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WHAT THE INDUSTRY READS FIRST

Round Two: Sohn Explains Locast Settlement, Recusal Reasoning

For **Senate Commerce** Democrats, the second nomination hearing of *Gigi Sohn* to serve as the fifth **FCC** commissioner wasn't about questions over her fitness for the role. Instead, they viewed it as an attempt by Republican colleagues to keep the agency in a 2-2 deadlock and stymie Chair *Jessica Rosenworcel's* ability to move forward on proceedings that may be more controversial.

The hearing largely revolved around Sohn's involvement in **Locast** as a board member of **Sports Fans Coalition NY** as well as her recent voluntary temporary recusal from voting in FCC matters surrounding retransmission consent. She joined the Locast board in March 2020, seven months after **ABC**, **CBS**, **Fox** and **NBC** sued Locast for violating their copyrights by retransmitting their programming. The streaming service argued it qualified for an exemption to those copyright laws due to its nature as a non-profit organization. A judge ruled against Locast in September, and the service [closed its doors](#).

Sohn said the court never instituted a fine for \$32 million against Locast. That number was the figure the networks could have sought in statutory damages. During negotiations between the parties representing Sports Fans Coalition NY and the broadcasters, the Big Four asked for that number to be in the settlement agreement in an effort to scare away any organization or individual that would dream of launching a service with similar intentions to Locast. Parties representing Sports Fans Coalition NY agreed to allow it and paid the \$700,000

Locast had in the bank to the broadcasters.

Sohn said she didn't offer details about the final settlement agreement because of a confidentiality clause she agreed to that barred her from speaking about it to Senate Commerce or talking about it in any written statements. She also noted only select pages from the agreement were leaked online, leading her to believe it was a strategic move by someone to make her look unsavory and prevent her confirmation. Some Republican members on the committee interpreted the confidentiality clause to mean she was prevented from speaking with the media, but there was no reason she should not have been more forthright about the settlement agreement. Their concern with the revised deal is that broadcasters offered to allow Sports Fans Coalition NY to pay a much smaller settlement in exchange for preferential treatment in Commission matters. Sohn was not a party involved in the litigation.

As for the recusal, Sohn said it is narrowly tailored and is specifically tied to a filing made by **Public Knowledge** in a docket seeking changes to the retransmission consent regime. That docket remains open. Later in the hearing, she said the recusal was primarily meant to assuage fears from members of Congress that she would not be able to maintain impartiality in her consideration of retrans issues coming before the FCC because of her involvement in Locast.

"This recusal is really what I would call a purple cow... I was trying to address the concerns of this committee around the Locast litigation and whether I would be biased, and I connected

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that to a petition of rulemaking that I personally signed 12 years ago that addresses some of the same issues raised in the litigation,” she said.

When asked about [letters](#) from **NCTA** and **USTelecom** questioning why she shouldn't be recused from all issues she or Public Knowledge has taken a stance on, Sohn characterized it as an opportunistic attack on her from those who have opposed her nomination.

“They saw an opportunity because I did not mention Locast in that letter even though it's clearly obvious to anybody who has been following the saga of my hopeful confirmation or nomination that's what it was tied to,” she said. “They were being opportunistic and I understand that. But again, their rationale, if you take it to its logical extreme, there's no limiting principle. Nobody with any knowledge who's ever spoken about these issues would ever be qualified to be an FCC commissioner, and that is perverse.”

Sohn noted that there's precedent for such recusals. Former FCC Chair *William Kennard* recused himself from a Fairness Doctrine-related docket when he discovered he had signed a pleading in the docket as an **NAB** intern. She also claimed she has been far more scrutinized than other previous nominees to the Commission, arguing she has been questioned about her ability to be impartial far more than folks like former FCC Chair *Ajit Pai*, who spent two years as an Associate General Counsel at **Verizon** and continued working on issues pertinent to the wireless industry during his tenure.

