TV WARS

HOW THE TELECOMMUNICATIONS TRUST IS SHAPING THE FUTURE OF THE INTERNET... AND INDIE FILM. BY DAVID ROSEN

The TV wars are underway and their outcome will do much to determine the future of non-theatrical film distribution and the Internet.

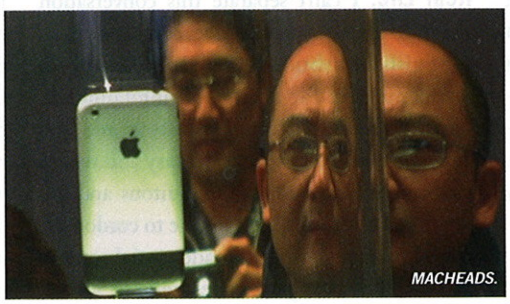
Traditionally, TV has been organized as discreet channels brought to a home viewer via an over-the-air broadcast, cable or satellite service. For more than a half-century, Americans learned how to twist a dial, handle a remote and pick programs from a branded network. Then they sat back, watched a show and — in 1960s *Mad Men* highball-in-hand style — blissed out.

During the past half-century, television became a multibillion-dollar industry dominated by TV networks, cable companies, Hollywood studios and huge advertising budgets. But like the sea change brought to the music industry, the traditional model of TV is beginning to be challenged by new Internet-based ones. This challenge is real: cable and satellite subscription rates are falling, whether due to demographics, the economy or the debated practice of "cord-cutting," by which viewers cancel their cable subscriptions in favor of downloads and Netflix streaming.

As the Internet becomes more and more important to both television delivery and film distribution, questions emerge. How will federal regulation affect it? And will the Internet be regulated in such a way as to allow for meaningful — and accessible — opportunities for independents, replacing or even growing now-declining DVD revenue? As long-time indie distributor Richard Lorber warns, "Home video DVD sales industry-wide have been dropping by about 15 percent each of the past few years." Ira Deutchman, managing partner at distributor Emerging Pictures, echoes, "We in the indie market are pretty much in the crapper right now in terms of the collapse of the DVD market. We're in the midst of a period with big questions but few answers."

Internet TV

The new Web-based video environment is often referred to as VOD (video-on-demand) or, even better, "no channel" TV. Traditional television was conceived as "always-on TV" — networks delivering all channels to all viewers all the time. With the new Web TV environment of streaming digital video, TV is becoming customized to each individual subscriber, ultimately offering a one-to-one signal and specialized on-demand options — thus, "no channel."



MACHEADS.

There are two competing approaches to "no channel" Internet video distribution — Internet Protocol Television (IPTV) and Over-the-Top TV (OTT). And, to make the issue more confusing, there is an effort underway to merge both approaches into a "hybrid" system.

IPTV is not "Internet television," but rather managed video services delivered in a secure manner over a closed or private Internet Service Provider (ISP) network. The telephone companies introduced it in the mid-1990s as a way to deliver TV shows, movies and other "broadband" content and, thus, compete with the cable operators. Major telcos such as AT&T and Verizon offer IPTV video packages (along with local and long-distance telephony and Internet access) as approved programming in a "walled garden" model not unlike the approach of conventional TV and cable channels.

OTT is "Internet television" and refers to an open or unmanaged video data stream that rides "over the top" of an ISP's network. Within the Internet's infinite "wilderness," a TV viewer with access to the Web has a variety of options. Assuming one has the right TV-Internet converter box, a viewer can access Netflix's archive, Apple TV's walled garden, Amazon Prime's collection and Google's Web TV supermarket. And in addition to these dominant content "gated communities," OTT enables users to surf the Web to discover a nearly infinite cornucopia of programming options, including those of indie makers selling everything from instructional videos to porn to docs. Initially, OTT program streams were delivered to the PC or another device using peer-to-peer technology, and they suffered in terms of video quality, accessibility, availability and reliability. However, as broadband telecom performance improves, these problems are being overcome. Additionally, it's easier now to connect or stream from your computer to your TV — or to allow a set-top box (Google TV, Apple TV, Roku) to do it for you.

Internet video is one of the battlefields in which the duopoly that defines the telecommunications trust — the telephone companies and the cable companies — is fighting to determine the future of communications in America. The underlying challenge represented by the OTT model is that it is delivered "over" an ISP's broadband service without a formal agreement over revenue splits between the bandwidth-providing telecommunications trust and those companies (such as Netflix) actually selling the video being served. How the question of these "splits" is resolved will determine the future of movie distribution to the consumer. Equally critical, it will shape the future of the Internet and net neutrality. A lot is at stake.

