



February 14, 2024

Christine Park-Gonzalez, Director
Anna Y. Park, Regional Attorney
U.S. Equal Employment Opportunity Commission
Los Angeles District Office
Roybal Federal Building
255 East Temple St., 4th Floor
Los Angeles, CA 90012

Investigation Request: Unlawful Racial Discrimination by The Walt Disney Company

Dear Director and Regional Attorney:

America First Legal Foundation (“AFL”) is a national, nonprofit organization working to protect the rule of law, due process, and equal protection for all Americans. We write pursuant to 29 C.F.R. § 1601.6(a), as an “organization ... request[ing] the issuance of a Commissioner charge for an inquiry into individual or systemic discrimination,” related to the illegal employment practices of The Walt Disney Company and its subsidiaries (“Disney”) in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2.

An unlawful employment practice is established when the evidence demonstrates that race, color, religion, sex, or national origin is a motivating factor for any employment practice. 42 U.S.C. § 2000e-2(m). Here, Disney admits and affirms that it knowingly and intentionally uses race, color, sex, or national origin as motivating factors in its employment practices.

Disney is a publicly traded corporation incorporated under the laws of the State of Delaware, with its principal executive offices located at 500 South Buena Vista Street Burbank, California, 91521.¹ Disney has affirmatively represented to its shareholders, investors, and the Securities and Exchange Commission that it is and will continue to make employment decisions based on individuals’ race, color, national origin, or sex. Disney maintains multiple programs that facilitate the limiting, segregating, or classifying of employees or applicants for employment and new business in ways that would deprive or tend to deprive, white, male, or

¹ The Walt Disney Company, Form 10-K (Nov. 21, 2023), <https://bit.ly/3UF9Dau>.

heterosexual individuals of employment, training, or promotions because of their race, color, sex, or national origin.

Disney's "Reimagine Tomorrow" website showcases a program of unlawful quotas, rebranded, in Orwellian disinformation fashion, as "diversity and inclusion policies" to amplify "underrepresented voices and untold stories as well as championing the importance of accurate representation in media and entertainment."² The stated pretext for the company's unlawful conduct is "to broaden access and diversity in our industry by adopting inclusion standards across Disney General Entertainment and live-action Studio productions by the end of 2022, with the goal of advancing representation in front of and behind the camera, in marketing and more."³ Disney General Entertainment encompasses essentially all content produced across Disney, so the unlawful requirements listed below in Disney's "Inclusion Standards" apply companywide.⁴

Disney lists different actions its productions can take to satisfy the "Inclusion Standards." Disney productions can follow illegal quotas for its productions, ranging from incorporating characters and stories that highlight "Underrepresented Groups" to unlawfully requiring that a production have "50% or more of regular and recurring actors come from Underrepresented Groups."⁵ The company's unlawful quotas are also applied behind the camera, where Disney requires three of the following criteria in Disney's Creative Leadership:

- "50% or more of producer & above on writing staff and 50% or more of Co-Producer & below on writing staff come from Underrepresented Groups;"⁶
- "50% or more of episodic directors come from Underrepresented Groups;"
- "Casting Director is from an Underrepresented Group or has not previously worked on a DGE show in this role;"

² *Reimagine Tomorrow*, DISNEY (last visited Feb. 12, 2024), <https://bit.ly/49w24ai>.

³ Our Intentions, *Reimagine Tomorrow*, DISNEY (last visited Feb. 12, 2024), <https://bit.ly/489Pqww>.

⁴ *Id.* (clarifying that Disney General Entertainment refers to all "of The Walt Disney Company's entertainment and news properties across a portfolio of television brands and businesses, including ABC Entertainment, ABC Signature, ABC News, Freeform, ONYX Collective, Twentieth Television Studios, FX Networks and FX Productions, Hulu Originals, Disney Branded Television (including the Disney Channel networks), and National Geographic. Disney Studios Content is the collection of The Walt Disney Company's entertainment properties creating content across a portfolio of brands; the live-action brands include Disney Live Action, Marvel Studios, Lucasfilm, 20th Century Studios, and Searchlight Pictures").

