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FAIR METHODS OF COMPETITION
IN THE
MOTION PICTURE INDUSTRY

Opening address by

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Federal Trade Commissioner

Trade Practice Conference of the Motion Picture Industry
held in New York City, beginning
Monday, October 10, 1927

It is a very great pleasure to welcome the delegates to this the most representative gathering of the motion picture industry ever assembled.

This meeting was called at the suggestion of the Federal Trade Commission and in a measure is the outgrowth of the Commission's proceeding against the Famous Players-Lasky Company.

In a broader sense it is a gathering of the industry for self-regulation in respect of certain practices which have given rise to complaint and which but for the corrective action here to be taken might lead to regulation by public authority.

It is the policy of the Federal Trade Commission to encourage self-government in industry, and to avoid superimposed governmental regulation whenever possible, because it realizes that those who are best acquainted with the peculiar problems of an industry are best equipped to govern it.

To date the Commission has held twenty-three successful trade practice conferences which have resulted in the adoption of codes of fair practice in as many industries. The ethical standards so adopted are much better calculated to meet the needs of those industries than any that could have been prescribed by the Commission without the cooperation of the industries involved.

Not only have the results been good from the standpoint of meeting the peculiar needs of those industries, but much litigation, annoyance and expense has been saved the industries and the Commission. As the

result of the recent trade practice conference of the correspondence school industry the Commission has dismissed fifty proceedings in one stage or another, the concerns involved having squared the account by subscribing to a code of fair practice which they helped to create.

Self-regulation is a relative term, however, and does not mean that an industry may regulate its practices solely in its own interest and without regard to the rights of the public. It is obvious that those who cry loudest against government in business do so with mental reservation, since to take all government out of business would mean to repeal all incorporation laws and to withdraw tariff protection and many other privileges which are purely governmental in character.

What we mean by self-regulation is voluntary conformity to standards of fair dealing and the law. It is the purpose of the Commission to aid in the reconciliation of business and the law in every proper way.

It would be folly to attempt to minimize the importance of the public interest in the conduct and regulation of the motion picture industry. Great as I knew the industry to be, I was astounded to learn that it is rated fourth among the industries of the United States; that it includes more than 20,000 theatres; that the total investment of the industry is in the neighborhood of \$1,500,000,000 and rapidly growing; that more than 7,000,000 people attend these exhibitions daily; and that the daily admissions amount to more than \$2,000,000.

So potent a factor is this great industry in the economic, family and social life of the country that its proper conduct is a matter of the gravest public concern.

Fortunately, the motion picture industry has recognized its peculiar obligation to the public in the suppression of salacious pictures and in many other ways. Far beyond the most of our industries this industry has shown an aptitude for self-control. The trade organizations in the several branches of the industry, the local film boards of trade and the arbitration boards all attest your zeal and capacity for what the international statesmen call "self-determination". Considering the comparative youth of the industry, its tremendous growth and conflicting interests, these achievements merit admiration and have mine.

In view of the magnitude of this accomplishment it does not detract from the credit due that the machinery may have developed a few squeaks or that some things remain to be done.

To meet the situation for which the meeting was called it was necessary that it should be a truly representative gathering. In an industry so vast any meeting would have to be on some basis of representation, at least so far as voting is concerned. To secure proper representation for unaffiliated exhibitors presented a difficult problem. Mr. Flannery, Director of Trade Practice Conferences, after

consultation with leaders in all three branches of the industry, reported a plan for regional representation which was unanimously approved by the Commission.

As you all know the United States has been divided into thirty-two commercial zones in each of which is a film board of arbitration composed of three distributor members and three exhibitor members. According to my information the exhibitor members are selected in each zone by the local theatre owners organization from among the exhibitors not affiliated with any producer or distributor.

The Commission, therefore, appealed to the exhibitor members of the several arbitration boards and to the local exhibitor associations, through the secretaries of the several film boards of trade, to apprise the unaffiliated exhibitors of the forthcoming conference and to advise them to select two delegates to represent them at the conference.

The letters sent out by Mr. Flannery were definite and specific and made plain that the delegates are to have no affiliation of any kind with producers or distributors and that one delegate from each zone must represent chains of theatres consisting of groups of five or more and that the other delegate must be selected from among the owners of one, or less than five, theatres.

It will be recognized that this is the only practicable method of selecting delegates from the vast number of unaffiliated exhibitors; that it is eminently fair; and that the delegates so selected are in fact truly representative and qualified to record the sentiments of all divergent interests among exhibitors of this class.

It is natural that such a gathering should spur certain interests to seek not only the recognition and protection to which they are entitled but also preferences and advantages beyond their due. I believe, however, that when the conference begins its work the delegates will be governed by a spirit of moderation and fair play and will not endanger the success of the undertaking by obstructive tactics, or by advocating measures outside the purview of the meeting, or by selfish insistence on measures to which they are not fairly entitled.

