

# Digital Future of the United States: Part V: The Future of Video

## Statement of Philip Rosenthal

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On behalf of the Writers Guild of America, West and  
The Screen Actors Guild

Before the  
Subcommittee on Telecommunications and the Internet  
Of the  
Committee on Energy and Commerce

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Good morning, Chairman Markey, Ranking Member Upton, and Members of the Subcommittee. Thank you for the opportunity to appear before you and to comment on the important topic of the future of television in this digital age.

My name is Philip Rosenthal and I am a writer and an actor in the television industry. I created and was executive producer of the comedy *Everybody Loves Raymond* which ran on CBS from 1996 through 2005. I have worked on a variety of television series since 1989. I am here today on the behalf of the Writers Guild of America, West, the Guild that represents Hollywood's screen and television writers, and the Screen Actors Guild, which represents Hollywood's performers. I am a member of both Guilds and the Directors Guild of America, a triple threat.

The Writers Guild of America, West (WGAW) represents over 7,500 writers in the motion picture, broadcast, cable, and new media industries in both entertainment and news. The Union conducts numerous programs, seminars, and events throughout the world on issues of interest to, and on behalf of writers

Screen Actors Guild (SAG) is the nation's premier labor union representing actors. With twenty-two branches nationwide, SAG represents over 122,000 actors in films, television programs and commercials, industrials and all new media formats. SAG exists to enhance actors' working conditions, compensation and benefits and to be a powerful, united voice on behalf of actors' rights.

Today I would like to highlight three subjects that are extremely relevant to the future of video and are especially concerning to writers and actors.

### The Promise of New Content Distribution Technologies

The first issue that I would like to highlight for the committee is the promise of the Internet and related technology. The emergence of new platforms and delivery systems for content holds great promise for the creative

community and consumers. The viewing public is no longer restrained by the television schedule to decide what and when to watch. Now they can purchase TV shows on iTunes or watch free replays on dozens of websites, allowing them to enjoy the content on their schedule.

However, these non-traditional media platforms and cutting-edge delivery systems are only as good as the creative content they feature. Whether it's shown on a television set, a computer screen or a mobile phone - it's all TV - and writers, actors and other creative talent must receive fair compensation for the content they help create.

### Product Integration

The second issue I would like to discuss is product integration. We are all accustomed to seeing an actor in a movie or television show hold a beverage with its label clear for the entire world to see. This is commonly referred to as product placement. On an artistic level I'm not crazy about this, but find little to complain about as there is little difference to my product, that product being a television show or motion picture, whether you see a label or not. If a character is required by the writer, director or actor to drink a soft drink, the story flows regardless of whether the drink is a Pepsi or a Yoo-Hoo or an unmarked can.

The problem began when production entities started making product placement deals for items that were not initially intended to be a part of a scene. Writers tried to find ways to incorporate the product after the fact, but in certain instances the actors ultimately were required to use props that made them appear awkward. As with all slippery slopes it was bothersome, but the creative community could still take solace in the fact that it was not directly endorsing a product, and that it would please those financing television shows and movies.

As with all principles that are not vehemently protected the slope has begun to disintegrate from beneath our feet. The new policy foisted upon the creative community by production companies and studios is product integration. This is the practice of not only *placing* the product in the scene, but making the product *a part* of the storyline with characters required to talk about the product as well. Thanks to the somewhat specious concerns that the DVR has resulted in no one watching commercials, the studios and production companies have concluded it's best just to turn the television and motion pictures themselves into commercials.

In 2006, product integration occurred more than 4000 times on network primetime television.

On NBC's *The Office*, a main character spent one episode working at a Staples store and Staples products have been integrated into another characters job. An episode of *Desperate Housewives* featured characters discussing the "cool" features of a Nissan Xterra. On *Smallville*, contact lenses helped one crime fighter with her duties, prompting another character to say, "Acuvue to the rescue." Oreo cookies were a major part of the plot in two separate episodes of the family drama *Seventh Heaven*. Here's a clip: (SHOW CLIP). A beautiful story. Maybe if the writers and actors weren't so worried about covering that engagement ring in sugar paste, they could've taken a look at the line: "Will you marry me on our wedding day?", surely a nominee for "Most Terrible Anything."