⁵ Disney General Entertainment Content: Inclusion Standards, *Reimagine Tomorrow*, DISNEY (last visited Feb. 12, 2024), <https://bit.ly/48f5op1>; see Our Intentions, *Reimagine Tomorrow*, DISNEY (last visited Feb. 12, 2024) (Disney does not define "Underrepresented Groups" in the employment context, but in context of charitable giving in the footnote at the bottom of the webpage, Disney admits that it provides grants towards "underrepresented and protected communities including Asian American, Pacific Islander, Black, Hispanic, Native American/Indigenous, LGBTQ, People with Disabilities, Veterans & Women").

⁶ Disney General Entertainment Content: Inclusion Standards, *Reimagine Tomorrow*, DISNEY (last visited Feb. 12, 2024).

- “Meaningful representation of Underrepresented Groups in senior creative leadership;”
- “Promotion of a member of an Underrepresented Group into a role that constitutes career progression for at least one member of the writing staff;”
- “Substantial year-over-year increase in members of Underrepresented Groups as directors and in writing staff.”

Disney maintains similar requirements for its “Below-the-Line” positions, requiring that at least two of the below five standards “must be met,” each of which are patently unlawful race and sex-based quotas:

- “50% or more of line producer and/or production department heads (ie [sic]: DP, composer, costume designer, editor, production designer, music supervisor...) come from Underrepresented Groups;”⁷
- “50% or more of other key roles (any mid-level crew and technical positions) come from Underrepresented Groups;”
- “50% or more of the overall crew or project staff come from Underrepresented Groups;”
- “Promotion of member of Underrepresented Group into a role that constitutes career progression for at least one crew/team member;”
- “Hiring a Line Producer and/or Production Department Head who has not been previously employed in that role on a DGE Show.”

Disney also requires productions to satisfy three of the following requirements to facilitate unlawful hiring, promotion, and development practices:

- “Paid employment opportunities such as apprenticeships, internships, expert advisers to facilitate union eligibility for members of Underrepresented Groups;”⁸
- “Training opportunities and/or skills development (craft, creative and business), including one-off, work-experience opportunities for students from underrepresented groups (to be coordinated through Current Executive & Corporate Social Responsibility);”
- “‘First job’ for member of Underrepresented Group in a role that constitutes career progression from prior;”
- “50% or more of outside vendors or contractors employed by production provide industry access or opportunities to members of Underrepresented Groups;”
- “Producer or Department Head participation in DGE Talent Development Initiative, guild or other approved mentorship program;”
- “Producer develops/executes a show-specific D&I program subject to Network approval.”

⁷ *Id.*

⁸ *Id.*

A leaked Frequently Asked Questions (“FAQ”) document on Disney’s “Inclusion Standards” describes the company’s intention “to increase training and development opportunities for members of underrepresented groups” in a racially exclusionary manner.⁹ The FAQ states that the “expectation is the Inclusion Standards will serve as a catalyst for those involved in the creative and hiring processes to become even more engaged in inclusive hiring and employment practices” and to “address” barriers “to equal employment opportunities [] for underrepresented groups.” Disney admits that an example of an “inclusive hiring and employment practice” is “improving access to training and development opportunities for members of underrepresented groups.”¹⁰ The company thus admits to a pattern and practice violation of 42 U.S.C. § 2000e-2(d).

Disney admits engaging in unlawful race and sex-based workforce balancing. It claims:

- From FY 2020 to FY 2021, the percentage of “people of color” working as directors for Disney rose by 6% – the percentage of white directors dropped by 6%.¹¹
- The percentage of Disney directors who are women also increased by 2% from FY 2020 to FY 2021 – the percentage of male directors dropped by 2%.¹²
- Over the same period, the percentage of people of color as Disney series regulars and leads grew 4% – the white percentage dropped 4%.¹³
- The percentage of people of color and women producers also each increased by 3% – white and male producers each dropped by 3%.¹⁴
- The percentage of writers who are people of color grew by 3%, as the white percentage dropped by 3%.¹⁵
- From FY 2021 to FY 2022 – the percentage of white Disney workforce companywide dropped by 3.6%.¹⁶

Disney even maintains a program that grants recipients \$25,000 to financially support “Underrepresented Directors.”¹⁷ The program unlawfully only awards the

⁹ Elon Musk (@elonmusk) X (Feb. 8, 2024, 2:44 AM), <https://bit.ly/493vuN3>.

