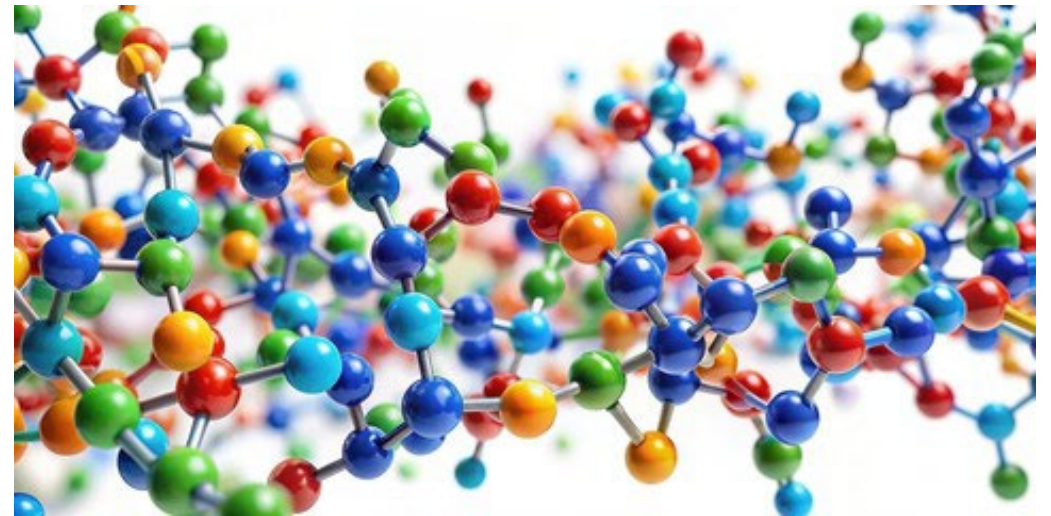
Loper Bright v. Raimondo | Majority Opinion

- *Chevron* deference runs counter to the Administrative Procedure Act (“APA”)
 - Incorporates “traditional conception” of courts as final interpreter
 - Thomas: *Chevron* violated the constitutional separation of powers
- *Stare decisis* did not require the Court to retain *Chevron*
 - Deferring to agency positions that can change runs counter to *stare decisis*
 - Gorsuch: *stare decisis* compels return to pre-*Chevron* jurisprudence



Loper Bright v. Raimondo | Majority Opinion

- Agencies are the experts, better suited to answering the questions of policy involved in resolving statutory ambiguities
- *Stare decisis* counsels the Court to keep *Chevron*
 - 40 years of *Chevron* has made it “much more than a single decision”
 - Increases predictability of agency regulation



Loper Bright's Effect on Administrative Law

Loper Bright's impact will be greater than the “major questions” doctrine.



Loper Bright's Effect on Administrative Law

“Although the Supreme Court has overruled *Chevron*, it has not disturbed district courts’ application of *Skidmore* deference principles.”

Regents of Univ. of Cal. v. The Chefs’ Warehouse, Inc.,
2024 WL 3937161, at *5 n.3 (E.D. Cal. Aug. 26, 2024)

“Today, the Supreme Court did away with the [deference] requirement, holding that ‘*Chevron* is overruled.’”

Texas v. DOL,
2024 WL 3240618, at *6 (E.D. Tex. June 28, 2024)



Corner Post, Inc. v. Board of Governors of the Federal Reserve System

Corner Post, Inc. v. Federal Reserve

- 2011 challenge to regulation setting maximum for debit card charge fees
 - D.C. Circuit upholds regulation
- 2021 facial challenge dismissed as barred by 6-year statute of limitations
- SCOTUS: SOL runs from when Corner Post was injured, which was 2018
- Jackson dissent: Effectively, there is no longer any limitations period





Trump v. United States

Trump v. United States | Background

- Indictment alleged that Trump and others conspired to overturn the results of the November 2020 election through five primary means:
 - Using false claims of election fraud to get state officials to change electoral votes
 - Organized fraudulent slates of electors in seven targeted states
 - Attempted to use DOJ to conduct “sham election crime investigations”
 - Attempted to persuade VP to fraudulently alter the election results
 - Exploited January 6 by “redoubling efforts to levy false claims of election fraud” and convince members of Congress to delay certification

