

in specifically addressing themselves to whether subscription television should be limited to programs of a box office nature, define such programs as follows (Petitioners' Comments, p. 64) :

"Generally defined, a box office attraction embraces any *type* of program which is not seen on a regular or frequent basis on conventional television and for which the public would ordinarily pay an admission charge." (Emphasis added.)

We propose, with this distinction in mind, to ask whether the programs in fact presented to the public during the Hartford trial¹ constituted, by any reasonable test, a beneficial supplement to the programming offered by free television.

A. Feature-Length Motion Pictures

Petitioners ask the Commission to accept the proposition that a programming schedule in which 86% of the time is devoted to the broadcast of feature-length motion pictures—each film, on the average, broadcast more than three and one-half times—is a beneficial supplement to the program choices available on free television. No reference is made by Petitioners to the fact that feature films were then and are now abundantly available on free television and a reader of their Comments, unmindful of free television programming, might well believe that the nation's television stations do not offer high quality feature films to the public.

We have made no calculation of the number of feature films which were in fact presented on free television in Hartford during the trial period but the three nationwide commercial networks offered to their affiliates in Hartford a total of 160 feature films during that time.²

It may therefore, be useful, since Petitioners' claims rest almost entirely upon the nature of the feature film product which they sold to subscribers, to analyze their product in some detail.

Of 432 feature films presented during the trial period only one, an obscure British film, is listed by Petitioners under "First Run Films". An additional 116 are listed by Petitioners under "First Subsequent Run Films (Shown several weeks after first theater run)". These 117 films, as the listing indicates, were presented to subscribers during the period of their release in motion picture theaters. The remaining 315 films, however, comprising 297 films characterized by Petitioners as "Older Feature Films (Over 6 Months in Theater Release)" and 18 films characterized as "Foreign-Language Films", and representing 73% of the total number of feature films presented, included films released to theaters as early as 1940 and, on average, were first released in theaters in 1960.³

If we are to rely on the information disclosed by Hartford, and not on mere speculation, the question presented is a concrete one. In its consideration of the subject, the Commission has consistently assumed that the feature films to be offered by subscription television would be so-called "first run feature films", noting that "first run feature films have not, with rare exceptions, been made available for television broadcasting". (*First Report*, para. 50). The Commission observed that such films would not be likely to become available in the foreseeable future for free broadcasting and concluded: "Thus, to the extent that first run film might become a substantial feature of on-the-air transmissions they would provide a kind of entertainment not now generally available to the television audience."

Even if we treat "First Subsequent Run Films" as fully satisfying the Commission's expectations we would still find that only 27% of the films presented to the Hartford subscribers did so.

In this respect it is worth noting that the Hartford trial confirms what we in television already know—that the public will view high-quality films even though they are not shown on television for some time after theatrical release. Petitioners who originally placed great reliance on the ability of subscription television to bring to the American public feature films while the negatives were not yet dry, are silent about the fact that, of those films shown in Hartford obtaining a cumulative subscriber viewing percentage of over 30%, 43 were listed in Petitioners' Exhibit 1 as "First Subsequent Run Films (Shown several weeks after first theater run)" while 47 were "Older Feature Films (Over 6 months in theater

¹ Since Petitioners' Comments include detailed data only as to the first 104 weeks of the trial we have confined our analysis to the programming offered to Hartford subscribers during that period. Programming references to the "trial period" herein are to such 104-week period. We are not aware of any contention that programming offered during the third year of the trial differed in any material respect.

² Source: Broadcast Information Bureau.

³ *Id.*