¹⁰ *Id.*

¹¹ Vision, *Reimagine Tomorrow*, DISNEY (last visited Feb. 12, 2024), <https://bit.ly/49zE2eC> (choose “Representation in Our Content,” then choose “Directors”).

¹² *Id.*

¹³ *Id.* (choose “View our data” under “Representation in Our Content,” then choose “Series Regular / Leads”).

¹⁴ *Id.* (choose “View our data” under “Representation in Our Content,” then choose “Producers”).

¹⁵ *Id.* (choose “View our data” under “Representation in Our Content,” then choose “Writers”).

¹⁶ *Id.* (choose “View our data” under “Representation in Our Workforce”).

¹⁷ *Sundance Institute and The Walt Disney Studios Launch Project Advancement and Completion Fund to Support Underrepresented Directors, Impact*, DISNEY (last visited Feb. 13, 2024), <https://bit.ly/3wfnIwl>; see also *2024 Sundance Institute | The Walt Disney Company Project Advancement and Completion Fund*, SUNDANCE INSTITUTE (last visited Feb. 13, 2024),

grants to “women, AAPI, Black, Indigenous/Native, Latinx, LGBTQIA+, disability-identifying, and religiously marginalized individuals.”

It is patently unlawful to consider racial, ethnic, and sex-based characteristics in hiring, training, compensation, and promotion. *See* 42 U.S.C. §§ 2000e-2(a), (d). Decades of case law have held that policies that impose racial balancing or quotas in employment, training, or recruitment, such as those presented on Disney’s websites, are prohibited. Indeed, the Supreme Court recently clarified that “[a] benefit provided to some ... but not to others necessarily advantages the former group at the expense of the latter.”

Based on its own public admissions, it appears that Disney is knowingly and intentionally violating federal civil rights laws, including 42 U.S.C. §§ 2000e-2(a) and (d). Disney’s employment practices, as described herein, are unlawful. They are also profoundly harmful. Discrimination based on immutable characteristics such as race, color, national origin, or sex “generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely to ever be undone.”¹⁸ More broadly, the discrimination highlighted in this case necessarily foments contention and resentment; it is “odious and destructive.”¹⁹ It truly “is a sordid business, this divvying us up” by race or sex.²⁰ A Commissioner charge should be issued here.

Thank you in advance for your cooperation.

Sincerely,

/s/ Reed D. Rubinstein
America First Legal Foundation

Cc: The Honorable Charlotte A. Burrows, Commission Chair
The Honorable Jocelyn Samuels, Commission Vice Chair
The Honorable Keith E. Sonderling, Commissioner
The Honorable Andrea R. Lucas, Commissioner
The Honorable Kalpana Kotagal, Commissioner

<https://bit.ly/3uuBeQZ> (listing these race and sex-based restrictions under the application’s “Eligibility Criteria”).

¹⁸ *Brown v. Bd. of Education*, 347 U.S. 484, 494 (1954).

¹⁹ *Texas v. Johnson*, 491 U.S. 397, 418 (1989).

²⁰ *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 511 (2006) (Roberts, C.J., concurring in part).