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA		
UNITED STATES OF AMERICA	*	CRIMINAL NO.
	*	
v.	*	GRAND JURY ORIGINAL
	*	
DONALD J. TRUMP,	*	VIOLATIONS:
	*	
Defendant.	*	Count 1: 18 U.S.C. § 371
	*	(Conspiracy to Defraud the United
	*	States)
	*	
	*	Count 2: 18 U.S.C. § 1512(k)
	*	(Conspiracy to Obstruct an Official
	*	Proceeding)
	*	
	*	Count 3: 18 U.S.C. §§ 1512(e)(2), 2
	*	(Obstruction of and Attempt to
	*	Obstruct an Official Proceeding)
	*	
	*	Count 4: 18 U.S.C. § 241
	*	(Conspiracy Against Rights)
	*	
	*	

INDICTMENT

The Grand Jury charges that, at all times material to this Indictment, on or about the dates and at the approximate times stated below:

INTRODUCTION

1. The Defendant, **DONALD J. TRUMP**, was the forty-fifth President of the United States and a candidate for re-election in 2020. The Defendant lost the 2020 presidential election.

2. Despite having lost, the Defendant was determined to remain in power. So for more than two months following election day on November 3, 2020, the Defendant spread lies that there had been outcome-determinative fraud in the election and that he had actually won. These claims were false, and the Defendant knew that they were false. But the Defendant repeated and widely

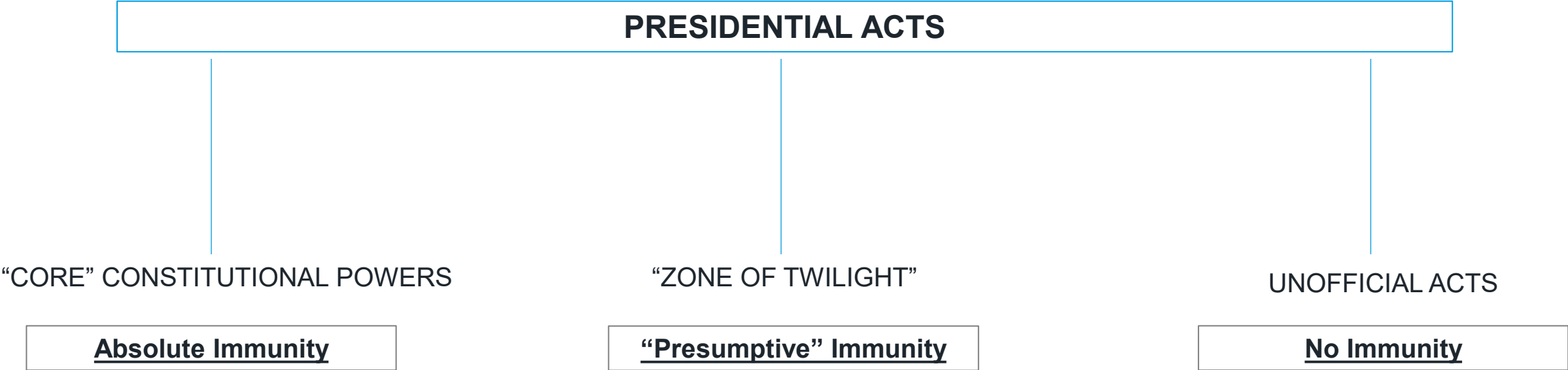
Trump v. United States | Background

This case is the first criminal prosecution in our Nation's history of a former President for actions taken during his Presidency. We are called upon to consider whether and under what circumstances such a prosecution may proceed. Doing so requires careful assessment of the scope of Presidential power under the Constitution. We undertake that responsibility conscious that we must not confuse "the issue of a power's validity with the cause it is invoked to promote," but must instead focus on the "enduring consequences upon the balanced power structure of our Republic." *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U. S. 579, 634 (1952) (Jackson, J., concurring).