This affair has attracted much attention and the public and the press will note well what occurs here. Whatever resolutions are adopted and whatever steps are taken must represent the free expression of the majority of the conference. Any attempt to control the deliberations of this assembly, or to prevent free discussion, or to obstruct progress must be answered for in the court of public opinion.

I have said that the meeting in a measure grows out of the proceeding against the Famous Players-Lasky Company. In that case the Commission entered an order, binding on the company just named, regarding the practice known as block booking. It was known to the Commission that the practice was not peculiar to the Famous Players Company but was more or

less general in the industry. One of the main objects of this meeting is to enable the industry, if possible, to adopt some arrangement regarding the marketing of films which will be in keeping with the spirit of the order and make unnecessary further litigation on this subject.

The order requires the respondents in the case to cease and desist "from leasing or offering to lease for exhibition in a theatre or theatres 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 for 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."

Judging from the clippings and correspondence this order was favorably received by the public and by a considerable portion of the trade. There is abundant evidence of a widespread and deepseated conviction that films ought not to be marketed under any plan which makes it incumbent upon an exhibitor to purchase films that he does not want in order to acquire films that he does want, because the exhibitor is best acquainted with the tastes, preferences and prejudices of his patrons, knows best what will please and what will offend.

These correspondents and editorial writers appear to feel that to afford to the exhibitor the freedom which he should have in the selection of films acceptable to his audience, he should be relieved of the loss involved in shelving an undesirable picture on which he must pay the full rental in addition to paying for a substitute picture. The exhibitor, they contend, can not always withstand the economic pressure to show the undesirable film, particularly if he is operating a small neighborhood theatre. You will note, therefore, that there is a lively public interest in the question of block booking aside from the possible effect of the practice in restraining trade by monopolizing the playing time of the theatres and thereby excluding the small producer making only an occasional picture, although that picture may be of high quality.

I lay these thoughts before you as an epitomization of the many expressions that have come to the attention of the Commission since the entry of the order in the Famous Players Case.

I am acquainted with the historical background of block booking and with the practical difficulties involved in the abandonment of modification of the system; but I lay the problem before you fully confident of your ability to work out a solution which will be fair to the exhibitors and distributors alike and which will enable the public to place responsibility for the showing of unsuitable films with that branch of the industry with which it has contact and will preclude the excuse behind which the exhibitor always hides, namely, that he is the victim of a vicious system of distribution.

The sooner the conference begins its labors the better and for that reason I shall not undertake a detailed discussion of the other problems which may be brought before you. We all know in a general way what these problems, or at least some of them, are. Many of you, no doubt, have proposals to bring before the conference which have not occurred to the rest of us. The producers, distributors and exhibitors will work out their programs in group meetings and bring them to the conference for consideration and action.

It will be appropriate, therefore, for me to restate in barest outline the purpose and scope of the meeting.

The purpose is not, as some of my correspondents have supposed, to obtain evidence on which to prosecute persons and corporations engaged in the motion picture industry; it is not to tear down or rebuild the fundamental organization and structure of the industry; it is merely to afford a forum for a full discussion of the practices of the industry which may be fairly comprehended within the expression "methods of competition" as used in Section 5 of the Federal Trade Commission Act.

You have an opportunity to determine for yourselves what are the unfair and undesirable practices in your industry and to frame suitable resolutions. The presiding commissioner will be available at all times and will gladly assist in every way possible and if requested will express his individual view as to the propriety of any particular resolution, with the reservation that the question must ultimately go to the full commission.

The resolutions when adopted are transmitted by the presiding commissioner to the full commission with his report and recommendations. When the commission has approved a particular resolution, it becomes the standard of fair practice for the industry, and the Commission will undertake to enforce the same by proceeding against a recalcitrant minority who may seek an unfair competitive advantage by continuing the proscribed practices.

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Resolutions which are not approved and at the same time are not positively disapproved may be received by the Commission as the expression of the trade and enforced or not according as the circumstances dictate when and if infractions occur.

I need not remind you that resolutions of this class may often be as effective as resolutions which the Commission undertakes to enforce. If they reflect the preponderant sentiment of the industry they will not be lightly disregarded, for men often have greater dread of the scorn of their associates than they have for the arm of the law.

The Commission believes that in expanding the trade conference procedure it is doing a constructive work. The Chamber of Commerce of the United States at its meeting last May voiced its approval of this work and adopted a resolution favoring the creation of trade groups in every industry to cooperate with the Commission in this way. Many of the practices which may be eliminated are not only unfair but wasteful as well. We all know that the increasing pressure of foreign competition may not be met by lowering American standards of living, but by increasing efficiency of production through elimination of waste. It may well be, therefore, that this procedure will play an important part in enabling American industry to withstand the increasing competition of foreign producers.

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