APPENDIX

Disney General Entertainment Content **INCLUSION STANDARDS**

<p>STANDARD A</p> <p>ON SCREEN REPRESENTATION</p> <p>At least THREE of the following FIVE areas need to be met to fulfill Standard A:</p>	<ul style="list-style-type: none"> •A1 Characters: 50% or more of regular and recurring written characters come from Underrepresented Groups •A2 Actors: 50% or more of regular and recurring actors come from Underrepresented Groups •A3 Secondary Characters: Meaningful inclusion of Underrepresented Groups as secondary or more minor on-screen individuals, including background actors •A4 Series Premise: Meaningful integration of Underrepresented Groups in overall themes and narratives •A5 Episodic Storytelling: Ongoing meaningful integration of Underrepresented Groups in episodic themes and narratives
<p>STANDARD B</p> <p>CREATIVE LEADERSHIP</p> <p>At least THREE of the following SIX areas need to be met to fulfill Standard B:</p>	<ul style="list-style-type: none"> •B1 50% or more of producer & above on writing staff and 50% or more of Co-Producer & below on writing staff come from Underrepresented Groups •B2 50% or more of episodic directors come from Underrepresented Groups •B3 Casting Director is from an Underrepresented Group or has not previously worked on a DGE show in this role •B4 Meaningful representation of Underrepresented Groups in senior creative leadership •B5 Promotion of a member of an Underrepresented Group into a role that constitutes career progression for at least one member of the writing staff •B6 Substantial year-over-year increase in members of Underrepresented Groups as directors and in writing staff
<p>STANDARD C</p> <p>BELOW-THE-LINE</p> <p>At least TWO of the following FIVE areas must be met to fulfill Standard C:</p>	<ul style="list-style-type: none"> •C1 50% or more of line producer and/or production department heads (ie: DP, composer, costume designer, editor, production designer, music supervisor...) come from Underrepresented Groups •C2 50% or more of other key roles (any mid-level crew and technical positions) come from Underrepresented Groups •C3 50% or more of the overall crew or project staff come from Underrepresented Groups •C4 Promotion of member of Underrepresented Group into a role that constitutes career progression for at least one crew/team member •C5 Hiring a Line Producer and/or Production Department Head who has not been previously employed in that role on a DGE Show
<p>STANDARD D</p> <p>INDUSTRY ACCESS & CAREER DEVELOPMENT</p> <p>At least THREE of the following SIX areas must be met to fulfill Standard D:</p>	<ul style="list-style-type: none"> •D1 Paid employment opportunities such as apprenticeships, internships, expert advisers to facilitate union eligibility for members of Underrepresented Groups (CTDI PA Program qualifies) •D2 Training opportunities and/or skills development (craft, creative and business), including one-off, work-experience opportunities for students from underrepresented groups (to be coordinated through Current Executive & Corporate Social Responsibility) •D3 'First job' for member of Underrepresented Group in a role that constitutes career progression from prior training (Staffing from CTDI Writing or Directing Program qualifies) •D4 50% or more of outside vendors or contractors employed by production provide industry access or opportunities to members of Underrepresented Groups as defined in D1-D3 •D5 Producer or Department Head participation in DGE Talent Development Initiative, guild or other approved mentorship program (Participating as a Panelist/Presenter at a CTDI event qualifies, Mentorship will be vetted by Current Executive) •D6 Producer develops/executes a show-specific D&I program subject to Network approval

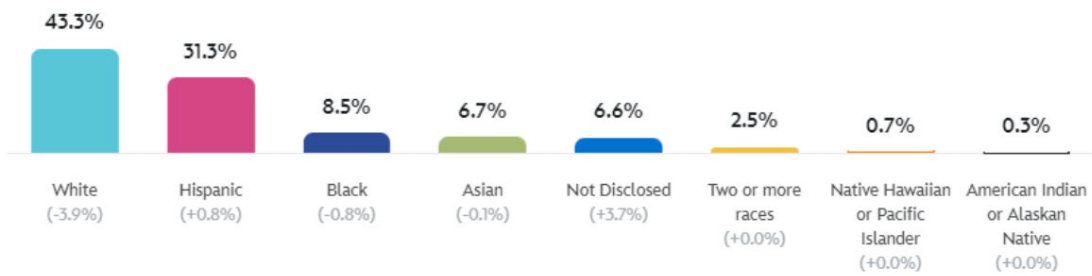
Context is critical when evaluating if a group is “underrepresented.”

Anyone involved in hiring decisions is prohibited from asking candidates and talent about their actual or perceived race, religion, color, sex, sexual orientation, gender, gender identity, military or veteran status, age, disability, or any other legally protected categories.