PHOTO COURTESY OF FILMDIY

Assessing the game

As an indie filmmaker, you play a role comparable to a mosquito on the rump of an elephant. You can either be swatted off with a tail swipe or sting the beast in a very vulnerable spot.

Some indie makers envision Internet video distribution as the new pot of gold. Sadly, their optimism is premature. Old hands such as Lorber and Deutchman, who both come from traditional theatrical distribution, are more cautious. As Lorber admits, "Digital TV is dramatically reshuffling release windows and reorganizing revenue streams." Deutchman elaborates, "The real challenge is that so little money is left for the filmmakers after the aggregators and all the middlemen take their shares. New models need to be developed to leave more money in the hands of filmmakers."

The experiences of several indie film producers, aggregators and distributors suggest some of the options available to indie makers as the TV wars play out.

Kobi Shely is co-founder of DocMovies and filmDIY.com and is hip to the vicissitudes of Internet distribution. He got into Internet video distribution the old-fashioned way: to promote his own film. Three years ago he was not able to get a theatrical release for his documentary, *MacHEADS*. "We couldn't get the movie to theatrical or TV screenings at first, but through our website we generated a substantial buzz." He then promoted it through iTunes and Amazon VOD, becoming, in Shely's words, "the most popular movie on both platforms." Releases followed on Hulu and other ad streaming services. "Finally," he adds, "CNBC bought the movie for TV distribution."

Looking back, Shely says, "If I had had my own VOD I would have released *MacHEADS* as a rental or download-to-own from my own website. The reason is quite simple: iTunes didn't do any marketing job. In fact, they hid the movie because it was too fanatical for their taste. However, *MacHEADS* became their number one selling movie for months." He notes that iTunes took 30 percent of sales, and an aggregator another 15 percent, while his own digital distributor operation, filmDIY, gives 70 percent to filmmakers and their income is available immediately through PayPal. "Filmmakers can do a lot better with a platform that can reward them instantly instead of relying on distributors' reports coming only once every quarter. Back then in 2008 it was just impossible. My goal with filmDIY is to let filmmakers, not third-party agents, take charge of their own marketing outcome so they can earn more. That is not to say that they shouldn't use other platforms like iTunes, but they should think about those platforms as their last distribution window."

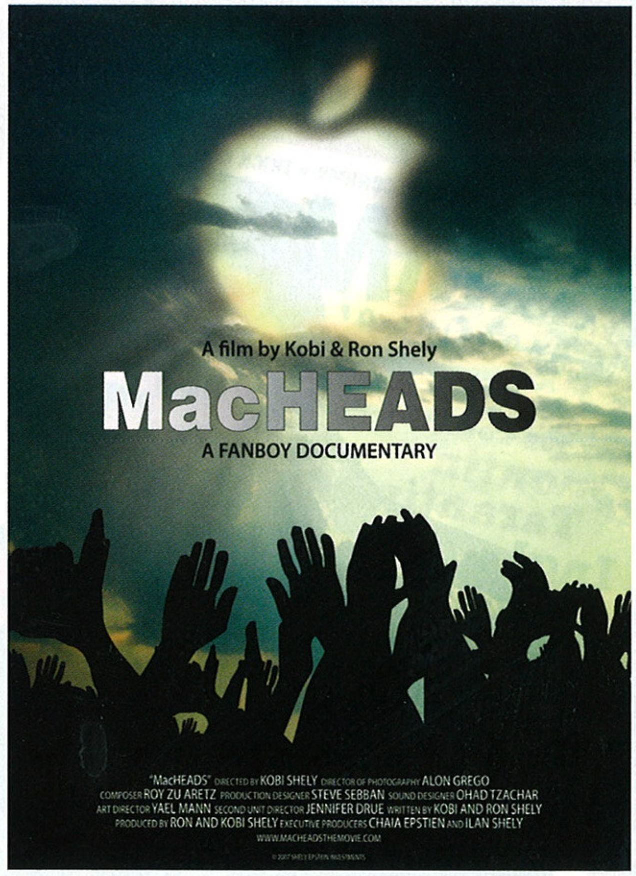


PHOTO COURTESY OF FILMDIY

Joe Hernandez runs VR4 Media Group, a Fort Lauderdale-based production company, and is taking a different approach to Web video. He is developing a hybrid IPTV/OTT network of interactive HDTV channels to run over a CDN (content distribution network). His service, which is planned for launch this summer in partnership with a major provider, will combine a content aggregation model targeted to indie makers with the company's own in-house productions. He sees it as "an alternative vehicle — an 'indie spirit venue' — to give makers access to the viewing public. We will utilize PPV [pay-per-view] and VOD opportunities to garner revenue for indies. Our initial focus is on wellness and lifestyle topics and the Spanish-speaking community."