She consulted the FCC's ethics officials on the matter, who determined that she did not need to make her recusal more broad, as well as Senate Commerce staff and her own advisors before making the decision. When asked if the *Biden Administration* pressured her to recuse herself, Sohn answered in the negative. “Quite the opposite,” she said. “They were very, very much opposed to me recusing at all.”

DISNEY, FOX CHIEFS TALK POWER OF SPORTS

After [telling CNBC](#) that **Disney** is bidding for **NFL** Sunday Ticket, CEO *Bob Chapek* declared on the company's 1Q22 earnings call that Disney wants to build a “sports machine.” But this isn't just about streaming and linear TV. “While multi-platform television and streaming will continue to be the foundation of sports coverage for the immediate future, we believe the opportunity for the Walt Disney Company goes well beyond these channels, extending to sports betting, gaming, and the metaverse,” he said. “In fact, that's what excites us—the opportunity to build a sports machine akin to our franchise flywheel that enables audiences to experience, connect with and become actively engaged with their favorite sporting events, stories, teams and players.” Hours earlier, **Fox Corp.**'s CEO talked up the power of sports betting. “We've already written over 50% more local

The WHO and the WHY

CFX's spotlight on recent new hires & promotions



CHARLIE
ANDREWS
EVP, DISNEY BRANDED TELEVISION

3 THINGS TO KNOW

- Charlie joined Disney Branded Television this week as EVP Live-Action and Alternative Series.

He reports to DBT President Ayo Davis, and actually has her old job. It was a busy week for the group, with Davis and team presenting their upcoming programming at TCA's Winter Tour on Monday.

- He most recently was at Fox Entertainment, where he developed shows such as “Gotham” and “911.” His resume also includes stints at Netflix and NBC Universal Television Studios.
- Charlie serves as Secretary on the Hollywood Radio & Television Society's board. The 75-year-old organization is a community of TV and entertainment professionals who work to connect, educate and provide access to the industry.

sports betting revenue at this point of the fiscal year than we did across all of fiscal '21. We have seen these fiscal trends continuing in 3Q,” CEO *Lachlan Murdoch* said during the company's earnings call. He said Fox Bet is driving engagement, but lamented that it's only in four states thus far. For the local TV stations, Fox Sports wagering revenue is the leading category of growth, pacing up over 100%. All of this comes down to the belief that watching sports and entertainment will become much less of a passive experience. “We realize this is going to be an important part of telling story in that third dimension, that lean-forward, interactive dimension,” said Chapek.

DISNEY DTC DELIVERS

Disney+ subscribers soared 37% YOY in 1Q22 to nearly 130 million worldwide. The news was especially welcome after the service only added 2 million subs in the prior quarter. Sequentially, it's up by about 12 million subs. In the U.S. and Canada, Disney+ subs jumped 18% YOY to 42.9 million. This was the first time Disney broke out sub numbers geographically. **Hulu** didn't see quite the same boost. Total Hulu subs (SVOD and Live+) clocked in at 45.3 million, a 1.5 million gain over 4Q21. **ESPN+** added 4.3 million during the period, to end the quarter with 21.3 million subs. Integrating more owned general entertainment into Disney services, particularly Disney+, will

be a priority going forward. Just today, episodes of “Grownish,” “Blackish” and “The Wonder Years” were added to Disney+. CFO *Christine McCarthy* said Disney expects programming and production expenses for DTC to increase to \$1 billion in 2Q from around \$800 million, while linear should see an increase in spending of around \$500 million. Keep an eye on Disney’s theatrical model, with CEO *Bob Chapek* noting that the success of “Encanto” on Disney+ proved theatricals aren’t the only way to build a Disney franchise. For the linear networks biz, revenues for the quarter were essentially flat to the prior-year quarter at \$7.7 billion, while operating income decreased 13% to \$1.5 billion. Overall, Disney’s revenue rose 34% YOY to \$21.8 billion.