Representation by Level and Ethnicity

(FY22 vs FY21)

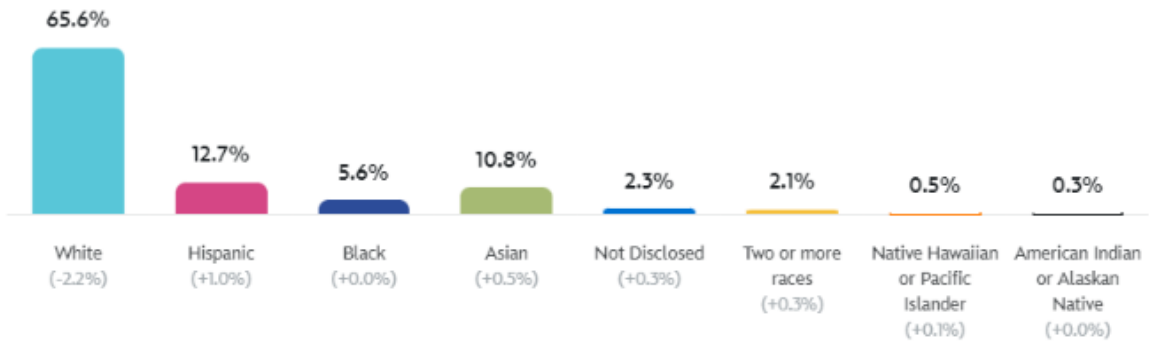
- Total Workforce
- Executive
- Manager
- Below Manager**



Representation by Level and Ethnicity

(FY22 vs FY21)

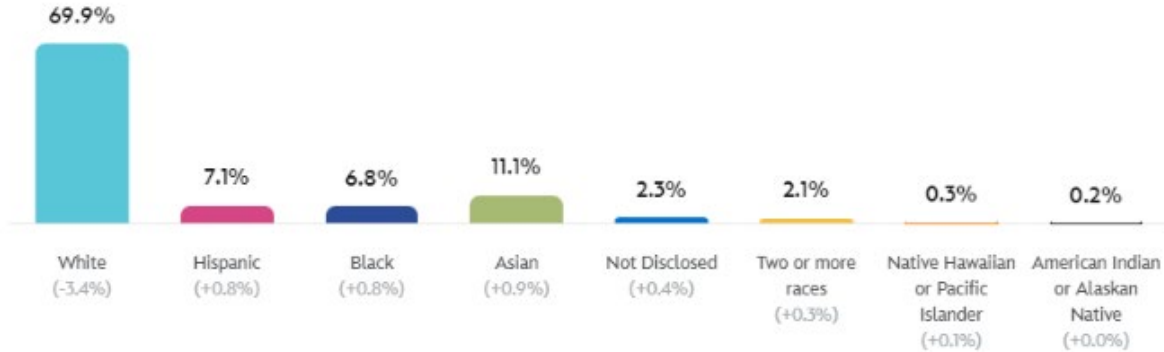
- Total Workforce
- Executive
- Manager**
- Below Manager



Representation by Level and Ethnicity

(FY22 vs FY21)

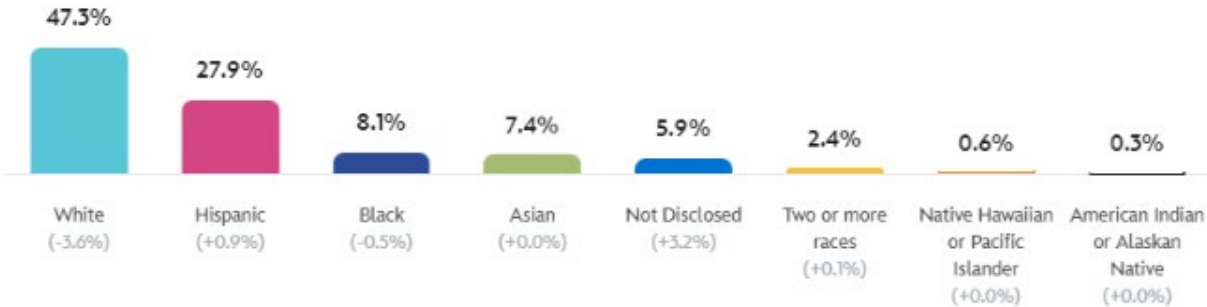
- Total Workforce
- Executive**
- Manager
- Below Manager