Product integration in reality programming is even more gratuitous. The poor contestants on *American Idol* must make Ford commercials every week which are then presented on the show as hip videos.' And the Judges can't say anything about it because their mouths are full of Coca-Cola.

Some of these commercial insertions could be dismissed as trivial. Others, however, are a dangerous incursion of commercial interests into a story where the writer would not place it and the viewer does not expect it. This often subtle but always insidious blurring of the line between content and commerce is an issue not just for the creative community, but for the American viewing public as well.

As writers, we believe our creative rights are affected when we are told we must incorporate a commercial product into the story lines we've written. Actors are subjected to forced endorsement when their character must extol the virtues of a product within a television program -- a practice that can seriously impact an actor's ability to get endorsement and commercial deals.

For the public, product integration exploits the emotional connection that viewers have with shows and their characters in order to sell merchandise. It also raises the serious issue of adequate disclosure.

If we are concerned about the effect commercials identified as commercials have on our children how much more insidious is this new practice? Product integration is a level of corporate pressure that impinges upon First Amendment free expression over the airwaves and the long-established protection of viewers against stealth advertising.

With few limits on broadcast advertising practices in place, the Guilds that I represent support a place for artistic discretion in product integration. We believe that writers and actors as creators of television should be consulted about potential product integrations as early as possible in the creative process and have the opportunity to refuse integrations if they believe it will harm the integrity of the program.

To protect viewers, we support disclosure that both adequately reveals product integration and is legible, and held on the screen long enough for viewers to read. A disclosure of such shows could say, "This program contains references to 'Reynolds Wrap' which is a brand of aluminum foil. The network has been paid for this inclusion. The writers and actors have not. Inclusion should not be considered an endorsement by the writers or actors." (Maybe this would end the problem.) We also support a ban on product integration in news.

But right now, individual writers and actors are nearly powerless against the companies who require them to perform these commercial services, and consumers are often unsuspectingly deceived in the process.

#### Independent Content/Production

The problem of product integration is exacerbated by the stranglehold that a few corporations have over the production and distribution of television programming. Due to the unparalleled vertical consolidation caused by the merger of TV broadcast networks with movie studios and cable television networks, the number of distinct voices contributing to mainstream television programming has dwindled to a handful. This means that Americans are seeing more television programming from fewer voices than ever before.

Because of the current consolidation there are not many, if any, places to go and not be pressured into incorporating product integration. Twenty years ago there were 29 dominant entertainment firms sharing 100 billion dollars in annual revenue. Today there are six conglomerates sharing 400 billion. Twenty years ago six firms controlled just a third of the employment of writers in Hollywood. Today they control 80 percent of employment. This control has led to near elimination of the independent television production community.

Gone are the independent production companies that brought us such beloved shows as *Gunsmoke*, *All in the Family*, *M\*A\*S\*H\**, *the Waltons*, *the Cosby Show*, and *The Wonder Years*, to name but a few.

During the 1992-1993 television season (just before the FCC's Financial/Syndication rules were repealed), only 33% of the network primetime lineup was comprised of network-produced programming. The rest was independently produced by companies not owned by the networks. By contrast, more than 75% of the current 2006-2007 network primetime lineup will be dominated by network-produced programming. And many of the independently produced content is reality programming. The total number of independent producers supplying primetime programming to the networks has shriveled from twenty-two in 1992 to two independent producers today. The remaining two, Warner Bros. and Sony Pictures TV, are affiliates of major

motion picture studios. Several companies have exploited this opportunity. The message is becoming clear, either you play ball or someone else will.

One remedy to this concentration of ownership is to enable access for independent program sources. Consequently, we propose a requirement that at least 25% of non-news and non-reality programming should come from independent sources not owned by one of the four broadcast networks

Our kids are watching. We are watching. Would we have wanted our memories of *Casablanca* to be Bogart saying to Ingrid Bergman as they say goodbye, "You're part of his life, the thing that keeps him going. Now get on that plane and enjoy United's non-stop, three-class service to Paris with seats that recline to a full 180 degrees."

Thank you for this opportunity to testify.