U.S. OKAYS WARNERMEDIA, DISCOVERY MERGER

U.S. regulators gave **WarnerMedia** and **Discovery** the green light to continue with their \$43 billion merger, according to a Wednesday **SEC** filing. Both companies gave the **FTC** and **DOJ** advance notice of the deal as part of the Hart-Scott-Rodino Act, and neither regulatory body decided to sue to block the proposed deal within the specified waiting period. More details will likely be revealed by Discovery’s leadership team during the company’s earnings call on Feb. 24.

MSG’S STREAMING, LINEAR BALANCING ACT

The race for DTC RSN offerings continues, with **MSG Networks** CEO *Andrea Greenberg* declaring the programmer is on track to launch a direct-to-consumer product by the end of 2022. Just what that model will look like remains to be seen. Greenberg noted that MSG is mindful of its traditional linear business partnerships, but it has flexibility in its current affiliate agreements. “We believe that there remains continued value in the [pay TV] bundle, so for us, any DTC offering will take this into consideration,” she said during Wednesday’s FY 2Q22 earnings call. “When we think about the millions of homes in our regions that don’t receive our networks, they are likely to be customers of our affiliates in one way or another, so there also may be partnership opportunities on that front.” MSG’s previous deals with the **NBA** and **NHL**—which are currently in the process of a multi-year renewal—have included DTC rights, according to the CEO. While the non-renewal with **Comcast** put a dent in MSG Networks’ 2Q affiliate revenue, advertising spend was strong, increasing by \$28.3 million in the quarter as compared to the prior year. Affiliate fee revenue decreased \$16.1 million, thanks largely to Comcast dropping the RSN on Oct. 1, resulting in a subscriber decrease of approximately 7%. As sports return to a normal schedule, MSG saw strong per-game advertising sales headlined by sports betting companies being the largest advertising category in 2Q. **Caesars Sportsbook** and **DraftKings** continue to grow their partnerships with MSG Networks, with the RSN looking to integrate mobile gaming into its telecasts. DraftKings is the presenting partner of MSG’s original betting shows, but Caesars is launching a short-form interview series that will air across the network and on MSG’s social media channels. For the quarter, MSG Networks generated \$160 million in revenue, an increase of \$13.7 million from a year ago

COMCAST’S COAX RECYCLING

Cable operators deal with a lot of coax, which can end up creat-

ing a lot of waste. Efforts to reduce coaxial waste over the years have included reel-less coax and recycling the metals in the wires, but not the insulation and jacketing. Now, **Comcast** is targeting the entire cable. It has teamed up with **Echo Environmental Holdings** for a new solution that breaks the wires down into raw, new materials that can be reused and resold. Echo Environmental created a solution last year that creates high-polymer fractions from the insulation and jacketing without hazardous chemicals or incineration, allowing the substances to be reintroduced directly into supply chains as raw materials. Recycled cable components are often reused in a variety of transportation, construction, communication and consumer goods. Echo Environmental, a subsidiary of **Envela**, said it has the capacity to recycle one million pounds of wire waste per month and will recycle about 70% of Comcast’s cable and coax waste each year.

TUBI REPORTS SINGS AVOD’S PRAISES

Tubi has a report full of stats to help convince advertisers that AVODs are where they should be placing their money. AVOD audiences grew twice as fast as SVOD (+16% vs +8% last year), according to Tubi, which projects free streaming’s audience will grow larger than paid streaming’s by mid-2022. Tubi’s audience insight report found the service had 3.6 billion hours streamed last year, a 40% YOY increase in total viewing time, and that 71% of Tubi streamers are unreachable on cable, 56% unreachable on linear TV and 27% unreachable on any other major free streaming platform.

STARLINK LOSES SATELLITES IN SPACE STORM

SpaceX’s satellite broadband service **Starlink** was dealt a blow last week when a geomagnetic storm caused the majority of 49 recently-launched satellites to fall out of orbit. On Feb. 3, Falcon 9 launched the Starlink satellites from Kennedy Space Center. The next day, the Starlink team commanded the satellites to take on a safe-mode to take cover from a geomagnetic storm. “Preliminary analysis show the increased drag at the low altitudes prevented the satellites from leaving safe-mode to begin orbit raising maneuvers, and up to 40 of the satellites will reenter or already have reentered the Earth’s atmosphere,” SpaceX said in a post on its website. “The deorbiting satellites pose zero collision risk with other satellites and by design demise upon atmospheric reentry.”