Representation by Level and Ethnicity

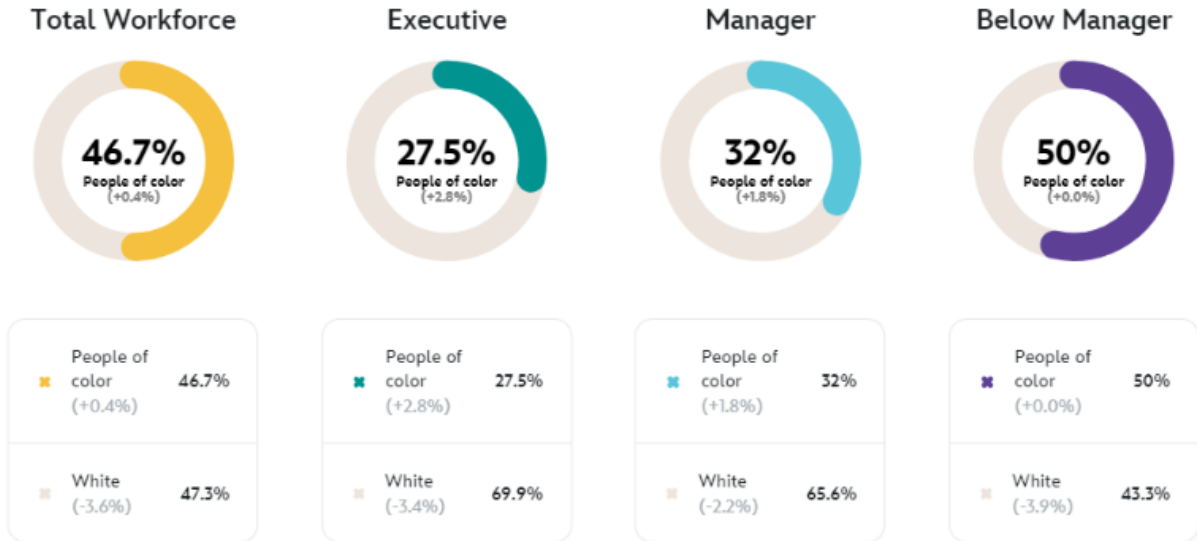
(FY22 vs FY21)

- Total Workforce**
- Executive
- Manager
- Below Manager



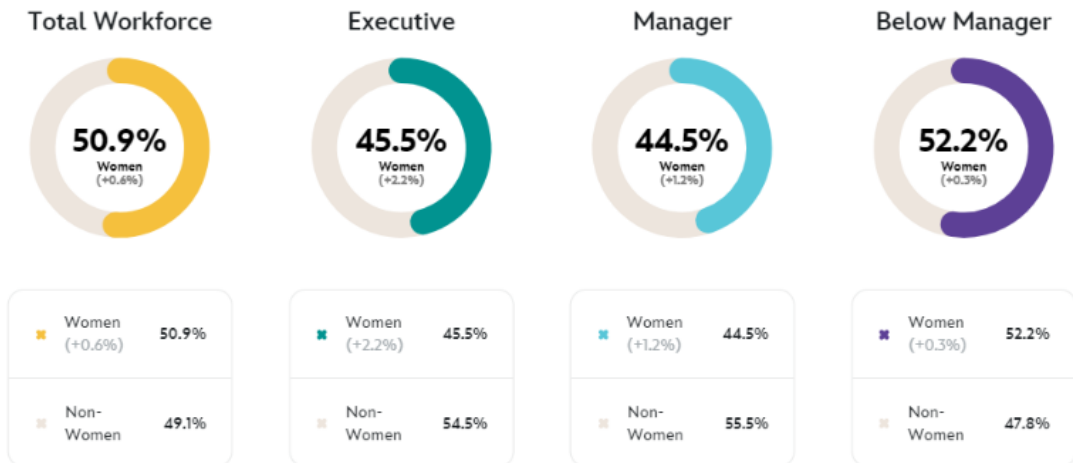
Representation by Level and Ethnicity

(FY22 vs FY21)











Representation by Level and Gender

(FY22 vs FY21)