IndiePlaya, recently founded by Jeff Brandstetter, is another new site trying to make a go of it by competing with the big guns (Netflix, Amazon) in the OTT space. It is specifically targeting niche filmmakers, offering them a

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service where they can stream their films, offer them for rental or download or even sell them on DVD. It offers non-exclusive deals, with no-minimum contract term and no upfront or subscription fees. It is a pay-as-you-go solution, taking a small fee (from 50¢ to $1.29) per transaction. It is employing a service-fee model because, as Brandstetter says, "our philosophy is that we provide no more value to the filmmaker charging $29.99 for a film than we are if we charge $9.99." He stresses, "The filmmaker is in control."

Lorber works within a more traditional structure. As with the recent *Le Quattro Volte*, his Lorber Films buys U.S. distribution rights and then releases his films in theaters and in ancillary markets. But he too is looking to the Internet — first as a marketing tool and second as a new revenue stream. He spelled this out: "We run in many ways a hybrid distribution company. We use new means to deliver traditional products and traditional means to introduce new media. Our thesis is: 'bytes to sell widgets' (i.e., Internet strategies to sell DVDs) and then 'bytes to sell bytes' (i.e., Internet to sell streams). We don't see [the Internet] as a source of strong revenue; it doesn't yet replace theatrical and/or home video. And we are not 'aggregators' looking to acquire product for digital distribution [only]. Rather, we seek deals in all 'windows' that leverage our films' revenue possibilities. We've made output deals with Netflix but are also looking to transaction VOD and EST [electronic sell-through] with Google, Amazon, VUDU and others." But old habits die hard. "Look," he says, "we still mail out a catalog profiling our 700 titles because people like looking at a catalog. Big brands such as J. Crew do the same. But we also have a strong online presence." Still, nothing beats a great *New York Times* Arts section review; such a rave scored for Lorber Films the highest art-house per-screen average for *Le Quattro Volte*'s opening weekend.

Lorber says while the industry's Internet sales, including VOD, are growing, "the increase did not make up for most companies' DVD losses. However, in time we believe that PPV and VOD as well as revenue from online subscription services might make up the difference."

These are but four examples that, hopefully, illuminate different approaches to Internet video distribution. Do not be mistaken, though. Like most indies, these players are but mosquitoes riding on a very big beast, the telecom trust, that is marching out to battle both in the marketplace and on Capitol Hill.

Playing the game

In May, AT&T will introduce a new pricing model on OTT Internet video transport. It plans to impose a surcharge on excessive video data carriage; according to AT&T, this new pricing plan will affect less than 2 percent of its customers. Subscribers who exceed their monthly allowance will pay an additional $10 for each 50GB over the cap. For some power users, Netflix is about to cost more than $8.99/month.

However, once this new pricing model, known as "data caps," is established, the relatively high bar AT&T is setting today will, I believe, gradually but systematically be lowered and, in time, disappear. AT&T and the other telcos do not want to be known as mere public utilities, hauling digital 0's and 1's. They've learned that the real money comes when they secure multiple charges for the same service: charge for voice, both local and long-distance; charge for Internet; charge for IPTV video; and charge for OTT video such as Netflix.

A bit of background. The Internet and Web consists of four interlinked components: (i) the phone or cable company that provides the "last mile" facilitating the consumer's broadband connectivity through the residential telephone company's digital subscriber line (DSL) or cable modem fiber line; (ii) the ISP that connects the customer to the PoP (point-of-presence) on the Internet and World Wide Web; (iii) the "middle mile" provider that links the customer to wider networks; and (iv) the provider of long-distance, high-speed connections to the network "backbone."

The system's choke hold is the ISP, and the number of ISPs is shrinking, reflecting the increasing power of the telecom trust over American communications. In 2008 Jupiter Research estimated that the top four ISPs — AT&T, Comcast, Time Warner and Verizon — controlled more than half (56.2 percent) of subscribers. According to the U.S. Census Bureau, between 2000 and 2005, the number of ISPs shrank by almost 75 percent, from 9,335 to 2,437; no current estimate of total ISPs is available from either the FCC or Census Bureau.

AT&T's new pricing model will likely lead to the imposition of a two-tier pricing model: (i) the "basic" Web, protected by traditional net neutrality (all data is equal) and (ii) the "premium" Web, with higher pricing for video transport over ISP lines (to protect the interests of the telecom trust). Net neutrality will likely persist among "basic" Web service but disappear from "premium" services — as it is in the process of doing among wireless services.

How this issue is resolved will determine the future of the Internet — and, by extension, affordable Internet distribution options for independent filmmakers. To keep up with how this battle is playing out in Washington, D.C. and on other fronts, check out freepress.net, savethenews.org and publicknowledge.org. ▼