TCA NOTEBOOK

History Channel will debut its fourth presidential miniseries, “Theodore Roosevelt,” across two nights, beginning on Memorial Day. The five-hour event is executive produced by presidential historian and Pulitzer Prize-winning author *Doris Kearns Goodwin*, **Appian Way**’s *Jennifer Davisson* and *Leonardo DiCaprio* and **RadicalMedia**. History’s third presidential miniseries, “Abraham Lincoln,” debuts on Feb. 20. Both series have high hopes, with “Grant” delivering 2.8 million viewers and “Washington” drawing 2.6 million in 2020. – British TV streaming service **BritBox** used the **TCA** to announce an extension of its partnership with Agatha Christie Limited and Mammoth Screen for three more adaptations of the mystery writer’s books. The service also announced that it has greenlit a sophomore season of “Father Brown” spinoff “Sister Boniface Mysteries.” BritBox has more than 2 million subs.

Think about that for a minute...

It's Personal

Commentary by Steve Effros

I've always known that building infrastructure the way we've done it with cable/broadband was both expensive and time consuming. Unfortunately, there's an alarming lack of appreciation for what it really means to "wire the country" for broadband, but folks are finally getting a little taste of reality. The \$65+ Billion the government has now approved to aid in wiring the rural unserved areas was a powerful reminder. And that's just for the remaining unserved areas! Reality will also set in as to how long it will take: years!

What I didn't appreciate was how long it takes, and how expensive it is to create the high quality products that flow through those wires. I'm not talking about the social network noise or the blogs and emails, they're created by many millions of people, very few of whom get paid for the work they do. I'm talking about the creative material; the movies, the documentaries and the like that fuel Netflix, Hulu, Amazon Prime, Apple Plus, Peacock and all the rest. Each one of those distributors is in the process of shelling out billions, with a "b" to try to get creative products online that will justify their subscription fees. It's not easy, it's not cheap and it's certainly not quick!

I have a personal story to tell here, and while that's not what I usually do in this column, it really does fit the message I am trying to send, and it allows me to ask a favor of you all at the same time.

My son, Jamie, is an actor. He's been very successful at voice acting (narration for documentaries, ads and the like) but has also been very busy as a writer, director and actor. His first film, "Give or Take" will be premiered in New York and LA theaters this week and next. The primary way most folks will get to see this sweet film, however, will be streaming, online. That starts Feb. 22.

Why? Because the process of writing, funding, filming, editing and distributing a film in the current environment is almost impossible for any independent creative folks to do. You almost have to have "big tech" behind you for it to work.

Those billions that Netflix and all the others are spending tend to go to the "establishment," the well known actors and directors, not the up and coming folks. Jamie and his cohorts have been working on creating this film for six years!

The process of creating something like this video product, ironically, is getting more expensive, not less. To be sure the new digital equipment that everyone can now buy makes it easy to shoot video stuff, but if you're going to try to compete for time, recognition, promotion or, dare I say it, money from the major distributors, you have to create a product that has a quality equivalent to the best in the theaters. That's quite a trick. I watched it being done. Believe me, I had no idea how complex and personnel intensive it is.

So I have a favor to ask. "Give or Take" premieres at a theater in NY at the end of this week. It will run for a week, then it starts streaming. It's not going to be a big money maker, but it is, if I say so myself, a film worth seeing. If you're in NY or LA check out where and when. Go see it or stream it. Hopefully some of you from Comcast or Netflix or Hulu or all the other readers of Cablefax involved in the creative side of the business will get a chance to see what the next generation can produce.

It's personal. Check it out. Here's where you can get all the info and see the trailer: linktr.ee/giveortakemovie



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(Steve Effros was President of CATA for 23 years and is now an advisor and consultant to the cable industry. His views do not necessarily reflect the views of Cablefax.)

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