Race / Ethnicity at Disney

(FY22 vs FY21)

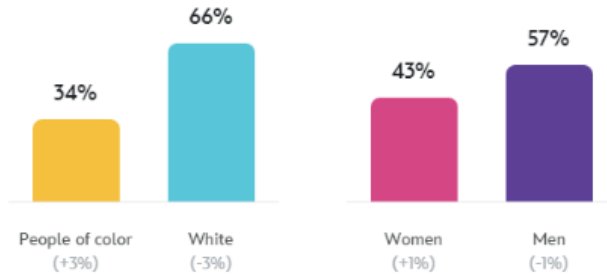
 White (-3.6%)	47.3%
 Hispanic / Latinx (+0.9%)	27.9%
 Black / African American (-0.5%)	8.1%
 Asian (+0.0%)	7.4%
 Not Disclosed (+3.2%)	5.9%
 Two or more races (+0.1%)	2.4%
 Native Hawaiian or other Pacific Islander (+0.0%)	0.6%
 Native American or Alaska Native (+0.0%)	0.3%



Scripted & Film Representation

(FY21 vs FY20)

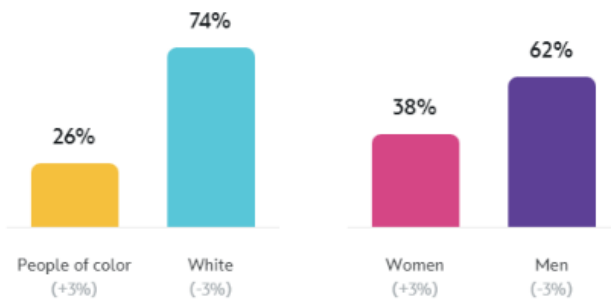
- Directors
- Series Regular / Leads
- Producers
- Writers**



Scripted & Film Representation

(FY21 vs FY20)

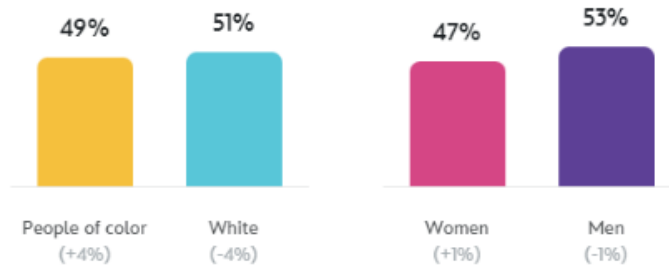
- Directors
- Series Regular / Leads
- Producers**
- Writers



Scripted & Film Representation

(FY21 vs FY20)

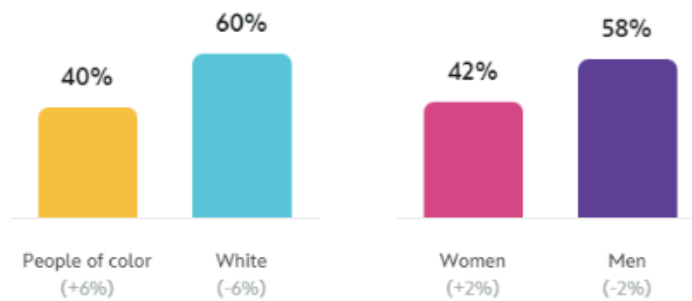
Directors **Series Regular / Leads** Producers Writers



Scripted & Film Representation

(FY21 vs FY20)

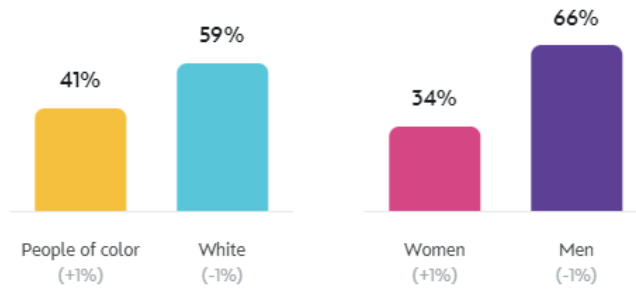
Directors Series Regular / Leads Producers Writers



News & Sports Representation

(FY21 vs FY20)