Trump v. United States | Lower Court Proceedings

- Trump moved to dismiss the indictment claiming Presidential Immunity, arguing that properly characterized, the indictment alleged acts that fall within the core of Presidential power.
- **District Court: motion denied**
 - “[F]ormer presidents do not possess absolute federal criminal immunity for any acts committed while in office.”
 - “[T]he possibility of vexatious post-Presidency litigation is much reduced in the criminal context” in light of “robust procedural safeguards attendant to federal criminal prosecutions.”
- **D.C. Circuit: affirmed district court**
 - Indictment alleged conspiracy to ignore ministerial duties, and under *Marbury v. Madison*, an official’s failure to carry out ministerial duties is subject to court review.

Trump v. United States | Supreme Court: Majority Framework



Summary of the SCOTUS Majority’s Position:

The danger of prosecuting a President for official actions “is akin to, indeed greater than, what led us to recognize absolute Presidential immunity from civil damages liability—that the President would be chilled from taking the ‘bold and unhesitating action’ required of an Independent executive.”

At the same time, “[t]here is a compelling ‘public interest in fair and effective law enforcement,’ and the President “is not above” the criminal laws.

“Taking into account these competing considerations, we conclude that the separation of powers principles explicated in our precedent necessitate at least a *presumptive* immunity from criminal prosecution for a President’s acts within the outer perimeter of his official responsibility.”

In dividing official from unofficial conduct, courts may not inquire into the President’s motives. And the fact that an action violates a generally applicable law does not render the action unofficial.

Application of Majority Framework/Majority Holding (6-3)

- Allegation that Trump attempted to use DOJ to conduct “sham election crime investigations”
 - Supreme Court: Prosecutorial decision-making is “the special province of the executive branch” and implicates “conclusive and preclusive” Presidential authority. **Absolute immunity applies.**
- Allegation that Trump attempted to persuade VP to fraudulently alter the election results
 - Supreme Court: Presiding over election certification is a constitutional and statutory duty *of the Vice President*, not the President, but the offices of President and Vice President are constitutionally and practically inextricably intertwined in many ways. **Presumptive immunity applies; district court must decide in first instance.**
- Allegations that Trump advanced false claims of election fraud to get state officials to change electoral votes; attempted to organize fraudulent slates of electors in seven states
 - Supreme Court: Issue not sufficiently briefed; **district court must decide in the first instance how to characterize.**
- Allegations regarding Trump’s involvement acts on January 6th
 - Supreme Court: Issue not sufficiently briefed; **district court must decide in the first instance how to characterize.**
- Evidence pertaining to a President’s official acts cannot be used to help secure a President’s conviction on charges that purport to be based only on unofficial conduct.
 - Justice Barrett disagrees. SCOTUS ruled 5-4 on this point.

Dissenting Opinions

- Justice Sotomayor: majority makes three moves that “completely insulate Presidents from criminal liability”
 - The majority unnecessarily discusses “core constitutional powers,” which have nothing to do with the DOJ’s allegations
 - The majority’s “presumptive” immunity is not a presumption at all
 - If evidence concerning official acts is generally inadmissible, Presidents will be immune for many private offenses, as well
- Justice Jackson: majority opinion fundamentally alters the constitutional structure
 - The majority approach “aggrandiz[es] power in the Judiciary and the Executive, to the detriment of Congress.”
 - The majority approach “undermines the constraints of the law as a deterrent for future Presidents who might otherwise abuse their power, to the detriment of us all.”

