Are the corporate suits ruining TV?

Network control and media consolidation are wringing the creativity out of entertainment.

By Marshall Herskovitz
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After 20 years and five series, including "thirtysomething" and "My So-Called Life," my partner, Ed Zwick, and I have -- for the time being at least -- stopped producing television programs.

It's not personal. I count as friends many of the executives who work at the networks. We had a deal at one network, ABC, for all of those 20 years, and, in spite of many regime changes, we were always treated with great respect. This is not about how we were treated but rather something much larger: How a confluence of government policy and corporate strategy is literally poisoning the TV business.

It started in 1995 when the Federal Communications Commission abolished its long-standing "finsyn" rules (that's financial interest and syndication, for those unfamiliar with the term), allowing networks for the first time to own the programs they broadcast. Before that, under classic antitrust definitions, the networks had been confined to the role of broadcaster, paying a license fee to production companies for the right to broadcast programs just two times. The production companies owned all subsequent rights. In the mid-1990s there were 40 independent production companies making television shows. If a particular network didn't like a show -- as famously happened with "The Cosby Show" many years ago -- the production company could take it to another network.

But not after 1995. The abolition of the old rules set in motion an ineluctable process, one that has negatively affected every creative person I know in television. Today there are zero independent production companies making scripted television. They were all forced out of business by the networks' insistence -- following the FCC's fin-syn ruling -- on owning part or all of every program they broadcast.

The most profound change resulting from that ruling is the way networks go about the business of creating programming. Networks today exert a level of creative control unprecedented in the history of the medium. The stories my friends tell me would make me laugh if the situation weren't so self-defeating. Network executives routinely tell producers to change the color of the walls on sets; routinely decide on the proper wardrobe for actors; routinely have "tone" meetings with directors on upcoming pilots; routinely give notes on every page of a script. (When we did "thirtysomething" in the late '80s, we never received network notes.) And by the way, they have every right to do these things. As owners, they have a responsibility to satisfy themselves that their product is competitive and successful.

The problem, of course, is that these executives often have little background or qualification for making creative decisions. They are guided by market research and -- they want to believe -- a learned intuition about
What the public wants. This season’s new shows have been a good indicator of how successful that strategy is: Even before the current writer’s strike, virtually every new show was struggling.

But the changes have gone further. Over the last few years -- during a time when network profits have been increasing -- salaries and profit participation for the writer-producers who create the shows have been slashed. Fees were cut by one-third to one-half, and profit participation in many cases was effectively eliminated. It’s a curious (and peculiarly American) fact that many of the great artistic talents in the history of film and TV also have been entrepreneurs: Chaplin, Capra, Serling, Pakula, Lucas, Spielberg -- the list goes on. For reasons that are probably more psychological than anything else, creative and financial independence seem to go hand in hand.

Yet what we have now is a complete absence of either in the world of television. Your TV may receive 200 channels, but virtually every one of them is owned by one of six big companies -- NBC Universal, Disney, Time Warner, Viacom/Paramount, Sony and News Corp. And each channel has a brand identity dictated by those companies to which each program must adhere. Producers are now employees, not creators. If you were foolish enough to independently produce a TV pilot today, when you took it to the network, you would give up at least half of your ownership and all of your control, even though the network wouldn't pay any more than it used to pay as that old license fee.

Is there significance to this, outside the narrow concerns of Hollywood and the lost earning power of producers? I think so. Besides any esoteric discussion of the value of storytelling in a culture -- which I believe is immense -- this trend is part of a larger problem caused by the FCC in all areas of media. The relaxation of the Fairness Doctrine (which required the networks to present the news in a balanced way), the lapse of any oversight of networks’ civic responsibility, the commoditization of network news -- these are all parts of a troubling move toward the aggregation of control of information in an ever-shrinking number of entities.

Our founding fathers could not have foreseen that freedom of the press might eventually be threatened just as much by media consolidation as by government. And if you doubt that’s happening, just watch Bill Moyers’ recent expose on the networks’ passive collusion with government in selling the Iraq war.

Because the business of television has become an exclusive club, closed to new members, some producers are turning to the Internet to have a voice. And, of course, the Big Six are doing everything they can to own and control that as well. Already, it’s impossible to make an "overall deal" - - the time-honored arrangement in which producers are kept on retainer to develop shows for a particular network -- without agreeing to be exclusive to the network on the Internet as well as television. The logic of this defies all laws of economics; producers pledge fealty to networks because they (the producers) don’t have the millions it takes to shoot, distribute and broadcast their own programs on television. Producing for the Internet, on the other hand, costs as little as $30,000 an hour, and "broadcasting" costs much less. Virtually anyone can do it.

So what value do the networks provide that makes it worthwhile for producers to agree to that exclusivity? You tell me, because I can’t figure it out. Less polite folks might call it extortion.

Zwick and I have joined that migration to the Internet. We’ve created a project called "quarterlife" -- a series and a social network -- that we own and control, and we had to give up our TV deal in order to do it. The series will premiere Sunday on MySpace and then on our site, quarterlife.com, the next night. We’ve worked very hard, and spent a great deal of our own money, to make it as good as anything we’ve ever done on television. And we’ve gotten calls from every guild and virtually every producer we know, all of whom are curious to see if this little experiment can succeed. Because if it does, it will prove that there’s a way to

independently produce, finance and distribute ambitious content on the Internet. And if we can do it, others can do it. To be sure, there's every possibility this series will end up on television after it's established on the Internet, but only if we still own it and control it creatively, which would make it unique in today's landscape.

The problems of network ownership and creative control are not directly at issue in the current strike by the Writers Guild of America. What's at stake is how writers will be compensated, given the control everyone assumes the big companies will exert over new methods of delivery.

But make no mistake -- deep resentment in the entire creative community over the absolute power now wielded by these companies is the fuel that feeds the strike. The public is also fed up, turning out in droves and sending millions of e-mails whenever the FCC holds hearings on the subject. And yet the large corporations move forward, seemingly unaware that they are strangling the creative engine that might save them.

Within five years there won't be a significant distinction between TV and broadband. As of now, the Internet is just too big for any company to get its hands around, and that's good for all of us. If the large companies -- and the FCC -- cannot come to comprehend the paradox that too much control is destructive to their own ends, they may bring about their own downfall, losing their audience and their workers at the same time. Like carriage makers at the dawn of the auto age.

Marshall Herskovitz is a TV and movie producer whose credits include "Blood Diamond," "thirtysomething" and the upcoming "quarterlife." He is president of the Producers Guild of America (which is not affiliated with the Alliance of Motion Picture & Television Producers, currently being struck by the Writers Guild of America).