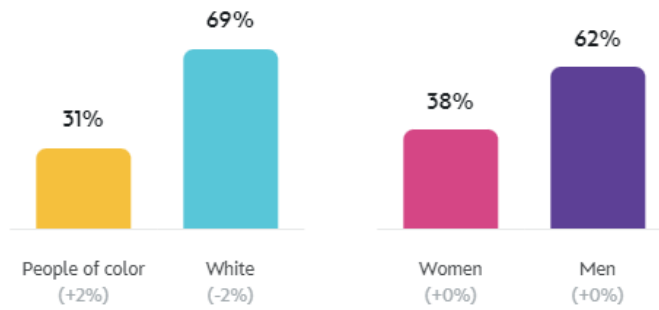
On Air Behind the Camera



News & Sports Representation

(FY21 vs FY20)

On Air Behind the Camera



FISCAL 2022 HIGHLIGHTS

(All data points are for fiscal 2022 unless otherwise noted)

World of Belonging

DIVERSITY, EQUITY & INCLUSION

We are committed to cultivating a welcoming and respectful workplace, creating content and experiences that inspire our global audiences, and collaborating with community organizations to make our industries accessible to all.

7 out of 11 Board of Director nominees at our 2023 Annual Meeting

Are women and/or racially/ethnically diverse

~47% of our U.S. employees

Were People of Color

~51% of our employees worldwide

Were women

To attract and retain representative talent at the executive level, we invest in talent development programs like the Black Talent Network, which launched in 2020. This initiative expands exposure for Black talent across the Company and helps to increase representation in senior-level roles. Participants engage with senior leaders and create career plans to expand their opportunities within the Company, and 86% of Black Talent Network participants said they know the next steps to achieve their career possibilities.

INCLUSION STANDARDS QUESTIONS

1. What are the DGE Inclusion Standards?

- The DGE Inclusion Standards are a set of guidelines aimed at improving the inclusion of underrepresented groups both on screen and in creative leadership and below-the-line positions on DGE productions. The Standards also aim to increase training and development opportunities for members of underrepresented groups and to enhance DGE's engagement with underserved audiences.
- By providing a framework upon which a show's inclusion efforts and progress can be measured, these guidelines are an expression of how we value inclusion as an organization and help us understand what outcomes constitute progress for Disney.
- The expectation is the Inclusion Standards will serve as a catalyst for those involved in the creative and hiring processes to become even more engaged in inclusive hiring and employment practices, and to take further action to evaluate whether any barriers to equal employment opportunities exist for underrepresented groups and, if so, to address those barriers.

2. What do we mean by "inclusive hiring and employment practices"?

- "Inclusive hiring and employment practices" refer to practices that are intended to cast the widest net possible when it comes to attracting, considering, evaluating, and retaining talent for jobs. Some examples are:
 - Making sure that job opportunities are being widely disseminated to all communities, including traditionally underrepresented communities.
 - Expanding your own professional network to include as many people as possible, including people from underrepresented groups, so that you have a larger pool of individuals to reach out to or consider when filling a role.
 - Challenging preconceived assumptions about what indicators are effective at predicting whether someone will or will not succeed at a particular role (e.g., assuming that someone who has a positive reference from a mutual connection will be successful on your show).
 - Reconsidering what qualities and experiences render someone qualified for a role (e.g., assuming that someone who has worked on your prior shows with you is the most qualified).
 - Interviewing and considering more individuals for every role.
 - Telling meaningful diverse and inclusive stories.
 - Improving access to training and development opportunities for members of underrepresented groups.

3. Do the Inclusion Standards require or encourage productions to reserve a certain number of open positions for underrepresented groups?

- No. The Inclusion Standards are about reinforcing inclusive practices. This means that productions will meet the Inclusion Standards by engaging in the inclusive hiring and employment practices described above.

Last Update: May 2021

Eligibility Criteria:

- Directors from traditionally underrepresented groups including:
 - Women
 - AAPI, Black/AA, Indigenous/Native, Hispanic/Latinx/Latine, MENA, SWANA
 - LGBTQIA+
 - Disability identifying
 - Religiously marginalized