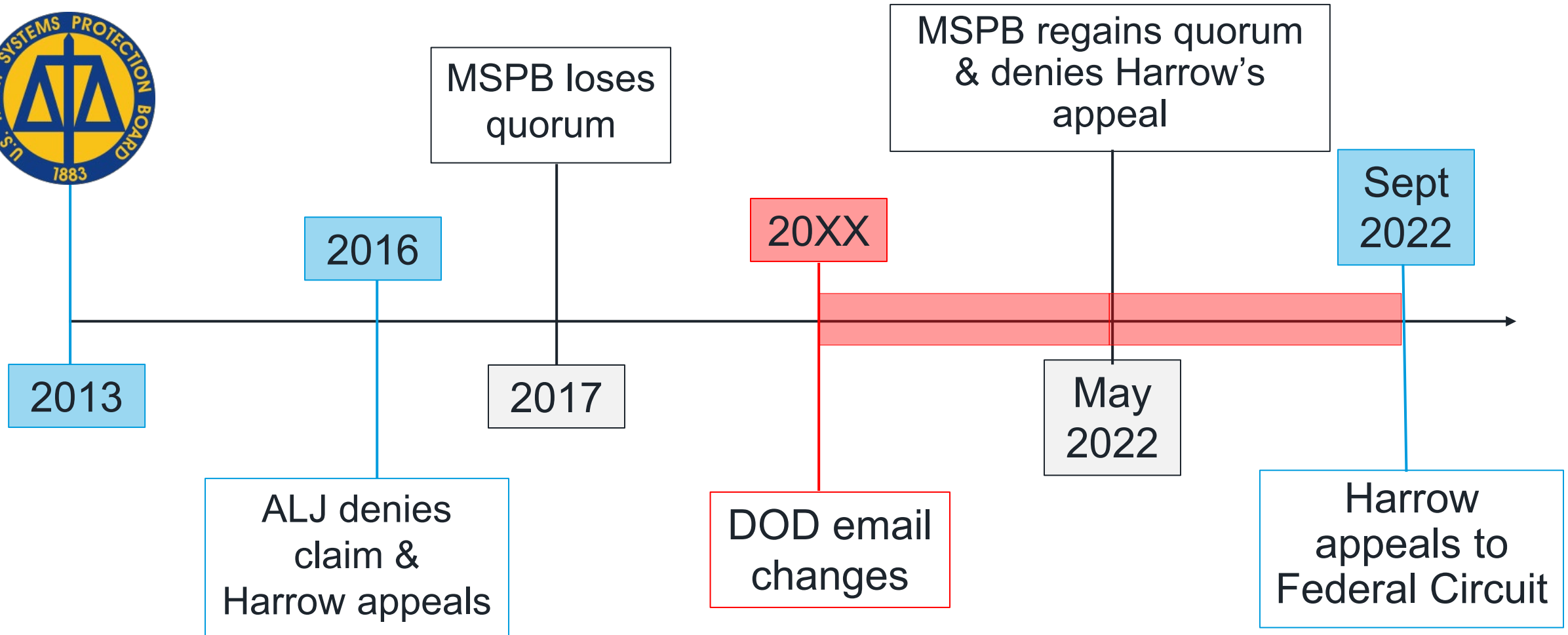


Harrow v. Department of Defense

Background | Stuart Harrow



Background | Harrow's Claim before the MSPB



Background | Harrow's Claim before the Federal Circuit

5 U.S.C. § 7703(b)(1)(A): [A] petition to review a final order or final decision of the [MSPB] shall be filed in the United States Court of Appeals for the Federal Circuit. Notwithstanding any other provision of law, any petition for review shall be filed within 60 days after the Board issues notice of the final order or decision of the Board.

28 U.S.C. § 1295(a): The United States Court of Appeals for the Federal Circuit shall have exclusive jurisdiction . . . (9) of an appeal from a final order or final decision of the Merit Systems Protection Board, pursuant to section[] 7703(b)(1)

Question Presented: Whether the 60-day filing deadline in § 7703(b)(1)(A) is jurisdictional.

The Merits Briefing | Arguments

Context = the filing deadline is **not** jurisdictional

- “Pursuant to” does not extend jurisdictional grant
- Supreme Court precedent: clear statement rule
- Textual context of nearby statutes and other statutory deadlines
- The statutory structure and purpose of the MSPB

Ruling | 9-0 for Harrow

The filing deadline is **not** jurisdictional.

- “Pursuant to” does not extend jurisdictional grant
- Supreme Court precedent: clear statement rule
- Textual context of other statutory procedural rules
- Remand other issues





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